Mercer Law Review

Volume 74
Number 2 *Articles Edition*

Article 14

3-2023

Buckle Up! The Supreme Court of Georgia Provides Clarity to the State's Seatbelt Statute in *Domingue v. Ford Motor Company*

Olivia Durkin

Buckle Up! The Supreme Court of Georgia Provides Clarity to the State's Seatbelt Statute in *Domingue v. Ford Motor Company*

Olivia Durkin*

I. INTRODUCTION

Imagine a loved one being in a severe accident where the seatbelt did not work in the way it was intended. As a result, you decide to hold the car manufacturer accountable, alleging negligence in the seatbelt design. During the discovery process, the car manufacturer attempts to shield themselves from liability by either producing evidence or alluding to the fact your loved one was not wearing their seatbelt at the time of the accident. Such evidence would be harmful to your case; what can you do?

You are in luck. Georgia has a statute with a provision that the failure to wear a seatbelt cannot be considered as evidence of negligence or causation; otherwise be considered by a fact finder on any question of liability; be a basis for cancellation or increase in insurance; and cannot be used as evidence to diminish recovery.

This statute, commonly known as Georgia's "seatbelt" statute, has long been under fire by defendants alleging that such evidence should be permitted in trial.[1] The most recent attack on the statute occurred in

*I would first like to thank my parents, Elaine and Hugh Rial, for their endless love and encouragement. Their kindness and supportiveness throughout my life and during law school means more than words can express. I would also like to thank my boyfriend, Blake Williamson, for his continuous encouragement, love, and patience. Additionally, I would like to thank Professor Steve Johnson. Professor Johnson, your insight and advice during the writing process was invaluable. And to everyone else who has supported me throughout my life—thank you.

1. Georgia's seatbelt statute, O.C.G.A. § 40-8-76.1, has been challenged by defendants since its enactment as a part of the Georgia Act in 1988. Subsection (d), which bars the production of seatbelt related evidence, has been particularly controversial. For more information on the historical challenges to O.C.G.A. § 40-8-76(d)—and the seatbelt statute

2022 in *Domingue v. Ford Motor Co.*[2] In this case, the United States District Court for the Middle District of Georgia certified three questions to the Supreme Court of Georgia asking the court to provide clarity on the statute.[3] In its review, the court held that Official Code of Georgia Annotated section 40-8-76.1(d)[4] does not preclude a defendant in an action alleging defective seatbelt design or manufacture from producing evidence related to the existence of seatbelts in the vehicle or those seatbelt's compliance with federal safety standards, but that O.C.G.A. § 40-8-76.1(d) bars consideration of the failure of an occupant to wear a seatbelt for the purposes set forth in the statute.[5]

II. FACTUAL BACKGROUND

On March 27, 2020, a Jeep Wrangler struck the 2015 Ford SRW Super Duty Pickup truck in which the plaintiffs (Kristen and Casey Domingue) were riding.[6] This was a serious "T-bone" collision where the driver's side of the plaintiffs' vehicle was hit, causing damage to both vehicles. In the course of the collision, the dashboard-airbag on the passenger side of the pickup truck failed to deploy, causing Kristen's head to hit the windshield. Kristen sustained serious injuries to her head, neck, and spine. The plaintiffs filed suit in the United States District Court for the Middle District of Georgia against Ford Motor Company (Ford), alleging negligence in the defective design and manufacture of the subject airbag restraint system, and claiming injuries to Kristen and loss of consortium for Casey.[7]

---

more generally—see Walter Hill Levie, III, Buckling Down to Buckle Up: A Jurisdictional Survey of the Admissibility of Seatbelt Evidence and the Need for A Model Seatbelt Act, 41 Cumb. L. Rev. 333, 338–43 (2011).

2. 314 Ga. 59, 875 S.E.2d 720 (2022).

3. *Id.* at 59, 875 S.E.2d at 722.

4. O.C.G.A. § 40-8-76.1(d) (2022).

5. *Domingue*, 314 Ga. at 59–60, 875 S.E.2d at 723.

6. Domingue v. Ford Motor Co., No. 7:20-CV-98 (HL), 2021 U.S. Dist. LEXIS 251499, at *1 (M.D. Ga. Oct. 6, 2021).

7. *Domingue*, 314 Ga. at 61, 875 S.E.2d at 723. In regard to the damages sustained, the plaintiffs specifically contended in their complaint:

> As the direct and proximate result of the collision and the failure of the passenger side airbag to deploy, [the] Plaintiff Kristen Domingue sustained a hematoma and lacerations to her scalp as well as a comminuted fracture of the C-1 vertebrae in her neck. In addition, the impact to her brain has caused her to suffer from double vision in her eye since the date of the collision.

Complaint at 5, Domingue v. Ford Motor Co., 314 Ga. 59, 875 S.E.2d 720 (2022) (No. 7:20-CV-98).

The plaintiffs filed a motion in limine with the trial court to exclude evidence "concerning the issue of whether [the] Plaintiff Kristen Domingue or [the] Plaintiff Casey Domingue were or were not wearing their seatbelts at the time of the subject collision."[8] The plaintiffs contended that such evidence was not relevant to the case at bar and was precluded under O.C.G.A. § 40-8-76.1(d).[9] Ford responded that evidence not related to the Domingues' actual seat belt use does not fall within the limits of O.C.G.A. § 40-8-76.1(d) and that the Domingues' "defect allegations and expert testimony in this case . . . opened the door to the admission of all seat belt evidence."[10] Additionally, Ford contended that

> Given the interconnected designs of restraints and airbags, it is pragmatically impossible to try an alleged failed airbag deployment case[] without discussing the restraint system; that "it would be impossible to conclude that a differently designed airbag would be safer, or would not be more harmful, without considering occupant seatbelt use or nonuse;" and that O.C.G.A. § 40-8-76.1(d) "would be unconstitutional as applied, infringing upon Ford's substantive due process and equal protection rights under both the Georgia and United States Constitutions" if the district court denied Ford the "fundamental right to show that [Kristen] Domingue was not using the primary component restraint system."[11]

The district court held a hearing to address the plaintiffs' motion in limine.[12] Thereafter, the defendants filed a "motion for certified question."[13] The district court subsequently certified three questions to

8. Domingue, 2021 U.S. Dist. LEXIS 251499, at *1–2.

9. *Domingue*, 314 Ga. at 60, 875 S.E.2d at 723.

10. *Id.*

11. *Id.* at 60–61, 875 S.E.2d at 723. In addition to the points mentioned in the Supreme Court of Georgia opinion, Ford contended that "the seatbelt and airbag are interconnected such that even the plaintiff's experts 'cannot write a report without discussing the restraints.'" *See* Domingue, 2021 U.S. Dist. LEXIS 251499, at *2.

12. *Domingue*, 314 Ga. at 61, 875 S.E.2d at 723.

13. *Id.* Ford included its own questions in their motion for certified question. The United States District Court for the Middle District of Georgia denied Ford's motion as moot and crafted its own certified questions to the Supreme Court of Georgia. After the district court certified its initial questions, the Supreme Court of Georgia noted a small error in the first certified question and invited the district court to clarify its question. As such, the district court redrafted the certified questions and submitted them to the Supreme Court of Georgia on October 21, 2021. The redrafted certified questions are the ones addressed in this Casenote. *Id.* at 61, 875 S.E.2d at 723–24.

the Supreme Court of Georgia regarding O.C.G.A. § 40-8-76.1(d). The Supreme Court of Georgia unanimously answered all three questions.[14]

The first question considered whether O.C.G.A. § 40-8-76.1(d) precludes a defendant in an action alleging negligent system manufacture from producing evidence related to the existence of seatbelts in a vehicle as a part of the vehicle's passenger restraint system.[15] The second question concerned whether O.C.G.A. § 40-8-76.1(d) bars a defendant in an action alleging a defective restraint system from providing evidence related to the seatbelt's design and compliance with federal safety standards.[16] The final question addressed whether O.C.G.A. § 40-8-76.1(d) precludes a defendant in an action regarding defective restraint system design from producing evidence related to an occupant's nonuse of a seatbelt.[17]

In answering these questions, the Supreme Court of Georgia first concluded that O.C.G.A. § 40-8-76.1(d) does not preclude a defendant in an action alleging a defective seat design from providing evidence related to the existence of seatbelts in the vehicle.[18] Further, the court held that subsection (d) of the seatbelt statute does not preclude a defendant from producing evidence relating to the seatbelt's compliance with federal safety standards; however, it does preclude the consideration of a motor vehicle occupant's failure to wear a seatbelt, even as a part of the defendant-manufacturer's defense.[19]

---

14. *Id.* at 59–60, 875 S.E.2d at 723.

15. *Id.* at 59, 875 S.E.2d at 722. The first certified question to the Supreme Court of Georgia verbatim was: "Does O.C.G.A. § 40-8-76.1(d) preclude a defendant in an action alleging defective restraint system design and/or negligent restraint system manufacture from producing evidence related to: (1) [t]he existence of seatbelts in a vehicle as part of the vehicle's passenger restraint system[?]" *Id.*

16. *Id.* The exact language of the second certified question was: "Does O.C.G.A. § 40-8-76.1(d) preclude a defendant in an action alleging defective restraint system design and/or negligent restraint system manufacture from producing evidence related to: (2) [e]vidence related to the seatbelt's design and compliance with applicable federal safety standards[?]" *Id.*

17. *Id.* The exact language of the third and final certified question was: "Does O.C.G.A. § 40-8-76.1(d) preclude a defendant in an action alleging defective restraint system design and/or negligent restraint system manufacture from producing evidence related to: (3) [a]n occupant's nonuse of a seatbelt as part of their defense?" *Id.*

18. *Id.* at 59–60, 875 S.E.2d at 723 (limiting the showing to the showing of the existence of seatbelts in the vehicle as a part of the vehicle's passenger restraint system).

19. *Id.* at 60, 875 S.E.2d at 723.

III. LEGAL BACKGROUND

A. O.C.G.A. § 40-8-76.1(d): Georgia's Seatbelt Statute

O.C.G.A. § 40-8-76.1 generally concerns the use of safety belts in passenger vehicles.[20] Subsection (d), the portion of the statute in dispute in the present case, provides parameters to what seat belt-related evidence can be used in litigation.[21] Specifically, O.C.G.A. § 40-8-76.1(d) says:

> 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.[22]

In examining O.C.G.A. § 40-8-76.1(d), the court noted that "a statute draws its meaning from its text, 'to that end, we must afford the statutory text its plain and ordinary meaning, we must view the statutory text in the context in which it appears, and we must read the statutory text in its most natural and reasonable way.'"[23]

B. The Production of Evidence in Light of the Georgia Seatbelt Statute

In *King v. Davis*,[24] a jury in Henry County, Georgia, found in favor Nita and Damond King (the Kings) regarding their personal injury claims against the defendant (Davis).[25] The Kings appealed the Henry County State Court's decision to instruct members of the jury on the issue

---

20. O.C.G.A. § 40-8-76.1(d).

21. *Id.*

22. *Id.* It has been generally accepted that the legislative intent behind the adoption of subsection (d) of O.C.G.A. § 40-8-76.1 is to ensure that those who cause vehicular collisions are not able to escape liability by raising the point that the injured party was not wearing a seatbelt. For more information on the general intent and parameters of Georgia's seatbelt statute, *see* 15 GA. JUR. § 28:125 (2022).

23. *Domingue*, 314 Ga. at 61, 875 S.E.2d at 724 (quoting Premier Health Care Invs., LLC v. UHS Anchor, L.P., 310 Ga. 32, 39, 849 S.E.2d 441, 448 (2020) (asserting generally that a statute derives its meaning from its text, and that the courts must consider the statute in a way a lay person would)).

24. 287 Ga. App. 715, 652 S.E.2d 585 (2007).

25. *Id.*

of damages to consider evidence of the Kings' failure to wear seatbelts.[26] Specifically, the state trial court charged that "[w]hen considering damages, [jurors] may take into account evidence of [the Kings'] alleged failure to use an available seatbelt."[27] In reviewing the jury instructions, the Georgia Court of Appeals determined that the jury instructions ran contrary to O.C.G.A. § 40-8-76.1(d), as the statute was intended to prohibit the use of evidence relating to a passenger's failure to wear a seatbelt "to diminish any recovery for damages."[28] Furthermore, the Georgia Court of Appeals considered the Supreme Court of Georgia's recognition of an important legislative purpose in "ensur[ing] that those who cause vehicular collisions are not permitted to escape liability by raising the defense that the injured party was not wearing a seatbelt."[29] The court reasoned that unlike other rules of evidence that permit the admission of evidence for a particular purpose, the legislative intent of the seatbelt statute was to bar evidence of seatbelt use in all instances.[30] As such, the court determined that because the jury instructions were an incorrect statement of law and prejudiced the plaintiffs' case, a new trial was required with jury instructions that conformed to O.C.G.A. § 40-8-76.1(d).[31]

An earlier decision of the Georgia Court of Appeals, *Crosby v. Cooper Tire & Rubber Co.*, [32] addressed a similar issue. In June 1991, Bobby Crosby was driving with his wife Jan Crosby and his daughter to his parents' home when the left rear tire of his Ford Bronco II blew out, causing the vehicle to flip.[33] Bobby Crosby was killed while his wife and daughter were seriously injured. Acting on behalf of herself and as the

---

26. *Id.*

27. *Id.* at 715, 652 S.E.2d at 585–86.

28. *Id.* at 716, 652 S.E.2d at 586 (quoting C.W. Matthews Contractor Co. v. Groover, 263 Ga. 108, 110, 428 S.E.2d 796, 799 (1993) ("[O]ne of [the General Assembly's] purposes in enacting O.C.G.A. § 40-8-76.1 was 'to provide that a failure to use seat safety belts may not be introduced in evidence in *any* civil action.'")).

29. *King*, 287 Ga. App. at 716, 652 S.E.2d at 586. Different from general rules of evidence which permit the admission of evidence for one purpose but not for others, the legislative intent of O.C.G.A. § 40-8-76.1(d) was to prohibit the admission of evidence that no seat belt was worn for any purpose. *Id.*

30. *Id.*

31. *Id.* at 716, 652 S.E.2d at 585.

32. 240 Ga. App. 857, 524 S.E.2d 313 (1999).

33. *Id.* at 857, 524 S.E.2d at 316. Specifically, Bobby Crosby was driving his Bronco approximately seventy miles to see his parents at the time of the accident. Out of nowhere, the Crosbys heard a loud pop noise that resembled the sound of a shotgun. When this noise occurred, the car jerked immediately to the right, turned sideways, and then flipped over. It was alleged that the left rear tire caused the shotgun-like sound. *Id.*

administratix of Bobby's estate, Jan Crosby brought an action against Cooper Tire & Rubber Company. She alleged negligent design and manufacture, failure to warn, violation of implied warranty of merchantability, and strict liability.[34] Cooper Tire alleged that "under O.C.G.A. § 40-8-76.1(d), for the exclusion of evidence to apply, the occupant must not be wearing a seatbelt; otherwise, the exclusion does not apply."[35] The Georgia Court of Appeals disagreed with Cooper Tire's assertion, holding that the General Assembly's intent when adopting the statute revealed that the statute was intended to apply regardless of whether the occupant was wearing the seatbelt.[36] Additionally, Cooper Tire alleged that the failure to wear seatbelts was relevant for "(1) reduction of any damages; (2) refutation of an element of [the] plaintiffs' failure to warn claim; and (3) impeachment."[37] With respect to this contention, the Georgia Court of Appeals held that the language of the statute is clear and that the legislative intent of O.C.G.A. § 40-8-76.1(d) was to "prohibit the admission of evidence that no seatbelt was worn for *all* purposes."[38]

The scope of the exclusion of evidence under O.C.G.A. § 40-8-76.1(d) was also addressed in *Denton v. Daimlerchrysler Corp.*[39] The plaintiffs in *Denton* alleged that there was a manufacturing defect relating to the occupant restraint system in the Chrysler automobile Vicki Denton was driving, which resulted in her death.[40] On November 11, 2004, Denton was in an accident where the airbags did not deploy as designed. A trial was conducted in the United States District Court for the Northern District of Georgia and the jury found for the plaintiffs. The defendants, Daimlerchrysler Corp. (Daimlerchrysler), filed a motion to stay and for a new trial. Regarding the motion for a new trial, Daimlerchrysler argued that multiple errors at trial prejudiced their ability to defend themselves in the action. For example, the defendant claimed that the plaintiffs waived their right to preclude the jury from considering seatbelt evidence

34. *Id.* at 864, 524 S.E.2d at 320.

35. *Id.* at 866, 524 S.E.2d at 322.

36. *Id.* Specifically, the court reasoned that the General Assembly intended for the seatbelt-related legislation to promote safety. *See generally* O.C.G.A. § 40-4-2(c) (stating that the statute does not apply to Type 6 vehicles); *C. W. Matthews Contractor Co.*, 263 Ga. 108, 428 S.E.2d 796; Hapeville v. Anderson, 246 Ga. 786, 272 S.E.2d 713 (1980); *Crosby*, 240 Ga. App. at 866, 524 S.E.2d at 321.

37. *Crosby*, 240 Ga. App. at 866, 524 S.E.2d at 322.

38. *Id. See generally* Johnson v. State, 146 Ga. App. 277, 246 S.E.2d 363 (1978) (asserting that a statute may intend to exclude evidence for any particular purpose).

39. 645 F. Supp. 2d 1215 (N.D. Ga. 2009).

40. *Id.* at 1219.

because they made the affirmative decision to include evidence relating to seatbelt usage in their argument.[41] The court noted that in raising this point, Daimlerchrysler failed to recognize that "O.C.G.A. § 40-8-76.1(d) is not a statute that merely confers waivable rights on a party . . . [the] statue provides the substantive law which courts must apply to any case involving an automobile."[42] Furthermore, the court looked to longstanding precedent that the failure to wear a seatbelt should not be consider by the jury in "any civil action"[43] and that the statute is as broad as it appears. As such, the court concluded that the seatbelt statute prohibits consideration of the use or nonuse of a seatbelt and that the court's jury instructions properly reflected this law.[44]

The United States District Court for the Middle District of Georgia similarly considered the exclusion of seatbelt-related evidence in *McCurdy v. Ford Motor Co.*[45] *McCurdy* was a products liability and negligence case in which McCurdy alleged that a defective sway bar link system in her 1995 Ford Explorer caused an accident.[46] During the discovery process, McCurdy filed a motion in limine to exclude evidence of her use of seatbelts during the accident.[47] The defendant, Ford, opposed McCurdy's motion, arguing that the plaintiff's failure to wear her seatbelt illustrated, "(1) the cause and mechanism of injuries to the plaintiff; (2) the ejection of the plaintiff; and (3) the presence in the subject vehicle of a three-point restraint at the driver side seating position occupied by the plaintiff during the subject crash."[48] The United States District Court for the Middle District of Georgia, Albany Division, rejected this argument, noting that Georgia law does not allow evidence of the failure to wear a seatbelt to show causation or to mitigate

41. *Id.* at 1221.

42. *Id.*

43. *Id.*

44. *Id.* at 1222.

45. No. 1:04-CV-151 (WLS), 2007 U.S. Dist. LEXIS 2109 (M.D. Ga. Jan. 11, 2007).

46. *Id.* at *1. On October 19, 2002, the plaintiff was driving her 1995 Ford Explorer east on Georgia State Route 32. The vehicle drifted onto the right shoulder of the road and the plaintiff attempted to correct by turning the wheels left and then right. Rather than straightening the vehicle, the vehicle went counterclockwise, resulting in a rollover. The plaintiff alleged that but for the defective stabilized bar linkage, the vehicle would not have rolled over and the plaintiff would not have incurred such injuries. *Id.* at *2.

47. *Id.* at *5.

48. *Id.* at *9.

damages.[49] As such, the court granted McCurdy's motion in limine, excluding any and all evidence of seatbelt usage from litigation.[50]

Similarly, the United States District Court for the Northern District of Georgia, Atlanta Division, addressed the inclusion of express and implied evidence of a motor vehicle occupant's failure to wear a seatbelt in *Hockensmith v. Ford Motor Co.*[51] In *Hockensmith,* the driver (Denise) lost control of a vehicle, which caused the vehicle to roll over. Denise, who was four months pregnant at the time of the accident, and her unborn baby were killed in the accident.[52] The passenger (Michael) survived the accident and sued Ford for the defective design of their Ford Explorer. During the course of litigation, Michael filed a motion to preclude the defendant from introducing evidence relating to Denise's failure to wear a seatbelt at the time of the accident.[53] The court determined that the "plain and unambiguous language" of O.C.G.A. § 40-8-76.1(d) barred evidence, either express or implied, alluding to Denise's nonuse of a seatbelt.[54] As a result, Michael's motion to preclude such evidence was granted.[55]

C. Negligence Per Se and Georgia's Seatbelt Statute

In *C.W. Matthews Contractor Co. v. Gover,*[56] the Supreme Court of Georgia considered the applicability of O.C.G.A. § 40-8-76.1(d) to negligence *per se* cases. In *C.W. Matthews*, the appellee, Linda Gover, was injured when another vehicle collided with hers in the vicinity of the appellant's (C.W. Matthews) construction site.[57] Gover was seven months pregnant at the time and was forced to undergo an emergency cesarean operation, which resulted in her child being born with brain damage.

---

49. *Id.* at *11. The court determined that to the extent that the plaintiff's ejection from her Ford Explorer is a part of the facts relating to the accident and her injuries, the ejection may be admissible; however, such evidence is not permitted as admissible in a round-about or indirect way of getting to the issue of the plaintiff's use, or alleged non-use, of a seatbelt at the time of the accident. *Id*. at *13.

50. *Id.* at *13.

51. No. 1:01-CV-3645-GET, 2003 U.S. Dist. LEXIS 27528 (N.D. Ga. Apr. 17, 2003).

52. *Id.* at *3–4. Specifically, plaintiff Benjamin Hockensmith, husband of the decedent, sued Ford, alleging that the vehicle driven by his wife at the time of the accident was defectively designed and that the accident was a direct result of this defect in the vehicle. *Id.*

53. *Id.* at *10.

54. *Id.* at *11.

55. *Id*.

56. 263 Ga. 108, 428 S.E.2d 796 (1993).

57. *Id.*

Gover filed suit against the other driver of the vehicle and C.W. Matthews, alleging that the negligence of C.W. Matthews' employees in directing traffic resulted in the collision and injuries to Gover. The Cobb County Superior Court found in favor of Gover, and C.W. Matthews appealed the decision to the Georgia Court of Appeals. On appeal, C.W. Matthews argued that O.C.G.A. § 40-8-76.1(d) applies only to the exclusion of evidence offered in cases involving negligence *per se* and does not apply where evidence is offered as a breach of a common law duty.[58] The Supreme Court of Georgia determined that "had the legislature intended the narrow interpretation given the statute by [C.W. Matthews], it would have categorized the evidence to be excluded as 'negligence *per se*.'"[59] Additionally, the court articulated that "one of [the legislature's] purposes in enacting O.C.G.A. § 40-8-76.1 was to 'provide that a failure to use a seat safety belts may not be introduced in *any* civil action.'"[60] This broad purpose statement, coupled with the language of O.C.G.A. § 40-8-76.1(d), led the Supreme Court of Georgia to confirm that the legislature did not intend to limit the exclusion of evidence of negligence to issues involving negligence *per se*.[61]

IV. COURT'S RATIONALE

A. Certified Question One

Justice Warren answered the first certified question in *Domingue v. Ford Motor Co.* by looking to the text of O.C.G.A. § 40-8-76.1(d).[62] In doing so, the Supreme Court of Georgia noted that O.C.G.A. § 40-8-76.1(d) does not profess to restrict the consideration of all seatbelt evidence.[63] The statute is clear that its restrictions only apply to "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."[64] As such,

58. *Id.* at 110, 428 S.E.2d at 799.

59. *Id.* Here, the legislature asserted that its intent in adopting subsection (d) of the seatbelt statute was to bar seatbelt-related evidence from being admitted in all actions, thus not limiting its protections to negligence *per se* cases. *Id.*

60. *Id.*

61. *Id.*

62. 314 Ga. at 61, 875 S.E.2d at 724.

63. *Id.* at 63, 875 S.E.2d at 724. In its decision, the court agreed with Ford—and the amicus curiae submitted by the Georgia Trial Lawyers Association (GTLA) and Product Liability Council (PLAC)—who asserted that the clear and unambiguous language of the statute only permits an answer in the negative. *Id.* at 62–63, 875 S.E.2d at 724.

64. *Id.* at 63, 875 S.E.2d at 725.

the restrictions applied by O.C.G.A. § 40-8-76.1(d) are predicated on the failure of an occupant to wear a seatbelt. The court reasoned that through this language, it follows that if the evidentiary prerequisites for the statute are not met, then the restrictions do not apply. As such,

> Because "the existence of seatbelts in a vehicle" is something other than the "failure of an occupant of a motor vehicle to wear a seat safety belt," the predicate of OCGA § 40-8-76.1 (d) is not met, and OCGA § 40-8-76.1 (d) does not restrict use or consideration of that evidence.[65]

The court additionally reasoned that the cases relied upon by the plaintiffs[66]—primarily *King v. Davis*, *Crosby v. Cooper Tire & Rubber Co.*, and *Denton v. Daimlerchrysler Co.*—did not purport to restrict all seatbelt evidence.[67] The court noted that *King v. Davis* was illustrative of this point, as the Georgia Court of Appeals reversed a jury instruction that would have allowed the jury to consider evidence of the occupant's alleged failure to wear a seatbelt when considering damages.[68] This was similar to *Crosby v. Cooper Tire & Rubber Co.*, as the court of appeals affirmed the lower "court's exclusion of evidence that the vehicle occupants were not wearing seatbelts at the time of the crash at issue for, among other purposes, the 'limited purpose [ ] of [the] reduction of any damages'—evidence that also falls clearly within the ambit of O.C.G.A. § 40-8-76.1 (d)'s restrictions."[69] The court noted that although both cases deem the statute to restrict the use of seatbelt-related evidence, neither case addressed the admittance of such evidence in the instances addressed within the first certified question in *Domingue*. As such, the court determined that *King* and *Crosby* were not persuasive in answering this question. The court additionally noted that the other case relied on by the plaintiffs, *Denton v. Daimlerchrysler*, ran contrary to the plaintiffs' contentions.[70]

Next, the court addressed the plaintiffs' argument that the precedent cases demonstrated a legislative intent that seatbelt-related evidence

---

65. *Id.*

66. *Id.* at 62, 875 S.E.2d at 724. With regard to the first certified question, the Domingues specifically contend that the answer to the first question should be "yes" because subsection (d) of O.C.G.A. § 40-8-76.1 is a comprehensive prohibition against the failure to wear a seatbelt defense on any issue of liability or damages. As such, the failure to wear a seatbelt defense is not available to any defendant in a civil action of any nature. *Id.* at 61–62, 875 S.E.2d at 724.

67. *Id.* at 63, 875 S.E.2d at 725.

68. *Id.*

69. *Id.*

70. *Id.* at 63–64, 875 S.E.2d at 725.

should be broadly excluded.[71] The court noted that the Domingues were asking the court to overrule clear text within the seatbelt statute based on the language in an unincorporated caption of the bill.[72] The caption summarized O.C.G.A. § 40-8-76.1(d) as providing that the failure to wear a seatbelt may not be introduced into evidence in any civil action and cannot be a basis for diminished recovery or a cancellation of insurance.[73] Justice Warren noted that generally the preamble of a statute is not a part of the act and therefore cannot control its meaning, however, it may be considered as evidence in determining the intent of an unclear law.[74] The court reasoned this was not the case with O.C.G.A. § 40-8-76.1(d), as it has been determined that the language of the statute is clear.[75] As a result, the court rejected the Domingue's argument to circumvent the plain text of the statute and invoke an intent expressed in the preamble of the seatbelt statute.[76]

As such, Justice Warren determined that O.C.G.A. § 40-8-76.1(d) does not mention evidence of the existence of seatbelts in a vehicle.[77] However, she noted that this conclusion was strictly limited to the question of whether the statute on its own precludes the introduction of evidence concerning the existence of seatbelts in an automobile.[78]

---

71. *Id.* at 64, 875 S.E.2d at 725.

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.* at 63, 875 S.E.2d at 724–25.

76. *Id.* at 64–65, 875 S.E.2d at 725–26. Regarding this point, the court noted that O.C.G.A. § 40-8-76.1(d) was amended in 1993 and 1999, and that its uncodified caption was also modified in those years so that it no longer contained the language, "may not be introduced in evidence in any civil action." *See* Jacob E. Daly, *Special Contribution: The Seat-Belt Defense in Georgia*, 65 MERCER L. REV. 19, 28 n.77 (2013). Moreover, the court looked to the dicta provided in *Cooper Tire & Rubber Co. v. Crosby*, where the Georgia Court of Appeals determined that the legislative intent of the caption intended to prohibit the admission of evidence that no seatbelt was used in all instances. 240 Ga. App. at 864, 574 S.E.2d at 320.

77. *Domingue*, 314 Ga. at 64–65, 875 S.E.2d at 725–26. In the court's holding of the first certified question, Justice Warren noted that the textual predicate for the application of subsection (d) of the seatbelt statute is the failure of an occupant to wear a seatbelt. The statute itself does not purport to restrict the consideration of seatbelt use; however, Justice Warren noted that trial courts may determine that evidence of seatbelt use may not be admissible. Such determinations are not required by the text of the statute. *See*, *e.g.*, *Denton,* 645 F.Supp.2d at 1222 (expressing that Georgia's seatbelt statute prohibits the jury's consideration of the use of or nonuse of a seatbelt for any purpose).

78. *Domingue*, 314 Ga. at 65, 875 S.E.2d at 726. The Supreme Court of Georgia did not decide whether such evidence would be relevant to the defendant's claims or admissible under the Federal Rules of Evidence. *Id.*

B. Certified Question Two

In regard to the second certified question, the Supreme Court of Georgia noted that the plaintiffs' main argument was that "the existence of seatbelts and their compliance with federal standards is totally irrelevant to anything in the case other than the alleged failure of [ ] Kristen Domingue to have worn [a] seatbelt," and that admitting such evidence would create a "back door" that would allow Ford to imply that the plaintiff was not wearing a seatbelt.[79] The court asserted that this argument suffered the same flaw as the plaintiffs' first argument—it expressly disregards the text of O.C.G.A. § 40-8-76.1(d).[80] Regarding this point, Justice Warren noted:

> [T]he evidentiary predicate for application of O.C.G.A. § 40-8-76.1 (d) is "[t]he failure of an occupant of a motor vehicle to wear a seat safety belt" . . . [which] does not speak about, let alone purport to restrict, the introduction or consideration of evidence related to a seatbelt's design or evidence about federal safety standards.[81]

The court therefore answered the second certified question with a confident "no."[82] The court focused its decision on the fact that O.C.G.A. § 40-8-76.1(d) does not "preclude [the] introduction or consideration of evidence related to a seatbelt's design or evidence about federal safety standards."[83] Additionally, the court reasoned that district courts can determine, based on all relevant evidence, whether such evidence would be appropriate under the Federal Rules of Evidence.[84]

C. The Third Certified Question

The Supreme Court of Georgia began its contemplation of the third certified question by providing clarity to the question, asserting that it was "asking whether in this kind of case . . . O.C.G.A. § 40-8-76.1(d) precludes consideration of evidence related to a motor vehicle occupant's failure to wear a seatbelt for the purposes set forth [earlier], even as a part of the defendant-manufacturer's defense."[85] The court swiftly

79. *Id.*
80. *Id.*
81. *Id.*
82. *Id.*
83. *Id.*
84. *Id.* at 65–66, 875 S.E.2d at 726.
85. *Id.* at 66, 875 S.E.2d at 726–27. The court noted that the third certified question asks whether O.C.G.A. § 40-8-76.1(d) bars the production of such evidence. It further expressed that it is not clear exactly what production means in the context of the statute,

answered the third certified question, asserting that the text of O.C.G.A. § 40-8-76.1(d) only allows for the answer to be "yes."[86]

The court noted that the text of the statute does not limit its applicability to certain types of cases or to a particular party. Further, the text does not contain exceptions if the failure to wear a seatbelt is at issue.[87] Because O.C.G.A. § 40-8-76.1(d) bars "the failure of a an occupant of a motor vehicle to wear a safety seat belt from being considered evidence of negligence and causation,"[88] it is clear that O.C.G.A. § 40-8-76.1(d) bars the consideration of an occupant's failure to use a seat belt in the aforementioned purposes, even as a part of the defendant's defense.

1. An Embedded Constitutional Question

Within the third certified question, Ford attempted to invoke a constitutional argument that O.C.G.A. § 40-8-76.1(d)—as interpreted by the court—would violate Ford's due process and equal protection rights under the United States Constitution and the Georgia Constitution.[89] With respect to this contention, the Supreme Court of Georgia declined Ford's request to decide whether O.C.G.A. § 40-8-76.1(d) is constitutional.[90]

In making its constitutional determination, the Supreme Court of Georgia first looked to the canon of constitutional doubt.[91] Under that canon of statutory interpretation, "if a statute has more than one meaning, one of which is constitutional and the other not, [the court] interpret[s] the statute as being consistent with the Constitution."[92] The court determined that this canon of interpretation was not appropriate,

---

but that the text of subsection (d) does not refer to—or limit—the production of any such evidence. *Id.* at 66 n.6, 875 S.E.2d at 727.

86. *Id.* at 66, 875 S.E.2d at 727.

87. *Id.*

88. *Id.* (internal quotation marks omitted).

89. *Id.* at 67, 875 S.E.2d at 727. Regarding this point, the Domingues pointed to *C.W. Matthews Contractor Co.*, where they argue the Supreme Court of Georgia has already determined that subsection (d) of O.C.G.A. § 40-8-76.1 is constitutional and does not violate a defendant's due process protections under the Georgia Constitution. The court noted that there is no dispute that the statue survived a facial constitutional challenge in *C.W. Matthews*; however, there is dispute as to whether the decision in *C.W. Matthews* would control the as-applied constitutional challenge by Ford in the present case. *Id.* at 67 n.8, 875 S.E.2d at 728.

90. *Id.* at 67, 875 S.E.2d at 728.

91. *Id.* at 68, 875 S.E.2d at 728.

92. *Id.*

as the language of O.C.G.A. § 40-8-76.1(d) is clear and does not supply more than one meaning.[93]

Secondly, the court articulated that it was not clear whether Ford's constitutional questions were ripe for review.[94] The court noted that the United States District Court for the Middle District of Georgia certified these questions at a point when the discovery process had hardly begun.[95] As such, an "as-applied constitutional challenge like this one [would] require Ford to show (among other things) that the [failure-to-wear-a- seatbelt] evidence it [sought] to introduce in this case [was] necessary to its defense."[96] Justice Warren asserted that was a fact-specific theory that required more development than what had taken place in *Domingue*.[97]

Finally, the court determined that the issue of constitutionality could not be appropriately addressed, as the district court did not include an issue of constitutionality in any of the three certified questions. On this point, Justice Warren noted that the Supreme Court of Georgia was not free from Justices that have severe concerns about the constitutionality of a statute—in this case, O.C.G.A. § 40-8-76.1(d)—that infringes on the defendant's ability to procure a defense against the claims brought against them.[98] Regardless of such concern, Justice Warren concluded that the constitutional questions raised by Ford were not presented to the Supreme Court of Georgia for resolution at this time.[99]

V. IMPLICATIONS

Through *Domingue,* the Supreme Court of Georgia was able to provide clarity to the bounds of O.C.G.A. § 40-8-76.1(d). In creating these boundaries, the court determined what types of seatbelt-related evidence a defendant may be precluded from presenting at trial. The decision provided clear benefits to the plaintiffs in seatbelt-related litigation;

93. *Id.* In addressing the cannon of constitutional doubt standard, the court looked to the Georgia Defense Lawyers Association's (GDLA) amicus brief, where it asked the court to recognize a judicial exception to subsection (d) of the seatbelt statute in product liability actions involving crashworthiness claims. GDLA further contended that the Supreme Court of Georgia has historically created judicial exceptions to Georgia statutes. As such, GDLA's amicus brief could be viewed as asking the court to invoke the cannon of constitutional doubt in its interpretation. *Id.* at 68 n.10, 875 S.E.2d at 728.

94. *Id.* at 68, 875 S.E.2d at 728.

95. *Id.* at 68–69, 875 S.E.2d at 728.

96. *Id.* at 69, 875 S.E.2d at 728–29.

97. *Id.* at 69, 875 S.E.2d at 729.

98. *Id.*

99. *Id.*

however, the decision simultaneously provided setbacks—and subtle benefits—to defendants where the seatbelt statute is of particular issue.

In regard to plaintiffs, the court's decision in *Dominigue* solidified the benefits afforded to plaintiffs since the adoption of O.C.G.A. § 40-8-76.1(d). For example, the court reaffirmed the fact that subsection (d) of the seatbelt statute bars a defendant from producing evidence relating to the plaintiffs' failure to wear a seatbelt for the purposes expressed in the statute. As such, plaintiffs may not be barred from recovery simply on the basis that the defendant was able to produce evidence that the plaintiff may not have been wearing a seatbelt.

With respect to defendants, the case provided frustrating setbacks. Although the court articulated that defendants are not precluded in an action alleging defective seatbelt design or manufacture from producing evidence relating to the existence of seatbelts within a vehicle or those seatbelts' compliance with federal safety standards, many defendants were left with the same frustrations towards O.C.G.A. § 40-8-76.1(d). Ultimately, *Domingue*—a case where defendants saw a glimmer of hope regarding a constitutional challenge of O.C.G.A. § 40-8-76.1(d)—provided no relief as to the frustrations many defendants have felt towards the statute.

Although the case did not provide immediate benefits to the defendants, the court gave a glimmer of hope for individuals that have grave concerns over the constitutionality of O.C.G.A. § 40-8-76.1(d).[100] When addressing this point, Justice Warren expressed that "some of us have serious concerns about the constitutionality of a statute that strips from the defendant the ability to present evidence that could be critical to its ability to present a defense of a product it designs and manufactures."[101] In making this point, Justice Warren pointed to *C.W. Matthews Contractor Co. v. Gover*—a case where the Supreme Court of Georgia rejected a facial constitutional challenge O.C.G.A. § 40-8-76.1(d) but left the door open to an as-applied constitutional challenge—to articulate that an as-applied challenge of Georgia's seatbelt statute may be a viable possibility for future defendants. However, the court noted that the constitutionality of the statute was not ripe in the present case as the United States District Court for the Middle District of Georgia did not include the issue of constitutionality in the questions it certified to the Supreme Court of Georgia.

Even though the court did not rule on the issue of constitutionality, its lengthy discussion on the issue leads one to believe that the court left the

100. *Id.*
101. *Id.*

door open to constitutional challenges of the Georgia seatbelt statute. As such, if a defendant is able to present the issue of the constitutionality of O.C.G.A. § 40-8-76.1(d) to the court in a ripe challenge, there is a strong likelihood that the court would deem the statute to be unconstitutional on the basis that it bars a defendant from producing potentially crucial evidence in establishing its defense against seatbelt-related claims.

In all, the issues addressed by the court in *Domingue* will have considerable implications on seatbelt-related litigation moving forward. Plaintiffs may remain confident in the protections solidified in *Domingue*; however, the case creates a sense of uneasiness regarding the longevity of the protections provided to plaintiffs in O.C.G.A. § 40-8-76.1(d). As such, defendants may proceed in light of the court's decision in *Domingue* with hope that the court may one day overturn O.C.G.A. § 40-8-76.1(d) on constitutional grounds for stripping away crucial evidence and tactics in developing defenses in seatbelt-related litigation.