

FILED
Clerk Superior Ct., Gordon County

**IN THE SUPERIOR COURT OF
GORDON COUNTY
STATE OF GEORGIA**

OCT 27 2005
Brian Brannon
Clerk

STATE OF GEORGIA	:	CRIMINAL ACTION
	:	
VS.	:	FILE NUMBER 04-CR-16471
	:	
JERRY WILLIAM JONES,	:	
	:	
DEFENDANT	:	

**OMNIBUS ORDER ON MOTIONS 1 - 139
FILED ON BEHALF OF DEFENDANT**

The Court hereby enters its Order on the following motions filed on behalf of the Defendant:

1.

Defendant's Motion #1 was **DENIED** by Order dated June 13, 2005.

2.

Defendant's Motion #2 moves for the constitutional incarceration of the Defendant.

Defendant is currently in the custody and control of the Department of Corrections. To resolve this motion requires notice to the Department of Corrections. This motion will be heard on a date subsequent to service of the motion on the Department of Corrections.

3.

Defendant's Motion #3 was **GRANTED** by order dated June 13, 2005.

4.

Defendant's Motion #4 was **GRANTED** by order dated June 13, 2005.

5.

Defendant's Motion #5 was **GRANTED** by order dated June 13, 2005.

6.

Defendant's Motion #6 requires no ruling by the Court.

7.

Defendant's Motion #7 was **GRANTED** by order dated June 13, 2005.

8.

There is no Defendant's Motion #8.

9.

Defendant's Motion #9 remains for conclusion of an evidentiary hearing on December 12, 2005.

10.

Defendant's Motion #10 was previously deferred to a later date by order dated June 13, 2005.

11.

Defendant's Motion #11 alleging discriminatory selection of the grand jury foreperson will be heard during the December, 2005, motions hearings.

12.

Defendant's Motion #12 general demurrer will be heard during the December, 2005, motions hearings.

13.

Defendant's Motion #13 special demurrer will be heard during the December, 2005, motions hearings.

2

14.

Defendant's Motion #14 requiring the State elect between malice murder and felony murder and between first and second degree cruelty to children is **DENIED**. *Usher v. State*, 259 Ga 835, 388 SE2d 686 (1990).

15.

As to Defendant's Motion #15, preliminary instructions will be given to the jury regarding grand jury, as follows: "I caution you the fact that this Defendant has been indicted by the grand jury is no evidence of his guilt. You should not consider the indictment as evidence nor an implication of guilt." Thus, as outlined above, Defendant's Motion #15 is **GRANTED**.

16.

Defendant's Motion #16 to strike and declare O.C.G.A. 16-5-1 unconstitutional is **DENIED**. *Speed v. State*, 270 Ga 688, 512 SE2d 896 (1999).

17.

Defendant's Motion #17 to, *inter alia*, quash the indictment is **DENIED**. *Riley v. State*, 278 Ga 677, 604 SE2d 488 (2004); *Terrell v. State*, 276 Ga. 34, 572 SE2d 595 (2002).

18.

Defendant's Motion #18 plea in bar to prevent the State from seeking the death penalty on grounds of disproportionality is **DENIED**. *Jenkins v. State*, 269 Ga 282, 498 SE2d 503 (1998); *cert. den.* 525 US 968, 119 S.Ct. 416, 142 SE2d 338 (1998). Defendant does not allege any unconstitutional motivation by the District Attorney. *Id.*

19.

Defendant's Motion #19 to declare O.C.G.A. §§ 17-10-30, 17-10-31 and 17-10-33 is

DENIED. *Greg v. Georgia*, 428 US 153 (1976); *Lewis v. State*, S05P0906 (decided Sept. 19, 2005) 2005 WL 2266510, ____ Ga. ____, ____ SE2d ____ (2005).

20.

Defendant's Motion #20 challenging the constitutionality of O.C.G.A. §17-10-1.2 and to bar victim impact statements is **DENIED.** *Payne v. Tennessee*, 501 US 808 (1991); *Livingston v. State*, 264 Ga. 402, 444 SE2d 748 (1994). Defendant's motion to hold a pre-trial hearing on the admissibility of such evidence if offered is **GRANTED.** *Turner v. State*, 268 Ga 213, 486 SE2d 839 (1997).

21.

Defendant's Motion #21 to declare execution by lethal injection unconstitutional is **DENIED.** *Lewis v. State*, S05P0906 (decided Sept. 19, 2005), 2005 WL 2266510, ____ Ga ____, ____ SE2d ____ (2005).

22.

Defendant's Motion #22 to declare O.C.G.A. § 17-10-30 et seq , including § 17-10-35, unconstitutional for failure to comply with *Ring v. Arizona*, 536 US 584 (2002) and *Apprendi v. New Jersey*, 530 US 466 (2000), is **DENIED.** *Id.*; *Coley v. State*, 231 Ga 829, 204 SE2d 612 (1974).

23.

Defendant's Motion #23 to dismiss and exclude State's notice of statutory aggravating circumstances is **DENIED.** The Court may reconsider said motion at time of trial.

24.

Defendant's Motion #24 to strike Georgia's death penalty is **DENIED.** It does not violate the 8th and 14th Amendments to the Constitution of the United States, nor is it arbitrary or violative

of equal protection.

25.

Defendant's Motion #25 was **GRANTED** by order dated June 13, 2005.

26.

Defendant's Motion #26 was **GRANTED** by order dated June 13, 2005.

27.

Defendant's Motion #27 contends the State should not be allowed to seek the death penalty in this case because of the discretion vested in the District Attorney to determine whether to seek the death penalty. As previously noted, Georgia's death penalty scheme is constitutional. Therefore, Defendant's Motion #27 is **DENIED**.

28.

Defendant's Motion #28 was withdrawn by the Defendant.

29.

Defendant's Motion #29 for the District Attorney to disclose past and present relationships, associations and ties between the prospective jurors and himself is premature, since the jury pool is unknown at this time. However, the information sought by the Defendant may be obtained during voir dire of the prospective jurors. To the extent Defendant is moving for the District Attorney to disclose such information, the motion is **DENIED**. Defendant also requests campaign disclosure records of the District Attorney which are public records and readily available to the Defendant and is, therefore, **DENIED**. The remaining paragraphs of Defendant's Motion #29 are **DENIED**.

30.

As to Defendant's Motion #30, counsel for both the State and Defendant are experienced trial

counsel, thoroughly familiar with the rules of evidence and relevant case law controlling the proper presentation of evidence and permissible argument as well as their official and professional responsibilities as officers of the Court. Therefore, counsel for both the State and the Defense are ordered to not intentionally make improper argument nor mislead the jury as to any fact of the case or as to the law, including arguing facts not in evidence or otherwise intentionally violate the rules of evidence and controlling case law governing the trial of a death penalty case. Counsel for both the State and Defendant are further directed that neither shall engage in pejorative comments or exchanges to the other in the presence of the jury nor engage in "speaking objections" in the presence of the jury.

Therefore, to the extent Defendant's Motion #30 requests the State to comply with the controlling law governing death penalty trials, the motion is **GRANTED**.

31.

(a) Defendant's Motion #31(a) is **DENIED**. See Court's order dated October 14, 2005.

(b) Defendant's Motion #31(b) to declare the Criminal Procedure Discovery Act (O.C.G.A. §§ 17-16-1, *et seq*) unconstitutional is **DENIED**. *Lucious v. State*, 271 Ga 361, 518 SE2d 677 (1999). The Court notes that, based upon statements made in court by both the State and the Defense, the statements made in the "Factual Background" of this motion are not factual.

(c) The Court reserves ruling on Defendant's Motion 31(c) until Defendant makes his decision on whether to opt-in to reciprocal discovery.

(d) The Court in its order dated June 13, 2005, granted Defendant 10 days from the receipt of the Court's ruling on Defendant's Motion #31(a) to elect to either opt-in or out of reciprocal discovery. The State has 10 days from receipt of Defendant's election to furnish any information

required under the Discovery Act should Defendant opt-in.

32.

Defendant's Motion #32 was previously withdrawn.

33.

Defendant's Motion #33 was granted by the Court by order dated June 13, 2005.

34.

Defendant's Motion #34 was granted by the Court by order dated June 13, 2005.

35.

A ruling on Defendant's Motion #35 is reserved until the Defendant makes his decision whether to opt-in to reciprocal discovery.

36.

Defendant's Motion #36 seeks discovery of the Grand Jury transcript, exhibits, and a list of the names of the Grand Jury. The names of the Grand Jurors are listed on the indictment. Grand Jury proceedings in Georgia are not transcribed and no memorialization of Grand Jury proceedings other than its presentments are kept. The presentments are public record and available from the Clerk. Therefore, Defendant's Motion #36 is **DENIED**.

37.

Defendant's Motion #37 to disclose confidential informants shall be argued during the December motions hearing.

38.

Defendant's Motion #38 for a Bill of Particulars on each count is **DENIED**.

39.

Defendant's Motion #39 for production of all matters pertaining to victim impact evidence pursuant to O.C.G.A. §§ 17-10-1.1 and 17-10-1.2 is deferred until closer to trial. The Court will conduct a hearing on the victim impact evidence pursuant to *Turner v. State*, 268 GA 213, 486 SE2d 839 (1997).

40.

Defendant's Motion #40 is duplicative of Defendant's Motion #39 and is therefore **DENIED**.

41.

A ruling on Defendant's Motion #41 is deferred until the Defendant notifies the Court of his decision whether to opt-in to reciprocal discovery. However, to the extent the State is in possession of exculpatory evidence that must be disclosed under *Brady*, the motion is **GRANTED**. To the extent such information is available under the Open Records Act, the Defendant must obtain such information pursuant to that act.

42.

A ruling on Defendant's Motion #42 for disclosure of use of hypnosis, etc., is deferred until Defendant advises the Court of his decision whether to opt-in to reciprocal discovery.

43.

Defendant's Motion #43(a) for disclosure of psychiatric history of State's witnesses is **DENIED**. However, should the State have particular solicited knowledge of the psychiatric history of a witness and should the Defendant opt-in to discovery, the Court, upon motion, will reconsider its ruling.

Defendant's Motion #43(b) is actually two separate motions. Defendant's motion to

determine if a child is competent to testify will be resolved at trial. A ruling on Defendant's motion concerning the admission of statements of a child under the child hearsay statute will be deferred until a later date prior to trial.

44.

Defendant's Motion #44 is **GRANTED** if the Defendant opts-in to reciprocal discovery; otherwise, said motion is **DENIED**.

45.

Defendant's Motion #45 seeking an order for an *in camera* inspection of the files of all police witnesses is **DENIED**.

46.

Defendant's Motion #46 seeking an order to provide dates of birth of all State's witnesses is **GRANTED** if Defendant elects to opt-in to discovery; otherwise, the same is **DENIED**. Defendant's request for Social Security numbers of the State's witnesses is **DENIED**.

47.

Defendant's Motion #47 for disclosure of the criminal records of the State's witnesses is governed by O.C.G.A. § 35-3-34(a)(2), and such information is equally available to the Defendant. Therefore, Defendant's motion #47 is **DENIED**.

48.

Defendant's Motion #48 to disclose any agreements with State's witnesses pursuant to *Giglio* is **GRANTED**.

49.

Defendant's Motion #49 for discovery of information for a fair adjudication of sentence is

but a discovery motion and will either be determined by constitutional and statutory requirements, both of which are addressed in separate motions or will be determined upon Defendant's decision whether to opt-in to discovery. Therefore, the motion is **DENIED**.

50.

Defendant's Motion #50 for disclosure by the State of similar transaction evidence and a pre-trial hearing thereon is **GRANTED**. Upon the State providing notice the State intends to introduce similar transaction evidence, the Court will schedule a hearing on the admissibility of such evidence.

51.

Defendant's Motion #51 for list of subpoenaed witnesses is **DENIED**.

52.

Defendant's Motion #52 for scientific reports is **GRANTED** if the Defendant elects to opt-in to reciprocal discovery; otherwise, the same is **DENIED**.

53.

Defendant's Motion #53 for information regarding State's experts is **GRANTED** if the Defendant elects to opt-in to reciprocal discovery; otherwise, the same is **DENIED**.

54.

Defendant's Motion #54 for an order for disclosure of test results of State's experts is **GRANTED** if Defendant elects to opt-in to reciprocal discovery; otherwise, the same is **DENIED**.

55.

A ruling on Defendant's Motion #55 for an order for State to produce negatives is reserved until Defendant notifies the Court of his decision whether to opt-in to reciprocal discovery.

56.

Defendant's Motion #56 for an order for the State to produce photographs, etc., is **GRANTED** if Defendant elects to opt-in to reciprocal discovery; otherwise, the same is **DENIED**.

57.

Defendant's Motion #57 to examine audio and video recordings is **GRANTED** if Defendant elects to opt-in to reciprocal discovery; otherwise, the same is **DENIED**.

58.

Defendant's Motion #58 for production of toxicology and other reports regarding the alleged victims and Defendant is **GRANTED** if the Defendant elects to opt-in to reciprocal discovery; otherwise, the same is **DENIED**.

59

Defendant's Motion #59 for disclosure of electronic surveillance is **GRANTED** Defendant to opt-in to reciprocal discovery; otherwise, the same is **DENIED**.

60.

Defendant's Motion #60 moves for production of any recordings or transcripts of Grand Jury proceedings. Since no transcript or recording of Grand Jury proceedings is made, Defendant's Motion is **DENIED**. Defendant also moves to voir dire grand jurors concerning their exposure to pre-trial publicity, opinions as to the guilt or innocence of the Defendant, and the extent they were personally affected or exposed to the events of January 7, 2004. This indictment was returned more than a year after this incident. Under the circumstances of this case, the Court **DENIES** Defendant's motion to voir dire the grand jurors. See *Isaacs v. State*, 259 Ga 717, 386 SE2d 316 (1989).

61.

Defendant's Motion #61 for Defendant to be present at all pre-trial hearings and conferences involving this case and at all trial proceedings is hereby **GRANTED**. Defendant's ability to hear bench conferences shall be afforded him by the use of the Court's hearing assisted device available in the courtroom. Defendant's request for the Defendant to be present at the "drawing of the jury pool," which is done electronically by the Clerk of Court, is **DENIED**.

62.

Defendant's Motion #62 for a complete recordation and transcript of all pre-trial and trial proceedings as outlined in U.A.P. IV.A.1 is **GRANTED**, including any oral or written questions from the selected jury addressed to the Court during their deliberations in both the guilt/innocence phase and, if necessary, the sentencing phase. The remaining prayers of said motion are **DENIED**.

63.

Defendant's Motion #63(a) for all evidentiary matters to be heard *in camera* which pertain to the admissibility of evidence and suppression of statements or evidence is **DENIED** at this time. See *R. W. Page vs. Lumpkin*, 249 Ga 576, 292 SE2d 815 (1982)

Defendant's Motion #63(b) to close the hearing to determine whether to close the hearing on various pre-trial matters is **DENIED**. *Id.*

Defendant's Motion #63(c) to exclude public and newsmedia from all pre-trial hearings in this case, prohibiting persons involved in this matter from making any statement or releasing any information related to the case, directing all records and transcripts be sealed until a jury is sequestered, and prohibiting use of video or other cameras to photograph the proceedings is **DENIED**. *R. W. Page, supra; Atlanta Journal-Constitution v. State*, 266 Ga App 168, 596 SE2d

694 (2004).

However, the Court will revisit Defendant's Motion #63 should it appear that public disclosure of sensitive information is interfering with the Defendant's constitutional right to a fair trial.

64.

Defendant's Motion #64 for the court reporter's tapes and notes to be made part of the record is **GRANTED**.

65.

Defendant's Motion #65 for a daily transcript is **DENIED**. The court reporter does not have the ability to provide daily transcripts.

66.

Defendant's Motion #66 is for appointment of an "impartial witness monitor" to monitor sequestered witnesses. While the Court declines to appoint a third party, the Court will establish a protocol for the sequestration of both the State and defense witnesses utilizing the Court's bailiffs.

67.

There being no state authority requiring the State to respond in writing to contested motions, Defendant's Motion #67 is **DENIED**.

68.

Defendant's Motion #68 to prevent ex-parte communication between the Court and the State is **GRANTED** to the extent that the Court and the State shall not engage in communication which involve substantive matters involved in this case except with counsel present. However, the Court may communicate ex-parte with either the State or defense counsel on procedural and logistical

matters such as scheduling matters and any other non-substantive matter.

69.

As to Defendant's Motion #69, the Court directs the District Attorney to advise the victims' family, through the Victim Assistance Office, of the expected proper conduct during the trial. The seatings of the victims' family and the Defendant's family touches on appropriate courtroom security and will be addressed by the Court prior to trial. Therefore, Defendant's Motion #69 is **GRANTED** as outlined.

70.

Defendant, in Motion #70, moves to exclude law enforcement from sitting in the courtroom in uniform. The Sheriff of Gordon County is charged with maintaining security in the courtroom, and it is therefore incumbent upon him to provide sufficient law enforcement, some of whom will by necessity be in uniform to assure the safety of the public, the jurors, the Defendant, and the court personnel. The Court, prior to trial, will review and approve court security procedures and staffing that will be appropriate and necessary. Therefore, Defendant's motion is **DENIED**.

71.

Defendant's Motion #71 to preclude admission of gruesome and prejudicial photographs of the deceased is deferred to the time of trial.

72.

Defendant's Motion #72 to extend time for closing arguments is deferred until the trial.

73.

As to Defendant's Motion #73, the Court will appropriately charge the jury on the State's burden of proof and the jury verdict. To that extent, Defendant's Motion #73 is **GRANTED**.

74.

Defendant's Motion #74 to "narrow the issues" is **DENIED**.

75.

Defendant's Motion #75 to preclude the indictment and names of the grand jurors from being revealed to the jury is **DENIED**. The Court will instruct the jury on the function of the indictment. As to the redaction of prejudicial information contained in the indictment, ruling is reserved until immediately prior to trial.

76.

Defendant's Motion #76 to bar prior convictions or bad acts is reserved until immediately prior to trial.

77.

Defendant's Motion #77 to "assure . . . jurors do not speculate about . . . parole" is in two parts. As to a prohibition by the State to improperly argue parole, O.C.G.A. § 17-8-76 outlines such prohibition, and the Court anticipates and believes all counsel will conduct themselves appropriately. To that end the Court directs both counsel for the State and the Defendant to refrain from violating O.C.G.A. § 17-8-76. Should a penalty phase of the trial be necessary, the Court will properly instruct the jury of their alternative sentences.

78.

Defendant's Motion #78 to restrict the use of the word "murder" is reserved until immediately prior to trial.

79.

Defendant's Motion #79 for a hearing on Defendant's motion for a change of venue is

GRANTED but will be deferred to immediately prior to trial.

80.

Defendant's Motion #80 for a change of venue is deferred until immediately prior to trial.

81.

Defendant's Motion #81 to exclude potential trial witnesses from observing voir dire is **GRANTED**. To the extent Defendant's prayer for the witnesses of either party to discuss what their testimony was during the trial with other witnesses who have not testified is **GRANTED**. To the extent Defendant moves this Court for an order preventing the District Attorney from common and appropriate trial preparation of the State's witnesses, it is **DENIED**.

82.

Defendant's Motion #82 to bar victim impact evidence is **DENIED**. Defendant's motion for a pre-trial hearing on the admissibility of specific victim impact evidence is duplicative of Defendant's Motions #39 and #40.

83.

Defendant's Motion #83 to preserve all evidence as outlined in Exhibit A of Defendant's motion and preclude additional State testing or examination which would alter, reduce or destroy such evidence without notice to the Defendant is **GRANTED**.

84.

Defendant's Motion #84 to inspect, examine and test physical evidence is **GRANTED** if Defendant elects to opt-in to reciprocal discovery; otherwise, the same is **DENIED**.

85.

Defendant's Motion #85 for production of scientific and expert reports is **GRANTED** if the

Defendant opts-in to discovery; otherwise, said motion is **DENIED**.

86.

Defendant's Motion #86 to suppress evidence obtained from any unlawful search and seizure is deferred for a hearing to be set prior to trial.

87.

Defendant's Motion #87 to suppress out-of-court identification is deferred for a hearing to be set prior to trial.

88.

Defendant's Motion #88 to suppress the arrest warrant is **DENIED** as moot, since the Defendant has been indicted.

89.

Defendant's Motion #89 to suppress Defendant's statements, etc., is deferred until a hearing to be set prior to trial.

90.

Defendant's Motion #90 for a jury trial is **GRANTED**.

91.

Defendant's Motion #91 is **GRANTED** to the extent it prays for a properly constituted petit jury pool and for the Court to hear and determine any applications for excusal. The remaining portions of said motion are **DENIED**.

92.

Defendant's Motion #92 to compensate certain jurors above the statutory amount is **DENIED**.

93.

Defendant's Motion #93 for individual voir dire of jurors and sequestration of jurors during voir dire is reserved. The Court intends to prepare, with counsels' input, a comprehensive procedure for jury selection, including a juror questionnaire, and the sequestered individual voir dire of *Witherspoon* and reverse *Witherspoon* questions.

94.

Defendant's Motion #94 to prevent death qualification voir dire is **DENIED**.

95.

As to Defendant's Motion #95 to prohibit video tapes and/or juror handbooks to orient jurors, this is apparently not utilized in Gordon County. Therefore, said motion is moot.

96.

Defendant's Motion #96 for use of a juror questionnaire is **GRANTED** as follows: Counsel for the State and Defendant are directed to confer and present to the Court a jointly proposed questionnaire to which they agree, no later than March 1, 2006. The Court reserves a decision on how the questionnaire will be provided to prospective jurors at a later date.

97.

Defendant's Motion #97 to bifurcate voir dire questions is **GRANTED**. All death penalty related voir dire will be done individually outside the presence of the other jurors.

98.

Defendant's Motion #98 to examine all jurors prior to exercising peremptory challenges is statutorily required and therefore **GRANTED**.

99.

Defendant's Motion #99 for expanded time for preparation for jury selection is **GRANTED**. The State and Defendant shall have one hour to prepare for jury selection after completion of voir dire.

100.

Defendant's Motion #100 for additional peremptory challenges is **DENIED** at this time.

101.

In Defendant's Motion #101, Defendant moves to exercise peremptory strikes in private. A ruling is deferred to the time of trial. The Court will determine the actual manner of jury selection, but it will be done either silently or outside the jurors presence.

102.

Defendant's Motion #102, which Defendant moves to exercise his challenges for cause outside the presence of the jury, is **GRANTED**.

103.

Defendant's Motion #103 requesting that the alternate jurors not be publically identified until jury deliberation begins is **GRANTED**.

104.

Defendant's Motion #104 for non-law enforcement personnel to be assigned duties as courtroom bailiffs is **DENIED**. While the Court has two non-law enforcement individuals assigned to the Court as bailiffs, by necessity the Court utilizes deputy sheriffs sworn as bailiffs to assist in the orderly operations of the Court.

105.

Defendant's Motion #105 to administer the bailiff's oath of office be administered publicly and in the presence of the assembled jurors is **GRANTED**.

106.

Defendant's Motion #106 moves to limit conversation between jurors and bailiffs. The bailiff's oath itself limits such conversation, and the bailiffs and all the court personnel are aware of the restriction. Therefore, Defendant's motion is **GRANTED** except that bailiffs may obviously engage in pleasantries with the jurors and give them court-approved instructions, such as being brought in and taken out of the courtroom.

107.

Defendant's Motion #107 to require jurors' notes to be made part of the record is deferred until trial.

108.

Defendant's Motion #108 moves the Court to prohibit the jury's exposure to victims' family and friends, specifically when entering and leaving the courthouse. To that extent, Defendant's motion is **GRANTED**. The Court anticipates at this time the Court will order the jury sequestered; therefore there would be no contact with the jury except by court-authorized personnel.

109.

Defendant's Motion #109 for a daily transcript of voir dire proceedings is **DENIED**. The court reporter does not have the capability to produce daily transcripts.

110.

There is no Motion #110.

20

111.

Defendant's Motion #111 for an *ex parte* hearing regarding the unconstitutionality of O.C.G.A. § 17-6-1, *et. seq.*, as applies to this case is **DENIED**. Whether Defendant chooses to opt-in or not opt-in is Defendant's decision after consultation with counsel. While *ex parte* conferences with the Court by the Defendant are appropriate in certain circumstances, the constitutionality of the statute is not dependent upon the Defendant's evidence.

112.

Defendant's Motion #112 has previously been granted by order dated July 21, 2005.

113.

There is no Motion #113.

114.

Defendant's Motion #114 was denied by order of Judge Howell dated August 8, 2005.

115.

Defendant's Motion #115 for an *in camera* inspection of the State's file for *Brady* material is **GRANTED**. To the extent this motion requests *in camera* inspection of records of any State or local agency not involved in the investigation of this case, or of records available to the Defendant, such as the Defendant's own medical records, the motion is **DENIED**. The State shall, within a reasonable time prior to trial, provide to the Court a certified copy of the State's file, along with a list of all exculpatory evidence previously disclosed to the Defendant.

116.

Defendant's Motion #116 deals with a motion to proceed *in forma pauperis* to file an open records request, which is a separate action and not part of, albeit related to, this case and requires no

ruling in this case.

117.

Defendant's Motion #117 for discovery of institutional records and files on the Defendant is **DENIED**, since said records are readily available to the Defendant at his own request.

118.

Defendant's Motion #118 to preclude the State from introducing non-statutory aggravating circumstances is **DENIED**.

119.

In filing Motion #119, Defendant objects to extended and weekend court dates for pre-trial matters involving this case. While the Court appreciates counsels' workload and Defendant's counsel's objection is noted, the Court will retain its discretion and exercise its responsibility to promptly dispose of the Court's business. The Court remains mindful that the Defendant is on trial for his life, and the extraordinary burden of uncertainty weighing on the Defendant, the Court will continue to strive, with all deliberate speed, to bring this matter to conclusion, ever mindful of the rights of all persons involved.

120.

Defendant's Motion #120 moves for an order for the presentation of Defendant's pre-trial motions. The Court appreciates Defendant's efforts. While the Court reserves its discretion to approve the order, the Court leaves to the Defendant the order of motions which require an evidentiary hearing to be presented in whichever sequence the Defendant wishes to do, with sufficient advance notice to the State and the Court. Defendant has presented to the Court many of its motions well briefed and which, by this order, has entered a ruling. On any motion upon which

the Court has ruled without an evidentiary hearing that either the State or the Defendant desires an evidentiary hearing, written submission of proffer of proof or additional oral argument, either party may request a hearing either by motion for reconsideration or request for a hearing. Therefore, as hereinbefore outlined, Defendant's motion is **GRANTED**.

121.

Defendant's Motion #121 is a supplemental motion to suppress to Defendant's Motion #86 and as previously ruled, is set for a hearing prior to trial.

122.

Defendant's Motion #122 to disqualify jurors who cannot adequately consider mitigating evidence or automatically vote for the death penalty will be taken up on an individual basis during voir dire. To the extent there is such a juror at that time, the Court would grant Defendant's motion.

123.

Defendant's Motion #123 to exclude hearsay evidence from the Court's consideration as outlined in said motion is **GRANTED**. Item #7 of Defendant's motion as written is **DENIED**.

124.

Defendant's Motion #125 to exclude firearm and ballistic identification evidence and to conduct a *Harper* hearing is **DENIED**. *Al-Amin v. State*, 278 Ga 74, 597 SE2d 332 (2004).

125.

Defendant's Motion #125 to exclude fingerprint evidence and to conduct a *Harper* hearing is **DENIED**, the same having reached a state of verifiable certainty. *Id.*

126.

Defendant's Motion #126 to exclude scientific testimony regarding forensic determination

of time of death is **DENIED**.

127.

Defendant's Motion #127 is a supplemental motion to Defendant's Motion #88 to suppress the arrest warrant and is **DENIED** for the same reason set forth in the Court's ruling on Defendant's Motion #88.

128.

Defendant's Motion #128 for access to Department of Family and Children Services records is deferred for a hearing after notice to Department of Family and Children Services. The Court suggests, but does not direct, that this hearing may be conducted during the December hearing dates.

129.

Defendant's Motion #129 to prohibit the statutory questions is **DENIED**.

130.

Defendant's Motion #130 to restrict judicial rehabilitation of potential jurors regarding death and life qualification is **GRANTED**, in that the Court fully intends to and will comply with the law of this state. To the extent the motion prays for the Court to refrain from its lawful responsibilities, the same is **DENIED**.

131.

Defendant's Motion #131 is premature in that Defendant states he has not been notified of any such person. Therefore, Defendant's motion is **DENIED** at this time.

132.

Defendant's Motion #132 for email communications concerning hearing dates and scheduling dates to be made part of the record is **GRANTED**. Both the Court and Defendant's counsel have

initiated email communications concerning procedural but not substantive matters. The Court notes that the Court routinely copies the Clerk of Court on each email. The Court directs all parties to include the Clerk on emails involving any aspect of this case, and the Clerk is directed to file a hard copy of said email in the Court file.

133.

Defendant's Motion #133 to recuse all officers employed by Gordon County Sheriff's Office from serving as courtroom security officers is **DENIED**. The Sheriff is responsible for security of the defendant, the courthouse, court personnel, jurors, and the general public, *inter alia*, while attending court functions. It is unreasonable and unnecessary. Any officer who may have been involved in the investigation of this case and who will testify as witnesses will not also provide security. However, officers who are not witnesses in the case shall perform their statutory duties. The Court has previously indicated that an appropriate security plan prepared by the Sheriff to provide security will be reviewed and approved by the Court, which will balance the need for security and the Defendant's rights to a fair trial.

134.

Defendant's Motion #134 for disclosure of communications between the Court and Jody Overcash is **GRANTED**. The Court sets this motion for a hearing during the December hearings dates previously set by the Court.

135.

Defendant's Motion #135 concerning electronic intercepts is premature, in that Defendant states he has no notice of such. Therefore, Defendant's motion is **DENIED** at this time.

136.

Defendant's Motion #136 for an order allowing the Defendant to view the scene of the crime with the Defendant's counsel is **GRANTED** as to the scene in Gordon County. Such viewing shall be arranged with the appropriate court security personnel of the Gordon County Sheriff's Office for a date and time mutually acceptable. Said date and time shall be revealed only to the necessary officers involved, the Defendant, Defendant's counsel, and the Court. Within 48 hours of the conclusion of the viewing, Defendant's counsel shall prepare and place in the record a certification that such viewing was completed. The Sheriff is directed to provide security in such a manner that the Defendant and Defendant's counsel are properly protected and secure but that counsel and Defendant may communicate privately. Any dispute about the arrangements shall be promptly brought to the Court's attention for resolution with the parties involved.

137.

Defendant's Motion #137 to suppress Defendant's statements is a supplemental motion to Defendant's Motion #89 and is deferred for a hearing prior to trial.

138.


Defendant's Motion #138 to exclude medical information on the Defendant is deferred for a hearing prior to trial. The Court suggests but does not require that this matter may be heard during the December hearing dates.

139.

Defendant's Motion #139 to exclude caller-ID evidence is deferred for a hearing prior to trial.

The Court's intent by this omnibus order on Defendant's motions is to resolve those motions which have been briefed and which do not require additional oral argument or an evidentiary hearing. However, either party may upon motion request a hearing or oral argument if the parties, in good faith, believe it is appropriate. In the alternative, the parties may supplement any motion ruled upon by the Court without a hearing by motion for reconsideration with a written proffer attached.

SO ORDERED this 24th day of October, 2005.



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