TITLE 40

MOTOR VEHICLES AND TRAFFIC

VOLUME 28A

Chap.

1. Identification and Regulation, 40-1-1 through 40-1-200.
2. Registration and Licensing of Motor Vehicles, 40-2-1 through 40-2-168.
3. Certificates of Title, Security Interests, and Liens, 40-3-1 through 40-3-95.
4. Identification of and Purchase and Resale of Motor Vehicles and Parts, 40-4-1 through 40-4-45.
5. Drivers' Licenses, 40-5-1 through 40-5-179.

VOLUME 29

6. Uniform Rules of the Road, 40-6-1 through 40-6-397.
7. Off-road Vehicles, 40-7-1 through 40-7-6.
8. Equipment and Inspection of Motor Vehicles, 40-8-1 through 40-8-291.
9. Reporting Accidents; Giving Proof of Financial Responsibility, 40-9-1 through 40-9-103.
10. Governor's Office of Highway Safety, 40-10-1 through 40-10-10.
11. Abandoned, Derelict, and Civil Forfeiture of Motor Vehicles, 40-11-1 through 40-11-24.
12. Actions Against Nonresident Motorists, 40-12-1 through 40-12-8.
13. Prosecution of Traffic Offenses, 40-13-1 through 40-13-64.
14. Use of Speed Detection Devices and Red Light Cameras, 40-14-1 through 40-14-26.
15. Motorcycle Operator Safety Training Program, 40-15-1 through 40-15-5.
16. Department of Driver Services, 40-16-1 through 40-16-8.

Cross references. — Regulation of retail installment sales of motor vehicles, § 10-1-30 et seq. Regulation of sales of gasoline and other petroleum products generally, § 10-1-140 et seq. Size and weight restrictions pertaining to motor vehicles and loads, § 32-6-20 et seq. Motor vehicle accident insurance, § 33-7-11 and T. 33, C. 34. Regulation of operation of self-service motor fuel dispensing pumps, § 36-60-1. Adoption of ordinances and authority to contract for removal of junked motor vehicles, § 36-60-4. Installation of road grates to accommodate bicycles, § 36-60-5. Regulation of activities of driver training schools and instructors, T. 43, C. 13. Regulation of motor vehicle racetracks, T. 43, C. 25. Regulation of used car and car parts dealers, T. 43, C. 47. Penalty for unauthorized display of sign, tag, or other documents on motor vehicle so as to convey impression that owner of motor vehicle is member of Governor's staff, § 45-1-3. Motor carriers, T. 46, C. 7. Motor fuel taxes, § 48-9-1 et seq.

JUDICIAL DECISIONS

Law on motor vehicles and traffic must be strictly construed. O'Steen v. Boone, 117 Ga. App. 174, 160 S.E.2d 229 (1968).

Applicability of title to motorcycles. — Motorcycle is subject to the provisions of the law on motor vehicles and traffic (see now O.C.G.A. T. 40) in general and to those of O.C.G.A. § 40-2-20 in particular. Grange Mut. Cas. Co. v. King, 174 Ga. App. 716, 331 S.E.2d 41 (1985).

Motorcycles taxed separately. — General Assembly, in providing license taxes, separated motorcycles from the general class of motor vehicles. Bullard v. Life & Cas. Ins. Co., 178 Ga. 673, 173 S.E. 855, answer conformed to, 49 Ga. App. 27, 174 S.E. 256 (1934).

Cited in Seaboard Air Line Ry. v. Benton, 175 Ga. 491, 165 S.E. 593 (1932).

OPINIONS OF THE ATTORNEY GENERAL

Purpose of motor vehicle and traffic law. — Overall primary purpose of the law on motor vehicles and traffic is to provide for the registration and licensing of motor vehicles, including providing dealers with the convenience of a special tag, transferable at will from vehicle to vehicle. 1954-56 Op. Att'y Gen. p. 473.

RESEARCH REFERENCES

ALR. — Liability of owner or operator of motor vehicle for injury caused thereby while it is being repaired or serviced, 15 A.L.R.3d 1387.

Criminal liability based on violation of statute or ordinance specifically regulating operation of snowmobile, 45 A.L.R.3d 1438.

Search and seizure: lawfulness of demand for driver's license, vehicle registration, or proof of insurance, pursuant to police stop to assist motorist, 19 A.L.R.5th 884.

CHAPTER 6

UNIFORM RULES OF THE ROAD

Article 1

General Provisions

Sec.

40-6-1. Violations of chapter a misdemeanor unless otherwise stated; maximum fines for speed limit violations.
40-6-2. Obedience to authorized persons directing traffic.
40-6-3. Chapter refers to operation of vehicles on highways; exceptions; vehicle accident reports and private property.
40-6-4. Persons riding animals or driving animal drawn vehicles.
40-6-5. Persons working on highways.
40-6-6. Authorized emergency vehicles; pursuit of fleeing suspects.
40-6-7. Operation of motor vehicles in parades.
40-6-8. Rights of owners of real property.
40-6-9. Challenges to speed limits and other traffic regulations established or enforced by local governing authorities.
40-6-10. Insurance requirements for operation of motor vehicles generally.
40-6-10.1. Financial responsibility requirements of the Federal Motor Carrier Safety Administration.
40-6-11. Insurance requirements for operation of motorcycles.
40-6-12. Subsequent violation; proof of financial responsibility.
40-6-13. Courts having jurisdiction to try offenses.
40-6-14. Sound volume limitations from within the motor vehicle.
40-6-15. Knowingly driving motor vehicle on suspended, canceled, or revoked registration; punishment.

Sec.

40-6-16. Procedure for passing certain stationary vehicles.
40-6-16.1. Procedure for passing vehicle with active sanitation workers.
40-6-17. Prohibited use of traffic-control device preemption emitter; penalty.

Article 2

Traffic Signs, Signals, and Markings

40-6-20. Obedience to traffic-control devices required; presumptions; red light cameras.
40-6-21. Meaning of traffic signals.
40-6-22. Pedestrian-control signals.
40-6-23. Flashing circular red or yellow signals.
40-6-24. Lane direction control signals.
40-6-25. Display of unauthorized signs, signals, or markings.
40-6-26. Interference with official traffic-control devices or certain signs; travel on closed highway prohibited.
40-6-27. Installation of blue retroreflective raised pavement markers.
40-6-28. Restricted access/managed lanes.

Article 3

Driving on Right Side of Roadway, Overtaking and Passing, Following too Closely

40-6-40. Vehicles to drive on right side of roadway; exceptions; impeding traffic.
40-6-41. Passing vehicles proceeding in opposite directions.
40-6-42. Overtaking and passing generally.
40-6-43. When overtaking and passing on the right permitted.
40-6-44. Limitations on overtaking and passing on the left.
40-6-45. Further limitations on driv-

Sec.
ing on left of center of roadway.
40-6-46. No-passing zones.
40-6-47. One-way roadways and rotary traffic islands.
40-6-48. Driving on roadways laned for traffic.
40-6-49. Following too closely.
40-6-50. Driving on divided highway, controlled-access roadways, and emergency lanes.
40-6-51. Restrictions on type of vehicle that may travel on certain major interstates and highways inside the Interstate 285 perimeter.
40-6-52. Prohibited lane usage by trucks using multilane highways.
40-6-53. Prohibited lane usage by buses and motorcoaches using multilane highways; HOV lane usage by a bus or motorcoach.
40-6-54. Designation of travel lanes for exclusive use of certain vehicles; penalty; presumption; establishment of high occupancy toll (HOT)lanes.
40-6-55. Obligation of drivers to yield to bicyclist in a bicycle lane.
40-6-56. Safe passing distance when overtaking a bicyclist.

Article 4

Right of Way

40-6-70. Right of way rule for vehicles approaching or entering intersection.
40-6-71. Yield when turning left.
40-6-72. Stopping and yielding.
40-6-73. Entering or crossing roadway.
40-6-74. Operation of vehicles on approach of authorized emergency vehicles.
40-6-75. Highway construction and maintenance personnel and vehicles.
40-6-76. Funeral processions.
40-6-77. Penalties for collision which causes serious injury to motorcyclist, pedestrian, bicyclist, or farmer transporting certain items.

Article 5

Rights and Duties of Pedestrians

Sec.
40-6-90. Pedestrians to obey traffic-control devices and traffic regulations.
40-6-91. Right of way in crosswalks.
40-6-92. Crossing roadway elsewhere than at crosswalk.
40-6-93. Drivers to exercise due care in relation to pedestrians.
40-6-94. Right of way of blind pedestrian.
40-6-95. Pedestrian under influence of alcohol or drug.
40-6-96. Pedestrians on or along roadway.
40-6-97. Pedestrians soliciting.
40-6-97.1. Solicitation permits for charitable organizations.
40-6-98. Driving through safety zone prohibited.
40-6-99. Pedestrians to yield to authorized emergency vehicles.
40-6-100. Right of way on sidewalks [Repealed].
40-6-101. Redesignated.

Article 6

Turning, Starting, Signaling

40-6-120. Methods of turning at intersections.
40-6-121. U-turns.
40-6-122. Starting parked vehicle.
40-6-123. Turning movements; signals required on turning, changing lanes, slowing, or stopping.
40-6-124. Signals by hand and arm or signal lights.
40-6-125. Method of giving hand and arm signals.
40-6-126. Central lane for turning.

Article 7

Negotiating Railroad Crossings, Entering Highways from Private Driveways

40-6-140. Approaching and travel over railroad grade crossing.
40-6-141. Erection and observance of stop signs at railroad grade crossings.

Sec.
40-6-142. Certain vehicles to stop at all railroad crossings.
40-6-143. Moving heavy equipment at railroad grade crossings.
40-6-144. Emerging from alley, driveway, or building; driving upon a sidewalk prohibited.

Article 8

School Buses

40-6-160. Speed limits when transporting children.
40-6-161. Headlights to be lit when transporting children; communication equipment required.
40-6-162. Use of visual signals.
40-6-163. Duty of driver of vehicle meeting or overtaking school bus; reporting of violations; civil monetary penalty for violations captured by school bus camera.
40-6-164. Duty of school bus driver stopping to allow children to disembark.
40-6-165. Operation of school buses.

Article 9

Speed Restrictions

40-6-180. Basic rules.
40-6-181. Maximum limits.
40-6-182. Establishment of state speed zones.
40-6-183. Alteration of speed limits by local authorities.
40-6-184. Impeding traffic flow; minimum speed limits; slower driving in a passing lane.
40-6-185. Speed limits on bridges and other elevated structures.
40-6-186. Racing on highways or streets.
40-6-187. Charging violations; sentence to specify amount by which speed limit exceeded.
40-6-188. Highway work zones; reduction in speed; signage.
40-6-189. Classification as super speeder; fees.

Article 10

Stopping, Standing, and Parking

PART 1

GENERAL PROVISIONS

Sec.
40-6-200. How vehicles to be parked; powers of Department of Transportation and local authorities.
40-6-201. Leaving motor vehicle unattended [Repealed].
40-6-202. Stopping, standing, or parking outside of business or residential districts.
40-6-203. Stopping, standing, or parking prohibited in specified places; stopping or standing for collecting municipal solid waste or recovered materials.
40-6-204. Exception as to disabled vehicles.
40-6-205. Obstructing intersection.
40-6-206. When police officers may remove vehicles; uninsured vehicles.
40-6-207. Liability of owner for traffic or parking violations occurring while vehicle leased to another; duty of owner to attend hearing on the offense; improper vehicle maintenance.
40-6-208. Parking areas for passengers of rapid rail or public transit buses; violations.

PART 2

PARKING FOR PERSONS WITH DISABILITIES

40-6-220. Short title.
40-6-221. Definitions.
40-6-222. Permits [Repealed].
40-6-223. Fees [Repealed].
40-6-224. Out-of-state handicapped or persons with disabilities license plates or permits.
40-6-224.1. Handicapped parking places for the nonambulatory [Repealed].
40-6-225. Parking places for persons with disabilities for the nonambulatory.
40-6-226. Offenses and penalties.

Sec.
40-6-227. Application to both public and private property.
40-6-228. Enforcement.

Article 11

Miscellaneous Provisions

40-6-240. Backing.
40-6-241. Distracted driving; restrictions on operation of wireless telecommunication devices and stand-alone electronic devices; penalty; exceptions.
40-6-241.1. Definitions; prohibition on certain persons operating motor vehicle while engaging in wireless communications; exceptions; penalties [Repealed].
40-6-241.2. Writing, sending, or reading text based communication while operating motor vehicle prohibited; prohibited uses of wireless telecommunication devices by drivers of commercial vehicles; exceptions; penalties for violation [Repealed].
40-6-242. Obstruction of driver's view or interference with control of vehicle.
40-6-243. Opening and closing vehicle doors.
40-6-244. Riding in house trailer.
40-6-245. Driving through canyon or on mountain highway.
40-6-246. Coasting.
40-6-247. Following fire apparatus or emergency vehicle.
40-6-248. Crossing fire hose.
40-6-248.1. Securing and covering loads on vehicles.
40-6-249. Littering highway.
40-6-250. Wearing device which impairs hearing or vision.
40-6-251. Driving in circular or zigzag course; "laying drags."
40-6-252. Parking, standing, or driving vehicle in private parking area after request not to do so.
40-6-253. Consumption of alcoholic beverage or possession of open container of alcoholic beverage in passenger area.
40-6-253.1. Transportation of medical waste; exception; penalty for violation.
40-6-254. Operating vehicle without adequately securing load.
40-6-255. Driving away without paying for gasoline.

Article 12

Accidents

40-6-270. Hit and run; duty of driver to stop at or return to scene of accident.
40-6-271. Duty upon striking unattended vehicle.
40-6-272. Duty upon striking fixture.
40-6-273. Duty to report accident resulting in injury, death, or property damage.
40-6-273.1. Instruction to drivers to provide certain information to other parties.
40-6-274. Exemption from duty to stop at scene or report accident.
40-6-275. Duty to remove vehicle from public roads; removal of incapacitated vehicle from state highway.
40-6-276. Duty of driver of wrecker/tow truck.
40-6-277. Sheriffs and chief executive officers of law enforcement agencies to report traffic accident deaths.
40-6-278. Uniform motor vehicle accident reports and reporting procedures.
40-6-279. Accidents involving operation of fully autonomous vehicles.

Article 13

Special Provisions for Certain Vehicles

PART 1

BICYCLES AND PLAY VEHICLES

40-6-290. Application of part regarding bicycles.
40-6-291. Traffic laws applicable to bicycles; operation upon paved shoulder; signaling of right hand turns.
40-6-292. Manner of riding bicycle; passengers.

Sec.
40-6-293. Clinging to vehicles.
40-6-294. Riding on roadways and bicycle paths.
40-6-295. Carrying articles.
40-6-296. Lights and other equipment on bicycles.
40-6-297. Violation of part a misdemeanor; duty of parents and guardians.
40-6-298. Rules and regulations.
40-6-299. Redesignated.

PART 1A

OPERATION OF FARM USE VEHICLE

40-6-305. Purpose of farm use vehicle.
40-6-306. Rights and duties of operator.
40-6-307. Local restrictions on public roads and highways.

PART 2

MOTORCYCLES

40-6-310. Traffic laws applicable to persons operating motorcycles.
40-6-311. Manner of riding motorcycle generally.
40-6-312. Operating motorcycle on roadway laned for traffic.
40-6-313. Clinging to other vehicles.
40-6-314. Footrests and handlebars.
40-6-315. Headgear and eye-protective devices for riders.
40-6-316. Rules and regulations.

PART 2A

PERSONAL ASSISTIVE MOBILITY DEVICES

40-6-320. Operation on highways and sidewalks; direction of travel.
40-6-321. Due care to pedestrians.
40-6-322. Speed of travel restricted.
40-6-323. Parking.
40-6-324. Transportation of hazardous materials; medical oxygen excluded.
40-6-325. Required equipment; minimum age for operation; exception to age requirement.
40-6-326. Operation while intoxicated.
40-6-327. Penalty for violations.

PART 3

PERSONAL TRANSPORTATION VEHICLES

40-6-330. Standards for operating personal transportation vehicles.
40-6-330.1. Required equipment for personal transportation vehicles; grandfather clause.
40-6-331. Designated areas of operation; PTV licensing requirements and operating standards; signage; use by a commercial delivery company.

PART 4

MOPEDS

40-6-350. Traffic laws applicable to persons operating mopeds.
40-6-351. Driver's license or permit required for certain operators.
40-6-352. Protective headgear.
40-6-353. Operation over certain roads may be prohibited.
40-6-354. Rules and regulations.

PART 5

LOW-SPEED VEHICLES

40-6-360. Rights of persons operating low-speed vehicles.
40-6-361. Traffic laws applicable to low-speed vehicles.
40-6-362. Operating low-speed vehicles on highways.

PART 6

PERSONAL TRANSPORTATION VEHICLE TRANSPORTATION PLAN

40-6-363. Legislative intent.
40-6-364. Definitions.
40-6-365. Standards for local authorities to establish personal transportation vehicle transportation plans.
40-6-366. Acquisition of property for PTV lanes.
40-6-367. Part inapplicable to certain localities with prior ordinances governing PTV use.
40-6-368. Requirements for streets or highways on which joint use by regular vehicle traffic and PTVs permitted.
40-6-369. Manner in which PTVs may be driven.
40-6-369.1. Speed limits on streets authorized for PTV use.

Article 14

Effect of Chapter on Powers of Local Authorities

Sec.
40-6-370. Uniform state-wide application of chapter.
40-6-371. Powers of local authorities generally.
40-6-372. Adoption of chapter by local authorities.
40-6-373. Effect of future changes in chapter.
40-6-374. Form of adopting ordinance.
40-6-375. Citations for violations.
40-6-376. Prosecution under this chapter or local ordinance; transfer of charge to state tribunal; double jeopardy.

Article 15

Serious Traffic Offenses

Sec.
40-6-390. Reckless driving.
40-6-391. Driving under the influence of alcohol, drugs, or other intoxicating substances; penalties; publication of notice of conviction for persons convicted for second time; endangering a child.
40-6-391.1. Entry and acceptance of plea of nolo contendere.
40-6-391.2. Seizure and civil forfeiture of motor vehicle operated by habitual violator.
40-6-391.3. Penalty for conviction for driving under influence of alcohol or drugs while driving school bus.
40-6-392. Chemical tests for alcohol or drugs.
40-6-393. Homicide by vehicle.
40-6-393.1. Feticide by vehicle; penalties.
40-6-394. Serious injury by vehicle.
40-6-395. Fleeing or attempting to elude police officer; impersonating law enforcement officer.
40-6-396. Homicide by interference with official traffic-control device or railroad sign or signal; serious injury by interference with official traffic-control device or railroad sign or signal.
40-6-397. Aggressive driving; penalty.

Cross references. — Liability of persons rendering emergency care generally, §§ 31-11-8, 51-1-29, 51-1-30, and 51-1-30.1. Regulation of size, weight, and other elements of vehicles and loads on public highways, § 32-6-20 et seq. Liability of law enforcement officers for actions taken while performing duties at scene of emergency, § 35-1-7. Observance of laws by motor carriers, § 40-1-122. Georgia forest products trucking rules, § 46-1-1.

Editor's notes. — Since the purpose of Ga. L. 1990, p. 2048, was to "revise, reorganize, modernize, consolidate, and clarify" laws relating to certain aspects of the motor vehicle code, wherever it was possible to do so, other Acts amending Title 40 were construed in conjunction with Ga. L. 1990, p. 2048. This construction particularly includes Acts amending a given Code section when the Code section was later renumbered or redesignated by Ga. L. 1990, p. 2048.

Ga. L. 1990, p. 2048, § 17, not codified by the General Assembly, provides: "Prosecution for any violation of Sections 4 and 5 of this Act occurring prior to January 1, 1991, is not affected or abated by this Act."

JUDICIAL DECISIONS

In light of the similarity of the statutory provisions, annotations decided under former Code 1933, § 92A-6 are included in the annotations for this Code section.

Constitutionality. — Uniform Rules of the Road Act, Ga. L. 1974, p. 633 (see now O.C.G.A. § 40-6-1 et seq.), does not violate the Georgia Constitution by containing matter different from what is expressed in the title. Head v. State, 246 Ga. 360, 271 S.E.2d 452 (1980).

Purpose of chapter. — Statutory purpose of all the regulations codified as the Uniform Rules of the Road, Ga. L. 1974, p.

633 (see now O.C.G.A. § 40-6-1 et seq.), is to promulgate the safe and expeditious movement of vehicular traffic on the highways. Crook v. State, 156 Ga. App. 756, 275 S.E.2d 794 (1980).

No conflict with O.C.G.A. § 40-9-3. — Uniform Traffic Regulations Act, Ga. L. 1953, Nov.-Dec. Sess., p. 556, is not in irreconcilable conflict with the provisions of the Motor Vehicle Responsibility Act, Ga. L. 1951, p. 565, which confers upon the commissioner of public safety the power to cancel drivers' licenses. Turmon v. Department of Pub. Safety, 222 Ga. 843, 152 S.E.2d 884 (1967) (decided under former Code 1933, § 92A-6).

Violation of statute and ordinance. — Any violation of the Uniform Rules of the Road Act, Ga. L. 1974, p. 633 (see O.C.G.A. § 40-6-1 et seq.) and of a local ordinance may, at the discretion of the local prosecutor, be charged as a violation of the state statute or the local ordinance. Diamond v. State, 151 Ga. App. 690, 261 S.E.2d 434 (1979).

State court jurisdiction. — State court has jurisdiction over all misdemeanor offenses in county including violations of the Uniform Rules of the Road Act, Ga. L. 1974, p. 633 (see now O.C.G.A. § 40-6-1 et seq.). Diamond v. State, 151 Ga. App. 690, 261 S.E.2d 434 (1979).

Traffic violation is negligence as a matter of law rather than issuable negligence as a matter of fact. Mathis v. Mangum, 166 Ga. App. 415, 304 S.E.2d 520 (1983).

Cited in Mayor of Savannah v. Palmerio, 242 Ga. 419, 249 S.E.2d 224 (1978); Akin v. Hardison, 245 Ga. 57, 262 S.E.2d 814 (1980); Ray v. Parcel Delivery Co., 155 Ga. App. 531, 271 S.E.2d 670 (1980).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, Ch. 68-16 are included in the annotations for this Code section.

Purpose of chapter. — Purpose of the Uniform Rules of the Road Act, Ga. L. 1974, p. 633 (see now O.C.G.A. § 40-6-1 et seq.) is not essentially penal, but remedial and designed to promote public safety. 1975 Op. Att'y Gen. No. 75-117.

Suspension and retention of licenses of convicted racers. — Amendment to the Uniform Rules of the Road Act, having been approved by the Governor subsequent to approval of the Drivers Licensing Act, prevails over the Drivers Licensing Act to the extent that there is a conflict between the two statutes; thus, the department should continue to suspend and retain drivers licenses of persons convicted of racing in accordance with the provisions of the Uniform Rules of the Road Act and disregard the inconsistent provisions of the Drivers Licensing Act which were approved prior to the Uniform Rules of the Road Act. 1975 Op. Att'y Gen. 75-117.

Permission required before city enacts ordinance. — City cannot enact an ordinance regulating parking on a state highway without first receiving permission of the Department of Transportation. 1971 Op. Att'y Gen. No. U71-3 (decided under former Code 1933, Ch. 68-16).

Units subject to braking and inspection requirements. — Type of unit which is secured by a flexible, welded joint is a single unified motor vehicle and not two separate vehicles; as such, the unit is subject to the braking and inspection requirements imposed by law on motor vehicles. 1968 Op. Att'y Gen. No. 68-308 (decided under former Code 1933, Ch. 68-16).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Driver's Failure to Maintain Proper Lookout, 40 POF2d 411.

Driver's Negligence in Backing Up, 46 POF2d 647.

ALR. — Right or duty to turn in viola-

tion of law of road to avoid traveler, or obstacle, 24 A.L.R. 1304; 63 A.L.R. 277; 113 A.L.R. 1328.

Regulation of carriers by motor vehicle as affected by interstate commerce clause, 85 A.L.R. 1136; 109 A.L.R. 1245; 135 A.L.R. 1358.

Power to restrict or interfere with access of abutter by traffic regulations, 73 A.L.R.2d 689.

Entrapment to commit traffic offense, 34 A.L.R.4th 1167.

ARTICLE 1

GENERAL PROVISIONS

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-303 are included in the annotations for this article.

Motor vehicles operating on "public roads." — Highway is a public road and the terms "highways" and "public highways," as used in the provisions regulating the operating of motor vehicles, mean "public roads" as distinguished from private ways. The meaning is not confined to the public highways which form the state highway system. Powell v. State, 193 Ga. 398, 18 S.E.2d 678 (1942) (decided under former Code 1933, § 68-303).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 222 et seq.

ALR. — Applicability of motor vehicle regulations to public officials or employees, 19 A.L.R. 459; 23 A.L.R. 418.

"Emergency rule" as applied to automobile or motorcycle drivers, 79 A.L.R. 1277; 111 A.L.R. 1019.

40-6-1. Violations of chapter a misdemeanor unless otherwise stated; maximum fines for speed limit violations.

(a) It is unlawful and, unless otherwise declared in this chapter with respect to particular offenses, it is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this chapter.

(b) Unless a different maximum fine or greater minimum fine is specifically provided in this chapter for a particular violation, the maximum fine which may be imposed as punishment for a first offense of violating any lawful speed limit established by or pursuant to the provisions of Article 9 of this chapter by exceeding a maximum lawful speed limit:

(1) By five miles per hour or less shall be no dollars;

(2) By more than five but not more than ten miles per hour shall not exceed $25.00;

(3) By more than ten but not more than 14 miles per hour shall not exceed $100.00;

(4) By more than 14 but less than 19 miles per hour shall not exceed $125.00;

(5) By 19 or more but less than 24 miles per hour shall not exceed $150.00; or

(6) By 24 or more but less than 34 miles per hour shall not exceed $500.00. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 23; Code 1933, § 68A-102, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 2001, p. 770, § 1.)

Cross references. — For surcharges to or apportionment of fines in certain traffic offense cases, §§ 15-21-73, 15-21-93, 15-21-112, 15-21-131, 15-21-149, 36-15-9, 47-11-51, 47-14-50, 47-16-60, and 47-17-60. Provision that offenses under jurisdiction of traffic violations bureau shall be classified as traffic violations rather than as misdemeanors, § 40-13-60.

Law reviews. — For annual survey of trial practice and procedure, see 56 Mercer L. Rev. 433 (2004). For annual survey on commercial transportation, see 69 Mercer L. Rev. 41 (2017).

JUDICIAL DECISIONS

Legislative intent. — Legislature has expressly limited the punishment prescribed in Ga. L. 1974, p. 633, § 1. United States v. Walter, 484 F. Supp. 183 (S.D. Ga. 1980).

O.C.G.A. § 40-6-1 cannot be the sole basis for a charge since the statute does not set out any proscribed conduct, but, instead, specifies the penalty for a violation of any provisions in O.C.G.A. Ch. 6, T. 40 which do not provide their own penalty. State v. Nix, 220 Ga. App. 651, 469 S.E.2d 497 (1996).

State court jurisdiction. — State court has jurisdiction over all misdemeanor offenses in county including violations of the Uniform Rules of the Road Act (see now O.C.G.A. § 40-6-1 et seq.). Diamond v. State, 151 Ga. App. 690, 261 S.E.2d 434 (1979).

Compliance did not necessarily show ordinary care. — Compliance with Georgia's Uniform Rules of the Road, O.C.G.A. § 40-6-1 et seq., did not necessarily demonstrate that a defendant exercised ordinary care; in a case seeking damages for injuries arising from an accident in which an auto struck a parked garbage truck, a trial court did not err in admitting evidence regarding a safer location for the stop of the truck or in refusing to instruct the jury that if the truck's flashing hazard lights were on at the time of the collision then, pursuant to O.C.G.A. § 40-6-203(c), the driver and the employer could not have been found negligent. Sinclair Disposal Serv. v. Ochoa, 265 Ga. App. 172, 593 S.E.2d 358 (2004).

Familiarity with state highway manual. — Interpretation of signs and signals as provided by the manual of the State Highway Board (now State Transportation Board) is not a matter of which the court can take judicial cognizance, nor one which the court can presume that every motorist is familiar with to the extent of imposing penal sanctions for disobedience thereof. Maxwell v. State, 97 Ga. App. 334, 103 S.E.2d 162 (1958).

Punishment for violations. — Punishment schemes contemplated by O.C.G.A. § 40-6-1 are: (1) punishment for violations of sections that have not "otherwise declared" their own penalties will be as provided for in O.C.G.A. § 17-10-3; and (2) punishment for violations of sections that have criminalized certain acts and prescribed particular punishments will be controlled by the specific penalties imposed by such sections. Chastain v. State, 231 Ga. App. 225, 498 S.E.2d 792 (1998).

Fine of $1,000 proper for speeding. — Trial court did not err in sentencing the defendant to a $1,000 fine for speeding in violation of O.C.G.A. § 40-6-181(b)(2) be-

cause the defendant did not object to the state's failure to admit certified copies of the defendant's prior convictions, nor did the defendant dispute that the defendant had multiple convictions for traffic violations; when the trial court asked the defendant whether any of the defendant's previous violations occurred while the defendant was operating a motorcycle, the defendant implicitly admitted at least one prior conviction for speeding. Jones v. State, 308 Ga. App. 99, 706 S.E.2d 593 (2011).

Violation of self-explanatory traffic-control device. — All traffic-control devices placed on the highway are presumed to be placed there by the authority of the State Highway Board (now State Transportation Board). Those which are self-explanatory are such that a violation thereof is a penal offense. Maxwell v. State, 97 Ga. App. 334, 103 S.E.2d 162 (1958).

Incremental speeds not material to charge. — Accusation specified that the defendant was charged with exceeding the speed limit on a certain road on a certain day which was sufficient to put the defendant on notice that the defendant was being tried for speeding, O.C.G.A. § 40-6-181(b); greater speeds by specified increment affected only the punishment and were therefore not material allegations to prove the crime of speeding so that the allegation that defendant was traveling 127 mph was not a material averment that had to be proven. Nye v. State, 279 Ga. App. 347, 631 S.E.2d 386 (2006).

Crossing yellow line. — In the absence of any properly placed sign explaining the meaning thereof, the crossing of a yellow line by a motorist to get in the opposite lane of traffic is not of itself a penal offense. Maxwell v. State, 97 Ga. App. 334, 103 S.E.2d 162 (1958).

Indictment naming wrong road did not support conviction. — Defendant's conviction for failure to keep the defendant's vehicle within a single lane of traffic could not stand; although there was evidence to support the charge, the accusation filed against the defendant stated the wrong road where the violation occurred, and therefore, there was insufficient evidence to convict the defendant of the charge stated in the accusation. Thrasher v. State, 292 Ga. App. 566, 666 S.E.2d 28 (2008).

Sentence for speeding within authorized limits. — Defendant's sentence to serve 12 months for speeding in violation of O.C.G.A. § 40-6-181(b)(2) was within authorized limits; O.C.G.A. § 40-6-1(b) simply sets limits on fines that can be imposed as punishment for a first offense of speeding and the statute does not restrict the available punishment for speeding to a fine. Jones v. State, 308 Ga. App. 99, 706 S.E.2d 593 (2011).

Cited in State v. Edwards, 236 Ga. 104, 222 S.E.2d 385 (1976); Berrian v. State, 139 Ga. App. 571, 228 S.E.2d 737 (1976); Peluso v. State, 147 Ga. App. 266, 248 S.E.2d 546 (1978); Gray v. State, 156 Ga. App. 117, 274 S.E.2d 115 (1980); Pfeiffer v. State, 173 Ga. App. 374, 326 S.E.2d 562 (1985); Ward v. State, 188 Ga. App. 372, 373 S.E.2d 65 (1988); Riddle v. State, 202 Ga. App. 194, 413 S.E.2d 494 (1991); Jones v. State, 258 Ga. App. 337, 574 S.E.2d 398 (2002); Smith v. State, 270 Ga. App. 759, 608 S.E.2d 35 (2004).

OPINIONS OF THE ATTORNEY GENERAL

Official signs. — Official traffic control signs, such as "Men Working," "Watch for Mowers," and "Survey Party," afford the same legal protection that is afforded by other official traffic control devices. 1970 Op. Att'y Gen. No. 70-55.

All-terrain vehicles operating on the highways of the State of Georgia are governed by the Uniform Rules of the Road, O.C.G.A. § 40-6-1 et seq. 2007 Op. Att'y Gen. No. 2007-3.

RESEARCH REFERENCES

ALR. — Right or duty to turn in violation of law of road to avoid traveler, or obstacle, 63 A.L.R. 277; 113 A.L.R. 1328.

40-6-2. Obedience to authorized persons directing traffic.

No person shall fail or refuse to comply with any lawful order or direction of any police officer, firefighter, police volunteer authorized under Code Section 35-1-11, or school-crossing guard designated by a local law enforcement agency invested by law with authority to direct, control, or regulate traffic. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 24; Code 1933, § 68A-104, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1989, p. 516, § 2; Ga. L. 1990, p. 2048, § 5; Ga. L. 1999, p. 654, § 2; Ga. L. 2002, p. 660, § 4; Ga. L. 2002, p. 1259, § 11.)

Cross references. — Provisions regarding refusal to obey official request at fire or other emergency, § 16-10-30. Authority of school-crossing guards to direct traffic, § 20-2-1131. Refusal to display driver's license upon demand by law enforcement officer, § 40-5-29.

JUDICIAL DECISIONS

Order to move vehicle lawful if given to owner, operator, or controller. — Order of the deputy sheriff to the defendant to move the wrecker was not a lawful order unless the defendant at the time was the owner, operator, or otherwise in control of the wrecker in question. Carroll v. State, 157 Ga. App. 112, 276 S.E.2d 265 (1981).

Attempt to comply with motorist's wishes provides no defense to failure to obey lawful directions of the deputy sheriff. Carroll v. State, 157 Ga. App. 113, 276 S.E.2d 267 (1981).

Directing traffic is official police function. — Because a police officer was directing traffic, and this activity necessarily is a police function, the officer was acting in the officer's official capacity at the time of a traffic accident, and the officer was entitled to assert official immunity as a defense to a claim of negligent conduct. Sommerfield v. Blue Cross & Blue Shield, Inc., 235 Ga. App. 375, 509 S.E.2d 100 (1998).

Stop proper after defendant ignored "stop" command. — Officer properly stopped the defendant after the defendant ignored the "stop" command of the officers on the other side of the intersection who were performing the police function of directing traffic. Williams v. State, 334 Ga. App. 195, 778 S.E.2d 820 (2015).

Fact issue on whether officer gave order. — Because a genuine issue of fact existed on whether the defendant officer ever told the plaintiff arrestee to park on the street in response to the arrestee's request that the officer move the police car so that the arrestee could enter the arrestee's driveway, and if the officer never did tell the arrestee to park on the street, or if the officer knew the arrestee could not hear the officer, not even arguable probable cause existed under O.C.G.A. § 40-6-2 for an arrest and granting the officer summary judgment on a false arrest claim was reversed. Skop v. City of Atlanta, 485 F.3d 1130 (11th Cir. 2007).

Jury properly instructed on statute. — In a suit by a driver who was injured when the driver ran into a house that was being moved, the trial court did not err in instructing the jury as to O.C.G.A. § 40-6-2; there was evidence that the driver failed to yield the right of way when confronted by a police car with

flashing blue lights that was escorting the house. Hersh v. Griffith, 284 Ga. App. 15, 643 S.E.2d 309 (2007).

Cited in Easterling v. City of Glennville, 694 F. Supp. 911 (S.D. Ga. 1986); United States v. Benitez-Macedo, 129 Fed. Appx. 506 (11th Cir. 2005).

RESEARCH REFERENCES

C.J.S. — 60A C.J.S., Motor Vehicles, § 838.

40-6-3. Chapter refers to operation of vehicles on highways; exceptions; vehicle accident reports and private property.

(a) The provisions of this chapter relating to the operation of vehicles refer to the operation of vehicles upon highways except:

(1) Where a different place is specifically referred to in a given Code section;

(2) The provisions of this chapter shall apply to a vehicle operated at shopping centers or parking lots or similar areas which although privately owned are customarily used by the public as through streets or connector streets;

(3) The provisions of this chapter relating to reckless driving, driving in violation of Code Section 40-6-391, and homicide by vehicle shall apply to vehicles operated upon highways and elsewhere throughout the state;

(4) The provisions of Code Sections 40-6-270, 40-6-271, and 40-6-272 shall apply upon the highways of this state, in all parking areas, and in all areas which are customarily open to the public and within 200 feet of all such highways, parking areas, and areas customarily open to the public;

(5)(A) The provisions of this chapter shall apply to a vehicle operated on any private property of this state which fronts on coastal marshlands or estuarine area as defined in Code Section 12-5-282, provided the owner of the private property files with the local law enforcement agency having primary jurisdiction to enforce the uniform rules of the road in such area:

(i) A petition requesting such local law enforcement agency to enforce the uniform rules of the road on such private property; and

(ii) Simultaneously files a plat with the petition delineating the location of the roads, streets, and common areas on such private property.

(B) The local law enforcement agency having primary jurisdiction to enforce the uniform rules of the road in such area shall enforce the uniform rules of the road on said private property at no cost to the owner of the private property or enter into a contractual agreement with the owner of the private property whereby the owner of the private property consents to pay part or all of the law enforcement expenses to such law enforcement agency.

(C) All persons operating vehicles on said roads, streets, and common areas shall be subject to all state and local traffic laws and regulations the same as if said private roads and streets were public roads and streets.

(D) Any state or local law enforcement agency empowered to enforce the uniform rules of the road in such area shall have concurrent jurisdiction with the primary local law enforcement agency to enforce the rules of the road on said private property.

(E) At least 30 days' prior notice shall be given to users of said private roads, streets, and common areas by publication in the newspapers of general circulation in the area and by posting signs along the private roads and streets specifying that state and local law enforcement agencies will be enforcing the uniform rules of the road on said private roads, streets, and common areas; and

(6)(A) Subject to the approval of the governing authority of the county or municipality, the provisions of this chapter shall apply to a vehicle operated within a privately owned residential area located within the corporate boundaries of a municipality or located within the boundaries of a county, provided the owner of the privately owned residential area files with the governing authority of such county or municipality:

(i) A petition signed by 50 percent of the property owners located in said subdivision requesting the law enforcement agency of the county or municipality to enforce the uniform rules of the road within such privately owned residential area; and

(ii) A plat delineating the location of roads, streets, and common areas within the privately owned residential area.

(B) Upon approval by the governing authority of the county or municipality, the law enforcement agency of such county or municipality shall enforce the uniform rules of the road within said privately owned residential area.

(C) All persons operating vehicles on the roads, streets, and common areas of said privately owned residential property shall be subject to all state and local traffic laws and regulations the same

as if such private roads, streets, and common areas were public roads and streets.

(D) At least 30 days' prior notice shall be given to users of said private roads, streets, and common areas by publication in a newspaper of general circulation in the area and by posting signs along the private road, streets, and common areas specifying that the county law enforcement agency or municipal law enforcement agency will be enforcing the uniform rules of the roads on said private roads, streets, and common areas.

(b) Notwithstanding the provisions of subsection (a) of this Code section, any law enforcement officer shall be authorized to write an accident report regarding any motor vehicle accident occurring on private property. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 22; Code 1933, § 68A-103, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1983, p. 1000, § 11; Ga. L. 1985, p. 758, § 15; Ga. L. 1986, p. 834, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1991, p. 1000, § 1; Ga. L. 1992, p. 2294, § 2.)

Cross references. — Off-road vehicles, T. 40, C. 7.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, "and" was inserted at the end of division (a)(6)(A)(i).

Law reviews. — For note on the 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 152 (1992).

JUDICIAL DECISIONS

Exact location of operating motor vehicle under influence of an intoxicant is not a material element of this offense and the accusation is sufficiently certain if the accusation charges that the offense was committed in a particular county. Felchlin v. State, 159 Ga. App. 120, 282 S.E.2d 743 (1981); Russell v. State, 174 Ga. App. 436, 330 S.E.2d 175 (1985).

Exact location is not a material element of the offense of reckless driving and a fatal variance did not exist as to the charge even though the state failed to prove that the defendant drove recklessly in a certain block of road as alleged in the indictment. Chavous v. State, 205 Ga. App. 455, 422 S.E.2d 327 (1992).

Applicability of chapter. — Uniform Act Regulating Traffic or Highways applies to streets and highways within corporate limits of municipalities as well as without. Richards & Assocs. v. Studstill, 92 Ga. App. 853, 90 S.E.2d 56 (1955), rev'd on other grounds, 212 Ga. 375, 93 S.E.2d 3 (1956).

It is criminal offense to operate a motor vehicle under influence of intoxicants anywhere in state, and the place is, therefore, no longer a material element of the offense. Flanders v. State, 97 Ga. App. 779, 104 S.E.2d 538 (1958); Walker v. State, 201 Ga. App. 672, 411 S.E.2d 734, cert. denied, 201 Ga. App. 904, 411 S.E.2d 734 (1991).

Because: (1) O.C.G.A. § 40-6-391(a), by the statute's plain language, applied to any moving vehicle, and a golf cart was a "vehicle" within the meaning of O.C.G.A. § 40-1-1(75); (2) the defendant stipulated at trial to driving the golf cart in Fayette County, making such a "moving vehicle" within the scope of O.C.G.A. § 40-6-391(a), and to being under the influence of alcohol while doing so; and (3) under O.C.G.A. § 40-6-3(a)(3), the provisions of O.C.G.A. § 40-6-391 applied anywhere in Georgia, whether on a street, highway, or private property, the defendant's DUI conviction was upheld on appeal. Simmons v. State, 281 Ga. App. 252, 635 S.E.2d 849 (2006).

In convictions of driving while under

the influence, a jury charge did not create ambiguity and confusion, requiring reversal, by using the word "anywhere" rather than the word "elsewhere" because under O.C.G.A. § 40-6-3(a)(3), the provisions of O.C.G.A. § 40-6-391 applied anywhere in Georgia. Duprel v. State, 301 Ga. App. 469, 687 S.E.2d 863 (2009), overruled on other grounds by Zilke v. State, 299 Ga. 232, 787 S.E.2d 745 (2016).

"Highway" as a "public highway." — To prove that a "highway" is a "public highway," there must be proof that it was established in one of the ways enumerated in the case of Southern Ry. v. Combs, 124 Ga. 1004, 53 S.E. 508 (1906). Baker v. State, 92 Ga. App. 60, 87 S.E.2d 644 (1955).

Parking lot. — Trial court properly denied suppression of drug evidence obtained from a search of the defendant's person after a police officer conducted an investigatory stop of the defendant's vehicle and noted a strong odor of marijuana as the officer stopped the vehicle based on a reasonable suspicion that the defendant was violating O.C.G.A. § 40-6-14(a) by the loud music emanating from the defendant's vehicle while parked in a convenience store parking lot pursuant to O.C.G.A. § 40-6-3(a)(2). Jackson v. State, 297 Ga. App. 615, 677 S.E.2d 782 (2009), cert. denied, No. S09C1461, 2009 Ga. LEXIS 409 (Ga. 2009).

Cited in Madden v. State, 252 Ga. App. 164, 555 S.E.2d 832 (2001); Patton v. State, 287 Ga. App. 18, 650 S.E.2d 733 (2007).

RESEARCH REFERENCES

ALR. — Applicability of regulations or rules governing vehicular traffic to driveways or other places not legal highways, 80 A.L.R. 469.

Applicability, to operation of motor vehicle on private property, of legislation making drunken driving a criminal offense, 29 A.L.R.3d 938.

Motorist's liability for signaling other vehicle or pedestrian to proceed, or to pass signaling vehicle, 14 A.L.R.5th 193.

40-6-4. Persons riding animals or driving animal drawn vehicles.

Every person riding an animal or driving an animal drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter, except those provisions of this chapter which by their very nature can have no application. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 27; Code 1933, § 68A-105, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 434.

C.J.S. — 60A C.J.S., Motor Vehicles, § 883.

ALR. — Liability for damage to motor vehicle or injury to person riding therein from collision with runaway horse, or horse left unattended or untied in street, 49 A.L.R.4th 653.

40-6-5. Persons working on highways.

Unless specifically made applicable, the provisions of this chapter, except those contained in Article 15 of this chapter, shall not apply to

authorized persons, teams, motor vehicles, and other equipment while actually engaged in work upon a highway but shall apply to such persons and vehicles when traveling to or from such work. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 25; Code 1933, § 68A-106, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1982, p. 3, § 40; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Term "work" encompasses both construction and repair. Myerholtz v. Conway, 108 Ga. App. 697, 134 S.E.2d 513 (1963), overruled on other grounds, Aultman v. Spellmeyer, 111 Ga. App. 769, 143 S.E.2d 403 (1965).

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 426.

C.J.S. — 60A C.J.S., Motor Vehicles, § 889.

40-6-6. Authorized emergency vehicles; pursuit of fleeing suspects.

(a) The driver of an authorized emergency vehicle or law enforcement vehicle, when responding to an emergency call, when in the pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this Code section.

(b) The driver of an authorized emergency vehicle or law enforcement vehicle may:

(1) Park or stand, irrespective of the provisions of this chapter;

(2) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(3) Exceed the maximum speed limits so long as he or she does not endanger life or property; and

(4) Disregard regulations governing direction of movement or turning in specified directions.

(c) The exceptions granted by this Code section to an authorized emergency vehicle shall apply only when such vehicle is making use of an audible signal and use of a flashing or revolving red light visible under normal atmospheric conditions from a distance of 500 feet to the front of such vehicle, except that a vehicle belonging to a federal, state, or local law enforcement agency and operated as such shall be making use of an audible signal and a flashing or revolving blue light with the same visibility to the front of the vehicle.

(d)(1) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons.

(2) When a law enforcement officer in a law enforcement vehicle is pursuing a fleeing suspect in another vehicle and the fleeing suspect damages any property or injures or kills any person during the pursuit, the law enforcement officer's pursuit shall not be the proximate cause or a contributing proximate cause of the damage, injury, or death caused by the fleeing suspect unless the law enforcement officer acted with reckless disregard for proper law enforcement procedures in the officer's decision to initiate or continue the pursuit. Where such reckless disregard exists, the pursuit may be found to constitute a proximate cause of the damage, injury, or death caused by the fleeing suspect, but the existence of such reckless disregard shall not in and of itself establish causation.

(3) The provisions of this subsection shall apply only to issues of causation and duty and shall not affect the existence or absence of immunity which shall be determined as otherwise provided by law.

(4) Claims arising out of this subsection which are brought against local government entities, their officers, agents, servants, attorneys, and employees shall be subject to the procedures and limitations contained in Chapter 92 of Title 36.

(e) It shall be unlawful for any person to operate an authorized emergency vehicle with flashing lights other than as authorized by subsection (c) of this Code section. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 26; Code 1933, § 68A-107, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1995, p. 855, § 1; Ga. L. 2002, p. 579, § 4.)

Cross references. — Operation of ambulances and ambulance services generally, T. 31, C. 11. Equipment of law enforcement and emergency vehicles, § 40-8-90 et seq.

Law reviews. — For article, "The Fall and Rise of Official Immunity," see 25 Ga. St. B.J. 93 (1988). For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001). For survey article on local government law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 353 (2003). For article, "Police Pursuits: A Comprehensive Look at the Broad Spectrum of Police Pursuit Liability and Law," see 57 Mercer L. Rev. 511 (2006). For annual survey on local government law, see 64 Mercer L. Rev. 213 (2012). For annual survey on local government law, see 65 Mercer L. Rev. 205 (2013).

For note on the 1995 amendment of this Code section, see 12 Ga. St. U.L. Rev. 295 (1995). For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 243 (2002).

JUDICIAL DECISIONS

Analysis

General Consideration
Application
Jury Instructions and Issues

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1933, § 68-301, and Ga. L. 1953, Nov.-Dec. Sess., p. 556, are included in the annotations for this Code section.

Construction with O.C.G.A. § 40-6-74. — Read together, O.C.G.A. §§ 40-6-6 and 40-6-74 mandate that a driver has a duty to yield the right of way to an authorized law enforcement vehicle when the vehicle approaches making use of an audible signal and visual signal under normal atmospheric conditions from a distance of 500 feet to the front of such vehicle, and furthermore the statutes do not restrict an "audible signal" to only sirens, and § 40-6-6 does not apply only when the authorized law enforcement vehicle is responding to an emergency call; accordingly, it was proper to give instructions as to §§ 40-6-6 and 40-6-74 in a suit by a driver who ran into a house while the house was being moved and escorted by police vehicles. Hersh v. Griffith, 284 Ga. App. 15, 643 S.E.2d 309 (2007).

"Authorized emergency vehicle" must be certified. — In a negligence action arising out of a motor vehicle collision, the court erred by charging the jury that the jury could find the defendant to be operating an "authorized emergency vehicle" privileged to disregard maximum speed limits and other traffic laws, since the defendant admitted the defendant was not "certified," as called for by O.C.G.A. § 40-1-1(5), and had not complied with the certification process. Pryor v. Phillips, 222 Ga. App. 116, 473 S.E.2d 535 (1996).

Time to address causation. — Nothing in the language of O.C.G.A. § 40-6-6 on emergency vehicles requires a court to address the issue of causation before dealing with the public official defendants' immunity from liability. Cameron v. Lang, 274 Ga. 122, 549 S.E.2d 341 (2001).

Statute designed for innocent persons, not suspects. — Appellate court erred in denying city's motion for summary judgment in a police pursuit case as the statute stating that a city could be held liable for injuries sustained during a police pursuit, under certain circumstances, applied only to innocent persons who were injured and not to fleeing suspects unless it was shown the officer intended to injure the suspect; since no such showing was made, the parents of the fleeing suspect who was killed trying to drive away from the officer could not recover from the city. City of Winder v. McDougald, 276 Ga. 866, 583 S.E.2d 879 (2003).

No issue of material fact as to applicability. — Because the testimony of the driver and the passenger that it was raining so hard they failed to see or hear the fire truck before the collision could be construed consistently with the direct evidence that the fire truck was using an audible signal and flashing red lights visible from a distance of 500 feet, it was insufficient to create a genuine issue of material fact on the applicability of O.C.G.A. § 40-6-6. Brown v. DeKalb County, 333 Ga. App. 441, 777 S.E.2d 23 (2015).

Cited in Karp v. Niver, 142 Ga. App. 241, 235 S.E.2d 589 (1977); Walker v. Burke County, 149 Ga. App. 704, 256 S.E.2d 100 (1979); Jones v. Ray, 159 Ga. App. 734, 285 S.E.2d 42 (1981); Keener v. Kimble, 170 Ga. App. 674, 317 S.E.2d 900 (1984); Mills v. City of Atlanta, 175 Ga. App. 8, 332 S.E.2d 319 (1985); Martin v. Georgia Dep't of Pub. Safety, 257 Ga. 300, 357 S.E.2d 569 (1987); Banks v. Patton, 202 Ga. App. 168, 413 S.E.2d 744 (1992); Jackson v. State, 223 Ga. App. 27, 477 S.E.2d 28 (1996); Morgan v. Causey, 910 F. Supp. 651 (M.D. Ga. 1996); Cameron v. Lang, 274 Ga. 122, 549 S.E.2d 341 (2001); Roundtree v. Cloud, 250 Ga. App. 334, 551 S.E.2d 770 (2001); Brewer v. Atlanta South 75, Inc., 288 Ga. App. 809, 655 S.E.2d 631 (2007); Rahmaan v. DeKalb County, 300 Ga. App. 572, 685 S.E.2d 472 (2009); Westmoreland v. State, 287 Ga. 688, 699 S.E.2d 13 (2010).

Application

Legislative intent. — Legislature intended by former Code 1933, § 68-301 to do two things: (1) to give the drivers of certain authorized emergency vehicles the right to travel when occasion required it at a speed in excess of the limit fixed by

the provision applicable to motor vehicles generally; and (2) to protect the public on highways, and even those riding in the vehicles thus favored, from reckless disregard of their safety by the drivers of these privileged vehicles. Archer v. Johnson, 90 Ga. App. 418, 83 S.E.2d 314 (1954) (decided under former Code 1933, § 68-301).

Innocent citizens must not be unreasonably endangered. — While it is most desirable and patently to the public interest that officers of the law proceed with much promptness and speed in overtaking and apprehending the violators of the law, and that the officers need not be answerable for simply exceeding the speed limits fixed by statute, yet the life and limb of innocent citizens must not be unreasonably endangered in the process. Archer v. Johnson, 90 Ga. App. 418, 83 S.E.2d 314 (1954) (decided under former Code 1933, § 68-301).

Georgia Court of Appeals concludes that the protection afforded innocent persons pursuant to O.C.G.A. § 40-6-6(d)(2) applies whether the innocent person is outside the vehicle or is an innocent passenger in the vehicle. Clayton County v. Austin-Powell, 321 Ga. App. 12, 740 S.E.2d 831 (2013), overruled on other grounds, Phillips v. Harmon, 297 Ga. 386, 774 S.E.2d 596 (2015).

Determining driver's regard for others' safety. — Conditions expressed in subsection (c) of Ga. L. 1953, Nov.-Dec. Sess., p. 556, when met, are to be taken into consideration in determining whether the driver of an authorized emergency vehicle exercising these statutory privileges has driven with due regard for the safety of others or has recklessly disregarded the safety of others. Poole v. City of Louisville, 107 Ga. App. 305, 130 S.E.2d 157 (1963) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Determining the emergency nature of a call. — In determining whether a vehicle is driven in response to an emergency call, it is not only material, but essential, to consider such facts as disclose the nature of the call which was being answered. This involves both a statement of the substance of the call as the call came into the hospital and the substance or terms of the call as communicated to the driver of the ambulance. City of Macon v. Smith, 117 Ga. App. 363, 160 S.E.2d 622 (1968) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

No marking of police cars as escort vehicles. — In a suit by a driver who ran into a house while the house was being moved and escorted by police vehicles, there was no merit to the driver's argument that the police vehicles had to be marked as escort vehicles; that would be contrary to O.C.G.A. §§ 40-6-6 and 40-8-91, which mandate proper markings for police cars and do not allow the vehicles to have amber lights. Hersh v. Griffith, 284 Ga. App. 15, 643 S.E.2d 309 (2007).

Vehicles in funeral procession. — Vehicle traveling in funeral procession is not within one of the categories of emergency vehicles. Gaudry v. Brandt, 119 Ga. App. 237, 166 S.E.2d 737 (1969) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Privileges and conditions of operation. — Ga. L. 1953, Nov.-Dec. Sess. p. 556 grants special privileges in operation of emergency vehicles, but sets out conditions for operation (which include the use of sirens and lights), and provides for liability when there has been a reckless disregard for the safety of others. Violation does not necessarily make the driver of the emergency vehicle liable, but it keeps open the issue of causation, which otherwise would be foreclosed. City of Winterville v. Strickland, 127 Ga. App. 716, 194 S.E.2d 623 (1972) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Evidence that a fire rescue emergency vehicle's lights were working properly at the time of an accident and testimony that the lights "were in compliance with Georgia law" was sufficient for a jury to have found that the lights were visible from a distance of 500 feet, in compliance with O.C.G.A. § 40-6-6 for purposes of allowing the vehicle to proceed through a red light; accordingly, a trial court properly denied a driver's motion for a directed verdict and judgment notwithstanding the verdict pursuant to O.C.G.A. § 9-11-50(a) arising from a collision that occurred at the intersection involving the driver's vehicle and the emergency vehicle. Wynn v. City of

Application (Cont'd)

Warner Robins, 279 Ga. App. 42, 630 S.E.2d 574 (2006).

Officer failing to engage siren negligent. — An officer whose emergency lights were in operation, but who failed to engage the officer's emergency siren before taking off in pursuit of an errant motor vehicle, was negligent. Herren v. Abba Cab Co., 155 Ga. App. 443, 271 S.E.2d 11 (1980).

Immunity of deputy. — After a sheriff's deputy caused a collision with another vehicle when the deputy failed to use the deputy's blue lights or siren when responding to an emergency call, the deputy was entitled to immunity in the absence of insurance purchased by the county which would protect the deputy. Logue v. Wright, 260 Ga. 206, 392 S.E.2d 235 (1990).

Deputy sheriff's high-speed response to an emergency call was a discretionary act which was protected by sovereign immunity even if the deputy acted negligently. Gilbert v. Richardson, 264 Ga. 744, 452 S.E.2d 476 (1994).

Injury resulting from police officer's high speed pursuit. — Fact an officer was performing the officer's professional duty in pursuing a suspect did not preclude the imposition of liability; the decision to initiate or continue pursuit of a suspect could be negligent when heightened risk of injuries to third parties was unreasonable in relation to the interest in apprehending the suspect so that genuine issues of material fact existed as to the reasonableness of the officer's conduct. Mixon v. City of Warner Robins, 264 Ga. 385, 444 S.E.2d 761 (1994), superseded by statute as stated in City of Winder v. McDougald, 276 Ga. 866, 583 S.E.2d 879 (2003); But see Pearson v. City of Atlanta, 231 Ga. App. 96, 499 S.E.2d 89 (1998), overruled on other grounds by Strength v. Lovett, 311 Ga. App. 35, 714 S.E.2d 723 (2011); Thompson v. Payne, 216 Ga. App. 217, 453 S.E.2d 803 (1995).

Officer could not be held liable in negligence after the evidence showed that the officer balanced the risks involved in pursuit of a fleeing vehicle and did not violate the principles set forth in O.C.G.A. § 40-6-6. Wilson v. City of Atlanta, 223 Ga. App. 144, 476 S.E.2d 892 (1996).

Officer's actions of slowing before going through a red light, exceeding the speed limit during light or nonexistent traffic, and disregarding regulations governing direction of traffic movement when oncoming traffic was light or nonexistent, as a matter of law, did not constitute a "reckless disregard" of law enforcement procedures, and were actions expressly authorized by O.C.G.A. § 40-6-6. Pearson v. City of Atlanta, 231 Ga. App. 96, 499 S.E.2d 89 (1998), overruled on other grounds by Strength v. Lovett, 311 Ga. App. 35, 714 S.E.2d 723 (2011).

Trial court erred in denying summary judgment pursuant to O.C.G.A. § 9-11-56(c) to a city and the city's employees in a wrongful death action; a police officer's actions were not the proximate cause of a decedent's death during a crash with a vehicle which was fleeing from police at high speed, and therefore O.C.G.A. § 40-6-6(d)(2) did not apply. City of Pooler v. Edenfield, 263 Ga. App. 278, 587 S.E.2d 408 (2003).

Deputy who was involved in a high-speed chase with a suspect was not liable for injuries a motorist sustained when the suspect's vehicle hit the motorist's vehicle because the deputy was performing a discretionary function when the deputy decided to pursue the suspect and the deputy did not act in reckless disregard of proper law enforcement procedures. Standard v. Hobbs, 263 Ga. App. 873, 589 S.E.2d 634 (2003).

In an arrestee's 42 U.S.C. § 1983 suit against a lead pursuit deputy and the supervisor for using excessive force to stop the arrestee's car during a high-speed chase, the arrestee's negligence claim against the county was not precluded by O.C.G.A. § 40-6-6(d)(2) because the claim was not based on the officers' decision to initiate and pursue a high-speed chase, but rather, was based on the officers' decisions to ram the arrestee's vehicle; the right to ram a vehicle was not one of the specific "exceptional rights" granted to pursuing officers under the statute. Harris v. Coweta County, No. 3:01-CV-148-WBH, 2003 U.S. Dist. LEXIS 27348 (N.D. Ga. Sept. 25, 2003).

Because police officers followed procedures in pursuing an individual in a high-speed chase, the officers did not violate O.C.G.A. § 40-6-6; consequently, because O.C.G.A. § 50-21-24(6) provided the Georgia Department of Public Safety (DPS) with immunity from liability for injuries resulting from the pursuit, the trial court properly granted summary judgment to the DPS. Blackston v. Ga. Dep't of Pub. Safety, 274 Ga. App. 373, 618 S.E.2d 78 (2005).

Whether a police officer disregarded traffic rules, pursuant to O.C.G.A. § 40-6-6(d)(2), while engaged in a high-speed pursuit of a fleeing suspect, did not change the fact that the decision to pursue the suspect was a discretionary one for which the officer was entitled to official immunity against a negligence action asserted by the individuals who were injured in a car that was involved in an accident as a result of the chase. Hanse v. Phillips, 276 Ga. App. 558, 623 S.E.2d 746 (2005).

Arrestee's negligence and battery claims against a deputy and other law enforcement officers failed because the arrestee was unable to show that the deputy acted with actual malice or actual intent to cause injury, which showing was required under Georgia case law discussing O.C.G.A. § 40-6-6(d)(2), when the deputy bumped the arrestee's car to stop the car after the arrestee led the deputy on a six-minute, 10-mile high-speed chase. Harris v. Coweta County, 261 Fed. Appx. 213 (2008) (Unpublished).

Because the legislature enacted O.C.G.A. § 40-6-6(d)(2) to limit liability when a fleeing suspect injures an innocent person, the legislature did not intend simultaneously to expand liability to cover injuries to the fleeing suspect. The fleeing suspect may be able to recover for the suspect's own injuries if an officer acts with an actual intent to cause injury as the phrase "actual intent to cause injury," which contains aspects of malice, means an actual intent to cause harm to the plaintiff, not merely an intent to do the act purportedly resulting in the claimed injury. Harris v. Coweta County, 261 Fed. Appx. 213 (2008) (Unpublished).

In a wrongful death action by a decedent's estate and her children against the county sheriff, the relevant conduct supporting a finding of proximate cause under O.C.G.A. § 40-6-6 was the decision of the sheriff's deputy to initiate or continue pursuing a fleeing suspect, not how the deputy drove the vehicle during the course of the pursuit. Thus, the trial court did not err in denying summary judgment on proximate cause grounds when there was some evidence from which a reasonable jury could have concluded that the deputy chose to continue the pursuit with conscious indifference to whether continuing the pursuit violated proper law enforcement procedures. Strength v. Lovett, 311 Ga. App. 35, 714 S.E.2d 723 (2011), cert. denied, No. S11C1794, 2011 Ga. LEXIS 979 (Ga. 2011).

Trial court erred in granting summary judgment to the city because genuine issues of material fact remained as to whether, under O.C.G.A. § 40-6-6(d)(2), the officer acted with reckless disregard of proper law enforcement procedures and the officer's actions were thus the proximate cause of the collision between the fleeing suspect and the driver. The driver's and passenger's affidavits were sufficient to create genuine issues of material fact regarding whether the officer acted with reckless disregard for proper law enforcement procedures in the officer's pursuit, which may be found to constitute a proximate cause of the driver's injuries. Ray v. City of Griffin, 318 Ga. App. 426, 736 S.E.2d 110 (2012).

Discretion applies to driver of ambulance. — Public employee's act of driving an ambulance was a discretionary act and, thus, the employee could not be held liable when the employee collided the ambulance with another vehicle while responding in the ambulance to an emergency call, even though the public employee may have been driving the ambulance negligently, as the law suspended the mechanical application of certain traffic rules and left the employee with the discretion to determine how to best respond to an emergency while driving the ambulance; accordingly, the trial court properly granted summary judgment to the employee after a wrongful death action was filed against the employee aris-

Application (Cont'd)

ing out of the collision. Smith v. Bulloch County Bd. of Comm'rs, 261 Ga. App. 667, 583 S.E.2d 475 (2003).

Reckless disregard for proper law enforcement procedures in high speed pursuit. — After the plaintiff in a wrongful death action presented some evidence that the defendant, a deputy sheriff, acted with reckless disregard for proper law enforcement procedures at the time the officer engaged in a high speed pursuit, the trial court erred in granting summary judgment to the defendant. Lang v. Becham, 243 Ga. App. 132, 530 S.E.2d 746 (2000).

After the plaintiffs were injured when a speeding car driven by a suspect who was fleeing law enforcement crashed into the plaintiffs' car, summary judgment was improperly granted to the Monroe County Sheriff as the Monroe deputies acted with reckless disregard of the Monroe County pursuit procedures in continuing a high speed chase of the fleeing driver because the pursuit of the fleeing driver was initiated based on a minor traffic violation; the Monroe deputies were informed by the police dispatcher that there were no warrants for the driver; and the fleeing driver reached speeds of 120 to 125 miles per hour, aggressively wove in and out of traffic, and drove through red lights at congested intersections. Wingler v. White, 344 Ga. App. 94, 808 S.E.2d 901 (2017).

Police pursuing suspect did not waive sovereign immunity. — In a case arising from a police chase, the trial court properly granted the police department's motion to dismiss on sovereign immunity grounds because the trial court correctly found that the police department did not waive sovereign immunity since the pursuing officers faithfully implemented the police department's policies and procedures and did not waive sovereign immunity pursuant to O.C.G.A. § 50-21-24(6). Loehle v. Ga. Dep't of Pub. Safety, 334 Ga. App. 836, 780 S.E.2d 469 (2015).

Issue of material fact as to fire truck's operation. — A genuine issue of material fact existed as to whether the fire truck proceeded past the red signal only after slowing down as may be necessary for safe operations and with due regard for the safety of all persons; thus, the trial court erred in granting summary judgment. Brown v. DeKalb County, No. A15A0267, 2015 Ga. App. LEXIS 351 (June 17, 2015).

No waiver of immunity. — Because O.C.G.A. § 40-6-6 applies only when a defendant's actions are not entitled to immunity, the statute had no application in an action arising from an accident occurring when the defendant officer was within the scope of the officer's official authority while pursuing a suspected stolen vehicle. Williams v. Solomon, 242 Ga. App. 807, 531 S.E.2d 734 (2000).

In a tort action for personal injuries and property damage arising from an auto collision filed against a city, because the facts did not involve an officer's pursuit of a fleeing suspect, or damages caused by a fleeing suspect, O.C.G.A. § 40-6-6 did not apply to the action and, thus, the trial court erred in relying on the statute as a ground for granting summary judgment to the city on sovereign immunity grounds. Weaver v. City of Statesboro, 288 Ga. App. 32, 653 S.E.2d 765 (2007), cert. denied, No. S08C0421, 2008 Ga. LEXIS 221 (Ga. 2008).

Jury Instructions and Issues

Charge of violation against arresting officer. — In prosecution of a case involving traffic violations, since the arresting officer's guilt or innocence of the offense of violating O.C.G.A. § 40-6-6 was not an issue, the trial court did not abuse the court's discretion in curtailing the defendant's cross-examination of the officer regarding such a violation. Horton v. State, 206 Ga. App. 242, 424 S.E.2d 882 (1992).

Charge proper. — Trial court did not err in failing to give requested jury instructions by a driver whose vehicle was involved in a collision with a city fire rescue van as the trial court's instructions under O.C.G.A. §§ 40-6-6 and 40-6-20(a) properly allowed the jury to determine whether the rescue van was an authorized emergency vehicle that complied with § 40-6-6, and the instructions also adequately informed the jury that the city had the burden of proof on the issue.

Wynn v. City of Warner Robins, 279 Ga. App. 42, 630 S.E.2d 574 (2006).

Arresting officers have broad authority. — Former Code 1933, § 68-301 was but a modern expression of the doctrine that arresting officers, "the ministers of justice," have a broad scope of authority and freedom of action while in the performance of the officers very responsible functions. Archer v. Johnson, 90 Ga. App. 418, 83 S.E.2d 314 (1954) (decided under former Code 1933, § 68-301).

Jury question whether proper care exercised. — Neither proceeding past signal, nor exceeding speed limit by emergency vehicle, is of itself negligence. But whether the care required by law was exercised in doing either of these things will generally be a question for the jury as are other questions of negligence. Bynes v. Stafford, 106 Ga. App. 406, 127 S.E.2d 159 (1962) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Jury question on whether passenger in stolen vehicle was innocent person. — Trial court erred by granting summary judgment to a county in a wrongful death action because there existed issues of fact as to whether the passenger in a stolen vehicle was an innocent person killed during the officer's pursuit of a fleeing suspect. Clayton County v. Austin-Powell, 321 Ga. App. 12, 740 S.E.2d 831 (2013), overruled on other grounds, Phillips v. Harmon, 297 Ga. 386, 774 S.E.2d 596 (2015).

Error to instruct failure to stop negligence per se. — Trial judge erred in instructing the jury that it was negligence per se for an ambulance, even on an emergency call, to fail to stop at a traffic control light when the color was red. Royal Cab Co. v. Hendrix, 96 Ga. App. 44, 99 S.E.2d 355 (1957) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 226, 298 et seq.

Am. Jur. Proof of Facts. — Negligent Operation of Emergency Vehicle, 10 POF3d 203

C.J.S. — 60A C.J.S., Motor Vehicles, § 870 et seq.

ALR. — Applicability of motor vehicle regulations to public officials or employees, 19 A.L.R. 459; 23 A.L.R. 418.

Validity of statute or ordinance giving right of way in streets or highways to certain classes of vehicles, 38 A.L.R. 24.

Liability for personal injury or damage from operation of fire department vehicle, 82 A.L.R.2d 312.

Liability arising from accidents involving police vehicles, 83 A.L.R.2d 383.

Liability of governmental unit or its officer for injury or damage from operation of vehicle pursued by police, 83 A.L.R.2d 452.

40-6-7. Operation of motor vehicles in parades.

Notwithstanding any other provisions of law, it shall be lawful to operate motor vehicles and motorcycles in parades although such motor vehicles and motorcycles and their operators and passengers do not meet the necessary requirements of law, especially with respect to flashing lights, sirens, and safety equipment. This Code section shall be applicable only in the event that the local authority which has the power to issue parade permits, at its discretion, authorizes the operation of such motor vehicles and motorcycles after it has been determined that the operation of such motor vehicles and motorcycles will not endanger the lives, safety, or property of other participants in the parade, bystanders, or other persons. The authorization for vehicles to be operated in parades as exceptions to otherwise required provisions of

law shall extend to only such time as the vehicles are actually engaged in the parade and in the return to the marshaling area. At all times, such vehicles shall be operated by a person properly licensed to operate such vehicles. Such motor vehicles and motorcycles covered under this Code section shall be operated in accordance with all provisions of law when traveling to and from a parade site and at all other times when not directly participating in a parade. (Ga. L. 1974, p. 446, § 1; Ga. L. 1990, p. 2048, § 5.)

Cross references. — Operation of motorcycles generally, § 40-6-310 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Highways, Streets, and Bridges, §§ 151, 288.

ALR. — Unlawful parade as riot, 9 A.L.R. 552.

Validity, construction, and application of state or local enactments regulating parades, 80 A.L.R.5th 255.

40-6-8. Rights of owners of real property.

Nothing in this chapter shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner, and not as matter of right, from prohibiting such use, or from requiring other or different or additional conditions than those specified in this chapter, or from otherwise regulating such use as may seem best to such owner. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 30; Ga. L. 1990, p. 2048, § 5.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 297.

ALR. — Validity of statute or ordinance forbidding running of automobile so as to inflict damage or injury, 47 A.L.R. 255.

40-6-9. Challenges to speed limits and other traffic regulations established or enforced by local governing authorities.

(a) As used in this Code section, the term "speed limits" shall be construed to refer to and include stop lights, stop signs, slow signs, yield signs, and any and every other light, device, or sign which may be used to impede, slow, stop, or regulate the speed of motor vehicles on the public highways.

(b) Any provisions of this chapter to the contrary notwithstanding, whenever any complaint is made to the Governor that any speed limit established by any county or municipal authority is arbitrary or unreasonable, or upon any complaint being made to the Governor that any speed limit established by the state or by any county or municipal

governing authority is being enforced primarily for the collection of revenue rather than for purposes of public safety, the Governor may, in his discretion, direct that an investigation and any necessary studies be commenced by the commissioner of public safety or his delegate who shall make a report thereon together with his recommendations as to whether the state should suspend the authority of the applicable local county or municipal governing authorities to enforce speed limits upon any state and federal highways lying within the jurisdiction of such authorities. Upon receipt of a report accompanied by recommendations that the power to enforce speed limits be restricted, the Governor shall furnish a copy of such report to the local authorities affected thereby, together with notice of hearing on the allegations of the report made by the commissioner of public safety or his delegate. Such hearing may be held at such time and such place as may be determined by the Governor but shall not be held less than ten days after notice to the local governing authorities. Such hearing shall be conducted before a board to be composed of the Governor, the Secretary of State, and an appointee of the Governor who is not the Attorney General who shall be reimbursed for the actual and necessary expenses pertaining to their services on the board but who shall receive no other additional compensation for their services thereon. Upon determination by the board that the speed limits established by the county or municipal governing authorities against whom complaint has been brought are either unreasonable or that speed limits are being primarily enforced for the collection of revenue rather than for purposes of public safety, the Governor shall issue his executive order suspending the power of such local governing authority to enforce speed limits on state or federal highways lying within its jurisdiction or on any particular such highway. In the event that this power is suspended, the Governor shall direct the commissioner of public safety to enforce the speed limits on such highways.

(c) At intervals of not less than six months, any governing authority affected by subsection (b) of this Code section and by an executive order issued in accordance with subsection (b) of this Code section may, upon a change of circumstances being shown to the Governor, petition the Governor for reconsideration, whereupon the Governor, in his discretion, may direct the commissioner of public safety or his delegate to inquire into such change of circumstances and report the same to him together with any recommendations for modification of the Governor's previous order; and the Governor, in his discretion, may order a new hearing on the matter before the board or may, without hearing, modify or revoke his previous executive order.

(d) Any provisions of this chapter to the contrary notwithstanding, when any complaint is made to the Governor that any traffic law, ordinance, or regulation, other than speed regulations for which provi-

sion has been made in subsection (b) of this Code section, established by any county or municipal authority is arbitrary or unreasonable, or upon any complaint being made to the Governor that any traffic law, ordinance, or regulation established by the state or by any county or municipal governing authority, other than speed regulations for which provision has been made in subsection (b) of this Code section, is being enforced primarily for the collection of revenue rather than for purposes of public safety, the Governor may, in his discretion, direct that an investigation and any necessary studies be commenced by the commissioner of public safety or his delegate who shall make a report thereon together with his recommendations as to whether the state should suspend the authority of the applicable local county or municipal governing authorities to enforce traffic laws, ordinances, or regulations upon any state and federal highways lying within the jurisdiction of such authorities. Upon receipt of a report accompanied by recommendations that the power to enforce traffic laws, ordinances, and regulations be restricted, the Governor shall furnish a copy of such report to the local authorities affected thereby, together with notice of a hearing on the allegations of the report made by the commissioner of public safety or his delegate. Such hearing may be held at such time and at such place as may be determined by the Governor but shall not be less than ten days after notice to the local governing authorities. This hearing shall be conducted before a board to be composed of the Governor, the Secretary of State, and an appointee of the Governor who is not the Attorney General who shall be reimbursed for the actual and necessary expenses pertaining to their services on the board but who shall receive no other additional compensation for their services thereon. Upon the determination by the board either that traffic laws, ordinances, or regulations, other than speed regulations for which provision has been made in subsection (b) of this Code section, established by the county or municipal governing authority against whom complaint has been brought are unreasonable or that traffic laws, ordinances, or regulations established by the state or by any county or municipal governing authority are being primarily enforced for the collection of revenue rather than for purposes of public safety, the Governor shall issue his executive order suspending the power of such local governing authority to enforce traffic laws, ordinances, and regulations on state or federal highways lying within its jurisdiction or on any particular such highway. In the event that this power is suspended, the Governor shall direct the commissioner of public safety to enforce the traffic laws and regulations on such highways.

(e) At intervals of not less than six months, any governing authority affected by subsection (d) of this Code section and by an executive order issued in accordance with subsection (d) of this Code section may, upon a change of circumstances being shown to the Governor, petition the

Governor for reconsideration, whereupon the Governor, in his discretion, may direct the commissioner of public safety or his delegate to inquire into such change of circumstances and report the same to him together with any recommendations for modification of the Governor's previous executive order; and the Governor, in his discretion, may order a new hearing on the matter before the board or may, without hearing, modify or revoke his previous executive order. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 50; Ga. L. 1963, p. 461, § 1; Ga. L. 1968, p. 1422, § 1; Ga. L. 1975, p. 1582, § 4; Ga. L. 1985, p. 149, § 40; Ga. L. 1988, p. 426, § 1; Ga. L. 1990, p. 2048, § 5.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1989, a comma was deleted following the second "of this Code section" near the beginning of subsection (e).

JUDICIAL DECISIONS

Cited in Noble v. State, 283 Ga. App. 81, 640 S.E.2d 666 (2006).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 233.

40-6-10. Insurance requirements for operation of motor vehicles generally.

(a)(1) As used in this Code section, the term "mobile electronic device" means a portable computing and communication device that has a display screen with touch input or a miniature keyboard.

(1.1) Upon the request of the insured, an insurer may issue a verification as to the existence of minimum motor vehicle liability insurance coverage as required under Chapter 34 of Title 33 in an electronic format to a mobile electronic device to the extent available. This paragraph shall not require an insurer to provide such verification of coverage in real time.

(1.2) The owner or operator of a motor vehicle for which minimum motor vehicle liability insurance coverage is required under Chapter 34 of Title 33 shall keep proof or evidence of required minimum insurance coverage in the vehicle at all times during the operation of the vehicle. The owner of a motor vehicle shall provide to any operator of such vehicle proof or evidence of required minimum insurance coverage for the purposes of compliance with this subsection. The proof or evidence of required minimum insurance coverage required by this subsection may be produced in either paper or electronic format. Acceptable electronic formats include a display of electronic images on a mobile electronic device.

(2) The following shall be acceptable proof of insurance on a temporary basis:

(A) If the policy providing such coverage was applied for within the last 30 days, a current written binder for such coverage for a period not exceeding 30 days from the date such binder was issued shall be considered satisfactory proof or evidence of required minimum insurance coverage;

(B) If the vehicle is operated under a rental agreement, a duly executed vehicle rental agreement shall be considered satisfactory proof or evidence of required minimum insurance coverage; and

(C) If the owner acquired ownership of the vehicle within the past 30 days, if the type of proof described in subparagraph (A) of this paragraph is not applicable but the vehicle is currently effectively provided with required minimum insurance coverage under the terms of a policy providing required minimum insurance coverage for another motor vehicle, then a copy of the insurer's declaration of coverage under the policy providing such required minimum insurance coverage for such other vehicle shall be considered satisfactory proof or evidence of required minimum insurance coverage for the vehicle, but only if accompanied by proof or evidence that the owner acquired ownership of the vehicle within the past 30 days.

(2.1) If the vehicle is insured under a fleet policy as defined in Code Section 40-2-137 providing the required minimum insurance coverage or if the vehicle is engaged in interstate commerce and registered under the provisions of Article 3A of Chapter 2 of this title, the insurance information card issued by the insurer shall be considered satisfactory proof of required minimum insurance coverage for the vehicle.

(2.2) If the vehicle is insured under a certificate of self-insurance issued by the Commissioner of Insurance providing the required minimum insurance coverage under which the vehicle owner did not report the vehicle identification number to the Commissioner of Insurance, the insurance information card issued by the Commissioner of Insurance shall be considered satisfactory proof of required minimum insurance coverage for the vehicle, but only if accompanied by a copy of the certificate issued by the Commissioner of Insurance.

(3) The requirement under this Code section that proof or evidence of minimum liability insurance be maintained in a motor vehicle at all times during the operation of the vehicle or produced in electronic format shall not apply to the owner or operator of any vehicle for which the records or data base of the Department of Revenue indicates that required minimum insurance coverage is currently effective.

(4) Except as otherwise provided in paragraph (7) of this subsection, any person who fails to comply with the requirements of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than $200.00 nor more than $1,000.00 or imprisonment for not more than 12 months, or both.

(5) Every law enforcement officer in this state shall determine if the operator of a motor vehicle subject to the provisions of this Code section has the required minimum insurance coverage every time the law enforcement officer stops the vehicle or requests the presentation of the driver's license of the operator of the vehicle.

(6) If a law enforcement officer of this state determines that the owner or operator of a motor vehicle subject to the provisions of this Code section does not have proof or evidence of required minimum insurance coverage, the arresting officer shall issue a uniform traffic citation for operating a motor vehicle without proof of insurance. If the court or arresting officer determines that the operator is not the owner, then a uniform traffic citation may be issued to the owner for authorizing the operation of a motor vehicle without proof of insurance.

(7) If the person receiving a citation under this subsection shows to the court having jurisdiction of the case that required minimum insurance coverage was in effect at the time the citation was issued, the court may impose a fine not to exceed $25.00. The court shall not in this case forward a record of the disposition of the case to the department, and the driver's license of such person shall not be suspended.

(8)(A) For purposes of this Code section, a valid insurance card or verification in electronic format on a mobile electronic device shall be sufficient proof of insurance only for any vehicle covered under a fleet policy as defined in Code Section 40-2-137. The insurance card or verification in electronic format on a mobile electronic device for a fleet policy shall contain at least the name of the insurer, policy number, policy issue or effective date, policy expiration date, and the name of the insured and may, but shall not be required to, include the year, make, model, and vehicle identification number of the vehicle insured. If the operator of any vehicle covered under a fleet policy as defined in Code Section 40-2-137 presents a valid insurance card or verification in electronic format on a mobile electronic device for a fleet policy to any law enforcement officer or agency, and the officer or agency does not recognize the insurance card or verification in electronic format on a mobile electronic device as valid proof of insurance and impounds or tows such vehicle for lack of proof of insurance, the law enforcement

agency or political subdivision shall be liable for and limited to the fees of the wrongful impoundment or towing of the vehicle, which in no way waives or diminishes any sovereign immunity of such governmental entity. If a person displays verification in electronic format on a mobile electronic device pursuant to this subparagraph, such person shall not be deemed as consenting to law enforcement to access other contents of such mobile electronic device.

(B) For any vehicle covered under a policy of motor vehicle liability insurance that is not a fleet policy as defined in Code Section 40-2-137, the insurer shall issue a policy information card which shall contain, or may make available in an electronic format on a mobile electronic device, at least the name of the insurer, policy number, policy issue or effective date, policy expiration date, name of the insured, and year, make, model, and vehicle identification number of each vehicle insured; the owner or operator of the motor vehicle shall keep such policy information card in the vehicle at all times during operation of the vehicle for purposes of Code Section 40-6-273.1, but any such policy information card or policy information in an electronic format on a mobile electronic device shall not be sufficient proof of insurance for any purposes of this Code section except as otherwise provided in this Code section. If a person displays policy information in an electronic format on a mobile electronic device pursuant to this subparagraph, such person shall not be deemed as consenting to law enforcement to access other contents of such mobile electronic device.

(b) An owner or any other person who knowingly operates or knowingly authorizes another to operate a motor vehicle without effective insurance on such vehicle or without an approved plan of self-insurance shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than $200.00 nor more than $1,000.00 or imprisonment for not more than 12 months, or both. An operator of a motor vehicle shall not be guilty of a violation of this Code section if such operator maintains a policy of motor vehicle insurance which extends coverage to any vehicle the operator may drive. An owner or operator of a motor vehicle shall not be issued a citation by a law enforcement officer for a violation of this Code section if the sole basis for issuance of such a citation is that the law enforcement officer is unable to obtain insurance coverage information from the records of the department.

(c) Any person who knowingly makes a false statement or certification under Code Section 40-5-71 or this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than $200.00 nor more than $1,000.00 or imprisonment for not more than 12 months, or both.

(d) Except for vehicles insured under a fleet policy as defined in Code Section 40-2-137 or under a plan of self-insurance approved by the Commissioner of Insurance, insurance coverage information from records of the department shall be prima-facie evidence of the facts stated therein and shall be admissible as evidence in accordance with Code Section 24-9-924 for the purposes of this Code section. (Code 1981, § 40-6-10, enacted by Ga. L. 1990, p. 2048, § 5; Ga. L. 1996, p. 1079, § 1; Ga. L. 2000, p. 429 §§ 5, 5A; Ga. L. 2001, p. 1228, § 2A; Ga. L. 2002, p. 1, § 1; Ga. L. 2003, p. 261, § 5; Ga. L. 2005, p. 334, § 18-1/HB 501; Ga. L. 2008, p. 209, § 1/HB 1235; Ga. L. 2010, p. 143, § 10/HB 1005; Ga. L. 2011, p. 99, § 59/HB 24; Ga. L. 2013, p. 607, § 1/HB 254.)

Cross references. — Requirements of motor vehicle liability insurance policies and uninsured motorist coverage, § 33-7-11. Motor vehicle accident reparations, T. 33, C. 34. Proof of financial responsibility, T. 40, C. 9. Motor carrier bond or insurance, § 40-1-112.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, "data base" was substituted for "database" in paragraph (a)(3).

Editor's notes. — Ga. L. 2000, p. 429, § 1, not codified by the General Assembly, provides: "(a) The General Assembly finds that a significant number of motor vehicle owners in this state fail to meet the requirements of existing law for minimum motor vehicle liability insurance. The General Assembly finds further that enforcement of such requirements is made difficult by existing methods and procedures for tracking insurance coverage and providing proof of insurance.

"(b) The General Assembly declares that the purpose of this Act is to improve enforcement of minimum motor vehicle liability insurance requirements by providing the Department of Public Safety with updated information from insurers regarding those vehicles for which minimum motor vehicle liability insurance coverage is in effect, which information may be made accessible to law enforcement officers throughout the state, all without hampering the underwriting activities of any insurer or changing existing penalties for operating a motor vehicle without minimum liability insurance coverage."

Code Section 40-5-71, referred to in subsection (c), was repealed by Ga. L. 2010, p. 143, § 8/HB 1005, effective May 20, 2010.

Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article, "Evidence," see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

For note on the 2001 amendment of this Code section, see 18 Ga. St. U.L. Rev. 177 (2001). For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 208 (2003).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1974, p. 113, § 14 and decisions under former Code Section 33-34-12, which was renumbered as Code Section 40-6-10 by Ga. L. 1990, p. 2048, § 5, are included in the annotations for this Code section.

Section states separate offenses. — Paragraph (a)(1) and subsection (b) of O.C.G.A. § 40-6-10 do not simply describe alternative ways of committing a single crime, but rather describe two separate offenses. Thompson v. State, 243 Ga. App. 878, 534 S.E.2d 151 (2000).

Mandatory insurance requirement is constitutional. — Mandatory requirement for insurance coverage is not viola-

tive of due process, is not violative of First Amendment rights, and is not an unconstitutional exercise by the state of the state's police power. Andrew v. State, 238 Ga. 433, 233 S.E.2d 209 (1977) (decided under Ga. L. 1974, p. 113, § 14).

Request for insurance card not required. — O.C.G.A. § 40-6-10 does not require that an officer "request" an insurance card in order to prosecute a driver for no proof of insurance; it is sufficient that no such proof can be found in the vehicle. Moore v. State, 234 Ga. App. 332, 506 S.E.2d 685 (1998).

Uninsured's liability in negligence action. — When one fails to obtain coverage as required by the Georgia Motor Vehicle Reparations Act, one is subjected to the prescribed penalties and may be liable in a negligence action as a tortfeasor since the protection of no fault coverage is not afforded. Tamiami Trail Tours, Inc. v. Bess, 150 Ga. App. 632, 258 S.E.2d 200 (1979) (decided under Ga. L. 1974, p. 113, § 14).

Willful injury. — Because any driver may be involved in an accident and such an accident may be determined to be the fault of such driver, the intentional act of driving without insurance coupled with negligent driving inflicts both a physical and economic injury, and the economic injury is a willful one. In re Whipple, 138 Bankr. 137 (Bankr. S.D. Ga. 1991) (decided under pre-1991 section).

Recorder's court lacks jurisdiction. — Recorder's court lacked jurisdiction to try a defendant for driving without insurance, and neither O.C.G.A. § 16-1-7 nor O.C.G.A. § 16-1-8 precluded later prosecution in superior court for operating a motor vehicle after having been declared a habitual violator and for driving under the influence. Parker v. State, 170 Ga. App. 333, 317 S.E.2d 209 (1984) (decided under former § 33-34-12).

Construction of "knowingly operating." — Defendant's inability to present proof of insurance does not establish that the defendant was knowingly operating a motor vehicle without effective insurance; failure to keep proof of insurance coverage and driving a vehicle without liability insurance are separate offenses. Jones v. State, 195 Ga. App. 569, 394 S.E.2d 387 (1990).

Knowledge that car was uninsured. — For driving without insurance in violation of O.C.G.A. § 40-6-10(b), while although the state may have proved that the vehicle was uninsured and that the defendant was driving the vehicle without a license to drive, no evidence presented permitted the inference beyond a reasonable doubt that the defendant had knowledge that the car was uninsured. English v. State, 261 Ga. App. 157, 582 S.E.2d 136 (2003).

Defendant's knowledge of policy expiration inferrable. — Conviction for a violation of former § 33-34-12 (see now O.C.G.A. § 40-6-10) will not be precluded merely by a defendant's asserted lack of knowledge that defendant's insurance policy had expired; knowledge may be inferred from other facts and circumstances. Quaile v. State, 172 Ga. App. 421, 323 S.E.2d 281 (1984) (decided under former § 33-34-12); Thompson v. State, 243 Ga. App. 878, 534 S.E.2d 151 (2000).

Stop on basis of "unknown" insurance status was improper. — Computer's return of "unknown" in response to a query regarding the insured status of a vehicle did not create a reasonable suspicion of criminal activity; thus, an officer's stop of the defendant's car solely on the basis of an "unknown" insurance status was improper, the later search of the car was tainted, and the trial court properly suppressed the search results. State v. Dixson, 280 Ga. App. 260, 633 S.E.2d 636 (2006).

Proof of insurance produced meant no impoundment of vehicle. — Trial court properly granted the defendant's motion to suppress evidence obtained after the defendant's car was impounded during a traffic stop because, even though the officer had reasonable articulable suspicion to initiate the traffic stop based on criminal database search results that the defendant's car was not insured, once the defendant provided proof of insurance in an acceptable manner, the officer did not have probable cause to arrest the defendant or issue the defendant a citation; and, without probable cause to issue the citation, the officer had no basis for impounding the defendant's vehicle. State v. Lewis, 344 Ga. App. 630, No. A17A1692, 2018 Ga. App. LEXIS 113 (2018).

Out-of-state vehicle. — When it was uncontroverted that the car defendant was driving was an Illinois automobile not required to be registered under Georgia law, the defendant was not subject to arrest under O.C.G.A. § 40-6-10(a)(1) for failure to have proof of insurance for the car. Sanchez v. State, 197 Ga. App. 470, 398 S.E.2d 740 (1990).

Lesser included offenses. — Operating motor vehicle without insurance is not lesser included offense of false swearing. Bowen v. State, 173 Ga. App. 361, 326 S.E.2d 525 (1985) (decided under former § 33-34-12).

Proof necessary to support conviction. — When the police officer requested proof of insurance during a lawful traffic stop and the defendant did not provide such proof, there was sufficient evidence to establish that the defendant failed to comply with O.C.G.A. § 40-6-10; therefore, the trial court did not err in denying the defendant's motion for directed verdict. Johnson v. State, 251 Ga. App. 659, 555 S.E.2d 34 (2001).

Evidence supported guilty verdict. — Evidence was sufficient to support the jury's guilty verdict on the charge defendant failed to maintain no-fault insurance on the vehicle involved in the collision. Nash v. State, 179 Ga. App. 702, 347 S.E.2d 651 (1986) (decided under former § 33-34-12).

Evidence was sufficient to support a conviction since: (1) after the defendant was stopped at a roadblock, an officer asked the defendant for the defendant's license and proof of insurance and the defendant responded by asking what the defendant had done; (2) the defendant was told that the defendant had done nothing, but that the papers still needed to be checked; (3) the defendant then stated that the defendant had not committed a crime and asked for the officer's badge number; (4) the officer gave this information to the defendant and then told the defendant that the defendant needed to produce the defendant's papers and that the defendant would otherwise be arrested; (5) the defendant then asked for the code section which permitted the officer to ask for the defendant's license; and (6) after this went on for several minutes, another officer came over and arrested the defendant. Johnson v. State, 234 Ga. App. 218, 507 S.E.2d 13 (1998); Davidson v. State, 237 Ga. App. 580, 516 S.E.2d 90 (1999).

Defendant's conviction for driving without insurance in violation of O.C.G.A. § 40-6-10(b) was based on sufficient evidence and, accordingly, the trial court's denial of defendant's motion for a judgment of acquittal pursuant to O.C.G.A. § 17-9-1 was properly denied since the jury determined, based mainly on circumstantial evidence, that the elements of the crime were satisfied; the record revealed that defendant was involved in a collision, slowed down briefly and then fled the scene, and then produced an insurance card which did not appear to be authentic and was not validated by the insurance company. Augustin v. State, 260 Ga. App. 631, 580 S.E.2d 640 (2003).

Evidence that the defendant, following a high-speed motor vehicle chase with police, could not produce proof of insurance was sufficient to support the guilty verdict returned against the defendant for driving with no proof of insurance. Arnold v. State, 262 Ga. App. 61, 584 S.E.2d 662 (2003).

Defendant's motion for a directed verdict on the charge of driving with no proof of insurance was properly denied because the arresting officer confirmed several times that the defendant could not find the defendant's proof of insurance, which was sufficient evidence to sustain the conviction. Broadnax-Woodland v. State, 265 Ga. App. 669, 595 S.E.2d 350 (2004).

Evidence that a defendant received and drove a car following the defendant's father's death and drove the car without procuring insurance for the car was sufficient to prove a violation of O.C.G.A. § 40-6-10. Lawson v. State, 313 Ga. App. 751, 722 S.E.2d 446 (2012).

Evidence was insufficient for conviction since there was no indication that any law enforcement officer ever asked the defendant about insurance. Kersey v. State, 243 Ga. App. 689, 534 S.E.2d 428 (2000).

When the state presented no evidence in response to the defense's evidence of an insurance card and, in fact, did not even

object to the card's admission into evidence, the state failed to present sufficient evidence to support the charge of operating a vehicle without insurance pursuant to O.C.G.A. § 40-6-10(b), and the defendant's conviction on that charge had to be reversed. Spence v. State, 263 Ga. App. 25, 587 S.E.2d 183 (2003).

Defendant was entitled to reversal of the conviction for no proof of insurance because the responding officer testified that the officer did not find any proof of insurance inside the vehicle the defendant was driving, the officer did not state that the officer was unable to verify through the Department of Revenue records whether the vehicle was insured at the time of the accident, and the owner, who was not the defendant, was responsible for providing the defendant with such proof. Fouts v. State, 322 Ga. App. 261, 744 S.E.2d 451 (2013).

Jury instructions. — With regard to the charge of driving a vehicle without liability insurance, a trial court erred in also instructing the jury that a driver has the duty to present proof of insurance upon the request of a law enforcement officer; these are separate offenses. Griffith v. State, 172 Ga. App. 255, 322 S.E.2d 921 (1984) (decided under former § 33-34-12).

When the defendant was charged with failing to maintain the defendant's lane in violation of O.C.G.A. § 40-6-48 and failing to use a turn signal in violation of O.C.G.A. § 40-6-123, the trial court properly instructed the jury as to the definition of the standard for strict liability offenses because the state was not required to prove mental fault or mens rea in those offenses; although O.C.G.A. § 40-6-10(b) required proof that the defendant knowingly operated the vehicle with no insurance, and O.C.G.A. § 40-6-270 required proof that the defendant knowingly failed to stop and comply with the statute's mandates, the trial court's charge on intent was found sufficient. Augustin v. State, 260 Ga. App. 631, 580 S.E.2d 640 (2003).

Charge of "no insurance." — Since the defendant was charged with only one crime, described as "no insurance" rather than "no proof of insurance," the defendant was charged with a violation of O.C.G.A. § 40-6-10(b), rather than a violation of § 40-6-10(a)(1) and, because § 40-6-10(b) requires proof that the defendant knowingly operated the vehicle with no insurance, the defendant was entitled to a jury instruction as to that element. Thompson v. State, 243 Ga. App. 878, 534 S.E.2d 151 (2000).

Proof of insurance for sentencing purposes. — O.C.G.A. § 40-6-10 mandates a lesser sentence for those who fail to have proof of insurance when they are stopped, but can later show the court that they actually were insured. Bailey v. State, 241 Ga. App. 497, 526 S.E.2d 865 (1999).

Sentence not unconstitutional. — Defendant's sentence of 12 months confinement to be served on probation following 60 days of confinement, $1,500 in fines, 100 hours of community service, and a mental health evaluation for obstruction of a law enforcement officer, driving without insurance, and failing to register a vehicle was within the statutory limits set by O.C.G.A. §§ 16-10-24(b), 40-2-20(c), and 40-6-10(b), and did not shock the conscience. Smith v. State, 311 Ga. App. 184, 715 S.E.2d 434 (2011).

"Knowing" was not an element to be proven. — Word "knowing" was not essential to proving the crime of driving with no proof of insurance, and its inclusion in the accusation was mere surplusage. The accusation was sufficient to inform the defendant of the charge against the defendant, and to protect the defendant from another prosecution for the same offense. Broadnax-Woodland v. State, 265 Ga. App. 669, 595 S.E.2d 350 (2004).

Cited in Martin v. State, 145 Ga. App. 564, 244 S.E.2d 91 (1978); Shmunes v. GMC, 146 Ga. App. 486, 246 S.E.2d 486 (1978); Peluso v. State, 147 Ga. App. 266, 248 S.E.2d 546 (1978); State Farm Fire & Cas. Co. v. Sweat, 547 F. Supp. 233 (N.D. Ga. 1982); Griffith v. State, 172 Ga. App. 255, 322 S.E.2d 921 (1984); Williams v. State, 181 Ga. App. 49, 351 S.E.2d 207 (1986); Schofill v. State, 183 Ga. App. 251, 358 S.E.2d 651 (1987); Farmer v. State, 185 Ga. App. 512, 364 S.E.2d 639 (1988); Watkins v. State, 191 Ga. App. 87, 381 S.E.2d 45 (1989); Lord v. State, 194 Ga.

App. 749, 392 S.E.2d 17 (1990); Nunn v. State, 224 Ga. App. 312, 480 S.E.2d 614 (1997); Morrison v. State, 225 Ga. App. 710, 484 S.E.2d 762 (1997); State v. Simmons, 255 Ga. App. 336, 565 S.E.2d 549 (2002); Lopez v. State, 286 Ga. App. 873, 650 S.E.2d 430 (2007); Green v. State, 287 Ga. App. 248, 651 S.E.2d 174 (2007); Hughes v. State, 293 Ga. App. 404, 667 S.E.2d 163 (2008); State v. Ogilvie, 292 Ga. 6, 734 S.E.2d 50 (2012); Munye v. State, 342 Ga. App. 680, 803 S.E.2d 775 (2017); State v. Charles, 344 Ga. App. 456, 810 S.E.2d 627 (2018).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1974, p. 113, § 14 and former Code Section 33-34-12, which was renumbered as Code Section 40-6-10 by Ga. L. 1990, p. 2048, § 5, are included in the annotations for this Code section.

"Operator," as used in former § 33-34-12 (see now O.C.G.A. § 40-6-10), is applicable to anyone operating a motor vehicle, regardless of whether that person owns the motor vehicle or is related to the owner of the motor vehicle. 1989 Op. Att'y Gen. No. U89-3 (decided under former § 33-34-12).

Owners and non-owner operators must have proof of insurance. — Paragraph (a)(1) of former § 33-34-12 (see ow O.C.G.A. § 40-6-10) requires both the owner and a non-owner operator of a motor vehicle to maintain adequate proof or evidence of the requisite insurance on the vehicle, and that responsibility is no longer limited solely to the owner of the vehicle. 1988 Op. Att'y Gen. No. U88-13 (decided under former § 33-34-12).

Magistrate court's limited jurisdiction. — Jurisdiction of magistrate's court of county does not embrace criminal prosecutions for violations of the insurance laws of this state, specifically proceedings brought under Ga. L. 1974, p. 113, § 14 (see now O.C.G.A. § 40-6-10). 1975 Op. Att'y Gen. No. U75-46 (decided under Ga. L. 1974, p. 113, § 14).

Recorder's court limited jurisdiction. — Recorder's court does not have authority to handle cases arising under Ga. L. 1974, p. 113, § 14 (see now O.C.G.A. § 40-6-10). 1980 Op. Att'y Gen. No. U80-4 (decided under Ga. L. 1974, p. 113, § 14).

Recorder's court does not have the authority to try offenses under subsection (a) of former § 33-34-12 (see now O.C.G.A. § 40-6-10). 1983 Op. Att'y Gen. No. U83-41 (decided under former § 33-34-12).

Law enforcement officers may stop and check drivers for proof of insurance, and may utilize the failure to produce such proof to trigger a requirement that such proof be provided within a reasonable time to avoid a citation for no insurance; but no citations may be issued for failure to produce proof of insurance on the spot. 1980 Op. Att'y Gen. No. U80-18 (decided under Ga. L. 1974, p. 113, § 14).

Effect of 1987 amendment on nonresidents. — Although nonresidents may be charged with a violation of subsection (b) of former § 33-34-12 (see now O.C.G.A. § 40-6-10) when operating an uninsured motor vehicle, nonresidents may not be charged with a violation of paragraph (a)(1) of former § 33-34-12 (see now O.C.G.A. § 40-6-10) as that subsection applies only to owners or operators of motor vehicles who are residents of the State of Georgia or who are otherwise required to register their vehicles in the State of Georgia. 1987 Op. Att'y Gen. No. 87-30 (decided under former § 33-34-12).

Violations by nonresidents. — Nonresident operating uninsured motor vehicle may be charged with violation of Ga. L. 1974, p. 113, § 14 (see now O.C.G.A. § 40-6-10) regardless of whether the home state of the nonresident requires such a vehicle to be insured. 1985 Op. Att'y Gen. No. U85-26 (decided under Ga. L. 1974, p. 113, § 14).

Driver of a borrowed automobile is required to show proof of insurance upon request. 1989 Op. Att'y Gen. No. U89-3 (decided under Ga. L. 1974, p. 113, § 14).

Effect of 1989 amendment on fingerprinting requirements. — After the 1989 amendment of Ga. L. 1974, p. 113,

§ 14 (see now O.C.G.A. § 40-6-10) increased the potential penalty for this offense to 12 months imprisonment (the previous version authorized a maximum term of imprisonment of 30 days), and affects only the potential penalty and does not modify the elements of the offense itself, the offense shall not be designated as an offense requiring fingerprinting. 1989 Op. Att'y Gen. 89-52 (decided under Ga. L. 1974, p. 113, § 14).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 168 et seq.

40-6-10.1. Financial responsibility requirements of the Federal Motor Carrier Safety Administration.

No motor carrier subject to the financial responsibility requirements of the Federal Motor Carrier Safety Administration, or any successor agency, as contained in 49 C.F.R. Part 387, shall operate any motor vehicle upon the highways of this state until such motor carrier has obtained and has in effect the minimum levels of financial responsibility prescribed by such federal regulations. (Code 1981, § 40-6-10.1, enacted by Ga. L. 2011, p. 479, § 11/HB 112.)

Law reviews. — For annual survey on insurance law, see 69 Mercer L. Rev. 117 (2017).

JUDICIAL DECISIONS

Intent. — The Georgia General Assembly and the Georgia Department of Public Safety did not intend to extend the federal financial responsibility regime imposed by the Federal Motor Carrier Safety Regulations to purely intrastate commerce involving nonhazardous commodities. Grange Indem. Ins. Co. v. Burns, 337 Ga. App. 532, 788 S.E.2d 138 (2016).

Presently engaged. — Plain language of the MCS-90 and § 30 of the Motor Carrier Act, 49 U.S.C. § 31139(b), provides that the endorsement covers vehicles only when the vehicles are presently engaged in the transportation of interstate commerce or the transportation of hazardous materials. Grange Indem. Ins. Co. v. Burns, 337 Ga. App. 532, 788 S.E.2d 138 (2016).

Each claim reviewed independently. — Each claim must be examined individually to determine whether the coverage afforded by the MCS-90 endorsement applies to the actual vehicle involved in the accident. Grange Indem. Ins. Co. v. Burns, 337 Ga. App. 532, 788 S.E.2d 138 (2016).

Intrastate trip involving nonhazardous commodities. — Trial court erred in concluding that the coverage afforded by the MCS-90 endorsement, O.C.G.A. § 40-6-10.1, applied because it was undisputed that the truck was engaged in a purely intrastate trip involving nonhazardous commodities at the time of the subject accident. Grange Indem. Ins. Co. v. Burns, 337 Ga. App. 532, 788 S.E.2d 138 (2016).

40-6-11. Insurance requirements for operation of motorcycles.

(a) For the purposes of this Code section, "motorcycle" means any motor vehicle traveling on public streets or highways having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground but excluding a tractor and a moped.

(b) No owner of a motorcycle or any other person, other than a self-insurer as defined in Chapter 34 of Title 33, shall operate or authorize any other person to operate the motorcycle unless the owner has liability insurance on the motorcycle equivalent to that required as evidence of security for bodily injury and property damage liability under Code Section 40-9-37. Any person who violates this subsection shall be guilty of a misdemeanor.

(c) The operator of a motorcycle shall keep proof or evidence of the minimum insurance coverage required by this Code section in his or her immediate possession or on the motorcycle at all times when such person is operating the motorcycle but only under the same circumstances and of the same type as prescribed for operators of other motor vehicles in Code Section 40-6-10. Any person who violates this subsection shall be subject to a fine not to exceed $25.00; however, there shall be no suspension of the person's operator's license or motor vehicle license tag for a violation of this subsection.

(d)(1) Insurance coverage information from records of the department shall be prima-facie evidence of the facts stated therein and shall be admissible as evidence in accordance with Code Section 24-9-924 for the purposes of this Code section.

(2) Every law enforcement officer in this state shall request the operator of a motorcycle subject to the provisions of subsection (c) of this Code section to produce proof or evidence of minimum insurance coverage required by this Code section at any time the law enforcement officer stops the motorcycle or requests the presentation of the driver's license of such operator.

(e) An owner or operator of a motorcycle shall not be issued a citation by a law enforcement officer for a violation of this Code section if the sole basis for issuance of such a citation is that the law enforcement officer is unable to obtain insurance coverage information from the records of the department. (Code 1981, § 40-6-11, enacted by Ga. L. 1990, p. 2048, § 5; Ga. L. 1992, p. 2785, § 22; Ga. L. 2000, p. 429, §§ 6, 6A; Ga. L. 2003, p. 261, § 6; Ga. L. 2011, p. 99, § 60/HB 24.)

Editor's notes. — Ga. L. 2000, p. 429, § 1, not codified by the General Assembly, provides: "(a) The General Assembly finds that a significant number of motor vehicle owners in this state fail to meet the requirements of existing law for minimum

motor vehicle liability insurance. The General Assembly finds further that enforcement of such requirements is made difficult by existing methods and procedures for tracking insurance coverage and providing proof of insurance.

"(b) The General Assembly declares that the purpose of this Act is to improve enforcement of minimum motor vehicle liability insurance requirements by providing the Department of Public Safety with updated information from insurers regarding those vehicles for which minimum motor vehicle liability insurance coverage is in effect, which information may be made accessible to law enforcement officers throughout the state, all without hampering the underwriting activities of any insurer or changing existing penalties for operating a motor vehicle without minimum liability insurance coverage."

Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article, "Evidence," see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 208 (2003).

JUDICIAL DECISIONS

Cited in Alexander Underwriters Gen. Agency, Inc. v. Lovett, 177 Ga. App. 262, 339 S.E.2d 368 (1985).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code Section 33-34-14, are included in the annotations for this Code section.

Motorcycle liability insurance coverage for guest passengers. — Former O.C.G.A. § 33-34-14 required that motorcycle liability insurance policies include coverage for guest passengers of at least the minimum coverage required under O.C.G.A. § 40-9-37. 1983 Op. Att'y Gen. No. U83-59 (decided under former § 33-34-14).

40-6-12. Subsequent violation; proof of financial responsibility.

(a) Any person convicted of a second or subsequent violation of Code Section 40-6-10 within a five-year period, as measured from date of arrest to date of arrest, shall be required to file with the Department of Driver Services and maintain for a period of three years from the date of conviction proof of financial responsibility, as such term is defined in paragraph (5) of Code Section 40-9-2, in addition to any other punishment.

(b) If the proof of financial responsibility filed in accordance with subsection (a) of this Code section is based upon a policy issued by an insurance company, such insurer may not cancel the policy until the Department of Driver Services is given at least 30 days' prior written notice of such cancellation. (Code 1981, § 40-6-12, enacted by Ga. L. 1990, p. 2048, § 5; Ga. L. 2000, p. 951, § 5A-1; Ga. L. 2005, p. 334, § 18-2/HB 501.)

40-6-13. Courts having jurisdiction to try offenses.

Any court having jurisdiction to try and dispose of traffic offenses shall have jurisdiction to try and dispose of the misdemeanor offenses provided for in Code Sections 40-6-10 and 40-6-11. Such jurisdiction shall be concurrent with the jurisdiction of any other court within the county having jurisdiction to try and dispose of such offenses. (Code 1981, § 40-6-13, enacted by Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Jurisdiction in state court of DeKalb County. — There was undisputed testimony that the misdemeanor crimes with which the defendant was charged and convicted occurred in DeKalb County, Georgia, and that the defendant was identified as the perpetrator of the offenses; thus, the record affirmatively established that the state court of DeKalb County exercised both personal and subject matter jurisdiction over the defendant. Freeman v. State, 194 Ga. App. 905, 392 S.E.2d 330, cert. denied, 194 Ga. App. 911, 392 S.E.2d 330 (1990).

40-6-14. Sound volume limitations from within the motor vehicle.

(a) It is unlawful for any person operating or occupying a motor vehicle on a street or highway to operate or amplify the sound produced by a radio, tape player, or other mechanical sound-making device or instrument from within the motor vehicle so that the sound is plainly audible at a distance of 100 feet or more from the motor vehicle.

(b) The provisions of this Code section shall not apply to any law enforcement motor vehicle equipped with any communication device necessary in the performance of law enforcement duties or to any emergency vehicle equipped with any communication device necessary in the performance of any emergency procedures.

(c) The provisions of this Code section do not apply to motor vehicles used for business or political purposes, which in the normal course of conducting such business use sound-making devices. The provisions of this subsection shall not be deemed to prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power, from regulating the time and manner in which such business may be operated.

(d) The provisions of this Code section do not apply to the noise made by a horn or other warning device required or permitted by Code Section 40-8-70. The Department of Public Safety shall promulgate rules defining "plainly audible" and establish standards regarding the measurement of sound by law enforcement personnel.

(e) A violation of this Code section shall be a misdemeanor. (Code 1981, § 40-6-14, enacted by Ga. L. 1991, p. 417, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, the paragraph (1) designation of subsection (a) was deleted, and related stylistic changes made.

Law reviews. — For note on the 1991 enactment of this Code section, see 8 Ga. St. U.L. Rev. 143 (1992).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 40-6-14 is not unconstitutionally vague because the plain language of subsection (a) provides clear notice of what conduct is prohibited. Davis v. State, 272 Ga. 818, 537 S.E.2d 327 (2000).

Plaintiff had no standing to bring a declaratory judgment action challenging the constitutionality of O.C.G.A. § 40-6-14 as a violation of the due process clause claiming it is void for vagueness and is unenforceable due to the Department of Public Safety's failure to promulgate rules defining "plainly audible" or to establish standards regarding measurement of sound by law enforcement personnel as mandated by O.C.G.A. § 40-6-14(d). Patterson v. State, 242 Ga. App. 131, 528 S.E.2d 884 (2000).

Investigatory stop after officer hears loud music. — Trial court properly denied suppression of drug evidence obtained from a search of the defendant's person after a police officer conducted an investigatory stop of the defendant's vehicle and noted a strong odor of marijuana as the officer stopped the vehicle based on a reasonable suspicion that the defendant was violating O.C.G.A. § 40-6-14(a) by the loud music emanating from the defendant's vehicle while parked in a convenience store parking lot pursuant to O.C.G.A. § 40-6-3(a)(2). Jackson v. State, 297 Ga. App. 615, 677 S.E.2d 782 (2009), cert. denied, No. S09C1461, 2009 Ga. LEXIS 409 (Ga. 2009).

In a case in which the defendant appealed a conviction for violating 18 U.S.C. § 922(g)(1), the defendant unsuccessfully argued that the district court erred in denying the defendant's motion to suppress the evidence seized from the defendant's automobile after being stopped by a police officer for violating O.C.G.A. § 40-6-14(a). The officer testified at the suppression hearing that the officer heard a loud thumping sound coming from the radio in defendant's automobile when the officer was located one block away from the defendant and that the officer heard the automobile before seeing it; a reasonable officer in the officer's position could have believed that the music was audible more than one-hundred feet away on the basis of those observations, and any mistake of fact by the officer in evaluating the distance from defendant's car was a reasonable one, and the officer did not violate the Fourth Amendment by stopping defendant for violation of the noise statute. United States v. Smalls, No. 11-12621, 2012 U.S. App. LEXIS 1203 (11th Cir. Jan. 19, 2012) (Unpublished).

Cited in State v. Bute, 250 Ga. App. 479, 552 S.E.2d 465 (2001).

OPINIONS OF THE ATTORNEY GENERAL

For an update of crimes and offenses for which the Georgia Crime Information Center is authorized to collect and file identifying data, see 1991 Op. Att'y Gen. No. 91-35.

40-6-15. Knowingly driving motor vehicle on suspended, canceled, or revoked registration; punishment.

(a) Any person who knowingly drives a motor vehicle on any public road or highway of this state at a time when the vehicle registration of

such vehicle is suspended, canceled, or revoked shall be guilty of a misdemeanor.

(b) Upon a first conviction thereof or a plea of nolo contendere, such person shall be punished by imprisonment for not more than 12 months and there may be imposed in addition thereto a fine of not less than $500.00 nor more than $1,000.00, at the discretion of the court.

(c) For a second or subsequent conviction within five years as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere accepted, such person shall be guilty of a high and aggravated misdemeanor and shall be punished by imprisonment for not less than ten days nor more than 12 months and there may be imposed in addition thereto a fine of not less than $1,000.00 nor more than $2,500.00.

(d) The department, upon receiving a record of the conviction of any person under this Code section upon a charge of driving a vehicle while the registration of such vehicle was suspended or revoked, shall extend the period of suspension or revocation for six months. The department may reinstate the suspended or revoked vehicle registration following the expiration of the original suspension or revocation period, the additional six-month suspension imposed pursuant to this subsection, and upon payment of a restoration fee of $210.00, or $200.00 when such reinstatement is processed by mail.

(e) For purposes of pleading nolo contendere, only one nolo contendere plea shall be accepted to a charge of driving a motor vehicle with a suspended, canceled, or revoked vehicle registration within a five-year period of time as measured from the date of the previous arrest for which a conviction was obtained or plea of nolo contendere was accepted to the date of the current arrest. All other nolo contendere pleas within such period of time shall be considered convictions.

(f) Notwithstanding the limits set forth in Article 14 of this chapter and in any municipal charter, any municipal court of any municipality in this state shall be authorized to impose the punishment provided for in this Code section upon a conviction of violating this Code section or upon conviction of violating any ordinance adopting the provisions of this Code section. (Code 1981, § 40-6-15, enacted by Ga. L. 2002, p. 1024, § 6; Ga. L. 2015, p. 60, § 4-24/SB 100.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, "six-month suspension" was substituted for "six month suspension" in the last sentence in subsection (d).

Editor's notes. — Ga. L. 2002, p. 1024, § 7, not codified by the General Assembly, provides: "This Act shall become effective November 1, 2002; provided, however, that the Act shall be effective upon its approval by the Governor or upon its becoming law without such approval for

the purposes of the authority of the commissioner to adopt rules and regulations and to employ staff and expend moneys within the limits of funds appropriated or otherwise made available for such purpose."

Ga. L. 2015, p. 60, § 6-1/SB 100, not codified by the General Assembly, provides that: "Section 4-9 of Part IV of this Act shall become effective on January 1, 2016, and all other parts of this Act shall become effective on July 1, 2015, and shall apply to offenses which occur on or after that date."

JUDICIAL DECISIONS

Evidence insufficient. — Evidence that a defendant received and drove a car following the defendant's father's death was insufficient to prove a violation of O.C.G.A. § 40-6-15 because there was no evidence from which the jury could infer that the defendant knew that the car was not registered. Lawson v. State, 313 Ga. App. 751, 722 S.E.2d 446 (2012).

Cited in Munye v. State, 342 Ga. App. 680, 803 S.E.2d 775 (2017).

40-6-16. Procedure for passing certain stationary vehicles.

(a) This Code section shall be known and may be cited as the "Spencer Pass Law."

(b) The operator of a motor vehicle approaching a stationary authorized emergency vehicle that is displaying flashing yellow, amber, white, red, or blue lights shall approach the authorized emergency vehicle with due caution and shall, absent any other direction by a peace officer, proceed as follows:

(1) Make a lane change into a lane not adjacent to the authorized emergency vehicle if possible in the existing safety and traffic conditions; or

(2) If a lane change under paragraph (1) of this subsection would be impossible, prohibited by law, or unsafe, reduce the speed of the motor vehicle to a reasonable and proper speed for the existing road and traffic conditions, which speed shall be less than the posted speed limit, and be prepared to stop.

(c) The operator of a motor vehicle approaching a stationary towing or recovery vehicle, a stationary highway maintenance vehicle, or a stationary utility service vehicle that is utilizing traffic cones or displaying flashing yellow, amber, white, or red lights shall approach the vehicle with due caution and shall, absent any other direction by a peace officer, proceed as follows:

(1) Make a lane change into a lane not adjacent to the towing, recovery, highway maintenance, or utility service vehicle if possible in the existing safety and traffic conditions; or

(2) If a lane change under paragraph (1) of this subsection would be impossible, prohibited by law, or unsafe, reduce the speed of the

motor vehicle to a reasonable and proper speed for the existing road and traffic conditions, which speed shall be less than the posted speed limit, and be prepared to stop.

(d)(1) Violation of subsection (b) of this Code section shall be punished by a fine of not more than $500.00.

(2) Violation of subsection (c) of this Code section shall be punished by a fine of not more than $250.00.

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

(1) "Utility service vehicle" means any vehicle being used by an employee or contractor of any entity, including, but not limited to, a political subdivision of this state or a local authority or commission related thereto, an electric cooperative, or a public or private corporation, in connection with the provision of utility services.

(2) "Utility services" means and includes electric, natural gas, water, waste-water, cable, telephone, or telecommunication services or the repair, location, relocation, improvement, or maintenance of utility poles, transmission structures, pipes, wires, fibers, cables, easements, rights of way, and associated infrastructure. (Code 1981, § 40-6-16, enacted by Ga. L. 2003, p. 427, § 1; Ga. L. 2006, p. 231, § 2/SB 64; Ga. L. 2011, p. 593, § 1/HB 156; Ga. L. 2016, p. 61, § 1/HB 767.)

The 2016 amendment, effective July 1, 2016, substituted the present provisions of the introductory paragraph of subsection (c) for the former provisions, which read: "The operator of a motor vehicle approaching a stationary towing or recovery vehicle or a stationary highway maintenance vehicle that is displaying flashing yellow, amber, or red lights shall approach the vehicle with due caution and shall, absent any other direction by a peace officer, proceed as follows:"; substituted "recovery, highway maintenance, or utility service vehicle" for "recovery, or highway maintenance vehicle" in paragraph (c)(1); designated the existing provisions of subsection (d) as paragraph (d)(1); deleted "or (c)" following "subsection (b)" in paragraph (d)(1); added paragraph (d)(2); and added subsection (e).

Cross references. — Payment of indemnification or disability of emergency personnel or prison guards, § 45-9-85.

Law reviews. — For note on the 2003 enactment of this Code section, see 20 Ga. St. U.L. Rev. 213 (2003).

JUDICIAL DECISIONS

Violation of statute warranted investigative stop. — Because the defendant's apparent violation of O.C.G.A. § 40-6-16(a) (now subsection (b)) gave the investigating officer a reasonable and articulable suspicion to stop the defendant and inquire further, the trial court erred in granting the defendant's motion to suppress a refusal to take a breath test in connection with DUI charges; moreover, the trial court erroneously concluded that the defendant could have had an innocent explanation for a last-minute swerve to avoid hitting the officer's patrol car as the issue went to the question of guilt or innocence and was not the dispositive question on a motion to suppress. State v. Rheinlander, 286 Ga. App.

625, 649 S.E.2d 828 (2007).

Evidence sufficient for conviction. — Defendant's motion for directed verdict of acquittal on a violation of Georgia's "move-over" statute, O.C.G.A. § 40-6-16(a) (now subsection (b)), was properly denied because a reasonable jury could find that, although a patrol car was moving at the time the defendant nearly struck the car, the car had been stationary with lights flashing, and the defendant had failed to slow down or move over. Van Auken v. State, 304 Ga. App. 802, 697 S.E.2d 895 (2010).

Evidence that the defendant passed the officer in a lane adjacent to the officer while the officer conducted a traffic stop and had the officer's blue emergency lights activated, and that the defendant had room to move out of the adjacent lane and safely into a farther lane was sufficient to support the defendant's conviction for violation of the Spencer Pass Law, O.C.G.A. § 40-6-16. Pierce v. State, 322 Ga. App. 145, 743 S.E.2d 438 (2013).

Cited in Stevenson v. City of Doraville, 294 Ga. 220, 751 S.E.2d 845 (2013).

40-6-16.1. Procedure for passing vehicle with active sanitation workers.

(a) As used in this Code section, the term "sanitation worker" means an individual engaged in the collection and transport of residential or commercial solid waste and recyclables as authorized by a county or municipal governing authority.

(b) The operator of a motor vehicle approaching a vehicle with active sanitation workers that is displaying flashing yellow, amber, white, or red lights shall approach the vehicle with due caution and shall, absent any other direction by a peace officer, proceed as follows:

(1) Make a lane change into a lane not adjacent to the vehicle if possible in the existing safety and traffic conditions; or

(2) If a lane change under paragraph (1) of this subsection would be impossible, prohibited by law, or unsafe, reduce the speed of the motor vehicle to a reasonable and proper speed for the existing road and traffic conditions, which speed shall be at least ten miles per hour less than the posted speed limit or 25 miles per hour, whichever is more, and be prepared to stop.

(c) Violation of subsection (b) of this Code section shall be punished by a fine of not more than $250.00. (Code 1981, § 40-6-16.1, enacted by Ga. L. 2015, p. 323, § 1/HB 206.)

40-6-17. Prohibited use of traffic-control device preemption emitter; penalty.

(a) As used in this Code section, the term "traffic-control device preemption emitter" means a mobile infrared transmitter or any other similar device which transmits an infrared beam, radio wave, or other signal used for the purpose of changing, altering, disabling, or disrupting the normal signal sequence of a traffic-control device.

(b) It shall be unlawful for any person other than law enforcement, fire department, or emergency personnel to use, possess with the ability to use, sell, or purchase a traffic-control device preemption emitter.

(c) Any person who violates subsection (b) of this Code section shall be guilty of a misdemeanor. (Code 1981, § 40-6-17, enacted by Ga. L. 2004, p. 1084, § 1.)

ARTICLE 2

TRAFFIC SIGNS, SIGNALS, AND MARKINGS

Cross references. — Routes and signage for the Georgia Wine Highway, § 3-6-21.4. Promulgation by Department of Transportation of uniform regulations governing erection and maintenance of signs, signals, markings, and other traffic-control devices, § 32-6-50.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 239 et seq.

ALR. — Applicability of motor vehicle regulations to public officials or employees, 19 A.L.R. 459; 23 A.L.R. 418.

Motorist's liability for collision at intersection of ordinary and arterial highways as affected by absence, displacement, or malfunctioning of stop sign or other traffic signal, 74 A.L.R.2d 242.

Custom or practice of drivers of motor vehicles as affecting question of negligence, 77 A.L.R.2d 1327.

Governmental liability for failure to post highway deer crossing warning signs, 59 A.L.R.4th 1217.

40-6-20. Obedience to traffic-control devices required; presumptions; red light cameras.

(a) The driver of any vehicle shall obey the instructions of an official traffic-control device applicable thereto, placed in accordance with this chapter, unless otherwise directed by a police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this chapter. A violation of this subsection shall be a misdemeanor, except as otherwise provided by subsection (f) of this Code section.

(b) No provisions of this chapter which require official traffic-control devices shall be enforced against an alleged violator if at the time and place of the alleged violation an official device was not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular Code section does not state that official traffic-control devices are required, such Code section shall be effective even though no devices are erected or in place.

(c) Whenever official traffic-control devices are placed in position approximately conforming to the requirements of this chapter, such devices shall be presumed to have been so placed by the official act or

direction of lawful authority, unless the contrary shall be established by competent evidence.

(d) Any official traffic-control device placed pursuant to this chapter and purporting to conform to the lawful requirements pertaining to such devices shall be presumed to comply with the requirements of this chapter, unless the contrary shall be established by competent evidence.

(e) The disregard or disobedience of the instructions of any official traffic-control device or signal placed in accordance with the provisions of this chapter by the driver of a vehicle shall be deemed prima-facie evidence of a violation of law, without requiring proof of who and by what authority such sign or device has been erected.

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

(A) "Owner" means the registrant of a motor vehicle, except that such term shall not include a motor vehicle rental company when a motor vehicle registered by such company is being operated by another person under a rental agreement with such company.

(B) "Recorded images" means images recorded by a traffic-control signal monitoring device:

(i) On:

(I) Two or more photographs;

(II) Two or more microphotographs;

(III) Two or more electronic images; or

(IV) Videotape; and

(ii) Showing a traffic-control signal displaying a CIRCULAR RED or RED ARROW signal along with the rear of a motor vehicle apparently operated in disregard or disobedience of such signal and, on at least one image or portion of tape, clearly revealing the number or other identifying designation of the license plate displayed on the motor vehicle.

(C) "Traffic-control signal monitoring device" means a device with one or more motor vehicle sensors working in conjunction with a traffic-control signal to produce recorded images of motor vehicles being operated in disregard or disobedience of a CIRCULAR RED or RED ARROW signal.

(2) Subsection (a) of this Code section may be enforced as provided in this subsection pursuant to the use of traffic-control signal monitoring devices in accordance with Article 3 of Chapter 14 of this title.

(3) For the purpose of enforcement pursuant to this subsection:

(A) The driver of a motor vehicle shall be liable for a civil monetary penalty of not more than $70.00 if such vehicle is found, as evidenced by recorded images produced by a traffic-control signal monitoring device, to have been operated in disregard or disobedience of a CIRCULAR RED or RED ARROW signal in violation of subsection (a) of this Code section and such disregard or disobedience was not otherwise authorized by law;

(B) The law enforcement agency authorized to enforce the provisions of this Code section shall send by regular mail addressed to the owner of the motor vehicle postmarked not later than ten days after the date of the alleged violation:

(i) A citation for the alleged violation, which shall include the date and time of the violation, the location of the intersection, the amount of the civil monetary penalty imposed, and the date by which the civil monetary penalty shall be paid;

(ii) A copy of the recorded image;

(iii) A copy of a certificate sworn to or affirmed by a certified peace officer employed by a law enforcement agency authorized to enforce this Code section and stating that, based upon inspection of recorded images, the owner's motor vehicle was operated in disregard or disobedience of a CIRCULAR RED or RED ARROW signal in violation of subsection (a) of this Code section and that such disregard or disobedience was not otherwise authorized by law;

(iv) A statement of the inference provided by subparagraph (D) of this paragraph and of the means specified therein by which such inference may be rebutted;

(v) Information advising the owner of the motor vehicle of the manner and time in which liability as alleged in the citation may be contested in court; and

(vi) Warning that failure to pay the civil monetary penalty or to contest liability in a timely manner shall waive any right to contest liability and result in a civil monetary penalty;

provided, however, that only warning notices and not citations for violations shall be sent during the 30 day period commencing with the installation of a traffic-control signal monitoring device at such location;

(C) Proof that a motor vehicle was operated in disregard or disobedience of a CIRCULAR RED or RED ARROW signal in violation of subsection (a) of this Code section shall be evidenced by recorded images produced by a traffic-control signal monitoring

device authorized pursuant to Article 3 of Chapter 14 of this title. A copy of a certificate sworn to or affirmed by a certified peace officer employed by a law enforcement agency and stating that, based upon inspection of recorded images, a motor vehicle was operated in disregard or disobedience of a CIRCULAR RED or RED ARROW signal in violation of subsection (a) of this Code section and that such disregard or disobedience was not otherwise authorized by law shall be prima-facie evidence of the facts contained therein; and

(D) Liability under this subsection shall be determined based upon preponderance of the evidence. Prima-facie evidence that the vehicle described in the citation issued pursuant to this subsection was operated in violation of subsection (a) of this Code section, together with proof that the defendant was at the time of such violation the registered owner of the vehicle, shall permit the trier of fact in its discretion to infer that such owner of the vehicle was the driver of the vehicle at the time of the alleged violation. Such an inference may be rebutted if the owner of the vehicle:

(i) Testifies under oath in open court or submits to the court a sworn notarized statement that he or she was not the operator of the vehicle at the time of the alleged violation;

(ii) Presents to the court a certified copy of a police report showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation; or

(iii) Submits to the court a sworn notarized statement identifying the name of the operator of the vehicle at the time of the alleged violation.

(4) A violation for which a civil penalty is imposed pursuant to this subsection shall not be considered a moving traffic violation, for the purpose of points assessment under Code Section 40-5-57. Such violation shall be deemed noncriminal, and imposition of a civil penalty pursuant to this subsection shall not be deemed a conviction and shall not be made a part of the operating record of the person upon whom such liability is imposed, nor shall it be used for any insurance purposes in the provision of motor vehicle insurance coverage.

(5) If a person summoned by regular mail fails to appear on the date of return set out in the citation and has not paid the penalty for the violation or filed a police report or notarized statement pursuant to subparagraph (D) of paragraph (3) of this subsection, the person shall then be summoned a second time by certified mail with a return receipt requested. The second summons shall include all information required in subparagraph (B) of paragraph (3) of this subsection for

the initial summons and shall include a new date of return. If a person summoned by certified mail again fails to appear on the date of return set out in the second citation and has failed to pay the penalty or file an appropriate document for rebuttal, the person summoned shall have waived the right to contest the violation and shall be liable for a civil monetary penalty of not more than $70.00.

(6) Any court having jurisdiction over violations of subsection (a) of this Code section or any ordinance adopting the provisions of said subsection pursuant to Code Section 40-6-372 shall have jurisdiction over cases arising under this subsection and shall be authorized to impose the civil monetary penalty provided by this subsection. Except as otherwise provided in this subsection, the provisions of law governing jurisdiction, procedure, defenses, adjudication, appeal, and payment and distribution of penalties otherwise applicable to violations of subsection (a) of this Code section shall apply to enforcement under this subsection; provided, however, that any appeal from superior or state court shall be by application in the same manner as that provided by Code Section 5-6-35.

(7) Recorded images made for purposes of this subsection shall not be a public record for purposes of Article 4 of Chapter 18 of Title 50.

(8) A governing authority shall not impose a civil penalty under this subsection on the owner of a motor vehicle if the operator of the vehicle was arrested or issued a citation and notice to appear by a peace officer for the same violation that is recorded by a traffic-control signal monitoring device. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 32, 34; Code 1933, § 68A-201, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 2001, p. 770, § 2; Ga. L. 2003, p. 597, § 2; Ga. L. 2008, p. 1184, §§ 1, 1.1, 2/HB 77.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, the "(8)" designation was added to the last paragraph in subsection (f).

Law reviews. — For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

Jurisdiction of campus police. — University police officer had authority under O.C.G.A. § 40-13-30 to issue citations for an accident that occurred at an intersection that bordered the campus, and the trial court, therefore, properly denied defendant's motion for a directed verdict of acquittal under O.C.G.A. § 17-9-1 relating to the charge of failing to obey a traffic control device in violation of O.C.G.A. § 40-6-20; the broad language of O.C.G.A. § 40-13-30 gave any officer of Georgia that had authority to arrest for a misdemeanor the authority to prefer charges and bring offenders to trial. Hawkins v. State, 281 Ga. App. 852, 637 S.E.2d 422 (2006).

Requirements of accusation and ability to withstand demurrer. — Trial court erred in sustaining defendant's demurrer regarding the charges of failing to yield the right of way while turning left and failing to obey a traffic-control device as an accusation that charges an accused

with having committed certain acts in violation of a specified penal statute withstood a demurrer, and the indictment cited both O.C.G.A. §§ 40-6-20 and 40-6-71. Further, although the accusation failed to put the defendant on notice of what instruction of a traffic-control device the state alleged the defendant failed to obey, the defendant could not admit that the defendant failed to yield the right of way to a vehicle when the defendant was intending to turn left within the specified intersection, which was regulated by traffic lights, without admitting to the offense of failure to obey a traffic-control device. State v. Shabazz, 291 Ga. App. 751, 662 S.E.2d 828 (2008).

Charge authorized under Code section. — O.C.G.A. § 40-6-20 requires drivers to obey the instructions of traffic control devices and could be the basis for a charge of vehicular homicide or failure to yield the right of way. State v. Nix, 220 Ga. App. 651, 469 S.E.2d 497 (1996).

Trial court did not err in failing to give requested jury instructions by a driver whose vehicle was involved in a collision with a city fire rescue van as the trial court's instructions under O.C.G.A. §§ 40-6-6 and 40-6-20(a) properly allowed the jury to determine whether the rescue van was an authorized emergency vehicle that complied with O.C.G.A. § 40-6-6, and the instructions also adequately informed the jury that the city had the burden of proof on the issue. Wynn v. City of Warner Robins, 279 Ga. App. 42, 630 S.E.2d 574 (2006).

Charge on intent properly required. — When a case arose from an intersection collision between a car driven by the defendant and another car, a red Mustang, and when the defense's contentions at trial were that the defendant thought the light was green, that the defendant had no intention of running a red light or of causing the victim's death, and that if the defendant did run the red light, it was the result of legal mistake or accident, the trial court did not err by charging the jury on the intent required to commit the offenses charged; the state was required to prove the intent to do the act which resulted in the violation of the law and not the intent to commit the crime itself. Hoffer v. State, 192 Ga. App. 378, 384 S.E.2d 902, cert denied, 192 Ga. App. 902, 384 S.E.2d 902 (1989).

Charge on advisory sign not required. — In a wrongful death action, the trial court did not err in refusing to charge O.C.G.A. § 40-6-20 since the yellow sign with the legend "exit 30 m.p.h." located near the area of the fatal impact was an advisory sign. Norman v. Williams, 220 Ga. App. 367, 469 S.E.2d 366 (1996).

Presumption of proper placement of no parking sign. — Whenever a no parking sign is placed in a position approximately conforming to the requirements of this chapter, the sign shall be presumed to have been so placed by the official act or direction of lawful authority, unless the contrary shall be established by competent evidence. Fabian v. Vincent, 155 Ga. App. 464, 270 S.E.2d 858 (1980).

Merger into vehicular homicide. — Defendant's reckless driving, running a red light, and less safe driving under the influence convictions merged into the defendant's reckless vehicular homicide convictions, which involved two deaths resulting from the defendant's striking a car; however, the failure to exercise due care conviction involving the defendant striking a pedestrian did not merge into the vehicular homicide conviction as the acts leading to the two charges involved different facts and different victims. Hill v. State, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

Stoplight showing green lights in both directions. — When the case arose from an intersection collision between a car which defendant drove and another car, because the trial court correctly and repeatedly charged that the defendant could be convicted only if the state proved beyond a reasonable doubt that the stop light facing the defendant was red, any defense based upon the light being green when the defendant went through the light was not an accident defense; logically, one cannot be convicted of running a red light if the light was, in fact, green; accordingly, the defendant's contention that a malfunction of the light showing green lights in both directions did not give rise to the defense of accident. Hoffer v. State, 192 Ga. App. 378, 384 S.E.2d 902,

cert. denied, 192 Ga. App. 902, 384 S.E.2d 902 (1989).

Conditions for speed limit reduction. — Whether the speed limit has been reduced depends upon whether action has been taken by a governing authority and proper notice posted on the highway. Harper v. Brown, 122 Ga. App. 316, 176 S.E.2d 621 (1970).

Transportation Department presumed responsible for highway sign. — Under subsection (c) of Ga. L. 1953, Nov.-Dec. Sess. p. 556 (see now O.C.G.A. § 40-6-20), a sign or marking on a state highway is presumed to have been put there by the authority of the State Highway Department (now Department of Transportation). Maxwell v. State, 97 Ga. App. 334, 103 S.E.2d 162 (1958).

Violation of self-explanatory traffic-control device. — All traffic-control devices placed on the highway are presumed to be placed there by the authority of the State Highway Board (now State Transportation Board) of this state. Those which are self-explanatory are such that a violation thereof is a penal offense. Maxwell v. State, 97 Ga. App. 334, 103 S.E.2d 162 (1958).

No judicial notice of familiarity with highway manual. — Interpretation of signs and signals as provided by the manual of the State Highway Board (now State Transportation Board) is not a matter of which the court can take judicial cognizance, nor one which it can presume that every motorist is familiar with, to the extent of imposing penal sanctions for disobedience thereof. Maxwell v. State, 97 Ga. App. 334, 103 S.E.2d 162 (1958).

Driver obeying sign may assume maximum speed limit not exceeded. — Driver must be entitled to assume that the driver is not exceeding the maximum speed limit when the driver drives in obedience to the sign, although the sign indicates a higher limit than that provided by a valid ordinance. Palmer v. Stevens, 115 Ga. App. 398, 154 S.E.2d 803 (1967).

Prima facie evidence of legal violation. — Proof that a speed limit sign exists at a given spot and that a driver disobeyed the sign constitutes prima facie evidence of a violation of law, without showing that the sign was official or by whom and by what authority the sign was erected. Palmer v. Stevens, 115 Ga. App. 398, 154 S.E.2d 803 (1967).

Burden of showing sign not placed by governmental authority. — Ga. L. 1953, Nov.-Dec. Sess., p. 556 (see now O.C.G.A. § 40-6-20) must mean that the movant may offer evidence that a traffic-control sign or device existed at the given spot; the burden is then upon the person objecting to the evidence to offer evidence showing that the signal was not placed there by any proper governmental authority. The evidence might be general, as showing that the signal in question is not one used by the authority having jurisdiction at that place; it might be a showing that it was placed there by an unauthorized authority, or it might be any other type of evidence sufficient to overcome the prima facie showing that the device existed and should therefore have been obeyed. Fields v. Jackson, 102 Ga. App. 117, 115 S.E.2d 877 (1960).

Burden is upon the person objecting to evidence that a traffic-control sign or device existed at a given spot to offer evidence showing that the signal was not placed there by any proper governmental authority. The evidence might be general, as showing that the signal in question is not one used by the authority having jurisdiction at that place; it might be a showing that it was placed there by an unauthorized authority; or it might be any other type of evidence sufficient to overcome the prima facie showing that the device existed and should therefore have been obeyed. Munday v. Brissette, 113 Ga. App. 147, 148 S.E.2d 55, rev'd on other grounds, 222 Ga. 162, 149 S.E.2d 110 (1966).

Driving through private shopping center. — Driver's argument that a city employee was acting outside the scope of employment at the time of an accident was without merit because the employee's act of crossing a private shopping center before pulling onto the road was not unlawful under O.C.G.A. § 40-6-20(e) (disregard of a traffic signal) or O.C.G.A. § 16-7-21(b)(1) (criminal trespass); the employee was therefore immune from suit and liability based on O.C.G.A. § 36-92-3.

Guice v. Brown, 334 Ga. App. 199, 778 S.E.2d 823 (2015).

Sufficient evidence to show violation. — Police officer's testimony that the defendant went through a red light was sufficient evidence to convict the defendant driver of violating O.C.G.A. § 40-6-20. Lanwehr v. State, 265 Ga. App. 359, 593 S.E.2d 897 (2004).

There was sufficient evidence to support the defendant's conviction for vehicular homicide by driving under the influence of alcohol. The testimony of the arresting officer that the defendant appeared intoxicated, a videotape of the defendant interacting with the officer at the scene, the testimony of an expert that indicated that the defendant took no evasive actions and struck the pedestrian in a well-lighted area, and the testimony of witnesses that the defendant ran a red light supported the defendant's conviction. Brown v. State, 291 Ga. App. 383, 662 S.E.2d 206 (2008).

Because a police officer observed the defendant make a turn even though the arrows indicating that turn remained red, the valid traffic stop was not impermissibly prolonged pending the arrival of a second officer due to the first officer's incapacity to smell; accordingly, the evidence was sufficient to sustain the defendant's conviction for driving under the influence and failing to obey a traffic control device under O.C.G.A. §§ 40-6-20 and 40-6-391(a)(1), (a)(5). Peterson v. State, 294 Ga. App. 128, 668 S.E.2d 544 (2008).

Evidence was sufficient to support the defendant's conviction for disobeying a traffic control device under O.C.G.A. § 40-6-20 because, although the defendant never reached the intersection at issue because the defendant rear-ended the last of three cars sitting at the intersection, a reasonable reading of the statute required that a driver facing a red traffic light stop behind the stop line or cross walk and also behind those vehicles stopped in observance of the traffic light. Brogdon v. State, 299 Ga. App. 547, 683 S.E.2d 99 (2009), aff'd, 287 Ga. 528, 697 S.E.2d 211 (2010).

Jury cannot decide speed limit of unmarked area. — Issue should not be left after the event for a jury to decide, since official action has not been taken, whether it considers an unmarked area to have a certain speed limit. Harper v. Brown, 122 Ga. App. 316, 176 S.E.2d 621 (1970).

Giving charge regarding the lack of an absolute duty to have one's vehicle under control was error since it was undisputed that the defendant ran a red light; the charge given applies to intersections where right-of-way rules apply. Fouts v. Builders Transp., Inc., 222 Ga. App. 568, 474 S.E.2d 746 (1996).

Fine for running red light. — Defendant's fine of $252 for running a red light was not excessive under state law since a misdemeanor is generally punishable by a fine not to exceed $1,000 or a sentence not to exceed 12 months. The fact that the trial court might generally impose lesser fines in other cases would not without more render a larger fine impermissible in a particular case. Riddle v. State, 202 Ga. App. 194, 413 S.E.2d 494 (1991).

City did not violate a driver's substantive due process rights by adding court surcharges under O.C.G.A. § 15-21-73 to a penalty for running a red light under O.C.G.A. § 40-6-20 before stopping the practice pursuant to an opinion by the state attorney general; the city's actions of collecting surcharges that the city thought were permissible under state law and remitting the monies to other governmental authorities appeared to have been taken in good faith and did not shock the conscience. City of Duluth v. Morgan, 287 Ga. App. 322, 651 S.E.2d 475 (2007).

Cited in Liberty Mut. Ins. Co. v. Bray, 136 Ga. App. 587, 222 S.E.2d 70 (1975); Andrews v. Buckner, 143 Ga. App. 862, 240 S.E.2d 266 (1977); Georgia S. & Fla. Ry. v. Odom, 152 Ga. App. 664, 263 S.E.2d 469 (1979); State v. Williams, 156 Ga. App. 813, 275 S.E.2d 133 (1980); Washington v. Washington, 181 Ga. App. 848, 354 S.E.2d 25 (1987); Duke Trucking Co. v. Giles, 185 Ga. App. 833, 366 S.E.2d 216 (1988); Ward v. State, 188 Ga. App. 372, 373 S.E.2d 65 (1988); Lyons v. State, 208 Ga. App. 632, 431 S.E.2d 432 (1993); DOT v. Jackson, 229 Ga. App. 321, 494 S.E.2d 20 (1997); Howard v. State, 233 Ga. App. 861, 505 S.E.2d 270 (1998); Driver v. State, 240 Ga. App. 513, 523 S.E.2d 919 (1999); United States v. Benitez-Macedo, 129 Fed. Appx.

506 (11th Cir. 2005); Jaheni v. State, 285 Ga. App. 266, 645 S.E.2d 735 (2007); Horne v. State, 286 Ga. App. 712, 649 S.E.2d 889 (2007); Green v. State, 287 Ga. App. 248, 651 S.E.2d 174 (2007); Dunagan v. State, 283 Ga. 501, 661 S.E.2d 525 (2008); State v. Ogilvie, 292 Ga. 6, 734 S.E.2d 50 (2012).

OPINIONS OF THE ATTORNEY GENERAL

Official signs afford same protection as other traffic devices. — Official traffic control signs, such as "Men Working," "Watch for Mowers," and "Survey Party," afford the same legal protection that is afforded by other official traffic control devices. 1970 Op. Att'y Gen. No. 70-55.

Construction with other law. — Additional monetary penalties provided in O.C.G.A. § 15-21-73 may not be added to the civil monetary penalties imposed pursuant to O.C.G.A. § 40-6-20. 2005 Op. Att'y Gen. No. U2005-4.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 240, 246, 305, 314 et seq., 329 et seq.

8 Am. Jur. 2d, Automobiles and Highway Traffic, § 911.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 28 et seq., 33, 51, 53, 54, 56 et seq., 74. 60A C.J.S., Motor Vehicles, §§ 494, 564, 565, 566, 838 et seq. 61 C.J.S., Motor Vehicles, § 1254. 61A C.J.S., Motor Vehicles, § 1642.

ALR. — Liability for automobile accident, other than direct collision with pedestrian, as affected by reliance upon or disregard of stop-and-go signal, 2 A.L.R.3d 12.

Liability for collision of automobile with pedestrian at intersection as affected by reliance upon or disregard of stop-and-go signal, 2 A.L.R.3d 155.

Liability for automobile accident at intersection as affected by reliance upon or disregard of "yield" sign or signal, 2 A.L.R.3d 275.

Liability for automobile accident at intersection as affected by reliance upon or disregard of unchanging stop signal or sign, 3 A.L.R.3d 180.

Liability for automobile accident at intersection as affected by reliance upon or disregard of unchanging caution, slow, danger, or like sign or signal, 3 A.L.R.3d 507.

Liability for collision of automobile with pedestrian at intersection as affected by reliance upon or disregard of traffic sign or signal other than stop-and-go signal, 3 A.L.R.3d 557.

40-6-21. Meaning of traffic signals.

(a) The following meanings shall be given to highway traffic signal indications, except those on pedestrian signals:

(1) Green indications shall have the following meanings:

(A) Traffic, except pedestrians, facing a CIRCULAR GREEN signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. Vehicular traffic turning shall yield the right of way to approaching vehicles. Vehicular traffic must stop and remain stopped to allow a pedestrian to cross the roadway within a crosswalk when the pedestrian lawfully within the intersection or an adjacent crosswalk at the

time such signal is exhibited is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching and is within one lane of the half of the roadway on which the vehicle is traveling or onto which it is turning. For the purposes of this subparagraph, "half of the roadway" means all traffic lanes carrying traffic in one direction of travel;

(B) Traffic, except pedestrians, facing a GREEN ARROW signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall stop and remain stopped to allow a pedestrian lawfully within an adjacent crosswalk to cross the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching and is within one lane of the half of the roadway on which the vehicle is traveling or onto which it is turning. For the purposes of this subparagraph, "half of the roadway" means all traffic lanes carrying traffic in one direction of travel. Vehicular traffic shall yield the right of way to other traffic lawfully using the intersection; and

(C) Unless otherwise directed by a pedestrian signal, pedestrians facing any green indication, except when the sole green indication is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk;

(2) Yellow indications shall have the following meanings:

(A) Traffic, except pedestrians, facing a steady CIRCULAR YELLOW or YELLOW ARROW signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection;

(B) Pedestrians facing a steady CIRCULAR YELLOW or YELLOW ARROW signal, unless otherwise directed by a pedestrian signal, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown, and no pedestrian shall then start to cross the roadway; and

(C) Traffic, except pedestrians, facing a flashing YELLOW ARROW signal may proceed in the direction of the arrow. Vehicular traffic turning shall yield the right of way to approaching vehicles. Vehicular traffic shall stop and remain stopped to allow a pedestrian to cross the roadway within a crosswalk when the pedestrian is lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited, when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the

pedestrian is approaching and is within one lane of the half of the roadway on which the vehicle is traveling or onto which it is turning. For the purposes of this subparagraph, "half of the roadway" means all traffic lanes carrying traffic in one direction of travel; and

(3) Red indications shall have the following meanings:

(A) Traffic, except pedestrians, facing a steady CIRCULAR RED signal alone shall stop at a clearly marked stop line or, if there is no stop line, before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, before entering the intersection, and shall remain standing until an indication to proceed is shown, except as provided in subparagraphs (B), (C), and (D) of this paragraph;

(B) Vehicular traffic facing a steady CIRCULAR RED signal may cautiously enter the intersection to make a right turn after stopping as provided in subparagraph (A) of this paragraph. Such vehicular traffic shall stop and remain stopped to allow a pedestrian to cross the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching and is within one lane of the half of the roadway on which the vehicle is traveling or onto which it is turning. For the purposes of this subparagraph, "half of the roadway" means all traffic lanes carrying traffic in one direction of travel. Vehicular traffic shall yield the right of way to other traffic lawfully using the intersection;

(C) Traffic, except pedestrians, facing a steady CIRCULAR RED signal, after stopping as provided in subparagraph (A) of this paragraph, may make a right turn but shall stop and remain stopped for pedestrians and yield the right of way to other traffic proceeding as directed by the signal at such intersection. Such vehicular traffic shall not make a right turn against a steady CIRCULAR RED signal at any intersection where a sign is erected prohibiting such right turn;

(D) Traffic, except pedestrians, facing a steady CIRCULAR RED signal, after stopping as provided in subparagraph (A) of this paragraph, may make a left turn from the left-hand lane of a one-way street onto a one-way street on which the traffic moves toward the driver's left but shall stop and remain stopped for pedestrians and yield the right of way to other traffic proceeding as directed by the signal at such intersection. Such vehicular traffic shall not make a left turn against a steady CIRCULAR RED signal at any intersection where a sign is erected prohibiting such left turn;

(E) Unless otherwise directed by a pedestrian signal, pedestrians facing a steady CIRCULAR RED signal alone shall not enter the roadway;

(F) Traffic, except pedestrians, facing a steady RED ARROW signal may not enter the intersection to make the movement indicated by such arrow and, unless entering the intersection to make such other movement as is permitted by other indications shown at the same time, shall stop at a clearly marked stop line or, if there is no stop line, before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, before entering the intersection, and shall remain standing until an indication to make the movement indicated by such arrow is shown;

(G) Unless otherwise directed by a pedestrian signal, pedestrians facing a steady RED ARROW signal shall not enter the roadway; and

(H) Traffic, except pedestrians, facing a flashing RED ARROW signal, after stopping as provided in subparagraph (A) of this paragraph, may make a right turn but shall stop and remain stopped for pedestrians and yield the right of way to other traffic proceeding as directed by the signal at such intersection.

(b) In the event an official traffic-control device signal is erected and maintained at a place other than an intersection, the provisions of this Code section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but, in the absence of any such sign or marking, the stop shall be made at the signal. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 35; Ga. L. 1973, p. 474, § 1; Code 1933, § 68A-202, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1975, p. 496, § 1; Ga. L. 1977, p. 278, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 8, § 40; Ga. L. 1990, p. 2048, § 5; Ga. L. 1995, p. 229, § 1; Ga. L. 1997, p. 143, § 40; Ga. L. 2014, p. 851, § 6/HB 774.)

JUDICIAL DECISIONS

Offenses not chargeable under Code section. — Intent of O.C.G.A. § 40-6-21 is only to define the meaning to be given to traffic control signals and the statute could not be the basis for a charge of vehicular homicide or failure to yield the right of way. State v. Nix, 220 Ga. App. 651, 469 S.E.2d 497 (1996).

Trial court did not err by charging that intent was required. — When a case arose from an intersection collision between a car driven by the defendant and another car and since the defense's contentions at trial were that the defendant thought the light was green, that the defendant had no intention of running a red light or of causing the victim's death, and that if the defendant did run the red light, it was the result of legal mistake or accident, the trial court did not err by charging the jury on the intent required to commit the offenses charged; the state was required to prove the intent to do the act which resulted in the violation of the

law and not the intent to commit the crime itself. Hoffer v. State, 192 Ga. App. 378, 384 S.E.2d 902, cert. denied, 192 Ga. App. 902, 384 S.E.2d 902 (1989).

Strict liability offense. — After the defendant was charged with disobeying a traffic control device, the court properly rejected an instruction under O.C.G.A. § 16-2-2, that a person shall not be found guilty of any crime committed by misfortune or accident because the charge was a strict liability offense. Arnold v. State, 228 Ga. App. 470, 491 S.E.2d 819 (1997).

No judicial notice of familiarity with highway manual. — Interpretation of signs and signals as provided by the manual of the State Highway Board (now State Transportation Board) is not a matter of which the court can take judicial cognizance, nor one which the court can presume that every motorist is familiar with to the extent of imposing penal sanctions for disobedience thereof. Maxwell v. State, 97 Ga. App. 334, 103 S.E.2d 162 (1958).

Jury instruction as to procedure under green light. — Trial court erred in instructing the jury as to O.C.G.A. § 40-6-21 and omitting language providing that vehicles which enter an intersection by virtue of a "circular green" signal must nonetheless yield to vehicles lawfully within the intersection. Steele v. Blickstein, 170 Ga. App. 177, 316 S.E.2d 767 (1984).

Pedestrian's duty to exercise ordinary care. — O.C.G.A. §§ 40-6-21 and 40-6-22 mandate that the driver of a vehicle shall yield the right of way to a pedestrian lawfully crossing an intersection, however, those statutes do not abrogate a pedestrian's duties to exercise ordinary care for the pedestrian's own safety and avoid the consequences of any negligence on the part of others. Gaffron v. Metropolitan Atlanta Rapid Transit Auth., 229 Ga. App. 426, 494 S.E.2d 54 (1997).

When the plaintiff represented that the plaintiff safely entered a crosswalk, although admitting that the last time plaintiff saw the defendant's vehicle was when the vehicle was slowing down, and that the plaintiff entered the crosswalk when faced solely with a green arrow, and when the defendant's testimony was that the plaintiff "jetted out" into the path of the defendant's vehicle as the defendant made a right turn on red, the jury's verdict in favor of the defendant was authorized by the evidence and the trial court did not err in denying the plaintiff's motion for new trial. Sampson v. Jones, 236 Ga. App. 57, 510 S.E.2d 902 (1999).

Stoplight showing green lights in both directions. — When the case arose from an intersection collision between a car which defendant drove and another car, because the trial court correctly and repeatedly charged that the defendant could be convicted only if the state proved beyond a reasonable doubt that the stop light facing the defendant was red, any defense based upon the light being green when the defendant went through the light, was not an accident defense; logically, one cannot be convicted of running a red light if the light was, in fact, green; accordingly, defendant's contention that a malfunction of the light showing green lights in both directions did not give rise to the defense of accident. Hoffer v. State, 192 Ga. App. 378, 384 S.E.2d 902, cert. denied, 192 Ga. App. 902, 384 S.E.2d 902 (1989).

Jury instructions upheld. — Instruction on subparagraph (a)(1)(A) (meaning of traffic signals) of O.C.G.A. § 40-6-21, rather than O.C.G.A. § 40-6-71 (turning left), held proper. Corley v. Harris, 171 Ga. App. 688, 320 S.E.2d 833 (1984); Bailey v. Bartee, 205 Ga. App. 463, 422 S.E.2d 319 (1992).

Cited in Washington v. Washington, 181 Ga. App. 848, 354 S.E.2d 25 (1987); United States v. Benitez-Macedo, 129 Fed. Appx. 506 (11th Cir. 2005); State v. Shabazz, 291 Ga. App. 751, 662 S.E.2d 828 (2008); Brogdon v. State, 299 Ga. App. 547, 683 S.E.2d 99 (2009).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 240.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 838 et seq., 896.

ALR. — Liability for automobile accident, other than direct collision with pedestrian, as affected by reliance upon or disregard of stop-and-go signal, 2 A.L.R.3d 12.

Liability for collision of automobile with pedestrian at intersection as affected by reliance upon or disregard of stop-and-go signal, 2 A.L.R.3d 155.

Liability for automobile accident at intersection as affected by reliance upon or disregard of unchanging stop signal or sign, 3 A.L.R.3d 180.

Liability for automobile accident at intersection as affected by reliance upon or disregard of unchanging caution, slow, danger, or like sign or signal, 3 A.L.R.3d 507.

Liability for collision of automobile with pedestrian at intersection as affected by reliance upon or disregard of traffic sign or signal other than stop-and-go signal, 3 A.L.R.3d 557.

40-6-22. Pedestrian-control signals.

Whenever special pedestrian-control signals exhibiting the words WALK or DON'T WALK or symbols so directing a pedestrian are in place, such signals shall indicate as follows:

(1) **Word or symbol message *WALK***. Pedestrians facing such signal may proceed across the roadway in the direction of the signal. Every driver of a vehicle shall stop and remain stopped for such pedestrians; and

(2) **Flashing or steady *DON'T WALK***. No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his crossing on the WALK signal shall proceed to sidewalk or safety island while the DON'T WALK signal is showing. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 36; Code 1933, § 68A-203, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1995, p. 229, § 2; Ga. L. 2013, p. 141, § 40/HB 79.)

JUDICIAL DECISIONS

No judicial notice of familiarity with highway manual. — Interpretation of signs and signals as provided by the manual of the State Highway Board (now State Transportation Board) is not a matter of which the court can take judicial cognizance, nor one which the court can presume that every motorist is familiar with, to the extent of imposing penal sanctions for disobedience thereof. Maxwell v. State, 97 Ga. App. 334, 103 S.E.2d 162 (1958).

Pedestrian's duty to exercise ordinary care. — O.C.G.A. §§ 40-6-21 and 40-6-22 mandate that the driver of a vehicle shall yield the right of way to a pedestrian lawfully crossing an intersection; however, those statutes do not abrogate a pedestrian's duties to exercise ordinary care for the pedestrian's own safety and avoid the consequences of any negligence on the part of others. Gaffron v. Metropolitan Atlanta Rapid Transit Auth., 229 Ga. App. 426, 494 S.E.2d 54 (1997).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 231.

ALR. — Liability for collision of automobile with pedestrian at intersection as affected by reliance upon or disregard of stop-and-go signal, 2 A.L.R.3d 155.

40-6-23. Flashing circular red or yellow signals.

Flashing signal indications shall have the following meanings:

(1) **Flashing circular red (stop signal) —** When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop at a clearly marked stop line or, if there is no stop line, before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign;

(2) **Flashing circular yellow (caution signal) —** When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 37; Code 1933, § 68A-204, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 2017, p. 720, § 4/HB 328.)

The 2017 amendment, effective July 1, 2017, inserted "circular" near the beginning of paragraphs (1) and (2) and struck the period at the end of the catchline in paragraph (2).

JUDICIAL DECISIONS

No judicial notice of familiarity with highway manual. — Interpretation of signs and signals as provided by the manual of the State Highway Board (now State Transportation Board) is not a matter of which the court can take judicial cognizance, nor one which the court can presume that every motorist is familiar with, to the extent of imposing penal sanctions for disobedience thereof. Maxwell v. State, 97 Ga. App. 334, 103 S.E.2d 162 (1958).

Sufficient evidence to find defendant drivers negligent. — Under an application of the rules of law to the facts, the jury was authorized to find from the evidence adduced upon the trial, and the reasonable inferences to be drawn therefrom, that the defendant drivers were grossly negligent in causing the plaintiff's injuries. Lawrence v. Hayes, 92 Ga. App. 778, 90 S.E.2d 102 (1955).

Cited in State v. Shabazz, 291 Ga. App. 751, 662 S.E.2d 828 (2008).

RESEARCH REFERENCES

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 840, 841.

ALR. — Liability for automobile accident at intersection as affected by reliance upon or disregard of unchanging stop signal or sign, 3 A.L.R.3d 180.

Liability for automobile accident at intersection as affected by reliance upon or disregard of unchanging caution, slow, danger, or like sign or signal, 3 A.L.R.3d 507.

Liability for collision of automobile with pedestrian at intersection as affected by reliance upon or disregard of traffic sign or signal other than stop-and-go signal, 3 A.L.R.3d 557.

40-6-24. Lane direction control signals.

When lane direction control signals are placed over the individual lanes of a street or road, vehicular traffic may travel in any lane over which a green signal is shown but shall not enter or travel in any lane over which a red signal is shown, provided that a vehicle may enter a lane over which a yellow or amber signal is shown for purposes of making a left turn only. (Ga. L. 1966, p. 183, § 3; Code 1933, § 68A-204.1, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 5.)

Cross references. — Designation of travel lanes for exclusive or preferential use of buses and other designated passenger vehicles, § 32-9-4.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1953, Nov.-Dec. Sess., p. 556, are included in the annotations for this Code section.

No judicial notice of familiarity with highway manual. — Interpretation of signs and signals as provided by the manual of the State Highway Board (now State Transportation Board) is not a matter of which the court can take judicial cognizance, nor one which the court can presume that every motorist is familiar with, to the extent of imposing penal sanctions for disobedience thereof. Maxwell v. State, 97 Ga. App. 334, 103 S.E.2d 162 (1958) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Cited in State v. Shabazz, 291 Ga. App. 751, 662 S.E.2d 828 (2008).

40-6-25. Display of unauthorized signs, signals, or markings.

(a) No person shall place, maintain, or display upon or in view of any highway any sign, signal, marking, or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal or which attempts to direct the movement of traffic or which hides from view or interferes with the effectiveness of an official traffic-control device or any railroad sign or signal.

(b) No person shall maintain or place nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising.

(c) This Code section shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.

(d) Every such prohibited sign, signal, or marking is declared to be a public nuisance, and the authority having jurisdiction over the highway is empowered to remove it or cause it to be removed without notice. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 38; Code 1933, § 68A-205, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

Cross references. — Provisions regarding erection, placement, or maintenance of unauthorized traffic signs or signals, § 32-6-51.

Law reviews. — For article, "Recommendations Regarding Control of Outdoor Advertising Along the Interstate Highway System in Georgia," see 14 Mercer L. Rev. 308 (1963).

40-6-26. Interference with official traffic-control devices or certain signs; travel on closed highway prohibited.

(a) No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down, or remove any official traffic-control device or any railroad sign or signal or any inscription, shield, or insignia thereon or any other part thereof.

(b) No person shall, without lawful authority, drive around or through or ignore any official traffic-control device so as to go onto an officially closed highway or road or onto a section of highway or road before it has been officially opened to the public. This Code section shall not apply to police officers in the performance of their duties, to individuals domiciled or making their livelihood within the affected area, or to any person authorized to be in the affected area by the appropriate municipal, county, or state officer. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 39; Code 1933, § 68A-206, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

Cross references. — Provisions regarding interference with traffic-control devices, § 32-6-50.

JUDICIAL DECISIONS

Unwarranted alteration of stop sign negligence per se. — Whether a traffic control device was initially erected by authority of the State Highway Department (now Department of Transportation) or by local municipal authorities, an unwarranted alteration of the stop sign (allegedly replaced after installation of gas lines so as to face in the wrong direction) constitutes a violation of Ga. L. 1953, Nov.-Dec. Sess., p. 556 and is negligence per se. Richards & Assocs. v. Studstill, 92 Ga. App. 853, 90 S.E.2d 56 (1955), rev'd on other grounds, 212 Ga. 375, 93 S.E.2d 3 (1956).

40-6-27. Installation of blue retroreflective raised pavement markers.

It shall be unlawful for any person to place or install any blue retroreflective raised pavement marker on any public highway, road, or street, provided that such marker may be placed or installed by the state or any county, municipality, fire department, or employee or agent thereof solely for the purpose of marking the location of fire hydrants. (Code 1981, § 40-6-27, enacted by Ga. L. 1991, p. 943, § 1.)

40-6-28. Restricted access/managed lanes.

(a) The department may install gates, signs, or barriers, or any combination thereof, to restrict access to managed lanes.

(b) No person shall drive any vehicle through, around, or under any barrier or closed or moving gate of a managed lane.

(c) No vehicle shall enter or exit a managed lane at any point other than designated entry or exit points unless directed by authorized emergency personnel. (Code 1981, § 40-6-28, enacted by Ga. L. 2015, p. 1058, § 5/SB 125.)

ARTICLE 3

DRIVING ON RIGHT SIDE OF ROADWAY, OVERTAKING AND PASSING, FOLLOWING TOO CLOSELY

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 247 et seq.

Am. Jur. Proof of Facts. — Negligence of Driver During Overtaking and Passing Maneuver, 29 POF2d 121.

Negligent Left Turn of Motor Vehicle, 35 POF2d 405.

Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or Pass, 31 POF3d 145.

ALR. — Applicability of motor vehicle regulations to public officials or employees, 19 A.L.R. 459; 23 A.L.R. 418.

Validity of regulations as to part of street to be used by moving vehicles, 29 A.L.R. 1348.

Responsibility for collision at night of automobiles, one of which, with lights on, is standing or moving on wrong side of road, 59 A.L.R. 590.

Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 104 A.L.R. 485.

Constitutionality, construction, and application, of statute prescribing special precautions in passing stopped automobile, 108 A.L.R. 987.

Automobile accidents on street or highway divided by parkway or other neutral strip, 165 A.L.R. 1418.

Liability for collision due to swaying or swinging of motor vehicle or trailer, 1 A.L.R.2d 167.

Negligence of motorist colliding with vehicle approaching in wrong lane, 47 A.L.R.2d 6.

Negligence of motorist as to injury or damage occasioned in avoiding collision with vehicle approaching in wrong lane, 47 A.L.R.2d 119.

Custom or practice of drivers of motor

vehicles as affecting question of negligence, 77 A.L.R.2d 1327.

Gross negligence, recklessness, or the like, within "guest" statute, predicated upon conduct in passing cars ahead or position of car on wrong side of the road, 6 A.L.R.3d 832.

40-6-40. Vehicles to drive on right side of roadway; exceptions; impeding traffic.

(a) Upon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway, except as follows:

(1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(2) When an obstruction exists making it necessary to drive to the left of the center of the highway, provided that any person so doing shall yield the right of way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such a distance as to constitute an immediate hazard;

(3) Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or

(4) Upon a roadway restricted to one-way traffic.

(b) Upon all roadways, any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

(c) Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the center of the roadway except when authorized by official traffic-control devices designating certain lanes to the left of the center of the roadway for use by traffic not otherwise permitted to use such lanes or except as permitted under paragraph (2) of subsection (a) of this Code section. However, this subsection shall not be construed as prohibiting the crossing of the center of the roadway in making a left turn into or from an alley, private road, or driveway.

(d) No two vehicles shall impede the normal flow of traffic by traveling side by side at the same time while in adjacent lanes, provided that this Code section shall not be construed to prevent vehicles traveling side by side in adjacent lanes because of congested traffic conditions. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 55; Ga. L. 1967, p. 542, § 1; Ga. L. 1968, p. 1065, § 1; Code 1933, § 68A-301, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

Law reviews. — For article surveying developments in Georgia torts law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 247 (1981).

JUDICIAL DECISIONS

Negligence per se. — After the defendant was charged with crossing the centerline in violation of O.C.G.A. § 40-6-40(a) at the time the defendant hit the plaintiff's automobile head-on, it was held that a violation of the Uniform Rules of the Road prima facie establishes negligence per se in the absence of a valid defense, and the burden then shifts to the defendant to show that the violation was unintentional and in the exercise of ordinary care. Cox v. Cantrell, 181 Ga. App. 722, 353 S.E.2d 582 (1987).

Sufficient evidence supported conviction. — Sufficient evidence supported a defendant's conviction of driving on the wrong side of the road in violation of O.C.G.A. § 40-6-40; while the defendant claimed that, when the collision occurred, the defendant was swerving to avoid another car, an eyewitness disputed this claim, testifying that no other vehicle caused the defendant to swerve, and the jury, as arbiter of fact, was entitled to believe the eyewitness. Dotson v. State, 276 Ga. App. 418, 623 S.E.2d 252 (2005).

Sufficient evidence supported the defendant's conviction for driving on the wrong side of the roadway because the defendant, who was traveling southbound on a highway, veered off the west shoulder, then veered back onto the roadway and traveled across the southbound and northbound lanes, left the roadway on the east shoulder, rotated clockwise, and struck a tree, resulting in a fatality and other serious injuries. Crowe v. State, 314 Ga. App. 527, 724 S.E.2d 831 (2012).

Offense justified stop. — Investigating officer had a reasonable articulable suspicion to stop the defendant's vehicle based on a violation of O.C.G.A. § 40-6-40 for driving on the wrong side of the road; hence, the defendant's motion to suppress was properly denied on this ground. Dunbar v. State, 283 Ga. App. 872, 643 S.E.2d 292 (2007).

Trial court did not err in denying the defendant's motion to suppress because the officer was authorized to perform a traffic stop since the officer saw the defendant cross the solid double yellow line and then drive on the wrong side of the road; because driving on the wrong side of the road was itself a traffic offense, O.C.G.A. § 40-6-40, the officer had a reasonable articulable suspicion that a traffic offense had occurred. Parker v. State, 317 Ga. App. 93, 730 S.E.2d 717 (2012).

Trial court erred in granting the defendant's motion to suppress because the undisputed facts showed that the officer observed the defendant veer into and drive on the wrong side of the road and because driving on the wrong side was a traffic offense under O.C.G.A. § 40-6-40, the officer had reasonable articulable suspicion that a traffic offense had occurred. State v. Zeth, 320 Ga. App. 140, 739 S.E.2d 443 (2013).

Obstructions. — Object need not be stationary in order to be an obstruction. Smith v. Lott, 246 Ga. 366, 271 S.E.2d 463 (1980).

Motor vehicle may be an obstruction when the vehicle is operated on a public road in a manner which could not be generally or reasonably anticipated, taking into account all of the circumstances and conditions present at the time and place, and thereby hinders or impedes the proper travel on the road. Except in clear and palpable cases, the issue of when a vehicle is so operated is one for the jury. Smith v. Lott, 246 Ga. 366, 271 S.E.2d 463 (1980).

Combine driven at eight to 18 miles per hour, the width of which was such that the combine's left hand portion protruded across the center line of the highway, could not be said as a matter of law not to amount to an obstruction. Smith v. Lott, 246 Ga. 366, 271 S.E.2d 463 (1980).

When read together, O.C.G.A. § 40-6-46(c) and paragraph (a)(2) of O.C.G.A. § 40-6-40 provide that there is no violation of the no-passing zone statute when an obstruction exists making it necessary to drive to the left of the center of the highway, provided that any person so

doing must yield the right of way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard. Smith v. State, 237 Ga. App. 77, 514 S.E.2d 710 (1999).

Whether the trash truck that the defendant passed in a no-passing zone posed an obstruction allowing the defendant to cross the double yellow centerline in order to pass the vehicle was a question for the trier of fact to resolve; there was evidence to support the defendant's conviction under O.C.G.A. § 40-6-46. Parker v. State, 276 Ga. App. 9, 622 S.E.2d 403 (Oct. 18, 2005).

Because the defendant committed a traffic violation by crossing a solid yellow line in the roadway, and was not legitimately faced with an obstruction, despite claiming that it was undoubtedly convenient to pass the slow moving van driving ahead, a police officer had a reasonable and articulable suspicion to initiate a traffic stop of the defendant's vehicle. Przyjemski v. State, 290 Ga. App. 22, 658 S.E.2d 807 (2008).

Jury question as to obstruction. — Slow-moving farm vehicle could constitute a roadway obstruction, and whether the vehicle does so is a jury question. The trial court's charge was authorized when the instruction was that a vehicle driver can cross over the centerline to avoid an obstruction, providing any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard. This does not amount to authority to violate the law as to "passing zones." Foskey v. Williams Bros. Trucking Co., 197 Ga. App. 715, 399 S.E.2d 484 (1990).

Driving on right not absolute. — Statutory requirements to drive on right side of roadway, on their face, are not absolute and do not prohibit driving on the left at all places and in all circumstances. Davis v. Metzger, 119 Ga. App. 750, 168 S.E.2d 866 (1969).

Failure to drive on correct side of road established. — Juvenile's adjudication as a delinquent after being charged with delinquency for reckless driving for passing in a no-passing zone, serious injury by motor vehicle, and feticide was upheld on appeal as the testimony and evidence clearly established that although the juvenile may have begun to pass in a passing zone, the juvenile failed to consider how far the passing zone continued and the juvenile continued to pass at a high rate of speed well into the no-passing zone knowing the approach of the crest of a hill and a curve was coming, yet the juvenile never once sought to slow down and return to the right lane behind the vehicle the juvenile was attempting to pass. In the Interest of A.H., 291 Ga. App. 861, 663 S.E.2d 270 (2008).

Evidence of reckless driving supported vehicular homicide conviction. — Evidence that the defendant drove after the defendant admittedly consumed methadone, Xanax (alprazolam), and Percocet and that the defendant crossed over the center line of the road in violation of O.C.G.A. § 40-6-40(a) and collided with another vehicle, killing the driver, was sufficient to show the defendant drove while impaired and drove recklessly under O.C.G.A. § 40-6-390(a), supporting the defendant's vehicular homicide conviction under O.C.G.A. § 40-6-393(a). Wright v. State, 304 Ga. App. 651, 697 S.E.2d 296 (2010).

Necessity or justification defense not applicable. — Defendant's apparent claim that the defendant was justified in violating O.C.G.A. § 40-6-40(a), the statute regarding driving on the wrong side of the roadway, due to the configuration of the ice cream truck the defendant was driving had to be rejected as the statute did not recognize an exception for necessity or justification. Momodu v. State, No. A03A0567, 2003 Ga. App. LEXIS 629 (May 21, 2003).

Violation of Ga. L. 1953, Nov.-Dec. Sess., p. 556) is a misdemeanor. Gordy v. State, 93 Ga. App. 743, 92 S.E.2d 737 (1956).

State must prove that road public. — When the accused was charged with the offense of involuntary manslaughter while in the commission of unlawful acts, in that the accused operated an automobile upon a certain public road at a speed in excess of 60 miles per hour and to the

left of the center of the road, it was necessary for the state to prove that the road was, in fact, a public road in order to prove that part of the indictment alleging unlawful acts. Bond v. State, 104 Ga. App. 627, 122 S.E.2d 310 (1961).

Jury instruction held proper. — Because a challenged jury instruction on the law of obstruction was given directly from O.C.G.A. § 40-6-40(a)(2) and was quoted from an earlier Supreme Court of Georgia opinion, such was a correct statement of the law and was properly adjusted to the circumstances of the case. Decatur's Best Taxi Serv., Inc. v. Smith, 282 Ga. App. 731, 639 S.E.2d 482 (2006).

Cited in Berrian v. State, 139 Ga. App. 571, 228 S.E.2d 737 (1976); Lott v. Smith, 153 Ga. App. 365, 265 S.E.2d 291 (1980); Reed v. Dixon, 153 Ga. App. 604, 266 S.E.2d 286 (1980); Lott v. Smith, 156 Ga. App. 826, 275 S.E.2d 720 (1980); Moore v. State, 160 Ga. App. 870, 288 S.E.2d 585 (1982); Malpass v. State, 173 Ga. App. 690, 327 S.E.2d 753 (1985); Mortimer v. State, 177 Ga. App. 679, 340 S.E.2d 649 (1986); Laymac v. State, 181 Ga. App. 737, 353 S.E.2d 559 (1987); Hendrix v. State, 186 Ga. App. 665, 368 S.E.2d 181 (1988); Arnold v. Arnold, 197 Ga. App. 103, 397 S.E.2d 724 (1990); State v. Tate, 208 Ga. App. 117, 430 S.E.2d 9 (1993); Caffey v. State, 210 Ga. App. 395, 436 S.E.2d 102 (1993); Plemmons v. State, 326 Ga. App. 765, 755 S.E.2d 205 (2014); Dickson v. State, 339 Ga. App. 500, 793 S.E.2d 663 (2016).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 247 et seq.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 652, 715, 744, 745.

ALR. — Right or duty to turn in violation of law of road to avoid traveler, or obstacle, 63 A.L.R. 277; 113 A.L.R. 1328.

Applicability of res ipsa loquitur doctrine where motor vehicle leaves road, 79 A.L.R.2d 6.

40-6-41. Passing vehicles proceeding in opposite directions.

Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and, upon roadways having width for not more than one lane of traffic in each direction, each driver shall give to the other at least one-half of the main traveled portion of the roadway or as nearly one-half as possible. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 56; Code 1933, § 68A-302, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 5.)

Law reviews. — For comment on Roberts v. Phillips, 35 Ga. App. 733, 134 S.E. 837 (1926), see 1 Ga. L. Rev. No. 1, p. 49 (1927).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1910, §§ 628 and 1770(52) are included in the annotations for this Code section.

Purpose of section. — Former Code 1933, § 68A-302 (see now O.C.G.A. § 40-6-41) required a driver to drive on the right side of the road except under certain circumstances and to give at least one-half of the main-traveled portion of the road to oncoming traffic, respectively. Berrian v. State, 139 Ga. App. 571, 228 S.E.2d 737 (1976).

Vehicle meeting streetcar should turn to right. — When a vehicle which is able to turn either to the right or the left meets a streetcar, which under its fran-

chise can travel only along the one fixed way marked out by its track, the vehicle meeting the streetcar should, in the absence of any reason preventing, itself turn to the right side. Athens Ry. & Elec. Co. v. McKinney, 16 Ga. App. 741, 86 S.E. 83 (1915) (decided under former Code 1910, § 628).

Constitutionality of provision making penal failure to turn vehicle to right. — So much of former Code 1910, § 1770 as undertook to make penal the failure of the operator of a motor vehicle, when meeting a vehicle approaching in the opposite direction, to "turn his vehicle to the right so as to give one-half of the traveled roadway, if practicable, and a fair opportunity to the other to pass by without unnecessary interference" is too uncertain and indefinite in its terms to be capable of enforcement. Heath v. State, 36 Ga. App. 206, 136 S.E. 284 (1926), for comment, see 1 Ga. L. Rev. 49 (1927), (decided under former Code 1910, § 1770(52)).

When two cars are "meeting" each other. — When a car traveling along a public highway had been brought to a stop in the highway, and another car was approaching it from the front, both cars, notwithstanding one was stationary, were "meeting" each other in the sense of former Code 1910, § 1770. Roberts v. Phillips, 35 Ga. App. 743, 134 S.E. 837 (1926), aff'd, 166 Ga. 897, 144 S.E. 651 (1928) (decided under former Code 1910, § 1770(52)).

Proof of failure to give one-half of roadway not found. — Charges in an indictment that the defendant failed and refused to give the deceased a fair opportunity to pass by without unnecessary interference, it being practical to give one-half of the travelled roadway, were not sustained by the proof, since the evidence showed that the cars collided on a temporary bridge which was less than 12 feet wide and too narrow to permit two automobiles to pass each other thereon. Shupe v. State, 36 Ga. App. 286, 136 S.E. 331 (1927) (decided under former Code 1910, § 1770(52)).

No duty to construct impact-proof guardrails. — There is no legal duty on a railroad company to construct the guardrails of a bridge sufficiently strong to withstand the impact of an automobile going at the rate of 20 to 25 miles per hour. Corley v. Cobb County, 21 Ga. App. 219, 93 S.E. 1015 (1917); Eberhart v. Seaboard Air-Line Ry., 34 Ga. App. 49, 129 S.E. 2, cert. denied, 34 Ga. App. 836 (1925) (decided under former Code 1910, § 1770(52)).

Driving on right not absolute. — Statutory requirements to drive on right side of roadway, on their face, are not absolute and do not prohibit driving on the left at all places and in all circumstances. Davis v. Metzger, 119 Ga. App. 750, 168 S.E.2d 866 (1969).

Cited in Raybon v. Reimers, 138 Ga. App. 511, 226 S.E.2d 620 (1976); Wilson v. State, 147 Ga. App. 560, 249 S.E.2d 361 (1978).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 247, 254.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 652, 709, 711, 715.

ALR. — Automobiles: duty and liability with respect to giving audible signal before passing, 22 A.L.R.3d 325.

40-6-42. Overtaking and passing generally.

The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions, and special rules stated in this article:

(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and

shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle; and

(2) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 57; Code 1933, § 68A-303, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1989, p. 14, § 40; Ga. L. 1990, p. 2048, § 5.)

Law reviews. — For comment on Roberts v. Phillips, 35 Ga. App. 733, 134 S.E. 837 (1926), see 1 Ga. L. Rev. No. 1, p. 49 (1927).

JUDICIAL DECISIONS

Driver unaware that vehicle being overtaken. — O.C.G.A. § 40-6-42 does not intend to impose absolute criminal or civil liability upon the driver of a vehicle who does not know, nor are the facts to show the driver should have known, that the driver's vehicle was being overtaken. James v. Allen, 173 Ga. App. 636, 327 S.E.2d 501 (1985).

Evidence sufficient to support jury verdict. — Trial court properly denied a motion for judgment notwithstanding the verdict since the movant, driving a van, had attempted to overtake and pass a motorcycle without changing lanes, resulting in a collision. The evidence was such that the jury could have reasonably found that the movant violated both O.C.G.A. §§ 40-6-42 and 40-6-312(a). Neiswonger v. Janics, 196 Ga. App. 607, 396 S.E.2d 553 (1990).

Evidence sufficient to find violation. — When the evidence in a criminal prosecution authorized a finding that, in attempting to pass an automobile travelling in the same direction, the defendant showed a purpose to take a known chance of perpetrating an injury on another, in that the defendant knew that automobiles were likely to be approaching on the highway from the opposite direction, and was so indifferent to the rights of others that the defendant acted as if they did not exist, the defendant was guilty, not merely of ordinary negligence, but of a higher degree thereof, to wit, gross or criminal negligence. Collins v. State, 66 Ga. App. 325, 18 S.E.2d 24 (1941).

When two automobiles collided near the front of a parked automobile, which the defendant was passing, while the defendant's car was to the left of the center of the highway and on the plaintiff-driver's side of the road, this was a violation of former Code 1933, § 68-303 and was negligence per se. Hodges v. Pilgrim, 88 Ga. App. 256, 76 S.E.2d 454 (1953).

Audible warning by overtaking vehicle unnecessary. — Driver of a vehicle overtaking another vehicle proceeding in the same direction does not have to sound a horn or give any other audible warning before passing. Aultman v. Spellmeyer, 111 Ga. App. 769, 143 S.E.2d 403 (1965).

Cited in Hanover Ins. Co. v. Rollins, 136 Ga. App. 595, 222 S.E.2d 91 (1975); Smith v. Southeastern Stages, Inc., 479 F. Supp. 593 (N.D. Ga. 1977); Burnett v. Doster, 144 Ga. App. 443, 241 S.E.2d 319 (1978).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 249, 250.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 652, 715, 741 et seq.

ALR. — Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 24 A.L.R. 507; 47 A.L.R. 703; 62 A.L.R. 970; 104 A.L.R. 485.

Rights and liabilities as between drivers of motor vehicles proceeding in same direction, where one or both attempt to pass on left of another vehicle so proceeding, 27 A.L.R.2d 317.

Reciprocal rights, duties, and liabilities where driver of motor vehicle attempts to pass on right of other motor vehicle proceeding in same direction, 38 A.L.R.2d 114.

Reciprocal rights, duties, and liabilities where motor vehicle driver, passing on left of other vehicle proceeding in same direction, cuts back to the right, 48 A.L.R.2d 232.

Duty and liability as to signaling following driver to pass or giving him warning of approaching danger, 48 A.L.R.2d 252.

Construction, applicability, and effect of traffic regulation prohibiting vehicles from passing one another at street or highway intersection, 53 A.L.R.2d 850.

Duty and liability of overtaken driver with respect to adjusting speed to that of passing vehicle, 91 A.L.R.2d 1260.

Automobiles: duty and liability with respect to giving audible signal before passing, 22 A.L.R.3d 325.

40-6-43. When overtaking and passing on the right permitted.

(a) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

(1) When the vehicle overtaken is making or about to make a left turn; or

(2) Upon a street or highway with unobstructed pavement of sufficient width for two or more lanes of moving vehicles in the direction being traveled by the overtaking vehicle.

(b) If otherwise authorized, the driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. Such movement shall not be made by driving off the roadway. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 58; Code 1933, § 68A-304, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Jury instruction proper. — See Hogan v. Pony Express Courier Corp., 195 Ga. App. 592, 394 S.E.2d 391 (1990).

Cited in Thomas v. State, 294 Ga. App. 108, 668 S.E.2d 540 (2008).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 253.

C.J.S. — 60A C.J.S., Motor Vehicles, § 744.

ALR. — Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 24 A.L.R. 507; 47 A.L.R. 703; 62 A.L.R. 970; 104 A.L.R. 485.

Liability for injury or damage growing out of pulling out of parked motor vehicle, 29 A.L.R.2d 107.

Reciprocal rights, duties, and liabilities where driver of motor vehicle attempts to pass on right of other motor vehicle proceeding in same direction, 38 A.L.R.2d 114.

Automobiles: duty and liability with respect to giving audible signal before passing, 22 A.L.R.3d 325.

40-6-44. Limitations on overtaking and passing on the left.

No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event, the overtaking vehicle shall return to an authorized lane of travel as soon as practicable and, in the event the passing movement involves the use of a lane authorized for vehicles approaching from the opposite direction, before coming within 200 feet of any approaching vehicle. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 58A; Code 1933, § 68A-305, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Lesser included offense of vehicular homicide. — Defendant could not be prosecuted for the offense of improper passing and vehicular homicide since the defendant had already pled guilty to a charge of improper passing and paid a fine because improper passing was necessarily a lesser included offense of vehicular homicide. State v. Williams, 214 Ga. App. 701, 448 S.E.2d 700 (1994).

Violation as negligence per se. — Violation of that part of this statute which prohibits passing to the left of the center of the road where the way ahead is not clear would constitute negligence per se, unless the violation was the result of an emergency unmixed with any fault of the driver; whether or not such an emergency existed is ordinarily a jury question. Hagans v. State, 91 Ga. App. 55, 84 S.E.2d 852 (1954).

Evidence sufficient to find violation. — After two automobiles collided near the front of a parked automobile, which the defendant was passing, while the defendant's car was to the left of the center of the highway and on plaintiff-driver's side of the road, this was a violation of this statute and was negligence per se. Hodges v. Pilgrim, 88 Ga. App. 256, 76 S.E.2d 454 (1953).

Evidence held sufficient. — See Basile v. State, 183 Ga. App. 853, 360 S.E.2d 414, cert. denied, 183 Ga. App. 905, 360 S.E.2d 414 (1987).

Cited in Hanover Ins. Co. v. Rollins, 136 Ga. App. 595, 222 S.E.2d 91 (1975); Simpson v. Reed, 186 Ga. App. 297, 367 S.E.2d 563 (1988).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 249, 250.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 652, 715, 741 et seq.

ALR. — Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 24 A.L.R. 507; 47 A.L.R. 703; 62 A.L.R. 970; 104 A.L.R. 485.

Rights and liabilities as between drivers of motor vehicles proceeding in same

direction, where one or both attempt to pass on left of another vehicle so proceeding, 27 A.L.R.2d 317.

Reciprocal rights, duties, and liabilities where motor vehicle driver, passing on left of other vehicle proceeding in same direction, cuts back to the right, 48 A.L.R.2d 232.

40-6-45. Further limitations on driving on left of center of roadway.

(a) No vehicle shall be driven on the left side of a roadway designed and authorized for traffic traveling in opposite directions under the following conditions:

(1) When approaching or upon the crest of a grade or a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;

(2) When traversing any:

(A) Intersection which is clearly marked by a solid barrier line placed on the right-hand element of a combination stripe along the center or lane line or by a solid double yellow line; or

(B) Railroad grade crossing; or

(3) When the view is obstructed upon approaching within 100 feet of any bridge, viaduct, or tunnel.

(b) The foregoing limitations shall not apply upon a one-way roadway nor under the conditions described in paragraph (2) of subsection (a) of Code Section 40-6-40 nor to the driver of a vehicle turning left into or from an alley, private road, driveway, or roadway. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 59; Code 1933, § 68A-306, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 2000, p. 1313, § 3.)

JUDICIAL DECISIONS

Constitutionality. — See Garrett v. Department of Pub. Safety, 237 Ga. 413, 228 S.E.2d 812 (1976).

Finding of negligence by defendant. — When the defendant could have avoided collision by turning to left, failure to turn was negligence. When, under the allegations of the petition, the defendant by defendant's asserted negligence in traveling at an illegal and excessive speed while approaching an intersection and in failing to maintain a vigilant lookout produced a condition of danger of imminent collision with the plaintiff's auto which could have been averted by defendant's turning to the left side of the roadway, the defendant's failure to turn under the alleged conditions was a proper specification of negligence, notwithstanding the provisions of Ga. L. 1953, Nov.-Dec. Sess., p. 556. Fisher v. Temple, 109 Ga. App. 859, 137 S.E.2d 545 (1964).

Cited in Lott v. Smith, 153 Ga. App. 365, 265 S.E.2d 291 (1980); Gray v. State, 156 Ga. App. 117, 274 S.E.2d 115 (1980); Whitehead v. Cogar, 180 Ga. App. 812, 350 S.E.2d 821 (1986); Worthy v. Kendall, 222 Ga. App. 324, 474 S.E.2d 627 (1996).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 251, 252.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 652, 659 et seq.

ALR. — Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 24 A.L.R. 507; 47 A.L.R. 703; 62 A.L.R. 970; 104 A.L.R. 485.

Rights and liabilities as between drivers of motor vehicles proceeding in same direction, where one or both attempt to pass on left of another vehicle so proceeding, 27 A.L.R.2d 317.

Construction, applicability, and effect of traffic regulation prohibiting vehicles from passing one another at street or highway intersection, 53 A.L.R.2d 850.

40-6-46. No-passing zones.

(a) The Department of Transportation and local authorities are authorized to determine those portions of any highway under their respective jurisdictions where overtaking and passing or driving to the left side of the roadway would be especially hazardous and may, by appropriate signs or markings on the roadway, indicate the beginning and end of such zones and, when such signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey the directions thereof. Such no-passing zones shall be clearly marked by a solid barrier line placed on the right-hand element of a combination stripe along the center or lane line or by a solid double yellow line.

(b) Where signs or markings are in place to define a no-passing zone as set forth in subsection (a) of this Code section, no driver shall at any time drive on the left side of the roadway within such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.

(c) This Code section does not apply under the conditions described in paragraph (2) of subsection (a) of Code Section 40-6-40 nor to the driver of a vehicle turning left into or from an alley, private road, or driveway. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 60; Ga. L. 1959, p. 144, § 1; Code 1933, § 68A-307, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

No judicial notice of familiarity with highway manual. — Interpretation of signs and signals as provided by the manual of the State Highway Board (now State Transportation Board) is not a matter of which the court can take judicial cognizance, nor one which the court can presume that every motorist is familiar with, to the extent of imposing penal sanctions for disobedience thereof. Maxwell v. State, 97 Ga. App. 334, 103 S.E.2d 162 (1958) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Purpose of zones. — No-passing zones were established for the benefit of oncoming motorists traveling in the opposite direction, and for the benefit of one whose vehicle is being passed. Southeast Transp. Corp. v. Hogan Livestock Co., 133 Ga. App. 825, 212 S.E.2d 638 (1975).

Existence of obstruction. — When read together, O.C.G.A. § 40-6-40(a)(2) and subsection (c) of O.C.G.A. § 40-6-46 provide that there is no violation of the no-passing zone statute when an obstruction exists making it necessary to drive to the left of the center of the highway, provided that any person so doing must yield the right of way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard. Smith v. State, 237 Ga. App. 77, 514 S.E.2d 710 (1999).

Whether the trash truck that the defendant passed in a no-passing zone posed an obstruction allowing the defendant to cross the double yellow centerline in order to pass the vehicle, was a question for the trier of fact to resolve; there was evidence to support the defendant's conviction under O.C.G.A. § 40-6-46. Parker v. State, 276 Ga. App. 9, 622 S.E.2d 403 (Oct. 18, 2005).

Because the defendant committed a traffic violation by crossing a solid yellow line in the roadway, and was not legitimately faced with an obstruction, despite claiming that it was undoubtedly convenient to pass the slow moving van driving ahead, a police officer had a reasonable and articulable suspicion to initiate a traffic stop of the defendant's vehicle. Przyjemski v. State, 290 Ga. App. 22, 658 S.E.2d 807 (2008).

Violation of statute clearly established. — Juvenile's adjudication as a delinquent after being charged with delinquency for reckless driving for passing in a no-passing zone, serious injury by motor vehicle, and feticide was upheld on appeal as the testimony and evidence clearly established that although the juvenile may have begun to pass in a passing zone, the juvenile failed to consider how far the passing zone continued and the juvenile continued to pass at a high rate of speed well into the no-passing zone knowing the approach of the crest of a hill and a curve was coming, yet the juvenile never once sought to slow down and return to the right lane behind the vehicle the juvenile was attempting to pass. In the Interest of A.H., 291 Ga. App. 861, 663 S.E.2d 270 (2008).

Cited in Hanover Ins. Co. v. Rollins, 136 Ga. App. 595, 222 S.E.2d 91 (1975); Lott v. Smith, 153 Ga. App. 365, 265 S.E.2d 291 (1980); Duncan v. Deits, 185 Ga. App. 136, 363 S.E.2d 601 (1987); Worthy v. Kendall, 222 Ga. App. 324, 474 S.E.2d 627 (1996); Roberts v. Dove, 234 Ga. App. 853, 508 S.E.2d 213 (1998); Haynes-Turner v. State, 289 Ga. App. 652, 658 S.E.2d 203 (2008).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 251.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 652, 749, 750.

40-6-47. One-way roadways and rotary traffic islands.

(a) The Department of Transportation and local authorities with respect to highways under their respective jurisdictions may designate any highway, roadway, part of a roadway, or specific lanes upon which vehicular traffic shall proceed in one direction at all of such times as shall be indicated by official traffic-control devices.

(b) Upon a roadway so designated for one-way traffic, a vehicle shall be driven only in the direction designated at all or such times as shall be indicated by official traffic-control devices.

(c) A vehicle passing around a rotary traffic island shall be driven only to the right of such island. (Ga. L. 1953, Nov.-Dec. Sess., p. 556,

§ 61; Code 1933, § 68A-308, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

OPINIONS OF THE ATTORNEY GENERAL

Erection of traffic-control device by municipality on state road. — Municipality may not, by ordinance, seek to regulate streets which are a part of the state highway system, unless the municipality is attempting to erect or maintain a traffic-control device on a road which is a part of the state highway system, and written approval has first been obtained from the department. 1974 Op. Att'y Gen. No. U74-94.

40-6-48. Driving on roadways laned for traffic.

Whenever any roadway has been divided into two or more clearly marked lanes for traffic, the following rules, in addition to all others consistent with this Code section, shall apply:

(1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety;

(2) Upon a roadway which is divided into three lanes, and provides for two-way movement of traffic, with two lanes in one direction, a vehicle being driven in a continuous or center lane shall have the right of way when overtaking and passing another vehicle traveling in the same direction;

(3) Upon a roadway which is divided into three lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance, or in preparation for making a left turn, or where such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic-control devices or road striping;

(4) Official traffic-control devices may be erected directing specified traffic, including but not limited to buses or trucks, to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway, and drivers of vehicles shall obey the directions of every such device; and

(5) Official traffic-control devices may be installed prohibiting the changing of lanes on sections of roadway, and drivers of vehicles shall obey the directions of every such device. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 62; Ga. L. 1967, p. 542, §§ 2, 3; Code 1933, § 68A-309, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

Cross references. — Designation of travel lanes for exclusive or preferential use of buses and other designated passenger vehicles, § 32-9-4. Central lane for turning, § 40-6-126.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1989, "and" was added at the end of paragraph (4).

JUDICIAL DECISIONS

Justified stop. — Police officer's observation of the defendant weaving out of the defendant's lane justified the finding of the court that the stopping of the car was not pretextual, but justified. Davis v. State, 236 Ga. App. 32, 510 S.E.2d 889 (1999).

Because the defendant was witnessed crossing the white traffic line on two occasions, the stop of the defendant's vehicle was valid under Ga. Const. 1983, Art. I, Sec. I, Para. XIII; the defendant's weaving without reason into nearby lanes violated O.C.G.A. § 40-6-48(1) and justified the stop, and the officer's actual motive in stopping the defendant was inconsequential. Rayo-Leon v. State, 281 Ga. App. 74, 635 S.E.2d 368 (2006).

In an in rem forfeiture case in which: (1) the initial traffic stop of the van was reasonable and did not implicate the Fourth Amendment since a law enforcement officer had probable cause to believe that the claimant violated Georgia traffic law by twice violating O.C.G.A. § 40-6-48; (2) the seven minutes it took to effectuate the traffic stop was reasonable; and (3) the search of the van was lawful because of a drug dog's positive alert, the district court did not err in denying a claimant's motion to suppress. United States v. $ 175,722.77, in United States Currency, 307 Fed. Appx. 257 (11th Cir. 2007) (Unpublished).

Defendant's Fourth Amendment rights were not violated by a traffic stop because there was probable cause that the defendant violated O.C.G.A. § 40-6-48(1) by weaving between lanes, various factors went beyond an inchoate hunch and amounted to reasonable suspicion of other illegal activity, and prolonging detention for three minutes was not unreasonable. Also, any discovery violation under Fed. R. Crim. P. 12(b)(4) did not prejudice the defendant's substantial rights in that it was irrelevant to the outcome of the suppression hearing. United States v. Robinson, 272 Fed. Appx. 774 (11th Cir. 2008) (Unpublished).

Before an officer stopped the defendant's vehicle, the officers observed the defendant fail to maintain the defendant's lane in violation of O.C.G.A. § 40-6-48(1) and such a violation provided the officer with probable cause for the stop. United States v. Garcia, 284 Fed. Appx. 791 (11th Cir. 2008) (Unpublished).

Defendant's conviction for DUI per se in violation of O.C.G.A. § 40-6-391(a)(5) was upheld. The traffic stop of the defendant was proper because the officer observed the defendant driving erratically, including sudden braking and weaving within the lane, even though the defendant was acquitted of failure to operate the vehicle within a single lane, O.C.G.A. § 40-6-48(1). Ivey v. State, 301 Ga. App. 796, 689 S.E.2d 100 (2009).

Trial court did not err in denying the defendant's motion to suppress because the officer was justified in stopping the defendant's vehicle based on the videotaped evidence that established that the officer observed the defendant's vehicle failing to maintain the vehicle's lane in violation of O.C.G.A. § 40-6-48(1). Acree v. State, 319 Ga. App. 854, 737 S.E.2d 103 (2013).

Officer's observation of the defendant's vehicle crossing the fog line three times provided sufficient justification for an initial traffic stop. Calcaterra v. State, 321 Ga. App. 874, 743 S.E.2d 534 (2013).

Officer's qualified immunity following traffic stop. — Officer was entitled to summary judgment based on qualified immunity as to an arrestee's Fourth Amendment claim regarding the stop of the arrestee's vehicle because the officer had arguable reasonable suspicion to stop the arrestee since the officer responded to an off-duty officer's report that the arrestee was driving at an unusual speed and weaving across the road, and the off-duty

officer identified the vehicle. Jenkins v. Gaither, No. 12-15631, 2013 U.S. App. LEXIS 20296 (11th Cir. Oct. 4, 2013) (Unpublished).

Indictment. — Indictment stating that defendant "did fail to operate his motor vehicle entirely within a single lane of traffic. . ." was not deficient because the indictment did not allege that the defendant failed to ascertain whether the defendant could move from the defendant's lane safely. Harridge v. State, 243 Ga. App. 658, 534 S.E.2d 113 (2000).

Defendant's conviction for failure to keep the defendant's vehicle within a single lane of traffic could not stand; although there was evidence to support the charge, the accusation filed against the defendant stated the wrong road for where the violation occurred, and therefore, there was insufficient evidence to convict the defendant of the charge stated in the accusation. Thrasher v. State, 292 Ga. App. 566, 666 S.E.2d 28 (2008).

Inconsistent verdict could not form basis for attacking DUI conviction. — Fact that the jury found the defendant not guilty of a charge of failing to maintain a lane could not be a basis for attacking the guilty verdict for driving under the influence of alcohol under O.C.G.A. § 40-6-391(a)(1). Renkiewicz v. State, 283 Ga. App. 692, 642 S.E.2d 384 (2007).

Failure to request jury charge. — When the defendant did not request a charge on a violation of O.C.G.A. § 40-6-48 as the predicate for finding the defendant guilty of the lesser included offense of vehicular homicide in the second degree, the charge that was given by the trial court was sufficient and there was no error. Collum v. State, 195 Ga. App. 42, 392 S.E.2d 301 (1990).

Issue should have been submitted to jury. — Trial court erred by granting summary judgment to the defendants in a wrongful death action upon concluding that the plaintiffs' decedent was 50 percent or more responsible for the decedent's own death because there was an issue of fact as to whether the decedent would have died but for the presence of the tractor-trailer illegally parked in the emergency lane. Reed v. Carolina Cas. Ins. Co., 327 Ga. App. 130, 755 S.E.2d 356 (2014).

Suppression motion properly denied. — Because a sheriff's deputy lawfully stopped the defendant for twice crossing the center line in violation of O.C.G.A. § 40-6-48(1), and given that: (1) the deputy sheriff's specialized DUI training; and (2) the defendant's admission of ingesting alcohol, failure to maintain lane, bloodshot eyes, performances on several field sobriety tests, and strong odor of alcohol, the evidence seized in connection with the stop was admissible; moreover, the defendant's claim that the state failed to establish a violation of § 40-6-48(1) and the defendant's eventual acquittal of failure to maintain a lane were not determinative of whether the traffic stop was lawful. Steinberg v. State, 286 Ga. App. 417, 650 S.E.2d 268 (2007), cert. denied, No. S07C1725, 2008 Ga. LEXIS 113 (Ga. 2008).

Defendant unsuccessfully argued that a law enforcement officer lacked probable cause to make a stop because the officer caused the defendant to drive in an erratic, unsafe manner. What the testimony at the evidentiary hearing fairly showed was that the defendant, over a matter of seconds, attempted to make three lane changes, twice pulling into lanes occupied by other vehicles, causing one to brake and sound the vehicle's horn to avoid collision; the officer had probable cause to stop the defendant for the defendant's violations of O.C.G.A. §§ 40-6-48 and 40-6-123. United States v. Pineda, No. 1:06-cr-350-WSD, 2008 U.S. Dist. LEXIS 18137 (N.D. Ga. Mar. 10, 2008).

Evidence was sufficient to sustain a conviction since the arresting officer testified that the officer observed the defendant weave across the road. Moore v. State, 234 Ga. App. 332, 506 S.E.2d 685 (1998).

Testimony that the defendant weaved across the road and twice crossed over the center line was sufficient to support the defendant's conviction for improper lane usage. Arsenault v. State, 257 Ga. App. 456, 571 S.E.2d 456 (2002).

Because an officer witnessed the defendant driving completely from one side of the lane to the other numerous times, and in doing so the defendant's wheels at least partially crossed over the center of the

white line separating the lanes. This evidence was sufficient to support the defendant's conviction for failure to maintain lane. Kuehne v. State, 274 Ga. App. 668, 618 S.E.2d 702 (2005).

Convictions of driving under the influence of alcohol to the extent that it was less safe to drive, O.C.G.A. § 40-6-391(a)(1), reckless driving, O.C.G.A. § 40-6-390, and failure to maintain a lane, O.C.G.A. § 40-6-48 were supported by sufficient evidence since, when an officer stopped to assist the defendant, whose car was parked on the side of a road, the defendant told the officer that the defendant had driven off the road, the officer found tire marks and a fender in the area where the defendant ran off the road and the defendant's vehicle was missing its left front fender, the officer noticed a strong odor of alcohol on the defendant's breath, the defendant admitted to drinking for over four hours and could not tell the officer how many drinks had been consumed, and the defendant then failed field sobriety tests. Taylor v. State, 278 Ga. App. 181, 628 S.E.2d 611 (2006).

Defendant's conviction for failure to maintain a lane, in violation of O.C.G.A. § 40-6-48(1), was supported by sufficient evidence because the police officers noticed that the defendant's vehicle had front end damage and that it was dragging on the ground, and defendant admitted that the vehicle had hit a road sign, which was off the road; the police officers investigated the area where the incident occurred and noted that a road sign was down on the ground, which was consistent with the statement given by defendant. Crenshaw v. State, 280 Ga. App. 568, 634 S.E.2d 520 (2006).

Given evidence from an ensuing police officer identifying the defendant as the driver of the vehicle stopped, and because the jury was the judge of the credibility of the witnesses presented at trial, and was authorized to reject the defendant's alibi defense, sufficient evidence was presented to support the defendant's convictions for reckless driving, failure to maintain a lane, driving with defective equipment, fleeing or attempting to elude a police officer, and obstruction of a police officer. Daniel v. State, 282 Ga. App. 291, 638 S.E.2d 430 (2006).

Fact that the defendant's vehicle exited the roadway before coming to rest upside down in an adjacent gore area provided sufficient evidence that the defendant failed to maintain the defendant's lane of traffic, O.C.G.A. § 40-6-48(1). Schlanger v. State, 290 Ga. App. 407, 659 S.E.2d 823 (2008).

There existed sufficient evidence to support defendant's convictions for failing to maintain a lane based on the testimony of a police officer who observed the defendant cross one lane to another more than seven times without signaling, which at one point required the officer to swerve to avoid being struck by the defendant's vehicle. Bell v. State, 291 Ga. App. 437, 662 S.E.2d 248 (2008).

Evidence supported conviction of failure to maintain lane, although in denying a motion to suppress, the trial court had stated that it was not clear whether a criminal violation had occurred, only issue at that time was the legality of the stop, which did not depend on finding that actual criminal violation had occurred; later finding of guilt of failure to maintain lane was supported by undisputed evidence that the defendant drove into a pothole and that it was not located in the lane of travel. Camacho v. State, 292 Ga. App. 120, 663 S.E.2d 364 (2008), cert. denied, No. S08C1769, 2008 Ga. LEXIS 872 (Ga. 2008).

Testimony of deputies who observed a defendant driving erratically and a paramedic who examined the defendant at the stop scene to the effect that the defendant was under the influence of alcohol to the extent that the defendant was a less safe driver, along with blood alcohol evidence, was sufficient for the jury to find beyond a reasonable doubt that the defendant was guilty of driving under the influence of alcohol to the extent that the defendant was a less safe driver, and of failing to safely maintain the vehicle within a marked traffic lane in violation of O.C.G.A. §§ 40-6-48(1) and 40-6-391(a)(1). Stubblefield v. State, 302 Ga. App. 499, 690 S.E.2d 892 (2010).

Evidence was insufficient to sustain the defendant's conviction for failure to main-

tain a lane in violation of O.C.G.A. § 40-6-48(1) because the state failed to present any witness testimony pertaining to the charge, and instead relied solely upon a videotape depicting the defendant's operation of the vehicle immediately prior to the traffic stop; the videotape failed to show where defendant's vehicle crossed into the adjacent lane of traffic. Waters v. State, 306 Ga. App. 114, 701 S.E.2d 550 (2010).

Evidence that the defendant failed to maintain the vehicle within a single lane when making a wide right turn and then again after completing the turn supported the defendant's conviction for failure to maintain lane. King v. State, 317 Ga. App. 834, 733 S.E.2d 21 (2012).

Undisputed evidence that the collision occurred outside the defendant's lane of travel was sufficient for the jury to find that the defendant failed to maintain the defendant's lane of travel and was, therefore, guilty of second degree vehicular homicide. Evans-Glodowski v. State, 335 Ga. App. 484, 781 S.E.2d 591 (2016).

Trial court did not err in denying the defendant's motion for new trial on the failure to maintain a lane conviction because the arresting trooper observed the defendant completely travel off the right side of the roadway across the fog line and into the concrete median area, failing to maintain the defendant's lane; and the defendant's failure to maintain a lane conviction was based on the trooper's observation rather than on the admission of the blood alcohol content evidence or any other evidence related to the driving under the influence charges. Stoica v. State, 339 Ga. App. 486, 793 S.E.2d 651 (2016).

Evidence was sufficient to convict the defendant of driving under the influence of alcohol to the extent that the defendant was a less safe driver, speeding, failure to maintain lane, and driving while possessing an open container of an alcoholic beverage because a sergeant pulled over the defendant's car for speeding and failing to maintain the defendant's lane; another officer observed six out of six clues of impairment in the officer's horizontal gaze nystagmus evaluation of the defendant and smelled the odor of an alcoholic beverage coming from the defendant's mouth; and, after the defendant's arrest, the sergeant searched the defendant's car and found a glass filled with ice and a dark liquid that smelled like an alcoholic beverage. Monroe v. State, 340 Ga. App. 373, 797 S.E.2d 245 (2017).

Evidence insufficient to sustain conviction. — Given that the trial court failed to provide the defendant with an opportunity to be heard regarding the trial court's decision to take judicial notice that the highway the defendant drove upon was a two-lane marked road, and no evidence was presented to establish that the highway was divided into two or more clearly marked lanes for traffic, there was insufficient evidence to convict the defendant of a failure to maintain a lane. Stewart v. State, 288 Ga. App. 735, 655 S.E.2d 328 (2007).

Given that no evidence was presented to establish that the street the defendant was driving on was divided into two or more clearly marked lanes, the evidence was insufficient to convict the defendant of failure to maintain the lane. Stroud v. State, 344 Ga. App. 827, No. A17A1679, 2018 Ga. App. LEXIS 148 (2018).

Instructions. — Reversal of defendant's conviction for improper lane change was required since the trial court first instructed the jury by reading the language of the accusation charging the defendant with an improper lane change in violation of O.C.G.A. § 40-6-48, then later read O.C.G.A. § 40-6-123(b) and told the jury that the defendant was charged with improper lane change in violation of that section. Threatt v. State, 240 Ga. App. 592, 524 S.E.2d 276 (1999).

When the defendant was charged with failing to maintain defendant's lane in violation of O.C.G.A. § 40-6-48 and failing to use a turn signal in violation of O.C.G.A. § 40-6-123, the trial court properly instructed the jury as to the definition of the standard for strict liability offenses because the state was not required to prove mental fault or mens rea in those offenses; although O.C.G.A. § 40-6-10(b) required proof that the defendant knowingly operated the vehicle with no insurance, and O.C.G.A. § 40-6-270 required proof that the defendant knowingly failed to stop and comply with the statute's man-

dates, the trial court's charge on intent was found sufficient. Augustin v. State, 260 Ga. App. 631, 580 S.E.2d 640 (2003).

Because the accusation read to the jury charged an improper lane change, but the jury was twice instructed on the elements of failure to maintain a lane, these inconsistent instructions required reversal of the defendant's improper lane change conviction. Walker v. State, 280 Ga. App. 393, 634 S.E.2d 177 (2006).

In a prosecution for driving under the influence and making an improper lane change, because the defendant did not request instructions on accident and justification, the trial court did not err in failing to give those instructions; moreover, because the jury was charged on involuntary intoxication, the failure to charge on accident was not harmful as a matter of law. Walker v. State, 280 Ga. App. 393, 634 S.E.2d 177 (2006).

Because there was some evidence, even from the state's witnesses, that showed that the defendant committed an act of following too closely, a traffic violation other than the more culpable offense of DUI, that such evidence not only showed that the defendant committed the less-culpable offenses of following too closely and of failing to maintain the defendant's lane, that may have caused the collision and resulting death, the trial court erred in failing to give the defendant's written request for an instruction on second-degree vehicular homicide. Brown v. State, 287 Ga. App. 755, 652 S.E.2d 631 (2007).

Trial court did not err by refusing to give the defendant's requested charge on misfortune or accident because the defendant, who was charged with driving under the influence, reckless driving, and failure to maintain lane, was not entitled to a charge that the accident was unavoidable; because the defendant did not admit to committing any act that constituted the offenses with which the defendant was charged, the defendant was not entitled to an instruction on accident. Davis v. State, 301 Ga. App. 484, 687 S.E.2d 854 (2009), cert. dismissed, No. S10C0633, 2010 Ga. LEXIS 339 (Ga. 2010).

Cited in Jenkins v. Lampkin, 145 Ga. App. 746, 244 S.E.2d 895 (1978); Mathews v. Taylor, 155 Ga. App. 2, 270 S.E.2d 247 (1980); Griffin v. State, 191 Ga. App. 302, 381 S.E.2d 562 (1989); Allenbrand v. State, 217 Ga. App. 609, 458 S.E.2d 382 (1995); State v. Holcomb, 219 Ga. App. 231, 464 S.E.2d 651 (1995); Hitchcock v. McPhail, 221 Ga. App. 299, 471 S.E.2d 256 (1996); Stepic v. State, 226 Ga. App. 734, 487 S.E.2d 643 (1997); Hamilton v. State, 228 Ga. App. 285, 491 S.E.2d 485 (1997); State v. Bowen, 231 Ga. App. 95, 498 S.E.2d 570 (1998); Forsman v. State, 239 Ga. App. 612, 521 S.E.2d 410 (1999); State v. Hanson, 243 Ga. App. 532, 532 S.E.2d 715 (2000); Moore v. Pitt-DesMoines, Inc., 245 Ga. App. 676, 538 S.E.2d 155 (2000); In the Interest of W.N.J., 268 Ga. App. 637, 602 S.E.2d 173 (2004); Smith v. State, 270 Ga. App. 759, 608 S.E.2d 35 (2004); Dunbar v. State, 283 Ga. App. 872, 643 S.E.2d 292 (2007); Davis v. State, 286 Ga. App. 443, 649 S.E.2d 568 (2007); Trull v. State, 286 Ga. App. 441, 649 S.E.2d 571 (2007); Lopez v. State, 286 Ga. App. 873, 650 S.E.2d 430 (2007); Merritt v. State, 288 Ga. App. 89, 653 S.E.2d 368 (2007); Brantley v. State, 290 Ga. App. 764, 660 S.E.2d 846 (2008); Thomas v. State, 294 Ga. App. 108, 668 S.E.2d 540 (2008); Eason v. Dozier, 298 Ga. App. 65, 679 S.E.2d 89 (2009); Johnson v. State, 300 Ga. App. 605, 685 S.E.2d 339 (2009); Jones v. State, 319 Ga. App. 678, 738 S.E.2d 130 (2013); State v. Zeth, 320 Ga. App. 140, 739 S.E.2d 443 (2013); Smith v. State, 324 Ga. App. 100, 749 S.E.2d 395 (2013); Plemmons v. State, 326 Ga. App. 765, 755 S.E.2d 205 (2014); Barlow v. State, 327 Ga. App. 719, 761 S.E.2d 120 (2014); State v. Outen, 296 Ga. 40, 764 S.E.2d 848 (2014); Chernowski v. State, 330 Ga. App. 702, 769 S.E.2d 126 (2015); Williams v. State, 296 Ga. 817, 771 S.E.2d 373 (2015); Sherod v. State, 334 Ga. App. 314, 779 S.E.2d 94 (2015); Kim v. State, 337 Ga. App. 155, 786 S.E.2d 532 (2016); State v. Wallace, 338 Ga. App. 611, 791 S.E.2d 187 (2016); State v. Osterloh, 342 Ga. App. 668, 804 S.E.2d 696 (2017).

RESEARCH REFERENCES

ALR. — Negligence of motorist colliding with vehicle approaching in wrong lane, 47 A.L.R.2d 6.

Negligence of motorist as to injury or damage occasioned in avoiding collision with vehicle approaching in wrong lane, 47 A.L.R.2d 119.

Applicability of res ipsa loquitur doctrine where motor vehicle leaves road, 79 A.L.R.2d 6.

40-6-49. Following too closely.

(a) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

(b) The driver of any motor vehicle which is drawing another vehicle when traveling upon a roadway outside of a business or residential district and which is following another motor truck or motor vehicle drawing another vehicle shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this shall not prevent a motor truck or motor vehicle drawing another vehicle from overtaking and passing any like vehicle or other vehicle.

(c) Motor vehicles being driven upon any roadway outside of a business or residential district in a caravan or motorcade whether or not towing other vehicles shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This subsection shall not apply to funeral processions, parades, or other groups of vehicles if such groups of vehicles are under the supervision and control of a law enforcement agency.

(d) Vehicles which approach from the rear any other vehicle or vehicles stopped or slowed to make a lawful turn shall be deemed to be following for purposes of this Code section.

(e) This Code section shall not apply to the operator of any non-leading vehicle traveling in a coordinated platoon. For purposes of this subsection, the term "coordinated platoon" means a group of motor vehicles traveling in the same lane utilizing vehicle-to-vehicle communication technology to automatically coordinate the movement of such vehicles. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 63; Code 1933, § 68A-310, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 2017, p. 757, § 1/HB 472.)

The 2017 amendment, effective July 1, 2017, added subsection (e).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-1641 are included in the annotations for this Code section.

No absolute duty to avoid collision. — No provision of law places an absolute duty on any driver to avoid a collision. All the circumstances and conditions at the time and place, including the conduct of other drivers, must be taken into account. Flanigan v. Reville, 107 Ga. App. 382, 130 S.E.2d 258 (1963) (decided under former Code 1933, § 68-1641).

No provision of law places an absolute duty on any driver to avoid a collision. Malcom v. Malcolm, 112 Ga. App. 151, 144 S.E.2d 188 (1965) (decided under former Code 1933, § 68-1641).

"Following" within meaning of subsection (d). — An approaching vehicle is "following" the leading vehicle for purposes of O.C.G.A. § 40-6-49(d) only where the leading vehicle has stopped or slowed to make a lawful turn. Wilhelm v. Atlanta Gas Light Co., 190 Ga. App. 869, 380 S.E.2d 276, cert. denied, 190 Ga. App. 899, 380 S.E.2d 276 (1989).

Following too closely violation of laws. — Following too closely, without due regard for the speed of vehicles ahead and the traffic on and condition of the highway, is a violation of the Georgia motor vehicle laws. Wallace v. Yarbrough, 155 Ga. App. 184, 270 S.E.2d 357 (1980) (decided under former Code 1933, § 68-1641).

In a negligence action, whether a driver cited with following too closely was acting with criminal negligence or intent was a question for the jury to decide for purposes of tolling the limitations period governing the cause of action. Beneke v. Parker, 293 Ga. App. 186, 667 S.E.2d 97 (2008), aff'd in part, rev'd in part, 285 Ga. 733, 684 S.E.2d 243 (2009).

No right to assume road clear. — Driver has no right to assume that road ahead of the driver is clear of traffic and it is the driver's duty to maintain a diligent lookout ahead. Wallace v. Yarbrough, 155 Ga. App. 184, 270 S.E.2d 357 (1980) (decided under former Code 1933, § 68-1641).

Provisions furnish general rule of driving conduct. — Trial court did not err in instructing the jury that former Code 1933, § 68A-310 (see now O.C.G.A. § 40-6-49) and former Code 1933, § 68A-801 (see now O.C.G.A. § 40-6-180) did not define precisely what constituted following too closely or driving at a prudent speed, and merely furnished a general rule of conduct. Forehand v. Pace, 146 Ga. App. 682, 247 S.E.2d 192 (1978) (decided under former Code 1933, § 68-1641).

Violation as basis for traffic stop. — Trial court's denial of a defendant's motion to suppress the evidence of drugs found in the defendant's vehicle was upheld. The stop of the defendant's vehicle was not pretextual in that two officers observed the defendant's vehicle with tinted windows and following another vehicle too closely, which provided a sufficient legal basis to effectuate the traffic stop. Pollack v. State, 294 Ga. App. 400, 670 S.E.2d 165 (2008).

There was no Fourth Amendment violation in an officer's search of the defendant's car because the officer executed a traffic stop after seeing the defendant follow another vehicle too closely, and the officer's request for consent-which occurred during pending computer check on the defendant's name-did not result from an unduly prolonged detention. Defendant's consent to search was thus valid. Proctor v. State, 298 Ga. App. 388, 680 S.E.2d 493 (2009).

When cocaine was found during a traffic stop after a dog sniff, suppression was not warranted, because the officer had probable cause to believe that the car was following too closely since it was not "contrary to the laws of nature" that a car traveling slower than the flow of traffic could position itself very closely to another car just after changing lanes. United States v. Whitlock, 493 Fed. Appx. 27 (11th Cir. Oct. 19, 2012) (Unpublished).

Investigative stop held proper. — Trial court did not err in denying the defendant's motion to suppress cocaine found during a search of the defendant's car as the officer's testimony authorized a

finding that the officer saw the defendant committing traffic violations for which the defendant received either a warning or a citation — impeding traffic, in violation of O.C.G.A. § 40-6-184(a), and following too closely, in violation of O.C.G.A. § 40-6-49. Warren v. State, 314 Ga. App. 477, 724 S.E.2d 404 (2012), cert. denied, No. S12C1072, 2012 Ga. LEXIS 548 (Ga. 2012).

Leading vehicle has no absolute superior legal position. — All drivers of vehicles using the highways are held to the exercise of due care; a leading vehicle has no absolute legal position superior to that of one following and each driver must exercise ordinary care in the situation in which that driver finds oneself. Malcom v. Malcolm, 112 Ga. App. 151, 144 S.E.2d 188 (1965) (decided under former Code 1933, § 68-1641); Lynch v. Broom, 158 Ga. App. 52, 279 S.E.2d 302 (1981), overruled on other grounds, Chadwick v. Miller, 169 Ga. App. 338, 312 S.E.2d 835 (1983) (decided under former Code 1933, § 68-1641).

Duties of leading and following vehicles. — Driver of the leading vehicle must exercise ordinary care not to stop, slow up, or swerve from the driver's course without adequate warning to following vehicles of the driver's intention so to do; the driver of the following vehicle, in the driver's turn, must exercise ordinary care to avoid collision with vehicles, both those in front and those behind the driver. Lynch v. Broom, 158 Ga. App. 52, 279 S.E.2d 302 (1981), overruled on other grounds, Chadwick v. Miller, 169 Ga. App. 338, 312 S.E.2d 835 (1983) (decided under former Code 1933, § 68-1641).

Jury determines whether section violated. — Former Code 1933, § 68-1641 merely furnished a general rule of conduct, and it is for the jury to determine, in the light of all the attendant circumstances of the case, whether that section had been violated. Malcom v. Malcolm, 112 Ga. App. 151, 144 S.E.2d 188 (1965) (decided under former Code 1933, § 68-1641).

Whether or not a driver was following too closely when the driver struck the other vehicle was clearly a jury question. White v. Cline, 174 Ga. App. 448, 330 S.E.2d 386 (1985).

Jury decides questions as to due care. — Just how close to a vehicle in the lead a following vehicle ought, in the exercise of ordinary care, to be driven, just what precautions a driver of such a vehicle must, in the exercise of ordinary care, take to avoid colliding with a leading vehicle which slows, stops, or swerves in front of that driver, just what signals or warnings the driver of a leading vehicle must, in the exercise of due care, give before stopping or slowing up of the driver's intention to do so, may not be laid down in any hard and fast or general rule; in each case except when reasonable minds may not differ, what due care is required, and whether due care was exercised, is for the jury. Lynch v. Broom, 158 Ga. App. 52, 279 S.E.2d 302 (1981), overruled on other grounds, Chadwick v. Miller, 169 Ga. App. 338, 312 S.E.2d 835 (1983) (decided under former Code 1933, § 68-1641).

Jury allowed to infer. — When there was some evidence from which the jury was authorized to infer that the deceased was stopped to make a lawful left turn into a southbound lane of the highway, when the defendant approached the deceased's car from behind, the court did not err by charging O.C.G.A. § 40-6-49. Branch v. Maxwell, 203 Ga. App. 553, 417 S.E.2d 176, cert. denied, 203 Ga. App. 905, 417 S.E.2d 176 (1992).

Guilty plea not conclusive that defendant negligent. — Plea of guilty in traffic court to the charge of following too closely is only a circumstance to be considered along with all the other evidence in the civil action for damages, and is not conclusive of the fact that the defendant was negligent. Malcom v. Malcolm, 112 Ga. App. 151, 144 S.E.2d 188 (1965) (decided under former Code 1933, § 68-1641).

An admission to the traffic offense of following too closely does not conclusively show liability; it is only a circumstance for the jury to consider with all the other evidence in a civil action for damages. Armandroff v. Cushing, 250 Ga. App. 105, 550 S.E.2d 674 (2001).

Finding of ordinary negligence must first be made. — While a violation of former Code 1933, § 68-1641 has been

called negligence per se, before a negligent act can be found to be negligence per se, a finding of ordinary negligence must in reality first be made. Dowis v. McCurdy, 109 Ga. App. 488, 136 S.E.2d 389, cert. dismissed, 220 Ga. 415, 139 S.E.2d 294 (1964) (decided under former Code 1933, § 68-1641).

Evidence insufficient for conviction. — After the defendant noticed a tractor trailer diagonally to the defendant's front and left swerve into the defendant's path of travel and, to avoid a collision the defendant swung the defendant's vehicle into the far left lane and struck the rear of a dump truck, the evidence was insufficient to support a conviction on the charge of following too closely since the defendant had not been in the same lane as the dump truck. Torrance v. State, 217 Ga. App. 562, 458 S.E.2d 495 (1995).

Trial court properly denied the plaintiffs' JNOV motion pursuant to O.C.G.A. § 9-11-50 in an action arising from an auto accident; a driver did not admit liability, the relevant facts were disputed, and the fact that the driver was unable to stop in time to avoid the collision did not demand a finding that the driver was following too closely in violation of O.C.G.A. § 40-6-49. Cameron v. Peterson, 264 Ga. App. 1, 589 S.E.2d 834 (2003).

Evidence sufficient for conviction. — Evidence was sufficient to support the defendant's conviction for following too closely after the defendant rear-ended a car at four o'clock in the morning and witnesses smelled alcohol on the defendant's breath and observed the defendant's red eyes and slurred speech at the accident scene and later at a hospital. Belyeu v. State, 262 Ga. App. 682, 586 S.E.2d 396 (2003).

Evidence supported a conviction of following another vehicle too closely after an officer observed the defendant driving "right on the tail" of another car on an interstate highway, traveling approximately 70 m.p.h. and, at times, only five feet from the car in front of the driver. Totino v. State, 266 Ga. App. 265, 596 S.E.2d 749 (2004).

Motorist's identification of the defendant as the driver of a pick-up truck that hit the motorist's vehicle and then drove away was sufficient under former O.C.G.A. § 24-4-8 (see now O.C.G.A. § 24-14-8) to establish the defendant's identity for purposes of defendant's conviction for leaving the scene of an accident and following too closely in violation of O.C.G.A. §§ 40-6-49 and 40-6-270(a)(1). Craig v. State, 276 Ga. App. 329, 623 S.E.2d 518 (2005).

Evidence was sufficient to support defendant's conviction for following too closely as an officer described the traffic conditions on the interstate and the length of the space the defendant was leaving between the defendant's truck and the truck ahead of the defendant; the officer also testified that a video recording of the defendant's stop shown to the jury demonstrated the traffic conditions; viewed in a light to favor the verdict, the evidence authorized the jury to find beyond a reasonable doubt that the defendant had followed the lead truck more closely than was reasonable and prudent in light of the speed of the vehicles and traffic conditions. Buckholts v. State, 283 Ga. App. 254, 641 S.E.2d 246 (2007).

Evidence adduced at trial was sufficient to authorize the jury to find the defendant guilty of violating O.C.G.A. § 40-6-49 beyond a reasonable doubt because the defendant rear-ended a car and left the scene without providing the victim with any identifying information. Sevostiyanova v. State, 313 Ga. App. 729, 722 S.E.2d 333, cert. denied, No. S12C0968, 2012 Ga. LEXIS 612 (Ga. 2012).

Instructions. — Because there was some evidence, even from the state's witnesses, that showed that the defendant committed an act of following too closely, a traffic violation other than the more culpable offense of DUI, that such evidence not only showed that the defendant committed the less-culpable offenses of following too closely and of failing to maintain the defendant's lane, that may have caused the collision and resulting death, the trial court erred in failing to give the defendant's written request for an instruction on second-degree vehicular homicide. Brown v. State, 287 Ga. App. 755, 652 S.E.2d 631 (2007).

Trial court distinguished between the

counts charging the defendant with violating O.C.G.A. §§ 40-6-49(d) and 40-6-270 because the trial court fairly instructed the jurors that knowledge was an element of the hit-and-run count. Sevostiyanova v. State, 313 Ga. App. 729, 722 S.E.2d 333, cert. denied, No. S12C0968, 2012 Ga. LEXIS 612 (Ga. 2012).

Comma inadvertently added to the state's requested charge on O.C.G.A. § 40-6-49(d) was harmless because the trial court read the charges aloud and the jury did not see the written charge. Sevostiyanova v. State, 313 Ga. App. 729, 722 S.E.2d 333, cert. denied, No. S12C0968, 2012 Ga. LEXIS 612 (Ga. 2012).

Trial court did not err in charging the jury on O.C.G.A. § 40-6-49(a) because the trial court charged the jury and then explained the term "following" by the court's charge on § 40-6-49(d); there was no variance between the accusation and the proof at trial on the count charging the defendant with violating § 40-6-49. Sevostiyanova v. State, 313 Ga. App. 729, 722 S.E.2d 333, cert. denied, No. S12C0968, 2012 Ga. LEXIS 612 (Ga. 2012).

Cited in Peluso v. State, 147 Ga. App. 266, 248 S.E.2d 546 (1978); Avant Trucking Co. v. Stallion, 159 Ga. App. 198, 283 S.E.2d 7 (1981); U-Haul Co. v. Ford, 171 Ga. App. 744, 320 S.E.2d 868 (1984); United States v. Bates, 840 F.2d 858 (11th Cir. 1988); Johnstone v. Malone Office Equip. Co., 192 Ga. App. 137, 384 S.E.2d 208 (1989); Tam v. State, 225 Ga. App. 101, 483 S.E.2d 142 (1997); Furlong v. Dyal, 246 Ga. App. 122, 539 S.E.2d 836 (2000); Rucker v. State, 266 Ga. App. 293, 596 S.E.2d 639 (2004); Smith v. State, 270 Ga. App. 759, 608 S.E.2d 35 (2004); Roberts v. State, 280 Ga. App. 672, 634 S.E.2d 790 (2006); Garcia-Carrillo v. State, 322 Ga. App. 439, 746 S.E.2d 137 (2013).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 248.

C.J.S. — 60A C.J.S., Motor Vehicles, § 736.

ALR. — Construction and application of statutes regulating or forbidding passing on hill by vehicle, 60 A.L.R.2d 211.

Driver's failure to maintain proper distance from motor vehicle ahead, 85 A.L.R.2d 613.

Automobiles: sudden emergency as exception to rule requiring motorist to maintain ability to stop within assured clear distance ahead, 75 A.L.R.3d 327.

40-6-50. Driving on divided highway, controlled-access roadways, and emergency lanes.

(a) As used in this Code section, the term "gore" means the area of convergence between two lanes of traffic.

(b) Every vehicle driven on a divided highway shall be driven only upon the right-hand roadway unless directed or permitted to use another roadway by official traffic-control devices or police officers. No vehicle shall be driven over, across, or within any dividing space, barrier, gore, paved shoulder, or section separating the roadways of a divided highway; except that a vehicle may be driven through an opening in such physical barrier or dividing space or at an established crossover or intersection unless specifically prohibited by an official sign, signal, or control device. No person shall drive a vehicle onto or from any controlled-access roadway except at such entrances and exits as are established by public authority. Except as provided for in

subsection (c) of this Code section, no vehicle shall be driven in an emergency lane except in the event of an actual emergency.

(c) For purposes of this subsection, "transit bus" means a bus used for the transportation of passengers within a system which is operated by or under contract to the state, a public agency or authority, or a county or municipality of this state. If the commissioner of transportation permits the use of emergency lanes of a controlled-access roadway by transit buses in the metropolitan Atlanta nonattainment area, the commissioner shall designate on which controlled-access roadways the use of emergency lanes by transit buses may be allowed and upon such designation the commissioner shall only permit the use on that emergency lane of a transit bus with a seating capacity of 33 passengers or more. Transit buses authorized to use the emergency lanes under this subsection may be operated on the emergency lane only when main lane traffic speeds are less than 35 miles per hour. Drivers of transit buses being operated on the emergency lanes may not exceed the speed of the main lane traffic by more than 15 miles per hour and may never exceed 35 miles per hour. Drivers of transit buses being operated on the emergency lanes must yield to merging, entering, and exiting traffic and must yield to other vehicles on the emergency lanes. Transit buses operating on the emergency lanes must be registered with the Department of Transportation.

(d) Nothing in this Code section shall prohibit the use of a FlexAuto lane in the manner permitted under Code Section 32-9-4.1. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 64; Ga. L. 1963, p. 254, § 4; Code 1933, §§ 68A-311, 68A-312, enacted by Ga. L. 1974, p. 633, § 1; Code 1981, §§ 40-6-50, 40-6-51; Ga. L. 1990, p. 2048, § 5; Ga. L. 2003, p. 329, § 1; Ga. L. 2005, p. 684, § 3/HB 273.)

Cross references. — Construction and regulation of limited-access roads generally, § 32-6-110 et seq.

Editor's notes. — Ga. L. 2005, p. 684, § 1/HB 273, not codified by the General Assembly, provides; "The General Assembly finds and determines and recommends as follows:

"(1) The Georgia Department of Transportation has a job of overwhelming proportions and addresses the ever-increasing transportation needs of the state through the hard work and dedication of outstanding leaders and staff;

"(2) There is a need in this state to reduce emissions and improve air quality by increasing traffic flow and reducing traffic congestion and decreasing drive times;

"(3) The Department of Transportation is urged to use creative and innovative methods to deal with gridlock and traffic congestion in Georgia and especially in the metropolitan areas;

"(4) Upon passage of this enabling legislation, the department is urged to implement FlexAuto lanes where applicable and to commence the implementation of such lanes in as timely a manner as is practicable;

"(5) The Department of Transportation is requested specifically to identify 20 major areas with a history of traffic congestion in and around our state that will derive the most benefit from the use of FlexAuto lanes and, after identifying these areas, to create and rapidly implement a plan for use of such lanes in such areas;

"(6) Studies and construction models

used successfully in other areas within this country and others should be used as models where traffic flow was improved and emissions reduced by using creative and innovative methods to deal with gridlock and traffic congestion; and

"(7) The model used in Virginia is being studied by Israel, France, Japan, Germany, and England."

JUDICIAL DECISIONS

Emergency lanes. — Because "emergency lane" has a meaning commonly understood by drivers following the rules of the road in Georgia, the term "emergency lane" as used in statutes is sufficiently definite to meet constitutional standards. Payne v. State, 275 Ga. 181, 563 S.E.2d 844 (2002).

Because a truck driver witnessed an accident on a highway in which two vehicles veered off the road into a ravine presented an emergency, the truck driver's act of stopping in an emergency lane to run into the ravine to provide assistance was in compliance with O.C.G.A. § 40-6-50(b), and not in violation of O.C.G.A. § 40-6-203. Reid v. Midwest Transp., 270 Ga. App. 557, 607 S.E.2d 170 (2004).

Tractor trailer illegally parked in emergency lane. — Trial court erred by granting summary judgment to the defendants in a wrongful death action upon concluding that the plaintiffs' decedent was 50 percent or more responsible for the decedent's own death because there was an issue of fact as to whether the decedent would have died but for the presence of the tractor-trailer illegally parked in the emergency lane. Reed v. Carolina Cas. Ins. Co., 327 Ga. App. 130, 755 S.E.2d 356 (2014).

Cited in Merritt v. State, 288 Ga. App. 89, 653 S.E.2d 368 (2007).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 247.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 652, 654.

ALR. — Automobile accidents on street or highway divided by parkway or other neutral strip, 165 A.L.R. 1418.

Automobiles: accidents arising from merger of traffic on limited-access highway with that from service road or ramp, 40 A.L.R.3d 1429.

40-6-51. Restrictions on type of vehicle that may travel on certain major interstates and highways inside the Interstate 285 perimeter.

(a)(1) Any motor vehicle with more than six wheels and commercial motor vehicles as defined by Code Section 40-1-1 shall not travel on any portions of Interstates 20, 75, 85 or Georgia Highway 400 that are located within the arc of Interstate 285 unless the driver of such motor vehicle is:

(A) Engaging in a pick up or delivery to or from a shipper located inside the arc of Interstate 285;

(B) Traveling to or from such motor vehicle's terminal facility located inside the arc of Interstate 285;

(C) Traveling to or from a repair facility located inside the arc of Interstate 285 for service; or

(D) Traveling to or from his or her residence which is located inside the arc of Interstate 285.

(2) The Department of Transportation by order and local authorities by ordinance may regulate or prohibit the use of any controlled-access roadway within their respective jurisdictions by any class of vehicle or kind of traffic which is found to be incompatible with the normal and safe movement of traffic.

(b) The Department of Transportation or the local authority adopting any such prohibition shall erect and maintain official traffic-control devices on the controlled-access highway on which such prohibitions are applicable, and when such devices are in place no person shall disobey the restrictions stated thereon.

(c) For purposes of this Code section, roadways within the jurisdiction of the Department of Transportation and roadways within the jurisdiction of local authorities shall be as set forth in Code Section 32-4-1.

(d) A driver of a motor vehicle failing to comply with the requirements of subsection (a) of this Code section shall be fined $150.00. A driver of a motor vehicle failing to comply with subsection (a) of this Code section during a declared state of emergency for inclement weather conditions shall be fined $1,000.00. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 65; Ga. L. 1963, p. 254, § 3; Code 1933, § 68A-313, enacted by Ga. L. 1974, p. 633, § 1; Code 1981, § 40-6-52; Code 1981, § 40-6-51, as redesignated by Ga. L. 1990, p. 2048, § 5; Ga. L. 2014, p. 745, § 9/HB 877; Ga. L. 2014, p. 807, § 3/HB 753.)

Cross references. — Construction and regulation of limited-access roads generally, § 32-6-110 et seq.

JUDICIAL DECISIONS

Cited in Duke Trucking Co. v. Giles, 185 Ga. App. 833, 366 S.E.2d 216 (1988).

RESEARCH REFERENCES

ALR. — Automobiles: accidents arising from merger of traffic on limited-access highway with that from service road or ramp, 40 A.L.R.3d 1429.

40-6-52. Prohibited lane usage by trucks using multilane highways.

(a) As used in this Code section, the term "truck" means any vehicle equipped with more than six wheels, except buses and motorcoaches.

(b) On roads, streets, or highways with three or more lanes allowing for movement in the same direction, it shall be unlawful for any truck to operate in any lanes other than the two most right-hand lanes, except when the truck is preparing for a left turn or as otherwise provided by subsection (d) of this Code section.

(c) On roads, streets, or highways with two lanes allowing for movement in the same direction, it shall be unlawful for any truck to operate in the left-hand lane, except when the truck is actually overtaking and passing another vehicle, preparing for a left turn, or as otherwise provided by subsection (d) of this Code section.

(d) On interstate highways with four or more lanes allowing for movement in the same direction, the Department of Transportation may designate specific lanes that either prohibit or allow trucks. Where truck usage has been so designated and indicated as such by signs erected by the Department of Transportation, it shall be unlawful for any truck to operate in any lanes other than as designated. (Code 1981, § 40-6-53, enacted by Ga. L. 1987, p. 361, § 1; Code 1981, § 40-6-52, as redesignated by Ga. L. 1990, p. 2048, § 5; Ga. L. 2001, p. 1050, § 1; Ga. L. 2004, p. 746, § 2.)

Cross references. — Impeding traffic flow in left-hand lane on multi-lane highways, § 40-6-184.

Law reviews. — For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 224 (2001).

JUDICIAL DECISIONS

Cited in Massie v. Ross, 211 Ga. App. 354, 439 S.E.2d 3 (1993).

40-6-53. Prohibited lane usage by buses and motorcoaches using multilane highways; HOV lane usage by a bus or motorcoach.

(a) On roads, streets, or highways with three or more lanes allowing for movement in the same direction, it shall be unlawful for any bus or motorcoach to operate in any lanes other than the two most right-hand lanes, except when the bus or motorcoach is preparing for a left turn, is moving to or from an HOV lane, or as otherwise provided by subsection (c) of this Code section.

(b) On roads, streets, or highways with two lanes allowing for movement in the same direction, it shall be unlawful for any bus or

motorcoach to operate in the left-hand lane, except when the bus or motorcoach is actually overtaking and passing another vehicle, preparing for a left turn, or as otherwise provided by subsection (c) of this Code section.

(c) On interstate highways with four or more lanes allowing for movement in the same direction, the Department of Transportation may designate specific lanes that either prohibit or allow buses or motorcoaches. Where such usage has been so designated and indicated by signs erected by the Department of Transportation, it shall be unlawful for any bus or motorcoach to operate in any lanes other than those designated for its use except when moving to or from an HOV lane.

(d) When moving to or from an HOV lane, a bus or motorcoach shall move to the proper lanes of travel expeditiously and in the shortest distance possible under the circumstances. (Code 1981, § 40-6-53, enacted by Ga. L. 2004, p. 746, § 3.)

Editor's notes. — Ga. L. 1990, p. 2048, § 5, redesignated former Code Section 40-6-53 as present Code Section 40-6-52.

40-6-54. Designation of travel lanes for exclusive use of certain vehicles; penalty; presumption; establishment of high occupancy toll (HOT)lanes.

(a) The Department of Transportation may designate travel lanes on any road in the state highway system for the exclusive use of certain vehicles, as provided in Code Section 32-9-4; provided, however, that where such designation has been made, the road shall be appropriately marked with signs or other roadway markers or markings to inform the traveling public of the restrictions imposed.

(b) Any person who violates subsection (b) of Code Section 32-9-4 shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine:

(1) Not to exceed $75.00 for the first such offense;

(2) Not to exceed $100.00 for the second such offense;

(3) Not to exceed $150.00 for the third such offense; and

(4) Not to exceed $150.00 plus one point on such person's driver's license as provided for under Code Section 40-5-57 for the fourth or subsequent offense.

(c) In the prosecution of an offense committed in the presence of or witnessed by a law enforcement officer whether by direct observation or as recorded through means of video surveillance, either by magnetic

imaging or photographic copy, of failure to obey a road sign restricting a highway or portion thereof to the use of high occupancy vehicles (HOV), proof that the vehicle described in the HOV violation summons was operated in violation of this Code section, together with proof that the defendant was at the time of such violation the registered owner of the vehicle, shall constitute evidence as a rebuttable presumption that such registered owner of the vehicle was the person committing the violation. Notwithstanding any other provision of this subsection to the contrary, said rebuttable presumption shall be overcome if the owner of said vehicle states, under oath, in open court, that he or she was not the operator of the vehicle at the time the alleged offense occurred.

(d) The General Assembly finds and declares that the development, improvement, and use of exclusive or preferential high occupancy vehicle lanes, emergency vehicle lanes, and truck lanes or routes should be undertaken in order to relieve congestion and increase the efficiency of the federal-aid highway system. The Department of Transportation in cooperation with the State Road and Tollway Authority is hereby authorized to implement high occupancy toll (HOT) lanes where appropriate in qualifying HOV lanes. A "HOT lane" is a designated lane which allows single occupancy vehicles to gain access to HOV lanes by paying a toll set by the State Road and Tollway Authority. The department may design and develop a system of HOT lanes which uses value pricing and lane management. "Value pricing" recognizes the need to vary the road user charge according to the levels of congestion and time of day; and "lane management" restricts access to the designated HOT lanes based on occupancy, vehicle type, or other objective which would maximize the efficiency of the federal-aid highway system. (Code 1981, § 40-6-54, enacted by Ga. L. 1993, p. 363, § 2; Ga. L. 2004, p. 746, § 4.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, "of this subsection" was substituted for "of this paragraph" in the last sentence of subsection (c).

40-6-55. Obligation of drivers to yield to bicyclist in a bicycle lane.

Notwithstanding other provisions of this chapter relating to operating a vehicle on a roadway, where a bicycle lane is provided on the roadway, the operator of a motor vehicle shall yield to a person operating a bicycle in a bicycle lane. (Code 1981, § 40-6-55, enacted by Ga. L. 2011, p. 426, § 2/HB 101.)

Administrative rules and regulations. — Penalties for Violations of Uniform Rules of the Road, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Driver License Services, Revoca-

tion and Suspension, Rule 375-3-3-.01.

40-6-56. Safe passing distance when overtaking a bicyclist.

(a) As used in this Code section, the term "safe distance" means not less than three feet.

(b) Notwithstanding any provision of this article to the contrary, when feasible, the operator of a motor vehicle, when overtaking and passing a bicycle that is proceeding in the same direction on the roadway, shall leave a safe distance between such vehicle and the bicycle and shall maintain such clearance until safely past the overtaken bicycle. (Code 1981, § 40-6-56, enacted by Ga. L. 2011, p. 426, § 2/HB 101.)

Administrative rules and regulations. — Penalties for Violations of Uniform Rules of the Road, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Driver License Services, Revocation and Suspension, Rule 375-3-3-.01.

ARTICLE 4

RIGHT OF WAY

JUDICIAL DECISIONS

Cited in Rigdon v. Williams, 132 Ga. App. 176, 207 S.E.2d 591 (1974).

RESEARCH REFERENCES

ALR. — Driving automobile across track in front of streetcar that has stopped to take on or let off passengers as negligence or contributory negligence, 14 A.L.R. 811.

Duty and liability to persons struck by automobile while crossing street at unusual place, or diagonally, 14 A.L.R. 1176; 67 A.L.R. 313.

Applicability of motor vehicle regulations to public officials or employees, 19 A.L.R. 459; 23 A.L.R. 418.

Right of way at street or highway intersections as dependent upon, or independent of, care or negligence, 89 A.L.R. 838; 136 A.L.R. 1497.

Right of way as between vehicles as affected by relative distances or time of reaching intersection, 175 A.L.R. 1013.

Rights, duties, and liability with respect to narrow bridge or passage as between motor vehicles approaching from opposite directions, 47 A.L.R.2d 142.

Custom or practice of drivers of motor vehicles as affecting question of negligence, 77 A.L.R.2d 1327.

40-6-70. Right of way rule for vehicles approaching or entering intersection.

(a) When two vehicles approach or enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right,

provided that when a vehicle approaches or enters an intersection with no stop signs or other traffic-control devices from a highway that terminates at the intersection, the driver of that vehicle shall yield the right of way to the other vehicle, whether the latter vehicle be on such driver's right or left. When two vehicles approach or enter an intersection with a traffic light in unactivated dark mode, the driver of each vehicle shall be required to stop in the same manner as if a stop sign were facing in each direction at the intersection. Drivers shall not be required to stop if the traffic signal is properly signed as a pedestrian hybrid beacon or ramp meter and operating in the unactivated dark mode. When a flashing indication is given, the driver shall stop for the flashing red signal and exhibit caution while passing through a flashing yellow indication.

(b) The right of way rule declared in subsection (a) of this Code section is modified at through highways and otherwise as stated in this chapter. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 72; Ga. L. 1966, p. 183, § 5; Code 1933, § 68A-401, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1982, p. 3, § 40; Ga. L. 1990, p. 2048, § 5; Ga. L. 1999, p. 904, § 1; Ga. L. 2010, p. 442, § 5/HB 1174; Ga. L. 2014, p. 851, § 7/HB 774; Ga. L. 2017, p. 720, § 5/HB 328.)

The 2017 amendment, effective July, 1, 2017, substituted "a traffic light in unactivated dark mode" for "an inoperative traffic light" near the beginning of the second sentence of subsection (a).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1989, the hyphens between the words "right of way" in subsection (b) were deleted.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-303 are included in the annotations for this Code section.

DOT granted summary judgment in personal injury action. — Trial court properly granted summary judgment to the Georgia Department of Transportation in a personal injury suit alleging the department negligently designed, maintained, and failed to provide proper traffic control devices at an intersection because the undisputed evidence showed that the clearly visible stop signs at the intersection were ignored by one driver, who was the proximate cause of the accident and the injures. Bennett v. Ga. DOT, 318 Ga. App. 369, 734 S.E.2d 77 (2012).

One who has the right-of-way may assume that others will obey the rules of the road absent some factual indicia that such is not the case. Morgan v. Braasch, 214 Ga. App. 82, 446 S.E.2d 746 (1994).

Right of way at uncontrolled intersection. — Instruction that a person traveling on a subservient street has the burden of yielding when intersecting with a through street at an uncontrolled intersection was a correct statement of law. Smith v. Hiawassee Hdwe. Co., 167 Ga. App. 70, 305 S.E.2d 805 (1983).

Law that person on subservient street must yield to traffic on through street at an uncontrolled intersection is applicable only where motorists approaching an unregulated intersection may discern that one of the roads is a major through street while the other road is subservient. Lee v. Bartusek, 205 Ga. App. 551, 422 S.E.2d 570 (1992).

Section applicable to inoperative traffic light. — An inoperative traffic

light is to be treated as an unmarked intersection for purposes of O.C.G.A. § 40-6-70 and the trial court's refusal to charge the jury accordingly was reversible error. Edmond v. Roberson, 207 Ga. App. 101, 427 S.E.2d 74 (1993).

Jury instruction proper. — Jury instruction on the duty to yield right-of-way was proper after the evidence indicated that both vehicles involved in an accident approached the intersection at approximately the same time. Cleveland v. Bryant, 236 Ga. App. 459, 512 S.E.2d 360 (1999).

Jury instruction on right of way not proper. — Because the general right of way rule set forth in O.C.G.A. § 40-6-70, applied when two drivers arrived simultaneously at an intersection controlled by four-way stop signs, the trial court erred in charging the jury that the rule did not apply in such circumstance. Given that the question of which driver had the right of way was central to the determination of negligence, the appellate court could not say that the trial court's erroneous instruction to the jury regarding right of way was harmless. Graham v. Fallick, 322 Ga. App. 525, 745 S.E.2d 747 (2013).

Former Code 1933, § 68-303 applied within the corporate limits. Shipman v. Johnson, 87 Ga. App. 538, 74 S.E.2d 557 (1953) (decided under former Code 1933, § 68-303).

Section applicable when driver on left should apprehend collision. — Former Code 1933, § 68-303 applied not only after the automobiles arrive at the intersection simultaneously or at practically the same time, but also when, under all the circumstances, including the distances and speeds of the two cars, the driver of the automobile on the left should reasonably apprehend that a collision will occur unless the driver yields the right of way. Laseter v. Clark, 54 Ga. App. 669, 189 S.E. 265 (1936) (decided under former Code 1933, § 68-303).

Rule that at an intersection the driver on the right shall have the right of way is not limited to two vehicles coming to an intersection simultaneously, or practically so, but is applicable to any situation where the distances between the two vehicles, their relative speeds, or any other circumstances show that the driver on the left should reasonably apprehend a collision would occur unless the driver yielded the right of way. Essig v. Cheves, 75 Ga. App. 870, 44 S.E.2d 712 (1947) (decided under former Code 1933, § 68-303).

Section inapplicable when vehicles moving in opposite directions. — Rule that the operator of a motor vehicle shall give the right of way to an operator approaching from the right on an intersecting highway is intended to avoid collision by automobiles whose proper courses would intersect or converge, and has no application where the vehicles are moving in opposite directions. Hollomon v. Hopson, 45 Ga. App. 762, 166 S.E. 45 (1932) (decided under former Code 1933, § 68-303).

Negligence per se. — Violation of the provision providing that at the intersection of two highways the driver on the left should give the right of way to the driver on the right is negligence per se. Laseter v. Clark, 54 Ga. App. 669, 189 S.E. 265 (1936) (decided under former Code 1933, § 68-303).

Failure to yield right of way to one entitled to the right of way is negligence per se. Shipman v. Johnson, 87 Ga. App. 538, 74 S.E.2d 557 (1953) (decided under former Code 1933, § 68-303).

Driver of car having right of way must exercise ordinary care. — Driver of an automobile having the right of way at a highway intersection is not freed from all duty to exercise ordinary care, and the driver may not personally violate a speed statute or ordinance. Laseter v. Clark, 54 Ga. App. 669, 189 S.E. 265 (1936) (decided under former Code 1933, § 68-303).

Drivers' assumption that others will obey rules. — Driver having right of way may assume that others will obey rule of the road and will yield the right of way to that driver, and the driver has the right to proceed at a reasonable speed even though the driver sees another vehicle approaching. Greene v. Helms, 115 Ga. App. 447, 154 S.E.2d 892 (1967).

Sufficient evidence to find defendant drivers negligent. — Under an application of the rules of law to the facts, the jury was authorized to find from the

evidence adduced upon the trial, and the reasonable inferences to be drawn therefrom that the defendant drivers were grossly negligent in causing the plaintiff's injuries. Lawrence v. Hayes, 92 Ga. App. 778, 90 S.E.2d 102 (1955).

Insufficient evidence of guilt. — Because the defendant was convicted under the wrong code section and because the trial court specifically found that the defendant was not the driver of the vehicle, the defendant's convictions for failure to yield while entering a roadway and causing an automobile accident in violation of O.C.G.A. § 40-6-70(a) were reversed. Stone v. State, 277 Ga. App. 847, 627 S.E.2d 890 (2006).

Cited in Robbins v. Farmers & Merchants Bank, 161 Ga. App. 53, 289 S.E.2d 288 (1982).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 288.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 53, 54, 56. 60A C.J.S., Motor Vehicles, § 846 et seq.

ALR. — Right of way at street or highway intersections, 37 A.L.R. 493; 47 A.L.R. 595.

Rights and duties at intersection of arterial (or other favored) highway and nonfavored highway, 58 A.L.R. 1197; 81 A.L.R. 185.

Right of way at street or highway intersections as dependent upon, or independent of, care or negligence, 89 A.L.R. 838; 136 A.L.R. 1497.

Right of way as between vehicles as affected by relative distances or time of reaching intersection, 175 A.L.R. 1013.

Right and duty of motorist on through, favored, or arterial street or highway to proceed where lateral view at intersection is obstructed by physical obstacle, 59 A.L.R.2d 1202.

Duty and liability of vehicle drivers approaching intersection of one-way street with other street, 62 A.L.R.2d 275.

Motorist's liability for collision at intersection of ordinary and arterial highways as affected by absence, displacement, or malfunctioning of stop sign or other traffic signal, 74 A.L.R.2d 242.

What is a street or highway intersection within traffic rules, 7 A.L.R.3d 1204.

Automobiles: duty and liability with respect to giving audible signal at intersection, 21 A.L.R.3d 268.

40-6-71. Yield when turning left.

The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 73; Code 1933, § 68A-402, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Jury instructions upheld. — Instruction on O.C.G.A. § 40-6-21(a)(1)(A) (meaning of traffic signals), rather than O.C.G.A. § 40-6-71 (turning left), held proper. Corley v. Harris, 171 Ga. App. 688, 320 S.E.2d 833 (1984); Bailey v. Bartee, 205 Ga. App. 463, 422 S.E.2d 319 (1992).

Opposing driver's testimony allowed the jury to consider whether the driver satisfied the driver's duty in looking and not seeing any oncoming vehicles such that the driver knew or should have known whether the suing driver's vehicle was so close so as to pose an immediate hazard. Dubberly v. Cooper, 258 Ga. App. 193, 573 S.E.2d 442 (2002).

Requirements of accusation and ability to withstand demurrer. — Trial court erred in sustaining the defendant's demurrer regarding the charges of failing to yield the right of way while turning left and failing to obey a traffic-control device as an accusation that charges an accused with having committed certain acts in violation of a specified penal statute withstood a demurrer, and the indictment cited both O.C.G.A. §§ 40-6-20 and 40-6-71. Further, although the accusation failed to put the defendant on notice of what instruction of a traffic-control device the state alleged the defendant failed to obey, the defendant could not admit that the defendant failed to yield the right of way to a vehicle when the defendant was intending to turn left within the specified intersection, which was regulated by traffic lights, without admitting to the offense of failure to obey a traffic-control device. State v. Shabazz, 291 Ga. App. 751, 662 S.E.2d 828 (2008).

Evidence sufficient for conviction. — See Cook v. State, 238 Ga. App. 341, 518 S.E.2d 749 (1999).

Payment of fine did not dispose of negligence action. — In a negligence action for damages sustained by a bicyclist allegedly caused by an oncoming driver, because the driver's payment of a fine on a failure to yield citation did not constitute an explicit admission of guilt or amount to a finding of negligence per se, and because fact issues remained as to whether the bicyclist was contributorily negligent, partial summary judgment in the bicyclist's favor was reversed. Hite v. Anderson, 284 Ga. App. 156, 643 S.E.2d 550 (2007).

Inconsistent verdicts. — After the trial court accepted a guilty plea from the oncoming driver for running a red light and a guilty verdict was entered against the defendant for failing to yield the right of way, the fact that the two verdicts were inconsistent did not preclude the guilty verdict against the defendant. Nolan v. State, 257 Ga. App. 767, 572 S.E.2d 100 (2002).

Cited in Thompson v. Hill, 143 Ga. App. 272, 238 S.E.2d 271 (1977); Johnson v. State, 170 Ga. App. 433, 317 S.E.2d 213 (1984); Branch v. State, 175 Ga. App. 696, 334 S.E.2d 24 (1985).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 287.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 699 et seq., 864.

ALR. — Right of way at street or highway intersections, 47 A.L.R. 595.

Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 47 A.L.R. 703; 62 A.L.R. 970; 104 A.L.R. 485.

Automobiles: cutting corners as negligence, 115 A.L.R. 1178.

Liability for accident arising from failure of motorist to give signal for left turn at intersection, as against oncoming or intersecting motor vehicle, 39 A.L.R.2d 65.

Liability for accident arising from failure of motorist to give signal for left turn between intersections, 39 A.L.R.2d 103.

Duty and liability of vehicle drivers approaching intersection of one-way street with other street, 62 A.L.R.2d 275.

40-6-72. Stopping and yielding.

(a) Preferential right of way may be indicated by stop signs or yield signs as authorized in Code Section 32-6-50.

(b) Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line or, if there is no stop line, before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of approaching

traffic on the intersecting roadway before entering it. After stopping, the driver shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of roadways.

(c) The driver of a vehicle approaching a yield sign shall, in obedience to such sign, slow down to a speed reasonable for the existing conditions and, if required for safety to stop, shall stop at a clearly marked stop line or, if there is no stop line, before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After slowing or stopping, the driver shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection or junction of roadways. If such a driver is involved in a collision with a vehicle in the intersection after driving past a yield sign without stopping, such collision shall be deemed prima-facie evidence of his failure to yield the right of way. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 74; Code 1933, § 68A-403, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1939, p. 295 are included in the annotations for this Code section.

DOT without liability when stop sign present. — Trial court properly granted summary judgment to the Georgia Department of Transportation in a personal injury suit alleging the department negligently designed, maintained, and failed to provide proper traffic control devices at an intersection because the undisputed evidence showed that the clearly visible stop signs at the intersection were ignored by one driver, who was the proximate cause of the accident and the injures. Bennett v. Ga. DOT, 318 Ga. App. 369, 734 S.E.2d 77 (2012).

Function of fixed red light. — Fixed red light is not traffic-control device; rather, it has same effect as stop sign, which requires a vehicle to stop and then proceed through the intersection only when it is safe to do so. Andrews v. Buckner, 143 Ga. App. 862, 240 S.E.2d 266 (1977).

Driver lawfully in lane. — Municipal court's finding that the driver who was hit improperly entered the intersection had no bearing on the defendant's guilt, although the defendant may have entered the intersection too soon, the evidence established that at the time the defendant entered the intersection the defendant was lawfully in the lane and the driver who was hit was obligated to yield to the defendant. Wilson v. City of Riverdale, 203 Ga. App. 250, 416 S.E.2d 825 (1992), overruled on other grounds, Brown v. City of Marietta, 214 Ga. App. 840, 449 S.E.2d 540 (1994).

Entering safely into the intersection. — Driver of a vehicle on a roadway controlled by a stop sign may momentarily gain preference of right of way when, after coming to a complete stop at the stop sign and having diligently looked for oncoming traffic, enters safely into the intersection. Flournoy v. Brown, 226 Ga. App. 857, 487 S.E.2d 683 (1997).

Partial compliance inadequate. — Even if the defendant did manage to stop

at a stop sign to let several cars go by, since the defendant failed to yield to victims when the victims were approaching an intersection on another roadway, the defendant was liable under O.C.G.A. § 40-6-72. Moss v. State, 209 Ga. App. 59, 432 S.E.2d 825 (1993).

Probable cause for arrest for violation. — Officer had probable cause to justify an arrest for failure to stop at a stop sign under Georgia law after the officer saw a suspect fail to properly stop and observed the vehicle go past the white line at the stop sign. Williams v. Deal, No. 311-061, 2014 U.S. Dist. LEXIS 114635 (S.D. Ga. Aug. 18, 2014).

Violation prima facie establishes negligence. — Operation of a bus in a manner which constituted a violation of former Code 1933, § 68A-403 (see now O.C.G.A. § 40-6-72) prima facie established negligence per se in the absence of a valid defense. Johnson v. McAfee, 151 Ga. App. 774, 261 S.E.2d 708 (1979).

Matters submitted to jury. — Existence of a stop sign though unofficial, and the failure of the plaintiff to heed the sign are relevant matters in a consideration of the diligence and negligence of the parties and such matters should be submitted to the jury. Tyson v. Shoemaker, 208 Ga. 28, 65 S.E.2d 163 (1951) (decided under Ga. L. 1939, p. 295).

Jury instruction upheld. — Instruction stating "that the defendant has no duty to yield the right of way if you find that the defendant, after stopping and looking, could not see the automobile in which the plaintiff was riding as the defendant entered the roadway" was a correct statement of law. Humphreys v. Kipfmiller, 237 Ga. App. 572, 515 S.E.2d 878 (1999).

Evidence sufficient. — Police officer's testimony that the officer observed the defendant run a stop sign that was "clearly visible" to oncoming traffic was sufficient to authorize the trial court's finding that the defendant was guilty, beyond a reasonable doubt, of disregarding a stop sign. Evans v. State, 235 Ga. App. 877, 510 S.E.2d 619 (1999).

Police officer's observation that the stop of the vehicle the defendant was driving was executed after the vehicle went through an intersection without stopping at a stop sign was sufficient to support defendant's conviction for disregarding a stop sign and the state did not have to prove that the intersection did not have a "marked stop line," "a crosswalk," or a "point nearest the intersecting roadway" as described in O.C.G.A. § 40-6-72. Scott v. State, 254 Ga. App. 728, 563 S.E.2d 554 (2002).

Evidence that the police observed the defendant running a stop sign just moments before the defendant engaged the police in a high-speed motor vehicle chase was sufficient to support the defendant's conviction for failure to obey a stop sign. Arnold v. State, 262 Ga. App. 61, 584 S.E.2d 662 (2003).

Evidence supported a defendant's convictions for fleeing and attempting to elude a police officer as an underlying offense for felony murder, theft by taking, vehicular homicide, disregarding a traffic control device, failing to stop at a stop sign, and reckless driving as: (1) the defendant stole a vehicle and was spotted by an officer shortly after the vehicle was reported as stolen; (2) when the officer began to follow the vehicle, the vehicle rapidly accelerated; (3) the officer followed the stolen vehicle for several blocks, with both vehicles traveling between 60-70 miles per hour; (4) the vehicle continued to accelerate after the officer turned on the officer's blue lights and siren; (5) when the stolen vehicle ran a red light, the stolen vehicle struck a car, killing the driver; and (6) the officer and the owner of the stolen vehicle identified the defendant as the person driving the stolen vehicle. Ferguson v. State, 280 Ga. 893, 635 S.E.2d 144 (2006).

Appeals court found sufficient evidence to support the defendant's convictions for DUI to the degree of being a less-safe driver and of failing to stop at a stop sign as the evidence, although not overwhelming, showed that the defendant smelled of alcohol, had run a stop sign, and that the arresting officer believed that the defendant was a less-safe driver as a result of alcohol consumption. Sistrunk v. State, 287 Ga. App. 39, 651 S.E.2d 350 (2007).

Cited in Holbrook Waterproofing Co. v. Cleaver, 132 Ga. App. 24, 207 S.E.2d 562

(1974); Jenkins v. Lampkin, 145 Ga. App. 746, 244 S.E.2d 895 (1978); Cannon v. Rithmire, 156 Ga. App. 360, 274 S.E.2d 746 (1980); Hensel v. Davis, 170 Ga. App. 153, 316 S.E.2d 479 (1984); DOT v. Jackson, 229 Ga. App. 321, 494 S.E.2d 20 (1997); Gilmore v. State, 242 Ga. App. 470, 530 S.E.2d 221 (2000).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 241, 285, 293.

C.J.S. — 60A C.J.S., Motor Vehicles, § 837 et seq.

ALR. — Right of way at street or highway intersections, 37 A.L.R. 493; 47 A.L.R. 595.

Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 47 A.L.R. 703; 62 A.L.R. 970; 104 A.L.R. 485.

Right and duty of motorist on through, favored, or arterial street or highway to proceed where lateral view at intersection is obstructed by physical obstacle, 59 A.L.R.2d 1202.

Motorist's liability for collision at intersection of ordinary and arterial highways as affected by absence, displacement, or malfunctioning of stop sign or other traffic signal, 74 A.L.R.2d 242.

Liability for automobile accident at intersection as affected by reliance upon or disregard of "yield" sign or signal, 2 A.L.R.3d 275.

Liability for automobile accident at intersection as affected by reliance upon or disregard of unchanging stop signal or sign, 3 A.L.R.3d 180.

Liability for automobile accident at intersection as affected by reliance upon or disregard of unchanging caution, slow, danger, or like sign or signal, 3 A.L.R.3d 507.

Liability for collision of automobile with pedestrian at intersection as affected by reliance upon or disregard of traffic sign or signal other than stop-and-go signal, 3 A.L.R.3d 557.

What is a street or highway intersection within traffic rules, 7 A.L.R.3d 1204.

Automobiles: accidents arising from merger of traffic on limited-access highway with that from service road or ramp, 40 A.L.R.3d 1429.

40-6-73. Entering or crossing roadway.

The driver of a vehicle about to enter or cross a roadway from any place other than another roadway shall yield the right of way to all vehicles approaching on the roadway to be entered or crossed. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 75; Code 1933, § 68A-404, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Driver yields to all vehicles in process of passing. — Ga. L. 1953, Nov.-Dec. Sess., p. 556 specifies "all vehicles," which, in the absence of exceptions, must be construed to include vehicles which are in the process of passing, whether the vehicles are doing so in a legal or an illegal manner. Munday v. Brissette, 113 Ga. App. 147, 148 S.E.2d 55, rev'd on other grounds, 222 Ga. 162, 149 S.E.2d 110 (1966).

In an action arising out of an automobile accident, the trial court did not express an opinion to the jury as to which vehicle had the right-of-way, but carefully avoided answering the question posed by a juror which called on the court to express an opinion as to who had the right-of-way in the center turn lane where the accident occurred. Latargia v. Toole, 196 Ga. App. 692, 396 S.E.2d 607 (1990).

Visibility of approaching vehicles. — O.C.G.A. § 40-6-73 places no duty on the driver entering the roadway to yield to

even properly approaching vehicles if the approaching vehicles are not visible to the driver of the entering vehicle. Harrison v. Ellis, 199 Ga. App. 199, 404 S.E.2d 348 (1991).

Pattern charges on yielding the right of way and the duty to yield when entering or crossing a roadway from a private road were proper since, although the defendant did not at first see the plaintiff approaching, the defendant continued into the roadway after the defendant did see the plaintiff. Claxton v. Lee, 229 Ga. App. 357, 494 S.E.2d 80 (1997).

Knowledge of illegal approach. — O.C.G.A. § 40-6-73 requires a driver entering a roadway to yield to an illegally approaching vehicle only when the driver of the entering vehicle has knowledge of the illegal approach of that vehicle. Harrison v. Ellis, 199 Ga. App. 199, 404 S.E.2d 348 (1991).

Last clear chance. — While a charge on last clear chance might have helped clarify the issue of fault for the jury, it was not ground for reversal that such a charge was not given, absent any request for, or objection to, such an instruction. Harrison v. Ellis, 199 Ga. App. 199, 404 S.E.2d 348 (1991).

Section found inapplicable. — See Blake v. Continental S.E. Lines, 168 Ga. App. 718, 309 S.E.2d 829 (1983).

Jury instruction upheld. — Trial court did not err in instructing the jury that the plaintiff had no duty to yield the right-of-way if the jury found that the plaintiff, after stopping and looking, could not see the defendant's automobile as the plaintiff entered the roadway since the jury was authorized to find that the defendant's automobile was not visible to the plaintiff as the plaintiff entered the roadway and thus a charge indicating the possible inapplicability of O.C.G.A. § 40-6-73 under such circumstances was adjusted to the evidence. Simpson v. Reed, 186 Ga. App. 297, 367 S.E.2d 563, cert. denied, 186 Ga. App. 919, 367 S.E.2d 563 (1988); Money v. Daniel, 188 Ga. App. 215, 372 S.E.2d 305 (1988).

When there was conflicting testimony regarding how far from the store an accident occurred, but it was undisputed that the defendant pulled out of a stationary area and reentered a highway before the accident, the trial court did not err in charging the jury on the issue of duty. Hall v. Buck, 206 Ga. App. 754, 426 S.E.2d 586 (1992).

Examination of an entire jury charge showed that the trial court correctly instructed the jury on the northbound motorist's duty to exercise ordinary care while looking for approaching vehicles before exiting a parking lot in a case where the northbound motorist was waved into a center lane and struck the southbound motorist's car that was already in the center lane but which the northbound motorist may not have seen approaching since the southbound lanes were backed up with cars. Driscoll v. Walters, 267 Ga. App. 688, 600 S.E.2d 744 (2004).

Evidence sufficient to support conviction. — Defendant's conviction of failure to yield when entering a roadway, O.C.G.A. § 40-6-73, was affirmed; the conviction was supported by sufficient evidence that the defendant failed to yield before pulling out from behind a parked car onto the roadway, and defendant validly waived the defendant's rights to counsel and to a jury trial. Dellinger v. State, 269 Ga. App. 878, 605 S.E.2d 632 (2004).

Defendant was properly found guilty of failure to yield based on the testimony of the arresting officer that the defendant almost caused a collision from pulling out of a bar parking lot onto the roadway. Dorsey v. State, 327 Ga. App. 226, 757 S.E.2d 880 (2014).

Cited in Hunt v. Schmitt, 190 Ga. App. 554, 379 S.E.2d 409 (1989); Butler v. Huckabee, 209 Ga. App. 761, 434 S.E.2d 576 (1993); Roberts v. Dove, 234 Ga. App. 853, 508 S.E.2d 213 (1998).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 289.

Am. Jur. Proof of Facts. — Last Clear Chance, 32 POF2d 625.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 53, 54, 56. 60A C.J.S., Motor Vehicles, § 846 et seq.

ALR. — Right of way at street or highway intersections, 37 A.L.R. 493; 47 A.L.R. 595.

Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 47 A.L.R. 703; 62 A.L.R. 970; 104 A.L.R. 485.

Right of way as between vehicles in street or highway and vehicles approaching from private driveway, 50 A.L.R. 283.

Automobiles: cutting corners as negligence, 115 A.L.R. 1178.

Liability for injury or damage growing out of pulling out of parked motor vehicle, 29 A.L.R.2d 107.

40-6-74. Operation of vehicles on approach of authorized emergency vehicles.

(a) Upon the immediate approach of an authorized emergency vehicle or a vehicle belonging to a federal, state, or local law enforcement agency making use of an audible signal and visual signals meeting the requirements of Code Section 40-6-6, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle or law enforcement vehicle has passed, except when otherwise directed by a police officer.

(b) This Code section shall not operate to relieve the driver of any authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 76; Code 1933, § 68A-405, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

Cross references. — Limitation of liability of persons rendering emergency care, §§ 31-11-8, 51-1-29, 51-1-30, 51-1-30.1.

JUDICIAL DECISIONS

Charge must fit evidence. — Trial court did not err in refusing to give a charge on O.C.G.A. § 40-6-74 if the charge was not adjusted to the evidence. Lucas v. Love, 238 Ga. App. 463, 519 S.E.2d 253 (1999).

Construction with O.C.G.A. § 40-6-6. — Read together, O.C.G.A. §§ 40-6-6 and 40-6-74 mandate that a driver has a duty to yield the right of way to an authorized law enforcement vehicle when the law enforcement vehicle approaches making use of an audible signal and visual signal under normal atmospheric conditions from a distance of 500 feet to the front of such vehicle, and furthermore the statutes do not restrict an "audible signal" to only sirens, and § 40-6-6 does not apply only when the authorized law enforcement vehicle is responding to an emergency call; accordingly, it was proper to give instructions as to §§ 40-6-6 and 40-6-74 in a suit by a driver who ran into a house while the house was being moved and escorted by police vehicles. Hersh v. Griffith, 284 Ga. App. 15, 643 S.E.2d 309 (2007).

Insufficient evidence for conviction. — There was no violation of O.C.G.A. § 40-6-74 when the evidence was that the officer's purpose was to stop the defendant for speeding and the state failed to prove that the defendant obstructed the roadway and prevented the

officer from passing the defendant. Jackson v. State, 223 Ga. App. 27, 477 S.E.2d 28 (1996).

Evidence was not sufficient to support a conviction for failure to yield to an emergency vehicle since it was established that the police officer was pursuing the defendant, rather than seeking to pass the defendant. Burrell v. State, 225 Ga. App. 264, 483 S.E.2d 679 (1997).

Cited in Findley v. McDaniel, 158 Ga. App. 445, 280 S.E.2d 858 (1981); Willis v. Love, 232 Ga. App. 543, 502 S.E.2d 487 (1998).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 298 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 35, 53, 54, 56.

ALR. — Validity of statute or ordinance giving right of way in streets or highways to certain classes of vehicles, 38 A.L.R. 24.

Right of way at street or highway intersections, 47 A.L.R. 595.

Right of way of vehicle carrying policeman, 65 A.L.R. 140.

Construction and application of statutory provision requiring motorists to yield right-of-way to emergency vehicle, 87 A.L.R.5th 1.

40-6-75. Highway construction and maintenance personnel and vehicles.

(a) The driver of a vehicle shall yield the right of way to any authorized vehicle or pedestrian actually engaged in work upon a highway within any highway construction or maintenance area indicated by official traffic-control devices.

(b) The driver of a vehicle shall yield the right of way to an authorized vehicle actually engaged in work upon a highway whenever such vehicle displays flashing or revolving amber lights and has a permit to use such amber lights. (Code 1933, § 68A-406, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, § 35.

JUDICIAL DECISIONS

Jury instructions. — Trial court's omission of words from a jury instruction to the effect that there was a violation of O.C.G.A. § 40-6-75 was not error because the trial court's charge, which read verbatim from the statute and then charged the jury on negligence per se, substantially covered the principles contained in the construction worker's request to charge. Gates v. Navy, 274 Ga. App. 180, 617 S.E.2d 163 (2005).

40-6-76. Funeral processions.

(a) As used in this Code section, a "funeral procession" means an array of motor vehicles in which the lead vehicle displays a sign,

pennant, flag, or other insignia furnished by a funeral home indicating a funeral procession unless led by a state or local law enforcement vehicle and each vehicle participating in the funeral procession is operating its headlights.

(b) Funeral processions shall have the right of way at intersections subject to the following conditions and exceptions:

(1) Operators of vehicles in a funeral procession shall yield the right of way upon the approach of an authorized emergency vehicle or law enforcement vehicle giving an audible and visual signal; and

(2) Operators of vehicles in a funeral procession shall yield the right of way when directed to do so by a traffic officer.

(c) Funeral processions escorted by the police, a sheriff, or a sheriff's deputy shall have the right of way in any street or highway through which they may pass. Local governments may, by ordinance, provide for such escort service and provide for the imposition of reasonable fees to defray the cost of such service.

(d) The operator of a vehicle not in a funeral procession shall not interrupt a funeral procession except when authorized to do so by a traffic officer or when such vehicle is an authorized emergency vehicle or law enforcement vehicle giving an audible and visual signal.

(e) Operators of vehicles not a part of a funeral procession shall not join a funeral procession by operating their headlights for the purpose of securing the right of way granted by this Code section to funeral processions.

(f) The operator of a vehicle not in a funeral procession shall not attempt to pass vehicles in a funeral procession on a two-lane highway.

(g) Any person violating subsection (d), (e), or (f) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed $100.00.

(h) Any law enforcement officer who is directing or escorting a funeral procession in this state, whether such service is provided while on duty or not, shall enjoy the same immunities from liability as the officer possesses while in the performance of other official duties. (Code 1981, § 40-6-76, enacted by Ga. L. 1989, p. 1803, § 1; Ga. L. 1990, p. 1319, § 2; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Use of city owned motor vehicles for private escort service prohibited by city code. — Under a city code provision prohibiting use of city vehicles for anything other than the city's business, police officers were prohibited from using city owned motorcycles to provide their own private funeral escort service. Morton

v. Bell, 264 Ga. 832, 452 S.E.2d 103 (1995).

40-6-77. Penalties for collision which causes serious injury to motorcyclist, pedestrian, bicyclist, or farmer transporting certain items.

(a) For purposes of this Code section, "serious injury" shall include, but shall not be limited to, causing bodily harm to another by depriving him or her of a member of his or her body, by rendering a member of his or her body useless, by seriously disfiguring his or her head or body or a member thereof, or by causing organic brain damage which renders the body or any member thereof useless.

(b) Any person who causes a serious injury to another person as a result of a collision with a motorcyclist, bicyclist, pedestrian, or farmer operating any vehicle used to transport agricultural products, livestock, farm machinery, or farm supplies by committing any right of way violation under this chapter when such motorcyclist, bicyclist, pedestrian, or farmer operating any vehicle used to transport agricultural products, livestock, farm machinery, or farm supplies is abiding by the provisions of this title shall be guilty of a misdemeanor and shall be punished:

(1) For a first offense, by a fine of not less than $250.00 in addition to any other penalties stipulated by law and the court shall report such conviction to the Department of Driver Services; and

(2) For a second or subsequent offense within a five-year period of time, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, by a fine of not less than $500.00 nor more than $1,000.00 and imprisonment for not less than ten days nor more than 12 months. Any fine imposed under this paragraph shall be mandatory and shall not be suspended or waived or conditioned upon the completion of any course or sentence. The court imposing punishment under this subsection shall forward a record of the disposition of the case to the Department of Driver Services. (Code 1981, § 40-6-77, enacted by Ga. L. 2006, p. 504, § 2/HB 1392; Ga. L. 2009, p. 65, § 4/SB 196.)

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required for violators. — Those charged with offenses under O.C.G.A. § 40-6-77 are to be fingerprinted. 2007 Op. Att'y Gen. No. 2007-1.

Any misdemeanor offenses arising under subsection (b) of O.C.G.A. § 40-6-77

are offenses for which those charged are to be fingerprinted. 2010 Op. Att'y Gen. No. 10-6.

ARTICLE 5

RIGHTS AND DUTIES OF PEDESTRIANS

JUDICIAL DECISIONS

Cited in Edwards v. Trammell, 187 Ga. App. 22, 369 S.E.2d 288 (1988).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d., Automobiles and Highway Traffic, § 231.

Am. Jur. Trials. — Child-Pedestrian Accident Cases, 9 Am. Jur. Trials 427.

ALR. — Duty of pedestrian before crossing street to look for vehicles approaching on intersecting street, 9 A.L.R. 1248; 44 A.L.R. 1299.

Duty and liability to persons struck by automobile while crossing street at unusual place, or diagonally, 14 A.L.R. 1176; 67 A.L.R. 313.

Liability for injury to child playing on or in proximity to automobile, 44 A.L.R. 434.

Liability for injury by automobile to child playing ball in the street, 44 A.L.R. 1304.

Validity, construction, and effect of regulations as to the time, place, or manner of crossing street by pedestrian, 49 A.L.R. 1406.

Right or duty to turn in violation of law of road to avoid traveler, or obstacle, 63 A.L.R. 277; 113 A.L.R. 1328.

Liability for injury to pedestrian who suddenly darts or steps into path of automobile, 65 A.L.R. 192; 113 A.L.R. 528.

Liability for injury to pedestrian struck by automobile while walking along street or highway, 67 A.L.R. 96; 93 A.L.R. 551.

Duty of pedestrian crossing street or highway as regards looking for automobiles, 79 A.L.R. 1073.

Liability of owner or operator of motor vehicle for injury to person who has alighted from or is waiting for streetcar or bus, 123 A.L.R. 791.

Liability for injury by vehicle to construction or maintenance worker in street or highway, 5 A.L.R.2d 757.

Application of "assured clear distance ahead" or "radius of lights" doctrine to accident involving pedestrian crossing street or highway, 31 A.L.R.2d 1424.

Failure to comply with statute regulating travel by pedestrian along highway as affecting right to recovery for injuries or death resulting from collision with automobile, 45 A.L.R.3d 658.

Who is "pedestrian" entitled to rights and subject to duties provided by traffic regulations or judicially stated, 35 A.L.R.4th 1117.

40-6-90. Pedestrians to obey traffic-control devices and traffic regulations.

(a) A pedestrian shall obey the instructions of any official traffic-control device specifically applicable to him, unless otherwise directed by a police officer.

(b) Pedestrians shall be subject to traffic and pedestrian control signals as provided in Code Sections 40-6-21 and 40-6-22.

(c) At all other places, pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this chapter. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 77; Code 1933, § 68A-501, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

RESEARCH REFERENCES

ALR. — Duty of pedestrian before crossing street to look for vehicles approaching on intersecting street, 44 A.L.R. 1299.

Duty and liability to person struck by automobile while crossing street at unusual place or diagonally, 67 A.L.R. 313.

Liability for collision of automobile with pedestrian at intersection as affected by reliance upon or disregard of stop-and-go signal, 2 A.L.R.3d 155.

Liability for collision of automobile with pedestrian at intersection as affected by reliance upon or disregard of traffic sign or signal other than stop-and-go signal, 3 A.L.R.3d 557.

40-6-91. Right of way in crosswalks.

(a) The driver of a vehicle shall stop and remain stopped to allow a pedestrian to cross the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching and is within one lane of the half of the roadway on which the vehicle is traveling or onto which it is turning. For the purposes of this subsection, "half of the roadway" means all traffic lanes carrying traffic in one direction of travel.

(b) No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impractical for the driver to yield.

(c) Subsection (a) of this Code section shall not apply under the conditions stated in subsection (b) of Code Section 40-6-92.

(d) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 78; Code 1933, § 68A-502, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1995, p. 229, § 3.)

JUDICIAL DECISIONS

Pedestrian in crosswalk is entitled to assume that approaching vehicle would yield right of way and not pass the other stopped vehicles. Greene v. Helms, 115 Ga. App. 447, 154 S.E.2d 892 (1967).

When the pedestrian plaintiff entered the roadway in the crosswalk and in accordance with the pedestrian-control signal, it was error to charge the jury on the "dart-out" provision of O.C.G.A. § 40-6-91. Gaffron v. Metropolitan Atlanta Rapid Transit Auth., 229 Ga. App. 426, 494 S.E.2d 54 (1997).

When the plaintiff represented that the plaintiff safely entered a crosswalk, although admitting that the last time the

plaintiff saw the defendant's vehicle was when the vehicle was slowing down, and that plaintiff entered the crosswalk when faced solely with a green arrow, and when the defendant's testimony was that the plaintiff "jetted out" into the path of the defendant's vehicle as the defendant made a right turn on red, the jury's verdict in favor of the defendant was authorized by the evidence and the trial court did not err in denying the plaintiff's motion for new trial. Sampson v. Jones, 236 Ga. App. 57, 510 S.E.2d 902 (1999).

Pedestrian not in crosswalk. — Grant of summary judgment to the driver and the insurer was affirmed because the evidence showed that the plaintiff was dressed in black clothing, was drunk, crossed a major roadway at night outside of an available crosswalk, and there was no evidence that the driver was speeding nor was violating any rules of the road, or even saw the pedestrian; therefore, the driver did not fail to exercise due diligence to avoid striking the pedestrian. Politzer v. Xiaoyan, 801 S.E.2d 114 (2017).

Instruction on accident. — Appellate court erred in reversing the defendant's conviction for vehicular homicide based on the defendant's failure to stop for a pedestrian in a crosswalk because those charges were strict liability offenses to which the accident defense did not apply since it was undisputed the defendant voluntarily drove into the crosswalk and struck the child. State v. Ogilvie, 292 Ga. 6, 734 S.E.2d 50 (2012).

Cited in Metropolitan Atlanta Rapid Transit Auth. v. Federick, 187 Ga. App. 696, 371 S.E.2d 204 (1988); Weathers v. Foote & Davies Transp. Co., 189 Ga. App. 134, 375 S.E.2d 97 (1988).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 302.

C.J.S. — 60A C.J.S., Motor Vehicles, § 895.

ALR. — Duty of pedestrian before crossing street to look for vehicles approaching on intersecting street, 9 A.L.R. 1248; 44 A.L.R. 1299.

Liability for injury to pedestrian colliding with side of automobile, 25 A.L.R. 1513.

Contributory negligence of pedestrian at street crossing as affected by statute or ordinance, 96 A.L.R. 786.

Liability for collision of automobile with pedestrian at intersection as affected by reliance upon or disregard of traffic sign or signal other than stop-and-go signal, 3 A.L.R.3d 557.

40-6-92. Crossing roadway elsewhere than at crosswalk.

(a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles upon the roadway unless he has already, and under safe conditions, entered the roadway.

(b) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right of way to all vehicles upon the roadway if he uses the roadway instead of such tunnel or crossing.

(c) Between adjacent intersections at which traffic-control signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.

(d) No pedestrian shall cross a roadway intersection diagonally unless authorized by official traffic-control devices. When authorized to

cross diagonally, pedestrians shall cross only in accordance with the official traffic-control devices pertaining to such crossing movements. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 79; Ga. L. 1967, p. 542, § 4; Code 1933, § 68A-503, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Defendant entitled to show child violated section. — Even though a child may not be chargeable with contributory negligence because of the child's tender age, the defendant is entitled to show that the plaintiff was in fact violating Ga. L. 1974, p. 633, § 1 when the child's injury was sustained. Lewis v. Noonan, 142 Ga. App. 654, 236 S.E.2d 900 (1977).

Pedestrian proceeding without care. — When the evidence revealed that the defendants had the right of way as the plaintiff proceeded heedlessly from the safety of the center median without using the nearby crosswalk, the defendant was not negligent per se and O.C.G.A. § 40-6-92 did not protect the plaintiff. Etheredge v. Kersey, 236 Ga. App. 243, 510 S.E.2d 544 (1998).

Trial court did not err in finding that the defendant violated O.C.G.A. § 40-6-92(a) as it was undisputed that there was no marked crosswalk where the defendant was crossing the road, that the defendant was crossing other than at either a marked crosswalk or an unmarked crosswalk, and that the defendant entered the roadway when it was not safe to do so, given the traffic and weather conditions, and failed to yield to motor vehicle traffic. Hill v. State, 341 Ga. App. 409, 801 S.E.2d 87 (2017).

Crossing outside of crosswalk. — While O.C.G.A. § 40-6-92(a) does not absolutely prohibit a pedestrian from crossing the roadway outside of a crosswalk, the statute mandates that under those conditions, the pedestrian shall yield the right of way to all vehicles upon the roadway unless the pedestrian has already, and under safe conditions, entered the roadway. Nelson v. State, 317 Ga. App. 527, 731 S.E.2d 770 (2012).

Jury instruction. — When the pedestrian plaintiff entered the roadway in the crosswalk and in accordance with the pedestrian-control signal, it was error to charge the jury on subsection (a) of O.C.G.A. § 40-6-92. Gaffron v. Metropolitan Atlanta Rapid Transit Auth., 229 Ga. App. 426, 494 S.E.2d 54 (1997).

Cited in Conner v. Mangum, 132 Ga. App. 100, 207 S.E.2d 604 (1974); Hill v. Copeland, 148 Ga. App. 232, 250 S.E.2d 822 (1978); Weathers v. Foote & Davies Transp. Co., 189 Ga. App. 134, 375 S.E.2d 97 (1988); Shilliday v. Dunaway, 220 Ga. App. 406, 469 S.E.2d 485 (1996).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 303.

C.J.S. — 60A C.J.S., Motor Vehicles, § 895.

ALR. — Crossing street elsewhere than at regular crossing as contributory negligence precluding recovery for injury from defect or obstruction, 3 A.L.R. 1113.

Duty of pedestrian before crossing street to look for vehicles approaching on intersecting street, 9 A.L.R. 1248; 44 A.L.R. 1299.

Liability for injury to pedestrian colliding with side of automobile, 25 A.L.R. 1513.

Liability for injury on park strip between sidewalk and curb, 59 A.L.R. 387; 61 A.L.R. 267; 19 A.L.R.2d 1053.

Duty and liability to person struck by automobile while crossing street at unusual place or diagonally, 67 A.L.R. 313.

Liability for injury on parking or strip between sidewalk and curb, 19 A.L.R.2d 1053.

Liability for collision of automobile with pedestrian at intersection as affected by

reliance upon or disregard of traffic sign or signal other than stop-and-go signal, 3 A.L.R.3d 557.

Liability, in motor vehicle-related cases, of governmental entity for injury or death resulting from defect or obstruction on roadside parkway or parking strip, 98 A.L.R.3d 439.

40-6-93. Drivers to exercise due care in relation to pedestrians.

Notwithstanding other provisions of this chapter, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway, shall give warning by sounding his horn when necessary, and shall exercise proper precautions upon observing any child or any obviously confused, incapacitated, or intoxicated person. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 80; Code 1933, § 68A-504, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Ordinary care required. — Legal requisite of a motorist as to parties on the street or highway, whether in other vehicles or as pedestrians, and whether a child or adult, is the exercise of ordinary care. Reed v. Dixon, 153 Ga. App. 604, 266 S.E.2d 286 (1980).

One lying prone in the highway in a drunken condition is owed a duty of care if one is lying in the open on a flat road, even though undiscovered. A driver in such a situation is under a duty to discover the victim's peril and avoid injury to that person. Fountain v. Thompson, 252 Ga. 256, 312 S.E.2d 788 (1984).

Applicability. — Provisions of O.C.G.A. § 40-6-93 do not purport to apply to duties owed to other drivers, but focuses on duties owed to persons on the highway; the statute had no applicability to a case against a motorist brought by a motorcyclist who claimed that the motorist failed to avoid a collision once the motorist ascertained that the motorcyclist was not in control of the vehicle. McKissick v. Giroux, 272 Ga. App. 499, 612 S.E.2d 827 (2005).

Applicability to bicyclists. — Courts have applied the provisions of Ga. L. 1953, Nov.-Dec. Sess, p. 556 (see now O.C.G.A. § 40-6-93) to bicyclists. Howard v. Hall, 112 Ga. App. 247, 145 S.E.2d 70 (1965).

Jury charge upheld. — Charge to the jury under Ga. L. 1953, Nov.-Dec. Sess., p. 556 (see now O.C.G.A. § 40-6-93), that "every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway," etc., which added thereafter the phrase "or such other user of any roadway," which was not contained in that section, was not error especially since the language imposed no greater duty on the defendant than does the common law. Hughes v. Brown, 111 Ga. App. 676, 143 S.E.2d 30 (1965).

Trial court did not err in charging the jury on O.C.G.A. § 40-6-93 as the court included limiting instructions. As part of the court's instructions, the trial court read the accusation, defined the charged crimes, explained that the state bore the burden of proving the material elements of those offenses, and told the jury that the jury could find the defendant guilty only if the jury determined beyond a reasonable doubt that the defendant committed the offenses as alleged in the accusation. Hughes v. State, 290 Ga. App. 475, 659 S.E.2d 844 (2008).

No merger into vehicular homicide. — Defendant's reckless driving, running a red light, and less safe driving under the influence convictions merged into the defendant's reckless vehicular homicide convictions, which involved two deaths resulting from the defendant's striking a car; however, the failure to exercise due care conviction involving the defendant's striking a pedestrian did not merge into the vehicular homicide conviction as the acts leading to the two charges involved different facts and different victims. Hill v.

State, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

Merger required remand for resentencing. — Because the defendant's misdemeanor sentence, based on the failure to exercise due care, was also based in part on convictions that merged with the reckless vehicular homicide counts, and because the trial court never vacated the defendant's convictions for the misdemeanor counts charged, the relevant portions of the defendant's sentence were vacated and the case was remanded for resentencing. Hill v. State, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

Cited in Johnson v. Ellis, 179 Ga. App. 343, 346 S.E.2d 119 (1986).

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 411, 418, 422, 936.

Am. Jur. Proof of Facts. — Last Clear Chance, 32 POF2d 625.

C.J.S. — 60A C.J.S., Motor Vehicles, § 891.

ALR. — Injury by road vehicle to person on sidewalk, 1 A.L.R. 840; 75 A.L.R. 559.

Right or duty to turn in violation of law of road to avoid traveler, or obstacle, 24 A.L.R. 1304; 63 A.L.R. 277; 113 A.L.R. 1328.

Liability for injury to pedestrian colliding with side of automobile, 25 A.L.R. 1513.

Right of way at street or highway intersections, 37 A.L.R. 493; 47 A.L.R. 595.

Duty of pedestrian before crossing street to look for vehicles approaching on intersecting street, 44 A.L.R. 1299.

Liability for injury by automobile to child playing ball in the street, 44 A.L.R. 1304.

Liability for injury on park strip between sidewalk and curb, 59 A.L.R. 387; 61 A.L.R. 267; 19 A.L.R.2d 1053.

Liability for injury to pedestrian struck by automobile as affected by his blindness, deafness, or other physical disability, 62 A.L.R. 578.

Liability for injury to pedestrian struck by automobile while walking along street or highway, 67 A.L.R. 96; 93 A.L.R. 551.

Duty and liability to person struck by automobile while crossing street at unusual place or diagonally, 67 A.L.R. 313.

Liability of owner or operator of motor vehicle for injury to person who has alighted from or is waiting for streetcar or bus, 123 A.L.R. 791.

Intoxication of person injured or killed as affecting applicability of last clear chance doctrine, 26 A.L.R.2d 308.

Duty of motor vehicle driver approaching place where children are playing or gathered, 30 A.L.R.2d 5.

Application of "assured clear distance ahead" or "radius of lights" doctrine to accident involving pedestrian crossing street or highway, 31 A.L.R.2d 1424.

Liability for motor vehicle accident where vision of driver is obscured by smoke, dust, atmospheric condition, or unclean windshield, 42 A.L.R.2d 13; 32 A.L.R.4th 933.

Rights of injured guest as affected by obscured vision from vehicle in which he was riding, 42 A.L.R.2d 350; 32 A.L.R.4th 933.

Instructions on sudden emergency in motor vehicle cases, 80 A.L.R.2d 5.

Motorist's liability for injury to one in or about a street or highway for the purpose of directing or warning traffic, 98 A.L.R.2d 1169.

Liability for collision of automobile with pedestrian at intersection as affected by reliance upon or disregard of traffic sign or signal other than stop-and-go signal, 3 A.L.R.3d 557.

Liability of motorist colliding with person engaged about stalled or disabled vehicle on or near highway, 27 A.L.R.3d 12.

Automobiles: sudden emergency as exception to rule requiring motorist to maintain ability to stop within assured clear distance ahead, 75 A.L.R.3d 327.

Liability, in motor vehicle-related cases, of governmental entity for injury or death resulting from defect or obstruction on roadside parkway or parking strip, 98 A.L.R.3d 439.

Motor vehicle operator's liability for accident occurring while driving with vision

obscured by smoke or steam, 32 A.L.R.4th 933.

Sufficiency of evidence to raise last clear chance doctrine in case of automobile collision with pedestrian or bicyclist—modern cases, 9 A.L.R.5th 826.

40-6-94. Right of way of blind pedestrian.

The driver of every vehicle shall yield the right of way to any blind pedestrian who is carrying a walking cane or stick white in color or white tipped with red or who is accompanied by a guide dog. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 80; Code 1933, § 68A-504.1, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

Cross references. — Guarantee of equal access to and use of public accommodations, facilities, and privileges by persons with visual disabilities and deaf persons, § 30-4-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 503.

C.J.S. — 60A C.J.S., Motor Vehicles, § 885.

40-6-95. Pedestrian under influence of alcohol or drug.

A person who is under the influence of intoxicating liquor or any drug to a degree which renders him a hazard shall not walk or be upon any roadway or the shoulder of any roadway. Violation of this Code section is a misdemeanor and is punishable upon conviction by a fine not to exceed $500.00. (Code 1933, § 68A-505.1, enacted by Ga. L. 1974, p. 633, § 1; Code 1981, § 40-6-96; Code 1981, § 40-6-95, as redesignated by Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Not lesser included offense of DUI. — As a matter of fact or of law, the offense of being a pedestrian under the influence is not a lesser included offense of the offense of driving under the influence. Dickson v. State, 167 Ga. App. 685, 307 S.E.2d 267 (1983).

Drunk pedestrian not in crosswalk. — Grant of summary judgment to the driver and the insurer was affirmed because the evidence showed that the plaintiff was dressed in black clothing, was drunk, crossed a major roadway at night outside of an available crosswalk, and there was no evidence that the driver was speeding nor was violating any rules of the road, or even saw the pedestrian; therefore, the driver did not fail to exercise due diligence to avoid striking the pedestrian. Politzer v. Xiaoyan, 801 S.E.2d 114 (2017).

Probable cause. — Probable cause for arrest exists when the defendant stated the defendant was drunk and the officer observed signs of intoxicated behavior. Miller v. State, 221 Ga. App. 494, 471 S.E.2d 565 (1996).

Questions for jury. — When the decedent was run over by a bus after the driver let the decedent off on the roadway approximately four feet from the curb and about 25 feet from the bus stop, the issues of the decedent's negligence and the duty of care owed to the decedent were questions for the jury. Cuthbert v. Metropolitan Atlanta Rapid Transit Auth., 190 Ga.

App. 550, 379 S.E.2d 413, cert. denied, 190 Ga. App. 897, 379 S.E.2d 413 (1989).

Not applicable in tort action. — Defendants failed to show, as a matter of law, that the alcohol and cocaine in the deceased's system rendered him a "hazard" in violation of O.C.G.A. § 40-6-95. Moreover, there was no evidence to suggest that the deceased wandered onto the highway in violation of O.C.G.A. § 40-6-96. Swinney v. Schneider Nat'l Carriers, Inc., 829 F. Supp. 2d 1358 (N.D. Ga. Nov. 7, 2011).

Cited in White v. State, 310 Ga. App. 386, 714 S.E.2d 31 (2011).

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 444, 514.

C.J.S. — 60A C.J.S., Motor Vehicles, § 886.

ALR. — Intoxication of person injured or killed as affecting applicability of last clear chance doctrine, 26 A.L.R.2d 308.

40-6-96. Pedestrians on or along roadway.

(a) As used in this Code section, the term "pedestrian" means any person afoot and shall include, without limitation, persons standing, walking, jogging, running, or otherwise on foot.

(b) Where a sidewalk is provided, it shall be unlawful for any pedestrian to stand or stride along and upon an adjacent roadway unless there is no motor vehicle traveling within 1,000 feet of such pedestrian on such roadway or the available sidewalk presents an imminent threat of bodily injury to such pedestrian.

(c) Where a sidewalk is not provided but a shoulder is available, any pedestrian standing or striding along and upon a highway shall stand or stride only on the shoulder, as far as practicable from the edge of the roadway.

(d) Where neither a sidewalk nor a shoulder is available, any pedestrian standing or striding along and upon a highway shall stand or stride as near as practicable to an outside edge of the roadway, and, if on a two-lane roadway, shall stand or stride only on the left side of the roadway.

(e) Except as otherwise provided in this chapter, any pedestrian upon a roadway shall yield the right of way to all vehicles upon the roadway.

(f) No pedestrian shall enter or remain upon any bridge or approach thereto beyond the bridge signal, gate, or barrier after a bridge operation signal indication has been given.

(g) No pedestrian shall pass through, around, over, or under any crossing gate or barrier at a railroad grade crossing or bridge while such gate or barrier is closed or is being opened or closed. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 82; Code 1933, § 68A-506, enacted by Ga. L. 1974, p. 633, § 1; Code 1981, § 40-6-97; Code 1981, § 40-6-96, as

redesignated by Ga. L. 1990, p. 2048, § 5; Ga. L. 2009, p. 65, § 5/SB 196.)

JUDICIAL DECISIONS

Duty to create walkway. — No duty exists at law to design a roadway with a sidewalk or transversable shoulder; however, a duty to create a walkway may be created by ordinance or by an accepted industry standard for a particular type of development. Samuelson v. Lord, Aeck & Sergeant, Inc., 205 Ga. App. 568, 423 S.E.2d 268, cert. denied, 205 Ga. App. 901, 423 S.E.2d 268 (1992).

Questions for jury. — When the decedent was run over by a bus after the driver let the decedent off on the roadway approximately four feet from the curb and about 25 feet from the bus stop, the issues of the decedent's negligence and the duty of care owed to the decedent were questions for the jury. Cuthbert v. Metropolitan Atlanta Rapid Transit Auth., 190 Ga. App. 550, 379 S.E.2d 413, cert. denied, 190 Ga. App. 897, 379 S.E.2d 413 (1989).

Partial summary judgment was inappropriate in a pedestrian's personal injury lawsuit after the driver's car crossed the white line before striking the pedestrian because even the driver's expert testified that the part of the road between the white line and the curb was part of the shoulder of the road. Field v. Lowery, 300 Ga. App. 812, 686 S.E.2d 422 (2009).

What constitutes "sidewalk." — When there is an excavation extending from a property line across a walkway, leaving only an 18-inch ledge, this ledge cannot be held as a matter of law to be a "sidewalk" within the contemplation of Ga. L. 1953, Nov.-Dec. Sess., p. 556. Roseberry v. Freeman, 97 Ga. App. 545, 103 S.E.2d 745 (1958).

Subsection (d) applies only to two-lane roads. — Partial summary judgment was inappropriate in a pedestrian's personal injury lawsuit since the driver's car crossed the white line before striking the pedestrian because O.C.G.A. § 40-6-96(d) was inapplicable to require the pedestrian to walk on the left since by the statute's clear language, this provision applied to two-lane roads, and the accident occurred on a part of a highway where it was four-lanes wide. Field v. Lowery, 300 Ga. App. 812, 686 S.E.2d 422 (2009).

Not applicable in tort action. — Defendants failed to show, as a matter of law, that the alcohol and cocaine in the deceased's system rendered him a "hazard" in violation of O.C.G.A. § 40-6-95. Moreover, there was no evidence to suggest that the deceased wandered onto the highway in violation of O.C.G.A. § 40-6-96. Swinney v. Schneider Nat'l Carriers, Inc., 829 F. Supp. 2d 1358 (N.D. Ga. Nov. 7, 2011).

Sufficiency of evidence to convict. — Evidence that defendant was walking in the middle of the roadway, causing cars to stop to avoid hitting the defendant, supported the defendant's conviction under O.C.G.A. § 40-6-96(c). McCormack v. State, 325 Ga. App. 183, 751 S.E.2d 904 (2013).

Cited in Tiller v. State, 286 Ga. App. 230, 648 S.E.2d 738 (2007).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 323, 324.

ALR. — Liability for injury to pedestrian struck by automobile while walking along street or highway, 67 A.L.R. 96; 93 A.L.R. 551.

Liability of owner or operator of motor vehicle for injury to person who has alighted from or is waiting for streetcar or bus, 123 A.L.R. 791.

40-6-97. Pedestrians soliciting.

(a) No person shall stand in a roadway for the purpose of soliciting a ride.

(b) Except as provided in Code Section 40-6-97.1, no person shall stand on a highway for the purpose of soliciting employment, business, or contributions from the occupant of any vehicle.

(c) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 82; Code 1933, § 68A-507, enacted by Ga. L. 1974, p. 633, § 1; Code 1981, § 40-6-98; Code 1981, § 40-6-97, as redesignated by Ga. L. 1990, p. 2048, § 5; Ga. L. 1996, p. 737, § 1.)

JUDICIAL DECISIONS

Forbidding of business upon paved area of highway. — For a pedestrian to choose the paved area of a highway for a place to stand and transact business, no matter how laudable the business itself might be, is certainly a privilege rather than a right, and therefore subject to regulation by the state, which may, if the state deems proper, forbid it entirely. Zeiger v. State, 140 Ga. App. 610, 231 S.E.2d 494 (1976).

Elements essential for conviction under subsection (b). — There were three elements essential of proof for conviction of the offense in subsection (b) of former Code 1933, § 68A-507 (see now O.C.G.A. § 40-6-97): (1) that the person accused be "on a highway"; (2) "for the purpose of soliciting"; and (3) "from the occupant of any vehicle." Crook v. State, 156 Ga. App. 756, 275 S.E.2d 794 (1980).

Person solicited standing away from car. — Conviction under subsection (b) of former Code 1933, § 68A-507 (see now O.C.G.A. § 40-6-97) cannot be sustained since the person from whom the defendant solicited business was standing five or six feet from that person's car at the time the defendant handed the person the defendant's business card. The person who was solicited was not the "occupant" of a vehicle. Thus, the state failed to prove an essential element of the offense. Crook v. State, 156 Ga. App. 756, 275 S.E.2d 794 (1980).

Passing out literature in support of presidential candidate while standing in a roadway did not fall within any proscription of O.C.G.A. § 40-6-97. Robinson v. State, 177 Ga. App. 848, 341 S.E.2d 497 (1986).

Cited in Carroll v. State, 157 Ga. App. 113, 276 S.E.2d 267 (1981).

40-6-97.1. Solicitation permits for charitable organizations.

Municipal or county governments are authorized to adopt ordinances for the issuance of permits for the solicitation of contributions on streets and highways within the geographic jurisdiction of such governments to charitable organizations registered in accordance with Code Section 43-17-5 and to charitable organizations exempt from such registration in accordance with Code Section 43-17-9. (Code 1981, § 40-6-97.1, enacted by Ga. L. 1996, p. 737, § 1; Ga. L. 2001, p. 4, § 40.)

Cross references. — Application for registration as a solicitor agent, § 43-17-3.1.

40-6-98. Driving through safety zone prohibited.

No vehicle shall at any time be driven through or within a safety zone. (Code 1933, § 68A-508, enacted by Ga. L. 1974, p. 633, § 1; Code 1981, § 40-6-99; Code 1981, § 40-6-98, as redesignated by Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Cited in Switlick v. State, 295 Ga. App. 849, 673 S.E.2d 323 (2009).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 232.

C.J.S. — 60A C.J.S., Motor Vehicles, § 891.

40-6-99. Pedestrians to yield to authorized emergency vehicles.

(a) Upon the immediate approach of an authorized emergency vehicle making use of an audible signal meeting the requirements of Code Section 40-8-94, and visual and audible signals meeting the requirements of Code Section 40-6-6 or a vehicle belonging to a federal, state, or local law enforcement agency making use of visual and audible signals meeting the requirements of Code Section 40-6-6, every pedestrian shall yield the right of way to the authorized emergency vehicle or law enforcement vehicle.

(b) This Code section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway nor from the duty to exercise due care to avoid colliding with any pedestrian. (Code 1933, § 68A-510, enacted by Ga. L. 1974, p. 633, § 1; Code 1981, § 40-6-101; Code 1981, § 40-6-99, as redesignated by Ga. L. 1990, p. 2048, § 5.)

Cross references. — Limitation of liability of persons rendering emergency care, §§ 31-11-8, 51-1-29, 51-1-30, and 51-1-30.1.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 296 et seq.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 870, 871.

40-6-100. Right of way on sidewalks.

Repealed by Ga. L. 1990, p. 2048, § 5, effective January 1, 1991.

Editor's notes. — This Code section was based on Ga. L. 1974, p. 633, § 1. For present provisions pertaining to pedestrian right of way on sidewalk, see Code Section 40-6-144.

40-6-101. Redesignated.

Editor's notes. — Ga. L. 1990, p. 2048, § 5, redesignated former Code Section 40-6-101 as present Code Section 40-6-99.

ARTICLE 6

TURNING, STARTING, SIGNALING

Administrative rules and regulations. — Penalties for Violations of Uniform Rules of the Road, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Driver License Services, Revocation and Suspension, Rule 375-3-3-.01.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Negligent Left Turn of Motor Vehicle, 35 POF2d 405. Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or Pass, 31 POF3d 145.

40-6-120. Methods of turning at intersections.

The driver of a vehicle intending to turn at an intersection shall do so as follows:

(1) **Right turn.** Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway;

(2) **Left turn.** (A) As used in this paragraph, the term "extreme left-hand lane" means the lane furthest to the left that is lawfully available to traffic moving in the same direction as the turning vehicle. In the event of multiple lanes, the second extreme left-hand lane shall be the lane to the right of the extreme left-hand lane that is lawfully available to traffic moving in the same direction as the turning vehicle. The third extreme left-hand lane shall be the lane to the right of the second extreme left-hand lane and so forth.

(B) The driver of a vehicle intending to turn left shall approach the turn in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of the turning vehicle. Whenever practicable, the left turn shall be made to the left of the center of the intersection and so as to exit the intersection or other location

in the extreme left-hand lane lawfully available to traffic moving in the same direction as the turning vehicle on the roadway being entered.

(C) In the event of multiple left turn lanes, the driver of a vehicle turning left shall exit the intersection in the same relative travel lane as the vehicle entered the intersection. If the vehicle is in the second extreme left-hand lane entering the intersection, the vehicle shall exit the intersection in the second extreme left-hand lane. Where there are multiple lanes of travel in the same direction safe for travel, a vehicle shall not be permitted to make a lane change once the intersection has been entered. (Code 1981, § 40-6-120, enacted by Ga. L. 2010, p. 256, § 1/HB 1231; Ga. L. 2011, p. 752, § 40/HB 142.)

Editor's notes. — Ga. L. 2010, p. 256, § 1/HB 1231, effective July 1, 2010, repealed former Code Section 40-6-120, pertaining to required position and methods of turning at intersections, and traffic-control devices, and enacted the present Code section. The former Code section was based on Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 66; Code 1933, § 68A-601, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.

Ga. L. 2010, p. 256, § 5/HB 1231, not codified by the General Assembly, provides that the enactment by that Act shall apply to all offenses committed on or after July 1, 2010.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68A-601 and former O.C.G.A. § 40-6-120, are included in the annotations for this Code section.

Area held not to be "intersection." — Area within which private driveway or private way joins with public road is not "intersection" as defined by law. Howard v. Hall, 112 Ga. App. 247, 145 S.E.2d 70 (1965) (decided under former law).

Statute was unconstitutionally vague. — In light of the conflict in the language of former O.C.G.A. § 40-6-120(a)(2), a person of common intelligence could not determine with reasonable definiteness that the statute prohibited the making of a left turn into the right lane of a multi-lane roadway. Accordingly, former § 40-6-120(a)(2) was too vague to be enforced against a driver of a vehicle making a left turn into a multi-lane roadway that lacked official traffic-control devices directing the driver into which lane to turn and was, therefore, unconstitutional under the due process clauses of the Georgia and United States Constitutions. McNair v. State, 285 Ga. 514, 678 S.E.2d 69 (2009) (decided under former O.C.G.A. § 40-6-120).

Section not applicable to turn made into private driveway. — Since former O.C.G.A. § 40-6-120 was substantially the same as former Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 66, which was not applicable to a turn made from a public highway into a private driveway, its charge in such instances was error. Hill v. Yara Eng'g Co., 157 Ga. App. 281, 277 S.E.2d 256 (1981).

Turns should be made in compliance with road markings. — Turns should be made from the roadway, but more particularly, in compliance with the patterns established by the markings (official traffic control devices) on the road. State v. Williams, 156 Ga. App. 813, 275 S.E.2d 133 (1980) (decided under Ga. L. 1974, p. 633, § 1).

Driver who is turning as directed by a traffic control device was not relieved from complying with other rules of the road, such as signaling or maintaining a

diligent lookout. Richardson v. Chesky, 235 Ga. App. 28, 508 S.E.2d 441 (1998) (decided under former O.C.G.A. § 40-6-120).

Turning right from end of emergency lane prior to entry into intersection. — When the defendant in the defendant's vehicle proceeded along the emergency lane and turned therefrom, despite the presence of a solid white line indicating the end of the emergency lane, prior to the defendant's entry into the intersection, the officer was justified in stopping the defendant for making an improper right turn. State v. Williams, 156 Ga. App. 813, 275 S.E.2d 133 (1980) (decided under Ga. L. 1974, p. 633, § 1).

Turning right from lane adjacent to right-hand lane. — Trial court did not err in finding that an officer's traffic stop was unreasonable and not based on the observation of an illegal right turn in violation of former O.C.G.A. § 40-6-120(a)(1), given evidence that the defendant activated the turn signal and checked for traffic behind the vehicle prior to turning right from a lane adjacent to the right-hand-turn lane. Therefore, evidence of the defendant's alcohol consumption taken after the officer's stop was properly suppressed. State v. Mincher, 313 Ga. App. 875, 723 S.E.2d 300 (2012) (decided under former O.C.G.A. § 40-6-120).

Officer's observation of an illegal left turn served to provide the officer with reasonable suspicion as a basis for the officer's initial encounter with the defendant. Welborn v. State, 232 Ga. App. 837, 503 S.E.2d 85 (1998) (decided under former O.C.G.A. § 40-6-120).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 243.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 53, 54, 56. 60A C.J.S., Motor Vehicles, §§ 609, 700, 703.

ALR. — Automobiles: cutting corners as negligence, 6 A.L.R. 321; 115 A.L.R. 1178.

Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 24 A.L.R. 507; 47 A.L.R. 703; 62 A.L.R. 970; 104 A.L.R. 485.

Automobile crossing street at a point other than a street intersection, 57 A.L.R. 1106.

Rights and duties at intersection of arterial (or other favored) highway and nonfavored highway, 58 A.L.R. 1197; 81 A.L.R. 185.

Duty and liability of vehicle drivers approaching intersection of one-way street with other street, 62 A.L.R.2d 275.

What is a street or highway intersection within traffic rules, 7 A.L.R.3d 1204.

40-6-121. U-turns.

No vehicle shall be turned so as to proceed in the opposite direction:

(1) Upon any curve;

(2) Upon the approach to or near the crest of a grade where such vehicle cannot be seen by the driver of another vehicle approaching from either direction;

(3) Where such turn cannot be made in safety and without interfering with other traffic; or

(4) Where a prohibition is posted. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 67; Code 1933, § 68A-602, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Cited in Cason v. Columbus, 148 Ga. App. 208, 250 S.E.2d 836 (1978); Hashemy v. State, 167 Ga. App. 96, 306 S.E.2d 65 (1983); State v. Webb, 193 Ga. App. 2, 386 S.E.2d 891 (1989); Neiswonger v. Janics, 196 Ga. App. 607, 396 S.E.2d 553 (1990).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 246.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 53, 54, 56. 60A C.J.S., Motor Vehicles, § 706.

ALR. — Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 47 A.L.R. 703; 62 A.L.R. 970; 104 A.L.R. 485.

Automobiles: liability for U-turn collisions, 53 A.L.R.4th 849.

40-6-122. Starting parked vehicle.

No person shall start a vehicle which is stopped, standing, or parked unless and until such movement can be made with reasonable safety. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 68; Code 1933, § 68A-603, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Evidence disclosed no negligent action on part of bus driver. — See Blake v. Continental S.E. Lines, 168 Ga. App. 718, 309 S.E.2d 829 (1983).

Instruction on truck operating on public road. — In an action for injuries sustained by the plaintiff when the plaintiff was thrown from the defendant's truck's running board, where the plaintiff had been standing at the defendant's request to keep the truck from toppling over as the defendant drove the truck out of a ditch, since the direct and circumstantial evidence authorized the finding that the truck was being operated in the public road at the time the plaintiff contends the plaintiff was injured, an instruction with reference to the violations of the sections regulating the driving of automobiles on public roads was justified. Bramlett v. Hulsey, 98 Ga. App. 39, 104 S.E.2d 614 (1958).

RESEARCH REFERENCES

C.J.S. — 60A C.J.S., Motor Vehicles, § 693.

ALR. — Liability for injury or damage growing out of pulling out of parked motor vehicle, 29 A.L.R.2d 107.

40-6-123. Turning movements; signals required on turning, changing lanes, slowing, or stopping.

(a) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in Code Section 40-6-120 or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or change lanes or move right or left upon a roadway unless and until such movement can be

made with reasonable safety. No person shall so turn any vehicle without giving an appropriate and timely signal in the manner provided in this Code section.

(b) A signal of intention to turn right or left or change lanes when required shall be given continuously for a time sufficient to alert the driver of a vehicle proceeding from the rear in the same direction or a driver of a vehicle approaching from the opposite direction.

(c) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided in this Code section to the driver of any vehicle immediately to the rear when there is an opportunity to give such signal.

(d) The signals provided for in subsection (b) of Code Section 40-6-124 shall be used to indicate an intention to turn, change lanes, or start from a parked position and shall not be flashed on one side only on a parked or disabled vehicle or flashed as a courtesy or "do pass" signal to operators of other vehicles approaching from the rear. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 69; Code 1933, § 68A-604, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Analysis

General Consideration
Application
Jury Instructions

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-303 are included in the annotations for this Code section.

Signal required for safety of others. — Legislature's concern is plainly the preservation of the safety of others by requiring sufficient notice of the driver's intent to turn or change lanes, and the use of the term "when required" in O.C.G.A. § 40-6-123(b) clearly indicates that it anticipated times when use of a signal was not required for the safety of others. Clark v. State, 208 Ga. App. 896, 432 S.E.2d 220 (1993).

Purpose of signals. — One purpose of giving a hand and arm signal upon stopping, starting, or turning an automobile is to command the attention of the drivers of other automobiles and to make other drivers aware of the intentions of the driver signaling in order to avoid collisions. Pfeifer v. Yellow Cab Co., 88 Ga. App. 221, 76 S.E.2d 225 (1953) (decided under former Code 1933, § 68-303).

Signal requirements (hand and arm) of statute were not superseded by a mechanical attachment on the vehicle placed there for the purpose of signaling to other users of the highway the intention of the driver to stop the driver's vehicle or make a turn. Eidson v. Felder, 69 Ga. App. 225, 25 S.E.2d 41 (1943) (decided under former Code 1933, § 68-303).

Imposition of legal duty to ascertain safety of turning movement. — Sense of the first sentence of former Code 1933, § 68-303 was to impose a legal duty to ascertain the safety of a turning movement before deviating from a direct course of travel, at intersections, or to enter a private road or driveway, and elsewhere. Crouch v. Nicholson, 116 Ga. App. 12, 156 S.E.2d 384 (1967) (decided under former

General Consideration (Cont'd)

Code 1933, § 68-303).

Application

Probable cause to stop vehicle. — Defendant was not illegally stopped under the Fourth Amendment because the deputy testified to observing the defendant improperly change lanes. Tri Huynh v. State, 239 Ga. App. 62, 518 S.E.2d 920 (1999).

When there was no dispute that the defendant turned right without signaling into the southbound lane of the road that the arresting deputy was preparing to turn onto, there was probable cause to stop the defendant's vehicle. McBride v. State, 246 Ga. App. 151, 539 S.E.2d 201 (2000).

Because a deputy testified that the driving the deputy observed was not "reasonably safe," and the trial court found the deputy credible, the deputy had a sufficiently specific basis to justify an initial traffic stop pursuant to O.C.G.A. § 40-6-123, and the trial court did not err in denying the defendant's motion to suppress evidence found in the car. Salinas-Valdez v. State, 276 Ga. App. 732, 624 S.E.2d 278 (2005).

Defendant unsuccessfully argued that a law enforcement officer lacked probable cause to make a stop because the officer caused the defendant to drive in an erratic, unsafe manner. What the testimony at the evidentiary hearing fairly showed was that the defendant, over a matter of seconds, attempted to make three lane changes, twice pulling into lanes occupied by other vehicles, causing one to brake and sound the vehicle's horn to avoid collision; the officer had probable cause to stop the defendant for the defendant's violations of O.C.G.A. §§ 40-6-48 and 40-6-123. United States v. Pineda, No. 1:06-cr-350-WSD, 2008 U.S. Dist. LEXIS 18137 (N.D. Ga. Mar. 10, 2008).

While the state failed to adduce direct evidence showing, at the moment the vehicle was at the subdivision's exit, the precise location of the cars that were later stopped in front of or behind the vehicle at the next intersection, a reasonable inference arose from the officer's testimony that the cars stopped at the stop sign with the vehicle had exited the nearby driveway at a time such that the driver of the vehicle defendant was riding in was required to signal the driver's intent to turn. Thus, the evidence obtained as a result of the traffic stop was admissible. Morgan v. State, 309 Ga. App. 740, 710 S.E.2d 922 (2011).

Defendant was properly stopped when the defendant turned off from a road-block without using a turn signal. The arresting officer testified that the officer knew the officer could not stop the defendant for failing to employ a turn signal unless there were other cars behind the defendant, and that the officer specifically remembered other cars following closely behind the defendant when the defendant turned without a signal in violation of O.C.G.A. § 40-6-123. Scandrett v. State, 293 Ga. 602, 748 S.E.2d 861 (2013).

Probable cause for arrest for violation. — In the absence of any signal visible in the darkness, a trooper had probable cause to stop the defendant's vehicle for a possible violation of O.C.G.A. § 40-6-123(b) and was not obligated to assume the defendant had vainly indicated such lane changes by means of hand and arm signals. Mayfield v. State, 186 Ga. App. 233, 566 S.E.2d 836 (1988).

When a police officer was stopped directly behind the defendant at a red stop signal, the fact that both vehicles were stopped prior to the defendant's turn did not obviate the need for the defendant to use the defendant's turn signal and, upon seeing defendant commit the offense, the officer was authorized to stop the defendant. Trippe v. State, 219 Ga. App. 250, 464 S.E.2d 655 (1995).

When the defendant, driving a car only five to seven feet in front of a police officer, violated O.C.G.A. § 40-6-123, probable cause existed to stop the vehicle, and the trial court erred as a matter of fact and law in holding the stop was pretextual. State v. Reddy, 236 Ga. App. 106, 511 S.E.2d 530 (1999).

In accordance with O.C.G.A. § 40-6-123, the defendant was required to use defendant's signal to alert the officers behind the defendant of the defendant's intention to turn right and, upon observ-

ing the defendant commit a traffic offense, the officers were authorized to stop the defendant. Woodward v. State, 245 Ga. App. 409, 537 S.E.2d 791 (2000).

Application to vehicle turning from direct course of travel. — In a jury charge, former Code 1933, § 68-303 was applicable to a vehicle which was upon the highway and turned to the right or left from a direct course of travel. Shank v. Nexsen, 127 Ga. App. 684, 194 S.E.2d 586 (1972) (decided under former Code 1933, § 68-303).

Failure to signal for lane change. — When an officer testified that the defendant changed lanes without a signal at a time when traffic was heavy and that such a lane change was unsafe, the officer's stop of the defendant's vehicle was not pretextual. Knight v. State, 234 Ga. App. 359, 506 S.E.2d 245 (1998).

Probable cause existed to stop the defendant's car because the defendant failed to signal while changing lanes as required by O.C.G.A. § 40-6-123 as the officer's car was approximately 30 feet behind the defendant, and the Fourth Amendment did not require that a traffic citation be issued. United States v. Woods, No. 09-15555, 2010 U.S. App. LEXIS 13642 (11th Cir. July 2, 2010) (Unpublished).

Officer's traffic stop of a defendant was justified by specific articulable facts giving the officer a reasonable suspicion of a traffic violation, i.e. changing lanes without reasonable safety in violation of O.C.G.A. § 40-6-123(a), even though the defendant was ultimately acquitted of that offense, given that the defendant abruptly changed lanes in front of the officer without signalling, requiring the officer to apply the officer's brakes. Parker v. State, 307 Ga. App. 61, 704 S.E.2d 438 (2010).

Evidence, viewed in the light most favorable to the prosecution, authorized the jury to find that the defendant turned without signaling because a patrol officer testified that the officer saw that the defendant twice failed to use a turn signal when traffic conditions required the defendant to do so. Nunnally v. State, 310 Ga. App. 183, 713 S.E.2d 408 (2011).

Trial court did not err in denying defendant's motion to suppress on the ground that the traffic stop was improperly based on a violation of O.C.G.A. § 40-6-123 for movement of a vehicle into the dedicated turn lane without a signal because there existed a reasonable articulable suspicion for a brief investigatory stop of the vehicle based on the officer's observation that defendant was not wearing a seatbelt. The seatbelt violation alone authorized a stop of the vehicle. Wilson v. State, 318 Ga. App. 59, 733 S.E.2d 365 (2012).

Left turn signal was not necessary from a left-turn-only lane and, since the defendant made a U-turn from such position, an officer was not justified in making a stop based on the officer's conclusion that the defendant was intoxicated. State v. Goodman, 220 Ga. App. 169, 469 S.E.2d 327 (1996).

Driver who is turning as directed by a traffic control device is not relieved from complying with other rules of the road such as signaling or maintaining a diligent lookout. Richardson v. Chesky, 235 Ga. App. 28, 508 S.E.2d 441 (1998).

Negligence per se. — When the defendant came to a complete or almost complete stop in the road, allegedly without any brake, emergency, or signal lights, at a time and place where traffic was "bad," there was evidence that the defendant was negligent per se and partially at fault for the subsequent accident where a car following the defendant was hit by another car, and a directed verdict in favor of the defendant was reversed. Harrison v. Jenkins, 235 Ga. App. 665, 510 S.E.2d 345 (1998).

Use of signals as "do pass" signal is negligence per se. — It is negligence per se for the operator of a motor vehicle to use that operator's electrical directional signals to indicate it is safe for a following motorist to pass. Cunningham v. National Serv. Indus., Inc., 174 Ga. App. 832, 331 S.E.2d 899 (1985).

Evidence insufficient to support conviction of improper lane changing. — See Eisenberger v. State, 177 Ga. App. 673, 340 S.E.2d 232, cert. denied, 479 U.S. 818, 107 S. Ct. 77, 93 L. Ed. 2d 33 (1986).

Evidence insufficient to support stopping car for changing lanes. — When the nearest following car was ap-

Application (Cont'd)

proximately 100 yards away, and there was no evidence to suggest that the road or traffic conditions were such that it was unsafe for the defendants to have changed lanes without using a turn signal, there was no basis for stopping the car. Bowers v. State, 221 Ga. App. 886, 473 S.E.2d 201 (1996).

Evidence insufficient to support conviction. — Evidence was insufficient to sustain a conviction since there was no evidence that a turn signal was required to alert other drivers in the area to the defendant's turn. Moore v. State, 234 Ga. App. 332, 506 S.E.2d 685 (1998).

Evidence obtained from search after legal stop. — When any one of the traffic violations observed by a police officer would have provided probable cause to effectuate a traffic stop, the trial court's denial of a motion to suppress evidence found during a subsequent search of the defendant's person, based upon an allegedly improper traffic stop, was not clearly erroneous. Tukes v. State, 236 Ga. App. 77, 511 S.E.2d 534 (1999).

Defendant's Fourth Amendment rights were not violated because there was probable cause to stop a taxicab because a taxicab driver violated O.C.G.A. § 40-6-123 by an improper lane change and, even assuming that the defendant, as a passenger, had an expectation of privacy, the defendant was present when the driver consented and never expressed any disagreement to a search of the passenger compartment. United States v. Harris, 526 F.3d 1334 (11th Cir. 2008), cert. denied, 129 S. Ct. 569, 172 L.Ed.2d 433 (2008).

Evidence sufficient for injury by vehicle after violating statute. — With regard to a defendant's convictions for improper lane change, serious injury by vehicle while driving under the influence, and misdemeanor obstruction of an officer, there was sufficient evidence to support the convictions based on an officer's testimony that the defendant attempted to leave the scene several times and the evidence of the defendant's vehicle passenger suffering a severe injury to the left eye. It was unnecessary to show that the passenger's eye was permanently rendered useless. Wells v. State, 297 Ga. App. 153, 676 S.E.2d 821 (2009).

No evidence refuting officer's testimony. — When there was no evidence in the record refuting a police officer's testimony that the officer stopped the defendant because of a failure to signal a turn, the trial court's decision to deny a motion to suppress was supported by the record. Williams v. State, 236 Ga. App. 102, 511 S.E.2d 216 (1999).

Underlying offense for vehicular homicide. — Trial court's failure to merge the defendant's convictions for driving recklessly and committing second degree vehicular homicide in violation of O.C.G.A. §§ 40-6-390 and 40-6-393, respectively, was not error for sentencing purposes as the reckless driving offense was not the underlying offense of the homicide, but rather, improper lane change was, in violation of O.C.G.A. § 40-6-123(a); further, pursuant to O.C.G.A. § 16-1-6, there was no factual merger because the crimes were committed sequentially and separately. Cutter v. State, 275 Ga. App. 888, 622 S.E.2d 96 (2005).

Summary judgment improper on issue of negligence. — Trial court erred in granting a driver summary judgment in a children's wrongful death action because the evidence was sufficient to create a genuine issue of material fact on the questions of whether the driver acted negligently and whether the driver's negligence was a concurring proximate cause of the collision that resulted in the death of the children's father; a jury hearing the evidence could find that the driver failed to keep a proper lookout as the driver proceeded down the highway, made an unnecessarily sudden stop without warning as the driver approached the cross street, and was a concurring proximate cause of the collision that killed the father. Hayes v. Crawford, 317 Ga. App. 75, 730 S.E.2d 26 (2012).

Jury Instructions

Trial court erred in charging the jury under O.C.G.A. § 40-6-123(c) in an action arising out of a rear-end collision, since although there was evidence that

the driver slowed down when the driver approached an intersection, there was no evidence that the driver applied the driver's brakes, and there was no evidence as to whether the driver gave an appropriate signal by hand and arm or signal lamps. Wallace v. Ramey, 191 Ga. App. 293, 381 S.E.2d 434 (1989).

Instructions. — Reversal of the defendant's conviction for improper lane change was required since the trial court first instructed the jury by reading the language of the accusation charging the defendant with an improper lane change in violation of O.C.G.A. § 40-6-48, then later read subsection (b) of O.C.G.A. § 40-6-123 and told the jury that the defendant was charged with improper lane change in violation thereof. Threatt v. State, 240 Ga. App. 592, 524 S.E.2d 276 (1999).

When the defendant was charged with failing to maintain the defendant's lane in violation of O.C.G.A. § 40-6-48 and failing to use a turn signal in violation of O.C.G.A. § 40-6-123, the trial court properly instructed the jury as to the definition of the standard for strict liability offenses because the state was not required to prove mental fault or mens rea in those offenses; although O.C.G.A. § 40-6-10(b) required proof that the defendant knowingly operated the vehicle with no insurance, and O.C.G.A. § 40-6-270 required proof that the defendant knowingly failed to stop and comply with the statute's mandates, the trial court's charge on intent was found sufficient. Augustin v. State, 260 Ga. App. 631, 580 S.E.2d 640 (2003).

Because the accusation read to the jury charged an improper lane change, but the jury was twice instructed on the elements of failure to maintain a lane, these inconsistent instructions required reversal of the defendant's improper lane change conviction. Walker v. State, 280 Ga. App. 393, 634 S.E.2d 177 (2006).

Cited in Cason v. Columbus, 148 Ga. App. 208, 250 S.E.2d 836 (1978); Allen v. State, 150 Ga. App. 109, 257 S.E.2d 5 (1979); Mathews v. Taylor, 155 Ga. App. 2, 270 S.E.2d 247 (1980); Hill v. Yara Eng'g Co., 157 Ga. App. 281, 277 S.E.2d 256 (1981); Hunter v. Batton, 160 Ga. App. 849, 288 S.E.2d 244 (1982); Griffin v. Bremen Steel Co., 161 Ga. App. 768, 288 S.E.2d 874 (1982); Morris v. DeLong, 183 Ga. App. 124, 358 S.E.2d 285 (1987); Neiswonger v. Janics, 196 Ga. App. 607, 396 S.E.2d 553 (1990); Corbin v. State, 203 Ga. App. 297, 416 S.E.2d 848 (1992); State v. Jones, 214 Ga. App. 593, 448 S.E.2d 496 (1994); Daniels v. State, 222 Ga. App. 29, 473 S.E.2d 239 (1996); Parker v. State, 249 Ga. App. 530, 549 S.E.2d 154 (2001); Noble v. State, 283 Ga. App. 81, 640 S.E.2d 666 (2006); Cuaresma v. State, 292 Ga. App. 43, 663 S.E.2d 396 (2008); Ray v. State, 292 Ga. App. 575, 665 S.E.2d 345 (2008); Stinson v. State, 318 Ga. App. 351, 733 S.E.2d 390 (2012); Jenkins v. Gaither, No. 12-15631, 2013 U.S. App. LEXIS 20296 (11th Cir. Oct. 4, 2013), (Unpublished).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 244, 281.

C.J.S. — 60A C.J.S., Motor Vehicles, § 699 et seq.

ALR. — Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 24 A.L.R. 507; 47 A.L.R. 703; 62 A.L.R. 970; 104 A.L.R. 485.

Liability for accident arising from motorist's failure to give signal for right turn, 38 A.L.R.2d 143.

Liability for accident arising from failure of motorist to give signal for left turn at intersection as against motor vehicle proceeding in same direction, 39 A.L.R.2d 15.

Liability for accident arising from failure of motorist to give signal for left turn at intersection, as against oncoming or intersecting motor vehicle, 39 A.L.R.2d 65.

Liability for accident arising from failure of motorist to give signal for left turn between intersections, 39 A.L.R.2d 103.

Motor vehicle accidents involving right turns from lane other than right-hand lane, 7 A.L.R.3d 282.

Negligence or contributory negligence of motorist in failing to proceed in accordance with turn signal given, 84 A.L.R.4th 124.

40-6-124. Signals by hand and arm or signal lights.

(a) Any stop or turn signal when required in this chapter shall be given either by means of the hand and arm or by signal lights, except as otherwise provided in subsection (b) of this Code section.

(b) Any motor vehicle in use on a highway shall be equipped with, and a required signal shall be given by, signal lights when the distance from the center of the top of the steering post to the left outside limit of the body, cab, or load of such motor vehicle exceeds 24 inches or when the distance from the center of the top of the steering post to the rear limits of the body or load thereof exceeds 14 feet. The latter measurement shall apply to any single vehicle and also to any combination of vehicles. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 70; Code 1933, § 68A-605, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 5.)

Cross references. — Requirements regarding brake lights and turn signals generally, §§ 40-8-25, 40-8-26.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-303 are included in the annotations for this Code section.

No conflict between subsection (b) and § 40-8-26. — There is no conflict between O.C.G.A. § 40-8-26, which requires the maintenance in good order of signal devices on all motor vehicles, and subsection (b) of O.C.G.A. § 40-6-124, which excuses from that requirement vehicles of a certain size. Stubbs v. State, 193 Ga. App. 342, 387 S.E.2d 619 (1989).

Purpose of signals. — One purpose of giving a hand and arm signal upon stopping, starting, or turning an automobile is to command the attention of the drivers of other automobiles and to make the other drivers aware of the intentions of the driver signaling in order to avoid collisions. Pfeifer v. Yellow Cab Co., 88 Ga. App. 221, 76 S.E.2d 225 (1953) (decided under former Code 1933, § 68-303).

Bus driver not exempted. — Driver of a bus was not exempted from the duty of complying with the provisions of former Code 1933, § 68-303, requiring hand signals before starting, stopping, or turning. Folds v. Auto Mut. Indem. Co., 55 Ga. App. 198, 189 S.E. 711 (1937) (decided under former Code 1933, § 68-303).

Operator of a bus who intended to stop or make a turn to the left or right was not relieved from the statutory obligation to extend the driver's arm horizontally as a warning or signal that the driver so intends by the fact that the driver's vehicle was equipped with a red and yellow flag which the driver could cause to extend horizontally on the left side of the driver's bus when the driver intended to stop or to make a turn. Eidson v. Felder, 69 Ga. App. 225, 25 S.E.2d 41 (1943) (decided under former Code 1933, § 68-303).

Signal requirements (hand and arm) of former Code 1933, § 68-303 were not superseded by a mechanical attachment on the vehicle placed there for the purpose of signaling to other users of the highway the intention of the driver to stop the driver's vehicle or make a turn. Eidson v. Felder, 69 Ga. App. 225, 25 S.E.2d 41 (1943) (decided under former Code 1933, § 68-303).

Negligence per se. — Failure to comply with former Code 1933, § 68-303 was negligence per se. Folds v. Auto Mut.

Indem. Co., 55 Ga. App. 198, 189 S.E. 711 (1937) (decided under former Code 1933, § 68-303).

Legal meaning of left-turn signal is that the driver of the front vehicle is warning drivers of following vehicles, when the blinker light is in operation, that it is the driver's intention to turn to the driver's left. To recognize a custom that the signal for left turn from the lead vehicle means an invitation to the following vehicle to pass is to give such signal a meaning in direct conflict with the meaning assigned the signal by express statutory law. Arnold v. Chupp, 93 Ga. App. 583, 92 S.E.2d 239 (1956).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 201.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 697, 698, 702.

ALR. — Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 24 A.L.R. 507; 47 A.L.R. 703; 62 A.L.R. 970; 104 A.L.R. 485.

Liability for accident arising from motorist's failure to give signal for right turn, 38 A.L.R.2d 143.

Liability for accident arising from failure of motorist to give signal for left turn at intersection as against motor vehicle proceeding in same direction, 39 A.L.R.2d 15.

Liability for accident arising from failure of motorist to give signal for left turn at intersection, as against oncoming or intersecting motor vehicle, 39 A.L.R.2d 65.

Liability for accident arising from failure of motorist to give signal for left turn between intersections, 39 A.L.R.2d 103.

40-6-125. Method of giving hand and arm signals.

All signals required by this article when given by hand and arm shall be given from the left side of the vehicle in the following manner and shall indicate as follows:

(1) Left turn, hand and arm extended horizontally;

(2) Right turn, hand and arm extended upward;

(3) Stop or decrease speed, hand and arm extended downward. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 71; Code 1933, § 68A-606, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-303, are included in the annotations for this Code section.

Purpose of signals. — One purpose of giving a hand and arm signal upon stopping, starting, or turning an automobile is to command the attention of the drivers of other automobiles and to make the other drivers aware of the intentions of the driver signaling in order to avoid collisions. Pfeifer v. Yellow Cab Co., 88 Ga. App. 221, 76 S.E.2d 225 (1953) (decided under former Code 1933, § 68-303).

Bus driver not exempted. — Driver of a bus was not exempted from the duty of complying with the provisions of former Code 1933, § 68-303, requiring hand signals before starting, stopping, or turning. Folds v. Auto Mut. Indem. Co., 55 Ga. App. 198, 189 S.E. 711 (1937) (decided under former Code 1933, § 68-303).

Failure to comply with former Code 1933, § 68-303 was negligence per se. Folds v. Auto Mut. Indem. Co., 55 Ga. App.

198, 189 S.E. 711 (1937) (decided under former Code 1933, § 68-303).

RESEARCH REFERENCES

ALR. — Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 24 A.L.R. 507; 47 A.L.R. 703; 62 A.L.R. 970; 104 A.L.R. 485.

Sudden or unsignaled stop or slowing of motor vehicle as negligence, 29 A.L.R.2d 5.

Liability for accident arising from motorist's failure to give signal for right turn, 38 A.L.R.2d 143.

Liability for accident arising from failure of motorist to give signal for left turn at intersection as against motor vehicle proceeding in same direction, 39 A.L.R.2d 15.

Liability for accident arising from failure of motorist to give signal for left turn at intersection, as against oncoming or intersecting motor vehicle, 39 A.L.R.2d 65.

Liability for accident arising from failure of motorist to give signal for left turn between intersections, 39 A.L.R.2d 103.

40-6-126. Central lane for turning.

Whenever a highway or roadway has a central lane in which traffic may enter from either direction for the purposes of making a left turn, no vehicle shall be driven into such central lane except for the purpose of making a left turn, and no vehicle shall enter into such central lane at a location which is more than 300 feet from the location where the vehicle will turn left across one or more lanes of oncoming traffic. No vehicle which has been driven into such a central lane shall be operated in such central lane for more than 300 feet. (Code 1981, § 40-6-126, enacted by Ga. L. 1997, p. 866, § 1.)

Cross references. — Driving on roadways laned for traffic, § 40-6-48.

JUDICIAL DECISIONS

Cited in Driscoll v. Walters, 267 Ga. App. 688, 600 S.E.2d 744 (2004).

ARTICLE 7

NEGOTIATING RAILROAD CROSSINGS, ENTERING HIGHWAYS FROM PRIVATE DRIVEWAYS

Cross references. — Regulation of railroad grade crossings, § 32-6-190 et seq.

40-6-140. Approaching and travel over railroad grade crossing.

(a) As used in this Code section, the term "other on-track equipment" means any car, rolling stock, or other device that, alone or coupled to another device, is operated on stationary rails.

(b) Whenever any person driving a vehicle approaches a railroad grade crossing, such driver shall stop within 50 feet but not less than 15 feet from the nearest rail of such railroad and shall not proceed until he or she can do so safely, when:

(1) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a train;

(2) A crossing gate is lowered or a human flagman gives or continues to give a signal of the approach of the passage of a train or other on-track equipment; or

(3) An approaching train or other on-track equipment is plainly visible and is in hazardous proximity to such crossing.

(c) No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.

(d) If no electric or mechanical signal device is giving warning of the immediate approach of a train or other on-track equipment, no crossing gate or barrier is closed, there is no stop sign at the crossing, and there is no human flagman giving warning, all drivers shall slow to a reasonable and prudent speed and verify that there is no approaching train or other on-track equipment prior to proceeding. For the purposes of this subsection, "a reasonable and prudent speed" means a speed slow enough to enable the driver to safely stop the vehicle prior to reaching the nearest rail of such crossing.

(e) No person shall drive a vehicle over a railroad grade crossing when a train or other on-track equipment is approaching.

(f) No person shall drive a vehicle over a railroad grade crossing if there is insufficient space to drive completely through the crossing without stopping.

(g) No person shall drive a vehicle over a railroad grade crossing if there is insufficient undercarriage clearance for the vehicle to negotiate the crossing. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 83; Code 1933, § 68A-701, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 2003, p. 484, § 9; Ga. L. 2018, p. 354, § 1/SB 409.)

The 2018 amendment, effective July 1, 2018, inserted "or other on-track equipment" throughout; added subsection (a); redesignated former subsection (a) as present subsection (b) and inserted "or she" near the end of the introductory para-

graph; and redesignated former subsections (b) through (f) as present subsections (c) through (g), respectively.

JUDICIAL DECISIONS

Construction of provisions. — Provisions of O.C.G.A. § 40-6-140 must be construed with provisions of Ga. L. 1953, Nov.-Dec. Sess., p. 556 (see now O.C.G.A. § 40-6-141). Central of Ga. R.R. v. Sellers, 129 Ga. App. 811, 201 S.E.2d 485 (1973).

Vehicle operator generally under no duty to stop and listen. — Ga. L. 1953, Nov.-Dec. Sess., p. 556 certainly puts a duty on the operator of a motor vehicle to look, but it puts no duty on the operator to listen and no duty to stop, unless there is a signaling device or unless the train is "plainly visible." Atlantic Coast Line R.R. v. Hall Livestock Co., 116 Ga. App. 227, 156 S.E.2d 396 (1967).

Section's violation negligence per se. — Ga. L. 1953, Nov.-Dec. Sess., p. 556 makes failure to use one's sense of sight and to stop under given circumstances the equivalent of negligence as a matter of law. Atlantic Coast Line R.R. v. Hall Livestock Co., 116 Ga. App. 227, 156 S.E.2d 396 (1967).

As a jury could have determined that an employee for a tractor company was negligent per se pursuant to O.C.G.A. § 40-6-140(f) (now (g)) for driving a tractor-trailer over a railroad crossing, whereupon the tractor trailer got stuck due to insufficient undercarriage clearance, the jury's subrogation award to an insurer whose insured suffered damages from the incident was supported by the evidence as was the award of litigation expenses under O.C.G.A. § 13-6-11; accordingly, it was proper to deny a motion by the insurer for the tractor company, against which the judgment was entered, for judgment notwithstanding the verdict. Universal Underwriters Group v. Southern Guar. Ins. Co., 297 Ga. App. 587, 677 S.E.2d 760 (2009).

Instructions to jury. — Trial court did not err in refusing to charge the jury that O.C.G.A. § 40-6-140 "puts a duty on the operator of a motor vehicle to look, but it puts no duty on him to listen and no duty to stop unless there is a signaling device or unless the train is 'plainly visible'"; the requested charge, while appropriate in a civil action, was not adjusted to the facts of a criminal case. Decker v. State, 217 Ga. App. 803, 459 S.E.2d 586 (1995).

In a motorcycle-vehicle collision case, which occurred when a motorcycle crossed a railroad crossing and struck a car as the other driver was making a U-turn to avoid having to wait at the crossing for an oncoming train, the trial evidence supported the giving of jury charges on O.C.G.A. §§ 40-6-140 and 40-6-180 because these sections addressed approaching railroad crossings. Young v. Griffin, 329 Ga. App. 413, 765 S.E.2d 625 (2014).

Cited in Travelers Ins. Co. v. Gaither, 148 Ga. App. 251, 251 S.E.2d 66 (1978); Terry v. Liberty Mut. Ins. Co., 152 Ga. App. 583, 263 S.E.2d 475 (1979).

RESEARCH REFERENCES

C.J.S. — 74 C.J.S., Railroads, § 786 et seq.

ALR. — Traveler's ignorance of existence of railroad crossing as affecting liability for injury, 40 A.L.R. 1309.

Duty of automobilist to shut off motor at railroad crossing, 54 A.L.R. 542.

40-6-141. Erection and observance of stop signs at railroad grade crossings.

The Department of Transportation and local authorities with the approval of the department are authorized to designate particularly dangerous highway grade crossings of railroads and to erect stop signs thereat. When such stop signs are erected, the driver of any vehicle shall stop within 50 feet but not less than 15 feet from the nearest rail of such railroad and shall proceed only upon exercising due care. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 84; Ga. L. 1973, p. 947, § 2; Code 1933, § 68A-702, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1953, Nov.-Dec. Sess., pp. 556 and 594 are included in the annotations for this Code section.

Construction of provisions. — Provisions of Ga. L. 1953, Nov.-Dec. Sess., pp. 556 and 593 (see now O.C.G.A. § 40-6-141) must be construed with provisions of Ga. L. 1953, Nov.-Dec. Sess., pp. 556 and 594 (see now O.C.G.A. § 40-6-140). Central of Ga. R.R. v. Sellers, 129 Ga. App. 811, 201 S.E.2d 485 (1973) (decided under Ga. L. 1953, Nov.-Dec. Sess. pp. 556 and 594).

Cited in Georgia S. & Fla. Ry. v. Odom, 152 Ga. App. 664, 263 S.E.2d 469 (1979).

RESEARCH REFERENCES

ALR. — Failure to stop, look, and listen at railroad crossing as negligence per se, 1 A.L.R. 203; 2 A.L.R. 767; 41 A.L.R. 405.

Duty of automobilist to shut off motor at railroad crossing, 54 A.L.R. 54.

Negligence of driver of motor vehicle as respects manner of timely application of proper brakes, 72 A.L.R.2d 6.

40-6-142. Certain vehicles to stop at all railroad crossings.

(a) Except as provided in subsection (b) of this Code section, the driver of any motor vehicle carrying passengers for hire, any bus, whether or not operated for hire, or of any school bus, whether carrying any school children or empty, or of any vehicle carrying any hazardous material listed in Section 392.10 of Title 49 of the Code of Federal Regulations as those regulations currently exist or as they may in the future be amended or in regulations adopted by the commissioner of public safety, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within 50 feet but not less than 15 feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train and shall not proceed until he or she can do so safely. After stopping as required in this Code section and upon proceeding when it is safe to do so, the driver of any such

vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such crossing, and the driver shall not shift gears while crossing the track or tracks.

(b) No stop need be made at any such crossing where:

(1) Traffic is directed to proceed by a police officer, a firefighter, or a railroad flagman;

(2) A traffic-control signal directs traffic to proceed;

(3) The highway crosses an abandoned railroad track which is marked with a sign indicating its abandoned status, where such signs are erected by or under the direction of the local or state authority having jurisdiction over the highway; or

(4) The highway crosses an industrial siding or spur track marked "exempt," where such signs are erected by or under the direction of the local or state authority having jurisdiction over the highway. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 85; Code 1933, § 68A-703, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1991, p. 1004, § 1; Ga. L. 2003, p. 484, § 10; Ga. L. 2004, p. 631, § 40; Ga. L. 2005, p. 334, § 18-3/HB 501.)

Cross references. — Duty of carriers of passengers to exercise extraordinary diligence, § 46-9-132.

JUDICIAL DECISIONS

Ga. L. 1953, Nov.-Dec. Sess., p. 556 places an absolute duty on drivers to stop, listen, and look. The duration of the stopping, listening, and looking must be sufficient to assure a reasonably prudent person that no train is approaching that will endanger that person's proceeding across the tracks safely. Underwood v. Atlanta & W.P.R.R., 106 Ga. App. 467, 127 S.E.2d 318 (1962).

Railroads intended to benefit from section. — Railroad falls within that class for whose benefit Ga. L. 1953, Nov.-Dec. Sess., p. 556 was enacted. Atlanta & W.P.R.R. v. Underwood, 218 Ga. 193, 126 S.E.2d 785 (1962).

Negligence per se. — Violation of Ga. L. 1953, Nov.-Dec. Sess., p. 556 would be negligence per se. Underwood v. Atlanta & W.P.R.R., 106 Ga. App. 467, 127 S.E.2d 318 (1962).

RESEARCH REFERENCES

C.J.S. — 74 C.J.S., Railroads, § 786.

ALR. — Duty of automobilist to shut off motor at railroad crossing, 54 A.L.R. 542.

40-6-143. Moving heavy equipment at railroad grade crossings.

(a) No person shall operate or move a crawler-type tractor, steam shovel, derrick, roller, or any equipment or structure having a normal

operating speed of ten miles per hour or less or a vertical body or load clearance of less than one-half inch per foot of the distance between any two adjacent axles or in any event of less than nine inches, measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with this Code section.

(b) Notice of any such intended crossing shall be given to a station agency of such railroad and a reasonable time shall be given to such railroad to provide proper protection at such crossing.

(c) Before making any such crossing, the person operating or moving any such vehicle or equipment shall first stop it not less than 15 feet nor more than 50 feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train and shall not proceed until the crossing can be made safely.

(d) No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car. If a flagman is provided by the railroad, movement over the crossing shall be under his direction. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 86; Code 1933, § 68A-704, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

RESEARCH REFERENCES

ALR. — Duty of automobilist to shut off motor at railroad crossing, 54 A.L.R. 542.

40-6-144. Emerging from alley, driveway, or building; driving upon a sidewalk prohibited.

The driver of a vehicle emerging from an alley, building, private road, or driveway within a business or residential district shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across such alley, building entrance, road, or driveway or, in the event there is no sidewalk area, shall stop at the point nearest the street to be entered where the driver has a view of approaching traffic thereon. The driver of a vehicle shall yield the right of way to any pedestrian on a sidewalk. Except as provided by resolution or ordinance of a local government for sidewalks within the jurisdiction of such local government authorizing the operation of bicycles on sidewalks by persons 12 years of age or younger, no person shall drive any vehicle upon a sidewalk or sidewalk area except upon a permanent or duly authorized driveway. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 88; Code 1933, §§ 68A-509, 68A-705, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 2009, p. 65, § 7/SB 196.)

JUDICIAL DECISIONS

Cited in Hadden v. Owens, 154 Ga. App. 467, 268 S.E.2d 760 (1980); Money v. Daniel, 188 Ga. App. 215, 372 S.E.2d 305 (1988); Noellien v. State, 298 Ga. App. 47, 679 S.E.2d 75 (2009).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 304.

C.J.S. — 60A C.J.S., Motor Vehicles, § 822.

ARTICLE 8

SCHOOL BUSES

Cross references. — Accident insurance for children being transported by school bus, § 20-2-1090 et seq. Duty of drivers of school buses to stop at railroad crossings, § 40-6-142. Equipment of school buses, § 40-8-110 et seq.

Administrative rules and regulations. — Public School Bus Inspection, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Public Safety, Chapter 570-30.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 68A-706 and 68-1667 are included in the annotations for this article.

Waiver of equipment standards. — There was no authority which would allow a waiver of equipment standards enumerated in former Code 1933, §§ 68A-706 and 68-1667. 1977 Op. Att'y Gen. No. 77-43 (decided under former Code 1933, §§ 68A-706 and 68-1667).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 282.

Am. Jur. Proof of Facts. — Liability of School Bus Driver or School for Injury to Child Going to or from School Bus, 13 POF3d 475.

C.J.S. — 60A C.J.S., Motor Vehicles, § 719.

ALR. — Carrier's liability to person in street or highway for purpose of boarding its vehicle, 7 A.L.R.2d 549.

40-6-160. Speed limits when transporting children.

(a) Except as otherwise provided in subsection (b) of this Code section, it shall be unlawful to operate:

(1) A school bus transporting school children to and from school or to and from school activities at a speed greater than 40 miles per hour on a public road other than one which is a part of The Dwight D. Eisenhower System of Interstate and Defense Highways; or

(2) A school bus transporting school children to and from school or to and from school activities on a public road which is a part of The

Dwight D. Eisenhower System of Interstate and Defense Highways at a speed greater than 55 miles per hour.

(b) When a school bus is transporting school children to or from an event or school activity or an express bus transporting students from one school to another school and is not loading or unloading children during such transportation, the speed limit shall be 55 miles per hour on other public roads as well as on those public roads which are a part of The Dwight D. Eisenhower System of Interstate and Defense Highways. (Code 1933, § 68A-706, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1978, p. 2065, § 1; Ga. L. 1988, p. 540, § 1; Ga. L. 1989, p. 14, § 40; Ga. L. 1990, p. 8, § 40; Ga. L. 1990, p. 2048, § 5; Ga. L. 1992, p. 2785, § 23; Ga. L. 2000, p. 136, § 40.)

Cross references. — Code section not applicable to public transit systems transporting school children, § 40-8-114.

RESEARCH REFERENCES

ALR. — Liability of motorbus carrier or driver for death of, or injury to, discharged passenger struck by other vehicle, 16 A.L.R.5th 1.

40-6-161. Headlights to be lit when transporting children; communication equipment required.

(a) It shall be unlawful to operate any school bus which is transporting children unless the headlights on such school bus are illuminated.

(b) It shall be unlawful to operate any school bus which is transporting children unless the driver of the bus is equipped with one or more devices to allow live communication between the driver and school officials or public safety officials or both. Such communication may be provided by two-way radio, cellular telephone, or any other device which provides similar communications capability. (Ga. L. 1964, p. 338, § 1; Code 1933, § 68A-706, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 2000, p. 1629, § 1.)

Cross references. — Code section not applicable to public transit systems transporting school children, § 40-8-114.

40-6-162. Use of visual signals.

A school bus driver shall actuate the visual signals required by Code Sections 40-8-111 and 40-8-115 whenever, but only whenever, the school bus is stopped on the highway for the purpose of receiving or discharging school children. A school bus driver shall not actuate the visual signals:

(1) At intersections or other places where traffic is controlled by traffic-control signals or police officers; or

(2) In designated school bus loading areas where the bus is entirely off the roadway. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 89; Code 1933, § 68A-706, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 8, § 40; Ga. L. 1990, p. 2048, § 5.)

Cross references. — Code section not applicable to public transit systems transporting school children, § 40-8-114.

JUDICIAL DECISIONS

Intersection with stop sign. — School bus driver was authorized to actuate the flashers and stop arm of the bus at an intersection with a stop sign. Parker v. State, 228 Ga. App. 15, 491 S.E.2d 113 (1997).

40-6-163. Duty of driver of vehicle meeting or overtaking school bus; reporting of violations; civil monetary penalty for violations captured by school bus camera.

(a) Except as provided in subsection (b) of this Code section, the driver of a vehicle meeting or overtaking from either direction any school bus stopped on the highway shall stop before reaching such school bus when there are in operation on the school bus the visual signals as specified in Code Sections 40-8-111 and 40-8-115, and such driver shall not proceed until the school bus resumes motion or the visual signals are no longer actuated.

(b) The driver of a vehicle upon a highway with separate roadways or a divided highway, including, but not limited to, a highway divided by a turn lane, need not stop upon meeting or passing a school bus which is on a different roadway or on another half of a divided highway, or upon a controlled access highway when the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

(c) Every school bus driver who observes a violation of subsection (a) of this Code section is authorized and directed to record specifically the vehicle description, license number of the offending vehicle, and time and place of occurrence on forms furnished by the Department of Public Safety. Such report shall be submitted within 15 days of the occurrence of the violation to the local law enforcement agency which has law enforcement jurisdiction where the alleged offense occurred.

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

(A) "Agent" means a person or entity who is authorized by a law enforcement agency or governing body to administer the procedures contained herein and:

(i) Provides services to such law enforcement agency or governing body;

(ii) Operates, maintains, leases, or licenses a video recording device; or

(iii) Is authorized by such law enforcement agency or governing body to review and assemble the recorded images.

(B) "Owner" means the registrant of a motor vehicle, except that such term shall not include a motor vehicle rental company when a motor vehicle registered by such company is being operated by another person under a rental agreement with such company.

(C) "Recorded images" means images recorded by a video recording device mounted on a school bus with a clear view of vehicles passing the bus on either side and showing the date and time the recording was made and an electronic symbol showing the activation of amber lights, flashing red lights, stop arms, and brakes.

(D) "Video recording device" means a camera capable of recording digital images showing the date and time of the images so recorded.

(2) Subsection (a) of this Code section may be enforced by using recorded images as provided in this subsection.

(3) For the purpose of enforcement pursuant to this subsection:

(A) The owner of a motor vehicle shall be liable for a civil monetary penalty to the governing body of the law enforcement agency provided for in subparagraph (d)(3)(B) of this Code Section if such vehicle is found, as evidenced by recorded images, to have been operated in disregard or disobedience of subsection (a) of this Code section and such disregard or disobedience was not otherwise authorized by law. The amount of such civil monetary penalty shall be $250.00;

(B) The law enforcement agency authorized to enforce the provisions of this Code section shall send by first class mail addressed to the owner of the motor vehicle not later than ten days after obtaining the name and address of the owner of the motor vehicle:

(i) A citation for the alleged violation, which shall include the date and time of the violation, the location of the infraction, the amount of the civil monetary penalty imposed, and the date by which the civil monetary penalty shall be paid;

(ii) An image taken from the recorded image showing the vehicle involved in the infraction;

(iii) A copy of a certificate sworn to or affirmed by a certified peace officer employed by a law enforcement agency authorized

to enforce this Code section and stating that, based upon inspection of recorded images, the owner's motor vehicle was operated in disregard or disobedience of subsection (a) of this Code section and that such disregard or disobedience was not otherwise authorized by law;

(iv) A statement of the inference provided by subparagraph (D) of this paragraph and of the means specified therein by which such inference may be rebutted;

(v) Information advising the owner of the motor vehicle of the manner and time in which liability as alleged in the citation may be contested in court; and

(vi) A warning that failure to pay the civil monetary penalty or to contest liability in a timely manner shall waive any right to contest liability and result in a civil monetary penalty;

(C) Proof that a motor vehicle was operated in disregard or disobedience of subsection (a) of this Code section shall be evidenced by recorded images. A copy of a certificate sworn to or affirmed by a certified peace officer employed by a law enforcement agency and stating that, based upon inspection of recorded images, a motor vehicle was operated in disregard or disobedience of subsection (a) of this Code section and that such disregard or disobedience was not otherwise authorized by law shall be prima-facie evidence of the facts contained therein; and

(D) Liability under this subsection shall be determined based upon preponderance of the evidence. Prima-facie evidence that the vehicle described in the citation issued pursuant to this subsection was operated in violation of subsection (a) of this Code section, together with proof that the defendant was at the time of such violation the registered owner of the vehicle, shall permit the trier of fact in its discretion to infer that such owner of the vehicle was the driver of the vehicle at the time of the alleged violation. Such an inference may be rebutted if the owner of the vehicle:

(i) Testifies under oath in open court or submits to the court a sworn notarized statement that he or she was not the operator of the vehicle at the time of the alleged violation and identifies the name of the operator of the vehicle at the time of the alleged violation; or

(ii) Presents to the court a certified copy of a police report showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation.

(4) A violation for which a civil penalty is imposed pursuant to this subsection shall not be considered a moving traffic violation for the

purpose of points assessment under Code Section 40-5-57. Such violation shall be deemed noncriminal, and imposition of a civil penalty pursuant to this subsection shall not be deemed a conviction and shall not be made a part of the operating record of the person upon whom such liability is imposed, nor shall it be used for any insurance purposes in the provision of motor vehicle insurance coverage.

(5) If a person is mailed a citation by first class mail pursuant to subparagraph (B) of paragraph (3) of this subsection, such person may pay the penalty or request a court date. Any citation executed pursuant to this paragraph shall provide to the person issued the citation at least 30 business days from the mailing of the citation to inspect information collected by the video recording device in connection with the violation. If the person requesting a court date fails to appear on the date and time of such hearing or if a person has not paid the penalty for the violation or filed a police report or notarized statement pursuant to subparagraph (D) of paragraph (3) of this subsection, such person shall then be sent a second citation by first class mail. The second citation shall include all information required in subparagraph (B) of paragraph (3) of this subsection for the initial citation and shall include a hearing date and time. If a person fails to appear on the date and time of such hearing set out in the second citation or if the person has failed to pay the penalty or file an appropriate document for rebuttal, the person issued the second citation shall have waived the right to contest the violation and shall be liable for the civil monetary penalty provided in paragraph (3) of this subsection.

(6) Any court having jurisdiction over violations of subsection (a) of this Code section shall have jurisdiction over cases arising under this subsection. Any person receiving a notice pursuant to subparagraph (B) of this paragraph shall have the right to contest such liability for the civil monetary penalty in the magistrate court or other court of competent jurisdiction for a traffic violation. Except as otherwise provided in this subsection, the provisions of law governing jurisdiction, procedure, defenses, adjudication, appeal, and payment and distribution of penalties otherwise applicable to violations of subsection (a) of this Code section shall apply to enforcement under this subsection except as provided in subparagraph (A) of paragraph (3) of this subsection; provided, however, that any appeal from superior or state court shall be by application in the same manner as that provided by Code Section 5-6-35.

(7) If a violation has not been contested and the assessed penalty has not been paid, the agent or governing body shall send to the person who is the registered owner of the motor vehicle a final notice

of any unpaid civil monetary penalty authorized by this Code section, except in cases where there is an adjudication that no violation occurred or there is otherwise a lawful determination that no civil monetary penalty shall be imposed. The notice shall inform the registered owner that the agent or governing body shall send a referral to the Department of Revenue if the assessed penalty and any late fee is not paid within 30 days after the final notice was mailed and that such referral shall result in the nonrenewal of the registration of such motor vehicle and shall prohibit the title transfer of such motor vehicle within this state.

(8) The agent or governing body shall send a referral to the Department of Revenue not sooner than 30 days after the final notice required under paragraph (7) of this subsection was mailed if a violation of an ordinance or resolution adopted under this article has not been contested and the assessed penalty has not been paid. The referral to the Department of Revenue shall include the following:

(A) Any information known or available to the agent or governing body concerning the license plate number, year of registration, and the name of the owner of the motor vehicle;

(B) The date on which the violation occurred;

(C) The date when the notice required under this Code section was mailed; and

(D) The seal, logo, emblem, or electronic seal of the governing body.

(9) If the Department of Revenue receives a referral under paragraph (8) of this subsection, such referral shall be entered into the motor vehicle database within five days of receipt and the Department of Revenue shall refuse to renew the registration of such motor vehicle and shall prohibit the title transfer of such vehicle within this state unless and until the civil monetary penalty plus any late fee is paid to the governing body. The Department of Revenue shall mail a notice to the registered owner of such motor vehicle that informs such owner:

(A) That the registration of the vehicle involved in the violation will not be permitted to be renewed;

(B) That the title of the vehicle involved in the violation will not be permitted to be transferred in this state;

(C) That the aforementioned penalties are being imposed due to the failure to pay the civil monetary penalty plus any late fee for an ordinance violation adopted under the authority of this Code section; and

(D) Of the procedure that the person may follow to remove the penalties.

(10) The Department of Revenue shall remove the penalties on a vehicle if any person presents the Department of Revenue with adequate proof that the penalty and any late fee, if applicable, has been paid.

(11) Recorded images made for purposes of this subsection shall not be a public record for purposes of Article 4 of Chapter 18 of Title 50.

(12) A governing authority shall not impose a civil penalty under this subsection on the owner of a motor vehicle if the operator of the vehicle was arrested or issued a citation and notice to appear by a certified peace officer for the same violation.

(13) A local school system may enter into an intergovernmental agreement with a local governing authority to offset expenses regarding the implementation and ongoing operation of video recording devices serving the purpose of capturing recorded images of motor vehicles unlawfully passing a school bus.

(14) Any school bus driver operating a vehicle equipped with an activated video recording device shall be exempt from the recording provisions of subsection (c) of Code Section 40-6-163.

(15) The money collected and remitted to the governing body pursuant to subparagraph (d)(3)(B) of this Code section shall only be used by such governing body to fund local law enforcement or public safety initiatives. This paragraph shall not preclude the appropriation of a greater amount than collected and remitted under this subsection. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 89; Code 1933, § 68A-706, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1985, p. 1175, § 1; Ga. L. 1986, p. 819, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 2011, p. 257, § 1/SB 57; Ga. L. 2018, p. 1057, § 1/HB 978.)

The 2018 amendment, effective July 1, 2018, in the middle of subsection (b), inserted "or a divided highway, including, but not limited to, a highway divided by a turn lane,", inserted "or on another half of a divided highway", and substituted "controlled access" for "controlled-access"; and rewrote subsection (d).

Cross references. — Code section not applicable to public transit systems transporting school children, § 40-8-114.

JUDICIAL DECISIONS

Jury instruction. — After the plaintiff's vehicle was struck in the rear by the defendant's vehicle, the trial court did not err in refusing to charge on O.C.G.A. § 40-6-163(a) since no written request to charge this statute was submitted by the plaintiffs and the record reveals no evidence of an oral request. Gurly v. Hinson, 194 Ga. App. 673, 391 S.E.2d 483 (1990).

Cited in Parker v. State, 228 Ga. App.

15, 491 S.E.2d 113 (1997); Thomas v. State, 261 Ga. App. 493, 583 S.E.2d 207 (2003); Leachman v. State, 286 Ga. App. 708, 649 S.E.2d 886 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Determination of actual driver unnecessary. — O.C.G.A. § 40-6-163, effective July 1, 1985, does not require the Department of Public Safety to attempt to determine the actual driver of a vehicle owned by a governmental or business entity. 1985 Op. Att'y Gen. No. 85-56.

Notice to be given to registered owner. — If a vehicle has both a legal owner and a registered owner, the required notice should be sent to the registered owner. 1985 Op. Att'y Gen. No. 85-56.

Notice to prosecuting official upon second or subsequent warning letters. — Upon receipt of a report from a school bus driver that a person who has a previous warning letter regarding a violation of O.C.G.A. § 40-6-163 in the driver's driver record has again violated the provisions of that Code section, the Department of Public Safety should notify the prosecuting official responsible for prosecuting misdemeanors in the county in which the violation in the second report occurred. 1985 Op. Att'y Gen. No. 85-56.

Lanes separated by flush median. — On a highway where the traffic lanes are separated only by a flush median or a two-way left-turn lane so that the various parts of the highway are divided only by painted stripes, vehicles from either direction must stop for a stopped school bus displaying the bus' visual stop signals. 1989 Op. Att'y Gen. No. 89-20.

Highway separated by physical dividing median. — If a four-lane highway is separated by a grass strip or other physical dividing median, a driver approaching a school bus need not stop; however, if the four-lane highway is separated merely by a painted strip dividing the two directions, it would appear from the foregoing that a driver approaching the school bus would be required to stop. 1963-65 Op. Att'y Gen. p. 303.

RESEARCH REFERENCES

ALR. — Constitutionality, construction, and application, of statute prescribing special precautions in passing stopped automobile, 108 A.L.R. 987.

40-6-164. Duty of school bus driver stopping to allow children to disembark.

After stopping to allow children to disembark from the bus, it shall be unlawful for the driver of the school bus to proceed until all children who need to cross the roadway have done so safely. Any driver willfully violating this Code section shall be guilty of a misdemeanor. (Ga. L. 1976, p. 479, § 1; Ga. L. 1990, p. 8, § 40; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Cited in Georgia Farm Bureau Mut. Ins. Co. v. Greene, 174 Ga. App. 120, 329 S.E.2d 204 (1985).

40-6-165. Operation of school buses.

(a) Prior to moving a school bus from a stop at which passengers have been loaded or unloaded, the driver of the bus shall check all mirrors to ensure that it is safe to place the bus in motion.

(b) Prior to loading or unloading passengers from a school bus, the driver shall engage the parking brakes of the bus and shall not release such brakes until each passenger boarding the bus is on board and until each passenger disembarking from the bus is off the roadway and safely on the pedestrian areas of the roadway.

(c) Prior to loading or unloading passengers from a school bus, the driver shall display the stop arm on the bus and shall not retract the stop arm until each passenger boarding the bus is on board and until each passenger disembarking from the bus is off the roadway and safely on the pedestrian areas of the roadway.

(d) The driver of a school bus shall not use or operate a wireless telecommunications device, as such term is defined in Code Section 40-6-241, or two-way radio while loading or unloading passengers.

(e) The driver of a school bus shall not use or operate a wireless telecommunications device, as such term is defined in Code Section 40-6-241, while the bus is in motion, unless it is being used in a similar manner as a two-way radio to allow live communication between the driver and school officials or public safety officials.

(f) The driver of a school bus shall instruct all passengers exiting the bus of the proper procedures of crossing the roadway in front of the bus only.

(g) The driver of a school bus shall ensure that the red flasher lights on the bus remain illuminated and flashing until all passengers have boarded or have exited the bus and have safely crossed the roadway and are safely on the pedestrian areas of the roadway.

(h) The driver of a school bus shall extend the extension arm or gate on the front of the bus until all passengers have boarded or have exited the bus and have safely crossed the roadway and are safely on the pedestrian areas of the roadway. (Code 1981, § 40-6-165, enacted by Ga. L. 2004, p. 621, § 7; Ga. L. 2016, p. 380, § 1/HB 777; Ga. L. 2018, p. 127, § 3/HB 673.)

The 2016 amendment, effective July 1, 2016, added ", unless it is being used in a similar manner as a two-way radio to allow live communication between the driver and school officials or public safety officials and in accordance with the provisions of paragraph (2) of subsection (b) and of subsection (c) of Code Section 40-6-241.2" at the end of subsection (e).

The 2018 amendment, effective July 1, 2018, substituted "wireless telecommunications device, as such term is defined in Code Section 40-6-241," for "cellular telephone" in subsections (d) and (e); and

deleted "and in accordance with the provisions of paragraph (2) of subsection (b) and of subsection (c) of Code Section 40-6-241.2" following "safety officials" at the end of subsection (e).

Cross references. — Training of school bus drivers, § 20-2-1125.

Editor's notes. — Ga. L. 2004, p. 621, § 5, not codified by the General Assembly, provides: "This part [consisting of §§ 5-8 of the Act] shall be known and may be cited as 'Aleana's Law.'"

Ga. L. 2018, p. 127, § 1/HB 673, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Hands-Free Georgia Act.'"

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur 2d, Automobiles and Highway Traffic, § 309.

C.J.S. — 60A C.J.S., Motor Vehicles, § 870.

ARTICLE 9

SPEED RESTRICTIONS

JUDICIAL DECISIONS

Motorist may be tried and convicted in two counties for speeding. — When a motorist is charged with speeding and driving under the influence in two counties, the motorist may be tried and convicted in both counties for speeding, but a conviction for driving under the influence in one county will bar prosecution in the other as this charge arises out of the same conduct in both counties. State v. Willis, 149 Ga. App. 509, 254 S.E.2d 743 (1979).

Cited in Hardison v. Shepard, 246 Ga. 196, 269 S.E.2d 458 (1980); Reed v. Carolina Cas. Ins. Co., 327 Ga. App. 130, 755 S.E.2d 356 (2014); State v. Osterloh, 342 Ga. App. 668, 804 S.E.2d 696 (2017).

OPINIONS OF THE ATTORNEY GENERAL

Prosecuting legislators for speeding violations. — There is no constitutional immunity for members of the General Assembly from prosecution for speeding violations or other violations of the criminal law. 1985 Op. Att'y Gen. No. U85-50.

RESEARCH REFERENCES

ALR. — Applicability of motor vehicle regulations to public officials or employees, 19 A.L.R. 459; 23 A.L.R. 418.

Driving automobile at a speed which prevents stopping within length of vision as negligence, 44 A.L.R. 1403; 58 A.L.R. 1493; 87 A.L.R. 900; 97 A.L.R. 546.

Excessive speed of automobile as affecting question whether excavation or other defect in highway is the proximate cause of accident, 82 A.L.R. 294.

Inference or presumption that owner of motor vehicle was its driver at time of traffic, driving, or parking offense, 49 A.L.R.2d 456.

Meaning of "residence district," "business district," "school area," and the like, in statutes and ordinances regulating speed of motor vehicles, 50 A.L.R.2d 343.

Construction, application, and effect, in civil motor vehicle accident cases, of "slow speed" traffic statutes prohibiting driving at such a slow speed as to create danger, to impede normal traffic movement, or the like, 66 A.L.R.2d 1194.

Custom or practice of drivers of motor

vehicles as affecting question of negligence, 77 A.L.R.2d 1327.

Speed, alone or in connection with other circumstances, as gross negligence, wantonness, recklessness, or the like, under automobile guest statute, 6 A.L.R.3d 769.

Legal aspects of speed bumps, 60 A.L.R.4th 1249.

40-6-180. Basic rules.

No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard for the actual and potential hazards then existing. Consistently with the foregoing, every person shall drive at a reasonable and prudent speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching and traversing a hill crest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 48; Code 1933, § 68A-801, enacted by Ga. L. 1975, p. 1582, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Analysis

General Consideration
Procedure
Governed Area
Jury Issues and Instructions
Application

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 1770 and former Code 1933, § 68-301 are included in the annotations for this Code section.

Constitutionality. — While O.C.G.A. § 40-6-180 standing alone does not meet the constitutional certainty requirements of the due process clause, that statute furnishes sufficient criteria to meet constitutional criteria when read in conjunction with O.C.G.A. § 40-6-181. Bilbrey v. State, 254 Ga. 629, 331 S.E.2d 551 (1985).

Requirements for valid indictment, accusation, or citation. — For an indictment, accusation, or citation to meet due process standards in too-fast-for-conditions cases where the accused is traveling slower than the maximum limit in O.C.G.A. § 40-6-181, it must allege the speed of the vehicle and the hazard or condition which made that speed "greater than is reasonable and prudent under the conditions." Bilbrey v. State, 254 Ga. 629, 331 S.E.2d 551 (1985).

Negligence per se. — Violation of O.C.G.A. § 40-6-180 is negligence per se. Parr v. Pinson, 182 Ga. App. 707, 356 S.E.2d 740 (1987).

"Failure to keep vehicle under control." — Accusation charging the defendant with "failure to keep vehicle under control" would not put the defendant on notice to appear prepared to defend oneself as to the offense of driving "too fast for conditions." Cottongim v. City of East Point, 167 Ga. App. 21, 306 S.E.2d 30 (1983).

Since the year 1975, the offense of "failure to keep vehicle under control" has been nonexistent. Cottongim v. City of East Point, 167 Ga. App. 21, 306 S.E.2d 30 (1983).

"Actual and potential hazards then existing" under O.C.G.A. § 40-6-180 include pedestrians or other traffic in the roadway. Hamby v. State, 256 Ga. App.

General Consideration (Cont'd)

886, 570 S.E.2d 77 (2002).

Driver must reduce speed in approaching intersection. — Driver must reduce the speed of a driver's vehicle in approaching an intersection so as to bring the vehicle's immediate control within the driver's power and render the vehicle safe to go into the intersection at the reduced rate of speed. Smith v. Hardy, 144 Ga. App. 168, 240 S.E.2d 714 (1977).

Evidence showing that both a police officer and the defendant were forced to take evasive action to avoid a collision was sufficient to support the conclusion that the defendant was not operating the defendant's vehicle at a reasonable speed upon approaching an intersection. Bass v. State, 185 Ga. App. 666, 365 S.E.2d 509 (1988).

Cancellation not required for conviction for driving too fast. — Conviction for driving too fast for conditions is not a conviction which singularly, or in combination with any other offense or offenses, statutorily requires the cancellation, suspension, or revocation or authorizes a court or the department to impose suspension or revocation of a driver's license. Hardison v. Shepard, 246 Ga. 196, 269 S.E.2d 458 (1980).

Circumstantial evidence on speed. — Although evidence may be entirely circumstantial as to the rate of speed of an automobile, it may be sufficient to support a reasonable conclusion reached by the jury on the issue of negligence. Smith v. Hardy, 144 Ga. App. 168, 240 S.E.2d 714 (1977).

Evidence of the force of the impact of a collision, or as to the distance which the automobile that caused the injury traveled from the point of the collision until the vehicle stopped, may of itself, and in connection with other circumstances, be sufficient to warrant a finding of the jury of negligence as to speed. Smith v. Hardy, 144 Ga. App. 168, 240 S.E.2d 714 (1977).

Purpose of section. — Purpose of former Code 1910, § 1770(5) was to protect pedestrians and others lawfully on the highways of this state against the consequences of the negligent and improper operation of automobiles. Elsbery v. State, 12 Ga. App. 86, 76 S.E. 779 (1912) (decided under former Code 1910, § 1770(5)).

Section's general penal provision incapable of enforcement. — So much of former Code 1910, § 1770(5) as undertakes to make penal the operation of an automobile on one of the highways of this state at a rate of speed greater than was reasonable and proper, having regard to the traffic and use of the highway, or so as to endanger the life or limb of any person or the safety of any property, was too uncertain and indefinite in its terms to be capable of enforcement. Hayes v. State, 11 Ga. App. 371, 75 S.E. 523 (1912); Holland v. State, 11 Ga. App. 769, 76 S.E. 104 (1912); Carter v. State, 12 Ga. App. 430, 78 S.E. 205 (1913) (decided under former Code 1910, § 1770(5)).

Misdemeanor provision enforceable. — So much of former Code 1910, § 1770(5) as makes it a misdemeanor to operate an automobile at a rate of speed greater than six miles per hour upon approaching a crossing of intersecting highways was sufficiently definite and certain in the statute's terms to be capable of enforcement. Hayes v. State, 11 Ga. App. 371, 75 S.E. 523 (1912); Empire Life Ins. Co. v. Allen, 141 Ga. 413, 81 S.E. 120 (1914) (decided under former Code 1910, § 1770(5)).

Former Civil Code 1910, § 1770(5) was sound as a rule of civil conduct. Quarles v. Gem Plumbing Co., 18 Ga. App. 592, 90 S.E. 92 (1916) (decided under former Code 1910, § 1770(5)).

Violation of section negligence. — It is negligence to run the machine at a greater rate of speed than six miles per hour as provided in former Civil Code 1910, § 1770(5) and without giving the warning which the law requires. Fuller v. Inman, 10 Ga. App. 690, 74 S.E. 287 (1912) (decided under former Code 1910, § 1770(5)).

Section not different from ordinary care rule. — Indeed, in most respects, it is not greatly different from the rule of ordinary care which would apply in the absence of a statute. Strickland v. Whatley, 142 Ga. 802, 83 S.E. 856 (1914) (decided under former Code 1910, § 1770(5)).

Statutory duties are cumulative. — Statutory duties are cumulative, and do

not destroy the common-law duties of drivers of automobiles relative to persons and property using the highway. The duty at common law of a driver of an automobile, relative to persons and property on the highway, is to exercise ordinary care to avoid injuring them. What will amount to ordinary care will depend upon the circumstances of the case. Giles v. Voiles, 144 Ga. 853, 88 S.E. 207 (1916) (decided under former Code 1910, § 1770(5)).

Persons other than pedestrians protected. — Former Civil Code 1910, § 1770(5) was sufficiently clear and definite in the statute's terms as to persons and property protected, and did not provide that the only persons intended to be protected are pedestrians. Holland v. State, 11 Ga. App. 769, 76 S.E. 104 (1912) (decided under former Code 1910, § 1770(5)).

Section exhaustive in scope. — Former Code 1910, § 1770(3) should be exhaustive of entire subject of regulating speed of auto vehicles and automobiles, and should operate as a substitute for former Code 1910, § 1770(5). Hardy v. State, 25 Ga. App. 287, 103 S.E. 267 (1920) (decided under former Code 1910, § 1770(30)).

Former Code 1910, § 1770(30) was unconstitutional. Jones v. State, 151 Ga. 502, 107 S.E. 765 (1921) (decided under former Code 1910, § 1770(30)).

Intersecting streets. — Former Civil Code 1910, § 1770(51) did not apply to intersecting streets of a city, and any contrary ruling is overruled. Shannon v. Martin, 164 Ga. 872, 139 S.E. 671, 54 A.L.R. 1246 (1927) (decided under former Code 1910, § 1770(51)).

Section cumulative to common law. — Former Civil Code 1910, § 1770(51) imposed certain statutory duties upon drivers of automobiles with reference to persons and property using the highway. These are cumulative and do not destroy the common-law duties of drivers relative to such persons and property using the highway. At common law, the driver owes the duty to exercise ordinary care to avoid injury. Davies v. West Lumber Co., 32 Ga. App. 460, 123 S.E. 757 (1924) (decided under former Code 1910, § 1770(51)).

"Immediate control" construed. — "Immediate control" does not mean speed enabling an operator to bring a vehicle to a stop "within vision" of a railroad crossing or short curve, and this without reference as to whether the weather was clear or rainy. Central of Ga. Ry. v. Burton, 33 Ga. App. 199, 125 S.E. 868 (1924) (decided under former Code 1910, § 1770(51)).

Section furnishes rule of civil conduct. — Portion of former Code 1933, § 68-301 which provided that no person should operate a motor vehicle upon any public street or highway at a speed greater than was reasonable and safe, having regard to the conditions then existing, was too indefinite to be capable of enforcement, but not too indefinite to furnish a rule of civil conduct. Willis v. Jones, 89 Ga. App. 824, 81 S.E.2d 517 (1954) (decided under former Code 1933, § 68-301).

Whether driver grossly negligent determined by jury. — Former subsection (a) of former Code 1933, § 68-301, providing that no person should operate a motor vehicle upon any public street or highway at a speed greater than was reasonable and safe, having due regard to the conditions then existing, did not define any speed as being "greater than is reasonable and safe," and whether or not the driver was grossly negligent in operating the automobile at a dangerous rate of speed, under the conditions and circumstances alleged, was an issue of fact which should be determined by a jury. Carpenter v. Lyons, 78 Ga. App. 214, 50 S.E.2d 850 (1948) (decided under former Code 1933, § 68-301).

It was not error for a court to charge former Code 1933, § 68-301 as: there were allegations to the effect that under the circumstances a violation of applicable speed laws was gross negligence; it was not charged that a violation of the speed laws in itself was gross negligence when "gross negligence" was defined by the judge in the judge's charge to the jury; and it was made clear to the jury that recovery must be predicated on a finding of gross negligence on the part of the driver of the automobile. Kimberly v. Reed, 79 Ga. App. 137, 53 S.E.2d 208 (1949) (decided under former Code 1933, § 68-301).

Exercise of due care required. — All drivers of vehicles using the highways are

General Consideration (Cont'd)

held to the exercise of due care. Harper v. Plunkett, 122 Ga. App. 63, 176 S.E.2d 187 (1970) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Negligence per se. — While a violation of Ga. L. 1953, Nov.-Dec. Sess., p. 556 has been called negligence per se, before a negligent act can be found to be negligence per se, a finding of ordinary negligence must in reality first be made. Dowis v. McCurdy, 109 Ga. App. 488, 136 S.E.2d 389, cert. dismissed, 220 Ga. 415, 139 S.E.2d 294 (1964) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

To find violation is negligence per se, finding of common-law negligence must first be made. Palmer v. Stevens, 115 Ga. App. 398, 154 S.E.2d 803 (1967) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Violation by a driver of Ga. L. 1953, Nov.-Dec. Sess., p. 556 is negligence per se, and this is true whether the negligence charged is ordinary negligence or gross negligence. Wright v. Dilbeck, 122 Ga. App. 214, 176 S.E.2d 715 (1970); But see CSX Transp., Inc. v. Trism Specialized Carriers, Inc., 9 F. Supp. 2d 1374 (N.D. Ga. 1998), aff'd, 182 F.3d 788 (11th Cir. 1999) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

No absolute duty on driver to avoid a collision. — All the circumstances and conditions at the time and place, including the conduct of other drivers, must be taken into account. Flanigan v. Reville, 107 Ga. App. 382, 130 S.E.2d 258 (1963) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Neither Ga. L. 1953, Nov.-Dec. Sess., p. 556, nor any other provision of law, places an absolute duty on any driver to avoid a collision. Malcom v. Malcolm, 112 Ga. App. 151, 144 S.E.2d 188 (1965) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

No absolute duty is imposed by Ga. L. 1953, Nov.-Dec. Sess., p. 556 upon the driver of a following vehicle to avoid colliding with the automobile immediately ahead of that driver, by the control of speed or otherwise, but all the facts and circumstances are to be taken into consideration so it may be determined where the negligence lies. Harper v. Plunkett, 122 Ga. App. 63, 176 S.E.2d 187 (1970) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Legal position of leading vehicle. — Leading vehicle has no absolute legal position superior to that of vehicle following. Malcom v. Malcolm, 112 Ga. App. 151, 144 S.E.2d 188 (1965) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Speed to be controlled with regard to all highway conditions. — Ga. L. 1953, Nov.-Dec. Sess., p. 556 requires that a driver shall control the driver's speed with regard to all conditions of highway. Atlanta Metallic Casket Co. v. Hollingsworth, 104 Ga. App. 154, 121 S.E.2d 388 (1961) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Reduced speed required in approaching intersection. — Driver must reduce speed in approaching an intersection to bring the vehicle's immediate control within the driver's power and render the vehicle safe to go into the intersection at the reduced rate of speed. Wells v. Alderman, 117 Ga. App. 724, 162 S.E.2d 18 (1968) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Reasonable and prudent speed standard. — Gist of violation of Ga. L. 1953, Nov.-Dec. Sess., p. 556 is driving at speed greater than is reasonable and prudent under all the circumstances. Phillips v. Howard, 109 Ga. App. 404, 136 S.E.2d 473 (1964) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Informant's tip provided police with additional basis to observe and stop defendant. — Trial court did not err in denying the defendant's motion to suppress, despite a claim that an informant used to apprehend the defendant was not previously known to police and had never provided any information until helping in the prosecution of the defendant, because the informant's tip predicted some aspects of the defendant's future behavior and contained information not available to the general public that was corroborated by the observations of officers; moreover, the defendant's reckless driving and flight from a congested parking lot, which caused a short high-speed chase to ensue, and the fact that the police learned that

the defendant often carried a gun, provided the officers with an additional basis to stop the defendant and make an arrest. Patton v. State, 287 Ga. App. 18, 650 S.E.2d 733 (2007).

Cited in Gilbert v. Parks, 140 Ga. App. 550, 231 S.E.2d 391 (1976); Dozier v. Brackett, 148 Ga. App. 110, 251 S.E.2d 101 (1978); Dunn v. Dunn, 150 Ga. App. 592, 258 S.E.2d 274 (1979); Maddox v. Thomas, 151 Ga. App. 477, 260 S.E.2d 355 (1979); Reed v. Dixon, 153 Ga. App. 604, 266 S.E.2d 286 (1980); Exum v. Long, 157 Ga. App. 592, 278 S.E.2d 13 (1981); Avant Trucking Co. v. Stallion, 159 Ga. App. 198, 283 S.E.2d 7 (1981); Mercer v. Burnette, 662 F.2d 706 (11th Cir. 1981); Walker v. State, 163 Ga. App. 638, 295 S.E.2d 574 (1982); U-Haul Co. v. Ford, 171 Ga. App. 744, 320 S.E.2d 868 (1984); Harper v. Dooley, 221 Ga. App. 715, 472 S.E.2d 461 (1996); Worthy v. Kendall, 222 Ga. App. 324, 474 S.E.2d 627 (1996); Thomas v. CSX Transp., Inc., 233 Ga. App. 178, 503 S.E.2d 662 (1998); Stokes v. Cantrell, 238 Ga. App. 741, 520 S.E.2d 248 (1999); Moore v. Pitt-DesMoines, Inc., 245 Ga. App. 676, 538 S.E.2d 155 (2000); State v. Lockett, 259 Ga. App. 179, 576 S.E.2d 582 (2003); King v. State, 262 Ga. App. 37, 584 S.E.2d 652 (2003); Smith v. State, 270 Ga. App. 759, 608 S.E.2d 35 (2004); Purvis v. Steve, 284 Ga. App. 116, 643 S.E.2d 380 (2007); Heller v. City of Atlanta, 290 Ga. App. 345, 659 S.E.2d 617 (2008).

Procedure

Indictment based on section incapable of enforcement. — An indictment charging the defendant with a misdemeanor in driving and operating a truck on a public highway in such a manner as to endanger the lives and property of certain named persons due to the circumstances and conditions by driving the truck at excessive speed back and forth across the road was too indefinite in the indictment's terms to be capable of enforcement. Phillips v. State, 60 Ga. App. 622, 4 S.E.2d 698 (1939) (decided under former Code 1910, § 1770(30)).

General allegation of negligence good against demurrer. — An allegation that the defendant was negligent in operating an automobile at a rate of speed greater than was reasonable and safe in violation of former Code 1933, § 68-301 was good as against general demurrer. Eubanks v. Akridge, 91 Ga. App. 243, 85 S.E.2d 502 (1954) (decided under former Code 1933, § 68-301).

Venue. — In the absence of constitutional or statutory provisions to the contrary, a criminal offense under former Code 1933, § 68-301 must be prosecuted in the county or district in which the offense was committed, unless the venue was changed. Hall v. State, 73 Ga. App. 616, 37 S.E.2d 545 (1946) (decided under former Code 1933, § 68-301).

Nonresident not amenable to service. — Former state resident who is nonresident when service is attempted is not amenable to service. Parham v. Edwards, 346 F. Supp. 968 (S.D. Ga. 1972), aff'd, 470 F.2d 1000 (5th Cir. 1973) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Governed Area

Every public thoroughfare is a "highway." — Every thoroughfare which is used by the public and is common to all the public, and which the public has the right to use, is a "highway." Southern Ry. v. Combs, 124 Ga. 1004, 53 S.E. 508 (1906); Hines v. Wilson, 25 Ga. App. 63, 102 S.E. 646, cert. denied, 25 Ga. App. 840, (1920) (decided under former Code 1910, § 1770(5)).

"Crossing of intersecting highways" construed. — Street or highway extending to, but not beyond, another highway, crosses and intersects such highway within the meaning of former Code 1910, § 1770(5). Hayes v. State, 11 Ga. App. 371, 75 S.E. 523 (1912) (decided under former Code 1910, § 1770(5)).

"Crossing of intersecting highways" is an intersection or meeting of public thoroughfares as distinguished from private ways. Laing v. Perryman, 31 Ga. App. 239, 120 S.E. 646 (1923) (decided under former Code 1910, § 1770(5)).

"Descent" defined. — Construing the word "descent," as used in former Code 1910, § 1770(5), in the light of the statutory's context and the declared purpose of that section, it will be held to mean a declivity in the highway over which, from

Governed Area (Cont'd)

ordinary human experience and observation, it would be deemed more dangerous to operate an automobile at an excessive rate of speed than upon level ground. Elsbery v. State, 12 Ga. App. 86, 76 S.E. 779 (1912) (decided under former Code 1910, § 1770(5)).

Railroads. — Provisions of former Civil Code 1910, § 1770(51) applied to railroad crossings in a city. Atlanta & W.P.R.R. v. West, 38 Ga. App. 300, 143 S.E. 785 (1928) (decided under former Code 1910, § 1770(51)).

No exception for police on sharp curve speed limitations. — Speed limitation of motor vehicles approaching sharp curve contains no exception in favor of police officers. Hudson v. Carton, 37 Ga. App. 634, 141 S.E. 222 (1928) (decided under former Code 1910, § 1770(51)).

"Intersection" construed. — Term "intersection" is not limited to intersecting highways. Atlanta Metallic Casket Co. v. Hollingsworth, 104 Ga. App. 154, 121 S.E.2d 388 (1961) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Jury Issues and Instructions

Court need not charge jury with statute in its entirety. — Conviction for driving too fast for conditions need not be reversed because the trial court failed to charge the jury with O.C.G.A. § 40-6-180 in the statute's entirety, as the first sentence of the statute was a correct statement of the new law and did not exclude any elements of the offense charged. Davis v. State, 172 Ga. App. 710, 324 S.E.2d 559 (1984).

Jury charge not precluded by fact speed within posted limit. — Fact that a driver's rate of speed is within the posted speed limit at the scene of a collision does not preclude a jury charge on Ga. L. 1975, p. 582, § 1 (see now O.C.G.A. § 40-6-180). Cohran v. Douglasville Concrete Prods., Inc., 153 Ga. App. 8, 264 S.E.2d 507 (1980).

Even assuming that the defendant was traveling within the posted speed limit prior to and at the time of a collision, the propriety of the charge to the jury on traveling too fast for conditions is unaffected. Keenan v. State, 168 Ga. App. 51, 308 S.E.2d 26 (1983); Franklin v. Hennrich, 196 Ga. App. 372, 395 S.E.2d 859 (1990).

Jury instruction upheld. — In action for injuries sustained by plaintiff when the plaintiff was thrown from the defendant's truck's running board, where plaintiff had been standing at the defendant's request to keep the truck from toppling over as defendant drove the truck out of a ditch, since the direct and circumstantial evidence authorized the finding that the truck was being operated in the public road at the time the plaintiff contends the plaintiff was injured, an instruction with reference to the violations of the sections regulating the driving of automobiles on public roads was justified. Bramlett v. Hulsey, 98 Ga. App. 39, 104 S.E.2d 614 (1958).

Charge which states that no person shall drive a vehicle on a street or highway at a speed greater than is reasonable and prudent under the conditions, and having regard to the actual and potential hazards then existing; that in every event, speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highway in compliance with legal compliance and the duty of all persons to use due care is proper. Bowen v. State, 100 Ga. App. 487, 111 S.E.2d 651 (1959).

Court did charge that portion of Ga. L. 1957, Nov.-Dec. Sess., p. 556 as follows: "In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highway," which was proper, in that the petition charged negligence per se "in failing to slow speed of his vehicle to avoid colliding with petitioner." Collins v. Porterfield, 102 Ga. App. 294, 116 S.E.2d 105 (1960).

Trial court did not err in instructing the jury that Ga. L. 1975, p. 1582, § 1 (see now O.C.G.A. § 40-6-180) does not define precisely what constitutes driving at a prudent speed and merely furnishes a general rule of conduct. Forehand v. Pace, 146 Ga. App. 682, 247 S.E.2d 192 (1978).

Trial court properly charged the jury on the parties' duty under O.C.G.A.

§ 40-6-180 that every person was required to drive at a reasonable and prudent speed when approaching and crossing an intersection and, thus, the trial court did not err in not giving the charge on the same subject requested by the injured driver and spouse. Hefner v. Maiorana, 259 Ga. App. 176, 576 S.E.2d 580 (2003).

Jury instruction properly denied. — Trial court did not err in refusing to give a requested jury charge containing references to several situations or conditions the existence of which was not reasonably raised by the evidence, including a non-existing railroad crossing and speculative references to special pedestrian hazards. Campbell v. Cozad, 207 Ga. App. 175, 427 S.E.2d 515 (1993).

Trial court properly refused to give a requested charge which simply quoted O.C.G.A. § 40-6-180 and contained matters irrelevant to the evidence presented in the case. Shilliday v. Dunaway, 220 Ga. App. 406, 469 S.E.2d 485 (1996).

Duty of jury in case involving pedestrian collision. — It is for the jury to determine, from the evidence, in any case of a collision between an automobile and a pedestrian, whether it was the duty of the driver to have stopped the automobile, whether the driver endeavored to do so, and whether the failure to stop in the particular case was due to negligence. O'Dowd v. Newnham, 13 Ga. App. 220, 80 S.E. 36 (1913) (decided under former Code 1910, § 1770(5)).

Jury charge upheld. — Charge of the court, "if this chauffeur was driving the automobile, as it approached N. street, at a greater rate of speed than six miles an hour, that would, by virtue of the law itself, constitute negligence," is a correct statement of the law. Ware v. Lamar, 16 Ga. App. 560, 85 S.E. 824 (1915); Ware v. Lamar, 18 Ga. App. 673, 90 S.E. 364 (1916) (decided under former Code 1910, § 1770(5)).

For a proper charge under the evidence on the speed approaching a crossing, see Elberton & E.R.R. v. Thornton, 32 Ga. App. 259, 122 S.E. 795 (1924) (decided under former Code 1910, § 1770(5)).

Error to charge that ordinary care requires ability to stop instantly. — It would have been error under former Code 1910, § 1770(5) for the judge to say in the judge's charge that ordinary care in crossing a railroad should have included the additional element of ability to stop the automobile instantly. Davis v. Whitcomb, 30 Ga. App. 497, 118 S.E. 488 (1923); Elberton & E.R.R. v. Thornton, 32 Ga. App. 259, 122 S.E. 795 (1924) (decided under former Code 1910, § 1770(5)).

Jury instruction upheld. — Trial court did not err in instructing the jury that the law requires motor vehicles while in use upon the public streets to be equipped with efficient and serviceable brakes, and that the operation of the truck without that equipment along the public streets constituted negligence per se. Orange Crush Bottling Co. v. Smith, 35 Ga. App. 92, 132 S.E. 259 (1926) (decided under former Code 1910, § 1770(51)).

Charge to the effect that whenever the operator of any vehicle along a public highway shall meet a vehicle approaching from an opposite direction, the operator of the first vehicle shall turn to the right was held applicable to the conduct of the plaintiff. Hornbrook v. Reed, 35 Ga. App. 425, 133 S.E. 264 (1926) (decided under former Code 1910, § 1770(51)).

Whether driver grossly negligent determined by jury. — Former subsection (a) of former Code 1933, § 68-301, providing that no person should operate a motor vehicle upon any public street or highway at a speed greater than was reasonable and safe, having due regard to the conditions then existing, did not define any speed as being "greater than is reasonable and safe," and whether or not the driver was grossly negligent in operating the automobile at a dangerous rate of speed, under the conditions and circumstances alleged, was an issue of fact which should be determined by a jury. Carpenter v. Lyons, 78 Ga. App. 214, 50 S.E.2d 850 (1948) (decided under former Code 1933, § 68-301).

It was not error for a court to charge former Code 1933, § 68-301 as: there were allegations to the effect that under the circumstances a violation of applicable speed laws was gross negligence; it was not charged that a violation of the speed laws in itself was gross negligence when

Jury Issues and Instructions (Cont'd)

"gross negligence" was defined by the judge in the judge's charge to the jury and it was made clear to the jury that recovery must be predicated on a finding of gross negligence on the part of the driver of the automobile. Kimberly v. Reed, 79 Ga. App. 137, 53 S.E.2d 208 (1949) (decided under former Code 1933, § 68-301).

Determination of reasonable and prudent speed for jury. — It is jury question as to whether the defendant was driving at a reasonable and prudent speed at the time of a collision. Hill v. Rosser, 102 Ga. App. 776, 117 S.E.2d 889 (1960) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Determination of the reasonableness of speed is necessarily for the jury. Phillips v. Howard, 109 Ga. App. 404, 136 S.E.2d 473 (1964) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Jury question as to exercise of reasonable diligence. — Evidence was sufficient to present a jury question as to whether the defendant exercised reasonable diligence under the circumstances and did not demand a finding that the plaintiff was negligent in driving 40 miles per hour through the weather conditions that prevailed at the time of the collision. Ellison v. Robinson, 96 Ga. App. 882, 101 S.E.2d 902 (1958) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Consideration of conditions in each case by jury. — Jury should consider the conditions obtaining in each case in determining whether there should have been a further slowing on approaching an intersection to render the speed "appropriate." Traffic rules and traffic control must be sensible and realistic. Wells v. Alderman, 117 Ga. App. 724, 162 S.E.2d 18 (1968) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Application

Summary judgment appropriate. — When the plaintiff testified that the defendant was driving safely, had control over the vehicle both were riding in prior to the accident, admitted there was nothing defendant could have done to avoid an on-coming car other than to swerve off the road and hit a parked car from which the plaintiff received injuries, and answered in the negative when asked if the defendant had done anything wrong relative to the accident, summary judgment was appropriate. Hendrix v. Sexton, 223 Ga. App. 466, 477 S.E.2d 881 (1996).

Necessity for jury to specify offense serving as foundation for finding. — After the jury found the appellant guilty of three misdemeanors — driving too fast for conditions, improper driving, and driving under the influence of alcohol so as to make the driver a less safe driver — but the jury did not reveal which of the included offenses served as the jury's foundation for finding the defendant to have been a less safe driver, the defendant's convictions for both included offenses had to be stricken, and the defendant could not be sentenced for either of the included offenses. Howard v. State, 182 Ga. App. 403, 355 S.E.2d 772 (1987).

Sufficient evidence to show unsafe speed. — When the evidence was sufficient to authorize a finding that the defendant drove the defendant's parents' vehicle at a speed greater than was reasonable and prudent under conditions existing at the time of the collision, the trial court did not err in failing to grant a new trial on the plaintiff's claims against the defendants. Thompson v. Hardy Chevrolet-Pontiac-Buick, Inc., 203 Ga. App. 499, 417 S.E.2d 358 (1992).

Evidence was sufficient to convict the defendant of driving too fast for conditions pursuant to O.C.G.A. § 40-6-180 and vehicular homicide based on the violation since the defendant: (1) was speeding; (2) had 350 feet of sight distance in which to see the victim; and (3) did not brake, slow down, or sound the defendant's horn prior to striking the victim. Hamby v. State, 256 Ga. App. 886, 570 S.E.2d 77 (2002).

Evidence was sufficient to support the defendant's convictions for driving under the influence, vehicular homicide, reckless driving, unsafe speed, and other charges as the evidence showed that the defendant was caught trying to take merchandise from a store, and then struck and killed the victim with the defendant's van as the defendant left the store parking lot and turned on to a highway at a time when the

defendant admittedly was under the influence of drugs. Cromartie v. State, 275 Ga. App. 209, 620 S.E.2d 413 (2005).

Recovery for negligent train operation. — It was not the legislative scheme that the operator of a machine owed a statutory duty to the railroad company to keep the machine under control and not to cause the machine to run more than six miles an hour so as to prevent running into a hole or down a declivity, if the company should negligently leave one on the company's right of way, but not immediately on the crossing of the tracks, by failing to comply with the company's statutory duty as to keeping the public road crossing in repair. Western & A.R.R. v. Smith, 145 Ga. 276, 88 S.E. 983 (1916) (decided under former Code 1910, § 1770(5)).

That an automobile approaches a railroad at an unlawful rate of speed will not necessarily preclude recovery for negligent operation of a train. Payne v. Wells, 28 Ga. App. 29, 109 S.E. 926 (1921) (decided under former Code 1910, § 1770(5)).

Extension of criminal activity into adjoining county. — When a driver voluntarily and criminally begins operating the driver's automobile in excess of the speed limit and voluntarily, continuously, and uninterruptedly extends the driver's criminal act into an adjoining county, the driver violates former Code 1933, § 68-301 in each county. A conviction for violating that section in one county, under such circumstances, will be no bar to a prosecution in the adjoining county. Hall v. State, 73 Ga. App. 616, 37 S.E.2d 545 (1946) (decided under former Code 1933, § 68-301).

If way ahead not clear to pass, driver authorized to reduce speed. — When the facts alleged showed that both a truck and a car were approaching the crest of a hill, where the way ahead was not clear for the truck to pass the car, the circumstances authorized the driver of the car to reduce the car's speed in some degree at the time and place. Young v. Truitt, 93 Ga. App. 143, 91 S.E.2d 115 (1955).

Speed allowing stopping within headlight range often required. — Under Ga. L. 1953, Nov.-Dec. Sess., p. 556 which requires a reasonable and prudent speed under existing conditions and hazards, a speed which allows stopping within the range of headlights will often be required, but not always, e.g., a well-lighted, limited access highway in clear weather and light traffic. Ruffin v. Bristol, 125 Ga. App. 367, 187 S.E.2d 577 (1972).

Inability to see over hill. — Fact that the defendant was traveling an upgrade and would not have been able to see the plaintiff until the defendant reached the crossing did not relieve the defendant of the duty to keep the defendant's vehicle under proper control at all times. Broadnax v. Nunn, 97 Ga. App. 864, 104 S.E.2d 553 (1958).

When municipal ordinance establishing maximum speed limit becomes effective. — Clear import of the language of Ga. L. 1957, Nov.-Dec. Sess., p. 556 is that a municipal ordinance seeking to establish a maximum speed limit different from the maximum state speed limits permitted is effective to accomplish that purpose only when it is implemented by the placement of appropriate signs publishing the limit. Palmer v. Stevens, 115 Ga. App. 398, 154 S.E.2d 803 (1967).

OPINIONS OF THE ATTORNEY GENERAL

Official signs afford same protection as official devices. — Official traffic control signs, such as "Men Working," "Watch for Mowers," and "Survey Party," afford the same legal protection that is afforded by other official traffic control devices. 1970 Op. Att'y Gen. No. 70-55.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 274.

C.J.S. — 60A C.J.S., Motor Vehicles, § 671 et seq.

ALR. — Excuse for exceeding speed limit for automobiles, 29 A.L.R. 883.

Right of way at street or highway intersections, 37 A.L.R. 493; 47 A.L.R. 595.

Driving automobile at speed which prevents stopping within range of vision as negligence, 97 A.L.R. 546.

Liability of state, municipality, or public agency for vehicle accident occurring because of accumulation of water on street or highway, 61 A.L.R.2d 425.

Necessity and propriety of instruction as to prima facie speed limit, 87 A.L.R.2d 539.

Indefiniteness of automobile speed regulations as affecting validity, 6 A.L.R.3d 1326.

Opinion testimony as to speed of motor vehicle based on skid marks and other facts, 29 A.L.R.3d 248.

Automobiles: sudden emergency as exception to rule requiring motorist to maintain ability to stop within assured clear distance ahead, 75 A.L.R.3d 327.

Motor vehicle operator's liability for accident occurring while driving with vision obscured by smoke or steam, 32 A.L.R.4th 933.

Criminal liability for street racing (drag racing), 89 A.L.R.6th 565.

40-6-181. Maximum limits.

(a) The limits specified in this Code section or established as authorized in this article shall be the maximum lawful vehicle speeds, except when a special hazard exists that requires a lower speed for compliance with Code Section 40-6-180.

(b) Consistent with the provision of engineering and traffic investigations regarding maximum speed limits as provided in Code Section 40-6-182, no person shall drive a vehicle at a speed in excess of the following maximum limits:

(1) Thirty miles per hour in any urban or residential district;

(1.1) Thirty-five miles per hour on an unpaved county road unless designated otherwise by appropriate signs;

(2) Seventy miles per hour on a highway on the federal interstate system and on physically divided highways with full control of access which are outside of an urbanized area of 50,000 population or more, provided that such speed limit is designated by appropriate signs;

(3) Seventy miles per hour on a highway on the federal interstate system which is inside of an urbanized area of 50,000 population or more, provided that such speed limit is designated by appropriate signs;

(4) Sixty-five miles per hour on those sections of physically divided highways without full access control on the state highway system, provided that such speed limit is designated by appropriate signs; and

(5) Fifty-five miles per hour in other locations.

(c) The maximum speed limits set forth in this Code section may be altered as authorized in Code Sections 40-6-182, 40-6-183, and

40-6-188. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 48; Ga. L. 1963, p. 26, § 1; Ga. L. 1974, p. 11, § 1; Code 1933, § 68A-802, enacted by Ga. L. 1975, p. 1582, § 1; Ga. L. 1982, p. 1290, §§ 1, 2; Ga. L. 1983, p. 3, § 29; Ga. L. 1984, p. 22, § 40; Ga. L. 1988, p. 30, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1995, p. 759, § 1.1; Ga. L. 1996, p. 469, § 1.1; Ga. L. 2014, p. 851, § 8/HB 774.)

Cross references. — Speed limits in parks, historic sites, or recreational areas, § 12-3-10.

Editor's notes. — Ga. L. 1996, p. 469, § 4, not codified by the General Assembly, provides: "This Act shall become effective July 1, 1996, and shall apply with respect to offenses committed on or after that date. The provisions of this Act shall not apply to or affect offenses committed prior to that effective date."

Law reviews. — For survey article on local government law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 353 (2003).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-301 are included in the annotations for this Code section.

Constitutionality. — Enumeration of error charging that O.C.G.A. § 40-6-181 is unconstitutional was without merit. Getz v. State, 251 Ga. 462, 306 S.E.2d 918 (1983).

Statute authorizes quasi-legislative activity. — O.C.G.A. §§ 40-6-181 and 40-6-182 are laws which plainly authorize the Georgia Department of Transportation to exercise the quasi-legislative function of adopting rules (i.e., establishing speed limits on state highways) which carry the maximum speed limit law into effect and provide detail for it. In other words, the Department's administrative actions of determining and establishing the appropriate speed limit for a particular roadway based on various conditions is analogous to the legislative act of making law. DOT v. Watts, 260 Ga. App. 905, 581 S.E.2d 410 (2003).

Instruction containing incorrect speed limit not reversible error. — When the actual speed limit in the area of the accident was 55 miles per hour, the court's reference to a 35-mile-per-hour speed limit in the court's instruction to the jury, although inappropriate, did not constitute a reversible error. Reliance Ins. Co. v. Bridges, 168 Ga. App. 874, 311 S.E.2d 193 (1983).

No fatal variance when the speed alleged in the accusation was not a material allegation. — When the accusation alleged 100 mph and the evidence showed only 95 mph, no fatal variance occurred because: (1) to have been guilty of speeding, one need have only exceeded the designated speed limit under O.C.G.A. § 40-6-181(b); and (2) greater speeds by specified increment affected only the punishment and were therefore not material allegations to prove the crime of speeding. Jones v. State, 258 Ga. App. 337, 574 S.E.2d 398 (2002).

With regard to the defendant's trial and conviction for speeding, the trial court properly denied the defendant's motion for a directed verdict, which was based on the assertion that the state's evidence only showed that the defendant was driving 80 miles per hour in a 65 mile per hour zone and, therefore, the state failed to prove that the defendant was driving 16-20 miles per hour over the posted speed limit as there was no fatal variance between the indictment and the evidence at trial since actual speed was not a material averment of the indictment that had to be proven and it was within the jury's province to resolve the conflicting evidence against the defendant. Porter v. State, 290 Ga. App. 113, 658 S.E.2d 893 (2008).

Incremental speed not material to accusation. — Accusation specified that the defendant was charged with exceeding the speed limit on a certain road on a

certain day, which was sufficient to put the defendant on notice that the defendant was being tried for speeding, O.C.G.A. § 40-6-181(b); greater speeds by specified increments affected only the punishment and were therefore not material allegations to prove the crime of speeding so that the allegation that the defendant was traveling 127 mph was not a material averment that had to be proven. Nye v. State, 279 Ga. App. 347, 631 S.E.2d 386 (2006).

Count mistakenly naming officer as perpetrator. — Defendant could not be convicted under an accusation charging speeding since the accusation mistakenly named the prosecuting law enforcement officer as the perpetrator of the offense, even though the error was the result of inadvertence or carelessness, and the trial court abused the court's discretion in refusing to grant a mistrial as to the defective count in the accusation. Noeske v. State, 181 Ga. App. 778, 353 S.E.2d 635 (1987).

Admissibility of evidence gained through use of speed detection device. — State is required to present the necessary foundation, including proof of the visibility of the police vehicle as required by O.C.G.A. § 40-14-7, before evidence of speed gained through the use of a speed detection device is admissible. Johnson v. State, 189 Ga. App. 192, 375 S.E.2d 290 (1988), overruled on other grounds, Carver v. State, 208 Ga. App. 405, 430 S.E.2d 790 (1993).

State trooper's estimate that the defendant was driving 90 miles per hour in a zone designated for traveling no greater than 55 miles per hour was sufficient to support the defendant's conviction for speeding. Jackson v. State, 257 Ga. App. 715, 572 S.E.2d 60 (2002).

In a speeding and eluding prosecution, though an officer might not have advised the defendant of the defendant's right under O.C.G.A. § 40-14-5(b) to test a radar device for accuracy, any error in admitting the radar evidence was harmless since the defendant admitted speeding and the passenger said the car was traveling about 75 to 80 miles per hour (mph), which exceeded the 65 mph speed limit. Segel v. State, 293 Ga. App. 506, 667 S.E.2d 670 (2008).

Use of speed detection device without permit. — Although an officer used a speed detection device without a permit, the trial court's determination of guilt was not invalid because the state made the state clear that it was not depending on the radar confirmation of the speed to convict defendant. Stone v. State, 257 Ga. App. 492, 571 S.E.2d 488 (2002).

Sentence not excessive. — Sentence of 12 months probation, a $75 fine for speeding, and a concurrent 12 months probation for failure to dim headlights was within statutory limits, and was particularly merited in the case of defendant who had two prior DUI arrests and who, while acquitted of DUI in the instant case, had a blood alcohol level of .096 to .099 at the time of the defendant's arrest. Pitts v. State, 231 Ga. App. 9, 498 S.E.2d 534 (1998).

Trial court did not err in sentencing the defendant to a $1,000 fine for speeding in violation of O.C.G.A. § 40-6-181(b)(2) because the defendant did not object to the state's failure to admit certified copies of the defendant's prior convictions, nor did the defendant dispute that the defendant had multiple convictions for traffic violations; when the trial court asked the defendant whether any of the defendant's previous violations occurred while the defendant was operating a motorcycle, the defendant implicitly admitted at least one prior conviction for speeding. Jones v. State, 308 Ga. App. 99, 706 S.E.2d 593 (2011).

Defendant's sentence to serve 12 months for speeding in violation of O.C.G.A. § 40-6-181(b)(2) was within authorized limits; O.C.G.A. § 40-6-1(b) simply sets limits on fines that can be imposed as punishment for a first offense of speeding and the statute does not restrict the available punishment for speeding to a fine. Jones v. State, 308 Ga. App. 99, 706 S.E.2d 593 (2011).

Uniform traffic citation accused the defendant of a general speeding charge, rather than of speeding at 96 mph in a 55 mph zone and therefore, the trial court properly found the defendant guilty of speeding at 88 mph in a 55 mph zone. Wise v. State, 234 Ga. App. 140, 506 S.E.2d 156 (1998).

Defendant's argument that the state was required to prove the defendant was going 100 mph since that radar-gun speed was set forth in the uniform traffic citation (UTC) failed and the defendant's conviction for speeding under O.C.G.A. § 40-6-181 was affirmed because: (1) the UTC references to defendant's speed were not allegations but were notices of the evidence against the defendant; (2) even if the references to speed were allegations, the UTC specifically set forth the police officer's visual estimate of over 95 mph, and thus the defendant could not have complained that the evidence varied from that allegation; and (3) even if the radar-gun 100-mph allegation were the only allegation of speed, it would not have been a material allegation, and thus no fatal variance would have occurred. Jones v. State, 258 Ga. App. 337, 574 S.E.2d 398 (2002).

Evidence sufficient for conviction. — Evidence that a police officer observed the defendant driving above the speed limit, which the officer confirmed through use of the officer's radar and speedometer, was sufficient to support the defendant's conviction for speeding. Stearnes v. State, 261 Ga. App. 522, 583 S.E.2d 195 (2003).

Although the state failed to provide a proper foundation for the introduction of laser detection evidence, other evidence at trial was sufficient to sustain the defendant's conviction for speeding because the police officer who observed the defendant's vehicle testified that the vehicle was traveling at an "obvious high rate of speed" and faster than the speed limit. In the Interest of J.D.S., 273 Ga. App. 576, 615 S.E.2d 627 (2005).

Defendant's conviction for speeding was supported by sufficient evidence including the arresting officer's testimony that the speed limit at the scene was 35 mph, greater than the statutory maximum. Frasard v. State, 322 Ga. App. 468, 745 S.E.2d 716 (2013).

Evidence was sufficient to convict the defendant of driving under the influence of alcohol to the extent that the defendant was a less safe driver, speeding, failure to maintain lane, and driving while possessing an open container of an alcoholic beverage when the evidence showed that a sergeant pulled over the defendant's car for speeding and failing to maintain the defendant's lane, another officer observed six out of six clues of impairment in the officer's horizontal gaze nystagmus evaluation of the defendant and smelled the odor of an alcoholic beverage coming from the defendant's mouth, and, after the defendant's arrest, the sergeant searched the defendant's car and found a glass filled with ice and a dark liquid that smelled like an alcoholic beverage. Monroe v. State, 340 Ga. App. 373, 797 S.E.2d 245 (2017).

Recovery predicated on finding of gross negligence. — It was not error for a court to charge former Code 1933, § 68-301 as there were allegations to the effect that under the circumstances a violation of applicable speed laws was gross negligence; it was not charged that a violation of the speed laws in itself was gross negligence, when "gross negligence" was defined by the judge in the judge's charge to the jury; and it was made clear to the jury that recovery must be predicated on a finding of gross negligence on the part of the driver of the automobile. Kimberly v. Reed, 79 Ga. App. 137, 53 S.E.2d 208 (1949) (decided under former Code 1933, § 68-301).

Venue. — In the absence of constitutional or statutory provisions to the contrary, a criminal offense under former Code 1933, § 68-301 must be prosecuted in the county or district in which the offense was committed, unless the venue was changed. Hall v. State, 73 Ga. App. 616, 37 S.E.2d 545 (1946) (decided under former Code 1933, § 68-301).

Extension of criminal activity into adjoining county. — When a driver voluntarily and criminally began operating a driver's automobile in excess of the speed limit and voluntarily, continuously, and uninterruptedly extended the driver's criminal act into an adjoining county, the driver violated former Code 1933, § 68-301 in each county. A conviction for violating that section in one county under such circumstances would be no bar to a prosecution in the adjoining county. Hall v. State, 73 Ga. App. 616, 37 S.E.2d 545 (1946) (decided under former Code 1933, § 68-301).

Factors in determining whether limit reduced. — Whether the speed limit has been reduced depends upon whether action has been taken by a governing authority and proper notice posted on the highway. Harper v. Brown, 122 Ga. App. 316, 176 S.E.2d 621 (1970).

Reduction of speed required by existing hazards. — If the actual and potential hazards existing at any particular place on a highway require a speed of less than 60 (now 55) miles per hour, then the operator should reduce the speed of the operator's automobile at that place to whatever is reasonable and prudent under the conditions. Thomas v. Barnett, 107 Ga. App. 717, 131 S.E.2d 818 (1963).

Negligence per se. — While a violation of Ga. L. 1953, Nov.-Dec. Sess., p. 556 has been called negligence per se, it cannot be denied or refuted that to find it to be negligence per se, a finding of common-law negligence must first be made. When the plaintiff simply charged the defendant, not with driving over 35 miles per hour, but with driving too fast for the conditions existing at the time and place involved, this is not negligence per se. Grayson v. Yarbrough, 103 Ga. App. 243, 119 S.E.2d 41 (1961).

Speeding merged into reckless driving. — Defendant's conviction and sentence for speeding was vacated because the offense of speeding should have been merged into the offense of reckless driving; the defendant should have been convicted and sentenced only for reckless driving. Travis v. State, 314 Ga. App. 280, 724 S.E.2d 15 (2012).

Charging whole of section surplusage, but not error. — Court's charge in a personal injury action of substantially the whole of Ga. L. 1953, Nov.-Dec. Sess., p. 556, which included the statement that speed in a business or residential district is 35 (now 30) miles per hour, was surplusage, but it was not error for the reason that nothing in the charge intimated to the jury that the defendant would have been guilty of negligence in exceeding a 35-mile-per-hour (now 30-mile-per-hour) rather than a 60-mile-per-hour (now 55-mile-per-hour) maximum. Collins v. Porterfield, 102 Ga. App. 294, 116 S.E.2d 105 (1960).

Jury question alleged as to whether cause of collision was excessive speed. — When plaintiff driver, before entering the inner traffic lane, signaled the plaintiff's intention to do so, and the defendant driver was guilty of negligence per se in that defendant was operating a truck in excess of 55 miles per hour in violation of Ga. L. 1953, Nov.-Dec. Sess., p. 556, a jury question is alleged as to whether the proximate cause of the collision was negligence on the part of the defendant driver due to the defendant's excessive speed and failure to slow the defendant's vehicle down so as to avoid colliding with the plaintiff's automobile after an emergency in the road ahead forced the plaintiff driver to turn into the inner traffic lane. Hargrove v. Tanner, 98 Ga. App. 16, 104 S.E.2d 665 (1958).

Trial court did not commit reversible error in failing to give, sua sponte, a jury charge on justification, because there was no evidence to support such a charge; contrary to the defendant's assertions in the defendant's brief, at no time did the defendant testify that the defendant accelerated to 103 mph because the defendant had no safer option. Jones v. State, 315 Ga. App. 688, 727 S.E.2d 512 (2012).

Jury charge not misleading. — With regard to the defendant's trial and conviction for speeding, the portion of the jury charge that prohibited speeding in an urbanized area over a certain population amount was held to be mere surplusage and did not mislead the jurors. Porter v. State, 290 Ga. App. 113, 658 S.E.2d 893 (2008).

Cited in Gray v. State, 156 Ga. App. 117, 274 S.E.2d 115 (1980); Bilbrey v. State, 254 Ga. 629, 331 S.E.2d 551 (1985); Blackwell v. State, 180 Ga. App. 253, 349 S.E.2d 13 (1986); Laymac v. State, 181 Ga. App. 737, 353 S.E.2d 559 (1987); Cabral v. White, 181 Ga. App. 816, 354 S.E.2d 162 (1987); Coop v. State, 186 Ga. App. 578, 367 S.E.2d 836 (1988); Carver v. State, 199 Ga. App. 842, 406 S.E.2d 236 (1991); Pratt v. State, 208 Ga. App. 617, 431 S.E.2d 397 (1993); Forsman v. State, 239 Ga. App. 612, 521 S.E.2d 410 (1999); State v. Lockett, 259 Ga. App. 179, 576 S.E.2d 582 (2003); King v. State, 262 Ga. App. 37, 584 S.E.2d 652 (2003); In the Interest of

W.N.J., 268 Ga. App. 637, 602 S.E.2d 173 (2004); Whittle v. State, 282 Ga. App. 64, 637 S.E.2d 800 (2006); McWilliams v. State, 287 Ga. App. 585, 651 S.E.2d 849 (2007); Pruitt v. State, 289 Ga. App. 307, 656 S.E.2d 920 (2008); Spence v. State, 295 Ga. App. 583, 672 S.E.2d 538 (2009); Waterman v. State, 299 Ga. App. 630, 683 S.E.2d 164 (2009); State v. Ogilvie, 292 Ga. 6, 734 S.E.2d 50 (2012); Puckett v. State, 321 Ga. App. 785, 743 S.E.2d 466 (2013).

RESEARCH REFERENCES

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 671et seq., 683.

ALR. — Excuse for exceeding speed limit for automobiles, 29 A.L.R. 883.

Right of way at street or highway intersections, 37 A.L.R. 493; 47 A.L.R. 595.

Necessity and propriety of instruction as to prima facie speed limit, 87 A.L.R.2d 539.

Criminal liability for street racing (drag racing), 89 A.L.R.6th 565.

40-6-182. Establishment of state speed zones.

Whenever the commissioner of public safety or the commissioner of transportation shall determine upon the basis of an engineering and traffic investigation that any maximum speed set forth in this article is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of the state highway system, they may jointly determine and declare a reasonable and safe maximum speed limit at such place, which shall be effective when appropriate signs giving notice thereof are erected. Such a maximum speed limit may be declared to be effective at all times as are indicated upon such signs; and differing limits may be established for different times of day, different varying weather conditions, and other factors bearing on safe speeds, which shall be effective when posted upon appropriate fixed or variable signs. In no case shall the maximum speed limit for any highway be established at higher than the maximum speed limits set forth in Code Section 40-6-181 for that type of highway. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 49; Ga. L. 1957, p. 419, § 1; Ga. L. 1963, p. 254, § 2; Code 1933, § 68A-803, enacted by Ga. L. 1975, p. 1582, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-301 are included in the annotations for this Code section.

Setting speed limits was quasi-legislative activity. — In a case in which a parent filed a wrongful death action against the Georgia Department of Transportation alleging that the Department's negligence in choosing to set the speed limit along a certain stretch of highway at 50 miles per hour led to the death of the parent's child, the trial court erred in denying the Department's motion to dismiss the complaint on the basis of sovereign immunity under O.C.G.A. § 50-21-24(5) given that: (1) O.C.G.A. § 40-6-182 provided that the Georgia Commissioner of Public Safety and the Commissioner of the Georgia Transportation Department could set the speed limit on any part of the state highway system based on the conditions in that area; (2)

the Department's participation in setting the speed limit pursuant to O.C.G.A. § 40-6-182 was quasi-legislative action, as it entailed adopting rules and was analogous to the legislative activity of making of laws; and (3) pursuant to O.C.G.A. § 50-21-24(5), the Department could not be held liable for losses resulting from such quasi-legislative action. DOT v. Watts, 260 Ga. App. 905, 581 S.E.2d 410 (2003).

School zones outside municipal limits. — There is no statutory provision authorizing the establishment of school zones, as such, or restricting the speed of motor vehicles therein, outside the corporate limits of municipalities. Whitley Constr. Co. v. Price, 89 Ga. App. 352, 79 S.E.2d 416 (1953) (decided under former Code 1933, § 68-301).

Factors in determining whether speed limit reduced. — Whether the speed limit has been reduced depends upon whether action has been taken by a governing authority and proper notice posted on the highway. Harper v. Brown, 122 Ga. App. 316, 176 S.E.2d 621 (1970).

Signs designating zones need not be erected personally by commissioners. — There is no requirement that the physical erection of the signs giving notice of designated speed zones be done by the commissioner of public safety or the commissioner of transportation personally, rather than through an agent. Munday v. Brissette, 113 Ga. App. 147, 148 S.E.2d 55, rev'd on other grounds, 222 Ga. 162, 149 S.E.2d 110 (1966).

Sufficient evidence to find defendant drivers negligent. — Under an application of the rules of law to the facts, the jury was authorized to find from the evidence adduced upon the trial, and the reasonable inferences to be drawn therefrom, that the defendant drivers were grossly negligent in causing the plaintiff's injuries. Lawrence v. Hayes, 92 Ga. App. 778, 90 S.E.2d 102 (1955).

Cited in Frasard v. State, 322 Ga. App. 468, 745 S.E.2d 716 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Section constitutional. — Permitting the Department of Public Safety (now Commissioner of Public Safety) to fix special speed restrictions, within an authorized maximum, on any segment of a public street or highway, based upon an engineering or traffic survey, is not an unconstitutional delegation of legislative power. 1945-47 Op. Att'y Gen. p. 408.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 265 et seq.

ALR. — Right of way at street or highway intersections, 37 A.L.R. 493; 47 A.L.R. 595.

Necessity and propriety of instruction as to prima facie speed limit, 87 A.L.R.2d 539.

40-6-183. Alteration of speed limits by local authorities.

(a) Whenever the governing authority of an incorporated municipality or county, in its respective jurisdiction, determines on the basis of an engineering and traffic investigation that the maximum vehicle speed permitted under this chapter is greater than is reasonable and safe under the conditions found to exist upon a highway or part of a highway under its jurisdiction, such authority may determine and declare a reasonable and safe maximum vehicle speed limit thereon which:

(1) Decreases the limit at intersections;

(2) Decreases the limit outside an urban or residential district, but not to less than 30 miles per hour;

(3) Decreases the limit within an urban or residential district, but not to less than 25 miles per hour; or

(4) Decreases any speed limit where a special hazard or condition exists that requires lower speed for compliance with Code Section 40-6-180.

(b) Such an authority in its respective jurisdiction shall determine by an engineering and traffic investigation the proper maximum speed for all arterial streets and shall declare a reasonable and safe maximum speed limit thereon which may be greater or less than the maximum speed permitted under this chapter for an urban district, but in no case shall the maximum be established at higher than 55 miles per hour.

(c) Any altered limit established as authorized in this Code section shall be effective at all times or during hours of darkness or at other times as may be determined when appropriate signs giving notice thereof are erected upon such street or highway.

(d) Not more than six alterations as authorized in this Code section shall be made per mile along a street or highway, except in the case of reduced limits at intersections. The difference between adjacent limits shall not be more than ten miles per hour, except for reductions for school speed zones, which may be not more than 20 miles per hour when a warning sign is placed 700 feet in advance of the point at which the speed reduction is required. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 50; Code 1933, § 68A-804, enacted by Ga. L. 1975, p. 1582, § 1; Ga. L. 1978, p. 1967, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, §§ 68-301, 68-303, and 68-312 are included in the annotations for this Code section.

City ordinance penalizing lesser speed than is penalized by state. — Legislative provisions regulating the speed of motor vehicles within the state specifically authorize municipalities to regulate traffic within the municipal limits. Walters v. State, 90 Ga. App. 360, 83 S.E.2d 48 (1954) (decided under former Code 1933, §§ 68-301, 68-303, and 68-312).

Section inapplicable to state highways. — Ga. L. 1953, Nov.-Dec. Sess., p. 556 cannot be construed to confer upon local authorities the power to install and maintain traffic control devices on state highways. Mayor of Woodbury v. State Hwy. Dep't, 225 Ga. 723, 171 S.E.2d 272 (1969).

Cited in Sanders v. City of Columbus, 140 Ga. App. 441, 231 S.E.2d 473 (1976); Diamond v. State, 151 Ga. App. 690, 261 S.E.2d 434 (1979); Stanfield v. Smith, 152 Ga. App. 22, 262 S.E.2d 216 (1979); Reid v. City of Hogansville, 202 Ga. App. 131, 413 S.E.2d 457 (1991); Spence v. State, 295 Ga. App. 583, 672 S.E.2d 538 (2009); Frasard v. State, 322 Ga. App. 468, 745 S.E.2d 716 (2013).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 265 et seq.

ALR. — Right of way at street or highway intersections, 37 A.L.R. 493; 47 A.L.R. 595.

Necessity and propriety of instruction as to prima facie speed limit, 87 A.L.R.2d 539.

40-6-184. Impeding traffic flow; minimum speed limits; slower driving in a passing lane.

(a) No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation.

(b) Whenever the commissioner of public safety or the commissioner of transportation or local authorities determine on the basis of any engineering and traffic investigation that slow speeds on any part of a road under their respective jurisdictions impede the normal and reasonable movement of traffic, such commissioners jointly, or such local authorities, may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation, and such limit shall be effective when posted upon fixed or variable signs.

(c) Upon roads, streets, or highways with two or more lanes allowing for movement in the same direction, no person shall continue to operate a motor vehicle in the passing lane once such person knows or should reasonably know that he or she is being overtaken in such lane from the rear by a motor vehicle traveling at a higher rate of speed. For purposes of this Code section, "passing lane" means the most left-hand lane other than a high occupancy vehicle lane.

(d) Subsection (c) of this Code section shall not apply:

(1) When traffic conditions or congestion make it necessary to drive in the passing lane;

(2) When inclement weather, obstructions, or hazards make it necessary to drive in the passing lane;

(3) When compliance with a law of this state or with an official traffic control device makes it necessary to drive in the passing lane;

(4) When a vehicle must be driven in the passing lane to exit or turn left;

(5) On toll highways, when necessary to pay a toll or use a pass;

(6) To authorized emergency vehicles engaged in official duties; or

(7) To vehicles engaged in highway maintenance and construction operations. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 51; Code 1933, § 68A-805, enacted by Ga. L. 1975, p. 1582, § 1; Ga. L. 1987, p. 361, § 2; Ga. L. 1990, p. 2048, § 5; Ga. L. 2014, p. 167, § 1/HB 459.)

Cross references. — Truck use of left-hand lane on multi-lane highways, § 40-6-52.

Editor's notes. — Ga. L. 2014, p. 167, § 2/HB 459, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2014, and shall apply to offenses committed on or after such date."

JUDICIAL DECISIONS

Legislative intent. — O.C.G.A. § 40-6-184(a) does not apply when the driver is being overtaken by another vehicle that is exceeding the maximum speed limit since in such a context the other vehicle is not overtaking the driver because the latter is impeding the flow of traffic by traveling unreasonably slow, but rather because the other vehicle is traveling unreasonably fast in violation of the traffic laws; the legislative intent behind the statute was to prevent unsafe slow driving, not to punish drivers for failing to yield the lane to speeders. State v. Parke, 304 Ga. App. 124, 695 S.E.2d 413 (2010).

Negligence per se. — When the defendant came to a complete or almost complete stop in the road, allegedly without any brake, emergency, or signal lights, at a time and place where traffic was "bad," there was evidence that the defendant was negligent per se and partially at fault for the subsequent accident after a car following the defendant was hit by another car and a directed verdict in favor of the defendant was reversed. Harrison v. Jenkins, 235 Ga. App. 665, 510 S.E.2d 345 (1998).

Operation of farm machinery on public roads. — Former Code 1933, T. 68A did not exclude farm machinery from the public roads, but to permit the jury to impose liability on the basis of the speed of a corn combine would be tantamount to holding that the operation of farm machinery on the public roadway typically constituted negligence per se. Lott v. Smith, 156 Ga. App. 826, 275 S.E.2d 720 (1980).

Traffic stops for driving too slowly. — Fact that a vehicle was being driven so slowly as to create a traffic hazard authorized a stop for a traffic violation and authorized the officers to investigate the condition of the driver. Taylor v. State, 230 Ga. App. 749, 498 S.E.2d 113 (1998).

Trial court did not err in granting the defendant's motion to suppress because the trial court was authorized to find that the police officer who initiated the traffic stop lacked an articulable suspicion to believe that the defendant was impeding the flow of traffic in violation of O.C.G.A. § 40-6-184(a) when under the facts, the officer's belief that the defendant was impeding the flow of traffic was an insufficient basis for initiating an investigative stop; the court of appeals would not disturb the trial court's findings, which was based upon conflicting witness testimony, that at the time of the traffic stop, the defendant was traveling above the posted minimum speed limit and only a few miles below the posted maximum speed limit when the defendant's vehicle was passed by two vehicles that were speeding. State v. Parke, 304 Ga. App. 124, 695 S.E.2d 413 (2010).

Investigative stop held proper. — Trial court did not err in denying defendant's motion to suppress cocaine found during a search of the defendant's car as the officer's testimony authorized a finding that the officer saw the defendant committing traffic violations for which the defendant received either a warning or a citation — impeding traffic, in violation of O.C.G.A. § 40-6-184(a), and following too closely, in violation of O.C.G.A. § 40-6-49. Warren v. State, 314 Ga. App. 477, 724 S.E.2d 404 (2012), cert. denied, No. S12C1072, 2012 Ga. LEXIS 548 (Ga. 2012).

Reasonable opportunity to attain speed. — Minimum speed does not apply to vehicle entering highway from the emergency strip until there has been reasonable opportunity to attain this speed. Blake v. Continental S.E. Lines, 168 Ga. App. 718, 309 S.E.2d 829 (1983).

Momentary delay in proceeding through green light. — Since merely delaying one's start momentarily at an intersection is not impeding the flow of traffic on a four-lane road, a deputy sheriff lacked reasonable articulable suspicion to stop the defendant for impeding the flow of traffic in violation of O.C.G.A. § 40-6-184(a) since the defendant was stopped at a green light for only two or three seconds before the defendant proceeded forward. Martin v. State, 257 Ga. App. 435, 571 S.E.2d 459 (2002).

Evidence held sufficient for conviction. — Because the evidence sufficiently showed that the defendant's truck was traveling at a low rate of speed, approximately 25 to 30 m.p.h., on an interstate highway with a minimum posted speed limit of 40 m.p.h., and the investigating officer testified that traffic was getting backed up behind the defendant's truck, the appeals court found that the evidence was sufficient to support the defendant's conviction under O.C.G.A. § 40-6-184(a)(1). Dunn v. State, 289 Ga. App. 585, 657 S.E.2d 649 (2008), cert. denied, No. S08C1021, 2008 Ga. LEXIS 496 (Ga. 2008).

Sufficient evidence supported the defendant's conviction for impeding traffic because the record showed that the defendant slowed the truck and stopped at a green light on a busy highway, forcing traffic to maneuver around the defendant's truck because although traffic was not stopped completely by such conduct, the evidence authorized a jury to conclude that the defendant interfered with other drivers' ability to proceed normally and safely through a busy intersection. Smith v. State, 338 Ga. App. 635, 791 S.E.2d 418 (2016).

Evidence insufficient for conviction. — Because there was no evidence that the defendant was driving unusually slowly or that any other cars attempted to pass the defendant while the defendant was stopped in a lane of travel, the defendant's conviction for impeding traffic could not stand. Darwicki v. State, 291 Ga. App. 239, 661 S.E.2d 859 (2008).

Since there was no evidence any vehicles attempted to pass the defendant while the defendant was stopped, the evidence was not sufficient to support the conviction for impeding the flow of traffic. Green v. State, 323 Ga. App. 832, 748 S.E.2d 479 (2013).

Cited in Simpson v. Reed, 186 Ga. App. 297, 367 S.E.2d 563 (1988); Gossett v. State, 199 Ga. App. 286, 404 S.E.2d 595 (1991); Hall v. Buck, 206 Ga. App. 754, 426 S.E.2d 586 (1992); State v. Whelchel, 269 Ga. App. 314, 604 S.E.2d 200 (2004); Brantley v. State, 290 Ga. App. 764, 660 S.E.2d 846 (2008).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 277.

C.J.S. — 60A C.J.S., Motor Vehicles, § 723.

ALR. — Right of way at street or highway intersections, 37 A.L.R. 493; 47 A.L.R. 595.

Construction, application, and effect, in civil motor vehicle accident cases, of "slow speed" traffic statutes prohibiting driving at such a slow speed as to create danger, to impede normal traffic movement, or the like, 66 A.L.R.2d 1194.

Indefiniteness of automobile speed regulations as affecting validity, 6 A.L.R.3d 1326.

Liability or recovery in automobile negligence action as affected by driver's being blinded by lights of motor vehicle, 64 A.L.R.3d 551.

Liability or recovery in automobile negligence action as affected by driver's being blinded by lights other than those of a motor vehicle, 64 A.L.R.3d 760.

40-6-185. Speed limits on bridges and other elevated structures.

(a) No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed which can be maintained with safety to such bridge or structure, when such structure is posted as provided in this Code section.

(b) The Department of Transportation may conduct an investigation of any bridge or other elevated structure constituting a part of a highway, and, if it shall thereupon find that such structure cannot, with safety to itself, withstand vehicles traveling at the speed otherwise permissible under this chapter, the department shall determine and declare the maximum speed of vehicles which such structure can safely withstand and shall cause or permit suitable signs stating such maximum speed to be erected and maintained before each end of such structure.

(c) Upon the trial of any person charged with a violation of subsection (a) of this Code section, proof of determination of the maximum speed by the department and the existence of such signs shall constitute conclusive evidence of the maximum speed which can be maintained with safety to such bridge or structure. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 53; Code 1933, § 68A-806, enacted by Ga. L. 1975, p. 1582, § 1; Ga. L. 1990, p. 2048, § 5.)

RESEARCH REFERENCES

ALR. — Excuse for exceeding speed limit for automobiles, 29 A.L.R. 883.

40-6-186. Racing on highways or streets.

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

(1) "Drag race" means the operation of two or more vehicles from a point side by side at accelerated speeds in a competitive attempt to outdistance each other or the operation of one or more vehicles over a common selected course from the same point to the same point for the purpose of comparing the relative speeds or power of acceleration of such vehicle or vehicles within a certain distance or time limit.

(2) "Racing" means the use of one or more vehicles in an attempt to outgain, outdistance, or prevent another vehicle from passing, to arrive at a given destination ahead of another vehicle or vehicles, or to test the physical stamina or endurance of drivers over long-distance driving routes.

(b) No person shall drive any vehicle on a highway in this state in any race, speed competition or contest, drag race or acceleration

contest, test of physical endurance, exhibition of speed or acceleration, or for the purpose of making a speed record, and no person shall in any manner participate in any such race, competition of speed, contest of speed, or test or exhibition of speed.

(c) Any person convicted of violating subsection (b) of this Code section shall be guilty of a misdemeanor. (Ga. L. 1959, p. 303, § 1; Ga. L. 1961, p. 438, §§ 1-4; Code 1933, § 68A-808, enacted by Ga. L. 1975, p. 1582, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 2006, p. 449, § 21/HB 1253.)

Cross references. — Suspension of driver's license for conviction for racing on highways or streets, § 40-5-54. Penalty for laying drags, § 40-6-251.

JUDICIAL DECISIONS

Section not lacking in clarity. — Former Code 1933, § 68A-808 set out with reasonable definiteness what acts were prohibited. In re D.B.A., 242 Ga. 40, 247 S.E.2d 843 (1978) (see now O.C.G.A. § 40-6-186).

Races and contests of speed are offenses under drag racing. Perkins v. State, 151 Ga. App. 199, 259 S.E.2d 193 (1979), overruled on other grounds, Chance v. State, 154 Ga. App. 543, 268 S.E.2d 737 (1980).

Only one acting with intention can be convicted of crime. — Former Code 1933, § 68A-808 (see now O.C.G.A. § 40-6-186) must be construed in pari materia with other criminal sections and one can never be convicted of a crime unless one acts with intention, or criminal negligence. Snell v. McCoy, 135 Ga. App. 832, 219 S.E.2d 482 (1975).

Joint liability of racers. — Basis for imposing liability upon a racer for the damages resulting from a collision involving only a co-racer's vehicle is that two or more persons engaged in a common enterprise are jointly liable for wrongful acts done in connection with the enterprise, at least when the enterprise is an unlawful one, in which case all are answerable for any injury done by any one of them, and even assuming that the evidence would not authorize a finding that the defendant and another were technically "racing" as defined in O.C.G.A. § 40-6-186(a)(2), a "common enterprise" to drive two cars in tandem at excessive speeds and in a reckless manner is as much a tacit "unlawful joint enterprise" to violate the traffic laws of this state as an agreement to engage in "racing." Bellamy v. Edwards, 181 Ga. App. 887, 354 S.E.2d 434 (1987); Kilpatrick v. Foster, 185 Ga. App. 453, 364 S.E.2d 588 (1987), cert. denied, 185 Ga. App. 910, 364 S.E.2d 588 (1988).

Transfer of case involving juveniles to superior court. — Evidence that a juvenile had a history of using marijuana and other drugs, had used marijuana before the juvenile lost control of a car the juvenile was driving while racing another car on a public street, causing a multi-car collision in which two people died, had challenged other people to automobile races on several occasions, violated the conditions of the juvenile's driver's license by driving with a non-family member, and used drugs after the accident was sufficient to support the juvenile court's judgment that the juvenile was not amenable to treatment in the juvenile court system and that the interests of the juvenile and the community would be better served if the case was transferred to the superior court. In the Interest of W.N.J., 268 Ga. App. 637, 602 S.E.2d 173 (2004).

State's proof against mere occupant of vehicle. — When an occupant of a vehicle who was neither the driver nor the owner of the vehicle is charged with engaging in a contest of speed, or a race, the state must prove positive wrongful acts against the occupant. It may not rest the state's case simply on proof that the per-

son was an occupant. Snell v. McCoy, 135 Ga. App. 832, 219 S.E.2d 482 (1975).

Evidence sufficient to support conviction. — Defendants were guilty of racing even though their automobiles were capable of going faster than the speeds observed by the police and the distance between the vehicles stayed basically the same; the officers testified that one was trying to "outrun" the other. Dodd v. State, 205 Ga. App. 472, 422 S.E.2d 313 (1992).

Cited in Cabral v. White, 181 Ga. App. 816, 354 S.E.2d 162 (1987); Eason v. Dozier, 298 Ga. App. 65, 679 S.E.2d 89 (2009).

OPINIONS OF THE ATTORNEY GENERAL

Suspension and retention of licenses of convicted racers. — Department should continue to suspend and retain drivers' licenses of persons convicted of racing, in accordance with the provisions of former Code 1933, § 68A-808 (see now O.C.G.A. § 40-6-186), and disregard the inconsistent provisions of Ga. L. 1975, p. 1008, § 1 (see now O.C.G.A. Ch. 5, T. 40) which were approved prior to the approval of that section. 1975 Op. Att'y Gen. 75-117.

Official reservation of street for drag-racing purposes. — Prohibition of drag racing "on a highway in the state" in O.C.G.A. § 40-6-186 does not apply when the drag racing activities take place on a street which has been closed for that purpose. 1983 Op. Att'y Gen. No. U83-53.

City street which has been closed to the public for purposes of an officially sanctioned activity (such as a drag race) ceases to be a "highway" as defined by § 40-1-1(16) (see now O.C.G.A. § 40-1-1(19)). 1983 Op. Att'y Gen. No. U83-53.

RESEARCH REFERENCES

C.J.S. — 60A C.J.S., Motor Vehicles, § 679.

ALR. — Excuse for exceeding speed limit for automobiles, 29 A.L.R. 883.

Liability of participant in unauthorized highway race for injury to third person directly caused by other racer, 13 A.L.R.3d 431.

Liability of public authority for injury arising out of automobile race conducted on street or highway, 80 A.L.R.3d 1192.

Criminal liability for street racing (drag racing), 89 A.L.R.6th 565.

40-6-187. Charging violations; sentence to specify amount by which speed limit exceeded.

(a) In every charge of violation of any speed regulation in this chapter, the summons, uniform traffic citation, official charging instrument, or notice to appear shall specify the speed at which the defendant is alleged to have driven, the maximum speed applicable within the district or at the location, and whether the violation occurred on a two-lane road or highway. For purposes of this Code section, the term "two-lane road or highway" means a road or highway with two lanes for through-traffic movement exclusive of any portion of the road or highway adjoining the traveled way for parking, speed change, turning, weaving, truck climbing, or other purposes supplementary to through-traffic movement.

(b) For the purpose of imposing points pursuant to Code Section 40-5-57, every sentence for a violation of any speed regulation in this

chapter shall state the specific amount by which the person convicted exceeded the speed limit. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 54; Code 1933, § 68A-807, enacted by Ga. L. 1975, p. 1582, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 5; Ga. L. 2006, p. 449, § 22/HB 1253; Ga. L. 2009, p. 679, § 10/HB 160.)

JUDICIAL DECISIONS

Indictment for involuntary manslaughter held sufficiently definite. — When an indictment for involuntary manslaughter alleges violation of automobile speed regulations by stating that at the time of the accident the defendant was operating the defendant's automobile at a rate of speed in excess of 60 (now 55) miles per hour, the allegation is sufficiently definite. Byars v. State, 92 Ga. App. 511, 88 S.E.2d 818 (1955).

Citation not defective. — When the officer left the box indicating "2-lane road" blank, the officer was complying with the citation statute by showing that the road consisted of more than two lanes at the location at issue and, thus, the citation was not defective. Frasard v. State, 322 Ga. App. 468, 745 S.E.2d 716 (2013).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 342, 343.

40-6-188. Highway work zones; reduction in speed; signage.

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

(1) "Highway work zone" means a segment of any highway, road, or street where the Department of Transportation, a county, a municipality, or any contractor for any of the foregoing is engaged in constructing, reconstructing, or maintaining the physical structure of the roadway or its shoulders or features adjacent to the roadway, including without limitation underground or overhead utilities or highway appurtenances, or any other type of work related thereto.

(2) "Work zone personnel" means employees of the Department of Transportation, a county, a municipality, or any contractor for any of the foregoing.

(b)(1) The Department of Transportation, any county, or any municipality may designate any segment of a highway, road, or street under its jurisdiction as a highway work zone.

(2) Whenever a highway work zone is designated pursuant to paragraph (1) of this subsection, there shall be erected or posted signage of adequate size at the beginning point of such highway work zone designating the zone and warning the traveling public that increased penalties for speeding violations are in effect for the highway work zone, and there shall be erected or posted at the end of

such highway work zone adequate signage indicating the end of such zone and that increased penalties for speeding violations are no longer in effect.

(c)(1) The Department of Transportation or the governing authority of any county or municipal corporation is authorized to establish a temporary reduction in the maximum speed limit through any highway work zone located on or adjacent to any street or highway under its respective jurisdiction. The commissioner of transportation or the local governing authority shall not be required to conduct any engineering and traffic investigation in order to establish a reduced speed limit in a highway work zone pursuant to this paragraph.

(2) Whenever reduced speed zones are established pursuant to paragraph (1) of this subsection, there shall be erected or posted signage of adequate size at the beginning point of such speed zone designating the zone and the speed limit to be observed therein, and there shall be erected or posted at the end of such speed zone adequate signage indicating the end of such speed zone, which signage shall also indicate such different speed limit as may then be observed. Signs indicating such reduced speed limit shall be spaced not further than one mile apart throughout the highway work zone. Where the speed limit established pursuant to paragraph (1) of this subsection is at least ten miles per hour less than the established speed limit on the street or highway, there shall be erected at least 600 feet in advance of the beginning of the speed zone a sign of adequate size which shall bear the legend "Reduced Speed Ahead." Whenever any signage is required by this paragraph, the same shall be in addition to the signage requirements of paragraph (2) of subsection (b) of this Code section.

(d)(1) Any signage required by this Code section shall conform to applicable provisions of the Manual on Uniform Traffic Control Devices; provided, however, that nothing in this Code section shall prohibit the use of movable or portable speed limit signs in highway work zones.

(2) Any existing regulatory signage conflicting with signage erected or posted pursuant to this Code section shall be removed, covered, folded, or turned so as not to be readable by oncoming motorists.

(e)(1) In order for a person to be cited or convicted for exceeding a speed limit, reduced or otherwise, in any highway work zone as provided in paragraph (2) of this subsection, there must be present in the highway work zone at the time of the offense the signage required by this Code section and either:

(A) Work zone personnel; or

(B) Barriers, on-site work vehicles, or shoulder or pavement drop offs that constitute a hazard to the traveling public.

(2) A person convicted of exceeding the speed limit, reduced or otherwise, in any highway work zone designated pursuant to this Code section shall be guilty of a misdemeanor of a high and aggravated nature and shall be punished by a fine of not less than $100.00 nor more than $2,000.00 or by imprisonment for a term not to exceed 12 months, or both.

(f) Whenever the Department of Transportation finds it necessary to designate a highway work zone within a county or municipality, the Department of Transportation shall be required to notify the county or municipality of the work activity; provided, however, that the failure of the Department of Transportation to give such notice shall not be a defense to any charge of violating the speed limit in any highway work zone. (Code 1981, § 40-6-188, enacted by Ga. L. 1995, p. 759, § 2; Ga. L. 1997, p. 143, § 40; Ga. L. 1997, p. 866, § 2; Ga. L. 2000, p. 1313, § 4; Ga. L. 2003, p. 450, § 4.)

40-6-189. Classification as super speeder; fees.

(a) As used in this Code section, the term "department" means the Department of Driver Services.

(b) In addition to any other fines or penalties imposed by any local jurisdiction or the department, the department shall administer and collect a fee of $200.00 from any driver who is convicted of driving at a speed of 85 miles per hour or more on any road or highway or 75 miles per hour or more on any two-lane road or highway, as defined in Code Section 40-6-187. Such a driver, upon conviction, shall be classified as a "super speeder."

(c) The department shall notify offenders of the imposition of a fee under this Code section within 30 days after receipt of a qualifying ticket and notice of conviction. Failure to pay the fee imposed by this Code section within 90 days after receipt of the notice shall result in the suspension of the driver's license or driving privileges of the offender, and, in addition to the existing fees and penalties, a fee of $50.00 shall be assessed, payable upon the application for reinstatement of the driver's license or driving privileges. Notice shall be provided by the department to the offender by first-class mail to the address shown on the records of the department. Such mailed notice shall be adequate notification of the fee imposed by this Code section and of the offender's ability to avoid a driver's license suspension by paying the fee prior to the effective date of the suspension. No other notice shall be required to make the driver's license suspension effective.

(d) The department shall be authorized to promulgate rules and regulations to implement the provisions of this Code section.

(e) All fees collected under the provisions of this Code section shall be deposited in the general fund of this state with the intent that these moneys be used to fund a trauma care system in Georgia and the direct and indirect costs associated with the administration of this Code section. The Office of the State Treasurer shall separately account for all of the moneys received under the provisions of this Code section. (Code 1981, § 40-6-189, enacted by Ga. L. 2009, p. 679, § 11/HB 160.)

Cross references. — Georgia Trauma Care Network Commission, T. 31, C. 11, A. 5.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, "the State Treasurer" was substituted for "Treasury and Fiscal Services" in the second sentence of subsection (e).

ARTICLE 10

STOPPING, STANDING, AND PARKING

JUDICIAL DECISIONS

Article's purpose. — The legislature, in making it a crime to park in specified areas or fashions by the road, enacted the law for the benefit of all persons who might meet or follow the parked vehicle, and the law's purpose was to avoid collisions by persons coming from behind the parked vehicle and those meeting the parked vehicle. O'Pry v. Goodman, 132 Ga. App. 191, 207 S.E.2d 674 (1974).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Feasibility of Stopping or Parking Vehicle off Roadway, 26 POF2d 575.

ALR. — Lunch wagons in street, 4 A.L.R. 346.

Applicability of motor vehicle regulations to public officials or employees, 19 A.L.R. 459; 23 A.L.R. 418.

Validity of ordinance which denies to automobiles while used for hire the parking privileges extended to automobiles generally, 22 A.L.R. 113.

Right of abutting owner to control cab stands or parking in street, 33 A.L.R. 355.

Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 62 A.L.R. 970; 104 A.L.R. 485.

Municipal establishment or operation of off-street public parking facilities, 8 A.L.R.2d 373.

When is motor vehicle "disabled" or the like within exception to statute regulating parking or stopping, 15 A.L.R.2d 909.

Inference or presumption that owner of motor vehicle was its driver at time of traffic, driving, or parking offense, 49 A.L.R.2d 456.

Liability of owner or driver of double-parked motor vehicle for ensuing injury, death, or damage, 82 A.L.R.2d 726.

PART 1

GENERAL PROVISIONS

40-6-200. How vehicles to be parked; powers of Department of Transportation and local authorities.

(a) Except as otherwise provided in this Code section, every vehicle stopped or parked upon a two-way roadway shall be stopped or parked with the right-hand wheels parallel to and within 12 inches of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder.

(b) Except when otherwise provided by local ordinance, every vehicle stopped or parked upon a one-way roadway shall be stopped or parked parallel to the curb or edge of the roadway, in the direction of authorized traffic movement, with its right-hand wheels within 12 inches of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder or with its left-hand wheels within 12 inches of the left-hand curb or as close as practicable to the left edge of the left-hand shoulder.

(c) Local authorities may by ordinance permit angle parking on any roadway, except that angle parking shall not be permitted on any federal-aid or state highway unless the Department of Transportation has determined that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

(d) The department, with respect to highways under its jurisdiction, may place signs prohibiting, restricting, or limiting the stopping, standing, or parking of vehicles on any highway where, in its opinion, as evidenced by resolution or order entered in its minutes, such stopping, standing, or parking is dangerous to those using the highway or where the stopping, standing, or parking of vehicles would unduly interfere with the free movement of traffic thereon. Such signs shall be official signs, and no person shall stop, stand, or park any vehicle in violation of the restrictions on such signs. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 93; Ga. L. 1963, p. 254, § 6; Code 1933, § 68A-1004, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-303 are included in the annotations for this Code section.

Limiting parking of vehicles on highways. — Department of Transportation may limit the parking of vehicles on any highways under the Department's jurisdiction. Fabian v. Vincent, 155 Ga. App. 464, 270 S.E.2d 858 (1980).

Stop of vehicle for suspicion of drug dealing. — After the police came upon the car described in the tip and

observed that the car was parked on the wrong side of the street with the car's engine running, a violation of O.C.G.A. § 40-6-200(a), although the officers were certainly conscious of the anonymous tip when the officers stopped the defendant, the officers were not required to refrain from stopping the defendant for the traffic violation merely because the officers suspected the defendant of selling drugs; the officers were authorized to stop the defendant and check the defendant's driver's license and insurance card. Mack v. State, 212 Ga. App. 187, 441 S.E.2d 503 (1994).

Temporary stops. — Under a reasonable construction, former Code 1933, § 68-303 should not apply to temporary stops made as a normal and reasonable incident to traffic conditions existing at the time. Railway Express Agency, Inc. v. Mathis, 83 Ga. App. 415, 63 S.E.2d 921 (1951) (decided under former Code 1933, § 68-303).

Applicability to state highways in municipalities. — Provisions of Ga. L. 1933, Nov.-Dec. Sess., p. 556 apply to state highways in municipalities. Rhodes v. Baker, 116 Ga. App. 157, 156 S.E.2d 545 (1967).

Stop of defendant for parking in middle of road proper. — Trial court order suppressing drug evidence seized after a Terry stop of the defendant for parking in the middle of the road was error because O.C.G.A. § 40-6-200(a) made it improper to park in the middle of a two-way roadway and provided a proper basis for the officer's decision to stop the defendant. Stafford v. State, 284 Ga. 773, 671 S.E.2d 484 (2008).

Parking found in violation. — Parking of a vehicle so that a substantial portion thereof was within 12 feet of the highway's center line was a violation of Ga. L. 1953, Nov.-Dec. Sess., p. 556 (see now O.C.G.A. § 40-6-203) and was negligence per se. Washington v. Kemp, 99 Ga. App. 635, 109 S.E.2d 294 (1959).

Cited in Malpass v. State, 173 Ga. App. 690, 327 S.E.2d 753 (1985); Roberts v. State, 242 Ga. App. 120, 527 S.E.2d 617 (2000); Momodu v. State, No. A03A0567, 2003 Ga. App. LEXIS 629 (May 21, 2003).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 305, 314, 315.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 751 et seq., 761, 762 et seq.

ALR. — Right to admission to parking ground or to service at gas station or garages, 35 A.L.R. 557.

Validity of automobile parking ordinances or regulations, 108 A.L.R. 1152; 130 A.L.R. 316.

Construction and effect in civil actions of statute, ordinance, or regulation requiring vehicles to be stopped or parked parallel with, and within certain distance of, curb, 17 A.L.R.2d 582.

Duties and liabilities between owners or drivers of parked or parking vehicles, 25 A.L.R.2d 1224.

Civil liability of mobile vendor for attracting into street child injured by another's motor vehicle, 84 A.L.R.3d 826.

40-6-201. Leaving motor vehicle unattended.

Reserved. Repealed by Ga. L. 2007, p. 214, § 3/HB 144, effective July 1, 2007.

Editor's notes. — This Code section was based on Code 1933, § 68A-1101, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.

Ga. L. 2007, p. 214, § 4/HB 144, not codified by the General Assembly, provides, in part, that prosecutions for or cases involving any violation of law occurring prior to July 1, 2007, shall not be affected by the repeals or amendments made by that Act or abated by reason thereof.

40-6-202. Stopping, standing, or parking outside of business or residential districts.

Outside of a business or residential district, no person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the roadway when it is practicable to stop, park, or so leave such vehicle off the roadway; but in every event, an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles, and a clear view of the stopped vehicle shall be available from a distance of 200 feet in each direction upon the highway. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 90; Code 1933, § 68A-1001, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

Law reviews. — For comment on Roberts v. Phillips, 35 Ga. App. 733, 134 S.E. 837 (1926), see 1 Ga. B.J. 49 (1927).

JUDICIAL DECISIONS

Applicability. — Injured party was not entitled to a requested jury instruction under O.C.G.A. § 40-6-202 because that section did not apply to a momentary stopping of a motor vehicle on a highway as occurred in this case, but the statute instead applied to where stopping or parking impeded the safe flow of traffic. Cox v. Allen, 256 Ga. App. 53, 567 S.E.2d 363 (2002).

Applicability regarding school buses. — Ga. L. 1953, Nov.-Dec. Sess., p. 556 is not applicable to school buses while being used for transportation of school children. Stroud v. Doolittle, 213 Ga. 32, 96 S.E.2d 876 (1957).

Parking restrictions do not apply in business districts. — Georgia Court of Appeals concludes that the parking restrictions in O.C.G.A. § 40-6-202 do not apply within a business district and because a business district is comprised of the territory contiguous to and including a highway, the parking restrictions in § 40-6-202 cannot be read to apply to roadways within areas meeting the criteria in O.C.G.A. § 40-1-1(8). Granger v. MST Transp., LLC, 329 Ga. App. 268, 764 S.E.2d 872 (2014).

Evidence sufficient for conviction. — Defendant's conviction for improper stopping in violation of O.C.G.A. § 40-6-202 was based on sufficient evidence as the fact that the vehicle was blocking only one lane of traffic, rather than the entire street, was adequate because the vehicle was not legally parked for purposes of § 40-6-202; further, because the defendant was sitting in the driver's seat of the car with a suspended license, which the defendant clearly knew about because the defendant had received citations for driving with a suspended license previously, there was sufficient circumstantial evidence to convict the defendant of driving without a valid license in violation of O.C.G.A. § 40-5-121. Marsengill v. State, 275 Ga. App. 840, 622 S.E.2d 58 (2005).

Evidence insufficient for conviction. — Evidence was insufficient to support a conviction for improper stopping, standing, or parking outside of a business or residential district because the state failed to adduce evidence that the defendant was parked outside of a business or residential district by merely presenting evidence that the defendant was parked within a residential or business area. Darwicki v. State, 291 Ga. App. 239, 661 S.E.2d 859 (2008).

Negligence per se instruction not supported by evidence. — When a driver collided with a second driver's

stalled truck, it was error for the trial court to instruct the jury on negligence per se in relation to O.C.G.A. § 40-6-202 as the charge was not supported by the evidence; the highway was in a rural area, the second driver had not been driving without lights, but lost illumination when the vehicle's engine failed, and there was no evidence that the second driver had "parked" the truck, but that the truck came to a stop of the truck's own volition. White v. Scott, 284 Ga. App. 87, 643 S.E.2d 356 (2007).

Negligence per se instruction supported by evidence. — Defendant truck driver's admission of violating O.C.G.A. § 40-6-202, that the defendant parked without using reflective triangles, allowed plaintiff car driver's Fed. R. Civ. P. 50 motion to be granted to instruct the jury that the truck driver was negligent; that the truck driver intentionally parked the driver's truck in violation of § 40-6-202 was sufficient for negligence per se. McPherson v. Rowe, No. 09-13007, 2010 U.S. App. LEXIS 2964 (11th Cir. Feb. 16, 2010) (Unpublished).

Suppression motion improperly granted. — Trial court erroneously granted suppression of the evidence seized in a traffic stop involving two defendants in which an officer, after arresting the first defendant for obstruction, searched the car and found a substance which a field test showed to be cocaine as the stopping officer was authorized to make the stop based on a violation of O.C.G.A. § 40-6-202 and because the officer could search the passenger compartment of the car incident to the arrest of the first defendant. State v. Stafford, 288 Ga. App. 309, 653 S.E.2d 750 (2007), aff'd, 284 Ga. 773, 671 S.E.2d 484 (2008).

Cited in Wallace v. Ener, 521 F.2d 215 (5th Cir. 1975); Fabian v. Vincent, 155 Ga. App. 464, 270 S.E.2d 858 (1980); Blake v. Continental S.E. Lines, 161 Ga. App. 869, 289 S.E.2d 551 (1982); Reliance Ins. Co. v. Bridges, 168 Ga. App. 874, 311 S.E.2d 193 (1983); Chinnis v. State, 240 Ga. App. 518, 523 S.E.2d 924 (1999); Welch v. State, 263 Ga. App. 70, 587 S.E.2d 220 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Officers removing vehicles personally liable for gross negligence. — Peace officers who cause vehicles to be removed from the public roadway are personally liable for those acts which constitute gross negligence with respect to the vehicle. 1974 Op. Att'y Gen. No. 74-99.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 305.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 751 et seq., 762 et seq.

ALR. — Validity of automobile parking ordinances or regulations, 108 A.L.R. 1152; 130 A.L.R. 316.

Construction and effect in civil actions of statute, ordinance, or regulation requiring vehicles to be stopped or parked parallel with, and within certain distance of, curb, 17 A.L.R.2d 582.

40-6-203. Stopping, standing, or parking prohibited in specified places; stopping or standing for collecting municipal solid waste or recovered materials.

(a) Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic-control device, no person shall:

(1) Stop, stand, or park a vehicle:

(A) On the roadway side of any vehicle stopped or parked at the edge of a curb of a street;

(B) On a sidewalk;

(C) Within an intersection;

(D) On a crosswalk;

(E) Between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs or markings;

(F) Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;

(G) Upon any bridge or other elevated structure upon a highway or within a highway tunnel;

(H) On any railroad tracks;

(I) On any controlled-access highway;

(J) In the area between roadways of a divided highway, including crossovers; or

(K) At any place where official signs prohibit stopping;

(2) Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:

(A) In front of a public or private driveway;

(B) Within 15 feet of a fire hydrant;

(C) Within 20 feet of a crosswalk at an intersection;

(D) Within 30 feet upon the approach to any flashing signal, stop sign, yield sign, or traffic-control signal located at the side of a roadway;

(E) Within 20 feet of the driveway entrance to any fire station or on the side of a street opposite the entrance to any fire station within 75 feet of such entrance (when properly posted); or

(F) At any place where official signs prohibit standing; or

(3) Park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading property or passengers:

(A) Within 50 feet of the nearest rail of a railroad crossing; or

(B) At any place where official signs prohibit parking.

(b) No person shall move a vehicle not lawfully under his control into any prohibited area or to such a distance away from the curb as is unlawful.

(c) Notwithstanding any other provision of law, any vehicle used solely for the purpose of collecting municipal solid waste or recovered materials as defined in Code Section 12-8-22 may stop or stand on the road, street, or highway for the sole purpose of collecting such waste or materials; provided, however, that such vehicle shall maintain flashing hazard lights at all times that it is engaged in stopping or standing for the purpose of waste or materials collection. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 92; Code 1933, § 68A-1003, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1989, p. 14, § 40; Ga. L. 1990, p. 2048, § 5; Ga. L. 1994, p. 639, § 1.)

Cross references. — Right of person to have removed any car parked without authorization upon property possessed by such person, § 44-1-13.

Law reviews. — For annual survey of trial practice and procedure, see 56 Mercer L. Rev. 433 (2004).

JUDICIAL DECISIONS

"Stop, stand, or park" a vehicle. — Trial court properly charged the jury that "no person shall stop, stand, or park a vehicle on any controlled-access highway," since the evidence presented an inference from which the jury could have found that the driver was in the process of stopping or had come to a rolling stop at the time of the collision. Morris v. DeLong, 183 Ga. App. 124, 358 S.E.2d 285 (1987).

O.C.G.A. § 40-6-203 prohibits any halting, even if momentary, of a vehicle on a controlled-access highway except when necessary to keep from striking other traffic or to comply with the directions of a police officer or traffic-control signal or sign. The statute is definite and certain in the statute's meaning, and men of common intelligence would not differ as to the application of the statute's provisions. Conyers v. State, 260 Ga. 506, 397 S.E.2d 423 (1990).

Violation of statute is negligence per se. — In a negligence action, where a driver arrived at the scene of an existing accident, parked in the emergency lane, turned on the driver's emergency blinkers, and exited the driver's vehicle, and a second vehicle hit the parked vehicle and then went off into a ravine, killing the driver, the trial court's denial of summary judgment in favor of the first driver was proper; parking in the emergency lane of a limited access highway was negligence per se. Storer Communications, Inc. v. Burns, 195 Ga. App. 230, 393 S.E.2d 92 (1990).

Violation constituting actionable negligence. — Before violation constitutes actionable negligence, it must be for the protection of a class of persons of which the plaintiff is a member. Kibbey Chevrolet, Inc. v. Anderson, 111 Ga. App. 90, 140 S.E.2d 564 (1965).

Purpose of prohibitions against crosswalk parking. — Statutory prohibitions against parking on a crosswalk were intended to guard against the hazard to users of the streets caused by pedestrians having to enter and cross at places where there are obstructions in the street. Archer Plumbing & Heating Co. v. Dodys, 112 Ga. App. 355, 145 S.E.2d 277 (1965).

Violation not negligence as to one striking rear of parked carrier. — Because the purpose of Ga. L. 1953, Nov.-Dec. Sess., p. 556 prohibiting parking in an intersection or within 20 feet of a crosswalk at an intersection is to prevent intersection collisions and hazards of obstructions to sight between pedestrians and motorists by parked vehicles, the violation of those provisions would in no way be negligence as to one striking the rear of a parked carrier. Kibbey Chevrolet, Inc. v. Anderson, 111 Ga. App. 90, 140 S.E.2d 564 (1965).

Parking found in violation. — Parking of a vehicle so that a substantial

portion thereof was within 12 feet of the center line of the highway was a violation of Ga. L. 1953, Nov.-Dec. Sess., p. 556, and was negligence per se. Washington v. Kemp, 99 Ga. App. 635, 109 S.E.2d 294 (1959).

Parked garbage truck. — Compliance with Georgia's Uniform Rules of the Road, O.C.G.A. § 40-6-1 et seq., did not necessarily demonstrate that a defendant exercised ordinary care; in a case seeking damages for injuries arising from an accident in which an auto struck a parked garbage truck, a trial court did not err in admitting evidence regarding a safer location for the stop of the truck or in refusing to instruct the jury that if the truck's flashing hazard lights were on at the time of the collision, then, pursuant to O.C.G.A. § 40-6-203(c), the driver and the employer could not have been found negligent. Sinclair Disposal Serv. v. Ochoa, 265 Ga. App. 172, 593 S.E.2d 358 (2004).

Tractor trailer illegally parked in emergency lane. — Trial court erred by granting summary judgment to the defendants in a wrongful death action upon concluding that the plaintiffs' decedent was 50 percent or more responsible for the decedent's own death because there was an issue of fact as to whether the decedent would have died but for the presence of the tractor-trailer illegally parked in the emergency lane. Reed v. Carolina Cas. Ins. Co., 327 Ga. App. 130, 755 S.E.2d 356 (2014).

Oncoming driver failing to keep proper lookout. — Oncoming driver's conduct in failing to keep proper lookout, simply because it constituted the violation of a public law, was not of such nature as to relieve the defendants of the consequence of their unlawful act in leaving the truck parked upon and within 12 feet of the center of the highway; in order for the driver's negligence to insulate the defendants from liability it must have been such as the defendants could not have reasonably anticipated at the time the defendants created the perilous situation by leaving the truck standing on the highway. Pittman v. Staples, 95 Ga. App. 187, 97 S.E.2d 630 (1957).

Drivers may stop school buses within less than 12 feet. — School bus drivers are accorded the right to stop their buses on the pavement and within less than 12 feet of the center line of the highway for the purpose of receiving or discharging school children. Stroud v. Doolittle, 213 Ga. 32, 96 S.E.2d 876 (1957).

Emergency lanes. — Because a situation in which a truck driver witnessed an accident on a highway in which two vehicles veered off the road into a ravine presented an emergency, the truck driver's act of stopping in an emergency lane to run into the ravine to provide assistance was in compliance with O.C.G.A. § 40-6-50(b), and not in violation of O.C.G.A. § 40-6-203. Reid v. Midwest Transp., 270 Ga. App. 557, 607 S.E.2d 170 (2004).

No basis for stop. — Because the government did not allege that the defendant stopped the defendant's vehicle under any of the particular circumstances listed in O.C.G.A. § 40-6-203, there was no traffic basis on which the officer could have had probable cause to stop the defendant's vehicle. United States v. Lopez-Garcia, 565 F.3d 1306 (11th Cir. 2009), cert. denied, 558 U.S. 1092, 130 S. Ct. 1012, 175 L. Ed. 2d 620 (2009).

Cited in Wallace v. Ener, 521 F.2d 215 (5th Cir. 1975); Fabian v. Vincent, 155 Ga. App. 464, 270 S.E.2d 858 (1980); Blake v. Continental S.E. Lines, 161 Ga. App. 869, 289 S.E.2d 551 (1982); Garrett v. Brannen, 164 Ga. App. 10, 296 S.E.2d 205 (1982); Robinson v. Metropolitan Atlanta Rapid Transit Auth., 197 Ga. App. 628, 399 S.E.2d 252 (1990); Roberts v. State, 242 Ga. App. 120, 527 S.E.2d 617 (2000); Dial v. Natalizi, 246 Ga. App. 97, 539 S.E.2d 617 (2000); Gantt v. State, 263 Ga. App. 102, 587 S.E.2d 255 (2003); Ingram v. State, 286 Ga. App. 436, 649 S.E.2d 576 (2007).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 305, 317 et seq.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 751 et seq., 762 et seq.

ALR. — Driving automobile across track in front of street car that has stopped to take on or let off passengers as negligence or contributory negligence, 14 A.L.R. 811.

Right to admission to parking ground or to service at gas station or garages, 35 A.L.R. 557.

Parking at improper place as affecting liability for automobile accident, 73 A.L.R. 1074.

Validity of automobile parking ordinances or regulations, 108 A.L.R. 1152; 130 A.L.R. 316.

Stopping vehicle on traveled portion of highway as affecting responsibility for collision between vehicles, 131 A.L.R. 562.

Construction and effect in civil actions of statute, ordinance, or regulation requiring vehicles to be stopped or parked parallel with, and within certain distance of, curb, 17 A.L.R.2d 582.

Criminal responsibility of motor vehicle operator for accident arising from physical defect, illness, drowsiness, or falling asleep, 63 A.L.R.2d 983.

Applicability of res ipsa loquitur doctrine where motor vehicle stops on highway, 79 A.L.R.2d 153.

Civil liability of mobile vendor for attracting into street child injured by another's motor vehicle, 84 A.L.R.3d 826.

40-6-204. Exception as to disabled vehicles.

Code Sections 40-6-200, 40-6-202, and 40-6-203 shall not apply to the driver of any vehicle which is disabled while on the roadway in such a manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 90; Code 1933, § 68A-1001, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1938, p. 295 are included in the annotations for this Code section.

Standard for determining emergency stop. — Standard to be applied in determining whether the operator has made an emergency stop on the public highway is whether an ordinarily prudent man, under the same or similar circumstances, and with the same information available to the operator as to conditions to be considered in determining where the stop should be made, would have acted in the same manner. Smith v. Nelson, 123 Ga. App. 712, 182 S.E.2d 332 (1971).

Positioning vehicle in lawful area. — Although there may be no sufficient space at the immediate point of the emergency, yet if the vehicle can consistently with law and common prudence be moved to some other area where lawful space may be had, the driver should under the law pursue the latter course. Potts v. Sessions, 77 Ga. App. 259, 48 S.E.2d 561 (1948) (decided under Ga. L. 1939, p. 295).

Section applicable where driver indicates brakes unsafe. — Charging the jury on O.C.G.A. § 40-6-204 was proper after the driver of a truck indicated that the condition of the driver's brakes made it impossible for the driver to effect a safe stop. Grogan v. Bennett, 208 Ga. App. 102, 430 S.E.2d 94 (1993).

Cited in Wallace v. Ener, 521 F.2d 215 (5th Cir. 1975); Fabian v. Vincent, 155 Ga. App. 464, 270 S.E.2d 858 (1980); Blake v. Continental S.E. Lines, 161 Ga. App. 869, 289 S.E.2d 551 (1982); Brown v. Shiver, 183 Ga. App. 207, 358 S.E.2d 862 (1987); Robinson v. Metropolitan Atlanta Rapid

Transit Auth., 197 Ga. App. 628, 399 S.E.2d 252 (1990); Dial v. Natalizi, 246 Ga. App. 97, 539 S.E.2d 617 (2000).

RESEARCH REFERENCES

C.J.S. — 60A C.J.S., Motor Vehicles, § 759.

ALR. — Negligence or contributory negligence of driver or occupant of motor vehicle parked or stopped on highway without flares, 67 A.L.R.2d 12.

40-6-205. Obstructing intersection.

No driver shall enter an intersection unless there is sufficient space on the other side of the intersection to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic-control signal indication to proceed. (Code 1933, § 68A-1005, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

RESEARCH REFERENCES

ALR. — What is a street or highway intersection within traffic rules, 7 A.L.R.3d 1204.

40-6-206. When police officers may remove vehicles; uninsured vehicles.

(a) Whenever any police officer finds a vehicle in violation of any of the provisions of Code Section 40-6-202, such officer is authorized to move such vehicle or require the driver or other person in charge of the vehicle to move it to a position off the roadway.

(b) Any police officer is authorized to remove or cause to be removed to a place of safety any unattended vehicle illegally left standing upon any highway, bridge, or causeway or in any tunnel.

(c) Any police officer is authorized to remove or cause to be removed to the nearest garage or other place of safety any vehicle found upon a highway when:

(1) Report has been made that such vehicle has been stolen or taken without the consent of its owner;

(2) The person or persons in charge of such vehicle are unable to provide for its custody or removal;

(3) The person driving or in control of such vehicle is arrested for an alleged offense for which the officer is required by law to take the person arrested before a proper magistrate without unnecessary delay;

(4) Any such vehicle has been left unattended for 24 hours or more; or

(5) Such vehicle is stopped, except when traffic congestion makes movement impossible, on a controlled-access highway which is part of The Dwight D. Eisenhower System of Interstate and Defense Highways for more than eight hours, unless such vehicle constitutes a traffic hazard, in which case it may be removed immediately.

(d) Because uninsured vehicles pose a threat to the public safety and health, any law enforcement officer is authorized to remove or cause to be removed to the nearest garage or other place of safety the vehicle of a person who is charged under subsection (a) or (b) of Code Section 40-6-10 if such person admits to the law enforcement officer that there is no insurance in effect on the vehicle or if the law enforcement officer verifies that the proof of insurance provided by such person is fraudulent. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 91; Code 1933, § 68A-1002, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1975, p. 1286, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1987, p. 542, § 5; Ga. L. 1990, p. 2048, § 5; Ga. L. 2000, p. 136, § 40.)

Cross references. — Right of person to have removed any car parked without authorization upon property possessed by such person, § 44-1-13.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, a comma was deleted following "Defense Highways" in paragraph (c)(5).

Law reviews. — For comment on Wilkinson v. Townsend, 96 Ga. App. 179, 99 S.E.2d 539 (1957), see 9 Mercer L. Rev. 372 (1958).

JUDICIAL DECISIONS

No lien arises under Ga. L. 1953, Nov.-Dec., Sess., p. 556, and detention of the automobile by the garage against the demands of the owner amounts to a conversion. Wilkinson v. Townsend, 96 Ga. App. 179, 99 S.E.2d 539 (1957) commented on in 9 Mercer L. Rev. 372 (1958).

Indefinite retention of vehicles not authorized. — Enforcement officers initially authorized to remove or impound a vehicle do not have a duty to retain possession indefinitely; the statutes require only the removal to a "garage or other place of safety," not necessarily into the custody of the authorities, and there is nothing about the vehicle's ultimate disposition. Strickland v. Vaughn, 221 Ga. App. 636, 472 S.E.2d 159 (1996).

Cited in State v. Lamb, 202 Ga. App. 69, 413 S.E.2d 511 (1991); Ahmad v. State, 312 Ga. App. 703, 719 S.E.2d 563 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Possible liability of officers removing vehicles personally liable for gross negligence. — Peace officers who cause vehicles to be removed from the public roadway are personally liable for those acts which constitute gross negligence with respect to the vehicle. 1974 Op. Att'y Gen. No. 74-99.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 313.

C.J.S. — 60 C.J.S., Motor Vehicles, § 63. 60A C.J.S., Motor Vehicles, §§ 789, 790.

ALR. — Lien for towing or storage, ordered by public officer, of motor vehicle, 85 A.L.R.3d 199.

State or municipal towing, impounding, or destruction of motor vehicles parked or abandoned on streets or highways, 32 A.L.R.4th 728.

40-6-207. Liability of owner for traffic or parking violations occurring while vehicle leased to another; duty of owner to attend hearing on the offense; improper vehicle maintenance.

(a) The owner of any motor vehicle leased to another shall not be liable for a state, county, or municipal traffic or parking violation occurring while such leased vehicle was not in the owner's possession or control, if upon notice of the violation the owner notifies the clerk of the court in which the case is pending of the name and address of the lessee of the vehicle on the date the violation occurred. If the owner fails to submit the notice, the court in which the case is heard may find the owner of the motor vehicle liable for the violation.

(b) After providing the name and address of the lessee, the owner shall not be required to attend a hearing on the offense, unless notified that the offense occurred through a mechanical failure of the vehicle which resulted from the owner's failure to maintain the vehicle.

(c) The owner of any leased vehicle shall be liable for any violation which was caused by the owner's failure to maintain the vehicle properly. The lessee claiming the violation resulted from the owner's failure to maintain the vehicle properly shall notify the clerk of the court in which the case is pending along with the owner of the vehicle of the claim within seven days after receiving notice of the violation or at least ten days prior to the date the case will be heard by the court, whichever is later. (Code 1933, § 68A-1005.1, enacted by Ga. L. 1981, p. 1004, § 1; Ga. L. 1990, p. 2048, § 5.)

Cross references. — Bailments, § 44-12-40 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 862, 864.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 778, 779.

ALR. — Construction and application of statute imposing liability expressly upon motor vehicle lessor for damage caused by operation of vehicle, 41 A.L.R.4th 993.

State regulation of motor vehicle rental ("you-drive") business, 60 A.L.R.4th 784.

40-6-208. Parking areas for passengers of rapid rail or public transit buses; violations.

(a) In all parking lots, parking decks, and other such facilities owned or operated by any public transit authority or established for the exclusive purpose of providing parking for passengers of rapid rail or public transit buses, it shall be unlawful to:

(1) Stop, stand, or park a vehicle other than in marked spaces designed for that purpose;

(2) Stop, stand, or park a vehicle on any yellow curb;

(3) Stop, stand, or park a vehicle in any location which results in impeding ingress or egress to said facility or which results in impeding the free passage of any other vehicle;

(4) Leave any vehicle unattended in areas designated as "kiss-ride" or designated as "attended vehicles only";

(5) Stop, stand, or park any taxicab or other vehicle for hire, whether attended or unattended, in any area not specifically designated for such vehicles;

(6) Stop, stand, or park any vehicle for the purpose of loading or unloading passengers, except in areas specifically designated for that use, such as "kiss-ride" or "passenger drop-off" areas;

(7) Stop, stand, or park any vehicle for a period in excess of 24 hours unless such parking area is designated "overnight" or "long-term" parking;

(8) Stop, stand, or park any vehicle for any purpose other than to board the rapid rail car or public transit bus serving such parking lot; or

(9) Create or maintain any fire or flame, including fires or flames for cooking or grilling, or to fail to extinguish said fire or flame and to remove from such public transit parking facility all debris and residue associated with the creation and maintenance of said fire or flame.

(b) Any person violating subsection (a) of this Code section shall be subject to a fine levied by the municipality or, in the case of properties located outside the boundaries of a municipality, by the county in which the offense occurs. Such offense shall be cited by the issuance of a written citation which shall be left on the violator's vehicle and which shall contain, at a minimum:

(1) The nature of the violation;

(2) The amount of the fine which will be levied for such violation;

(3) That the cited individual has the right to contest the citation and be given an opportunity to be heard;

(4) The location of the court in which the cited individual must appear within five days of the date of the citation to contest same; and

(5) The location at which fines may be paid.

(c) Nothing in this Code section shall be construed to limit the enforcement of any other provision of state law which may be applicable, including, but not limited to, Part 2 of this article, the "Parking Law For Persons With Disabilities," and the uniform rules of the road. (Code 1981, § 40-6-208, enacted by Ga. L. 1998, p. 890, § 3.)

Part 2

Parking for Persons with Disabilities

Cross references. — Access to public facilities by the handicapped, T. 30, C. 3. Special license plates for disabled veterans, § 40-2-69 et seq. Special license plates for disabled persons, § 40-2-74. Parking space designation for persons with disabilities, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of the Comptroller General, Rules of Safety Fire Commission, § 120-3-20-.06.

40-6-220. Short title.

This part shall be known and may be cited as the "Parking Law for Persons with Disabilities." (Code 1933, § 68A-1020, enacted by Ga. L. 1980, p. 1334, § 3; Ga. L. 1990, p. 2048, § 5; Ga. L. 1995, p. 1302, § 8.)

40-6-221. Definitions.

As used in this part, the term:

(1) "Counterfeit" means any copy of any kind of parking permit for persons with disabilities which is not authorized by and does not carry the official seal of the Department of Revenue.

(2) "Institution" means an institution for which a permit or conditional permit may be issued under Article 1 of Chapter 7 of Title 31.

(3) "Parking place for persons with disabilities" means any area on public or private property which has been designated as reserved for use of persons with disabilities as follows:

(A) By a blue metal reflective sign which is at least 12 inches in width and 18 inches in length and is erected at a height of seven feet from the bottom of the sign to its ground surface and in such manner that it will not be obscured by a vehicle parked in the space and bearing the following words: "Permit Parking Only,"

"Tow-Away Zone," and the international symbol for accessibility. The warnings required in this subparagraph shall be centered on the sign, printed in white, and shall occupy not less than 75 percent of the surface area of the sign. The sign required by this subparagraph shall be the official authorized sign for parking place designations for persons with disabilities in this state. In addition, parking spaces which are required by Code Section 30-3-6 shall be designated as "For Disabled Persons With Ambulatory Assistive Devices Only"; or

(B) Where the parking place is on private property, is constructed solely from concrete, was used by the public or finished prior to July 1, 1987, and which is designated by having imprinted and maintained in reflective paint upon each such place the words "Tow-Away Zone" or "Parking Only for Persons with Disabilities" or the universal symbol of accessibility, that designation shall be deemed to meet the requirements of subparagraph (A) of this paragraph until such time as that concrete lot is renovated, repaired, or remodeled, at which time a sign shall be erected which shall comply with the requirements of subparagraph (A) of this paragraph.

(4) "Permanently disabled person" means a person with disabilities whose disability or incapacity can be expected to last for more than 180 days.

(5) "Person with disabilities" means a person who:

(A) Is so ambulatorily disabled that he or she cannot walk 200 feet without stopping to rest;

(B) Cannot walk without the use of or assistance from a brace, a cane, a crutch, another person, a prosthetic device, a wheelchair, or other assistive device;

(C) Is restricted by lung disease to such an extent that his or her forced respiratory volume for one second, when measured by spirometry, is less than one liter, or when at rest, his or her arterial oxygen tension is less than 60 millimeters of mercury on room air;

(D) Uses portable oxygen;

(E) Has a cardiac condition to the extent that his or her functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association;

(F) Is severely limited in his or her ability to walk due to an arthritic, neurological, or orthopedic condition or complications due to pregnancy; or

(G) Is a blind individual whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose

visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

(5.1) "Practitioner of the healing arts" means a person holding a license to practice medicine, podiatric medicine, or chiropractic issued pursuant to Article 2 of Chapter 34 of Title 43, Chapter 35 of Title 43, or Chapter 9 of Title 43, respectively.

(6) "Ramp" shall mean, in addition to any other specified meanings:

(A) Any ramp or curb ramp as defined in ANSI A117.1-1986 by Chapter 3 of Title 30; and

(B) Any vehicle mounted lift used by handicapped persons for the purpose of access to and from the vehicle upon which it is mounted.

(7) "Temporarily disabled person" means a person with disabilities whose disability or incapacity can be expected to last for not more than 180 days and shall include, but not be limited to, any woman who is pregnant and who presents a sworn affidavit of a medical doctor attesting to a medical need for access to parking for persons with disabilities. (Code 1933, § 68A-1021, enacted by Ga. L. 1980, p. 1334, § 3; Ga. L. 1981, p. 677, § 1; Ga. L. 1984, p. 1263, § 1; Ga. L. 1987, p. 1439, § 1; Ga. L. 1988, p. 1460, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1992, p. 1394, § 1; Ga. L. 1995, p. 1302, § 8; Ga. L. 2000, p. 951, § 5A-2; Ga. L. 2000, p. 1182, § 2; Ga. L. 2004, p. 619, § 1; Ga. L. 2005, p. 334, § 18-4/HB 501.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, former paragraphs (0.1) through (5) were redesignated as present paragraphs (1) through (7), in order to delete the decimal number paragraph designations originally given to maintain the alphabetical organization of the defined terms.

Pursuant to Code Section 28-9-5, in 1992, a comma was inserted following "limited to" in paragraph (7).

40-6-222. Permits.

Reserved. Repealed by Ga. L. 2006, p. 659, § 2/HB 1217, effective May 1, 2006.

Code Commission notes. — The amendment of this Code section by Ga. L. 2006, p. 535, § 2, irreconcilably conflicted with and was treated as superseded by Ga. L. 2006, p. 659, § 2/HB 1217. See County of Butts v. Strahan, 151 Ga. 417 (1921).

Editor's notes. — This Code section was based on Code 1933, § 68A-1022, enacted by Ga. L. 1980, p. 1334, § 3; Ga. L. 1981, p. 624, § 1; Ga. L. 1981, p. 677, § 2; Ga. L. 1985, p. 149, § 40; Ga. L. 1987, p. 1464, § 2; Ga. L. 1988, p. 1460, § 2; Ga. L. 1990, p. 2048, § 5; Ga. L. 1995, p. 1302, § 8; Ga. L. 2000, p. 951, § 5A-3; Ga. L. 2000, p. 1182, § 3; Ga. L. 2004, p. 619, § 2; Ga. L. 2005, p. 334, § 18-5/HB 501; Ga. L. 2005, p. 636, § 1/SB 267.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 1C Am. Jur. Pleading and Practice Forms, Affidavits, § 2.

40-6-223. Fees.

Reserved. Repealed by Ga. L. 2006, p. 659, § 3/HB 1217, effective May 1, 2006.

Editor's notes. — This Code section was based on Code 1933, § 68A-1023, enacted by Ga. L. 1980, p. 1334, § 3; Ga. L. 1981, p. 677, § 3; Ga. L. 1990, p. 2048, § 5; Ga. L. 1995, p. 1302, § 8; Ga. L. 2000, p. 951, § 5A-4; Ga. L. 2005, p. 334, § 18-6/HB 501.

40-6-224. Out-of-state handicapped or persons with disabilities license plates or permits.

State and local authorities shall honor visitors' out-of-state handicapped license plates or persons with disabilities license plates and similar special parking permits on the same basis as license plates for persons with disabilities and special parking permits issued within this state. (Code 1933, § 68A-1024, enacted by Ga. L. 1980, p. 1334, § 3; Ga. L. 1981, p. 677, § 4; Ga. L. 1990, p. 2048, § 5; Ga. L. 1995, p. 1302, § 8.)

40-6-224.1. Handicapped parking places for the nonambulatory.

Repealed by Ga. L. 1990, p. 2048, § 5, effective January 1, 1991.

Editor's notes. — This Code Section was based on Ga. L. 1989, p. 572, § 1. For present provisions pertaining to parking for persons with disabilities for the nonambulatory, see Code Section 40-6-225.

40-6-225. Parking places for persons with disabilities for the nonambulatory.

Any business entity may elect to designate parking places for persons with disabilities for the nonambulatory. Such parking places for the nonambulatory shall be in addition to any parking places for persons with disabilities required by Chapter 3 of Title 30. Such parking places for the nonambulatory shall be clearly marked by a sign bearing the words "Parking for Persons with Disabilities — nonambulatory persons only." Such parking places for the nonambulatory shall be utilized only for the purpose of allowing a nonambulatory permanently disabled person to enter or exit a vehicle while in such parking place. A vehicle in a parking place for the nonambulatory shall be required to have a valid unexpired parking permit for persons with disabilities or a specially designated license plate for disabled persons authorized under Code Section 40-2-74 or 40-2-74.1. For the purposes of this Code section,

the term "nonambulatory permanently disabled person" means a person who is permanently disabled as a result of the loss or loss of use of one or both legs and who is dependent upon crutches, a walker, or a wheelchair for locomotion. (Code 1981, § 40-6-224.1, enacted by Ga. L. 1989, p. 572, § 1; Code 1981, § 40-6-225, as redesignated by Ga. L. 1990, p. 2048, § 5; Ga. L. 1995, p. 1302, § 8; Ga. L. 2006, p. 659, § 4/HB 1217; Ga. L. 2007, p. 47, § 40/SB 103.)

40-6-226. Offenses and penalties.

(a) It shall be unlawful for any person to stop, stand, or park any vehicle in a parking place for persons with disabilities unless there is displayed on the driver's side of the dashboard or hung from the rearview mirror of the parked vehicle a valid unexpired parking permit for persons with disabilities or unless there is attached to the vehicle a specially designated license plate for disabled veterans or other disabled persons authorized under Code Section 40-2-74 or 40-2-74.1 and unless such person is the person to whom such permit or license plate was issued; the person to whom such permit or license plate was issued is a passenger in the vehicle; or such vehicle is being used for the transportation of disabled passengers on behalf of the institution to which such permit was issued.

(a.1) It shall be unlawful for any person to stop, stand, or park any vehicle in a parking place for persons with disabilities which is designated "For Persons With Disabled Ambulatory Assistive Devices Only" unless:

(1) There is displayed on the driver's side of the dashboard or hung from the rearview mirror of the parked vehicle a valid unexpired parking permit for persons with disabilities or unless there is attached to the vehicle a specially designated license plate for disabled veterans or other disabled persons authorized under Code Section 40-2-74 or 40-2-74.1; and

(2) A person with disabilities who is using a wheelchair, crutches, walker, or other ambulatory assistive device is the driver of or a passenger in such vehicle.

(b)(1) It shall be unlawful for any person to stop, stand, or park any vehicle in a parking place for persons with disabilities except for the purpose of allowing a disabled person to enter or get out of such vehicle while in such parking place. However, nothing in this paragraph shall prevent an ambulance or emergency vehicle from stopping in a parking place for persons with disabilities.

(2) It shall be unlawful for any person to stop, stand, or park any vehicle in a parking place for the nonambulatory as provided by a

business pursuant to the provisions of Code Section 40-6-225 except for the purpose of allowing a nonambulatory permanently disabled person to enter or get out of such vehicle while in such parking place. However, nothing in this paragraph shall prevent an ambulance or emergency vehicle from stopping in a parking place for the nonambulatory.

(3) It shall be unlawful for any person to stop, stand, or park any vehicle in any area directly connecting with a parking place for persons with disabilities which area is clearly designed and designated for access to such parking place for persons with disabilities.

(c) It shall be unlawful for any person to obtain by fraud or counterfeit a parking permit for persons with disabilities.

(c.1) It shall be unlawful for any person to knowingly and willfully make a false or misleading statement in an application for a parking permit for persons with disabilities or in the affidavit of a practitioner of the healing arts stating that an applicant is a disabled person.

(d) It shall be unlawful for any person or institution, other than the one to whom a parking permit for persons with disabilities or specially designated license plate for the disabled person is issued, to make use of a parking permit for persons with disabilities or specially designated license plate for a disabled person unless the person to whom such permit or license plate was issued is a passenger in such vehicle. It shall be unlawful for any person to use a parking permit for persons with disabilities for any institutional vehicle other than the vehicle for which the permit has been issued. It shall be unlawful for any person to use a parking permit for persons with disabilities issued to an institution for any purpose other than to transport disabled persons.

(e) No person shall park a vehicle so as to block any entrance or exit ramp used by persons with disabilities on public or private property.

(f)(1) Any person violating subsection (c) or (c.1) of this Code section shall be guilty of a misdemeanor.

(2) Any person violating subsection (a), (a.1), (b), (d), or (e) of this Code section shall be subject to a fine of not less than $100.00 and not more than $500.00.

(g) In addition to the penalties provided for in subsection (f) of this Code section, any vehicle which is illegally parked in a parking place for persons with disabilities which is marked by a sign bearing the words "Tow-Away Zone" as described in paragraph (3) of Code Section 40-6-221 on public or private property may be towed away or caused to be towed away by a proper law enforcement agency or the official security agency of said property at the expense of the owner of the

vehicle or, if the vehicle is leased or rented, at the expense of the person responsible for payment on the lease or rental agreement.

(h) A property owner who is required to provide parking places for persons with disabilities shall designate each such place with a sign meeting the applicable requirements specified therefor by paragraph (3) of Code Section 40-6-221 and upon failure so to designate each such parking place for persons with disabilities shall be subject to a fine of $150.00 for each place which is not so designated; provided, however, that the fine will be waived if the required designation is made within 14 days from the date of citation. If that property owner fails or refuses to designate properly the parking places for persons with disabilities within such 14 days, the property owner shall, on the fifteenth day after receiving the citation, be subject to the $150.00 fine for each place and an additional $5.00 fine for each place for each day that the owner fails to comply with provisions of this subsection until the places are properly designated. All fines assessed under this subsection shall be paid into the treasury of the city or county issuing the citation against the owner. (Code 1933, § 68A-1024, enacted by Ga. L. 1980, p. 1334, § 3; Ga. L. 1981, p. 677, § 4; Code 1981, § 40-6-225; Ga. L. 1984, p. 1263, § 2; Ga. L. 1985, p. 558, § 1; Ga. L. 1987, p. 1439, §§ 2, 3; Ga. L. 1989, p. 572, § 2; Ga. L. 1990, p. 8, § 40; Code 1981, § 40-6-226, as redesignated by Ga. L. 1990, p. 2048, § 5; Ga. L. 1993, p. 707, § 1; Ga. L. 1994, p. 97, § 40; Ga. L. 1995, p. 1302, § 8; Ga. L. 2000, p. 1182, § 4; Ga. L. 2005, p. 636, § 2/SB 267; Ga. L. 2006, p. 659, § 5/HB 1217.)

JUDICIAL DECISIONS

State court jurisdiction over handicapped space parking. — Because parking a vehicle in a handicapped parking space is a misdemeanor, criminal jurisdiction over this offense lies in the state courts of counties. Burden v. State, 176 Ga. App. 17, 335 S.E.2d 304 (1985).

Harm not element of offense. — O.C.G.A. § 40-6-226 does not require the harming of a particular individual in order for an offense to occur. Burden v. State, 176 Ga. App. 17, 335 S.E.2d 304 (1985).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprintable offense. — Offense set forth in O.C.G.A. § 40-6-226, which prohibits the improper use of a handicapped parking space, permit, or license plate, does not fall within any of the categories set forth by the General Assembly requiring fingerprinting and the Attorney General has not so designated the offense. 1984 Op. Att'y Gen. No. 84-44.

40-6-227. Application to both public and private property.

The provisions of this part are applicable to both public and private property; and all law enforcement officers of this state and its political subdivisions are expressly authorized to enforce the provisions of this

part on private property as well as on public property. (Code 1981, § 40-6-226, enacted by Ga. L. 1984, p. 1263, § 3; Code 1981, § 40-6-227, as redesignated by Ga. L. 1990, p. 2048, § 5; Ga. L. 1995, p. 1302, § 8.)

40-6-228. Enforcement.

(a) Any county or municipal law enforcement agency of the state which is empowered to enforce the provisions of this part may, in its discretion, appoint any person who is a citizen of the United States, is of good moral character, and has not previously been convicted of a felony to enforce the provisions of Code Section 40-6-226 within the county or municipality in which the appointing law enforcement agency exercises jurisdiction. Each person appointed pursuant to this Code section shall take and subscribe an oath of office as prescribed by the appointing authority. Any person appointed and sworn pursuant to this subsection shall be authorized to enforce the provisions of this part in the same manner as any law enforcement officer of the state or any county or municipality of the state subject to the limitations provided in subsections (b) and (c) of this Code section.

(b) No person appointed pursuant to subsection (a) of this Code section shall be deemed a peace officer under the laws of this state or:

(1) Be deemed an employee of or receive any compensation from the state, county, municipality, or appointing law enforcement agency, but the appointing law enforcement agency shall provide any person so appointed with a uniform consisting of a pith helmet and a windbreaker jacket which shall remain the property of the appointing law enforcement agency;

(2) Be required to complete any training or be certified pursuant to the requirements of Chapter 8 of Title 35;

(3) Have the power or duty to enforce any other traffic or criminal laws of the state, county, or municipality;

(4) Have the power to possess and carry firearms and other weapons for the purpose of enforcing the parking laws for persons with disabilities; provided, however, that a person who possesses a valid weapons carry license issued under Code Section 16-11-129 and who carries such weapon in a manner permitted under Code Section 16-11-126 shall not be in violation of this paragraph; or

(5) Be entitled to any indemnification from the state, county, or municipality for any injury or property damage sustained by such person as a result of attempting to enforce the parking laws of the state for persons with disabilities.

(c) Neither the state nor any county, municipality, or other political subdivision of the state or any department, agency, board, or officer of the state or any county, municipality, or political subdivision of the state shall be liable or accountable for or on account of any act or omission of any person appointed pursuant to this Code section in connection with such person's enforcement of the provisions of Code Section 40-6-226. No person appointed pursuant to this Code section shall be liable on account of any act or omission in connection with such person's enforcement of the provisions of Code Section 40-6-226.

(d) It shall be unlawful for any person willfully to obstruct, resist, impede, or interfere with any person appointed pursuant to this Code section in connection with such person's enforcement of Code Section 40-6-226 or to retaliate or discriminate in any manner against such person as a reprisal for any act or omission of such person. Any violation of this subsection shall be punishable as a misdemeanor. (Code 1981, § 40-6-227, enacted by Ga. L. 1988, p. 389, § 1; Code 1981, § 40-6-228, as redesignated by Ga. L. 1990, p. 2048, § 5; Ga. L. 1994, p. 504, § 1; Ga. L. 1995, p. 1302, § 8; Ga. L. 1997, p. 521, § 1; Ga. L. 2010, p. 524, § 1/HB 1338; Ga. L. 2010, p. 963, § 2-16/SB 308.)

Editor's notes. — Ga. L. 2010, p. 963, § 3-1/SB 308, not codified by the General Assembly, provides, in part, that the amendment of this Code section shall apply to all offenses committed on and after June 4, 2010, and shall not affect any prosecutions for acts occurring before June 4, 2010, and shall not act as an abatement of any such prosecution.

Law reviews. — For article, "Crimes and Offenses," see 27 Ga. St. U.L. Rev. 131 (2011).

ARTICLE 11

MISCELLANEOUS PROVISIONS

RESEARCH REFERENCES

ALR. — Duty in operating automobile at curve or on hill, 57 A.L.R. 589.

Duty of operator of motor vehicle as affected by barrier placed to indicate that street is closed or undergoing repairs, 78 A.L.R. 525.

Duty and liability of vehicle driver blinded by glare of lights, 22 A.L.R.2d 292.

Inference or presumption that owner of motor vehicle was its driver at time of traffic, driving, or parking offense, 49 A.L.R.2d 456.

Liability or recovery in automobile negligence action as affected by driver's being blinded by lights of motor vehicle, 64 A.L.R.3d 551; 64 A.L.R.3d 760.

40-6-240. Backing.

(a) A driver shall not back a vehicle unless such movement can be made with safety and without interfering with other traffic.

(b) A driver of a vehicle shall not back a vehicle upon any shoulder or roadway of any controlled-access highway. (Ga. L. 1953, Nov.-Dec. Sess.,

p. 556, § 94; Code 1933, § 68A-1102, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Backing must be "with safety" as well as without interference with traffic, and when a driver backs into another vehicle, the backing is not done "with safety," regardless of whether that vehicle is moving or occupied. State v. Nichols, 225 Ga. App. 609, 484 S.E.2d 507 (1997).

Sufficient evidence to convict. — Officer's testimony provided sufficient evidence to support the conviction for improper backing under O.C.G.A. § 40-6-240(a) as the officer testified that the defendant backed 10 to 15 yards up a hill on a busy one-way street, and the defendant would have had difficulty seeing cars behind the defendant due to the crest of the hill. Jones v. State, 259 Ga. App. 506, 578 S.E.2d 165 (2003).

As predicate for investigatory stop. — Sufficient circumstantial evidence was introduced to convict the defendant of being a felon in possession of a firearm during a drug trafficking crime under 18 U.S.C. §§ 922(g)(1) and 924(c)(1)(A) because a pistol was found, along with drugs, inside the defendant's car alongside the driver's seat, after police stopped the car for improper backing, a violation of O.C.G.A. § 40-6-240(a). United States v. Hamilton, 299 Fed. Appx. 878 (11th Cir. 2008) (Unpublished).

Suppression motion based on reasonable suspicion of violation of O.C.G.A. § 40-6-240(a). — Denial of the defendant's suppression motion was upheld on appeal as: (1) the defendant's vehicle was not stopped by the investigating officer; (2) the defendant voluntarily pulled into a driveway and stopped; (3) the officer did not prevent the defendant's departure; and (4) the officer had a reasonable and objective basis to conclude that the defendant committed the traffic offense of improper backing in violation of O.C.G.A. § 40-6-240(a). Collier v. State, 282 Ga. App. 605, 639 S.E.2d 405 (2006), cert. denied, No. S07C0542, 2007 Ga. LEXIS 217 (Ga. 2007).

Cited in Pfeiffer v. State, 173 Ga. App. 374, 326 S.E.2d 562 (1985); Roberson v. State, 230 Ga. App. 179, 495 S.E.2d 643 (1998); Holland v. State, 240 Ga. App. 169, 523 S.E.2d 33 (1999).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 229.

C.J.S. — 60A C.J.S., Motor Vehicles, § 695.

ALR. — Duties and liabilities between owners or drivers of parked or parking vehicles, 25 A.L.R.2d 1224.

Liability for injury occasioned by backing of motor vehicle in public street or highway, 63 A.L.R.2d 5.

Liability for injury occasioned by backing of motor vehicle from private premises into public street or highway, 63 A.L.R.2d 108.

Liability for injury or damage occasioned by backing of motor vehicle within private premises, 63 A.L.R.2d 184.

40-6-241. Distracted driving; restrictions on operation of wireless telecommunication devices and stand-alone electronic devices; penalty; exceptions.

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

(1) "Stand-alone electronic device" means a device other than a wireless telecommunications device which stores audio or video data files to be retrieved on demand by a user.

(2) "Utility services" means and includes electric, natural gas, water, waste-water, cable, telephone, or telecommunications services or the repair, location, relocation, improvement, or maintenance of utility poles, transmission structures, pipes, wires, fibers, cables, easements, rights of way, or associated infrastructure.

(3) "Wireless telecommunications device" means a cellular telephone, a portable telephone, a text-messaging device, a personal digital assistant, a stand-alone computer, a global positioning system receiver, or substantially similar portable wireless device that is used to initiate or receive communication, information, or data. Such term shall not include a radio, citizens band radio, citizens band radio hybrid, commercial two-way radio communication device or its functional equivalent, subscription based emergency communication device, prescribed medical device, amateur or ham radio device, or in-vehicle security, navigation, or remote diagnostics system.

(b) A driver shall exercise due care in operating a motor vehicle on the highways of this state and shall not engage in any actions which shall distract such driver from the safe operation of such vehicle.

(c) While operating a motor vehicle on any highway of this state, no individual shall:

(1) Physically hold or support, with any part of his or her body a:

(A) Wireless telecommunications device, provided that such exclusion shall not prohibit the use of an earpiece, headphone device, or device worn on a wrist to conduct a voice based communication; or

(B) Stand-alone electronic device;

(2) Write, send, or read any text based communication, including but not limited to a text message, instant message, e-mail, or Internet data on a wireless telecommunications device or stand-alone electronic device; provided, however, that such prohibition shall not apply to:

(A) A voice based communication which is automatically converted by such device to be sent as a message in a written form; or

(B) The use of such device for navigation of such vehicle or for global positioning system purposes;

(3) Watch a video or movie on a wireless telecommunications device or stand-alone electronic device other than watching data related to the navigation of such vehicle; or

(4) Record or broadcast a video on a wireless telecommunications device or stand-alone electronic device; provided that such prohibition shall not apply to electronic devices used for the sole purpose of continuously recording or broadcasting video within or outside of the motor vehicle.

(d) While operating a commercial motor vehicle on any highway of this state, no individual shall:

(1) Use more than a single button on a wireless telecommunications device to initiate or terminate a voice communication; or

(2) Reach for a wireless telecommunications device or stand-alone electronic device in such a manner that requires the driver to no longer be:

(A) In a seated driving position; or

(B) Properly restrained by a safety belt.

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

(f)(1) Except as provided for in paragraph (2) of this subsection, any person convicted of violating this Code section shall be guilty of a misdemeanor which shall be punished as follows:

(A) For a first conviction with no conviction of and no plea of nolo contendere accepted to a charge of violating this Code section within the previous 24 month period of time, as measured from the dates any previous convictions were obtained or pleas of nolo contendere were accepted to the date the current conviction is obtained or plea of nolo contendere is accepted, a fine of not more than $50.00, but the provisions of Chapter 11 of Title 17 and any other provision of law to the contrary notwithstanding, the costs of such prosecution shall not be taxed nor shall any additional penalty, fee, or surcharge to a fine for such offense be assessed against a person for conviction thereof;

(B) For a second conviction within a 24 month period of time, as measured from the dates any previous convictions were obtained or pleas of nolo contendere were accepted to the date the current conviction is obtained or plea of nolo contendere is accepted, a fine of not more than $100.00, but the provisions of Chapter 11 of Title 17 and any other provision of law to the contrary notwithstanding, the costs of such prosecution shall not be taxed nor shall any additional penalty, fee, or surcharge to a fine for such offense be assessed against a person for conviction thereof; or

(C) For a third or subsequent conviction within a 24 month period of time, as measured from the dates any previous convic-

tions were obtained or pleas of nolo contendere were accepted to the date the current conviction is obtained or plea of nolo contendere is accepted, a fine of not more than $150.00, but the provisions of Chapter 11 of Title 17 and any other provision of law to the contrary notwithstanding, the costs of such prosecution shall not be taxed nor shall any additional penalty, fee, or surcharge to a fine for such offense be assessed against a person for conviction thereof.

(2) Any person appearing before a court for a first charge of violating paragraph (1) of subsection (c) of this Code section who produces in court a device or proof of purchase of such device that would allow such person to comply with such paragraph in the future shall not be guilty of such offense. The court shall require the person to affirm that they have not previously utilized the privilege under this paragraph.

(g) Subsections (c) and (d) of this Code section shall not apply when the prohibited conduct occurred:

(1) While reporting a traffic accident, medical emergency, fire, an actual or potential criminal or delinquent act, or road condition which causes an immediate and serious traffic or safety hazard;

(2) By an employee or contractor of a utility services provider acting within the scope of his or her employment while responding to a utility emergency;

(3) By a law enforcement officer, firefighter, emergency medical services personnel, ambulance driver, or other similarly employed public safety first responder during the performance of his or her official duties; or

(4) While in a motor vehicle which is lawfully parked. (Code 1933, § 68A-1103, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 2010, p. 1156, § 2/HB 23; Ga. L. 2010, p. 1158, § 3/SB 360; Ga. L. 2018, p. 127, § 4/HB 673.)

The 2018 amendment, effective July 1, 2018, substituted the present provisions of this Code section for the former provisions, which read: "A driver shall exercise due care in operating a motor vehicle on the highways of this state and shall not engage in any actions which shall distract such driver from the safe operation of such vehicle, provided that, except as prohibited by Code Sections 40-6-241.1 and 40-6-241.2, the proper use of a radio, citizens band radio, mobile telephone, or amateur or ham radio shall not be a violation of this Code section."

Cross references. — Penalties for Violations of Uniform Rules of the Road, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Driver License Services, Revocation and Suspension, Rule 375-3-3-.01.

Editor's notes. — Ga. L. 2010, p. 1156, § 4/HB 23, not codified by the General Assembly, provides that the amendment by that Act shall be applicable to offenses committed on or after July 1, 2010.

Ga. L. 2010, p. 1158, § 1/SB 360, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Caleb Sorohan Act for

Saving Lives by Preventing Texting While Driving.'"

Ga. L. 2010, p. 1158, § 6/SB 360, not codified by the General Assembly, provides that the amendment by that Act shall apply to offenses committed on or after July 1, 2010.

Ga. L. 2018, p. 127, § 1/HB 673, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Hands-Free Georgia Act.'"

Law reviews. — For article, "Motor Vehicles and Traffic," see 27 Ga. St. U.L. Rev. 155 (2011).

JUDICIAL DECISIONS

Stop justified based on officer's observation. — Stop of the defendant's vehicle was justified by the officer's observation of the defendant manipulating some sort of device in the defendant's hands, which the officer believed was contributing to the defendant not stopping for the officers directing traffic. Williams v. State, 334 Ga. App. 195, 778 S.E.2d 820 (2015).

Award of punitive damages based on cell phone use in auto accident. — After an employee collided with a vehicle while driving a tractor-trailer, the employee was not entitled to summary judgment on the punitive damages claim because although the proper use of a cell phone while driving was permissible in Georgia, the court could not find as a matter of law that the plaintiffs could not prove aggravating circumstances that would warrant an award of punitive damages; the punitive damages claims against other defendants failed because the plaintiffs presented no evidence that these defendants actually knew about the nature of the employee's cell phone use. Little v. McClure, No. 5:12-CV-147 (MTT), 2014 U.S. Dist. LEXIS 120681 (M.D. Ga. Aug. 29, 2014).

Cited in Smith v. State, 324 Ga. App. 100, 749 S.E.2d 395 (2013).

RESEARCH REFERENCES

ALR. — Criminal and quasi-criminal liability arising from use of portable electronic device while driving, 5 A.L.R.7th 3.

40-6-241.1. Definitions; prohibition on certain persons operating motor vehicle while engaging in wireless communications; exceptions; penalties.

Repealed by Ga. L. 2018, p. 127, § 5/HB 673, effective July 1, 2018.

Editor's notes. — This Code section was based on Code 1981, § 40-6-241.1, enacted by Ga. L. 2010, p. 1156, § 3/HB 23.

Ga. L. 2018, p. 127, § 1/HB 673, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Hands-Free Georgia Act.'"

40-6-241.2. Writing, sending, or reading text based communication while operating motor vehicle prohibited; prohibited uses of wireless telecommunication devices by drivers of commercial vehicles; exceptions; penalties for violation.

Repealed by Ga. L. 2018, p. 127, § 6/HB 673, effective July 1, 2018.

Editor's notes. — This Code section was based on Code 1981, § 40-6-241.2, enacted by Ga. L. 2010, p. 1158, § 4/SB 360; Ga. L. 2015, p. 1370, § 6/HB 118.

Ga. L. 2018, p. 127, § 1/HB 673, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Hands-Free Georgia Act.'"

40-6-242. Obstruction of driver's view or interference with control of vehicle.

(a) No person shall drive a vehicle when it is so loaded or when there are in the front seat such a number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

(b) No passenger in a vehicle shall ride in such position or commit any act as to interfere with the driver's view ahead or to the sides or to interfere with his control over the driving mechanism of the vehicle. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 96; Code 1933, § 68A-1104, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Cited in Reed v. Dixon, 153 Ga. App. 604, 266 S.E.2d 286 (1980); Pate v. Seaboard R.R., Inc., 819 F.2d 1074 (11th Cir. 1987); Worthy v. Kendall, 222 Ga. App. 324, 474 S.E.2d 627 (1996); State v. Bute, 250 Ga. App. 479, 552 S.E.2d 465 (2001).

RESEARCH REFERENCES

C.J.S. — 60A C.J.S., Motor Vehicles, § 650 et seq.

ALR. — Negligence of automobile passenger as to lookout or other precaution as affecting question of negligence or contributory negligence of driver, 165 A.L.R. 596.

40-6-243. Opening and closing vehicle doors.

No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so and can be done without interfering with the movement of other traffic, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers. (Ga. L. 1967, p. 542, § 5; Code 1933, § 68A-1105, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

RESEARCH REFERENCES

C.J.S. — 60A C.J.S., Motor Vehicles, § 756.

ALR. — Liability for injury or damage caused in collision with, or avoiding collision with, open door or parked automobile, 92 A.L.R.2d 1037.

40-6-244. Riding in house trailer.

No driver of a motor vehicle shall allow a person or persons to occupy a towed house trailer while it is being towed by a motor vehicle upon a public highway. (Code 1933, § 68A-1106, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1975, p. 1202, § 1; Ga. L. 1990, p. 2048, § 5.)

40-6-245. Driving through canyon or on mountain highway.

The driver of a vehicle traveling through a defile or canyon or on a mountain highway shall hold such vehicle under control and as near the right-hand edge of the highway as reasonably possible and, except when driving entirely to the right of the center of the roadway, shall give audible warning with the horn of such vehicle upon approaching any curve where the view is obstructed within a distance of 200 feet along the highway. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 97; Code 1933, § 68A-1107, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1978, p. 1483, § 3; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 5.)

RESEARCH REFERENCES

ALR. — Duty in operating automobile at curve or on hill, 57 A.L.R. 589.

Automobiles: duty and liability with respect to giving audible signal where driver's view ahead is obstructed at curve or hill, 16 A.L.R.3d 897.

40-6-246. Coasting.

(a) The driver of any motor vehicle when traveling upon a down grade shall not coast with the gears or transmission of such vehicle in neutral.

(b) The driver of a truck or bus when traveling upon a down grade shall not coast with the clutch disengaged. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 98; Code 1933, § 68A-1108, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

RESEARCH REFERENCES

ALR. — Injury to one while coasting in street, 109 A.L.R. 941.

40-6-247. Following fire apparatus or emergency vehicle.

The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm or any other emergency vehicle closer than 200 feet and shall not park such vehicle within 500 feet of any fire apparatus stopped in answer to a fire alarm. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 99; Code 1933,

§ 68A-1109, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 248.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 872, 879.

40-6-248. Crossing fire hose.

No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street, private road, or driveway to be used at any fire or alarm of fire, without consent of the fire department official in command. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 100; Code 1933, § 68A-1110, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

40-6-248.1. Securing and covering loads on vehicles.

(a) As used in this Code section, the term "litter" has the meaning provided by paragraph (1) of Code Section 16-7-42.

(a.1) No vehicle shall be driven or moved on any public road unless such vehicle is constructed or loaded or covered so as to prevent any of its load from dropping, escaping, or shifting in such a manner as to:

(1) Create a safety hazard; or

(2) Deposit litter on public or private property while such vehicle is on a public road.

However, this Code section shall not prohibit the necessary spreading of any substance in public road maintenance or construction operations.

(b) No person shall operate or load for operation, on any public road, any vehicle with any load unless such load and any covering thereon is securely fastened so as to prevent such covering or load from:

(1) Becoming loose, detached, or in any manner becoming a hazard to other users of the public road; or

(2) Depositing litter on public or private property while such vehicle is on a public road.

(c) No motor carrier shall allow a commercial motor vehicle to be driven and no person shall operate a commercial motor vehicle with a load that is not secure. Loads shall be secured as required by state and federal law, rule, and regulation. As used in this subsection, the term "load" shall include loads consisting of liquids and gases as well as solid materials.

(d) Nothing in this Code section nor any regulations based thereon shall conflict with federal, Department of Public Safety, or Board of Public Safety regulations applying to the securing of loads on motor vehicles.

(e) The provisions of paragraph (2) of subsection (a) and paragraph (2) of subsection (b) of this Code section and regulations based thereon shall not apply to organic debris that escapes during the transportation of silage from field or farm to storage and storage to feedlot or during the transportation of agricultural or farm products or silvicultural products from farm or forest to a processing plant or point of sale or use. (Code 1933, § 95A-955, enacted by Ga. L. 1973, p. 947, § 1; Ga. L. 1981, p. 705, § 1; Ga. L. 2002, p. 1270, § 1; Code 1981, § 32-6-21; Code 1981, § 40-6-248.1, as redesignated by Ga. L. 2006, p. 275, § 3-9/HB 1320; Ga. L. 2012, p. 580, § 10/HB 865; Ga. L. 2013, p. 141, § 40/HB 79; Ga. L. 2013, p. 838, § 18/HB 323.)

Cross references. — Operating vehicle without adequately securing load, § 40-6-254. Prohibition against dragging or sliding of vehicles or loads on road surfaces, § 40-8-3.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2012, a comma that was inadvertently deleted was inserted following "federal" in subsection (c) (now (d)).

Editor's notes. — Ga. L. 2006, p. 275, § 1-1/HB 1320, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Comprehensive Litter Prevention and Abatement Act of 2006'."

Ga. L. 2006, p. 275, § 5-1/HB 1320, not codified by the General Assembly, provides that the Act shall become effective April 21, 2006, for purposes of adopting local ordinances to become effective on or after July 1, 2006.

Ga. L. 2006, p. 275, § 3-9/HB 1320, effective July 1, 2006, redesignated former Code Section 32-6-21 as present Code Section 40-6-248.1.

Ga. L. 2013, p. 838, § 20/HB 323, not codified by the General Assembly, provides, in part: "This Act shall become effective on July 1, 2013, and shall apply to violations committed on or after such date".

JUDICIAL DECISIONS

Driving with an unsecured load is a strict liability offense, and proof of mens rea or guilty knowledge is unnecessary to support a conviction. Semones v. State, 200 Ga. App. 3, 406 S.E.2d 483, cert. denied, 200 Ga. App. 897, 406 S.E.2d 483, cert. vacated, 261 Ga. 744, 414 S.E.2d 463 (1991).

Probable cause for stop. — Nothing showed error in the district court's denial of the defendants' motion to suppress since the district court found probable cause to stop and search the second defendant's truck for drug proceeds or, alternatively, probable cause under O.C.G.A. § 40-6-248.1 for carrying an unsecured load, and that after the stop, valid consent was given. United States v. Baza, No. 09-10285, 2010 U.S. App. LEXIS 12498 (11th Cir. June 17, 2010) (Unpublished).

What acts constitute loading process for insurance purposes. — Logger's act of throwing a metal cable across a load of logs on a truck to secure the logs prior to transportation on a public road constituted a part of the loading process for insurance purposes and was not an act separate therefrom. Crosby v. Georgia Cas. & Sur. Co., 173 Ga. App. 644, 327 S.E.2d 505 (1985).

OPINIONS OF THE ATTORNEY GENERAL

Traffic regulation. — This section qualifies as a statute relating to traffic upon the public roads, streets and highways, violation of which is punishable as a misdemeanor offense. 1979 Op. Att'y Gen. No. U79-14 (see O.C.G.A. § 32-6-21; now O.C.G.A. § 40-6-248.1).

Department of Transportation not entitled to enforcement proceeds. — Department of Transportation is not entitled to any portion of resulting fine or forfeiture from enforcement of this section. 1973 Op. Att'y Gen. No. 73-149 (see O.C.G.A. § 32-6-21; now O.C.G.A. § 40-6-248.1).

RESEARCH REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d, Carriers, §§ 34, 86. 39 Am. Jur. 2d, Highways, Streets, and Bridges, § 235 et seq.

C.J.S. — 40 C.J.S., Highways, §§ 394 et seq.

40-6-249. Littering highway.

Any person littering a highway in violation of Part 2 of Article 2 of Chapter 7 of Title 16 or driving, moving, or loading for operation a vehicle in violation of Code Section 40-6-248.1 shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in Code Section 16-7-43. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 101; Code 1933, § 68A-1111, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 2006, p. 275, § 3-13/HB 1320.)

Editor's notes. — Ga. L. 2006, p. 275, § 1-1/HB 1320, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Comprehensive Litter Prevention and Abatement Act of 2006'."

Ga. L. 2006, p. 275, § 5-1, not codified by the General Assembly, provides that the Act shall become effective April 21, 2006 for purposes of adopting local ordinances to become effective on or after July 1, 2006.

40-6-250. Wearing device which impairs hearing or vision.

No person shall operate a motor vehicle while wearing a headset or headphone which would impair such person's ability to hear, nor shall any person while operating a motor vehicle wear any device which impairs such person's vision; provided, however, that a person may wear a headset or headphone for communication purposes. (Ga. L. 1974, p. 1137, § 1; Code 1933, § 68A-1112, enacted by Ga. L. 1978, p. 1601, § 1; Ga. L. 1989, p. 1399, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1995, p. 759, § 1; Ga. L. 2010, p. 1158, § 5/SB 360.)

Editor's notes. — Ga. L. 2010, p. 1158, § 1/SB 360, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Caleb Sorohan Act for Saving Lives by Preventing Texting While Driving.'"

Ga. L. 2010, p. 1158, § 6/SB 360, not codified by the General Assembly, provides that the amendment by that Act shall apply to offenses committed on or after July 1, 2010.

Law reviews. — For article, "Motor

Vehicles and Traffic," see 27 Ga. St. U.L. Rev. 155 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Offense arising from a violation of O.C.G.A. § 40-6-250 does not appear to be an offense for which fingerprinting is required. 2010 Op. Att'y Gen. No. 10-6.

40-6-251. Driving in circular or zigzag course; "laying drags."

(a) No driver of any motor vehicle shall operate the vehicle upon the public streets, highways, public or private driveways, airport runways, or parking lots in such a manner as to create a danger to persons or property by intentionally and unnecessarily causing the vehicle to move in a zigzag or circular course or to gyrate or spin around, except to avoid a collision or injury or damage.

(b) The offenses described in this Code section shall be sufficiently identified on any traffic ticket, warrant, accusation, or indictment when referred to as "laying drags."

(c) This Code section shall not apply to drivers operating vehicles in or on any raceway, drag strip, or similar place customarily and lawfully used for such purposes.

(d) Any person violating subsection (a) of this Code section shall be guilty of a misdemeanor. (Ga. L. 1970, p. 549, §§ 1-4; Ga. L. 1990, p. 2048, § 5.)

Cross references. — Suspension of driver's license for conviction for racing on highways or streets, § 40-5-54.

JUDICIAL DECISIONS

Even though defendant's behavior did not technically violate O.C.G.A. § 40-6-251, the fact that the defendant was driving in such a manner as to endanger others reasonably justified an investigative stop. State v. Armstrong, 223 Ga. App. 350, 477 S.E.2d 635 (1996).

Evidence insufficient to support conviction. — Since no evidence showed that the defendant was "laying drags," that is, that the defendant caused the defendant's vehicle to move in a zigzag or circular course, or to gyrate or spin around, the evidence was insufficient to support the defendant's conviction for "laying drags" and the trial court's judgment against the defendant for that offense had to be reversed. Hale v. State, 262 Ga. App. 710, 586 S.E.2d 372 (2003).

Cited in Phillips v. State, 324 Ga. App. 728, 751 S.E.2d 526 (2013).

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 921 et seq., 1069. 21 Am. Jur. 2d, Criminal Law, §§ 1, 5, 19, 26 et seq.

C.J.S. — 60A C.J.S., Motor Vehicles, § 679. 61A C.J.S., Motor Vehicles, § 1642 et seq.

ALR. — What conduct in driving an automobile amounts to wantonness, willfulness, or the like, precluding defense of contributory negligence, 119 A.L.R. 654.

Motor vehicle operator's criminal responsibility for homicide where he and deceased were racing, though accused's car was not otherwise involved in the collision or incident, 82 A.L.R.2d 463.

Validity, construction, and application of criminal statutes specifically directed against racing of automobiles on public streets or highways (drag racing), 24 A.L.R.3d 1286.

40-6-252. Parking, standing, or driving vehicle in private parking area after request not to do so.

(a) No person shall, after having been requested not to do so by a law enforcement officer or an authorized agent of the owner, park or stand an occupied or unoccupied motor vehicle in or repeatedly drive a motor vehicle through or within a parking area located on privately owned property and provided by a merchant, group of merchants, or shopping center or other facility for customers if:

(1) The parking area is identified by at least one sign as specified in this paragraph, and if the parking area contains more than 150 parking spaces then by at least one such sign at each entrance to the parking area, each such sign containing the following information in easy-to-read printing:

(A) Notice of this Code section;

(B) Identification of the property which is reserved for customers' use only;

(C) Identification of the merchant, group of merchants, or shopping center or other similar facility providing the parking area; and

(D) Warning that violators will be prosecuted; and

(2) The motor vehicle is parked, is standing, or is being operated other than for the purpose of:

(A) Transporting some person to or from the interior of the place of business of a merchant identified by the sign or signs in the parking area or to or from the interior of the shopping center or other facility so identified;

(B) Making use of a telephone, vending machine, automatic teller machine, or other similar facility located in the parking area;

(C) Meeting the requirements of a situation in which it has unexpectedly become impossible or impractical for the motor vehicle to continue to travel on the public roads; or

(D) Carrying out an activity for which express permission has been given by the owner of the parking area or an authorized representative of the owner.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine:

(1) Not to exceed $50.00 for the first such offense;

(2) Not to exceed $100.00 for the second such offense; and

(3) Not to exceed $150.00 for the third or subsequent such offense.

(c) The governing authority of any municipal corporation by ordinance may adopt by reference the provisions of subsection (a) of this Code section without publishing or posting in full the provisions thereof. Any person violating any such ordinance shall be subject to a monetary fine:

(1) Not to exceed $50.00 for the first such violation;

(2) Not to exceed $100.00 for the second such violation; and

(3) Not to exceed $150.00 for the third or subsequent such violation. (Code 1981, § 40-6-252, enacted by Ga. L. 1990, p. 2048, § 5; Ga. L. 1992, p. 2785, § 24; Ga. L. 1993, p. 91, § 40.)

OPINIONS OF THE ATTORNEY GENERAL

Fingerprintable offense. — Offense of "cruising" in a merchant's parking area is one which those charged with a violation are to be fingerprinted. 1987 Op. Att'y Gen. No. 87-21.

40-6-253. Consumption of alcoholic beverage or possession of open container of alcoholic beverage in passenger area.

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

(1) "Alcoholic beverage" means:

(A) Beer, ale, porter, stout, and other similar fermented beverages, including sake or similar products, of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor;

(B) Wine of not less than one-half of 1 percent of alcohol by volume; or

(C) Distilled spirits which is that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.

(2) "Open alcoholic beverage container" means any bottle, can, or other receptacle that:

(A) Contains any amount of alcoholic beverage; and

(B)(i) Is open or has a broken seal; or

(ii) The contents of which are partially removed.

A container that has been sealed or resealed pursuant to Code Section 3-5-4 or 3-6-4 shall not constitute an open alcoholic beverage container for purposes of this Code section.

(3) "Passenger area" means the area designed to seat the driver and passengers while a motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in his or her seating position; provided, however, that such term does not include any locked glove compartment or, in a passenger car not equipped with a trunk, any area behind the rearmost upright seat or not normally occupied by the driver or passengers.

(b)(1) A person shall not:

(A) Consume any alcoholic beverage; or

(B) Possess any open alcoholic beverage container

in the passenger area of any motor vehicle which is on the roadway or shoulder of any public highway.

(2) The provisions of paragraph (1) of this subsection shall not apply to any passenger in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation or in the living quarters of a motor home or house trailer.

(3) Only a person who consumes an alcoholic beverage or possesses an open alcoholic beverage container in violation of this Code section shall be charged with such offense; provided, however, that an operator of a motor vehicle who is alone in the passenger area of such motor vehicle shall be deemed to be in possession of any open alcoholic beverage container in such passenger area.

(c) Any person who violates this Code section is subject to a fine not to exceed $200.00. (Code 1981, § 40-6-253, enacted by Ga. L. 1991, p. 1587, § 2; Ga. L. 2001, p. 208, § 1-4; Ga. L. 2008, p. 834, § 2/SB 55; Ga. L. 2013, p. 617, § 2/HB 99.)

Code Commission notes. — Both Ga. L. 1991, p. 1058 and Ga. L. 1991, p. 1587 enacted a new Code Section 40-6-253. Pursuant to Code Section 28-9-5, in 1991, the legislation enacted by Ga. L. 1991, p. 1058 was renumbered as Code Section 40-6-253.1.

Law reviews. — For note on the 1991 enactment of this Code section, see 8 Ga. St. U.L. Rev. 129 (1992).

JUDICIAL DECISIONS

Punishment for violation of O.C.G.A. § 40-6-253 is governed by its own penalty provision, not by O.C.G.A. § 17-10-3, the general misdemeanor statute; thus, the trial court erred in sentencing the defendant convicted of a violation to 12 months probation. Chastain v. State, 231 Ga. App. 225, 498 S.E.2d 792 (1998).

Abuse of discretion. — In a civil action, the court did not abuse the court's discretion in admitting evidence that the defendant was holding a glass of wine at the time of the accident. Boyer v. Brown, 240 Ga. App. 100, 522 S.E.2d 692 (1999).

Negligence per se. — In a civil action, the court did not err in instructing the jury that a violation of O.C.G.A. § 40-6-253 was negligence per se. Boyer v. Brown, 240 Ga. App. 100, 522 S.E.2d 692 (1999).

Sufficient evidence of venue. — Even though a chase involving the defendant might have ended in another county, because the offense of eluding the officers was complete at the moment the defendant refused to stop, despite the visual and audible signals requiring such, the defendant's act of continuing the chase into that second county did not destroy venue in the county where the chase began; moreover, after the defendant wrecked the vehicle involved in the chase in the second county, the evidence gathered at the scene was sufficient to support the inference that the open beer containers were in the vehicle when the defendant was observed driving the vehicle moments earlier in the county where the chase began. Mack v. State, 283 Ga. App. 172, 641 S.E.2d 194 (2007).

Motion to suppress evidence obtained from Selective Traffic Enforcement Program roadblock. — In defendant's trial for driving under the influence under 18 U.S.C. §§ 7 and 13 and O.C.G.A. § 40-6-391 and an open container violation under O.C.G.A. § 40-6-253, a motion to suppress evidence obtained as a result of a Selective Traffic Enforcement Program roadblock was denied because the roadblock reasonably fit within the Fourth Amendment constraints. Implied consent protections did not apply to field sobriety tests because the defendant was not under arrest at the time such tests were performed. United States v. Howard, No. CR208-09, 2008 U.S. Dist. LEXIS 72916 (S.D. Ga. Sept. 24, 2008).

Trial court did not err in allowing the sergeant and the arresting officer to testify that they observed an open container that was full of ice cubes and a dark liquid with the distinct odor of alcohol in the defendant's car despite the state's failure to preserve the actual open container because, pretermitting whether the open-container evidence possessed an apparent exculpatory value so as to make it constitutionally material, the defendant did not show that the police acted in bad faith in failing to preserve the container. Monroe v. State, 340 Ga. App. 373, 797 S.E.2d 245 (2017).

Alcohol container outside of vehicle sufficient. — Fact that an open container of malt liquor was sitting in the snow directly outside the driver's door of the defendant's vehicle was sufficient to support the conviction for possessing an open container. Simmons v. State, 321 Ga. App. 743, 743 S.E.2d 434 (2013).

Evidence sufficient for conviction. — Defendant's admission against interest that the defendant was drinking while driving, coupled with proof that a glass smelling of alcohol was hidden under the passenger seat and the carpet was wet where the defendant had poured out the defendant alcoholic beverage, was sufficient for conviction under O.C.G.A. § 40-6-253. Geoffrion v. State, 224 Ga. App. 775, 482 S.E.2d 450 (1997).

When the totality of the circumstances, including the location of the car and the defendant's position in the car, indicated that the defendant was in actual physical control of the vehicle and in possession of an open container of an alcoholic beverage, even though the defendant was not seen driving the car, there was sufficient evidence that the police officers' act of questioning the defendant was more than a consensual inquiry and was within the scope of the officers' official duties so that a jury could reasonably determine that the defendant's use of a false name was a

violation. Wynn v. State, 236 Ga. App. 98, 511 S.E.2d 201 (1999).

Although the defendant argued the state failed to prove that any open container in the car actually contained alcohol, the appellate court found the jury could have concluded from an officer's testimony that the "open bottle of beer" on the front seat was an open bottle containing beer pursuant to O.C.G.A. § 40-6-253(a)(2)(A). Yates v. State, 263 Ga. App. 29, 587 S.E.2d 180 (2003).

Evidence was sufficient to support the defendant's conviction for having an open container of alcoholic beverage in the vehicle because, even though the officer's testimony established that the bottle in the defendant's car was empty, the defendant's statement to the officer that the defendant consumed the beer while driving was proof that the bottle contained an alcoholic beverage. Kalb v. State, 276 Ga. App. 394, 623 S.E.2d 230 (2005).

Convictions against the defendant for driving under the influence of alcohol to the extent that it was less safe for the defendant to drive and possession of an open container of alcohol, in violation of O.C.G.A. §§ 40-6-253(b)(1)(B) and 40-6-391(a)(1), were supported by sufficient evidence when police officers who had responded to a call observed the defendant driving into a parking lot with a damaged car, the defendant screamed and cried when asked what had happened and if the defendant was okay, there was a strong odor of alcohol, the defendant had bloodshot and watery eyes, admitted to having had "too many," and the defendant refused to take field sobriety tests or a chemical breath test; further, a search of the vehicle after the defendant's arrest revealed open bottles of wine cooler. Crenshaw v. State, 280 Ga. App. 568, 634 S.E.2d 520 (2006).

Defendant's argument that the evidence was insufficient to support the defendant's open container conviction pursuant to O.C.G.A. § 40-6-253 because there was no evidence presented during the trial that there was an open container in the passenger compartment of the defendant's truck was disingenuous; the defendant requested a bench trial and stipulated to evidence presented at the motion hearing, which included a witness's testimony that the witness saw an opened beer can in the passenger compartment of the defendant's truck. Brogdon v. State, 299 Ga. App. 547, 683 S.E.2d 99 (2009), aff'd, 287 Ga. 528, 697 S.E.2d 211 (2010).

By showing circumstantially that each defendant had equal access to a cooler in the backseat, the state was able to support the state's theory that all of the defendants were guilty of joint constructive possession of the open containers. Davenport v. State, 308 Ga. App. 140, 706 S.E.2d 757 (2011).

Arresting officer's testimony that police located two partially filled bottles of vodka and one partially filled bottle of tequila in a defendant's vehicle, along with photographs of the bottles showing the bottles to be labeled vodka and tequila bottles, was sufficient to authorize the jury to find that the partially-filled bottles held alcohol. Ayiteyfio v. State, 308 Ga. App. 286, 707 S.E.2d 186 (2011).

Sufficient evidence supported the defendant's conviction for possession of an open alcoholic beverage container in the passenger area of a motor vehicle, while operating the vehicle, because the defendant drove into a tree while operating a vehicle containing three children as passengers, resulting in a fatality and other serious injuries, and a clear plastic bottle containing 77 proof alcohol was found on the floorboard. Crowe v. State, 314 Ga. App. 527, 724 S.E.2d 831 (2012).

Evidence was sufficient to convict the defendant of driving under the influence of alcohol to the extent that the defendant was a less safe driver, speeding, failure to maintain lane, and driving while possessing an open container of an alcoholic beverage when the evidence showed that a sergeant pulled over the defendant's car for speeding and failing to maintain the defendant's lane, another officer observed six out of six clues of impairment in the officer's horizontal gaze nystagmus evaluation of the defendant and smelled the odor of an alcoholic beverage coming from the defendant's mouth, and, after the defendant's arrest, the sergeant searched the defendant's car and found a glass filled with ice and a dark liquid that smelled like an alcoholic beverage. Monroe v.

State, 340 Ga. App. 373, 797 S.E.2d 245 (2017).

Excessive sentence. — Sentence imposed on an open container conviction was vacated because O.C.G.A. § 40-6-253(c) provided that the maximum fine for violating the statute was not to have exceeded $200, and the defendant was sentenced to serve 12 months on this count. Brogdon v. State, 299 Ga. App. 547, 683 S.E.2d 99 (2009), aff'd, 287 Ga. 528, 697 S.E.2d 211 (2010).

Out of time appeal following guilty plea rejected. — Following guilty pleas to first degree homicide by vehicle and possession of an open container, the trial court properly denied the defendant's motion for an out-of-time appeal, finding that the defendant failed to show that the right to an appeal was frustrated by ineffective assistance of counsel since the record showed that the attacks on the guilty plea in the out-of-time appeal were without merit; thus, trial counsel could not have been ineffective in failing to pursue such an appeal. Martin v. State, 329 Ga. App. 10, 763 S.E.2d 363 (2014).

Cited in Welch v. State, 263 Ga. App. 70, 587 S.E.2d 220 (2003); Hernandez v. State, 297 Ga. App. 177, 676 S.E.2d 795 (2009); Sommese v. State, 299 Ga. App. 664, 683 S.E.2d 642 (2009); Jones v. State, 319 Ga. App. 520, 737 S.E.2d 318 (2013); State v. Hasson, 334 Ga. App. 1, 778 S.E.2d 15 (2015).

OPINIONS OF THE ATTORNEY GENERAL

For an update of crimes and offenses for which the Georgia Crime Information Center is authorized to collect and file identifying data, see 1991 Op. Att'y Gen. No. 91-35.

Jurisdiction over possession of open container of alcohol in vehicle. — In counties in which there is a state court, both the state court and the magistrate court of the county possess concurrent jurisdiction over the prosecution of individuals charged with violating a county ordinance prohibiting the possession of open containers of alcohol while operating a motor vehicle. 1992 Op. Att'y Gen. No. U92-3.

Construction with other law. — Enforcement provisions of O.C.G.A. § 40-6-253 remain in effect including for bottles of wine resealed pursuant to O.C.G.A. § 3-6-4; the 2008 changes in the law were not intended to and did not authorize carrying open alcoholic beverage containers in the passenger area of vehicles. 2008 Op. Att'y Gen. No. 2008-7.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of open container laws, 97 A.L.R.6th 653.

40-6-253.1. Transportation of medical waste; exception; penalty for violation.

(a) As used in this Code section, the terms "infectious substance" and "regulated medical waste" have the same meaning as given to those terms under the federal Hazardous Materials Regulations published in Title 49 of the Code of Federal Regulations as those regulations currently exist or may in the future be amended. The terms "etiologic agent" and "infectious substance" are synonymous.

(b) The transportation of infectious substances and regulated medical waste, including but not limited to the marking of packages and marking or placarding of vehicles with appropriate warnings, shall

comply with the requirements of the federal Hazardous Material Regulations published in Title 49 of the Code of Federal Regulations as those regulations currently exist or may in the future be amended and with compatible regulations adopted or promulgated by the commissioner of public safety.

(c) Nurses, physicians, and other health care professionals may utilize all applicable exceptions contained in federal regulations and in the regulations of the Department of Public Safety when transporting infectious substances.

(d) Violation of the provisions of this Code section shall constitute a misdemeanor. (Code 1981, § 40-6-253.1, enacted by Ga. L. 1991, p. 1058, § 1; Ga. L. 1992, p. 982, § 1; Ga. L. 2003, p. 484, § 11; Ga. L. 2005, p. 334, § 18-7/HB 501.)

Code Commission notes. — Both Ga. L. 1991, p. 1058 and Ga. L. 1991, p. 1587 enacted a new Code Section 40-6-253. Pursuant to Code Section 28-9-5, in 1991, the legislation enacted by Ga. L. 1991, p. 1058 was renumbered as Code Section 40-6-253.1.

OPINIONS OF THE ATTORNEY GENERAL

For an update of crimes and offenses for which the Georgia Crime Information Center is authorized to collect and file identifying data, see 1991 Op. Att'y Gen. No. 91-35.

40-6-254. Operating vehicle without adequately securing load.

No person shall operate any motor vehicle with a load on or in such vehicle unless the load on or in such vehicle is adequately secured to prevent the dropping or shifting of such load onto the roadway in such a manner as to create a safety hazard. For purposes of this Code section, a load shall include, but not be limited to, a trailer required to be registered under Chapter 2 of this title. Any person who operates a vehicle in violation of this Code section shall be guilty of a misdemeanor. (Code 1981, § 40-6-254, enacted by Ga. L. 1992, p. 1967, § 2; Ga. L. 2002, p. 1270, § 2; Ga. L. 2015, p. 584, § 1/HB 123.)

Cross references. — Securing loads on vehicles, § 40-6-248.1.

JUDICIAL DECISIONS

Cited in Westmoreland v. State, 287 Ga. 688, 699 S.E.2d 13 (2010).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting. — Offense arising under O.C.G.A. § 40-6-254 does not require fingerprinting. 2002 Op. Att'y Gen. No. 2002-7.

40-6-255. Driving away without paying for gasoline.

(a) No person shall drive a motor vehicle so as to cause it to leave the premises of an establishment at which gasoline offered for retail sale was dispensed into the fuel tank of such motor vehicle unless due payment or authorized charge for the gasoline so dispensed has been made.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed $100.00 or by confinement in the county or other jail, county correctional institution, or such other places as counties may provide for maintenance of county inmates for a term not to exceed 60 days, or both. (Code 1981, § 40-6-255, enacted by Ga. L. 1998, p. 1658, § 2.)

Cross references. — Suspension of driver's license for violation, § 40-5-57.2.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting. — An offense under O.C.G.A. § 40-6-255 would be designated as one which requires fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

ARTICLE 12

ACCIDENTS

RESEARCH REFERENCES

ALR. — Liability for injuries due to collision between street car and automobile at street intersection, 28 A.L.R. 217; 46 A.L.R. 1000.

Constitutionality, construction, and effect of statute in relation to conduct of driver of automobile after happening on an accident, 66 A.L.R. 1228; 101 A.L.R. 911.

Liability for injury to pedestrian struck by automobile while walking along street or highway, 67 A.L.R. 96; 93 A.L.R. 551.

Duty toward travelers as regards condition of street or highway left as a result of an accident therein, 81 A.L.R. 1004.

Liability of person, other than owner of animal or owner or operator of motor vehicle, for damage to motor vehicle or injury to person riding therein resulting from collision with domestic animal at large in street or highway, 21 A.L.R.4th 132.

Liability of owner or operator of vehicle for damage to motor vehicle or injury to person riding therein resulting from collision with domestic animal at large in street or highway, 21 A.L.R.4th 159.

Fact that passenger in vehicle is owner as affecting right to recover from driver for injuries to, or death of, passenger incurred in consequence of driver's negligence, 21 A.L.R.4th 459.

40-6-270. Hit and run; duty of driver to stop at or return to scene of accident.

(a) The driver of any vehicle involved in an accident resulting in injury to or the death of any person or in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of the accident or shall stop as close thereto as possible and forthwith return to the scene of the accident and shall:

(1) Give his or her name and address and the registration number of the vehicle he or she is driving;

(2) Upon request and if it is available, exhibit his or her operator's license to the person struck or the driver or occupant of or person attending any vehicle collided with;

(3) Render to any person injured in such accident reasonable assistance, including the transporting, or the making of arrangements for the transporting, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such transporting is requested by the injured person; and

(4) Where a person injured in such accident is unconscious, appears deceased, or is otherwise unable to communicate, make every reasonable effort to ensure that emergency medical services and local law enforcement are contacted for the purpose of reporting the accident and making a request for assistance.

The driver shall in every event remain at the scene of the accident until fulfilling the requirements of this subsection. Every such stop shall be made without obstructing traffic more than is necessary.

(b) If such accident is the proximate cause of death or a serious injury, any person knowingly failing to stop and comply with the requirements of subsection (a) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years.

(c)(1) If such accident is the proximate cause of an injury other than a serious injury or if such accident resulted in damage to a vehicle which is driven or attended by any person, any person knowingly failing to stop or comply with the requirements of this Code section shall be guilty of a misdemeanor and:

(A) Upon conviction shall be fined not less than $300.00 nor more than $1,000.00, which fine shall not be subject to suspension, stay, or probation, or imprisoned for up to 12 months, or both;

(B) Upon the second conviction within a five-year period of time, as measured from the dates of previous arrests for which convic-

tions were obtained to the date of the current arrest for which a conviction is obtained, shall be fined not less than $600.00 nor more than $1,000.00, which fine shall not be subject to suspension, stay, or probation, or imprisoned for up to 12 months, or both; and for purposes of this subparagraph, previous pleas of nolo contendere accepted within such five-year period shall constitute convictions; and

(C) Upon the third or subsequent conviction within a five-year period of time, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, shall be fined $1,000.00, which fine shall not be subject to suspension, stay, or probation, or imprisoned for up to 12 months, or both; and for purposes of this subparagraph, previous pleas of nolo contendere accepted within such five-year period shall constitute convictions.

(2) For the purpose of imposing a sentence under this subsection, a plea of nolo contendere shall constitute a conviction.

(3) If the payment of the fine required under this subsection will impose an economic hardship on the defendant, the judge, at his sole discretion, may order the defendant to pay such fine in installments and such order may be enforced through a contempt proceeding or a revocation of any probation otherwise authorized by this Code section.

(d) Notwithstanding the limits set forth in any municipal charter, any municipal court of any municipality shall be authorized to impose the punishments provided for in this Code section upon a conviction of violating this Code section or upon conviction of violating any ordinance adopting the provisions of this Code section. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 40, 41; Ga. L. 1985, p. 758, § 16; Ga. L. 1987, p. 3, § 40; Ga. L. 1988, p. 1499, § 1; Ga. L. 1988, p. 1893, § 6; Ga. L. 1989, p. 14, § 40; Ga. L. 1990, p. 8, § 40; Ga. L. 1990, p. 2048, § 5; Ga. L. 1991, p. 1608, § 2.1; Ga. L. 2008, p. 1164, § 1/SB 529.)

Cross references. — Suspension of driver's license for conviction for failure to stop and render aid, § 40-5-54.

Editor's notes. — Ga. L. 1991, p. 1608, § 3.1, not codified by the General Assembly, provides that subsection (b) and paragraph (c)(1) are applicable to policies of motor vehicle insurance issued, issued for delivery, delivered, or renewed on and after October 1, 1991.

Ga. L. 2008, p. 1164, § 6/SB 529, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all offenses committed on or after July 1, 2008.

Law reviews. — For annual survey on criminal law and procedure, see 44 Mercer L. Rev. 165 (1992).

For note discussing relief from civil liability in legislation concerning emergency aid to accident victims, see 25 Ga. B.J. 90 (1962). For note on the 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 99 (1992).

JUDICIAL DECISIONS

Analysis

General Consideration
Practice and Procedure
Application
Jury Instructions

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 17781(54), former Code 1933, § 68-308, and former Code Section 40-6-271, which was renumbered as Code Section 40-6-270 by Ga. L. 1990, p. 2048, § 5, are included in the annotations for this Code section.

Constitutionality. — Georgia's hit-and run statute is not unconstitutional as the statute does not confront an individual with substantial hazards of self-incrimination through requiring certain disclosures as the statute is not directed at a highly selective group inherently suspect of criminal activities. Bell v. State, 293 Ga. 683, 748 S.E.2d 382 (2013).

"Accident" defined. — Word "accident" as used in the hit and run statute does not require that the act causing the injury be mere negligence or mishap, but is used broadly to include any incident where death or injury follows. Gutierrez v. State, 235 Ga. App. 878, 510 S.E.2d 570 (1998).

Application to driver "involved" in collision. — Duties of a driver to stop or to return to the scene of a vehicular collision do not apply only to the drivers of the vehicles which actually collide; the statutory duties apply to a driver who is "involved" in a collision. Bellamy v. Edwards, 181 Ga. App. 887, 354 S.E.2d 434 (1987).

Vehicles not being driven or attended. — Because the vehicle struck by the defendant was not being driven or attended by any person, reversal of the defendant's conviction under O.C.G.A. § 40-6-270 was required. Melvin v. State, 225 Ga. App. 169, 483 S.E.2d 146 (1997).

Stopping without obstructing traffic not negligence per se. — Violation of the provision relative to stopping without obstructing traffic is not negligence per se, as it is too indefinite for enforcement, but the provision does furnish a rule of civil conduct under the circumstances of each case, and the jury may find negligence in fact as a result of its violation. Brock v. Avery Co., 99 Ga. App. 881, 110 S.E.2d 122 (1959).

Instruction for offenses under § 40-6-270. — After the defendant was charged with failing to maintain the defendant's lane in violation of O.C.G.A. § 40-6-48 and failing to use a turn signal in violation of O.C.G.A. § 40-6-123, the trial court properly instructed the jury as to the definition of the standard for strict liability offenses because the state was not required to prove mental fault or mens rea in those offenses; although O.C.G.A. § 40-6-10(b) required proof that the defendant knowingly operated the vehicle with no insurance, and O.C.G.A. § 40-6-270 required proof that the defendant knowingly failed to stop and comply with the statute's mandates, the trial court's charge on intent was found sufficient. Augustin v. State, 260 Ga. App. 631, 580 S.E.2d 640 (2003).

Instruction on knowledge. — Trial court distinguished between the counts charging the defendant with violating O.C.G.A. §§ 40-6-49(d) and 40-6-270 because the trial court fairly instructed the jurors that knowledge was an element of the hit-and-run count. Sevostiyanova v. State, 313 Ga. App. 729, 722 S.E.2d 333, cert. denied, No. S12C0968, 2012 Ga. LEXIS 612 (Ga. 2012).

Evidence sufficient to deny directed verdict motion. — Trial court properly denied the defendant's motion for a directed verdict in a trial for leaving the scene of an accident as it was not necessary that the state show actual damage or injury; because the defendant knew that the defendant's tractor-trailer had hit the rear of a car, the defendant should have stopped to see if damage resulted. Dalton v. State, 286 Ga. App. 666, 650 S.E.2d 591 (2007).

Evidence sufficient for conviction. — Evidence was sufficient to convict defendant of leaving the scene of an accident since, while driving the defendant's truck, the defendant accidentally struck the victim, the defendant knew about that fact, the defendant did not dispute the victim's testimony that the defendant had stated to the victim that the defendant had not hit the victim that hard, and eyewitnesses testified that while the eyewitnesses blocked the defendant's truck's egress while police were on route to the scene, the defendant fled on foot without providing defendant's name, address, license, or other identifying information. McKay v. State, 264 Ga. App. 726, 592 S.E.2d 135 (2003).

Motorist's identification of the defendant as the driver of a pick-up truck that hit the motorist's vehicle and then drove away was sufficient under former O.C.G.A. § 24-4-8 (see now O.C.G.A. § 24-14-8) to establish the defendant's identity for purposes of the defendant's conviction for leaving the scene of an accident and following too closely in violation of O.C.G.A. §§ 40-6-49 and 40-6-270(a)(1). Craig v. State, 276 Ga. App. 329, 623 S.E.2d 518 (2005).

Evidence, viewed in the light most favorable to the verdict, was sufficient for a rational trier of fact to find the defendant guilty beyond a reasonable doubt of felony fleeing or attempting to elude a police officer, failure to stop upon striking an unattended vehicle, and failure to stop at or return to the scene of an accident, violations of O.C.G.A. §§ 40-6-270(a), 40-6-271(a), and 40-6-395(a) and (b)(5)(A)when the defendant refused to stop a vehicle for two bicycle-patrol uniformed officers, drove the vehicle into one of the officers, struck two unattended vehicles, and struck an officer's marked bicycle. Fairwell v. State, 311 Ga. App. 834, 717 S.E.2d 332 (2011).

Jury was authorized to find that the defendant "knowingly" failed to comply with O.C.G.A. § 40-6-270 because the victim testified that the defendant hit the victim's car, the car was damaged, the victim showed the defendant the damage to the car, and the defendant left without giving the information required. Sevostiyanova v. State, 313 Ga. App. 729, 722 S.E.2d 333, cert. denied, No. S12C0968, 2012 Ga. LEXIS 612 (Ga. 2012).

Evidence adduced at trial was sufficient to authorize the jury to find the defendant guilty of violating O.C.G.A. § 40-6-270 beyond a reasonable doubt because the defendant rear-ended a car and left the scene without providing the victim with any identifying information. Sevostiyanova v. State, 313 Ga. App. 729, 722 S.E.2d 333, cert. denied, No. S12C0968, 2012 Ga. LEXIS 612 (Ga. 2012).

Evidence was sufficient to support the defendant's conviction for leaving the scene of an accident which caused damage to the victim's vehicle as it provided that the defendant did not stop at the scene and provide the defendant's name and registration information. Johnson v. State, 337 Ga. App. 622, 788 S.E.2d 559 (2016).

Cited in Pryor v. State, 102 Ga. App. 744, 117 S.E.2d 880 (1960); Glover v. State, 123 Ga. App. 348, 181 S.E.2d 98 (1971); Harrison v. Feather, 178 Ga. App. 35, 342 S.E.2d 1 (1986); Scott v. State, 230 Ga. App. 522, 496 S.E.2d 494 (1998); Wilson v. State, 233 Ga. App. 327, 503 S.E.2d 924 (1998); Couch v. State, 246 Ga. App. 106, 539 S.E.2d 609 (2000); Maxwell v. State, 282 Ga. 22, 644 S.E.2d 822 (2007); Stadnisky v. State, 285 Ga. App. 33, 645 S.E.2d 545 (2007); Leachman v. State, 286 Ga. App. 708, 649 S.E.2d 886 (2007); Green v. State, 287 Ga. App. 248, 651 S.E.2d 174 (2007); Merritt v. State, 288 Ga. App. 89, 653 S.E.2d 368 (2007).

Practice and Procedure

Sufficiency of indictment. — An essential element of the offense of leaving the scene of an accident, as set forth in O.C.G.A. § 40-6-270, is failing to return to the scene of an accident and remaining until fulfilling the requirements of former § 40-6-271 (see now paragraphs (a)(1) to (a)(3) of § 40-6-270). Omission of such element renders void a count in an indictment charging the offense. Thomason v. State, 196 Ga. App. 447, 396 S.E.2d 79 (1990).

Indictment which alleged that the de-

Practice and Procedure (Cont'd)

fendants acted "unlawfully" with reference to O.C.G.A. § 40-6-270, and that the defendants' actions resulted in death, sufficiently charged the intent to commit the criminal act, the knowledge necessary to form such intent, and adequately asserted proximate cause. Tidwell v. State, 216 Ga. App. 8, 453 S.E.2d 64 (1994).

Indictment against codefendants couched in the specific charge of a violation of O.C.G.A. § 40-6-270 was not fatally defective because the indictment failed to differentiate or name the actual driver. Tidwell v. State, 216 Ga. App. 8, 453 S.E.2d 64 (1994).

As lesser included offense of vehicular homicide. — Because the evidence presented by the state was insufficient to convict the defendant of first-degree vehicular homicide under O.C.G.A. § 40-6-393(a) predicated on a violation of O.C.G.A. § 40-6-270(b), and specifically, the state failed to prove that the defendant's failure to remain at the scene of the accident contributed to the death of the victim, but instead the evidence showed that the victim died on impact, the defendant's vehicular homicide conviction was reversed and the case was remanded for resentencing on the lesser included offense of felony hit-and-run. Henry v. State, 284 Ga. App. 893, 645 S.E.2d 32 (2007).

Rule of lenity did not apply to hit-and-run and vehicular homicide. — Rule of lenity did not apply to the two felony charges of hit-and-run under O.C.G.A. § 40-6-270(b) and vehicular homicide under O.C.G.A. § 40-6-393(b) because it was essential to the rule that both crimes be proved with the same evidence. The element of causation of the accident was essential to prove first degree vehicular homicide, but was not necessary to prove felony hit-and-run. Rouen v. State, 312 Ga. App. 8, 717 S.E.2d 519 (2011).

Effect of civil litigation. — Defendant was entitled to a new trial when the victim's testimony and the defendant's testimony conflicted as to whether the victim acknowledged that the victim was unhurt after being struck by the defendant's vehicle and since the court disallowed any testimony regarding whether the victim was the plaintiff in a pending civil action against the defendant arising out of the same circumstances as the criminal prosecution. Spitzberg v. State, 233 Ga. App. 848, 506 S.E.2d 143 (1998).

Recovery petition subject to special demurrer. — Petition in this case by which the plaintiff sought to recover for injuries inflicted by an automobile when the plaintiff was walking on a public highway, and which alleged, as specific acts of negligence contributing to the injuries, the failure of the defendants to stop after the infliction of the injuries, and the defendant's failure to give the name and address of the operator and the name and address of the owner of the automobile as required by former Code 1910, § 1778, was subject to a special demurrer as to these and other allegations in regard to the conduct of the defendant after the injuries had been inflicted. Springer v. Adams, 37 Ga. App. 344, 140 S.E. 390 (1927) (decided under former Code 1910, § 1778(54)).

Error in resentencing. — In remanding a felony hit-and-run case for resentencing, the court directed that the defendant be resentenced on only one of the two counts. Accordingly, the trial court was not authorized to resentence the defendant on both counts. Henry v. State, 291 Ga. App. 482, 662 S.E.2d 260 (2008).

Application

Relevance of evidence of leaving scene. — Although the defendant's conduct in leaving the scene bore no causal connection to the collision, the jury was authorized to consider it in connection with the defendant's other acts preceding the injury as tending to establish the defendant's conduct in causing the injury as being negligence, and defendant's subsequent conduct in this regard was relevant to the issue of punitive damages. Bellamy v. Edwards, 181 Ga. App. 887, 354 S.E.2d 434 (1987).

Testimony concerning the defendant's prior high-speed vehicular flight from a police officer in violation of O.C.G.A. § 40-6-395 was sufficiently similar to the defendant's alleged flight from the instant vehicular collision so as to be

admissible on the issue of the defendant's identity and bent of mind. Cabral v. State, 199 Ga. App. 557, 405 S.E.2d 556 (1991).

Aggravated assault and hit-and-run are not mutually exclusive crimes. — Aggravated assault with a motor vehicle and hit-and-run with that same vehicle are not mutually exclusive crimes, since an aggravated assault includes a finding of intent which is not an element of hit-and-run. Gutierrez v. State, 235 Ga. App. 878, 510 S.E.2d 570 (1998).

State failed to prove death caused by failure to stop and render aid. — Habeas court erred in denying relief to a prisoner who was serving a term of imprisonment for first degree vehicular homicide with failure to stop and render aid as the predicate offense in violation of O.C.G.A. § 40-6-270(b) because the state did not prove beyond a reasonable doubt that the victim's death was caused by the prisoner's failure to stop and render aid; the evidence at the prisoner's trial was uncontroverted that the victim would have died regardless of whether or not the prisoner remained at the scene. In the prisoner's direct appeal, the court of appeals ruled that the illegal act in first degree vehicular homicide predicated on failure to stop and render aid was causing the death or injury by the accident and then failing to stop and render assistance but five years later, a unanimous court of appeals issued a whole-court decision, concluding that the crime was causing the victim's death by driving in the way prohibited by the predicate driving offense and overruling the decision in the prisoner's direct appeal. Klaub v. Battle, 286 Ga. 156, 686 S.E.2d 117 (2009).

Evidence insufficient for conviction. — Defendant's conviction for the offense of hit and run could not stand as the evidence was insufficient to show that the vehicle which the defendant collided with sustained any damage, and also did not show that the defendant knew the defendant committed any damage as the defendant first got out of the defendant's car, looked for damages, and left only when the defendant did not see any damage. Lawrence v. State, 257 Ga. App. 592, 571 S.E.2d 812 (2002).

Since the state failed to show that the defendant had driven any vehicle during the relevant period or that a particular vehicle was involved in a hit-and-run incident, the evidence was not sufficient to support the defendant's convictions for hit-and-run and less safe DUI, in violation of O.C.G.A. §§ 40-6-270 and 40-6-391(a)(1); there was also no evidence that the defendant owned the car or was authorized to drive the car. Reynolds v. State, 306 Ga. App. 1, 700 S.E.2d 888 (2010).

Evidence sufficient for conviction. — Evidence that the defendant's truck pushed a compact car a distance of at least 64 feet and that the defendant was stopped heading away from the scene, one to one-and-a-half miles from the accident, supported the jury's determination that the defendant intended not to stop. Burden v. State, 187 Ga. App. 778, 371 S.E.2d 410, cert. denied, 187 Ga. App. 907, 371 S.E.2d 410 (1988).

Since the defendant stipulated that the defendant was driving the car that hit the victim, evidence of the defendant's driving the defendant's car toward the victim, speeding up after the victim screamed, and slowing the car down and applying the brake lights about two football fields away, showed that the defendant had knowledge of the accident and the requisite general intent. Dworkin v. State, 210 Ga. App. 461, 436 S.E.2d 665 (1993).

Evidence that the defendant left the scene after backing into the car behind the defendant's vehicle and injuring an officer was sufficient for conviction. Priester v. State, 249 Ga. App. 594, 549 S.E.2d 429 (2001).

Conviction for hit and run was supported by sufficient evidence that there was an extremely loud noise made by the impact as well as testimony concerning how the impact would be perceived inside the defendant's truck, that the defendant seemed to slow temporarily before proceeding, and by testimony concerning the appearance of the rig and the defendant's conduct when the defendant arrived at the defendant's destination. Gibson v. State, 280 Ga. App. 435, 634 S.E.2d 204 (2006).

Adjudications as to two counts of aggravated assault and two counts of failing to

Application (Cont'd)

stop at or return to an accident scene were supported by sufficient evidence detailing the juvenile's act of striking two individuals with a car, and then leaving the scene of that accident; moreover, decisions as to the credibility of witnesses were in the province of the juvenile court, which apparently determined that the state disproved the juvenile's defense. In the Interest of J.L., 281 Ga. App. 105, 635 S.E.2d 393 (2006).

Given sufficient evidence that the defendant left the scene of an accident without providing the mandatory identifying information to the other party involved in the accident, the defendant's hit-and-run conviction was upheld on appeal; the fact that the defendant presented a different version of the events was immaterial. London v. State, 289 Ga. App. 17, 656 S.E.2d 180 (2007).

Section measures conduct of vehicular homicide defendant. — Conduct of a defendant at the time of a vehicular homicide may well be measured, inferentially and circumstantially by the conduct which the provisions of former Code 1933, § 68-308 proposed to regulate. Hunter v. State, 65 Ga. App. 766, 16 S.E.2d 500 (1941) (decided under former Code 1933, § 68-308).

Factors for determining negligence of hit and run driver. — Conduct of a hit and run driver of an automobile in failing to stop and give the driver's name, other information, and render assistance to the person injured by the driver in the operation of the driver's automobile along a public highway may, in that it is in violation of a statute, be regarded as negligence as a matter of law, and although, when taken alone, such conduct may have no causal connection with the act which caused the injuries, it is a circumstance which may be considered, in connection with the driver's other acts preceding the injury, as tending to establish the driver's conduct in causing the injury as being negligence. Battle v. Kilcrease, 54 Ga. App. 808, 189 S.E. 573 (1936) (decided under former Code 1933, § 68-308).

No proof that deputy failed to render aid. — In a wrongful death action filed against a county sheriff's deputy and the county, the administrator's claim that the deputy failed to report an accident and failed to render aid, in violation of both O.C.G.A. §§ 40-6-270(a)(3) and 40-6-273, were rejected, and the deputy and the county were erroneously denied summary judgment as the evidence showed that: (1) the deputy radioed for officer assistance; (2) the two officers looked for a second vehicle that might have been involved in the accident, to no avail; and (3) based on these factors, no evidence existed that the deputy breached the duty imposed by § 40-6-273. Purvis v. Steve, 284 Ga. App. 116, 643 S.E.2d 380, cert. denied, No. S07C1063, 2007 Ga. LEXIS 517 (Ga. 2007).

Penalty is assessed only against the operator, without reference to the owner of the vehicle involved or the employer of the driver, as the case may be. Georgia Power Co. v. Shipp, 195 Ga. 446, 24 S.E.2d 764 (1943) (decided under former Code 1933, § 68-308).

Restitution not available unless leaving the scene caused damages. — Under O.C.G.A. §§ 17-14-2(2) and 17-14-9, restitution was not available for defendant's conviction for leaving the scene of an accident in violation of O.C.G.A. § 40-6-270(a) because the damage to the other vehicle was solely attributable to the collision between the cars defendant's failure to stop after the collision neither caused nor contributed to the damage. Zipperer v. State, 299 Ga. App. 792, 683 S.E.2d 865 (2009).

Jury Instructions

Instruction required. — Trial court's instruction on former § 40-6-271 (see now paragraphs (a)(1) to (a)(3) of O.C.G.A. § 40-6-270) was essential when a defendant was charged with violating O.C.G.A. § 40-6-270, one specific element of which involves fulfilling the requirements of former § 40-6-271. Griffith v. State, 172 Ga. App. 255, 322 S.E.2d 921 (1984).

General jury charge on negligence and proximate cause sufficient. — Since the jury was previously charged on theories of general negligence and proximate cause, it was not error not to charge that the failure to render aid must proxi-

mately cause the injury. Atlanta Transit Sys. v. Smith, 141 Ga. App. 87, 232 S.E.2d 580 (1977).

Instruction for offenses under § 40-6-270. — Trial court's instruction on former § 40-6-271 (see now paragraphs (a)(1) to (a)(3) of O.C.G.A. § 40-6-270), relating to the duty to give information and render aid, was essential when a defendant was charged with violating O.C.G.A. § 40-6-270, one specific element of which involved fulfilling the requirements of former § 40-6-271. Griffith v. State, 172 Ga. App. 255, 322 S.E.2d 921 (1984).

Even though the trial court did not specifically instruct the jury on knowing failure as stated in O.C.G.A. § 40-6-270(b) and (c), giving the pattern charge on intent was sufficient to inform the jury that the defendants intended to evade the duty imposed by that section. Tidwell v. State, 216 Ga. App. 8, 453 S.E.2d 64 (1994).

Trial court did not improperly charge the jury on the entirety of O.C.G.A. § 40-6-270, even though the defendant was only accused of violating § 40-6-270(a), as the evidence that the defendant fled the scene of the accident without providing a name and other information was sufficient to sustain the conviction without even implicating the remainder of the statute. Craig v. State, 276 Ga. App. 329, 623 S.E.2d 518 (2005).

Justification defense instruction was not warranted by the evidence. — Because the defendant contested the state's claim of being impaired and challenged the results of the Intoxilyzer test, the defendant was not entitled to assert the defense of justification after being charged with leaving the scene of an accident and other related offenses; thus, an instruction on a justification defense was not warranted by the evidence. London v. State, 289 Ga. App. 17, 656 S.E.2d 180 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Duty to stop not extended to trains and crews. — Requirement to stop at the scene of a motor vehicle incident does not extend to railroad trains and their operating crews. 1970 Op. Att'y Gen. No. 70-32.

Effect of § 51-1-29. — Ga. L. 1962, p. 534, § 1 (see now O.C.G.A. § 51-1-29) apparently relieves one not at fault but involved in an automobile accident from liability because one is required under Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 40 and 41 (see now O.C.G.A. § 40-6-270) to render aid and provide transportation to a hospital, even though the person believes that the person is not competent to undertake such responsibility. 1967 Op. Att'y Gen. No. 67-333.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 326, 327 et seq.

Am. Jur. Proof of Facts. — Identification of Hit-And-Run Vehicle and Driver, 60 POF3d 91.

C.J.S. — 60 C.J.S., Motor Vehicles, § 46. 61A C.J.S., Motor Vehicles, §§ 1692 et seq., 1695.

ALR. — Liability for injuries due to collision between street car and automobile at street intersection, 28 A.L.R. 217; 46 A.L.R. 1000.

Constitutionality, construction, and effect of statute in relation to conduct of driver of automobile after happening of an accident, 66 A.L.R. 1228; 101 A.L.R. 911.

Liability for injury to pedestrian struck by automobile while walking along street or highway, 67 A.L.R. 96; 93 A.L.R. 551.

Duty toward travelers as regards condition of street or highway left as result of an accident therein, 81 A.L.R. 1004.

Violation of statute requiring one involved in an accident to stop and render aid as affecting civil liability, 80 A.L.R.2d 299.

Construction and application of "amnesty" provision whereby automobile driver leaving scene of accident may re-

port to police within stated time without risk of use of his report against him, 36 A.L.R.4th 907.

Sufficiency of showing of driver's involvement in motor vehicle accident to support prosecution for failure to stop, furnish identification, or render aid, 82 A.L.R.4th 232.

Necessity and sufficiency of showing, in criminal prosecution under "hit-and-run" statute, accused's knowledge of accident, injury, or damage, 26 A.L.R.5th 1.

Uninsured motorist indorsement: construction and application of requirement that there be "physical contact" with unidentified or hit-and-run vehicle; "miss-and-run" cases, 77 A.L.R.5th 319.

Uninsured motorist indorsement: general issues regarding requirement that there be "physical contact" with unidentified or hit-and-run vehicle, 78 A.L.R.5th 341.

Uninsured motorist indorsement: construction and application of requirement that there be "physical contact" with unidentified or hit-and-run vehicle; "hit-and-run" cases, 79 A.L.R.5th 289.

40-6-271. Duty upon striking unattended vehicle.

(a) The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place on the vehicle struck a written notice giving the name and address of the driver and the owner of the vehicle doing the striking.

(b) Any person who fails to comply with the requirements of subsection (a) of this Code section shall be guilty of a misdemeanor. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 43; Ga. L. 1980, p. 1059, § 1; Code 1981, § 40-6-272; Code 1981, § 40-6-271, as redesignated by Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Offense not subject to criminal prosecution. — Conduct proscribed is without express statutory punishment and is not an offense subject to criminal prosecution. United States v. Walter, 484 F. Supp. 183 (S.D. Ga. 1980) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556, prior to amendment by Ga. L. 1980, p. 1059, § 1).

Probable cause to arrest. — In defendant's trial for hijacking a motor vehicle, the trial court did not err in finding that a gun and the keys to the vehicle were discovered during a search incident to a lawful arrest for hit and run in violation of O.C.G.A. § 40-6-271(a), and therefore properly denied the defendant's motion to suppress evidence. The officer had probable cause to arrest for hit and run based on an examination of the vehicle and a witness's identification of the defendant, by pointing to the defendant as the driver. Souder v. State, 301 Ga. App. 348, 687 S.E.2d 594 (2009), cert. denied, No. S10C0536, 2010 Ga. LEXIS 343 (Ga. 2010).

Evidence sufficient. — Conviction for striking an unattended vehicle was affirmed since the record showed that, even though the victim was in the parking lot, the victim had walked away from the victim's vehicle when the defendant struck the bumper of the victim's vehicle; further, the defendant failed to provide the victim with the defendant's name and address following the incident. Crutcher v. State, 267 Ga. App. 410, 599 S.E.2d 353 (2004).

Evidence, viewed in the light most favorable to the verdict, was sufficient for a

rational trier of fact to find the defendant guilty beyond a reasonable doubt of felony fleeing or attempting to elude a police officer, failure to stop upon striking an unattended vehicle, and failure to stop at or return to the scene of an accident, violations of O.C.G.A. §§ 40-6-270(a), 40-6-271(a), and 40-6-395(a) and (b)(5)(A), when the defendant refused to stop a vehicle for two bicycle-patrol uniformed officers, drove the vehicle into one of the officers, struck two unattended vehicles, and struck an officer's marked bicycle. Fairwell v. State, 311 Ga. App. 834, 717 S.E.2d 332 (2011).

Evidence was amply sufficient for a rational finder of fact to find the defendant guilty beyond a reasonable doubt of violating O.C.G.A. § 40-6-271 because the defendant struck two separate unattended vehicles in a parking lot, and both victims testified at trial that the victims saw the collisions occur and that the driver left the scene without speaking to either of the victims, leaving a note, or providing any contact information. Sevostiyanova v. State, 313 Ga. App. 729, 722 S.E.2d 333, cert. denied, No. S12C0968, 2012 Ga. LEXIS 612 (Ga. 2012).

Cited in Adams v. State, 293 Ga. App. 377, 667 S.E.2d 186 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Requirement to stop not extended to trains and crews. — Requirement to stop at the scene of a motor vehicle incident does not extend to railroad trains and their operating crews. 1970 Op. Att'y Gen. No. 70-32.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 331, 332.

C.J.S. — 60 C.J.S., Motor Vehicles, § 46. 61A C.J.S., Motor Vehicles, § 1695.

ALR. — Liability for injuries due to collision between street car and automobile at street intersection, 28 A.L.R. 217; 46 A.L.R. 1000.

Constitutionality, construction, and effect of statute in relation to conduct of driver of automobile after happening of an accident, 66 A.L.R. 1228; 101 A.L.R. 911.

Criminal responsibility of one other than driver at time of accident, under "hit and run" statute, 62 A.L.R.2d 1130.

Sufficiency of compliance with requirement of criminal "hit and run" statute that motorist identify himself, 48 A.L.R.3d 685.

40-6-272. Duty upon striking fixture.

The driver of any vehicle involved in an accident resulting only in damage to a fixture legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and of the registration number of the vehicle he is driving and shall, upon request and if available, exhibit his operator's license. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 44; Code 1981, § 40-6-273; Code 1981, § 40-6-272, as redesignated by Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Intent charge proper. — Since the defendant's intent in leaving the scene of the accident was an element of an offense under O.C.G.A. § 40-6-272, the trial court's charge concerning the legal inference that a person of sound mind and

discretion intends the natural and probable consequences of their intentional acts was relevant and proper. Wadsworth v. State, 209 Ga. App. 333, 433 S.E.2d 419 (1993).

Cited in In the Interest of J.D.T., 262 Ga. App. 860, 586 S.E.2d 748 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Requirement to stop not extended to trains and crews. — Requirement to stop at the scene of a motor vehicle incident does not extend to railroad trains and their operating crews. 1970 Op. Att'y Gen. No. 70-32.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 326 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, § 46. 61A C.J.S., Motor Vehicles, § 1692 et seq.

ALR. — Liability for injuries due to collision between street car and automobile at street intersection, 28 A.L.R. 217; 46 A.L.R. 1000.

Constitutionality, construction, and effect of statute in relation to conduct of driver of automobile after happening of an accident, 66 A.L.R. 1228; 101 A.L.R. 911.

Duty toward travelers as regards condition of street or highway left as result of an accident therein, 81 A.L.R. 1004.

Criminal responsibility of one other than driver at time of accident, under "hit and run" statute, 62 A.L.R.2d 1130.

Sufficiency of compliance with requirement of criminal "hit and run" statute that motorist identify himself, 48 A.L.R.3d 685.

40-6-273. Duty to report accident resulting in injury, death, or property damage.

The driver of a vehicle involved in an accident resulting in injury to or death of any person or property damage to an apparent extent of $500.00 or more shall immediately, by the quickest means of communication, give notice of such accident to the local police department if such accident occurs within a municipality. If such accident occurs outside a municipality, such notice shall be given to the office of the county sheriff or to the nearest office of the state patrol. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 45; Ga. L. 1978, p. 1494, § 1; Code 1981, § 40-6-274; Code 1981, § 40-6-273, as redesignated by Ga. L. 1990, p. 2048, § 5; Ga. L. 1994, p. 97, § 40; Ga. L. 1994, p. 363, § 1.)

Law reviews. — For annual survey of insurance law, see 58 Mercer L. Rev. 181 (2006).

JUDICIAL DECISIONS

Time to report accident. — As neither an individual injured in a car accident nor the car's owner provided notice of such accident to police until four or five days after the accident, the injured passenger was not entitled to recover under the driver's uninsured motorist policy. Navarro v. Atlanta Cas. Co., 250 Ga. App. 550, 552 S.E.2d 508 (2001).

When other driver unknown. — To

recover uninsured motorist insurance benefits in a "John Doe" action, an insured, or a person acting on the insured's behalf, must give immediate notice of the accident to the local police department under O.C.G.A. § 40-6-273. Dawkins v. Doe, 263 Ga. App. 737, 589 S.E.2d 303 (2003).

Trial court properly granted summary judgment to an insurer because after a motorcyclist was injured in a collision with a pickup truck, whose driver left the scene, and did not report the incident to the police for 29 days; the motorcyclist violated O.C.G.A. § 40-6-273, which was a condition precedent to uninsured motorist coverage under O.C.G.A. § 33-7-11(c). Pender v. Doe, 276 Ga. App. 178, 622 S.E.2d 888 (2005).

Charge not required. — Trial court's refusal to give the defendant's oral request to charge the jury on the provisions of O.C.G.A. § 40-6-273 was not error as the defendant was not charged with violating the duty to report accidents as set out in that section and the defendant failed to submit a written request to charge on that section. Grady v. State, 212 Ga. App. 118, 441 S.E.2d 253 (1994).

Severity of the injury. — Evidence that the defendant was driving some people home in a truck from a bar, that the decedent fell off the truck bed, that the decedent was lying unconscious on the pavement, that the defendant and other people in the truck put the decedent in the truck, that the defendant and the others did not take the decedent to a hospital when the decedent regained consciousness in the truck because the decedent did not want to go to a hospital, and that the defendant did not report the accident, was sufficient to support the defendant's conviction for failing to report the accident. Steele v. State, 275 Ga. App. 651, 621 S.E.2d 606 (2005).

Evidence insufficient to support conviction. — Evidence was insufficient to support a conviction of leaving the scene of the accident since there was no collision with another car, no one was injured, and the defendant claimed that any damage was worth far less than $500; the defendant intended to leave the car in a ditch for only a short time and return for the car later. Harvey v. State, 277 Ga. App. 435, 626 S.E.2d 623 (2006).

Factors for determining negligence of hit and run driver. — In a wrongful death action filed against a county sheriff's deputy and the county, the administrator's claim that the deputy failed to report an accident and failed to render aid, in violation of both O.C.G.A. §§ 40-6-270(a)(3) and 40-6-273, were rejected, and the deputy and the county were erroneously denied summary judgment as the evidence showed that: (1) the deputy radioed for officer assistance; (2) the two officers looked for a second vehicle that might have been involved in the accident, to no avail; and (3) based on these factors, no evidence existed that the deputy breached the duty imposed by § 40-6-273. Purvis v. Steve, 284 Ga. App. 116, 643 S.E.2d 380, cert. denied, No. S07C1063, 2007 Ga. LEXIS 517 (Ga. 2007).

Cited in Collins v. Porterfield, 102 Ga. App. 294, 116 S.E.2d 105 (1960); Thomas v. State, 133 Ga. App. 893, 212 S.E.2d 648 (1975); Hall v. State, 200 Ga. App. 585, 409 S.E.2d 221 (1991).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, T. 68 are included in the annotations for this Code section.

Accident on private property. — No specific statutory mandate requires a county sheriff to investigate an accident occurring on private property. 1968 Op. Att'y Gen. No. 68-206 (decided under former Code 1933, T. 68).

Accidents on private property. — All accidents must be reported, even though the accident may occur on private property. 1972 Op. Att'y Gen. No. U72-34.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 184, 210.

C.J.S. — 60 C.J.S., Motor Vehicles, § 46. 61A C.J.S., Motor Vehicles, § 1692 et seq.

ALR. — Liability for injuries due to collision between street car and automobile at street intersection, 28 A.L.R. 217; 46 A.L.R. 1000.

Constitutionality, construction, and effect of statute in relation to conduct of driver of automobile after happening of an accident, 66 A.L.R. 1228; 101 A.L.R. 911.

Necessity and sufficiency of showing in a criminal prosecution under a "hit-and-run" statute accused's knowledge of accident, injury, or damage, 23 A.L.R.3d 497; 26 A.L.R.5th 1.

Sufficiency of compliance with requirement of criminal "hit and run" statute that motorist identify himself, 48 A.L.R.3d 685.

Admissibility of police officer's testimony at state trial relating to motorist's admissions made in or for automobile accident report required by law, 46 A.L.R.4th 291.

Necessity and sufficiency of showing, in criminal prosecution under "hit-and-run" statute, accused's knowledge of accident, injury, or damage, 26 A.L.R.5th 1.

40-6-273.1. Instruction to drivers to provide certain information to other parties.

The law enforcement officer at the scene of an accident required to be reported in accordance with the provisions of Code Section 40-6-273 shall instruct the driver of each motor vehicle involved in the accident to report the following to all other parties suffering injury or property damage as an apparent result of the accident:

(1) The name and address of the owner and the driver of the motor vehicle;

(2) The license number of the motor vehicle; and

(3) The name of the liability insurance carrier for the motor vehicle or the fact that such driver has a certificate of self-insurance issued pursuant to Code Section 33-34-5.1. (Code 1981, § 40-6-273.1, enacted by Ga. L. 1994, p. 831, § 1; Ga. L. 2000, p. 1246, § 17.)

Law reviews. — For note on the 1994 enactment of this Code section, see 11 Ga. St. U.L. Rev. 223 (1994).

40-6-274. Exemption from duty to stop at scene or report accident.

Any other provision of this article or any other law to the contrary notwithstanding, the driver of any vehicle involved in a traffic accident in which there is no personal injury or in which no second party and no property of a second party is involved shall not have the duty to stop or immediately report such accident, and no such driver shall be prosecuted for his failure to stop or immediately to report such accident. This Code section shall not abrogate or affect a driver's duty to file any

written report which may be required by the local law enforcement agency. (Ga. L. 1972, p. 819, § 1; Code 1981, § 40-6-275; Code 1981, § 40-6-274, as redesignated by Ga. L. 1990, p. 2048, § 5; Ga. L. 1994, p. 97, § 40.)

JUDICIAL DECISIONS

Cited in Lindsey v. Storey, 936 F.2d 554 (11th Cir. 1991).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 184, 210, 383.

ALR. — Duty toward travelers as regards condition of street or highway left as result of an accident therein, 81 A.L.R. 1004.

Constitutionality, construction, and effect of statutes in relation to conduct of driver of automobile after happening of accident, 101 A.L.R. 911.

40-6-275. Duty to remove vehicle from public roads; removal of incapacitated vehicle from state highway.

(a) Any other provision of this article or any other law to the contrary notwithstanding, motor vehicles involved in traffic accidents and the drivers of such motor vehicles shall be subject to the provisions of this Code section.

(b) This Code section shall apply to motor vehicle traffic accidents which occur on the public roads of this state as defined in paragraph (24) of Code Section 32-1-3. Any violation of this Code section shall be punishable as a misdemeanor pursuant to Code Section 40-6-1.

(c) When a motor vehicle traffic accident occurs with no apparent serious personal injury or death, it shall be the duty of the drivers of the motor vehicles involved in such traffic accident, or any other occupant of any such motor vehicle who possesses a valid driver's license, to remove said vehicles from the immediate confines of the roadway into a safe refuge on the shoulder, emergency lane, or median or to a place otherwise removed from the roadway whenever such moving of a vehicle can be done safely and the vehicle is capable of being normally and safely driven, does not require towing, and can be operated under its own power in its customary manner without further damage or hazard to itself, to the traffic elements, or to the roadway. The driver of any such motor vehicle may request any person who possesses a valid driver's license to remove any such motor vehicle as provided in this Code section, and any such person so requested shall be authorized to comply with such request.

(d) The driver or any other person who has removed a motor vehicle from the main traveled way of the road as provided in subsection (c) of

this Code section before the arrival of a police officer shall not be considered liable or at fault regarding the cause of the accident solely by reason of moving the vehicle pursuant to this Code section.

(e) This Code section shall not abrogate or affect a driver's duty to file any written report which may be required by a local law enforcement agency, but compliance with the requirements of this Code section shall not allow a driver to be prosecuted for his or her failure to stop and immediately report a traffic accident.

(f) This Code section shall not abrogate or affect a driver's duty to stop and give information in accordance with law, nor shall it relieve a police officer of his or her duty to render a report in accordance with law.

(g) Employees of the Department of Transportation, in the exercise of the management, control, and maintenance of the state highways, may require and assist in the removal from the main traveled way of roads on the state highway system of all vehicles incapacitated from any cause other than having been involved in a motor vehicle accident and of all vehicles incapacitated as a result of motor vehicle traffic accidents and of debris caused thereby when such motor vehicle accidents occur with no apparent serious personal injury or death, where such move can be accomplished safely by the drivers of the vehicles involved or with the assistance of a towing or recovery vehicle and will result in the improved safety or convenience of travel upon the road. However, a vehicle incapacitated as a result of a motor vehicle traffic accident with apparent serious personal injury or death may not be moved until the enforcement officer has made the necessary measurements and diagrams required for the initial accident investigation. (Ga. L. 1974, p. 969, § 1; Ga. L. 1977, p. 742, §§ 1, 2; Code 1981, § 40-6-276; Code 1981, § 40-6-275, as redesignated by Ga. L. 1990, p. 2048, § 5; Ga. L. 1993, p. 370, § 2; Ga. L. 1994, p. 97, § 40; Ga. L. 1999, p. 904, § 2; Ga. L. 2004, p. 896, § 1.)

Law reviews. — For annual survey article discussing developments in criminal law, see 51 Mercer L. Rev. 209 (1999).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 40-6-275 is unconstitutionally vague on the statute's face, in that the statute compels a driver who is involved in an accident and who believes in good faith that a vehicle has incurred "extensive" property damage to leave the driver's vehicle in the roadway at the driver's peril, not knowing whether others will conclude that the damage was something less than "extensive." State v. Johnson, 270 Ga. 111, 507 S.E.2d 443 (1998).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 374.

ALR. — Duty toward travelers as regards condition of street or highway left as result of an accident therein, 81 A.L.R. 1004.

Constitutionality, construction, and effect of statutes in relation to conduct of driver of automobile after happening of accident, 101 A.L.R. 911.

Criminal responsibility for injury or death in operation of mechanically defective motor vehicle, 88 A.L.R.2d 1165.

40-6-276. Duty of driver of wrecker/tow truck.

(a) The driver of each wrecker truck towing away any vehicle from the scene of a wreck shall also take away all parts belonging to the vehicle which he is towing away, or, if they consist of small parts or broken glass, he shall clear the streets of said small parts or glass, unless the driver is ordered not to do so by the investigating police officer due to circumstances at the scene of the accident.

(b) Any person violating subsection (a) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed $100.00. (Ga. L. 1970, p. 445, §§ 1, 2; Ga. L. 1982, p. 3, § 40; Code 1981, § 40-6-277; Code 1981, § 40-6-276, as redesignated by Ga. L. 1990, p. 2048, § 5.)

Cross references. — Authority of counties and municipalities with regard to removal and disposal of wrecked, or junked motor vehicles, § 36-60-4.

40-6-277. Sheriffs and chief executive officers of law enforcement agencies to report traffic accident deaths.

Every sheriff and chief executive officer of a law enforcement agency other than a sheriff shall, on or before the tenth day of each month, report in writing to the Department of Transportation the death of any person within their jurisdiction during the preceding calendar month as the result of a traffic accident known to them, giving the time and place of the accident and the circumstances relating thereto, in the manner specified by the commissioner of transportation. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 46; Code 1981, § 40-6-278; Code 1981, § 40-6-277, as redesignated by Ga. L. 1990, p. 2048, § 5; Ga. L. 2000, p. 951, § 5A-5; Ga. L. 2003, p. 484, § 12; Ga. L. 2005, p. 334, § 18-8/HB 501.)

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, § 46. 61A C.J.S., Motor Vehicles, § 1692 et seq.

40-6-278. Uniform motor vehicle accident reports and reporting procedures.

The commissioner of transportation shall prescribe, by rule, uniform motor vehicle accident reports and reporting procedures which shall be used by all police officers, whether state, county, or municipal. The rules shall be adopted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The rules may require one type of report and reporting procedure for motor vehicle accidents in which property damage alone is involved and another type of report and reporting procedure for motor vehicle accidents involving personal injury or death. The commissioner may, by rule, require additional investigation or reports in case of serious bodily injury or death. (Ga. L. 1973, p. 443, § 1; Code 1981, § 40-6-279; Code 1981, § 40-6-278, as redesignated by Ga. L. 1990, p. 2048, § 5; Ga. L. 2000, p. 951, § 5A-6; Ga. L. 2005, p. 334, § 18-9/HB 501.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 23.

ALR. — Discoverability of traffic accident reports and derivative information, 84 A.L.R.4th 15.

40-6-279. Accidents involving operation of fully autonomous vehicles.

Notwithstanding the provisions of this chapter to the contrary, when an accident involves a fully autonomous vehicle with the automated driving system engaged, the requirements of subsection (a) of Code Sections 40-6-270, 40-6-271, 40-6-272, 40-6-273, and 40-6-273.1 shall be deemed satisfied if such fully autonomous vehicle remains on the scene of such accident as required by law and such fully autonomous vehicle or operator promptly contacts a local law enforcement agency and communicates the information required by this chapter. (Code 1981, § 40-6-279, enacted by Ga. L. 2017, p. 549, § 3/SB 219.)

Effective date. — This Code section became effective July 1, 2017.

Editor's notes. — Ga. L. 1990, p. 2048, § 5, redesignated former Code Section 40-6-279 as present Code Section 40-6-278.

Law reviews. — For article on the 2017 enactment of this Code section, see 34 Ga. St. U.L. Rev. 231 (2017).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 326 et seq.

ARTICLE 13

SPECIAL PROVISIONS FOR CERTAIN VEHICLES

Administrative rules and regulations. — Bicycle safety, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Public Safety, Chapter 570-10.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Motorist's Negligence in Child "Dart-Out" Case, 10 POF3d 1.

Negligence of Motorist in Accident Involving Bicyclist, 11 POF3d 395.

Motor Vehicle Accidents — Contributory Negligence by Bicyclist, 11 POF3d 503.

ALR. — Products liability issues surrounding design, production, distribution, and use of recreational and vehicular helmets, 13 A.L.R.7th 5.

PART 1

BICYCLES AND PLAY VEHICLES

40-6-290. Application of part regarding bicycles.

The provisions of this part applicable to bicycles shall apply whenever a bicycle is operated upon a highway, upon a bicycle lane, or upon any bicycle path set aside for the exclusive use of bicycles, subject to those exceptions stated in this part. (Code 1933, § 68A-1201, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 2011, p. 426, § 3/HB 101.)

Cross references. — Construction of bicycle trails and bikeways, §§ 12-3-114, 12-3-115.

40-6-291. Traffic laws applicable to bicycles; operation upon paved shoulder; signaling of right hand turns.

(a) The provisions of this chapter that apply to vehicles, but not exclusively to motor vehicles, shall apply to bicycles, except as provided in this Code section and except that the penalties prescribed in subsection (b) of Code Section 40-6-390, subsection (c) of Code Section 40-6-391, and subsection (a) of Code Section 40-6-393 shall not apply to persons riding bicycles.

(b) Notwithstanding the provisions of Code Section 40-6-50, any person operating a bicycle may ride upon a paved shoulder; provided, however, that such person shall not be required to ride upon a paved shoulder.

(c) Any person operating a bicycle may signal a right turn with his or her right arm and hand extended horizontally or with his or her left

hand and arm extended upward. (Ga. L. 1973, p. 471, § 3; Code 1933, § 68A-1202, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1978, p. 1483, § 4; Ga. L. 1988, p. 13, § 40; Ga. L. 1990, p. 2048, § 5; Ga. L. 2011, p. 426, § 3/HB 101.)

JUDICIAL DECISIONS

Evidence was sufficient for a rational trier of fact to find beyond a reasonable doubt that the defendant was driving the defendant's vehicle in a manner exhibiting a reckless disregard for the safety of others as the defendant was distraught, had consumed alcohol, and was driving outside the defendant's lane of travel when the defendant struck from behind the victim on a bicycle, which had visible reflectors. Lesh v. State, 259 Ga. App. 325, 577 S.E.2d 4 (2003).

Cited in Hunter v. Batton, 160 Ga. App. 849, 288 S.E.2d 244 (1982).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 227. 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 593.

ALR. — Injury to one while coasting in the street, 20 A.L.R. 1433; 109 A.L.R. 941.

Reciprocal duties of driver of automobile and bicyclist or motorcyclist, 172 A.L.R. 736.

Operation of bicycle as within drunk driving statute, 73 A.L.R.4th 1139.

40-6-292. Manner of riding bicycle; passengers.

(a) A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto and shall allow no person to ride upon the handlebars.

(b) No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

(c) No person shall transport a child under the age of one year as a passenger on a bicycle on a highway, roadway, bicycle path, bicycle lane, or sidewalk; provided, however, that a child under the age of one year may be transported on a bicycle trailer or in an infant sling so long as such child is seated in the bicycle trailer or carried in an infant sling according to the bicycle trailer's or infant sling's manufacturer's instructions, and the bicycle trailer is properly affixed to the bicycle according to the bicycle trailer's manufacturer's instructions or the infant sling is properly worn by the rider of the bicycle according to the infant sling's manufacturer's instructions.

(d) No child between the ages of one year and four years shall ride as a passenger on a bicycle or bicycle trailer or be transported in an infant sling unless the child is securely seated in a child passenger bicycle seat, bicycle trailer, or infant sling according to the child passenger bicycle seat's, bicycle trailer's, or infant sling's manufacturer's instructions and the child passenger seat or bicycle trailer is properly affixed

to the bicycle according to the child passenger bicycle seat's or bicycle trailer's manufacturer's instructions or the infant sling is worn according to the infant sling's manufacturer's instructions.

(e) Violation of subsections (c) and (d) of this Code section shall not constitute negligence per se nor contributory negligence per se or be considered evidence of negligence or liability.

(f) No person under the age of 16 years failing to comply with subsections (c) and (d) of this Code section shall be fined or imprisoned. (Ga. L. 1973, p. 471, § 8; Code 1933, § 68A-1203, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1993, p. 518, § 2; Ga. L. 2011, p. 426, § 3/HB 101.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 227, 228. 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 592.

40-6-293. Clinging to vehicles.

No person riding upon any bicycle, coaster, roller skates, sled, or toy vehicle shall attach the same or himself or herself to any vehicle upon a roadway. (Ga. L. 1973, p. 471, § 7; Code 1933, § 68A-1204, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 2011, p. 426, § 3/HB 101.)

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 593.

ALR. — Liability for injury to bicyclist while holding on to moving motor vehicle, 138 A.L.R. 1127.

Reciprocal duties of driver of automobile and bicyclist or motorcyclist, 172 A.L.R. 736.

40-6-294. Riding on roadways and bicycle paths.

(a) As used in this Code section, the term "hazards to safe cycling" includes, but shall not be limited to, surface debris, rough pavement, drain grates which are parallel to the side of the roadway, parked or stopped vehicles, potentially opening car doors, or any other objects which threaten the safety of a person operating a bicycle.

(b) Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, except when:

(1) Turning left;

(2) Avoiding hazards to safe cycling;

(3) The lane is too narrow to share safely with a motor vehicle;

(4) Traveling at the same speed as traffic;

(5) Exercising due care when passing a standing vehicle or one proceeding in the same direction; or

(6) There is a right turn only lane and the person operating the bicycle is not turning right;

provided, however, that every person operating a bicycle away from the right side of the roadway shall exercise reasonable care and shall give due consideration to the other applicable rules of the road.

(c) Persons riding bicycles upon a roadway shall not ride more than two abreast except on bicycle paths, bicycle lanes, parts of roadways set aside for the exclusive use of bicycles, or when a special event permit issued by a local governing authority permits riding more than two abreast.

(d) Whenever a usable bicycle path has been provided adjacent to a roadway and designated for the exclusive use of bicycle riders, then the appropriate governing authority may require that bicycle riders use such bicycle path and not use those sections of the roadway so specified by such local governing authority. The governing authority may be petitioned to remove restrictions upon demonstration that the bicycle path has become inadequate due to capacity, maintenance, or other causes.

(e) Bicycle paths subject to the provisions of subsection (d) of this Code section shall at a minimum be required to meet accepted guidelines, recommendations, and criteria with respect to planning, design, operation, and maintenance as set forth by the American Association of State Highway and Transportation Officials, and such bicycle paths shall provide accessibility to destinations equivalent to the use of the roadway.

(f) Any person operating a bicycle in a bicycle lane shall ride in the same direction as traffic on the roadway.

(g) Electric assisted bicycles may be operated on bicycle paths. (Ga. L. 1973, p. 471, § 6; Code 1933, § 68A-1205, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1992, p. 1546, §§ 1, 2; Ga. L. 1995, p. 271, § 1; Ga. L. 1996, p. 236, § 2; Ga. L. 2011, p. 426, § 3/HB 101.)

Cross references. — Construction of bicycle trails and bikeways, §§ 12-3-114, 12-3-115.

JUDICIAL DECISIONS

Cited in DeWaters v. City of Atlanta, 169 Ga. App. 41, 311 S.E.2d 232 (1983).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 249, 250, 254. 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 595.

C.J.S. — 40 C.J.S., Highways, § 394 et seq.

ALR. — Reciprocal duties of driver of automobile and bicyclist or motorcyclist, 172 A.L.R. 736.

40-6-295. Carrying articles.

No person operating a bicycle shall carry any package, bundle, or other article which prevents him or her from keeping at least one hand upon the handlebars. (Ga. L. 1973, p. 471, § 9; Code 1933, § 68A-1206, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 2011, p. 426, § 3/HB 101.)

40-6-296. Lights and other equipment on bicycles.

(a) Every bicycle when in use at nighttime shall be equipped with a light on the front which shall emit a white light visible from a distance of 300 feet to the front and with a light on the back which shall emit a red light visible from a distance of 300 feet to the rear. Any bicycle equipped with a red reflector on the rear that is approved by the Department of Public Safety shall not be required to have a light on the rear of the bicycle.

(b) Every bicycle sold or operated shall be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level pavement.

(c) No bicycle shall be equipped or operated while equipped with a set of handlebars so raised that the operator must elevate his or her hands above the operator's shoulders in order to grasp the normal steering grip area.

(d)(1) No person under the age of 16 years shall operate or be a passenger on a bicycle on a highway, bicycle path, bicycle lane, or sidewalk under the jurisdiction or control of this state or any local political subdivision thereof without wearing a bicycle helmet.

(2) For the purposes of this subsection, the term "bicycle helmet" means a piece of protective headgear which meets or exceeds the impact standards for bicycle helmets set by the American National Standards Institute (ANSI) or the Snell Memorial Foundation.

(3) For the purposes of this subsection, a person shall be deemed to wear a bicycle helmet only if a bicycle helmet of good fit is fastened securely upon such person's head with the straps of such bicycle helmet.

(4) No bicycle without an accompanying protective bicycle helmet shall be rented or leased to or for the use of any person under the age of 16 years unless that person is in possession of a bicycle helmet at the time of the rental or lease.

(5) Violation of any provision of this subsection shall not constitute negligence per se nor contributory negligence per se or be considered evidence of negligence or liability.

(6) No person under the age of 16 failing to comply with any provision of this subsection shall be fined or imprisoned. (Ga. L. 1973, p. 471, § 5; Code 1933, § 68A-1207, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1993, p. 518, § 3; Ga. L. 2000, p. 951, § 5A-7; Ga. L. 2005, p. 334, § 18-10/HB 501; Ga. L. 2011, p. 426, § 3/HB 101.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 199 et seq.

C.J.S. — 60A C.J.S., Motor Vehicles, § 621 et seq.

ALR. — Reciprocal duties of driver of automobile and bicyclist or motorcyclist, 172 A.L.R. 736.

JUDICIAL DECISIONS

Cited in State v. Hammond, 313 Ga. App. 882, 723 S.E.2d 89 (2012).

40-6-297. Violation of part a misdemeanor; duty of parents and guardians.

(a) It shall be a misdemeanor for any person to do any act forbidden or fail to perform any act required in this part.

(b) The parent of any child and the guardian of any ward shall not authorize or knowingly permit such child or ward to violate any of the provisions of this part. (Code 1933, § 68A-1201, enacted by Ga. L. 1974, p. 633, § 1; Code 1981, § 40-6-298; Ga. L. 1990, p. 2048, § 5; Code 1981, § 40-6-297, as redesignated by Ga. L. 2011, p. 426, § 3/HB 101.)

Editor's notes. — This Code section formerly pertained to reflectors on pedals of bicycles. The former Code section was based on Ga. L. 1972, p. 547, §§ 1, 2; Ga. L. 1973, p. 471, § 4; Code 1933, § 68A-1208, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5 and was repealed by Ga. L. 2011, p. 426,

§ 3/HB 101, effective July 1, 2011.

RESEARCH REFERENCES

ALR. — Injury to one while coasting in the street, 20 A.L.R. 1433; 109 A.L.R. 941.

40-6-298. Rules and regulations.

The Board of Public Safety is authorized to promulgate rules and regulations to carry this part into effect and is authorized to establish regulations for any additional safety equipment or standards it shall require for bicycles. (Ga. L. 1973, p. 471, § 12; Code 1933, § 68A-1209, enacted by Ga. L. 1974, p. 633, § 1; Code 1981, § 40-6-299; Ga. L. 1990, p. 2048, § 5; Code 1981, § 40-6-298, as redesignated by Ga. L. 2011, p. 426, § 3/HB 101.)

Editor's notes. — Ga. L. 2011, p. 426, § 3/HB 101, effective July 1, 2011, redesignated former Code Section 40-6-299 as present Code Section 40-6-298.

40-6-299. Redesignated.

Editor's notes. — Ga. L. 2011, p. 426, § 3/HB 101, effective July 1, 2011, redesignated former Code Section 40-6-299 as present Code Section 40-6-298.

PART 1A

OPERATION OF FARM USE VEHICLE

Effective date. — This part became effective July 1, 2016.

40-6-305. Purpose of farm use vehicle.

(a) As used in this part, the term:

(1) "Farmer" means the owner of a commercial agricultural or silvicultural operation or an employee thereof. Such term shall also include any spouse, child, sibling, parent, grandparent, or grandchild of the owner of such operation.

(2) "Farm use vehicle" means an all-terrain vehicle or personal transportation vehicle.

(b) A farmer who is 16 years of age or older may operate a farm use vehicle on any public road or highway of this state so long as:

(1) Such vehicle has a properly affixed emblem conforming to the requirements of Code Section 40-8-4; and

(2) Such vehicle is actively being operated by such farmer to transport:

(A) Agricultural products, livestock, farm machinery, or farm supplies to or from a farm; or

(B) Such farmer between his or her residence and the farm at which he or she works or between properties of such farm. (Code 1981, § 40-6-305, enacted by Ga. L. 2016, p. 351, § 1/HB 579.)

40-6-306. Rights and duties of operator.

Every person operating a farm use vehicle shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of any other vehicle under this chapter except as to special regulations in this part and except as to the provisions of this chapter which by their nature can have no application. (Code 1981, § 40-6-306, enacted by Ga. L. 2016, p. 351, § 1/HB 579.)

40-6-307. Local restrictions on public roads and highways.

Any municipality may prohibit or limit the operation of farm use vehicles on public roads and highways within its jurisdiction if it is determined that such operation endangers the safety of the traveling public. (Code 1981, § 40-6-307, enacted by Ga. L. 2016, p. 351, § 1/HB 579.)

Part 2

Motorcycles

Cross references. — Requirements as to liability insurance coverage for motorcycles, § 40-6-11.

Administrative rules and regulations. — Motorcyclists' Eye Protection, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Public Safety, Chapter 570-12.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Negligent Operation of Motorcycle, 47 POF2d 127.

ALR. — "Emergency rule" as applied to automobile or motorcycle drivers, 79 A.L.R. 1277; 111 A.L.R. 1019.

40-6-310. Traffic laws applicable to persons operating motorcycles.

Every person operating a motorcycle shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of any other vehicle under this chapter except as to special regulations in this part and except as to those provisions of this chapter which by their

nature can have no application. (Code 1933, § 68A-1301, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

RESEARCH REFERENCES

ALR. — Reciprocal duties of driver of automobile and bicyclist or motorcyclist, 172 A.L.R. 736.

40-6-311. Manner of riding motorcycle generally.

(a) A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto; and such operator shall not carry any other person nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons or upon another seat firmly attached to the motorcycle at the rear or side of the operator.

(b) A person shall ride upon a motorcycle equipped with handlebars for directional control only by sitting astride the seat, facing forward, and with one leg on either side of the motorcycle.

(c) No person shall operate a motorcycle while carrying any package, bundle, or other article which prevents him from keeping both hands on the handlebars.

(d) No operator shall carry any person, nor shall any person ride, in a position that will interfere with the operation or control of the motorcycle or the view of the operator.

(e) No person shall operate or ride upon a motorcycle unless he shall wear some type of footwear in addition to or other than socks. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 95; Ga. L. 1962, p. 716, § 1; Ga. L. 1969, p. 732, § 1; Ga. L. 1972, p. 475, § 1; Code 1933, § 68A-1302, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1990, p. 2048, § 5; Ga. L. 2017, p. 184, § 6A/HB 136.)

The 2017 amendment, effective July 1, 2017, in subsection (b), inserted "equipped with handlebars for directional control", substituted "by" for "while", and inserted "and".

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 227, 228. 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 596 et seq.

ALR. — Reciprocal duties of driver of automobile and bicyclist or motorcyclist, 172 A.L.R. 736.

40-6-312. Operating motorcycle on roadway laned for traffic.

(a) All motorcycles are entitled to full use of a lane, and no motor vehicle shall be driven in such a manner as to deprive any motorcycle of the full use of a lane. This subsection shall not apply to motorcycles operated two abreast in a single lane.

(b) The operator of a motorcycle shall not overtake and pass in the same lane occupied by the vehicle being overtaken.

(c) No person shall operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles.

(d) Motorcycles shall not be operated more than two abreast in a single lane.

(e) A person operating a motorcycle shall at all times keep his headlights and taillights illuminated.

(f) Subsections (b) and (c) of this Code section shall not apply to police officers in the performance of their official duties. (Code 1933, § 68A-1303, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Evidence sufficient to find violation of subsection (a). — Trial court properly denied a motion for judgment notwithstanding the verdict since the movant, driving a van, had attempted to overtake and pass a motorcycle without changing lanes, resulting in a collision. The evidence was such that the jury could have reasonably found that the movant violated both O.C.G.A. §§ 40-6-42(1) and 40-6-312. Neiswonger v. Janics, 196 Ga. App. 607, 396 S.E.2d 553 (1990).

Charging section because of skid mark. — Even though evidence indicated that a motorcycle skid mark was found near the location on the highway where the collision between the motorcycle and truck occurred and the skid mark ran from the center line to the side of the road which would serve as evidence that at the time the brakes were applied on the motorcycle it was on the center line if not in the same lane with the vehicle being passed, the trial court erred in charging the jury with respect to O.C.G.A. § 40-6-312 since there was no evidence associating the skid mark and the motorcycle involved in the collision. Exum v. Long, 157 Ga. App. 592, 278 S.E.2d 13 (1981).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 206, 254.

ALR. — Reciprocal duties of driver of automobile and bicyclist or motorcyclist, 172 A.L.R. 736.

40-6-313. Clinging to other vehicles.

No person riding upon a motorcycle shall attach himself or the motorcycle to any other vehicle on a roadway. (Code 1933, § 68A-1304, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

40-6-314. Footrests and handlebars.

(a) Any motorcycle carrying a passenger, other than in a sidecar or enclosed cab, shall be equipped with footrests for such passenger.

(b) No person shall operate any motorcycle with handlebars more than 25 inches in height above that portion of the seat occupied by the operator or with a backrest more commonly known as a sissy bar that is designed in such a way as to create a sharp point at its apex. (Ga. L. 1969, p. 732, § 2; Ga. L. 1972, p. 475, § 2; Code 1933, § 68A-1305, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 2016, p. 90, § 2/HB 166.)

The 2016 amendment, effective July 1, 2016, substituted "25 inches" for "15 inches" in subsection (b).

Editor's notes. — Ga. L. 2016, p. 90, § 1/HB 166, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Motorcycle Mobility Safety Act.'"

40-6-315. Headgear and eye-protective devices for riders.

(a) No person shall operate or ride upon a motorcycle unless he or she is wearing protective headgear which complies with standards established by the commissioner of public safety.

(b) No person shall operate or ride upon a motorcycle if the motorcycle is not equipped with a windshield unless he or she is wearing an eye-protective device of a type approved by the commissioner of public safety.

(c) This Code section shall not apply to persons riding within an enclosed cab or motorized cart. This Code section shall not apply to a person operating a three-wheeled motorcycle used only for agricultural purposes.

(d) The commissioner of public safety is authorized to approve or disapprove protective headgear and eye-protective devices required in this Code section and to issue and enforce regulations establishing standards and specifications for the approval thereof. The commissioner shall publish in print or electronically lists of all protective headgear and eye-protective devices by name and type which have been approved. (Ga. L. 1969, p. 732, § 3; Code 1933, § 68A-1306, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1984, p. 1329, § 2; Ga. L. 1990, p. 2048, § 5; Ga. L. 2000, p. 951, § 5A-8; Ga. L. 2005, p. 334, § 18-11/HB 501; Ga. L. 2010, p. 838, § 10/SB 388.)

Cross references. — Protective headgear required for operators and passengers upon a moped, § 40-6-352

Administrative rules and regulations. — Specifications for Protective Headgear for Vehicular Users, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Public Safety, Chapter 570-13.

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 40-6-315 is a valid exercise of police power. Ritter v. State, 258 Ga. 551, 372 S.E.2d 230 (1988).

There is no First Amendment right to ride a motorcycle wearing a baseball cap, a bandanna, or bareheaded. ABATE of Ga., Inc. v. Georgia, 137 F. Supp. 2d 1349 (N.D. Ga. 2001), aff'd, 264 F.3d 1315 (11th Cir. 2001).

O.C.G.A. § 40-6-315 does not violate due process on grounds that a motorcyclist cannot determine whether the motorcyclist is meeting the headgear requirements of the statute. ABATE of Ga., Inc. v. Georgia, 137 F. Supp. 2d 1349 (N.D. Ga. 2001), aff'd, 264 F.3d 1315 (11th Cir. 2001).

O.C.G.A. § 40-6-315 does not violate the equal protection rights of motorcycle riders under the Fourteenth Amendment. ABATE of Ga., Inc. v. Georgia, 137 F. Supp. 2d 1349 (N.D. Ga. 2001), aff'd, 264 F.3d 1315 (11th Cir. 2001).

Motorcycle helmet law, O.C.G.A. § 40-6-315, does not require that the Georgia Board of Public Safety issue a list approving specific types of headgear and, therefore, the failure of the board to publish a list of approved headgear and eye-protective devices did not violate the plaintiff's rights under the First, Fifth, and Fourteenth Amendments to the United States Constitution. ABATE of Ga., Inc. v. Georgia, 264 F.3d 1315 (11th Cir. 2001), cert. denied, 536 U.S. 924, 122 S. Ct. 2592, 153 L. Ed. 2d 781 (2002).

Motorcycle helmet law, O.C.G.A. § 40-6-315, is not unconstitutionally vague. ABATE of Ga., Inc. v. Georgia, 264 F.3d 1315 (11th Cir. 2001), cert. denied, 536 U.S. 924, 122 S. Ct. 2592, 153 L. Ed. 2d 781 (2002).

Headgear. — O.C.G.A. § 40-6-313 does not require the Board of Public Safety to approve specific types of headgear; the statute does require the establishment of compliance standards through regulations. Dowis v. State, 243 Ga. App. 354, 533 S.E.2d 34 (2000).

Although it may be debatable whether particular types of headgear comply with standards established by the Board of Public Safety, it is absolutely clear that a cloth bandana does not. Dowis v. State, 243 Ga. App. 354, 533 S.E.2d 34 (2000).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 252. 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 599.

ALR. — Motorcyclist's failure to wear helmet or other protective equipment as affecting recovery for personal injury or death, 85 A.L.R.4th 365.

Validity of traffic regulations requiring motorcyclists to wear helmets or other protective gear, 72 A.L.R.5th 607.

40-6-316. Rules and regulations.

The commissioner of public safety is authorized to promulgate rules and regulations to carry this part into effect and to establish regulations for safety standards for the operation of motorcycles. (Code 1933, § 68A-1306, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1985, p. 149,

§ 40; Ga. L. 1990, p. 2048, § 5; Ga. L. 2000, p. 951, § 5A-8; Ga. L. 2005, p. 334, § 18-12/HB 501.)

Part 2A

Personal Assistive Mobility Devices

Law reviews. — For note on the 2003 enactment of this part, see 20 Ga. St. U.L. Rev. 198 (2003).

40-6-320. Operation on highways and sidewalks; direction of travel.

(a) Electric personal assistive mobility devices may be operated on highways and on sidewalks where a 48 inch clear path is maintained for access for persons with disabilities, provided that any person operating such a device shall have the same rights and duties as prescribed for pedestrians in Article 5 of this chapter and except as otherwise provided in this part.

(b) No person shall operate any electric personal assistive mobility device on the roadway of any highway unless:

(1) The maximum speed limit of the roadway is 35 miles per hour or less; or

(2) The roadway has a separately striped bicycle lane and the device is operated within the bicycle lane.

(c) When traveling on any roadway of a highway, a person operating an electric personal assistive mobility device shall travel in the same direction authorized for motor vehicle traffic on such roadway. (Code 1981, § 40-6-320, enacted by Ga. L. 2003, p. 308, § 4.)

40-6-321. Due care to pedestrians.

Any person operating an electric personal assistive mobility device on a sidewalk or roadway shall comply with the requirements of this part or any local ordinance regulating the use of such devices pursuant to Code Section 40-6-371 and shall exercise due care to avoid colliding with, and shall yield the right of way to, persons traveling on foot. (Code 1981, § 40-6-321, enacted by Ga. L. 2003, p. 308, § 4.)

40-6-322. Speed of travel restricted.

No person shall operate an electric personal assistive mobility device at a speed greater than seven miles per hour when traveling on any sidewalk or 15 miles per hour elsewhere; provided, however, that a

county or municipal governing authority or the commissioner of transportation may further restrict the speed of such devices in locations where pedestrian traffic is congested and there is a significant speed differential between pedestrians and operators of such devices. (Code 1981, § 40-6-322, enacted by Ga. L. 2003, p. 308, § 4.)

40-6-323. Parking.

(a) An electric personal assistive mobility device may be parked on a sidewalk unless otherwise prohibited or restricted by an official traffic control device or local ordinance; provided, however, that in no case shall an electric personal assistive mobility device be parked on any sidewalk in such a manner as to prevent the movement of a wheelchair.

(b) An electric personal assistive mobility device shall not be parked on any roadway in such a manner as to prevent the movement of a legally parked motor vehicle.

(c) Except as otherwise provided in this Code section, any person operating an electric personal assistive mobility device shall be subject to the same parking restrictions as provided for motor vehicles under Part 1 of Article 10 of this chapter. All violations of parking restrictions shall be deemed the responsibility of the owner of such device; and, for purposes of parking restrictions, the owner shall be deemed to be in control of the device at the time of a parking violation involving such device, and no evidence of actual control by such owner need be proven as an element of the offense. (Code 1981, § 40-6-323, enacted by Ga. L. 2003, p. 308, § 4.)

40-6-324. Transportation of hazardous materials; medical oxygen excluded.

No person shall carry or transport any hazardous materials on an electric personal assistive mobility device. Oxygen carried for personal medical reasons shall not be deemed a hazardous material for purposes of this Code section. (Code 1981, § 40-6-324, enacted by Ga. L. 2003, p. 308, § 4.)

40-6-325. Required equipment; minimum age for operation; exception to age requirement.

(a) Any electric personal assistive mobility device, when operated on any highway or sidewalk, shall be equipped with front, rear, and side reflectors which shall be visible from a distance of 300 feet when directly in front of lawful upper beams of headlights on a motor vehicle; a system that when employed will enable the operator to bring the device to a controlled stop; and, if the device is operated between

one-half hour after sunset and one-half hour before sunrise, a lamp emitting a white light which, while the device is in motion, illuminates the area in front of the operator for a distance of 300 feet.

(b) No person under the age of 16 years shall operate an electric assistive personal mobility device on any highway; provided, however, that a person under the age of 16 years may operate an electric assistive personal mobility device on any sidewalk if such person is wearing protective headgear which meets or exceeds the impact standards for bicycle helmets required by Code Section 40-6-296. (Code 1981, § 40-6-325, enacted by Ga. L. 2003, p. 308, § 4.)

40-6-326. Operation while intoxicated.

Any person who is under the influence of any intoxicating liquor or any drug to a degree which renders him or her a hazard shall not operate any electric personal assistive mobility device on any highway or sidewalk. Violation of this Code section shall be a misdemeanor, punishable upon conviction by a fine not to exceed $500.00. (Code 1981, § 40-6-326, enacted by Ga. L. 2003, p. 308, § 4.)

40-6-327. Penalty for violations.

Any person who violates any provision of this part other than Code Section 40-6-326 shall not be guilty of a criminal offense or a moving traffic violation for purposes of Code Section 40-5-57 but shall be subject to a civil penalty not to exceed $500.00. (Code 1981, § 40-6-327, enacted by Ga. L. 2003, p. 308, § 4.)

Part 3

Personal Transportation Vehicles

Law reviews. — For note, "Disability Rights in the Age of Uber: Applying the Americans with Disabilities Act of 1990 to Transportation Network Companies," see 33 Ga. St. U.L. Rev. 517 (2017).

40-6-330. Standards for operating personal transportation vehicles.

Any local authority desiring to establish operating standards for personal transportation vehicles shall comply with Part 6 of this article. (Code 1981, § 40-6-330, enacted by Ga. L. 2014, p. 745, § 10/HB 877.)

Editor's notes. — Ga. L. 2014, p. 745, § 10/HB 877, effective July 1, 2014, redesignated former Code Section 40-6-330 as present Code Section 40-6-330.1.

40-6-330.1. Required equipment for personal transportation vehicles; grandfather clause.

(a) All personal transportation vehicles shall be equipped with:

(1) A braking system sufficient for the weight and passenger capacity of the vehicle, including a parking brake;

(2) A reverse warning device functional at all times when the directional control is in the reverse position;

(3) A main power switch. When the switch is in the "off" position, or the key or other device that activates the switch is removed, the motive power circuit shall be inoperative. If the switch uses a key, it shall be removable only in the "off" position;

(4) Head lamps;

(5) Reflex reflectors;

(6) Tail lamps;

(7) A horn;

(8) A rearview mirror;

(9) Safety warning labels; and

(10) Hip restraints and hand holds or a combination thereof.

(b) The requirements of subsection (a) of this Code section shall not apply to any personal transportation vehicles operated during daylight hours authorized by local ordinances enacted prior to January 1, 2012. (Ga. L. 1973, p. 598, § 2; Code 1933, § 68A-1401, enacted by Ga. L. 1974, p. 633, § 1; Code 1981, § 40-6-330; Ga. L. 1990, p. 2048, § 5; Ga. L. 2000, p. 951, § 5A-9; Ga. L. 2002, p. 506, § 5; Ga. L. 2002, p. 512, § 10; Ga. L. 2005, p. 334, § 18-13/HB 501; Code 1981, § 40-6-330.1, as redesignated by Ga. L. 2014, p. 745, § 10/HB 877.)

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 281 (2002).

JUDICIAL DECISIONS

Improper use of go-cart. — Motorized go-cart when not properly driven may be equally as dangerous as a motor vehicle when improperly used. Hill v. Morrison, 160 Ga. App. 151, 286 S.E.2d 467 (1981).

Application to golf cart. — Since a golf cart was a "motorized vehicle" under O.C.G.A. § 40-1-1(33) and (75), the defendant had to have a driver's license when driving the golf cart on a highway; the motorized cart statutes, O.C.G.A. §§ 40-6-330 and 40-6-331(b), (c) authorized licensing of the vehicle, not the driver. Coker v. State, 261 Ga. App. 646, 583 S.E.2d 498 (2003).

40-6-331. Designated areas of operation; PTV licensing requirements and operating standards; signage; use by a commercial delivery company.

(a) A local authority may, by ordinance, designate certain public streets or portions thereof or PTV paths that are under its regulation and control for the combined use of PTVs and regular vehicular traffic or the use of PTVs and no other types of motor vehicles and establish the conditions under which PTVs may be operated upon such streets or portions thereof or PTV paths, including without limitation the conditions under which a person may operate PTVs on such designated streets or portions thereof or PTV paths. All operators of PTVs shall be required to possess a valid driver's license except when operating a PTV within a locality whose local authority has enacted an ordinance permitting the use of PTVs or motorized carts on streets without possession of a driver's license prior to January 1, 2012.

(b) Local authority ordinances may establish operating standards but shall not require PTVs to meet any requirements of general law as to registration, inspection, certificate of title, or licensing; provided, however, that a local authority may, by ordinance, require the local registration and licensing of PTVs operated within its boundaries at least once every five years for a fee not to exceed $15.00. No local authority shall be liable for losses that result from exercising or not exercising inspection powers or functions, including failure to make an inspection or making an inadequate or negligent inspection of a PTV. The provisions of this subsection and the authority granted by this subsection shall not apply to PTVs owned by golf courses, country clubs, or other such organized entities which own such PTVs and make them available to or for use by members or the public on a rental or licensed basis, provided that such PTVs are used only on the premises of such golf courses, country clubs, or other such organized entities.

(c) Each local authority permitting the use of PTVs upon the public streets within its jurisdiction shall erect signs on every highway which comprises a part of the state highway system at that point on the highway which intersects the corporate limits of the municipality or boundaries of the county. Such signs shall be at least 24 by 30 inches in area and shall warn approaching motorists that PTVs are authorized for use on public streets. All costs associated with such signs shall be funded entirely by the local authority. Ordinances establishing operating standards for PTVs shall not be effective unless appropriate signs giving notice are posted as required by this subsection.

(d)(1) In jurisdictions where PTVs are permitted or otherwise allowed by state law, PTVs may cross streets and highways that are part of the state highway system only at crossings or intersections

designated for that purpose and which are constructed as an active grade crossing in accordance with the Manual on Uniform Traffic Control Devices. PTV crossings shall be indicated by warning sign W11-11 of the Standard Highway Signs and be clearly visible in both directions by vehicles traversing the highway which is being crossed or intersected by PTVs.

(2) PTVs may cross streets and highways that are part of a municipal street system or county road system and used by other types of motor vehicles only at crossings or intersections designated for that purpose by the local authority having jurisdiction over such system.

(e)(1) Regardless of whether a local ordinance has been approved regarding the use of PTVs, delivery personnel for a commercial delivery company which has at least 10,000 persons employed in this state may operate PTVs within a residential subdivision with speed limits of 25 miles per hour or less, provided that any PTV utilized by a commercial delivery company shall:

(A) Include the equipment required in subsection (a) of Code Section 40-6-330.1;

(B) Be marked in a conspicuous manner with the name of the commercial delivery company;

(C) Be operated by a person with a valid driver's license; and

(D) Be utilized only for the delivery of envelopes and packages with a maximum size of 130 inches for the combined length and girth and with a weight no greater than 150 pounds per package.

(2) Any commercial delivery company utilizing PTVs under this subsection shall remit a $50.00 fee every five years to each local authority where a PTV is operated along with a signed statement that such commercial delivery company operates PTVs within the jurisdiction of such local authority.

(3) Notwithstanding any other provision of law to the contrary, any person operating a PTV under this subsection shall be granted all the rights and shall be subject to all the duties applicable to a driver of any other vehicle under this chapter; provided, however that subsection (b) of Code Section 40-6-315 shall not be applicable to the operator of a PTV under this subsection.

(4) Any PTV authorized to operate pursuant to this subsection shall not pull multiple trailers. Such PTVs shall be limited to pulling one trailer or cargo platform and be limited to hauling weight no greater than the carrying capacity of the PTV as determined by the manufacturer. (Ga. L. 1973, p. 598, § 2; Code 1933, § 68A-1402,

enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 1241, § 2; Ga. L. 1990, p. 2048, § 5; Ga. L. 2002, p. 506, § 6; Ga. L. 2002, p. 512, § 11; Ga. L. 2004, p. 67, § 3; Ga. L. 2013, p. 872, § 1/HB 384; Ga. L. 2014, p. 745, § 10/HB 877; Ga. L. 2015, p. 1072, § 6/SB 169.)

Cross references. — Personal Transportation Vehicle Transportation Plan, §§ 40-6-363 through 40-6-369.1.

Code Commission notes. — The amendment of this Code section by Ga. L. 2002, p. 506, § 6, irreconcilably conflicted with and was treated as superseded by Ga. L. 2002, p. 512, § 11. See County of Butts v. Strahan, 151 Ga. 417 (1921).

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 281 (2002).

JUDICIAL DECISIONS

Application to golf cart. — Since a golf cart was a "motorized vehicle" under O.C.G.A. § 40-1-1(33) and (75), the defendant had to have a driver's license when driving the golf cart on a highway; the motorized cart statutes, O.C.G.A. §§ 40-6-330 and 40-6-331 authorized licensing of the vehicle, not the driver. Coker v. State, 261 Ga. App. 646, 583 S.E.2d 498 (2003).

Part 4

Mopeds

40-6-350. Traffic laws applicable to persons operating mopeds.

Every person operating a moped shall be granted all the rights and shall be subject to all the duties applicable to the driver of any other vehicle under this chapter except as to special regulations in this part and except as to those provisions of this chapter which by their nature can have no application. However, the operator of a moped shall not be required to comply with subsection (e) of Code Section 40-6-312, relating to headlights and taillights, or subsection (b) of Code Section 40-6-315, relating to windshields and eye-protective devices. (Code 1933, § 68A-1112, enacted by Ga. L. 1978, p. 2241, § 5; Ga. L. 1990, p. 2048, § 5.)

40-6-351. Driver's license or permit required for certain operators.

No person under 15 years of age shall operate a moped or an electric assisted bicycle upon the public roads and highways of this state. No person shall operate a moped upon the public roads and highways of this state unless he or she shall have in his or her possession a valid driver's license, instruction permit, or limited permit issued to him or her pursuant to Chapter 5 of this title; provided, however, that all classes of licenses, instruction permits, or limited permits issued pursuant to Chapter 5 of this title shall be valid for the purposes of operating mopeds upon the public roads and highways of this state. No

license or permit shall be required for the operation of an electric assisted bicycle. (Code 1933, § 68A-1112, enacted by Ga. L. 1978, p. 2241, § 5; Ga. L. 1990, p. 2048, § 5; Ga. L. 1996, p. 236, § 3; Ga. L. 2007, p. 47, § 40/SB 103.)

JUDICIAL DECISIONS

Cited in Simmons v. State, 281 Ga. App. 252, 635 S.E.2d 849 (2006).

40-6-352. Protective headgear.

(a) No person shall operate or ride as a passenger upon a moped unless he or she is wearing protective headgear which complies with standards established by the commissioner of public safety. The commissioner in determining such standards shall consider the size, speed, and operational characteristics of the moped. Such standards need not necessarily be the same as for motorcyclists; however, any moped operator wearing an approved motorcycle helmet shall be deemed in compliance with this subsection. Operators of electric assisted bicycles may wear a properly fitted and fastened bicycle helmet which meets the standards of the American National Standards Institute or the Snell Memorial Foundation's Standards for Protective Headgear for Use in Bicycling, rather than a motorcycle helmet.

(b) The commissioner of public safety is authorized to approve or disapprove protective headgear for moped operators and to issue and enforce regulations establishing standards and specifications for the approval thereof. He or she shall publish in print or electronically lists by name and type of all protective headgear which have been approved by him or her. (Code 1933, § 68A-1112, enacted by Ga. L. 1978, p. 2241, § 5; Ga. L. 1990, p. 2048, § 5; Ga. L. 1996, p. 236, § 4; Ga. L. 2000, p. 951, § 5A-10; Ga. L. 2005, p. 334, § 18-14/HB 501; Ga. L. 2010, p. 838, § 10/SB 388.)

40-6-353. Operation over certain roads may be prohibited.

The commissioner of transportation or local governing authorities having jurisdiction over public roads and highways may prohibit the operation of mopeds on public roads and highways within their jurisdiction if it is determined that such operation endangers the safety of the traveling public. (Code 1933, § 68A-1112, enacted by Ga. L. 1978, p. 2241, § 5; Ga. L. 1990, p. 2048, § 5.)

40-6-354. Rules and regulations.

The commissioner of public safety is authorized to promulgate rules and regulations to carry this part into effect and is authorized to

establish regulations for safety equipment or standards for the operation of mopeds. (Code 1933, § 68A-1112, enacted by Ga. L. 1978, p. 2241, § 5; Ga. L. 1990, p. 2048, § 5; Ga. L. 2000, p. 951, § 5A-11; Ga. L. 2005, p. 334, § 18-15/HB 501.)

Part 5

Low-speed Vehicles

40-6-360. Rights of persons operating low-speed vehicles.

Every person operating a low-speed vehicle shall be granted all the rights and shall be subject to all the duties applicable to the driver of any other vehicle under this chapter except as to special regulations in this part and except as to those provisions of this chapter which by their nature can have no application. (Code 1981, § 40-6-360, enacted by Ga. L. 2002, p. 512, § 12.)

RESEARCH REFERENCES

C.J.S. — 60A C.J.S., Motor Vehicles, § 723.

40-6-361. Traffic laws applicable to low-speed vehicles.

(a) All low-speed vehicles are entitled to full use of a lane, and no motor vehicle shall be driven in such a manner as to deprive any low-speed vehicle of the full use of a lane.

(b) The operator of a low-speed vehicle shall not overtake and pass in the same lane occupied by the vehicle being overtaken.

(c) No person shall operate a low-speed vehicle between lanes of traffic or between adjacent lines or rows of vehicles.

(d) Low-speed vehicles shall not be operated two or more abreast in a single lane. (Code 1981, § 40-6-361, enacted by Ga. L. 2002, p. 512, § 12.)

40-6-362. Operating low-speed vehicles on highways.

Low-speed vehicles shall be operated only on any highway where the posted speed limit does not exceed 35 miles per hour. The operator of a low-speed vehicle shall not operate such vehicle on any highway where the posted speed limit exceeds 35 miles per hour. (Code 1981, § 40-6-362, enacted by Ga. L. 2002, p. 512, § 12.)

PART 6

PERSONAL TRANSPORTATION VEHICLE TRANSPORTATION PLAN

40-6-363. Legislative intent.

The purpose of this part shall be to authorize any local authority to establish a personal transportation vehicle transportation plan for roadways and streets within the local authority's jurisdiction. It is the intent of the General Assembly that these plans be designed and developed to best serve the functional travel needs of the jurisdiction and to have the physical safety of the personal transportation vehicle occupants and their property as a major planning component. No local authority shall be liable for losses resulting from exercising or not exercising its authority to adopt a personal transportation vehicle transportation plan, failing to adopt such plan, making an inadequate plan, or negligently adopting such plan. (Code 1981, § 40-6-363, as enacted by Ga. L. 2014, p. 745, § 11/HB 877)

Editor's notes. — Ga. L. 2014, p. 745, § 11/HB 877, effective July 1, 2014, redesignated former Code Section 40-6-363 as present Code Section 40-6-367.

40-6-364. Definitions.

As used in this part, the term:

(1) "Personal transportation vehicle lane" or "PTV lane" means a portion of the roadway that has been designated by striping, pavement markings, or signage for the exclusive or preferential use of persons operating personal transportation vehicles. Such PTV lanes shall at a minimum meet accepted guidelines, recommendations, and criteria with respect to planning, design, operation, and maintenance as set forth in the American Association of State Highway and Transportation Officials Safety Manual.

(2) "Personal transportation vehicle transportation plan" or "PTV plan" means a detailed guide for the operation of personal transportation vehicles upon local streets and road segments passed by a local authority through ordinance or resolution.

(3) "Plan area" means the territory designated by a local authority in a personal transportation vehicle transportation plan that provides for use of personal transportation vehicles and may include privately owned land upon the consent of the landowner. (Code 1981, § 40-6-364, enacted by Ga. L. 2014, p. 745, § 11/HB 877.)

40-6-365. Standards for local authorities to establish personal transportation vehicle transportation plans.

(a) A local authority may, by ordinance or resolution, adopt a PTV plan.

(b) Prior to the enactment of a PTV plan, a local authority shall submit the plan to any agency having traffic law enforcement responsibilities in the plan area and allow for input and comment upon the PTV plan.

(c) A PTV plan shall:

(1) Establish minimum general design criteria for the development, planning, and construction of separated PTV lanes, including, but not limited to, the design speed of the facility, the space requirements of the personal transportation vehicle, and roadway design criteria. This paragraph shall not apply if a local authority's governing body and the law enforcement agency with primary traffic jurisdiction over the street in question concludes that the street or roadway segment is suitable to safely accommodate both regular vehicular traffic and personal transportation vehicles but shall be governed by the requirements listed in Code Section 40-6-368;

(2) Establish uniform specifications and symbols for signs, markers, and traffic control devices consistent with the most current version of the Manual on Uniform Traffic Control Devices to control personal transportation vehicle traffic; to warn of dangerous conditions, obstacles, or hazards; to designate the right of way between personal transportation vehicles, other motor vehicles, and bicycles; to state the nature and destination of the PTV lane; and to warn pedestrians, bicyclists, and motorists of the presence of personal transportation vehicle traffic;

(3) Include a permitting process for personal transportation vehicles operating within the plan area. Such permitting process may include, but is not limited to, requirements regarding permit posting, permit renewal, operator education, and liability insurance. Local authorities may require a personal transportation vehicle to be permitted at least once every five years for a fee not to exceed $15.00;

(4) Establish minimum safety criteria for personal transportation vehicle operators, including, but not limited to, requirements relating to personal transportation vehicle maintenance and personal transportation vehicle safety. Unless otherwise allowed by law under local ordinance established prior to January 1, 2012, as authorized by Part 3 of this article, operators shall be required to possess a valid driver's license and comply with the financial responsibility requirements for passenger vehicle operators;

(5) Establish restrictions limiting the operation of personal transportation vehicles to PTV lanes, paths, or other approved streets or road segments in the plan area; and

(6) Provide that any person operating a personal transportation vehicle in the plan area in violation of the PTV plan is guilty of an infraction punishable by a fine as established by law.

(d) A PTV plan may include, but is not limited to, the following elements:

(1) Route selection, which includes a finding that the route will accommodate personal transportation vehicles without an adverse impact upon traffic safety, and will consider, among other things, the travel needs of commuters and other users;

(2) Transportation interfacing, which shall include, but not be limited to, coordination with other modes of transportation;

(3) Community involvement in planning;

(4) Flexibility and coordination with long-range transportation planning;

(5) Provision for personal transportation vehicle related facilities including, but not limited to, special access points, charging stations, and personal transportation vehicle crossings;

(6) Provisions for parking facilities, including, but not limited to, community commercial centers, golf courses, public areas, parks, and other destination locations; and

(7) Provisions for special paving, road markings, signage and striping for PTV lanes, road crossings, parking, and circulation.

(e) A PTV plan shall not include the use of any state highway, or any portion thereof, or the operation of personal transportation vehicles except that a crossing of, or a PTV lane along, a state highway may be included in the plan if consistent with accepted guidelines, recommendations, and criteria with respect to planning, design, signage, operation, and maintenance of shared use paths or PTV lanes as set forth in the Manual on Uniform Traffic Control Devices and the American Association of State Highway and Transportation Officials Safety Manual. (Code 1981, § 40-6-365, enacted by Ga. L. 2014, p. 745, § 11/HB 877.)

40-6-366. Acquisition of property for PTV lanes.

A local authority that adopts a PTV plan may establish PTV lanes through the acquisition of property, including easements or rights of

way, by dedication, purchase, or condemnation. (Code 1981, § 40-6-366, enacted by Ga. L. 2014, p. 745, § 11/HB 877.)

40-6-367. Part inapplicable to certain localities with prior ordinances governing PTV use.

This part shall have no application to any county or municipality that has enacted prior to January 1, 2012, an ordinance authorizing the operation of PTVs. (Code 1981, § 40-6-363, enacted by Ga. L. 2011, p. 247, § 2/SB 240; Code 1981, § 40-6-367, as redesignated by Ga. L. 2014, p. 745, § 11/HB 877.)

40-6-368. Requirements for streets or highways on which joint use by regular vehicle traffic and PTVs permitted.

Any street or highway segment upon which the joint use by regular vehicle traffic and personal transportation vehicles is permitted shall:

(1) Have speed limits of 25 miles per hour or less, as established by an engineering and traffic survey; and

(2) Have been determined by a qualified traffic engineer to accommodate personal transportation vehicles without adversely impacting traffic safety or the travel needs of commuters and other users. (Code 1981, § 40-6-368, enacted by Ga. L. 2014, p. 745, § 11/HB 877.)

40-6-369. Manner in which PTVs may be driven.

(a) All personal transportation vehicles authorized by a PTV plan to operate on a street, road segment, or PTV lane are entitled to full use of a lane, and no motor vehicle shall be driven in such manner as to deprive a personal transportation vehicle of the full use of a lane.

(b) The operator of a personal transportation vehicle shall not overtake and pass in the same lane occupied by the vehicle being overtaken.

(c) No person shall operate a personal transportation vehicle between lanes of traffic or between adjacent lines or rows of vehicles.

(d) Personal transportation vehicles shall not be operated two or more abreast in a single lane. (Code 1981, § 40-6-369, enacted by Ga. L. 2014, p. 745, § 11/HB 877.)

40-6-369.1. Speed limits on streets authorized for PTV use.

Personal transportation vehicles shall only be operated on highways where the posted speed limit does not exceed 25 miles per hour. The

operator of a personal transportation vehicle shall not operate such vehicle on any highway where the posted speed limit exceeds 25 miles per hour. (Code 1981, § 40-6-369.1, enacted by Ga. L. 2014, p. 745, § 11/HB 877.)

ARTICLE 14

EFFECT OF CHAPTER ON POWERS OF LOCAL AUTHORITIES

JUDICIAL DECISIONS

Chapter generally admissible in civil cases. — As Ga. L. 1974, p. 633 (see now O.C.G.A. Art. 14, Ch. 6, T. 40) did not prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from regulating or prohibiting stopping, standing, or parking in the course of which local authorities may by reference adopt any or all provisions of former Code 1933, Ch. 68A, and as a violation which was both a violation of the state traffic regulations and the city ordinance may be tried in either jurisdiction, there seems no reason why that former chapter should not be generally admissible in civil cases with the burden on the party contending it inapplicable to prove any change effectuated by local authorities. Fabian v. Vincent, 155 Ga. App. 464, 270 S.E.2d 858 (1980).

40-6-370. Uniform state-wide application of chapter.

The provisions of this chapter and the definitions contained in Code Section 40-1-1 shall be applicable and uniform throughout this state and in all counties and municipalities therein, and no local authority shall enact or enforce any ordinance on a matter covered by the provisions of this chapter except as expressly authorized in Code Sections 40-6-371 and 40-6-372. (Code 1933, § 68A-1501, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1984, p. 22, § 40; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-1606, are included in the annotations for this Code section.

Applicability of former provisions. — Former Code 1933, Ch. 68-16 applied to streets and highways within the corporate limits of municipalities as well as without. Richards & Assocs. v. Studstill, 92 Ga. App. 853, 90 S.E.2d 56 (1955), rev'd on other grounds, 212 Ga. 375, 93 S.E.2d 3 (1956) (decided under former Code 1933, § 68-1606).

Chapter made applicable to municipalities. — Former Code 1933, § 68E-209 (see now O.C.G.A. § 40-8-28), relating to lights on parked vehicles, was made applicable to municipalities by former Code 1933, § 68-1606 (see now O.C.G.A. § 40-6-370). National Upholstery Co. v. Padgett, 108 Ga. App. 857, 134 S.E.2d 856 (1964) (decided under former Code 1933, § 68-1606).

Cited in Cofer v. Cook, 141 Ga. App. 646, 234 S.E.2d 185 (1977).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 68-1606 are included in the annotations for this Code section.

City ordinance regulating parking on state highway. — City may not enact an ordinance regulating parking on state highway without first receiving permission of the Department of Transportation. 1971 Op. Att'y Gen. No. 71-U71-3 (decided under former Code 1933, § 68-1606).

40-6-371. Powers of local authorities generally.

(a) This chapter shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

(1) Regulating or prohibiting stopping, standing, or parking;

(2) Regulating traffic by means of police officers or official traffic-control devices;

(3) Regulating or prohibiting processions or assemblages on the highways;

(4) Designating particular highways or roadways for use by traffic moving in one direction as authorized in Code Section 40-6-47;

(5) Establishing speed limits for vehicles in public parks, notwithstanding any provisions of law establishing a minimum speed limit for an area outside an urban or residential district;

(6) Designating any highway as a through highway or designating any intersection or junction of roadway as a stop or yield intersection or junction;

(7) Requiring the registration and inspection of bicycles, including the requirement of a registration fee;

(8) Designating any highway intersection as a "yield right of way" intersection and requiring vehicles facing a "yield right of way" sign to yield the right of way to other vehicles;

(9) Regulating or prohibiting the turning of vehicles or specified types of vehicles;

(10) Altering or establishing speed limits as authorized by law;

(11) Designating no-passing zones as authorized in Code Section 40-6-46;

(12) Prohibiting or regulating the use of controlled-access roadways by any class of vehicle or kind of traffic as authorized in Code Section 40-6-51;

(13) Prohibiting or regulating the use of heavily traveled streets by any class of vehicle or kind of traffic found to be incompatible with the normal and safe movement of traffic;

(14) Establishing minimum speed limits as authorized by law;

(15) Designating hazardous railroad grade crossings as authorized in Code Section 40-6-141;

(16) Designating and regulating traffic on play streets;

(17) Regulating persons propelling push carts;

(18) Regulating persons upon skates, coasters, sleds, and other toy vehicles;

(18.1) Regulating the operation of electric personal assistive mobility devices, provided that such regulations are no less restrictive than those imposed by Part 2A of Article 13 of this chapter;

(18.2) Regulating the operation of personal transportation vehicles, provided that such regulations comply with Parts 3 and 6 of Article 13 of this chapter;

(19) Adopting and enforcing such temporary or experimental regulations as may be necessary to cover emergencies or special conditions; or

(20) Adopting such other traffic regulations as are specifically authorized by this chapter.

(a.1) No fine imposed by a local authority for violation of an ordinance or regulation for conduct which constitutes a violation of a provision of this chapter shall exceed any maximum fine specified by this chapter for such violation.

(b) No local authority shall erect or maintain any official traffic-control device at any location so as to require the traffic on any state highway to stop before entering or crossing any intersecting highway unless approval in writing has first been obtained from the Department of Transportation of the State of Georgia. If this issue is on trial in a civil or criminal action, the proper authority shall be presumed.

(c) No ordinance or regulation enacted under paragraph (4), (5), (6), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), or (18.2) of subsection (a) of this Code section shall be effective until official traffic-control devices giving notice of such local traffic regulations are erected upon or at the entrances to the highway or the part thereof affected as may be most appropriate. (Ga. L. 1955, p. 736, § 1; Ga. L. 1973, p. 98, § 1; Code 1933, § 68A-1502, enacted by Ga. L. 1974, p. 633,

§ 1; Ga. L. 1975, p. 1582, § 4; Ga. L. 1990, p. 2048, § 5; Ga. L. 2001, p. 770, § 3; Ga. L. 2003, p. 308, § 5; Ga. L. 2014, p. 745, § 12/HB 877.)

Cross references. — Challenges to speed limits or traffic laws established by local governing authorities, § 40-6-9.

Law reviews. — For note on the 2003 amendment of this Code section, see 20 Ga. St. U.L. Rev. 198 (2003).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1910, §§ 1770(12), 1770(57) and Ga. L. 1953, Nov.-Dec. Sess., p. 556 are included in the annotations for this Code section.

Admissibility of chapter in civil cases. — As Ga. L. 1974, p. 633 (see O.C.G.A. Art. 14, Ch. 6, T. 40) did not prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from regulating or prohibiting stopping, standing, or parking, in the course of duties they may by reference adopt any or all provisions of former Code 1933, Ch. 68A (see O.C.G.A. § 40-6-370 et seq.), and as a violation which was both a violation of the state traffic regulations and the city ordinance may be tried in either jurisdiction, there seems no reason why that former chapter should not be generally admissible in civil cases, with the burden on the party contending it inapplicable to prove any change effectuated by local authorities. Fabian v. Vincent, 155 Ga. App. 464, 270 S.E.2d 858 (1980).

City's ordinances prohibiting the use of amphibious vehicles as tour vehicles in parts of the city were not preempted by the state law giving the Public Service Commission the authority to issue certificates of public convenience and necessity; the ordinances fall within the constitutional exception to the doctrine of preemption since the General Assembly enacted general laws authorizing the local government to exercise its police powers and enact the local laws at issue. Old South Duck Tours, Inc. v. Mayor & Aldermen of Savannah, 272 Ga. 869, 535 S.E.2d 751 (2000).

Charge to jury based on O.C.G.A. § 40-6-371 valid. Banks v. City of Brunswick, 529 F. Supp. 695 (S.D. Ga. 1981), aff'd, 667 F.2d 97 (11th Cir. 1982).

Ordinance failing to sufficiently define prohibited activity. — City ordinance which undertakes to make punishable the operation of an automobile upon one of the streets of the city "in a careless or reckless manner" is null and void because it fails to sufficiently define the prohibited act. Hayes v. State, 11 Ga. App. 371, 75 S.E. 523 (1912).

Regulations allowed within ordinance. — City ordinance regulating the operation of automobiles may contain other regulations, not consistent with the laws of the state, and dealing with circumstances which are not included within it, but the city ordinance must accord with the state speeding provisions. Carter v. State, 12 Ga. App. 430, 78 S.E. 205 (1913).

State's right to regulate inadequate municipal regulations. — State would not abdicate right to deal with speed of automobiles in populous communities, when the dangers from the operation of such machines are far greater than elsewhere, if the municipal regulations should in any respect fall short of the state law on the subject. Carter v. State, 12 Ga. App. 430, 78 S.E. 205 (1913).

Municipal ordinance with speed limit greater than allowed by state. — Ordinance attempting to make punishable the running of automobiles in a certain manner at a rate of speed greater than ten miles per hour at corners and crossings within the limits of the municipality is void because the ordinance is in conflict with state law. Carter v. State, 12 Ga. App. 430, 78 S.E. 205 (1913).

Speeding automobile defying municipal limit. — Driver must so operate the driver's automobile as to have the automobile's speed at all times under the driver's control, and whenever it is neces-

sary, for the preservation of either persons or property, that the automobile should be brought to a stop, the exercise of reasonable care requires that the vehicle be stopped instantly. O'Dowd v. Newnham, 13 Ga. App. 220, 80 S.E. 36 (1913).

Proximate cause and contributory negligence fact questions. — In view of the plaintiff's testimony as to the defendant's making a left turn in violation of a city ordinance, it was a question of fact for the trial judge to determine what was the proximate cause of the plaintiff's injury, and whether the negligence of the plaintiff or of the defendant caused or contributed to the plaintiff's injury. Faggart v. Rowe, 33 Ga. App. 422, 126 S.E. 731 (1925).

Uncontrolled intersection not "through street." — When it is undisputed that a collision in question occurred at an uncontrolled intersection, there is no merit to the contention that the street was a "through street" under a city ordinance. Phillips v. Reece, 106 Ga. App. 779, 128 S.E.2d 370 (1962).

Cited in Russell v. Fletcher, 244 Ga. 854, 262 S.E.2d 138 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Section is not in conflict with the state Constitution. — 1972 Op. Att'y Gen. No. 72-79.

Municipal erection of traffic control device. — Municipality may not, by ordinance, seek to regulate streets which are a part of the state highway system, unless the municipality is attempting to erect or maintain a traffic-control device on a road which is a part of the state highway system and written approval has first been obtained from the department. 1974 Op. Att'y Gen. No. U74-94.

Use of cameras for traffic control by local government. — Municipalities are not prohibited by Georgia's Constitution or laws from enacting ordinances regarding enforcement of traffic control devices by the use of cameras. 2000 Op. Att'y Gen. No. U00-7.

Counties may enact ordinances regarding enforcement of traffic control devices by the use of cameras. 2000 Op. Att'y Gen. No. U00-12.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 20 et seq.

ALR. — Validity of statute or ordinance forbidding running of automobile so as to inflict damage or injury, 47 A.L.R. 255.

Power of municipal corporation to limit exclusive use of designated lanes or streets to buses and taxicabs, 43 A.L.R.3d 1394.

40-6-372. Adoption of chapter by local authorities.

Local authorities by ordinance may adopt by reference any or all provisions of this chapter or of Code Section 40-1-1 without publishing or posting in full the provisions thereof. (Ga. L. 1955, p. 736, § 1; Ga. L. 1973, p. 98, § 1; Code 1933, § 68A-1503, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1975, p. 1582, § 4; Ga. L. 1984, p. 22, § 40; Ga. L. 1990, p. 2048, § 5.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-1680, are included in the annotations for this Code section.

Constitutionality. — Ga. L. 1955, p.

566, which based its application upon population, was constitutional. Gordon v. Green, 228 Ga. 505, 186 S.E.2d 719 (1972) (decided under former Code 1933, § 68-1680).

Municipal authorities may localize state provisions. — Ga. L. 1974, p. 633, § 1 (see now O.C.G.A. §§ 40-6-372 and 40-6-374) were laws of general application and these laws constituted "express legislative authority," which conferred the power upon local authorities to adopt any or all provisions of former Code 1933, Ch. 68A and make those provisions local ordinance violations. Akin v. Hardison, 245 Ga. 57, 262 S.E.2d 814 (1980).

Punishing state offenses as municipal violators. — Power of a municipality to punish as a municipal offense that which is by general law of the state also a state offense must be conferred by a general rather than a special act of the legislature, and the grant of this power must be clearly expressed. The mere authority granted in a municipal charter to enact ordinances for the general welfare is not a sufficient delegation of this authority. Furthermore, the act which the municipality seeks to punish as a municipal offense must be such as affects the peace and good order of the municipality and contain some characterizing ingredient not contained in the state offense. Gordon v. Green, 228 Ga. 505, 186 S.E.2d 719 (1972) (decided under former Code 1933, § 68-1680).

RESEARCH REFERENCES

ALR. — Conflict between statutes and local regulations as to automobiles, 21 A.L.R. 1186; 64 A.L.R. 993; 147 A.L.R. 522.

40-6-373. Effect of future changes in chapter.

A future amendment or repeal of a provision of this chapter or of Code Section 40-1-1 shall so amend or repeal the pertinent provision, if any, of the original ordinance adopted by a local authority pursuant to the authority of Code Section 40-6-372 without any action by such local authority being required. (Code 1933, § 68A-1504, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1984, p. 22, § 40; Ga. L. 1990, p. 2048, § 5.)

40-6-374. Form of adopting ordinance.

Local authorities shall use the following wording or similar wording in adopting by reference the provisions of this chapter or the definitions contained in Code Section 40-1-1:

(Municipality or County) of _____

Ordinance _____ number

An ordinance adopting the Georgia Uniform Rules of the Road, Code Sections [_____ to _____ (except for Code Sections _____)] of Chapter 6 of Title 40 of the Official Code of Georgia Annotated, to regulate traffic upon the public streets of the (Municipality or County) of _____ and repealing ordinance number _____ and all other ordinances and sections of ordinances in conflict herewith.

It is ordained by _____ as follows:

Section 1. Adoption by reference. Pursuant to Chapter 6 of Title 40 of the Official Code of Georgia Annotated, Code Sections 40-6-372 through 40-6-376, Code Sections [_____ to _____ (except for Code Sections _____)] of that chapter known as the Uniform Rules of the Road and the definitions contained in Code Section 40-1-1 are hereby adopted as and for the traffic regulations of this (Municipality or County) with like effect as if recited herein.

Section 2. Penalties. Unless another penalty is expressly provided by law, every person convicted of a violation of any provision of this ordinance shall be punished by a fine of not more than _____ dollars or by imprisonment for not more than _____ days or by both such fine and imprisonment.

Section 3. Repeal. The (existing ordinances covering the same matters as embraced in this ordinance) are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed.

Section 4. Effective date. This ordinance shall take effect from and after the _____ day of _____, _____.

(Code 1933, § 68A-1505, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1983, p. 3, § 29; Ga. L. 1984, p. 22, § 40; Ga. L. 1990, p. 2048, § 5; Ga. L. 1999, p. 81, § 40.)

JUDICIAL DECISIONS

Municipal localization of state provisions. — Ga. L. 1974, p. 633, § 1 (see now O.C.G.A. §§ 40-6-372 and 40-6-374) were laws of general application and these laws constituted "express legislative authority," which conferred the power upon local authorities to adopt any or all provisions of former Code 1933, Ch. 68A and make those provisions local ordinance violations. Akin v. Hardison, 245 Ga. 57, 262 S.E.2d 814 (1980).

40-6-375. Citations for violations.

It shall be sufficient in citing a violation of a provision of this chapter to refer to the ordinance number of the enacting ordinance, provided that the citation form used is the one developed by the commissioner of public safety under the authority of Code Section 40-13-1. (Code 1933, § 68A-1506, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1990, p. 2048, § 5.)

40-6-376. Prosecution under this chapter or local ordinance; transfer of charge to state tribunal; double jeopardy.

(a) Any offense, except a violation of subsection (b) of Code Section 40-6-270 or a violation of Code Section 40-6-393, which is a violation of

a provision of this chapter and of a local ordinance may, at the discretion of the local law enforcement officer or prosecutor, be charged as a violation of the state statute or of the local ordinance. A violation of subsection (b) of Code Section 40-6-270 or a violation of Code Section 40-6-393 shall be charged as a state violation.

(b) If the offense charged under an ordinance constitutes a violation of any provision of this chapter, the defendant may request transfer of the charge to the appropriate state tribunal. If the defendant so requests, the recorder or city judge, after conducting a commitment hearing in which probable cause for arrest is found, or upon obtaining a waiver of commitment hearing, shall summarily fix the defendant's bond and bind his case over to the appropriate state tribunal.

(c) No person tried in any court for a violation of this chapter or any ordinance adopted pursuant thereto shall thereafter be tried in any court for the same offense. A conviction for the violation of an ordinance adopted pursuant to this chapter shall be considered a prior conviction for all purposes under this chapter and under Chapter 13 of this title.

(d) No court, other than a court having jurisdiction to try a person charged with a violation of Code Section 40-6-393, shall have jurisdiction over any offense arising under the laws of this state or the ordinances of any political subdivision thereof, which offense arose out of the same conduct which led to said person's being charged with a violation of Code Section 40-6-393 and any judgment rendered by such court shall be null and void. (Ga. L. 1955, p. 736, §§ 1, 2; Code 1933, § 68A-1507, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1975, p. 1582, § 4; Ga. L. 1982, p. 1694, §§ 2, 4; Ga. L. 1988, p. 1499, § 2; Ga. L. 1989, p. 14, § 40; Ga. L. 1990, p. 2048, § 5.)

Cross references. — Arrests, Trials, and Appeals for Traffic Offenses, T. 40, Ch. 13, Art. 2.

Law reviews. — For survey article on criminal law and procedure for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 117 (2003).

JUDICIAL DECISIONS

Charging of violation of statute and ordinance interchangeable. — Any violation of former Code 1933, Ch. 68A and of a local ordinance may, at the discretion of the local prosecutor, be charged as a violation of the state statute or the local ordinance. Diamond v. State, 151 Ga. App. 690, 261 S.E.2d 434 (1979) (decided prior to 1982 amendment; see O.C.G.A. Ch. 6, T. 40).

Prosecutor may select the forum. — O.C.G.A. § 40-6-376(a) expressly grants the prosecutor the discretion to select the forum. State v. Serio, 257 Ga. App. 369, 571 S.E.2d 168 (2002).

State authorized to seek transfer from municipal to state court. — Trial court erred in concluding that the state was not authorized to seek transfer from municipal to state court as the prosecutor properly brought a state charge against the defendant and entered a nolle prosequi on the local ordinance violation; the prosecutor was authorized to bring the charges in state court, and the trial court erred in finding otherwise and in transfer-

ring the case back to municipal court. State v. West, 258 Ga. App. 269, 574 S.E.2d 365 (2002).

Jurisdiction over traffic offenses. — Under O.C.G.A. § 40-6-376(a), any violation of state traffic law which is also a violation of a local ordinance may, at the prosecutor's discretion, be charged as a violation of either the state statute or the local ordinance; under O.C.G.A. § 40-6-376(b), if an offense is charged under a local ordinance, but also constitutes a violation of state law, the defendant may request a transfer of the charge from a lower court to "the appropriate state tribunal," and if the defendant makes such a request, a city or recorder's court judge shall bind the defendant's case over to the appropriate state tribunal, after fixing bond and determining whether there was probable cause for arrest. State v. Serio, 257 Ga. App. 369, 571 S.E.2d 168 (2002).

Inapplicable. — Defendant's offenses were charged as violations of state laws, not local ordinances, so O.C.G.A. § 40-6-376(b) was inapplicable because the defendant waived the defendant's right to a jury trial and jurisdiction was proper in either the recorder's court or the state court. State v. Serio, 257 Ga. App. 369, 571 S.E.2d 168 (2002).

Chapter generally admissible in civil cases. — As Ga. L. 1974, p. 633 (see now O.C.G.A. Art. 14, Ch. 6, T. 40) did not prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from regulating or prohibiting stopping, standing, or parking, in the course of which local authorities may by reference adopt any or all provisions of former Code 1933, Ch. 68A, and as a violation, which is both a violation of the state traffic regulations, and the city ordinance may be tried in either jurisdiction, there seems no reason why that former chapter should not be generally admissible in civil cases with the burden on the party contending the provision inapplicable to prove any change effectuated by local authorities. Fabian v. Vincent, 155 Ga. App. 464, 270 S.E.2d 858 (1980).

Existence of municipal ordinances must be pled and proved as the court will not take judicial notice of the existence of such ordinances. Hodges v. State, 100 Ga. App. 611, 112 S.E.2d 373 (1959).

Res judicata conviction of either state law or municipal ordinance. — Conviction of violation of either the state law or municipal ordinance shall constitute res judicata as to the other tribunal for the same offense. Merely because an identical municipal ordinance exists, as to a traffic regulation, the jurisdiction of neither the state nor the municipal court is preempted by the other until there has been a conviction in one of the courts. Hodges v. State, 100 Ga. App. 611, 112 S.E.2d 373 (1959).

Lack of jurisdiction. — As the focus of a jurisdictional statute was a charge against a specific person, it divested a probate court of jurisdiction over an underlying misdemeanor offense, like reckless driving, when the person was charged with felony vehicular homicide. State v. Perkins, 276 Ga. 621, 580 S.E.2d 523 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Ga. L. 1955, p. 736 was not in conflict with the state Constitution. 1972 Op. Att'y Gen. No. 72-79.

RESEARCH REFERENCES

ALR. — Liability for accident arising from motorist's failure to give signal for right turn, 38 A.L.R.2d 143.

ARTICLE 15

SERIOUS TRAFFIC OFFENSES

Law reviews. — For note on the 1994 amendments of Code Sections 40-6-391, 40-6-391.1, and 40-6-392 of this article, see 11 Ga. St. U.L. Rev. 215 (1994). For note on the 1994 amendments of Code Sections 40-6-391.1 and 40-6-395 of this article, see 11 Ga. St. U.L. Rev. 223 (1994). For note on the 1995 amendments of Code sections in this article, see 12 Ga. St. U.L. Rev. 289 and 295 (1995). For note on the 1999 amendments to Code sections in this article, see 16 Ga. St. U.L. Rev. 200 (1999).

JUDICIAL DECISIONS

Unintentional vehicular death generally misdemeanor offense. — General Assembly excepted vehicular deaths from other forms of involuntary manslaughter and established the offense as a misdemeanor except in cases of reckless driving or vehicular offenses connected with police vehicles. Berrian v. State, 139 Ga. App. 571, 228 S.E.2d 737 (1976).

Cited in Cofer v. Hawthorne, 154 Ga. App. 875, 270 S.E.2d 84 (1980); State v. Osterloh, 342 Ga. App. 668, 804 S.E.2d 696 (2017).

RESEARCH REFERENCES

Am. Jur. Trials. — Motor Vehicle Collisions — Agency Relationship, 8 Am. Jur. Trials 1.

Unwitnessed Automobile Accident Cases, 18 Am. Jur. Trials 443.

Litigation of Collision — Caused Automobile Fuel Tank Fire Cases, 23 Am. Jur. Trials 383.

Voir Dire in Low Speed Collision Cases — Plaintiff's View, 96 Am. Jur. Trials 1.

ALR. — Acquittal or conviction of one offense in connection with operation of automobile as bar to prosecution for another, 172 A.L.R. 1053.

Inference or presumption that owner of motor vehicle was its driver at time of traffic, driving, or parking offense, 49 A.L.R.2d 456.

What constitutes "minor traffic infraction" excludible from calculation of defendant's criminal history under United States sentencing guidelines § 4A1.2(c)(2), 113 A.L.R. Fed. 561.

40-6-390. Reckless driving.

(a) Any person who drives any vehicle in reckless disregard for the safety of persons or property commits the offense of reckless driving.

(b) Every person convicted of reckless driving shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed $1,000.00 or imprisonment not to exceed 12 months, or by both such fine and imprisonment, provided that no provision of this Code section shall be construed so as to deprive the court imposing the sentence of the power given by law to stay or suspend the execution of such sentence or to place the defendant on probation. (Code 1933, § 68A-901, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1989, p. 350, § 2; Ga. L. 1990, p. 2048, § 5.)

Law reviews. — For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001). For annual survey of criminal law, see 56 Mercer L. Rev. 153 (2004).

JUDICIAL DECISIONS

Analysis

General Consideration
Procedure
Application
Jury Issues and Instruction

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1939, p. 295, are included in the annotations for this Code section.

Section enforceable. — Use of the words "willful or wanton" in former Ga. L. 1939, p. 295 (see now O.C.G.A. § 40-6-390) was not so vague and indefinite as to be incapable of enforcement. Lancaster v. State, 83 Ga. App. 746, 64 S.E.2d 902 (1951) (decided under former Ga. L. 1939, p. 295).

Section informs person of legal violation. — Ga. L. 1974, p. 633, § 1 (see now O.C.G.A. § 40-6-390(a)) is sufficiently definite to inform a person of common intelligence as to when the person is violating the law. Wilson v. State, 245 Ga. 49, 262 S.E.2d 810 (1980).

Reckless driving charges not affected by unconstitutionality of O.C.G.A. § 40-6-391(a)(6). — Fact that O.C.G.A. § 40-6-391(a)(6) was held unconstitutional as a denial of equal protection did not apply to require dismissal of charges against the defendant that the defendant committed reckless driving in violation of subsection (a) of O.C.G.A. § 40-6-390 and first degree vehicular homicide in violation of O.C.G.A. § 40-6-393(a) by reckless driving; the charges merely included the fact that marijuana was found in the defendant's blood because the marijuana was relevant to a determination that the defendant drove "in reckless disregard for the safety of persons or property." Ayers v. State, 272 Ga. 733, 534 S.E.2d 76 (2000).

Reckless driving does not involve specific, intended victims. — Trial court did not err in quashing that part of the indictment that charged the defendant with "reckless driving" as to three passengers in another automobile after the driver of that other automobile cut the defendant's vehicle off in traffic; "reckless driving" did not involve specific, intended victims, but only required the state to show that the defendant drove the defendant's car in a manner exhibiting reckless disregard for the safety of persons or property, and, thus, the three counts of the indictment identifying the three passengers as "victims" of the defendant's reckless driving could not stand. State v. Burrell, 263 Ga. App. 207, 587 S.E.2d 298 (2003).

Reckless driving and reckless conduct do not merge. — Trial court did not err by failing to merge the crimes of reckless driving, O.C.G.A. § 40-6-390, and reckless conduct, O.C.G.A. § 16-5-60, for punishment because the two offenses did not merge for sentencing when §§ 40-6-390 and 16-5-60 each had a provision that required proof of a fact that the other did not, and to establish a violation of § 40-6-390, the state only had to prove that the defendant drove the car in a manner exhibiting reckless disregard for the safety of persons or property; reckless conduct requires proof of harm or an actual threat of harm to the bodily safety of another person and does not require that the crime be committed while driving a motor vehicle, but reckless driving does not require that there be an injured or threatened party and instead merely requires that the state prove a general disregard for the safety of persons or property while driving a motor vehicle. Howard v. State, 301 Ga. App. 230, 687 S.E.2d 257 (2009).

Cruelty to children count did not merge with reckless driving count. —

Trial court properly did not merge the appellant's convictions for cruelty to children in the second degree and serious injury by vehicle by the act of reckless driving with respect to the same victim for the purpose of sentencing because each offense required proof of a different wrongful act as the cruelty to children conviction required proof of facts not required by the serious injury by vehicle conviction and vice versa. McNeely v. State, 296 Ga. 422, 768 S.E.2d 751 (2015).

Speeding merged into reckless driving. — Defendant's conviction and sentence for speeding was vacated because the offense of speeding should have been merged into the offense of reckless driving; the defendant should have been convicted and sentenced only for reckless driving. Travis v. State, 314 Ga. App. 280, 724 S.E.2d 15 (2012).

Prosecution of homicide caused solely through violation of Ga. L. 1974, p. 633, § 1 (see now O.C.G.A. § 40-6-390) must be under the vehicular homicide provision, Ga. L. 1974, p. 633, § 1 (see now O.C.G.A. § 40-6-390), and not as for murder or involuntary manslaughter. State v. Foster, 141 Ga. App. 258, 233 S.E.2d 215, aff'd, 239 Ga. 302, 236 S.E.2d 644 (1977).

Predication of murder charge on section. — Murder charge cannot be predicated upon homicide resulting from "reckless disregard for … safety of persons," as that phrase is used in Ga. L. 1974, p. 633, § 1 (see now O.C.G.A. § 40-6-390). Foster v. State, 239 Ga. 302, 236 S.E.2d 644 (1977).

Cited in Torley v. State, 141 Ga. App. 366, 233 S.E.2d 476 (1977); Brock v. State, 146 Ga. App. 78, 245 S.E.2d 442 (1978); State v. Black, 149 Ga. App. 389, 254 S.E.2d 506 (1979); Head v. State, 246 Ga. 360, 271 S.E.2d 452 (1980); McSears v. State, 247 Ga. 48, 273 S.E.2d 847 (1981); Hardison v. Haslam, 250 Ga. 59, 295 S.E.2d 830 (1982); Williams v. State, 171 Ga. App. 546, 320 S.E.2d 389 (1984); Anderson v. State, 254 Ga. 470, 330 S.E.2d 592 (1985); Ricks v. State, 184 Ga. App. 428, 361 S.E.2d 829 (1987); Davis v. State, 272 Ga. 818, 537 S.E.2d 327 (2000); English v. State, 261 Ga. App. 157, 582 S.E.2d 136 (2003); Crossley v. State, 261 Ga. App. 250, 582 S.E.2d 204 (2003); State v. Lowe, 263 Ga. App. 1, 587 S.E.2d 169 (2003); In the Interest of W.N.J., 268 Ga. App. 637, 602 S.E.2d 173 (2004); Hannah v. State, 280 Ga. App. 230, 633 S.E.2d 800 (2006); Jaheni v. State, 285 Ga. App. 266, 645 S.E.2d 735 (2007); Leachman v. State, 286 Ga. App. 708, 649 S.E.2d 886 (2007); Green v. State, 287 Ga. App. 248, 651 S.E.2d 174 (2007); State v. Outen, 296 Ga. 40, 764 S.E.2d 848 (2014); Holman v. State, 329 Ga. App. 393, 765 S.E.2d 614 (2014); State v. Hasson, 334 Ga. App. 1, 778 S.E.2d 15 (2015).

Procedure

Language of indictment. — When the indictment charging the defendant with homicide by vehicle tracked the language of Ga. L. 1974, p. 633, § 1 (see now O.C.G.A. § 40-6-390), accusing the defendant of "driving his motor vehicle in a reckless disregard for the safety of the deceased," but also contained the additional phrase "by failing to grant the right of way to oncoming traffic," a common-sense reading of the entire indictment made it clear that the defendant was being so charged, and the defendant was properly charged. Ivie v. State, 151 Ga. App. 496, 260 S.E.2d 543 (1979).

Appellate court found that because the count of the indictment charging the defendant with reckless driving included the "crucial language" that the defendant drove with reckless disregard for the safety of persons and property, count two, charging the defendant with vehicular homicide based on that predicate act, contained the elements of the offense and apprised the defendant of the charges that the defendant had to be prepared to answer at trial; thus, count two was legally sufficient and the trial court correctly denied the defendant's motion in arrest of judgment. Howard v. State, 252 Ga. App. 487, 555 S.E.2d 884 (2001).

Trial court did not err by finding that the defendant waived the defendant's right to challenge the indictment charging the defendant with reckless driving because the defendant failed to timely file a written special demurrer. Lauderback v. State, 320 Ga. App. 649, 740 S.E.2d 377 (2013).

Procedure (Cont'd)

Indictment for reckless driving sufficiently alleged first degree vehicular homicide. — By alleging that a defendant violated the reckless driving statute, O.C.G.A. § 40-6-390, an indictment incorporated the elements of that offense that the defendant drove the vehicle in reckless disregard for the safety of persons or property and was sufficient to assert an indictment for vehicular homicide in the first degree. State v. Biddle, 303 Ga. App. 384, 693 S.E.2d 539 (2010).

Motion for acquittal properly denied. — Trial court properly denied defendant's motion for a directed verdict of acquittal when: (1) the defendant missed the stop sign; (2) the defendant proceeded across four lanes of traffic; (3) the defendant plowed into the victims' car, causing one victim to die; (4) the defendant was swaying, slurring defendant's speech, and had an odor of alcohol about the defendant's body; and (5) there were no skid marks in the intersection. Sanders v. State, 258 Ga. App. 16, 572 S.E.2d 712 (2002).

No merger with serious injury by vehicle charge. — Trial court did not err by failing to merge a reckless-driving charge into a serious-injury-by-vehicle charge because the two crimes were entirely separate and distinct, requiring a showing of different elements and based on the defendant's drunk driving of a four-wheeler ATV with a 10-year-old passenger, who was brain-damaged when the defendant clipped a tractor and flipped the ATV; the state used the evidence of the clipping of the tractor scoop, which caused the rollover and injury to the child, as the elements of the serious-injury-by-vehicle offense, which was separate from and sequential to the reckless-driving offense, which was premised on the defendant's intoxication. Croft v. State, 278 Ga. App. 107, 628 S.E.2d 144 (2006).

Application

Location of vehicle not material element. — Exact location is not a material element of the offense of reckless driving and a fatal variance did not exist as to the charge even though the state failed to prove that the defendant drove recklessly in a certain block of road as alleged in the indictment. Chavous v. State, 205 Ga. App. 455, 422 S.E.2d 327 (1992).

Adequate grounds for arrest. — Defendant's claim, in defense of a charge of aggravated assault against police officers, that the defendant was resisting an unlawful arrest, was meritless. As the officers observed the defendant driving in a reckless manner, the officers were authorized to stop and arrest the defendant for reckless driving. Mackey v. State, 296 Ga. App. 675, 675 S.E.2d 567 (2009).

Sufficient evidence to withstand motion for directed verdict. — Evidence was sufficient to deny a defendant's motion for a directed verdict in a prosecution for reckless vehicular homicide, reckless driving, DUI, running a red light, and failure to exercise due care when, after smoking crack and arguing with the defendant's former spouse, the defendant had struck a car from behind, struck a pedestrian, and collided with a burgundy car, killing the burgundy car's two occupants; the defendant was found slumped over on the front driver's side of the pickup truck the defendant was driving. Hill v. State, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

Sufficient evidence to find defendant guilty. — When there was eyewitness testimony presented at the trial that the defendant was driving in excess of the speed limit immediately after the collision, evidence of the defendant's flight from the scene of the collision, and also the defendant's own statement that the defendant was driving "too fast" (which, though not necessarily inculpatory, was properly admitted for the jury to determine whether or not it constituted an admission), there was sufficient evidence from which the jury could find the defendant guilty of reckless driving. Deshazier v. State, 155 Ga. App. 526, 271 S.E.2d 664 (1980).

When the state's evidence showed that the defendant was driving under the influence of alcohol (.16 grams percent) at a high rate of speed without any lights, recklessly passed two other vehicles immediately prior to the collision with the victim, and was driving in the wrong lane

when the defendant crashed into the victim's car, the evidence was sufficient to enable any rational trier of fact to find that a causal connection existed between the defendant's violation of O.C.G.A. § 40-6-390 or O.C.G.A. § 40-6-391 and the victim's death and thus to find the defendant guilty beyond a reasonable doubt of the offense of homicide by vehicle in the first degree. McNabb v. State, 180 Ga. App. 723, 350 S.E.2d 314 (1986).

When there was evidence that the defendant was driving at an excessive speed in disregard of a police roadblock, the evidence was sufficient to find the defendant guilty. Duncan v. State, 202 Ga. App. 456, 415 S.E.2d 7 (1992).

When the evidence showed that the defendant lost control of the defendant's vehicle while the defendant was speeding and attempting to pass in a no-passing zone and that the defendant had ingested both alcohol and cocaine, the defendant was properly convicted of reckless driving. Gentry v. State, 236 Ga. App. 820, 513 S.E.2d 528 (1999).

Evidence was sufficient to prove that the defendant was guilty of reckless driving and attempting to elude an officer when the defendant led the officer on a high-speed chase driving on the wrong side of the road and wilfully failed to bring the defendant's car to a stop after the officer activated the patrol car's blue lights and siren. Brackins v. State, 249 Ga. App. 788, 549 S.E.2d 775 (2001).

Evidence that the defendant drove the defendant's tractor-trailer at a high rate of speed through a construction zone with signs and indications that slow-moving traffic was in the area was sufficient to support the defendant's conviction for homicide by vehicle in the first degree as the evidence showed that the collision the defendant caused which killed the victim was not an unfortunate accident for which the defendant would not be liable, but instead was the result of defendant's reckless driving in disregard for the safety of other people. Wilkes v. State, 254 Ga. App. 447, 562 S.E.2d 519 (2002).

Sufficient evidence supported the verdict that the defendant committed reckless driving in violation of O.C.G.A. § 40-6-390(a) after the defendant, while driving an 18-wheeler truck, made an illegal U-turn near a tunnel, blocking all four lanes of oncoming traffic and placing other motorists in jeopardy, particularly those exiting the tunnel, as the motorist had limited visibility. Pennington v. State, 254 Ga. App. 837, 564 S.E.2d 219 (2002).

Evidence was sufficient to support a reckless driving conviction after a juvenile was driving 112 miles per hour, 42 miles per hour over the speed limit, and was "passing cars like a rocket, and flying down the highway;" for procedural and fair trial reasons, however, the conviction was reversed. In the Interest of J.C., 257 Ga. App. 657, 572 S.E.2d 21 (2002).

Evidence was sufficient for a rational trier of fact to find beyond a reasonable doubt that the defendant was driving the defendant's vehicle in a manner exhibiting a reckless disregard for the safety of others under O.C.G.A. § 40-6-390(a) as the defendant was distraught, had consumed alcohol, and was driving outside the defendant's lane of travel when the defendant struck from behind the victim on a bicycle, which had visible reflectors. Lesh v. State, 259 Ga. App. 325, 577 S.E.2d 4 (2003).

Evidence that the defendant, during a high-speed motor vehicle chase, drove the defendant's vehicle on the wrong side of the road, ran a stop sign, and struck a curb was sufficient to support the defendant's conviction for reckless driving. Arnold v. State, 262 Ga. App. 61, 584 S.E.2d 662 (2003).

Evidence was sufficient to convict the defendant for reckless driving after the police officer testified that the defendant was driving 24 mph above the speed limit on a city street near pedestrians; in addition, the defendant showed signs of impairment due to alcohol consumption. This evidence was sufficient to show that the defendant acted with a reckless disregard for public safety as required for a reckless driving conviction. Fraser v. State, 263 Ga. App. 764, 589 S.E.2d 329 (2003).

When evidence that the defendant's blood tested positive for marijuana use within 12 hours of a collision was properly introduced and when testimony by an accident reconstruction expert and a wit-

Application (Cont'd)

ness indicated that the defendant was traveling recklessly on the wrong side of the road when the defendant struck the victim's vehicle, the defendant was properly found guilty of first-degree vehicular homicide and reckless driving. Upshaw v. State, 264 Ga. App. 878, 592 S.E.2d 523 (2003).

Evidence was sufficient to convict the defendant beyond a reasonable doubt of reckless driving under O.C.G.A. § 40-6-390(a) when the defendant was driving at a speed much faster than the surrounding vehicles, the defendant "punched" the accelerator, the defendant made abrupt lane changes, and the defendant ran a stop sign. Pinch v. State, 265 Ga. App. 1, 593 S.E.2d 1 (2003).

There was sufficient evidence to support the convictions for reckless driving and failure to exercise due care because the evidence demonstrated that the defendant was driving above the speed limit without headlights on a rainy night, was looking down instead of watching the road ahead, and neither sounded the defendant's horn nor applied the defendant's brakes when the defendant saw the victims just before hitting the victims. Winston v. State, 270 Ga. App. 664, 607 S.E.2d 147 (2004).

Evidence supported the defendant's reckless driving conviction as a police officer testified that the defendant crossed the center line while driving. Morrison v. State, 272 Ga. App. 34, 611 S.E.2d 720, aff'd, 280 Ga. 222, 626 S.E.2d 500 (2006).

Evidence was sufficient to support the defendant's convictions for driving under the influence, vehicular homicide, reckless driving, and other charges as the evidence showed that the defendant was caught trying to take merchandise from a store, and then struck and killed the victim as the defendant left the store parking lot and turned on to a highway at a time when the defendant admittedly was under the influence of drugs. Cromartie v. State, 275 Ga. App. 209, 620 S.E.2d 413 (2005).

When the defendant, who was under the influence of methamphetamine, drove on the wrong side of the road and injured a motorist, and another motorist went to the first motorist's assistance and was killed by an oncoming vehicle, it was not improper for a jury to reject a claim that the defendant did not proximately cause the victim's death and return a guilty verdict of vehicular manslaughter, under O.C.G.A. § 40-6-393, because there was evidence that the defendant's negligence substantially contributed to the victim's death. McGrath v. State, 277 Ga. App. 825, 627 S.E.2d 866 (2006), cert. denied, 549 U.S. 1223, 127 S. Ct. 1287 (2007).

Convictions of driving under the influence of alcohol to the extent that it was less safe to drive, O.C.G.A. § 40-6-391(a)(1), reckless driving, O.C.G.A. § 40-6-390, and failure to maintain a lane, O.C.G.A. § 40-6-48, were supported by sufficient evidence since, when an officer stopped to assist the defendant, whose car was parked on the side of a road, the defendant told the officer that the defendant had driven off the road, the officer found tire marks and a fender in the area where the defendant ran off the road and the defendant's vehicle was missing the vehicle's left front fender, the officer noticed a strong odor of alcohol on the defendant's breath, the defendant admitted to drinking for over four hours and could not tell the officer how many drinks had been consumed, and the defendant then failed field sobriety tests. Taylor v. State, 278 Ga. App. 181, 628 S.E.2d 611 (2006).

Reckless driving conviction was not subject to a reversal on appeal as sufficient evidence was presented that the defendant's conduct in almost hitting a police officer who was standing on the side of the highway while traveling at a high rate of speed constituted a reckless disregard for the safety of others. Graves v. State, 280 Ga. App. 420, 634 S.E.2d 186 (2006).

See Newton v. State, 280 Ga. App. 709, 634 S.E.2d 839 (2006).

Evidence supported a defendant's convictions for fleeing and attempting to elude a police officer as an underlying offense for felony murder, theft by taking, vehicular homicide, disregarding a traffic control device, failing to stop at a stop sign, and reckless driving as: (1) the defendant stole a vehicle and was spotted by

an officer shortly after the vehicle was reported as stolen; (2) when the officer began to follow the vehicle, the vehicle rapidly accelerated; (3) the officer followed the stolen vehicle for several blocks, with both vehicles traveling between 60-70 miles per hour; (4) the vehicle continued to accelerate after the officer turned on the officer's blue lights and siren; (5) when the stolen vehicle ran a red light, the vehicle struck a car, killing the driver; and (6) the officer and the owner of the stolen vehicle identified the defendant as the person driving the stolen vehicle. Ferguson v. State, 280 Ga. 893, 635 S.E.2d 144 (2006).

Given evidence from an ensuing police officer identifying the defendant as the driver of the vehicle stopped, and because the jury was the judge of the credibility of the witnesses presented at trial, and was authorized to reject the defendant's alibi defense, sufficient evidence was presented to support the defendant's convictions for reckless driving, failure to maintain a lane, driving with defective equipment, fleeing or attempting to elude a police officer, and obstruction of a police officer. Daniel v. State, 282 Ga. App. 291, 638 S.E.2d 430 (2006).

In a defendant's trial for reckless driving and driving under the influence of alcohol to the extent that it was less safe to drive, arising out of an incident in which the defendant's car spun out of control and struck another car, the trial court did not err in refusing to give a jury instruction on the defense of accident under O.C.G.A. § 16-2-2; the defendant was not entitled to a jury instruction on that affirmative defense because the defendant did not admit to driving recklessly or under the influence of alcohol to the extent that it was less safe to drive. Rutland v. State, 282 Ga. App. 728, 639 S.E.2d 628 (2006).

Sufficient evidence existed to support a defendant's conviction for reckless driving because the evidence established that, while impaired by alcohol, the defendant, in the midst of other traffic, blatantly ran a red light at a busy intersection, exceeded the speed limit by 15 miles per hour, and wove in and out of the lane. Horne v. State, 286 Ga. App. 712, 649 S.E.2d 889 (2007), cert. denied, No. S07C1912, 2007 Ga. LEXIS 744 (Ga. 2007).

Given that sufficient evidence was presented through the testimony of the arresting officer, the property damage victims, and the defendant's admissions, and a 16-year gap between the current DUI offense and a prior DUI arrest did not require exclusion of the latter as a similar transaction as it provided evidence of the defendant's bent of mind to get behind the wheel of a vehicle when it was less safe to do so, the defendant's conviction for the recent offense was upheld on appeal; thus, the trial court did not err in denying the defendant's motion for a directed verdict of acquittal. Evans v. State, 287 Ga. App. 74, 651 S.E.2d 363 (2007).

Evidence authorized the jury to find the defendant guilty of reckless driving, O.C.G.A. § 40-6-390(a), beyond a reasonable doubt as the state presented evidence that the defendant was legally intoxicated, and by the defendant's own admission, the defendant was driving a vehicle at a significant rate of speed when the defendant took the defendant's eyes off the roadway and became unable to "handle the speed." After "fishtailing" and skidding, the defendant began spinning and rolling as the defendant exited the roadway. Schlanger v. State, 290 Ga. App. 407, 659 S.E.2d 823 (2008).

Evidence supported the defendant's conviction for reckless driving, O.C.G.A. § 40-6-390(a), as the defendant admittedly exceeded the speed limit to some degree, and a witness reported that the defendant's truck "flew" down the street. Hughes v. State, 290 Ga. App. 475, 659 S.E.2d 844 (2008).

Evidence that the defendant eluded police at 75 miles per hour (mph) in a 25 mph zone, ran several stop signs, abandoned the car, and fled on foot was sufficient to convict the defendant of reckless driving in violation of O.C.G.A. § 40-6-390(a). Bridges v. State, 293 Ga. App. 783, 668 S.E.2d 293 (2008).

Sufficient evidence supported a defendant's conviction for reckless driving under O.C.G.A. § 40-6-390. While the defendant's car was about two car lengths behind an off-duty police officer's car, defendant was laying drags in a drive-thru line, caused the defendant's vehicle to swerve, and was visibly impaired. Griffis

Application (Cont'd)

v. State, 295 Ga. App. 903, 673 S.E.2d 348 (2009), overruled on other grounds by Zilke v. State, 299 Ga. 232, 787 S.E.2d 745 (2016).

Evidence supported the defendant's conviction for reckless driving because the defendant's drinking was established by evidence that the defendant's blood-alcohol level was between .078 and .115 at the time of the incident, and the defendant drove the vehicle off the roadway, spun out of control, and struck an electrical pole; the defendant drove with cruise control on although it was raining, the evidence indicated that the road was in good condition, despite the defendant's testimony to the contrary, and the manner in which the defendant drove suggested the negative influence of intoxication on the operation of the vehicle. Davis v. State, 301 Ga. App. 484, 687 S.E.2d 854 (2009), cert. dismissed, No. S10C0633, 2010 Ga. LEXIS 339 (Ga. 2010).

Allegations in an indictment of reckless driving and vehicular homicide through reckless driving, in violation of O.C.G.A. §§ 40-6-390(a) and 40-6-391(a)(1), were proven by evidence that the defendant drove 15 to 20 miles over the speed limit in the rain, weaving in and out of traffic, with a blood alcohol level of 0.135, ultimately crossing a median into oncoming traffic and killing a victim. Prather v. State, 303 Ga. App. 374, 693 S.E.2d 546 (2010).

Defendant's conviction for reckless driving was appropriate because the evidence was sufficient for the jury to have found beyond a reasonable doubt that the defendant was driving the defendant's truck in a manner exhibiting a reckless disregard for the safety of others under O.C.G.A. §§ 40-6-390(a) and 40-6-393(a). Although the defendant argued that there was no direct evidence of the manner of driving, and that the circumstantial evidence supported a separate hypothesis that the defendant had lost consciousness because of heat exhaustion and dehydration before the accident, the jury considered the testimony regarding that alternative theory and obviously rejected that theory. Shy v. State, 309 Ga. App. 274, 709 S.E.2d 869 (2011).

Evidence was sufficient to show that the defendant was driving a vehicle in a manner exhibiting a reckless disregard for the safety of others because the state trooper who stopped the defendant testified that the defendant was driving 32 miles per hour above the posted speed limit on a portion of the highway designated as a construction zone; in addition, the defendant was driving the vehicle late at night after having admittedly consumed alcohol. Travis v. State, 314 Ga. App. 280, 724 S.E.2d 15 (2012).

Evidence that the defendant borrowed her sister's car, struck the rear of a slower moving car leading to the deaths of the driver and passenger, the defendant identified herself as her sister, and the defendant signed her sister's name on the Miranda form and on her written statement supported the defendant's convictions for first degree homicide by vehicle, forgery, reckless driving, and giving a false name. Smith v. State, 319 Ga. App. 164, 735 S.E.2d 153 (2012).

Expert testimony that the defendant's speed at the time of braking was between 54 and 66 miles per hour, exceeding the 35 mile per hour speed limit, and testimony from other drivers on the road that the defendant passed the other drivers at an excessive rate of speed was sufficient for the jury to infer beyond a reasonable doubt that the defendant was driving in a manner exhibiting a reckless disregard for the safety of others. Evans-Glodowski v. State, 335 Ga. App. 484, 781 S.E.2d 591 (2016).

Evidence was sufficient to convict the defendant of serious injury by vehicle and reckless driving because the defendant drifted into the victim's lane and did not change lanes; as the victim attempted to avoid the defendant's van, the defendant crossed back into the defendant's lane and struck the victim's car; the victim was hospitalized for almost two months and suffered severe injuries and received physical and occupational therapy to learn to walk again, but the victim was not able to resume teaching dance based on the victim's wheelchair restrictions; and, although the defendant contended that the evidence showed that the collision was accidental rather than reckless,

the jury resolved conflicts in the evidence against the defendant. Pefinis v. State, 344 Ga. App. 428, 810 S.E.2d 329 (2018).

Relevant evidence to defendant's defense of accident. — In connection with defendant's conviction for reckless driving, causing serious bodily injury due to reckless driving, and other crimes, the trial court abused the court's discretion in granting the state's motion in limine to exclude the defendant's evidence of the design of the intersection where the accident occurred as such evidence was relevant to the defendant's defense of accident. Dunagan v. State, 283 Ga. 501, 661 S.E.2d 525 (2008).

Reckless driving is not lesser included offense of DUI. — Reckless driving was not a lesser included offense, as a matter of law or fact, of driving under the influence under O.C.G.A. § 16-1-6 as the facts in the indictment of the defendant were insufficient to support a reckless driving charge under O.C.G.A. § 40-6-390(a), and as a matter of law, the crimes were equally serious. Shockley v. State, 256 Ga. App. 892, 570 S.E.2d 67 (2002).

Informant's tip provided police with additional basis to observe and stop defendant. — Trial court did not err in denying the defendant's motion to suppress, despite a claim that an informant used to apprehend the defendant was not previously known to police and had never provided any information until helping in the prosecution of the defendant, because the informant's tip predicted some aspects of the defendant's future behavior and contained information not available to the general public that was corroborated by the observations of officers; moreover, the defendant's reckless driving and flight from a congested parking lot, which caused a short high-speed chase to ensue, and the fact that the police learned that the defendant often carried a gun, provided the officers with an additional basis to stop the defendant and make an arrest. Patton v. State, 287 Ga. App. 18, 650 S.E.2d 733 (2007).

Sentencing defendant on lesser offenses when sentenced on greater. — Trial court erred in sentencing the defendant on the lesser offenses of reckless driving and driving under the influence while the trial court also sentenced the defendant on the greater offense of homicide by vehicle in the first degree, which included the lesser offenses. Had the jury revealed which of the lesser offenses served as the foundation for the homicide verdict a sentence on the remaining lesser offense might have been appropriate, but as such information did not appear in the record the defendant may not be sentenced for either of the lesser included offenses of violation of O.C.G.A. §§ 40-6-390 and 40-6-391. McNabb v. State, 180 Ga. App. 723, 350 S.E.2d 314 (1986).

Evidence insufficient to authorize conviction. — Evidence that the defendant, upon finding the road blocked and seeing two men, not in uniform, come toward the defendant, endeavored to pass around the automobile blocking the road, which necessitated the defendant's driving partly into the ditch, that in so doing the defendant slightly damaged the car of the sheriff, which was blocking the road, when the defendant's automobile scraped against the left front fender and grill of the sheriff's car, and that the defendant did not stop, but continued on, was insufficient to authorize a conviction for leaving the scene of an accident or for reckless driving. Worley v. State, 87 Ga. App. 195, 73 S.E.2d 229 (1952).

Requiring restitution. — Trial court, after a conviction, is unauthorized to require restitution in the nature of damages to the prosecutor. Lancaster v. State, 83 Ga. App. 746, 64 S.E.2d 902 (1951).

Driving on wrong side of road. — Evidence showing that the defendant came over a hill around a curve, crossed over into the wrong lane, and stayed there until the defendant's car collided head-on with another was sufficient to support a finding that the defendant's conduct in driving on the wrong side of the road constituted reckless disregard for the safety of others. Shadix v. State, 179 Ga. App. 644, 347 S.E.2d 298 (1986).

Evidence of reckless driving supported vehicular homicide conviction. — Evidence that the defendant drove after the defendant admittedly consumed methadone, Xanax (alprazolam),

Application (Cont'd)

and Percocet and that the defendant crossed over the center line of the road in violation of O.C.G.A. § 40-6-40(a) and collided with another vehicle, killing the driver, was sufficient to show the defendant drove while impaired and drove recklessly under O.C.G.A. § 40-6-390(a), supporting the defendant's vehicular homicide conviction under O.C.G.A. § 40-6-393(a). Wright v. State, 304 Ga. App. 651, 697 S.E.2d 296 (2010).

Evidence of two prior speeding tickets and a failure to stop ticket was admissible in the defendant's trial for first degree vehicular homicide in violation of O.C.G.A. § 40-6-393 because the defendant contested recklessness, and the tickets were similar in nature to the defendant's reckless conduct and showed the defendant's bent of mind and course of conduct. Taylor v. State, 304 Ga. App. 573, 696 S.E.2d 498 (2010).

Merger into vehicular homicide. — Defendant's reckless driving, red light, and less safe driving under the influence convictions merged into the defendant's reckless vehicular homicide convictions, which involved two deaths resulting from the defendant's striking a car; however, the failure to exercise due care conviction involving the defendant's striking a pedestrian did not merge into the vehicular homicide conviction as the acts leading to the two charges involved different facts and different victims. Hill v. State, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

Merger not required for sentencing purposes. — Trial court's failure to merge the defendant's convictions for driving recklessly and committing second degree vehicular homicide, in violation of O.C.G.A. §§ 40-6-390 and 40-6-393, respectively, was not error for sentencing purposes as the reckless driving offense was not the underlying offense of the homicide, but rather, improper lane change was, in violation of O.C.G.A. § 40-6-123(a); further, pursuant to O.C.G.A. § 16-1-6, there was no factual merger because the crimes were committed sequentially and separately. Cutter v. State, 275 Ga. App. 888, 622 S.E.2d 96 (2005).

Although offenses related to the getaway car were part of the same criminal episode, the essential elements of armed robbery, theft by receiving, fleeing or attempting to elude a police officer, and reckless driving were completely separate and distinct. As a result, the trial court did not err in failing to merge these offenses. Garibay v. State, 290 Ga. App. 385, 659 S.E.2d 775 (2008).

Jury Issues and Instruction

Jury instruction. — Injured party was not entitled to the injured party's request to a charge on O.C.G.A. § 40-6-390(a) for reckless driving because the charge was not a complete statement of the law as the charge did not define the specific conduct that constituted reckless disregard for the safety of persons or property or point to specific conduct that was reckless under the facts and circumstances of the case as was required under the statute. Cox v. Allen, 256 Ga. App. 53, 567 S.E.2d 363 (2002).

Requested charge on reckless driving as lesser included offense. — Defendant was entitled to a new trial on the charge of aggravated assault upon a police officer in violation of O.C.G.A. § 16-5-21 because the trial court should have given the defendant's requested charge on reckless driving in violation of O.C.G.A. § 40-6-390(a) as a lesser included offense since there was evidence that the defendant did not intend to injure a police officer but that the defendant's decision to drive off suddenly with the officer in close proximity to the defendant's truck was nonetheless an act of criminal negligence, which would have supported a conviction for reckless driving. Young v. State, 294 Ga. App. 227, 669 S.E.2d 407 (2008).

Because Count 4, alleging aggravated assault by placing another in reasonable apprehension of immediately receiving a violent injury with an object which, when used offensively against a person, was likely to and actually did result in serious bodily injury, only required the state to prove that the defendant had the general intent to drive the van, the offense of reckless driving would not show a less culpable mental state than that which was required to establish the commission

of the crime of aggravated assault as charged, and the trial court did not err by refusing to give the requested charge of reckless driving as a lesser included offense of aggravated assault as alleged in Count 4. Patterson v. State, 332 Ga. App. 221, 770 S.E.2d 62 (2015), aff'd, 299 Ga. 491, 789 S.E.2d 175 (2016).

Defendant's conviction for aggravated assault with an object under O.C.G.A. § 16-5-21(b)(2) with regard to pinning the victim to a house with a vehicle was affirmed because the defendant was not entitled to jury instructions on the lesser included crimes of reckless conduct and reckless driving as the base crime of simple assault under O.C.G.A. § 16-5-20(a)(2) did not require a specific intent to cause the victim to be apprehensive of receiving a violent injury. Patterson v. State, 299 Ga. 491, 789 S.E.2d 175 (2016).

Contingent jury charges on first- and second-degree vehicular homicide upheld. — Trial court did not err in charging the jury on vehicular homicide, specifically explaining that if the jury found the defendant guilty of either DUI or reckless driving, and if the jury also found the defendant guilty of vehicular homicide, it followed that the defendant had to be guilty of first-degree, and not second-degree, vehicular homicide. Hill v. State, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

Instruction on justification not authorized. — Trial court did not commit reversible error in failing to give, sua sponte, a jury charge on justification, because there was no evidence to support such a charge; contrary to the defendant's assertions in the defendant's brief, at no time did the defendant testify that the defendant accelerated to 103 mph because the defendant had no safer option. Jones v. State, 315 Ga. App. 688, 727 S.E.2d 512 (2012).

No charge required on defense of accident. — In a defendant's trial for reckless driving and driving under the influence of alcohol to the extent that it was less safe to drive, arising out of an incident in which the defendant's car spun out of control and struck another car, the trial court did not err in refusing to give a jury instruction on the defense of accident under O.C.G.A. § 16-2-2; the defendant was not entitled to a jury instruction on that affirmative defense because the defendant did not admit to driving recklessly or under the influence of alcohol to the extent that it was less safe to drive. Rutland v. State, 282 Ga. App. 728, 639 S.E.2d 628 (2006).

Trial court did not err by refusing to give the defendant's requested charge on misfortune or accident because the defendant, who was charged with driving under the influence, reckless driving, and failure to maintain lane, was not entitled to a charge that the accident was unavoidable; because the defendant did not admit to committing any act that constituted the offenses with which the defendant was charged, the defendant was not entitled to an instruction on accident. Davis v. State, 301 Ga. App. 484, 687 S.E.2d 854 (2009), cert. dismissed, No. S10C0633, 2010 Ga. LEXIS 339 (Ga. 2010).

RESEARCH REFERENCES

C.J.S. — 61A C.J.S., Motor Vehicles, §§ 1547 et seq., 1572.

ALR. — What amounts to reckless driving within statute making reckless driving of automobile a criminal offense, 86 A.L.R. 1273; 53 A.L.R.2d 1337.

What conduct in driving an automobile amounts to wantonness, willfulness, or the like, precluding defense of contributory negligence, 119 A.L.R. 654.

What constitutes "operation" or "negligence in operation" within statute making owner of motor vehicle liable for negligence in its operation, 13 A.L.R.2d 378.

Criminal responsibility of motor vehicle operator for accident arising from physical defect, illness, drowsiness, or falling asleep, 63 A.L.R.2d 983.

Custom or practice of drivers of motor vehicles as affecting question of negligence, 77 A.L.R.2d 1327.

Liability for automobile accident alleg-

edly caused by driver's blackout, sudden unconsciousness, or the like, 93 A.L.R.3d 326.

Motor vehicle operator's liability for accident occurring while driving with vision obscured by smoke or steam, 32 A.L.R.4th 933.

Statute prohibiting reckless driving: definiteness and certainty, 52 A.L.R.4th 1161.

Establishment of negligence within meaning of statute penalizing negligent homicide by operation of motor vehicle — speeding or driving at unsafe speed, 84 A.L.R.6th 427.

40-6-391. Driving under the influence of alcohol, drugs, or other intoxicating substances; penalties; publication of notice of conviction for persons convicted for second time; endangering a child.

(a) A person shall not drive or be in actual physical control of any moving vehicle while:

(1) Under the influence of alcohol to the extent that it is less safe for the person to drive;

(2) Under the influence of any drug to the extent that it is less safe for the person to drive;

(3) Under the intentional influence of any glue, aerosol, or other toxic vapor to the extent that it is less safe for the person to drive;

(4) Under the combined influence of any two or more of the substances specified in paragraphs (1) through (3) of this subsection to the extent that it is less safe for the person to drive;

(5) The person's alcohol concentration is 0.08 grams or more at any time within three hours after such driving or being in actual physical control from alcohol consumed before such driving or being in actual physical control ended; or

(6) Subject to the provisions of subsection (b) of this Code section, there is any amount of marijuana or a controlled substance, as defined in Code Section 16-13-21, present in the person's blood or urine, or both, including the metabolites and derivatives of each or both without regard to whether or not any alcohol is present in the person's breath or blood.

(b) The fact that any person charged with violating this Code section is or has been legally entitled to use a drug shall not constitute a defense against any charge of violating this Code section; provided, however, that such person shall not be in violation of this Code section unless such person is rendered incapable of driving safely as a result of using a drug other than alcohol which such person is legally entitled to use.

(c) Every person convicted of violating this Code section shall, upon a first or second conviction thereof, be guilty of a misdemeanor, upon a

third conviction thereof, be guilty of a high and aggravated misdemeanor, and upon a fourth or subsequent conviction thereof, be guilty of a felony except as otherwise provided in paragraph (4) of this subsection and shall be punished as follows:

(1) First conviction with no conviction of and no plea of nolo contendere accepted to a charge of violating this Code section within the previous ten years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

(A) A fine of not less than $300.00 and not more than $1,000.00, which fine shall not, except as provided in subsection (g) of this Code section, be subject to suspension, stay, or probation;

(B) A period of imprisonment of not fewer than ten days nor more than 12 months, which period of imprisonment may, at the sole discretion of the judge, be suspended, stayed, or probated, except that if the offender's alcohol concentration at the time of the offense was 0.08 grams or more, the judge may suspend, stay, or probate all but 24 hours of any term of imprisonment imposed under this subparagraph;

(C) Not fewer than 40 hours of community service, except that for a conviction for violation of subsection (k) of this Code section where the person's alcohol concentration at the time of the offense was less than 0.08 grams, the period of community service shall be not fewer than 20 hours;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program within 120 days following his or her conviction; provided, however, that if the defendant is incarcerated and such program cannot be completed within 120 days, it shall be completed within 90 days of his or her release from custody. The sponsor of any such program shall provide written notice of the Department of Driver Services' certification of the program to the person upon enrollment in the program;

(E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as a part of such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; provided, however, that in the court's discretion such evaluation may be waived; and

(F) If the person is sentenced to a period of imprisonment for fewer than 12 months, a period of probation of 12 months less any days during which the person is actually incarcerated;

(2) For the second conviction within a ten-year period of time, as measured from the dates of previous arrests for which convictions

were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

(A) A fine of not less than $600.00 and not more than $1,000.00, which fine shall not, except as provided in subsection (g) of this Code section, be subject to suspension, stay, or probation;

(B) A period of imprisonment of not fewer than 90 days and not more than 12 months. The judge shall probate at least a portion of such term of imprisonment, in accordance with subparagraph (F) of this paragraph, thereby subjecting the offender to the provisions of Article 7 of Chapter 8 of Title 42 and to such other terms and conditions as the judge may impose; provided, however, that the offender shall be required to serve not fewer than 72 hours of actual incarceration;

(C) Not fewer than 30 days of community service;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program within 120 days following his or her conviction; provided, however, that if the defendant is incarcerated and such program cannot be completed within 120 days, it shall be completed within 90 days of his or her release from custody. The sponsor of any such program shall provide written notice of the Department of Driver Services' certification of the program to the person upon enrollment in the program;

(E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as a part of such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; and

(F) A period of probation of 12 months less any days during which the person is actually incarcerated;

(3) For the third conviction within a ten-year period of time, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

(A) A fine of not less than $1,000.00 and not more than $5,000.00, which fine shall not, except as provided in subsection (g) of this Code section, be subject to suspension, stay, or probation;

(B) A mandatory period of imprisonment of not fewer than 120 days and not more than 12 months. The judge shall probate at least a portion of such term of imprisonment, in accordance with subparagraph (F) of this paragraph, thereby subjecting the of-

fender to the provisions of Article 7 of Chapter 8 of Title 42 and to such other terms and conditions as the judge may impose; provided, however, that the offender shall be required to serve not fewer than 15 days of actual incarceration;

(C) Not fewer than 30 days of community service;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program within 120 days following his or her conviction; provided, however, that if the defendant is incarcerated and such program cannot be completed within 120 days, it shall be completed within 90 days of his or her release from custody. The sponsor of any such program shall provide written notice of the Department of Driver Services' certification of the program to the person upon enrollment in the program;

(E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as a part of such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; and

(F) A period of probation of 12 months less any days during which the person is actually incarcerated;

(4) For the fourth or subsequent conviction within a ten-year period of time, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

(A) A fine of not less than $1,000.00 and not more than $5,000.00, which fine shall not, except as provided in subsection (g) of this Code section, be subject to suspension, stay, or probation;

(B) A period of imprisonment of not less than one year and not more than five years; provided, however, that the judge may suspend, stay, or probate all but 90 days of any term of imprisonment imposed under this paragraph. The judge shall probate at least a portion of such term of imprisonment, in accordance with subparagraph (F) of this paragraph, thereby subjecting the offender to the provisions of Article 7 of Chapter 8 of Title 42 and to such other terms and conditions as the judge may impose;

(C) Not fewer than 60 days of community service; provided, however, that if a defendant is sentenced to serve three years of actual imprisonment, the judge may suspend the community service;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program within 120 days following his or her conviction; provided,

however, that if the defendant is incarcerated and such program cannot be completed within 120 days, it shall be completed within 90 days of his or her release from custody. The sponsor of any such program shall provide written notice of the Department of Driver Services' certification of the program to the person upon enrollment in the program;

(E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as a part of such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; and

(F) A period of probation of five years less any days during which the person is actually imprisoned;

provided, however, that if the ten-year period of time as measured in this paragraph commenced prior to July 1, 2008, then such fourth or subsequent conviction shall be a misdemeanor of a high and aggravated nature and punished as provided in paragraph (3) of this subsection;

(5) If a person has been convicted of violating subsection (k) of this Code section premised on a refusal to submit to required testing or where such person's alcohol concentration at the time of the offense was 0.08 grams or more, and such person is subsequently convicted of violating subsection (a) of this Code section, such person shall be punished by applying the applicable level or grade of conviction specified in this subsection such that the previous conviction of violating subsection (k) of this Code section shall be considered a previous conviction of violating subsection (a) of this Code section;

(6) For the purpose of imposing a sentence under this subsection, a plea of nolo contendere based on a violation of this Code section shall constitute a conviction; and

(7) For purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of this subsection, only those offenses for which a conviction is obtained or a plea of nolo contendere is accepted on or after July 1, 2008, shall be considered; provided, however, that nothing in this subsection shall be construed as limiting or modifying in any way administrative proceedings or sentence enhancement provisions under Georgia law, including, but not limited to, provisions relating to punishment of recidivist offenders pursuant to Title 17.

(d)(1) Notwithstanding the limits set forth in any municipal charter, any municipal court of any municipality shall be authorized to impose the misdemeanor or high and aggravated misdemeanor punishments provided for in this Code section upon a conviction of

violating this Code section or upon a conviction of violating any ordinance adopting the provisions of this Code section.

(2) Notwithstanding any provision of this Code section to the contrary, any court authorized to hear misdemeanor or high and aggravated misdemeanor cases involving violations of this Code section shall be authorized to exercise the power to probate, suspend, or stay any sentence imposed. Such power shall, however, be limited to the conditions and limitations imposed by subsection (c) of this Code section.

(e) The foregoing limitations on punishment also shall apply when a defendant has been convicted of violating, by a single transaction, more than one of the four provisions of subsection (a) of this Code section.

(f) The provisions of Code Section 17-10-3, relating to general punishment for misdemeanors including traffic offenses, and the provisions of Article 3 of Chapter 8 of Title 42, relating to probation of first offenders, shall not apply to any person convicted of violating any provision of this Code section.

(g)(1) If the payment of the fine required under subsection (c) of this Code section will impose an economic hardship on the defendant, the judge, at his or her sole discretion, may order the defendant to pay such fine in installments and such order may be enforced through a contempt proceeding or a revocation of any probation otherwise authorized by this Code section.

(2) In the sole discretion of the judge, he or she may suspend up to one-half of the fine imposed under subsection (c) of this Code section conditioned upon the defendant's undergoing treatment in a substance abuse treatment program as defined in Code Section 40-5-1.

(h) For purposes of determining under this chapter prior convictions of or pleas of nolo contendere to violating this Code section, in addition to the offense prohibited by this Code section, a conviction of or plea of nolo contendere to any of the following offenses shall be deemed to be a violation of this Code section:

(1) Any federal law substantially conforming to or parallel with the offense covered under this Code section;

(2) Any local ordinance adopted pursuant to Article 14 of this chapter, which ordinance adopts the provisions of this Code section; or

(3) Any previously or currently existing law of this or any other state, which law was or is substantially conforming to or parallel with this Code section.

(i) A person shall not drive or be in actual physical control of any moving commercial motor vehicle while there is 0.04 percent or more by

weight of alcohol in such person's blood, breath, or urine. Every person convicted of violating this subsection shall be guilty of a misdemeanor and, in addition to any disqualification resulting under Article 7 of Chapter 5 of this title, the "Uniform Commercial Driver's License Act," shall be fined as provided in subsection (c) of this Code section.

(j)(1) The clerk of the court in which a person is convicted a second or subsequent time under subsection (c) of this Code section within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, shall cause to be published a notice of conviction for each such person convicted. Such notices of conviction shall be published in the manner of legal notices in the legal organ of the county in which such person resides or, in the case of nonresidents, in the legal organ of the county in which the person was convicted. Such notice of conviction shall be one column wide by two inches long and shall contain the photograph taken by the arresting law enforcement agency at the time of arrest, the name of the convicted person, the city, county, and zip code of the convicted person's residential address, and the date, time, place of arrest, and disposition of the case and shall be published once in the legal organ of the appropriate county in the second week following such conviction or as soon thereafter as publication may be made.

(2) The convicted person for which a notice of conviction is published pursuant to this subsection shall be assessed $25.00 for the cost of publication of such notice and such assessment shall be imposed at the time of conviction in addition to any other fine imposed pursuant to this Code section.

(3) The clerk of the court, the publisher of any legal organ which publishes a notice of conviction, and any other person involved in the publication of an erroneous notice of conviction shall be immune from civil or criminal liability for such erroneous publication, provided such publication was made in good faith.

(k)(1) A person under the age of 21 shall not drive or be in actual physical control of any moving vehicle while the person's alcohol concentration is 0.02 grams or more at any time within three hours after such driving or being in physical control from alcohol consumed before such driving or being in actual physical control ended.

(2) Every person convicted of violating this subsection shall be guilty of a misdemeanor for the first and second convictions and upon a third or subsequent conviction thereof be guilty of a high and aggravated misdemeanor and shall be punished and fined as provided in subsection (c) of this Code section, provided that any term of

imprisonment served shall be subject to the provisions of Code Section 17-10-3.1, and any period of community service imposed on such person shall be required to be completed within 60 days of the date of sentencing.

(3) No plea of nolo contendere shall be accepted for any person under the age of 21 charged with a violation of this Code section.

(l) A person who violates this Code section while transporting in a motor vehicle a child under the age of 14 years is guilty of the separate offense of endangering a child by driving under the influence of alcohol or drugs. The offense of endangering a child by driving under the influence of alcohol or drugs shall not be merged with the offense of driving under the influence of alcohol or drugs for the purposes of prosecution and sentencing. An offender who is convicted of a violation of this subsection shall be punished in accordance with the provisions of subsection (d) of Code Section 16-12-1. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 47; Ga. L. 1968, p. 448, § 1; Code 1933, § 68A-902, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1983, p. 1000, § 12; Ga. L. 1984, p. 22, § 40; Ga. L. 1985, p. 149, § 40; Ga. L. 1985, p. 758, § 17; Ga. L. 1987, p. 3, § 40; Ga. L. 1987, p. 904, § 1; Ga. L. 1988, p. 1893, § 2; Ga. L. 1989, p. 14, § 40; Ga. L. 1990, p. 2048, § 5; Ga. L. 1991, p. 1886, §§ 6-8; Ga. L. 1992, p. 2556, § 2; Ga. L. 1994, p. 1600, § 8; Ga. L. 1996, p. 1413, § 1; Ga. L. 1997, p. 760, § 23; Ga. L. 1999, p. 293, §§ 1, 2; Ga. L. 1999, p. 391, §§ 7, 8; Ga. L. 2001, p. 208, § 1-5; Ga. L. 2005, p. 334, § 18-15.1/HB 501; Ga. L. 2007, p. 47, § 40/SB 103; Ga. L. 2008, p. 498, §§ 2, 3, 4/HB 336; Ga. L. 2009, p. 8, § 40/SB 46; Ga. L. 2010, p. 422, § 1/HB 898; Ga. L. 2013, p. 294, § 4-48/HB 242; Ga. L. 2014, p. 710, §§ 1-19, 4-1/SB 298.)

Cross references. — Confinement of juvenile violators of subsection (k) of this Code section, § 15-11-35. Compensation of victims of violation of this Code section, § 15-21-110 et seq. Intoxication as relieving person from criminal responsibility for actions, § 16-3-4. Public drunkenness, § 16-11-41. Seizure and disposition of driver's license of persons charged with driving under influence of alcohol or drugs, § 40-5-67. Notices of implied consent to chemical tests and rights of motorists, § 40-5-67.1. Ignition interlock device limited driving permits, § 40-5-64.1. Ignition interlock devices, § 42-8-110 et seq. Navigating vessels while intoxicated, § 52-7-12. Suspension, revocation, and cancellation forms based on violations, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Driver License Services, § 375-3-3-.06.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, "this Code section" was substituted for "Code Section 40-6-391" in paragraph (c)(1) and in the first sentence of paragraph (d)(2).

Pursuant to Code Section 28-9-5, in 1987, "and" was deleted at the end of subparagraph (c)(2)(B) and "Code section" was substituted for "Code" in the first sentence of paragraph (d)(2).

Pursuant to Code Section 28-9-5, in 1990, "section" was inserted following "Code" the first time that word appears in the first sentence of paragraph (d)(2) due to its inadvertent omission from Ga. L. 1990, p. 2048, § 5.

Pursuant to Code Section 28-9-5, in 1991, "this chapter" was substituted for "Chapter 6 of Title 40" in paragraph (h)(2).

Pursuant to Code Section 28-9-5, in 1999, subparagraphs (c)(1)(D), (c)(2)(D), and (c)(3)(D) as enacted by Ga. L. 1999, p. 391, § 7, were redesignated as (c)(1)(E), (c)(2)(F), and (c)(3)(F), respectively, and punctuation was revised accordingly.

Editor's notes. — Ga. L. 1994, p. 1600, § 11, not codified by the General Assembly, provides that the provisions of the Act shall apply only to cases arising out of arrests occurring on or after January 1, 1995, except that the provisions amending subsection (a) of Code Section 40-6-391.1, restricting the acceptance of a plea of nolo contendere to a charge of violating Code Section 40-6-391, and the provisions amending subsection (c) of Code Section 40-6-391, changing the criminal penalties for violations of the section, shall become effective July 1, 1994, and except that the provisions amending subsection (g) of Code Section 40-5-67.1, relating to the time for requesting a hearing on an administrative suspension, the stay of a suspension pending such hearing, and the early termination of an administrative suspension under certain conditions shall apply to cases pending on July 1, 1994.

Ga. L. 1996, p. 1413, § 2, not codified by the General Assembly, provides: "This Act shall become effective July 1, 1996, and shall apply with respect to offenses committed on or after that effective date. This Act shall not apply to or affect offenses committed prior to that effective date."

Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Teen-age and Adult Driver Responsibility Act.'"

Ga. L. 1997, p. 760, § 27, provides that the amendment made by the Act to this Code section shall apply to offenses committed on or after July 1, 1997, and shall not apply to offenses committed prior to that date.

Ga. L. 1999, p. 391, § 2, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as 'Heidi's Law.'"

Ga. L. 2008, p. 498, § 5/HB 336, not codified by the General Assembly, provides, in part, that the amendment to this Code section, by that Act, shall be applied to offenses occurring on or after July 1, 2008; provided, however, that for purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of subsection (c) of Code Section 40-6-391, only those offenses for which a conviction or a plea of nolo contendere is obtained on or after July 1, 2008, shall be considered.

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

Law reviews. — For article, "Challenges to Humanitarian Legal Approaches for Eliminating the Hazards of Drunk Alcoholic Drivers," see 4 Ga. L. Rev. 251 (1970). For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 203 (1997). For article, "The Harper Standard and the Alcosensor: The Road Not Traveled," see 6 Ga. St. B.J. 8 (2000). For annual survey of criminal law, see 57 Mercer L. Rev. 113 (2005). For article, "No Second Chances: Immigration Consequences of Criminal Charges," see 13 Ga. St. B.J. 26 (2007). For article, "The Experiential Future of the Law," see 60 Emory L.J. 585 (2011).

For note discussing operation of Ga. L. 1968, p. 448 (see now O.C.G.A. § 40-6-392) and constitutional issues raised by the concept, see 20 Mercer L. Rev. 489 (1969). For note on the 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 129 (1992). For note on the 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 298 (1992). For note, "Rodriguez v. State: Addressing Georgia's

Implied Consent Requirements for Non-English-Speaking Drivers," see 54 Mercer L. Rev. 1253 (2003).

For comment on Harper v. State, 91 Ga. App. 456, 86 S.E.2d 7 (1955), holding that one is under the influence of alcohol when it appears that it is less safe for him to operate a motor vehicle than it would be if he were not so affected, see 18 Ga. B.J. 190 (1955). For comment on Flournoy v. State, 106 Ga. App. 756, 128 S.E.2d 528 (1962), see 14 Mercer L. Rev. 442 (1963).

JUDICIAL DECISIONS

Analysis

General Consideration
Notice
Testing
Evidence
Instructions to Jury
Endangering a Child
Sentence and Punishment

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1910, §§ 1770(9), 1770(56), and former Code 1933, § 68-307 are included in the annotations for this Code section.

Cases cited below referring to .12 percent blood alcohol level construe paragraph (a)(4) (now (a)(5)) as it existed prior to the 1988 amendment.

Section constitutional. — It is not an unreasonable restriction upon the right and use of private property, in violation of the due process clauses of the state and federal Constitutions, to make it unlawful for a person under the influence of intoxicating liquor to operate or drive a vehicle anywhere in the state. Cook v. State, 220 Ga. 463, 139 S.E.2d 383 (1964).

Constitutionality. — Former Code 1933, § 68A-902 (see now O.C.G.A. § 40-6-391) was constitutional. Cargile v. State, 244 Ga. 871, 262 S.E.2d 87 (1979).

Paragraph (a)(4) (now (a)(5)) of O.C.G.A. § 40-6-391 is not void for vagueness. Lester v. State, 253 Ga. 235, 320 S.E.2d 142 (1984); Scott v. Walker, 253 Ga. 695, 324 S.E.2d 187 (1985) (decided prior to 1988 amendment).

Inasmuch as it is clear what O.C.G.A. § 40-6-391 as a whole prohibits, the statute is not unconstitutionally vague. Steele v. State, 260 Ga. 835, 400 S.E.2d 1 (1991); Harris v. State, 199 Ga. App. 457, 405 S.E.2d 501 (1991).

O.C.G.A. § 40-6-391 is not unconstitutionally vague. King v. State, 200 Ga. App. 511, 408 S.E.2d 509 (1991).

Paragraph (a)(5) of O.C.G.A. § 40-6-391 does not constitute an improper exercise of the police power, is not void for vagueness, is not overbroad, and does not create a mandatory irrebuttable presumption that is unconstitutionally burden-shifting. Bohannon v. State, 269 Ga. 130, 497 S.E.2d 552 (1998).

Subsection (k) of O.C.G.A. § 40-6-391 does not violate the right to equal protection under the federal or state constitutions. Barnett v. State, 270 Ga. 472, 510 S.E.2d 527 (1999).

Provision of paragraph (a)(6) of O.C.G.A. § 40-6-391 allowing a person with pharmaceutical marijuana in that person's body fluids to be convicted of driving with marijuana in that person's system only if it is established that the person was "rendered incapable of driving safely," while a person with metabolites of unprescribed marijuana can be found guilty of driving with marijuana in the person's system without evidence of impairment is an unconstitutional denial of equal protection. Love v. State, 271 Ga. 398, 517 S.E.2d 53 (1999).

Provision of paragraph (a)(6) of O.C.G.A. § 40-6-391 making it unlawful to drive while marijuana residue is circulating in the driver's body fluids bears a rational relationship to a legitimate state purpose, protection of the public, and does not violate equal protection. Love v. State, 271 Ga. 398, 517 S.E.2d 53 (1999).

General Consideration (Cont'd)

"Less safe to drive" under paragraph (a)(2) of O.C.G.A. § 40-6-391 and "rendered incapable of driving safely" under paragraph (a)(6) of O.C.G.A. § 40-6-391 set the same standard of impairment necessary to establish that a driver was driving under the influence of alcohol or other intoxicating substance; thus, the statute did not violate the equal protection clauses of the United States and Georgia Constitutions. State v. Kachwalla, 274 Ga. 886, 561 S.E.2d 403 (2002).

As O.C.G.A. § 40-6-391(a)(5) provided more than adequate notice to a person of ordinary intelligence that driving with a alcohol concentration in excess of 0.08 grams was criminal conduct, O.C.G.A. § 40-6-391(a)(5) was not unconstitutionally vague, and defendant's driving under the influence conviction was affirmed. Noble v. State, 275 Ga. 635, 570 S.E.2d 296 (2002).

Trial court erred when the court concluded that O.C.G.A. § 40-6-391(a)(2) violated the equal protection clauses of the United States and Georgia constitutions because "less safe to drive," under O.C.G.A. § 40-6-391(a)(2), and "rendered incapable of driving safely," under O.C.G.A. § 40-6-391(b), set the same standard of impairment necessary to establish that a driver was driving under the influence of alcohol or other intoxicating substance; thus, there was no disparity in the treatment of those charged under O.C.G.A. § 40-6-391(a)(2) and those charged under O.C.G.A. § 40-6-391(b). State v. Beck, 275 Ga. 688, 572 S.E.2d 626 (2002).

Trial court erred in denying defendant's motion to suppress the results of a blood test as defendant was erroneously advised by a police officer that the implied consent statute was applicable due to the seriousness of the injuries sustained in the accident; although the officer's statement was correct at the time of the accident, the Georgia Supreme Court has since then ruled that O.C.G.A. § 40-5-55(a) was unconstitutional if defendant has not been arrested for a violation of O.C.G.A. § 40-6-391 at the time the consent to the blood test was given. Buchanan v. State, 264 Ga. App. 148, 589 S.E.2d 876 (2003).

No self-incrimination violation. — Trial court did not err by denying the defendant's motion to suppress and affirming the defendant's convictions because the trial court's ultimate conclusion that the defendant was not compelled into submitting to the breath test was proper and a reading of the implied consent notice was not, by itself, coercive. Olevik v. State, 302 Ga. 228, 806 S.E.2d 505 (2017).

"Less safe" language surplusage. — Language referring to driving under the influence "under age 21" in a count charging the defendant with violating O.C.G.A. § 40-6-391(a)(1) by driving under the influence of alcohol to the extent that it was less safe to drive was surplusage; the language did not render the accusation void because the remaining language accurately described a violation of § 40-6-391(a)(1). Striplin v. State, 284 Ga. App. 92, 643 S.E.2d 361 (2007).

Reckless driving charges not affected by unconstitutionality of paragraph (a)(6). — Fact that O.C.G.A. § 40-6-391(a)(6) was held unconstitutional as a denial of equal protection did not apply to require dismissal of charges against the defendant that the defendant committed reckless driving in violation of O.C.G.A. § 40-6-390(a) and first degree vehicular homicide in violation of O.C.G.A. § 40-6-393(a) by reckless driving; the charges merely included the fact that marijuana was found in the defendant's blood because it was relevant to a determination that the defendant drove "in reckless disregard for the safety of persons or property." Ayers v. State, 272 Ga. 733, 534 S.E.2d 76 (2000).

Constitutionality of implied consent notice. — Submitting to a breath test was held to implicate a person's right against compelled self-incrimination and prior decisions that held otherwise were overruled. Olevik v. State, 302 Ga. 228, 806 S.E.2d 505 (2017).

Crimes that are malum prohibitum. — Defendant's claim that the defendant could not form the criminal intent to commit the crimes of driving while under the influence per se and reckless driving because the defendant was involuntarily intoxicated at the time of the offenses had to

be rejected as those types of crimes were included under a section of the law that described crimes that were "malum prohibitum," the criminal element of which was simply the intention to do the act which resulted in a violation of the law, and not the intent to commit the crime itself. Since the evidence showed that the defendant intended to commit the acts which resulted in the offenses, the fact that the defendant could not form the requisite intent to commit the specific crimes was immaterial. Crossley v. State, 261 Ga. App. 250, 582 S.E.2d 204 (2003).

Due process was not violated by the failure to return the defendant's plastic license following a license suspension hearing which was resolved in the defendant's favor since the rationale for confiscation of the license in the first place was a pending charge under this O.C.G.A. § 40-6-391. Wright v. State, 228 Ga. App. 717, 492 S.E.2d 581 (1997).

Trial court properly denied the defendant's amended motion for a new trial, holding that the administration of breath tests pursuant to Ga. Comp. R. & Regs. 92-3-.06(12)(b) did not violate the due process clause under both U.S. Const., amend. 5 or Ga. Const. 1983, Art. I, Sec. I, Para. I, given that: (1) the claim was raised for the first time in the new trial motion, and was thus untimely; (2) the defendant had an alternative remedy under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1; (3) the defendant failed to show that the Division of Forensic Sciences (DFS) eliminated meaningful procedures for conducting breath tests when the department promulgated the rule; and (4) the techniques and methods approved by DFS were sufficient to ensure fair and accurate testing. Palmaka v. State, 280 Ga. App. 761, 634 S.E.2d 883 (2006).

Evidence of ALS agreement relevant. — In a DUI case under O.C.G.A. § 40-6-391(a)(1), evidence of an agreement the defendant entered in an administrative license suspension (ALS) proceeding, in which the defendant agreed to plead guilty to DUI in exchange for the return of the defendant's license, was relevant and admissible in the defendant's DUI case although the defendant later decided not to plead guilty and go to trial, and although the agreement did not recite that it could be used against the defendant at trial. Smith v. State, 345 Ga. App. 43, No. A18A0800, 2018 Ga. App. LEXIS 163 (2018).

Standard is "any drug." — Accusation brought pursuant to O.C.G.A. § 40-6-391(a)(2) is not insufficient if it fails to name a particular drug; in fact, that provision makes it unlawful to drive while under the influence of any drug. Buchanan v. State, 264 Ga. App. 148, 589 S.E.2d 876 (2003).

Definition of marijuana under statute. — Definition of "marijuana" under the Motor Vehicles Act, O.C.G.A. § 40-6-391 et seq., not only includes THC for purposes of determining whether one is driving under the influence, but requires that THC be considered "marijuana" in order for paragraph (a)(6) of O.C.G.A. § 40-6-391 to be actionable since THC in the blood or urine is the method by which the presence of marijuana is detected for purposes of determining whether one is driving under the influence thereof. Cronan v. State, 236 Ga. App. 374, 511 S.E.2d 899 (1999).

Suspension of license not prosecution for double jeopardy purposes. — Suspension of a driver's license at an administrative hearing was not punishment, nor was the hearing a prosecution for the purposes of double jeopardy; thus, a subsequent criminal prosecution for driving under the influence was not barred. Nolen v. State, 218 Ga. App. 819, 463 S.E.2d 504 (1995), cert. denied, 518 U.S. 1018, 116 S. Ct. 2550, 135 L. Ed. 2d 1070 (1996); McDaniel v. State, 224 Ga. App. 5, 479 S.E.2d 779 (1996).

Payment of the fee required for reinstatement of a driver's license after the license was suspended following an arrest for driving under the influence was not punishment and did not bar a subsequent prosecution for driving under the influence. Thompson v. State, 229 Ga. App. 526, 494 S.E.2d 306 (1997); Morgan v. State, 229 Ga. App. 861, 495 S.E.2d 138 (1998).

O.C.G.A. § 40-6-391(a)(2) provides adequate notice that a person who ingests marijuana or any other drug speci-

General Consideration (Cont'd)

fied in that section and then drives a motor vehicle does so at his or her own peril of violating these provisions. Kevinezz v. State, 265 Ga. 78, 454 S.E.2d 441 (1995).

Operator under influence to extent vehicle's operation less safe. — "Under the influence" means more than having consumed the smallest amount of alcohol possible to imagine. The operator of a motor vehicle must be under the influence of an intoxicant to the extent that it is less safe for the operator to operate a motor vehicle than if the operator were not so affected. Anderson v. State, 226 Ga. 35, 172 S.E.2d 424 (1970) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Trial court did not err in denying the defendant's motion to quash the uniform traffic citation filed against the defendant even though the citation did not specify whether the defendant was being charged with DUI under O.C.G.A. § 40-6-391(a)(1), known as "less safe DUI" or under O.C.G.A. § 40-6-391(a)(5), known as "per se DUI" since those provisions were not separate offenses but were merely alternative ways to prove the offense of DUI; however, the trial court did violate the defendant's procedural due process rights to present evidence when the trial court told the state to stick to proving "per se DUI" because the trial court indicated to the defendant that it was not going to require the defendant to defend against a "less safe DUI" charge even though the trial court later clarified that the resulting conviction was for "less safe DUI." Rigdon v. State, 270 Ga. App. 217, 605 S.E.2d 903 (2004).

Testimony of deputies who observed a defendant driving erratically and a paramedic who examined the defendant at the stop scene to the effect that the defendant was under the influence of alcohol to the extent that the defendant was a less safe driver, along with blood alcohol evidence, was sufficient for the jury to find beyond a reasonable doubt that the defendant was guilty of driving under the influence of alcohol to the extent that the defendant was a less safe driver, and of failing to safely maintain the vehicle within a marked traffic lane in violation of O.C.G.A. §§ 40-6-48(1) and 40-6-391(a)(1). Stubblefield v. State, 302 Ga. App. 499, 690 S.E.2d 892 (2010).

No intent to repeal criminal sanctions. — Legislature, in amending O.C.G.A. § 40-6-391 in 1988, did not intend to repeal the criminal sanctions for driving under the influence of alcohol. Proo v. State, 192 Ga. App. 169, 384 S.E.2d 197 (1989), cert. denied, 493 U.S. 1071, 110 S. Ct. 1115, 107 L. Ed. 2d 1022 (1990); Proveaux v. State, 198 Ga. App. 119, 401 S.E.2d 12 (1990).

Legislative intent. — O.C.G.A. § 40-6-391(b) is clear enough to discern the legislature's intention, which was not, as appellant argues, to allow anyone who has ever legally used a drug to be exempt from the prohibitions of § 40-6-391(a). Burks v. State, 195 Ga. App. 516, 394 S.E.2d 136 (1990).

City ordinance attempting to make penal state offense of DWI. — To apply a city ordinance attempting to make penal the state offense of driving while intoxicated, would, equally, result in an illegal conviction, as infringing upon the state law governing that subject. In either event, a conviction under the ordinance upon such a state of facts would be void and could not be pleaded in abatement against an accusation in the state court for violating the state law. Smith v. State, 88 Ga. App. 749, 77 S.E.2d 764 (1953) (decided under prior Code 1933, § 68-307).

Offense separate and distinct from public drunkenness. — Offense of operating vehicle while under the influence is separate and distinct from public drunkenness in that each requires for conviction ingredients not essential to the other, and is separate and distinct from the offense of public drunkenness contained in a city ordinance. Accordingly, a conviction of violation of an ordinance relating to being drunk on the street is no bar to a prosecution in the criminal court of a county for the offense of operating a motor vehicle while under the influence of intoxicants. Smith v. State, 88 Ga. App. 749, 77 S.E.2d 764 (1953) (decided under prior Code 1933, § 68-307).

Vehicle registration numbers are not element of offense. — Fact that

defendant's DUI citation did not state the tag or registration numbers of the vehicle defendant was driving when arrested was irrelevant to the issue of whether defendant was driving under the influence since that information forms no part of the elements of the offense. Uren v. State, 174 Ga. App. 804, 331 S.E.2d 642 (1985).

Indictment may stand upon former Code 1910, § 1770, making it a misdemeanor for one to operate an automobile over the public streets or roads while intoxicated, which was not repealed by the similar unconstitutional 1915 provision. Jones v. State, 151 Ga. 502, 107 S.E. 765 (1921); McDonald v. State, 152 Ga. 223, 109 S.E. 656 (1921) (decided under former Code 1910, § 1770(9)).

Indictment charging defendant in language of section. — When the indictment charged the defendant with the offense of operating a motor vehicle under the influence of intoxicating liquor substantially in the language of Ga. L. 1953, p. 556, it was not subject to the ground of demurrer (now motion to dismiss) attacking it because it failed to allege that the defendant's driving was affected in any manner by the use of the intoxicating liquors and drugs, and because it failed to allege that the defendant's intoxication made it less safe for the defendant to operate the motor vehicle at the time and place. Hooks v. State, 97 Ga. App. 897, 104 S.E.2d 623 (1958) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 566).

Variation in accusation and citation irrelevant. — Fact that an accusation issued for violation of O.C.G.A. § 40-6-391 is in fact couched in broader language than the uniform traffic citations originally issued establishes no ground for the dismissal of the accusation. Manning v. State, 175 Ga. App. 738, 334 S.E.2d 338 (1985).

Issuance of a formal accusation after the defendant's arrest, specifying alternative methods by which the defendant violated O.C.G.A. § 40-6-391, did not amend the uniform traffic citation, but superseded the citation as the charging instrument. Ellerbee v. State, 215 Ga. App. 102, 449 S.E.2d 874 (1994).

Inconsistent verdict could not form basis for attacking DUI conviction. — Fact that the jury found the defendant not guilty of a charge of failing to maintain a lane could not be a basis for attacking the guilty verdict for driving under the influence of alcohol under O.C.G.A. § 40-6-391(a)(1). Renkiewicz v. State, 283 Ga. App. 692, 642 S.E.2d 384 (2007).

Conviction not affected by use of old citation form. — Validity of defendant's conviction for driving under the influence was not affected by the fact that the uniform traffic citation issued to the defendant was not the form then in use, since the citation showed on the citation's face that the citation had been approved by the Commissioner of Public Safety as required by O.C.G.A. § 40-13-1. Hudson v. State, 261 Ga. 414, 405 S.E.2d 495 (1991).

Variation in accusation and statutory language. — Accusation charging driving under the influence and reciting the proper statute, but omitting "less safe driver" language in O.C.G.A. § 40-6-391, was sufficient. Broski v. State, 196 Ga. App. 116, 395 S.E.2d 317 (1990).

Accusation that omitted certain statutory language but that apprised the defendant that the defendant was being charged with driving with an unlawful alcohol concentration of 0.10 grams or more within three hours of operating a vehicle was sufficient. Lewis v. State, 215 Ga. App. 486, 451 S.E.2d 116 (1994).

O.C.G.A. § 40-6-391 establishes only one crime, driving under the influence; subsections (a)(1) and (a)(4) of O.C.G.A. § 40-6-391 merely set out two different methods of proving that crime. Kuptz v. State, 179 Ga. App. 150, 345 S.E.2d 670 (1986); Scott v. State, 207 Ga. App. 533, 428 S.E.2d 359 (1993).

While it is impermissible to join distinct offenses in a single count of an indictment or accusation, it is also well settled that subsection (a) of O.C.G.A. § 40-6-391 establishes a single crime of driving while in a prohibited condition and that paragraphs (a)(1) and (a)(4) (now (a)(5)) merely define different modes of committing that one crime; a charging instrument is not subject to the objection of duplicity or multifariousness where, as here, alternative methods of violating the one criminal statute at subsection (a) are alleged in a single count. Morgan v. State, 212 Ga.

General Consideration (Cont'd)

App. 394, 442 S.E.2d 257 (1994); Hankins v. City of Alpharetta, 217 Ga. App. 635, 458 S.E.2d 858 (1995).

Defect in one count when the defendant was charged with two alternative counts of driving under the influence arising from the same conduct did not affect the other charge. Smith v. State, 239 Ga. App. 515, 521 S.E.2d 450 (1999).

Reference to multiple subsections acceptable. — Trial court did not err in denying the defendant's motion to quash the uniform traffic citation filed against the defendant and alleging the defendant violated a DUI statute as the uniform traffic citation did not allege more than one offense against the defendant; the citation's reference to multiple subsections involved the different ways that the state could prove the offense and were not allegations that multiple offenses were committed. Slinkard v. State, 259 Ga. App. 755, 577 S.E.2d 825 (2003).

Violation of O.C.G.A. § 40-6-391 was a crime for purposes of the application of a life insurance policy exclusion from the payment of benefits "for any loss caused directly or indirectly, wholly or partly, by: … committing, or attempting to commit a crime." Barnes v. Greater Ga. Life Ins. Co., 243 Ga. App. 149, 530 S.E.2d 748 (2000).

Violation serves as statutory predicate. — Trial court did not err in denying the defendant's motion in arrest of judgment that attacked the validity of the defendant's indictment for first-degree homicide by vehicle as the allegation in the indictment that the defendant violated O.C.G.A. § 40-6-391(k)(1) could serve as the statutory predicate for the charged offense of first-degree vehicular homicide since the evidence showed that the defendant was under 21-years-old and was driving the defendant's vehicle with a blood alcohol level measured at .08 grams after the accident, and, thus, the state showed that the statutory predicate offense applied. David v. State, 261 Ga. App. 468, 583 S.E.2d 135 (2003).

Defendant's contention that violation of O.C.G.A. § 40-6-391 was not intended by the legislature to serve as a statutory predicate for vehicular homicide because enactment of the vehicular homicide statute predated enactment of § 40-6-391 had to be rejected; when the legislature enacted § 40-6-391, it was presumed to do so with knowledge of the existing provisions of the vehicular homicide statute and with reference to it. David v. State, 261 Ga. App. 468, 583 S.E.2d 135 (2003).

Paragraph (a)(1) does not require commission of unsafe act. — Paragraph (a)(1) of O.C.G.A. § 40-6-391 makes it unlawful for a person to drive or be in actual physical control of any moving vehicle while under the influence of alcohol to the extent that it is "less safe for the person to drive …." There is no requirement that the person actually commit an unsafe act. Moss v. State, 194 Ga. App. 181, 390 S.E.2d 268 (1990); State v. Smith, 196 Ga. App. 876, 397 S.E.2d 304 (1990); Shannon v. State, 205 Ga. App. 831, 424 S.E.2d 51, cert. denied, 205 Ga. App. 901, 424 S.E.2d 51 (1992); Shelton v. State, 214 Ga. App. 166, 447 S.E.2d 115 (1994); Anthony v. State, 211 Ga. App. 622, 441 S.E.2d 70 (1993), overruled on other grounds, State v. Coleman, 216 Ga. App. 598, 455 S.E.2d 604 (1995).

Citation adequate under paragraph (a)(1) not paragraph (a)(4). — Traffic citation which charged the defendant with "D.U.I in violation of Code Section 40-6-391" was adequate for prosecution under the less safe standard of paragraph (a)(1) of O.C.G.A. § 40-6-391 but was inadequate to prosecute under paragraph (a)(4) of O.C.G.A. § 40-6-391. Power v. State, 231 Ga. App. 335, 499 S.E.2d 357 (1998).

Paragraph (a)(4) (now (a)(5)) of O.C.G.A. § 40-6-391 creates no presumption of intoxication, but merely proscribes certain conduct. Cunningham v. State, 255 Ga. 35, 334 S.E.2d 656 (1985); Mosley v. State, 185 Ga. App. 610, 365 S.E.2d 451 (1988); Koulianos v. State, 192 Ga. App. 90, 383 S.E.2d 642 (1989).

Paragraph (a)(4) (now (a)(5)) of O.C.G.A. § 40-6-391 defines a specific act as criminal rather than raising a presumption of intoxication. Hudgins v. State, 176 Ga. App. 719, 337 S.E.2d 378 (1985).

In an accusation charging a violation of paragraph (a)(5) of O.C.G.A. § 40-6-391,

use of the words "alcohol concentration" did not import into the accusation an unnecessarily minute description of a necessary fact. Mitchell v. State, 269 Ga. 378, 497 S.E.2d 566 (1998).

Use of presumptions established by § 40-6-392. — Presumption of sobriety contained in O.C.G.A. § 40-6-392(b)(1) is irrelevant when the ultimate issue before the jury is the defendant's impaired ability to drive as the result of being under the influence of a drug. Perano v. State, 167 Ga. App. 560, 307 S.E.2d 64 (1983).

Commission of the crime of driving under the influence (DUI) by violating paragraph (a)(1), (a)(2), or (a)(3) of O.C.G.A. § 40-6-391 may include as an element of proof thereof, those presumptions or inferences which are established by paragraph (b)(1), (b)(2), or (b)(3) (now paragraph (b)(1) or (b)(2)) of O.C.G.A. § 40-6-392. The crime of DUI by violating paragraph (a)(4) (now (a)(5)) of O.C.G.A. § 40-6-391 differs only in that proof merely of the commission of a proscribed specific act is sufficient without resort to any inference or presumption. Hogan v. State, 178 Ga. App. 534, 343 S.E.2d 770 (1986).

Criminal defendant was not entitled to jury instructions based on the presumptions in O.C.G.A. § 40-6-392 when the where defendant was on trial for vehicular homicide, and evidence of the defendant's blood-alcohol level was not admitted to show that the defendant was driving under the influence but was admitted as a circumstance of the defendant's arrest for vehicular homicide through reckless driving. Collum v. State, 195 Ga. App. 42, 392 S.E.2d 301 (1990).

Trial court did not err by failing to give the jury the defendant's requested instruction on the statutory presumption of sobriety as set forth in O.C.G.A. § 40-6-392(b)(1) because the defendant's request was predicated upon the driving under the influence (DUI) less safe count of the indictment, of which the jury found the defendant not guilty; O.C.G.A. § 40-6-392(b)(1) applied only to DUI less safe violations and did not entitle the defendant to a presumption of sobriety with respect to the defendant's reckless driving violation. Travis v. State, 314 Ga. App. 280, 724 S.E.2d 15 (2012).

Impaired driving ability is element. — Under paragraph (a)(2) of O.C.G.A. § 40-6-391, impaired driving ability is an element of the crime that the state must prove to obtain a conviction. Kevinezz v. State, 265 Ga. 78, 454 S.E.2d 441 (1995).

Impaired driving ability not element under paragraph (a)(4) (now (a)(5)). — Impaired driving ability is not a fact necessary to constitute the crime established in paragraph (a)(4) (now (a)(5)) of O.C.G.A. § 40-6-391. Lester v. State, 253 Ga. 235, 320 S.E.2d 142 (1984).

Impaired driving ability is not an element of the offense of driving under the influence of marijuana or a controlled substance under paragraph (a)(5) (now (a)(6)) of O.C.G.A. § 40-6-391. Ryals v. State, 215 Ga. App. 51, 449 S.E.2d 865 (1994).

Same physical condition. — Phrase "driving under the influence," with respect to both alcohol and drugs, and the phrase "to the extent it is less safe for the person to drive" are not two separate elements; but are equivalent concepts describing the same physical condition. Kevinezz v. State, 265 Ga. 78, 454 S.E.2d 441 (1995).

Double jeopardy. — Because the trial court's grant of a new trial stemmed from trial error, the defendant could not be retried on an offense of per se DUI, given that the defendant was adjudged not guilty of that charge based upon the insufficiency of the evidence; thus, the trial court erred in denying the plea in bar. Shah v. State, 288 Ga. App. 788, 655 S.E.2d 347 (2007).

Trial court erred in dismissing the defendant's charge for DUI, O.C.G.A. § 40-6-391(k), on double jeopardy grounds under O.C.G.A. § 16-1-7(b) based on the prior disposal online of a separate seat belt citation because there was no showing that the solicitor had actual knowledge of the DUI charge at the time the seat belt charge was handled. State v. Garlepp, 338 Ga. App. 788, 790 S.E.2d 839 (2016).

Multiple convictions based upon same incident. — Since a defendant cannot be convicted of more than one offense if the offenses are the same in law and fact, a defendant cannot be convicted of both driving under the influence and driv-

General Consideration (Cont'd)

ing with a blood alcohol level of at least .12% when both convictions are based on the same incident of driving under the influence. Sanders v. State, 176 Ga. App. 869, 338 S.E.2d 5 (1985).

When a defendant was convicted of driving under the influence (DUI), in violation of paragraph (a)(1) of O.C.G.A. § 40-6-391, and driving with a blood-alcohol concentration in excess of .12 grams, in violation of paragraph (a)(4) (now (a)(5)), the court was not authorized to enter convictions on both DUI charges since the convictions were predicated on the same conduct. Love v. State, 195 Ga. App. 392, 393 S.E.2d 520 (1990).

Defendant's convictions for operating a motor vehicle under the influence of alcohol while having a probationary license and driving under the influence of alcohol could not both stand since, under the facts, the latter was a lesser included offense in the violation of the probationary license offense. Williams v. State, 223 Ga. App. 209, 477 S.E.2d 367 (1996).

Defendant could be convicted on both felony possession of methamphetamine and driving under the influence of methamphetamine, a misdemeanor; there is no basis for dismissing a felony based on a misdemeanor conviction at common law, and such a result would defy common sense. Helmeci v. State, 230 Ga. App. 866, 498 S.E.2d 326 (1998).

Under the plain language of O.C.G.A. § 40-5-63(a), because the underlying DUI convictions pursuant to O.C.G.A. § 40-6-391 did not have to result from separate arrests or separate and isolated incidents, the Department of Driver Services could suspend a driver's license based upon two separate DUI convictions resulting from a single incident. Dozier v. Jackson, 282 Ga. App. 264, 638 S.E.2d 337 (2006).

Separate offenses. — Defendant's prosecution for driving under the influence and driving with .12% alcohol level did not result in the defendant's being placed in jeopardy twice for the same offense; the two offenses are separate crimes and upon conviction for the latter, the defendant could not also be convicted for the former. Hadden v. State, 180 Ga. App. 496, 349 S.E.2d 770 (1986).

Defendant's acquittal on a charge of driving under the influence on August 6, 1987, did not bar a subsequent prosecution for driving under the influence on November 2, 1987, where neither of the accusations stated that the date of the alleged offenses was a material averment and the state could prove their commission at any time within the two-year statute of limitations. Sandner v. State, 193 Ga. App. 62, 387 S.E.2d 27 (1989).

Simple battery charge did not "arise from the same conduct" as a driving under the influence (DUI) charge, so as to come within the prohibition of the multiple prosecution bar, since the battery occurred 40 minutes after the defendant's arrest for DUI and at a different location, the officer who made the DUI arrest was not the same person allegedly struck by the defendant, and the DUI involved the defendant's operation of a motor vehicle, but the battery did not. State v. Littler, 201 Ga. App. 527, 411 S.E.2d 522 (1991).

Lesser included offense. — DUI accusation must allege harm or danger in order to render reckless conduct a lesser included offense. Barber v. State, 204 Ga. App. 94, 418 S.E.2d 436 (1992).

Improper lane change, driving without headlights, and driving under the influence of alcohol (DUI) convictions did not merge because the facts alleged in the accusation with regard to the DUI charge were not also sufficient to establish the lesser offenses of improper lane change and driving without headlights. Parker v. State, 249 Ga. App. 530, 549 S.E.2d 154 (2001).

Public drunkenness is not, as matter of fact or law, a lesser included offense of driving under the influence of alcohol to the extent it is less safe to drive. State v. Tweedell, 209 Ga. App. 13, 432 S.E.2d 619 (1993).

When person is under the influence. — Person is under the influence of intoxicating liquor when it appears that it is less safe for such person to operate a motor vehicle than it would be if the person were not so affected. Cargile v. State, 244 Ga. 871, 262 S.E.2d 87 (1979).

Trial court does not err in charging the

jury that the jury is authorized to find a driver guilty if the jury finds the driver operated a motor vehicle while under the influence of alcohol to the extent that the driver was a "less safe driver," instead of charging that the use of alcohol must have rendered the driver "incapable of safely driving." Jones v. State, 168 Ga. App. 106, 308 S.E.2d 209 (1983).

Separate sentences for per se and less safe DUI. — Imposing separate sentences for both driving under the influence per se, O.C.G.A. § 40-6-391(a)(5), and driving under the influence less safe, O.C.G.A. § 40-6-391(a)(1), was improper, and since the conviction based on O.C.G.A. § 40-6-391(a)(5) posed the more serious risk of injury to property or the public, that conviction was affirmed; a conviction under O.C.G.A. § 40-6-391(a)(5) did not require proof of impaired driving ability, so even if the results of the field sobriety tests should have been excluded, it was highly probable that the error did not contribute to the judgment since the breath test results, which were not challenged on appeal, provided sufficient proof of the per se violation, and, thus, any error in denying the defendant's motion to suppress the results of the field sobriety tests was harmless. Partridge v. State, 266 Ga. App. 305, 596 S.E.2d 778 (2004).

Alcohol concentration 0.10 grams or more within three hours after driving. — Paragraph (a)(5) of O.C.G.A. § 40-6-391 declaring a person per se DUI if an individual's alcohol concentration is 0.10 grams or more at any time within three hours after driving does not require that the person be tested within three hours; it need be established only that the individual's alcohol concentration was 0.10 grams or greater during the three-hour period after the individual ceased driving. Yarbrough v. State, 241 Ga. App. 777, 527 S.E.2d 628 (2000).

When operator under influence. — An operator of a motor vehicle on the public highway of this state is under the influence of intoxicating liquor when the operator is so affected by intoxicating liquor as to make it less safe for the operator to operate such a vehicle than it would be if the operator was not affected by such intoxicating liquor. Sims v. State, 92 Ga. App. 169, 88 S.E.2d 186 (1955) (decided under former Code 1933, § 68-307).

Degree of driver incapacity required for conviction. — It is not necessary that the defendant be so under the influence as to be incapable of driving. It is necessary only that the defendant be under the influence to a degree which renders the defendant less safe or incapable of driving safely. Howell v. State, 179 Ga. App. 632, 347 S.E.2d 358 (1986).

Presence of alcohol in defendant's body does not, by itself, support inference that the defendant's driving was impaired. — To win a conviction for driving under the influence under O.C.G.A. § 40-6-391(a)(1), the "less safe driver" statute, the state must prove that the defendant had impaired driving ability as a result of drinking alcohol; impaired driving ability depends solely upon an individual's response to alcohol and because individual responses to alcohol vary, the presence of alcohol in a defendant's body, by itself, does not support an inference that the defendant was an impaired driver. Baird v. State, 260 Ga. App. 661, 580 S.E.2d 650 (2003).

Probable cause needed to conduct an arrest for DUI requires that the officer have knowledge or reasonably trustworthy information that a suspect was actually in physical control of a moving vehicle, while under the influence of alcohol to a degree which renders the suspect incapable of driving safely; mere presence of alcohol is not the issue because in a less safe case, the state must prove that the defendant had impaired driving ability as a result of drinking alcohol and it is not necessary for an officer to give the officer's opinion or state specifically that a defendant was a less safe driver. State v. Sanders, 274 Ga. App. 393, 617 S.E.2d 633 (2005).

Mere occupation of parked automobile while under the influence of alcohol is not a crime. Ferguson v. City of Doraville, 186 Ga. App. 430, 367 S.E.2d 551 (1988), overruled on other grounds, Vogtle v. Coleman, 259 Ga. 115, 376 S.E.2d 861 (1989).

Operating vehicle for only few yards while intoxicated. — It would make no difference to one charged with

General Consideration (Cont'd)

operating an automobile over a public highway of this state while under the influence of intoxicating liquor that one had just gotten behind the wheel of the car and had gone only a few yards when one was stopped by the officers and arrested. Such an act would come within the meaning of the word "operation," prohibiting the above offense. Austin v. State, 47 Ga. App. 191, 170 S.E. 86 (1933), overruled on other grounds, Harper v. State, 91 Ga. App. 456, 86 S.E.2d 7 (1955) (decided under former Code 1933, § 68-307).

Person under influence steering pushed or towed vehicle. — One who, while under the influence of intoxicants, steers a vehicle which is unable to move under the vehicle's own power, while being pushed or towed, violates Ga. L. 1953, p. 556 (see O.C.G.A. § 40-6-391). Harris v. State, 97 Ga. App. 495, 103 S.E.2d 443 (1958), overruled on other grounds, New v. State, 171 Ga. App. 392, 319 S.E.2d 542 (1984) and Luke v. State, 177 Ga. App. 518, 340 S.E.2d 30 (1986) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Steering towed vehicle sufficient for conviction. — Defendant could be convicted of driving under the influence of alcohol even though the vehicle the defendant was steering was being towed. Bridgers v. State, 213 Ga. App. 157, 444 S.E.2d 330 (1994).

Public versus private road. — O.C.G.A. § 40-6-391(a)(5) provided that it was unlawful for any person to drive or be in actual physical control of any moving vehicle with a blood alcohol level of 0.08 or more and drew no distinction between driving on public roads versus private thoroughfares; thus the defendant had no immunity from prosecution for driving under the influence because the act was committed on private property. Madden v. State, 252 Ga. App. 164, 555 S.E.2d 832 (2001).

Roadblocks used to identify licenses, insurances, and sobriety. — When the defendant was convicted of less-safe DUI under O.C.G.A. § 40-6-391, the trial court did not err in denying the defendant's motion to suppress the results of breath and blood tests because the daylight roadblock was well-identified as a police checkpoint for the stated and authorized purpose of checking driver's licenses, insurance, and driver sobriety. Clark v. State, 318 Ga. App. 873, 734 S.E.2d 839 (2012).

Pedestrian under the influence. — As a matter of fact or of law, the offense of being a pedestrian under the influence is not a lesser included offense of the offense of driving under the influence. Dickson v. State, 167 Ga. App. 685, 307 S.E.2d 267 (1983).

Defendant charged with permitting an intoxicated driver to drive could not be convicted unless it was proved that the driver violated O.C.G.A. § 40-6-391 governing driving under the influence; thus, the prosecution was a "criminal action … arising out of acts" in alleged violation of that section and admissibility of the results of an intoximeter test given to the driver would be governed by O.C.G.A. § 40-6-392. Munda v. State, 172 Ga. App. 857, 324 S.E.2d 799 (1984).

When source of alcohol was prescription drug. — When the defendant contended that the defendant's conviction could not stand, relying upon the state's failure to rebut the defendant's contention that prior to the time of the defendant's arrest, the defendant had been taking a prescription drug, the major component of which was alcohol, it was found that a rational trier of fact could reasonably have found from the evidence adduced at trial enough proof of the defendant's guilt beyond a reasonable doubt. Kimberly v. State, 180 Ga. App. 521, 349 S.E.2d 489 (1986).

Conviction proper though found "not unsafe." — O.C.G.A. § 40-6-391 simply requires a finding that a person was a less safe driver than the person would have been if the person were not under the influence of alcohol, and a jury could and did properly find that the defendant's driving, although not unsafe, violated O.C.G.A. § 40-6-391. Jones v. State, 207 Ga. App. 469, 428 S.E.2d 402 (1993).

Involuntary manslaughter proven. — One who, while violating this section, drives so dangerously or recklessly that, as a result of that person's intoxication, the person unintentionally kills another

human being is guilty of involuntary manslaughter in the commission of an unlawful act. French v. State, 99 Ga. App. 149, 107 S.E.2d 890 (1959) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Lesser included offense of vehicular homicide. — Offense of driving under the influence was a lesser included offense of first degree vehicular homicide and conviction of both offenses was proscribed. Duncan v. State, 183 Ga. App. 368, 358 S.E.2d 910 (1987).

Reckless conduct. — Since reckless conduct requires harm or danger to "another person," an element not required by O.C.G.A. § 40-6-391 to be alleged and proven, it is not a lesser included offense of driving under the influence as a matter of law. Whiteley v. State, 188 Ga. App. 129, 372 S.E.2d 296, cert. denied, 188 Ga. App. 913, 372 S.E.2d 296 (1988); Cooney v. State, 205 Ga. App. 385, 422 S.E.2d 286 (1992).

Reckless conduct was not a lesser included crime of driving under the influence as a matter of fact since the accusation included no allegation of harm or danger to another person and there was no proof of such at trial. Whiteley v. State, 188 Ga. App. 129, 372 S.E.2d 296, cert. denied, 188 Ga. App. 913, 372 S.E.2d 296 (1988); Cooney v. State, 205 Ga. App. 385, 422 S.E.2d 286 (1992).

Arrest as prerequisite. — O.C.G.A. § 40-5-55(a), as the statute now stands, provides that consent is implied only if a person is arrested for a violation of O.C.G.A. § 40-6-391. Buchanan v. State, 264 Ga. App. 148, 589 S.E.2d 876 (2003).

Warrantless arrest. — When obtaining a warrant to arrest the defendant for driving under the influence would have required at least two hours, during which time physical evidence of the defendant's alleged intoxication would dissipate, the warrantless arrest was proper under subsection (a) of O.C.G.A. § 40-6-391. State v. Fleming, 202 Ga. App. 774, 415 S.E.2d 513 (1992).

Obligation not to leave accident scene. — Defendant's conviction for a per se driving under the influence violation was upheld on appeal and no unlawful seizure of the defendant occurred at the collision scene the defendant caused since the defendant was obligated not to leave the scene of the accident regardless of whether an officer told the defendant not to leave. Stadnisky v. State, 285 Ga. App. 33, 645 S.E.2d 545 (2007).

Probable cause for arrest. — As to the question of whether the arrest of a defendant for the offense of driving under the influence is made with probable cause, the question is whether the officer at the time of the defendant's arrest has knowledge or reasonably trustworthy information that: (1) the defendant was in actual physical control of a moving vehicle; (2) while under the influence of any drug; (3) to a degree which renders the defendant incapable of driving safely. Griggs v. State, 167 Ga. App. 581, 307 S.E.2d 75 (1983).

There was probable cause to arrest the defendant for a violation of O.C.G.A. § 40-6-391(a) when the officer's initial approach was a first level police-citizen encounter and was solely to determine if the defendant was in need of assistance, when the officer then noted that the defendant was unsteady on the defendant's feet, the defendant's voice was slurred, the defendant's eyes were red and glassy, and the defendant smelled strongly of alcoholic beverage, and when the defendant admitted driving the vehicle the officer had observed abandoned in a ditch, and had consumed several beers and gave an implausible explanation for the accident. Childress v. State, 251 Ga. App. 873, 554 S.E.2d 818 (2001).

Although a police officer who stopped the defendant for speeding did not conduct field sobriety tests after the officer noticed that the defendant had bloodshot, glassy eyes and smelled alcohol on the defendant's breath, the officer had probable cause to arrest the defendant for driving under the influence of alcohol because of the defendant's condition and the fact that an alco-sensor test the defendant agreed to take showed the presence of alcohol, and the appellate court reversed the trial court's judgment finding that the officer did not have probable cause to arrest the defendant and granting the defendant's motion to suppress evidence resulting from the defendant's arrest. State v. Sledge, 264 Ga. App. 612, 591 S.E.2d 479 (2003).

General Consideration (Cont'd)

Police officer who saw the defendant standing over a motorcycle that was involved in an accident and detected a strong smell of alcohol coming from the defendant had probable cause to believe the defendant violated O.C.G.A. § 40-6-391(a) by driving a motor vehicle under the influence of alcohol to the extent it was less safe for the defendant to drive, and the trial court properly denied the defendant's motion in limine to exclude testimony regarding the results of a blood test the defendant took after the officer informed the defendant of the defendant's rights under Georgia's implied consent statute. Oliver v. State, 268 Ga. App. 290, 601 S.E.2d 774 (2004).

Undisputed testimony from an officer, who had extensive experience in DUI cases, that the defendant admitted to drinking, had a strong odor of alcohol on the defendant's person, and had glossy eyes, provided sufficient probable cause to warrant an arrest for DUI despite the fact that the officer failed to have an independent recollection of the field sobriety tests the officer administered. Frederick v. State, 270 Ga. App. 397, 606 S.E.2d 615 (2004).

Suppression motion was properly denied as there was probable cause to arrest a defendant for driving under the influence after: (1) the defendant was stopped for speeding; (2) an officer noticed that the defendant's eyes were bloodshot, speech was slow, and that the defendant smelled of alcohol; and (3) field sobriety tests indicated that the defendant was under the influence of alcohol. Moody v. State, 273 Ga. App. 670, 615 S.E.2d 803 (2005).

Despite the defendant's claim that an officer's detention was illegal and thus, any statement uttered while detained should have been suppressed, suppression of that statement was properly denied, given that: (1) the officer encountered the defendant after responding to a 9-1-1 call reporting a crime at a specific location; and (2) the officer's personal observations, when coupled with the defendant's admission as to being drunk and driving a car onto the curb, as the 9-1-1 dispatcher had stated, supplied the officer with probable cause to arrest the defendant. Moore v. State, 281 Ga. App. 141, 635 S.E.2d 408 (2006).

There was probable cause to arrest a defendant for driving under the influence less safe under O.C.G.A. § 40-6-391 when an officer smelled alcohol on the defendant's breath and when the defendant admitted to having been drinking. Therefore, no basis for excluding the result of a blood-alcohol test to which the defendant subsequently consented arose as the fruit of the poisonous tree. Hazley v. State, 289 Ga. App. 558, 657 S.E.2d 628 (2008).

Although there was evidence supporting the trial court's finding that there was not probable cause to arrest the defendant for driving under the influence (DUI)-less safe, there was ample evidence to support probable cause to arrest the defendant for DUI per se. The results of two breath tests, and the defendant's admission that the defendant had three to four drinks prior to driving and that the defendant had consumed the last of these about 30 minutes before the traffic stop established a reasonable probability that the defendant was in violation of O.C.G.A. § 40-6-391(a)(5). State v. Rish, 295 Ga. App. 815, 673 S.E.2d 259, cert. denied, No. S09C0911, 2009 Ga. LEXIS 362 (Ga. 2009).

Officer's observations that a defendant was unsteady, smelled of alcohol, had glassy and blood-shot eyes, had marijuana in the defendant's possession, and was driving at night while playing music loud enough to be heard almost a mile away, gave the officer probable cause to arrest the defendant for DUI in violation of O.C.G.A. § 40-6-391(a)(5). Brown v. State, 302 Ga. App. 272, 690 S.E.2d 907 (2010).

Based on the evidence presented, the combination of the observed speed, the defendant's admitting that the defendant had been consuming alcohol, the odor of alcohol coming from the defendant, the condition of the defendant's eyes, the results of the AlcoSensor being positive, and the horizontal gaze nystagmus test results all provided probable cause for the arrest. Drawing all permissible inferences from the evidence in favor of the trial court's ruling, the trial court did not err by finding sufficient probable cause to sup-

port the defendant's arrest for driving under the influence to the extent that the defendant was less safe to drive. Jaffray v. State, 306 Ga. App. 469, 702 S.E.2d 742 (2010).

Officer was entitled to qualified immunity as to false arrest claim of arrestee arrested for driving under the influence because it was not clearly established that probable cause was lacking since, inter alia, the arrestee told the officer the arrestee had consumed at least two beers earlier in the evening, and admitted that the arrestee began changing lanes and abruptly swerved back into the original lane. Bannister v. Conway, No. 1:12-CV-1487-TWT, 2013 U.S. Dist. LEXIS 152569 (N.D. Ga. Oct. 23, 2013).

Cash bond. — When a person is arrested by a state patrolman inside a municipality for driving under the influence, a deputy sheriff, even without authorization from the court, may accept a cash bond; the trial court, as a result, has the authority to order the cash bond forfeited. Wilson v. State, 167 Ga. App. 421, 306 S.E.2d 704 (1983).

Venue. — Exact location of operating a motor vehicle under influence of an intoxicant is not a material element of an offense under O.C.G.A. § 40-6-391 and the accusation is sufficiently certain if it charges that the offense was committed in a particular county. Felchlin v. State, 159 Ga. App. 120, 282 S.E.2d 743 (1981).

While the phrase "as prosecuting attorney for the county and state aforesaid" sufficiently established venue to support a violation of O.C.G.A. § 40-6-391(a)(1), the state's failure to sufficiently allege venue in order to sustain a second count, charging a violation of § 40-6-391(a)(5), supported the defendant's motion to quash the second count and reversal of the defendant's conviction on that count. Werner v. State, 280 Ga. App. 853, 635 S.E.2d 234 (2006).

Appeals court rejected the defendant's claim that the accusation failed to adequately charge venue as a charge of DUI incorporated the words "Henry County" in the heading by using the phrase "as prosecuting attorney for the county and state aforesaid" in the body of the accusation; but the court warned the state against such practice as the solicitor could easily devise forms which stated with clarity the county in which the offense allegedly occurred, and thereby avoid the costs which resulted from having to repeatedly defend the type of challenge the defendant raised. Gordy v. State, 287 Ga. App. 459, 651 S.E.2d 471 (2007), cert. denied, No. S07C1866, 2008 Ga. LEXIS 128 (Ga. 2008).

Evidence of highway number insufficient proof of venue. — In a DUI case under O.C.G.A. § 40-6-391(a)(1), the state failed to prove that venue was proper in Fayette County: the evidence showed only that the defendant was stopped on Highway 138 by a Fayette County Sheriff's deputy, which was insufficient to prove venue; because DUI elements were established by the evidence, retrial was permitted. Smith v. State, 345 Ga. App. 43, No. A18A0800, 2018 Ga. App. LEXIS 163 (2018).

Removal to federal court disallowed. — When a substitute rural mail carrier employed by the United States Postal Service, while delivering mail for the United States Postal Service, was arrested and charged with driving under the influence of alcohol pursuant to O.C.G.A. § 40-6-391, the carrier's petition to remove the pending state criminal prosecution to a federal district court was summarily dismissed as there was no causal connection between the carrier's official acts and the criminal allegations the carrier was charged with under state law. Georgia v. Waller, 660 F. Supp. 952 (M.D. Ga. 1987).

Transfer of case involving juveniles to superior court. — Evidence that a juvenile had a history of using marijuana and other drugs, had used marijuana before the juvenile lost control of a car the juvenile was driving while racing another car on a public street, causing a multi-car collision in which two people died, had challenged other people to automobile races on several occasions, violated the conditions of the juvenile's driver's license by driving with a non-family member, and used drugs after the accident was sufficient to support the juvenile court's judgment that the juvenile was not amenable to treatment in the juvenile court system

General Consideration (Cont'd)

and that the interests of the juvenile and the community would be better served if the case was transferred to the superior court. In the Interest of W.N.J., 268 Ga. App. 637, 602 S.E.2d 173 (2004).

Conviction for DUI in one county bars prosecution in other. — When a motorist is charged with speeding and driving under the influence in two counties, the motorist may be tried and convicted in both counties for speeding, but a conviction for driving under the influence in one county will bar prosecution in the other as this charge arises out of the same conduct in both counties. State v. Willis, 149 Ga. App. 509, 254 S.E.2d 743 (1979).

Prosecution of new offense time-barred. — Filing of a formal accusation beyond the applicable limitations period barred the prosecution for a violation of paragraph (a)(4) of O.C.G.A. § 40-6-391, brought two months after the original charge of a violation of paragraph (a)(1) of O.C.G.A. § 40-6-391, notwithstanding the fact that the new paragraph (a)(4) (now (a)(5)) of O.C.G.A. § 40-6-391 offense may have stemmed from the same conduct as the original charge. State v. Rustin, 208 Ga. App. 431, 430 S.E.2d 765 (1993).

Defendant's plea of nolo contendere waived any defenses and objections to the defendant's conviction for driving under the influence of drugs when the plea was voluntarily entered as shown by the defendant's ratification thereof by entering the plea on the back of the uniform traffic citation and signing the defendant's name. Moffett v. State, 228 Ga. App. 73, 491 S.E.2d 126 (1997).

Challenge to procedures used in reading the defendant the statutory implied consent warning and the proper working of the Intoxilyzer 5000 machine should have been appropriately raised by a motion in limine, not a motion to suppress. Goddard v. State, 244 Ga. App. 730, 536 S.E.2d 160 (2000).

Tort duty invocable against police officer. — Law enforcement officer owes a tort duty to a member of the general public injured by a drunk driver when the officer allows the noticeably intoxicated driver to continue operating a motor vehicle. Landis v. Rockdale County, 206 Ga. App. 876, 427 S.E.2d 286 (1993).

Tort duty not invocable against police officer. — Deputy sheriff was not liable to the widow of a motorist killed in a collision with a drunk driver whom the deputy had failed to arrest or otherwise restrain from driving; although the deputy may have been present at the scene of the crime in that the deputy observed an intoxicated driver, the deputy's duty to enforce drunk driving laws was to the public in general, not specifically to the motorist who was killed hours later in a collision with the intoxicated driver at another location. Landis v. Rockdale County, 212 Ga. App. 700, 445 S.E.2d 264 (1994).

When an officer from one agency released a motorist without conducting a complete investigation, if the officers from another jurisdiction have reasonable suspicion that the defendant was driving under the influence, the fact that the first officer chose not to investigate that issue does not deprive the other officers of the officer's independent authority to investigate. State v. Gehris, 242 Ga. App. 384, 528 S.E.2d 300 (2000), overruled on other grounds by Zilke v. State, 299 Ga. 232, 787 S.E.2d 745 (2016).

Prosecutor's closing argument did not violate prohibition against golden rule arguments. — Prosecutor's remarks during a DUI offense did not violate the prohibition against golden rule arguments by asking the jurors to put themselves in the position of a victim since it is not improper for the state to appeal to the jury to convict for the safety of the community or to curb an epidemic of violence in the community. Nor is it improper for the prosecutor to emphasize to the jury the jury's responsibility to enforce the law. Coghlan v. State, 319 Ga. App. 551, 737 S.E.2d 332 (2013).

Mistrial properly denied. — Because the defendant was not prejudiced by a challenged juror's conduct in communicating with a state witness, namely, a police officer as: (1) the alleged improper communication was innocent; (2) the case was never discussed; and (3) once the involvement was discovered, the conversation

immediately ended; hence, the trial court did not abuse the court's discretion in denying a mistrial. Duncan v. State, 281 Ga. App. 270, 635 S.E.2d 875 (2006).

New trial unwarranted when counsel's failure to object to evidence of prior DUI conviction did not result in prejudice. — Defendant's ineffective assistance of counsel claim did not warrant a new trial because sufficient evidence of the defendant's intoxication was presented in the record, and the defendant failed to show prejudice resulting from trial counsel's failure to object to the defendant's admission to having a prior DUI conviction, even though it was error for trial counsel not to object. Thomas v. State, 288 Ga. App. 827, 655 S.E.2d 701 (2007).

Continuance of case properly denied. — Trial court did not abuse the court's discretion by denying the defendant's request for a continuance because the court had granted a certificate pursuant to O.C.G.A. § 24-13-94 to permit the defense an opportunity to obtain the information and witnesses from the breathalyzer manufacturer, set the case with enough time for the defense to do so, and, after the Kentucky court issued an order denying the request, which order was entitled to full faith and credit, required the defendant to proceed to trial. Phillips v. State, 324 Ga. App. 728, 751 S.E.2d 526 (2013).

Blood test results suppressed properly. — Before an unconscious person could have been deemed not to have withdrawn the implied consent to blood alcohol testing, that implied consent must have first existed as provided by O.C.G.A. § 40-5-55(a); consent was implied only if a person was arrested for a violation of O.C.G.A. § 40-6-391, and when the defendant was not arrested for any such violation before the blood test was conducted, a trial court properly suppressed the results of the blood test. State v. Bass, 273 Ga. App. 540, 615 S.E.2d 589 (2005).

Under Ga. Const. 1983, Art. I, Sec. I, Para. XIII, the defendant could not suppress the evidence of the blood test taken while the defendant was under suspicion for driving under the influence under O.C.G.A. § 40-6-391; because the state complied with the statutory implied consent requirements, the defendant was deemed under the implied consent provisions of O.C.G.A. § 40-5-55 to have given the defendant's consent to a test of the defendant's blood. Meiklejohn v. State, 281 Ga. App. 712, 637 S.E.2d 117 (2006).

Blood test properly admitted after defendant requested breath test. — After a defendant's van hit a utility pole, an officer did not violate O.C.G.A. § 40-6-392(a)(3) by failing to reasonably accommodate the defendant's request for a breath test as the officer believed that the defendant could not complete a breath test due to serious injuries to the defendant's mouth and jaw. Since the defendant was not in police custody, but was a hospital patient, and consented to a blood test after first requesting a breath test, evidence of the blood test was admissible in a prosecution for driving under the influence. Fowler v. State, 294 Ga. App. 864, 670 S.E.2d 448 (2008), cert. denied, No. S09C0529, 2009 Ga. LEXIS 204 (Ga. 2009).

Determination of actual consent required. — Defendant's driving under the influence case was remanded to the trial court because, in considering the defendant's motion to suppress, the court failed to address whether the defendant gave actual consent to the procuring and testing of blood, which would require the determination of the voluntariness of the consent under the totality of the circumstances. Williams v. State, 296 Ga. 817, 771 S.E.2d 373 (2015).

In a case charging the defendant with driving under the influence (DUI) to the extent it was less safe for the defendant to drive and DUI per se, the motion to suppress the results of the state-administered test of the defendant's breath was properly granted as the defendant lacked the capacity to consent to the breath test based upon the defendant's confusion and high level of intoxication; the state was only able to show that the defendant acquiesced to the officer's request that the defendant submit to a breath test but was unable to show actual consent; and the trial court was not expressly required to address in the court's order each relevant factor in determining if the defendant's

General Consideration (Cont'd)

consent was voluntary. State v. Jung, 337 Ga. App. 799, 788 S.E.2d 884 (2016).

Blood draw taken from the defendant, who was charged with DUI (methamphetamine), O.C.G.A. § 40-6-391(a)(6), was suppressed from the evidence because the defendant's consent was not voluntarily given; the defendant had been injured in a car accident, was pinned to the ground, mumbling, screaming, and vomiting, and was incapable of making a rational decision. State v. Osterloh, 342 Ga. App. 668, 804 S.E.2d 696 (2017).

Evidence insufficient to establish coercion as defense. — Appellate court chose not to disturb the jury's determination that the defendant was not coerced into driving while intoxicated because the defendant admitted that the defendant was not coerced into driving a truck away from a restaurant; the defendant testified that an employee of the restaurant asked the defendant to leave; the defendant drove away to avoid a fight; the defendant had three or four beers before driving the truck; the defendant had a cell phone in the defendant's possession but the defendant did not attempt to call 9-1-1, nor did the defendant ask the restaurant's employees to call a cab for the defendant; and the person who was trying to fight the defendant was in the parking lot but was not armed. Hines v. State, 308 Ga. App. 299, 707 S.E.2d 534 (2011).

Statute of limitation. — Because DUI was a predicate offense set out in the indictment against the defendant only as an element of the offense of vehicular homicide, in violation of O.C.G.A. § 40-6-393(a), and not as a separate crime for which the defendant risked separate criminal liability, a trial court did not err by denying the defendant's plea in bar because as a felony offense prosecution on the vehicular homicide counts were commenced within four years after the commission of the crime as required by O.C.G.A. § 17-3-1(c); the expiration of the limitations period for the driving under the influence counts did not preclude a prosecution for vehicular homicide. Leachman v. State, 286 Ga. App. 708, 649 S.E.2d 886 (2007), cert. denied, No. S07C1816, 2007 Ga. LEXIS 768 (Ga. 2007).

Evidence of subsequent DUI arrests admissible. — Evidence that in the seven months after a defendant was arrested for DUI in violation of O.C.G.A. § 40-6-391(a)(1), the defendant drove the defendant's vehicle twice while under the influence of alcohol to the extent it was less safe for the defendant to drive, was admissible as relevant to the defendant's bent of mind and course of conduct with respect to DUI. Ayiteyfio v. State, 308 Ga. App. 286, 707 S.E.2d 186 (2011).

No provision for judgment notwithstanding the verdict in DUI case. — Trial court did not err in denying the defendant's motion for judgment notwithstanding the verdict (JNOV) after the defendant was convicted of driving under the influence to the extent that the defendant was a less-safe driver in violation of O.C.G.A. § 40-6-391(a)(1) because JNOV was not a remedy available in a criminal case. Masood v. State, 313 Ga. App. 549, 722 S.E.2d 149 (2012).

Qualified immunity of officer in civil rights claim based on driving under influence arrest. — Officer was entitled to summary judgment based on qualified immunity as to an arrestee's Fourth Amendment claim regarding the stop of the arrestee's vehicle because the officer had arguable reasonable suspicion to stop the arrestee since the officer responded to an off-duty officer's report that the arrestee was driving at an unusual speed and weaving across the road, and the off-duty officer identified the vehicle; also, officers had arguable probable cause to arrest the arrestee for driving under the influence. Jenkins v. Gaither, No. 12-15631, 2013 U.S. App. LEXIS 20296 (11th Cir. Oct. 4, 2013) (Unpublished).

Out of time appeal following guilty plea rejected. — Following guilty pleas to first degree homicide by vehicle and possession of an open container, the trial court properly denied the defendant's motion for an out-of-time appeal finding that the defendant failed to show that the right to an appeal was frustrated by ineffective assistance of counsel since the record showed that the attacks on the guilty plea in the out-of-time appeal were without

merit; thus, trial counsel could not have been ineffective in failing to pursue such an appeal. Martin v. State, 329 Ga. App. 10, 763 S.E.2d 363 (2014).

Cited in Carter v. State, 38 Ga. App. 182, 143 S.E. 441 (1928); Hixson v. Barrow, 135 Ga. App. 519, 218 S.E.2d 253 (1975); Torley v. State, 141 Ga. App. 366, 233 S.E.2d 476 (1977); Elder v. State, 143 Ga. App. 610, 239 S.E.2d 160 (1977); Howe v. Cofer, 144 Ga. App. 589, 241 S.E.2d 472 (1978); Huff v. State, 144 Ga. App. 764, 242 S.E.2d 361 (1978); Brock v. State, 146 Ga. App. 78, 245 S.E.2d 442 (1978); Garrett v. State, 146 Ga. App. 610, 247 S.E.2d 136 (1978); Cofer v. Crowell, 146 Ga. App. 639, 247 S.E.2d 152 (1978); Keenan v. Buchanan, 148 Ga. App. 279, 251 S.E.2d 120 (1978); Lewis v. State, 149 Ga. App. 181, 254 S.E.2d 142 (1979); State v. Black, 149 Ga. App. 389, 254 S.E.2d 506 (1979); Grizzle v. State, 153 Ga. App. 364, 265 S.E.2d 324 (1980); Vann v. State, 153 Ga. App. 710, 266 S.E.2d 349 (1980); Jackson v. Willis, 2 Bankr. 566 (Bankr. M.D. Ga. 1980); Arnold v. State, 163 Ga. App. 94, 292 S.E.2d 891 (1982); State v. Chumley, 164 Ga. App. 828, 299 S.E.2d 564 (1982); Stewart v. State, 165 Ga. App. 62, 299 S.E.2d 134 (1983); Reliance Ins. Co. v. Bridges, 168 Ga. App. 874, 311 S.E.2d 193 (1983); Wessels v. State, 169 Ga. App. 246, 312 S.E.2d 361 (1983); Steed v. City of Atlanta, 172 Ga. App. 839, 325 S.E.2d 165 (1984); Pfeiffer v. State, 173 Ga. App. 374, 326 S.E.2d 562 (1985); McElroy v. State, 173 Ga. App. 685, 327 S.E.2d 805 (1985); Russell v. State, 174 Ga. App. 436, 330 S.E.2d 175 (1985); Peters v. State, 175 Ga. App. 463, 333 S.E.2d 436 (1985); Atkins v. State, 175 Ga. App. 470, 333 S.E.2d 441 (1985); Melton v. State, 175 Ga. App. 472, 333 S.E.2d 682 (1985); Drayton v. State, 175 Ga. App. 780, 334 S.E.2d 720 (1985); McNair v. State, 177 Ga. App. 502, 339 S.E.2d 773 (1986); Billingslea v. State, 177 Ga. App. 775, 341 S.E.2d 305 (1986); Lovell v. State, 178 Ga. App. 366, 343 S.E.2d 414 (1986); Smith v. State, 180 Ga. App. 620, 349 S.E.2d 754 (1986); Branch v. State, 182 Ga. App. 818, 357 S.E.2d 136 (1987); House v. State, 184 Ga. App. 724, 362 S.E.2d 429 (1987); Williams v. Hart, 83 Bankr. 840 (Bankr. M.D. Ga. 1987); Odom v. State, 185 Ga. App. 496, 364 S.E.2d 626 (1988); Smith v. State, 185 Ga. App. 531, 364 S.E.2d 907 (1988); Brooks v. State, 187 Ga. App. 194, 369 S.E.2d 801 (1988); Hale v. State, 188 Ga. App. 524, 373 S.E.2d 250 (1988); Browning v. State, 188 Ga. App. 591, 373 S.E.2d 654 (1988); Sapp v. State, 188 Ga. App. 700, 374 S.E.2d 114 (1988); State v. Speir, 189 Ga. App. 254, 375 S.E.2d 298 (1988); Harrison v. Brunson, 82 Bankr. 634 (Bankr. S.D. Ga. 1988); Parsons v. State, 190 Ga. App. 803, 380 S.E.2d 87 (1989); Vulcan Life Ins. Co. v. Davenport, 191 Ga. App. 79, 380 S.E.2d 751 (1989); Helms v. State, 191 Ga. App. 283, 381 S.E.2d 428 (1989); Manley v. State, 191 Ga. App. 376, 381 S.E.2d 592 (1989); Corley v. State, 192 Ga. App. 35, 383 S.E.2d 586 (1989); Sturdy v. State, 192 Ga. App. 71, 383 S.E.2d 632 (1989); Griner v. State, 192 Ga. App. 283, 384 S.E.2d 398 (1989); Moore v. Jarvis, 885 F.2d 1565 (11th Cir. 1989); Harbin v. State, 193 Ga. App. 248, 387 S.E.2d 367 (1989); King v. State, 194 Ga. App. 69, 389 S.E.2d 500 (1989); Kolker v. State, 260 Ga. 240, 391 S.E.2d 391 (1990); Lord v. State, 194 Ga. App. 749, 392 S.E.2d 17 (1990); Studebaker's of Savannah, Inc. v. Tibbs, 195 Ga. App. 142, 392 S.E.2d 908 (1990); Trammell v. State, 196 Ga. App. 540, 396 S.E.2d 286 (1990); Menendez v. Jewett, 196 Ga. App. 565, 396 S.E.2d 294 (1990); Eppinger v. State, 198 Ga. App. 889, 403 S.E.2d 829 (1991); Anderson v. State, 199 Ga. App. 595, 405 S.E.2d 504 (1991); Brantley v. State, 199 Ga. App. 623, 405 S.E.2d 533 (1991); Purser v. State, 201 Ga. App. 839, 412 S.E.2d 869 (1991); Kendrick v. State, 202 Ga. App. 164, 413 S.E.2d 785 (1991); Anderson v. State, 262 Ga. 26, 413 S.E.2d 732 (1992); Bowden v. State, 202 Ga. App. 802, 415 S.E.2d 527 (1992); Gazaway v. State, 207 Ga. App. 641, 428 S.E.2d 659 (1993); Pratt v. State, 208 Ga. App. 617, 431 S.E.2d 397 (1993); Payne v. State, 209 Ga. App. 780, 434 S.E.2d 543 (1993); Cheevers v. Clark, 214 Ga. App. 866, 449 S.E.2d 528 (1994); Martin v. State, 217 Ga. App. 860, 460 S.E.2d 92 (1995); Dooley v. State, 221 Ga. App. 245, 470 S.E.2d 803 (1996); Pitts v. State, 231 Ga. App. 9, 498 S.E.2d 534 (1998); Ballenger Paving Co. v. Gaines, 231 Ga. App. 565, 499 S.E.2d 722 (1998); Radcliffe v. State, 234 Ga. App. 576, 507

General Consideration (Cont'd)

S.E.2d 759 (1998); In re B.C.G., 235 Ga. App. 1, 508 S.E.2d 239 (1998); Lambropoulous v. State, 234 Ga. App. 625, 507 S.E.2d 225 (1998); Griffin v. State, 242 Ga. App. 878, 531 S.E.2d 752 (2000); Berkow v. State, 243 Ga. App. 698, 534 S.E.2d 433 (2000); Thompson v. State, 243 Ga. App. 878, 534 S.E.2d 151 (2000); Perdue v. Caffey (In re Caffey), 248 B.R. 920 (Bankr. N.D. Ga. 2000); Couch v. State, 246 Ga. App. 106, 539 S.E.2d 609 (2000); Rodriguez v. State, 275 Ga. 283, 565 S.E.2d 458 (2002); Northside Equities, Inc. v. Hulsey, 275 Ga. 364, 567 S.E.2d 4 (2002); State v. Johnson, 257 Ga. App. 162, 570 S.E.2d 627 (2002); Perdue v. State, 256 Ga. App. 765, 578 S.E.2d 456 (2002); Lockett v. State, 257 Ga. App. 412, 571 S.E.2d 192 (2002); Johnson v. State, 261 Ga. App. 633, 583 S.E.2d 489 (2003); Gantt v. State, 263 Ga. App. 102, 587 S.E.2d 255 (2003); Dozier v. Pierce, 279 Ga. App. 464, 631 S.E.2d 379 (2006); Chancellor v. Dozier, 283 Ga. 259, 658 S.E.2d 592 (2008); Brantley v. State, 290 Ga. App. 764, 660 S.E.2d 846 (2008); Dunagan v. State, 283 Ga. 501, 661 S.E.2d 525 (2008); Hernandez v. State, 297 Ga. App. 177, 676 S.E.2d 795 (2009); Eason v. Dozier, 298 Ga. App. 65, 679 S.E.2d 89 (2009); State v. Rowell, 299 Ga. App. 238, 682 S.E.2d 343 (2009); Jacobs v. State, 308 Ga. App. 117, 706 S.E.2d 737 (2011); Smith v. State, 324 Ga. App. 100, 749 S.E.2d 395 (2013); Reed v. Carolina Cas. Ins. Co., 327 Ga. App. 130, 755 S.E.2d 356 (2014); Preston v. State, 327 Ga. App. 556, 760 S.E.2d 176 (2014); State v. Hasson, 334 Ga. App. 1, 778 S.E.2d 15 (2015); State v. Mantooth, 337 Ga. App. 698, 788 S.E.2d 584 (2016); State v. Charles, 344 Ga. App. 456, 810 S.E.2d 627 (2018).

Notice

Notice of offense. — Notice given that driving under the influence of alcohol is a crime is adequate. Head v. State, 246 Ga. 360, 271 S.E.2d 452 (1980).

Citation reciting that the defendant was stopped for driving over the centerline, describing the defendant as a less than safe driver with the smell of alcohol on the defendant's breath and unsteady on the defendant's feet, who failed an alco-sensor test and whose blood alcohol measured .10 percent was sufficient to charge a violation of O.C.G.A. § 40-6-391(a)(1). Shannon v. State, 205 Ga. App. 831, 424 S.E.2d 51, cert. denied, 205 Ga. App. 901, 424 S.E.2d 51 (1992).

Provision authorizing punishment for a "high and aggravated misdemeanor" upon a third or subsequent conviction of DUI does not create a separate and independent offense and did not constitute a material allegation in an accusation. State v. Phillips, 206 Ga. App. 421, 425 S.E.2d 412 (1992).

Indictment only put the defendant on notice that the defendant could be convicted if the marijuana or cocaine had made the defendant a less safe driver. The indictment did not put the defendant on notice that the defendant could be convicted solely on the physical act of driving with any amount of marijuana or cocaine in the defendant's blood or urine under O.C.G.A. § 40-6-391(a)(5). Kevinezz v. State, 265 Ga. 78, 454 S.E.2d 441 (1995).

Citation was not vague when the citation informed the defendant that the defendant was charged with violating O.C.G.A. § 40-6-391 by driving the defendant's vehicle under the influence of alcohol and specifically provided that a DUI breath test was administered showing an alcohol level of .17 grams. Shelton v. State, 216 Ga. App. 634, 455 S.E.2d 304 (1995).

Accusation charging an offense under O.C.G.A. § 40-6-391 was sufficient even though the accusation did not contain the exact wording of the current section. Wade v. State, 223 Ga. App. 222, 477 S.E.2d 328 (1996).

Indictment or accusation charging a defendant with driving under the influence of alcohol or drugs, even if it does not specify to the extent it was less safe for the defendant to drive, is an indictment that charges the defendant with violating paragraph (a)(1), (a)(2), or (a)(3) of O.C.G.A. § 40-6-391; but would not put a defendant on notice that a defendant was convicted under paragraph (a)(4) or (a)(5) of § 40-6-391 which does not contain the phrase "under the influence" and does not require the state to prove impaired driving ability. Power v. State, 231 Ga. App. 335, 499 S.E.2d 357 (1998).

Indictment stating that the defendant "did then and there unlawfully drive a moving vehicle while under the influence of alcohol, so that it was less safe for the defendant to drive, there being not less than .10 percent by weight of alcohol in his blood" was sufficient notice of two ways the defendant could be convicted of driving under the influence. Kennon v. State, 232 Ga. App. 494, 502 S.E.2d 330 (1998).

Trial court did not err when the court denied the defendant's motion to quash the defendant's traffic citation because the citation did not identify the specific subsection of O.C.G.A. § 40-6-391 which the defendant violated. Fluellen v. State, 264 Ga. App. 19, 589 S.E.2d 847 (2003).

Trial court properly denied the defendant's motion to quash count one of the accusation filed against the defendant as: (1) although the accusation did not specify a particular drug that the defendant was alleged to have been driving under, O.C.G.A. § 40-6-391(a)(2) prohibited driving under the influence of any drug; (2) the defendant was informed of the charged offense, and that the defendant would need to meet the charges that the defendant drove while under the influence of amphetamines and cannabinoids; (3) the defendant could not reasonably claim that the defendant was surprised by evidence introduced at trial or was unable to prepare a defense; (4) the defendant did not risk future prosecution for the same offenses; and (5) the defendant was not misled to the defendant's prejudice by any imperfection in the accusation, and any error was harmless. Buchanan v. State, 264 Ga. App. 148, 589 S.E.2d 876 (2003).

Fair construction of defendant's Uniform Traffic Citation showed that the citation indicated a violation of O.C.G.A. § 40-6-391(a)(5), unlawful alcohol concentration; when the citation showed that the defendant's breath results were ".223," and that the defendant was charged with "DUI," defendant was on adequate notice of a charge of unlawful alcohol concentration. Taylor v. State, 265 Ga. App. 637, 595 S.E.2d 344 (2004).

Accusation that charged the defendant, age 19, with being a minor under 18 while driving with an alcohol concentration of .02 or more was not fatally variant with the proof at tria, because the charge cited O.C.G.A. § 40-6-391, the correct statute under which the defendant was charged, and the defendant could not be surprised with proof of the defendant's own age. Mills v. State, 271 Ga. App. 506, 610 S.E.2d 80 (2004).

Count phrasing sufficiently descriptive. — Accusation was sufficiently descriptive to defeat a motion in arrest of judgment where reference of "such driving and being in actual physical control" incorporated preceding count's explicit reference to "actual physical control of a moving vehicle." Jones v. State, 206 Ga. App. 604, 426 S.E.2d 179 (1992).

Traffic citation's notice sufficient. — Defendant's contention that the state's failure to recite the words "to the extent that it was less safe for the person to drive" constituted a fatal defect insufficiently alleging the essential elements of O.C.G.A. § 40-6-391 for purposes of notice did not hold when the defendant could not demonstrate any prejudice to oneself. As such, it was enough that the necessary facts could appear in any form, or by fair construction could be found within the terms of the traffic citation, including the mere recital of the statute. Brooks v. State, 207 Ga. App. 477, 428 S.E.2d 357 (1993).

Notice of implied consent rights. — Trial court erred in concluding that the state's breath tests related to a charge of DUI against the defendant were not admissible and had to be suppressed on the ground that a police officer did not read the defendant's implied consent rights at the scene of the defendant's arrest in a local park; the defendant was not arrested in the local park for DUI, but, instead, was arrested for criminal trespass and it was not until the defendant was taken to a detention center that the defendant was arrested for DUI, at which time the officer read to the defendant the implied consent rights. State v. Jones, 261 Ga. App. 357, 583 S.E.2d 139 (2003).

Because the defendant, who was charged with driving under the influence in violation of O.C.G.A. § 40-6-391, was confused after a police officer read the defendant the implied consent warning,

Notice (Cont'd)

and the defendant failed to respond to the officer's request to administer the chemical breath test, this response was tantamount to a refusal. State v. Adams, 270 Ga. App. 878, 609 S.E.2d 378 (2004).

Pursuant to O.C.G.A. § 40-5-67.1(d.1), a trial court did not err in denying the defendant's motion to suppress based upon the officer's failure to give an implied consent warning before the test was administered because the defendant voluntarily consented to the breath test. Jones v. State, 319 Ga. App. 520, 737 S.E.2d 318 (2013).

Trial court erred when the court granted the defendant's motion to suppress evidence based on the officer adding words to the implied consent notice because the added words did not alter the substance of the notice nor affect the defendant's consent to testing. State v. Fedrick, 329 Ga. App. 75, 763 S.E.2d 739 (2014).

Trial court did not err by refusing to suppress the defendant's blood-test results based on not being under arrest prior to being read Georgia's implied consent notice because, although the defendant's recollection differed from that of the law-enforcement officer, and although defense counsel cross-examined the officer extensively as to alleged inconsistencies in the chronology of events, the officer testified that the officer issued citations to the defendant before reading Georgia's implied consent notice. Chernowski v. State, 330 Ga. App. 702, 769 S.E.2d 126 (2015).

Failure to give notice of implied consent rights. — Trial court did not have to find as a matter of fact that the officer read the implied consent warning before arresting the defendant in order to grant the motion to suppress as the court's grant of the motion was adequately supported by the state's failure to meet the state's burden of proving that the implied consent warning was read after arrest; hence, the state failed to meet the state's burden because the trial court found the officer's testimony lacked credibility and there was no other evidence showing that the warning was given after the defendant's arrest. State v. Stelzenmuller, 285 Ga. App. 348, 646 S.E.2d 316 (2007).

Trial court properly granted the defendant's motion to suppress the results of a state-administered blood test showing that the defendant had marijuana in defendant's system at the time of a fatal car accident as the testing was obtained by an officer without the officer giving the implied consent notice to defendant. State v. Morgan, 289 Ga. App. 706, 658 S.E.2d 237 (2008), cert. denied, No. S08C1017, 2008 Ga. LEXIS 504 (Ga. 2008).

Testing

Constitutionality. — Because a defendant was arrested for driving under the influence under O.C.G.A. § 40-6-391 based on probable cause and the state complied with the implied consent requirements of O.C.G.A. § 40-5-55, the defendant could not complain that drug and alcohol testing violated the search and seizure provisions of the Fourth Amendment or the Georgia Constitution because the implied consent statute allowed for the warrantless compelled testing of bodily fluids based on the existence of probable cause but without proof of the existence of exigent circumstances. Cornwell v. State, 283 Ga. 247, 657 S.E.2d 195 (2008).

Determination of actual consent required. — Based on the United States Supreme Court decision in Missouri v. McNeely, in which the court rejected a per se rule that the natural metabolization of alcohol in a person's bloodstream constitutes an exigency justifying an exception to the U.S. Const., amend. 4's search warrant requirement for nonconsensual blood testing in all driving under the influence cases, the Georgia Supreme Court overruled Strong v. State, 231 Ga. 514 (1973), to the extent that decision holds otherwise. Williams v. State, 296 Ga. 817, 771 S.E.2d 373 (2015).

Field sobriety tests were not "statements" and were not inadmissible under the constitution even if the defendant was in custody and had not been read the defendant's Miranda rights. Morrissette v. State, 229 Ga. App. 420, 494 S.E.2d 8 (1997).

Miranda warnings are not required to

precede field sobriety tests during routine roadside questioning when the detained driver is not under formal arrest but exhibits many physical manifestations of intoxication amounting to probable cause to arrest. Arce v. State, 245 Ga. App. 466, 538 S.E.2d 128 (2000).

Field sobriety tests are not designed to detect the mere presence of alcohol in a person's system, but to produce information on the question whether alcohol is present at an impairing level such that the driver is less safe within the meaning of O.C.G.A. § 40-6-391(a)(1). Werner v. State, 246 Ga. App. 677, 538 S.E.2d 168 (2000).

Because a police officer reasonably suspected that the defendant was intoxicated, the officer had a legal basis for asking the defendant to submit to field sobriety tests without violating the Fourth Amendment; when the defendant refused to take the tests, the evidence was sufficient to find the defendant guilty of driving under the influence to the extent that the defendant was a less safe driver in violation of O.C.G.A. § 40-6-391. Long v. State, 271 Ga. App. 565, 610 S.E.2d 74 (2004).

Possibility that officers might have called a tow truck before giving field sobriety tests did not mean that the defendant was in custody after the truck was called, thereby requiring Miranda warnings before the tests were given; the defendant had not known that the tow truck was called and thus there was no basis to believe the detention was not temporary. Grodhaus v. State, 287 Ga. App. 628, 653 S.E.2d 67 (2007), cert. denied, No. S08C0238 2008 Ga. LEXIS 173 (Ga. 2008).

Trial court did not err in denying the defendant's motion to suppress and motion in limine to exclude the defendant's field sobriety test results because the officers who stopped the defendant's vehicle were not required to advise the defendant of the defendant's Miranda rights prior to the field sobriety testing since although the defendant was not free to leave, the defendant was not handcuffed or placed in the patrol car during the investigation, and in addition to informing the defendant of the reason for the stop, the officers told the defendant that the officers had to wait for a HEAT Unit officer to determine whether the defendant was too impaired to safely operate the defendant's vehicle; based upon the circumstances, the trial court was authorized to find that a reasonable person would believe that the defendant's freedom of action was only temporarily curtailed pending further investigation during the traffic stop, and the delay of approximately twenty-five minutes between the initial stop and the HEAT Unit officer's arrival at the scene did not automatically convert the investigation into a custodial situation. Waters v. State, 306 Ga. App. 114, 701 S.E.2d 550 (2010).

Defendant's motion to suppress evidence obtained on the night of the defendant's arrest for driving under the influence of alcohol in violation of O.C.G.A. § 40-6-391(a)(1) should not have been granted as the defendant was not in custody for purposes of Miranda during the investigation. State v. Mosley, 321 Ga. App. 236, 739 S.E.2d 106 (2013).

Arrest is not prerequisite to chemical test. — Arrest for driving under the influence (DUI) was not a prerequisite for administration of a chemical test. If an officer had reasonable grounds to believe a traffic offense was committed while the defendant was violating DUI laws, a chemical test was proper and admissible. State v. Goolsby, 262 Ga. App. 867, 586 S.E.2d 754 (2003).

Requests for chemical tests. — Amendment to O.C.G.A. § 40-5-67.1, effective August 18, 1995, provides that the new implied consent warning requirement applies only as to "an offense committed on or after April 21, 1995." The applicable law in situations where the request for testing is made regarding an offense occurring before April 21, 1995, includes, inter alia, that a suspect is not entitled to a warning which tracks the exact language of O.C.G.A. § 40-5-67.1; the sufficiency of the warning is to be judged by its content and not its form; and the warning must inform the suspect that the suspect could have an additional test by a qualified person of the suspect's own choosing. State v. Golub, 220 Ga. App. 810, 470 S.E.2d 331 (1996).

Testing (Cont'd)

Trial court did not err in granting the defendant's motion to suppress evidence of a state-administered breath test because the state failed to reasonably accommodate the defendant's request for an independent blood test; when a officer learned that the defendant did not have sufficient cash for a blood test at one of the recommended hospitals the defendant should have been offered the opportunity to use a telephone to make other arrangements, and the officer's unilateral determination that the defendant would be unable to pay for the blood test, without confirming the hospitals' policies regarding payment and without offering to accommodate the defendant in obtaining a method of payment, was insufficient. State v. Davis, 309 Ga. App. 558, 711 S.E.2d 76 (2011).

O.C.G.A. § 40-6-392(a)(4), with regard to an independent chemical test of blood, specifies no deadline for requesting full information, no timetable for supplying the information, and no penalty for the state's failure to produce the information. State v. Thompson, 334 Ga. App. 692, 780 S.E.2d 67 (2015).

Chemical test may be requested despite absence of probable cause. — Chemical test may be requested under the implied consent statute even though the arresting officer lacks probable cause to arrest for substance-influenced driving if the officer has at least reasonable grounds to believe that a violation of O.C.G.A. § 40-6-391 has occurred. Whiteley v. State, 188 Ga. App. 129, 372 S.E.2d 296, cert. denied, 188 Ga. App. 913, 372 S.E.2d 296 (1988).

"Unable" to provide breath sample equals refusal. — In a prosecution for driving under the influence, when the arresting officer testified that the defendant pretended to, but did not, blow into a breath-alcohol testing machine (which had been tested and was certified as working properly), and the defendant testified as to why the defendant was unable to provide an adequate breath sample, the trial court properly admitted evidence of the defendant's "refusal" to submit to a breath test. Walker v. State, 262 Ga. App. 872, 586 S.E.2d 757 (2003).

Calibration of breath test instrument. — There is a presumption in all cases arising under O.C.G.A. § 40-6-391 that the Director of the State Crime Laboratory has caused the instrument used to administer the breath test to be checked periodically for calibration. Sapp v. State, 184 Ga. App. 527, 362 S.E.2d 406 (1987).

Source code for breath test machine not discoverable. — In a driving-while-intoxicated case, the defendant was not entitled to discovery of the "source code" used to program a breath test machine. The defendant did not show that the code was in the possession, custody, or control of the state as required by O.C.G.A. §§ 17-16-1(1) and 17-16-23(b). Hills v. State, 291 Ga. App. 873, 663 S.E.2d 265 (2008).

In a DUI case, the state was not required to disclose the computer source code for the Intoxilyzer 5000 used to measure the defendant's blood alcohol under O.C.G.A. § 40-6-392(a)(4) because the state did not have access to the source code from the Intoxilyzer's Kentucky manufacturer and had not attempted to gain access to the code. Smith v. State, 325 Ga. App. 405, 750 S.E.2d 758 (2013).

Lapse of time between test and violation. — Intoximeter operator's testimony that the operator conducted an intoximeter test on defendant at 2:49 a.m. and that the results were ".14 grams per 100 cc's of blood" was sufficient to sustain the defendant's conviction under paragraph (a)(4) of O.C.G.A. § 40-6-391 even though the operator admitted that the operator was not able to testify as to the defendant's blood alcohol content level at the time of the violation, 40 minutes earlier. Simon v. State, 182 Ga. App. 210, 355 S.E.2d 120 (1987).

Trial court erred in suppressing the defendant's alcohol test results on the ground that there was no evidence that a blood sample was taken within three hours of the accident allegedly caused by the defendant's drunken driving; O.C.G.A. § 40-6-391(a)(5) does not require such test to be administered within three hours of the accident. State v. Allen, 256 Ga. App. 798, 570 S.E.2d 34 (2002).

Breathalyzer machine test results are based on accepted scientific theory or

"rest upon the laws of nature"; and, when the statutory requirements for admissibility are met, the results may be admitted into evidence without expert testimony regarding the scientific theory behind the operation of the test. Brown v. State, 202 Ga. App. 371, 414 S.E.2d 505 (1991), cert. denied, 202 Ga. App. 371, 414 S.E.2d 505 (1992).

When the jury in a first trial "rejected" breath test results, in the sense that the jury concluded the results were insufficient to prove beyond a reasonable doubt that the defendant had the required alcohol concentration, the jury did not necessarily conclude that the breath test results were wholly lacking in probative value, and when the test results were not the only evidence supporting a less safe driver charge, the state was not precluded by the doctrine of collateral estoppel from introducing evidence of the breath test results in a subsequent trial. Sullivan v. State, 235 Ga. App. 768, 510 S.E.2d 136 (1998).

Denial of the defendant's motion to suppress the results of the breath tests was proper when the evidence showed there was probable cause for the defendant's arrest and subsequent testing. Maurer v. State, 240 Ga. App. 145, 525 S.E.2d 104 (1999).

Defendant's conviction for driving under the influence to the extent that the defendant's blood-alcohol content exceeded the legal limit was reversed as the trial court erroneously admitted a photostatic copy of the Intoxilyzer report over a best evidence objection, the state was unable to explain the absence of the original, the state presented no evidence that the state made any effort to locate the original, and former O.C.G.A. § 24-7-20 (see now O.C.G.A. § 24-9-920) did not apply. Lumley v. State, 280 Ga. App. 82, 633 S.E.2d 413 (2006).

Trial court did not err in denying suppression of the results of the defendant's Intoxilyzer 5000 and other field sobriety tests administered upon a defendant's arrest for driving with an unlawful alcohol concentration and driving under the influence of alcohol in violation of O.C.G.A. § 40-6-391 as: (1) the arguments the defendant raised about the officer's ability to manipulate the Intoxilyzer 5000 test went to the weight, and not admissibility of the evidence; (2) the officer was sufficiently trained to administer the tests; (3) the state showed substantial compliance with the required procedures; and (4) no due process violation resulted from the evidence being admitted. Stewart v. State, 280 Ga. App. 366, 634 S.E.2d 141 (2006).

Evidence was sufficient for the trial court to find beyond a reasonable doubt that the defendant was guilty of driving an automobile with an unlawful alcohol concentration in violation of O.C.G.A. § 40-6-391(a)(5) because to carry the state's burden to show that the Intoxilyzer machine on which the defendant's breath was tested was operated with all the machine's electronic and operating components attached and in good working order, the state produced certificates of inspections conducted on the machine before and after the test, and the testimony of the operator that the machine was operating properly when the test was conducted; the machine produced test results showing that the defendant had an alcohol concentration of 0.179 grams. Yeary v. State, 302 Ga. App. 535, 690 S.E.2d 901 (2010).

Only computer printout of intoxilyzer test is discoverable. — Trial court did not err in denying the defendant's motion for disclosure of scientific reports pursuant to O.C.G.A. § 40-6-392(a)(4) because intoxilyzer test results were provided to the defendant, and the defendant's discovery request was overbroad when the defendant sought information far beyond the scope of information to which the defendant was entitled under § 40-6-392(a)(4); the only discoverable information from an intoxilyzer test under § 40-6-392(a)(4) is the computer printout of the test result because unlike the gas chromatography test, which produces data that has to be interpreted by a chemist to determine blood alcohol level, an intoxilyzer does not produce raw data but rather prints out the actual test result showing the person's blood alcohol level, which means that the machine computes the test result. Stetz v. State, 301 Ga. App. 458, 687 S.E.2d 839 (2009).

Evidence of field sobriety test harmless. — Conviction under O.C.G.A.

Testing (Cont'd)

§ 40-6-391(a)(5) does not require the state to prove impaired driving ability. Thus, even if the results of the field sobriety tests should have been excluded, the trial court's failure to exclude the results was harmless error when the breath test results, which were not challenged on appeal, provide sufficient proof of the per se violation. Partridge v. State, 266 Ga. App. 305, 596 S.E.2d 778 (2004).

Defendant was not harmed by the trial court's denial of a motion to exclude the results of the defendant's horizontal gaze nystagmus (HGN) test from the trial for a charge of driving under the influence of alcohol to the extent the defendant was a less safe driver, O.C.G.A. § 40-6-391(a)(1), because the record showed that the HGN test evidence did not contribute to the verdict. The trial court found that the administration of the field sobriety tests by the officer were incorrect, but noted that the court had given the results of those tests little or no weight. Cash v. State, 299 Ga. App. 303, 682 S.E.2d 607 (2009), cert. denied, No. S09C1984, 2010 Ga. LEXIS 50 (Ga. 2010).

Correlation between horizontal gaze nystagmus test and blood alcohol content. — At a trial for a violation of O.C.G.A. § 40-6-391(a)(1), an officer's testimony as to the likelihood of blood/alcohol concentration based on certain results on the horizontal gaze nystagmus test was relevant since field sobriety test results were relevant and there was nothing inflammatory or misleading about the evidence. Webb v. State, 277 Ga. App. 355, 626 S.E.2d 545 (2006).

Breath test evidence irrelevant. — In defendant's prosecution for driving while under the influence of alcohol to the extent that the defendant was a less safe driver, the defendant's blood alcohol was irrelevant so admission of the results of a breath test, even if erroneous, was harmless error and the defendant's conviction would not be reversed on the ground of admission of that evidence. Worthman v. State, 266 Ga. App. 208, 596 S.E.2d 643 (2004).

Breath test admissible. — Trial court properly denied the defendant's motion in limine, admitting an Intoxilyzer 5000's certificate of inspection as nontestimonial, as well as the defendant's breath test results; even if error was presented, it was harmless since the defendant was acquitted of driving under the influence with an unlawful blood alcohol concentration. Moreover, the incident report was properly admitted under the rule of completeness as the trial court was authorized to find that it was necessary for the state to admit all relevant parts of the incident report in evidence to show that the omissions noted by the defendant were not so material as to have effected the accuracy of the report. Phillips v. State, 289 Ga. App. 281, 656 S.E.2d 905 (2008).

Trial court did not abuse the court's discretion by denying the defendant's motion for mistrial after the jury accidentally heard the numerical result of an Alco-Sensor test because the trial court gave the jury a curative instruction, and the totality of the evidence was sufficient by itself to support the jury's finding that the defendant was guilty beyond a reasonable doubt of driving under the influence, O.C.G.A. § 40-6-391(k)(1). Travis v. State, 314 Ga. App. 280, 724 S.E.2d 15 (2012).

Court of appeals did not err in reversing an order granting the defendant's motion to suppress evidence of the state's breath test results because the procedures followed by the state comported with the fundamental fairness required by due process; the police officer delivered to the defendant the required implied consent notice in an accurate and timely manner, thereby informing the defendant of the right to an independent test under O.C.G.A. § 40-6-392(a)(3). Thus, the state was under no constitutional duty to immediately inform the defendant of the results of the state administered breath test. Padidham v. State, 291 Ga. 99, 728 S.E.2d 175 (2012).

Breath test admissible despite delay. — Breath test results were admissible at a trial for a violation of O.C.G.A. § 40-6-391(a)(1) and (5) as the police officer's notification to the defendant of the implied consent rights under O.C.G.A. § 40-6-392(a)(4) was timely in the circumstances; although the defendant was placed in the police car and not given the

notification for 18 minutes, the notice was timely because the officer was attending to the passenger and ensuring that the passenger was unharmed and had a safe way to get home and the officer was transporting possession of the vehicle for purposes of impounding the vehicle. Naik v. State, 277 Ga. App. 418, 626 S.E.2d 608 (2006).

Breath test admissible despite initial refusal. — Trial court was not required to suppress evidence of the defendant's breath test results, although it was clear that the defendant refused to take a breath test when asked at the scene, as the defendant rescinded that refusal by agreeing to take the test at the police station. Stapleton v. State, 279 Ga. App. 296, 630 S.E.2d 769 (2006).

At the time of a defendant's arrest for DUI, the defendant refused to submit to a breath test; after the officer gave the defendant the chance to rescind this refusal, the defendant agreed to take the test in the absence of any threats or inducements. As the officer did not act unreasonably in attempting to induce the defendant to rescind the initial refusal, the test results were admissible. State v. Quezada, 295 Ga. App. 522, 672 S.E.2d 497 (2009).

Refusal not evidence of the presence of alcohol. — Jury charge that a DUI defendant's refusal to submit to a blood alcohol test could create an inference that the test would show the presence of alcohol which impaired the defendant's driving was plain error, requiring a new trial, because the charge shifted the burden of proof to the defendant, requiring the defendant to rebut the inference that the defendant was an impaired driver. Wagner v. State, 311 Ga. App. 589, 716 S.E.2d 633 (2011).

Use of terms "percent" or "grams." — Although the intoximeter test results in this case were expressed in numbers which represent the percentage of alcohol in the blood by weight, or grams, those results frequently have been referred to without qualifying the results with either the term "percent" or the term "grams," and are commonly understood to mean the amount of alcohol in a certain weight of the subject's blood, expressed as a percentage. Page v. State, 202 Ga. App. 828, 415 S.E.2d 487, cert. denied, 202 Ga. App. 907, 415 S.E.2d 487 (1992).

Denial of pretrial intoximeter inspection motion harmless. — Acquittal under paragraph (a)(4) (now (a)(5)) of O.C.G.A. § 40-6-391 precluded any harm in denying the defendant's motion for pretrial inspection of an intoximeter device and was no basis for reversal of convictions under paragraph (a)(1) of O.C.G.A. §§ 40-6-391 and 3-3-23(a)(2). Gilbert v. State, 262 Ga. 840, 426 S.E.2d 155 (1993).

Uncertified photocopies of a certificate of inspection for an Intoxilyzer 5000 were admissible after a police officer testified at trial that the officer personally made the photocopies of the original certificates. Wright v. State, 238 Ga. App. 442, 519 S.E.2d 461 (1999).

Results of defendant's intoximeter test were admissible because the arresting officer advised the defendant of the defendant's rights under the implied consent law as close in proximity to the instant of arrest as the circumstances warranted, since after the officer stopped the defendant and put the defendant in the patrol car, the officer got a call and went after another vehicle, picked up the driver and then took both of the drivers to the police station and read the defendant the implied consent rights while the drivers were in the patrol car. Fore v. State, 180 Ga. App. 196, 348 S.E.2d 579 (1986).

Blood test results were admissible for driving offenses. — In a prosecution for driving under the influence of marijuana and driving under the influence of drugs to the extent of being a less safe driver, even though the hospital consent form signed by the defendant was entitled "Request for Alcohol Testing," the test results, which were positive for marijuana, were admissible since the defendant had earlier consented to testing after receiving the required implied consent notice. State v. Lewis, 233 Ga. App. 390, 504 S.E.2d 242 (1998).

Trial court did not err in denying a motion to suppress evidence of the blood-alcohol results obtained after the defendant's vehicle was stopped and it was determined that the defendant was driving under the influence; the defendant consented to such a test as a driver using

Testing (Cont'd)

a vehicle on the Georgia highways and the delay in administering the implied consent warning was due to the defendant's drunken condition and difficult behavior. Cain v. State, 274 Ga. App. 533, 617 S.E.2d 567 (2005).

Although the state was unable to prove that the defendant's blood-alcohol content exceeded the legal limit within three hours of driving, as required by O.C.G.A. § 40-6-391(a)(5), the jury was authorized to consider the blood test results in connection with the charge that the defendant was a less safe driver. Furlow v. State, 276 Ga. App. 332, 623 S.E.2d 186 (2005).

Defendant's argument, that the officer advised the defendant that the defendant was under arrest for driving under the influence and not for a violation of O.C.G.A. § 40-6-391(a)(6) and that the defendant never consented to the testing of the defendant's blood for the presence of drugs, failed; nothing in O.C.G.A. § 40-5-55 or O.C.G.A. § 40-6-392 required the officer to tell the defendant that the defendant was under arrest for a drug offense in order for the implied consent to be valid. Meiklejohn v. State, 281 Ga. App. 712, 637 S.E.2d 117 (2006).

Refusal to submit to breath test as search incident to arrest, after warning, was admissible. — In the defendant's DUI trial, O.C.G.A. § 40-6-391(a)(1), because a breath test was permitted as a search incident to the defendant's DUI arrest, the defendant's refusal to take the breath test was not the exercise of the constitutional right against unreasonable searches and seizures, and evidence of the defendant's refusal was properly admitted under O.C.G.A. § 40-5-67.1(b). Cherry v. State, No. A17A2085, 2018 Ga. App. LEXIS 116 (Feb. 21, 2018).

Results of chemical tests administered to defendant were inadmissible since the crime laboratory report on the tests did not state on the report's face the exact numerical quantity of the drugs found in the defendant's blood and urine. Box v. State, 187 Ga. App. 260, 370 S.E.2d 28 (1988).

Trial court erred in denying the defendant's motion to suppress the results of a blood test the defendant consented to after a state trooper read defendant the implied consent notice under O.C.G.A. § 40-5-67.1(b)(2), which informed the defendant that Georgia law required the defendant to submit to chemical testing, that the refusal to submit to testing would lead to the suspension of the defendant's driving privileges, and that the defendant's refusal might be offered into evidence against the defendant at trial; the defendant was not suspected of violating O.C.G.A. § 40-6-391 when the defendant was advised of the implied consent law, O.C.G.A. § 40-5-55(a) (which was unconstitutional), and the defendant's consent was invalid. Cooper v. State, 277 Ga. 282, 587 S.E.2d 605 (2003).

Suppression of chemical breath test results were required because after the defendant failed to respond to the officer's request to administer the chemical breath test and because such a response was tantamount to a refusal, when the defendant was then taken to a detention center, it was error to administer the test without the defendant being asked to consent again or without reading the defendant's implied consent warnings pursuant to O.C.G.A. § 40-5-67.1. State v. Adams, 270 Ga. App. 878, 609 S.E.2d 378 (2004).

Trial court erred in denying a motion to suppress the defendant's chemical test results that were obtained under the implied consent statute, O.C.G.A. § 40-5-55(a), as the defendant was not arrested after a fatal crash for any offense in violation of O.C.G.A. § 40-6-391 nor was there probable cause to arrest the defendant for any such violation. Costley v. State, 271 Ga. App. 692, 610 S.E.2d 647 (2005).

State-administered test results improperly admitted. — Defendant's conviction for underage driving under the influence (blood alcohol content) was reversed as the trial court improperly denied the defendant's motion in limine premised on the arresting officer's failure to provide the defendant with an independent chemical test of the defendant's blood after defendant plainly requested one; that the defendant's request for a blood

test was made prior to the defendant's arrest and the giving of the implied consent warnings was not determinative under these facts and the officer's failure to inquire into the defendant's request for an independent test required the suppression of the results of the state-administered test. McGinn v. State, 268 Ga. App. 450, 602 S.E.2d 209 (2004).

Trial court did not err in denying defendant's motion to exclude state-administered test results. — Trial court did not err in denying the defendant's motion to exclude the results of a state-administered breath test because a state trooper's initial overstatement of the legal blood alcohol concentration, which the trooper corrected immediately, was so not misleading that it rendered the defendant incapable of making an informed decision about whether to submit to chemical testing; the videotape recording demonstrated that before the trooper read the implied consent notice, the defendant told the trooper that the defendant knew that 0.08 grams was the legal limit applicable to individuals over the age of 21. Travis v. State, 314 Ga. App. 280, 724 S.E.2d 15 (2012).

Trial court properly denied the defendant's motion in limine to exclude evidence that the defendant refused chemical testing based on the testimony of a deputy that while in the defendant's hospital room, a ticket was written for drunk driving and the defendant was advised of the custodial arrest; thus, there was no error in the trial court's determination that a reasonable person in the defendant's position would not think that they were free to leave at the time the deputy read the implied consent warnings. Plemmons v. State, 326 Ga. App. 765, 755 S.E.2d 205 (2014).

Failure to allow independent urine test. — Judgment of conviction entered against the defendant for driving under the influence of alcohol to the extent it was less safe to drive had to be reversed as the trial court erred in admitting the results of a breath test since the defendant also requested that an independent urine test be performed as was the defendant's right under the law, and since that right was not honored, the law dictated that the breath test was not admissible to support the defendant's conviction. Johnson v. State, 261 Ga. App. 633, 583 S.E.2d 489 (2003).

Trial court erred in not suppressing the results of the state-administered breath test that the defendant gave after the defendant was arrested for driving under the influence of alcohol; the defendant exercised the defendant's right to also request that an additional test be performed by asking that the defendant be given an independent urine test, and since that right was not honored, the state-administered breath test was not admissible to support the defendant's conviction. Johnson v. State, 261 Ga. App. 633, 583 S.E.2d 489 (2003).

Admissibility of results of test performed pursuant to medical treatment. — When the blood-alcohol test was performed pursuant to the medical treatment of the plaintiff and recorded in the regular course of hospital business, and the blood-alcohol test was not administered for the purpose of determining whether the plaintiff violated O.C.G.A. § 40-6-391, it was not necessary that the defendant establish compliance with that statute to render the test results admissible; the blood test results thus recorded in the regular course of hospital business were admissible under former O.C.G.A. § 24-3-14 (see now O.C.G.A. § 24-8-803). Bynum v. Standard (Chevron) Oil Co., 157 Ga. App. 819, 278 S.E.2d 669 (1981).

Trial court did not err in denying the defendant's motion for an independent expert to examine the intoximeter that was used to test the defendant's breath because any testing by such an expert would not prove that the machine gave an inaccurate reading for the defendant since the original test condition, including the defendant's own physical condition, could not have been duplicated. Blanos v. State, 192 Ga. App. 835, 386 S.E.2d 714 (1989).

Trial court did not err in admitting the results of a blood test administered to the defendant in the course of medical treatment as the right to refuse a state-administered test was entirely independent of the state's prerogative, pursuant to a warrant obtained in accordance with the Fourth Amendment, to obtain

Testing (Cont'd)

test results as other evidence of a crime. Rylee v. State, 288 Ga. App. 784, 655 S.E.2d 239 (2007).

Admissibility of blood test. — State showed to a reasonable certainty that the blood tested at a lab was the same as that drawn from the defendant, notwithstanding a discrepancy between the testimony of the person who drew the blood and the person who tested the blood as to the color of the stopper on a sealed vial. Brown v. State, 201 Ga. App. 441, 411 S.E.2d 286 (1991).

Because the police had probable cause to believe that the defendant was impaired, in violation of O.C.G.A. § 40-6-391, when the defendant caused a vehicle accident that resulted in serious injury of one vehicle occupant and the death of another occupant, based on the defendant's appearance and statements made to medical personnel, the trial court found that the implied consent notice was properly administered and suppression of the state-administered chemical tests was denied; although the defendant was not under arrest at the time the implied consent notice was read to the defendant, given the serious injuries resulting from the accident and the fact that there was probable cause to believe the defendant was driving while impaired, the consent to testing was implied pursuant to O.C.G.A. § 40-5-55. Ellis v. State, 275 Ga. App. 881, 622 S.E.2d 89 (2005).

In a DUI per se case, the trial court did not err in denying the defendant's motion to suppress the results of a chemical testing of the defendant's blood because the defendant freely and voluntarily consented to the test as the defendant gave an affirmative response to the officer's question pursuant to the implied consent notice; the officer did not employ shows of force; and, at the fire station, the defendant reaffirmed the defendant's assent before the medic drew the defendant's blood. Jacobs v. State, 338 Ga. App. 743, 791 S.E.2d 844 (2016).

Inadmissibility of blood test. — When an officer failed to read appropriate warnings to the defendant, it was error to admit results of the defendant's breath tests, even though the defendant had stipulated to the facts that would be demonstrated by the results of the tests, i.e., that the defendant had a blood alcohol level of .207. Richards v. State, 269 Ga. 483, 500 S.E.2d 581 (1998), reversing Richards v. State, 225 Ga. App. 777, 484 S.E.2d 683 (1997).

Horizontal gaze nystagmus test was a valid indication of the presence of alcohol, the results of which were admissible. Manley v. State, 206 Ga. App. 281, 424 S.E.2d 818 (1992).

Officer was properly permitted to testify that, in the officer's opinion, the defendant was under the influence of alcohol to the extent that it was less safe for the defendant to drive based on the results of the horizontal gaze nystagmus test the officer administered. Sieveking v. State, 220 Ga. App. 218, 469 S.E.2d 235 (1996).

Evidence regarding the officer's training and experience in administering field sobriety tests and the procedures the officer followed in administering horizontal gaze nystagmus tests justified admission of the results of the defendant's tests. Tuttle v. State, 232 Ga. App. 530, 502 S.E.2d 355 (1998).

There was no merit to a defendant's argument that the results of a horizontal gaze nystagmus test should not have been admitted because an officer did not perform the test properly. The officer substantially performed the test in accordance with the guidelines, and the defendant showed six clues of impairment. Hann v. State, 292 Ga. App. 719, 665 S.E.2d 731 (2008).

Defendant, who had cerebral palsy, failed to show that the results of a horizontal gaze nystagmus test performed on the defendant were unreliable and therefore inadmissible due to the defendant's medical condition. Moreover, the officers had sufficient other evidence to arrest the defendant for driving under the influence, including erratic driving, an odor of alcohol, the defendant's admission that the defendant had been drinking, and the results of an alco-sensor test. Harris v. State, 301 Ga. App. 775, 689 S.E.2d 91 (2009).

Arresting officer's performing one of the three evaluative components of the hori-

zontal gaze nystagmus (HGN) test (the smooth pursuit component) "a little quickly" did not render the entire test inadmissible, given evidence of the officer's experience at giving the test, that the defendant was a proper subject, and that the other components were correctly performed. Parker v. State, 307 Ga. App. 61, 704 S.E.2d 438 (2010).

In the defendant's DUI trial, O.C.G.A. § 40-6-391(a)(1), horizontal gaze nystagmus (HGN) test was properly admitted, although the defendant stated the defendant had taken Prozac, which would influence the results, because the evidence was relevant as to whether the defendant showed signs of impairment, O.C.G.A. § 24-4-401, and the defendant remained free to attempt to persuade the factfinder that the testimony be afforded little weight under the circumstances. Cherry v. State, No. A17A2085, 2018 Ga. App. LEXIS 116 (Feb. 21, 2018).

Passive alcohol sensor. — Trial court properly convicted the defendant of driving under the influence and related charges after a bench trial, and no error occurred with regard to the trial court failing to suppress the evidence gathered by the arresting officer's use of a passive alcohol sensor; the defendant was not harmed by any alleged error since the state never offered any of the evidence directly gathered by the sensor for admission during trial. Sultan v. State, 289 Ga. App. 405, 657 S.E.2d 311 (2008).

Although a trial court should have suppressed the results of an improperly performed horizontal gaze nystagmus (HGN) test, with regard to defendant's convictions for driving under the influence offenses, such error was harmless since the trial court specifically stated on the record that the trial court did not consider the HGN test; therefore, the test did not contribute to the verdict in the case. Sultan v. State, 289 Ga. App. 405, 657 S.E.2d 311 (2008).

Injuries' impact on field sobriety test admissibility. — Admissibility of field sobriety tests was not affected by the defendant's injuries at the time the tests were given. Morrissette v. State, 229 Ga. App. 420, 494 S.E.2d 8 (1997).

Error in excluding HGN test results. — Officer's comment to the defendant that "I'm just going to shut your car door so some other drunk doesn't take it off," was insufficient to cause a reasonable person to believe that the person's detention would not have been temporary, and a trial court erred in excluding on the basis of a Miranda violation evidence of the results of roadside sobriety tests performed on the defendant thereafter; evidence concerning the officer's improper administration of a horizontal gaze nystagmus (HGN) test did not mandate the exclusion of the test results, and the trial court erred in excluding the results of the HGN evaluation. State v. Pierce, 266 Ga. App. 233, 596 S.E.2d 725 (2004).

Miranda warnings before administering field sobriety tests. — Defendant's suppression motion was properly denied as an officer was not required to give the defendant Miranda warnings before administering field sobriety tests as the officer did not make any statement that would cause a reasonable person to believe that the defendant was under arrest and not temporarily detained during an investigation. Moody v. State, 273 Ga. App. 670, 615 S.E.2d 803 (2005).

Because the Miranda requirements were not triggered until the defendant's arrest, and after performance of the field sobriety tests, suppression of the test results was not required. Doyle v. State, 281 Ga. App. 592, 636 S.E.2d 751 (2006).

Trial court did not err by denying the defendant's motion to suppress or motion for new trial with regard to the defendant's convictions for driving under the influence because it was not necessary for the stopping officer to advise the defendant of the Miranda rights prior to administering the field sobriety tests since the defendant was not under arrest. Officers are not required to provide warnings under Miranda prior to administering field sobriety tests during a traffic stop unless the suspect is in custody. Appling v. State, 320 Ga. App. 379, 739 S.E.2d 816 (2013).

Evidence of the defendant's refusal to submit to voluntary field sobriety tests was admissible, and was not testimonial in nature and thus subject to the Fifth Amendment protection against self-incrimination as a refusal to submit to the tests was not testimonial in nature,

Testing (Cont'd)

and the mere fact that the defendant refused to submit to a blood test was not subject to the privilege against self-incrimination since no impermissible coercion was involved, regardless of the form of refusal. Ferega v. State, 286 Ga. App. 808, 650 S.E.2d 286 (2007), cert. denied, 129 S. Ct. 195, 172 L.Ed.2d 140 (2008).

Probable cause for arrest existed. — Trial court properly convicted the defendant of driving under the influence and related charges after a bench trial because probable cause existed to arrest the defendant based on the officer's observations of: (1) the defendant having slurred speech and red, watery eyes; (2) having a positive breath test result; (3) having the smell of alcohol coming from the defendant's vehicle; and (4) the defendant admitting to drinking. Sultan v. State, 289 Ga. App. 405, 657 S.E.2d 311 (2008).

Based on the totality of the circumstances, an officer had probable cause to arrest the defendant for driving under the influence; the evidence showed that the officer, while investigating a one-vehicle accident in which the defendant's truck ran off the road, detected the odor of alcohol when talking with the defendant, and observed that the defendant's speech was mumbled and slow, and that the defendant's eyes were bloodshot. The defendant also initially gave the officer a credit card instead of a license, and admitted to having one or more drinks. Cash v. State, 299 Ga. App. 303, 682 S.E.2d 607 (2009), cert. denied, No. S09C1984, 2010 Ga. LEXIS 50 (Ga. 2010).

Probable cause for testing found. — Under the Fourth Amendment, an officer had probable cause to have a defendant submit to an alco-sensor test. The officer had validly stopped the defendant's car after a passenger littered, and the officer saw open beer bottles in the car and smelled alcohol in the car even after the bottles and the passenger had been removed. Hinton v. State, 289 Ga. App. 309, 656 S.E.2d 918 (2008).

There was probable cause under the Fourth Amendment for an officer to request a blood test under O.C.G.A. § 40-5-55 from a defendant suspected of driving under the influence when the defendant showed four out of six signs of impairment on a horizontal gaze nystagmus test, admitted to drinking, smelled of alcohol, had a positive alco-sensor result, and had bloodshot eyes. The fact that an officer did not believe that there was probable cause to request the blood test did not require a different finding as the scope of a person's Fourth Amendment rights was determined objectively. State v. Preston, 293 Ga. App. 94, 666 S.E.2d 417 (2008).

Because plaintiff arrestee's initial blood alcohol level had been high enough for the initial O.C.G.A. § 40-6-391(a)(5) per se driving under the influence charge, but tests a year later by defendant crime lab employees resulted in lower levels, the lab employees were entitled to qualified immunity on the arrestee's Sixth Amendment compulsory process claim, which alleged the lab employees failed to disclose the lower results. The test of materiality had to be applied post-trial with the arrestee having to show that the suppression of the evidence undermined confidence in the outcome of the trial, and since the state judge and jury had found the arrestee's evidence and arguments convincing enough that the arrestee was not convicted of even the lesser DUI charge under O.C.G.A. § 40-6-391(a)(1), any additional testimony in the arrestee's favor would not have achieved a better result; thus, the materiality test had not been satisfied and the Sixth Amendment claim failed. Kjellsen v. Mills, 517 F.3d 1232 (11th Cir. 2008).

Denying defendant crime lab employees qualified immunity on plaintiff arrestee's Fourth Amendment malicious prosecution claim for nondisclosure of later blood alcohol level test results was reversed because: (1) the arrestee's blood alcohol level had been high enough for the initial O.C.G.A. § 40-6-391(a)(5) per se driving under the influence charge; and (2) it was undisputed that blood alcohol levels often decreased over time; thus, the lower level test results a year later did not negate probable cause. Kjellsen v. Mills, 517 F.3d

1232 (11th Cir. 2008).

Challenging test given by expert. — Trial court did not abuse the court's discretion by sequestering the defendant's expert witness with regard to challenging the officer's method of administering the horizontal gaze nystagmus test because the expert did not observe the actual test, thus, any opinion would have been based on the officer's testimony or on hypothetical questions posed by counsel and the defendant had previously challenged the officer's method of administering the test in a motion to suppress and had the benefit of that testimony prior to trial. Puckett v. State, 321 Ga. App. 785, 743 S.E.2d 466 (2013).

Request for an independent test. — After the defendant was convicted of driving under the influence-per se, the defendant's motion to suppress the results of a state-designated breath test was properly denied because, after placing the defendant under arrest and reading the defendant the Georgia implied consent notice, the trooper asked the defendant if the defendant was willing to submit to a chemical test of the defendant's breath, but the defendant responded by saying that the defendant would take a urine test; the trooper then explained that the trooper was asking the defendant to submit to a breath test and the defendant agreed to submit to that test; and the defendant never requested an independent test of the defendant's urine, blood, or breath. Farmer v. State, 335 Ga. App. 679, 782 S.E.2d 786 (2016).

Evidence

Construed with O.C.G.A. § 40-6-394. — State was not required to prove that a defendant was committing any traffic violation or unsafe act, in addition to a violation of paragraph (a)(4) (now (a)(5)) of O.C.G.A. § 40-6-391; it is sufficient that the evidence showed that the defendant's violation of that section caused an injury such as described in O.C.G.A. § 40-6-394, which specifies various types of serious injuries. Jones v. State, 195 Ga. App. 569, 394 S.E.2d 387 (1990).

Evidence was sufficient to convict the defendant of serious injury by vehicle because the defendant told a police officer and a nurse that the defendant had been driving the vehicle; although the defendant later recanted that admission, the jury was authorized to believe the defendant's earlier statements; the victim testified about the injuries to the victim's leg, that it was essentially useless for months, and that the victim still used leg braces; and the state met the state's burden of establishing a causal connection between the defendant's violation of the driving under the influence statute and the serious injury by vehicle statute as the defendant admitted to driving the car and to drinking in the car. Fitzpatrick v. State, 339 Ga. App. 135, 793 S.E.2d 446 (2016).

Blood-alcohol content deemed direct evidence. — When the defendant contended the trial court erred by denying the defendant's request to charge the definitions of "direct" and "circumstantial evidence," arguing that the evidence relating to the percentage of alcohol in the defendant's blood at the time the defendant was driving is circumstantial because the percentage of alcohol in a person's breath, rather than the percentage of alcohol in the blood, is specified in paragraph (a)(4) of O.C.G.A. § 40-6-391, it was held that O.C.G.A. § 40-6-392(a) makes it clear that a breath test is used to determine the amount of alcohol in a person's blood, and since there was direct evidence that the defendant was driving an automobile on a public highway at 1:52 a.m., and direct evidence that 32 minutes later the intoximeter test registered a blood-alcohol content of .15, whether or not the evidence that the defendant was driving with .15 percent alcohol in the defendant's blood was circumstantial was immaterial, because, when there is some direct evidence involved in the case, it is not error to fail to charge on circumstantial evidence. Herndon v. State, 187 Ga. App. 313, 370 S.E.2d 164 (1988) (decided prior to 1988 amendment).

Breath testing instrument inspection certificate admissible. — In a defendant's prosecution for driving under the influence under O.C.G.A. § 40-6-391, the inspection certificate for the instrument used to conduct the defendant's breath test under O.C.G.A. § 40-6-392(f) was properly admitted because it was not

Evidence (Cont'd)

testimonial hearsay and did not violate the defendant's rights of confrontation; it was a business record that was not made in an investigatory or adversarial setting or generated in anticipation of the prosecution of a particular defendant. Rackoff v. State, 281 Ga. 306, 637 S.E.2d 706 (2006).

Manner of driving may be considered when there is evidence that the defendant has been drinking. Turner v. State, 95 Ga. App. 157, 97 S.E.2d 348 (1957) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Statement by witness that automobile "operated" by defendant. — Answer by state trooper that automobile was "operated" by the defendant accused of drunken driving was not subject to objection as a conclusion when the answer was in reference to facts observed by the witness when the trooper arrived at the scene. Echols v. State, 104 Ga. App. 695, 122 S.E.2d 473 (1961) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Blood alcohol evidence irrelevant. — Evidence of defendant's blood alcohol content was irrelevant to defendant's prosecution under the "less safe" provisions of O.C.G.A. § 40-6-391(a)(1). Evans v. State, 253 Ga. App. 71, 558 S.E.2d 51 (2001).

Any error in the admission of the defendant's hospital test results was harmless after the officer testified that, based on the accident, speaking with the defendant, and the odor of alcoholic beverage coming from the defendant's breath, the officer felt that the defendant was a less-safe driver when an accident occurred; even without the hospital's tests, the evidence of guilt was overwhelming in light of the manner of the crash, the defendant's admission to driving the car, and the officer's observations of the defendant's demeanor. King v. State, 272 Ga. App. 8, 611 S.E.2d 692 (2005).

Trial court did not abuse the court's discretion in excluding the evidence of the defendant's blood test obtained after being released from jail, which was negative for marijuana, because the state tried the defendant only for violating O.C.G.A. § 40-6-391 by driving under the influence of alcohol, and the blood test shed no light on the defendant's alcohol impairment; thus, it was properly determined irrelevant by the trial court. Smith v. State, 324 Ga. App. 100, 749 S.E.2d 395 (2013).

Denial of motion in limine not error. — Trial court did not err in denying the defendant's motion in limine to exclude a failure to take a breath test and other evidence in a criminal trial on a charge of driving under the influence of alcohol to the extent that the defendant was a less safe driver, in violation of O.C.G.A. § 40-6-391, as there was probable cause to arrest the defendant without such tests based on the defendant's conduct and the officer's observations; the defendant was weaving in and out of lanes, fumbled with the bus controls when asked to turn off the vehicle, the defendant exited the vehicle in an unsteady manner, and the officer observed that the defendant spoke in a slow and confused way, and that the defendant smelled of alcohol. Lewis v. State, 276 Ga. App. 248, 622 S.E.2d 912 (2005).

Trial court did not err in denying the defendant's motion in limine to suppress the results of a state-administered breath test as an officer's implied consent warning was substantively accurate so as to allow the defendant to make an informed decision about whether to consent to the test, and solely referred to the defendant's privilege to drive within the state of Georgia with a Georgia driver's license, and not the defendant's Pennsylvania license; further, the officer's initial statement was nothing more than an attention-grabbing preface, and as such did not constitute a substantive change that altered the meaning of the implied consent notice thereafter recited to the defendant. McHugh v. State, 285 Ga. App. 131, 645 S.E.2d 619 (2007).

Trial court properly denied defendant's motion in limine and upheld defendant's conviction for driving under the influence as the traffic stop of his vehicle was justified since the evidence showed that he committed a traffic offense by making an abrupt turning maneuver in his vehicle to evade a roadblock, which was a sufficiently suspicious and deliberately furtive response to the road check so as to give

the officer at least a reasonable suspicion of defendant's criminal activity and to warrant further investigation. Stinson v. State, 318 Ga. App. 351, 733 S.E.2d 390 (2012).

Evidence sufficient to justify brief investigatory stop. — Merely observing a can of beer in the hand of one who is otherwise driving a car or operating a boat in a safe manner does, in and of itself, constitute an articulable suspicion that a violation of O.C.G.A. § 40-6-391 or O.C.G.A. § 52-7-12 may be occurring so as to authorize a brief investigatory stop. State v. Baker, 197 Ga. App. 1, 397 S.E.2d 554 (1990).

Denial of a motion to suppress was not error because the police officer who pulled the defendant over had probable cause to believe that the defendant was a less safe driver because the defendant was all over the road, smelled of alcohol, and threw up all over the place and the officer could have arrested the defendant under O.C.G.A. § 40-6-391, rather than wait for a DUI officer. Abrahamson v. State, 276 Ga. App. 584, 623 S.E.2d 764 (2005).

Because the defendant's apparent violation of O.C.G.A. § 40-6-16(a) gave the investigating officer a reasonable and articulable suspicion to stop the defendant and inquire further, the trial court erred in granting the defendant's motion to suppress a refusal to take a breath test in connection with DUI charges; moreover, the trial court erroneously concluded that the defendant could have had an innocent explanation for a last-minute swerve to avoid hitting the officer's patrol car as the issue went to the question of guilt or innocence and was not the dispositive question on a motion to suppress. State v. Rheinlander, 286 Ga. App. 625, 649 S.E.2d 828 (2007).

Trial court erred by granting the defendant's motion to suppress the evidence of a DUI violation obtained during the traffic stop of the defendant's vehicle by committing clear error in finding that the officer lacked a reasonable, articulable suspicion to stop the defendant's car as the officer had received a radio dispatch and had obtained information from a fast-food restaurant employee that suspicious persons in a vehicle were banging on the windows and cursing at the fast-food restaurant. Such actions involved engaging in disorderly conduct, which was an allegation of a crime that gave the officer grounds for conducting a brief traffic stop of the defendant's vehicle for investigatory purposes. State v. Melanson, 291 Ga. App. 853, 663 S.E.2d 280 (2008).

Defendant's conviction for DUI per se in violation of O.C.G.A. § 40-6-391(a)(5) was upheld. The traffic stop of the defendant was proper because the officer observed the defendant driving erratically, including sudden braking and weaving within the lane, even though the defendant was acquitted of failure to operate the vehicle within a single lane, O.C.G.A. § 40-6-48(1). Ivey v. State, 301 Ga. App. 796, 689 S.E.2d 100 (2009).

Trial court did not err by denying a motion to suppress because the evidence supported the trial court's conclusion that a police officer, who responded to a report of a fight in a parking lot, had an articulable suspicion to stop the defendant when the officer saw the defendant driving fast from the parking lot, and investigate further the defendant's connection to the reported fight. Hines v. State, 308 Ga. App. 299, 707 S.E.2d 534 (2011).

With regard to the defendant's conviction for driving under the influence, the trial court properly denied the defendant's motion to suppress because the officer had a reasonable, articulable suspicion to detain the defendant upon finding the defendant asleep behind the wheel of a vehicle with the engine running, and the defendant was unresponsive when the officer initially shined the officer's flashlight inside the vehicle. Pierce v. State, 319 Ga. App. 721, 738 S.E.2d 307 (2013).

After the defendant was convicted of driving under the influence per se, the trial court did not err in denying the defendant's motion to suppress evidence obtained during a traffic stop that resulted in the defendant's arrest as the trial court did not clearly err in finding that the officer had reasonable suspicion to initiate the investigatory stop based on a traffic violation because some evidence supported the trial court's findings that the officer's testimony was credible and

Evidence (Cont'd)

that the defendant crossed the fog line. Phillips v. State, 338 Ga. App. 231, 789 S.E.2d 421 (2016).

Opportunity to take independent test. — Because the trial court found that the arresting officer made a reasonable effort to accommodate the defendant's request for an independent blood test pursuant to O.C.G.A. § 40-6-392(a)(3), the court did not err in denying the defendant's motion to suppress the blood test. Whittle v. State, 282 Ga. App. 64, 637 S.E.2d 800 (2006).

Defendant's right to an independent blood alcohol content test under O.C.G.A. § 40-6-392(a)(3) was not invoked by asking the officer if the defendant could blow again because the defendant admitted that, at the time, the defendant did not know there was a difference between an independent test and the state's test and that the defendant was satisfied when the officer said that the defendant could blow again down at the station. Waterman v. State, 299 Ga. App. 630, 683 S.E.2d 164 (2009).

Request for an independent test. — Allegedly impaired driver's statement that the driver wanted "more tests" could not reasonably be construed as a request for an independent chemical test of the driver's own choosing because the driver made the request to the officer immediately after being given field sobriety tests. Therefore, the results of the state-administered test were properly admitted at trial. Avery v. State, 311 Ga. App. 595, 716 S.E.2d 729 (2011).

Breath test admissible despite refusal to permit defendant to consult with counsel. — Motion filed by a defendant to exclude the results of a breath test under the Georgia implied consent law in the defendant's prosecution for driving under the influence under O.C.G.A. § 40-6-391 was properly denied because the defendant was not entitled to the advice of counsel before deciding whether to submit to the test; the right to counsel under U.S. Const., amend. 6 and Ga. Const. 1983, Art. I, Sec. I, Para. XIV did not come into play until the proceedings had reached a critical stage, and the breath test was not such a stage because it did not signal the beginning of a formal adversary hearing and because a lawyer could add little to the warnings required from the officer administering the test by O.C.G.A. § 40-6-392(a)(4). Rackoff v. State, 281 Ga. 306, 637 S.E.2d 706 (2006).

Delay in releasing state administered blood test results. — State's failure to immediately inform a defendant of the results of the state administered test does not create a situation where the defendant is left with no, or so little, information that he or she is denied any meaningful choice in violation of due process; driving under the influence defendants must determine, often under difficult and stressful circumstances, whether to request an independent test, and that the choice may be difficult does not render it fundamentally unfair and this fact alone does not support a due process claim. Padidham v. State, 291 Ga. 99, 728 S.E.2d 175 (2012).

Suppressed breath test results remained admissible for impeachment purposes. — Despite an order suppressing the defendant's breath test results, the results remained admissible for impeachment purposes once the defendant testified that the limited alcohol consumed did not affect or impair the defendant's ability to drive. Moreover, absent bad faith or an order requiring production, the state did not fail to fully disclose all information regarding the breath test. Rosandich v. State, 289 Ga. App. 170, 657 S.E.2d 255 (2008), cert. denied, No. S08C0861, 2008 Ga. LEXIS 380 (Ga. 2008).

Obtaining breathalyzer information from out-of-state manufacturer. — Trial court did not err by requiring defendant to proceed to trial without the source code and other requested information as it had granted a certificate under O.C.G.A. § 24-13-94 to permit the defense an opportunity to obtain the information from the breathalyzer manufacturer located in Kentucky, set the case with enough time to do so, and, after the Kentucky court issued an order denying the request, which order was entitled to full faith and credit, required defendant to proceed to trial. Phillips v. State, 324 Ga. App. 728, 751 S.E.2d 526 (2013).

Use of roadblock. — Driving under the influence of alcohol conviction was upheld as the trial court properly denied the defendant's motion to suppress breath test results taken from an officer posted at a secondary roadblock, since the evidence supported the fact that the officer was part of the primary roadblock, and thus had a legitimate authority to stop the defendant; the fact that the officer may have served as the chase car was irrelevant as the chase car was also part of the primary roadblock. Fischer v. State, 261 Ga. App. 44, 581 S.E.2d 680 (2003).

In a trial for driving under the influence in violation of O.C.G.A. § 40-6-391(a)(1) and (5), the trial court properly suppressed results of the breath tests after determining that the arresting officer's testimony was not credible; although the defendant had bloodshot, red, and watery eyes and an odor of alcohol during a routine roadblock, those facts did not establish probable cause to arrest, and the defendant's refusal to perform field sobriety tests did not necessarily result in an inference that the defendant was unable to successfully perform the tests. State v. Ellison, 271 Ga. App. 898, 611 S.E.2d 129 (2005).

Even assuming that the probate court erroneously failed to grant the defendant's oral motion in limine concerning the constitutionality of a roadblock, the defendant's conviction for driving under the influence to the extent that it was less safe to drive was affirmed on appeal as similar evidence concerning the roadblock was admitted, without objection, making any error related to the admission of the objected-to evidence harmless beyond a reasonable doubt. State v. Rigdon, 284 Ga. App. 785, 645 S.E.2d 17 (2007), cert. denied, No. S07C1211, 2007 Ga. LEXIS 541 (Ga. 2007).

Because a form document, entitled the "Henry County Police Department Roadblock & Safety Checkpoint Record," introduced at a motion to suppress hearing by the state was properly admitted as a business record under former O.C.G.A. § 24-3-14 (see now O.C.G.A. § 24-8-803), and the testimonial evidence regarding the primary purpose of the roadblock passed constitutional muster, in that it was legitimately conducted as part of a statewide "zero tolerance" campaign, the defendant's motion to suppress the evidence seized as a result was properly denied. Yingst v. State, 287 Ga. App. 43, 650 S.E.2d 746 (2007).

Trial court properly found that a roadblock leading to the defendant's arrest was lawful, pretermitting whether the requesting sergeant was a supervisory officer, and the trial court properly denied the defendant's motion to suppress evidence seized as a result of an arrest for DUI. The record also supported the conclusions that all vehicles were stopped, that the delay to motorists was minimal, and that the roadblock was well identified, the stop was made within the constitutional confines of a routine motorist roadblock, and the defendant's arrest was the result of a personal decision to operate a motor vehicle while in an intoxicated state. Velasquez v. State, 288 Ga. App. 109, 653 S.E.2d 518 (2007).

In the defendant's trial for driving under the influence under 18 U.S.C. §§ 7 and 13 and O.C.G.A. § 40-6-391 and an open container violation under O.C.G.A. § 40-6-253, a motion to suppress evidence obtained as a result of a Selective Traffic Enforcement Program roadblock was denied because the roadblock reasonably fit within the Fourth Amendment constraints. Implied consent protections did not apply to field sobriety tests because the defendant was not under arrest at the time such tests were performed. United States v. Howard, No. CR208-09, 2008 U.S. Dist. LEXIS 72916 (S.D. Ga. Sept. 24, 2008).

Trial court did not err in denying the defendant's motion to suppress evidence obtained during a roadblock or in convicting the defendant of driving under the influence per se in violation of O.C.G.A. § 40-6-391 because the evidence was sufficient to show that the decision to implement the roadblock was made by a supervisory officer, which prevented the field officers from exercising unfettered discretion in stopping the drivers since the lieutenant and corporal who implemented the roadblock testified that they were supervisors in the traffic unit of the county sheriff's office; the trial court was autho-

Evidence (Cont'd)

rized to find that the purposes of the roadblock were as stated by the lieutenant and corporal, and each of the identified purposes set forth in the order for the roadblock was a legitimate primary purpose. Rappley v. State, 306 Ga. App. 531, 702 S.E.2d 763 (2010).

Testimony from a sheriff's chief deputy authorized a trial court to find that a sergeant had authority to implement roadblocks and that the sergeant had a legitimate primary purpose for implementing a roadblock at which the defendant was stopped and arrested, which was highway safety and driver sobriety. Martin v. State, 313 Ga. App. 226, 721 S.E.2d 180 (2011).

Trial court did not err in denying the defendant's motion to suppress evidence seized at a roadblock because the state met the state's burden of establishing the legitimate purpose of the roadblock by introducing a certified copy of a department of public safety roadblock approval form; the programmatic purposes set out in the roadblock form were supported by the other evidence at the suppression hearing, and the police officers' actions at the scene were in line with those purposes. Hite v. State, 315 Ga. App. 221, 726 S.E.2d 704 (2012), cert. denied, No. S12C1286, 2012 Ga. LEXIS 1020 (Ga. 2012).

Detention reasonable. — Trial court did not err in denying the defendant's motion to suppress evidence obtained at a roadblock after finding that the defendant's detention by the officers was not excessive because the trial court was authorized to conclude that the brief detention of the defendant was neither unreasonable nor illegal; the trial court's findings that the arresting officer detained the defendant for 20 minutes after the initial portable breath test to conduct an additional test and that the 20 minute delay was for the defendant's benefit of to insure that the portable alcohol test was not affected by residual alcohol due to the defendant's recent consumption of alcoholic beverages were supported by the evidence. Owens v. State, 308 Ga. App. 374, 707 S.E.2d 584 (2011), cert. denied, No. S11C1036, 2011 Ga. LEXIS 498 (Ga. 2011).

Trial court did not err in denying the defendant's motion to suppress evidence obtained at a roadblock because given the evidence presented, the trial court was authorized to conclude that the sergeant issued the order for the roadblock properly and initiated, authorized, and supervised the roadblock and that the sergeant's decision to implement the roadblock was made at the programmatic level for a legitimate primary purpose; the evidence supported the trial court's findings of fact that the information on the roadblock approval form, which stated the reasons for the roadblock, did not conflict with any evidence presented as to when the roadblock was to be conducted or by whom the roadblock was authorized. Owens v. State, 308 Ga. App. 374, 707 S.E.2d 584 (2011), cert. denied, No. S11C1036, 2011 Ga. LEXIS 498 (Ga. 2011).

No probable cause for arrest. — Officers did not have probable cause to arrest the defendant for driving under the influence when the defendant displayed none of the telltale signs of inebriation and the defendant had an explanation for the wreck. State v. Burke, 230 Ga. App. 392, 496 S.E.2d 755 (1998).

Under the Tate standard, the defendant's breath test results, obtained while defendant was in custody, were properly suppressed as the arresting officer lacked probable cause to arrest the defendant for driving under the influence since: (1) the defendant had a single-car accident; (2) the defendant had two clues for intoxication in the HGN test, while the other four clues were inconclusive or indicated no intoxication; (3) the defendant's alco-sensor test results were positive for alcohol; (4) the trial court found that all of the alleged indicia of impairment were caused by the accident or lacked credibility; and (5) the defendant adequately explained the accident to the officer. State v. Gray, 267 Ga. App. 753, 600 S.E.2d 626 (2004), disapproved, Hughes v. State, 296 Ga. 744, 770 S.E.2d 636 (2015).

Trial court should have directed a verdict of acquittal on a charge of DUI to the extent that the defendant was less safe; the only evidence was the smell of alcohol

on the defendant's breath, but there was no evidence that the defendant's driving ability was impaired due to alcohol consumption. Ojemuyiwa v. State, 285 Ga. App. 617, 647 S.E.2d 598 (2007).

Trial court erred in denying a defendant's motion to suppress because the state did not establish sufficient probable cause to arrest the defendant for driving under the influence when the state offered no evidence showing that the defendant's driving ability was impaired due to alcohol consumption; evidence that an officer smelled alcohol on the defendant's breath, that an alco-sensor test revealed the presence of alcohol, and that the defendant admitted that the defendant had been drinking "earlier in the day" was insufficient as a matter of law to constitute probable cause to arrest the defendant for driving under the influence. Handley v. State, 294 Ga. App. 236, 668 S.E.2d 855 (2008).

Although the defendant had glassy and watery eyes, smelled of alcohol, and admitted to drinking a glass of wine, other testimony supported an inference that the defendant was not an impaired driver; accordingly, the defendant's motion to suppress was properly granted based on a finding that there was no probable cause to arrest the defendant for violating O.C.G.A. § 40-6-391(a)(1). State v. Goode, 298 Ga. App. 749, 681 S.E.2d 199 (2009), disapproved, Hughes v. State, 296 Ga. 744, 770 S.E.2d 636 (2015).

Trial court did not clearly err in granting a DUI defendant's motion to suppress evidence based on a lack of probable cause to arrest the defendant. The state failed to show that the defendant's driving ability was impaired due to alcohol consumption, O.C.G.A. § 40-6-391(a)(1), but only that the defendant tested positively for alcohol, that the defendant smelled of alcohol, and that the defendant admitted having drinks hours earlier. State v. Damato, 302 Ga. App. 181, 690 S.E.2d 478 (2010).

Order denying the defendant's motion to suppress any evidence obtained as a result of arrest was reversed because the officer lacked probable cause to arrest the defendant for driving under the influence since the officer testified that the stop was initiated not because of the defendant's driving, but because of an obstructed license plate, and the defendant indicated no signs of intoxication following certain tests and the only evidence was defendant's admission the defendant had consumed a beer earlier. Bostic v. State, 332 Ga. App. 604, 774 S.E.2d 175 (2015).

Weaving as providing probable cause. — It is well established that weaving, both out of one's lane and within one's own lane, particularly when combined with other factors, may give rise to reasonable articulable suspicion on the part of a trained law enforcement officer that the driver is violating the driving under the influence laws, and the conduct forming the basis of the reasonable suspicion need not be a violation of the law. Veal v. State, 273 Ga. App. 47, 614 S.E.2d 143 (2005).

Stop authorized when officer witnesses driver weaving outside lane. — Police officer who witnessed a driver weaving from the driver lane to the curb lane had reasonable information to believe that a criminal offense was being committed, and therefore had probable cause to stop the automobile. State v. Bowen, 231 Ga. App. 95, 498 S.E.2d 570 (1998).

Trial court did not err in denying the defendant's motion to suppress because the officer was justified in stopping the defendant's vehicle based on the videotaped evidence that established that the officer observed the defendant's vehicle failing to maintain the vehicle's lane in violation of O.C.G.A. § 40-6-48(1). Acree v. State, 319 Ga. App. 854, 737 S.E.2d 103 (2013).

Stop authorized when driver on wrong side of road. — Investigating officer had a reasonable articulable suspicion to stop the defendant's vehicle based on a violation of O.C.G.A. § 40-6-40 for driving on the wrong side of the road; hence, the defendant's motion to suppress was properly denied on this ground. Dunbar v. State, 283 Ga. App. 872, 643 S.E.2d 292 (2007).

Stop held invalid. — Since a 9-1-1 call from an unidentified informant did not provide the police with reasonable suspicion to stop the defendant's vehicle, the stop unreasonably intruded upon the de-

Evidence (Cont'd)

fendant's Fourth Amendment rights; as a result, the trial erred by denying the defendant's motion to suppress. Slocum v. State, 267 Ga. App. 337, 599 S.E.2d 299 (2004).

In a prosecution for driving under the influence, the trial court erroneously denied the defendant's motion to suppress evidence seized as a result of a traffic stop made by an officer armed with only a "be on the lookout" warning as the officer lacked a particularized and objective basis for suspecting that the defendant was involved in any criminal activity, but admitted to possessing only scant information about the driver, the year and make of the vehicle being driven, and the vehicle's direction of travel; moreover, the mere fact that the defendant's gold Ford truck was located in the vicinity of the alleged crime did not necessarily give rise to articulable suspicion. Murray v. State, 282 Ga. App. 741, 639 S.E.2d 631 (2006).

Trial court did not err in finding that an officer's traffic stop was unreasonable and not based on the observation of an illegal right turn in violation of O.C.G.A. § 40-6-120(1), given evidence that the defendant activated the turn signal and checked for traffic behind the vehicle prior to turning right from a lane adjacent to the right-hand-turn lane. Therefore, evidence of the defendant's alcohol consumption taken after the officer's stop was properly suppressed. State v. Mincher, 313 Ga. App. 875, 723 S.E.2d 300 (2012).

Stop held valid. — Despite the defendant's claim that a sheriff's deputy lacked a specific and articulable suspicion of criminal activity necessary to execute a traffic stop of the defendant's vehicle, and thus that the evidence seized thereafter had to be suppressed, the appeals court found otherwise as sufficient facts had been conveyed to the deputy prior to the stop for the deputy to have a reasonable belief that the defendant had been involved in a domestic dispute, and might be under the influence of alcohol to justify a finding that the resulting stop was valid; hence, suppression was properly denied. Lacy v. State, 285 Ga. App. 647, 647 S.E.2d 350 (2007), cert. denied, No. S07C1514, 2007 Ga. LEXIS 620 (Ga. 2007).

In a driving under the influence case, there was no merit to the defendant's argument that an officer lacked articulable suspicion to stop the defendant's vehicle. Testimony that the defendant was swerving showed that the defendant was not stopped because of mere inclination, caprice, or harassment, and the trial court accepted the officer's testimony that the full extent of the defendant's actions was not reflected on a video shown to the jury. Hann v. State, 292 Ga. App. 719, 665 S.E.2d 731 (2008).

Sufficient evidence to withstand motion for directed verdict. — Evidence was sufficient to deny a defendant's motion for a directed verdict in a prosecution for reckless vehicular homicide, reckless driving, DUI, running a red light, and failure to exercise due care when, after smoking crack and arguing with the defendant's former spouse, the defendant had struck a car from behind, struck a pedestrian, and collided with a burgundy car, killing the burgundy car's two occupants; the defendant was found slumped over on the front driver's side of the pickup truck the defendant was driving. Hill v. State, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

Because sufficient evidence was presented to support a finding that the defendant was intoxicated to the level that the intoxication caused both the defendant's loss of consciousness and an accident resulting in the defendant's truck straddling a ditch with the truck's nose down at close to a 90-degree angle, and the responding deputies testified that the defendant appeared to be under the influence of alcohol to the extent that it was less safe to drive, the defendant's conviction for violating O.C.G.A. § 40-6-391(a)(1) was supported by sufficient direct evidence of guilt; thus, a directed verdict of acquittal as to that charge was properly denied. Stewart v. State, 288 Ga. App. 735, 655 S.E.2d 328 (2007).

In a trial for driving under the influence of alcohol to the extent of being a less safe driver in violation of O.C.G.A. § 40-6-391(a)(1), the trial court properly denied the defendant's motion for a di-

rected verdict, given a properly admitted 9-1-1 call describing the defendant's erratic driving, the defendant's admission to having had three drinks, the defendant's refusal to submit to chemical testing, and a police officer's testimony that it was the officer's opinion that the defendant was under the influence of alcohol to the extent of being a less safe driver. Key v. State, 289 Ga. App. 317, 657 S.E.2d 273 (2008).

Prior consumption only circumstantial evidence of later being under influence. — While there was direct evidence that the defendant had consumed some alcoholic beverage prior to the collision, this was at most only circumstantial evidence that the defendant was under the influence of alcoholic beverages at the time of the collision. Culver v. State, 80 Ga. App. 438, 56 S.E.2d 197 (1949) (decided under former Code 1933, § 68-307).

Use of circumstantial evidence. — Driving a vehicle while intoxicated may be shown by circumstantial evidence. State v. Hill, 178 Ga. App. 669, 344 S.E.2d 491 (1986); Wooten v. State, 234 Ga. App. 451, 507 S.E.2d 202 (1998).

While circumstantial evidence of a defendant's intoxication at the time of the defendant's arrest would not be admissible in a case charging violation of paragraph (a)(4) (now (a)(5)) of O.C.G.A. § 40-6-391 as proof that the defendant had violated paragraph (a)(1) of O.C.G.A. § 40-6-391, such evidence is admissible as evidence of the circumstances surrounding the appellant's arrest for having violated paragraph (a)(4) (now (a)(5)). Sapp v. State, 184 Ga. App. 527, 362 S.E.2d 406 (1987).

To be guilty of the offense of driving under the influence of intoxicants one must drive or be in actual physical control of a moving vehicle while under the influence of alcohol or drugs. However, it is well settled that the driving of an automobile while intoxicated may be shown by circumstantial evidence, such as a police officer finding the defendant in a parked car, intoxicated, with the motor running. Jones v. State, 187 Ga. App. 132, 369 S.E.2d 509 (1988).

Although the evidence was circumstantial, the evidence justified a finding of guilt beyond a reasonable doubt after the officer observed and testified to circumstances from which a jury could infer that the defendant was in actual physical control of the car when the car was moved to the location where the officer found the car, and that the defendant was intoxicated while moving it there. Johnson v. State, 194 Ga. App. 501, 391 S.E.2d 132 (1990).

When the defendant smelled of marijuana, slurred the defendant's speech, admitted smoking marijuana, and refused to submit to testing to confirm the presence of the drug, the trial court reasonably concluded that there was at least some marijuana present in the defendant's system. Albert v. State, 236 Ga. App. 146, 511 S.E.2d 244 (1999).

Although the officer never saw the defendant in control of the vehicle on the public highway and no evidence was presented that the defendant was observed under the influence of alcohol at the time the defendant was driving since the defendant admitted driving the car when the defendant lost control and that the defendant moved the car to the parking lot after the accident, the evidence of events was sufficient to allow the trier of fact to conclude that the defendant was intoxicated at the time the defendant was in control of the defendant's car. Goodson v. State, 242 Ga. App. 167, 529 S.E.2d 175 (2000).

Evidence was sufficient to convict the defendant of driving under the influence under O.C.G.A. § 40-6-391(a)(1) since the evidence showed that the officer was almost struck by the defendant's erratic driving, that the defendant appeared to be intoxicated shortly thereafter, and that the defendant fled from the would-be arresting officer, thereby providing enough circumstantial evidence for the jury to conclude that the defendant's driving was less safe due to the use of alcohol. Shockley v. State, 256 Ga. App. 892, 570 S.E.2d 67 (2002).

Driving under the influence was provable by circumstantial evidence; although an officer did not see the defendant's car moving, the officer saw sufficient circumstances to support the defendant's driving under the influence-less safe driver conviction because, inter alia, the officer

Evidence (Cont'd)

found the defendant passed out behind the steering wheel of a car haphazardly parked in a lot with the car's engine running and lights on, and the defendant admitted to driving after taking medicine. Stephens v. State, 271 Ga. App. 634, 610 S.E.2d 613 (2005).

Sufficient circumstantial evidence supported the defendant's conviction for driving under the influence of alcohol to the extent that the defendant was a less safe driver; a reasonable inference could be made from the circumstantial evidence when the defendant was found with alcohol on the defendant's breath and the defendant's truck in a ditch. Raby v. State, 274 Ga. App. 665, 618 S.E.2d 704 (2005).

Evidence supported a conviction for driving under the influence as: (1) a trooper found the defendant sleeping behind the wheel with two young children in the car; (2) the defendant's blood-alcohol content was well over the legal limit; and (3) the defendant had clearly driven off the road at some point before the trooper discovered the car. Furlow v. State, 276 Ga. App. 332, 623 S.E.2d 186 (2005).

Defendant's conviction for driving under the influence to the extent that the defendant was a less safe driver was affirmed as a police officer opined that the defendant was impaired and the officer testified that: (1) the defendant smelled of alcohol; (2) the defendant was speeding; (3) the defendant's eyes were red and glassy and the defendant's speech was slurred; (4) the defendant refused to submit to any field sobriety tests; and (5) the defendant swayed while standing still. Lee v. State, 280 Ga. App. 706, 634 S.E.2d 837 (2006).

Because sufficient evidence existed for the arresting officer to believe that the defendant was under the influence of alcohol, specifically, the defendant's erratic driving; detecting the odor of alcohol on the defendant's breath; observing that the defendant was very emotional, had been crying, and had a flushed face and watery eyes; and that the defendant admitted to consuming alcohol, the trial court properly denied suppression of the evidence gathered. Slayton v. State, 281 Ga. App. 650, 637 S.E.2d 67 (2006).

Even without evidence of the failed field sobriety tests, because the experienced officer's undisputed testimony sufficiently showed that the defendant: (1) traveled at a high rate of speed; (2) swerved in and out of the defendant's lane of travel at least five times; (3) switched lanes by crossing over the gore area of the highway several times; (4) had bloodshot eyes and slow, uncoordinated movements; (5) smelled of alcohol, slurred words, and was unsteady on the defendant's feet, both the arrest and conviction for driving under the influence were supported by sufficient evidence and sufficient probable cause. Gregoire v. State, 285 Ga. App. 111, 645 S.E.2d 611 (2007).

Sufficient circumstantial evidence existed to support the defendant's convictions given that: (1) the defendant admitted to drinking and driving the vehicle that an officer testified to as having a warm engine; (2) the defendant had slurred speech, bloodshot eyes, and swaying movements; and (3) the surrounding circumstances helped to show that the defendant had been drinking and driving recently enough to satisfy the three-hour requirement under O.C.G.A. § 40-6-391(a)(5). O'Connell v. State, 285 Ga. App. 835, 648 S.E.2d 147 (2007).

Defendant's conviction of driving under the influence was proper, though based on circumstantial evidence only, because the fact finder was not required to accept as reasonable the hypothesis that the defendant became intoxicated only after the defendant arrived home or that someone else was driving the defendant's car when a citizen saw the car running other cars off the road. Silvers v. State, 297 Ga. App. 362, 677 S.E.2d 410 (2009).

Trial court did not err in convicting the defendant of driving under the influence of alcohol to the extent the defendant was a less safe driver in violation of O.C.G.A. § 40-6-391(a) because the trial court could have found from the evidence that no other reasonable hypothesis existed for the defendant's presence at the scene of an accident other than that the defendant wrecked a car while driving under the influence when: (1) a police officer found the defendant slumped over the wheel of a wrecked car, which was resting up against

a curb and blocking the road, with the ignition on; (2) there was no evidence of anyone else in the area who could have driven the vehicle; and (3) the defendant was passed out in the car, drooling, and smelling of alcohol; although the car was not running when the officer arrived, and the officer had not seen the car moving, the officer observed circumstances from which a fact-finder could infer that the defendant was in actual physical control of the car when the car was moved to the location where the officer found the car and that the defendant was intoxicated while moving the car there. Patterson v. State, 302 Ga. App. 27, 690 S.E.2d 625 (2010).

Evidence that a defendant was found slumped over, asleep, in the driver's seat of a car in a fast food restaurant, with the defendant's hands on the steering wheel, the engine running, the headlights on, and two empty bottles of vodka, along with evidence that the defendant admitted drinking prior to driving to the restaurant, was sufficient to convict the defendant of driving under the influence in violation of O.C.G.A. § 40-6-391(a)(5). Lawson v. State, 313 Ga. App. 751, 722 S.E.2d 446 (2012).

Evidence was sufficient to convict the defendant of DUI less safe under O.C.G.A. § 40-6-391(a)(1), given that the defendant admitted to driving home from a bar where the defendant stopped to urinate, the defendant was just outside the vehicle, the engine was running, and no one else was around. Although the officer did not see the defendant driving, a jury could infer that the defendant had driven the car there. Pough v. State, 325 Ga. App. 547, 754 S.E.2d 129 (2014).

Appellant's conviction for vehicular homicide was affirmed because the verdict led to the strong inference that the appellant, while driving under the influence, killed the victim with a vehicle that the appellant was driving at a high rate of speed, and there was no other evidence that another car or anything else struck the victim with such force as to kill. Taylor v. State, 337 Ga. App. 486, 788 S.E.2d 97 (2016).

Stop based on erroneous facts. — It was not error to admit evidence and statements showing intoxication, even though the stop of the defendant's automobile was erroneous due to an error on the part of the officer or the dispatcher who "ran the tag" and erroneously determined that the automobile was stolen. Cunningham v. State, 231 Ga. App. 420, 498 S.E.2d 590 (1998).

Delay in reading implied consent warnings. — Trial court properly granted the defendant's motion to suppress the results of a chemical test of blood based on the undue delay between the arrest, after a traffic stop, and the reading of the implied consent warnings as: (1) the state trooper was presented with numerous opportunities to issue the warnings to the defendant, but did not; and (2) the trial court rejected the trooper's rationale for not reading the defendant the implied consent warnings at any other earlier opportunity, implicitly determining that the trooper's testimony was not credible. State v. Austell, 285 Ga. App. 18, 645 S.E.2d 550 (2007).

Evidence of prior DUI convictions. — Trial court properly admitted evidence of two prior driving under the influence convictions when there were sufficient similarities between the incidents that the two prior incidents were admissible to show course of conduct and bent of mind. Simon v. State, 182 Ga. App. 210, 355 S.E.2d 120 (1987); Casoria v. State, 210 Ga. App. 269, 435 S.E.2d 678 (1993).

In a prosecution for driving under the influence of alcohol to the extent that the defendant was a less safe driver, the trial court did not err in admitting evidence of the defendant's prior per se DUI conviction to establish the defendant's bent of mind and course of conduct. Miller v. State, 250 Ga. App. 84, 550 S.E.2d 134 (2001).

Regardless of any slight variance of circumstances, evidence of the defendant's prior crime of driving with an unlawful blood alcohol content was properly admitted as similar transaction evidence to prove bent of mind or course of conduct in the defendant's subsequent prosecution for driving under the influence to the extent that it was less safe to drive in violation of O.C.G.A. § 40-6-391(a)(1) and for driving with an unlawful blood alcohol

Evidence (Cont'd)

content in violation of § 40-6-391(a)(4). Moran v. State, 257 Ga. App. 236, 570 S.E.2d 673 (2002).

Because the defendant refused any testing of sobriety or blood alcohol content, an officer's testimony was sufficient to support a conviction for driving under the influence because the officer who arrested the defendant had stopped the defendant on a prior occasion as to which the defendant eventually admitted being less safe to drive so the officer was familiar with the defendant's appearance and demeanor when intoxicated, and could provide evidence sufficient to sustain a conviction and to provide probable cause to arrest the defendant. Berry v. State, 274 Ga. App. 831, 619 S.E.2d 339 (2005).

In a prosecution for vehicular homicide and driving under the influence (DUI), the trial court properly allowed evidence regarding the defendant's prior DUI as the defendant had pled guilty to that offense, the blood test results appeared on the uniform traffic citation, a certified copy of the accusation and plea was entered into evidence, and an officer testified that the defendant was the person arrested on that charge. Hurston v. State, 278 Ga. App. 472, 629 S.E.2d 18 (2006).

Defendant's prior driving under the influence (DUI) convictions were properly admitted as similar transaction evidence; not only was the evidence relevant for the purpose of showing the defendant's bent of mind and course of conduct on the night in question, but the prior DUI offenses were sufficiently similar to the defendant's current offense to be admissible. The state's evidence showed that all of the offenses occurred near midnight and at similar locations, that the defendant made similar statements to officers on each occasion, and that the indicia of intoxication were similar in each case including the strong odor of alcohol, slurred speech, and bloodshot eyes. Gamble v. State, 283 Ga. App. 326, 641 S.E.2d 556 (2007).

In a less safe DUI case, the state made the required showing for similar transaction evidence under Ga. Unif. Super. Ct. R. 31.3(B) by stating the nature of the evidence and asking that the evidence be admitted to show the defendant's bent of mind and course of conduct, which were proper purposes for allowing similar transaction evidence in less safe DUI cases. Steele v. State, 306 Ga. App. 870, 703 S.E.2d 5 (2010).

Defendant's conviction for driving under the influence (DUI) and other crimes was affirmed because the defendant's prior DUI conviction was properly admitted as the conviction was relevant to the issue of the defendant's knowledge of the consequences of both consenting to and refusing the tests, and its probative value outweighed any prejudice. Kim v. State, 337 Ga. App. 155, 786 S.E.2d 532 (2016).

In a driving under the influence (DUI) per se case, the defendant's prior DUI conviction was improperly admitted to show intent as the probative value of the evidence was substantially outweighed by the danger of unfair prejudice because the jury could infer intent from the defendant's act of driving after admittedly consuming alcohol without considering the prior DUI, and there was a danger of interjecting unfair prejudice at trial; however, admission of that evidence was harmless as the direct evidence of the defendant's guilt for the DUI-per se charge was overwhelming as the defendant admitted to consuming alcohol, and the breath tests showed the defendant's blood alcohol content was substantially in excess of 0.08 grams. Jones v. State, 301 Ga. 544, 802 S.E.2d 234 (2017).

After the defendant was arrested for driving under the influence (DUI) and refused to submit to a state administered breath test, the state's motion to introduce evidence of other DUI violations was improperly denied as the danger of undue prejudice did not substantially outweigh the probative value of the evidence of other occasions when the defendant drove under the influence because the state demonstrated the state's prosecutorial need for the extrinsic act evidence; the close proximity in time between the three prior DUI arrests and the charged offense; and the overall similarity between the three prior arrests and the current charge, especially with regard to the defendant's experiences with the requested state administered tests. State v. Voyles,

No. A18A0771, 2018 Ga. App. LEXIS 251 (May 7, 2018).

Evidence of defendant's reputation for sobriety was irrelevant to the charge of driving under the influence. King v. State, 205 Ga. App. 825, 423 S.E.2d 429, cert. denied, 205 Ga. App. 900, 423 S.E.2d 429 (1992).

State need not prove defendant was drunk when driving. — It was not necessary that the state prove that the defendant was drunk when driving but rather that the state prove beyond a reasonable doubt that the defendant was under the influence of alcohol so as to make it less safe for the defendant to operate a motor vehicle. Anderson v. State, 203 Ga. App. 118, 416 S.E.2d 309, cert. denied, 203 Ga. App. 905, 416 S.E.2d 309 (1992).

Evidence supporting citation. — Even though the citation charging the defendant with driving under the influence to the extent it was less safe to drive contained a reference to the defendant's breath test result, the state was not required to prove the test result since it was not a part of the formal charge. Tomko v. State, 233 Ga. App. 20, 503 S.E.2d 300 (1998).

True test of the basis of conviction of driving while under the influence of intoxicants was when it was shown beyond a reasonable doubt that it was less safe for such person to operate a motor vehicle than it would be if the person were not so affected. Turner v. State, 95 Ga. App. 157, 97 S.E.2d 348 (1957) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

When evidence supported a guilty verdict under either paragraph (a)(1) or (a)(4) (now (a)(5)) of O.C.G.A. § 40-6-391, the state was not required to proceed under one paragraph or the other nor was the jury required to disclose the paragraph on which the jury based the jury's verdict. Kuptz v. State, 179 Ga. App. 150, 345 S.E.2d 670 (1986).

Photograph of defendant taken shortly after the defendant's arrest was admissible when the defendant's condition vis-a-vis alcohol influence was an issue and the defendant's physical appearance was some evidence in the case. Farmer v. State, 180 Ga. App. 720, 350 S.E.2d 583 (1986).

Police officers' opinion testimony that the defendant was under the influence of alcohol to the extent that the defendant was rendered a less safe driver was admissible. Chance v. State, 193 Ga. App. 242, 387 S.E.2d 437 (1989).

Police officer who stopped defendant at a supervised roadblock was competent to give the officer's opinion that the defendant's condition rendered the defendant a less safe driver, even though the officer had not observed the defendant's driving. Waits v. State, 232 Ga. App. 357, 501 S.E.2d 870 (1998).

Because an officer gave an opinion that the defendant was driving under the influence (DUI) after giving an extensive outline of the officer's years of DUI training and experience and of the officer's observations of the defendant, the opinion did not impermissibly invade the jury's province. Karafiat v. State, 290 Ga. App. 15, 658 S.E.2d 801 (2008).

Evidence was sufficient to convict a defendant of DUI (less safe) in violation of O.C.G.A. § 40-6-391(a)(2) after the defendant ran a police officer off the road, did not maintain the defendant's lane of travel, and exhibited impairment on sobriety tests; a blood test showed positive results for lorazepam, zolpidem, and mirtazapine. Rivera v. State, 309 Ga. App. 544, 710 S.E.2d 694 (2011).

In the defendant's DUI trial, the state trooper who stopped the defendant was permitted to give the trooper's opinion regarding whether the defendant was impaired based on the trooper's observations and field sobriety tests; moreover, the trial court cautioned the jury that although the trooper was permitted to give the trooper's opinion, it was solely for the jury to determine whether the defendant was impaired to the extent the defendant was less safe to drive. Scott v. State, 332 Ga. App. 559, 774 S.E.2d 137 (2015).

Officer's testimony regarding authority to operate intoximeter. — Police officer's testimony as to authority to operate an intoximeter was sufficient, notwithstanding the defendant's assertion that a directed verdict should have been granted to the defendant on the charge of driving under the influence because the document offered by the state failed to

Evidence (Cont'd)

reveal the officer was certified to operate the machine. Williamson v. State, 194 Ga. App. 439, 390 S.E.2d 658 (1990).

Evidence of implied consent warning. — When the state's only evidence concerning the implied consent warning was the deputy's conclusory statement that the deputy read a warning contained on a card, the state failed to meet the state's burden of proving compliance with the implied consent notice requirements. Miller v. State, 238 Ga. App. 61, 516 S.E.2d 838 (1999).

Admissibility of properly-conducted breathalyzer test. — Admissibility of breathalyzer test results is controlled solely by O.C.G.A. § 40-6-392 so that, as long as a test has been conducted in compliance with that statute, a defendant is precluded from attacking the admissibility of the test based on a challenge to the scientific reliability of the result. Brannan v. State, 261 Ga. 128, 401 S.E.2d 269 (1991).

Sufficient evidence was offered to allow admission of the defendant's breath test in order to prove the defendant's violation of O.C.G.A. § 40-6-391(a)(5) since the oral testimony of the administering officer indicated the officer's qualifications and compliance with the approved methods of the test as required by O.C.G.A. § 40-6-392(a)(1)(A); thus, the court had an adequate foundation laid in order to admit the test results. Scara v. State, 259 Ga. App. 510, 577 S.E.2d 796 (2003).

Trial court properly denied a defendant's motion to suppress the results of the breath test administered with regard to the defendant's conviction for driving with an unlawful alcohol concentration because the defendant's statement that "I will take a blood test" was not a request for an independent test under the implied consent law but was an attempt to designate which test would be administered by the state, which was not an option for the defendant; further, the officer's response to the defendant merely clarified the designation that the state-administered test would be a breath test and did not mislead the defendant regarding the defendant's right to have an independent chemical test. Anderton v. State, 283 Ga. App. 493, 642 S.E.2d 137 (2007).

Trial court properly denied defendant's motion to suppress the results of the defendant's breath test because the officer's reading of the implied consent notice was accurate, the officer asked whether defendant consented, the officer told the defendant to answer yes or no, and the officer's statement, that "as long as you continue to be cool and be cooperative, I'll make the process go by real quick for you," was not coercive or deceptively misleading and did not render the defendant incapable of making an informed decision about whether to submit to the breath test. Miller v. State, 317 Ga. App. 504, 731 S.E.2d 393 (2012).

Admissibility of other evidence obtained at roadblocks. — In a prosecution for driving under the influence, evidence obtained at a roadblock set up to check for driver's licenses and intoxicated drivers was admissible because the roadblock was legitimate and the defendant's detention at the roadblock did not constitute an arbitrary, random stop or an unreasonable seizure. White v. State, 233 Ga. App. 276, 503 S.E.2d 891 (1998).

Roadblock failed to satisfy Fourth Amendment standard. — Because the state failed to show that a police department's checkpoint program had an appropriate primary purpose other than ordinary crime control when viewed at the programmatic level, the checkpoint violated the Fourth Amendment, and the defendant's DUI convictions were reversed. Charales v. State, 329 Ga. App. 533, 765 S.E.2d 701 (2014).

Suppression motion erroneously granted. — Because a police officer possessed sufficient information regarding both the defendants via a police dispatcher, who was relaying information from a 9-1-1 caller, and after signaling for the defendants to pull the vehicle over, the officer observed both the defendants switch places, the officer observed sufficient and particular facts to investigate both men for driving under the influence; hence, the trial court erroneously ordered suppression of the evidence obtained from the resulting traffic stop. State v. Bingham, 283 Ga. App. 468, 641 S.E.2d 663 (2007).

Order granting the defendant's motion to suppress evidence at the defendant's trial for DUI-less safe driving, O.C.G.A. § 40-6-391(a)(1), was error because, contrary to the trial court's findings, the arresting officer's observations of the defendant's odor of alcohol, bloodshot and watery eyes, unsteadiness, and the defendant's positive alco-sensor test, were sufficient to support a finding of impairment; the officer also testified that, based on the officer's observations and experience, the officer was of the opinion that the defendant was a less safe driver, which was evidence showing that the defendant was a less safe driver. The state was not required to prove that the defendant committed an unsafe act in order to show it was less safe for the defendant to drive. State v. Burke, 298 Ga. App. 621, 680 S.E.2d 658 (2009).

Suppression motion properly granted. — Because the evidence sufficiently showed that the defendant's mental condition was clearly vulnerable, and that the defendant: (1) could not read; (2) had to be forcibly restrained while the consent form was initially being read; (3) was weeping while the remainder of the form was read; and (4) never actually signed the consent form, the trial court properly found that any consent to submit to blood and urine tests was not freely and voluntarily given. Moreover, the proper standard of review on appeal, based on the fact that credibility was an issue, was not a de novo standard, but a clearly erroneous standard. State v. Stephens, 289 Ga. App. 167, 657 S.E.2d 18 (2008).

Suppression motion properly denied. — In a DUI prosecution, the trial court did not err in denying the defendant's motion to suppress the results of a blood test as the notice given to the defendant by a state trooper under the implied consent law, O.C.G.A. § 40-5-67.1(a), was sufficiently accurate to permit the defendant to make an informed decision about whether to consent to testing, and the evidence failed to show that the defendant requested an independent test. Collins v. State, 290 Ga. App. 418, 659 S.E.2d 818 (2008).

With regard to a defendant's conviction for driving under the influence and other related crimes, the trial court properly denied the defendant's motion to suppress field sobriety test results, which the defendant based on being unreasonably detained without receiving the Miranda warnings, as the defendant was not under arrest and the defendant's detainment while waiting for a second officer to arrive at the scene was not unreasonable nor unnecessary since the first officer who initiated the stop after observing the defendant driving erratically had a suspect in the patrol car. The court also found that the second officer timely gave the defendant the implied consent warnings after the defendant was arrested. Thomas v. State, 294 Ga. App. 108, 668 S.E.2d 540 (2008).

With regard to a defendant's convictions for driving under the influence and child endangerment, the trial court properly denied the defendant's motion to suppress evidence of the defendant's intoxication as an officer's insistence that the defendant return outside the defendant's day care facility after bringing children back in after arriving with the children in a vehicle was justified by a reasonable suspicion of criminal activity based on the defendant's failure to call the police regarding a domestic violence incident that occurred on the premises earlier, which indicated that the defendant may have engaged in reckless conduct. Upon talking to the defendant, the officer noticed that the defendant's eyes were glassy and that the defendant was in an overly emotional state, which gave additional justification to the officer to suspect that the defendant was intoxicated. Johnson v. State, 299 Ga. App. 474, 682 S.E.2d 601 (2009).

Trial court did not err in denying the defendant's motion to suppress and motion in limine to exclude the defendant's field sobriety test results because the implied consent warning was timely given; a HEAT Unit officer gave the defendant the warning immediately after the defendant's arrest. Waters v. State, 306 Ga. App. 114, 701 S.E.2d 550 (2010).

Trial court did not err in denying the defendant's motion to suppress the results of a blood-alcohol-content test that was obtained via the seizure of the defendant's blood samples and pursuant to a search

Evidence (Cont'd)

warrant because the warrant was narrowly drafted to seek only the blood samples and medical records from the hospital where the defendant was treated on the night of the accident; even if the warrant could be construed as authorizing a broader seizure of all of the defendant's medical records instead of only those relevant to the defendant's treatment related to the accident, the defendant failed to show that any such broader seizure occurred and, thus, failed to show any harm. Jones v. State, 313 Ga. App. 590, 722 S.E.2d 202 (2012).

In a DUI per se case, the trial court did not err in denying the defendant's motion to suppress statements the defendant made to police because the defendant was not in custody when the defendant made the statements; thus the statements were not taken in violation of Miranda; there was no evidence of flashing police lights, guns drawn, or other officers present; and the defendant was standing in a parking lot. Jacobs v. State, 338 Ga. App. 743, 791 S.E.2d 844 (2016).

Identification of driver. — Although a passenger in the defendant's truck claimed that the passenger was the driver in a single vehicle accident, based on a positive identification of the defendant as the driver from a witness, the testimony from the arresting officer about the defendant's injuries, which were consistent with a driver's, and a taped conversation between the defendant and the passenger while they were in the officer's cruiser, there was sufficient evidence upon which any rational trier of fact could have based a verdict of guilty as to the charges; in the conversation in the officer's cruiser, the defendant told the passenger that the passenger should say that the passenger was driving because the defendant would not spend another night in jail, and also said that the passenger should have been driving when the wreck occurred. Becker v. State, 280 Ga. App. 97, 633 S.E.2d 436 (2006).

Failure to produce evidence of marijuana usage. — Defendant's conviction for driving under the influence was reversed since the state's failure to produce evidence of marijuana usage in a "written scientific report" left the defense counsel at a huge disadvantage in trying to cross-examine the state's witness as to the implications of test results and the formation of the witness's opinion based upon the results. Durden v. State, 187 Ga. App. 154, 369 S.E.2d 764, aff'd, 258 Ga. 720, 375 S.E.2d 610 (1988).

Combined alcohol and drugs conviction. — Defendant who was acquitted of driving under the influence of drugs, and as to whom the court directed a verdict of "not guilty" of driving under the influence of alcohol, could nonetheless be found guilty of driving under the combined influence of drugs and alcohol, arising from the same incident, since the arresting officer testified that the defendant refused to submit to a chemical test of defendant's blood, defendant had glassy and bloodshot eyes, and that the defendant tested positive for alcohol on the alco-sensor and for drugs using two field sobriety eye tests. Mendoza v. State, 196 Ga. App. 627, 396 S.E.2d 576 (1990).

Golf cart was a vehicle. — Because: (1) O.C.G.A. § 40-6-391(a), by the statute's plain language, applied to any moving vehicle, and, a golf cart was a "vehicle" within the meaning of O.C.G.A. § 40-1-1(75); (2) the defendant stipulated at trial to driving the golf cart in Fayette County, making such a "moving vehicle" within the scope of O.C.G.A. § 40-6-391(a), and to being under the influence of alcohol while doing so; and (3) under O.C.G.A. § 40-6-3(a)(3), the provisions of § 40-6-391 applied anywhere in Georgia, whether on a street, highway, or private property, the defendant's DUI conviction was upheld on appeal. Simmons v. State, 281 Ga. App. 252, 635 S.E.2d 849 (2006).

Presence of cocaine in blood supported conviction. — Evidence that while driving a truck the defendant was involved in an accident and that a blood test revealed a metabolite of cocaine in the defendant's blood was sufficient to support the defendant's conviction for driving under the influence. Holland v. State, 329 Ga. App. 103, 763 S.E.2d 894 (2014).

Evidence sufficient to support conviction of driving under influence. —

See Lawrence v. State, 157 Ga. App. 264, 277 S.E.2d 60 (1981); Fuller v. State, 166 Ga. App. 734, 305 S.E.2d 463 (1983); Fuller v. State, 169 Ga. App. 468, 313 S.E.2d 745 (1984); Collins v. State, 177 Ga. App. 758, 341 S.E.2d 288 (1986); Pryor v. State, 182 Ga. App. 79, 354 S.E.2d 690 (1987); Daugherty v. State, 182 Ga. App. 730, 356 S.E.2d 902 (1987); Schofill v. State, 183 Ga. App. 251, 358 S.E.2d 651 (1987); Flanders v. State, 188 Ga. App. 98, 371 S.E.2d 918 (1988); Grizzard v. State, 188 Ga. App. 303, 372 S.E.2d 683 (1988); Campbell v. State, 189 Ga. App. 303, 375 S.E.2d 654 (1988); Clark v. State, 192 Ga. App. 718, 386 S.E.2d 379 (1989); Rustin v. State, 192 Ga. App. 775, 386 S.E.2d 535 (1989); Ussery v. State, 195 Ga. App. 394, 393 S.E.2d 522 (1990); Stanley v. State, 195 Ga. App. 706, 394 S.E.2d 785 (1990); Mickey v. State, 196 Ga. App. 895, 397 S.E.2d 148 (1990); Hudson v. State, 261 Ga. 414, 405 S.E.2d 495 (1991); Austin v. State, 200 Ga. App. 91, 406 S.E.2d 500, cert. denied, 200 Ga. App. 895, 406 S.E.2d 500 (1991); Mullis v. State, 201 Ga. App. 75, 410 S.E.2d 182 (1991); Laminack v. State, 201 Ga. App. 663, 411 S.E.2d 895 (1991); Gordon County Farms v. Edwards, 204 Ga. App. 770, 420 S.E.2d 607 (1992); Bryant v. State, 204 Ga. App. 856, 420 S.E.2d 801 (1992); Butts v. City of Peachtree City, 205 Ga. App. 492, 422 S.E.2d 909 (1992); Conner v. State, 205 Ga. App. 564, 422 S.E.2d 872 (1992); Lanier v. City of Manchester, 205 Ga. App. 597, 423 S.E.2d 30 (1992); King v. State, 205 Ga. App. 825, 423 S.E.2d 429 (1992); Rylee v. State, 210 Ga. App. 314, 436 S.E.2d 52 (1993); Harris v. State, 210 Ga. App. 366, 436 S.E.2d 231 (1993); Moon v. State, 211 Ga. App. 559, 439 S.E.2d 559 (1993); Schoicket v. State, 211 Ga. App. 636, 440 S.E.2d 65 (1994); Marsh v. State, 211 Ga. App. 751, 440 S.E.2d 478 (1994); Fouche v. State, 211 Ga. App. 875, 440 S.E.2d 758 (1994); Leigner v. State, 213 Ga. App. 871, 446 S.E.2d 770 (1994); Shelton v. State, 214 Ga. App. 166, 447 S.E.2d 115 (1994); Lewis v. State, 214 Ga. App. 830, 449 S.E.2d 535 (1994); Crawford v. City of Forest Park, 215 Ga. App. 234, 450 S.E.2d 237 (1994); Shelton v. State, 216 Ga. App. 634, 455 S.E.2d 304 (1995); Parrish v. State, 216 Ga. App. 832, 456 S.E.2d 283 (1995); Torrance v. State, 217 Ga. App. 562, 458 S.E.2d 495 (1995); Keef v. State, 220 Ga. App. 134, 469 S.E.2d 318 (1996); Lee v. State, 222 Ga. App. 389, 474 S.E.2d 281 (1996); Hill v. State, 223 Ga. App. 493, 478 S.E.2d 406 (1996); Burrell v. State, 225 Ga. App. 264, 483 S.E.2d 679 (1997); Tanner v. State, 225 Ga. App. 702, 484 S.E.2d 766 (1997); McClain v. State, 226 Ga. App. 714, 487 S.E.2d 471 (1997); Apperson v. State, 225 Ga. App. 804, 484 S.E.2d 739 (1997); Kovacs v. State, 227 Ga. App. 870, 490 S.E.2d 539 (1997); Piast v. State, 230 Ga. App. 222, 495 S.E.2d 875 (1998); Reynolds v. State, 230 Ga. App. 458, 496 S.E.2d 474 (1998); Horne v. State, 237 Ga. App. 844, 517 S.E.2d 74 (1999); Davidson v. State, 237 Ga. App. 580, 516 S.E.2d 90 (1999); Walker v. State, 239 Ga. App. 831, 521 S.E.2d 861 (1999); O'Brien v. State, 242 Ga. App. 344, 529 S.E.2d 657 (2000); Vaughn v. State, 243 Ga. App. 816, 534 S.E.2d 513 (2000); Duvall v. State, 250 Ga. App. 87, 550 S.E.2d 479 (2001); Slinkard v. State, 259 Ga. App. 755, 577 S.E.2d 825 (2003); In the Interest of A.A., 265 Ga. App. 369, 593 S.E.2d 891 (2004).

Under the evidence, the jury was authorized to find that the defendant was operating the defendant's motor truck on a public street while under the influence of an intoxicating liquor. Langford v. State, 69 Ga. App. 619, 26 S.E.2d 385 (1943) (decided under former Code 1933, § 68-307).

Appeals court found the following facts indicated there was sufficient evidence to convict a defendant driver of driving under the influence (DUI) since the defendant: (1) after being stopped for going through a red light, told the officer the defendant was talking on a cell phone; (2) had a flushed face and smelled like beer; (3) could not say certain sequences of the alphabet according to instructions; (4) admitted to drinking beer; (5) refused to submit to field sobriety tests but had a slurred voice when telling the officer why; and (6) had a cup of beer in the car. Lanwehr v. State, 265 Ga. App. 359, 593 S.E.2d 897 (2004).

Evidence was sufficient to support conviction of per se driving under the influence under O.C.G.A. § 40-6-391(a)(5)

Evidence (Cont'd)

when, inter alia, an officer saw the defendant's truck weaving and straddling two lanes, the defendant smelled of an alcoholic beverage, the defendant's speech was slurred, the defendant's eyes were red and bloodshot, when the defendant failed three field sobriety tests, and when the blood alcohol breath tests showed alcohol concentrations of .164 and .156; the fact that the jury acquitted the defendant of driving under the influence to the extent that it is less safe for a person to drive and improper lane change did not invalidate the verdict since Georgia did not recognize an inconsistent verdict rule. Smith v. State, 265 Ga. App. 756, 596 S.E.2d 13 (2004).

Sufficient evidence supported convictions of driving under the influence of alcohol under the former version of O.C.G.A. § 40-6-391 to the extent that the defendant was less safe to drive and driving while having an alcohol concentration of 0.10 grams or more when an officer stopped the defendant after seeing the defendant closely following another car on a highway and weaving, when the defendant had an odor of alcohol, slurred speech, bloodshot eyes, and admitted that the defendant had three alcoholic beverages that night, when an alco-sensor indicated positive for alcohol, and breath tests registered .114 and .101 grams of alcohol in the defendant's blood; evidence supporting a per se charge was not insufficient simply because the machine's margin of error brought a breathalyzer test result below the legal limit for blood alcohol content. Totino v. State, 266 Ga. App. 265, 596 S.E.2d 749 (2004).

There was sufficient evidence to support the defendant's convictions for driving under the influence of alcohol and obstructing a police officer as the police corporal observed the defendant staggering around the defendant's vehicle, which was parked in the middle of a public street, and driving in violation of the traffic laws, and, after the defendant was stopped, the defendant had a strong odor of alcohol on the defendant's breath, slurred speech, and gave a positive result for consumption of alcohol on the alco-sensor. Monas v. State, 270 Ga. App. 50, 606 S.E.2d 80 (2004).

Defendant's conviction for violation of O.C.G.A. § 40-6-391(a)(1) was supported by sufficient evidence as the state was not required to prove that the defendant committed an unsafe act, but rather, the state needed only to prove beyond a reasonable doubt that the defendant was under the influence of alcohol to the degree that rendered the defendant a less safe driver; the trooper who observed the defendant testified that the trooper believed the defendant was a less than safe driver, based on the defendant's condition, and there was also testimony as to the defendant's blood alcohol level and how it affected the defendant's reaction time. Overton v. State, 270 Ga. App. 285, 606 S.E.2d 306 (2004).

Motion to dismiss "driving under the influence" charges was properly denied because the defendant was not charged with an offense under O.C.G.A. § 40-6-391(a)(4), but was charged with violations under §§ 40-6-391(a)(1) and 40-6-391(a)(2); while the defendant's drug test results were suppressed, there was evidence to support conviction under § 40-6-391(a)(1). Harris v. State, 272 Ga. App. 366, 612 S.E.2d 557 (2005).

Evidence supported the defendant's conviction for DUI as a less safe driver, in violation of O.C.G.A. § 40-6-391(a)(1), after a police officer observed the defendant's vehicle traveling without the vehicle's headlights on at night, the defendant failed to heed the officer's hand motions, the defendant drove through a red light, and the defendant failed to yield to oncoming traffic, and upon being stopped, the officer smelled alcohol on the defendant, who refused to take voluntary field sobriety tests or the required state breath test. Drogan v. State, 272 Ga. App. 645, 613 S.E.2d 195 (2005).

Evidence supported the defendant's driving under the influence conviction because: (1) the defendant's erratic, dangerous behavior more than showed an impaired state; (2) the defendant's refusal to submit to field sobriety tests or to state-administered chemical tests was circumstantial evidence of intoxication; and (3) a police officer who observed the defendant testified that, in the officer's opinion, the defendant was intoxicated such that it

was less safe to drive. Jones v. State, 273 Ga. App. 192, 614 S.E.2d 820 (2005).

In a prosecution for vehicular homicide based on the defendant's impaired driving, the fact that the defendant's expert was unable to conclude from the state's testing whether the defendant was impaired did not mean the state failed to prove the defendant's impairment as the state's expert testified that use of the drugs found in the defendant's system after an accident would have made the defendant a less safe driver so a jury could find beyond a reasonable doubt that the defendant was impaired. McClure v. State, 273 Ga. App. 751, 615 S.E.2d 856 (2005).

Evidence supported the defendant's conviction for driving under the influence of alcohol-less safe driver because the defendant drove erratically, had a strong odor of alcohol, had glassy eyes, had slurred speech, and repeatedly failed to respond to questions posed by the officer; the defendant also refused to submit to state-administered chemical testing after being read the implied consent warning. Alewine v. State, 273 Ga. App. 629, 616 S.E.2d 472 (2005).

Observations by an officer that the defendant's vehicle was weaving in traffic, that portions of the car actually crossed over into the adjacent lane of traffic, that there was an odor of an alcoholic beverage and that the defendant had red, watery eyes, and that the defendant failed three sobriety tests provided sufficient evidence to support a conviction of driving under the influence as a less safe driver. Kuehne v. State, 274 Ga. App. 668, 618 S.E.2d 702 (2005).

Evidence was sufficient to support the defendant's convictions for driving under the influence, vehicular homicide, reckless driving, and other charges as the evidence showed that the defendant was caught trying to take merchandise from a store, and then struck and killed the victim as the defendant left the store parking lot and turned on to a highway at a time when the defendant admittedly was under the influence of drugs. Cromartie v. State, 275 Ga. App. 209, 620 S.E.2d 413 (2005).

Evidence was sufficient to convict a defendant of driving under the influence of alcohol to the extent it was less safe for the defendant to drive in violation of O.C.G.A. § 40-6-391(a)(1) based on the defendant's indicia of intoxication, the defendant's driving, the defendant's refusal to submit to sobriety tests, and the officer's opinion that the defendant was intoxicated to the extent that the defendant was a less safe driver. Hoffman v. State, 275 Ga. App. 356, 620 S.E.2d 598 (2005).

Sufficient evidence supported the defendant's conviction of driving under the influence to the extent that the defendant was less safe in violation of O.C.G.A. § 40-6-391(a)(1); the defendant was weaving down a street when the defendant struck a parked car and witnesses, including a police officer, testified that the defendant exhibited an indicia of intoxication. Dotson v. State, 276 Ga. App. 418, 623 S.E.2d 252 (2005).

Evidence was sufficient to support a conviction for driving under the influence of alcohol despite the defendant's contention that the defendant was not driving the car when the officer saw the car speeding; the jury was authorized to reject that testimony in favor of that offered by the state. Morgan v. State, 277 Ga. App. 670, 627 S.E.2d 413 (2006).

Driving under the influence of marijuana conviction was upheld on appeal as: (1) the court rejected the defendant's claim that the conviction had to be reversed merely because the state produced no evidence of marijuana in the defendant's system, given that the refusal to submit to a test of urine or blood created an inference that these tests would have shown the presence of a prohibited substance; and (2) the evidence, when combined with the defendant's poor performance on the field sobriety tests, bloodshot eyes, unsteadiness while exiting the car, and the odor of marijuana, adequately supported this conviction; moreover, the fact that the trial court found the defendant not guilty of a marijuana possession charge did not require a different result as Georgia abolished the inconsistent verdict rule. Graves v. State, 280 Ga. App. 420, 634 S.E.2d 186 (2006).

Convictions against the defendant for driving under the influence of alcohol to the extent that it was less safe for the

Evidence (Cont'd)

defendant to drive and possession of an open container of alcohol in violation of O.C.G.A. §§ 40-6-391(a)(1) and 40-6-253(b)(1)(B) were supported by sufficient evidence when police officers who responded to a call observed the defendant driving into a parking lot with a damaged car, the defendant screamed and cried when asked what had happened and if the defendant was okay, there was a strong odor of alcohol, the defendant had bloodshot and watery eyes, admitted to having had "too many," and the defendant refused to take field sobriety tests or a chemical breath test; further, a search of the vehicle after the defendant's arrest revealed open bottles of wine cooler. Crenshaw v. State, 280 Ga. App. 568, 634 S.E.2d 520 (2006).

After a review of the evidence surrounding the auto accident which the defendant caused while under the influence of methamphetamine, with the defendant's four-year-old son as a passenger, and in which the defendant rear-ended the driver in front of the defendant causing that driver to become paralyzed from the neck down, when coupled with the testimony of two law enforcement officers who were at the scene and described the defendant's erratic behavior after the collision, the defendant's serious injury by vehicle, driving under the influence of methamphetamine, and endangering a child by driving under the influence convictions were supported by the evidence. Duncan v. State, 281 Ga. App. 270, 635 S.E.2d 875 (2006).

Even in the absence of forensic evidence as to a defendant's blood alcohol concentration, the defendant's convictions for reckless driving and driving under the influence of alcohol to the extent that it was less safe to drive were supported by evidence of the defendant's erratic driving, including following another vehicle too closely, and of the defendant's slurred speech, staggering gait, and flight of irrational belligerence, combined with the detection of a strong order of alcohol emanating from the defendant; the witness testimony was certainly sufficient to authorize any rational trier of fact to conclude beyond a reasonable doubt that the defendant was guilty of the charged offenses. Rutland v. State, 282 Ga. App. 728, 639 S.E.2d 628 (2006).

There was sufficient evidence to find the defendant guilty of driving under the influence of alcohol to the extent that the defendant was a less safe driver; the officer who stopped the defendant at a roadblock testified that the defendant had a strong odor of alcohol about the defendant, that the defendant's eyes were bloodshot, that the defendant was slack-jawed, and that the defendant's speech was slurred; the defendant told the officer that the defendant had consumed two alcoholic drinks. Gamble v. State, 283 Ga. App. 326, 641 S.E.2d 556 (2007).

Although defense counsel in a DUI case under O.C.G.A. § 40-6-391(a)(1) was ineffective in tendering a report into evidence that contained the otherwise inadmissible numerical result of an alco-sensor test, the defendant was not prejudiced; evidence of guilt, including the fact that the defendant was passed out behind the wheel in a left turn lane with the car in gear, the fact that the defendant had to be roused from sleep and was disoriented, the defendant's admission to drinking, and the defendant's failing a field sobriety test was overwhelming. Hopkins v. State, 283 Ga. App. 654, 642 S.E.2d 356 (2007).

Trial court did not err in denying the defendant's motion to suppress evidence seized by a state trooper who was lawfully investigating a serious injury accident the defendant was involved in as evidence the trooper found, specifically, some steel wool and prescription drugs, when coupled with other information the trooper possessed concerning the nature and cause of the crash, provided sufficient probable cause for the trooper to believe that the defendant was driving under the influence; further, the appeals court agreed that the evidence would have been inevitably discovered. Cunningham v. State, 284 Ga. App. 739, 644 S.E.2d 878 (2007).

Deputy had probable cause to arrest a defendant for DUI independent of field sobriety tests; when the deputy arrived on the scene and before the deputy conducted the tests, the deputy was told by another officer that the defendant had been driving on the wrong side of the road and had

been drinking, the deputy noticed that the defendant was unsteady, nervous, and smelled strongly of alcohol, and the defendant admitted to having been drinking two or three hours before. Tune v. State, 286 Ga. App. 32, 648 S.E.2d 423 (2007).

Defendant's DUI conviction was upheld on appeal based on the investigating officer's testimony that the defendant: (1) sped through a residential area; (2) crossed the centerline in the roadway; (3) drove on the wrong side of the road; (4) drifted in and out of a marked lane of traffic; (5) smelled strongly of alcohol; (6) had a red face, bloodshot and watery eyes, and slurred speech; (7) was unsteady; and (8) failed three field sobriety tests. McDevitt v. State, 286 Ga. App. 120, 648 S.E.2d 481 (2007).

Given the arresting officer's observations, the defendant's failure to maintain a lane of driving, the evidence presented surrounding the defendant's arrest, and the defendant's failed field sobriety and breath tests, sufficient evidence was presented to support the DUI convictions; thus, a new trial based on the insufficiency of the evidence was properly denied. Trull v. State, 286 Ga. App. 441, 649 S.E.2d 571 (2007).

Defendant's DUI conviction was upheld on appeal as the evidence of guilt, specifically: smelling strongly of alcohol, having trouble walking and speaking, fumbling with a wallet, a half-empty can of beer in the defendant's truck, hiding the truck's keys and a license in the bathroom, the officer having just seen the defendant driving, despite the defendant's claim to the contrary, and the multiple similar transactions, was overwhelming. Caraway v. State, 286 Ga. App. 592, 649 S.E.2d 758 (2007), cert. denied, No. S07C1736, 2007 Ga. LEXIS 686 (Ga. 2007).

Sufficient evidence existed to support a defendant's conviction for DUI when there was evidence that the defendant had been drinking via an officer's observation of the defendant running a red light, speeding, and failing to maintain the lane, and the defendant refused to submit to an alco-sensor test; further, evidence that a strong smell of alcohol came from the defendant and that four field sobriety tests were conducted indicated that the defendant was impaired. Horne v. State, 286 Ga. App. 712, 649 S.E.2d 889 (2007), cert. denied, No. S07C1912, 2007 Ga. LEXIS 744 (Ga. 2007).

State's evidence, both direct and circumstantial, was sufficient to uphold the defendant's conviction of vehicular homicide and that the defendant violated O.C.G.A. § 40-6-391 by driving while under the influence of alcohol as the evidence established the following: testimony of eyewitnesses and of the trooper who investigated the accident established that the defendant was driving erratically and dangerously prior to the collision; the jury was entitled to consider the defendant's admitted flight from the scene as evidence of the defendant's guilt; the defendant admitted that there were two open bottles of liquor in the defendant's car prior to the fatal crash and that the defendant had an alcohol problem on that day. Merritt v. State, 288 Ga. App. 89, 653 S.E.2d 368 (2007).

Defendant's conviction for driving under the influence of alcohol to the extent that it was less safe to drive was supported by the defendant's driving 70 miles per hour in a 45-miles-per-hour zone; an officer's description of the defendant's odor of alcohol, bloodshot eyes, and lack of balance; the defendant's performance on field sobriety and breath tests; the defendant's testimony that the defendant drank six alcoholic drinks over the evening; and the officer's opinion that the defendant was under the influence. Yglesia v. State, 288 Ga. App. 217, 653 S.E.2d 823 (2007).

Trial court properly denied a motion to suppress the defendant's breath test results as the officer that stopped the defendant had probable cause to arrest based on: (1) the defendant's admission to consuming alcohol; (2) the arresting officer's detection of alcohol on both the defendant's breath and the defendant's person; and (3) the fact that impaired driving ability was not an element under O.C.G.A. § 40-6-391(k)(1). Dodds v. State, 288 Ga. App. 231, 653 S.E.2d 828 (2007), cert. denied, No. S08C0518, 2008 Ga. LEXIS 335 (Ga. 2008).

Defendant's bloodshot, watery eyes, admission to drinking, the positive result from an alco-sensor test, and an officer's

Evidence (Cont'd)

smelling alcohol on the defendant's breath provided probable cause to arrest the defendant for driving under the influence (DUI). Moreover, it appeared that the arrest had been not for DUI (less safe) but for DUI (underage per se) for which the officer had ample probable cause in light of the above factors as well as the low per se limit and the officer's extensive experience in this area. Kellogg v. State, 288 Ga. App. 265, 653 S.E.2d 841 (2007), cert. denied, No. S08C0458, 2008 Ga. LEXIS 229 (Ga. 2008).

Trial court properly convicted a defendant of driving under the influence, less safe, in violation of O.C.G.A. § 40-6-391(a)(1), after a bench trial because the evidence showed that: (1) an officer saw the defendant drunk earlier in the evening while responding to a dispute between neighbors; (2) the defendant admitted to drinking; and (3) the defendant admitted to driving the defendant's vehicle while drunk from the defendant's home to a lake home. Any error in the charging instrument was deemed waived on appeal as the defendant should have addressed any purported error by a special demurrer and, likewise, the defendant failed to file a motion to suppress challenging the officers' entry into the defendant's dwelling without authority; thus, that issue was deemed waived. Pruitt v. State, 289 Ga. App. 307, 656 S.E.2d 920 (2008).

Sufficient evidence supported convictions for driving under the influence of drugs to the extent of being a less safe driver under O.C.G.A. § 40-6-391(a)(2) in that: (1) an officer saw the defendant's vehicle weaving, tailgating, and going over 80 miles per hour; (2) the defendant spoke slowly, was unsteady, had bloodshot, glassy eyes, and performed poorly on field sobriety tests; and (3) the defendant's urine tested positive for cocaine, marijuana, and six prescription drugs. Cornwell v. State, 283 Ga. 247, 657 S.E.2d 195 (2008).

There was sufficient evidence supporting convictions of driving under the influence of alcohol to the extent that it was less safe to drive and of driving with an unlawful blood-alcohol concentration. Although the defendant claimed that the defendant drank only while the defendant's truck was parked, officers found no containers of alcohol in the truck, and the testimony as to the manner in which the truck was parked authorized a finding that the defendant had been driving the truck erratically; furthermore, a test showing the defendant's blood alcohol level of 0.198 was administered within three hours of the time the defendant testified that the defendant began drinking. Dorris v. State, 291 Ga. App. 716, 662 S.E.2d 804 (2008).

Evidence that a defendant's vehicle left the road, traversed a drainage ditch, and became lodged between two trees, along with evidence that the defendant was unsteady on the defendant's feet, had extremely dilated pupils, had a strong odor of alcohol about the defendant's person, and admitted to having two beers was sufficient to support the defendant's convictions for failure to maintain a lane and driving under the influence of alcohol to the extent it was less safe for the defendant to drive. Chancellor v. State, 284 Ga. 66, 663 S.E.2d 203 (2008).

Sufficient evidence supported defendant's conviction for driving under the influence of an intoxicating substance since the evidence established that the defendant purchased two cans of an aerosol computer cleaning product and approximately nine minutes later drove a vehicle over a curb and a sidewalk, through the grass in a straight line, and across a street, striking a mailbox and a car before coming to rest in an open field. When an officer approached the defendant and a passenger, the officer immediately noticed symptoms that, based on the officer's training and experience, were consistent with inhalant use. Castaneda v. State, 292 Ga. App. 390, 664 S.E.2d 803 (2008).

Testimony from the driver of a van struck by a defendant's vehicle, combined with the defendant's admission regarding drinking, the defendant's failed field sobriety tests, and a breath test that showed the defendant had a blood alcohol level of .146 was sufficient to support a jury's conviction of the defendant for driving

under the influence of alcohol (less safe) under O.C.G.A. § 40-6-391(a)(1). Thrasher v. State, 292 Ga. App. 566, 666 S.E.2d 28 (2008).

Because a police officer observed the defendant make a turn even though the arrows indicating that turn remained red, the valid traffic stop was not impermissibly prolonged pending the arrival of a second officer due to the first officer's incapacity to smell; accordingly, the evidence was sufficient to sustain the defendant's conviction for driving under the influence and failing to obey a traffic control device under O.C.G.A. §§ 40-6-20 and 40-6-391. Peterson v. State, 294 Ga. App. 128, 668 S.E.2d 544 (2008).

Evidence was sufficient to convict a defendant of DUI per se under O.C.G.A. § 40-6-391(a)(5) because as the defendant did not consume any alcohol between the time of the accident and the arrival of the police, after which a breath test revealed the defendant's blood alcohol content to be .245, the jury was authorized to find that the defendant's blood alcohol level was .08 or more when the defendant drove a van into the ditch. Reese v. State, 296 Ga. App. 186, 674 S.E.2d 68 (2009), overruled in part by Gordon v. State, 334 Ga. App. 633, 780 S.E.2d 376, (2015).

Because a police officer's actions, including reading the defendant the implied consent warnings in O.C.G.A. § 40-5-67.1(g)(2)(B) multiple times, were reasonable and the procedure utilized was fair, the results of a toxicology report, indicating that 0.24 milligrams per liter of benzoylecgonine, a metabolite of cocaine, was present in the defendant's blood was sufficient for the jury to find the defendant guilty of violating O.C.G.A. § 40-6-391(a)(6). Page v. State, 296 Ga. App. 431, 674 S.E.2d 654 (2009).

With regard to a defendant's convictions for improper lane change, serious injury by vehicle while driving under the influence, and misdemeanor obstruction of an officer, there was sufficient evidence to support the convictions. The conviction was supported by an officer's testimony that the defendant attempted to leave the scene several times, and the evidence of the defendant's vehicle passenger suffering a severe injury to the left eye. Wells v. State, 297 Ga. App. 153, 676 S.E.2d 821 (2009).

Evidence was sufficient to sustain convictions of driving under the influence (less safe and per se), and vehicular homicide as a result under circumstances in which the defendant admitted to drinking two beers on the morning of a fatal accident, the defendant was seen with beer that morning, the defendant was not aware whether the children in the defendant's vehicle were buckled in as was required by law, and the victim probably was not buckled in, the defendant had a .235 blood alcohol level shortly after the accident, the defendant smelled of the odor of alcohol, and the defendant was unable to control the defendant's automobile, all of which led to the death of a child; it was for the jury to decide the reasonableness of the hypotheses that the defendant drove off the road because of problems with the tires on the vehicle. Daniel v. State, 298 Ga. App. 245, 679 S.E.2d 811 (2009).

Conviction of driving under the influence of drugs to the extent it was less safe to drive, O.C.G.A. § 40-6-391(a)(2), was proper because the state was not required to present the results from scientific testing of blood or urine to prove a charge under § 40-6-391(a)(2); further, the defendant admitted to having smoked marijuana earlier that day, and an alcosensor test performed on the defendant was negative. Finally, the arresting officer testified that, based upon years of experience observing people who were under the influence of marijuana and all of the officer's observations in this case, it was the officer's opinion that the defendant was under the influence of marijuana to the extent that the defendant was a less safe driver. Richardson v. State, 299 Ga. App. 365, 682 S.E.2d 684 (2009).

Officer had reasonable suspicion to conduct field sobriety tests based on the smell of alcohol emanating from a defendant, the defendant's watery, bloodshot eyes, and the defendant's admission to drinking alcohol. The failure of three field sobriety tests supplied the officer with probable cause to arrest the defendant, and all of this evidence, along with the defendant's refusal to submit to a chemical test of the

Evidence (Cont'd)

defendant's blood and breath, was sufficient to support a conviction for driving under the influence. Blankenship v. State, 301 Ga. App. 602, 688 S.E.2d 395 (2009).

Evidence was sufficient to authorize a jury to find the defendant guilty beyond a reasonable doubt of driving under the influence of alcohol to the extent that it was less safe for the defendant to drive; a police officer, who had extensive experience and training in DUI detection, testified that in the officer's opinion, the defendant was under the influence of alcohol to the extent the defendant was less safe to drive, based on the officer's observation of the defendant's unsteadiness, flushed face, bloodshot, watery, glazed eyes, confused mental state, mumbled speech, and the strong odor of alcohol about the defendant's body as well as the statement of a passenger that the defendant had been drinking beer a short time before. The defendant's refusal to submit to field sobriety tests, an alco-sensor test, and the state-administered breath test was admissible as circumstantial evidence of intoxication and, together with other evidence, would support an inference that the defendant was an impaired driver. Crusselle v. State, 303 Ga. App. 879, 694 S.E.2d 707 (2010).

Evidence presented by the state was sufficient for any rational trier of fact to find the defendant guilty of driving under the influence less safe beyond a reasonable doubt because the defendant's consumption of alcohol was established by the defendant's own testimony, the positive result from the alcosensor test, evidence that the defendant's blood alcohol content was between 0.073 and 0.085 an hour after the incident, the smell of alcohol emanating from the defendant, and the defendant's watery and bloodshot eyes. Moreover, the evidence that the defendant was speeding constituted evidence that the defendant's driving was impaired and the officer testified that in the officer's opinion, the defendant was under the influence of alcohol to the extent that it was less safe for the defendant to drive. A police officer may give opinion testimony as to the state of sobriety of a driving under the influence (DUI) suspect and whether the suspect was under the influence to the extent it made the suspect less safe to drive; further, it was well-settled that DUI could be proved solely by circumstantial evidence and it was not necessary that the circumstantial evidence exclude every other hypothesis except that of guilt. Jaffray v. State, 306 Ga. App. 469, 702 S.E.2d 742 (2010).

Evidence was sufficient to support a defendant's convictions for driving under the influence of alcohol (DUI) per se and DUI less safe in violation of O.C.G.A. § 40-6-391(a)(5) and (a)(1), respectively, because the arresting officer smelled alcohol, the defendant admitted drinking and wrecking the defendant's motorcycle, and the defendant's breath test result was 0.152 grams. Jacobson v. State, 306 Ga. App. 815, 703 S.E.2d 376 (2010), cert. denied, No. S11C0498, 2011 Ga. LEXIS 582 (Ga. 2011).

Evidence of the defendant's erratic driving, some of which was recorded by a deputy's dashboard camera, the defendant's failing field sobriety tests, the defendant's admission that the defendant had been drinking, and the defendant's Intoxilyzer 5000 result exceeding .08 grams, were sufficient to support the defendant's conviction of driving under the influence of alcohol under O.C.G.A. § 40-6-391(a)(5). Miller v. State, 307 Ga. App. 701, 706 S.E.2d 94 (2011).

Evidence was more than sufficient to establish not only that the defendant had been drinking, but that the defendant was a less safe driver because the defendant was impaired. During the trial: (1) a truck driver testified that the truck driver called 9-1-1 to report that the defendant was driving erratically; (2) a police officer, who responded to the call, testified that the officer videotaped the erratic driving and stopped the defendant; (3) the videotape showed the erratic driving; (4) the officer testified and the video showed that, when the defendant exited the vehicle, the defendant was unsteady on the defendant's feet; (5) the officer testified that the defendant's speech was slightly slurred, the defendant's eyes were bloodshot and glassy, and that a strong odor of alcohol was coming from the defendant's breath

or person; (6) the officer testified that the defendant mentioned that the defendant had consumed a couple of beers or drinks; (7) the officer testified that the defendant unsuccessfully attempted to perform standardized field sobriety tests; and (8) the defendant agreed to blow into an alcosensor, which indicated positive for alcohol. Schenck v. State, 307 Ga. App. 890, 706 S.E.2d 218 (2011).

Assuming that the defendant's post-verdict motion for judgment notwithstanding the verdict was a motion for new trial, it was, nevertheless, wholly without merit because the evidence was sufficient to convict the defendant of driving under the influence (to the extent that the defendant was a less-safe driver, O.C.G.A. § 40-6-391(a)(1)) because a police officer administered two field-sobriety tests, and defendant exhibited clues of impairment on each. Masood v. State, 313 Ga. App. 549, 722 S.E.2d 149 (2012).

Evidence was sufficient for the jury to find the defendant guilty of first degree homicide by vehicle, O.C.G.A. § 40-6-393(a), first degree feticide by vehicle, O.C.G.A. § 40-6-393.1(b)(1), driving under the influence (DUI) of alcohol, O.C.G.A. § 40-6-391(a)(5), and DUI of alcohol to the extent that it was less safe for the defendant to do so, § 40-6-391(a)(1), because the state presented evidence that the defendant had a blood-alcohol content of nearly double the legal limit at or near the time the defendant veered across three lanes of traffic and collided with a driver's pick-up truck, which resulted in the death of the driver, a passenger, and the passenger's unborn child. Jones v. State, 313 Ga. App. 590, 722 S.E.2d 202 (2012).

Sufficient evidence supported defendant's conviction on three counts of endangering a child under the age of 14 while driving under the influence, in violation of O.C.G.A. § 40-6-391(a)(1), because defendant drove into a tree while operating a vehicle containing three children as passengers, resulting in a fatality and other serious injuries, a clear plastic bottle containing 77 proof alcohol was found on the floorboard, and the defendant's blood alcohol content was 0.207 grams. Crowe v. State, 314 Ga. App. 527, 724 S.E.2d 831 (2012).

The evidence was sufficient for the jury to find the defendant guilty beyond a reasonable doubt of driving under the influence (DUI) less safe in violation of O.C.G.A. § 40-6-391(a)(1) because upon questioning, the defendant told the officer that the defendant had been drinking, an alco-sensor administered to the defendant tested positive for alcohol, and a second officer smelled the odor of alcohol on the defendant's breath. Cordy v. State, 315 Ga. App. 849, 729 S.E.2d 13 (2012).

Evidence that the defendant was found in the driver's seat of the irregularly parked vehicle with the keys in the ignition, the defendant was the sole occupant of the vehicle, there was no evidence another party drove the vehicle to the location, the defendant failed field sobriety tests, and the defendant had a blood-alcohol concentration of .212 grams according to intoxilyzer tests was sufficient to support the defendant's conviction for driving with an unlawful alcohol concentration. Stallings v. State, 319 Ga. App. 587, 737 S.E.2d 592 (2013).

Defendant's conviction for DUI was affirmed because the officer's testimony was sufficient to prove beyond a reasonable doubt that the defendant was under the influence of alcohol. The officer's opinion testimony that the defendant was under the influence of alcohol was direct evidence of the defendant's guilt; thus, the reasonable hypothesis rule did not apply. Hinton v. State, 319 Ga. App. 673, 738 S.E.2d 120 (2013).

Witnesses' observations of the defendant's slurred speech, bloodshot eyes, lack of balance, odor of alcohol, and repeated collisions with the victim's truck was sufficient to support the defendant's conviction for driving under the influence to the extent it was less safe for the defendant to drive. Simmons v. State, 321 Ga. App. 743, 743 S.E.2d 434 (2013).

Evidence was sufficient to support the defendant's conviction for DUI per se as an officer observed that the defendant exited the driver's side door of the vehicle, appeared nervous, had glassy, bloodshot eyes, and had a very strong odor of alcohol about the defendant's person. A second officer made the same observations and performed a breath test, which registered

Evidence (Cont'd)

positive for the presence of alcohol. Daniels v. State, 321 Ga. App. 748, 743 S.E.2d 440 (2013).

Evidence that the defendant was found in the driver's seat of a vehicle that had the vehicle's flashers on and was stopped in the lane of travel, the defendant was the sole occupant of the vehicle, the defendant failed field sobriety tests, and the defendant had a blood-alcohol concentration that was double the legal limit supported the conviction for DUI per se. Green v. State, 323 Ga. App. 832, 748 S.E.2d 479 (2013).

Sufficient evidence supported the defendant's conviction for driving under the influence, less safe, based on the evidence of the defendant's refusal to take the state-administered breath test, the smell of alcohol on the defendant's person, and the defendant's repeated refusals to follow the officer's commands. Taylor v. State, 326 Ga. App. 27, 755 S.E.2d 839 (2014).

Sufficient evidence supported the defendant's conviction for driving under the influence based on testimony that prior to the accident, the defendant was driving aggressively at an excessive rate of speed and weaving before crossing the median and making impact with the victim's car and the testimony from a witness and law-enforcement officer that the defendant reeked of alcohol, had bloodshot eyes, spoke with slurred speech, became belligerent, and refused to submit to a state-administered test. Holman v. State, 329 Ga. App. 393, 765 S.E.2d 614 (2014).

Defendant's testimony that the defendant had smoked synthetic marijuana and taken prescription Thorazine on the day of the offense and the officer's testimony that the officer administered the horizontal gaze nystagmus test and observed all six traits was sufficient for the jury to find the defendant guilty of driving under the influence of a drug to the extent that it was less safe to drive. Jones v. State, 332 Ga. App. 449, 773 S.E.2d 408 (2015).

Evidence was sufficient to convict the defendant of driving under the influence of alcohol to the extent that the defendant was a less safe driver, speeding, failure to maintain lane, and driving while possessing an open container of an alcoholic beverage when the evidence showed that a sergeant pulled over the defendant's car for speeding and failing to maintain the defendant's lane, another officer observed six out of six clues of impairment in the officer's horizontal gaze nystagmus evaluation of the defendant and smelled the odor of an alcoholic beverage coming from the defendant's mouth, and, after the defendant's arrest, the sergeant searched the defendant's car and found a glass filled with ice and a dark liquid that smelled like an alcoholic beverage. Monroe v. State, 340 Ga. App. 373, 797 S.E.2d 245 (2017).

Evidence that the defendant lost control of a motorcycle on a straight road, the defendant's blood alcohol level was nearly double that required for a conviction of DUI per se, the defendant professed lack of memory of driving, and the defendant's addled state of mind authorized the court to find the defendant guilty of DUI less safe. Canelas v. State, No. A18A0764, 2018 Ga. App. LEXIS 218 (Mar. 29, 2018).

Evidence supporting verdict of drunken driving. — Evidence supports a verdict of drunken driving when, at the time the troopers arrived at the scene of the alleged crime, the defendant was sitting under the steering wheel of the automobile and attempting to get the car in gear, the motor of the automobile was running, and the automobile rolled backwards when the witness started to get out of the patrol car. Echols v. State, 104 Ga. App. 695, 122 S.E.2d 473 (1961) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Evidence showing that the defendant was speeding, drove at least a short distance without car headlights, was unruly and belligerent upon arrest, was unsteady, smelled of alcohol, and repeatedly refused to submit to an intoximeter test was sufficient to support a conviction. Howell v. State, 179 Ga. App. 632, 347 S.E.2d 358 (1986).

When the state's evidence shows that the defendant was driving under the influence of alcohol (.16 grams percent) at a high rate of speed without any lights, recklessly passed two other vehicles immediately prior to the collision with the

victim, and was driving in the wrong lane when the defendant crashed into the victim's car, the evidence is sufficient to enable any rational trier of fact to find that a causal connection existed between the defendant's violation of O.C.G.A. § 40-6-390 or O.C.G.A. § 40-6-391 and the victim's death and thus to find the defendant guilty beyond a reasonable doubt of the offense of homicide by vehicle in the first degree. McNabb v. State, 180 Ga. App. 723, 350 S.E.2d 314 (1986).

When the arresting officer testified that there was an odor of alcohol about the car driven by the defendant, that the defendant was unstable on the defendant's feet and the defendant's speech was slurred, and the officer stated that, based on the officer's experience of almost 20 years as a police officer and having observed four or five hundred people driving under the influence of alcohol, the defendant was under the influence of alcohol and that the defendant's driving ability was impaired as a result of the defendant being under the influence of alcohol, the evidence was sufficient to allow a rational trier of fact to find the defendant guilty beyond a reasonable doubt of driving under the influence of alcohol. Williams v. State, 190 Ga. App. 361, 378 S.E.2d 886, cert. denied, 190 Ga. App. 899, 378 S.E.2d 866 (1989).

When a defendant's intoximeter test revealed an alcohol concentration of .26 grams, a rational trier of fact could reasonably conclude that the defendant was guilty beyond a reasonable doubt of driving under the influence of alcohol. Jones v. State, 195 Ga. App. 569, 394 S.E.2d 387 (1990).

Superior court did not err in concluding, on de novo review of the evidence presented to the probate court, that the defendant was intoxicated to the extent that the defendant was rendered a less safe driver and in finding the defendant guilty as charged since the where defendant presented no evidence to rebut the presumption raised by evidence that a breath test properly administered to the defendant resulted in a reading of .17 grams. Bell v. State, 197 Ga. App. 175, 398 S.E.2d 29 (1990).

Evidence was sufficient to support conviction of driving under the influence after the officer observed only one occupant in the vehicle during the course of a prolonged erratic pursuit and witnessed the removal of the vehicle's sole occupant, whom the officer positively identified as the defendant, when the vehicle stopped. Hilburn v. State, 207 Ga. App. 127, 427 S.E.2d 97 (1993).

When the evidence revealed that the defendant had a blood-alcohol concentration of .11 percent within less than an hour after operating a moving vehicle, that the defendant "had glassy eyes" at the time of arrest and that a strong odor of alcohol permeated the vehicle defendant was driving shortly before the defendant's arrest, this evidence and testimony that the defendant consumed alcoholic beverages before defendant's arrest was sufficient to authorize the jury's finding that the defendant was guilty, beyond a reasonable doubt, of driving under the influence of alcohol in violation of paragraph (a)(1) of O.C.G.A. § 40-6-391. Anthony v. State, 211 Ga. App. 622, 441 S.E.2d 70 (1993), overruled on other grounds, State v. Coleman, 216 Ga. App. 598, 455 S.E.2d 604 (1995).

Direct evidence that the defendant was passed out in the driver's seat behind the wheel of a truck, with the engine running and the lights on and that the truck moved a few inches when the officer roused the defendant, coupled with other circumstantial evidence, was sufficient to support a finding that the defendant was in control of a moving vehicle while intoxicated. Green v. State, 214 Ga. App. 664, 448 S.E.2d 758 (1994).

Evidence that the defendant was speeding and abruptly changing lanes while there was marijuana in the defendant's system was sufficient to authorize a jury's finding that the defendant was under the influence of any drug to the extent that it was less safe for the defendant to drive in violation of paragraph (a)(2) of O.C.G.A. § 40-6-391 beyond a reasonable doubt. Grant v. State, 215 Ga. App. 10, 449 S.E.2d 545 (1994).

Evidence that defendant drove an automobile while the defendant's blood-alcohol level was in excess of the legal limit was sufficient to authorize the jury's finding that the defendant was guilty beyond a

Evidence (Cont'd)

reasonable doubt. Ellerbee v. State, 215 Ga. App. 102, 449 S.E.2d 874 (1994).

Whether the person is a less safe driver is irrelevant because to obtain a conviction the state only needs to prove the physical act of driving with any amount of the specified drugs in the blood or urine. Kevinezz v. State, 265 Ga. 78, 454 S.E.2d 441 (1995).

Evidence was sufficient to support a conviction for driving under the influence, notwithstanding the reversal of the defendant's conviction for making an improper turn, when the arresting officer testified that the defendant abruptly turned in front of another vehicle and almost caused an accident and that the officer noticed an odor of alcohol on the defendant's breath and that the defendant had bloodshot and glassy eyes. Burke v. State, 233 Ga. App. 778, 505 S.E.2d 528 (1998).

Two breathalyzer tests, which showed blood alcohol concentrations of .101 and .103 were sufficient to support a conviction for driving under the influence, notwithstanding that the breathalyzer machine had a margin of error of .010. Scheipers v. State, 234 Ga. App. 112, 505 S.E.2d 835 (1998).

When the evidence showed that the defendant lost control of the defendant's vehicle while the defendant was speeding and attempting to pass in a no-passing zone and that the defendant had ingested both alcohol and cocaine, the defendant was properly convicted of driving under the influence. Gentry v. State, 236 Ga. App. 820, 513 S.E.2d 528 (1999).

When the evidence showed that the defendant not only smelled of alcohol and failed field sobriety tests, but also that the defendant sped through a stop sign, the jury was authorized to find beyond a reasonable doubt that the defendant was guilty of driving under the influence of alcohol to the extent that it was less safe for defendant to drive. Kelly v. State, 242 Ga. App. 30, 528 S.E.2d 812 (2000).

Police officer's testimony and evidence of the state-administered blood alcohol result to which the defendant stipulated were sufficient to enable the jury to conclude beyond a reasonable doubt that the defendant was guilty of DUI in violation of O.C.G.A. § 40-6-391(a)(1). Schoolfield v. State, 251 Ga. App. 52, 554 S.E.2d 181 (2001).

Evidence was sufficient to support a conviction for driving under the influence of alcohol in violation of O.C.G.A. § 40-6-391(a)(1) since the evidence showed that the defendant smelled strongly of alcohol, had watery bloodshot eyes, failed the horizontal gaze nystagmus test, and was positive for alcohol on the alcosensor test. Duren v. State, 252 Ga. App. 257, 555 S.E.2d 913 (2001).

When police discovered the defendant, passed out in the driver's seat of the defendant's truck, with the engine running, in a front yard and the defendant's blood-alcohol content was over the legal limit, the reasonable conclusion was that the defendant was driving the truck while under the influence and it followed that the evidence of defendant's guilt was sufficient to sustain defendant's conviction. Jarriel v. State, 255 Ga. App. 305, 565 S.E.2d 521 (2002).

Evidence was sufficient to convict the defendant of driving while under the influence of alcohol as the state introduced evidence to satisfy the statutory requirement that the defendant's alcohol concentration was equal or greater to the legal limit within three hours of driving. Young v. State, 275 Ga. 309, 565 S.E.2d 814 (2002).

Because there was no requirement that a driver actually committed an unsafe act to be found to be under the influence of alcohol to the extent that it was less safe for the driver to drive, or that the state had to prove impaired driving ability, a rational trier of fact was authorized to find beyond a reasonable doubt that the defendant was driving while impaired by alcohol to the extent that the defendant was a less safe driver after the state produced evidence that, at the time of a vehicle stop, the defendant had glassy, bloodshot eyes, was unsteady, smelled of alcohol, had jumpy eyes in field sobriety tests, had alcohol on the breath, had trouble reciting the alphabet, had a blood-alcohol level of approximately .09 grams, and had admitted to drinking alcohol that evening. Susman v. State, 256 Ga. App. 94, 567 S.E.2d 736 (2002).

There was sufficient evidence to support defendant's conviction of driving under the influence of alcohol to the extent that it was less safe to drive in violation of O.C.G.A. § 40-6-391(a)(1) since, inter alia, the defendant was stopped for speeding, defendant's eyes were glassy and blood-shot, the defendant's speech was slightly slurred, the defendant's breath had a strong odor of alcohol, the defendant admitted to having consumed more than one drink, and the defendant failed several field sobriety tests. Mueller v. State, 257 Ga. App. 830, 572 S.E.2d 627 (2002).

Trial court did not err in denying the defendant's motions for directed verdict and new trial because the evidence was sufficient to sustain the defendant's convictions for vehicular homicide and DUI where several witnesses on the scene testified that the defendant was in the driver's seat of the vehicle immediately after the accident. Hunt v. State, 261 Ga. App. 417, 582 S.E.2d 493 (2003).

Evidence that the defendant was driving erratically, that the defendant's breath smelled of alcohol, that the defendant's eyes were red, that the defendant's speech was slurred, and that the defendant exited the vehicle in a slow and unsteady manner after the defendant was stopped by a police officer for traffic violations was sufficient to support the defendant's conviction for driving under the influence of alcohol. Stearnes v. State, 261 Ga. App. 522, 583 S.E.2d 195 (2003).

Evidence that the defendant had crack cocaine in defendant's urine at the time the defendant led police on a high-speed motor vehicle chase, including subsequent tests that confirmed the defendant had crack cocaine in the defendant's system, was sufficient to support the defendant's conviction for driving with drugs present in the defendant's urine. Arnold v. State, 262 Ga. App. 61, 584 S.E.2d 662 (2003).

Police officer's testimony that the defendant was driving erratically, failed to pass field sobriety tests, and, when confronted smelled of alcohol and was exhibiting strange behavior was sufficient to sustain a DUI conviction in violation of O.C.G.A. § 40-6-391(a)(1). Weldon v. State, 262 Ga. App. 854, 586 S.E.2d 741 (2003).

There was sufficient evidence to support the defendant's conviction for driving under the influence of alcohol to the extent it was less safe for the defendant to drive pursuant to O.C.G.A. § 40-6-391(a)(1), including the defendant's admission to police, the admissibility of which the defendant conceded by brief on appeal, the condition of the defendant's person upon being arrested, and the defendant's failure of the field sobriety tests administered on the scene, as well as the breath tests administered shortly thereafter; there is no requirement that the defendant actually commit an unsafe act to violate § 40-6-391(a)(1). Marryott v. State, 263 Ga. App. 65, 587 S.E.2d 217 (2003).

Defendant's conviction for drunk driving was upheld on appeal because sufficient evidence showed that the defendant failed the field sobriety tests administered to the defendant and because, upon arrest, the defendant had red glassy eyes, an unsteady stance, mumbled speech, smelled of alcohol, admitted to having had two beers, and admitted to driving to a bar. Mullady v. State, 270 Ga. App. 444, 606 S.E.2d 645 (2004).

Defendant was properly found guilty of driving under the influence given the evidence regarding the manner of failing to yield when entering the roadway, the smell of alcohol on the defendant's person, the positive result of the blood alcohol test, the defendant's performance on the field sobriety tests, the open containers of alcohol in the vehicle, and the defendant's decision to flee from the scene. Dorsey v. State, 327 Ga. App. 226, 757 S.E.2d 880 (2014).

Evidence supported the defendant's conviction for DUI and driving with a suspended license, O.C.G.A. §§ 40-5-121 and 40-6-391, based on evidence that the homeowners called 911 to report the defendant leaving their home intoxicated, that police observed signs of impairment (odor of alcohol, horizontal gaze nystagmus clues, and positive breath test), and a blood test. Danley v. State, 342 Ga. App. 61, 802 S.E.2d 851 (2017).

Evidence insufficient to sustain conviction of driving under influence. — When it was not shown whether or not it was less safe for the defendant to operate the car than it would have been

Evidence (Cont'd)

without the alleged intoxicants, opinion evidence that the defendant had been drinking was insufficient to sustain a conviction for operating an automobile upon a public highway while under the influence. Turner v. State, 95 Ga. App. 157, 97 S.E.2d 348 (1957).

When the evidence introduced on behalf of the state showed merely that an automobile belonging to the defendant was observed being operated on a public street or thoroughfare, that when the officers stopped the automobile the officers arrested the defendant, who was in the automobile and was in an intoxicated condition, and that another adult person was also an occupant of the automobile; since the evidence wholly fails to show directly that the defendant was the operator of the automobile; and since the circumstances otherwise appearing in the case are equally consistent with the theory that the other occupant was the driver of the automobile as with the theory that the defendant was the driver, the evidence was insufficient to authorize the verdict of guilty. Spence v. State, 96 Ga. App. 851, 102 S.E.2d 51 (1958).

Arresting officer's testimony that the defendant's "eyes were red and glassy, and he had an odor of alcoholic beverage about his breath" was insufficient to sustain a conviction under paragraph (a)(1) of O.C.G.A. § 40-6-391 since the officer testified unequivocally that the defendant's speech was not slurred, that the defendant was not staggering, and that there was nothing unusual or erratic about the defendant's driving. Clay v. State, 193 Ga. App. 377, 387 S.E.2d 644 (1989).

With the exclusion of the defendant's medical records from evidence, the remaining evidence was not sufficient to enable a rational trier of fact to find the defendant guilty of violating O.C.G.A. § 40-6-391. King v. State, 272 Ga. 788, 535 S.E.2d 492 (2000).

Because no one saw the defendant drive the truck and there was no testimony or other evidence about the defendant's manner of driving or ability to drive, the evidence was insufficient to support a verdict on the driving under the influence count. Peck v. State, 245 Ga. App. 599, 538 S.E.2d 505 (2000).

Evidence was sufficient to convict the defendant of DUI when the victim the defendant hit with the defendant's truck testified in considerable detail about the defendant's failed effort to move the defendant's truck uneventfully from the truck's parking space and the victim also testified without dispute that the defendant smelled of alcohol, the defendant's speech was slurred, the defendant was slumped over the steering wheel, and seemed "incoherent." McKay v. State, 264 Ga. App. 726, 592 S.E.2d 135 (2003).

Because the state failed to prove that the defendant's blood alcohol level exceeded the legal limit within three hours of the time that the defendant was in actual physical control of a vehicle, and failed to present expert testimony to establish this fact, the appeals court agreed with the defendant's contention that insufficient evidence supported the defendant's DUI conviction under O.C.G.A. § 40-6-391(a)(5). Peters v. State, 281 Ga. App. 385, 636 S.E.2d 97 (2006).

Defendant's blood test results should have been suppressed because, although a nurse and an officer testified that the officer read the implied consent warning to the defendant prior to the blood draw, the actual card from which the officer read was not admitted into evidence, the state did not produce evidence of what was read to the defendant, and the state thus failed to prove that the state complied with the O.C.G.A. § 40-5-67.1(b) implied consent notice requirements; in the absence of the blood test results, there was no competent evidence that the defendant had an alcohol concentration of .08 grams or more within three hours after driving as charged in the accusation. Thus, the conviction for DUI per se was not supported by sufficient evidence. Epps v. State, 298 Ga. App. 607, 680 S.E.2d 636 (2009).

Since the state failed to show that the defendant had driven any vehicle during the relevant period or that a particular vehicle was involved in a hit-and-run incident, the evidence was not sufficient to support defendant's convictions for hit-and-run and less safe DUI, in violation of O.C.G.A. §§ 40-6-270 and

40-6-391(a)(1); there was also no evidence that the defendant owned the car or was authorized to drive the car. Reynolds v. State, 306 Ga. App. 1, 700 S.E.2d 888 (2010).

Defendant's conviction for driving under the influence of alcohol was reversed because there was insufficient evidence to support the conviction given the state's failure to tender the Intoxilyzer 5000 test results into evidence. In the absence of the blood test results, there was no competent evidence that the defendant had an alcohol concentration of 0.08 grams or more at a time within three hours after driving and being in actual physical control of a moving vehicle. Cash v. State, 337 Ga. App. 511, 786 S.E.2d 560 (2016), cert. denied, No. S16C1760, 2017 Ga. LEXIS 123 (Ga. 2017).

Because the state failed to demonstrate that exigent circumstances justified the warrantless search, the trial court erred in admitting into evidence the results of the defendant's blood and urine tests and the defendant's conviction for DUI per se was reversed due to insufficient evidence. Bailey v. State, 338 Ga. App. 428, 790 S.E.2d 98 (2016).

Evidence insufficient for "less safe driver" conviction. — Trial court erred in the court's conviction of an underage defendant who, while speeding, lost vehicular control, when the companions' testimony did not adduce that the defendant was a less safe driver as a result of being under the influence of alcohol, officer's testimony did not trace alcohol specifically to the defendant, and the defendant had blood test results indicating .04 grams. Davis v. State, 206 Ga. App. 647, 426 S.E.2d 267 (1992).

City police officer's testimony that the defendant was exceeding the speed limit by 10 miles per hour as shown by radar could not be used with evidence of a positive urine sample to support the defendant's conviction under paragraph (a)(2) of O.C.G.A. § 40-6-391. Webb v. State, 223 Ga. App. 9, 476 S.E.2d 781 (1996).

Evidence was sufficient to sustain a conviction since the arresting officer testified that the defendant had slurred speech, red and glassy eyes, was loud and boisterous, had the odor of an alcoholic beverage, and that the officer believed the defendant was under the influence of alcohol to a point where it was less safe to drive. Moore v. State, 234 Ga. App. 332, 506 S.E.2d 685 (1998).

When the evidence that the defendant was impaired as a result of ingesting marijuana consisted of a police officer's testimony that the defendant had red, glassy eyes and red eyelids at the time the defendant was stopped and admitted to having smoked marijuana earlier that evening, but the officer's testimony did not indicate that the defendant's speech was slurred, that the defendant was staggering, that the defendant failed any field sobriety tests or that there was anything unusual or erratic about the defendant's driving, it was insufficient to sustain a less safe driver conviction. Bowen v. State, 235 Ga. App. 900, 510 S.E.2d 873 (1999).

Evidence was not sufficient to establish that the defendant was driving under the influence of alcohol to the extent it made the defendant a less safe driver as the evidence at most showed the defendant had consumed an alcoholic beverage earlier in the day and, thus, that the defendant had alcohol in the defendant's system; however, the evidence did not show the alcohol in the defendant's system impaired the defendant or made the defendant a less safe driver. Ricks v. State, 255 Ga. App. 188, 564 S.E.2d 793 (2002).

Evidence supported a conviction of DUI to the extent that it was less safe to drive after the officer testified that the defendant drove erratically, had a flushed face and bloodshot eyes, and smelled of alcohol; the officer also noticed that the defendant's speech was heavily slurred, the defendant staggered and was unsteady on the defendant's feet, the defendant almost fell four times during the field sobriety tests, and that the defendant's performance on the tests indicated that the defendant was impaired. Grodhaus v. State, 287 Ga. App. 628, 653 S.E.2d 67 (2007), cert. denied, No. S08C0238 2008 Ga. LEXIS 173 (Ga. 2008).

Defendant's conviction for driving while under the influence of any drug to the extent that it was less safe for the defendant to drive, in violation of O.C.G.A. § 40-6-391(a)(2), was reversed because

Evidence (Cont'd)

there was no evidence as to the effect of the drugs in the defendant's blood, alprazolam and a cocaine metabolite, on the defendant's ability to drive safely. Head v. State, 303 Ga. App. 475, 693 S.E.2d 845 (2010).

Evidence sufficient to establish that the defendant was a "less safe driver" within the meaning of paragraph (a)(1) of O.C.G.A. § 40-6-391. Lee v. State, 188 Ga. App. 406, 373 S.E.2d 28, cert. denied, 188 Ga. App. 912, 373 S.E.2d 28 (1988); Ayers v. City of Atlanta, 221 Ga. App. 381, 471 S.E.2d 240 (1996); Tam v. State, 225 Ga. App. 101, 483 S.E.2d 142 (1997); Thomas v. State, 226 Ga. App. 1, 485 S.E.2d 246 (1997); Dixon v. State, 227 Ga. App. 533, 489 S.E.2d 532 (1997); Hamilton v. State, 228 Ga. App. 285, 491 S.E.2d 485 (1997); Heath v. State, 229 Ga. App. 69, 493 S.E.2d 225 (1997); Garrett v. State, 230 Ga. App. 97, 495 S.E.2d 579 (1998); Walker v. State, 230 Ga. App. 376, 497 S.E.2d 12 (1998); Kollman v. State, 231 Ga. App. 630, 498 S.E.2d 745 (1998); Tuttle v. State, 232 Ga. App. 530, 502 S.E.2d 355 (1998); Self v. State, 232 Ga. App. 735, 503 S.E.2d 625 (1998); Mealor v. State, 233 Ga. App. 193, 504 S.E.2d 29 (1998); Sheffield v. State, 237 Ga. App. 701, 516 S.E.2d 563 (1999); Lanier v. State, 238 Ga. App. 875, 517 S.E.2d 106 (1999); Forsman v. State, 239 Ga. App. 612, 521 S.E.2d 410 (1999); Byrd v. State, 240 Ga. App. 354, 523 S.E.2d 578 (1999); Driver v. State, 240 Ga. App. 513, 523 S.E.2d 919 (1999); Harding v. State, 242 Ga. App. 609, 530 S.E.2d 514 (2000); Fairbanks v. State, 244 Ga. App. 123, 534 S.E.2d 529 (2000); Poole v. State, 249 Ga. App. 409, 548 S.E.2d 113 (2001).

Evidence was presented from which a rational trier of fact could reasonably find the defendant was intoxicated and that the defendant's intoxication caused the defendant to be a "less safe" driver which caused the collision and deaths of the defendant's three passengers. Mote v. State, 212 Ga. App. 551, 442 S.E.2d 799 (1994).

When the officer questioned the defendant about the vehicle, the defendant admitted that the defendant had been driving the vehicle, the defendant was unsteady on the defendant's feet and was unable to coordinate the defendant's motor and verbal skills, the defendant's eyes were bloodshot, a strong odor of alcohol permeated the defendant's body and clothing and the defendant subsequently submitted to an alco-sensor test, which was positive, this evidence was sufficient to authorize the trial court's finding that the defendant was guilty beyond a reasonable doubt of operating a moving vehicle under the influence of alcohol to the extent that it was less safe to drive. Martin v. State, 216 Ga. App. 25, 453 S.E.2d 498 (1995).

Testimony of one police officer that the officer observed the defendant drive into a parking lot at a high rate of speed, "scrub" a curb, abruptly make a loop, run a stop sign, and continue driving at a reckless speed, and testimony of that officer and a second officer that the defendant had bloodshot eyes, slurred speech, and a strong odor of alcohol about the defendant was sufficient to support the defendant's conviction for driving under the influence of alcohol (DUI) to the extent that it was less safe for the defendant to drive. Boyd v. State, 259 Ga. App. 864, 578 S.E.2d 472 (2003).

Evidence that the police officer noticed the distinct smell of alcohol about the defendant, that the defendant admitted consuming two beers, and that the defendant had trouble performing field sobriety tests was sufficient to support the defendant's conviction for driving under the influence to the extent that the defendant was a less safe driver. Long v. State, 261 Ga. App. 478, 583 S.E.2d 158 (2003).

Evidence was sufficient to support a less safe conviction under O.C.G.A. § 40-6-391(a)(1) since, although the arresting officer did not see the defendant drive, the defendant told the arresting officer the defendant was driving, that the defendant had collided with a tractor trailer, since the defendant never told the officer that the defendant was not driving or that another person had been driving the car, since the officer, who was an experienced accident investigator, testified that the tractor trailer's lane was clearly established when the tractor trailer was struck, that the defendant

admitted that the defendant had been drinking, that the defendant smelled like alcohol, that the defendant's eyes were bloodshot, that the defendant's speech was slurred, and since the results of a test of the defendant's blood alcohol showed a level of .178 grams. Shoemake v. State, 266 Ga. App. 342, 596 S.E.2d 805 (2004).

Evidence that, while attempting to elude a police officer, the defendant drove at over 80 miles per hour, ran stop signs and traffic lights, struck two vehicles and tried to strike another, along with evidence of marijuana in the defendant's system, established the defendant's guilt of driving under the influence of marijuana to the extent that the defendant was a less safe driver. Ponder v. State, 274 Ga. App. 93, 616 S.E.2d 857 (2005).

Evidence that the defendant approached a stop sign at a high rate of speed on a highway's right shoulder between stopped traffic and the guardrail, passed stopped vehicles, and turned right at the stop sign without stopping, along with the defendant's bloodshot eyes, sobriety test results, and a trooper's opinion that the defendant was impaired, were sufficient to sustain a conviction of driving under the influence to the extent that the defendant was a less safe driver; since the state did not try to use the defendant's positive alco-sensor results, the requested charge that the jury be instructed that the alco-sensor test could not be used to establish breath-alcohol content was neither apt nor relevant. Hatcher v. State, 277 Ga. App. 611, 627 S.E.2d 175 (2006).

Evidence was sufficient to find the defendant guilty of vehicular homicide by driving under the influence of alcohol to the extent that it was less safe to drive, O.C.G.A. § 40-6-391(a)(1); despite the defendant's claims that the officers' statements were insufficient to prove that the blood alcohol concentration was .08 grams or more, the defendant stipulated that the Intoxilyzers used were "used to measure the blood alcohol content" of the body, and both officers read into evidence their implied consent cards which included the language ".08 grams." Corbett v. State, 277 Ga. App. 715, 627 S.E.2d 365 (2006).

Convictions of driving under the influence of alcohol to the extent that it was less safe for the defendant to drive, O.C.G.A. § 40-6-391(a)(1), reckless driving, O.C.G.A. § 40-6-390, and failure to maintain a lane, O.C.G.A. § 40-6-48, were supported by sufficient evidence when an officer stopped to assist the defendant, whose car was parked on the side of a road, the defendant told the officer that the defendant had driven off the road, the officer found tire marks and a fender in the area where the defendant ran off the road and the defendant's vehicle was missing the vehicle's left front fender, the officer noticed a strong odor of alcohol on the defendant's breath, the defendant admitted to drinking for over four hours and could not tell the officer how many drinks had been consumed, and the defendant then failed field sobriety tests. Taylor v. State, 278 Ga. App. 181, 628 S.E.2d 611 (2006).

Because the state failed to present sufficient evidence that the defendant had driven a vehicle within three hours prior to the Intoxilyzer 5000 test being administered, and no evidence was presented to support a per se violation of the offense, a driving under the influence of alcohol with an unlawful blood alcohol level conviction was reversed; but, given the defendant's admission to losing control of the vehicle and running into an embankment on the opposite side of the road, and evidence of a blood alcohol level well above the legal limit, which constituted circumstantial evidence of being a less-safe driver, a less-safe driving under the influence conviction was upheld. Norton v. State, 280 Ga. App. 303, 640 S.E.2d 48 (2006).

Defendant's conviction for driving under the influence to the extent that the defendant was a less safe driver under O.C.G.A. § 40-6-391(a)(1) was affirmed as it was supported by sufficient evidence including: (1) the defendant's admissions that the defendant had been driving a motorcycle and that the defendant had consumed "beer, tequila, and lots of alcohol" earlier in the day; (2) the defendant's refusal to submit to state-administered chemical testing; and (3) a deputy's opinion that the defendant was under the influence of alcohol to the extent that the defendant was a less safe driver. Kimbrell v. State, 280 Ga. App. 867, 635 S.E.2d 237 (2006).

Evidence (Cont'd)

Given that the state's evidence sufficiently showed that the defendant essentially admitted to being drunk to an investigating officer, and as a result of an attempt to drive, the car was lodged on a curb, and the officer found an open beer container inside the car, although circumstantial, this evidence was sufficient to support a finding that the defendant was driving the car while intoxicated; hence, the defendant was not entitled to a directed verdict of acquittal. Moore v. State, 281 Ga. App. 141, 635 S.E.2d 408 (2006).

Convictions for driving under the influence of drugs and to the extent that the defendant was a less-safe driver were upheld on appeal as supported by sufficient evidence, given that the defendant drove erratically, manifested signs of impairment, and had three drugs in the defendant's system; hence, when coupled with the fact that no evidence of tampering with the defendant's urine sample was submitted, the trial court did not abuse the court's discretion in admitting the sample and in denying the defendant's motion for a new trial. Kelly v. State, 281 Ga. App. 432, 636 S.E.2d 143 (2006).

Because an officer's description of the defendant's speech, behavior, bloodshot eyes, odor, performance on the field sobriety tests, and the result of the alco-sensor test, when coupled with the defendant's own testimony, were sufficient to authorize a jury to convict the defendant of driving under the influence of alcohol to the extent of being a less safe driver, the trial court properly denied the defendant a new trial. Renkiewicz v. State, 283 Ga. App. 692, 642 S.E.2d 384 (2007).

Appeals court found sufficient evidence to support the defendant's convictions for DUI to the degree of being a less-safe driver and of failing to stop at a stop sign as the evidence, although not overwhelming, showed that the defendant smelled of alcohol, had run a stop sign, and that the arresting officer believed that the defendant was a less-safe driver as a result of alcohol consumption. Sistrunk v. State, 287 Ga. App. 39, 651 S.E.2d 350 (2007).

Because: (1) the appeals court did not weigh the evidence or determine witness credibility, despite the two conflicting views of the evidence; and (2) a jury charge related to HGN tests, where no HGN test was given, was proper, sufficient evidence supported the defendant's less-safe driver conviction under O.C.G.A. § 40-6-391(a)(1); thus, the trial court did not err in denying the defendant's motion for a directed verdict of acquittal. Massa v. State, 287 Ga. App. 494, 651 S.E.2d 806 (2007).

Evidence was sufficient to sustain the defendant's conviction for "less safe" driving under the influence, O.C.G.A. § 40-6-391(a)(1), as in addition to the defendant having slurred speech and bloodshot, watery eyes, being unsteady on the defendant's feet, admitting to drinking, having a blood-alcohol content of .136 gram percent, and driving the defendant's car off the roadway, the experienced arresting officer testified that, in the officer's opinion, the defendant was less safe to drive. Schlanger v. State, 290 Ga. App. 407, 659 S.E.2d 823 (2008).

Evidence was sufficient for any rational trier of fact to find the defendant guilty of driving under the influence of alcohol to the extent that the defendant was a less safe driver, O.C.G.A. § 40-6-391(a)(1), beyond a reasonable doubt because the defendant's drinking was established by evidence that the defendant's blood-alcohol level was between .078 and .115 at the time of the incident, and the defendant drove the vehicle off the roadway, spun out of control, and struck an electrical pole; the arresting deputies testified to the defendant's slurred speech, stumbling gait, "glazy" eyes, and "pasty" complexion, one of the officers smelled alcohol coming from the defendant's person and vehicle, and the experienced officers testified that, in their opinion, the defendant was under the influence to the extent that it was less safe for the defendant to drive. Davis v. State, 301 Ga. App. 484, 687 S.E.2d 854 (2009), cert. dismissed, No. S10C0633, 2010 Ga. LEXIS 339 (Ga. 2010).

Trial court did not err in convicting the defendant of driving under the influence of alcohol to the extent it was less safe for the defendant to drive, possession of an open container of alcoholic beverage, and disorderly conduct because the testimony

of the driver accosted by the defendant and the arresting officer was sufficient to enable a rational jury to find the defendant guilty beyond a reasonable doubt of the charged crimes; the defendant's erratic driving in a crowded parking lot, the defendant's odd and belligerent behavior toward the other driver in a drive-thru line, the odor of alcohol on the defendant's breath and person, the defendant's watery and bloodshot eyes, the defendant's staggering on the sidewalk, the defendant's refusal to submit to the alco-sensor test, the field sobriety tests, and the state-administered breath test, and the open container in the defendant's truck were sufficient to show that alcohol impaired the defendant's ability to drive safely. Corbin v. State, 305 Ga. App. 768, 700 S.E.2d 868 (2010).

Although a police officer did not conduct field sobriety tests due to the defendant's injuries, the evidence was sufficient to sustain the defendant's DUI less safe conviction because the evidence showed that: (1) the defendant lost control of the vehicle the defendant was driving and left the roadway; (2) the defendant told a 9-1-1 operator after the accident that the defendant was intoxicated; (3) there was an odor of alcohol inside the vehicle; (4) there was an odor of alcohol on the defendant's person; and (5) the defendant's eyes were dilated in a well-lit room. Fletcher v. State, 307 Ga. App. 131, 704 S.E.2d 222 (2010).

Sufficient evidence including: (1) the defendant's excessive speed and erratic driving; (2) the defendant's possession of methamphetamine; and (3) the defendant's blood results showing the presence of methamphetamine and amphetamine, supported the jury's finding that the defendant's ability to safely operate the vehicle was impaired by the defendant's ingestion of methamphetamine and amphetamine. Kar v. State, 318 Ga. App. 379, 733 S.E.2d 387 (2012).

Evidence sufficient for vehicular homicide conviction. — After the defendant admitted having consumed a six-pack of beer approximately two-and-one-half hours prior to the accident, and a forensic chemist testified that the defendant's blood-alcohol level at the time of the accident would have been between .105 and .13 percent, the expert testimony was sufficient, pursuant to former subparagraph (b)(3) of O.C.G.A. § 40-6-392, to authorize the conclusion that the defendant was "under the influence of alcohol" within the contemplation of paragraph (a)(1) of O.C.G.A. § 40-6-391. Based on this evidence, combined with the evidence of the defendant's erratic driving, a rational trier of fact could reasonably have found the defendant guilty of vehicular homicide beyond a reasonable doubt. Collum v. State, 186 Ga. App. 822, 368 S.E.2d 578 (1988).

In a prosecution for vehicular homicide, the state was not required to produce direct evidence showing that the defendant's impaired driving ability proximately caused the collision. Dobson v. State, 222 Ga. App. 331, 474 S.E.2d 630 (1996).

Allegations in an indictment of reckless driving and vehicular homicide through reckless driving, in violation of O.C.G.A. §§ 40-6-390(a) and 40-6-391(a)(1), were proven by evidence that the defendant drove 15 to 20 miles over the speed limit in the rain, weaving in and out of traffic, with a blood alcohol level of 0.135, ultimately crossing a median into oncoming traffic and killing a victim. Prather v. State, 303 Ga. App. 374, 693 S.E.2d 546 (2010).

Evidence was sufficient for a a conviction of vehicular homicide, O.C.G.A. § 40-6-393(a), based on the defendant's driving while impaired by alcohol and taking a fast turn in a door-less jeep, causing the defendant's passenger to be thrown onto the highway where the passenger was struck by another vehicle; the jury could conclude that the defendant's conduct played a substantial part in bringing about the passenger's death. A few hours after the accident the defendant's blood-alcohol content was .19 grams, more than twice the legal limit. Hartzler v. State, 332 Ga. App. 674, 774 S.E.2d 738 (2015).

Evidence of prior conviction as character evidence. — Although the evidence was sufficient to support defendant's convictions for vehicular homicide under O.C.G.A. § 40-6-391(b), the court's

Evidence (Cont'd)

admission of similar-transaction evidence, consisting of a prior methamphetamine conviction, was erroneous as irrelevant character evidence under former O.C.G.A. § 24-2-2 (see now O.C.G.A. § 24-4-404), and the conviction was reversed. McMullen v. State, 316 Ga. App. 684, 730 S.E.2d 151 (2012).

Evidence sufficient to support adjudication of delinquency based on charge of driving under influence. In re C.P.M., 213 Ga. App. 761, 446 S.E.2d 242 (1994).

Admission of similar transaction evidence appropriate. — Notwithstanding a defendant's argument that the admission of similar transaction evidence at the defendant's trial for driving under the influence to show bent of mind violated state and federal due process, the court had to affirm the judgment as only the Georgia Supreme Court or the legislature had the authority to depart from the state's established rule on the admissibility of such evidence. Wade v. State, 295 Ga. App. 45, 670 S.E.2d 864 (2008), cert. denied, No. S09C0568, 2009 Ga. LEXIS 265 (2009).

Relevant evidence admissible. — Defendant was properly convicted of DUI per se in violation of O.C.G.A. § 40-6-391(a)(5) because the trial court did not err in admitting evidence of the defendant being a less safe driver, the defendant's alcohol impairment, and of the field sobriety tests; the evidence of the defendant's field sobriety test was relevant to counter the defendant's attacks on the accuracy of the breath test, and the evidence of the defendant's impairment was relevant to establish the facts that were the basis for the DUI arrest. Holowiak v. State, 308 Ga. App. 887, 709 S.E.2d 39 (2011), overruled on other grounds, Davenport v. State, 289 Ga. 399, 711 S.E.2d 699 (2011), vacated in part, 316 Ga. App. 328, 729 S.E.2d 486 (2012).

Cell phone evidence inadmissible in DUI case. — Trial court erred by denying the defendant's motion to suppress the digital contents of the defendant's cell phone following the defendant's arrest for driving while under the influence because no exigent circumstances existed, particularly since the defendant was arrested, handcuffed, and the keys secured. Specifically, warrantless searches of a cell phone, even one that is seized incident to an arrest, is illegal, unless the state can show that exigent circumstances made the needs of law enforcement so compelling that a warrantless search was objectively reasonable under U.S. Const., amend. IV. Brown v. State, 330 Ga. App. 488, 767 S.E.2d 299 (2014).

Failure to show breath test machine manufacturer was a material witness. — In 10 driving under the influence cases, because the defendants failed to present any evidence of facts supporting the existence of an error in their breath test results as required by case law, the trial court did not abuse the court's discretion when the court determined that the defendants failed to show that the machine's manufacturer was a material witness under the Uniform Act to Secure Attendance of an Out-of-State Witness Act, O.C.G.A. § 24-13-94(a). Young v. State, 324 Ga. App. 127, 749 S.E.2d 423 (2013).

Suppression motion to exclude breath test results properly denied. — Because the evidence sufficiently showed that the defendant asked for a blood test in response to the officer's request to submit to the state-administered breath test, clearly attempting to designate the state-administered test, not request an independent test, and the defendant understood that the type of test that would be done was solely of the state's choosing, the trial court properly denied a motion to suppress the breath test results obtained. Brooks v. State, 285 Ga. App. 624, 647 S.E.2d 328 (2007).

Fact that a defendant did not have sufficient breath to complete the second of two breath tests did not require suppression of the first test which indicated a blood alcohol level of .146. Thrasher v. State, 292 Ga. App. 566, 666 S.E.2d 28 (2008).

Trial court did not err in admitting the results of the defendant's portable alco-sensor test because even though the defendant was in custody for purposes of

Miranda, the portable test was administered in response to a demand from the defendant, not the officer; thus, the situation was more akin to a spontaneous outburst from an unwarned suspect or a test conducted pursuant to the Georgia implied consent statute, O.C.G.A. § 40-6-392. Hale v. State, 310 Ga. App. 363, 714 S.E.2d 19 (2011).

It constitutes negligence for motorist to operate a car while under influence of intoxicating liquors when the liquor contributes to and is a cause of the motorist's running into and striking another's car. Hammond v. Young, 89 Ga. App. 669, 80 S.E.2d 825 (1954) (decided under former Code 1933, § 68-307).

Quantification of controlled substance not required. — Amounts of controlled substances in urine sample did not have to be quantified to prove charges of driving under the combined influence of marijuana and cocaine and drug possession. Kerr v. State, 205 Ga. App. 624, 423 S.E.2d 276, cert. denied, Tempo Mgt., Inc. v. Lewis, 210 Ga. App. 390, 436 S.E.2d 98 (1993).

Trial court did not err by allowing evidence of the defendant's urine test's results even though the laboratory report did not quantify the cocaine detected in the defendant's urine. Woityra v. State, 213 Ga. App. 89, 443 S.E.2d 867 (1994).

Evidence of drugs insufficient. — When the evidence at trial that a defendant had ingested cocaine was the only evidence adduced to show defendant's violation of O.C.G.A. § 40-6-391, there was nothing from which the jury could have inferred that the defendant was under the influence of cocaine to the extent that the defendant was a less safe driver; thus, the evidence was not sufficient to convict the defendant of driving under the influence. Sparks v. State, 195 Ga. App. 589, 394 S.E.2d 407, overruled on other grounds, Green v. State, 260 Ga. 625, 398 S.E.2d 360 (1990).

Mere fact that the defendant had ingested marijuana as shown by a positive urine sample was not sufficient to support a conviction under paragraph (a)(2) of O.C.G.A. § 40-6-391 because that provision did not prohibit driving after ingesting any quantity of drugs. Webb v. State, 223 Ga. App. 9, 476 S.E.2d 781 (1996).

Admissibility of field sobriety tests. — Because the defendant: (1) was not in custody for the purposes of Miranda when asked to perform field sobriety tests; (2) did not make any statement or take any overt act which would have caused a reasonable person to believe that the encounter was anything more than a temporary detention; and (3) voluntarily submitted to the field sobriety tests, suppression of the results of the tests was properly denied. McDevitt v. State, 286 Ga. App. 120, 648 S.E.2d 481 (2007).

Trial court did not err in denying the defendant's motion to suppress evidence of the results of field sobriety tests on the ground that the tests were administered without the defendant having the benefit of a Miranda warning because the defendant was not in custody until after the field sobriety tests were complete; the defendant was allowed to walk around and was not put into handcuffs or a patrol car while the defendant and the first officer awaited the arrival of the second officer, and a reasonable person in the defendant's position could conclude that the person's freedom of action was only temporarily curtailed and that a final determination of the person's status was simply delayed. DiMauro v. State, 310 Ga. App. 526, 714 S.E.2d 105 (2011).

Guest's knowledge of host-driver's intoxication. — Mere fact that, in an action by a guest against the host-driver of an automobile in which the plaintiff was riding, it is alleged, as one of the grounds of negligence, that the host was driving the automobile under the influence of intoxicating liquors, does not require the conclusion that the plaintiff knew of such intoxication at the time plaintiff entered the automobile or in time to have avoided any injury resulting from such negligence. Stephenson v. Whiten, 91 Ga. App. 110, 85 S.E.2d 165 (1954) (decided under former Code 1933, § 68-307).

Criminality partly dependent upon place where committed. — Since the statute makes it a misdemeanor to operate a motor vehicle while under the influence of intoxicants, upon any "public street or highway, or any private way, private street, or private property in this

Evidence (Cont'd)

state," the criminality of the act depends, in part, upon the place where it is committed and, this being so, the allegation of place is material, and any variance between the allegation and the proof is fatal. Isenhower v. State, 88 Ga. App. 762, 77 S.E.2d 834 (1953) (decided under former Code 1933, § 68-307).

Proving defendant committed offense at exact point alleged. — In a prosecution, upon a charge that the defendant in Floyd County, Georgia, drove and operated an automobile upon "a certain public street and public highway of said state and county, to wit: on U.S. Highway No. 27 at a point three miles south of Rome, Georgia," while in an intoxicated condition and while under the influence of intoxicating liquors, it was not necessary to prove that the defendant committed the offense at a point three miles south of Rome, Georgia, such allegation being mere surplusage. Robinson v. State, 76 Ga. App. 313, 45 S.E.2d 717 (1947) (decided under former Code 1933, § 68-307).

No reversal when state testified to only one breath test. — Appeals court rejected the defendant's argument that the evidence was insufficient to support a conviction for driving under the influence of alcohol per se because only one breath test was testified to by the state and O.C.G.A. § 40-6-392(a)(1)(B) mandated that two breath tests had to be given; moreover, even if the court were to agree with this contention, the defendant waived this argument by failing to make any objection at trial to the admission of the single breath test. Annaswamy v. State, 284 Ga. App. 6, 642 S.E.2d 917 (2007).

Alco-sensor test results not admissible to demonstrate blood-alcohol content. — Because the defendant attempted to use an alco-sensor test result to show a blood-alcohol amount, and such a result was not admissible for that purpose, but instead was used as an initial screening device to aid the police officer in determining probable cause to arrest a motorist suspected of driving under the influence of alcohol, the trial court did not err in excluding such evidence for the purpose sought by the defendant. Trull v. State, 286 Ga. App. 441, 649 S.E.2d 571 (2007).

Intervening failed breath test results admissible. — Because an intervening failed breath test, due to the defendant's inability to provide an adequate sample, did not render otherwise valid breath alcohol test results inadmissible, and given that the fact of an intervening failed breath test went to the weight, not the admissibility, of the test results, suppression of the results was properly denied. Davis v. State, 286 Ga. App. 443, 649 S.E.2d 568 (2007).

Witness' observation as to person's intoxication. — In a prosecution for operating a motor truck on the public highway while intoxicated, since the answer of a witness is that the defendant was under the influence of intoxicating liquor, the jury is authorized to say that since the observed matter in issue cannot be so fully and accurately described as to put the jury completely in the place of the testifying witness, thus enabling the jurors to draw the inference equally as well as the witness, the jury may determine the condition of the defendant from the direct testimony of the witness who observed the defendant, rather than from a subsequent description of the defendant's conduct by the witness. Grier v. State, 72 Ga. App. 633, 34 S.E.2d 642 (1945) (decided under former Code 1933, § 68-307).

In a prosecution for driving an automobile under the influence of intoxicating liquor it is proper for a witness who had, and can prove that the witness had, suitable opportunities for observation to state whether a person was intoxicated or that the witness appeared to be drinking. Spence v. State, 83 Ga. App. 588, 63 S.E.2d 910 (1951) (decided under former Code 1933, § 68-307).

Recording of 9-1-1 call. — In a trial for driving under the influence of alcohol to the extent of being a less safe driver in violation of O.C.G.A. § 40-6-391(a)(1), admission of a recording of a 9-1-1 call made by a caller who was following the defendant's vehicle was proper. Admission of the call did not violate the Confrontation Clause of the Sixth Amendment because the call's primary purpose was to prevent

immediate harm to the public, not to establish evidentiary facts for a future prosecution, and the call was admissible under former O.C.G.A. § 24-3-3 (see now O.C.G.A. § 24-8-803) because the caller had not deliberated about the statement and had personal knowledge of what the caller described to the 9-1-1 operator. Key v. State, 289 Ga. App. 317, 657 S.E.2d 273 (2008).

Failure to include trial transcript in record on appeal. — Because the defendant failed to include the trial transcript in the record for the appellate court to review an order denying the defendant's motion to suppress, that court had to assume as a matter of law that the evidence presented supported the trial court's findings, and that the court properly exercised the court's judgment and discretion. Pittman v. State, 286 Ga. App. 415, 650 S.E.2d 302 (2007).

Error as to blood test results waived on appeal. — In a prosecution for DUI, the trial court did not err in denying the defendant's motion to suppress the blood test evidence as the trial court properly allowed the discovery of notes, memoranda, graphs, or computer printouts pertaining to the blood sample taken as well as all chain of custody documentation because they were the only items deemed relevant to the prosecution; suppression of the blood test results was not required as the defendant waived error on appeal as to the absence of one of the two lab testers. Cottrell v. State, 287 Ga. App. 89, 651 S.E.2d 444 (2007), cert. denied, No. S07C1894, 2007 Ga. LEXIS 816 (Ga. 2007).

Error in admitting chemical test results harmless in light of other evidence. — While the appeals court agreed that the trial court erred in denying the defendant's motion to suppress the results of the chemical test of the defendant's blood, the error was harmless as other evidence presented by the state, specifically the defendant's admission to being intoxicated and the testimony of other witnesses describing their observations, proved the defendant's intoxication. Harrelson v. State, 287 Ga. App. 664, 653 S.E.2d 98 (2007).

Expert testimony. — Trial court did not err in not allowing an ophthalmologist to testify as an expert that a driving-under-the-influence defendant had two surgeries in the past, which could have affected the defendant's performance on walk-and-turn and one-leg-stand tests. The witness had no personal knowledge of the surgery in question or of the medical records referring to the surgeries; moreover, the defendant's live-in companion was permitted to testify at length regarding the defendant's medical issues arising from the surgery and the surgery's effect on the defendant's ability to walk normally at the time of the arrest. Aal v. State, 290 Ga. App. 252, 659 S.E.2d 609 (2008).

Sitting in driver's seat sufficient. — Arresting officer's testimony that the defendant was sitting in the driver's seat of the vehicle with the keys in the ignition and the dashboard lights on when the officer arrived less than three hours before administering the breath test was sufficient to support the charge for DUI per se. State v. Gaggini, 321 Ga. App. 31, 740 S.E.2d 845 (2013).

Instructions to Jury

Charge correct on witness' ability to judge intoxication. — In a proceeding the defendant was convicted of driving under influence of alcohol, the trial court's charge that "a witness who had and was able to improve suitable opportunities for observation may state whether a person was intoxicated and the extent of his intoxication" was proper and stated a correct principle of law and there was no harmful error in the charge given. Smitherman v. State, 157 Ga. App. 526, 278 S.E.2d 107 (1981).

Language to the effect that "a witness who satisfactorily shows that he had opportunity to observe, and did observe, the condition of another, may testify whether that person was under the influence of intoxicants and the extent thereof, stating the facts upon which the opinion is based" is suitable for use as a jury charge. Luke v. State, 177 Ga. App. 518, 340 S.E.2d 30 (1986).

Inappropriate jury charge. — Trial court erred in the court's charge to the jury because the charge had the effect of eliminating the jury's consideration of de-

Instructions to Jury (Cont'd)

fendant's defense to the violation of O.C.G.A. § 40-6-391. The charge did not allow for the defendant's defense that the car's movement was "an accident" caused by the defendant's falling headfirst onto the floorboard. Virgil v. State, 227 Ga. App. 96, 488 S.E.2d 694 (1997).

It was reversible error when the judge instructed the jury that "if there was at that time an alcohol concentration of 0.08 grams or more, it shall be inferred that the person was under the influence of alcohol as prohibited by Code Section 40-6-391" since, although this paraphrased the language of former subparagraph (b)(3) of O.C.G.A. § 40-6-392, it impermissibly shifted the burden to the defendant to prove the defendant's innocence of the driving under the influence charge under paragraph (a)(1) of O.C.G.A. § 40-6-391. Davis v. State, 236 Ga. App. 32, 510 S.E.2d 889 (1999).

Charge as to witness' testimony constituting fact rather than opinion. — Charge that a witness in a driving-under-the-influence case states a fact rather than an opinion when the witness testifies that a defendant was under the influence of intoxicating liquors could easily mislead a jury to a defendant's prejudice and reversal of a conviction is required. New v. State, 171 Ga. App. 392, 319 S.E.2d 542 (1984).

Charge did not impermissibly shift burden of proof to defendant. — Charging the jury that if a person has .12 percent or more by weight of alcohol in the person's blood while driving, that the person shall be in violation of Georgia law, did not impermissibly shift the burden of proof to the defendant. The charge created no such presumption but merely proscribed driving with a blood alcohol level of .12 percent. Koulianos v. State, 192 Ga. App. 90, 383 S.E.2d 642 (1989).

Trial court's jury charge on blood alcohol contents over .10 percent and .12 percent under former subparagraphs (b)(3) and (b)(4) of O.C.G.A. § 40-6-392, when the defendant was formally charged with violating paragraph (a)(1) of O.C.G.A. § 40-6-391, did not impermissibly shift the burden of proof and allow the jury to convict the defendant of an offense different than the one charged. Waters v. State, 195 Ga. App. 288, 393 S.E.2d 280 (1990), cert. denied, 498 U.S. 970, 111 S. Ct. 437, 112 L. Ed. 2d 420 (1990).

Trial court's instruction to the jury on the definition of blood-alcohol concentration, derived from O.C.G.A. § 40-1-1(1), did not unconstitutionally shift the burden of proof from the state to the defendant. Brannan v. State, 261 Ga. 128, 401 S.E.2d 269 (1991).

Burden of proving defendant's lung capacity was not unconstitutionally shifted to the defendant since the court considered the weight to be given to the intoximeter results as well as other evidence regarding the defendant's condition at the time of the arrest. Walker v. State, 204 Ga. App. 559, 420 S.E.2d 17, cert. denied, 204 Ga. App. 922, 420 S.E.2d 17 (1992).

Charges regarding the use of the blood to alcohol ratio have been held to be harmless so long as the charges are given in conjunction with a qualifying instruction regarding the inconclusiveness of the ratio. Therefore, the burden of proof was not shifted to the defendant. Walker v. State, 204 Ga. App. 559, 420 S.E.2d 17, cert. denied, 204 Ga. App. 922, 420 S.E.2d 17 (1992).

In a prosecution of defendant for driving under the influence, to the extent that the defendant was a less safe driver, a charge that the jury might infer that a person was under the influence of alcohol if there was a blood alcohol concentration of 0.08 grams or more was not impermissible. Animashaun v. State, 216 Ga. App. 104, 453 S.E.2d 126 (1995).

Charge to the jury that the defendant's refusal to take a requested chemical test "may be considered as positive evidence creating an inference that the test would show the presence of alcohol. However, such an inference may be rebutted" did not improperly shift the burden of proof to the defendant. Bravo v. State, 249 Ga. App. 433, 548 S.E.2d 129 (2001).

In convictions of driving while under the influence, a jury charge stating that if the jury found that the officer erred in administering or interpreting the results of a field sobriety test, the evidence was to

be given only the weight deemed appropriate, did not impermissibly shift the burden of proof to the defendant to prove that the tests were wrongly administered or analyzed. Duprel v. State, 301 Ga. App. 469, 687 S.E.2d 863 (2009), overruled on other grounds by Zilke v. State, 299 Ga. 232, 787 S.E.2d 745 (2016).

Mandatory instruction that the influence of alcohol "shall be inferred" (rather than the permissive "may infer") was impermissibly burden-shifting; however, the erroneous charge did not require reversal since it was not relevant to any elements of the crime of driving with a blood-alcohol level in excess of the legal limit. Ellerbee v. State, 215 Ga. App. 102, 449 S.E.2d 874 (1994).

Charge in the language of O.C.G.A. § 40-6-392(b) that if the blood level exceeds certain amounts there shall be a presumption that the person was under the influence of alcohol as prohibited by provisions of subsection (a) of O.C.G.A. § 40-6-391 is impermissible burden shifting but, even if improperly given, it is not relevant to the determination of any crime defined in subsection (a) and does not require reversal. Knapp v. State, 229 Ga. App. 175, 493 S.E.2d 583 (1997).

No instruction on accident required. — In a defendant's trial for reckless driving and driving under the influence of alcohol to the extent that it was less safe to drive, arising out of an incident in which the defendant's car spun out of control and struck another car, the trial court did not err in refusing to give a jury instruction on the defense of accident under O.C.G.A. § 16-2-2; the defendant was not entitled to a jury instruction on that affirmative defense because the defendant did not admit to driving recklessly or under the influence of alcohol to the extent that it was less safe to drive. Rutland v. State, 282 Ga. App. 728, 639 S.E.2d 628 (2006).

Trial court did not err by refusing to give the defendant's requested charge on misfortune or accident because the defendant, who was charged with driving under the influence, reckless driving, and failure to maintain lane, was not entitled to a charge that the accident was unavoidable; because the defendant did not admit to committing any act that constituted the offenses with which the defendant was charged, the defendant was not entitled to an instruction on accident. Davis v. State, 301 Ga. App. 484, 687 S.E.2d 854 (2009), cert. dismissed, No. S10C0633, 2010 Ga. LEXIS 339 (Ga. 2010).

Instruction regarding "inference" was error. — In a prosecution for driving under the influence -- less safe driver, it was error to charge to the jury that if the jury believed the defendant's alcohol concentration was .08 percent or more "it shall be inferred" that the defendant was under the influence of alcohol, and the giving of generalized instructions regarding the state's burden and the jury's responsibilities was insufficient to overcome the mandatory nature of the instruction. Stepic v. State, 226 Ga. App. 734, 487 S.E.2d 643 (1997).

Charge required on sufficiency of circumstantial evidence. — Entirely circumstantial evidence requires a charge on the sufficiency of circumstantial evidence to authorize the defendant's conviction in the absence of a timely written request. Lyons v. State, 90 Ga. App. 25, 81 S.E.2d 890 (1954) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Circumstantial evidence. — In a prosecution for driving under the influence of alcohol, the defendant was entitled to defendant's requested instruction on circumstantial evidence based on a reasonable hypothesis from the defendant's use of Benadryl that the defendant was not guilty of the crime charged. Cato v. State, 212 Ga. App. 417, 441 S.E.2d 900 (1994).

In a prosecution for driving under the influence of alcohol, evidence upon which an officer based the officer's opinion that the defendant was impaired and a less safe driver was circumstantial, and the failure to give a requested charge on former O.C.G.A. § 24-4-6 (see now O.C.G.A. § 24-14-6) was reversible error. Tomko v. State, 233 Ga. App. 20, 503 S.E.2d 300 (1998).

After the court read the indictment to the jury as well as the entire Code section, and when there was circumstantial evidence of marijuana metabolites in the blood, there was no reason to give so little

Instructions to Jury (Cont'd)

credence to the ability of the jury to select that portion of the statute obviously applicable to the facts and issues presented for the jury's determination that a mistrial should be declared. Chadwick v. State, 236 Ga. App. 199, 511 S.E.2d 286 (1999).

Right to refuse tests. — Defendant's requested instruction regarding the defendant's right to refuse to take chemical or other tests and the exercise of that right was properly refused since other instructions relayed the same principles to the jury as covered in the requested charge. White v. State, 233 Ga. App. 276, 503 S.E.2d 891 (1998).

Horizontal gaze nystagmus test. — Charge on the scientific efficacy of the horizontal gaze nystagmus test in a prosecution for driving under the influence was not an erroneous expression of the court's opinion in violation of O.C.G.A. § 17-8-57. Waits v. State, 232 Ga. App. 357, 501 S.E.2d 870 (1998).

Defendant's challenge to horizontal gaze nystagmus (HGN) failed, and the conviction for drunk driving was upheld on appeal, because the HGN is an accepted, common procedure that has reached a state of verifiable certainty in the scientific community and is admissible as a basis upon which an officer can determine that a driver was impaired by alcohol. Mullady v. State, 270 Ga. App. 444, 606 S.E.2d 645 (2004).

Charge that field sobriety tests could not be used to quantify blood alcohol properly refused. — In the defendant's DUI trial, the trial court did not err in refusing the defendant's requested charge to the effect that the horizontal gaze nystagmus and field sobriety tests could not be used to quantify a blood alcohol content over 0.10 grams because the state trooper's testimony that "just by the field sobriety alone, it is between [a] 93 and 95 percent success rate of them being a .1 or higher on the side of the road at that particular time" was admissible and not improper. Scott v. State, 332 Ga. App. 559, 774 S.E.2d 137 (2015).

Failure to charge on the presumption on nonimpairment contained at O.C.G.A. § 40-6-392(b)(1) was not harmful as that provision did not apply to the crime of driving with a blood-alcohol level in excess of the legal limit. Ellerbee v. State, 215 Ga. App. 102, 449 S.E.2d 874 (1994).

Failure to charge that manner of driving not unsafe not error. — It was not error to fail to charge that "it is a defense to a prosecution for driving under the influence that the person's manner of driving was not unsafe." Cunningham v. State, 221 Ga. App. 341, 471 S.E.2d 273 (1996).

Use of words "some alcohol" in jury instruction. — In the context of the entire trial court's charge in proceeding when the defendant was convicted of driving under the influence of alcohol, the use of the word "some" in the jury instruction that "the essential ingredients of the offense are the driving or being in control of a moving vehicle by the accused at a time while under the influence of some alcohol" did not constitute harmful error since that instruction was followed by the instruction that "the operator of a motor vehicle is under the influence of alcohol when he is so affected by it as to make it less safe for him to drive, operate, or be in control of the vehicle than it would be if he were not affected by such alcohol." Smitherman v. State, 157 Ga. App. 526, 278 S.E.2d 107 (1981).

Although the word "some" is not found in O.C.G.A. § 40-6-391, the trial court does not err in charging that in order to find the defendant guilty, the jury must find "that at the time and place, he was under the influence of some intoxicating beverages." Jones v. State, 168 Ga. App. 106, 308 S.E.2d 209 (1983).

Charge on affect of alcohol appropriate. — Charge that the jury had to find "that the operator of a motor vehicle is under the influence of alcohol when he or she is so affected by the alcohol as to make that person a less safe driver than they would have been had they not consumed any alcohol at all" was a correct statement of law. Brownlee v. State, 225 Ga. App. 311, 483 S.E.2d 370 (1997).

Charge on effect of alcohol not required. — Trial court did not err in refusing to give the defendant's requested jury instruction that, to convict the defendant

of driving under the influence of alcohol to the extent that it was less safe to drive in violation of O.C.G.A. § 40-6-391(a)(1), the defendant had to be so affected by the alcohol that the alcohol adversely affected the defendant's operation of the motor vehicle; § 40-6-391(a)(1) did not require that the defendant actually committed an unsafe act in order to be convicted of violating the statute. Moran v. State, 257 Ga. App. 236, 570 S.E.2d 673 (2002).

Non-moving vehicle. — It is not error to refuse to give a charge that "a defendant cannot be convicted of driving under the influence for operating a non-moving vehicle." Melendy v. State, 202 Ga. App. 638, 415 S.E.2d 62 (1992).

Charging defendant for operating nonmoving vehicle. — Former proscription against merely operating a vehicle while under the influence of intoxicating liquor has been replaced by a proscription against driving or being "in actual physical control of any moving vehicle" while under the influence of alcohol or drugs; thus, a jury charge indicating the defendant could be convicted for operating a nonmoving vehicle was in error. Carr v. State, 169 Ga. App. 679, 314 S.E.2d 694 (1984).

Charge allowing conviction for nonmoving vehicle correct. — Court's failure to give a jury charge on the requirement that a driver be in actual physical control of a moving vehicle while under the influence of alcohol is proper when the court charges the jury on the subject matter of the requested charge and when the requested charge is argumentative and an incorrect interpretation of the law. Phillips v. State, 185 Ga. App. 54, 363 S.E.2d 283 (1987).

Court properly denied defendant's instruction on involuntary intoxication since, although the defendant produced evidence that the defendant was not aware that a prescribed medication could affect the defendant's ability to drive, there was no evidence that the defendant did not have sufficient mental capacity to distinguish between right and wrong by reason of the defendant's intoxication. Flanders v. State, 188 Ga. App. 98, 371 S.E.2d 918 (1988).

Charge on greater offense only. — Trial court properly refused to give a charge on reckless driving submitted by the defendant when the uncontradicted evidence showed completion of the greater offense of driving under the influence so that the charge on the lesser offense was not required. Howard v. State, 182 Ga. App. 403, 355 S.E.2d 772 (1987).

In convictions of driving while under the influence, a jury charge for the lesser included offense of attempted DUI was not required because the evidence showed the commission of the completed offense. Duprel v. State, 301 Ga. App. 469, 687 S.E.2d 863 (2009), overruled on other grounds by Zilke v. State, 299 Ga. 232, 787 S.E.2d 745 (2016).

Charge as to criminal intent. — Because a defendant was charged with driving under the influence, the trial court properly instructed the jury that criminal intent had to be proved by the state in every prosecution and that criminal intent did not mean an intention to violate the law or to violate a penal statute, but simply meant to intend to commit the act which was prohibited by statute. Viewed in the statute's entirety, the charge was sufficient to inform the jury that the jury had to find that the defendant intended to evade the duty imposed by O.C.G.A. § 40-6-391 and that the jury had to find that the defendant knowingly drove while under the influence. Cornwell v. State, 283 Ga. 247, 657 S.E.2d 195 (2008).

In a prosecution for driving with an alcohol concentration greater than 0.08 grams, O.C.G.A. § 40-6-391(a)(5), a jury instruction that the state did not have to prove that the defendant intended to drive under the influence, nor that the defendant knew that the defendant was doing so, was proper viewed in the context of the charge as a whole which stated that criminal intent meant the intent to do the act which resulted in a violation of the law. Goethe v. State, 294 Ga. App. 232, 668 S.E.2d 859 (2008).

Jury in a defendant's trial for DUI in violation of O.C.G.A. § 40-6-391(a) was correctly charged that the defendant's intent to drive while intoxicated was immaterial because the evidence was undisputed that the defendant intentionally ingested alcohol, Xanax, and Ambien, then drove in an intoxicated state in the

Instructions to Jury (Cont'd)

defendant's pajamas, although the defendant did not remember driving. Myers v. State, 302 Ga. App. 753, 691 S.E.2d 650 (2010).

Incomplete charge. — Trial court's charge to the jury "that a person shall not drive or be in actual physical control of any motor vehicle while under the influence of alcohol" was harmfully incomplete because the charge did not inform the jury that being under the influence of alcohol meant that consumption of alcohol had rendered the person a less safe driver. Taylor v. State, 184 Ga. App. 368, 361 S.E.2d 667, cert. denied, 184 Ga. App. 911, 361 S.E.2d 667 (1987).

Totality of charges were deemed adequate. — Because, in their totality, the jury charges given by the trial court covered substantially and adequately the principles contained in the two requested instructions cited by the defendant, the trial court did not err in refusing to give them in the exact language the defendant requested; hence, the appeals court rejected the defendant's contention that the jurors were left with insufficient guidance to evaluate the blood tests results or the quality of the blood test chain of custody. Steinberg v. State, 286 Ga. App. 417, 650 S.E.2d 268 (2007), cert. denied, No. S07C1725, 2008 Ga. LEXIS 113 (Ga. 2008).

Charging entire section. — Given defendant's crime scene admission of driving under the influence, there was no reasonable probability that the jury convicted the defendant of the offenses upon a basis not charged in the accusation; accordingly, that the superior court charged O.C.G.A. § 40-6-391(a) as a whole was no more than harmless error under the circumstances. Marryott v. State, 263 Ga. App. 65, 587 S.E.2d 217 (2003).

Crime committed prior to indictment. — Trial court did not err in instructing that the jury could find the defendant guilty if the jury found the defendant committed the charged offenses "at any time within two years immediately preceding the date of the swearing out of" the charges. Horner v. State, 240 Ga. App. 1, 522 S.E.2d 483 (1999).

Superfluous language in jury charge not harmful. — Although jury instructions concerning being a less safe driver under paragraph (a)(1)-(3) of O.C.G.A. § 40-6-391 and the inferences listed in O.C.G.A. § 40-6-392(b)(1) (see now O.C.G.A. § 40-6-392(b)(1), (2)) are superfluous in a prosecution under § 40-6-391 for driving while under the influence by having .12 percent or more alcohol in the blood, the additional language is not harmful when the jury is informed of the legal ramifications of a blood-alcohol content of over .12 percent and there is evidence that the defendant's blood-alcohol content was greater than .12 percent. Courson v. State, 184 Ga. App. 793, 363 S.E.2d 41 (1987).

Since the defendant was charged with driving under the influence by having 0.1 percent or more by weight of alcohol in the defendant's blood, jury instructions concerning being a less safe driver and the inferences derived therefrom were superfluous; however, since the jury was also informed of the legal ramifications of a blood-alcohol content of over 0.1 percent and there was evidence that the defendant's blood-alcohol content was greater than 0.1 percent, the additional language in the charge was not harmful to the defendant. Frazier v. State, 267 Ga. App. 682, 601 S.E.2d 145 (2004).

Repeated portions of jury charges covering legal principles relating to two different counts for which the defendant was prosecuted under O.C.G.A. § 40-6-391 did not confuse or mislead the jury or in any manner result in an unfair statement of the law. Hawkins v. State, 223 Ga. App. 34, 476 S.E.2d 803 (1996).

"Recharge" not error. — Repetition of a sentence from paragraph (a)(5) (now (a)(6)) of O.C.G.A. § 40-6-391 in response to a jury request for such did not serve to prejudice the minds of the jury, requiring no reversal. Hill v. State, 207 Ga. App. 65, 426 S.E.2d 915 (1993).

Burden of proof. — Trial court did not err by charging that the prosecution was not required to prove the prosecution's case to a mathematical certainty under paragraph (a)(4) of O.C.G.A. § 40-6-391 since the jury was not misled by a charge instructing the jury that the state was

required to prove each material allegation of the accusation and every essential element of the crime beyond a reasonable doubt before the defendant could be convicted of the charge. Brown v. State, 201 Ga. App. 441, 411 S.E.2d 286 (1991).

Special verdict. — When an accusation was drawn in the conjunctive, charging the defendant with being a less safe driver and with having a blood alcohol count over 0.10, providing a verdict form that listed separately each of the two methods by which the defendant was accused of violations and instructing the jury to indicate "guilty" or "not guilty" as to each method, such verdict form was not a request for a special verdict in violation of O.C.G.A. § 17-9-2. Dean v. State, 232 Ga. App. 390, 501 S.E.2d 895 (1998).

Preliminary instruction was harmless error. — Trial court erred in mentioning the excluded results of a breath test when instructing the jury because the preliminary instruction was both unnecessary and improper, but the error was harmless; there was no reasonable probability that the preliminary instruction impacted the jury's verdict because the jury was presented with overwhelming evidence that the defendant was a less-safe driver including: (1) a video of the traffic stop, which showed the defendant's less-than-stellar performance on the field sobriety tests, the defendant's difficulty following instructions, and the defendant's occasionally belligerent demeanor; (2) the defendant's admission to consuming alcohol; (3) the officer's testimony regarding the defendant's traffic violation, the officer's observations during the stop, and the positive results of the alco-sensor test; and (4) similar-transaction evidence. Hale v. State, 310 Ga. App. 363, 714 S.E.2d 19 (2011).

Correct jury charge. — When the court charged the jury: "If you find … that the defendant was … at the time of the operation of such automobile, under the influence of intoxicating liquors to the extent that it rendered his operation of such automobile less safe, then he would be deemed to be under the influence of intoxicating liquors," this is a correct statement of the law. Maxwell v. State, 97 Ga. App. 334, 103 S.E.2d 162 (1958) (decided under Ga. L. 1953, Nov.-Dec. Sess., p. 556).

Equal protection clause was not violated in charging the jury to convict if the defendant was under the influence of alcohol to the extent that it was "less safe" for defendant to drive, rather than if defendant was "rendered incapable of driving safely"; the standards were legally equivalent. Johnson v. State, 268 Ga. App. 426, 602 S.E.2d 177 (2004).

Trial court did not err in giving jury instructions in defendant's trial for DUI as an unsafe driver, in violation of O.C.G.A. § 40-6-391(a)(1), and in refusing to give the defendant's requested jury instruction as the charge by the court did not differ in substance from that requested by the defendant, and the standard used for offenses under O.C.G.A. § 40-6-391(b) had been held "equivalent," such that there was no disparate treatment suffered by the defendant when the court gave the "less safe" jury charge rather than the "rendered incapable of driving safely" jury charge. Drogan v. State, 272 Ga. App. 645, 613 S.E.2d 195 (2005).

Trial court properly charged the jury with respect to driving under the influence that "a person (should) not drive or be in actual physical control of any moving vehicle while under the influence of alcohol to the extent that it (was) less safe for that person to drive." Furlow v. State, 276 Ga. App. 332, 623 S.E.2d 186 (2005).

In a prosecution for driving with an alcohol concentration greater than 0.08 grams, O.C.G.A. § 40-6-391(a)(5), the trial court properly instructed the jury that equipment used to measure alcohol content that was approved by the Georgia State Crime Lab was considered accurate if properly operated as this was simply an explanation of O.C.G.A. § 40-6-392(a)(1)(A). Goethe v. State, 294 Ga. App. 232, 668 S.E.2d 859 (2008).

Trial court did not err in charging the jury during the defendant's trial for driving under the influence of alcohol to the extent that it was less safe for the defendant to drive because the challenged charge immediately followed a proper charge regarding the implications of a defendant's refusal to submit to tests, and

Instructions to Jury (Cont'd)

the defendant failed to show what harm the defendant suffered as the result of the giving of the jury instruction; the charge was adjusted to the evidence because the testimony adduced at trial showed that the defendant was speeding immediately prior to the defendant's arrest, and the charge properly left the determination of whether the defendant was impaired in the hands of the jury. Crusselle v. State, 303 Ga. App. 879, 694 S.E.2d 707 (2010).

Trial court did not err in refusing to give the defendant's requested charges concerning the reliability and possible malfunctioning of breath testing machines because the trial court's general charge on the state-administered test adequately instructed the jury on the fallibility of those machines. Holowiak v. State, 308 Ga. App. 887, 709 S.E.2d 39 (2011), overruled on other grounds, Davenport v. State, 289 Ga. 399, 711 S.E.2d 699 (2011), vacated in part, 316 Ga. App. 328, 729 S.E.2d 486 (2012).

Jury instruction for serious injury by vehicle as given was not plain error because the charge that the defendant's counsel requested was substantially similar to the charge that the trial court gave; the trial court charged the jury that no person could be convicted of any crime unless and until each element of the crime as charged was proven beyond a reasonable doubt; and a conviction under the serious injury by vehicle statute as charged did not require a conviction under the driving under the influence statute. Fitzpatrick v. State, 339 Ga. App. 135, 793 S.E.2d 446 (2016).

Charges that were not misleading or confusing were not reversible error. — Failure to instruct on issues that were not material to the case and slips of the tongue in instructions that did not clearly mislead or confuse the jury were not reversible error regarding the defendant's convictions for driving while under the influence of alcohol to the extent that the defendant was a less safe driver. Worthman v. State, 266 Ga. App. 208, 596 S.E.2d 643 (2004).

Defendant's less-safe DUI conviction was upheld on appeal as a jury charge on criminal intent, and the trial court's use of the term "sober," was not confusing or erroneous, and the appeals court refused to speculate that the instruction led the jury to believe that it could convict based on the defendant's consumption of any amount of an alcoholic beverage. McWilliams v. State, 287 Ga. App. 585, 651 S.E.2d 849 (2007).

In convictions of driving while under the influence, a jury charge did not create ambiguity and confusion, requiring reversal, by using the word "anywhere" rather than the word "elsewhere" because under O.C.G.A. § 40-6-3(a)(3), the provisions of O.C.G.A. § 40-6-391 applied anywhere in Georgia. Duprel v. State, 301 Ga. App. 469, 687 S.E.2d 863 (2009), overruled on other grounds by Zilke v. State, 299 Ga. 232, 787 S.E.2d 745 (2016).

Trial court did not err in refusing to charge the jury that the presence of alcohol in the body did not support an inference that the defendant was impaired and that the jury had to evaluate evidence of how a preexisting condition could affect physical appearance or performance on roadside sobriety evaluations because the trial court's charges did not mislead or confuse the jury, nor did the trial court commit error by declining to give the defendant's requested charges; the trial court instructed the jury that DUI per se required no proof of impairment, which substantially covered the same principle contained in one of the defendant's requested charges, and the trial court adequately covered the evidentiary principles underlying the defendant's other requested charge in the court's general instructions regarding the definition of evidence, how to evaluate conflicting evidence, and impeachment. Holowiak v. State, 308 Ga. App. 887, 709 S.E.2d 39 (2011), overruled on other grounds, Davenport v. State, 289 Ga. 399, 711 S.E.2d 699 (2011), vacated in part, 316 Ga. App. 328, 729 S.E.2d 486 (2012).

Contingent jury charges on first- and second-degree vehicular homicide upheld. — Trial court did not err in charging the jury on vehicular homicide, specifically explaining that if the jury found the defendant guilty of either DUI or reckless driving, and if the jury also

found the defendant guilty of vehicular homicide, it followed that the defendant had to be guilty of first-degree, and not second-degree, vehicular homicide. Hill v. State, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

Justification and accident instructions not warranted. — In a prosecution for driving under the influence and making an improper lane change, because the defendant did not request instructions on accident and justification, the trial court did not err in failing to give the instruction; moreover, because the jury was charged on involuntary intoxication, the failure to charge on accident was not harmful as a matter of law. Walker v. State, 280 Ga. App. 393, 634 S.E.2d 177 (2006).

Disclosure by jury of section upon which verdict based. — There was no error in the court's failure to instruct the jury to disclose whether their guilty verdicts (of vehicular homicide) were premised upon the defendant's violation of O.C.G.A. § 40-6-390 or O.C.G.A. § 40-6-391, or both, since there was evidence to warrant the jury's finding of a violation of either section, or both. Deshazier v. State, 155 Ga. App. 526, 271 S.E.2d 664 (1980).

Refusal not evidence of the presence of alcohol. — Trial court erred in instructing the jury that the defendant's refusal to submit to a chemical test of defendant's breath could be considered as positive evidence creating an inference that the test would show the presence of alcohol or other prohibited substances which impaired the defendant's driving as the instruction improperly allowed the jury to infer impaired driving from the mere presence of alcohol; the error was not harmless since the evidence of impairment was not overwhelming and since the charge could have misled the jury into thinking that the state met the state's burden of proving impaired driving under O.C.G.A. § 40-6-391(a)(1) simply by showing the refusal of chemical testing. Baird v. State, 260 Ga. App. 661, 580 S.E.2d 650 (2003).

Intoxication by toxic vapors instruction. — Trial court did not improperly instruct the jury on each of the elements of O.C.G.A. § 40-6-391, including intoxication by toxic vapors, as the charge stated the law accurately, and the complained-of language concerning toxic vapors was mere surplusage. Rylee v. State, 288 Ga. App. 784, 655 S.E.2d 239 (2007).

Endangering a Child

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

With regard to a defendant's convictions for reckless driving, less safe driving while intoxicated (DUI), and child endangerment by DUI, the trial court properly refused to merge the two counts for sentencing purposes because O.C.G.A. § 40-6-391 unambiguously prevented merger and the rule of lenity did not apply since the two code provisions did not prohibit the same conduct. Monahan v. State, 292 Ga. App. 655, 665 S.E.2d 387 (2008).

Sentence and Punishment

Enhanced sentencing provisions not applied retroactively. — Defendant, who committed a DUI offense on November 11, 1990, was improperly subjected to the enhanced sentencing provisions contained in subparagraph (c)(3)(A) of O.C.G.A. § 40-6-391, which did not become effective until January 1, 1991. Holtapp v. City of Fayetteville, 208 Ga. App. 606, 431 S.E.2d 403 (1993).

Construed with § 40-5-63(a). — O.C.G.A. § 40-5-63(a) effectuates suspension or revocation of a driver's license automatically upon a conviction for driving under the influence, notice of suspension being the trial for the driving offense. Eppinger v. State, 236 Ga. App. 426, 512 S.E.2d 320 (1999).

O.C.G.A. § 40-6-391(c) is not an enhanced penalty statute because the

Sentence and Punishment (Cont'd)

statute neither increases the maximum confinement authorized nor converts a misdemeanor offense into a felony. Thus, consideration of a person's prior uncounseled convictions for driving under the influence of alcohol in determining an appropriate sentence does not violate any constitutional right to counsel. Moore v. State, 181 Ga. App. 548, 352 S.E.2d 821, cert. denied, 484 U.S. 904, 108 S. Ct. 247, 98 L. Ed. 2d 204 (1987).

Sentence for single violation after more than one conviction. — Jury may find a defendant guilty of violating both paragraphs (a)(1) and (a)(4) (now (a)(5)) of O.C.G.A. § 40-6-391 based on a single incident, but a defendant can be sentenced for only one DUI violation. Tomlin v. State, 184 Ga. App. 726, 362 S.E.2d 489 (1987).

Court erred in entering convictions and sentencing the defendant on two DUI charges, under paragraphs (a)(1) and (a)(4) (now (a)(5)) of O.C.G.A. § 40-6-391 since both charges were predicated on the same conduct. O'Dell v. State, 200 Ga. App. 655, 409 S.E.2d 54, cert. denied, 200 Ga. App. 896, 409 S.E.2d 54 (1991).

Following convictions of defendant on two DUI charges, under paragraphs (a)(1) and (a)(5) of O.C.G.A. § 40-6-391, because it was apparent from the transcript that for purposes of sentencing the trial judge considered the charges alternative and sentenced the defendant for only one offense, the "per se" DUI conviction was vacated and the "less safe" DUI conviction affirmed, with no remand. Hewett v. State, 244 Ga. App. 112, 534 S.E.2d 867 (2000).

O.C.G.A. § 40-6-391(a) establishes a single crime of driving under the influence (DUI) and § 40-6-391(a)(1) through (a)(5) merely define different ways of committing that one crime. Thus, a defendant who was found guilty of violating both § 40-6-391(a)(1) and (a)(5) could only be convicted and sentenced for one DUI violation. Fowler v. State, 294 Ga. App. 864, 670 S.E.2d 448 (2008), cert. denied, No. S09C0529, 2009 Ga. LEXIS 204 (Ga. 2009).

Defendant was prosecuted and found guilty for violating both O.C.G.A. § 40-6-391(a)(1) and (a)(5) but could only be convicted and sentenced for one driving under the influence (DUI) violation; thus, the defendant's conviction for DUI per se was reversed and resentencing was ordered. Smith v. State, 338 Ga. App. 635, 791 S.E.2d 418 (2016).

High misdemeanor charge requires previous convictions within five years. — State lacked statutory authority to charge a high and aggravated misdemeanor because both of the defendant's previous DUI convictions were not within five years of the present charge. State v. Bangley, 209 Ga. App. 208, 433 S.E.2d 372 (1993).

High misdemeanor charge required. — Defendant's third conviction within five years for driving under the influence was classified as a high and aggravated misdemeanor, and the defendant could not be sentenced to imprisonment in the state penal system. Floyd v. State, 227 Ga. App. 873, 490 S.E.2d 542 (1997).

Merger into vehicular homicide. — Defendant's reckless driving, red light, and less safe driving under the influence convictions merged into the defendant's reckless vehicular homicide convictions, which involved two deaths resulting from the defendant's striking a car; however, the failure to exercise due care conviction involving the defendant's striking a pedestrian did not merge into the vehicular homicide conviction as the acts leading to the two charges involved different facts and different victims. Hill v. State, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

Lesser included driving under the influence predicate offense could not stand as a separate conviction because the appellant had been convicted of vehicular homicide. Dickson v. State, 339 Ga. App. 500, 793 S.E.2d 663 (2016).

When offenses merge, later conviction vacated. — When the offenses charged under paragraphs (a)(1) and (a)(4) (now (a)(5)) of O.C.G.A. § 40-6-391 were based on the same conduct, the offenses merged under the substantive double jeopardy rule, which limits multiple convictions or punishments for crimes arising from the same criminal conduct,

requiring vacating of the conviction obtained under paragraph (a)(4) (now (a)(5)) of O.C.G.A. § 40-6-391. Hoffman v. State, 208 Ga. App. 574, 430 S.E.2d 886 (1993).

Harmless error because of merger. — Defendant's count for driving under the influence (DUI) less safe, in violation of O.C.G.A. § 40-6-391(a)(1), was merged into the defendant's DUI per se conviction. In light of the merger, the DUI less safe count was void and any error as to that count was harmless. Greene v. State, 312 Ga. App. 666, 722 S.E.2d 77 (2011), cert. denied, No. S12C0516, 2012 Ga. LEXIS 670 (Ga. 2012).

Error in sentencing defendant on lesser offenses. — Trial court erred in sentencing the defendant on the lesser offenses of reckless driving and driving under the influence while the trial court also sentenced the defendant on the greater offense of homicide by vehicle in the first degree, which included the lesser offenses. Had the jury revealed which of the lesser offenses served as the foundation for the homicide verdict a sentence on the remaining lesser offense might have been appropriate, but as such information did not appear in the record the defendant may not be sentenced for either of the lesser included offenses of violation of O.C.G.A. §§ 40-6-390 and 40-6-391. McNabb v. State, 180 Ga. App. 723, 350 S.E.2d 314 (1986).

Trial court properly considered mitigating and aggravating circumstances brought to the court's attention for purposes of imposing sentence within the range of punishment allowed by this statute, including driving history, which included several prior misdemeanor traffic accusations to which the defendant had pled guilty even though the defendant had never served time in confinement as a result of those pleas. Dotson v. State, 179 Ga. App. 233, 345 S.E.2d 871 (1986).

In sentencing the defendant on a charge of driving under the influence, a sentence within the range permitted for the first conviction within the previous five years was authorized, and the court properly reviewed the defendant's entire driving record, including two prior DUI convictions that did not occur within the past five years along with three other traffic violations within five years, before accepting the defendant's plea of nolo contendere. Millwood v. State, 213 Ga. App. 419, 447 S.E.2d 343 (1994).

Duty of court to seize license and temporary permit pending appeal. — Upon conviction for driving under the influence, the defendant was properly required to surrender the defendant's driver's license and temporary permit to the trial court pending appeal; the seizure and forwarding of the license to the Department of Public Safety was not part of the defendant's sentence or a condition of defendant's bond but a requirement imposed by statute on the court. Wells v. State, 212 Ga. App. 15, 440 S.E.2d 692 (1994).

First offender treatment unavailable. — Phrase "relating to probation of first offenders" in O.C.G.A. § 40-6-391(f) refers to the general title of O.C.G.A. Art. 3, Ch. 8, T. 42, and does not purport to limit the prohibition of first offender treatment only to convictions for driving under the influence when probation is imposed. Sims v. State, 214 Ga. App. 443, 448 S.E.2d 77 (1994).

O.C.G.A. § 40-6-391(f) did not violate equal protection under the Fourteenth Amendment or Ga. Const. 1983, Art. I, Sec. I, Para. II by excluding DUI offenses from First Offender Act, O.C.G.A. § 42-8-60 et seq., coverage. The defendant did not show the absence of a rational relationship between the state's compelling interest in protecting the public's safety and the classification; the defendant's equal protection argument boiled down to no more than the claim that the legislature made a bad policy judgment about which offenders should be eligible for First Offender Act treatment. Rhodes v. State, 283 Ga. 361, 659 S.E.2d 370 (2008).

Sentence to serve 24 hours in jail. — Since, under a plea agreement, the defendant pled guilty to driving while a less safe driver and the state nolle prosequied the charge of driving with an alcohol concentration (BAC) of 0.10 or greater, the trial court was required to sentence the defendant to serve at least 24 hours in jail pursuant to subparagraph (c)(1)(B) of O.C.G.A. § 40-6-391 because there was

Sentence and Punishment (Cont'd)

lawful evidence that the defendant drove with a BAC greater than .10. Phillips v. State, 241 Ga. App. 689, 527 S.E.2d 283 (1999).

Fines. — Because the defendant's fine was not assessed as a condition of probation, but as a part of the defendant's DUI sentence, the trial court did not err in denying the defendant's motion to negate or suspend the fine when the defendant's probation was revoked. Rouse v. State, 256 Ga. App. 579, 569 S.E.2d 261 (2002).

Since no fine was imposed on the driving under the influence offense that violated O.C.G.A. § 40-6-391, the $100 brain/spinal cord fee imposed under O.C.G.A. §§ 15-21-149 and 15-21-150 and the $25 driving under the influence victim surcharge imposed under O.C.G.A. §§ 15-21-110 and 15-21-112(a) should not have been imposed under O.C.G.A. §§ 15-21-112 and 15-21-149(a) because those were contingent upon the imposition of a fine. Johnson v. State, 282 Ga. App. 258, 638 S.E.2d 406 (2006).

Crime lab fee of $25 should not have been imposed under O.C.G.A. § 42-8-34(d)(2) in the driving under the influence case under O.C.G.A. § 40-6-391 because the defendant was not sentenced to probation on the driving under the influence count. Johnson v. State, 282 Ga. App. 258, 638 S.E.2d 406 (2006).

Sentence proper. — Sentence of 12 months' probation, a $1,000 fine, and 300 hours of community service is within the limits established by O.C.G.A. § 40-6-391 for driving under the influence of alcohol. Cothran v. State, 177 Ga. App. 58, 338 S.E.2d 513 (1985).

When the defendant pled guilty to two counts each of driving under the influence of alcohol (DUI) and driving with a suspended license, and one count each of driving without proof of insurance, improper lane usage, unlawful use of a license, giving a false name, impeding traffic, and violation of a county open container ordinance, and was sentenced on the DUI counts to a 12-month consecutive term, a $1,000 fine, and a $25 assessment for costs of publishing defendant's photo and, on the remaining charges, to concurrent 12-month terms and a $200 fine for driving without proof of insurance, the sentence was not unconstitutionally excessive. McClure v. State, 218 Ga. App. 365, 460 S.E.2d 884 (1995).

Sentence of 30 days in custody, 11 months probation, 40 hours of community service, and fines totaling $2,000 on conviction of driving under the influence of alcohol, driving with an unlawful alcohol concentration, and failure to maintain lane was not excessive. Gidey v. State, 228 Ga. App. 250, 491 S.E.2d 406 (1997).

Absent inclusion of a record and an express authority to the contrary, the trial judge was authorized to impose attendance at the Chatham County DUI court treatment program as a condition of the defendant's probation; further, the imposition was not a denial of the defendant's equal protection rights in that nonresidents were not required to attend, especially and in light of the fact that the defendant failed to show any evidence to show the genesis, nature, or content of the program of which the defendant complained. Kellam v. State, 271 Ga. App. 125, 608 S.E.2d 729 (2004).

Defendant's sentence was not excessive because the trial court orally sentenced the defendant to a combination of 100 days of confinement, 60 days of house arrest, and 12 months of probation for misdemeanor driving under the influence; an oral declaration of a sentence was not the sentence of the court and the sentence signed by the trial court properly sentenced the defendant to confinement for 12 months (to serve 100 days) and the remainder probated (60 days thereof in house arrest). Kimbrell v. State, 280 Ga. App. 867, 635 S.E.2d 237 (2006).

House arrest insufficient. — Upon the defendant's conviction for driving under the influence of alcohol, the trial court erred by not sentencing the defendant to at least 72 hours confinement as required by O.C.G.A. § 40-6-391(c)(2)(B), and house arrest was not incarceration, as such limited confinement did not constitute a continuous and uninterrupted custody in a jail or penitentiary. Pierce v. State, 278 Ga. App. 162, 628 S.E.2d 235 (2006).

Sentence improper. — Since the court could not determine from the record

whether the trial court imposed a permissible fine plus permissible costs and penalties, or whether an impermissible fine was in fact imposed, and because any uncertainty or ambiguity ought to be resolved in favor of imposing the lesser penalty, the portion of the fine in excess of the $1,000 maximum was vacated. Morgan v. State, 212 Ga. App. 394, 442 S.E.2d 257 (1994).

Sentence of 10 days in jail followed by 12 months probation for conviction of driving under the influence was improper. Kovacs v. State, 227 Ga. App. 870, 490 S.E.2d 539 (1997).

Sentence imposed under O.C.G.A. § 40-6-391(a)(5) for driving a moving vehicle while defendant's alcohol concentration was more than 0.10 grams had to be vacated as the trial court neither merged that count into the other charged count nor indicated to which count the court's sentence applied; thus, the sentence imposed under that section was improper. Schoolfield v. State, 251 Ga. App. 52, 554 S.E.2d 181 (2001).

Because the trial court erred in failing to sentence a defendant to the mandatory minimum period of imprisonment of 24 hours, as specified by O.C.G.A. § 40-6-391(c)(1)(B), the sentence imposed was vacated, and a resentencing was ordered. State v. Dyer, 275 Ga. App. 657, 621 S.E.2d 615 (2005).

Given that a charge of DUI served as the predicate act underlying a charge of serious injury by vehicle, thus constituting a lesser included crime of the serious injury by vehicle, O.C.G.A. § 16-1-7(a) barred conviction of and punishment for both; hence, in light of this incongruence, defendant's DUI conviction and sentence, as well as the sentence for serious injury by vehicle, were vacated. Hannah v. State, 280 Ga. App. 230, 633 S.E.2d 800 (2006).

Sentence for homicide by vehicle. — Upon conviction of the defendant of three counts of homicide by vehicle (O.C.G.A. § 40-6-393) through a violation of O.C.G.A. § 40-6-391, it was not a violation of double jeopardy to sentence the defendant to 15 years for each of the homicide counts. Cox v. State, 243 Ga. App. 668, 533 S.E.2d 435 (2000).

DUI acquittal/vehicular homicide conviction. — Acquittal on a secondary charge of driving while under the influence of drugs did not preclude conviction for vehicular homicide by reckless driving since sufficient facts were otherwise advanced showing the defendant had attempted to pass in a no-passing lane and was driving on the wrong side of the road. Hill v. State, 207 Ga. App. 65, 426 S.E.2d 915 (1993).

Consecutive sentence/other offenses. — In sentencing defendant on conviction of two counts of endangering a child, the court erred in imposing sentences of 12 months on the first count, consecutive to defendant's 12-month sentence for driving under the influence, and, on the second count, 12 months' probation consecutive to the sentence on the first count. Guest v. State, 229 Ga. App. 627, 494 S.E.2d 523 (1998).

Sentencing upon multiple convictions. — Trial court erred in sentencing the defendant to three consecutive twelve month sentences for defendant's three driving under the influence convictions. Taylor v. State, 238 Ga. App. 753, 520 S.E.2d 267 (1999).

Trial court properly sentenced the defendant to a term of imprisonment for 12 months as the instant offense was the defendant's third driving under the influence (DUI) in five years, and the defendant's thirteenth DUI overall, and O.C.G.A. § 40-6-391(c)(3) mandated that for a third or subsequent driving under the influence violation within a five-year period, an individual would be punished by a mandatory period of imprisonment of not less than 120 days nor more than 12 months. Branton v. State, 258 Ga. App. 221, 573 S.E.2d 475 (2002).

DUI probation convictions on non-DUI offenses. — Special probation conditions requiring that the defendant complete a driving under the influence risk reduction course under O.C.G.A. § 40-6-391(c), perform 40 hours of community service under O.C.G.A. § 40-6-391(c), and pay a $25 photograph fee under O.C.G.A. § 40-6-391(j)(1), (2) were not an abuse of discretion despite the fact that the conditions of probation were not imposed upon the defendant's driving under the influence conviction, for which probation was not imposed, but were in-

Sentence and Punishment (Cont'd)

stead imposed on the defendant's sentence of probation on the related convictions; while the defendant claimed that the conditions were peculiar to a driving under the influence conviction, the conditions were reasonably related to the nature of the offenses and the rehabilitative goals of probation pursuant to O.C.G.A. § 42-8-35 as all of the conditions had rehabilitative value, the photograph fee also served the purpose of protection of society, and the driving under the influence course was relevant since the defendant was sentenced to a driving under the influence charge in the same case and had a lengthy driving under the influence history. Johnson v. State, 282 Ga. App. 258, 638 S.E.2d 406 (2006).

Imposition of ignition interlock device on second-time DUI offender mandatory. — O.C.G.A. § 42-8-111 is plain and susceptible of only one natural and reasonable construction, and that is that "shall" means that there is no discretion in the trial court to consider whether to impose an ignition interlock device as a condition of probation for a second time DUI offender, absent a showing of financial hardship; accordingly, a trial court erred in not imposing that condition of probation on the defendant, who had previously been convicted of a DUI offense and who entered a negotiated plea to driving under the influence of alcohol to the extent that the defendant was a less safe driver in violation of O.C.G.A. § 40-6-391(a)(1). State v. Villella, 266 Ga. App. 499, 597 S.E.2d 563 (2004).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1953, Nov.-Dec. Sess., p. 556, are included in the annotations for this Code section.

Time of applicability. — Provisions of O.C.G.A. § 40-6-391 which merely provide new trial procedures may be applied to all cases tried on or after September 1, 1983, regardless of when the violations occurred. All other provisions can be applied only to defendants whose alleged illegal conduct occurred on or after September 1, 1983. 1983 Op. Att'y Gen. No. U83-52.

Venue. — Motorist is subject to charges of violating Ga. L. 1974, p. 633, § 1 (see now O.C.G.A. § 40-6-391) wherever in Georgia the motorist happens to be operating a motor vehicle while the motorist is intoxicated, including on a federal military installation, provided, of course, that federal law does not preempt the operation of state and local laws. 1976 Op. Att'y Gen. No. 76-13.

Right to counsel. — Defendants who receive active sentences in accordance with subsection (c) of O.C.G.A. § 40-6-391 are constitutionally entitled to counsel, but may voluntarily waive this right. 1984 Op. Att'y Gen. No. U84-2.

Suspension or cancellation of licenses of those convicted. — Although not authorized under Ga. L. 1974, p. 633, § 1 (see now O.C.G.A. § 40-6-391) or former Code 1933, § 27-2506 (see now O.C.G.A. § 17-10-3) to suspend or cancel licenses of those convicted of driving under the influence of drugs or intoxicants, a judge may still do so by virtue of authority granted in former Code 1933, § 92A-9908; furthermore, a judge may sentence a defendant to either, but not both, a suspended or probated sentence, which may be properly conditioned upon payment of a fine. 1974 Op. Att'y Gen. No. U74-78 (see O.C.G.A. § 40-5-54).

Judge may probate fine and sentence. — That portion of subsection (c) of Ga. L. 1974, p. 633, § 1 (see now O.C.G.A. § 40-6-391) which used the word "shall," authorizing the imposition of a 90-day penalty, was mandatory and cannot be construed to mean that the court is vested with discretion in imposing the minimum 90-day sentence; however, former Code 1933, § 27-2506 (see now O.C.G.A. § 17-10-3), relating to punishment of misdemeanors, permitted a judge to impose, in addition to or instead of any other penalty provided for the punishment of a misdemeanor involving a traffic offense, probation or suspension of all or any part of a penalty upon such terms and conditions as may be prescribed by the judge;

therefore, a judge imposing sentence pursuant to subsection (c) may probate either the fine or the sentence, as well as both the fine and the sentence. 1974 Op. Att'y Gen. No. U74-102 (rendered prior to 1983 amendment).

Shortest serveable jail term. — Shortest period of imprisonment which must actually be served in jail pursuant to subsection (c) of O.C.G.A. § 40-6-391 is that period of time which may not be suspended, stayed, or probated according to the statute. 1984 Op. Att'y Gen. No. U84-2.

Probation for violations of local ordinances. — Municipal and recorder's courts are without authority to place individuals on state supervised probation for violations of local ordinances adopting the provisions of O.C.G.A. § 40-6-391, although probate courts hearing cases brought pursuant to the state statute do have the power to probate as a limited exception to the prohibition of O.C.G.A. § 42-8-34. 1983 Op. Att'y Gen. No. 83-73.

Payment of fine. — Defendant is obligated to pay the total amount of the defendant's fine imposed pursuant to subsection (c) of O.C.G.A. § 40-6-391, regardless of the length of the sentence of imprisonment imposed contemporaneously or the portion of that sentence of imprisonment which is actually served in jail. 1984 Op. Att'y Gen. No. U84-2.

Person who removes intoxicated driver from the scene before the officers can investigate can be charged as an accessory after the fact and as a principal in the crime of driving under the influence of intoxicating liquor. 1963-65 Op. Att'y Gen. p. 473.

Revocation for out-of-state convictions. — Department of Public Safety is within the department's authority to revoke driver's license for out-of-state convictions; provided, however, such convictions are for offenses which would be grounds for revocation if committed in Georgia. 1963-65 Op. Att'y Gen. p. 524.

For legal status and effect of alcolyzer test, see 1972 Op. Att'y Gen. No. 72-46.

Reporting of convictions. — Convictions for violations of O.C.G.A. §§ 40-6-391(2), (4), (6), and 40-5-151 should be reported by the superior court clerk to Department of Driver Services (DDS) and violations of O.C.G.A. §§ 16-13-30(b), 16-13-31, and 16-13-31.1 should be reported to DDS only upon the clerk's determination that the conviction meets the mandate of O.C.G.A. § 40-5-54(a)(2). 2017 Op. Att'y Gen. No. 17-4.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 335, 337, 362.

Am. Jur. Proof of Facts. — Defense to Charge of Driving Under the Influence of Alcohol, 17 POF2d 1.

Punitive Damages in Motor Vehicle Litigation — Intoxicated Driver, 1 POF3d 1.

Negligent Failure to Detain Intoxicated Motorist, 1 POF3d 545.

Liability of Social Host for Negligent Driving of Intoxicated Adult Guest, 3 POF3d 697.

Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 POF3d 229.

Unreliability of the Horizontal Gaze Nystagmus Test, 4 POF3d 439.

Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 POF3d 459.

Punitive Damages in Motor Vehicle Litigation — Intoxicated Driver, 18 POF3d 1.

Proof that Driver Was "Operating" Motor Vehicle While Intoxicated, 61 POF3d 115.

Am. Jur. Trials. — The Impaired Driver — Ascertaining Physical Condition, 4 Am. Jur. Trials 615.

Defense on Charge of Driving While Intoxicated, 19 Am. Jur. Trials 123.

Failure to Protect Public From an Intoxicated Driver, 34 Am. Jur. Trials 499.

Driving Under the Influence: Tactical Considerations in Sobriety Checkpoint Cases, 59 Am. Jur. Trials 79.

Trial Defenses to a Breath Test Score, 70 Am. Jur. Trials 1.

Litigating a Driving While Intoxicated Case, 76 Am. Jur. Trials 213.

C.J.S. — 61A C.J.S., Motor Vehicles, § 1574 et seq.

ALR. — Driving automobile while intoxicated as a substantive criminal offense, 42 A.L.R. 1498; 49 A.L.R. 1392; 68 A.L.R. 1356; 142 A.L.R. 555.

Constitutionality and effect of statute relating to civil liability of person driving automobile while under influence of liquor, 56 A.L.R. 327.

What conduct in driving an automobile amounts to wantonness, willfulness, or the like, precluding defense of contributory negligence, 119 A.L.R. 654.

What is a "motor vehicle" within statutes making it an offense to drive while intoxicated, 66 A.L.R.2d 1146.

Right to trial by jury in criminal prosecution for driving while intoxicated or similar offense, 16 A.L.R.3d 1373.

Automobiles: driving under the influence, or when addicted to the use, of drugs as criminal offense, 17 A.L.R.3d 815.

Applicability, to operation of motor vehicle on private property, of legislation making drunken driving a criminal offense, 29 A.L.R.3d 938.

Admissibility in criminal case of blood alcohol test where blood was taken from unconscious driver, 72 A.L.R.3d 325.

What amounts to violation of drunken-driving statute in officer's "presence" or "view" so as to permit warrantless arrest, 74 A.L.R.3d 1138.

What constitutes driving, operating, or being in control of motor vehicle for purposes of driving while intoxicated statute or ordinance, 93 A.L.R.3d 7.

Request for prior administration of additional test as constituting refusal to submit to chemical sobriety test under implied consent law, 98 A.L.R.3d 572.

Reckless driving as lesser included offense of driving while intoxicated or similar charge, 10 A.L.R.4th 1252.

Admissibility in criminal case of blood-alcohol test where blood was taken despite defendant's objections or refusal to submit to test, 14 A.L.R.4th 690.

Failure to restrain drunk driver as ground of liability of state or local government unit or officer, 48 A.L.R.4th 320.

Validity, construction, and application of statutes directly proscribing driving with blood-alcohol level in excess of established percentage, 54 A.L.R.4th 149.

Snowmobile operation as DWI or DUI, 56 A.L.R.4th 1092.

Horizontal gaze nystagmus test: use in impaired driving prosecution, 60 A.L.R.4th 1129.

Social host's liability for injuries incurred by third parties as a result of intoxicated guest's negligence, 62 A.L.R.4th 16.

Passenger's liability to vehicular accident victim for harm caused by intoxicated motor vehicle driver, 64 A.L.R.4th 272.

Driving while intoxicated: "choice of evils" defense that driving was necessary to protect life or property, 64 A.L.R.4th 298.

Cough medicine as "intoxicating liquor" under DUI statute, 65 A.L.R.4th 1238.

Horseback riding or operation of horse-drawn vehicle as within drunk driving statute, 71 A.L.R.4th 1129.

Operation of bicycle as within drunk driving statute, 73 A.L.R.4th 1139.

Operation of mopeds and motorized recreational two-, three-, and four-wheeled vehicles as within scope of driving while intoxicated statutes, 32 A.L.R.5th 659.

Validity of police roadblocks or checkpoints for purpose of discovery of alcoholic intoxication — post-Sitz cases, 74 A.L.R.5th 319.

Validity, construction, and application of statute permitting forfeiture of motor vehicle for operating while intoxicated, 89 A.L.R.5th 539.

Clause in life, accident, or health policy excluding or limiting liability in case of insured's use of intoxicants or narcotics, 100 A.L.R.5th 617.

Validity, construction, and operation of school "zero tolerance" policies towards drugs, alcohol, or violence, 117 A.L.R.5th 459.

Vertical gaze nystagmus test: Use in impaired driving prosecution, 117 A.L.R.5th 491.

Claim of diabetic reaction or hypoglycemia as defense in prosecution for driving while under influence of alcohol or drugs, 17 A.L.R.6th 757.

Validity, construction, and application of state "zero tolerance" laws relating to underage drinking and driving, 34 A.L.R.6th 623.

What constitutes driving, operating, or being in control of motor vehicle for purposes of driving while intoxicated statute, regulation, or ordinance — being in physical control or actual physical control — general principles, 92 A.L.R.6th 295.

What constitutes driving, operating, or being in control of motor vehicle for purposes of driving while intoxicated statute, regulation, or ordinance — being in physical control or actual physical control — motorist sleeping or unconscious, 93 A.L.R.6th 207.

What constitutes driving, operating, or being in control of motor vehicle for purposes of driving while intoxicated statute, regulation, or ordinance — being in physical control or actual physical control — passengers, 94 A.L.R.6th 191.

What constitutes driving, operating, or being in control of motor vehicle for purposes of driving while intoxicated statute or ordinance — being in actual physical control — status of vehicle, 95 A.L.R.6th 1.

What constitutes driving, operating, or being in control of motor vehicle for purposes of driving while intoxicated statute or ordinance — being in actual physical control — factors and circumstances establishing actual physical control: miscellaneous situations, 96 A.L.R.6th 355.

Assimilation, under assimilative crimes act (18 U.S.C.A. § 13), of state statutes relating to driving while intoxicated or under influence of alcohol, 175 A.L.R. Fed. 293.

40-6-391.1. Entry and acceptance of plea of nolo contendere.

(a) The decision to accept a plea of nolo contendere to a charge of violating Code Section 40-6-391 shall be at the sole discretion of the judge but, if such plea is accepted, the penalties provided for in subsection (c) of Code Section 40-6-391 shall be imposed; provided, however, that no such plea of nolo contendere shall be accepted if the person charged with violating Code Section 40-6-391 had an alcohol concentration of more than 0.15 at any time within three hours after driving or being in control of any moving vehicle from alcohol consumed before such driving or being in control ended.

(b) If the defendant has not been convicted of or had a plea of nolo contendere accepted to a charge of violating Code Section 40-6-391 within the previous five years and if the plea of nolo contendere shall be used as provided in paragraph (1) of subsection (a) of Code Section 40-5-63, no such plea shall be accepted unless, at a minimum, the following conditions are met:

(1) The defendant has filed a verified petition with the court requesting that such plea be accepted and setting forth the facts and special circumstances necessary to enable the judge to determine that accepting such plea is in the best interest of justice; and

(2) The judge has reviewed the defendant's driving records that are on file with the Department of Driver Services.

(c) The judge, as part of the record of the disposition of the charge, shall set forth, under seal of the court, his or her reasons for accepting the plea of nolo contendere.

(d) The record of the disposition of the case, including the ruling required in subsection (c) of this Code section, shall be forwarded to the Department of Driver Services within ten days after disposition.

(e) If a plea of nolo contendere is accepted under the conditions set forth in subsection (b) of this Code section, the defendant's driver's license shall be forwarded to the Department of Driver Services as provided in subsection (c) of Code Section 40-5-67. (Code 1981, § 40-6-391.1, enacted by Ga. L. 1983, p. 1000, § 13; Ga. L. 1984, p. 22, § 40; Ga. L. 1990, p. 1154, § 8; Ga. L. 1990, p. 2048, § 5; Ga. L. 1991, p. 1886, § 9; Ga. L. 1992, p. 2564, § 12; Ga. L. 1992, p. 2785, § 25; Ga. L. 1994, p. 831, § 2; Ga. L. 1994, p. 1600, § 9; Ga. L. 1997, p. 760, § 24; Ga. L. 2000, p. 951, § 5A-12; Ga. L. 2005, p. 334, § 18-16/HB 501.)

Editor's notes. — Ga. L. 1994, p. 1600, § 11, not codified by the General Assembly, provides that the provisions of the Act shall apply only to cases arising out of arrests occurring on or after January 1, 1995, except that the provisions amending subsection (a) of Code Section 40-6-391.1, restricting the acceptance of a plea of nolo contendere to a charge of violating Code Section 40-6-391, and the provisions amending subsection (c) of Code Section 40-6-391, changing the criminal penalties for violations of the Code section, shall become effective July 1, 1994, and except that the provisions amending subsection (g) of Code Section 40-5-67.1, relating to the time for requesting a hearing on an administrative suspension, the stay of a suspension pending such hearing, and the early termination of an administrative suspension under certain conditions shall apply to cases pending on July 1, 1994.

Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Teen-age and Adult Driver Responsibility Act'."

Ga. L. 1997, p. 760, § 27, not codified by the General Assembly, provides that the amendment made by the Act to this Code section shall apply to offenses committed on or after July 1, 1997, and shall not apply to offenses committed prior to that date.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 203 (1997).

For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 129 (1992).

JUDICIAL DECISIONS

Judge under no obligation to accept nolo contendere plea simply because the petition is acceptable on the petition's face. Robinson v. State, 173 Ga. App. 285, 326 S.E.2d 245 (1985).

Cited in Wessels v. State, 169 Ga. App. 246, 312 S.E.2d 361 (1983).

OPINIONS OF THE ATTORNEY GENERAL

Time of applicability. — Provisions of O.C.G.A. § 40-6-391.1 which merely provide new trial procedures may be applied to all cases tried on or after September 1, 1983, regardless of when the violations occurred. All other provisions can be applied only to the defendants whose alleged illegal conduct occurred on or after September 1, 1983. 1983 Op. Att'y Gen. No. U83-52.

Selection of driver improvement school. — Although O.C.G.A.

§ 40-6-391.1 requires that a judge who accepts a plea of nolo contendere must order the defendant to attend a driver improvement school certified by the commissioner of the Department of Public Safety, the statute does not deprive the judge of all discretion to designate a particular driver improvement school so long as the designated school is chosen from among those certified. 1983 Op. Att'y Gen. No. U83-68.

40-6-391.2. Seizure and civil forfeiture of motor vehicle operated by habitual violator.

(a) Any motor vehicle operated by a person who has been declared a habitual violator for three violations of Code Section 40-6-391, whose license has been revoked, and who is arrested and charged with a violation of Code Section 40-6-391 is declared to be contraband and subject to forfeiture in accordance with the procedures set forth in Chapter 16 of Title 9.

(b) In any case where a vehicle which is the only family vehicle is determined to be subject to forfeiture, the court may, if it determines that the financial hardship to the family as a result of the forfeiture and sale outweighs the benefit to the state from such forfeiture, order the title to the vehicle transferred to such other family member who is a duly licensed operator and who requires the use of such vehicle for employment or family transportation purposes. Such transfer shall be subject to any valid liens and shall be granted only once. (Code 1981, § 40-6-391.2, enacted by Ga. L. 1991, p. 1896, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2015, p. 693, § 3-24/HB 233.)

Cross references. — Surrender of license plates of habitual violators, § 40-2-136. Habitual violators, § 40-5-58.

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

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

For note on the 1991 enactment of this Code section, see 8 Ga. St. U.L. Rev. 129 (1992).

JUDICIAL DECISIONS

Forfeiture of parent's vehicle for crime of child. — Forfeiture of appellant parent's vehicle after the parent's child, a habitual offender, was arrested for driving the vehicle without a license, driving under the influence of alcohol, and leaving the scene of an accident was not clearly erroneous since: (1) the harshness of the penalty was considered, but forfeiture was expressly provided for by statute; (2) the vehicle was the instrumentality used by the child to commit the offense which led to the forfeiture and, therefore, was close enough to the offense to render the vehicle "guilty"; and (3) while it was not apparent how frequently the child drove the parent's car, it was clear that the child was driving the vehicle at the time of arrest. Frank v. State, 257 Ga. App. 164, 570 S.E.2d 613 (2002).

OPINIONS OF THE ATTORNEY GENERAL

"Director" in subsection (c) is surplusage. — Term "director" in O.C.G.A. § 40-6-391.2(c) is mere surplusage without significance in this context. 1992 Op. Att'y Gen. No. U92-8.

Cost of storage at commercial facility. — District attorney, as the state official responsible for initiating forfeiture proceedings and to whom the vehicle is delivered, is responsible for storage costs if the vehicle is stored at a commercial vehicle storage facility, although proceeds from this and other forfeitures may be used for payment of these costs. 1992 Op. Att'y Gen. No. U92-8.

40-6-391.3. Penalty for conviction for driving under influence of alcohol or drugs while driving school bus.

A school bus driver licensed pursuant to Article 7 of Chapter 5 of this title shall upon a conviction of a violation of Code Section 40-6-391 while driving a school bus be punished by imprisonment for a period of not less than one year nor more than five years or by a fine of not less than $1,000.00 nor more than $5,000.00, or both. (Code 1981, § 40-6-391.3, enacted by Ga. L. 1991, p. 1140, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, this Code section, enacted as Code Section 40-6-391.2, was renumbered as Code Section 40-6-391.3.

40-6-392. Chemical tests for alcohol or drugs.

(a) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person in violation of Code Section 40-6-391, evidence of the amount of alcohol or drug in a person's blood, urine, breath, or other bodily substance at the alleged time, as determined by a chemical analysis of the person's blood, urine, breath, or other bodily substance shall be admissible. Where such a chemical test is made, the following provisions shall apply:

(1)(A) Chemical analysis of the person's blood, urine, breath, or other bodily substance, to be considered valid under this Code section, shall have been performed according to methods approved by the Division of Forensic Sciences of the Georgia Bureau of Investigation on a machine which was operated with all its electronic and operating components prescribed by its manufacturer properly attached and in good working order and by an individual possessing a valid permit issued by the Division of Forensic Sciences for this purpose. The Division of Forensic Sciences of the Georgia Bureau of Investigation shall approve satisfactory techniques or methods to ascertain the qualifications and competence of individuals to conduct analyses and to issue permits, along with requirements for properly operating and maintaining any testing instruments, and to issue certificates certifying that

instruments have met those requirements, which certificates and permits shall be subject to termination or revocation at the discretion of the Division of Forensic Sciences.

(B) In all cases where the arrest is made on or after January 1, 1995, and the state selects breath testing, two sequential breath samples shall be requested for the testing of alcohol concentration. For either or both of these sequential samples to be admissible in the state's or plaintiff's case-in-chief, the readings shall not differ from each other by an alcohol concentration of greater than 0.020 grams and the lower of the two results shall be determinative for accusation and indictment purposes and administrative license suspension purposes. No more than two sequential series of a total of two adequate breath samples each shall be requested by the state; provided, however, that after an initial test in which the instrument indicates an adequate breath sample was given for analysis, any subsequent refusal to give additional breath samples shall not be construed as a refusal for purposes of suspension of a driver's license under Code Sections 40-5-55 and 40-5-67.1. Notwithstanding the above, a refusal to give an adequate sample or samples on any subsequent breath, blood, urine, or other bodily substance test shall not affect the admissibility of the results of any prior samples. An adequate breath sample shall mean a breath sample sufficient to cause the breath-testing instrument to produce a printed alcohol concentration analysis.

(2) When a person shall undergo a chemical test at the request of a law enforcement officer, only a physician, registered nurse, laboratory technician, emergency medical technician, or other qualified person may withdraw blood for the purpose of determining the alcoholic content therein, provided that this limitation shall not apply to the taking of breath or urine specimens. No physician, registered nurse, or other qualified person or employer thereof shall incur any civil or criminal liability as a result of the medically proper obtaining of such blood specimens when requested in writing by a law enforcement officer;

(3) The person tested may have a physician or a qualified technician, chemist, registered nurse, or other qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer. The justifiable failure or inability to obtain an additional test shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer; and

(4) Upon the request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or his

attorney. The arresting officer at the time of arrest shall advise the person arrested of his rights to a chemical test or tests according to this Code section.

(b) Except as provided in subsection (c) of this Code section, upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person in violation of Code Section 40-6-391, the amount of alcohol in the person's blood at the time alleged, as shown by chemical analysis of the person's blood, urine, breath, or other bodily substance, may give rise to inferences as follows:

(1) If there was at that time an alcohol concentration of 0.05 grams or less, the trier of fact in its discretion may infer therefrom that the person was not under the influence of alcohol, as prohibited by paragraphs (1) and (4) of subsection (a) of Code Section 40-6-391; or

(2) If there was at that time an alcohol concentration in excess of 0.05 grams but less than 0.08 grams, such fact shall not give rise to any inference that the person was or was not under the influence of alcohol, as prohibited by paragraphs (1) and (4) of subsection (a) of Code Section 40-6-391, but such fact may be considered by the trier of fact with other competent evidence in determining whether the person was under the influence of alcohol, as prohibited by paragraphs (1) and (4) of subsection (a) of Code Section 40-6-391.

(c)(1) In any civil or criminal action or proceeding arising out of acts alleged to have been committed in violation of paragraph (5) of subsection (a) of Code Section 40-6-391, if there was at that time or within three hours after driving or being in actual physical control of a moving vehicle from alcohol consumed before such driving or being in actual physical control ended an alcohol concentration of 0.08 or more grams in the person's blood, breath, or urine, the person shall be in violation of paragraph (5) of subsection (a) of Code Section 40-6-391.

(2) In any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person in violation of subsection (i) of Code Section 40-6-391, if there was at that time or within three hours after driving or being in actual physical control of a moving vehicle from alcohol consumed before such driving or being in actual physical control ended an alcohol concentration of 0.04 grams or more in the person's blood, breath, or urine, the person shall be in violation of subsection (i) of Code Section 40-6-391.

(3) In any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person in violation of subsection (k) of Code Section 40-6-391, if there was at that time or within three hours after driving or being in actual physical control of a moving vehicle from alcohol consumed before such driving or being

in actual physical control ended an alcohol concentration of 0.02 grams or more in the person's blood, breath, or urine, the person shall be in violation of subsection (k) of Code Section 40-6-391.

(d) In any criminal trial, the refusal of the defendant to permit a chemical analysis to be made of his blood, breath, urine, or other bodily substance at the time of his arrest shall be admissible in evidence against him.

(e)(1) A certification by the office of the Secretary of State or by the Department of Public Health that a person who drew blood was a licensed or certified physician, physician assistant, registered nurse, practical nurse, medical technologist, medical laboratory technician, or phlebotomist at the time the blood was drawn;

(2) Testimony, under oath, of the blood drawer; or

(3) Testimony, under oath, of the blood drawer's supervisor or medical records custodian that the blood drawer was properly trained and authorized to draw blood as an employee of the medical facility or employer

shall be admissible into evidence for the purpose of establishing that such person was qualified to draw blood as required by this Code section.

(f) Each time an approved breath-testing instrument is inspected, the inspector shall prepare a certificate which shall be signed under oath by the inspector and which shall include the following language:

"This breath-testing instrument (serial no. _____) was thoroughly inspected, tested, and standardized by the undersigned on (date _____) and all of its electronic and operating components prescribed by its manufacturer are properly attached and are in good working order."

When properly prepared and executed, as prescribed in this subsection, the certificate shall, notwithstanding any other provision of law, be self-authenticating, shall be admissible in any court of law, and shall satisfy the pertinent requirements of paragraph (1) of subsection (a) of this Code section and subparagraph (g)(2)(F) of Code Section 40-5-67.1. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 47; Ga. L. 1968, p. 448, §§ 1, 2; Ga. L. 1974, p. 562, §§ 1, 2; Code 1933, § 68A-902.1, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1975, p. 1008, § 3; Ga. L. 1977, p. 1036, § 1; Ga. L. 1983, p. 1000, § 14; Ga. L. 1988, p. 1893, §§ 3, 5; Ga. L. 1990, p. 2048, § 5; Ga. L. 1991, p. 1886, § 10; Ga. L. 1992, p. 2564, § 13; Ga. L. 1994, p. 1600, § 10; Ga. L. 1995, p. 1160, § 4; Ga. L. 1997, p. 143, § 40; Ga. L. 1997, p. 760, § 25; Ga. L. 2001, p. 208, § 1-6; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2009, p. 859, § 3/HB 509; Ga. L. 2011, p. 705, § 6-3/HB 214.)

Cross references. — Obtaining of blood sample to test for presence of intoxicating substances in instances where person, as result of casualty or other ailment is unable to give consent to taking of sample, § 45-16-46. Administering tests to persons charged with navigating vessels while intoxicated, § 52-7-12. Implied Consent, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Bureau of Investigation, Chapter 92-3.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, paragraphs (c)(.1), (c)(1), and (c)(2) were redesignated as paragraphs (c)(1), (c)(2), and (c)(3), respectively.

Editor's notes. — Ga. L. 1994, p. 1600, § 11, not codified by the General Assembly, provides that the provisions of the Act shall apply only to cases arising out of arrests occurring on or after January 1, 1995, except that the provisions amending subsection (a) of Code Section 40-6-391.1, restricting the acceptance of a plea of nolo contendere to a charge of violating Code Section 40-6-391, and the provisions amending subsection (c) of Code Section 40-6-391, changing the criminal penalties for violations of the section, shall become effective July 1, 1994, and except that the provisions amending subsection (g) of Code Section 40-5-67.1, relating to the time for requesting a hearing on an administrative suspension, the stay of a suspension pending such hearing, and the early termination of an administrative suspension under certain conditions shall apply to cases pending on July 1, 1994.

Ga. L. 1995, p. 1160, § 5, not codified by the General Assembly, provides that the Act shall apply to all cases pending at the time of its approval by the Governor or its becoming law without such approval, except that the provisions regarding the requirement for two breath samples set forth in subparagraph (a)(1)(B) of Code Section 40-6-392 shall not apply to arrest made prior to January 1, 1995.

Ga. L. 1997, p. 760, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Teen-age and Adult Driver Responsibility Act'."

Ga. L. 1997, p. 760, § 27, not codified by the General Assembly, provides that the amendment made by the Act to this Code section shall apply to offenses committed on or after July 1, 1997, and shall not apply to offenses committed prior to that date.

Law reviews. — For article, "Challenges to Humanitarian Legal Approaches for Eliminating the Hazards of Drunk Alcoholic Drivers," see 4 Ga. L. Rev. 251 (1970). For article surveying judicial developments in Georgia criminal law, see 31 Mercer L. Rev. 59 (1979). For article surveying Georgia cases in the area of evidence from June 1979 through May 1980, see 32 Mercer L. Rev. 63 (1980). For article surveying developments in Georgia workers' compensation law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 323 (1981). For article surveying law of evidence in 1984-1985, see 37 Mercer L. Rev. 249 (1985). For annual survey of the law of evidence, see 38 Mercer L. Rev. 215 (1986). For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 203 (1997). For annual survey article discussing developments in the law of evidence, see 51 Mercer L. Rev. 279 (1999). For article, "The Harper Standard and the Alcosensor: The Road Not Traveled," see 6 Ga. St. B.J. 8 (2000). For survey article on criminal law and procedure for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 117 (2003). For annual survey of criminal law, see 57 Mercer L. Rev. 113 (2005). For annual survey of evidence law, see 58 Mercer L. Rev. 151 (2006). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

For note discussing scientific basis of blood classification and use of blood tests as evidence, see 16 Mercer L. Rev. 306 (1964). For note on the 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 129 (1992). For note on the 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 298 (1992). For note, "The Final Patient Privacy Regulations Under the Health Insurance Portability and Accountability Act — Promoting Patient Privacy or Public Confusion?," see 37 Ga. L. Rev. 723 (2003). For note, "Rodriguez v. State: Addressing Georgia's Implied Consent Requirements for Non-English-

Speaking Drivers," see 54 Mercer L. Rev. 1253 (2003).

For comment on Flournoy v. State, 106 Ga. App. 756, 128 S.E.2d 528 (1962), see 14 Mercer L. Rev. 442 (1963).

JUDICIAL DECISIONS

Analysis

General Consideration
Constitutionality
Performance of Tests
Admissibility of Results
Judicial Proceedings
Jury Instructions

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, annotations cited below referring to .12 percent alcohol blood level construe paragraph (b)(4) as it existed prior to the 1988 amendment.

Ga. L. 1968, p. 448 should be strictly construed. Burson v. Collier, 226 Ga. 427, 175 S.E.2d 660 (1970).

In cases of offenses committed prior to April 21, 1995, strict compliance with the notice requirement as to independent tests was not required and failure to fully advise the defendants of the defendants' rights to an independent test by qualified personnel did not render the warning legally insufficient. State v. Holcomb, 219 Ga. App. 231, 464 S.E.2d 651 (1995).

Adoption and publication. — Standard Operating Procedures for urinalysis testing of the Division of Forensic Sciences of the Georgia Bureau of Investigation satisfied the requirements regarding adoption and publication of rules under O.C.G.A. § 50-13-3. State v. Cooper, 229 Ga. App. 97, 493 S.E.2d 1 (1997).

Retroactive application of express certification requirement. — Provisions requiring certification of inspection of breath-testing instruments applied retroactively to cases pending on the date of enactment (April 21, 1995); thus, suppression of breath test results was proper since the state could not produce an inspection certificate. State v. Kampplain, 223 Ga. App. 16, 477 S.E.2d 143 (1996); Cullen v. State, 223 Ga. App. 356, 477 S.E.2d 620 (1996).

Breath testing device certificates provided for in O.C.G.A. § 40-6-392(f) are records made within the regular course of business. Brown v. State, 268 Ga. 76, 485 S.E.2d 486 (1997); Rowell v. State, 229 Ga. App. 397, 494 S.E.2d 5 (1997); Jackson v. State, 233 Ga. App. 568, 504 S.E.2d 505 (1998).

Gas chromatograph printout is not a scientific report. — Printout from a gas chromatograph is a graph or recordation of data and is not a scientific report; therefore, Rayburn v. State, 234 Ga. App. 482, 506 S.E.2d 876 (1998), along with other cases interpreting O.C.G.A. § 17-16-23, do not govern a discovery dispute regarding the printout. Birdsall v. State, 254 Ga. App. 555, 562 S.E.2d 841 (2002).

Maintenance logs not admitted. — Trial court did not err in refusing a DUI defendant's request to admit maintenance logs showing when the Intoxilyzer 5000 used to conduct the defendant's breath test was taken out of service. Intoxilyzer 5000 maintenance logs were not even relevant enough to be discoverable pursuant to O.C.G.A. § 40-6-392(a)(4). Jacobson v. State, 306 Ga. App. 815, 703 S.E.2d 376 (2010), cert. denied, No. S11C0498, 2011 Ga. LEXIS 582 (Ga. 2011).

Certificate is not written scientific report. — Certificate of inspection of breath testing instruments required to be made by O.C.G.A. § 40-6-392(f) is not a written scientific report within the meaning of O.C.G.A. § 17-16-23, relating to the right of defendants to reports. Harmon v. State, 224 Ga. App. 890, 482 S.E.2d 730 (1997).

Completed certificate admissible without further proof. — Once a certif-

General Consideration (Cont'd)

icate of inspection is completed as specified under O.C.G.A. § 40-6-392, the certificate is admissible in any court of law without further proof and a further foundation for admission under the business records exception to the hearsay rule is rendered unnecessary. State v. Haddock, 235 Ga. App. 726, 510 S.E.2d 561 (1998).

Consent to test voluntary. — Under the Fourth Amendment, the defendant's motion to suppress the results of a state-administered blood test was improperly granted as the trial court erred in concluding that the defendant did not actually consent to the test because the officer promptly read the implied consent warning to the defendant and confirmed the defendant's affirmative response after the defendant was assisted from the hood of the car, after the defendant asked the officer to retrieve the defendant's shoes, which the officer agreed to do, and after the officer asked the defendant in a calm and polite voice to have a seat in the patrol car; and the evidence included the hospital's consent form that gave the defendant the option of refusing consent. State v. Domenge-Delhoyo, 338 Ga. App. 439, 790 S.E.2d 139 (2016).

Implied consent valid provision. — O.C.G.A. § 40-5-67.1, upon becoming effective, did not repeal that portion of O.C.G.A. § 40-6-392 regarding implied consent. Code Section 40-5-67.1 primarily concerns the methods and procedures to effect the administrative suspension of a driver's license based upon the use of chemical test results and does not address the admissibility of evidence in a criminal trial and was intended to provide additional consent notice requirements. State v. Hassett, 216 Ga. App. 114, 453 S.E.2d 508 (1995).

Implied consent notice given before arrest. — When the defendant received an implied consent notice and blood test before the defendant's arrest for driving under the influence, the notice was not untimely under O.C.G.A. § 40-6-392 because that Code section does not apply to situations where the notice and test precede an arrest. Joiner v. State, 239 Ga. App. 843, 522 S.E.2d 25 (1999).

Evidence of implied consent warning being provided. — Although a videotape of a defendant's traffic stop did not show the officer reading the defendant the implied consent notice, the videotape's sound was poor and there were moments when both the officer and the defendant were off-camera. The officer was further heard telling the defendant that what happened would depend on the results of the test, implying that the officer had read the notice. Additionally, the officer testified at trial without objection that the officer had read the notice and that the defendant had consented. Rowell v. State, 312 Ga. App. 559, 718 S.E.2d 890 (2011).

Arrest not required before reading of implied consent rights when defendant received serious injuries in accident. — Because the defendant was involved in an accident which resulted in serious injuries and the investigating officer had probable cause to believe that the defendant was driving under the influence, the officer was not required to arrest the defendant before the reading of implied consent; however, if a different accident did not involve serious injuries, the suspect needed to be under arrest before the implied consent rights were read to the suspect. Hough v. State, 279 Ga. 711, 620 S.E.2d 380 (2005).

Time of notification relative to arrest. — Trial court erred in concluding that the state's breath tests relating to a charge of DUI against the defendant were not admissible and had to be suppressed on the ground that a police officer did not read the defendant's implied consent rights at the scene of the defendant's arrest in a local park; the defendant was not arrested in the local park for DUI, but instead was arrested for criminal trespass, and it was not until the defendant was taken to a detention center that the defendant was arrested for DUI at which time the officer read the implied consent rights to the defendant. State v. Jones, 261 Ga. App. 357, 583 S.E.2d 139 (2003).

Notification of implied consent rights given in close proximity to arrest. — Under ordinary circumstances, the advice should be given at the time of the arrest or at a time as close in proximity to the instant of arrest as circum-

stances might warrant. Lee v. State, 177 Ga. App. 8, 338 S.E.2d 445 (1985), cert. denied, 476 U.S. 1116, 106 S. Ct. 1973, 90 L. Ed. 2d 657 (1986).

When a defendant was being treated for an injury and was awaiting a trip to the hospital; when the officer was concerned about the defendant's condition because the defendant was dazed and nauseated; and when the officer delayed charging the defendant until just before the ambulance was leaving, the officer was justified in advising the defendant after defendant's arrival at the hospital. The warning was given in close proximity to the arrest under the circumstances, and hence, evidence of the defendant's refusal to submit to testing was admissible. Lee v. State, 177 Ga. App. 8, 338 S.E.2d 445 (1985), cert. denied, 476 U.S. 1116, 106 S. Ct. 1973, 90 L. Ed. 2d 657 (1986).

Notification of one's implied consent rights is timely if given at a time as close in proximity to the instant of arrest as the circumstances of the individual case might warrant. Mason v. State, 177 Ga. App. 184, 338 S.E.2d 706 (1985).

Defendant, who was arrested at 1:28 p.m. and informed of defendant's rights at 1:46 p.m. on the same day, was informed of defendant's implied consent rights at a time enabling the defendant to exercise those rights in a meaningful fashion and the defendant's refusal to submit to chemical analysis was properly admitted in evidence. Highsmith v. City of Woodbury, 189 Ga. App. 58, 375 S.E.2d 79, cert. denied, 189 Ga. App. 912, 375 S.E.2d 79 (1988).

Arresting officer's failure to read implied consent rights to the defendant until 25 to 30 minutes after defendant first became aware of the defendant's condition was not improper since the rights were read after the defendant was taken to the police station and there arrested for driving under the influence. State v. Whitfield, 214 Ga. App. 574, 448 S.E.2d 492 (1994).

Delay in reading implied consent rights for five to ten minutes was not excessive when the defendant was not coherent at the scene of defendant's physical arrest. State v. Holmes, 224 Ga. App. 29, 479 S.E.2d 409 (1996).

Two-hour delay before the defendant was advised of the defendant's implied consent rights was not untimely since the delay was caused by a newly hired officer's call for assistance to confirm the officer's determination that the defendant was driving under the influence. Edge v. State, 226 Ga. App. 559, 487 S.E.2d 117 (1997), overruled on other grounds by Zilke v. State, 299 Ga. 232, 787 S.E.2d 745 (2016).

When there was a perceived threat of a fire or explosion at the accident scene and an apparent need for prompt medical transportation of the defendant for medical treatment, there was a fair risk that the defendant would not have been able to make an intelligent choice concerning the state's request for a blood test and the implied consent warning given at the hospital was timely given. Townsend v. State, 236 Ga. App. 530, 511 S.E.2d 587 (1999).

Implied consent warning must be given at a time as close in proximity to the instant of arrest as the circumstances of that particular case might warrant. Townsend v. State, 236 Ga. App. 530, 511 S.E.2d 587 (1999).

Although a police officer who detected a strong order of alcohol coming from the defendant who was standing over a motorcycle that was involved in an accident informed the defendant of the defendant's rights under Georgia's implied consent statute before the officer arrested the defendant for driving under the influence of alcohol, the appellate court found that the defendant was not free to leave at the time the implied consent warning was read to the defendant, and the court held that the reading of the notice satisfied the requirements of O.C.G.A. §§ 40-5-55, 40-5-67.1(a), and 40-6-392(a)(4). Oliver v. State, 268 Ga. App. 290, 601 S.E.2d 774 (2004).

O.C.G.A. § 40-5-67.1 implied consent notice given at the "time of arrest" under O.C.G.A. § 40-6-392 was timely when it preceded the formal arrest by a few seconds and the O.C.G.A. § 40-5-55(a) state-administered chemical testing, "Intoxilyzer 5000" testing, was done after the arrest. The "time of the arrest" included times as close in proximity to the instant of arrest as the circumstances of the individual case might warrant. Kahl v. State, 268 Ga. App. 879, 602 S.E.2d 888 (2004).

General Consideration (Cont'd)

With regard to a defendant's conviction for driving under the influence and other related crimes, the trial court properly denied the defendant's motion to suppress field sobriety test results which the defendant based on being unreasonably detained without receiving the Miranda warnings as the defendant was not under arrest and the defendant's detainment while waiting for a second officer to arrive at the scene was not unreasonable nor unnecessary since the first officer who initiated the stop after observing the defendant driving erratically had a suspect in the patrol car. The court also found that the second officer timely gave the defendant the implied consent warnings after the defendant was arrested and had refused to submit to the breath test. Thomas v. State, 294 Ga. App. 108, 668 S.E.2d 540 (2008).

Hearing impaired person arrested for driving under the influence was not entitled to a qualified interpreter before that person's rights under the implied consent law were conveyed to the person by the arresting officer. State v. Webb, 212 Ga. App. 872, 443 S.E.2d 630 (1994).

Blood test results inadmissible When the arresting officer failed to comply with the procedure in O.C.G.A. § 40-6-392, such failure rendered blood test results inadmissible. State v. Woody, 215 Ga. App. 448, 449 S.E.2d 615 (1994).

Blood test results admissible. — After a defendant's van hit a utility pole, an officer did not violate O.C.G.A. § 40-6-392(a)(3) by failing to reasonably accommodate the defendant's request for a breath test as the officer believed that the defendant could not complete a breath test due to serious injuries to the defendant's mouth and jaw. Since the defendant was not in police custody, but was a hospital patient, and consented to a blood test after first requesting a breath test, evidence of the blood test was admissible in a prosecution for driving under the influence. Fowler v. State, 294 Ga. App. 864, 670 S.E.2d 448 (2008), cert. denied, No. S09C0529, 2009 Ga. LEXIS 204 (Ga. 2009).

Impact of voluntary consent to test. — Pursuant to O.C.G.A. § 40-5-67.1(d.1), a trial court did not err in denying the defendant's motion to suppress based upon the officer's failure to give an implied consent warning before the test was administered because the defendant voluntarily consented to the breath test. Jones v. State, 319 Ga. App. 520, 737 S.E.2d 318 (2013).

Miranda warning unnecessary. — Evidence of the defendant's refusal to take a breath test did not need to be excluded simply because the officer did not advise defendant of the defendant's rights. Lankford v. State, 204 Ga. App. 405, 419 S.E.2d 498 (1992), cert. denied, 506 U.S. 1051, 113 S. Ct. 972, 122 L. Ed. 2d 127 (1993).

Choice afforded a suspect under O.C.G.A. §§ 40-5-55 and 40-6-392, either to agree or refuse to take a blood-alcohol test, is not protected by the privilege against self-incrimination, and the form signed by the defendant, agreeing to take a breath test, was likewise unprotected, such that the court erred in suppressing the form based on a police officer's failure to inform the defendant of the defendant's Miranda rights. State v. Mack, 207 Ga. App. 287, 427 S.E.2d 615 (1993).

An arresting officer was not required to read a defendant a Miranda warning during a traffic stop based on the officer's statement to the defendant that if the defendant did not blow into an alco-sensor properly, the officer would take the defendant to jail, because the defendant voluntarily consented to take the test and made several attempts before the officer made the statement. Rowell v. State, 312 Ga. App. 559, 718 S.E.2d 890 (2011).

Results admissible although not given to defendant immediately. — Trial court erred in suppressing the results of an alcohol test on the grounds that the results were not given to the defendant immediately after the test. There was no requirement in the procedural rules enacted pursuant to O.C.G.A. § 40-6-392(a)(1)(A) by the Division of Forensic Sciences that the results be given to defendant at any particular time. State v. Padidham, 310 Ga. App. 839, 714 S.E.2d 657 (2011).

Testimony as to officer's precise wording not required. — Trial court did

not err in admitting into evidence the results of an intoximeter test performed on the defendant when the arresting officer could not recall the precise wording in which the officer gave the defendant the implied consent warnings. Cheevers v. Clark, 214 Ga. App. 866, 449 S.E.2d 528 (1994).

Exclusion from discovery provisions when defendant refused to submit to chemical test of arresting officer. — Because the defendant refused to submit to the chemical test required by the arresting officer pursuant to O.C.G.A. § 40-5-55, the defendant was excluded from the discovery provisions of O.C.G.A. § 40-6-392(a)(4), and the trial court correctly denied the defendant's discovery request made pursuant to those provisions. Massey v. State, 331 Ga. App. 430, 771 S.E.2d 122 (2015), cert. denied, 2015 Ga. LEXIS 411 (Ga. 2015).

Chemical analysis for drugs. — Defendant presented no evidence showing that the state-administered blood test for drugs did not comply with O.C.G.A. § 40-6-39. The statutory scheme expressly authorizes law enforcement officers to request a chemical analysis of a person's blood for the purpose of determining the presence of drugs, provided that the chemical analysis complies with the requirements of O.C.G.A. § 40-6-392(a)(1)(A). Jackson v. State, 340 Ga. App. 228, 797 S.E.2d 152 (2017).

Refusal to take state-administered test. — Driver has the right to refuse to take a state-administered test subject to the legislative mandate that evidence of the exercise of that right shall be admissible in the driver's criminal trial. Nawrocki v. State, 235 Ga. App. 416, 510 S.E.2d 301 (1998).

Refusal to undergo alcohol screening test. — O.C.G.A. § 40-6-392 did not apply to the initial alcohol screening test used to determine probable cause to arrest drunk drivers and, thus, a police officer was not required to advise the defendant in a prosecution for driving under the influence of the defendant's right to an independent test before requesting that the defendant undergo preliminary screening; evidence regarding the defendant's pre-arrest refusal to undergo the alcohol screening test was admissible. Keenan v. State, 263 Ga. 569, 436 S.E.2d 475 (1993); Bravo v. State, 249 Ga. App. 433, 548 S.E.2d 129 (2001).

Refusal to submit to blood or urine test. — Refusal to submit to a blood or urine test may be considered as positive evidence creating an inference that the test would show the presence of a prohibited substance. Albert v. State, 236 Ga. App. 146, 511 S.E.2d 244 (1999).

Notification by officer other than arresting officer. — Fact that a police officer other than the arresting officer advised the defendant of the defendant's rights did not form a basis for excluding the results of the defendant's intoximeter tests. State v. Buice, 176 Ga. App. 843, 338 S.E.2d 293 (1985).

Implied consent statute was not violated because an officer other than the arresting officer read the defendant the implied consent rights. Edge v. State, 226 Ga. App. 559, 487 S.E.2d 117 (1997), overruled on other grounds by Zilke v. State, 299 Ga. 232, 787 S.E.2d 745 (2016).

Misleading arrestee. — Evidence merely that the officer informed the arrestee that the consequences of the arrestee's refusal to submit to a state-administered test could be suspension of the arrestee's driver's license for a period of "six to twelve months" in no way suggests that the officer purposely attempted to mislead the arrestee and the results of the defendant's blood-alcohol test were properly admitted into evidence. Whittington v. State, 184 Ga. App. 282, 361 S.E.2d 211 (1987).

Agitated relatives of victim justified delay in advising of rights. — When a two-year-old child was killed in the accident and the officer was concerned that agitated relatives of the child gathered at the scene might be a threat to the defendant, it could not be said that the officer's waiting until the officer was driving away after having placed the defendant under arrest to advise the defendant of the defendant's rights was not timely. Hall v. State, 219 Ga. App. 871, 467 S.E.2d 206 (1996).

Repetition of warnings not required. — Implied consent statute was properly implemented when the defen-

General Consideration (Cont'd)

dant was given the implied consent warnings when the defendant was arrested for driving with a suspended license but was not again given the implied consent warnings after the defendant took a breath test and was placed under arrest for driving under the influence. Parsons v. State, 190 Ga. App. 803, 380 S.E.2d 87 (1989).

Police officer was not required to again allow the defendant to consider the defendant's options once the defendant knew the defendant had failed an administered breath test by returning to the defendant the form which the defendant had previously reviewed, initialled, and signed so as to indicate the defendant's desire for an additional test. State v. Hull, 210 Ga. App. 72, 435 S.E.2d 284 (1993).

Pretense of compliance as tantamount to refusal to take test. — When a defendant gives only the pretense of compliance with a blood-alcohol test, the defendant's actions are tantamount to a refusal to take the test, and the officer who attempted to give the test can testify regarding the defendant's refusal to take the test. Cadden v. State, 176 Ga. App. 377, 336 S.E.2d 266 (1985).

Test not performed at request of officer. — Results of an alcohol concentration level test which was not performed at either the request or direction of a law enforcement officer are not subject to the dictates of O.C.G.A. § 40-6-392 and the party seeking to admit the test results must satisfy the court that the results are admissible pursuant to the rules of evidence. Oldham v. State, 205 Ga. App. 268, 422 S.E.2d 38, cert. denied, 205 Ga. App. 901, 422 S.E.2d 38 (1992).

Statute applies only to driving under the influence tests administered at the direction of a law enforcement officer, not tests administered pursuant to a search warrant, which by definition are issued at the direction of a judicial officer. Hynes v. State, 341 Ga. App. 500, 801 S.E.2d 306 (2017).

Defendant not in custody before implied consent warning given. — Defendant was not in custody before an implied consent warning was given; the defendant knew that the defendant was being investigated for driving under the influence and had been told that the defendant was drunk, but the defendant had not been placed in a patrol car or handcuffed. Tune v. State, 286 Ga. App. 32, 648 S.E.2d 423 (2007).

Prosecution for allowing intoxicated driver to operate vehicle. — If the state wants to prosecute a party who allowed an intoxicated driver to operate an automobile in violation of the section governing driving under the influence, the state can use the intoximeter results obtained from the accused operator only if the state can prove that the state's evidence meets the statutory requirements for admissibility of O.C.G.A. § 40-6-392. Munda v. State, 172 Ga. App. 857, 324 S.E.2d 799 (1984).

Person charged with permitting another person to operate an automobile contrary to the law governing driving under the influence has standing to contest the admissibility of an intoximeter test under the section governing the introduction of such evidence. Munda v. State, 172 Ga. App. 857, 324 S.E.2d 799 (1984).

"Totality of circumstances" test inapplicable. — Because the choice afforded a suspect under the implied consent statute does not rise to the level of constitutional self-incrimination, it is improper for a court to apply the "totality of circumstances" test. The issues to be determined are simply whether the officer told the suspect of the defendant's implied consent rights in a timely fashion and whether the suspect revoked the implied consent. State v. Highsmith, 190 Ga. App. 838, 380 S.E.2d 272, cert. denied, 190 Ga. App. 899, 380 S.E.2d 272 (1989).

Error in admitting chemical test results harmless in light of other evidence. — While the appeals court agreed that the trial court erred in denying the defendant's motion to suppress the results of the chemical test of the defendant's blood, the error was harmless as other evidence presented by the state, specifically the defendant's admission to being intoxicated and the testimony of other witnesses describing their observations, proved the defendant's intoxication. Harrelson v. State, 287 Ga. App. 664, 653 S.E.2d 98 (2007).

Failure to show harm after court entered directed verdict of acquittal. — Defendant was unable to show harm from the denial of a pretrial motion to dismiss evidence of a breath test administered before the defendant was read the implied consent rights as required by O.C.G.A. § 40-5-67.1(b)(2), and without being informed of the right to an independent chemical analysis as required by O.C.G.A. § 40-6-392(a)(4) because at trial, the trial court directed a verdict of acquittal on the charge of driving under the influence with a blood alcohol level higher than 0.08 percent. Hernandez v. State, 297 Ga. App. 177, 676 S.E.2d 795 (2009).

Subjective "less safe" test determines whether one is "under the influence" of intoxicating liquors. Harper v. State, 91 Ga. App. 456, 86 S.E.2d 7 (1955).

Subpoena not required to obtain gas chromatograph results. — It is reversible error for a trial court to quash a subpoena seeking the printout from a gas chromatograph; a subpoena is not required to obtain a printout from a gas chromatograph and a request for discovery directed to the state is adequate to prompt production of the printout, whether it is in the hands of the prosecutor or in the files of the state crime laboratory. Birdsall v. State, 254 Ga. App. 555, 562 S.E.2d 841 (2002).

Only computer printout of intoxilyzer test is discoverable. — Trial court did not err in denying the defendant's motion for disclosure of scientific reports pursuant to O.C.G.A. § 40-6-392(a)(4) because intoxilyzer test results were provided to the defendant, and the defendant's discovery request was overbroad when the defendant sought information far beyond the scope of information to which the defendant was entitled under § 40-6-392(a)(4); the only discoverable information from an intoxilyzer test under § 40-6-392(a)(4) is the computer printout of the test result because unlike the gas chromatography test, which produces data that has to be interpreted by a chemist to determine blood alcohol level, an intoxilyzer does not produce raw data but rather prints out the actual test result showing the person's blood alcohol level, which means that the machine computes the test result. Stetz v. State, 301 Ga. App. 458, 687 S.E.2d 839 (2009).

Cited in Yawn v. State, 134 Ga. App. 77, 213 S.E.2d 178 (1975); Campbell v. State, 136 Ga. App. 338, 221 S.E.2d 212 (1975); Ware v. State, 137 Ga. App. 673, 224 S.E.2d 873 (1976); Abercrombie v. State, 138 Ga. App. 536, 226 S.E.2d 763 (1976); Martin v. State, 139 Ga. App. 8, 228 S.E.2d 15 (1976); Morris v. State, 139 Ga. App. 630, 229 S.E.2d 110 (1976); Johnson v. City of Albany, 413 F. Supp. 782 (M.D. Ga. 1976); Hunter v. State, 141 Ga. App. 276, 233 S.E.2d 252 (1977); Loar v. State, 142 Ga. App. 875, 237 S.E.2d 237 (1977); Hunter v. State, 143 Ga. App. 541, 239 S.E.2d 212 (1977); State v. Baker, 146 Ga. App. 608, 247 S.E.2d 160 (1978); McElwee v. State, 147 Ga. App. 84, 248 S.E.2d 162 (1978); Longino v. Cofer, 148 Ga. App. 341, 251 S.E.2d 113 (1978); Chase v. State, 148 Ga. App. 690, 252 S.E.2d 194 (1979); State v. Laycock, 151 Ga. App. 145, 259 S.E.2d 150 (1979); Ensley v. Jordan, 244 Ga. 435, 260 S.E.2d 480 (1979); Hardison v. Chastain, 151 Ga. App. 678, 261 S.E.2d 425 (1979); Jackson v. State, 152 Ga. App. 441, 263 S.E.2d 181 (1979); Terry v. Liberty Mut. Ins. Co., 152 Ga. App. 583, 263 S.E.2d 475 (1979); Holloway v. McElroy, 474 F. Supp. 1363 (M.D. Ga. 1979); Adams v. Hardison, 153 Ga. App. 152, 264 S.E.2d 693 (1980); Collins v. State, 154 Ga. App. 651, 269 S.E.2d 509 (1980); Mulling v. State, 156 Ga. App. 404, 274 S.E.2d 770 (1980); Tolbert v. Hicks, 158 Ga. App. 642, 281 S.E.2d 368 (1981); Hartley v. State, 159 Ga. App. 157, 282 S.E.2d 684 (1981); Felchlin v. State, 159 Ga. App. 120, 282 S.E.2d 743 (1981); Garner v. State, 159 Ga. App. 244, 282 S.E.2d 909 (1981); Chumley v. State, 160 Ga. App. 619, 287 S.E.2d 630 (1981); Tucker v. State, 249 Ga. 323, 290 S.E.2d 97 (1982); Beaman v. State, 161 Ga. App. 129, 291 S.E.2d 244 (1982); State v. Johnston, 249 Ga. 413, 291 S.E.2d 543 (1982); Bailey v. State, 249 Ga. 535, 291 S.E.2d 704 (1982); Hardison v. Haslam, 250 Ga. 59, 295 S.E.2d 830 (1982); Smith v. State, 164 Ga. App. 624, 298 S.E.2d 587 (1982); State v. Chumley, 164 Ga. App. 828, 299 S.E.2d 564 (1982); Reliance Ins. Co. v. Bridges, 168 Ga. App. 874, 311 S.E.2d 193 (1983); Epps v. State,

General Consideration (Cont'd)

169 Ga. App. 157, 312 S.E.2d 146 (1983); Higginbotham v. State, 170 Ga. App. 80, 316 S.E.2d 181 (1984); Parker v. State, 170 Ga. App. 655, 317 S.E.2d 891 (1984); Patton v. State, 170 Ga. App. 807, 318 S.E.2d 231 (1984); Quaile v. State, 172 Ga. App. 421, 323 S.E.2d 281 (1984); State v. Strickman, 173 Ga. App. 1, 325 S.E.2d 775 (1984); Horah v. State, 173 Ga. App. 306, 325 S.E.2d 917 (1985); Roberts v. State, 173 Ga. App. 614, 327 S.E.2d 743 (1985); Rielli v. State, 174 Ga. App. 220, 330 S.E.2d 104 (1985); Mitchell v. State, 174 Ga. App. 594, 330 S.E.2d 798 (1985); Riley v. State, 174 Ga. App. 607, 330 S.E.2d 808 (1985); Atkins v. State, 175 Ga. App. 470, 333 S.E.2d 441 (1985); Manning v. State, 175 Ga. App. 738, 334 S.E.2d 338 (1985); Drayton v. State, 175 Ga. App. 803, 334 S.E.2d 720 (1985); Cadden v. State, 176 Ga. App. 377, 336 S.E.2d 266 (1985); Paul v. State, 176 Ga. App. 524, 336 S.E.2d 379 (1985); State v. Carter, 176 Ga. App. 872, 338 S.E.2d 300 (1985); Little v. State, 178 Ga. App. 268, 342 S.E.2d 712 (1986); State v. Brown, 178 Ga. App. 307, 342 S.E.2d 779 (1986); Hogan v. State, 178 Ga. App. 534, 343 S.E.2d 770 (1986); Campbell v. State, 178 Ga. App. 814, 344 S.E.2d 745 (1986); State v. Greene, 178 Ga. App. 875, 344 S.E.2d 771 (1986); Smith v. State, 180 Ga. App. 309, 349 S.E.2d 4 (1986); Farmer v. State, 180 Ga. App. 720, 350 S.E.2d 583 (1986); Duffee v. State, 184 Ga. App. 247, 361 S.E.2d 239 (1987); Williams v. Hart, 83 Bankr. 840 (Bankr. M.D. Ga. 1987); Odom v. State, 185 Ga. App. 496, 364 S.E.2d 626 (1988); Smith v. State, 185 Ga. App. 531, 364 S.E.2d 907 (1988); Clough v. Lively, 186 Ga. App. 415, 367 S.E.2d 295 (1988); Collum v. State, 186 Ga. App. 822, 368 S.E.2d 578 (1988); Brooks v. State, 187 Ga. App. 194, 369 S.E.2d 801 (1988); Buffington v. State, 190 Ga. App. 365, 378 S.E.2d 884 (1989); Watkins v. State, 191 Ga. App. 87, 381 S.E.2d 45 (1989); Potts v. State, 191 Ga. App. 75, 381 S.E.2d 99 (1989); Holcomb v. State, 191 Ga. App. 379, 381 S.E.2d 594 (1989); Hunter v. State, 191 Ga. App. 769, 382 S.E.2d 679 (1989); Koulianos v. State, 192 Ga. App. 90, 383 S.E.2d 642 (1989); Ross v. State, 192 Ga. App. 850, 386 S.E.2d 721 (1989); Ussery v. State, 195 Ga. App. 394, 393 S.E.2d 522 (1990); Shults v. State, 195 Ga. App. 525, 394 S.E.2d 573 (1990); Abdsharafat v. State, 195 Ga. App. 837, 395 S.E.2d 61 (1990); Menendez v. Jewett, 196 Ga. App. 565, 396 S.E.2d 294 (1990); Parker v. State, 198 Ga. App. 838, 403 S.E.2d 897 (1991); Fowler v. State, 200 Ga. App. 505, 408 S.E.2d 449 (1991); Hurd v. State, 201 Ga. App. 373, 411 S.E.2d 111 (1991); Daras v. State, 201 Ga. App. 512, 411 S.E.2d 367 (1991); Bowden v. State, 202 Ga. App. 802, 415 S.E.2d 527 (1992); Holloman v. State, 203 Ga. App. 476, 416 S.E.2d 839 (1992); Pippins v. State, 204 Ga. App. 318, 419 S.E.2d 28 (1992); Tibbs v. State, 207 Ga. App. 273, 427 S.E.2d 603 (1993); Clapsaddle v. State, 208 Ga. App. 840, 432 S.E.2d 262 (1993); Wells v. State, 210 Ga. App. 165, 435 S.E.2d 523 (1993); Gregg v. State, 216 Ga. App. 135, 453 S.E.2d 499 (1995); Walton v. State, 217 Ga. App. 11, 456 S.E.2d 289 (1995); Shelter Mut. Ins. Co. v. Bryant, 220 Ga. App. 526, 469 S.E.2d 792 (1996); Renschen v. State, 225 Ga. App. 678, 484 S.E.2d 753 (1997); Fruhling v. State, 233 Ga. App. 544, 505 S.E.2d 47 (1998); Buchnowski v. State, 233 Ga. App. 766, 505 S.E.2d 263 (1998); Lambropoulous v. State, 234 Ga. App. 625, 507 S.E.2d 225 (1998); State v. Kaylor, 234 Ga. App. 495, 507 S.E.2d 233 (1998); Mackey v. State, 234 Ga. App. 554, 507 S.E.2d 482 (1998); Walker v. State, 239 Ga. App. 831, 521 S.E.2d 861 (1999); Gallimore v. State, 242 Ga. App. 374, 529 S.E.2d 668 (2000); Klink v. State, 272 Ga. 605, 533 S.E.2d 92 (2000); Hulsey v. Northside Equities, Inc., 249 Ga. App. 474, 548 S.E.2d 41 (2001); State v. Lentsch, 252 Ga. App. 655, 556 S.E.2d 248 (2001); Satterfield v. State, 252 Ga. App. 525, 556 S.E.2d 568 (2001); Johnson v. State, 261 Ga. App. 633, 583 S.E.2d 489 (2003); Dozier v. Pierce, 279 Ga. App. 464, 631 S.E.2d 379 (2006); Stadnisky v. State, 285 Ga. App. 33, 645 S.E.2d 545 (2007); Dodds v. State, 288 Ga. App. 231, 653 S.E.2d 828 (2007); Taylor v. State, 337 Ga. App. 486, 788 S.E.2d 97 (2016).

Constitutionality

Constitutionality. — See Garrett v. Department of Pub. Safety, 237 Ga. 413, 228 S.E.2d 812 (1976).

Supreme Court's refusal to review a constitutional challenge to O.C.G.A. § 40-6-392 for mandating a presumption of intoxication if the alcoholic test reading is above .10 rendered such a contention without merit. McCann v. State, 167 Ga. App. 368, 306 S.E.2d 681 (1983), cert. denied, 464 U.S. 1044, 104 S. Ct. 712, 79 L. Ed. 2d 174 (1984).

Implied consent read in English to foreign speaking individual. — Defendant, a Spanish speaking person, who claimed constitutional violations to the implied consent statutes were without merit since the defendant was not similarly situated to a hearing impaired person and, although similarly situated to an English speaking person, there was a rational basis for requiring the implied consent warnings to be read in English. Rodriguez v. State, 275 Ga. 283, 565 S.E.2d 458 (2002).

Section grants right to refuse test. — Since, under the Constitution of Georgia, the state may constitutionally take a blood sample from a defendant without defendant's consent, O.C.G.A. §§ 40-5-55 (see now O.C.G.A. § 40-5-67.1) and 40-6-392 grant, rather than deny, a right to a defendant by providing for refusal to take such a test. Allen v. State, 254 Ga. 433, 330 S.E.2d 588 (1985).

Choice provided to a DUI defendant under Georgia law—submitting to a blood-alcohol test or refusing to submit, with resultant sanctions—is not so painful, dangerous, or severe, or so violative of religious beliefs, that no choice actually exists, and does not amount to compulsion on behalf of the state or a violation of due process. Allen v. State, 254 Ga. 433, 330 S.E.2d 588 (1985).

Multiple tests may be requested. — Nothing in the implied consent law prohibits an officer from advising a driver of the defendant's implied consent rights and requesting multiple chemical tests at one time, and such a request would not violate the Fourth Amendment as an unreasonable attempt to "shop" through the defendant's bodily fluids in search of evidence. McKeown v. State, 187 Ga. App. 685, 371 S.E.2d 243 (1988).

Procedural due process rights provided. — Under Ga. L. 1974, p. 633, § 1 (see now O.C.G.A. § 40-6-392), procedural due process rights are afforded a driver before the driver is deprived of any rights or privileges. Cogdill v. Department of Pub. Safety, 135 Ga. App. 339, 217 S.E.2d 502 (1975).

Trial court properly denied the defendant's amended motion for a new trial, holding that the administration of breath tests pursuant to Ga. Comp. R. & Regs. 92-3-.06(12)(b) did not violate the due process clause under both U.S. Const., amend. 5 or Ga. Const. 1983, Art. I, Sec. I, Para. I given that: (1) the claim was raised for the first time within the new trial motion, and was thus untimely; (2) the defendant had an alternative remedy under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1; (3) the defendant failed to show that the Division of Forensic Sciences (DFS) eliminated meaningful procedures for conducting breath tests when it promulgated the rule; and (4) the techniques and methods approved by DFS were sufficient to ensure fair and accurate testing. Palmaka v. State, 280 Ga. App. 761, 634 S.E.2d 883 (2006).

State's failure to immediately inform a defendant of the results of the state-administered test does not create a situation where the defendant is left with no, or so little, information that he or she is denied any meaningful choice in violation of due process; driving under the influence defendants must determine, often under difficult and stressful circumstances, whether to request an independent test, and that the choice may be difficult does not render it fundamentally unfair and this fact alone does not support a due process claim. Padidham v. State, 291 Ga. 99, 728 S.E.2d 175 (2012).

Constitutionality of statute's presumptions. — Presumptions created by statute do not constitute denial of due process and equal protection by being burden shifting when these "presumptions" are modified in the charge to the jury as, in reality, being only "rebuttable presumptions or inferences." Olsen v. State, 168 Ga. App. 296, 308 S.E.2d 703 (1983).

Confrontation rights not offended. — Charge on driving under the influence of alcohol does not impermissibly direct the return of a verdict of guilty on the

Constitutionality (Cont'd)

basis of the statutory presumptions of intoxication when the jury is instructed that the statutory presumptions are rebuttable. Clark v. State, 169 Ga. App. 535, 313 S.E.2d 748 (1984).

Presumptions created by O.C.G.A. § 40-6-392 do not constitute a denial of due process of law. Melton v. State, 175 Ga. App. 472, 333 S.E.2d 682 (1985).

Former paragraph (b)(4) of O.C.G.A. § 40-6-392 regarding the effect of a finding of a blood alcohol reading of .12 or more does not create a constitutionally impermissible presumption of guilt. Turrentine v. State, 176 Ga. App. 145, 335 S.E.2d 630 (1985).

Former paragraph (b)(3) of O.C.G.A. § 40-6-392 does not create an unconstitutional, burden-shifting presumption that a person with 0.10 grams of alcohol per liter of blood is "under the influence" of alcohol. Lattarulo v. State, 261 Ga. 124, 401 S.E.2d 516 (1991), cert. denied, 502 U.S. 823, 112 S. Ct. 86, 116 L. Ed. 2d 59 (1991).

O.C.G.A. § 40-6-392 does not offend a defendant's right of confrontation because the admissibility of inspection certificates on breath testing devices, as provided by subsection (f), is based on the hearsay exception for business records. Brown v. State, 268 Ga. 76, 485 S.E.2d 486 (1997); Rowell v. State, 229 Ga. App. 397, 494 S.E.2d 5 (1997); Jackson v. State, 233 Ga. App. 568, 504 S.E.2d 505 (1998).

Because the classification of persons qualified to draw blood and the records showing such classification are regulated under Department of Human Resources rules, subsection (e) O.C.G.A. § 40-6-392 creates a public records exception to the hearsay rule, and therefore the certification required by that statute does not violate the confrontation clause. Price v. State, 269 Ga. 222, 498 S.E.2d 262 (1998).

Certificate of inspection for approved breath testing instrument that was properly prepared and executed was self authenticating, notwithstanding any other provision of law, was admissible, and did not deny the defendant the constitutional right to confront witnesses against the defendant. Madden v. State, 252 Ga. App. 164, 555 S.E.2d 832 (2001).

Admission of self-authenticating certificates of inspection for the Intoxilyzer 5000 used to test the defendant's breath was proper as the certificates were required by O.C.G.A. § 40-6-392(f), the certificates qualified as business records under former O.C.G.A. § 24-3-14 (see now O.C.G.A. § 24-8-803), and the certificates did not violate the defendant's confrontation rights under U.S. Const., amend. 6. Neal v. State, 281 Ga. App. 261, 635 S.E.2d 864 (2006).

Self-incrimination. — Because the defendant was not compelled by the state to submit to a breath test after the defendant's arrest, the admission at trial of the test results did not violate the defendant's right against self-incrimination. Fantasia v. State, 268 Ga. 512, 491 S.E.2d 318 (1997).

Treating alcohol differently from other drugs. — Legislature is authorized to classify and treat alcohol differently from other drugs and the defendant cannot complain if drug users are not entitled to have qualified persons conduct the tests. Head v. State, 246 Ga. 360, 271 S.E.2d 452 (1980).

Duties of alcoholic beverage distributors. — Argument that former Code 1933, Ch. 68A (see now O.C.G.A. Ch. 6, T. 40) violated due process by failing to require distributors of alcoholic beverages to label their products so as to put a consumer on notice as to what quantity of the beverage was required in a given time period to raise the level of alcohol to that prohibited by law was without merit. Head v. State, 246 Ga. 360, 271 S.E.2d 452 (1980).

Preservation of breath sample. — Neither the federal nor the state constitutional guarantee of due process requires the state to preserve a sample of the breath used in the administration of the auto-intoximeter test. Hopper v. State, 175 Ga. App. 358, 333 S.E.2d 201 (1985).

Standing. — Defendant, who was denied a second chemical test on the ground that the defendant did not have on the defendant's person sufficient currency with which to pay the $38 cost of the test, lacked standing to attack the state's implied consent law as unconstitutional in denying an indigent person a second

chemical test at public expense, absent any proof of the defendant's own indigency. Taylor v. State, 261 Ga. 415, 405 S.E.2d 496 (1991); Stone v. State, 262 Ga. 687, 424 S.E.2d 787 (1993).

Performance of Tests

Application of 1995 amendment. — Requirement imposed under the 1995 amendment of O.C.G.A. § 40-6-392 that for a test to be considered valid the test must be conducted "on a machine which was operated with ... components ... attached and in good working order" applied to a pending prosecution, and when the test was given on a machine on which a component prescribed by the manufacturer had been disabled and overridden, the test was not valid. State v. Hunter, 221 Ga. App. 837, 473 S.E.2d 192 (1996).

Because a prosecution for driving under the influence was pending when the 1995 amendment of O.C.G.A. § 40-6-392 regarding the requirements for certification was approved by the governor, the provisions applied even though it was impossible for the police to have complied with them. Hobbs v. State, 224 Ga. App. 314, 480 S.E.2d 330 (1997).

When alcoholic content test not mandatory. — There is no provision of law which makes it mandatory for the state to subject a person arrested for driving under the influence of intoxicants to a test to determine the alcoholic content of the person's blood in the absence of demand. Hendrix v. State, 125 Ga. App. 327, 187 S.E.2d 557 (1972).

Showing that test not completed within "operator's judgment" is not evidence of "refusal to submit." Burson v. Collier, 226 Ga. 427, 175 S.E.2d 660 (1970).

State required to show machine in good working order. — State is required to show that the machine on which blood tests were conducted was operated with all the machine's electronic and operating parts properly attached and in good working order. Banks v. State, 235 Ga. App. 701, 509 S.E.2d 63 (1998).

Authority of officer to designate type of chemical test. — O.C.G.A. § 40-5-67.1, read in pari materia with O.C.G.A. §§ 40-5-55 and 40-6-392, authorizes a law enforcement officer to designate the appropriate chemical test to be administered — breath, blood, urine, or other bodily substance — for the detection of the source of impairment as suspected by the officer. State v. Hunter, 221 Ga. App. 837, 473 S.E.2d 192 (1996).

Intoximeter performs "chemical analysis." — Intoximeter which determines the amount of alcohol in one's breath (by whatever means) and calculates therefrom the blood-alcohol content performs a "chemical analysis" or "chemical test." Fisher v. State, 177 Ga. App. 465, 339 S.E.2d 744 (1986).

Approval of breath test instrument. — Bureau of Investigation Division of Forensic Sciences substantially complied with the requirements of the Administrative Procedure Act in amending regulations permitting the use of a breath test instrument. Corner v. State, 223 Ga. App. 353, 477 S.E.2d 593 (1996).

Breath test determinative of blood-alcohol content. — Breath-alcohol test is as conclusive as a blood-alcohol test in determining the amount of alcohol in a person's blood and the results from a breath test can be the basis of a conviction for driving while under the influence of alcohol. Fudge v. State, 184 Ga. App. 590, 362 S.E.2d 147 (1987).

Subsection (a) of O.C.G.A. § 40-6-392 makes it clear that a breath test is used to determine the amount of alcohol in a person's blood. Herndon v. State, 187 Ga. App. 313, 370 S.E.2d 164 (1988).

Trial court properly reversed administrative suspension of a driver's license when the evidence did not show that the driver's breath test was properly administered as two breath samples were required to verify the accuracy of the breathalyzer. Ga. Dep't of Pub. Safety v. Robinette, 254 Ga. App. 884, 564 S.E.2d 726 (2002).

"Qualified person" requirement of O.C.G.A. § 40-6-392 applies to all blood test results showing drug content as well as alcoholic content. Carr v. State, 222 Ga. App. 776, 476 S.E.2d 75 (1996).

State was not required to prove that the person who drew the defendant's blood after the defendant was suspected of hav-

Performance of Tests (Cont'd)

ing swallowed cocaine the defendant was carrying and consented to a blood test was "qualified" to perform the test before the testimony of a forensic toxicologist could be admitted into evidence as that requirement only related to chemical tests performed where the state sought to prove that a defendant was driving under the influence, and the defendant was charged with cocaine possession and not with driving under the influence. Millsap v. State, 261 Ga. App. 427, 582 S.E.2d 568 (2003).

Examiner need not understand science behind machine. — O.C.G.A. § 40-6-392 does not demand that the examiner have an expert's knowledge of the underlying scientific principles governing the functioning of the machine. Dotson v. State, 179 Ga. App. 233, 345 S.E.2d 871 (1986) Gutierrez v. State, 228 Ga. App. 458, 491 S.E.2d 898 (1997).

Testimony by a toxicologist that the toxicologist was familiar with the workings of the urinalysis machine and that the machine was in good working order was sufficient to establish such fact for the jury; O.C.G.A. § 40-6-392 does not require that a toxicologist have an expert's knowledge of the underlying scientific principles governing the functioning of the machine. Helmeci v. State, 230 Ga. App. 866, 498 S.E.2d 326 (1998).

Mortician qualified. — When a licensed mortician who extracted blood from the deceased after a fatal accident testified to being in the mortician business for years and receiving training at the John College of Mortuary Science in Nashville, Tennessee, such technician was a qualified person under O.C.G.A. § 40-6-392. Clark v. Jefferson Pilot Life Ins. Co., 209 Ga. App. 93, 432 S.E.2d 815 (1993).

Medical center employee qualified person to draw blood. — Full-time employee of a medical center whose only job was to "draw blood" and who had trained at the center to perform this function was a "qualified person" within the meaning of Ga. L. 1974, p. 633, § 1 (see now O.C.G.A. § 40-6-392). Gooch v. State, 155 Ga. App. 708, 272 S.E.2d 572 (1980).

Statutory requirements apply to blood test analyzed by hospital. — Requirements in O.C.G.A. § 40-6-392 apply to a blood test requested by a law enforcement officer but analyzed by a hospital. State v. Padgett, 329 Ga. App. 747, 766 S.E.2d 143 (2014).

Forensic chemist qualified. — Testing of blood samples by a forensic chemist with the Division of Forensic Sciences, using a method approved by the division, satisfied the requirements of O.C.G.A. § 40-6-392. Lewis v. State, 215 Ga. App. 486, 451 S.E.2d 116 (1994); Jordan v. State, 223 Ga. App. 176, 477 S.E.2d 583 (1996); Morrissette v. State, 229 Ga. App. 420, 494 S.E.2d 8 (1997); Bailey v. State, 229 Ga. App. 869, 494 S.E.2d 672 (1998).

Technician was a "qualified person" to administer a breath test when the technician took a course in breath analysis, trained on the machine used to test the defendant, and was certified by the police academy. Eubanks v. State, 175 Ga. App. 244, 333 S.E.2d 3 (1985).

Medical laboratory technician qualified. — Department of Human Resources certificate signed by a reviewing official and stating that the person who drew the defendant's blood was classified as a medical laboratory technician was in substantial compliance with the requirement of O.C.G.A. § 40-6-392 regarding proof of the technician's qualifications. Bazemore v. State, 225 Ga. App. 741, 484 S.E.2d 673 (1997).

Unlicensed technician's testimony admissible. — Testimony of an unlicensed crime lab technician as to the technician's tasks in the initial screening test was admissible when the technician did not offer any opinion as to chemical analysis, or interpret any testing, nor make any report as to the results of testing; the technician's duties were done in accordance with lab procedure, under supervision of a doctor, and did not constitute actual performance of the chemical analysis. Martin v. State, 214 Ga. App. 614, 448 S.E.2d 471 (1994).

More than one test may be requested by the accused, for example a breath test and a blood test. Failure to allow the defendant an additional test or tests, absent a finding that such failure is "justifiable," is a violation of O.C.G.A. § 40-6-392 and precludes the state's use

of the state's tests. Turner v. State, 199 Ga. App. 466, 405 S.E.2d 296 (1991).

There is nothing about the plain language of either O.C.G.A. § 40-5-67.1(b)(3) or paragraph (b)(2) of O.C.G.A. § 40-6-392 which would preclude the defendant from affirmatively choosing to have the state's qualified testing officer perform an additional breath test at the defendant's expense. Nawrocki v. State, 235 Ga. App. 416, 510 S.E.2d 301 (1998).

State has no duty to show defendant's waiver of additional test. — State is under no duty to show the defendant's affirmative waiver of an additional chemical test. A duty is placed upon an officer who administers or causes to be administered a chemical test for alcoholic content in bodily fluids to advise the testee that the testee is entitled to an independent test of the testee's own choosing, and once that duty is fulfilled by the officer, the statutory obligation is satisfied. State v. Griffin, 204 Ga. App. 459, 419 S.E.2d 528 (1992).

Driver's right to additional test notification. — It is necessary for the arresting officer to notify the driver of the driver's right to have an additional test made before the driver could be burdened with the responsibility of having to request the test. Nelson v. State, 135 Ga. App. 212, 217 S.E.2d 450 (1975); Garrett v. Department of Pub. Safety, 237 Ga. 413, 228 S.E.2d 812 (1976).

In order to utilize the results of a blood-alcohol test to establish criminal liability against a defendant, it must be shown that the defendant was advised of his or her right to have additional tests made, but this rule does not apply to a person who is not a defendant. Johnson v. State, 146 Ga. App. 835, 247 S.E.2d 513 (1978).

Rights contemplated by O.C.G.A. § 40-6-392 include a warning that the suspect has a right to an individual and independent test to corroborate or contest the state-administered test. State v. Johnston, 160 Ga. App. 71, 286 S.E.2d 47 (1981), aff'd, 249 Ga. 413, 291 S.E.2d 543 (1982).

When a law enforcement officer requests a person to submit to a chemical test because of acts alleged to have been committed while operating a motor vehicle under the influence of alcohol or drugs, and the officer arrests that person on this ground, the officer must inform the person at the time of arrest of the person's right to an independent chemical analysis to determine the amount of alcohol or drugs present in the person's blood. Perano v. State, 250 Ga. 704, 300 S.E.2d 668 (1983).

Advisement of rights deemed deficient. — Officer's advice to the defendant that, "[a]fter submitting to the required testing, you are entitled to additional chemical tests at your own expense" was deficient because the advice completely failed to inform the defendant that the defendant could choose the defendant's own qualified person to administer the additional test. State v. Causey, 215 Ga. App. 85, 449 S.E.2d 639 (1994).

Criteria for provision of independent test. — It is incumbent on the trial court to determine whether a failure or inability to obtain an additional test is justified. In making that determination, the trial court must decide if, under the totality of the circumstances, the officer made a reasonable effort to accommodate the accused who seeks an independent test. Factors to be considered include, but are not limited to, the following: (1) availability of or access to funds or resources to pay for the requested test; (2) a protracted delay in the giving of the test if the officer complies with the accused's request; (3) availability of police time and other resources; (4) location of requested facilities; and (5) opportunity and ability of the accused to make arrangements personally for the testing. Wells v. State, 210 Ga. App. 165, 435 S.E.2d 523 (1993).

Defendant's right to an independent blood alcohol content test under O.C.G.A. § 40-6-392(a)(3) was not invoked by asking the officer if the defendant could blow again because the defendant admitted that, at the time, the defendant did not know there was a difference between an independent test and the state's test and that the defendant was satisfied when the officer said that the defendant could blow again down at the station. Waterman v. State, 299 Ga. App. 630, 683 S.E.2d 164 (2009).

O.C.G.A. § 40-6-392(a)(4), with regard

Performance of Tests (Cont'd)

to an independent chemical test of blood, specifies no deadline for requesting full information, no timetable for supplying the information, and no penalty for the state's failure to produce the information. State v. Thompson, 334 Ga. App. 692, 780 S.E.2d 67 (2015).

Officer's assistance in obtaining. — When the defendant requested an independent test be performed and the officer suggested that the defendant telephone the only facility in the county which performed independent chemical analysis, to find out the procedure and the price and make the necessary arrangements, and when the officer dialed the telephone number for the facility, the facts support the trial court's findings that the officer made a reasonable effort to accommodate the defendant's efforts to obtain an independent test and that the defendant was not impeded from doing so by any conduct on the part of law enforcement. Pruitt v. State, 203 Ga. App. 125, 416 S.E.2d 524, cert. denied, 203 Ga. App. 907, 416 S.E.2d 524 (1992).

When there was no evidence that there was a hospital in the locality of the defendant's arrest which would have performed a blood test on the defendant without a doctor's order if the officer had transported the defendant there, there was no corresponding duty on behalf of the officer to transport the defendant to that hospital, and the officer satisfied the officer's duty by informing the defendant of the right to an independent test and giving the defendant the opportunity to make arrangements for one by providing the defendant with a telephone and a telephone book. Wells v. State, 210 Ga. App. 165, 435 S.E.2d 523 (1993).

While an officer must not prevent a defendant from exercising the right to an independent test, it is not the officer's duty to ensure the performance of such a test. Crawford v. City of Forest Park, 215 Ga. App. 234, 450 S.E.2d 237 (1994).

After advising a driver of the right to an independent chemical test, an officer was not required to ask the driver where and by whom the driver wished the test performed and, after the driver chose an independent test, but did not specify any choice of personnel, the officer's action in taking the driver to the nearest hospital was reasonable. McDaniel v. State, 218 Ga. App. 555, 462 S.E.2d 446 (1995) Wells v. State, 227 Ga. App. 521, 489 S.E.2d 307 (1997).

Officer's refusal to take the defendant to a reasonably close facility as requested by the defendant on the sole basis that the officer was unfamiliar with the area in which the hospital was located was not, in and of itself, sufficient grounds to deny the defendant's request for an independent test by personnel of the defendant's own choosing. Joel v. State, 245 Ga. App. 750, 538 S.E.2d 847 (2000).

Motion to suppress breath test results was upheld after the booking officer denied the defendant an opportunity to have an independent test, under O.C.G.A. § 40-6-392(a)(3), on the rationale that the booking officer needed to ask the arresting officer for advisement, and the booking officer made no effort to satisfy the defendant's request, forcing the defendant to believe that it was too late to receive an independent test. State v. Braunecker, 255 Ga. App. 685, 566 S.E.2d 409 (2002).

Defendant's conviction for underage driving under the influence (blood alcohol content) was reversed as the trial court improperly denied the defendant's motion in limine premised on the arresting officer's failure to provide the defendant with an independent chemical test of the defendant's blood after the defendant plainly requested one; that the defendant's request for a blood test was made prior to the defendant's arrest and the giving of the implied consent warnings was not determinative under these facts and the officer's failure to inquire into the defendant's request for an independent test required the suppression of the results of the state-administered test. McGinn v. State, 268 Ga. App. 450, 602 S.E.2d 209 (2004).

Verbatim recitation as warning not required. — It is sufficient that the defendant was fully advised of the defendant's obligation to submit to a test, the consequences of refusal to do so, and the defendant's right to have an independent test of the various bodily substances made

by personnel of the defendant's own choosing. Howard v. Cofer, 150 Ga. App. 579, 258 S.E.2d 195 (1979).

When the driver was suspected of intoxication, the driver was not entitled to a warning which tracked the exact language of Ga. L. 1974, p. 633, § 1 (see O.C.G.A. § 40-6-392), requiring suspension of a license for failure to submit to a test. Ivie v. State, 151 Ga. App. 496, 260 S.E.2d 543 (1979); Martin v. State, 214 Ga. App. 614, 448 S.E.2d 471 (1994).

Blood or breath testing not prerequisite to requirement for urine sample. — O.C.G.A. § 40-5-67.1, construed with O.C.G.A. §§ 40-5-55 and 40-6-392, does not require blood or breath testing before an officer may require a suspect to provide a urine sample for analysis for the presence of alcohol, drugs, or marijuana. State v. Sumlin, 224 Ga. App. 205, 480 S.E.2d 260 (1997).

Independent testing notice inapplicable to screening tests. — Since initial alcohol screening tests are not governed by O.C.G.A. § 40-6-392 and since the motorist was not under arrest at the time the screening test was administered, there was no requirement that the administration of the screening test be preceded by advising the motorist of the motorist's right to an independent test. Turrentine v. State, 176 Ga. App. 145, 335 S.E.2d 630 (1985).

Independent testing responsibility of arrestee. — Although law enforcement officers are required to make reasonable efforts to accommodate requests for independent tests, it is not the officers' duty to ensure that the independent test was performed. Thornhill v. State, 202 Ga. App. 826, 415 S.E.2d 473 (1992).

Failure to obtain independent test based on defendant's actions. — State-administered breath test results were admissible despite defendant's request for an independent test because the evidence showed that the officer was willing to take defendant for another test but that the defendant refused to go with the arresting officer, demanding another driver, and none was available. Luckey v. State, 313 Ga. App. 502, 722 S.E.2d 114 (2012).

Form establishes notice to accused regarding additional chemical test. — Simple form, completed, signed, and dated by the accused or an equivalent mechanism will suffice to establish that the accused has either availed oneself of the accused's opportunity to undertake an additional chemical test or waived that right. Steed v. City of Atlanta, 172 Ga. App. 839, 325 S.E.2d 165 (1984).

Arrestee free to have additional test administered. — If arrestee was not willing to have the determination of the arrestee's blood-alcohol level "at the alleged time" rest exclusively upon the results of the state's intoximeter examination, the arrestee was free to have a qualified person of the arrestee's own choosing administer an additional test. State v. Richardson, 186 Ga. App. 888, 368 S.E.2d 825 (1988).

Paragraph (a)(3) of O.C.G.A. § 40-6-392 allows one accused of driving under the influence of alcoholic beverages the right to have a chemical analysis of one's blood and urine by a qualified person of one's own choosing, and there is a corresponding duty on the part of law enforcement officers not to refuse or fail to allow the accused to exercise that right. State v. Griffin, 204 Ga. App. 459, 419 S.E.2d 528 (1992).

When arrestee to be informed of right to additional test. — Right to have an additional test must be made known to the defendant at the time of arrest in order that the defendant may, if the defendant so chooses, challenge the accuracy of the chemical test administered by the state. Nelson v. State, 135 Ga. App. 212, 217 S.E.2d 450 (1975).

Legislature intended that the right to have additional test made be made known to the defendant at the time of arrest in order that the defendant may, if the defendant so chooses, challenge the accuracy of the chemical test administered by the state at the only time such a challenge would be meaningful. Garrett v. Department of Pub. Safety, 237 Ga. 413, 228 S.E.2d 812 (1976).

Failure to inform the defendant at the time of the defendant's arrest of the defendant's right to an independent chemical analysis did not preclude admission of intoximeter test results when the defendant was so emotionally upset upon being

Performance of Tests (Cont'd)

arrested that the arresting officer was unable to advise the defendant of the defendant's implied consent warning but the warning was given prior to administration of the test. Hadden v. State, 180 Ga. App. 496, 349 S.E.2d 770 (1986).

Payment of independent test by defendant. — Defendant was not denied the right to obtain an independent breath/blood test when the officer merely informed the defendant that the defendant would have to pay for the test even though the defendant did not have cash or credit at that time. Avant v. State, 251 Ga. App. 165, 554 S.E.2d 194 (2001).

Evidence inadmissible when untimely notice to defendant. — O.C.G.A. § 40-6-392 requires that an officer inform a criminal defendant at the time of the defendant's arrest of the defendant's right to an independent chemical analysis to determine the amount of alcohol or drugs present in the blood. Thus, when the arresting officer didn't inform the defendant of the defendant's rights regarding the test until after the officer took the defendant to jail, the defendant's refusal to blow into a breath machine was not admissible at trial. Vandiver v. State, 207 Ga. App. 836, 429 S.E.2d 318 (1993).

Officer's failure to carry a warning card was not a good reason for a delay of more than 45 minutes in advising the defendant of defendant's rights. Dawson v. State, 227 Ga. App. 38, 488 S.E.2d 114 (1997).

When an officer did not give the correct warning at the time of arrest, results of a breath test were inadmissible, even though the officer asked the defendant after the test whether the defendant wanted another test of the defendant's own choosing. State v. O'Donnell, 225 Ga. App. 502, 484 S.E.2d 313 (1997).

Counsel was ineffective for failing to file a motion to suppress the defendant's blood sample, which had tested positive for methamphetamine, because the defendant was not read the defendant's implied consent rights until nearly an hour after the defendant was arrested for leaving the scene of an accident, instead of at the time of the defendant's arrest as required by O.C.G.A. §§ 40-5-55 and 40-6-392(a)(4). Thrasher v. State, 300 Ga. App. 154, 684 S.E.2d 318 (2009).

Defendant's blood test request "not premature." — Trial court erred by finding that the defendant's request for a blood test was premature because the state had not yet performed the state's own test and thus required remanding of the case to determine whether the defendant's request was ever actually withdrawn so as to admit the results of the state-administered breath test. Duckett v. State, 206 Ga. App. 651, 426 S.E.2d 271 (1992).

Demand for blood test abandoned. — Trial court's determination that the defendant abandoned any earlier demand for a blood test after being afforded a second breath test was supported by the evidence and therefore was not clearly erroneous. Morgan v. State, 212 Ga. App. 394, 442 S.E.2d 257 (1994).

Right to independent testing valid. — In the absence of an affirmative showing in the record of fraud or deceit by the police calculated to thwart an honest exercise of the defendant's statutory rights, the mere fact that the defendant was taken to a facility that would not test the defendant's drawn blood does not render the advice given the defendant, regarding the defendant's right to independent testing, invalid. State v. Griffin, 204 Ga. App. 459, 419 S.E.2d 528 (1992).

Defendant's right to independent test. — When the defendant offered no evidence to rebut the officer's testimony that the officer read the defendant the implied consent warning card, and no objection to the evidence was raised, the court found no merit to the defendant's argument that the state's evidence failed to establish that the defendant was advised of the defendant's right to an independent test as required by O.C.G.A. § 40-6-392. Walker v. State, 204 Ga. App. 559, 420 S.E.2d 17, cert. denied, 204 Ga. App. 922, 420 S.E.2d 17 (1992).

Defendant's motion to suppress the results of a blood test administered pursuant to a search warrant was properly denied because the statute dealing with chemical tests for alcohol or drugs in a defendant's blood did not grant the defen-

dant the right to an independent test when the officer obtained a search warrant for a blood test; the defendant forfeited the defendant's right to independent testing by refusing the arresting officer's request to submit to a state-administered breath test after being advised under the implied consent law; and the defendant was not entitled to take advantage of the independent test incentive as the defendant refused to submit to the chemical testing requested by the arresting officer. Hynes v. State, 341 Ga. App. 500, 801 S.E.2d 306 (2017).

State's duty to obtain independent analysis, not sample. — Trial court properly determined that a police officer's failure to take the defendant to another hospital to have the withdrawn blood sample actually analyzed after discovering that the original hospital would not perform such an analysis was not reasonable in light of the defendant's request for an independent blood test; therefore, the trial court properly granted the defendant's motion to suppress the results of the state's intoximeter test. State v. Button, 206 Ga. App. 673, 426 S.E.2d 194 (1992).

Once the accused requests an independent test, the officer's duty is not simply to assist the individual in getting the individual's blood drawn. Instead, the officer must accommodate the accused until the accused obtains an admissible test or until it is determined that despite reasonable efforts such a test cannot be obtained. Hulsinger v. State, 221 Ga. App. 274, 470 S.E.2d 809 (1996).

When statutory rights to alternate tests attach. — Statutory rights to alternate tests do not attach until state has performed the state's tests. Nor is a request for an alternate test made prior to testing by the state effective to trigger rights under Ga. L. 1974, p. 633, § 1 (see now O.C.G.A. § 40-6-392). Huff v. State, 144 Ga. App. 764, 242 S.E.2d 361 (1978).

Right to an alternate test by a person of the defendant's own choosing does not attach until the state has performed the state's test. Modlin v. State, 176 Ga. App. 83, 335 S.E.2d 312 (1985); Rawl v. State, 192 Ga. App. 57, 383 S.E.2d 903 (1989).

O.C.G.A. § 40-6-392 gives an accused the right to an independent chemical test when there has been a test administered at the request of law enforcement officers, but the accused did not have the right to refuse the police-administered test and demand one of the defendant's own choosing. Lufburrow v. State, 206 Ga. App. 250, 425 S.E.2d 368 (1992).

Defendant's failure to complete a breath test without justification negated the defendant's right to an alternative test. Allen v. State, 229 Ga. App. 435, 494 S.E.2d 229 (1997).

State's burden that test results obtained according to guidelines. — State satisfied the state's burden of proving that its test results were obtained in accordance with the statutory guidelines when it is without dispute that the defendant was properly advised of the defendant's right to an additional chemical test and the trial court obviously accepted the defendant's position that the defendant had indeed made such a request. Pruitt v. State, 203 Ga. App. 125, 416 S.E.2d 524, cert. denied, 203 Ga. App. 907, 416 S.E.2d 524 (1992).

State's failure to establish that the defendant was apprised of the defendant's right to an independent test of the defendant's own choosing precludes admission of the intoximeter results. State v. Peters, 211 Ga. App. 755, 440 S.E.2d 515 (1994).

Independent testing responsibility of arrestee. — It is the responsibility of the arrestee, not of the officer, to designate the specifics of independent testing and the officer must be apprised by the arrestee of those specifics before the officer has a duty to facilitate the arrestee's election. State v. Willis, 184 Ga. App. 639, 362 S.E.2d 444 (1987).

Request for independent test. — Defendant's questions concerning the procedure which would be followed if the defendant was arrested for driving under the influence and the defendant's response after being told the defendant was entitled to an independent test showed that the defendant did make a sufficient request for an independent test. Church v. State, 210 Ga. App. 670, 436 S.E.2d 809 (1993).

Defendant's words, "Could I get a blood test?" could not be reasonably construed

Performance of Tests (Cont'd)

as a request for an additional, independent test under O.C.G.A. § 40-6-392(a)(3). Under the circumstances, it appeared that the defendant's request concerned the type of test the state would administer—blood versus breath—not a desire for an additional test. Mathis v. State, 298 Ga. App. 817, 681 S.E.2d 179 (2009).

Trial court did not err in granting the defendant's motion to suppress evidence of a state-administered breath test because the state failed to reasonably accommodate the defendant's request for an independent blood test; when an officer learned that the defendant did not have sufficient cash for a blood test at one of the recommended hospitals the defendant should have been offered the opportunity to use a telephone to make other arrangements, and the officer's unilateral determination that the defendant would be unable to pay for the blood test, without confirming the hospitals' policies regarding payment and without offering to accommodate the defendant in obtaining a method of payment, was insufficient. State v. Davis, 309 Ga. App. 558, 711 S.E.2d 76 (2011).

After the defendant was convicted of driving under the influence-per se, the defendant's motion to suppress the results of a state-designated breath test was properly denied because, after placing the defendant under arrest and reading the defendant the Georgia implied consent notice, the trooper asked the defendant if the defendant was willing to submit to a chemical test of the defendant's breath, but the defendant responded by saying that the defendant would take a urine test; the trooper then explained that the trooper was asking the defendant to submit to a breath test and the defendant agreed to submit to that test; and the defendant never requested an independent test of the defendant's urine, blood, or breath. Farmer v. State, 335 Ga. App. 679, 782 S.E.2d 786 (2016).

Judicial notice in determining opportunities for independent test. — Trial court's "taking judicial notice" of the fact that the defendant would have only been permitted to make a collect call from jail was not an impermissible factor in resolving the question of whether the defendant was given a reasonable opportunity to make arrangements for the independent blood test the defendant wanted. State v. Mallory, 180 Ga. App. 815, 350 S.E.2d 823 (1986).

Ample opportunity for taking independent blood test required. — Defendant was not given an ample opportunity to take an independent blood test when the officer who took the defendant to a hospital for such a test told the defendant that the defendant did not have enough money to take the test, would not let the defendant talk to a clerk personally to negotiate another method of payment, and would not allow the defendant to contact relatives who lived near the hospital for financial assistance. State v. Buffington, 189 Ga. App. 800, 377 S.E.2d 548 (1989); Brady v. City of Lawrenceville, 206 Ga. App. 395, 425 S.E.2d 404 (1992).

Defendant was improperly denied the defendant's right to have an independent test performed when the defendant refused to go to any of the three hospitals chosen by the arresting officer and was denied access to another facility approximately ten miles from the location of the arrest. Akin v. State, 193 Ga. App. 194, 387 S.E.2d 35, cert. denied, 193 Ga. App. 909, 387 S.E.2d 351 (1989).

Evidence that the arresting officer refused to authorize the defendant's requests for testing at local hospitals, despite the defendant's ability to pay for such testing, authorized the trial court's finding that a reasonable effort was not made to accommodate the defendant's request for an independent blood test. State v. Vandervoort, 215 Ga. App. 72, 449 S.E.2d 617 (1994).

Because the arresting officer failed to make a reasonable effort to accommodate the defendant's request to obtain an independent blood test in accordance with O.C.G.A. § 40-6-392(a)(3), but instead rebuffed every suggestion the defendant made in order to secure independent testing and, despite security risks, accommodations could have been made, the trial court did not err in granting the defendant's motion in limine to suppress the results of the state-administered breath

test. State v. Howard, 283 Ga. App. 234, 641 S.E.2d 225 (2007).

Denial of opportunity to obtain independent test. — Motion to suppress results of a state administered breath test was properly granted when police officers never gave the defendant the opportunity to ascertain the defendant's family doctor's telephone number or address in order to obtain a requested independent test. State v. White, 188 Ga. App. 658, 373 S.E.2d 840 (1988).

When an arresting officer failed to warn the defendant ahead of time of a hospital's payment policy for independent tests, even though the officer was fully aware that the defendant did not have sufficient funds to obtain a blood test at the hospital but nevertheless took the defendant there without warning the defendant of the policy, so as to enable the defendant to attempt to make arrangements to secure the necessary funds, the officer failed to make a reasonable effort to accommodate the defendant's desire for an independent chemical test and the intoximeter test results should have been excluded. Love v. State, 195 Ga. App. 392, 393 S.E.2d 520 (1990); State v. Brodie, 216 Ga. App. 198, 453 S.E.2d 786 (1995).

When a defendant was transported from one facility to another and made the request for independent tests once the defendant was allowed to make telephone calls, the defendant's request was made within a reasonable time. Because the state failed to present any evidence at the suppression hearing from which the trial court could find the failure to respond to the defendant's timely request was justified, the evidence of the results of the breath test should have been suppressed. Covert v. State, 196 Ga. App. 679, 396 S.E.2d 596 (1990).

Court's failure to suppress the result of an intoximeter test was error when the defendant asked the arresting police officer to take the defendant to the closest hospital which could administer a blood test, and the officer made an apparently innocent mistake in assuming that no hospitals in the area could administer a legally admissible test. The end result was that the defendant was unable to have an independent blood test which, in effect, amounted to an unjustifiable refusal to permit the defendant an opportunity for an independent test by a person of the defendant's own choosing. O'Dell v. State, 200 Ga. App. 655, 409 S.E.2d 54, cert. denied, 200 Ga. App. 896, 409 S.E.2d 54 (1991).

Upon arrest for driving under the influence, the defendant did not waive the right to a second test under O.C.G.A. § 40-6-392 since although the defendant did not have cash to pay for the test, the defendant did have a credit card and automated teller machine card; police had the duty to reasonably accommodate the defendant and should have allowed the defendant to use a telephone or should have taken the defendant where the defendant could use the teller machine card to obtain necessary cash. Butts v. City of Peachtree City, 205 Ga. App. 492, 422 S.E.2d 909 (1992).

Police officer did not make a reasonable effort to accommodate the defendant's request to obtain an independent breath test after admitting to the defendant that the intoximeter machine used to test the defendant was not functioning properly and a functioning machine was available in the same room. State v. Beall, 211 Ga. App. 799, 440 S.E.2d 537 (1994).

Police officer's testimony that the officer did not accommodate the defendant's request for an independent blood test, as was required pursuant to O.C.G.A. § 40-6-392(a)(3), because the officer speculated that the defendant would bond out of jail and go get the defendant's own test did not show that the state either complied with the statute or that the state offered sufficient justification for not accommodating the request; thus, the defendant's convictions for driving under the influence to the extent the defendant was less safe and driving with an unlawful blood alcohol content had to be reversed. Smith v. State, 250 Ga. App. 583, 552 S.E.2d 528 (2001).

Denial of the defendant's motion to suppress for failure to give the defendant a reasonable opportunity to have an additional breath test performed by a person of the defendant's own choosing pursuant to O.C.G.A. § 40-6-392(a)(3) was not error; complying with the defendant's re-

Performance of Tests (Cont'd)

quest would have taken a trooper away from an accident with injuries that required the trooper's presence, the location requested by the defendant was over 40 miles away and outside the trooper's territory, and there was no evidence that the defendant had made arrangements for a test by the defendant's personal physician. Smith v. State, 277 Ga. App. 81, 625 S.E.2d 497 (2005).

Officer's failure to drive a defendant to the defendant's physician's office outside of the officer's jurisdiction, 30-45 minutes away, at a time when the office was likely closed and when the officer's jurisdiction was short-handed, was justified. The officer offered to take the defendant to another independent testing facility and to give the defendant a phone book to find another facility. Ritter v. State, 306 Ga. App. 689, 703 S.E.2d 8 (2010).

Defendant was not denied opportunity to obtain independent test. — After the defendant was arrested for driving under the influence, and there was conflicting testimony on whether the jailer prevented the individual who came to the defendant's assistance from obtaining an independent test for the defendant, sufficient evidence was presented from which the trial court could rightly conclude that a reasonable effort was made to accommodate the defendant's request for an independent test and that the defendant was not prevented by any action on the part of the law enforcement authority from obtaining the test. Gray v. State, 194 Ga. App. 811, 392 S.E.2d 290 (1990).

When the defendant was offered the opportunity to obtain an independent test but the medical facility selected refused to perform the test, and when again offered the opportunity to have an independent test conducted, the defendant did not select another facility, but became argumentative with the police officers, the trial court properly found that the defendant was afforded a reasonable opportunity to make arrangements for an independent test, but that the defendant had not done so. Jenkins v. State, 198 Ga. App. 843, 403 S.E.2d 859 (1991).

When the defendant exercised the defendant's right to an independent test of the defendant's own choosing by demanding, in writing, an additional breath test, which was performed 20 minutes after the first test by the same officer on the same intoximeter, and yielded the same result, the defendant was afforded the opportunity to obtain an independent test of the defendant's blood-alcohol content. Caldwell v. State, 202 Ga. App. 729, 415 S.E.2d 653 (1992).

Because the trial court found that the arresting officer made a reasonable effort to accommodate the defendant's request for an independent blood test pursuant to O.C.G.A. § 40-6-392(a)(3), the court did not err in denying the defendant's motion to suppress the blood test. Whittle v. State, 282 Ga. App. 64, 637 S.E.2d 800 (2006).

Waiver of alternative test need not be shown. — State is not required to make an affirmative showing that the driver waived the driver's right to an independent blood-alcohol test by a person of the driver's own choosing. Hudgins v. State, 176 Ga. App. 719, 337 S.E.2d 378 (1985).

Paragraph (a)(4) of O.C.G.A. § 40-6-392 does not require an affirmative showing of a waiver of right to additional chemical test or an actual request for additional test. Test is valid if the defendant was informed of the defendant's rights to additional testing at the time of the defendant's arrest. State v. Dull, 176 Ga. App. 152, 335 S.E.2d 605 (1985); Pruitt v. State, 203 Ga. App. 125, 416 S.E.2d 524, cert. denied, 203 Ga. App. 907, 416 S.E.2d 524 (1992).

Arresting officer must advise the testee that the testee is entitled to an independent test (for alcoholic consumption) of the testee's own choosing but need not show that the defendant testee either waived the defendant's right to such a test or sought the additional test. Snelling v. State, 176 Ga. App. 192, 335 S.E.2d 475 (1985).

State need not establish that the defendant made an affirmative waiver of the defendant's right to an independent test. Martin v. State, 176 Ga. App. 871, 338 S.E.2d 298 (1985).

Sufficient compliance with the "implied

consent" statute is established by evidence showing that the accused was given timely notice of the accused's implied consent rights and thereafter made no request for an independent chemical test. Martin v. State, 176 Ga. App. 871, 338 S.E.2d 298 (1985).

Affirmative showing of waiver or request for an additional test is not required. State v. Carter, 178 Ga. App. 677, 344 S.E.2d 499 (1986).

State is under no duty to show a driver's affirmative waiver of an additional chemical test. State v. Tosar, 180 Ga. App. 885, 350 S.E.2d 811 (1986).

No reversal when state testified to only one breath test. — Appeals court rejected the defendant's argument that the evidence was insufficient to support a conviction for driving under the influence of alcohol per se because only one breath test was testified to by the state and O.C.G.A. § 40-6-392(a)(1)(B) mandated that two breath tests had to be given; moreover, even if the court were to agree with this contention, the defendant waived this argument by failing to make any objection at trial to the admission of the single breath test. Annaswamy v. State, 284 Ga. App. 6, 642 S.E.2d 917 (2007).

Driver responsible for costs of alternative tests. — Law does not require the government to pay for two tests. The second is the driver's option, so that the driver may challenge the results of the officer's requested test. The cost of the optional test, to be administered by a qualified person of the driver's own choosing, must be borne by the driver, at least when the driver is able to pay. Thompson v. State, 175 Ga. App. 645, 334 S.E.2d 312 (1985).

Duty of officers to take driver to hospital for requested test. — Ga. L. 1974, p. 633, § 1 (see now O.C.G.A. § 40-6-392) gives one accused of driving under the influence of alcoholic beverages the right to have a chemical analysis of the accused's blood and urine by a qualified person of the accused's own choosing. There is coupled with the right granted to the accused, however, a corresponding duty on the part of law enforcement officers not to deny the accused that right by refusing or failing to take the accused to a hospital for the test the accused wants and is reasonably entitled to have. Puett v. State, 147 Ga. App. 300, 248 S.E.2d 560 (1978).

Before duty of police arises to transport the defendant to a location of independent test, and before there is a breach of that duty which may give reason to suppress the evidence of the state-administered test, the defendant must first show that the defendant had made arrangements with a qualified person of the defendant's own choosing, that the test would be made if the defendant came to the hospital, that the defendant so informed the personnel at the jail where defendant was under arrest, and that those holding the defendant either refused or failed to take the defendant to the hospital for that purpose. Lovell v. State, 178 Ga. App. 366, 343 S.E.2d 414 (1986); Melvin v. State, 205 Ga. App. 799, 423 S.E.2d 718 (1992).

State's test not suppressed due to defendant's inability to obtain test. — Mere fact that a defendant was unable to obtain a chemical test of the defendant's own choosing fails to disclose any reason to suppress the results of the state's breathalyzer test. Grizzle v. State, 153 Ga. App. 364, 265 S.E.2d 324 (1980); Harper v. State, 164 Ga. App. 230, 296 S.E.2d 782 (1982); Melvin v. State, 205 Ga. App. 799, 423 S.E.2d 718 (1992).

When the defendant is afforded the opportunity for an independent test, the fact that the defendant is unable to obtain the method of the defendant's own choosing does not of itself require suppression of the state's test results. Dozier v. State, 187 Ga. App. 51, 369 S.E.2d 328 (1988); Cadden v. State, 213 Ga. App. 291, 444 S.E.2d 383 (1994).

Consent to test valid when advice properly given. — When a driver has been advised of the driver's rights to submit to a chemical test as required by paragraph (a)(4) of O.C.G.A. § 40-6-392, the driver's consent to submit to the test is a valid informed choice. Griggs v. State, 167 Ga. App. 581, 307 S.E.2d 75 (1983).

Driver not entitled to lawyer at time of test. — Driver is not entitled to the presence of a lawyer, as requested, at the time the driver was asked to submit to

Performance of Tests (Cont'd)

a chemical test. Cogdill v. Department of Pub. Safety, 135 Ga. App. 339, 217 S.E.2d 502 (1975).

One is not entitled to advice of counsel when confronted with a decision as to whether to submit to a test under the implied consent law. Oyler v. State, 175 Ga. App. 486, 333 S.E.2d 690 (1985).

Timely notice to defendant. — Arresting officer adequately complied with the requirements of O.C.G.A. § 40-6-392(a)(4) when the officer gave the warning to the defendant prior to administering the intoximeter test approximately ten minutes after the defendant's arrest. Martin v. State, 211 Ga. App. 561, 440 S.E.2d 24 (1994).

Trial court did not err in denying a motion to suppress evidence of the blood-alcohol results obtained after the defendant's vehicle was stopped as it was determined that the defendant was driving under the influence, and the police officer waited until a proper time to notify the defendant of the right to take a chemical test; the defendant consented to such a test as a driver using a vehicle on the Georgia highways and the delay in administering the implied consent warning was due to the defendant's drunken condition and difficult behavior. Cain v. State, 274 Ga. App. 533, 617 S.E.2d 567 (2005).

When the officer placed the defendant in handcuffs after the field sobriety tests concluded, the implied consent notice was considered timely read to the defendant because the officer promptly read the implied consent notice to the defendant after placing the defendant in the back of the patrol car; and the record failed to show how the defendant would have benefitted from the notice being read earlier as it might have caused confusion for it to have been read before the officer asked for an alco-sensor test as part of the field sobriety evaluation. State v. Domenge-Delhoyo, 338 Ga. App. 439, 790 S.E.2d 139 (2016).

Factors which weigh into an appellate court's decision to conclude that the implied consent notice is timely include: whether the notice was given at the earliest time at or after arrest when it would be meaningful and a defendant could make an intelligent choice; how the defendant would have benefitted by being read the implied consent notice earlier when an officer properly delays the reading of implied consent for a brief period in order to attend to the exigencies of police work; and that the notice was given on the scene of the arrest rather than after transport to another location. State v. Domenge-Delhoyo, 338 Ga. App. 439, 790 S.E.2d 139 (2016).

Advisement of rights timely although officer momentarily interrupted. — Results of the defendant's intoximeter test were admissible because the arresting officer advised the defendant of the defendant's rights under the implied consent law as close in proximity to the instant of arrest as the circumstances warranted since after the officer stopped the defendant and put the defendant in the patrol car, the officer got a call and went after another vehicle, picked up the driver and then took both of the drivers to the police station and read the defendant the implied consent rights while the drivers were in the patrol car. Fore v. State, 180 Ga. App. 196, 348 S.E.2d 579 (1986).

Non-English speaking driver. — When the law enforcement officer cannot communicate with the driver because the driver cannot speak English, any failure to obtain an additional test is justifiable and the results of the state-administered tests are admissible. State v. Tosar, 180 Ga. App. 885, 350 S.E.2d 811 (1986).

Retention of blood samples for unconscious defendant. — State is not required to take and retain blood samples for use by an unconscious defendant in the event the defendant desires an independent test by someone of the defendant's own choosing after regaining consciousness. Bartell v. State, 181 Ga. App. 148, 351 S.E.2d 495 (1986).

State need not preserve breath sample. — Trial court did not err in ruling that the state was not required to preserve a breath sample for later independent testing by the defendant nor did the court err in denying the appellant's motion for mistrial on that basis. Kuptz v. State, 179 Ga. App. 150, 345 S.E.2d 670 (1986).

Defendant's failure to recall not inconsistent with state's showing of re-

fusal. — Defendant's failure to recall the circumstances following a collision did not contradict the state's prima facie showing that the defendant was in a communicative condition — not dead, unconscious or otherwise incapable of refusing the test — when informed of the defendant's rights and thereafter refused chemical testing of the defendant's blood. Duncan v. State, 183 Ga. App. 368, 358 S.E.2d 910 (1987).

Timely test, with administratively approved methods, not suppressed. — From the terms of paragraph (a)(1) of O.C.G.A. § 40-6-392, it is clear that the chemical test of an arrestee's breath is intended to reflect the arrestee's blood-alcohol level at the "alleged time" that the arrestee was driving under the influence, not at some later time, and it is also clear that the test is to be conducted in accordance with methods which have been administratively approved, not in accordance with any other "approved" methods. When there is no evidence that a "20-minute" rule has ever been administratively approved, an arrestee is not entitled to have suppressed from evidence the results of an intoximeter test which was shown to have been conducted within 20 minutes of the "alleged time" and in accordance with all administratively approved methods. State v. Richardson, 186 Ga. App. 888, 368 S.E.2d 825 (1988).

Retest allowed. — When, due to inadvertence, a breathalyzer test of a defendant's breath cannot be completed, and a retest is possible without inconveniencing the defendant and without delay, such a retest is not a violation of the defendant's rights and is not a basis for suppression of the results of the test. Montgomery v. State, 174 Ga. App. 95, 329 S.E.2d 166 (1985).

Lack of opportunity to take urine test not error. — Fact that a defendant who was given a breathalyzer test and a blood test requested by the defendant did not have the opportunity to take a urine test was not error. Massengale v. State, 174 Ga. App. 480, 330 S.E.2d 417 (1985).

Evidence showing chemical test in statutory compliance. — See McNair v. State, 177 Ga. App. 502, 339 S.E.2d 773 (1986); Magher v. State, 199 Ga. App. 508, 405 S.E.2d 327 (1991).

Trial court erred in suppressing the results of a blood alcohol content breath test when the test was conducted in accordance with methods adopted by the Division of Forensic Sciences of the Georgia Bureau of Investigation; any deviation from the machine's operator's manual went to the weight and not to the admissibility of the results, and the 20 minute waiting period between taking samples was not part of the approved methods of testing. State v. Palmaka, 266 Ga. App. 595, 597 S.E.2d 630 (2004).

Admissibility of Results

Admissibility of test results into evidence in a criminal proceeding is affected by O.C.G.A. § 40-6-392. State v. Johnston, 160 Ga. App. 71, 286 S.E.2d 47 (1981), aff'd, 249 Ga. 413, 291 S.E.2d 543 (1982).

Under O.C.G.A. § 40-6-392, a chemical analysis of a person's breath is admissible in a criminal proceeding for the offense of driving under the influence of alcohol, but only if obtained in accordance with specific statutory guidelines. State v. Johnston, 160 Ga. App. 71, 286 S.E.2d 47 (1981), aff'd, 249 Ga. 413, 291 S.E.2d 543 (1982).

Implied consent warning properly advised the driver of the purposes for which the driver's blood was to be tested, and the test results were thus admissible in a prosecution for driving with the presence of marijuana in the driver's blood. Radcliffe v. State, 234 Ga. App. 576, 507 S.E.2d 759 (1998).

Trial court properly admitted evidence of the defendant's blood tests in a criminal trial as a proper foundation was laid by the state for purposes of admission under O.C.G.A. § 40-6-392(a)(1)(A) after the supervisor of the person who ran the blood test reviewed the research and results of the test and testified regarding the procedure and results thereof. Verlangieri v. State, 273 Ga. App. 585, 615 S.E.2d 633 (2005).

Trial court erred in suppressing the defendant's refusal to submit to a state-administered chemical breath test as the implied consent notice given by a sheriff's deputy was substantially accurate and timely given, and irrespective of

Admissibility of Results (Cont'd)

whether the refusal resulted from the defendant's confusion about the defendant's right to, and insistence on, a blood test, it nevertheless remained a refusal. State v. Brookbank, 283 Ga. App. 814, 642 S.E.2d 885 (2007).

Trial court erred in granting the defendant's motion to suppress a breath test slip from an intoxilyzer and all testimony about the intoxilyzer because the state was not required to produce the breath test slip to the defendant ten days before trial as a part of discovery since the breath test slip did not constitute a written scientific report within the meaning of O.C.G.A. § 17-16-23; no test or analysis was performed because the sample was insufficient, and the breath test slip did not show any test results but reflected only a measurement of breath volume. State v. Tan, 305 Ga. App. 55, 699 S.E.2d 74 (2010).

Grant of the defendant's motion to suppress was reversed because the trial court erred in concluding that the defendant did not actually consent to the state-administered blood test under the totality of the circumstances as the undisputed evidence in the video recording demonstrated that the defendant's consent was free and voluntary and the 20-minute delay in the officer's implied consent notice resulted from the officer complying with the defendant's request to perform field sobriety tests. State v. Domenge-Delhoyo, 338 Ga. App. 439, 790 S.E.2d 139 (2016).

Properly-conducted test admissible. — Results of immunoassay test performed on the defendant's blood were admissible after the test was done in accordance with procedures approved by the state crime laboratory as specified by paragraph (a)(1) of O.C.G.A. § 40-6-392. Jackson v. State, 198 Ga. App. 261, 401 S.E.2d 289 (1990), cert. denied, 198 Ga. App. 898, 401 S.E.2d 289 (1991).

Blood tests performed on machines acceptable to the Department of Forensic Science yielding results indicating whether an illegal substance was present in the defendant's blood were admissible. Radcliffe v. State, 234 Ga. App. 576, 507 S.E.2d 759 (1998).

Trial court did not err in denying the defendant's motion to exclude evidence of breathalyzer test results as the state introduced certificates of the Intoxilyzer machine used to obtain breath tests and the machine's operator testified the machine was working properly at the time the tests were administered, and thus, the state established the machine was operating at the time the defendant's breathalyzer tests were conducted. Young v. State, 275 Ga. 309, 565 S.E.2d 814 (2002).

Due to the defendant's agreement to chemical testing, and subsequent submission to the testing, admission of the state-administered chemical test was proper. Doyle v. State, 281 Ga. App. 592, 636 S.E.2d 751 (2006).

Defendant's argument, that the officer advised the defendant that the defendant was under arrest for driving under the influence and not for a violation of O.C.G.A. § 40-6-391(a)(6) and that the defendant never consented to the testing of the defendant's blood for the presence of drugs, failed; nothing in O.C.G.A. § 40-5-55 or O.C.G.A. § 40-6-392 required the officer to tell the defendant that the defendant was under arrest for a drug offense in order for the implied consent to be valid. Meiklejohn v. State, 281 Ga. App. 712, 637 S.E.2d 117 (2006).

Trial court did not err in denying a defendant's motion to suppress the results of the defendant's horizontal gaze nystagmus (HGN) field sobriety test and of the Intoxilyzer 5000 breath test as the administrating officer testified to the officer's experience and training as well as the testing and scoring method used regarding the HGN test, and the defendant's constitutional challenges to the admissibility of the Intoxilyzer 5000 breath test results had already been decided in prior case law precedent adversely to the defendant. Laseter v. State, 294 Ga. App. 12, 668 S.E.2d 495 (2008).

Evidence was sufficient for the trial court to find beyond a reasonable doubt that the defendant was guilty of driving an automobile with an unlawful alcohol concentration in violation of O.C.G.A. § 40-6-391(a)(5) because to carry the state's burden to show that the Intoxilyzer machine on which the defendant's breath

was tested was operated with all the machine's electronic and operating components attached and in good working order, the state produced certificates of inspections conducted on the machine before and after the test, and the testimony of the operator that the machine was operating properly when the test was conducted; the machine produced test results showing that the defendant had an alcohol concentration of 0.179 grams. Yeary v. State, 302 Ga. App. 535, 690 S.E.2d 901 (2010).

Court of appeals did not err in reversing an order granting the defendant's motion to suppress evidence of the state's breath test results because the procedures followed by the state comported with the fundamental fairness required by due process; the police officer delivered to the defendant the required implied consent notice in an accurate and timely manner, thereby informing the defendant of the right to an independent test under O.C.G.A. § 40-6-392(a)(3). Thus, the state was under no constitutional duty to immediately inform the defendant of the results of the state-administered breath test. Padidham v. State, 291 Ga. 99, 728 S.E.2d 175 (2012).

Admissibility of refusal. — While it is not improper, in light of O.C.G.A. § 40-6-392(d), to instruct a jury that evidence of a defendant's refusal to submit to chemical testing of the defendant's bodily substances is admissible against the defendant, or that the jury could infer the presence of alcohol from the defendant's refusal, Georgia law does not permit a jury to infer from a defendant's refusal of chemical testing that the test would have showed that alcohol impaired the defendant's driving; impaired driving ability depends solely upon an individual's response to alcohol, which varies from person to person, such that the presence of alcohol in a defendant's body, by itself, does not support an inference that the defendant was an impaired driver for purposes of O.C.G.A. § 40-6-391(a)(1). Baird v. State, 260 Ga. App. 661, 580 S.E.2d 650 (2003).

Evidence of the defendant's refusal to submit to voluntary field sobriety tests was admissible, and was not testimonial in nature and thus subject to the Fifth Amendment protection against self-incrimination as a refusal to submit to the tests was not testimonial in nature, and the mere fact that the defendant refused to submit to a blood test was not subject to the privilege against self-incrimination since no impermissible coercion was involved, regardless of the form of refusal. Ferega v. State, 286 Ga. App. 808, 650 S.E.2d 286 (2007), cert. denied, 129 S. Ct. 195, 172 L.Ed.2d 140 (2008).

Defendant's DUI conviction was upheld on appeal as the evidence of guilt was overwhelming, specifically: smelling strongly of alcohol, having trouble walking and speaking, fumbling with a wallet, a half-empty can of beer in the defendant's truck, hiding the truck's keys and a license in the bathroom, the officer having just seen the defendant driving, despite the defendant's claim to the contrary, and the multiple similar transactions. Caraway v. State, 286 Ga. App. 592, 649 S.E.2d 758 (2007), cert. denied, No. S07C1736, 2007 Ga. LEXIS 686 (Ga. 2007).

Because the defendant's apparent violation of O.C.G.A. § 40-6-16(a) gave the investigating officer a reasonable and articulable suspicion to stop the defendant and inquire further, the trial court erred in granting the defendant's motion to suppress a refusal to take a breath test in connection with DUI charges; moreover, the trial court erroneously concluded that the defendant could have had an innocent explanation for a last-minute swerve to avoid hitting the officer's patrol car as the issue went to the question of guilt or innocence and was not the dispositive question on a motion to suppress. State v. Rheinlander, 286 Ga. App. 625, 649 S.E.2d 828 (2007).

As a defendant, convicted of driving under the influence, had been read the implied consent rights as soon after the arrest as was warranted under the circumstances, as required by O.C.G.A. § 40-6-392(a)(4), defense counsel was not deficient for not subpoenaing an officer to establish the contrary and thereby prevent admission of evidence that the defendant refused to submit to a breath test. Lynch v. State, 293 Ga. App. 858, 668 S.E.2d 264 (2008).

Admissibility of Results (Cont'd)

Trial court properly denied the defendant's motion in limine to exclude evidence that the defendant refused chemical testing based on the testimony of a deputy that while in the defendant's hospital room, a ticket was written for drunk driving and the defendant was advised of the custodial arrest; thus, there was no error in the trial court's determination that a reasonable person in the defendant's position would not think that they were free to leave at the time the deputy read the implied consent warnings. Plemmons v. State, 326 Ga. App. 765, 755 S.E.2d 205 (2014).

In the defendant's DUI trial, O.C.G.A. § 40-6-391(a)(1), because a breath test was permitted as a search incident to the defendant's DUI arrest, the defendant's refusal to take the breath test was not the exercise of the constitutional right against unreasonable searches and seizures, and evidence of the defendant's refusal was properly admitted under O.C.G.A. § 40-5-67.1(b). Cherry v. State, No. A17A2085, 2018 Ga. App. LEXIS 116 (Feb. 21, 2018).

Admissibility after initial refusal. — Trial court was not required to suppress evidence of the defendant's breath test results, although it was clear that the defendant refused to take a breath test when asked at the scene as the defendant rescinded that refusal by agreeing to take the test at the police station. Stapleton v. State, 279 Ga. App. 296, 630 S.E.2d 769 (2006).

Test made more than eight hours after arrest not admitted. — Trial court did not err in excluding the defendant's testimony regarding an independent blood test made more than eight hours after the arrest. Allen v. State, 229 Ga. App. 435, 494 S.E.2d 229 (1997).

Evidence inadmissible when untimely notice to defendant. — Officer's preference that officer read the implied consent warning in the presence of a witness was not sufficient reason to excuse the officer's failure to give the warning at the time of arrest. State v. Lamb, 217 Ga. App. 290, 456 S.E.2d 769 (1995).

Accidents involving serious injuries. — Absent an arrest, a person involved in an accident resulting in serious injuries or fatalities must be informed of the person's implied consent rights within a reasonable amount of time after the accident, as determined by the circumstances, and, when possible, before the administration of any state tests. Seith v. State, 225 Ga. App. 684, 484 S.E.2d 690 (1997).

Trial court erred in granting the defendant's motion to suppress results from a blood test performed prior to any arrest as: (1) the evidence showed that the defendant was involved in a car wreck resulting in serious injury before blood was drawn; and (2) a sheriff's deputy had probable cause to suspect that the defendant had been driving under the influence of alcohol; moreover, contrary to the defendant's assertion, the fact that a loss of consciousness was temporary did not cause the blood test to fall outside the ambit of O.C.G.A. § 40-5-55(c). State v. Umbach, 284 Ga. App. 240, 643 S.E.2d 758 (2007).

Consent implied by taking. — State does not have to show the defendant's actual consent, but only that, after being advised of the defendant's rights pursuant to O.C.G.A. § 40-6-392, the defendant did not refuse to submit to the state-administered test. Wadsworth v. State, 209 Ga. App. 333, 433 S.E.2d 419 (1993).

Implied consent warnings were timely when the warnings were given by the officer after the officer attended to matters at the scene that were necessary, including attending to the defendant's injuries and making certain the scene was cleared. Morrissette v. State, 229 Ga. App. 420, 494 S.E.2d 8 (1997).

An officer issued a "be on the lookout" (BOLO) after the defendant, who had struck a car and smelled of alcohol, sped off; the officer did not mention that the defendant appeared intoxicated. A second officer who heard the BOLO and detained the defendant at a restaurant did not have probable cause to arrest the defendant; therefore, the fact that the defendant was not read the defendant's implied consent rights until other officers arrived and arrested the defendant did not make the implied consent advisement untimely under O.C.G.A. § 40-6-392(a)(4). Lynch v.

State, 293 Ga. App. 858, 668 S.E.2d 264 (2008).

Trial court did not err by refusing to suppress the defendant's blood-test results based on not being under arrest prior to being read Georgia's implied consent notice because, although the defendant's recollection differed from that of the law-enforcement officer, and although defense counsel cross-examined the officer extensively as to alleged inconsistencies in the chronology of events, the officer testified that the officer issued citations to the defendant before reading Georgia's implied consent notice. Chernowski v. State, 330 Ga. App. 702, 769 S.E.2d 126 (2015).

Judicial notice of test results. — Trial courts may take judicial notice that Intoximeter 3000 machine test results are based on accepted scientific theory or rest upon the laws of nature; and, when the statutory requirements for admissibility are met, the results may be admitted into evidence without expert testimony regarding the scientific theory behind the operation of the test. Lattarulo v. State, 261 Ga. 124, 401 S.E.2d 516 (1991), cert. denied, 502 U.S. 823, 112 S. Ct. 86, 116 L. Ed. 2d 59 (1991); McClendon v. State, 201 Ga. App. 262, 410 S.E.2d 760 (1991).

Trial court did not err in admitting the results of a breath test over the defendant's objections that the "methods" used to test the defendant were not contained in the Georgia Bureau of Investigation's published administrative regulations. Rowell v. State, 229 Ga. App. 397, 494 S.E.2d 5 (1997).

Failure to continuously watch the defendant for 20 consecutive minutes prior to the breath test did not require exclusion of the test results when the evidence shows that the 20-minute rule was substantially complied with and, although an accused can always introduce evidence of the possibility of circumstances that might cause error in the test results, such evidence relates to the weight rather than the admissibility of the test results. Berkow v. State, 243 Ga. App. 698, 534 S.E.2d 433 (2000).

Trial court properly refused to suppress evidence of a defendant's chemical breath test; testimony from an officer and proof that a current implied consent card contained the same language as the card used during the defendant's arrest allowed the trial court to conclude that the officer had advised the defendant of the defendant's implied consent rights, and as there was evidence that the breath test machine was working properly at the time of the defendant's breath test, any argument regarding the machine's subsequent removal or repair went to the weight of the results, not their admissibility. Jones v. State, 285 Ga. App. 352, 646 S.E.2d 323 (2007), cert. denied, No. S07C1407, 2007 Ga. LEXIS 758 (Ga. 2007).

Breath test admissible despite delay. — Breath test results were admissible at a trial for a violation of O.C.G.A. § 40-6-391(a)(1) and (a)(5) as the police officer's notification to the defendant of the implied consent rights under O.C.G.A. § 40-6-392(a)(4) was timely in the circumstances; although the defendant was placed in the police car and not given the notification for 18 minutes, the notice was timely because the officer was attending to the passenger and ensuring that the passenger was unharmed and had a safe way to get home and the officer was transporting possession of the vehicle for purposes of impounding the vehicle. Naik v. State, 277 Ga. App. 418, 626 S.E.2d 608 (2006).

Admission of first test result when unable to complete second test. — Fact that a defendant did not have sufficient breath to complete the second of two breath tests did not require suppression of the first test which indicated a blood alcohol level of .146. Thrasher v. State, 292 Ga. App. 566, 666 S.E.2d 28 (2008).

Breath test admissible despite refusal to permit defendant to consult with counsel. — Motion filed by a defendant to exclude the results of a breath test under the Georgia implied consent law in the defendant's prosecution for driving under the influence under O.C.G.A. § 40-6-391 was properly denied because the defendant was not entitled to the advice of counsel before deciding whether to submit to the test; the right to counsel under U.S. Const., amend. 6 and Ga. Const. 1983, Art. I, Sec. I, Para. XIV did not come into play until the proceedings

Admissibility of Results (Cont'd)

had reached a critical stage, and the breath test was not such a stage because it did not signal the beginning of a formal adversary hearing and because a lawyer could add little to the warnings required from the officer administering the test by O.C.G.A. § 40-6-392(a)(4). Rackoff v. State, 281 Ga. 306, 637 S.E.2d 706 (2006).

Suppressed breath test results remained admissible for impeachment purposes. — Despite an order suppressing the defendant's breath test results, the results remained admissible for impeachment purposes once the defendant testified that the limited alcohol consumed did not affect or impair an ability to drive. Moreover, absent bad faith or an order requiring production, the state did not fail to fully disclose all information regarding the defendant's breath test. Rosandich v. State, 289 Ga. App. 170, 657 S.E.2d 255 (2008), cert. denied, No. S08C0861, 2008 Ga. LEXIS 380 (Ga. 2008).

Artistic tendencies as justification for juror striking. — Trial court did not err in denying the defendant's Batson challenge regarding the state's peremptory strike of an African-American juror who was a dance instructor as the prosecutor explained that the prosecutor struck the juror because people in artistic professions had "a different slant," discriminatory intent was not inherent in this race-neutral explanation, and the juror was not similarly situated to other jurors who were not stricken. White v. State, 258 Ga. App. 546, 574 S.E.2d 629 (2002).

Admissibility of an alco-sensor test result is not governed by O.C.G.A. § 40-6-392. Simms v. State, 223 Ga. App. 330, 477 S.E.2d 628 (1996).

Even though the admissibility of alcosensor results is not governed by O.C.G.A. § 40-6-392 when the results are not used as evidence of the amount of alcohol in a person's blood, when the testimony is that the alcosensor showed evidence of alcohol on the defendant's breath, the officer must testify that the officer used a device of approved design. Knapp v. State, 229 Ga. App. 175, 493 S.E.2d 583 (1997).

Argument that the results of an alco-sensor test were inadmissible because the defendant submitted to the test at the request of the defendant's wife, and not the officer's request, were meritless because O.C.G.A. §§ 40-5-55 and 40-6-392(a)(4) did not apply to the administration of the alco-sensor test. Hernandez v. State, 297 Ga. App. 177, 676 S.E.2d 795 (2009).

Trial court did not err in admitting the results of the defendant's portable alco-sensor test because even though the defendant was in custody for purposes of Miranda, the portable test was administered in response to a demand from the defendant, not the officer; thus, the situation was more akin to a spontaneous outburst from an unwarned suspect or a test conducted pursuant to the Georgia implied consent statute, O.C.G.A. § 40-6-392. Hale v. State, 310 Ga. App. 363, 714 S.E.2d 19 (2011).

Intoximeter test results properly admitted. — When the defendant asserted as error the denial of the defendant's motion to exclude the results of two intoximeter tests performed after the defendant was arrested, arguing that the results of the tests should have been suppressed because the arresting officer discouraged the defendant from taking a blood test after the defendant had elected to do so and forced the defendant to accept the state's choice as to the type of independent test administered, there was no error, since the trial court concluded that by the defendant's own testimony, the defendant stated that the defendant decided that the defendant's best alternative was to take the breath test. Hattaway v. State, 191 Ga. App. 812, 383 S.E.2d 140, cert. denied, 191 Ga. App. 922, 383 S.E.2d 140 (1989).

Computer generated analysis of breath, made admissible pursuant to O.C.G.A. § 40-6-392(a) upon showing a proper foundation, was properly admitted into evidence. The analysis, referred to by that section, was "created" by the machine and not by the trooper who was trained in the use of the machine and the administration of the test. Walters v. State, 195 Ga. App. 434, 394 S.E.2d 105 (1990).

It was not error to admit into evidence an intoximeter printout and allow the jury

to see the printout, over the defendant's objection that the printout was cumulative of the officer's testimony. Walters v. State, 195 Ga. App. 434, 394 S.E.2d 105 (1990).

When the machine used to test the defendant's breath was an approved type, the officer who administered the test was trained and certified to operate the machine, the machine was operating properly when the defendant's breath was tested, and the defendant was informed of the defendant's implied consent rights before being tested, the evidence established that the defendant's breath was tested in accordance with the specific guidelines of O.C.G.A. § 40-6-392. Eppinger v. State, 198 Ga. App. 889, 403 S.E.2d 829, cert. denied, 198 Ga. App. 897, 403 S.E.2d 829 (1991).

O.C.G.A. § 40-6-392 was satisfied when the officer who administered the tests was authorized by the State of Georgia to perform chemical analyses utilizing the Intoximeter Breath Analyzer 3000 machine and the officer's certification permit was admitted into evidence without objection. Stinson v. State, 203 Ga. App. 225, 416 S.E.2d 765, cert. denied, 203 Ga. App. 908, 416 S.E.2d 765 (1992).

Probate court did not err by admitting an intoximeter test result despite a delay in advising the defendant of the defendant's implied consent rights when the police officer's intervening emergency call required that another certified operator be located to administer the test, and the conservation ranger's truck was not suited for carrying uncooperative passengers safely, thus requiring the officer to concentrate the officer's efforts on placing defendant in custody and safely and effectively transporting the defendant, rather than on advising the defendant of the defendant's rights. Given these exigencies and the fact that evidence showed that the defendant had earlier been belligerent, angry, and uncooperative, advising the defendant of the defendant's implied consent rights would have been of no conceivable benefit. Smith v. State, 204 Ga. App. 576, 420 S.E.2d 29, cert. denied, 204 Ga. App. 922, 420 S.E.2d 29 (1992).

Officers' testimony that blood alcohol breath test machines were functioning properly, had been inspected, that no pieces or components were missing, that the officers performed all required tests, and that the officers prepared the instruments in accordance with the officers' training showed substantial compliance with the required procedures, and admission of the test results was proper; the defendants' arguments that the breath test results should have been inadmissible because the machines registered increasing blood alcohol concentration readings as a person continued to blow into the machines went to the weight of the evidence, which was for the trial court to determine. Whittaker v. State, 279 Ga. App. 148, 630 S.E.2d 560 (2006).

Trial court did not err in denying suppression of the results of the defendant's Intoxilyzer 5000 and other field sobriety tests administered upon a defendant's arrest for driving with an unlawful alcohol concentration and driving under the influence of alcohol in violation of O.C.G.A. § 40-6-391 as: (1) the arguments the defendant raised about the officer's ability to manipulate the Intoxilyzer 5000 test went to the weight, and not admissibility of the evidence; (2) the officer was sufficiently trained to administer the tests; (3) the state showed substantial compliance with the required procedures; and (4) no due process violation resulted from the evidence being admitted. Stewart v. State, 280 Ga. App. 366, 634 S.E.2d 141 (2006).

Willful performance implied consent. — When the evidence showed that the defendant was properly informed of the defendant's rights under the implied consent law and went on to take the test, the defendant obviously did not refuse to submit to the test, and the state had no further burden of showing the defendant's consent thereafter. Wadsworth v. State, 209 Ga. App. 333, 433 S.E.2d 419 (1993).

No requirement that certificate be introduced. — To prove that a blood alcohol test is valid, there is no requirement that a "certificate" of any kind must be introduced at trial; the state sufficiently complied with the state's burden of proof by competent circumstantial evidence that the test was performed according to approved methods, on a machine in good working order, and by an individual

Admissibility of Results (Cont'd)

possessing a valid permit. Bazemore v. State, 225 Ga. App. 741, 484 S.E.2d 673 (1997).

Oral testimony of an intoximeter machine operator was properly admitted as original evidence when there was no contention either that the witness had not been qualified to operate the machine or that the operator had failed to perform the test in accordance with methods approved by the Division of Forensic Services of the Georgia Bureau of Investigation. Valdez v. State, 192 Ga. App. 10, 383 S.E.2d 611 (1989).

Proof of qualifications of person conducting test. — When the only evidence offered by the state as to the qualifications of the person who withdrew the defendant's blood was inadmissible hearsay having no probative value, the state failed to present any competent evidence showing that the mandatory requirements of O.C.G.A. § 40-6-392(a)(2) had been met; breach of the requirement rendered evidence of the blood test offered by the state inadmissible to establish a presumption that the alleged drunken driver was driving under the influence. Harden v. State, 210 Ga. App. 673, 436 S.E.2d 756 (1993).

Testimony of a state trooper that a nurse withdrew the blood was not competent evidence to prove compliance with the "qualified person" requirement. Carr v. State, 222 Ga. App. 776, 476 S.E.2d 75 (1996).

Testimony of the arresting officer that the officer knew the hospital employee who drew the defendant's blood and that the employee had drawn blood for the officer several times was not sufficient to show that the employee was qualified within the meaning of O.C.G.A. § 40-6-392. Brahm v. State, 230 Ga. App. 407, 497 S.E.2d 240 (1998).

Admission of a copy of a document certifying that the inspector of the Intoxilyzer 5000 was authorized to perform inspections was not reversible error. Kollman v. State, 231 Ga. App. 630, 498 S.E.2d 745 (1998).

Proof of the qualifications of the person who drew the defendant's blood was properly established through hospital business records and the testimony of a supervisor. Dean v. State, 232 Ga. App. 390, 501 S.E.2d 895 (1998).

Only acceptable methods of proving the qualification of the person who drew a defendant's blood are the certificate provided for in O.C.G.A. § 40-6-392(e), introduced by means of the business records exception to the hearsay rule, and the testimony of the person who drew the blood. Peek v. State, 272 Ga. 169, 527 S.E.2d 552 (2000).

State properly laid a foundation for the admission of Intoxilyzer 5000 test results by the administering officer testifying that the officer was trained to operate the Intoxilyzer 5000 and that the officer had a permit from the Division of Forensic Sciences (DFS) to operate it, and by the permit, which was entered into evidence, showing that the officer was certified by the DFS to perform chemical analyses of breath specimens pursuant to the Uniform Act Regulating Traffic on Highways and the authorization was applicable to analyses utilizing an Intoxilyzer Model 5000. Garland v. State, 256 Ga. App. 313, 568 S.E.2d 540 (2002).

Operator's opinion about performance of test not required evidence. — It is sufficient for a breathalyzer operator to testify to the facts upon which a trial court can base a conclusion that a chemical test complied with O.C.G.A. § 40-6-392(a)(1)(A). It is not necessary that the operator additionally testifies to the operator's opinion that the test was performed according to methods approved by the Division of Forensic Sciences of the Georgia Bureau of Investigation. State v. Naik, 259 Ga. App. 603, 577 S.E.2d 812 (2003).

Testimony of forensic toxicologist properly admitted. — In a prosecution for driving under the influence, testimony of the forensic toxicologist who tested the defendant's blood was properly admitted as expert testimony as the witness had a permit from the Georgia Bureau of Investigation to perform chemical analyses of blood specimens received from the police, and the defendant subsequently had the opportunity to cross-examine the witness about the witness's credentials and testi-

mony. Fowler v. State, 294 Ga. App. 864, 670 S.E.2d 448 (2008), cert. denied, No. S09C0529, 2009 Ga. LEXIS 204 (Ga. 2009).

Periodic testing of intoximeter machine. — When the state periodically tested the intoximeter machine and a log was kept in the sheriff's office, such tests being required to be made periodically, the intoximeter results were properly admitted. Walters v. State, 195 Ga. App. 434, 394 S.E.2d 105 (1990).

Although a breath machine was taken out of service after the defendant's test, the state submitted circumstantial evidence in accordance with O.C.G.A. § 40-6-392(f) that the machine was in good working order during the test; therefore, the trial court erred in granting the defendant's motion to suppress. State v. Rackoff, 264 Ga. App. 506, 591 S.E.2d 379 (2003).

Log sheet with handwritten intoxilyzer results admissible. — Log sheet with handwritten intoxilyzer results was not excluded because the state had provided everything the state had with regard to the intoxilyzer results and there was nothing left in the state's possession to complete that evidence; to the extent that the state failed to provide information in the detail provided on an intoxilyzer printout, those omissions went to the weight and not the admissibility of the intoxilyzer results. Cross-examination of the officer who administered the test would allow the defendant's counsel the opportunity to test the nature of the state's evidence, and the trial court indicated that the court would revisit the motion in limine admitting the log sheet should the state not offer the testimony of that officer. Jones v. State, 345 Ga. App. 14, No. A17A1532, 2018 Ga. App. LEXIS 169 (2018).

Attachment of test cards to inspection certificates was not required for admissibility of breath test results. Yount v. State, 249 Ga. App. 563, 548 S.E.2d 674 (2001).

Certificates lacked sufficient indicia of reliability. — Certificates showing that a breath test machine was properly functioning both prior to and following the defendant's test were improperly admitted without proof of sufficient indicia of reliability. Daniel v. State, 227 Ga. App. 92, 488 S.E.2d 129 (1997).

Certification of certificates of inspection not required. — O.C.G.A. § 40-6-392(f) does not require that copies of certificates of inspection must be certified to be admissible. Andries v. State, 236 Ga. App. 842, 512 S.E.2d 685 (1999).

Certificate of inspection for a breath-testing instrument was admissible even though the certificate was not prepared until eight months after the inspection. Williams v. State, 224 Ga. App. 368, 481 S.E.2d 535 (1997).

As a certificate of inspection of a breath test machine, pursuant to O.C.G.A. § 40-6-392(f), was deemed simply a record made in the regular course of business, the certificate was not "testimonial" hearsay under Crawford v. Washington, 541 U.S. 36 (2004), and the defendant's confrontation rights under the Sixth Amendment were not violated when the certificate was offered into evidence in a driving under the influence trial. Rackoff v. State, 275 Ga. App. 737, 621 S.E.2d 841 (2005).

Inspection certificates admissible under Melendez-Diaz. — Testing certificates for a breath-testing machine were properly admitted into evidence in a defendant's trial for driving under the influence (less safe and per se) under former O.C.G.A. § 24-3-14 (see now O.C.G.A. § 24-8-803) and O.C.G.A. § 40-6-392(f). The documents did not come within the Melendez-Diaz v. Massachusetts, 557 U.S. 305, 129 S. Ct. 2527, 174 L. Ed. 2d 314 (2009) because the documents are not generated for the prosecution of a particular defendant. Ritter v. State, 306 Ga. App. 689, 703 S.E.2d 8 (2010).

Photocopies of certificates. — Admission of photocopies of certificates of inspection was not an abuse of discretion when the originals were accounted for. Chastain v. State, 231 Ga. App. 225, 498 S.E.2d 792 (1998).

Uncertified photocopies of a certificate of inspection for an Intoxilyzer 5000 were admissible after a police officer testified at trial that the officer personally made the photocopies of the original certificates. Wright v. State, 238 Ga. App. 442, 519 S.E.2d 461 (1999).

Admissibility of Results (Cont'd)

Delay in certificate affects weight. — Inspector's delay in signing a certificate of inspection of a breath test machine went to the certificate's weight rather than the certificate's admissibility. Tam v. State, 225 Ga. App. 101, 483 S.E.2d 142 (1997).

Inspection certificates erroneously admitted. — When the state laid no foundation for inspection certificates other than testimony describing the certificates and showing that the certificates were "maintained in the log book" for the breath machine, the test results were erroneously admitted. Hamilton v. State, 228 Ga. App. 285, 491 S.E.2d 485 (1997).

Foundation requirements may be met by other than certificate. — Certificate of inspection is not the sole method of meeting the foundational requirements for admitting into evidence the results of a breath alcohol test. Banks v. State, 235 Ga. App. 701, 509 S.E.2d 63 (1998).

Foundation not laid. — Because the state did not offer a contrary proffer as to how the deputy might have answered the objected-to question, regarding whether the machine used for the breath test was authorized by the Division of Forensic Sciences, the trial court did not err in suppressing the results based on the state's failure to lay a foundation for the evidence. State v. Warren, 338 Ga. App. 849, 792 S.E.2d 116 (2016).

Showing that machine in working order required. — Results of the defendant's breath test were erroneously admitted after the state failed to establish that the state's Intoximeter 3000 machine had all the machine's electronic and operating components attached and in working order. Raulerson v. State, 223 Ga. App. 556, 479 S.E.2d 386 (1996).

Testimony of the individual who conducted breath tests sufficiently proved by circumstantial evidence that the tests were performed on a machine operated with all the machine's electronic and operating components prescribed by the machine's manufacturer properly attached and in good working order. Gidey v. State, 228 Ga. App. 250, 491 S.E.2d 406 (1997); Diaz v. State, 245 Ga. App. 380, 537 S.E.2d 784 (2000).

Certification and inspection of a machine need not occur on the same day as the testing. Rowell v. State, 229 Ga. App. 397, 494 S.E.2d 5 (1997).

Defendant charged with driving with an unlawful alcohol concentration may always introduce evidence of the possibility of error or circumstances that might have caused the machine to malfunction; such evidence would relate to the weight rather than the admissibility of breathalyzer results. Banks v. State, 235 Ga. App. 701, 509 S.E.2d 63 (1998).

Defendant is entitled to attack the results of a blood alcohol test by attempting to show the machine was not in good working order and thus not operating properly when the defendant was tested. Banks v. State, 235 Ga. App. 701, 509 S.E.2d 63 (1998).

Evidence of a refusal to submit to a blood-alcohol test is admissible because the refusal is relevant to the question of guilt or innocence. Wessels v. State, 169 Ga. App. 246, 312 S.E.2d 361 (1983) (decided prior to 1983 amendment adding subsection (c)).

Defendant's refusal to take a blood alcohol test is relevant and admissible. Rawl v. State, 192 Ga. App. 57, 383 S.E.2d 903 (1989).

Defendant who was acquitted of driving under the influence of drugs, and as to whom the court directed a verdict of "not guilty" of driving under the influence of alcohol, could nonetheless be found guilty of driving under the combined influence of drugs and alcohol, arising from the same incident, since the arresting officer testified that the defendant refused to submit to a chemical test of the defendant's blood, the defendant had glassy and bloodshot eyes, and that the defendant tested positive for alcohol on the alco-sensor and for drugs using two field sobriety eye tests. Mendoza v. State, 196 Ga. App. 627, 396 S.E.2d 576 (1990).

Person is required to submit to a test to determine if the person is under the influence of alcohol or other drugs; however, a driver has the right to refuse to take a state administered test, subject to the mandate that exercise of the right of refusal shall be admissible in the driver's criminal trial. State v. Leviner, 213 Ga.

App. 99, 443 S.E.2d 688 (1994).

Failure to provide adequate sample considered refusal. — Defendant's failure to provide an adequate breath sample was properly considered a refusal, and the instructions given by the trial court regarding the evidentiary ramifications of such a refusal were both proper and warranted since the defendant did not blow hard enough in the machine to register a result on either of two tries and the officer who arrested the defendant testified that the officer believed that the defendant was too intoxicated to give an adequate sample. Komala v. State, 237 Ga. App. 236, 515 S.E.2d 185 (1999).

Determination of unwilling, not unable, to provide sample. — When the arresting officer testified that the defendant pretended to, but did not, blow into a breath-alcohol testing machine, which had been tested and was certified as working properly, and the defendant testified as to why the defendant was unable to provide an adequate breath sample, the trial court was authorized to believe the officer's testimony that the defendant was unwilling, not unable, to give a sample sufficient to determine the defendant's blood alcohol concentration. Walker v. State, 262 Ga. App. 872, 586 S.E.2d 757 (2003).

Evidence of refusal to take test held not admissible. — Officer's statement to the defendant: "After submitting to the required testing, you are entitled to additional chemical tests at your own expense" did not properly advise the defendant of the defendant's rights, and evidence of the defendant's refusal to submit to a state administered test was inadmissible at trial. Moore v. State, 217 Ga. App. 536, 458 S.E.2d 479 (1995).

Evidence of refusal to have additional test. — Prosecutor's argument regarding the defendant's failure to take an additional blood alcohol level test did not create an impermissible inference because had the defendant refused to submit to any chemical test, that refusal would have been admissible at trial under subsection (d) of O.C.G.A. § 40-6-392 as positive evidence creating an inference that such a test, if performed, would have shown the presence of alcohol in the defendant's blood. Dupont v. State, 204 Ga. App. 262, 418 S.E.2d 803 (1992).

Two sequential breath test results were properly allowed into evidence. Horne v. State, 237 Ga. App. 844, 517 S.E.2d 74 (1999).

Because an intervening failed breath test, due to the defendant's inability to provide an adequate sample, did not render otherwise valid breath alcohol test results inadmissible, and given that the fact of an intervening failed breath test went to the weight, not the admissibility, of the test results, suppression of the results was properly denied; moreover, the appeals court declined to hold that the word "sequential," also meant without any gaps in the procedure due to the test taker's inability to give an adequate breath sample. Davis v. State, 286 Ga. App. 443, 649 S.E.2d 568 (2007).

Admission of two results even if one lower. — Trial court erred in ruling that a printout in the defendant's case be redacted to reflect or show the first, lower breath test result only on the ground that Georgia law only allowed the lower of two sequential breath test samples to be used to prosecute the defendant's DUI case as O.C.G.A. § 40-6-392(a)(1)(B) clearly contemplated the admission of both sequential test results even though the statute specified that the lower of the two numbers was to be the determinative number for certain purposes. State v. Kruzel, 261 Ga. App. 90, 581 S.E.2d 711 (2003).

State was without authority to conduct a third breath test on the defendant and the trial court should have granted the defendant's motion to exclude the results of a third test. Davis v. State, 237 Ga. App. 817, 517 S.E.2d 87 (1999).

Evidence of refusal admissible without showing implied consent warnings given. — It was not error to deny the defendant's motion to suppress testimony that the defendant refused to take a breath test although there was no affirmative showing by the state that implied consent warnings were given. Wyatt v. State, 179 Ga. App. 327, 346 S.E.2d 387 (1986).

When the defendant failed to show a medical or physical explanation why the defendant was unable to take

Admissibility of Results (Cont'd)

and complete a breath test, it was not error to admit evidence of such nonverbal refusal. Allen v. State, 229 Ga. App. 435, 494 S.E.2d 229 (1997).

Attacking the admissibility of properly-conducted breathalyzer test. — Admissibility of breathalyzer test results is controlled solely by O.C.G.A. § 40-6-392 so that, as long as a test has been conducted in compliance with the statute, a defendant is precluded from attacking the admissibility of the test based on a challenge to the scientific reliability of the result. Brannan v. State, 261 Ga. 128, 401 S.E.2d 269 (1991).

Failure to abide by statute renders test inadmissible. — In the absence of the advice of rights under O.C.G.A. § 40-6-392, the intoximeter test results administered by the arresting officer are inadmissible. Nelson v. State, 135 Ga. App. 212, 217 S.E.2d 450 (1975); Holcomb v. State, 217 Ga. App. 482, 458 S.E.2d 159 (1995).

Results of a breath test for alcohol content are rendered inadmissible by the failure to advise the defendant, both at the time of the defendant's arrest and at any time subsequent thereto, of defendant's right to the three types of chemical tests set forth in the Uniform Rules of the Road, viz., blood, urine, and breath. Hulsey v. State, 138 Ga. App. 221, 225 S.E.2d 752 (1976).

Substantial compliance with the provision as to additional blood-alcohol-level tests does not compensate for the total failure to advise the defendant at any time of the defendant's right to a urine analysis. Hulsey v. State, 138 Ga. App. 221, 225 S.E.2d 752 (1976).

Language of Ga. L. 1974, p. 633, § 1 (see now O.C.G.A. § 40-6-392) makes it clear that a person must be advised of the person's right to have an additional test administered by a qualified person of the person's own choice in addition to the one administered by the arresting officer. The failure to so inform invalidates the result of any test and also justifies the refusal to submit to a test. Garrett v. Department of Pub. Safety, 237 Ga. 413, 228 S.E.2d 812 (1976).

It is reversible error to admit evidence regarding the result of a breath test when the defendant was informed of the defendant's right to have either a blood or breath test, but was not advised of the defendant's additional right under Ga. L. 1974, p. 633, § 1 (see now O.C.G.A. § 40-6-392). Torley v. State, 141 Ga. App. 366, 233 S.E.2d 476 (1977).

Results of an intoximeter (breath) test which is taken in violation of the protections afforded by Ga. L. 1974, p. 633, § 1 (see O.C.G.A. § 40-6-392) may not be used in evidence against the defendant. State v. Johnston, 160 Ga. App. 71, 286 S.E.2d 47 (1981), aff'd, 249 Ga. 413, 291 S.E.2d 543 (1982).

When a person is not advised, at the time of arrest, or at a time as close in proximity to the instant of arrest as the circumstances of the individual case might warrant, of the person's right to an independent chemical analysis to determine blood-alcohol or drug contents, the results of a state-administered test will not be admissible at trial to show that the accused was driving under the influence of alcohol or drugs. Perano v. State, 250 Ga. 704, 300 S.E.2d 668 (1983); State v. McCard, 173 Ga. App. 504, 326 S.E.2d 856 (1985).

Admission of the results from a blood-alcohol test in prosecution for homicide by vehicle was reversible error when the defendant was undeniably conscious and communicating with those present at the hospital where the defendant was taken to be treated after the accident, and the police officer did not follow the statutory obligation of informing the defendant of the right to refuse to take the test or the defendant's right to an independent chemical analysis. Carswell v. State, 171 Ga. App. 455, 320 S.E.2d 249 (1984), overruled on other grounds, Adcock v. State, 260 Ga. 302, 392 S.E.2d 886 (1990).

Conviction of driving under the influence of alcohol was reversed when the court erred in allowing into evidence a police officer's testimony that the appellant "failed" a roadside sobriety test administered to the appellant without the required foundation for such evidence. Channell v. State, 172 Ga. App. 156, 322 S.E.2d 356 (1984).

After the defendant made arrangements for an additional chemical analysis of the defendant's blood but was prevented from accomplishing this by the arresting officer acting under what the officer believed to be the predetermined policy of the police department and medical center which created barriers and denied the defendant the opportunity to obtain a test of the defendant's own choosing, the trial court erred in admitting the results of the intoximeter test. Gordon v. State, 190 Ga. App. 55, 378 S.E.2d 362 (1989).

Admission of the defendant's blood test results was harmful error when, although the card from which the arresting officer read the defendant the implied consent warning included a statement regarding the right to an independent test, the record was devoid of evidence that the defendant was offered an opportunity to schedule a second test. Norfleet v. State, 196 Ga. App. 548, 396 S.E.2d 237 (1990).

Warning that completely failed to inform a driver that the driver could choose the driver's own qualified person to administer the additional test made the intoximeter test administered by the state inadmissible. State v. Harrison, 216 Ga. App. 325, 453 S.E.2d 820 (1995).

Failure to advise the defendant of the right to an independent, additional blood alcohol test prevented the state from introducing the results of an additional, but not independent, blood test requested by the defendant as a result of the deficient warning. Jones v. State, 218 Ga. App. 675, 462 S.E.2d 804 (1995).

In a driving under the influence charge, the state's failure to provide the defendant a blood test after the defendant provided a breath sample on a state-administered breath test was a violation of O.C.G.A. § 40-6-392 and precluded the state from introducing evidence regarding its test. State v. Schmidt, 256 Ga. App. 749, 569 S.E.2d 630 (2002).

Trial court erred in denying the defendant's motion to suppress the results of the defendant's intoximeter test after the arresting officer failed to provide an independent blood test under O.C.G.A. § 40-6-392(a)(3), failed to use reasonable efforts to ensure that the defendant's blood was both drawn and tested, and the officer did not suggest any other testing alternatives, such as calling the defendant's personal physician or the defendant's lawyer, or submitting the sample to the state's crime lab; once the defendant invoked the right to an independent test, the officer had a duty to make reasonable efforts to accommodate the independent test. Cole v. State, 263 Ga. App. 222, 587 S.E.2d 314 (2003).

After a defendant was arrested for driving under the influence and asked for an independent test pursuant to O.C.G.A. § 40-6-392(a)(3), and the police deputy brought the defendant to a hospital where the deputy knew that the defendant could only have blood drawn at that hour but not tested, the deputy did not reasonably accommodate the defendant's request; accordingly, the trial court erred in failing to suppress the results of the test conducted by the deputy. Koontz v. State, 274 Ga. App. 248, 617 S.E.2d 207 (2005).

An arresting officer did not make a reasonable effort to accommodate a defendant's request for an independent blood test by qualified personnel of the defendant's own choosing, as required under O.C.G.A. §§ 40-5-67.1(b)(2) and 40-6-392(a)(3), because the officer unilaterally chose the location for the independent test. State v. Metzager, 303 Ga. App. 17, 692 S.E.2d 687 (2010).

Even if the police were entitled to discover the result of the blood test by lawfully obtaining a warrant for the defendant's medical record, that did not change the fact that the result in the medical record was from a procedure that failed to comply with O.C.G.A. § 40-6-392, which governed the admissibility of state-administered blood alcohol tests, and the presence of a warrant did not cure the improper testing procedure that occurred; thus, the inevitable discovery doctrine did not provide an avenue for admission of the defendant's blood test results. State v. Padgett, 329 Ga. App. 747, 766 S.E.2d 143 (2014).

Trial court did not err in granting the defendant's motion to suppress a blood test for failing to comply with O.C.G.A. § 40-6-392 because, although an officer requested that the defendant's blood be

Admissibility of Results (Cont'd)

drawn by a registered nurse at a hospital, the officer did not retain the sample for testing or request that the sample be sent to the state crime lab; the analysis of the defendant's blood was performed by the hospital; and the hospital's analysis of the defendant's blood sample did not comply with the requirements of the statute and was thus inadmissible. State v. Padgett, 329 Ga. App. 747, 766 S.E.2d 143 (2014).

When a suspect requests an independent test but is unable to obtain the test, the results of the state-administered test cannot be used by the state as evidence against the suspect unless the failure to obtain the test is justified; an accused's right to have an additional, independent chemical test or tests administered is invoked by some statement that reasonably could be construed, in light of the circumstances, to be an expression of a desire for such test. Wright v. State, 338 Ga. App. 216, 789 S.E.2d 424 (2016), cert. denied, No. S17C0046, 2017 Ga. LEXIS 209 (Ga. 2017).

Defendant's driving under the influence per se conviction was reversed because the trial court erred in admitting the results of the state-administered test because the defendant was not given an independent test after requesting one as the defendant's statements to the arresting officer could reasonably be construed as a request for an independent test and, therefore, the state-administered test results should have been suppressed. Wright v. State, 338 Ga. App. 216, 789 S.E.2d 424 (2016), cert. denied, No. S17C0046, 2017 Ga. LEXIS 209 (Ga. 2017).

Test results suppressed when state failed to provide requested discovery regarding machine. — Trial court did not err in granting a DUI defendant's motion to suppress evidence of a state-administered breath test based on the state's failure, in disobedience of a discovery order granted by the trial court, to provide the defendant with information regarding the machine and the machine's training materials pursuant to O.C.G.A. § 40-6-392(a)(4). State v. Smiley, 301 Ga. App. 778, 689 S.E.2d 94 (2009).

Test admissible although computer source code for Intoxilyzer not produced. — In a DUI case, the State was not required to disclose the computer source code for the Intoxilyzer 5000 used to measure defendant's blood alcohol under O.C.G.A. § 40-6-392(a)(4) because the State did not have access to the source code from the Intoxilyzer's Kentucky manufacturer and had not attempted to gain access to the code. Smith v. State, 325 Ga. App. 405, 750 S.E.2d 758 (2013).

Improper procedure used to persuade defendant to rescind initial refusal made results inadmissible. — Suppression of the defendant's breath test was proper because the trial court found that the procedure used by the deputy to persuade the defendant to rescind an initial refusal-telling the defendant that the defendant could go home to the defendant's son if the defendant blew under the legal limit-was not fair or reasonable; the ruling depended on the credibility of the witnesses and the trial court correctly applied the law. State v. Rowell, 299 Ga. App. 238, 682 S.E.2d 343 (2009).

Blood and urine test results held inadmissible. — Because the evidence sufficiently showed that the defendant's mental condition was clearly vulnerable, and that the defendant: (1) could not read; (2) had to be forcibly restrained while the consent form was initially being read; (3) was weeping while the remainder of the form was read; and (4) never actually signed the consent form, the trial court properly found that any consent to submit to blood and urine tests was not freely and voluntarily given. Moreover, the proper standard of review on appeal, based on the fact that credibility was an issue, was not a de novo standard, but a clearly erroneous standard. State v. Stephens, 289 Ga. App. 167, 657 S.E.2d 18 (2008).

Error in the admission, over the defendant's timely objection, of the results of a state-administered test was harmless when the evidence of the defendant's blood alcohol level merely corroborated other evidence including defendant's own statements that the defendant had been drinking heavily. Mooney v. State, 221 Ga. App. 420, 471 S.E.2d 904 (1996).

Consent obtained by misleading information. — Police officer's warning to

anonresident defendant that "Under O.C.G.A. §§ 40-5-55 and 40-5-153, you will lose your privilege to operate a motor vehicle from six to twelve months should you refuse to submit to the designated State administered chemical test" omitted the crucial fact that refusal to take the test would affect the defendant's ability to drive "on the highways of this state." Thus, the defendant was deprived of making an informed choice, and the test results were inadmissible; overruling, Anthony v. State, 211 Ga. App. 622, 441 S.E.2d 70 (1993) and State v. Reich, 210 Ga. App. 407, 436 S.E.2d 703 (1993). State v. Coleman, 216 Ga. App. 598, 455 S.E.2d 604 (1995).

When a nonresident defendant's consent to a chemical breath test was based at least in part on an officer's statement that the defendant's refusal to take the test would result in a six-month suspension of the defendant's out-of-state driver's license, a penalty which the state was unauthorized to carry out, the defendant was deprived of making an informed choice under the implied consent law, and the test results were inadmissible. Deckard v. State, 210 Ga. App. 421, 436 S.E.2d 536 (1993).

In a prosecution for driving under the influence, when the defendant was deprived by the totality of the inaccurate, misleading, and/or inapplicable information given to the defendant by the arresting officer of making an informed choice under the implied consent statute, the defendant's refusal to consent to a urine test was rendered inadmissible. State v. Leviner, 213 Ga. App. 99, 443 S.E.2d 688 (1994).

Miranda warnings not required. — State administered breath test does not require Miranda warnings. State v. Lord, 236 Ga. App. 868, 513 S.E.2d 25 (1999).

Admissibility of blood test when defendant unconscious. — Results of a blood test administered to the defendant while the defendant was unconscious were admissible. Thornberry v. State, 146 Ga. App. 827, 247 S.E.2d 495 (1978).

Even if the defendant was unconscious or semi-conscious, and thereby incapable of refusing to consent to a blood test, the results of the test were nevertheless admissible. Holmes v. State, 180 Ga. App. 787, 350 S.E.2d 497 (1986).

Hospital business records. — Trial court properly admitted the results of a blood test performed by a hospital as a business record pursuant to former O.C.G.A. § 24-3-14 (see now O.C.G.A. § 24-8-803), at the defendant's trial for vehicular homicide, when the test was administered for the purpose of assisting in the defendant's medical treatment, was requested by the treating physician, not a law enforcement officer, and was not obtained for the purpose of showing that the defendant was in violation of the driving-under-the-influence statute. Jackson v. State, 196 Ga. App. 724, 397 S.E.2d 13 (1990).

It is not necessary that a blood alcohol test administered by a hospital in providing medical treatment be performed in compliance with the procedures of subsection (a) of O.C.G.A. § 40-6-392 in order to be considered a valid test for purposes of the inferences permitted under subsection (b) of that section. Dixon v. State, 227 Ga. App. 533, 489 S.E.2d 532 (1997).

Medical records certified by the records custodian of a hospital showing the results of an independent chemical test requested by the defendant were not admissible without further foundational evidence that would satisfy the requirements of the business records exception to the hearsay rule. Brahm v. State, 230 Ga. App. 407, 497 S.E.2d 240 (1998).

While the Supreme Court had held that the only acceptable methods of proving the qualification of the person who drew a defendant's blood was the certificate provided for in O.C.G.A. § 40-6-392(e), introduced by means of the business records exception to the hearsay rule and the testimony of the person who drew the blood, that did not prevent the same certificate from being admitted under other appropriate, hearsay exceptions, such as the public records exception. Bess v. State, 254 Ga. App. 80, 561 S.E.2d 209 (2002).

Alternative methods of challenging improperly obtained results. — Results of an intoximeter test, if improperly obtained, are subject to a motion to suppress, or alternatively, subject to objection at the time the evidence is offered as this

Admissibility of Results (Cont'd)

is consistent with the statutory mandate that the use of such tests in criminal trials shall be subject to the strictest protections and within the parameters of O.C.G.A. § 17-5-30. State v. Johnston, 160 Ga. App. 71, 286 S.E.2d 47 (1981), aff'd, 249 Ga. 413, 291 S.E.2d 543 (1982).

When the defendant previously has not moved to suppress evidence, the results of defectively administered test are inadmissible over objection. State v. Johnston, 160 Ga. App. 71, 286 S.E.2d 47 (1981), aff'd, 249 Ga. 413, 291 S.E.2d 543 (1982).

Motion in limine. — In a DUI case, the state's failure to offer evidence at a pre-trial hearing that the defendant had been informed of the defendant's statutory rights to additional chemical tests did not involve a constitutional issue and thus did not subject the test results to a motion to suppress; rather, a motion in limine was the proper device for obtaining a pre-trial ruling. Pierce v. State, 173 Ga. App. 551, 327 S.E.2d 531 (1985).

Motion alleging noncompliance with either O.C.G.A. § 40-6-392 or administrative regulations concerning the administration of a blood test may be raised only by way of a motion in limine. Sapp v. State, 184 Ga. App. 527, 362 S.E.2d 406 (1987).

Unlike a pre-trial motion in limine, the filing of a pre-trial motion to suppress, based on, for example, lack of probable cause for arrest, mandates that an evidentiary hearing "shall" be held outside the presence of the jury before the contested tangible evidence is admitted at trial. Sapp v. State, 184 Ga. App. 527, 362 S.E.2d 406 (1987).

Trial court properly denied the defendant's motion in limine, admitting an Intoxilyzer 5000's certificate of inspection as non-testimonial, as well as the defendant's breath test results; even if error was presented, it was harmless since the defendant was acquitted of driving under the influence with an unlawful blood alcohol concentration. Moreover, the incident report was properly admitted under the rule of completeness as the trial court was authorized to find that it was necessary for the state to admit all relevant parts of the incident report in evidence to show that the omissions noted by the defendant were not so material as to have effected the accuracy of the report. Phillips v. State, 289 Ga. App. 281, 656 S.E.2d 905 (2008).

Defendant's motion in limine claiming that an intoxilyzer's seizure of the defendant's breath samples was unlawful because the intoxilyzer's electronic components and operating parts were not properly attached and in good working order as required by O.C.G.A. § 40-6-392 was subject to the requirements of O.C.G.A. § 17-5-30, relating to motions to suppress. State v. Carter, 292 Ga. App. 322, 665 S.E.2d 14 (2008).

Foundation requirements for the admissibility of chemical test results do not have to be proved in front of the jury. Gaston v. State, 227 Ga. App. 666, 490 S.E.2d 198 (1997).

Defendant was properly not allowed to question an intoximeter operator outside the presence of the jury in order to show that the operator was not able to lay a foundation for the admissibility of the test results. Daniel v. State, 231 Ga. App. 125, 497 S.E.2d 656 (1998).

Foundation requirement satisfied. — Proper foundation showing that testing officer met all the requirements of paragraph (a)(1) of O.C.G.A. § 40-6-392 with regard to blood-alcohol tests was laid when an officer testified that the officer was trained and experienced, that the test was performed according to approved methods, and that the officer had a permit to operate the machine. Riley v. State, 175 Ga. App. 810, 334 S.E.2d 863 (1985); Broski v. State, 196 Ga. App. 116, 395 S.E.2d 317 (1990); Page v. State, 202 Ga. App. 828, 415 S.E.2d 487, cert. denied, 202 Ga. App. 907, 415 S.E.2d 487 (1992).

Police officer's testimony that the officer observed the defendant continuously from defendant's arrest until the time of testing was sufficient to satisfy any foundation requirement as to the admission of the test results. Lee v. State, 188 Ga. App. 912, 373 S.E.2d 28, cert. denied, 188 Ga. App. 912, 373 S.E.2d 28 (1988).

Proper foundation was laid when the officer who performed the test testified that the officer was certified to operate the

machine and that the officer conducted the customary pretest procedures before administering the test, and there was also testimony that the machine, an Intoximeter 3000, was periodically serviced. Harris v. State, 199 Ga. App. 457, 405 S.E.2d 501 (1991).

Proper foundation for admission of test results was laid when, although the state was unable to produce the police officer who administered the test, the arresting officer testified that the officer was personally present and witnessed the administration of the test. Mullis v. State, 201 Ga. App. 75, 410 S.E.2d 182 (1991).

Proper foundation was established for admission of intoximeter test results when the state established that the examiner was a certified peace officer, that the examiner possessed a valid permit to operate the intoximeter, that the examiner continuously maintained that permit and that the examiner's permit was in effect on the day the examiner administered the test. Pratt v. State, 208 Ga. App. 617, 431 S.E.2d 397 (1993).

Results of a breath test were not inadmissible on the basis that the state trooper who inspected the machine did not actually test each component individually to determine if the machine was in good working order. Gaston v. State, 227 Ga. App. 666, 490 S.E.2d 198 (1997).

Testimony of a forensic chemist that the chemist was trained to use the intoxometer machine and used the machine almost daily, and that the machine was working properly and all of the machine's working parts were in order at the time of the test was sufficient to meet the foundational requirements of O.C.G.A. § 40-6-392. Waggoner v. State, 228 Ga. App. 148, 491 S.E.2d 88 (1997).

State presented an adequate foundation for admission of alcohol breath test results in a prosecution for driving under the influence since there was proof that the arresting officer was certified to operate the machine and had ensured that the machine was working properly before the breath test, and the officer also testified that the machine was periodically checked for calibration and that the machine had been calibrated a few weeks prior to the breath test. Pak v. State, 234 Ga. App. 538, 507 S.E.2d 166 (1998).

When it was undisputed that a machine used to analyze breath tests was routinely inspected, and that maintenance protocols were followed, a technician's testimony, in conjunction with the technician's certificates, was more than adequate to lay the foundation necessary to admit the defendant's breath test results. Hammontree v. State, 236 Ga. App. 342, 512 S.E.2d 342 (1999).

Sufficient evidence was offered to allow admission of the defendant's breath test in order to prove the defendant's violation of O.C.G.A. § 40-6-391(a)(5) when the oral testimony of the administering officer indicated the officer's qualifications and compliance with the approved methods of the test as required by O.C.G.A. § 40-6-392(a)(1)(A); the court found that an adequate foundation had been laid in order to admit the test results. Scara v. State, 259 Ga. App. 510, 577 S.E.2d 796 (2003).

Trial court did not err in allowing the Intoxilyzer results into evidence as the arresting officer testified that as to training and certification, the machine's inspection certificates were admitted, and the officer testified further that the machine passed the machine's own diagnostic test, appeared to be in good working order, and did not appear to have any parts missing. Stapleton v. State, 279 Ga. App. 296, 630 S.E.2d 769 (2006).

Even though the testifying officer did not, personally, conduct the required testing of the machine, an adequate foundation was provided by the officer's testimony that the machine was in proper working order, as evidenced by "self-tests," and that a qualified officer signed the required certificate. Evans v. State, 230 Ga. App. 728, 497 S.E.2d 248 (1998).

"Self-authenticating" provision of subsection (f) of O.C.G.A. § 40-6-392 contained the proper foundation for admission of a certificate of inspection, and a further foundation under the "business records" exception of former O.C.G.A. § 24-3-14(b) (see now O.C.G.A. § 24-8-803) was not necessary. Jackson v. State, 233 Ga. App. 568, 504 S.E.2d 505 (1998).

Intoxilyzer test results were improperly

Admissibility of Results (Cont'd)

excluded under O.C.G.A. § 40-6-392 since the state produced a properly prepared and executed certificate of inspection certifying that the electronic components and operating parts of the device were properly attached and in good working order. Any failure of the device to have passed an operational requirement by registering a 0.074 reading in the device's analysis of the control solution during the difference check went to the weight, not the admissibility, of the test results. State v. Carter, 292 Ga. App. 322, 665 S.E.2d 14 (2008).

Admission of testimony concerning breath test when section complied with. — Trial court did not err in admitting testimony concerning the defendant's breath test in prosecution for driving under the influence when the arresting officer advised the defendant, pursuant to O.C.G.A. § 40-6-392, of the defendant's right to undergo additional chemical tests of the amount of alcohol in the defendant's blood and such officer administering the test testified as to the defendant's training to conduct such breath tests and the defendant's certificate, issued by the State Crime Laboratory (now Division of Forensic Sciences of Georgia Bureau of Investigation), was properly introduced into evidence. Fletcher v. State, 157 Ga. App. 707, 278 S.E.2d 444 (1981).

Admissibility of test results is controlled by the provisions of O.C.G.A. § 40-6-392 and, so long as a test has been conducted in compliance with those statutory provisions, an expert's opinion which questions the reliability of the results of that test would have no bearing on the admissibility of those results into evidence. Close v. State, 195 Ga. App. 652, 394 S.E.2d 563 (1990).

When the defendant refused to submit to a state-administered breath test, telling the officer that "attorneys in the past had advised him never to take the breath test," admission of evidence of the defendant's refusal was not error because, by defendant's own statement, the defendant demonstrated that the defendant was not deprived of an opportunity to make an informed choice. Allenbrand v. State, 217 Ga. App. 609, 458 S.E.2d 382 (1995).

Evidence sufficient to show foundation properly laid. — Police officer's testimony that the officer conducted the breath test, that the officer was certified to operate the machine, and that the machine appeared to be working properly, despite an apparent malfunction by the printer, was sufficient to lay a proper foundation for admission of the results of the test. Banks v. State, 235 Ga. App. 701, 509 S.E.2d 63 (1998).

Testimony on screening test admissible. — Proper foundation for the testimony of a police officer regarding an alco-sensor test the officer administered was laid by the officer's statement regarding the officer's training and experience, and testimony by that officer and another that the defendant showed positive for the presence of alcohol in the defendant's body was admissible. Gray v. State, 222 Ga. App. 626, 476 S.E.2d 12 (1996).

Inference of blood-alcohol level permitted. — When chemical analysis of defendant's blood at the time of the defendant's arrest approximately one hour after a collision showed a blood-alcohol level of .30 grams percent, the jury was authorized to infer that the defendant's blood-alcohol at the time of the collision was .08 grams percent or greater. The absence of testimony about the metabolic rate of alcohol in the blood so as to permit a calculation of blood-alcohol content at the actual time of the collision did not render the evidence insufficient to support the desired inference. Cheevers v. Clark, 214 Ga. App. 866, 449 S.E.2d 528 (1994).

Impeachment purposes. — Evidence of defendant's .09 BAC was admissible to rebut the defendant's testimony regarding consumption of only three beers over a five hour period and the subsequent inference raised thereby that the defendant was not intoxicated. Jones v. State, 241 Ga. App. 515, 527 S.E.2d 223 (1999).

Effect of prior administrative action. — Dismissal of an administrative action against the defendant to suspend the defendant's license for allegedly refusing to take a breath test is irrelevant to the question of refusal and to the question of the admissibility of evidence of refusal in a subsequent court proceeding. Sheffield v. State, 184 Ga. App. 141, 361 S.E.2d 28 (1987).

Admissibility of evidence in civil actions. — Even though breach of the notice requirement renders evidence of the blood test administered by the state inadmissible to establish a presumption that the allegedly drunken driver was driving under the influence, such evidence should be admitted for impeachment purposes in the trial of a civil action. Ensley v. Jordan, 244 Ga. 435, 260 S.E.2d 480 (1979).

When the doctor who treated plaintiff-driver in the hospital emergency room following the accident detected what the doctor thought was the odor of alcohol about the plaintiff-driver and, without a request or direction by the officer, ordered a blood-alcohol test to be performed upon the plaintiff-driver in order to determine the type of anesthesia to use on plaintiff-driver, the blood-alcohol test results were admissible under former O.C.G.A. § 24-3-14 (see now O.C.G.A. § 24-8-803) as part of a hospital record made in the regular course of hospital business and, thus, compliance with paragraphs (a)(2) and (a)(3) of O.C.G.A. § 40-6-392 was not a prerequisite to the admission of the blood test results. Bynum v. Standard (Chevron) Oil Co., 157 Ga. App. 819, 278 S.E.2d 669 (1981).

Evidence of refusal to submit to blood-alcohol testing is admissible in civil cases. Stacy v. Caldwell, 186 Ga. App. 293, 367 S.E.2d 73, cert. denied, 186 Ga. App. 919, 367 S.E.2d 73 (1988).

In an action for damages for injuries sustained in an automobile collision, the trial court did not err in permitting an examining and treating physician to testify concerning the defendant's intoxication utilizing the hospital business records as well as the physician's observation of the defendant during examination in the hospital. Studebaker's of Savannah, Inc. v. Tibbs, 195 Ga. App. 142, 392 S.E.2d 908 (1990).

Failure of defendant to object. — Although the admissibility of test results was affected by the state's failure to lay a proper foundation, by failing to object when testimony as to the results was offered, the defendant waived any objection the defendant could have made and the testimony was not illegally admitted. Carr v. State, 222 Ga. App. 776, 476 S.E.2d 75 (1996).

Printout reflecting an "insufficient sample," and thus no analysis and no result, is not subject to discovery under O.C.G.A. § 17-16-23 because if there is no test and no result, there is nothing to discover. State v. Tan, 305 Ga. App. 55, 699 S.E.2d 74 (2010).

No error in admission. — Since there was no attempt by the defense to push for discovery of the printout from a gas chromatograph, no refusal by the state to produce that document, and no request by the defense for a continuance for additional time to examine the printout, which was available at trial, the trial court did not abuse the court's discretion in admitting the testimony of the state's expert witness, despite the prosecutor's failure to produce the printout before trial. Birdsall v. State, 254 Ga. App. 555, 562 S.E.2d 841 (2002).

Despite a contention by the defendant that the inspection certificates for the Intoxilyzer 5000 were inadmissible hearsay, the evidence was properly admitted based on the officer's testimony independent of the inspection certificates. Braswell v. State, 281 Ga. App. 500, 636 S.E.2d 689 (2006).

Because the evidence sufficiently showed that the defendant asked for a blood test in response to the officer's request to submit to the state-administered breath test, clearly attempting to designate the state-administered test, not request an independent test, and the defendant understood that the type of test that would be done was solely of the state's choosing, the trial court properly denied a motion to suppress the breath test results obtained. Brooks v. State, 285 Ga. App. 624, 647 S.E.2d 328 (2007).

In a prosecution for DUI, the trial court did not err in denying the defendant's motion to suppress the blood test evidence as the trial court properly allowed the discovery of notes, memoranda, graphs, or computer printouts pertaining to the blood sample taken, as well as all chain of custody documentation, because they were the only items deemed relevant to the prosecution; suppression of the blood test results was not required, as the de-

Admissibility of Results (Cont'd)

fendant waived error on appeal as to the absence of one of the two lab testers. Cottrell v. State, 287 Ga. App. 89, 651 S.E.2d 444 (2007), cert. denied, No. S07C1894, 2007 Ga. LEXIS 816 (Ga. 2007).

Trial court did not err in denying the defendant's motion to suppress and motion in limine to exclude the defendant's field sobriety test results because the officers who stopped the defendant's vehicle were not required to advise the defendant of the defendant's Miranda rights prior to the field sobriety testing since although the defendant was not free to leave, the defendant was not handcuffed or placed in the patrol car during the investigation, and in addition to informing the defendant of the reason for the stop, the officers told the defendant that the officers had to wait for a HEAT Unit officer to determine whether the defendant was too impaired to safely operate the defendant's vehicle; based upon the circumstances, the trial court was authorized to find that a reasonable person would believe that the defendant's freedom of action was only temporarily curtailed pending further investigation during the traffic stop, and the delay of approximately twenty-five minutes between the initial stop and the HEAT Unit officer's arrival at the scene did not automatically convert the investigation into a custodial situation. Waters v. State, 306 Ga. App. 114, 701 S.E.2d 550 (2010).

Judicial Proceedings

Ga. L. 1974, p. 633, § 1 (see now O.C.G.A. § 40-6-392) is evidentiary in nature rather than substantive. Head v. State, 246 Ga. 360, 271 S.E.2d 452 (1980).

Waiver of objections to evidence. — Defendant's objections to blood and urine evidence, based on allegations that the state failed to comply with O.C.G.A. § 40-6-392, were not raised at the time the evidence was introduced and were therefore waived. Glover v. State, 230 Ga. App. 795, 498 S.E.2d 300 (1998).

"Time of arrest" construed. — Ruling of the trial court that since the officer failed to inform this defendant of the defendant's rights under O.C.G.A. § 40-6-392 at the time of arrest the results of the alcohol test should be suppressed constituted a construction of the term "time of arrest" which was too narrow and restrictive and was clearly erroneous. State v. Lubin, 164 Ga. App. 689, 297 S.E.2d 371 (1982).

Presumption of intoxication. — When the result of an intoximeter test indicated that there was .15 percent alcohol content in the blood, the results give rise to a presumption of intoxication. Helmly v. State, 142 Ga. App. 577, 236 S.E.2d 540 (1977).

In an evaluation of the sufficiency of the evidence, when the petitioner was convicted of voluntary manslaughter, the court considered evidence as to the percentage of alcohol in the victim's blood, but did not rely on this statutory presumption. Holloway v. McElroy, 632 F.2d 605 (5th Cir. 1980), cert. denied, 451 U.S. 1028, 101 S. Ct. 3019, 69 L. Ed. 2d 398 (1981).

Court may charge that the "presumption" authorized by a breathalyzer reading of more than .10 alcohol in the blood creates merely a "permissive presumption." Such a presumption allows, but does not require, the trier of fact to infer the elemental fact from proof by the prosecutor of a basic one and does not place any kind of burden upon the defendant. McCann v. State, 167 Ga. App. 368, 306 S.E.2d 681 (1983), cert. denied, 464 U.S. 1044, 104 S. Ct. 711, 79 L. Ed. 2d 174 (1984).

Presumption of sobriety. — Presumption of sobriety contained in paragraph (b)(1) of O.C.G.A. § 40-6-392 is irrelevant when the ultimate issue before the jury is the defendant's impaired ability to drive as the result of being under the influence of a drug. Perano v. State, 167 Ga. App. 560, 307 S.E.2d 64 (1983).

Breath testing instrument inspection certificate admissible. — In a defendant's prosecution for driving under the influence under O.C.G.A. § 40-6-391, the inspection certificate for the instrument used to conduct the defendant's breath test under O.C.G.A. § 40-6-392(f) was properly admitted because it was not

testimonial hearsay and did not violate the defendant's rights of confrontation; it was a business record that was not made in an investigatory or adversarial setting or generated in anticipation of the prosecution of a particular defendant. Rackoff v. State, 281 Ga. 306, 637 S.E.2d 706 (2006).

Presumption does not apply to violation of O.C.G.A. § 40-6-391(k)(1). — Although O.C.G.A. § 40-6-392(b)(1) provided that it was to be presumed that persons with an alcohol concentration of .05 were not under the influence of alcohol, that statutory provision did not apply to a charge that a person under the age of 21 violated O.C.G.A. § 40-6-391(k)(1) with an alcohol concentration of .02 or more, and since that was part of the charge in the defendant's case, the presumption did not apply. David v. State, 261 Ga. App. 468, 583 S.E.2d 135 (2003).

Circumstantial evidence. — When the trial court properly granted a defendant's motion to suppress the results of the intoximeter test because of a de facto denial of the defendant's right to have an additional test of the defendant's own choosing, there was sufficient competent circumstantial evidence to authorize the reasonable trier of fact to find the appellant guilty beyond a reasonable doubt of driving under the influence of alcohol. Porter v. State, 195 Ga. App. 388, 393 S.E.2d 513 (1990).

Discovery of source code for breath testing device. — Defendant pointed to no evidence showing that the source code for a breath testing device was within the possession, custody, or control of the state. Thus, the trial court properly denied the defendant's motion to discover the source code. Mathis v. State, 298 Ga. App. 817, 681 S.E.2d 179 (2009).

Defendant failed to show that the trial court erred in denying the defendant's request for a certificate of materiality seeking the source code for the device that was used to test the defendant's blood-alcohol content, because the defendant presented no admissible evidence during the hearing on the motion and no evidence to support the factual contention that the provider was acting as an arm of law enforcement and that the provider and the state were joint participants in an enterprise. Parker v. State, 326 Ga. App. 217, 756 S.E.2d 300 (2014).

Instruction based on subsection (c) in error. — In a wrongful death action, the trial court erred in giving a jury instruction in the language of O.C.G.A. § 40-6-392(c) because the evidence indicated that the decedent crossed the street between an intersection with a traffic signal and an intersection with a stop sign, not between adjacent intersections at which traffic-control signals were used. Silvers v. Kimbell, 219 Ga. App. 482, 465 S.E.2d 530 (1995).

Admissibility of chemical text is not jury question. — The determination of whether evidence of chemical test results should be admitted under O.C.G.A. § 40-6-392(a)(1)(A) is never a jury question and, therefore, the court did not err in refusing to charge the jury as to the foundation requirements of that section. Burke v. State, 233 Ga. App. 778, 505 S.E.2d 528 (1998).

Admissibility for offenses committed while person was driving. — Any person who drives or operates a motor vehicle upon the highways of Georgia shall be deemed to have given consent to a chemical test for the purpose of determining the alcoholic content of the driver's blood if the driver is lawfully arrested for any offense that is allegedly committed while driving or operating a vehicle under the influence of intoxicating liquor. Thus, after submitting to the test as is required by law, such evidence may be used for any offense that is allegedly committed while the person is driving or operating a vehicle under the influence of intoxicating liquor; but, the test result is not allowed for offenses which allegedly arise after the driving has ceased. Franklin v. State, 136 Ga. App. 47, 220 S.E.2d 60 (1975).

Civil or administrative nature of proceedings. — Proceedings to suspend driving privileges are strictly civil or administrative in nature since no criminal consequences result from a finding adverse to the accused. Cogdill v. Department of Pub. Safety, 135 Ga. App. 339, 217 S.E.2d 502 (1975).

Design of intoximeter or analyzer required to be approved. — State is required to produce either a properly au-

Judicial Proceedings (Cont'd)

thenticated record that the photoelectric intoximeter (or breath analyzer) was of a design specifically approved by the director of the State Crime Laboratory (now Division of Forensic Sciences of the Georgia Bureau of Investigation), or the testimony of the director personally to that effect. Smitherman v. State, 153 Ga. App. 322, 265 S.E.2d 119 (1980).

Under Department of Public Safety Rule 570-9.06(5), effective October 31, 1979, the approval of the State Crime Laboratory director (now Division of Forensic Sciences of the Georgia Bureau of Investigation) was needed only for the design of any type of breath analyzer used in this state. Willoughby v. State, 153 Ga. App. 434, 265 S.E.2d 352 (1980).

When the intoximeter was furnished by the Department of Public Safety it may be inferred that the intoximeter's design was specifically approved by the director of the State Crime Laboratory (now Division of Forensic Sciences of the Georgia Bureau of Investigation). McCann v. State, 158 Ga. App. 202, 279 S.E.2d 499 (1981).

Burden of proof. — State has burden of proving that seizure of appellee's breath resulting in intoximeter results was in accordance with mandated procedures. State v. Johnston, 160 Ga. App. 71, 286 S.E.2d 47 (1981), aff'd, 249 Ga. 413, 291 S.E.2d 543 (1982).

In the absence of proof that the equipment utilized in the test is of the approved type under Department of Public Safety rules or has the approval of the Director of the Division of Forensic Sciences of the Georgia Bureau of Investigation the test results of the intoximeter are inadmissible. State v. Johnston, 160 Ga. App. 71, 286 S.E.2d 47 (1981), aff'd, 249 Ga. 413, 291 S.E.2d 543 (1982).

Regardless of whether the issue is addressed in a hearing on a "motion in limine" or on a "motion to suppress," the state bears the burden of proving that its evidence meets the requirements of O.C.G.A. § 40-6-392 when the state seeks to prove a defendant's criminal liability by the introduction of evidence of an intoximeter test. McElroy v. State, 173 Ga. App. 685, 327 S.E.2d 805 (1985).

In the absence of testimony by a defendant that the defendant was refused the opportunity for an independent test, the state's burden is merely to show that the defendant was properly advised of the defendant's rights. Tiller v. State, 176 Ga. App. 797, 338 S.E.2d 42 (1985).

Trial court's jury charge on blood alcohol contents over .10 percent and .12 percent under former paragraphs (b)(3) and (b)(4) of O.C.G.A. § 40-6-392, when the defendant was formally charged with violating O.C.G.A. § 40-6-391(a)(1), did not impermissibly shift the burden of proof and allow the jury to convict the defendant of an offense different than the one charged. Waters v. State, 195 Ga. App. 288, 393 S.E.2d 280 (1990), cert. denied, 498 U.S. 970, 111 S. Ct. 437, 112 L. Ed. 2d 420 (1990).

State may meet the burden of establishing the sufficiency of blood-alcohol tests by introducing a certificate of the manufacturer of the machine and certificates of officers who administered the test for the current charge and who performed the test on the defendant for a prior similar transaction. Conner v. State, 205 Ga. App. 564, 422 S.E.2d 872, cert. denied, 205 Ga. App. 899, 422 S.E.2d 872 (1992).

Subpoenas. — Defendant has the right to subpoena memos, notes, graphs, computer print-outs, and other data relied upon by a state crime lab chemist in obtaining gas chromatography test results, but a trial court has discretion to quash an unreasonable and oppressive subpoena. Townsend v. State, 236 Ga. App. 530, 511 S.E.2d 587 (1999).

Prejudicial error was not shown when the trial granted a motion to quash a subpoena for production of test reports, but ruled that an expert forensic chemist of the defendant's selection would be permitted to examine a sample of the blood and directed that a sample be released to the defendant since the court thereby provided the defendant with the means to effectively challenge the validity of the sample and accuracy of the state's testing procedures and results. Townsend v. State, 236 Ga. App. 530, 511 S.E.2d 587 (1999).

Subpoena of personal medical records. — In the absence of waiver and

without notice to the accused or an opportunity to object, it was not "appropriate" under former O.C.G.A. § 24-9-40 (see now O.C.G.A. § 24-12-1) for the state in a criminal case to subpoena a defendant's own personal medical records which were then in the possession of a physician, hospital, or health care facility. King v. State, 272 Ga. 788, 535 S.E.2d 492 (2000).

Autointoximeter's accuracy demonstrable to jury. — Court may explain to jurors that autointoximeter is considered accurate if properly operated without violating O.C.G.A. § 17-8-55 (see O.C.G.A. § 17-8-57), which provides: "It is error for any judge in any criminal case, during its progress …, to express or intimate his opinion as to what has or has not been proved or as to the guilt of the accused." Henson v. State, 168 Ga. App. 210, 308 S.E.2d 555 (1983).

Defendant's rights under paragraph (a)(4). — In a prosecution for driving with an unlawful blood-alcohol level, the defendant was entitled to subpoena from the state's forensic chemist the chain of custody documents and other documentation which pertained to the actual test of the defendant's blood including gas chromatograph results. Bazemore v. State, 244 Ga. App. 460, 535 S.E.2d 830 (2000).

In a prosecution for driving with an unlawful blood-alcohol level, documents which pertained to the qualifications of the person who drew the defendant's blood and certification documentation for the machine were not sufficiently relevant to be discovered by the defendant. Bazemore v. State, 244 Ga. App. 460, 535 S.E.2d 830 (2000).

Officer's testimony as to qualifications. — Oral testimony by a police officer that the officer was certified to operate a particular model of intoximeter at the time the officer tested the defendant was not barred by the best evidence rule. Clarke v. State, 170 Ga. App. 852, 319 S.E.2d 16 (1984).

Testimony of officer who read implied consent notice. — In a prosecution for driving under the influence, when the state rested without producing the testimony of the officer who read the defendant the implied consent notice required by O.C.G.A. § 40-6-392(a)(4), the trial court did not abuse the court's discretion by allowing the state to reopen the state's case to produce this officer's testimony because the defendant had notice that this officer was a witness and could anticipate that the officer would be called to testify, and the defendant could not show that the trial court's actions prejudiced the defendant's ability to present a defense. Painter v. State, 263 Ga. App. 407, 587 S.E.2d 867 (2003).

Implied consent rules valid against criminal defendants. — Amendments adopted since 1980 to the implied consent rules, issued under the auspices of the Department of Public Safety but in fact formulated by the Division of Forensic Sciences pursuant to the mandate of O.C.G.A. § 40-6-392, have been promulgated in substantial compliance with pertinent statutory requirements and thus are valid and effective against the defendants in a criminal action. State v. Holton, 173 Ga. App. 241, 326 S.E.2d 235 (1984).

Relevance of later machine accuracy test. — Testing of the intoximeter machine nearly five months after the charged incident would not prove that the machine gave an inaccurate reading for the defendant since the original test's condition, including the defendant's own physical condition, could not have been duplicated. Walters v. State, 195 Ga. App. 434, 394 S.E.2d 105 (1990).

Challenge to reliability of test. — When the state lays the proper foundation for the introduction of intoximeter test results, the defendant's challenge to the reliability of the test results does not affect the admissibility of the results but goes merely to the weight to be placed on the results by the jury. Sanders v. State, 176 Ga. App. 869, 338 S.E.2d 5 (1985).

Discrepancy in testimony as to a driver's request for an additional test simply creates a question of credibility for the trial court on a motion to suppress. Cunningham v. State, 255 Ga. 35, 334 S.E.2d 656 (1985); Curtis v. State, 182 Ga. App. 388, 355 S.E.2d 741 (1987).

Conflicting testimony of driver and arresting officer concerning advisement of right to independent test was a matter of credibility to be resolved by

Judicial Proceedings (Cont'd)

the trial court, no showing of an affirmative waiver being required of the state. Osteen v. State, 176 Ga. App. 722, 337 S.E.2d 369 (1985).

When there is a conflict over whether a defendant was advised of the defendant's right to an additional test, resolution of the question of credibility is for the trial court. McNair v. State, 177 Ga. App. 502, 339 S.E.2d 773 (1986); Lovell v. State, 178 Ga. App. 366, 343 S.E.2d 414 (1986).

Motion to suppress results denied. — When, contrary to other evidence, the defendant testified that the implied consent warnings were not read to the defendant at the scene of the defendant's arrest or at the sheriff's office and that the defendant had the money to pay for such a test, but two or three deputies told the defendant that the defendant did not want the test because the test cost too much, and defendant contended it was error to deny the defendant's motion to suppress the results of the intoximeter test because the defendant was denied the defendant's right to an independent blood test, the Court of Appeals would not reverse the ruling of the trial court because the evidence did not demand a finding contrary to the judge's determination. Branch v. State, 182 Ga. App. 818, 357 S.E.2d 136 (1987).

Driving on wrong side of road justified stop. — Investigating officer had a reasonable articulable suspicion to stop the defendant's vehicle based on a violation of O.C.G.A. § 40-6-40 for driving on the wrong side of the road; hence, the defendant's motion to suppress was properly denied on this ground. Dunbar v. State, 283 Ga. App. 872, 643 S.E.2d 292 (2007).

Motion to exclude proper. — When it was uncontroverted in three consolidated cases that the arresting officer did not inform the defendant of the defendant's right, after submission to the state-administered test, to have an independent test administered by a qualified person of the defendant's own choosing, the trial court properly granted the defendant-appellees' motions to exclude the results of the state-administered tests or the refusal to submit to such testing. State v. Hassett, 216 Ga. App. 114, 453 S.E.2d 508 (1995).

Trial court error not warranting reversal. — Trial court erred in allowing the officer to respond to a question regarding the legal limit for DUI; however, this error did not warrant reversal. Taylor v. State, 204 Ga. App. 489, 419 S.E.2d 745 (1992).

Charge as to admissibility of evidence of refusal to take test. — Giving the state's requested charge that the appellant's refusal to permit a chemical analysis of the appellant's blood, breath, or urine was admissible in evidence was not error. Wyatt v. State, 179 Ga. App. 327, 346 S.E.2d 387 (1986).

Appeals. — When the defendant accepted the benefit of the trial court's ruling suppressing the results of the chemical tests administered by the state, and finding that the defendant was capable of withdrawing defendant's consent to testing and indeed refused the request to test, the defendant was prohibited on appeal to reverse that position and argue that the defendant did not refuse. Gantt v. State, 263 Ga. App. 102, 587 S.E.2d 255 (2003).

Jury Instructions

Instruction on presumption of sobriety. — Trial court did not err by failing to give the jury the defendant's requested instruction on the statutory presumption of sobriety as set forth in O.C.G.A. § 40-6-392(b)(1) because the defendant's request was predicated upon the driving under the influence (DUI) less safe count of the indictment, of which the jury found the defendant not guilty; O.C.G.A. § 40-6-392(b)(1) applied only to DUI less safe violations and did not entitle the defendant to a presumption of sobriety with respect to the defendant's reckless driving violation. Travis v. State, 314 Ga. App. 280, 724 S.E.2d 15 (2012).

Charging jury as to rebuttable nature of presumptions. — When the trial judge, in instructing the jury on presumption under Ga. L. 1974, p. 633, § 1 (see O.C.G.A. § 40-6-392), failed to instruct that such presumption was rebuttable, and when there was no request for more specific instructions, such error, if any,

was harmless in light of the defendant's admission that the defendant was far under the influence of alcohol at time the defendant was stopped. Prickett v. State, 155 Ga. App. 668, 272 S.E.2d 534 (1980).

When the trial court in the case before the court charged that the presumption arising from the results of a breathalyzer test was rebuttable, the Court of Appeals rejected the argument that the charge was either burden shifting in the first instance or that the charge became so because the defendant offered no evidence in the defendant's own behalf. Brown v. State, 174 Ga. App. 470, 330 S.E.2d 408 (1985).

No explanation to the jury about the rebuttal of presumptions in O.C.G.A. § 40-6-392 was necessary when the trial court referred to the presumptions in the court's charge to the jury, but also clearly stated that under the state's accusation against the defendant those presumptions did not apply. Stewart v. State, 176 Ga. App. 148, 335 S.E.2d 603 (1985).

Trial court's jury charge that the presumption arising from an alcohol concentration of 0.05 or less is rebuttable was correct and did not shift the burden of proof to the defendant. Cornell v. State, 239 Ga. App. 127, 520 S.E.2d 782 (1999).

Generalized instructions insufficient. — In a prosecution for driving under the influence - less safe driver, it was error to charge to the jury that if the jury believed the defendant's alcohol concentration was .08 percent or more "it shall be inferred" that the defendant was under the influence of alcohol, and the giving of generalized instructions regarding the state's burden and the jury's responsibilities was insufficient to overcome the mandatory nature of the instruction. Stepic v. State, 226 Ga. App. 734, 487 S.E.2d 643 (1997).

Charge in language of subsection (b). — Charge in the language of O.C.G.A. § 40-6-392(b) that if the blood level exceeds certain amounts there shall be a presumption that the person was under the influence of alcohol as prohibited by provisions of O.C.G.A. § 40-6-391(a) is impermissible burden shifting but, even if improperly given, it is not relevant to the determination of any crime defined in that subsection and does not require reversal. Knapp v. State, 229 Ga. App. 175, 493 S.E.2d 583 (1997).

Instruction on equipment. — Instruction: "I charge you that breath alcohol measuring equipment approved by the State Crime Lab is considered accurate if properly operated" was a correct statement of the law and did not invade the province of the jury or shift the burden of proof. Johnson v. State, 231 Ga. App. 215, 498 S.E.2d 778 (1998).

As certificates of inspection regarding an Intoxilyzer 5000 used in the defendant's criminal matter were properly admitted pursuant to the business records exception to the hearsay rule under former O.C.G.A. § 24-3-14 (see now O.C.G.A. § 24-8-803) and O.C.G.A. § 40-6-392(f), the trial court's refusal to given the limiting instruction regarding their use, as requested by the defendant, was not reversible error. Neal v. State, 281 Ga. App. 261, 635 S.E.2d 864 (2006).

In a prosecution for driving with an alcohol concentration greater than 0.08 grams, O.C.G.A. § 40-6-391(a)(5), the trial court properly instructed the jury that equipment used to measure alcohol content that was approved by the Georgia State Crime Lab was considered accurate if properly operated as this was simply an explanation of O.C.G.A. § 40-6-392(a)(1)(A). Goethe v. State, 294 Ga. App. 232, 668 S.E.2d 859 (2008).

Instruction on inferring guilt from refusal to submit to breath test. — Instruction which stated "in any criminal trial the refusal of the defendant to permit a chemical analysis to be made of her blood, breath, urine or other bodily substances at the time of her arrest shall be admissible into evidence against her" did not mandate the jury to infer guilt from the defendant's refusal. Rayburn v. State, 234 Ga. App. 482, 506 S.E.2d 876 (1998).

Trial court did not err in charging the jury during the defendant's trial for driving under the influence of alcohol to the extent that it was less safe for the defendant to drive because the challenged charge immediately followed a proper charge regarding the implications of a defendant's refusal to submit to tests, and the defendant failed to show what harm the defendant suffered as the result of the

Jury Instructions (Cont'd)

giving of the jury instruction; the charge was adjusted to the evidence because the testimony adduced at trial showed that the defendant was speeding immediately prior to the defendant's arrest, and the charge properly left the determination of whether the defendant was impaired in the hands of the jury. Crusselle v. State, 303 Ga. App. 879, 694 S.E.2d 707 (2010).

Jury instruction in error. — It was reversible error when the judge instructed the jury that "if there was at that time an alcohol concentration of 0.08 grams or more, it shall be inferred that the person was under the influence of alcohol as prohibited by Code Section 40-6-391" since, although this paraphrased the language of paragraph (b)(3) of O.C.G.A. § 40-6-392, it impermissibly shifted the burden to the defendant to prove the defendant's innocence of the driving under the influence charge under O.C.G.A. § 40-6-391(a)(1). Davis v. State, 236 Ga. App. 32, 510 S.E.2d 889 (1999).

Instruction that test results "valid". — In a case in which the defendant was convicted of driving under the influence of alcohol with an unlawful blood alcohol concentration, the trial court erred in charging the jury since, as given, the charge implied that the analysis or result for a particular individual "shall be considered valid," and mandated that the jury find valid the test results showing that the defendant's blood alcohol level exceeded the legal limit. Bailey v. State, 323 Ga. App. 424, 747 S.E.2d 210 (2013).

Instructions on Spanish speaking individuals. — Instruction that the implied consent warning does not have to be read in Spanish to a Spanish-speaking individual was authorized under the authority of State v. Tosar, 180 Ga. App. 885, 350 S.E.2d 811 (1986). Hernandez v. State, 238 Ga. App. 796, 520 S.E.2d 698 (1999).

Even in view of evidence that a Spanish speaking defendant did not understand implied consent warnings, the trial court's instruction that the defendant's refusal to submit to testing could be considered as evidence creating an inference that the test would show the presence of alcohol or drugs was not error since the court also charged that this inference was rebuttable. Hernandez v. State, 238 Ga. App. 796, 520 S.E.2d 698 (1999).

Instruction based on presumption of section not required. — Criminal defendant was not entitled to jury instructions based on the presumptions in O.C.G.A. § 40-6-392 when the defendant was on trial for vehicular homicide, and evidence of the defendant's blood-alcohol level was not admitted to show that the defendant was driving under the influence but was admitted as a circumstance of the defendant's arrest for vehicular homicide through reckless driving. Collum v. State, 195 Ga. App. 42, 392 S.E.2d 301 (1990).

Charge to jury may be derived entirely from wording of statute. — Trial court was not in error with respect to the defendant when the court's charge to the jury was derived entirely from the wording of O.C.G.A. § 40-6-392, since such a charge is not conclusive as to the issue of whether the defendant had been under the influence of alcohol at the time the defendant drove the automobile. Morris v. State, 172 Ga. App. 832, 324 S.E.2d 793 (1984).

Jury charge under paragraph (b)(3) erroneous when defendant tried under other provision. — Trial court's error in charging the burden-shifting language of former paragraph (b)(3) of O.C.G.A. § 40-6-392 required the reversal of the defendant's conviction inasmuch as the defendant was tried only for violating O.C.G.A. § 40-6-391(a)(1). King v. State, 200 Ga. App. 511, 408 S.E.2d 509 (1991).

Superfluous language in jury charge not harmful. — Although jury instructions concerning being a less safe driver under O.C.G.A. § 40-6-391(a)(1)-(3) and the inferences listed in paragraphs (b)(1)-(3) (see now paragraph (b)91), (b)(2)) are superfluous in a prosecution under O.C.G.A. § 40-6-391 for driving while under the influence by having .12 percent or more alcohol in the blood, the additional language is not harmful when the jury is informed of the legal ramifications of a blood-alcohol content of over .12 percent and there is evidence that the defendant's blood-alcohol content was greater than .12 percent.

Courson v. State, 184 Ga. App. 793, 363 S.E.2d 41 (1987).

Erroneous charge on conclusions drawn from various blood alcohol levels. — Court's erroneous charge on the conclusions that may be drawn according to various blood alcohol levels using the prohibited term "presumption" was not corrected by the court's subsequent amendment substituting the term "inference" for the prohibited term. Holcomb v. State, 217 Ga. App. 482, 458 S.E.2d 159 (1995).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 68-1625.1, are included in the annotations for this Code section.

Time of applicability. — Provisions of O.C.G.A. § 40-6-392 which merely provide new trial procedures may be applied to all cases tried on or after September 1, 1983, regardless of when the violations occurred. All other provisions can be applied only to defendants whose alleged illegal conduct occurred on or after September 1, 1983. 1983 Op. Att'y Gen. No. U83-52.

In context of former Code 1933, § 64B-306 (see now O.C.G.A. § 40-5-55), driver has no election of chemical test to be administered. 1977 Op. Att'y Gen. No. 77-21.

Driver must be informed of the driver's right to an additional test so that the driver may challenge the accuracy of the chemical test administered by the state. 1977 Op. Att'y Gen. No. 77-21.

Responsibility of obtaining the additional tests rests with the driver. 1977 Op. Att'y Gen. No. 77-21.

Driver may designate additional test. — It is only with regard to the independent or additional test that the driver may designate the chemical test to be administered. 1977 Op. Att'y Gen. No. 77-21.

For legal status and effect of alcolyzer test, see 1972 Op. Att'y Gen. No. 72-46 (rendered under former Code 1933, § 68-1625.1).

Evidence admissible in any action. — Evidence of the amount of alcohol or drug in the tested person's blood is admissible in any civil or criminal action arising out of the acts alleged to have been committed while the person was driving under the influence of alcohol or other drugs. 1976 Op. Att'y Gen. No. 76-11.

When test results given to person tested. — If the person given a blood alcohol test requests the results of the test, then a copy of the blood-alcohol report should be given to that person or their attorney; copies of blood-alcohol reports should not be distributed under any other circumstances unless a subpoena is issued from a court of competent jurisdiction. 1976 Op. Att'y Gen. No. 76-11.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 350 et seq. 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 955 et seq.

Am. Jur. Proof of Facts. — Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing, 4 POF3d 229.

Proof and Disproof of Alcohol-Induced Driving Impairment Through Evidence of Observable Intoxication and Coordination Testing, 9 POF3d 459.

Am. Jur. Trials. — The Impaired Driver — Ascertaining Physical Condition, 4 Am. Jur. Trials 615.

Defense on Charge of Driving While Intoxicated, 19 Am. Jur. Trials 123.

Failure to Protect Public From an Intoxicated Driver, 34 Am. Jur. Trials 499.

Driving Under the Influence: Tactical Considerations in Sobriety Checkpoint Cases, 59 Am. Jur. Trials 79.

Trial Defenses to a Breath Test Score, 70 Am. Jur. Trials 1.

Litigating a Driving While Intoxicated Case, 76 Am. Jur. Trials 213.

C.J.S. — 61A C.J.S., Motor Vehicles, §§ 1592, 1597, 1607.

ALR. — Driving automobile while intoxicated as a substantive criminal offense, 42 A.L.R. 1498; 49 A.L.R. 1392; 68 A.L.R. 1356; 142 A.L.R. 555.

Admissibility and weight of evidence based on scientific test for intoxication or presence of alcohol in system, 127 A.L.R. 1513; 159 A.L.R. 209.

Degree or nature of intoxication for purposes of statute or ordinance making it a criminal offense to operate an automobile while in that condition, 142 A.L.R. 555.

Requiring submission to physical examination or test as violation of constitutional rights, 164 A.L.R. 967; 25 A.L.R.2d 1407.

Validity of legislation creating presumption of intoxication or the like from presence of specified percentage of alcohol in blood, 46 A.L.R.2d 1176.

Qualification as expert to testify as to findings or results of scientific test to determine alcoholic content of blood, 77 A.L.R.2d 971.

Construction and application of statutes creating presumption or other inference of intoxication from specified percentages of alcohol present in system, 16 A.L.R.3d 748.

Admissibility in criminal case of blood alcohol test where blood was taken from unconscious driver, 72 A.L.R.3d 325.

Driving while intoxicated: duty of law enforcement officer to offer suspect chemical sobriety test under implied consent law, 95 A.L.R.3d 710.

Necessity and sufficiency of proof that tests of blood alcohol concentration were conducted in conformance with prescribed methods, 96 A.L.R.3d 745.

Request before submitting to chemical sobriety test to communicate with counsel as refusal to take test, 97 A.L.R.3d 852.

Request for prior administration of additional test as constituting refusal to submit to chemical sobriety test under implied consent law, 98 A.L.R.3d 572.

Evidence of automobile passenger's blood-alcohol level as admissible in support of defense that passenger was contributorily negligent or assumed risk of automobile accident, 5 A.L.R.4th 1194.

Admissibility in criminal case of blood-alcohol test where blood was taken despite defendant's objections or refusal to submit to test, 14 A.L.R.4th 690.

Admissibility in criminal case of evidence that accused refused to take test of intoxication, 26 A.L.R.4th 1112.

Drunk driving: Motorist's right to private sobriety test, 45 A.L.R.4th 11.

Validity, construction, and application of statutes directly proscribing driving with blood-alcohol level in excess of established percentage, 54 A.L.R.4th 149.

Sufficiency of showing of physical inability to take tests for driving while intoxicated to justify refusal, 68 A.L.R.4th 776.

Challenges to use of breath tests for drunk drivers based on claim that partition or conversion ratio between measured breath alcohol and actual blood alcohol is inaccurate, 90 A.L.R.4th 155.

Driving while intoxicated: subsequent consent to sobriety test as affecting initial refusal, 28 A.L.R.5th 459.

Authentication of blood sample taken from human body for purposes of determining blood alcohol content, 76 A.L.R.5th 1.

Authentication of organic nonblood specimen taken from human body for purposes of analysis, 78 A.L.R.5th 1.

Admissibility and sufficiency of extrapolation evidence in DUI prosecutions, 119 A.L.R.5th 379.

40-6-393. Homicide by vehicle.

(a) Any person who, without malice aforethought, causes the death of another person through the violation of subsection (a) of Code Section 40-6-163, Code Section 40-6-390 or 40-6-391, or subsection (a) of Code Section 40-6-395 commits the offense of homicide by vehicle in the first degree and, upon conviction thereof, shall be punished by imprisonment for not less than three years nor more than 15 years.

(b) Any driver of a motor vehicle who, without malice aforethought, causes an accident which causes the death of another person and leaves the scene of the accident in violation of subsection (b) of Code Section 40-6-270 commits the offense of homicide by vehicle in the first degree and, upon conviction thereof, shall be punished by imprisonment for not less than three years nor more than 15 years.

(c) Any person who causes the death of another person, without an intention to do so, by violating any provision of this title other than subsection (a) of Code Section 40-6-163, subsection (b) of Code Section 40-6-270, Code Section 40-6-390 or 40-6-391, or subsection (a) of Code Section 40-6-395 commits the offense of homicide by vehicle in the second degree when such violation is the cause of said death and, upon conviction thereof, shall be punished as provided in Code Section 17-10-3.

(d) Any person who, after being declared a habitual violator as determined under Code Section 40-5-58 and while such person's license is in revocation, causes the death of another person, without malice aforethought, by operation of a motor vehicle, commits the offense of homicide by vehicle in the first degree and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 20 years, and adjudication of guilt or imposition of such sentence for a person so convicted may be suspended, probated, deferred, or withheld but only after such person shall have served at least one year in the penitentiary. (Code 1933, § 68A-903, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1976, p. 977, § 1; Ga. L. 1982, p. 1694, §§ 1, 3; Ga. L. 1983, p. 1000, § 15; Ga. L. 1990, p. 2048, § 5; Ga. L. 1992, p. 2093, § 1; Ga. L. 1999, p. 391, § 9; Ga. L. 2008, p. 1164, § 2/SB 529.)

Cross references. — Homicide generally, § 16-5-1 et seq. Suspension of driver's license for conviction for homicide by vehicle, § 40-5-54. Maintenance of separate causes of action for personal injury and property damage caused by single act of wrongful or negligent operation of motor vehicle, § 51-1-32.

Editor's notes. — Ga. L. 1999, p. 391, § 2, not codified by the General Assembly, provides: "This Act shall be known and may be cited as 'Heidi's Law'."

Ga. L. 2008, p. 1164, § 6/SB 529, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all offenses committed on or after July 1, 2008.

Law reviews. — For article discussing developments in Georgia law of homicide by vehicle in 1977, see 29 Mercer L. Rev. 55 (1977). For survey article on criminal law and procedure for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 117 (2003).

JUDICIAL DECISIONS

Analysis

General Consideration
"Person"
Pleadings
Evidence

JURY INSTRUCTIONS
SENTENCING

General Consideration

Constitutionality. — Paragraph (a)(5) (now (a)(6)) of O.C.G.A. § 40-6-391 is not void as creating an impermissible irrebuttable presumption that a person with any amount of marijuana in his or her system is an unsafe driver. Stevenson v. State, 264 Ga. 892, 453 S.E.2d 18 (1995).

Classification of homicides by vehicle constitutional. — Classification by the General Assembly of homicides by vehicle resulting from violations of Ga. L. 1974, p. 633 (see now O.C.G.A. Ch. 6, T. 40) differently from other homicides in the commission of unlawful acts is a constitutional classification. State v. Edwards, 236 Ga. 104, 222 S.E.2d 385 (1976).

Classification did not violate equal protection. — Trial court did not err in denying the defendant's motion in arrest of judgment since the indictment issued against the defendant for first-degree vehicular homicide was not void because the predicate offense mentioned in it, O.C.G.A. § 40-6-391, made it easier to convict those drivers who were under 21-years-old and who had an alcohol concentration of .02 or more since the disparate treatment based on age did not violate the defendant's equal protection rights under the state and federal constitutions; rather the predicate offense was rationally related to the state's legitimate interest in deterring younger, more inexperienced drivers from drinking and driving. David v. State, 261 Ga. App. 468, 583 S.E.2d 135 (2003).

Reckless driving charges not affected by unconstitutionality of § 40-6-391(a)(6). — Fact that O.C.G.A. § 40-6-391(a)(6) was held unconstitutional as a denial of equal protection did not apply to require dismissal of charges against the defendant that the defendant committed reckless driving in violation of O.C.G.A. § 40-6-390(a) and first degree vehicular homicide in violation of O.C.G.A. § 40-6-393(a) by reckless driving; the charges merely included the fact that marijuana was found in the defendant's blood because it was relevant to a determination that the defendant drove "in reckless disregard for the safety of persons or property." Ayers v. State, 272 Ga. 733, 534 S.E.2d 76 (2000).

Offense created a foreseeable risk of death by definition. — Although a jury was not explicitly instructed that the jury was required to find that a defendant was acting in a dangerous manner in order to convict the defendant of felony murder based on theft by receiving, the jury did in fact make such a finding when the jury found the defendant guilty of vehicular homicide by reckless driving because that offense, by definition, created a foreseeable risk of death. State v. Kelly, 290 Ga. 29, 718 S.E.2d 232 (2011).

Conduct of accused must be cause of death. — Subsections (a) and (b) of O.C.G.A. § 40-6-393 both provide that conduct of an accused must be the cause of death in order to warrant a conviction. Williams v. State, 165 Ga. App. 831, 302 S.E.2d 736 (1983).

Because the evidence presented by the state was insufficient to convict the defendant of first-degree vehicular homicide under O.C.G.A. § 40-6-393(a) predicated on a violation of O.C.G.A. § 40-6-270(b), and specifically, the state failed to prove that the defendant's failure to remain at the scene of the accident contributed to the death of the victim, but instead the evidence showed that the victim died on impact, the defendant's vehicular homicide conviction was reversed and the case was remanded for resentencing on the lesser included offense of felony hit-and-run. Henry v. State, 284 Ga. App. 893, 645 S.E.2d 32 (2007).

Section provides that homicide either felony or misdemeanor. — Subsection (a) of Ga. L. 1974, p. 633, § 1 (see now O.C.G.A. § 40-6-393) provides that "reckless driving" resulting in death is homicide by vehicle in the first degree and is a felony. Subsection (b) of those provisions generally provides that other homicides by vehicle are of the second degree and is a misdemeanor. Berrian v. State, 139 Ga. App. 571, 228 S.E.2d 737 (1976).

Application of subsection (b). — Implicit in the directive of subsection (b) of O.C.G.A. § 40-6-393, pertaining to the violation of any provision of the title, is the requirement that the provision set forth a specific violation. State v. Nix, 220 Ga. App. 651, 469 S.E.2d 497 (1996).

Elements that must be proved. — Language of subsection (c) of O.C.G.A. § 40-6-393 clearly requires that the state prove not only that the accused was operating a motor vehicle after having been declared a habitual violator, but that such act caused the death of another person. Everett v. State, 216 Ga. App. 444, 454 S.E.2d 620 (1995).

Use of DUI statute as predicate offense. — Trial court did not err in denying the defendant's motion in arrest of judgment as the indictment sufficiently alleged that the defendant violated O.C.G.A. § 40-6-393(a) and caused the death of another person through the violation of O.C.G.A. § 40-6-391, the predicate offense, and the indictment included the causation element by alleging that the violation of O.C.G.A. § 40-6-391 was the cause of the passenger's death after the defendant, 17-years-old, lost control of the defendant's vehicle while driving with a blood alcohol level of .08. David v. State, 261 Ga. App. 468, 583 S.E.2d 135 (2003).

Because DUI was a predicate offense set out in the indictment against the defendant only as an element of the offense of vehicular homicide, in violation of O.C.G.A. § 40-6-393(a), and not as a separate crime for which the defendant risked separate criminal liability, a trial court did not err by denying the defendant's plea in bar because, as a felony offense, prosecution on the vehicular homicide counts were commenced within four years after the commission of the crime as required by O.C.G.A. § 17-3-1(c); the expiration of the limitations period for the driving under the influence counts did not preclude a prosecution for vehicular homicide. Leachman v. State, 286 Ga. App. 708, 649 S.E.2d 886 (2007), cert. denied, No. S07C1816, 2007 Ga. LEXIS 768 (Ga. 2007).

Predicating murder charge on reckless disregard. — Murder charge cannot be predicated upon homicide resulting from "reckless disregard for … safety of persons," as that phrase is used in the reckless driving provision. Foster v. State, 239 Ga. 302, 236 S.E.2d 644 (1977).

Lesser included offenses. — Driving on the wrong side of the road is a lesser included offense of second degree vehicular homicide. Rank v. State, 179 Ga. App. 28, 345 S.E.2d 75 (1986).

Offense of driving under the influence was a lesser included offense of first degree vehicular homicide, and conviction of both offenses was proscribed. Duncan v. State, 183 Ga. App. 368, 358 S.E.2d 910 (1987).

Defendant could not be prosecuted for the offense of improper passing and vehicular homicide since the defendant had already pled guilty to a charge of improper passing and paid a fine because improper passing was necessarily a lesser included offense of vehicular homicide. State v. Williams, 214 Ga. App. 701, 448 S.E.2d 700 (1994).

Rule of lenity did not apply to hit-and-run and vehicular homicide. — Rule of lenity did not apply to the two felony charges of hit-and-run under O.C.G.A. § 40-6-270(b) and vehicular homicide under O.C.G.A. § 40-6-393(b) because it was essential to the rule that both crimes be proved with the same evidence. The element of causation of the accident was essential to prove first degree vehicular homicide, but was not necessary to prove felony hit-and-run. Rouen v. State, 312 Ga. App. 8, 717 S.E.2d 519 (2011).

Pre-1979 section was not arbitrary, even though there was no crime punishing serious physical injury as reckless driving and driving under the influence of alcohol were crimes in and of themselves and when applicable where no death resulted. Head v. State, 246 Ga. 360, 271 S.E.2d 452 (1980).

Adequate notice. — Notice given that driving under the influence of alcohol is a crime is adequate. Head v. State, 246 Ga. 360, 271 S.E.2d 452 (1980).

Mislabeled count. — Trial court erred in entering judgment and imposing a sentence on an allegedly mislabeled count under the guise that the jury found the defendant guilty of homicide by vehicle in the first degree instead of involuntary

General Consideration (Cont'd)

manslaughter, when the jury specifically acquitted the defendant on another charge of homicide by vehicle in the first degree based upon the same act and against the same victim. Taylor v. State, 295 Ga. App. 689, 673 S.E.2d 7, aff'd, 286 Ga. 328, 687 S.E.2d 409 (2009).

Statutory basis for vehicular homicide prosecution. — Vehicular homicide must now be prosecuted under Ga. L. 1976, p. 977 § 1, (see now O.C.G.A. § 40-6-393) or the murder provision, former Code 1933, § 26-110 (see now O.C.G.A. § 16-5-1). State v. Foster, 141 Ga. App. 258, 233 S.E.2d 215, aff'd, 239 Ga. 302, 236 S.E.2d 644 (1977).

O.C.G.A. § 40-6-393 does not preclude a malice murder charge in vehicular deaths. Chester v. State, 262 Ga. 85, 414 S.E.2d 477 (1992).

Homicide caused by violating reckless driving provision, Ga. L. 1974, p. 633, § 1 (see now O.C.G.A. § 40-6-390), must be prosecuted under Ga. L. 1976, p. 977, § 1 (see now O.C.G.A. § 40-6-393), and not as for murder or involuntary manslaughter. State v. Foster, 141 Ga. App. 258, 233 S.E.2d 215, aff'd, 239 Ga. 302, 236 S.E.2d 644 (1977).

Offenses which do not underlie second degree vehicular homicide. — Neither driving under the influence nor reckless driving can act as the underlying traffic offense for a conviction of second degree vehicular homicide. McKinney v. State, 204 Ga. App. 323, 419 S.E.2d 339 (1992).

Evidence of reckless driving supported vehicular homicide conviction. — Evidence that the defendant drove after the defendant admittedly consumed methadone, Xanax (alprazolam), and Percocet and that the defendant crossed over the center line of the road in violation of O.C.G.A. § 40-6-40(a) and collided with another vehicle, killing the driver, was sufficient to show the defendant drove while impaired and drove recklessly under O.C.G.A. § 40-6-390(a), supporting the defendant's vehicular homicide conviction under O.C.G.A. § 40-6-393(a). Wright v. State, 304 Ga. App. 651, 697 S.E.2d 296 (2010).

Guilty verdicts not mutually exclusive. — Although verdicts finding the defendant guilty of first degree vehicular homicide in the deaths of two victims and of second degree vehicular homicide in the deaths of two other victims were inconsistent, the verdicts were not mutually exclusive based on the contention that, by finding second degree vehicular homicide, the jury must have found that the defendant did not drive recklessly, thereby excluding the defendant's conviction for first degree vehicular homicide. Davis v. State, 245 Ga. App. 402, 538 S.E.2d 67 (2000).

Verdict not inconsistent with felony murder verdict. — Verdicts convicting a defendant of felony murder and vehicular homicide were not inconsistent because the felony murder, and the underlying aggravated assault, were based on the defendant driving a vehicle at the victim's vehicle, while the vehicular homicide charge was based on the defendant causing the victim's death by intentionally changing lanes when it was not safe to do so, meaning that the two crimes were based on distinct underlying acts, and it was neither legally nor logically impossible to convict the defendant of both crimes. Mills v. State, 280 Ga. 232, 626 S.E.2d 495 (2006).

Intent. — When the case arose from an intersection collision between a car driven by the defendant and another car, a red Mustang, and when the defense's contentions at trial were that the defendant thought the light was green, that the defendant had no intention of running a red light or of causing the victim's death, and that if the defendant did run the red light, it was the result of legal mistake or accident, the trial court did not err by charging the jury on the intent required to commit the offenses charged; the state was required to prove the intent to do the act which resulted in the violation of the law and not the intent to commit the crime itself. Hoffer v. State, 192 Ga. App. 378, 384 S.E.2d 902, cert. denied, 192 Ga. App. 902, 384 S.E.2d 902 (1989).

Involuntary manslaughter distinguished. — Trial court did not err in failing to compel the state to prosecute the defendant under the involuntary manslaughter statute rather than the vehicu-

lar homicide statute for the General Assembly made a rational distinction between the two offenses. Williams v. State, 171 Ga. App. 546, 320 S.E.2d 389 (1984).

Jurisdiction. — As the focus of a jurisdictional statute was a charge against a specific person, it divested a probate court of jurisdiction over an underlying misdemeanor offense, like reckless driving, when the person was charged with felony vehicular homicide. State v. Perkins, 276 Ga. 621, 580 S.E.2d 523 (2003).

Transfer of case involving juveniles to superior court. — Evidence that a juvenile had a history of using marijuana and other drugs, had used marijuana before the juvenile lost control of a car the juvenile was driving while racing another car on a public street, causing a multi-car collision in which two people died, had challenged other people to automobile races on several occasions, violated the conditions of the juvenile's driver's license by driving with a non-family member, and used drugs after the accident was sufficient to support the juvenile court's judgment that the juvenile was not amenable to treatment in the juvenile court system and that the interests of the juvenile and the community would be better served if the case was transferred to the superior court. In the Interest of W.N.J., 268 Ga. App. 637, 602 S.E.2d 173 (2004).

Application to nondrivers. — Nothing in the statutory language of O.C.G.A. § 40-6-393(c) prohibits a vehicular homicide conviction against a pedestrian or a non-driver. Indeed, an individual may be a party to a violation of the traffic laws without driving. Nelson v. State, 317 Ga. App. 527, 731 S.E.2d 770 (2012).

Evidence insufficient to show for conviction based on failure to stop and render aid. — Defendant was entitled to have the conviction for homicide by vehicle based on failure to stop and render aid set aside because there was no evidence that the victim would have survived the injuries if the defendant had stopped to assist the victim. Walker v. State, 293 Ga. 709, 749 S.E.2d 663 (2013).

Cited in Torley v. State, 141 Ga. App. 366, 233 S.E.2d 476 (1977); Brock v. State, 146 Ga. App. 78, 245 S.E.2d 442 (1978); Wilson v. State, 147 Ga. App. 560, 249 S.E.2d 361 (1978); Brown v. State, 152 Ga. App. 273, 262 S.E.2d 497 (1979); Gooch v. State, 155 Ga. App. 708, 272 S.E.2d 572 (1980); Department of Human Resources v. J.R.S., 161 Ga. App. 262, 287 S.E.2d 713 (1982); Beaman v. State, 161 Ga. App. 129, 291 S.E.2d 244 (1982); Walker v. State, 163 Ga. App. 638, 295 S.E.2d 574 (1982); Johnson v. State, 170 Ga. App. 433, 317 S.E.2d 213 (1984); Cunningham v. State, 255 Ga. 35, 334 S.E.2d 656 (1985); Cauthen v. State, 177 Ga. App. 565, 340 S.E.2d 199 (1986); Laymac v. State, 181 Ga. App. 737, 353 S.E.2d 559 (1987); Brown v. State, 182 Ga. App. 682, 356 S.E.2d 663 (1987); Watkins v. State, 191 Ga. App. 87, 381 S.E.2d 45 (1989); Scavonne v. State, 193 Ga. App. 603, 388 S.E.2d 735 (1989); Jackson v. State, 198 Ga. App. 261, 401 S.E.2d 289 (1990); State v. Johnson, 270 Ga. 111, 507 S.E.2d 443 (1998); In the Interest of A.L.S., 261 Ga. App. 778, 584 S.E.2d 27 (2003); Roberts v. State, 280 Ga. App. 672, 634 S.E.2d 790 (2006); Eason v. Dozier, 298 Ga. App. 65, 679 S.E.2d 89 (2009).

"Person"

Unborn children not covered. — Legislature did not intend for the term "person" as used in O.C.G.A. § 40-6-393 to encompass unborn children. Billingsley v. State, 183 Ga. App. 850, 360 S.E.2d 451 (1987).

Child who lived eleven hours after delivery was "person." — After the defendant injured a pregnant woman whose child lived approximately 11 hours after being delivered by emergency Caesarean section, the child was a "person" at the time of the child's death and the trial court erred by granting the defendant's general demurrer to a charge of vehicular homicide. State v. Hammett, 192 Ga. App. 224, 384 S.E.2d 220 (1989).

Pleadings

Indictment for felony murder and vehicular homicide. — Defendant could be indicted for vehicular homicide under O.C.G.A. § 40-6-393 and felony murder during the commission of fleeing and attempting to elude a police officer under

Pleadings (Cont'd)

O.C.G.A. § 40-6-395. State v. Tiraboschi, 269 Ga. 812, 504 S.E.2d 689 (1998).

Indictment for reckless driving sufficiently alleged first degree vehicular homicide. — By alleging that a defendant violated the reckless driving statute, O.C.G.A. § 40-6-390, an indictment incorporated the elements of that offense that the defendant drove the vehicle in reckless disregard for the safety of persons or property, and was sufficient to assert an indictment for vehicular homicide in the first degree. State v. Biddle, 303 Ga. App. 384, 693 S.E.2d 539 (2010).

Indictment tracking statute with explanation held sufficient. — When the indictment charging the defendant with homicide by vehicle tracked the language of Ga. L. 1974, p. 633, § 1 (see O.C.G.A. § 40-6-390), accusing the defendant of "driving his motor vehicle in a reckless disregard for the safety of the deceased," but also contained the additional phrase "by failing to grant the right of way to oncoming traffic," a common-sense reading of the entire indictment made it clear that the defendant was being so charged, and the defendant was properly charged. Ivie v. State, 151 Ga. App. 496, 260 S.E.2d 543 (1979).

Indictment unclear as to whether felony or misdemeanor charged. — When the indictment merely charged vehicular homicide and did not set forth that it was of the first degree, or second degree, and in reading the allegations it was not possible to determine if the reckless manner, "failing to yield right of way," amounted to driving the vehicle "in reckless disregard for the safety of persons or property" or charged the defendant with a mere misdemeanor, that is, some other violation of Ga. L. 1974, p. 633 (see now O.C.G.A. Ch. 6, T. 40); thus, the placing of Ga. L. 1976, p. 977, § 1 (see now O.C.G.A. § 40-6-393) in the indictment was insufficient. State v. Black, 149 Ga. App. 389, 254 S.E.2d 506 (1979).

Indictment sufficient. — An indictment that directly tracked the language of subsection (a) of O.C.G.A. § 40-6-393 was sufficient to charge the defendant with felony vehicular homicide. Duggan v. State, 225 Ga. App. 291, 483 S.E.2d 373 (1997).

No additional time to obtain indictment for felony vehicular homicide. — Georgia Court of Appeals properly concluded that O.C.G.A. § 17-3-3 did not give the state six additional months to obtain a second indictment against the appellee for felony vehicular homicide (FVH) after the state's unsuccessful attempt to appeal the dismissal of the FVH count of the first indictment as the appeal did not stay any time limit and the FVH count of the second indictment did not relate back to the date of the first indictment since only a misdemeanor was pending at that point. State v. Outen, 296 Ga. 40, 764 S.E.2d 848 (2014).

Denial of defendant's motion for a directed verdict was not error when the jury was not compelled by the evidence to accept the defendant's theory that the victim was still alive and not dying after the defendant hit the victim and was instead killed by another vehicle. Hood v. State, 193 Ga. App. 701, 389 S.E.2d 264 (1989).

Evidence

Exculpatory information withheld by state. — When the defendant pled guilty to homicide by vehicle and serious injury by vehicle, the defendant should have been allowed to withdraw the plea after the defendant discovered that the state deliberately withheld exculpatory evidence regarding the calculation of the defendant's speed and road conditions. Carroll v. State, 222 Ga. App. 560, 474 S.E.2d 737 (1996).

Testimony that defendant seen intoxicated weeks later near accident scene. — In prosecution for vehicular homicide, predicated on reckless driving and driving under the influence, testimony by a police officer as to finding the defendant in a car, slumped over the steering wheel and obviously drunk, at a service station near the scene of the accident, a few weeks after the accident, was admissible to show the defendant's bent of mind and course of conduct. Head v. State, 246 Ga. 360, 271 S.E.2d 452 (1980).

Defendant not guilty of vehicular homicide. — Evidence was insufficient to

sustain a conviction for vehicular homicide in the second degree since given the position of the cars prior to the accident and given that the defendant's car did not impact with the defendant's deceased sister's car in the accident, there was no direct evidence sufficient to establish that the defendant's commission of a traffic offense was the proximate cause of the deceased's death. McKinney v. State, 204 Ga. App. 323, 419 S.E.2d 339 (1992).

Victim's use of marijuana as contributing factor. — When the victim hit the defendant who was improperly backing onto the highway, the victim's two passengers were killed, and the victim's urinalysis was positive for marijuana use, that evidence indisputably went to the question of whether the victim was impaired and whether that impairment contributed to the accident and the trial court erred when the court prohibited the defendant from presenting the urinalysis evidence or cross-examining the victim about marijuana use prior to the crash. Crowe v. State, 277 Ga. 513, 591 S.E.2d 829 (2004).

Witness' testimony that "person is under the influence." — Charge to the jury stating that "when a witness testifies that a person's under the influence of alcohol, the witness is testifying as to a fact, and is not giving an opinion" was reversible error because the jury was erroneously instructed to consider what was the ultimate personal conclusion of the witnesses as a statement of the existence of the objective fact of the defendant's intoxication. Howard v. State, 177 Ga. App. 589, 340 S.E.2d 212 (1986).

Syringes and Narcotics Anonymous booklet seized from the defendant's car had no probative value to a vehicular homicide charge and could serve only to instill in the jury's mind that the defendant was a user of hard drugs. The inflammatory nature of these items of evidence was further enhanced by the fact that the non-drug related items found in the defendant's car were not introduced into evidence. Nash v. State, 179 Ga. App. 702, 347 S.E.2d 651 (1986).

Admission of a bag of syringes purchased by the defendant being prosecuted for vehicular homicide was not necessary to establish the defendant's precollision route and should not have been admitted as evidence, though such admission was harmless error. Nash v. State, 179 Ga. App. 702, 347 S.E.2d 651 (1986).

Defendant's admission that the defendant had used cocaine the night before the collision was admissible in a prosecution for vehicular homicide. Nash v. State, 179 Ga. App. 702, 347 S.E.2d 651 (1986).

Intoxication making "less safe" driver. — Evidence was presented from which a rational trier of fact could reasonably find the defendant was intoxicated and that defendant's intoxication caused the defendant to be a "less safe" driver which caused the collision and deaths of the defendant's three passengers. Mote v. State, 212 Ga. App. 551, 442 S.E.2d 799 (1994).

In an action in which the defendant is accused of causing the victim's death through a violation of O.C.G.A. § 40-6-391(a)(1), which makes it unlawful for a person to drive or be in actual physical control of any moving vehicle under the influence of alcohol to the extent that it is less safe for the person to drive, it is not required that the defendant be shown to have actually committed an unsafe act. Miller v. State, 236 Ga. App. 825, 513 S.E.2d 27 (1999).

Attempting suicide by collision supported malice murder count. — Defendant, who attempted to commit suicide by driving the defendant's car head-on into another vehicle, whose occupant was killed, could be considered as having an "abandoned and malignant" heart for purposes of implying malice, despite the fact that the primary purpose of the defendant's action was to kill oneself. Anderson v. State, 254 Ga. 470, 330 S.E.2d 592 (1985).

Victim's failure to wear seat belt. — Victim's failure to wear a seat belt can play no role in determining whether the defendant is guilty of vehicular homicide. Whitener v. State, 201 Ga. App. 309, 410 S.E.2d 796, cert. denied, 201 Ga. App. 905, 410 S.E.2d 796 (1991).

Failure to escort oversized mobile home. — Death of another person resulting from a driver's failure to provide a

Evidence (Cont'd)

front escort to an oversized mobile home, as required by the driver's permit, fell squarely within the definition of "homicide by vehicle." Wheat v. State, 171 Ga. App. 583, 320 S.E.2d 808 (1984).

Evidence of prior speeding tickets to show recklessness. — Evidence of two prior speeding tickets and a failure to stop ticket was admissible in the defendant's trial for first degree vehicular homicide in violation of O.C.G.A. § 40-6-393 because the defendant contested recklessness and the tickets were similar in nature to the defendant's reckless conduct and showed the defendant's bent of mind and course of conduct. Taylor v. State, 304 Ga. App. 573, 696 S.E.2d 498 (2010).

Evidence was sufficient to convict of providing alcohol to minor. — Evidence that the defendant encouraged the minor, a 14-year old, to drink and drive when the defendant gave the minor beer and the keys to the defendant's car, knowing that the minor was about to drive, was sufficient to show that the defendant was a party to the minor's driving under the influence to the extent that it was less safe to drive and thus to support conviction for homicide by vehicle in the first degree despite the fact that the defendant was neither driving nor riding in the car that caused the deaths. Guzman v. State, 262 Ga. App. 564, 586 S.E.2d 59 (2003).

Evidence sufficient to withstand motion for directed verdict. — Evidence was sufficient to deny a defendant's motion for a directed verdict in a prosecution for reckless vehicular homicide, reckless driving, DUI, running a red light, and failure to exercise due care when, after smoking crack and arguing with the defendant's former spouse, the defendant struck a car from behind, struck a pedestrian, and collided with a burgundy car, killing the burgundy car's two occupants; the defendant was found slumped over on the front driver's side of the pickup truck the defendant was driving. Hill v. State, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

Evidence sufficient for conviction. — See Quaile v. State, 172 Ga. App. 421, 323 S.E.2d 281 (1984); Whitener v. State, 201 Ga. App. 309, 410 S.E.2d 796, cert. denied, 201 Ga. App. 905, 410 S.E.2d 796 (1991); Tillery v. State, 225 Ga. App. 89, 483 S.E.2d 333 (1997); In re L.P., 228 Ga. App. 786, 492 S.E.2d 757 (1997); Scott v. State, 230 Ga. App. 522, 496 S.E.2d 494 (1998); Holland v. State, 240 Ga. App. 169, 523 S.E.2d 33 (1999); Hill v. State, 250 Ga. App. 9, 550 S.E.2d 422 (2001).

After the defendant admitted having consumed a six-pack of beer approximately two-and-one-half hours prior to the accident, and a forensic chemist testified that the defendant's blood alcohol level at the time of the accident would have been between .105 and .13 percent, the expert testimony was sufficient, pursuant to former subparagraph (b)(3) of O.C.G.A. § 40-6-392, to authorize the conclusion that the defendant was "under the influence of alcohol" within the contemplation of O.C.G.A. § 40-6-391(a)(1). Based on this evidence, combined with the evidence of the defendant's erratic driving, a rational trier of fact could reasonably have found the defendant guilty of vehicular homicide beyond a reasonable doubt. Collum v. State, 186 Ga. App. 822, 368 S.E.2d 578 (1988).

Evidence that the defendant drove a tractor-trailer truck at such a high rate of speed that other vehicles had to move out of the truck's path was sufficient to support the defendant's conviction for homicide by vehicle in the first degree after the defendant's truck crashed into a vehicle and caused the victim's death as the evidence showed that the defendant drove the vehicle in reckless disregard of the safety of others, and that the defendant's recklessness caused the victim's death. Wilkes v. State, 254 Ga. App. 447, 562 S.E.2d 519 (2002).

Evidence supported the defendant's conviction of homicide by vehicle in the first degree, a violation of O.C.G.A. § 40-6-393(a), in relation to the death of a pedestrian who was struck while walking along the shoulder of the road given that: (1) two witnesses saw the defendant's burgundy car with the defendant's license plate strike the victim and drive away; (2) when police traced the car to the defendant, the passenger-side, including the side mirror, was damaged; (3) a fabric imprint consistent with the victim's cloth-

ing was found on the hood of the defendant's car; and (4) the defendant's friend testified that, at around the time of the accident, the defendant drove the defendant's burgundy car away from the friend's home, which was near the accident scene. Jackson v. State, 258 Ga. App. 806, 575 S.E.2d 713 (2002), cert. denied, 540 U.S. 1006, 124 S. Ct. 536, 157 L. Ed. 2d 413 (2003).

Trial court did not err in denying the defendant's motions for directed verdict and new trial because the evidence was sufficient to sustain the defendant's convictions for vehicular homicide and DUI when several witnesses on the scene testified that the defendant was in the driver's seat of the vehicle immediately after the accident. Hunt v. State, 261 Ga. App. 417, 582 S.E.2d 493 (2003).

When evidence that the defendant's blood tested positive for marijuana use within 12 hours of a collision was properly introduced and when testimony by an accident reconstruction expert and a witness indicated that the defendant was traveling recklessly on the wrong side of the road when the defendant struck the victim's vehicle, the defendant was properly found guilty of first-degree vehicular homicide and reckless driving. Upshaw v. State, 264 Ga. App. 878, 592 S.E.2d 523 (2003).

Because, among other evidence, the state patrol's accident reconstruction specialist opined that an officer did a "sudden-snatch left," a sudden evasive maneuver, to avoid a collision between the officer's and the defendant's vehicle during a high speed chase of the defendant, and while doing so, lost control of the vehicle and collided with an oncoming car, the jury could have found that, while fleeing and eluding the officer, the defendant veered the defendant's vehicle toward and into the lane of the officer's vehicle, causing the officer to "sudden-snatch-left," lose control of the vehicle, and collide with the oncoming car; thus, the defendant's conviction of homicide by vehicle was supported by sufficient evidence. Ponder v. State, 274 Ga. App. 93, 616 S.E.2d 857 (2005).

Evidence was sufficient to support the defendant's convictions for driving under the influence, vehicular homicide, reckless driving, and other charges as the evidence showed that the defendant was caught trying to take merchandise from a store, and then struck and killed the victim as the defendant left the store parking lot and turned on to a highway at a time when the defendant admittedly was under the influence of drugs. Cromartie v. State, 275 Ga. App. 209, 620 S.E.2d 413 (2005).

Defendant was properly convicted of causing death while operating a vehicle after having been declared a habitual violator (O.C.G.A. § 40-6-393(c)) although the defendant was eligible to apply for a license under O.C.G.A. § 40-5-62(a)(1), the failure to apply for reinstatement of the license after five years elapsed meant that the revocation remained in effect. Greene v. State, 278 Ga. App. 848, 630 S.E.2d 123 (2006).

State's evidence, both direct and circumstantial, was sufficient to uphold the defendant's conviction of vehicular homicide and that the defendant violated O.C.G.A. § 40-6-391 by driving while under the influence of alcohol as the evidence established the following: testimony of eyewitnesses and of the trooper who investigated the accident established that the defendant was driving erratically and dangerously prior to the collision; the jury was entitled to consider the defendant's admitted flight from the scene as evidence of the defendant's guilt; the defendant admitted that there were two open bottles of liquor in the defendant's car prior to the fatal crash and that the defendant had an alcohol problem on that day. Merritt v. State, 288 Ga. App. 89, 653 S.E.2d 368 (2007).

There was sufficient evidence to support the defendant's conviction for vehicular homicide by driving under the influence of alcohol based on the testimony of the arresting officer that the defendant appeared intoxicated, a videotape of the defendant interacting with the officer, the testimony of an expert that indicated that the defendant took no evasive actions and struck the pedestrian in a well-lighted area, and witnesses' testimony that the defendant ran a red light. Therefore, the jury properly found that the defendant was operating the vehicle while under the

Evidence (Cont'd)

influence of alcohol to the extent it was less safe for the defendant to drive. Brown v. State, 291 Ga. App. 383, 662 S.E.2d 206 (2008).

With regard to a defendant's convictions on six counts of first degree vehicular homicide and other crimes, the defendant failed to establish ineffective assistance of counsel as defense counsel presented seven witnesses who testified that the defendant was not driving the vehicle at issue. The fact that certain photographs and blood test sampling were not presented into evidence, other evidence that went to the defendant's defense was not admitted into evidence, and an accident reconstruction expert was not hired were reasonable strategic decisions. Davis v. State, 293 Ga. App. 799, 668 S.E.2d 290 (2008).

Defendant's conviction for reckless driving was appropriate because the evidence was sufficient for the jury to have found beyond a reasonable doubt that the defendant was driving the defendant's truck in a manner exhibiting a reckless disregard for the safety of others under O.C.G.A. §§ 40-6-390(a) and 40-6-393(a). Although the defendant argued that there was no direct evidence of the manner of driving, and that the circumstantial evidence supported a separate hypothesis that the defendant had lost consciousness because of heat exhaustion and dehydration before the accident, the jury considered the testimony regarding that alternative theory and obviously rejected that theory. Shy v. State, 309 Ga. App. 274, 709 S.E.2d 869 (2011).

Evidence that a defendant was intoxicated at twice the legal limit and crashed the defendant's car into a tree, killing the defendant's passenger, was sufficient for the jury to find the defendant guilty of first degree vehicular homicide in violation of O.C.G.A. § 40-6-393(a), although the defendant claimed the passenger grabbed the steering wheel. Brown v. State, 310 Ga. App. 285, 712 S.E.2d 521 (2011).

Evidence was sufficient for the jury to find the defendant guilty of first degree homicide by vehicle, O.C.G.A. § 40-6-393(a), first degree feticide by vehicle, O.C.G.A. § 40-6-393.1(b)(1), driving under the influence (DUI) of alcohol, O.C.G.A. § 40-6-391(a)(5), and DUI of alcohol to the extent that it was less safe for the defendant to do so, O.C.G.A. § 40-6-391(a)(1), because the state presented evidence that the defendant had a blood-alcohol content of nearly double the legal limit at or near the time the defendant veered across three lanes of traffic and collided with a driver's pick-up truck, which resulted in the death of the driver, a passenger, and the passenger's unborn child. Jones v. State, 313 Ga. App. 590, 722 S.E.2d 202 (2012).

Sufficient evidence supported defendant's conviction for first-degree homicide by vehicle by violating O.C.G.A. § 40-6-391(a)(5) because the defendant drove into a tree while operating a vehicle containing three children as passengers, resulting in a fatality and other serious injuries, a clear plastic bottle containing 77 proof alcohol was found on the floorboard, and defendant's blood alcohol content was 0.207 grams. Crowe v. State, 314 Ga. App. 527, 724 S.E.2d 831 (2012).

Double jeopardy did not bar the defendant's retrial for misdemeanor vehicular homicide under O.C.G.A. § 40-6-393(c) as the evidence supported the conviction. The evidence established that by crossing a highway outside of a crosswalk, the defendant placed a young child in the path of a quickly approaching van, causing the child to be struck and fatally injured. Nelson v. State, 317 Ga. App. 527, 731 S.E.2d 770 (2012).

Jury found defendant guilty of not only vehicular homicide but also reckless driving (not speeding) and less-safe driving under the influence (DUI). Accordingly, the jury's verdict of first-degree vehicular homicide was proper. Otuwa v. State, 319 Ga. App. 339, 734 S.E.2d 273 (2012).

Evidence that the defendant borrowed her sister's car, struck the rear of a slower moving car leading to the deaths of the driver and passenger, the defendant identified herself as her sister, and the defendant signed her sister's name on the Miranda form and on her written statement supported the defendant's convictions for first degree homicide by vehicle,

forgery, reckless driving, and giving a false name. Smith v. State, 319 Ga. App. 164, 735 S.E.2d 153 (2012).

Evidence was sufficient for a a conviction of vehicular homicide, O.C.G.A. § 40-6-393(a), based on the defendant's driving while impaired by alcohol and taking a fast turn in a door-less Jeep, causing the defendant's passenger to be thrown onto the highway where the passenger was struck by another vehicle; the jury could conclude that the defendant's conduct played a substantial part in bringing about the passenger's death. A few hours after the accident the defendant's blood-alcohol content was .19 grams, more than twice the legal limit. Hartzler v. State, 332 Ga. App. 674, 774 S.E.2d 738 (2015).

Evidence was sufficient to support convictions for homicide by vehicle and serious injury by vehicle as the jury was entitled to find the defense expert's testimony conflicted with and was less credible than the account of the eyewitness driving in front of the defendant's car at the time of the collision, who testified that the defendant's car veered left and into another car, and the evidence showed that the defendant fled and had the damage to the defendant's car repaired. Michael v. State, 335 Ga. App. 579, 782 S.E.2d 479 (2016).

Undisputed evidence that the collision occurred outside the defendant's lane of travel was sufficient for the jury to find that the defendant failed to maintain the defendant's lane of travel and was, therefore, guilty of second degree vehicular homicide. Evans-Glodowski v. State, 335 Ga. App. 484, 781 S.E.2d 591 (2016).

Appellant's conviction for vehicular homicide was affirmed because the verdict led to the strong inference that the appellant, while driving under the influence, killed the victim with a vehicle appellant was driving at a high rate of speed and there was no other evidence that another car or anything else struck the victim while alive with such force as to kill. Taylor v. State, 337 Ga. App. 486, 788 S.E.2d 97 (2016).

Evidence was sufficient to convict the defendant of first degree homicide by vehicle while fleeing and attempting to elude a pursuing police vehicle because the officer began following a car as the officer suspected that the driver was impaired; the officer activated the vehicle's lights to stop the car to investigate whether the driver was impaired, but the defendant did not pull over and stop; after the officer blew the air horn to give the defendant an audible stop signal, the car accelerated; seconds later, the car failed to negotiate a sharp curve and crashed into a utility pole; on arrival at the hospital emergency room, the passenger was declared dead; and the passenger died as a result of injuries suffered in the crash. Moceri v. State, 338 Ga. App. 329, 788 S.E.2d 899 (2016), cert. denied, No. S17C0095, 2017 Ga. LEXIS 210 (Ga. 2017).

Sufficient evidence supported appellant's convictions for vehicular homicide and serious bodily injury based on the state presenting testimony of an expert in pharmacology and toxicology that the drugs in the appellant's system would have made the appellant a hazardous driver and that the appellant was severely impaired, along with evidence that the vehicle the appellant was driving crossed the center line and killed two people. Dickson v. State, 339 Ga. App. 500, 793 S.E.2d 663 (2016).

Evidence of the defendant's animosity and threats toward the victim's girlfriend, eyewitness testimony about the defendant's manner of driving, and the defendant's statements to police that the defendant was driving in a "fit of fury" and "like a bat out of hell," was sufficient for the jury to find the defendant guilty of first degree vehicular homicide. Turner v. State, 342 Ga. App. 882, 805 S.E.2d 624 (2017).

Evidence sufficient to sustain conviction of vehicular homicide in the second degree. — See Watts v. State, 186 Ga. App. 358, 366 S.E.2d 849 (1988); McKinney v. State, 213 Ga. App. 498, 445 S.E.2d 550 (1994).

Evidence that the defendant was driving some people home in a truck from a bar, that the decedent fell off the truck bed, that the decedent was lying unconscious on the pavement, that the defendant and other people in the truck put the

Evidence (Cont'd)

decedent in the truck, that the defendant and the others did not take the decedent to a hospital when the decedent regained consciousness in the truck as the decedent did not want to go to a hospital, and that the defendant did not report the accident was sufficient to support the defendant's conviction for second degree vehicular homicide when it was coupled with a doctor's testimony that the decedent, who died from brain injuries a week later, would have had a better prognosis if treated earlier. Steele v. State, 275 Ga. App. 651, 621 S.E.2d 606 (2005).

When the defendant, who was under the influence of methamphetamine, drove on the wrong side of the road and injured a motorist, and another motorist went to the first motorist's assistance and was killed by an oncoming vehicle, it was not improper for a jury to reject a claim that the defendant did not proximately cause the victim's death and return a guilty verdict of vehicular manslaughter, under O.C.G.A. § 40-6-393, because there was evidence that the defendant's negligence substantially contributed to the victim's death. McGrath v. State, 277 Ga. App. 825, 627 S.E.2d 866 (2006), cert. denied, 549 U.S. 1223, 127 S. Ct. 1287 (2007).

Evidence was sufficient to support the defendant's conviction for vehicular homicide because although there was some evidence that the collision between the motorcycle and a pedestrian occurred in the roadway, other evidence indicated that the victim had crossed the road and reached the apparent safety of a tree before the defendant lost control of the motorcycle. Greene v. State, 278 Ga. App. 848, 630 S.E.2d 123 (2006).

Expert testimony that the defendant's speed at the time of braking was between 54 and 66 miles per hour, exceeding the 35 mile per hour speed limit, and testimony from other drivers on the road that the defendant passed the other drivers at an excessive rate of speed was sufficient for the jury to infer beyond a reasonable doubt that the defendant was driving in a manner exhibiting a reckless disregard for the safety of others. Evans-Glodowski v. State, 335 Ga. App. 484, 781 S.E.2d 591 (2016).

Jury Instructions

Charging on lesser included offense. — In the absence of a timely written request, the trial judge in a trial for homicide by vehicle did not err in failing to charge on the lesser included offense of homicide by vehicle in the second degree. Ivie v. State, 151 Ga. App. 496, 260 S.E.2d 543 (1979).

In a prosecution for vehicular homicide in the first degree, even though there was sufficient evidence to convict the defendant of causing the death of the victim with malice aforethought through reckless driving and driving under the influence, there was also evidence that the defendant committed separate less culpable offenses of speeding and failing to obey a traffic signal and, thus, the defendant was entitled to a charge on the lesser included offense of second degree vehicular homicide. Lefler v. State, 210 Ga. App. 609, 436 S.E.2d 777 (1993).

Because there was some evidence, even from the state's witnesses, that showed that the defendant committed an act of following too closely, a traffic violation other than the more culpable offense of DUI, that may have caused the collision and resulting death, the trial court erred in failing to give the defendant's written request for an instruction on second-degree vehicular homicide. Brown v. State, 287 Ga. App. 755, 652 S.E.2d 631 (2007).

Trial court did not err in not giving the defendant's requested charge on homicide by vehicle in the second degree based on failure to maintain a lane as the request was made orally, not in writing, and the evidence, which included the defendant's admission to driving in a "fit of fury" and despite being blinded by mace, did not support such a charge. Turner v. State, 342 Ga. App. 882, 805 S.E.2d 624 (2017).

Refusal to grant the defendant's requested charge on vehicular homicide in the second degree by following too closely as a lesser included offense of vehicular homicide in the first degree by driving under the influence was reversible error since there was evidence of following too closely and the evidence did not demand a finding that the driving under the influence was the sole proximate cause of the

victim's death. Hayles v. State, 180 Ga. App. 860, 350 S.E.2d 793 (1986).

When the defendant was accused of beating the victim with a pistol and running over the victim with a car, the trial court did not err in refusing to charge on the lesser included offenses of vehicular homicide and reckless conduct. The defendant's theory was that other individuals committed the crime and that the defendant accidentally ran over the victim; thus, the evidence showed either the commission of the offenses as charged or the commission of no offense. Lupoe v. State, 284 Ga. 576, 669 S.E.2d 133 (2008).

Instruction on malice aforethought. — In a trial when the defendant was tried for, inter alia, homicide by vehicle in the first degree, a violation of O.C.G.A. § 40-6-393(a), the trial court did not err by instructing the jury on the meaning of the term "malice aforethought," as the explicit statutory definition of that crime contained the term "malice aforethought." Jackson v. State, 258 Ga. App. 806, 575 S.E.2d 713 (2002), cert. denied, 540 U.S. 1006, 124 S. Ct. 536, 157 L. Ed. 2d 413 (2003).

Instruction on proximate cause. — Trial court is not required to give an instruction on proximate cause in a prosecution for vehicular homicide when the defendant does not request the charge, and when the trial court specifically charges the jury that causation is a material element of the offense. Billingsley v. State, 183 Ga. App. 850, 360 S.E.2d 451 (1987).

Instruction on accident. — Appellate court erred in reversing defendant's conviction for vehicular homicide based on her failure to stop for a pedestrian in a crosswalk because those charges were strict liability offenses to which the accident defense did not apply since it was undisputed she voluntarily drove into the crosswalk and struck the child. State v. Ogilvie, 292 Ga. 6, 734 S.E.2d 50 (2012).

Instruction on "carelessness" rather than "recklessness" not misleading. — In charge on vehicular homicide, the trial court did not equate "reckless" with "carelessness"; even assuming that use of the term "carelessness" in one portion of the jury charge made the charge less clear than desired, after reviewing the charge as a whole, the court was satisfied that the jury had not been misled or confused. Gathuru v. State, 291 Ga. App. 178, 661 S.E.2d 233 (2008).

In a vehicular homicide case, the trial court did not err in not responding to a jury question with regard to the definitions of "reckless" and "carelessness" by defining the terms; initial charge, which mentioned "carelessness" only once and consistently stated that vehicular homicide had to be based on a willful, wanton, or reckless disregard for others' safety, did not allow the jury to lower the standard of proof, and more charges might have confused the jury. Gathuru v. State, 291 Ga. App. 178, 661 S.E.2d 233 (2008).

Instruction on criminal negligence proper. — Trial court properly charged the jury on criminal negligence at the defendant's trial for homicide by vehicle in the second degree; such a charge is applicable to vehicular homicide, regardless of the grade of the offense. Conyers v. State, 260 Ga. 506, 397 S.E.2d 423 (1990).

Instruction on criminal negligence not warranted. — Defendant accused of second-degree vehicular homicide was not entitled to a requested charge on criminal negligence since the state's case established that the defendant intended to violate the rules of the road by changing lanes, and the theory of criminal negligence was not supported by the facts or the evidence. Asberry v. State, 193 Ga. App. 711, 389 S.E.2d 18 (1989).

Instruction on circumstantial evidence. — Because the testimony from the medical examiner amounted to direct, and not circumstantial, evidence that: (1) the accident the defendant was charged with causing caused the decedent's death; (2) either the defendant's or the other impact caused the blunt force trauma to the decedent's head; and (3) any of the impacts, alone, could have caused the trauma, the defendant's requested circumstantial evidence charge was properly denied by the trial court. Kirk v. State, 289 Ga. App. 125, 656 S.E.2d 251 (2008).

Disclosure by jury of verdict's premise. — There was no error in the court's failure to instruct the jury to disclose whether the jury's guilty verdicts (of

Jury Instructions (Cont'd)

vehicular homicide) were premised upon the defendant's violation of O.C.G.A. § 40-6-390 or O.C.G.A. § 40-6-391, or both, since there was evidence to warrant the jury's finding of a violation of either section, or both. Deshazier v. State, 155 Ga. App. 526, 271 S.E.2d 664 (1980).

Instructions confusing to jury as to first- and second-degree vehicular homicide. — Trial court's instruction to the jury was correct, under O.C.G.A. § 40-6-393(b), as to vehicular homicide in the first degree, but was misleading as to vehicular homicide in the second degree because the instruction could have misled the jury into believing that the jury could convict the defendant of second degree vehicular homicide without finding that the defendant's violation of O.C.G.A. § 40-6-273, by failing to report an accident in which the decedent was injured when the decedent fell off a truck that the defendant was driving, caused the decedent's later death from brain injuries. Steele v. State, 275 Ga. App. 651, 621 S.E.2d 606 (2005).

Instruction as to degrees of crime. — Trial court's instruction on vehicular homicide was not improper; the instruction did not bar a verdict for second-degree vehicular homicide, but correctly implied that if the jury concluded that the defendant was guilty of either DUI or reckless driving, and if the jury also found the defendant guilty of vehicular homicide, it followed that the defendant must be guilty of first-degree, and not second-degree, vehicular homicide. Hill v. State, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

Contingent jury charges on first- and second-degree vehicular homicide upheld. — Trial court did not err in charging the jury on vehicular homicide, specifically explaining that if the jury found the defendant guilty of either DUI or reckless driving, and if the jury also found the defendant guilty of vehicular homicide, it followed that the defendant had to be guilty of first-degree, and not second-degree, vehicular homicide. Hill v. State, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

Sentencing

Sentencing defendant on lesser offenses when also sentenced on greater offense. — Trial court erred in sentencing the defendant on the lesser offenses of reckless driving and driving under the influence while the trial court also sentenced the defendant on the greater offense of homicide by vehicle in the first degree, which included the lesser offenses. Had the jury revealed which of the lesser offenses served as the foundation for the homicide verdict a sentence on the remaining lesser offense might have been appropriate, but as such information did not appear in the record the defendant may not be sentenced for either of the lesser included offenses of violation of O.C.G.A. §§ 40-6-390 and 40-6-391. McNabb v. State, 180 Ga. App. 723, 350 S.E.2d 314 (1986).

When speeding was a direct and proximate cause of the vehicular homicide, it merged into the vehicular homicide conviction, and a separate sentence for the speeding offense was void. Gilpatrick v. State, 226 Ga. App. 692, 487 S.E.2d 461 (1997).

Trial court improperly treated a jury's finding of guilt on an involuntary manslaughter count as a finding of guilt on an additional homicide by vehicle count because the jury had expressly acquitted the defendant of homicide by vehicle. That conviction was properly vacated, and resentencing was required on a conviction for serious injury by vehicle. Taylor v. State, 286 Ga. 328, 687 S.E.2d 409 (2009).

Merger required remand for resentencing. — Because the defendant's misdemeanor sentence, based on the failure to exercise due care, was also based in part on convictions that merged with the reckless vehicular homicide counts, and because the trial court never vacated the defendant's convictions for the misdemeanor counts charged, the relevant portions of the defendant's sentence were vacated and the case was remanded for resentencing. Hill v. State, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

Fifteen year sentence for each homicide count. — Upon conviction of the defendant of three counts of homicide by

vehicle through a violation of O.C.G.A. § 40-6-391, driving under the influence, it was not a violation of double jeopardy to sentence the defendant to 15 years for each of the homicide counts. Cox v. State, 243 Ga. App. 668, 533 S.E.2d 435 (2000).

Sentencing for felony conviction appropriate. — Defendant was properly sentenced for felony vehicular homicide instead of misdemeanor vehicular homicide as the evidence that the defendant was speeding and weaving through traffic, causing the accident, was sufficient to support the felony conviction. Bell v. State, 293 Ga. 683, 748 S.E.2d 382 (2013).

No merger of convictions. — Five convictions for serious injury by vehicle and a conviction for vehicular homicide did not merge; although the convictions stemmed from one incident of driving under the influence, there were separate victims for each offense. Harris v. State, 272 Ga. App. 366, 612 S.E.2d 557 (2005).

Trial court's failure to merge the defendant's convictions for driving recklessly and committing second degree vehicular homicide in violation of O.C.G.A. §§ 40-6-390 and 40-6-393, respectively, was not error for sentencing purposes as the reckless driving offense was not the underlying offense of the homicide, but rather, improper lane change was in violation of O.C.G.A. § 40-6-123(a); further, pursuant to O.C.G.A. § 16-1-6, there was no factual merger because the crimes were committed sequentially and separately. Cutter v. State, 275 Ga. App. 888, 622 S.E.2d 96 (2005).

Merger of convictions. — Convictions for driving under the influence of alcohol and reckless driving merged into a vehicular homicide conviction and were vacated. Harris v. State, 272 Ga. App. 366, 612 S.E.2d 557 (2005).

When the defendant collided with a car, killing two of the car's occupants, two counts of DUI vehicular homicide were properly merged into two counts of reckless vehicular homicide; the defendant could be convicted only once for the death of each victim. Hill v. State, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

Defendant's reckless driving, red light, and less safe driving under the influence convictions merged into the defendant's reckless vehicular homicide convictions, which involved two deaths resulting from the defendant's striking a car; however, the failure to exercise due care conviction involving the defendant's striking a pedestrian did not merge into the vehicular homicide conviction as the acts leading to the two charges involved different facts and different victims. Hill v. State, 285 Ga. App. 503, 646 S.E.2d 718 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Time of applicability. — Provisions of O.C.G.A. § 40-6-393 which merely provide new trial procedures may be applied to all cases tried on or after September 1, 1983, regardless of when the violations occurred. All other provisions can be applied only to defendants whose alleged illegal conduct occurred on or after September 1, 1983. 1983 Op. Att'y Gen. No. U83-52.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 371 et seq., 381 et seq.

Am. Jur. Trials. — Vehicular Homicide, 13 Am. Jur Trials 295

C.J.S. — 61A C.J.S., Motor Vehicles, § 1660 et seq.

ALR. — Liability for injury to pedestrian struck by automobile while walking along street or highway, 67 A.L.R. 96; 93 A.L.R. 551.

Homicide by automobile as murder, 21 A.L.R.3d 116.

Admissibility in criminal case of blood-alcohol test where blood was taken despite defendant's objections or refusal to submit to test, 14 A.L.R.4th 690.

Motorist's liability for striking person lying in road, 41 A.L.R.4th 303.

Corporation's criminal liability for homicide, 45 A.L.R.4th 1021.

Alcohol-related vehicular homicide: na-

ture and elements of offense, 64 A.L.R.4th 166.

Establishment of negligence within meaning of statute penalizing negligent homicide by operation of motor vehicle — speeding or driving at unsafe speed, 84 A.L.R.6th 427.

40-6-393.1. Feticide by vehicle; penalties.

(a) For the purposes of this Code section, the term "unborn child" means a member of the species homo sapiens at any stage of development who is carried in the womb.

(b)(1) A person commits the offense of feticide by vehicle in the first degree if he or she causes the death of an unborn child by any injury to the mother of such child which would be homicide by vehicle in the first degree as provided in subsection (a), (b), or (d) of Code Section 40-6-393 if it resulted in the death of such mother.

(2) A person convicted of the offense of feticide by vehicle in the first degree shall be punished by imprisonment for not less than three years nor more than 15 years.

(c)(1) A person commits the offense of feticide by vehicle in the second degree if he or she causes the death of an unborn child by any injury to the mother of such child by violating any provision of this title other than Code Section 40-6-390 or 40-6-391, which would be homicide by vehicle in the second degree as provided in subsection (c) of Code Section 40-6-393 if it resulted in the death of such mother.

(2) A person convicted of the offense of feticide by vehicle in the second degree shall be punished as provided in Code Section 17-10-3. (Code 1981, § 40-6-393.1, enacted by Ga. L. 1991, p. 1109, § 1; Ga. L. 2006, p. 643, § 3/SB 77; Ga. L. 2008, p. 1164, § 3/SB 529.)

Editor's notes. — Ga. L. 2006, p. 643, § 5/SB 77, not codified by the General Assembly, provides that this Act shall apply to all offenses committed on or after July 1, 2006.

Ga. L. 2008, p. 1164, § 6/SB 529, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all offenses committed on or after July 1, 2008.

Law reviews. — For article on the 2006 amendment of this Code section, see 23 Ga. St. U.L. Rev. 27 (2006).

For note on the 1991 enactment of this Code section, see 8 Ga. St. U.L. Rev. 147 (1992).

JUDICIAL DECISIONS

Evidence sufficient to support conviction. — Evidence was sufficient for the jury to find the defendant guilty of first degree homicide by vehicle, O.C.G.A. § 40-6-393(a), first degree feticide by vehicle, O.C.G.A. § 40-6-393.1(b)(1), driving under the influence (DUI) of alcohol, O.C.G.A. § 40-6-391(a)(5), and DUI of alcohol to the extent that it was less safe for the defendant to do so, O.C.G.A. § 40-6-391(a)(1), because the state presented evidence that the defendant had a blood-alcohol content of nearly double the legal limit at or near the time the defendant veered across three lanes of traffic and collided with a driver's pick-up truck,

which resulted in the death of the driver, a passenger, and the passenger's unborn child. Jones v. State, 313 Ga. App. 590, 722 S.E.2d 202 (2012).

OPINIONS OF THE ATTORNEY GENERAL

For an update of crimes and offenses for which the Georgia Crime Information Center is authorized to collect and file identifying data, see 1991 Op. Att'y Gen. No. 91-35.

RESEARCH REFERENCES

ALR. — Homicide based on killing of unborn child, 64 A.L.R.5th 671.

40-6-394. Serious injury by vehicle.

Whoever, without malice, shall cause bodily harm to another by depriving him of a member of his body, by rendering a member of his body useless, by seriously disfiguring his body or a member thereof, or by causing organic brain damage which renders the body or any member thereof useless through the violation of Code Section 40-6-390 or 40-6-391 shall be guilty of the crime of serious injury by vehicle. A person convicted under this Code section shall be guilty of a felony and shall be punished by imprisonment for not less than one year nor more than 15 years. (Code 1933, § 68A-903.1, enacted by Ga. L. 1979, p. 768, § 1; Ga. L. 1985, p. 758, § 18; Ga. L. 1989, p. 232, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1999, p. 391, § 10.)

Cross references. — Maintenance of separate causes of action for personal injury and property damage caused by single act of wrongful or negligent operation of motor vehicle, § 51-1-32.

Editor's notes. — Ga. L. 1999, p. 391, § 2, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as 'Heidi's Law.'"

Law reviews. — For note on the 1989 amendment to this Code section, see 6 Ga. St. U.L. Rev. 281 (1989).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 40-6-394 was not unconstitutional as applied to the defendant, who was also convicted of a DUI, when the evidence showed that a passenger in the car the defendant hit had the passenger's legs shattered in several places, had numerous surgeries, and had difficulty walking. Pecina v. State, 274 Ga. 416, 554 S.E.2d 167 (2001).

Construed with O.C.G.A. § 40-6-391(a)(4). — State was not required to prove that a defendant was committing any traffic violation or unsafe act, in addition to a violation of O.C.G.A. § 40-6-391(a)(4); it is sufficient that the evidence showed that the defendant's violation of § 40-6-391 caused an injury such as described in O.C.G.A. § 40-6-394. Jones v. State, 195 Ga. App. 569, 394 S.E.2d 387 (1990); Moss v. State, 209 Ga. App. 59, 432 S.E.2d 825 (1993).

No merger with reckless driving. — Trial court did not err by failing to merge a reckless-driving charge into a serious-injury-by-vehicle charge because the two crimes were entirely separate and distinct, requiring a showing of different elements and based on the defendant's drunk driving of a four-wheeler ATV with

a 10-year-old passenger, who was brain-damaged when the defendant clipped a tractor and flipped the ATV; the state used the evidence of the clipping of the tractor scoop, which caused the rollover and injury to the child, as the elements of the serious-injury-by-vehicle offense, which was separate from and sequential to the reckless-driving offense, which was premised on the defendant's intoxication. Croft v. State, 278 Ga. App. 107, 628 S.E.2d 144 (2006).

Broken bones as serious disfigurement. — General demurrer to charges of serious injury by vehicle against the defendant was properly denied because whether broken bones constituted serious disfigurement under O.C.G.A. § 40-6-394 depended on the facts of the case; further, the indictment tracked the language of the statute and sufficiently advised the defendant of the charges against the defendant. Harris v. State, 272 Ga. App. 366, 612 S.E.2d 557 (2005).

Evidence of serious injury. — Issues of whether two-inch scar and temporary uselessness of leg sustained by automobile occupants constituted serious injuries within the meaning of O.C.G.A. § 40-6-394 were jury questions and the evidence was sufficient to support finding of such injuries. Keef v. State, 220 Ga. App. 134, 469 S.E.2d 318 (1996).

When the defendant pled guilty to homicide by vehicle and serious injury by vehicle, the defendant should have been allowed to withdraw the plea after defendant discovered that the state deliberately withheld exculpatory evidence regarding calculation of the defendant's speed and road conditions. Carroll v. State, 222 Ga. App. 560, 474 S.E.2d 737 (1996).

Evidence was sufficient to convict the defendant under O.C.G.A. § 40-6-394, although the victim's legs were not rendered permanently useless; evidence that the victim's walking was seriously impaired was sufficient. Adams v. State, 259 Ga. App. 570, 578 S.E.2d 207 (2003).

Evidence showing, inter alia, that the victim suffered a concussion requiring transport by ambulance to the hospital, needed stitches in the victim's head, required knee surgery, and suffered injury that prevented proper function of the victim's wrist and thumb two years after the collision was sufficient to support a conviction for serious injury by vehicle. King v. State, 262 Ga. App. 37, 584 S.E.2d 652 (2003).

Defendant was properly found guilty of causing serious injury by vehicle as a result of struggling with the arresting officer while attempting to be handcuffed, attempting to flee while the officer was in the doorway of the vehicle, and the officer being thrown from the vehicle, causing a broken arm and a dislocated shoulder. Dorsey v. State, 327 Ga. App. 226, 757 S.E.2d 880 (2014).

Trial court was authorized to find that the injury to the husband, multiple rib fractures and bruising, and the wife's dislocated finger and head laceration rose to the level of serious disfigurement for purposes of the defendant's convictions for serious injury by vehicle. Bray v. State, 330 Ga. App. 768, 768 S.E.2d 285 (2015), cert. denied, No. S15C0988, 2015 Ga. LEXIS 391 (Ga. 2015).

Standard is not permanently useless. — With regard to a defendant's convictions for improper lane change, serious injury by vehicle while driving under the influence, and misdemeanor obstruction of an officer, there was sufficient evidence to support the convictions based on an officer's testimony that the defendant attempted to leave the scene several times and the evidence of the defendant's vehicle passenger suffering a severe injury to the left eye. It was unnecessary to show that the passenger's eye was permanently rendered useless. Wells v. State, 297 Ga. App. 153, 676 S.E.2d 821 (2009).

Evidence sufficient to support conviction. — After a review of the evidence surrounding the auto accident which the defendant caused while under the influence of methamphetamine, with the defendant's four-year-old son as a passenger, and in which the defendant rear-ended the driver in front of the defendant causing that driver to become paralyzed from the neck down, when coupled with the testimony of two law enforcement officers who were at the scene and described the defendant's erratic behavior after the collision, the defendant's serious injury by vehicle, driving under the influence of

methamphetamine, and endangering a child by driving under the influence convictions were supported by the evidence. Duncan v. State, 281 Ga. App. 270, 635 S.E.2d 875 (2006).

Sufficient evidence supported defendant's conviction for serious injury by vehicle because the defendant drove into a tree while operating a vehicle containing three children as passengers, resulting in a fatality and other serious injuries, a clear plastic bottle containing 77 proof alcohol was found on the floorboard, and the defendant's blood alcohol content was 0.207 grams. Crowe v. State, 314 Ga. App. 527, 724 S.E.2d 831 (2012).

Evidence was sufficient to support convictions for homicide by vehicle and serious injury by vehicle as the jury was entitled to find the defense expert's testimony conflicted with and was less credible than the account of the eyewitness driving in front of the defendant's car at the time of the collision, who testified that the defendant's car veered left and into another car, and the evidence showed that the defendant fled and had damage to the defendant's car repaired. Michael v. State, 335 Ga. App. 579, 782 S.E.2d 479 (2016).

Evidence was sufficient to convict the defendant of serious injury by vehicle because the defendant told a police officer and a nurse that the defendant had been driving the vehicle; although the defendant later recanted that admission, the jury was authorized to believe the defendant's earlier statements; the victim testified about the injuries to the victim's leg, that it was essentially useless for months, and that the victim still used leg braces; and the state met the state's burden of establishing a causal connection between the defendant's violation of the driving under the influence statute and the serious injury by vehicle statute as the defendant admitted to driving the car and to drinking in the car. Fitzpatrick v. State, 339 Ga. App. 135, 793 S.E.2d 446 (2016).

Sufficient evidence supported the appellant's convictions for vehicular homicide and serious bodily injury based on the state presenting testimony of an expert in pharmacology and toxicology that the drugs in the appellant's system would have made the appellant a hazardous driver and that the appellant was severely impaired, along with evidence that the vehicle appellant was driving crossed the center line and killed two people. Dickson v. State, 339 Ga. App. 500, 793 S.E.2d 663 (2016).

Evidence was sufficient to convict the defendant of serious injury by vehicle and reckless driving because the defendant drifted into the victim's lane and did not change lanes; as the victim attempted to avoid the defendant's van, the defendant crossed back into the defendant's lane and struck the victim's car; the victim was hospitalized for almost two months and suffered severe injuries and received physical and occupational therapy to learn to walk again, but the victim was not able to resume teaching dance based on the victim's wheelchair restrictions; and, although the defendant contended that the evidence showed that the collision was accidental rather than reckless, the jury resolved conflicts in the evidence against the defendant. Pefinis v. State, 344 Ga. App. 428, 810 S.E.2d 329 (2018).

Relevant evidence to defendant's defense of accident. — In connection with the defendant's conviction for reckless driving, causing serious bodily injury due to reckless driving, and other crimes, the trial court abused the court's discretion in granting the state's motion in limine to exclude the defendant's evidence of the design of the intersection where the accident occurred prior to the wreck as such evidence was relevant to the defendant's defense of accident. Dunagan v. State, 283 Ga. 501, 661 S.E.2d 525 (2008).

Evidence of whether victim was wearing seat belt properly excluded. — As there was no duty on a police officer under O.C.G.A. § 40-6-394 to prevent or mitigate injuries that were caused by the defendant's reckless and intoxicated driving, there was no abuse of discretion in the trial court's refusal to admit evidence regarding whether the officer, who was responding to the scene of an ongoing crime, was wearing a seat belt at the time that the officer had to swerve the police cruiser in order to avoid a collision with the defendant's vehicle. Potts v. State, 296 Ga. App. 242, 674 S.E.2d 109 (2009).

Convictions did not merge with vehicular homicide conviction. — Five

convictions for serious injury by vehicle and a conviction for vehicular homicide did not merge; although the convictions stemmed from one incident of driving under the influence, there were separate victims for each offense. Harris v. State, 272 Ga. App. 366, 612 S.E.2d 557 (2005).

Cruelty to children count did not merge with serious injury by vehicle count. — Trial court properly did not merge the appellant's convictions for cruelty to children in the second degree and serious injury by vehicle by the act of reckless driving with respect to the same victim for the purpose of sentencing because each offense required proof of a different wrongful act as the cruelty to children conviction required proof of facts not required by the serious injury by vehicle conviction and vice versa. McNeely v. State, 296 Ga. 422, 768 S.E.2d 751 (2015).

Video tape depicting the rehabilitation of a victim was not inflammatory and unduly prejudicial in that the videotape illustrated the extent of the victim's injuries which is necessary under O.C.G.A. § 40-6-394 . Dudley v. State, 204 Ga. App. 327, 419 S.E.2d 138 (1992).

Double jeopardy and DUI. — Proof that the defendant was guilty of driving under the influence (DUI) under O.C.G.A. § 40-6-391 was a required element for convicting the defendant of serious injury by vehicle under O.C.G.A. § 40-6-394, and while proof of serious injury by vehicle also required proof of an additional element, bodily harm, the DUI charge included no element that was not also contained in the crime of serious injury by vehicle; accordingly, the Blockburger test was not met, and the subsequent indictment for serious injury by vehicle violated the double jeopardy clause of the Fifth Amendment. Thus, the defendant's plea in bar was a valid exercise of the federal double jeopardy clause. Garrett v. State, 306 Ga. App. 429, 702 S.E.2d 470 (2010).

Jury instructions. — Jury instruction defining the offense of serious injury by vehicle that listed as an element disfigurement to the victim's "body or a member thereof" did not require the defendant to defend against an allegation of which the indictment had not provided the defendant with notice; furthermore, when the final charge was viewed as a whole, there was no reasonable probability that the cited language confused or misled the jury. Karafiat v. State, 290 Ga. App. 15, 658 S.E.2d 801 (2008).

Jury instruction for serious injury by vehicle as given was not plain error because the charge that the defendant's counsel requested was substantially similar to the charge that the trial court gave; the trial court charged the jury that no person could be convicted of any crime unless and until each element of the crime as charged was proven beyond a reasonable doubt; and a conviction under the serious injury by vehicle statute as charged did not require a conviction under the driving under the influence statute. Fitzpatrick v. State, 339 Ga. App. 135, 793 S.E.2d 446 (2016).

Mistrial was properly denied. — Defendant was not prejudiced by a challenged juror's conduct in communicating with a state witness, namely, a police officer as: (1) the alleged improper communication was innocent; (2) the case was never discussed; and (3) once the involvement was discovered, the conversation immediately ended; hence, the trial court did not abuse the court's discretion in denying a mistrial. Duncan v. State, 281 Ga. App. 270, 635 S.E.2d 875 (2006).

Appearance of victim before jury. — It was not error for the trial court to allow the victim, who had been left a quadriplegic by a collision with the defendant, to appear before the jury so that the state could show the extent of the victim's injuries as required under O.C.G.A. § 40-6-394. Dunagan v. State, 286 Ga. App. 668, 649 S.E.2d 765 (2007), reversed on other grounds, 283 Ga. 501, 661 S.E.2d 525 (2008).

Jury question as to whether victim died on impact. — Conviction for serious injury by vehicle was not void as the resolution of whether the victim died immediately upon impact was for the jury. Taylor v. State, 295 Ga. App. 689, 673 S.E.2d 7, aff'd, 286 Ga. 328, 687 S.E.2d 409 (2009).

Sentence improper. — Given that a charge of DUI served as the predicate act underlying a charge of serious injury by vehicle, thus constituting a lesser in-

cluded crime of the serious injury by vehicle, O.C.G.A. § 16-1-7(a) barred conviction of and punishment for both; hence, in light of this incongruence, the defendant's DUI conviction and sentence, as well as the sentence for serious injury by vehicle, were vacated. Hannah v. State, 280 Ga. App. 230, 633 S.E.2d 800 (2006).

Cited in Holman v. State, 329 Ga. App. 393, 765 S.E.2d 614 (2014).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 362, 366.

C.J.S. — 61A C.J.S., Motor Vehicles, §§ 1574 et seq. 1597, 1607, 1623 et seq.

ALR. — Motorist's liability for striking person lying in road, 41 A.L.R.4th 303.

40-6-395. Fleeing or attempting to elude police officer; impersonating law enforcement officer.

(a) It shall be unlawful for any driver of a vehicle willfully to fail or refuse to bring his or her vehicle to a stop or otherwise to flee or attempt to elude a pursuing police vehicle or police officer when given a visual or an audible signal to bring the vehicle to a stop. The signal given by the police officer may be by hand, voice, emergency light, or siren. The officer giving such signal shall be in uniform prominently displaying his or her badge of office, and his or her vehicle shall be appropriately marked showing it to be an official police vehicle.

(b)(1) Any person violating the provisions of subsection (a) of this Code section shall be guilty of a high and aggravated misdemeanor and:

(A) Upon conviction shall be fined not less than $500.00 nor more than $5,000.00, and the fine shall not be subject to suspension, stay, or probation, and imprisoned for not less than ten days nor more than 12 months. Any period of such imprisonment in excess of ten days may, in the sole discretion of the judge, be suspended, stayed, or probated;

(B) Upon the second conviction within a ten-year period of time, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, shall be fined not less than $1,000.00 nor more than $5,000.00, and the fine shall not be subject to suspension, stay, or probation, and imprisoned for not less than 30 days nor more than 12 months. Any period of such imprisonment in excess of 30 days may, in the sole discretion of the judge, be suspended, stayed, or probated; and for purposes of this paragraph, previous pleas of nolo contendere accepted within such ten-year period shall constitute convictions; and

(C) Upon the third or subsequent conviction within a ten-year period of time, as measured from the dates of previous arrests for

which convictions were obtained to the date of the current arrest for which a conviction is obtained, shall be fined not less than $2,500.00 nor more than $5,000.00, and the fine shall not be subject to suspension, stay, or probation, and imprisoned for not less than 90 days nor more than 12 months. Any period of such imprisonment in excess of 90 days may, in the sole discretion of the judge, be suspended, stayed, or probated; and for purposes of this paragraph, previous pleas of nolo contendere accepted within such ten-year period shall constitute convictions.

(2) For the purpose of imposing a sentence under this subsection, a plea of nolo contendere shall constitute a conviction.

(3) If the payment of the fine required under paragraph (1) of this subsection will impose an economic hardship on the defendant, the judge, at his or her sole discretion, may order the defendant to pay such fine in installments and such order may be enforced through a contempt proceeding or a revocation of any probation otherwise authorized by this subsection.

(4) Notwithstanding the limits set forth in any municipal charter, any municipal court of any municipality shall be authorized to impose the punishments provided for in this subsection upon a conviction of violating this subsection or upon conviction of violating any ordinance adopting the provisions of this subsection.

(5)(A) Any person violating the provisions of subsection (a) of this Code section who, while fleeing or attempting to elude a pursuing police vehicle or police officer:

(i) Operates his or her vehicle in excess of 20 miles an hour above the posted speed limit;

(ii) Strikes or collides with another vehicle or a pedestrian;

(iii) Flees in traffic conditions which place the general public at risk of receiving serious injuries;

(iv) Commits a violation of paragraph (5) of subsection (a) of Code Section 40-6-391; or

(v) Leaves the state

shall be guilty of a felony punishable by a fine of $5,000.00 or imprisonment for not less than one year nor more than five years or both.

(B) Following adjudication of guilt or imposition of sentence for a violation of subparagraph (A) of this paragraph, the sentence shall not be suspended, probated, deferred, or withheld, and the charge shall not be reduced to a lesser offense, merged with any other offense, or served concurrently with any other offense.

(c) It shall be unlawful for a person:

(1) To impersonate a sheriff, deputy sheriff, state trooper, agent of the Georgia Bureau of Investigation, agent of the Federal Bureau of Investigation, police officer, or any other authorized law enforcement officer by using a motor vehicle or motorcycle designed, equipped, or marked so as to resemble a motor vehicle or motorcycle belonging to any federal, state, or local law enforcement agency; or

(2) Otherwise to impersonate any such law enforcement officer in order to direct, stop, or otherwise control traffic. (Code 1933, § 68A-904, enacted by Ga. L. 1974, p. 633, § 1; Ga. L. 1978, p. 1483, § 2; Ga. L. 1983, p. 836, § 1; Ga. L. 1985, p. 758, § 19; Ga. L. 1987, p. 3, § 40; Ga. L. 1990, p. 585, § 1; Ga. L. 1990, p. 2048, § 5; Ga. L. 1992, p. 6, § 40; Ga. L. 1994, p. 831, § 3; Ga. L. 1995, p. 855, § 2; Ga. L. 2004, p. 450, § 1; Ga. L. 2010, p. 256, § 2/HB 1231; Ga. L. 2012, p. 729, § 1/HB 827.)

Cross references. — Impersonating public officer or employee generally, § 16-10-23. Suspension of driver's license for conviction for fleeing or attempting to elude officer, § 40-5-54.

Editor's notes. — Ga. L. 2010, p. 256, § 5/HB 1231, not codified by the General Assembly, provides that the amendment by that Act shall apply to all offenses committed on or after July 1, 2010.

Ga. L. 2012, p. 729, § 2/HB 827, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall apply to offenses committed on or after July 1, 2012.

Law reviews. — For article, "Criminal Law," see 53 Mercer L. Rev. 209 (2001). For annual survey of criminal law, see 56 Mercer L. Rev. 153 (2004). For article, "Police Pursuits: A Comprehensive Look at the Broad Spectrum of Police Pursuit Liability and Law," see 57 Mercer L. Rev. 511 (2006).

JUDICIAL DECISIONS

Constitutionality. — Statute was not unconstitutional for failing to include a provision for the exercise of self defense, given the statutory defense that a person's conduct was justified remained a defense to prosecution for any crime based on that conduct; moreover, the defendant was permitted to present justification evidence, and the trial court instructed the jury that justification was a defense and could be claimed when the person's conduct was justified for any reason under the law or in all other instances based on similar reason and justice. Harbuck v. State, 280 Ga. 775, 631 S.E.2d 351 (2006).

Offenses under subsections (a) or (b) of former Code 1933, § 68A-904 (see now O.C.G.A. § 40-6-395) were purely statutory and have no relation to the common law. State v. Black, 149 Ga. App. 389, 254 S.E.2d 506 (1979).

Subject matter jurisdiction. — Inasmuch as it was established that a violation of O.C.G.A. § 40-6-395 was alleged to have occurred in Douglas County, Georgia, the state court of Douglas County had subject-matter jurisdiction over the case; thus, the denial of the defendant's motion in arrest of judgment was not error. Harbuck v. State, 280 Ga. 775, 631 S.E.2d 351 (2006).

Counts merged. — Because two counts charged the defendant with fleeing from an officer after having been given a proper signal to stop from the officer, the unit of prosecution under both counts was

the same and the counts should have merged. Gibbs v. State, 340 Ga. App. 723, 798 S.E.2d 308 (2017).

Pleas and violations of double jeopardy. — Subsequent prosecution of the defendant for robbery after the defendant pled guilty to fleeing to elude did not violate double jeopardy since the offenses involved wholly different elements and facts. Blackwell v. State, 230 Ga. App. 611, 496 S.E.2d 922 (1998).

Even assuming arguendo that the defendant's position that O.C.G.A. § 40-6-395 set out two distinct offenses, wilful failure to stop and fleeing and eluding a police officer, the defendant was tried, first in a bench trial and again on remand after an appeal, on an accusation charging the defendant with fleeing and eluding an officer and was found guilty and sentenced both times for fleeing and eluding; hence, because the defendant was not tried on the offense of wilful failure to stop, the defendant's contention that double jeopardy considerations prohibited a jury trial on that charge was moot. Harbuck v. State, 280 Ga. 775, 631 S.E.2d 351 (2006).

Counts did not merge. — Two counts of eluding an officer against a defendant, who was a passenger in a truck, did not factually merge as in the first count, the defendant eluded the officer by being in a truck that exceeded the posted speed limit by at least 30 mph while an officer was chasing the truck, when the officer clocked the vehicle as exceeding 100 miles per hour in a 55-miles-per-hour zone; the first count was separate and complete prior to the truck's driver running a red light and endangering the crossing vehicle in the driver's efforts to elude the police, which was the basis for the second count of eluding an officer. Michael v. State, 281 Ga. App. 289, 635 S.E.2d 790 (2006), overruled on other grounds by Gibbs v. State, 304 Ga. App. 723, 798 S.E.2d 308 (2017).

Although offenses related to the getaway car were part of the same criminal episode, the essential elements of armed robbery, theft by receiving, fleeing or attempting to elude a police officer, and reckless driving were completely separate and distinct. As a result, the trial court did not err in failing to merge these offenses. Garibay v. State, 290 Ga. App. 385, 659 S.E.2d 775 (2008).

Trial court properly sentenced the defendant on five separate counts of attempting to elude a police officer because the evidence supported the jury's conclusion that the defendant willfully led police on a dangerous high speed chase after being given clear signals by five separate police vehicles to stop; it is the act of fleeing from an individual police vehicle or police officer after being given a proper visual or audible signal to stop from that individual police vehicle or officer, and not just the act of fleeing itself, that forms the proper "unit of prosecution" under O.C.G.A. § 40-6-395. Smith v. State, 290 Ga. 768, 723 S.E.2d 915 (2012).

Merger with felony murder. — Defendant's conviction for felony fleeing and attempting to elude was vacated as the offense served as the underlying felony for a felony murder conviction and merged with the conviction for felony murder. Ferguson v. State, 280 Ga. 893, 635 S.E.2d 144 (2006).

Identification of officer. — No violation of subsection (a) of O.C.G.A. § 40-6-395 is shown unless evidence demonstrates that the officer allegedly eluded was in required uniform and that the officer's vehicle was appropriately marked. Phillips v. State, 162 Ga. App. 471, 291 S.E.2d 776 (1982).

Evidence that the law enforcement officer displayed a variety of objective indicia of the officer's lawful authority was sufficient to authorize the jury's determination that the defendant was unlawfully attempting to elude the officer's. Mooney v. State, 221 Ga. App. 420, 471 S.E.2d 904 (1996).

State's failure to present evidence of the officer's attire was harmless when the jury was considering whether an individual driving 131 mph in the dark, early in the morning hours was aware that the individual was being pursued by a peace officer. Ray v. State, 233 Ga. App. 162, 503 S.E.2d 391 (1998).

Applicability to uniformed officers on foot. — When a defendant failed to stop after being given a signal to do so by a police officer on foot and in uniform, the defendant violated O.C.G.A. § 40-6-395,

and therefore the evidence was sufficient to support the defendant's conviction for fleeing and attempting to elude; § 40-6-395 did not apply only when an officer was in a police vehicle and not on foot, as was the factual circumstances involving the defendant, because to read § 40-6-395 to mean only a police officer on foot would render the phrase "pursuing police vehicle" in the first sentence of § 40-6-395 meaningless, and a court was prohibited from interpreting a statute in this manner. Maxwell v. State, 282 Ga. 22, 644 S.E.2d 822 (2007).

One signal given by police enough. — Intent of the legislature was to require only one form of recognizable signal, either visual or audible. Reynolds v. State, 209 Ga. App. 628, 434 S.E.2d 166 (1993).

Defendant's conviction for eluding the police was reversed as a fair risk could not have been excluded (due to the unexplained ambiguity appearing in the face of O.C.G.A. § 40-6-395 at the time of the offense) that the driver could have labored under a mistaken belief that merely because a second signal was not given the defendant was free wilfully to elude police pursuit without fear of criminal sanction. Reynolds v. State, 209 Ga. App. 628, 434 S.E.2d 166 (1993).

Applicability to passengers. — Not only a driver can be found guilty of violating O.C.G.A. § 40-6-395; the evidence may show that the driver and the passenger acted in concert between themselves in an effort to effect an unlawful escape from the police. Bivins v. State, 166 Ga. App. 580, 305 S.E.2d 29 (1983).

When the defendant was only a passenger in a van during a high speed chase with police and was not the driver, and there was no evidence that the defendant did anything other than occupy the passenger seat while a codefendant drove the van, the trial court erred by denying the defendant's motion for a directed verdict on the charge of fleeing from police. Carter v. State, 249 Ga. App. 354, 548 S.E.2d 102 (2001).

Sufficiency of accusation. — Amended accusation charging that the defendant "did wilfully fail to stop and did otherwise fleeing or attempting to elude a pursuing police vehicle or police officer when given a visual or an audible signal to bring the vehicle to a stop in violation of this section" sufficiently apprised the defendant of the charges against the defendant. Reed v. State, 205 Ga. App. 209, 422 S.E.2d 15, cert. denied, No. S92C1446, 1992 Ga. LEXIS 865 (1992).

Grant of the defendant's special demurrer to counts which charged the defendant with fleeing or attempting to elude a police officer was proper because the offense charged could have been committed by the defendant's failure to respond to a visual signal of the officer either by hand or by emergency light and the accusation did not allege which type of visual signal was given. State v. Jones, 246 Ga. App. 482, 540 S.E.2d 622 (2000).

Charges that the defendant violated O.C.G.A. § 40-6-395(a) by willfully failing or refusing to bring the defendant's vehicle to a stop or otherwise fled or attempted to elude a pursuing police officer when given a visual or audible signal to bring the vehicle to a stop, and that the defendant violated O.C.G.A. § 16-10-24(a) by knowingly and willfully obstructing or hindering the officer in the lawful discharge of the officer's duties by refusing to follow the officer's reasonable and lawful commands, were not mutually exclusive, as the crimes had different elements and neither guilty verdict legally or logically excluded the other. Golden v. State, 276 Ga. App. 538, 623 S.E.2d 727 (2005).

Trial court did not err in denying the defendant's motion in arrest of judgment as to the count of fleeing and attempting to elude police because the indictment charged that the defendant unlawfully willfully failed to bring a vehicle to a stop after having been given an audible and visual signal to bring the vehicle to a stop by an officer while fleeing in an attempt to escape arrest for theft by receiving and did flee in traffic conditions which placed the general public at risk of receiving serious injuries in violation of O.C.G.A. § 40-6-395. Dixson v. State, 313 Ga. App. 379, 721 S.E.2d 555 (2011).

Indictment charging the defendant with eluding police was not fatally defective because the indictment did not contain the term "pursuing"; the indictment provided sufficient notice of the

charge against the defendant. Jackson v. State, 284 Ga. App. 619, 644 S.E.2d 491 (2007), cert. denied, No. S07C1169, 2007 Ga. LEXIS 521 (Ga. 2007).

Indictment charging the defendant with "fleeing or attempting to elude," alleging that the defendant unlawfully and willfully failed to bring the defendant's vehicle to a stop after a pursuing police officer gave a visual and audible signal, was sufficient to withstand a general demurrer. State v. Wilson, 318 Ga. App. 88, 732 S.E.2d 330 (2012).

Sufficient evidence of venue. — Even though a chase involving the defendant might have ended in another county, because the offense of eluding the officers was complete at the moment the defendant refused to stop, despite the visual and audible signals requiring such, the defendant's act of continuing the chase into that second county did not destroy venue in the county where the chase began; moreover, after the defendant wrecked the vehicle involved in the chase in the second county, the evidence gathered at the scene was sufficient to support the inference that the open beer containers were in the vehicle when the defendant was observed driving the vehicle moments earlier in the county where the chase began. Mack v. State, 283 Ga. App. 172, 641 S.E.2d 194 (2007).

Indictment charging the defendant with felony fleeing and attempting to elude a police officer was defective as the indictment failed to list any predicate offense as required by O.C.G.A. § 40-6-395(b)(5)(A); nowhere was the predicate offense mentioned of fleeing in traffic conditions such that the general public was placed at risk of serious injuries. Cochran v. State, 288 Ga. App. 538, 654 S.E.2d 458 (2007).

As there was evidence the defendant was speeding and eluding a police officer in Dawson County, venue was established there, even though the defendant was apprehended in Forsyth County. Segel v. State, 293 Ga. App. 506, 667 S.E.2d 670 (2008).

In a fleeing and eluding case under O.C.G.A. § 40-6-395, the evidence was sufficient to establish venue as required by Ga. Const. 1983, Art. VI, Sec. II, Para. VI and O.C.G.A. § 17-2-2(a) based on evidence that the chase originated in the county and continued there, which included an eyewitness's testimony, dash cam footage, and a map. Payne v. State, 338 Ga. App. 677, 791 S.E.2d 451 (2016).

Insufficient evidence of venue. — State failed to present evidence of venue necessary for a fleeing and eluding conviction as the testimony merely identified streets, but did not indicate the counties in which the chase or shooting took place. Grant v. State, 326 Ga. App. 121, 756 S.E.2d 255 (2014).

Investigatory stop. — Because police officers saw a vehicle matching a dispatcher's description shortly after receiving the dispatch, and the vehicle attempted to elude the officers, in violation of O.C.G.A. § 40-6-395(a), the officers had a specific and articulable reason to stop the vehicle; consequently, the trial court properly denied the defendant's motions to suppress, in limine, and for a new trial. Francis v. State, 275 Ga. App. 164, 620 S.E.2d 431 (2005).

Since the defendant ignored the officers' commands during an investigatory stop based on a tipster's report of illegal drug activity, fled from the scene, and led the officers on a chase in violation of O.C.G.A. § 40-6-395(a), any taint arising from the allegedly illegal stop was purged and the defendant's flight provided a legitimate basis for discovery of evidence in the defendant's car. Prather v. State, 279 Ga. App. 873, 633 S.E.2d 46 (2006).

Trial court properly denied the defendant's motion to suppress because undisputed facts showed that the initial stop of the vehicle on the highway ramp did not result in a seizure within the meaning of the Fourth Amendment since the defendant fled with the vehicle and, after the defendant fled from the initial stop, the officer pursued the defendant and observed the defendant commit traffic violations, speeding, running a red light, and improper lane usage, which provided a valid basis for the second stop. Jenkins v. State, No. A18A0123, 2018 Ga. App. LEXIS 236 (Apr. 25, 2018).

Illegal Terry stop does not provide carte blanche to violate O.C.G.A. § 40-6-395. Davis v. State, 235 Ga. App. 10, 507 S.E.2d 827 (1998).

Officer waving a car to a stop was not a Terry stop by virtue of O.C.G.A. § 40-6-395. — A DUI defendant was not forced to stop by a police officer who waved the defendant down by virtue of O.C.G.A. § 40-6-395 because the officer told the defendant that the defendant was free to go and there was no pursuit involved. Butler v. State, 303 Ga. App. 564, 694 S.E.2d 168 (2010).

Probable cause to arrest for violation. — In an arrestee's 42 U.S.C. § 1983 suit alleging that that the arrestee was falsely arrested in violation of U.S. Const., amend. IV the arresting officer was entitled to qualified immunity because actual probable cause to affect the arrestee's arrest for violating O.C.G.A. § 40-6-395(c) existed after police received a citizen call about a civilian car using police-like strobe lights, the arrestee's car matched the citizen's description, the officer saw the arrestee activate strobe lights on the arrestee's car, and the officer found a strobe light switch box in the car. Baker v. Moskau, 335 Fed. Appx. 864 (11th Cir. 2009) (Unpublished).

No audible signal given. — When indictment charged the defendant with attempting to elude "after having been given visual and audible signal to bring the vehicle to a stop" but, at trial, the arresting officer testified that the officer used only visual signals, the state failed to prove the signal was given in the manner alleged, and the evidence was insufficient to support the charge as made in the indictment. Little v. State, 202 Ga. App. 7, 413 S.E.2d 496 (1991).

Offenses of fleeing and eluding not merged with suspended license violation. — Convictions under both O.C.G.A. §§ 40-5-58(c) and 40-6-395(b)(5)(A) were proper under O.C.G.A. § 16-1-6 as the elements of both charged offenses required different proof. Under O.C.G.A. § 40-5-58(c), the state proved that the defendant was declared an habitual violator, was properly notified of such status, and that the defendant operated a vehicle without having obtained a valid driver's license; while under O.C.G.A. § 40-6-395(b)(5)(A), proof that the driver committed a misdemeanor while fleeing or attempting to elude, that the driver was trying to escape arrest for a felony offense other than road violations, and that the driver committed one of the statutorily enumerated acts was required. Buggay v. State, 263 Ga. App. 520, 588 S.E.2d 244 (2003).

Sufficient evidence of first degree homicide by vehicle while eluding. — Evidence was sufficient to convict the defendant of first degree homicide by vehicle while fleeing and attempting to elude a pursuing police vehicle because the officer began following a car as the officer suspected that the driver was impaired; the officer activated the vehicle's lights to stop the car to investigate whether the driver was impaired, but the defendant did not pull over and stop; after the officer blew the air horn to give the defendant an audible stop signal, the car accelerated; seconds later, the car failed to negotiate a sharp curve and crashed into a utility pole; on arrival at the hospital emergency room, the passenger was declared dead; and the passenger died as a result of injuries suffered in the crash. Moceri v. State, 338 Ga. App. 329, 788 S.E.2d 899 (2016), cert. denied, No. S17C0095, 2017 Ga. LEXIS 210 (Ga. 2017).

Indictment for felony murder and vehicular homicide. — Defendant could be indicted for vehicular homicide under O.C.G.A. § 40-6-393 and felony murder during the commission of fleeing and attempting to elude a police officer under O.C.G.A. § 40-6-395. State v. Tiraboschi, 269 Ga. 812, 504 S.E.2d 689 (1998).

Charge predicate to felony murder. — Charge under O.C.G.A. § 40-6-395 of fleeing and attempting to elude a police officer served as a predicate to felony murder. State v. Tiraboschi, 269 Ga. 812, 504 S.E.2d 689 (1998).

Dual prosecution valid, but sentencing merged. — Defendant could be lawfully prosecuted for both O.C.G.A. § 40-6-395(a) and (b)(5)(A) without offending O.C.G.A. § 16-1-7(a), although the defendant could not be sentenced for both; the court found that because all of the evidence was used up to prove the crime of felony fleeing or attempting to elude, the misdemeanor conviction for fleeing or attempting to elude merged into the greater offense. Buggay v. State, 263 Ga. App. 520, 588 S.E.2d 244 (2003).

Conviction upheld. — Defendant was properly convicted of a charge of attempting to elude a police officer when the evidence showed that the officer was on patrol and in the officer's patrol car and had the officer's blue light flashing and siren sounding. Cook v. State, 180 Ga. App. 877, 350 S.E.2d 847 (1986).

Evidence was sufficient to support the conviction of the defendant, notwithstanding that a videotape recorded by a video camera in the arresting officer's patrol car indicated that the defendant's vehicle disappeared from the officer's view as the officer completed a U-turn and had already come to a stop by the time the officer made a left turn into a commercial complex, since the officer testified that the defendant was the driver of the vehicle and that the defendant attempted to elude the pursuing police officer through the defendant's actions and denials after the defendant brought the defendant's vehicle to a stop. Turner v. State, 236 Ga. App. 592, 512 S.E.2d 699 (1999).

Defendant's conviction under O.C.G.A. § 40-6-395 was upheld as: (1) the conviction was supported by sufficient evidence of the defendant's failure to yield to an uniformed police officer driving a marked police vehicle when commanded to do so; (2) the issue as to whether a failure to stop was wilful was a question for the jury upon consideration of the words, conduct, demeanor, motive, and all other circumstances connected with the act; (3) a motion to quash the accusation contested the authenticity of the state's evidence and did not attack the accusation for a facial defect, thus making denial of the motion proper; (4) the pursuing officer was not called upon to exercise the legislative function of defining what constituted a crime, but the executive branch function of enforcing the law; (5) there was no constitutional requirement that the statute had to contain a statement that a justification defense be asserted; (6) the State Court of Douglas County had subject-matter jurisdiction over the case; and (7) since the defendant was not found guilty of a wilful failure to stop, a contention that the defendant could not be tried for the offense was moot. Harbuck v. State, 280 Ga. 775, 631 S.E.2d 351 (2006).

Given evidence from an ensuing police officer identifying the defendant as the driver of the vehicle stopped, and because the jury was the judge of the credibility of the witnesses presented at trial, and was authorized the reject the defendant's alibi defense, sufficient evidence was presented to support the defendant's convictions for reckless driving, failure to maintain a lane, driving with defective equipment, fleeing or attempting to elude a police officer, and obstruction of a police officer. Daniel v. State, 282 Ga. App. 291, 638 S.E.2d 430 (2006).

Because sufficient direct and circumstantial evidence showed that the defendant, a prior felon wielding a weapon, engaged in a fight with the two victims, fatally wounding one and shooting the other in the arm, and thereafter fled from police, the defendant's convictions for involuntary manslaughter, reckless conduct, fleeing and eluding, and possession of a firearm by a convicted felon were upheld on appeal. Alvin v. State, 287 Ga. App. 350, 651 S.E.2d 489 (2007).

Evidence was sufficient to support the defendant's convictions for trafficking in cocaine, possession of a firearm during the commission of a felony, possession of a firearm by a convicted felon, and felony fleeing or attempting to elude based on the defendant's involvement in a police chase that included speeds in excess of 100 m.p.h. in a residential area and the defendant's attempt to flee on foot. Hinton v. State, 297 Ga. App. 565, 677 S.E.2d 752 (2009).

Evidence was sufficient to support the defendant's conviction for fleeing from an officer since the defendant admitted to being the driver of the vehicle and that the defendant "freaked out" when the co-defendant returned to the car indicating that a fast food restaurant robbery had taken place and police sirens were heard, so the defendant "hit the gas" when a sergeant pulled behind the vehicle. Broyard v. State, 325 Ga. App. 794, 755 S.E.2d 36 (2014).

Evidence was sufficient to support the appellant's conviction as a party to the crime of violating O.C.G.A. § 40-6-395(a) for fleeing and eluding because the appellant testified and admitted shoplifting,

admitted to having a prior record of shoplifting, had only recently been released from prison, and that getting caught on the day of the events would be a parole violation that would send the appellant back to prison. McNeely v. State, 296 Ga. 422, 768 S.E.2d 751 (2015).

Officer's testimony was sufficient to establish the defendant's identity as the individual who refused to bring a vehicle to a stop after having been given a visual and audible signal by the officer. Glispie v. State, 335 Ga. App. 177, 779 S.E.2d 767 (2015), aff'd in part and rev'd in part, 300 Ga. 128 793 S.E.2d 381 (Ga. 2016).

Evidence sufficient. — There was evidence sufficient to convince any rational trier of fact of the existence of the essential elements of the crime of attempting to elude an officer. Hassell v. State, 212 Ga. App. 432, 442 S.E.2d 261 (1994); Finlon v. State, 228 Ga. App. 213, 491 S.E.2d 458 (1997); Davidson v. State, 237 Ga. App. 580, 516 S.E.2d 90 (1999); Gibson v. State, 243 Ga. App. 610, 533 S.E.2d 783 (2000).

Evidence that the arresting officer was uniformed and driving a marked patrol car and that the defendant fled after a license check had been completed supported the defendant's conviction. Davis v. State, 235 Ga. App. 10, 507 S.E.2d 827 (1998).

Evidence was sufficient to prove that the defendant was guilty of reckless driving and attempting to elude an officer when the defendant led the officer on a high speed chase driving on the wrong side of the road and wilfully failed to bring the defendant's car to a stop after the officer activated the patrol car's blue lights and siren. Brackins v. State, 249 Ga. App. 788, 549 S.E.2d 775 (2001).

Evidence authorized the trial court to find beyond a reasonable doubt that the defendant attempted to elude a police officer under O.C.G.A. § 40-6-395(a) as the defendant wilfully failed and refused to bring the vehicle to a stop when given visual and audible signals to do so. Weir v. State, 257 Ga. App. 387, 571 S.E.2d 191 (2002).

Convictions for armed robbery, aggravated assault, fleeing to elude a police officer, and reckless driving were all upheld on appeal given the sufficiency of the identification evidence supplied by the victim, an investigating officer, and the arresting officer, as well as observations made by the latter in apprehending the defendant; moreover, the defendant's failure to object to the admission of a photographic lineup and show-up as impermissibly suggestive precluded appellate review of those issues. Newton v. State, 280 Ga. App. 709, 634 S.E.2d 839 (2006).

Evidence supported a defendant's convictions for fleeing and attempting to elude a police officer as an underlying offense for felony murder, theft by taking, vehicular homicide, disregarding a traffic control device, failing to stop at a stop sign, and reckless driving as: (1) the defendant stole a vehicle and was spotted by an officer shortly after the vehicle was reported as stolen; (2) when the officer began to follow the vehicle, the vehicle rapidly accelerated; (3) the officer followed the stolen vehicle for several blocks, with both vehicles traveling between 60-70 miles per hour; (4) the vehicle continued to accelerate after the officer turned on the officer's blue lights and siren; (5) when the stolen vehicle ran a red light, the vehicle struck a car, killing the driver; and (6) the officer and the owner of the stolen vehicle identified the defendant as the person driving the stolen vehicle. Ferguson v. State, 280 Ga. 893, 635 S.E.2d 144 (2006).

Evidence supported a defendant's conviction of bringing stolen property to Georgia, eluding an officer, and possessing marijuana as a party, if not as a conspirator, since: (1) the defendant discussed with the defendant's boyfriend what would happen if they were apprehended by the police; (2) the boyfriend gave the defendant a handgun after the boyfriend stole a new gun and the defendant packed two guns with the defendant's personal items and the ski masks; (3) the defendant suspected that the truck was stolen, refused to ask about the truck's origin, saw the stolen gun on the seat of the truck, observed two gas drive-offs, ate stolen food, smoked shared marijuana repeatedly, and sat next to the glove compartment where the marijuana lay; and (4) the defendant was silent during the police pursuits, saw the defendant's boyfriend retrieve a stolen handgun just prior to an

assault of a police officer, did not hinder the boyfriend or warn the police, lied to the police to cover up the matter, and referred to the entire affair as having "fun for a minute." Michael v. State, 281 Ga. App. 289, 635 S.E.2d 790 (2006), overruled on other grounds by Gibbs v. State, 340 Ga. App. 723, 798 S.E.2d 308 (2017).

There was sufficient evidence to convict the defendants of fleeing or attempting to elude a police officer in violation of O.C.G.A. § 40-6-395(a); both of the defendants, along with the driver, fled after the vehicle in which they were riding crashed, and, as a result, the defendants, by fleeing with the driver, became chargeable as parties to the crime. Cooper v. State, 281 Ga. App. 882, 637 S.E.2d 480 (2006).

There was sufficient evidence to support a defendant's conviction for fleeing and eluding the police based on the defendant, after panicking from striking a vehicle in a nightclub parking lot, testifying at trial that the defendant attempted to flee to avoid arrest for driving under the influence and for striking the parked car. Adams v. State, 293 Ga. App. 377, 667 S.E.2d 186 (2008).

Evidence that the defendant eluded police at 75 miles per hour (mph) in a 25 mph zone, ran several stop signs, abandoned the car, and fled on foot was sufficient to convict the defendant of fleeing and attempting to elude in violation of O.C.G.A. § 40-6-395(a). Bridges v. State, 293 Ga. App. 783, 668 S.E.2d 293 (2008).

Evidence that a defendant gave a fake name and address, sped from the scene of a traffic stop, abandoned the truck, and continued to run from, hide from, and fight with police was more than sufficient to support convictions for misdemeanor obstruction of a police officer in violation of O.C.G.A. § 16-10-24(a) and fleeing or attempting to elude in violation of O.C.G.A. § 40-6-395(a). Lightsey v. State, 302 Ga. App. 294, 690 S.E.2d 675 (2010).

Because the defendant chose to run away from a traffic stop, a police officer had probable cause to arrest the defendant for fleeing or attempting to elude a police officer; voluntarily throwing a digital scale and a baggie of suspected cocaine to the sidewalk near parking spaces within an apartment complex demonstrated an abandonment of the items. State v. Nesbitt, 305 Ga. App. 28, 699 S.E.2d 368 (2010).

Evidence was sufficient to find the defendant guilty beyond a reasonable doubt of two counts of fleeing and attempting to elude a police officer because officers pursued the defendant's fleeing vehicle in a high-speed chase in patrol vehicles clearly marked with their emergency lights and sirens activated; despite those warnings, the defendant ran a stop sign and a red light and refused to stop the defendant's vehicle until "stop sticks" disabled the defendant's vehicle. Tauch v. State, 305 Ga. App. 643, 700 S.E.2d 645 (2010).

Evidence, viewed in the light most favorable to the verdict, was sufficient for a rational trier of fact to find the defendant guilty beyond a reasonable doubt of felony fleeing or attempting to elude a police officer, failure to stop upon striking an unattended vehicle, and failure to stop at or return to the scene of an accident, violations of O.C.G.A. §§ 40-6-395(a) and (b)(5)(A), 40-6-270(a), and 40-6-271(a), when the defendant refused to stop a vehicle for two bicycle-patrol uniformed officers, drove the vehicle into one of the officers, struck two unattended vehicles, and struck an officer's marked bicycle. Fairwell v. State, 311 Ga. App. 834, 717 S.E.2d 332 (2011).

Evidence that the defendant traveled 0.7 miles before stopping after the officers engaged the emergency lights and siren on the patrol car, passing a number of safe locations to stop, supported the defendant's conviction for fleeing and attempting to elude. King v. State, 317 Ga. App. 834, 733 S.E.2d 21 (2012).

Evidence insufficient for conviction. — Johnson v. State, 246 Ga. App. 197, 540 S.E.2d 212 (2000).

Evidence was not sufficient to sustain the defendant's conviction for fleeing and attempting to elude police because the state charged the defendant with striking or colliding with another vehicle while the defendant was attempting to elude police, but there was no evidence that a vehicle the defendant drove struck or collided with another vehicle. James v. State, 265 Ga. App. 689, 595 S.E.2d 364 (2004).

Given evidence that the pursuing officer

failed to activate the blue emergency lights, and no evidence was presented that the officer gave any other signal to communicate to the driver of the pursued vehicle of the requirement for that driver to stop, the defendant's conviction under O.C.G.A. § 40-6-395(a) was reversed. Bradford v. State, 287 Ga. App. 50, 651 S.E.2d 356 (2007).

Because the defendant complied with a deputy's signal to stop a vehicle and the deputy did not arrest the defendant or instruct the defendant to remain at the scene while the officer chased a wanted person, the defendant's subsequent flight from the scene did not equate to fleeing pursuit by an officer under O.C.G.A. § 40-6-395(a); accordingly, the trial court erred in denying the defendant's motion for a directed verdict of acquittal. Bledson v. State, 294 Ga. App. 772, 670 S.E.2d 223 (2008).

Evidence insufficient to support felony conviction. — Evidence was sufficient to support the defendant's guilty verdict as to misdemeanor fleeing and eluding, in violation of O.C.G.A. § 40-6-395, but the evidence was insufficient to show that there were traffic conditions that placed the general public at risk of serious injury to support the defendant's conviction for felony fleeing and eluding. Hicks v. State, 321 Ga. App. 773, 743 S.E.2d 458 (2013).

Circumstantial evidence was sufficient to convict the defendant of misdemeanor fleeing or attempting to elude a police officer because a deputy identified the defendant as the driver; another officer followed the defendant out of the parking lot when the defendant refused to stop; and the officer activated the vehicle's lights and siren but lost sight of the speeding car moments before a car of the same color struck another vehicle just ahead; however, the evidence was insufficient to convict the defendant of felony fleeing or attempting to elude as no evidence was presented that the defendant was attempting to elude arrest for a non-traffic violation when the defendant struck the other vehicle. Johnson v. State, 337 Ga. App. 622, 788 S.E.2d 559 (2016).

Evidence insufficient for arrest. — Because the circumstances of the defendant's low-speed flight from an uniformed detective, who was driving an unmarked vehicle, were insufficient to present law enforcement with evidence of a particular crime, the defendant could not be charged with the crime of attempting to elude an officer, and police lacked the probable cause sufficient to warrant an arrest for the offense; thus, the search incident to the arrest was invalid, warranting suppression of the evidence seized. Stephens v. State, 278 Ga. App. 694, 629 S.E.2d 565 (2006).

Directed verdict motion properly denied. — In a case involving charges of obstruction of an officer and attempting to elude, a motion for directed verdict was properly denied since the officer was investigating the defendant for driving under the influence and the defendant did not respond to the officer's orders and forced the officer to get a warrant to effectuate an arrest. Reed v. State, 205 Ga. App. 209, 422 S.E.2d 15, cert. denied, No. S92C1446, 1992 Ga. LEXIS 865 (1992).

Counsel not ineffective in conceding guilt. — Counsel was not ineffective by conceding defendant's guilt on a fleeing and eluding charge in order to build credibility and avoid conviction on the more serious charges; the fleeing charge carried a five-year maximum sentence, O.C.G.A. § 40-6-395(b)(5)(A), whereas the defendant faced a sentence of life without parole were the defendant convicted of armed robbery. Payne v. State, 338 Ga. App. 677, 791 S.E.2d 451 (2016).

Mandatory sentence. — Because O.C.G.A. § 40-6-395 imposed a minimum sentence of 10 days upon conviction of fleeing or attempting to elude a police officer, the trial court erred in failing to sentence a defendant to the mandatory minimum incarceration. State v. Searcy, 277 Ga. App. 642, 627 S.E.2d 210 (2006).

Cited in Snell v. McCoy, 135 Ga. App. 832, 219 S.E.2d 482 (1975); State v. Edwards, 236 Ga. 104, 222 S.E.2d 385 (1976); Torley v. State, 141 Ga. App. 366, 233 S.E.2d 476 (1977); Brock v. State, 146 Ga. App. 78, 245 S.E.2d 442 (1978); McSears v. State, 247 Ga. 48, 273 S.E.2d 847 (1981); Hill v. State, 159 Ga. App. 589, 284 S.E.2d 92 (1981); Lester v. State, 253 Ga. 235, 320 S.E.2d 142 (1984); Freeman

v. State, 194 Ga. App. 905, 392 S.E.2d 330 (1990); Cabral v. State, 199 Ga. App. 557, 405 S.E.2d 556 (1991); Jackson v. State, 223 Ga. App. 27, 477 S.E.2d 28 (1996); English v. State, 261 Ga. App. 157, 582 S.E.2d 136 (2003); State v. Stilley, 261 Ga. App. 868, 584 S.E.2d 9 (2003); Faulkner v. State, 277 Ga. App. 702, 627 S.E.2d 423 (2006); Jaheni v. State, 285 Ga. App. 266, 645 S.E.2d 735 (2007); Leachman v. State, 286 Ga. App. 708, 649 S.E.2d 886 (2007); McClendon v. State, 287 Ga. App. 238, 651 S.E.2d 165 (2007); Green v. State, 287 Ga. App. 248, 651 S.E.2d 174 (2007); Francis v. State, 287 Ga. App. 428, 651 S.E.2d 779 (2007); Segel v. State, 293 Ga. App. 506, 667 S.E.2d 670 (2008); Westmoreland v. State, 287 Ga. 688, 699 S.E.2d 13 (2010); Myers v. State, 311 Ga. App. 668, 716 S.E.2d 772 (2011); Russell v. State, 319 Ga. App. 472, 735 S.E.2d 797 (2012).

OPINIONS OF THE ATTORNEY GENERAL

Elements required to determine if cases are felonies requiring transfer to superior court. 1996 Op. Att'y Gen. No. U96-7.

RESEARCH REFERENCES

C.J.S. — 61A C.J.S., Motor Vehicles, § 1514 et seq.

ALR. — What conduct in driving an automobile amounts to wantonness, wilfullness, or the like, precluding defense of contributory negligence, 119 A.L.R. 654.

Automobiles: liability of one fleeing police for injury resulting from collision of police vehicle with another vehicle, person or object, 51 A.L.R.3d 1226.

40-6-396. Homicide by interference with official traffic-control device or railroad sign or signal; serious injury by interference with official traffic-control device or railroad sign or signal.

(a) Any person who, without malice aforethought, causes the death of another person through the violation of subsection (a) of Code Section 40-6-26 commits the offense of homicide by interference with an official traffic-control device or railroad sign or signal and, upon conviction thereof, shall be punished by imprisonment for not less than two nor more than 15 years.

(b) Any person who, without malice aforethought, causes bodily harm to another by depriving such other person of a member of his or her body, by rendering a member of his or her body useless, by seriously disfiguring his or her body or a member thereof, or by causing organic brain damage which renders the body or any member thereof useless through the violation of subsection (a) of Code Section 40-6-26 commits the offense of serious injury by interference with an official traffic-control device or railroad sign or signal and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years. (Code 1981, § 40-6-396, enacted by Ga. L. 1996, p. 1281, § 3.)

Law reviews. — For review of 1996 uniform rules of the road legislation, see 13 Ga. St. U.L. Rev. 241 (1996).

40-6-397. Aggressive driving; penalty.

(a) A person commits the offense of aggressive driving when he or she operates any motor vehicle with the intent to annoy, harass, molest, intimidate, injure, or obstruct another person, including without limitation violating Code Section 40-6-42, 40-6-48, 40-6-49, 40-6-123, 40-6-184, 40-6-312, or 40-6-390 with such intent.

(b) Any person convicted of aggressive driving shall be guilty of a misdemeanor of a high and aggravated nature. (Code 1981, § 40-6-397, enacted by Ga. L. 2001, p. 208, § 1-7.)

Law reviews. — For annual survey of criminal law, see 56 Mercer L. Rev. 153 (2004).

JUDICIAL DECISIONS

Aggressive driving involves specific, intended victims. — Trial court erred in quashing that part of the indictment that alleged the defendant committed the offense of aggressive driving against three passengers in the other automobile defendant chased, based on the defendant's argument that the offense involved the defendant's manner of driving and was unrelated to the individual occupants of the vehicle; rather, the offense of "aggressive driving" involved specific, intended victims, and, thus, the state was permitted to attempt to prove that the defendant, through the defendant's aggressive driving, targeted not only the other automobile's driver, but also the individual passenger's as well. State v. Burrell, 263 Ga. App. 207, 587 S.E.2d 298 (2003).

Reckless conduct conviction no bar to aggressive driving conviction. — Defendant's previous conviction for reckless conduct under O.C.G.A. § 16-5-60 did not bar later conviction for aggressive driving under O.C.G.A. § 40-6-397 when both convictions arose out of the same incident. A conviction for aggressive driving did not require proof of fact that the defendant endangered the bodily safety of the other driver and the other driver's family, while reckless conduct conviction did not require proof of fact that the defendant drove with intent to annoy, harass, intimidate, and injure another; thus, each crime required proof of fact that the other did not, so neither offense was included in the other so as to violate the substantive bar against double jeopardy of O.C.G.A. § 16-1-7. Winn v. State, 291 Ga. App. 16, 660 S.E.2d 883 (2008).

Evidence sufficient for conviction. — Trial court was authorized to conclude beyond a reasonable doubt that the defendant committed the offense of aggressive driving when the defendant braked suddenly, causing the car following the defendant to brake also, which caused the third car in line to collide with the car second in line; the evidence also showed that the defendant knew that the driver of the second car was behind the defendant, the passengers in the defendant's car yelled obscenities at the driver of the second car and made obscene gestures toward the second driver, and thereafter, the defendant braked suddenly after telling the defendant's passengers to "watch this." In the Interest of A.M.A., 266 Ga. App. 273, 596 S.E.2d 756 (2004).

Aggressive driving conviction was upheld based on an officer's testimony that

the defendant rudely tailgated the officer and became very agitated that the officer was driving slowly. Frasard v. State, 278 Ga. App. 352, 629 S.E.2d 53 (2006).

Evidence that the defendant struck a truck four times in rapid succession and then struck the truck again as the defendant fled the scene was sufficient to support the defendant's conviction for aggressive driving. Simmons v. State, 321 Ga. App. 743, 743 S.E.2d 434 (2013).

Insufficient evidence for conviction. — Defendant's convictions for terroristic acts, aggressive driving, and criminal trespass were reversed on appeal since the only evidence identifying the defendant as the perpetrator of a roadway situation wherein the victim was tailgated and an object was thrown at the victim's car, causing a dent, was a police officer's hearsay testimony that the officer spoke to the defendant's mother, who indicated that the defendant had not been home, and the hearsay statement of the defendant admitting to the tailgating and honking; this evidence was inadmissible hearsay and therefore, relying on the remaining evidence, insufficient evidence existed to support the defendant's convictions. Patterson v. State, 287 Ga. App. 100, 650 S.E.2d 770 (2007).

Challenge rendered moot by acquittal. — In a defendant's trial for aggressive driving and other charges arising out of a road rage incident, the defendant's claim that the trial court erred by omitting a pronoun representing the gender of a victim when charging the jury on the offense of aggressive driving was moot in light of the jury's acquittal of the defendant on that charge. Adams v. State, 282 Ga. App. 819, 640 S.E.2d 329 (2006).

Cited in State v. Ogilvie, 292 Ga. 6, 734 S.E.2d 50 (2012).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting. — Georgia Crime Information Center is authorized to collect and file fingerprints of persons charged with a violation of O.C.G.A § 40-6-397. 2001 Op. Att'y Gen. No. 2001-11.

CHAPTER 7

OFF-ROAD VEHICLES

Sec.		Sec.	
40-7-1.	Short title.	40-7-5.	Authority to regulate time periods and to establish zones of use.
40-7-2.	Declaration of policy.		
40-7-3.	"Off-road vehicle" defined.		
40-7-4.	Operating restrictions; "perennial stream" defined.	40-7-6.	Enforcement and penalties.

Cross references. — Jurisdiction to try certain cases involving operation of off-road vehicle, § 15-9-30.8.

RESEARCH REFERENCES

ALR. — Accidents involving negligence in operation of snowmobile, skimobile, or similar vehicle, 42 A.L.R.3d 1422.

Operation or use of vehicle outside scope of permission as rendering it uninsured within meaning of uninsured motorist coverage, 17 A.L.R.4th 1322.

40-7-1. Short title.

This chapter shall be known and may be cited as the "Off-Road Vehicle Act of 1975." (Ga. L. 1976, p. 330, § 1.)

40-7-2. Declaration of policy.

The rapid increase in the use of off-road vehicles and their growing impact upon aspects of the public interest are matters of concern to the General Assembly and to the people of this state. Therefore, in order to promote the safe use of off-road vehicles, to protect the wildlife and natural resources of the state, and to guarantee the availability of various forms of recreation to all citizens in an environment of diversity and quality, this chapter is enacted. (Ga. L. 1976, p. 330, § 2; Ga. L. 1985, p. 149, § 40.)

40-7-3. "Off-road vehicle" defined.

As used in this chapter, the term "off-road vehicle" means any motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, snow, ice, marsh, swampland, or other natural terrain and not intended for use predominantly on public roads. The term includes, but is not limited to, four-wheel drive vehicles, low-pressure tire vehicles, two-wheel vehicles, nonhighway tire vehicles, amphibious machines, ground effect or air cushion vehicles, and

any other means of transportation deriving power from any source other than muscle or wind. The term shall exclude any motorboat; any military, fire, law enforcement, or other government vehicle being used for official purposes; any vehicles used exclusively on airports; all farm machinery, farm tractors, and other vehicles used exclusively for agricultural purposes; any self-propelled equipment for harvesting and transportation of forest products, for clearing land for planting, for utility services and maintenance, for earth moving, construction, or mining; and self-propelled lawnmowers, snowblowers, garden or lawn tractors, or golf carts, while such vehicles are being used exclusively for their designed purposes. (Ga. L. 1976, p. 330, § 3; Ga. L. 2010, p. 98, § 1-1/HB 207; Ga. L. 2012, p. 726, § 4/HB 795.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 1 et seq.

40-7-4. Operating restrictions; "perennial stream" defined.

Any person operating an off-road vehicle under any of the following conditions shall be deemed to be in violation of this chapter and subject to the penalties provided in Code Section 40-7-6:

(1) Without operative brakes or without mufflers or other silencing equipment;

(2) On any private property without the express written permission of the owner of the property or his or her agent; or

(3) Within any perennial stream, except when directly crossing such stream. As used in this paragraph, the term "perennial stream" means a stream:

(A) That under normal circumstances has water flowing year round;

(B) That has the channel located below the ground-water table most of the year;

(C) For which ground water is the primary source of water; and

(D) For which runoff from rainfall is a supplemental source of water flow. (Ga. L. 1976, p. 330, § 4; Ga. L. 1994, p. 97, § 40; Ga. L. 2010, p. 98, § 1-2/HB 207.)

JUDICIAL DECISIONS

Cited in Simmons v. State, 281 Ga. App. 252, 635 S.E.2d 849 (2006).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 200, 202.

40-7-5. Authority to regulate time periods and to establish zones of use.

(a) Incorporated towns and municipalities and counties shall have the authority to adopt ordinances consistent with state laws or regulations to regulate time periods and zones of use for off-road vehicles.

(b) Agencies of state government shall have the authority to adopt rules and regulations to regulate time periods and zones for use for off-road vehicles on property under their jurisdiction or management. (Ga. L. 1976, p. 330, § 5.)

40-7-6. Enforcement and penalties.

All peace officers shall enforce the provisions of this chapter. Any person who violates any provision of this chapter shall not thereby be guilty of a criminal act but shall be subject to a civil penalty of not less than $25.00. (Ga. L. 1976, p. 330, § 6; Ga. L. 2010, p. 98, § 1-3/HB 207.)

Cross references. — Jurisdiction to try certain cases involving operation of off-road vehicle, § 15-9-30.8.

CHAPTER 8

EQUIPMENT AND INSPECTION OF MOTOR VEHICLES

Article 1

Equipment Generally

Part 1

General Provisions

Sec.
40-8-1. Application of article.
40-8-2. Vehicles within jurisdiction of commissioner of public safety.
40-8-3. Vehicle or load dragging on highway; wheels causing pounding on road surface.
40-8-4. Emblem to be displayed on certain slow-moving vehicles or equipment operating on public roads.
40-8-5. Alteration of odometer; involvement with devices which cause odometer to register other than actual mileage; penalties.
40-8-6. Alteration of suspension system; operation of vehicle with broken springs.
40-8-6.1. Raised chassis vehicles.
40-8-7. Driving unsafe or improperly equipped vehicle; punishment for violations of chapter generally; vehicle inspection by law enforcement officer without warrant.
40-8-8. Speedometer.
40-8-9. Compliance with federal provisions.
40-8-10. Operation of motor vehicles with nitrous oxide; penalty for violation.
40-8-11. Operational rules for autonomous vehicles; state consumer laws applicable.

Part 2

Lighting Equipment

40-8-20. When lighted headlights and other lights required.
40-8-21. Visibility distance and mounted height; exception for wreckers.
40-8-22. Headlights.
40-8-23. Taillights.
40-8-24. Reflectors.
40-8-25. Brake lights and turn signals required.
40-8-26. Standards for brake lights and signal devices.
40-8-27. Light, flag, or strobe lamp on projecting load; requirements for lamp and flag.
40-8-28. Lights on parked vehicles.
40-8-29. Spotlights, foglights, and auxiliary lights permitted.
40-8-30. Standards for multiple-beam road lighting equipment.
40-8-31. Use of multiple-beam road lighting equipment.
40-8-32. Lights on vehicles of rural mail carriers.
40-8-33. Lights on farm tractors and unlicensed three-wheeled motorcycles used only for agricultural purposes; restrictions on trailers and semitrailers otherwise exempt under Code Section 40-8-1; no duty on manufacturers of lighting systems.
40-8-34. Color in lighting equipment.
40-8-35. Operating low-speed vehicles on highway requires amber strobe light.

Part 3

Brakes

40-8-50. Brakes required.
40-8-51. Means of operation.
40-8-52. Parking brakes.
40-8-53. Performance ability of brakes.
40-8-54. Maintenance.

Part 4

Horns, Exhaust Systems, Mirrors, Windshields, Tires, Safety Belts, Energy Absorption Systems

40-8-70. Horns and warning devices.
40-8-71. Exhaust system; prevention of noise, smoke, and fumes.
40-8-72. Mirrors.

Sec.
40-8-73. Windshields and windshield wipers.
40-8-73.1. Tinting of windows or windshields.
40-8-74. Tires.
40-8-75. Tire covers.
40-8-76. Safety belts required as equipment; safety restraints for children.
40-8-76.1. Use of safety belts in passenger vehicles.
40-8-77. Energy absorption system.
40-8-78. Safety glazing.
40-8-79. Unlawfully riding in bed of pickup truck; penalty.

PART 5

EQUIPMENT OF LAW ENFORCEMENT AND EMERGENCY VEHICLES

40-8-90. Restrictions on use of blue lights on vehicles.
40-8-91. Marking and equipment of law enforcement vehicles; motorist allowed to continue to safe location before stopping for law enforcement officer vehicles.
40-8-91.1. Marking and equipment of all-terrain vehicles used as law enforcement vehicles.
40-8-92. Designation of emergency vehicles; flashing or revolving lights; permits; fee; prohibition against use of flashing or revolving green lights by private persons on public property.
40-8-93. Flashing parking or brake lights or directional signals not prohibited.
40-8-94. Sirens, whistles, or bells.
40-8-95. Rules and regulations.
40-8-96. Violation of Code Sections 40-8-90 and 40-8-92.

PART 6

EQUIPMENT OF SCHOOL BUSES

40-8-110. Identification and color.
40-8-111. Equipment generally.
40-8-112. Compliance with State Board Bus Specifications.
40-8-113. Standards applicable regardless of size or capacity.
40-8-114. Operation of school buses by churches, private schools, and local transit systems; transportation of school children on buses owned or operated by public transit systems.
40-8-115. Identification and equipment of school buses for special school route service.
40-8-116. Unlawful acts.

Article 2

Control of Vehicle Emissions

PART 1

EMISSION CONTROL DEVICES GENERALLY

40-8-130. Unlawful to operate vehicle without serviceable emission control device; penalty; exceptions.
40-8-131. Inspection without warrant authorized.
40-8-132. Annual inspection [Repealed].

PART 2

ESTABLISHMENT OF EMISSION STANDARDS; INSPECTION OF MOTOR VEHICLES FOR COMPLIANCE WITH STANDARDS

40-8-150 through 40-8-163. [Repealed].

PART 3

VISIBLE EMISSIONS

40-8-180. Short title.
40-8-181. Visible emissions from vehicles on public roadways prohibited; exceptions.
40-8-182. Enforcement of part; traffic violation citations.
40-8-183. Penalty.
40-8-184. Municipal and county regulation prohibited.
40-8-185. Part not applicable to certain vehicles.

Article 3

Inspections by Officers of Department of Public Safety

40-8-200. Inspection of vehicles by officers of the Department of Public Safety; certificate of inspection; procedure for noncompliant vehicle.

Sec.
40-8-201. Duties of owners and drivers of vehicles.

Article 4

Inspection of Public School Buses

40-8-220. Inspection of public school buses.

Sec.
40-8-221. Penalty.
40-8-222 through 40-8-264. [Repealed].

Article 5

Vehicle Equipment Safety Compact

40-8-280 through 40-8-291. [Repealed].

Cross references. — Duties of state fire marshal regarding setting forth of minimum standards covering design, construction, and other aspects of transportation of liquefied petroleum gas by tank truck, tank trailer, or other method, § 10-1-265. Regulation of size, weight, and other aspects of vehicles and loads on public highways, § 32-6-20 et seq. Observance of laws by motor carriers, § 40-1-122.

JUDICIAL DECISIONS

Cited in Archer v. Johnson, 90 Ga. App. 418, 83 S.E.2d 314 (1954); Beck v. Wade, 100 Ga. App. 79, 110 S.E.2d 43 (1959); Hodges v. State, 100 Ga. App. 611, 112 S.E.2d 373 (1959); King v. State, 133 Ga. App. 426, 211 S.E.2d 363 (1974).

OPINIONS OF THE ATTORNEY GENERAL

Coverage of inspection laws. — Legislature intended that both owner-drivers and nonowner-drivers of vehicles should be covered by the motor vehicle inspection laws. 1967 Op. Att'y Gen. No. 67-433.

ARTICLE 1

EQUIPMENT GENERALLY

Editor's notes. — Ga. L. 1982, p. 165, which repealed and reenacted Parts 1 through 4 of this article, contained a legislative intent provision in § 11, not codified by the General Assembly, which stated: "The General Assembly finds that properly equipped and serviced vehicles contribute to the public welfare and safety of the citizens of Georgia through the reduction of motor vehicle accidents resulting from mechanical failure. The General Assembly also finds that it is the responsibility of all motorists to maintain their motor vehicles in proper working condition. It is the intent of this Act to encourage all citizens to maintain their motor vehicles in safe operating condition. It is furthermore the intent of this Act to encourage the Department of Human Resources to promulgate rules and regulations specifying minimum safety standards for motor vehicles used to transport persons to and from day care centers or child care centers licensed by said department."

JUDICIAL DECISIONS

Vehicle retains "automobile" status regardless of operability. — Wheeled vehicle, designed to be self-propelled and to serve as a means of transportation, does not gain or lose status as an "automobile" depending upon whether at any

given time it is or is not fully capable of being operated as such. Cotton States Mut. Ins. Co. v. Statiras, 157 Ga. App. 169, 276 S.E.2d 853 (1981).

OPINIONS OF THE ATTORNEY GENERAL

Basis for vehicular distinctions. — Legislature based its vehicular distinctions not solely upon the load carried but upon the manner in which the defined load is carried by the vehicle under consideration. 1968 Op. Att'y Gen. No. 68-308.

Vehicle with flexible, welded joint. — Type of unit which is secured by a flexible, welded joint is a single unified motor vehicle and not two separate vehicles. As such, it is subject to the braking inspection requirements imposed by law on motor vehicles. 1968 Op. Att'y Gen. No. 68-308.

Pole trailers. — Legislature intended to classify as pole trailers only those vehicles in which the load thereupon carried was utilized to carry the trailer's own weight between the supporting connections. 1968 Op. Att'y Gen. No. 68-308.

Golf cart is motor vehicle. — Golf cart was a vehicle other than a tractor, not operated upon a track, and propelled by other than muscular power and thus fell within the definition of "motor vehicle." If it was to be operated upon a public road, the operator must comply with registration and inspection requirements and all equipment requirements of former Code 1933, Ch. 68-17. 1972 Op. Att'y Gen. No. U72-78.

PART 1

GENERAL PROVISIONS

40-8-1. Application of article.

(a) This article shall not apply to implements of husbandry, road machinery, road rollers, farm tractors, or three-wheeled motorcycles used only for agricultural purposes, except when expressly made applicable. This article shall not apply to personal transportation vehicles.

(b) Nothing in this article shall be construed to prohibit the use of additional parts and accessories on any vehicle, which use is not inconsistent with the provisions of this article. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 102; Ga. L. 1973, p. 598, § 3; Code 1933, § 68E-101, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-1, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1984, p. 1329, § 3; Ga. L. 1992, p. 6, § 40; Ga. L. 2014, p. 745, § 13/HB 877.)

JUDICIAL DECISIONS

Cited in Sheppard v. Martin, 100 Ga. App. 164, 110 S.E.2d 429 (1959); Mathis v. Patrick, 109 Ga. App. 376, 136 S.E.2d 166 (1964); Arnold Servs., Inc. v. Sullins, 110 Ga. App. 19, 137 S.E.2d 727 (1964); Faust v. Buchanan, 123 Ga. App. 15, 179 S.E.2d 294 (1970); Rogers v. State, 131 Ga. App. 136, 205 S.E.2d 901 (1974).

OPINIONS OF THE ATTORNEY GENERAL

Motor vehicles owned by a city or county are subject to the same equipment requirements as privately owned vehicles. 1954-56 Op. Att'y Gen. p. 468.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 184 et seq., 220, 221.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 33 et seq., 43 et seq., 111 et seq.

ALR. — Constitutionality, construction, and application of statute or ordinance requiring inspection of motor vehicles, 106 A.L.R. 795.

40-8-2. Vehicles within jurisdiction of commissioner of public safety.

In addition to the requirements of this article, the commissioner of public safety, as to the motor vehicles within the jurisdiction of the Department of Public Safety, shall have the authority to promulgate rules designed to promote safety pursuant to the provisions of Code Section 40-1-8. Any such rules promulgated or deemed necessary by the commissioner shall include the following: every vehicle and all parts thereof shall be maintained in a safe condition at all times. The lights, brakes, and equipment shall meet such safety requirements as the commissioner shall promulgate from time to time. Notwithstanding any provision of law to the contrary, a vehicle, driver, or motor carrier that is subject to a safety rule so promulgated shall comply with the more stringent or additional requirement imposed by that motor carrier safety or hazardous materials safety rule. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 102; Ga. L. 1973, p. 598, § 3; Code 1933, § 68E-102, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-2, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 2000, p. 951, § 5B-1; Ga. L. 2005, p. 334, § 19-1/HB 501; Ga. L. 2011, p. 479, § 12/HB 112.)

40-8-3. Vehicle or load dragging on highway; wheels causing pounding on road surface.

No vehicle or load any portion of which drags or slides on the surface of the roadway shall be used or transported on the highways. No vehicle shall be used or transported on the highways the wheels of which, while being used or transported, either from construction or otherwise, cause pounding on the road surface. (Ga. L. 1927, p. 226, § 17; Code 1933, § 68-404; Ga. L. 1970, p. 628, § 1; Code 1933, § 68E-103, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-3, enacted by Ga. L. 1982, p. 165, § 10.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 203. 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 1087.

C.J.S. — 60 C.J.S., Motor Vehicles, § 43 et seq.

40-8-4. Emblem to be displayed on certain slow-moving vehicles or equipment operating on public roads.

(a) It shall be unlawful for any person to operate upon the public roads of this state any slow-moving vehicle or equipment, any farm trailer or semitrailer which is used for agricultural purposes and which would otherwise be exempt from this article as an implement of husbandry under Code Section 40-8-1, any animal drawn vehicle, or any machinery designed for use and generally operated at speeds less than 25 miles per hour, including all road construction or maintenance equipment and machinery except when engaged in actual construction or maintenance procedures and all other construction equipment and machinery, unless there is displayed on the rear thereof an emblem which shall comply with subsection (b) of this Code section. It shall also be unlawful to operate upon the public roads of this state without such an emblem any three-wheeled motorcycle used only for agricultural purposes unless such three-wheeled motorcycle is licensed as required by Chapter 2 of this title and is in compliance with all other requirements of this chapter.

(b) The emblem required by subsection (a) of this Code section shall conform with those standards and specifications adopted for slow-moving vehicles by the American Society of Agricultural Engineers in December, 1966, and contained within such society's standard ASAE S276.1, or shall be an emblem of the same shape and size painted on such vehicle in a bright and conspicuous retroreflective red orange paint. Such emblem shall be mounted on the rear of such vehicles, in the approximate horizontal geometric center of the vehicle, at a height of three to five feet above the roadway, and shall be maintained at all times in a clean and reflective condition.

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

(d) Nothing in this Code section shall apply to any self-propelled, two-wheeled vehicle. (Ga. L. 1970, p. 229, §§ 1-4; Code 1933, § 68E-104, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-4, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1984, p. 1329, § 4; Ga. L. 1989, p. 298, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 8, 201.

40-8-5. Alteration of odometer; involvement with devices which cause odometer to register other than actual mileage; penalties.

(a) It shall be unlawful for any person knowingly to tamper with, adjust, alter, change, set back, disconnect, or fail to connect an odometer of a motor vehicle, or to cause any of the foregoing to occur to an odometer of a motor vehicle, so as to reflect a lower mileage than the motor vehicle has actually been driven, except as provided in this Code section.

(b) It shall be unlawful for any person knowingly to bring into this state a motor vehicle which reflects a lower mileage than the motor vehicle actually has been driven due to any illegal acts outlined in subsection (a) of this Code section.

(c) It shall be unlawful for any person knowingly to sell or attempt to sell a motor vehicle which reflects a lower mileage than the motor vehicle actually has been driven due to any illegal acts outlined in subsection (a) of this Code section.

(d) Subsections (a), (b), and (c) of this Code section shall not apply to the disconnection of the odometer used for registering the mileage or use of new motor vehicles being tested by the manufacturer prior to delivery to a franchised dealer.

(e) It shall be unlawful for any person to advertise for sale, to sell, to use, to install, or to have installed any device which causes an odometer to register any mileage other than the actual mileage driven. For the purposes of this subsection, the actual mileage driven is that mileage driven by the vehicle as registered by the odometer within the manufacturer's designed tolerance.

(f) It shall be unlawful for any person to conspire with any other person to violate this Code section.

(g)(1) In addition to any other penalty provided by law, any person who, with intent to defraud, violates this Code section shall be liable in an amount equal to the sum of:

(A) Three times the amount of actual damages sustained or $1,500.00, whichever is greater; and

(B) In the case of any successful action to enforce the foregoing liability, the costs of the action, together with reasonable attorney's fees, as determined by the court.

(2) Any action to enforce any liability created under this subsection may be brought in any superior court or state court having proper jurisdiction, within two years from the date on which the liability arises.

(h)(1) If any person violates any provision of this Code section, the Attorney General, any district attorney in this state, or any solicitor-general in this state may bring an action in any superior court or state court having jurisdiction to restrain such violation.

(2) Any action arising under paragraph (1) of this subsection may be brought within two years from the date of the violation.

(i) Any person violating this Code section shall be guilty of a misdemeanor. (Ga. L. 1975, p. 754, §§ 1, 2; Ga. L. 1977, p. 1227, § 1; Ga. L. 1981, p. 649, § 1; Code 1933, § 68E-105, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-5, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1985, p. 149, § 40; Ga. L. 1996, p. 748, § 20.)

Cross references. — Entry of odometer reading on certificate of title upon sale or transfer of motor vehicle, § 40-3-25. Actions giving rise to suspension or revocation of licenses of used car dealers generally, § 43-47-10.

Editor's notes. — Ga. L. 1996, p. 748, § 27, not codified by the General Assembly, provides: "Notwithstanding any other provision of law, an Act approved February 11, 1854 (Ga. L. 1854, p. 281), which abolished the office of solicitor of the City Court of Savannah, now the State Court of Chatham County, and transferred responsibility for the prosecution of criminal cases in said court to the solicitor general (now the district attorney) for the Eastern Judicial Circuit is confirmed. It shall be the duty of said district attorney to prosecute all criminal actions in said state court until otherwise specifically provided by law."

Ga. L. 1996, p. 748, § 28, not codified by the General Assembly, provides: "The provisions of this Act shall not affect the powers, duties, or responsibilities of the district attorney as successor to the office of solicitor general under the constitution, statutes, and common law of this state as provided by Code Section 15-18-1."

Ga. L. 1996, p. 748, § 29, not codified by the General Assembly, provides: "Except as otherwise authorized in this Act, on and after July 1, 1996, any reference in general law or in any local Act to the solicitor of a state court shall mean and shall be deemed to mean the solicitor-general of such state court."

Ga. L. 1996, p. 748, § 30, not codified by the General Assembly, provides: "The provisions of paragraph (3) of Code Section 15-18-62, relating to the qualifications for the office of solicitor-general of a state court, shall apply to any person elected or appointed to such office after July 1, 1996. Any person holding such office on July 1, 1996, may continue to hold such office for the remainder of the term to which such person was elected or appointed notwithstanding the fact that such person has not been a member of the State Bar of Georgia for three years if such person is otherwise qualified to hold the office of solicitor-general."

Law reviews. — For annual survey on law on torts, see 42 Mercer L. Rev. 431 (1990).

JUDICIAL DECISIONS

Conflicting evidence of mileage presented jury question. — When the evidence established that at the time an automobile was purchased by seller of

automobile the certificate of ownership listed 14,229 miles as the car's mileage, that when the car was sold by the seller to the buyer, the odometer read 14,179 miles, and when the buyers test-drove the car the odometer read approximately 7,000 miles, there is considerable conflict regarding the actual mileage of the car, and it is the province of the jury to determine whether the seller altered or knew of the alteration of the odometer. Joseph Charles Parrish, Inc. v. Hill, 173 Ga. App. 97, 325 S.E.2d 595 (1984).

Trial court's grant of summary judgment to the defendant was error because the circumstantial evidence in support of the plaintiff's tampering claim pointed at least more strongly to a conclusion opposite to the defendant's testimony denying the claim, and was sufficient to allow a jury to draw reasonable inferences in favor of the claim. Winder v. Paul Light's Buckhead Jeep Eagle Chrysler Plymouth, Inc., 249 Ga. App. 707, 549 S.E.2d 515 (2001).

Trial court did not err when the court denied an auto dealership summary judgment as to a buyer's claims under O.C.G.A. § 40-8-5(c) for odometer tampering because the dealership's technician actually suspected that the odometer reading was inaccurate and reported that suspicion to a superior, with the result that the dealership had a duty to investigate before selling the car to the buyer with a certification that the odometer reading was accurate. Alvear v. Sandy Springs Toyota, Inc., 332 Ga. App. 798, 775 S.E.2d 172 (2015).

Purpose. — O.C.G.A. § 40-8-5 is designed to protect consumers against fraud in the statute's general prohibition against odometer tampering. Chrysler Motors Corp. v. Morgan, 194 Ga. App. 39, 389 S.E.2d 545, cert. dismissed, 194 Ga. App. 911, 389 S.E.2d 545 (1989).

Testing does not alter status of vehicle. — One legal effect of O.C.G.A. § 40-8-5(d) is that a manufacturer's disconnection of a new vehicle's odometer and testing of that vehicle does not alter the status of that vehicle. It is still a new vehicle. Chrysler Motors Corp. v. Morgan, 194 Ga. App. 39, 389 S.E.2d 545, cert. dismissed, 194 Ga. App. 911, 389 S.E.2d 545 (1989).

Buyer proved violation. — Trial court properly denied an auto sales company's motion for directed verdict as to the buyer's claims of fraud and violation of fair business and odometer statutes because the company pointed to no evidence that the buyer was put on notice that the odometer reading was false or that the car did not have a valid emissions inspection at the time of the sale plus the buyer testified that the company responded that the odometer reflected the car's actual mileage. Gobran Auto Sales, Inc. v. Bell, 335 Ga. App. 873, 783 S.E.2d 389 (2016).

Punitive damages. — Punitive damages are not permitted solely for violation of O.C.G.A. § 40-8-5; recovery is limited to three times actual damages or $1,500, whichever is greater. Joseph Charles Parrish, Inc. v. Hill, 173 Ga. App. 97, 325 S.E.2d 595 (1984).

Treble damages. — Trial court erred by awarding treble damages of the entire compensatory damages award for each violation, which amounted to sextuple damages for each violation, as the jury awarded the car buyer compensatory damages of $4,114.50 and, in addition, the jury awarded $24,684 on the basis of both the treble damages provision in the Fair Business Practices Act, O.C.G.A. § 10-1-390 et seq., specifically O.C.G.A. § 10-1-399(c), and the treble damages provision in the odometer statute, O.C.G.A. § 40-8-5(g)(1)(A), with no verdict allocation. Gobran Auto Sales, Inc. v. Bell, 335 Ga. App. 873, 783 S.E.2d 389 (2016).

Damages under both federal and state laws unwarranted. — Nothing on the face of either the federal or the state statute warrants a conclusion that it was intended that a successful consumer litigant, in effect, reap the benefit of six times the amount of actual damages suffered or a minimum award of $3,000 merely because the litigant asserts in a state judicial forum causes of action, arising from the same general course of conduct, under both the federal and the state odometer law. Such a result would vest the consumer with a major windfall, and one that is not needed to advance the legislative purpose behind the odometer statutes. Force v. McGeachy, 186 Ga. App. 781, 368 S.E.2d 777 (1988).

When no damages, attorney fees to be awarded. — Both paragraph (g)(1) of O.C.G.A. § 40-8-5 and 15 U.S.C. § 1989(a)(2) on their face require the trial court and not the jury to determine reasonable attorney fees and to award costs of the action whenever the litigation to enforce the odometer statutes is successful. Accordingly, the trial judge erred in refusing to award any attorney fees whatsoever to the plaintiff's counsel after the jury found the defendant had defrauded the plaintiff but awarded no damages or litigation expense. Force v. McGeachy, 186 Ga. App. 781, 368 S.E.2d 777 (1988).

Attorney fees for services performed at appellate level. — In the event that a case is retried in whole or in part, and if the plaintiff should once more be successful, plaintiff's counsel would be entitled to an award of reasonable attorney fees based not only on all proceedings prepared for and conducted at the trial court level but based on counsel's representation of the client at the appellate level as well, and the trial court has the power and is the proper forum in which to determine reasonable attorney fees for services performed, including those on appeal. Force v. McGeachy, 186 Ga. App. 781, 368 S.E.2d 777 (1988).

Waiver of rights. — Rights which a purchaser of an automobile acquired under O.C.G.A. § 40-8-5 are waived by the purchaser's signing of a release absolving the dealer of liability when the purchaser is an articulate and wary businessman who is knowledgeable and experienced in the law. Leathers v. Robert Potamkin Cadillac Corp., 184 Ga. App. 430, 361 S.E.2d 845 (1987).

Cited in State ex rel. Ryles v. Meredith Chevrolet, Inc., 145 Ga. App. 8, 244 S.E.2d 15 (1978).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 196 et seq.

Am. Jur. Proof of Facts. — Fraudulent Alteration of Odometer, 1 POF2d 677.

ALR. — Construction and application of state statute making it unlawful to tamper with motor vehicle odometer, 76 A.L.R.3d 981.

Practices forbidden by state deceptive trade practice and consumer protection acts, 89 A.L.R.3d 449.

Validity, construction and application of state laws concerning, relating to, or encompassing disclosure of and tampering with motor vehicle odometer — Validity of statutory provisions, construction of statute and particular terms, and remedies, 66 A.L.R.6th 351.

Validity, construction, and application of state laws concerning, relating to, or encompassing disclosure of and tampering with motor vehicle odometer — Statutes of limitation, parties to action, evidentiary matters, and particular violations of statute, 67 A.L.R.6th 209.

40-8-6. Alteration of suspension system; operation of vehicle with broken springs.

(a) It shall be unlawful to alter the suspension system of any private passenger motor vehicle which may be operated on any public street or highway more than two inches above or below the factory recommendation for any such vehicle.

(b) It shall be unlawful to operate any private passenger motor vehicle upon any highway, roadway, or street if the suspension system of such vehicle has been altered more than two inches above or below the factory recommendation for such vehicle.

(c) It shall be unlawful to operate any motor vehicle upon any highway, roadway, or street if the springs relative to the suspension system are broken.

(d) Any person violating this Code section shall be guilty of a misdemeanor. (Ga. L. 1973, p. 458, §§ 1, 2; Ga. L. 1975, p. 763, § 1; Code 1933, § 68E-106, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-6, enacted by Ga. L. 1982, p. 165, § 10.)

40-8-6.1. Raised chassis vehicles.

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

(1) "Frame" means the main longitudinal structural members of the chassis of a truck.

(2) "Frame height" means the vertical distance between a level surface and the lowest point on the frame of a truck, measured when the truck is upon such level surface without a load.

(3) "Gross vehicle weight rating" means the manufacturer's gross vehicle weight rating whether or not the vehicle is modified by use of parts not originally installed by the manufacturer.

(b) It shall be unlawful to alter the suspension system of any truck with a gross vehicle weight rating of 4,500 pounds or less, which may be operated on any public street or highway, so as to exceed 27 inches as measured from the surface of the street to the lowest point on the frame of the truck.

(c) It shall be unlawful to alter the suspension system of any truck with a gross vehicle weight rating of not less than 4,501 pounds and not more than 7,500 pounds, which may be operated on any public street or highway, so as to exceed 30 inches as measured from the surface of the street to the lowest point on the frame of the truck.

(d) It shall be unlawful to alter the suspension system of any truck with a gross vehicle weight rating of not less than 7,501 pounds and not more than 14,000 pounds, which may be operated on any public street or highway, so as to exceed 31 inches as measured from the surface of the street to the lowest point on the frame of the truck.

(e) It shall be unlawful to operate any truck upon any highway, roadway, or street if the suspension system has been altered in excess of the limitations provided for in this Code section.

(f) Any person violating this Code section shall be guilty of a misdemeanor. (Code 1981, § 40-8-6.1, enacted by Ga. L. 1986, p. 1210, § 1; Ga. L. 1992, p. 6, § 40.)

40-8-7. Driving unsafe or improperly equipped vehicle; punishment for violations of chapter generally; vehicle inspection by law enforcement officer without warrant.

(a) No person shall drive or move on any highway any motor vehicle, trailer, semitrailer, or pole trailer, or any combination thereof, unless the equipment upon any and every such vehicle is in good working order and adjustment as required in this chapter and the vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person upon the highway.

(b) It is a misdemeanor for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on any street or highway any vehicle or combination of vehicles:

(1) Which is in such unsafe condition as to endanger any person;

(2) Which does not contain those parts or is not at all times equipped with such lights and other equipment in proper condition and adjustment as required in this chapter; or

(3) Which is equipped in any manner in violation of this chapter.

(c) It is also a misdemeanor for any person to do any act forbidden or fail to perform any act required under this chapter.

(d) Any vehicle suspected of being operated in violation of this article may be the subject of an inspection conducted by any law enforcement officer who has reason to believe such violation is occurring, without the necessity of obtaining a warrant to permit such inspection. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, §§ 102, 123; Ga. L. 1963, p. 333, § 1; Code 1933, § 68E-107, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-7, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1994, p. 97, § 40.)

JUDICIAL DECISIONS

Section not limited to enumerated parts. — Ga. L. 1953, Nov.-Dec. Sess. p. 556, §§ 102 and 123 (see now O.C.G.A. § 40-8-7), in proscribing unsafe vehicles, is not limited in effect only to the parts enumerated, but is sufficiently broad to cover any other equipment on a motor vehicle which, being defective, renders the vehicle dangerous to others. Beck v. Wade, 100 Ga. App. 79, 110 S.E.2d 43 (1959).

Construction. — On the statute's face, O.C.G.A. § 40-8-7 plainly punishes both driving a vehicle in an unsafe condition endangering another and driving a vehicle having defective equipment, and the statute does not condition multiple violations thereof upon different arrests or separate and isolated incidents. Edmondson v. State, 285 Ga. App. 543, 647 S.E.2d 92 (2007).

Strict criminal liability. — In a prosecution for driving an unsafe motor vehicle with defective equipment, it was proper to instruct the jury that such crimes are violations of strict liability criminal statutes; meaning that the state must prove that the defendant must do the acts or make the omissions that are prohibited, but does not have to prove a mental fault. Coates v. State, 216 Ga. App. 93, 453 S.E.2d 35 (1994).

In a prosecution for driving an unsafe

motor vehicle with defective equipment, the defense of accident did not apply. The fact that there was no criminal scheme, undertaking, or criminal negligence was not a defense to this strict liability criminal statute. Coates v. State, 216 Ga. App. 93, 453 S.E.2d 35 (1994).

State was not required to prove guilty knowledge in a prosecution for driving an improperly equipped vehicle. Nelson v. State, 224 Ga. App. 623, 481 S.E.2d 605 (1997).

Violation provided probable cause for investigatory stop. — Officer's observation of a three-inch crack in the taillight and a hole in the lens of the defendant's car provided the officer with a valid basis for an investigatory stop. Loveless v. State, 337 Ga. App. 894, 789 S.E.2d 244 (2016).

Trial court erred by finding that a traffic stop was not authorized because the stop was outside of the officer's jurisdiction; the stop was authorized under the hot pursuit doctrine because it started immediately after the officer observed the defendant's broken tag light, a violation of O.C.G.A. § 40-8-7(a), and was continuous until the stop was effected. State v. Charles, 344 Ga. App. 456, 810 S.E.2d 627 (2018).

Original equipment not required. — Defendant's truck's lack of an interior rearview mirror did not constitute a violation of O.C.G.A. § 40-8-7 or O.C.G.A. § 40-8-72, neither of which required the vehicle to contain all original equipment from the time of manufacture and, as a result, could not have given the officer the requisite reasonable, articulable suspicion to justify a stop. Abercrombie v. State, 343 Ga. App. 774, 808 S.E.2d 245 (2017).

Determination of safety for jury. — It is proper to allow the jury to determine whether a vehicle was unsafe. Elliott v. Leavitt, 122 Ga. App. 622, 178 S.E.2d 268 (1970).

Sufficient evidence of guilt. — Given evidence from an ensuing police officer identifying the defendant as the driver of the vehicle stopped, and because the jury was the judge of the credibility of the witnesses presented at trial, and was authorized to reject the defendant's alibi defense, sufficient evidence was presented to support the defendant's convictions for reckless driving, failure to maintain a lane, driving with defective equipment, fleeing or attempting to elude a police officer, and obstruction of a police officer. Daniel v. State, 282 Ga. App. 291, 638 S.E.2d 430 (2006).

Sentencing. — Because there was no evidence that the defendant had commenced serving the sentence announced at trial, the trial court did not erroneously increase the sentence nine days later to 12 months' confinement by means of a nunc pro tunc order. Edmondson v. State, 285 Ga. App. 543, 647 S.E.2d 92 (2007).

In a case arising from a single traffic accident involving the defendant's tractor-trailer, the trial court did not err in not merging the defendant's convictions on 12 counts of driving a vehicle with defective equipment; O.C.G.A. § 40-8-7 does not condition multiple violations upon different arrests or separate incidents, and each equipment defect count charged different defects and thus was proven on different facts. Edmondson v. State, 285 Ga. App. 543, 647 S.E.2d 92 (2007).

Negligence per se instruction not supported by evidence. — When a driver collided with a second driver's stalled truck, it was error for the trial court to instruct the jury on negligence per se in relation to O.C.G.A. § 40-6-202 as the charge was not supported by the evidence; the highway was in a rural area, the second driver had not been driving without lights, but lost illumination when the vehicle's engine failed, and there was no evidence that the second driver "parked" the truck, but that the truck came to a stop of the truck's own volition. White v. Scott, 284 Ga. App. 87, 643 S.E.2d 356 (2007).

Merger. — Given that each of the defendant's defective equipment convictions were proven on different facts, no error resulted from the trial court's failure to merge such offenses for sentencing purposes. Edmondson v. State, 285 Ga. App. 543, 647 S.E.2d 92 (2007).

Cited in Southeastern Liquid Fertilizer Co. v. Mock, 92 Ga. App. 270, 88 S.E. 531 (1955); Sims v. Hoff, 106 Ga. App. 626, 127 S.E.2d 679 (1962); Borochoff v. Russell, 108 Ga. App. 266, 132 S.E.2d 861 (1963);

Arnold Servs., Inc. v. Sullins, 110 Ga. App. 19, 137 S.E.2d 727 (1964); Shirey v. Woods, 118 Ga. App. 851, 165 S.E.2d 891 (1968); Glynn Plymouth, Inc. v. Davis, 120 Ga. App. 475, 170 S.E.2d 848 (1969); Southeast Transp. Corp. v. Hogan Livestock Co., 133 Ga. App. 825, 212 S.E.2d 638 (1975); Simpson v. Reed, 186 Ga. App. 297, 367 S.E.2d 563 (1988); Newman v. Collins, 186 Ga. App. 595, 367 S.E.2d 866 (1988); United States v. Delyea, 703 F. Supp. 83 (M.D. Ga. 1989); Brock v. State, 196 Ga. App. 605, 396 S.E.2d 785 (1990); Robinson v. Metropolitan Atlanta Rapid Transit Auth., 197 Ga. App. 628, 399 S.E.2d 252 (1990); Hall v. Buck, 206 Ga. App. 754, 426 S.E.2d 586 (1992); In the Interest of W.N.J., 268 Ga. App. 637, 602 S.E.2d 173 (2004); Valentine v. State, 323 Ga. App. 761, 748 S.E.2d 122 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 68-1723 are included in the annotations for this Code section.

Each operation of unsafe vehicle is misdemeanor. — Once a vehicle has been declared unsafe, a misdemeanor citation may be issued each time the vehicle is found moving on the highways for purposes other than effecting the requisite repairs. 1974 Op. Att'y Gen. No. 74-31 (decided under former Code 1933, § 68-1723).

Persons who may be issued citations. — Citations may be issued not only to the driver of an unsafe school bus but also to any person who knew the school bus to be in an unsafe condition and yet ordered or directed the driver to take the bus upon the highways, and to the owner of the school bus if such owner knew of the unsafe condition and yet permitted continued operation of the school bus. 1974 Op. Att'y Gen. No. 74-31 (decided under former Code 1933, § 68-1723).

Motor scooters. — Retailer of motor scooters must comply with the inspection requirements of former Code 1933, § 1723 prior to shipment or sale of such motor scooters to a purchaser. 1968 Op. Att'y Gen. No. 68-91 (decided under former Code 1933, § 68-1723).

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 717.

C.J.S. — 61A C.J.S., Motor Vehicles, §§ 1504 et seq., 1639, 1640.

ALR. — Contributory negligence of driver or occupant of motor vehicle driven without lights or with defective or inadequate lights, 67 A.L.R.2d 118; 62 A.L.R.3d 560; 62 A.L.R.3d 771; 62 A.L.R.3d 844.

Liability or recovery in automobile negligence action as affected by absence or insufficiency of lights on parked or standing motor vehicle, 61 A.L.R.3d 13.

40-8-8. Speedometer.

Every motor vehicle operated upon a public street or highway shall be equipped with a speedometer in good working order. (Code 1933, § 68E-108, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-8, enacted by Ga. L. 1982, p. 165, § 10.)

40-8-9. Compliance with federal provisions.

It shall be unlawful to operate in this state any truck or truck tractor having a gross weight of 43,000 or more pounds which does not comply with the vehicle identification rules of the commissioner promulgated

pursuant to Chapter 7 of Title 46 and Chapter 16 of this title or the vehicle identification rules of the United States Department of Transportation. (Code 1981, § 40-8-9, enacted by Ga. L. 1986, p. 946, § 1; Ga. L. 2000, p. 951, § 5B-2; Ga. L. 2002, p. 415, § 40; Ga. L. 2002, p. 1378, § 6; Ga. L. 2004, p. 749, § 8.)

Code Commission notes. — The amendment of this Code section by Ga. L. 2002, p. 415, § 40, irreconcilably conflicted with and was treated as superseded by Ga. L. 2002, p. 1378, § 6. See County of Butts v. Strahan, 151 Ga. 417 (1921).

40-8-10. Operation of motor vehicles with nitrous oxide; penalty for violation.

(a) It shall be unlawful for any person on a public road to drive a passenger car, excluding a motor home, which supplies the motor vehicle's combustion engine with nitrous oxide unless the system supplying nitrous oxide is made inoperative by disconnecting the line feeding nitrous oxide to the engine or by removing the container or containers of nitrous oxide from the vehicle.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor. (Code 1981, § 40-8-10, enacted by Ga. L. 2002, p. 1080, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting. — Offense arising under O.C.G.A. § 40-8-10(a) does not require fingerprinting. 2002 Op. Att'y Gen. No. 2002-7.

40-8-11. Operational rules for autonomous vehicles; state consumer laws applicable.

(a) A person may operate a fully autonomous vehicle with the automated driving system engaged without a human driver being present in the vehicle, provided that such vehicle:

(1) Unless an exemption has been granted under applicable federal or state law, is capable of being operated in compliance with Chapter 6 of this title and this chapter and has been, at the time of its manufacture, certified by the manufacturer as being in compliance with applicable federal motor vehicle safety standards;

(2) Has the capability to meet the requirements of Code Section 40-6-279;

(3) Can achieve a minimal risk condition in the event of a failure of the automated driving system that renders that system unable to perform the entire dynamic driving task relevant to its intended operational design domain;

(4)(A) Until December 31, 2019, is covered by motor vehicle liability coverage equivalent to 250 percent of that which is required under:

(i) Indemnity and liability insurance equivalent to the limits specified in Code Section 40-1-166; or

(ii) Self-insurance pursuant to Code Section 33-34-5.1 equivalent to, at a minimum, the limits specified in Code Section 40-1-166; and

(B) On and after January 1, 2020, is covered by motor vehicle liability coverage equivalent to, at a minimum:

(i) Indemnity and liability insurance equivalent to the limits specified in Code Section 40-1-166; or

(ii) Self-insurance pursuant to Code Section 33-34-5.1 equivalent to, at a minimum, the limits specified in Code Section 40-1-166; and

(5) Is registered in accordance with Code Section 40-2-20 and identified on such registration as a fully autonomous vehicle or lawfully registered outside of this state.

(b) It shall be the responsibility of the occupants of a fully autonomous vehicle to comply with the requirements of Code Sections 40-8-76 and 40-8-76.1 regarding the use of safety belts and child passenger restraining systems.

(c) Unless otherwise provided in this Code section, fully autonomous vehicles, automated driving systems, and any commercial use or operation of fully autonomous vehicles shall be governed by this Code section, Code Sections 40-1-1 and 40-5-21, Chapter 6 of this title, and this chapter notwithstanding any other provision of law to the contrary. No rules or regulations relative to the operation of fully autonomous vehicles or automated driving systems shall be adopted which limit the authority to operate such vehicles or systems conferred by this Code section.

(d) No provision of this Code section shall be construed to limit the applicability of state consumer protection laws, including Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975," Article 22 of Chapter 1 of Title 10, the "Georgia Motor Vehicle Franchise Practices Act," and Article 28 of Chapter 1 of Title 10, the "Georgia Lemon Law." (Code 1981, § 40-8-11, enacted by Ga. L. 2017, p. 549, § 3/SB 219; Ga. L. 2018, p. 207, § 1/HB 717.)

Effective date. — This Code section became effective July 1, 2017.

The 2018 amendment, effective July 1, 2018, added subsection (d).

Law reviews. — For article on the 2017 enactment of this Code section, see 34 Ga. St. U.L. Rev. 231 (2017). For annual survey on commercial transportation, see 69 Mercer L. Rev. 41 (2017).

Part 2

Lighting Equipment

RESEARCH REFERENCES

ALR. — Validity and construction of regulations as to automobile lights, 78 A.L.R. 815.

Driving motor vehicle without lights or with improper lights as gross negligence or the like warranting recovery by guest under guest statute or similar common-law rule, 21 A.L.R.2d 209.

Contributory negligence of driver or occupant of motor vehicle driven without lights or with defective or inadequate lights, 67 A.L.R.2d 118; 62 A.L.R.3d 560; 62 A.L.R.3d 771; 62 A.L.R.3d 844.

Liability or recovery in automobile negligence action as affected by absence or insufficiency of lights on parked or standing motor vehicle, 61 A.L.R.3d 13.

Liability or recovery in automobile negligence action as affected by driver's being blinded by lights of motor vehicle, 64 A.L.R.3d 551.

40-8-20. When lighted headlights and other lights required.

Every vehicle upon a highway within this state at any time from a half-hour after sunset to a half-hour before sunrise and at any time when it is raining in the driving zone and at any other time when there is not sufficient visibility to render clearly discernible persons and vehicles on the highway at a distance of 500 feet ahead shall display lights, including headlights, and illuminating devices as required in this part for different classes of vehicles, subject to exceptions with respect to parked vehicles as stated in this part. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 103; Ga. L. 1973, p. 434, § 1; Ga. L. 1977, p. 667, § 1; Code 1933, § 68E-201, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-20, enacted by Ga. L. 1982, p. 165, § 10.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, "half-hour" was substituted for "half hour" in two places.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1910, §§ 1770(4), 1770(29), and 1770(50) are included in the annotations for this Code section.

Purpose of regulations. — Purpose of the several regulations of motor vehicles is the protection of the lives and limbs of all persons upon or using such streets and highways, not only those who may be met, overtaken, or passed by the driver, but as well for the protection of those who may accompany the driver. Black v. State, 34 Ga. App. 449, 130 S.E. 591 (1925) (decided under former Code 1910, § 1770(50)).

Violation is negligence per se. — It is negligence per se to operate an automobile along one of the public highways of this state from one hour after sunset to one hour before sunrise without carrying a proper light. Sheppard v. Johnson, 11

Ga. App. 280, 75 S.E. 348 (1912) (decided under former Code 1910, § 1770(4)).

Whether or not vehicle is equipped with lights. — Under former Code 1910, § 1770, it was a criminal offense for a person to operate a motor vehicle on a public highway of this state during the period between one hour (now a half-hour) after sunset and one hour (now a half-hour) before sunrise, without having any lights burning on the vehicle, whether or not the vehicle was equipped with such lights as is required by the statute. Davis v. West Lumber Co., 32 Ga. App. 460, 123 S.E. 757 (1924) (decided under former Code 1910, § 1770(50)); Fuller v. State, 33 Ga. App. 372, 126 S.E. 302 (1925) (decided under former Code 1910, § 1770(29)).

Headlights not required. — Trial court did not err when the court granted summary judgment to a driver when the driver had the right of way over the vehicle with which the driver collided, and though not required by law to have the driver's headlights on, the driver stated that the driver's headlights were in fact on because the driver remembered turning the lights on, and because the light from the headlights reflected off of the other car immediately before the collision. Charles v. Glover, 258 Ga. App. 710, 574 S.E.2d 910 (2002).

Section is strict liability statute. — O.C.G.A. §§ 40-8-20 and 40-8-22 are examples of "strict criminal liability" motor vehicle safety statutes, which can be violated and enforced of necessity through a criminal sanction without a showing of mens rea or guilty knowledge on the part of the violator. Queen v. State, 189 Ga. App. 161, 375 S.E.2d 287 (1988).

Presumption as to compliance. — With nothing appearing to the contrary, it will be assumed that the automobile was duly equipped with "front lights" and that the lights were "throwing strong white lights to a reasonable distance in the direction in which such vehicle is proceeding," in accordance with the requirements of former Code 1910, § 1770. City of Macon v. Jones, 36 Ga. App. 799, 138 S.E. 283 (1927) (decided under former Code 1910, § 1770(50)).

Violation as basis for traffic stop and search. — Trial court properly denied the defendant's motion to suppress the methamphetamine seized as a result of a traffic stop on the vehicle the defendant was a passenger in as sufficient evidence supported the trial court's finding that an officer's stop of the vehicle was justified by the officer's reasonable articulable suspicion of a crime, specifically, a violation of O.C.G.A. § 40-8-20. Richardson v. State, 283 Ga. App. 89, 640 S.E.2d 676 (2006).

Trial court's finding that the officer's initial stop of the defendant's vehicle was lawful based upon the trial court's finding that the visibility warranted the use of headlights and taillights was consistent with witness testimony. Owens v. State, 334 Ga. App. 203, 778 S.E.2d 830 (2015).

Negligence per se instruction not supported by evidence. — When a driver collided with a second driver's stalled truck, it was error for the trial court to instruct the jury on negligence per se in relation to O.C.G.A. § 40-6-202 as the charge was not supported by the evidence; the highway was in a rural area, the second driver had not been driving without lights, but lost illumination when the vehicle's engine failed, and there was no evidence that the second driver had "parked" the truck, but that the truck came to a stop of the truck's own volition. White v. Scott, 284 Ga. App. 87, 643 S.E.2d 356 (2007).

Cited in Southeastern Liquid Fertilizer Co. v. Mock, 92 Ga. App. 270, 88 S.E.2d 531 (1955); Maulding v. Atlanta Transit Sys., 101 Ga. App. 11, 112 S.E.2d 666 (1960); Fields v. Jackson, 102 Ga. App. 117, 115 S.E.2d 877 (1960); Mathis v. Patrick, 109 Ga. App. 376, 136 S.E.2d 166 (1964); Plyler v. Smith, 193 Ga. App. 114, 386 S.E.2d 881 (1989); Cannon Air Transp. Servs. v. Stevens Aviation, Inc., 249 Ga. App. 514, 548 S.E.2d 485 (2001); State v. Hasson, 334 Ga. App. 1, 778 S.E.2d 15 (2015); Jenkins v. State, No. A18A0123, 2018 Ga. App. LEXIS 236 (Apr. 25, 2018).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 205, 206.
C.J.S. — 60 C.J.S., Motor Vehicles, §§ 18, 43 et seq. 60A C.J.S., Motor Vehicles, §§ 625 et seq., 697, 698. 61 C.J.S., Motor Vehicles, §§ 1317, 1330, 1338, 1353, 1359. 61A C.J.S., Motor Vehicles, § 1640.

40-8-21. Visibility distance and mounted height; exception for wreckers.

(a) Whenever this article declares the required distance from which certain lights and devices shall render objects visible or within which such lights or devices shall be visible, such provisions shall apply during the times stated in Code Section 40-8-20 in respect to a vehicle without load when upon a straight, level, unlighted highway under normal atmospheric conditions, unless a different time or condition is expressly stated.

(b) Except as provided in subsection (c) of this Code section, whenever this article declares the required mounted height of lights or devices, it shall mean the distance from the center of such light or device to the level ground upon which the vehicle stands when such vehicle is without a load.

(c)(1) As used in this subsection, the term "wrecker" means any vehicle designed to tow other vehicles.

(2) Except as provided in paragraph (3) of this subsection, the taillights required by Code Section 40-8-23, the brake lights required by Code Section 40-8-26, and the rear turn signal devices required by Code Section 40-8-26 shall be permanently mounted on a wrecker so as to be visible above any vehicle being towed by such wrecker by the drivers of vehicles following such wrecker.

(3) If a wrecker is not permanently equipped with lights as required by paragraph (2) of this subsection, then whenever a wrecker is towing another vehicle temporary taillights, brake lights, and rear turn signals which function so as to signal the actions of the wrecker shall be attached to the vehicle being towed so as to be visible by the drivers of vehicles following such wrecker. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 104; Code 1933, § 68E-202, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-21, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1986, p. 1185, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, "taillights" was substituted for "tail lights" in paragraphs (c)(2) and (c)(3).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 205 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, § 343 et seq. 60A C.J.S., Motor Vehicles, § 630 et seq.

ALR. — Validity and construction of regulations as to automobile lights, 78 A.L.R. 815.

40-8-22. Headlights.

(a) Every motor vehicle other than a motorcycle or motor driven cycle shall be equipped with at least two but not more than four headlights, with at least one on each side of the front of the motor vehicle, which headlights shall comply with the requirements and limitations set forth in this article.

(b) Every motorcycle and every motor driven cycle shall be equipped with at least one and not more than two headlights, which shall comply with the requirements and limitations of this article.

(c) Every headlight upon every motor vehicle, including every motorcycle and motor driven cycle, shall be located at a height measured from the center of the headlight of not more than 54 inches nor less than 24 inches, to be measured as set forth in subsection (b) of Code Section 40-8-21.

(d) The headlights required by this Code section shall be maintained in proper working condition and shall not be covered by any type of material, provided that the covering restriction shall not apply to any vehicle on which the original factory headlights were covered.

(e) It shall be unlawful to operate a motor vehicle unless such motor vehicle is equipped with aiming pads on each headlight. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 105; Ga. L. 1957, p. 616, § 1; Code 1933, § 68E-203, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-22, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1992, p. 2785, § 26.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, "motor driven" was substituted for "motor-driven" in subsections (a), (b), and (c).

JUDICIAL DECISIONS

Jury instructions. — Since the defendant specifically requested a jury instruction at a trial on maintaining headlights in proper working order, the defendant specifically waived the right on appeal to enumerate that request as error. Keller v. State, 271 Ga. App. 79, 608 S.E.2d 697 (2004).

When a driver collided with a second driver's stalled truck, it was error for the trial court to instruct the jury on negligence per se in relation to O.C.G.A. § 40-6-202 as the charge was not supported by the evidence; the highway was in a rural area, the second driver had not been driving without lights, but lost illu-

mination when the vehicle's engine failed, and there was no evidence that the second driver "parked" the truck, but that the truck came to a stop of the truck's own volition. White v. Scott, 284 Ga. App. 87, 643 S.E.2d 356 (2007).

Cited in Fields v. Jackson, 102 Ga. App. 117, 115 S.E.2d 877 (1960); State v. Hammang, 249 Ga. App. 811, 549 S.E.2d 440 (2001).

OPINIONS OF THE ATTORNEY GENERAL

More than two headlights on a vehicle. — It was anticipated by the legislature in Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 105 (see now O.C.G.A. § 40-8-22) that motor vehicles could be equipped with more than two headlamps (now headlights). 1954-56 Op. Att'y Gen. p. 469.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 205, 207.

Am. Jur. Proof of Facts. — Defective or Improperly Operated Headlights, 22 POF2d 173.

C.J.S. — 60 C.J.S., Motor Vehicles, § 43 et seq. 60A C.J.S., Motor Vehicles, § 630 et seq.

ALR. — Validity and construction of regulations as to automobile lights, 78 A.L.R. 815.

Liability or recovery in automobile negligence action arising out of collision or upset as affected by operation of vehicle without front lights, or with improper front lights, 62 A.L.R.3d 560.

40-8-23. Taillights.

(a) Every motor vehicle, trailer, semitrailer, and pole trailer manufactured prior to January 1, 1954, shall be equipped with at least one taillight mounted on the rear, which when lighted as required in this article shall emit a red light plainly visible from a distance of 500 feet to the rear.

(b) Every motor vehicle, trailer, semitrailer, and pole trailer manufactured after January 1, 1954, shall be equipped with two taillights which meet the specifications provided in this Code section.

(c) Every taillight upon every vehicle shall be located at a height of not more than 60 inches nor less than 20 inches, to be measured as set forth in subsection (b) of Code Section 40-8-21.

(d) Either a taillight or a separate light shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear. Any taillight or taillights, together with any separate light for illuminating the rear registration plate, shall be so wired as to be lighted whenever the headlights or auxiliary driving lights are lighted.

(e) All lenses on taillights shall be maintained in good repair and shall meet manufacturers' specifications. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 106; Code 1933, § 68E-204, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-23, enacted by Ga. L. 1982, p. 165, § 10.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, "headlights", "taillight", and "taillights" have been substituted for "head lights", "tail light", and "tail lights", respectively, throughout subsections (a) through (e).

JUDICIAL DECISIONS

Investigatory stop for taillight violation. — Grant of the defendant's motion to suppress was not clearly erroneous as the officer stopping the defendant's automobile for an investigatory stop provided no factual basis for believing that the defendant's older model automobile violated the taillight specifications in O.C.G.A. § 40-8-23(e) simply because newer models violated the statute; further, the trial court could have found that the officer's testimony that the officer had conducted research into the newer models' taillights was less than credible. State v. Keddington, 264 Ga. App. 912, 592 S.E.2d 532 (2003).

After a police officer initially stopped the defendant's vehicle because the officer thought that there was no license plate on the vehicle, in violation of O.C.G.A. § 40-8-23(d), but upon a closer inspection the license tag was in fact there but the light for the tag was inoperable, the officer was justified in stopping the vehicle; further, the defendant's nervousness and the smell of marijuana about the car provided a reasonable, articulable suspicion for the officer to detain the defendant for further investigation and suppression of the drugs seized from the defendant's vehicle was properly denied. Collins v. State, 273 Ga. App. 598, 615 S.E.2d 646 (2005).

After reviewing the dash cam recording, the body cam recording, and still photographs, the trial court was authorized to reject the state's claim that it had evinced the underlying premise, the lack of a functioning tag light, and to thus find that the state did not show that the officer had reasonable suspicion that the defendant had violated O.C.G.A. § 40-8-23(d). State v. Mathis, 338 Ga. App. 86, 789 S.E.2d 336 (2016).

Application to tractors. — Former Code 1933, § 68E-204 (see now O.C.G.A. § 40-8-23) did not apply to tractors unless the tractor is equipped with an electric lighting system. Southeastern Liquid Fertilizer Co. v. Mock, 92 Ga. App. 270, 88 S.E.2d 531 (1955).

Probable cause shown to stop/arrest defendant for violation. — Deputy sheriff was entitled to qualified immunity with respect to the plaintiff's federal civil rights claims, which were properly dismissed on summary judgment, because the plaintiff did not show that the deputy violated the plaintiff's constitutional rights; the deputy had probable cause to stop the plaintiff for a tag-light violation under O.C.G.A. § 40-8-23(d), and that probable cause was sufficient to permit the deputy to arrest the plaintiff for that violation. Plaintiff's refusal to comply with the deputy's instructions as well as plaintiff's belligerent and confrontational behavior, provided ample probable cause to arrest plaintiff for violating O.C.G.A. § 16-10-24; finally, the use of a taser gun in effectuating the plaintiff's arrest was reasonably proportionate to the difficult, tense, and uncertain situation that the deputy faced, and did not constitute excessive force. Draper v. Reynolds, 369 F.3d 1270 (11th Cir.), cert. denied, 543 U.S. 988, 125 S. Ct. 507, 160 L. Ed. 2d 373 (2004).

Because the arresting officer had probable cause for an initial stop of the defendant based on observing a non-functioning tag light on the defendant's vehicle, and once the vehicle was lawfully stopped, the officer was allowed to ask for consent to search the car, the Court of Appeals rejected the defendant's claims of error regarding those issues as support for granting a motion for a directed verdict as to a violation of O.C.G.A. §§ 16-10-24 and 40-8-23. Hampton v. State, 287 Ga. App. 896, 652 S.E.2d 915 (2007).

Negligence per se instruction not supported by evidence. — When a driver collided with a second driver's stalled truck, it was error for the trial court to instruct the jury on negligence per se in relation to O.C.G.A. § 40-6-202 as the charge was not supported by the evidence; the highway was in a rural area, the second driver had not been driving

without lights, but lost illumination when the vehicle's engine failed, and there was no evidence that the second driver "parked" the truck, but that the truck came to a stop of the truck's own volition. White v. Scott, 284 Ga. App. 87, 643 S.E.2d 356 (2007).

Cited in Southern Bakeries Co. v. White, 103 Ga. App. 146, 118 S.E.2d 724 (1961); Beadles v. Bowen, 106 Ga. App. 34, 126 S.E.2d 254 (1962); Mathis v. Patrick, 109 Ga. App. 376, 136 S.E.2d 166 (1964); Rogers v. State, 131 Ga. App. 136, 205 S.E.2d 901 (1974); Phillips v. State, 162 Ga. App. 471, 291 S.E.2d 776 (1982); Navicky v. State, 245 Ga. App. 284, 537 S.E.2d 740 (2000); Kohlmeier v. State, 289 Ga. App. 709, 658 S.E.2d 261 (2008); Maloy v. State, 293 Ga. App. 648, 667 S.E.2d 688 (2008).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 205, 207.

Am. Jur. Proof of Facts. — Defective or Improperly Operated Taillights, 22 POF2d 225.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 18, 43 et seq. 60A C.J.S., Motor Vehicles, §§ 625 et seq., 697, 698, 791. 61 C.J.S., Motor Vehicles, §§ 1077 et seq., 1153 et seq., 1258 et seq. 61A C.J.S., Motor Vehicles, §§ 1385 et seq., 1470.

ALR. — Validity and construction of regulations as to automobile lights, 78 A.L.R. 815.

Contributory negligence of driver or occupant of motor vehicle driven without lights or with defective or inadequate lights, 67 A.L.R.2d 118; 62 A.L.R.3d 560; 62 A.L.R.3d 771; 62 A.L.R.3d 844.

40-8-24. Reflectors.

(a) Every motor vehicle manufactured after March 12, 1954, and operated upon a highway, other than a truck tractor, motorcycle, or motor driven cycle, shall carry on the rear, either as a part of the taillights or separately, two red reflectors, and every motorcycle and every motor driven cycle shall carry on the rear at least one red reflector, meeting the requirements of this Code section.

(b) Every such reflector shall be mounted on the vehicle at a height not less than 20 inches nor more than 60 inches measured as set forth in subsection (b) of Code Section 40-8-21 and shall be of such size and characteristics and so mounted as to be visible at night from all distances within 300 feet to 50 feet from the rear of such vehicle except that visibility from the greater distance is hereinafter required of reflectors on certain types of vehicles.

(c) When operated, towed, or parked upon a highway, roadway, or street at any time, every trailer and semitrailer which would otherwise be exempt from this article as an implement of husbandry under Code Section 40-8-1 shall carry on the rear, either as a part of the taillights or separately, two red reflectors and shall carry on the front two red reflectors. The reflectors carried on the rear shall meet the requirements of subsection (b) of this Code section. The reflectors carried on the front of such trailer or semitrailer shall be mounted thereon at a height of not less than 20 inches nor more than 60 inches measured as

set forth in subsection (b) of Code Section 40-8-21 and shall be of such size and characteristics and so mounted as to be visible at night from all distances within 300 feet to 50 feet from the front of such trailer or semitrailer. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 107; Code 1933, § 68E-205, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-24, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1989, p. 298, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, "motor driven" was substituted for "motor-driven" in two places in subsection (a) and "tail-lights" was substituted for "tail lights" in subsections (a) and (c).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 190, 191.
C.J.S. — 60 C.J.S., Motor Vehicles, § 43 et seq. 60A C.J.S., Motor Vehicles, § 625 et seq. 61 C.J.S., Motor Vehicles, § 1208. 61A C.J.S., Motor Vehicles, § 1639.

40-8-25. Brake lights and turn signals required.

(a) It shall be unlawful for any person to sell any motor vehicle manufactured after January 1, 1954, including any motorcycle or motor driven cycle manufactured after January 1, 1954, in this state or for any person to drive such vehicle on the highways unless it is equipped with at least one brake light meeting the requirements of Code Section 40-8-26.

(b) If a motor vehicle is manufactured with two brake lights, both must be operational.

(c) No person shall sell or offer for sale or operate on the highways any motor vehicle, trailer, or semitrailer registered in this state and manufactured or assembled after January 1, 1954, unless it is equipped with mechanical or electrical turn signals meeting the requirements of Code Section 40-8-26. This subsection shall not apply to any motorcycle or motor driven cycle manufactured prior to January 1, 1972. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 108; Code 1933, § 68E-206, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-25, enacted by Ga. L. 1982, p. 165, § 10.)

Cross references. — Provisions regarding turn signals as required equipment on vehicles, § 40-6-124.
Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, "motor driven" was substituted for "motor-driven" in subsections (a) and (c).

JUDICIAL DECISIONS

Violation as basis for traffic stop. — Conviction for violating 21 U.S.C. § 841(a)(1) and (b)(1)(B)(ii) was affirmed. District court did not err in denying the defendant's motion to suppress since the defendant's Fourth Amendment rights

were not violated by a traffic stop as: (1) the stop was not pretextual since the defendant was in violation of O.C.G.A. § 40-8-25(b); (2) only 15-17 minutes elapsed between the initial stop and the defendant's arrest; (3) the district court did not err in finding that the defendant consented to a search of the vehicle and that the search did not exceed the scope of permission given; and (4) to the extent that the defendant argued that the dog sniff was illegal because the traffic stop was illegal, that argument failed because the officers had an objectively reasonable basis to stop the defendant's car. United States v. Terry, 220 Fed. Appx. 961 (11th Cir. Mar. 23, 2007) (Unpublished).

Mistaken belief of officer regarding violation does not invalidate stop. — Trial court erred in granting the defendant's motion to suppress because, even if the officer was mistaken in the belief that the center light was a brake light and that all brake lights had to be illuminated under O.C.G.A. § 40-8-25, the officer's reasonable belief that an offense had been committed as the center light was not illuminated, though the officer might have been mistaken either as to fact or law, was a sufficient founding suspicion to enable the trial court to determine that the stop was not mere arbitrariness or harassment, which was the real question; furthermore, the trial court's reasoning that a crime had to have been committed for the stop to have been valid was improper. State v. Cartwright, 329 Ga. App. 154, 764 S.E.2d 175 (2014).

Cited in Williams v. Herr, 112 Ga. App. 529, 145 S.E.2d 639 (1965); Thomson Whsle. Grocery Co. v. Merritt, 116 Ga. App. 764, 159 S.E.2d 107 (1967); Lancaster v. State, 261 Ga. App. 348, 582 S.E.2d 513 (2003).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 201, 205.

C.J.S. — 60 C.J.S, Motor Vehicles, § 43 et seq. 60A C.J.S., Motor Vehicles, § 625 et seq. 61A C.J.S., Motor Vehicles, §§ 1639, 1640.

40-8-26. Standards for brake lights and signal devices.

(a) Any motor vehicle may be equipped and when required under this article shall be equipped with the following signal lights or devices:

(1) A brake light on the rear which shall emit a red light and which shall be actuated upon application of the service (foot) brake and which may but need not be incorporated with a taillight; and

(2) A light or lights or mechanical signal device capable of clearly indicating any intention to turn either to the right or to the left and which shall be visible from both the front and the rear.

(b) Every brake light shall be plainly visible and understandable from a distance of 300 feet to the rear both during normal sunlight and at nighttime, and every signal light or lights indicating intention to turn shall be visible and understandable during daytime and nighttime from a distance of 300 feet from both the front and the rear. When a vehicle is equipped with a brake light or other signal lights, such light or lights shall at all times be maintained in good working condition. No brake light or signal light shall project a glaring or dazzling light.

(c) All mechanical signal devices shall be self-illuminated when in use at the times mentioned in Code Section 40-8-20.

(d) All lenses on brake lights and signal devices shall be maintained in good repair and shall meet manufacturers' specifications. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 112; Code 1933, § 68E-207, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-26, enacted by Ga. L. 1982, p. 165, § 10.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, "taillight" was substituted for "tail light" in paragraph (a)(1).

JUDICIAL DECISIONS

No conflict with § 40-6-124(b). — There is no conflict between O.C.G.A. § 40-8-26, which requires the maintenance in good order of signal devices on all motor vehicles, and O.C.G.A. § 40-6-124(b), which excuses from that requirement vehicles of a certain size. Stubbs v. State, 193 Ga. App. 342, 387 S.E.2d 619 (1989).

Violation provided probable cause for investigatory stop. — Officer's observation of a three-inch crack in the taillight and a hole in the lens of the defendant's car provided the officer with a valid basis for an investigatory stop. Loveless v. State, 337 Ga. App. 894, 789 S.E.2d 244 (2016).

Punishment for violation. — Fine of $1,000 for a brake light violation was not excessive. Bowen v. State, 237 Ga. App. 597, 516 S.E.2d 311 (1999).

Cited in Williams v. Herr, 112 Ga. App. 529, 145 S.E.2d 639 (1965); Shirey v. Woods, 118 Ga. App. 851, 165 S.E.2d 891 (1968); State v. Warren, 242 Ga. App. 605, 530 S.E.2d 515 (2000); Lancaster v. State, 261 Ga. App. 348, 582 S.E.2d 513 (2003).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 201.

C.J.S. — 60 C.J.S., Motor Vehicles, § 43 et seq. 60A C.J.S., Motor Vehicles, § 630 et seq.

ALR. — Reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction, 24 A.L.R. 507; 47 A.L.R. 703; 62 A.L.R. 970; 104 A.L.R. 485.

40-8-27. Light, flag, or strobe lamp on projecting load; requirements for lamp and flag.

(a) Except as provided in subsection (b) of this Code section, whenever the load upon any vehicle extends to the rear four feet or more beyond the bed or body of such vehicle, there shall be displayed at the extreme rear end of the load, at the times specified in Code Section 40-8-20, a red light plainly visible from a distance of at least 500 feet to the sides and rear. The red light required under this Code section shall be in addition to the red rear light required upon every vehicle. At any other time there shall be displayed at the extreme rear end of such load a flag or flags as described in subsection (c) of this Code section not less than 18 inches square and so hung that the entire area is visible to the driver of a vehicle approaching from the rear.

(b) Any motor vehicle or trailer transporting a load of logs, long pulpwood, poles, or posts which extend more than four feet beyond the

rear of the body or bed of such vehicle shall have securely affixed as close as practical to the end of any such projection one amber strobe type lamp equipped with a multidirectional type lens so mounted as to be visible from the rear and both sides of the projecting load. If the mounting of one strobe lamp cannot be accomplished so that it is visible from the rear and both sides of the projecting load, multiple strobe lights shall be utilized so as to meet the visibility requirements of this subsection. The strobe lamp shall flash at a rate of at least 60 flashes per minute and shall be plainly visible from a distance of at least 500 feet to the rear and sides of the projecting load any time of the day or night. The lamp shall be operating at any time of the day or night when the vehicle is operated on any highway or parked on the shoulder or immediately adjacent to the traveled portion of any public roadway. The projecting load shall also be marked with a flag or flags as described in subsection (c) of this Code section. An emergency light permit as provided for in Code Section 40-8-92 is not required on a vehicle utilizing an amber strobe light to comply with the provisions of this Code section.

(b.1) In lieu of the strobe type lamp or lamps provided for in subsection (b) of this Code section, any motor vehicle or trailer transporting a load of logs, long pulpwood, poles, or posts which extend more than four feet beyond the rear of the body or bed of such vehicle shall have securely affixed as close as practical to the end of any such projection, one light-emitting diode (LED) light equipped with a multidirectional type lens, mounted so as to be visible from the rear and from both sides of the projecting load. If the mounting of one light-emitting diode (LED) light cannot be accomplished so that it is visible from the rear and from both sides of the projecting load, multiple light-emitting diode (LED) lights shall be utilized so as to meet the visibility requirements of this subsection. The light-emitting diode (LED) light or lights shall be amber in color, shall flash at a rate of at least 60 flashes per minute, and shall be plainly visible from a distance of at least 500 feet from the rear and sides at a radius of 180 degrees of the projecting load at any time of the day or night. Any light-emitting diode (LED) light shall be constructed of durable, weather resistant material and may be powered by the vehicle's electrical system or by an independent battery system, or both. If the light-emitting diode (LED) light is powered by an independent battery system, the driver of the vehicle shall have in his or her immediate possession charged, spare batteries for use in case of battery failure. Any solid state light-emitting diode (LED) lighting that consists of multiple light-emitting diode (LED) lights shall not have less than 85 percent of the light-emitting diode (LED) lights in operable condition. The lights shall remain in operation at any time of the day or night when the vehicle is operated on any highway or parked on the shoulder or immediately adjacent to the

traveled portion of any public roadway. The projecting load shall also be marked with a flag or flags as described in subsection (c) of this Code section. An emergency light permit as provided for in Code Section 40-8-92 is not required on a vehicle utilizing a light-emitting diode (LED) light to comply with the provisions of this Code section.

(c) The flag or flags as required by subsection (a) or (b) of this Code section shall be of a bright red or orange fluorescent color not less than 18 inches square which is clearly visible and shall be displayed in such a manner that the entire area of the flag is visible from the rear of the vehicle. There shall be a single flag at the extreme rear of the projecting load if the projecting load is two feet wide or less. Two such warning flags shall be required if the projecting load is wider than two feet. Flags shall be located to indicate the maximum width of loads which extend beyond the rear of the vehicle. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 109; Code 1933, § 68E-208, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-27, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1999, p. 828, § 2; Ga. L. 2008, p. 171, § 15/HB 1111; Ga. L. 2011, p. 479, § 13/HB 112.)

Cross references. — Length of vehicles and loads, § 32-6-24.

JUDICIAL DECISIONS

Probable cause. — Officer's stop of the defendant's vehicle based on a violation of O.C.G.A. § 40-8-27 for failing to affix a visible red light or bright red or orange flag on a load the defendant was hauling provided sufficient probable cause to stop the vehicle; thus, the stop was not pretextual. Bain v. State, 258 Ga. App. 440, 574 S.E.2d 590 (2002).

Cited in Green v. Knight, 153 Ga. App. 183, 264 S.E.2d 657 (1980); Hall v. Buck, 206 Ga. App. 754, 426 S.E.2d 586 (1992).

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 740, 882 et seq.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 776, 777.

ALR. — Liability for injury or damage caused by collision with portion of load projecting beyond rear or side of motor vehicle or trailer, 21 A.L.R.3d 371.

Liability or recovery in automobile negligence action arising out of collision or upset as affected by operation of vehicle without, or with improper, clearance, load, or similar auxiliary lights, 62 A.L.R.3d 844.

40-8-28. Lights on parked vehicles.

(a) When a vehicle is lawfully parked upon a street or highway during the hours between a half-hour after sunset and a half-hour before sunrise, and there is sufficient light to reveal any person or object

within a distance of 500 feet upon such street or highway, no lights need be displayed upon such parked vehicle.

(b) When a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended, during the hours between a half-hour after sunset and a half-hour before sunrise and there is not sufficient light to reveal any person or object within a distance of 500 feet upon such highway, such vehicle so parked or stopped shall be equipped with one or more lights meeting the following requirements: at least one light shall display a white or amber light visible from a distance of 500 feet to the front of the vehicle, and the same light or at least one other light shall display a red light visible from a distance of 500 feet to the rear of the vehicle; and the location of such light or lights shall always be such that at least one light or combination of lights meeting the requirements of this Code section is installed as near as practicable to the side of the vehicle which is closest to passing traffic. This subsection shall not apply to a motor driven cycle.

(c) If a vehicle is manufactured with two lights meeting the requirements of subsection (b) of this Code section, both such lights shall be maintained in good working order.

(d) Any lighted headlights upon a parked vehicle shall be depressed or dimmed. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 110; Code 1933, § 68E-209, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-28, enacted by Ga. L. 1982, p. 165, § 10.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, "half-hour" was substituted for "half hour" in subsections (a) and (b) and "motor driven" was substituted for "motor-driven" in the last sentence of subsection (b).

JUDICIAL DECISIONS

Negligence per se instruction not supported by evidence. — When a driver collided with a second driver's stalled truck, it was error for the trial court to instruct the jury on negligence per se in relation to O.C.G.A. § 40-6-202 as the charge was not supported by the evidence; the highway was in a rural area, the second driver had not been driving without lights, but lost illumination when the vehicle's engine failed, and there was no evidence that the second driver "parked" the truck, but that the truck came to a stop of the truck's own volition. White v. Scott, 284 Ga. App. 87, 643 S.E.2d 356 (2007).

Cited in Reynolds v. Rentz, 98 Ga. App. 4, 104 S.E.2d 608 (1958); Brock v. Avery Co., 99 Ga. App. 881, 110 S.E.2d 122 (1959); Beadles v. Smith, 106 Ga. App. 31, 126 S.E.2d 250 (1962); Beadles v. Bowen, 106 Ga. App. 34, 126 S.E.2d 254 (1962); National Upholstery Co. v. Padgett, 108 Ga. App. 857, 134 S.E.2d 856 (1964); Kibbey Chevrolet, Inc. v. Anderson, 111 Ga. App. 90, 140 S.E.2d 564 (1965); National Upholstery Co. v. Padgett, 111 Ga. App. 842, 143 S.E.2d 494 (1965); Crosby Aeromarine, Inc. v. Hyde, 115 Ga. App. 836, 156 S.E.2d 106 (1967); Grubbs v. Duskin, 118 Ga. App. 82, 162 S.E.2d 762 (1968); Skinner v. Medlock, 119 Ga. App. 140, 166 S.E.2d 373 (1969); Hyde v. Crosby Aeromarine, Inc., 119 Ga. App.

560, 167 S.E.2d 614 (1969); Davis v. Southland Auto Salvage, Inc., 138 Ga. App. 571, 226 S.E.2d 749 (1976).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 201, 208. 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 762, 876 et seq.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 774, 775, 778, 779. 61 C.J.S., Motor Vehicles, §§ 1216, 1219, 1317, 1344, 1345, 1369.

ALR. — Liability or recovery in automobile negligence action as affected by absence or insufficiency of lights on parked or standing motor vehicle, 61 A.L.R.3d 13.

Liability or recovery in automobile negligence action as affected by motor vehicles being driven or parked without dimming lights, 63 A.L.R.3d 824.

40-8-29. Spotlights, foglights, and auxiliary lights permitted.

(a) Any motor vehicle may be equipped with not to exceed one spotlight, and no lighted spotlight shall be aimed and used upon any approaching vehicle. It shall be unlawful for any person except law enforcement officers and persons licensed under Chapter 38 of Title 43 to operate a spotlight from any moving vehicle on any highway or public roadway.

(b) Any motor vehicle may be equipped with not to exceed two foglights mounted on the front at a height not less than 12 inches nor more than 30 inches above the level surface upon which the vehicle stands and so aimed that when the vehicle is not loaded none of the high intensity portion of the light to the left of the center of the vehicle shall at a distance of 25 feet ahead project higher than a level of four inches below the level of the center of the light from which it comes.

(c) Any motor vehicle may be equipped with not to exceed one auxiliary passing light mounted on the front at a height not less than 24 inches nor more than 42 inches above the level surface upon which the vehicle stands, and every such auxiliary passing light shall meet the requirements and limitations set forth in this article.

(d) Any motor vehicle may be equipped with not to exceed one auxiliary driving light mounted on the front at a height not less than 16 inches nor more than 42 inches above the level surface upon which the vehicle stands, and every such auxiliary driving light shall meet the requirements and limitations set forth in this article. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 111; Code 1933, § 68E-210, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-29, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1983, p. 3, § 29; Ga. L. 1992, p. 6, § 40.)

JUDICIAL DECISIONS

Evidence insufficient to support conviction. — In the absence of any evidence indicating that it was the defendant, rather than the defendant's passenger, who used the spotlight found under the passenger's feet, the evidence was insufficient to support a conviction for a violation of O.C.G.A. § 40-8-29(a). Firsanov v. State, 270 Ga. 873, 513 S.E.2d 184 (1999).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 205, 206.

C.J.S. — 60A C.J.S., Motor Vehicles, § 772 et seq.

40-8-30. Standards for multiple-beam road lighting equipment.

Except as hereinafter provided in this part, the headlights or the auxiliary driving light or the auxiliary passing light or combination thereof on motor vehicles other than motorcycles or motor driven cycles shall be so arranged that the driver may select at will between distributions of light projected to different elevations, and such lights may, in addition, be so arranged that such selection can be made automatically, subject to the following limitations:

(1) There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of at least 350 feet ahead for all conditions of loading;

(2) There shall be a lowermost distribution of light, or composite beam, so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least 100 feet ahead; and on a straight level road under any condition of loading none of the high intensity portion of the beam shall be directed to strike the eyes of an approaching driver;

(3) Every new motor vehicle other than a motorcycle or a motor driven cycle registered in this state which has multiple-beam road lighting equipment shall be equipped with a beam indicator which shall be lighted whenever the uppermost distribution of light from the headlights is in use and shall not otherwise be lighted. Such indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 113; Ga. L. 1955, Ex. Sess., p. 25, § 1; Code 1933, § 68E-211, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-30, enacted by Ga. L. 1982, p. 165, § 10.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, in the first sentence of paragraph (3), commas were deleted following "indicator" and "use."

Pursuant to Code Section 28-9-5, in 1991, in the introductory language and in paragraph (3), "motor driven" was substituted for "motor-driven."

JUDICIAL DECISIONS

Cited in Southeastern Liquid Fertilizer Co. v. Mock, 92 Ga. App. 270, 88 S.E.2d 531 (1955); Wood v. Atlantic Coast Line R.R., 192 F. Supp. 351 (M.D. Ga. 1960); Mathis v. Patrick, 109 Ga. App. 376, 136 S.E.2d 166 (1964); Cupp v. State, 111 Ga. App. 722, 143 S.E.2d 197 (1965); Seaboard C.L.R.R. v. Sheffield, 127 Ga. App. 580, 194 S.E.2d 484 (1972); Owens-Illinois, Inc. v. Bryson, 138 Ga. App. 78, 225 S.E.2d 475 (1976); Rothrock v. Martin, 138 Ga. App. 16, 225 S.E.2d 489 (1976); Ingram v. Jackson, 153 Ga. App. 201, 265 S.E.2d 29 (1980); Johnson v. UPS, 616 F.2d 161 (5th Cir. 1980).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 205 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, § 43 et seq. 60A C.J.S., Motor Vehicles, § 630 et seq.

ALR. — Liability or recovery in automobile negligence action as affected by absence or insufficiency of lights on parked or standing motor vehicle, 61 A.L.R.3d 13.

40-8-31. Use of multiple-beam road lighting equipment.

Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in Code Section 40-8-20, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

(1) Whenever a driver of a vehicle approaches an oncoming vehicle within 500 feet, such driver shall use a distribution of light, or composite beam, so aimed that the glaring rays are not projected into the eyes of the oncoming driver. The lowermost distribution of light, or composite beam, specified in paragraph (2) of Code Section 40-8-30 shall be deemed to avoid glare at all times, regardless of road contour and loading; and

(2) Whenever the driver of a vehicle follows another vehicle within 200 feet to the rear, except when engaged in the act of overtaking and passing, such driver shall use a distribution of light permissible under this chapter other than the uppermost distribution of light specified in paragraph (1) of Code Section 40-8-30. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 114; Ga. L. 1955, Ex. Sess., p. 25, § 1; Code 1933, § 68E-212, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-31, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1989, p. 14, § 40.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-302 are included in the annotations for this Code section.

Duty to dim headlights. — It is the duty of one operating a motor vehicle along a public highway in this state to have the vehicle equipped with a suitable device for dimming or changing the focus of the headlights thereon so as to prevent dangerously glaring or dazzling rays from the lamps thereof to affect the eyesight of the driver of an approaching vehicle, and to dim the lights, or change the focus when necessary. Fender v. Drost, 62 Ga. App. 345, 7 S.E.2d 800 (1940) (decided under former Code 1933, § 68-302).

As the trial court erred by holding that the defendant did not have a duty to dim the defendant's vehicle lights because the police officer stopped at the stop light was not an oncoming vehicle, the defendant's motion to suppress the results of a breath test for a driving under the influence charge was improperly granted. State v. Mussell, 257 Ga. App. 533, 571 S.E.2d 518 (2002).

What constitutes negligence per se. — While the failure to have one's motor vehicle equipped with a suitable device for dimming or changing the focus of the headlights of the vehicle is negligence per se, the failure to dim the lights or change their focus is not negligence per se, as the requirement to dim is by inference and not by mandate. Williams v. Chastain, 91 Ga. App. 167, 85 S.E.2d 92 (1954) (decided under former Code 1933, § 68-302).

Negligence is question for jury. — Whether or not one's failure to dim the lights of one's motor vehicle while on one of the public highways of this state as one meets an approaching automobile is ordinary negligence or not is a question for determination by the jury under all the attendant circumstances of each case. Williams v. Chastain, 91 Ga. App. 167, 85 S.E.2d 92 (1954) (decided under former Code 1933, § 68-302).

Sentence not excessive. — Sentence of 12 months probation and a $75 fine for speeding, and a concurrent 12 months probation for failure to dim headlights, was within statutory limits, and was particularly merited in case of a defendant who had two prior DUI arrests and who, while acquitted of DUI in the instant case, had a blood alcohol level of .096 to .099 at the time of the defendant's arrest. Pitts v. State, 231 Ga. App. 9, 498 S.E.2d 534 (1998).

Cited in Central of Ga. Ry. v. Hurst, 115 Ga. App. 271, 154 S.E.2d 641 (1967); McConnell v. State, 188 Ga. App. 653, 374 S.E.2d 111 (1988).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 205 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, § 343 et seq. 60A C.J.S., Motor Vehicles, § 630 et seq.

ALR. — Liability or recovery in automobile negligence action as affected by motor vehicles being driven or parked without dimming lights, 63 A.L.R.3d 824.

Liability or recovery in automobile negligence action as affected by driver's being blinded by lights of motor vehicle, 64 A.L.R.3d 551.

40-8-32. Lights on vehicles of rural mail carriers.

Any automobile operated by a rural mail carrier for the purpose of delivering mail shall be authorized to display two amber colored lights so as to warn approaching travelers to decrease their speed because of the danger of colliding with such mail carrier as he stops and starts along the edge of the highway. Such amber lights should be visible

under normal atmospheric conditions from a distance of 500 feet to the front of such vehicle. (Ga. L. 1961, p. 202, § 1; Code 1933, § 68E-213, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-32, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1997, p. 143, § 40.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 205 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, § 26.

40-8-33. Lights on farm tractors and unlicensed three-wheeled motorcycles used only for agricultural purposes; restrictions on trailers and semitrailers otherwise exempt under Code Section 40-8-1; no duty on manufacturers of lighting systems.

(a) Every farm tractor and every three-wheeled motorcycle used only for agricultural purposes equipped with an electric lighting system shall at all times mentioned in Code Section 40-8-20 display a red taillight and either multiple-beam or single-beam road lighting equipment meeting the requirements of Code Sections 40-8-23 and 40-8-30, respectively.

(b) When operated or towed upon a highway, roadway, or street at any time from a half-hour after sunset to a half-hour before sunrise and at any time when it is raining in the driving zone and at any other time when there is not sufficient visibility to render clearly discernible persons and vehicles on the highway, roadway, or street at a distance of 500 feet to the rear, every trailer and semitrailer which would otherwise be exempt from this article as an implement of husbandry under Code Section 40-8-1 either shall comply with Code Section 40-8-23, relating to taillights, or shall be equipped with an operating red flashing light which is plainly visible from a distance of 500 feet to the rear and which is either permanently or temporarily fixed to the rear of such trailer or semitrailer or shall be accompanied by an escort vehicle which is equipped with one or more operating red or amber flashing lights that are visible from a distance of 500 feet and which shall follow such trailer or semitrailer.

(c) Nothing in this Code section shall be construed to impose a duty on a manufacturer of an implement of husbandry under Code Section 40-8-1 to install an electric lighting system, taillights, or red flashing lights or otherwise equip implements of husbandry to be in compliance with the provisions of this Code section at the time of manufacture or sale; it being the intent of this Code section to place a duty on operators of the equipment only under specified circumstances and conditions, and not on manufacturers. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 102;

Ga. L. 1973, p. 598, § 3; Code 1933, § 68E-214, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-33, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1984, p. 1329, § 5; Ga. L. 1989, p. 298, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, "taillight" was substituted for "tail light" in subsection (a), "half-hour" was substituted for "half hour" in two places in subsection (b), and "taillights" was substituted for "tail lights" in subsections (b) and (c).

JUDICIAL DECISIONS

Cited in Plyler v. Smith, 193 Ga. App. 114, 386 S.E.2d 881 (1989).

40-8-34. Color in lighting equipment.

The color in all lighting equipment covered in this title shall be in accordance with Society of Automotive Engineers (SAE) Standard J578, April, 1965, as thereafter revised or amended. (Ga. L. 1974, p. 633, § 1; Code 1933, § 68E-215, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-34, enacted by Ga. L. 1982, p. 165, § 10.)

40-8-35. Operating low-speed vehicles on highway requires amber strobe light.

Any low-speed vehicle operated on the highways of this state shall display an amber strobe light so as to warn approaching travelers to decrease their speed because of the danger of colliding with such vehicle. Such amber strobe light shall be mounted in a manner so as to be visible under normal atmospheric conditions from a distance of 500 feet from the front and rear of such vehicle. (Code 1981, § 40-8-35, enacted by Ga. L. 2002, p. 512, § 13.)

Part 3

Brakes

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 109, 200. 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 534, 540 et seq., 567, 582, 744 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 11, 43. 60 C.J.S., Motor Vehicles, § 322. 60A C.J.S., Motor Vehicles, §§ 736, 737.

ALR. — Effect of defective brakes on liability for injury, 170 A.L.R. 611.

Automobiles: liability of owner or operator of motor vehicle for injury, death, or property damage resulting from defective brakes, 40 A.L.R.3d 9.

Products liability: personal injury or death allegedly caused by defect in braking system in motor vehicle, 99 A.L.R.3d 179.

40-8-50. Brakes required.

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

(1) "Gross combination weight rating (GCWR)" means the combined gross vehicle weight ratings of all vehicles in a combination of vehicles.

(2) "Gross vehicle weight rating (GVWR)" means the value specified by the manufacturer or manufacturers as the maximum loaded weight of a single or a combination (articulated) vehicle, the actual gross weight, or registered gross weight, whichever is greater.

(3) "Hazardous material" has the meaning provided by Chapter 51 of Title 49 of the United States Code Annotated.

(4) "Surge brakes" means a self-contained, permanently closed hydraulic brake system for trailers that relies on inertial forces, developed in response to the braking action of the towing vehicle, applied to a hydraulic device mounted on or connected to the tongue of the trailer to slow down or stop the towed vehicle.

(b) Every motor vehicle, other than a motorcycle or motor driven cycle, when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels. If these two separate means of applying the brakes are connected in any way, they shall be so constructed that failure on any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two wheels.

(c) Every motorcycle and motor driven cycle manufactured after January 1, 1974, when operated upon a highway, shall be equipped with at least two brakes which may be operated by hand or foot.

(d) Except as otherwise provided in subsection (e) of this Code section, every trailer or semitrailer of 3,000 pounds gross weight or more shall be equipped with brakes on all wheels. Any farm trailer with two or more wheels, pulled from a tongue, used in or operated for farm purposes, including transporting fertilizer and agricultural materials to the farm, shall not be required to have an independent braking system thereon, provided such farm trailer shall not weigh over 4,000 pounds when empty.

(e) Any trailer or semitrailer may utilize surge brakes, subject to the following conditions and limitations:

(1) The gross vehicle weight rating or the actual gross weight of any surge brake equipped trailer or semitrailer does not exceed 20,000 pounds;

(2) For trailers and semitrailers with a gross vehicle weight rating of 12,000 pounds or less, the gross vehicle weight rating of any such trailer shall not exceed 1.75 times the gross vehicle weight rating of the towing vehicle;

(3) For trailers and semitrailers with a gross vehicle weight rating greater than 12,000 pounds, but less than 20,001 pounds, the gross vehicle weight rating of any such trailer shall not exceed 1.25 times the gross vehicle weight rating of the towing vehicle;

(4) The actual gross weight of the trailer or semitrailer and load does not exceed the manufacturer's gross vehicle weight rating;

(5) The trailer or semitrailer brakes must be designed and connected in such a manner that in case of accidental breakaway of the towed vehicle the brakes shall apply automatically; and

(6) For vehicles used for commercial purposes, the vehicle or combination of vehicles complies in all other respects with licensing, insurance, registration, identification, driver and vehicle safety, and hazardous materials regulations of the Department of Public Safety and United States Department of Transportation applicable to such vehicles or combination of vehicles.

(f) Where there is no manufacturer's gross vehicle weight rating or the manufacturer's gross vehicle weight rating is exceeded in violation of paragraph (4) of subsection (e) of this Code section, then the actual gross weight of the trailer or semitrailer shall be used to determine compliance with paragraphs (2) and (3) of subsection (e) of this Code section. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 115; Ga. L. 1965, p. 406, § 1; Ga. L. 1970, p. 438, § 1; Ga. L. 1974, p. 422, § 1; Code 1933, § 68E-301, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-50, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 2000, p. 809, § 1; Ga. L. 2002, p. 415, § 40; Ga. L. 2005, p. 334, § 19-2/HB 501; Ga. L. 2009, p. 449, § 3A/SB 128.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, "motor driven" was substituted for "motor-driven" in subsections (a) and (b) (now subsections (b) and (c)).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1910, § 1770(50) and former Code 1933, § 68-302 are included in the annotations for this Code section.

Operation without brakes as negligence per se. — Operation of a truck along the public streets not equipped with efficient and serviceable brakes constituted negligence per se. Orange Crush Bottling Co. v. Smith, 35 Ga. App. 92, 132 S.E. 259 (1926) (decided under former Code 1910, § 1770(50)).

Former Code 1933, § 68-302 should be construed to make it an act of negligence per se to operate a vehicle on a public thoroughfare without the required

brakes. Cruse v. Taylor, 89 Ga. App. 611, 80 S.E.2d 704 (1954) (decided under former Code 1933, § 68-302).

Operation of a bus in a manner which constitutes a violation of former Code 1933, § 68E-301 (see now O.C.G.A. § 40-8-50) prima facie establishes negligence per se in the absence of a valid defense. Johnson v. McAfee, 151 Ga. App. 774, 261 S.E.2d 708 (1979).

Duty to keep proper brakes imposed on owner. — Statutory duty to keep an automobile equipped with proper brakes is imposed on the owner, and the owner is liable for any injuries proximately caused by the defective condition of the brakes if the owner permits another person to operate the vehicle while the vehicle is in that condition. Gregory v. Ross, 214 Ga. 306, 104 S.E.2d 452 (1958).

Cited in Harris v. Combs, 96 Ga. App. 638, 101 S.E.2d 144 (1957); Sims v. Hoff, 106 Ga. App. 626, 127 S.E.2d 679 (1962); Borochoff v. Russell, 108 Ga. App. 266, 132 S.E.2d 861 (1963); Juhan v. C.W. Matthews Contracting Co., 114 Ga. App. 608, 152 S.E.2d 623 (1966); Shirey v. Woods, 118 Ga. App. 851, 165 S.E.2d 891 (1968); Glynn Plymouth, Inc. v. Davis, 120 Ga. App. 475, 170 S.E.2d 848 (1969); Taylor v. Buckhead Glass Co., 120 Ga. App. 663, 171 S.E.2d 779 (1969); Cravey v. J.S. Gainer Pulpwood Co., 128 Ga. App. 465, 197 S.E.2d 171 (1973); Lewis v. Harry White Ford, Inc., 129 Ga. App. 318, 199 S.E.2d 599 (1973); White v. Seaboard C.L.R.R., 139 Ga. App. 833, 229 S.E.2d 775 (1976); Hurst v. J.P. Colley Contractors, 167 Ga. App. 56, 306 S.E.2d 54 (1983); Cantrell v. U-Haul Co., 224 Ga. App. 671, 482 S.E.2d 413 (1997).

40-8-51. Means of operation.

(a) One of the means of brake operation shall consist of a mechanical connection from the operating lever to the brake shoes or bands, and this brake shall be capable of holding the vehicle or combination of vehicles stationary under any condition of loading on any upgrade or downgrade upon which it is operated.

(b) The brake shoes operating within or upon the drums on the vehicle wheels of any motor vehicle may be used for both service and hand operation. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 115; Code 1933, § 68E-302, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-51, enacted by Ga. L. 1982, p. 165, § 10.)

40-8-52. Parking brakes.

Every 1966 model motor vehicle and all subsequent model motor vehicles shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading, on a surface free from snow, ice, or loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver's muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power, provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied with the

required effectiveness despite exhaustion of any source of energy or leakage of any kind. The same brake drums, brake shoes and lining assemblies, brake shoe anchors, and mechanical brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that failure of any one part shall not leave the vehicle without operative brakes. (Ga. L. 1970, p. 438, § 2; Ga. L. 1971, p. 515, § 1; Code 1933, § 68E-303, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-52, enacted by Ga. L. 1982, p. 165, § 10.)

RESEARCH REFERENCES

ALR. — Failure to set brakes, or maintain adequate brakes, as causing accidental runaway of parked motor vehicle, 42 A.L.R.3d 1252.

40-8-53. Performance ability of brakes.

(a) Except as provided for in subsection (b) of this Code section, every motor vehicle or combination of motor drawn vehicles shall be capable at all times and under all conditions of loading of being stopped on a dry, smooth, level road free from loose material, upon application of the service (foot) brake within the distances specified in this Code section or shall be capable of being decelerated at a sustained rate corresponding to these distances.

	Feet to Stop From 20 Miles Per Hour	Deceleration in Feet Per Second
Vehicles or combinations of vehicles having brakes on all wheels	30	14
Vehicles or combinations of vehicles not having brakes on all wheels	40	10.7

(b) The brake performance ability for commercial motor vehicles shall be as provided for in the federal motor carrier safety regulations contained in 49 C.F.R. 393.52 and adopted by the commissioner of public safety pursuant to Code Section 40-1-8. Commercial motor vehicles shall be capable at all times and under all conditions of loading

of being stopped on a dry, smooth, level road free from loose material upon application of the service (foot) brake within the distances specified in those rules. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 115; Ga. L. 1982, p. 3, § 40; Code 1933, § 68E-304, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-53, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1994, p. 97, § 40; Ga. L. 2011, p. 479, § 14/HB 112.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, "motor drawn" was substituted for "motor-drawn" (now in subsection (a)).

40-8-54. Maintenance.

All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 115; Code 1933, § 68E-305, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-54, enacted by Ga. L. 1982, p. 165, § 10.)

JUDICIAL DECISIONS

Lack of maintenance program for school bus. — When an owner was operating a used bus (particularly one whose past maintenance history was unknown) as a school bus, whether the owner had exercised ordinary diligence if the owner failed to establish an effective maintenance program to replace periodically all deteriorating brake parts was a genuine issue of material fact sufficient to preclude summary judgment for the owner. Kirby v. Spate, 214 Ga. App. 433, 448 S.E.2d 7 (1994).

Cited in Eastern Dehydrating Co. v. Brown, 112 Ga. App. 349, 145 S.E.2d 274 (1965).

Part 4

Horns, Exhaust Systems, Mirrors, Windshields, Tires, Safety Belts, Energy Absorption Systems

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Defective Tire, 39 POF2d 209.

Crashworthiness of Motor Vehicle — Defective Automobile Seatbelts, 4 POF3d 131.

Crashworthiness of Motor Vehicle — Defective Airbag System, 21 POF3d 1.

Defective Automobile Child Safety Restraint, 21 POF3d 115.

Proof of Automobile Design Defect, 59 POF3d 73.

Proof of Injury Resulting from Defects in Child Safety Seat, 77 POF3d 85.

Am. Jur. Trials. — Defective Tire Litigation, 34 Am. Jur. Trials 603.

The Seatbelt Defense, 35 Am. Jur. Trials 349.

Auto Product Liability: Defective Door Latch, 36 Am. Jur. Trials 339.

Auto Product Liability: Defective Seatbelt, 37 Am. Jur. Trials 401.

Automobile Airbag Malfunction Litigation: Practice and Strategy, 83 Am. Jur. Trials 1.

40-8-70. Horns and warning devices.

(a) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than 200 feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall, when it is reasonably necessary to ensure safe operation, give audible warning with his or her horn but shall not otherwise use such horn when upon a highway.

(b) No vehicle shall be equipped with nor shall any person use upon a vehicle any siren, whistle, or bell except as otherwise permitted in this Code section and Code Section 40-8-94.

(c) No vehicle shall be equipped with a theft alarm signal device which is so arranged that it can be used by the driver as an ordinary warning signal. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 116; Code 1933, § 68E-401, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-70, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 2001, p. 4, § 40.)

JUDICIAL DECISIONS

Failure to blow horn may be negligence. — Driver who is conscious of the presence of a pedestrian in the street may be found negligent in failing to blow the horn or give such other warning of the approach of the automobile as may be reasonably necessary. Lott v. Herrin, 120 Ga. App. 796, 172 S.E.2d 203 (1969).

Unlawful siren use not negligence per se. — In a negligence action arising out of a motor vehicle collision, the defendant's unlawful use of a siren was not negligence per se. There had to be evidence of a causal relationship between the defendant's failure to obtain a permit for the siren and the collision. Pryor v. Phillips, 222 Ga. App. 116, 473 S.E.2d 535 (1996).

Cited in Collins v. Alewine, 102 Ga. App. 172, 115 S.E.2d 721 (1960); Myers v. Pearce, 102 Ga. App. 235, 115 S.E.2d 842 (1960); Marsh v. Hargrove, 103 Ga. App. 264, 118 S.E.2d 866 (1961); Grayson v. Yarbrough, 103 Ga. App. 243, 119 S.E.2d 41 (1961); Fuller v. Self, 107 Ga. App. 664, 131 S.E.2d 241 (1963); Hughes v. Brown, 111 Ga. App. 676, 143 S.E.2d 30 (1965); Howard v. Hall, 112 Ga. App. 247, 145 S.E.2d 70 (1965); Bennett v. Haley, 132 Ga. App. 512, 208 S.E.2d 302 (1974); Blizzard v. Bennett, 143 Ga. App. 568, 239 S.E.2d 223 (1977); Hurst v. J.P. Colley Contractors, 167 Ga. App. 56, 306 S.E.2d 54 (1983); Frasard v. State, 278 Ga. App. 352, 629 S.E.2d 53 (2006).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 201. 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 597.

C.J.S. — 60 C.J.S., Motor Vehicles, § 43 et seq. 60A C.J.S., Motor Vehicles, § 623. 61 C.J.S., Motor Vehicles, § 1208.

ALR. — Automobiles: duty and liability with respect to giving audible signal at intersection, 21 A.L.R.3d 268.

Automobiles: duty and liability with respect to giving audible signal before passing, 22 A.L.R.3d 325.

Automobiles: duty and liability with respect to giving audible signal upon approaching pedestrian, 24 A.L.R.3d 183.

40-8-71. Exhaust system; prevention of noise, smoke, and fumes.

(a) Every motor vehicle shall at all times be equipped with an exhaust system, in good working order and in constant operation, meeting the following specifications:

(1) The exhaust system shall include the piping leading from the flange of the exhaust manifold to and including the muffler or mufflers and tail pipes;

(2) The use of flexible pipe shall be prohibited except on diesel tractors or according to manufacturers' original specifications;

(3) The exhaust emission point shall extend beyond the rear or outside of the passenger compartment. The trunk shall be considered as part of the passenger compartment;

(4) The exhaust system and its elements shall be securely fastened, including the consideration of missing or broken hangers; and

(5) There shall be no part of the exhaust system passing through the passenger compartment or any exposed stack so located that any individual entering or leaving the vehicle may be burned.

(b) The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

(c) It shall be unlawful for any person to sell or offer for sale any muffler which causes excessive or unusual noise or annoying smoke or any muffler cutout, bypass, or similar device for use on a motor vehicle or for any person to use, to sell, or to offer for sale any motor vehicle equipped with any such muffler, muffler cutout, bypass, or similar device. Any person violating this subsection shall be guilty of a misdemeanor. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 117; Ga. L. 1962, p. 653, § 1; Ga. L. 1971, p. 779, § 1; Code 1933, § 68E-402, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-71, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1994, p. 97, § 40.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 202. 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 737, 933, 936. 21 Am. Jur. 2d, Criminal Law, §§ 1, 18 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, § 52. 60A C.J.S., Motor Vehicles, § 621.

ALR. — Public regulation requiring mufflers or similar noise-preventing devices on motor vehicles, aircraft, or boats, 49 A.L.R.2d 1202.

Liability of motor vehicle owner or operator for personal injury or death of passenger or guest occasioned by inhalation of gases or fumes from exhaust, 56 A.L.R.2d 1099.

Products liability: motor vehicle exhaust systems, 72 A.L.R.4th 62.

40-8-72. Mirrors.

(a) Except as provided in subsection (b) of this Code section, every motor vehicle which is so constructed or loaded as to obstruct the driver's view to the rear thereof from the driver's position shall be equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least 200 feet to the rear of such vehicle.

(b) Every commercial motor vehicle shall be equipped with two rear-vision mirrors meeting the requirements of the federal motor vehicle safety standards contained in 49 C.F.R. 571.111 in effect at the time of manufacture, one at each side, firmly attached to the outside of the motor vehicle, and so located as to reflect to the driver a view of the highway to the rear, along both sides of the vehicle; provided, however, that only one outside mirror shall be required, which shall be on the driver's side, on a commercial motor vehicle which is so constructed that the driver has a view to the rear by means of an interior mirror. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 118; Code 1933, § 68E-403, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-72, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 2011, p. 479, § 15/HB 112.)

JUDICIAL DECISIONS

Original equipment not required. — Defendant's truck's lack of an interior rearview mirror did not constitute a violation of O.C.G.A. § 40-8-7 or O.C.G.A. § 40-8-72, neither of which required the vehicle to contain all original equipment from the time of manufacture and, as a result, could not have given the officer the requisite reasonable, articulable suspicion to justify a stop. Abercrombie v. State, 343 Ga. App. 774, 808 S.E.2d 245 (2017).

Cited in Coopers', Inc. v. Holmes, 126 Ga. App. 597, 191 S.E.2d 562 (1972); State v. Reid, 313 Ga. App. 633, 722 S.E.2d 364 (2012).

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 736.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 621, 667, 699, 701.

ALR. — Liability for failure to provide motor vehicle with adequate rearview mirror, 27 A.L.R.2d 1040.

40-8-73. Windshields and windshield wipers.

(a) No person shall drive any motor vehicle with any sign, poster, or other nontransparent material upon the front windshield, side windows, or rear windows of such vehicle which obstructs the driver's clear view of the highway or any intersecting highway.

(b) The windshield of every motor vehicle shall be equipped with a device for cleaning rain, snow, or other moisture therefrom, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

(c) Every windshield wiper upon a motor vehicle shall be maintained in good working order.

(d) No opaque or solid material including, but not limited to, cardboard, plastic, and taped glass shall be employed in lieu of a glass windshield or window.

(e) No motor vehicle shall be operated with a windshield or rear window having a starburst or spider webbing effect greater than three inches by three inches. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 119; Code 1933, § 68E-404, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-73, enacted by Ga. L. 1982, p. 165, § 10.)

JUDICIAL DECISIONS

Violation justified traffic stop. — Traffic stop was justified when officers noticed that a defendant's car had a ten-inch "starburst" crack in the car's windshield; under O.C.G.A. § 40-8-73(e), a vehicle was not to be operated with a windshield or rear window having a starburst or spider webbing effect greater than three inches by three inches. Glenn v. State, 285 Ga. App. 872, 648 S.E.2d 177 (2007).

Cited in Vickers v. State, 234 Ga. App. 563, 507 S.E.2d 810 (1998); Darby v. State, 239 Ga. App. 492, 521 S.E.2d 438 (1999); State v. Terrell, 327 Ga. App. 745, 761 S.E.2d 142 (2014).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 203, 317, 318. 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 584, 768, 769, 871.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 18, 43 et seq. 60A C.J.S., Motor Vehicles, §§ 623, 665, 676. 61 C.J.S., Motor Vehicles, § 951. 61A C.J.S., Motor Vehicles, § 1380.

ALR. — Impairment of driver's view through windshield as affecting liability for automobile accident, 10 A.L.R. 299.

Motor vehicle operator's liability for accident occurring while driving with vision obscured by smoke or steam, 32 A.L.R.4th 933.

40-8-73.1. Tinting of windows or windshields.

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

(1) "Light reflectance" means the ratio of the amount of total light that is reflected outward by a product or material to the amount of total light falling on the product or material.

(2) "Light transmission" means the ratio of the amount of total light, expressed in percentages, which is allowed to pass through a surface to the amount of light falling on the surface.

(3) "Manufacturer" means a person who produces or assembles a vehicle glass-coating material or who fabricates, laminates, or tempers a safety-glazing material, which material reduces light transmission.

(4) "Material" means any transparent product or substance which reduces light transmission.

(5) "Multipurpose passenger vehicle" means a motor vehicle designed to carry ten persons or less which is constructed on a truck chassis or with special features for occasional off-road operation.

(b) Except as provided in this Code section, it shall be unlawful for any person to operate a motor vehicle in this state:

(1) Which has material and glazing applied or affixed to the front windshield, which material and glazing when so applied or affixed reduce light transmission through the windshield; or

(2) Which has material and glazing applied or affixed to the rear windshield or the side or door windows, which material and glazing when so applied or affixed reduce light transmission through the windshield or window to less than 32 percent, plus or minus 3 percent, or increase light reflectance to more than 20 percent.

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

(1) Adjustable sun visors which are mounted forward of the side windows and are not attached to the glass;

(2) Signs, stickers, or other matter which is displayed in a seven-inch square in the lower corner of the windshield farthest removed from the driver or signs, stickers, or other matter which is displayed in a five-inch square in the lower corner of the windshield nearest the driver;

(3) Direction, destination, or termination signs upon a passenger common carrier motor vehicle if the signs do not interfere with the driver's clear view of approaching traffic;

(4) Any transparent item which is not red or amber in color which is placed on the uppermost six inches of the windshield;

(5) Any federal, state, or local sticker or certificate which is required by law to be placed on any windshield or window;

(6) The rear windshield or the side or door windows, except those windows to the right and left of the driver of:

(A) A multipurpose passenger vehicle;

(B) A school bus, any other bus used for public transportation, and any bus or van owned or leased by any religious or any nonprofit organization duly incorporated under the laws of this state;

(C) Any limousine owned or leased by a public or private entity; or

(D) Any other vehicle, the windows or windshields of which have been tinted or darkened before factory delivery or permitted by federal law or regulation;

(7) Any law enforcement vehicle;

(8) Any vehicle that displays a valid special license plate issued to a government official under Code Section 40-2-61, 40-2-63, or 40-2-64;

(9) Any vehicle owned or operated by the state or a political subdivision thereof and that displays a valid license plate issued pursuant to Code Section 40-2-37; or

(10) Any vehicle operated in the course of business by a person licensed or registered under Chapter 38 of Title 43, relating to private detective and private security businesses.

(d) The Department of Public Safety may, upon application from a person required for medical reasons to be shielded from the direct rays of the sun and only if such application is supported by written attestation of such fact from a person licensed to practice medicine under Chapter 34 of Title 43 or a person certified as an optometrist under Chapter 30 of Title 43, issue an exemption from the provisions of this Code section for any motor vehicle owned by such person or in which such person is a habitual passenger. The exemption shall be issued with such conditions and limitations as may be prescribed by the Department of Public Safety.

(e) No person shall install any material upon the windshields or windows of any motor vehicle, the installation of which would result in a reduction of light transmission or an increase in light reflectance in violation of subsection (b) of this Code section.

(f) Notwithstanding any other provision of this Code section, commercial motor vehicles operated in this state are subject to the specifications of or limitations relating to windshield or window glazing or the application of light reducing or reflectance material to the windshield or windows as provided for in the federal motor carrier safety regulations contained in 49 C.F.R. 393.60 and adopted by the commissioner of public safety pursuant to Code Section 40-1-8.

(g) The Department of Public Safety is authorized to promulgate such rules and regulations as may be necessary to carry out the provisions of this Code section.

(h) Any person who violates subsection (b) or (e) of this Code section shall be guilty of a misdemeanor. (Code 1981, § 40-8-73.1, enacted by Ga. L. 1983, p. 1300, § 1; Ga. L. 1984, p. 1211, § 1; Ga. L. 1984, p. 22, § 40; Ga. L. 1985, p. 149, § 40; Ga. L. 1989, p. 896, § 1; Ga. L. 1992, p. 2785, § 27; Ga. L. 2000, p. 951, § 5B-3; Ga. L. 2005, p. 331, § 1/HB 20;

Ga. L. 2005, p. 334, § 19-3/HB 501; Ga. L. 2006, p. 782, § 1/SB 570; Ga. L. 2007, p. 206, § 1/HB 79; Ga. L. 2011, p. 479, § 16/HB 112.)

Code Commission notes. — The amendment of this Code section by Ga. L. 2005, p. 331, § 1/HB 20, irreconcilably conflicted with and was treated as superseded by Ga. L. 2005, p. 334, § 19-3/HB 501. See County of Butts v. Strahan, 151 Ga. 417 (1921).

Pursuant to Code Section 28-9-5, in 2005, "Public" was substituted for "Motor Vehicle" following "The Department of" in subsection (f) (now subsection (g)).

Administrative rules and regulations. — Safety Glazing Material and Window Tinting Manufacturer and Installer Requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Public Safety, Chapter 570-22.

Law reviews. — For annual survey of criminal law, see 57 Mercer L. Rev. 113 (2005).

JUDICIAL DECISIONS

Constitutionality. — Appellate court's finding that O.C.G.A. § 40-8-73.1 was unconstitutional as no rational connection existed between the residence of the driver of a vehicle and the goal of improving law enforcement officer safety during traffic stops, did not warrant suppression of evidence seized during a traffic stop of the defendant's vehicle, because the investigating officer had reason to believe that the vehicle's windows were tinted darker than that permitted by the statute. Ciak v. State, 278 Ga. 27, 597 S.E.2d 392 (2004).

Basis for traffic stop. — Trial court erred in granting the defendants' motion to suppress the drug evidence seized following a traffic stop for a violation of O.C.G.A. § 40-8-73.1 as an officer's observations of a vehicle's dark tinted windows, and belief that such violated the statute were sufficient to justify the stop; moreover, a free air search by a drug-sniffing dog did not violate the defendants' Fourth Amendment rights. State v. Simmons, 283 Ga. App. 141, 640 S.E.2d 709 (2006).

Convictions for violating 18 U.S.C. §§ 472 and 922(g) were affirmed since the district court did not err by denying the defendant's motion to suppress evidence because the vehicle stop did not violate the Fourth Amendment; a police officer had a reasonable suspicion that the defendant's vehicle violated the Georgia window tint law, O.C.G.A. § 40-8-73.1(b)(2). United States v. Moody, 240 Fed. Appx. 858 (11th Cir. 2007) (Unpublished).

When an officer decided to stop the defendant's truck, the officer knew state law prohibited excessive window tinting and that the officer could not see the driver or inside the truck, thus, the officer reasonably believed the defendant had violated O.C.G.A. § 40-8-73.1(b), thus there was no error in denying the defendant's Fourth Amendment motion to suppress in connection with the defendant's drug conviction under 21 U.S.C. § 841(a)(1). United States v. Garcia, 284 Fed. Appx. 791 (11th Cir. 2008) (Unpublished).

Trial court's denial of a defendant's motion to suppress the evidence of drugs found in the defendant's vehicle was upheld as the trial court properly determined that the stop of the defendant's vehicle was not pretextual in that two officers observed the defendant's vehicle with tinted windows and following another vehicle too closely. Pollack v. State, 294 Ga. App. 400, 670 S.E.2d 165 (2008).

Trial court did not err in denying the defendant's motion to suppress after finding that the excessive-window-tinting statute, O.C.G.A. § 40-8-73.1(b), was unconstitutional because an officer had a reasonable articulable suspicion to justify the traffic stop; the officer observed that the defendant's vehicle had darkly tinted windows and reasonably believed that to be in violation of § 40-8-73.1, and the fact that the statute was later found to be unconstitutional did not render the stop invalid. Christy v. State, 315 Ga. App. 647, 727 S.E.2d 269 (2012).

When cocaine was found during a traffic stop after a dog sniff, suppression was not warranted because the officer had probable cause to believe that the car had illegal window tint. United States v. Whitlock, 493 Fed. Appx. 27 (11th Cir. Oct. 19, 2012) (Unpublished).

Officer's traffic stop of the defendants' vehicle was not pretextual for purposes of their request for suppression because it was undisputed that the officer believed that the vehicle had a window tint violation which, upon testing the window, was confirmed. State v. Price, 322 Ga. App. 778, 746 S.E.2d 258 (2013).

Cited in Williams v. State, 293 Ga. App. 842, 668 S.E.2d 825 (2008); Sommese v. State, 299 Ga. App. 664, 683 S.E.2d 642 (2009); Perry v. State, 317 Ga. App. 885, 733 S.E.2d 57 (2012).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprintable offense. — Offense in O.C.G.A. § 40-8-73.1, which provides that a resident who operates a motor vehicle in this state that has material applied to the windshield or front windows that restricts the amount of light entering the vehicle shall be guilty of a misdemeanor, is designated as an offense for which persons charged with a violation shall be fingerprinted. 1984 Op. Att'y Gen. No. 84-44.

40-8-74. Tires.

(a) No vehicle equipped with solid rubber tires shall be used or transported on the highways, unless every solid rubber tire on such vehicle shall have rubber on its entire traction surface at least one inch thick above the edge of the flange on the entire periphery.

(b) No person shall operate or move on any highway any motor vehicle, trailer, or semitrailer having any metal tire in contact with the roadway.

(c) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat, or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it shall be permissible to use:

(1) Farm machinery with tires having protuberances which will not injure the highway; and

(2) Tire chains of reasonable proportions or tires equipped with safety metal spike studs upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid.

(d) The transportation board and local authorities in their respective jurisdictions may in their discretion issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of such movable tracks, or of farm tractors or other farm machinery, the operation of which upon a highway would otherwise be prohibited under this Code section.

(e) All tires:

(1) Shall have not less than 2/32 inch tread measurable in all major grooves except that school buses and commercial vehicles shall have not less than 4/32 inch tread measurable in all major grooves on the front tires and school buses shall have not less than 4/32 inch tread measurable in all major grooves on the rear tires when there are only two tires on the rear; such measurements shall not be made where tie bars, humps, or fillets are located;

(2) Shall be free from any cuts, breaks, or snags on tread and sidewall deep enough to expose body cord; and

(3) Shall be free from bumps, bulges, or separations.

(f) No motor vehicle shall be operated on a public street or highway with tires that have been marked "not for highway use," "for racing purposes only," or "unsafe for highway use."

(g) Retreaded, regrooved, or recapped tires shall not be used upon the front wheels of buses. (Ga. L. 1927, p. 226, § 17; Code 1933, § 68-404; Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 120; Ga. L. 1970, p. 628, § 1; Code 1933, § 68E-405, enacted by Ga. L. 1982, p. 165, § 4; Ga. L. 1982, p. 3, § 40; Code 1981, § 40-8-74, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1992, p. 2785, § 28; Ga. L. 1993, p. 727, § 1; Ga. L. 2011, p. 479, § 17/HB 112.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "transportation board" was substituted for "Transportation Board" in subsection (d).

JUDICIAL DECISIONS

Inspector not entitled to official immunity in wrongful death suit arising out of faulty inspection of tires. — In a wrongful death and nuisance suit wherein the victim was killed while traveling in a taxi cab on a state highway, and the taxi cab had passed a mandatory city inspection the day prior, the trial court erred in granting summary judgment to the city inspector on the basis of official immunity as the inspector's act of inspecting the tires on the taxi cab was a ministerial function since the inspector was required to check for minimum tread depth and complete the inspection checklist before passing the vehicle as safe, which were simple, absolute, and definite tasks of a ministerial nature. As a result, the inspector was not entitled to official immunity and it was for the jury to determine if the inspector performed the tasks negligently. Heller v. City of Atlanta, 290 Ga. App. 345, 659 S.E.2d 617 (2008), aff'd, Ga. DOT v. Heller, 285 Ga. 262, 674 S.E.2d 914 (2009).

Decedent was killed when the taxi in which the decedent was riding spun out of control on a rain-slick road and hit a tree. The city employee who cleared the taxi for use on the roads was not shielded from liability by the doctrine of official immunity because: (1) inspection of tires was a minsterial act; (2) the employee did nothing to verify whether the taxi's badly worn tires had the legally required minimum amount of 2/32 inch of tread on the tires under O.C.G.A. § 40-8-74(e)(1); and (3) the employee had no "discretion" to ignore this minimum legal requirement. Ga. DOT v. Heller, 285 Ga. 262, 674 S.E.2d 914 (2009).

Cited in Woodard v. State, 289 Ga. App. 643, 658 S.E.2d 129 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Studded tire prohibited. — Studded tire is a metal tire within the meaning of O.C.G.A. § 40-8-74 and may not be used on vehicles operated in this state. 1968 Op. Att'y Gen. No. 68-487.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 185, 194. 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 540 et seq., 734, 1064.

C.J.S. — 60 C.J.S., Motor Vehicles, § 18. 60A C.J.S., Motor Vehicles, §§ 621, 622, 978, 691, 692.

40-8-75. Tire covers.

Every bus, truck, full trailer, semitrailer, and pole trailer, with the exception of local haul pulpwood trucks and local haul waste collection dumping trailers, shall be equipped with suitable metal protectors or substantial flexible flaps on the rearmost wheels to prevent, as far as practicable, such wheels from throwing dirt, gravel, rocks, water, or other materials on the windshields of following vehicles. Such protectors or flaps shall have a ground clearance of not more than one-half of the distance from the center of the rearmost axle to the center of the protector or flap under any conditions of loading of the vehicle and shall be at least as wide as the tires they are covering; provided, however, that if any such bus, truck, full trailer, semitrailer, or pole trailer is so designed and constructed that the foregoing requirements are accomplished by means of fenders, body construction, or other enclosures, then the protectors or flaps provided for in this Code section shall not be required. (Ga. L. 1979, p. 906, § 2; Code 1933, § 68E-406, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-75, enacted by Ga. L. 1982, p. 165, § 10.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 203, 206.

C.J.S. — 60 C.J.S., Motor Vehicles, § 43 et seq.

40-8-76. Safety belts required as equipment; safety restraints for children.

(a) No new private passenger automobile manufactured after January 1, 1964, shall be sold to the general public in this state unless such automobile shall be equipped with two sets of safety belts for the front seat thereof. The safety belts may be installed by the manufacturer prior to delivery to the dealer, or they may be installed by the dealer.

(b)(1) Every driver who transports a child under eight years of age in a passenger automobile, van, or pickup truck, other than a taxicab as defined by Code Section 33-34-5.1 or a public transit vehicle as defined by Code Section 16-5-20, shall, while such motor vehicle is in motion and operated on a public road, street, or highway of this state, provide for the proper restraint of such child in a child passenger restraining system appropriate for such child's height and weight and approved by the United States Department of Transportation under provisions of Federal Motor Vehicle Safety Standard 213 in effect on January 1, 1983, or at the time of manufacture, subject to the following specific requirements and exceptions:

(A) Any such child weighing at least 40 pounds may be secured by a lap belt when:

(i) The vehicle is not equipped with both lap and shoulder belts; or

(ii) Not including the driver's seat, the vehicle is equipped with one or more lap and shoulder belts that are all being used to properly restrain other children;

(B) Any such child shall be properly restrained in a rear seat of the motor vehicle consistent with the requirements of this paragraph. If the vehicle has no rear seating position appropriate for correctly restraining a child or all appropriate rear seating positions are occupied by other children, any such child may be properly restrained in a front seat consistent with the requirements of this paragraph;

(C) A driver shall not be deemed to be complying with the provisions of this paragraph unless any child passenger restraining system required by this paragraph is installed and being used in accordance with the manufacturer's directions for such system; and

(D) The provisions of this paragraph shall not apply when the child's parent or guardian either obtains a physician's written statement that a physical or medical condition of the child prevents placing or restraining him or her in the manner required by this paragraph. If the parent or guardian can show the child's height is over 4 feet and 9 inches, such child shall be restrained in a safety belt as required in Code Section 40-8-76.1.

(2) Upon a first conviction of an offense under this subsection, the defendant shall be punished by a fine of not more than $50.00, except in the case of a child who is six or seven years of age, if the defendant shows to the court having jurisdiction of the case that a child passenger restraining system meeting the applicable requirements of this subsection has been purchased by him or her after the time of the

offense and prior to the court appearance, the court may waive or suspend the fine for such first conviction. This exception shall apply until January 1, 2012. Upon a second or subsequent conviction of an offense under this subsection, the defendant shall be punished by a fine of not more than $100.00. No court shall impose any additional fees or surcharges to a fine for such a violation. The court imposing a fine for any violation of this Code section shall forward a record of the disposition of the cases to the Department of Driver Services for the sole purpose of data collection on a county by county basis.

(c) Violation of this Code section shall not constitute negligence per se nor contributory negligence per se. Violation of subsection (b) of this Code section shall not be the basis for cancellation of coverage or increase in insurance rates.

(d) The provisions of this Code section shall not apply to buses, as defined in paragraph (7) of Code Section 40-1-1, used in the transport of children over four years of age until July 1, 2012, provided that the bus is operated by a licensed or commissioned child care facility, has a current annual transportation safety inspection certificate as required by the appropriate licensing body, and has evidence of being inspected for use by a child care facility. If the bus is not a school bus, as defined in paragraph (55) of Code Section 40-1-1, or a multifunction school activities bus, as defined in 49 C.F.R. 571.3(B), each child over four years of age and under eight years of age shall be properly restrained by a child passenger restraining system. Multifunction school activities buses, as defined in 49 C.F.R. 571.3(B), shall not be required to transport children five years of age or older in a child passenger restraining system. (Ga. L. 1963, p. 366, § 2; Ga. L. 1964, p. 168, § 1; Code 1933, § 68E-407, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-76, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1983, p. 1464, § 1; Ga. L. 1984, p. 22, § 40; Ga. L. 1985, p. 149, § 40; Ga. L. 1988, p. 480, § 1; Ga. L. 1996, p. 469, § 2; Ga. L. 2000, p. 1246, § 17; Ga. L. 2001, p. 740, § 1; Ga. L. 2004, p. 716, § 1; Ga. L. 2011, p. 253, § 1/SB 88.)

Cross references. — Use of safety belts in passenger vehicles, § 40-8-76.1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, the correct spelling of "Violation" was substituted at the beginning of subsection (d) (now subsection (c)).

Pursuant to Code Section 28-9-5, in 2004, "C.F.R." was substituted for "CFR" two times in subsection (d).

Editor's notes. — Ga. L. 2004, p. 716, § 3, not codified by the General Assembly, provides: "It shall be the duty of the Governor's Office of Highway Safety to implement and coordinate a program to inform parents and other citizens of Georgia of the provisions of subsection (b) of Code Section 40-8-76 and paragraph (3) of subsection (e) of Code Section 40-8-76.1 as amended by this Act. Such program shall be carried out prior to January 1, 2005. The Governor's Office of Highway Safety shall solicit the cooperation and assistance of the Georgia State Patrol, Department of Motor Vehicle Safety, Georgia Sheriffs Association, Georgia Association of Chiefs of Police, Incorporated, Peace Officers' Association of Georgia, Medical

College of Georgia, Georgia Hospital Association, Georgia Association of Educators, Professional Association of Georgia Educators, Georgia Parent-Teacher Association, and other appropriate organizations in educating the citizens of the state and in implementing, coordinating, and carrying out such provisions."

Law reviews. — For article, "Federal Automotive Safety Standards and Georgia Products Liability Law: Conflict or Coexistence?," see 26 Ga. St. B.J. 107 (1990).

For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 199 (2001).

For comment discussing Bentzler v. Braun, 34 Wis. 2d 362, 149 N.W.2d 626 (1967), as to plaintiff's failure to use a seat belt as constituting contributory or comparative negligence in automobile injury cases, see 2 Ga. L. Rev. 110 (1967). For comment discussing Brown v. Kendrick, 192 So. 2d 49 (Fla. 1966), and suggesting contributory negligence ramifications of failure of guest passengers to use seatbelts in Georgia, see 18 Mercer L. Rev. 511 (1967).

JUDICIAL DECISIONS

Cited in In the Interest of W.N.J., 268 Ga. App. 637, 602 S.E.2d 173 (2004).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 17, 190, 191. 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 524, 542, 568 et seq. 21 Am. Jur. 2d, Criminal Law, §§ 1, 18 et seq.

Am. Jur. Proof of Facts. — Proof of Injury Resulting from Defects in Child Safety Seat, 77 POF3d 85.

C.J.S. — 60 C.J.S., Motor Vehicles, § 43 et seq.

ALR. — Automobile occupant's failure to use seat belt as contributory negligence, 92 A.L.R.3d 9.

Nonuse of automobile seatbelts as evidence of comparative negligence, 95 A.L.R.3d 239.

Failure to use or misuse of automobile child safety seat or restraint system as affecting recovery for personal injury or death, 46 A.L.R.5th 557.

Liability under state law for injuries resulting from defective automobile seatbelt, shoulder harness, or restraint system, 48 A.L.R.5th 1.

40-8-76.1. Use of safety belts in passenger vehicles.

(a) As used in this Code section, the term "passenger vehicle" means every motor vehicle, including, but not limited to, pickup trucks, vans, and sport utility vehicles, designed to carry 15 passengers or fewer and used for the transportation of persons; provided, however, that such term shall not include motorcycles; motor driven cycles; or off-road vehicles or pickup trucks being used by an owner, driver, or occupant 18 years of age or older in connection with agricultural pursuits that are usual and normal to the user's farming operation; and provided, further, that such term shall not include motor vehicles designed to carry 11 to 15 passengers which were manufactured prior to July 1, 2015, and which, as of such date, did not have manufacturer installed seat safety belts.

(b) Each occupant of the front seat of a passenger vehicle shall, while such passenger vehicle is being operated on a public road, street, or highway of this state, be restrained by a seat safety belt approved under Federal Motor Vehicle Safety Standard 208.

(c) The requirement of subsection (b) of this Code section shall not apply to:

(1) A driver or passenger frequently stopping and leaving the vehicle or delivering property from the vehicle, if the speed of the vehicle between stops does not exceed 15 miles per hour;

(2) A driver or passenger possessing a written statement from a physician that such person is unable, for medical or physical reasons, to wear a seat safety belt;

(3) A driver or passenger possessing an official certificate or license endorsement issued by the appropriate agency in another state or country indicating that the driver is unable for medical, physical, or other valid reasons to wear a seat safety belt;

(4) A driver operating a passenger vehicle in reverse;

(5) A passenger vehicle with a model year prior to 1965;

(6) A passenger vehicle which is not required to be equipped with seat safety belts under federal law;

(7) A passenger vehicle operated by a rural letter carrier of the United States Postal Service while performing duties as a rural letter carrier;

(8) A passenger vehicle from which a person is delivering newspapers; or

(9) A passenger vehicle performing an emergency service.

(d) The failure of an occupant of a motor vehicle to wear a seat safety belt in any seat of a motor vehicle which has a seat safety belt or belts shall not be considered evidence of negligence or causation, shall not otherwise be considered by the finder of fact on any question of liability of any person, corporation, or insurer, shall not be any basis for cancellation of coverage or increase in insurance rates, and shall not be evidence used to diminish any recovery for damages arising out of the ownership, maintenance, occupancy, or operation of a motor vehicle.

(e)(1) Except as otherwise provided in paragraphs (2) and (3) of this subsection, a person failing to comply with the requirements of subsection (b) of this Code section shall not be guilty of any criminal act and shall not be guilty of violating any ordinance. A violation of this Code section shall not be a moving traffic violation for purposes of Code Section 40-5-57.

(2) A person failing to comply with the requirements of subsection (b) of this Code section shall be guilty of the offense of failure to wear a seat safety belt and, upon conviction thereof, may be fined not more than $15.00; but, the provisions of Chapter 11 of Title 17 and any other provision of law to the contrary notwithstanding, the costs of such prosecution shall not be taxed nor shall any additional penalty, fee, or surcharge to a fine for such offense be assessed against a person for conviction thereof. The court imposing such fine shall forward a record of the disposition of the case of failure to wear a seat safety belt to the Department of Driver Services.

(3) Each minor eight years of age or older who is an occupant of a passenger vehicle shall, while such passenger vehicle is being operated on a public road, street, or highway of this state, be restrained by a seat safety belt approved under Federal Motor Vehicle Safety Standard 208. In any case where a minor passenger eight years of age or older fails to comply with the requirements of this paragraph, the driver of the passenger vehicle shall be guilty of the offense of failure to secure a seat safety belt on a minor and, upon conviction thereof, may be fined not more than $25.00. The court imposing such a fine shall forward a record of the court disposition of the case of failure to secure a seat safety belt on a minor to the Department of Driver Services.

(f) Probable cause for violation of this Code section shall be based solely upon a law enforcement officer's clear and unobstructed view of a person not restrained as required by this Code section. Noncompliance with the restraint requirements of this Code section shall not constitute probable cause for violation of any other Code section. (Code 1981, § 40-8-76.1, enacted by Ga. L. 1988, p. 31, § 1; Ga. L. 1990, p. 588, § 1; Ga. L. 1993, p. 516, § 1; Ga. L. 1994, p. 1005, § 1; Ga. L. 1996, p. 469, § 3; Ga. L. 1997, p. 143, § 40; Ga. L. 1998, p. 1579, § 1; Ga. L. 1999, p. 276, § 1; Ga. L. 2000, p. 862, § 1; Ga. L. 2000, p. 951, § 5B-4; Ga. L. 2004, p. 716, § 2; Ga. L. 2005, p. 334, § 19-4/HB 501; Ga. L. 2010, p. 817, § 1/SB 458; Ga. L. 2011, p. 253, § 2/SB 88; Ga. L. 2015, p. 940, § 1/HB 325.)

Cross references. — Safety belts required as equipment and safety restraints for children under age eight, § 40-8-76.

Editor's notes. — Ga. L. 1998, p. 1579, § 2, not codified by the General Assembly, provides that the 1998 amendment to this Code section shall be applicable to offenses committed on or after July 1, 1998.

Ga. L. 2004, p. 716, § 3, not codified by the General Assembly, provides: "It shall be the duty of the Governor's Office of Highway Safety to implement and coordinate a program to inform parents and other citizens of Georgia of the provisions of subsection (b) of Code Section 40-8-76 and paragraph (3) of subsection (e) of Code Section 40-8-76.1 as amended by this Act. Such program shall be carried out prior to January 1, 2005. The Governor's Office of Highway Safety shall solicit the cooperation and assistance of the Georgia State Patrol, Department of Motor Vehicle Safety, Georgia Sheriffs Association, Georgia Association of Chiefs of Police, Incor-

porated, Peace Officers' Association of Georgia, Medical College of Georgia, Georgia Hospital Association, Georgia Association of Educators, Professional Association of Georgia Educators, Georgia Parent-Teacher Association, and other appropriate organizations in educating the citizens of the state and in implementing, coordinating, and carrying out such provisions."

Law reviews. — For article, "Federal Automotive Safety Standards and Georgia Products Liability Law: Conflict or Coexistence?," see 26 Ga. St. B.J. 107 (1990). For survey article on product liability law, see 59 Mercer L. Rev. 331 (2007) and 60 Mercer L. Rev. 303 (2008). For article, "The Seat-Belt Defense in Georgia," see 65 Mercer L. Rev. 19 (2013).

JUDICIAL DECISIONS

Section constitutional under state and federal provisions. — O.C.G.A. § 40-8-76.1 works no violation of federal due process or trial by jury by precluding evidence that the driver's failure to wear a seat belt was the proximate cause of the driver's injuries, nor does the statute work violations of state constitutional "right of access" to the courts (Ga. Const. 1983, Art. I, Sec. I, Para. XII) or equal protection of the laws (Ga. Const. 1983, Art. I, Sec. I, Para. II). C.W. Matthews Contracting Co. v. Gover, 263 Ga. 108, 428 S.E.2d 796 (1993).

Section does not deny equal protection. — Defendant who filed a motion to suppress evidence found in the defendant's automobile after being stopped for failing to fasten the defendant's seat belt could not show the absence of a rational relation between the classification drawn by O.C.G.A. § 40-8-76.1 and the public safety purpose thereof; thus, the trial court's denial of the defendant's motion based on an equal protection challenge to that statute was not error. Farley v. State, 272 Ga. 432, 531 S.E.2d 100 (2000).

Seat belt law is a prospective statute only, applying to incidents on or after September 1, 1988. Payne v. Joyner, 197 Ga. App. 527, 399 S.E.2d 83 (1990).

Vehicular homicide. — Victim's failure to wear a seat belt can play no role in determining whether the defendant is guilty of vehicular homicide. Whitener v. State, 201 Ga. App. 309, 410 S.E.2d 796, cert. denied, 201 Ga. App. 905, 410 S.E.2d 796 (1991).

Probable cause for initial stop. — Even though O.C.G.A. § 40-8-76.1 does not require shoulder strap safety belts, the officer's observation that the defendant was not wearing the defendant's car's shoulder strap safety belt supported probable cause for stopping the defendant for violating subsection (b). Davis v. State, 232 Ga. App. 320, 501 S.E.2d 836 (1998).

When the officer testified that the officer had a clear and unobstructed view of the driver of the vehicle not wearing a seat belt, this view was sufficient to establish probable cause for the stop, and once the vehicle was lawfully stopped, the officer was allowed to ask for the driver's consent to search the car. State v. Millsap, 243 Ga. App. 519, 528 S.E.2d 865 (2000).

O.C.G.A. § 40-8-76.1 was amended in order to provide that minors in pickup trucks were required to use seatbelts; as subsection (a) of O.C.G.A. § 40-8-76.1 specifically included pickup trucks that contained minors, the driver of a pickup truck could be stopped and ticketed for the failure to require a minor occupant to wear a seatbelt. State v. McDuff, 252 Ga. App. 183, 555 S.E.2d 213 (2001).

After the defendant's car was legitimately stopped during a police operation to stop vehicles wherein an occupant was not wearing a seatbelt, in violation of O.C.G.A. § 40-8-76.1(b), the court held that the traffic stop was justified and the search of the vehicle thereafter was based on the defendant's consent; accordingly, the denial of the defendant's motion to suppress evidence seized therein pursuant to O.C.G.A. § 17-5-30 was proper. Taylor v. State, 263 Ga. App. 420, 587 S.E.2d 791 (2003), cert. denied, 542 U.S. 941, 124 S. Ct. 2916, 159 L. Ed. 2d 820 (2004).

Police officer's observation that the first defendant, who was driving the vehicle, and the second defendant, who was a

front-seat passenger, were violating the seatbelt law by not wearing their seatbelts was a sufficient ground for making a valid investigatory stop of their vehicle, which led to the later finding that the defendants were transporting cocaine. Fernandez v. State, 275 Ga. App. 151, 619 S.E.2d 821 (2005).

Consensual search upon traffic stop for seatbelt violation supported denial of a suppression motion as the search conducted pursuant to the defendant's consent was not a search based solely on the defendant's failure to wear a seatbelt; thus, the trial court did not err by ruling that law enforcement did not violate the Fourth Amendment during an officer's traffic stop for a violation of O.C.G.A. § 40-8-76.1. Blitch v. State, 281 Ga. 125, 636 S.E.2d 545 (2006).

Trial court properly denied the defendant's motion to suppress evidence seized as a result of the stop of the defendant's vehicle; the stop of the defendant's vehicle for a seat belt violation under O.C.G.A. § 40-8-76.1(e)(3), (f) was permissible even if pretextual. Soilberry v. State, 282 Ga. App. 161, 637 S.E.2d 861 (2006), cert. denied, No. S07C0381, 2007 Ga. LEXIS 55 (Ga. 2007).

Defendant's Fourth Amendment rights were not violated because the defendant was properly stopped for driving without a seatbelt in violation of O.C.G.A. § 40-8-76.1, and the officer's search of the passenger area and recovery of the firearm beneath the driver's seat was valid because the arrest was lawful. United States v. Jackson, 249 Fed. Appx. 130 (11th Cir. 2007) (Unpublished).

In a trial for violations of 18 U.S.C. §§ 922(g)(1) and 924(e)(1), denial of a defendant's motion to suppress was not clear error because a police officer had probable cause to stop the defendant based on observing the defendant violate O.C.G.A. § 40-8-76.1 and during the stop developed probable cause to arrest the defendant for drug possession and search the defendant's vehicle. United States v. Price, 353 Fed. Appx. 308 (11th Cir. Nov. 18, 2009).

Probable cause for stopping for seat belt violation. — Although the federal safety standard referred to in O.C.G.A. § 40-8-76.1(b) did not mandate the use of shoulder strap safety belts, a police officer had probable cause to stop the defendant on suspicion that the defendant was violating § 40-8-76.1(b) when the officer observed that the defendant was not wearing a shoulder strap safety belt while driving. Moran v. State, 257 Ga. App. 236, 570 S.E.2d 673 (2002).

Because sufficient evidence existed to support a finding that the arresting officer had a clear and unobstructed view of the defendant not wearing a seat belt as required by O.C.G.A. § 40-8-76.1(f), the officer's subsequent stop of the defendant's vehicle was supported by probable cause, making suppression of the evidence thereafter seized unwarranted; as a result, reconsideration of the court's ruling did not amount to an abuse of discretion. Schramm v. State, 286 Ga. App. 156, 648 S.E.2d 392 (2007).

Inability to see the employment of any restraining device, coupled with the common knowledge that seat belts were not standard equipment in the back of pickup trucks, provided a sufficient basis for a traffic stop to ensure compliance with O.C.G.A. § 40-8-76.1. State v. McDuff, 252 Ga. App. 183, 555 S.E.2d 213 (2001).

Exclusion of evidence. — For the exclusion of evidence provision of O.C.G.A. § 40-8-76.1 to apply, it is not required that the occupant was not wearing a seat belt and was charged with not wearing the seat belt. Crosby v. Cooper Tire & Rubber Co., 240 Ga. App. 857, 524 S.E.2d 313 (1999).

Intent of subsection (d) of O.C.G.A. § 40-8-76.1 is to disallow admission of evidence of the failure to wear safety belts; thus, such evidence would not be allowed on the basis that it was relevant and admissible for the limited purposes of reduction of any damages, refutation of an element of plaintiffs' failure to warn claim, and impeachment. Crosby v. Cooper Tire & Rubber Co., 240 Ga. App. 857, 524 S.E.2d 313 (1999).

O.C.G.A. § 40-8-76.1(d), which prohibits the use of evidence of the failure of an occupant of a motor vehicle to wear a seat safety belt as evidence of negligence or causation or to diminish any recovery for damages in any civil action, is not a stat-

ute that merely confers waivable rights on a party. Rather, O.C.G.A. § 40-8-76.1(d) provides the substantive law which courts must apply to any case involving an automobile. Denton v. Daimlerchrysler Corp., 645 F. Supp. 2d 1215 (N.D. Ga. 2009).

Evidence from stop as probable cause for arrest. — When a stop for a seat belt violation was made, O.C.G.A. § 40-8-76.1 did not preclude an officer from conducting a reasonable inquiry and investigation to insure both the officer's safety and that of others, and evidence gathered as a result of the stop could be used as probable cause to arrest the driver for driving under the influence and other offenses. Temples v. State, 228 Ga. App. 228, 491 S.E.2d 444 (1997); Holt v. Leiter, 232 Ga. App. 376, 501 S.E.2d 879 (1998).

When any one of the traffic violations observed by a police officer would have provided probable cause to effectuate a traffic stop, the trial court's denial of a motion to suppress evidence found during a subsequent search of the defendant's person, based upon an allegedly improper traffic stop, was not clearly erroneous. Tukes v. State, 236 Ga. App. 77, 511 S.E.2d 534 (1999).

Nothing in O.C.G.A. § 40-8-76.1(f) prevents an officer who stops a motorist for failing to wear a seat belt from conducting a reasonable investigation to ensure the officer's safety and if, during that investigation, the officer sees evidence of an unrelated crime, the officer may arrest the motorist for the unrelated crime notwithstanding the fact that the motorist originally was stopped for failing to wear a seat belt. Edwards v. State, 239 Ga. App. 44, 518 S.E.2d 426 (1999).

Arrests for additional offenses. — Even though the probable cause for the initial stop cannot itself be used as probable cause for arrests based on other violations, once a stop for a seat belt violation is made, O.C.G.A. § 40-8-76.1 does not prevent an officer from making an arrest for additional offenses based upon separate probable cause. Davis v. State, 232 Ga. App. 320, 501 S.E.2d 836 (1998).

Prosecution on DUI not barred by earlier disposal of seat belt violation. — Trial court erred in dismissing the defendant's charge for DUI, O.C.G.A. § 40-6-391(k), on double jeopardy grounds under O.C.G.A. § 16-1-7(b) based on the prior disposal online of a separate seat belt citation; there was no showing that the solicitor had actual knowledge of the DUI charge at the time the seat belt charge was handled. State v. Garlepp, 338 Ga. App. 788, 790 S.E.2d 839 (2016).

Sport utility vehicles covered. — Even though a sport utility vehicle had design characteristics of an off-road vehicle, it was designed and intended primarily for use on public roads and, therefore, the General Assembly intended for seat safety belts to apply to it as a passenger vehicle in order to promote safety. Crosby v. Cooper Tire & Rubber Co., 240 Ga. App. 857, 524 S.E.2d 313 (1999).

Erroneous jury instruction warranted new trial. — Because the trial court erroneously instructed the jury on the use of evidence a married couple's failure to wear their seatbelts as evidence of negligence or causation or to diminish any recovery, and such likely prejudiced the couple, a new trial was warranted. King v. Davis, 287 Ga. App. 715, 652 S.E.2d 585 (2007).

Cited in Katz v. White, 190 Ga. App. 458, 379 S.E.2d 186 (1989); Scott v. Chapman, 203 Ga. App. 58, 416 S.E.2d 111 (1992); Heard v. State, 291 Ga. App. 550, 662 S.E.2d 310 (2008); Hughes v. State, 293 Ga. App. 404, 667 S.E.2d 163 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Payments to Peace Officers' Annuity and Benefit Fund. — Amount required to be withheld and paid over to the Peace Officers' Annuity and Benefit Fund is not required to be withheld and paid over in cases involving the failure to wear a seat safety belt under O.C.G.A. § 40-8-76.1(e). 2008 Op. Att'y Gen. No. 2008-4.

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 542, 568, 569.

C.J.S. — 61 C.J.S., Motor Vehicles, §§ 1061, 1071, 1105, 1106, 1110, 1365.

40-8-77. Energy absorption system.

(a) As used in this Code section, the term "private passenger automobile" shall mean a four-wheel motor vehicle designed for carrying ten passengers or less, not for hire, for use on public roads and highways, and not designed for use as a dwelling or for camping, provided that the term "private passenger automobile" shall not include a multipurpose vehicle, which is, for the purposes of this Code section, defined as a motor vehicle, except a trailer, designed to carry ten passengers or less and constructed either on a truck chassis or with special features for occasional off-road operation.

(b) Every new private passenger automobile manufactured on and after August 1, 1973, which is sold or licensed in this state shall be sold subject to the manufacturer's warranty that it is equipped with an appropriate energy absorption system conforming to all federal motor vehicle safety standards applicable to such automobile on the date of manufacture. The warranty may be given by means of the federal safety standard certification label affixed to the automobile. (Ga. L. 1971, p. 373, §§ 1-3; Ga. L. 1974, p. 8, § 1; Ga. L. 1976, p. 1413, § 1; Code 1933, § 68E-408, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-77, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1992, p. 2785, § 28.)

OPINIONS OF THE ATTORNEY GENERAL

"Private passenger automobile" construed. — Any motor vehicle, meeting other requisites of Ga. L. 1971, p. 373 (see O.C.G.A. § 40-8-77), which is principally designed for use on public roads and highways and the carrying of passengers not for hire is a "private passenger automobile" within the coverage of these provisions, even though it might have subsidiary multi-purpose functions which did not fit within the definition. 1972 Op. Att'y Gen. No. 72-50; 1973 Op. Att'y Gen. No. 73-92.

Criteria for determination. — Legislative criteria behind these provisions was one of principal-design intention, and in every case the department's application or nonapplication would depend upon a conclusion as to whether the manufacturer had designed the vehicle principally for carrying passengers or whether the passenger-carrying capacity of the vehicle was strictly subsidiary to other functions not within the definition. 1973 Op. Att'y Gen. No. 73-92.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 1, 184 et seq., 190, 191.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 1 et seq., 479, 480.

ALR. — Express or implied warranty of

quality, condition, or fitness of automobile or truck sold by retail dealer, 43 A.L.R. 648.

Express warranty as excluding implied warranty of fitness, 164 A.L.R. 1321.

40-8-78. Safety glazing.

(a) No person shall sell any motor vehicle manufactured after January 1, 1954, nor shall any such motor vehicle be registered unless such vehicle is equipped with safety glazing materials of a type approved by the commissioner of public safety wherever glazing materials are used in doors, windows, and windshields. The provisions of this Code section shall apply to all passenger-type motor vehicles, including passenger buses and school buses, but in respect to trucks, including truck tractors, the requirements as to safety glazing materials shall apply to all glazing materials used in doors, windows, and windshields in the drivers' compartments of such vehicles.

(b) The term "safety glazing materials" means glazing materials so constructed, treated, or combined with other materials as to reduce substantially, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they may be cracked or broken.

(c) Any person engaged in the business of replacing windshields or any side or rear windows of motor vehicles, which are subject to the provisions of this Code section, shall not replace such windshields or side or rear windows with any glazing materials other than safety glazing materials approved by the commissioner.

(d) The commissioner of public safety shall compile and publish in print or electronically a list of types of glazing materials by name approved by him or her as meeting the requirements of this Code section and the commissioner shall not register any motor vehicle which is subject to the provisions of this Code section unless it is equipped with an approved type of safety glazing materials, and he or she shall thereafter suspend the registration of any motor vehicle so subject to this Code section which he or she finds is not so equipped until it is made to conform to the requirements of this Code section.

(e) This Code section shall not be construed to require that side or rear windows of motor vehicles which were replaced or installed prior to January 1, 1954, must be replaced with safety glazing materials as provided in this Code section. (Code 1933, § 68E-409, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-78, enacted by Ga. L. 1982, p. 165, § 10; Ga. L. 1994, p. 97, § 40; Ga. L. 2000, p. 951, § 5B-5; Ga. L. 2005, p. 334, § 19-5/HB 501; Ga. L. 2010, p. 838, § 10/SB 388.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, "truck tractors" was substituted for "truck-tractors" in the second sentence of subsection (a).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 190, 191.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 43 et seq., 474 et seq.

40-8-79. Unlawfully riding in bed of pickup truck; penalty.

It shall be unlawful for any person under the age of 18 to ride as a passenger in the uncovered bed of a pickup truck on any interstate highway in this state. The driver of any vehicle in violation of this Code section shall be guilty of a misdemeanor. (Code 1981, § 40-8-79, enacted by Ga. L. 1990, p. 588, § 2.)

JUDICIAL DECISIONS

Cited in In re B.C.G., 235 Ga. App. 1, 508 S.E.2d 239 (1998); Steele v. State, 275 Ga. App. 651, 621 S.E.2d 606 (2005).

PART 5

EQUIPMENT OF LAW ENFORCEMENT AND EMERGENCY VEHICLES

Cross references. — Operation of authorized emergency vehicles, § 40-6-6.

40-8-90. Restrictions on use of blue lights on vehicles.

(a)(1) Except as provided in this paragraph and subsection (b) of this Code section, it shall be unlawful for any person, firm, or corporation to operate any motor vehicle equipped with or containing a device capable of producing any blue lights, whether flashing, blinking, revolving, or stationary, except:

(A) Motor vehicles owned or leased by any federal, state, or local law enforcement agency;

(B) Motor vehicles with a permit granted by a state agency to bear such lights; or

(C) Antique, hobby, and special interest vehicles, as defined in paragraph (8) of subsection (l) of Code Section 40-2-86.1, which may display a blue light or lights of up to one inch in diameter as part of any such vehicle's rear stop lamps, rear turning indicator, rear hazard lamps, and rear reflectors.

(2) Any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor.

(b) The prohibition contained in subsection (a) of this Code section shall not apply to any elected sheriff who, pursuant to an agreement between the sheriff and the county governing authority, is using his or her personal motor vehicle in a law enforcement activity, provided such vehicle is marked as provided in Code Section 40-8-91.

(c) It shall be unlawful for any person to use any motor vehicle equipped with flashing, blinking, revolving, or stationary blue lights in the commission of a felony, and, upon conviction of a violation of this subsection, the punishment shall be a fine of not less than $1,000.00 or imprisonment of not less than one year, or both. (Ga. L. 1966, p. 208, § 1; Ga. L. 1971, p. 781, § 1; Ga. L. 1972, p. 1092, § 1; Ga. L. 1977, p. 1012, § 1; Ga. L. 1984, p. 1193, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1992, p. 1287, § 1; Ga. L. 2005, p. 1026, § 1/SB 178; Ga. L. 2010, p. 9, § 1-82/HB 1055.)

Editor's notes. — Ga. L. 2005, p. 1026, § 2/SB 178, not codified by the General Assembly, provides that the 2005 amendment applies to offenses occurring on or after July 1, 2005.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required for violators. — O.C.G.A. § 40-8-90 is an offense for which those charged with a violation are to be fingerprinted. 2006 Op. Att'y Gen. No. 2006-2.

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, § 43 et seq.

40-8-91. Marking and equipment of law enforcement vehicles; motorist allowed to continue to safe location before stopping for law enforcement officer vehicles.

(a) Except as provided in subsection (b) of this Code section, any motor vehicle which is used on official business by any person authorized to make arrests for traffic violations in this state, or any municipality or county thereof, shall be distinctly marked on each side and the back with the name of the agency responsible therefor, in letters not less than four inches in height.

(b) Any motor vehicle, except as hereinafter provided in this subsection, used by any employee of the Georgia State Patrol for the purpose of enforcing the traffic laws of this state shall be distinctly painted, marked, and equipped in such manner as shall be prescribed by the commissioner of public safety pursuant to this Code section. The commissioner in prescribing the manner in which such vehicles shall be painted, marked, or equipped shall:

(1) Require that all such motor vehicles be painted in a two-toned uniform color or a solid color. For vehicles painted in a two-toned uniform color, the hood, top, and the top area not to exceed 12 inches below the bottom of the window opening thereof shall be a light gray color and the remaining portion of said motor vehicle shall be painted a dark blue color;

(2) Require that any such motor vehicle be equipped with at least one lamp which when lighted shall display a flashing or revolving colored light visible under normal atmospheric conditions for a distance of 500 feet from the front and rear of such vehicle; and

(3) Require that any such motor vehicle shall be distinctly marked on each side and the back thereof with the wording "State Patrol" in letters not less than six inches in height of a contrasting color from the background color of the motor vehicle.

(c) It shall be unlawful for any person, except persons lawfully entitled to own vehicles for law enforcement purposes, to paint, mark, or equip any motor vehicle in the same manner prescribed by this Code section or by the commissioner for law enforcement vehicles.

(d) When a law enforcement vehicle is disposed of, or is not in use for law enforcement, the lettering and colored lights must be removed. Any person using such vehicle for personal use prior to removing colored lights and lettering shall be guilty of a misdemeanor.

(e) Whenever a motorist driving on the roadways of this state is directed to stop by a law enforcement officer in a law enforcement vehicle marked as required under this Code section, the motorist may continue to drive until a reasonably safe location for stopping is reached. Such motorist shall indicate to the officer his or her intent to proceed to a safe location by displaying the vehicle's flashing lights or turn signal. In proceeding to a safe location, the motorist shall observe the posted maximum speed limit.

(f) An otherwise lawful arrest shall not be invalidated or in any manner affected by failure to comply with this Code section. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 107A; Ga. L. 1966, p. 166, § 1; Ga. L. 1976, p. 208, § 1; Ga. L. 1986, p. 802, §§ 1-3; Ga. L. 1987, p. 3, § 405; Ga. L. 2006, p. 231, § 3/SB 64; Ga. L. 2006, p. 255, § 1/SB 454; Ga. L. 2010, p. 105, § 1-1/HB 981; Ga. L. 2014, p. 866, § 40/SB 340; Ga. L. 2018, p. 232, § 1/HB 809.)

The 2018 amendment, effective July 1, 2018, in paragraph (b)(1), added "or a solid color" at the end of the first sentence and substituted "For vehicles painted in a two-toned uniform color, the" for "The" at the beginning of the second sentence.

Cross references. — Provision that marked vehicles normally used for transporting criminals or those accused of crime shall not be used for transporting mental patients, persons undergoing habilitation for mental retardation, alcohol-

ics, or others, §§ 37-3-101, 37-4-61, 37-7-101.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, "in" was substituted for "is" preceding "use for law enforcement" near the beginning of subsection (d).

Editor's notes. — Ga. L. 2010, p. 105, § 3-1/HB 981, not codified by the General Assembly, provided for the repeal of the amendment to subsection (b) of this Code section by that Act, effective June 30, 2013.

Law reviews. — For survey article on local government law, see 59 Mercer L. Rev. 285 (2007) and 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

Applicability of section limited. — Ga. L. 1966, p. 166, § 1 (see now O.C.G.A. § 40-8-91) is applicable only in cases where vehicles are used in patrolling traffic or in making arrests for traffic violations. Clayton v. Taylor, 223 Ga. 346, 155 S.E.2d 387 (1967).

Construction with other law. — County sheriff had the independent authority to repaint and remark county-owned sheriff's vehicles assigned to the sheriff's exclusive use, but lacked the authority to modify portions of a county-owned building in which the sheriff's office and jail were housed, as the facility was shared with the superior, state, and magistrate courts of Clayton County as well as the clerks of those courts, the solicitor general, and the district attorney, and hence, not under the sheriff's exclusive use; as a result, subject to compliance with O.C.G.A. § 40-8-91, summary judgment in favor of the county as to the extent of the sheriff's authority was reversed as to the former, but affirmed as to the latter. Hill v. Clayton County Bd. of Comm'rs, 283 Ga. App. 15, 640 S.E.2d 638 (2006), overruled on other grounds, Mayor & Aldermen of Savannah v. Batson-Cook Co., 291 Ga. 114, 728 S.E.2d 189 (Ga. 2012).

No marking of police cars as escort vehicles. — In a suit by a driver who ran into a house while the house was being moved and escorted by police vehicles, there was no merit to the driver's argument that the police vehicles had to be marked as escort vehicles; that would be contrary to O.C.G.A. §§ 40-6-6 and 40-8-91, which mandate proper markings for police cars and do not allow those vehicles to have amber lights. Hersh v. Griffith, 284 Ga. App. 15, 643 S.E.2d 309 (2007).

Public policy to identify arresting vehicles. — Ga. L. 1966, p. 166, § 1 (see now O.C.G.A. § 40-8-91) requires that motor vehicles used by the police on official business shall be marked on the back and on each side. This is an expression of the public policy of the state that vehicles used for the purpose of traffic arrests shall be identified. Clayton v. Taylor, 223 Ga. 346, 155 S.E.2d 387 (1967).

Civil action when failure to mark vehicle is proximate cause of injury. — Vehicles used for the purpose of traffic arrests shall be identified, and when the failure to make such identification is the proximate cause of injury, a civil action will lie. Ross v. City of Lilburn, 114 Ga. App. 428, 151 S.E.2d 490 (1966).

No civil action if no causal connection exists. — In an action for damages caused by a car collision, the court did not err in refusing to charge that the failure of the sheriff to have the sheriff's automobile distinctly marked on each side and the back, as provided by Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 107A, was negligence per se, since the defendant, who caused the collision in an attempt to outrun the sheriff's car, contended that the defendant did not know who was pursuing the defendant because such car was unmarked since there was no causal connection between the sheriff's failure to have the sheriff's automobile properly marked and the collision. Fountain v. Smith, 103 Ga. App. 192, 118 S.E.2d 852 (1961).

Arrests from unmarked vehicles. — O.C.G.A. § 40-8-91 does not invalidate traffic arrests made in unmarked vehicles. State v. Carter, 215 Ga. App. 647, 451 S.E.2d 541 (1994).

O.C.G.A. § 40-8-91 did not require exclusion of the testimony of an officer who

made an arrest for reckless driving in an unmarked vehicle. Gilbert v. State, 222 Ga. App. 787, 476 S.E.2d 39 (1996).

Flight from unmarked vehicle. — Because the circumstances of the defendant's low-speed flight from an uniformed detective, who was driving an unmarked vehicle, were insufficient to present law enforcement with evidence of a particular crime, the defendant could not be charged with the crime of attempting to elude an officer, and police lacked probable cause sufficient to warrant an arrest for the offense; thus, the search incident to the arrest was invalid, warranting suppression of the evidence seized. Stephens v. State, 278 Ga. App. 694, 629 S.E.2d 565 (2006).

Stop by unmarked vehicle. — O.C.G.A. § 40-8-91 did not require exclusion of the evidence obtained after an officer, who had been following the defendant in an unmarked police car based on a tip, pulled the defendant over after the defendant crossed the center line. Sapp v. State, 297 Ga. App. 218, 676 S.E.2d 867 (2009).

Cited in Poole v. City of Louisville, 107 Ga. App. 305, 130 S.E.2d 157 (1963); Ward v. State, 126 Ga. App. 214, 190 S.E.2d 444 (1972); Barron v. State, 157 Ga. App. 186, 276 S.E.2d 868 (1981); Thomas v. State, 261 Ga. App. 493, 583 S.E.2d 207 (2003); Batten v. State, 341 Ga. App. 332, 801 S.E.2d 57 (2017).

OPINIONS OF THE ATTORNEY GENERAL

Marking required of sheriff-owned automobile used for law enforcement. — If the sheriff of a county is required to furnish the sheriff's own automobile for law enforcement purposes, even though the automobile is owned by the sheriff and the county does not furnish the sheriff with a motor vehicle for such purposes, such motor vehicle must be marked in accordance with Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 107A (see now O.C.G.A. § 40-8-91). 1954-56 Op. Att'y Gen. p. 897.

If a motor vehicle is owned by a sheriff as the sheriff's own individual motor vehicle but is used by the sheriff on official business to make arrests for traffic violations, such motor vehicle should be marked, under Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 107A (see now O.C.G.A. § 40-8-91). 1957 Op. Att'y Gen. p. 332.

Use of marked automobile by constable. — Constable may use a marked automobile that is equipped with a colored light mounted on the cab and a siren, if the constable can do so without holding oneself out to the public as a county police officer. 1969 Op. Att'y Gen. No. 69-214.

Arrest made using unmarked vehicle valid. — Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 107A (see now O.C.G.A. § 40-8-91) has no effect on the legality of any arrest which is made, and an arrest made by a sheriff or a deputy sheriff using an unmarked motor vehicle would be legal, if otherwise so. 1957 Op. Att'y Gen. p. 332.

Mandamus to enforce compliance with section. — Petition for writ of mandamus brought by a taxpayer or member of the motoring public is the proper method to enforce compliance with Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 107A (see now O.C.G.A. § 40-8-91), requiring the marking of official vehicles. 1965-66 Op. Att'y Gen. No. 65-49.

40-8-91.1. Marking and equipment of all-terrain vehicles used as law enforcement vehicles.

(a) As used in this Code section, the term "all-terrain vehicle" means any motorized vehicle designed for off-road use which is equipped with four or more nonhighway tires and which is 50 inches or less in width.

(b) Every all-terrain vehicle must comply with the equipment and marking specifications set forth in this article before such vehicle can be

used by law enforcement agencies and officers upon the public roads of this state. All provisions of law relating to safe operation of law enforcement or emergency vehicles shall be applied to the operation of such all-terrain vehicles.

(c) Any all-terrain vehicle which is operated by law enforcement agencies and officers upon the public roads of this state shall be registered and licensed in accordance with the provisions of Code Section 40-2-37. (Code 1981, § 40-8-91.1, enacted by Ga. L. 2006, p. 675, § 1/HB 1216; Ga. L. 2012, p. 726, § 5/HB 795.)

40-8-92. Designation of emergency vehicles; flashing or revolving lights; permits; fee; prohibition against use of flashing or revolving green lights by private persons on public property.

(a) All emergency vehicles shall be designated as such by the commissioner of public safety. The commissioner shall so designate each vehicle by issuing to such vehicle a permit to operate flashing or revolving emergency lights of the appropriate color. Such permit shall be valid for one year from the date of issuance; provided, however, that permits for vehicles belonging to federal, state, county, or municipal governmental agencies shall be valid for five years from the date of issuance. Any and all officially marked law enforcement vehicles as specified in Code Section 40-8-91 shall not be required to have a permit for the use of a blue light. Any and all fire department vehicles which are distinctly marked on each side shall not be required to have a permit for the use of a red light. Any and all ambulances, as defined in Code Section 31-11-2, licensed by this state shall not be required to have a permit for the use of a red light.

(b) The commissioner shall authorize the use of red or amber flashing or revolving lights only when the person or governmental agency shall demonstrate to the commissioner a proven need for equipping a vehicle with emergency lights. The fee for such lights shall be $2.00, provided that no federal, state, county, or municipal governmental agency or an ambulance provider, as defined in Code Section 31-11-2, shall be required to pay such fee.

(c) Nothing contained in this Code section shall prohibit the commissioner from issuing a single special use permit to cover more than one vehicle, provided each vehicle covered under such special use permit shall pay the fee specified in subsection (b) of this Code section.

(d) Except as provided in this subsection, it shall be unlawful for any person, firm, or corporation to operate any motor vehicle or to park any motor vehicle on public property with flashing or revolving green lights. This subsection shall not apply to any motor vehicle being used by any

law enforcement agency, fire department, emergency management agency, or other governmental entity to designate the location of the command post for such agency, department, or entity at the site of an emergency. (Ga. L. 1971, p. 781, § 2; Ga. L. 1972, p. 1092, §§ 3, 4; Ga. L. 1977, p. 1012, § 4; Ga. L. 1983, p. 447, § 1; Ga. L. 1988, p. 582, § 1; Ga. L. 1991, p. 1145, § 3; Ga. L. 2000, p. 951, § 5B-6; Ga. L. 2005, p. 334, § 19-6/HB 501; Ga. L. 2010, p. 95, § 1/SB 410.)

Administrative rules and regulations. — Flashing and Revolving Lights on Motor Vehicles, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Public Safety, Chapter 570-11.

JUDICIAL DECISIONS

Cited in Palmer v. State, 250 Ga. 219, 297 S.E.2d 22 (1982); Pryor v. Phillips, 222 Ga. App. 116, 473 S.E.2d 535 (1996).

OPINIONS OF THE ATTORNEY GENERAL

Use of flashing lights by university security departments. — Flashing or revolving blue lights can be operated on motor vehicles belonging to campus police and security departments of the University System of Georgia; however, these vehicles must belong to the Board of Regents, and this applies only to the University System, and not to other schools, colleges, or campuses which are not under the jurisdiction of the Board of Regents. 1973 Op. Att'y Gen. No. 73-23.

Prerequisites for amber light permits. — Board of Public Safety may establish by rule and regulation the prerequisites for the issuance of amber light permits and amber lights may be used only in accordance with those rules and regulations. 1974 Op. Att'y Gen. No. 74-112.

Prohibition on use of red emergency lights imposable. — Current Georgia law does not expressly forbid the use of red emergency lights on law enforcement vehicles; but the Board of Public Safety may, by the Board's rules and regulations, impose a prohibition on the use of red emergency lights on law enforcement vehicles. 1983 Op. Att'y Gen. No. 83-32.

Volunteer firemen exempt from fee. — Volunteer fireman who, along with application for permit to operate flashing or revolving emergency lights, submits sufficient proof that the fireman's application is occasioned solely by the fireman's duty as a volunteer fireman should enjoy the same exemption from $2.00 fee provided for in O.C.G.A. § 40-8-92 that is enjoyed by the fireman's respective governmental unit. 1982 Op. Att'y Gen. No. 82-15.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 30, 31, 36 et seq., 56. 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 801 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, § 43 et seq. 60A C.J.S., Motor Vehicles, § 630 et seq.

40-8-93. Flashing parking or brake lights or directional signals not prohibited.

Nothing contained in Code Sections 40-8-90 and 40-8-92 shall be deemed to apply to nor construed to prohibit blinking or flashing parking or brake lights or directional signals on any motor vehicle. (Ga. L. 1972, p. 1092, § 6; Ga. L. 1977, p. 1012, § 5.)

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 789, 790.

40-8-94. Sirens, whistles, or bells.

Any authorized emergency vehicle may be equipped with a siren, whistle, or bell capable of emitting sound audible under normal conditions from a distance of not less than 500 feet, but such siren shall not be used except when such vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which latter event the driver of such vehicle shall sound the siren when necessary to warn pedestrians and other drivers of the approach thereof. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 116.)

JUDICIAL DECISIONS

Unlawful siren use not negligence per se. — In a negligence action arising out of a motor vehicle collision, the defendant's unlawful use of a siren was not negligence per se. There had to be evidence of a causal relationship between the defendant's failure to obtain a permit for the siren and the collision. Pryor v. Phillips, 222 Ga. App. 116, 473 S.E.2d 535 (1996).

40-8-95. Rules and regulations.

The commissioner of public safety shall implement any and all provisions of Code Sections 40-8-90, 40-8-92, and 40-8-93 by the promulgation of necessary rules and regulations. (Ga. L. 1977, p. 1012, § 6; Ga. L. 2000, p. 951, § 5B-7; Ga. L. 2005, p. 334, § 19-7/HB 501.)

OPINIONS OF THE ATTORNEY GENERAL

Prohibition on use of red emergency lights imposable. — Current Georgia law does not expressly forbid the use of red emergency lights on law enforcement vehicles; but the Board of Public Safety may, by the Board's rules and regulations, impose a prohibition on the use of red emergency lights on law enforcement vehicles. 1983 Op. Att'y Gen. No. 83-32.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 15, 16, 20.

40-8-96. Violation of Code Sections 40-8-90 and 40-8-92.

Any person violating Code Sections 40-8-90 and 40-8-92 shall be guilty of a misdemeanor. (Ga. L. 1972, p. 1092, § 5; Ga. L. 1977, p. 1012, § 7.)

RESEARCH REFERENCES

Am. Jur. 2d. — 21 Am. Jur. 2d, Criminal Law, §§ 1, 18 et seq.

ALR. — Validity and construction of regulations as to automobile lights, 11 A.L.R. 1226; 78 A.L.R. 815.

Part 6

Equipment of School Buses

Cross references. — Operation of school buses, § 40-6-160 et seq.

40-8-110. Identification and color.

(a) Every bus used for the transportation of school children shall bear upon the front and rear thereof a plainly visible sign containing the words "SCHOOL BUS" in letters not less than eight inches in height.

(b) On and after January 1, 1971, every new school bus purchased for the transportation of school children shall be painted National School Bus Chrome Yellow. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 89; Ga. L. 1970, p. 586, § 2.)

Cross references. — Code section not applicable to public transit systems transporting school children, § 40-8-114.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 68-311 are included in the annotations for this Code section.

Failure to mark bus is negligence per se. — Operation of a bus in transporting school children without the bus being marked "school bus" is negligence per se. Dishinger v. Suburban Coach Co., 84 Ga. App. 498, 66 S.E.2d 242 (1951) (decided under former Code 1933, § 68-311).

40-8-111. Equipment generally.

(a) Each school bus used for the transportation of school children in the State of Georgia shall be in compliance with the State Board of Education bus specifications for the model year of such school bus.

(b) Each public school system shall be required to maintain each of its school buses in good working condition, including all safety equipment required in accordance with the specifications established pursuant to subsection (a) of this Code section.

(c) Nothing in subsection (a) of this Code section shall apply to motor vehicles operated by a local transit system which transport school children to and from school on regular or scheduled routes of a transit vehicle with regular fare-paying passengers. (Ga. L. 1970, p. 586, § 2; Ga. L. 1978, p. 1367, §§ 1, 2; Ga. L. 1982, p. 3, § 40; Ga. L. 1986, p. 501, § 1; Ga. L. 1992, p. 2963, § 1; Ga. L. 2004, p. 621, § 8.)

Cross references. — Code section not applicable to public transit systems transporting school children, § 40-8-114.

Editor's notes. — Ga. L. 1992, p. 2963, § 2, not codified by the General Assembly, provides: "The requirements of this Act shall apply only to new school buses manufactured on or after January 1, 1993."

Ga. L. 2004, p. 621, § 5, not codified by the General Assembly, provides: "This part [consisting of §§ 5-8 of the Act] shall be known and may be cited as 'Aleana's Law.'"

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 66-311 are included in the annotations for this Code section.

Inapplicability of section to common carrier. — Predecessor law was intended to apply to busses primarily and exclusively used for transportation of school children to and from school, and not to a bus operating as a common carrier for hire, traveling on a schedule along an established route, and transporting school children only as an incident of the carrier's duty to transport any member of the public who wishes to ride and pays the rider's fare. Hanks v. Georgia Power Co., 86 Ga. App. 654, 72 S.E.2d 198 (1952) (decided under former Code 1933, § 66-311).

Cited in Metropolitan Atlanta Rapid Transit Auth. v. Tuck, 163 Ga. App. 132, 292 S.E.2d 878 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Standards apply to city transit buses in which children ride. — Safety and equipment standards set up by Ga. L. 1970, p. 586, § 2 (see now O.C.G.A. § 40-8-111) apply to the buses of a city transit system in which school children ride. 1972 Op. Att'y Gen. No. U72-18.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 87, 282. 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 496, 923.

C.J.S. — 60 C.J.S., Motor Vehicles, § 189. 78 C.J.S., Schools and School Districts, § 457.

40-8-112. Compliance with State Board Bus Specifications.

Every school bus used to transport children to and from school shall comply with the State Board Bus Specifications prescribed by the State Board of Education. (Ga. L. 1970, p. 586, § 2.)

Cross references. — Code section not applicable to public transit systems transporting school children, § 40-8-114.

OPINIONS OF THE ATTORNEY GENERAL

Waiver of equipment standards. — There is no authority which would allow a waiver of the equipment standards enumerated in Ga. L. 1970, p. 586, § 2 (see now O.C.G.A. § 40-8-111). 1977 Op. Att'y Gen. No. 77-43.

40-8-113. Standards applicable regardless of size or capacity.

The identification and equipment standards provided in this part shall apply to all school buses as defined in paragraph (55) of Code Section 40-1-1 regardless of size or capacity. (Ga. L. 1974, p. 633, § 1; Ga. L. 1992, p. 6, § 40.)

40-8-114. Operation of school buses by churches, private schools, and local transit systems; transportation of school children on buses owned or operated by public transit systems.

(a) Notwithstanding any other provision of this title to the contrary, churches, private schools, or local transit systems may operate school buses meeting the equipment, color, and marking requirements of Code Sections 40-8-110 through 40-8-112 and 40-8-115 and drivers of such vehicles shall be required to stop as set forth in Code Section 40-6-163. For purposes of this subsection, only churches and private schools are authorized to comply with Code Sections 40-8-110 through 40-8-112, and only local transit systems are authorized to comply with Code Section 40-8-115.

(b) Notwithstanding any other provision of this title to the contrary, the requirements relating to buses used for the transportation of school children, which requirements are contained in the following Code sections:

(1) Code Section 40-6-160, relating to speed limits;

(2) Code Section 40-6-161, relating to headlamps;

(3) Code Section 40-6-162, relating to use of visual signals;

(4) Code Section 40-6-163, relating to meeting or passing school buses;

(5) Code Section 40-8-110, relating to identification and color;

(6) Code Section 40-8-111, relating to equipment generally;

(7) Code Section 40-8-112, relating to compliance with certain State Board of Education specifications;

(8) Code Section 40-8-115, relating to identification and equipment of certain school buses; and

(9) Code Section 40-8-220, relating to inspection of school buses,

shall not apply to any bus which is owned or operated by a publicly owned and operated transit system and which either transports school children to and from school on regular or scheduled routes with regular fare-paying passengers or which engages in tripper service. (Ga. L. 1974, p. 633, § 1; Ga. L. 1983, p. 633, § 2.)

40-8-115. Identification and equipment of school buses for special school route service.

This part shall not prohibit the use of a school bus as defined in paragraph (55) of Code Section 40-1-1 for special school route service, provided it shall meet the following identification and equipment requirements:

(1) The bus need not be painted yellow or black;

(2) The bus shall be equipped with four hooded or recessed red flasher lights, or four red flasher lights and four amber flasher lights mounted on the same horizontal centerline as the red lights and nearer the centerline. Such amber lights shall be at least two and one-half times brighter than the red lights. The system shall be wired so that the amber signal lights are activated only by manual or foot operation and if activated are automatically deactivated and the red signal lights activated when the bus entrance door is opened; and

(3) While transporting children to or from school, the bus shall be equipped with the following temporary signs, located conspicuously on the front and back of such vehicle:

(A) The sign on the front shall have the words “SCHOOL BUS” printed in black letters not less than six inches high, on a background of National School Bus Glossy Yellow; and

(B) The sign on the rear shall be at least ten square feet in size and shall be painted National School Bus Glossy Yellow and have the words "SCHOOL BUS" printed in black letters not less than eight inches high. (Ga. L. 1974, p. 633, § 1; Ga. L. 1992, p. 6, § 40.)

Cross references. — Code section not applicable to public transit systems transporting school children, § 40-8-114.

JUDICIAL DECISIONS

Use of local transit authority bus for special school route service necessitates compliance with school bus identification and equipment requirements. Metropolitan Atlanta Rapid Transit Auth. v. Tuck, 163 Ga. App. 132, 292 S.E.2d 878 (1982).

40-8-116. Unlawful acts.

It shall be unlawful to operate:

(1) Any vehicle displaying the words "SCHOOL BUS" unless it meets the color, identification, and equipment requirements set forth in Code Section 40-8-113 or 40-8-115;

(2) A vehicle without the words "SCHOOL BUS" but which is of a color and exhibits some equipment or identification which reasonably could cause a motorist to confuse it with a properly colored, identified, and equipped school bus;

(3) Any school bus for any purpose other than the transportation of school children to or from school or school activities without concealing or covering all markings thereon indicating "SCHOOL BUS"; or

(4) A vehicle which has been permanently converted from the purpose of transporting students to or from school or school activities without first having painted such vehicle some color other than the yellow required in subsection (b) of Code Section 40-8-110 and without having removed the stop arms, if any, and any other equipment required by Code Section 40-8-111. (Ga. L. 1974, p. 633, § 1.)

JUDICIAL DECISIONS

Cited in Metropolitan Atlanta Rapid Transit Auth. v. Tuck, 163 Ga. App. 132, 292 S.E.2d 878 (1982).

ARTICLE 2

CONTROL OF VEHICLE EMISSIONS

PART 1

EMISSION CONTROL DEVICES GENERALLY

40-8-130. Unlawful to operate vehicle without serviceable emission control device; penalty; exceptions.

(a) It shall be unlawful for the owner of any motor vehicle to operate or permit the operation of such vehicle on which any device controlling or abating atmospheric emissions which is placed on a motor vehicle by the manufacturer pursuant to regulations promulgated by the United States secretary of health and human services in accordance with the provisions of Title II, the National Emissions Standards Act, of the Air Quality Act of 1967, Public Law 90-148 has been rendered unserviceable by removal, alteration, or other interference with its operation.

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

(c) Subsection (a) of this Code section shall not apply to any person repairing any such device described in that subsection or to the removal of any such device by any person for the purpose of repairing or replacing such device.

(d) Subsection (a) of this Code section shall not apply to any person removing any such device for the purpose of converting any motor vehicle to operate on natural or liquefied petroleum gas or make any other modifications which would reduce atmospheric emissions. (Ga. L. 1971, p. 188, § 1; Ga. L. 1982, p. 3, § 40; Ga. L. 1997, p. 143, § 40.)

U.S. Code. — The federal Air Quality Act of 1967, which amended the federal Clean Air Act (now codified at 42 U.S.C. § 7401 et seq.), was amended by the federal Clean Air Act Amendments of 1977 (P.L. 95-95; 91 Stat. 685). Title II of the Air Quality Act of 1967, the federal National Emissions Standards Act, is codified at 42 U.S.C. § 7521 et seq.

OPINIONS OF THE ATTORNEY GENERAL

No exemption for dual fuel capacity vehicles under O.C.G.A. Art. 2, Ch. 8, T. 40 is provided under O.C.G.A. § 40-8-130. 1981 Op. Att'y Gen. No. 81-84.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 202. 21 Am. Jur. 2d, Criminal Law, §§ 1, 18 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, § 52.

40-8-131. Inspection without warrant authorized.

Any vehicle suspected of being operated in violation of this part may be the subject of an inspection conducted by an officer of the Georgia State Patrol who has reason to believe such violation is occurring, without the necessity of obtaining a warrant to permit such inspection. (Ga. L. 1971, p. 188, § 1.)

40-8-132. Annual inspection.

Repealed by Ga. L. 1982, p. 165, §§ 1, 6, effective November 1, 1982.

Editor's notes. — This Code section was based on Ga. L. 1972, p. 989, § 1.

Part 2

Establishment of Emission Standards; Inspection of Motor Vehicles for Compliance with Standards

40-8-150 through 40-8-163.

Reserved. Repealed by Ga. L. 1992, p. 918, § 1, effective July 1, 1992.

Editor's notes. — Ga. L. 1992, p. 918, § 1, effective July 1, 1992, repealed Part 2 of Article 2 of Chapter 8 of this title, which consisted of Code Sections 40-8-150 through 40-8-159, 40-8-159.1, and Code Sections 40-8-160 through 40-8-163 and was based on Ga. L. 1979, p. 1213, §§ 1, 2; Ga. L. 1981, Ex. Sess., p. 8; and Ga. L. 1985, p. 149, § 40. For present provisions as to automobile emissions standards, see Code Section 12-9-40 et seq.

Part 3

Visible Emissions

40-8-180. Short title.

This part shall be known and may be cited as the "Vehicular Visible Emission Control Act." (Ga. L. 1971, p. 186, § 1; Ga. L. 1994, p. 97, § 40.)

40-8-181. Visible emissions from vehicles on public roadways prohibited; exceptions.

(a) It shall be unlawful for any person to operate on a public roadway of this state a diesel powered vehicle which discharges into the atmosphere visible emissions resulting in a decrease of light transmis-

sion beyond 30 percent, whether emitted from the crankcase, the exhaust system, or from any part of the power system; provided, however, that the light obscuring limitations prescribed in this subsection may be exceeded during periods of acceleration and deceleration not to exceed ten continuous seconds or 1,000 feet.

(b) It shall be unlawful for any person to operate on a public roadway of this state a gasoline powered vehicle which discharges into the atmosphere visible emissions resulting in a decrease of light transmission, whether emitted from the crankcase, the exhaust system, or from any part of the power system; provided, however, that the light obscuring limitation prescribed in this subsection may be exceeded for periods not to exceed ten continuous seconds or 1,000 feet.

(c) Subsections (a) and (b) of this Code section shall not apply to the normal discharge of condensed water vapor. (Ga. L. 1971, p. 186, § 2.)

JUDICIAL DECISIONS

Stop of vehicle for violation was not justified when there was no proof that the trooper was equipped with a light transmission gauge prescribed by O.C.G.A. § 40-8-182. Raulerson v. State, 223 Ga. App. 556, 479 S.E.2d 386 (1996).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 155.

40-8-182. Enforcement of part; traffic violation citations.

(a) This part shall be enforced by the duly authorized traffic control agency of this state or of any political subdivision thereof. The Air Quality Control Agency of this state shall produce and furnish to such traffic control agency appropriate light transmission gauges to be used in the enforcement of this part.

(b) A traffic violation citation shall be issued to the operator of a vehicle in violation of any provision of this part on and after January 1, 1973. (Ga. L. 1971, p. 186, § 2.)

40-8-183. Penalty.

Any person who violates any provision of this part shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $10.00 nor more than $25.00. (Ga. L. 1971, p. 186, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d, Carriers, §§ 296, 297, 299. 21 Am. Jur. 2d, Criminal Law, §§ 1, 18 et seq.

C.J.S. — 39A C.J.S., Health and Environment, § 147 et seq.

40-8-184. Municipal and county regulation prohibited.

No subdivision of this state shall enact any ordinance or issue any rules and regulations pertaining to the discharging into the atmosphere of visible emissions from diesel powered vehicles or gasoline powered vehicles. (Ga. L. 1971, p. 186, § 4.)

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 155.

40-8-185. Part not applicable to certain vehicles.

This part shall not apply to off-highway farm, forest, and construction equipment being moved from one work location to another. (Ga. L. 1971, p. 186, § 5.)

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 155.

ARTICLE 3

INSPECTIONS BY OFFICERS OF DEPARTMENT OF PUBLIC SAFETY

40-8-200. Inspection of vehicles by officers of the Department of Public Safety; certificate of inspection; procedure for noncompliant vehicle.

(a) The commissioner of public safety and members of the Department of Public Safety, and such other officers and employees of the department as the commissioner may designate, may at any time, upon reasonable cause to believe that a vehicle is unsafe or not equipped as required by law or that its equipment is not in proper adjustment or repair, require the driver of such vehicle to stop and submit such vehicle to an inspection and such tests with reference thereto as may be appropriate.

(b) In the event such vehicle and its equipment are found to be in safe condition and in full compliance with the law, the officer making

such an inspection shall issue to the driver an official certificate of inspection and approval of such vehicle specifying those parts or equipment so inspected and approved.

(c) In the event such vehicle is found to be in unsafe condition or any required part or equipment is not present or is not in proper repair and adjustment, the officer shall give a written notice to the driver and shall send a copy to the department. Such notice shall require that such vehicle be placed in safe condition and its equipment in proper repair and adjustment specifying the particulars with reference thereto and shall require that a certificate of inspection and approval be obtained within 30 days. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 124; Ga. L. 1960, p. 950, § 1; Ga. L. 1963, p. 333, § 1; Ga. L. 1965, p. 188, § 2.)

Cross references. — Authority of law enforcement officers to stop vehicles for determination of compliance with vehicle size, weight, and other laws, § 32-6-30.

OPINIONS OF THE ATTORNEY GENERAL

Removal of vehicles from roadways by officers. — Officer may not remove vehicle from roadway simply because the officer determines the vehicle is not safe for operation. 1974 Op. Att'y Gen. No. 74-99.

Thirty-day grace period provided by Ga. L. 1965, p. 188, § 2 (see now O.C.G.A. § 40-8-200) relates only to special inspections, and has no application to annual inspections. 1970 Op. Att'y Gen. No. U70-113.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 220, 221. 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 733, 1064.

C.J.S. — 60 C.J.S., Motor Vehicles, § 43 et seq. 60A C.J.S., Motor Vehicles, § 621 et seq.

40-8-201. Duties of owners and drivers of vehicles.

(a) No person driving a vehicle shall refuse to submit such vehicle to an inspection and test when required to do so by the commissioner of public safety or an authorized officer of the Department of Public Safety.

(b) Every owner or driver, upon receiving a notice as provided in Code Section 40-8-200, shall comply therewith and shall within 30 days secure an official certificate of inspection and approval, which shall be issued in duplicate, one copy to be retained by the owner or driver and the other copy to be forwarded to the Department of Public Safety. In lieu of compliance with this subsection, the vehicle shall not be operated, except as provided in subsection (c) of this Code section.

(c) No person shall operate any vehicle after receiving a notice with reference thereto as provided in Code Section 40-8-200 except as may be necessary to return such vehicle to the residence or place of business of the owner or driver, or to a garage, until such vehicle and its equipment

have been placed in proper repair and adjustment and otherwise made to conform to the requirements of this article. A certificate of inspection and approval shall be obtained as promptly as possible thereafter.

(d) In the event repair or adjustment of any vehicle or its equipment is found necessary upon inspection, the owner of such vehicle may obtain such repair or adjustment at any place he may choose, but in every event an official certificate of inspection and approval must be obtained; otherwise, such vehicle shall not be operated upon the highways of this state. (Ga. L. 1953, Nov.-Dec. Sess., p. 556, § 125; Ga. L. 1963, p. 333, § 1; Ga. L. 1965, p. 188, § 3.)

OPINIONS OF THE ATTORNEY GENERAL

Thirty-day grace period provided by Ga. L. 1965, p. 188, § 3 (see now O.C.G.A. § 40-8-201) relates only to special inspections, and has no application to annual inspections. 1970 Op. Att'y Gen. No. U70-113.

Separate offenses for repeated use of unsafe vehicle. — Once a vehicle has been declared unsafe, a misdemeanor citation may be issued each time the vehicle is found moving on the highways for purposes other than effecting the requisite repairs. 1974 Op. Att'y Gen. No. 74-31.

Applicability as to vehicle with expired inspection certificate. — Provisions which permit the return of a vehicle to a place of residence, place of business, or a garage for the purpose of obtaining repairs after notice has been given by the director of the Department of Public Safety that the vehicle is in an unsafe condition are inapplicable in those cases which relate to vehicles bearing expired motor vehicle inspection certificates. 1967 Op. Att'y Gen. No. 67-166.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 220, 221. 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 733.

C.J.S. — 60 C.J.S., Motor Vehicles, § 43 et seq. 60A C.J.S., Motor Vehicles, § 621 et seq.

ARTICLE 4

INSPECTION OF PUBLIC SCHOOL BUSES

Editor's notes. — Ga. L. 1982, p. 165, § 9, effective November 1, 1982, repealed the Code sections formerly appearing at this article and enacted the current article. The former article, relating to motor vehicle safety inspections, consisted of Code Sections 40-8-220 through 40-8-223 (Part 1), 40-8-240 through 40-8-249 (Part 2), and 40-8-260 through 40-8-264 (Part 3), and was based on Ga. L. 1963, p. 333, § 1; Ga. L. 1965, p. 188, § 4; Ga. L. 1969, p. 271, §§ 2, 3; Ga. L. 1970, p. 438, § 6; Ga. L. 1971, p. 258, § 1; Ga. L. 1971, p. 515, § 2; Ga. L. 1972, p. 901, §§ 1, 4-6; Ga. L. 1972, p. 989, § 1; Ga. L. 1973, p. 598, § 4; Ga. L. 1976, p. 216, §§ 1, 2; Ga. L. 1979, p. 906, § 1; and Ga. L. 1981, p. 1740, § 1.

Ga. L. 1982, p. 165, § 11, not codified by the General Assembly, provides: "The General Assembly finds that properly equipped and serviced vehicles contribute to the public welfare and safety of the citizens of Georgia through the reduction of motor vehicle accidents resulting from mechanical failure. The General Assembly also finds that it is the responsibility of all motorists to maintain their motor ve-

hicles in proper working condition. It is the intent of this Act to encourage all citizens to maintain their motor vehicles in safe operating condition. It is furthermore the intent of this Act to encourage the Department of Human Resources to promulgate rules and regulations specifying minimum safety standards for motor vehicles used to transport persons to and from day care centers or child care centers licensed by said department."

Administrative rules and regulations. — Public School Bus Inspection, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Public Safety, Chapter 570-30.

RESEARCH REFERENCES

ALR. — Constitutionality, construction, and application of statute or ordinance requiring inspection of motor vehicles, 106 A.L.R. 795.

Criminal responsibility for injury or death in operation of mechanically defective motor vehicle, 88 A.L.R.2d 1165.

Effect of violation of safety equipment statute as establishing negligence in automobile accident litigation, 38 A.L.R.3d 530.

40-8-220. Inspection of public school buses.

(a) Every school bus which is defined by paragraph (55) of Code Section 40-1-1 which is owned or operated by a state, county, or municipal government or under contract by any independent school system shall be inspected annually, or more frequently at the discretion of the commissioner of public safety, under the supervision of an employee of the Department of Public Safety.

(b) The employee of the department shall supervise the inspection of such vehicle to determine if such vehicle possesses in safe operating condition the equipment which is applicable to school buses required by Parts 1 through 4 of Article 1 of this chapter and the equipment required by Part 6 of Article 1 of this chapter.

(c) If such vehicle is found to meet the equipment and safety requirements specified in subsection (b) of this Code section, then the employee of the department making the inspection shall issue a school bus certificate of safety inspection to the vehicle.

(d) If such vehicle does not meet the equipment and safety requirements specified in subsection (b) of this Code section, then that vehicle shall not be operated on the streets and highways of this state, and no school bus certificate of safety inspection shall be issued to such vehicle.

(e) All public school buses shall be made available for the inspection required under this Code section, and no person shall conceal any bus required to be inspected under this Code section.

(f) The commissioner of public safety is authorized to implement any and all provisions of this Code section by the promulgation of necessary rules and regulations. When duly promulgated and adopted, all rules

and regulations issued pursuant to this Code section shall have the force of law. (Code 1933, § 68E-208, enacted by Ga. L. 1979, p. 906, § 1; Code 1933, § 68E-501, enacted by Ga. L. 1982, p. 165, § 4; Code 1981, § 40-8-249; Code 1981, § 40-8-220, enacted by Ga. L. 1982, p. 165, § 9; Ga. L. 1992, p. 6, § 40; Ga. L. 2000, p. 951, § 5B-8; Ga. L. 2005, p. 334, § 19-8/HB 501.)

Cross references. — Code section not applicable to public transit systems transporting school children, § 40-8-114.

40-8-221. Penalty.

Any person who violates any provision of this article shall be guilty of a misdemeanor. (Code 1981, § 40-8-221, enacted by Ga. L. 1982, p. 165, § 9.)

40-8-222 through 40-8-264.

Repealed by Ga. L. 1982, p. 165, § 9, effective November 1, 1982.

Editor's notes. — For further information as to the repealed Code sections, see the editor's notes at the beginning of this article.

ARTICLE 5

VEHICLE EQUIPMENT SAFETY COMPACT

40-8-280 through 40-8-291.

Repealed by Ga. L. 1983, p. 691, § 1, effective March 16, 1983.

Editor's notes. — This article was based on Ga. L. 1964, p. 463, §§ 1-12.

CHAPTER 9

REPORTING ACCIDENTS; GIVING PROOF OF FINANCIAL RESPONSIBILITY

Article 1

General Provisions

Sec.
40-9-1. Short title.
40-9-2. Definitions.
40-9-3. Administration of chapter; rules and regulations; hearings; appeals.
40-9-4. Exceptions to application of chapter.
40-9-5. Application of chapter to nonresidents, unlicensed drivers, and unregistered vehicles; accidents in other states.
40-9-6. Transfer of registration of vehicle after registration suspended [Repealed].
40-9-7. Surrender of license after suspension.
40-9-8. Operating vehicle during suspension of driver's license or operating privilege.
40-9-9. Reinstatement of driver's license; fee.
40-9-10. Chapter supplemental.
40-9-11. Chapter not to prevent other process.
40-9-12. Violations generally.

Article 2

Reporting Accidents; Giving Security for Damages

40-9-30. Fee for copy of accident report.
40-9-31. Submission of accident reports to department.
40-9-32. Determination of amount of security required; time limitation on consideration of accident report, notice, or claim; administrative hearing; judicial review.
40-9-33. Suspension of driver's license or operating privilege for failure to deposit security.
40-9-34. Exceptions to requirement of security.
40-9-35. Agreements for payment of damages.
40-9-36. Amount of security; designation of persons for whom deposit made; reduction or increase in amount.
40-9-37. Requirements for liability insurance policies; erroneous information as to insurance.
40-9-38. Surety bonds and real property bonds as security; requirements; cancellations; liens; actions on bonds; reduction or increase of security; erroneous information.
40-9-39. Custody, disposition, and return of deposit.
40-9-40. Check of court records for pending action or unsatisfied judgment; certificate of clerk.
40-9-41. Matters not to be evidence in civil actions for damages.

Article 3

Unsatisfied Judgments

40-9-60. Courts to report unpaid judgments to department; department to report judgments against nonresidents.
40-9-61. Suspension of driver's license or operating privilege for nonpayment of judgment.
40-9-62. Duration of suspension; when judgments deemed satisfied.
40-9-63. Installment payment of judgments.

Article 4

Giving Proof of Financial Responsibility for the Future

40-9-80. Methods of giving proof; duration.
40-9-81. Proof required upon restoration of driver's license suspended for certain offenses.
40-9-82. Cancellation of insurance certificate.

Article 5

Assigned Risk Plans, "Spot" Insurance, and Cooperation by Insured

Sec.
40-9-100. Assigned risk plan.
40-9-101. Reserved.
40-9-102. Insurance for person renting U-drive-it vehicle.
40-9-103. Cooperation by insured with insurer in connection with defense of action or threatened action under policy.

Cross references. — Settlement offers and agreement for personal injury, bodily injury, and death from motor vehicle, § 9-11-67.1. Requirements of motor vehicle liability policies, and coverage of claims against uninsured motorists, § 33-7-11. Motor vehicle accident reparations, T. 33, C. 34. Motor carrier bond or insurance, § 40-1-112. Insurance requirements for operation of motor vehicles generally, § 40-6-10. Insurance requirements for operation of motorcycles, § 40-6-11. Proof of financial responsibility regarding motorcycles, § 40-6-12. Prosecution of separate causes of action for personal injury and property damage caused by wrongful or negligent operation of motor vehicle, § 51-1-32 et seq.

Administrative rules and regulations. — Safety Responsibility of the Rules and Regulations of the State of Georgia, Department of Driver Services, Driver License Services, Chapter 375-3-7.

Law reviews. — For article advocating compulsory automobile insurance, see 19 Ga. B.J. 207 (1956). For article arguing against compulsory automobile insurance, see 19 Ga. B.J. 209 (1956). For article advocating moderate reform of auto accident compensation system prior to Georgia's adoption of Ch. 34, T. 33, see 5 Ga. St. B.J. 321 (1969).

For comment on Shropshire v. Caylor, 94 Ga. App. 37, 93 S.E.2d 586 (1956), see 19 Ga. B.J. 527 (1957). For comment on Austin v. Smith, 96 Ga. App. 659, 101 S.E.2d 169 (1957), concerning gross negligence in relation to gratuitous automobile guest, see 20 Ga. B.J. 552 (1958). For comment on Frankel v. Cone, 214 Ga. 733, 107 S.E.2d 819 (1959), see 10 Mercer L. Rev. 338 (1959). For comment discussing the unconstitutionality of statutes imposing liability without fault, in light of Corley v. Lewless, 227 Ga. 745, 182 S.E.2d 766 (1971), see 9 Ga. St. B.J. 129 (1972).

JUDICIAL DECISIONS

Analysis

Decisions Under Prior Law
1. Decisions Under Code 1933, Ch. 68-3
2. Decisions Under Ga. L. 1951, P. 565

Decisions Under Prior Law

1. Decisions Under Code 1933, Ch. 68-3

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1951, p. 565 and former Code 1933, Ch. 68-3, which dealt with civil liability, are included in the annotations for this Code section.

Constitutionality. — Former Code 1933, Ch. 68-3 clearly violated the due process clause of both the federal and state Constitutions for the reason that the statute made the owner of a motor vehicle liable if the vehicle was being used in the prosecution of the business of, or for the benefit of, the owner, even though the vehicle was operated without notice to the owner, or without the owner's knowledge and consent, express or implied. Frankel v. Cone, 214 Ga. 733, 107 S.E.2d 819 (1959), overruled on other grounds, Lott Inv. Corp. v. Gerbing, 242 Ga. 90, 249

S.E.2d 561 (1978), commented on in 10 Mercer L. Rev. 338 (1959) (decided under former Code 1933, Ch. 68-3).

Former Code 1933, Ch. 68-3 was unconstitutional. Redd v. Brisbon, 113 Ga. App. 23, 147 S.E.2d 15 (1966) (decided under former Code 1933, Ch. 68-3).

Purpose of traffic laws. — Georgia lawmakers enacted traffic laws to address the problem of injury and damage, daily occurring in this state and elsewhere, resulting from the careless, incompetent, and unlawful operation of automobiles and other motor vehicles along the roads and highways. Jones v. Dixie Drive It Yourself Sys., 97 Ga. App. 669, 104 S.E.2d 497 (1958) (decided under former Code 1933, Ch. 68-3).

Chapter unambiguous. — Former Code 1933, Ch. 68-3, having clearly and plainly made the owner liable when the vehicle is negligently operated for the owner's benefit, is unambiguous and not open to any other construction. McElroy v. McCord, 213 Ga. 695, 100 S.E.2d 880 (1957) (decided under former Code 1933, Ch. 68-3).

Owner liable when vehicle's operation to owner's substantial benefit. — Former Code 1933, Ch. 68-3 did not require that the operation of the vehicle be for the sole benefit of the owner, and must be construed so as to render the owner liable when the operation is a substantial benefit to the owner and rendered pursuant to the owner's procurement. The effect of this law was to extend the liability of owners of motor vehicles and to render the owners liable for the imputed negligence of another, since, under preexisting law, there would be no such liability, and in effect made proof of the benefit conferred on the owner the equivalent of proof of agency so as to impute the negligence of the operator to the owner. Shropshire v. Caylor, 94 Ga. App. 37, 93 S.E.2d 586 (1956), commented on in 19 Ga. B.J. 527 (1957). (decided under former Code 1933, Ch. 68-3).

Allegation that defendant acted as owner's agent. — Allegation that the defendant was at the time of an automobile accident an agent and employee of the owner of the vehicle, acting within the course and scope of employment, with the express permission and consent, and for the benefit of the latter, is a sufficient allegation of agency to bind the owner for the tortious misconduct of the defendant. Belch v. Sprayberry, 97 Ga. App. 47, 101 S.E.2d 870 (1958) (decided under former Code 1933, Ch. 68-3).

Allegation that operator holds title for benefit of defendant. — When, in an action growing out of the negligent operation of an automobile, the liability of the defendant is dependent upon the defendant's right to the possession, dominion, and control of the property, the mere allegation that the operator holds trust title to the property for the benefit and convenience of the defendant is insufficient to show such possession, dominion, and control on the part of the defendant as will sustain the action. Belch v. Sprayberry, 97 Ga. App. 47, 101 S.E.2d 870 (1958) (decided under former Code 1933, Ch. 68-3).

Circumstances under which driver agent of bailee. — When the owner of an automobile arranges with the owners of a certain service station to have the owner's car washed and greased and, by arrangement with an employee of the service station, the car is to be returned to the owner after the work on the car has been completed, the agreement to redeliver the car is a part of the contract of bailment and the car's driver is the agent of the bailee, not the bailor. Shropshire v. Caylor, 94 Ga. App. 37, 93 S.E.2d 586 (1956), commented on in 19 Ga. B.J. 527 (1957) (decided under former Code 1933, Ch. 68-3).

Verdict against owner unsupported by evidence. — There being no evidence in an action for damages resulting from a tractor-car accident, direct or circumstantial, sufficient to authorize an inference that the owner knew of or consented to the owner's farm tractor being driven by the owner's grandson when the accident occurred, and no evidence as to a course of conduct from which such consent could be implied, the verdict against the owner was wholly without evidence to support the verdict. Powell v. Mauldin, 102 Ga. App. 606, 117 S.E.2d 234 (1960) (decided under former Code 1933, Ch. 68-3).

Decisions Under Prior Law (Cont'd)

2. Decisions Under Ga. L. 1951, P. 565

Duties and actions of department in suspending licenses constitutional. — Duties and actions of the Department of Public Safety in suspending licenses under Ga. L. 1951, p. 565 when there is neither insurance nor financial ability to compensate others for damages from accidents are all clearly administrative, and therefore are not judicial, in violation of the state Constitution. Turmon v. Department of Pub. Safety, 222 Ga. 843, 152 S.E.2d 884 (1967) (decided under Ga. L. 1951, p. 565).

Chapter wise, just, and valid. — Ga. L. 1951, p. 565, which attaches the penalty of withdrawing the license when a licensee is not complying with that law and is involved in a wreck, is wise, just, and valid. Turmon v. Department of Pub. Safety, 222 Ga. 843, 152 S.E.2d 884 (1967) (decided under Ga. L. 1951, p. 565).

Purpose of insurance certificate. — Effect of a certificate issued to the Department of Public Safety by an insurance company, if that certificate states that a person has been issued an operator's policy, is to certify that the person has automobile liability insurance which covers the person while operating a motor vehicle, regardless of whether or not the motor vehicle is being used as a livery conveyance. Davis v. Reserve Ins. Co., 220 Ga. 335, 138 S.E.2d 657 (1964) (decided under Ga. L. 1951, p. 565).

Insurer barred from asserting coverage nonexistent following certification. — An insurer will be barred from asserting that coverage does not exist under an automobile liability policy if the insurer has certified, in accordance with a financial responsibility law, that the policy issued to the insured does provide such coverage, and a driver's license is issued on the basis of the certificate. Davis v. Reserve Ins. Co., 220 Ga. 335, 138 S.E.2d 657 (1964) (decided under Ga. L. 1951, p. 565).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1951, p. 565 are included in the annotations for this Code section.

Persons in military service. — Department is not precluded from implementing provisions of Ga. L. 1951, p. 565 against one in military service. 1969 Op. Att'y Gen. No. 69-428 (rendered under Ga. L. 1951, p. 565).

RESEARCH REFERENCES

ALR. — Responsibility of public officer for negligence of subordinate in operation of vehicle, 3 A.L.R. 149.

Dangerous instrumentality doctrine as applied to automobile, 16 A.L.R. 270.

Liability of employer for injuries inflicted by automobile while being driven by or for salesman or collector, 17 A.L.R. 621; 29 A.L.R. 470; 54 A.L.R. 627; 107 A.L.R. 419.

Automobile liability insurance, 28 A.L.R. 1301; 41 A.L.R. 507.

Liability of undertaker or funeral director for injury to passenger in vehicle furnished by former, 29 A.L.R. 827.

Civil rights and liabilities as affected by failure to comply with regulations as to registration of automobile or licensing of operator, 35 A.L.R. 62; 38 A.L.R. 1038; 43 A.L.R. 1153; 54 A.L.R. 374; 58 A.L.R. 532; 61 A.L.R. 1190; 78 A.L.R. 1028; 87 A.L.R. 1469; 111 A.L.R. 1258; 163 A.L.R. 1375.

Automobiles: liability of owner for negligence of one to whom car is loaned or hired, 36 A.L.R. 1137; 68 A.L.R. 1008; 100 A.L.R. 920; 168 A.L.R. 1364.

Civil rights and liabilities as affected by failure to comply with statute upon sale of motor vehicle, 37 A.L.R. 1465; 52 A.L.R. 701; 63 A.L.R. 688; 94 A.L.R. 948.

Ownership of automobile as prima facie evidence of responsibility for negligence of person operating it, 42 A.L.R. 898; 74 A.L.R. 951; 96 A.L.R. 634.

Chauffeur in general employment of owner as servant for time being of owner, or of borrower of car, 42 A.L.R. 1446.

Liability for injury to child playing on or in proximity to automobile, 44 A.L.R. 434.

Liability of owner for negligence of one permitted by the former's servant, or member of his family, to drive automobile, 44 A.L.R. 1382; 54 A.L.R. 851; 98 A.L.R. 1053; 134 A.L.R. 974.

Personal care required of one riding in an automobile driven by another as affecting his right to recover against third persons, 47 A.L.R. 293; 63 A.L.R. 1432; 90 A.L.R. 984.

Automobiles: liability of owner or operator for injury to guest, 47 A.L.R. 327; 51 A.L.R. 581; 61 A.L.R. 1252; 65 A.L.R. 952.

Constitutionality and effect of statute relating to civil liability of person driving automobile while under influence of liquor, 56 A.L.R. 327.

Liability for damage or injury by skidding motor vehicle, 58 A.L.R. 264; 113 A.L.R. 1002.

Driving automobile at a speed which prevents stopping within length of vision as negligence, 58 A.L.R. 1493; 87 A.L.R. 900; 97 A.L.R. 546.

Liability of master for injury to one whom servant, in violation of instructions, permits to ride on vehicle, 62 A.L.R. 1167; 74 A.L.R. 163.

Owner's liability for injury by automobile while being used for servant's own pleasure or business, 68 A.L.R. 1051; 51 A.L.R.2d 8; 51 A.L.R.2d 120; 52 A.L.R.2d 350.

Liability for injury in collision with automobile standing on wrong side of street or highway, 70 A.L.R. 1021.

Right, as against vehicle owner, of one not in his general employment injured while assisting in remedying conditions due to accident to automobile or truck in highway, 72 A.L.R. 1283.

Excessive speed of automobile as proximate cause of accident where it or colliding vehicle is on wrong side of road, 77 A.L.R. 598.

Liability for damages by vehicle trailers, 84 A.L.R. 281.

Automobiles: liability of parent for injury to or death of child's guest by negligent operation of car, 88 A.L.R. 590.

Liability of owner under "family purpose" doctrine, for injuries by automobile while being used by member of his family, 88 A.L.R. 601; 100 A.L.R. 1021; 132 A.L.R. 981.

What conduct in driving automobile amounts to wantonness, willfulness, or the like, precluding defense of contributory negligence, 92 A.L.R. 1367; 119 A.L.R. 654.

What amounts to gross negligence, recklessness, or the like, within statute limiting liability of owner or operator of automobile for injury to guest, 96 A.L.R. 1479.

Evidence of specific acts or reputation as admissible to prove incompetency of motor vehicle driver, or defendant's knowledge thereof, in action against one permitting alleged incompetent to drive, 120 A.L.R. 1311.

Distraction of attention of driver of automobile as affecting question of negligence, wantonness, etc., or contributory negligence, 120 A.L.R. 1513.

Liability of owner or one in charge of automobile for injury due to its condition, to one, other than his employee or bailee for use, engaged in some service or operation in connection with it, 122 A.L.R. 1023.

Admissibility and weight of evidence as to condition of automobile or parts thereof after accident, on issue as to responsibility for accident, 129 A.L.R. 438.

Necessity and sufficiency, in complaint or declaration in action for injury or damage due to dangerous condition of automobile or other machine, of allegations as to particular defects, 129 A.L.R. 1274.

Injury to guest of operator as within statutory or nonstatutory rule which makes owner of automobile liable for negligence of another operating the car with his consent, 131 A.L.R. 891.

Civil or criminal liability of one in charge of an automobile who permits an unlicensed person to operate it, 137 A.L.R. 475.

Conduct of operator of automobile at railroad crossing as gross negligence, recklessness, etc., within guest statute, 143 A.L.R. 1144.

Commencement and termination of host and guest relationship within statute or rule as to liability for injury to automobile guest, 146 A.L.R. 682.

Infant owner as within statute which makes owner of automobile responsible or creates a lien for injury or death inflicted by another operating automobile, 146 A.L.R. 701.

Liability of owner of automobile for negligence while it is being operated by another with his consent as affected by immunity of the operator (or his employer) from liability or action, 152 A.L.R. 1058.

Scope of consent or permission with respect to time or place of operation of car by another as affecting owner's liability for injury, 159 A.L.R. 1309.

Automobile owner's common-law liability for negligence in entrusting car to known incompetent, reckless, or inexperienced person as affected by statute limiting owner's liability to use within terms of consent, 163 A.L.R. 1418.

Guest's knowledge that automobile driver has been drinking as precluding recovery, under guest statutes or equivalent common-law rule, 15 A.L.R.2d 1165.

Joint enterprise rules as applicable to the hiring, lease, or bailment of an airplane, 18 A.L.R.2d 929.

Liability of motor vehicle owner or operator for accident occasioned by blowout or other failure of tire, 24 A.L.R.2d 161.

Liability for injury incident to towing automobile, 30 A.L.R.2d 1019.

Proof, in absence of direct testimony by survivors or eyewitnesses, of who, among occupants of motor vehicle, was driving it at time of accident, 32 A.L.R.2d 988.

Right of motor vehicle owner liable to injured third person because of negligence of one permitted to drive, to indemnity from the latter or the latter's employer to whom vehicle was bailed, 43 A.L.R.2d 879.

Deviation from employment in use of employer's car during regular hours of work, 51 A.L.R.2d 8; 51 A.L.R.2d 120; 52 A.L.R.2d 350.

Route driver or salesman as independent contractor or employee of merchandise producer or processor, for purposes of respondeat superior doctrine, 53 A.L.R.2d 183.

Liability of employer for negligent operation of motor vehicle by automobile salesman, 53 A.L.R.2d 631.

Rights of seller of motor vehicle with respect to purchase price or security on failure to comply with laws concerning transfer of title, 58 A.L.R.2d 1351.

Vehicle owner or his agent having general right of possession and control as guest of driver within automobile guest statute or similar rule, 65 A.L.R.2d 312.

Intoxication, unconsciousness, or mental incompetency of person as affecting his status as guest within automobile guest statute or similar common-law rule, 66 A.L.R.2d 1319.

Liability of taxicab carrier to passenger injured while boarding vehicle, 75 A.L.R.2d 988.

Liability for personal injury or property damage, for negligence in teaching or supervision of learning driver, 5 A.L.R.3d 271.

Share-the-ride arrangement or car pool as affecting status of automobile rider as guest, 10 A.L.R.3d 1087.

Liability based on entrusting automobile to one who is intoxicated or known to be excessive user of intoxicants, 19 A.L.R.3d 1175.

What amounts to negligence within meaning of statutes penalizing negligent homicide by operation of a motor vehicle, 20 A.L.R.3d 473.

Liability of motorist who left key in ignition for damage or injury caused by stranger operating the vehicle, 45 A.L.R.3d 787.

Liability or recovery in automobile negligence action as affected by absence or insufficiency of lights on parked or standing motor vehicle, 61 A.L.R.3d 13.

Constitutionality of automobile and aviation guest statutes, 66 A.L.R.3d 532.

Infant as guest within automobile guest statutes, 66 A.L.R.3d 601.

Who is "owner" within statute making owner responsible for injury or death inflicted by operator of automobile, 74 A.L.R.3d 739.

Motor carrier's liability for personal injury or death of passenger caused by debris, litter, or other foreign object on floor or seat of vehicle, 1 A.L.R.4th 1249.

Combining or "stacking" uninsured motorist coverages provided in policies issued by different insurers to different insureds, 28 A.L.R.4th 362.

Automobiles: liability for U-Turn collisions, 53 A.L.R.4th 849.

ARTICLE 1

GENERAL PROVISIONS

40-9-1. Short title.

This chapter shall be known and may be cited as the "Motor Vehicle Safety Responsibility Act." (Ga. L. 1977, p. 1014, § 1; Ga. L. 2005, p. 334, § 20-1/HB 501.)

40-9-2. Definitions.

As used in this chapter, the term:

(1) "Accident" means the collision of any motor vehicle with another vehicle or with any object or fixture, or involvement of a motor vehicle in any manner in which any person is killed or injured or in which damage to the property of any one person to an extent of $500.00 or more is sustained.

(2) "Commissioner" means the commissioner of driver services.

(3) "Department" means the Department of Driver Services.

(4) "Operator" means every person who drives or is in actual physical control of a motor vehicle upon a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.

(5) "Proof of financial responsibility" means proof of ability to respond in damages for liability on account of accidents occurring subsequent to the effective date of said proof in the amounts specified in subparagraph (a) (1) (A) of Code Section 33-7-11.

(6) "Suspension of driver's license" means the temporary withdrawal by formal action of the department of a resident's license or nonresident's privilege to operate a motor vehicle on the public highways. (Ga. L. 1951, p. 565, § 1; Ga. L. 1956, p. 543, §§ 2-5; Code 1933, § 68C-101, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1978, p. 1494, § 2; Ga. L. 1982, p. 1751, § 1; Ga. L. 1983, p. 3, § 29; Ga. L. 1983, p. 938, § 2; Ga. L. 1990, p. 649, § 1; Ga. L. 1991, p. 1608, § 2.2; Ga. L. 1994, p. 363, § 2; Ga. L. 2000, p. 951, § 6-1; Ga. L. 2000, p. 1516, § 2; Ga. L. 2005, p. 334, § 20-1/HB 501.)

Editor's notes. — Ga. L. 1982, p. 1751, § 1, effective July 1, 1982, amended Code 1933, § 68C-101, the basis for this Code section. Since the 1982 Act did not specifically amend this Code section, and since the Code of Georgia of 1933, as amended, stood repealed on November 1, 1982 (see Code Section 1-1-10(a)(1)), no effect could be given to the 1982 amendment after that date. The provisions of the 1982 Act were reenacted in substantially similar form as an amendment to this Code section by Ga. L. 1983, p. 3, § 29.

Law reviews. — For note on the 1991

amendment of this Code section, see 8 Ga. St. U.L. Rev. 99 (1992).

For comment on Bell v. Burson, 402 U.S. 535, 91 S. Ct. 1586, 29 L. Ed. 2d 90 (1971), see 23 Mercer L. Rev. 383 (1972). For comment on Pope v. Cokinos, 232 Ga. 425, 207 S.E.2d 63 (1974), see 26 Mercer L. Rev. 337 (1974).

JUDICIAL DECISIONS

When coverage requirements not applicable. — Minimum compulsory liability limits established by a rule of the Public Service Commission were applicable to personal injury claims asserted by passengers in a tractor-trailer, when the passengers sought recovery up to minimum limits of $100,000/$300,000 as established by the rule, and were not subject to the lower limits established by O.C.G.A. § 40-9-2, even though the tractor-trailer was not a passenger carrier. Guinn Transp., Inc. v. Canal Ins. Co., 234 Ga. App. 235, 507 S.E.2d 144 (1998).

Cited in Smith v. Employers' Fire Ins. Co., 255 Ga. 596, 340 S.E.2d 606 (1986); Georgia Farm Bureau Mut. Ins. Co. v. Burch, 222 Ga. App. 749, 476 S.E.2d 62 (1996).

OPINIONS OF THE ATTORNEY GENERAL

Accidents occurring on private property. — All accidents, as defined by Ga. L. 1951, p. 565, must be reported, even though the accident may occur on private property. 1972 Op. Att'y Gen. No. U72-34.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 57 et seq., 113 et seq., 142 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 282, 310.

ALR. — Insurance covering damage to automobile by accident or collision, 105 A.L.R. 1426.

Automobile insurance: umbrella or catastrophe policy automobile liability coverage as affected by primary policy "other insurance" clause, 67 A.L.R.4th 14.

40-9-3. Administration of chapter; rules and regulations; hearings; appeals.

(a) The commissioner shall administer and enforce this chapter and is authorized to adopt and enforce rules and regulations necessary for its administration. The commissioner shall prescribe suitable forms requisite or deemed necessary for the purposes of this chapter.

(b) The commissioner shall provide for hearings upon request of persons aggrieved by orders or acts of the commissioner under this chapter. Such hearings shall not be subject to the procedural provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(c) The commissioner is authorized to adopt and enforce rules and regulations necessary for the administration of such hearings, including but not limited to, hearings provided in Code Section 40-9-32. Except as provided in Code Section 40-9-32, a request for a hearing under this chapter shall not operate as a stay of any order or act of the commissioner.

(d) The commissioner's decision as rendered at such hearing shall be final unless the aggrieved person shall desire an appeal, in which case he or she shall have the right to enter an appeal to the superior court of the county of his or her residence or the Superior Court of Fulton County by filing a complaint in the superior court, naming the commissioner as defendant, within 30 days from the date the commissioner enters his or her decision or order. The appellant shall not be required to post any bond nor pay the costs in advance. If the aggrieved person desires, the appeal may be heard by the judge at term or in chambers or before a jury at the first term. The hearing on the appeal shall be de novo. However, such appeal shall not act as a supersedeas of any order or acts of the commissioner, nor shall the appellant be allowed to operate or permit a motor vehicle to be operated in violation of any suspension or revocation by the commissioner while such appeal is pending. (Ga. L. 1951, p. 565, § 2; Ga. L. 1956, p. 543, § 6; Ga. L. 1973, p. 509, § 1; Code 1933, § 68C-201, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 2000, p. 951, § 6-2; Ga. L. 2003, p. 484, § 13; Ga. L. 2004, p. 749, § 9; Ga. L. 2005, p. 334, § 20-1/HB 501.)

JUDICIAL DECISIONS

Commissioner's refusal to consider evidence constitutional. — Since Ga. L. 1951, p. 565 authorizes judicial review of all administrative actions, the refusal by the department (now commissioner) to consider evidence as to who was responsible does not violate the requirements of due process. Turmon v. Department of Pub. Safety, 222 Ga. 843, 152 S.E.2d 884 (1967).

No conflict with chapter on Uniform Rules of Road. — Ga. L. 1951, p. 565 is not in irreconcilable conflict with (see now O.C.G.A. Ch. 6, T. 40), which confers upon the commissioner the power to cancel driver's licenses. Turmon v. Department of Pub. Safety, 222 Ga. 843, 152 S.E.2d 884 (1967) Ga. L. 1956, p. 543, § 6 (see now O.C.G.A. § 40-9-3).

Exhaustion of administrative remedies. — When the plaintiff made no attempt to comply with the provisions for the reinstatement of the plaintiff's license, which had been lawfully revoked by the department (now commissioner), the trial court was correct in holding that the plaintiff had not exhausted the plaintiff's remedies and, therefore, refusing a mandamus absolute. Murphy v. Dominy, 211 Ga. 70, 84 S.E.2d 193 (1954).

Under Georgia law, the director (now commissioner) of public safety has jurisdiction over the suspension of licenses when no security is furnished following an accident and when no liability insurance covers the vehicle involved or the operator. In such a case, the failure to exhaust administrative remedies or to appeal to the superior court is fatal to any action for relief by the aggrieved person in regard to the license brought in another court. Sellers v. State Farm Mut. Auto. Ins. Co., 314 F. Supp. 78 (S.D. Ga. 1970).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 21.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 29 et seq., 33, 34.

ALR. — Requirement that multicoverage umbrella insurance policy offer uninsured or underinsured motorist coverage equal to liability limits under um-

brella provisions, 52 A.L.R. 5th 451.

40-9-4. Exceptions to application of chapter.

This chapter shall not apply with respect to any motor vehicle owned by the United States, the State of Georgia, any political subdivision of this state, or any municipality therein, or any motor carrier required by any other law to file evidence of insurance or other surety. Code Sections 40-9-81, 40-9-7, 40-9-8, and 40-9-12 shall apply as to the operator of such motor vehicles. All provisions of this chapter shall apply to the operator of such motor vehicles while on unofficial business. (Ga. L. 1951, p. 565, § 15; Ga. L. 1956, p. 543, § 19; Ga. L. 1963, p. 593, § 10; Code 1933, § 68C-603, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1994, p. 97, § 40; Ga. L. 2005, p. 334, § 20-1/HB 501.)

JUDICIAL DECISIONS

Cited in Scott v. Joe Thomson Auto Rental & Leasing, Inc., 257 Ga. App. 453, 571 S.E.2d 475 (2002).

RESEARCH REFERENCES

ALR. — Automobile liability insurance, 41 A.L.R. 507.

40-9-5. Application of chapter to nonresidents, unlicensed drivers, and unregistered vehicles; accidents in other states.

(a) If the operator or the owner of a vehicle involved in an accident in this state has no license, such operator shall not be allowed a license until he or she has complied with the requirements of this chapter to the same extent that would be necessary if, at the time of the accident, he or she had held a license in this state.

(b) When a nonresident's operating privilege is suspended pursuant to Code Section 40-9-33 or 40-9-61, the department shall transmit a certified copy of the record of such action to the official in charge of the issuance of licenses and registration certificates in the state in which such nonresident resides, if the law of such other state provides for action in relation thereto similar to that provided for in subsection (c) of this Code section.

(c) Upon receipt of a certification that the operating privilege of a resident of this state has been suspended in another state pursuant to a law providing for its suspension for failure to deposit security for the payment of judgments arising out of a motor vehicle accident, under circumstances which would require the department to suspend a

nonresident's operating privilege had the accident occurred in this state, the department shall suspend the license of such resident. Such suspension shall continue until such resident furnishes evidence of his or her compliance with the laws of such other state relating to the showing of proof of financial responsibility or reinstatement of operating privilege. (Ga. L. 1951, p. 565, § 8; Ga. L. 1956, p. 543, § 16; Ga. L. 1958, p. 694, § 4; Code 1933, § 68C-306, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1982, p. 3, § 40; Ga. L. 2005, p. 334, § 20-1/HB 501.)

40-9-6. Transfer of registration of vehicle after registration suspended.

Reserved. Repealed by Ga. L. 2005, p. 334, § 20-1/HB 501, effective July 1, 2005.

Editor's notes. — This Code section was based on Ga. L. 1951, p. 565, § 12; Code 1933, § 68C-701, enacted by Ga. L. 1977, p. 1014, § 1.

40-9-7. Surrender of license after suspension.

(a) Any person whose driver's license shall have been suspended under any provision of this chapter shall immediately return his or her license to the department. If any person shall fail to return such license to the department, the department shall direct any peace officer to secure possession thereof and to return it to the department.

(b) Any person willfully failing to return his or her driver's license as required in subsection (a) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed $500.00 or by imprisonment for not more than 30 days, or by both such fine and imprisonment. (Ga. L. 1951, p. 565, § 14; Code 1933, § 68C-702, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 2005, p. 334, § 20-1/HB 501.)

40-9-8. Operating vehicle during suspension of driver's license or operating privilege.

Any person whose driver's license or nonresident's operating privilege has been suspended under this chapter and who, during such suspension, drives any motor vehicle upon any highway, except where permitted under this chapter, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment for not less than five days nor more than six months and there may be imposed in addition thereto a fine of not more than $500.00. (Ga. L. 1951, p. 565, § 14; Ga. L. 1969, p. 819, § 5; Code 1933, § 68C-704, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 2005, p. 334, § 20-1/HB 501.)

40-9-9. Reinstatement of driver's license; fee.

Whenever a driver's license is suspended under any provisions of this chapter and the filing of proof of financial responsibility is made a prerequisite to reinstatement of such license, no such license shall be reinstated unless the driver or owner, in addition to complying with the other provisions of this chapter, pays to the department a fee of $25.00. Only one such fee shall be paid by any one person irrespective of the number of licenses to be reinstated. The fees paid pursuant to this Code section shall be expendable receipts to be used only by the department toward the cost of administration of this chapter. (Ga. L. 1963, p. 593, § 9; Ga. L. 1969, p. 819, § 6; Code 1933, § 68C-605, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1983, p. 487, § 3; Ga. L. 2005, p. 334, § 20-1/HB 501.)

40-9-10. Chapter supplemental.

This chapter shall in no respect be considered as a repeal of the state motor vehicle laws but shall be construed as supplemental thereto. (Ga. L. 1951, p. 565, § 18; Ga. L. 1963, p. 593, § 10; Code 1933, § 68C-606, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 2005, p. 334, § 20-1/HB 501.)

40-9-11. Chapter not to prevent other process.

Nothing in this chapter shall be construed as preventing the plaintiff in any action at law from relying for relief upon the other processes provided by law. (Ga. L. 1951, p. 565, § 20; Ga. L. 1963, p. 593, § 10; Code 1933, § 68C-607, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 2005, p. 334, § 20-1/HB 501.)

40-9-12. Violations generally.

Any person who shall violate any provision of this chapter for which no penalty is otherwise provided shall be guilty of a misdemeanor. (Ga. L. 1951, p. 565, § 14; Code 1933, § 68C-705, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 2005, p. 334, § 20-1/HB 501.)

ARTICLE 2

REPORTING ACCIDENTS; GIVING SECURITY FOR DAMAGES

JUDICIAL DECISIONS

Cited in Patterson v. Commercial Union Ins. Co., 151 Ga. App. 86, 258 S.E.2d 748 (1979).

RESEARCH REFERENCES

ALR. — Who is "owner" within statute making owner responsible for injury or death inflicted by operator of automobile, 74 A.L.R.3d 739.

40-9-30. Fee for copy of accident report.

The Department of Transportation, or its third-party designee, shall charge a fee of $5.00 for each copy of any accident report received and maintained by that department or its designee pursuant to Code Section 40-6-273. (Code 1981, § 40-9-30, enacted by Ga. L. 1991, p. 309, § 1; Ga. L. 2005, p. 334, § 20-2/HB 501; Ga. L. 2011, p. 583, § 12/HB 137.)

Cross references. — Duty to report accident resulting in injury, death, or property damage, § 40-6-273.

Editor's notes. — Former Code Section 40-9-30, pertaining to the requirement that accidents be reported, which was repealed by Ga. L. 1990, p. 591, § 1, effective July 1, 1990, was based on Ga. L. 1951, p. 565, § 4; Ga. L. 1956, p. 543, § 8; Ga. L. 1963, p. 593, § 1; Ga. L. 1964, p. 225, § 1; Ga. L. 1977, p. 1014, § 1; Ga. L. 1978, p. 1494, § 3; Ga. L. 1979, p. 826, § 3.

40-9-31. Submission of accident reports to department.

Each state and local law enforcement agency shall submit to the Department of Transportation the original document of any accident report prepared by such law enforcement agency or submitted to such agency by a member of the public. If the Department of Driver Services receives a claim requesting determination of security, the Department of Transportation shall provide a copy or an electronic copy of any relevant accident reports to the Department of Driver Services. Any law enforcement agency may transmit the information contained on the accident report form by electronic means, provided that the Department of Transportation has first given approval to the reporting agency for the electronic reporting method utilized. The law enforcement agency shall retain a copy of each accident report. Any law enforcement agency that transmits the data by electronic means must transmit the data using a nonproprietary interchangeable electronic format and reporting method. For purposes of this Code section, the term "nonproprietary" shall include commonly used report formats. All such reports shall be submitted to the Department of Transportation within 14 days when electronically submitted and when not electronically submitted not more than 15 days following the end of the month in which such report was prepared or received by such law enforcement agency. The Department of Transportation is authorized to engage the services of a third party in fulfilling its responsibilities under this Code section. (Code 1981, § 40-9-31, enacted by Ga. L. 1994, p. 362, § 1; Ga. L. 1999, p. 871, § 1; Ga. L. 2000, p. 951, § 6-3; Ga. L. 2002, p. 415, § 40;

Ga. L. 2005, p. 334, § 20-2/HB 501; Ga. L. 2011, p. 583, § 13/HB 137; Ga. L. 2015, p. 1072, § 7/SB 169.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, the subsection (a) designation was deleted.

Editor's notes. — Former Code Section 40-9-31, concerning penalties for failure to report accident or giving false information in a report, was based on Ga. L. 1951, p. 565, § 14; Ga. L. 1977, p. 1014, § 1 and was repealed by Ga. L. 1990, p. 591, § 2, effective July 1, 1990.

40-9-32. Determination of amount of security required; time limitation on consideration of accident report, notice, or claim; administrative hearing; judicial review.

(a) The department, not less than 30 days after receipt of an accident report or notice of an accident with respect to which a person claims under oath to have suffered damages and requests determination of security, shall determine the amount of security sufficient in its judgment to satisfy any judgment or judgments for damages resulting from such accident that may be recovered against each operator and owner. Such determination shall be made on the basis of the reports or other information submitted. Notwithstanding any other provisions of this chapter, the department shall not consider or take any action with respect to an accident report, notice of accident, or any claim filed under this Code section which is received more than six months after the date of the accident.

(b) The department, upon determining the amount of security required, shall give written notice to each operator and owner of the amount of security required to be deposited by him or her. Such notice shall state that each operator's license shall be suspended on the thirtieth day from the date of mailing of notice unless within that time the required security is deposited and such owner or operator shall give proof of financial responsibility for the future. The license of the one depositing the security will not then be suspended.

(c)(1) Any person so notified may, within ten days after receipt of such notification, make a written request to the department for a hearing. Such request shall operate as a stay of any suspension pending the outcome of such hearing. The scope of such hearing, for the purposes of this Code section, shall cover the issues of whether there is a reasonable possibility that a judgment could be rendered against such person in an action arising out of the accident and whether such person is exempt from the requirement of depositing security under Code Section 40-9-34. The department may also consider at such hearing the amount of security required. The requirements of depositing security under this Code section shall not apply to any person against whom the department has found that there is not a reasonable possibility of a judgment being rendered.

(2) For the purposes of this Code section, a hearing may consist of a department determination of such issues, such determination to be based solely on written reports submitted by the operator or owner and by investigatory officers, provided that the owner or operator in his or her request to the department for a hearing has expressly consented to this type of hearing and that the department has also consented thereto.

(d) Any person required to give security after a hearing as provided in subsection (c) of this Code section may petition for judicial review of the decision of the department, but suspension of such person's driver's license or operating privilege shall not be stayed while such appeal is pending. The superior court upon such appeal may consider the written reports considered by the department at the hearing as authorized by subsection (c) of this Code section. (Ga. L. 1951, p. 565, §§ 9, 11; Ga. L. 1963, p. 593, §§ 2, 3; Ga. L. 1964, p. 225, § 2; Ga. L. 1969, p. 819, § 2; Code 1933, §§ 68C-302, 68C-310, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1985, p. 1647, §§ 1, 2; Ga. L. 1986, p. 10, § 40; Ga. L. 1994, p. 859, § 1; Ga. L. 2005, p. 334, § 20-2/HB 501.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, the paragraph (1) and (2) designations were added to the existing language of subsection (c).

Law reviews. — For comment on Bell v. Burson, 402 U.S. 535, 91 S. Ct. 1586, 29 L. Ed. 2d 90 (1971), discussing the revocation of a motorist's license pursuant to the state's financial responsibility laws, without a hearing to determine fault, prior to the enactment of Ga. L. 1977, p. 1014, § 1, see 8 Ga. St. B.J. 252 (1971).

JUDICIAL DECISIONS

Failure to exhaust administrative remedies or appeal. — Under Georgia law, the director (now commissioner) of public safety has jurisdiction over the suspension of licenses when no security is furnished following an accident and when no liability insurance covers the vehicle involved or the operator. In such a case, the failure to exhaust administrative remedies or to appeal to the superior court is fatal to any action for relief by the aggrieved person in regard to the license brought in another court. Sellers v. State Farm Mut. Auto. Ins. Co., 314 F. Supp. 78 (S.D. Ga. 1970).

Driver found not guilty of traffic violation. — Superior court erred in reversing the suspension of a driver's license and holding that merely because the driver was found not guilty of a traffic violation, there could be no reasonable possibility that a civil judgment could be rendered against the driver. Miles v. Carr, 224 Ga. App. 247, 480 S.E.2d 282 (1997).

Cited in Hall v. Regal Ins. Co., 202 Ga. App. 511, 414 S.E.2d 669 (1991).

OPINIONS OF THE ATTORNEY GENERAL

Persons in military service. — Department is not precluded from implementing provisions of Ga. L. 1951, p. 565 against one in military service. 1969 Op. Att'y Gen. No. 69-428.

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Automobile Insurance, § 24 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 287, 379 et seq., 387 et seq.

40-9-33. Suspension of driver's license or operating privilege for failure to deposit security.

(a) In the event that any person required to deposit security fails to deposit such security within 30 days from the date of mailing of notice as provided in Code Section 40-9-32 and such person does not make a timely request for a hearing, or in the event any person fails to deposit security after the department has determined that there exists a reasonable possibility of a judgment being rendered against such person, the department shall thereupon suspend:

(1) The driver's license of such person; and

(2) If such person is a nonresident, the privilege of operating or permitting the operation of a vehicle within this state.

(b) The license or nonresident's operating privilege shall remain so suspended and shall not be restored, nor shall any such license be issued to such person, nor shall such nonresident's operating privilege be restored, until:

(1) Such person shall deposit or there shall be deposited on his or her behalf the security and proof of financial responsibility for the future as required by this chapter;

(2) One year shall have elapsed following the date of such suspension and evidence satisfactory to the department has been filed with it that during the period of suspension no action for damages arising out of the accident has been instituted; or

(3) Evidence satisfactory to the commissioner has been filed with him or her of a release from liability or a final adjudication of nonliability. (Ga. L. 1951, p. 565, §§ 5, 7; Ga. L. 1956, p. 543, § 9; Ga. L. 1963, p. 593, § 4; Code 1933, § 68C-303, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 2005, p. 334, § 20-2/HB 501.)

Law reviews. — For comment on Bell v. Burson, 402 U.S. 535, 91 S. Ct. 1586, 29 L. Ed. 2d 90 (1971), discussing the revocation of a motorist's license pursuant to the state's financial responsibility laws, without a hearing to determine fault, prior to the enactment of Ga. L. 1977, p. 1014, § 1, see 8 Ga. St. B.J. 252 (1971).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 92A-605, are included in the annotations for this Code section.

No prior hearing is necessary for

suspension of a driver's license under due process requirements. Roberts v. Burson, 322 F. Supp. 380 (N.D. Ga. 1969) (decided under former Code 1933, § 92A-605).

Security required to respond for liability. — Safety Responsibility Act requires the depositing of security as proof of ability to respond in damages for the liability by the operator or owner of a motor vehicle involved in an accident so that the owner or operator will not have their operator's driver's license and registration certificate suspended. Fitzgerald v. Universal Underwriters Ins. Co., 132 Ga. App. 610, 208 S.E.2d 619 (1974).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 173 et seq.

C.J.S. — 60A C.J.S., Motor Vehicles, §§ 379 et seq., 387 et seq.

40-9-34. Exceptions to requirement of security.

The requirements as to security and suspension provided in Code Sections 40-9-32 and 40-9-33 shall not apply:

(1) To the operator or owner of the vehicle involved in the accident if the owner had in effect at the time of the accident an automobile liability policy with respect to the vehicle involved in the accident, except that a driver shall not be so exempt if at the time of the accident the vehicle was being operated without the owner's permission, express or implied;

(2) To the operator, if he is not the owner of the vehicle involved in the accident but there was in effect at the time of the accident an automobile liability policy with respect to his driving of vehicles not owned by him which provided him with liability coverage in the operation of the motor vehicle involved in such accident;

(3) To an operator or owner whose liability for damages resulting from the accident is, in the judgment of the department, covered by any other form of liability insurance policy;

(4) To any person qualifying as a self-insurer under Code Section 33-34-5.1 or to any person operating a vehicle for such self-insurer;

(5) To the operator or the owner of a vehicle involved in an accident wherein no injury or damage was caused to the person or property of anyone other than such driver or owner;

(6) To the operator or the owner of a motor vehicle legally parked at the time of the accident;

(7) To the owner of a vehicle if at the time of the accident the vehicle was being operated without his permission, express or implied, or was parked by a person who had been operating such vehicle without such permission;

(8) To a resident of this state involved in an accident with a nonresident of this state when the damage is less than $300.00, except upon the written request of any party in interest;

(9) If, prior to the date that the department would otherwise suspend a license and registration or a nonresident's operating privilege under Code Section 40-9-33, there shall be filed with the department evidence satisfactory to it that the person who would otherwise have to file security has been released from liability or finally adjudicated not to be liable. (Ga. L. 1951, p. 565, §§ 5, 6; Ga. L. 1956, p. 543, §§ 9, 11; Code 1933, § 68C-304, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 2000, p. 1246, § 17.)

Cross references. — Requirements regarding automobile liability policies generally, § 33-34-3.

JUDICIAL DECISIONS

Individual must deposit security unless policy covers liability. — If an individual's liability policy covers the individual's potential liability to any person aggrieved after an accident the individual does not have to deposit any security. If the individual has no insurance at all, or the policy does not cover the particular type of liability claim, the individual must comply with the requirements of proof of financial responsibility. Fitzgerald v. Universal Underwriters Ins. Co., 132 Ga. App. 610, 208 S.E.2d 619 (1974).

Effect of void business exclusion in policy. — An automobile policy exclusion for the insured using a vehicle "while employed or otherwise engaged in any business" was void as against public policy to the extent of the mandatory monetary requirements in effect at the time of the collision. Federated Mut. Ins. Co. v. Dunton, 213 Ga. App. 148, 444 S.E.2d 123 (1994).

Cited in Commercial Union Ins. Co. v. Insurance Co. of N. Am., 155 Ga. App. 786, 273 S.E.2d 24 (1980); Hall v. Regal Ins. Co., 202 Ga. App. 511, 414 S.E.2d 669 (1991).

OPINIONS OF THE ATTORNEY GENERAL

Owner permitting another to drive. — Ga. L. 1951, p. 565 does not mean that when an owner gives permission to another to drive the owner's vehicle the owner assumes all the consequences of the driver's acts; such an interpretation would render without meaning the phrase relating to "permission, express or implied," for there must be some point when permission to drive an automobile ceases being express or implied. 1969 Op. Att'y Gen. No. 69-40.

RESEARCH REFERENCES

ALR. — Liability of insurer, under compulsory statutory vehicle liability policy, to injured third persons, notwithstanding insured's failure to comply with policy conditions, as measured by policy limits or by limits of financial responsibility act, 29 A.L.R.2d 817.

40-9-35. Agreements for payment of damages.

(a) Any two or more of the persons involved in or affected by an accident may enter into a written agreement for the payment of an agreed amount with respect to all claims of any of such persons because of bodily injury to or death or property damage arising from such accident, which agreement may provide for payment in installments, and may file a signed copy thereof with the department.

(b) The department, to the extent provided by any such written agreement filed with it, shall not require the deposit of security and shall terminate any prior order of suspension or, if security has previously been deposited, the department shall immediately return such security to the depositor or his personal representative. (Ga. L. 1951, p. 565, § 6; Code 1933, § 68C-305, enacted by Ga. L. 1977, p. 1014, § 1.)

40-9-36. Amount of security; designation of persons for whom deposit made; reduction or increase in amount.

(a) The security under this chapter shall be in such amount as the department may require, but in no case in excess of the limits specified in subsection (a) of Code Section 40-9-37. Every depositor of security shall designate in writing every person on whose behalf the deposit is made and may at any time change such designation, in writing, to include an additional person or persons; provided, however, that a single deposit of security shall be applicable only on behalf of persons required to furnish security because of the same accident.

(b) The department may, upon written notice to all parties involved, reduce or increase the amount of security ordered in any case within six months after the date of the accident if in its judgment the amount ordered is excessive or inadequate. In case the security originally ordered has been deposited, the excess deposit over the reduced amount ordered shall be returned to the depositor or his personal representative. (Ga. L. 1951, p. 565, § 9; Ga. L. 1956, p. 543, § 17; Ga. L. 1963, p. 593, § 6; Code 1933, § 68C-307, enacted by Ga. L. 1977, p. 1014, § 1.)

JUDICIAL DECISIONS

Cited in Fox v. Stanish, 150 Ga. App. 537, 258 S.E.2d 190 (1979); Commercial Union Ins. Co. v. Insurance Co. of N. Am., 155 Ga. App. 786, 273 S.E.2d 24 (1980).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Automobile Insurance, § 27. 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 168, 169.

C.J.S. — 60 C.J.S., Motor Vehicles, § 286 et seq.

40-9-37. Requirements for liability insurance policies; erroneous information as to insurance.

(a) No liability insurance policy shall be effective under Code Section 40-9-34 unless issued by an insurance company authorized to do business in this state, except as provided in subsection (b) of this Code section, and unless such policy or bond is subject to limits, exclusive of interest and costs, of not less than the amounts specified in subparagraph (a)(1)(A) of Code Section 33-7-11.

(b) No policy shall be effective under Code Section 40-9-34 with respect to any vehicle which was not registered in this state or which was registered elsewhere than in this state at the effective date of the policy or the most recent renewal thereof unless the insurance company issuing such policy is authorized to do business in this state, or if such company is not authorized to do business in this state, unless it shall execute a power of attorney authorizing the commissioner to accept service on its behalf of notice or process in any action upon such policy arising out of such accident.

(c) Whenever erroneous information is given to the department with respect to the matters set forth in paragraph (1), (2), or (3) of Code Section 40-9-34, the department shall take appropriate action as provided in Code Section 40-9-32 after receipt of correct information with respect to such matters. (Ga. L. 1951, p. 565, §§ 5, 9; Ga. L. 1956, p. 543, § 10; Ga. L. 1957, p. 124, §§ 1, 5; Ga. L. 1958, p. 694, §§ 1, 5; Ga. L. 1964, p. 225, § 5; Code 1933, § 68C-307, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1982, p. 1751, § 2; Ga. L. 1983, p. 3, § 29; Ga. L. 1983, p. 938, § 3; Ga. L. 2000, p. 1516, § 3.)

Cross references. — Amount of insurance coverage required as prerequisite to operation of motor vehicle, § 33-34-4.

Editor's notes. — Ga. L. 1982, p. 1751, § 2, effective July 1, 1982, amended former Code 1933, § 68C-307, the basis for this Code section. Since the 1982 Act did not specifically amend this Code section, and since the Code of Georgia of 1933, as amended, stood repealed on November 1, 1982 (see Code Section 1-1-10(a)(1)), no effect could be given to the 1982 amendment after that date. The provisions of the 1982 Act were reenacted in substantially similar form as an amendment to this Code section by Ga. L. 1983, p. 3, § 29.

JUDICIAL DECISIONS

Clause exempting company from liability if insured avoided arrest. — Clause in an automobile liability policy exempting insurance company from liability if the automobile is involved in an accident occurring while insured is attempting to avoid apprehension or arrest is void as against public policy, but only to the extent of insurance required by the compulsory insurance law at the time of

the collision. Cotton States Mut. Ins. Co. v. Neese, 254 Ga. 335, 329 S.E.2d 136 (1985).

Ga. L. 1951, p. 565 did not require total coverage for any damages that may be imposed by law to any class of persons. Fitzgerald v. Universal Underwriters Ins. Co., 132 Ga. App. 610, 208 S.E.2d 619 (1974).

Named driver exclusion upheld. — No language in O.C.G.A. § 40-9-37 prohibited named driver exclusion disallowing coverage for insured's spouse, nor was the contested provision violative of public policy, such that the trial court's conclusion that provision was unenforceable was erroneous. Progressive Preferred Ins. Co. v. Browner, 209 Ga. App. 544, 433 S.E.2d 401 (1993).

"Business use" exclusion void. — Automobile policy exclusion for the insured using a vehicle "while employed or otherwise engaged in any business" was void as against public policy to the extent of the mandatory monetary requirements in effect at the time of the collision. Federated Mut. Ins. Co. v. Dunton, 213 Ga. App. 148, 444 S.E.2d 123 (1994).

Rental cars. — Even though a car rental agreement stated that coverage limits were those imposed by the state financial responsibility law where the accident occurs, the rental company could not claim entitlement to such limits when the company failed to comply with the requirements that the company's limitations of coverage be specified in the company's self-insurance plan filed with the commissioner of insurance. Ryan v. Boyd, 911 F. Supp. 524 (M.D. Ga. 1996).

Cited in Standard Guar. Ins. Co. v. Davis, 145 Ga. App. 147, 243 S.E.2d 531 (1978); Fox v. Stanish, 150 Ga. App. 537, 258 S.E.2d 190 (1979); Commercial Union Ins. Co. v. Insurance Co. of N. Am., 155 Ga. App. 786, 273 S.E.2d 24 (1980); In re Whipple, 138 Bankr. 137 (Bankr. S.D. Ga. 1991).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Automobile Insurance, § 24 et seq.

ALR. — Automobile liability insurance, 13 A.L.R. 135; 19 A.L.R. 879; 23 A.L.R. 1472; 28 A.L.R. 1301; 41 A.L.R. 507.

Automobile insurance: policy obtained by mortgagee or conditional vendor of car as other or additional insurance within clause against such insurance in policy obtained by mortgagor or conditional vendee and vice versa, 76 A.L.R. 1174.

Insurance covering damage to automobile by accident or collision, 105 A.L.R. 1426.

Policy provision extending coverage to comply with financial responsibility act as applicable to insured's first accident, 8 A.L.R.3d 388.

Automobile liability insurance: what are accidents or injuries "arising out of ownership, maintenance, or use" of insured vehicle, 15 A.L.R.4th 10.

Combining or "stacking" uninsured motorist coverages provided in policies issued by different insurers to same insured, 21 A.L.R.4th 211.

Automobile liability insurance policy flight from police exclusion: validity and effect, 49 A.L.R.4th 325.

What constitutes "entering" or "alighting from" vehicle within meaning of insurance policy, or statute mandating insurance coverage, 59 A.L.R.4th 149.

What constitutes single accident or occurrence within liability policy limiting insurer's liability to specified amount per accident or occurrence, 64 A.L.R.4th 668.

40-9-38. Surety bonds and real property bonds as security; requirements; cancellations; liens; actions on bonds; reduction or increase of security; erroneous information.

(a) Security under this chapter may also be provided for by a surety bond executed by the person and by a surety company duly authorized

to transact business in this state or by the person giving proof of his ownership of real property and by one or more individual sureties owning real property within this state and having an equity therein in at least the amount of the bond. The commissioner may not accept any real property bond unless the real property is scheduled in an affidavit attached thereto setting forth a description of such property and the title thereto, including any liens and encumbrances and amounts thereof, market value and value of such sureties' interest therein, executed by the owner or owners of such interest, and such bond and affidavit shows thereon that a duplicate original of such bond and affidavit has been recorded in the office of the clerk of the superior court where deeds are admitted to record in the county where the real property is located. The clerk shall provide a separate book for such purpose. The bond shall be approved by the clerk in the same manner as a supersedeas bond is approved. The fee of the clerk for recording and approving such affidavit and bond shall be $2.50.

(b) The commissioner shall not accept any such bond unless it is conditioned for payments in amounts requested by the commissioner, subject to the maximum amounts of security as specified under this chapter.

(c) No such bond shall be canceled unless 20 days' prior written notice of cancellation is given the commissioner, and cancellation of the bond shall not prevent recovery thereon with respect to any cause of action which necessitated the filing of such bond.

(d) A bond with individual sureties shall constitute a lien upon the real property of the principal and any individual surety in favor of the Governor of Georgia for the use of any holder of any final judgment arising out of the cause of action which necessitated the filing of the bond, against the principal on account of damage to property or injury to or death of any person or persons, upon the recording of the bond in the office of the clerk of the court where deeds are admitted to record in the county where the real property is located.

(e) When a bond with individual sureties filed with the commissioner is no longer required under this chapter, the commissioner shall, upon request, cancel it as to liability for damage to property or injury to or death of any person or persons; and, when a bond has been canceled by the commissioner, he shall, upon request, furnish a certificate of cancellation with the seal of the department thereon. The certificate, notwithstanding any other provision of law, may be recorded in the office of the clerk of the court in which the bond was admitted to record.

(f) When the certificate of cancellation with the seal of the department thereon has been filed in the office of the clerk of the superior court in which the bond was admitted to record, and when there are no

claims or judgments against the principal in the bond on account of damage to property or injury to or death of any person or persons resulting from the ownership or operation of a motor vehicle by the principal arising out of the cause of action which necessitated the filing of the bond, the clerk of the superior court of the county in which the bond was admitted to record shall thereupon record the certificate of cancellation, which shall discharge the lien of the bond on the real property of the sureties. The cost of such recording shall be upon such sureties.

(g) If a final judgment rendered against the principal on the bond filed with the commissioner is not satisfied within 30 days after its rendition, the judgment creditor may, for his own use and benefit and at his sole expense, bring an action on the bond in the name of the state against the company or persons issuing the bond.

(h) When the sureties on the bond are individuals, the judgment creditor may proceed against any or all parties to the bond at law for a judgment or in equity for a decree and foreclosure of the lien on the real property of the sureties. The proceeding whether at law or in equity may be against one, all, or any intermediate number of parties to the bond; and, when less than all are joined, another or others may be impleaded in the same proceeding; and, after final judgment or decree, other proceedings may be instituted until full satisfaction is obtained.

(i) The department may, upon written notice to all parties involved, reduce or increase the amount of security ordered in any case within six months after the date of the accident if in its judgment the amount ordered is excessive or inadequate. In case the security originally ordered has been deposited, the excess deposit over the reduced amount ordered shall be returned to the depositor or his personal representative.

(j) Whenever erroneous information is given the department with respect to the matters set forth in paragraph (1), (2), or (3) of Code Section 40-9-34, the department shall take appropriate action as provided in Code Section 40-9-32 after receipt of correct information with respect to such matters. (Ga. L. 1951, p. 565, §§ 5, 9; Ga. L. 1956, p. 543, § 12; Ga. L. 1959, p. 341, § 1; Code 1933, § 68C-307.1, enacted by Ga. L. 1978, p. 1527, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1989, p. 14, § 40.)

40-9-39. Custody, disposition, and return of deposit.

(a) The department shall place any security deposited with it under this chapter in the general fund of the state treasury. Such security shall be applicable and available only:

(1) For the payment of any settlement agreement covering any claim arising out of the accident upon instruction of the person who made the deposit; or

(2) For the payment of a judgment or judgments for damages arising out of the accident rendered against the person required to make the deposit in an action at law begun not later than one year after the deposit of such security or within one year after the date of deposit of any security following failure to make payments under an agreement to pay.

(b) Upon the expiration of one year from the date of any deposit of security, any security remaining on deposit shall be returned to the person who made such deposit or to his legal representative, if evidence satisfactory to the department has been filed with it:

(1) That no action for damages arising out of the accident for which deposit was made is pending against any person on whose behalf the deposit was made; and

(2) That there does not exist any unpaid judgment rendered against any such person in any such action.

In any case where the depositor shall die while security is on deposit with the department, the commissioner is authorized to return such security to the executor or administrator of the estate of the deceased depositor, or, if there is no executor or administrator and the amount on deposit is $1,000.00 or less, the commissioner is authorized to pay over such deposit to the surviving spouse or heirs at law of the deceased depositor. In any event, no deposit shall be returned unless and until satisfactory evidence has been filed by the person seeking such return, under the same conditions as provided in paragraph (1) of this subsection for the filing of such evidence by the depositor.

(c) In any case where, after the expiration of one year from the date of any deposit of security, the commissioner is unable to contact the depositor by mail or receives no response from the depositor, the commissioner shall have a notice printed in the local newspaper in which legal notices are usually printed, in the county of the last known address of the depositor, once each week for four consecutive weeks. Such notice shall specify that the depositor is eligible for the return of the security subject to the provisions of this Code section and shall further specify that, if no response is received from the notice within one year from the date on which the last notice is printed, the security will be deposited in the general fund of the state treasury. If no response to the notice is received by the commissioner, the commissioner shall dispose of the security as provided in this subsection. The cost of the publication shall be deducted from the security on deposit, regardless of whether the security is returned to the depositor or his legal represen-

tative or deposited in the state treasury. After such security is deposited in the general fund of the state treasury, the state treasurer is authorized to return such security to the proper person as provided in this Code section as a refund, in the event proof is furnished to the commissioner that such person is the proper person to whom such security should be refunded. The state treasurer shall make no such refund without a certification by the commissioner of the name of the person to whom the refund should be made.

(d) Upon receiving a certificate from the clerk of any court wherein a judgment has been obtained against the person in whose behalf the deposit was made, which certificate shall set forth the parties to the litigation, the time, place, and date of the accident, and the fact that the judgment is unsatisfied of record and that the time for appeal has expired, it shall be the duty of the commissioner to transmit immediately to the clerk of such court any cash security held by the department, to be applied to the satisfaction of the judgment and any accrued interest and court costs. Any additional security over and above the amount required to satisfy the foregoing shall be returned by the department to the depositor. (Ga. L. 1951, p. 565, § 10; Ga. L. 1956, p. 543, § 18; Ga. L. 1963, p. 593, § 7; Ga. L. 1965, p. 456, § 1; Ga. L. 1969, p. 819, § 4; Ga. L. 1971, p. 654, § 1; Ga. L. 1972, p. 412, § 1; Code 1933, § 68C-308, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 3/SB 296.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, "paragraph (1)" was substituted for "the first paragraph" in the last sentence of subsection (b), and "contact" was substituted for "contract" in the first sentence of subsection (c).

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, § 286 et seq.

40-9-40. Check of court records for pending action or unsatisfied judgment; certificate of clerk.

At the end of the expiration of one year from the date of the accident or one year from the date of the suspension under this chapter, the clerk, or the judge if there is no clerk, of any court of this state having jurisdiction over civil cases shall, upon request of an operator or owner or an authorized representative of either, check the records of such court and furnish such operator or owner or authorized representative with a certificate showing whether or not there is an action at law pending or an unsatisfied judgment on file against such operator or owner arising out of the accident which necessitated the depositing of security or on which the suspension was based. The fee for providing

such certificate shall be as provided in Code Section 15-6-77 and shall be paid by the party requesting the certificate. (Ga. L. 1951, p. 565, § 3; Ga. L. 1956, p. 543, §§ 7, 14; Code 1933, § 68C-309, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1981, p. 1396, § 7; Ga. L. 1991, p. 1324, § 7.)

40-9-41. Matters not to be evidence in civil actions for damages.

Neither any accident report filed with the Department of Transportation, the action taken by the Department of Driver Services pursuant to this chapter, the findings, if any, of the department upon which such action is based, nor the security filed as provided in this chapter shall be referred to in any way, nor shall they be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages. (Ga. L. 1951, p. 565, § 11; Code 1933, § 68C-310, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1994, p. 97, § 40; Ga. L. 2005, p. 334, § 20-3/HB 501.)

JUDICIAL DECISIONS

Diagram prepared by investigating police officer admissible. — In a negligence action arising out of a motor vehicle collision, a diagram prepared by the investigating police officer as part of the officer's report, but not filed with the department, was properly admitted. Pryor v. Phillips, 222 Ga. App. 116, 473 S.E.2d 535 (1996).

ARTICLE 3

UNSATISFIED JUDGMENTS

Cross references. — Verdict and judgment generally, T. 9, C. 12.

RESEARCH REFERENCES

ALR. — Validity and application of statute or regulation authorizing revocation or suspension of driver's license for reason unrelated to use of, or ability to operate, motor vehicle, 18 A.L.R.5th 542.

40-9-60. Courts to report unpaid judgments to department; department to report judgments against nonresidents.

(a) Whenever any person fails within 30 days to satisfy any judgment rendered in an action at law arising out of a motor vehicle accident, to which no appeal has been entered or motion for a new trial entered, then upon the request of the judgment creditor or his attorney it shall be the duty of the court in which such judgment is rendered within this state to forward to the department immediately after the expiration of said 30 days a certified copy of such judgment. The court shall be entitled to a fee as required by paragraphs (4) and (5) of

subsection (g) of Code Section 15-6-77. In the event a certificate of pending or unsatisfied judgment is requested, the court shall be entitled to a fee as required by paragraph (8) of subsection (g) of Code Section 15-6-77.

(b) If the defendant named in any certified copy of a judgment reported to the department is a nonresident, the department shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registrations of the state of which the defendant is a resident. (Ga. L. 1956, p. 543, § 13; Code 1933, § 68C-401, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1981, p. 1396, § 8; Ga. L. 1992, p. 6, § 40.)

JUDICIAL DECISIONS

Constitutionality. — There is no constitutional violation because judgment creditor alone decides whether to seek remedy under Ga. L. 1977, p. 1014, § 1 (see now O.C.G.A. § 40-9-60). Keenan v. Hardison, 245 Ga. 599, 266 S.E.2d 205 (1980).

40-9-61. Suspension of driver's license or operating privilege for nonpayment of judgment.

(a) The department, upon receipt of a certified copy of an unsatisfied judgment, shall suspend the driver's license or nonresident's operating privilege of the person against whom such judgment was rendered except as provided in subsections (b) and (c) of this Code section.

(b) If the judgment creditor consents, in writing, in such form as the department may prescribe, the department, in its discretion, may allow the judgment debtor to retain his or her license or nonresident's operating privilege for six months from the date of such consent and thereafter until such consent is revoked in writing, notwithstanding default in the payment of such judgment or of any installments as provided in Code Section 40-9-63.

(c) The department shall take no action pursuant to subsection (a) of this Code section if it shall find that an insurer was obligated to pay the judgment upon which suspension is based, at least to the extent and for the amounts required in this article, but has not paid such judgment for any reason. Such finding shall not be binding upon such insurer and shall have no legal effect whatever except for the purposes of administering this Code section. Whenever, in any judicial proceedings, it shall be determined by any final judgment, decree, or order that an insurer is not obligated to pay any such judgment, the department, notwithstanding any contrary finding theretofore made by it, shall forthwith suspend the license or nonresident's operating privilege of any person against whom such judgment was rendered. (Ga. L. 1956, p. 543, § 13;

Code 1933, § 68C-402, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 2005, p. 334, § 20-4/HB 501.)

JUDICIAL DECISIONS

Section constitutional. — Since a party has only a qualified right and not a vested right in a driver's license, the revocation of the party's license under Ga. L. 1977, p. 1014, § 1 (see now O.C.G.A. § 40-9-61) cannot violate the prohibition against passage of retroactive statutes. Keenan v. Hardison, 245 Ga. 599, 266 S.E.2d 205 (1980).

There is no equal protection violation resulting from the fact that the judgment creditor alone has discretion whether or not to seek the remedy imposed by Ga. L. 1977, p. 1014, § 1 (see now O.C.G.A. § 40-9-61). Keenan v. Hardison, 245 Ga. 599, 266 S.E.2d 205 (1980).

Nature of punishment. — Suspension of a driver's license under Ga. L. 1977, p. 1014, § 1 (see now O.C.G.A. § 40-9-61) cannot be considered a criminal punishment. Keenan v. Hardison, 245 Ga. 599, 266 S.E.2d 205 (1980).

When the evidence was sufficient to support the Department of Public Safety's decision to suspend a license, the superior court, sitting as an appellate court, erred in reversing the suspension. Miles v. Andress, 229 Ga. App. 86, 493 S.E.2d 233 (1997).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 172.

C.J.S. — 60 C.J.S., Motor Vehicles, § 387 et seq.

40-9-62. Duration of suspension; when judgments deemed satisfied.

(a) A driver's license or nonresident's operating privilege suspended pursuant to Code Section 40-9-61 shall remain so suspended and shall not be renewed, nor shall any such license or registration be thereafter issued in the name of the judgment debtor, whether or not he or she was previously licensed, unless and until every such judgment is stayed, or satisfied in full or to the extent provided in subsection (b) of this Code section, subject to the exceptions provided in this article.

(b) Judgment referred to in this article, which is based upon an accident which occurred on or after January 1, 2001, shall, for the purpose of this chapter only, be deemed satisfied:

(1) When $25,000.00 has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident;

(2) When, subject to such limit of $25,000.00 because of bodily injury to or death of one person, $50,000.00 has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or

(3) When $25,000.00 has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident.

(c) Reserved.

(d) Payments made in settlement of any claims because of bodily injury, death, or property damage arising from the accident shall be credited in reduction of the amounts provided for in this Code section. (Ga. L. 1956, p. 543, § 13; Ga. L. 1957, p. 124, §§ 2, 3; Ga. L. 1958, p. 694, § 2; Code 1933, § 68C-403, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1983, p. 938, § 4; Ga. L. 1984, p. 22, § 40; Ga. L. 2000, p. 1516, § 4; Ga. L. 2005, p. 334, § 20-4/HB 501.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 172.

40-9-63. Installment payment of judgments.

(a) A judgment debtor, upon due notice to the judgment creditor, may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments, and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(b) The department shall not suspend a license or nonresident's operating privilege and shall restore any license or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor obtains such an order permitting the payment of any such judgment in installments, and while the payment of any such installments is not in default. (Ga. L. 1956, p. 543, § 13; Code 1933, § 68C-404, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1994, p. 97, § 40; Ga. L. 2005, p. 334, § 20-4/HB 501.)

ARTICLE 4

GIVING PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE

Cross references. — Maintenance of proof of present and future minimum motor vehicle insurance coverage upon restoration of license prior to expiration of period of suspension, § 40-5-63.

RESEARCH REFERENCES

ALR. — Validity of Motor Vehicle Financial Responsibility Act, 35 A.L.R.2d 1011.

Application of financial responsibility or compulsory insurance laws to governmental vehicles or their operators, 87 A.L.R.2d 1224.

Automobile liability insurance: operator's policies, 88 A.L.R.2d 995.

Omnibus clause as extending automobile liability coverage to third person using car with consent of permittee of named insured, 21 A.L.R.4th 1146.

Validity and construction of automobile insurance provision or statute automatically terminating coverage when insured obtains another policy providing similar coverage, 61 A.L.R.4th 1130.

Validity, construction, application, and effect of statute requiring conditions, in addition to expiration of time, 2 A.L.R.5th 725.

40-9-80. Methods of giving proof; duration.

(a) In all those situations under this chapter in which proof of financial responsibility for the future is required, such proof may be given by filing with the department:

(1) A written certificate of any insurance carrier certifying that there is in effect a liability policy as to that vehicle meeting the requirements of subsections (a) and (b) of Code Section 40-9-37; or

(2) A plan of self-insurance, accepted by the commissioner, as provided in Code Section 33-34-5.1.

(b) Such proof must be maintained for a one-year period. (Ga. L. 1964, p. 225, § 6; Ga. L. 1969, p. 819, § 7; Code 1933, § 68C-501, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 2000, p. 1246, § 17.)

RESEARCH REFERENCES

ALR. — Application of uninsured or underinsured motorist or no-fault insurance to school bus incidents, 80 A.L.R.6th 389.

40-9-81. Proof required upon restoration of driver's license suspended for certain offenses.

(a) Whenever any person is convicted of any offense making mandatory the suspension of such person's driver's license, the department shall not restore the license to such person until permitted under the motor vehicle laws of this state, and not then unless and until such person shall give and thereafter maintain proof of financial responsibility for the future.

(b) If such person does not have the required proof at any time during the one-year period following the date of restoration of his driver's license, the department shall immediately revoke the license. (Ga. L. 1951, p. 565, § 7A; Ga. L. 1956, p. 543, § 15; Ga. L. 1957, p. 124, § 4; Ga. L. 1958, p. 694, § 3; Ga. L. 1963, p. 593, § 8; Ga. L. 1964, p.

225, § 3; Ga. L. 1971, p. 249, § 1; Code 1933, § 68C-502, enacted by Ga. L. 1977, p. 1014, § 1.)

Cross references. — Offenses giving rise to mandatory suspension of driver's license, § 40-5-54. Factors governing restoration of drivers' licenses generally, § 40-5-62.

JUDICIAL DECISIONS

Purpose of section. — Object of Ga. L. 1951, p. 565, which gave to the trial judge the right to suspend the license of a driver convicted of driving while intoxicated, was to provide for the suspension of the license as part of the punishment for the violation of the law, while Ga. L. 1951, p. 565 has for its purpose requiring the qualification of the licensee as a self-insurer, or the giving of a liability insurance policy or a surety bond, for the protection of the public from any loss or damage during a period of three years; one deals with the revocation of a privilege, and the other with a suspension of the privilege as a part of the punishment for violating the law. Murphy v. Dominy, 211 Ga. 70, 84 S.E.2d 193 (1954).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 173 et seq.

ALR. — Automobile liability insurance, 13 A.L.R. 135; 19 A.L.R. 879; 23 A.L.R. 1472; 28 A.L.R. 1301; 41 A.L.R. 507.

40-9-82. Cancellation of insurance certificate.

Any insurance company filing a certification with the department in order for the operator to show the proof required in this article shall not cancel such certification within 12 months from its effective date except for a subsequent conviction of any offense requiring the mandatory suspension of such operator's license, and the department shall be given at least 20 days' prior written notice of such cancellation. The commissioner may, in his discretion, permit the cancellation of such certificate for other cause made known to and approved by him. (Code 1933, § 68C-502, enacted by Ga. L. 1977, p. 1014, § 1.)

ARTICLE 5

ASSIGNED RISK PLANS, "SPOT" INSURANCE, AND COOPERATION BY INSURED

Cross references. — Motor vehicle accident insurance generally, T. 33, C. 34.

Administrative rules and regulations. — Property and casualty section, Official Compilation of the Rules and Regulations of the State of Georgia, Comptroller General, Rules of Comptroller General Office of Commissioner of Insurance, Rule 120-2-1-.06.

Law reviews. — For survey article on insurance, see 34 Mercer L. Rev. 177 (1982).

JUDICIAL DECISIONS

Cited in State Farm Mut. Auto. Ins. Co. v. Cone, 165 Ga. App. 766, 302 S.E.2d 620 (1983).

RESEARCH REFERENCES

ALR. — Validity of Motor Vehicle Financial Responsibility Act, 35 A.L.R.2d 1011.

Automobile liability insurance: operator's policies, 88 A.L.R.2d 995.

Cancellation of compulsory or "financial responsibility" automobile insurance, 44 A.L.R.4th 13.

Validity, construction, application, and effect of statute requiring conditions, in addition to expiration of time, 2 A.L.R.5th 725.

40-9-100. Assigned risk plan.

(a) After consultation with insurance companies authorized to issue automobile policies in this state, the Commissioner of Insurance shall approve a reasonable plan or plans for the equitable apportionment among such companies of applicants for motor vehicle liability policies and other automobile policies who are in good faith entitled to but are unable to procure such policies through ordinary methods. When any such plan has been approved, all such insurance companies shall subscribe thereto and participate therein.

(b) Any applicant for a policy to be issued under any such plan, any person insured under any such plan, and any insurance company affected may appeal to the Commissioner of Insurance from any ruling or decision of the manager or committee designated to operate such plan. Any person aggrieved by any order or act of the Commissioner of Insurance under this Code section may, within ten days after notice of such order or act, file a petition in the superior court of the county of his residence for a review thereof. The court will summarily hear his petition and may make any appropriate order or decree.

(c) A person who has committed no traffic offenses for the prior three years and has had no claims based on fault against an insurer for the prior three years shall not be eligible for a policy to be issued under the plan created by this Code section unless such person's application or the subsequent investigation on the application discloses reasons for which the person would not be able to procure a policy through ordinary methods. (Ga. L. 1951, p. 565, § 17; Ga. L. 1963, p. 593, § 10; Code 1933, § 68C-601, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1990, p. 738, § 1; Ga. L. 1994, p. 97, § 40.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1994, "Commissioner of Insurance" was substituted for "Insurance Commissioner" in the second sentence in subsection (b).

JUDICIAL DECISIONS

Legislative intent. — Enactment of assigned risk plan found in O.C.G.A. § 40-9-100 indicates a determination by the General Assembly that an innocent party should not bear the loss. Young v. Allstate Ins. Co., 248 Ga. 350, 282 S.E.2d 115 (1981).

Maximum bodily injury limit. — Policy issued pursuant to the plan can provide a maximum bodily injury liability limit of $100,000 per person. Schwartz v. Black, 200 Ga. App. 735, 409 S.E.2d 681, cert. denied, 200 Ga. App. 897, 409 S.E.2d 681 (1991).

Limit in plan prevails over general law principles. — Since the plan itself provides a maximum bodily injury liability limit of $100,000, reliance upon principles of general contract and insurance law to assert a greater limit in the instant case is unavailing. Schwartz v. Black, 200 Ga. App. 735, 409 S.E.2d 681, cert. denied, 200 Ga. App. 897, 409 S.E.2d 681 (1991).

Failure of insured to notify insurer of lawsuit against the insured does not constitute defense to insurer's liability. This is true even though the insurance has been extended by the insurer under the assigned risk plan set out in O.C.G.A. § 40-9-100. Young v. Allstate Ins. Co., 248 Ga. 350, 282 S.E.2d 115 (1981).

Insured's failure to comply with the notice provisions of a policy of automobile insurance issued pursuant to Georgia's assigned risk plan would not operate to defeat recourse to the policy by a third party when the insurer received prompt and adequate notice of the pendency of litigation, and there was no suggestion that the insurer's ability to defend had been prejudiced in any way by the failure of the insured to provide the insurer with prior notice of an accident. Starnes v. Cotton States Mut. Ins. Co., 194 Ga. App. 320, 390 S.E.2d 419, aff'd, 260 Ga. 235, 392 S.E.2d 3 (1990).

Cited in Allstate Ins. Co. v. Young, 638 F.2d 31 (5th Cir. 1981); Georgia Farm Bureau Mut. Ins. Co. v. Coffman, 169 Ga. App. 192, 311 S.E.2d 854 (1983); National Indem. Co. v. Smith, 172 Ga. App. 415, 323 S.E.2d 274 (1984); Allstate Ins. Co. v. O'Brien, 172 Ga. App. 693, 324 S.E.2d 498 (1984); Berryhill v. State Farm Fire & Cas. Co., 174 Ga. App. 97, 329 S.E.2d 189 (1985); Moore v. Georgia Cas. & Sur. Co., 179 Ga. App. 247, 345 S.E.2d 894 (1986); State Farm Mut. Auto. Ins. Co. v. Hamilton, 213 Ga. App. 384, 444 S.E.2d 414 (1994).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Automobile Insurance, §§ 24, 57.

ALR. — Automobile liability insurance, 13 A.L.R. 135; 19 A.L.R. 879; 23 A.L.R. 1472; 28 A.L.R. 1301; 41 A.L.R. 507.

Cancellation of compulsory or "financial responsibility" automobile insurance, 44 A.L.R.4th 13.

40-9-101. Reserved.

Editor's notes. — Ga. L. 2000, p. 1246, §§ 15, 16, effective July 1, 2000, amended and then redesignated the former provisions of this Code section, relating to self-insurers, as Code Section 33-34-5.1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, this Code section designation was reserved.

40-9-102. Insurance for person renting U-drive-it vehicle.

Any person who rents motor vehicles from a U-drive-it owner is required to provide his own insurance, and insurance companies

authorized to issue automobile policies in this state shall be required by the Commissioner of Insurance to provide "spot" insurance, which shall be purchased by such person before the U-drive-it owner shall be authorized to turn a motor vehicle over to such person. If a U-drive-it owner turns over any motor vehicle to any person without first ascertaining that such "spot" insurance has been obtained, the U-drive-it owner shall not, as to that particular rental transaction, be exempted from the provisions of this chapter as provided in Code Section 40-9-4. (Ga. L. 1951, p. 565, § 23; Ga. L. 1963, p. 593, § 10; Code 1933, § 68C-604, enacted by Ga. L. 1977, p. 1014, § 1; Ga. L. 1994, p. 97, § 40.)

Law reviews. — For annual survey article discussing developments in insurance law, see 51 Mercer L. Rev. 313 (1999).

JUDICIAL DECISIONS

Purpose of section. — Car rental agency's failure to verify a renting driver was insured did not constitute negligence per se so as to make the agency liable in an action against the agency by occupants of a vehicle who were injured in a collision involving a vehicle rented from the agency. O.C.G.A. § 40-9-102 was not designed to prevent the collision which caused the plaintiffs' injuries, but, rather, the statute's purpose is to assure that such tortfeasors are not uninsured. Rabinovitz v. Accent Rent-A-Car, Inc., 213 Ga. App. 786, 446 S.E.2d 244 (1994); Alamo Rent-A-Car, Inc. v. Hamilton, 216 Ga. App. 659, 455 S.E.2d 366 (1995).

O.C.G.A. § 40-9-102 requires that a person who rents from a U-drive-it owner must provide insurance for the vehicle either through a vehicle insurance policy the renter already holds for the renter's own vehicle that covers the renter while driving another car or by purchasing at the time of rental an insurance policy that covers the specific rental vehicle. Atlanta Rent-A-Car, Inc. v. Jackson, 204 Ga. App. 448, 419 S.E.2d 489, cert. denied, 204 Ga. App. 921, 419 S.E.2d 489 (1992).

Co-operators not subject to statute. — Clear language of O.C.G.A. § 40-9-102 addresses itself to the renter of the vehicle, not the operator, authorized or not, inasmuch as the relationship with the rental agency is a matter of contract; thus, an authorized co-operator of a vehicle, who is not deemed a co-renter by the contract, is not subject to the statute. A. Atlanta Autosave, Inc. v. Generali - U.S. Branch, 270 Ga. 757, 514 S.E.2d 651 (1999).

Liability insurance for injury to third parties. — Language in an automobile rental agreement stating that the lessor "furnishes no insurance whatsoever to the renter" did not exempt the lessor from providing liability insurance for injury to third parties. Jones v. Wortham, 201 Ga. App. 668, 411 S.E.2d 716, cert. denied, 201 Ga. App. 904, 411 S.E.2d 716 (1991).

O.C.G.A. § 40-9-102, which provides that lessees from U-drive-it agencies furnish their own insurance, does not completely exempt the agencies from their duty to procure liability insurance as owners of vehicles pursuant to the insurance law. Jones v. Wortham, 201 Ga. App. 668, 411 S.E.2d 716, cert. denied, 201 Ga. App. 904, 411 S.E.2d 716 (1991).

Car rental company was properly granted summary judgment in a suit by the children and estate of a decedent who was injured and died as a result of a collision with a rented vehicle as the company's violation of O.C.G.A. § 40-9-102 by failing to require the lessee of the vehicle to have "spot" liability insurance was not the proximate cause of the collision which caused the decedent's injuries and death, and, therefore, the company, which had

the company's own liability insurance covering the vehicle, was not personally liable for the decedent's injuries and death. Scott v. Joe Thomson Auto Rental & Leasing, Inc., 257 Ga. App. 453, 571 S.E.2d 475 (2002).

Liability when driver not party to contract. — Driver of rented automobile, who was listed as an additional driver but not as an additional renter and who did not sign or cosign the rental agreement, was not a party to the agreement; therefore, the driver's insurance provider was not liable for costs arising out of an accident. A. Atlanta AutoSave, Inc. v. Generali - U.S. Branch, 230 Ga. App. 887, 498 S.E.2d 278 (1998).

Operator's insurance policy deemed primary. — Operator's insurance was primary and the owner's insurance afforded excess coverage, if any, in the case of a rental car, even though the operator's policy contained an "excess insurance" clause which stated that any liability insurance provided by the company for a vehicle not owned by the insured should be excess of any other collectible insurance. Jones v. Wortham, 201 Ga. App. 668, 411 S.E.2d 716, cert. denied, 201 Ga. App. 904, 411 S.E.2d 716 (1991).

Under O.C.G.A. § 40-9-102, U-drive-it car rental companies are not exempt from the companies' duty under O.C.G.A. § 33-34-4 to insure cars the companies own, but the companies enjoy special treatment in terms of priority of coverage on cars rented to the public, and the renter's liability insurance coverage provided primary liability coverage for loss caused by a driver of a rental car. Jordan v. Spirit Rent-A-Car, 252 Ga. App. 117, 555 S.E.2d 734 (2001).

Company's employee who rented the vehicle from the vehicle owner was insured under the insurance policy that the vehicle owner had with the insurer on which the vehicle owner was listed as an additional insured, and, thus, under Georgia statutory law, the renter's insurance provided the primary insurance coverage and the vehicle owner provided the secondary coverage after the company's employee injured the victim in a collision unless it was shown that the parties contracted to reverse the order of priority; since no such contract was shown, the insurer's coverage was the primary insurance coverage. Zurich Am. Ins. Co. v. General Car & Truck Leasing Sys., 258 Ga. App. 733, 574 S.E.2d 914 (2002).

Lessee's insurance primary when lessor uninsured. — When automobile lessee's insurance had been canceled at the time the lessee rented the automobile, the lessor's insurance became primary insurance for purposes of accident coverage, notwithstanding facts that lessor's manager thought the manager had verified that lessee did have insurance, and that lessee was not the driver of the automobile at the time of the accident. A. Atlanta AutoSave, Inc. v. Generali - U.S. Branch, 230 Ga. App. 887, 498 S.E.2d 278 (1998).

Rental agency not required to offer insurance. — O.C.G.A. § 40-9-102 does not require the U-drive-it owner to offer insurance at the time of rental if the renter already has insurance to cover the rental vehicle. The notations on the face of the rental contract at issue demonstrate that the car rental agency ascertained that the renter had insurance coverage before renting the car to the renter, therefore, a car rental agency was not required to offer insurance to a renter or to require renter to purchase insurance to be eligible for the exemption afforded by O.C.G.A. § 40-9-102. Atlanta Rent-A-Car, Inc. v. Jackson, 204 Ga. App. 448, 419 S.E.2d 489, cert. denied, 204 Ga. App. 921, 419 S.E.2d 489 (1992).

Primary coverage provided by rental company. — When a rental company incorporated the company's own liability coverage as part of the company's rental agreement and failed to determine whether the renter maintained the renter's own liability coverage, the company's coverage had priority over the renter's policy. Ryan v. Boyd, 911 F. Supp. 524 (M.D. Ga. 1996).

Renter's insurance not primary in all instances. — O.C.G.A. § 40-9-102 does not mean that a renter and U-drive-it owner cannot, under any circumstances, contract between themselves for the owner's insurance to be primary. General Car & Truck Leasing Sys. v. Woodruff, 214 Ga. App. 200, 447 S.E.2d 97 (1994).

Lack of coverage by renter. — Car rental agency looses the statutory exemp-

tion provided by the statute when it is later determined that the renter did not have insurance coverage. A. Atlanta Autosave, Inc. v. Generali - U.S. Branch, 270 Ga. 757, 514 S.E.2d 651 (1999).

Application to dealers who loan cars to customers. — Unambiguous provisions of a used vehicle dealer's insurance policy provided that the dealer's customer, who had borrowed a car while the customer's car was repaired, was an insured under the policy but was only insured up to the compulsory legal limits of O.C.G.A. § 33-7-11. Because the car was not rented, the provisions of O.C.G.A. § 40-9-102 did not apply. Grange Mut. Cas. Co. v. Fulcher, 306 Ga. App. 109, 701 S.E.2d 547 (2010).

Cited in Wausau Ins. Cos. v. Lightnin' Truck Rental, Inc., 194 Ga. App. 819, 392 S.E.2d 32 (1990).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Automobile Insurance, §§ 22, 24.

ALR. — State regulation of motor vehicle rental ("you-drive") business, 60 A.L.R.4th 784.

40-9-103. Cooperation by insured with insurer in connection with defense of action or threatened action under policy.

(a) No motor vehicle liability insurance policy covering a motor vehicle principally garaged or principally used in this state shall be issued, delivered or issued for delivery, or renewed in this state unless such policy contains provisions or has an endorsement thereto which specifically requires the insured to send his insurer, as soon as practicable after the receipt thereof, a copy of every summons or other process relating to the coverage under the policy and to cooperate otherwise with the insurer in connection with the defense of any action or threatened action covered under the policy.

(b)(1) Noncompliance by the insured with this required provision or endorsement shall constitute a breach of the insurance contract which, if prejudicial to the insurer, shall relieve the insurer of its obligation to defend its insureds under the policy and of any liability to pay any judgment or other sum on behalf of its insureds.

(2) In the event the insurer denies coverage and it is determined by declaratory judgment or other civil process that there is in fact coverage, the insurer shall be liable to the insured for legal costs and attorney's fees as may be awarded by the court.

(c) Subsections (a) and (b) of this Code section shall not operate to deny coverage for failure to send a copy of a summons or other process relating to policy coverage if such documents are sent by a third party to the insurer or to the insurer's agent by certified mail or statutory overnight delivery within ten days of the filing of such documents with the clerk of the court. If the name of the insurer or the insurer's agent is unknown, the third party shall have a period of 30 days from the date

the insurer or agent becomes known in which to send these required documents. Such documents must be sent to the insurer or agent at least 30 days prior to the entry of any judgment against the insured. (Code 1933, § 68C-608, enacted by Ga. L. 1982, p. 1624, § 2; Code 1981, § 40-9-103, enacted by Ga. L. 1982, p. 1624, § 4; Ga. L. 1984, p. 22, § 40; Ga. L. 1989, p. 14, § 40; Ga. L. 2000, p. 1589, § 3.)

JUDICIAL DECISIONS

Additional insured's duty to cooperate. — O.C.G.A. § 40-9-103 protects the insurer from prejudicial actions of an additional insured because once the additional insured is covered by a policy, the contractual restrictions are as binding as the restrictions would be for any other third-party beneficiary. Cotton States Mut. Ins. Co. v. Starnes, 260 Ga. 235, 392 S.E.2d 3 (1990).

Cited in Georgia Mut. Ins. Co. v. Rollins, Inc., 209 Ga. App. 744, 434 S.E.2d 581 (1993).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobile Insurance, § 366 et seq.

CHAPTER 10

GOVERNOR'S OFFICE OF HIGHWAY SAFETY

Sec.
40-10-1. Short title.
40-10-2. Declaration of policy; general authority of Governor.
40-10-3. Definitions.
40-10-4. Creation of Office of Highway Safety.
40-10-5. Duties of director.
40-10-6. Office space; staff, supplies, and materials.
40-10-7. Specific authority and duties of Governor.
40-10-8. Cooperation with other agencies.
40-10-9. Powers of local governing authorities.
40-10-10. Acceptance and administration of funds.

Cross references. — Duties of law enforcement and school officials relating to traffic safety in vicinity of schools, § 20-2-1130.

Administrative rules and regulations. — Highway safety grant program, Official Compilation of the Rules and Regulations of the State of Georgia, Grant Program Description for Governor's Office of Highway Safety, Rule 279-1-.01.

40-10-1. Short title.

This chapter shall be known and may be cited as the "Highway Safety Coordination Act of 1967." (Ga. L. 1967, p. 708, § 1.)

40-10-2. Declaration of policy; general authority of Governor.

It is the public policy of this state in every way possible to reduce the number of traffic accidents, deaths, injuries, and property damage through the formulation of comprehensive highway safety programs. The Governor, as the chief executive and highest elected official of this state, is vested with the power and authority to act as the chief administrator in the formulation of such programs of highway safety. (Ga. L. 1967, p. 708, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 15, 16, 19, 23.

C.J.S. — 16 C.J.S., Constitutional Law, §§ 321 et seq., 447 et seq.

ALR. — Liability of public authority for injury arising out of automobile race conducted on street or highway, 80 A.L.R.3d 1192.

Liability, in motor vehicle-related cases, of governmental entity for injury or death resulting from failure to repair pothole in surface of highway or street, 98 A.L.R.3d 101.

Liability, in motor vehicle-related cases, of governmental entity for injury or death resulting from defect or obstruction on roadside parkway or parking strip, 98 A.L.R.3d 439.

40-10-3. Definitions.

As used in this chapter, the term:

(1) "Director" means the director of the Office of Highway Safety in the Department of Public Safety.

(2) "National Highway Safety Act of 1966" means the National Highway Safety Act of 1966, Pub. Law 89-564, 23 U.S.C. Section 401, et seq., and all amendments thereto.

(3) "Office" means the Office of Highway Safety in the Department of Public Safety. (Code 1981, § 40-10-3; Ga. L. 1985, p. 149, § 40; Ga. L. 1997, p. 143, § 40.)

Editor's notes. — This Code section was created as part of the Code enactment and was thus enacted into law by Ga. L. 1981, Ex. Sess., p. 8 (Code Enactment Act).

40-10-4. Creation of Office of Highway Safety.

There is created within the executive department the Office of Highway Safety. The Office of Highway Safety is assigned to the Department of Public Safety for administrative purposes only as provided in Code Section 50-4-3. The director of the Office of Highway Safety is designated the Governor's highway safety representative and shall be appointed by the Governor and serve at his pleasure. The Office of Highway Safety is charged and empowered to carry out the responsibilities established by the National Highway Safety Act of 1966. (Ga. L. 1972, p. 1015, § 1605; Ga. L. 1973, p. 466, § 1.)

40-10-5. Duties of director.

The director shall advise with and assist the Governor in the formulation, coordination, and supervision of comprehensive state and local highway safety programs to reduce traffic accidents, deaths, injuries, and property damage within this state. The director, acting under the direction and supervision of the Governor, shall also advise with and assist the various departments and agencies of state government concerned with highway safety programs. He shall coordinate and review, cooperatively, the programs developed by the various local political subdivisions, for the purpose of assisting them in the preparation of their highway safety programs to ensure that they meet the criteria established for such programs by the appropriate state and federal authorities. (Ga. L. 1967, p. 708, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 19, 23, 25. 38 Am. Jur. 2d, Governor, § 5 et seq.

ALR. — Duty as regards barriers for protection of automobile travel, 173 A.L.R. 626.

Highways: governmental duty to provide curve warnings or markings, 57 A.L.R.4th 342.

40-10-6. Office space; staff, supplies, and materials.

The Governor is authorized to provide and designate for the use of the director such space as shall be necessary to quarter the director and his staff. The director is authorized to employ and secure the necessary staff, supplies, and materials to carry out this chapter, subject to the approval of the Governor. (Ga. L. 1967, p. 708, § 4.)

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, § 1.

40-10-7. Specific authority and duties of Governor.

Notwithstanding the provisions of Code Section 50-5-143, the Governor is authorized and granted the power to contract and to exercise any other powers which may be necessary in order to ensure that all departments of the state government and local political subdivisions participate to the fullest extent possible in the benefits available under the National Highway Safety Act of 1966 and similar federal programs of highway safety. The Governor shall formulate standards for highway safety programs for political subdivisions to assure that they meet the criteria of the National Highway Safety Agency and shall institute a reporting system for the local political subdivisions to report the status of their programs to the state. (Ga. L. 1967, p. 708, § 5; Ga. L. 2008, p. 589, § 2/HB 969.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 17, 18, 184 et seq. 38 Am. Jur. 2d, Governor, § 1.

40-10-8. Cooperation with other agencies.

The Governor, acting for and in behalf of the State of Georgia, is authorized to cooperate with, and participate in, the programs of all federal, state, local, public, and private agencies and organizations in

order to effectuate the purposes of this chapter. (Ga. L. 1967, p. 708, § 6.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 15 et seq., 184 et seq.

40-10-9. Powers of local governing authorities.

The governing authorities of the various counties and municipalities are empowered to contract with the state, federal, and other local public and private agencies and organizations and exercise other necessary powers to participate to the fullest extent possible in the highway safety programs of this state, the National Highway Safety Act of 1966, and similar federal programs of highway safety. (Ga. L. 1967, p. 708, § 7; Ga. L. 1985, p. 149, § 40.)

OPINIONS OF THE ATTORNEY GENERAL

Contracting for ambulance service. — County may contract with a funeral director for the operation of an ambulance service, and the county is authorized to fix charges and fees for such a service, but this duty may be delegated to the operator of the ambulance service because mere collection would be a ministerial act involving little judgment or discretion. 1973 Op. Att'y Gen. No. 73-10.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 15, 16, 20.

40-10-10. Acceptance and administration of funds.

The Governor is designated the appropriate state official to accept and administer any funds which shall be made available to the State of Georgia and its various political subdivisions for the purpose of carrying out a comprehensive highway safety program. (Ga. L. 1967, p. 708, § 8.)

CHAPTER 11

ABANDONED, DERELICT, AND CIVIL FORFEITURE OF MOTOR VEHICLES

Article 1

Abandoned and Derelict Vehicles

Sec.
40-11-1. Definitions.
40-11-2. Duty of person removing or storing motor vehicle.
40-11-3. Removal of vehicles from public property by peace officer; notification requirements.
40-11-3.1. Unattended vehicle checks.
40-11-3.2. Limited prohibition on towing vehicles within paid parking facility located within 500 feet of an establishment serving alcohol.
40-11-4. Creation of lien; courts authorized to foreclose lien.
40-11-5. Lien foreclosure procedure.
40-11-6. Sale of vehicle pursuant to foreclosure.
40-11-7. How purchaser at foreclosure sale may obtain certificate of title.
40-11-8. Disposition of proceeds of foreclosure sale.
40-11-9. Derelict motor vehicles; determination of status; disposition; violations and penalties.
40-11-10. Disposition of certain contents of abandoned vehicles.

Article 2

Civil Forfeiture of Vehicles and Components

40-11-20. Items subject to civil forfeiture.
40-11-21. Assignment of new identification numbers prior to disposition of property.
40-11-22 through 40-11-24. [Repealed].

Cross references. — Power of counties and municipalities to provide by ordinance for removal and disposal of discarded, dismantled, or junked motor vehicles or motor vehicle parts, § 36-60-4. Disposition of unclaimed property generally, § 44-12-190 et seq.

ARTICLE 1

ABANDONED AND DERELICT VEHICLES

40-11-1. Definitions.

As used in this article, the term:

(1) "Abandoned motor vehicle" means a motor vehicle or trailer:

(A) Which has been left by the owner or some person acting for the owner with an automobile dealer, repairman, or wrecker service for repair or for some other reason and has not been called for by such owner or other person within a period of 30 days after the time agreed upon; or within 30 days after such vehicle is turned over to such dealer, repairman, or wrecker service when no time is agreed upon; or within 30 days after the completion of necessary repairs;

(B) Which is left unattended on a public street, road, or highway or other public property for a period of at least five days and when it reasonably appears to a law enforcement officer that the individual who left such motor vehicle unattended does not intend to return and remove such motor vehicle. However, on the state highway system, any law enforcement officer may authorize the immediate removal of vehicles posing a threat to public health or safety or to mitigate congestion;

(C) Which has been lawfully towed onto the property of another at the request of a law enforcement officer and left there for a period of not less than 30 days without anyone having paid all reasonable current charges for such towing and storage;

(D) Which has been lawfully towed onto the property of another at the request of a property owner on whose property the vehicle was abandoned and left there for a period of not less than 30 days without anyone having paid all reasonable current charges for such towing and storage; or

(E) Which has been left unattended on private property for a period of not less than 30 days.

(2) "Motor vehicle" or "vehicle" means a motor vehicle or trailer.

(3) "Owner" or "owners" means the registered owner, the owner as recorded on the title, lessor, lessee, security interest holders, and all lienholders as shown on the records of the Department of Revenue or the records from the vehicle's state of registration. (Ga. L. 1972, p. 342, § 1; Ga. L. 1977, p. 253, § 1; Ga. L. 1980, p. 995, § 1; Ga. L. 1981, p. 469, § 1; Ga. L. 1984, p. 548, § 1; Ga. L. 1985, p. 1265, § 1; Ga. L. 1993, p. 370, § 3; Ga. L. 2000, p. 951, § 7-1; Ga. L. 2002, p. 415, § 40; Ga. L. 2002, p. 563, § 1; Ga. L. 2005, p. 334, § 21-1/HB 501; Ga. L. 2011, p. 752, § 40/HB 142; Ga. L. 2011, p. 777, § 1/HB 114.)

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 266 (2002).

JUDICIAL DECISIONS

Mobile home. — Abandoned Motor Vehicle Act, O.C.G.A. § 40-11-1 et seq., did not apply in an action for a writ of possession of a mobile home brought by a creditor against a towing service since the mobile home was not "abandoned" as outlined by O.C.G.A. § 40-11-1. Coweta County Impound & Storage, Inc. v. Security Pacific Fin. Servs., 216 Ga. App. 664, 455 S.E.2d 370 (1995).

Failure to provide notice. — Because an operator of a towing service provided no written notification to a lienholder as required by O.C.G.A. § 40-11-1 et seq., the operator forfeited any fees that the statute may have provided for towing and

storing. Purser Truck Sales, Inc. v. Horton, 276 Ga. App. 17, 622 S.E.2d 405 (2005).

Notice not given for vehicle left at repair shop. — Trial court erred by conditioning a finance company's writ of possession upon the payment of a repair company's storage fees because the repair company failed to provide the notice required by the Abandoned Motor Vehicle Act, O.C.G.A. § 40-11-2(f); thus, it was prevented from recovery of any storage fees. Further, the trial court erred by finding that the vehicle had not been abandoned since neither the finance company nor the title owner of the vehicle had called for the vehicle within 30 days after the vehicle was left with the repair company. Transworld Fin. Corp. v. Coastal Tire & Container Repair, LLC, 298 Ga. App. 286, 680 S.E.2d 143 (2009).

Cited in Miller v. Self, 137 Ga. App. 717, 224 S.E.2d 823 (1976); Shaw v. Wheat St. Baptist Church, 141 Ga. App. 883, 234 S.E.2d 711 (1977); Atlanta Truck Serv., Inc. v. Associates Com. Corp., 146 Ga. App. 170, 246 S.E.2d 2 (1978); Walker v. Crane, 243 Ga. App. 838, 534 S.E.2d 520 (2000).

RESEARCH REFERENCES

Am. Jur. 2d. — 1 Am. Jur. 2d, Abandoned, Lost, and Unclaimed Property, §§ 3, 4. 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 1, 2, 9.

40-11-2. Duty of person removing or storing motor vehicle.

(a) Any person who removes a motor vehicle from public property at the request of a law enforcement officer or stores such vehicle shall, if the owner of the vehicle or some person acting for the owner is not present, seek the identity of and address of all known owners of such vehicle from the law enforcement officer requesting removal of such, from such officer's agency, from a local law enforcement agency for the jurisdiction in which the remover's or storer's place of business is located, or from the State of Georgia by direct electronic access as provided through its agencies and authorities within three business days of removal. The local law enforcement agency shall furnish such information to the person removing such vehicle within three business days after receipt of such request.

(b) Any person who removes a motor vehicle from private property at the request of the property owner or stores such vehicle shall, if the owner of the vehicle or some person acting for the owner is not present, notify in writing a local law enforcement agency of the location of the vehicle, the manufacturer's vehicle identification number, license number, model, year, and make of the vehicle within three business days of the removal of such vehicle and shall seek from the local law enforcement agency or from the State of Georgia by direct electronic access as provided through its agencies and authorities the identity and address of all known owners of such vehicle and any information indicating that such vehicle is a stolen motor vehicle. The local law enforcement agency shall furnish such information to the person removing such vehicle within three business days after receipt of such request.

(c) If any motor vehicle removed under conditions set forth in subsection (a) or (b) of this Code section is determined to be a stolen motor vehicle, the local law enforcement officer or agency shall notify the Georgia Crime Information Center of the location of such motor vehicle within 72 hours after receiving notice that such motor vehicle is a stolen vehicle.

(d) If any motor vehicle removed under conditions set forth in subsection (a) or (b) of this Code section is determined not to be a stolen vehicle or is not a vehicle being repaired by a repair facility or is not being stored by an insurance company providing insurance to cover damages to the vehicle, the person removing or storing such motor vehicle shall, within seven calendar days of the day such motor vehicle was removed or one business day after the information is furnished to the remover or storer pursuant to subsection (a) or (b) of this Code section, whichever is later, notify all owners, if known, by written acknowledgment signed thereby or by certified or registered mail or statutory overnight delivery, of the location of such motor vehicle, the fees connected with removal and storage of such motor vehicle, and the fact that such motor vehicle will be deemed abandoned under this chapter unless the owner, security interest holder, or lienholder redeems such motor vehicle within 30 days of the day such vehicle was removed.

(e) If none of the owners redeems such motor vehicle as described in subsection (d) of this Code section, or if a vehicle being repaired by a repair facility or being stored by an insurance company providing insurance to cover damages to the vehicle becomes abandoned, the person removing or storing such motor vehicle shall, within seven calendar days of the day such vehicle became an abandoned motor vehicle, give notice by electronic means as provided by the State of Georgia through its agencies and authorities, in writing, or by sworn statement, on the form prescribed by the state revenue commissioner, to the Department of Revenue with a research fee as fixed by rule or regulation payable to the Department of Revenue, stating the manufacturer's vehicle identification number, the license number, the fact that such vehicle is an abandoned motor vehicle, the model, year, and make of the vehicle, the date the vehicle became an abandoned motor vehicle, the date the vehicle was removed, and the present location of such vehicle and requesting the name and address of all owners of such vehicle. If the form submitted is rejected because of inaccurate or missing information, the person removing or storing the vehicle shall resubmit, within seven calendar days of the date of the rejection, a corrected notice form together with an additional research fee as fixed by rule or regulation payable to the Department of Revenue. Each subsequent corrected notice, if required, shall be submitted with an additional research fee as fixed by rule or regulation payable to the

Department of Revenue. If a person removing or storing the vehicle has knowledge of facts which reasonably indicate that the vehicle is registered or titled in a certain other state, such person shall check the motor vehicle records of that other state in the attempt to ascertain the identity of the owner of the vehicle. Research requests may be submitted and research fees made payable to the office of the tax commissioner and deposited in the general fund for the county in which the remover's or storer's place of business is located in lieu of the Department of Revenue, but in like manner, if such office processes motor vehicle records of the Department of Revenue.

(f) Upon ascertaining the owners of such motor vehicle, the person removing or storing such vehicle shall, within five calendar days, by certified or registered mail or statutory overnight delivery, notify all known owners of the vehicle of the location of such vehicle and of the fact that such vehicle is deemed abandoned and shall be disposed of if not redeemed.

(g) If the identity of the owners of such motor vehicle cannot be ascertained, the person removing or storing such vehicle shall place an advertisement in a newspaper of general circulation in the county where such vehicle was obtained or, if there is no newspaper in such county, shall post such advertisement at the county courthouse in such place where other public notices are posted. Such advertisement shall run in the newspaper once a week for two consecutive weeks or shall remain posted at the courthouse for two consecutive weeks. The advertisement shall contain a complete description of the motor vehicle, its license and manufacturer's vehicle identification numbers, the location from where such vehicle was initially removed, the present location of such vehicle, and the fact that such vehicle is deemed abandoned and shall be disposed of if not redeemed.

(h) The Department of Revenue shall provide to the Georgia Crime Information Center all relevant information from sworn statements described in subsection (e) of this Code section for a determination of whether the vehicles removed have been entered into the criminal justice information system as stolen vehicles. The results of the determination shall be provided electronically to the Department of Revenue.

(i) Any person storing a vehicle under the provisions of this Code section shall notify the Department of Revenue if the vehicle is recovered, is claimed by the owner, is determined to be stolen, or for any reason is no longer an abandoned motor vehicle. Such notice shall be provided within seven calendar days of such event.

(j) If vehicle information on the abandoned motor vehicle is not in the files of the Department of Revenue, the department may require such

other information or confirmation as it determines is necessary or appropriate to determine the identity of the vehicle.

(k) Any person who does not provide the notice and information required by this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as for a misdemeanor, shall not be entitled to any storage fees, shall not be eligible to contract with or serve on a rotation list providing wrecker services for this state or any political subdivision thereof, and shall not be licensed by any municipal authority to provide removal of improperly parked cars under Code Section 44-1-13.

(l) Any person who knowingly provides false or misleading information when providing any notice or information as required by this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as for a misdemeanor. (Ga. L. 1972, p. 342, § 2; Ga. L. 1977, p. 253, § 2; Ga. L. 1980, p. 995, § 2; Ga. L. 1981, p. 469, § 2; Ga. L. 1982, p. 3, § 40; Ga. L. 1985, p. 1265, § 2; Ga. L. 1988, p. 1750, § 1; Ga. L. 1990, p. 1657, § 6; Ga. L. 1992, p. 2978, § 10; Ga. L. 1993, p. 772, § 1; Ga. L. 1995, p. 663, § 1; Ga. L. 1996, p. 6, § 40; Ga. L. 1998, p. 1305, § 1; Ga. L. 2000, p. 951, § 7-1; Ga. L. 2000, p. 1589, § 4; Ga. L. 2002, p. 563, § 2; Ga. L. 2005, p. 334, § 21-2/HB 501; Ga. L. 2008, p. 803, § 3/HB 945.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "this chapter" was substituted for "Chapter 11 of this title" in subsection (d).

Law reviews. — For note on the 1990 amendment of this Code section, see 7 Ga. St. U.L. Rev. 329 (1990). For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 266 (2002).

JUDICIAL DECISIONS

No conversion when attempt to notify vehicle owner. — Fact that garagemen were not in strict compliance with the notice requirements of O.C.G.A. § 40-11-2 did not mandate a conclusion that garagemen's actions amounted to a conversion when the garagemen made several attempts to notify the vehicle owner formally and spoke with the owner several times over the telephone, and the owner knew the vehicle would be sold if the owner did not claim the vehicle. Gearing v. Complete Wrecker Serv., Inc., 187 Ga. App. 242, 370 S.E.2d 9 (1988).

Automobile repair shop that failed to comply with the notice requirement of O.C.G.A. § 40-11-2 could not take advantage of the provision for payment of storage costs by a lienholder in an action by a bank for possession of a vehicle following default by the debtor. First Nat'l Bank v. Alvin Worley & Sons, 221 Ga. App. 820, 472 S.E.2d 568 (1996).

Failure to comply with the notice provisions. — Because a vehicle-towing company failed to notify a car owner as required by O.C.G.A. § 40-11-2, it was liable to the owner for conversion as a matter of law when the company refuses to allow the owner to retrieve the car without the owner first paying storage and towing costs. A Tow, Inc. v. Williams, 245 Ga. App. 661, 538 S.E.2d 542 (2000).

Because an operator of a towing service provided no written notification to a lienholder as required by O.C.G.A. § 40-11-1 et seq., the operator forfeited any fees that the statute may have provided for towing

and storing. Purser Truck Sales, Inc. v. Horton, 276 Ga. App. 17, 622 S.E.2d 405 (2005).

Trial court erred by conditioning a finance company's writ of possession upon the payment of a repair company's storage fees because the repair company failed to provide the notice required by the Abandoned Motor Vehicle Act, O.C.G.A. § 40-11-2(f); thus, it was prevented from recovery of any storage fees. Further, the trial court erred by finding that the vehicle had not been abandoned since neither the finance company nor the title owner of the vehicle had called for the vehicle within 30 days after the vehicle was left with the repair company. Transworld Fin. Corp. v. Coastal Tire & Container Repair, LLC, 298 Ga. App. 286, 680 S.E.2d 143 (2009).

Notice not required when owner known. — Under the 1994 version of O.C.G.A. § 40-11-2(b), a wrecker service which pulled and stored a vehicle in the good faith belief that the owner was known was exempt from compliance with the notice requirements of that section. Walker v. Crane, 243 Ga. App. 838, 534 S.E.2d 520 (2000).

Cited in Shaw v. Wheat St. Baptist Church, 141 Ga. App. 883, 234 S.E.2d 711 (1977).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 32 et seq.

40-11-3. Removal of vehicles from public property by peace officer; notification requirements.

(a) Any peace officer who finds a motor vehicle which has been left unattended on a public street, road, or highway or other public property for a period of at least five days shall be authorized to cause such motor vehicle to be removed to a garage or other place of safety, if such peace officer reasonably believes that the person who left such motor vehicle unattended does not intend to return and remove such motor vehicle.

(b) Any law enforcement officer who finds a motor vehicle which has been left unattended on the state highway system shall be authorized to cause such motor vehicle to be removed immediately to a garage or other place of safety when such motor vehicle poses a threat to public health or safety or to mitigate congestion. Any peace officer who finds a motor vehicle which has been left unattended on a public street, road, or highway or other public property, other than the state highway system, shall be authorized immediately to cause such motor vehicle to be removed immediately to a garage or other place of safety when such motor vehicle poses a threat to public health or safety or to mitigate congestion.

(c) Any peace officer who, under this Code section, causes any motor vehicle to be removed to a garage or other place of safety shall be liable for gross negligence only.

(d)(1) Any peace officer or the law enforcement agency which causes a motor vehicle to be removed to a garage or other place of safety or which is notified of the removal of a motor vehicle from private

property shall within 72 hours from the time of removal or notice and if the owner is unknown attempt to determine vehicle ownership through official inquiries to the Department of Revenue vehicle registration and vehicle title files. These inquiries shall be made from authorized criminal justice information system network terminals.

(2) If the name and address of the last known registered owner of the motor vehicle is obtained from the Georgia Crime Information Center, the peace officer who causes the motor vehicle to be removed shall, within three calendar days, make available to the person removing such motor vehicle the name and address of the last known registered owner of such motor vehicle, the owner of the motor vehicle as recorded on the title of such vehicle, and all security interest holders or lienholders. If such information is not available, the peace officer shall, within three calendar days, notify the person removing or storing such vehicle of such fact.

(3) Law enforcement agencies shall make record entries in Georgia criminal justice information system files through authorized criminal justice information system network terminals after an unsuccessful attempt to obtain vehicle ownership information and shall remove the record entries when ownership is determined. (Ga. L. 1972, p. 342, § 3; Ga. L. 1980, p. 995, § 3; Ga. L. 1984, p. 548, § 2; Ga. L. 1988, p. 1750, § 2; Ga. L. 1990, p. 1657, § 7; Ga. L. 1993, p. 370, § 4; Ga. L. 1995, p. 663, § 2; Ga. L. 1996, p. 6, § 40; Ga. L. 1997, p. 143, § 40; Ga. L. 2000, p. 951, § 7-1; Ga. L. 2002, p. 415, § 40; Ga. L. 2005, p. 334, § 21-3/HB 501.)

Law reviews. — For note on the 1990 amendment of this Code section, see 7 Ga. St. U.L. Rev. 329 (1990).

JUDICIAL DECISIONS

Authority to tow cars limited. — Wrecker service acting under a contract with a subdivision of townhouses did not have authority to tow a car from a public street within the subdivision. Hardin v. City Wide Wrecker Serv., Inc., 232 Ga. App. 617, 502 S.E.2d 548 (1998).

Indefinite retention of vehicles not authorized. — Enforcement officers initially authorized to remove or impound a vehicle do not have a duty to retain possession indefinitely; the statutes require only the removal to a "garage or other place of safety," not necessarily into the custody of the authorities, and there is nothing about the vehicle's ultimate disposition. Strickland v. Vaughn, 221 Ga. App. 636, 472 S.E.2d 159 (1996).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 10.

ALR. — State or municipal towing, impounding, or destruction of motor vehicles parked or abandoned on streets or highways, 32 A.L.R.4th 728.

40-11-3.1. Unattended vehicle checks.

(a) It shall be the duty of any peace officer who discovers a motor vehicle which has been left unattended on a public street, road, or highway or other public property to immediately perform an unattended vehicle check on such motor vehicle, unless there is displayed on such motor vehicle an unattended vehicle check card indicating that another peace officer has already performed such an unattended vehicle check. For purposes of this Code section, an unattended vehicle check shall consist of such actions as are reasonably necessary to determine that the unattended vehicle does not contain an injured or incapacitated person and to determine that the unattended vehicle does not pose a threat to public health or safety.

(b) A peace officer completing an unattended vehicle check shall complete and attach to the vehicle an unattended vehicle check card. Unattended vehicle check cards shall be in such form, and shall be attached to vehicles in such manner, as may be specified by rule or regulation of the Department of Public Safety; and to the extent that sufficient funds are available to the department, the department may distribute such forms free of charge to law enforcement agencies in this state. Unattended vehicle check cards shall be serially numbered; shall be of a distinctive color and shape, so as to be readily visible to passing motorists; and shall contain spaces for the investigating police officer to indicate the location of the vehicle, the date and time of the completion of the unattended vehicle check, and the name of such peace officer's law enforcement agency. A detachable stub, which shall be filed with the investigating peace officer's law enforcement agency, shall bear the same serial number and shall contain the same information, together with the identity of the investigating peace officer and the license plate number and other pertinent identifying information relating to the abandoned vehicle.

(c) Nothing in the Code section shall limit the otherwise applicable authority of a peace officer to have an unattended motor vehicle removed to a garage or other place of safety.

(d) It shall be unlawful for any person other than a peace officer to attach a genuine or counterfeit unattended motor vehicle check card to a motor vehicle; and any person convicted of violating this subsection shall be guilty of a misdemeanor. (Code 1981, § 40-11-3.1, enacted by Ga. L. 1988, p. 688, § 1; Ga. L. 2000, p. 951, § 7-1.)

40-11-3.2. Limited prohibition on towing vehicles within paid parking facility located within 500 feet of an establishment serving alcohol.

(a) It shall be unlawful for the owner or operator of a paid private parking lot or paid private parking facility located within 500 feet of an

establishment which serves alcoholic beverages for consumption on the premises to remove, tow, or immobilize or cause to be removed, towed, or immobilized a motor vehicle left in such lot or facility between midnight and noon of the following day. Nothing in this Code section shall prohibit the owner of such a parking lot or facility from charging a penalty not to exceed $25.00 in excess of normal parking fees for vehicles which remain on the property during such period without authorization. No owner or operator of such a parking lot or facility shall be liable for any damages to any motor vehicle remaining on the property during such period without authorization. Nothing in this Code section shall prohibit a resident or a business owner from towing or removing or causing to be towed or removed a motor vehicle left on private property. For purposes of this subsection, the terms "paid private parking lot" and "paid private parking facility" mean private parking lots where the owner or operator of a motor vehicle pays a valuable consideration for the right to park in such parking lot or parking facility.

(b) Any person violating the provisions of subsection (a) of this Code section shall be guilty of a misdemeanor. (Code 1981, § 40-11-3.2, enacted by Ga. L. 2002, p. 563, § 3.)

Law reviews. — For note on the 2002 enactment of this Code section, see 19 Ga. St. U.L. Rev. 266 (2002).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting. — Offense arising under O.C.G.A. § 40-11-3.2 does not require fingerprinting. 2002 Op. Att'y Gen. No. 2002-7.

40-11-4. Creation of lien; courts authorized to foreclose lien.

(a) Any person who removes or stores any motor vehicle which is or becomes an abandoned motor vehicle shall have a lien on such vehicle for the reasonable fees connected with such removal or storage plus the cost of any notification or advertisement up to the date of retrieval or public sale of such vehicle. Such lien shall exist if the person moving or storing such vehicle is in compliance with Code Section 40-11-2.

(b) The lien acquired under subsection (a) of this Code section may be foreclosed in any court which is competent to hear civil cases, including, but not limited to, magistrate courts. Liens shall be foreclosed in magistrate courts only when the amount of the lien does not exceed the jurisdictional limits established by law for such courts. (Ga. L. 1972, p. 342, § 3; Ga. L. 1980, p. 995, § 4; Ga. L. 1981, p. 469, § 3; Ga. L. 1983, p. 884, § 3-28; Ga. L. 1984, p. 22, § 40; Ga. L. 1998, p. 1305, § 2; Ga. L. 2000, p. 951, § 7-1; Ga. L. 2014, p. 807, § 4/HB 753.)

JUDICIAL DECISIONS

Satisfaction of abandoned motor vehicle lien. — Holder of a security interest in an automobile was entitled to the foreclosure and possession of the vehicle, subject to satisfaction of an abandoned motor vehicle lien acquired by a towing company where the towing company had complied with O.C.G.A. § 40-11-2 and had a proper lien. Atlantic Steel Credit Union v. Shephard, 204 Ga. App. 297, 419 S.E.2d 132 (1992).

Owner's claims for vehicle which was not abandoned. — Repeated and timely claims by owner for owner's tractor made O.C.G.A. § 40-11-4 inapplicable as vehicle was not "abandoned." Mays v. Lampkin, 207 Ga. App. 737, 429 S.E.2d 113 (1993).

Failure to provide notice. — Because an operator of a towing service provided no written notification as required by O.C.G.A. § 40-11-1 et seq., the operator forfeited any fees that the statute may have provided for towing and storing. Purser Truck Sales, Inc. v. Horton, 276 Ga. App. 17, 622 S.E.2d 405 (2005).

Notice not given for vehicle left at repair shop. — Trial court erred by conditioning a finance company's writ of possession upon the payment of a repair company's storage fees because the repair company failed to provide the notice required by the Abandoned Motor Vehicle Act, O.C.G.A. § 40-11-2(f); thus, it was prevented from recovery of any storage fees. Further, the trial court erred by finding that the vehicle had not been abandoned since neither the finance company nor the title owner of the vehicle had called for the vehicle within 30 days after the vehicle was left with the repair company. Transworld Fin. Corp. v. Coastal Tire & Container Repair, LLC, 298 Ga. App. 286, 680 S.E.2d 143 (2009).

Cited in Gearing v. Complete Wrecker Serv., Inc., 187 Ga. App. 242, 370 S.E.2d 9 (1988); A Tow, Inc. v. Williams, 245 Ga. App. 661, 538 S.E.2d 542 (2000).

40-11-5. Lien foreclosure procedure.

All liens acquired under Code Section 40-11-4 shall be foreclosed as follows:

(1) Any proceeding to foreclose a lien on an abandoned motor vehicle must be instituted within one year from the time the lien is recorded or is asserted by retention;

(2) The person desiring to foreclose a lien on an abandoned motor vehicle shall, by certified or registered mail or statutory overnight delivery, make a demand upon the owners for the payment of the reasonable fees for removal and storage plus the costs of any notification or advertisement up to the date of retrieval or public sale of such vehicle. Such written demand shall include an itemized statement of all charges and may be made concurrent with the notice required by subsection (f) of Code Section 40-11-2. Such demand shall be made on a form prescribed by rule or regulation of the Department of Revenue and shall notify the owner of his or her right to a judicial hearing to determine the validity of the lien. The demand shall further state that failure to return the written demand to the lien claimant, file with a court of competent jurisdiction a petition for a judicial hearing, and provide the lien claimant with a copy of such petition, all within ten days of delivery of the lien claimant's written

demand, shall effect a waiver of the owner's right to such a hearing prior to sale. The form shall also provide the suspected owner with the option of disclaiming any ownership of the vehicle, and his or her affidavit to that effect shall control over anything contrary in the records of the Department of Revenue. No such written demand shall be required if the identity of the owner cannot be ascertained and the notice requirements of subsection (g) of Code Section 40-11-2 have been complied with;

(3)(A) If, within ten days of delivery to the appropriate address of the written demand required by paragraph (2) of this Code section, the owner of the abandoned motor vehicle fails to pay or file with the court a petition for a judicial hearing with a copy to the lien claimant in accordance with the notice provided pursuant to paragraph (2) of this Code section, or if the owner of the abandoned motor vehicle cannot be ascertained, the person removing or storing the abandoned motor vehicle may foreclose such lien. The person asserting such lien may move to foreclose by making an affidavit to a court of competent jurisdiction, on a form prescribed by rule or regulation of the Department of Revenue, showing all facts necessary to constitute such lien and the amount claimed to be due. Such affidavit shall aver that the notice requirements of Code Section 40-11-2 have been complied with, and such affidavit shall also aver that a demand for payment in accordance with paragraph (2) of this Code section has been made without satisfaction or without a timely filing of a petition for a judicial hearing or that the identity of the owner cannot be ascertained. The person foreclosing shall verify the statement by oath or affirmation and shall affix his or her signature thereto.

(B) Regardless of the court in which the affidavit required by this paragraph is filed, the fee for filing such affidavit shall only be $10.00 per motor vehicle upon which a lien is asserted. Notwithstanding any law to the contrary, the affidavit filing fee shall not be taxed nor shall any additional fee or surcharge be assessed for such filing.

(4) If no timely petition for a hearing has been filed with a court of competent jurisdiction, then, upon such affidavit's being filed by the lien claimant pursuant to paragraph (3) of this Code section, the lien will conclusively be deemed a valid one and foreclosure thereof allowed;

(5) If a petition for a hearing is filed with a court of competent jurisdiction within ten days after delivery of the lien claimant's demand, a copy of which demand shall be attached to the petition, the court shall set such a hearing within ten days of filing of the petition;

(6) Upon the filing of such petition by an owner, neither the lien claimant nor the court may sell the motor vehicle, although posses-

sion of the motor vehicle may be retained by the lien claimant or obtained by the court in accordance with the order of the court which sets the date for the hearing;

(7) If, after a full hearing, the court finds that a valid debt exists, then the court shall authorize foreclosure upon and sale of the motor vehicle subject to the lien to satisfy the debt if such debt is not otherwise immediately paid;

(8) If the court finds the actions of the person asserting the lien in retaining possession of the motor vehicle were not taken in good faith, then the court, in its discretion, may award damages to the owner, any party which has been deprived of the rightful use of the vehicle, or the lessee due to the deprivation of the use of the motor vehicle; and

(9) If an affidavit meeting the requirements of paragraph (3) of this Code section is filed and no petition for a hearing is timely filed, or if, after a full hearing, the court determines that a valid debt exists, the court shall issue an order authorizing the sale of such motor vehicle. However, the holder of a security interest in or a lien on the vehicle, other than the holder of a lien created by Code Section 40-11-4, shall have the right, in the order of priority of such security interest or lien, to pay the debt and court costs. If the holder of a security interest or lien does so pay the debt and court costs, he or she shall have the right to possession of the vehicle, and his or her security interest in or lien on such vehicle shall be increased by the amount so paid. A court order shall be issued to this effect, and in this instance there shall not be a sale of the vehicle. (Ga. L. 1980, p. 995, § 5; Ga. L. 1982, p. 1650, §§ 1, 2; Ga. L. 1983, p. 3, § 29; Ga. L. 1984, p. 22, § 40; Ga. L. 1985, p. 1265, § 3; Ga. L. 1988, p. 1750, § 3; Ga. L. 1998, p. 1305, § 3; Ga. L. 2000, p. 951, § 7-1; Ga. L. 2000, p. 1589, §§ 3, 4; Ga. L. 2002, p. 563, § 4; Ga. L. 2005, p. 334, § 21-4/HB 501; Ga. L. 2011, p. 777, § 2/HB 114; Ga. L. 2014, p. 807, § 5/HB 753.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, "Code section" was substituted for "subsection" twice in subparagraph (3)(A), in paragraph (4), and in paragraph (9).

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 266 (2002).

JUDICIAL DECISIONS

Failure to comply strictly with notice provisions. — Notice issued by a towing company did not include an itemized list of the charges underlying the lien and neglected to notify the recipient that the failure to petition for a judicial hearing would waive the recipient's right to a hearing before the public sale; thus, absent strict compliance with the notice provisions of O.C.G.A. § 40-11-5(2), a valid lien upon the vehicle had not been created upon which to foreclose. Accordingly, in a conversion action, the towing company owner was properly ordered to return the

vehicle to the owner. Horner v. Robinson, 299 Ga. App. 327, 682 S.E.2d 578 (2009).

Violation of automatic stay. — Court denied motion to dismiss creditor's complaint seeking an order that a towing company's statutory lien be set aside under 11 U.S.C. § 545(2) as the company violated the automatic stay, 11 U.S.C. § 362(a)(4), when the company impounded a debtor's truck and took steps to obtain a statutory lien and to have the truck declared legally abandoned under O.C.G.A. § 40-11-5 as the bankruptcy court had subject matter jurisdiction over causes of action relating to the enforcement of the automatic stay and the avoidance of a statutory lien, which were both created and determined by Title 11. The matter was related to bankruptcy, as it was certainly conceivable that the outcome of this proceeding could have an effect on the debtor's bankruptcy case because if the creditor prevailed, the creditor would sell the truck, and any proceeds from the sale in excess of the creditor's claim would be returned to the estate. Mercedes-Benz Fin. Servs. of Am., LLC v. Corner Lot, Inc. (In re Lyons), 489 B.R. 270 (Bankr. N.D. Ga. 2013).

Cited in Atlanta Truck Serv., Inc. v. Associates Com. Corp., 146 Ga. App. 170, 246 S.E.2d 2 (1978); Gearing v. Complete Wrecker Serv., Inc., 187 Ga. App. 242, 370 S.E.2d 9 (1988); Mitsubishi Motors Credit of Am., Inc. v. Robinson & Stephens, Inc., 263 Ga. App. 168, 587 S.E.2d 146 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Affidavit filing fee in foreclosure of lien on abandoned motor vehicle. — Magistrate court should collect only a $5.00 fee per vehicle upon the filing of an affidavit in support of the foreclosure of a lien on any abandoned motor vehicle pursuant to subparagraph (3)(B) of O.C.G.A. § 40-11-5; the $20.00 filing fee for civil actions in magistrate court should not be collected until the filing of a petition for probable cause hearing pursuant to paragraph (5) of O.C.G.A. § 40-11-5. 1989 Op. Att'y Gen. U89-13.

RESEARCH REFERENCES

Am. Jur. 2d. — 1 Am. Jur. 2d, Abandoned, Lost, and Unclaimed Property, § 48.

40-11-6. Sale of vehicle pursuant to foreclosure.

(a)(1) As used in this subsection, the term "public sale" means a sale:

(A) Held at a place reasonably available to persons who might desire to attend and submit bids;

(B) At which those attending shall be given the opportunity to bid on a competitive basis;

(C) At which the sale, if made, shall be made to the highest and best bidder; and

(D) Except as otherwise provided in Title 11 for advertising or dispensing with the advertising of public sales, of which notice is given by advertisement once a week for two weeks in the newspaper in which the sheriff's advertisements are published in the county where the sale is to be held, and which notice shall state the

day and hour, between 9:00 A.M. and 5:00 P.M., and the place of sale and shall briefly identify the goods to be sold.

(2) Upon order of the court, the person holding the lien on the abandoned motor vehicle shall be authorized to sell such motor vehicle at public sale.

(b) After satisfaction of the lien, the person selling such motor vehicle shall, not later than 30 days after the date of such sale, provide the clerk of the court with a copy of the bill of sale as provided to the purchaser and turn the remaining proceeds of such sale, if any, over to the clerk of the court. Any person who fails to comply with the requirements of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as for a misdemeanor. (Ga. L. 1980, p. 995, § 6; Ga. L. 1998, p. 1305, § 4; Ga. L. 2000, p. 951, § 7-1; Ga. L. 2015, p. 996, § 3C-5/SB 65.)

The 2015 amendment, effective January 1, 2016, redesignated the previously existing provisions of subsection (a) as paragraph (a)(2); added paragraph (a)(1); and, in paragraph (a)(2), deleted ", as defined by Code Section 11-1-201" at the end.

Editor's notes. — Ga. L. 2015, p. 996, § 1-1/SB 65, not codified by the General Assembly, provides that: "(a) This Act shall be known and may be cited as the 'Debtor-Creditor Uniform Law Modernization Act of 2015.'

"(b) To promote consistency among the states, it is the intent of the General Assembly to modernize certain existing uniform laws promulgated by the Uniform Law Commission affecting debtor and creditor rights, responsibilities, and relationships and other federally recognized laws affecting such rights, responsibilities, and relationships."

40-11-7. How purchaser at foreclosure sale may obtain certificate of title.

The purchaser at a sale as authorized in this article shall receive a certified copy of the court order authorizing such sale. Any such purchaser may obtain a certificate of title to such motor vehicle by filing the required application, paying the required fees, and filing a certified copy of the order of the court with the Department of Revenue. The Department of Revenue shall then issue a certificate of title, which shall be free and clear of all liens and encumbrances. (Ga. L. 1972, p. 342, § 4; Ga. L. 1975, p. 913, § 1; Ga. L. 1977, p. 253, § 3; Ga. L. 1980, p. 995, § 7; Ga. L. 2000, p. 951, § 7-1; Ga. L. 2005, p. 334, § 21-5/HB 501.)

40-11-8. Disposition of proceeds of foreclosure sale.

The clerk of the court shall retain the remaining balance of the proceeds of a sale under Code Section 40-11-6, after satisfaction of liens, security interests, and debts, for a period of 12 months; and, if no claim has been filed against such proceeds by the owner of the abandoned

motor vehicle or any interested party, then he or she shall pay such remaining balance as follows:

(1) If the abandoned motor vehicle came into the possession of the person creating the lien other than at the request of a peace officer, the proceeds of the sale shall be divided equally and paid into the general fund of the county in which the sale was made, into the general fund of the municipality, if any, in which the sale was made, and to the person who placed the lien on the motor vehicle which resulted in foreclosure;

(2) If the abandoned motor vehicle came into the possession of the person creating the lien at the request of a police officer of a municipality, the proceeds of the sale shall be divided equally and paid into the general fund of the municipality and to the person who placed the lien on the motor vehicle which resulted in foreclosure;

(3) If the abandoned motor vehicle came into the possession of the person creating the lien at the request of a county sheriff, deputy sheriff, or county police officer, the proceeds of the sale shall be divided equally and paid into the general fund of the county in which the sale was made and to the person who placed the lien on the motor vehicle which resulted in foreclosure; or

(4) If the abandoned motor vehicle came into the possession of the person creating the lien at the request of a member of the Georgia State Patrol or other employee of the State of Georgia, the proceeds of the sale shall be divided equally and paid into the general fund of the county in which the sale was made and to the person who placed the lien on the motor vehicle which resulted in foreclosure. (Ga. L. 1972, p. 342, § 8; Ga. L. 1977, p. 253, § 5; Ga. L. 1980, p. 995, § 8; Ga. L. 2000, p. 951, § 7-1; Ga. L. 2014, p. 807, § 6/HB 753.)

40-11-9. Derelict motor vehicles; determination of status; disposition; violations and penalties.

(a) If a motor vehicle has been left unattended on private property for not less than two days or on public property for not less than three days without the owner or driver making any attempt to recover such vehicle or to leave a conspicuously placed note that such owner or driver intends to return for such vehicle; or, if a conspicuous note was left, if the motor vehicle has been left unattended for not less than five days and if because of damage, vandalism, theft, or fire the vehicle is damaged to the extent that its restoration to an operable condition would require the replacement of one or more major component parts or involves any structural damage that would affect the safety of the vehicle; or if there is evidence that the vehicle was inoperable due to major mechanical breakdown at the time it was left on the property,

such as the engine, transmission, or wheels missing, no coolant in the cooling system, no oil in the engine, or burned fluid in the transmission; or if the vehicle is seven or more years old; or if the vehicle is not currently tagged or is not verifiable by the state as to who is the current owner or lienholder of the vehicle; or if the vehicle has been abandoned to a wrecker service by an insurance company and the owner following the insurance company's making a total loss payment, then any person removing such vehicle shall within 72 hours of removing such vehicle obtain the identity of and address of the last known registered owner of the vehicle, the owner of the vehicle as recorded on the certificate of title of such vehicle, and any security interest holder or lienholder on such vehicle from the local law enforcement agency of the jurisdiction in which the vehicle was located. If the law enforcement agency shows no information on the vehicle, then a request for such information shall be sent to the Department of Revenue. Within 72 hours after obtaining such information, the person removing such vehicle shall, by certified mail or statutory overnight delivery, return receipt requested, notify the registered owner, title owner, and security interest holder or lienholder of the vehicle that such vehicle will be declared a derelict vehicle and the title to such vehicle will be canceled by the Department of Revenue if such person or persons fail to respond within ten days of receipt of such notice. The state revenue commissioner shall prescribe the form and content of such notice. If the registered owner, title owner, or security interest holder or lienholder fails to respond within 30 days from the date of such notice by certified mail or statutory overnight delivery, and if the vehicle is appraised as having a total value of less than $300.00, the vehicle shall be considered to be a derelict vehicle. The value of the vehicle shall be determined as 50 percent of the wholesale value of a similar car in the rough section of the *National Auto Research Black Book, Georgia Edition*, or if a similar vehicle is not listed in such book or, regardless of the model year or book value of the vehicle, if the vehicle is completely destroyed by fire, flood, or vandalism or is otherwise damaged to the extent that restoration of the vehicle to a safe operable condition would require replacement of more than 50 percent of its major component parts, the person shall obtain an appraisal of the motor vehicle from the local law enforcement agency's auto theft section with jurisdiction in the county or municipality where such vehicle is located. Any person removing a vehicle shall complete a form, to be provided by the Department of Revenue, indicating that the vehicle meets at least four of the above-stated eight conditions for being a derelict vehicle and shall file such form with the Department of Revenue and the law enforcement agency with jurisdiction from which such vehicle was removed.

(b) Upon determination that a vehicle is a derelict motor vehicle as provided in subsection (a) of this Code section, it may be disposed of by

sale to a person who scraps, dismantles, or demolishes motor vehicles, provided that such vehicle may be sold for scrap or parts only and shall in no event be rebuilt or sold to the general public. Any person disposing of a derelict motor vehicle shall, prior to disposing of such vehicle, photograph such vehicle and retain with such photograph the appraisal required in subsection (a) of this Code section and the notice to the Department of Revenue required in this subsection for a period of three years after its disposition. Such person shall also notify the Department of Revenue of the disposition of such vehicle in such manner as may be prescribed by the state revenue commissioner. The Department of Revenue shall cancel the certificate of title for such vehicle and shall not issue a rebuilt or salvage title for such vehicle.

(c) For purposes of this Code section, the term "derelict vehicle" shall not include a vehicle which does not bear a manufacturer's vehicle identification number plate or a vehicle identification number plate assigned by a state jurisdiction.

(d) Any person who abandons a derelict motor vehicle on public or private property shall be guilty of a misdemeanor and upon conviction shall be fined not more than $500.00 and shall pay all costs of having such derelict motor vehicle removed, stored, and sold as provided for in this Code section. Notwithstanding any other provision of law to the contrary, such fines shall be disposed as follows:

(1) If the abandoned motor vehicle was removed other than at the request of a peace officer, the moneys arising from the fine shall be divided equally and paid into the general fund of the county in which the offense was committed and into the general fund of the municipality, if any, in which the offense was committed;

(2) If the abandoned motor vehicle was removed at the request of a police officer of a municipality, the moneys arising from the fine shall be paid into the general fund of the municipality;

(3) If the abandoned motor vehicle was removed at the request of a county sheriff, deputy sheriff, or county police officer, the moneys arising from the fine shall be paid into the general fund of the county in which the offense was committed; and

(4) If the abandoned motor vehicle was removed at the request of a member of the Georgia State Patrol or other employee of the State of Georgia, the moneys arising from the fine shall be paid into the general fund of the county in which the offense was committed.

(e) Any person removing a derelict motor vehicle who fails to comply with the requirements of this Code section or who knowingly provides false or misleading information when providing any notice or information required by this Code section shall be guilty of a misdemeanor.

(f) Neither the State of Georgia nor any state agency nor the person removing, storing, and processing the vehicle unless recklessly or grossly negligent shall be liable to the owner of a vehicle declared to be a derelict motor vehicle pursuant to this Code section or an abandoned motor vehicle. (Code 1981, § 40-11-9, enacted by Ga. L. 1993, p. 772, § 2; Ga. L. 1994, p. 97, § 40; Ga. L. 1998, p. 1305, § 5; Ga. L. 2000, p. 951, § 7-1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2005, p. 334, § 21-6/HB 501.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, "fail to respond" was substituted for "fails to respond" in the third sentence in subsection (a) and "manufacturer's vehicle" was substituted for "manufactured vehicle" in subsection (c).

40-11-10. Disposition of certain contents of abandoned vehicles.

(a) As used in this Code section, the term "contents" means only the following:

(1) Prescription drugs or eyewear;

(2) Personal documents, including, but not limited to, birth records, passports, or death records;

(3) Firearms;

(4) Medical devices;

(5) Child safety restraining devices; or

(6) Keys, except the keys to the abandoned motor vehicle.

(b) Any person who stores an abandoned motor vehicle pursuant to the provisions of this article shall allow the owner of such vehicle to retrieve the contents from such vehicle, and the owner of a motor vehicle shall be allowed to retrieve contents and any other item from such vehicle if such retrieval occurs within the first 30 days that such vehicle is stored.

(c) Prior to the sale or other final disposition of an abandoned motor vehicle, if the person who stores such vehicle locates contents, as defined in paragraphs (1) through (3) of subsection (a) of this Code section, in such vehicle, such person shall surrender such contents to the nearest law enforcement agency. (Code 1981, § 40-11-10, enacted by Ga. L. 2011, p. 777, § 3/HB 114.)

ARTICLE 2

CIVIL FORFEITURE OF VEHICLES AND COMPONENTS

Editor's notes. — The former Article 2, concerning Disposition of Abandoned Vehicles by Wrecking Companies, was repealed by Ga. L. 1981, p. 469, § 4, effective July 1, 1981.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 397.

40-11-20. Items subject to civil forfeiture.

The following items are declared to be contraband and are subject to forfeiture in accordance with the procedures set forth in Chapter 16 of Title 9:

(1) Any motor vehicle the manufacturer's vehicle identification number of which has been removed, altered, defaced, falsified, or destroyed; and

(2) Any component part of a motor vehicle the manufacturer's identification number of which has been removed, altered, defaced, falsified, or destroyed. (Code 1981, § 40-11-20, enacted by Ga. L. 1988, p. 1948, § 1; Ga. L. 2000, p. 951, § 7-1; Ga. L. 2015, p. 693, § 3-25/HB 233.)

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

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

RESEARCH REFERENCES

ALR. — Criminal liability, under state law, concerning illegal removal or alteration of vehicle identification number, including sale or possession of altered motor vehicles or parts, 107 A.L.R.5th 567.

40-11-21. Assignment of new identification numbers prior to disposition of property.

Prior to the property's being sold or returned to the owner or otherwise disposed of, the Department of Revenue shall assign it a new identification number. If the property is to be returned to the owner, the court shall order that such return is conditioned on the owner paying the expenses relating to the civil forfeiture, including the expenses of maintenance of custody, advertising, and court costs. (Code 1981,

§ 40-11-24, enacted by Ga. L. 1988, p. 1948, § 1; Ga. L. 2000, p. 951, § 7-1; Ga. L. 2005, p. 334, § 21-7/HB 501; Code 1981, § 40-11-21, as redesignated by Ga. L. 2015, p. 693, § 3-25/HB 233.)

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

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

40-11-22 through 40-11-24.

Repealed by Ga. L. 2015, p. 693, § 3-25/HB 233, effective July 1, 2015.

Editor's notes. — These Code sections were based on Code 1981, §§ 40-11-22, 40-11-23, enacted by Ga. L. 1988, p. 1948, § 1; Ga. L. 2000, p. 951, § 7-1.

Ga. L. 2015, p. 693, § 3-25/HB 233, effective July 1, 2015, renumbered former Code Section 40-11-24 as present Code Section 40-11-21.

Law reviews. — For article on the 2015 repeal of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

CHAPTER 12

ACTIONS AGAINST NONRESIDENT MOTORISTS

Sec.
40-12-1. Appointment of Secretary of State as agent for service of process on nonresidents; nonresident minor.
40-12-2. How service on nonresident made.
40-12-3. Venue of actions against nonresidents; nonresident joint defendant.
40-12-4. Records to be kept by Secretary of State.
40-12-5. Certificate of service to be sent to clerk of court; time for answering complaint.
40-12-6. Continuances.
40-12-7. Designation of employees to perform functions of Secretary of State.
40-12-8. Service upon personal representative.

Law reviews. — For article surveying trial practice and procedure, see 34 Mercer L. Rev. 299 (1982). For annual survey article on trial practice and procedure, see 50 Mercer L. Rev. 359 (1998).

For note discussing constitutional restrictions on the exercise of personal jurisdiction, see 11 Ga. L. Rev. 149 (1976).

For comment criticizing Young v. Morrison, 220 Ga. 127, 137 S.E.2d 456 (1964), finding unconstitutional the 1957 amendment to the Nonresident Motorists' Act (Ga. L. 1957, p. 649), authorizing suit against nonstate resident who when cause of action arose was a state resident, see 16 Mercer L. Rev. 360 (1964). For comment, "Jurisdiction over Nonresidents in Georgia: Crowder v. Ginn," see 17 Ga. L. Rev. 201 (1982).

JUDICIAL DECISIONS

Purpose of the Georgia Nonresident Motorist Act is to subject a nonresident to the jurisdiction of Georgia courts on the theory that by using Georgia highways the nonresident consents to be sued in Georgia on causes of action arising from an alleged tort liability incurred by the nonresident's use of the highways. Aldrich v. Johns, 93 Ga. App. 787, 92 S.E.2d 804 (1956).

Both the original act and the amendment enacted by Ga. L. 1957, pp. 649, 650, were intended to give a plaintiff user of the highways of Georgia a county of venue within the state, where the collision occurred therein and where otherwise the plaintiff would be forced into the courts of another state to protect the plaintiff's rights. Tomlinson v. Sadler, 99 Ga. App. 482, 109 S.E.2d 84 (1959).

Main and controlling purpose of the Georgia Nonresident Motorist Act was to provide a ready and efficient remedy in this state for injuries occasioned by the negligent operation of motor vehicles upon the highways of this state by nonresidents who are merely passing through or have no fixed residence or place of business here where they may be readily found and sued, and thus to relieve the persons claiming to have been damaged from the necessity of pursuing the nonresidents into some other state for the purpose of obtaining redress. Hirsch v. Shepherd Lumber Corp., 194 Ga. 113, 20 S.E.2d 575, answer conformed to, 67 Ga. App. 474, 21 S.E.2d 110 (1942); Cheeley v. Fujino, 131 Ga. App. 41, 205 S.E.2d 83 (1974).

Construction of chapter. — Nothing less than the strict requirements of this statute, which is in derogation of common law, will suffice in the absence of a show-

ing of evasion by the nonresident. Stone v. Sinkfield, 70 Ga. App. 787, 29 S.E.2d 310 (1944).

Georgia Nonresident Motorist Act is in derogation of common law and must be strictly construed. Furthermore, if the statute is at all ambiguous or doubtful in meaning, the statute must receive a constitutional construction if possible. Aldrich v. Johns, 93 Ga. App. 787, 92 S.E.2d 804 (1956).

Georgia Nonresident Motorist Act, being in derogation of common law, must be strictly construed. Tomlinson v. Sadler, 99 Ga. App. 482, 109 S.E.2d 84 (1959); Foster v. Lankford, 120 Ga. App. 573, 171 S.E.2d 662 (1969); Hanft v. Allbright, 132 Ga. App. 263, 208 S.E.2d 20 (1974); Rogers v. Hagen, 445 F. Supp. 361 (N.D. Ga. 1978).

While the provisions of the Georgia Non-Resident Motorist Act, O.C.G.A. § 40-12-1 et seq., are strictly construed when service of process is attempted pursuant to that Act, this rule of strict construction does not apply when jurisdiction is obtained under the Georgia Long Arm Statute, O.C.G.A. § 9-10-94. King v. Barrios, 257 Ga. App. 538, 571 S.E.2d 531 (2002).

Application of chapter to nonresidents. — Georgia Nonresident Motorist Act applies to all nonresident defendants in tort actions resulting from the use of the highways of this state. Cheeley v. Fujino, 131 Ga. App. 41, 205 S.E.2d 83 (1974).

Georgia Nonresident Motorist Act applies only to those persons who were in fact nonresidents at the time they were exercising the rights and privileges referred to in O.C.G.A. § 40-12-1. Bailey v. Hall, 199 Ga. App. 602, 405 S.E.2d 579 (1991).

Defendant's residence at the time the cause of action arises, not defendant's residence when the suit is filed or process is served, governs the defendant's amenability to service of a suit under the Georgia Nonresident Motorist Act, O.C.G.A. § 40-12-1 et seq. Brown v. Meyer, 222 Ga. App. 133, 473 S.E.2d 521 (1996).

Service on residents precluded. — Georgia Nonresident Motorist Act was intended to apply to nonresident defendants only, and not to permit a suit to be filed against a resident defendant and a nonresident defendant in a county other than that of the resident defendant. Lowe v. Roberts, 59 Ga. App. 890, 2 S.E.2d 748 (1939).

Georgia Nonresident Motorist Act is a jurisdictional statute and specifically authorizes service upon nonresidents, which by necessary implication precludes service under the statute's terms on one who is a resident of this state. Davis v. Holt, 105 Ga. App. 125, 123 S.E.2d 686 (1961).

When one resides in this state, one is not subject to service under the Georgia Nonresident Motorist Act, even though one may be a resident of another state also. Davis v. Holt, 105 Ga. App. 125, 123 S.E.2d 686 (1961).

Georgia Nonresident Motorist Act is inapplicable where the defendant is a resident of the state. Foster v. Lankford, 120 Ga. App. 573, 171 S.E.2d 662 (1969).

Resident and nonresident joint tort feasors. — Georgia Nonresident Motorist Act, as originally codified from the Act of 1937 (Ga. L. 1937, p. 732 et seq.), affected nonresidents only, and it could not be applied since there was a resident and a nonresident suable as joint tort feasors so as to change the venue of the action as against the resident defendant. Nor did the 1957 amendment (Ga. L. 1957, pp. 649, 650) have any such effect. Tomlinson v. Sadler, 99 Ga. App. 482, 109 S.E.2d 84 (1959).

Chapter not limited to use by residents. — Georgia Nonresident Motorist Act is not intended for the exclusive use of residents of the state. Griffin v. Thomas, 120 Ga. App. 362, 170 S.E.2d 437 (1969).

Nonresident of the state is entitled to utilize substituted service under the provisions of the Georgia Nonresident Motorist Act. Griffin v. Thomas, 120 Ga. App. 362, 170 S.E.2d 437 (1969).

Use against foreign nationals. — While the Georgia Nonresident Motorist Act is clearly in derogation of the common law, there is nothing in the statute restricting it to mere nonresident citizens of the United States, nor is there any language therein which would not allow it to be used against a foreign national. Cheeley v. Fujino, 131 Ga. App. 41, 205 S.E.2d 83 (1974).

Foreign motor common carriers are suable under the Georgia Nonresident Motorist Act. Southeastern Truck Lines v. Rann, 214 Ga. 813, 108 S.E.2d 561 (1959).

Chapter inapplicable in slander action. — Georgia Nonresident Motorist Act, which in effect authorizes judgments in personam against nonresidents who use the highways of this state with their automobiles, is in nowise pertinent to a case where a nonresident is being sued for slander. Grimmett v. Barnwell, 184 Ga. 461, 192 S.E. 191 (1937).

Cited in Everett v. McCary, 93 Ga. App. 474, 92 S.E.2d 112 (1956); White v. Tittle, 97 Ga. App. 185, 102 S.E.2d 689 (1958); Smith v. Lamb, 103 Ga. App. 157, 118 S.E.2d 924 (1961); Coggins v. Rhodes, 113 Ga. App. 837, 149 S.E.2d 834 (1966); Morrow v. Henley, 122 Ga. App. 646, 178 S.E.2d 308 (1970); Fidelity & Cas. Co. v. Wilson, 124 Ga. App. 444, 184 S.E.2d 21 (1971); Railey v. State Farm Mut. Auto. Ins. Co., 129 Ga. App. 875, 201 S.E.2d 628 (1973); Avis Rent A Car Sys. v. Rice, 132 Ga. App. 857, 209 S.E.2d 270 (1974); Rainwater v. Vazquez, 133 Ga. App. 173, 210 S.E.2d 380 (1974); Webb v. Oliver, 133 Ga. App. 555, 211 S.E.2d 605 (1974); Rosenbaum v. Dunn, 136 Ga. App. 870, 222 S.E.2d 596 (1975).

RESEARCH REFERENCES

ALR. — Power of court, in exercise of discretion, to refuse to entertain action for nonstatutory tort occurring in another state or country, 32 A.L.R. 6; 48 A.L.R.2d 800.

Constitutionality, construction, and effect of statutes in relation to foreign-owned vehicles operating within state, 82 A.L.R. 1091; 138 A.L.R. 1499.

Constitutionality of statute providing for substituted or constructive service upon nonresident in action for tort in connection with automobile, 99 A.L.R. 130.

Venue of action against nonresident motorist served constructively under statute, 38 A.L.R.2d 1198.

Discretion of court to refuse to entertain action for nonstatutory tort occurring in another state or country, 48 A.L.R.2d 800.

Who is subject to constructive or substituted service of process under statutes providing for such service on nonresident motorists, 53 A.L.R.2d 1164.

Tolling of statute of limitations during absence from state as affected by fact that party claiming benefit of limitations remained subject to service during absence or nonresidence, 55 A.L.R.3d 1158.

Doctrine of forum non conveniens: assumption or denial of jurisdiction in action between nonresident individuals based upon tort occurring within forum state, 92 A.L.R.3d 797.

40-12-1. Appointment of Secretary of State as agent for service of process on nonresidents; nonresident minor.

(a) The acceptance by any nonresident of this state, whether a person, firm, or corporation, of the rights and privileges conferred by the laws now or hereafter enforced in this state permitting the operation of motor vehicles, as evidenced by the operation of a motor vehicle by any such nonresident anywhere within the territorial limits of this state, shall be deemed equivalent to the appointment by such nonresident of the Secretary of State of Georgia, or his successor in office, to be his true and lawful attorney in fact upon whom may be served all summonses or other lawful processes in any action or proceeding against any such nonresident growing out of any accident or collision in which any such nonresident may be involved by reason of the operation by him, for him, or under his control or direction, express

or implied, of a motor vehicle anywhere within the territorial limits of the State of Georgia, and said acceptance or operation shall be a signification of his agreement that any such process against him shall be of the same legal force and validity as if served upon him personally.

(b) If such nonresident motorist is a minor, then the minor and his parents or guardians shall be deemed to have assented to the appointment by such nonresident minor and his parents or guardians of the Secretary of State of Georgia, or his successor in office, to be the true and lawful attorney in fact for such minor and his parents or guardians, upon whom may be served any summons or other lawful process in any action or proceeding against such nonresident minor, his parents, or guardians growing out of any accident or collision in which any such nonresident minor may be involved by reason of the operation by him, for him, or under his control or direction, express or implied, of a motor vehicle anywhere within the territorial limits of the State of Georgia, and such acceptance or operation shall be a signification of his agreement or an agreement for him by his parents or guardians that any such process against him or them shall be of the same legal force and validity as if served upon him or them personally; and in this respect, the court wherein such action shall have been filed shall be authorized to appoint, upon motion duly made, a guardian ad litem for such minor for the purposes of defending such suit. (Ga. L. 1937, p. 732, § 1; Ga. L. 1964, p. 299, § 1; Ga. L. 1967, p. 800, § 1.)

Law reviews. — For article, "The Georgia Long Arm Statute: A Significant Advance in the Concept of Personal Jurisdiction," see 4 Ga. St. B.J. 13 (1967). For article summarizing law relating to jurisdiction and venue over domestic and foreign corporations in Georgia, see 21 Mercer L. Rev. 457 (1970). For article, "Foreign Corporations in Georgia," see 10 Ga. St. B.J. 243 (1973).

For comment, "Jurisdiction over Nonresidents in Georgia: Crowder v. Ginn," see 17 Ga. L. Rev. 201 (1982).

JUDICIAL DECISIONS

Analysis

General Consideration
Nonresident Motorists
1. In General
2. Operation of Automobile Under Right or Privilege
Procedure

General Consideration

Nonresidents to whom chapter applicable. — Nonresident Motorist Act, O.C.G.A. § 40-12-1 et seq., applies only to those persons who were in fact nonresidents at the time the nonresidents were exercising the rights and privileges referred to in § 40-12-1. Bailey v. Hall, 199 Ga. App. 602, 405 S.E.2d 579 (1991).

Application to residents at time of tort. — In the context of the running of the statute of limitation, specifically O.C.G.A. § 9-3-33, and service of process issues, the Georgia's Nonresident Motorist Act, O.C.G.A. § 40-12-1 et seq., does not apply when the defendant is a resident of Georgia at the time of the tort.

Andrews v. Stark, 264 Ga. App. 792, 592 S.E.2d 438 (2003).

Legislative intent was to provide a method of service upon nonresident motorists as effective and certain as that employed in requiring residents of the state to answer actions for damages arising from collisions upon the public highways of the state. Evans v. Brooks, 93 Ga. App. 352, 91 S.E.2d 799 (1956).

Basis of constitutional validity of Ga. L. 1937, p. 732, § 1 (see now O.C.G.A. § 40-12-1) is the right of the state, by the exercise of the state's police power, to prescribe regulations necessary for the public safety and order in the operation of motor vehicles. Wood v. Wm. B. Reilly & Co., 40 F. Supp. 507 (N.D. Ga. 1941).

Ga. L. 1967, p. 800, § 1 (see now O.C.G.A. § 40-12-1) gives the state in personam jurisdiction over parties who use the highways of the state and become involved in an accident or collision. Rogers v. Hagen, 445 F. Supp. 361 (N.D. Ga. 1978).

Ga. L. 1937, p. 732, § 1 (see now O.C.G.A. § 40-12-1) does not apply to all roads and highways in the state because it does not apply to roads on military reservations. Cabe v. Edwards, 107 Ga. App. 551, 130 S.E.2d 803 (1963).

"Motor vehicle." — Term "motor vehicle" as used in Ga. L. 1967, p. 800, § 1 does not include a trailer without motive power not hitched to or being drawn by a motor vehicle. O'Steen v. Boone, 117 Ga. App. 174, 160 S.E.2d 229 (1968).

Cited in Hirsch v. Shepherd Lumber Corp., 67 Ga. App. 474, 21 S.E.2d 110 (1942); Beasley v. Elder, 88 Ga. App. 419, 76 S.E.2d 849 (1953); Horne v. Ewing, 89 Ga. App. 300, 79 S.E.2d 339 (1953); Allied Fin. Co. v. Prosser, 103 Ga. App. 538, 119 S.E.2d 813 (1961); Biddinger v. Fletcher, 116 Ga. App. 532, 157 S.E.2d 764 (1967); McKee v. Southern Ry., 50 F.R.D. 502 (N.D. Ga. 1970); Taylor v. Clark, 124 Ga. App. 766, 186 S.E.2d 159 (1971); Unnever v. Stephens, 142 Ga. App. 787, 236 S.E.2d 886 (1977); McClure v. Kelley, 154 Ga. App. 338, 268 S.E.2d 393 (1980); Hardin v. Wright, 172 Ga. App. 644, 323 S.E.2d 918 (1984); Foster v. Morrison, 177 Ga. App. 250, 339 S.E.2d 307 (1985).

Nonresident Motorists

1. In General

Effect of nonresidents using state highways. — Nonresident motorists, by using the highways of the state, not only consent to be sued in both state and federal courts of the state, but also waive the provisions of 28 U.S.C. § 1391(a) as to venue. Burke v. Greer, 114 F. Supp. 671 (M.D. Ga. 1953).

Ga. L. 1937, p. 732, § 1 (see now O.C.G.A. § 40-12-1) allows a nonresident to be sued in a county where the accident took place. Petroleum Carrier Corp. v. Carter, 233 F.2d 402 (5th Cir. 1956).

Means of obtaining personal service on nonresident. — In a Georgia resident's suit against a South Carolina resident arising from a motor vehicle accident, the court disapproved the language in any case that the Non-Resident Motorists Act (NRMA), specifically O.C.G.A. § 40-12-1, was the proper method of obtaining service on nonresident motorists to the extent that this statement stated or implied that the NRMA was the exclusive method of obtaining personal service on nonresident motorists. Farrie v. McCall, 256 Ga. App. 446, 568 S.E.2d 603 (2002).

Person with in-state and out-of-state residences. — For the purposes of Ga. L. 1967, p. 800, § 1 (see now O.C.G.A. § 40-12-1), a person can have more than one residence and if one of these residences is in Georgia, the defendant is not subject to service even though it is also proved that the defendant has an out-of-state residence as well. Thompson v. Abbott, 226 Ga. 353, 174 S.E.2d 904 (1970), overruled on other grounds, Ogden Equip. Co. v. Talmadge Farms, Inc., 232 Ga. 614, 208 S.E.2d 459 (1974) and, overruled on other grounds as stated in, Farrie v. McCall, 256 Ga. App. 446, 568 S.E.2d 603 (2002); Carroll v. Americal Corp., 207 Ga. App. 651, 428 S.E.2d 811 (1993).

"Nonresident" does not include Georgia resident at time of accident. — "Nonresident" under Ga. L. 1967, p. 800, § 1 (see now O.C.G.A. § 40-12-1) cannot be a person who was a Georgia resident at the time the cause of action arose: in fact, the legislature's attempt to

Nonresident Motorists (Cont'd)
1. In General (Cont'd)

specifically include such persons within the purview of the statute, Ga. L. 1957, p. 649, has been held unconstitutional as violative of U.S. Const., amend. 14. Watwood v. Barber, 70 F.R.D. 1 (N.D. Ga. 1975).

Foreign corporation with office in state. — When a foreign corporation has an office and place of business in a county in this state, which is in charge of an agent upon whom service of a suit against the corporation can be legally made, such corporation is not a "nonresident" of this state within the meaning of Ga. L. 1937, p. 732, § 1 (see now O.C.G.A. § 40-12-1) so as to authorize a suit against the corporation in a county in this state where it has no office, place of business, or agent. Hirsch v. Shepherd Lumber Corp., 194 Ga. 113, 20 S.E.2d 575, answer conformed to, 67 Ga. App. 474, 21 S.E.2d 110 (1942).

Use of nonresident's vehicle by child of nonresident. — When a parent, an Alabama resident, allowed a daughter unrestricted use of a motor vehicle while retaining title in the parent's name, and the daughter was in an accident in Georgia, the Nonresident Motorist Act, O.C.G.A. § 40-12-1 et seq., permitted the exercise of personal jurisdiction over the nonresident motor vehicle owner alleged to be liable under the family purpose doctrine for damage resulting from the operation of an automobile in Georgia. McCard v. Wright, 170 Ga. App. 567, 317 S.E.2d 633 (1984).

2. Operation of Automobile Under Right or Privilege

Employment of resident driver by nonresident. — Employment by a nonresident of a Georgia citizen for sales work in Georgia when such employment contemplates the use of the resident's duly licensed and registered automobile in the conduct of the nonresident's business is not sufficient to bring the nonresident within the terms of Ga. L. 1937, p. 732, § 1 (see now O.C.G.A. § 40-12-1) in a suit seeking recovery for injuries inflicted by such employee in the operation of the employee's automobile while engaged in the employee's sales duties. Wood v. Wm. B. Reilly & Co., 40 F. Supp. 507 (N.D. Ga. 1941).

It was not the aim of the law makers, and none is expressed, to provide that so indirect an acceptance by the nonresident of the rights and privileges conferred by the laws of this state permitting the operation of motor vehicles as follows from the employment of a duly licensed and registered resident owner results in the equivalent appointment of an agent for service. Wood v. Wm. B. Reilly & Co., 40 F. Supp. 507 (N.D. Ga. 1941).

Employment by a nonresident of a duly licensed and registered owner of an automobile is not such an acceptance by the nonresident of the rights and privileges conferred by the laws of Georgia permitting the operation of motor vehicles within the state as will be deemed equivalent to the appointment by the nonresident of the Secretary of State as agent to receive service of process in an action against the nonresident for injuries caused by a resident employee's or agent's negligent operation of the automobile within the state. Myers v. Katz, 67 Ga. App. 640, 21 S.E.2d 482 (1942).

Operation in this state of a motor vehicle registered under the laws of this state by a resident of this state who owns the motor vehicle, although the resident may be, in the operation of the motor vehicle, the servant and agent of a nonresident, is not the operation of the automobile under any right or privilege conferred by the laws of this state on a nonresident. Myers v. Katz, 67 Ga. App. 640, 21 S.E.2d 482 (1942).

Automobile not operated for nor under control of nonresident. — Service of process upon a nonresident whose automobile, operated by a third person, is involved in a collision in Georgia is invalid when it cannot be said that the automobile was operated for or under the control of the nonresident. Hanft v. Allbright, 132 Ga. App. 263, 208 S.E.2d 20 (1974).

Procedure

O.C.G.A. Ch. 12, T. 40 must be strictly construed and fully complied with before a trial court can obtain jurisdiction over the person of a nonresident

defendant; in the absence of service in conformity with the act, or the waiver of the act's requirements, any judgment rendered by the court is void. Medlin v. Church, 157 Ga. App. 876, 278 S.E.2d 747 (1981).

Defendant without knowledge of notice not subject to jurisdiction of court. — Filing of a certificate of the Secretary of State that the registered letters to the defendants, addressed to the defendant's "care general delivery," were returned to the defendant's marked "unclaimed," is not such a compliance with the law as would subject the defendants to the jurisdiction of a Georgia court, in the absence of evidence that the defendants knew of the presence of such letters in the post office of the city of their residence and refused to call for, receive, and sign for them. Stone v. Sinkfield, 70 Ga. App. 787, 29 S.E.2d 310 (1944).

Process naming defendants, not secretary of state, as agent. — Process is not void because it names defendants and not the Secretary of State as agent or attorney in fact for the defendants as the person to whom the process is directed and against whom the suit is filed. Mull v. Taylor, 68 Ga. App. 663, 23 S.E.2d 595 (1942).

Defendant may not refuse to accept service of notice sent by the Secretary of State and thus exculpate oneself. Proof that there was proper service on the Secretary of State, proper notice sent by the Secretary by registered mail to the defendant at the defendant's address, and refusal by the latter, amounts to proper service so as to give the court jurisdiction. Liberty Mut. Ins. Co. v. Coburn, 129 Ga. App. 520, 200 S.E.2d 146 (1973).

Notice received by employee or agent of defendant is sufficient. — When the notice is received by the defendant's employee or agent, and the latter fails to inform the defendant, the notice is nevertheless sufficient. Liberty Mut. Ins. Co. v. Coburn, 129 Ga. App. 520, 200 S.E.2d 146 (1973).

Nonresident does not acquire residence in agent's county. — Nonresident does not by the mere appointment of an agent to accept service for the nonresident acquire a fixed residence in the county of such agent. The provision for the appointment of an attorney in fact relates to service, and not to venue. Lloyd Adams, Inc. v. Liberty Mut. Ins. Co., 190 Ga. 633, 10 S.E.2d 46 (1940).

Service may not be made on representative of deceased nonresident. — Statute provides for substituted service only in actions against the user of the highways and does not extend to actions against the user's personal representative. Death revokes the agency of the state official so that substituted service cannot thus be made on the personal representative of the deceased nonresident. Hendrix v. Jenkins, 120 F. Supp. 879 (M.D. Ga. 1954).

Proper method of service on nonresident minor defendant. — Minor is not sui juris; accordingly, in order to perfect service upon a nonresident minor defendant under O.C.G.A. Ch. 12, T. 40, both the nonresident minor defendant and the minor's guardian must be served. Medlin v. Church, 157 Ga. App. 876, 278 S.E.2d 747 (1981).

Running of time for removal. — When statutory service of process is made on the defendant through service on the Secretary of State, the time for removal does not run as of the date of the statutory service on the Secretary of State, but as of the time when the defendant actually receives a copy of the initial pleading. Barber v. Willis, 246 F. Supp. 814 (N.D. Ga. 1965).

Waiver of jurisdictional defects by appearance. — When a petition brought under the Georgia Nonresident Motorist Act sufficiently alleged the trial court's jurisdiction of the subject matter of the suit, the defendant waived any jurisdictional defects as to the defendant's person by appearing through the defendant's attorneys and pleading to the merits. Garver v. Smith, 90 Ga. App. 892, 84 S.E.2d 693 (1954).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 142 et seq.

C.J.S. — 61 C.J.S., Motor Vehicles, § 1124 et seq.

ALR. — Constitutionality of statute providing for substituted or constructive service upon nonresident in action for tort in connection with operation of automobile, 35 A.L.R. 951; 57 A.L.R. 1239; 99 A.L.R. 130.

Construction, application, and effect of statutes providing for constructive or substituted service of process upon nonresident motorists, 82 A.L.R. 768; 96 A.L.R. 594; 125 A.L.R. 457; 138 A.L.R. 1464; 155 A.L.R. 333; 53 A.L.R.2d 1164.

Who is subject to constructive or substituted service of process under statutes providing for such service on nonresident motorists, 155 A.L.R. 333; 53 A.L.R.2d 1164.

Venue of action against nonresident motorist served constructively under statute, 38 A.L.R.2d 1198.

What is "motor vehicle" or the like within statute providing for constructive or substituted service of process on nonresident motorists, 48 A.L.R.2d 1283.

Place or type of motor vehicle accident as affecting applicability of statute providing for constructive or substituted service upon nonresident motorist, 73 A.L.R.2d 1351.

Airplane or other aircraft as "motor vehicle" or the like within statute providing for constructive or substituted service of process on nonresident motorist, 36 A.L.R.3d 1387.

40-12-2. How service on nonresident made.

Service of process upon a nonresident pursuant to Code Section 40-12-1 shall be made by serving a copy of the complaint or other pleading with summons attached thereto on the Secretary of State, his duly authorized agent, or his successor in office, along with a copy of the affidavit to be submitted to the court pursuant to this Code section. Such service shall be sufficient service upon any such nonresident, provided that notice of such service and a copy of the complaint and process are forthwith sent by registered or certified mail or statutory overnight delivery by the plaintiff to the defendant, if his address is known, and the defendant's return receipt and the plaintiff's affidavit of compliance with this Code section are appended to the summons or other process and filed with the summons, complaint, and other papers in the case in the court wherein the action is pending. The Secretary of State shall charge and collect a fee as set out in Code Section 45-13-26 for service of process on him under this Code section. (Ga. L. 1937, p. 732, § 2; Ga. L. 1959, p. 113, § 1; Ga. L. 1965, p. 231, § 1; Ga. L. 1983, p. 1474, § 2; Ga. L. 1984, p. 22, § 40; Ga. L. 1989, p. 364, § 2; Ga. L. 2000, p. 1589, § 3.)

Law reviews. — For article, "Foreign Corporations in Georgia," see 10 Ga. St. B.J. 243 (1973).

JUDICIAL DECISIONS

Ga. L. 1959, p. 113, § 1 (see now O.C.G.A. § 40-12-2) is in derogation of the common law, and must be strictly construed and fully complied with before a court of a state other than that of the defendant's residence may obtain jurisdiction of the defendant's person. Roland v. Shelton, 106 Ga. App. 581, 127 S.E.2d 497 (1962); Babb v. Cook, 203 Ga. App. 437, 417 S.E.2d 63 (1992); Swanigan v. Leroux, 240 Ga. App. 550, 524 S.E.2d 244 (1999).

Status as nonresident. — When an individual has more than one residence, and one residence is in Georgia, the individual is not a nonresident for purposes of the Nonresident Motorist Act, O.C.G.A. § 40-12-1 et seq.; nor is a former Georgia resident who moves out of state after the action arose a nonresident under the Act. Whitten v. Richards, 240 Ga. App. 719, 523 S.E.2d 906 (1999).

Requirements for jurisdiction. — In order for a court to obtain jurisdiction over the person of a defendant in an action brought against a nonresident motorist so as to render valid a judgment in personam against such defendant, two things must be done: (1) service of the process and copies of the petition or other pleading with process attached thereto must be had upon the Secretary of State of Georgia, or the Secretary's duly authorized agent; and (2) notice of such service and a copy of the petition and process must be sent by registered mail to the defendant. Roland v. Shelton, 106 Ga. App. 581, 127 S.E.2d 497 (1962); Medlin v. Church, 157 Ga. App. 876, 278 S.E.2d 747 (1981).

Under O.C.G.A. § 40-12-2: (1) service on the Secretary of State and (2) sending notice of this service and copy of the petition and process to the defendant by registered mail are essential to jurisdiction over the defendant. Rielly v. Crook, 112 Ga. App. 334, 145 S.E.2d 110 (1965); Watts v. Kegler, 133 Ga. App. 231, 211 S.E.2d 177 (1974).

When the defendant was not personally served with process, nor by certified mail, nor given any written notice of the pendency of an action, service on the Secretary of State was defective. Only when the notice authorized by statute is actually received can substituted service become the equivalent of personal service. Brown v. Meyer, 222 Ga. App. 133, 473 S.E.2d 521 (1996).

Defendant's actual knowledge of the complaint prior to the time of filing by virtue of the defendant's receipt of a letter containing the complaint did not satisfy the requirements of O.C.G.A. § 40-12-2. Pringle v. Jaganauth, 240 Ga. App. 65, 522 S.E.2d 560 (1999), overruled on other grounds, Farrie v. McCall, 256 Ga. App. 446, 568 S.E.2d 603 (2002).

When the nonresident's address was not known, the nonresident's return receipt, indicating that the nonresident received the notice, could not have been filed; therefore, because service by certified mail was not possible, service upon the Secretary of State under O.C.G.A. § 40-12-2 was insufficient and there was no personal jurisdiction. Guerrero v. Tellez, 242 Ga. App. 354, 529 S.E.2d 639 (2000).

Compliance with Hague Convention. — In a diversity action resulting from an automobile accident, the plaintiff's service of a copy of the summons and complaint on the Georgia Secretary of State and sending a copy by registered mail to the defendant, a Canadian resident, pursuant to the Nonresident Motorist Act, O.C.G.A. § 40-12-1 et seq., satisfied the requirements of the Hague Convention. Curcuruto v. Cheshire, 864 F. Supp. 1410 (S.D. Ga. 1994).

Burden on plaintiff to investigate defendant's location. — Burden is on the plaintiff to investigate and learn where the defendant may be located. Cheek v. Norton, 106 Ga. App. 280, 126 S.E.2d 816 (1962).

To construe Ga. L. 1959, p. 113, § 1 (see O.C.G.A. § 40-12-2) to mean that there is no burden at all on the plaintiff to ascertain the defendant's whereabouts, and leave it merely to chance and the plaintiff's conscience whether the plaintiff provides an address for service of notice or not, would contravene the minimum requirements of due process. Cheek v. Norton, 106 Ga. App. 280, 126 S.E.2d 816 (1962).

Assumptions upon which jurisdiction rest. — Jurisdiction rests upon assumption that the defendant received notice of the action and an opportunity to defend. There must be at least an attempt by the plaintiff to give the defendant notice of service in the manner set forth in the statute. Cheek v. Norton, 106 Ga. App. 280, 126 S.E.2d 816 (1962).

Reasonable probability of receipt of notice. — Both the statute and the facts concerning the mailing of the notice must be such as to show within a reasonable probability that the defendant in fact received notice. Cheek v. Norton, 106 Ga. App. 280, 126 S.E.2d 816 (1962).

Proof which raises a reasonable probability that notice was received by the defendant is sufficient in the absence of a showing by the defendant that such notice was not in fact received. Roland v. Shelton, 106 Ga. App. 581, 127 S.E.2d 497 (1962).

When the reasonable probability requirements are met, the fact that the nonresident defendant did not in fact receive actual notice, especially when failure to do so is the fault of such defendant, will not always deprive the courts of jurisdiction. Dunn v. Royal Bros. Co., 111 Ga. App. 322, 141 S.E.2d 546 (1965).

Conditions barring jurisdiction. — Filing of a certificate of the Secretary of State that the registered letters to the defendants, addressed to the defendants "care general delivery," were returned to the Secretary marked "unclaimed," is not such a compliance with O.C.G.A. § 40-12-2 as would subject the defendants to the jurisdiction of a Georgia court, in the absence of evidence that the defendants knew of the presence of such letters in the post office of the city of the defendants' residence and refused to call for, receive, and sign for the letters. Stone v. Sinkfield, 70 Ga. App. 787, 29 S.E.2d 310 (1944).

When a return receipt is not filed showing delivery of the letter to a nonresident defendant the court does not acquire jurisdiction over the person of the defendant unless the letter was in fact delivered to the nonresident, or the nonresident had notice of the letter or the action against the defendant, or the defendant refused delivery of the letter addressed to the defendant. Rielly v. Crook, 112 Ga. App. 334, 145 S.E.2d 110 (1965).

Trial court's finding of insufficient service of process was not an abuse of discretion as, although a driver served an employee of a moving company by substituted service of a renewal complaint upon the Georgia Secretary of State, the driver's return receipt for service upon the employee was not signed by the employee and the employee averred that the employee did not live at that address at that time; there was no evidence that the driver attempted to serve the employee at the address listed in the driver's complaint and an affidavit of compliance was not appended to the summons or other process and was not properly filed with the trial court. Nolan v. Jowers, 280 Ga. App. 815, 635 S.E.2d 211 (2006).

In an action against the defendant, a Kentucky resident, to recover damages arising from a motor vehicle accident under the Georgia Nonresident Motorist Act (NRMA), O.C.G.A. § 40-12-1 et seq., the trial court granted the defendant's motion to dismiss as the statute of limitation had expired, and the plaintiff had failed to effect service upon the defendant by certified mail under O.C.G.A. § 40-12-2 of the NRMA because the plaintiff knew where the defendant resided at the time of the accident, and the plaintiff confirmed that the defendant was registered to vote at that address on the same day that the plaintiff filed the complaint, but the plaintiff made no attempt to serve the defendant at that address until nearly four months after the statute of limitation expired. Covault v. Harris, 337 Ga. App. 301, 787 S.E.2d 272 (2016).

Delivery in fact accomplishes service. — If letter is in fact delivered to the addressee, or if the addressee has notice of the letter or the action against the addressee, or if the addressee refuses delivery of the letter to the addressee, service has been accomplished. Watts v. Kegler, 133 Ga. App. 231, 211 S.E.2d 177 (1974).

Compliance with notice provisions accomplishes service. — When notice is duly given to the defendant as required by the provisions of the Nonresident Motorist Act (see now O.C.G.A. § 40-12-1 et seq.),

irrespective of whether the defendant actually received such notice, and when the statute is otherwise complied with, due and legal service has been perfected. Dunn v. Royal Bros. Co., 111 Ga. App. 322, 141 S.E.2d 546 (1965).

When the plaintiff strictly complied with the requirements of O.C.G.A. § 40-12-2, notice and service on the defendant was sufficient since the defendant did not receive the summons and complaint because of the defendant's own non-collecting of the defendant's mail. Bowers v. Winter, 228 Ga. App. 530, 492 S.E.2d 296 (1997).

Trial court erred in holding that a nonresident driver's failure to receive actual notice of a lawsuit invalidated service as the driver never denied that the driver received two notices from postal authorities that the certified letter was available to be claimed. Tate v. Hughes, 255 Ga. App. 511, 565 S.E.2d 853 (2002).

Presumption of receipt is rebuttable. — While proof that notices were mailed raises a presumption that the defendant received the notices, this presumption is a rebuttable one. Roland v. Shelton, 106 Ga. App. 581, 127 S.E.2d 497 (1962).

Proof of service showing essentials of jurisdiction is rebuttable by evidence that the defendant did not in fact receive the notice. Rielly v. Crook, 112 Ga. App. 334, 145 S.E.2d 110 (1965); Watts v. Kegler, 133 Ga. App. 231, 211 S.E.2d 177 (1974).

Provision of affidavit by plaintiff's counsel. — Affidavit of compliance with Ga. L. 1965, p. 231, § 1 (see now O.C.G.A. § 40-12-2) may be given by the plaintiffs' counsel, rather than the plaintiffs themselves, since the attorney is the agent of the client for the purpose of the litigation in question. Locklear v. Morgan, 127 Ga. App. 326, 193 S.E.2d 208 (1972).

No provision for service by publication. — There is no provision in the Nonresident Motorist Act (see now O.C.G.A. § 40-12-1 et seq.) for service on a nonresident defendant by publication. National Sur. Corp. v. Hernandez, 120 Ga. App. 307, 170 S.E.2d 318 (1969).

Cited in Mull v. Taylor, 68 Ga. App. 663, 23 S.E.2d 595 (1942); Everett v. McCary, 93 Ga. App. 474, 92 S.E.2d 112 (1956); Norris Candy Co. v. Dixie Hwy. Express, Inc., 102 Ga. App. 665, 117 S.E.2d 250 (1960); Liberty Mut. Ins. Co. v. Coburn, 129 Ga. App. 520, 200 S.E.2d 146 (1973); Livingston v. Taylor, 284 Ga. App. 638, 644 S.E.2d 483 (2007).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 142 et seq.

C.J.S. — 61 C.J.S., Motor Vehicles, § 1124 et seq.

ALR. — Construction, application, and effect of statutes providing for constructive or substituted service of process on nonresident motorists, 82 A.L.R. 768; 96 A.L.R. 594; 125 A.L.R. 457; 138 A.L.R. 1464; 155 A.L.R. 333; 53 A.L.R.2d 1164.

Who is subject to constructive or substituted service of process under statutes providing for such service on nonresident motorists, 155 A.L.R. 333; 53 A.L.R.2d 1164.

Time limit for service of process under the Hague Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, Art. 1 et seq., Fed. R. Civ. P. 4 note (Hague Service Convention), 15 A.L.R. Fed. 3d 4.

40-12-3. Venue of actions against nonresidents; nonresident joint defendant.

All actions brought under this chapter relating to the use of the highways of this state by nonresident motorists shall be brought in the county in which the accident or injury occurred or the cause of action originated, or in the county of the residence of the plaintiff, as the plaintiff in such action may elect, if the plaintiff in such action is a

resident of the State of Georgia; and, if the plaintiff in such action is a nonresident of the State of Georgia, the action shall be brought in the county in this state in which the accident or injury occurred or the cause of action originated; and the courts in such counties having jurisdiction of tort actions shall have jurisdiction of all such nonresident users in actions arising under this chapter. Where an action for damages is brought against a resident of this state, any nonresident involved in the same accident or collision and who is suable under this chapter may be joined as a defendant in the county wherein the resident defendant is suable, and the jurisdiction of the court of and over such nonresident joint defendant shall not be affected or lost by reason of the fact that the jury returns a verdict in favor of such resident joint defendant although the accident, injury, or cause of action did not originate in the county wherein the action is brought. (Ga. L. 1937, p. 732, § 3; Ga. L. 1947, p. 305, § 2; Ga. L. 1955, p. 650, § 1; Ga. L. 1959, p. 120, § 1.)

Law reviews. — For article discussing aspects of third party practice (impleader) under the Georgia Civil Practice Act, see 4 Ga. St. B.J. 355 (1968). For article summarizing law relating to jurisdiction and venue over domestic and foreign corporations in Georgia, and service therein, see 21 Mercer L. Rev. 457 (1970). For article, "Foreign Corporations in Georgia," see 10 Ga. St. B.J. 243 (1973). For article surveying trial practice and procedure, see 34 Mercer L. Rev. 299 (1982).

For note discussing problems with venue in Georgia, and proposing statutory revisions to improve the resolution of venue questions, see 9 Ga. St. B.J. 254 (1972).

For comment on World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980) and Rush v. Savchuk, 444 U.S. 320, 100 S. Ct. 571, 62 L. Ed. 2d 516 (1980), regarding minimum contacts and state jurisdiction, see 15 Ga. L. Rev. 19 (1980). For comment, "Jurisdiction over Nonresidents in Georgia: Crowder v. Ginn," see 17 Ga. L. Rev. 201 (1982).

JUDICIAL DECISIONS

Constitutionality. — It is not a violation of the equal protection clause to allow a nonresident motorist to be sued in any county of the state at the election of the plaintiff. Lloyd Adams, Inc. v. Liberty Mut. Ins. Co., 190 Ga. 633, 10 S.E.2d 46 (1940).

Joint defendant sued with manufacturer "resident defendant." — Since the rupture of a tire was alleged to have "involved" a manufacturer in a collision, the driver of the truck using the tire was also allowed to be sued as a joint defendant with the manufacturer, which was a "resident defendant" under O.C.G.A. § 40-12-3. Gault v. National Union Fire Ins. Co., 208 Ga. App. 134, 430 S.E.2d 63 (1993).

Nonresident against nonresident. — Nonresident may bring an action and secure service under the Nonresident Motorist Act (see now O.C.G.A. § 40-12-1 et seq.) against a nonresident user of the highways of this state, a resident of the same state as the plaintiff, for the recovery of damages for injuries sustained as a result of the operation of the defendant's automotive vehicle on the highways of this state. Griffin v. Thomas, 120 Ga. App. 362, 170 S.E.2d 437 (1969).

Use against foreign nationals. — There is nothing in the statute restricting the statute to mere nonresident citizens of the United States, nor is there any language therein which would not allow the statute to be used against a foreign national. Cheeley v. Fujino, 131 Ga. App. 41, 205 S.E.2d 83 (1974).

Foreign corporation with in-state office not nonresident. — When a for-

eign corporation has an office and place of business in a county in this state, which office is in the charge of an agent upon whom service of a suit against the corporation can be legally made, such corporation is not a "nonresident" of this state within the meaning of Ga. L. 1937, p. 732, § 3 (see now O.C.G.A. § 40-12-3) so as to authorize a suit against the corporation in a county in this state when the corporation has no office, place of business, or agent. Hirsch v. Shepherd Lumber Corp., 194 Ga. 113, 20 S.E.2d 575, answer conformed to, 67 Ga. App. 474, 21 S.E.2d 110 (1942).

Resident may choose county for filing action. — Ga. L. 1959, p. 120, § 1 (see now O.C.G.A. § 40-12-3) allows a resident of Georgia at the time of the incident to choose, as a matter of convenience at the time of filing the resident's action, a proper forum in the county where the incident took place or a proper forum in the county where the resident is then residing. Oliver v. Carter, 118 Ga. App. 353, 163 S.E.2d 757 (1968).

Courts with jurisdiction over actions. — Venue for actions under the Nonresident Motorist Act (see now O.C.G.A. § 40-12-1 et seq.) is in courts which have jurisdiction of tort and criminal actions. Aldrich v. Johns, 93 Ga. App. 787, 92 S.E.2d 804 (1956).

Joint action against resident and nonresident. — Ga. L. 1947, p. 305, § 2 (see now O.C.G.A. § 40-12-3) does not authorize the bringing of a joint tort action against a resident of Georgia and a nonresident in a county wherein the resident defendant does not reside. Hays v. Jones, 81 Ga. App. 597, 59 S.E.2d 404 (1950).

Venue is proper over a nonresident third-party defendant when the third-party complaint is sued in the county of residence of the third-party plaintiff (the defendant in the primary action). Chapman v. Latex Filler & Chem. Co., 135 Ga. App. 665, 218 S.E.2d 671 (1975).

Differing venue classifications for resident and nonresident actions. — Since the venue of tort actions against residents is based upon the residence of the defendant, it is apparent that the venue of actions against nonresidents could not be determined on the same basis. The situation of the nonresident being distinctly different from that of the resident, it was proper for the General Assembly to classify nonresidents separately for the purpose of determining venue. Lloyd Adams, Inc. v. Liberty Mut. Ins. Co., 190 Ga. 633, 10 S.E.2d 46 (1940).

Defendant's appearance is waiver of jurisdictional defects. — When a petition brought under the Nonresident Motorist Act (see now O.C.G.A. § 40-12-1 et seq.) sufficiently alleged the trial court's jurisdiction of the subject matter of the suit, the defendant waived any jurisdictional defects as to the defendant's person by appearing through the defendant's attorneys and pleading to the merits. Garver v. Smith, 90 Ga. App. 892, 84 S.E.2d 693 (1954).

An action, brought by a resident against nonresidents, neither in the county where the action arose nor in the county of the plaintiff's residence, confers jurisdiction of the subject matter upon the court if it is named in the Nonresident Motorist Act (see now O.C.G.A. § 40-12-1 et seq.), and the defendant's plea to the merits without filing a plea to the jurisdiction as to the person is a waiver of the lack of such jurisdiction. Stanford v. Davidson, 105 Ga. App. 742, 125 S.E.2d 720 (1962); Biddinger v. Fletcher, 224 Ga. 501, 162 S.E.2d 414 (1968).

Only defendant's conduct can waive venue. — Conduct which will amount to waiver of venue is that of the defendant alone and nothing a plaintiff might do can change the legal consequences which attach to that conduct. Biddinger v. Fletcher, 224 Ga. 501, 162 S.E.2d 414 (1968).

Submission to jurisdiction of court. — When a nonresident voluntarily institutes a suit in a county in this state the nonresident submits oneself, for all purposes of that suit, to the jurisdiction of the courts of the county in which the suit is pending. Biddinger v. Fletcher, 224 Ga. 501, 162 S.E.2d 414 (1968).

Trial in improper county does not invalidate judgment. — Venue relates to procedure, and not to jurisdiction, and the fact an action is tried in a county other

than that declared by the statute as the proper county for its trial does not go to the jurisdiction and does not invalidate the judgment. Biddinger v. Fletcher, 224 Ga. 501, 162 S.E.2d 414 (1968).

Action against nonresident motor common carrier. — While it is provided that an action against a nonresident motor common carrier may be brought in the county where the cause of action or some part thereof arose, this does not have the effect of restricting or limiting the venue in that respect. This provision contemplates an action arising out of a transaction in Georgia, but even then the statute does not require that the action be brought in the county where the action arose. Parker v. Ryder Truck Lines, 150 Ga. App. 163, 257 S.E.2d 18 (1979).

Even though a nonresident interstate motor common carrier was registered in Georgia and had a registered agent for service of process, venue of a personal injury action against the carrier and nonresident driver was proper only in the county in which the accident occurred. Southern Drayage, Inc. v. Williams, 216 Ga. App. 721, 455 S.E.2d 418 (1995).

Cited in Pate v. Taylor Chem. Co., 88 Ga. App. 127, 76 S.E.2d 131 (1953); Wade v. Hopper, 209 Ga. 802, 76 S.E.2d 403 (1953); Wade v. Hopper, 89 Ga. App. 87, 78 S.E.2d 809 (1953); Horne v. Ewing, 89 Ga. App. 300, 79 S.E.2d 339 (1953); Garver v. Smith, 90 Ga. App. 892, 84 S.E.2d 693 (1954); Arnold v. Chupp, 93 Ga. App. 583, 92 S.E.2d 239 (1956); Rogers v. Johnson, 94 Ga. App. 666, 96 S.E.2d 285 (1956); Petroleum Carrier Corp. v. Carter, 233 F.2d 402 (5th Cir. 1956); Hole v. Duncan, 105 Ga. App. 725, 125 S.E.2d 731 (1962); Atlanta Metallic Casket Co. v. Mosby Truck Serv., Inc., 107 Ga. App. 677, 131 S.E.2d 590 (1963); Key v. Hobbs, 133 Ga. App. 863, 212 S.E.2d 496 (1975); Gowdy v. Schley, 317 Ga. App. 693, 732 S.E.2d 774 (2012).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 142 et seq., 214, 240. 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 941, 972, 973, 1172.

C.J.S. — 61 C.J.S., Motor Vehicles, §§ 1116 et seq., 1127 et seq.

ALR. — Power of court, in exercise of discretion, to refuse to entertain action for nonstatutory tort occurring in another state or country, 32 A.L.R. 6; 48 A.L.R.2d 800.

Venue of action against nonresident motorist served constructively under statute, 38 A.L.R.2d 1198.

Discretion of court to refuse to entertain action for nonstatutory tort occurring in another state or country, 48 A.L.R.2d 800.

40-12-4. Records to be kept by Secretary of State.

The Secretary of State or his successor in office shall keep a record of all processes, which record shall show the day and hour of service upon him. When the return receipt for any such registered notice shall be returned to the Secretary of State, he shall deliver it to the plaintiff on request and keep a record of the date of its receipt by him and of its delivery to the plaintiff. (Ga. L. 1937, p. 732, § 5.)

RESEARCH REFERENCES

ALR. — Constitutionality of statute providing for substituted or constructive service upon nonresident in action for tort in connection with operation of automobile, 35 A.L.R. 951; 57 A.L.R. 1239; 99 A.L.R. 130.

40-12-5. Certificate of service to be sent to clerk of court; time for answering complaint.

The Secretary of State or his successor in office, within three days from the date of the service upon him of the summons or process provided for in this chapter, shall certify to the court in which the action is pending that the summons or process has been filed in his office as provided for in this chapter. Upon receipt of such certification by the clerk of the court in which the action is pending, the complaint shall be answered within 30 days after service of the summons and complaint upon him, unless the time for the appearance of the defendant shall be extended by an order of the court in order to allow the defendant ample opportunity to be heard. (Ga. L. 1937, p. 732, § 6.)

JUDICIAL DECISIONS

Cited in Stone v. Sinkfield, 70 Ga. App. 787, 29 S.E.2d 310 (1944).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 142 et seq.

C.J.S. — 61 C.J.S., Motor Vehicles, § 1124 et seq.

ALR. — Statutory service on nonresident motorist: return receipts, 95 A.L.R.2d 1033.

40-12-6. Continuances.

The court in which an action brought against a nonresident pursuant to this chapter is pending shall cause any such action to be continued as long as may be necessary to afford the defendant reasonable opportunity to defend the action. (Ga. L. 1937, p. 732, § 4.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 142 et seq.

40-12-7. Designation of employees to perform functions of Secretary of State.

The Secretary of State is authorized and empowered to designate such of his employees as he deems necessary for the purposes of accepting service as provided in this chapter and performing all other duties and functions as provided in this chapter for the Secretary of State. Such designation shall be in writing, and all actions by any such person designated shall be as valid and binding as though performed by

the Secretary of State himself. The power and authority of any such person so designated shall cease immediately upon such person's ceasing to be an employee of the Secretary of State. (Ga. L. 1957, p. 65, § 1.)

JUDICIAL DECISIONS

Cited in Norris Candy Co. v. Dixie Hwy. Express, Inc., 102 Ga. App. 665, 117 S.E.2d 250 (1960).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 142 et seq.

C.J.S. — 61 C.J.S., Motor Vehicles, § 1124 et seq.

ALR. — Who is subject to constructive or substituted service of process under statutes providing for such service on nonresident motorists, 155 A.L.R. 333; 53 A.L.R.2d 1164.

40-12-8. Service upon personal representative.

If any person upon whom service of process is authorized by this chapter shall die, or be or become insane, or shall not be sui juris, service shall be made upon his administrator, executor, guardian, or other personal representative in the manner prescribed in this chapter, if such administrator, executor, guardian, or personal representative is not a resident of this state. (Ga. L. 1957, p. 649, § 3.)

JUDICIAL DECISIONS

Ga. L. 1957, p. 649, § 3 (see now O.C.G.A. § 40-12-8) is not unconstitutional. The legislature exercised the legislature's police power in regulating the use of the state highways by providing that when a nonresident motorist subject to suit in Georgia dies, service shall be made upon the nonresident's personal representative, if not a resident of Georgia. Peterson v. Wade, 222 Ga. 805, 152 S.E.2d 745 (1966).

Proper method of service on nonresident minor defendant. — Minor is not sui juris; accordingly, in order to perfect service upon a nonresident minor defendant under O.C.G.A. Ch. 12, T. 40, both the nonresident minor defendant and the minor's guardian must be served. Medlin v. Church, 157 Ga. App. 876, 278 S.E.2d 747 (1981).

Cited in Focht v. American Cas. Co., 103 Ga. App. 138, 118 S.E.2d 737 (1961).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 141 et seq.

C.J.S. — 61 C.J.S., Motor Vehicles, § 1124 et seq.

ALR. — Action or proceeding which directly or indirectly seeks to establish liability of, or to recover judgment against, a nonresident executor or administrator, or other fiduciary, as to in personam or in rem, as regards acquisition of jurisdiction under constructive or substituted service of process, 136 A.L.R. 621.

Who is subject to constructive or substituted service of process under statutes providing for such service on nonresident motorists, 155 A.L.R. 333; 53 A.L.R.2d 1164.

Constitutionality and construction of statute authorizing constructive or substituted service of process on, and continuation of pending action against, foreign representative of deceased nonresident driver of motor vehicle, arising out of accident occurring in state, 18 A.L.R.2d 544.

CHAPTER 13

PROSECUTION OF TRAFFIC OFFENSES

Article 1

Uniform Traffic Citation and Complaint Form

Sec.

40-13-1. Form to be developed by commissioner of driver services; function; identifying number.
40-13-2. System of accountability; procedures for use and issuance.
40-13-2.1. Signature on citations required; effect of failure to sign; exemption for out-of-state drivers; electronic capture of signature.
40-13-3. Traffic offenses triable on complaint without indictment except in superior courts; report of disposition.
40-13-4. Fees of officers.

Article 2

Arrests, Trials, and Appeals

40-13-20. "Municipal courts" defined.
40-13-21. General powers and jurisdiction of probate and municipal courts; assistance of the district attorney or solicitor.
40-13-22. Jurisdiction over offenses under Code Section 40-2-8.
40-13-23. Waiver of jury trial; withdrawal of waiver.
40-13-24. Indictment or accusation not required; docket.
40-13-25. Costs.
40-13-26. How sentences for traffic offenses served; disposition of fines and costs; definition of "urban interstate system".
40-13-27. Records to be kept.
40-13-28. Appeal to superior court; bond.
40-13-29. Jurisdiction exclusive.
40-13-30. Authority to make arrests.
40-13-31. Arresting fees.
40-13-32. Restrictions on ability of courts to change or modify traffic law sentences or judgments.
40-13-33. Limitation on habeas corpus challenge of misdemeanor traffic conviction.

Article 3

Traffic Violations Bureaus

40-13-50. Establishment.
40-13-51. Appointment of clerk or deputy clerk; bond.
40-13-52. Traffic offense cards; contents.
40-13-53. Release of arrested person upon service of citation and complaint.
40-13-54. Disposition of original and copies of citation and complaint.
40-13-55. Cash bonds permitted.
40-13-56. Officer not to accept cash bond.
40-13-57. Taking of cash bond where officer doubts that arrested person will appear.
40-13-58. Failure to appear after giving cash bond as admission of guilt; forfeiture of bond; order to stand trial not precluded.
40-13-59. Records to be kept by traffic violations bureau; filing of citation and complaint; time for posting cash bond; when bond forfeited.
40-13-60. Disposition of traffic violations; jurisdiction of bureau.
40-13-61. Maintenance of records; accusations.
40-13-62. Failure to appear; bench warrant.
40-13-63. Penalty for failure to appear.
40-13-64. Suspended sentence division; collection of fines.

Cross references. — Cancellation, suspension, and revocation of drivers' licenses, § 40-5-50 et seq.

ARTICLE 1

UNIFORM TRAFFIC CITATION AND COMPLAINT FORM

Administrative rules and regulations. — Uniform Traffic Citations, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Chapter 375-3-4.

JUDICIAL DECISIONS

Jurisdiction of appeal from city court. — When uniform traffic citation and complaint form was used to charge an offense in a constitutional city court, but solicitor (now district attorney) subsequently amended the form to allege a violation of a city ordinance, jurisdiction of an appeal lay in the superior court rather than the Court of Appeals. Parnell v. City of Atlanta, 173 Ga. App. 602, 327 S.E.2d 569 (1985).

Cited in Collins v. State, 154 Ga. App. 651, 269 S.E.2d 509 (1980).

RESEARCH REFERENCES

ALR. — Right of motorist stopped by police officers for traffic offense to be informed at that time of his federal constitutional rights under Miranda v. Arizona, 25 A.L.R.3d 1076.

40-13-1. Form to be developed by commissioner of driver services; function; identifying number.

The commissioner of driver services shall develop a uniform traffic citation and complaint form for use by all law enforcement officers who are empowered to enforce the traffic laws and ordinances in effect in this state. Such form shall serve as the citation, summons, accusation, or other instrument of prosecution of the offense or offenses for which the accused is charged, and as the record of the disposition of the matter by the court before which the accused is brought, and shall contain such other matter as the commissioner shall provide. Each such form shall have a unique identifying number which shall serve as the docket number for the court having jurisdiction of the accused. (Ga. L. 1972, p. 1148, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 2005, p. 334, § 22-1/HB 501.)

JUDICIAL DECISIONS

Uniform traffic citations as accusations. — When the state filed uniform traffic citations with the court, the citations functioned as an accusation, commenced the prosecution, and established the term of court at which the right to a speedy trial attached. Clark v. State, 236 Ga. App. 130, 510 S.E.2d 616 (1998), aff'd, 271 Ga. 519, 520 S.E.2d 694 (1999).

Defendant's demand for a speedy trial was not timely filed when it was filed in the next term following the filing of the formal accusation, rather than in the next term following the filing of the uniform traffic citation. Clark v. State, 271 Ga. 519, 520 S.E.2d 694 (1999), affirming Clark v. State, 236 Ga. App. 130, 510 S.E.2d 616 (1998).

Information written on the defendant's uniform traffic citation functioned as a valid order or citation, issued by police, for the defendant to appear before a municipal judge at a later date to answer the charge against the defendant. Beaman v. City of Peachtree City, 256 Ga. App. 62, 567 S.E.2d 715 (2002).

Prosecution by formal accusation. — Oath and attestation upon the uniform traffic citation issued under O.C.G.A. § 40-13-1 is apparently an "affidavit," developed by the Commissioner of Public Safety for the prosecution of traffic offense cases; this "ticket" alone suffices to prosecute a traffic violation. But when the arresting officer neglects to sign, under oath and before an authorized magistrate, the "arresting officer's certification" on the citation attesting that the officer reasonably believed the defendant committed the offense, prosecution by formal accusation, pursuant to O.C.G.A. § 17-7-71, is the correct procedure. Evans v. State, 168 Ga. App. 716, 310 S.E.2d 3 (1983).

Limitations on prosecution. — When uniform traffic citations were issued within two years of the date offenses occurred and, later, the state filed amended accusations, the trial court did not err in refusing to dismiss charges on the ground that the statute of limitations expired because the amended accusations did not constitute the commencement of a new prosecution and there had been no final disposition of the previously filed accusations. Prindle v. State, 240 Ga. App. 461, 523 S.E.2d 44 (1999).

Uncompleted jurat portion of officer's certification. — Probate court's denial of the defendant's motion to quash a traffic citation which was defective because the jurat portion of the arresting officer's certification had not been completed was harmless error. King v. State, 176 Ga. App. 137, 335 S.E.2d 439 (1985), overruled on other grounds, Copeland v. White, 178 Ga. App. 644, 344 S.E.2d 436 (1986).

Accusation can be specific when affidavit general. — Accusation cannot be broader than the affidavit, but, as the greater includes the lesser, if the affidavit is general, the accusation can be specific. McCann v. State, 158 Ga. App. 202, 279 S.E.2d 499 (1981).

Purpose of the identifying number is to provide the person receiving the citation or that person's attorney a means of locating the docketed case. Hyatt v. State, 134 Ga. App. 703, 215 S.E.2d 698 (1975).

Demand for speedy trial. — Defendant's demand for a speedy trial upon receipt of uniform traffic citation and complaint form was not premature since such a citation itself contains the accusation, the preferring of which is a prerequisite to a demand for speedy trial. Majia v. State, 174 Ga. App. 432, 330 S.E.2d 171, aff'd, 254 Ga. 660, 333 S.E.2d 834 (1985).

Mere issuance of a uniform traffic citation, without subsequently filing the citation with the clerk of the courts, is not sufficient to authorize the entry of a filed demand for speedy trial pursuant to O.C.G.A. § 17-7-170(a). Ghai v. State, 219 Ga. App. 479, 465 S.E.2d 498 (1995).

Transcript of proceedings. — In misdemeanor cases, it is discretionary with the trial court as to whether the proceedings are transcribed. Thus, absent a demand for a transcript, prepared at the request of the demanding party, the reporting of such a case is not required as a matter of law. Ward v. State, 188 Ga. App. 372, 373 S.E.2d 65 (1988).

Venue not affected by use of citation form. — Uniform traffic citations are not evidence, and thus cannot provide the factual basis necessary to establish venue. Graves v. State, 269 Ga. 772, 504 S.E.2d 679 (1998), overruled on other grounds, Jones v. State, 272 Ga. 900, 537 S.E.2d 80 (2000), reversing Graves v. State, 227 Ga. App. 628, 490 S.E.2d 111 (1997).

Conviction not affected by use of old citation form. — Validity of the defendant's conviction for driving under the influence was not affected by the fact that the uniform traffic citation issued to the defendant was not the form then in use, when the citation showed on the citation's face that the citation had been approved by the Commissioner of Public Safety as required by O.C.G.A. § 40-13-1. Hudson v. State, 261 Ga. 414, 405 S.E.2d 495 (1991).

Cited in Smith v. State, 140 Ga. App. 339, 231 S.E.2d 91 (1976); Holland v. State, 151 Ga. App. 189, 259 S.E.2d 187

(1979); Boss v. State, 152 Ga. App. 169, 262 S.E.2d 527 (1979); Cargile v. State, 244 Ga. App. 871, 262 S.E.2d 87 (1979); McSears v. State, 247 Ga. 48, 273 S.E.2d 847 (1981); Weaver v. State, 179 Ga. App. 641, 347 S.E.2d 295 (1986); Dixon v. State, 196 Ga. App. 15, 395 S.E.2d 577 (1990); Poppell v. State, 209 Ga. App. 91, 432 S.E.2d 573 (1993); State v. Black, 213 Ga. App. 331, 444 S.E.2d 368 (1994); State v. Gerbert, 267 Ga. 169, 475 S.E.2d 621 (1996); Millan v. State, 231 Ga. App. 121, 497 S.E.2d 664 (1998); Roberts v. State, 280 Ga. App. 672, 634 S.E.2d 790 (2006).

OPINIONS OF THE ATTORNEY GENERAL

Purpose of uniform traffic citation. — Because a citation serves as the formal accusation against a convicted driver, local jurisdictions may transmit traffic ticket information electronically to the Department of Public Safety, but not as a substitute for sending the citation copy. The uniform traffic citation must also be forwarded to the department. 1991 Op. Att'y Gen. No. U91-2.

All law officers must use the uniform traffic citation when enforcing traffic laws and ordinances. 1973 Op. Att'y Gen. No. 73-18.

Certification. — Certification contained within the uniform traffic citation is not required to be sworn to before a judicial officer; an oath administered by a notary public is sufficient. 1985 Op. Att'y Gen. No. 85-5.

There is no statutory requirement for a certification as provided for by the uniform traffic citation. 1985 Op. Att'y Gen. No. 85-5.

Since the certification is part of the citation, it should be completed as near to the time of arrest as possible and at least prior to the filing of the citation with the clerk of court; generally, this should be done within 48 hours of the arrest. 1985 Op. Att'y Gen. No. 85-5.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 141. 20 Am. Jur. 2d, Courts, §§ 51, 52.

C.J.S. — 60 C.J.S., Motor Vehicles, § 29 et seq.

40-13-2. System of accountability; procedures for use and issuance.

The Board of Public Safety, by rule and regulation, shall establish a system of accountability for all traffic citations and complaints, and it shall also provide the procedures governing the use and issuance of such citations and complaints. (Ga. L. 1972, p. 1148, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 15 et seq.

40-13-2.1. Signature on citations required; effect of failure to sign; exemption for out-of-state drivers; electronic capture of signature.

(a) A person who is issued a citation as provided in this chapter or Code Section 17-6-11, relating to display of driver's license in lieu of

bail, shall sign the citation to acknowledge receipt of the citation and of his or her obligation to appear for trial. The officer shall advise the person that signing the citation is not an admission of guilt and that failure to sign will result in the person having to post a cash bond. If the person refuses to sign the citation, it shall constitute reasonable cause to believe that the person will not appear at trial and the officer may bring the person before a judicial officer or traffic violations bureau to post a bond as is otherwise provided by law.

(b) The provisions of subsection (a) of Code Section 17-6-11 shall not apply to a person in possession of a driver's license issued by a state or foreign country that has not entered into a reciprocal agreement regarding the operation of motor vehicles with this state as provided in Chapter 5 of Title 40, which provides for the suspension of a driver's license by the other state or foreign country of a person who fails to appear for trial of a traffic offense committed in this state.

(c) The signature of any person to whom a citation is issued may be captured electronically. (Code 1981, § 40-13-2.1, enacted by Ga. L. 2000, p. 1313, § 5; Ga. L. 2010, p. 932, § 25/HB 396.)

JUDICIAL DECISIONS

Procedures after failure to sign. — Trial court did not err in granting the defendant's motion to suppress evidence because the defendant's arrest was illegal. After electing to issue a traffic citation, a deputy could not make a custodial arrest of the defendant when the defendant refused to sign the citation; the deputy had to follow the procedures in O.C.G.A. § 40-13-2.1(a) of advising the defendant that signing the citation would not be an admission of guilt or that, if the defendant refused to sign, the defendant would need to post a cash bond. State v. Torres, 290 Ga. App. 804, 660 S.E.2d 763 (2008).

40-13-3. Traffic offenses triable on complaint without indictment except in superior courts; report of disposition.

Except for offenses tried in the superior courts, all other courts having jurisdiction of the offense may proceed with the adjudication of the offenses contained within the complaint without the necessity of filing an indictment or other accusation in order to bring the accused to trial. The judge or clerk of each court before whom a person accused of such an offense is brought shall promptly report the final disposition of the case to the Department of Driver Services. Notwithstanding the reporting requirements of this Code section, the Department of Driver Services may by rule or regulation relieve the judge or clerk of each such court of the responsibility of reporting those offenses which do not result in convictions or adjudications of guilt or pleas of nolo contendere. (Ga. L. 1972, p. 1148, §§ 2, 4; Ga. L. 1992, p. 1118, § 2; Ga. L. 1992, p. 2785, § 29; Ga. L. 2000, p. 951, § 7A-1; Ga. L. 2005, p. 334, § 22-2/HB 501.)

Cross references. — Trial of misdemeanor motor vehicle violations upon citation, § 17-7-71. Trial upon citation in municipal court, § 36-32-10.2.

JUDICIAL DECISIONS

Guilty plea under First Offender Act. — Defendant's pleas of guilty to traffic offenses under the First Offender Act, O.C.G.A. § 42-8-60 et seq., were properly considered to be a final disposition under O.C.G.A. § 40-13-3 requiring reporting to the Department of Public Safety. Salomon v. Earp, 190 Ga. App. 405, 379 S.E.2d 217 (1989), overruled on other grounds, Pender v. Witcher, 196 Ga. App. 856, 397 S.E.2d 193 (1990).

Demand for speedy trial. — Defendant's demand for a speedy trial upon receipt of a uniform traffic citation and complaint form was not premature since such a citation itself contains the accusation, the preferring of which is a prerequisite to a demand for speedy trial. Majia v. State, 174 Ga. App. 432, 330 S.E.2d 171, aff'd, 254 Ga. 660, 333 S.E.2d 834 (1985).

Filing accusation not commencement of new prosecution. — Filing of an accusation in no way constituted commencement of a new prosecution and, therefore, the prosecution was not barred by the statute of limitations. Davis v. State, 208 Ga. App. 845, 432 S.E.2d 229 (1993).

Validity of citation. — That an indictment of a defendant was later necessary under O.C.G.A. §§ 17-7-70(a) and 40-13-3 did not destroy the validity of a formerly issued uniform traffic citation; the citation for felony vehicular homicide was not void, but expired and was superseded. State v. Perkins, 276 Ga. 621, 580 S.E.2d 523 (2003).

Commencement of prosecution. — Indictment filed in superior court was not the "commencement" of a new prosecution against the defendant for statute of limitations purposes as the indictment was issued in the superior court after the defendant had the defendant's case involving misdemeanor traffic charges transferred from the county probate court to the superior court; rather, the Uniform Traffic Citation issued to the defendant on the day the alleged offenses occurred commenced the prosecution against the defendant, and, thus, the prosecution against the defendant was brought within the two-year limitations period applicable to the defendant's case. Bishop v. State, 261 Ga. App. 445, 582 S.E.2d 571 (2003).

Cited in Holland v. State, 151 Ga. App. 189, 259 S.E.2d 187 (1979); Stone v. State, 151 Ga. App. 531, 260 S.E.2d 405 (1979); Boss v. State, 152 Ga. App. 169, 262 S.E.2d 527 (1979); Collins v. State, 154 Ga. App. 651, 269 S.E.2d 509 (1980); McSears v. State, 247 Ga. 48, 273 S.E.2d 847 (1981); Weaver v. State, 179 Ga. App. 641, 347 S.E.2d 295 (1986).

OPINIONS OF THE ATTORNEY GENERAL

Section applies to recorders' court. — Recorders' court, being a court with jurisdiction over traffic offenses, must comply with the reporting requirements of Ga. L. 1972, p. 1148, §§ 2 and 4 (see now O.C.G.A. § 40-13-3). 1973 Op. Att'y Gen. No. 73-18.

First-offender treatment immaterial to administrative handling of report of conviction. — Upon receipt of report of conviction, i.e., finding of guilt or entry of plea of guilty, or plea of nolo contendere, the Department of Public Safety should administratively handle the report as it would any other report of conviction notwithstanding the fact that the defendant was able to lessen any harsh criminal consequences of the defendant's actions by availing oneself of first offender treatment. 1982 Op. Att'y Gen. No. 82-64.

Nolo contendere plea. — Once the Department of Public Safety is in receipt of a report of "an accepted plea of nolo contendere", the Department should administratively handle the nolo contendere plea as provided for in O.C.G.A. Ch. 5, T. 40 without regard to whether a fine was or was not imposed by the trial court. 1982 Op. Att'y Gen. No. 82-64.

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 921 et seq.

C.J.S. — 61A C.J.S., Motor Vehicles, § 1504 et seq.

40-13-4. Fees of officers.

Nothing contained in this article shall be construed to prohibit or to deny to any officer or official of any court any fees prescribed for his duties and services in connection with the offenses provided for in this article. (Ga. L. 1972, p. 1148, § 4.)

JUDICIAL DECISIONS

Cited in Holland v. State, 151 Ga. App. 189, 259 S.E.2d 187 (1979).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 141. 20 Am. Jur. 2d, Courts, §§ 54, 55.

ARTICLE 2

ARRESTS, TRIALS, AND APPEALS

Cross references. — Judicial procedure relating to juvenile traffic offenses, §§ 15-11-49, 15-11-50. Transfer of charge to state tribunal, § 40-6-376.

Law reviews. — For note, "You have the Right to Free Speech: Retaliatory Arrests and the Pretext of Probable Cause," see 51 Ga. L. Rev. 607 (2017).

JUDICIAL DECISIONS

Courts from which direct appeal would lie. — Courts named in O.C.G.A. Art. 2, Ch. 13, T. 40 from which direct appeal would lie are probate courts, municipal courts, and police courts. The act provides that police courts shall be construed to include mayor's courts or recorder's courts, or like municipal courts by whatever names called. Henson v. DeKalb County, 158 Ga. App. 348, 280 S.E.2d 393 (1981).

RESEARCH REFERENCES

ALR. — Entrapment to commit traffic offense, 34 A.L.R.4th 1167.

40-13-20. "Municipal courts" defined.

As used in this article, the term "municipal courts" shall be construed to include municipal courts of the incorporated municipalities of this

state. (Ga. L. 1937-38, Ex. Sess., p. 558, § 3; Ga. L. 1987, p. 3, § 40; Ga. L. 1994, p. 604, § 1.)

40-13-21. General powers and jurisdiction of probate and municipal courts; assistance of the district attorney or solicitor.

(a) The probate courts and municipal courts of the incorporated towns and cities of this state, acting by and through the judges or presiding officers thereof, shall have the right and power to conduct trials, receive pleas of guilty, and impose sentence, in the manner required by law, upon defendants violating any and all criminal laws of this state relating to traffic upon the public roads, streets, and highways of this state where the penalty for the offense does not exceed that of the grade of misdemeanor.

(b) The probate court shall have jurisdiction to issue warrants, try cases, and impose sentence thereon in all misdemeanor cases arising under the traffic laws of this state in all counties of this state in which there is no city, county, or state court, provided the defendant waives a jury trial. Notwithstanding any provision of law to the contrary, all municipal courts are granted jurisdiction to try and dispose of misdemeanor traffic offenses arising under state law except violations of Code Section 40-6-393 and to impose any punishment authorized for such offenses under general state law, whether or not there is a city, county, or state court in such county, if the defendant waives a jury trial and the offense arises within the territorial limits of the respective jurisdictions as now or hereafter fixed by law.

(c) In any traffic misdemeanor trial, a judge of the probate court, upon his or her own motion, may request the assistance of the district attorney of the circuit in which the court is located or solicitor-general of the state court of the county to conduct the trial on behalf of the state. If, for any reason, the district attorney or solicitor-general is unable to assist, the district attorney or solicitor-general may designate a member of his or her staff to conduct the trial on behalf of the state. (Ga. L. 1937-38, Ex. Sess., p. 558, §§ 1-3; Ga. L. 1953, Nov.-Dec. Sess., p. 83, § 2; Ga. L. 1962, p. 3146, § 2; Ga. L. 1971, p. 2299, § 1; Ga. L. 1982, p. 2107, § 44; Ga. L. 1987, p. 3, § 40; Ga. L. 1989, p. 354, § 1; Ga. L. 1989, p. 604, § 1; Ga. L. 1992, p. 909, § 1; Ga. L. 1992, p. 980, § 1; Ga. L. 1996, p. 748, § 21.)

Cross references. — Provisions regarding jurisdiction of recorder's, mayor's, and other police courts to try traffic offenses, § 40-5-124.

Editor's notes. — Ga. L. 1996, p. 748, § 27, not codified by the General Assembly, provides: "Notwithstanding any other provision of law, an Act approved February 11, 1854 (Ga. L. 1854, p. 281), which abolished the office of solicitor of the City Court of Savannah, now the State Court of Chatham County, and transferred respon-

sibility for the prosecution of criminal cases in said court to the solicitor general (now the district attorney) for the Eastern Judicial Circuit is confirmed. It shall be the duty of said district attorney to prosecute all criminal actions in said state court until otherwise specifically provided by law."

Ga. L. 1996, p. 748, § 28, not codified by the General Assembly, provides: "The provisions of this Act shall not affect the powers, duties, or responsibilities of the district attorney as successor to the office of solicitor general under the constitution, statutes, and common law of this state as provided by Code Section 15-18-1."

Ga. L. 1996, p. 748, § 29, not codified by the General Assembly, provides: "Except as otherwise authorized in this Act, on and after July 1, 1996, any reference in general law or in any local Act to the solicitor of a state court shall mean and shall be deemed to mean the solicitor-general of such state court."

Ga. L. 1996, p. 748, § 30, not codified by the General Assembly, provides: "The provisions of paragraph (3) of Code Section 15-18-62, relating to the qualifications for the office of solicitor-general of a state court, shall apply to any person elected or appointed to such office after July 1, 1996. Any person holding such office on July 1, 1996, may continue to hold such office for the remainder of the term to which such person was elected or appointed notwithstanding the fact that such person has not been a member of the State Bar of Georgia for three years if such person is otherwise qualified to hold the office of solicitor-general."

Law reviews. — For survey article on criminal law and procedure for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 117 (2003).

For note on the 1989 amendment to this Code section, see 6 Ga. St. U.L. Rev. 196 (1989).

JUDICIAL DECISIONS

Constitutionality. — In providing that municipal courts shall have jurisdiction over ordinance violations and such other jurisdiction as provided by law, Ga. Const. 1983, Art. VI, Sec. I, Para. I authorizes the General Assembly to vest municipal courts with jurisdiction over state misdemeanor offenses. Kolker v. State, 260 Ga. 240, 391 S.E.2d 391 (1990).

Construed with O.C.G.A. § 1-1-2. — Under the statutory provisions contained in O.C.G.A. § 40-13-21, it was in 1937, and continues to be, the intent of the legislature to vest all municipal courts with jurisdiction over state misdemeanor traffic laws (citing 1945 Georgia Constitution). Whaley v. State, 260 Ga. 384, 393 S.E.2d 681 (1990).

Municipal court jurisdiction over misdemeanor traffic offenses. — Power of municipal courts to try and dispose of misdemeanor traffic offenses is conditioned upon the defendant's waiver of the defendant's right to a jury trial. Kolker v. State, 260 Ga. 240, 391 S.E.2d 391 (1990).

Jurisdiction to issue warrant not limited. — Right and jurisdiction of the court to issue a warrant is not limited to any particular instances. Cooper v. Lunsford, 203 Ga. 166, 45 S.E.2d 395 (1947).

Probate court lost the court's jurisdiction to hear and decide misdemeanor traffic offenses by operation of law upon the effective date of the creation of a state court in the county. Fausnaugh v. State, 244 Ga. App. 263, 534 S.E.2d 554 (2000).

Waiver of jury trial in probate court. — In those probate court cases in which there is no record that a timely objection to trial without a jury was made, the right to a jury trial is waived, and the issue cannot be raised for the first time on appeal. Nicholson v. State, 261 Ga. 197, 403 S.E.2d 42 (1991), but see Davis v. State, 197 Ga. App. 746, 399 S.E.2d 554 (1990).

Waiver of jury in recorder's court. — When no evidence appeared indicating the defendant's objection to proceeding without a jury on a prior charge of driving under the influence tried in the recorder's court, the defendant waived the defendant's right to a jury trial on that charge, and the trial court did not err by consid-

ering the valid prior judgment in sentencing the defendant as a third-time violator. Kolker v. State, 200 Ga. App. 72, 406 S.E.2d 514, cert. denied, 200 Ga. App. 896, 406 S.E.2d 514 (1991).

Cited in Mathis v. Rowland, 208 Ga. 571, 67 S.E.2d 760 (1951); City of Adairsville v. Barton, 159 Ga. App. 810, 285 S.E.2d 581 (1981); Kolker v. State, 193 Ga. App. 306, 387 S.E.2d 597 (1989); Zornes v. State, 262 Ga. 757, 426 S.E.2d 355 (1993); Mauldin v. Burnette, 89 F. Supp. 2d 1371 (M.D. Ga. 2000); Lockett v. State, 257 Ga. App. 412, 571 S.E.2d 192 (2002); State v. Rigdon, 284 Ga. App. 785, 645 S.E.2d 17 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Jurisdiction over cases arising under traffic laws. — In counties having no city court (now state court), the probate court has jurisdiction to dispose of misdemeanor cases arising by virtue of traffic laws of this state. 1948-49 Op. Att'y Gen. p. 483; 1950-51 Op. Att'y Gen. p. 21.

Ga. L. 1937-38, Ex. Sess., p. 558, §§ 1-3 (see now O.C.G.A. § 40-13-21) limits the jurisdiction of the probate court to cases arising under traffic laws of the state. 1958-59 Op. Att'y Gen. p. 67.

Probate court, having jurisdiction over traffic offenses pursuant to O.C.G.A. §§ 15-9-30(b)(8) and 40-13-21, has jurisdiction over violations of county traffic ordinances. 1995 Op. Att'y Gen. No. U95-1.

Jurisdiction over traffic cases. — Probate court may exercise state judicial power over misdemeanor traffic offenses occurring within the corporate limits of a municipal corporation where the charter of the municipal corporation authorizes a municipal court but no such court is in existence. The arresting officer in a misdemeanor traffic case is responsible for returning those charges to the proper court with jurisdiction to hear the matter, but, if the citation is erroneously returned to the incorrect court, that court should promptly act to transfer the matter to a court with jurisdiction to consider the charges. 1989 Op. Att'y Gen. No. U89-30.

Power of probate court not prohibited because of municipal court existence. — O.C.G.A. § 40-13-29 does not prohibit the probate court from exercising state judicial power in any county simply because of the existence of a municipal court within the corporate limits of a municipal corporation within that county. 1989 Op. Att'y Gen. No. U89-30.

Authority of mayor's court when there is no city or county court, see 1954-56 Op. Att'y Gen. p. 489; 1960-61 Op. Att'y Gen. p. 567.

Municipal courts, police courts, mayors' courts or recorders' courts have jurisdiction when the offense occurs within the incorporated limits of the municipality in a county which has no city or county court and the defendant waives a jury trial. 1967 Op. Att'y Gen. No. 67-157.

Municipal court possesses jurisdiction to try all misdemeanor cases originating within the corporate limits of the city which concern violations of laws relating to traffic upon the public roads, streets, and highways. 1973 Op. Att'y Gen. No. 73-29.

Traffic laws enumerated. — Municipal court has jurisdiction over the offenses of driving under the influence of intoxicating liquor or drugs, driving a vehicle without a driver's license or with a revoked, suspended, or cancelled driver's license, driving a vehicle without a state inspection sticker or with an expired state inspection sticker, driving a vehicle without a state license plate or with an illegal or expired state license plate, and other traffic offenses occurring on the public roads of the municipality. 1967 Op. Att'y Gen. No. 67-157.

Municipal court possesses jurisdiction to try violations of laws requiring annual inspections of motor vehicles and prohibiting driving under the influence of intoxicating liquor or drugs. 1973 Op. Att'y Gen. No. 73-29.

No authority over licensing and registration violations. — Probate courts have no authority or jurisdiction in violations arising under licensing and registration provisions because those provisions are not "traffic laws" as contemplated by Ga. L. 1962, p. 3146, § 2 (see now O.C.G.A. § 40-13-21). 1965-66 Op. Att'y Gen. No. 65-18.

No jurisdiction of public drunkenness offense. — Since the offense of public drunkenness does not involve "traffic upon the public roads, streets, and highways of this state …," a probate court is without jurisdiction to try cases or to accept cash bonds for the offense of public drunkenness. 1984 Op. Att'y Gen. No. U84-13.

Authority to issue warrants. — If there is no city or county court in a county, then the judge of the probate court would have authority to issue warrants for the violation of traffic laws. 1954-56 Op. Att'y Gen. p. 109.

Judge of the probate court may issue a warrant for arrest for traffic violations and a justice of the peace may issue a warrant for traffic offenses if a warrant has not otherwise been issued by the judge of the probate court. 1965-66 Op. Att'y Gen. No. 65-57.

Probate judges may issue arrest warrants only in certain traffic cases and for peace officers accused of any offense in the performance of their duties. 1983 Op. Att'y Gen. No. U83-13.

Authority to appoint attorney to prosecute. — In a misdemeanor traffic case before a county probate court when the probate judge either has not requested the assistance of the district attorney or has requested assistance but the district attorney has refused to conduct the trial or to designate a member of his or her staff to conduct the trial, the board of commissioners is free to provide an attorney to prosecute the case. Further, in a case under the jurisdiction of the probate court other than a misdemeanor traffic case, the board of commissioners is also free to provide an attorney to prosecute the case. 2001 Op. Att'y Gen. No. U2001-2.

Warrant for failure to appear. — Judge of the probate court does not have authority to issue a bench warrant, but the judge does have authority to issue an arrest warrant for a person who does not appear to answer a traffic violation citation issued to that person. 1975 Op. Att'y Gen. No. U75-65.

Named probate court may issue warrant ordering apprehension of individual charged with violating traffic laws who fails to appear in court on the date and at the time specified in the citation upon which he or she was arrested. 1980 Op. Att'y Gen. No. U80-58.

Burden on defendant to notify court if jury trial desired. — Probate court has an affirmative burden to obtain a written waiver of a jury trial prior to proceeding to dispose of a pending traffic case on the merits. However, the defendant has an affirmative burden to notify the court if a jury trial is desired. 1980 Op. Att'y Gen. No. 80-135.

Limitation on imposition of fines. — Maximum fines that may be imposed by the probate court under Ga. L. 1937-38, Ex. Sess., p. 558, §§ 1-3 (see now O.C.G.A. § 40-13-21) would be those fines specifically provided by statute for the particular misdemeanor involved in the trial. 1948-49 Op. Att'y Gen. p. 484.

Assessment of costs. — When a probate court hears cases involving traffic cases, costs should be assessed in accordance with former Code 1933, § 24-1716. 1970 Op. Att'y Gen. No. U70-102 (see now O.C.G.A. § 15-9-60).

In traffic offense cases tried in the probate court, costs which are properly incurred may be recovered from an insolvent cost fund when there is neither a fine nor a bond forfeiture. 1969 Op. Att'y Gen. No. 69-511.

Costs applicable to traffic cases brought in probate courts pursuant to O.C.G.A. § 40-13-21 or when a judge of the probate court issues warrant in traffic cases pursuant to O.C.G.A. § 17-4-23 are those enumerated in O.C.G.A. § 15-9-60 for public safety patrol trials plus costs allowed for other services actually performed. 1981 Op. Att'y Gen. No. U81-36.

Appeal to superior court. — O.C.G.A. § 40-13-28 requires that a misdemeanor traffic defendant who has been convicted in the probate court and who wishes to appeal to the superior court is to be remanded to the custody of the sheriff pending the posting of an appellate bond only if the defendant has been sentenced to a term of imprisonment. 1989 Op. Att'y Gen. No. U89-30.

Private practice of part-time district attorney. — District attorney may appoint a part-time assistant district attorney to prosecute traffic cases in the

probate court if requested by the judge of the probate court. If the assistant is compensated solely by county funds, the assistant can engage in the private practice of law except as a conflict of interest may arise due to that person's responsibilities as an assistant district attorney. 1991 Op. Att'y Gen. No. U91-6.

RESEARCH REFERENCES

C.J.S. — 21 C.J.S., Courts, § 109 et seq.

40-13-22. Jurisdiction over offenses under Code Section 40-2-8.

(a) Notwithstanding any provision of the law to the contrary, any person, firm, or corporation charged with an offense under Code Section 40-2-8 may be tried in any municipal court of any municipality if the offense occurred within the corporate limits of such municipality. Such courts are granted the jurisdiction to try and dispose of such cases. The jurisdiction of such courts shall be concurrent with the jurisdiction of any other courts within the county having jurisdiction to try and dispose of such cases. Any fines and bond forfeitures arising from the prosecution of such cases shall be retained by the municipality and shall be paid into the treasury of such municipality. Any person, firm, or corporation charged with any offense under this Code section shall be entitled to request to have the case against him transferred to the court having general misdemeanor jurisdiction in the county wherein the alleged offense occurred.

(b) Nothing in this Code section shall be construed to give any municipality the right to impose a fine or punish by imprisonment in excess of the limits as set forth in the municipality's charter. (Ga. L. 1931, p. 213, § 2; Code 1933, § 68-9901; Ga. L. 1977, p. 1039, § 1; Ga. L. 1987, p. 3, § 40; Ga. L. 2015, p. 693, § 3-32/HB 233.)

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

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

OPINIONS OF THE ATTORNEY GENERAL

Probate court is without jurisdiction to try the offense of operating a motor vehicle with expired license tags. 1958-59 Op. Att'y Gen. p. 67.

Former Code 1933, § 68.9901 (see now O.C.G.A. § 40-13-22) was not a traffic law of Georgia, but rather was part of the revenue statutes of the state and hence the probate court would have no jurisdiction to try offenses under such section. 1958-59 Op. Att'y Gen. p. 67.

40-13-23. Waiver of jury trial; withdrawal of waiver.

(a) No court defined in this article shall have the power to dispose of traffic misdemeanor cases as provided in this article unless the defendant shall first waive in writing a trial by jury. If the defendant wishes a trial by jury, he shall notify the court and, if reasonable cause exists, he shall be immediately bound over to the court in the county having jurisdiction to try the offense, wherein a jury may be impaneled. Where a cash bond, property bond, or driver's license in lieu of bond has been posted, the bond shall be transferred to the court assuming jurisdiction, and the defendant shall not be required to post a new bond by the court assuming jurisdiction.

(b) No waiver of a trial by jury may be withdrawn when such waiver has been interposed for the purpose of delay. Except with approval of the court, no waiver of a trial by jury may be withdrawn after the commencement of the trial or the filing of motions on behalf of the defendant, whichever comes first. (Ga. L. 1937-38, Ex. Sess., p. 558, § 4; Ga. L. 1985, p. 149, § 40; Ga. L. 1987, p. 329, § 1; Ga. L. 1992, p. 2785, § 29; Ga. L. 1996, p. 1279, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, a comma was inserted following "property bond" in the third sentence of subsection (a).

JUDICIAL DECISIONS

Written waiver required. — Language of O.C.G.A. § 40-13-23 is clear and unambiguous: without a written waiver of trial by jury, the probate court is without authority to proceed to disposition of the case. An oral waiver at a recorded hearing is not sufficient compliance with the statute. Snellings v. State, 194 Ga. App. 552, 391 S.E.2d 36 (1990), but see Nicholson v. State, 261 Ga. 197, 403 S.E.2d 42 (1991).

When a review of the record reveals that the appellant did not sign the jury trial waiver, the probate court was without authority to dispose of the case. Even though there is no indication that the waiver-of-jury-trial issue was raised in the superior court, this is a matter which goes to the subject matter jurisdiction of the probate court and the right to attack the judgment as a nullity is not waived by the failure to attack the judgment before. Davis v. State, 197 Ga. App. 746, 399 S.E.2d 554 (1990), but see Nicholson v. State, 261 Ga. 197, 403 S.E.2d 42 (1991).

Waiver of jury in recorder's court. — When no evidence appeared indicating the defendant's objection to proceeding without a jury on a prior charge of driving under the influence tried in the recorder's court, the defendant waived the right to a jury trial on that charge, and the trial court did not err by considering the valid prior judgment in sentencing the defendant as a third-time violator. Kolker v. State, 200 Ga. App. 72, 406 S.E.2d 514, cert. denied, 200 Ga. App. 896, 406 S.E.2d 514 (1991).

Waiver may not be raised on appeal absent objection. — In those probate court cases in which there is no record that a timely objection to trial without a jury was made, the right to a jury trial is waived, and the issue cannot be raised for the first time on appeal. Nicholson v. State, 261 Ga. 197, 403 S.E.2d 42 (1991), but see Davis v. State, 197 Ga. App. 746, 399 S.E.2d 554 (1990).

Superior court erred in remanding the case to the municipal court for further determination of the waiver of jury trial issue when the record failed to show that the defendant had objected to proceeding

without a jury in the municipal court. Doggett v. City of Manchester, 201 Ga. App. 425, 411 S.E.2d 288, cert. denied, 201 Ga. App. 903, 411 S.E.2d 288 (1991); Shannon v. State, 205 Ga. App. 831, 424 S.E.2d 51, cert. denied, 205 Ga. App. 901, 424 S.E.2d 51 (1992).

Georgia Supreme Court has held that a written waiver of a right to trial by jury is itself waived if the defendant proceeds to trial without objecting to being tried without a jury. Giles v. City of Locust Grove, 203 Ga. App. 164, 416 S.E.2d 758, cert. denied, 203 Ga. App. 906, 416 S.E.2d 758 (1992).

Defendant waived the defendant's rights under O.C.G.A. § 40-13-23 when the record fails to reflect that the defendant interposed any objection in the municipal court to being tried without a jury, and the record contains a finding by the municipal court judge that the defendant and defense counsel were specifically advised by the court of the defendant's right to trial by jury. Giles v. City of Locust Grove, 203 Ga. App. 164, 416 S.E.2d 758, cert. denied, 203 Ga. App. 906, 416 S.E.2d 758 (1992).

Cited in Newmans v. State, 65 Ga. App. 288, 16 S.E.2d 87 (1941); Dodd v. State, 85 Ga. App. 589, 69 S.E.2d 784 (1952); Kendall v. State, 196 Ga. App. 760, 396 S.E.2d 927 (1990); Walton v. State, 197 Ga. App. 263, 398 S.E.2d 221 (1990); Puckett v. State, 239 Ga. App. 582, 521 S.E.2d 634 (1999).

OPINIONS OF THE ATTORNEY GENERAL

Burden on defendant to notify court. — Probate court has an affirmative burden to obtain a written waiver of a jury trial prior to proceeding to dispose of a pending traffic case on the merits. However, the defendant has an affirmative burden to notify the court if a jury trial is desired. 1980 Op. Att'y Gen. No. 80-135.

Removal or appeal bond not condition for transfer. — Municipal judge is not authorized to require a removal or appeal bond as a condition of transferring a case to superior court under O.C.G.A. § 40-13-23. 1984 Op. Att'y Gen. No. U84-44.

Disposition of fines in cases transferred between courts. — Municipality cannot collect and retain fines resulting from cases transferred from municipal court to superior court pursuant to O.C.G.A. § 40-13-23, since fines imposed by the superior court must be paid into the county treasury. 1984 Op. Att'y Gen. No. U84-44.

Phrase "if reasonable cause exists" in subsection (a) of O.C.G.A. § 40-13-23 provides that, if a defendant has notified the court that the defendant desires a trial by jury, the court must review the case and, if reasonable cause exists to prosecute the matter against the defendant, the court is to bind the charges over to the court having jurisdiction to try the offense and the ability to provide the defendant's requested trial by a jury. If reasonable cause to continue the prosecution does not exist, the municipal court may dismiss the charges at that point. 1989 Op. Att'y Gen. No. U89-23.

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 935.

C.J.S. — 15A C.J.S., Common Law, § 1.

40-13-24. Indictment or accusation not required; docket.

An indictment or accusation shall not be required against a defendant under this article, but a citation and complaint specifically setting out the charge shall be issued. The court shall keep a docket on which shall be plainly kept the name and address of the defendant, the nature

of the offense in brief, the date when brought before the court, and the final disposition of the case with the date thereof. Such docket shall be the same in each probate court handling traffic misdemeanor cases and shall be on a form to be prescribed by the Department of Law. Such docket shall be paid for from the treasury of the county in which such court is located. Municipal courts may use the dockets ordinarily in use by them in the trial of other cases or, in the discretion of the court, may adopt the docket provided in this Code section for probate courts. (Ga. L. 1937-38, Ex. Sess., p. 558, § 6; Ga. L. 1987, p. 3, § 40.)

JUDICIAL DECISIONS

Law prior to section. — At the time of the passage of Ga. L. 1937-38, Ex. Sess., p. 558, § 6 (see now O.C.G.A. § 40-13-24), the law of this state contemplated that every arrest, either for a misdemeanor or felony, would be made under a warrant. Cooper v. Lunsford, 203 Ga. 166, 45 S.E.2d 395 (1947).

Insolvent costs fund authorized. — Having construed Ga. L. Ex. Sess. 1937-38, p. 558, as contemplating the creation of an insolvent costs fund in order to pay the sheriff costs in accordance with its provisions, and the Act by its terms making the ordinary (now probate judge) an officer of the court and specifying the amount of costs the ordinary (now probate judge) is to receive in each case, the General Assembly necessarily intended that the ordinary (now probate judge) would participate in the insolvent costs fund. Cooper v. Lunsford, 203 Ga. 166, 45 S.E.2d 395 (1947).

Demand for speedy trial. — Defendant's demand for a speedy trial upon receipt of a uniform traffic citation and complaint form was not premature since such a citation itself contains the accusation, the preferring of which is a prerequisite to a demand for speedy trial. Majia v. State, 174 Ga. App. 432, 330 S.E.2d 171, aff'd, 254 Ga. 660, 333 S.E.2d 834 (1985).

Cited in McSears v. State, 247 Ga. 48, 273 S.E.2d 847 (1981).

OPINIONS OF THE ATTORNEY GENERAL

Costs permitted for entering case on docket. — An ordinary (now probate judge) who tries cases arising out of the violation of traffic laws shall be allowed the fee provided for by Ga. L. 1937-38, Ex. Sess., p. 558, § 5 (see now O.C.G.A. § 40-13-25) when the ordinary (now probate judge) enters a case on the docket pursuant to the ordinary's duties as set forth in Ga. L. 1937, Ex. Sess., p. 558, § 6 (see now O.C.G.A. § 40-13-24). 1968 Op. Att'y Gen. No. 68-213.

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 984, 985, 995. 62B Am. Jur. 2d, Process, § 1.

C.J.S. — 21 C.J.S., Courts, §§ 239, 308.

40-13-25. Costs.

The costs in any case disposed of under this article shall be as provided in Code Section 15-9-60. In case a defendant refuses to waive a trial by jury and is bound over to another court, the costs shall await the final disposition of the case. (Ga. L. 1937-38, Ex. Sess., p. 558, § 5.)

JUDICIAL DECISIONS

Cited in Sikes v. Charlton County, 103 Ga. App. 251, 119 S.E.2d 59 (1961).

OPINIONS OF THE ATTORNEY GENERAL

Ordinary allowed fee for entering case on docket. — Ordinary (now probate judge) who tries cases arising out of the violation of traffic laws shall be allowed a fee when the ordinary enters a case on the docket pursuant to the ordinary's duties as set forth in Ga. L. 1937-38, Ex. Sess., p. 558, § 6. 1968 Op. Att'y Gen. No. 68-213 (see now O.C.G.A. § 40-13-24).

Justice of the peace is entitled to costs for the issuance of a warrant. 1948-49 Op. Att'y Gen. p. 49.

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Costs, § 1 et seq.
C.J.S. — 21 C.J.S., Courts, § 239.

40-13-26. How sentences for traffic offenses served; disposition of fines and costs; definition of "urban interstate system".

(a) Defendants who plead guilty or who are convicted under this article shall be required to serve their sentences in such manner as is provided for by law in misdemeanor cases. In case a fine is imposed and paid, the officers of court, where on fee basis, shall first be paid their costs arising in such case. After the payment of all costs, the remainder of such fine shall be paid into the county treasury in the event the case is disposed of by the probate court; if the case is disposed of by the municipal court of an incorporated municipality, the remainder of such fine or fines shall be paid into the treasury of the municipality where the court is located, except that where such courts have jurisdiction beyond the corporate limits of a municipality, and the offense occurs outside the municipality, the fine shall be paid into the county treasury; provided, however, that in any case where a fine was imposed for violation of any traffic offense provided in or authorized by Chapter 6 of this title on any "urban interstate system" if the arrest or citation in such case was made or issued by a member of the Uniform Division of the Department of Public Safety's motorcycle enforcement unit, the remainder of such fine shall be remitted to the Department of Public Safety for the maintenance and enhancement of the Department's motorcycle program. The judge of the probate court or the person presiding over the municipal court must pay into the county treasury, municipal treasury, or Department of Public Safety by the fifteenth day of each month the remainder of all fines for the preceding month. Such payment must be accompanied by a list showing the name of the defendant in each case, the fine imposed in each case, the costs in each

case and to whom paid, and the balance which is being paid into the treasury. The official making such payment must be given a written receipt by the person receiving the payment. No officer receiving a salary will receive any fees for arresting or attending court in any case arising under this article, but the usual fees must be assessed, and, if the arresting officer is not entitled to the costs, they must go to the county or city to which the fine is paid or Department of Public Safety as required by this Code section.

(b) As used in this Code section, the term "urban interstate system" means a portion of the national system of interstate and defense highways which:

(1) Is located entirely within any part of this state; and

(2) Includes a single numbered interstate highway which forms a closed loop or perimeter.

Where these conditions exist, the urban interstate system shall consist of the interstate highway constituting the closed loop or perimeter and all interstate highways or portions thereof located within such loop or perimeter, not including any portion of any interstate highway outside of the loop or perimeter. (Ga. L. 1937-38, Ex. Sess., p. 558, § 7; Ga. L. 1953, Jan.-Feb. Sess., p. 416, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 207, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1987, p. 3, § 40; Ga. L. 2006, p. 159, § 2/HB 1209.)

Cross references. — Sentence and punishment generally, T. 17, C. 10. Surcharges to or apportionment of fines in certain traffic offense cases, §§ 15-21-73, 15-21-93, 15-21-112, 15-21-131, 15-21-149, 36-15-9, 47-11-51, 47-14-50, 47-16-60, and 47-17-60. Punishment for misdemeanor traffic offenses generally, § 17-10-3. Maximum fines for certain offenses, § 40-6-1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, "Code section" was substituted for "subsection" in the introductory language of subsection (b).

Editor's notes. — Ga. L. 2006, p. 159, § 3/HB 1209, and amended by Ga. L. 2010, p. 105, § 2-1/HB 981, not codified by the General Assembly, as amended by Ga. L. 2007, p. 47, § 15A/SB 103, and amended by Ga. L. 2010, p. 105, § 2-2/HB 981, provides: "This Act shall become effective on July 1, 2006."

JUDICIAL DECISIONS

Sheriff has right to costs for making arrest, even though the arrest is made contrary to the policy of the law that the person who makes the affidavit upon which a warrant is issued should not make the arrest thereunder. Cooper v. Lunsford, 203 Ga. 166, 45 S.E.2d 395 (1947).

Insolvent cost fund authorized. — Georgia L. Ex. Sess., 1937-38, p. 558, authorizes the establishment of an insolvent cost fund for the benefit of the officers of courts of ordinary (now probate court). Cooper v. Lunsford, 203 Ga. 166, 45 S.E.2d 395 (1947).

Claim against insolvent costs fund. — Law contemplates that an officer having a claim against an insolvent costs fund should present an itemized statement of the costs before being approved. When it

is agreed, however, that the sheriff had performed a service for each item for which the sheriff has received costs from the court of ordinary (now probate court), the sheriff's failure to file a written itemized costs bill should not operate as a forfeiture of such costs as the sheriff had received, or the sheriff's right to participate in an insolvent costs fund. Cooper v. Lunsford, 203 Ga. 166, 45 S.E.2d 395 (1947).

Probate judge erred by allowing defendants to "buy out" their community service. — Probate judge who told criminal defendants that the defendants had the burden of proving their innocence, who allowed defendants to "buy out" their community service sentences and kept the proceeds in a bank account that the judge controlled, participated in ex parte communications, insulted and abused parties in the judge's court, and disposed of cases outside the jurisdiction of the probate court, was found in violation of Ga. Code Jud. Conduct Canons 1, 2, and 3, Ga. Const. 1983, Art. VI, Sec. VII, Para. VII(a), and O.C.G.A. §§ 16-10-32 and 40-13-26, was removed from office and barred from seeking judicial office again. Inquiry Concerning Fowler, 287 Ga. 467, 696 S.E.2d 644 (2010).

OPINIONS OF THE ATTORNEY GENERAL

State highway patrolman's claim for fees. — State highway patrolman is not entitled to fees for the performance of the patrolman's duties in criminal cases of whatever type the duties may be. 1948-49 Op. Att'y Gen. p. 49.

Ga. L. 1937-38, Ex. Sess., p. 558, § 7 (see now O.C.G.A. § 40-13-26) authorizes establishment of an insolvent cost fund for the benefit of the officers of the probate court. 1958-59 Op. Att'y Gen. p. 48.

Disposition of fines in cases transferred from municipal court to superior court. — Municipality cannot collect and retain fines resulting from cases transferred from municipal court to superior court pursuant to O.C.G.A. § 40-13-23 since fines imposed by the superior court must be paid into the county treasury. 1984 Op. Att'y Gen. No. U84-44.

Since O.C.G.A. §§ 15-21-2 and 15-21-52 mandate that all fines collected by county courts be paid into the county treasury, a municipality and county cannot contract to provide for the division of moneys received as fines by the superior court from cases transferred under O.C.G.A. § 40-13-23. 1984 Op. Att'y Gen. No. U84-44.

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Costs, §§ 1, 93 et seq.

40-13-27. Records to be kept.

A written record is required to be kept of every case made or disposed of under this article. Such record shall be accessible at all times for public inspection and official audit and shall be kept and remain as a part of the permanent records of the court. (Ga. L. 1937-38, Ex. Sess., p. 558, § 8.)

OPINIONS OF THE ATTORNEY GENERAL

Purpose of section. — Under O.C.G.A. § 40-13-27, municipal traffic records must be accessible for public inspection. 1982 Op. Att'y Gen. No. U82-36.

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, §§ 22 et seq., 49 et seq., 59, 60.

C.J.S. — 21 C.J.S., Courts, §§ 9, 307 et seq.

40-13-28. Appeal to superior court; bond.

Any defendant convicted under this article shall have the right of appeal to the superior court. The provisions of Code Sections 5-3-29 and 5-3-30 shall not apply to appeals under this Code section. Otherwise, the appeal shall be entered as appeals are entered from the probate court to the superior court, provided that the defendant shall be entitled to bail and shall be released from custody upon giving the bond as is provided for appearances in criminal cases in the courts of this state. Such bond shall have the same conditions as appearance bonds in criminal cases. The appeal to the superior court shall not be a de novo investigation before a jury but shall be on the record of the hearing as certified by the judge of that court who presided at the hearing below. (Ga. L. 1937-38, Ex. Sess., p. 558, § 10; Ga. L. 1986, p. 982, § 15.)

Cross references. — Appeals to superior courts generally, T. 5, C. 3.

Editor's notes. — Ga. L. 1986, p. 982, § 25, not codified by the General Assembly, provided that that Act would apply to all cases filed on or after July 1, 1986.

JUDICIAL DECISIONS

Construction of section. — Language of O.C.G.A. § 40-13-28 cannot be read in isolation so as to support a right of direct appeal regardless of the type of conviction but must instead be read in the context of the entire chapter (see O.C.G.A. Ch. 13, T. 40), which deals only with the trial of traffic offenses committed on public roads. City of Adairsville v. Barton, 159 Ga. App. 810, 285 S.E.2d 581 (1981).

Construing O.C.G.A. §§ 5-6-35(a)(1) and 40-13-28 according to their real intent and meaning and not so strictly as to defeat the legislative purpose, the General Assembly did not intend to remove traffic appeals under § 40-13-28 from the discretionary appeals procedures. Brown v. City of Marietta, 214 Ga. App. 840, 449 S.E.2d 540 (1994).

Any appeal from a superior court review under O.C.G.A. § 40-13-28 of any lower court, except the probate court, shall be under O.C.G.A. § 5-6-35(a); however, an appeal from the superior court review under § 40-13-28 of a traffic case from the probate court shall be by direct appeal under O.C.G.A. § 5-6-34(a)(1). Power v. State, 231 Ga. App. 335, 499 S.E.2d 357 (1998).

Construction of 1986 amendment. — The 1986 amendment to O.C.G.A. § 40-13-28 that changed the scope of review in the superior court from a de novo investigation to a review of the record was not also intended to change the method of appeal from the superior court in such cases from discretionary appeals under O.C.G.A. § 5-6-35(a)(1) to direct appeals under O.C.G.A. § 5-6-34(a). Brown v. City of Marietta, 214 Ga. App. 840, 449 S.E.2d 540 (1994).

Scope of review. — In enacting O.C.G.A. § 40-13-28, the General Assembly provided for a right of appeal "on the record" to the superior court. Thus, the mandate of the superior courts is to review asserted errors of law in the proceedings below under general appellate principles. The appellant may not raise issues not litigated in the court below, but the appellant is entitled to a review of the record which ensures that the evidence

has been received in conformity with statutory and constitutional standards and that the evidence supports the conviction. Walton v. State, 261 Ga. 392, 405 S.E.2d 29 (1991), cert. denied, 502 U.S. 982, 112 S. Ct. 587, 116 L. Ed. 2d 611 (1991).

O.C.G.A. § 40-13-28 applies only to probate courts and municipal courts and does not have the broad scope to apply to appeals from recorder's court. Zornes v. State, 262 Ga. 757, 426 S.E.2d 355 (1993).

This section is procedural law. — Although O.C.G.A. § 40-13-28 certainly affects the assertion of substantive rights, the statute nonetheless falls within the category of a procedural law since the rule is that there are no vested rights in any course of procedure. Holloman v. State, 203 Ga. App. 476, 416 S.E.2d 839, cert. denied, 203 Ga. App. 906, 416 S.E.2d 839 (1992).

Appeal to the superior court is not a "de novo proceeding." If the conviction is properly supported by the evidence, the conviction would stand; if not, an acquittal would be required. The superior court would not, however, make an independent finding of guilt or innocence based on the evidence submitted, as would be done were the appeal, in fact, de novo. Walton v. State, 261 Ga. 392, 405 S.E.2d 29 (1991), cert. denied, 502 U.S. 982, 112 S. Ct. 587, 116 L. Ed. 2d 611 (1991).

Once it is waived in the probate court, the right to a jury trial may not be raised for the first time on appeal to the superior court, or to the appellate court. Walton v. State, 261 Ga. 392, 405 S.E.2d 29 (1991), cert. denied, 502 U.S. 982, 112 S. Ct. 587, 116 L. Ed. 2d 611 (1991).

Defendant not entitled to de novo review in superior court. — After the defendant was convicted in probate court of DUI and appealed to the superior court, the defendant was not entitled to a de novo review in the superior court, nor was the defendant entitled to another opportunity to decide whether the defendant wished to be tried in the probate court. Holloman v. State, 203 Ga. App. 476, 416 S.E.2d 839, cert. denied, 203 Ga. App. 906, 416 S.E.2d 839 (1992).

Defendant was not entitled to a trial de novo based on the defendant's reliance upon a construction of O.C.G.A. § 40-13-28 that was disapproved in a later case. Shannon v. State, 205 Ga. App. 831, 424 S.E.2d 51, cert. denied, 205 Ga. App. 901, 424 S.E.2d 51 (1992).

Appeal procedures take precedence over any conflicting rules of procedure contained in the city charter, both because this statute is the latest expression of the General Assembly on the subject and also by reason of the general provision in the Georgia Constitution. Giles v. City of Locust Grove, 203 Ga. App. 164, 416 S.E.2d 758, cert. denied, 203 Ga. App. 906, 416 S.E.2d 758 (1992).

Review of recorder's court decisions. — Proper method for obtaining review of a decision of a recorder's court is either by direct appeal to the superior court, in the case of traffic violations, or by application for certiorari to the superior court. Franklin v. Recorder's Court, 174 Ga. App. 498, 330 S.E.2d 429 (1985).

No direct appeal from county recorder's court. — O.C.G.A. § 40-13-28 makes no mention of county recorder's courts and therefore a direct appeal is not provided from the decisions of such a court. Henson v. DeKalb County, 158 Ga. App. 348, 280 S.E.2d 393 (1981).

Discretionary appeal to appellate court. — Appeal that is created by O.C.G.A. § 40-13-28 is a "de novo proceeding," whereby the superior court reviews the certified record below and makes a new determination as to guilt or innocence. A further appeal to the Court of Appeals must comply with the discretionary appeal provisions of O.C.G.A. § 5-6-35. Anderson v. City of Alpharetta, 187 Ga. App. 148, 369 S.E.2d 521 (1988).

Only convicted defendants may appeal. — O.C.G.A. § 40-13-28 conveys the right of appeal to the Superior Court only to a convicted defendant. Sears v. State, 196 Ga. App. 207, 396 S.E.2d 1 (1990).

De novo review before judge who is a lawyer. — Record devoid of any evidence that the probate court judge was not a lawyer failed to prove that the defendant should be accorded the right to a de novo review of the defendant's conviction before a judge who was a lawyer. Pippins v. State, 204 Ga. App. 318, 419 S.E.2d 28 (1992).

Probate court's summary of the evidence could serve as the basis for a new

determination of guilt or innocence when the Court of Appeals, in a previous appeal, did not reject the probate court's summary of the evidence as insufficient but merely held that if a transcript of the evidence had been made and relied upon by the superior court, the transcript should be included in the record on appeal. Walker v. State, 199 Ga. App. 519, 405 S.E.2d 322, cert. denied, 199 Ga. App. 907, 405 S.E.2d 322 (1991).

Insufficient record. — In a de novo proceeding, the superior court, following the court's own applicable procedures, undertakes to address only those issues which the lower court was otherwise authorized to address. When the superior court did not have a sufficient record to review the probate court's denial of the defendant's motion to dismiss and plea in bar, nothing remained for the Court of Appeals to review. Eppinger v. State, 198 Ga. App. 889, 403 S.E.2d 829, cert. denied, 198 Ga. App. 897, 403 S.E.2d 829 (1991).

Failure to accord defendant proper de novo review. — Superior court, which affirmed the defendant's probate court conviction for speeding and driving under the influence after presuming that the verdict of the probate court was correct since there was no transcript reflecting evidence to the contrary, did not accord the defendant the de novo review to which the defendant was entitled. Holloman v. State, 199 Ga. App. 230, 404 S.E.2d 651 (1991).

Denial of de novo review. — Defendant's contention that the defendant's due process rights were violated because the defendant was denied a de novo review of the defendant's conviction returned by a non-lawyer judge in the probate court failed since the procedure in Georgia provides for a review of the proceedings held before a probate judge. Walker v. State, 204 Ga. App. 559, 420 S.E.2d 17, cert. denied, 204 Ga. App. 922, 420 S.E.2d 17 (1992).

Very existence of the procedure to recreate the events of an unrecorded trial pursuant to O.C.G.A. § 5-6-41(g) was sufficient to rebut the defendant's unsubstantiated allegations that O.C.G.A. § 40-13-28 deprived the defendant of meaningful review of the defendant's convictions. Lyons v. State, 239 Ga. App. 325, 521 S.E.2d 232 (1999).

Denial of mandatory review. — When the appellant did not receive the review mandated by O.C.G.A. § 40-13-28 it was necessary that the dismissal of appellant's appeal of a conviction in municipal court be reversed and the case remanded for further proceedings. Lankford v. City of Marietta, 261 Ga. 602, 409 S.E.2d 515 (1991).

Cited in Newmans v. State, 65 Ga. App. 288, 16 S.E.2d 87 (1941); Gilbert v. State, 261 Ga. 425, 405 S.E.2d 498 (1991); State v. Rigdon, 284 Ga. App. 785, 645 S.E.2d 17 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Incarceration pending appeal. — O.C.G.A. § 40-13-28 requires that a misdemeanor traffic defendant who has been convicted in the probate court and who wishes to appeal to the superior court is to be remanded to the custody of the sheriff pending the posting of an appellate bond only if the defendant has been sentenced to a term of imprisonment. 1989 Op. Att'y Gen. No. U89-30.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 23, 127, 139, 140, 148 et seq., 160 et seq., 174, 218.

40-13-29. Jurisdiction exclusive.

In all counties except those having city, county, or state courts, the judge of the probate court shall have exclusive jurisdiction of all traffic

misdemeanor cases originating in the county outside of municipal corporations, and the judge of the municipal court in each municipal corporation shall have exclusive jurisdiction of traffic misdemeanor cases originating inside the corporate limits of municipalities. (Ga. L. 1937-38, Ex. Sess., p. 558, § 11; Ga. L. 1987, p. 3, § 40; Ga. L. 1992, p. 2785, § 29.)

JUDICIAL DECISIONS

State courts retain jurisdiction. — Superior, state, and municipal courts share concurrent jurisdiction over misdemeanor traffic offenses; thus, the defendant's plea in bar in state court contesting jurisdiction over the defendant's misdemeanor traffic violations was properly denied. Govert v. State, 257 Ga. App. 80, 570 S.E.2d 393 (2002).

Superior courts retain jurisdiction. — O.C.G.A. § 40-13-29 does not take away jurisdiction from the superior court to try misdemeanor violations of traffic laws and vest such jurisdiction in courts of ordinary (now probate court) or municipal courts as the case might be exclusively as against the superior courts. Smith v. State, 62 Ga. App. 733, 9 S.E.2d 714 (1940); Allen v. State, 85 Ga. App. 887, 70 S.E.2d 543 (1952).

OPINIONS OF THE ATTORNEY GENERAL

Meaning of "exclusive." — Term "exclusive" as used in Ga. L. 1937-38, Ex. Sess., p. 558, § 11 (see now O.C.G.A. § 40-13-29) is intended merely to exclude jurisdiction of a recorder's court in cases in which the offense is committed outside of a municipal corporation, and in turn the recorder's court is given exclusive jurisdiction as against the probate court over offenses committed within the limits of a municipality. 1963-65 Op. Att'y Gen. p. 300.

Power of probate court not prohibited because of municipal court existence. — O.C.G.A. § 40-13-29 does not prohibit the probate court from exercising state judicial power in any county simply because of the existence of a municipal court within the corporate limits of a municipal corporation within that county. 1989 Op. Att'y Gen. No. U89-30.

Probate court may exercise power within limits of municipal corporation. — Probate court may exercise state judicial power over misdemeanor traffic offenses occurring within the corporate limits of a municipal corporation when the charter of the municipal corporation authorizes a municipal court but no such court is in existence. The arresting officer in a misdemeanor traffic case is responsible for returning those charges to the proper court with jurisdiction to hear the matter, but, if the citation is erroneously returned to the incorrect court, that court should promptly act to transfer the matter to a court with jurisdiction to consider the charges. 1989 Op. Att'y Gen. No. U89-30.

Probate court lacks jurisdiction if there is a municipal court. — Judge of the probate court does not have jurisdiction over a traffic violation occurring inside the limits of a city, if there is a recorder's court or any other municipal court. 1963-65 Op. Att'y Gen. p. 303.

Concurrent jurisdiction with superior courts. — While the jurisdiction of these courts are exclusive, each of the other courts inside the territorial limits described, this jurisdiction is concurrent of that of the superior court of the county involved. 1958-59 Op. Att'y Gen. p. 64.

Superior courts have concurrent jurisdiction in cases arising under O.C.G.A. § 40-13-29. 1958-59 Op. Att'y Gen. p. 71.

Court's waiver of jurisdiction not permitted. — Since the General Assembly vested in the judge of recorder's court in each municipality the exclusive jurisdiction of cases arising inside municipality's corporate limits, the judge of the municipal court cannot vest that jurisdiction

in another court by merely waiving the court's own jurisdiction. 1957 Op. Att'y Gen. p. 61.

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Courts, §§ 12, 14, 65 et seq., 98 et seq.

40-13-30. Authority to make arrests.

Officers of the Georgia State Patrol and any other officer of this state or of any county or municipality thereof having authority to arrest for a criminal offense of the grade of misdemeanor shall have authority to prefer charges and bring offenders to trial under this article, provided that officers of an incorporated municipality shall have no power to make arrests beyond the corporate limits of such municipality unless such jurisdiction is given by local or other law. (Ga. L. 1937-38, Ex. Sess., p. 558, § 9; Ga. L. 1992, p. 2785, § 29.)

Cross references. — Provisions regarding procedure for arrests for violation of motor vehicle laws, § 17-4-23. Display of driver's license in lieu of bail, formal recognizance, or incarceration for violations of traffic laws, § 17-6-11.

JUDICIAL DECISIONS

Outer limits of municipal officer's authority for misdemeanor arrests. — Ga. L. 1937-38, Ex. Sess., p. 558, § 9 (see now O.C.G.A. § 40-13-30) defines outer limits of a municipal officer's authority in making arrest for misdemeanors and traffic offenses. Jones v. City of Pembroke, 220 Ga. 213, 138 S.E.2d 276 (1964).

Authority to issue citations. — University police officer had authority under O.C.G.A. § 40-13-30 to issue citations for an accident that occurred at an intersection that bordered the campus, and the trial court, therefore, properly denied the defendant's motion for a directed verdict of acquittal under O.C.G.A. § 17-9-1 relating to the charge of failing to obey a traffic control device in violation of O.C.G.A. § 40-6-20; the broad language of § 40-13-30 gave any officer of Georgia that had authority to arrest for a misdemeanor the authority to prefer charges and bring offenders to trial. Hawkins v. State, 281 Ga. App. 852, 637 S.E.2d 422 (2006).

Arrest powers outside officers' appointed territories. — Ga. L. 1937-38, Ex. Sess., p. 558, § 9 (see now O.C.G.A. § 40-13-30) provides by implication that certain officers (including deputy sheriffs) have arrest powers for these offenses outside the officers' appointed territories. This interpretation is compelled by the statute's specific territorial restriction of only municipal officers. City of Winterville v. Strickland, 127 Ga. App. 716, 194 S.E.2d 623 (1972).

Under common law, even a municipal officer has power of arrest outside the officer's city limits when a hot pursuit situation exists; therefore, an officer's pursuit of the defendant in a truck matching the description of a stolen vehicle, which went into an adjoining county, was authorized. Hastings v. State, 211 Ga. App. 873, 441 S.E.2d 83 (1994).

Trial court did not err in granting police officers summary judgment in a citizen's action alleging false imprisonment, assault and battery, and intentional infliction of emotional distress in connection with the defendant's arrest because the arrest was lawful under O.C.G.A. § 17-4-20 since obstruction occurred in

the officers' presence; even if the officers did not have probable cause to arrest the defendant, the officers had the authority and discretion to arrest outside the officers' jurisdiction for offenses committed in the officers' presence and, therefore, the officers' immunity could not be defeated by the officers' decision to arrest outside of the officers' jurisdiction. Taylor v. Waldo, 309 Ga. App. 108, 709 S.E.2d 278 (2011).

Even though the deputy sheriff thereafter crossed into an adjoining county in search of a safer location to conduct a DUI investigation, the sheriff was not deprived of the authority to then arrest the defendant for the crimes committed in the sheriff's presence. Suggs v. State, 343 Ga. App. 71, 806 S.E.2d 224 (2017).

"Hot pursuit" exception authorized. — Exception to Ga. L. 1937-38, Ex. Sess., p. 558, § 9 (see O.C.G.A. § 40-13-30) is an instance in which a crime is committed in the municipality and the officer's "hot pursuit" takes the officer beyond the officer's geographical limits to effectuate the arrest. Wooten v. State, 135 Ga. App. 97, 217 S.E.2d 350 (1975); Poss v. State, 167 Ga. App. 86, 305 S.E.2d 884 (1983).

Policeman's legal authority under the "hot pursuit" doctrine under Ga. L. 1937-38, Ex. Sess., p. 558, § 9 (see now O.C.G.A. § 40-13-30) includes both the power to arrest and the power to perform other normal police functions incidental to and necessitated by the arrest. Wooten v. State, 135 Ga. App. 97, 217 S.E.2d 350 (1975).

Arrest is valid when the crime was committed in a municipality and a city officer gave "hot pursuit" which took the officer beyond the limits of the municipality to effectuate the arrest. Argonaut Ins. Co. v. Head, 149 Ga. App. 528, 254 S.E.2d 747 (1979).

Critical elements characterizing "hot pursuit" are the continuity and immediacy of the pursuit, rather than merely the rate of speed at which pursuit is made. Poss v. State, 167 Ga. App. 86, 305 S.E.2d 884 (1983).

"Hot pursuit" doctrine applied. — When the only violation committed in the presence of city officers was exceeding the speed limit in violation of a city ordinance, the "hot pursuit" doctrine still would apply. Argonaut Ins. Co. v. Head, 149 Ga. App. 528, 254 S.E.2d 747 (1979).

Although an arresting officer of an incorporated municipality normally did not have the power to make arrests beyond the corporate limits of that municipality, the officer's arrest of the defendant in a neighboring county was authorized under the "hot pursuit" doctrine since the officer spotted the car the defendant was reportedly traveling in inside the county where the officer had arresting authority, and the officer continuously and immediately pursued the defendant's car into the neighboring county where the officer waited for backup to arrive in order to make the arrest; thus, the traffic stop of the defendant following a dispatch that the defendant was a suspected shoplifter was legal and the defendant's motion to suppress the evidence was properly denied. Margerum v. State, 260 Ga. App. 398, 579 S.E.2d 825 (2003).

Cited in Newmans v. State, 65 Ga. App. 288, 16 S.E.2d 87 (1941); Dodd v. State, 85 Ga. App. 589, 69 S.E.2d 784 (1952); Wright v. State, 134 Ga. App. 406, 214 S.E.2d 688 (1975); McLarty v. State, 176 Ga. App. 433, 336 S.E.2d 273 (1985); Delong v. State, 185 Ga. App. 314, 363 S.E.2d 811 (1987); Page v. State, 250 Ga. App. 795, 553 S.E.2d 176 (2001); Grech v. Clayton County, 335 F.3d 1326 (11th Cir. 2003); Duprel v. State, 301 Ga. App. 469, 687 S.E.2d 863 (2009).

OPINIONS OF THE ATTORNEY GENERAL

Sheriff is authorized to enforce traffic regulations on the highways of this state. 1969 Op. Att'y Gen. No. 69-385.

"Hot pursuit" doctrine. — Municipal police officers may go beyond city limits in "hot pursuit" situations and make arrests. 1975 Op. Att'y Gen. No. U75-73.

Constable's authority limited. — In the absence of a warrant, a constable does not have the authority to enforce the motor vehicle laws of this state. 1975 Op. Att'y Gen. No. U75-56.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 24, 106, 107, 273, 313,349, 361. 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 955, 956, 963, 989.

ALR. — Degree of force that may be employed in arresting one charged with a misdemeanor, 42 A.L.R. 1200.

40-13-31. Arresting fees.

The sheriffs of the several counties of this state are entitled to an arresting fee, as provided by law, in every case in which the sheriff or his lawful deputy arrests, assists in arresting, or takes custody of any person charged with a crime who has been apprehended by an officer of the Georgia State Patrol and delivered to the sheriff or his lawful deputy. If the sheriff is upon a salary, the fee shall be paid into the county treasury. (Ga. L. 1943, p. 571, § 1; Ga. L. 1992, p. 2785, § 29.)

Cross references. — Abolition of fee system for compensation of sheriffs, § 15-16-19. Procedure for bringing complaint that speed limit is being enforced by county or municipality primarily for collection of revenue rather than for purposes of public safety, § 40-6-9.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "a" was inserted preceding "crime" in the first sentence.

JUDICIAL DECISIONS

Cited in Sanders v. Wilkinson County, 69 Ga. App. 676, 26 S.E.2d 467 (1943).

OPINIONS OF THE ATTORNEY GENERAL

Fee when sheriff does not participate in arrest. — Sheriff is not entitled to an arresting fee for an arrest made by the county police, when the sheriff does not participate in the arrest, but sheriffs are entitled to an arresting fee when the sheriffs assist in an arrest made by the Georgia State Patrol. 1945-47 Op. Att'y Gen. p. 96.

Sheriff is entitled to an arresting fee when the accused is arrested by a state patrolman and delivered to the sheriff who accepts bond without confining the accused. 1954-56 Op. Att'y Gen. p. 115.

Arresting fees when offender could be brought before more than one court. — Ga. L. 1943, p. 571, § 1 (see now O.C.G.A. § 40-13-31) would seem to contemplate that arresting fees would be the same regardless of which court an offender might be brought before when two or more courts have concurrent jurisdiction. 1963-65 Op. Att'y Gen. p. 300.

40-13-32. Restrictions on ability of courts to change or modify traffic law sentences or judgments.

(a) No court having jurisdiction over cases arising out of the traffic laws of this state or the traffic laws of any county or municipal government shall change or modify a traffic law sentence or judgment

rendered pursuant to a conviction, plea of guilty, or plea of nolo contendere after 90 days from the date of judgment, except for the purpose of correcting clerical errors therein, unless there is strict compliance with all of the following requirements:

(1) A motion to change or modify the sentence or judgment is made by the defendant to the court rendering the judgment;

(2) Notice, including a copy of the motion and rule nisi, is given to the prosecuting official who brought the original charge at least ten days prior to the motion hearing; and

(3) A hearing is held with opportunity for the state to be heard.

(b) If the original judgment is changed or modified pursuant to this Code section, the judge shall certify to the Department of Driver Services that such change or modification is a true and correct copy of the change or modification and that the requirements set forth in paragraphs (1) through (3) of subsection (a) of this Code section have been met.

(c) Except for orders correcting clerical errors, the Department of Driver Services shall not recognize as valid any change or modification order nor make any changes to a driver's history unless such change or modification as submitted to the department is in strict compliance with the requirements set forth in subsections (a) and (b) of this Code section.

(d) In the case of municipal courts, notice to the city attorney, or to the solicitor in those cases where the municipal court has a solicitor, shall be deemed to be notice as provided for in this Code section.

(e) In all cases wherein notice is required in this Code section, same shall be deemed sufficient if sent by certified mail or statutory overnight delivery, return receipt requested, with adequate postage thereon, to the correct address of the prosecuting official.

(f) Notwithstanding other laws and specifically notwithstanding Code Section 17-7-93, a motion to change or modify a traffic law sentence or judgment may, at any time prior to the expiration of the term of court following the term at which judgment and sentence were pronounced or within 90 days of the time judgment and sentence were pronounced, whichever time period is greater, be made by the defendant and accepted by the court as provided in this Code section. (Code 1981, § 40-13-32, enacted by Ga. L. 1984, p. 1144, § 1; Ga. L. 1985, p. 149, § 40; Ga. L. 1988, p. 1893, § 4; Ga. L. 1989, p. 14, § 40; Ga. L. 2000, p. 951, § 7A-2; Ga. L. 2000, p. 1589, § 3; Ga. L. 2005, p. 334, § 22-3/HB 501.)

JUDICIAL DECISIONS

Strict compliance required. — Defendant's challenge to the defendant's misdemeanor traffic convictions by a motion to vacate was not an appropriate remedy and the defendant's motion could not be construed as a motion for arrest of judgment because the motion was untimely under O.C.G.A. § 40-13-33(a); the 180-day limit applied to any challenge that could have been brought by habeas corpus. The defendant failed to show compliance with the requirements of O.C.G.A. § 40-13-32. Munye v. State, 342 Ga. App. 680, 803 S.E.2d 775 (2017).

OPINIONS OF THE ATTORNEY GENERAL

Strict compliance required. — Subsection (a) of O.C.G.A. § 40-13-32 reflects the intent of the General Assembly that all orders modifying previously entered judgments in misdemeanor traffic cases be considered of no force and effect unless the orders fully comply with all applicable provisions of that section, including both the procedural requirements of subsection (a) and the jurisdictional limitations found in subsection (f). The terminology specifically means that substantial compliance is insufficient. 1989 Op. Att'y Gen. No. 89-22.

Department of Public Safety is authorized to amend a plea of guilty or nolo contendere only after strict compliance with the procedural requirements of subsection (a) of O.C.G.A. § 40-13-32, when applicable, and when the order modifying the judgment reflects that the order is based on a motion filed in a timely manner as defined in subsection (f). 1989 Op. Att'y Gen. No. 89-22.

Nunc pro tunc order. — If a nunc pro tunc order is entered by the court within 90 days of judgment and within the term of court and is not a clerical error, as such a nunc pro tunc order need not reflect compliance with the procedural requirements of subsection (a) of O.C.G.A. § 40-13-32, no further showing is required for the Department of Public Safety to make the appropriate changes to the Department's records. 1989 Op. Att'y Gen. No. 89-22.

If a nunc pro tunc order is entered by the court outside the term of court and is not a clerical error, under subsection (f) of O.C.G.A. § 40-13-32, so long as the modification is based upon a motion filed within 90 days of judgment, the Department of Public Safety need not be concerned about the term of court, nor with compliance with the procedural requirements of subsection (a), but beyond the 90-day time period the department may not accept orders that do not reflect strict compliance with the procedural requirements of subsection (a), and orders based upon motions filed outside the 90-day time period are valid only if the trial court possessed the jurisdiction to enter the orders, which is dependent upon the filing of the motion which led to the modification within either the term of court that the judgment was entered or the next succeeding term. 1989 Op. Att'y Gen. No. 89-22.

40-13-33. Limitation on habeas corpus challenge of misdemeanor traffic conviction.

(a) Any challenge to a misdemeanor conviction of any of the traffic laws of this state or the traffic laws of any county or municipal government which may be brought pursuant to Chapter 14 of Title 9 must be filed within 180 days of the date the conviction becomes final.

(b) Any challenge to a conviction specified in subsection (a) of this Code section which became final before March 28, 1986, must be filed within 180 days following March 28, 1986.

(c) When the commissioner of driver services is named as the respondent, all such petitions must be brought in the Superior Court of Fulton County.

(d) Failure to file the challenge within the time prescribed in this Code section shall divest the court of jurisdiction. (Code 1981, § 40-13-33, enacted by Ga. L. 1986, p. 444, § 1; Ga. L. 1992, p. 2785, § 29; Ga. L. 2000, p. 951, § 7A-3; Ga. L. 2005, p. 334, § 22-4/HB 501.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1987, "March 28, 1986" and "following March 28, 1986" were substituted for "the effective date of this Code section" and "of the effective date of this Code section", respectively, in subsection (b).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A § 40-13-33 is not unconstitutional as a suspension of the writ of habeas corpus. Earp v. Brown, 260 Ga. 215, 391 S.E.2d 396, cert. denied, 498 U.S. 940, 111 S. Ct. 346, 112 L. Ed. 2d 310 (1990).

Construed with § 17-9-4. — O.C.G.A § 40-13-33 creates a limited and procedural exception to the general rule of law codified at O.C.G.A. § 17-9-4 that a defendant can collaterally attack void judgments at any time; this statute does not permit a defendant, beyond 180 days after the defendant's convictions, to attack the underlying convictions leading to the revocation of the defendant's driver's license under O.C.G.A. § 40-5-58. Earp v. Brown, 260 Ga. 215, 391 S.E.2d 396 (1990), cert. denied, 498 U.S. 940, 111 S. Ct. 346, 112 L. Ed. 2d 310 (1990).

Applicability. — O.C.G.A § 40-13-33 applies to all challenges to final convictions of misdemeanor traffic offenses, not just to challenges by means of petition for a writ of habeas corpus. Brown v. Earp, 261 Ga. 522, 407 S.E.2d 737 (1991).

Permissible procedural restriction. — Procedural limitations of subsections (a) and (b) of O.C.G.A § 40-13-33 neither suspend the writ of habeas corpus, nor cause a court to dismiss an action for habeas without consideration of the equities presented. Rather, the statute provides that in a narrowly defined class of cases—those in which a petitioner who is not in custody seeks habeas relief from a misdemeanor traffic conviction—the petition for habeas corpus must be filed within 180 days of conviction. As such, the statute imposes a permissible procedural restriction on a limited group of cases. Earp v. Boylan, 260 Ga. 112, 390 S.E.2d 577 (1990).

Scope of limitation. — The 180-day limitation is not restricted only to habeas corpus challenges actually brought under O.C.G.A. Ch. 14, T. 9, but applies to "any challenge" (except those categories of habeas corpus challenges excluded for obvious constitutional reasons by the Supreme Court's holding in Earp v. Boylan, 260 Ga. 112, 390 S.E.2d 577 (1990)) which may have been brought pursuant to that chapter. Walker v. State, 199 Ga. App. 701, 405 S.E.2d 887, cert. denied, 199 Ga. App. 907, 405 S.E.2d 887 (1991).

Motion untimely. — Defendant's challenge to the defendant's misdemeanor traffic convictions by a motion to vacate was not an appropriate remedy and the defendant's motion could not be construed as a motion for arrest of judgment or other alternative motion because the motion was untimely under O.C.G.A. § 40-13-33(a); the 180-day limit applied to any challenge that could have been brought by habeas corpus, and suspension of a driver's license interfered with a liberty interest. Munye v. State, 342 Ga. App. 680, 803 S.E.2d 775 (2017).

Defendant's failure to timely assert a challenge to a prior guilty plea to a misdemeanor traffic conviction barred the defendant from collaterally attacking the voluntariness of the plea. Grant v. State, 231 Ga. App. 868, 501 S.E.2d 27 (1998).

Appeal of conviction for misdemeanor traffic violations untimely. — O.C.G.A. § 40-13-33 divested the trial court of jurisdiction to consider any challenge to a traffic conviction not made within 180 days of the conviction, and applied to all challenges to final convictions of misdemeanor traffic offenses; a trial court did not err by dismissing the defendant's motion to reopen the defendant's case when the motion was filed more than a year after the defendant's conviction for various misdemeanor traffic violations. Jeter v. State, 269 Ga. App. 266, 603 S.E.2d 783 (2004).

ARTICLE 3

TRAFFIC VIOLATIONS BUREAUS

40-13-50. Establishment.

In every court of this state having jurisdiction over the violation of traffic laws or traffic ordinances, the judge, or the judges where there is more than one judge, may provide by written order for the establishment of a traffic violations bureau for the handling or disposition of certain traffic cases in substantial compliance with this article. The court shall promulgate and provide to the clerk of the traffic violations bureau a list of the traffic offenses which shall be handled and disposed of by the traffic violations bureau. However, nothing in this article shall authorize the judge of such court to employ any person or persons to administer this article. (Ga. L. 1966, p. 381, § 1; Ga. L. 1992, p. 2785, § 29.)

40-13-51. Appointment of clerk or deputy clerk; bond.

(a) The court may appoint a clerk or deputy clerk or deputy clerks, who shall be named in the order establishing the traffic violations bureau, for the purpose of receiving money as provided in this article. Any deputy clerk so appointed shall be under the direct supervision of and attached to the office of the clerk of the court.

(b) Such person or persons, except where such person is the clerk of the court and is already under bond, shall be bonded in the sum of $2,500.00. (Ga. L. 1966, p. 381, § 2.)

40-13-52. Traffic offense cards; contents.

The court may, in its order, provide that there shall be maintained in the office of the traffic violations bureau cards known as "traffic offense cards." Upon each traffic offense card shall appear: the name and address of the person charged with a traffic offense; the date of the birth of such person; the sex of such person; and his driver's license number. The card shall be numbered so that it may show any previous traffic offense, giving the date of the offense, the trial date, the citation

number, the disposition of the case, and the amount of any fine paid. (Ga. L. 1966, p. 381, § 5.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, "person" was substituted for "persons" preceding "charged" in the second sentence.

40-13-53. Release of arrested person upon service of citation and complaint.

(a) Subject to the exceptions set out in subsection (b) of this Code section, any officer who arrests any person for the violation of a traffic law or traffic ordinance alleged to have been committed outside the corporate limits of any municipality shall permit such person to be released upon being served with a citation and complaint and agreeing to appear, as provided in this article. If such officer has reasonable and probable grounds to believe that the person will not obey such citation and agreement to appear, the officer may require such person to surrender his driver's license in accordance with Code Section 17-6-11.

(b) The following offenses shall not be handled or disposed of by a traffic violations bureau:

(1) Any offense for which a driver's license may be suspended by the commissioner of driver services;

(2) Any motor vehicle registration violation;

(3) A violation of Code Section 40-5-20;

(4) Speeding in excess of 30 miles per hour over the posted speed limit; or

(5) Any offense which would otherwise be a traffic violations bureau offense but which arose out of the same conduct or occurred in conjunction with an offense which is excluded from the jurisdiction of the traffic violations bureau. Any such offense shall be subject to the maximum punishment set by law. (Ga. L. 1966, p. 381, § 3; Ga. L. 1983, p. 1000, § 16; Ga. L. 1992, p. 2785, § 29; Ga. L. 2000, p. 951, § 7A-4; Ga. L. 2005, p. 334, § 22-5/HB 501.)

JUDICIAL DECISIONS

Driving with suspended license is not offense to which O.C.G.A. § 40-13-53(a) applies. United States v. Wilson, 853 F.2d 869 (11th Cir. 1988), cert. denied, 488 U.S. 1041, 109 S. Ct. 866, 102 L. Ed. 2d 990 (1989).

Out-of-state offenders not covered. — O.C.G.A. § 40-13-53 is directed to officers dealing with residents in Georgia and does not attempt to cover out-of-state traffic offenders, per se. O'Keefe v. State, 189 Ga. App. 519, 376 S.E.2d 406, cert. denied, 189 Ga. App. 913, 376 S.E.2d 406 (1988).

Requiring a motorist cited for a traffic violation to drive the motorist's car to a correctional center, in accordance with standard procedure for booking out-of-state motorists and requiring the

motorist to post bond, did not constitute an unlawful detention of the motorist or the motorist's automobile. O'Keefe v. State, 189 Ga. App. 519, 376 S.E.2d 406, cert. denied, 189 Ga. App. 913, 376 S.E.2d 406 (1988).

Cited in Smith v. State, 270 Ga. App. 759, 608 S.E.2d 35 (2004).

40-13-54. Disposition of original and copies of citation and complaint.

The original citation and complaint shall be sent by the officer issuing it to the traffic violations bureau of the court within 24 hours of the arrest. The defendant named in the citation shall be given the second copy. The officer issuing the citation and complaint shall retain one copy for himself or herself, and the court may, by order, provide that an additional copy shall be made for the use of any municipality in the county or the Department of Driver Services. (Ga. L. 1966, p. 381, §§ 7, 8; Ga. L. 2000, p. 951, § 7A-5; Ga. L. 2005, p. 334, § 22-6/HB 501.)

40-13-55. Cash bonds permitted.

Any person cited for any traffic offense under the jurisdiction of the traffic violations bureau of the court shall be permitted to give a cash bond for his appearance under the terms and conditions as set forth upon the citation and complaint given to him at the time he is cited by the arresting officer for a traffic violation. (Ga. L. 1966, p. 381, § 10.)

Cross references. — Acceptance of cash bonds for traffic violations generally, § 17-6-5. Display of driver's license in lieu of incarceration, formal recognizance, or bail by persons arrested for traffic violations, § 17-6-11.

JUDICIAL DECISIONS

Effect of failure to appear. — Ga. L. 1966, p. 381, § 10 (see now O.C.G.A. § 40-13-55) does not convert bond forfeiture into criminal convictions, but merely establishes that in the event of a failure to appear in court, the bond will be forfeited and the failure construed as an admission of guilt. Duncan v. Ricketts, 232 Ga. 89, 205 S.E.2d 274 (1974).

Traffic violation not considered felony. — Because a traffic violation under the jurisdiction of the traffic violations bureau cannot be considered as a misdemeanor, it follows that the violation cannot be construed to be a felony. Duncan v. Ricketts, 232 Ga. 89, 205 S.E.2d 274 (1974).

40-13-56. Officer not to accept cash bond.

No officer giving a citation and complaint to a defendant for a traffic violation shall accept a cash bond himself. (Ga. L. 1966, p. 381, § 11.)

40-13-57. Taking of cash bond where officer doubts that arrested person will appear.

In the event an officer has authority to issue citation and complaint as set forth in Code Section 40-13-53 but declines to do so because of his belief that such person will not obey the citation and agreement to appear, such officer may bring such person to the traffic violations bureau and such person may be allowed to post a cash bond for his appearance in accordance with the schedule established by the court. (Ga. L. 1966, p. 381, § 4; Ga. L. 1992, p. 2785, § 29.)

40-13-58. Failure to appear after giving cash bond as admission of guilt; forfeiture of bond; order to stand trial not precluded.

Where a defendant cited for a traffic violation posts a cash bond according to the schedule set up by court order and fails to appear in court at the term of court and on the day set in the original citation and complaint, then and in that event, such failure shall be construed as an admission of guilt and the cash bond may be forfeited without the necessity for the statutory procedure provided for the forfeiture of statutory bail bonds. A judgment of guilty may be entered accordingly, ordering the case disposed of and settled. The proceeds of the cash bond shall be applied and distributed as any fine imposed by said court would be. Nothing in this Code section shall be construed as preventing the judge from ordering the defendant to appear and stand trial. (Ga. L. 1966, p. 381, § 10.)

JUDICIAL DECISIONS

In general. — When a defendant cited for a traffic violation posts a cash bond according to the schedule set up by court order and fails to appear in court at the term of court and on the day set in the original citation and complaint, then and in that event, such failure shall be construed as an admission of guilt and the cash bond may be forfeited; in these circumstances, a plaintiff has established negligence per se in the violation of a statute, which is a prima facie showing of negligence. Coleman v. Fortner, 260 Ga. App. 373, 579 S.E.2d 792 (2003).

Admission against interest. — When a defendant cited for a traffic violation posts a cash bond and fails to appear in court at the term of court and on the day set in the original citation and complaint, then such failure shall be construed as an admission of guilt and the cash bond may be forfeited under O.C.G.A. § 40-13-58; the rule, as to parties to a suit, is that, while convictions for criminal offenses are inadmissible in a civil personal injury action, a plea of guilty may be shown as an admission against interest. Howard v. Lay, 259 Ga. App. 391, 577 S.E.2d 75 (2003).

When a motorist who was a defendant in a personal injury suit arising from an automobile accident was issued a citation in connection with the accident, was aware that the citation was issued, even though the motorist was unable to sign the citation as the motorist was being treated for injuries, but was aware that the motorist's spouse had paid the citation for the motorist, after which the motorist did not appear in court as directed by the

citation, it was proper to instruct the jury in the personal injury suit that the jury could consider this bond forfeiture to be an admission against interest. Burnette v. Brown, 272 Ga. App. 383, 612 S.E.2d 489 (2005).

Driver's failure to appear on a traffic citation for which the driver posted a cash bond was construed as an admission of guilt in a motorist's civil suit arising from the accident which led to the citation; since the driver did not appear at the trial of the civil suit, the driver's negligence was unrebutted and was conclusive. Pep Boys-Manny, Moe & Jack, Inc. v. Yahyapour, 279 Ga. App. 674, 632 S.E.2d 385 (2006).

No admission against interest found. — Payment of a fine for a traffic citation did not constitute an admission against interest in a personal injury suit arising from the accident where the tortfeasor testified that the tortfeasor had no knowledge of the citation until the tortfeasor's deposition, when it was mentioned by the tortfeasor's attorney, as the tortfeasor was unconscious when the citation was issued, and that the tortfeasor's spouse must have paid the fine while the tortfeasor was recuperating. Howard v. Lay, 259 Ga. App. 391, 577 S.E.2d 75 (2003).

Calculating criminal history based on bond forfeiture. — Sentence imposed for the defendant's 2008 bank robbery was vacated and the case was remanded for resentencing because the defendant's bond forfeiture should not factor into the calculation of the defendant's criminal history under U.S. Sentencing Guidelines Manual § 4A1.2(a) (2008) if the defendant's failure to attend the February 2008 arraignment was involuntary under O.C.G.A. § 17-6-72(b), and the district court, assuming that all Georgia bond forfeitures should be considered convictions for purposes of calculating criminal history under the sentencing guidelines pursuant to O.C.G.A. § 40-13-58, did not determine whether the defendant's failure to attend the arraignment was willful or involuntary. United States v. Daniel, 358 Fed. Appx. 79 (11th Cir. 2009) (Unpublished).

Exclusion of evidence of forfeiture error. — Trial court erred in excluding evidence that a city bus driver was issued a citation for a lane change violation in an accident that resulted in the plaintiff's injuries and that the bus driver paid the citation without entering a plea or appearing to contest the citation, acknowledging guilt under O.C.G.A. § 40-13-58 and establishing negligence per se. The error was not harmless because the error prevented the plaintiff from establishing negligence as a matter of law and from impeaching the driver's inconsistent trial testimony. Agic v. MARTA, 334 Ga. App. 679, 780 S.E.2d 79 (2015).

Jury charge proper. — In the victim's action for damages for a vehicle collision in which the driver posted bond for a traffic citation but did not appear in court, the trial court's charge that the driver's failure to appear was an admission of guilt was an accurate statement of the law regarding forfeiture. Coleman v. Fortner, 260 Ga. App. 373, 579 S.E.2d 792 (2003).

Cited in Cannon v. Street, 220 Ga. App. 212, 469 S.E.2d 343 (1996); Furlong v. Dyal, 246 Ga. App. 122, 539 S.E.2d 836 (2000); Eubanks v. Waldron, 263 Ga. App. 75, 587 S.E.2d 253 (2003); Hite v. Anderson, 284 Ga. App. 156, 643 S.E.2d 550 (2007).

40-13-59. Records to be kept by traffic violations bureau; filing of citation and complaint; time for posting cash bond; when bond forfeited.

(a) The traffic violations bureau of the court shall record on the prescribed form, as set out in Code Section 40-13-52, the driving record of the defendant. If there is no previous record of the driver's history, the citation appearing on the original citation and complaint shall be entered on the driver's traffic offense card; and each traffic offense

thereafter shall be entered thereon, with the disposition thereof, up to a period of four years.

(b) All the pending cases which appear on the citation and complaint issued by the arresting officer, as provided for in this article, shall be filed at the cashier's desk in the traffic violations bureau of the court and shall be retained there up until 72 hours, or such other period of time as the judge shall fix by order, prior to the time the case is set for trial in the court. If cash bond is posted according to the schedules prescribed by order of the judge at any time up to 72 hours, or such other period of time as the judge shall fix by order, prior to the date of the court appearance, as specified in the citation and complaint, the same shall be entered on the driver's traffic offense card and an entry shall be made thereon that the driver has posted a cash bond.

(c) Within 72 hours after the date set for a hearing in the court on the citation and complaint given, where the defendant has posted a cash bond and has failed to appear for the hearing, the court shall enter an order that the cash bond has been forfeited in accordance with this article. Such order shall be recorded on the back of the citation and complaint which is maintained in the traffic violations bureau of the court and shall also be recorded on the defendant's traffic offense card. (Ga. L. 1966, p. 381, § 11.)

JUDICIAL DECISIONS

Similar acts of speeding admissible. — Since the statute cited by the defendant referred only to the recording of the defendant's driving record by the traffic violations bureau of the court, the statute in no way prohibited the state from presenting evidence of independent similar acts of the defendant. The evidence of other similar acts of speeding committed by the defendant met the requirements for admission of other independent crimes or acts committed by the defendant for the purpose of showing identity, motive, plan, scheme, bent of mind, and/or course of conduct. Taylor v. State, 205 Ga. App. 84, 421 S.E.2d 104 (1992), overruled on other grounds, Carver v. State, 208 Ga. App. 405, 430 S.E.2d 790 (1993).

40-13-60. Disposition of traffic violations; jurisdiction of bureau.

Any traffic violation under the jurisdiction of the traffic violations bureau shall be characterized and classified as a traffic violation and shall not be considered as a misdemeanor. Whenever any traffic violation is transferred from another court to a court which has a traffic violations bureau, if such offense is classified as a traffic violation on the traffic violations bureau schedule of the receiving court, such violation shall be handled and disposed of by such traffic violations bureau. Where a defendant demands a trial on a traffic violation, it shall be tried before a judge of the court which established the traffic violations bureau. The request for a trial shall not result in a loss of jurisdiction

by the traffic violations bureau. (Ga. L. 1966, p. 381, § 12; Ga. L. 1992, p. 2785, § 29.)

JUDICIAL DECISIONS

O.C.G.A. § 40-13-60 is unconstitutional to the extent the statute may be interpreted as limiting a traffic violator to a bench trial and because the written rights advisement form used with regard to the traffic violations charged against a defendant was tailored only to guilty pleas and did not adequately address the defendant's right to a jury trial. Smith v. State, 270 Ga. App. 759, 608 S.E.2d 35 (2004).

No right to counsel on speeding charge. — Defendant was not entitled to counsel at the bench trial when the defendant was tried for speeding because, pursuant to O.C.G.A. § 40-13-60, the defendant was tried for a traffic violation, and was not subjected to a misdemeanor prosecution. Miller-Roy v. State, 255 Ga. App. 575, 565 S.E.2d 899 (2002).

Right to trial by jury. — O.C.G.A. § 40-13-60 manifestly infringes on Ga. Const. 1983, Art. I, Sec. XI, Para. I insofar as the statute denies a criminal defendant, who is subject to potential punishment as a misdemeanant, the right to trial by jury; eliminating the language in O.C.G.A. § 40-13-60 that seemingly restricts a traffic violator to a bench trial would not undermine the general intent and overall scheme of O.C.G.A. § 40-13-50 et seq. Geng v. State, 276 Ga. 428, 578 S.E.2d 115 (2003).

Cited in Daniel v. State, 169 Ga. App. 722, 314 S.E.2d 737 (1984); Keller v. State, 183 Ga. App. 717, 359 S.E.2d 714 (1987); Adefemi v. Ashcroft, 335 F.3d 1269 (11th Cir. 2003).

40-13-61. Maintenance of records; accusations.

All records other than those excepted in this article shall be maintained at the traffic violations bureau of the court. No accusation of an offense for which citation and complaint may be issued shall be entered on the misdemeanor docket maintained by the clerk of the court. No accusation for any offense coming under the jurisdiction of the traffic violations bureau of the court shall be taken by the prosecuting attorney of the court or maintained in his office unless said person to whom the said summons was issued fails to post a cash bond as defined in this article or fails to appear on the date specified in the summons to answer said complaint. (Ga. L. 1966, p. 381, § 9; Ga. L. 1985, p. 149, § 40.)

40-13-62. Failure to appear; bench warrant.

When any person cited for a traffic violation pursuant to this article fails to appear in court on the date specified in the citation and in accordance with his written promise to appear, unless such person has posted a cash bond as provided in this article, the traffic violations bureau thereupon loses jurisdiction and the citation shall be forwarded to the prosecuting attorney of the court who shall have an accusation issued against such person. Upon motion of the prosecuting attorney, a bench warrant shall issue based on the accusation for the arrest of the defendant. The defendant's case shall be docketed by the clerk of the

court and handled as all other misdemeanors. (Ga. L. 1966, p. 381, § 12; Ga. L. 1992, p. 2785, § 29.)

JUDICIAL DECISIONS

Section determines when accusation is "found." — It is not until the traffic violations bureau loses jurisdiction to the state court under O.C.G.A. § 40-13-62 that a uniform traffic citation becomes an accusation and is "found" for purposes of O.C.G.A. § 17-7-170. Keller v. State, 183 Ga. App. 717, 359 S.E.2d 714 (1987).

Cited in Smith v. State, 270 Ga. App. 759, 608 S.E.2d 35 (2004).

40-13-63. Penalty for failure to appear.

The willful failure of any person to appear in accordance with the written promise contained on the citation and complaint and served upon such person shall constitute an offense which shall be punishable by fine in an amount not to exceed $200.00 or by confinement in jail for a period not to exceed three days. (Ga. L. 1966, p. 381, § 13; Ga. L. 1999, p. 334, § 4.)

40-13-64. Suspended sentence division; collection of fines.

The court may provide that its traffic violations bureau, in addition to the duties set out in this article, shall have charge of what shall be called and designated in the court as the "Suspended Sentence Division of the _____ Court." This division of the court shall be responsible for collecting fines imposed upon persons convicted in the court, where the sentence is suspended upon the payment of a fine. The person or persons in the division shall be authorized, where the judge imposing the sentence stipulates the same therein, to permit such persons receiving suspended sentences, in addition to the other conditions imposed in the suspended sentence, to pay the suspended sentence fine in installments. The person or persons responsible for the administration of the suspended sentence division shall be responsible for collecting the suspended sentence fine by installments and shall also be responsible for the arrest of persons who fail in this respect to comply with the conditions of the suspended sentence. (Ga. L. 1966, p. 381, § 14.)

CHAPTER 14

USE OF SPEED DETECTION DEVICES AND RED LIGHT CAMERAS

Article 1

General Provisions

Sec.

40-14-1. Definitions.

Article 2

Speed Detection Devices

40-14-1.1. Definitions.
40-14-1.2. Agent not private investigator or subject to certain laws.
40-14-2. Permit required for use; use not authorized where officers paid on fee system; operation by registered or certified peace officers.
40-14-3. Application for permit; use of device while application pending.
40-14-4. Compliance with rules of Federal Communications Commission; certification of devices.
40-14-5. Testing of radar devices; removal of inaccurate radar devices from service; maintenance of testing log and independent calibration tests of automated traffic enforcement devices.
40-14-6. Warning signs required; signage requirements.
40-14-7. Visibility of vehicle from which device is operated.
40-14-8. When case may be made and conviction had.
40-14-9. Certain evidence inadmissible; use of device on hill.
40-14-10. Unlawful use of devices generally.
40-14-11. Investigations by commissioner of public safety; issuance of order suspending or revoking permit; ratio of speeding fines to agency's budget.
40-14-12. Administrative hearing upon permit suspension or revocation.

Sec.

40-14-13. Administrative and judicial appeal of decision suspending or revoking permit.
40-14-14. Petition for reconsideration following permit suspension or revocation.
40-14-15. Rehearing or restoration of permit at direction of Governor.
40-14-16. Restrictions on suspension or revocation of drivers' licenses; reports to Department of Driver Services to specify speed.
40-14-17. Laser devices; reliability and admissibility of evidence.
40-14-18. Enforcement of speed limit in school zones with recorded images; civil monetary penalty; vehicle registration and transfer of title restrictions for failure to pay penalty.

Article 3

Red Light Cameras

40-14-20. Definitions.
40-14-21. Traffic-control signal monitoring devices; application and permit for operation; collection and use of civil monetary penalty; inspection of devices.
40-14-22. Timing of traffic-control signals utilizing monitoring devices.
40-14-23. Use of signs to notify motorists of traffic-control signal monitoring devices.
40-14-24. Reports on traffic-control signal monitoring device use.
40-14-25. Complaints about traffic-control signal monitoring devices; rebuttable presumption; remission of revenues.
40-14-26. Revoking traffic-control signal monitoring device permit; hearing; reconsideration.

Administrative rules and regulations. — Speed detection devices, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Public Safety, Chapter 570-7.

JUDICIAL DECISIONS

Record keeping. — Records of Department of Public Safety kept to be used in speeding cases in which radar speed determinations were to be introduced in evidence were records made in the regular course of business within the meaning of former O.C.G.A. § 24-3-14 (see now O.C.G.A. § 24-8-803). Wiggins v. State, 249 Ga. 302, 290 S.E.2d 427 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Application of chapter to counties and municipalities. — Ga. L. 1968, p. 425 (see now O.C.G.A. Ch. 14, T. 40) is intended to apply to the law enforcement officers of counties and municipalities. 1975 Op. Att'y Gen. No. 75-10.

Ga. L. 1968, p. 425 (see now O.C.G.A. Ch. 14, T. 40) places no restrictions on the use of Vascar and radar by the Department of Public Safety. 1975 Op. Att'y Gen. No. 75-10.

Ga. L. 1968, p. 425 (see now O.C.G.A. Ch. 14, T. 40) does not cover any operation of timing devices by the Department of Public Safety, but rather is limited to governing the manner in which county and municipal law enforcement officers may employ radar and Vascar. 1975 Op. Att'y Gen. No. 75-10.

RESEARCH REFERENCES

ALR. — Presumption and burden of proof of accuracy of scientific and mechanical instruments for measuring speed, temperature, time, and the like, 21 A.L.R.2d 1200.

Automobiles: speeding prosecution based on observation from aircraft, 27 A.L.R.3d 1446.

Possession or operation of device for detecting or avoiding traffic radar as criminal offense, 17 A.L.R.4th 1334.

ARTICLE 1

GENERAL PROVISIONS

Editor's notes. — Ga. L. 2001, p. 770, § 4 designated Code Section 40-14-1 as Article 1 of this chapter.

40-14-1. Definitions.

As used in this chapter, the term:

(1) "Campus" means the grounds owned or occupied by a college or university.

(2) "Campus law enforcement agency" means the campus agency charged with the enforcement of the laws of this state.

(3) "College or university" means an accredited public or private educational institution of higher learning.

(4) "Speed detection device" means, unless otherwise indicated, that particular device designed to measure the speed or velocity of a motor vehicle and marketed under the name "Vascar" or any similar device operating under the same or similar principle and any devices for the measurement of speed or velocity based upon the Doppler principle of radar or the speed timing principle of laser. All such devices must meet or exceed the minimum performance specifications established by the Department of Public Safety. (Ga. L. 1968, p. 425, § 3; Ga. L. 1970, p. 435, § 3; Ga. L. 1984, p. 502, § 1; Ga. L. 1989, p. 586, § 1; Ga. L. 1996, p. 1281, §§ 4, 5.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, "principle" was substituted for "principal" preceding "of radar" in the first sentence of paragraph (4).

Law reviews. — For review of 1996 use of radar speed detection devices legislation, see 13 Ga. St. U.L. Rev. 244 (1996).

JUDICIAL DECISIONS

Laser-based devices. — Inclusion of laser-based devices in the definition of "speed detection devices," without more, does not vitiate the state's burden of satisfying the requirements applicable to "novel scientific evidence." Izer v. State, 236 Ga. App. 282, 511 S.E.2d 625 (1999).

Failure to prove that the radar was used in accordance with the required prerequisites did not require approval of the defendant's motion to suppress when the officer testified at trial that the officer stopped the defendant's car because the officer first observed the defendant driving in excess of the posted speed limit and then confirmed this observation through the use of radar. Green v. State, 239 Ga. App. 617, 521 S.E.2d 441 (1999).

Evidentiary foundation properly laid. — See Brooker v. State, 206 Ga. App. 563, 426 S.E.2d 39 (1992).

OPINIONS OF THE ATTORNEY GENERAL

Definition of "speed detection device." — Definition of "speed detection device" found in O.C.G.A. § 35-8-2(11) does not conflict with the definition for the same device found in O.C.G.A. § 40-14-1. 1981 Op. Att'y Gen. No. 81-77.

O.C.G.A. § 35-8-2(11) does not bring in any additional types of devices not considered under the definition found in O.C.G.A. § 40-14-1. 1981 Op. Att'y Gen. No. 81-77.

Stopwatch. — Although not normally thought to be a "speed detection device," a stopwatch does meet that definition under O.C.G.A. § 35-8-2(11) when the stopwatch is used in traffic enforcement. 1981 Op. Att'y Gen. No. 81-77.

Stopwatch is a similar mechanism to "Vascar." In actuality, "Vascar" is a type of stopwatch combined with a computer which handles the mathematical functions. 1981 Op. Att'y Gen. No. 81-77.

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 947 et seq.

ARTICLE 2

SPEED DETECTION DEVICES

Cross references. — Speed Detection Devices, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Chapter 570-7.

Editor's notes. — Ga. L. 2001, p. 770, § 4 designated Code Sections 40-14-2 through 40-14-17 as Article 2 of this chapter.

40-14-1.1. Definitions.

As used in this article, the term:

(1) "Agent" means a person or entity who is authorized by a law enforcement agency or governing body to administer the procedures contained herein and:

(A) Provides services to such law enforcement agency or governing body;

(B) Operates, maintains, leases, or licenses an automated traffic enforcement safety device; or

(C) Is authorized by such law enforcement agency or governing body to review and assemble the recorded images captured by the automated traffic enforcement safety device for review by a peace officer.

(2) "Automated traffic enforcement safety device" means a speed detection device that:

(A) Is capable of producing photographically recorded still or video images, or both, of the rear of a motor vehicle or of the rear of a motor vehicle being towed by another vehicle, including an image of such vehicle's rear license plate;

(B) Is capable of monitoring the speed of a vehicle as photographically recorded pursuant to subparagraph (A) of this paragraph; and

(C) Indicates on each photographically recorded still or video image produced the date, time, location, and speed of a photographically recorded vehicle traveling at a speed above the posted speed limit within a marked school zone.

(3) "Owner" means the registrant of a motor vehicle, except that such term shall not include a motor vehicle rental company when a motor vehicle registered by such company is being operated by another person under a rental agreement with such company.

(4) "Recorded images" means still or video images recorded by an automated traffic enforcement safety device.

(5) "School zone" means the area within 1,000 feet of the boundary of any public or private elementary or secondary school. (Code 1981, § 40-14-1.1, enacted by Ga. L. 2018, p. 1057, § 2/HB 978.)

Effective date. — This Code section became effective July 1, 2018.

40-14-1.2. Agent not private investigator or subject to certain laws.

Nothing in this article shall be construed to mean that an agent is providing or participating in private investigative services or acting in such manner as would render such agent subject to the provisions of Article 4 of Chapter 18 of Title 50. (Code 1981, § 40-14-1.2, enacted by Ga. L. 2018, p. 1057, § 2/HB 978.)

Effective date. — This Code section became effective July 1, 2018.

40-14-2. Permit required for use; use not authorized where officers paid on fee system; operation by registered or certified peace officers.

(a) The law enforcement officers of the various counties, municipalities, colleges, and universities may use speed detection devices only if the sheriffs of such counties, or the governing authorities of such counties, or the governing authorities of such municipalities, or the president of such college or university shall approve of and desire the use of such devices and shall apply to the Department of Public Safety for a permit to use such devices in accordance with this chapter.

(b) No county sheriff, county or municipal governing authority, college, or university shall be authorized to use speed detection devices where any arresting officer or official of the court having jurisdiction of traffic cases is paid on a fee system. This subsection shall not apply to any official receiving a recording fee.

(c) A permit shall not be issued by the Department of Public Safety to an applicant under this Code section unless the applicant provides law enforcement services by certified peace officers 24 hours a day, seven days a week on call or on duty or allows only peace officers employed full time by the applicant to operate speed detection devices. Speed detection devices can only be operated by registered or certified peace officers of the county sheriff, county, municipality, college, or university to which the permit is applicable; provided, however, that an automated traffic enforcement safety device may be operated by an agent or registered or certified peace officers of the county sheriff, county, or municipality to which the permit is applicable. Persons

operating the speed detection devices must be registered or certified by the Georgia Peace Officer Standards and Training Council as peace officers and certified by the Georgia Peace Officer Standards and Training Council as operators of speed detection devices; provided, however, that agents may operate automated traffic enforcement safety devices without such registrations or certifications. (Ga. L. 1968, p. 425, § 1; Ga. L. 1978, p. 2254, § 1; Ga. L. 1979, p. 771, § 1; Ga. L. 1989, p. 586, § 1; Ga. L. 1996, p. 1281, § 6; Ga. L. 1997, p. 956, § 1; Ga. L. 1999, p. 1227, § 1; Ga. L. 2018, p. 1057, § 3/HB 978.)

The 2018 amendment, effective July 1, 2018, in subsection (c), added the provisos at the end of the second and third sentences.

Cross references. — Certification of persons employed to use speed detection devices, § 35-8-12.

Law reviews. — For note on the 1999 amendment to this Code section, see 16 Ga. St. U.L. Rev. 192 (1999).

For comment on State v. Tomanelli, 153 Conn. 365, 216 A.2d 625 (1966), discussing judicial notice of radar speedometer guidance, see 18 Mercer L. Rev. 299 (1966).

JUDICIAL DECISIONS

Use of device not restricted. — Phrase "in accordance with the provisions of O.C.G.A. Ch. 14, T. 40" modifies the application for a permit rather than the use of the speed detection device, and a total and unswerving compliance with the chapter is not required in such use. Ferguson v. State, 163 Ga. App. 171, 292 S.E.2d 87 (1982).

Admissibility in evidence. — See Wiggins v. State, 249 Ga. 302, 290 S.E.2d 427 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Construction of section. — Ga. L. 1968, p. 425, § 1 (see now O.C.G.A. § 40-14-2) should be construed in light of the evil it was designed to remedy, which "evil" was the possible abuse of the use of such devices by law enforcement officers who were compensated on a percentage fee basis. 1975 Op. Att'y Gen. No. 75-10.

Eligibility to use detection devices. — Absent independent legal authorization, a county marshal or deputy marshal does not have authority to apply for or use speed detection devices. 2005 Op. Att'y Gen. No. 2005-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 265. 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 944 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 19, 28 et seq., 69 et seq., 74. 61A C.J.S., Motor Vehicles, § 1641 et seq.

40-14-3. Application for permit; use of device while application pending.

(a) A county sheriff, county or municipal governing authority, or the president of a college or university may apply to the Department of Public Safety for a permit to authorize the use of speed detection

devices for purposes of traffic control within such counties, municipalities, colleges, or universities on streets, roads, and highways, provided that such application shall name the street or road on which the device is to be used and the speed limits on such street or road shall have been approved by the Office of Traffic Operations of the Department of Transportation. Law enforcement agencies are authorized to use speed detection devices on streets and roads for which an application is pending as long as all other requirements for the use of speed detection devices are met. Nothing in this subsection shall be construed to affect the provisions of Code Section 40-14-9.

(b) The Department of Public Safety is authorized to prescribe by appropriate rules and regulations the manner and procedure in which applications shall be made for such permits and to prescribe the required information to be submitted by the applicants. The Department of Public Safety may deny the application or suspend the speed detection device permit for failure to provide information or documentation at the department's request. (Ga. L. 1968, p. 425, §§ 2, 4; Ga. L. 1970, p. 435, § 2; Ga. L. 1989, p. 586, § 1; Ga. L. 1995, p. 713, § 1; Ga. L. 1996, p. 1281, § 7; Ga. L. 1999, p. 1227, § 2; Ga. L. 2004, p. 631, § 40.)

Cross references. — Application for permit, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Public Safety, Speed Detection Devices, § 570-7-.02.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, "Code" was substituted for "O.C.G.A." in the last sentence of subsection (a).

Law reviews. — For note on the 1999 amendment to this Code section, see 16 Ga. St. U.L. Rev. 192 (1999).

OPINIONS OF THE ATTORNEY GENERAL

Purpose of section. — "Remedy" undertaken by the legislature in O.C.G.A. § 40-14-3 was the statutory regulation of the use of Vascar and radar by counties and municipalities, the Department of Public Safety being designated as the regulating agency. 1975 Op. Att'y Gen. No. 75-10.

Refusal to issue permit. — Department of Public Safety may refuse to issue a speed detection device permit if the requisite procedure and information has not been followed and submitted by the applicant. 1974 Op. Att'y Gen. No. 74-74.

Addition to original permit. — If a proper application has been made to add additional streets and highways to a speed detection device permit, such addition may be accomplished by issuing a new permit or by adding the new streets and highways to the original permit. 1974 Op. Att'y Gen. No. 74-74.

Eligibility to use detection devices. — Absent independent legal authorization, a county marshal or deputy marshal does not have authority to apply for or use speed detection devices. 2005 Op. Att'y Gen. No. 2005-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 265, 266. 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 944 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 28 et seq., 69 et seq. 61A C.J.S., Motor Vehicles, § 1641 et seq.

40-14-4. Compliance with rules of Federal Communications Commission; certification of devices.

No state, county, municipal, or campus law enforcement agency may use speed detection devices unless the agency possesses a license in compliance with Federal Communications Commission rules, and unless each device, before being placed in service and annually after being placed in service, is certified for compliance by a technician possessing a certification as required by the Department of Public Safety. (Ga. L. 1978, p. 2254, § 1; Ga. L. 1979, p. 771, § 1; Ga. L. 1988, p. 308, § 1; Ga. L. 1989, p. 586, § 1.)

JUDICIAL DECISIONS

Failure to establish all of foundation elements. — When the defendant was convicted of speeding, the defendant was correct that the state failed to establish all of the foundational elements that are applicable to state troopers, such as the introduction of evidence as to the State Patrol's licensing and annual certification of its radar devices. Brown v. State, 204 Ga. App. 629, 420 S.E.2d 35 (1992), overruled on other grounds, Carver v. State, 208 Ga. App. 405, 430 S.E.2d 790 (1993).

Defendant waived claim of error regarding proper foundation. — Defendant did not show that the trial court erred in admitting into evidence the results of a radar speed detection device as the defendant objected to admission of the results for lack of "foundation," but did not state what the foundation should be; accordingly, the defendant waived a claim of error. Keller v. State, 271 Ga. App. 79, 608 S.E.2d 697 (2004).

Certificate of accuracy dated within one year prior to the use of radar. — State met the requirements of the statute by producing a copy of the certificate of accuracy dated within one year prior to the use of the radar in the case. Gamble v. State, 237 Ga. App. 414, 515 S.E.2d 422 (1999).

Administrative certificate sufficient for county police. — When a radar detection device was operated by a county officer, the administrative permit issued by the Department of Public Safety presumptively complied with O.C.G.A. § 40-14-4 and an actual Federal Communications Commission license did not need to be produced to demonstrate compliance. Brooker v. State, 206 Ga. App. 563, 426 S.E.2d 39 (1992); Nairon v. State, 215 Ga. App. 76, 449 S.E.2d 634 (1994).

Uncertified technician. — When the manufacturer's certification of accuracy and correctness of operation failed to show that the compliance check was done by a technician possessing certification as required by the Department of Public Safety, the state failed to show compliance with the third foundational requirement contained in *Wiggins,* and the admission of the radar evidence of speed was error. Hardaway v. State, 207 Ga. App. 150, 427 S.E.2d 527 (1993).

Cited in Gray v. State, 156 Ga. App. 117, 274 S.E.2d 115 (1980); Wiggins v. State, 249 Ga. 302, 290 S.E.2d 427 (1982).

40-14-5. Testing of radar devices; removal of inaccurate radar devices from service; maintenance of testing log and independent calibration tests of automated traffic enforcement devices.

(a) Each state, county, municipal, or campus law enforcement officer using a radar device, except for an automated traffic enforcement safety device as provided for under Code Section 40-14-18, shall test the device for accuracy and record and maintain the results of the test at the beginning and end of each duty tour. Each such test shall be made in accordance with the manufacturer's recommended procedure. Any radar unit not meeting the manufacturer's minimum accuracy requirements shall be removed from service and thereafter shall not be used by the state, county, municipal, or campus law enforcement agency until it has been serviced, calibrated, and recertified by a technician with the qualifications specified in Code Section 40-14-4.

(b) Each county, municipal, or campus law enforcement officer using a radar device, except for an automated traffic enforcement safety device as provided for under Code Section 40-14-18, shall notify each person against whom the officer intends to make a case based on the use of the radar device that the person has a right to request the officer to test the radar device for accuracy. The notice shall be given prior to the time a citation and complaint or ticket is issued against the person and, if requested to make a test, the officer shall test the radar device for accuracy. In the event the radar device does not meet the minimum accuracy requirements, the citation and complaint or ticket shall not be issued against the person, and the radar device shall be removed from service and thereafter shall not be used by the county, municipal, or campus law enforcement agency until it has been serviced, calibrated, and recertified by a technician with the qualifications specified in Code Section 40-14-4.

(c)(1) The law enforcement agency, or agent on behalf of the law enforcement agency, operating an automated traffic enforcement safety device provided for under Code Section 40-14-18 shall maintain a log for the automated traffic enforcement safety device attesting to the performance of such device's self-test at least once every 30 days and the results of such self-test pertaining to the accuracy of the automated traffic enforcement safety device. Such log shall be admissible in any court proceeding for a violation issued pursuant to Code Section 40-14-18.

(2) The law enforcement agency, or agent on behalf of the law enforcement agency, operating an automated traffic enforcement safety device shall perform an independent calibration test on the automated traffic enforcement safety device at least once every 12

months. The results of such calibration test shall be admissible in any court proceeding for a violation issued pursuant to Code Section 40-14-18. (Ga. L. 1978, p. 2254, § 1; Ga. L. 1979, p. 771, § 1; Ga. L. 1989, p. 586, § 1; Ga. L. 1996, p. 1281, § 8; Ga. L. 2018, p. 1057, § 4/HB 978.)

The 2018 amendment, effective July 1, 2018, inserted ", except for an automated traffic enforcement safety device as provided for under Code Section 40-14-18," in the first sentences of subsections (a) and (b); and added subsection (c).

JUDICIAL DECISIONS

Classification drawn by subsection (b) of O.C.G.A. § 40-14-5 between county and municipal officers, who must offer to prove to suspected speeders the accuracy of their radar speed detectors, and state officers, who need not make such an offer, is rationally related to the legitimate governmental objective of preventing local law enforcement officers from using radar to operate local revenue producing "speed traps." Wiggins v. State, 249 Ga. 302, 290 S.E.2d 427 (1982).

Subsection (b) limitations. — Although O.C.G.A. § 40-14-5 requires a law enforcement officer using a radar device to notify each person against whom the officer intends to make a case that the person has a right to request the officer to test the radar device for accuracy, the right does not extend to a test of the tuning forks or any other instrument used to test the radar device; nor does the statute entitle the defendant to observe the accuracy test performed on the radar device. Carver v. State, 208 Ga. App. 405, 430 S.E.2d 790 (1993).

Objection to radar evidence required at trial level. — Defendant must invoke an evidentiary ruling on the admissibility of radar evidence in order to preserve the adverse ruling on defendant's objection for appeal. Carver v. State, 208 Ga. App. 405, 430 S.E.2d 790 (1993).

Noncompliance with subsection (b) harmless when speeding admitted. — In view of the defendant's admission that the defendant was "doing 50 or 51" in a 35 m.p.h. zone, any error the trial judge may have committed in considering the results of a radar check were considered harmless, notwithstanding the defendant's assertion that the arresting officer failed to comply with O.C.G.A. § 40-14-5(b). Carver v. State, 198 Ga. App. 254, 401 S.E.2d 300 (1990).

In a speeding and eluding prosecution, though an officer might not have advised the defendant of the defendant's right under O.C.G.A. § 40-14-5(b) to test a radar device for accuracy, any error in admitting the radar evidence was harmless as the defendant admitted speeding and the passenger said the car was traveling about 75 to 80 miles per hour (mph), which exceeded the 65 mph speed limit. Segel v. State, 293 Ga. App. 506, 667 S.E.2d 670 (2008).

Failure to prove foundation for admission of radar evidence. — There was no support for the defendant's argument that failure to properly prove the foundation for admission of radar evidence should result in a motion to suppress since the only issue was the legitimacy of the initial stop, not whether the radar evidence was admissible without adequate foundation on the substantive charge of speeding. Hennings v. State, 236 Ga. App. 473, 512 S.E.2d 357 (1999).

Cited in Quinn v. State, 234 Ga. App. 360, 506 S.E.2d 890 (1998).

OPINIONS OF THE ATTORNEY GENERAL

Subsection (b) does not require citizen access to patrol vehicle. — Subsection (b) requires each county, municipal, or campus law enforcement officer

making cases by use of radar to advise a citizen, prior to issuance of a citation, of the right to a test of the device for accuracy and that the officer must, upon request, perform such a test; however, the officer is not required by law to permit the citizen access to the patrol vehicle in order to witness the officer conducting the test. 1991 Op. Att'y Gen. No. U91-7.

40-14-6. Warning signs required; signage requirements.

(a) Each county, municipality, college, and university using speed detection devices shall erect signs on every highway which comprises a part of the state highway system at that point on the highway which intersects the corporate limits of the municipality, the county boundary, or the boundary of the college or university campus. Such signs shall be at least 24 by 30 inches in area and shall warn approaching motorists that speed detection devices are being employed. No such devices shall be used within 500 feet of any such warning sign erected pursuant to this subsection.

(b) In addition to the signs required under subsection (a) of this Code section, each county, municipality, college, and university using speed detection devices shall erect speed limit warning signs on every highway which comprises a part of the state highway system at that point on the highway which intersects the corporate limits of the municipality, the county boundary, or the boundary of the college or university campus. Such signs shall be at least 24 by 30 inches in area, shall warn approaching motorists of changes in the speed limit, shall be visible plainly from every lane of traffic, shall be viewable in any traffic conditions, and shall not be placed in such a manner that the view of such sign is subject to being obstructed by any other vehicle on such highway. No such devices shall be used within 500 feet of any such warning sign erected pursuant to this subsection.

(c) In addition to the signs required under subsections (a) and (b) of this Code section, each law enforcement agency using an automated traffic enforcement safety device as provided for in Code Section 40-14-18 shall erect signs warning of the use of a stationary speed detection device within the approaching school zone. Such signs shall be at least 24 by 30 inches in area, shall be visible plainly from every lane of traffic, shall be viewable in all traffic conditions, and shall not be placed in such a manner that the view of such sign is subject to being obstructed by any other vehicle on such highway. Such signs shall be placed within 500 feet prior to the warning sign announcing the reduction of the speed limit for the school speed zone. There shall be a rebuttable presumption that such signs are properly installed pursuant to this subsection at the time of any alleged violation under this article. (Ga. L. 1968, p. 425, § 5; Ga. L. 1970, p. 435, § 4; Ga. L. 1989, p. 586, § 1; Ga. L. 1996, p. 1281, § 9; Ga. L. 2003, p. 450, § 5; Ga. L. 2018, p. 1057, § 5/HB 978.)

The 2018 amendment, effective July 1, 2018, added subsection (c).

JUDICIAL DECISIONS

Incomplete compliance. — Although there is evidence that some sites on the city limits of the municipality should have had signs but did not, since there is also evidence that other locations contained signs comporting with the statute, incomplete compliance with O.C.G.A. § 40-14-6 does not require exclusion of evidence gathered by use of a speed detection device. Ferguson v. State, 163 Ga. App. 171, 292 S.E.2d 87 (1982).

Evidence of speeding was admissible even though the city was not in total literal compliance with the requirements of O.C.G.A. § 40-14-6 that signs be erected on every highway at the point on the highway which intersects the corporate limits of the city. Royston v. State, 166 Ga. App. 386, 304 S.E.2d 732 (1983).

When a defendant convicted of speeding claimed there was no evidence that the public was put on notice that speed detection devices were in use near the location where the defendant was stopped, under O.C.G.A. § 40-14-6(a), incomplete compliance with this provision, requiring the posting of warnings that speed detection devices were in use, did not require the exclusion of evidence obtained by the use of speed detection devices. Ferguson v. State, 263 Ga. App. 40, 587 S.E.2d 195 (2003).

Despite the defendant's claim that the state failed to comply with O.C.G.A. § 40-14-6, the officer's testimony that the defendant had been speeding was admissible because the officer testified that the officer verified the existence and extent of a 35 mph speed limit zone at the county line by riding on both sides of that line and physically verifying the posted speed limits in the area. Frasard v. State, 322 Ga. App. 468, 745 S.E.2d 716 (2013).

Placement of detection device. — O.C.G.A. § 40-14-6 requires that a speed detection device itself be more than 500 feet from the county or municipal boundary, but does not forbid the penetration of a radar beam into the 500-foot zone. State v. Vickery, 184 Ga. App. 468, 361 S.E.2d 678, cert. denied, 184 Ga. App. 910, 361 S.E.2d 678 (1987).

Applicability to state law enforcement officers. — O.C.G.A. § 40-14-6 is not applicable to state law enforcement officers and therefore although the radar was not operated within 500 feet of a radar speed device warning sign, such failure would not invalidate the radar evidence. Walker v. State, 204 Ga. App. 559, 420 S.E.2d 17, cert. denied, 204 Ga. App. 922, 420 S.E.2d 17 (1992).

Because a trooper was employed by the state, and not a county, municipality, college, or university, the limitations under O.C.G.A. § 40-14-6 did not apply. Wilshin v. State, 289 Ga. App. 683, 658 S.E.2d 224 (2008).

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 271.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 28 et seq., 68 et seq. 61A C.J.S., Motor Vehicles, § 1641 et seq.

40-14-7. Visibility of vehicle from which device is operated.

Except as provided for in Code Section 40-14-18, no stationary speed detection device shall be employed by county, municipal, college, or university law enforcement officers where the vehicle from which the device is operated is obstructed from the view of approaching motorists or is otherwise not visible for a distance of at least 500 feet. (Ga. L.

1968, p. 425, § 7; Ga. L. 1978, p. 1968, § 1; Ga. L. 1989, p. 586, § 1; Ga. L. 1992, p. 2785, § 30; Ga. L. 2018, p. 1057, § 6/HB 978.)

The 2018 amendment, effective July 1, 2018, substituted "Except as provided for in Code Section 40-14-18, no" for "No" at the beginning of this Code section.

JUDICIAL DECISIONS

Legislative intent. — General Assembly, in enacting Ga. L. 1968, p. 425, § 7 (see now O.C.G.A. § 40-14-7), was concerned with eradicating the so-called "speed trap" wherein unwary motorists are lured into a speed trap designed not so much to control traffic but to generate fees from traffic fines. Darden v. Rapkin, 148 Ga. App. 127, 251 S.E.2d 94 (1978).

Stationary police radar devices are the concern of Ga. L. 1968, p. 425, § 7 (see now O.C.G.A. § 40-14-7). Darden v. Rapkin, 148 Ga. App. 127, 251 S.E.2d 94 (1978).

Proof of visibility. — State is required to present the necessary foundation, including proof of the visibility of the police vehicle as required by O.C.G.A. § 40-14-7, before evidence of speed gained through the use of a speed detection device is admissible. Johnson v. State, 189 Ga. App. 192, 375 S.E.2d 290 (1988), overruled on other grounds, Carver v. State, 208 Ga. App. 405, 430 S.E.2d 790 (1993).

Objection to radar evidence required at trial level. — Defendant must invoke an evidentiary ruling on the admissibility of radar evidence in order to preserve the adverse ruling on the defendant's objection for appeal. Carver v. State, 208 Ga. App. 405, 430 S.E.2d 790 (1993).

Speed detection device inadmissible. — Defendant's argument that an officer violated O.C.G.A. § 40-14-7 by obstructing the officer's vehicle from the view of approaching motorists was overruled because the trial court found the speed-detection device results inadmissible, and the defendant's conviction was not based on the use of such a device. Stone v. State, 257 Ga. App. 492, 571 S.E.2d 488 (2002).

Cited in Wiggins v. State, 249 Ga. 302, 290 S.E.2d 427 (1982); Hernandez-Lopez v. State, 319 Ga. App. 662, 738 S.E.2d 116 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Applicability. — Visibility restrictions of Ga. L. 1968, p. 425, § 7 (see now O.C.G.A. § 40-14-7) do not apply to the Department of Public Safety. 1975 Op. Att'y Gen. No. 75-10.

Ga. L. 1968, p. 425 (see now O.C.G.A. Ch. 14, T. 40) places no restrictions on the use of Vascar and radar by the Department of Public Safety. 1975 Op. Att'y Gen. No. 75-10.

RESEARCH REFERENCES

C.J.S. — 61A C.J.S., Motor Vehicles, § 1641 et seq.

40-14-8. When case may be made and conviction had.

(a) No county, city, or campus officer shall be allowed to make a case based on the use of any speed detection device, unless the speed of the vehicle exceeds the posted speed limit by more than ten miles per hour and no conviction shall be had thereon unless such speed is more than ten miles per hour above the posted speed limit.

(b) The limitations contained in subsection (a) of this Code section shall not apply in properly marked school zones one hour before, during, and one hour after the normal hours of school operation or programs for care and supervision of students before school, after school, or during vacation periods as provided for under Code Section 20-2-65, in properly marked historic districts, and in properly marked residential zones. For purposes of this chapter, thoroughfares with speed limits of 35 miles per hour or more shall not be considered residential districts. For purposes of this Code section, the term "historic district" means a historic district as defined in paragraph (5) of Code Section 44-10-22 and which is listed on the Georgia Register of Historic Places or as defined by ordinance adopted pursuant to a local constitutional amendment. (Ga. L. 1968, p. 425, § 1; Ga. L. 1970, p. 435, § 1; Ga. L. 1978, p. 2254, § 1; Ga. L. 1979, p. 771, § 1; Ga. L. 1989, p. 586, § 1; Ga. L. 1992, p. 2785, § 30; Ga. L. 2000, p. 1257, § 1; Ga. L. 2018, p. 1057, § 7/HB 978.)

The 2018 amendment, effective July 1, 2018, inserted "or programs for care and supervision of students before school, after school, or during vacation periods as provided for under Code Section 20-2-65" in the middle of the first sentence of subsection (b).

JUDICIAL DECISIONS

Application to prosecution for driving under the influence. — City police officer's testimony that the defendant was exceeding the speed limit by 10 miles per hour as shown by radar could not be used with evidence of a positive urine sample to support the defendant's conviction for driving under the influence of drugs. Webb v. State, 223 Ga. App. 9, 476 S.E.2d 781 (1996).

No application to state troopers. — Although a defendant was only traveling 10 miles per hour above the posted speed limit when the defendant's vehicle was stopped by a state police trooper for speeding, since O.C.G.A. § 40-14-8(a) did not apply to state troopers, the stop was valid; § 40-14-8(a) only applied to county, city, or campus officers. Hayes v. State, 292 Ga. App. 724, 665 S.E.2d 422 (2008).

Stop of vehicle justified. — Even though an officer, mistaken as to the speed limit where the radar operation was established, was prohibited by O.C.G.A. § 40-14-8 from making a case against a vehicle going only nine miles per hour over the limit, nothing prevented the officer from stopping the vehicle for speeding. Freeland v. State, 223 Ga. App. 326, 477 S.E.2d 633 (1996).

When an officer clocked the defendant driving 10 miles per hour over the speed limit, this provided the officer with a legal reason to stop the defendant to warn the defendant of exceeding the speed limit, even though, under O.C.G.A. § 40-14-8(a), the defendant could not be convicted of speeding; therefore, it was proper to deny the defendant's motion to suppress the results of this stop. Berry v. State, 274 Ga. App. 831, 619 S.E.2d 339 (2005).

RESEARCH REFERENCES

ALR. — Proof, by radar or other mechanical or electronic devices, of violation of speed regulations, 47 A.L.R.3d 822.

40-14-9. Certain evidence inadmissible; use of device on hill.

Evidence obtained by county or municipal law enforcement officers in using speed detection devices within 300 feet of a reduction of a speed limit inside an incorporated municipality or within 600 feet of a reduction of a speed limit outside an incorporated municipality or consolidated city-county government shall be inadmissible in the prosecution of a violation of any municipal ordinance, county ordinance, or state law regulating speed; nor shall such evidence be admissible in the prosecution of a violation as aforesaid when such violation has occurred within 30 days following a reduction of the speed limit in the area where the violation took place, except that this 30 day limitation shall not apply to a speeding violation within a highway work zone, as defined in Code Section 40-6-188, or in an area with variable speed limits, as defined in Code Section 40-6-182. No speed detection device shall be employed by county, municipal, or campus law enforcement officers on any portion of any highway which has a grade in excess of 7 percent. (Ga. L. 1968, p. 425, § 6; Ga. L. 1970, p. 435, § 5; Ga. L. 1978, p. 2256, § 1; Ga. L. 1979, p. 771, § 2; Ga. L. 1989, p. 586, § 1; Ga. L. 2003, p. 450, § 6; Ga. L. 2010, p. 442, § 6/HB 1174.)

JUDICIAL DECISIONS

Proof device not used on hill required. — Given the plain language of O.C.G.A. § 40-14-9, proof that a speed detection device was not employed on a portion of a highway having a grade in excess of seven percent is a condition imposed by the law for the results of the radar test to be admissible. Carver v. State, 208 Ga. App. 405, 430 S.E.2d 790 (1993).

Claim that grade exceeded seven percent not proven. — When a defendant was convicted of speeding after the defendant was stopped by an officer using a speed detection device and claimed that the angle of the street in the area where the defendant was arrested showed greater than a seven percent grade, the defendant did not show that this method of measuring the street's grade was an acceptable method, the officer's unrebutted testimony was that the area where the device was used was level, and the results of the speed detection device were cumulative of the officer's unassisted observation of the defendant's speed, which alone was sufficient to sustain the defendant's conviction. Ferguson v. State, 263 Ga. App. 40, 587 S.E.2d 195 (2003).

Objection to radar evidence required at trial level. — Defendant must invoke an evidentiary ruling on the admissibility of radar evidence in order to preserve the adverse ruling on the defendant's objection for appeal. Carver v. State, 208 Ga. App. 405, 430 S.E.2d 790 (1993).

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, § 944 et seq.

C.J.S. — 61A C.J.S., Motor Vehicles, §§ 1641 et seq., 1650 et seq.

ALR. — Presumption and burden of proof of accuracy of scientific and mechanical instruments for measuring speed, temperature, time, and the like, 21 A.L.R.2d 1200.

Proof, by radar or other mechanical or electronic devices, of violation of speed regulations, 47 A.L.R.3d 822.

40-14-10. Unlawful use of devices generally.

It shall be unlawful for speed detection devices to be used in any county or municipality or on any campus for which a permit authorizing such use has not been issued or for which a permit authorizing such use has been suspended or revoked and not reissued. It shall be unlawful for any official of such county, municipality, college, or university to order such speed detection devices to be used. It shall be unlawful for any law enforcement officer of any such county, municipality, college, or university to use any such speed detection devices. Any such official or law enforcement officer violating this Code section shall be guilty of a misdemeanor. (Ga. L. 1977, p. 800, § 4; Ga. L. 1985, p. 149, § 40; Ga. L. 1989, p. 586, § 1; Ga. L. 1996, p. 1281, § 10.)

RESEARCH REFERENCES

Am. Jur. 2d. — 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 947, 948.

40-14-11. Investigations by commissioner of public safety; issuance of order suspending or revoking permit; ratio of speeding fines to agency's budget.

(a) Upon a complaint being made to the commissioner of public safety that any county, municipality, college, or university is employing speed detection devices for purposes other than the promotion of the public health, welfare, and safety or in a manner which violates this chapter or violates its speed detection device permit, the commissioner or the commissioner's designee is authorized and empowered to conduct an investigation into the acts and practices of such county, municipality, college, or university with respect to speed detection devices. If, as a result of this investigation, the commissioner or the commissioner's designee finds that there is probable cause to suspend or revoke the speed detection device permit of such county, municipality, college, or university, he or she shall issue an order to that effect.

(b) Upon the suspension or revocation of any speed detection device permit for the reasons set forth in this Code section, the commissioner of public safety shall notify the executive director of the Georgia Peace Officer Standards and Training Council of the action taken.

(c) Upon receipt from the executive director of the Georgia Peace Officer Standards and Training Council that an officer's certification to operate speed detection devices has been withdrawn or suspended pursuant to Code Section 35-8-12, the commissioner of public safety or the commissioner's designee shall suspend the speed detection device permit for the employing agency. The period of suspension or revocation

shall be consistent with the action taken by the Georgia Peace Officer Standards and Training Council.

(d) There shall be a rebuttable presumption that a law enforcement agency is employing speed detection devices for purposes other than the promotion of the public health, welfare, and safety if the fines levied based on the use of speed detection devices for speeding offenses are equal to or greater than 35 percent of a municipal or county law enforcement agency's budget. For purposes of this Code section, fines collected for citations issued for violations of Code Section 40-6-180 shall be included when calculating total speeding fine revenue for the agency; provided, however, that fines for speeding violations exceeding 20 miles per hour over the established speed limit and civil monetary penalties for speeding violations issued pursuant to Code Section 40-14-18 shall not be considered when calculating total speeding fine revenue for the agency. (Ga. L. 1968, p. 425, § 8; Ga. L. 1977, p. 800, § 1; Ga. L. 1989, p. 586, § 1; Ga. L. 1996, p. 1281, § 11; Ga. L. 1999, p. 1227, § 3; Ga. L. 2015, p. 1064, § 2/SB 134; Ga. L. 2018, p. 1057, § 8/HB 978.)

The 2018 amendment, effective July 1, 2018, inserted "and civil monetary penalties for speeding violations issued pursuant to Code Section 40-14-18" in the middle of the last sentence of subsection (d).

Law reviews. — For note on the 1999 amendment to this Code section, see 16 Ga. St. U.L. Rev. 192 (1999).

OPINIONS OF THE ATTORNEY GENERAL

Manner of permit revocation exclusive. — Only manner in which a speed detection device permit may be revoked or suspended is by an executive order specifically directing such revocation or suspension pursuant to the revocation procedures of Ga. L. 1968, p. 425, § 8 (see now O.C.G.A. §§ 40-14-11 through 40-14-13). 1974 Op. Att'y Gen. No. 74-74.

RESEARCH REFERENCES

C.J.S. — 61A C.J.S., Motor Vehicles, § 1650 et seq.

40-14-12. Administrative hearing upon permit suspension or revocation.

Upon issuance by the commissioner of public safety of an order suspending or revoking the speed detection device permit of any county, municipality, college, or university, the county, municipality, college, or university affected shall be afforded a hearing, to be held within ten days of the effective date of the order. The hearing shall be held before the commissioner or deputy commissioner of public safety, and, following the hearing, the county, municipality, college, or university affected

shall be served with a written decision announcing whether the permit shall remain revoked or whether it shall be reinstated. (Ga. L. 1968, p. 425, § 9; Ga. L. 1977, p. 800, § 2; Ga. L. 1989, p. 586, § 1; Ga. L. 1996, p. 1281, § 12.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, "and, following the hearing," was substituted for "and following the hearing" in the second sentence.

OPINIONS OF THE ATTORNEY GENERAL

Manner of permit revocation exclusive. — Only manner in which a speed detection device permit may be revoked or suspended is by an executive order specifically directing such revocation or suspension pursuant to the revocation procedures of Ga. L. 1968, p. 425, §§ 8 through 10 (see now O.C.G.A. §§ 40-14-11 through 40-14-13). 1975 Op. Att'y Gen. No. 74-74.

RESEARCH REFERENCES

C.J.S. — 61A C.J.S., Motor Vehicles, § 1648 et seq.

40-14-13. Administrative and judicial appeal of decision suspending or revoking permit.

Any county, municipality, college, or university aggrieved by a decision of the commissioner or deputy commissioner of public safety suspending or revoking its speed detection device permit may appeal that decision within 30 days of its effective date to the Board of Public Safety, which shall schedule a hearing with respect thereto before the board. Following a hearing before the board, the county, municipality, college, or university affected shall be served with a written decision announcing whether the permit shall remain revoked or whether it shall be reinstated. An adverse decision of the board may be appealed by the county, municipality, college, or university to the superior court with appropriate jurisdiction, but the municipality, county, college, or university shall be denied the use of the speed detection device until after such appeal is decided by the court. (Ga. L. 1968, p. 425, § 10; Ga. L. 1977, p. 800, § 3; Ga. L. 1989, p. 586, § 1; Ga. L. 1996, p. 1281, § 13.)

OPINIONS OF THE ATTORNEY GENERAL

Manner of permit revocation exclusive. — Only manner in which a speed detection device permit may be revoked or suspended is by an executive order specifically directing such revocation or suspension pursuant to the revocation procedures of Ga. L. 1968, p. 425, §§ 8 through 10 (see now O.C.G.A. §§ 40-14-11 through 40-14-13). 1974 Op. Att'y Gen. No. 74-74.

40-14-14. Petition for reconsideration following permit suspension or revocation.

At the expiration of six months following the suspension or revocation of a speed detection device permit by the Board of Public Safety or, if no appeal was taken, by the commissioner or deputy commissioner of public safety, the governing authority of any such county or municipality or the president of any such college or university may, upon a change of circumstances being shown to the commissioner, petition the commissioner for a reconsideration of whether such county, municipality, college, or university should be permitted to use speed detection devices within their respective jurisdictions. (Ga. L. 1968, p. 425, § 11; Ga. L. 1977, p. 800, § 5; Ga. L. 1989, p. 586, § 1; Ga. L. 1996, p. 1281, § 14.)

OPINIONS OF THE ATTORNEY GENERAL

Manner of permit reinstatement exclusive. — Once a local government unit's speed detection device permit has been revoked, the permit may only be reinstated subsequent to a petition for reconsideration. 1974 Op. Att'y Gen. No. 74-74.

40-14-15. Rehearing or restoration of permit at direction of Governor.

The Governor, in his discretion, may direct the commissioner of public safety, or his delegate, to inquire into such change of circumstances and report the same to him together with any recommendations he might have. The Governor, in his discretion, may order a new hearing on the matter before the Board of Public Safety or may, without hearing, issue his order directing the commissioner to grant a permit to such a county, municipality, college, or university to use speed detection devices. If a county, municipality, college, or university shall not be granted a permit to use such devices, it shall not apply for a rehearing until the expiration of six months. (Ga. L. 1968, p. 425, § 12; Ga. L. 1989, p. 586, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Manner of permit reinstatement exclusive. — Once a local government unit's speed detection device permit has been revoked, the permit may only be reinstated subsequent to a petition for reconsideration. 1974 Op. Att'y Gen. No. 74-74.

40-14-16. Restrictions on suspension or revocation of drivers' licenses; reports to Department of Driver Services to specify speed.

No speeding violation of less than ten miles per hour above the legal speed limit in the county or municipality or on a college or university campus in which a person is given a speeding ticket shall be used by the

Department of Driver Services for the purpose of suspending or revoking the driver's license of the violator. No speeding violation report by a county, municipality, or college or university campus to the Department of Driver Services which fails to specify the speed of the violator shall be used by the Department of Driver Services to revoke the driver's license of a violator. (Ga. L. 1968, p. 425, § 13; Ga. L. 1989, p. 586, § 1; Ga. L. 2002, p. 415, § 40; Ga. L. 2005, p. 334, § 23-1/HB 501.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 117 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 353, 354.

40-14-17. Laser devices; reliability and admissibility of evidence.

Evidence of speed based on a speed detection device using the speed timing principle of laser which is of a model that has been approved by the Department of Public Safety shall be considered scientifically acceptable and reliable as a speed detection device and shall be admissible for all purposes in any court, judicial, or administrative proceedings in this state. A certified copy of the Department of Public Safety list of approved models of such laser devices shall be self-authenticating and shall be admissible for all purposes in any court, judicial, or administrative proceedings in this state. (Code 1981, § 40-14-17, enacted by Ga. L. 1999, p. 5, § 1.)

Law reviews. — For annual survey article discussing developments in the law of evidence, see 51 Mercer L. Rev. 279 (1999).

JUDICIAL DECISIONS

Admissibility of evidence. — When the state introduced, without objection, a certified Department of Public Safety order listing the approved models of laser detection devices, and that list included the device used to measure the defendant's speed, the evidence of speed based on that device was considered to be scientifically acceptable and reliable. Van Nort v. State, 250 Ga. App. 7, 550 S.E.2d 111 (2001).

Although the state failed to provide a proper foundation for the introduction of laser detection evidence, other evidence at trial was sufficient to sustain the defendant's conviction for speeding because the police officer who observed the defendant's vehicle testified that the vehicle was traveling at an "obvious high rate of speed" and faster than the speed limit. In the Interest of J.D.S., 273 Ga. App. 576, 615 S.E.2d 627 (2005).

Trial court did not commit plain error in admitting the laser-speed-detection-device evidence because the state complied with O.C.G.A. § 40-14-17 by the arresting officer testifying as to certification to use the devices, that the police department had approved the devices for use, as well as having provided lengthy testimony regarding familiarity with calibrating the device and

that the device used was calibrated at the start of the officer's shift. Lafavor v. State, 334 Ga. App. 125, 778 S.E.2d 377 (2015).

Laser-speed-detection-device evidence was not necessary because the officer's estimate that the defendant was exceeding the speed limit was sufficient to sustain the defendant's conviction. Lafavor v. State, 334 Ga. App. 125, 778 S.E.2d 377 (2015).

40-14-18. Enforcement of speed limit in school zones with recorded images; civil monetary penalty; vehicle registration and transfer of title restrictions for failure to pay penalty.

(a)(1) The speed limit within any school zone as provided for in Code Section 40-14-8 and marked pursuant to Code Section 40-14-6 may be enforced by using photographically recorded images for violations which occurred only on a school day during the time in which instructional classes are taking place and one hour before such classes are scheduled to begin and for one hour after such classes have concluded when such violations are in excess of ten miles per hour over the speed limit.

(2) Prior to the placement of a device within a school zone, each school within whose school zone such automated traffic enforcement safety device is to be placed shall first apply for and secure a permit from the Department of Transportation for the use of such automated traffic enforcement safety device. Such permit shall be awarded based upon need. The Department of Transportation shall promulgate rules and regulations for the implementation of this paragraph.

(b) For the purpose of enforcement pursuant to this Code section:

(1) The owner of a motor vehicle shall be liable for a civil monetary penalty to the governing body of the law enforcement agency provided for in paragraph (2) of this subsection if such vehicle is found, as evidenced by photographically recorded images, to have been operated in disregard or disobedience of the speed limit within any school zone and such disregard or disobedience was not otherwise authorized by law. The amount of such civil monetary penalty shall be $75.00 for a first violation and $125.00 for a second or any subsequent violation, in addition to fees associated with the electronic processing of such civil monetary penalty which shall not exceed $25.00; provided, however, that for a period of 30 days after the first automated traffic enforcement safety device is introduced by a law enforcement agency within a school zone, the driver of a motor vehicle shall not be liable for a civil monetary penalty but shall be issued a civil warning for disregard or disobedience of the speed limit within the school zone;

(2) A law enforcement agency authorized to enforce the speed limit of a school zone, or an agent working on behalf of a law enforcement

agency or governing body, shall send by first class mail addressed to the owner of the motor vehicle within 30 days after obtaining the name and address of the owner of the motor vehicle but no later than 60 days after the date of the alleged violation:

(A) A citation for the alleged violation, which shall include the date and time of the violation, the location of the infraction, the maximum speed at which such motor vehicle was traveling in photographically recorded images, the maximum speed applicable within such school zone, the civil warning or the amount of the civil monetary penalty imposed, and the date by which a civil monetary penalty shall be paid;

(B) An image taken from the photographically recorded images showing the vehicle involved in the infraction;

(C) A website address where photographically recorded images showing the vehicle involved in the infraction and a duplicate of the information provided for in this paragraph may be viewed;

(D) A copy of a certificate sworn to or affirmed by a certified peace officer employed by a law enforcement agency authorized to enforce the speed limit of the school zone and stating that, based upon inspection of photographically recorded images, the owner's motor vehicle was operated in disregard or disobedience of the speed limit in the marked school zone and that such disregard or disobedience was not otherwise authorized by law;

(E) A statement of the inference provided by paragraph (4) of this subsection and of the means specified therein by which such inference may be rebutted;

(F) Information advising the owner of the motor vehicle of the manner in which liability as alleged in the citation may be contested through an administrative hearing; and

(G) A warning that failure to pay the civil monetary penalty or to contest liability in a timely manner as provided for in subsection (d) of this Code section shall waive any right to contest liability;

(3) Proof that a motor vehicle was operated in disregard or disobedience of the speed limit of the marked school zone shall be evidenced by photographically recorded images. A copy of a certificate sworn to or affirmed by a certified peace officer employed by a law enforcement agency and stating that, based upon inspection of photographically recorded images, a motor vehicle was operated in disregard or disobedience of the speed limit in the marked school zone and that such disregard or disobedience was not otherwise authorized by law shall be prima-facie evidence of the facts contained therein; and

(4) Liability under this Code section shall be determined based upon a preponderance of the evidence. Prima-facie evidence that the vehicle described in the citation issued pursuant to this Code section was operated in violation of the speed limit of the school zone, together with proof that the defendant was, at the time of such violation, the registered owner of the vehicle, shall permit the trier of fact in its discretion to infer that such owner of the vehicle was the driver of the vehicle at the time of the alleged violation. Such an inference may be rebutted if the owner of the vehicle:

(A) Testifies under oath in open court or submits to the court a sworn notarized statement that he or she was not the operator of the vehicle at the time of the alleged violation;

(B) Presents to the court a certified copy of a police report showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation.

(c) A violation for which a civil warning or a civil monetary penalty is imposed pursuant to this Code section shall not be considered a moving traffic violation for the purpose of points assessment under Code Section 40-5-57. Such violation shall be deemed noncriminal, and imposition of a civil warning or civil monetary penalty pursuant to this Code section shall not be deemed a conviction and shall not be made a part of the operating record of the person upon whom such liability is imposed, nor shall it be used for any insurance purposes in the provision of motor vehicle insurance coverage.

(d) If a person issued and mailed a citation pursuant to subsection (b) of this Code section fails to pay the civil monetary penalty for the violation or has not filed a police report or notarized statement pursuant to paragraph (4) of subsection (b) of this Code section in no less than 30 nor more than 60 days after such mailing as determined and noticed by the law enforcement agency, the agent or law enforcement agency shall send to such person by first class mail a second notice of any unpaid civil monetary penalty, except in cases where there is an adjudication that no violation occurred or there is otherwise a lawful determination that no civil monetary penalty shall be imposed. The second notice shall include all information required in paragraph (2) of subsection (b) of this Code section and shall include a new date of return which shall be no less than 30 days after such mailing as determined and noticed by the law enforcement agency. If such person notified by second notice again fails to pay the civil monetary penalty or file a police report or notarized statement pursuant to paragraph (4) of subsection (b) of this Code section by the new date of return, such person shall have waived the right to contest the violation and shall be liable for the civil monetary penalty provided for under this Code section, except in cases where there is an adjudication that no violation occurred or there is

otherwise a lawful determination that no civil monetary penalty shall be imposed.

(e) Notices mailed by first class mail pursuant to this Code section shall be adequate notification of the fees and penalties imposed by this Code section. No other notice shall be required for the purposes of this Code section.

(f) Any court having jurisdiction over violations of subsection (a) of this Code section shall have jurisdiction over cases arising under this subsection and shall be authorized to impose the civil monetary penalty provided by this subsection. Except as otherwise provided in this subsection, the provisions of law governing jurisdiction, procedure, defenses, adjudication, appeal, and payment and distribution of penalties otherwise applicable to violations of subsection (a) of this Code section shall apply to enforcement under this Code section except as provided in subsection (b) of this Code section; provided, however, that any appeal from superior or state court shall be by application in the same manner as that provided by Code Section 5-6-35.

(g) If a violation has not been contested and the assessed penalty has not been paid, the agent or governing body shall send to the person who is the registered owner of the motor vehicle a final notice of any unpaid civil monetary penalty authorized by this Code section, except in cases where there is an adjudication that no violation occurred or there is otherwise a lawful determination that no civil monetary penalty shall be imposed. The notice shall inform the registered owner that the agent or governing body shall send a referral to the Department of Revenue if the assessed penalty is not paid within 30 days after the final notice was mailed and such that such referral shall result in the nonrenewal of the registration of such motor vehicle and shall prohibit the title transfer of such motor vehicle within this state.

(h) The agent or governing body shall send a referral to the Department of Revenue not sooner than 30 days after the final notice required under subsection (g) was mailed if a violation of an ordinance or resolution adopted under this article has not been contested and the assessed penalty has not been paid. The referral to the Department of Revenue shall include the following:

(1) Any information known or available to the agent or governing body concerning the license plate number, year of registration, and the name of the owner of the motor vehicle;

(2) The date on which the violation occurred;

(3) The date when the notice required under this Code section was mailed; and

(4) The seal, logo, emblem, or electronic seal of the governing body.

(i) If the Department of Revenue receives a referral under subsection (h) of this Code section, such referral shall be entered into the motor vehicle database within five days of receipt and the Department of Revenue shall refuse to renew the registration of the motor vehicle and shall prohibit the title transfer of such vehicle within this state unless and until the civil monetary penalty plus any late fee is paid to the governing body. The Department of Revenue shall mail a notice to the registered owner:

(1) That the registration of the vehicle involved in the violation will not be permitted to be renewed;

(2) That the title of the vehicle involved in the violation will not be permitted to be transferred in this state;

(3) That the aforementioned penalties are being imposed due to the failure to pay the civil monetary penalty and any late fee for an ordinance violation adopted under the authority of this Code section; and

(4) Of the procedure that the person may follow to remove the penalties.

(j) The Department of Revenue shall remove the penalties on a vehicle if any person presents the Department of Revenue with adequate proof that the penalty and any late fee, if applicable, has been paid.

(k) Recorded images made for purposes of this Code section shall not be a public record for purposes of Article 4 of Chapter 18 of Title 50.

(l) A civil warning or civil monetary penalty under this Code section on the owner of a motor vehicle shall not be imposed if the operator of the vehicle was arrested or issued a citation and notice to appear by a certified peace officer for the same violation.

(m) The money collected and remitted to the governing body pursuant to paragraph (1) of subsection (b) of this Code section shall only be used by such governing body to fund local law enforcement or public safety initiatives. This subsection shall not preclude the appropriation of a greater amount than collected and remitted under this subsection. (Code 1981, § 40-14-18, enacted by Ga. L. 2018, p. 1057, § 9/HB 978.)

Effective date. — This Code section became effective July 1, 2018.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2018, a paragraph (1) designator was deleted in subsection (f), as there was no paragraph (2).

ARTICLE 3

RED LIGHT CAMERAS

Cross references. — Failure to obey a traffic control device as evidenced by images from a red light camera, § 40-6-20.

40-14-20. Definitions.

As used in this article, the term:

(1) "Governing authority" means any county, municipality, or consolidated government.

(2) "Recorded images" has the meaning provided in subparagraph (f)(1)(B) of Code Section 40-6-20.

(3) "Traffic-control signal monitoring device" has the meaning provided in subparagraph (f)(1)(C) of Code Section 40-6-20. (Code 1981, § 40-14-20, enacted by Ga. L. 2001, p. 770, § 4; Ga. L. 2008, p. 1184, § 3/HB 77.)

40-14-21. Traffic-control signal monitoring devices; application and permit for operation; collection and use of civil monetary penalty; inspection of devices.

(a) A governing authority must obtain an operating permit from the Department of Transportation prior to using any traffic-control signal monitoring device. The governing authority shall not use traffic-control signal monitoring devices unless the chief law enforcement officer of such governing authority desires the use of such devices and such use is approved by a properly adopted resolution of the governing authority.

(b) The governing authority shall also conduct a public hearing on the proposed use of such devices prior to entering any contract on or after July 1, 2001, for the use or purchase of such devices.

(c) The Department of Transportation is authorized to prescribe by appropriate rules and regulations the manner and procedure in which applications shall be made for traffic-control signal monitoring device permits and to prescribe the required information to be submitted by an applicant consistent with the requirements of this title. The Department of Transportation may deny an application or suspend or revoke a permit for failure of the governing authority to provide requested information or documentation or for any other violation of this article or violation of the rules and regulations of the department.

(d) An application for the operation of a traffic-control signal monitoring device by a governing authority shall name the intersection at

which the device is to be used and provide demonstrable evidence that there is a genuine safety need for the use of such device at the designated intersection. The documented safety need for each designated intersection shall be approved by the Department of Transportation in accordance with nationally recognized safety standards. For each designated intersection, the governing authority shall conduct a traffic engineering study to determine whether, in addition to or as an alternative to the traffic-control signal monitoring device, there are other possible design or operational changes likely to reduce the number of accidents or red light violations at that intersection. This report shall be submitted with the application for an operation permit required under these provisions and any request to amend the operation permit to include an additional intersection.

(e) The revenue generated by the use of a traffic-control signal monitoring device shall not be considered when determining whether to issue a permit for the operation of such devices at a designated intersection. The only consideration shall be the increased life-saving safety value by the use of such a device at the designated intersection.

(f) Permits shall be issued by the Department of Transportation within three months of receiving a completed permit application from a governing authority where such governing authority is otherwise in compliance with the provisions of this article. An application for amendment to an existing permit and an application for a renewal permit following a suspension or revocation of a permit shall also be processed within three months of receipt of such application, provided that the application is complete and complies with the provisions of this article. A permit shall authorize use of a traffic-control signal monitoring device for only those designated intersections approved as having a documented life-saving safety need by the Department of Transportation.

(g) No governing authority shall be authorized to use traffic-control signal monitoring devices where any arresting officer or official of the court having jurisdiction of traffic cases is paid on a fee system. This subsection shall not apply to any official receiving a recording fee.

(h) If a governing authority elects to use traffic-control signal monitoring devices, no portion of any civil monetary penalty collected through the use of such devices may be paid to the manufacturer or vendor of the traffic-control signal monitoring devices. The compensation paid by the governing authority for such devices shall be based on the value of such equipment and shall not be based on the number of citations issued or the revenue generated by such devices.

(i) Charges for violations based on evidence obtained from a traffic-control signal monitoring device shall not be made by a law

enforcement agency unless the law enforcement agency employs at least one full-time certified peace officer.

(j) A traffic-control signal monitoring device shall not be used to produce any photograph, microphotograph, electronic image, or videotape showing the identity of any person in a motor vehicle.

(k) A governing authority utilizing traffic-control signal monitoring devices shall at all times cooperate fully with the Department of Transportation. The department is authorized, at any time, to inspect traffic-control signal monitoring devices used by a governing authority and any records pertaining to revenues collected from the use of such devices.

(l) A permit may be amended at any time by amended application submitted by a governing authority. The request to amend an application and to add a new intersection to the list of authorized intersections for the operation of a traffic-control signal monitoring device shall be considered by the department in the same manner as original permit applications.

(m) A permit shall be reviewed by the Department of Transportation once every three years from the date of issuance or date of the most recent extension unless the permit has been revoked or suspended by the department. The review shall be conducted in the same manner as the original permit application.

(n) The department is authorized to set reasonable application fees to compensate the department for necessary costs in issuing, amending, or reviewing a permit to operate traffic-control signal monitoring devices.

(o) Any governing authority operating a traffic-control signal monitoring device on December 31, 2008, shall have until January 1, 2010, to obtain a permit for the operation of such device as required by this Code section. (Code 1981, § 40-14-21, enacted by Ga. L. 2001, p. 770, § 4; Ga. L. 2003, p. 597, § 3; Ga. L. 2004, p. 498, § 2; Ga. L. 2008, p. 1184, § 4/HB 77.)

40-14-22. Timing of traffic-control signals utilizing monitoring devices.

The timing of any traffic-control signal which is being monitored by a traffic-control signal monitoring device shall conform to regulations promulgated by the Department of Transportation pursuant to Code Section 32-6-50. The duration of the yellow or red light of any traffic-control device at which a traffic-control signal monitoring device is installed shall not be decreased prior to the installation of a device or during the time for which the device is operated. The Department of

Transportation shall establish minimal yellow light change interval times for traffic-control devices at intersections where a traffic-control signal monitoring device is utilized. The minimal yellow light change interval time shall be established in accordance with nationally recognized engineering standards, and any such established time shall not be less than the recognized national standard plus one additional second. Each governing authority using a traffic-control signal monitoring device shall at its own expense test the device for accuracy at regular intervals and record and maintain the results of each test. Such test results shall be public records subject to inspection as provided by Article 4 of Chapter 18 of Title 50. Each such test shall be made in accordance with the manufacturer's recommended procedure. Any such device not meeting the manufacturer's minimum accuracy requirements shall be removed from service and thereafter shall not be used by the governing authority, nor shall any charges for violations based on evidence from such device be made by a law enforcement agency, until such device has been serviced and calibrated at the expense of the governing authority by a qualified technician. (Code 1981, § 40-14-22, enacted by Ga. L. 2001, p. 770, § 4; Ga. L. 2008, p. 1184, § 5/HB 77.)

40-14-23. Use of signs to notify motorists of traffic-control signal monitoring devices.

Each governing authority using traffic-control signal monitoring devices shall erect signs on every highway which comprises a part of the state highway system at that point on the highway which intersects the jurisdictional limits of the governing authority. A sign shall be erected also by such entity on each public road on the approach to the next traffic-control signal for such road when a traffic-control signal monitoring device is monitoring such next signal for such road and signs shall also be erected at any other location required by the Department of Transportation. Such signs shall be of a design specified by the Department of Transportation in accordance with nationally recognized standards. (Code 1981, § 40-14-23, enacted by Ga. L. 2001, p. 770, § 4; Ga. L. 2008, p. 1184, § 6/HB 77.)

40-14-24. Reports on traffic-control signal monitoring device use.

(a) Each governing authority using any traffic-control signal monitoring device shall submit not later than February 1 of each year a report on such use during the preceding calendar year to the Department of Transportation. Such report shall include, without limitation:

(1) A description of the locations where traffic-control signal monitoring devices were used;

(2) The number of violations recorded at each location and in the aggregate on a monthly basis;

(3) The total number of citations issued;

(4) The number of civil monetary penalties and total amount of such penalties paid after citation without contest;

(5) The number of violations adjudicated and results of such adjudications, including a breakdown of dispositions made;

(6) The total amount of civil monetary penalties paid; and

(7) The quality of the adjudication process and its results.

(b) If any governing authority fails to provide the report provided for in subsection (a) of this Code section all revenues generated from the operation of any traffic-control signal monitoring device from the date the report was due shall be forwarded to the general fund of the state. The governing authority shall not be entitled to retain any revenue until the annual report is filed and accepted by the Department of Transportation.

(c) The Department of Transportation shall forward copies of all reports to the offices of the Governor, Lieutenant Governor, and the Speaker of the House by March 1 of each year. The department shall also forward to the offices of the Governor, Lieutenant Governor, and the Speaker of the House a complete list of all traffic-control signal monitoring devices currently in use. (Code 1981, § 40-14-24, enacted by Ga. L. 2001, p. 770, § 4; Ga. L. 2003, p. 597, § 4; Ga. L. 2008, p. 1184, § 7/HB 77.)

40-14-25. Complaints about traffic-control signal monitoring devices; rebuttable presumption; remission of revenues.

(a) Complaints surrounding the use and operation of traffic-control signal monitoring devices by governing authorities, including the use by a governing authority for any purpose other than the promotion of the public health, welfare, and safety or in a manner which violates this article or violates its operating permit, may be made to the commissioner of transportation. The commissioner or the commissioner's designee is authorized to conduct an investigation into the acts and practices of the governing authority with respect to the use of traffic-control signal monitoring devices. If, as a result of this investigation, there is evidence to substantiate a violation of this article or the rules and regulations of the Department of Transportation, the department may take any action deemed necessary to prevent further misconduct or violations, including denying an application for a permit or suspension or revocation of a permit.

(b) There shall be a rebuttable presumption that a governing authority is using traffic-control signal monitoring devices for purposes other than the promotion of the public health, welfare, and safety if such devices are used by a governing authority without a valid permit issued by the Department of Transportation or in violation of any requirement of this article or the rules and regulations of the department.

(c) Where a violation of this article by a governing authority or any law enforcement agency enforcing the use of traffic-control signal monitoring devices on behalf of such governing authority is substantiated, the Department of Transportation may order that revenues generated from the use of traffic-control signal monitoring devices during the time of such violation or misconduct shall be remitted to the state's general fund. The department's order to remit funds shall be a continuous order until the violation is corrected by the governing authority as determined by the department. Any governing authority failing to abide by such order shall be liable for interest and costs, including reasonable attorney fees, incurred in the enforcement of the order. Jurisdiction for enforcing the department's order shall be in the Superior Court of Fulton County. (Code 1981, § 40-14-25, enacted by Ga. L. 2008, p. 1184, § 8/HB 77; Ga. L. 2009, p. 8, § 40/SB 46.)

40-14-26. Revoking traffic-control signal monitoring device permit; hearing; reconsideration.

(a) Upon issuance by the commissioner of transportation of an order denying an application for or suspending or revoking a traffic-control signal monitoring device permit, the governing authority affected shall be afforded a hearing, to be held within 30 days of the effective date of the order. The hearing shall be held before the commissioner of the department or his or her designee, and, within 30 days following the hearing, the governing authority affected shall be served with a written decision announcing whether the permit shall remain denied, suspended, or revoked or whether it shall be granted or reinstated.

(b) Only after the expiration of three years following the revocation of a traffic-control signal monitoring device permit shall the governing authority make application, upon a change of circumstances being shown, to the commissioner of transportation for a reconsideration of whether the governing authority should be permitted to use traffic-control signal monitoring devices. (Code 1981, § 40-14-26, enacted by Ga. L. 2008, p. 1184, § 8/HB 77; Ga. L. 2009, p. 8, § 40/SB 46.)

CHAPTER 15

MOTORCYCLE OPERATOR SAFETY TRAINING PROGRAM

Sec.
40-15-1. Definitions.
40-15-2. Establishment and operation of programs; provisions of programs; certificates of completion.
40-15-3. Authorization of board to promulgate rules, prescribe fees, and set student requirements.
40-15-4. Coordinator authorized; duties and requirements.
40-15-5. Requirements for instructors.

Cross references. — Safety Program, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Drivers Services, Motorcycle Safety, Subject 375-7-4.

Editor's notes. — This chapter was to take effect upon adequate appropriations being made by the General Assembly. As a means of revising the Code sections in this chapter, Ga. L. 1986, p. 181 was enacted as an amendment to the 1984 Act (Ga. L. 1984, p. 644) enacting this chapter, rather than as an amendment to the Code itself. Section 2 of Ga. L. 1986, p. 181 provided that that Act "shall become effective upon its approval by the Governor [March 18, 1986] or upon its becoming law without such approval; provided, however, that no provision of this Act shall affect or supersede Section 2 of the said 1984 Act [which provided the appropriations-based effective date]." Initial funds were appropriated in 1986 for a program coordinator. Additional funds were appropriated in 1987 for implementation of this chapter.

40-15-1. Definitions.

As used in this chapter, the term:

(1) "Board" means the Board of Driver Services.

(2) "Commissioner" means the commissioner of driver services.

(3) "Coordinator" means the state-wide motorcycle safety coordinator provided for in Code Section 40-15-4.

(4) "Department" means the Department of Driver Services.

(5) "Motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor and a moped.

(6) "Operator" means any person who drives or is in actual physical control of a motorcycle.

(7) "Program" means a motorcycle operator safety training program provided for in Code Section 40-15-2. (Code 1981, § 40-15-1, enacted by Ga. L. 1984, p. 644, § 1; Ga. L. 1986, p. 181, § 1; Ga. L.

1997, p. 143, § 40; Ga. L. 1997, p. 1505, § 1; Ga. L. 2000, p. 951, § 8-1; Ga. L. 2005, p. 334, § 23-2/HB 501.)

40-15-2. Establishment and operation of programs; provisions of programs; certificates of completion.

(a)(1) The department is authorized to set up, establish, and operate a motorcycle operator safety training program for the purpose of assisting motorcycle operators to meet the requirements for licensed driving of motorcycles in this state.

(2) The coordinator, with the approval of the commissioner, shall be authorized to set up, establish, and operate additional motorcycle operator safety training programs.

(b) Any such programs shall provide courses on motorcycle operator safety. The programs shall be based on the Motorcycle Safety Foundation Motorcycle Rider Course or its equivalent in quality, utility, and merit.

(c) The department shall issue a certificate of completion to each person who satisfactorily completes the motorcycle operator safety training program. (Code 1981, § 40-15-2, enacted by Ga. L. 1984, p. 644, § 1; Ga. L. 1986, p. 181, § 1; Ga. L. 1992, p. 6, § 40; Ga. L. 1997, p. 1505, § 2.)

40-15-3. Authorization of board to promulgate rules, prescribe fees, and set student requirements.

The board is authorized to adopt, promulgate, and establish rules and regulations for the operation of any motorcycle operator safety training program; to provide for the entrance and enrollment of students; to prescribe fees for the course; and to prescribe the ages, requirements, and conditions under which students may be received for instruction in any such program. (Code 1981, § 40-15-3, enacted by Ga. L. 1984, p. 644, § 1; Ga. L. 1986, p. 181, § 1.)

40-15-4. Coordinator authorized; duties and requirements.

(a) The commissioner shall appoint a state-wide motorcycle safety coordinator who shall carry out and enforce the provisions of this chapter and the rules and regulations of the department. The coordinator shall be placed in the unclassified service as defined by Code Section 45-20-2 and shall serve at the pleasure of the commissioner.

(b) The coordinator shall also be authorized to:

(1) Promote motorcycle safety throughout the state;

(2) Provide consultation to the various departments of state government and local political subdivisions relating to motorcycle safety; and

(3) Do any other thing deemed necessary by the commissioner to promote motorcycle safety in the state. (Code 1981, § 40-15-4, enacted by Ga. L. 1984, p. 644, § 1; Ga. L. 1986, p. 181, § 1; Ga. L. 1994, p. 97, § 40; Ga. L. 1997, p. 143, § 40; Ga. L. 1997, p. 1505, § 3; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-62/HB 642.)

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

40-15-5. Requirements for instructors.

Every person who desires to qualify as an instructor in a motorcycle operator safety training program shall meet the following requirements:

(1) Be of good moral character;

(2) Give satisfactory performance on a written, oral, performance, or combination examination administered by the coordinator testing both knowledge of the field of motorcycle operator education and skills necessary to instruct and impart motorcycle driving skills and safety to students. The instructor training program shall provide for a course of instruction based on the Motorcycle Safety Foundation's Instructor Course or its equivalent in quality, utility, and merit. This course of instruction shall be held periodically based on the applications received and the need for instructors, and an examination fee prescribed by the coordinator shall be charged;

(3) Be physically able to operate safely a motorcycle and to instruct others in the operation of motorcycles; and

(4) Hold a valid Class M driver's license. (Code 1981, § 40-15-5, enacted by Ga. L. 1984, p. 644, § 1; Ga. L. 1986, p. 181, § 1; Ga. L. 1994, p. 97, § 40.)

CHAPTER 16

DEPARTMENT OF DRIVER SERVICES

Sec.
40-16-1. Definitions.
40-16-2. Primary responsibilities.
40-16-2.1. Annual reports to the General Assembly.
40-16-3. Board of Driver Services; commissioner.
40-16-4. Duties of commissioner; compensation of department employees.
40-16-5. Authority of commissioner; previous action by department; background checks; debt collection.
40-16-5.1. Use of department vehicles and equipment.
40-16-6. Civil monetary penalties.
40-16-7. Budget of department.
40-16-8. Governor's Commercial Transportation Advisory Committee.

Administrative rules and regulations. — Organization, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Driver Services, Administration, Chapter 375-1-1.

40-16-1. Definitions.

As used in this chapter, the term:

(1) "Board" means the Board of Driver Services.

(2) "Commissioner" means the commissioner of driver services.

(3) "Department" means the Department of Driver Services. (Code 1981, § 40-16-1, enacted by Ga. L. 2000, p. 951, § 1-1; Ga. L. 2005, p. 334, § 1-1/HB 501.)

40-16-2. Primary responsibilities.

(a) There is created the Department of Driver Services. The Department of Driver Services shall be a successor agency to and continuation of the former Department of Motor Vehicle Safety. The department shall be the agency primarily responsible for:

(1) Administration of the laws and regulations relating to drivers' licenses, as provided for in Chapter 5 of this title;

(2) Administration of the laws and regulations relating to proof of financial responsibility, as provided for in Chapter 9 of this title;

(3) Administration of laws relating to ignition interlock devices for use by driving under the influence offenders;

(4) Administration of laws relating to driver training schools, driver improvement clinics, DUI Alcohol or Drug Use Risk Reduction Programs, and commercial driving schools;

(5) Administration of laws relating to motorcycle safety programs;

(6) Administration of laws and regulations relating to issuance of limousine chauffeur permits; and

(7) Administration of any other laws specifically providing for their administration by the department.

(b) Responsibility for the following functions formerly exercised by the Department of Motor Vehicle Safety is transferred as follows:

(1) Promulgation of regulations relating to the size and the weights of motor vehicles, trailers, and loads as provided for in Article 2 of Chapter 6 of Title 32 shall be vested in the Department of Transportation; and administrative enforcement of such regulations and the law enforcement function of apprehending and citing violators of such laws and regulations are transferred to the Department of Public Safety, as well as the function of promulgating regulations relative to its enforcement function;

(2) Enforcement of laws and regulations relating to licensing and fuel tax registration requirements is transferred to the Department of Public Safety;

(3) Administration of laws and regulations relating to certification of motor carriers and limousine carriers is transferred to the Department of Public Safety and administration of laws and regulations relating to carrier registration and registration and titling of vehicles is transferred to the Department of Revenue;

(4) Administration of laws relating to motor vehicle franchise practices is transferred to the Department of Revenue;

(5) Administration of laws relating to handicapped parking permits is transferred to the Department of Revenue;

(6) Responsibility for establishment of safety standards for motor vehicles and motor vehicle components is generally transferred to the Department of Public Safety except as may be specifically otherwise provided by law;

(7) Administration of laws relating to hazardous materials carriers is transferred to the Department of Public Safety;

(8) Enforcement of all state laws on the following properties owned or controlled by the Department of Transportation or the State Road and Tollway Authority is transferred to the Department of Public Safety: rest areas, truck-weighing stations or checkpoints, wayside parks, parking facilities, toll facilities, and any buildings and grounds for public equipment and personnel used for or engaged in administration, construction, or maintenance of the public roads or research pertaining thereto;

(9) Enforcement of Code Section 16-10-24, relating to obstructing or hindering law enforcement officers is transferred to the Department of Public Safety;

(10) Enforcement of Code Sections 32-9-4 and 40-6-54, relating to designation of restricted travel lanes is transferred to the Department of Public Safety;

(11) Enforcement of Code Section 16-11-43, relating to obstructing highways, streets, sidewalks, or other public passages, on any public road which is part of the state highway system is transferred to the Department of Public Safety;

(12) Enforcement of Code Section 16-7-43, relating to littering public or private property or waters, on any public road which is part of the state highway system is transferred to the Department of Public Safety; and

(13) Enforcement of Code Section 16-7-24, relating to interference with government property, on any public road which is part of the state highway system is transferred to the Department of Public Safety.

(c) In the performance of its duties, the department shall be required to comply with all applicable federal laws and rules and regulations and shall certify that the state is in compliance with all provisions and requirements of all applicable federal-aid acts and programs. (Code 1981, § 40-16-2, enacted by Ga. L. 2000, p. 951, § 1-1; Ga. L. 2000, p. 1199, § 1; Ga. L. 2001, p. 1251, § 2-1; Ga. L. 2003, p. 484, § 14; Ga. L. 2005, p. 334, § 1-1/HB 501; Ga. L. 2012, p. 580, § 11/HB 865.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, the second subsection (b) was redesignated as subsection (c).

JUDICIAL DECISIONS

Inspection of commercial vehicles valid and constituted no Fourth Amendment violation. — Because Georgia's commercial vehicle scheme under O.C.G.A. § 40-16-2(b)(3) and its regulations provided ample notice that such vehicles could be stopped and inspected, and the inspections were limited as to who could perform the inspections and the cargo and documents to be inspected, denying the defendant's motion to suppress the drugs found in the defendant's commercial vehicle was proper under the Fourth Amendment; O.C.G.A. § 40-16-5(c) expressly exempted any requirement that the rules and regulations be promulgated pursuant to the Georgia Administrative Procedure Act and the rules and regulations were effective. United States v. Ponce-Aldona, 579 F.3d 1218 (11th Cir. 2009), cert. denied, 558 U.S. 1128, 130 S. Ct. 1094, 175 L. Ed. 2d 912 (2010).

Cited in White v. Ga. Dep't of Motor Vehicle Safety, No. 1:04-CV-0790-JOF, 2006 U.S. Dist. LEXIS 2735 (N.D. Ga. Jan. 12, 2006).

40-16-2.1. Annual reports to the General Assembly.

Annual reports shall be provided to the General Assembly by the affected departments with respect to the reorganization provided for in Code Section 40-16-2 and with respect to other activities of the departments as follows:

(1) The Department of Driver Services shall provide an annual report which shall include, together with other information deemed pertinent by the department, service metrics clearly indicating the department's ability to meet public demand for its services; and

(2) The Department of Public Safety shall provide an annual report which shall include, together with other information deemed pertinent by the department, the records of the department with respect to safety inspections and citations issued. (Code 1981, § 40-16-2.1, enacted by Ga. L. 2005, p. 334, § 1-1/HB 501.)

40-16-3. Board of Driver Services; commissioner.

(a) The department shall be under the direction, control, and management of the Board of Driver Services and the commissioner of driver services. The commissioner shall be appointed by and serve at the pleasure of the board.

(b)(1) The Board of Driver Services shall be a successor to and continuation of the Board of Motor Vehicle Safety and shall consist of nine members. Five members shall be appointed by the Governor and their terms shall expire as follows: two members on June 30, 2003, and June 30 of each sixth year thereafter; two members on June 30, 2005, and June 30 of each sixth year thereafter; and one member on June 30, 2007, and June 30 of each sixth year thereafter. Two members shall be appointed by the Lieutenant Governor and their terms shall expire as follows: one member on June 30, 2003, and June 30 of each sixth year thereafter and one member on June 30, 2006, and June 30 of each sixth year thereafter. Two members shall be appointed by the Speaker of the House and their terms shall expire as follows: one member on June 30, 2003, and June 30 of each sixth year thereafter and one member on June 30, 2006, and June 30 of each sixth year thereafter. All members except for the initial appointees shall serve for terms of six years and until their successors are appointed and qualified.

(2) All members serving on the Board of Motor Vehicle Safety as of May 2, 2005, shall continue to serve as members of the Board of Driver Services for the remainder of their original terms of office and shall if necessary hold over beyond the end of those terms until successors are appointed and qualified.

(c) The Governor shall designate a member to serve as chairperson of the board. The chairperson's term as chairperson shall expire on June 30, 2003, and June 30 of each second year thereafter. The board may elect other officers from among its membership and may establish bylaws for the conduct of its business.

(d) The members of the board shall receive no salary for their service on the board but any member who is not otherwise a state officer or employee shall receive a per diem expense allowance as provided in subsection (b) of Code Section 45-7-21.

(e) The board shall be the general policy-making body for the Department of Driver Services; and the commissioner shall be the chief executive officer of the department, subject to the policies established by the board. All rules and regulations promulgated by the commissioner must be approved by the board before they take effect.

(f) The commissioner shall receive an annual salary to be set by the board which shall be his or her total compensation for services as commissioner. The commissioner shall be reimbursed for all actual and necessary expenses incurred by him or her in carrying out his or her official duties.

(g) The commissioner shall take and subscribe before the board an oath to discharge faithfully and impartially the duties of such office, which oath shall be in addition to the oath required of all civil officers. (Code 1981, § 40-16-3, enacted by Ga. L. 2000, p. 951, § 1-1; Ga. L. 2002, p. 837, § 1; Ga. L. 2005, p. 334, § 1-1/HB 501; Ga. L. 2006, p. 72, § 40/SB 465.)

JUDICIAL DECISIONS

Cited in White v. Ga. Dep't of Motor Vehicle Safety, No. 1:04-CV-0790-JOF, 2006 U.S. Dist. LEXIS 2735 (N.D. Ga. Jan. 12, 2006).

40-16-4. Duties of commissioner; compensation of department employees.

(a) The commissioner shall establish such units within the department as he or she deems proper for its administration and shall designate persons to be directors and assistant directors of such units to exercise such authority as he or she may delegate to them in writing.

(b) The commissioner shall have the authority to employ as many persons as he or she deems necessary for the administration of the department and for the discharge of the duties of his or her office. He or she shall issue all necessary directions, instructions, orders, and rules applicable to such persons. He or she shall have authority, as he or she deems proper, to employ, assign, compensate, and discharge employees

of the department within the limitations of the department's appropriation and the restrictions set forth by law.

(c) All employees of the department shall be compensated upon a fixed salary basis and no person shall be compensated for services to the department on a commission or contingent fee basis.

(d) Neither the commissioner nor any officer or employee of the department shall be given or receive any fee, compensation, loan, gift, or other thing of value in addition to the compensation and expense allowance provided by law for any service or pretended service either rendered or to be rendered as commissioner or as an officer or employee of the department.

(e)(1) The commissioner shall have the authority to appoint and employ 30 investigators who shall be certified peace officers pursuant to the provisions of Chapter 8 of Title 35, the "Georgia Peace Officer Standards and Training Act."

(2) The investigators of the department shall have jurisdiction throughout this state with such duties and powers as are prescribed by law.

(f) The department shall have the authority to contract and make cooperative and rental agreements with the United States government; any county, municipality, or local government, or any combination thereof; any public or private corporation or firm; or any public authority, agency, commission, or institution, including agencies of state government, for the purpose of obtaining goods, materials, and services needed to perform any of the duties, responsibilities, or functions vested in the department. (Code 1981, § 40-16-4, enacted by Ga. L. 2000, p. 951, § 1-1; Ga. L. 2005, p. 334, § 1-1/HB 501; Ga. L. 2007, p. 117, § 7/HB 419; Ga. L. 2010, p. 932, § 26/HB 396.)

40-16-5. Authority of commissioner; previous action by department; background checks; debt collection.

(a) Subject to approval by the board, the commissioner shall have the power to make and publish in print or electronically reasonable rules and regulations not inconsistent with this title or other laws or with the Constitution of this state or of the United States for the administration of this chapter or any law which it is his or her duty to administer.

(b) The commissioner may prescribe forms as he or she deems necessary for the administration and enforcement of this chapter or any law which it is his or her duty to administer.

(c) The authority granted to the commissioner pursuant to this Code section shall be exercised at all times in conformity with Chapter 13 of

Title 50, the "Georgia Administrative Procedure Act"; provided, however, that regulations governing commercial driver licensing may be adopted by administrative order referencing compatible federal regulations or standards without compliance with the procedural requirements of Chapter 13 of Title 50; provided, further, that such compatible federal regulations or standards shall be maintained on file by the department and made available for inspection and copying by the public, by means including but limited to posting on the department's computer Internet site.

(d) Rules and regulations previously adopted which relate to functions performed by the Department of Driver Services shall remain of full force and effect as rules and regulations of the Department of Driver Services until amended, repealed, or superseded by rules or regulations adopted by the commissioner of driver services. The following rules and regulations shall remain of full force and effect as rules and regulations of the referenced department until amended, repealed, or superseded by rules or regulations adopted by the referenced department:

(1) All rules and regulations previously adopted which relate to functions transferred under this chapter to the Department of Transportation from the Department of Motor Vehicle Safety;

(2) All rules and regulations previously adopted which relate to functions transferred under this chapter to the Public Service Commission from the Department of Motor Vehicle Safety;

(3) All rules and regulations previously adopted which relate to functions transferred under this chapter to the Department of Public Safety from the Department of Motor Vehicle Safety;

(4) All rules and regulations previously adopted which relate to functions transferred under this chapter to the Department of Revenue from the Department of Motor Vehicle Safety; and

(5) All rules and regulations previously adopted which relate to functions transferred under this chapter from the Department of Human Resources (now known as the Department of Behavioral Health and Developmental Disabilities for these purposes) to the Department of Driver Services.

(e) All valid licenses, permits, certificates, and similar authorizations previously issued by any department or agency with respect to any function transferred as provided in this chapter shall continue in effect until the same expire by their terms unless they are suspended, revoked, or otherwise made ineffective as provided by law.

(f) Notwithstanding any provision of law to the contrary, the commissioner is authorized to promulgate regulations allowing for back-

ground investigations of applicants for credentials in any of the industries regulated by the department by means other than classifiable electronically recorded fingerprints in instances in which an applicant attempts to comply with the applicable statutory language mandating such background investigation, but his or her fingerprints cannot be captured electronically for reasons that are beyond the applicant's control.

(g)(1) The commissioner may contract with a debt collection agency or attorney doing business within or outside this state for the collection of delinquent fees owed to the department pursuant to this title. Such contract may provide for the rate of payment and the manner in which compensation for debt collection services shall be paid. The compensation, fees, and expenses for such debt collection may be added to the amount of the delinquent fees owed and may be collected directly by the contractor from the debtor. The commissioner is authorized to provide such contractor with the necessary information regarding the delinquent fees and debtor for the collection of the fees owed.

(2) No delinquent fees may be collected pursuant to paragraph (1) of this subsection from a person not subject to a license suspension or cancellation pursuant to this title.

(3) The commissioner may adopt rules and regulations to carry out the provisions of this subsection. (Code 1981, § 40-16-5, enacted by Ga. L. 2000, p. 951, § 1-1; Ga. L. 2002, p. 1378, § 7; Ga. L. 2005, p. 334, § 1-1/HB 501; Ga. L. 2009, p. 453, § 3-22/HB 228; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2011, p. 355, § 18/HB 269; Ga. L. 2017, p. 184, § 7/HB 136.)

The 2017 amendment, effective July 1, 2017, added subsection (g).

JUDICIAL DECISIONS

Rules and regulations permitting search of commercial vehicle valid. — Because Georgia's commercial vehicle scheme under O.C.G.A. § 40-16-2(b)(3) and its regulations provided ample notice that such vehicles could be stopped and inspected, and the inspections were limited as to who could perform the inspections and the cargo and documents to be inspected, denying the defendant's motion to suppress the drugs found in the defendant's commercial vehicle was proper under the Fourth Amendment; O.C.G.A. § 40-16-5(c) expressly exempted any requirement that the rules and regulations be promulgated pursuant to the Georgia Administrative Procedure Act O.C.G.A. Ch. 13, T. 50, and the rules and regulations were effective. United States v. Ponce-Aldona, 579 F.3d 1218 (11th Cir. 2009), cert. denied, 558 U.S. 1128, 130 S. Ct. 1094, 175 L. Ed. 2d 912 (2010).

40-16-5.1. Use of department vehicles and equipment.

(a) Except as otherwise provided in this Code section, no department motor vehicles shall be used by any investigators employed by the department except in the discharge of official duties. Any other equipment shall be used only with the express written approval of the commissioner.

(b) The commissioner may adopt rules and regulations governing the use of equipment. The commissioner may adopt rules and regulations pursuant to which investigators employed by the department may use a department motor vehicle while working an approved off-duty job, provided that any such use shall comply with such conditions as may be imposed by the commissioner, which conditions shall include but shall not be limited to a finding of public benefit and reimbursement to the department by the employer or employee for use of the vehicle.

(c) At no time will an off-duty employee be allowed use of a department motor vehicle at any political function of any kind. (Code 1981, § 40-16-5.1, enacted by Ga. L. 2002, p. 838, § 4; Ga. L. 2005, p. 334, § 1-1/HB 501.)

40-16-6. Civil monetary penalties.

(a) To the extent specifically authorized by law, the commissioner may pursuant to rule or regulation specify and impose civil monetary penalties for violations of laws, rules, and regulations administered by the commissioner. Except as may be hereafter authorized by law, the maximum amount of any such monetary penalty shall not exceed the maximum penalty authorized by law or rule or regulation for the same violation immediately prior to July 1, 2005.

(b) All proceedings for the imposition of civil monetary penalties by the commissioner and other contested cases to be decided by or under authority of the commissioner shall be subject to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." All such administrative proceedings which are pending on July 1, 2005, under laws the administration of which is transferred from the commissioner of motor vehicle safety to another enforcement agency shall be transferred to the jurisdiction of such other enforcement agency as of July 1, 2005.

(c) The amendment of this chapter and the Act by which it is amended shall not affect or abate the status as a crime of any act or omission which occurred prior to July 1, 2005, nor shall the prosecution of such crime be abated as a result of such amendment. (Code 1981, § 40-16-6, enacted by Ga. L. 2000, p. 951, § 1-1; Ga. L. 2002, p. 415, § 40; Ga. L. 2003, p. 177, § 5; Ga. L. 2005, p. 334, § 1-1/HB 501.)

40-16-7. Budget of department.

(a) The department shall be a budget unit to which funds may be appropriated as provided in the "Budget Act," Part 1 of Article 4 of Chapter 12 of Title 45. The department shall be an independent and distinct department of state government. The duties of the department shall be performed by that department and not by any other agency of state government, and the department shall not perform the duties of any other agency of state government. The position of commissioner of driver services shall be a separate and distinct position from any other position in state government. The duties of the commissioner shall be performed by the commissioner and not by any other officer of state government, and the commissioner shall not perform the duties of any other officer of state government.

(b) Appropriations for functions transferred to and from the Department of Motor Vehicle Safety and other departments may be transferred to and from such departments as provided for in Code Section 45-12-90, relating to disposition of appropriations for duties, purposes, and objects which have been transferred. Personnel, equipment, and facilities previously employed for such transferred functions shall likewise be transferred to the appropriate departments. Contracts relating to functions transferred to and from the Department of Motor Vehicle Safety and other departments, and any rights of renewal under such contracts, shall also be transferred to the appropriate departments. Any disagreement between such departments as to any such transfers shall be determined by the Governor.

(c) Except as specifically provided otherwise by law, all fines and bond forfeitures collected for criminal violations cited by the department's investigators shall, after deduction from the total fine or bond forfeiture of the amounts due the Peace Officers' Annuity and Benefit Fund and the Sheriffs' Retirement Fund of Georgia and any other deductions specified by law, be paid by the clerk of the court into the fine and bond forfeiture fund of the county treasurer in the same manner and subject to the same rules of distribution as other fines and bond forfeitures. (Code 1981, § 40-16-7, enacted by Ga. L. 2000, p. 951, § 1-1; Ga. L. 2005, p. 334, § 1-1/HB 501; Ga. L. 2015, p. 693, §§ 3-32, 3-33/HB 233; Ga. L. 2016, p. 864, § 40/HB 737.)

The 2016 amendment, effective May 3, 2016, part of an Act to revise, modernize, and correct the Code, substituted "total fine or bond forfeiture" for "total fine or forfeiture" in subsection (c).

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

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

JUDICIAL DECISIONS

Cited in White v. Ga. Dep't of Motor Vehicle Safety, No. 1:04-CV-0790-JOF, 2006 U.S. Dist. LEXIS 2735 (N.D. Ga. Jan. 12, 2006).

40-16-8. Governor's Commercial Transportation Advisory Committee.

(a) There shall be established, within the department, the Governor's Commercial Transportation Advisory Committee. The purpose of this committee is to advise the Governor on all laws, regulations, rules, and other matters related to the operation within this state of motor carriers, including private carriers, as defined in Code Section 46-1-1. The committee shall also serve as a forum for representatives of the motor carrier industry to meet with representatives of the various state agencies responsible for the oversight, enforcement, taxation, and regulation of the commercial transportation industry.

(b) The committee shall consist of the following members:

(1) The commissioner of driver services or his or her designee;

(2) The commissioner of public safety or his or her designee;

(3) The commissioner of transportation or his or her designee;

(4) The state revenue commissioner or his or her designee;

(5) The Speaker of the House or his or her designee;

(6) The chairperson of the House Transportation Committee, who shall chair the committee;

(7) The President Pro Tempore of the Senate or his or her designee;

(8) The chairperson of the Senate Transportation Committee;

(9) The president of the Georgia Motor Trucking Association or his or her designee;

(10) Five industry representatives appointed by the Governor; and

(11) The Governor or his or her designee who shall serve ex officio.

(c) Each member of the committee shall serve until replaced. All members of the committee shall have equal voting privileges on all matters brought before the committee. The committee shall meet at least three times per year at a date and time set by the chairperson. The chairperson shall prepare an agenda for each meeting and shall distribute the agenda for each meeting at least 20 days prior to the date

of the meeting. (Code 1981, § 40-16-8, enacted by Ga. L. 2005, p. 330, § 1/HB 458; Ga. L. 2006, p. 72, § 40/SB 465.)