SUPREME COURT OF LOUISIANA

No. 95-KA-1754

STATE OF LOUISIANA

Versus

WILLARD ALLEN

ON APPEAL FROM THE TENTH JUDICIAL DISTRICT COURT,
PARISH OF NATCHITOCHES, STATE OF LOUISIANA

JOHNSON, J. Dissenting

I respectfully dissent from the conclusions reached by the majority in allowing both the conviction and penalty to stand in this matter. The evidence in this case shows that relator's Assignment of Error No. 6 has merit because certain perspective jurors should have been excused for cause, but were not.

LINDA (JUDY) DIXON

Based on her responses, the record shows the trial court erred when it failed to excuse venireperson Linda Dixon for cause. Not only did this witness inform the court of the connexity between her family and the victim, her answers proved that she was unable to follow the law. The following colloquy was elicited during voir dire concerning the relationship existing between Ms. Dixon and the victim:

(by the prosecution)
Q. Do you know of reason that you can think of Ms. Dixon why you could not serve as a juror in this case?

A. There's one thing you all would probably would want to be aware of, the man that was killed was seeing a childhood friend of my daughter and my daughter also works with her sister. So if that would be something you would need to be aware of that's the case?

When asked if this connection to the victim could cause her any undue influence, Ms.

Dixon was unable to adamantly respond either in the affirmative or negative, but stated that "it might".

Also, when asked by defense counsel if she agreed with the law concerning evidence taken in violation of the law, she said that she was unable to so. The following exchange took place:

Q. I mentioned the exclusionary rule earlier, that is a rule that says if evidence is taken in violation of some law then it is not to be used in a trial, do you agree with that rule?

A. No.

Q. You think that we should do away with that rule and the evidence should be used and we should do something else about the violation of law?

A. Yes.

Finally, this perspective juror admitted that she had formed an opinion (if her daughter was involved) and was unsure whether or not she could render a fair and impartial decision. Clearly, the defense properly challenged Linda Dixon for cause and it was error to deny their challenge.

CLIFTON SMITH

The evidence in this case reveals that venireperson Clifton Smith knew both the victim and a potential witness, Mary Messick who was the co-owner of the Cherokee Club with the victim. Mr. Smith stated that he would regularly see the victim when he would stop at the club for beer. He further stated that he had known the victim for approximately 2 years and that he (victim) would come over and sit at his table with him when he patronized their business.

Defense counsel asked Mr. Smith if he had read about this murder and if he had formed an opinion. In response, this prospective juror stated that he had read about the murder, talked about it at his place of employment, and "guess" he formed an opinion. Finally, when asked if he was able to put aside those things he read in the newspaper

or heard about, and listen to the evidence in the case and make a determination based on the evidence, he only stated that he "would certainly try because rumors get around, but..." Just as the defense attempted to challenge Ms. Dixon for cause based on her responses, the responses elicited from Mr. Smith show that there was ground to excuse him for cause. First of all, he and the victim were socially acquainted for nearly 2 years prior to this murder, and his answers show that he had formed an opinion.

The requirements for excusing a juror for cause are listed in La. C.Cr.P. art. 797. In pertinent part, this article provides:

> The state or the defendant may challenge a juror for cause on the grounds that:
> (2) The juror is not impartial, whatever the cause of his impartiality. An opinion or impression as to the guilt or innocence of the defendant shall not of itself be sufficient ground of challenge to a juror, if he declares, and the court is satisfied, that he can render an impartial verdict according to the law and evidence;
> (3) The relationship, whether by blood, marriage, employment, friendship, or enmity between the juror and the defendant,... is such that it is reasonable to conclude that it would influence the juror in arriving at a verdict;
> (4) The juror will not accept the law as given to him by the court;

Under the language provided above both Dixon and Smith should have been excused. They both admitted that they had formed an opinion about the case. Also, they admitted that a relationship existed between themselves and the victim. Smith stated that he and the victim were friends. Although their relationship was not as close as the one between Smith and the victim, Dixon stated that they (she and her daughter) were related to the family and that this connection might influence her. Finally, both jurors gave rather "weak" responses when asked if they could follow the law. While a charge of bias may be removed if the prospective juror is rehabilitated and if the court is satisfied that the juror can render an impartial verdict according to the evidence and instructions given by the court, here, the record shows that neither of these jurors were

sufficiently rehabilitated.[1] In fact, venireperson Dixon stated that she just didn't know if she could render a

fair and impartial decision.

Our jurisprudence states that prejudice is presumed when a challenge for cause is erroneously denied by a trial court and the defendant has exhausted his peremptory challenges. An erroneous ruling depriving an accused of a peremptory challenge violates his substantive rights and constitutes reversible error. State v. Maxie, 653 So. 2d 526 (la. 1995); State v. Robertson, 630 So. 2d (La. 1994); State v. Ross, 623 So. 2d 643 (La. 1993). To prove reversible error warranting reversal of both the conviction and sentence, the defendant needs to show: (1) erroneous denial of a challenge for cause; and, (2) use of all peremptory challenges. Defendant exhausted all of his exemptory challenges. Applying these principles of law to the instant matter,it is clear that defendant's challenges for cause were erroneously denied. Because the death penalty is an absolute and final resolution, this court should set aside both the conviction and sentence, and remand the case for a new trial.

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[1] See State v. Gibson, 505 So. 2d 237 (La. App. 3 Cir. 1987), writ denied, 508 So. 2d 66 (La. 1987).