

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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**EX PARTE MOTION FOR FUNDS TO SECURE THE ATTENDANCE
OF OUT-OF-STATE WITNESSES**

Mr. Joe Client respectfully moves this Court to provide funds to secure out-of-state witnesses necessary to the defense. 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.

2. This Court has deemed Mr. Client indigent. Mr. Client requires funds to reimburse necessary out-of-state witnesses for their travel expenses.

3. Mr. Client's mother and sister live in Boise, Idaho. They are both critical witnesses in this case because they were the only witnesses to many events involving Mr. Client about which it is necessary to present evidence. They both have first hand knowledge of Mr. Client's history of alcohol addiction, and can testify that he was introduced to alcohol as a young boy by his uncle (who is now in jail), that he struggled with addiction from a young age, that he attempted to receive treatment throughout his childhood, and that his addiction to alcohol has affected his personality and development. These facts are critical to Mr. Client's guilt/innocence phase intoxication defense because the jury needs to understand that his addiction to alcohol is longstanding and that without his use of alcohol on the night of the crime, it is impossible to imagine that he could have committed the crime.

4. If Mr. Client is convicted of capital murder, the testimony of his mother and sister will be necessary during the sentencing phase because such testimony will humanize Mr. Client, explain his character, and mitigate the crime. See Lockett v. Ohio, 438 U.S. 586, 605 (1978) (because "the imposition of death by public authority is so profoundly different from all other penalties, . . . an individualized decision is essential in capital cases"); Brownlee v. Haley, 306 F.3d 1043, 1055-56 (11th Cir. 2002) (recognizing family testimony on substance abuse as mitigating)..

5. Mr. Client's mother and sister are both indigent and cannot afford to travel to Alabama for trial.

6. State and federal law entitle Mr. Client to the requested funds. See Ake v. Oklahoma, 470 U.S. 68, 74 (1985) (state must provide funds to secure participation of potential witnesses whose testimony relates to issues "likely to be a significant factor at trial"). The Sixth Amendment to the United States Constitution and Article I of the Alabama Constitution preserve the defendant's right to compulsory process for obtaining witnesses in his favor. In addition, Alabama's Uniform Act to Secure the Attendance of Witnesses from Without the State authorizes this Court to summon out-of-state witnesses and order reimbursement of their travel expenses. Ala. Code § 12-21-283; see also Ex parte Simmons, 668 So. 2d 901, 903 (Ala. Crim. App. 1995) (Act authorizes issuance of *subpoenas duces tecum*).

7. Denial of this motion would violate Mr. Client's equal protection rights because he certainly would secure the attendance of these witnesses if he were not indigent. See United States v. Meriwether, 486 F.2d 498, 506 (5th Cir. 1973) (equal protection questions raised when indigent defendant's case subjected to pretrial scrutiny by prosecutor, while nonindigent defendant able to proceed without such scrutiny); see also Griffin v. Illinois, 351 U.S. 12, 19 (1956) ("There can be no equal justice where the kind of trial a man gets depends on the amount of money he has."); Ex parte Moody, 684 So. 2d 114, 120 (Ala. 1996) (indigent and nonindigent defendants should be treated equally).

8. Denial of this motion also would deny Mr. Client his right to present a defense. Washington v. Texas, 388 U.S. 14, 19 (1967) (Constitution protects "the right to present the defendant's version of the facts . . . to the jury"); see also Taylor v. Illinois, 484 U.S. 400, 408 (1988) ("[T]his right [of an accused to present witnesses in his own defense] is an essential attribute of the adversary system itself."); 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."); Boykins v. Wainwright, 737 F.2d 1539, 1544 (11th Cir. 1984) ("The right to present witnesses in one's own defense in a criminal trial lies at the core of the Fifth and Fourteenth Amendments' guarantee of due process of law.").

9. The right to present a defense is "especially crucial in cases . . . where the State is seeking to have the death penalty imposed." Ex parte Murray, 588 So. 2d 924, 926 (Ala. 1991). Because this is a capital case, this Court must apply special considerations to ensure that it is fair. "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).

10. If Mr. Client is denied this request, he will be deprived of due process, equal protection, effective assistance of counsel, a fair trial, a reliable sentencing proceeding, and his right to confront the witnesses against him and to present evidence on his own behalf 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 order funds to pay for travel of the above-mentioned out-of-state witnesses.

Respectfully submitted,

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[CERTIFICATE OF SERVICE]

[MOTION UPDATED ON 10/04/17]