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RECENT GEORGIA CASES
EXCERPTED FOR LEGISLATIVE INTENT AND HISTORY

The following cases relating to Georgia law are not exhaustive on the issue of legislative intent and history. These are a few examples of recent court decisions excerpted for this topic in the state. ***You must review the entire court opinion to determine its applicability to your case.***

FAIR V. STATE
284 GA. 165, 664 S.E.2D 227
GA., 2008. JULY 14, 2008

[1] ***166** The construction of OCGA § 16-3-24.2 is an issue of first impression in this Court. However, the defendants cite and rely upon *Boggs v. State*, 261 Ga.App. 104, 106, 581 S.E.2d 722 (2003). There, the Court of Appeals focused on the plain language of the statute, see *Sizemore v. State*, 262 Ga. 214, 216, 416 S.E.2d 500 (1992), and held that

> [a]ccording to Black's Law Dictionary, one who is immune is exempt or free from duty or penalty, [cit.] and prosecution is defined as "(a) criminal action; a proceeding instituted and carried on by due course of law, before a competent tribunal, for the purpose of determining the guilt or innocence of a person charged with crime." Therefore, by the plain meaning of [immune from prosecution] and the other language in the statute, the statute must be construed to bar criminal proceedings against persons who use force under the circumstances set forth in OCGA § 16-3-23 or § 16-3-24. Further, as the statute provides that such person " *shall* be immune from criminal prosecution," the decision as to whether a person is immune under OCGA § 16-3-24.2 must be determined by the trial court [as a matter of law] before the trial of that person commences. (Emphasis supplied.)

Boggs, supra at 106, 581 S.E.2d 722. See *O'Donnell v. Durham*, 275 Ga. 860, 861(3), 573 S.E.2d 23 (2002) ("'Shall' is generally construed as a word of mandatory import."). Because we are of the opinion that the Court of Appeals correctly construed and applied OCGA § 16-3-24.2 in *Boggs*, we hold that the trial court erred in refusing to rule pre-trial on the defendants' motions, and we therefore remand for a pre-trial determination of whether the defendants are entitled to immunity from prosecution under OCGA § 16-3-24.2.

…

The determination of what mental state is required in those criminal statutes where no culpable mental state is expressly designated is a matter of statutory construction. See *State v. Miller*, 260 Ga. 669(2), 398 S.E.2d 547 (1990). See also *Daniels v. State*, 264 Ga. 460, 461(2), 448 S.E.2d 185 (1994). "In construing a ***168** statute, the cardinal rule is to glean the intent of the legislature. [Cits.]" *Alford v. Public Service Comm.*, 262 Ga. 386, 387(1)(a), 418 S.E.2d 13 (1992). See also *Stephens v. Hopper*, 241 Ga. 596, 602-603(4), 247 S.E.2d 92 (1978) (analyzing intent of legislature in construing (b)(1) statutory aggravating circumstance).

The State maintains that, because the language of the (b)(8) statutory aggravating circumstance does not contain the word "knowingly," it should not be construed to require knowledge that the victim was a peace officer. Contending that this Court should consider the statutory construction given to similar statutes in Georgia, the State correctly points out that the word "knowingly" appears in the criminal statute defining aggravated assault against a peace officer, OCGA § 16-5-21(c), and in the criminal statute defining aggravated battery against a peace officer, OCGA § 16-5-24(c), and that both crimes have been construed by our appellate courts as requiring knowledge of the victim's status as a police officer as an element of the crime. *Bundren v. State*, 247 Ga. 180, 181(2), 274 S.E.2d 455 (1981). See also ****232** *Chandler v. State*, 204 Ga.App. 816, 821(3), 421 S.E.2d 288 (1992) (applying *Bundren*, supra, to aggravated battery on a peace officer). These separate crimes against police officers were the subject of legislation enacted subsequent to the 1973 adoption of our revised death penalty statute and its inclusion of the (b)(8) statutory aggravating circumstance. Ga. L.1973, pp. 159, 163-165, § 3; Ga. L.1976, pp. 543-544, §§ 1, 2. However, when the General Assembly adopted the latter code sections, it knew that "knowingly" was not required in the (b)(8) aggravating circumstance and nevertheless made it mandatory to prove the defendant's knowledge with regard to the aggravated assault and aggravated battery provisions. Furthermore, the word "knowingly" appears in the (b)(3) statutory aggravating circumstance which is part of the same statute and was enacted simultaneously with the (b)(8) aggravating circumstance. If the General Assembly had intended to require knowledge of the victim's status as a peace officer in order for the (b)(8) aggravating circumstance to apply, "the statutory history shows that it knew how to do so. 'We must presume that its failure to do so was a matter of considered choice.' [Cit.]" *Inland Paperboard & Packaging v. Ga. Dept. of Revenue*, 274 Ga.App. 101, 104, 616 S.E.2d 873 (2005). See also *Bauerband v. Jackson County*, 278 Ga. 222, 225-226(3), 598 S.E.2d 444 (2004).

…

Our General Assembly knew the importance and gravity of the bill it was considering. As revealed by a review of the House and Senate Journals, the vote in neither the House nor Senate on this bill was unanimous. In fact, after the Judiciary Committee recommended a "do pass" of HB 12 by committee substitute, the House recommitted the bill to the Judiciary Committee without passing it at that time. Georgia House Journal, Regular Session 1973, pp. 330-331. Later, the bill was passed by substitute after several amendments were proposed and defeated. Georgia House Journal, Regular Session 1973, pp. 606-607. The Senate finally passed the bill by a split vote after defeating several floor amendments. Georgia Senate Journal, Regular Session 1973, p. 505. The General Assembly fully followed the legislative process, enacted the law and has never amended the language setting forth the (b)(8) aggravating circumstance in any way. *Bauerband v. Jackson County*, supra; *Inland Paperboard & Packaging v. Ga. Dept. of Revenue*, supra.

…

HUNSTEIN, Presiding Justice, concurring in part and dissenting in part.

While I concur fully in the majority's opinion herein as to Divisions 1, 2(a), and 3, I cannot agree with the majority's determination that the statutory aggravating circumstance set forth in OCGA § 17-10-30(b)(8) does not require a finding of victim status scienter. Thus, as discussed below, I respectfully dissent to the majority's holding in Division 2(b).

As the majority observes, "[t]he determination of what mental state is required in those criminal statutes where no culpable mental state is expressly designated is a matter of statutory construction. [Cit.]" Maj. Op. at 231. In its effort to glean the Legislature's intent in enacting OCGA § 17-10-30(b)(8), the majority adopts the mode of analysis propounded by the State, comparing the absence of the word "knowingly" in the (b)(8) statutory aggravating circumstance to that word's inclusion in the criminal statutes defining aggravated assault and aggravated battery against a peace officer, see OCGA §§ 16-5-21(c) and 16-5-24(c), as well as in the statutory aggravating circumstance set forth in OCGA § 17-10-30(b)(3). While I agree that this apparent contrast is worthy of note, I do not accept it as dispositive.[FN1] Rather, I find considerably more persuasive ****238** the **legislative history** reflecting the purpose of the enactment of the statutory

aggravating circumstances as well as the rules of statutory construction specifically applicable to penal statutes, which together lead me to reject the majority's conclusion.

FN1. Indeed, as the majority is constrained to acknowledge, the two statutes regarding criminal offenses against police officers, which the majority finds so compelling, were enacted *after* the adoption of the (b)(8) statutory aggravating circumstance, see Ga. L.1973, pp. 159, 163-165, § 3; Ga. L.1976, pp. 543-544, §§ 1, 2, and they are thus hardly illuminating as to the Legislature's intent at the time it enacted (b)(8). As to the differences in language between (b)(8) and (b)(3), I believe, as discussed below, that a broader look at all eleven statutory aggravating circumstances evidences the Legislature's intent to require some element of mens rea as to each aggravating circumstance. In addition, I note that inferring an intent element where a criminal statute is silent is not unprecedented in this Court. See, e.g., *State v. Miller*, 260 Ga. 669, 674(2), 398 S.E.2d 547 (1990) (construing Anti-Mask Act as applying only where defendant "knows or reasonably should know that the conduct provokes a reasonable apprehension of intimidation, threats or violence").

In determining the Legislature's intent with respect to the (b)(8) statutory aggravating circumstance, " 'it is appropriate for the court to look to the old law and the evil which the legislature sought ***178** to correct in enacting the new law and the remedy provided therefor.' [Cit.]" *State v. Mulkey*, 252 Ga. 201, 204(2), 312 S.E.2d 601 (1984).[FN2] Accordingly, it is noteworthy that OCGA § 17-10-30 was enacted in 1973, see Ga. L.1973, pp. 159, 163-165, § 3, in the aftermath of the United States Supreme Court's decision in *Furman v. Georgia*, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972), which had invalidated the Georgia death penalty statutes then in effect. In an effort to reinstate the death penalty in Georgia

FN2. In this regard, I would stress with particular interest the fact that we have in the past looked to the **legislative history** of a statute in construing an intent requirement even where the word "knowingly" appeared in the text of the statute in question. See *Bundren v. State*, 247 Ga. 180, 181(2), 274 S.E.2d 455 (1981) (looking to history of statute regarding aggravated assault of a police officer to glean legislative intent as to whether knowledge was essential element of offense).

…

[i]n the wake of *Furman*, Georgia['s legislature] amended its capital punishment statute ... to narrow the class of murderer subject to capital punishment by specifying 10 [now 11] statutory aggravating circumstances, one of which must be found by the jury to exist beyond a reasonable doubt before a death sentence can ever be imposed.

(Citations and footnote omitted.) *Gregg v. Georgia*, 428 U.S. 153, 196-197(IV)(B), 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976). Thus, the legislative intent was to focus the death penalty with greater precision in order to, as the majority puts it, "ensure that [the revised death penalty statute] would withstand future constitutional attack." Maj. Op. at 232.[FN3]

FN3. See also Georgia Senate Journal, Regular Session 1973, pp. 505-506, Remarks of Senator Ward of the 39th District ("I oppose the position taken by the Senate in passing the bill (HB 12) to reinstate the death penalty in Georgia.... In *Furman v. Georgia* ... the Court declared that 'the imposition and carrying out the death penalty [is unconstitutional].' I ... have ... doubts that the bill being voted upon today will withstand a constitutional attack....").

UNIFIED GOVERNMENT OF ATHENS-CLARKE COUNTY v. ATHENS NEWSPAPERS, LLC
284 GA. 192, 663 S.E.2D 248
GA., 2008. JUNE 30, 2008

Atlanta Journal & Constitution v. City of Brunswick, 265 Ga. 413, 414(1), 457 S.E.2d 176 (1995). The plain and ordinary meaning of the adjective "pending" is "[r]emaining undecided; awaiting decision...." *Black's Law Dictionary* 1154 (7th ed.1999). " '[T]he term "pending" means nothing more than "remaining undecided." '[Cit.]" *Fidelity Investment Co. v. Anderson*, 66 Ga.App. 57, 58, 17 S.E.2d 84 (1941).

…

[5] Although OCGA § 50-18-70(f) refers to the "individual" in control of the public ***253*** record, the restrictive signification "private or natural person" is not necessarily inherent in the word "individual." *Black's Law Dictionary,* p. 696 (5th ed.1979). Furthermore, both OCGA § 50-18-70(f) and OCGA § 50-18-72(h) refer to action, within three business days, by "the public officer or agency" in control of the requested records. A review of these statutes and the Open Records Act as a whole does not clearly indicate the legislative intent with respect to the starting point for the response time. Compare *Anderson v. Village of Jacksonville,* 103 S.W.3d 190, 194, 199 (Mo.App.2003) (where a similar statute required a response by the end of the third business day following the date the request is received by the custodian of records of a public governmental body). However, "[t]he very purpose of the Open Records Act 'is to encourage public access to government information and to foster confidence in government through openness to the public.' [Cit.]" *Howard v. Sumter Free Press,* 272 Ga. 521, 522(1), 531 S.E.2d 698 (2000).

GEORGIA DEPT. OF REVENUE V. OWENS CORNING
283 GA. 489, 660 S.E.2D 719
GA., 2008. APRIL 21, 2008

489 We granted certiorari in this case to determine whether the Court of Appeals erred by holding that the 1997 version of OCGA § 48-8-3(34)(A) clearly and unambiguously creates an exemption from taxation for machinery repair parts. See *Owens Corning v. Ga. Dept. of Revenue,* 285 Ga.App. 158, 645 S.E.2d 644 (2007). Based on the applicable standards of review, the **legislative history** of the statute, and the Legislature's expressed intent that machinery repair parts not be extended a sales tax exemption prior to 2000, we find that no clear, unambiguous exemption for machinery repair parts existed in 1997. Therefore, we must reverse.

…

[6] [7] Likewise, no exemption was created under the revision of OCGA § 48-8-3(34)(A) in 1997. The 1997 statute provides for a sales tax exemption for "[m]achinery, *including components thereof,* which is used directly in the manufacture of tangible personal property when the machinery is bought to replace or upgrade machinery in a manufacturing plant presently existing in this state." (Emphasis supplied.) Nothing in this language creates an explicit exemption from sales tax for machinery repair parts. At best, this language may create some ambiguity that "replacement components" could possibly include repair parts. However, in cases of ambiguity, the statute must be interpreted in favor of the tax, not the exemption. *Collins,* supra. Moreover, in light of the Legislature's explicit past declarations that machinery repair parts should be subject to tax, it stands to reason that, if the Legislature wished to reverse this historical trend in the 1997 amendment, it would have done so explicitly.

The Legislature did not take that action, however, until 2000. That year, OCGA § 48-8-3 was revised once more. The phrase "including components thereof" was deleted from subsection (34)(A). In addition, a new subsection was added which, for the first time, explicitly provides a phased-in exemption applicable to machinery repair parts. Until this point in time, every explicit mention by the Legislature of repair parts was made to show that these items were not allowed an exemption. The 2000 amendment is the first time the Legislature altered this rule.

…

491 The Legislature's intent that the exemption for machinery repair parts not take effect until 2000 is made evident from the stated purpose for the 2000 statutory revision, namely "to amend Code Section 48-8-3 ..., relating to exemption from sales and use taxes, so as *to clarify* that the exemption regarding certain components of machinery used directly in the manufacture of tangible personal property extends only to machinery components purchased to upgrade such machinery."

(Emphasis supplied.) The Legislature then goes on to create a prospective phased-in exemption for machinery repair parts. This language shows that the Legislature wished to eradicate any ambiguity caused by the 1997 statute and make it clear that the 1997 statute did not extend the sales tax exemption to machinery repair parts.

…

DISSENT

[w]e begin our analysis with the "golden rule" of statutory construction, which requires us to follow the literal language of the statute "unless it produces contradiction, absurdity or such an inconvenience *****723*** as to insure that the legislature meant something else." [Cit.]

*TELECOM*USA v. Collins,* 260 Ga. 362, 363(1), 393 S.E.2d 235 (1990). I submit that the majority does not adhere to this "golden rule." Instead, it begins its analysis with the unwarranted assumption that the term "components" as used in former OCGA § 48-8-3(34)(A) is ambiguous, and then attempts to justify that assumption.

STATE V. WARE
282 GA. 676, 653 S.E.2D 21
GA., 2007. NOVEMBER 05, 2007

[4] [5] The State relies in part on the Act's statement of intent. "[I]n attempting to ascertain legislative intent of a doubtful statute, a court may look to the caption of the act [cit.] and its **legislative history**. [Cit.]" *Sikes v. State,* 268 Ga. 19, 21(2), 485 S.E.2d 206 (1997). However, it is fundamental that the preamble or caption of an act is no part thereof and cannot control the plain meaning of the body of the act. *Bentley v. State Bd. of Medical Examiners,* 152 Ga. 836, 838-839(2), 111 S.E. 379 (1922); *Chambers Lumber Co. v. Martin,* 112 Ga.App. 826, 146 S.E.2d 529 (1965).

RADIO SHACK CORP. V. CASCADE CROSSING II, LLC
282 GA. 841, 653 S.E.2D 680
GA., 2007. OCTOBER 29, 2007

To the contrary, the result is to establish the legislative intent of the General Assembly which binds this Court, as well as all others, in construing the statutory provision in issue. " 'The cardinal rule in construing a legislative act, is " 'to ascertain the legislative intent and purpose in enacting the law, and then to give it that construction which will effectuate the legislative intent and purpose.'" (Cit.)' [Cit.]" *Cox v. Fowler,* 279 Ga. 501, 502, 614 S.E.2d 59 (2005). Thus, it is sufficient that, in the 30 years since the decision in *Burgess,* "[t]here has been no attempt on the part of the legislature to alter the construction of" OCGA § 13-1-11 therein. *Georgia R. and Banking Co. v. Brown,* 86 Ga. 320, 323, 12 S.E. 812 (1890).

ALLEN V. WRIGHT
282 GA. 9, 644 S.E.2D 814
GA., 2007. MAY 14, 2007

This Court may construe statutes to avoid absurd results.... [Cit.] However, under our system of separation of powers this Court does not have the authority to rewrite statutes. "(T)he doctrine of separation of powers is an immutable constitutional principle which must be strictly enforced. Under that doctrine, statutory construction belongs to the courts, legislation to the legislature. We can not add a line to the law." [Cit.]

State v. Fielden, 280 Ga. 444, 448, 629 S.E.2d 252 (2006).

…
***14** Pursuant to the principle of statutory construction, "Expressum facit cessare tacitum" (if some things are expressly mentioned, the inference is stronger that those omitted were intended to be excluded) and its companion, the venerable principle, "Expressio unius est exclusion alterius" ("The express mention of one thing implies the exclusion of another"), the list of actions in [a statute] is presumed to exclude actions not specifically listed ([cit.]), and the omission of [additional actions] from [the statute] is regarded by the courts as deliberate. [Cits.]

Alexander Properties Group v. Doe, 280 Ga. 306, 309(1), 626 S.E.2d 497 (2006).

The dissent is correct that the established rules of statutory construction require the courts to interpret a statute as valid whenever possible. *Banks v. Ga. Power Co.*, 267 Ga. 602, 603, 481 S.E.2d 200 (1997); *State of Ga. v. Davis*, 246 Ga. 761(1), 272 S.E.2d 721 (1980). However, where, as here, the General Assembly expressly designated what the plaintiff's medical authorization form "shall provide," the principle of "expressio unius est ***818** exclusio alterius" makes it impossible for the courts to rewrite OCGA § 9-11-9.2 so as to incorporate the missing HIPAA requirements. *State v. Fielden*, supra; *Alexander Properties Group v. Doe*, supra.

STATE V. COLLIER
279 GA. 316, 612 S.E.2D 281
GA., 2005. APRIL 26, 2005

[4] [5] The State argues that this Court must interpret OCGA § 40-5-67.1(d) in light of its purpose and **legislative history**, that it is a remedial statute which should be liberally construed to effectuate its purpose, and that inasmuch as the implied consent provisions make no mention of the use of search warrants, the language "no test shall be given" refers only to warrantless tests. But the State's arguments ignore the fact that "[w]here the language of a statute is plain and susceptible to only one natural and reasonable construction, courts must construe the statute accordingly. [Cit.] In fact, 'where the language of a statute is plain and unambiguous, judicial construction is not only unnecessary***284** but forbidden.' " (Footnote omitted.) *Abdulkadir v. State*, 279 Ga. 122, 123, 610 S.E.2d 50 (2005). OCGA § 40-5-67.1(d) clearly prohibits the giving of any chemical test once the suspect refuses to submit to the requested one. It certainly makes no provision for the police to then attempt to obtain a search warrant.

GORDON V. ATLANTA CAS. CO.
279 GA. 148, 611 S.E.2D 24
GA., 2005. MARCH 28, 2005

[2] The language of the statute is plain and it is not illogical. It clearly states that the insurer is to pay "*all* sums which [the] insured shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle." (Emphasis supplied.) OCGA § 33-7-11(a)(1). All means all, every single one. Since the insured in this case is entitled to recover damages for the death of his son against the owner or driver of the uninsured vehicle, he is entitled to recover those damages against his insurer. As Judge Barnes correctly pointed out in her dissent:

[T]he language in this case *is* clear on its face. The majority then, through some sort of judicial clairvoyance, engrafts what it believes the legislature must have intended. This approach, of course, assumes that the legislature was incapable of understanding the meaning of "all," and that the General Assembly did not want insureds to be able to recover for *all* damages caused by uninsured motorists, but only for certain damages that the majority proceeds to define. ...

No language in the statute can reasonably support the majority's proposed construction. A plain reading of the language ***26** clearly requires coverage, regardless of whether the person injured is a covered or noncovered person in the policy. All that the statute requires is that the insured person

be "legally entitled to recover damages." A court cannot by construction "add to, take from, or vary the meaning of unambiguous words in the statute."

The majority conjectures that the legislature did not intend to require this coverage, but can point to no language or ambiguity in the statute supporting this construction of the ***150** legislative intent, and makes no reference to any **legislative history** or comment upon which it relies. Where there is no ambiguity, our job is simply to look at the words the legislature used, not to interpret what we think they must have meant. If the legislature disagrees with our construction, it is free to amend the statute to make its intent clear, as it has on other occasions.

DIXON V. STATE
278 GA. 4, 596 S.E.2D 147
GA., 2004. MAY 03, 2004

[1] 1. The statutory rape and child molestation statutes are part of a legislative framework aimed at protecting children from sexual exploitation and abuse. As part of a coordinated scheme, relating to the same subject matter, these statutes must be construed together to determine how the legislature intended to treat the conduct that occurred in this case.[FN2]

FN2. See, e.g., *Lucas v. Smith*, 201 Ga. 834, 837, 41 S.E.2d 527 (1947) ("our system of law is not to be construed by single Code sections or single provisions of the law; the entire system must be construed as a whole to determine the intent and purpose of the laws as applied to each particular case or state of facts."); *Mathis v. Cannon*, 276 Ga. 16, 26, 573 S.E.2d 376 (2002) ("It is an elementary rule of statutory construction that a statute must be construed in relation to other statutes of which it is a part, and all statutes relating to the same subject matter, briefly called statutes in pari materia, are construed together"), quoting *Butterworth v. Butterworth*, 227 Ga. 301, 303-304, 180 S.E.2d 549 (1971).

…

Reading these statutes together shows a clear legislative intent to prosecute the conduct that the jury determined to have occurred in this case as misdemeanor statutory rape. A number of sound legal arguments support this position. First, in 1996 the legislature amended OCGA § 16-6-3 specifically to eliminate any discretion over whether to punish conduct meeting the misdemeanor ***149** statutory rape criteria as either felony or misdemeanor statutory rape. It would defeat the legislature's intent in doing so if the State retained the discretion to prosecute the same conduct as either misdemeanor statutory rape or felony child molestation. Second, where two statutes overlap, the statute addressing the narrower range of conduct will usually trump the more general statute, and the misdemeanor statutory rape provision is far more specific than the child molestation statute. Third, the misdemeanor statutory rape statute reflects the most recent legislative judgment regarding the appropriate punishment for Dixon's conduct. Finally, given the conflict between the two statutes, Dixon is entitled to receive only the lesser of the two possible punishments.

(a) The legislature amended the statutory rape laws in 1995, and again in 1996, in order to "provide for different penalties depending on the age of the perpetrator." [FN4] In 1995, the legislature added the misdemeanor statutory rape provision, OCGA § 16-6-3(b), authorizing the trial court, in its discretion, to punish conduct that would otherwise qualify as felony statutory rape as a misdemeanor if the victim was 14 or 15 years of age and the perpetrator was no more than three years older than the victim.[FN5] In 1996, however, the legislature removed the discretionary nature of the misdemeanor statutory rape ***6** provision, so that conduct meeting the criteria of the misdemeanor statute could only be punished as a misdemeanor. [FN6]