

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 and 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. The first three statutory questions set out in O.C.G.A. § 15-12-164 are so conclusory and so clearly suggestive of the proper answer (e.g., "Have you any prejudice," "Is your mind perfectly impartial?") that they are of no value in eliciting information which this Court could use in determining a challenge for cause or which counsel could use in deciding to exercise a peremptory

challenge. For this reason, the statutory questions have been held to be inadequate to ensure the fair and impartial jury guaranteed by the United States Constitution. Jordan v. Lippman, 763 F.2d 1265, 1281 (11th Cir. 1985). See also, Berryhill v. Zant, 858 F.2d 633, 642 (11th Cir. 1988) (Clark, J., concurring).

4. The fourth statutory question asks jurors only whether they are opposed to capital punishment. It does not elicit other points of view on the death penalty that could interfere with their ability to be fair and impartial, see e.g., Pope v. State, 256 Ga. 195, 345 S.E.2d 831 (1986), nor does it elicit answers as to a juror's ability to set aside any personal views and decide the case on the evidence. Gray v. Mississippi, 481 U.S. 648 (1987); Wainwright v. Witt, 469 U.S. 810 (1985); David v. Georgia, 429 U.S. 122 (1976); Witherspoon v. Illinois, 391 U.S. 510 (1963). Instead, each juror should be asked whether he or she has a position on the death penalty and, if so, what it is. This answer would, of course, be followed by appropriate follow-up questions by the court and the parties.

5. It is not mandatory that the statutory questions be asked unless the defendant requests them. See Smith v. State, 168 Ga. 611, 615, 148 S.E. 531 (1929). This Defendant does not request the questions in this case.

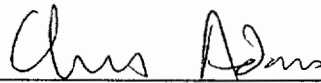
6. Failure to preclude the use of "the statutory questions" would deprive Mr. Jones of the independent state and federal constitutional guarantees to: a fair trial and right to present a defense,

the effective assistance of counsel, due process of law, to equal 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, this Defendant would respectfully request that this Court refrain from asking the statutory questions to prospective jurors in this case.

DATED this 11 day of August, 20 05

Respectfully Submitted,



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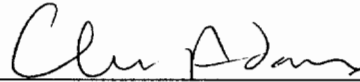


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CERTIFICATE OF SERVICE

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 11 day of August, 2005.



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DEATH PENALTY/LIFE WITHOUT PAROLE CASE

IN THE SUPERIOR COURT OF GORDON COUNTY
STATE OF GEORGIA

_____)	
STATE OF GEORGIA,)	
)	
)	Indictment No. 16471
)	
v.)	
)	
JERRY WILLIAM JONES,)	
)	
_____)	

ORDER

Upon consideration of Mr. Jones's *Motion to Preclude the Use of "The Statutory Questions"*, the Court being otherwise sufficiently advised, and good grounds appearing therefore,

IT IS HEREBY ORDERED AND DECREED, that this Court will not ask the statutory questions to prospective jurors in this case.

SO ORDERED this _____ day of _____, 20_____.

 Judge G. Carey Nelson
 Judge Superior Court, State of Georgia

Prepared by:
E. Michelle Drake
Counsel for Mr. Jones