IN THE SUPREME COURT OF MISSISSIPPI

No. 2023-DR-01076-SCT

WILLIE JEROME MANNING

Petitioner,

v.

STATE OF MISSISSIPPI

Respondent.

BRIEF OF AMERICAN CIVIL LIBERTIES UNION AND AMERICAN CIVIL LIBERTIES UNION OF MISSISSIPPI, MISSISSIPPI OFFICE OF STATE PUBLIC DEFENDER, AND MISSISSIPPI NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE AS AMICI CURIAE IN SUPPORT OF PETITIONER

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INTRODUCTION

On June 18, 2010, at his sixth trial in this State, a majority-white jury convicted Curtis Giovanni Flowers, a Black man, of murdering four victims (three of whom were white) and voted to impose the death penalty. Nine years later, the U.S. Supreme Court reversed that decision based on the "extraordinary facts of [the] case." *Flowers v. Mississippi*, 588 U.S. 284, 288 (2019). Similar "extraordinary facts" exist here with respect to the conviction of Willie Jerome Manning, a Black man in Mississippi accused of killing two young white students.

Mr. Manning was convicted by a jury in which only 2 of 28 Black venirepersons sat on the jury. He was investigated by a sheriff who would later be caught procuring false testimony; prosecuted by a state attorney who famously re-prosecuted a Black defendant despite exonerating DNA evidence; and confronted with junk science such as eyeballing hair follicles and bullet markings. Those "extraordinary facts" not only call into question Mr. Manning's wrongful conviction and sentence, they run counter to the very fabric of the U.S. and Mississippi Constitutions, which aim to safeguard against such abuses of our criminal justice system.

Mr. Manning's story is not an outlier but part of a tragic pattern. In light of the statistics showing how often the system consigns Black defendants to a losing role, it is likely that, given his race, the crime, and the race of the victims, Mr. Manning never stood a chance to prove his innocence even before he entered a courtroom. The prosecution used every tool, except a fair trial, to create the perfect environment for the jury to convict Mr. Manning. Along with the false testimony described in Mr. Manning's petition, the jury selection for Mr. Manning's trial was replete with blatant racially motivated strikes that could never survive a *Batson* challenge today.

This Court, along with officials, attorneys, and judges, has employed numerous tools to recognize and remedy intentional miscarriages of justice, especially those informed by race. Now

that the false testimony has been revealed, the junk science negated, and the case whittled down to the circumstantial evidence that remains, Mr. Manning should be afforded the opportunity to actually be heard by an open-minded, evenhandedly selected jury. A fair trial, with real science, real testimony, and fairly chosen jurors, will bring everyone closer to the truth and give Mr. Manning his proper day in court. This Court should grant rehearing.

INTEREST OF AMICI CURIAE

The ACLU is a nationwide, nonprofit, nonpartisan organization with nearly two million members and supporters dedicated to protecting the principles embodied in the state and federal Constitutions and our nation's civil rights laws. The ACLU of Mississippi is its statewide affiliate and is committed to the same mission. The Mississippi Office of State Public Defender is a state agency charged with supplying training and technical assistance to people providing indigent defense services and representing people convicted of felony offenses on appeal. The Mississippi NAACP is a nonprofit organization that seeks to ensure the rights of all persons and eliminate racial hatred and racial discrimination. Amici all have a longstanding interest in explaining and defending constitutional rights at different stages of a criminal case.

SUMMARY OF ARGUMENT

This Court should grant Willie Manning's request for rehearing:

1. Black defendants face a heightened risk of false convictions. In this country, and in Mississippi more specifically, there is an undeniable, overwhelming pattern of false convictions of Black defendants for serious crimes. As a Black man, Mr. Manning faced an exponentially higher probability of false conviction than a white person accused of the same crime.

2. Multiple factors lead to that inequitable result. Mr. Manning's conviction was part of a broader pattern of law enforcement framing Black defendants for crimes through illegally

procured witness testimony and withholding *Brady* information.

3. Similarly, the prosecutor improperly eliminated Black individuals from the jury using racially suspect pretexts that would never survive a *Batson* review today.

4. Unlike a more diverse jury, the resulting jury, with only two Black people, was primed to wrongfully convict Mr. Manning.

ARGUMENT

I. Black Americans Face an Overwhelming Risk, and Likelihood, That They Will Be Wrongfully Convicted of Murder.

The statistics are uncontroverted: Black defendants in Mississippi face an outsized risk of false conviction. Even though Black people represent only 13.7% of the U.S. population, *see* U.S. Census Bureau, *QuickFacts, United States*, July 1, 2023,[1] since 1989, of the 3,604 exonerations nationwide identified by the National Registry of Exonerations ("NRE"), 53% of the exonerees were Black, *see* NRE Database.[2] "[I]nnocent black Americans are seven times more likely than white Americans to be falsely convicted of crimes." Samuel R. Gross et al., *Race and Wrongful Convictions in the United States 2022*, NRE at 1 (Sept. 2022). The statistics unique to Mississippi are even worse: Although Black people represent only 38% of the population of Mississippi, *see* U.S. Census Bureau, *QuickFacts, Mississippi*, July 1, 2023,[3] according to the NRE, of 29 Mississippi defendants who have been exonerated since 1989, 24, or 83%, were Black, meaning Black exonerated defendants appear at a rate of nearly 5-to-1 over white, *see* NRE Database.

The risk to Black defendants of wrongful conviction is especially acute when the accused faces murder charges. Black people make up 56% of all defendants exonerated in connection with murder charges. *See* NRE Database. By contrast, white people, who represent 75.3% of the U.S.

[1] Available at https://www.census.gov/quickfacts/fact/table/US/PST045221.
[2] Available at https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx.
[3] Available at https://www.census.gov/quickfacts/fact/table/MS,US/PST045223.

population, *see* U.S. Census Bureau, *United States*, *supra*, make up only 29% of defendants exonerated for murder, *see* NRE Database. To make the point even more starkly, Black defendants convicted of murder are approximately 80% more likely to be innocent than other defendants convicted of the same crime. *See* Gross, *Race and Wrongful Convictions*, *supra*, at 4.

The risk of wrongful conviction for Black defendants does not lessen in cases involving the death penalty: of murder exonerees identified by the NRE who faced death sentences prior to exoneration, 78 of 142, or 55%, were Black. *See* NRE Database. These exoneration cases typically carry similar attributes—a Black defendant and white victim(s), incorrect or perjured cross-racial eyewitness identifications, jailhouse confessions, junk science, and prosecutorial misconduct. Almost all of those factors were at play in Mr. Manning's case, calling into question the integrity of his conviction and sentence.

Black Defendants and White Victims. The victims of the crime for which Mr. Manning was convicted, Tiffany Miller and Jon Steckler, were white—a dynamic which further heightens the risk that Mr. Manning was convicted of, and sentenced to death for, a crime he did not commit. According to the NRE, disparities in the percentage of death sentences and executions in the United States for murders of white victims versus Black victims "suggest that innocent defendants who are charged with killing white victims are more likely to be sentenced to death, and sometimes no doubt executed, than those charged with killing Black victims." Gross, *Race and Wrongful Convictions*, *supra*, at 5. That Mr. Manning is Black heightens the risk of wrongful conviction even further; according to NRE data, "about 13% of murders by Black people have white victims, but 26% of innocent Black murder exonerees were convicted of killing white people." *Id.*[4]

[4] Notably, "[t]he pattern of harsh sentencing for murder convictions with white victims and lighter sentencing for those with Black victims is not restricted to death sentences[;] [i]f they avoid the death penalty, innocent murder defendants in white-victim cases are also more likely to be sentenced to life in prison than those charged with killing Black victims." Gross, *Race and Wrongful Convictions*, *supra*, at 5.

False Accusations and Perjury. Mr. Manning's conviction involved false accusations and perjury by three key witnesses at his trial. False accusations by trial witnesses are a common feature of wrongful convictions; of the 3,604 exonerations identified by the NRE since 1989, 2,312, or 64%, involved such misconduct. *See* NRE Database.[5] The exonerees whose cases involved perjury or other false testimony were disproportionately Black. For all exonerees identified by the NRE whose cases involved perjury or false accusations, 55% were Black, and when limited to exonerees who faced murder charges, 600 of 1,018, or 59%, were Black. *See id.*

Witness Tampering and Bribery. Testimony essential to the State's case against Mr. Manning was also the result of witness tampering. Witness tampering, which occurs "when a law enforcement officer tricks, persuades, or forces a witness to testify falsely against the defendant," is a common feature of murder convictions that lead to exonerations, especially where exonerees are Black. Samuel R. Gross et al., *Government Misconduct and Convicting the Innocent: The Role of Prosecutors, Police and Other Law Enforcement*, NRE at xii (Sept. 1, 2020). According to the NRE, witness tampering occurred in 44% of cases involving murder convictions of Black defendants. *See* NRE Database. By contrast, witness tampering occurred in only 38% of cases involving murder convictions overall and 25% of cases involving murder convictions of white defendants. *See id.*

Here, Earl Jordan testified that Mr. Manning confessed while in jail to murdering Miller and Streckler but has since submitted a sworn affidavit admitting that his testimony was false. *See* Mot. for Leave to File Successive Petition for Post-Conviction Relief, at 19-22. Frank Parker

[5] *See also* Rob Warden, *The Snitch System: How Snitch Testimony Sent Randy Steidl & Other Innocent Americans to Death Row*, Center on Wrongful Convictions 3 (Winter 2004-2005), available at https://perma.cc/63LF-6QYN (highlighting study finding 45.9% of all false capital convictions in the United States were driven by false testimony from an informant, making "snitches the leading cause of wrongful convictions in U.S. capital cases").

testified that he overheard Mr. Manning mention to another prisoner that he sold the gun that he used to kill Miller and Streckler on the street, but the prisoner who Mr. Manning allegedly told has since submitted an affidavit stating that Mr. Manning never made such a statement in his presence. *See id.* at 23-26. Paula Hathorn, Mr. Manning's former girlfriend, testified that she saw Mr. Manning on December 9 and did not see him again until December 14, but has since admitted she saw Mr. Manning on December 12—evidence which would have corroborated defense testimony regarding Mr. Manning's whereabouts the night of the murders. *See id.* at 26-27.

In short, as a Black Mississippian convicted of murder and facing a death sentence, Mr. Manning faced the overwhelming probability that he would be wrongfully convicted of murder. The profile of Mr. Manning as a Black male defendant with alleged victims who were white, coupled with known defects in the evidence used to convict him, significantly increased the likelihood of a wrongful conviction.

II. As Part of a Broader Pattern of Framing Black Defendants and Violating Rights, the Investigating Sheriff Procured False Testimony Implicating Mr. Manning.

This is not the first time Mr. Manning has been falsely accused of murder. Mr. Manning was also charged with the murders of two women, Alberta Jordan and Emmoline Jimmerson, in 1993, a year before he allegedly killed Miller and Steckler and a year before he was put on trial for that crime. There are two important points of overlap between this case and the earlier one: (1) the person who led the investigation in both cases was Sheriff Dolph Bryan, and (2) all, or almost all, of the key witnesses to the crimes later recanted or altered their testimony.[6] In fact, in both cases, critical witnesses explained that the sheriff had either threatened or bribed them—or

[6] Mississippi courts have found that Sheriff Bryan violated a defendant's constitutional rights at least twice, once by interrogating a child alone until he confessed to a murder, and once in a prior case against Mr. Manning unsuccessfully accusing him of a different murder. *See Edmonds v. Oktibbeha Cnty., Miss*., No. 1:09CV00070-B-D, 2010 WL 4942273, at *1 (N.D. Miss. Nov. 30, 2010), *aff'd*, 675 F.3d 911 (5th Cir. 2012); *Manning v. State*, 735 So. 2d 323, 331 (Miss. 1999).

both—to force them to make statements implicating Mr. Manning, and the sheriff told them what he wanted them to say.

In the Jordan-Jimmerson case, neighbors found the bodies of Jordan and Jimmerson on the floor of their apartment in 1993. *Manning*, 735 So. 2d at 331. They had been murdered six weeks after Steckler and Miller. Law enforcement struggled to find the culprit and made no arrest for well over a year before a tip implicating Mr. Manning reportedly led them to Kevin Lucious, a prisoner serving life sentences without parole in Missouri. *Manning v. State*, 158 So. 3d 302, 303 (Miss. 2015). At that time, Sheriff Bryan already had Mr. Manning on his radar as a potential suspect for the murders of Steckler and Miller. *Manning v. State*, 884 So. 2d 717, 721 (Miss. 2004). Lucious's testimony sealed Mr. Manning's fate—he was "[t]he only witness to testify that he saw Manning entering the women's apartment shortly before their bodies were discovered." *Manning*, 158 So. 3d at 303. He testified not only to that, but to having heard Mr. Manning make statements about needing money and about wishing he had done more to "them"—a statement the prosecution portrayed as a likely reference to the two victims. *Manning*, 735 So. 2d at 331.

Lucious later recanted his testimony that he saw Mr. Manning enter the apartment or heard him discuss the murders. *Manning*, 884 So. 2d at 721. He testified that Sheriff Bryan and David Lindley of the Starkville Police Department came to interview him and "threatened him with prosecution in Mississippi for those two murders if he did not sign the statement." *Id.* at 723. Importantly, there were other indicia of falsehood—for example, the police conducted a door-to-door canvas of the apartment complex after discovering the murder, and the apartment where Lucious allegedly lived when he claimed to see Mr. Manning enter the victims' apartment building was vacant. *See id.* at 727. Further scrutiny of the State's case revealed it was a house of cards, flattened both by the suppressed canvassing results as well as evidence of an alternate suspect (Jo

Jo Robinson) the State had never disclosed. *Id.* at 726-27. **As a result, 20 years after his conviction, this Court granted Mr. Manning a new trial and prosecutors dropped the charges**. *See Manning*, 158 So. 3d at 306.

As evidenced by the events in this case, *see supra* Part I-II, the witness intimidation and false testimony in the Jordan-Jimmerson case was an intended feature, not a "flaw," of Sheriff Bryan's cases against Mr. Manning. Under circumstances such as these, when law enforcement is willing to frame a man twice for murder, it is almost beyond question that more aspects of Mr. Manning's trial would fall far short of what he was constitutionally entitled to.

III. The Prosecution Improperly Eliminated Potential Black Jurors, and Its Use of Peremptory Strikes Would Not Survive a *Batson* Challenge Today.

A study analyzing jury-selection data examined cases in Mississippi's Fifth Circuit Court District between 1992 and 2017, under the district's Chief Prosecutor Doug Evans.[7] Evans had captured national attention when he drew condemnation from the U.S. Supreme Court in *Flowers*.[8] His 30-year tenure has come to be defined by his office's pernicious striking of Black jurors. Yesko, *supra*.

Under Evans' supervision, Mississippi prosecutors excluded Black prospective jurors at a rate nearly 4½ times that of white prospective jurors. Craft, *supra.* While the jury pool roughly reflected the racial makeup of the district, which was 40% Black, the analysis found "stark racial disparities at every step in the jury selection process." *Id.* Of the 1,275 prospective jurors struck by prosecutors using peremptory strikes, 71% were Black. *Id.* Overall, the prosecution chose to strike 50% of the eligible Black jurors and just 11% of eligible white jurors. *Id.*

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[7] Will Craft, *Mississippi D.A. Doug Evans Has Long History of Striking Black People from Juries*, APM Reports (June 12, 2018), https://features.apmreports.org/in-the-dark/mississippi-da-doug-evans-striking-black-people-from-juries.

[8] Parker Yesko, *Mississippi DA, Exposed for Striking Black Jurors, Leaves His Office on His Own Terms*, Bolts (June 30, 2023), https://perma.cc/BY5G-QPCZ.

The prosecutor in Manning's case, Forrest Allgood, who served as District Attorney of Eastern Central Mississippi from 1989 until 2015, has obtained a similar level of notoriety.[9] Allgood is prominently featured in the documentary film *Mississippi Innocence*, which chronicles the wrongful convictions and exonerations of Kenney Brewer and Levon Brooks, and Netflix's *The Innocence Files*.[10] Davis, *supra*, at 990. Allgood amassed a record of misconduct and reversed convictions throughout his tenure, and he was repeatedly held accountable by this Court. *See Holliman v. State*, No. 2010-KA-00397-SCT (Miss. 2011) (reversing conviction of Brian Holliman); *Edmonds v. State*, 955 So. 2d 787, 792 (Miss. 2007) (reversing conviction of Tyler Edmonds); *Butler v. State*, 608 So. 2d 314, 318-19 (Miss. 1992) (reversing conviction of Sabrina Butler, finding that Allgood committed misconduct by arguing to the jury that her failure to take the stand was an indication of guilt).

Allgood was also the prosecutor in the Jordan-Jimmerson case against Mr. Manning, and therefore implicated in the deluge of *Brady* errors concerning issues with Lucious's testimony that led the Court to throw out Mr. Manning's conviction. *See, e.g.*, *Manning*, 735 So. 2d at 343. In the documentary film's final interview, regarding the wrongful convictions and exonerations of Brewer and Brooks, Allgood states: "In a very real sense, the system failed in both these cases. But then yet and still, in a very real sense, the system worked. Nobody died." Davis, *supra*, at 995. That will not be the case here if this Court refuses to grant Mr. Manning a rehearing.

During Mr. Manning's trial in 1994, the prosecution used ***6 of 9*** peremptory challenges

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[9] Angela J. Davis, *Film Review: Mississippi Innocence and the Prosecutor's Guilt*, Geo. J. of Legal Ethics 989, 1008 (2012), available at https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=2968&context=facsch_lawrev.

[10] John Anderson, *'The Innocence Files' Sees the Devil in the Details of Criminal Injustice*, Am. Magazine (Apr. 17, 2020), available at https://www.americamagazine.org/artsculture/2020/04/17/innocence-files-sees-devil-details-criminal-injustice.

against Black potential jurors, leading to a jury with only two Black jurors in a county where 40% of the population is Black and where 28 of 85, or 33%, of the individuals in the venire were Black. *See Manning v. Epps*, 695 F. Supp. 2d 323, 347-48 (N.D. Miss. 2009); *see also Miller-El v. Dretke*, 545 U.S. 231, 240 (2005) (calling similar gap numbers—"[o]ut of 20 black members of the 108-person venire panel for Miller-El's trial, only 1 served"—"remarkable"). When pressed, the prosecution cited race-based or stereotypical attributes as explanations for striking these jurors, even going so far as to disqualify jurors for thinking O.J. Simpson was innocent or reading *Ebony* or *Jet*, magazines with predominantly Black audiences. *Manning*, 695 F. Supp. 2d at 350, 352. Had the trial court evaluated Mr. Manning's *Batson* challenges under the prevailing, and correct, legal standard, there is no doubt the composition of Mr. Manning's jury—and, potentially, the jury's decision to convict him—would have been different.

At trial, when Mr. Manning's defense counsel attempted to object to the prosecutor's strikes of Black jurors during voir dire, the trial court either dismissed his objections or suggested he present them later, then later stated that they had already been ruled upon. *Id.* at 348. On direct appeal, this Court discussed each juror, but found the claims barred. *Manning v. State*, 726 So. 2d 1152, 1183-86 (Miss. 1998). On post-conviction review, a federal district court reviewed Mr. Manning's claims and denied them. *See Manning*, 695 F. Supp. 2d at 349. Since then, Mr. Manning's repeated attempts to challenge this finding have been summarily rejected on procedural grounds. *Manning*, 726 So. 2d at 1185 ("Manning is procedurally barred from asserting this claim for error for failure to rebut the prosecutor's reason for the strike as pretextual."); *Manning v. State*, 2013 Miss. LEXIS 186 (Apr. 25, 2013) (finding Manning's *Batson* claim barred by the doctrine of *res judicata*).

The U.S. Supreme Court held in *Batson v. Kentucky* that the Equal Protection Clause

prohibits the racially discriminatory use of peremptory strikes during jury selection. 476 U.S. 79 (1986). In the decades since *Batson*, the Supreme Court has handed down a series of decisions reinforcing its central holding and elaborating on the factors a trial judge may consider in evaluating whether racial discrimination factored into a peremptory strike.

The watershed adjustment in courts' approach to *Batson*, however, was the U.S. Supreme Court's instruction in *Miller-El* that "***all*** of the circumstances that bear upon the issue of racial animosity must be consulted." 545 U.S. at 239 (emphasis added). As that Court noted, it had not "develop[ed] a comparative juror analysis last time," in a prior *Batson* case, but it explicitly did so in *Miller-El*. *Id.* at 241, 247. In that case, the Court also looked to "broader patterns of practice during the jury selection," such as how the prosecution shuffled the jury, its questioning about minimum acceptable sentences, and "widely known evidence of the general policy of [a] District Attorney's Office to exclude black venire members from juries." *Id.* at 253. The majority used at least four different *types* of evidence to show pretext, putting the prosecution's claimed non-racial explanations through the wringer. *Id.* at 241-48. Three years later in *State v. Snyder*, at oral argument, the U.S. Supreme Court took issue with Louisiana's position that the prosecution's repeated references to the O.J. Simpson trial were race neutral simply because neither Simpson's nor the defendant's race was mentioned. Transcript of Oral Argument at 36-37 (Dec. 4, 2007), *State v. Snyder*, 552 U.S. 472 (2008). Justice Souter described such a notion as "highly unlikely" and "not [evidence of] a critical mind at work." *Id*. *Miller-El* and later *Batson* cases demonstrate that a defense attorney could be as creative showing pretext for striking Black jurors as the prosecutor had been concealing it.

Applying the *Miller-El* and *Batson* lines of cases here makes clear Mr. Manning should have succeeded on his *Batson* claim—had he been given an initial opportunity to make one. There

were multiple instances when the prosecutor would strike a Black juror whose responses or behavior were the same as or more helpful to the prosecution than a white juror who was allowed to sit. Juror Christi La Marque Robertson, a Black man, was struck for reading publications about O.J. Simpson, but white jurors read those same periodicals and were accepted on the jury. *Manning*, 695 F. Supp. 2d at 350; *see Snyder*, 552 U.S. at 483 (Justice Alito, writing for the Court, finding a prosecutor's explanation that he chose to strike one Black juror because he had a conflicting obligation "implausib[le]" given that several of the white jurors had similar or more serious obligations and yet he had not sought to have them dismissed). The prosecutor stated he also struck Robertson because he had not filled in much of his questionnaire, but even the reviewing district court judge agreed that white jurors left as many if not more blanks in the form. *See Manning*, 695 F. Supp. 2d at 351-52.

At least three prospective Black jurors at Mr. Manning's trial—James Graves, Joyce Merritt, and Robertson—were struck for reading publications, *Jet* and *Ebony*, that were marketed to Black people and covered the trial of O.J. Simpson. *See id.* at 350. It is well settled that striking Black jurors for reading magazines marketed to Black people is tantamount to striking those individuals on the basis of race. *See, e.g.*, *Hernandez v. New York*, 500 U.S. 352, 371 (1991) (voir dire criterion closely associated with "certain ethnic groups" "should be treated as a surrogate for race under an equal protection analysis"); *Ricardo v. Rardin*, 189 F.3d 474, 1999 WL 561595 at *2 (9th Cir. 1999) (prosecutor's decision to strike Black juror who was reading *The Autobiography of Malcolm X* was not race neutral); *see also Flowers*, 588 U.S. at 302 (holding defendants may present "other relevant circumstances that bear upon the issue of racial discrimination" in making out discriminatory intent prong of *Batson* claim). Yet, the federal district court rejected Mr. Manning's *Batson* challenge, remarking that it was "not persuaded that the periodicals a person

reads is inherently based on race." *Manning*, 695 F. Supp. 2d at 350, *rev'd*, 688 F.3d 177 (5th Cir. 2012). But the question is whether the prosecutor used the magazines as a proxy for race, which he clearly did.

Post-*Miller-El* decisions also encourage courts to consider counsel's information on the history of State's use of peremptory strikes. As this Court has noted, attorneys "have manipulated *Batson* to a point that in many instances the voir dire process has devolved into 'an exercise in finding race neutral reasons to justify racially motivated strikes.'" *Flowers v. State*, 947 So. 2d 910, 937 (Miss. 2007). The prosecution of Mr. Manning is one instance in a long history of attorneys in this State who "persist in violating the principles of *Batson* by racially profiling jurors."[11] *Id.* at 939.

IV. Racially Discriminatory Use of Peremptory Strikes Created a Jury Primed to Wrongfully Convict Mr. Manning.

The prosecutor's conduct during jury selection created fertile ground for a false conviction and Mr. Manning's death sentence. For years, research has affirmed what many already believed to be true: on average, Black jurors are more skeptical of the police, more concerned with false convictions, and are less likely to convict Black defendants. Mona Lynch & Emily V. Shaw, *Downstream Effects of Frayed Relations: Juror Race, Judgement, and Perceptions of Police*, Race and Just. (2023) (citing studies that show Black Americans view police as substantially less fair, procedurally just, and legitimate than white Americans, and finding Black jurors are less likely to

[11] The discriminatory use of preemptory strikes has led this Court, as well as at least two Supreme Court Justices, to consider calling for their abolition. *See Flowers*, 947 So. 2d at 937 ("Because it is well recognized that the right to an 'impartial jury and fair trial' is guaranteed by our Constitution, but that 'the right of peremptory challenge is not of constitutional magnitude,' we would be well within our authority in abolishing the peremptory challenge system as a means to ensure the integrity of our criminal trials[.]"); *Batson*, 476 U.S. at 102-03 (Marshall, J., concurring); *Miller-El*, 545 U.S. at 266-67 (Breyer, J., concurring).

convict Black defendants).[12] The reason behind this skepticism is well founded. Black defendants make up 53% of the 3,200 exonerations listed in the NRE. Samuel R. Gross, et al., *Race and Wrongful Convictions*, *supra*, at 6-7. Innocent Black defendants are about 7½ times more likely to be convicted of murder. *Id.* 72% of murder prosecutions that led to exoneration included official misconduct—such as *Brady* violations or witness tampering—and convictions that led to those murder exonerations with Black defendants were almost 50% more likely to include misconduct by police officers. *Id*.

Studies have shown that the lack of racial diversity among jurors can seriously compromise the credibility, reliability, and integrity of the criminal justice system. Specifically, research suggests that less diverse juries spend less time deliberating, make more errors, and consider less perspectives than more diverse juries. *See* Samuel R. Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations*, 90 J. Personality & Soc. Psych. 597, 609 (2006). These less diverse juries create fertile ground for false convictions, as the jury is often less critical of the State's case, makes more factual errors, and provides less reason for their verdict. "[J]urors in diverse juries were more likely to deliver counterarguments and discount evidence lacking in reliability than jurors in non-diverse juries." Samuel R. Sommers, *Determinants and Consequences of Jury Racial Diversity: Empirical Findings, Implications and Directions for Future Research*, 2 Soc. Issues & Pol'y Rev. 65, 86-87 (2008). The difference between diverse and non-diverse juries does not come solely from the Black jurors; white jurors were also found to process "trial information more systematically" and were "less likely to believe the defendant was guilty when they were in a diverse group." Sommers, *On Racial Diversity and Group Decision Making*, *supra*, at 607.

[12] Available at https://doi.org/10.1177/21533687231178322.

Nowhere is this clearer than across the six trials of Curtis Flowers. *See Flowers*, 588 U.S. at 284. Across his six trials, only two resulted in hung juries. *Id*. at 287. Those two trials, *Flowers IV* and *Flowers V*, were the only two where at least over 20% of the jury was non-white. *See* Alicia Arman et al., *Flowers Case: Effects of Racial Makeup of Juries*, Table 1.[13] *Flowers IV* had 5 Black jurors out of 12, or 42% Black representation; *Flowers V* had 3 Black jurors out of 12, or 25% representation. When representation is more closely aligned with the overall population, juries are better at processing information and discounting evidence lacking in reliability, such as tampered witness testimony, unreliable eyewitness accounts, and perjury. *See* Sommers, *Determinants and Consequences of Jury Racial Diversity*, *supra*, at 86-87.

Irreparably, Mr. Manning's trial lacked this critically needed diverse jury. Had the jury been more representative of Starkville, it would have been better equipped to evaluate the unreliable and tampered-with testimony collected by the sheriff and put on by the prosecutor. Nevertheless, Earl Jordan's recent confession provides new evidence and an opportunity for this Court to right the wrong below by permitting the circuit court the opportunity to consider the totality of the evidence that should have been available to the jury during the initial trial.

CONCLUSION

For the reasons set forth above, this Court should grant Petitioner's motion for rehearing.

[13] Available at https://perma.cc/L8R4-GJ94.

THIS the 22nd day of November 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Ayanna Hill, hereby certify that I electronically filed the foregoing document using the Court's MEC system which sent notification of such filing to all counsel of record on this 22nd day of November 2024.

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