1/17/01

SUPREME COURT OF LOUISIANA

No. 99-KA-1311

STATE OF LOUISIANA

Versus

EMMETT D. TAYLOR

JOHNSON, J., dissenting

I dissent from the majority's holding that the state did not violate *Batson v. Kentucky,* 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986) by exercising its peremptory challenges to exclude three out of four prospective African-Americans from the jury.

The state claims that it because exercised a peremptory challenge to excuse Mary Porter she was sympathetic to defendant's socioeconomic background, and she was "very light" on the death penalty. In it's explanation for striking Ms. Porter, the state clearly mischaracterized her responses. When asked whether she would be able to consider both a life sentence and the death penalty, Ms. Porter unequivocally stated that she would consider both and added that she was not predisposed to either. Furthermore, Ms. Porter never stated that she would consider defendant's socioeconomic background "a big factor."

The state also peremptorily challenged Reverend Robert L. Davison. When asked to provide a race-neutral explanation, the district attorney responded that because he is a reverend, Davison would be "more forgiving when it comes to the penalty phase."The state's explanation makes no sense because the lone African-American who did serve on the jury was also a member of the clergy. Furthermore, there is no evidence in the record to indicate whether the state inquired into the religious background of any of the other potential jurors.

Concerning Manuel Holmes, the state claims that it excused Holmes because Holmes was gave one word answers and seemed inattentive. However, the state's explanation is not credible because the record reveals that Dwade Clay, a Caucasian who was ultimately selected for the jury, gave the same monotonous short answers.

The state's explanation for excusing prospective alternate juror, Darius Trufant is also inadequate. Regarding the potential juror, the district attorney explained that he observed Mr. Trufant speaking to some

people in the courtroom and that some of his family members were affiliated with gangs. However, the record is completely silent regarding Mr. Trufant's alleged "knowledge" of people in the courtroom. Neither the district attorney nor the trial judge inquired into the identity of the persons Mr. Trufant was seen speaking to. Furthermore, there is no evidence to support the district attorney's speculation regarding Mr. Trufant's and his family's affiliation to gangs. The state did not offer, and the trial court did not require, any proof of these allegations. Therefore, I can only conclude that they were pretextual.

I also disagree with the majority's conclusion that the trial court did not erroneously deny defendant's challenges for cause against veniremembers Carol Funk and Paulette Motley. When examined by the state, Ms. Funk stated that she would consider the circumstances of the case, including mitigation evidence when deciding whether to vote for death or a life sentence. However, during voir dire by the defense, Ms. Funk made it unequivocally clear that she would vote for the death penalty in the case of intentional murder.

In my view, Ms. Funk's Ms. Funk's pronouncement that the death penalty is the appropriate penalty when a person has committed "intentional" murder casts doubt on her ability to consider life imprisonment this case: where a conviction of first degree murder would necessarily require a finding of intent.

Additionally, when examined by the state, prospective juror, Paulette Motley, responded that she could impose both the death penalty and life imprisonment and that she could consider both aggravating and mitigating circumstances to reach her verdict in the penalty phase. Conversely, when defense counsel asked her whether she could vote for life imprisonment in a case in which the three aggravating circumstances urged in this case were present, Ms. Motley responded that she would not consider anything less than a death sentence when aggravating circumstances are present. Furthermore, Ms. Motley demonstrated an uncertainty about her ability not to hold defendant's failure to testify against him.

Ms. Motley's responses make it clear that she would be inclined to vote for the death penalty in any case where aggravating circumstances are present. Her statement, indicating that she would not even consider any mitigating factors presented by the defense, shows that she was unwilling or unable to follow the law. Furthermore, her expression that she would be affected by defendant's failure to take the stand also indicate that she would be unable to adhere to the judge's instruction not to draw any inference

concerning defendant's decision to exercise his Fifth Amendment rights. In sum, Ms. Motley made evident that she would not accept the law as given to her by the court.

For the aforementioned reasons, I respectfully dissent.