

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 DEPOSE STATE EXPERT WITNESSES
AND REQUEST FOR PRODUCTION OF DOCUMENTS**

Joe Client moves this Court to grant him leave to depose expert witnesses the State intends to call to testify at his trial and to direct the State to provide him with the curricula vitae, certificates, qualifying documents, and all other background documentation necessary to assess adequately the qualifications of the State's expert witnesses. In support of this motion, Mr. Client submits the following:

1. Mr. Client is charged with capital murder in the alleged robbery-murder of Mr. Victim on March 17, 2005. The State is seeking the death penalty.

2. Upon information and belief, undersigned expects the State to call several expert witnesses during the guilt/innocence phase of the trial, including:

a. Donald Foot, to be offered as an expert in footprint examination and comparison; and

b. Carla Coroner, to be offered as an expert in forensic pathology.

3. Expert opinions are admissible in Alabama. See Ala. Code § 12-21-160.

4. "To qualify as an expert, the witness must have such knowledge, skill, experience or training that the witness' opinion will be considered in reason as giving the trier of fact light upon the question to be determined." Charles W. Gamble, McElroy's Alabama Evidence § 127.02(2) (6th ed. 2009). Whether an expert is qualified to testify is a decision that rests in the discretion of the trial court after a full review of the witness's qualifications. Id. at § 127.02(3).

5. At trial, the defense may cross-examine the State's expert witnesses about their qualifications and the details upon which they have based their opinions. See id. at § 142.01(5). Without access to the State's expert witnesses prior to trial, defense counsel

cannot adequately prepare and the defendant's right to confrontation and cross-examination becomes meaningless.

6. Alabama Rule of Criminal Procedure 16.6 specifically allows for the taking of depositions "[w]henever, due to the exceptional circumstances of the case, it is in the interest of justice that the testimony of a prospective witness be taken and preserved for use at trial."

7. Alabama courts have recognized that broader discovery is justified in capital cases. Ex parte Monk, 557 So. 2d 832, 836-37 (Ala. 1989). Because this is a capital case, this Court must apply heightened standards to ensure that it is fair. Under the Eighth Amendment, "fundamental respect for humanity" requires heightened reliability in determining whether the death penalty is appropriate. Johnson v. Mississippi, 486 U.S. 578, 584 (1988) (quoting Gardner v. Florida, 430 U.S. 349, 363-64 (1977)).

8. Alabama Rule of Criminal Procedure 16.1(c) provides that the State shall permit the defense to inspect and copy or photograph papers and documents within its possession, custody, or control that are material to the preparation of the defense.

9. The rules also provide that:

Upon written request of the defendant, the prosecutor shall . . . permit the defendant to inspect and to copy any results or reports of physical or mental examinations or scientific tests or experiments, if the examinations, tests, or experiments were made in connection with the particular case, and the results or reports are within the possession, custody, or control of the state/municipality, and their existence is known to the prosecutor.

Ala. R. Crim. P. 16.1(d).

10. Because this is a capital case and exacting standards of justice must be met, the defendant must be permitted to depose expert witnesses whom the State intends to call at trial. In order to guarantee Mr. Client the rights to due process, cross-examination, a fair trial, and a reliable sentencing protected by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Alabama law, Mr. Client must be permitted to obtain background information concerning the qualifications of the State's expert witnesses and the details upon which their expert opinions are based.

For these reasons, Mr. Client respectfully requests that this Court enter an order granting the motion.

Respectfully submitted,

/s/ Linda Lawyer

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[CERTIFICATE OF SERVICE]

[MOTION UPDATED ON 09/29/17]