

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 SUPPRESS DEFENDANT’S STATEMENTS**

Joe Client respectfully moves this Court to suppress his statements of May 27, 2016, and June 17, 2016, as evidence against him in the prosecution’s case-in-chief, as rebuttal evidence, and as impeachment evidence. In support of this motion, Mr. Client submits the following:

1. Mr. Client is charged with capital murder in connection with the robbery-murder of Vernon Victim. The State is seeking the death penalty.

2. Mr. Client is a twenty-two-year-old male. He never completed the eighth grade and is of below-average intelligence. He reads at only a fourth grade level. For the past three years, Mr. Client has worked painting houses and doing odd jobs in and around Maycomb.

3. Mr. Client was stopped outside The Watering Hole, a local bar, by two uniformed police officers, Acker and Bates, at 2:00 a.m. on May 27, 2016. Mr. Client had been drinking with a small group of friends and family in celebration of his brother’s birthday.

4. Officers Acker and Bates asked Mr. Client if he would accompany them to the police station to answer some questions. Mr. Client told the officers that he was not sure it was safe for him to drive because of his inebriated state. The officers said they would take him to the police station, and Mr. Client rode to the police station in the back of their police car.

5. At the police station, Mr. Client was escorted inside through a secured entrance that had to be opened by a third officer from inside the station. Officers Acker and Bates took Mr. Client to a small interrogation room, where he was instructed to sit and wait for someone to come talk to him.

6. After approximately ten minutes, Officer Clinton entered the interrogation room and began questioning Mr. Client. Mr. Client said he did not want to talk to the police until he had spoken with an attorney. He said he was too drunk to talk without someone there to help him. Officer Clinton then left the interrogation room.

7. Mr. Client was left in the interrogation room alone for sixty to ninety minutes. The door was locked from the outside, and Mr. Client was not allowed to use the restroom or get a drink of water. At least once, Mr. Client fell asleep in his chair.

8. Eventually, Detective Dawson entered the interrogation room and asked Mr. Client if he “wanted to talk about the robbery now.” Detective Dawson proceeded to ask Mr. Client questions about “the robbery.” Mr. Client again said he wanted to speak to his lawyer. He told Detective Dawson that he was drunk and “couldn’t think straight.” Mr. Client said he was so tired he could “barely stay awake.”

9. Detective Dawson responded, “Maybe a week in jail will help clear your mind. You want to do it that way?” Mr. Client was afraid that he would be jailed and lose his job. He told the detective that he did not know much, but that he did not want to go to jail. Detective Dawson told him that the only way he would stay out of jail was to give a statement.

10. Detective Dawson gave Mr. Client a Miranda form. Mr. Client did not read the form or fully understand its contents, but he signed it.

11. After answering Detective Dawson’s questions for an additional forty-five minutes, Mr. Client said that he could not talk anymore. Then, at approximately 4:15 a.m. on May 27, 2016, Mr. Client was formally arrested for robbery-murder of Mr. Victim.

12. Mr. Client appeared before Judge Johnson for a probable cause hearing on May 28, 2016. Immediately after Judge Johnson found probable cause, an initial appearance proceeding was held. Mr. Client was informed of the charges against him and of his right to be represented by counsel. Mr. Client notified the court that he was indigent and would like to have counsel appointed to represent him.

13. While awaiting transfer from the courthouse to the county jail, Mr. Client was approached by Officer Edwards. Officer Edwards initiated conversation with Mr. Client. Among other things, he questioned Mr. Client regarding details about his case, including specific questions about Mr. Victim’s house and Mr. Client’s work history.

**I. MR. CLIENT’S STATEMENTS MUST BE SUPPRESSED BECAUSE THEY WERE TAKEN FOLLOWING AN ILLEGAL ARREST.**

14. A seizure occurs when, “in view of all of the circumstances surrounding the incident,” a person reasonably believes that he is not “free to leave.” United States v. Mendehall, 446 U.S. 544, 554 (1980). Whether a person has been seized rests on an objective standard of police conduct, not on how the officers subsequently characterize their actions. Davis v. Mississippi, 394 U.S. 721, 726-27 (1969); State v. Hanson, 480 So. 2d 620, 624 (Ala. Crim. App. 1985). Even “an initially consensual encounter . . . can be transformed into a seizure or detention within the meaning of the Fourth Amendment.” Kaupp v. Texas, 538 U.S. 626, 632 (2003) (citation omitted).

15. Mr. Client was seized and in custody when he was interrogated. He was taken to the police station, locked in an interrogation room for over two hours, and never told that he was free to go. Detective Dawson questioned Mr. Client in an inherently coercive setting, which by its very nature “intrude[d] so severely on interests protected by the Fourth Amendment as necessarily to trigger the traditional safeguards against illegal arrest.” Dunaway v. New York, 442 U.S. 200, 216 (1979); see also United States v. Sharpe, 470 U.S. 675, 691 (1985) (Marshall, J., concurring); Hanson, 480 So. 2d at 624.

16. The Fourth Amendment prohibits the seizure of an individual absent probable cause. Probable cause requires that a police officer have reasonable grounds for a belief that an individual is guilty of a crime. That belief must be particular to the individual detained. Maryland v. Pringle, 540 U.S. 366, 373 (2003). In determining whether there is probable cause, a court must look at the historical facts leading up to a seizure and determine whether an objectively reasonable police officer would believe he had probable cause to detain the individual in question. Id.

17. The facts of this case clearly demonstrate that the police lacked probable cause to detain Mr. Client. No physical evidence linked Mr. Client to the crime scene. No witnesses suggested that Mr. Client was at or near Mr. Victim’s home on the evening of the killing. These “historical facts” suggest that any suspicions the police may have had about Mr. Client’s connection to the crime were ill-founded at best. No objectively reasonable officer could have believed, on the strength of the evidence available at the time of Mr. Client’s interrogation, that Mr. Client was guilty of killing Mr. Victim. Any seizure of a person made without probable cause violates his constitutional rights, and any statement that flows from that seizure is inadmissible at trial. Dunaway, 442 U.S. at 216-19; see also Wong Sun v. United States, 371 U.S. 471, 488 (1963); Ex parte Meeks, 434 So. 2d 844, 846 (Ala. 1983).

## II. MR. CLIENT'S STATEMENTS TO DETECTIVE DAWSON MUST BE SUPPRESSED BECAUSE THEY WERE OBTAINED IN VIOLATION OF HIS FIFTH AND FOURTEENTH AMENDMENTS RIGHTS.

### A. Mr. Client's Statements Must Be Suppressed Because They Were Obtained in Violation of Edwards v. Arizona.

18. When an accused has invoked his right to counsel, a waiver of that right cannot be established by showing that he responded to further interrogation initiated by the police. Edwards v. Arizona, 451 U.S. 477, 484 (1981). Rather, once an individual has asserted his right to counsel, the police must stop their questioning and cannot interrogate further unless the suspect initiates subsequent meetings. Edwards, 451 U.S. at 485; see also Minnick v. Mississippi, 498 U.S. 146, 153 (1990) (once suspect invokes right to counsel, "interrogation must cease and officials may not reinitiate interrogation without counsel present"). Edwards applies where subsequent interrogation is performed by someone with no knowledge of the accused's prior invocation of his right to counsel. Arizona v. Roberson, 486 U.S. 675, 687 (1988).

19. In this case, Mr. Client clearly and unequivocally invoked his right to speak to an attorney on two separate occasions. Upon being taken to the interrogation room and initially questioned by Officer Clinton, Mr. Client said that he wanted to speak to an attorney. At that time, Officer Clinton ceased questioning Mr. Client.

20. Several hours later, Detective Dawson entered the interrogation room and began questioning Mr. Client about a robbery at Mr. Victim's house. Because this questioning was initiated by authorities after Mr. Client clearly invoked his right to counsel, any statements made during the interrogation must be suppressed. Edwards, 451 U.S. at 484-85; see also Ex parte Williams, 31 So. 3d 670, 683 (Ala. 2009) ("With third-party communications, the police are still prohibited from reinitiating questioning, and the impetus for reinitiation must still come from the accused.").

### B. Mr. Client's Statements Must Be Suppressed Because He Was Not Given Proper Miranda Warnings.

21. When an individual is questioned by police and not given the Miranda warning, "a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel." Miranda v. Arizona, 384 U.S. 436, 475 (1966) (citation omitted).

22. Mr. Client gave two statements to Detective Dawson. The first statement is clearly inadmissible because Mr. Client was not informed of his Miranda rights prior to making it. Mr. Client was not informed of his right to remain silent when he was initially contacted by Officers Acker and Bates, nor when he was placed in the back of a police car. The officers did not inform Mr. Client of his rights upon locking him in an interrogation room at the police station. Officer Clinton likewise failed to advise Mr. Client of his Miranda rights upon initiating the interrogation. Finally, Detective Dawson did not inform Mr. Client about his rights prior to questioning him. Given that Mr. Client twice asked to speak to a lawyer and repeatedly told officers he was drunk and having difficulty thinking straight, the State clearly cannot satisfy the “heavy burden” of showing that Mr. Client waived his rights. Miranda, 384 U.S. at 475.

23. Mr. Client’s second statement to Detective Dawson likewise is inadmissible because it was preceded by ineffective Miranda warnings. Not until Mr. Client began answering the detective’s questions and again asked to speak to an attorney did Detective Dawson make even the slightest acknowledgment of Mr. Client’s constitutional rights. After forcing Mr. Client to continue to answer questions, Detective Dawson gave Mr. Client a written form that listed the protections afforded under Miranda. Detective Dawson did not read the form to Mr. Client, despite knowing that Mr. Client was inebriated. Nor did Detective Dawson make any effort to ensure that Mr. Client understood the rights listed on the waiver form. For these reasons, coupled with Mr. Client’s limited education and reading ability, it is clear that Mr. Client was not “adequately and effectively apprised of his rights” as mandated by Miranda, 384 U.S. at 467, and any statements made following the ineffective warning given by Detective Dawson must be suppressed.

C. Mr. Client’s Second Statement to Detective Dawson Must Be Suppressed.

24. If a suspect is interrogated in the absence of an attorney, the State must affirmatively prove not only that the waiver was voluntary, but also that it constituted “a knowing and intelligent relinquishment or abandonment of a known right or privilege.” Edwards, 451 U.S. at 482 (citing Johnson v. Zerbst, 304 U.S. 458, 464 (1938)).

25. The voluntariness analysis focuses on the coercive actions of the police and the mental condition of the defendant, Colorado v. Connelly, 479 U.S. 157, 164 (1986), to determine whether the defendant’s will was “overborne” by the environment in which he was questioned and the interrogator’s actions. Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973). Characteristics of the accused, such as his age, education, and intelligence, also must be taken into account. Id. In order to be “knowing and intelligent,” a waiver must have been “made with a full awareness of both the nature of the right being abandoned and the

consequences of the decision to abandon it.” Moran v. Burbine, 475 U.S. 412, 421 (1986). This analysis likewise depends “upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused.” Edwards, 451 U.S. at 482.

26. The totality of the circumstances demonstrates that Mr. Client did not voluntarily waive his Fifth Amendment rights: the officers’ refusal to provide counsel in the face of two explicit requests; Mr. Client’s inebriated and exhausted state; Mr. Client’s impaired intellectual functioning and fourth grade reading level; and the absence or inadequacy of Miranda warnings. Greenwald v. Wisconsin, 390 U.S. 519, 521 (1968). Detective Dawson greatly heightened the coercive nature of the custodial interrogation by threatening to incarcerate Mr. Client if he did not cooperate. In addition, Mr. Client was detained for several hours during which he was not allowed to use the bathroom, eat, drink, or contact counsel, friends, or family. The interrogation took place in the middle of the night, after Mr. Client spent the evening at a birthday party where he imbibed a substantial amount of alcohol. These facts clearly demonstrate that Mr. Client did not voluntarily waive his Miranda rights. See Mincey v. Arizona, 437 U.S. 385, 401-02 (1978).

27. For similar reasons, Mr. Client did not knowingly and intelligently waive his right to remain silent. Mr. Client expressed repeatedly during the interrogation that he was drunk and having trouble thinking clearly. Mr. Client was never given verbal Miranda warnings; he was given only a printed form. Mr. Client’s intoxicated and sleep-deprived state, as well as his below-average intellectual functioning and limited reading abilities, made it virtually impossible for Mr. Client to fully understand the written Miranda warnings. Finally, because Mr. Client had already answered a number of Detective Dawson’s questions prior to receiving the written warnings, under the circumstances it was not clear to Mr. Client that continuing to answer questions after signing the waiver would create any additional danger of self-incrimination. Missouri v. Seibert, 542 U.S. 600, 613 (2004) (plurality opinion) (“If [ ] interrogators employ the technique of withholding warnings until after interrogation succeeds in eliciting a confession, the warnings will be ineffective in preparing the suspect for successive interrogation.”).

D. Mr. Client’s Second Statement Must Be Suppressed Because it Was the Fruit of the Illegal Prior Statement.

28. Miranda warnings given after a suspect has made an unwarned statement do not sufficiently “advise the suspect that he had a real choice about giving an admissible statement at that juncture.” Seibert, 542 U.S. at 612. This is particularly true where “the two-step interrogation technique was used in a calculated way to undermine the Miranda warning.” Id. at 622 (Kennedy, J., concurring). Successive interrogation tactics wrongfully

suggest to an individual that the mere repetition of earlier statements would have no potentially incriminating effect. Id. at 620; Darwin v. Connecticut, 391 U.S. 346, 350-51 (1968) (Harlan, J., concurring). When Miranda warnings are given only after a suspect has already volunteered information to the police, “the warnings will be ineffective in preparing the suspect for successive interrogation, close in time and similar in content.” Seibert, at 613 (plurality opinion). Thus, the impermissible earlier statement taints and renders inadmissible the subsequent statement. See Ex parte Callahan, 471 So. 2d 463 (Ala. 1985).

29. The warnings given by Detective Dawson were not intended to convey his rights to Mr. Client, see Duckworth v. Eagan, 492 U.S. 195, 202-03 (1989), but rather to serve as a “talismatic incantation” of the Miranda rights, which the Supreme Court has rejected, see California v. Prysock, 453 U.S. 355, 359 (1981) (per curiam). Detective Dawson did not make any effort to inform Mr. Client of his rights; instead he attempted to overwhelm Mr. Client’s efforts to invoke his right to counsel. It was not until Mr. Client answered Detective Dawson’s first set of inquiries that the detective gave the required warnings. “[A] reasonable person in [Mr. Client’s] shoes would not have understood them to convey a message that [he] retained a choice about continuing to talk.” Seibert, 542 U.S. at 602.

E. Mr. Client’s Statements Must Be Suppressed Because They Were Involuntary.

30. Whether preceded by Miranda warnings or not, statements that are coerced or given involuntarily violate due process and cannot be used at trial for any purpose. New Jersey v. Portash, 440 U.S. 450, 459 (1979). The appropriate test for the voluntariness of a statement is whether a defendant’s will was overborne by the totality of the circumstances. It requires an examination of the characteristics of the accused and the interrogation itself. Dickerson v. United States, 530 U.S. 428, 434 (2000). Only statements that are “free from inducement, threat or promise, either expressed or implied, that would have produced in the mind of the accused any fear of harm or hope of favor” can be considered voluntary. Ex parte Jackson, 836 So. 2d 979, 982-83 (Ala. 2002).

31. Under the totality of the circumstances, it is clear that Mr. Client’s statements were involuntary. Mr. Client has limited mental capacity and academic attainment far below his peers. At the time he was seized by Officers Acker and Bates, Mr. Client had been drinking alcoholic beverages in large quantities for several hours. Numerous times throughout the course of his interrogations, Mr. Client told his interrogators that he could not think straight because he was drunk and exhausted. Mr. Client was locked in a small interrogation room; not permitted food, water, or use of the bathroom; denied contact with friends and family; and despite invoking his Fifth and Sixth Amendment right to counsel, not permitted access to an attorney. When Mr. Client told Detective Dawson that he did not want

to speak with him, the detective used coercive tactics to compel Mr. Client to speak by unconstitutionally and illegally threatening to incarcerate Mr. Client unless he cooperated. Any statements that are the result of coercive action by the State that overwhelms the will of the accused are involuntary, Schneekloth, 412 U.S. at 225, and inadmissible for any purpose, Mincey, 437 U.S. at 398; Portash, 440 U.S. at 459-60. For this reason, Mr. Client's statements must be excluded in their entirety.

### **III. MR. CLIENT'S STATEMENTS TO OFFICER EDWARDS MUST BE SUPPRESSED BECAUSE THEY WERE OBTAINED IN VIOLATION OF THE DEFENDANT'S SIXTH AMENDMENT RIGHT TO COUNSEL.**

32. The Sixth Amendment right to counsel attaches when formal proceedings are initiated against a defendant. Massiah v. United States, 377 U.S. 201 (1964); see also Brewer v. Williams, 430 U.S. 387 (1977). Once the Sixth Amendment has attached, any deliberately elicited statement taken without counsel present is inadmissible against the accused. Id. at 398.

33. The Supreme Court has held that a preliminary hearing constitutes a "critical stage" in the criminal justice process and that an accused's Sixth Amendment attaches at that time. Coleman v. Alabama, 399 U.S. 1, 8-10 (1970); see also Ex parte Stewart, 853 So. 2d 901, 903 (Ala. 2002) (overruled on other grounds).

34. Officer Edwards questioned Mr. Client after his probable cause hearing on May 28, 2005. Officer Edwards's questioning of Mr. Client about details about his case, including specific questions about Mr. Victim's house, occurred after Mr. Client's Sixth Amendment right to counsel had attached.

35. When police initiate contact with an accused in an effort to "deliberately elicit" information after the accused has asserted his Sixth Amendment right to counsel, any waiver of the accused's right to counsel is invalid. See Fellers v. United States, 540 U.S. 519, 523-24 (2004). Moreover, any discussion between a government agent and an indicted defendant that is intended to elicit incriminating information and that takes place outside the presence of counsel must be preceded by Miranda warnings. Illinois v. Perkins, 496 U.S. 292, 296 (1990).

36. Mr. Client did not initiate contact with Officer Edwards. Nor did Mr. Client indicate he wished to revoke his previously-asserted right to counsel. The context and subject matter of Officer Edwards's questioning indicate that the officer attempted to elicit potentially incriminating information from Mr. Client. Moreover, Officer Edwards did not



preface his questioning with Miranda warnings. By “intentionally creating a situation likely to induce [Mr. Client] to make incriminating statements without the assistance of counsel,” the State violated his Sixth Amendment right to counsel. United States v. Henry, 447 U.S. 264, 274 (1980). Any statements made to Officer Edwards must be excluded from trial.

37. High standards of proof have always been set for the waiver of constitutional rights, Tague v. Louisiana, 444 U.S. 469, 470 (1980), and this same standard applies to questions of whether a defendant effectively waived his Miranda rights. Id.; see also Miranda, 384 U.S. at 475.

38. This high standard of proof is especially appropriate because this is a capital case. “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).

39. Denial of this motion to suppress will deprive Mr. Client of his rights to due process, equal protection, a fair trial, and a reliable sentencing as guaranteed by the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Alabama law.

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

- a. allow Mr. Client to present evidence and argument on this motion at a pretrial hearing outside the presence of the jury; and
- b. grant Mr. Client’s motion to suppress his statements.

Respectfully submitted,

/s/ Linda Lawyer

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[CERTIFICATE OF SERVICE]

**[MOTION UPDATED ON 10/05/17]**