

06-10119 SNYDER V. LOUISIANA

DECISION BELOW:942 So2d 484

LOWER COURT CASE NUMBER: 1998-KA-1078

QUESTIONS PRESENTED:

Petitioner Allen Snyder, a black man, was convicted and sentenced to death by an all-white jury in Jefferson Parish, Louisiana, for the fatal stabbing of his wife's male companion. Prior to trial, the prosecutor reported to the media that this was his "O.J. Simpson case." At trial, the prosecutor peremptorily struck all five African Americans who had survived cause challenges and then, over objection, urged the resulting all-white jury to impose death because this case was like the O.J. Simpson case, where the defendant "got away with it." On initial review, a majority of the Louisiana Supreme Court ignored probative evidence of discriminatory intent, including the prosecutor's O.J. Simpson remarks and argument, and denied Mr. Snyder's Batson claims by a 5-2 vote.

This Court directed the court below to reconsider Mr. Snyder's Batson claims in light of *Miller-El v. Dretke*, 545 U.S. 231 (2005). See *Snyder v. Louisiana*, 545 U.S. 1137 (2005). On remand, a bare majority adhered to its prior holding, once again disregarding substantial evidence establishing discriminatory intent, including the prosecutor's references to the O.J. Simpson case, the totality of strikes against African-American jurors, and evidence showing a pattern of practice of race-based peremptory challenges by the prosecutor's office. In addition, the majority imposed a new and higher burden on Mr. Snyder, asserting that *Rice v. Collins*, 546 U.S. 333 (2006), permitted reversal only if "a reasonable factfinder [would] necessarily conclude the prosecutor lied" about the reasons for his strikes. Three justices, including the author of the original opinion, dissented, finding the prosecutor's reference to the O.J. Simpson case in argument to an all-white jury, made "against a backdrop of the issues of race and prejudice," supported the conclusion that the State improperly exercised peremptory strikes in a racially discriminatory fashion. The Louisiana Supreme Court's consideration of Mr. Snyder's Batson claims on remand from this Court raises the following important questions:

1. Did the majority below ignore the plain import of *Miller-El* by failing to consider highly probative evidence of discriminatory intent, including the prosecutor's repeated comparisons of this case to the O.J. Simpson case, the prosecutor's use of peremptory challenges to purge all African Americans from the jury, the prosecutor's disparate questioning of white and black prospective jurors, and documented evidence of a pattern of practice by the prosecutor's office to dilute minority presence in petit juries?

2. Did the majority err when, in order to shore up its holding that Mr. Snyder had failed to prove discriminatory intent, it imported into a direct appeal case the

standard of review this Court applied in *Rice v. Collins*, an AEDPA habeas case?

3. Did the majority err in refusing to consider the prosecutor's first two suspicious strikes on the ground that defense counsel's failure to object could not constitute ineffective assistance of counsel because Batson error does not render the trial unfair or the verdict suspect — i.e., that failure to raise a Batson objection can never result in prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984) — a holding directly conflicting with decisions from inter alia the Third Circuit Court of Appeals and the Alabama and Mississippi Supreme Courts?

CERT. GRANTED 6/25/2007