

CORRECTED

JAN 22 2019

SUPREME COURT OF LOUISIANA

No. 2019-KK-1355

DEC 20 2019

STATE OF LOUISIANA

VERSUS

JERMAN NEVEAUX



**ON SUPERVISORY WRIT TO THE
24TH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON**

JOHNSON, C.J., would grant and assigns reasons.

I would grant the writ, finding the trial court abused its discretion in refusing to suppress the defendant's statement. The statement was given to a Jefferson Parish Sheriff's Office deputy two days after Mr. Neveaux was severely beaten by Jefferson Parish Sheriff's deputies and while he was still in the custody of that office. In my view, the circumstances under which the statement was given, and its use against him, violate the Fifth and the Fourteenth Amendments.

The State is seeking the death penalty for Mr. Neveaux, a young African American man on trial for killing a white sheriff's deputy. The law requires courts to employ every presumption against voluntariness in an ordinary case where the State seeks to use an incriminating statement given by the defendant. *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). And, because death is different, the Supreme Court requires us to apply heightened care to protecting the rights of the defendant in capital prosecutions. *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). In this case, the trial court did neither. Mr. Neveaux suffered severe physical injuries, requiring his hospitalization, at the hands of Jefferson Parish Sheriff's Office deputies and he gave a statement two days later while still in the custody of the Jefferson Parish Sheriff's Office and still in fear of harm. Its admission into evidence in this capital case violates Due Process. *Beecher v. Alabama*, 389 U.S. 35, 36-37 (1967); *Mincey v. Arizona*, 437 U.S. 385, 387 (1978).

I find the trial court abused its discretion in refusing to suppress the statement. The fact that the statement was given two days after defendant was severely beaten makes us question the voluntariness of the statement. In a troublingly similar case from the darkest days of Jim Crow, three black men were charged with the murder of a white man and severely beaten before, a day later, confessing to the murder. In 1936, the United States Supreme Court explained why, in the circumstances, the time-lapse between the physical abuse and the confession was of no consequence under the law:

All this having been accomplished, on the next day, that is . . . when the defendants had been given time to recuperate somewhat from the tortures to which they had been subjected, the two sheriffs, one of the county where the crime was committed, and the other of the county of the jail in which the prisoners were confined, came to the jail, accompanied by eight other persons, some of them deputies, there to hear the free and voluntary confession of these miserable and abject defendants. The sheriff of the county of the crime admitted that he had heard of the whipping, but averred that he had no personal knowledge of it. He admitted that one of the defendants, when brought before him to confess, was limping and did not sit down, and that this particular defendant then and there stated that he had been strapped so severely that he could not sit down, and, as already stated, the signs of the rope on the neck of another of the defendants were plainly visible to all. Nevertheless the solemn farce of hearing the free and voluntary confessions was gone through with, and these two sheriffs and one other person then present were the three witnesses used in court to establish the so-called confessions, which were received by the court and admitted in evidence over the objections of the defendants duly entered of record as each of the said three witnesses delivered their alleged testimony. There was thus enough before the court when these confessions were first offered to make known to the court that they were not, beyond all reasonable doubt, free and voluntary.

Brown v. Mississippi, 297 U.S. 278, 282-83 (1936). Many of the same circumstances were present here.

I also note also that the public record of this case indicates that after the district judge denied defendant's motion to suppress he recused himself "in an effort to avoid any appearance of partiality and/or impropriety, giving special consideration to the nature of the penalty sought by the district attorney in the case." In my view, this alone warrants granting the writ and remanding for consideration by another judge.

The record of Mr. Neveaux's physical abuse at the hands of the Jefferson Parish Sheriff's Office and the subsequent threats made to him should trouble our courts more than it apparently has. This court should not sanction physical abuse of defendants by official representatives of the State. The Due Process Clause requires "that state action, whether through one agency or another, shall be consistent with the fundamental principles of liberty and justice which lie at the base of all our civil and political institutions." *Hebert v. Louisiana*, 272 U.S. 312, 316 (1926). This State action was not.