Supreme Court of Georgia
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SUMMARIES OF OPINIONS

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OTIS V. THE STATE (S15A1717)

Under an opinion today by the Supreme Court of Georgia, a man charged with stabbing to death a 75-year-old woman can no longer be prosecuted for murder because a **Fulton County** judge mistakenly called a mistrial after the jury had been seated and the murder trial was underway.

In today's unanimous opinion, **Justice Robert Benham** writes for the high court that the State is barred from proceeding in its case against Geary Otis, in which prosecutors were seeking a punishment of life in prison with no chance of parole, because a retrial would subject Otis to double jeopardy in violation of his constitutional rights.

According to briefs filed in the case, Otis, a New Orleans native, moved to Atlanta in 1988 and retired in 2009. In March 2014, he was indicted by a Fulton County grand jury for murder in connection with the 2013 stabbing death of 75-year-old Mary Oliver and the aggravated assault of 71-year-old Emmanuel Surry, as well as for two counts of possession of a knife during the commission of a felony and other crimes. The State gave notice it would seek a prison sentence of life without parole.

On April 7, 2014, trial began, and a jury was selected and sworn in, after which both sides gave opening statements. Otis's attorney began hers by stating, "Geary Otis last June just snapped." She said that would be the only explanation the jury would hear for what had happened. She said the evidence would show that Otis, 64 and overweight, suddenly exhibited "incredible physical prowess, superhuman strength," as he ran up the stairs in a high-rise independent living facility, fought with Surry, kicked down a metal door and stabbed Mary Oliver several times, cutting into her bone and spinal column. The attorney described how police

had to use a Taser to subdue him, with Otis yelling, "You a lie, you a lie." The lawyer asked the jury to consider "what crazy people look like," as "mental illness" comes in many forms. "I'll be asking for the only verdict that speaks the truth in this case, and that is that Geary is not guilty by reason of insanity." It was the first the State heard that the defense planned to use "not guilty by reason of insanity" as its defense. Following opening statements, the State prosecutor objected to Otis's intent to pursue the insanity defense because prosecutors had not been given any pre-trial notice of the defense strategy. While Otis's attorney agreed she had not given any pre-trial notice, she asserted it was not required as she did not intend to use any expert testimony but instead would rely only on lay witnesses. The judge recessed the proceedings until the next morning, instructing the parties to prepare to address the issue of notice under Uniform Superior Court Rule 31.1, which requires that notice be given by the defense when it plans to "raise the issue of insanity or mental illness." The next morning, the prosecutor for the State agreed that because the defense attorney would not be relying on expert witnesses, the defense attorney was not required to give the State notice of its planned defense strategy. Neither the State nor the defense requested a mistrial. The trial judge, Superior Court Judge Ural Glanville, stated he still thought Otis was required to give the State notice he was pursuing an insanity defense even if he was doing so through lay witnesses. The prosecutor pointed out how the State had been harmed by the lack of pre-trial notice, as prosecutors could have tried to speak with family members in Louisiana about Otis's mental health history and tried to find whether any medical records existed or not. The prosecutor requested a three-day postponement until the following Monday, April 14, to attempt to locate lay witnesses to refute the insanity defense. The judge stated he was unsure three days would be long enough for the State to prepare to rebut the defendant's defense and also said he himself had "other plans" the following week. The judge suggested the trial could be set for April 21, but he did not want to hold the jury that long. The judge concluded that a continuance (or postponement) of two weeks was "not the proper vehicle." He then, on his own and without either party's request ("sua sponte"), declared a mistrial. However, he suggested the trial would be back on the trial calendar in less than two weeks.

On April 14, 2014, Otis's attorney filed a "plea in bar," arguing that the State could not re-try Otis because a jury had already been impaneled and therefore a retrial would result in double jeopardy. (The Fifth Amendment to the U.S. Constitution states that, "No person shall…be subject for the same offense to be twice put in jeopardy of life or limb." This provision prohibits state and federal governments from prosecuting individuals for the same crime more than once.) The trial judge denied the plea in bar, entering an order citing "manifest necessity" as the basis for the mistrial due to the defense's failure to give notice of the insanity defense. The trial court determined that, "Defendant's right to have the trial completed by the impaneled jury is outweighed by the public interest in affording the State one full and fair opportunity to present its evidence…." Otis's attorneys appealed to the state Supreme Court, arguing that because the trial court violated his constitutional right to trial by the jury he chose, double jeopardy now precludes any further litigation against him.

"We agree, and reverse," today's opinion says. In its 1995 decision in *Abernathy v. State*, the Georgia Supreme Court ruled: "Because the purpose of notice is to give the State an opportunity to obtain an independent expert mental health evaluation and prepare its evidence in rebuttal… [a defendant] need not provide notice pretrial if he intends to present evidence of mental illness solely through lay witnesses." At the hearing on the issue of notice, the State

acknowledged this Court's decision in *Abernathy* and did not seek a mistrial, but only a continuance. Judge Glanville, however, concluded that the *Abernathy* decision applied only when the insanity defense is pursued in the penalty phase of a death penalty case. The judge then declared a mistrial because he found that Otis had failed to comply with the mandatory notice requirement in Uniform Superior Court Rule 31.1.

"Although *Abernathy* was decided in the context of interim review of a death penalty case, this Court's holding and reasoning were not limited to that context," today's opinion says. "Accordingly, the circumstances in this case did not demand entry of mistrial. The trial court erred in entering a mistrial over the appellant's [i.e. Otis's] objection because appellant did not violate Uniform Superior Court Rule 31.1 when he announced his intent to raise the insanity defense based solely on lay witness testimony without first giving timely notice to the State. As a result, appellant may not be retried."

In a concurrence, **Justice David Nahmias** writes that he agrees with the judgment of today's opinion but questions the ruling in *Abernathy* that "pretrial notice of the defense's intent to present mental health evidence may be required only when the evidence is presented through experts."

"I write to emphasize that Uniform Superior Court Rules 31.1 and 31.5 *need* to be revised, no matter what we think of *Abernathy*," says the concurrence, which is joined by Justice Keith Blackwell. "If we are going to continue to follow *Abernathy*, the holding of that case should be made explicit in the text of the rules, to ensure that trial judges, lawyers, and litigants who read the rules understand that this Court has imposed a significant limitation upon their scope. Under *Abernathy*, the rules should refer to the intention to raise 'the issue of insanity or mental illness' 'using expert evidence.' If instead it is decided that *Abernathy* should not be followed, the rules should clearly abrogate its holding by adding 'using expert or non-expert evidence.'"

"It is apparent that the trial court in this case was striving to produce a fair trial, but the court erred in not abiding by our holding in *Abernathy*," the opinion says. "The result is that Otis cannot be retried for the murder and other crimes he is alleged to have committed."

Attorneys for Appellant (Otis): Amanda Grantham, Bryan Grantham
Attorneys for Appellee (State): Paul Howard, Jr., Paige Whitaker, Dep. D.A., Sheila Gallow, Asst. D.A., Samuel Olens, Attorney General, Beth Burton, Dep. A.G., Paula Smith, Sr. Asst. A.G.

THE STATE V. ANDRADE (S15G0866)

A South Georgia district attorney has won the right to appeal an **Atkinson County** Superior Court ruling that a rape suspect's incriminating statements to law enforcement officers must be suppressed when his case goes to trial.

In a unanimous ruling, the Georgia Supreme Court has reversed a decision by the Georgia Court of Appeals, which found that the state prosecutor had failed to appeal the Atkinson County ruling within the two-day timeframe required for some appeals by a 2013 amendment to a Georgia statute. "The judgment of the Court of Appeals is reversed, and the case is remanded for the Court of Appeals to address the merits of the appeal," **Justice Keith Blackwell** writes for this court.

According to briefs filed in the case, in 2014, 17-year-old Aram Andrade was indicted in Atkinson County for three counts of rape and one count of burglary in the first degree. Prior to trial, his lawyer filed a motion seeking to suppress incriminating statements Andrade made to Pearson police officers in two separate interviews. Following a pre-trial hearing on the motion, the judge granted the motion to suppress as to the second recorded interview, finding that the police officer should have ended the interview when Andrade said he did not want to speak to him. However, the judge found that Andrade's statements in the first interview were admissible and denied his motion to suppress regarding those statements.

The superior court entered its order on June 6, 2014. On June 23, 2014 – 17 days later – the State filed a Notice of Appeal, stating it intended to appeal the ruling suppressing Andrade's statements in the second interview. But the Court of Appeals promptly dismissed the State's appeal and did not consider the merits, finding the State had missed its deadline for filing the appeal as required under Georgia Code § 5-7-1 (a) (5). At issue in this case is whether § 5-7-1 (a) (5), which the legislature recently added as an amendment to § 5-7-1, applies in this case, or whether the provision before it, § 5-7-1 (a) (4), still applies. Under § 5-7-1 (a) (4), the State has the right to appeal any judgment "suppressing or excluding **evidence illegally seized**," and it has 30 days from the date of the order to file a notice that it intends to appeal. Under § 5-7-1 (a) (5), which became effective in July 2013, the State is given the right to appeal any judgment "excluding **any other evidence** to be used by the state at trial," and it has only two days to file its appeal. The Court of Appeals determined that an appeal of an order suppressing statements on the ground they were involuntary is no longer authorized by § 5-7-1 (a) (4) but instead is now authorized by § 5-7-1 (a) (5). As a result, the State missed the two-day deadline, and the appellate court dismissed the appeal on procedural grounds. The State – saying the decision would have a "devastating effect" on prosecutions throughout the state – then appealed to the Georgia Supreme Court, which agreed to review the case to determine whether the appellate court was wrong in ruling that § 5-7-1 (a) (5), rather than § 5-7-1 (a) (4), applies in this case.

The high court has concluded it was wrong. "[F]or nearly 40 years, both this Court and the Court of Appeals have acknowledged repeatedly that an appeal from an order suppressing a statement on the ground that it was involuntary or otherwise obtained by unlawful means is properly brought under § 5-7-1 (a) (4)," today's opinion says. While the Court of Appeals apparently thought these precedents were somehow abolished in 2013 when the General Assembly amended § 5-7-1 by adding paragraph (a) (5), "the enactment of § 5-7-1 (a) (5) did not in any way diminish the scope of § 5-7-1 (a) (4). In the first place, the 2013 legislation did not change a single word in § 5-7-1 (a) (4)."

"Moreover, the preamble to the 2013 legislation is explicit that the Act was intended 'to provide the state with *more* direct appeals rights,'" the opinion says. "Indeed, even since the effective date of the 2013 legislation, our Court has continued to point to § 5-7-1 (a) (4) as a proper basis for appeals by the State from orders that suppress statements given by the accused to law enforcement officers."

"The Court of Appeals was mistaken when it concluded that the appeal in this case was subject to § 5-7-1 (a) (5), and it erred when it dismissed the appeal," the opinion concludes.
Attorneys for Appellant (State): Dick Perryman, District Attorney, Rebekah Ditto, Asst. D.A.
Attorney for Appellee (Andrade): John Strickland, Jr.

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

* Henry Grady Finley, III (Douglas Co.)	**FINLEY V. THE STATE (S15A1595)**
* Hector Marquez (Fulton Co.)	**MARQUEZ V. THE STATE (S15A1459)**
* Anthony Threatt Robinson (Chatham Co.)	**ROBINSON V. THE STATE (S15A1912)**
* Edward Scudder (Fulton Co.)	**SCUDDER V. THE STATE (S15A1312)** (The Court has upheld Scudder's two murder convictions and life prison sentences. But it is sending the case back to the trial court for resentencing because the judge failed to sentence Scudder on two gun possession charges for which the jury found him guilty. The judge erroneously concluded that those gun crimes merged with the other crimes for which Scudder was sentenced.)
* Hoke Smith Tarpley (Laurens Co.)	**TARPLEY V. THE STATE (S15A1457)**
* Sentelle Williams (DeKalb Co.)	**WILLIAMS V. THE STATE (S15A1857)**

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

* Stephen B. Taylor	**IN THE MATTER OF: STEPHEN B. TAYLOR (S15Y1766, S15Y1767)**

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

* Robert B. Eddleman	**IN THE MATTER OF: ROBERT B. EDDLEMAN (S16Y0125)** (All the Justices concur, except Justice Harold Melton, who dissents)