

IN THE SUPERIOR COURT OF  
GORDON COUNTY  
STATE OF GEORGIA

FILED  
Clerk Superior Ct., Gordon County

SEP 28 2006

Brian Brannon  
Clerk

STATE OF GEORGIA : CRIMINAL ACTION  
: :  
VS. : FILE NUMBER 04-CR-16471  
: :  
JERRY WILLIAM JONES, :  
: :  
DEFENDANT :

**ORDER ON MOTION #143 TO BAR IMPOSITION OF  
DEATH PENALTY OR SENTENCE OF LIFE WITHOUT PAROLE**

The above and foregoing motion came regularly before the Court on August 21, 2006, with the Defendant being present, and after argument of counsel for the State and the Defendant, the Court enters the following order:

**BACKGROUND**

The Defendant Jerry Jones was indicted by the Grand Jury of Gordon County *inter alia* for four counts of malice murder and one count of felony murder. The State timely filed its notice of intent to seek the death penalty and has filed its notice of statutory aggravating circumstances. The Defendant pled guilty to all of the charges in the 22-count indictment on December 13, 2005. **The sentencing phase is scheduled for trial February 19, 2007.**

On May 5, 2006, the Defendant filed this motion to bar imposition of the death penalty or a sentence of life without parole, and the Court heard argument of counsel on August 21, 2006.

The Defendant contends that failure to allege the statutory aggravating circumstances set forth in O.C.G.A. § 17-10-30.1(a) and 31.1(a) violates his Constitutional rights under the due process

clause of the Fifth Amendment and the notice and jury trial guarantees of the Sixth Amendment to the Constitution of the United States.

The Defendant further contends that failure to set out the statutory aggravating circumstances in the indictment violates his "inherent rights" protected by Act 1 § 1 ¶ XXVIII of the Georgia Constitution. Jones contends that the statutory aggravating circumstances are elements of the offense of murder and that he has a common law right to have these elements presented to the Grand Jury as part of his common law rights to indictment by the Grand Jury if the State seeks the enhanced punishment of death.

#### DISCUSSION

Defendant's Constitutional arguments that the failure to present statutory aggravating circumstances to the Grand Jury and included in the indictment violates the Defendant's Fifth and Sixth Amendment rights were decided adversely to the Defendant in *Terrell v. State*, 276 Ga. 34, 527 SE2d 595 (2002) *reconsideration den.*; *cert den.* 540 US 835, 124 S. Ct. 88, 157 L. Ed. 2d 64 (2003)

A defendant charged with murder in Georgia has a common law right to indictment by a Grand Jury, such right being in existence at the time of the founding of the State and is Constitutionally protected.

The issue presented by the Defendant appears to be: the Defendant has a common law right to indictment, the indictment must set forth each essential element of the crime, and that the statutory aggravating circumstances become "elements" of the offense of murder when the State chooses to seek the death penalty, citing *Gordon v. State*, 102 Ga. 673, 29 S.E. 444 (1897); *Jones v. United States*, 526 U.S. 227, 119 S. Ct. 11215, 143 L.Ed. 311.

The common law defined murder as unlawful homicide with malice aforethought. *Oliver*

*Wendell Holmes, Jr., The Common Law & Other Writing, pages 51-52.*

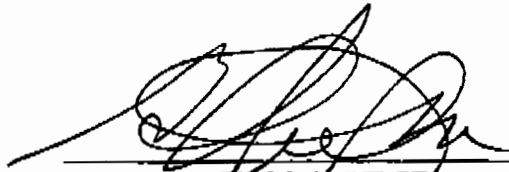
A defendant charged with murder has the common law right to have the charges presented to a grand jury. *Gordon, supra.* At common law, at the time of the founding of the State, a person found guilty of murder was punished by death. In common law, an indictment must set forth the "Christian name, surname . . . of the offender, time and place where the act was committed. The offense itself must be set forth with clearness and certainty." *Blackstone's Commentaries, Book IV, pages 301-303.* In English common law, murder was punished by death. *Blackstone, page 370.*

~~This, there is no requirement in common law that the required words be used.~~  
"statutory aggravating circumstances" to be considered "elements" of the offense of murder.

**JUDGMENT**

Therefore, Defendant's motion to bar the death penalty or life imprisonment without parole because the statutory circumstances were not included in the indictment is **DENIED.**

SO ORDERED this 25<sup>th</sup> day of September, 2006.



**G. CAREY NELSON, JUDGE**  
**SUPERIOR COURT OF GORDON COUNTY, GEORGIA**