

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 PROHIBIT TRIAL PARTICIPANTS FROM COMMENTING
ON OR RELEASING INFORMATION TO THE MEDIA**

Joe Client respectfully moves this Court for an order prohibiting all attorneys, parties, witnesses, law enforcement personnel and court personnel who are connected to the prosecution or investigation of this case from releasing information in any form to any agent or employee of any news media concerning any aspect of these proceedings. In support of this motion, Mr. Client submits the following:

1. On June 7, 2011, the State indicted Mr. Client for the capital murder of Victor Victim and David Deceased. The State is seeking the death penalty.

2. In addition to Mr. Client, the State indicted two other men for this crime: Karl Kodefendant and Paul Plead. Mr. Plead pleaded guilty to the lesser crime of murder, which carries a sentence of twenty-five years to life, in exchange for his testimony against Mr. Kodefendant and Mr. Client. In January 2016, the State tried Mr. Kodefendant in Maycomb County. A jury convicted him of capital murder and this Court sentenced him to death.

3. As detailed in Mr. Client's motions for change of venue and to close pretrial proceedings, the proceedings in this case have received widespread publicity, much of which has been inaccurate, false, speculative, and inflammatory.

4. The Supreme Court has recognized that prejudicial pretrial publicity can jeopardize a criminal defendant's right to a fair trial by an impartial jury.

The outcome of a criminal trial is to be decided by impartial jurors, who know as little as possible of the case, based on material admitted into evidence before them in a court proceeding. Extrajudicial comments on, or discussion of, evidence which might never be admitted at trial and ex parte statements by counsel giving their version of the facts obviously threaten to undermine this basic tenet.

Gentile v. State Bar of Nev., 501 U.S. 1030, 1070 (1991); see also id. at 1075 (“[F]ew, if any, interests under the Constitution are more fundamental than the right to a fair trial by ‘impartial’ jurors, and an outcome affected by extrajudicial statements would violate that fundamental right.”); Gannett Co. v. DePasquale, 443 U.S. 368, 378-79 (1979) (“After the commencement of the trial itself, inadmissible prejudicial information about a defendant can be kept from a jury by a variety of means. When such information is publicized during a pretrial proceeding, however, it may never be altogether kept from potential jurors.”); Sheppard v. Maxwell, 384 U.S. 333, 360 (1966) (exclusion of inadmissible evidence at trial “is rendered meaningless when news media make it available to the public”); Estes v. Texas, 381 U.S. 532, 536 (1965) (“Pretrial [coverage] can create a major problem for the defendant in a criminal case. Indeed, it may be more harmful than publicity during the trial for it may well set the community opinion as to guilt or innocence.”).

5. Trial courts have “an affirmative constitutional duty to minimize the effects of prejudicial pretrial publicity.” Gannett Co., 443 U.S. at 378; see also Nebraska Press Ass’n v. Stuart, 427 U.S. 539, 555 (1976) (“the measures a judge takes or fails to take to mitigate the effects of pretrial publicity . . . may well determine whether the defendant receives a trial consistent with the requirements of due process”).

6. In order to ensure that a criminal defendant’s right to a fair trial is not compromised by comments from lawyers, parties, or other trial participants to the media, the trial court may need to control the release of leads, information, and gossip by proscribing extrajudicial statements to the media from all lawyers, parties, witnesses, and court officials. Sheppard, 384 U.S. at 362-63 (due process “requires that the accused receive a trial by an impartial jury free from outside influences” and “[n]either prosecutors, counsel for defense, the accused, witnesses, court staff nor enforcement officers . . . should be permitted to frustrate its function”); see also Nebraska Press Ass’n, 427 U.S. at 552-53 (reaffirming Sheppard’s proposal that trial courts use methods such as prohibition of extrajudicial comments by trial participants to control prejudicial effects of pretrial publicity).

7. Eleventh Circuit precedent requires trial courts to guard against prejudicial pretrial publicity. See News-Journal Corp. v. Foxman, 939 F.2d 1499, 1512 (11th Cir. 1991) (“Moreover, when First Amendment claims impinge upon the Sixth Amendment right to a trial by an impartial jury, asserted First Amendment interests must yield to . . . the right to a fair trial for the accused.”); United States v. Noriega, 917 F.2d 1543, 1549 (11th Cir. 1990) (per curiam) (“The Court has placed an affirmative duty on trial courts to guard against prejudicial pretrial publicity.”); United States v. Gurney, 558 F.2d 1202, 1210 (5th Cir. 1977) (“[T]he district judge can place restrictions on parties, jurors, lawyers, and others involved with the proceedings despite the fact that such restrictions might affect First Amendment considerations. Sixth Amendment rights of the accused must be protected always.”).

8. Alabama trial courts have imposed orders prohibiting trial participants from releasing information to the media in order to protect a criminal defendant's right to a fair trial by an impartial jury. See, e.g., McGowan v. State, 990 So. 2d 931, 965 (Ala. Crim. App. 2003) (approving trial court's order prohibiting all participants from releasing information to media). Moreover, the Alabama Rules of Professional Conduct preclude both prosecution and defense attorneys in criminal matters from making extrajudicial comments about the case other than general factual statements, reference to matters of public record, or statements necessary to protect the public and assist in the apprehension of a suspect. Ala. R. Prof'l Conduct 3.6. The rules also prohibit lawyers from making any statement likely to be disseminated publicly if "the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding." Ala. R. Prof'l Conduct 3.6 (a). An order prohibiting such prejudicial and improper extrajudicial speech is necessary in this case to ensure these rules are followed.

9. A substantial likelihood exists that continued extrajudicial comments of the type previously made by the district attorney, law enforcement, and witnesses will taint the jury pool in this case and this Court should enter a narrowly tailored order restricting extrajudicial statements by participants in this case. As noted above, employees of the District Attorney's office and police have released prejudicial information about the case. Much of the information released to the media concerns evidence that will be excluded at trial, including Mr. Client's statements to officials; his subsequent refusal to participate in police interrogations and request for an attorney; the identity of prospective witnesses and their probable testimony; state officials' belief in Mr. Client's guilt; and other statements concerning the merits of the case. Failure to impose restrictions on statements by the participants in this trial will increase the volume of pretrial publicity and set community opinion about Mr. Client's guilt and the appropriateness of the death penalty.

10. The requested order is the least restrictive measure available to ensure a fair trial in this case. Other measures would be inappropriate or insufficient to adequately address the effects of the pretrial publicity. As the Supreme Court has noted:

Even if a fair trial can ultimately be ensured through voir dire, change of venue, or some other device, these measures entail serious costs to the system. Extensive voir dire may not be able to filter out all of the effects of pretrial publicity, and with increasingly widespread media coverage of criminal trials, a change of venue may not suffice to undo the effects of statements [by trial participants]. The State has a substantial interest in preventing officers of the court, such as lawyers, from imposing such costs on the judicial system and on the litigants.

The restraint on speech is narrowly tailored to achieve those objectives. The regulation of attorneys' speech is limited--it applies only to speech that is substantially likely to have a materially prejudicial effect; it is neutral as to points of view, applying equally to all attorneys participating in a pending case; and it merely postpones the attorneys' comments until after the trial.

Gentile, 501 U.S. at 1075-76.

11. In the context of a trial in which the death penalty is sought, the need for effective protective measures is critical. The Supreme Court has repeatedly recognized that the death penalty is unique in its finality and severity and that "extraordinary measures" must be taken to ensure that a death sentence is not imposed "out of whim, passion, prejudice, or mistake." Eddings v. Oklahoma, 455 U.S. 104, 118 (1982) (O'Connor, J., concurring); see also Ex parte Monk, 557 So. 2d 832, 836-37 (Ala. 1989) (hovering death penalty is special circumstance justifying special measures in capital cases). This case has already produced unprecedented publicity and unbridled hostility toward a defendant on trial for his life.

12. This Court must act to ensure that Mr. Client's rights to due process, a fair trial, and a reliable sentencing determination guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments and Alabama law are not compromised by further prejudicial publicity.

For these reasons, Mr. Client moves this Court to enter an order prohibiting all attorneys, parties, witnesses, law enforcement personnel, and court personnel who are connected to the prosecution or investigation of this case from releasing information in any form to any agent or employee of any news media concerning any aspect of these proceedings.

Respectfully submitted,

/s/ Linda Lawyer

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[CERTIFICATE OF SERVICE]

[MOTION UPDATED ON 10/04/17]