Court of Appeals
of the State of Georgia

ATLANTA, September 18, 2012

The Court of Appeals hereby passes the following order:

A13A0123. TRACY LASHAWN SMITH v. THE STATE.

Tracy Lashawn Smith was indicted for felony murder, aggravated assault, and aggravated battery. A jury found Smith guilty of aggravated assault and aggravated battery, but a mistrial was declared as to felony murder. After the State announced its intent to re-try Smith on the felony murder charge, Smith filed a plea in bar on double jeopardy grounds. The trial court denied the plea in bar, and Smith filed this appeal.

Under our Constitution, the Supreme Court has appellate jurisdiction over murder cases in which a sentence of death "was imposed or could be imposed." Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (8). This jurisdiction includes all murder cases, regardless of whether the State is seeking the death penalty or life imprisonment. *Neal v. State*, 290 Ga. 563, 572 (722 SE2d 765) (2012) (Hunstein, J., concurring). Thus, "[b]ecause the murder count of the indictment remains pending below, jurisdiction of this appeal lies in [the Supreme] Court." *Langlands v. State*, 280 Ga. 799, 799 (1) (633 SE2d 537) (2006). See also *WALB-TV v. Gibson*, 269 Ga. 564, note 2 (501 SE2d 821) (1998) (where an appeal is taken from an order "entered in the context of a murder prosecution," and the order affects the defendant's constitutional rights, jurisdiction of the appeal lies in the Supreme Court). Accordingly, this appeal is hereby TRANSFERRED to the Supreme Court.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, 09/18/2012
I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.
Witness my signature and the seal of said court hereto affixed the day and year last above written.

Kelly K. O. Loomis, *Clerk.*