IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2017

No. _____

GREGORY HILL,

PETITIONER,

VS.

JAMES GAMMON, WARDEN

RESPONDENT.

On Petition For Writ Of Certiorari to the
United States Court Of Appeals For The Eighth Circuit.

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Gregory Hill's case raises pressing issues of National importance: Whether and to what extent the criminal justice system tolerates racial discrimination in selection of its jurors; and whether the federal court applied and imposed on Mr. Hill a unduly burdensome review which deprived Mr. Hill of his due process to a Constitutional review on his factual issues relative to his **Batson claim.** Wherein Eighth Circuit jurisprudence is that: **"no Court has established bright-line rules about how much a State Court must say or the language it must use to compel a §2254 Court's conclusion that the State Court has adjudicated a claim on the merits,"** see **Brown v. Lubbers**, 371 F.3d 458, 460-61 (8th Cir. 2004).

Does the above Eighth Circuit Ruling contravene this Court's Precedents of **Anderson v. Bessemer City**, 470 U.S. 564, at 573 (1985) which establish a bright-line rule when reviewing a discrimination claim or error; and does the above Eighth Circuit jurisprudence contravene Congressional Intent set out § 2254 and its Amendments which states: **"(1) that the merits of the factual dispute were not resolved in the State court hearing;**

"(2) that the factfinding procedure employed by the State court was not adequate to afford a full and fair hearing; and

"(6) that the applicant did not receive a full, fair, and adequate hearing in the State court proceeding and this Court's Precedent in **Thomas v. Keohane**, 516 U.S. 99, 111 116 S.Ct. 457 (1995)?

LIST OF PARTIES

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Gregory Hill respectfully petition for writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

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The March 28, 2018 order of the Eighth Circuit denying Mr. Hill's Notice of Appeal is unreported and attached as Appendix B.

The December 12, 2017 order of the District court denying Mr. Hill's 59(e) alter or amend motion is unreported and attached as Appendix C.

The November 8, 2017 order of the District court denying Mr. Hill's 60(b)(6) application is available at **Hill v. Gammon**, 2017 U.S. Dist. Lexis 184842 (decided Nov. 8, 2017) and attached as Appendix D.

The March 17, 2000 order of the habeas court denying Mr. Hill's 2254 application is available at **Hill v. Gammon**, 2000 U.S. Dist. Lexis 23482 (decided March 17, 2000) and attached as Appendix E. Appendix herein after App.

JURISDICTION

The Court of Appeals entered its judgment May 15, 2018, This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

This case involves a state criminal defendant's constitutional rights under the Fourteenth Amendment. The Fourteenth Amendment provides in relevant part:

In all criminal prosecution, trial or appeal, no State is at liberty to ..."deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

This case also involves the application of 28 U.S.C.S. § 2254(e) and its Amendments, which is pertinent here and provides in relevant part:

"... a determination after a hearing on the merits of a factual issue, made by a State court of competent jurisdiction in a proceeding to which the applicant for the writ and the State or an officer or agent thereof were parties, evidenced by a written finding, written opinion, or other reliable and adequate written indicia, shall be presumed to be correct, unless the applicant shall establish or it shall otherwise appear, or the respondent shall admit--

"(1) that the merits of factual dispute were not resolved in the State court hearing;

"(2) that the factfinding procedure employed by the State court was not adequate to afford a full and fair hearing;--

"(6) that the applicant did not receive a full, fair, and adequate hearing in the State court proceeding;..."

STATEMENT OF THE CASE

A. Introduction

By any measure, Mr. Hill's convictions is extraordinary. (1) At the close of voir dire, Mr. Hill's counsel objected and established a prima facie case of racial discrimination pursuant to Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712 (1986), of African Americans being stricken from jury selection. The State was ordered to give explanations as to why the State struck these blacks. Out of numerous strikes the State failed to rebut a race based objection by Mr. Hill's counsel. During the time of Mr. Hill's trial and direct appeal, the law of this Court clearly states: **"If the trial court decides that the facts establish, prima facie, purposeful discrimination and the prosecutor does not come forward with a neutral explanation for his action, our precedents require that petitioner's conviction be reversed** Batson, 106 S.Ct., at 1725, (quoting Whitus v. Georgia, 383 U.S., at 549-550; Hernandez v. Texas, 347 U.S., at 482; Patton v. Mississippi, 332 U.S., at 469. (2) During Mr. Hill's direct appeal his Batson claim was raised, the jurisprudence of the Eastern District Court of Appeal, was [t]hat a white male had standing to challenge the State's use of a peremptory challenges against black members of the venire pursuant to Batson. See Appendix F, State v. Pullen, 811 S.W. 2d 463, 465 (Mo.App.E.D. 1991). In Mr. Hill's case, out of the State's explanations for its strikes, the state volunteered its reasons for striking a WHITE juror, this reason was based in part on the juror's race. The Eastern District Court of Appeals did not apply the jurisprudence and standing which it had applied to Pullen just a few months prior

to deciding Hill's Batson claim. The court in fact failed to even mention or consult these two jurors, Marilyn C. Caine and Claudia Cuccua. As a result, the Eastern District Court of Appeals not only denied relief, it denied Mr. Hill's his substantive due process to a Constitutional review of his convictions, pursuant to Batson, which adopted the standard of **Anderson v. Bessemer City**, 470 U.S. 546, 573-575, (1985) which states in part: "Rule 52(a) does not make exceptions or purport to exclude certain categories of factual findings from the obligation of a court of appeals to accept a district court's findings unless clearly erroneous." **Id. at 574** (quoting **Pullman-Standard v. Swint**, 456 U.S., at 287. This Court in **Foster v. Chatman**, 136 S.Ct. 1737 (2016), reaffirmed, "in reviewing a ruling claimed to be a Batson error, all of the circumstances that bear upon the issue of racial animosity must be consulted." **Id.** (**quoting Snyder**, 522 U.S., at 478.

B. Pre-Trial Proceeding

In October of 1989 Gregory Hill was found guilty on two counts of rape, two counts of sodomy, 2nd degree robbery and felonious restraint. Mr. Hill was sentenced to life plus fifty years and as an class x offender.

C. Mr. Hill's State Proceedings

In March of 2015 Mr. Hill filed a Motion to Recall the Mandate in the Missouri Eastern District Court of Appeals, Pro Se, contending that the court of appeals decision was contrary to clearly established federal law of Batson and

Anderson. These Precedents set forth a bright-line rule, that a reviewing court must review the record in its entirety, and that failure to do so violates Mr. Hill's substantive due process to a meaningful review of the factual issues/merits of his Batson claim on his first appeal. Mr. Hill also raised and challenged the court of appeals decision not to apply **'controlling legal principals'** of **Powers v. Ohio**, 499 U.S. 400 (1991), which held: "a criminal defendant may object to race-based exclusion of jurors effected through peremptory challenges whether or not the defendant and the excluded juror shares the same race," to his then pending appeal. Mr. Hill's Recall Mandate Motion was summarily denied June 17, 2015. See App. G.

D. Mr. Hill's Initial State Habeas Proceedings.

1. In August of 2015 Mr. Hill filed into the Missouri Supreme Court his state habeas petition Pro Se, Mr. Hill knowing that no State circuit court has jurisdiction to overturn a decision of a appellate court. Mr. Hill continued to challenge the validity of the procedural mechanism of his Batson review in the appellate court and two failure to heed and give effect to the teaching of **Powers v. Ohio** and **Griffith v. Kentucky**, 479 U.S. 314 (1987). On October 27, 2015, the Mo. Supreme Court denied petition without prejudice pursuant to Rule 91.02 and 84.22, which states in part ..."the petition in the first instance shall be to a circuit or associate circuit judge for the county in which the person is held in custody..." App.

H.

2. In November of 2015 Mr. Hill filed in Washington County Mo. his petition for writ of habeas corpus challenging the mechanism affirming his convictions, to be set aside, due to the Eastern District Court of Appeals failure to apply clearly established federal law, of **Batson** and **Anderson** and two, failure to apply newly declared constitutional rule to criminal case pending on direct review. **Griffith**, supra 479 U.S., at 321-22. On January 26, 2016, Washington County Mo. summarily denied the petition. App. I.

3. In March of 2016 Mr. Hill filed his habeas petition before Mo. Appellate Court Eastern District, raising his initial claims, that the Mo. Appellate Court failed to apply clearly established federal law of **Batson** and **Anderson**, "clearly erroneous standard" to his Batson claim on review which encompasses reviewing the entire record (voir dire) and two, failure to apply newly declared constitutional law of **Powers v. Ohio**, to his then pending Batson claim on review. On April 12, 2016 the Mo. Appellate Court summarily denied Hill's petition. App. J.

4. On May 23, 2016 this Court announced **Foster v. Chatman**, 136 S.Ct. 1737 195 L.Ed 2d 1 (2016) which reaffirmed a reviewing court applying the "clearly erroneous standard" to a Batson claim, and reaffirmed "circumstances that bear upon the issue of racial animosity must be consulted". **Id.**

5. On June 27, 2017 Mr. Hill filed into the Mo. Supreme Court his habeas petition raising his initial claims filed

in his previous habeas petitions and Recall Mandate Motion to the State's Appellate Court, relying on this Court's Precedents of Foster v. Chatman, Snyder v. Louisiana, 552 U.S. 472, 478 (2008); Miller-El v. Dretke, 545 U.S. 231, 240 (2005); Batson; Anderson; Griffith v. Kentucky, and Powers v. Ohio. On October 5, 2017 the Mo. Supreme Court summarily denied Hill's petition. App. K.

E. Mr. Hill's Post-Foster and Buck v. Davis, 137 S.Ct. 759 (2017) Federal Habeas Proceedings.

On October 30, 2017, Mr. Hill filed a motion for relief from the District court's denial of his Batson claim that Mr. Hill raised in his initial federal habeas corpus petition. Rule 60(b)(6) motion, Hill v. Gammon, No.4:96CV-2510-CEJ(E.D. Mo. Oct. 30, 2017), App. D. Mr. Hill detailed two defects in the integrity of the State and Federal Court's proceedings and six facts and circumstances demonstrating the "extraordinary circumstances' justifying reopening of a final judgment under Rule 60(b)(6). Gonzalez v. Crosby, 545 U.S. 524, 535 (2005). Specifically:

1. Missouri Appellate Court applied State v. Kilgore, 711 S.W.2d 57, 62 (Mo.banc 1989) to Mr. Hill's Batson claim. The defect in the Kilgore Rule is that it narrows the United States Supreme Court's definition of the clearly erroneous standard by omitting a certain category from that Rule-(entire evidence);

2. By the State's failure to consider and determine all relevant factual issues that bear upon race, the federal habeas

court applying the presumption of correctness to Mr. Hill's **Batson** claim is a defect in the integrity of the federal proceedings;

3. As to the racial strike of black juror Dewilla Jennings, the record (voir dire) shows the prosecutor's shifting explanation which reeks of after thought and was a pretext for discrimination;

4. As to the racial strike of black juror Caldonia Hackney, the record (voir dire) shows that the prosecutor mischaracterized and misrepresented Ms. Hackney's voir dire testimony to the trial court;

5. As to the racial strike of black juror Kathleen Hubbard, the record (voir dire) shows that the prosecutor committed fraud upon the court;

6. As to the racial strike of black juror Aminne Jones, the record (voir dire) shows that the prosecutor fabricated facts to the trial court;

7. As to the racial strike of black juror Marilyn C. Caine, the record would show and support that the prosecutor failed to come forward with any explanation for his strike of this juror;

8. As to the racial strike of white juror Claudia Cuccua, the record (voir dire) would show and support that the prosecutor not only volunteered its reasons for the strike, the State's explanation is based in part on this juror race.

9. **Foster** and **Davis** now allow for federal courts review and the reopening of final judgments under Rule 60(b)(6), where

[r]elying on race to obtain a conviction in a criminal case, it thus injures not just the defendant, but the law as an institution, the community at large, it poisons public confidence in the judicial process. See **Davis**, supra, at 778 (2017).

See Rule 60(b)(6) Motion, App. D at 10-20, (E.D.Mo. Oct. 30, 2017), Doc. No. 45.

In adjudicating this 60(b) motion, the district court recognized that Mr. Hill "attacked... the defect in the integrity of the proceedings", beginning with the State Court not applying the federal standard. App. D at 28. The district court failed to recognize or did not even mention that Mr. Hill attacked the integrity of the federal habeas court. See App. D. at 2. Which states clearly: **"In Gonzalez, a motion that, like Gregory challenges a defect in the integrity of the federal habeas procedding, Id. 532, (showing extraordinary circumstances requirement) Id. at 535 and, the failure to reach the merits, Id. at 538 does not warrant such treatment, and can therefore be ruled upon by the District Court without precertification by the Court of Appeals pursuant to § 2244(b)(3)" Id. at 538.** The district court concluded that Mr. Hill did not obtain certification to file a successive writ from the Eighth Circuit and that because petitioner had not made a substantial showing of a denial of a federal constitutional right, the district court did not issue a certificate of appealability. App. D at 28.

All post Foster and Davis federal habeas proceedings appear

in the opinion below on page 1 herein.

It is perfectly consistent with this Court's jurisdiction and practices to review a lower federal or state court decision in order to ascertain whether a federal question may be implicated in an unreasoned summary order, see e.g. R.J. Reynolds Tobacco Company v. Durham County, 479 U.S. 130, 136-139 (1986); Cf. Sears v. Upton, 561 U.S. 945 (2010); also this Court has jurisdiction under 28 U.S.C. § 1254(1) when a district court or a Circuit Court's decision implicates a federal right. That condition is satisfied here.

REASON FOR GRANTING THE WRIT

The district court's decision contravened this Court's Precedent and deepened the Circuit Courts jurisprudence in a case raising an issue of national significance: Whether the criminal justice system will tolerate a conviction obtained after a State actor failed to refute a prima facie case of racial discrimination, by not coming forward with a race neutral explanation for his strike and that through the State's unequivocal race based strikes of juror Claudia Cuccua in part on race, in violation of not only Mr. Hill's 14th Amendment right, but also the right of the excluded juror.

This Court has repeatedly stressed that racial discrimination in the administration of justice is exceptional, and that courts must be particularly vigilant about eliminating it in the court rooms. Disregarding this settled precedent, the 60(b) court

concluded that the habeas court considered and denied both petitioner's Batson claim on the merits, citing the Report and Recommendation DOC #32 at 11-16, App. D. at 28. This assertion and ruling is contrary to the record and an unreasonable application of clearly establish federal law, as determined by this Court.

FOR ALL THESE REASONS, AND THOSE DISCUSSED MORE FULLY HEREIN, CERTIORARI SHOULD BE GRANTED.

Certiorari should be granted because reasonable jurists could unquestionably debate not only the extraordinariness of the circumstances identified by Mr. Hill, but whether Batson's factual issue[s] not adjudicated by State Court extend beyond 28 U.S.C.S. 2254 Statutory Presumption of correctness and, to clear up the Eighth Circuit and its sister Circuits mis-interpretation, that, **"no Court has established bright-line rules about how much a state court must say or the language it must use to compel a 2254 Court's conclusion that the state court has adjudicated a claim on the merits".** Brown v. Lubbers, 371 F.3d 458, 460-61 (8th Cir. 2004).

Mr. Hill "faces convictions whose reliability was fundamentally compromised by the race-based strikes of the State of Missouri."

As explained in detail above and those discussed more fully herein, Mr. Hill's 60(b) application pled numerous exceptional circumstances including the following Batson's factual issues

not adjudicated by the State Court;

All Reference of Each Juror is Found In The Record (Voir dire) Herein App. L. pp. 1-325.

A. There is no doubt that Gregory's trial counsel objected to and established a prima facie case of racial discrimination before the trial court which encluded, black juror Marilyn C. Caine. App. L, p. 303, line 7-21. The record is totally void of the state's explanation as to why it struck this juror, see App. L, pp. 300-25. Further, the Missouri Court of Appeals during their review of Mr. Hill's **Batson** claim, failed to determine the merits of this factual issue, the State appellate court made no, written finding, written opinion, or any other reliable and adequate written indicia, to where the presumption of correctness can be applied. See App. M at pp. 7-8 **State v. Hill**, 808 S.W.2d at 888-890. This Court precedents beginning as far back as one hundred thirty seven years ago, sought to eradicate racial discrimination from its court rooms. See **Strauder v. West Virginia**, 100 U.S. 303 (1880). This Court has a trilogy of precedents reaffirming this jurisprudence and law every since. The law and jurisprudence of **Batson** require, **"If the trial court decides that the facts establish, prima facie, purposeful discrimination...,** as it was in Mr. Hill's case ..."**and the prosecutor does not come forward with a neutral explanation for his action, our precedents require that petitioner's conviction be reversed"**. **Batson**, 476 U.S., at 99)(quoting **Whitus v. Georgia**, 385 U.S., at 549-550; **Hernandez v. Texas**, 347 U.S., at 482; **Patton v. Mississippi**,

332 U.S., at 469. To apply the Statutory Presumption of Correctness standard to the factual issue of Marilyn C. Caine is not only a defect in the integrity of the habeas proceedings, but deny Mr. Hill his right under the due process clause of the 14th Amendment to a full and fair review in federal court and, 60(b)(6) can and should reopen Mr. Hill's first habeas corpus proceeding.

B. There is no doubt that App. L, voir dire record will show not only that the prosecutor volunteered it's reason for striking white juror Claudia Cuccua, but that reason is based in part on her race and the trial court stated on the record, **"I don't want to hear about all these other jurors."** See App. L, p. 306, line 6-25 and p. 307, line 1-14. Further, the Missouri Court of Appeals during their review failed to determine the merits of this factual issue, the appellate court made no, written finding, written opinion, or any other reliable and adequate written indicia, to where the presumption of correctness can be applied. In this case, this Court's Precedent also controls, **Griffith v. Kentucky**, 479 U.S. 314 (1987), which held: **"That on direct review, a new constitutional rule must be applied retroactively "to all cases, state and federal." at Id. 328.** Mr. Hill direct appeal was pending when this Court announced **Powers v. Ohio**, 499 U.S. 400 (1991) which held: **"A criminal defendant may object to a race based exclusions of jurors effected through peremptory challenges whether or not the defendant and the excluded juror share the same race." Id. at 404-416.**

The order in State v. Hill, 808 S.W.2d 882, 888-890 (Mo.App.E.D. 1991) and attached as App. M at pp. 7-8, shows the court never mentioned these two jurors in their review and opinion. However, the district court prior to reaching its determination recognized and acknowledged: **"Petitioner presented the same factual grounds, the Batson challenges and the prosecutor's admitted consideration of gender as a basis for his peremptory strikes, but before this Court he argues a different legal theory than argued before the state courts."** App. E at p.5. Further, the district court's March 17, 2000 order in Hill v. Gammon, held: **"These findings of fact, which defeat Petitioner's Batson argument, are supported by the record and are presumed to be correct."** at App. E at p.6. To apply the Statutory Presumption of Correctness standard to this factual issue of Claudia Cuccua is a defect in the integrity of the habeas corpus proceeding. However, the habeas court failed to reach the above factual issues of Marilyn C. Caine and Claudia Cuccua, which Mr. Hill raised in his initial habeas proceeding as being struck based on race and gender. Petitioner's Memorandum of Law in Support for writ of habeas corpus claim 1, Doc #6, See App. N at 10-11.

This case, should serve as a "prototype" or paradigm for the federal Circuit Courts mis-interpretation, that "no Court has established bright-line rules about how much a State court must say or the language it must use to compel a 2254 Court's conclusion that the State court has adjudicated a claim on

the merits"; **Brown** at 461 (8th Cir. 2004). In context of a **Batson** review in a 2254 proceeding, said mis-interpretation contravenes clearly established federal law set out in **Anderson v. Bessemer City**, 470 U.S. 564, 573 (1985). The **Batson** Court adopted **Anderson** as its standard **"bright-line rule"** for a reviewing court **Id. at 573.** This **bright-line rule** dictates exactly what a court must undertake in its review, i.e. review of the entire evidence and all relevant circumstances that bear upon the issue of racial animosity; these issues must be consulted. See **Foster v. Chatman**, 136 S.Ct. 1737 (2016); **Snyder**, 552 U.S., at 478.

Foster, **Snyder**, **Batson** and **Anderson** principals are not contrary to 2254 and its amendments, specifically the statutory presumption of correctness. This Court's precedent recognized and acknowledged in **Thompson v. Keohane**, 516 U.S. 99 (1995), that 2254 Statute list eight exception to the presumption of correctness, **Id**, **at 111.** These exception establishes **bright-line rule[s]**, which state and federal courts must follow. Where there is no written opinion, evidenced by a written finding or other reliable and adequate written indicia, by a state court, the presumption of correctness can not be applied. Three of the exceptions are applicable here: **"(1) that the merits of the factual dispute were not resolved in the State court hearing;"**

"(2) that the factfinding procedure employed by the State court was not adequate to afford a full and fair hearing;"

"(6) that the applicant did not receive a full, fair, and

adequate hearing in the State court proceeding;" See App M State v. Hill, 808 S.W.2d 882, 888-890 (1991) at pp. 7-8, See also App. P pp. 5-6. §2254. State custody; remedies in Federal courts.

Mr. Hill has shown where there was no written opinion, finding or any other reliable and adequate written indicia by the State courts as to jurors listed above. Mr. Hill now shows that the factfinding procedure employed by the State Appellate court was not adequate to afford a full, fair and adequate hearing and that Mr. Hill did not receive a full, fair, and adequate hearing in the State court proceeding.

This Court in Miller-El v. Dretke, 125 S.Ct. 2317 (2005), clarify Batson and did not establish new rules of criminal procedure, the Court did not merely review the reasons that the prosecutor gave for peremptory striking the African-American jurors; instead it also considered the voir dire questions that the prosecutor had posed to the various jurors. Id. at 2333-38.

The State appellate court reviewed Mr. Hill Batson claim under the standard of State v. Kilgore, 711 S.W.2d 57, 62 (Mo.banc 1989), which narrows this Court's Precedent of Anderson v. Bessemer City, "clearly erroneous standard" when applied to a Batson claim on review. The Kilgore rule omitted the category of reviewing "entire evidence" from its review. The factfinding procedures of Kilgore, did deny Mr. Hill a full, fair and adequate hearing in State court on the factual issue[s] of his Batson claim, which left factual dispute unresolved.

See App. O **State v. Kilgore**, 711 S.W.2d at Headnote 6 and at 62. The inadequate standard of the **Kilgore rule** is an unreasonable application of clearly established federal law of **Anderson** and when applied to Mr. Hill's **Batson** claim on review violated Mr. Hill substantive due process right implicit in the 14th Amend. to a full, fair and adequate hearing on direct appeal.

The Missouri Court of Appeals decision's was "contrary to" federal law, 28 U.S.C. § 2254(d)(1), because the court used an incorrect legal standard in not considering the **"totality of the relevant facts" and "all relevant circumstances" surrounding the peremptory strikes**, see **Batson**, **Id. at 94-96**, it rested its decision solely on the prosecutor's reasons for its strikes. See App. M **State v. Hill**, 808 S.W.2d 882, 888-890 (1991) at pp. 7-8. The totality of all relevant facts and all relevant circumstances, not considered by the State Appeal Court in their determination of each of the following jurors can be found in the record vire dire.

Black juror Ms. Dewilla Jennings, was liked by the prosecutor, but the State thought she was being candid in response to questions about a Williams Jennings who was tried by the Circuit Attorney Office. See App. L at pp. 247-248 and P. 249, line 8-15. The court allowed the prosecutor to further question Ms. Jennings about his concerns. Ms. Jennings said her husband name was **Ora Jennings** and not Williams Jennings. The State admitted to knowing **Ora Jennings** and claimed to had seen him many times. See App. L. pp. 295-298. There were no

other questions about **Ora Jennings** or any questions as to any relation between Ms. Jennings and Williams Jennings by the State. At the **Batson** hearing the State's explanation shifted, all the things and reasons the State liked her shifted against Ms. Dewilla Jennings see App. L at 317-318 which reeks of after thought, which this Court calls a sham, a pretext for discrimination in **Foster**, 136 S.Ct. 1737, L.Ed 3d at 20-21 (2016); and **Miller-El II**, supra 125 S.Ct., at 2328 (2005).

Black juror Ms. Caldonia Hackney, the prosecutor mischaracterizied and misrepresented Ms. Hackney's voir dire testimony to the trial court. The prosecutor asked Ms. Hackney about her prior jury service, her response was selection only. See App. L at p. 115 line 9-11. The prosecutor then proceeded and asked Ms. Hackney a compound and obfuscated question. **"Any experience with crime or the criminal justice system at all?"** Ms. Hackney, **"No."** See App. L pp. 274-275. At the **Batson** hearing one of the prosecutor reasons for striking Ms. Hackney **"that she had no prior jury service of any sort." that sheet indicated "yes." I asked her. She indicated "no."** See App. L pp. 319, line 11-25 and p. 320 line 1. This should not have been accepted by the Missouri Appeals Court without further inquiry, however, the record is inconsistent with that explanation. Step three of **Batson** inquiry involves an evaluation of the prosecutor's credibility and the best evidence of discriminatory intent often will be the demeanor of the attorney who exercises the challenge. See **Snyder**, 522 U.S. 472, 480 (2008); **Miller-El v. Cockrell**, 537 U.S. 322, 339 (2003); **Purkett v. Elam**, 514

U.S. 765, 768 (1995); **Hernandez v. New York**, 500 U.S. 352, 365 (1991) and **Batson**, supra at 98 (1986).

Black jurors Kathleen Hubbard and Aminne Jones was struck by the State for reason, the prosecutor claimed each juror indicated they wanted off the jury. See App. L pp. 307, line 16-19, p. 309, line 7-20. Further inquiry into the record voir dire, the Missouri Appeals Court would have found that the record would have been inconsistent with that explanation. Again, step three of **Batson**, involves an evaluation of the prosecutor's credibility. However, by applying the wrong legal standard, the credibility of the prosecutor and the record went un-examined by the State court which is contrary to **Batson**.

Further, when the state uses the wrong legal standard, the rule of deference does not apply. The **Kilgore** rule allows Missouri Appeals Courts to be less intrusive when reviewing a **Batson** claim, and therefore violates the Constitution. This Court should hold that the **Kilgore standard**, as currently interpreted by the Missouri Court of Appeals, does not satisfy the constitutional requirement laid down in **Batson** or **Anderson**.

F. The District Court Failed to Undertake The Equitable Rule 60(b) Inquiry Mandated by This Court's Precedent.

The District court disregarded this Court's precedent establishing that Rule 60(b) is an equitable remedy, which "provides courts with authority 'adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice." **Liljeberg v. Health Servs. Acquisition**

Corp., 486 U.S. 847, 863-64 (1988)(quoting Klapprott v. United States, 335 U.S. 601, 614-15 (1949). As with any equitable standard where the touchstone is accomplishing justice, a Court must "examine all of the circumstances" to determine whether "collectively [they establish] extraordinary circumstances for purpose of Rule 60(b). See Klapprott, 335 U.S., at 615 (analyzing circumstances collectively in concluding that reopening the judgment was appropriate under Rule 60(b)).

Instead of following this equitable, holistic approach, the district court diluted the full weight of the circumstances identified by Mr. Hill, for example, the district court deemed **"In denying habeas relief, this court also considered and denied petitioner's claim on the merits. [32 at 11-14]."** See App. D at pp. 27-28. By discounting, these circumstances identified by Mr. Hill, the district court concluded that petitioner's petition was successive. The district court failed to undertake the equitable, case-specific analysis mandated by this Court's precedents **Buck v. Davis**, 137 S.Ct. 759, 777-778 (2017)(quoting **Rose v. Mitchell**, 443 U.S. 545, 555 (1979); **Davis v. Ayala**, 135 S.Ct. 2187, 2208 (2015); See also **Liljeberg**, 486 U.S., at 864 (1988). The district court undermined the integrity of both petitioner's convictions and the criminal justice system overall. Yet, the district court failed to consider the extraordinary circumstances identified by Mr. Hill and improperly treated Mr. Hill's case like any other involving a successive claim. The only way that the district court reached such a patently incorrect conclusion is by disregarding the

facts at the heart of Mr. Hill's case. To reiterate, Mr. Hill's claim is that by the habeas court applying the statutory presumption of correctness to Mr. Hill's factual issues of his **Batson** error, not adjudicated in State court, the integrity of the initial habeas court was constitutional flawed.

CONCLUSION

For all of the foregoing reasons, Mr. Hill's case is extraordinary. At a minimum, Justices of this Court could conclude, to apply §2254 Statutory Presumption of Correctness to factual issues in the context of a **Batson** error not adjudicated by a State court, is a defect in the integrity of a habeas proceeding.

In sum, this Court's review is warranted to resolve, a **bright-line rule** was and is established by this Court when reviewing a **Batson** error or claim, and that **Rule 52(a)** "does not make exceptions or purport to exclude certain categories of factual finding from the obligation of a court of appeals..." **Anderson**, 470 U.S., at 574 (1985).

RESPECTFULLY SUBMITTED

Gregory Hill

GREGORY HILL PRO SE