



Supreme Court of Georgia

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SUMMARIES OF OPINIONS

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THE STATE V. LEWIS (S15G0666)

Under a ruling today by the Supreme Court of Georgia, the case involving former **DeKalb County** schools Superintendent Crawford Lewis is being returned to DeKalb Superior Court to determine whether he testified truthfully against his two co-defendants. If he did, his sentence will be changed from a year in prison to a year on probation, as originally agreed upon by State prosecutors and Lewis' attorneys in a plea arrangement.

In today's ruling, **Chief Justice Hugh Thompson** writes for the high court that although the trial judge accepted the terms of the plea bargain negotiated between the State and Lewis, the judge retained the authority to determine whether Lewis truthfully testified against his co-defendants, as required by the terms of the agreement. Although the judge implied that Lewis may have been less than truthful, she made no written findings to that effect, so the case must be remanded.

“Should the trial court find after consideration of the record, the parties' arguments, and the evidence that Lewis did not testify truthfully, Lewis will lose the benefit of the negotiated sentencing agreement and the court will be relieved of its duty to impose the promised probationary sentence,” the opinion says. “If, however, the trial court determines on remand that Lewis testified truthfully, the condition precedent to the trial court's obligation to impose the probationary sentence recommended by the State will have been met and the interests of justice and our decision in this appeal will require the trial court to sentence him according to the negotiated plea agreement.”

Today's opinion upholds a Georgia Court of Appeals ruling that by accepting the terms of the negotiated plea agreement, the trial judge had agreed to sentence Lewis to probation

instead of to prison. However, the Court of Appeals also concluded that Lewis was entitled to the negotiated sentence only if he testified truthfully at the trial of his co-defendants, and that while both the State prosecutors and Lewis' attorneys claimed his testimony had been truthful, the trial judge apparently disagreed.

According to the facts of the case, Patricia Reid, Anthony Pope, and Lewis were indicted by a DeKalb County grand jury and charged with violating Georgia's Racketeer Influenced and Corrupt Organizations Act (RICO) and felony Theft-by-Taking related to some school construction projects. As part of a negotiated plea agreement, District Attorney Robert James, representing the State, agreed to dismiss the felony charges against Lewis in exchange for his guilty plea to one misdemeanor count of hindering and obstructing a law enforcement officer, conditioned upon Lewis testifying truthfully against his co-defendants. Lewis agreed, with the understanding that the State would recommend a sentence of 12 months probation, a \$500 fine, and 240 hours of community service. The record shows that the State prosecutors and Lewis' attorneys had a plea discussion with then-DeKalb County Superior Court Judge Cynthia Becker in her office prior to the entry of Lewis' plea and that the judge "went along" with the State's recommendation. After accepting Lewis' plea, the trial judge deferred sentencing him until the end of trial.

Lewis subsequently testified at trial, and his co-defendants were ultimately convicted. At Lewis' sentencing hearing, the District Attorney told the judge Lewis had complied with the plea terms by testifying truthfully and asked the judge to impose the agreed-upon sentence. However, the judge refused the State's recommendation and sentenced Lewis to 12 months imprisonment instead of probation. Lewis was taken into immediate custody and the trial judge refused to consider bond.

Lewis' attorneys filed an emergency motion for an immediate hearing seeking reconsideration of Lewis' sentence in accordance with the negotiated plea agreement, asking for the recusal of the trial judge if reconsideration was denied and, in the alternative, asking to withdraw Lewis' guilty plea. The trial judge set an emergency hearing for one week later and refused to grant Lewis' request for an immediate bond. Three days later, in response to an emergency motion filed by Lewis in the Court of Appeals, that court issued an order directing the trial court to set a reasonable bond immediately, and Lewis was released on bond. Subsequently, at the emergency hearing, the judge denied Lewis' request for reconsideration and warned him that his prior testimony would be used against him in future prosecution if he withdrew his plea. Furthermore, the judge stated that her decision regarding Lewis' sentence was based on "the credibility, the believability, the probability or the improbability of the testimony" she had heard, implying that Lewis may have lied at the trial of his co-defendants. Rather than withdraw his plea, Lewis then appealed to the Court of Appeals.

In its October 2014 opinion, the Court of Appeals found that "the record shows that the State had made a negotiated plea recommendation and that the trial judge went along with this recommendation at the time she accepted the plea. Although Lewis' sentencing was deferred, the trial judge had, at the very least, implicitly agreed to sentence him according to the State's recommendation, provided that he testified truthfully at the trial of his co-defendants. Lewis relied on the trial court's acceptance of his negotiated plea when he later waived his Fifth Amendment rights and testified on behalf of the State at trial, wherein he provided testimony that incriminated himself." Under the circumstances here, the Court of

Appeals ruled, “we find that the interests of justice require that Lewis be sentenced according to the State’s recommendation pursuant to the negotiated plea, provided that he testified truthfully on behalf of the State at the trial of his co-defendants.” However, the Court of Appeals determined that even though both parties agreed Lewis had complied with the terms of the plea agreement and testified truthfully, the trial court retained the authority to decide whether the terms of the parties’ plea bargain had been fulfilled. Based on this part of its ruling, the Court of Appeals threw out the trial court’s judgment and ruled the case must go back to the trial court to determine whether Lewis had fulfilled his obligation of testifying truthfully. The State then appealed to the Georgia Supreme Court, which agreed to review the case to determine whether the Court of Appeals erred in its rulings.

“Because we conclude that the Court of Appeals’ opinion properly balanced the rights of the parties with respect to the enforcement of the terms of a plea agreement with the power of the trial court to reject such agreements, we affirm” the Court of Appeals decision, today’s Supreme Court opinion says.

With this opinion, “we reject the broad proposition posited by the parties that once a trial court accepts a plea agreement in a criminal prosecution, it has no authority to determine whether the parties to that agreement, either the State or the defendant, have complied with its terms and no authority to reject the plea agreement and agreed-upon sentence based on one party’s lack of performance if the other party does not complain of the lack of performance.”

Both the State prosecutors and Lewis’ attorneys argued that because the trial court was not a party to the plea agreement, it had no independent role in determining whether the agreement’s conditions were met. Therefore, because the State was satisfied Lewis had fulfilled his obligations, they argued, the trial court was obligated to sentence him to probation.

“We disagree,” today’s opinion says. “Although under Georgia law a trial court does not participate in plea negotiations and is not a party to any plea agreement or contract that may be reached, the court nonetheless plays an active role in overseeing the performance of such agreements,” the opinion says. “A trial court is clearly authorized to set aside a plea bargain based on a defendant’s breach.” As numerous courts have concluded, “it is the responsibility of the trial court, not the State, to determine whether a plea agreement has been breached.”

The Supreme Court concludes “that as a general rule, where a defendant has performed under the terms of a negotiated plea agreement to his or her detriment in reliance on the trial court’s acceptance of the plea terms, the trial court, like the prosecution, will be bound by its promises.” However, if “the trial court found Lewis materially breached the plea agreement by failing to provide truthful testimony, the court would be relieved of its duty to sentence Lewis according to the State’s recommendation, regardless of any consequences Lewis might suffer as a result of his partial performance.”

The Supreme Court agrees with the Court of Appeals that the case must be remanded. In imposing a harsher sentence on Lewis than the State recommended, the judge only implied Lewis may have breached the agreement by testifying untruthfully.

“As the trial court made no express finding with respect to this issue, however, we agree that Lewis’ sentence must be vacated and the case remanded for a hearing to determine the appropriate sentence,” the opinion says.

Attorneys for Appellant (State): Robert James, District Attorney, Anna Cross, Dep. Chief Asst. D.A.

Attorneys for Appellee (Lewis): Michael Brown, Bernard Taylor, Kacy Brake

DANIELS V. THE STATE (S15A1428)

In a high-profile Atlanta cold case, the Georgia Supreme Court has upheld the rape and murder convictions of a man who remained undetected for nearly two decades until advances in DNA analysis and the law led to a match between his DNA and that of his 25-year-old victim.

In today's unanimous decision, written by **Presiding Justice P. Harris Hines**, the high court has affirmed the life prison sentence given to Larry Daniels, who was found guilty by a **Fulton County** jury of the 1991 rape and murder of Latrenda Jennings.

However, the high court finds that in addition to sentencing Daniels for Jennings' murder, the trial court also should have sentenced him separately for rape. It is therefore sending the case back to the trial court to correct the sentence.

According to the facts of the case, on April 21, 1991, a jogger found Jennings' body next to the track at Booker T. Washington High School. Her belt was wrapped around her neck in a tight knot and her jeans were on the ground, covered in mud and urine. Her leggings had been partially removed and her legs were spread. Rigor mortis had set in. Various personal effects were found nearby including a crack pipe, lighters, and her purse. The police found no drugs or money on her, but later learned that in the months leading up to her death, Jennings had been using crack cocaine and working as a prostitute.

The autopsy revealed that Jennings died of ligature strangulation. The medical examiner found abrasions on her lower back, buttocks and shoulder, which he said were consistent with someone struggling while lying face up. He also found a laceration to Jennings' vagina, which was oozing blood when her body was found and was consistent with "traumatic intercourse." The medical examiner performed a sexual assault kit, swabbing Jennings' mouth, anus, breast and vagina. He sent the swabs to the Georgia Bureau of Investigation (GBI) Crime Lab, whose analysis showed there were intact spermatozoa cells in her vagina from a single unidentified male. The GBI crime lab technician later testified that spermatozoa tend to break up over time, suggesting that the intact cells collected from the sexual assault kit had been in Jennings' body for only a short period. Sperm can remain in the body as long as 72 hours. The anal swab also tested positive for traces of seminal fluid. At the time, there was no national CODIS (Combined DNA Index System), which is a national computer database made up of individuals' DNA profiles. With no fingerprints and no suspect with whom they could do a DNA comparison, Jennings' case eventually was classified as cold.

It languished until May 2009 when the Fulton County District Attorney Cold Case Squad reviewed the file. Although most of the evidence collected at the scene had been lost during the nearly two decades since Jennings' murder, the rape kit remained in evidence and it was sent to a DNA lab in Texas. The lab was able to create a DNA profile from the kit and it was uploaded in the CODIS database. It was also compared with a man named Frank Gibson who had been a potential lead in the case, but the profiles did not match. In December 2009, however, the database returned a match for the profile. The DNA found in Jennings' body matched Larry Daniels, who had recently been sentenced to 12 years in prison after pleading guilty to two armed robberies. As a convicted felon, Daniels had been required to give a DNA sample. A new

DNA sample was obtained from Daniels, and it confirmed that the sperm found in Jennings was his. During questioning, Daniels denied knowing Jennings but later admitted that he could not say he had never met her. He admitted he had previously traded crack cocaine for sex with women but that none of the transactions had ever resulted in violence. He said he was familiar with the area where Jennings' body was found, denied hanging out there, but said he had been to Washington High School to play sports while he was attending West Fulton High School, a nearby rival.

During the investigation, officers learned that nine months before Jennings' murder, Daniels had attacked another woman. On July 11, 1990, after offering to give the woman a ride home, he instead drove her to Maddox Park where he began to beat and choke her while pulling at her clothes and breast. An Atlanta police officer intervened after witnessing Daniels kicking the woman as she lay on the ground. Daniels attempted to escape but was arrested. The incident occurred in the vicinity of Washington High School.

In August 2010, Daniels was indicted for malice murder, felony murder based on aggravated assault, felony murder based on rape, aggravated assault, and rape. In June 2012, a jury found him guilty of all charges. His eventual sentence was to life in prison on top of the sentence he was already serving for armed robbery. Daniels appealed to the state Supreme Court, arguing that "no rational finder of fact could have found that the State proved Mr. Daniels guilty beyond a reasonable doubt."

In today's opinion, the high court disagrees. "The state in which Jennings' body was discovered, and its location which was well familiar to Daniels, coupled with the DNA evidence linking only Daniels to Jennings, the evidence that the sexual intercourse was close in time to the murder, Daniels' differing stories to police, and the evidence of prior similarly violent sexual conduct by Daniels were sufficient to support the jury's conclusion that Daniels assaulted, raped, and murdered Jennings as opposed to having engaged in consensual sex with her prior to her death at the hands of another," the opinion says. "Simply, the evidence was sufficient to enable a rational trier of fact to find Daniels guilty beyond a reasonable doubt of the crimes for which he was convicted."

However, the trial court erred in sentencing Daniels, the high court has found. Instead of recognizing that Daniels' conviction of malice murder required that the two felony murder verdicts be vacated for sentencing purposes, the judge "merged" the felony murders into the malice murder conviction, and then "merged" the aggravated assault and rape into the felony murders. As a result, Daniels was only sentenced for murder. The correct analysis was for the trial judge to determine whether the aggravated assault and rape convictions merged with the malice murder based on the facts. The high court found that while the aggravated assault merged with the malice murder because they involved the same act – strangulation – the rape was a separate act and did not merge with the malice murder. Consequently, Daniels should have been sentenced separately for that crime. "Accordingly, the case is remanded to the trial court for resentencing" on rape, the opinion concludes.

Attorney for Appellant (Daniels): Michael Tarleton

Attorneys for Appellee (State): Paul Howard, Jr., District Attorney, Paige Whitaker, Dep. D.A., Joshua Morrison

THE STATE V. CASH ET AL. (S15A0720)

In an opinion today, the state Supreme Court has ruled that a mother and daughter who were convicted of murdering the daughter's boyfriend are entitled to a new trial.

With today's unanimous ruling in this high-profile case, the high court has upheld a **Paulding County** judge's order granting a new trial to the mother and her 20-year-old daughter. The State had appealed the judge's ruling, arguing the judge was biased and should have recused himself.

In today's opinion, however, **Chief Justice Hugh Thompson** writes for the Court that "we dismiss the State's appeal of the denial of its motion to recuse and affirm the trial court's grant of new trials to appellees."

According to the facts of the case, on Memorial Day weekend, 2011, Lennis Donovan "Donny" Jones was at the home of Elgerie Mary Cash in Dallas, mowing the grass. Jones, 44, was friends with Cash, 45, and according to prosecutors, had recently become romantically involved with Cash's daughter, 20-year-old Jennifer Weathington. The women later said that Jones came inside the house in the afternoon. Soon after, neighbors heard an outcry from the house, and the next-door neighbor said Cash ran out of the house shouting that "Donny" had been shot. Deputies from the Paulding County Sheriff's Office arrived within minutes where they found Cash standing on the front porch crying, screaming for help, and saying that it was an accident. They found Jones in the upstairs bedroom lying on the floor, with a single gunshot wound to the head. Weathington was crouching by Jones and holding a towel to his head, crying and begging for help, and telling Jones to "hang on." Jones, who was still alive at that point, was transported to Kennestone Hospital where he died later that day. Cash and Weathington told officers at the scene that Jones had been examining a Glock automatic pistol recently purchased by Cash and, believing it to be empty, had placed the pistol to his head and pulled the trigger. Officers later testified that at that point, they did not suspect foul play. Jones' body was transferred to the Georgia Bureau of Investigation where medical examiner Dr. Jonathan Eisenstat conducted an autopsy. He found no stippling or powder tattooing at the site of Jones' wound and concluded the fatal shot was fired from at least 18 inches from the point of entry and it was not possible the wound was self-inflicted. According to prosecutors, while Cash told officers that Jones had held the pistol "against his right temple," the bullet had entered behind and below his right ear and exited at the top left of his forehead. On June 6, 2011, investigators used a search warrant to go through Cash's home where they found Jones' baseball cap in the laundry room, which had Jones' blood on it. According to the women's attorneys, Jones had been wearing the hat at the time of his death, which could explain the finding that the wound was inflicted from at least 18 inches away.

More than six months later, in December 2011, Cash and her daughter were arrested and charged with Jones' murder. In October 2013, a jury convicted both of them of malice murder, felony murder, two counts of aggravated assault and possession of a firearm during the commission of a felony. Each was sentenced to life in prison plus five years on the gun charge. They filed a motion requesting a new trial, and a hearing was set for May 12, 2014. Four days before the hearing, the State filed a motion asking the judge to recuse himself. The trial judge dismissed the motion and denied the State's request for a "Certificate of Immediate Review," which would have allowed the State to appeal his refusal to recuse himself and allow another judge to hear the motion. Following a two-day hearing, the trial judge granted the women a new

trial, finding that the jury's verdict went against the weight of the evidence and that the women's attorneys had rendered ineffective assistance of counsel based on a number of deficiencies, including their failure to secure expert testimony at trial. The court also characterized the conduct of Cash's attorney during trial as "atrocious." The State then appealed to the Georgia Supreme Court, arguing the trial court had erred in granting a new trial and in refusing to recuse himself.

Today's opinion first addresses the issue of recusal, stating that Georgia Code § 5-7-1, "which we have repeatedly held lists the types of trial court rulings that the State may appeal, does not provide for appeals by the State from final judgments." Rather, that statute permits the State to appeal an order denying a motion to recuse or disqualify a judge only if that order is made "prior to the defendant being put in jeopardy," or prior to the jury being impaneled and sworn. "Here, because the State did not file its motion to recuse until after appellees' convictions and shortly before the hearing on their motions for new trial, jeopardy had attached and the State thus does not have a right to appeal under § 5-7-1," the opinion says. Also, "because there is no constitutional right to appeal, there is no merit to the State's argument that it violates its right to due process to deny it an opportunity to appeal the denial of its recusal motion."

The State also argued that the trial judge abused his discretion in granting a motion for new trial. "We disagree," today's opinion says. As this Court has stated: "Even when the evidence is legally sufficient to sustain a conviction, a trial judge may grant a new trial if the verdict of the jury is 'contrary to...the principles of justice and equity,' or if the verdict is 'decidedly and strongly against the weight of the evidence.' When properly raised in a timely motion, these grounds for a new trial – commonly known as the 'general grounds' – require the trial judge to exercise a 'broad discretion to sit as a thirteenth juror.' In exercising that discretion, the trial judge must consider some of the things that she cannot when assessing the legal sufficiency of the evidence, including any conflicts in the evidence, the credibility of witnesses, and the weight of the evidence."

In this case, although there was a hat at the crime scene, police did not recover it until a week later, after noticing it in a photograph. Before then, Cash had thrown it in the garbage but later retrieved it and put it in the laundry with some dirty clothes. The hat had Jones' blood on it and a bullet hole that matched the location of the entry wound to Jones' head. Forensic testing also showed gunshot residue on his hand. But the medical examiner had completed his autopsy before the hat was discovered and tested. Based on the evidence available to him at the time of the autopsy, he concluded that Jones did not shoot himself.

In his ruling on the motion for new trial, the judge noted that both women had immediately called for help; that investigators failed to take the hat immediately; that the medical examiner did not have the hat when he conducted his initial autopsy; and that the hat had Jones' blood on it. The judge then stated, "So I will – in the role of the thirteenth juror,...grant a new trial in this case," adding that "my granting a new trial is consistent with the principles of equity and justice."

Today's opinion states: "We conclude that the trial court, who observed the trial and who had the duty to examine the conflicts in the evidence and the credibility of the witnesses in ruling on the general grounds, did not abuse its broad discretion in granting appellees' new trials on the general grounds."

Attorneys for Appellant (State): Donald Donovan, District Attorney, Steven Messinger, Chief Asst. D.A.

Attorneys for Appellee (Cash): Robert Citronberg, Andrew Fleischman

POST V. THE STATE (S15A1189)

FRIPP V. THE STATE (S15A1190)

BROWN V. THE STATE (S15A1193)

In another case involving a request that a judge recuse himself, the Georgia Supreme Court has thrown out or reversed murder convictions of two men and a woman. The high court has found that **Cobb County** Superior Court Judge Reuben Green was wrong in denying the defendants' motions asking him to withdraw from the case.

With today's unanimous decision, written by **Justice David Nahmias**, two of the three defendants effectively have been granted a new trial based on Green's failure to recuse himself. The third may or may not eventually win a new trial depending on whether a new judge determines that Green should have withdrawn from presiding over his case as well.

According to the facts of the case, on Dec. 9, 2009, Desmond Omar Post, Rolaunda Fripp, and Joseph Brown, along with Darchelle R. Arnold and Jarvis A. Butts, decided to "hit a lick," which is street slang for committing a robbery. Their plan was to lure victims with money from a nightclub to a vacant apartment in the Las Colinas Apartments in Marietta, where they all lived. Acting on the plan, the two women – Arnold and Fripp – went to the Sportsline Bar on Windy Hill Road where they met, danced and drank with Christopher Jackson, Mark Jones, and Josh McCarter. Arnold had noticed that all three men were flashing a lot of cash. At some point, Arnold invited the men to her apartment. As the bar closed, Fripp, Arnold, and the three men left the bar in two cars. On the way to the apartment, Arnold called Butts from her cell phone to let him know she and Fripp were coming back with the three men. At the complex, Fripp led the three unarmed victims – Jackson, Jones and McCarter – into a dark, abandoned, graffiti-ridden apartment where she knew that Butts, Post and Brown would be waiting. As soon as they walked into Apartment 21-3, Butts, Post and Brown rushed into the room and yelled at the victims to get their hands up and get down on the floor. All three victims put their hands up. But in the chaos, Brown began shooting, hitting Jackson and Jones. The gunman then held the pistol to McCarter's head and demanded everything he had. McCarter gave up his wallet and cigarettes and begged for his life until the assailants ran from the apartment. When Fripp and Arnold had first entered the vacant apartment with the victims, they immediately headed toward the back and escaped out a window. They heard the gunshots behind them as they made their way to Arnold's apartment. Five minutes later, Brown, Post and Butts joined them. Brown had a gun, and he told the women he had shot the victims. Meanwhile, still at the abandoned apartment, McCarter told Jackson he was going to find help. By then Jones was unresponsive, but Jackson was conscious, though unable to talk. McCarter ran to a nearby QuikTrip store and called 911. By the time police arrived at the apartment, they found Jackson and Jones lying on the floor. Jones was dead, and while Jackson was still alive, he later died at a hospital. With McCarter's help, police were able to quickly identify and arrest the suspects. Post, Butts, and Brown eventually admitted to police they'd been hiding in the apartment awaiting the victims' arrival.

Prior to trial, Arnold pleaded guilty to murder, armed robbery and aggravated assault and agreed to testify for the State. She was given two life sentences and 20 years on probation. The

remaining four co-defendants were tried together and found guilty of murder, armed robbery and aggravated assault. Arnold subsequently attempted to withdraw her guilty plea, but her motion was denied, and in November 2012, this Court upheld the denial. In October, the Court upheld Butts' convictions and prison sentence. This appeal to the state Supreme Court involves Post, Fripp, and Brown.

At issue in this appeal is Green's denial of the defendants' pre-trial motions asking him to recuse himself. On Oct. 6, 2010, the governor appointed Green to Cobb Superior Court, and the case of Post, Fripp, and Brown was assigned to him. In April 2011, two months before the scheduled trial date, Post's attorney filed a motion for recusal based on the fact that at the time Green was appointed to the bench, he was campaigning for election to the State Court and District Attorney Patrick Head, whose office was prosecuting the three defendants, served as Green's campaign treasurer. Also, prior to becoming a judge, Green had worked in Head's office as an assistant district attorney during the preparation of this case. At a final pretrial motions hearing six weeks after Post filed his recusal motion, Green engaged the parties in a lengthy discussion about the issue of his recusal. Based on that discussion, Fripp's and Brown's attorneys subsequently also filed motions asking Green to recuse himself on the ground that he had created an appearance of impropriety by defending himself against the recusal allegations.

Today's 33-page opinion sets out in detail the process and analysis courts must follow in response to a motion asking a judge to recuse himself from a case. Under Rule 25.3 of the Uniform Superior Court Rules, when a trial judge is asked to recuse himself, "the judge shall temporarily cease to act upon the merits of the matter" and "immediately" determine three things: (1) whether the motion was filed within the required timeframe; (2) whether the affidavit accompanying it is legally sufficient; and (3) whether the affidavit sets forth facts that if proved, would warrant the judge's recusal from the case. If all three criteria are met, "another judge shall be assigned to hear the motion to recuse," the rule says.

On appeal, Post argued that Green erred in finding that he failed to satisfy the three criteria that trigger the requirement to refer a recusal motion for reassignment to another judge. "We agree," today's opinion says. "To summarize, taken at face value, Post's April 18, 2011 recusal motion was timely, he substantially complied with the accompanying affidavit requirement, and the motion included an allegation – that the district attorney prosecuting him was serving as treasurer for the trial judge's election campaign – that was potentially sufficient to warrant the judge's recusal." "We therefore vacate Post's convictions and Judge Green's order denying his recusal motion, and we remand this case to the trial court to be referred for the assignment of a judge other than Judge Green to decide the recusal motion."

The opinion goes on to say that if the assigned judge denies Post's recusal motion, Judge Green will continue to preside over the case and the convictions against Post should be reinstated. If the recusal motion is granted, however, his case also "would start over" before a new judge.

As to the case involving Fripp and Brown, based on the judge's statements at the final pretrial motions hearing, "we conclude that Judge Green was required to refer the motions for reassignment, and that the judge who should have heard the motions would have had no choice but to grant them," the opinion says. "Accordingly, a remand for the motions to be heard by a new judge is unnecessary, and the orders denying Fripp's and Brown's recusal motions are reversed."

“We have previously held that a judge cannot become actively involved in presenting evidence or argument against a motion seeking his recusal without that defense itself becoming a basis for recusal,” the opinion says. “Accordingly, we reverse the orders denying Fripp’s and Brown’s recusal motions, vacate their convictions, and remand their cases to the trial court with direction that the cases be reassigned to a new judge to continue with pretrial proceedings from the point at which Brown and Fripp filed their meritorious recusal motions.”

Attorneys for Appellants (Post, Fripp, Brown): Ashleigh Merchant, Christopher Geel, Kenneth Croy, Mitch Durham

Attorneys for Appellees (State): D. Victor Reynolds, District Attorney, Jason Samuels, Asst. D.A., John Pursley, Asst. D.A., John Edwards, Asst. D.A.

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

- * Samuel Johnson Hayes (DeKalb Co.) **HAYES V. THE STATE (S15A0764)**
- * Eugene McDuffie (Telfair Co.) **MCDUFFIE V. THE STATE (S15A1093)**
- * Joseph Andrew Thomas (Richmond Co.) **THOMAS V. THE STATE (S15A0777)**
(While the high court upheld Thomas’ murder conviction and life prison sentence, it has thrown out his sentences for five counts of aggravated assault with a deadly weapon. For sentencing purposes, those counts should have been merged into his armed robbery and attempted armed robbery convictions, which involved the same five victims.)

IN DISCIPLINARY MATTERS, the Georgia Supreme Court has accepted a petition for **voluntary surrender of license** – tantamount to disbarment – from attorney:

- * Wilson R. Smith **IN THE MATTER OF: WILSON R. SMITH (S16Y0217)**

The Court has ordered the **3-month suspension with conditions** of attorney:

- * James A. Meaney, III **IN THE MATTER OF: JAMES A. MEANEY, III (S16Y0034)**