SUPREME COURT OF LOUISIANA

No. 95-KA-0320

STATE OF LOUISIANA

Versus

ALBERT EARL LAVALAIS, III

ON DIRECT APPEAL FROM THE 27TH JUDICIAL DISTRICT COURT, PARISH OF ST. LANDRY, STATE OF LOUISIANA

JOHNSON, J., Dissenting

The transcript of the trial reads more like fiction than an American tragedy which left a woman murdered for hire, the shooter on death row, and the man who solicited and paid for the murder convicted, but sentenced to life in prison rather than facing the death penalty.

Lavalier was a 19 year old farm hand working on the Smith family farm in Cottonport, Louisiana, when George Paul "Joey" Smith talked him into killing his wife, Sheila Smith, for $50,000. (He actually paid $10,000 to Lavalier). Smith collected $500,000 in insurance proceeds and the authorities, although suspicious, never were able to make a case against him.

"Plantation" would be a more accurate word than "farm" to describe the vast land holdings owned by the Smith family in St. Landry Parish because included in the definition of land mass is a historical relationship between black farm workers and property owners. At Smith's trial, the prosecutor argued that Smith was descended from a "plantation family that farms thousands of acres of farm land, cattle, rice, cotton, beans, and corn", and that defendant's family was part of this "plantation culture" in that family members lived and worked in the fields. The prosecutor acknowledged that Lavalais family members worked for Smith before and after the murder, and there was a very close relationship between Smith and Albert Lavalais and the Lavalais family.

As can be expected with any "plantation culture", after living on the land for several generations, individuals become economically dependent, and can easily be intimidated into carrying out the wishes of landowners, even when doing so is not in their own best interest. Such individuals become bound by emotional ties which are not easily untangled. Because of these circumstances

underlying Lavalais' actions and the nature of his relationship to Smith, Lavalais was under the domination and control of Smith, and such fact should have been a mitigating factor during the sentencing phase of Lavalais' trial.

Even the state acknowledged at Smith's trial the fact that Lavalais was under Smith's dominion and control. During Smith's trial, the state presented the testimony of Charlene Coco, the victim's aunt, who testified that Smith boasted about how Lavalais looked up to him as his "Parrain", a term used throughout Acadiana that translates to "godfather." Coco testified to the following conversation:

> And [Smith]...put his arm around Albert's shoulder and said, "isn't that right? You think of me as your Parrain." And, "You would do anything I would ask you to do, wouldn't you, Albert?" And Albert looked at him and he repeated it, he said, "You look at me as your Parrain and if I asked you to do anything you would do it for me." And Albert answered, "Yes, I would."

In addition, during the state's opening argument at Smith's trial, the prosecutor described defendant as a teenager who was manipulated and coerced into committing a homicide by a wealthy and powerful planter from Cottonport. The prosecutor further argued that Smith was a "manipulative, a cunning, a scheming and a p[lan]ing individual."

What is more interesting is that while the state put on the above stated evidence in Smith's trial in 1995, at Lavalais' trial in 1993, the state refuted Lavalais' contention that he was acting under the domination and control of Smith. The state expressly argued against the presence of this mitigating factor in its penalty phase opening statement.

Under these facts and circumstances, imposition of the death penalty is excessive and disproportionate. A comparative review of "murder for hire" cases reveal that throughout the state of Louisiana since 1976, there have been relatively few murder for hire situations. With the exception of one case prosecuted under La. R.S. 14:30(A)(4), a life sentence has been recommended.[1] State

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[1] See State v. Jones, 607 So.2d 828 (La. App. 1st Cir. 1992); writ denied, 612 So.2d 79 (La. 1993); State v. Velez, 588 So.2d 116 (La. App. 3rd Cir. 1991), writ denied, 592 So.2d 408 (La. 1992); State v. Fleming, 574 So.2d 486 (La. App. 4th Cir. 1991); State v. Seward, 509 So.2d 413 (La. 1987); State v. Woodcock, No. 275-167 "I", as reported in State v. Koll, 463 So.2d 774 (La. App. 4th Cir. 1985), writ denied, 467 So.2d 1131 (La. 1985); State v. Ester, 458 So.2d 1357 (La. App. 2nd Cir. 1984), writ denied, 464 So.2d 313 (La. 1985); State v. Johnson, 438 So.2d 1091 (La. 1983); State v. Whitt, 404 So.2d 254 (La. 1981); State v. Sylvester, 388

v. Smith, 600 So.2d 1319 (La. 1992) remains the only case in which a death sentence was imposed for conviction under La. R.S. 14:30(A)(4). In State v. Smith, defendant Scire had procured and paid Smith for the killing of the victim who had testified against several individuals on charges of conspiracy to distribute cocaine in Florida. To execute the killing, Smith constructed an explosive device, affixed it to the victim's pick-up truck, and was paid for doing so. Id. Although defendants were initially sentenced to death, this court overturned their convictions and sentences and remanded for a new trial based on an erroneous reasonable doubt instruction. State v. Smith at 1327-28.On remand, Smith was acquitted by a jury on retrial and the State allowed Scire to plead to manslaughter.

In light of Louisiana's jurisprudence, it is evident that Louisiana juries have been inclined to recommend sentences of life imprisonment in murder for hire cases. It is also evident that juries make no distinction in moral culpability between the trigger man and the person who recruits him for the murder. Yet, in the present case, Lavalais, who is a young, Black man who was 19 years of age at the time of the crime, received the death penalty while Smith, who is White, was sentenced to life imprisonment. In juxtaposition, these cases offer striking examples of age-old stereotypes and prejudices that state and federal jurisprudence has tried to rectify in capital cases. Unfortunately, such objectives and goals were not met in this case.

For the foregoing reasons, I respectfully dissent.

So.2d 1155 (La. 1980).