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LEXINGTON COUNTY MASS MURDER



Merah



Elias



Nahtahn



Gabriel



Elaine Marie

What it takes to defend a death penalty case

Veteran attorney knows about stress of such events

By **HARRISON CAHILL**
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As the defense gears up in the case of Timothy Ray Jones Jr., the Lexington County father accused of killing his five children and burying them in shallow graves in Alabama, the possibility of a death penalty trial lingers.

Jack Swerling knows what it's like

preparing for a death penalty case.

The Columbia-area defense attorney nicknamed "Mr. Murder" has defended up to 13 of them, including some of the most infamous murderers in South Carolina, such as Lexington County's Larry Gene Bell and serial killer Donald "Pee Wee" Gaskins.

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DEATH PENALTY

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Even though Swerling has a wealth of knowledge and experience when it comes to death penalty defense, he said he does not envy anyone who is preparing for a potential death penalty case.

"There's nothing like defending a death penalty case, because of the consequences and because of what it means if you lose," Swerling said. "The stress is huge."

Robert Madsen, the public defender who is representing the 33-year-old Jones, filed two motions last week asking the state to disclose all evidence it has against Jones that could be favorable for him later in court. Although 11th Circuit Solicitor Donnie Meyers has not announced he will pursue the death penalty against Jones, the defense seems to be gearing up for it.

On Sept. 8, 2014, Jones was charged with five counts of murder in connection with the deaths of his children — identified as Merah, 8; Elias, 7; Nah-tahn, 6; Gabriel, 2; and Elaine Marie, 1 — after he led Lexington County investigators to the children's bodies in an Alabama field. The case is the largest mass murder in recent Midlands history.

Jones is accused of killing the children in their Red Bank home, then driving around the Southeast for more than a week before being stopped on suspicion of driving under the influence of alcohol or drugs at a traffic safety check in Raleigh, Miss., authorities have said. The children were not with him.

His vehicle contained "a large amount of blood and handwritten notes with directions to kill and mutilate bodies," according to an arrest warrant, and a subsequent search of the vehicle revealed "a significant amount of bleach products (aroma) along with blood."

Jones, who had custody of the children after he and their mother divorced, "believed the children were going to kill him, chop him up and feed him to the dogs," according to Lexington County arrest warrants.

Jones was a computer engineer at an Intel Corp. office in the St. Andrews area of Columbia, where he reported making nearly \$72,000 a year, according to divorce records.

TIMELINE: TIMOTHY JONES JR. CASE

■ **Aug. 28, 2014:** Timothy Ray Jones Jr., 32, of Lexington picks up his three school-age children at their elementary school and his two other children at their day care. This is the last time that anyone reports seeing Jones with his children.

■ **Aug. 29, 2014:** Jones' three school-age children are absent from their elementary school.

■ **Tuesday, Sept. 2:** Jones' three school-age children again are absent from their elementary school.

■ **Sept. 3, 2014:** Jones' ex-wife reports Jones and the couple's five children missing to the Lexington County Sheriff's Department. Jones had been scheduled to bring the children to stay with his ex-wife Sept. 2. Deputies enter Jones and the five children as missing persons on the National Crime Information Center computer database.

■ **Sept. 6, 2014:** Jones is detained at a vehicle safety checkpoint in Smith County (Miss.) after sheriff's deputies learn that he and his five children have been reported missing. Smith County sheriff's deputies arrest Jones on charges of driving under the influence of alcohol or drugs and possessing synthetic marijuana and drug paraphernalia. Jones is booked at the county jail in Raleigh, Miss.

■ **Sept. 6, 2014:** Smith County sheriff's deputies contact Lexington County detectives, telling them that Jones' five children were not with Jones. Lexington County sheriff's detectives have reason to believe, for the first time, that foul play is involved. Jones' ex-wife and other relatives provide information to law enforcement agencies.

■ **Sept. 8, 2014:** Lexington County detectives obtain an arrest warrant for Jones on a charge of unlawful conduct toward a child by a legal custodian. Smith County holds him until Lexington County detectives can serve the arrest warrant on Jones. A Lexington County detective, a South Carolina Law Enforcement Division agent and an FBI agent go to Mississippi to speak with Jones and relatives of Jones who live nearby. Jones cooperates.

■ **Sept. 9, 2014:** Jones leads investigators to a dirt road off Alabama Highway 10 in Wilcox County, to five sets of what detectives think are human remains. Lexington County crime scene investigators travel to Alabama.

■ **Sept. 16, 2014:** Public Defender Robert Madsen is appointed to defend Jones.

■ **Sept. 25, 2014:** Jones' attorneys file 14 motions, asking for a gag order and that Jones not be made to appear in court in jail clothing or shackles.

■ **Sept. 30, 2014:** Circuit Judge Thomas Russo approves a gag order on all comments outside of legal proceedings and documents.

■ **Jan. 12, 2015:** A grand jury indicts Jones on murder charges. Documents allege Jones strangled four of the children and beat 6-year-old Nahtahn to death.

■ **June 3, 2015:** Jones' defense attorneys file a motion to have the state turn over all evidence favorable to their client.

■ **WHAT'S NEXT:** Jones is undergoing psychiatric examination by forensic investigators to determine if he understood right from wrong at the time of the killings and whether he is of sound mind to stand trial.

Madsen, like others in the case, cannot talk to the media because of a judge's gag order.

"Right now, it's a search and investigation of the facts, the reports, the statements and anything you find out about the case," Swerling said in reference to the motions. "It's standard to file the motions."

Swerling said the two types of motions that Jones' attorneys filed force state prosecutors to turn

over all evidence, including statements, police reports, test results and forensic evidence, that is favorable for the defense. That evidence and documentation could help bolster the defense's argument to not have Jones face the death penalty, should such a case be pursued.

"If it becomes a death penalty case, you have to look at all types of resources and records,"

Swerling said. "It's a very intricate type of investigation, where you are getting a detective to look at the all facts and also to find out what makes a person tick."

While all of that is par for the course when preparing for a defense, Swerling said the next thing that will happen is the completion of a psychiatric examination designed to make sure the suspect is fit to stand trial.

The process involves a forensic psychiatrist meeting with the suspect and determining whether the person meets the M'Naghten Rule, which is a test that determines whether a person accused of a crime was sane at the time of its commission and, therefore, criminally responsible for the wrongdoing. If the suspect is found to be mentally ill, the defense could claim insanity.

Of course, the state then has the right to have the defendant examined by a state psychiatrist to either refute or corroborate the forensic psychiatrist's evaluation.

When it comes time for trial, a death penalty case is split into two parts: proving guilt or innocence and then determining punishment. Swerling said if it comes to the second phase of the trial, this is where defense attorneys look for ways in which evidence might have been mishandled and other ways they might be able to tilt the jury in favor of the defendant.

"I don't think people realize what lawyers do, they think they go to work, go home and party. A real trial lawyer learns to live with stress," Swerling said. "Every day you find something else that you can find or that you need to do or someone else you need to talk to or some other test you need to do."

Swerling said as the stress builds in searching under every unturned rock for anything that could help a client's defense, early nights mean going to bed at 1:30 a.m. and seeing your family for only an hour on the weekend.

"You're working late at night, and you are trying to do everything you can to make sure you have everything you can," Swerling said. "You're putting yourself through a physical and mental test."

"It's a young man and young woman's game. Stress affects you in your older age."

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