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## **SUPREME COURT CLARIFIES INTENT ELEMENT IN STRICT LIABILITY TRAFFIC OFFENSES**

In *State v. Ogilvie*, S12G0703 (Nov. 5, 2012), the Georgia Supreme Court considered whether a person can commit a strict liability traffic offense without a culpable mental state. The question arose after appellant struck and killed a seven-year-old boy with her car as she drove through a crosswalk while the child was crossing the street. Appellant was convicted of second degree vehicular homicide based on her failure to stop for a pedestrian in a crosswalk, see O.C.G.A. § 40-6-91(a). The trial court declined to give appellant's requested jury charge on the defense of accident. However, on appeal she contended that the accident charge was authorized by her testimony that she could not stop before hitting the child because he ran across the street in front of her car, giving her only a second or two to avoid hitting him. The Court of Appeals concluded that appellant's testimony warranted an accident charge. The Court of Appeals held that the failure to give the accident charge was harmful and reversed her convictions based on the proposition that there is no criminal intent element for the "strict liability" traffic offenses set forth in Chapter 6 of Title 40 of the Georgia Code. The Georgia Supreme Court found the Court of Appeals' premise was incorrect.

The Court explained that if appellant had been indicted for a crime that required her to have intentionally or maliciously hit the child, like murder, then this evidence would have supported an accident instruction, because it would tend to show that she did not act with the requisite "criminal ... intention." However, the Court held that this was not the type of intent required to commit a strict liability traffic offense. The Court noted that, "Criminal intent does not always equate to mental fault, guilty knowledge or purposeful violation of the law." The Court stated that while criminal intent is an element that must be proved by the state in every prosecution, in a "strict liability" traffic offense "there is no requirement of specific intent or wrongful purpose that is an element of other crimes, but [it] require[s] the defendant has voluntarily committed the act that the statute prohibits, which typically involves driving at a particular time and place (e.g., through a red light, see O.C.G.A. § 40-6-20(a)) or in a particular way (e.g., too fast, see O.C.G.A. § 40-6-181)." In other words, the State must prove only *general* criminal intent, which is "simply the intent to do the act which results in the violation of the law, and not the intent to commit the crime itself." Here, the appellant testified that she could not avoid hitting the child because he unexpectedly ran across the street in front of her, giving her only a second or two to stop. Thus, the Court held, appellant's defense was not that she acted involuntarily, but rather that the act (or failure to act) of another person—the child in running into the crosswalk (or the crossing guard in failing to stop him)—was a proximate cause defense. Consequently, the trial court was not required to give an accident instruction. Moreover, the Court stated that the trial court committed no error in this regard since it gave the jury a full charge on proximate cause.