No. 23-5682

In The
Supreme Court of the United States

DILLON GAGE COMPTON,
Petitioner,

v.

STATE OF TEXAS
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTIONS PRESENTED

1. Whether the Texas Court of Criminal Appeals violated equal protection principles by not explicitly engaging in a side-by-side comparison of each individual prospective juror.

2. Whether Texas exercised its peremptory strikes in a prohibited discriminatory fashion.

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STATEMENT OF THE CASE

A. Factual Background of Crime

Petitioner Dillon Gage Compton, an inmate in the French Robertson Unit of the Texas Department of Criminal Justice, murdered Correctional Officer Mari Ann Johnson on July 16, 2016. Officer Johnson was among the officers supervising Compton and other kitchen workers early that morning. At 2:00 AM, a fellow officer found Officer Johnson's body in the dry-goods commissary hidden behind a rolling cabinet. The medical examiner concluded that Johnson's cause of death was asphyxia due to manual strangulation with blunt force injuries.

B. Trial and Appeal

Following strikes for cause, 42 qualified venirepersons remained for the 12 person jury. Of the 42 qualified venirepersons, 19 were men and 23 were women. Four out of the 42 were racial minorities, and two did not list their race. After peremptory strikes were completed, the jury was composed of four women and eight men. The racial makeup was one minority (a Hispanic man), one juror of unknown race, and 10 whites. Compton objected under *Batson v. Kentucky*[1] and under *J.E.B. v. Alabama*[2]. 21 RR 12. In response to Compton's *Batson* and *J.E.B.* objections, the State explained that it struck these venirepersons not because of their race or gender but because they indicated they could not follow the law, specifically regarding their ability to consider the full range of punishment. 21 RR 14-15. The trial court overruled Compton's objections. 21 RR 19.

The jury ultimately convicted Compton of capital murder. Based on the jury's answers to the special issues set forth in Texas Code of Criminal Procedure Article 37.071, Sections 2(b) and 2(e), the trial court sentenced Compton to death. Pursuant to Texas Code of Criminal

[1] *Batson v. Kentucky*, 476 U.S. 79 (1986).
[2] *J. E. B. v. Alabama ex rel. T. B.*, 511 U.S. 127 (1994).

Procedure Article 37.071, § 2(g), the case was automatically appealed to the Texas Court of Criminal Appeals ("CCA"). The CCA affirmed the trial court's judgment, holding that Compton's *Batson* and *J.E.B.* challenges lacked merit. The CCA denied rehearing on May 31, 2023.

Relying upon a misreading of *Flowers*, Compton now appears to ask this Court to create a mandatory requirement that a reviewing court explicitly engage in a side-by-side comparison of struck and unstruck venirepersons in order to avoid violating equal protection principles. Case law establishes that side-by-side comparison is a useful and powerful tool. It is a tool that the CCA evidently utilized in its thorough analysis of Compton's *J.E.B.* claim. However, current case law does not support an assertion that a court must explicitly enumerate its comparisons of potential jurors to avoid constitutional violations.

REASONS FOR DENYING THE PETITION

QUESTION PRESENTED #1

I. The Texas Court of Criminal Appeals engaged in thorough, meaningful analysis comparing the struck men and women, thus satisfying equal protection requirements and precluding the need for further review.

Compton's first question presented, as phrased in his petition, is based upon a mischaracterization that the CCA did not engage in meaningful analysis comparing the struck men and women. Without reiterating the entire analysis from the court below, it is necessary to examine the analysis framework used by the CCA to compare the struck men and women venirepersons. The CCA began by agreeing that Compton had satisfied his *prima facie* case under *J.E.B.* (Pet. App. 32a). It then examined the record under the *Flowers*[3] factors. (Pet. App. 32-36). While agreeing that it was concerning to use of 13 out of 15 peremptory strikes on women, the statistical evidence ultimately did not override the CCA's conclusion that the trial court did not err in denying

[3] *Flowers v. Mississippi*, 139 S. Ct. 2228 (2019).

Compton's objection. (Pet. App. 32a). Further, the CCA determined that the record provided no evidence that the female venirepersons were questioned differently than the males, and that additional questioning was almost always due to vacillation or concern with regard to imposing the death penalty. (Pet. App. 33a). The most contentious *Flowers* factor in this case is the side-by-side comparison of stricken and accepted venirepersons. The CCA did not engage in an explicit side-by-side analysis of every single potential juror in its opinion. (Pet. App. 33-34a). Rather, it demonstrated its close analysis of each potential juror by enumerating six points that exhibited the struck female jurors' overall less favorable views towards the death penalty. (Pet. App. 34a). Finally, the CCA held both that the record supported the State's explanations and that other circumstances raised by Compton failed to demonstrate purposeful discrimination. (Pet. App. 35a).

With regard to the side-by-side comparison factor, Compton claims that the CCA engaged in "group level scrutiny" that was inadequate to determine whether the State struck any female venireperson on the basis of gender. However, this position ignores the multipoint analysis laid out by the CCA illustrating that they did in fact meaningfully compare the struck women with the men. By performing its analysis in this way, the CCA did not raise Compton's burden. It simply found that Compton failed to show that even one strike was made discriminatorily.

Further, even if the CCA had not engaged in the exact side-by-side analysis Compton desires, the thorough analysis evidenced by the opinion did not violate equal protection principles. It seems Compton is asking for a mandatory requirement that a reviewing court must explicitly list and name every single juror in its comparison in order to effectively determine whether there is an inference of purposeful gender discrimination. However, no existing case law requires such explicit side-by-side analysis. *Flowers* states that side-by-side comparison is among the kinds of evidence a defendant *may* present,[4] while *Miller-El v. Dretke* states that side-by-side comparisons are more powerful than bare

[4] *Id*. at 2243 (emphasis added).

statistics.[5] Thus, Compton is requesting this Court to create a new mandatory analytical step, rather than allowing a reviewing court to utilize the current *Flowers* factors in an efficient manner depending on the case at hand.

Respondent, the State of Texas, asks this Court not to grant the petition for writ of certiorari on this issue. The constitutional requirements for review of peremptory strikes are well established in current case law and do not require what Compton requests.

QUESTION PRESENTED #2

II. The Texas Court of Criminal Appeals correctly determined that Texas did not exercise its peremptory strikes in a prohibited discriminatory fashion.

As originally stated during trial and maintained throughout the direct appeal process, Texas's main objective when making peremptory strikes was to ensure a jury that could consider the full possible range of punishment. The record demonstrates, and the Texas Court of Criminal Appeals agrees, that the responses given by the stricken venirepersons demonstrated a greater level of hesitation, vacillation, or opposition to the death penalty than those given by unstricken venirepersons. To grant the petition for a writ of certiorari on this issue would require this Court to engage in a fact-bound analysis that would duplicate the appropriate analysis already performed by the CCA in conformance with the constitutional requirements laid out by this Court.

[5] *Miller-El v. Dretke*, 545 U.S. 231, 241 (2005).

CONCLUSION

The Respondent State of Texas requests that the petition for a writ of certiorari be denied.

Respectfully Submitted,

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