

IN THE CIRCUIT COURT OF MAYCOMB COUNTY, ALABAMA

STATE OF ALABAMA,

v.

JOE CLIENT.

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Case No. CC-00-0000

MOTION TO DISMISS THE INDICTMENT
ON THE GROUNDS OF INADEQUATE NOTICE

Joe Client respectfully moves this Court to dismiss the indictment on the grounds that it deprives him of adequate notice of the charges and of the opportunity to prepare an effective defense. In support of this motion, Mr. Client submits the following:

1. Joe Client is before the Court on a July 24, 2011, indictment charging him with capital murder during a robbery of Vicky Victim on May 18, 2011. The indictment does not specify what item(s) Mr. Client allegedly stole or attempted to steal, nor does it specify what weapon purportedly was used to commit the killing. The State is seeking the death penalty.

2. The indictment is unconstitutionally vague because it does not contain “[n]otice of issues to be resolved by the adversary process.” Lankford v. Idaho, 500 U.S. 110, 126 (1991). A valid indictment must: (1) show the accused against what to prepare a defense; (2) identify the offense so that he is tried for the same charge that was brought before the grand jury; (3) protect somewhat against double jeopardy; and (4) give the court the means to accept or reject the verdict, pronounce judgment, and pass sentence. Thompson v. State, 542 So. 2d 1286, 1291 (Ala. Crim. App. 1988); see also State v. Roffler, 69 So. 3d 225, 231 (Ala. 2010). In Alabama, “[an] indictment must contain the elements of the offense intended to be charged and sufficiently apprise the defendant of what he must be prepared to meet.” Ex parte Rumlin, 564 So. 2d 1386, 1388 (Ala. 1990) (citation omitted); see also Ex parte Hightower, 443 So. 2d 1272, 1273 (Ala. 1983); Hewlett v. State, 520 So. 2d 200, 204 (Ala. Crim. App. 1987). Alabama Code section 15-8-25 further mandates that an indictment “state the facts constituting the offense in ordinary and concise language, without prolixity or repetition, *in such a manner as to enable a person of common understanding to know what is intended* and with that degree of certainty which will enable the court, on conviction, to pronounce the judgment.” (emphasis added).

3. The present indictment lacks the legal and factual specificity necessary for Mr. Client to prepare a reasonable and adequate defense. It does not apprise him of the case he needs to defend against and does not charge the elements of the offense. It fails to set forth

particular acts or means by which the defendant allegedly committed the murder, does not specify the degree of robbery charged, includes no statement of what property was taken, from where, or at what time, and does not aver other evidence of theft. It therefore deprives Mr. Client of his rights to due process under state and federal law and to be notified of the charges against him.

4. Under Alabama law, the indictment is inadequate and must be dismissed. See Ala. Code § 15-8-25; Hightower, 443 So. 2d at 1273 (“An indictment must specify the conduct sought to be condemned so that the defendant may have an opportunity to prepare a defense if one is available.”); Rogers v. State, 539 So. 2d 451, 454 (Ala. Crim. App. 1988) (although indictment need not contain *all* proof necessary to convict defendant, it must provide enough information for him to “prepare his defense and be protected against a subsequent prosecution for the same offense” (citation omitted)).

5. If this Court does not dismiss the indictment and order the State to include a robbery charge in any subsequent indictment, Mr. Client will be deprived of due process, a fair trial by an impartial jury, a reliable sentencing proceeding, effective assistance of counsel, and the right to confront witnesses against him and to present a defense, as protected 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 dismissing the indictment against Mr. Client and causing new grand jury proceedings to commence.

Respectfully submitted,

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[CERTIFICATE OF SERVICE]

[MOTION UPDATED ON 10/04/17]