

DEATH PENALTY/LIFE WITHOUT PAROLE CASE

IN THE SUPERIOR COURT OF GORDON COUNTY
STATE OF GEORGIA

FILED
Clerk Superior Ct., Gordon County

STATE OF GEORGIA,

MAY 19 2005

Indictment No. 16471

Brian Brannon
Clerk

v.

JERRY WILLIAM JONES,

**MOTION FOR COMPLETE RECORDATION
AND TRANSCRIPT OF ALL PRE-TRIAL AND TRIAL PROCEEDINGS**

Jerry 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, 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 to order complete recording of all pretrial and trial proceedings in this case.

In support of this motion, 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. "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). Furthermore, 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). Our system of justice must go “to extraordinary measures to ensure that the prisoner [facing the possibility of being] 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. 104, 118 (1982) (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 (1980).

2. The right of a defendant to have complete recordation and a complete transcript of the criminal proceedings against him is a right recognized by the Federal system, the state of Georgia, and by other states. The transcript provides both a complete record of the proceedings and the basis an appellate court will use to review the case and rule upon any alleged errors raised during an appeal from a conviction. The absence of a complete recordation and transcript “effectively deprives the defendant of his right to appeal” because inherent in the right of a convicted person to an appeal is “the right to a transcript on appeal” Montford v. State 164 Ga.App. 627, 629, 298 S.E.2d 319, 320 (1982). See Wilson v. State 246 Ga. 672, 675, 273 S.E.2d 9, 12 (1980) (noting that “in view of [the Georgia Supreme Court’s] responsibility of the appellate review of cases in which the death penalty was imposed, an accurate and complete transcript is essential”). In cases where a transcript is incomplete or absent altogether, a defendant’s counsel will not be able to effectively review the trial proceedings for possible errors. This is particularly true where a defendant has different or separate counsel at the appellate level than at the trial level. See United States v. Selva 559 F.2d 1303 (5th Cir. 1977) (holding that although defendant urged no specific trial error he was entitled to a new trial

because his new counsel was foreclosed from examining a transcript for possible error since there was an unrecorded portion). Convictions have been reversed because of a lack of complete or adequate recordation and transcript. Id.; Parrott v. State 134 Ga.App. 160, 214 S.E.2d 3 (1975); People v. Apalatequi 82 Cal.App. 3d 970 (1978); State v. Moore 534 P.2d 1124 (N.M. 1975); State v. Robinson 387 So. 2d 1143 (La. 1980); State v. Ford 338 So. 2d 107 (La. 1976).

3. This capital prosecution is subject to the Unified Appeal Outline Proceedings as are all capital prosecutions in this state. The Unified Appeal provides that “*all* proceedings in the Superior Court shall be recorded and transcribed.” Unified Appeal, Note (emphasis in original). Rule I(A)(3) declares that the purpose of following all rules outlined in the Unified Appeal is to “make[e] certain that the record and transcripts of the proceedings are complete for unified review by the sentencing court and by the Supreme Court.” Rule IV(A)(1) mandates that within forty-five days of a jury’s verdict during the sentencing phase, the court reporter “file with the superior court a *complete transcript* of all phases of the case” unless a time extension is granted (emphasis in original). This Rule further enumerates the extensive list of the various proceedings for which transcription and recordation is required.¹ Even in the absence of an

¹For purposes of this rule, the term “complete transcript” shall include a complete transcription of: all pre-trial hearings; the selection of the jurors, including challenges for cause; the voir dire examination and the striking; the opening statements and closing arguments of counsel; the examination of the witnesses; all documentary evidence, including photographs; all oral motions (whether pre-trial, during trial or after trial) and all hearings on oral and written motions; all oral objections and all hearings on oral and written objections; all conferences and hearings of every description and for every purpose conducted between court and counsel, including all bench and chamber conferences; all oral stipulations of counsel; the charges of the court to the jury during the guilt-innocence and sentencing phases of the proceedings; the publication of the verdict and the polling of the jury; the pronouncement of sentence; and all oral comments, instructions,

appeal by a defendant in a capital case, Rule IV(A)(3)(a) requires the Superior Court to submit the complete transcript, as defined in Rule IV(A), to the Supreme Court for review. See McDaniel v. State 271 Ga. 552, 522 S.E.2d 648 (1999) (reminding judges in death penalty cases to complete the report required by O.C.G.A. §17-10-35(a) and transmit it to the Supreme Court for review as required by the Unified Appeal Procedure). The constitutionality of these rules are not in question. Sliger v. State 248 Ga. 316, 282 S.E.2d 291 (1981). In order for the transcript to be submitted to the Superior and Supreme Courts, all the proceedings must first be recorded and transcribed.

4. The failure to record the entire proceedings in the trial court and make them part of the record violates a defendant's right to full review of his case on appeal, his right to the assistance of counsel on appeal and in pursuing post-conviction remedies, and his right to equal access to courts which may review his conviction on either appeal or collateral attack as guaranteed by the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution. See, e.g., Gardner v. Florida, 430 U.S. 349 (1977); Gregg v. Georgia, 428 U.S. 153 (1976); Britt v. North Carolina, 404 U.S. 226 (1971); United States v. Selva, 559 F.2d 1303 (5th Cir. 1977); United States v. Brumley, 560 F.2d 1268, 1281 (5th Cir. 1977); Wilson v. State, 246 Ga. 672, 273 S.E.2d 9, 12 (1980) (“in view of [the Georgia Supreme Court’s] responsibility of the appellate review of cases in which the death penalty was imposed, an accurate and complete transcript is essential”); Montford v. State 164 Ga.App. 627, 629, 298 S.E.2d 319, 320 (1982).

5. Thus, the record should include, but not be limited to:

all pre-trial hearings;

directions, admonitions, rulings and orders of the court in the case from the first proceeding through conclusion of the trial.
Unified Appeal, § IV.A.1 (emphasis added).

the selection of the jurors, including challenges for cause;

the voir dire examination and the striking;

the opening statements and closing arguments of counsel;

the examination of the witnesses;

all documentary evidence, including photographs;

all oral motions (whether pre-trial, during trial or after trial) and all hearings on oral and written motions;

all oral objections and all hearings on oral and written objections;

all conferences and hearings of every description and for every purpose conducted between court and counsel, including all bench and chamber conferences;

all oral stipulations of counsel;

the charges of the court to the jury during the guilt-innocence and sentencing phases of the proceedings;

the publication of the verdict and the polling of the jury; the pronouncement of sentence; and

all oral comments, instructions, directions, admonitions, rulings and orders of the court in the case from the first proceeding through conclusion of the trial.

6. The record should also include:

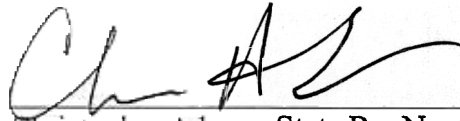
all contacts between the jury and any other person, except for contacts explicitly and carefully allowed by the trial court, at a hearing, after consultation with defense counsel;

any and all questions or written statements made by jurors.

WHEREFORE, for the foregoing reasons and any others that may appear to this Court after a hearing, counsel for Jerry Jones, respectfully requests this Court order that all proceedings in this case be recorded and transcribed.

DATED this 15 day of May, 20 05

Respectfully Submitted,



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



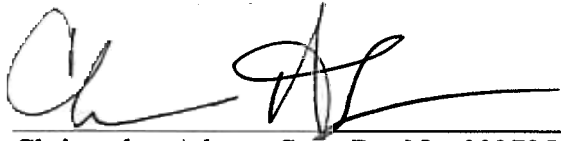
E. Michelle Drake, State Bar No. 229202
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Counsel for Jerry Jones

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 19th day of

May, 2005.



Christopher Adams, State Bar No. 002725
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STATE OF GEORGIA

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ORDER

Upon consideration of Jerry Jones's *Motion for Complete Recordation and Transcript of All Pre-trial and Trial Proceedings*, the Court being otherwise sufficiently advised, and good grounds appearing therefore,

IT IS HEREBY ORDERED AND DECREED, that all proceedings in this case shall be recorded and transcribed, including, but not limited to:

- all pre-trial hearings;
- the selection of the jurors, including challenges for cause;
- the voir dire examination and the striking;
- the opening statements and closing arguments of counsel;
- the examination of the witnesses;
- all documentary evidence, including photographs;
- all oral motions (whether pre-trial, during trial or after trial) and all hearings on oral and written motions;
- all oral objections and all hearings on oral and written objections;
- all conferences and hearings of every description and for every purpose conducted between court and counsel, including all bench and chamber conferences;
- all oral stipulations of counsel;
- the charges of the court to the jury during the guilt-innocence and sentencing phases of the proceedings;
- the publication of the verdict and the polling of the jury; the

pronouncement of sentence; and
all oral comments, instructions, directions, admonitions, rulings and orders
of the court in the case from the first proceeding through conclusion of the
trial;

IT IS HEREBY FURTHER ORDERED AND DECREED, that the following
proceedings and events in this case shall also be recorded and transcribed:

- all contacts between the jury and any other person, except for contacts
explicitly and carefully allowed by the trial court, at a hearing, after
consultation with defense counsel; and
- any and all questions or written statements made by jurors

SO ORDERED this day of _____, 20.

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

Prepared by:
Christopher Adams, State Bar No. 002725
E. Michelle Drake, State Bar No. 229202
Counsel for Jerry Jones