

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 DISMISS THE INDICTMENT
ON THE GROUNDS THAT IT IS MULTIPLICITOUS

Joe Client respectfully moves this Court to dismiss the indictment on the ground that its multiplicity violates his right to be free from double jeopardy. In support of this motion, Mr. Client submits the following:

1. Joe Client is before the Court on a September 7, 2016, indictment charging him with two counts of burglary-murder of Vicky Victim on July 15, 2016. The State is seeking the death penalty.

2. Count One charges Mr. Client with intentionally killing Ms. Victim by shooting her with a handgun during the time that he knowingly and unlawfully entered or remained unlawfully in Ms. Victim's dwelling with intent to commit assault, in violation of Alabama Code section **13A-5-40(a)(4)**.

3. Count Two charges Mr. Client with intentionally killing Ms. Victim by shooting her with a handgun during the time that he knowingly and unlawfully entered or remained unlawfully in Ms. Victim's dwelling with intent to commit murder, in violation of Alabama Code section **13A-5-40(a)(4)**.

4. The indictment is unconstitutionally multiplicitous because it charges Mr. Client with two counts under the same statute. Because it charges him with two counts of capital murder arising out of single killing, the indictment exposes Mr. Client to double jeopardy. U.S. Const. amend. V (guaranteeing that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb.").

5. The Double Jeopardy Clause protects a defendant against multiple punishments for the same offense. Heard v. State, 999 So. 2d 992, 1006-07 (Ala. 2007); Meyer v. State, 575 So. 2d 1212, 1217 (Ala. Crim. App. 1990) (citing North Carolina v. Pearce, 395 U.S. 711, 717 (1969)) (vacating two of three convictions for intentional murder because triple conviction "violated the protection against double jeopardy"). A defendant cannot

“constitutionally be convicted of two counts of the same statute.” King v. State, 574 So. 2d 921, 929 (Ala. Crim. App. 1990).

6. Counts One and Two charge violations of the same statute, section 13A-5-40(a)(4). Both counts merely allege alternative ways of establishing the burglary components of the capital offense. Even where there are alternative methods of proving the offense charged in one statute, there is still only one offense. See Ex parte State (In re Sisson v. State), 528 So. 2d 1159, 1162 (Ala. 1988); Stewart v. State, 601 So. 2d 491, 494-95 (Ala. Crim. App. 1992). The two subsections of the burglary statute are “merely alternative methods of proving the same crime, and therefore, d[o] not constitute separate offenses.” King, 574 So. 2d at 929 (quoting Sisson, 528 So. 2d at 1162); see also Blockburger v. United States, 284 U.S. 299, 304 (1932) (for double jeopardy purposes, test to determine “whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not”).

7. Alabama precedent requires dismissal of this indictment. In Knight v. State, 675 So. 2d 487 (Ala. Crim. App. 1995), the State improperly convicted the defendant of two counts of capital murder during the course of a single robbery because he had stolen both the victim’s car and his money. Id. at 496. The Court of Criminal Appeals held that the Double Jeopardy Clause prohibited the State from convicting the defendant of two crimes because all the elements of robbery had occurred when the first act took place and the entire transaction was part of a single act. Id. at 497.

8. This Court should dismiss the indictment because the multiple charges will adversely affect the trial and sentencing procedure and otherwise prejudice Mr. Client. Multiple charges convey the impression that Mr. Client is accused of a multitude of crimes, instead of one murder. This is especially improper in the capital context, where there is a heightened need for reliability. 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 the special circumstance” that justifies expansion of constitutional rights).

9. This Court should dismiss the indictment or, in the alternative, order the State to elect among the counts. Mr. Client’s indictment upon these multiplicitous charges deprives him of his rights to due process, a fair trial and reliable sentencing determination, and to be free from double jeopardy 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 dismissing the indictment against Mr. Client and causing new grand jury proceedings to commence.

Respectfully submitted,

/s/ Linda Lawyer

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[CERTIFICATE OF SERVICE]

[MOTION UPDATED ON10/04/17]