SUPREME COURT OF LOUISIANA

No. 95-KA-0320

STATE OF LOUISIANA

Versus

ALBERT EARL LAVALAIS, III

ON APPEAL FROM THE TWENTY-SEVENTH JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. LANDRY, STATE OF LOUISIANA, HONORABLE JOSEPH A. LAHAYE, PRESIDING JUDGE

CALOGERO, C.J., dissenting.

At the time of the murder, defendant Lavalais was a nineteen-year-old poor farmhand with a marginal IQ. He and his family were part of a "plantation culture," living and working in Smith's fields. Since the age of eleven, defendant was a farm laborer for Smith, used to executing his directions.

Under La. C.Cr.P. art. 905.9 and La. S.Ct.R. 28(c), this Court reviews every death sentence to determine if it is constitutionally excessive because the sentence is disproportionate, considering the offense and the offender.

The death penalty imposed on Lavalais appears disproportionate in light of the failure of other juries around the state to return death penalties in murder-for-hire cases. Only once before since 1976 has a Louisiana jury sentenced the triggerman to death in a murder-for-hire case, and this was overturned. State v. Smith, 600 So.2d 1319 (La. 1992)

The only murder-for-hire case in St. Landry Parish other than this one involved this same murder. In that case, Joey Smith recruited this defendant to kill Smith's wife. For his part in ordering the murder, Smith was given a life sentence.

The thrust of the state's argument against Smith was that although Smith did not pull the trigger, he used Lavalais as the

instrumentality of the murder. Smith, descended form a wealthy plantation family, had been giving orders to the defendant since Lavalais was his eleven-year-old farm laborer. Even though the state argued that Lavalais was under the dominion and control of Smith in the Smith trial, the prosecutor disputed the presence of this mitigating factor in its present case against the defendant Lavalais.

The two different approaches in prosecuting the defendant and Smith would not alone necessarily render defendant's sentence unfair. See Lassiter v. Department of Social Services, 452 U.S. 18, 25, 101 S.Ct. 2153, 2161 (1981). However, there is a question as to prosecution's failure to use the testimony of Witness Coco, who testified in Smith's trial that defendant looked to Smith as his "Parrin," or godfather, and would do anything Smith asked him to do. Clearly such testimony would have been helpful to the jury in the penalty phase.

Defendant's limited experience and resources, combined with an IQ of 77, places his mental capacity 94% below that of the general population. His dependant personality further made him particularly susceptible to manipulation and coercion. From the ages of eleven until the time of the offense when defendant was nineteen, the defendant was in the employ of Smith. In the seven years between the time of the offense and the arrest, Lavalais was gainfully employed.

In light of the above, I dissent from the majority's affirmance of the death penalty. The death penalty is disproportionately excessive considering the offense and offender. The majority has only recognized one case in which a death sentence was imposed under similar circumstances. In State v. Smith, 600 So. 2d 1319 (La. 1992), the Louisiana State Supreme Court reversed the conviction of a paid hit man, who murdered the victim in retaliation for damaging testimony. Here, the defendant was an inexperienced, nineteen-year-old farmhand, who had depended on

Smith's benevolence throughout his formative years. For his part in directing that Lavalais murder Smith's wife, Smith received a life sentence. If disproportionality has a legitimate place in the law (and it does: See Furman v. Georgia, 408 U.S.238 (1972)), it is for application in cases such as this. For Lavalais's part in the offense, I would affirm the conviction and have the defendant sentenced to life in prison at hard labor.

Accordingly, I respectfully dissent.