

IN THE CIRCUIT COURT OF MAYCOMB COUNTY, ALABAMA

STATE OF ALABAMA,

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v.

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Case No. CC-00-0000

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JOE CLIENT.

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ASSERTION OF RIGHT TO BE PRESENT

Joe Client respectfully notifies this Court, pursuant to Rule 9.1(a) of the Alabama Rules of Criminal Procedure, that he intends to exercise his right to be present at any and all proceedings at every stage of his capital trial. In support of this notice, Mr. Client submits the following:

1. Mr. Client is charged with capital murder. The State is seeking the death penalty.

2. Alabama Rule of Criminal Procedure 9.1(a) provides that “[t]he defendant has the right to be present at the arraignment and at every stage of the trial, including the selection of the jury, the giving of additional instructions pursuant to Rule 21, the return of the verdict, and sentencing.”

3. Mr. Client’s right to be present at all stages of his criminal trial derives from the constitutional mandate that he have an opportunity to defend himself. See Kentucky v. Stincer, 482 U.S. 730, 745 (1987) (“[D]ue process clearly requires that a defendant be allowed to be present to the extent that a fair and just hearing would be thwarted by his absence.” (internal quotation marks omitted)); Illinois v. Allen, 397 U.S. 337, 338 (1970) (“One of the most basic of the rights guaranteed by the Confrontation Clause is the accused’s right to be present in the courtroom at every stage of his trial.”).

4. The right to be present is particularly critical in capital cases. See, e.g., Ex parte Jackson, 674 So. 2d 1365, 1369 (Ala. 1994) (reversing where defendant was removed during sentencing because “State law and federal law secure the right of a defendant accused of a capital crime to be present during all phases of the trial; without the defendant’s presence at every stage, the court has no jurisdiction to pronounce judgment against the defendant.”); Ex parte Stout, 547 So. 2d 901, 903 (Ala. 1989) (finding defendant had constitutional right to be present at pretrial suppression hearing because “the right to a public trial concomitant with the right to due process and the right to confront the witnesses against oneself includes a right of the defendant and his attorney to be present at all stages of a criminal proceeding”).

5. Mr. Client's right to be present extends to all proceedings in this case, including but not limited to all pretrial hearings and conferences; voir dire questioning and jury selection, opening and closing statements, bench conferences, examinations of witnesses and presentation of documentary evidence, hearings regarding oral and written objections, and charge conferences; instructions to the jury; all proceedings when the jury is present, including any questions by jurors or jury concerns or problems; the sentencing hearing and presentment of sentence; and all other hearings and judicial proceedings of any kind that may influence the outcome of this case.

6. Mr. Client's presence at every stage of the proceedings is necessary to ensure his rights to due process, a fair trial and reliable sentencing as guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, the Alabama Constitution and Alabama law.

For these reasons, Mr. Client respectfully requests that this Court order that Mr. Client be present at every stage of the proceedings against him.

Respectfully submitted,

/s/ Linda Lawyer

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[CERTIFICATE OF SERVICE]

[MOTION UPDATED ON 10/03/17]