

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 MISCHARACTERIZATIONS OF THE  
JURY’S ROLE AS ADVISORY OR A RECOMMENDATION**

Joe Client respectfully moves this Court to prohibit instructions, arguments, or comments to the jury describing its sentencing verdict as advisory, a recommendation, or not binding on this Court. 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. In Caldwell v. Mississippi, 472 U.S. 320 (1985), the Supreme Court held that “it is constitutionally impermissible to rest a death sentence on a determination made by a sentencer who has been led to believe that the responsibility for determining the appropriateness of the defendant’s death sentence rests elsewhere.” Id. at 328-29. The Court reversed the defendant’s conviction and death sentence because the prosecutor and trial court told the jury that its decision was not final and would be reviewed by the state supreme court. The Court emphasized that “sentencer discretion [is] consistent with — and indeed [is] indispensable to — the Eighth Amendment’s need for reliability in the determination that death is the appropriate punishment” only when “sentencers treat their power to determine the appropriateness of death as an ‘awesome responsibility.’” Id. at 330 (citations omitted).

3. Until recently, Alabama’s capital statute characterized the jury’s penalty phase verdict as advisory. See Ala. Code §§ 13A-5-46(a), (e).

4. Alabama law now requires the trial judge to impose the sentence decided by the jury, making the jury’s verdict binding. Ala. Code § 13A-5-47(a). The Alabama Pattern Jury Instructions have not been updated to reflect this change in the law, and continue to characterize the jury’s penalty phase verdict as advisory and a “recommendation.” See Ala. Pattern Jury Inst. - Crim., Penalty Proceedings - Capital Cases (2007 ed.).

5. Because the jury’s sentencing verdict is now binding on the court, any statements or inferences by the prosecutor or the court that the jury’s penalty phase determination is only “advisory,” a “recommendation,” or is not binding on the court “improperly describe the role assigned to the jury.” Romano v. Oklahoma, 512 U.S. 1, 9 (1994) (quoting Dugger v. Adams, 489 U.S. 401, 407 (1989)); Ex parte McGriff, 908 So. 2d 1024, 1038 (Ala. 2004) (stating that at no time during capital trial should jury be told its decision is “advisory” or “recommending”).

6. Mischaracterizing the jury’s sentencing role would violate Mr. Client’s rights to due process, equal protection, a fair trial, and a reliable sentence 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 granting the motion and preclude instructions, arguments, or comments to the jury that the jury’s findings are advisory and not binding on this Court.

Respectfully submitted,

/s/ Linda Lawyer  
Linda Lawyer  
123 Main Street  
Maycomb, AL 54321  
(334) 987-6543  
lawyer@email.com

*Counsel for Joe Client*

[CERTIFICATE OF SERVICE]

[MOTION UPDATED ON 10/12/17]