

IN THE CIRCUIT COURT OF MAYCOMB COUNTY, ALABAMA

STATE OF ALABAMA,

v.

JOE CLIENT.

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Case No. CC-00-0000

MOTION FOR INDIVIDUALLY SEQUESTERED VOIR DIRE

Joe Client respectfully moves this Court to allow counsel for Mr. Client to voir dire prospective jurors individually and apart from all the other jurors; to sequester those who have been questioned until the jury has been selected; and to admonish prospective jurors not to talk with one another regarding the case. In support of this motion, Mr. Client submits the following:

1. Joe Client, a young African American man, is charged with capital murder for his alleged participation in the death of Victor Victim, an elderly white man. The State is seeking the death penalty.

2. Mr. Client's co-defendant, Kyle Kodefendant, was tried in Maycomb County for the murder of Victor Victim. Mr. Kodefendant was convicted of capital murder and sentenced to death by this Court on April 29, 2016.

3. Three other young men, Peter Perpetrator, Alex Accomplice, and Paul Plead, were charged with capital murder for their alleged participation in the crime. The three men were allowed to plead guilty to the lesser crime of murder, which carries a sentence of twenty-five years to life, in exchange for their testimony against Joe Client and Kyle Kodefendant. In April 2016, Paul Plead and Alex Accomplice were sentenced to life, and Peter Perpetrator was sentenced to twenty-five years in prison.

4. On the facts of this case — including the extensive and highly prejudicial pretrial publicity, the likelihood of contamination from the conviction and sentence of his co-defendants, the interracial nature of the crime, and the severity of the penalty sought by the State — individually sequestered voir dire of prospective jurors is constitutionally required for Mr. Client to receive a fair trial before an impartial jury.

I. FACTS

5. At each stage of these lengthy criminal proceedings against Joe Client, Kyle Kodefendant, Peter Perpetrator, Alex Accomplice and Paul Plead — from the killing on March 17, 2014, through Kyle Kodefendant’s capital trial and the sentencing of Peter Perpetrator, Alex Accomplice, and Paul Plead in April 2016, and up to these pretrial proceedings against Joe Client — the proceedings have received extensive and prejudicial publicity in Maycomb County, Coosa County, and Shelby County, so that a fair trial by an impartial and unbiased jury cannot be had in this county.

6. The citizens of Maycomb County have concluded that Mr. Client’s co-defendant, Kyle Kodefendant, is guilty of this crime. The convictions of Joe Client’s other co-defendants were highly publicized in the community. Today, in Maycomb County, there is no presumption of innocence surrounding Mr. Client. To the contrary, there is prevalent community bias against Mr. Client and widespread agreement that he should be sentenced to death.

7. Heightened publicity surrounded the crime for which Mr. Client was indicted from the very first moment. Articles in the Maycomb Times, with a daily circulation in excess of 1600 in Maycomb County, and in the Clanton Courier, with a circulation in excess of 4000, publicized the acts with which Mr. Client is charged in the days following the killing. See Exhibits 1-11. These newspaper reports contained rumors and hearsay, described the crime in gruesome detail, and characterized the murder as “brutal.” Id. They also reveal the amount of unofficial publicity that the case generated, since the articles reported that “Sheriff’s officials said that during the investigation, it was necessary to question a large number of people in Chilton, Coosa, and Shelby Counties.” Id. at 10.

8. Similar coverage was broadcast on radio and television in Maycomb County and the surrounding areas, describing in detail the acts with which Mr. Client is charged and linking him to the murder. WIMP Television, the largest television station in the state with over 4500 viewer households in Maycomb County, ran stories on the murder and named Joe Client as a defendant. See Exhibits 12-16. WBOR radio station, with over 8000 listeners every morning, covered every step of the criminal proceedings against Mr. Client. See Exhibits 17-20. WKLL, with signals extending from Montgomery to Tennessee and from Mobile to Albany, also ran stories on the killing. See Exhibits 21-27. Chilton State University Television ran several stories on the killing and named Joe Client as a defendant. See Exhibits 64-67.

9. Extensive publicity has surrounded all pretrial proceedings to date. One newspaper article from the Maycomb Times reported that “[t]he capital murder trial for Joe

Client docketed for the week has been postponed to allow for a mental evaluation of Mr. Client” and explained that Mr. Client’s attorneys doubted his ability to comprehend the nature of the charges and to aid in the conduct of his defense. Exhibit 68. An edition of the Clanton Courier featured a prejudicial photograph of Joe Client flanked by his codefendants, “handcuffed,” and “under heavy guard.” Exhibit 69.

10. When Kyle Kodefendant was sentenced to death, prejudicial photographs of Mr. Kodefendant and Mr. Client blanketed the Clanton Courier. A lead article in the Clanton Courier entitled “Kodefendant Draws Death Sentence” on April 30, 2016, reported that “the killing of Mr. Victim has been called one of the most brutal and unnecessary in the recent history of Maycomb County.” The article publicized this Court’s conclusion that the killing was “deliberate, intentional, contrived, unnecessary, brutal and heinous.” It also reported, as if it were fact, that Joe Client held down the victim while his co-defendant struck the fatal blows. Finally, the newspapers reported victim impact statements, such as the comment by the victim’s sister that, “I feel much better now.” Exhibit 70.

11. Similarly prejudicial publicity surrounded the convictions and sentences of Mr. Client’s other co-defendants. See Exhibits 69-79.

12. The repeated references to charges pending against Mr. Client, his background, and the guilt of his co-defendants, have placed before prospective jurors in Maycomb County information that is incompetent as evidence and have severely prejudiced the community against Joe Client.

13. Extensive media coverage continues, making it impossible even for newcomers to Maycomb County to remain unaware of false and prejudicial information about this case.

II. INDIVIDUAL SEQUESTERED VOIR DIRE IS NECESSARY TO A FAIR TRIAL.

14. It is axiomatic that the constitutional guarantee of a fair trial by an impartial jury requires that jurors not come into the trial proceedings with opinions or beliefs about the defendant’s guilt that have been improperly shaped or formed by pretrial publicity. A juror must render a verdict based solely on the evidence presented in court. Irvin v. Dowd, 366 U.S. 717, 723 (1961); Ex parte Killingsworth, 82 So. 3d 761, 764 (Ala. 2010) (per curiam) (“A defendant is ‘entitled to be tried by 12, not 9 or even 10, impartial and unprejudiced jurors.’” (quoting Parker v. Gladden, 385 U.S. 363, 366 (1966))); see also Sheppard v. Maxwell, 384 U.S. 333, 362 (1966); Estes v. Texas, 381 U.S. 532, 540 (1965).

15. Impartiality is crucial because the jury is invested with the awesome responsibility of deciding the fate of an accused person and resolving difficult questions of culpability, criminal responsibility, and punishment. The input and reasoned involvement of each juror is essential to the proper functioning of the criminal justice system.

16. Logically, the “right to an impartial jury carries with it the concomitant right to take reasonable steps designed to insure that the jury is impartial.” Ham v. South Carolina, 409 U.S. 524, 532 (1973) (Marshall, J., concurring in part and dissenting in part). The oldest, most common, and most important of these steps are challenges for cause and peremptory challenges. Ham, 409 U.S. at 532; Ex parte Killingsworth, 82 So. 3d 761, 764 (Ala. 2010) (per curiam) (“Voir dire serves the purpose of assuring a criminal defendant that this right [to an impartial jury] will be protected.” (quoting United States v. Ortiz, 315 F.3d 873, 888 (8th Cir. 2002))). The right to exercise peremptory challenges and challenges for cause is meaningless, however, if it is unaccompanied by the right to a full and adequate voir dire. Rosales-Lopez v. United States, 451 U.S. 182, 188 (1981).

17. While the question of whether or not to conduct individual voir dire lies within the trial court’s discretion, that discretion is limited by the requirements of due process. See Haney v. State, 603 So. 2d 368, 402 (Ala. Crim. App. 1991). Individual voir dire is constitutionally required where there has been extensive and highly prejudicial pretrial publicity such as in this case. See Jordan v. Lippman, 763 F.2d 1265 (11th Cir. 1985) (conviction vacated where trial court refused to allow individual voir dire on pretrial publicity); see also Haney, 603 So. 2d at 402 (noting that individual questioning may be constitutionally required in some cases).

18. The Alabama Supreme Court has repeatedly recognized the importance of voir dire in assessing whether peremptory strikes are used in a racially biased manner and has relied on the scope and nature of voir dire to assess the integrity of the jury selection process. See Ex parte Nguyen, 751 So. 2d 1224, 1227 (Ala. 1999); Yancey v. State, 813 So. 2d 1, 8 (Ala. Crim. App. 2001). Failure to disclose information during group voir dire has resulted in reversals in numerous cases. See Ex parte Dixon, 55 So. 3d 1257 (Ala. 2010); Conf. America, Inc. v. Telecomm. Coop. Network, Inc., 885 So. 2d 772 (Ala. 2003); Tomlin v. State, 695 So. 2d 157 (Ala. Crim. App. 1996); Knight v. State, 675 So. 2d 487 (Ala. Crim. App. 1995); see also Williams v. Taylor, 529 U.S. 420, 440-442 (2000).

19. The importance of meaningful voir dire is heightened because this is a capital case. “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). As a result, capital defendants are entitled to more extensive voir dire to explore jurors’ potential prejudices. Turner v. Murray, 476 U.S. 28, 35-37 (1986); see also Morgan v. Illinois, 504 U.S. 719, 730 (1992).

20. This Court must adopt procedures for voir dire that provide a reasonable assurance that prejudice will be discovered if present. See Cummings v. Dugger, 862 F.2d 1504, 1508 (11th Cir. 1989); Berryhill v. Zant, 858 F.2d 633, 640-42 (11th Cir. 1988); Jordan v. Lippman, 763 F.2d 1265 (11th Cir. 1985). It is not enough for a juror to give a general assurance that she could lay aside her opinions and decide the case solely on the evidence. See, e.g., Skilling v. United States, 561 U.S. 358, 456-57 (2010) (Sotomayor, J., partial concurrence); Ex parte Colby, 41 So. 3d 1, 7 (Ala. 2009).

21. It is crucial that an informed *judicial* determination of impartiality be made. This Court must ascertain to what materials and information a juror has been exposed and assess the results of that exposure. Individually sequestered voir dire is the only adequate method by which this can be accomplished without simultaneously tainting all other potential jurors. See, e.g., United States v. Lehder-Rivas, 955 F.2d 1510, 1523 (11th Cir. 1992) (“In cases involving extensive publicity, this Circuit has expressed a preference for an individual voir dire conducted by the trial court outside the presence of prospective jurors.”); Cummings, 862 F.2d at 1508 (“Individual voir dire allows the trial court to probe the effect of any adverse publicity on the juror and insulates the jurors from one another’s prejudicial comments.”); ABA Standards for Criminal Justice 8-3.5 (3d Ed. 1992) (“If there is a substantial possibility that individual jurors will be ineligible to serve because of exposure to potentially prejudicial material, the examination of each juror with respect to exposure shall take place outside the presence of other chosen and prospective jurors.”).

23. A more searching inquiry is possible during individual voir dire and complete answers are more likely to be elicited during individual questioning than in group voir dire.

24. In this case, clearly inadmissible evidence and evidence otherwise outside the province of proper jury consideration has been publicized so extensively and in a manner so prejudicial to the interests of Mr. Client that, unless counsel is allowed to question the potential jurors individually, it will inevitably jeopardize his right to a trial before a fair and impartial jury, effective assistance of counsel, and a jury selected from a fair cross-section of the community as guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Alabama law.

For these reasons, Joe Client respectfully moves this Court to enter an order granting this motion.

Respectfully submitted,

/s/ Linda Lawyer

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[CERTIFICATE OF SERVICE]

[MOTION UPDATED ON 10/11/17]