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03 KA 2418

SUPREME COURT OF LOUISIANA

DOCKET NUMBER 03-KA-2418

STATE OF LOUISIANA

APPELLEE

VERSUS

JOHN DALE ALLEN

APPELLANT

2003 SEP 24 PM 4:41

SUPREME COURT
LOUISIANA

CLERK
OF COURT

ON APPEAL FROM THE THIRTY-NINTH JUDICIAL DISTRICT COURT,
PARISH OF RED RIVER, DOCKET NO. 87,280
STATE OF LOUISIANA
THE HONORABLE LEWIS O. SAMS,
JUDGE PRESIDING

**RULE 28 CAPITAL SENTENCE
REVIEW MEMORANDUM**

MAY IT PLEASE THE COURT:

Pursuant to Rule 28 of this Court's Rules of Court, the State of Louisiana submits this Sentence Review Memorandum regarding this first-degree murder case in the Thirty-Ninth Judicial District, Parish of Red River.

THE INSTANT CASE: STATE OF LOUISIANA V. JOHN DALE ALLEN

**State of Louisiana v. John D. Allen
Criminal Docket Number 87,280**

Shirley P. (Elaine) Oliver, a fifty-one year old white female, owned and operated the Riverside Bait and Tackle Shop in the "Old Town" section of Coushatta¹, Red River Parish,

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The "Old Town" area of Coushatta is in an older area of the town, originally thriving because of the bridge over the Red River. The old bridge was replaced with a new bridge,

Louisiana with her husband, Jack. Generally, Elaine operated the shop during the day while Jack drove a truck. Record, pages 1567-1571 (hereinafter referred to as R. p. ___).²

On July 6, 1999, Elaine was found stabbed to death at the shop. After an investigation by the Coushatta Police Department, with assistance from the Louisiana State Police, the North Louisiana Crime Laboratory and the Red River Parish Sheriff's Office, the defendant, John Dale Allen (hereinafter referred to as Mr. Allen, defendant or appellant), an African-America male, was arrested for this murder. Mr. Allen was arrested, and eventually convicted for the murder of Ms. Oliver. The facts leading up to Mr. Allen's arrest and conviction are as follows.

At approximately 2:55 p.m. Ms. Oliver was seen returning to the bait shop after purchasing items at the Bestway Grocery Store at 2:42 p.m. R.p. 1621. A receipt was found during the investigation to verify the purchase, and the time of the purchase. R.p. 1454, 1619. At a little after 3:00 p.m. on July 6, 1999 the body of Ms. Oliver was found at the Riverside Bait and Tackle Shop by two fishermen. R.p. 1385, 1392, 1401. The police were contacted and an investigation followed.

The investigation revealed, and trial testimony proved, that Ms. Oliver suffered at least twenty-one knife wounds and died as a result of those wounds. R.p. 1579. Some of these wounds were defensive in nature and many required great force to make the type of injury inflicted. R.p. 1580-1586.

It was shown that appellant was seen by Jessie Lee Hendricks and Dorothy Hendricks walking from the area of the Riverside Bait and Tackle Shop shortly after 3:00 p.m. R.p. 1627-1628, 1657. Significantly, appellant was wearing black rubber boots with his pants tucked in. R.p. 1628. Later that day, near "dusk-dark", appellant was overheard telling his cousin, John A. Allen, that "I have stabbed somebody over at the bridge". R.p. 1785-1786.

It was also discovered that, shortly before the murder, defendant had a conversation with

isolating the "Old Town" area by making the bridge approach a dead end. It did remain a popular fishing spot on the Red River.

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The record consists of eight volumes, pages 1- 1931 and an additional volume, labeled as supplement volume 1, pages 1-249 (the certification of that volume is the last page of the supplement volume 1, but is not numbered). For purposes of this filing, the supplemental volume will be cited as S. R. p. ___).

13-year old Carlton Solton.³ In that conversation defendant indicated that the store in “Old Town” would be a possible target for an armed robbery. R p. 1779. It was further revealed that they had discussed the Kwik Pantry armed robbery which Solton had just committed. R.p. 1781.

After appellant was developed as a suspect, a search warrant was obtained for his two places of residence. During the execution of the search warrants and an arrest warrant, appellant was found to be wearing a pair of black rubber boots, with the pants tucked in the boots. R.p. 1465, 1466. After recovery of the black rubber boots, they were submitted to the North Louisiana Crime Lab for DNA testing. The DNA testing revealed two spots of blood high up on the shaft of the boots⁴, one of which was analyzed and found to match the DNA of Elaine Oliver to the exclusion of 404 quadrillion people. R.p. 1730. ⁵

The cash register in the bait shop was found open, with the drawer on the counter and outside of the cash register. R. p. 1459. The spring arms designed to hold currency in the compartments were up and the drawer empty, indicating that the bait shop had been robbed. R. p. 1437, 1459.

The case went to trial and the jury was selected in Jackson Parish and returned to Red River Parish for trial. On September 5, 2002 appellant/defendant was found guilty by the jury of the first degree murder of Shirley P. (Elaine) Oliver. R. p. 25, 232.

On September 6, 2002 the sentencing trial was conducted. In the sentencing trial it was revealed that defendant has a long history of criminal activity. He has been convicted of forgery, simple escape, first degree robbery and armed robbery. R. p. 1889-1892. At the time of his trial

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Carlton Solton was appellant’s co-defendant in the latest armed robbery for which he was convicted. Defendant recruited Solton to commit the armed robbery, the scene of one of defendant’s previous crimes. These statements were made after the armed robbery, and in discussions of future sites for armed robberies they could commit.

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These blood spots were “medium velocity” blood spatters, consistent with the blood spots found on other items near the body of Ms. Oliver, indicating that it could have deposited in the same manner as the blood spots on the other items near the body.

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The second blood spot was not subjected to DNA analysis, allowing for defense testing, if it was desired. The second spot was never analyzed, but based on size and location, there is no reason to believe that it was not deposited at the same time as the other spot and belonged to Ms. Oliver.

he was serving a life sentence for armed robbery, after being found to be a fourth-felony offender under the habitual felony offender statute (*La. R. S. 15:529.1*). R.p. 1889-1892. After due deliberations the jury recommended the penalty of death, having found that the murder of Elaine Oliver was committed during the perpetration or attempted perpetration of an armed robbery. R.p. 26, 238. On September 26, 2002 appellant was formally sentenced to death by the trial court. S. R p. 11, 246-249.

PREVIOUS FIRST DEGREE MURDER CASES IN RED RIVER PARISH, THIRTY-NINTH JUDICIAL DISTRICT.

**State of Louisiana v. Richard Scott McCoy
Criminal Docket Number 81,502**

Richard Scott McCoy and Aliene Sessions McCoy (both white persons) were married in 1980. Of that marriage two children were born, Jason Scott McCoy (born on February 16, 1984) and Kara McCoy (born on February 10, 1986). Richard Scott McCoy and Aliene Sessions McCoy separated in 1989, and were divorced on February 25, 1990. They entered into a community property settlement on October 11, 1995, in which defendant conveyed all his right, title and interest in the matrimonial domicile to Aliene Sessions McCoy. At the time of the murder she lived at this residence with their two children.

On Easter Sunday, April 7, 1996, Aliene Sessions McCoy, the victim, took the minor children with her to Sunday school and church. Richard Scott McCoy picked up the children at the conclusion of the worship service for visitation. At approximately 4:30 p.m. that afternoon, Aliene Sessions McCoy picked up the children from her former father-in-law's house, and after going to a family Easter egg hunt, returned home with her children.

At approximately 9:40 p.m. defendant arrived at the residence of Aliene Sessions McCoy on Nichols Road in Red River Parish (formerly the family home and now under the ownership of Aliene McCoy). The defendant drove up in the driveway and went to the door on the side of the house that is under the carport which opens to the kitchen area. Jason McCoy was on the breakfast counter in the kitchen and Aliene McCoy was in the kitchen. Kara McCoy was taking a bath in the bathroom. When Aliene went to the door, Richard Scott McCoy, armed with a .38 caliber Rossi five-shot revolver, fired five times through the door and wall surrounding the door.

Two of those bullets came close to hitting Jason. Aliene grabbed Jason and headed down the hall to her bedroom. Richard Scott McCoy walked around to the back of the house and, before entering a screened-in porch, reloaded the five-shot Rossi revolver. The five shells that were emptied from the gun were found at that location. The defendant then entered the screened-in porch and broke a large glass window in the breakfast area and entered the home through that rear window. Aliene collected the two children and hid them in her bedroom closet. She then armed herself with a .32 caliber revolver. After entering the house, the defendant walked down the hall to the master bedroom where Aliene was located and started shooting at her. She returned fire and shot six times. One of the bullets fired by Richard Scott McCoy hit Aliene in the left rear head, causing a wound that would have been fatal. After Aliene fell down in the bathroom next to the bathtub, Richard Scott McCoy walked to her and unloaded the five-shot Rossi revolver. At that time Jason and Kara left the closet where they were hiding and Jason ran past the defendant and out of the house. Kara stopped where her mother had fallen and asked her father if he was going to hurt them and asked him not to hurt her mother anymore. Defendant loaded one bullet into the .38 revolver, placed the gun to the left ear of Aliene and fired the gun, killing his ex-wife. Defendant left the home and was apprehended two days later on April 9, 1996, in Sierra Blanca, Texas at a border patrol checkpoint by United States Border Patrol agents. At the time he was arrested, the border patrol agents seized a .38 caliber Rossi revolver and a 50 cartridge box of .38 bullets with fifteen bullets missing. Firearm identification tests showed that the .38 revolver in possession of Richard McCoy was the weapon used to fire the ten spent .38 cartridges found at the victim's residence. Five of the cartridges were found outside where the defendant entered the residence and the other five cartridges were found at the victim's feet. An autopsy was done and two bullets were recovered from the head wounds of the victim. Firearm identification tests further showed that the bullets recovered from the victim were fired from the .38 caliber Rossi revolver that was taken from the defendant in Sierra Blanca, Texas.

Mr. McCoy was indicted by the Red River Parish Grand Jury for first degree murder on April 23, 1996. On May 9, 1997, as a result of a plea bargain, the defendant pled guilty to first degree murder and was sentenced to life imprisonment at hard labor, without the benefit of

probation, parole or suspension of sentence.

**State of Louisiana v. Lynwood Hudson
Criminal Docket Number 86,246**

On December 23, 1998, Lynwood Hudson (an African-American male), in the company of Deltheia Heard (an African-American female), visited the home of John Snead (a white male) in a remote area of Red River Parish. While Mr. Hudson was fixing a light in the kitchen, Mr. Snead allegedly made unwanted sexual advances to Ms. Heard. After Mr. Hudson demanded that the sexual advances stop, Mr. Hudson and Mr. Snead argued, which resulted in Mr. Snead being shot and killed by Mr. Hudson. After the shooting, Mr. Hudson stole several items from the house, including tools and beer. Mr. Hudson left in Mr. Snead's car.

After an investigation it was determined that Mr. Hudson threw the gun, belonging to Mr. Snead, into the Red River near St. Maurice, Louisiana. It was further learned that Mr. Hudson attempted to pawn the stolen tools in Winnfield, Louisiana. Further, the stolen car was found in Winn Parish and traced to Mr. Hudson.

Upon his arrest, Mr. Hudson admitted that he shot Mr. Snead and stole his car, as well as the tools and beer. He indicated that the murder occurred during an argument, after the unwanted sexual advances to Ms. Heard. Ms. Heard was not in the house when the shooting took place but admitted that she heard a shot from the house during the argument. She further admitted that Mr. Hudson later picked her up in Mr. Snead's car and that she knew he threw the gun into the Red River.

Mr. Hudson was indicted for first degree murder by the Red River Parish Grand Jury, and on April 26, 2000, pled guilty to the amended charge of manslaughter, with the agreement that his sentence would be between thirty and forty years at hard labor, to be imposed after a pre-sentence investigation. On June 14, 2000, after the pre-sentence investigation was completed and reviewed by the trial court, Mr. Hudson was sentenced to forty years at hard labor.

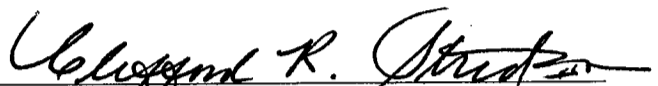
CONCLUSION

The sentence imposed in this case was not under the influence of passion, prejudice or any other arbitrary factors and is not disproportionate to the penalty imposed in other cases, considering the circumstances surrounding the crime and the character and propensities of the

defendant. Finally, the evidence supports the jury's finding of the statutory aggravating circumstance.

The State prays that this Capital Sentence Review be deemed good and sufficient, and in accordance with law.

RESPECTFULLY SUBMITTED,


CLIFFORD R. STRIDER, III
Assistant District Attorney
Thirty-Ninth Judicial District
Parish of Red River
Post Office Box 606
Coushatta, LA 71019
(318) 932-4035

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing Rule 28 Capital Sentence Review Memorandum has been served upon defendant/appellant's appellate counsel, R. Neal Walker, 636 Baronne Street, New Orleans, LA, 70113, by placing same in the United States mail, with proper postage affixed, on this the 23rd day of September, 2003.


CLIFFORD R. STRIDER, III