

IN THE SUPERIOR COURT OF FORSYTH COUNTY
STATE OF GEORGIA

FORSYTH COUNTY GEORGIA
FILED IN THIS OFFICE
MAY 16 2006
CLERK SUPERIOR COURT

STATE OF GEORGIA,

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v.

Case No. 06CR0126

JULIA LYNN WOMACK TURNER,
Defendant.

MOTION TO DISQUALIFY THE DISTRICT ATTORNEY

Comes now the defendant, by and through counsel, and moves this Court to disqualify the office of the District Attorney and his staff from prosecuting the case against her. This motion is made pursuant to the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, to Article 1, § 1, ¶¶ I, II, XI, and XVII of the Georgia Constitution, to the Georgia Code of Professional Responsibility, to the American Bar Association's Standards of Criminal Justice, to O.C.G.A. § 15-18-5, and to all other applicable law. In support of this motion, this defendant would show as follows:

1.

This defendant is a white female facing a death penalty trial on charges of murder.

2.

The Defendant was an employee of the Forsyth County District Attorney's office and was working with all the staff including the present.

Denied 5/30/06

3.

The Defendant also worked with Denise Shinall who was an investigator for the Forsyth County District Attorney's office. Denise Shinall was a listed witness in the investigation of the death of Randy Thompson.

4.

The Defense believes that a number of persons who are current employees of the Forsyth County District Attorney's office worked with the Defendant, Lynn Turner, while she was an employee there and further that these persons talked with investigators during the investigation of the current case.

5.

Because of the knowledge the personnel in the District Attorney's office had and the rumors which permeated the investigation, the then District Attorney, Phil Smith, recused himself and appointed a special prosecutor.

6.

Since the initial recusal, the District Attorney has moved the court and the court has granted an Order allowing the District Attorney to now be unrecused.

7.

The political importance of a case such as this can and must be assumed. The symbolic and political importance, while of utmost significance to an elected office holder, such as the District Attorney, is not a constitutionally permissible reason for determining that the death penalty is warranted in this case. See Zant v. Stephens, 462 U.S.862 (1983); Gregg v. Georgia, 428 U.S. 153 (1976); Woodson v. North Carolina, 428 U.S. 280 (1976).

8.

With regard to whether or not to seek the death penalty in this case, the District Attorney of Forsyth County is not in a position to exercise her discretion free from the extraordinary symbolic and political importance of this case in this community. Instead, the political and symbolic status of this case compels the District Attorney to seek the death penalty without consideration of whether a sentence less than death would be appropriate for any number of proper reasons.

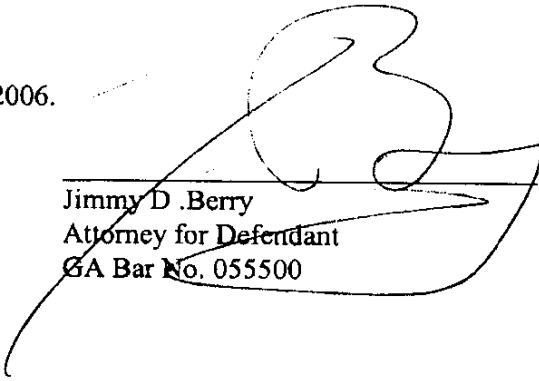
9.

As a result, the aforesaid Forsyth County District Attorney, Penny Penn, has acquired such information and thereby such an interest in the case herein that she shall not be able to discharge her duties impartially in regard to this case, contrary to O.C.G.A. Section 15-18-2 and 15-18-5.

WHEREFORE, Defendant respectfully moves the Court as follows:

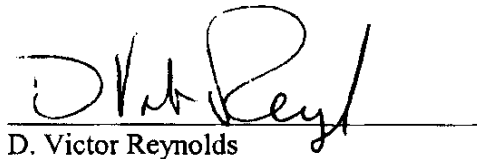
- (a) That the Defendant have a hearing on the motion;
- (b) That an Order issue disqualifying the Forsyth County District Attorney from prosecuting this case;
- (c) That the Defendant have such other and further relief as the Court may deem just and proper.

This 15th day of May, 2006.


Jimmy D. Berry
Attorney for Defendant
GA Bar No. 055500

236 Washington Avenue
Marietta, GA 30060
770-422-5434

(813)

A handwritten signature in black ink, appearing to read "D. Victor Reynolds", written over a horizontal line.

D. Victor Reynolds
Attorney for Defendant
GA Bar No. 601421

CERTIFICATE OF SERVICE

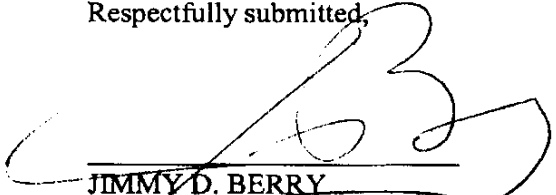
This is to certify that, as of this date, I have served the proper prosecuting officer in the foregoing matter with a copy of the foregoing by one of the following ways:

- (a) Depositing in the United States Mail, with adequate postage affixed thereon; or
 (b) Personally placing a copy of same in his hands, or his authorized agent for this purpose.

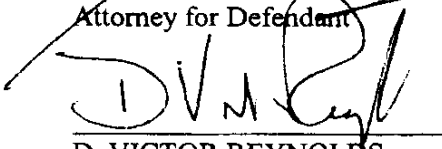
Forsyth Co. District Attorney's Office
100 Courthouse Square
Cumming, GA 30130

This 16 day of May, 2006.

Respectfully submitted,



JIMMY D. BERRY
State Bar No. 055500
Attorney for Defendant



D. VICTOR REYNOLDS
State Bar No. 601421
Attorney for Defendant

236 Washington Avenue
Marietta, Georgia 30060
(770) 422-5434