IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

DAVID PHILLIP WILSON, Petitioner, v. JOHN Q. HAMM, Commissioner, Alabama Department of Corrections, Respondent.	)	CASE NO. 1:19-CV-284-RAH-CSC *** DEATH PENALTY CASE ***

PETITIONER'S REPLY BRIEF
RE. MOTION FOR *BATSON* DISCOVERY

Pursuant to the Court's Order dated November 10, 2025 (Doc. 145), Petitioner David P. Wilson respectfully submits this Reply Brief concerning his motion for leave to file a motion for *Batson* discovery.

Mr. Wilson will address in this Reply certain disputed facts, the law of "good cause" for purposes of discovery, and his need to review the Law Enforcement Tracking System records (known as the LETS records) of two potential jurors. In support of his motion, Mr. Wilson replies as follows:

DISPUTED FACTS

1. Respondent summarizes the facts regarding the peremptory strike of Darran Williams ("DW") as follows: "DW (#73) was a 34-year-old man, the sixth strike. Per Maxwell, the State struck him due to his LETS record, which indicated that he had 14 speeding citations." Doc. 146, p. 4. But that is not what Mr. Maxwell said. At the *Batson* hearing, Mr. Maxwell testified that Mr. Williams was struck because he had "14 speeding convictions, *and* he had a LETS record." Doc. 76-15 at PDF 56-57, Bates 2419-20 (emphasis added). Mr. Maxwell was then asked by District Attorney Douglas Valeska, "Do we have *anything else besides* the speeding?" *Id.* (emphasis added). To which he responded, "I've got my – I have got in my notes that he had a LETS record… *And* 14 speedings." *Id.* (emphasis added). Thus, the State's justification for the strike at the *Batson* hearing was that there was or were some criminal record(s), *in addition to the 14 speeding tickets*, that were reflected in the LETS record. Notably, Mr. Maxwell's testimony was consistent with the State's claim during *voir dire* that the State was not concerned with speeding tickets: If it had only been speeding tickets, the prosecutors would not have struck DW. *See* Doc. 76-7 at PDF 52, Bates 1257.

2. In his factual statement, Respondent makes a passing reference to the fact that Mr. Wilson and the decedent were both white. The races of the defendant and decedent, however, are immaterial to Mr. Wilson's *Batson* challenge and should

not distract this Court. In *Powers v. Ohio*, the United States Supreme Court unequivocally held that "*Batson* recognized that a prosecutor's discriminatory use of peremptory challenges harms the excluded jurors and the community at large," not just the defendant, and as a result, "[t]o bar petitioner's claim because his race differs from that of the excluded jurors would be to condone the arbitrary exclusion of citizens from the duty, honor, and privilege of jury service." *Powers v. Ohio*, 499 U.S. 400, 406, 415 (1991).

3. Respondent states that Mr. Wilson's counsel could have "pressed Maxwell for more information about the LETS records" at the *Batson* remand hearing. *See* Doc. 146, p. 9. This factual statement is starkly at odds with the state-court record. At the *Batson* hearing, the prosecutors did not bring with them the LETS records on which they purportedly struck DW and Jehl Dawsey ("JD"). Instead, and for this reason, the prosecutors agreed to produce the LETS records after the hearing. Doc. 76-15 at PDF 49, Bates 2412 (Maxwell testifies that he does not have with him at the *Batson* hearing the "information that our office prepares."); Doc. 76-16 at PDF 126, Bates 2489. As a result, Mr. Wilson's counsel could not have successfully asked for more information about the LETS records during the hearing.

4. Although Mr. Maxwell made no reference to DW's age at the *Batson* hearing, as Respondent acknowledges, Respondent nevertheless suggests in his

response that DW may have been struck because he was only 34 years old. Doc. 146, p. 9. The universe of possible reasons that *may* have justified a peremptory strike is irrelevant when they were not the reasons that actually motivated the strike at trial, and thus Respondent's attempt to add an additional reason at this juncture is inappropriate. *Miller-El v. Dretke*, 545 U.S. 231, 252 (2005) ("A *Batson* challenge does not call for a mere exercise in thinking up any rational basis. If the stated reason does not hold up, its pretextual significance does not fade because a trial judge, or an appeals court, can imagine a reason that might not have been shown up as false.").

LEGAL ARGUMENT

I. THIS IS NOT THE TIME TO RULE ON THE MERITS. THE ONLY QUESTION IS WHETHER THERE IS GOOD CAUSE FOR DISCOVERY.

5. Petitioner is not asking this Court to rule on the merits of the *Batson* claim. This case is not yet ripe for a determination of the *Batson* issue. The parties have not briefed the substantive *Batson* claim, nor the preliminary questions of procedural default. The Court is not, at this point, in a position to declare that Mr. Wilson's *Batson* claim has no merit.

6. Despite this, Respondent rests his opposition to the *Batson* discovery motion precisely on the argument that Mr. Wilson's *Batson* claim has no merit. Respondent argues that Mr. Wilson "cannot show that the denial of his *Batson* claim in state court was contrary to or an unreasonable application of federal law, or an

unreasonable determination of the facts in light of the evidence presented. 28 U.S.C. § 2254(d).” Doc. 146, p. 8-9.

7. But that is not the question at this juncture, nor the legal standard for whether this Court should grant Mr. Wilson discovery on the *Batson* issues.

8. To be clear, Mr. Wilson’s *Batson* claim is *prima facie* meritorious, but he does not bear the burden of documenting its validity as a precondition for discovery directed to the issue.

A. *Mr. Wilson’s* Batson *Claim Is* Prima Facie *Meritorious.*

9. In his response, Respondent argues that even setting aside JD and DW’s LETS records, the Alabama Court of Criminal Appeals (“ACCA”) was reasonable in upholding the trial court’s *Batson* opinion concerning the peremptory strikes of JD and DW based solely on JD’s age and DW’s traffic history.

10. But contrary to Respondent’s argument, JD’s age and DW’s traffic history could not have been the race-neutral reasons on which the State based its strikes.

11. As Mr. Wilson has pled in his First Amended Petition (Doc. 114, ¶¶ 846-47), the State’s purported reason for striking JD based on his age is contradicted by JD’s statements during *voir dire*. Age alone as a class-based assumption is an improper ground on which to peremptorily strike a juror. *Ex parte Branch*, 526 So. 2d 609, 624 (Ala. 1987). At the *Batson* hearing, the State justified its age-based

strikes based on the abstract assumption that "younger people are less likely to invoke the death penalty than older people." Doc. 76-15 at PDF 51, Bates 2414. However, during *voir dire*, JD unequivocally stated that he *could* impose the death penalty. Doc. 76-7 at PDF 39-40, Bates 1244-1245. Thus, age as a proxy for likelihood of imposing death could not have been the race-neutral reason that led the State to strike JD at trial, and was therefore pretextual. As a result, the ACCA's determination was an unreasonable interpretation of the facts and an unreasonable application of federal law.

12. With regard to DW, Respondent alleges that his strike was not in violation of *Batson* because he had 14 speeding tickets, and thus the ACCA's determination was not unreasonable. But again, such an interpretation of the State's reasons for striking DW is an unreasonable interpretation of the facts. The 14 tickets alone could not have been why the state struck DW at trial. During *voir dire*, the prosecution specifically stated that they did not care about traffic violations. Doc. 76-7 at PDF 52, Bates 1257. Furthermore, during the *Batson* hearing, Mr. Maxwell alleged that the state struck DW because of the 14 tickets *and* a LETS record; thus, even assuming that the prosecution found the traffic tickets relevant at trial, it clearly did not believe that traffic tickets *alone* were sufficient. Doc. 76-15 at PDF 56, Bates 2419. Therefore, the 14 speeding tickets alone could not have been a non-pretextual race-neutral reason for the strike.

13. Thus, Mr. Wilson's *Batson* claim is *prima facie* meritorious. In any event, Respondent's opinion regarding the merits of Mr. Wilson's *Batson* claim as it currently stands is immaterial to this Court's decision on whether additional *Batson* discovery has the potential to justify relief.

B. *The Proper Standard of Review*

14. The proper question for the Court is whether the requested discovery materials would likely assist Mr. Wilson in making his case "to demonstrate that he is … entitled to relief." *Bracy v. Gramley*, 520 U.S. 899, 908-909 (1997). To show good cause for discovery, Mr. Wilson must demonstrate what he could prove if discovery was permitted.

15. At the *Batson* hearing, the State claimed that the prosecutors relied on LETS records in order to remove jurors with *any* criminal convictions, and implied that the LETS records contained criminal convictions *in addition* to traffic violations. Doc. 76-15 at PDF 56-57, Bates 2419-20. But based on the available criminal record database investigated by Mr. Wilson (*i.e.*, the Alacourt records), DW's LETS records will likely show only traffic violations. So the LETS records will demonstrate that the State was likely misleading the state court during the *Batson* hearing.

16. Such a conclusion is supported by contradictions in the record. First, it is not true that the State was interested in *any* criminal convictions during *voir dire*.

At trial, the prosecution explicitly stated that they did not care about traffic violations. *See supra.* Second, at the *Batson* hearing, the State also claimed that LETS records were incomplete. Doc. 76-15 at PDF 133-134, Bates 2496-2497. If they were concerned about a comprehensive list of jurors' criminal histories, it is unclear why they would have relied on the incomplete LETS database. Third, at trial, the prosecution failed to ask either JD or DW any questions about their LETS records. Doc. 76-7 at PDF 39-40, Bates 1244-45 (State questioning JD during *voir dire*); Doc. 76-7 at PDF 45-46, Bates 1250-51 (State questioning DW during *voir dire*). The State's failure to question a prospective juror regarding an issue that it propounds as a reason for striking him is compelling evidence that the reason is pretextual. *Miller-El v. Dretke*, 545 U.S. 231, 246 (2005). Thus, it appears that the State mentioned LETS records at the *Batson* hearing as a way to cover up race-based peremptory strikes. By implying (but not demonstrating) that the LETS records contained more serious convictions than traffic convictions, the State attempted to create a race-neutral reason for striking JD and DW.

17. Based on information available in the criminal records database Alacourt, Mr. Wilson expects that DW's LETS record will contain only speeding tickets. Doc. 114-37 (DW's Alacourt records); Doc. 114-38 (JD's Alacourt records). The LETS record will help Mr. Wilson demonstrate that the State's proffered race-neutral reason for striking DW was pretextual.

18. As indicated above, Mr. Maxwell clearly intended to proffer that the State had 14 speeding tickets *and additional convictions reflected in the LETS record.* Doc. 76-15 at PDF 56, Bates 2419. If DW's LETS record only shows traffic violations, as Mr. Wilson expects, the record would contradict what the State proffered at the *Batson* hearing. The LETS record will therefore show that the State's race-neutral reasons for striking DW were pretextual.

19. Mr. Wilson expects that JD's LETS record will show that he had no criminal convictions aside from minor traffic violations, including a speeding violation and a no seat belt violation, based on his Alacourt records. Doc. 114-38. As was the case with DW's LETS record, traffic convictions alone can only be a pretextual reason for striking JD, given that the State explicitly stated during *voir dire* that it did not care about traffic tickets. *See supra.* Thus, compounded with the fact that age was a pretextual reason for striking JD, the LETS record will show that the State's reasons for striking JD were pretextual.

20. The LETS records will also permit Mr. Wilson to prove that the ACCA's decision is an unreasonable application of clearly established federal law and rests on unreasonable findings of fact. Moreover, these LETS records will allow Mr. Wilson to prove his claim of ineffective assistance of counsel related to *Batson* and to establish "prejudice" for purposes of the "cause and prejudice" standard for procedural default analysis.

21. Petitioner has argued elsewhere at length why the ACCA's decision is an unreasonable application of *Batson* (Doc. 114, Claim VI.D, ¶¶ 884-899, incorporated herein by reference), and this is not the time for the Court to resolve this matter. That will require full briefing on the *Batson* claim. That is for another day.

II. RESPONDENT DID NOT RESPOND TO THE CASES PETITIONER RAISED.

22. Respondent merely re-states the general rule governing habeas discovery from *Bracy v. Gramley*, 520 U.S. 899 (1997), without applying the *Bracy* case to the specific facts of Mr. Wilson's case. Respondent also failed to address other specific legal authority raised by Mr. Wilson that favors discovery here.

23. *Bracy* holds that a habeas petitioner has demonstrated "good cause" and is entitled to discovery "where specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is . . . entitled to relief." *Bracy*, 520 U.S. at 908-09 (quoting *Harris v. Nelson*, 394 U.S. 286, 300 (1969)). In *Bracy*, Court held that the petitioner had shown good cause for discovery because he made "specific allegations" that his trial attorney may have acted in a way that enabled judicial corruption and jeopardized Mr. Bracy's rights at trial. Mr. Bracy's "specific allegations" were that his trial attorney had been a former associate of the trial judge, and at least one other past associate of the judge had been found corrupt. *Bracy*, 520 U.S. at 908-09. There

was no direct evidence that Mr. Bracy's trial attorney was corrupt. Thus, Mr. Bracy's allegations were "only a theory" based on surrounding evidence and "not supported by any solid evidence of petitioner's trial lawyer's participation in any such [corruption] plan" when the Court decided that he had good cause for discovery. *Bracy*, 520 U.S. at 908-09.

24. Mr. Wilson's allegations are far less speculative than the allegations in *Bracy*, and thus he is also entitled to discovery. The State has provided no argument to the contrary. Mr. Wilson has alleged that the LETS records requested will demonstrate that the LETS records show only traffic violations, and thus they were pretextual reasons for striking JD and DW. Mr. Wilson makes these allegations based on independent investigation into JD and DW's criminal records through publicly accessible databases like Alacourt, and thus his allegations are even more specific than the "theory" that justified discovery in *Bracy*.

25. The governing standard in *Bracy* was a post-AEDPA reaffirmation of the test set out in *Harris v. Nelson*, 394 U.S. 286 (1969), which was also affirmed post-AEDPA by the Eleventh Circuit in *Daniel v. Comm'r, Ala. Dep't of Corr.*, 822 F.3d 1248 (11th Cir. 2016). Although the AEDPA had a limiting effect on habeas review, it is evident that both the U.S. Supreme Court and the Eleventh Circuit sought to preserve the habeas court's critical authority to order supplemental discovery to help resolve a claim. *Harris* held that a habeas court should authorize

discovery "where specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is confined illegally and is therefore entitled to relief." *Harris*, 394 U.S. at 300. In *Harris* itself, the Court considered whether Fed.R.Civ.P. 33, which authorizes interrogatories in civil proceedings *without leave of court*, applies to habeas cases. The Court held that such expansive discovery, without leave of court, did not apply in habeas. However, the Court went on to hold that the All Writs Act authorizes habeas courts to order discovery if such discovery will aid the court to "properly 'dispose of the matter as law and justice require,'" and in such circumstances, it is "the inescapable obligation of the courts" to order such discovery. *Harris*, 394 U.S. at 300, 299. At the time when *Harris* was decided, the Federal Rules of Habeas Corpus had yet to be promulgated. But the promulgation of Rule 6 less than a decade after *Harris* reifies the Court's position that the authority to order discovery remains within the "scope and flexibility of the writ," and the Supreme Court has held that Rule 6 was intended to be consistent with *Harris. Harris*, 394 U.S. at 291; *Bracy*, 520 U.S. at 909.

26. In *Daniel*, the Eleventh Circuit held that "the particular facts of this case suggest good cause exists to warrant discovery." 822 F.3d at 1281. Mr. Daniel had moved for discovery "seeking access to a variety of records to substantiate his penalty phase ineffective assistance of counsel claim. He asked for records in the

possession of trial counsel and various state agencies that he cannot access without a court order." *Id.* Like Mr. Daniel, Mr. Wilson is also seeking documents that are in the possession of the prosecution and State authorities, to which he has no access without a court order.

27. Respondent correctly cites *Arthur v. Allen* as holding that "good cause for discovery cannot arise from mere speculation." 459 F.3d 1310, 1311 (11th Cir. 2006). But on its facts *Arthur* does not support Respondent's argument here. In *Arthur*, the Eleventh Circuit held that the petitioner was not entitled to discovery because the two affidavits on which the petitioner's discovery request relied were substantially retracted by their affiants, and the retractions included the sections most relevant to the petitioner's claim. *Arthur*, 459 F.3d at 1311. By contrast to the non-existent evidence substantiating the discovery request in *Arthur*, Mr. Wilson's allegations concerning the LETS records are based on careful investigations into the criminal records of JD and DW from available law enforcement databases, not "mere speculation." As a result, as Mr. Wilson has alleged earlier, he is entitled to discovery of the LETS records under *Arthur*.

28. Respondent has failed to address Mr. Wilson's argument from *Banks v. Dretke*, 540 U.S. 668 (2004). In *Banks*, the Supreme Court held that where a prosecutor has led defense counsel to expect that specified disclosures will be made during an earlier point in litigation, but has failed to make those disclosures, the

defense "cannot be faulted for relying on that representation." 540 U.S. at 671. In *Banks*, the State represented to the defense prior to trial that it would produce all exculpatory evidence, and thus discovery litigation was unnecessary. As a result, defense counsel relied on that representation and did not investigate whether a witness at trial was a police informant. Mr. Banks later discovered that the state suppressed the witness's relationship with the police and thus moved for discovery and an evidentiary hearing concerning the witness's role as a police informant during federal habeas proceedings. *Id.* at 682, 684. The district court granted Mr. Banks' request for discovery and an evidentiary hearing, and later granted habeas relief. *Id.* at 684-85. The U.S. Supreme Court later upheld the district court's decision that Mr. Banks was entitled to rely on the State's representations. Here, Mr. Wilson likewise cannot be faulted for relying on the State's representation during the *Batson* hearing that the State would produce the LETS records. Here, like the prosecution in *Banks*, the State has failed to fulfill its discovery obligation. Here, like Mr. Banks, Mr. Wilson is entitled to discovery.

29. In addition, Respondent has not attempted to distinguish the facts here from those in *Barbour v. Dunn*, where discovery was recently granted to a habeas petitioner in the Middle District of Alabama. No. 2:01-CV-612-ECM, 2021 WL 1215776 (M.D. Ala. Mar. 30, 2021). In *Barbour*, the court summarized the rule for supplemental discovery set out in *Bracy* and emphasized that under *Bracy*, "specific

allegations demonstrating good cause are sufficient for supplemental discovery under Habeas Corpus Rule 6." *Barbour*, at *4. And such "specific allegations" should be based on evidence such as affidavits. *Id.* To decide whether such "specific allegations" had been made, the habeas court must: "(1) review the essential elements of the petitioner's claim and then (2) consider whether the petitioner's specific allegations establish good cause for discovery under that claim. If good cause exists, supplemental discovery must be allowed." *Id.* Mr. Barbour raised an actual innocence claim. As a result, in the first step, the *Barbour* court determined the essential elements of Barbour's claim were: "(1) a petitioner asserting an actual innocence claim must proffer new evidence; and (2) the court must find that it is more likely than not that no reasonable juror would have found the petitioner guilty upon review of the record as a whole." *Id.* at *5. In the second step, the *Barbour* court found that the petitioner raised the following specific allegations showing how the requested evidence would help demonstrate his claim and thus entitled him to discovery: Mr. Barbour "specifically alleges that his confession was false and coerced, that DNA evidence will demonstrate its falsity, that numerous family members of the victim believe the real perpetrator was never brought to justice, and a host of other inconsistencies exist. Further, Mr. Barbour submitted new evidence in the form of numerous credible affidavits from key witnesses that another

perpetrator may have committed the crime, extending Mr. Barbour's allegations well beyond 'mere speculation' or 'pure hypothesis.'" *Id.* at *7.

30. Mr. Wilson has satisfied the same two steps as Mr. Barbour and is likewise entitled to discovery. Mr. Wilson raises a *Batson* claim. Under the first step outlined in *Barbour*, the court must consider the elements of a *Batson* claim. To prove a *Batson* claim, Mr. Wilson must first make a *prima facie* showing of racial discrimination in one or more peremptory strikes by the prosecution. It is uncontested that Mr. Wilson has done so by showing that Mr. Wilson was tried by an all-white jury after African-American veniremen were peremptorily struck. *Wilson v. State*, 142 So. 3d 732, 747-48 (Ala. Crim. App. 2010). At the second step of *Batson*, the burden shifts to the State to provide a race neutral reason for striking the jurors at issue. Here, the State contended that it struck JD and DW at least in part due to their LETS records, and it implied that the LETS records showed more than just speeding tickets. At the third step of *Batson*, the burden once again shifts back to Mr. Wilson to show that the reasons proffered by the State were pretextual. It is this third step of *Batson* that would be aided by additional discovery. Under the second step outlined in *Barbour*, Mr. Wilson must then make specific allegations indicating good cause for discovery. To do so, he must allege how the requested discovery would help prove the third element of his *Batson* claim. Mr. Wilson specifically alleges that LETS records were pretextual reasons for striking DW and

JD, and production of the LETS records would demonstrate that they were pretextual. Mr. Wilson makes the specific allegation based on the Alacourt records for DW and JD, which indicate that the two men had no criminal record aside from traffic tickets. In addition, based on the State's representations during the *Batson* hearing and during *voir dire*, the State did not care about traffic convictions and did not consider traffic convictions to be a reason to strike a juror. The LETS records will help Mr. Wilson show that the LETS records showed only traffic convictions, and therefore the State's race-neutral reasons for striking both jurors were pretextual. Mr. Wilson's specific allegations are thus not "mere speculation" or "pure hypothesis," but rather based on publicly available state criminal records, and like Mr. Barbour, he is entitled to discovery to prove his claim.

31. Respondent has not attempted to distinguish the facts here from those in other cases from this circuit where discovery was granted. In *Bowers v. U.S. Parole Comm'n, Warden*, the Eleventh Circuit held that a "unique history of bias and alleged political pressure" in the case was more than "mere speculation" and granted discovery on whether political pressure on the Parole Commission might have affected their decision in his case. 760 F.3d 1177, 1185 (11th Cir. 2014). In *In re Davis*, No. CV409-130, 2010 WL 11550005 (S.D. Ga. Apr. 27, 2010), the Southern District of Georgia granted the state discovery under the same *Bracy* standard, when the discovery would help the court determine when evidence

supporting Petitioner's actual innocence claim first became available. Such evidence was critical in resolving the Petitioner's actual innocence claim in *Davis*, as it would determine whether Petitioner delayed in bringing that claim. In *Gary v. Terry*, the Middle District of Georgia granted discovery for the petitioner to obtain bitemark evidence that may have been suppressed by the state in violation of *Brady v. Maryland*, 373 U.S. 83, 83 (1963). No. 4:97-CV-181 (CDL), 2005 WL 3534761, *4 (M.D. Ga. Dec. 23, 2005). The bitemark evidence also could have been used to substantiate the petitioner's claim that the trial court erred in denying him funds to hire his own forensic odontologist. Bite mark discovery could thus aid in proving essential elements of two claims: to determine whether the prejudice prong of *Brady* was satisfied in that case, and whether the State's case at trial would have been undermined had petitioner been granted funds for a forensic odontologist. *Id.* Like the other cases in this circuit where discovery was granted, the LETS records here will help to demonstrate Mr. Wilson's *Batson* claim. They are critical for this Court to determine whether Maxwell had attempted to mislead the court during the *Batson* hearing. In addition, here it is likewise beyond "mere speculation" that production of the LETS records would help Mr. Wilson prove that the State's purported race-neutral reasons for striking JD and DW were pretextual.

32. Respondent has also failed to address Mr. Wilson's argument that judicial economy favors providing Mr. Wilson with discovery. *Blackledge v. Allison*,

431 U.S. 63, 72 (1977). In *Blackledge*, the petitioner attempted to raise a claim concerning the validity of his plea bargain. The Court found that because his claim survived summary dismissal, he was entitled to procedures such as a motion for summary judgment or Rule 6 discovery and expansion of the record that would permit the judge to dispose of the habeas claim without a full evidentiary hearing.

33. Not only has Respondent failed to rebut any of the caselaw presented by Mr. Wilson in his discovery motion, Respondent has not presented this Court with caselaw that supports denying discovery. Discovery is thus due to be granted.

III. THE LEGAL ISSUES IN THIS CASE SURROUNDING *BATSON* BASICALLY REVOLVE AROUND THE QUESTION OF PREJUDICE.

34. The cluster of legal issues surrounding the potential *Batson* violation in this case revolves around the question of "prejudice." Prejudice is the heart of the matter in the substantive *Batson* claim, in the ineffective assistance of counsel claim related to *Batson,* and in the procedural default issues surrounding both the substantive *Batson* claim and the IAC *Batson* claim.

35. In order to brief the prejudice question—whether on the procedural default issues, or on the substantive *Batson* claim, or on the IAC *Batson* claim—Mr. Wilson must be allowed to review the LETS records that the prosecution used when it struck the jury. Those LETS records will allow Mr. Wilson to demonstrate that the

prosecutor proffered pretextual reasons for striking JD and DW. This is clear from the procedural context of the *Batson* claim in this case.

A. Procedural Context

36. Petitioner's trial counsel did not raise a *Batson* challenge during jury selection despite the fact that there was an egregious *prima facie* case under *Batson*. The prosecution struck all eight of the Black potential jurors—using three for cause challenges and five peremptory strikes—to ensure an all-white jury for the prosecution of a capital murder case in a county that was 25% to 29% African American.

37. On appeal, the Alabama Court of Criminal Appeals remanded the case to the trial court to conduct a *Batson* hearing. On return from remand, the trial court held a *Batson* hearing, at which the prosecutor proffered reasons for the strikes of two jurors based on their LETS records. Petitioner has detailed the factual history surrounding the LETS records in his Reply to Respondent's Answer to Petitioner's First Amended Petition. Doc. 135, Claim VI, pp. 214-223, ¶¶ 463-480 (incorporated herein by reference).

38. District Attorney Douglas Valeska and his assistant Gary Maxwell did not bring the LETS records to the *Batson* hearing on remand from the ACCA. As a result, defense counsel was not able to cross-examine Mr. Maxwell on the contents of the LETS records. For that reason, Mr. Valeska and defense counsel stipulated

that the LETS records would stand in as a replacement for the ordinary voir dire questioning that would have been available at trial. *See* Doc. 76-15 at PDF 125-26, Bates 2488-2489; Doc. 135, ¶ 465. At the *Batson* hearing, the prosecution promised to turn over the LETS records to Mr. Wilson. The prosecution stated:

> MR. VALESKA: And we have no problem with them submitting their documents, as he said, and make a copy. And we can submit ours –
>
> THE COURT: We have a copying machine we can make available to you. And it's –
>
> MR. VALESKA: That's fine. And we will provide to them –
>
> THE COURT: You can do that before you leave.
>
> MR. VALESKA: And what we have from LETS, we will provide to them.
>
> Doc. 76-15 at PDF 141, Bates 2504.

39. Mr. Valeska never provided the LETS records as promised. Mr. Wilson's counsel moved to supplement the record with the Alacourt records they promised on March 18, 2011. *See* Doc. 76-16 at PDF 5-14, Bates 2514-23. The trial court granted the motion to supplement on March 31, 2011. Doc. 76-16 at PDF 18-23, Bates 2527-32.

40. Mr. Wilson has raised several claims surrounding the potential *Batson* violation, including ineffective assistance of trial and post-conviction counsel for failing to prosecute properly the *Batson* claim. *See* Doc. 114, Claim IV.F, p. 353, ¶

767-770; Doc. 135, ¶ 378. For all of those claims, Mr. Wilson will need access to the LETS records to argue "prejudice."

B. Prejudice re. the Batson Claim

41. In his Amended Petition, Petitioner raised a *Batson* claim. *See* Doc. 114, Claim VI, p. 382-426, ¶ 829-899.

42. Respondent now claims, in his response to the discovery motion, that at the *Batson* hearing on remand from the ACCA, "The defense could have pressed Maxwell [the prosecutor] for more information about the LETS records, but instead, all they asked him on cross was whether he prosecuted and struck the jury in *State v. Floyd*." Doc. 146, p. 9. In other words, Respondent is now claiming a procedural bar on the *Batson* claim because counsel on remand failed to press on the LETS records.

43. Insofar as Respondent is now raising a procedural bar based on the failure of counsel at the *Batson* remand to ensure that the LETS records were placed in the record, two considerations preclude such a bar. First, counsel at the *Batson* remand hearing provided ineffective assistance of counsel that would provide "cause and prejudice" to excuse the default. Second, prosecutorial misconduct provides cause and prejudice, particularly insofar as the prosecutors did not follow up on their promise to supplement the record with the LETS records.

44. To establish "cause and prejudice," Mr. Wilson needs access to the LETS records.

C. Prejudice re. the IAC Batson Claim

45. Petitioner also raised a claim of ineffective assistance of counsel ("IAC") because of trial counsel's failure to raise the *Batson* challenge at the original trial. *See* Doc. 114, Claim IV.F, p. 353-354, ¶ 767-770 (henceforth "IAC *Batson* claim").

46. At trial, the prosecutors had the LETS records in their hands. Had a proper *Batson* hearing been held at that time, the LETS records would have been in the state record for all subsequent purposes. Doc. 114, Claim IV.F, p. 353, ¶ 767-770. Petitioner alleges that "had counsel raised the challenge contemporaneously, the State would have been required to produce the LETS records it relied on to strike Jurors Dawsey and Williams," and they would therefore have been placed in the state record and available to the federal court today. Doc. 114, ¶ 769.

47. There is no question that the first prong of the IAC analysis under *Strickland v. Washington*, namely the "deficient performance" prong, is satisfied in this case. *Strickland v. Washington*, 466 U.S. 668, 687 (1984) ("A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction or death sentence has two components. First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made

errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment."). Trial counsel clearly did not provide competent legal representation when they failed to raise a *Batson* challenge. The State conceded on appeal that a *prima facie* showing had been made. *Wilson v. State*, 142 So. 3d 732, 747-48 (Ala. Crim. App. 2010). No reasonable attorney would have failed to object.

48. The only question on the IAC *Batson* claim is whether the "prejudice" prong is satisfied. Again, Mr. Wilson needs the LETS records to establish prejudice.

D. Prejudice re. IAC of Rule 32 Counsel

49. Moreover, Respondent claims that the IAC *Batson* claim is procedurally defaulted because it "was not brought in Wilson's Amended Rule 32 Petition." Doc. 129, p. 84, ¶ 145. In his Reply to Respondent's Answer, Petitioner responds, *inter alia*, that state post-conviction counsel was ineffective for failing to raise the IAC *Batson* claim. *See* Doc. 135, ¶ 378 ("Insofar as any deficiency in the development of the factual basis in state post-conviction proceedings is attributable to the incompetent representation of Rule 32 counsel, Petitioner replies that any procedural default would be excused under the 'cause and prejudice' standard by the ineffective assistance of state postconviction counsel under *Martinez v. Ryan*, 566 U.S. 1 (2012), which prejudiced Petitioner.").

50. In order to assess the "cause and prejudice" standard regarding the IAC of post-conviction counsel, the Court will need to address the question of "prejudice." Once again, Mr. Wilson needs the LETS records to establish prejudice.

51. In other words, all roads lead to a "prejudice" analysis, and Mr. Wilson needs the LETS records to make his argument.

CONCLUSION

52. For the foregoing reasons, Mr. Wilson respectfully requests that this Court grant his motion for leave to file a motion for *Batson* discovery.

Dated this 12th day of January, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2026, the foregoing reply brief has been electronically filed with the Clerk of the Court and therefore a copy has been electronically served upon counsel for Respondent:

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