

**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**

Indictment No. 16471

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STATE OF GEORGIA, )  
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 )  
 v. )  
 )  
 JERRY WILLIAM JONES, )  
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**MOTION FOR PRE-TRIAL HEARING TO DETERMINE  
COMPETENCY OF CHILD WITNESS**

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 a pre-trial hearing to determine competency of a child witness.

In support, counsel states:

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. Comes now, JERRY WILLIAM JONES, by and through counsel, and requests that this court, in a pre-trial fashion, determine whether Brittney Phelps, Brandy Jones and Tami Peeler are presently competent to give live testimony before the jury, and whether Brittney Phelps, Brandy Jones and Tami Peeler was competent at the time he made the alleged hearsay statements to third persons which the state will attempt to introduce at the trial through the Child Hearsay Statute. These determinations by the court are at the very heart of the "indicia of reliability" test which this Court must make under the Child Hearsay Statute.

4. This request covers both a determination of "competency" and a determination of the "indicia of reliability" as to each and every statement allegedly made by the child to a third person which statement the state will attempt to introduce at the trial.

5. In the case of Westbrook v. State, 186 Ga.App. 493, 368 S.E.2d 131 (1988), the Georgia Court of Appeals, over Judge Beasley's objections, implicitly held that the phrase "available to testify" in the Child Hearsay Statute means competent to testify as well as present to testify. 186 Ga. App. at 498 (Beasley, J., concurring); See also Ward v. State, 186 Ga.App. 503, 368 S.E.2d 139 (1988).

6. Jerry Jones contends that if competency is required for the child's live testimony, competency must also be required for the child's hearsay statements. It would violate Mr. Client's due process rights to prevent the admission of live testimony from an incompetent witness while allowing the admission of hearsay evidence from an incompetent witness.

7. Allowing an incompetent child witness to testify would deprive Jerry Jones of the independent state and federal constitutional guarantees to: a fair trial and right to present a

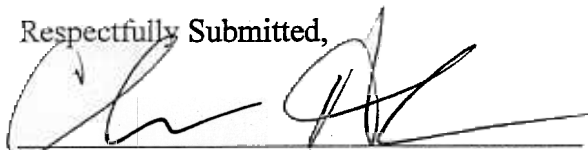
defense, cross-examination and confrontation of adverse witnesses and evidence, due process of law, to compulsory process to secure witnesses, to equal protection of the laws, to freedom from cruel and unusual punishment, and a reliable verdict and sentence. Ga. Const. art. I, § I, ¶¶ I, II, IV, V, VII, IX, X, XI, XII, XIII, XIV, XVI, XVII, XVIII, XXIV and XXVIII; U.S. Const. amend. V, VI, VIII and XIV.

WHEREFORE, this Defendant requests a hearing to determine, in advance of trial:

- (1) whether Brittney Phelps, Brandy Jones and Tami Peeler are presently competent to give live testimony before the jury; and
- (2) whether Brittney Phelps, Brandy Jones and Tami Peeler were competent at the time they made the alleged hearsay statements to third persons.

DATED this 13 day of May, 20 05.

Respectfully Submitted,



Christopher Adams, State Bar No. 002725  
Georgia Capital Defender  
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(404) 739-5172



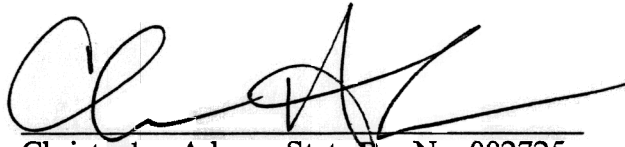
E. Michelle Drake, State Bar No. 229202  
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Counsel for Jerry Jones

**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, 20 05.

Respectfully Submitted,



Christopher Adams, State Bar No. 002725  
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Prepared by:  
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