

SUPREME COURT OF LOUISIANA

No. 98-KA-1078

STATE OF LOUISIANA

Versus

ALLEN SNYDER

LEMMON, J., Concurring in the Remand of the Case to the District Court for a Reopened Hearing on Competency to Proceed, but Otherwise Dissenting from Affirming the Conviction and Sentence

The racial bias overtones of the entirety of this rather simple trial require reversal of the conviction and sentence of a black defendant tried by an all-white jury.

Early in the voir dire, the prosecutor accepted a black juror (Brooks). When two other black jurors were peremptorily struck, defense counsel noted their race, but did not attempt to establish a prima facie case of discrimination necessary to make a Batson challenge, apparently because one black juror had already been accepted. However, the prosecutor, after peremptorily striking a third black juror, also backstruck Brooks. When required by the judge to give a race-neutral explanation for striking Brooks, the prosecutor stated what essentially was no reason at all, asserting that the juror would miss class as a student teacher and may try to hurry the trial. However, on the previous day when Brooks was accepted, the dean of the school told the judge's clerk that Brooks' missing class would not be a problem, and the prosecutor apparently did not think it would be a problem, since he initially accepted Brooks. The backstriking of Brooks, along with the peremptory challenging of all four of the other blacks on the jury venire, resulted in an all-white jury, and the timing of the Brooks backstrike made the early acceptance of Brooks suspect.

Whether the conviction and sentence should be reversed on the Batson issue is

a very serious issue. However, the prosecutor's intention to utilize racial bias became crystal clear when he commented during closing argument in the penalty phase that O.J. Simpson "got away with it" in the California verdict that had been rendered shortly before this trial.

Prior to trial, the defense moved to exclude any reference to the Simpson verdict, arguing that this prosecutor "has been all over two parishes talking about 'this is his O.J. Simpson case'" and that any reference to the Simpson verdict, overwhelmingly unpopular in national polls of white citizens, would be extremely prejudicial. The prosecutor did not attempt to explain the relevance of any reference to the Simpson verdict, but gave "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." The judge stated that, "[b]ased on [the prosecutor's] representations, I'm going to deny your motion."

The prosecutor did not mention the Simpson verdict until closing argument in the penalty phase when he, in effect, urged the all-white jury not to let this O.J. prototype "[get] away with it." The acquittal of Simpson, a high profile black defendant who had threatened to kill himself before his arrest, was totally irrelevant to any issue in the penalty phase of the present case.¹ The prosecutor's attempt to inflame the jury by characterizing Simpson's acquittal as "he got away with it" was highly prejudicial to this black defendant.

I find compelling the rhetorical question by defense counsel in oral argument

¹The penalty phase of a capital case focuses primarily on "the circumstances of the offense and the character and propensities of the offender." The Simpson trial, of course, was not a capital case. Therefore, the prosecutor's plea in the penalty phase of this case not to let another murderer "[get] away with it" not only was irrelevant to any penalty phase issue, but was an inaccurate comparison since the murderer in this case was already facing a life sentence as a result of the already rendered verdict in the guilt phase.

before this court, asking whether the prosecutor would have ranted about O.J.'s getting away with it if he had not backstruck the only black juror toward the end of voir dire.² Racially inflammatory tactics, such as those in the present case, should not be tolerated, even at the expense of the reversal of convictions and sentences obtained by their use. This is the only means this court has to halt similar tactics in the future, perhaps in the guilt phase of the trial of an innocent person.

The senseless carnage by this defendant does not make this a very sympathetic case for the defense. Nevertheless, this defendant is constitutionally entitled to a fair trial that is as free as possible of any aura of racial bias. He did not receive such a trial in this case.

²Of course, the vote of only one juror would mandate defendant's being sentenced to life imprisonment.