

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

FILED
Clerk Superior Ct., Gordon County
JUN 27 2005
Brian Brannon
Clerk

STATE OF GEORGIA	*	CASE NO. 16471
VS.	*	
JERRY WILLIAM JONES,	*	CHARGES: MURDER, ET AL.
DEFENDANT.	*	
	*	

STATE'S INITIAL RESPONSE TO DEFENDANT'S
MOTIONS FILED MAY 19, 2005

NOW COMES, the State of Georgia by and through the Office of District Attorney for the Cherokee Judicial Circuit and files this its written notice of which of the May 19, 2005 defense motions it does not contest in full or partially pursuant to the presiding judge's order dated June 13, 2005 (filed June 15, 2005) and more particularly states, as follows:

1.

Because of the nature of the pleading and/or notice, no response is required of the State at this time to the following pleadings:

- A. **No. 3 - Defendant's Assertion of Fourth Amendment Rights, etc.**
- B. **No. 4 - Defendant's Assertion of Fifth and Sixth Amendment Rights, etc.**
- C. **No. 5 - Notice of Non-Waiver of Rights, etc.**
- D. **No. 90 - Demand for Trial by Jury.**

2.

COURT REPORTER AND RELATED ISSUES

In regard to the following motions which are some of those involving the above-

ORIGINAL

referenced matter, undersigned does not object or contest **No. 64 (Motion for Court Reporter's Tapes and Notes to be Made Part of the Record, etc.)** Further, although undersigned does not object to following two (2) motions in general certain provisions need to be addressed by the Court before issuing an order pertaining to each:

- A. **No. 61 - Motion for Jerry William Jones to be Present:** This certainly is defendant's constitutional right; however, in paragraph No. 11 of said Motion (definition provision) the Court needs to address two (2) specific areas for practical and security reasons before granting this motion. First, the "draw of the jury pool" is not a critical stage and is purely administrative mechanical function that does not require either side to be present and secondly, the Court needs for security purposes to consider separately how "bench conferences" will be handled in an efficient, effective and constitutional way.
- B. **No. 62 - Motion for Complete Recordation and Transcript, etc.:** Certainly, there is no objection to this by the State because this is what is lawfully required, except how, as a practical matter, can this include "all contacts between the jury and any other person..." when this is generally learned after the fact. Accordingly, anything of this nature which occurs when court is in session will be covered by the list set forth in paragraph No. 5 of the defendant motion referenced herein and if not, will have to be dealt with on a case-by-case basis in a manner which insures fairness and due process to all parties.

3.

TRIAL JUROR ISSUES

As to a portion of the motions which deal with the empaneling, selection and logistical conduct, the State does not contest in general principal but submits its official positions, as follows:

A. **No. 15**- **Motion to Instruct the Jury at the Start of the Trial About Grand Jury Indictment Procedures** is appropriate and undersigned is confident this court intended and will do so without the necessity of a court order; however, the State will defer to the Court the exact language to use, which hopefully will not be the hyperbole and the slanted language that the defense suggests in paragraph No. 5 of its herein-above referenced motion. Please note if the Court does give a preliminary charge **Motion No. 75 (In Limine to Preclude Prejudicial Information, etc.)** becomes moot and therefore should be denied.;

B. **No. 91** - **Motion for a Special Venire, etc.** is one that requires a procedure that the presiding judge was probably already prepared to do; thus, it is superfluous and the State will defer to the Court the establishment of the procedure for this trial. Finally, the State objects to the granting of the prayer for relief No. 5 as it is not the law as it applies to actual jury drawn only not to the pool from which it is drawn.;

C. **No. 93** - **Motion for Individual Voir Dire of Juror, etc.** and its relief is the most appropriate way to conduct voir dire and if the defense contemplates that sequestering is only during voir dire and does not incorporate overnight sequestering of the jury pool, then the State has no objection;

D. The State takes no position and defers to the Courts discretion on its ruling on **No. 95** - **Motion to Prohibit the Use of Video-Tapes and/or Juror Handbooks....**

E. **No. 96** - **Motion for Submission of Juror Information Questionnaire, etc.** is a guideline to the most practical method to obtain personal information of individual jurors; however, the State would like input in the creation of said questionnaire and defers to this Court the establishment of the procedure of submitting to and return of each questionnaire;

F. **No. 98** - **Motion for an Order Allowing Defendant to Examine all Jurors Prior to Exercising** is appropriate provided it applies reciprocally to the State and is limited in application to only those jurors necessary after statutory qualification as to bias and death penalty to comprise the number equal to the State and Defense strikes and number to serve including how many alternates the court deems appropriate;

G. Provided the State is awarded the exact same relief as the defense, it has no objection to the appropriate remedies asked for in **No. 99-Motion for Order Expanding Time for Preparation for Jury Selection;**

H. The State's response to **No. 101-Motion for Order Allowing Jerry William Jones to Exercise his Peremptory Strikes...** is exactly the same as its response to **No. 99**, see 3.G., *supra* which then makes a ruling on **No. 102** as to exercising challenge for cause moot and superfluous as these challenges are also included in **Motion No. 101's** prayers for relief;

I. **No. 103**- **Motion for an Order Directing that Alternate Jurors not be Publically Identified, etc.** is the obvious manner in which to handle all alternates and the State will

voluntarily comply without the necessity of a court order; and

J. The State has no position for or against the relief prayed for in **No. 105- Motion for Order Requiring that Bailiff's Oaths of Office....** and leaves it totally up to this Court's discretion in what to do; however, if the Court grants this motion then the relief requested in **No. 106-Motion to Limit Conversations Between Jurors and Bailiffs** should be deemed moot and superfluous necessitating the denial of this parallel pleading.

4.

The State's position on the defense's motions dealing with a closed courtroom and a gag order is to support the Court's in its lawful rulings which balances the interest of due process and an open society but encourages the Court to also consider the importance of a jury of citizens of Gordon County rendering the verdicts in both phases to this trial since this is the community in which this occurred and if at all possible should be the appropriate venue to speak the truth as to guilty/not guilty and if guilty, the appropriate sentence for that conduct. Further, any ruling should be reciprocal to both parties. This position applies to the following pleadings:

- A. **No. 63a - Motion for all Evidentiary Matters to be Heard In Camera;**
- B. **No. 63b-Motion to Conduct Closed Evidentiary Hearing on ..., etc.;** and
- C. **No. 63c- Motion to Control Prejudicial Publicity.**

5.

DISCOVERY ISSUES

Premitting a response to each specific motion dealing with the issues set out above which are found in the package of defense motions between No. 33 and including No. 59 and reserving the right to said specific response and understanding our continuing duty to amend,

revise and modify said previously served statutory discovery, the State through its initial filing and service of discovery pleadings and attachments on June 3, 2005 states that it has complied with the majority of what the defense is entitled to. The attachments included the List of Witnesses with the mandated information, copies of all scientific reports received to date, and copies of the defendant's interview by written response together with the fact that the state's open file policy has been initiated by defense counsels' review of the reading file¹ and the subsequent copying and supplying of all requested and designated. Further, any future voluntary compliance and specific responses will be predicated on defendant and his counsels' decision of whether to opt-in to the reciprocal discovery statute as amended (Chapter 16 of Title 17 of the Georgia Code) which is set out in the withdrawn motion No. 32. Accordingly, the State respectfully reserves an opportunity for future response if needed until at least ten (10) days following this decision which has been delayed pursuant to the Court's ruling on motion No. 31. (see paragraph 20 at page 10 of its order dated June 13, 2005).

Finally, for clarification and as a general response to these discovery requests, undersigned attaches hereto office memos addressing its open file policy, response to reciprocal discovery opt-in, and criminal histories which are attached respectively as Exhibit A, Exhibit B and Exhibit C which by reference each are specifically incorporated herein.

6.


The State respectfully reserves the right to respond to any reconsideration or expansion of the Court's ruling as to motions Nos. 7 and 31d as set out in its order dated June 13, 2005 and

¹Consists of exact copy of the investigative files of the two lead agencies in this investigation-GBI and Gordon County Sheriff's Office which prosecuting office has received.

State by the filing of this pleading is doing so in accordance with the court's order hereinbefore referenced and it should not in any way be considered a waiver to its continuing objection to the defense motion No. 67 entitled "Motion for an Order Requiring the District Attorney to Respond in Writing to Each Motion which is Contested by the State".

Respectfully Submitted,
this 27th day of June, 2005

Office of District Attorney
Cherokee Judicial Circuit

BY: 
T. Joseph Campbell
District Attorney
State Bar No. 106950

GORDON COUNTY DIVISION
P.O. BOX 1478
CALHOUN, GA 30703
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February 23, 1995

M E M O

TO: Mickey R. Thacker
 Sharon M. Fox
 Rebecca B. Tierce
 D. Scott Smith
 Lance T. McCoy
 Assistant District Attorneys

FROM: ~~T. Joseph Campbell~~
 District Attorney
 Cherokee Judicial Circuit

Re: Office Policy in regard to defense
 access to State files and the new
 Discovery Law

Recently at the meeting of the Bartow County Bar Association, I advised those attorneys present who represent criminal clients that our office would continue in the same manner as we have been doing, provided defense lawyers did not opt into the new discovery law. What we will do at Arraignment is to provide the defendant or defense counsel with a copy of the indictment or accusation along with a list of witnesses and, although not required unless the defendant makes a demand, scientific reports and defendant's statements. We will continue to have an open file policy except in unusual cases as determined by the Assistant assigned the case with my approval. The open file policy means simply that the defense lawyer, after the assigned attorney has an opportunity to remove all work product and sensitive correspondence from the file, can review it and take notes from same under the supervision of the staff member. It does not mean that we will make a copy of the complete file; however, if there are some exculpatory matters or arguably favorable material, those items probably need to be copied and given to the defense counsel provided we obtain a receipt for this documentation and file it.

If defense counsel opts into the new discovery law as set out in Chapter 17-16, then in that event there will be no open file. The Court will be requested to conduct an in camera inspection and at or before Arraignment we will only supply a copy of the indictment and list of witnesses, and then if we have it prepared, the other items that would be necessary to be supplied would

Exhibit A
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February 23, 1995

MEMO TO:
All Assistant District Attorneys
Cherokee Judicial Circuit
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have to be done at least ten (10) days prior to trial, which would include the criminal history records, other physical documentary evidence including photographs, other witnesses' statements, defendants' statements which, as you note, will include under the new law co-conspirators' statements which are attributable to the defendant on trial. If an attorney requests a review of the file prior to indictment or filing the accusation and subsequently at or around Arraignment opts in under the new discovery bill, I believe at that point in time we will revise the policy and there will be no open files until Arraignment has been concluded as to that attorney. Hopefully, the local Bar will cooperate with this once they are informed of our office policy.

I welcome any comments upon this decision, and if you feel it is better for us to establish a different policy than this continuance of the current one, then I will be open to discussion; however, I think with a large majority of our cases being handled by local counsel who understand our policy they will rarely opt in even. Also, all discovery that was specified in the Constitution or in the Uniform Superior Court Rules has not been modified by this law and the time frames in regard to similar transactions and other matters still must be addressed as they are unaffected by this new law. I am preparing a list of deadlines for you to keep as a reminder and to keep your staff apprised so they can remind each of us as these deadlines approach. This schedule is a list of the dates of Arraignment with the number of days in parenthesis from that Arraignment to the next Trial Week, then I have placed the deadline of ten (10) days before trial which is ours in which to comply with the new discovery, some of which will be almost immediately after Arraignment and others will give us ample time to complete, and then the five-day response time before trial for defense counsel. Please note that these times can be changed by Court order and can be made to be supplied sooner than these deadlines, but I did prepare these guidelines so that when and if we get any opting into the new discovery law by any attorneys you will know what our time frame is. Also, attached is the Memo that I received from the Prosecuting Attorneys' Council as to Social Security numbers which pretty much makes that a moot issue and would be good to apprise local law enforcement, even though I believe each has decided to not ask for those or if they did not to disclose them because disclosure is a violation of Federal Law. Further, legislation is now pending in the General Assembly to delete this and birth dates from the list of witnesses, and hopefully this will resolve this question. Finally, after I am assured each of you has reviewed this new law, I will schedule a meeting for us to discuss more at length and that possibly will be in May.

TJC/scr
Attachments (2)

Exhibit

Page

A
2 of **2**

T. JOSEPH CAMPBELL**District Attorney
Cherokee Judicial Circuit**

135 West Cherokee Avenue, Suite 368
 Cartersville, Georgia 30120
 Phone (770) 387-5080 Fax (770) 387-5085
 Victim Assistance Phone (770) 387-5106

MEMO

July 27, 2001

BARTOW COUNTY DIVISION**(Cartersville Office/Staff Attorneys)**

Mickey R. Thacker, Deputy
 Lance T. McCoy
 Minerva C. Blanchette
 Martha K. Helppie
 Rosemary G. Heidmann

GORDON COUNTY DIVISION**(Calhoun Office/Staff Attorneys)**

D. Scott Smith, Deputy
 Sharon M. Fox
 Rebecca B. Paris

TO: Members of Bartow and
 Gordon County Bar Associations

FROM: T. Joseph Campbell
 District Attorney
 Cherokee Judicial Circuit

Re: New Office Policy concerning
 Compliance with Reciprocal
 Discovery

The Bartow County Division has been refining our response to the "opt-in" requests received since the April, 2001 Term. Because that experiment worked well and was more efficient for the staff, a new procedure will become effective in both divisions as of August 1, 2001. Mickey Thacker, Deputy District Attorney based on extensive research developed a standard response pleading and procedure which has been reviewed, discussed and refined by all staff attorneys and myself. This policy in no way will effect our "open file" policy, but that policy is integral to our response. The amount of materials supplied voluntarily and at or around arraignment will be reduced and the burden will shift to you to review the case file maintained by our office and designate which additional items you desire a copy and hopefully ~~doing~~ ^{Surin} this time any reciprocal discovery can be copied and examined so less time will be expended by both our offices in this paperwork phase. Attached is an appendix with the leading cases dealing with discovery and the state's "open file" policy.

As to felony cases as defined in O.C.G.A. §17-16-2, our office will supply the indictment and a list of witnesses as is required by the constitution, statute and Uniform Rules of the Superior Courts. Additionally, voluntarily, our office will serve copies of the defendant's statement to law enforcement officers, as well as copies of scientific reports in our case file. First and foremost, you need to review the pleadings to insure you have copies of these documents and review the case file because our office will not guarantee that what you receive is everything in those specific categories in our case file. After you review the cases, you will have to agree that our "open file" policy and you contacting our office and arranging a time to and actually conducting said review is compliance with O.C.G.A. §17-16-4(a)(1) and (4) as to "... disclose

Exhibit**Page****B****1 of 3**

and make available for inspection, copying..." and "... permit the defendant at a time agreed to by the parties... to inspect and copy or photograph ...". The criminal histories of each felony defendant will also be served on that person or his/her attorney at arraignment with the initial pleadings to be in compliance with O.C.G.A. §17-16-4(a)(2). Of course, the original will be maintained in our file and not attached to original pleadings filed in the Clerk's office.

The other areas of discovery O.C.G.A. §§ 17-6-4 (a)(3) and 17-16-7 will require your office to schedule the date and time to inspect the physical, photographic, documentary and taped evidence. Also, because of our "open file" policy all witness statements are produced and available but your contact is necessary to complete this process an advance notice is necessary to make the law enforcement files also available. Hence, if all this can be done at one time and if you are agreeable to the time frame the reciprocal can take place at that time especially since the equipment to comply will be readily available. As to copies made and supplied at this compliance session there will be no charge for appointed counsel but if you are retained it will be .25¢ per copy plus \$8.18 per hour for staff person to make these copies if the time exceeds one half hour. Regardless, of whether you are appointed or hired you will need to supply the blank audio or video tapes you need to make copies with. As to photographs, our copier in both division offices have the ability to make copies of photographs so that would certainly be less than reprint costs that you would owe and hopefully satisfactorily reproduced. A difficult evidentiary problem is where there is too much physical evidence to maintain and produce at our office and in these cases the review will be at the evidence storage area of the investigating agency.

As to misdemeanor cases in the reciprocal discovery process as provided for in Article 2 of Chapter 16, Title 17 of our code, at arraignment our office will supply a copy of the indictment/accusation and list of witnesses. As stated in the felony cases, a copy of the defendant's statement(s) will be provided voluntarily but as with felonies you need to avail yourself of our "open file" policy to insure you have all if you do not file a notice in accordance with O.C.G.A. §17-16-22 (a). As to scientific reports our office will only voluntarily provide these without guarantee in DUI and misdemeanor marijuana cases. In all other cases you can either go with the "open file" policy or file a request in accordance with O.C.G.A. §17-16-23(b). As to all other discovery in misdemeanor cases, the review of our "open file" policy is available; however, no photocopies of any other documents in our file will be available unless the assigned attorney for good cause makes an exception. The same applies to photographs and audio/video tapes not involving a defendant's statement. This is the same as the old policy; thus, nothing has changed.

cc: Judges, Superior Courts, Cherokee Judicial Circuit

Exhibit B
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APPENDIX

Re Reciprocal Discovery Case Law

- LAWSON V. STATE. 224 Ga. App 64 (1997)
- 2. MCSEARS V. STATE. 22 Ga. App 90 (1997)
- GUILD V. STATE. 134 Ga. App 862 (1998)
- PATTMAN V. STATE. Ga. App 786 (1999)
- ADAMS V. STATE. 17 Ga. 48 (1999)
- TAYLOR V. STATE. 72 Ga. 62 (2000)

APPENDIX

BARTOW COUNTY DIVISION
(Cartersville Office/Staff Attorneys)

Mickey R. Thacker, Deputy
 Gregory S. Dickson
 Rosemary G. Heidmann
 Erik J. Pirozzi
 Russell S. Thomas

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GORDON COUNTY DIVISION
(Calhoun Office/Staff Attorneys)

D. Scott Smith, Deputy
 Sharon M. Fox
 Brad S. Harris

September 30, 2003

NOTICE

**TO: MEMBERS OF DEFENSE BARS OF
 BARTOW AND GORDON COUNTY**

**FROM: T. JOSEPH CAMPBELL
 DISTRICT ATTORNEY
 CHEROKEE JUDICIAL CIRCUIT**

RE: CRIMINAL HISTORY INFORMATION

- I. Only the Georgia Criminal History Information will be released to Defense counsel in a pending criminal case, as follows:
- A. Defendant/Client as an attachment to II. of Part One of this office's initial discovery pleading;
 - B. Co-defendant in a multiple defendant case will be released only pursuant to a written discovery pleading similar to a Brady type motion or via written request form supplied by our office, if utilizing open file policy; and
 - C. As to witnesses and other Non- Parties, including possible suspects and only if a copy is in our file including law-enforcement reports received, these will be released only pursuant to a filed Brady type motion or without a motion pending, if arguably favorable or impeaching, with a written request as part of our open file policy.

Exhibit C
Page 1 of 2

- II. Federal or Other State Criminal History Information received via N.C.I.C.
- A. Not available for inspection or review even via our open file policy because of federal laws, rules and regulations
- B. If such information is in our file and it is of an impeachment type and/or arguably favorable, this will require the filing of a Brady type motion and an in camera inspection by and an order of the court authorizing the release of all or a portion of this type information in our files. Our office will work with each of you to avoid as best possible unnecessary litigation and court time on this issue. You will be responsible for all these pleadings and proceedings.
- III. Miscellaneous Matters
- A. Costs: 25¢ per page for retained counsel only and only as to co-defendant and/or non-parties such as witnesses where the reports are in our file.
- B. This office declines to exercise the authority of O.C.G.A. § 35-3-34(d) and will not run criminal histories other than in the creation of each defendant's file for purposes of prosecution, including but not limited to, sentencing and similar transaction type evidence and on a limited basis as impeachment type evidence, if not available otherwise. Thus, independent request to generate a history for witnesses whose report is not available in our file is not within our authority and you can only do so in accordance with O.C.G.A. § 35-3-34(a)(2) through the Georgia Crime Information Center.

cc: Honorable Howell, Smith and Nelson
Judges of the Superior Courts of the Cherokee Circuit

Exhibit C
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IN THE SUPERIOR COURT
FOR THE COUNTY OF GORDON
STATE OF GEORGIA

STATE OF GEORGIA	*	CASE NO. 16471
	*	
	*	
	*	
JERRY WILLIAM JONES,	*	CHARGES: MURDER, ET AL.
DEFENDANT.	*	
	*	

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The above and foregoing "State's Initial Response to Defendant's Motions filed May 19, 2005..."

SO SERVED UPON CHRISTOPHER ADAMS & E. MICHELLE DRAKE,
GA. CAPITAL DEFENDER OFFICE BY:

-] (1) HAND DELIVERY: _____
- (2)


 T. JOSEPH CAMPBELL
 DISTRICT ATTORNEY
 CHEROKEE JUDICIAL CIRCUIT