

SOCIAL JUSTICE PRO BONO

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With pro bono help on a 23-year journey, Curtis Flowers is now out of prison on bail after being tried for murder six times. In every trial, the prosecutor used his peremptory challenges to strike black prospective jurors, but the U.S. Supreme Court reversed Flowers' most recent conviction.

Curtis Flowers' 23-Year Road, With Pro Bono Help, From Arrest and Six Trials to Bail



ABOUT THE AUTHOR

Jim Shelson is a partner in the Jackson, Mississippi office of Phelps Dunbar LLP. He is the Chair of the IADC Social Justice Pro Bono Committee. He can be reached at shelsonj@phelps.com.

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The mission of the Social Justice Pro Bono Committee is to ensure that the IADC and its members continue to serve as guardians, caretakers, and advocates of and for social justice and to serve as role models for others in our profession. The Committee will explore and identify approaches to and resources for the provision of legal services to advance the cause of social justice, to assist the poor, disadvantaged, and other individuals, groups or organizations unable to secure legal assistance to address critical problems. The Committee will support, enhance, and transform the social justice and pro bono efforts of IADC members, corporate legal departments and public interest organizations in the U.S. and around the world. Learn more about the Committee at www.iadclaw.org.



Katie Kenyon
Vice Chair of Publications
Meyer, Unkovic & Scott LLP
kmk@muslaw.com

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The City of Winona, Mississippi, is called the Crossroads of North Mississippi because it is located where Highway 82 intersects with Highway 51 and Interstate I-55.¹ Winona is a one-hour-and-fifteen minute drive north of Jackson, Mississippi, and a one-and-a-half hour drive south of Memphis, Tennessee.² Winona has a population of approximately 5,000 people.³ It is the birthplace of blues legend Little Sammy Davis.⁴

The Murders in Winona

On July 16, 1996, four people were shot to death at the Tardy Furniture Company in Winona.⁵ “One hot summer morning, someone walked into Tardy Furniture in Winona and shot owner Bertha Tardy and three workers – Robert Golden, Carmen Rigby, and Derrick ‘Bobo’ Stewart. Nearly \$300 was stolen from the cash register. Hours later, Curtis Flowers emerged as a suspect. He’d stopped working at Tardy Furniture about two weeks before and owed the store a \$300 advance on his paycheck.”⁶ In January 1997, Flowers was charged with all four murders.⁷ “The quadruple murder and robbery of the Tardy Furniture store in

July 1996 rattled Winona ... In the many years since, it continues to hold a tight grip on the community and its 5,000 residents.”⁸

But the case against Flowers developed major holes. In 2018, the second season of the podcast, “In the Dark,” by American Public Media, exposed the holes. For example, a gun that was potentially the murder weapon was turned over to police, but it disappeared, and two of Flowers’ cellmates who had testified at trial that Flowers confessed to the murders in jail later recanted their testimony.⁹

As the United States Supreme Court summarized, “Flowers is black. He has been tried six separate times before a jury for murder. The same lead prosecutor represented the State in all six trials.”¹⁰ The lead prosecutor, Doug Evans, is white. In the six trials of Flowers, 61 of the 72 jurors were white.¹¹

In the years since 1996, Flowers has received pro bono assistance, including from the Cornell Death Penalty Project, the

¹ <http://winonams.us/>.

² <http://winonams.us/>.

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https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml?src=bkmk.

⁴ https://en.wikipedia.org/wiki/Little_Sammy_Davis.

⁵ Flowers v. State, 773 So.2d 309, 312 (Miss. 2000).

⁶ Cara Bayles, “For Curtis Flowers, A Long Road To Bail, Law 360, Jan. 5, 2020,

<https://www.law360.com/articles/1230943/for-curtis-flowers-a-long-road-to-bail>.

⁷ Id. at 313.

⁸ Rick Rojas, After 6 Murder Trials and 23 Years, Curtis Flowers is Granted Bail, New York Times, Jan. 16, 2020,

<https://www.nytimes.com/2019/12/16/us/curtis-flowers-murder.html>.

⁹ See <https://www.apmreports.org/in-the-dark/season-two>.

¹⁰ Flowers v. Mississippi, 139 S.Ct. 2228, 2234 (2019).

¹¹ Rick Rojas, After 6 Murder Trials and 23 Years, Curtis Flowers is Granted Bail, New York Times, Jan. 16, 2020,

<https://www.nytimes.com/2019/12/16/us/curtis-flowers-murder.html>.

Mississippi Innocence Project, and other lawyers and law firms.¹²

The Six Trials of Curtis Flowers

In each of the first two trials, Flowers was tried for one individual murder.¹³ In each subsequent trial, Flowers was tried for all four of the murders together.¹⁴ Flowers was convicted in each of his first three trials, but the Mississippi Supreme Court reversed each conviction.¹⁵

At Flowers' first trial, there were 36 prospective jurors – 5 black and 31 white.¹⁶ The State struck all of the black prospective jurors.¹⁷ Flowers was convicted by an all-white jury and sentenced to death.¹⁸ Flowers appealed to the Mississippi Supreme Court alleging prosecutorial misconduct and that the State violated *Batson*¹⁹ in exercising peremptory strikes against black prospective jurors.²⁰ *Batson* held that a prosecutor's use of peremptory challenges in a criminal case to exclude jurors based solely on their race violated the Equal Protection Clause of the Fourteenth Amendment. Under *Batson*, the "ultimate inquiry is whether the State was 'motivated

in substantial part by discriminatory intent.'"²¹ The conviction in the first trial was reversed because of prosecutorial misconduct, so the Mississippi Supreme Court did not address the *Batson* issue.²²

At the second trial, there were 30 prospective jurors – 5 black and 25 white.²³ The State again struck all of the black prospective jurors, but the trial court disallowed one of the strikes on *Batson* grounds and seated 1 black juror.²⁴ The jury convicted Flowers and sentenced him to death.²⁵ The Mississippi Supreme Court again reversed for prosecutorial misconduct.²⁶

At the third trial, there were 45 prospective jurors – 17 black and 28 white.²⁷ One black prospective juror was struck for cause.²⁸ The State had 15 peremptory strikes and used all 15 against prospective black jurors.²⁹ A jury of 11 white jurors and 1 black juror convicted Flowers and sentenced him to death.³⁰ The conviction in the third trial was reversed because the Mississippi Supreme Court found the prosecutor violated *Batson* by discriminating against black jurors in the jury selection process.³¹

¹² <https://www.mscenterforjustice.blog/blog-1/2019/7/2/rob-mcduff-and-the-mississippi-center-for-justice-to-represent-curtis-flowers-as-his-case-returns-from-the-us-supreme-court>.

¹³ Id. at 2236.

¹⁴ Id.

¹⁵ Id. at 2235.

¹⁶ Id. at 2236

¹⁷ Id.

¹⁸ Id.

¹⁹ *Batson v. Kentucky*, 476 U.S. 79 (1986).

²⁰ Flowers, 139 S.Ct. at 2236.

²¹ Id. at 2244.

²² Flowers, 139 S.Ct. at 2235.

²³ Id. at 2236.

²⁴ Id.

²⁵ Id.

²⁶ Id. See also *Flowers v. State*, 842 So.2d 531 (Miss. 2003).

²⁷ Flowers, 139 S.Ct. at 2236.

²⁸ Id.

²⁹ Id.

³⁰ Id. at 2237.

³¹ Id., citing *Flowers v. State*, 947 So.2d 910, 935 (Miss. 2007).

At the fourth trial, there were 36 prospective jurors – 16 black and 20 white.³² The State had 11 peremptory strikes and used all 11 against prospective black jurors.³³ The seated jury consisted on 7 white jurors and 5 black jurors.³⁴ The jury could not reach a verdict and the fourth trial ended in a mistrial.³⁵

At the fifth trial, there is no available racial information about the prospective jurors.³⁶ The seated jury consisted of 9 white jurors and 5 black jurors. The jurors could not reach a verdict and the fifth trial ended in a mistrial.³⁷

At the sixth trial, there were 26 prospective jurors – 6 black and 20 white.³⁸ The State exercised 6 peremptory strikes, and used 5 of the 6 strikes against black prospective jurors, leaving only 1 black juror on the jury.³⁹ That jury convicted Flowers and sentenced him to death.⁴⁰ Flowers appealed to the Mississippi Supreme Court. The Mississippi Supreme Court affirmed the conviction.⁴¹ Flowers appealed to the United States Supreme Court, asserting the State violated *Batson* in exercising peremptory strikes against black prospective jurors.⁴²

The United States Supreme Court found the State violated *Batson* and reversed Flowers' conviction. In summary the Court found as follows: "Four critical facts, taken together, require reversal. *First*, in the six trials combined, the State employed its peremptory challenges to strike 41 of the 42 black prospective jurors that it could have struck ... *Second*, in the most recent trial, the sixth trial, the State exercised peremptory strikes against five of the six black prospective jurors. *Third*, at the sixth trial, in an apparent effort to find pretextual reasons to strike black prospective jurors, the State engaged in dramatically disparate questioning of black and white prospective jurors. *Fourth*, the State then struck at least one black prospective juror, Carolyn Wright, who was similarly situated to white prospective jurors who were not struck by the State."⁴³

In short, the State used its peremptory strikes to remove as many black prospective jurors as possible. "The State appeared to proceed as if *Batson* had never been decided. The State's relentless, determined effort to rid the jury of black individuals strongly suggests that the State wanted to try Flowers before a jury with as few black jurors as possible, and ideally before an all-white jury."⁴⁴ The State's pattern of striking black prospective jurors and its disparate

³² Flowers, 137 S.Ct. at 2237.

³³ Id.

³⁴ Id.

³⁵ Id.

³⁶ Id.

³⁷ Id.

³⁸ Id.

³⁹ Id.

⁴⁰ Id.

⁴¹ Id. See also Flowers v. State, 158 So.3d 1009 (Miss. 2014); Flowers v. State, 240 So.3d 1082 (Miss. 2017).

⁴² Flowers, 139 S.Ct. at 2237.

⁴³ Id. at 2235.

⁴⁴ Id. at 2246.

questioning of black prospective jurors violated *Batson*.⁴⁵

Flowers Seeks Bail

After the United States Supreme Court reversed Flowers conviction in June 2019, Flowers sought bail in the Mississippi trial court. On December 16, 2019, the trial court granted bail. A \$250,000 bond was posted by an anonymous donor and Flowers was released from prison.⁴⁶ Flowers had been jailed for 23 years. He spent much of that time on death row.

When he granted Flowers' request for bail, the trial judge noted "the troubling fact that in the nearly four months this case has been back before the court, the state of Mississippi has taken absolutely no action of any kind in furtherance of this prosecution. I have this caution for the state of Mississippi: If it continues in its dilatory conduct, the state will reap the whirlwind."⁴⁷ The trial judge also noted that a seventh trial of Flowers would consist of "wholly a circumstantial evidence case."⁴⁸

One of Flowers' lawyers said, "[t]his was not a case with just one reversal for prosecutorial misconduct, but four. That is unprecedented in the history of the American legal system. In other words, every time Doug Evans won a conviction, he did it by cheating."⁴⁹

Doug Evans Recuses Himself

In November 2019, the NAACP Legal Defense and Educational Fund filed a federal class action – *Attala County NAACP v. Evans*⁵⁰ – against Doug Evans accusing him of excluding black jurors from criminal juries. The suit alleges that black prospective jurors were 6.7 times more likely to be struck than white jurors.⁵¹ On January 6, 2020, Evans recused himself as the prosecutor in Flowers' case, and requested that the Mississippi Attorney General's office take over the prosecution.⁵² The Mississippi Attorney General has not yet decided whether she will try Curtis Flowers again.

⁴⁵ Id. at 2251.

⁴⁶ Cara Bayles, "For Curtis Flowers, A Long Road To Bail, Law 360, Jan. 5, 2020, <https://www.law360.com/articles/1230943/for-curtis-flowers-a-long-road-to-bail>.

⁴⁷ Cara Bayles, "With DA Out, What's Next For Curtis Flowers," Law 360, Jan. 12, 2020, <https://www.law360.com/articles/1233079>.

⁴⁸ Cara Bayles, "For Curtis Flowers, A Long Road To Bail, Law 360, Jan. 5, 2020, <https://www.law360.com/articles/1230943/for-curtis-flowers-a-long-road-to-bail>.

⁴⁹ Elliott C. McLaughlin, "Mississippi prosecutor who tried Curtis Flowers on murder charges six times

steps down," CNN, Jan 8, 2020,

<https://www.cnn.com/2020/01/07/us/mississippi-curtis-flowers-prosecutor-recuses/index.html>.

⁵⁰ <https://features.apmreports.org/documents/?document=6551924-NAACP-v-Doug-Evans>.

⁵¹ <https://www.naacpldf.org/case-issue/attala-county-naacp-v-evans>.

⁵² Elliott C. McLaughlin, "Mississippi prosecutor who tried Curtis Flowers on murder charges six times steps down," CNN, Jan 8, 2020,

<https://www.cnn.com/2020/01/07/us/mississippi-curtis-flowers-prosecutor-recuses/index.html>.

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