IN THE CIRCUIT COURT OF MAYCOMB COUNTY, ALABAMA

STATE OF ALABAMA,	*	
	*	
v.	*	Case No. CC-00-0000
	*	
JOE CLIENT.	*	

MOTION TO SUPPRESS UNCONSTITUTIONALLY SEIZED EVIDENCE

Joe Client respectfully moves this Court to suppress any and all evidence obtained pursuant to an unreasonable search and seizure at Mr. Client's grandmother's home on April 21, 2016 at 7:30 a.m. Mr. Client also moves to suppress the victim's credit card, which was seized after his illegal arrest on April 21, 2016. In support of this motion, Mr. Client submits the following:

1. Mr. Client has been charged with two counts of capital murder pursuant to Alabama Code section 13A-5-40(a)(2) in connection with the death of Victor Victim and the State is seeking the death penalty.

I. THE EVIDENCE WAS SEIZED PURSUANT TO AN ILLEGAL SEARCH.

2. On April 21, 2016, at 7:30 a.m., four Maycomb County police officers arrived at the home of Mr. Client's grandmother, Lucy Client, who at the time was eighty-six years old. Mr. Client was living with his grandmother in her house located at the end of an isolated two-mile-long dirt road just outside of Maycomb.

3. Lucy Client was asleep in her bed when the officers knocked on her front door. After being roused from her sleep by the repeated knocking, Ms. Client opened the door. One officer announced that he had a warrant to search her house. The officers never informed Ms. Client that the purpose of the search was to find evidence to use against her grandson in connection with Mr. Victim's murder, nor did they inform her that she could decline the search. The officers did not show the warrant to Ms. Client. Based on the officer's representation that he had a warrant, Ms. Client replied "go ahead," and opened the door. The four officers entered the front door and conducted a search in which they retrieved a pair of blue jeans, a red T-shirt, and a .380-caliber revolver from the front hall closet.

4. As the officers left her home, Ms. Client asked for a copy of the search warrant. An officer handed her a copy of the warrant. The warrant did not identify any intended objects of the search or list any of the items that were seized. In the section of the form that

calls for a description of the "person or property to be seized," the only entry was a description of Ms. Client's one-story white house at 11101 Traverse Way. See Search Warrant (attached as Exhibit A).

A. The Warrant Lacked Particularity.

5. A warrant that fails to comply with the Fourth Amendment's particularity requirement is plainly invalid. See Groh v. Ramirez, 540 U.S. 551, 557 (2004). Here, because the search warrant failed to describe the "persons or things to be seized," it is facially invalid and unconstitutional. Id. (warrant "plainly invalid" where it provided no description of type of evidence sought in search); see also Massachusetts v. Shepard, 468 U.S. 981, 988 n.5 (1984) ("[A] warrant that fails to conform to the particularity requirement of the Fourth Amendment is unconstitutional."); Peavy v. State, 336 So. 2d 199, 202 (Ala. Crim. App. 1976) ("General exploratory searches are forbidden by Federal and State courts alike."). Because the warrant was so obviously deficient, the search must be regarded as "warrantless." Groh, 540 U.S. at 558; Bumper v. North Carolina, 391 U.S. 543 (1968).

6. As both state and federal case law make plain, a warrantless search and seizure inside a person's home is presumptively unreasonable. Payton v. New York, 445 U.S. 573, 586 (1980); Ex parte Moffitt, 844 So. 2d 531, 533 (Ala. 2002). This presumptive rule against warrantless searches applies "with equal force to searches whose only defect is a lack of particularity in the warrant." Groh, 540 U.S. at 559. The search in this case was conducted without a valid warrant and in violation of state and federal law.

7. Moreover, this search does not fit into the limited, narrowly drawn exceptions to the warrant requirement. See Katz v. United States, 389 U.S. 347, 357 (1967) (subject to a few specifically established and well-delineated exceptions, warrantless searches are *per se* unreasonable). No exigent circumstances existed here: the officers were not in hot pursuit of a suspect; there was no fear of destruction or removal of evidence; and there was no danger to the officers or other parties. See Payton, 445 U.S. at 587-88.

B. Mr. Client's Grandmother Did Not Consent to a Search.

8. If the State intends to rely upon Ms. Client's purported "consent" to justify the search, it must prove that the consent was freely and voluntarily given. Schneckloth v. Bustamonte, 412 U.S. 218, 248 (1973). This burden cannot be discharged by showing no more than an acquiescence to a claim of lawful authority. Bumper, 391 U.S. at 548-49; see also Bates v. Harvey, 518 F.3d 1233, 1244 (11th Cir. 2008) (consent could not be inferred where homeowner did not initially reply to officer's search request, shook her head when asked about suspect's location, and said "something to the effect of I guess so" when police

entered bedroom and asked to look around); Ex parte Tucker, 667 So. 2d 1339, 1343 (Ala. 1995) (mere submission to police authority will not suffice for consent). Moreover, "a search conducted in reliance upon a warrant cannot later be justified on the basis of consent if it turns out that the warrant was invalid." Bumper, 391 U.S. at 549.

9. Because the search and seizure of the aforementioned items from Ms. Client's home were unreasonable and violated Mr. Client's state and federal rights, the recovered evidence must be suppressed. Mapp v. Ohio, 367 U.S. 643 (1967).

II. EVIDENCE WAS SEIZED PURSUANT TO AN ILLEGAL ARREST.

10. Additionally, this Court must suppress the evidence obtained pursuant to Mr. Client's illegal arrest. On April 21, 2016, at around 10:00 a.m., Mr. Client was arrested at his girlfriend's apartment in Maycomb, Alabama. Because this arrest was illegal, the victim's credit card recovered from Mr. Client's wallet must be suppressed.

11. At 10:00 a.m. on April 21, 2016, four police cars arrived at the apartment complex in which Mr. Client's girlfriend lived. Two police officers approached the landlord and obtained a key. The officers did not have a warrant for Mr. Client's arrest, but convinced the landlord to give them the key anyway. They used the key to unlock the apartment, entered the bedroom, and awoke Mr. Client and his girlfriend, who were asleep in the bedroom, by shining a flashlight in their faces. The officers informed Mr. Client that he was under arrest, handcuffed him, and placed him in a patrol car. Subsequently, pursuant to an inventory of Mr. Client's personal items, the police discovered the victim's credit card in Mr. Client's wallet.

12. The Supreme Court has recognized that the Fourth Amendment protects individuals against state intrusions where they have a legitimate expectation of privacy. Katz v. United States, 389 U.S. 347, 361 (1967). Because Mr. Client was staying overnight with his girlfriend in her home at the time of the arrest, he had a reasonable expectation of privacy in her home and his warrantless seizure was unreasonable under the Fourth Amendment. Minnesota v. Olson, 495 U.S. 91, 98 (1998) (overnight guest has legitimate expectation of privacy in host's home); see also Eggers v. State, 914 So. 2d 883, 894 (Ala. Crim. App. 2004) (defendant had reasonable expectation of privacy in friend's tent where he was overnight guest).

13. No exigent circumstances justified the officers' warrantless intrusion into the apartment: the alleged murder weapon had already been recovered; there was no evidence that Mr. Client was a danger to himself or others; and because four patrol cars surrounded the building, had Mr. Client attempted to leave, he would have been promptly apprehended.

Welsh v. Wisconsin, 466 U.S. 740 (1984) (warrantless intrusion not justified where police knew exact location of suspect, had already recovered alleged murder weapon, and where patrol cars surrounded building to prevent suspect's escape); see also Kirk v. Louisiana, 536 U.S. 635, 638 (2002) ("[P]olice officers need either a warrant or probable cause plus exigent circumstances in order to make a lawful entry into a home."). The arrest of Mr. Client was unreasonable and constituted a violation of his rights under state and federal law. The evidence recovered as a consequence of his illegal arrest must be suppressed. Mapp v. Ohio, 367 U.S. 643 (1967).

14. Because this is a capital case, this Court must apply special considerations to ensure that it is fair. "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).

15. If the evidence seized from Mr. Client is not suppressed, he will be deprived of his right to be free from unreasonable searches and seizures, due process, equal protection, a fair trial, and a reliable sentencing as protected by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Alabama law.

For these reasons, Mr. Client respectfully requests that this Court:

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 the unconstitutionally obtained evidence.

Respectfully submitted,

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[CERTIFICATE OF SERVICE]

[MOTION UPDATED ON 10/05/17]