

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 FOR CHANGE OF VENUE

Mr. Client respectfully moves this Court to change the venue for the trial in this case. In support of this motion, Mr. Client submits the following:

1. On June 7, 2016, the State indicted Mr. Client for the capital murder of Victor Victim and David Deceased. The State is seeking the death penalty.

2. In addition to Mr. Client, the State indicted two other men for this crime: Karl Kodefendant and Paul Plead. Mr. Plead pleaded guilty to the lesser crime of murder, which carries a sentence of twenty-five years to life, in exchange for his testimony against Mr. Kodefendant and Mr. Client. In January 2017, the State tried Mr. Kodefendant in Maycomb County. A jury convicted him of capital murder and this Court sentenced him to death.

I. FACTS REQUIRING CHANGE OF VENUE

3. At each stage of the criminal proceedings against Mr. Client, the newspapers, broadcast media, and other forms of communication in Maycomb County and neighboring counties have given the case such extensive publicity, and in a manner so prejudicial to Joe Client, that it is impossible to conduct a fair trial by an impartial and unbiased jury in this county.

A. Media Coverage of the Crime

4. The deaths of Nellie and Jim Rogers received widespread publicity. Articles in the Maycomb Courier, with a circulation in excess of 1600 daily in Maycomb County, and in the Maycomb Chatterer, with a circulation in excess of 4000 daily, publicized the killings. (Def. Exs. 1-18.) These reports described the crime in gruesome and sensationalized detail. (Def. Exs. 1-18.)

5. Coverage in the Maycomb Courier has repeatedly quoted police statements that this was the most brutal and savage murder in Maycomb County's history. (Def. Exs. 2, 6,

11.) For example, Maycomb County Chief Investigator Roy Stevens told the press that “[i]n my ten years of law enforcement, this is the worst I’ve seen in all my years of law enforcement. There is nothing that could justify that type of behavior.” “County Shaken by Slayings,” Maycomb Courier, May 18, 2016, at A2. (Def. Ex. 6.)

6. Many of these newspaper reports speculated that the killings were gang related. (Def. Exs. 4-7, 8, 9.) In the May 19, 2016, edition of the Maycomb Courier, the front page headline read “Night of Horror Leaves Two Dead in Gang-Related Violence.” Maycomb Courier, May 18, 2016, at A1. (Def. Ex. 12.) Mugshots of Mr. Client, Paul Plead, and Karl Kodefendant were displayed below the headline. The article quoted James Phillips, director of the Alabama Bureau of Investigation, as saying that the crime was possibly gang related and that Mr. Client was suspected to be the ringleader. (Def. Ex. 12.) Reprints of this article appeared the same day in the Maycomb Chatterer. (Def. Ex. 19.)

7. The papers also reported comments by Maycomb County Sheriff Bob Williams in which he stated that the murders represented “a trend toward the way violence has been going in our country” and that “nobody is immune to this.” “Three Indicted in Slayings,” Maycomb Courier, June 3, 2016, at A2. (Def. Ex. 21.) Williams was quoted saying that the murders were “a reality check” for the county about the influx of gangs. Id.

8. The victims’ funerals and memorial services were widely publicized. (Def. Exs. 22-26.) A front page article in the May 21, 2016, Maycomb Courier described a moment of silence led by the Mayor of Maycomb to show respect for the victims’ families. “Slaying Victims Buried,” Maycomb Courier, May 21, 2016, at A2. (Def. Ex. 23.) Photographs of the murder victims accompanied the article as well as photographs of the coffins at the funerals. Id.

9. Similar publicity was broadcast on radio and television in Maycomb County and the surrounding areas. WIMP Television, the largest television station in Maycomb, carried stories on the killings to over 4500 television-watching households in Maycomb County. (Def. Ex. 27.) WBOR radio station, with over 8000 listeners, also ran stories about the crime. (Def. Exs. 35-37.)

B. Media Coverage of the Search and Arrest

10. Coverage of the crime was immediately followed with sensational media coverage of the search that led to Mr. Client’s arrest, with headlines such as “Hundreds Comb Area For Gang Members” and “Maycomb Residents Are Shocked — Killers Still At Large.” (Def. Exs. 33, 34.) Local residents collected money to offer a reward for information leading to the arrest and conviction of the persons who killed the victims. (Def.

Ex. 35.) Similar publicity was broadcast on radio and television in Maycomb County and the surrounding areas. (Def. Exs. 36-38.)

11. Mr. Client's arrest was the subject of excessive and prejudicial media publicity. The top headline in the Maycomb Courier on May 23, 2016, was "Three Charged with Capital Murder in Gang-Related Slayings." Maycomb Courier, May 23, 2016, at A1. (Def. Ex. 39.) Below the headline was a photograph of Mr. Client and his co-defendants in orange jumpsuits, handcuffed and surrounded by officers as they were taken to arraignment. The article reported that at their arraignment, the three co-defendants "smiled and joked." Reprints of this article appeared the same day in the Daily News and the Maycomb Chatterer. (Def. Ex. 40, 44.)

C. Media Coverage of the Alleged Confession

12. Mr. Client's alleged confession was widely publicized. Radio and television broadcasts reported that police authorities stated that Mr. Client admitted to the murder and told police that he was trying to "teach [the victims] a lesson." (Def. Exs. 45-46.) These stories also reported that Mr. Client refused to speak further with the police and asked for an attorney. Id.

13. These stories published Mr. Client's criminal record, discussing three prior convictions for theft and assault. (Def. Exs. 45-47.)

D. Media Coverage of Co-defendant's Guilty Plea

14. On October 31, 2016, Paul Plead pleaded guilty to the lesser-included offense of felony murder in exchange for his testimony against Mr. Client and Karl Kodefendant. The Maycomb Chatterer reported that, according to District Attorney Investigator Bob Walker, Plead had agreed to testify about how Mr. Client and Karl Kodefendant tortured the victims for hours before killing them. "Suspect Pleads Guilty to Slayings," Maycomb Chatterer, Nov. 20, at 2016, A1. (Def. Ex. 50.) District Attorney Brown was quoted saying that the agreement ensured a capital conviction for Mr. Client and Karl Kodefendant. (Def. Ex. 50.) Similar publicity was broadcast over the radio and television in Maycomb County and the surrounding areas. (Def. Exs. 42-43.) The story aired ten times over the week of the arrests on WIMP Television alone. (Def. Ex. 47.)

E. Media Coverage of Co-defendant's Trial

15. Coverage of the trial of Mr. Client's co-defendant, Karl Kodefendant, created a recent wave of media saturation and led to some of the most damaging publicity. The press reported that the State's principal witness in the Kodefendant trial was Paul Plead, who had admitted participating in the killings with Karl Kodefendant and Mr. Client. "Plead to Testify in Kodefendant's Trial," Maycomb Courier, Jan. 14, 2017, at A3. (Def. Ex. 53.) During the trial, the press reported the details of Plead's testimony describing the manner in which Mr. Client and Kodefendant allegedly killed the two victims. For example, the front page of the January 22, 2017, Maycomb Chatterer was headlined "Suspect Says Torture Lasted Hours Before Bloodbath Began." (Def. Ex. 55.) The article stated that "Plead testified yesterday that he saw Kodefendant and Client assault and kill the two victims after confronting Jim Rogers about the stereo equipment," and continued with a detailed description of his testimony recounting how the victims were killed. Id. The article also described the photographs of the victims that were shown to the jury. Id. Reprints of this article appeared the same day in the Daily News and Maycomb Courier. (Def. Exs. 56-57.)

16. The January 24, 2017, front page of the Maycomb Courier read "Jury Calls for Death in Slayings of Two Youths." (Def. Ex. 58.) The article reported that in Kodefendant's case, the jury voted unanimously for the death penalty and found aggravating circumstances of robbery, burglary, and that the crime was especially heinous, atrocious, or cruel. Id. A similar article in the Maycomb Chatterer stated that the victims' family supports the death penalty. "Family Mourns Loss," Maycomb Chatterer, Jan. 24, 2017, at A2. (Def. Ex. 59.)

F. Continued Media Coverage

17. Since Mr. Kodefendant's trial, the media's extensive and prejudicial coverage of the State's prosecution of Mr. Client has not abated. After Mr. Kodefendant was sentenced to death, the Maycomb Courier published a feature series on the victims' mothers, reporting that one of the mothers contemplated suicide. "For Slaying Victims' Families, The Hurt Continues," Maycomb Courier, Feb. 7, 2017, at A1. (Def. Ex. 60.)

18. Moreover, in the past three months, nearly every motion ruled upon by this Court has been reported in the press. "Client Moves to Suppress Confession," The Maycomb Chatterer, Feb. 28, 2017, at A3 (Def. Ex. 61); "Client Seeks Continuance," Maycomb Chatterer, Mar. 13, 2017, at A3 (Def. Ex. 62).

19. Although the press was excluded from pretrial motions hearings on discovery and suppression issues, the newspapers printed the motions for discovery and the suppression motion, making it abundantly clear to all readers that Mr. Client had allegedly confessed to the crime. "Client Hearing Closed to Media," Maycomb Courier, Mar. 21, 2017 A1 (Def. Ex. 63.)

20. Each of these articles also reports Mr. Client's prior theft and assault convictions and Mr. Kodefendant's conviction and death sentence, summarizes the details of the offense, and recounts Mr. Plead's guilty plea and testimony at Kodefendant's trial. (Def. Exs. 61-63.)

II. STATE AND FEDERAL LAW REQUIRE A CHANGE OF VENUE TO PROTECT MR. CLIENT'S RIGHTS.

21. The Constitution guarantees criminal defendants a fair trial by a panel of impartial and indifferent jurors. The Supreme Court has held that when prejudicial pretrial publicity or an inflamed community atmosphere precludes seating an impartial jury, due process requires the trial court to grant a defendant's motion for a change of venue. Rideau v. Louisiana, 373 U.S. 723, 731 (1963) (refusal to change venue was denial of due process where film of defendant's confession had been televised three times to people in parish); see also Sheppard v. Maxwell, 384 U.S. 333, 362-63 (1966); Estes v. Texas, 381 U.S. 532, 583-84 (1965) (defendant deprived of due process by televising of his highly publicized criminal trial); Irvin v. Dowd, 366 U.S. 717, 726 (1961) (trial courts must change venue when pretrial publicity has "fostered a strong prejudice among the people of [the county]").

22. Eleventh Circuit precedent requires trial courts to change venue when "pretrial publicity is sufficiently prejudicial and inflammatory and the prejudicial pretrial publicity saturated the community where the trials were held." Coleman v. Kemp, 778 F.2d 1487, 1490 (11th Cir. 1985); see also Coleman v. Zant, 708 F.2d 541, 544 (11th Cir. 1983) ("Prejudice is presumed from pretrial publicity when (1) pretrial publicity is sufficiently prejudicial and inflammatory, and (2) the prejudicial pretrial publicity saturated the community where the trials were held.").

23. Under the Alabama Rules of Criminal Procedure, defendants "shall be entitled to a change of the place of trial to the nearest county free from prejudice if a fair and impartial trial and an unbiased verdict cannot be had for any reason." Ala. R. Crim. P. 10.1.

24. Alabama trial courts, especially in death penalty cases, have consistently followed Rule 10.1 and have changed venue due to excessive and prejudicial pretrial publicity. See, e.g., Ex parte Hall, 820 So. 2d 152, 155 (Ala. 2001) (venue changed in capital murder prosecution from Conecuh County to Monroe County due to excessive pretrial publicity); Centobie v. State, 861 So. 2d 1111, 1117 (Ala. Crim. App. 2001) (venue changed on defendant's motion in capital murder prosecution from St. Clair County to Elmore County); Ferguson v. State, 814 So. 2d 925, 938 (Ala. Crim. App. 2000) (on defendant's motion, capital murder trial transferred from Colbert to Mobile County because of extensive pretrial publicity); Burgess v. State, 723 So. 2d 742, 749 n.1 (Ala. Crim. App. 1997) (venue

changed in capital murder prosecution from Colbert County to Jefferson County due to excessive pretrial publicity); Giles v. State, 632 So. 2d 568, 576 (Ala. Crim. App. 1992) (venue changed from Blount County to Morgan County for sentencing phase of capital murder prosecution); McMillian v. State, 594 So. 2d 1253, 1273 (Ala. Crim. App. 1991) (venue changed in capital murder prosecution from Monroe County to Baldwin County due to pretrial publicity); Whisenant v. State, 370 So. 2d 1080, 1096 (Ala. Crim. App. 1979) (capital murder trial transferred from Mobile to Jefferson County because of extensive pretrial publicity).

25. In Mr. Client's case, this Court must change venue because "a fair and impartial trial and an unbiased verdict cannot be reasonably expected in the county in which the defendant is to be tried." Ala. R. Crim. P. 10.1(b). The provocative characterizations of these killings as gang-related and the portrayal of Mr. Client have provoked the community's hostility against Mr. Client.

26. Much of what has been reported in the media about this case is inadmissible. For example, Mr. Client's prior convictions are inadmissible, see Ex parte Johnson, 507 So. 2d 1351, 1356-57 (Ala. 1986) (admission of defendant's prior arrest record requires reversal); Ala. R. Evid. 404(b); cf. Marshall v. United States, 360 U.S. 310 (1959) (holding that exposure of jurors to newspaper articles on prior convictions which had been ruled inadmissible was so prejudicial as to entitle accused to new trial). There has hardly been a reference to Mr. Client that does not mention his prior convictions. (Def. Exs. 3, 5, 10, 41, 45, 50, 73, 94.)

27. Likewise, Mr. Client's subsequent refusal to participate in police interrogations and his request for an attorney are inadmissible. Doyle v. Ohio, 426 U.S. 610 (1976); Ex parte Johnson, 629 So. 2d 619 (Ala. 1993) (reversing where prosecutor elicited testimony that defendant, during custodial interrogation, asked for legal help). (Def. Exs. 45-46.)

28. Similarly, Paul Plead's guilty plea and Karl Kodefendant's conviction and death sentence are inadmissible at Mr. Client's trial, see Whitt v. State, 733 So. 2d 463, 483 (Ala. Crim. App. 1998) (prosecutor's comment that co-defendant had been convicted on same charges faced by defendant improper); Tomlin v. State, 591 So. 2d 550 (Ala. Crim. App. 1991) (evidence that co-defendant had been convicted and sentenced to death violated defendant's right to fair trial). The Maycomb Chatterer alone published no fewer than twenty front page stories featuring Mr. Kodefendant's conviction and death sentence in headlines. (Def. Exs. 40-44, 50-61, 68-72.)

29. The opinions of various commentators about the appropriate punishment and the impact of the crime on the community, and in particular the opinions of the District

Attorney and other state officials about the appropriateness of the death penalty, (Def. Exs. 2, 6, 11, 47-50) are clearly inadmissible at trial. Berger v. United States, 295 U.S. 78 (1935); Brooks v. Kemp, 762 F.2d 1383, 1408 (11th Cir. 1985), vacated on other grounds by Kemp v. Brooks, 478 U.S. 1016 (1986); Quinlivan v. State, 579 So. 2d 1386 (Ala. Crim. App. 1991).

30. In addition, the Eighth Amendment prohibits the introduction of the family members' opinions as to the appropriate sentence, Booth v. Maryland, 482 U.S. 496 (1987), Payne v. Tennessee, 501 U.S. 808 (1991). The families' support for the death penalty has been widely and repeatedly publicized. (R. 45, 48, 90, 101.)

31. The prejudice to Mr. Client caused by the media's education of the jury about these inadmissible facts is obvious:

Pretrial [coverage] can create a major problem for the defendant in a criminal case. Indeed, it may be more harmful than publicity during the trial for it may well set the community opinion as to guilt or innocence.

Estes, 381 U.S. at 536.

32. The cumulative effect of two years of publicity has sealed the community's belief in Mr. Client's guilt. This is evidenced by the sworn statements of several local residents and journalists who have reported on the community atmosphere throughout these proceedings. (Def. Exs. 1-5.) For example, the affidavit of a clerk at a local convenience store states: "Everyone knows that these guys, [Mr. Client, Mr. Plead, and Mr. Kodefendant], are guilty and should be executed." Williams Aff. ¶ 3. (Def. Ex. 72.)

33. Clearly inadmissible evidence and evidence otherwise outside the province of proper jury consideration at trial has been publicized so extensively and in a manner so prejudicial that it has jeopardized Mr. Client's rights to due process, trial before a fair and impartial jury, effective assistance of counsel, confrontation of witnesses, a jury selected from a fair cross section of the community, and a reliable sentencing determination as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Alabama law.

III. CONCLUSION

34. The Supreme Court has repeatedly recognized that a death sentence is unique in its finality and severity and that "extraordinary measures" must be taken to ensure that

such a sentence is not imposed “out of whim, passion, prejudice, or mistake.” Eddings v. Oklahoma, 455 U.S. 104, 118 (1982) (O’Connor, J., concurring); see also Ex parte Monk, 557 So. 2d 832, 836-37 (Ala. 1989) (hovering death penalty is special circumstance justifying special measures in capital cases). This case has produced unprecedented publicity and unbridled hostility toward a defendant on trial for his life. This Court must act to ensure that a fair and reliable trial and sentencing determination are not compromised by further prejudicial publicity.

For these reasons, Mr. Client moves for an evidentiary hearing on this motion and moves that his motion for a change of venue be granted.

Respectfully submitted,

/s/ Linda Lawyer

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[CERTIFICATE OF SERVICE]

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