

**SUPREME COURT
STATE OF GEORGIA**

Georgia CVS Pharmacy, LLC,
Appellant-Defendant,
v.
James Carmichael,
Appellee-Plaintiff.

Supreme Court
Case No. S22G0527

**Atlanta Volunteer Lawyers Foundation's Amicus Curiae Brief In Support Of
Appellee-Plaintiff James Carmichael**

Gilbert H. Deitch
Georgia Bar No. 216400
Andrew T. Rogers
Georgia Bar No. 007010
Kara E. Phillips
Georgia Bar No. 379670
W. Michael D'Antignac
Georgia Bar No. 205714
DEITCH & ROGERS, LLC
1189 S. Ponce De Leon Avenue, NE
Atlanta, GA 30306
Tel: 770-394-9000
gil@victimattorneys.com
andy@victimattorneys.com
kara@victimattorneys.com
michael@victimattorneys.com

Attorneys for Amicus Curiae Atlanta Volunteer Lawyers Foundation

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Introduction

The greater Atlanta region is suffering from a plague of out-of-state buyers that actively seek out low-income, multi-family properties in Georgia for purchase in order to take advantage of government subsidies, spend as little as possible on tenant safety and security, and then flip the properties for enormous profits.

As the Atlanta Journal-Constitution concluded, after an extensive, yearlong investigation, “[a]t least three-fourths of the region’s most dangerous apartments ... belong to private equity firms or other absentee investors under whom crime and squalor are not so much bad fortune as collateral damage from a widely followed business model.” AJC, “Dangerous Dwellings,” June 9, 2022.¹

“These owners typically raise rents, perform merely cosmetic renovations and limit spending on security and maintenance.” *Id.* “Many flip the properties in short order, nearly doubling their money in no more than two or three years.” *Id.* “Along the way, profits accumulate, often bolstered by taxpayers.” *Id.* Meanwhile, “government agencies provide minimal oversight of substandard complexes, hampered not only by laws that give them little authority and by inadequate resources but also, at times, by a lack of will to take on well-financed landlords.” *Id.*

¹ <https://www.ajc.com/news/investigations/dwellings/apartments-violent-crime/>. “Years of tracking homicides across metro Atlanta revealed a bleak and persistent reality: Murders cluster at certain apartment complexes.” *Id.* “The Atlanta Journal-Constitution attempted to find out why.” *Id.* “Doing so took a year of reporting,” and the creation of a “first of its kind for the region” database. *Id.*

The result is that there are “more than 250 chronically dangerous complexes ... beset by violent crime and, often, by horrific living conditions.” *Id.* “Of the more than 250 complexes, 162 accounted for one in every five homicides in metro Atlanta in recent years ...” *Id.* “Day after day, complexes such as these place outsized burdens on police and other public safety resources.” *Id.* And the tenants “find themselves trapped amid the pervasive violence,” including “[m]ore than 13,000 school-age children [who] live in 144 of the [dangerous] complexes.” *Id.*

In the face of these deplorable and horrific conditions, CVS and its supporting amici ask this Court to make the owners of these chronically dangerous apartment complexes and owners of other properties *even less accountable* to crime victims. That is exactly the opposite of what Georgia needs. We need to put “the cost and accountability back where it rightly belongs – on negligent landlords.” AJC Editorial Board, “Dangerous Dwellings,” January 9, 2023.²

Rather than address these real-world conditions affecting Georgians, CVS and its amici instead repeatedly mischaracterize the Court of Appeals opinion and the evidence in this case. They similarly mischaracterize Georgia law and incorrectly claim that the Court of Appeals created new Georgia law on foreseeability. And they make outlandish and unsupported public policy assertions that are all refuted by evidence, experience, and reason. For those reasons, this Court should affirm the

² <https://www.ajc.com/opinion/dangerous-dwellings-editorial-to-legislators/>.

Court of Appeals and avoid undermining one of the few methods by which Georgia citizens can hold landlords and other dangerous business owners accountable via a jury trial.

AVLF’s Interest and Unique Expertise

The Atlanta Volunteer Lawyers Foundation (“AVLF”) is a nonprofit legal organization that provides free representation to low-income tenants. AVLF is the largest provider of pro bono legal services in Atlanta. AVLF 2019 Annual Report³ at 2. For more than forty years, AVLF has provided high-quality legal representation, education, and holistic services at no cost to low-income families with civil legal needs at critical times in their lives. *Id.* AVLF is committed to equal access to the civil legal system because such access provides direct benefits to low-income families and their communities, as well as advancing justice and fairness.

AVLF’s programs include services for tenants involved in landlord-tenant disputes or facing eviction, survivors of intimate partner abuse, and employees seeking unpaid wages. *See generally id.* AVLF works to create safe and stable families, homes, and communities, and a fairer and more equitable Atlanta. Through these programs, and in one year alone, AVLF served 1,387 families, ensured 248 of them avoided being displaced from their homes, obtained \$386,000 in damages for tenants, and helped 89 Atlanta families move into better living conditions. *Id.* at 16.

³ https://avlf.org/wp-content/uploads/AVLF_Annual-Report_v06_digital-1.pdf.

Though AVLF programs were once delivered only from Peachtree Center in downtown Atlanta, AVLF now works through satellite offices located in various Atlanta public schools and the Fulton County Courthouse. *Id.* at 6. Closer to client’s homes and neighborhoods, AVLF is able to have a much deeper appreciation of, and more effective response to, the inter-relatedness of housing instability, education, health, homelessness, and intimate partner abuse.

For example, for many years, AVLF had a full-time community advocate⁴ whose every-day office was inside Thomasville Heights Elementary School, where nearly every student lived across the street in the notorious Forest Cove Apartment Complex. *See* AVLF, “Forest Cove Diaspora,” June 16, 2022.⁵ Within the first year at Thomasville Heights, AVLF helped achieve a 51% reduction in student exits. *Id.* Building on that success, AVLF expanded the program to three other schools within the Carver Cluster of Atlanta Public Schools (APS). *Id.*

However, because of the rampant crime and other deplorable conditions at Forest Cove,⁶ which is located approximately one mile from the CVS Moreland

⁴ AVLF’s Standing with Our Neighbors program places a lawyer and a community advocate directly in Atlanta schools to act as a first responder when trouble arises. When a kindergartner’s asthma is flaring up because of the creeping mold on the walls, and the landlord refuses to step in, parents can turn to our advocates for help. *See* AVLF 2019 Report at 11.

⁵ <https://avlf.org/blog/forest-cove-diaspora-building-trust-with-our-neighbors/>.

⁶ Forest Cove is one of the dangerous apartment complexes profiled in the AJC Dangerous Dwellings investigation. *See* AJC, Dangerous Dwellings, June 9, 2022 (“At Forest Cove, a notoriously dangerous and dilapidated – and recently

Avenue store, at the end of 2021, the City of Atlanta condemned and ordered the razing of the Forest Cove apartment complex. *Id.* As a result of the sudden relocation of all Forest Cove residents, APS decided to close Thomasville Heights Elementary—a school AVLF had worked to improve for six years. *Id.*

That decision, in turn, led to the loss of nearly all of AVLF’s funding for its neighborhood-based team in the Carver Cluster of schools. *Id.* That loss jeopardized AVLF’s ability to stand with and support the displaced residents being relocated via a process that, despite best efforts, carries a high risk of families falling through the cracks. *Id.* The loss of funding also jeopardized AVLF’s ability to assist the residents of the many other neighborhoods that make up the Carver Cluster of schools, neighborhoods that also deal with some of the *highest* crime rates in Atlanta. *See id.*

This was a real crisis for AVLF, and though AVLF has been able to re-group and provide continued support for the Forest Cove Diaspora, the experience was an incredibly important lesson for AVLF. *Id.*

Among other things, it gave AVLF a first-hand experience of the widespread consequences of property and business owner negligence when it comes to safety from crime. AVLF’s clients typically come from high-crime areas in Atlanta, and many live in apartments where landlords fail to meet even minimal standards of

condemned – complex in southeast Atlanta that is scheduled for demolition, the police have investigated 19 homicides since 2009.”).

security. Thus, AVLF has always had special expertise on this topic. However, with the Forest Cove condemnation and the closure of Thomasville Heights Elementary School, AVLF itself faced its own form of eviction and loss of place that so often affects its clients.

Because of the thousands of families AVLF assists and because of AVLF's own staff who work in these neighborhoods, AVLF has a strong interest and unique expertise on the question of whether and how landlords and other business owners may be held accountable for their negligence in failing to keep their premises safe from crime. AVLF believes that any effort to weaken civil accountability for these owners and to prevent juries from hearing relevant evidence, such as an owner's knowledge that their premises is located in a high-crime area or their own acknowledgment of the danger, must be rejected. Landlords must face juries and the community, and be held accountable for their negligence and the harms that result.

Argument

1. CVS and its amici repeatedly mischaracterize the Court of Appeals opinion and the evidence in this case.

Before addressing the public policy assertions made by CVS and its amici directly, it is important to correct the litany of misstatements made by CVS and its amici regarding the Court of Appeals opinion and the evidence in this case. These misstatements are a foundation of the public policy arguments made by CVS and its

amici. They have built a strawman of the proceedings below in hopes that the Court will focus on their contrivance rather than what the Court of Appeals actually held.

A. The Court of Appeals relied primarily on prior similar incidents to affirm the jury’s finding of foreseeability.

Reading the briefs of CVS and its amici, one gets the impression that “generalized”, high-crime area evidence was the critical evidence for the Court of Appeals opinion. For example, CVS claims that “[t]he Court of Appeals’ decision in this case is one of only a few Court of Appeals decisions that have relied *heavily* on generalized crime evidence.” CVS Br. at 22 (emphasis added); *see* Retail Litig. Ctr. Br. at 10 (“The admission of testimony about the perceived crime rate in a given area ... creates a dangerously amorphous standard that drifts swiftly into strict liability.”).

But, in truth, the Court of Appeals opinion relied firstly and primarily on *two prior armed robberies* and a third physical attack on a customer during a robbery, all of which occurred on CVS’s premises:

Carmichael presented evidence of an armed robbery of a cashier, a robbery/“purse-snatching” of a customer in the parking lot, and another armed robbery of an employee, all occurring at the store within two years of the present incident. These robberies all involve similar circumstances to those involved in the present incident: two involved firearms, and at least one involved a physical attack on a customer in the parking lot. Additionally, “[w]hile these theft crimes occurred when the drivers were not near their vehicles, under the circumstances shown to have existed in this case, it was reasonable to anticipate that an unauthorized entry into a vehicle might occur when the driver was

nearby and that personal harm to the driver would result.” *Wal-Mart Stores, Inc. v. Lee*, 290 Ga. App. 541, 548 (2008).

Ga. CVS Pharmacy, LLC v. Carmichael, 362 Ga. App. 59, 64 (2021).

The Court of Appeals made clear the importance of prior crimes to its analysis when it found that, in at least four precedential opinions, “we have found *similar crimes* to these to be substantially related to other armed robberies so as to show the foreseeability of further criminal activity.” *Id.* (emphasis added).

To be sure, the Court of Appeals *also* considered evidence that the Moreland Avenue store was located in a high-crime area: “Carmichael also presented evidence from numerous CVS employees and managers that CVS knew that the store was located in a high-crime area.” *Id.* But nothing in the Court of Appeals opinion would allow any future court to hold that high-crime area evidence *alone* is sufficient to show foreseeability. To the contrary, the Court of Appeals held that, “[f]rom *all* this evidence, the jury could conclude that the robbery of Carmichael was reasonably foreseeable to CVS.” *Id.* at 64-65 (emphasis added).

Thus, the question in this case is not whether “generalized”, high-crime area evidence is alone sufficient to establish the robbery at issue was reasonably foreseeable. Rather, the question is whether the high-crime area evidence is relevant to prove foreseeability when considered *along* with evidence of three prior robberies at the same store, as well as evidence that CVS’s own employees considered the parking lot unsafe and requested armed security, but their requests were denied. *Id.*

B. The Court of Appeals did not rely on constructive knowledge of prior crimes.

In a blatantly misleading manner, the Georgia Defense Lawyers Association argues for seven pages of its brief that “there must be evidence of **actual** knowledge of prior, substantially similar crimes,” and “[w]hat the plaintiff-appellee argued in the case below—and now argues to this Court—is a change in the applicable standard of proof.” GDLA Br. at 19; *see id.* at 19-20 (referring to a “scheme urged by the plaintiff-appellee in this case and accepted by the Court of Appeals”).

What makes GLDA’s argument remarkably misleading is that it *never* cites any statement from the Court of Appeals, or even any argument from the plaintiff-appellee, that constructive knowledge of prior similar incidents is sufficient.

Indeed, it is hard to fathom how GDLA can make these arguments after reading the Court of Appeals opinion. The Court of Appeals found that “Carmichael presented evidence that *these crimes were reported to CVS.*” *Carmichael*, 362 Ga. App. at 65 (emphasis added). That was a simple finding to make, and one not even disputed by CVS, given that the two prior armed robberies involved *CVS’s own employees*, and “Ham and White both requested security from CVS [corporate] based on their respective incidents.” *Id.* at 61. And while the third robbery involved a CVS customer rather than an employee, “Langford filed an incident report with CVS.” *Id.*

The other foreseeability evidence was expressly based on CVS’s *actual*

knowledge. “Carmichael also presented evidence from numerous CVS employees and managers that CVS *knew* the store was located in a high-crime area.” *Id.* at 64 (emphasis added). “CVS’s own employees, including its managers, considered the parking lot unsafe, and the store’s employees repeatedly requested security guards based on these and other incidents, but their requests were denied.” *Id.*

C. The Court of Appeals did not rely on social media or other “imagined dangers.”

In a similarly misleading manner, the Retail Litigation Center argues that “[p]ublic policy considerations dictate that constructive knowledge of imagined dangers cannot fairly be used to establish liability,” and “imagined dangers feature prominently in today’s social media, where perception distorts reality and where alarmism is the currency driving more internet user traffic.” Retail Litig. Ctr. Br. at 10-11. “If foreseeability is established, in part, by this kind of testimony, the bar has been set so low that it is no standard at all.” *Id.* at 11.

Yet, absolutely no social media evidence was admitted in this case. The Retail Litigation Center does not even attempt to draw any analogy between the first-hand experiences of CVS’s own employees in this case and “Nextdoor posts or Ring ‘alerts’ about allegedly suspicious activity.” *Id.*

Consider the record evidence in this case. For example, Holly White, a CVS shift manager at the Moreland store, testified that, on November 24, 2012, less than thirty days before the robbery of James Carmichael, she was “preparing to close,”

when a robber “approached [her] with a handgun, put it to [her] head and told [her] to open the registers.” V12-T419. “[A]fter [she] emptied the registers, he told [her] to go to the office to the safe.” V12-T419-20. “He followed [her] halfway,” and then “was gone.” V12-T420. White “asked for security after[wards],” “[w]ith no results.” *Id.* And this was not the first time White had asked for security. “[A]s far back as 2011,” White had asked CVS for “armed security,” but that request was denied. V12-T421.

For the Retail Litigation Center to disregard the real-life experience of CVS employees and managers who lived and worked in the neighborhood and to compare an armed robbery where someone’s life is threatened with a gun to “Nextdoor posts” and “Ring alerts” is absurd, insulting, and clearly intended to distract from the actual facts and real issues of this case.

D. The Court of Appeals did not rely on “generalized” high-crime area evidence.

CVS and its amici repeatedly refer to the high-crime area evidence in this case as “generalized” crime evidence and argue that Georgia courts have rejected reliance on generalized crime evidence. *See* CVS Br. at 22; Retail Litig. Ctr. Br. at 11; GDLA Br. at 8; Georgians for Lawsuit Reform at 19.

Once again, CVS and its amici ignore the record evidence in this case. CVS upper-level managers relied on objective, quantitative, *location-specific* crime analysis. Specifically, CVS uses “a Cap Index for guidance,” and “it has a number”

that “var[ies] based on location right around the store.” V9-R4747-48 (Lehman).⁷ “The CAP index for this unit is [nearly] 1000”—ten times the national average. V16-R922 (Daily). CVS store-level employees also testified based on their personal knowledge of working at the Moreland store and living in the surrounding area. *See, e.g.*, V12-T475-76 (Humphries) (“You grew up in the neighborhood? A. Yes.”).

Meanwhile, the evidence Georgia courts have rejected as “generalized” is materially different from the evidence in this case. For example, in *Agnes Scott College, Inc. v. Clark*, 273 Ga. App. 619 (2005), one of the cases cited by GDLA and the Retail Litigation Center, the plaintiff “produced general crime statistics for *the City of Decatur*”—not the specific area where Agnes Scott is located. *Id.* at 621 (emphasis added). In stark contrast, here, CVS uses a third-party crime index score that is “based on location right around the store.” V9-R4747-48.

The Retail Litigation Center also objects to what it calls “the dubious propriety of lay testimony to establish foreseeability.” Retail Litig. Ctr. Br. at 11. However, the Retail Litigation Center never points to any objection, let alone an appellate argument, by CVS to the admissibility of *its own employees*, who grew up and worked in the neighborhood, offering this testimony. *See, e.g.*, V12-T475-76

⁷ <https://capindex.com/how-we-help/crimecast-data-reports/> (“The CAP Index Scoring System is the result of sophisticated research by expert professionals with roots in criminological theory and its applications. It incorporates socio-economic factors along with police and client loss data into its algorithms”).

(Humphries); *Lau's Corp, Inc. v. Haskins*, 261 Ga. 491, 492 (1991) (relying on “the affidavits of two local business people who stated that the neighborhood where the China King Restaurant is located is, in their opinion, a high crime area”).

The Retail Litigation Center also never explains why people who actually live in high-crime areas are unqualified to testify about their experience and why expert testimony should be required. AVLF’s experience working firsthand with people who live in these neighborhoods is that they know, all too well, how widespread crime is in their neighborhoods. *See, e.g.*, AJC Dangerous Dwellings, June 9, 2022 (“They shoot here all the time, even during the day.”); *id.* (“Gunfire is so commonplace”). It would be a perversion of justice if the very people who are most directly affected by criminal violence are unable to testify in court as to such experience.

Perhaps most importantly, this case *does* involve expert testimony. Carmichael’s expert opinioned on the “elevated risk of violent crime” “*within a half mile* of the Moreland Avenue CVS.” V9-R4724 (Villines) (emphasis added).

E. The Court of Appeals did not simply “assume” CVS could have reasonably prevented Carmichael’s injury.

Another misimpression one gets from the Retail Litigation Center’s brief is that the Court of Appeals assumed, without evidence, that CVS could have prevented Carmichael’s injury. They boldly assert that “[t]here is simply no evidence presented suggesting that a security officer would have prevented the shooting from

occurring.” Retail Litig. Ctr. Br. at 14; *see id.* at 13 (“Although it is highly questionable whether security guards would have prevented Carmichael’s injury, the \$42 million awarded against CVS necessarily assumes that it would have.”); *id.* at 9 (“[T]he Decision’s premise, which is that more security personnel, surveillance, and lighting would have prevented Carmichael’s injury, is utterly speculative.”).

However, the Court of Appeals expressly relied on record evidence, including expert testimony, that armed security and proper parking-lot lighting likely would have prevented the armed robbery against Carmichael:

CVS’s employees testified that the store previously had security guards that provided “a good deterrent” but that they were removed in 2010 and that at least three crimes occurred on the property afterward. CVS’s own corporate representative also testified that security guards were an effective deterrent, that “CVS wouldn’t hire security guards if they didn’t believe they were effective,” and that “lighting” could “be a deterrent to violent crime.” The investigating officer also testified that he found “armed security effective” and that “in [his] experience ... people don’t rob and shoot people while an officer is sitting there.” Carmichael’s expert witness testified that “*there’s an overwhelming body of research which confirm[ed] that [armed security] has a high deterrent effect.*” In the expert witness’s opinion, if CVS had a security guard present, “the robbery more likely would have been prevented.” The expert witness also reviewed the lighting at the Moreland Avenue store’s parking lot and testified that, in his opinion, if CVS had uniform lighting in the parking lot, it would have “facilitate[d] better visibility in the area to deter loitering, trespassing, [and] any of those undesirable activities.”

Carmichael, 326 Ga. App. at 67 (emphasis added); *see also Brookview Holdings v. Suarez*, 285 Ga. App. 90, 96 (2007) (reviewing similar testimony and finding “that

it was not based upon mere conjecture or speculation”); *Six Flags Over Ga. II, L.P. v. Martin*, 335 Ga. App. 350, 362 (2015) (similar).

It is also worth emphasizing that this evidence shows that CVS did not need to undertake extraordinary measures to satisfy the standard of ordinary care. Carmichael presented evidence that CVS needed to simply do what it had *already* done at the same Moreland Avenue store from 2008 to 2010—provide one armed guard. That is also what CVS employees and managers themselves agreed should have been done. In fact, CVS’s District Manager had made three separate requests for CVS to reinstate an armed guard at the Moreland Avenue store, and CVS’s 30(b)(6) designee agreed that the District Manager’s recommendation was correct. *See* V12-T506-10; V9-R4710.

Equally important, this Court did not grant certiorari to review the sufficiency of the evidence, nor any legal question, regarding whether CVS could have prevented Carmichael’s injury. In fact, CVS did not even seek certiorari from this Court on the issue. Thus, many portions of the Retail Litigation Center’s brief are wholly irrelevant to the actual issue before the Court—foreseeability.⁸

⁸ Many of the secondary sources cited by the Retail Litigation Center actually *affirm* the standard of care Carmichael argued in this case. Those sources say that *unarmed* security officers are not effective, and that “armed patrols” are “necessary” for “private security to generate comparable deterrence.” Retail Litig. Ctr. Br. at 16. That is precisely what Carmichael’s expert said was necessary. V9-R4720 (“I would recommend either an extra-duty law enforcement officer from a local jurisdiction [thus necessarily armed] or an appropriately trained armed uniformed security

2. CVS and its amici mischaracterize Georgia law and incorrectly claim that the Court of Appeals created new foreseeability law.

Much like CVS and its amici misstate the Court of Appeals opinion and the record evidence on which it relied, they also misstate the nature of Georgia law and whether the Court of Appeals created new law. They do so to invoke a parade of horrors that they assert will ensue if the Court of Appeals opinion is allowed to stand. However, not only are CVS and its amici incorrect about the nature of Georgia law on foreseeability, but the fact that they are wrong demonstrates their fears are only imagined dangers that have not come true and have been disproved by several decades of experience.

A. Georgia courts have long considered high-crime area evidence along with other foreseeability evidence.

More than thirty years ago, this Court held in *Lau's Corp. v. Haskins*, 261 Ga. 491 (1991), that a proprietor's knowledge that its business "is located in a 'high crime' area" is relevant, along with prior crimes, to determine whether a robbery in the parking lot was foreseeable. *Id.* at 493; *see id.* (finding that, where "the proprietor, knew about one previous purse snatching" and "knew that his business is located in a 'high crime' area," "it is sufficient to give rise to a triable issue").

officer."). In any event, if CVS had wanted to put forth research that security would not have prevented Carmichael's injury, the proper way to do that would have been through an expert witness at trial to counter Carmichael's expert witness, and the jury would have decided which witness to believe. CVS chose not to do so.

More recently, in *Martin v. Six Flags Over Georgia II, L.P.*, 301 Ga. 323, 331 (2017), this Court again explained that “[a]n establishment’s location in a high crime area may also support the finding of a duty on the part of the landowner to guard against criminal attacks.” (citations omitted).

Between *Lau’s* and *Martin*, the Court of Appeals has also consistently recognized the relevance of high-crime area evidence to foreseeability. *See, e.g., Woodall v. Rivermont Apts. Ltd. P’ship*, 239 Ga. App. 36, 40-41 (1999) (physical precedent); *Walker v. St. Paul Apts., Inc.* 227 Ga. App. 298, 299 (1997); *Piggly Wiggly S. Inc. v. Snowden*, 219 Ga. App. 148, 149 (1995); *Shoney’s Inc. v. Hudson*, 218 Ga. App. 171, 173 (1995). *Martin* itself cites *Lau’s*, *Woodall*, and *Snowden*.

This authority shows that there is nothing novel or unusual about the Court of Appeals’ consideration of evidence that CVS managers and employees knew the Moreland Avenue store was located in a high-crime area, along with evidence of prior crimes. As this Court recognized in *Lau’s Corp.*, the relevance of such evidence is obvious. “Certainly, a high crime rate in a particular area may increase the risk of harm to patrons so that a prudent owner will take security precautions.” 261 Ga. at 493. To argue otherwise would defy common sense. If other proprietors in the surrounding area are experiencing high crime, then it would be willful blindness to assume that your property is somehow immune.

To be clear, this does not mean that proprietors are liable for crime that takes place on other properties. It is simply some evidence, along with other evidence such as prior similar incidents, that a jury may consider in deciding that a criminal act *on the premises* is *foreseeable*, again because if crime is occurring at nearby properties, it is reasonable to expect it will occur on your property. A plaintiff must then also present evidence to support a jury's finding that the proprietor failed to exercise ordinary care and that had the proprietor exercised ordinary care, the criminal act on the premises likely would have been prevented. Rather than any form of "strict liability," this is longstanding and traditional negligence embedded in Georgia jurisprudence.

B. Georgia courts have also long considered a proprietor's acknowledgment of a known danger.

For nearly thirty years as well, Georgia courts have recognized that a proprietor may be aware of and acknowledge a known danger and a jury may find this evidence sufficient to show reasonable foreseeability of a criminal act. For example, in *Snowden*, the Court of Appeals found foreseeability based on this type of evidence:

Two of defendant's assistant managers testified that they considered the parking lot unsafe, that they had repeatedly suggested the hiring of a security guard, that male employees always walked female employees to their cars at night, and that they would not allow their wives to go to the store alone. Even in the absence of prior similar crimes, this testimony would have been sufficient to create a question of fact as to whether defendant knew or should have known about the unreasonable

risk of criminal attack in its parking lot.

219 Ga. App. at 149; *see also Shoney's*, 218 Ga. App. at 174 (similar).

This is also well-established Georgia law. Even the cases cited by CVS and its supporting amici recognize that “acknowledgement of a known danger by a defendant” is one of the “methods to establish foreseeability.” *Med. Ctr. Hosp. Auth. v. Cavender*, 331 Ga. App. 469, 480 (2015); *see also Pappas Restaurants, Inc. v. Welch*, 362 Ga. App. 152, 160 n.5 (2021) (describing “different methods for showing foreseeability in the absence of a substantially similar prior crime,” including “a defendant’s acknowledgment of the danger”).

This authority shows that there is nothing novel or unusual about the Court of Appeals’ consideration of evidence that “CVS’s own employees, including its managers, considered the parking lot unsafe, and the store’s employees repeatedly requested security guards based on [prior robberies], but their requests were denied.” *Carmichael*, 362 Ga. App. at 64. If anything, the Court of Appeals opinion in this case is *narrower* than *Snowden*, *Cavender*, and *Pappas* on this issue. Those cases hold that courts can find foreseeability based on acknowledgment evidence, even without prior similar crimes. But the Court of Appeals here did not need to go so far. That is because, here, there is record evidence that CVS knew of prior similar incidents, knew that its store was located in high-crime area, *and* acknowledged the

dangerous nature of its parking lot, and the Court of Appeals relied on “all this evidence.” *Id.*

3. The public policy assertions made by CVS and its amici are all refuted by evidence, experience, and reason.

In an effort to further distract from the relevant facts of the case, CVS and its amici make two main public policy assertions. First, they assert that a “foreseeability standard that takes into consideration whether the business is located in a high crime area [] will incentivize businesses to close or never open in high crime communities.” Georgians for Lawsuit Reform Br. at 20. Indeed, they believe that Judgment in CVS’s favor best serves “underprivileged communities,” *id.* at 19, and “communities that are the most in need,” CVS Br. at 23.

Second, they assert that a foreseeability standard that considers high-crime area evidence “also shifts the government’s police function to private business,” *Id.*, and “CVS parking lot is best left to carefully trained and armed police employed by the government, not property owners,” Retail Litig. Ctr. Br. at 19.

Each of these assertions is refuted by record evidence, experience, and reason.

A. Consideration of high-crime area evidence has not caused, and will not cause, business flight.

For more than three decades, beginning at least with *Lau’s* and consistently reinforced by appellate opinions, binding Georgia precedent allows courts and juries to consider whether a proprietor knew that its premises was located in a high-crime

area. If CVS and its amici were to be believed, this longstanding precedent should have caused “businesses to close or never open in high crime communities.” Georgians for Lawsuit Reform Br. at 20.

Yet, no such business flight has occurred in Georgia. After all, it did not stop CVS from opening its Moreland Avenue store in 2008 or even from providing an armed security guard for the first three years the store was open. *See* V12-T437-38.

AJC’s Dangerous Dwellings investigation similarly confirms that, much like CVS’s operations in high-crime areas, “[o]wners of some of metro Atlanta’s most challenged apartment complexes make no secret of the fact that renting apartments to poor people can be *extremely profitable*.” AJC, Dangerous Dwellings, June 9, 2022 (emphasis added). Indeed, “[a]cross metro Atlanta,” “values of apartment complexes that cater to people with limited incomes have risen dramatically in the past five years,” despite “an alarming number of violent crimes.” *Id.*

For example, in April 2021 and approximately eight months before it was condemned by the City of Atlanta, Forest Cove was sold for nearly \$39 million, approximately \$22 million more than the seller had paid for the property. <https://iaspublicaccess.fultoncountyga.gov/datalets/datalet.aspx?mode=sales&sIndex=0&idx=1&LMparent=20>.

As another example, “the Florida-based owner of Royal Oaks in southwest Atlanta and 14 other complexes in Georgia” reports “double-digit returns *each of the*

past 18 years,” even though “more than 400 serious crimes, including three homicides and seven rapes, [were] reported at Royal Oaks.” *Id.* (emphasis added).

Yet another example, “East Ponce Village, a sprawling complex of more than 900 units in Stone Mountain, for instance, has had five owners, four names and, in the past decade, hundreds of violent crimes in addition to its 11 homicides.” *Id.* “In just six weeks in 2021, police reports show two rapes and one shooting occurred in vacant apartments.” *Id.* But “[t]he crime didn’t prevent the complex’s latest owner from paying a premium for the property.” *Id.* “The private equity firm Adams Investor Group, based in a suburb of Philadelphia, closed on the purchase the same week last year as the first rape.” *Id.* “The previous owner had acquired the property four years earlier for \$38 million,” and “the Adams firm took over \$47 million in debt and added \$28 million in cash to complete the deal, significantly increasing the property value to \$75 million.” *Id.* (emphasis added).

In fact, “[t]he firm has bought and sold six other complexes in metro Atlanta since 2016.” *Id.* “Its founder, Brian Adams, describes the region as ‘one of the most fertile grounds for apartment investing in the U.S.’” *Id.*

One more example: “Olive Tree Holdings, a New York-based private equity firm, recently sold eight apartment complexes in metro Atlanta for *almost \$137 million more* than it had paid for them no more than four years earlier.” *Id.* (emphasis added). “Nine homicides and dozens of other violent crimes occurred at the

complexes under Olive Tree’s ownership.” *Id.* “[R]ecords show dozens of complaints to code enforcement about health and safety issues.” *Id.* “Nevertheless, the value of each complex rose significantly.” *Id.*

Thus, what evidence and experience clearly demonstrate is that businesses have long operated and will continue to operate in high-crime areas—and make healthy profits—despite the fact that Georgia law correctly recognizes that their location in high-crime areas can be relevant evidence, along with prior crimes, of foreseeability. To conclude otherwise would be to ignore these real-world conditions.

Tellingly, neither CVS nor any amici offer *evidence* to show that businesses are avoiding high-crime areas based on Georgia’s foreseeability standard. Instead of evidence, they offer outdated speculation. For example, Georgians for Lawsuit Reform and the Retail Litigation Center cite decisions from Michigan courts in the 1980s to argue that “[t]o hold [business] owners responsible for providing police protection against the criminal conduct of third parties ... , especially those in ‘high crime’ areas, *may* drive businesses out of those neighborhoods.” Georgians for Lawsuit Reform Br. at 20 (quoting *Stafford v. Church’s Fried Chicken, Inc.*, 629 F. Supp. 1109, 1110 (E.D. Mich. 1986)(emphasis added)); see Retail Litig. Ctr. Br. at 7 (similar).

But, five years after *Stafford*, this Court issued *Lau*'s in which it considered "the affidavits of two local business people who stated that the neighborhood where the China King Restaurant is located is, in their opinion, a high crime area." 261 Ga. at 492. And the last three decades in Georgia—and especially the last ten years—demonstrate growing business and healthy profits including in high-crime areas.⁹

The notion that business will flee high-crime areas because courts allow juries to consider high-crime area evidence, along with prior similar incidents, also makes no logical sense. No one, not even CVS, has argued in this case that proprietors should *never* be held liable for criminal acts on their premises. In fact, CVS agrees that prior similar incidents may be used to show foreseeability. Thus, even under the standard advanced by CVS and its amici, businesses still face liability risks from operating in high-crime areas, which will invariably have more prior similar crimes than other areas. After all, CVS itself had three prior robberies, including an armed robbery less than one month before the armed robbery against Carmichael.

In sum, businesses have long operated and will continue to operate in high-

⁹ On this issue, Georgians for Lawsuit Reform also cite a November 1, 1997 paper, "*Property Owners' Liability for Criminal Acts on Their Premises: Are There Foreseeable Limits?*" Br. at 21. But two defense lawyers wrote the paper *without a single citation* to support their "policy considerations." <https://www.wlf.org/wp-content/uploads/1997/11/Baker-CLN.pdf> at 26-27. The rest of Georgians for Lawsuit Reform's citations on this issue are similarly problematic, including relying on an opinion piece without any evidence, a *high school* student's paper, and many citations that simply identify that there is a lot of crime in low-income areas.

crime areas and make healthy profits doing so. Especially when many of these owners “limit spending on security and maintenance” in order to further maximize profits (AJC, “Dangerous Dwellings,” June 9, 2022), it is illogical to *lessen* accountability and to prevent juries from knowing the full context of proprietors’ ability to reasonably foresee criminal acts on their premises.

That does not make proprietors in high-crime areas strictly liable for criminal acts on their premises. A jury may find, and in fact numerous juries have found, that proprietors in high-crime areas have exercised ordinary care or could not have reasonably prevented the criminal act from occurring. But those are decisions that juries must make, based on the facts, and without arbitrary restrictions on the type of foreseeability evidence they can consider.

B. Consideration of high-crime area evidence also has not taken away, and cannot take away, from the government’s duty to provide law enforcement.

Just as consideration of high-crime area evidence in Georgia for the last three decades has not caused business to flee high-crime areas, it also has not taken away and cannot take away from the government’s duty to provide law enforcement. Despite three decades recognizing the consideration of high-crime area evidence, police departments across Georgia remain responsible for fighting crime.

Meanwhile, and once again, the assertions made by CVS and its amici make no logical sense. Even under the standard accepted by CVS and its amici, if there

are prior similar crimes, proprietors can be liable for criminal acts on their premises and must take precautions to protect invitees from crime. Thus, any concerns with “private policing” also apply to CVS’s own foreseeability test.

In any event, proprietors are often the ones failing to uphold their statutory duty to keep their premises safe, not law enforcement. In other words, the problem is often the opposite of what CVS and its amici claim it to be. The proprietors’ failures to exercise ordinary care overburden law enforcement.

For example, as the AJC found during its investigation, “[d]ay after day, [dangerous apartment] complexes ... place *outsized burdens on police* and other public safety resources.” AJC, *Dangerous Dwellings*, June 9, 2022. “Of the 10 addresses in Atlanta that generated the greatest number of complaints about housing-code violations in the past five years, nine are apartment complexes. The police answered more than 28,000 calls at those complexes ... roughly 15 a day.” *Id.* “‘If you have a complex that’s in disarray and disrepair, it just kind of welcomes the criminal element there,’ said Deputy Chief Carven Tyus of the Atlanta police” *Id.*

This problem of dangerous properties overburdening law enforcement is not limited to apartment complexes. For example, in *Martin*, Cobb County police had to maintain police units close by Six Flags (in addition to off-duty officers who worked

at the park) because “18 to 20 percent of the Cobb County Police Department’s call volume comes from within a two-mile radius of Six Flags.” 301 Ga. at 327.

As another example, in *Welch v. Pappas*, Sup. Ct. No. S22G0617, the legally related case being argued at the same time as this case, Cobb County police called Pappas’s Security Director to meet to discuss the “heavy” and “concentrated” amount of crime in Pappas’s parking lot. *Welch*, V2-824 (Heenan Dep. at 119). As Pappas’s Security Director explains, the police wanted to “push it out of our parking lot.” *Id.* “He was trying to get the bad guys out of Marietta, and he wanted us to help deter it from our parking lot.” *Id.*

What this evidence and these examples show is that no one, and certainly not law enforcement professionals, expects proprietors to be *solely* responsible for preventing crime. However, in addition to the duty governments owe to provide law enforcement, proprietors also owe a *statutory* duty to keep their premises safe. And where proprietors fail to satisfy their duty, crime victims have the right to hold negligent owners liable. The consequence of failing to hold proprietors accountable makes everyone unsafe. A lack of accountability overburdens law enforcement agencies that expect and rely on proprietors to fulfill their statutory duty to exercise ordinary care.

C. This Court is not the proper forum for (unfounded) objections to the cost of reasonable security and Georgia’s constitutionally protected jury system.

As the preceding sections should illustrate, the real objection that CVS and its amici have is *not* the mere consideration of high-crime area evidence, along with prior similar incidents, to show foreseeability. Their real objection is to premises liability for *any* criminal act—no matter the foreseeability evidence—and to juries making decisions about whether proprietors have exercised ordinary care.

That is the only way to understand their arguments about business flight and law enforcement. Those arguments really have nothing to do with the *type* of evidence presented in a premises-liability case. They instead attack the entire notion of premises-liability being decided by juries altogether.

And if that were not clear from their public policy assertions, the Retail Litigation Center says what CVS and its amici really believe: “The requirements of securing premises should, in the first instance, be left to a property owner’s reasonable discretion, but failing that, then they should be defined in the legislative arena, where facts, studies, and information can be vetted and, where appropriate, amended through the same process.” Retail Litig. Ctr. Br. at 17; *see id.* (“[C]omplex decisions about who, what, when, where, and how to engage private security in[] the hands of a patchwork of individual jury verdicts will only exacerbate these issues.”).

But it should be obvious that this Court is not the proper forum for these arguments. If CVS and its amici want to abolish premises-liability in the State of Georgia, they must ask the General Assembly to do so. This Court has no authority

to re-write O.C.G.A. § 51-3-1, which has long been interpreted to apply to criminal acts. Indeed, neither CVS nor any amici ask this Court to overrule any of its longstanding precedents recognizing that O.C.G.A. § 51-3-1 applies to criminal acts, which is a clear sign that they themselves understood that only the General Assembly could consider it.

To be absolutely clear, it would be horrendous public policy for the General Assembly to *lessen* accountability for premises owners. For example, at the Park at Greenbriar apartment complex across from Greenbriar Mall in 2019:

[There was] a five-month string of violence during which apartments were sprayed with gunfire, a tenant was robbed by two armed men, a different tenant reported her children were held at gunpoint, a maintenance supervisor was threatened with a gun, a visitor suffered a gunshot wound to the face, another visitor was shot in the parking lot while waiting for an Uber, and still another visitor was shot while walking to Greenbriar Mall to meet up with his mother.

AJC, *Dangerous Dwellings: Part 5*, Dec. 16, 2022.¹⁰

During this five-month span of crime, “a leasing office worker warned her supervisors in three separate written reports that *police wanted the complex to improve security.*” *Id.* (emphasis added). “She typed the same sentence each time: They [the police] consider this property a ‘WAR ZONE.’” *Id.*

Still, despite these three separate written reports and five months of crime, the owner “testified he heard nothing of this violence until a series of lawsuits were filed

¹⁰ <https://www.ajc.com/news/investigations/dwellings/list-apartments-identified/>

by the survivors of the victim of the August 2019 shooting and two others wounded in separate attacks.” *Id.* In other words, civil lawsuits remain one of the few tools that crime victims have to bring accountability to negligent premises owners.

Finally, if CVS and its amici want to remove the jury’s role in deciding fact disputes in premises-liability actions, they must ask the citizens of Georgia to amend the Georgia Constitution and remove a right that has been in place since Georgia’s founding—the inviolate right to trial by jury. *See* Ga. Const. Art. 1, § 1, ¶ 11 (a). Not even the General Assembly has the authority to make such a revolutionary change.

Conclusion

For those reasons, this Court should affirm the Court of Appeals.

/s/ W. Michael D’Antignac
GILBERT H. DEITCH
Georgia Bar No. 216400
ANDREW T. ROGERS
Georgia Bar No. 007010
KARA E. PHILLIPS
Georgia Bar No. 379670
W. MICHAEL D’ANTIGNAC
Georgia Bar No. 205714
DEITCH & ROGERS, LLC
1189 S. Ponce de Leon Ave., NE
Atlanta, Georgia 30306
(770) 394-9000
gil@victimattorneys.com
andy@victimattorneys.com
kara@victimattorneys.com
michael@victimattorneys.com

*Attorneys for Amicus Curiae Atlanta
Volunteer Lawyers Foundation*

CERTIFICATE OF SERVICE

I certify that, on January 17, 2023, I served a copy of **Atlanta Volunteer Lawyers Foundation’s Amicus Curiae Brief In Support Of Appellee-Plaintiff James Carmichael** by e-mail on the following counsel of record:

Attorneys for Appellee-Plaintiff James Carmichael

Michael B. Terry
Naveen Ramachandrappa
BONDURANT, MIXSON & ELMORE, LLP
1201 W Peachtree St NW, Ste 3900
Atlanta, GA 30309
404-881-4100
terry@bmelaw.com
ramachandrappa@bmelaw.com

Peter A. Law
Brian C. Kaplan
LAW & MORAN
563 Spring Street NW
Atlanta, GA 30308
pete@lawmoran.com
brian@lawmoran.com

James A. Rice, Jr.
Andrew J. Brandt
JAMES A. RICE, JR., P.C.
563 Spring Street NW
Atlanta, GA 30308
jim@ricefirm.com
andrew@ricefirm.com

Attorneys for Petitioner-Defendant Georgia CVS Pharmacy, LLC

Laurie Webb Daniel
Matthew D. Friedlander
WEBB DANIEL FRIEDLANDER LLP

1201 W Peachtree St NW, Ste 2625
Atlanta, GA 30309
Tel: 404-817-8500
laurie.daniel@webbdaniel.law
matthew.friedlander@webbdaniel.law

Keith R. Blackwell
Jay Repko
ALSTON & BIRD LLP
1201 W Peachtree St NW, Ste 4900
Atlanta, GA 30309
Tel : 404-881-7000
keith.blackwell@alston.com
jay.repko@alston.com

Carrie A. Moss
BENDIN SUMRALL & LANDER, LLC
1360 Peachtree St NE
One Midtown Plz, Ste 800
Atlanta, GA 30309
Tel: 404-671-3100
cmoss@bsllaw.net

Attorneys for Amicus Curiae Chamber Of Commerce Of The United States and
The Georgia Chamber of Commerce

Val Leppert
Martha Banner Banks
KING & SPALDING, LLP
1180 Peachtree St NE, Ste 1600
Atlanta, GA 30309
Tel: 404-572-3578
vleppert@kslaw.com
bbanks@kslaw.com

Judson H. Turner
GILBERT HARRELL SUMERFORD & MARTIN, P.C.
777 Gloucester St, Ste 200
Brunswick, GA 31520
Tel: 912-265-6700

jturner@ghsmlaw.com

Attorneys for Amici Curiae Retail Litigation Center, Inc., National Retail Federation, and National Federation of Independent Business

Rebecca Woods
Esther McDonald
SEYFARTH SHAW LLP
1075 Peachtree St NE, Ste 2500
Atlanta, GA 30309-3958
Tel: 404-885-1500
rwoods@seyfarth.com
emcdonald@seyfarth.com

Attorneys for Amici Curiae Georgians for Lawsuit Reform

Adeline Kenerly Lambert
Drew F. Waldbeser
LEHOTSKY KELLER LLP
3280 Peachtree Rd NE
Atlanta, GA 30305
Tel: 512-693-8350
adeline@lehotskykeller.com
drew@lehotskykeller.com

Kyle D. Hawkins
LEHOTSKY KELLER LLP
919 Congress Ave
Austin, TX 78701
Tel: 512-693-8350
kyle@lehotskykeller.com

Attorneys for Amici Curiae Georgia Defense Lawyers Association

Elissa B. Haynes
FREEMAN MATHIS & GARY, LLP
100 Galleria Pkwy, Ste 1600
Atlanta, GA 30339
Tel: 770-818-0000
elissa.haynes@fmglaw.com

Martin A. Levinson
HAWKINS PARNELL & YOUNG, LLP
303 Peachtree St NE, Ste 4000
Atlanta, GA 30308
Tel: 404-614-7400
mlevinson@hpylaw.com

/s/ W. Michael D'Antignac