



Supreme Court of Georgia

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SUMMARIES OF OPINIONS

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THE STATE V. JACKSON (S19A0646)

Under an opinion today by the Supreme Court of Georgia, a man whose trial ended in a mistrial may not be retried for murder, as that would violate his constitutional protection against double jeopardy, which prohibits defendants from being prosecuted more than once for the same offense.

In today's decision, written by **Justice Nels S.D. Peterson**, the high court has upheld a **Dougherty County** judge's rulings, granting a mistrial to **Monquez Jackson** and concluding that double jeopardy prohibited the State from retrying him based on the District Attorney's improper closing argument in which he commented on matters that had not been brought into evidence. The trial judge made "extensive findings," the opinion says, that the District Attorney intentionally made the improper statement knowing it would lead to a mistrial and an opportunity to retry the case.

"We conclude that the trial court did not abuse its considerable discretion in granting the mistrial," today's opinion says. "We also conclude that the trial court's factual findings supported its jeopardy ruling and that those findings must stand given the deference we afford them."

In April 2015, Jackson was indicted with his wife, Sade Britt, her brother Dwayne Britt, and Tomeka Porter for various crimes against Anthony Westbrook. Jackson alone was charged with malice murder, while he, his wife and brother-in-law were charged with felony murder, armed robbery, and other crimes. Porter was charged only with conspiracy to commit armed robbery. Prior to Jackson's trial, his three co-defendants all entered into agreements with the

State, with the Britts pleading guilty to less serious crimes in exchange for their testimony. The State agreed to dismiss the charge against Porter if she testified.

Sade Britt, Jackson's wife, testified at trial that her husband shot Westbrook after the couple held him at gunpoint and she used his ATM card to steal money. She testified that her brother, Dwayne Britt, was present when she made the ATM withdrawals and nearby when Westbrook was shot. She said that a few days later, Porter and Jackson dropped her off near Westbrook's van so she could attempt to clean the vehicle of any incriminating evidence. Dwayne Britt also testified for the State, although his testimony differed from his sister's in several respects. He said he was high on drugs that night and did not see Jackson with a gun. Porter, who stated in advance of trial that Sade Britt had confessed to killing Westbrook, never did testify.

The appeal in this case concerns the State's handling of Porter's failure to testify at Jackson's trial. The elected district attorney served as lead counsel for the State at the trial, which began on July 31, 2017. At trial, the defense made multiple hearsay objections as to statements allegedly made by Porter. During the direct testimony of the State's lead investigator, the State attempted to introduce prior statements by Porter, but a hearsay objection was sustained by the trial court. At that point, the district attorney left open the possibility of calling Porter to the stand, but he never did so. After the close of evidence, the State made an oral motion seeking to preclude the defense from making any reference to Porter during its closing arguments, adding that the D.A. would say nothing about her other than that "the State elected not to call her." The trial court agreed with the defense that the defense could mention Porter to the limited extent that the State had mentioned her in its opening, by saying that the charges against Porter had been resolved.

In her closing argument, defense counsel noted that the State had not called Porter to testify, adding, "I wonder what she would have had to say." In his closing, the District Attorney stated the following: "Everything is not needed to be proven. Every witness doesn't need to be called. You have got direct evidence. There is other evidence through testimony that has told you what happened. Even Tomeka Porter, all she could tell you is, 'Yeah, we went back to the car to clean it up.' You have got the evidence to support that already that that happened. That is corroborated. Tomeka Porter wasn't needed. All she can do is say, 'Yeah, I went back and I saw her clean up the car.'" The State omitted any reference to Porter's earlier statement that Sade Britt had confessed to killing Westbrook.

The defense attorney promptly objected on the basis that the D.A. was arguing facts not in evidence. The trial court agreed with the D.A. that his argument was a reasonable inference from Sade Britt's testimony, but the judge ruled that he would instruct the jury that it could not consider any suggestion about what Porter would have said had she testified. After a short recess, the defense moved for a mistrial based on prosecutorial misconduct. The trial judge granted the motion, saying a "curative" instruction to jurors would have been insufficient.

Jackson then filed a Plea of Double Jeopardy and a Motion to Dismiss, arguing that a retrial would constitute double jeopardy because the D.A.'s closing argument was an attempt to goad defense counsel into seeking a mistrial so the D.A. could retry the case. The trial court held a hearing on the motion, at which the D.A. testified that he "did not intentionally goad counsel into trying to ask for a mistrial" and in fact thought he was "winning the case." The trial court granted the defendant's motion, citing the D.A.'s "shifting and conflicting explanations" as to his

closing argument and the “certainly not overwhelming” evidence presented against Jackson. The trial court also cited the D.A.’s considerable experience and noted he would have been well aware that his comments would lead to a mistrial. The State then appealed the trial court’s decision to the state Supreme Court, arguing that the trial court abused its discretion in ordering a mistrial.

“We disagree,” today’s opinion says.

According to Georgia Code § 17-8-75, “Where counsel in the hearing of the jury make statements of prejudicial matters which are not in evidence, it is the duty of the court to interpose and prevent the same.” Once an objection is made, if the prosecuting attorney is the offender, the statute says, the judge “may order a mistrial.”

“A trial judge’s decision to declare a mistrial based on his assessment of the prejudicial impact of improper argument is entitled to great deference on appeal, and we will affirm the trial court’s rejection of possible alternatives to a mistrial if reasonable judges could differ about the proper disposition,” the opinion says, quoting the Georgia Supreme Court’s 2015 decision in *Harvey v. State*.

“Finding that the evidence presented against Jackson at trial was not overwhelming, the trial court concluded that the State’s comments were so prejudicial as to create an unfair trial for Jackson,” the opinion says. The State’s lead investigator testified at trial that there was no physical evidence connecting Jackson to the crime and that law enforcement could not corroborate any of his wife’s statements regarding Jackson’s involvement. The D.A. also acknowledged that the only witnesses who testified about Jackson’s involvement were his wife and brother-in-law, and there were inconsistencies in their testimony. “The trial court was in the best position to judge the possible prejudicial impact of the State’s argument,” the opinion says.

As to the trial court’s ruling on double jeopardy, the opinion says that although the U.S. Constitution’s double jeopardy clause does not bar the State from retrying a case after a mistrial is granted due to prosecutorial misconduct, “a retrial may be barred where the misconduct was intended to goad the defendant into moving for a mistrial.” In particular, “the defendant must show that the State was purposefully attempting through its prosecutorial misconduct to secure an opportunity to retry the case....”

Here, the trial court found that the D.A. “acted with specific and deliberate intent to subvert the protections afforded by the double jeopardy clause by goading the defendant into moving for a mistrial,” the opinion says. “The trial court thus made the requisite findings, applying the correct standard.”

Attorneys for Appellant (State): Gregory Edwards, District Attorney, H.R. Moroz, Asst. D.A.
Attorney for Appellee (Jackson): Ingrid Driskell

GLYNN COUNTY SCHOOL DISTRICT V. BRUNSWICK-GLYNN COUNTY JOINT WATER AND SEWER COMMISSION (S19A0819)

The **Glynn County School District** has lost its appeal of a Glynn County Superior Court’s decision ordering it to pay the local water and sewer commission more than \$139,000 in water and sewer debt recovery charges.

Under a ruling today, the high court has upheld – without writing an opinion – the lower court’s order that the school district pay the **Brunswick-Glynn County Joint Water & Sewer Commission** for water and sewer debt recovery charges the school district quit paying in 2014,

arguing it was prohibited from paying the charges by the Georgia Constitution and Georgia statutory law. The trial court found that the school district was not constitutionally or statutorily prohibited from paying the debt recovery fees, and ordered the school district to pay the commission the total amount of debt recovery fees it had accrued since it stopped paying them in September 2014.

Under Georgia Supreme Court Rules, Rule No. 59 states that in civil cases, the high court may affirm a lower court’s ruling without an opinion when one of several circumstances exist, including that the ruling by the lower court “adequately explains the decision and an opinion would have no precedential value.”

Attorneys for Appellant (District): Hieu Nyuyen, Phillip Hartley

Attorneys for Appellee (Commission): Charles Dorminy, Steven Bristol

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

- * Dwayne Leonard Abney (Chatham Co.) **ABNEY V. THE STATE (S19A0741)**
- * Terry Joe Cain (Irwin Co.) **CAIN V. THE STATE (S19A0669)**
(The Supreme Court has upheld Cain’s murder and life prison sentence for shooting to death Matthew Mobley and assaulting Gregory Johnson. But the trial court erred in sentencing Cain for the aggravated assault of Mobley, as that crime merged into the malice murder conviction for sentencing purposes. Therefore, the high court is remanding the case for the trial court to vacate the aggravated assault conviction and the sentence that Cain received for assaulting Johnson.)
- * Edwin Lawrence Chapman (Chatham Co.) **CHAPMAN V. THE STATE (S19A0868)**
- * Kendrick M. Cheeves (Spalding Co.) **CHEEVES V. THE STATE (S19A0739)**
- * Casey Collins (Cobb Co.) **COLLINS V. THE STATE (S19A0809)**
- * Ruby Anne Evans (Tift Co.) **EVANS V. THE STATE (S19A0508)**
- * Justin Marquis Graves (Cobb Co.) **GRAVES V. THE STATE (S19A0882)**
- * Frederick Lee Gude (Fulton Co.) **GUDE V. THE STATE (S19A0611)**
- * David Jackson (Warren Co.) **JACKSON V. THE STATE (S19A0861)**
- * Todd Eric Jones, Jr. (Spalding Co.)** **JONES V. THE STATE (S19A0986)**
- * Freddie Lewis (Fulton Co.) **LEWIS V. THE STATE (S19A0765)**
- * William F. Moore, Jr. (Spalding Co.)** **MOORE V. THE STATE (S19A0985)**
- * Quindarius Keshun Morton (Gwinnett Co.) **MORTON V. THE STATE (S19A0899)**
- * Gregory Adrian Rhynes (Chatham Co.) **RHYNES V. THE STATE (S19A0509)**
- * Jeremy Dennis Scott (Chatham Co.) **SCOTT V. THE STATE (S19A0598)**
- * Brent James Shubert (Franklin Co.) **SHUBERT V. THE STATE (S19A0886)**

* Jerome Marquis Victoria (Toombs Co.) **VICTORIA V. THE STATE (S19A0686)**
* Dennis G. Welch (Berrien Co.) **WELCH V. THE STATE (S19A0846)**

**** Jones and Moore were codefendants**

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

* Jeffrey L. Sakas **IN THE MATTER OF: JEFFREY L. SAKAS**
 (S19Y1164, S19Y1165, S19Y1166)