

SUPREME COURT OF LOUISIANA

No. 98-KA-1078

STATE OF LOUISIANA

V.

ALLEN SNYDER

ON APPEAL

**FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT,
FOR THE PARISH OF JEFFERSON
HONORABLE KERNAN A. HAND, JUDGE**

JOHNSON, J., Dissenting

I would have more confidence in the fairmindedness of this jury and the jury's pronouncement of the death sentence, had the state not used its peremptory challenges to exclude every African American juror, resulting in an all white jury for this black defendant. In my view, this violation of Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712 (1986), coupled with the prosecutor's inflammatory and prejudicial comparison of this case to the O. J. Simpson trial, require that we set aside the death sentence and remand the case for resentencing.

The Sixth Amendment to the United States Constitution gives a criminal defendant the right to a trial by a jury of his peers. I still believe that racial discrimination in the jury selection process offends the Equal Protection Clause of the Fourteenth Amendment and a pattern of strikes against African American jurors still gives rise to an inference of discrimination. Once the inference of discrimination is present, the prosecutor then has the burden of articulating a race-neutral explanation for striking the African American jurors. The trial judge serves as the gatekeeper, ensuring that racial prejudice, which impedes the securing of equal justice, does not invade our judicial system. As the gatekeeper, the trial judge must decide whether the prosecutor has articulated a genuine concern, or whether the reason articulated is merely a guise to accomplish his/her discriminatory purpose. Verbalized facially neutral reasons can be a pretext for conscious or unconscious racism.

In the present case, the prosecutor's action in accepting the first African-American juror seems to have been a tactic to keep defense counsel from raising Batson challenges to the subsequent exclusions. Nonetheless, defense counsel noted in the record which excluded jurors were African-American. The Batson challenges to the remaining three African-American jurors, including the one juror who was accepted and later backstruck, were overruled by the trial court.

The trial court accepted the prosecutor's "race-neutral" explanations and the majority found them to be "plausible, supported by the record and race neutral."

The prosecutor's discriminatory intent in excluding all African-Americans from the jury was evidenced by his reference to the O. J. Simpson trial during closing arguments. In State v. Green, 94-0887 (La. 5/22/95), 655 So. 2d 272, 287, we recognized that "for a Batson challenge to succeed, it is not enough that a racially discriminatory result be evidenced; rather, that result 'must ultimately be traced to a racially discriminatory purpose.'" Here we have a racially discriminatory result. An all-white jury selected by peremptorily excluding the five African-Americans from the venire, and the prosecutor's racially discriminatory purpose of inflaming the jury by referring to O. J. Simpson getting away with murder in California. Because of the nationwide media focus on O. J. Simpson, the defense made a pre-trial motion to exclude any references to the O. J. Simpson case. This motion was denied by the trial judge based on the prosecutor's assurance that he would not, at any time during the course of taking evidence or before the jury, mention the O. J. Simpson case.¹ It is blatantly clear that the prosecutor did not intend to keep his word. The prosecutor had no need to make reference to this defendant not getting away with murder during the penalty phase of the trial. At this point, the defendant had

¹ During the hearing on the pre-trial motion to exclude references to the O. J. Simpson case, the following colloquy occurred:

Prosecutor:

Now, certainly, I can assure the Court that I'm not going to get up in my opening voir dire and say, "we're here for the Jefferson Parish O. J. Simpson court - - case." I have no intentions of doing that. I have no - - perhaps in argument, I don't know. I don't know. It might be inappropriate, but I think it's premature. And I can assure this Court I will make no reference to the O. J. Simpson case at any time during the course of the taking of any evidence in this case.

Defense Attorney:

That's - - Judge, evidence is not what I'm worried about. I'm certain he's not going to ask any witnesses, "don't you think this is a whole lot like the O. J. Simpson case?" I'm concerned about Mr. Williams' famous arguments.

. . . .

Defense Attorney:

And I would ask that the court issue a ruling that Mr. Williams is not to refer to this or to make comparisons in any way with the O. J. Simpson case and that he be held in contempt if he does that.

Prosecutor:

Judge, I ask the court to allow me, as an officer of this Court, to conduct this case in the proper manner, but in the way that I see fit. And, I have given the Court my word that I will not, at any time during the course of the taking of evidence or before the jury in this case, mention the O. J. Simpson case. . . . So, I have - - I give the Court my word that I won't do this. I just ask you not to grant this motion.

. . . .

The Court:

Based on Mr. Williams' representations, I'm going to deny your motion.

already been convicted of the crime, so there was nothing for him to “get away with.” The prosecutor utilized the O. J. Simpson verdict to racially inflame the jury’s passion to sentence this defendant to death. Such tactics leave no doubt in my mind that the prosecutor had a racially discriminatory purpose for excluding the African-American jurors.

The defense argues that the prosecutor’s comments on the O. J. Simpson verdict to this all white jury were devastating and requires that the conviction be reversed. While there is much evidence that the majority of white Americans believe O. J. Simpson was guilty of murdering his wife and that he “got away with it,” the prosecutor’s improper comments during the penalty phase do not implicate the trial phase. The defendant’s own confession, plus the testimony of his ex-wife, Mary Snyder who survived this brutal attack, along with that of Gwen Williams, the witness who came to the aid of Ms. Snyder during the attack, support the defendant’s conviction of first degree murder. The prosecutor’s improper and clearly inflammatory comments did, however, create a substantial risk that the death penalty would be imposed. In my opinion, the defendant’s death sentence should be set aside and this matter remanded for resentencing.

For the aforementioned reasons, I respectfully dissent.