

IN THE SUPERIOR COURT OF GORDON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,)
)
 vs.)
)
 JERRY WILLIAMS JONES,)
)
 Defendant.)

CRIMINAL ACTION NO. 16471

FILED
Clerk Superior Ct., Gordon County
OCT 19 2005
Brian Brannon
Clerk

ORDER ON CONSTITUTIONALITY OF O.C.G.A. § 17-16-4 AS AMENDED
BY THE CRIMINAL JUSTICE ACT OF 2005

Before the Court is defendant Jerry William Jones' challenge to the amended provisions of O.C.G.A. § 17-16-4. The defendant has challenged the newly amended discovery provisions which allow for more liberal discovery in the penalty phase of capital trials. Specifically he cites a lack of reciprocity in the provisions violate his due process rights under the United States and Georgia Constitutions. The Court finds that the challenged provisions do comply with the reciprocity requirements of *State v. Lucious*, 271 Ga. 361 (1999) and *Wardius v. Oregon*, 412 U.S. 470 (1973). The Court finds no merit in the defendants other constitutional challenges to the amendments.

The challenged amendments to O.C.G.A. § 17-16-4 were contained in the Criminal Justice Act of 2005 which among other things amended the already existing framework allowing a defendant to "opt in" to the more liberal discovery system. Prior to the amendments in the 2005 bill, the system only addressed discovery as it related to the

guilt/innocence phase of the trial. The 2005 amendments extend that system of liberal discovery to the sentencing phase of the trial as well.

The United States Supreme Court in a series of cases starting with Williams v. Florida, 399 U.S. 78 (1970) delineate broad principles for testing reciprocal discovery schemes in the face of due process challenges. In Williams the Court affirmed a Florida notice of alibi statute which required the defendant to divulge any alibi defense and witnesses he planned to bring in exchange for a similar list from the state. The Court upheld the statute in the face of a due process challenge holding that the defendant's disclosures were "carefully hedged with *reciprocal duties* requiring state disclosure to the defendant." *Id.*

The Court in Wardius v. Oregon, 412 U.S. 470 (1973) expands upon the reciprocal duties language of Williams in detailing what the due process clause required. Surmising that the due process clause is primarily concerned with the "balance of forces between the accused and the accuser," the Court held, "that in the absence of a strong showing of state interests to the contrary, discovery must be a two-way street." *Id.* at 474-475. The Georgia system of reciprocal discovery was upheld in Lucious v. State, 271 Ga. 361 (1999). The Court held that the Georgia system,

"Furthers legitimate State interests by establishing a closely symmetrical scheme of discovery in criminal cases that maximizes the presentation of reliable evidence, minimizes the risk that a judgment will be predicated on incomplete or misleading evidence, and fosters fairness and efficiency in criminal proceedings. Because the Act provides for reciprocal discovery in criminal felony cases with

any imbalance favoring the defendant, the Act does not violate the due process clause of the United States or Georgia Constitutions."

The defendant contends the new amendments, dealing with the discovery obligations of the state and defendant at the penalty phase, places an improper burden on the defendant, and as such is not reciprocal. Specifically he cites that the burdens placed upon the defendant in sections (b)(3)(A,B,C) requiring the defense to *serve* upon the state their evidence in mitigation is not reciprocal with the states corresponding duty in (A)(5) to, "provide the defendant with *notice* of any evidence in aggravation of punishment that the state intends to introduce in sentencing."

"It is a fundamental principle of statutory construction that if possible a statute will be construed in such a way as to find it constitutional." *Garner v. Harrison*, 260 Ga. 866 (1991).

"A statute must be construed in relation to other statutes of which it is a part, and all statutes relating to the same subject-matter, briefly called statutes in *pari materia*, are construed together, and harmonized wherever possible, so as to ascertain the legislative intent and give effect thereto." *State v. Lockett*, 259 Ga.App. 179 (2003).

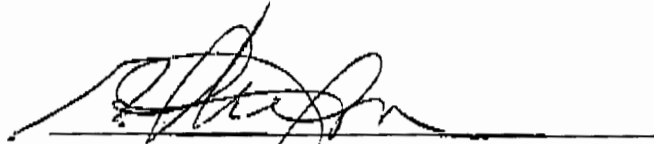
After a careful reading of the authorities and the challenged amendments the Court is satisfied that the defendant's due process rights will not be impinged upon by the new amendments if he chooses to opt in to the statutory system. The authorities cited stand for the broad proposition that a defendant's due process rights are not violated so long as the duties and obligations with respect to discoverable material are, on balance, reciprocal. Said another way, so long as the nature of the information to be exchanged is reciprocal in nature, due process does not require that the means of making available that information be identical. The defendant's

argument that the state's burden to merely give notice of any evidence in aggravation it intends to introduce is not reciprocal to the defendant's burden to actually produce said evidence is an isolated reading of the amendment. When read in the context of the entire statutory scheme, the state has the burden of making all of the evidence it intends to introduce at trial, inclusive of any aggravating evidence, available to the defendant before the trial begins. The amendment merely requires the state to identify the specific evidence, already made available to the defendant, which it intends to introduce at the penalty phase, but must do so "no later than the beginning of trial." On the other hand the defendant is required to serve the state with any evidence it intends to use as evidence in mitigation at the time of the verdict in the guilt/innocence phase. This would include evidence which the defendant is not required to make available to the state prior to the guilt/innocence phase. Due to the time constraints involved between a verdict of guilt and the start of the penalty phase it is a reasonable burden to require the defendant to actually serve the material it intends to use, since very likely the state would not have had access to the information until a verdict of guilt had been entered.

Given such a reading, the statute clearly contemplates reciprocal burdens on the state and defense in terms of the nature of the information revealed by each side. Although the manner in which that information is made available to the other party is not identical, the amendments adhere to the constitutional constraints of due process. The Court is satisfied that there is a

balance of forces between the state and defendant and that the proverbial two-way street has been achieved. Accordingly the Court denies the defendant's motion.

It is so Ordered, this 14th day of October, 2005.

A handwritten signature in black ink, appearing to read "G. Carey Nelson", is written over a horizontal line.

G. Carey Nelson, Judge
Superior Court of Gordon County, Georgia