IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

WINSTON CHEN, **Plaintiff,** **v.** **AMERICAN HONDA MOTOR CO., INC., Individually and d/b/a ACURA, STEVEN ALEXANDER RENNIE, BP CORPORATION NORTH AMERICA, PACIFIC EMPLOYERS INSURANCE COMPANY, and DOES 1 through 20, inclusive,** **Defendant.**	**Civil Action** **File No. 04-VS-067587-J**

MOTION IN LIMINE OF DEFENDANTS
BP CORPORATION NORTH AMERICA AND STEVEN RENNIE

For the reasons stated below, Defendants BP Corporation North America and Steven Rennie move the Court in limine to exclude any evidence, arguments, or comments suggesting that Defendant Steven Rennie violated the Georgia Hit and Run Statute, or failed to render assistance to the plaintiff following the collision made the basis of this lawsuit. Plaintiff has not asserted a separate claim or cause of action based on this theory, or else a motion to strike or for summary judgment might be procedurally appropriate.

I. The Court Should Exclude Any Evidence, Arguments, Or Comments To The Effect That Defendant Rennie Violated The Georgia Hit And Run Statute.

Plaintiff intends to proffer a novel alternative theory of liability at trial. The theory is that Defendant Rennie, by not *immediately* calling 9-1-1 after the collision, and by not braving the fire to rescue Plaintiff Chen from his burning vehicle, violated the Georgia "hit and run" statute, Georgia Code Ann. § 40-6-270.[1] As a matter of law, however, the hit and run statute does not apply to a party who remains at the scene of the accident, as did Defendant Rennie. Accordingly, the Court should preclude plaintiff's counsel from prejudicing the jury with evidence and arguments to the effect that Defendant Rennie violated Georgia's hit and run statute.

The issue of whether a party violated a statute and is thus guilty of negligence *per se* is a threshold question of law for the court, not an issue for the jury. *See Bajjani v. Gwinnett County Sch. Dist.*, 278 Ga. App. 866, 873 (2006). In other words, whether a party is entitled to claim a breach of duty because of violation of a statute can only be answered with a court construction of the purpose and intent of the statute. *Allen Trucking Co., Inc. v. Blakely Peanut Co.*, 340 So.2d 452, 454 (Ala. Civ. App. 1976). Courts should be reluctant to interpret a criminal statute as establishing an actionable standard of care in a civil case. *See Jastram v.*

[1] There were no charges at all made against Rennie by the investigating officers.

Williams, 276 Ga. App. 475, 476 (2005). ("Criminal statutes, which express prohibitions rather than personal entitlements and specify a particular remedy other than civil litigation, are accordingly poor candidates for the imputation of private rights of action.").

Here, as a matter of law, the undisputed facts establish that Defendant Rennie did not violate the hit and run statute. Section 40-6-270 provides in pertinent part:

40-6-270. Hit and run; duty of driver to stop at or return to scene of accident.

> (a) The driver of any vehicle involved in an accident resulting in injury to or the death of any person or in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of the accident or shall stop as close thereto as possible and forthwith return to the scene of the accident and shall:
>
> (1) Give his name and address and the registration number of the vehicle he is driving;
>
> (2) Upon request and if it is available, exhibit his operator's license to the person struck or the driver or occupant of or person attending any vehicle collided with; and
>
> (3) Render to any person injured in such accident reasonable assistance, including the transporting, or the making of arrangements for the transporting, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such transporting is requested by the injured person.
>
> The driver shall in every event remain at the scene of the accident until fulfilling the requirements of this subsection. Every such stop shall be made without obstructing traffic more than is necessary.

Georgia Code Ann. § 40-6-270.

As the U.S. Court of Appeals stated with respect to § 40-6-270's predecessor: "The statute by its terms applies, to, and only to, person[s] who strike and injure persons or property *and then run away*." *Greyhound Corp. v. Ault*, 238 F.2d 198, 202 (5th Cir. 1956) (emphasis added). The court concluded that the Georgia hit and run statute did not apply in that case because: "No contention was made, indeed none could be, either in the pleadings or proof that what happened here was a hit and run accident under the statute." *Id.* The court then held that it was improper, and reversible error, for plaintiff's counsel to even imply that the defendant violated the hit and run statute when the evidence established that the contrary.

Similarly, the Georgia Court of Appeals has explained that: "OCGA § 40-6-270 does not criminalize the collision itself, but the hit and run driver's attempt to evade civil liability *by leaving the scene* before the injured party can establish his identity." *McKay v. State*, 264 Ga. App. 726, 728 (2003)(emphasis added). In other words: "The essence of the crime of hit and run is failing to stop at or return to the scene of an accident in which one has been involved." *Hovis v. State*, 260 Ga. App. 278, 280-81 (2003). Thus, the Court of Appeals recently observed that subsections (a)(1)-(3) of the hit and run statute "do not establish alternative methods of

committing the offense of hit and run or leaving the scene of the accident." *Craig v. State*, 276 Ga. App. 329, 331 (2005).

A comprehensive review of Georgia cases involving the hit and run statute confirms that no Georgia court has ever applied the hit and run statute, in either the criminal or the civil context, to a driver who remained at the scene.[2] In civil cases, evidence and arguments regarding an alleged violation of the hit and run statute are permissible only when the defendant actually leaves the scene of the accident. *See Petroleum Carrier Corp. v. Snyder*, 161 F.2d 323, 327 (5th Cir. 1947) (Georgia hit and run statute). The reason for that limitation is that "what the driver did immediately after the collision [is] relevant *only* to show whether he knew or thought that he was to blame." *Id.* (emphasis added). The statute lists three duties the driver shall fulfill while remaining at the scene without obstructing traffic more than is necessary, but these are not independent duties. A driver cannot violate the hit and run statute by staying and providing allegedly insufficient assistance to the other driver, anymore than he could do so by remaining and refusing to show the other driver his driver's license.

[2] *See Gibson v. State*, 280 Ga. App. 435 (2006); *Steele v. State*, 275 Ga. App. 651 (2005); *Klaub v. State*, 263 Ga. App. 101 (2003); *McKay v. State*, 264 Ga. App. 726 (2003); *Augustin v. State*, 260 Ga. App. 631 (2006); *Klaub v. State*, 255 Ga. App. 40 (2002); *Lawrence v. State*, 257 Ga. App. 592 (2002); *Priester v. State*, 249 Ga. App. 594 (2001); *Couch v. State*, 246 Ga. App. 106 (2000); *Langlois v. Wolford*, 246 Ga. App. 209 (2000); *Gutierrez v. State*, 235 Ga. App. 878 (1998); *Wilson v. State*, 233 Ga. App. 327 (1998); *Scott v. State*, 230 Ga. App. 522 (1998); *Spitzberg v. State*, 233 Ga. App. 848 (1998); *Melvin v. State*, 225 Ga. App. 169 (1997); *Dworkin v. State*, 210 Ga. App. 461 (1993); *Cabral v. State*, 199 Ga. App. 557 (1991); *Thomason v. State*, 190 Ga. App. 447 (1990); *Keenan v. Hill*, 190 Ga. App. 108 (1989); *Burden v. State*, 187 Ga. App. 778 (1988); *Griffith v. State*, 172 Ga. App. 255 (1984); *Pryor v. State*, 102 Ga. App. 744 (1960); *Hunter v. State*, 65 Ga. App. 766 (1941).

As a penal statute, § 40-6-270 must be strictly construed and read according to the natural and obvious import of its language, and its operation should not be extended by application of a subtle and forced interpretation. *Perkins v. State*, 277 Ga. 323, 326 (2003). This rule applies when a penal statute is being construed in the context of a civil action. *Alexander Properties Group, Inc. v. Doe*, 280 Ga. 306, 626 S.E.2d 497, 499 n.3 (2006). It is undisputed that Rennie stayed at the scene of the accident, called 9-1-1 for assistance, and cooperated with police and fire until the police transported him to the hospital for his drug and alcohol test (which was negative). Not only did Rennie not "hit and run" but to put it in the words of the statute itself, Rennie "remain[ed] at the scene of the accident until fulfilling the requirements of [the statute]." Georgia Code Ann. § 40-6-270. Although there is no support at all for a claimed violation of the hit and run statute where a driver stays and does not "run," even if for sake of argument the other requirements were separately chargeable, Rennie still did not violate the statute. Accordingly, as a matter of law, Rennie complied with the hit and run statute, and plaintiff should not be permitted to inject into the trial highly prejudicial evidence or arguments that Rennie violated the statute. *See id.* at 328 (Hutcheson, J., dissenting) ("There was the serious, the very prejudicial error of charging and reading to the jury the Hit and Run Statute.").

II. The Court Should Exclude Any Evidence, Arguments, Or Comments To The Effect That Defendant Rennie Violated A Duty To Rescue Plaintiff.

Plaintiff's counsel should likewise be precluded from attempting to establish that Defendant Rennie violated a purported common law duty to render assistance to the plaintiff after the collision. By complying with the statutory requirement of remaining at the scene, Rennie satisfied any post-accident duties he may have owed. Indeed, while calling for 9-1-1 is not required by the hit and run statute as a separate requirement, Rennie stayed and called 9-1-1. (*See*, Attached copy of the DeKalb County Dispatch Log, and Mr. Rennie's BP cell phone invoice, showing Rennie's call and report of the accident and vehicle fire.)

Georgia common law does not impose a duty upon a motorist to place one's self in peril in order to rescue another motorist. It is well settled that "[A] person is under no duty to rescue another from a situation of peril which the former has not caused." *City of Douglasville v. Queen*, 270 Ga. 770, 773 (1999). Thus, the jury could not properly base a liability finding on Rennie's alleged failure to render assistance, without first finding that Rennie caused the accident. And if the jury makes that threshold finding, there is no need for the jury to consider whether Rennie failed to render assistance – the legal effect of the threshold finding would

be to make defendants liable or not liable for the plaintiff's damages.[3] It is axiomatic that evidence, argument or comment which serves no purpose other than to prejudice the jury should be excluded. *See Dept. of Transp. v. Mendel*, 237 Ga. App. 900, 902 (1999) ("A trial court may exclude relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading of the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.").

Given the sympathetic and severe injuries, the issue of prejudice is especially prominent in this case. Defendants are certainly entitled to a fair trial on the basis of the liability facts, and there can be no doubt about the purpose of the "failing to render assistance" argument. It is patently prejudicial and especially so given the graphic and severe nature of Mr. Chen's injuries.

CONCLUSION

For the foregoing reasons, Defendants BP Corporation North America and Steven Rennie request that the Court grant this Motion in Limine and award defendants any other relief to which they may be justly entitled.

[3] Subject to a determination regarding settling defendant Honda's relationship, if any, to causing Plaintiff's damages.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for all parties in this action with a copy of the Certificate of Service of the foregoing **BP and Rennie Motion in Limine** by electronic filing and that I have served counsel for all parties with a copy of the document by depositing in the United States Mail a copy of same in envelopes with adequate postage thereon, addressed as follows:

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This 30th day of November, 2006.

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