

Lost in Translation: A Fair Trial, Justices Rule

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Justice Harold Melton John Disney/Daily Report

The Georgia Supreme Court unanimously ruled Monday that a man from Gambia convicted of murder in Fulton County is entitled to a new trial because his uncertified interpreter provided him with an inaccurate translation of the proceedings against him.

The decision echoed a reminder last week by Chief Justice Hugh Thompson to lawmakers that state and federal law require that courts provide language services free of charge to litigants and witnesses in criminal and civil cases.

Noting that 700,000 people born outside the United States live in metropolitan Atlanta, Thompson said he envisioned "that every court, in every city and every county in Georgia, will have the capacity of serving all litigants, speaking any language, regardless of national origin, from the moment they enter the courthouse until the moment they leave."

In the decision announced Monday, Justice Harold Melton wrote for the court, directing the Fulton County Superior Court to retry Mahamadou Tunkara, a native of the West African

country of Gambia who speaks Soninke. Tunkara was convicted in November 2010 for the murder of Muhamed Turay and sentenced to life plus five years. But the trial judge, Fulton County Superior Court Judge Craig Schwall, granted Tunkara's motion for new trial on the grounds that his interpreter did not give him a clear picture of what was happening at his trial.

Fulton County District Attorney Paul Howard appealed the ruling to the high court, along with Deputy District Attorney Paige Whitaker and Assistant District Attorney Sheila Gallow. Howard was not immediately available for comment.

Tunkara was represented on appeal by Bruce Harvey of the Bruce Harvey Criminal Defense Law Firm.

Harvey said Schwall deserved credit for making a rare decision to grant a new trial in a case he had just heard. "He did what a judge is supposed to do," Harvey said. Schwall re-evaluated his denial during trial of the public defender's motion for a mistrial because of the language problem. "He said, "I was wrong. We'll try the case again."

Harvey said the translator at the trial spoke the language but wasn't qualified to be a court interpreter, "which is very difficult."

Melton noted that the trial judge's order for a new trial referred to "a complete breakdown" of Tunkara's understanding of the proceedings due to misleading information from his interpreter, who was not officially certified.

The state argued that the trial court abused its discretion and challenged the ruling as not supported by statutes allowing for judges to grant new trials if the verdict goes against the evidence. The high court agreed the judge used the wrong statutes to back up the new trial order but was correct nonetheless.

Melton wrote that the trial judge's ruling for a new trial was premised on a special ground: the inadequacy of the interpreter. Melton said the judge's discretion to order a new trial in this case lies in O.C.G.A. § 5-5-25, which provides: "In all motions for a new trial on other grounds not provided for in this code, the presiding judge must exercise a sound legal discretion" in either granting or refusing the motion.

The high court ruled that the inadequacy of an interpreter is one of the "other grounds" not provided for in the code.

"Although the trial court mistakenly cited the wrong statutory provisions in its order," Melton said, the state conceded at a motion for new trial hearing that the trial court could exercise its authority under O.C.G.A. § 5-5-25 in order to consider granting a new trial.

"The record shows that trial court employed this broad discretion to grant a new trial after a full hearing and the consideration of evidence, and we affirm that ruling under the right-for-any-reason rule," Melton wrote. The opinion cited *Mathis v. State*, 279 Ga. 100, (610 SE2d 62)

(2005), which holds that the high court will affirm a trial court's ruling if it is "right for any reason."

Turay bled to death after being stabbed in a fight at a flea market off Campbellton Road in 2007. Witnesses told police he was stabbed during a fight with Tunkara, the opinion said. Tunkara was indicted in 2008 for malice murder, felony murder, aggravated assault and possession of a knife during the commission of a felony.

Tunkara's first trial in January 2010 ended in a mistrial after the jury could not reach a decision. He had a certified interpreter assigned to translate for him in the first trial, but that interpreter was out of the country and not available when he was tried for the second time in November 2010. In the second trial, an uncertified interpreter sat with him and translated the testimony.

Shortly before closing arguments, his counsel moved for a mistrial, saying the interpreter was inadequate, according to the high court's ruling.

Tunkara's attorney told the court the interpreter was giving his client incomplete and inaccurate information. As a result, the defense attorney said his client believed the blood on the knife was his, not that of the victim, when the facts suggested opposite. Tunkara argued that he was defending himself against Turay, claiming he was the one wielding the knife. But witnesses from the flea market had testified otherwise.

The case is *State v. Tunkara*, No. S15A1715.

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