



statutory and jurisprudential authorities cited below, and all other applicable constitutional, statutory, treaty, customary international law, evolving international standards, jurisprudential authority to order a daily transcript of all voir dire proceedings.

In support, counsel states:

1. Jerry Jones is on trial for his life. The State, through the District Attorney, has announced its intention to kill Jerry Jones, a human being, by lethal injection.

2. “The fundamental respect for humanity underlying the Eighth Amendment's prohibition against cruel and unusual punishment gives rise to a special ‘need for reliability in the determination that death is the appropriate punishment’ in any capital case.” Johnson v. Mississippi, 486 U.S. 578, 584 (1988) (citations omitted). It is well established that when a defendant's life is at stake, a court must be “particularly sensitive to insure that every safeguard is observed.” Gregg v. Georgia, 428 U.S. 153, 187 (1976). This heightened standard of reliability is “a natural consequence of the knowledge that execution is the most irremediable unfathomable of penalties; that death is different.” Ford v. Wainwright, 477 U.S. 399, 411 (1986).

Death, in its finality, differs more from life imprisonment than a 100-year prison term differs from one of only a year or two. Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case.

Woodson v. North Carolina, 428 U.S. 280, 305 (1976). The United States Supreme Court has repeatedly emphasized the principle that because of the exceptional and irrevocable nature of the death penalty, "extraordinary measures" are required by the Eighth and Fourteenth Amendments to ensure the reliability of decisions regarding both guilt and punishment in a capital trial. Eddings v. Oklahoma, 455 U.S. 104, 118 (1982) (O'Connor, J., concurring). See also Beck v.

Alabama, 447 U.S. 625, 637-38 (1980); Lockett v. Ohio, 438 U.S. 586, 604 (1978); and Gardner v. Florida, 430 U.S. 349, 357-58 (1977).

3. While there is dicta in several precedent opinions which would indicate that a defendant in a criminal proceeding is not entitled to a daily transcript of testimony, those opinions generally predate the United States Supreme Court's decisions which deal with jury selection in death penalty cases.<sup>1</sup> Challenges to the prosecutors' use of peremptory strikes require evidentiary hearings. Before a defendant can properly assert a challenge to a prosecutor's unlawful use of peremptory strikes, he must be prepared to present evidence and argument in a meaningful and **effective** manner. The only way in which the defendant can properly prepare for the evidentiary hearings based upon allegations of the unlawful use of peremptory strikes is to be provided transcript(s) of the voir dire proceedings. Indeed, this Court itself must refer to the transcript of voir dire proceedings to make meaningful decisions with regard to challenges to the unlawful use of peremptory challenges.

4. Under Batson (unlawful racially based use of peremptory strikes) and J.E.B. v. Alabama (unlawful gender based use of peremptory strikes), the defense bears the burden of demonstrating that the prosecutors' use of strikes constitutes a *prima facie* case of racially or gender based discriminatory use of peremptory challenges. Once a *prima facie* case has been established the state must rebut the *prima facie* showing of the biased use of peremptory strikes with persuasive racial and gender neutral justifications for the exclusion of each juror challenged. The Supreme Court of Georgia has acknowledged that the burden of production, which shifts to the state once a *prima facie* case has been presented, increases in proportion to the strength of the

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<sup>1</sup> See Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986); Powers v. Ohio, 499 U.S. 400, 111 S.Ct. 1364, 113 L.Ed.2d 411 (1991); J.E.B. v. Alabama, 511 U.S. 127, 114 S.Ct. 1419, 128 L.Ed.2d 89, (1994); Georgia v. McCollum, 505 U.S. 42, 112 S.Ct. 2348, 120 L.Ed.2d 33 (1992); and Turner v. Murray, 476 U.S. 28, 106 S.Ct. 1683, 90 L.Ed.2d 27 (1986).

defendant's *prima facie* case. See Gamble v. State, 257 Ga. 325, 357 S.E.2d 792 (1987).

5. In the wake of the United States Supreme Court's decision in Georgia v. McCollum, 505 U.S. 42, 112 S.Ct. 2348, 120 L.Ed.2d 33 (1992), applying Batson to peremptory strikes by a criminal defendant, defense counsel must also be prepared to give race-neutral (and now, in light of J.E.B. v. Alabama, gender-neutral) reasons for his or her strikes if challenged by the state. The defendant must, when challenged by the prosecutors, be prepared to present evidence and effective argument in support of racial and gender neutral justifications for the exclusion of jurors. The only effective tool, in most cases, is reference to and use of the actual questions and answers developed during voir dire.

6. Prosecutors will frequently attempt to rebut Batson (and presumably, J.E.B. v. Alabama) challenges by coming forward with reasons that are pretexts for racial or gender bias. It is critically important that Jerry Jones be able to effectively and meaningfully show that the reasons offered by the prosecution are not race or gender neutral. For example, defense counsel must be prepared to challenge any misstatements which may be made by the prosecutor about the responses of the potential jurors. If the prosecutors give fanciful and far-fetched reasons for the racially biased or gender biased use of peremptory strikes, Jerry Jones and his attorneys must be able to rely on the written record of the proceedings.<sup>2</sup> The only way Jerry Jones can reasonably meet these demands is to have access to a transcript of the voir dire proceedings.

Failure to provide Jerry Jones with a daily transcript of all voir dire proceedings would deprive Jerry Jones of the independent state and federal constitutional guarantees to: a fair trial and right to present a defense, the effective assistance of counsel, due process of law, to equal

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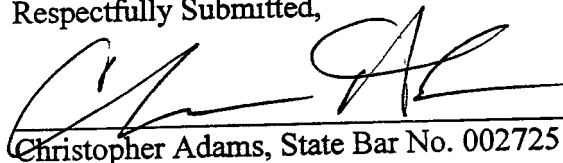
<sup>2</sup> See, e.g., Ex parte Thomas, 601 So.2d 56 (Ala. 1992); Marshall v. State, 593 So.2d 1161 (Fla. DCA2 1992); United States v. Gordon, 817 F.2d 1538 (11th Cir. 1987).

protection of the laws, to freedom from cruel and unusual punishment, and a reliable verdict and sentence. Ga. Const. art. I, § I, ¶¶ I, II, IV, V, VII, IX, X, XI, XII, XIII, XIV, XVI, XVII, XVIII, XXIV and XXVIII; U.S. Const. amend. V, VI, VIII and XIV

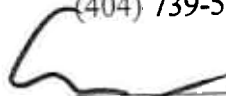
WHEREFORE, JERRY WILLIAM JONES respectfully requests that this Court enter an order directing the official court reporter assigned to this case to prepare a daily transcript of the voir dire proceedings for use by Jerry Jones and his attorneys, and for such other and further relief as might be appropriate in this matter.

DATED this 12 day of May, 2005.

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing motion has been mailed to The Office of the District Attorney for Gordon County via first-class United States Postal Service this 19<sup>th</sup> day of May, 2005.



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IN THE SUPERIOR COURT OF GORDON COUNTY  
STATE OF GEORGIA

STATE OF GEORGIA,

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Indictment No. 16471

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JERRY WILLIAM JONES,

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**ORDER**

Upon consideration of Jerry Jones's *Motion for a Daily Transcript of All Voir Dire Proceedings*, the Court being otherwise sufficiently advised, and good grounds appearing therefor,

IT IS HEREBY ORDERED AND DECREED, that the official court reporter assigned to this case shall prepare a daily transcript of the voir dire proceedings for use by JERRY WILLIAM JONES and his attorneys, and for such other and further relief as might be appropriate in this matter.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
The Honorable G. Carey Nelson  
Judge, Gordon County Superior Court  
State of Georgia

Prepared by:  
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