Supreme Court of Georgia
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SUMMARIES OF OPINIONS

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NEUMAN V. THE STATE (S15A0011)

In a 6-to-1 decision, the Supreme Court of Georgia has reversed the conviction of Hemy Neuman, who was found guilty but mentally ill of the 2010 murder of Russell "Rusty" Sneiderman outside a Dunwoody daycare center.

In this high-profile **DeKalb County** case, the high court has ruled that while the evidence "was sufficient to enable a rational trier of fact to conclude beyond a reasonable doubt that Neuman was guilty of the crimes of which he was convicted," it must reverse Neuman's conviction because the trial judge erred by allowing in as evidence the notes and records of two mental health experts who examined Neuman before trial.

"Because the trial court erred in admitting evidence, which was protected by the attorney-client privilege, we now reverse," **Justice Carol Hunstein** writes for the majority.

The State has the option to retry Neuman, who is currently serving a sentence of life in prison with no chance of parole.

According to the State's case, on Nov. 18, 2010, shortly after 9 a.m., Russell "Rusty" Sneiderman dropped off his 3-year-old son at Dunwoody Prep Daycare. Before Sneiderman got back to his car, Neuman, donning a bearded disguise, approached him in the parking lot and with a recently purchased .40 caliber handgun shot Sneiderman four to five times in the neck and torso. Despite the efforts of bystanders and ambulance personnel to save Sneiderman, several of the gunshot wounds were fatal to the 36-year-old father of two. Witnesses described a middle-aged man with a fake beard as the gunman, and a silver or grey Kia Sedona minivan as the getaway car. Investigators discovered that Neuman had rented a silver Kia Sedona the day before the murder and returned it only hours later. Fibers consistent with a costume wig were found in

the van. Once police learned of the rental car connection, and found Neuman had worked closely with the victim's wife, Andrea Sneiderman, at General Electric, they began taking a close look at Neuman as a possible suspect. Investigators found evidence of an ongoing affair between Neuman, a married man with children, and Andrea Sneiderman.

Investigators also discovered that a few weeks before the shooting, Neuman had bought a gun and a box of hollow point bullets from a private seller he found on the Internet. He had gone to a firing range to practice shooting. After the murder, Neuman contacted the young man who had sold him the gun and told him "something bad" had happened with the gun, and he had tossed it into Lake Lanier where no one could find it. He offered the young man money to lie if approached by police.

At trial, two medical experts testified on Neuman's behalf, and both concluded that at the time of the murder, Neuman was unable to distinguish between right and wrong due to a mental illness diagnosed as "bipolar disorder with psychosis, experiencing delusions." But two medical experts who testified for the State concluded that Neuman had been able to distinguish between right and wrong at the time he shot Sneiderman and that the symptoms and behaviors he reported were inconsistent with mental illness. One testified he believed Neuman was "malingering," or faking symptoms of mental illness, while the other said Neuman showed no signs of mental illness, hallucinations or delusions while in jail.

At issue in this opinion are the State's subpoenas of two mental health experts who were hired by Neuman's attorneys and were not initially due to testify. After Neuman pleaded not guilty, Dr. Julie Rand Dorney, a forensic psychiatrist, and Dr. Peter Thomas, a licensed psychologist, met with Neuman at the request of his attorneys to evaluate his psychological issues. Based on the doctors' advice, the attorneys then hired an expert witness to conduct a forensic psychological evaluation of Neuman to assess his criminal responsibility. While initially Neuman had pleaded not guilty, following that expert's evaluation, Neuman changed his plea to not guilty by reason of insanity.

When State prosecutors learned that Dorney and Thomas had met with Neuman, they sought their records from those meetings, over the objection of Neuman's attorneys. Following two hearings, the judge ordered the defense to turn over to the State all the doctors' notes and records concerning their evaluations of Neuman.

In March 2012, the jury found Neuman guilty but mentally ill of Malice Murder and Possession of a Firearm During the Commission of a Felony. He then appealed to the state Supreme Court.

In today's 20-page majority opinion, "we conclude that the trial court erred in disclosing to the State Dr. Rand Dorney's and Dr. Thomas' notes and records concerning Neuman. This evidence was not harmless, and therefore, we must reverse Neuman's conviction."

The majority rejects the State's argument that merely raising an insanity defense waives the attorney-client privilege. In this case, Neuman's attorneys hired Dorney and Thomas as consultants to assist them in evaluating a possible insanity defense for Neuman. When Thomas met with Neuman, he explained he was there at the request of Neuman's attorneys, and whatever Neuman told him would be between Thomas and Neuman's attorneys.

"The attorney-client privilege is 'the oldest of the privileges for confidential communications known to the common law,'" today's majority opinion says. It has long been the law of Georgia that the privilege "includes, by necessity, the network of agents and employees of

both the attorney and client, acting under the direction of their respective principals, to facilitate the legal representation." The privilege is not waived if the expert does not serve as a witness at trial. Here, the attorneys never intended to call Dorney and Thomas as witnesses, and only made the strategic trial decision to do so after the judge turned over their communications to the State.

The majority also has rejected the State's argument that the doctors' communications with Neuman are not protected by the attorney-client privilege because they were not confidential. Neuman signed a form before meeting with Dorney and Thomas that stated their examination of him was "not confidential" and anything "we discuss in the examination may be included in the written report or may be disclosed in court."

However, Dorney explained to Neuman that she and Thomas would report their information only to his attorneys, who would decide how to use it. And, "[a]lthough the form states that the exam would not be confidential, it also states that the exam is at the referral of Neuman's attorneys and information would be reported to trial counsel."

"We find that the communications between Neuman, Dr. Thomas, Dr. Rand Dorney, and Neuman's attorneys were intended to be confidential because it would foster an environment in which the doctors could probe Neuman for the truth, as part of the attorneys' assessment of the viability of an insanity defense," today's majority opinion says. "Thus, we conclude that the notes and records of Dr. Rand Dorney and Dr. Thomas, which the trial court ordered be turned over to the State, were protected by the attorney-client privilege."

Finally, while the State argues that any error in providing it with the doctors' files was harmless, "We disagree," the majority states. State prosecutors used the evidence from Dorney and Thomas to argue that Neuman was faking his symptoms and to impeach the statements Neuman made to the defense expert witnesses who evaluated his sanity and subsequently testified. "In this way, Dr. Rand Dorney and Dr. Thomas, although engaged by the defense to evaluate Neuman, became involuntary witnesses for the State, whose testimony, at least in part, ultimately undercut Neuman's defense," the majority opinion says.

In the dissent, **Justice Harold Melton** argues that he would agree with the majority were it not for the form Neuman signed in jail before he met with Dorney and Thomas. "This document speaks for itself, and the majority has not given any persuasive reason to support its conclusion that the document would somehow do anything other than convey a clear intention to show that the communications between Neuman and Drs. Thomas and Rand Dorney were 'not confidential,'" the dissent says. The form specifically told Neuman nothing was "off the record" and anything he said was "not a secret." And the form said that anything in the written report could "be disclosed in court, without specifying that only Neuman's attorneys would be authorized to make such court disclosures."

"The fact that the attorneys would receive the report first is to be expected, but it does nothing to change the fact that the waiver form indicated that any such report could *also* be later disclosed in court and would not otherwise be confidential," the dissent says.

"The attorney-client privilege protects communications between the client and the attorney that are *intended to be confidential;* the protection does not extend to communications which are not of a confidential nature."

"Because I believe that the majority is incorrect for having concluded that the notes and records of Drs. Rand Dorney and Thomas were subject to the attorney-client privilege under the circumstances of this case, I must respectfully dissent."

Attorney for Appellant (Neuman): J. Scott Key
Attorneys for Appellee (State): Robert James, District Attorney, Anna Cross, Dep. Chief Asst. D.A., Deborah Wellborn, Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Clint Malcolm, Asst. A.G.

TURNER V. GA RIVER NETWORK ET AL. (S14G1780)
GRADY CO. BOARD OF COMMISSIONERS V. GA RIVER NETWORK ET AL. (S14G1781)

In this high-profile environmental case, the state Supreme Court has ruled that the 25-foot buffer required by state law between development projects and the banks of waterways generally does not apply to marshes and wetlands.

With today's 6-to-1 decision, written by **Justice Robert Benham**, the high court has reversed the Georgia Court of Appeals, ruled in favor of the director of Georgia's Environmental Protection Division, and found that under the state's Erosion and Sedimentation Act, a 25-foot buffer is required only along the banks of state waters that are edged by "wrested vegetation," where the force of the water flow has torn away the vegetation and there is a clean demarcation between water and vegetation.

The case arose from efforts by **Grady County** to construct a 960-acre fishing lake by building a dam that would flood various creeks and wetlands. A section of Georgia's Erosion and Sedimentation Act (Georgia Code § 12-7-6 (b) (15) (A)) states that there must be "a 25 foot buffer along the banks of all state waters, as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, except" where one of six exceptions applies. One of the exceptions listed is: "Where the director determines to allow a variance that is at least as protective of natural resources and the environment." Grady County applied to the Environmental Protection Division (EPD) of the Georgia Department of Natural Resources for a buffer variance that would allow it to encroach on the 25-foot buffer required for streams on the site. Georgia River Network and American Rivers opposed the variance, in part because the application failed to address the project's impact on nearby wetlands. However, EPD Director Judson H. Turner issued the variance. The river groups then petitioned for an administrative hearing, and an Administrative Law Judge reversed the variance, concluding that it failed to account for buffers required for wetlands on the site. Turner and the County then sought judicial review in different courts – Turner in **Fulton County** Superior Court and the County in Grady County Superior Court. Both courts reversed the Administrative Law Judge's ruling, finding that the Erosion and Sedimentation Act requires a 25-foot buffer *only* along the banks of state waters edged by vegetation that was disturbed or moved by normal stream flow or wave action.

The river groups then appealed to the Court of Appeals, which reversed the trial courts' rulings on the variance. In a split 4-to-3 vote, the Court of Appeals majority concluded that "the Superior Courts erred by determining that the 25-foot buffer requirement of the Erosion and Sedimentation Act does not apply unless the state waters at issue have banks with wrested vegetation." Rather, the appellate court's majority said, the statute requires a buffer adjacent to "all state waters," not only those where vegetation has been wrested by normal stream flow or wave action. The majority acknowledged that the statute does not set out a way of measuring a buffer where there is no wrested vegetation, but found its interpretation was more in line with

legislative intent, particularly given the legislature's stated intent to strengthen erosion and sediment control. The dissent argued that the statute's specification that the buffer be required along the water's "banks" implies a body of water, such as a river or lake. The dissent argued that given the legislature's intent to prevent erosion, it is possible the legislature concluded a buffer simply was unnecessary where there is no vegetation along the banks or where there is continuous growth of vegetation into the waters, as in wetlands. Turner and the County then appealed to the State Supreme Court, which agreed to review the case to determine whether the Court of Appeals erred in ruling that the statute requires a 25-foot buffer on all state waters regardless of whether they are edged by wrested vegetation.

"Because we find that it did err, its judgment is reversed," today's majority opinion says. "The cardinal rule of statutory construction requires this Court to look diligently for the intention of the General Assembly, and the golden rule of statutory construction requires us to follow the literal language of the statute unless it produces contradiction, absurdity, or such an inconvenience as to insure that the legislature meant something else."

"Here, the Court of Appeals erred because the literal language of the statute does not require a buffer for state waters alongside banks without wrested vegetation." The law does not say: "There is established a 25 foot buffer along the banks of all state waters," the opinion points out. Rather it goes further. "By adding the phrase, 'as measured horizontally from the point where vegetation has been wrested,' the General Assembly expressly defined how the buffer 'is established,'" the majority opinion says. "Since the legislature offered no other method for the buffer to be established but for measuring it horizontally from the point of wrested vegetation, the buffer necessarily cannot be applied to state waters that are adjacent to banks without wrested vegetation. No further interpretation or analysis is required."

In conclusion, the majority opinion says: "In order for the buffer requirement to apply to state waters alongside banks without wrested vegetation, the legislature would need to take action to amend the statute."

Justice Harold Melton dissents, arguing that the statute presents an ambiguity by failing to provide guidance on how to measure the buffer zone for state waters that lack wrested vegetation. Normally, in the face of such an ambiguity, "this Court must give strong deference to the interpretation of the statute made by the Director of the Environmental Protection Division of the Georgia Department of Natural Resources," the dissent says. But such deference is not absolute, and here, the EPD's "extreme interpretation of § 12-7-6 (b) (15) (A) is unreasonable and manifestly contrary to the statute, which is intended to 'protect water quality and aquatic habitat' of all state waters. Providing no buffer at all to state waters without sufficient wrested vegetation works to the detriment of the statutory purpose, and as such, cannot be considered reasonable."

"Accordingly, though I do believe that the EPD may reasonably interpret the ambiguity present in § 12-7-6 (b) (15) (A), that interpretation must extend at least some level of buffer protection to state waters without wrested vegetation," the dissent concludes. "Otherwise, the purpose of the Land Erosion Act to protect water quality and aquatic habitat for all state waters is inappropriately undermined."

Attorneys for Appellants (State and County): Samuel Olens, Attorney General, Nels Peterson, Solicitor General, Isaac Byrd, Dep. A.G., John Hennelly Sr. Asst. A.G., James Coots, Sr. Asst. A.G., Edward Tolley, Devin Smith, Kevin Cauley

Attorneys for Appellees (Rivers): Charles Cork, III, William Sapp, Nathaniel Hunt

LUE, MAYOR V. EADY ET AL. (S15A0117)

Mary Ann Whipple Lue may hold onto her office as Mayor of the City of Gordon, GA, but the lawsuit against her may proceed under an opinion today by the Georgia Supreme Court.

In this locally high-profile case involving a contentious dispute over several actions Lue has taken since she became mayor last year, the high court has unanimously upheld in part and reversed in part a **Wilkinson County** judge's ruling in favor of City Council members who sued the mayor and sought her removal from office.

Lue was sworn in Jan. 6, 2014 as the first African American elected mayor of Gordon. The Gordon City Charter states that the government's authority "shall be vested in a city council to be composed of a mayor and six council members." It also states that "four councilmembers shall constitute a quorum and shall be authorized to transact the business of the city council." The charter defines the powers of the mayor as including the authority to "appoint and remove, for cause, with confirmation of appointment or removal by the council, all officers, department heads, and employees of the city except as otherwise provided by this charter." And the mayor is permitted to "participate in the discussion of all matters brought before the city council and vote on such matters only in the case of a tie vote, except that the mayor may vote in all elections for officers who are elected by the city council and impeachment or removal proceedings whether there is a tie or not."

Since taking office, Lue has had several run-ins with the City Council and citizens, including her attempt to fire the city attorney. Barely two months after Lue took office, in March 2014, city councilmen Terry Eady and Freddie Densley, along with five residents calling themselves Concerned Citizens of Gordon, sued Lue seeking her ouster and claiming she violated the state's Open Meetings Act and other laws that govern her conduct as a public official. She filed motions to dismiss the suit, arguing that she was protected by sovereign and official immunity and that the plaintiffs failed to state a claim under the Open Meetings Act. The judge denied her motions. In June 2014, Eady and the others filed an application for a Temporary Restraining Order and an "Interlocutory," or pretrial, Injunction. The judge granted the application for a TRO and suspended Lue from office pending trial. In July, the trial court entered an order ending the mayor's suspension but imposing certain restrictions on her, including prohibiting her from meeting privately with three or more councilmembers to discuss city business and requiring such meetings be open to the public. She was also prohibited from voting unless there was a three-to-three tie and from terminating any city employee without full due process and the court's approval. Mayor Lue then appealed to the state Supreme Court the denial of her motions to dismiss the case, the denial of her motion that the trial judge be recused, and certain terms of the pretrial injunction.

In today's 25-page opinion, written by **Justice Robert Benham**, the high court addresses each challenge made by Lue, including her motion to dismiss the portion of the lawsuit seeking her removal from office. The city charter dictates how a mayor may be removed from office, which includes an order by the Wilkinson county superior court. The grounds for removing a mayor include incompetence, misfeasance or malfeasance in office. Here, the plaintiffs alleged Lue violated the Open Meetings Act and committed other wrongdoing as the grounds for ousting her. "Nevertheless, a complaint for removal from office is one that must be asserted against the

office holder, in her individual capacity, not against the office," today's opinion says. Here, "plaintiffs did not name the mayor in her individual or personal capacity, but only in her capacity as mayor. Consequently, the trial court erred in denying Mayor Lue's motion to dismiss that portion of the complaint seeking removal from office."

Similarly, the complaint against Lue for violating the state's Open Meetings Act does not name her in her individual or personal capacity, only in her official capacity, and therefore must be dismissed, the opinion says.

While the high court has upheld the trial court's denial of Lue's motion that the judge recuse himself and the trial court's denial of her motion to dismiss plaintiffs' claim that they be awarded attorney's fees, it has reversed other parts of the trial judge's ruling. Lue argued that portions of the pretrial injunction were based on a misinterpretation of the city charter, and "we agree that the trial court misinterpreted the charter and reverse the noted portions of the interlocutory injunction order," the opinion says.

The first provision of the injunction challenged by Lue was the prohibition against her meeting privately with three or more councilmembers to discuss city business. The charter stipulates that "four councilmembers" shall constitute a quorum to transact city council business. The trial court's order, however, stated that this "includes occasions where at least three councilmembers and the mayor are present."

"But the language of the charter…specifically defines a quorum as consisting of 'four councilmembers,' and it makes a distinction between councilmembers and the mayor," today's opinion says. "That being the case, a meeting of three councilmembers plus the mayor does not constitute a quorum of the city council and is not a meeting that is subject to the Open Meetings Act." As a result, "we reverse that section of the interlocutory injunction order requiring compliance with the Open Meetings Act for meetings including Mayor Lue that do not involve a quorum of four councilmembers."

As to the mayor's challenge related to the city attorney, under the city charter, the mayor may participate in the council's discussions of matters before it, but she can vote in such matters only when there is a tie vote. However, she may vote in all elections of officers who are elected or removed by the city council, whether or not there is a tie. But neither the city attorney nor city employees are elected officers, the opinion says, and therefore, the mayor could only vote to remove them if there were a tie between councilmembers. "City employees are appointed by the mayor and are not elected officers, and therefore the challenged provision of the interlocutory injunction order does not violate the terms of the charter," the opinion says.

Lue also objected to the injunction's order prohibiting her from firing any city employee without full due process and approval by the court. While the record reflects that the councilmembers and citizens seeking the mayor's removal are concerned she may have plans to terminate some city employees, no allegation has been made that she has improperly done so yet. Courts will not issue injunctions "to allay mere apprehensions of injury, but only where the injury is imminent and irreparable and there is no adequate remedy at law," today's opinion says. "This section of the interlocutory injunction order is, therefore, reversed."

Among other issues, the high court has rejected Lue's contention that the lawsuit against her should be dismissed because as mayor, she is neither a natural person nor an entity capable of being sued. "Being named as a defendant in a lawsuit in an official capacity, rather than an individual capacity, does not mean the person so named is an entity incapable of being sued," the

opinion says. "[W]e conclude here that plaintiffs' claim against Lue, in her official capacity as mayor, is in essence a claim against the City of Gordon, which is a legal entity incorporated by the General Assembly and capable of being sued."
Attorney for Appellant (Lue): Wayne Kendall
Attorneys for Appellees (Eady): M. Devlin Cooper, Anna Bullington

KAUTZ, MAYOR V. POWELL ET AL. (S14G1161)

In another case involving a mayor of a Georgia city, the Supreme Court of Georgia has decided in favor of the Mayor of Snellville, ruling that she has the authority not only to appoint the City Attorney, but also to fire him.

In today's unanimous opinion, written by **Justice Harold Melton**, the high court has reversed decisions by the Georgia Court of Appeals and the Gwinnett County Superior Court, which both ruled that only the Snellville City Council has the authority under the city charter to fire the city attorney.

In November 2011, Kelly D. Kautz was elected as the first female mayor of Snellville in **Gwinnett County**. Anthony O. L. Powell was city attorney at the time, having been appointed by the previous mayor. Under the Snellville City Charter, the mayor is the Chief Executive Officer of the City and has certain appointment powers. Among them, the charter states: "The mayor shall appoint a city attorney, together with such assistant city attorneys as may be authorized, and shall provide for the payment of such attorney or attorneys for services rendered to the city." The tenure of the city attorney is not defined, and the charter does not explicitly state what official has the authority to terminate the city attorney or any appointed officer. One other section of the charter is at issue here – Section 2.16 – which states: "Except as otherwise provided by law or this Charter, the city council shall be vested with all the powers of government of this city." According to briefs filed in the case, the parties differ in their account of what happened to Powell. Kautz claimed that following her election, she told Powell he would no longer be needed as she intended to appoint a new city attorney, which she did. However, the five-member city council voted to retain Powell as a separate attorney for themselves, according to Kautz, and in an attempt to compromise with them, she reappointed Powell. In December 2012, however, Kautz again informed Powell of her intent to appoint a new city attorney, citing his lack of communication and exorbitant bills. She appointed a new law firm and says Powell then refused to relinquish his position or files. According to city council members, after appointing a new city attorney in November 2011, Kautz fired him four months later. She appointed another attorney who lasted less than 60 days, after which she reappointed Powell in April 2012. In December 2012, she attempted to terminate Powell a second time. She appointed two women from a law firm and when they resigned in January 2013, she attempted to appoint another attorney. At that point, the city council insisted Powell continue to serve as city attorney.

On Jan. 9, 2013, Kautz sued Powell and four of the five city council members, asking the court to declare that as mayor, she had the sole power to appoint the city attorney and the sole power to terminate him. Following a hearing, in April 2014, the trial court ruled against her. Kautz then appealed, and in a 4-to-3 decision, the Court of Appeals upheld the trial court's judgment, finding that while the charter "expressly authorizes the mayor to hire the city attorney," Section 2.16 gave the city council all powers not expressly granted to the mayor, including the power to terminate the city attorney. Kautz then appealed to the state Supreme

Court, which agreed to review the case to determine whether the Court of Appeals erred in ruling that the Snellville City Council retains the sole power to remove the city attorney.

In today's opinion, the Supreme Court has determined that the Court of Appeals erred and has reversed its decision.

"[T]he powers which a city government may lawfully exercise must be derived from its charter or the general laws of the state," the opinion says. Under the Snellville city charter, the mayor "shall appoint the city attorney," who may then serve for an indefinite time. Quoting a 1925 Georgia Supreme Court decision, the opinion then states: "Under such circumstances, '[w]here as here, the tenure of the office is not fixed by law, and no other provision is made for removals…it is…a sound and necessary rule to consider the [appointing authority's] power of removal as incident to the power of appointment."

"Accordingly, under the longstanding and universally accepted rule outlined above, the mayor retained the power to remove the city attorney after appointing him or her for an otherwise indefinite period of time," today's opinion says. "This remains so even under § 2.16 of the Snellville city charter on which the Court of Appeals erroneously relied to support its conclusion that the city council retained the sole power to terminate the employment of the city attorney."

Attorneys for Appellant (Kautz): S. Lester Tate, III, Phyllis Miller, Zahra Zarinshak, Christopher Adams

Attorneys for Appellees (Council): Anthony O.L. Powell, Robert Wilson, Nathan Powell

HUMPHREY V. THE STATE (S15A0588)

A man who has been in prison 16 years for murder and is representing himself has had part of his life prison sentence thrown out under an opinion today by the Georgia Supreme Court.

Justice Keith Blackwell writes for the unanimous Court that a portion of the sentence Jamel Humphrey agreed to under a plea bargain – in which he promised not to seek parole for 25 years – is illegal and therefore void under state law, and "we reverse the judgment of the trial court and remand the case with direction."

In 1997, Jamel Humphrey, then 21, was charged with beating to death 21-month old Jalliyah Humphrey, who was believed to be his daughter and whose body was found in a heavily wooded lot in Athens, **Clarke County** GA. In 1998, Humphrey pleaded guilty but mentally ill to the child's murder and agreed as part of a plea bargain to a life prison sentence with the stipulation that he would be ineligible for parole until he had served a minimum of 25 years. In exchange, the State agreed it would not seek the death penalty or a prison sentence of life with no chance of parole. At the time, state law dictated that someone under a life sentence had to serve a minimum of 14 years in prison before becoming eligible for early release under parole.

In 2013 and 2014, representing himself ("pro se"), Humphrey filed motions to modify what he said was an invalid plea and to throw out what he said was an illegal and void sentence. The trial court denied his motions.

But in today's opinion, the high court agrees with Humphrey that state law authorizes only three punishments for murder: the death penalty, imprisonment for life with no possibility of parole ever, or imprisonment for life with the possibility of parole as soon as permitted by law. (The law has been amended since Humphrey was sentenced and anyone sentenced today to life in prison would have to serve at least 30 years before becoming eligible to seek parole.)

"It is true that Humphrey consented to his sentence, including the provision that he would be ineligible for parole for the first 25 years of that sentence," today's opinion says. "But when a court imposes a criminal punishment that the law does not allow, the sentence is not just an error, it is void. And as we have indicated in a number of cases, the consent of the parties cannot validate a void sentence."

Humphrey's sentence limits eligibility for parole in a way not authorized by Georgia statutes. "By imposing such a sentence, a court intrudes upon the constitutional prerogative of the State Board of Pardons and Paroles to extend clemency to persons under sentence," the opinion says. "Although the Constitution permits the General Assembly by statute to limit this prerogative in certain respects, the Constitution gives the courts no such authority. For that reason, a judicial incursion upon the constitutional prerogative of the Board 'violates the constitutional provision regarding the separation of powers.' And whatever the prosecuting attorneys and defendant in a criminal case might agree to, they cannot simply by agreement confer upon the judicial branch an extraconstitutional power to limit the constitutional prerogatives of another branch of the government."

"Accordingly, we reverse the denial of the motion to vacate the sentence, and we remand for the trial court to vacate the provision of the sentence that purports to limit Humphrey's eligibility for parole."

In a footnote, however, the Court cautions: "No one should misunderstand our decision as holding that [Humphrey's] promise not to seek parole is unenforceable. When a defendant promises the State that he will not ask for parole, his promise is a personal one. It does not require a court to do anything, and it does not purport to limit the constitutional power of the Board. If Humphrey breaks his promise and applies to the Board for parole before he has served 25 years, the State may ask the Board itself or a court to enforce the promise. We express no opinion today about the availability of a remedy for the State, but our decision does not foreclose the possibility of such a remedy."

Attorney for Appellant (Humphrey): Jamel Humphrey (pro se)
Attorneys for Appellee (State): Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G.

BOWDEN V. THE MEDICAL CENTER, INC. (S14G1632)

The Supreme Court of Georgia has reversed a Georgia Court of Appeals decision and ruled in favor of an uninsured woman who was injured in a car wreck.

In today's unanimous opinion, written by **Justice David Nahmias**, the high court has ruled that prior to trial, the woman is entitled to detailed records from the hospital to determine whether its charges for her care were unreasonable.

On July 1, 2011, Danielle Bowden was in a collision in Columbus, GA in **Muscogee County** and taken by ambulance to The Medical Center hospital where she received emergency medical treatment and was hospitalized for three days. Bowden, 21, did not have health insurance. She had been riding as a passenger in a rental car which was owned and self-insured by Enterprise Leasing Company South Central, LLC. The hospital billed Bowden $21,409.59 for her treatment, which included emergency surgery, two CT scans and physical therapy during the three days she was hospitalized. While Bowden was in the hospital, her mother signed a document entitled, "Patient Acknowledgment, Assignment of Benefits and Consent Agreement,"

agreeing for her daughter that she was "individually obligated to pay the account in full of the hospital, and attending physicians…." Bowden presented her medical bills to Enterprise, which had insured the rental car up to $25,000. The hospital, meanwhile, filed a hospital lien to recover the costs of Bowden's care. The hospital offered to settle its near $21,500 lien for $8,333, but Bowden refused. When Bowden and the hospital could not reach a settlement, Enterprise filed an action against both of them and paid the $25,000 into the registry of the court for the court to settle the distribution. In a "cross-claim" against the hospital, Bowden then alleged that the hospital's charges were unreasonable and excessive because she was charged more than an insured patient, there was no valid contract between the hospital and her, the hospital had engaged in deceptive trade practices, and it would be unjustly enriched if it collected the full amount. The hospital filed a counterclaim seeking a declaration from the court that its hospital lien was valid.

To support her claim that the hospital's charges were not reasonable, Bowden sought during the discovery process – when the parties share information prior to trial – the hospital's pricing agreements with various insurance companies, the number of uninsured patients it treated, and information about the hospital's revenue. Among the documents her attorneys sought were rate-setting agreements for three years between the hospital and Medicaid, Medicare, Blue Cross/Blue Shield of Georgia, Tri-Care, and the indigent patient program, as well as specific, itemized bills of what she would have been charged if covered by any of those programs. The hospital's lawyers objected to her requests, arguing they were irrelevant, involved confidential and proprietary information, and were overly broad and burdensome. Bowden responded by filing a Motion to Compel the hospital to turn over the documents. The Muscogee County Superior Court granted her motion. But the Court of Appeals reversed the trial court ruling. It found that the hospital had already provided Bowden with information required under state law, including a summary of standard charges, and that her discovery requests seeking information about negotiated insurance rates were not relevant to her claim that the hospital's charges were unreasonable. In this pre-trial, or "interlocutory," appeal, Bowden then appealed to the state Supreme Court, which agreed to review the case to determine whether the Court of Appeals erred.

In today's 22-page opinion, the high court has ruled that the Court of Appeals was wrong. "[W]here the subject matter of a lawsuit includes the validity and amount of a hospital lien for the reasonable charges for a patient's care, how much the hospital charged other patients, insured or uninsured, for the same type of care during the same time period is relevant for discovery purposes," the opinion says.

Under Georgia Code § 9-11-26, unless otherwise limited by an order of the court: "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party…."

"In this civil suit, Bowden seeks to invalidate The Medical Center's hospital lien on the ground that the lien amount – which was the amount The Medical Center billed her for – grossly exceeds the reasonable charges for her care, while The Medical Center alleges that $21,409.59 was a reasonable charge for her care and seeks a declaratory judgment that its lien is valid," today's opinion says. "Thus, the 'subject matter involved in the pending action' indisputably

includes whether, in the words of the hospital lien statutes, 'the amount claimed to be due' by The Medical Center consists of the 'reasonable charges' for Bowden's hospital care."

The question is whether the documents Bowden has requested are "relevant" – "in the broad discovery rather than the narrower trial sense of that term – to the reasonableness of The Medical Center's charges for her care," today's opinion says.

"The fair and reasonable value of goods and services is often determined by considering what similar buyers and sellers have paid and received for the same product in the same market, with adjustments upward or downward made to account for pertinent differences, and we see no reason why the same cannot be true of health care."

"At issue now is an order compelling discovery, not a judgment validating or invalidating The Medical Center's hospital lien or even a ruling on the admissibility at trial of specific evidence – all matters on which we express no opinion," the decision says. "For present purposes, all we hold is that the discovery Bowden sought may have some relevance to the reasonableness of The Medical Center's charges for her care, and thus, assuming no other objections to her various requests are made and sustained, before this case proceeds to…trial, not only The Medical Center but Bowden is entitled to see what the information and documents show and whether they support her claims and defenses."

"Consequently, the trial court acted within its discretion in ordering The Medical Center to provide the requested discovery," the opinion says. In reaching the contrary conclusion, the Court of Appeals erred. "We therefore reverse the Court of Appeals' judgment."

Attorneys for Appellant (Bowden): Charles Gower, Austin Gower
Attorney for Appellee (Hospital): Bobby Scott

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IN OTHER CASES, the Supreme Court of Georgia has upheld **murder** convictions and life prison sentences for:

* Joshua Bernard Ferguson (Richmond Co.)	**FERGUSON V. THE STATE (S15A0309)**
* Faud Abdulaziz Mohamud (Gwinnett Co.)	**MOHAMUD V. THE STATE (S15A0586)** (The Supreme Court has upheld Mohamud's murder conviction but thrown out his sentence for aggravated assault. The aggravated assault conviction should have been merged into his murder conviction for sentencing purposes because the facts that proved each crime were the same.)
* Sharmilla Melissa Powell (Wayne Co.)	**POWELL V. THE STATE (S15A0600)**
* William Howard Powell (Wayne Co.)	**POWELL V. THE STATE (S15A0601)**
* Fabian Powers (Fulton Co.)	**POWERS V. THE STATE (S15A0504)**

IN DISCIPLINARY MATTERS, the Georgia Supreme Court has **disbarred** the following attorneys:

* Perrin Bowie Lovett **IN THE MATTER OF: PERRIN BOWIE LOVETT (S15Y0878)**

* Melissa Jill Starling **IN THE MATTER OF: MELISSA JILL STARLING (S15Y0904, S15Y0905)**

The Court has accepted a petition for **voluntary surrender of license** – tantamount to disbarment – from attorney:

* James Alan Langlais **IN THE MATTER OF: JAMES ALAN LANGLAIS (S15Y1181)**