

SUPREME COURT OF MISSISSIPPI

Curtis Giovanni Flowers v. State of Mississippi

240 So. 3d 1082 (Miss. 2017) · No. No. 2010-DP-01348-SCT · Decided November 2, 2017

SUMMARY

The Supreme Court of Mississippi affirmed Curtis Giovanni Flowers’s convictions and death sentences for four capital murders following his sixth trial. On remand from the United States Supreme Court for reconsideration under *Foster v. Chatman*, the court rejected Flowers’s Batson challenge to the prosecution’s peremptory strikes and reinstated its prior decision on the remaining issues. The opinion also addresses eyewitness identification, expert testimony, gunshot-residue evidence, jury selection, double jeopardy, jury instructions, and proportionality of the death sentence.

CASE DETAILS

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| COURT                 | Supreme Court of Mississippi                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| WRITING FOR THE COURT | Coleman, Justice, for the Court; Coleman; King; Waller                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| JURISDICTION          | Mississippi                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| DECIDED               | November 2, 2017                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| DOCKET                | No. 2010-DP-01348-SCT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| PROCEDURAL POSTURE    | Direct appeal from convictions for four counts of capital murder and four death sentences following Flowers's sixth trial; the United States Supreme Court vacated the Mississippi Supreme Court's prior judgment and remanded for reconsideration of the Batson issue in light of <i>Foster v. Chatman</i> .                                                                                                                                                                                                              |
| STANDARD OF REVIEW    | The opinion applied issue-specific standards, including abuse of discretion for evidentiary and expert-testimony rulings; substantial credible evidence and totality-of-the-circumstances review for identification-suppression findings; de novo review of legal sufficiency through the JNOV standard; plain-error review for unpreserved prosecutorial-misconduct claims; and clear-error or overwhelming-weight review of Batson findings, with substantial deference to the trial court's credibility determinations. |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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**PARTIES**

Curtis Giovanni Flowers a/k/a Curtis Flowers a/k/a Curtis G. Flowers  
v. State of Mississippi

**TOPICS**

jury selection equal protection evidence appellate procedure

**PRACTICE AREAS**

criminal law capital punishment criminal procedure constitutional law evidence appellate procedure

**QUESTIONS PRESENTED**

1. Whether the eyewitness identifications by Porky Collins were impermissibly suggestive or constitutionally unreliable.
2. Whether the trial court improperly excluded expert testimony concerning police investigative techniques and eyewitness identification reliability.
3. Whether evidence of a single particle of gunshot residue should have been excluded under Mississippi Rule of Evidence 403.
4. Whether the evidence was legally sufficient to support four capital-murder convictions.
5. Whether prosecutorial statements during closing argument constituted reversible misconduct or plain error.
6. Whether the State exercised peremptory strikes in violation of Batson v. Kentucky and the Equal Protection Clause.
7. Whether the remaining challenges to the convictions, death sentences, jury instructions, double jeopardy, proportionality, and cumulative error warranted reversal.

**HOLDINGS**

1. The trial court did not err in admitting Collins's identifications because the photographic lineup was not impermissibly suggestive, and the circumstances did not create a substantial likelihood of misidentification.
2. The trial court did not abuse its discretion by excluding Robert Johnson's proposed expert testimony.
3. The trial court did not abuse its discretion by excluding Dr. Jeffrey Neuschatz's proposed eyewitness-identification testimony.
4. The trial court did not abuse its discretion by admitting evidence that a single particle of gunshot residue was found on Flowers's hand.
5. The evidence was sufficient for a rational trier of fact to find Flowers guilty beyond a reasonable doubt of four counts of capital murder committed during an armed robbery.
6. The prosecutor's closing argument did not warrant reversal under plain-error review.

7. The State's peremptory strikes did not establish a Batson violation, and the trial court's finding that the State's race-neutral reasons were credible was not clearly erroneous.

#### KEY QUOTATIONS

*“Two peremptory strikes on the basis of race are two more than the Constitution allows.”* (¶ 97)

*“all of the circumstances that bear upon the issue of racial animosity must be consulted.”* (¶ 103)

#### FACTUAL BACKGROUND

Four employees of Tardy Furniture Store in Winona, Mississippi, were shot during a July 16, 1996 robbery. Investigators linked Flowers to the scene through witness sightings, a stolen .380-caliber pistol, a bloody shoeprint consistent with his shoe size and footwear, gunshot residue, missing cash, and testimony from a jailhouse informant that Flowers confessed. Flowers denied involvement and presented evidence challenging the investigation, eyewitness identifications, physical evidence, and the credibility of prosecution witnesses.

#### PROCEDURAL HISTORY

Flowers was convicted and sentenced to death after his sixth trial in Montgomery County Circuit Court. The Mississippi Supreme Court affirmed in *Flowers v. State*, 158 So. 3d 1009 (Miss. 2014), but the United States Supreme Court granted certiorari, vacated that judgment, and remanded for further consideration in light of *Foster v. Chatman*. After supplemental briefing, the Mississippi Supreme Court found no Batson violation, reinstated its resolution of the remaining issues, and affirmed the convictions and death sentences.

#### DISPOSITION

affirmed

#### CASES CITED

- *Flowers v. State*, 158 So. 3d 1009 (Miss. 2014)
- *Flowers v. Mississippi*, 136 S. Ct. 2157 (2016)
- *Foster v. Chatman*, 136 S. Ct. 1737 (2016)
- *Batson v. Kentucky*, 476 U.S. 79 (1986)
- *Flowers v. State*, 947 So. 2d 910 (Miss. 2007)
- *Flowers v. State*, 842 So. 2d 531 (Miss. 2003)
- *Flowers v. State*, 773 So. 2d 309 (Miss. 2000)
- *Butler v. State*, 102 So. 3d 260 (Miss. 2012)
- *Gray v. State*, 728 So. 2d 36 (Miss. 1998)
- *York v. State*, 413 So. 2d 1372 (Miss. 1982)
- *Neil v. Biggers*, 409 U.S. 188 (1972)
- *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993)
- *Gillett v. State*, 56 So. 3d 469 (Miss. 2010)

- Corrothers v. State, 148 So. 3d 278 (Miss. 2014)
- Taylor v. State, 110 So. 3d 776 (Miss. 2013)
- Ladner v. State, 584 So. 2d 743 (Miss. 1991)
- Minor v. State, 831 So. 2d 1116 (Miss. 2002)
- Foster v. State, 508 So. 2d 1111 (Miss. 1987)
- Conners v. State, 92 So. 3d 676 (Miss. 2012)
- Miller-El v. Cockrell, 537 U.S. 322 (2003)
- Miller-El v. Dretke, 545 U.S. 231 (2005)
- Snyder v. Louisiana, 552 U.S. 472 (2008)
- Thorson v. State, 721 So. 2d 590 (Miss. 1998)

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