NO.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2022

JARMAL WILLIAMSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

PETITION FOR WRIT OF CERTIORARI

MICHAEL CARUSO
Federal Public Defender
IAN MCDONALD
KATE MOLLISON*
Assistant Federal Public Defenders
Counsel for Petitioner Williamson
150 West Flagler Street, Suite 1700
Miami, Florida 33130-1556
Tel: 305-530-7000

* *Counsel of Record*

QUESTION PRESENTED FOR REVIEW

This case involves an important question of federal law in which the Eleventh Circuit has split from several of its sister circuits:

Does *Batson v. Kentucky*, 476 U.S. 79 (1986), and its progeny, including *Flowers v. Mississippi*, 139 S. Ct. 2228 (2019), instruct courts to consider as suggestive of pretext repeated misstatements of the record by a prosecutor when defending its peremptory jury strikes, particularly when these misstatements have created a pattern over multiple strikes of jurors in a protected class?

PARTIES TO THE PROCEEDING

There are no parties to the proceeding other than those named in the caption of the case.

RELATED PROCEEDINGS

The following proceedings directly relate to the case before the Court:

- *United States v. Williamson*, No. 19-14523, 2022 WL 68623 (11th Cir. Jan. 7, 2022)
- *United States v. Williamson*, No. 19-cr-20144-RNS (S.D. Fla. Oct. 30, 2019)

TABLE OF CONTENTS

TABLE OF APPENDICES

TABLE OF AUTHORITIES

Cases

Constitutional Provisions and Statutes

Rules

IN THE
SUPREME COURT OF THE UNITED STATES

No:

JARMAL WILLIAMSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

PETITION FOR WRIT OF CERTIORARI

Jarmal Williamson respectfully petitions to the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number No. 19-14523 in that court on January 7, 2022, *United States v. Williamson*, 2022 WL 68623 (11th Cir. Jan. 7, 2022),

which affirmed the judgment of the United States District Court for the Southern District of Florida.

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the judgment of the United States District Court for the Southern District of Florida, is contained in Appendix A.

STATEMENT OF JURISDICTION

The district court had jurisdiction over this case under 18 U.S.C. § 3231 because the petitioner was charged with violating federal criminal laws. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742.

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States. The decision of the court of appeals was entered on January 7, 2022. This petition is timely filed pursuant to SUP. CT. R. 13.1, SUP. CT. R. 13.3, and the Court's September 28, 2022 Order extending the deadline to file any petition for certiorari to November 14, 2022.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. CONST. amend. V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. amend. VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

STATEMENT OF THE CASE

Statement of Facts and Course of Proceedings

Mr. Williamson was convicted, after jury trial, of possession of a firearm and ammunition by a felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(e)(1). He was sentenced to 188 months in prison. DE85; DE94:10.

During jury selection, the court convened a panel of 45 potential jurors; six of these jurors were Black. DE93:113. The government was allowed six preemptory strikes, and one additional strike for the alternate. In selecting the first 12 jurors, the government struck four of the five Black potential jurors who came before it. DE93:107–11. In total, the prosecution struck 80 percent of the Black jurors before it, and only 5 percent of the non-Black jurors on the panel. Put simply, the government struck almost every Black juror on the panel it could, until it ran out of strikes.

The defense raised a *Batson* challenge. *See Batson v. Kentucky*, 476 U.S. 79 (1986); U.S. CONST. amend. V, VI. Specifically, defense counsel told the court that it was objecting "given the identity of the government's peremptory strikes." DE93:113. Mr. Williamson, a young

Black man himself, argued that the government had used "four out of [its] six" strikes on African-American jurors, and "the vast majority of the government strikes were on African-Americans who made up a minority of the venire." DE93:113.

In justifying its strikes, the prosecution made numerous misrepresentations to the court. For example, the prosecution stated that it struck juror M.B. because "he has a prior conviction for selling or possession of drugs." DE93:113. But that was not what M.B. had said. Rather, he stated that he "knew someone that had been arrested for possession of marijuana" about "30 years ago." DE93:42. As to juror C.K, the prosecution stated it struck him in part because "he believes that all felons should have their [firearm] rights restored," even though C.K. had actually told the court that "it depends on the conviction." DE93:57, 114.[1]

[1] Similar viewpoints were shared by two other non-Black jurors who were seated on the jury without objection by the prosecution: one juror had told the court that it was his "opinion" that people convicted for non-firearm offenses "shouldn't lose that right" to "carry firearms," DE93:36; another had told the court that he believed that that only "certain type[s] of felonies" should be "used as basis to prevent someone from having a gun." DE93:60.

The prosecution also argued that some of the excused jurors had relatives with criminal histories or substance abuse issues. Thus, the defense objected that "there were other jurors whose family members have had legal troubles with drugs," yet "a disproportionate number of those that were struck were African-American." DE93:114–15. For example, as to F.R., one of the excluded Black jurors, the government stated that he was struck because "his father was convicted for selling drugs," and he had "three uncles [who] were on drugs for years before passing." DE93:114. But as it had done with the other Black jurors, the government misrepresented the record on this point. F.R. had told the court that his father was *arrested* on drug "charges," not that he was *convicted* for "selling" drugs. DE93:75. Further, these responses were also shared by at least *five* non-Black jurors who were retained by the prosecution and seated on the jury: one juror had told the court that his mother and sister were convicted of "selling drugs from their house" and then "detained" for "four or five" years, DE93:33–34; another told the court that he had a "relative that has some issues with substance abuse," DE 93:60; another had told the court that she had a "brother-in-law arrested for a DUI" and a relative that has been "having a

substance abuse issue for a long time," DE93:64–65; another told the court that she had an uncle that was "arrested for a DUI," DE93:70; and another told the court that she had a family member who was "arrested" and "prosecuted." DE93:78.

After the defense raised its *Batson* objection, the court confirmed that the prosecution's strikes were used on African Americans, establishing a *prima facie* case of race discrimination. DE93:113. The government then provided reasons for its strikes, DE93:113–14, which Mr. Williamson agrees were facially race-neutral, satisfying the second step of the *Batson* analysis. He argued, however, that the district court should find that these reasons were pretextual, because in reality the prosecution's strikes were motivated by race. DE93:114–15. The district court however, found the prosecution's stated reasons to be "genuine." DE 93:115. It moved on from the objection, and the four Black jurors remained excluded.

The jury that ultimately deliberated against Mr. Williamson thus included only one Black juror, despite Black venirepersons comprising 13 percent of the overall panel and almost 20 percent of the qualified jurors not struck for cause.

The Opinion Below

Mr. Williamson appealed his conviction and sentence to the United States Court of Appeals for the Eleventh Circuit. He argued, *inter alia*, that the prosecution's strikes of the four Black jurors were based in substantial part on race. Specifically, he pointed to the prosecution's repeated misrepresentations of the record when defending its strikes; side-by-side comparisons of Black prospective jurors and multiple similar non-Black jurors who were not struck; and statistical evidence about the prosecutor's use of strikes against Black jurors as compared to non-Black jurors. Taken together, these facts all undermined the credibility of the prosecutor's stated reasons.

The Eleventh Circuit disagreed. In an unpublished opinion, the court analyzed "independently" each of the government's four strikes against Black jurors, and concluded for each excluded juror that the district court's determination was not clearly erroneous. *Williamson*, 2022 WL 68623 at *2. The court recognized that the prosecution had made numerous misrepresentations of the record when offering reasons for its repeated strikes of Black potential jurors. For example, the court noted that, as to its strike of juror M.B., the prosecution's justifications

"might not have perfectly reflected the record's contents", *id.* at *3; that as to juror C.K., "there is some daylight between the text of C.K's answers in his jury questionnaire and the government's description of his answers," *id.* at *4; and that, as to its strike of F.R., there was "discrepancy between the government's justification and what the record says." *Id.* at *5. Yet the court ignored this Court's precedent in *Flowers v. Mississippi*, 139 S. Ct. 2228 (2019), instead excusing these misstatements and failing to consider how this pattern of misstatements suggested pretext. The court also rejected the comparisons between the excluded Black jurors and multiple other non-Black seated jurors, finding the other jurors were "not valid comparators" or "not sufficiently similar." *Id.* at *4–5. The court did not engage with the statistical analysis offered by Mr. Williamson, and it failed to perform any cumulative analysis of the prosecutor's strikes at all. The court thus affirmed Mr. Williamson's conviction and sentence.

This petition follows.

REASONS FOR GRANTING THE PETITION

I. This Court should grant certiorari to resolve a circuit split regarding the proper interpretation of *Flowers v. Mississippi*.

In *Flowers v. Mississippi*, 139 S. Ct. 2228 (2019), this Court revisited its *Batson* precedent. *Batson v. Kentucky*, 476 U.S. 79 (1986). *Flowers* broke "no new legal ground," *Flowers*, 139 S. Ct. at 2235, but it became a comprehensive articulation of the *Batson* standard that has evolved over the past four decades.

Batson v. Kentucky established a three-step test to help courts ferret out discrimination in the jury selection process, and to determine whether a party has utilized peremptory jury strikes in a racially discriminatory manner. *Batson*, 476 U.S. at 86. First, a defendant must make *prima facie* showing that the strikes in question were based on race. Second, once the *prima facie* case has been made, the burden of production shifts to the other side to offer a race-neutral basis for striking the juror in question. Third, the court must determine whether the race-neutral reasons offered were the actual reasons the juror was struck, or whether the stated reasons were pretext and the strike was

in fact based on race. *See Snyder v. Louisiana*, 552 U.S. 472, 476 (2008).

In *Flowers*, the Court provided a list of factors that judges must consider when evaluating peremptory strikes subject to a *Batson* challenge. As relevant here, the Court mentioned "statistical evidence about the prosecutor's use of peremptory strikes against Black prospective jurors as compared to white prospective jurors in the case" and "a prosecutor's misrepresentations of the record when defending the strikes during the *Batson* hearing" as factors to be considered "in evaluating whether racial discrimination occurred." *Flowers*, 139 S. Ct. at 2243. As to the latter, the court explained that while "mistaken explanations should not be confused with racial discrimination," "a series of factually inaccurate explanations for striking Black prospective jurors can be telling." *Id*. at 2250. Indeed, *Flowers* makes clear that "[w]hen a prosecutor misstates the record in explaining a strike, that misstatement can be another clue showing discriminatory intent." *Id*. The Court also explained that individual strikes cannot be evaluated "in isolation"; rather, "we must examine the whole picture." *Id*.; *see also Miller-El v. Dretke*, 545 U.S. 231, 265 (2005) (noting that evidence of

discriminatory strikes must be viewed "cumulatively," even if individual strikes may be "open to judgment calls").

Several circuits have incorporated this guidance from *Flowers* into their recent *Batson* analyses. The Ninth Circuit, for example, in a case analyzing a *Batson* claim, vacated a district court order that "did not consider the prosecutor's misrepresentations of the record." *Ervin v. Davis*, 12 F.4th 1102, 1107 (9th Cir. 2021). As the court explained, *Flowers* established that such factual inaccuracies were "relevant in discerning the validity of the prosecutor's explanation." *Id.* Further, in vacating the judgment below, the court in *Ervin* also relied on the fact that the district court improperly "analyzed . . . strikes in isolation," *id.* at 1108, explaining that "*Flowers* reminds judges that they must consider the 'overall context' surrounding the strikes, and not each strike in a vacuum." *Id.* The Sixth Circuit also has looked to *Flowers* to determine whether an attorney's misstatements regarding peremptory strikes were in fact a "'series of factually inaccurate explanations for striking Black prospective jurors' that demonstrate clear error and imply discriminatory intent." *Meirs v. Ottawa County*, 821 F. App'x 445, 460 (6th Cir. 2020) (citing *Flowers*, 139 S. Ct. at 2250). Other

circuit courts have properly followed this guidance as well. *See, e.g.*, *Porter v. Coyne-Fague*, 35 F.4th 68, 80 (1st Cir. 2022) (considering, when analyzing *Batson* claim and ultimately granting habeas relief, that "the prosecutor's reason for the strike did not mirror Juror 103's stated concerns").

The Eleventh Circuit, however, has distorted *Flowers*'s guidance—in a way that directly conflicts with both *Flowers* and prior *Batson* cases. In *McNair v. Campbell*, 416 F.3d 1291 (11th Cir. 2005), the Eleventh Circuit had previously set out a straightforward rule: that if a prosecutor's race-neutral reasons for striking a juror "ultimately prove[] incorrect," those reasons will not typically suggest pretext of a racially motivated strike as long as they are both objectively reasonable and *based in the record*. *Id.* at 1311. This may be a helpful guardrail for evaluating a prosecutor's stated reasons for excluding a juror: the court need not presume pretext when prosecutors make *reasonable* inferences about a juror's characteristics that are based on facts in the record, even if those inferences ultimately prove incorrect. *Flowers* makes clear, however, that the benefit of the doubt does not properly extend to circumstances where the prosecution's stated reasons for striking a

juror were both inaccurate *and* unfounded, without basis in the record at all. In this case, the prosecution made numerous factual misrepresentations of the record regarding juror characteristics or statements made by jurors to the court when defending its strikes, raising an inference of pretext. Yet the Eleventh Circuit gave the prosecutor the benefit of the doubt each time, presuming the *opposite* of what *Flowers* instructs.

In holding that trial prosecutor's repeated misstatements of the record do not suggest pretext or help to establish clear error, the Eleventh Circuit's opinion directly conflicts with *Flowers*. As this Court instructed, misstatements that may seem like minor discrepancies individually are exactly the kind of "clue" to which reviewing courts must pay attention. *Flowers*, 139 S. Ct. at 2250. And this is all the more true so when, as here, these misstatements are repeated enough to create a "pattern." *Id.*

The Court in *Flowers* was clear that when the prosecution establishes a "pattern of factually inaccurate statements about Black prospective jurors," this "suggests that the State intended to keep Black prospective jurors off the jury." *Id.* Indeed, as discussed above, this is

exactly what the Ninth, Sixth, and First Circuits have held in their recent cases citing *Flowers*. By contrast, the Eleventh Circuit's opinion in this case, holding that the prosecution's repeated, unfounded misstatements of the record did not raise suspicion of pretext or demonstrate clear error, falls far outside this standard.

Further, *Flowers also* instructs courts not to focus on any individual strike "in isolation." *Id.* at 2250. As *Flowers* explains, each strike must be considered "in the context of all the facts and circumstances," including the prosecution's decision to strike *other* Black jurors. *Id.* Yet the opinion below does nothing to assess the cumulative effect of the four strikes, the statistical evidence presented regarding those strikes, or whether this "overall context . . . requires skepticism" of each individual strike. *Id.* Nor did the opinion accept that these repeated misrepresentations by the prosecution established a pattern that, taken together, *should* suggest that the prosecution's reasons were not genuine, and undermine the credibility of the stated

reasons. Thus, the Eleventh Circuit has not properly hewn to *Flowers*'s instructions to "examine the whole picture" of a *Batson* claim. *Id.*[2]

In all, the Eleventh Circuit has taken the bite out of *Flowers*, and of any meaningful review of *Batson* claims. This is in contrast to several other circuit Courts of Appeals, which have taken the recent guidance offered in *Flowers* seriously. And it means that both litigants and potential jurors in the Eleventh Circuit will be subject to trials in which discriminatory practices during jury selection may go unchecked—even though this Court has recently affirmed, through its holding in *Flowers*, that "[e]qual justice under law requires a criminal trial free of racial discrimination in the jury selection process." 139 S. Ct. at 2242. This petition allows this Court to correct this. The

[2] It is worth noting that the Eleventh Circuit's opinion below also conflicts with *Flowers* in another important way. The panel rejected Mr. Williamson's comparison to the five non-Black jurors who provided similar answers as F.R., concluding that "the comparators identified by Williamson are not sufficiently similar to prove that the government struck F.R. because of his race." *Williamson*, 2022 WL 68623 at *5. To reach this conclusion, the court noted that none of the non-Black jurors shared both of the characteristics that the government had cited in striking F.R. *Id.* But *Flowers* makes clear that "a defendant is not required to identify an identical white juror for the side-by-side comparison to be suggestive of discriminatory intent." 139 S. Ct. at 2249 (emphasis in original). And in *Flowers*, the Court analyzes several

Eleventh Circuit should not be permitted to misconstrue *Flowers* and other *Batson* precedent so far outside of how it was intended by this Court, and how it has been interpreted by its sister circuits.

II. The question presented warrants the Court's review, and this is an ideal vehicle through which to resolve the conflict.

The Eleventh Circuit has disregarded this Court's precedent on this most important of issues. "Other than voting, serving on a jury is the most substantial opportunity that most citizens have to participate in the democratic process." *Flowers*, 139 S. Ct. at 2238. A court of appeals that implicitly sanctions discriminatory jury selection by failing to enforce this Court's instructions to ferret out such discrimination dilutes the democratic power of the jury system. It is a harm that "touch[es] the entire community." *Batson*, 476 U.S. at 87. And it is a serious constitutional violation: excluding a potential juror from service based on their race violates the defendant's Fifth and Sixth Amendment rights to a jury composed of his peers and selected without discrimination, as well as the potential juror's Fifth Amendment right

---

jurors as valid comparators even when those jurors did not share all of the characteristics referenced by the prosecution. *Id*. at 2249–50.

to due process and equal protection of the laws. U.S. CONST. amend. V, VI. Because the Eleventh Circuit alone, in contrast with its several sister circuits, has failed to uphold this standard, Mr. Williamson respectfully asks this Court to grant review.

Finally, this case presents an ideal vehicle for certiorari. The issue was properly preserved in the district court and passed on by the court of appeals. There are no issues of waiver or harmlessness which might otherwise preclude a ruling on the merits.

CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of certiorari to the United States Court of Appeals for the Eleventh Circuit.

Respectfully Submitted,

MICHAEL CARUSO
FEDERAL PUBLIC DEFENDER

Ian McDonald
Assistant Federal Public Defender

Kate Mollison
Assistant Federal Public Defender

By: 

Counsel of Record
Special A No. A5502482
150 West Flagler Street
Suite 1700
Miami, Florida 33130-1556
Tel: 305-530-7000
Kate_Mollison@fd.org

Counsel for Petitioner

Miami, Florida
November 14, 2022