

JUN 15 2005

Brian Brannon  
Clerk

IN THE SUPERIOR COURT OF  
GORDON COUNTY  
STATE OF GEORGIA

STATE OF GEORGIA

CRIMINAL ACTION

VS.

FILE NUMBER 04-CR-16471

JERRY WILLIAM JONES,

DEFENDANT

ORDER ON VARIOUS MOTIONS  
FILED ON BEHALF OF DEFENDANT  
HEARD ON JUNE 3, 2005

The Defendant having filed numerous motions on behalf of the Defendant on May 19, 2005, and the Court having heard evidence and argument by the State and the Defendant concerning certain of said motions, the Court enters the following order on those motions addressed at the June 3, 2005, hearing, as follows:

1

(Motion #1)

The Defendant moved the Court to prevent the use of the "stun belt" as a security device in order to maintain courtroom security, alleging, *inter alia*, that its use would inhibit his ability to confer with counsel due to allegedly causing the Defendant psychological fear of receiving an electrical shock, in violation of his 5<sup>th</sup> and 6<sup>th</sup> amendment rights and further interfering with the Defendant's ability to communicate privately with his counsel, since the deputy who controls the belt must necessarily be within eyesight of the Defendant.

As an alternative, Defendant's counsel suggests that the Sheriff's Department place deputies

in close proximity of the Defendant to maintain courtroom security.

After considering the testimony presented by Capt. Doug Simons, Deputy DeLong and Sgt. Jack Jenkins of the Gordon County Sheriff's Office; argument of counsel and the totality of the circumstances, the Court finds that the use of the "stun belt" on Mr. Jones is the most effective method of assuring protection for the Defendant, the public, the jurors and court personnel during the course of the proceedings and the trial with the least negative effect to the Defendant's right to a fair trial.

It is within the discretion of the trial court to use the "stun belt" to prevent dangerous or disruptive behavior which threatens the conduct of a fair and safe trial. *Brown v. State*, 268 Ga. 254; 490 SE2d 75 (1997); *Young v. State* 269 Ga. 478, 499 SE2d 60 (1998).

In making its decision, the Court has considered a number of factors, including but not limited to, the testimony of the officers responsible for courtroom security, the training of the officers who will be using the remote trigger, the precautions taken to avoid accidental activation of the belt, and other alternative security measures. See *United States v. Durham*, 287 F3d 1297 (2002).

The evidence is clear and unequivocal that a stun belt serves a compelling interest in insuring security of a public courtroom and the dignified administration of justice in an unobtrusive manner. The belt is approximately four inches wide, powered by two nine-volt batteries connected to two contacts that when activated will discharge 50,000 volts of electricity for 5 - 8 seconds, causing the wearer of the belt to become immobilized. Because of the extremely low amperage, there appears to be no adverse effect upon a person's heart or internal organs. The only physical evidence remaining after the use of the belt are two small marks on the person's body where the contacts touch the skin which disappear in less than two weeks. The belt being used by the Gordon County

Sheriff's Office has a remote which requires activation of two triggers simultaneously. Each officer involved has received training on the use and effect of the belt. Sgt. Jenkins received training by the vendor and has been "shocked" by the belt as part of his training. Sgt. Jenkins, a qualified instructor on the belt, has currently two additional officers trained in the proper use of the belt. The Sheriff's Office has clearly established written policies on the use of the belt. Sgt. Jenkins testified to the training he had received on the belt and to become an instructor on the belt and to the training he has given to the certified officers trained in the use of the belt.

The record also clearly shows that the Defendant has been advised orally and in writing about the effect of the belt as well as what conduct by the Defendant would cause an officer to activate the belt, as well as what conduct by the Defendant is permissible and would not cause activation of the belt. Basically, the Defendant is advised that only sudden threatening conduct would result in activation. Moving about, conferring with counsel, even standing up alone would not result in activation. Furthermore, Sgt. Jenkins testified that the Defendant would be verbally warned to cease the inappropriate behavior, and all other steps to regain control of the Defendant would be taken prior to activation. Indeed, activation is the last resort of the officers.

The basic thrust of Defendant's motion is he is unable to confer with his counsel because of the psychological fear the belt will be activated. It is contended that Defendant would be afraid to talk to his counsel or shift in his seat because of the intimidation caused by fear of the belt. It is also contended the Defendant would be unable to have confidential conversation with his counsel because of the presence of the deputy possessing the remote.

The Court closely observed the Defendant throughout this approximately seven-hour hearing, as well as the two previous hearings, during which the Defendant was wearing the belt. Throughout

all of the hearings, the Defendant has exhibited no signs of any fear or of being uncomfortable. He has repeatedly leaned over and conferred with counsel, engaged in general conversation with his counsel (including during the Court's oral pronouncement on its decision concerning the belt) and written notes to counsel. The Court observed the Defendant rise from his chair to change positions and leaning back in his chair with his hands behind his head. He clearly participated in the hearing with no indication whatsoever that he was inhibited by fear of the activation of the belt, intentionally or accidentally. Furthermore, the officer controlling the remote sat a sufficient distance from the Defendant so that counsel could confer in confidence without fear of being overheard by the deputy.

The Court notes the Defendant is charged with four counts of murder of members of his ex-wife's family and of his own ten-month-old daughter, and kidnaping of three other small children. The State is seeking the death penalty, of which the Defendant is obviously aware, and there is a significant reasonable risk that the Defendant would not feel he has that much to lose were he placed in a position where he would believe he may have a reasonable chance of escape from the more relaxed security of the courtroom. While the Defendant does not have a history of past violent behavior, the Court notes that in his previous contacts with law enforcement he has fled. Additionally, law enforcement have been made aware of statements and conduct while housed at the maximum security prison in Reidsville, and that there has been at least one incident while awaiting a hearing in Gordon County of statements made by the Defendant of threats of acting out in the courtroom.

The Court also notes that the physical facilities both in the Annex and the Main Courtroom are a hindrance to maintaining proper security for the protection of the public and participants in the forthcoming trial.

Alternative methods of insuring security, such as a show of force by the deputies or chains, would be more detrimental to Defendant's sixth amendment rights under the circumstances because of the visibility of such security to the public and jurors. Whereas with the stun belt, the jurors will not be aware of the security measure taken. Furthermore, a large number of officers by necessity being in close proximity to the Defendant would hinder counsel's ability to confidently communicate with the Defendant. With chains or leg irons or braces, Defendant's movement would be visibly and obviously restricted.

Based upon all of the above and the recommendation of the trained professionals of the Gordon County Sheriff's Office, the Court finds that the use of the stun belt offers the best means of providing dignified administration of justice in the courtroom and assuring the safety and security of the Defendant, the public, the jurors and the court personnel, with the least obvious and intrusive means of enabling Defendant and counsel to participate freely in the trial of the case and to maintain confidential conversations with the Defendant.

The Court authorized the Gordon County Sheriff's Office to utilize the stun belt at all hearings and the trial of this case. Therefore, Defendant's motion is **DENIED**

2.

(Motion #2)

The gist of Defendant's Motion #2 pertains to apparent rules and regulations concerning Mr. Jones giving written material to his counsel at Reidsville State Prison. The Department of Corrections was not notified of this motion, and because it involves operations of the Department of Corrections, the Court finds due process requires the Department to be notified and given an opportunity to be heard. Therefore, the Court will conduct an evidentiary hearing on Defendant's

Motion #2 on July 18, 2005. The Court directs that counsel for the Defendant notify the Department of Corrections of the date and time of said hearing.

3.

(Motion #3)

Defendant's Motion #3 is notice of Defendant's assertion of his fourth amendment rights and revocation of any prior waivers and does not require a ruling by the Court.

4.

(Motion #4)

Defendant's Motion #4 is notice of Defendant's assertion of his fifth and sixth amendment rights and revocation of any prior waivers and does not require a ruling by the Court.

5.

(Motion #5)

Defendant's Motion #5 is a notice of Defendant's reservation of his constitutional rights and a request for an evidentiary hearing on any purported waiver of his constitutional rights. To the extent Defendant requests an evidentiary hearing on any purported waiver, the motion is **GRANTED.**

6.

(Motion #6)

Defendant's Motion #6 is Defendant's Memorandum of Law in Support of the Motions Filed.

7.

(Motion #7)

Defendant's Motion #7 is a motion reserving the right to file additional motions. State's discovery was filed and served on the Defendant on June 3, 2005. Defendant's motion to file additional necessary and appropriate motions arising from Defendant's review of State's discovery is **GRANTED**.

8.

(Motion #8)

There is no Defendant's Motion #8.

9.

(Motion #9)

Defendant has filed a challenge to the array of the Grand Jury. This motion requires an evidentiary hearing that will be held at 9:00 a.m., July 18, 2005. Defendant's request for the clerk to make available to counsel all information and material pertaining to the Gordon County Grand Jury, including all information pertaining to the compilation and selection process, any information concerning the computer programming and hardware utilized or related to selection of grand jurors; a list of all grand jurors in the current pool with each member's age, race and gender; the list of the members of the Gordon County Jury Commission showing age, race and gender, and any juror questionnaires, source lists and venire list utilized to select grand jurors is hereby **GRANTED**. The same are to be made available to Defendant's counsel prior to the July 18, 2005, hearing.

10.

(Motion #10)

Defendant has filed a motion to dismiss the indictment due to the composition of the petit jury. While a motion to dismiss the indictment based upon an alleged constitutionally infirm petit jury pool is puzzling to the Court, the Court will treat the motion as one to challenge the petit jury array. Although the Court indicated it would hear this motion on July 18, after reconsideration, a hearing on this motion shall be deferred until after a trial date has been set

11.

(Motion #11)

Defendant's Motion challenging the selection of the Grand Jury foreperson shall be heard on July 18, 2005.

12

(Motion #12)

Defendant's general demurrer to the indictment will be heard on July 18, 2005.

13

(Motion #13)

Defendant's special demurrer to the indictment will be heard on July 18, 2005.

14.

(Motion #14)

Defendant's Motion requiring the State to elect between malice murder and felony murder and between first or second degree cruelty to children will be heard on July 18, 2005.

15.

(Motion #15)

Defendant's Motion to instruct the jury concerning grand jury indictment will be heard July 18, 2005.

16.

(Motion #16)

Defendant's Motion to strike and declare unconstitutional O.C.G.A. §16-5-1 will be heard July 18, 2005.

17.

(Motion #25)

Defendant filed a motion for disclosure of any possible basis for the recusal of the judge. On the record and in open court, the Court advised the Defendant that it knows of no basis for recusal as far as this case is concerned. While the motion is **GRANTED**, the Court finds there is no basis for recusal. Should the Court become aware of a proper basis for recusal, the Court will advise the State and the Defense.

18.

(Motion #26)

Defendant also filed a motion seeking disclosure of any improper bias or prejudice or possible disqualification of the District Attorney or his staff. The District Attorney on the record and in open court stated there was no basis for disqualification of either himself or any member of his staff who were involved in this case. As to Defendant's request as to the Clerk of Court, his deputies, the Sheriff, his deputies, or the bailiffs, Defendant advised he had no basis to believe that

any person involved was disqualified or biased so as to affect the trial of this case or the Defendant's rights. While said motion is **GRANTED**, the Court finds there is no basis to disqualify the District Attorney, his staff, the Clerk of Court, his staff, the Sheriff, his deputies, or the bailiffs from involvement with this case. Each is advised to promptly disclose to the Court, State and Defense if any of the above become aware of any possible bias or potential reason for disqualification.

19.

(Motion #28)

Defendant's Motion challenging the judicial and prosecutorial selection process was withdrawn by the Defendant in open court.

20.

(Motions 31[a] - [d])

The Court takes under advisement Defendant's Motions challenging HB 170 amendments to the opt-in provision. The State has until June 27, 2005, to file its written response. The Court will issue a separate order after review of the parties' briefs; however, the Court **GRANTS** Defendant's motion to have 10 days from the date of the Court's order on these motions in which to elect to opt-in.

21.

(Motion #32)

Defendant's Motion for the State to comply with O.C.G.A. §§17-16-3, 17-16-4, 17-16-7 and 17-16-8 is **GRANTED**.

22.

(Motion #33)

Defendant's Motion for the State to comply with *Brady v. Maryland* and *Giglio v. United States* is **GRANTED**.

23.

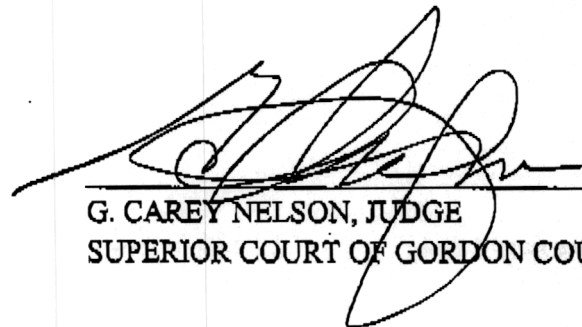
(Motion #34)

Defendant's Motion for a copy of the indictment and list of witnesses is a duplicate of a portion of Defendant's Motion #32 and has previously been granted.

Counsel are directed to be prepared on July 18, 2005, to argue Defendant's Motions numbered 2, 9, 11, 12, 13, 14, 15, and 16.

The District Attorney is directed to advise what remaining motions are unopposed by the State by June 27, 2005.

**SO ORDERED** this 13<sup>th</sup> day of June, 2005.



A handwritten signature in black ink, appearing to read 'G. Carey Nelson', is written over a horizontal line. The signature is stylized and somewhat cursive.

G. CAREY NELSON, JUDGE  
SUPERIOR COURT OF GORDON COUNTY, GEORGIA