

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 THE STATE TO REVEAL
ALL MITIGATING CIRCUMSTANCES**

Mr. Client respectfully moves this Court to order the production of any mitigating evidence maintained or acquired by the State of Alabama. In support of this motion, Mr. Client submits the following:

1. Mr. Client has been charged with capital murder and the State is seeking the death penalty. If Mr. Client is found guilty of capital murder, the trial will proceed to the sentencing phase, where the State may present evidence in support of a death sentence (aggravation) and Mr. Client will have an opportunity to present evidence in support of a sentence of life without parole (mitigation). Ala. Code § 13A-5-45(c).

2. Because “the imposition of death by public authority is so profoundly different from all other penalties, . . . an individualized decision is essential in capital cases.” Lockett v. Ohio, 438 U.S. 586, 605 (1978). Every capital defendant must be permitted to present, and the sentencer must consider, any mitigation evidence about the “circumstances of the offense together with the character and propensities of the offender” that would militate in favor of a sentence less than death. Eddings v. Oklahoma, 455 U.S. 104, 112 (1982) (citation omitted). The Supreme Court has held that “[v]irtually no limits are placed on the relevant mitigating evidence a capital defendant may introduce concerning his own circumstances.” Payne v. Tennessee, 501 U.S. 808, 822 (1991).

3. The State’s obligation to disclose favorable evidence applies to the sentencing phase in a capital case. Brady v. Maryland, 373 U.S. 83, 87 (1963) (“[t]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt *or to punishment*”) (emphasis added); see also Ex parte Monk, 557 So. 2d 832, 837 (Ala. 1989) (concluding that Brady “extends to evidence favorable on the issue of sentencing as well as on the issue of guilt”); Davis v. State, 184 So. 3d 415 (Ala. Crim. App. 2014).

4. In light of the State’s ongoing obligation to turn over any information favorable to Mr. Client with regard to the sentencing phase of his trial, Mr. Client requests that this Court order the prosecution to disclose to undersigned counsel and permit him access to all

mitigating evidence and information that could lead to the discovery of mitigating evidence.

5. The requested evidence and information includes but is not limited to the following:
 - a. any and all information regarding Mr. Client's criminal history;
 - b. any and all information that would support a showing that this offense was committed while Mr. Client was under the influence of mental or emotional disturbance;
 - c. any and all information regarding the victim's participation in the alleged conduct;
 - d. any and all information regarding Mr. Client's relative culpability with respect to the charged offense; specifically, any information indicating that the defendant was an accomplice in the capital offense committed by another person or that his participation was relatively minor;
 - e. any and all information tending to establish that the defendant acted under extreme duress or under the substantial domination of another person;
 - f. any and all information relating to Mr. Client's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law;
 - g. any and all information relating to Mr. Client's age at the time of the alleged offense;
 - h. any and all information relating to Mr. Client's conduct while in jail or prison, see Skipper v. South Carolina, 476 U.S. 1, 7 (1986); Morrison v. State, 551 So. 2d 435, 443 (Ala. Crim. App. 1989);
 - i. any and all information relating to Mr. Client's work history, see, e.g., Pooler v. Sec'y, Fla. Dep't of Corr., 702 F.3d 1252, 1262 (11th Cir. 2012); Suggs v. McNeil, 609 F.3d 1218, 1222 (11th Cir. 2010); Jackson v. Herring, 42 F.3d 1350, 1367 (11th Cir. 1995);

- j. any and all information relating to Mr. Client's reputation in the community, see, e.g., Pooler, 702 F.3d at 1262; Collier v. Turpin, 177 F.3d 1184, 1202 (11th Cir. 1999);
- k. any and all information relating to Mr. Client's home life as an adult and as a child, see, e.g., Harris v. Dugger, 874 F.2d 756, 763 (11th Cir. 1989);
- l. any and all information relating to Mr. Client's remorse, see, e.g., Troy v. Sec'y, Fla. Dep't of Corr., 763 F.3d 1308, 1310 (11th Cir. 2014); Magill v. Dugger, 824 F.2d 879, 892-93 (11th Cir. 1987);
- m. any and all information relating to Mr. Client's mental health history, see, e.g., Porter v. McCollum, 558 U.S. 30, 32-33 (2009); Harwick v. Crosby, 320 F.3d 1127, 1173 (11th Cir. 2003); Moody v. State, 888 So. 2d 532, 604 (Ala. Crim. App. 2003);
- n. any and all information relating to defendant's intellectual disability or subaverage intellectual functioning, see, e.g., Porter, 558 U.S. at 32-33; Williams v. Taylor, 529 U.S. 362, 396 (2000); Daniel v. Comm'r, Ala. Dep't of Corr., 822 F.3d 1248, 1269-70 (11th Cir. 2016); Brownlee v. Haley, 306 F.3d 1043, 1055 (11th Cir. 2002);
- o. any and all information relating to Mr. Client's history of physical, sexual, and/or verbal abuse, see, e.g., Porter, 558 U.S. at 36; Williams, 529 U.S. at 370, 398; Harris v. State, 947 So. 2d 1079, 1116-19 (Ala. Crim. App. 2004), overruled on other grounds by Ex parte Jenkins, 972 So. 2d 159 (Ala. 2005);
- p. any and all information relating to the economic conditions in which the defendant was raised or that he sustained as an adult, see, e.g., Wong v. Belmontes, 558 U.S. 15, 21 (2009); Ferrell v. Hall, 640 F.3d 1199, 1230 (11th Cir. 2011); Armstrong v. Dugger, 833 F.2d 1430, 1433 (11th Cir. 1987); Ex parte Smith, 213 So. 3d 214, 220 (Ala. 2003); Martin v. State, 548 So. 2d 488, 495 (Ala. Crim. App. 1988);
- q. any and all information relating to Mr. Client's good deeds and accomplishments, see Pooler, 702 F.3d at 1262; Collier v. Turpin, 177 F.3d 1184, 1202 (11th Cir. 1999);

- r) any and all information relating to Mr. Client's drug history as well as information regarding Mr. Client's chemical intake at the time of or near the time of the alleged offense, see Cone v. Bell, 556 U.S. 449, 454 (2009); Brownlee v. Haley, 306 F.3d 1043, 1055-56 (11th Cir. 2002);
- s. any and all information relating to Mr. Client's familial ties, see Burns v. Sec'y, Fla. Dep't of Corr., 720 F.3d 1296, 1301 (11th Cir. 2013); Washington v. State, 922 So. 2d 145, 178 (Ala. Crim. App. 2005);
- t. any and all information relating to Mr. Client's cooperation with law enforcement, see Waters v. Thomas, 46 F.3d 1506, 1517 (11th Cir. 1995); Samra v. State, 771 So. 2d 1108, 1121 (Ala. Crim. App. 1999);
- u. any and all information relating to Mr. Client's capacity for rehabilitation, see, e.g., Conklin v. Schofield, 366 F.3d 1191, 1205 (11th Cir. 2004);
- v. any and all information relating to Mr. Client's educational history, see, e.g., Aldridge v. Dugger, 925 F.2d 1320, 1330 (11th Cir. 1991);
- w. any and all information relating to Mr. Client's skills or hobbies, see, e.g., Williams v. Taylor, 529 U.S. 362, 396 (2000);
- x. any and all information relating to Mr. Client's religious background, see Armstrong v. Dugger, 833 F.2d 1430, 1433-34 (11th Cir. 1987);
- y. any and all information relating to Mr. Client's nonviolent and passive nature, see Armstrong, 833 F.2d at 1433-34; Myers v. State, 699 So. 2d 1281, 1284 (Ala. Crim. App. 1996);
- z. any other relevant mitigating circumstance which the defendant may offer as a basis for a sentence of life imprisonment without parole instead of death, Ala. Code § 13A-5-52, including evidence supporting the existence of any other nonstatutory mitigating circumstance. See Parker v. Dugger, 498 U.S. 308 (1991).

6. In this motion, Mr. Client seeks to *anticipate* any type of evidence favorable to Mr. Client that the State maintains or might acquire. Because Mr. Client is entitled to present any mitigating evidence and the jury is entitled to hear the same, Mr. Client

respectfully requests that this Court direct the State to provide all information that may have an impact on the jury's sentencing determination.

7. Because the State is seeking the death penalty, exacting standards must be met. "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).

8. Denial of access to this information will deprive Mr. Client of his rights to due process, equal protection, effective assistance of counsel, 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 requests that this Court order the production of information relevant to Mr. Client's sentencing phase presentation.

Respectfully submitted,

/s/ Linda Lawyer

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[CERTIFICATE OF SERVICE]

[MOTION UPDATED ON 10/04/17]