

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 DNA TESTING

Joe Client respectfully moves this Court for leave to perform independent DNA testing of evidence in the State’s possession.

1. The State has charged Mr. Client with capital murder and the State is seeking the death penalty.

2. 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)).

3. The State collected biological evidence from the crime scene and from the body of the victim. Shortly thereafter, Mr. Client provided samples of his blood and saliva to State investigators.

4. Mr. Client has a constitutional right to access physical evidence in the prosecution’s possession for independent testing. See, e.g., California v. Trombetta, 467 U.S. 479, 485 (1984) (describing a “constitutionally guaranteed access to evidence’ . . . [that] delivers exculpatory evidence into the hands of the accused”) (quoting United States v. Valenzuela-Bernal, 458 U.S. 858, 867 (1982)); Arizona v. Youngblood, 488 U.S. 51, 71 n.7 (1988) (Blackmun, J., dissenting, noting that it is important to preserve evidence “so that the defense has the opportunity at least to use whatever scientifically recognized tests are available”); see also Warren v. State, 288 So. 2d 826, 830 (Ala. 1973) (evidence “should have been made available to [defense] attorney, as an officer of the court, and under such safeguards as the trial court deemed necessary, for inspection and analysis” (citations omitted)); Ex parte Harwell, 639 So. 2d 1335, 1337 (Ala. 1993) (defendant has right to obtain sample for blood alcohol testing).

5. DNA testing is necessary to Mr. Client because it may prove to be exculpatory. The State has no eyewitnesses or other physical evidence that connects Mr. Client to the crime scene. As a result, the strength of its case against Mr. Client depends on the results of DNA testing of biological evidence found at the scene and on the victim's body. Mr. Client is entitled to conduct independent testing because an exclusion or inability to match his DNA would be exculpatory. See Brady v. Maryland, 373 U.S. 83, 87-88 (1963); see also Trombetta, 467 U.S. at 485 (“The prosecution has a constitutional duty to turn over exculpatory evidence that would raise a reasonable doubt about the defendant’s guilt.”) (citing United States v. Agurs, 427 U.S. 97, 112 (1976)).

6. Mr. Client also is entitled to conduct independent DNA testing in order to adequately challenge the reliability and accuracy of the State’s experts’ methodology and analysis, as well as the reliability of the laboratory and the technicians involved in the testing. Independent testing of the evidence is necessary for counsel to adequately prepare to cross-examine the State’s expert witnesses as well as to present the defense case. Recent revelations about fraud and mistakes in DNA testing and analysis underscore the importance of independent testing by the defense. See, e.g., Lauren Kirchner, Traces of Crime: How New York’s DNA Techniques Became Tainted, N.Y. Times, Sept. 4, 2017, at <https://nyti.ms/2x6AG4o>.

7. The Constitution protects “the right to present the defendant’s version of the facts as well as the prosecution’s to the jury so it may decide where the truth lies.” Washington v. Texas, 388 U.S. 14, 19 (1967); see also Chambers v. Mississippi, 410 U.S. 284, 302 (1973) (“Few rights are more fundamental than that of an accused to present witnesses in his own defense.”); Ex parte Murray, 588 So. 2d 924, 926 (Ala. 1991) (right to present evidence “especially crucial in cases . . . where the State is seeking to have the death penalty imposed”).

8. Rule 16.1(c) of the Alabama Rules of Criminal Procedure provides that the prosecutor shall permit the defendant to analyze and inspect tangible objects within the State’s possession, custody, or control that are material to the preparation of the defense or that were obtained from or belong to the defendant. See also Ala. R. Crim. P. 16.1(d) (providing that prosecutor shall permit defendant to inspect and copy any results or reports of scientific tests or experiments within his possession, custody, or control).

9. Access to biological evidence for DNA testing is necessary to ensure Mr. Client’s rights to due process, 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 State to preserve and provide sufficient material for independent DNA testing by the defense of all biological and forensic evidence in the State's possession.

Respectfully submitted,

/s/ Linda Lawyer

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[CERTIFICATE OF SERVICE]

[MOTION UPDATED ON 10/04/17]