

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

vs.

CASE NO. 2016CF-006991
COURT APPOINTED

ANDRE M. WARNER,
Defendant.

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MOTION TO DISMISS JURY

COMES NOW the Defendant, ANDRE M. WARNER, by and through his undersigned attorney and moves this Court to dismiss the jury and as grounds in support of this Motion alleges as follows:

1. On March 18, 2020, the jury in this case returned a verdict finding the Defendant guilty of First Degree Murder as well as guilty of other charges. This is a case in which the State is seeking the death penalty.
2. Following the verdict the jury panel was instructed to report back on March 30, 2020 for the start of the penalty phase.
3. On March 24, 2020, this Court entered an Order that cancelled the penalty phase scheduled for March 30, 2020 due to the issues related to COVID-19.
4. At this point in time, the soonest the penalty phase could begin is on or after April 20, 2020.
5. Given the challenging situation due to COVID-19, the potential dates for starting the penalty proceedings could change.
6. Fla. Stat. 921.141(1) provides that with respect to the penalty proceedings that “the proceeding shall be conducted by the trial judge before the trial jury as soon as practicable.” The

statute also contemplates that “impossibility or inability” can create a situation where the trial jury is unable to reconvene for the penalty proceeding and new jurors are summoned.

7. Fla. R. Crim. P. 3.370 provides that “In capital cases, absent a showing of prejudice, the trial court may order that between the guilt and penalty phases of the trial, the jurors may separate for a definite time to be fixed by the court and then reconvene before the beginning of penalty phase.”

8. It is the Defendant’s position that this Court has already set a definite time for the jury to reconvene for the beginning of the penalty phase, and due to impossibility and inability because of COVID-19 the proceeding had to be cancelled.

9. The Defendant would also rely on Anderson v. State, 426 S. 2d 1173 (Fla. 5th DCA 1983), which recognized the difficulty of demonstrating actual jury prejudice during trial, and therefore held that it is only necessary to show the existence of circumstances capable of prejudicing the jury.

10. The circumstances that exist in this case that are capable of prejudicing the jury include, but are not limited to, the following:

- a. The passage of time inherently damages the dynamic of the deliberative function of the jury.
- b. The jurors are placed in the position of contemplating the possible penalty in this case without the benefit of full and proper instructions in a timely manner.
- c. The jurors are put in the position of being exposed to information about the death penalty in general over an extended period of time thereby affecting and shaping their position regarding the death penalty from what they expressed in jury selection.
- d. The jurors are placed in an even more precarious position regarding exposure to

media information. In addition to what has been written, there has been extensive media coverage on both a local and national level.

- e. The jurors also face exposure to people who know about this case who know that the jurors are on this case. This exposure can involve subtle, but very powerful feelings regarding this case.
- f. The jurors' viewpoints regarding the world, life, people, etc., is being shaped and altered by the worldwide crisis created by COVID-19 in ways that were not contemplated and assessed at the time of jury selection.
- g. The passage of time also impairs the jury's ability to remember the evidence that has already been presented in this case that is relevant to the penalty phase.

WHEREFORE, the Defendant requests that this Court dismiss the trial jury and empanel a new jury to hear the penalty proceedings in this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by E-filing to the Office of the State Attorney, at felonypolk@sao10.com, this 26th day of March 2020.

/s/ ROBERT A. NORGDARD
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