

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 REQUIRE DISCLOSURE OF FAVORABLE INFORMATION  
CONCERNING PROSPECTIVE JURORS**

Joe Client respectfully moves this Court for an order requiring the District Attorney to disclose any information about prospective jurors that could be favorable to Mr. Client. In support of this motion, Mr. Client submits the following:

1. Joe Client has been indicted for capital murder pursuant to Alabama Code section 13A-5-40(a)(3). The State is seeking the death penalty.
2. Mr. Client is entitled to all information in the possession of the State that could be favorable to him. Brady v. Maryland, 373 U.S. 83, 87 (1963).
3. With regard to the disclosure of exculpatory information in capital cases, the Alabama Supreme Court has made clear that:

The hovering death penalty is the special circumstance justifying broader discovery in capital cases. In addition, because of the nature of the penalty in a capital case, the sentencing process becomes of utmost importance. . . . In a capital case the definition of “favorable evidence” expands at the sentencing stage to far beyond what it is at any stage of any other type of criminal proceeding. . . . This statutory mandate that a defendant shall be allowed to offer evidence of mitigating circumstances is another reason why broad discovery must be allowed.

Ex parte Monk, 557 So. 2d 832, 836-37 (Ala. 1989); see also Ex parte Womack, 541 So. 2d 47 (Ala. 1988) (failure of prosecutor to reveal plea bargains or other deals with State witnesses and suppression of evidence concerning guilt of State’s witness in crime constitutes reversible error).

4. If anyone involved in the prosecution of this case knows of any reason why a juror would be particularly favorable or unfavorable to the defense, or why a particular juror should not serve, she has a constitutional obligation to disclose that reason to the defense. See Ex parte Dixon, 55 So. 3d 1257, 1262 (Ala. 2010) (reversing where juror failed to disclose information during voir dire and State, aware of failure, was silent); Ex parte Ellington, 580 So. 2d 1367 (Ala. 1990) (failure to remove juror who admitted husband was police officer and that she knew one officers who was testifying reversible error); see also Monk, 557 So. 2d at 837 n.1 (noting high rate of reversal of capital cases in Alabama due to failure of district attorney to release exculpatory information).

5. Due to the long association of this District Attorney with this county, it is highly likely that she or members of her staff are familiar with the Maycomb County citizens called for jury service in this case. It is also likely that a member of the prosecution team has considered the fitness of one or more of the venirepersons on a prior occasion or prior to jury selection in this case. Information about particular jurors that could prove favorable to the defense must be disclosed to Mr. Client. Brady, 373 U.S. at 87; Monk, 557 So. 2d at 836-37; Ex parte Dickerson, 517 So. 2d 628 (Ala. 1987); Ex parte Kimberly, 463 So. 2d 1109 (Ala. 1984); Martin v. State, 839 So. 2d 665 (Ala. Crim. App. 2001); Hamilton v. State, 677 So. 2d 1254 (Ala. Crim. App. 1995); Padgett v. State, 668 So. 2d 78 (Ala. Crim. App. 1995); Jefferson v. State, 645 So. 2d 313 (Ala. Crim. App. 1994).

6. Determining what is favorable to Mr. Client is not limited to guilt/innocence phase issues. Any information that is favorable with regard to punishment also must be disclosed. Brady, 373 U.S. at 87; United States v. Bagley, 473 U.S. 667, 674 (1985). This would include, for example, knowledge that particular jurors are predisposed to view certain evidence as mitigating. See United States v. Gaston, 608 F.2d 607, 612 (5th Cir. 1979) (Brady requires disclosure of material evidence favorable as mitigation); Calley v. Callaway, 519 F.2d 184, 221 (5th Cir. 1975) (en banc) (same).

7. The prosecutor has a constitutional duty to reveal any information, in whatever form, that is favorable to the defense. This is particularly important in a capital case. “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). Full disclosure is required to ensure Mr. Client’s rights to due process, a fair trial, and a reliable sentencing as guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Alabama law.

For these reasons, Mr. Client respectfully moves this Court to enter an order that requires the prosecutor to disclose all information concerning prospective jurors that may be favorable to the defense.

Respectfully submitted,

/s/ Linda Lawyer

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[CERTIFICATE OF SERVICE]

**[MOTION UPDATED ON 10/11/17]**