

24-7351 PITCHFORD V. CAIN

DECISION BELOW: 126 F.4th 422

LOWER COURT CASE NUMBER: 23-70009

QUESTION PRESENTED:

District Attorney Doug Evans convicted Terry Pitchford, aged 18 years at the time of the crime, of capital murder and secured a death verdict in the Grenada Circuit Court before Judge Joseph Loper on February 9, 2006, with the entirety of jury selection and opening arguments taking place on February 6.

After direct and collateral reviews in state court, the Northern District of Mississippi granted habeas corpus relief upon concluding that the trial court failed to determine the plausibility of the prosecutor's proffered reasons for peremptorily striking four Black venire members or otherwise consider the full circumstances bearing upon whether Mr. Evans's reasons for striking any and each of these four venire members was pretextual and in violation of the Equal Protection Clause. In so doing, the District Court ruled the state supreme court's reliance on its waiver jurisprudence improperly foreclosed consideration of pretext *under Batson v. Kentucky*, 476 U.S. 79 (1986).

The Fifth Circuit reversed, finding that Judge Loper implicitly made determinations for each of the four strikes, trial counsel waived argument of pretext, and the Supreme Court of Mississippi's waiver jurisprudence comports with *Batson*.

This opinion in *Pitchford v. Cain* confirmed the Fifth Circuit's disavowal of earlier circuit jurisprudence recognizing, inter alia, that since *Miller-El v. Dretke*, 545 U.S. 231 (2005) (*Miller-El II*), capital petitioners had been unable to "waive[] any *Batson* claim based on a comparison analysis," *Woodward v. Epps*, 580 F.3d 318, 338 (5th Cir. 2009), deepening the Fifth Circuit's split, joined by two other circuits, with the majority of courts of appeals in the application of *Batson*.

This petition presents the following questions:

1. Does clearly established federal law determined by this Court and applied in six other circuits require reversal of a state appellate court's denial of relief from a capital prosecutor's discriminatory exercise of four peremptory strikes against Black venire members wherein the trial court, for each of the four strikes, failed to determine "the plausibility of the reason in light of all evidence with a bearing on it"? *Miller-El II*, 545 U.S. at 251–52.
2. Does Mississippi Supreme Court precedent, which deems waived on direct review arguments of pretext not stated in the trial record, defy this Court's clearly established federal law under *Batson*?
3. Does a finding of waiver on a trial record possessing *Batson* objections, defense counsel efforts to argue the objection, and the trial court's express assurance the issues were preserved, constitute an unreasonable determination of facts?

GRANTED LIMITED TO THE FOLLOWING QUESTION: WHETHER, UNDER THE STANDARDS SET FORTH IN AEDPA, 28 U. S. C. §2254(d), THE MISSISSIPPI SUPREME COURT UNREASONABLY DETERMINED THAT PETITIONER WAIVED HIS RIGHT TO REBUT THE PROSECUTOR'S ASSERTED RACE-NEUTRAL REASONS FOR EXERCISING PEREMPTORY STRIKES AGAINST FOUR BLACK JURORS.

ORDER OF MARCH 30, 2026:

THE MOTION OF PETITIONER FOR APPOINTMENT OF COUNSEL IS GRANTED.

CERT. GRANTED 12/15/2025