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STATE OF MISSOURI )  
COUNTY OF JASPER ) ss

IN THE CIRCUIT COURT IN AND FOR THE COUNTY OF JASPER

STATE OF MISSOURI

STATE OF MISSOURI,  
Plaintiff

v.

DONALD SIMPSON,  
Defendant

Cause No. CR591-55FX

Division No. I

MOTION TO WITHDRAW

Comes now defendant, Donald Simpson, by and through his attorney, Karen E. Kraft, and hereby moves that this Honorable Court allow defense counsel to withdraw her entry of appearance in the above cause. In support of this motion, defendant states the following:

1. Defendant is charged with murder first degree and the State is seeking the death penalty.

2. The State has endorsed John Katura as a witness in this cause. Mr. Katura was the only witness presented by the State at the preliminary hearing held on May 20, 1992.

3. Mr. Katura began calling defense counsel at her office after the preliminary hearing was held. On August 18, 1992, defense counsel Kraft had a telephone conversation with Mr. Katura which was initiated by Mr. Katura. During this conversation, Mr. Katura made statements to defense counsel regarding the case which included the fact that defendant did not strangle the victim in this cause. These statements directly contradicted Mr. Katura's testimony at the preliminary hearing.

4. Defense counsel provided a copy of her notes taken during the conversation with Mr. Katura to the State.

5. On November 18, 1992, Prosecuting Attorney David Dally informed defense counsel that Mr. Katura has denied making the statements made to defense counsel on the telephone on August 18, 1992.

6. Rule 3.7 of the Missouri Rules of Court states that "a lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness . . . ." Defense counsel Kraft has clearly become a necessary witness in this cause. Her testimony will clearly be needed to impeach Mr. Katura on material issues of fact, and does not fall under any of the exceptions listed in Rule 3.7.

7. Failure of this Court to grant defendant's motion would violate his rights to due process, effective assistance of counsel, confrontation of witnesses and reliable sentencing under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Article I, Sections 2, 10, 18(a), 19 and 21 of the Missouri Constitution, Revised Statutes of Missouri and Missouri Rules of Court and would be prejudicial to defendant in that it would deprive defendant of an essential witness in his defense.

WHEREFORE, defendant prays that this Honorable Court grant defense counsel Karen Kraft permission to withdraw from representation of defendant, and to issue any other orders the Court deems appropriate.

Respectfully submitted,

KAREN E. KRAFT  
Assistant Public Defender  
Missouri Bar No. 33547  
1221 Locust, Suite 410  
St. Louis, MO 63103  
(314) 340-7662  
Attorney for Defendant

A copy of the foregoing was delivered to the Office of the Prosecuting Attorney this 3rd day of December, 1992.

Attorney for Defendant