

IN THE CIRCUIT COURT OF MAYCOMB COUNTY, ALABAMA

STATE OF ALABAMA,

v.

JOE CLIENT.

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Case No. CC-00-0000

**MOTION TO SUBMIT EVIDENCE OF AND
ARGUE RESIDUAL DOUBT AT THE PENALTY PHASE**

Joe Client respectfully moves the Court for permission to submit evidence at the penalty phase that would cast doubt on his guilt, conviction, and the circumstances surrounding his participation in the offense and lessen his level of culpability for the offense. Mr. Client additionally requests that the Court instruct the jury at the penalty phase that this evidence, together with evidence presented at the guilt/innocence phase and any residual doubt from the guilt/innocence phase of the trial, may be considered as a mitigating circumstance. In support of this motion, Mr. Client submits the following:

1. Joe Client has been indicted for capital murder under Alabama Code section 13A-5-(40)(a)(1), and the State is seeking the death penalty.
2. Preliminary investigation in this case has revealed that the State's case relies on minimal and circumstantial evidence. Mr. Client's defense strategy therefore focuses on his innocence and reasonable doubt as to his guilt. If Mr. Client is convicted, his defense strategy at the penalty phase will similarly highlight his innocence and reasonable doubt as to his guilt.
3. Mr. Client's strategy at both the guilt/innocence and penalty phases of the trial necessarily will be affected by this Court's ruling on the admissibility of evidence of innocence and residual doubt as to his guilt at the penalty phase of trial as well as the availability of a penalty phase instruction directing the jury to consider this evidence in mitigation. See Guideline 10.10.1, cmt., American Bar Association Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases, 31 Hofstra L. Rev. 903, 1047-48 (2003) ("[I]t is critical that, well before trial, counsel formulate an integrated defense theory that will be reinforced by its presentation at both the guilt and mitigation stages.").
4. Alabama law provides that "evidence may be presented as to any matter that the court deems relevant to sentence and shall include any matters relating to the aggravating

and mitigating circumstances referred to in Alabama Code sections 13A-5-49, 13A-5-51, and 13A-5-52.” See Ala. Code § 13A-5-45(c). Section 13A-5-52 specifically states that “mitigating circumstances shall include . . . any circumstances of the offense that the defendant proffers as a basis for a sentence of life imprisonment without parole instead of death.” Ala. Code § 13A-5-52.

5. The Eighth Amendment to the United States Constitution requires the jury to consider “as a mitigating factor, any aspect of a defendant’s character or record and **any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death.**” Lockett v. Ohio, 438 U.S. 586, 604 (1978) (emphasis added); see also Eddings v. Oklahoma, 455 U.S. 104, 115 (1982) (sentencer may not refuse to consider, as a matter of law, any relevant mitigating evidence, including evidence of the petitioner’s unhappy upbringing and emotional disturbance, turbulent family history and beatings by a harsh father); Woodson v. North Carolina, 428 U.S. 280, 304 (1976) (“in capital cases the fundamental respect for humanity underlying the Eighth Amendment requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death”) (citation omitted).

6. Evidence casting doubt on the defendant’s guilt is relevant mitigating evidence because that evidence concerns a “circumstance of the offense.” See Lockett, 438 U.S. at 608 (holding invalid death penalty statutory scheme that effectively precluded sentencer from considering “the absence of direct proof that the defendant intended to cause the death of the victim” and “a defendant’s comparatively minor role in the offense”); see also Bell v. Ohio, 438 U.S. 637, 642 (1978) (finding same statutory scheme invalid where it effectively precluded sentencer from considering evidence argued by defendant in support of sentence less than death, including lack of proof that defendant participated in actual killing).

7. Evidence casting doubt on the defendant’s participation in the offense is relevant and admissible notwithstanding that the defendant has been convicted of an aggravated murder. See Green v. Georgia, 442 U.S. 95, 95-96 (1979) (exclusion of evidence at penalty phase of capital trial that codefendant killed victim after sending defendant on errand held unconstitutional).

8. Evidence of Mr. Client’s innocence and doubt as to his guilt is relevant mitigating evidence, and Mr. Client is entitled to a jury instruction that permits the jury to consider any residual doubts regarding the defendant’s participation in the offense while making the penalty phase determination whether the defendant’s culpability warrants death.

9. A defendant is entitled to jury instructions under Alabama law “which would not be misleading, which correctly state the law of his case, and which are supported by any evidence, however, weak, insufficient, or doubtful in credibility.” See Ex parte McGriff, 908 So. 2d 1024, 1035-36 (Ala. 2004) (citations omitted). Alabama law explicitly provides that “[e]vidence presented at the trial of the case may be considered in so far as it is relevant to the aggravating and mitigating circumstances without the necessity of re-introducing that evidence at the sentence hearing.” Ala. Code § 13A-5-45(c)(2).

10. While the Supreme Court has held that the Eighth Amendment does not require a residual doubt penalty phase instruction in every case, see Franklin v. Lynaugh, 487 U.S. 164 (1988), such an instruction is constitutionally required where, as in this case, the defendant will introduce evidence at the penalty phase that casts doubt on the circumstances surrounding his actual participation in the offense or the degree of his culpability and where the defense will argue evidence already submitted at the guilt phase in support of this theory. See id. (sole mitigating evidence defendant presented at penalty phase was clean disciplinary record while incarcerated). Moreover, Alabama Code section 13A-5-45(c)(2) permits the penalty-phase jury to reconsider evidence already presented at the guilt/innocence phase, without its reintroduction. In order to give effect to evidence presented at the guilt/innocence phase, the jury must be instructed at the penalty phase that it may consider this evidence as mitigating evidence.

For these reasons, Mr. Client respectfully moves this Court to:

- (a) enter an order allowing Mr. Client to submit evidence at the penalty phase casting doubt on his guilt, conviction, and the circumstances surrounding the defendant’s participation in the offense, and that lessens his culpability for the offense; and
- (b) provide instruction to the jury at the penalty phase of the trial that directs them to consider evidence introduced at the guilt/innocence and penalty phases as well as any residual doubts as factors that mitigate against the imposition of the death penalty.

Respectfully submitted,

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[CERTIFICATE OF SERVICE]

[MOTION UPDATED ON 10/04/17]