

No. 11-627

**In the
Supreme Court of the United States**

STATE OF ALABAMA,
Petitioner,
v.
THOMAS ROBERT LANE,
Respondent.

On Petition for a Writ of Certiorari to the
Alabama Court of Criminal Appeals

REPLY TO BRIEF IN OPPOSITION

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REPLY BRIEF OF STATE OF ALABAMA

Lane's assertions cannot be squared with the way the lower court actually decided this case. The court based its decision on the factual premise that "Lane was indigent and that Jordan was appointed by the court as Lane's counsel." Pet. App. 27a. In setting forth its central holding, the court explained that it was siding with jurisdictions that had found "no difference between retained counsel and appointed counsel when it comes to the right to continued representation by counsel of choice." Pet. App. 50a. And the court recognized that in reversing Lane's conviction, it was breaking from courts on the other side of the split. Those courts had held, in the lower court's words, "that because an indigent criminal defendant does not have a constitutional right to choose appointed counsel initially, such a defendant likewise does not have a right to continued representation by counsel already appointed." Pet. App. 38a.

Each of these points refutes important things Lane says in his BIO, but things he does not say are just as important. He does not deny, for example, that "[t]he decision of the Alabama court below, like the decisions of the courts on which it relies, conflicts with" precedents like *United States v. Gonzalez-Lopez*, 548 U.S. 140 (2006). Pet. 21. He does not deny

that a “rule granting a defendant the right to choose continued representation by his appointed lawyer” has adverse practical consequences. Pet. 22. And he does not deny that the rule in Alabama and similar jurisdictions will result in “needless retrials” in this case and others. Pet. 24-26.

With all this at stake, Lane would need to poke major holes in the split, or offer up substantial vehicle problems, to ward off certiorari. As explained below, he has done neither of those things.

I. There is a meaningful split.

Lane has not created any doubt about whether there is a split. He does not dispute that, in the very least, Alabama and eight other jurisdictions have held that defendants have a Sixth Amendment right to continuous representation by their appointed counsel. And the Alabama courts in this very case acknowledged that other jurisdictions take the contrary view. Pet. App. 38a, 63a-70a, 74a-75a. Commentators have recognized the split as well. *See* Pet. 18 (citing Key Bosse, *Price Tag on Constitutional Rights: Georgia v. Weis and Indigent Right to Continued Counsel*, 6 MODERN AMER. 43, 43, 45 (2010)). Lane responds by asserting that “[t]he four cases the State argues conflict with the decision below do not actually deal with the issues presented

in Mr. Lane’s case.” BIO 2. But as the lower courts recognized, on that point Lane is simply wrong.

Sixth Circuit. Lane is mistaken when he asserts that *Daniels v. Lafler*, 501 F.3d 735 (6th Cir. 2007), “did not address the question of remedy for an *improper* removal of counsel.” BIO 7. To be sure, the state-court decision under review in *Daniels* did find that the appointed attorney had been properly removed. 501 F.3d at 739. But the Sixth Circuit premised its analysis on its own “serious doubts as to whether, even applying AEDPA deference, the record supports the state court’s conclusions that [the defendant] acquiesced and that there was good cause for [the appointed attorney’s] removal.” *Id.* at 739 n.1. Because of those doubts, the Sixth Circuit resolved the case on federal constitutional grounds instead. *Id.* at 740. Squarely addressing the same Sixth Amendment issue presented in this case, the Sixth Circuit concluded that “Daniels, an indigent defendant forced to rely on court-appointed counsel, has no choice-of-counsel right.” *Id.* at 739. For that reason alone, the court concluded that “he is not entitled to relief.” *Id.* That is the governing rule in the Sixth Circuit, and it is directly contrary to the governing Sixth Amendment rule in Alabama.

Fourth Circuit. Also mistaken is Lane’s analysis of *United States v. Basham*, 561 F.3d 302 (4th Cir. 2009). There the Fourth Circuit adopted the Sixth Circuit’s holding in *Daniels* that there is no Sixth

Amendment right to continuous representation by appointed counsel of choice. *See id.* at 325 (citing *Daniels*, 501 F.3d at 740)). Lane responds only by noting that the Fourth Circuit also concluded, in the alternative, that even if the Sixth Amendment created such a right, the right would not have been implicated in that case because counsel's removal had been proper in any event. *See* 561 F.3d at 324. But the fact that the Sixth Amendment ruling was one of the court's two alternative holdings is irrelevant. "[An] alternative holding is no less binding than if it were the exclusive basis for the Court's decision." *Hamdan v. Rumsfeld*, 548 U.S. 557, 716 (2006); *accord Davis v. Allsbrooks*, 778 F.2d 168, 175 (4th Cir. 1985). Thus, if Lane had been tried in the Fourth Circuit, that court would not have reversed his conviction on choice-of-counsel grounds.

Louisiana. Lane has the same problem with *State v. Reeves*, 11 So. 3d 1031 (La. 2009). Like the Fourth Circuit in *Basham*, the Louisiana Supreme Court, in addition to holding that the Sixth Amendment creates no right to continuous representation by appointed counsel of choice, also found in the alternative that the trial court properly removed counsel as a matter of state law. *Id.* at 1062, 1065. As was true in *Basham*, the alternative nature of the holding is of no consequence. Had Lane been tried in Louisiana, his conviction would have been affirmed. *See State v. Gray*, 2011 WL 798820, *5 (La.

App. March 9, 2011) (holding that, under *Reeves*, an indigent defendant “only has the right under the federal constitution to effective representation”); *Vaughan v. Housing Auth.*, 80 So. 2d 561, 565 (La. App. 1955) (Louisiana lower courts follow all principles clearly announced by higher courts).

California. Finally, Lane is missing the point when he tries to distinguish *People v. Noriega*, 229 P.3d 1 (Cal. 2010). The California Supreme Court held in *Noriega* that the erroneous removal of appointed counsel is not a Sixth Amendment violation. Lane argues that *Noriega* does not conflict with the Alabama decision because the California court “determined that the facts surrounding the removal of counsel did not result in a ‘miscarriage of justice.’” BIO 7. But that is precisely the reason California’s decision *does* conflict with Alabama’s. It was precisely because the Alabama court found a Sixth Amendment violation that, following *Gonzalez-Lopez*, it declined to ask whether prejudice had occurred and instead automatically reversed. Pet. App. 50a. And it was precisely because the California court rejected the same asserted Sixth Amendment theory that it declined to reverse the defendant’s conviction despite the erroneous removal. *Id.* at 7. If Lane had been tried in California, the appellate court could have affirmed his conviction after finding that Jordan’s removal had not amounted to a miscarriage of justice. It was only because Lane was

tried in Alabama, under the Alabama court's different view of the Sixth Amendment, that his conviction was automatically reversed.

II. There are no meaningful vehicle problems.

Lane spends the rest of his opposition arguing that miscellaneous vehicle problems would make review difficult. Each of those assertions is incorrect.

A. The lower court's decision rests on federal law.

Lane begins by asserting that the Court of Criminal Appeals rooted its decision in state law rather than in federal law. The state-law basis of the decision, according to Lane, is twofold: "with respect to the propriety of the removal as well as with respect to remedy." BIO 8. But Lane's analysis on this front is mistaken.

It is irrelevant, as an initial matter, that the lower court's Sixth Amendment ruling arose against the backdrop of its ruling that counsel's removal had been invalid as a matter of state law. The very question upon which the lower courts have split is whether the Sixth Amendment is violated by the removal of appointed counsel that otherwise violates state law. *See* Pet. i, 11-18. In other words, in all these cases, the state trial court generally will have

committed an error of state law in removing the appointed lawyer. The question upon which the lower courts have disagreed is whether a state-law error of this sort results in a structural Sixth Amendment violation. Thus, the fact that the Alabama court held that the removal was erroneous under state law makes this case a better vehicle, not a worse one.

In this respect, this case arrives at this Court in much the same posture as *Gonzalez-Lopez*. In *Gonzalez-Lopez*, the lower court also concluded that the trial court improperly rejected an attorney based on an erroneous reading of the Rules of Professional Conduct. 548 U.S. at 143-44 (citing Missouri Rule of Professional Conduct 4-4.2). As here, the question in *Gonzalez-Lopez* was whether the trial court's state-law error resulted in a Sixth Amendment violation that compelled automatic reversal. That is a question of federal law.

Likewise, the Alabama court's chosen remedy—namely, to reverse and remand—was hardly independent of federal law. Lane is incorrect when he implies that the Court of Criminal Appeals relied primarily “on state law to determine that the appropriate remedy was to grant Mr. Lane a new trial.” BIO 9. Instead, the court invoked Alabama's plain-error rule *for the express purpose of deciding whether there was a Sixth Amendment violation*. The court explained that Lane had failed to make his

federal argument in the trial court, which necessitated the invocation of Alabama's plain-error rule to allow an appellate court to rectify the unpreserved error. Pet. App. 15a ("we review the Sixth Amendment claim for plain error under Rule 45A"). Then, the Court held that reversal was required *because* a Sixth Amendment violation had occurred. Pet. App. 47a ("a criminal defendant's Sixth Amendment right to counsel is clearly a 'substantial right' under Rule 45A, Ala. R. App. P. and that right was adversely affected by Jordan's removal").

In asserting that this case presents no substantial federal question, Lane is engaging in revisionist history about what happened during the proceedings below. As set forth in the addendum attached to this reply, Lane's first argument to the Court of Criminal Appeals was that "once an attorney has been appointed and an attorney-client relationship has been established, the erroneous removal of the attorney over the defendant's objection violates the Sixth Amendment." Reply Addendum 3a. His next argument was that the removal was "structural error that requires reversal without a showing of prejudice" under *Gonzalez-Lopez*. Reply Addendum 4a. The Court of Criminal Appeals decided the case based on that argument. And the Alabama Supreme Court granted certiorari for the purpose of reviewing that federal issue. Pet. App. 54a, 58a. Then, after the

Alabama Supreme Court's fractured decision, Lane successfully moved the court to reconsider on the grounds that a majority of Justices had agreed that "an indigent defendant has a right to continued representation by appointed counsel and that the improper removal of appointed counsel is structural error." Pet. App. 86a-87a.

B. The lower court decided the Sixth Amendment issue.

Lane also has no meaningful argument that this Sixth Amendment issue was not adequately presented below. *See* BIO 11-12. This case presents fully "developed arguments on both sides and lower court opinions squarely addressing the question." *Yee v. City of Escondido*, 503 U.S. 519, 538 (1992). "[E]ven if [there] were a claim not raised by petitioner below, [this Court] would ordinarily feel free to address it, since it was addressed by the court below." *Lebron v. National R.R. Passenger Corp.*, 513 U.S. 374, 379 (1995) (emphasis omitted); *accord United States v. Williams*, 504 U.S. 36, 41 (1992); *Va. Bankshares, Inc. v. Sandberg*, 501 U.S. 1083, 1099 n.8 (1991); *Stevens v. Department of Treasury*, 500 U.S. 1, 8 (1991). As the decisions of both the Alabama Court of Criminal Appeals and Alabama Supreme Court indicate, the appellate proceedings in this case have always been about whether the

removal of Lane's appointed counsel violated the Sixth Amendment.

Lane premises much of his waiver argument on a fundamental misinterpretation of a sentence in the Court of Criminal Appeals' decision. *See* BIO 11. That court did not say the State had conceded that Jordan's removal violated the Sixth Amendment. The court instead said the State conceded that *if* Jordan's removal violated the Sixth Amendment, then "the error was structural and requires reversal." Pet. App. 47a. As the cert petition indicates, the State maintains that position still. *See* Pet. 23-26. A straightforward application of *Gonzalez-Lopez* allows no other result, and this is the universal conclusion of courts that have considered the question. *See, e.g., People v. Durfee*, 547 N.W.2d 344, 347 (Mich. App. 1996). And it is precisely this twist—namely, that any violation of the alleged right would compel automatic reversal—that creates the pressing need for this Court's review of whether such a right exists in the first place. *See* States' Amicus 5-9.

What the State has always contested is Lane's threshold claim that there was a Sixth Amendment error here, and the parties emphatically offered up that question for the lower court's consideration. Lane inserted the Sixth Amendment issue in the first heading of his appeal brief: "The Trial Court's Removal of Mr. Lane's Appointed Counsel Was

Arbitrary and Violated Mr. Lane’s Right to Counsel and the Rules of Professional Conduct.” Reply Addendum 3a. He then argued for reversal because in his view, “[w]hile *Gonzalez-Lopez* involved retained rather than appointed counsel, once counsel is appointed, the distinction between appointed and retained counsel no longer applies.” Reply Addendum 4a-5a. And although the State’s brief did devote more space to the state-law issues than the federal ones, the State contested Lane’s federal assertions. It argued that “the trial court’s recusal of defense counsel did not interfere with Lane’s right to counsel.” Reply Addendum 8a. To counter any assertion that the removal was structural Sixth Amendment error, the State argued that “Lane suffered no prejudice when his attorney ‘Buzz’ Jordan was removed as counsel, because Lane had other counsel to represent him during this period, new counsel was promptly appointed, and the trial court continued the proceedings for Lane’s new counsel.” Reply Addendum 7a-8a.

Lane therefore cannot get any traction from waiver arguments. Whether or not the State made the “precise arguments” it might make in this Court, it contested Lane’s allegation that his Sixth Amendment rights were violated. *Yee*, 503 U.S. at 534. “Once a federal claim is properly presented, a party can make any argument in support of that

claim [in this Court]; parties are not limited to the precise arguments they made below.” *Id.*

C. Lane was represented by appointed counsel.

Lane’s last attempt to manufacture a vehicle problem need not detain the Court for long. Having secured a favorable precedent based on his own assertions that Jordan was appointed, Lane now maintains there is “uncertainty” about whether Jordan actually was appointed or retained. BIO 1. If there were any uncertainty on this point, it would not be a reason to deny certiorari. The lower court expressly assumed that Jordan was appointed, and issued a binding precedent based on that assumption. Pet. App. 27a. Under that decision, defendants in Alabama have a Sixth Amendment right to continuous representation by their appointed counsel of choice. That holding implicates the split, affects future prosecutions, and is worthy of this Court’s review, regardless of whether there is uncertainty about whether Jordan was appointed.

But there is no such uncertainty. Lane himself moved to supplement the record before the Court of Criminal Appeals to include “the appointment of counsel on October 27, 2004.” Reply Addendum 2a-3a. He stipulated in his briefs in the lower courts that Jordan was appointed. Pet. App. 27a (“Lane’s argument on appeal presumes that he was indigent

at trial”); Reply Addendum 3a-6a. The two lower courts issued their rulings based on that stipulation. Pet. App. 27a, 55a. And all the record evidence confirms Lane’s earlier stipulation. The trial judge and trial clerk listed Lane as indigent on the docket in October 2004. *See* Reply Addendum 1a. Jordan filed several motions for the provision of court funds. Reply Addendum 2a; Pet. App. 27a. And when the trial court disqualified Jordan, the judge immediately appointed a new attorney. Pet. App. 27a.

Lane cannot get any mileage out of the notion that even though Jordan was eventually appointed, “[t]he fact that Mr. Lane initially retained counsel in this case” means that this case presents a “hybrid situation” that does not implicate the question presented. BIO 14. Lane never explains how this particular fact could make a difference to the ultimate outcome, and it could not. The decision below is not premised on any notion that this was a “hybrid” situation, and Lane did not raise or prevail on that theory. The court instead issued its decision on the assumption that after he initially retained Jordan, “Lane was then found by the trial court to be indigent and that Jordan was then appointed by the court to represent Lane.” Pet. App. 26a. At that point, both as a matter of common sense and the premises on which the lower court decided this case, Jordan had the same status as any other appointed

lawyer for Sixth Amendment counsel-of-choice purposes. The court below thus held, as a blanket rule, that “there is no difference between retained counsel and appointed counsel when it comes to the right to continued representation by counsel of choice.” Pet. App. 50a. Because that rule is contrary to the law in four jurisdictions and the principle that the “right to counsel of choice does not extend to defendants who require counsel to be appointed for them,” *Gonzalez-Lopez*, 548 U.S. at 151, plenary review is warranted.

Respectfully submitted,

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ADDENDUM

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Excerpts of Briefs and Other Material.....1a

ADDENDUM

1. The following are portions of the record below that reflect that Buzz Jordan was appointed by the trial court to represent Lane in October 2004, shortly after Lane's original indictment in August 2004.

Paper Docket Sheet (written by judge), No. CC-04-3059 (Mobile Cnty. Cir. Ct. Oct. 14, 2004)

- “10/14/04 The Court, before arraignment, having ascertained that the defendant is not represented by counsel, desires the assistance of counsel, and is not able financially or otherwise to obtain the assistance of counsel, it is [illegible] and adjudged by the Court that Buzz Jordan [illegible] attorney, [illegible] and is hereby [illegible] defendant.”

Electronic Docket Sheet (later typed by clerk), No. CC-04-3059 (Mobile Cnty. Cir. Ct. Oct. 27, 2004)

- “10/27/2004 11:41:52 ATY1 Attorney for Defendant: Jordan Joe C Buzz

“10/27/2004 11:42:16 AAPT Appointment of Counsel Sent to Def. Attorney 1”

Mot. for Overhead and Extraordinary Expenses, State v. Lane, No. CC-04-3059 (Mobile Cnty. Cir. Ct. May 9, 2005)

- “COMES NOW, the Defendant, by and through his attorney of record, James Bailey and Buzz Jordan, and does respectfully move this Court to 1) APPROVE \$25 PER HOUR IN THIS CASE FOR OVERHEAD EXPENSES AND 2) APPROVE a reasonable amount FOR INVESTIGATIVE USE, BLOWUPS, EXPERTS, TRANSCRIPTS, ETC.”

2. The following portions of the record below reflect that Lane argued that Buzz Jordan was court-appointed counsel for the purposes of his Sixth Amendment claim.

Lane’s Mot. to Supplement Record on Appeal, State v. Lane, No. CC-05-1499 (Mobile Cnty. Cir. Ct. Dec. 5, 2006)

- “Several items that are necessary to the appeal in this case are currently omitted from the appellate record. Specifically, Mr. Lane moves to supplement the following: . . . The clerk’s record does not include many of the documents filed in this case prior to the 2005 indictment. For example, the record does not include the August 2004 indictment, the initial writ of arrest, or the

appointment of counsel on October 27, 2004.” *Id.* at 1, 3-4.

Lane’s Brief, Alabama Court of Criminal Appeals, Lane v. Alabama, No. CR-05-1443 (Ala. Crim. App. June 12, 2007)

- “A. The Trial Court’s Removal of Mr. Lane’s Appointed Counsel Was Arbitrary and Violated Mr. Lane’s Right to Counsel and the Rules of Professional Conduct.

“The Sixth Amendment right to counsel includes a qualified right to retain counsel of one’s own choice. United States v. Gonzalez-Lopez, 126 S. Ct. 2557, 2561 (2006); Wheat v. United States, 486 U.S. 153, 160 (1988). While an indigent defendant does not have a right, as an initial matter, to pick the lawyer who will be appointed to represent him, Gonzalez-Lopez, 126 S. Ct. at 2565, once an attorney has been appointed and an attorney-client relationship has been established, the erroneous removal of the attorney over the defendant’s objection violates the Sixth Amendment. See Smith v. Super. Ct. of Los Angeles County, 440 P.2d 65 (Cal. 1968)(en banc) (court-appointed counsel could not be dismissed, over the defendant’s objection, in circumstances in which retained counsel could not be removed).⁶

“FN6: Courts in many other jurisdictions recognize that the improper removal of counsel appointed to represent an indigent defendant violates the Sixth Amendment. See, e.g., Weaver v. State, 894 So. 2d 178, 189 (Fla. 2004) (erroneous removal of appointed counsel violates the Sixth Amendment); State v. Huskey, 82 S.W.3d 297, 305-06 (Tenn. Crim. App. 2002) (same); Clements v. State, 817 S.W.2d 194, 607-08 (Ark. 1991) (same); Stearnes v. Clinton, 780 S.W.2d 216, 221-23 (Tex. Crim. App. 1989) (same); Harling v. United States, 387 A.2d 1101, 1102 (D.C. 1978) (same); McKinnon v. State, 526 P.2d 18, 21-23 (Alaska 1974) (same); English v. State, 259 A.2d 822, 826 (Md. 1969) (same).”

- “B. The Arbitrary Removal of Defense Counsel Was Structural Error.

“In United States v. Gonzalez-Lopez, 126 S. Ct. 2557, 2563 (2006), the Supreme Court held that the erroneous removal of counsel is structural error that requires reversal without a showing of prejudice. . . .

“The Gonzales-Lopez [sic] structural error analysis applies equally to the circumstances of this case. While Gonzalez-Lopez involved retained rather than appointed counsel, once counsel is appointed, the distinction between

appointed and retained counsel no longer applies. Griffin v. Illinois, 351 U.S. 12, 19 (1956) (“There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.”) (plurality opinion). In an analogous case, the California Supreme Court reasoned that:

Once counsel is appointed to represent an indigent defendant, whether it be the public defender or a volunteer private attorney, the parties enter into an attorney-client relationship which is no less inviolable than if counsel had been retained. To hold otherwise would be to subject that relationship to an unwarranted and invidious discrimination arising merely from the poverty of the accused.

Smith v. Super. Ct. of Los Angeles County, 440 P.2d 65, 74 (1968) (en banc).¹¹

“In Mr. Lane’s case, the consequences of removing appointed counsel without cause are necessarily unquantifiable and indeterminate, and unquestionably qualify as structural error.

FN11. See also Weaver v. State, 894 So. 2d 178, 189 (Fla. 2004) (“To allow trial courts to remove an indigent defendant’s court-appointed counsel

with greater ease than a non-indigent defendant's retained counsel would stratify attorney-client relationships based on defendants' economic backgrounds."); State v. Huskey, 82 S. W. 3d 297, 305 (Tenn. Crim. App. 2002) ("any meaningful distinction between indigent and non-indigent defendants' right to representation by counsel ends once a valid appointment of counsel has been made."); Anaya v. People, 764 P.2d 779 (Colo. 1988) (harmless error analysis non applicable to improper removal of appointed trial counsel); English v. State, 259 A.2d 822, 826 (Md. 1969) ("once counsel has been chosen, whether by the court or the accused, the accused is entitled to the assistance of that counsel at trial.").

Lane's Brief, Alabama Supreme Court, Lane v. Alabama, No. 1091045 (Ala. June 12, 2007)

- "This Court's Precedent Recognizes That A Criminal Defendant Has A Constitutionally Protected Interest in Continued Representation by Appointed Counsel And Requires Trial Courts To Weigh This Interest in Deciding Whether to Disqualify Defense Counsel." *Id.* at 9.
- "The Court Should Affirm the Court of Criminal Appeals' Decision As Consistent with Precedent Recognizing that Poor Defendants, No Less Than Wealthy Defendants, Have a Protected Interest in Continued Representation." *Id.* at 15.

- “Alabama law recognizes that an indigent defendant has a Sixth Amendment right to continued representation by counsel and requires a trial court to balance this interest in determining whether to disqualify defense counsel.” *Id.* at 15.
- “However, once the trial court has appointed an attorney and the attorney-client relationship has been established, there is no basis for allowing the court broader authority to remove that attorney for reasons unrelated to the ‘fair and efficient administration of justice.’ Walker, 675 So.2d. at 410. Under the circumstances in Mr. Lane’s case, the fact that a defendant is indigent should be ‘of no consequence.’ Id.” *Id.* at 24.

3. The following are some portions of the record below that reflect that the State contested Lane’s Sixth Amendment claim in the lower courts.

State’s Brief, Alabama Court of Criminal Appeals, Lane v. Alabama, No. CR-05-1443 (Ala. Crim. App. June 12, 2007)

- “First, Lane suffered no prejudice when his attorney, “Buzz” Jordan was removed as counsel, because Lane had other counsel to represent him

during this period, new counsel was promptly appointed, and the trial court continued the proceedings for Lane's new counsel." *Id.* at 12.

- "The Trial Court's Recusal of Defense Counsel Did Not Interfere With Lane's Right to Counsel." *Id.* at 20.
- "Again, the trial court's proper exercise of its duties under Ala. R. Prof. Cond. 3.7, in light of Tegner, Ross, and Gonzalez-Lopez, undermines Lane's contention that Lane's constitutional rights were violated. They were not, and the trial court's actions should be affirmed." *Id.* at 22.

State's Petition for Certiorari, Alabama Supreme Court, Alabama v. Lane, No. 1091045 (Ala. May 12, 2010)

- "2. Whether there is a right to continued representation by appointed counsel. Like with the first issue, there is a split among jurisdictions on this issue, and this Court never has decided this issue." *Id.* at 6.

State's Initial Brief, Alabama Supreme Court, Alabama v. Lane, No. 1091045 (Ala. Oct. 1, 2010)

- "There is no right to continued representation by appointed counsel for an indigent defendant." *Id.* at 24.