

IN THE SUPREME COURT OF GEORGIA
CASE NO. S24G1299

STATE OF GEORGIA,
Appellant,

v.

MICHELLE WIERSON,
Appellee.

On Appeal from the Superior Court of Dekalb County
Case No. 19CR1516

**BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION AND
THE AMERICAN CIVIL LIBERTIES UNION OF GEORGIA
AS AMICI CURIAE IN SUPPORT OF APPELLEE**

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INTRODUCTION

Appellee Michelle Wierson asserts an insanity defense against criminal charges arising from a fatal car crash that occurred while she was purportedly off, or partially off, the medication prescribed to treat her bipolar disorder.

Below, the Court of Appeals held that the medication noncompliance alleged by the State cannot negate Wierson's insanity defense because Georgia's insanity defense statutes contain no exception for medication noncompliance. Amici submit this brief to highlight a canon of statutory construction that supports the Court of Appeals' decision: lenity.

Georgia criminal law contains statutory defenses for insanity and delusional compulsion. O.C.G.A. §§ 16-3-2, 16-3-3 (collectively "insanity defense statutes"). Below, the Court of Appeals held that the "clear language" of these statutes contains no exception that would deny the defense to individuals whose insanity or delusions, in the State's view, were triggered by medication noncompliance. *State v. Wierson*, No. A24A0242, slip op. at 10, (Ga. Ct. App. June 25, 2024). That holding is correct. The insanity defense statutes expressly pin the availability of their defenses to the defendant's mental condition "at the time of" the alleged crimes. O.C.G.A. §§ 16-3-2, 16-3-3. Their plain text leaves no room for

an exception that would foreclose the defense to defendants who, at a time *prior* to the alleged crimes, allegedly engaged in conduct that induced their subsequent insanity or delusions.

But even if the statutory text did not foreclose a medication-noncompliance exception, the rule of lenity would. That rule dictates that a criminal statute “must be construed strictly against criminal liability and, if it is susceptible to more than one reasonable interpretation, the interpretation most favorable to the party facing criminal liability must be adopted.” *Fleet Finance, Inc. of Georgia v. Jones*, 263 Ga. 228, 231 (1993). The rule has deep roots; it is “not much less old than” the task of statutory “construction itself.” *United States v. Wiltberger*, 18 U.S. (5 Wheat.) 76, 95 (1820) (Marshall, C.J.). The rule applies to interpretations of substantive criminal law, including questions about whether a defendant’s conduct falls within an exception to such a law. See *Ultra Telecom, Inc. v. State*, 288 Ga. 65 (2010). And it applies with special force where, as here, the State asks this Court not only to carve a textual exception into a statutory defense to criminal liability, but to do so against a defendant population comprising people with mental illness.

Accordingly, as explained below, even if the State's argument were a reasonable interpretation of the plain statutory text, it would still have to be rejected because it contradicts the rule of lenity.

INTEREST OF THE AMICI CURIAE

The American Civil Liberties Union ("ACLU") is a nationwide, nonprofit, nonpartisan organization with nearly two million members and supporters dedicated to protecting the principles embodied in the state and federal Constitutions and our nation's civil rights laws. The ACLU frequently litigates and files amicus curiae briefs in cases involving the fundamental rights protected by the Fourth Amendment and its state constitutional analogue.

The ACLU of Georgia is a non-profit organization that works to enhance and defend the civil liberties and rights of all Georgians through legal action, legislative and community advocacy, and civic education and engagement. The ACLU of Georgia envisions a state that guarantees all persons the civil liberties and rights contained in the United States and Georgia Constitutions and Bill of Rights, and it works to make that vision a reality.

ARGUMENT

I. The rule of lenity requires criminal statutes to be strictly construed against criminal liability.

The rule of lenity applies equally to criminal laws defining culpability and those prescribing punishment. It also serves important purposes. Among other things, it ensures that people have fair notice of the criminal rules that apply to them, and it ensures that those rules are set by legislatures rather than courts.

A. The rule of lenity requires any ambiguities in criminal laws to be resolved in favor of the defendant.

The rule of lenity is well established in Georgia. It instructs that when an ambiguity in a penal statute still exists after applying the traditional tools of statutory construction, the statute must be “strictly construed against the State and in favor of the accused.” *Smallwood v. State*, 310 Ga. 445, 451 (2020) (citing *State v. Hanna*, 305 Ga. 100, 103(2) (2019)). In that circumstance, the rule provides a clear mandate: a criminal statute “must be construed strictly against criminal liability and, if it is susceptible to more than one reasonable interpretation, the interpretation most favorable to the party facing criminal liability must be adopted.” *Fleet Finance*, 263 Ga. at 231 (1993). *See also* *Gee v. State*, 225 Ga. 669, 676(7) (1969) (“Penal statutes are always construed strictly against the State and liberally in favor of human liberty.”).

Particularly in recent years, Georgia courts have invoked lenity in cases where there is ambiguity as to which penalty applies to a criminal defendant, due to statutes establishing “different punishments for the same offense.” *Peacock v. State*, 314 Ga. 709, 723(5) (2022). In that situation, lenity resolves the ambiguity “in favor of the defendant, who will then receive the lesser punishment.” *Id.*; see, e.g., *McNair v. State*, 293 Ga. 282, 283–84 (2013).

But lenity’s reach is not limited to ambiguous punishments; it applies fully to cases where there is ambiguity about whether the defendant is guilty of any crime at all. “[W]hen a criminal statute is reasonably subject to two constructions, one of which would make an act criminal and one of which would not, such statute must be construed in favor of the accused and strictly against the State.” *Carsello v. State*, 220 Ga. 90, 94 (1964). That is, just as lenity applies when there is ambiguity as between more punishment and less punishment, it applies when there is ambiguity between some punishment and no punishment.

In *Fleet Finance*, for example, this Court applied the rule of lenity in concluding that, although a financial institution’s interest-charging practices may have been “exorbitant, unethical, and perhaps even immoral,” they were not unlawfully usurious. *Fleet Finance*, 263 Ga. at 229, 231. It did not matter, the

Court explained, that *Fleet Finance* was a civil case in which borrowers had sued a lender, because the case still called upon the Court to construe a criminal statute. *Id.* at 231. Later, citing *Fleet Finance*, the Court noted the lenity command—i.e., to construe criminal statutes “strictly against criminal liability”—in a case involving a sexual abuse statute. *Jenkins v. State*, 284 Ga. 642, 645 (2008) (quoting *Fleet Finance*, 263 Ga. at 231). These and other cases, stretching back decades, make clear that lenity is not just a punishment-selection rule; it is a broader command that “[c]riminal statutes must be strictly construed against the State and liberally in favor of the prisoner.” *Balkcom v. Defore*, 219 Ga. 641, 642(2) (1964); *Matthews v. Everett*, 201 Ga. 730, 735 (1947) (“Being a criminal statute, it must be construed strictly against the State and liberally in favor of the prisoner, within reason.”).

In fact, this Court has applied lenity where, as here, the question was whether the defendant’s conduct met an exception to a criminal statute. In *Ultra Telecom*, the Court considered whether certain video game machines were illegal gambling devices subject to condemnation under state gambling law. The Court held that they were not. 288 Ga. at 72. Although the condemnation proceeding arose in a civil context, because the governing law, O.C.G.A. § 16–12–35, was a

criminal statute, the Court concluded that “if it is susceptible to more than one reasonable interpretation,” it had to be given “the interpretation most favorable to the party facing criminal liability.” *Ultra Telecom*, 288 Ga. at 69 (quoting *Fleet Finance*, 263 Ga. at 231(3)). In *Ultra Telecom*, that meant holding that the machines fell within a statutory exception for “coin operated games or devices designed and manufactured for bona fide amusement purposes.” *Id.* at 65.

This Court’s application of lenity is consistent with the rule’s substantial pedigree. For centuries, the U.S. Supreme Court has applied the rule of lenity whenever “the traditional tools of statutory interpretation yield[ed] no clear answer.” *Wooden v. United States*, 595 U.S. 360, 395 (2022) (Gorsuch, J., concurring in judgment). That Court has explained that “the rule of lenity[] teach[es] that ambiguities about the breadth of a criminal statute should be resolved in the defendant’s favor.” *United States v. Davis*, 588 U.S. 445, 465 (2019); *see also Whalen v. United States*, 445 U.S. 684, 694 (1980) (so long as a statute “is not entirely free of doubt, the doubt must be resolved in favor of lenity”).

But lenity’s history extends even further back. It dates to English courts prior to the Founding, “justified in part on the assumption that when Parliament intended to inflict severe punishments it would do so clearly.” *Wooden*, 595 U.S.

at 388 (Gorsuch, J., concurring in judgment). To avoid imposing harsh sentences without clear authority, English judges “strictly construed” criminal statutes against the government. 1 William Blackstone, *Commentaries on the Laws of England* *88 (1765); see generally *Johnson v. United States*, 576 U.S. 591, 613–14 (2015) (Thomas, J., concurring) (describing emergence of the rule of lenity in 16th-century England); 2 Matthew Hale, *History of the Pleas of the Crown* 335 (1736) (felonies “are construed literally and strictly”); David S. Romantz, *Reconstructing the Rule of Lenity*, 40 Cardozo L. Rev. 523, 526–27 (2018). The rule’s rationale “embodies ‘the instinctive distastes against men languishing in prison unless the lawmaker has clearly said they should.’” *United States v. Bass*, 404 U.S. 336, 348 (1971) (quoting H. Friendly, *Mr. Justice Frankfurter and the Reading of Statutes*, in *Benchmarks* 196, 209 (1967)).

Thus, as this Court’s cases demonstrate, and as U.S. Supreme Court Chief Justice Marshall once explained, construing a criminal statute against a defendant requires more than just the probability of correctness. The state must establish with certainty that the statute encompasses the defendant’s conduct. See *Wiltberger*, 18 U.S. (5 Wheat.) at 105 (“We admit that it is extremely improbable” Congress meant to limit the reach of the criminal statute in the manner urged,

“[b]ut probability is not a guide which a court, in construing a penal statute, can safely take.”).

B. The rule of lenity protects due process and the separation of powers.

The rule of lenity serves vital purposes. It “is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not in the judicial department.” *Lovett v. State*, 111 Ga. App. 295, 295 (Ga. Ct. App. 1965) (quoting *Wiltberger*, 18 U.S. (5 Wheat.) 76). Or, in other words, lenity “uphold[s] the Constitution’s commitments to due process and the separation of powers.” *Wooden*, 595 U.S. at 389 (Gorsuch, J., concurring in judgment). Both commitments warrant mention here.

Lenity advances due process by serving as “a sort of junior version of the vagueness doctrine, which requires fair warning as to what conduct is proscribed.” *Banta v. State*, 281 Ga. 615, 617 (2007) (internal quotation marks omitted) (quoting *United States v. Lanier*, 520 U.S. 259, 266 (1997)). The vagueness doctrine, in turn, is rooted in due process, which “requires that the law give a person of ordinary intelligence fair warning that specific conduct is forbidden or mandated.” *Santos v. State*, 284 Ga. 514, 514 (2008); see U.S. Const. amend. XIV;

Ga. Const. art. I, § I, ¶ 1. A statute risks unconstitutional vagueness when it “fail[s] to provide notice sufficient to enable ordinary people to understand what conduct it prohibits, or requires,” or when it “authorize[s] and encourage[s] arbitrary and discriminatory enforcement.” *Santos*, 284 Ga. at 514 The rule of lenity mitigates that risk—of conviction or punishment without adequate notice of what conduct was proscribed—by mandating that ambiguities in criminal laws be “construed strictly against the state and liberally in favor of liberty.” *Gee*, 225 Ga. at 676 (citing *Matthews*, 225 Ga. at 735); see also *State v. Rasabout*, 356 P.3d 1258, 1267 (Utah 2015) (“[T]he rule of lenity ‘is rooted in fundamental principles of due process which mandate that no individual be forced to speculate, at peril of indictment, whether his conduct is prohibited.’” (quoting *Dunn v. United States*, 442 U.S. 100, 112 (1979))).¹

Just as important, lenity preserves the separation of powers by ensuring that only legislatures—not courts—create criminal offenses and prescribe their punishments. *Wiltberger*, 18 U.S. (5 Wheat.) at 95; see *United States v. Hudson*, 11 U.S. (7 Cranch) 32, 32 (1812). The Georgia Constitution provides that “[t]he

¹ See also *United States v. Santos*, 553 U.S. 507, 514 (2008) (Scalia, J.) (plurality op.) (explaining that lenity “vindicates the fundamental principle that no citizen should be . . . subjected to punishment that is not clearly prescribed”); *Wooden*, 595 U.S. at 390–91 (Gorsuch, J., concurring in judgment) (lenity ensures that “whether or not individuals happen to read the law, they can suffer penalties only for violating standing rules announced in advance”)

legislative, judicial, and executive powers shall forever remain separate and distinct[.]” Ga. Const. art. II, § 2, ¶ 3. And, as this Court has observed, “[t]he power to create crimes and to prescribe punishment . . . is legislative,” not judicial. *State v. Mayze*, 280 Ga. 5, 6 (2005) (alteration in original) (quoting *Knight v. State*, 243 Ga. 770, 771(1) (1979)). This is a crucial observation. At the national level, it ensures that “[a]ny new national laws restricting liberty require the assent of the people’s representatives and thus input from the country’s ‘many parts, interests and classes.’” *Wooden*, 595 U.S. at 391 (Gorsuch, J., concurring in judgment) (quoting *The Federalist* No. 51, at 324 (James Madison) (Clinton Rossiter ed., 1961)). In Georgia, this same principle ensures that if a penal law is to be expanded—or if a defense is to be narrowed—it is only because the General Assembly said so, not because courts said so.²

II. The rule of lenity resolves any ambiguity in this case.

As applied to this case, the rule of lenity dictates that Georgia’s insanity defense statutes cannot be construed to contain a medication-noncompliance

² See also *Liparota v. United States*, 471 U.S. 419, 427 (1985) (lenity “strikes the appropriate balance between the legislature, the prosecutor, and the court in defining criminal liability”); Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. Rev. 109, 132–34 (2010) (noting that early courts applied lenity “as a tool for curbing themselves” “from expanding penal statutes beyond their terms”).

exception. This Court’s decision in *Bailey v. State*, 249 Ga. 535 (1982), does not require a contrary result.

III. The rule of lenity and its underlying purposes apply here.

A straightforward application of the rule of lenity, as well as the constitutional values underlying the rule, confirms that the Court of Appeals correctly decided this case.

First, because O.C.G.A. §§ 16-3-2 and 16-3-3 contain no textual exception for medication noncompliance—or any other purportedly self-induced insanity or delusion—the State’s argument at best seeks to exploit some imagined ambiguity in those statutes. But even if this Court were to find such an ambiguity, the rule of lenity would instruct it to be resolved in favor of Ms. Wierson, not the State. At a minimum, the phrase “at the time of” in O.C.G.A. §§ 16-3-2 and 16-3-3 can be read to negate the possibility of denying those defenses based on conduct undertaken by the defendant at some time before the alleged crime. And because the statutes can be read that way, the rule of lenity requires that they must. *See, e.g., Smallwood*, 310 Ga. at 451 (2020); *Fleet Finance*, 263 Ga. at 231; *Gee*, 225 Ga. at 676.

Second, applying the rule of lenity in this case would advance the due process principles underlying the rule. The State alleges that Ms. Wierson

“stopped taking her medication *several weeks* before the collision” giving rise to criminal charges. Pet. at 5 (emphasis added). It would be remarkable for the law to impose criminal liability on anyone, let alone a person with mental illness, due to a medical decision they allegedly made weeks before an alleged crime.

Precisely because of their illnesses, many patients with severe mental illness lack insight into their condition, and thus may not understand, especially weeks in advance, the potential consequences of discontinuing medication. See Br. of American Psychiatric Ass’n et al. at 13–15. People with mental illness, in particular, therefore should not “be forced to speculate” about whether their medication decisions will trigger increased criminal exposure. *Rasabout*, 356 P.3d at 1267. Indeed, if the rule of lenity protects financial institutions from the ambiguous application of usury laws, *Fleet Finance*, 263 Ga. at 229, 231, and if it protects video game purveyors from the ambiguous application of gambling laws, *Ultra Telecom*, 288 Ga. at 69, then it should protect people with mental illness from the State’s effort to exploit any purported ambiguity in Georgia’s insanity defense statutes. It is hard to imagine a defendant population more well-suited to, or more deserving of, the rule’s application.

Third, this case implicates the separation-of-powers concerns animating the rule of lenity. The State’s petition forthrightly acknowledges that it is asking *this Court*—not the General Assembly—to craft “a modern solution to an age-old problem.” Pet. at 4. The State also seems to acknowledge that crafting such a solution will be a delicate undertaking fraught with competing policy concerns. For example, it asserts that this case “exposes the long-standing tension” between criminal accountability for “rational actors,” on the one hand, and mercy for “those incapable of rational action,” on the other. *Id.* To resolve that tension, the State asks this Court to “examine modern mental health through the ancient perspective of common law,” *id.* at 15, and “provide a framework” for defining and applying a medication-noncompliance exception, *id.* at 5 n.4. But providing such a framework is decidedly not this Court’s job; it is the General Assembly’s. *See, e.g., Mayze*, 280 Ga. at 6.

IV. *Bailey* does not compel a different conclusion.

This Court’s decision in *Bailey* does not control this case. *Bailey* held that a statutory delusional-compulsion defense was unavailable to a defendant who, in direct contravention of his physicians’ directive to avoid high-stress situations, armed himself with a loaded rifle, stayed up late, and confronted his tenant and her boyfriend. *Bailey*, 249 Ga. at 537–38. The confrontation immediately led to the

defendant's fatal shooting of his tenant's boyfriend and his own wife. *Id.* at 536.

The Court reasoned that, by "necessary implication," the compelled-delusion defense in Code Ann. § 26-703, a precursor to O.C.G.A. § 16-3-3, was unavailable to "a chronic paranoid schizophrenic" who had "voluntarily and intentionally induced his delusion." *Id.* at 537.

Bailey may not have been rightly decided; that is a decision for this Court to make. But even if it was, it is distinct from this case. The defendant in *Bailey* intentionally induced his own delusions *at the time* of his crimes. *Bailey* had no occasion to decide, and did not decide, whether roping in conduct occurring *weeks* before an alleged crime would contradict the statutory mandate to assess the defendant's mental state "at the time" of the crime. O.C.G.A. §§ 16-3-2, 16-3-3. Nor did *Bailey* address the rule of lenity at all. *Cf. Awad v. State*, 313 Ga. 99, 106 (2022) (concluding that prior decision "does not control" an issue that it "did not address").

Thus, to the extent *Bailey* construed the facts in that case to negate the defense in Code Ann. § 26-703, its holding does not apply to purported medication noncompliance occurring weeks before "the time of" the alleged crime. And, if this Court interprets *Bailey's* holding more broadly, it should be

narrowed or reconsidered in light of the case law instructing that statutory ambiguity should not be resolved in favor of criminal exposure by “necessary implication,” *Bailey*, 249 Ga. at 537, but instead in favor of lenity.

CONCLUSION

The ACLU and the ACLU of Georgia respectfully submit that the decision of the Court of Appeals should be affirmed.

DATE: February 14, 2025

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CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

This submission does not exceed the word-count limit imposed by Rule 20. Excluding the parts of the document exempted under Rule 20(6), this amicus brief contains 3,204 words as shown by Microsoft Word.

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CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2025, I served a copy of the foregoing
*Brief of the American Civil Liberties Union and the American Civil Liberties Union of
Georgia as Amici Curiae in Support of Respondent* upon all attorneys of record.

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