No. 18-7527
CAPITAL CASE

In the
SUPREME COURT of the UNITED STATES

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DAVID WILSON,
Petitioner,
v.

STATE OF ALABAMA,
Respondent.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE ALABAMA SUPREME COURT

BRIEF IN OPPOSITION

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CAPITAL CASE
QUESTION PRESENTED
(Restated)

1. David Wilson confessed to beating an elderly man with a baseball bat and choking him with cords before leaving his victim for dead. Before trial, the State told Wilson's counsel that it had received a letter from Catherine Corley (one of Wilson's accomplices), in which she stated that she had struck the victim with a baseball bat until he fell down. The State also informed Wilson's counsel that it believed the letter was written by Corley. Wilson never requested the letter before trial, nor did he argue on direct appeal that he was entitled to the letter under *Brady v. Maryland*.

   (a) Is Wilson precluded from raising his *Brady* argument in state post-conviction proceedings because the issue "could have been but was not raised at trial" or "on appeal"? Ala. R. Crim. P. 32.2(a)(3), (5).

   (b) Was Wilson's trial counsel ineffective for failing to obtain the Corley letter, even though the letter would have been inadmissible under Alabama law governing hearsay?

2. After police found the body of Wilson's victim and interviewed two of Wilson's accomplices who identified Wilson and described Wilson's involvement in the robbery and murder, the police arrived at Wilson's mother's home to question Wilson. His mother allowed the police in while she woke up Wilson. Wilson then agreed to join the police at the station, waived his *Miranda* rights, and provided a statement to police. Wilson's trial counsel unsuccessfully moved to suppress the statement and evidence gathered as a result thereof, arguing that the arrest was illegal. Were counsel ineffective for failing to more extensively discuss *Kaupp v. Texas* in their suppression motion, even though the police in *Kaupp* admitted that they did not have probable cause to arrest the defendant, while the police here had probable cause to arrest Wilson?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

STATEMENT OF THE CASE

Dewey Walker was a 64-year-old man who suffered from cancer. On the afternoon of April 6, 2004, David Wilson dropped by Mr. Walker's house and spoke with him. *Wilson v. State*, 142 So. 3d 732, 749 (Ala. Crim. App. 2010). Wilson knew both Walker and Walker's son Chris, and Wilson had previously been inside the elder Walker's home. *Id.* at 812. Wilson would return that night to rob and then kill Walker.

The evidence presented at trial showed that Wilson broke into Walker's home by breaking open a hole in the drywall toward the back of Walker's home. Wilson cased the house for valuables until Walker arrived home. Wilson then viciously attacked Walker with a baseball bat before strangling him with a computer-mouse cord and an extension cord. *Id.* at 781. During the onslaught, Walker sustained: 1) multiple fractures to his skull; 2) eight broken ribs; 3) a fractured sternum; 4) ligature marks on his neck; and 5) a contusion on his lung. When he had finished with him, Wilson left Walker on the floor of his house to die. *Id.*

This violence was even more shocking because it was planned. As Wilson later told police officers, he and three others—Matthew Marsh, Michael Jackson, and Catherine Corley—had previously discussed "hitting Mr. Walker and knocking him out and taking the keys" to Walker's van, which contained stereo equipment worth an estimated $20,000. *Id.* at 749. According to Corley, "Wilson was to get

half of the audio equipment from [Walker's] van because he had taken all of the chances in [the] burglary, theft and murder." *Id.* at 765. For several days, Wilson's violent acts went unnoticed. Indeed, "Wilson and his accomplices returned to Walker's house many times." *Id.* at 781. One time, Wilson took Corley into Walker's house because she wanted to see Wilson's body. "According to Wilson, Corley was excited by and a little thrilled with seeing Walker's body." *Id.*

But after a few days Walker's supervisor at work went to Walker's house to check on him. After he twice failed to make contact, Walker's supervisor spoke with Walker's neighbor, who called the police. On April 13, Officer Lynn Watkins and Officer Rhett Davis of the Dothan Police Department responded to the call and conducted a "welfare check" at Walker's house. *Id.* at 748. Watkins walked around the house and discovered that someone had broken into an exterior storage area and then broken through a wall to enter the house. *Id.* at 748-749. Entering the house the same way, Watkins and Davis discovered Walker lying dead in the kitchen in a pool of his own blood. *Id.*

Subsequent investigation by Investigator Tony Luker of the Dothan PD revealed the presence of blood droplets throughout the house. *Id.* at 749. Luker also found signs of a search for valuables in which locked doors were pried open and holes were knocked into walls. *Id.* Later, investigators located a substantial cache of valuable coins hidden in a wall of the house. *Id.* Luker also found two of weapons

Wilson used to strangle Walker, a broken mouse cord and an extension cord. *Id.* Both cords had dried blood on them. *Id.* These cords matched the ligature marks that were discovered on Walker's neck. *Id.*

While the apparent search of the walls had not been fruitful, Luker noticed that Walker's custom van that was full of stereo equipment had been stolen. In their efforts to locate the van, investigators interviewed Wilson's accomplices Matthew Marsh, Michael Jackson, and Catherine Corley. *Id.* Marsh told the investigators that Wilson had been the one to initially enter Walker's house and kill him. *Id.*

At this point, officers went to Wilson's home and Wilson agreed to accompany them to the police department. *Id.* Once there, he signed a *Miranda* waiver and admitted to having planned and carried out the forced entry into Walker's home. *Id.* As Wilson described it, the plan was to "hit[] Mr. Walker and knock[] him out and tak[e] the keys." (C. 517.) Though he unsurprisingly attempted to minimize his actions, he also admitted to taking a baseball bat into the home, hitting Walker with it when Walker arrived home unexpectedly, and strangling Walker twice before leaving him on the floor. *Wilson*, 142 So. 3d at 749.

Wilson had previously made an unforced entry into the home, but on the day of the murder he entered through the outside storage closet, making the entry hole that Officer Watkins would later find. *Id.* Wilson also described searching the house for valuables, a search that was interrupted when Walker arrived home

unexpectedly. *Id.* at 750. Wilson walked up behind Walker and struck him in the back of the head, felling him. *Id.* According to Wilson, Walker got back up, so Wilson began strangling him, first with a mouse cord and then with an extension cord. *Id.* This strangulation went on for six minutes. *Id.* Leaving Walker unconscious on the floor, Wilson took a laptop computer and a hat before leaving the scene. Over the next few days, Wilson and his accomplices made several trips back to Walker's house to search for valuables and to steal his van. *Id.*

The autopsy revealed that Walker suffered numerous injuries, estimated at over 114, across his body. *Id.* at 750. Walker had several skull fractures, broken ribs and a fractured sternum. *Id*. These injuries included defensive wounds indicating a struggle. *Id*. Additionally, Wilson's strangulation of Walker left grievous injuries to Walker's neck that would have been sufficient to cause his death on their own. (C. 494, R. 513-515.)

The jury convicted Wilson of one count of capital murder for taking the life of Dewey Walker during the course of a robbery, *see* § 13A–5–40(a)(2), Ala. Code 1975, and one count of capital murder for taking the life of Dewey Walker during the course of a burglary, *see* § 13A–5–40(a)(4), Ala. Code 1975. By a vote of 10–2, the jury recommended that Wilson be sentenced to death. The circuit court accepted the jury's recommendation and sentenced Wilson to death.

On direct appeal, the Alabama Court of Criminal Appeals ("ACCA") conducted a thorough review of the record and affirmed Wilson's convictions and sentence for the murder of Dewey Walker. *Wilson*, 142 So.3d at 819.

On September 19, 2014, Wilson filed his first Rule 32 petition. The State answered and moved to dismiss the first petition, after which Wilson filed an amended petition on December 11, 2015, which the State again moved to dismiss. On September 7, 2016, Wilson amended his petition again to add a claim under *Hurst v. Florida*, 136 S. Ct. 616 (2016), the State answered that claim and moved to dismiss it on October 6, 2016. On January 5, 2017 a hearing was held on the State's motion to dismiss. On February 24, 2017, the circuit court entered an order granting the State's motion and dismissing all claims in Wilson's amended petition.

Wilson appealed to the ACCA, which affirmed the circuit court's denial of relief in an unpublished memorandum opinion. *Wilson v. Alabama*, CR-16-0674 (March 8, 2018). Wilson petitioned for certiorari review in the Alabama Supreme Court, which denied the petition without opinion on August 24, 2018.

REASONS FOR DENYING THE WRIT

Wilson's petition fails to meet this Court's requirement that there be "compelling reasons" for granting certiorari. Sup. Ct. R. 10. The petition presents no genuine split, is heavily fact-bound, and thus fails to establish any of the grounds for granting certiorari review. His claims were rejected by the ACCA after a thorough consideration of the facts and circumstances of this case, and Wilson has shown no conflict between that decision and a decision of any other court. There is no reason for this Court to provide further review.

Review is particularly unwarranted here, where Wilson's challenge arises from a denial of state postconviction relief. Each of Wilson's claims is either barred by an independent and adequate state procedural rule or can be reviewed by federal courts on habeas review. Thus, even if the state courts were all in error (and they were not), a federal habeas court can resolve those issues Wilson has not procedurally defaulted. *See, e.g.*, *Hopkinson v. Shillinger*, 866 F.2d 1185, 1219-1220 (10th Cir. 1989) ("Even if the state postconviction petition was dismissed arbitrarily, the petitioner can present anew to the federal courts any claim of violation of his federal constitutional rights."). As such, there are no "compelling reasons" for the Court to review Wilson's claims at this time. Sup. Ct. R. 10.

I. WILSON'S *BRADY* CLAIM WAS PROCEDURALLY BARRED BECAUSE THE EXISTENCE OF THE LETTER WAS DISCLOSED TO HIM PRIOR TO TRIAL.

A. Wilson's Claim was Barred by an Independent and Adequate State Procedural Rule.

Wilson's claims regarding allegedly exculpatory evidence must be considered in light of the fact that his guilt for the death of Dewey Walker has never been genuinely at issue. Wilson admitted that he was alone in the house when he struck Walker in the back of the head with a baseball bat. (C. 505, 508.) Wilson also admitted that he twice tried to strangle Mr. Walker. First, with a computer mouse cord that broke under the strain. *Id.* at 506. Then he tried again with an extension cord. *Id.* at 506-507. The extension cord proved stronger, and Wilson strangled Mr. Walker for six minutes until he fell to the ground where he lay unconscious with blood "all over." *Id.* at 507, 508. Nonetheless, Wilson claims that the State violated *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to disclose a letter purportedly written by one of Wilson's accomplices, Catherine Corley.

The ACCA recognized that this was a claim that Wilson could have raised at the time of trial or on appeal because it was quite clear that the State disclosed the existence of the letter to Wilson's trial counsel. Consequently, the circuit court correctly dismissed the claim pursuant to Alabama's Rules of Criminal Procedure

32.2(a)(3) and 32.2(a)(5), which bar postconviction relief on any claim that "could have been but was not raised at trial" or "on appeal."

Wilson's *Brady* claim clearly falls within that category. Several months after Wilson had confessed to breaking into Walker's house, hitting him with a bat, and strangling him with two different cords, the district attorney obtained a letter purportedly from Corley, in which she confessed to striking Wilson with a bat until he fell down. (C.615.) After police obtained a writing sample from Corley's jail cell, a handwriting expert opined that the letter and writing sample were likely written by the same person. (C.636.)

Critically, before trial, Wilson's attorneys were made aware of Corley's letter and its likely authenticity. The State provided Wilson's counsel with a "police report in which Investigator Luker described the letter allegedly authored by Corley and his efforts to investigate the matter," as well as his conclusion that the letter was written by Corley. (Pet. Appx. 1, pp 9.) "Each page of the police report bears the initials of one of Wilson's trial counsel, and Wilson acknowledges in his petition that the police report was included in discovery." *Id.*

As explained further below, the State's disclosure of Investigator Luker's report shows that it did not suppress evidence of Corley's possible confession, and thus establishes that the State did not violate *Brady*. But even if the State violated *Brady* by not also producing the letter and report that bolstered its authenticity,

Wilson could have raised this claim at trial or on appeal. Because it "could have been but was not raised at trial" or "on appeal," Wilson's *Brady* claim is procedurally barred. Ala. R. Crim. P. 32.2(a)(3), (5).

"It is well established that federal courts will not review questions of federal law presented in a habeas petition when the state court's decision rests upon a state-law ground that 'is independent of the federal question and adequate to support the judgment.'" *Cone v. Bell*, 556 U.S. 449, 465 (2009). Indeed, "[i]n the context of direct review of a state court judgment, the independent and adequate state ground doctrine is jurisdictional." *Coleman v. Thompson*, 501 U.S. 722, 729 (1991). Because the ACCA denied relief on independent and adequate state procedural grounds, this Court should deny the petition.

B. Wilson's *Brady* Claim was Meritless.

Wilson's petition should also be denied because, at bottom, it is nothing more than an invitation to engage in fact-bound error correction of the circuit court's alternative finding that Wilson's *Brady* claim was meritless. As the circuit court found:

> [Defense counsel] initialed the police report which referenced the alleged confession letter of Ms. Corley and through an exercise of due diligence, trial counsel could have discovered the letter and could have learned of the examination of it by the handwriting expert and the resulting reports and supporting documentation. Accordingly, no *Brady* violation occurred and the Petitioner's claim is without merit.

(R.32 C. 1529.)

"There are three components of a true *Brady* violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." *Strickler v. Greene*, 527 U.S. 263, 281–82, 119 S. Ct. 1936, 1948, 144 L. Ed. 2d 286 (1999). In the present case, Wilson cannot satisfy the second prong of this three-part *Brady* test because the prosecutor did not "hide" information and require Wilson to "seek' it. Instead, this is a case where "public officials have properly discharged their official duties." *Banks v. Dretke*, 540 U.S. 668, 696 (2004). The prosecutor in this case maintained an open file policy and disclosed the existence of the Corley letter, its content, and its authenticity to Wilson's counsel. The police report attached to Wilson's petition disclosed that there was an authentic letter from Wilson's accomplice in which she stated that she had "hit Mr. Walker with a baseball bat until he fell." (R.32 C. 615-616.) Wilson's lead counsel, Scott Hedeen[1], initialed all pages of the police report upon receiving them from the State. In such cases, there is no suppression. As the Eleventh Circuit Court of Appeals has explained:

> Our case law is clear that "[w]here defendants, prior to trial, had within their knowledge the information by which they could have ascertained the alleged *Brady* material, there is no suppression by the government." *United States v. Griggs,* 713 F.2d 672, 674 (11th Cir. 1983); *accord LeCroy,* 421 F.3d at 1268 (noting that there was no *Brady* violation because the defendant could have obtained the

[1] Mr. Hedeen is now deceased.

> information had he used "reasonable diligence"); *Haliburton v. Sec'y for Dep't of Corr.,* 342 F.3d 1233, 1239 (11th Cir. 2003);*United States v. Valera,* 845 F.2d 923, 927–28 (11th Cir. 1988); *United States v. Cortez,*757 F.2d 1204, 1208 (11th Cir. 1985). The evidence was not suppressed by the state.

Maharaj v. Sec'y for Dep't of Corr., 432 F.3d 1292, 1315 (11th Cir. 2005) (finding no *Brady* suppression where existence and result of polygraph examination was disclosed to defendant, but polygraph report itself was not produced), *cert. denied Maharaj v. McDonough,* 549 U.S. 819 (2006); *see also Hughes v. Hopper*, 629 F.2d 1036, 1039 (5th Cir. 1980) ("if defense counsel knew about exculpatory or favorable information and made no effort to obtain it, there is no violation of Brady.").

Wilson tries to distort the state court's decision by asserting that it added a "diligence" prong to the *Brady* test. Far from creating a fourth *Brady* prong, the ACCA's holding merely addresses the *second* prong of that test: suppression. When, as here, the substance of the alleged *Brady* material is disclosed (the alleged confession and its authenticity) there is no suppression, and the defendant's argument fails. "The rule of *Brady*" only applies where there is "discovery, after trial of information which had been known to the prosecution but unknown to the defense." *United States v. Agurs*, 427 U.S. 97, 103 (1976). Here, Wilson's trial counsel indisputably knew all the relevant information about Corley and her purported letter. He knew it existed, knew what it said, and knew that the State

believed it to be authentic. Because this information was not suppressed, Wilson's *Brady* claim is meritless.

Wilson also argues that the State violated *Brady* by not producing documents authenticating the Corley letter, but that argument fails for at least three reasons. First, the authorship of the letter was not in dispute. As the exhibits to Wilson's petition show, the investigating officer believed "that the author of both documents are [sic] Catherine Nicole Corley." (R32 C. 616.) Second, the authenticating documents described in the petition have no independent materiality. *Brady* "evidence is material 'if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.'" *Strickler v. Greene*, 527 U.S. 263, 280 (1999). A document "authenticating" a letter's authorship when the authorship is not in dispute is not material because it neither adds to nor takes away from the quantum of evidence before the jury. Third, even if the letter's authenticity was at issue, the State produced the police report which disclosed the substance of the allegedly suppressed fact: that the document was authentic.

C. Wilson's Corresponding Ineffective Assistance Claim does not Warrant Certiorari Review.

Finally, Wilson claims that, in the alternative, this Court should grant certiorari review of the denial of his corresponding claim that trial counsel were

ineffective for not investigating the Corley letter. Wilson's petition presents no genuine conflict between the ACCA's decision and any decision of this Court. Instead, he seeks to have this Court engage in fact-bound error correction. Certiorari review is rarely granted for this reason and should not be granted here. Sup. Ct. R. 10.

The circuit court dismissed Wilson's claim because he failed to plead facts that, if true, would demonstrate that trial counsel violated *Strickland v. Washington*, 466 U.S. 668 (1984), by not investigating and presenting evidence regarding the Corley letter. The ACCA affirmed for the same reason. (Pet. Appx. 1, pp. 21.) Specifically, the ACCA held that Wilson would not have been able to admit the letter into evidence because it was hearsay that was not otherwise admissible under Alabama's evidentiary standards:

> Here, Wilson's claim is insufficiently pleaded because he failed to plead facts to satisfy the elements of admissibility established in [*Ex parte*] *Griffin*[, 790 So.2d 351 (Ala. 2000)]. Specifically, Corley's admitting that she hit Walker "with a baseball bat until he fell," (C. 615), would not exclude Wilson as the perpetrator of capital murder. Dr. Enstice "gave a conservative estimate of 114 contusions and abrasions on Walker's body, 32 of which were on his head." *Wilson*, 142 So.3d at 750. Corley's confession would not show that Wilson did not strike or kill Walker, or that he lacked the intent to kill Walker.
>
> Because Wilson failed to plead sufficient facts to satisfy the test established in *Griffin*, he has failed to show that the letter would have been admissible. Consequently, even assuming trial counsel were deficient in failing to investigate the letter and the expert reports generated in conjunction with its investigation, Wilson has failed to

> show that he was prejudiced by the deficiency. As such, the circuit court did not err in dismissing this claim. *See* Rule 32.7(d), Ala. R. Crim. P.

(Pet. Appx. 1, pp. 21.) Thus, the ACCA's rejection of this ineffective assistance claim turned on the fact that the Corley letter would not be admissible under Alabama law. Trial counsel cannot have been ineffective for failing to seek to admit inadmissible evidence.

Wilson does not contest that the Corley letter is inadmissible hearsay, but rather contends that State courts cannot "mechanistically" apply evidentiary rules to exclude exculpatory evidence. To be sure, this Court prohibits the "arbitrary" exclusion of evidence. But Alabama law does not arbitrarily exclude hearsay that could potentially be exculpatory. Rather, the Alabama Supreme Court has addressed the "balancing test" that trial courts must consider to prevent the hearsay rule from being applied "mechanistically" to exclude otherwise reliable and exculpatory evidence:

> [T]his Court has set out a test intended to ensure that any evidence offered for this purpose is admissible only when it is probative and not merely speculative. Three elements must exist before this evidence can be ruled admissible: (1) the evidence "must relate to the 'res gestae' of the crime"; (2) the evidence must exclude the accused as a perpetrator of the offense; and (3) the evidence "would have to be admissible if the third party was on trial." See *Ex parte Walker,* 623 So.2d at 284, and *Thomas,* 539 So.2d at 394–96.

Ex parte Griffin, 790 So. 2d 351, 354 (Ala. 2000); *but see Acosta v. State*, 208 So. 3d 651, 656 (Ala. 2016) (evidence that would exclude the defendant from the offense not "critical" if defendant could prove same facts by different means).

The Rule 32 correctly rejected the admissibility of the Corley letter, noting that:

> In *Holmes, Chambers, Ex parte Griffin,* and *Acosta*, each of the defendants contended that they did not participate at all in the crimes and the evidence that they sought to introduce supported their contentions, and if true, exonerated them.
> ...
> The statement in the alleged Corley letter, if true, does not exclude the Petitioner as a participant in the crimes against the victim or otherwise exonerate him or constitute a confession by Ms. Corley to actually killing the victim.

(R32 C. 1564-1565.) Unlike the defendants in those cases, Wilson admitted to having struck Walker, strangled him with an electrical cord, and left him dead or unconscious in a pool of his own blood. Moreover, the strangulation injuries were so deep and severe that they could have caused Walker's death. (C. 494, R. 513-515.) Additionally, unlike in *Chambers v. Mississippi*, which involved multiple hearsay statements that corroborated one another and "were originally made and subsequently offered at trial under circumstances that provided considerable assurance of their reliability," 410 U.S. 284, 300 (1973), Wilson has not alleged that the Corley letter bore any particular indicia of reliability. At bottom, the Corley letter would not have been so exonerating as to require its admission in spite of the

prohibition on hearsay. Because Wilson has shown no conflict with this Court's decisions, this Court should deny certiorari review to engage in fact-bound error correction of what is, at heart, a state law evidentiary question.

II. BECAUSE THE POLICE HAD PROBABLE CAUSE TO ARREST WILSON, TRIAL COUNSEL WERE NOT INEFFECTIVE FOR DECLINING TO MAKE ADDITIONAL ARGUMENTS AGAINST THE LEGALITY OF HIS ARREST.

Wilson's other ineffective assistance of counsel claim likewise lacks merit. Wilson contends that his attorneys were ineffective, not because they failed to move to suppress Wilson's confession to the police, but because they failed to "adequately" make use of this Court's decision in *Kaupp v. Texas*, 538 U.S. 626 (2003), when they moved to suppress Wilson's statement. But Wilson's counsel already argued on direct appeal that Wilson's "confession and the evidence seized from his mobile home should be suppressed as the fruit of an illegal arrest." *Wilson*, 142 So. 3d at 765. The ACCA rejected that argument, and this Court denied certiorari. Wilson's contention that his counsel could have briefed the issue more effectively is nothing more than a thinly veiled attempt to have his claim relitigated on collateral review. The argument is both improper and procedurally barred. *See* Ala. R. Crim. P. 32.2(a)(4) (precluding consideration of issues previously "raised or addressed on appeal").

Wilson's claim should also be rejected because it still fails on the merits. As the ACCA previously held on direct appeal, because "Investigator Luker had probable cause to arrest Wilson and … Wilson voluntarily left his home and entered a public area where he could be arrested based on probable cause alone, Wilson's arrest was not in violation of the Fourth Amendment." *Wilson*, 142 So. 3d at 767. Nothing in the cases that Wilson's new counsel has cited for his recycled challenge is to the contrary, which shows that Wilson's trial counsel were not ineffective.

A. The Evidence of Walker's Murder Together with the Statements of Multiple Accomplices Was Sufficient to Provide Probable Cause for Wilson's Arrest.

The ACCA has twice held that officers had probable cause to arrest Wilson, and Wilson has shown no conflict between those holdings and any decision of this Court. Unlike in *Kaupp* or in *Wong Sun v. United States*, 371 U.S. 471 (1963), the officers in the present case had certain knowledge that a crime had been committed before they first made contact with Wilson. Insofar as Wilson relies on *Kaupp* for the principle that statements of accomplices cannot provide probable cause, this Court made no such holding there because probable cause was not at issue. Further, in *Kaupp*, the police had neither a body nor a motive at the time of Kaupp's arrest. *Kaupp v. State*, 2001 WL 619119, at *1 (Tex. App. June 7, 2001) (Kaupp was not alleged to have participated in the sexual relationship and it was not until "after appellant was placed in the patrol car [that] the detectives learned that the

complainant's body had been found."). By contrast, in the present case Walker's body was found before any of the suspects were questioned. Moreover, the motive for Wilson's crime, robbery, was immediately apparent. During questioning, one of Wilson's accomplices, Matthew Marsh, described the robbery, clearly identified Wilson, described Wilson's involvement in the robbery, and described Wilson's account of inflicting injuries that matched Walker's. (R32 C. 706-707.)

Wilson also fails in his attempt to show a conflict between the ACCA's finding that probable cause for his arrest existed and this Court's decision in *Wong Sun v. United States*, 371 U.S. 471 (1963). In *Wong Sun*, the arresting officers were acting on nothing more than the "imprecise suggestion that a person described only as 'Blackie Toy,' the proprietor of a laundry somewhere on Leavenworth Street, had sold one ounce of heroin." *Id.* at 481. Thus, condoning Toy's arrest after the fact presented a clear danger of creating precedent that "a vague suspicion could be transformed into probable cause...." *Id.* at 484. By contrast, in this case the officers who eventually arrested Wilson had clear evidence that a crime had been committed, a clear identification of Wilson as the perpetrator, and a clear motive for the crime. Consequently, there is no doubt that the officers in the present case had reliable information on which to act.

Nor has this Court ever held that the statements of accomplices, backed up by clear evidence of a crime, were insufficient to establish probable cause. The ACCA recognized this fact, holding:

> In support of his pleading that co-defendant statements are insufficient to create probable cause to arrest, Wilson has cited to a number of federal and Alabama cases and an Alabama statute that directly or indirectly discuss the reliability of such evidence. See, eg., *Lee v. Illinois*, 476 S. 530 (1986); *Bruton v. United States*, 391 U.S. 123 (1968); *Lilly v. Virginia*, 527 U.S. 116 (1999); *Wong Sun v. United States*, 371 U.S. 471 (1963); *Bone v. State*, 706 So. 2d 1291 Ala. Crim. App. 1997); *Steele v. State*, 512 So. 2d 142 (Ala. Crim. App. 1987); and § 12-21-222, Ala. Code 1975. Not one of these sources supports Wilson's argument that a co-defendant's statement cannot create probable cause to arrest. There is, however, precedent in Alabama to the contrary. In *McWhorter v. State*, 781 So. 2d 257, 287-88 (Ala. Crim. App. 1999), this Court held that the arresting officer had probable cause to arrest McWhorter based on a statement given by his accomplice. See also *Vincent v. State*, 349 So. 2d 1145, 1146 (Ala. 1977) and *R.J. v. State*, 627 So. 2d 1163, 1165 (Ala. Crim. App. 1993). Consequently, Wilson has failed to show that trial counsel's objecting to the sufficiency of the State's evidence the suppression hearing would have had merit.

(Pet. Appx. 1, p. 16.) At the end of the day, considering the particular facts of this case, there is simply no doubt that the officers had sufficient trustworthy information to justify Wilson's arrest. Officers were relying not on a single, vague allegation, but rather on multiple interviews that precisely identified the crime, the motive, and the perpetrator. Nothing in this Court's jurisprudence supports the notion that Wilson's arrest was not supported by probable cause.

B. Wilson Was Not Arrested at Home.

Though Wilson's argument centers on the existence of probable cause, he also argues that he was arrested in his home, and that the ACCA's decision thus conflicts with *Kaupp v. Texas*, 538 U.S. 626 (2003). But Wilson's claim does not present a genuine conflict with *Kaupp.* As he did in the state courts, Wilson contends that there is an "identity of facts between Mr. Wilson's case and *Kaupp*." (Wilson's Petition, p. 17.) However, the facts in *Kaupp* are materially distinguishable. The ACCA explained that "[a]lthough the facts in *Kaupp* share some similarities to those present here, trial counsel's reliance on *Kaupp* would have been unavailing." (Pet. Appx. 1, p. 13.) The ACCA also endorsed the circuit court's analysis of the differences between *Kaupp* and the present case. *Id.* As the circuit court explained, the circumstances of Wilson's trip to the police department were substantially different from Kaupp's. (R32 C. 1538-1539.) The court noted that Kaupp, a seventeen year old, was roughly woken up by police officers who came into his room and shone a light in his eyes, where Wilson, twenty, was woken up by his mother while officers waited in the living room. *Id.* Kaupp was hauled away in his underwear, where Wilson was given time to dress. *Id.* Kaupp was given no choice to leave, where Wilson was asked to go and agreed. *Id.* Finally, and perhaps most significantly, the officers in *Kaupp* had already been denied a warrant and were fully aware that they lacked probable cause, where the officers in this case had a dead body, evidence of

burglary and robbery, a clear motive, and the statements of accomplices identifying Wilson as the man who killed Walker. *Id.* In short, there was no lack of probable cause in this case.

As the Rule 32 court correctly noted, Wilson voluntarily agreed to leave his home and to accompany officers to the Dothan Police Department. Wilson's arrest did not occur until after he has left his home. Because of this material difference, trial counsel could not have raised a meritorious argument based on an argument that the arrest occurred at Wilson's home. As such, Wilson's trial counsel were not ineffective for failing to more thoroughly unpack *Kaupp* when they tried to suppress Wilson's statements to the police. Wilson's *Strickland* claim therefore fails once again, and this Court should again decline to review it.

CONCLUSION

For the foregoing reasons, this Court should deny Wilson's petition for a writ of certiorari.

Respectfully submitted,

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