

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 REMOVE POTENTIAL JURORS WHO KNEW THE VICTIM
OR HIS FAMILY**

Joe Client respectfully moves this Court to remove from the jury service all prospective jurors who knew Victor Victim or any member of his family. In support of this motion, Mr. Client submits the following:

1. Joe Client has been charged with capital murder, and the State is seeking the death penalty.

2. “[T]he right to jury trial guarantees to the criminally accused a fair trial by a panel of impartial, ‘indifferent’ jurors.” Irvin v. Dowd, 366 U.S. 717, 722 (1961); see also Ex parte Killingsworth, 82 So. 3d 761, 764 (Ala. 2010) (per curiam). A capital sentencing jury that includes people who knew the victim or his family is precisely the kind of “tribunal organized to return a verdict of death” that is prohibited by the Constitution. Witherspoon v. Illinois, 391 U.S. 510, 520-521 (1968); Killingsworth, 82 So. 3d at 765. When a trial court allows such jurors to sit on the sentencing jury, there is no doubt that the court “‘crosse[s] the line of neutrality’ and ‘produce[s] a jury uncommonly willing to condemn a man to die.’” Lockhart v. McCree, 476 U.S. 162, 182-83 (1986) (quoting Witherspoon, 391 U.S. at 520-521).

3. As the Alabama Supreme Court has noted: “A defendant is entitled to be tried by 12, not 9 or even 10 impartial and unprejudiced jurors.” Killingsworth, 82 So. 3d at 764 (quoting Parker v. Gladden, 385 U.S. 363, 366 (1966) (internal quotation marks omitted)); see also Ala. Code § 12-16-150(4) (juror may be challenged for cause if “he is connected by consanguinity within the ninth degree, or by affinity within the fifth degree, computed according to the rules of the civil law, with . . . the person alleged to be injured”). In Killingsworth, the court reversed a capital conviction where the trial court had seated a juror who admitted during voir dire to knowing members of the victim’s family. Id. at 763, 765. Because the juror’s relationship with the victim’s family likely caused bias against the defendant, her seating violated the defendant’s Sixth Amendment right to an impartial jury. Id. at 765.

4. Moreover, the presence of biased jurors on the defendant's capital sentencing jury deprives the defendant of a sentence based on the evidence produced at the penalty phase of his capital trial. Turner v. Louisiana, 379 U.S. 466, 472 (1965); Irvin, 366 U.S. at 722. This requirement "goes to the fundamental integrity of all that is embraced in the constitutional concept of trial by jury." Turner, 379 U.S. at 472. Such jurors deprive a capital defendant of his right to an "individualized determination" of whether he should live or die based on his character and the circumstances of his crime. Zant v. Stephens, 462 U.S. 862, 879 (1983). "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).

5. Jurors who are related to or acquainted with the victim possess information about his characteristics and his death's impact on his family that is not subject to the procedures necessary for a fair trial, depriving the defendant of fundamental protections, including the right to confrontation, cross-examination, and counsel. Turner, 379 U.S. at 473.

6. Jurors who have lived, played, and talked with the victim or witnessed firsthand the pain and suffering of his family are unable to determine impartially whether the man on trial for his murder should live or die, and thus deprive the sentencing verdict of the reliability required by the Eighth Amendment. Ex parte Pilley, 789 So. 2d 888, 893 (Ala. 2000); Wood v. Woodham, 561 So. 2d 224 (Ala. 1989).

7. The failure to remove such jurors from Mr. Client's venire would deprive Mr. Client of 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, Joe Client respectfully moves this Court to grant this motion.

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 10/05/17]