01/25/02 "See News Release 007 for any concurrences and/or dissents."

SUPREME COURT OF LOUISIANA

No. 00-KA-2277

STATE OF LOUISIANA

v.

ELZIE BALL

Appeal from the 24th Judicial District Court,
Parish of Jefferson,
Honorable Alan J. Green, Judge

KIMBALL, J., dissenting.

I disagree with the majority's conclusion that the trial judge did not abuse his wide discretion in denying the defense's challenge for cause of the prospective juror, Faith Sintes. In my view, the voir dire record as a whole reveals "facts from which bias, prejudice or inability to render judgment according to law" on the part of Ms. Sintes may be reasonably implied. *State v. Hallal*, 557 So.2d 1388, 1389-90 (La. 1990). When the state asked Ms. Sintes whether she could consider both life imprisonment and the death penalty, she indicated that she could. Later, however, the defense counsel individually asked the panelists if they would automatically impose the death penalty in a situation where they had decided that the defendant had intentionally killed someone during an armed robbery. Unlike some of her fellow panelists who responded that they would want to see the evidence before deciding, that they would consider both penalties, and that they would probably not impose the death penalty automatically, Ms. Sintes responded, "I think I would automatically be in favor of the death penalty." Defense counsel then asked her if she meant that there really would not be any mitigating circumstances he could put on that would persuade her that life imprisonment would be an appropriate remedy. Ms. Sintes answered, "If I feel like

he did it intentionally, I think that he would -- I feel like he would get the death penalty."

I disagree with the majority's view that Ms. Sintes' use of the term "automatically" merely mirrors the defense counsel's use of that same term in the question put to her. Also, in my view, the fact that there was no attempt by the state or the trial court judge to clarify Ms. Sintes' problematic answer does not support a conclusion that no attempt was needed. I find that the voir dire record in this case is sufficiently different from that in *State v. Taylor*, 99-1311 (La. 1/17/01), 781 So.2d 1205 and *State v. Chester*, 97-2790 (La. 12/1/98), 724 So.2d 1276, and that Ms. Sintes' views on the death penalty are such that they would prevent or substantially impair the performance of her duties in accordance with her instructions or her oath. *Morgan v. Illinois*, 504 U.S. 719, 112 S.Ct. 2222, 119 L.Ed.2d 492 (1992). I therefore conclude that the trial judge erroneously denied the cause challenge of Ms. Sintes, and dissent.