

**DEATH PENALTY/LIFE WITHOUT PAROLE CASE**

IN THE SUPERIOR COURT OF GORDON COUNTY  
STATE OF GEORGIA

~~FILED  
Clerk Superior Ct., Gordon County  
MAR 18 2005  
Brian Brannon  
Clerk~~

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STATE OF GEORGIA, )  
)  
)  
v. )  
)  
)  
JERRY WILLIAM JONES, )  
)  
)  
\_\_\_\_\_ )

Indictment No. 16471

FILED  
Clerk Superior Ct., Gordon County  
MAY 19 2005  
Brian Brannon  
Clerk

**SPECIAL DEMURRER OR IN THE ALTERNATIVE  
MOTION TO DISMISS THE INDICTMENT**

COMES NOW JERRY WILLIAM JONES, by and through his counsel, and moves this Court to dismiss the indictment in this case. This motion is made pursuant to the provisions of the Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States and to Article I, § I, ¶¶ I, II, XI, XII and XXVIII of the Constitution of the State of Georgia. In support of his Special Demurrer Mr. Jones shows as follows:

- 1.

This is the capital prosecution of Mr. Jones and these proceedings could result in his death by lethal injection. The State, through the District Attorney, has announced its intention to kill Mr. Jones, a human being. “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, 108 S.Ct. 1981, 100 L.Ed.2d 575 (1988) (quoting Gardner v. Florida, 430 U.S. 349, 363-64, 97 S.Ct. 1197, 51 L.Ed.2d 393 (1977) (White, J., concurring) (quoting Woodson v. North Carolina, 428 U.S. 280, 305, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976))). It is now 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, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976). As this Court is acutely aware, the penalty of death is qualitatively and profoundly different from any other sentence. E.g., Ford v. Wainwright, 477 U.S. 399, 411, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986) (“In capital proceedings generally, this Court has demanded that factfinding procedures aspire to a heightened standard of reliability. This especial concern is a natural consequence of the knowledge that execution is the most irremediable and unfathomable of penalties; that death is different.” (citations omitted)); California v. Ramos, 463 U.S. 992, 998-99, 103 S.Ct. 3446, 77 L.Ed.2d 1171 (1983) (recognizing “the qualitative difference of death from all other punishments”); Eddings v. Oklahoma, 455 U.S. 104, 110, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982) (“the imposition of death by public authority is . . . profoundly different from all other penalties”). For this reason, our system of justice must go “to extraordinary measures to ensure that the prisoner sentenced to be executed is afforded process that will guarantee, as much as is humanly possible, that

the sentence was not imposed out of whim, passion, prejudice, or mistake." Eddings v. Oklahoma, 455 U.S. at 118 (O'Connor, J. concurring) (emphasis added). These "extraordinary measures" must be taken at both stages of any capital trial. Beck v. Alabama, 447 U.S. 625, 638, 100 S.Ct. 2382, 65 L.Ed.2d 392 (1980).

2.

Mr. Jones files this Special Demurrer to the captioned indictment with the express reservation of his right to a full and formal arraignment. Mr. Jones, by demurring to this indictment, does not waive his demand for a formal arraignment. Baskin v. State, 137 Ga. App. 840, 225 S.E.2d 77 (1976); Kincade v. State, 14 Ga. App. 544, 81 S.E. 910 (1914).

3.

The indictment fails to contain allegations stating as definitely as possible the time and place of the commission of the alleged offenses.

4.

The indictment was based solely on hearsay evidence which was presented to the Grand Jury as if the witness had personal knowledge.

5.

The indictment was based solely on hearsay evidence when better evidence was readily available for presentation to the Grand Jury.

6.

The method of presentation of evidence to the Grand Jury violated Mr. Jones's rights protected by the Fifth and Sixth Amendments to the Constitution of the United States and by Article I, § I, ¶¶ I and II of the Constitution of the State of Georgia.

7.

The indictment is vague and ambiguous and does not apprise Mr. Jones of the charge against him with sufficient specificity to permit him to adequately prepare his defense, and to plead any judgement in the instant case as a bar to any later proceedings against him based on these same alleged offenses in contravention to the double jeopardy clauses of the Fifth Amendment of the Constitution of the United States and Article I, § I, ¶ XVIII of the Constitution of the State of Georgia.

8.

The indictment is vague and ambiguous and indefinite so as to deprive Mr. Jones of rights guaranteed to him under the due process clause of the Fifth Amendment and under that clause of the Sixth Amendment guaranteeing to a defendant the right to be informed of the nature and cause of the accusation. Under both the Constitution of the United States and the Constitution of the State of Georgia, "[t]he fundamental idea in 'due process of law' is that of 'notice' ...." Blocker v. Blackburn, 228 Ga. 285, 289, 185 S.E.2d 56 (1971). As a matter of due process, the prosecution "must inform[] appellant what was intended to have been charged and what he must be prepared to meet." United States v. Holcomb, 797 F.2d 1320, 1326 (5th Cir. 1986).

9.

The indictment is based upon unconstitutional statutes, or in the alternative, on statutes which are unconstitutional as applied to the facts of this case. The constitutional provisions violated are the Fourth, Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States and Article I, § I, ¶¶ I, II, XII, XIII, XIV, and XVII or the Constitution of the State of Georgia.

10.

The indictment is predicated upon matters, facts, documents and evidence that were obtained as the consequence of an illegal search and seizure; said matters, facts, documents and things were all illegally and improperly presented to the Grand Jury incident to and in connection with the presentation of evidence to them that gave rise to the return of the indictment herein. Accordingly, the indictment and each and every count thereof must be dismissed.

11.

The statutes upon which the indictment is predicated are unconstitutional in that the potential penalties that may be imposed constitute cruel and unusual punishment.

12.

The indictment fails to supply the information required by O.C.G.A. § 17-7-54, and the indictment is so vague and ambiguous and does not apprise Mr. Jones of the charges against him with sufficient specificity to permit him to adequately prepare his defenses, and to plead any judgment in the instant case as a bar to any later proceedings against him based on the same alleged offense in contravention of the protection against Double Jeopardy. The indictment is so vague as to what conduct Mr. Jones was allegedly engaged in during the alleged commission of the murders that it is impossible to determine what he is charged with doing in each incident. Without sufficient notice as to what conduct is being charged Mr. Jones has no way of adequately defending himself against these charges.

13.

"Notice of issues to be resolved by the adversary process is a fundamental characteristic of fair procedure." Lankford v. Idaho, 500 U.S. 110, 111 S.Ct. 1723, 114 L.Ed.2d 173, 188 (1991). The indictment in this case is void of any legal or factual specificity. It is therefore impossible for Mr. Jones to prepare a reasonable and adequate defense.

[I]n order to be valid an indictment must: (1) show the accused what to prepare a defense against; (2) identify the offense so that he is tried for the same charge that was brought before the grand jury; (3) protect somewhat against double jeopardy; and (4) give the court the means to accept or reject the verdict, pronounce judgment, and pass sentence.

Thompson v. State, 542 So.2d 1286, 1291 (Ala. Cr. App. 1988).

14.

The indictment against Mr. Jones is vague and general. There is no language describing any of the facts or circumstances of the crime. It fails to set forth particular acts or means by which he allegedly committed the kidnapping of Brittney Phelps, Tami Hope Peeler and Brandy Jones. The indictment fails to set forth particular acts or means by which he allegedly committed interstate interference with custody. The indictment fails to set forth particular acts or means by which he allegedly committed interstate interference with custody and interference with custody. The indictment fails to set forth particular acts or means by which he allegedly committed burglary. The indictment fails to set forth particular acts or means by which he allegedly committed theft by taking. The indictment fails to set forth particular acts or means by which he allegedly used a firearm during the commission of a felony. The indictment fails to set forth particular acts or means by which he allegedly used a firearm during the crime of theft of a motor vehicle. Such an indictment deprives Mr. Jones of his rights to due process under the law and to be notified of the charges against him.

15.

The indictment against Mr. Jones is vague and general. There is no language describing any of the facts or circumstances of the crime. Such an indictment deprives Mr. Jones of his rights to due process under the law and to be notified of the charges against him.

16.

The Supreme Court's recent reasoning in Lankford highlights the importance of notice as a means to preserve the due process rights of a defendant. It quotes Justice Frankfurter:

"No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss **notice of the case against him and opportunity to meet it.**"

Lankford v. Idaho, 114 L.Ed.2d at 184 (emphasis added) (quoting Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123 (1951)).

17.

The indictment was predicated upon matters, facts, and things illegally and improperly obtained and presented to the grand jury, in violation of Mr. Jones's constitutional rights. See, e.g., Merriweather v. State, 63 Ga. App. 667, 11 S.E.2d 816 (1940); United States v. Basurto, 497 F.2d 781 (9th Cir. 1974); United States v. Estepa, 471 F.2d 1132 (2d Cir. 1972).

18.

In Beck v. Alabama, 447 U.S. 625 (1980), the United States Supreme Court held that the death penalty may be imposed only on the basis of reason, and that lesser included offense instructions should be given wherever their omission would "[enhance] the risk of an unwarranted conviction." Such a rule is necessary to prevent the violation of the defendant's rights under the Eighth and Fourteenth Amendments to the Constitution of the United States. In cases in which the omission of lesser included offense instructions would enhance the risk of unwarranted convictions, the omission of such charges in the indictment would also contribute to that risk. The omission of lesser included charges from the indictment is another means by which Mr. Jones is deprived of meaningful notice of the nature of the offense committed, and hinders him from further preparing an effective defense.

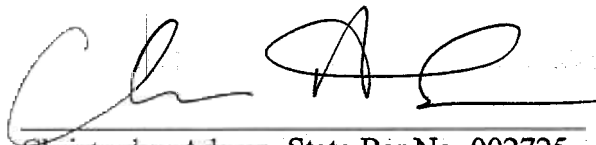
19.

The Georgia Court of Appeals has held on a number of occasions that "one accused of a crime has a right, if he demands it by a timely demurrer (objection), to have an accusation perfect in form and substance." Mealor v State, 135 Ga. App. 682, 218 S.E.2d 683 (1975); Burge v State, 103 Ga. App. 682, 120 S.E.2d 200 (1961).

WHEREFORE, Mr. Jones moves that this indictment be dismissed and all charges pending against him be dismissed.

DATED this 12 day of May, 2005.

Respectfully Submitted,



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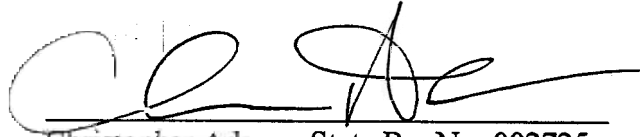
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Counsel for Jerry Jones

**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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