

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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)
)
v.)
)
JERRY WILLIAM JONES,)
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_____)

Indictment No. 16471

**MOTION TO SUPPRESS JERRY WILLIAM JONES'S
STATEMENTS AND MOTION FOR AN ORDER EXCLUDING
INVOLUNTARY ADMISSIONS AND CONFESSIONS**

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, international law, Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L. Ed. 2d 694 (1966); Spano v. New York, 360 U.S. 315, 79 S.Ct. 1202, 3 L. Ed. 2d, 1265 (1959); Dickerson v. United States, 520 U.S. 428 (2000); Escobedo v. Illinois, 378 U.S. 478, 84 S.Ct. 1758, 12 L. Ed. 2d 977 (1964); Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774, 12 L. Ed. 2d 908 (1964); O.C.G.A. § 24-3-50 *et seq.*, 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 suppressing any and all statements made by him to law enforcement officers after his arrest.

In support, counsel states:

1.

Mr. Jones is on trial for his life. The State, through the District Attorney, has announced its intention to kill Mr. 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, 108 S. Ct. 1981, 100 L. Ed. 2d 575 (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, 96 S. Ct. 2909, 49 L. Ed. 2d 859 (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, 106 S. Ct. 2595, 91 L. Ed. 2d 335 (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, 96 S. Ct. 2978, 49 L. Ed. 2d 944 (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, 102 S. Ct. 869, 71 L. Ed. 2d 1 (1982)

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(O'Connor, J., concurring). See also Beck v. Alabama, 447 U.S. 625, 637-38, 100 S. Ct. 2382, 65 L.Ed. 2d 392 (1980); Lockett v. Ohio, 438 U.S. 586, 604, 98 S. Ct. 2954, 57 L. Ed. 2d 973 (1978); and Gardner v. Florida, 430 U.S. 349, 357-58, 97 S. Ct. 1197, 51 L. Ed. 2d 393 (1977).

3.

The only statement State prosecutors have provided to Mr. Jones or his attorneys are statements purportedly made to jail-house snitch Corey Dixon. Defense counsel specifically reserve the right to amend and supplement this motion upon the further disclosure by the state of any statements allegedly made by Mr. Jones. Each of these statements must be suppressed for the following reasons:

4.

Mr. Jones shows that any of these alleged statements may incriminate him and such statements, if in fact they were even made, were the result of threats and abuse by the arresting officers and were made in the absence of counsel and without an intelligent or knowing waiver of counsel. Police must administer Miranda warnings before any custodial interrogation. A violation of this rule triggers a "bright-line, legal presumption of coercion, requiring suppression of all unwarned statements." Oregon v. Elstad, 470 U.S. 298, 307, fn.1, 105 S.Ct. 1285, 84 L. Ed. 2d 222, 231 (1985).

1 Detentions other than formal arrest may constitute "custody" for Miranda purposes: Where no formal arrest

It is clear that when the suspect invokes his right to counsel pursuant to the Fifth or Sixth Amendments of the Constitution of the United States or pursuant to the provisions of Article I, § I, ¶¶ XIII, XIV or XVI of the Constitution of the State of Georgia, there may be no police-initiated interrogation:

If the accused indicates in any manner at any time prior to or during questioning that he wishes to remain silent or to have access to counsel, the officers must cease interrogation. Where the accused asks for counsel, the officers may not resume interrogation

takes place, the relevant inquiry ... 'is how a reasonable [person] in the suspect's position would have understood [her] situation.'" People v. Boyer, 48 Cal.3d 247, 272 (1989).

Allen v. State, 259 Ga. 63, 377 S.E.2d 150 (1989); Edwards v. Arizona, 451 U.S. 477, 101 S. Ct. 1880, 68 L. Ed. 2d 378 (1981).² When a defendant invokes the right to remain silent, interrogation must immediately cease. See, e.g., Hatcher v. State, 259 Ga. 274, 379 S.E.2d 775, 777-78 (1989) (defendant's right to cut off questioning was not "scrupulously honored" where police continued interrogation after defendant stated that he did not "want to talk about it"); Flowers v. State, 252 Ga. 476, 314 S.E.2d 206, 208-09 (1984) ("interrogation should have ceased when in response to his Miranda rights [defendant] stated that he had said all he had to say"); Brewer v. Williams, 430 U.S. 387, 97 S. Ct. 1232, 51 L. Ed. 2d 424 (1977). Under Georgia law, only voluntary incriminating statements are admissible against the defendant at trial. O.C.G.A. § 24-3-50. When not made freely and voluntarily, a confession is presumed to be legally false and can not be the underlying basis of a conviction. McKennon v. State, 63 Ga. App. 466, 11 S.E. 2d 416 (1940). For a confession to be admissible, it must have been made voluntarily, i.e. "without being induced by another by the slightest hope of benefit or remotest fear of injury." O.C.G.A. § 24-3-50. A reward of lighter punishment is generally the "hope of benefit" to which the code section refers. Caffo v. State, 247 Ga. 751, 757, 279 S.E.2d 678 (1981). "The state bears the burden of demonstrating the voluntariness of a confession by a preponderance of the evidence." Bright v. State, 265 Ga. 265, 280, 455 S.E.2d

2. This rule has been restated so uniformly by the United States Supreme Court as to bear no reiteration. See, e.g., Oregon v. Bradshaw, 462 U.S. 1039, 1044, 103 S.Ct. 2830, 77 L.Ed.2d 405 (1983); Michigan v. Jackson, 475 U.S. 625, 626, 106 S.Ct. 1404, 89 L.Ed.2d 631 (1986); Moran v. Burbine, 475 U.S. 412, 412 n.1, 106 S. Ct. 1135, 89 L. Ed.2d 410 (1986); Patterson v. Illinois, 487 U.S. 285, 108 S.Ct. 2389, 101 L. Ed. 2d 261, 271 (1988); Solem v. Stumes, 465 U.S. 638, 641, 104 S. Ct. 1338, 79 L. Ed. 2d 579 (1984).

37 (1995). The law is well established that use of trickery and deceit to obtain a confession does not render it inadmissible, so long as the means employed are not calculated to procure an untrue statement. Moore v. State, 230 Ga. 839, 840, 199 S.E.2d 243 (1973).

6.

Mr. Jones's purported statements and/or inculpatory statements are not admissible even if law enforcement officials apprised him of his rights under Miranda v. Arizona, absent proof that he thereafter affirmatively waived his right against self-incrimination and his right to counsel. "The mere giving of the Miranda warnings, no matter how meticulous, no matter how often repeated, does not render admissible any inculpatory statement thereafter given by the accused. The giving of the warnings is only the first step. **To render the statement admissible the State must take the second step and prove that the rights of which the accused has been Miranda-warned were thereafter waived --intelligently, knowingly and voluntarily.**" Jones v. State, 461 So. 2d 686, 696 (Miss. 1984) (emphasis added).³ Even where "warnings and advice" regarding the accused's Miranda rights have been "fully and fairly given, the State shoulders a heavy burden to show a knowing and intelligent waiver. That burden is proof beyond a reasonable doubt." Id. at 697. Accord McCarty v. State, 554 So. 2d 909, 911 (Miss. 1989); Moran v. Burbine, 475 U.S. 412, 106 S.Ct. 1135, 89 L. Ed. 2d 410 (1986). To meet its burden, the state must affirmatively prove not only that Mr. Jones was advised of all of his rights, that he subsequently waived same, and that the waiver was voluntary, but also that it constituted a "knowing and intelligent relinquishment or abandonment of a known right or privilege." Edwards v. Arizona, 451 U.S. at 482 (citing Johnson v. Zerbst, 304

3. It should be noted that this is a subjective, not an objective, inquiry.

U.S. 458, 464, 58 S.Ct. 1019, 82 L. Ed. 461 (1983)). See also Tague v. Louisiana, 444 U.S. 469, 470, 100 S.Ct.652, 62 L. Ed. 2d 622 (1980). "[C]ourts must indulge every reasonable presumption against the loss of constitutional rights." Illinois v. Allen, 397 U.S. 337, 343, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970); Smith v. Illinois, 469 U.S. 91, 105 S.Ct. 490, 83 L.Ed.2d 488 (1984) (ambiguous statements not sufficient to justify waiver); Ross v. State, 254 Ga. 22, 326 S.E.2d 194, 199 (1985) ("an accused does not waive his Fifth Amendment right ... merely by his failure to assert it").

7.

Neither does the provision of counsel allow for the police to then reinitiate interrogation. See Minnick v. Mississippi, 498 U.S. 146, 111 S.Ct.486, 112 L.Ed.2d 489 (1990) (after accused provided with right to counsel, police may not reinitiate interrogation in the absence of counsel). The right to counsel attaches at any "critical stage" in a criminal prosecution. United States v. Massiah, 377 U.S. 201, 84 S.Ct. 1199, 12 L.Ed.2d 246 (1964). Any statements allegedly made by Mr. Jones would have to have been made after his right of counsel had attached and the resultant statement must be suppressed. Indeed, even had Mr. Jones initiated the contact, the prosecution cannot carry their heavy burden of showing a waiver of his constitutional rights. Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880, 68 L. Ed.2d 378 (1981).

8.

Any statements made to law enforcement officers while Mr. Jones was in custody were not "the product of an essentially free and unconstrained choice by [their] maker." Columbe v. Connecticut, 367 U.S. 568, 602, 81 S.Ct. 1860, 6 L. Ed.2d 1037 (1961). Because the statement was

not made voluntarily, admission of the statement at trial would violate Mr. Jones's right to due process of law guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States, by Article I, § I, ¶¶ I, II, and XIV of the Constitution of the State of Georgia, by Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964); and by O.C.G.A. § 24-3-50.

9.

Characteristics of the accused which have been held relevant to a determination of voluntariness include the suspect's age, e.g., Haley v. Ohio, 332 U.S. 596, 68 S.Ct. 302, 92 L.Ed. 224 (1948); lack of education, e.g., Payne v. Arkansas, 356 U.S. 560, 78 S.Ct. 844, 2 L.Ed.2d 975 (1958); low intelligence, e.g., Fikes v. Alabama, 352 U.S. 191, 77 S.Ct. 281, 1 L. Ed. 2d 246 (1957).

10.

To determine whether the state has proven that a confession was made voluntarily, the trial court must consider the totality of the circumstances. Clewise v. Texas, 386 U.S. 707, 87 S.Ct. 1338, 18 L.Ed.2d 423 (1976). To make a confession admissible, it must have been made voluntarily, without being coerced by another by the slightest hope of benefit or remotest fear of injury. O.C.G.A. § 24-3-50. A hope of light punishment is the type of hope of benefit to which the statute refers. State v. Barber, 197 Ga. App. 353, 354, 398 S.E.2d 419 (1990).

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At the time of Mr. Jones's arrest on the charges set forth in this case, the authorities did not have a valid warrant for his arrest nor did they have valid probable cause to charge him with these crimes. Continued detention of suspects for "investigatory" purposes on less than probable cause violates the Fourth and Fourteenth Amendments to the Constitution of the United States. Dunaway

v. New York, 442 U.S. 200, 99 S.Ct. 2248, 60 L.Ed.2d 824 (1979); Brown v. Illinois, 422 U.S. 590, 95 S.Ct. 2254, 45 L. Ed. 2d 416 (1975); Davis v. Mississippi, 394 U.S. 721, 89 S.Ct. 1394, 22 L. Ed. 2d 676 (1969). The question of when a "seizure" requiring probable cause occurs is one of law to be determined by the courts. No formal declaration by the police of intent to arrest is necessary. Davis v. Mississippi, 394 U.S. at 726-27. After he was already in custody, the police obtained a statement from Mr. Jones and that statement was derived directly from his illegal seizure and any statements must be suppressed. Taylor v. Alabama, 457 U.S. 687, 691-94, 102 S.Ct. 2664, 73 L. Ed. 2d 314 (1982); Dunaway v. New York, 442 U.S. at 212-213; Brown v. Illinois, 422 U.S. at 603-04; Wong Sun v. United States, 371 U.S. 471, 488, 83 S.Ct. 407, 9. L. Ed. 2d 441 (1963). Even where the defendant has waived his Miranda rights and given a confession or inculpatory statement, those statements must still be suppressed if they are the fruit of an illegal arrest.

12.

The Fourth Amendment to the Constitution of the United States requires that a person arrested without a warrant be taken before a judicial officer for a probable cause determination promptly following his arrest or his being charged with an offense, such as here where Mr. Jones was already in custody. Gerstein v. Pugh, 420 U.S. 103, 113-114, 95 S.Ct. 854, 43 L. Ed. 2d 54 (1975). In County of Riverside v. McLaughlin, 500 U.S. 44, 111 S.Ct. 1661, 114 L. Ed. 2d 49 (1991), the Supreme Court held that the defendant may be held for no more than 48 hours prior to being taken before a judicial officer. See also Columbe v. Connecticut, 367 U.S. 568, 584-85, 81 S.Ct. 1860, 6 L. Ed. 2d 1037 (1961). Failure to comply with the analogous federal rule requiring prompt presentation before a magistrate after arrest requires suppression of any statement made by a

defendant. See McNabb v. United States, 318 U.S. 332, 63 S.Ct. 608, 87 L. Ed. 2d 819 (1943); Mallory v. United States, 354 U.S. 449, 77 S.Ct. 1356, 1 L. Ed. 2d 1479 (1957).

ARGUMENT AND CITATION OF AUTHORITY

13.

When a defendant invokes the right to remain silent, interrogation must immediately cease. See, e.g., Hatcher v. State, 259 Ga. 274, 379 S.E.2d 775, 777-78 (1989) (defendant's right to cut off questioning was not "scrupulously honored" where police continued interrogation after defendant stated that he did not "want to talk about it"); Flowers v. State, 252 Ga. 476, 314 S.E.2d 206, 208-209 (1984) ("interrogation should have ceased when in response to his Miranda rights [defendant] stated that he had said all he had to say"); Brewer v. Williams, 430 U.S. 387, 97 S.Ct. 1232, 51 L. Ed. 2d 424 (1977).

14.

Any statements made to law enforcement officers or agents of the law enforcement officers while Mr. Jones was in custody were not "the product of an essentially free and unconstrained choice by [their] maker." Columbe v. Connecticut, 367 U.S. 568, 602, 81 S.Ct. 1860, 6 L. Ed. 2d 1037 (1961). If incriminating statements are elicited from a defendant in the absence of his counsel, then that defendant's right to counsel has been violated. Massiah v. United States, 377 U.S. 201, 84 S.Ct. 199, 12 L. Ed. 2d 246 (1964). See also Ross v. State, 254 Ga. 22, 26 n.3, 326 S.E.2d 194 (1985). An interrogation which proceeds without warnings when the defendant is in custody is an illegal custodial interrogation. Overby v. State, 160 Ga. App. 537, 538, 287 S.E.2d 568 (1981). In United States v. Henry, 447 U.S. 264, 100 S.Ct. 2183, 65 L. Ed. 2d 115 (1980), the court suppressed a

confession obtained by the use of a recording obtained by hiding a microphone on a jailhouse informer because the statement was taken in violation of the defendant's Sixth Amendment right to counsel.

15.

Because these statements were not made voluntarily, the admission of the oral statements at trial would violate Mr. Jones's right to due process of law guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States, by Article I, § I, ¶¶ I, II, and XIV of the Constitution of the State of Georgia, by Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774, 12 L. Ed. 2d 908 (1964); and by O.C.G.A. § 24-3-50. The statements elicited from Mr. Jones did, in fact, violate his right to counsel guaranteed by the Sixth and Fourteenth Amendments as defined by Massiah, 377 U.S. at 201, by using a jailhouse snitch to deliberately elicit incriminating information from him in the absence of counsel. This violation is demonstrated by examining the criteria for establishing such a claim which was affirmed in Lighthouse v. Dugger, 829 F.2d 1012, 1020 (11th Cir. 1987) (per curiam), cert. denied, 488 U.S. 934, 109 S.Ct. 329, 102 L. Ed. 2d 346 (1988). There the court stated that the establishment of a claim under Massiah is validated by showing that an inmate was a government agent⁴ and that the inmate deliberately elicited incriminating statements from the defendant. In the case of Maine v. Moulton, 474 U.S. 159, 106 S.Ct. 477, 88 L. Ed. 2d 481 (1985) the United States Supreme Court once again reaffirmed the principles of Massiah and Harris, when the Court held:

[R]espondent's Sixth Amendment right to the assistance of counsel

⁴ See United States v. Henry, 447 U.S. 264, n.11, 100 S.Ct. 2183, 65 L. Ed. 2d 115 (1980) where the court stated that an inmate enlisted by police to inform on other inmates is an **agent** of the state.

was violated by the admission at trial of incriminating statements made by him to [co-defendant] after indictment and at the meeting of the two to plan defense strategy for the up-coming trial.

(a) The assistance of counsel is necessary to safeguard the other procedural safeguards provided to the accused by the criminal justice process. Accordingly, the right to the assistance of counsel is not limited to participation in a trial; to deprive a person of counsel during the period prior to trial may be more damaging than denial of counsel during the trial itself. Whatever else it may mean, the right to counsel means at least that a person is entitled to the help of a lawyer at or after the time that judicial proceedings have been initiated against him.

(b) Once the right to counsel has attached and been asserted, the State must honor it. At the very least, the prosecutor and police have an affirmative obligation not to act in a manner that circumvents and thereby dilutes the protection afforded by the right to counsel. Spano v. New York, 360 U.S. 315, 79 S.Ct. 1202, 3 L. Ed. 2d 1265; Massiah v. United States, 377 U.S. 201, 12 L. Ed. 2d 246, 84 S.Ct. 1199; United States v. Henry, 447 U.S. 264, 65 L. Ed. 2d 115, 100 S.Ct. 2183.

16.

In Moulton, the Court was applying the constitutional principles articulated in Massiah and Henry to a situation where the state violated defendant Moulton's Sixth Amendment right when the state arranged to record conversations between Moulton and its undercover informant, who was Moulton's co-defendant. The police suggested to the undercover agent that he record his telephone conversations with defendant Moulton. Having learned, through the telephone conversations, that Moulton and his co-defendant, Colson, were going to meet, the police asked the informant to wear a

body wire transmitter and to record the conversation(s). The Court went on to note that just because the police were "fortunate enough to have an undercover informant already in close proximity to the accused" did not excuse the misconduct of the police. The Court held that by concealing the fact that the co-defendant was working as an agent of the State, the police denied Moulton the opportunity to consult with his attorney and thereby denied him the assistance of counsel guaranteed by the Sixth Amendment. In a footnote to the Moulton opinion, the Supreme Court made the following, very pertinent observations:

[T]he State argues that it took steps to prevent Colson from inducing Moulton to make incriminating admissions by instructing Colson to 'be himself,' 'act normal,' and 'not interrogate' Moulton. Tr. of Hearing on Motion to Suppress 42, 51, 56. In *Henry*, we rejected this same argument although the likelihood that the accused would talk about the pending charges to a cellmate was less than here, where the accused invited his codefendant to discuss the upcoming trial, and although the instructions to the agent were far more explicit. See 447 US at 268, 271, 65 L. Ed. 2d 115, 100 S.Ct. 2183. More importantly, under the circumstances of this case, the instructions given to Colson were necessarily inadequate. **The Sixth Amendment protects the right of the accused not to be confronted by an agent of the State regarding matters as to which the right to counsel has attached without counsel being present. This right was violated as soon as**

the State's agent engaged Moulton in conversation about the charges pending against him.

Id. at n.14 (emphasis added).

17.

The Court further held in Moulton that the "[k]nowing exploitation by the State of an opportunity to confront the accused without counsel being present is as much a breach of the State's obligation not to circumvent the right to the assistance of counsel as is the intentional creation of such an opportunity." (emphasis supplied). Accordingly, the Sixth Amendment is violated when the State obtains incriminating statements by knowingly circumventing the accused's right to have counsel present in a confrontation between the accused and a state agent." Again, the Moulton Court further expressed itself on this issue to two additional pertinent footnotes as follows:

[D]irect proof of the State's knowledge will seldom be available to the accused. However, as Henry makes clear, proof that the State 'must have known' that its agent was likely to obtain incriminating statements from the accused in the absence of counsel suffices to establish a Sixth Amendment violation. See 447 US., at 271, 65 L. Ed. 2d 115, 100 S.Ct. 2183.

Id. at n.12.

[B]ecause Moulton thought of Colson only as his codefendant, Colson's engaging Moulton in active conversation about their upcoming trial was certain to elicit statements that Moulton would

not intentionally reveal -- and had a constitutional right not to reveal -
- to persons known to be police agents. Under these circumstances,
Colson's merely participating in this conversation was **'the
functional equivalent of interrogation.'** Henry, 447 U.S. at 277, 65
L. Ed. 2d 115, 100 S.Ct. 2183 (Powell, J., concurring). In addition,
the tapes disclose and the Supreme Judicial Court of Maine found
that Colson 'frequently pressed Moulton for details of various thefts
and in so doing elicited much incriminating information that the State
later used at trial." 481 A.2d, at 161. Thus, as in Henry, supra. at 271,
n.9, 65 L. Ed. 2d 115, 100 S.Ct. 2183, we need not 'reach the situation
where the 'listening post' cannot or does not participate in active
conversation and prompt particular replies."

Id. at n.13 (emphasis added).

18.

The Supreme Court in Moulton went on to hold that it does not matter who initiated the contacts or meetings between the defendant and the snitch. The Court noted that it had summarily reversed a conviction where the defendant requested the meeting and initiated and led the conversation in which incriminating statements were made to an undercover informant. Once the right to counsel has attached, the government is under an "affirmative obligation" to respect and preserve the defendant's decision to deal with the state through his attorney. The state must take no action that "circumvents, and thereby dilutes the protection afforded by the right to counsel."

15

Moulton, 474 U.S. at 175 (citing Beatty v. United States, 389 U.S. 45, 88 S.Ct. 234, 19 L. Ed. 2d 48 (1967)).

SNITCHES

19.

Snitches come in all varieties. Snitches can be divided into two species -- the "pure" or "jailhouse" snitch,⁵ and the "accomplice" snitch. The "pure" snitch is a person who comes into court with a story about an alleged confession in the prison cell, in order to exact benefit in another case. The "accomplice" snitch is a person who was involved in the crime but who attempts to lessen that involvement by blaming another for the crime. Corey Dixon, in this case, is a "pure" snitch. The use of "snitches" in criminal -- and, particularly, capital -- cases is becoming an increasing problem. For example, the Mississippi Supreme Court has warned of:

an unholy alliance between con-artist convicts who want to get out of their own cases, law enforcement who [are] running a training ground for snitches over at the county jail, and the prosecutors who are taking what appears to be the easy route, rather than really putting their cases together with solid evidence.

McNeal v. State, 551 So. 2d 151, 158 n.2 (Miss. 1989).

20.

⁵ The American Heritage Dictionary, Second College Edition, copyright 1985 by Houghton Mifflin Company, defines "snitch" as

slang: to steal (something of little or no value) -- To turn informer: *snitched on his friends*. n. 1. A thief. 2. An informer; squealer [Orig. unknown.]

The Court's concern is a reflection of the fact that cases are built on opportunist "snitches" on a frighteningly frequent basis. For this reason, the same court has warned that the testimony of an accomplice or a snitch "is to be received and considered with caution, as from a polluted and suspicious source." Dedeaux v. State, 87 So. 664, 665 (Miss. 1921) (citing Wilson v. State, 16 So. 304 (Miss. 1894); see also, Coll v. United States, 409 U.S. 100, 103, 93 S.Ct. 354, 34 L. Ed. 2d 335 (1972) (there is a 'recognition that an accomplice may have a special interest in testifying, thus casting doubt upon his veracity").

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Indeed, the United States Supreme Court has also noted that:

[t]he use of informers, accessories, accomplices, false friends, or any of the other betrayals which are 'dirty business' may raise serious questions of credibility.

On Lee v. United States, 343 U.S. 747, 757, 72 S.Ct. 967, 96 L. Ed. 1270 (1952) (emphasis supplied); see also United States v. Swiderski, 539 F.2d 854 (2d Cir. 1976) (informer paid \$10,000 for his services, worked on a contingent fee basis); United States v. Sarvis, 523 F.2d 1177, 1180 (D.C. Cir. 1975); United States v. Wasko, 473 F.2d 1282 (7th Cir. 1973); United States v. Leonard, 494 F.2d 955, 961 (D.C. Cir. 1974); United States v. Garcia, 528 F.2d 580 (5th Cir.) (1976), cert. denied sub nom. Sandoval v. United States, 426 U.S. 952, 96 S. Ct. 3177, 49 L. Ed. 2d 1190 (1976).

22.

For these reasons, the United States Supreme Court has held that snitch or accomplice testimony "ought not to be passed upon under the same rules governing other apparently credible

witnesses. " Crawford v. United States, 212 U.S. 183, 204, 29 S.Ct. 183, 53 L. Ed. 465 (1909). Indeed, the Nevada Supreme Court recently noted "that a jail-house incrimination is not available in a fairly large number of homicide cases." D'Agostino v. State, 107 Nev. 1001, 823 P.2d 283, 285 (Nev. 1991). The Court went on to hold that special precautions must be taken to avoid presenting unreliable evidence to the jury:

A legally unsophisticated jury has little knowledge as to the types of pressures and inducements that jail inmates are under to "cooperate" with the state and to say anything that is "helpful" to the state's case. It is up to the trial judge to see that there are sufficient assurances of reliability prior to admitting this kind of amorphous testimony to keep this kind of unreliable evidence out of the hands of the jury

Id. at 284; see also Cal. Penal Code § 1127a (trial courts must instruct jurors that "testimony of an in-custody informant should be viewed with caution and close scrutiny"). This approach is even more appropriate when the snitch is an accomplice.

23.

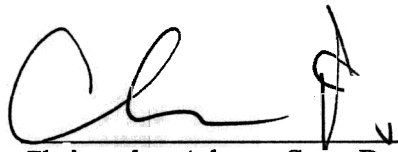
The alleged conversation which Mr. Jones had with the snitch, assuming that such a conversation ever took place, was the result of the concerted effort of the snitch and the prosecutors in this case. The applicable law simply will not allow such statements, contrived, developed and solicited by a jailhouse snitch to be used in a criminal proceeding where the State is attempting to put someone to death.

WHEREFORE, for the foregoing reasons and any others that may appear to this Court after a hearing, counsel for Mr. Jones, respectfully requests this Court:

- (1) grant this motion to suppress any alleged statements;
- (2) conduct an evidentiary hearing on this Motion; and
- (3) grant such other and further relief as to this Court seems appropriate.

DATED this 12 day of May, 20 05.

Respectfully Submitted,



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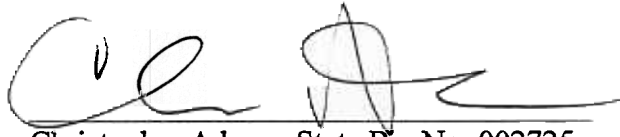
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Counsel for Jerry Jones

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 19th day of

May, 2005.



Christopher Adams, State Bar No. 002725
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