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**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

STATE OF GEORGIA,

v.

BRIAN G. NICHOLS,

Defendant.

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INDICTMENT FILE

NO. 2005-SC-29988

ORDER

On March 8, 2006, the Honorable Judge Hilton Fuller issued an order in the above case denying Defendant's Motion to Change Situs. In said order, Judge Fuller recognized that "[i]f this case were tried anywhere in the Fulton County courthouse complex, there would be a risk that some prospective or seated jurors would be adversely affected by being in the complex where the crimes allegedly occurred." Court's Order (March 8, 2006). In conjunction with issuing the latter order, Judge Fuller indicated that "[c]ircumstances could change," and that "[t]he consideration raised by [Defendant's earlier motion] will be continually evaluated."

This Court was appointed to preside over this case on February 4, 2008. From the date of the appointment, the Court has had concerns about conducting the entirety of the trial in the above case in the facilities known as the Fulton County Government Complex (including the following: the facilities located in the Fulton County Government Center, Lewis B. Slayton Courthouse, Fulton County Judicial Complex, Justice Center Tower, and the buildings housing the administrative offices for court and county government officials). Based on these concerns, the Court immediately initiated contact with

representatives of the U.S. District Court, Northern District of Georgia about conducting the trial of the above case at their facilities. Although extremely cooperative, the U.S. District Court was unable to accommodate the Court's request.

Thereafter, the Court asked Judith Cramer, Court Administrator for the Fulton County Superior Court, to investigate other possible locations to house the trial of the case. Ms. Cramer undertook the daunting task and investigated several sites including but not limited to the North Annex, South Annex, and Fort McPherson. Unfortunately, these facilities did not serve the needs of the trial due to concerns such as location, size, transportation, and security concerns.

Contemporaneous with the issuance of the instant order, the Court has begun the Voir Dire process with the jurors in the case. The Court still remains extremely concerned about proceeding with the trial of the case in the current facilities. The Court believes it is duty bound to prevent the introduction of error in all cases before it. Appellate courts have held trial courts are duty bound to ensure that all parties have a fair trial. *See e.g., Pleas v. State*, 268 Ga. 889, 891 (1998). "Due process is the observance of that fundamental fairness which is essential to the very concept of justice; it rests on basic fairness of procedure and demands a procedure appropriate to the case and just to the parties involved." 16C C.J.S. Constitutional Law §1436 (June 2008).

Fundamental fairness mandated under our constitutional due process provisions necessitates that the trial of the above case not occur in the Fulton County Government Complex. Therefore, the Court ORDERS Fulton County Government move the trial of the above case within ten (10) calendar days of the issuance of the instant order. The facility chosen to house the trial of the case MUST be located within Fulton County,

Georgia, and meet the following: necessary security requirements; necessary transportation requirements for both the Defendant, the staff, and the jurors (i.e., Atlanta Braves Parking); space, size, and technology to accommodate the staff of the Court, the Defense, the State, and the Media; accessible to public transportation; and in close proximity to the Fulton County Government Complex for access to technology, resources, supplies, and the office of the Superior Court Clerk. Both the State and the Defense have no objection to the instant Order and have expressly agreed to the City of Atlanta Municipal Court as a possible site for the trial of the case. The Court also notes that the instant Order OVERRULES the March 8, 2006 Order issued by Judge Fuller.

The Court will wait to hear from the appropriate authority on or before the expiration of the ten (10) -day time period as to the new location of the trial. Based on the current posture of the case being in the initial stages of jury selection, the Court stresses the time sensitive nature of the instant Order. As time is of the essence, the Court and all parties are prepared to move to the new location at a time prior to the expiration of the ten (10) -day time period established by this Order.

The Court understands that the appropriate Fulton County Government officials, particularly the County Manager and the County Commissioners, have been working on the issue of housing the above case for trial. The Court appreciates all their hard work and cooperation and that of others it has received in effectuating the move of the case.

SO ORDERED this 10th day of July, 2008.

/S/ James G. Bodiford

James G. Bodiford
Superior Court Judge
Cobb Judicial Circuit
Sitting by Special Appointment in