

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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**MOTION TO BAR THE PROSECUTOR FROM USING
DEFENDANT’S ALLEGED PRIOR WRONGS, CRIMES, OR ACTS**

Joe Client respectfully moves this Court to bar the State from introducing evidence of Mr. Client’s alleged prior wrongs, crimes, or acts. In support of this motion, Mr. Client states the following:

1. The State indicted Mr. Client under Alabama Code section 13A-5-40(a)(15) for the capital crime of murder when the victim is less than fourteen years of age, and the State is seeking the death penalty.

2. The State has indicated that it intends to introduce the following evidence against Mr. Client at trial:

- a) Evidence of a prior conviction for rape;
- b) Evidence of Mr. Client’s guilty pleas to drug possession and theft of property;
- c) Evidence that a court issued a warrant for Mr. Client’s arrest stemming from a domestic violence charge;
- d) Evidence of a fingerprint card that shows the Sheriff’s Department previously arrested Mr. Client for assault;
- e) Evidence of a police photo that reflects Mr. Client was arrested prior to the commission of this offense;
- f) Evidence of an uncharged incident of domestic violence;
- g) Evidence of a physical altercation with a co-worker;
- h) Evidence of Mr. Client’s drug addiction;

- i) Evidence of threats made by Mr. Client towards his ex-wife;
- j) Evidence of a conversation Mr. Client had the morning of the instant offense regarding a drug purchase;
- k) Evidence of Mr. Client's statements that he had previously engaged in corporal punishment of his children; and
- l) Evidence of a prior larceny that was obtained by law enforcement as a result of Mr. Client's statement in this case.

3. Evidence of prior bad acts or convictions is presumptively inadmissible because it lacks probative value and leads juries to believe that a defendant is more likely to have committed the alleged offense because he committed prior acts of misconduct. Even when evidence contains some probative value, the highly prejudicial nature of the evidence typically renders it inadmissible. Ex parte Drinkard, 777 So. 2d 295, 302 (Ala. 2000) (reversing capital conviction and death sentence because trial court admitted evidence of defendant's alleged involvement in collateral burglary).

4. The Alabama Rules of Evidence generally bar the State from introducing evidence of a defendant's prior bad acts. See Ala. R. Evid. 404(b) ("Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith."); C. Gamble, McElroy's Alabama Evidence § 69.01(1) (6th ed. 2009) ("[T]he prejudicial effect of collateral crimes or acts will far outweigh any probative value that might be gained.").

5. Alabama appellate courts have consistently reversed convictions where trial courts have improperly admitted evidence of a defendant's prior bad acts. See, e.g., Ex parte Woodall, 730 So. 2d 652, 665-66 (Ala. 1998) (reversing capital conviction and death sentence where trial court improperly admitted impeachment evidence of three prior uncharged acts of violence); Horton v. State, 217 So. 3d 27 (Ala. Crim. App. 2016) (capital conviction reversed where State admitted evidence that defendant used cocaine, assaulted girlfriend, and choked mother); Spradley v. State, 128 So. 3d 774, 791-92 (Ala. Crim. App. 2011) (error for witness to improperly testify that defendant was previously in jail and on probation).

6. Similarly, Supreme Court precedent bars the introduction of prior bad act evidence when it would lead the jury to convict the defendant based on a perceived propensity to commit unlawful acts. Old Chief v. United States, 519 U.S. 172, 181 (1997) ("Although . . . 'propensity evidence' is relevant, the risk that a jury will convict for crimes

other than those charged — or that, uncertain of guilt, it will convict anyway because a bad person deserves punishment—creates a prejudicial effect that outweighs ordinary relevance.” (citation omitted)); see also Huddleston v. United States, 485 U.S. 681, 685 (1988) (evidence of extrinsic acts is inadmissible where it “might adversely reflect on the actor’s character, unless that evidence bears upon a relevant issue in the case such as motive, opportunity, or knowledge”); Michelson v. United States, 335 U.S. 469, 476 (1948) (“The overriding policy of excluding such evidence [of prior bad acts], despite its admitted probative value, is the practical experience that its disallowance tends to prevent confusion of issues, unfair surprise and undue prejudice.”). In this case, none of the alleged prior bad acts or crimes are relevant to the crime charged and this Court should bar the State from introducing evidence of Mr. Client’s alleged prior bad acts.

7. If this Court allows the State to introduce into evidence any of Mr. Client’s alleged prior misconduct, Alabama law requires this Court to issue a limiting instruction and explain to the jury that the evidence may be considered only for the limited purpose for which it is found to be admissible and not as substantive evidence of guilt. See Ex parte Billups, 86 So. 3d 1079, 1086 (Ala. 2010) (reversing capital conviction and death sentence where trial court failed to properly instruct jury on how to consider evidence of defendant’s prior conviction); Waldrop v. State, 59 So. 3d 60, 76 (Ala. Crim. App. 2010) (same); Riley v. State, 48 So.3d 671, 680-82 (Ala. Crim. App. 2009) (reversing capital conviction and death sentence where trial court failed to *sua sponte* issue limiting instruction regarding admission of defendant’s prior convictions); Ex parte Minor, 780 So. 2d 796, 799-800 (Ala. 2000) (same).

8. Because this is a death penalty case, there exists a greater need for reliability and a judgment based on the law and evidence rather than passion or conjecture. “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 determining whether the death penalty is appropriate. Johnson v. Mississippi, 486 U.S. 578, 584 (1988); see also Ex parte Monk, 557 So. 2d 832, 836-37 (Ala. 1989) (death penalty is “special circumstance” that justifies expansion of constitutional rights).

For these reasons, Mr. Client respectfully moves this Court to:

- a. bar the State from introducing evidence of Mr. Client’s prior acts of misconduct; and

- b. in the event that this Court admits such evidence, issue a limiting instruction to the jury explaining that the evidence may be considered only for the limited purpose for which it is found to be admissible, and not as substantive evidence of guilt.

Respectfully submitted,

/s/ Linda Lawyer

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[CERTIFICATE OF SERVICE]

[MOTION UPDATED ON 10/04/17]