

In the Supreme Court of the United States

STEVEN MULKEY,
Petitioner,

v.

STATE OF ALABAMA,
Respondent.

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

BRIEF IN OPPOSITION

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**CAPITAL CASE
QUESTION PRESENTED**

Petitioner Steven Mulkey beat an elderly couple to death with a hammer. His guilt is undeniable and he was unanimously sentenced to death. During jury selection, the trial court informed the jury pool that it would be placing a veniremember in contempt of court for causing delay in the jury selection process. The question presented is whether the trial court's actions violated Mulkey's rights under the Sixth and Fourteenth Amendments.

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STATEMENT OF THE CASE

1. On September 16, 2018, Steven Mulkey beat Ching and Siu Mei Kao to death with a hammer during a dispute over thirty dollars' worth of yard work.

The Kaos owned the Siesta Motel in Irondale, Alabama, along with a second property nearby. (R. 624-27.) In 2018, both properties needed maintenance and repairs. (R. 624-27.) Mulkey, who was used to taking "under the table type work," approached the Kaos and offered to help them restore the properties. (R. 919, 921-22, 1382.) The Kaos arranged for Mulkey to mow both properties and promised to pay him fifty dollars. (R. 957, 1382-83.)

On September 16, Mulkey cut the grass at the second property as planned, then returned to the motel. (R. 926, 957.) When Mulkey approached Ching for payment, he told Mulkey he would only pay him twenty dollars instead of the previously agreed upon amount. (R. 957-59, 1383-84.) A heated argument ensued. (R. 957-58, 60.) After Ching dismissed him, Mulkey violently struck Ching in the head with a hammer he had with him. (R. 661-62, 668-69, 1384-85.) Mulkey then began to beat Siu Mei, who came to her husband's defense. (R. 827-28, 950, 968.) Siu Mei, however, was in better shape and Mulkey struggled to subdue her. (R. 986, 969.) Eventually, he grabbed a nearby steak knife and stabbed Siu Mei in the neck three times. (R. 787-91, 827.) The violent attack was captured on motel surveillance video. (Ex. 171.)

During the two days that followed, Mulkey made repeated attempts to dispose of the Kaos' bodies. He wrapped their bodies in bedsheets and bound them with nylon

rope, but he was unable to move them. (R. 662, 669, 676-77, 809-10, 947.) Around 1:00 a.m. on September 18, Mulkey returned to the motel and used a shopping cart to load the Kaos' bodies into the trunk of their own car. (R. 669, 676-77, 709-11, 948-49.) From there, he took their bodies to a secluded area and discarded them. (R. 743, 748-49, 809-10, 947-48.) Mulkey stole money from the Kaos' safe, shaved his head, and left the state. (R. 654, 775-79, 949-50, 952-54.)

On September 21, the Kaos' daughters reported them missing after they were unable to reach them for several days. (R. 618-19, 653.) Detectives identified Mulkey from the motel's surveillance video. (R. 639-42, 660-63.) Officers also found the Kaos' abandoned vehicle, and recovered the Kaos' safe, a hammer, a backpack, a receipt bearing Mulkey's name, the couple's passports, and what appeared to be blood stains in the trunk. (R. 654-55, 724-26, 735-36, 739.) Police collected additional evidence from Mulkey's motel room: a room receipt with his name on it, a photograph of Siu Mei, a bloodstained gardening glove, and a steak knife with blood on the blade, which was later matched to Siu Mei's genetic traits. (R. 755-62, 789-91.)

Mulkey was arrested by the U.S. Marshals Service in Staunton, Virginia. (R. 796.) After agreeing to speak with police, Mulkey revealed where he dumped the Kaos' bodies. (R. 796, 800-01, 809-10.) More than a week after the Kaos were murdered, investigators located their remains, which were partially decomposed. (R. 743-45, 809, 826, 839.) Ching was seventy-seven, and Siu Mei was seventy-six. (R. 808.)

2. Mulkey was charged with three counts of capital murder, and his trial began on April 17, 2023. (C. 221-22; R. 143.) On the first day of jury selection, prospective jurors were given general instructions, introductions, and juror questionnaires. (R. 168-218.) Several times the circuit court instructed the venire to return to the courthouse before 9:00 a.m. the following day. (R. 216-18.) On the second day of jury selection, the court was ready to resume voir dire when it stated:

Before we begin, I do have an administrative issue to take up. Juror [J.F.], juror number 230, we were able to reach him at 9:30, and he indicated he was getting dressed to come down. The Court is not going to delay this process any more. For the record, the Court has ordered that [J.F.] be taken into custody, and he will be held in contempt of court.

(R. 227-28.) Mulkey did not object or raise any concerns. (R. 299.) The court then addressed the venire, adding: “To those folks who were late, please understand that we try to begin as on time as possible, and if you are late, you hold up the process, as well as your fellow jurors.” (R. 229.) The court later removed J.F. for cause. (R. 390-91.)

Mulkey was found guilty of one count of capital murder for killing two or more persons during one act, scheme, or course of conduct. (R. 1110-14.) The jury unanimously found the existence of two aggravating circumstances and, by a vote of twelve to zero, agreed that Mulkey should be sentenced to death. (R. 1125-26, 1144-46, 1456.)

3. Mulkey argued for the first time on direct appeal to the Alabama Court of Criminal Appeals (ACCA) that placing a veniremember in contempt of court in front of the jury pool before voir dire constituted an abuse of power and compromised the

integrity of his jury selection and trial. *Mulkey v. State*, CR-2023-0304, 2025 WL 1272751, at *10 (Ala. Crim. App. May 2, 2025). The ACCA reviewed the court’s removal of the juror for plain error and determined that “Alabama courts have the authority to issue orders to prevent the hindrance of its proceedings, § 12-1-7(1), Ala. Code 1975, and ‘[t]o control ... all other persons connected with a judicial proceeding before it in every matter appertaining thereto.’” *Id.* (citing Ala. Code § 12-1-7(4)). The court also determined that “Mulkey’s assertion of prejudice is wildly speculative.” *Id.* The court affirmed Mulkey’s conviction and death sentence. *Id.* at *20.

Mulkey petitioned the Alabama Supreme Court for a writ of certiorari, which that court denied on December 19, 2025. *Mulkey v. State*, No. SC-2025-0615. This petition followed.

REASONS FOR DENYING THE WRIT

Mulkey’s petition presents neither an important federal question nor a genuine conflict among the courts. It simply asks this Court to review an unpreserved issue that was correctly resolved below. The Court should deny the petition.

Mulkey argues that the trial court violated his constitutional right to a fair and impartial jury under the Sixth and Fourteenth Amendments by announcing to the jury pool that a prospective juror would be held in contempt of court for delaying the jury selection process by arriving thirty minutes late. Pet. 8-13. Mulkey’s argument fails because there was no error below, the venire was not tainted, and his due process rights were not violated.

The ACCA reviewed Mulkey’s argument only for plain error because Mulkey had failed to preserve it. Then it determined—correctly—that no plain error occurred because trial courts have inherent authority to manage the jury selection process and the court’s exercise of that authority here did not constitute a constitutional violation. That ruling comports with this Court’s decisions. *See, e.g., United States v. Tsarnaev*, 595 U.S. 302, 316 (2022) (“This Court has held many times that a district court enjoys broad discretion to manage jury selection.”); *Dietz v. Bouldin*, 579 U.S. 40, 47 (2016) (“This Court has also held that district courts have the inherent authority to manage their dockets and courtrooms with a view toward the efficient and expedient resolution of cases.”); *Skilling v. United States*, 561 U.S. 358, 386 (2010) (“Jury selection, we have repeatedly emphasized, is ‘particularly within the province of the trial judge.’” (quoting *Ristaino v. Ross*, 424 U.S. 589, 594-95 (1976))).

J.F.’s conduct obstructed the jury selection process and delayed the court’s administration of Mulkey’s case. The court repeatedly instructed veniremembers to be at the courthouse for jury selection before 9:00 a.m., and J.F. disregarded the court’s order. (R. 216-18, 228.) The court’s remarks were brief and addressed only the logistics of jury selection and the venire’s compliance. The case Mulkey relies upon, *Sheppard v. Maxwell*, 384 U.S. 333, 362 (1966), is inapposite. Unlike the court in *Sheppard*, which allowed “bedlam” at the courthouse, the court here took appropriate action to preserve the integrity of the jury selection process and prevent any further interruption, disturbance, or impediment to the proceedings.

To the extent Mulkey alleges that J.F.’s removal implicates *Miller-El v. Dretke*, 545 U.S. 231 (2005), and *Powers v. Ohio*, 499 U.S. 400 (1991), he misunderstands the scope of these opinions. *Miller-El* and *Powers* concern the exclusion of prospective jurors through peremptory challenges based on race. 545 U.S. at 235; 499 U.S. at 402. There is no evidence in the record that the trial court’s removal of J.F. was motivated by race or any other discriminatory characteristic. Instead, the court removed J.F. for failing to appear on time, a race-neutral requirement imposed on every member of the jury pool. J.F. was excluded because he failed to follow the court’s instructions, not because of any discriminatory conduct by the State.

Mulkey’s claim that the trial court’s announcement influenced the venire’s ability to answer questions freely and honestly, Pet. 11, remains “wildly speculative.” *Mulkey*, 2025 WL 1272751, at *10. Mulkey cites responses from two veniremembers, G.S. and K.E., who expressed concern about the potential consequences of answering the questions truthfully. Pet. 11. But the record does not support Mulkey’s contention that J.F.’s removal *caused* these reactions. Any fear or hesitation expressed by G.S. or K.E. could just as easily reflect the typical concerns prospective jurors voice in capital cases. If anything, the fact that G.S. and K.E. candidly expressed their opinions demonstrates that the jury selection process functioned properly.

Moreover, the trial court was not required to poll the remaining veniremembers about the effect of J.F.’s removal or give a curative instruction *sua sponte*, particularly given that Mulkey did not object to the court’s statement or ask for any curative action. Despite Mulkey’s argument, *Remmer v. United States*, 347

U.S. 227, 230 (1954), does not require the trial court to conduct a hearing any time an administrative action is taken in front of the venire. In *Remmer*, an outside person communicated with and attempted to bribe a seated juror. 347 U.S. at 228. The incident occurred off the record and the petitioner was not informed of the incident until after the verdict. *Id.* By contrast, in Mulkey's case, the announcement was made on the record, in open court, and in the presence of both parties. (R. 227-28.) Mulkey had the opportunity to object or request a curative instruction but did neither. (R. 229.)

A trial court's enforcement of its own attendance rules through well-established contempt power is a lawful exercise of judicial authority. *Pearle Vision, Inc. v. Romm*, 541 F.3d 751, 757 (7th Cir. 2008). Mulkey's petition fails to show that the trial court's action was abuse of that authority, that the ACCA's opinion that no plain error occurred conflicts with any precedent by this Court, or that the question presented is one that has divided courts across the country. *See* S. Ct. R. 10. There is no need for further review.

CONCLUSION

For these reasons, the Court should deny certiorari.

Respectfully submitted,

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