

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 BAR THE DEATH PENALTY BECAUSE
ALA. CODE § 13A-5-40(a)(20) (MURDER IN PRESENCE OF CHILD) IS
UNCONSTITUTIONAL**

Joe Client respectfully moves this Court to bar imposition of the death penalty in this case because Ala. Code § 13A-5-40(a)(20) unconstitutionally injects considerations of victim impact into culpability-phase deliberations, is unconstitutionally vague, subjects defendants to grossly disproportionate sentencing, and fails to constitutionally narrow the class of people eligible to be sentenced to death. In support of this motion, Mr. Client states the following:

1. Ala. Code § 13A-5-40(a)(20) makes capital a “[m]urder by the defendant in the presence of a child under the age of 14 years at the time of the offense, if the victim was the parent or legal guardian of the child. For purposes of this subsection, ‘in the presence of a child’ means in the physical presence of a child or having knowledge that a child is present and may see or hear the act.”

2. Section 13A-5-40(a)(20) unconstitutionally injects consideration of victim impact evidence into culpability-phase deliberations and inflames the emotions of the jury, distracting from consideration of whether the State has proven its case beyond a reasonable doubt. Booth v. Maryland, 482 U.S. 496, 503 (1987) (admission of victim impact evidence “creates a constitutionally unacceptable risk that the jury may impose the death penalty in an arbitrary and capricious manner”), overruled on other grounds by Payne v. Tennessee, 501 U.S. 808, 830 n.2 (1991). The Alabama Supreme Court has held that it is improper to introduce evidence establishing that a victim had children and identifying the children of victims at the culpability phase of a capital trial. See, e.g., Ex parte Rieber, 663 So. 2d 999, 1005 (Ala. 1995) (holding “testimony concerning [victim]’s children, their ages, and the status of their custody after the murder was not relevant with respect to the question of his guilt or innocence and, therefore, [] it was inadmissible in the guilt phase of the trial”); Knight v. State, 142 So. 2d 899, 910 (Ala. 1962) (“[T]o hold such evidence not prejudicial to the defendant is to disregard the realities of trial atmosphere and the emotional frailties of human nature.”).

3. In addition, section 13A-5-40(a)(20) is unconstitutionally vague because it fails to define the limits of “parent or legal guardian” and fails to define the limits of “physical presence” and “having knowledge that a child is present and may see or hear the act.” The United States Supreme Court has repeatedly held that a statute is unconstitutionally vague and violates due process when it “fails to establish standards for the police and public that are sufficient to guard against the arbitrary deprivation of liberty interests.” City of Chicago v. Morales, 527 U.S. 41, 52 (1999); see also, e.g., Johnson v. United States, 576 U.S. 591, 597–602 (2015) (finding unconstitutionally vague “serious potential risk of physical injury to another”). Likewise, Alabama courts have held that elements making murder a capital offense must be capable of “consistent and narrow” application and that vague criminal statutes are unconstitutional. See, e.g., Ex parte Clark, 728 So. 2d 1126, 1138 (Ala. 1998) (reversing death sentence where offense would not support “consistent and narrow” application of death penalty statute); Ex parte Tulley, 199 So. 3d 812, 822–23 (Ala. 2015) (holding criminal statute unconstitutional due to sentencing vagueness).

4. As well, imposition of death pursuant to section 13A-5-40(a)(20) would be grossly disproportionate to the offense. Coker v. Georgia, 433 U.S. 584, 592 (1977) (where “sentence of death is grossly disproportionate and excessive punishment for [a] crime” it “is therefore forbidden by the Eighth Amendment as cruel and unusual punishment”); Kennedy v. Louisiana, 554 U.S. 407, 420–21 (2008) (same). All factors enumerated in section 13A-5-40(a) make murder a capital offense as a result of it being committed during the commission of another felony or as a result of a special status of the victim or perpetrator—except section 13A-5-40(a)(20). In this way, section 13A-5-40(a)(20) is a different offense “in terms of moral depravity and of the injury to the person and to the public,” and thus a sentence of death would be grossly disproportionate if imposed for it. Coker, 433 U.S. at 598; see also Kennedy, 554 U.S. at 442–43 (“asking for capital punishment forces a moral choice on the child, who is not of mature age to make that choice,” and prolonged capital trial harms child victim or witness). Further, no other state has enacted a law making capital any similar offense, indicating death is inappropriate as a punishment for this offense. Coker, 433 U.S. at 593 (“[W]e seek guidance in history and from the objective evidence of the country’s present judgment concerning the acceptability of death as a penalty for” an offense.); Kennedy, 554 U.S. at 422–426 (national legislative consensus against imposition of death for rape of child indicates death grossly disproportionate to offense).

5. Lastly, section 13A-5-40(a)(20) fails to constitutionally “narrow” the class of defendants eligible to be sentenced to death in violation of the Eighth Amendment and Supreme Court law. The death penalty may not be imposed “under sentencing procedures that creat[e] a substantial risk that it would be inflicted in an arbitrary and capricious manner.” Gregg v. Georgia, 428 U.S. 153, 188 (1976). In considering the constitutional

requirements necessary to ensure that capital punishment is “imposed fairly, and with reasonable consistency,” Eddings v. Oklahoma, 455 U.S. 104, 112 (1982), the Supreme Court has held that states must meaningfully “narrow the class of murderers subject to capital punishment.” Gregg, 428 U.S. at 196; see also Zant v. Stephens, 462 U.S. 862, 877 (1983) (capital statutes must “genuinely narrow” class of people eligible for death penalty).

6. Thus, failing to bar the death penalty in this case would violate 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 respectfully petitions this Court to bar the imposition of the death penalty in Mr. Client’s case.

Respectfully submitted,

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[CERTIFICATE OF SERVICE]

[MOTION UPDATED ON 2/7/2025]