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CAPITAL CASE REVERSED FOR *BATSON* ERROR

Flowers v. Mississippi—Filed June 21, 2019, in 17-9572 [[2019 WL 2552489](#); [2019 U.S. Lexis 4196](#)].

Facts: The same lead prosecutor conducted six capital murder trials of def. for the murder of four victims (three of whom were white). Def. raised *Batson* error at the first three trials in which all-white or almost all-white juries convicted and imposed death. The state supreme court reversed the first and second convictions for prosecutorial misconduct and the third conviction for *Batson* error. The fourth and fifth trials before juries that included five black jurors and three black jurors, respectively, ended in hung juries. At the sixth trial, the trial court found no *Batson* error after the prosecutor’s peremptory challenges against black jurors left only one black juror on the jury. The state supreme court affirmed the conviction and judgment of death in a 5-4 decision.

Held: (1.) Four critical facts, taken together, require reversal. First, in the six trials combined, the prosecutor used peremptory challenges to strike 41 of the 42 black prospective jurors he could have struck. Second, in the most recent trial, the prosecutor struck five of the six black prospective jurors. Third, in the most recent trial, the prosecutor engaged in dramatically disparate questioning of black and white prospective jurors. Fourth, the prosecutor then struck at least one black prospective juror who was similarly situated to white prospective jurors whom he did not strike. The Court states that its decision breaks no new legal ground and simply enforces *Batson*.

Kavanaugh, J., delivered the opinion of the Court, in which Roberts, C.J., and Ginsburg, Breyer, Alito, Sotomayor, and Kagan, JJ., joined. Alito, J., filed a concurring opinion. Thomas, J., filed a dissenting opinion, in which Gorsuch, J., joined as to Parts I, II, and III.