

FILED & RECORDED
WHITFIELD COUNTY, GA.
2007 FEB -9 PM 2:41

IN THE SUPERIOR COURT OF WHITFIELD COUNTY

STATE OF GEORGIA

STATE OF GEORGIA,

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v.

JULIA LYNN WOMACK TURNER,
Defendant.

Melicia Kendrick
CLERK OF SUPERIOR COURT
Case No. 04CR-0417

MOTION TO CHALLENGE
THE COMPOSITION OF THE PETIT JURIES OF WHITFIELD COUNTY

COMES NOW Defendant, by and through counsel, and moves this Court to require a new petit jury box be assembled. Defendant challenges the composition of the petit jury venire of Whitfield County because of the systematic under-representation of African-Americans, women, young adults (age 18-30), Latinos, Asian-Americans, the unemployed, disabled Americans, non-voters, and other cognizable groups in the selection of the traverse juries in Whitfield County. This motion is made pursuant to the rights and guarantees set forth in the provisions of the Fifth, Sixth, Eight, Ninth and Fourteenth Amendments to the Constitution of the United States, to Article I, § I, ¶¶ I, II, XI, XII, XIV, and XVII of the Constitution of the State of Georgia, to O.C.G.A. § 15-12-40, and to all other applicable law. In further support of this motion Defendant shows as follows:

1.

This is the capital prosecution of Defendant and these proceedings could result in her death by lethal injection. The State, through the District Attorney, has announced its intention to kill Defendant, a human being. "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) (quoting Gardner v. Florida, 430 U.S. 349, 363-64, 97 S.Ct. 1197, 51 L.Ed.2d 393 (1977) (White, J.,

concurring) (quoting Woodson v. North Carolina, 428 U.S. 280, 305, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976))). It is now 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). As this Court is acutely aware, the penalty of death is qualitatively and profoundly different from any other sentence. E.g., Ford v. Wainwright, 477 U.S. 399, 411, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986) ("In capital proceedings generally, this Court has demanded that factfinding procedures aspire to a heightened standard of reliability. This especial concern is a natural consequence of the knowledge that execution is the most irremediable and unfathomable of penalties; that death is different." (citations omitted)); California v. Ramos, 463 U.S. 992, 998-99, 103 S.Ct. 3446, 77 L.Ed.2d 1171 (1983) (recognizing "the qualitative difference of death from all other punishments"); Eddings v. Oklahoma, 455 U.S. 104, 110, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982) ("the imposition of death by public authority is . . . profoundly different from all other penalties"). For this reason, our system of justice must go "to extraordinary measures to ensure that the prisoner sentenced to be executed is afforded process that will guarantee, as much as is humanly possible, that the sentence was not imposed out of whim, passion, prejudice, or mistake." Eddings v. Oklahoma, 455 U.S. at 118 (O'Connor, J. concurring) (emphasis added). These "extraordinary measures" must be taken at both stages of any capital trial. Beck v. Alabama, 447 U.S. 625, 638, 100 S.Ct. 2382, 65 L.Ed.2d 392 (1980).

2.

Counsel believes there was an intentional, discriminatory and systematic exclusion of African-Americans, women, young adults (ages 18-30), Latinos, Asian-American, unemployed individuals, non-voters, disabled Americans or other cognizable groups from the jury rolls from which the traverse jury which will try this case will be selected.

3.

This county has a history and pattern of intentional, discriminatory and systematic exclusion of these groups from the petit jury pools.

4.

These groups all constitute cognizable distinctive classes of persons in this community.

5.

Exclusion of these or other groups from the petit jury pools violates Defendant's right to a petit jury composed of a fair cross-section of the community, Duren v. Missouri, 439 U.S. 357, 99 S.Ct.664, 58 L.Ed.2d 579 (1979), denies him equal protection of the law, Castaneda v. Partida, 430 U.S. 482, 97 S.Ct. 1272, 51 L.Ed.2d 498 (1977); see also United States v. Ovalle, 62 CrL 1469, 1998 WL 68881 (6th Cir. 2/23/98) (intentional discrimination against a cognizable class, even for the otherwise proper purpose of achieving a fair cross section of the community, violates equal protection), and violates the Constitution and the laws of Georgia. O.C.G.A. § 15-12-40; Vaseques v. Hillery, 474 U.S. 254, 106 S.Ct. 617, 88 L.Ed.2d 598 (1986).

WHEREFORE, Defendant respectfully requests that:

- (a) this Court set down this motion for an evidentiary hearing;
- (b) the traverse jury panel not be put upon her because of the unconstitutional composition of the pool from which the venire was drawn; and
- (c) this Court order the compilation of a new jury pool that is composed of a fair cross-section of the community.

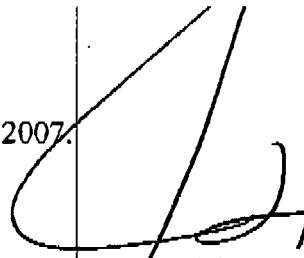
Signatures on following page

Respectfully submitted on February 7, 2007.

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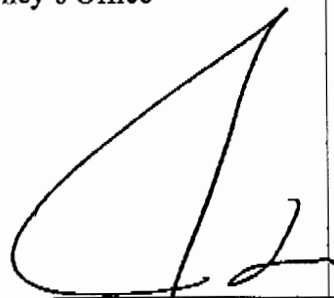
CERTIFICATE OF SERVICE

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:

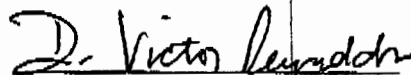
- (a) Depositing in the United States Mail, with adequate postage affixed thereon; or
- (b) Personally placing a copy of same in his hands, or his authorized agent for this purpose.

Penny Penn, DA
Forsyth Co. District Attorney's Office
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Respectfully submitted on February 7, 2007.



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