Supreme Court of Georgia
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SUMMARIES OF OPINIONS

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WARREN V THE STATE (S15A0795)

The Supreme Court of Georgia has thrown out a **Cobb County** court order that would have forced a man deemed mentally incompetent to take anti-psychotic medication so he could stand trial for murder.

In this high-profile case, the State is seeking the death penalty against Jesse James Warren for the 2010 shooting rampage at the Penske Trucking Company that left four dead.

But in today's 53-page decision, written by **Justice David Nahmias**, "we conclude that the trial court's order was insufficient in numerous respects to justify Warren's involuntary medication for the sole purpose of making him mentally competent to stand trial for the very serious crimes he is accused of committing." As a result, "we vacate the trial court's order and remand the case for further proceedings in light of this opinion."

According to briefs filed in the case, on Jan. 12, 2010, Warren, armed and dressed in camouflage clothing, went to the Penske truck rental facility in Kennesaw, GA and opened fire, shooting five men, four of whom were employees. A fifth was a customer who happened to be there at the time. Three died within a couple of days of the shooting. The fourth died more than three years later. The fifth shooting victim was paralyzed. Warren had previously worked at the facility before being fired in 2008. He was originally indicted with three counts of murder, and the State filed notice it would seek the death penalty. After the fourth man later died, Warren was re-indicted in October 2013 with four counts of malice murder and four counts of felony murder, along with a number of other charges.

Warren's attorneys filed a Notice of Intent of Defense to Raise Issues of Insanity, Mental Illness, or Mental Retardation. They also filed a Special Plea of Mental Incompetency to Stand Trial. Following a hearing, the trial court ordered he be evaluated by doctors from the Georgia Department of Behavioral Health and Developmental Disabilities. Following an examination by Dr. Brian Schief, a psychiatrist, and Dr. Don Hughey, a psychologist, who diagnosed him with "Delusional Disorder, Mixed Type," in May 2013, the trial court found Warren, 60, incompetent to stand trial. The judge ordered he be committed to the Department of Behavioral Health for further evaluation. Since then, Warren has remained in Central State Hospital, a state psychiatric hospital. In September 2013, Drs. Schief and Hughey notified the court that Warren remained incompetent. Among his delusions, he told police following his arrest that he had been awarded $500 million for his work in the Navy on a broadband communication project and that it had been stolen, according to briefs filed in the case. He also believed he was the Son of God, had been given his name by the Masons, and members of his church were "out to get him." The State filed a Motion to Compel Involuntary Antipsychotic Medication, his attorneys opposed the motion, and following a hearing in June 2014, the judge granted the State's motion to force the medication. Warren's attorneys then appealed the pre-trial ruling to the Georgia Supreme Court.

His attorneys argued the trial court's ruling did not meet the four-pronged test set out in the U.S. Supreme Court's 2003 ruling in *Sell v. United States.* Under *Sell,* four requirements must be met to force the administration of antipsychotic drugs solely for the purpose of restoring defendants to competency: A court must find that an important governmental interest is at stake; that the administration of the drugs is "substantially likely to render the defendant competent to stand trial" and "substantially unlikely to have side effects" that will interfere with his ability to assist his lawyer in conducting his defense; that involuntary medication is necessary because other less intrusive treatments are unlikely to achieve the same results; and that the medication is medically appropriate.

Today's opinion addresses each of the four parts of the *Sell* test in detail, finding "clear errors in the trial court's ruling." In relation to finding an important governmental interest, while the trial court's findings were incomplete, "the court did not err in its conclusion that the State demonstrated important governmental interests in rendering Warren competent to stand trial, and those interests are not offset by any special circumstances of the case." "Warren is accused, among other crimes, of shooting five people, killing four of them and paralyzing the fifth," the opinion says. "These are crimes against persons of the most serious magnitude."

However, with regard to the remaining three steps of the *Sell* test, the trial court's order merely recites the relevant language from *Sell,* providing insufficient written findings for the Supreme Court to review. The "fundamental problem" with the trial court's ruling on the second, third and fourth parts of the test "is that the court has not specified what antipsychotic medication or medications may be forcibly administered to Warren, in what dosage or range of dosages, for what period of time, and with what oversight by the court," the opinion says. "This is a problem created by the State – which drafted the order the trial court signed – because the State has not presented a specific treatment plan for Warren supported by expert testimony, nor can any particular treatment plan be readily discerned from the evidence offered at the hearing." This is not the first time the issue has come up. At the hearing on the State's motion, Warren's attorneys asked the trial court to require the State to provide a specific treatment plan, but the State objected and the court denied the request. The State has contended that it is impossible to

establish a specific treatment plan for Warren, the opinion says, because the only way to know how any given patient will respond to antipsychotic medication is to administer various drugs and see what happens through "trial and error."

But "*Sell* did not condone – nor will this Court allow – trial courts to cede oversight of such a significant constitutional matter to the State, allowing its doctors to force a mentally ill criminal defendant to take whatever medications in whatever dosages and for whatever period of time they consider appropriate," the opinion says. "We would hope that the State's physicians, as healthcare professionals, would not misuse such unfettered authority, but history teaches that involuntary medical treatment, especially of the poor, the outcast, and the incarcerated, is worthy of close and independent oversight."

Today's opinion points out that since the June 2014 hearing on the State's motion to force medication, it is possible Warren's mental and physical condition has changed or that new scientific information is available regarding antipsychotic drugs and their likely effectiveness and side effects. "Consequently, if the State elects to pursue its motion for involuntary medication on remand, the trial court should allow the parties to present additional evidence to ensure that the court's findings are based on current circumstances," the opinion says.
Attorneys for Appellant (Warren): Gerald Word, Michael Ivan, Jimmy Berry, Teri Thompson
Attorneys for Appellee (State): D. Victor Reynolds, District Attorney, Jesse Evans, Dep. Chief Asst. D.A., Donald Geary, Chief Asst. D.A., John Edwards, Asst. D.A.

INGRAM V. THE STATE (S15A1188)

The Georgia Supreme Court has upheld the murder convictions and prison sentence of life without parole given to a man for killing two baby sisters who perished in a fire after the man, in a gang-related retaliation, threw a Molotov cocktail into their mother's apartment.

In today's opinion, written by **Chief Justice Hugh Thompson**, "we conclude that, when viewed in the light most favorable to the verdicts, the evidence presented at trial and summarized above was sufficient to authorize a rational jury to find appellant guilty beyond a reasonable doubt of the crimes for which he was convicted."

According to the facts of the case, Kimjon Ingram and his former girlfriend, Cassandra Heflin, were members of the FOLKS gang in Atlanta. Although the two had broken up, they remained friends. Meanwhile, Charmaine Henderson lived in a second story apartment on Cooper Street in **Fulton County** with her 6-week-old and 21-month-old daughters, Lexusous and Donisha Henderson, as well as her roommate, Cantinas "Kina" White. On July 22, 1994, Heflin called Ingram and told him her sister was had been "jumped on" by some members of the rival CRIPS gang at Charmaine Henderson's apartment. Ingram told Heflin he would "go take care of that." Heflin told him to "blow them up if you have to," by which she later said she meant that Ingram, who always carried a gun, should shoot them if necessary. According to witnesses, Ingram began making Molotov cocktails, or firebombs, in the rear of his car, filling bottles with liquid gasoline and stuffing rags into them. Ingram then drove to Henderson's residence and threw two Molotov cocktails into her apartment window. According to briefs filed in the case, the first went through the living room and ended up in the hallway where it exploded. Henderson had just put her babies to bed down the hallway while she, her roommate and another adult were in the living room watching TV. Henderson and the others tried to get to her daughters but the flames in the hallway blocked them. They ran outside, screaming for help, and a neighbor came

to assist. He entered the apartment and heard the babies crying but could not get to them. A police officer, the first responder to arrive, said that he too could hear the babies' cries. But neither he nor a fireman who arrived shortly after could enter the apartment because the room just inside the apartment door was by then fully engulfed in flames. When the flames were mostly extinguished, one of the firemen entered the apartment and crawled along the floor, eventually finding the toddler sitting on a potty chair. He scooped her up and brought her outside, but both she and her infant sister had died from smoke inhalation.

Ingram was indicted in 1999 for two counts of felony murder, aggravated assault, arson in the first degree and possession of an explosive device. The State announced it would seek the death penalty. The jury for his case was selected on Sept. 10, 2001 and opening statements were due to begin the next day, Sept. 11, which was the date of the terrorist attack. The judge therefore canceled court that day but resumed the next, denying Ingram's motion requesting a continuance, or postponement. The jury subsequently convicted Ingram of all charges and he was sentenced to life in prison with no chance of getting out on parole. After the trial court denied his motion seeking a new trial in 2012, he then appealed to the state Supreme Court, arguing that a number of errors were made during his trial and his convictions should be reversed.

In today's opinion, the high court has rejected them all. The trial judge took steps to question jurors and to ensure they were comfortable moving forward in light of the events of Sept. 11. "Under these circumstances, and because the events of this case did not involve a terror attack like those of September 11, we conclude that the trial court did not clearly abuse its discretion in denying appellant's motion for a continuance," the opinion says. Among other issues, Ingram's attorney argued his trial attorney was ineffective for failing to object when the prosecutor, during closing arguments, sang "Happy Birthday" to the two deceased victims. However, because he failed to raise the issue at the earliest possible time, under court procedures, he is prohibited from raising it for the first time when the case is on appeal. Ingram also argued the trial court erred by instructing the jury it could consider the intelligence of witnesses in assessing their credibility. However, today's opinion says this Court has held that, "even assuming that 'the better practice is to omit intelligence as one of the factors in the credibility charge,'" its inclusion is not an error that requires reversal of the judgment.

In a concurrence, **Justice Carol Hunstein** agrees with the final judgment but writes to remind State prosecutors "that it is not their job to pursue stunts and antics during their closing arguments that are designed merely to appeal to the prejudices of jurors, but to see that justice is done and nothing more. That duty should not be forgotten in an excess of zeal or the eager quest for victory in any given case." She adds that, "Likewise, the trial judges of this state have a duty to maintain dignity and decorum in their courtrooms, and trial judges have the authority 'to control the courtroom by putting an end to the display of the prosecutor, even absent an objection from defense counsel.'"

Attorney for Appellant (Ingram): Dwight Thomas

Attorneys for Appellee (State): Paul Howard, Jr., District Attorney, Paige Whitaker, Dep. D.A., Michael Snow, Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Meghan Hill, Asst. A.G.

JOHNSON V. THE STATE (S15A0937)

The Supreme Court of Georgia has unanimously upheld the murder conviction and life prison sentence given to a young man who gunned down his stepfather in their Savannah home.

In this locally high-profile case, a **Chatham County** jury found Farren Johnson guilty but mentally ill of malice murder and other crimes for the 2008 shooting of Clarence Alston in the back of his head.

In today's unanimous opinion, **Justice David Nahmias** writes for the court that, "when viewed in the light most favorable to the verdicts, the evidence presented at trial…was sufficient to authorize a rational jury to find [Johnson] guilty beyond a reasonable doubt of the crimes for which he was convicted."

According to the facts at trial, Johnson, who was 24 at the time of the shooting, lived in a duplex in Savannah with his mother, Monica Johnson, and Alston. Monica Johnson and Alston, who was unemployed, were married but in the process of getting a divorce due to financial disagreements and the antagonistic relationship between the two. Police had been called to the duplex several times due to fights between Johnson and Alston. Johnson, who believed Alston was taking financial advantage of his mother, typically instigated the altercations, which usually ended with Alston pinning Johnson to the floor until he calmed down. Twice, Johnson threatened to kill Alston. In the months leading up to the shooting, Monica Johnson began telling her son he needed to move out and start to make it on his own. At the same time, she told both her husband and son she planned to leave. After finding her own place to live, she arranged to have her furniture picked up from the duplex the afternoon of May 28, 2008.

That night, around 8:30 p.m., when Monica Johnson returned home from work, her son stopped her from going inside, saying, "Mom, don't go in," "call the cops," "I did something wrong. I did something bad." She told her son he should call police, since he knew what had happened. Johnson then called 911 and said, "I shot him in the head. I killed him. He was trying to kill my mother." He told his mother he shot Alston "because he was taking you away from me." Responding officers found Alston inside the duplex lying lifeless in a pool of blood. Johnson was arrested and taken into custody.

In a videotaped interview shortly after his arrest, Johnson said he had come home around 6:00 p.m. and discovered the furniture was gone. Alston was sitting in a lawn chair inside the duplex, watching television, drinking a beer, and laughing. Johnson claimed he became angry because he believed that the furniture had been repossessed due to Alston's irresponsibility and that Alston was laughing about it. Johnson then went to his room, took out a .38 caliber gun he had purchased nine days earlier, unlocked the hammer with the safety key, loaded it, and went back to where the victim was sitting. He said he was almost out the front door when he dropped something. "I picked it up and I was like, man, forget this, man. I can't go – keep going and letting my mother go through this….That was the boiling point….And I snapped." Johnson claimed no words were spoken before he turned around, closed his eyes and squeezed the trigger, shooting Alston four times in the back of the head. During the interview with the detective, Johnson talked about the disputes he and his stepfather had been having, and claimed he had just "snapped" after seeing the furniture missing and his stepfather laughing about it. At trial, a detective testified that while Johnson kept bringing up those disputes, there was no evidence of physical or sexual assault by Alston against his stepson. Three mental health experts for the defense – two of whom had treated Johnson at Georgia Regional Hospital while he was awaiting

trial – testified they had diagnosed the young man as having a delusional disorder. But the State's two mental health experts testified there was not enough evidence to diagnose Johnson with any mental illness, and there was no evidence he was operating from a delusional compulsion at the time of the shooting. Rather, they said, his behavior seemed motivated by anger and frustration.

Johnson's trial attorney submitted a written request asking the judge to instruct the jury that they could consider Johnson guilty of the less serious charge of voluntary manslaughter. The attorney argued that the furniture being removed was the last straw and caused Johnson to snap. And Alston's laughter constituted the "provocation" that is required under the law to excite the passion necessary for voluntary manslaughter. But the trial court ruled against him.

In his appeal, Johnson's attorney made only one argument: that the trial court erred in denying his request to charge the jury on voluntary manslaughter. The trial court ruled that the victim's behavior was insufficient to justify a jury instruction on voluntary manslaughter.

"And we agree," today's opinion says. "A charge on voluntary manslaughter must be supported by evidence that the defendant 'act[ed] solely as the result of a sudden, violent, and irresistible passion resulting from serious provocation sufficient to excite such passion in a reasonable person.'" Johnson's attorney argued that Johnson was provoked to kill his stepfather due to passion caused by his antagonistic relationship with Alston, the family's financial problems, and the victim's laughter when he arrived home the night of the shooting. "But this Court has consistently held that, as a matter of law, these sorts of provocations are not sufficiently serious to provoke a 'sudden, violent, and irresistible passion' that would compel a reasonable person to kill," the opinion says. "This is especially so given the lengthy interval between the past altercations and the killing." In this case, Johnson's anger "was not triggered by an immediate argument and instead of just pulling out a gun and shooting, he had to go to his bedroom to get his gun, unlock the hammer, load the gun, and return with it to the living room, where he shot the unarmed, television-watching victim four times in the back of the head without exchanging a word."

Under these circumstances, Johnson's "response to the provoking incident was objectively unreasonable, and nothing in the evidence required a charge on voluntary manslaughter," today's opinion says.

Attorney for Appellant (Johnson): Amy Ihrig, Office of the Public Defender
Attorneys for Appellee (State): Margaret Heap, District Attorney, Greg McConnell, Chief Sr. Asst. D.A., Lyndsey Rudder, Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G., Matthew Crowder, Asst. A.G.

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IN OTHER CASES, the Supreme Court of Georgia has upheld the **murder** convictions and two consecutive life prison sentences given to:

* Larry Craig Cash (Haralson Co.) **CASH V. THE STATE (S15A1247)**

* George Redding (Fulton Co.) **REDDING V. THE STATE (S15A0985)**

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

* Douglas J. Mathis	**IN THE MATTER OF: DOUGLAS J. MATHIS (S15Y1627, S15Y1628)**

The Court has accepted a petition for voluntary discipline and ordered a **public reprimand with conditions** of attorney:

* Susan Michele Brown	**IN THE MATTER OF: SUSAN MICHELE BROWN (S15Y1555)**

The Court has **rejected a petition for voluntary discipline** from attorney:

* Morris P. Fair, Jr.	**IN THE MATTER OF: MORRIS P. FAIR, JR. (S16Y0025)**

(Fair had requested a Review Panel Reprimand, but the Court rejected his petition in light of his prior disciplinary history.)