

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 A CONTINUANCE

Joe Client respectfully requests this Court to grant him a continuance of three months to allow him to adequately obtain absent and material evidence. In support of this motion, Mr. Clients submits the following:

1. Joe Client was indicted for capital murder on May 5, 2016. The State is seeking the death penalty. This Court has scheduled Mr. Client's trial to begin in three weeks.

2. Mr. Client's defense relies heavily on the testimony of his former employer, Betty Boss, and material evidence to be obtained from her car. Ms. Boss moved to Tennessee three months ago and has not been reachable by phone, mail or otherwise for the last month because she is on a fishing trip. Ms. Boss's family in Alabama indicates that they expect her to return within the next month.

3. In addition to Ms. Boss's testimony, Mr. Client expects to retrieve material evidence from her car. Depending on the nature of that evidence, Mr. Client will need time to consult with counsel and potentially an expert as to how to proceed.

4. Alabama appellate courts have held that trial courts should grant continuances in cases where, as here, a witness or evidence is absent: (1) if the expected evidence is material and competent; (2) if there is a probability that the evidence will be forthcoming if the case is continued; and (3) if the moving party has exercised due diligence to secure the evidence. Dove v. State, 178 So. 3d 889, 891 (Ala. Crim. App. 2014) (quoting Ex parte Saranthus, 501 So. 2d 1256, 1257 (Ala. 1986)).

5. Because the expected evidence from Ms. Boss is material and competent, because it is probable that Ms. Boss will return from her trip in the near future and be willing to testify, and because Mr. Client has exercised due diligence in trying to reach Ms. Boss for the last month, this Court should grant a continuance.

6. The United States Supreme Court has found that the improper denial of a motion for continuance can result in a violation of due process. See, e.g., Lee v. Kemna, 534 U.S. 362, 388 (2002) (remanding for consideration of claim that denial of motion for continuance violated due process); Drope v. Missouri, 420 U.S. 162, 183 (1975) (denial of continuance to allow for psychiatric evaluation violates due process).

7. The Supreme Court has also found that denial of a continuance can deprive a defendant of effective assistance of counsel. See Hawk v. Olson, 326 U.S. 271, 278 (1945) (whether or not continuance is useful, importance of assistance of counsel in criminal case required that continuance be granted); United States v. Rojas-Contreras, 474 U.S. 231, 240-41 (1985) (Blackmun, J., concurring) (“[O]ne basis for granting a continuance is if ‘the failure to grant such a continuance . . . would deny counsel for the defendant . . . the reasonable time necessary for effective preparation. . . . The constitutional right to assistance of counsel is rendered meaningless if a defendant is forced to trial in the absence of adequate time to prepare.’”) (quoting, Speedy Trial Act, 18 U.S.C. § 3161 (h)(8)(B)(iv) (1975)); see also Massaro v. United States, 538 U.S. 500 (2003) (remanding for consideration of claim that counsel was ineffective for failing to obtain continuance).

8. Because this is a capital prosecution, full exposition of the truth should take precedence over considerations of expediency. “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).

9. The denial of a continuance in this case would violate Mr. Client’s rights to due process, a fair trial, and a reliable sentencing as protected by the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Alabama law.

For these reasons, Mr. Client respectfully requests that this Court grant a continuance in this case.

Respectfully submitted,

/s/ Linda Lawyer

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[CERTIFICATE OF SERVICE]

[MOTION UPDATED ON 10/03/17]