

IN THE CIRCUIT COURT OF MAYCOMB COUNTY, ALABAMA

STATE OF ALABAMA,

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v.

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Case No. 00-0000

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JOE CLIENT.

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**MOTION TO PERMIT VOIR DIRE
ON THE ISSUE OF RACIAL BIAS**

Joe Client respectfully moves this Court to allow counsel for Mr. Client to voir dire prospective jurors about race and bias. In support of this motion, Mr. Client submits the following:

1. Joe Client is charged with capital murder in the death of Victor Victim. Mr. Client and his alleged accomplices are African American. Mr. Victim was a white man. The State is seeking the death penalty.

2. Because this case involves an interracial crime, there is a heightened risk that racial prejudice will infect the trial. The risk of prejudice is particularly high with regard to potential jurors, who do not share the same professional responsibility as this Court.

3. It will be difficult for a juror with even the slightest racial bias to serve with the impartiality required in this case, and to give the defendant the benefit of the doubt to which he is entitled. For that reason, Mr. Client must be permitted to voir dire potential jurors thoroughly on race and bias.

4. In Turner v. Murray, 476 U.S. 28 (1986), the Supreme Court declared that a black defendant in a case with a white victim has a constitutional right to question jury veniremembers about their views on race. The Supreme Court explained:

Because of the range of discretion entrusted to a jury in a capital sentencing hearing, there is a unique opportunity for racial prejudice to operate but remain undetected. On the facts of this case, a juror who believes that blacks are violence-prone or morally inferior might well be influenced by that belief in deciding whether petitioner's crime involved the aggravating factors specified under Virginia law. Such a juror might also be less favorably inclined toward petitioner's evidence of mental disturbance as a mitigating circumstance. More subtle, less consciously held racial attitudes could also influence a juror's

decision in this case. Fear of blacks, which could easily be stirred up by the violent facts of petitioner's crime, might incline a juror to favor the death penalty.

Id. at 35; see also Buck v. Davis, 137 S. Ct. 759, 776 (2017) (expert testimony that defendant was more likely to commit acts of violence in future because he is black “appealed to a powerful racial stereotype – that of black men as ‘violence prone’” – and unconstitutionally provided support for death sentence based on race) (citing Turner, 476 U.S. at 35).

5. The Turner Court reasoned that the petitioner had shown a constitutional violation because his trial judge refused to permit voir dire on racial attitudes, which created an unacceptable risk that “racial prejudice may have infected petitioner’s capital sentencing.” 476 U.S. at 36. The Supreme Court concluded: “We hold that a capital defendant accused of an interracial crime is entitled to have prospective jurors informed of the race of the victim and questioned on the issue of racial bias.” Id. at 36-37; see also Peña-Rodriguez v. Colorado, 137 S. Ct. 855 (2017) (juror’s statement indicating reliance on racial bias to convict provided exception to allow trial court to consider whether defendant was denied right to impartial jury).

6. Statistical studies show that race plays an extraordinary role in the imposition of the death penalty. The Alabama Supreme Court has recognized, for instance, that “pre-Furman [v. Georgia, 408 U.S. 238 (1972)] juries may have exercised their ‘untrammelled discretion’ on a racial basis in cases of rape involving a black defendant and a white victim.” Beck v. State, 396 So. 2d 645, 653 (Ala. 1980). The statistical breakdown by race of defendant and race of victim for all persons on death row in Alabama at the time of Furman, even excluding rape offenses, revealed bias against black defendants and in favor of white victims. Beck, 396 So. 2d at 653 n.3.

7. Today, a black defendant accused of killing a white person is more likely to be sentenced to death than a white defendant accused of killing a white person or a defendant of any race in a case with a black victim. Alabama’s population is currently 27 percent black, but nearly half of the individuals on Alabama’s death row are black. Equal Justice Initiative, “Race and Poverty” (Aug. 2017), available at <http://www.eji.org/death-penalty/race-and-poverty>. Each year in Alabama, nearly 65 percent of all murders involve black victims, yet 73 percent of the people currently awaiting execution in Alabama were convicted of a crime in which the victim was white. Fewer than 5 percent of all murders in Alabama involve black defendants and white victims, but over 52 percent of black death row prisoners have been sentenced for killing someone white. Id.

8. Due to the possibility of prejudice, thorough voir dire on the issue of racial bias is necessary to ensure Mr. Client's rights to due process, 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, Mr. Client moves this Court to grant this motion and allow voir dire on the issue of racial bias.

Respectfully submitted,

/s/ Linda Lawyer

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[CERTIFICATE OF SERVICE]

[MOTION UPDATED ON 10/05/17]