

6/29/01

SUPREME COURT OF LOUISIANA

No. 98-KA-1417

STATE OF LOUISIANA

VERSUS

JUAN A. SMITH

KNOLL, J. Concurring.

Respectfully, I concur only as to assignment of error twelve in the penalty phase because I disagree, notwithstanding the holding in State v. Jackson, 608 So. 2d 949 (La. 1992), that the State is limited to “the evidence supporting a prior conviction to the document certifying the fact of conviction and to the testimony of the victim or of any eyewitness to the crime.” This restriction unduly limits the State’s ability to show the character and propensities of the defendant at the penalty phase when the State is seeking a sentence of death. The limitation sanitizes a defendant’s violent conduct and unnecessarily micro-manages the discretion of the trial court. Evidence of defendant’s prior convictions of murder are clearly admissible in the penalty phase. What evidence the State uses to show the prior conviction should be left to the discretion of the trial court.

Allowing a witness or surviving victim to a prior murder or attempted murder to testify rather than a law enforcement officer involved with the investigation of the offense is arbitrary. It would appear that a witness or a surviving victim’s testimony could more easily present the risk of shifting the jury’s focus away from its primary function of determining the appropriate sentence for this offense and this offender. Moreover, this overlooks the trauma that a witness or surviving victim of a prior

murder has suffered and the necessity of bringing closure to these life shattering events. It would be unnecessarily harsh to require them to testify years later when they have moved on with their lives when a law enforcement officer could serve the same purpose.

In conclusion, because I am not in accord with State v. Jackson, I would overrule it, finding such a limitation is arbitrary, it micro-manages the trial court's discretion, unduly limits the State's ability to show the character and propensity of the defendant at the penalty phase, and could unnecessarily work an undue harshness upon witnesses and surviving victims of prior murders. For these reasons, and further for the reasons given by Justice Cole in his dissent in part in Jackson, I concur in the result of assignment of error twelve in the penalty phase.