

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 PRECLUDE THE STATE FROM
INTRODUCING PREJUDICIAL PHOTOGRAPHS**

Joe Client respectfully moves this Court to preclude the State from introducing prejudicial photographs into evidence at trial. In support of this motion, Mr. Client submits the following:

1. The State indicted Mr. Client for the capital crime of murder during the course of a robbery, Ala. Code § 13A-5-40(a)(2), and the State is seeking the death penalty. In the course of their investigation, law enforcement officials took numerous photographs of the victim's body from various angles and distances. Additional photographs were taken at different times throughout the investigation, including during the autopsy.

2. Photographic evidence is admissible in a criminal prosecution only when it "tends to prove or disprove some disputed or material issue, to illustrate some relevant fact or evidence, or to corroborate or dispute other evidence in the case." Ex parte Siebert, 555 So. 2d 780, 783 (Ala. 1989); see also Eggers v. State, 914 So. 2d 883, 914-15 (Ala. Crim. App. 2004).

3. It is well established that where the prejudicial effect of photographs outweighs the probative value, the photos should not be admitted. See Blanton v. State, 886 So. 2d 850, 882 (Ala. Crim. App. 2003); Living v. State, 796 So. 2d 1121, 1143 (Ala. Crim. App. 2000); Caylor v. State, 353 So. 2d 8, 11 (Ala. Crim. App. 1977); see also Ala. R. Evid. 403.

4. "Courts have been almost universal in their condemnation of admitting photographs depicting the victim's body after it has been subject to autopsy procedures." State v. Clawson, 270 S.E.2d 659, 671 (W. Va. 1980), overruled on other grounds by Wilt v. Buracker, 443 S.E.2d 196 (W. Va. 1993); see also State v. Pennington, 80 P.3d 44, 51 (Kan. 2003); Turben v. State, 726 N.E.2d 1245, 1247 (Ind. 2000); People v. Pace, 225 Ill. App. 3d 415, 428 (1992); People v. Allen, 42 Cal. 3d 1222, 1258 (1986); Commonwealth v. Eckhart, 242 A.2d 271, 273-74 (Pa. 1968); State v. Poe, 441 P.2d 512 (Utah 1968); State v. Morris, 157 So. 2d 728, 731-32 (La. 1963); State v. Bischert, 308 P.2d 969, 972-73 (Mont.

1957).

5. Alabama courts have reversed cases because of the improper introduction of gruesome and prejudicial photographs. See McKee v. State, 31 So. 2d 656, 660-61 (Ala. Ct. App. 1947) (reversing conviction where photograph depicted areas of body that were irrelevant to photo's basis for admission); Wesley v. State, 26 So. 2d 413 (Ala. Ct. App. 1946) (admission in evidence of photos of wounds during autopsy, magnified eight times, was reversible error because photos did not portray wound at time inflicted); see also Caylor v. State, 353 So. 2d 8 (Ala. Crim. App. 1977) (suggesting that photos of victim's body, after autopsy, should not be introduced during retrial).

6. The Alabama Legislature has mandated that no death sentence shall be "imposed under the influence of passion, prejudice, or any arbitrary factor." Ala. Code § 13A-5-53(b)(1). The United States Supreme Court has expressly stated that in death penalty cases there exists a greater need for reliability, which necessitates a judgment based on the law and evidence rather than passion or caprice. "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).

7. The State is entitled to admit on those photographs that are necessary to establish the facts it seeks to prove at trial. The Court should prohibit the admission of gruesome photographs if their probative value is outweighed by their prejudicial impact on the jury. Many of the photographs obtained by the State depict full-body and close-up head shots of the victim that are entirely gruesome, gory, and inflammatory and serve little or no evidentiary purpose. The prejudicial nature of these photographs far outweighs their probative value.

8. In addition, many of the photographs are duplicative. Should this Court find that any photograph has probative value that is not outweighed by its prejudicial nature, it should prohibit the admission of any additional photographs that the State claims are relevant to the same issue.

9. The admission of gruesome, bloody photographs will have an enraging impact on the jury during the penalty phase. What is relevant in a capital sentencing hearing is assessing the conduct, culpability and character of the defendant. At sentencing, the jury is required to weigh aggravating and mitigating circumstances, thoughtfully consider Mr. Client's role in the offense, conscientiously judge his character and background, and decide

whether he should be executed or sentenced to life imprisonment without parole. Jurors who are overwhelmed by gruesome photographs will be motivated by passion and prejudice and incapable of fulfilling their role at the penalty phase.

10. Admission of prejudicial photographs would violate Mr. Client's rights to due process, equal protection, 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 moves this Court to enter an order prohibiting the State from introducing into evidence any gruesome or inflammatory photographs.

Respectfully submitted,

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[CERTIFICATE OF SERVICE]

[MOTION UPDATED ON 10/04/17]