

DEATH PENALTY/LIFE WITHOUT PAROLE CASE

IN THE SUPERIOR COURT OF GORDON COUNTY
STATE OF GEORGIA

FILED
Clerk Superior Ct., Gordon County

MAY 19 2005

Brian Brannon
Clerk

STATE OF GEORGIA,)
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Indictment No. 16471

v.

JERRY WILLIAM JONES,

**MOTION TO DISCLOSE THE PAST AND PRESENT
RELATIONSHIPS, ASSOCIATIONS AND TIES BETWEEN
THE DISTRICT ATTORNEY AND PROSPECTIVE JURORS AND
TO DISCLOSE RECORDS ABOUT PROSPECTIVE JURORS IN THE
PROSECUTOR'S POSSESSION**

JERRY WILLIAM JONES, through undersigned counsel, respectfully moves this Court, pursuant to the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Article I, § I, ¶¶ I, II, IV, V, VII, IX, X, XI, XII, XIII, XIV, XVI, XVII, XVIII, XXIV and XXVIII of the Constitution of the State of Georgia, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 10 1984, Art 14 and 16, 23 I.L.M. 1027 (Entry into force for the United States November 20, 1994), Inter-American Convention on Human Rights, November 22 1969, Art 4 and 7, 1144 UNTS 123, 9 I.L.M. 673 (Entry into force July 18, 1978), International Covenant of Civil and Political Rights, December 19 1966, Art 2(3) and 6 -7, 999 UNTS 171, 6 I.L.M. 368 (Entry into force for the United States September 8, 1992), Second Optional Protocol to the International Covenant on Civil and Political Rights, December 15 1989, UN GAOR Supp. (No. 49) at 207, UN Doc. A/44/49 (1989) (Entry into force July 11, 1991), Article 18, Vienna Convention on the Law of Treaties, May 23

1969, Art 18, 1155 UNTS 331; 8 ILM 679 (Entry into force January 27, 1980), as well as statutory and jurisprudential authorities cited below, and all other applicable constitutional, statutory, treaty, customary international law, evolving international standards, and jurisprudential authority for an order requiring the District Attorney to reveal any and all relationships, associations or ties with any prospective jurors, and to disclose any and all notes, memoranda or records in the possession of the state concerning any relationships, associations or ties between the office of the District Attorney and those persons called for jury duty in this case. This defendant also requests that the District Attorney be required to provide him with copies of any arrest, conviction, driving, or other records on prospective jurors in his possession.

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 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. Jerry Jones is entitled by the Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States, Article I, § 1, Par. I, XI, XII, XIV, and XVII of the Constitution of Georgia and by the laws of this state to be tried by impartial, fair-minded jurors. See Morgan v. Illinois, 504 U.S. 719, 726, 112 S.Ct. 2222, 119 L.Ed.2d 492 (1992); Parisie v. State, 178 Ga. App. 857, 344 S.E.2d 727, 729 (1986).

4. The fact that the District Attorney has been in political office for a number of years, the fact that the District Attorney has personal ties with many of the jurors and the fact that the District Attorney is one of the most highly visible political figures in the community will impede the jurors' ability to make fair and impartial determinations of the issues in this case. The District Attorney has run for office numerous times and has solicited funds as well as votes from the members of this community. Any such tie between a juror and the prosecutor or his office would obviously impinge upon that individual's fitness to serve as a juror in this case. Additionally, the existence of such relationships or ties, if not made known to the defense, will interfere with the intelligent use of Jerry Jones's peremptory challenges. See Tyree v. State, 262

Ga. 395, 418 S.E.2d 16, 18 (1992) (prosecutor's failure to disclose relationship with juror required reversal); Beam v. State, 260 Ga. 784, 400 S.E.2d 327 (1991) (trial court's refusal to excuse juror who worked for district attorney's office required reversal). See also Ward v. Commonwealth, 695 S.W.2d 404 (Ky. 1985) (any relationship between prospective jurors and prosecutor justifies challenge).

5. Discovery of religious, social, business, professional, recreational, and political associations, and previous employment by or dealings with criminal justice system, is essential to the selection of an impartial jury. However, a venireperson may often be hesitant to reveal such relationships, because "the juror may be reluctant to admit any bias in front of his [or her] peers." Williams v. Griswald, 743 F.2d 1533, 1540 n.14 (11th Cir. 1984).

6. If the District Attorney knows of any reason why a juror would be particularly favorable or unfavorable to the defense, or why a particular juror should not serve, he is under a constitutional obligation to disclose the reason to the defense. Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 194, 10 L.Ed.2d 215 (1963). See also Tyree v. State, 262 Ga. 395, 418 S.E.2d 16, 18 (1992); Beam v. State, 260 Ga. 784, 400 S.E.2d 327 (1991).

7 The courts have taken an increasingly expansive view of the nature of the interests requiring disclosure, ranging from a venireperson's contributions to the District Attorney's reelection campaign to indirect relationships with the law enforcement community. Certainly, if a conviction will be reversed on appeal or in collateral proceedings where the juror failed to reveal a particular relationship that might have justified a challenge for cause, even less intimate relationships must be disclosed on voir dire in order to permit the defense to effectively to exercise peremptory challenges and to preserve Jerry Jones right to a fair trial.

8. Without limiting the nature of the relationships that must be disclosed, Jerry Jones

directs this Court's and the District Attorney's attention to the following cases in which failure to disclose has created reversible error: Lyens v. State, 133 Ga. 587, 597-600, 66 S.E. 792 (1909) (persons *related* to those who contribute to prosecutor are incompetent to sit as jurors even if they were ignorant of such a connection until after trial); Tatum v. State, 206 Ga. 171, 56 S.E.2d 518 (1949); *cf.* Tatum v. Crosswell, 178 Ga. 679, 174 S.E. 140 (1934) (any financial interest at all in the litigation); Randolph v. Commonwealth, 716 S.W.2d 253 (Ky. 1986) (conviction reversed for failure to disclose prior juror/prosecutor relationship); Carpenter v. United States, 100 F.2d 716 (D.C. Cir. 1938); Falsetta v. State, 158 Ga. App. 392, 280 S.E.2d 411 (1981) (reversed on grounds of nondisclosure of juror affiliation with law enforcement agency). Trafton v. New York State Electric & Gas Corp., 100 N.Y.S. 2d 375, 376, 277 A. 1013 (1950) (undisclosed relationship required new trial even in absence of showing of prejudice). Tatum v. State, 206 Ga. 171, 56 S.E.2d 518, 520 (1949); Ward v. Commonwealth, 695 S.W.2d 404 (Ky. 1985) (*any* relationship between prospective jurors and prosecutor justifies challenge).

9. Jerry Jones would also show this Court that the following ties with the District Attorney should invariably be disclosed:

- (a) any person who has made a contribution to, or statement in support of, any campaign by the District Attorney for public office;
- (b) any person who has previously served on a jury in a case in which the district Attorney or a member of his staff was the prosecutor;
- (c) any person who makes a statement prior to or during voir dire that the District Attorney knows or suspects to be false or misleading; and
- (d) any person whom the District Attorney knows to harbor attitudes or biases that might make him or her hostile to Jerry Jones and his defense.

10. Due to the long association between the District Attorney and this county, it is

likely that or several of those called for jury duty will have previously been called. Therefore it is likely that members of the prosecution will have considered the fitness of more of the venirepersons previous occasion or prior to the onset of jury selection in this case.

1 Requiring disclosure of any ties between the prosecution and members of the jury pool at this juncture is necessary to ensure that Jerry Jones is furnished with impartial jury and to preclude the possibility of the trial being infected with reversible at the outset.

On information and belief, the District Attorney will receive in this case, as such offices do in most major felony trials, the arrest and driving records each veniremember, from county and state law enforcement agencies. Jerry Jones does not have access to such records. These records instrumental in conducting voir dire and exercising challenges for cause and peremptory challenges. [F]undamental fairness requires placing defendant upon an equal footing by requiring disclosure of the prosecutor's investigatory report upon prospective jurors. Since jurors so important to system of criminal justice, nondisclosure of information upon which defendant may exercise peremptory challenges places premium gamesmanship to the subversi of the trial's search for truth. Tagala v. State, 82 P.2d 604 611 (Alaska Ct. App. 99). For this reason, criminal defendants entitled to records of the criminal convictions of prospective jurors and similar information and materials about veniremembers that prosecutors routinely obtain from other government agencies. See id.; State v. Bessenecker, 404 N.W.2d 114, 118 (Iowa 1987); People v. Murtishaw, 63 P.2d 446 465 Cal. 98. Losavio v. Mayber, 495 P.2d 1032, 1033-3 (Colo. 1975).

Such records also must be made available to permit criminal defendant to challenge prosecutor's explanations for his peremptory strikes in response to challenge under

Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986). See, e.g., Ex parte Thomas, 601 So.2d 56 (Ala. 1992).

4. Failure to order the District Attorney to disclose to the defense this information will 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 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.

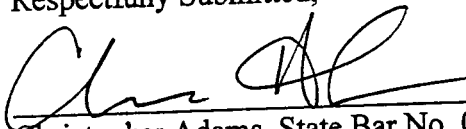
WHEREFORE, for the foregoing reasons and any others that may appear to this Court after a hearing, counsel for Jerry Jones, respectfully demands that this Court grant this motion and order the District Attorney to disclose to the defense information about the prospective jurors, including but not limited to the following:

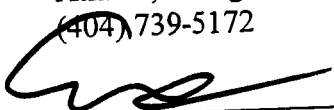
- (1) any ties between the District Attorney or his office and prospective jurors;
- (2) whether any prospective jurors have supported the District Attorney, financially or otherwise, in his political or other campaigns;
- (3) any information previously discovered by the District Attorney regarding a prospective juror's fitness or unfitness as a juror;
- (4) whether any prospective juror has previously been employed by or involved in social, fraternal or other activities with the District Attorney;
- (5) whether any prospective jurors are particularly favorable or unfavorable to the defense;
- (6) any law enforcement connections of any prospective jurors;
- (7) whether any prospective juror has ever previously served as a juror on a case prosecuted by the District Attorney or a member of his staff;
- (8) whether any prospective juror has made any statements during voir dire

known, believed, or suspected by the District Attorney to be false;
whether any prospective jurors harbor prejudices or biases against Jerry
Jones;
any conviction, arrest, or driving records of prospective jurors; and
any information about the previous experiences of prospective jurors or
their family members with the criminal justice system.

DATED this 12 day of May, 2005

Respectfully Submitted,

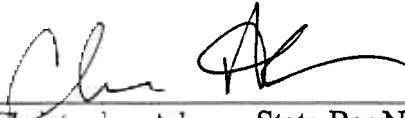

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CERTIFICATE OF SERVICE

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 19th-day of May, 20 05.



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- (8) whether any prospective juror has made any statements during voir dire known, believed, or suspected by the District Attorney to be false;
- (9) whether any prospective jurors harbor prejudices or biases against Jerry Jones;
- (10) any conviction, arrest, or driving records of prospective jurors; and
- (11) any information about the previous experiences of prospective jurors or their family members with the criminal justice system.

SO ORDERED this day of _____, 20____.

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

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