17-9572 FLOWERS V. MISSISSIPPI

DECISION BELOW: 240 So.3d 1082

LOWER COURT CASE NUMBER: 2010-DP-01348-SCT

QUESTION PRESENTED:

Petitioner Curtis Flowers has been tried six times for the same off in Mississippi state court. Through the first four trials, prosecutor Doug Evans relentlessly removed as many qualified African American jurors as he could. He struck all ten African Americans who came up for consideration during the first two trials, and he used all twenty-six of his allotted strikes against African Americans at the third and fourth trials. (The fifth jury hung on guilt-or-innocence and strike information is not in the available record). Along the way, Evans was twice adjudicated to have violated *Batson v. Kentucky* - once by the trial judge during the second trial, and once by the Mississippi Supreme Court after the third trial.

At the sixth trial Evans accepted the first qualified African American, then struck the remaining five. When Flowers challenged those strikes on direct appeal, a divided Mississippi Supreme Court reviewed Evans' proffered explanations for the strikes deferentially and without taking into account his extensive record of discrimination in this case, and affirmed. Flowers then sought review here, asking: "Whether a prosecutor's history of adjudicated purposeful race discrimination must be considered when assessing the credibility of his proffered explanations for peremptory strikes against minority prospective jurors?" This Court responded by granting certiorari, vacating the Mississippi Supreme Court's judgment, and remanding "for further consideration in light of *Foster v. Chatman*, 136 S. Ct. 1737 (2016)." *Flowers v. Mississippi*, 136 S. Ct. 2157 (2016).

On remand, a divided Mississippi Supreme Court again affirmed. Over three dissents, the state court majority emphasized deference to the trial court, and insisted both that the "[t]he prior adjudications of the violation of *Batson* do not undermine Evans' race neutral reasons," and that "the historical evidence of past discrimination ... does not alter our analysis ..." *Flowers v. Mississippi*, 240 So.3d 1082, 1124 (Miss. 2018). The state court majority then repeated, nearly word-for-word, its previous, history-blind evaluation of Evans' strikes.

Because a prosecutor's personal history of verified, adjudicated discrimination is highly probative of both his propensity to discriminate and his willingness to mask that discrimination with false explanations at *Batson's* third step, the barely altered question presented is:

Whether a prosecutor's history of adjudicated purposeful race discrimination may be dismissed as irrelevant when assessing the credibility of his proffered explanations for peremptory strikes against minority prospective jurors?

GRANTED LIMITED TO THE FOLLOWING QUESTION: WHETHER THE MISSISSIPPI SUPREME COURT ERRED IN HOW IT APPLIED *BATSON* v. KENTUCKY, 476 U.S. 79 (1986) IN THIS CASE.

CERT. GRANTED 11/2/2018