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STATEMENT OF THE CASE AND FACTS

1. Procedural Progress of the Case.

On November 20, 1986, the victim Louis J. Caillier III (L.J.) was shot to death at the front door of his residence located in Tampa, Hillsborough County, Florida. (R514) On December 1, 1986 Ty Payne (codefendant) was arrested by the Mandeville, Louisiana Police Department, and confessed to committing the murder of Louis J. Caillier III and implicated the Appellant, Carla Caillier as an accessory for the solicitation of the murder. (R513). On December 10, 1986, a Hillsborough County grand jury indicted Carla Caillier for First Degree Murder in the shooting death of her husband, Louis J. "L.J." Caillier III. (R513, 514).

Carla Caillier proceeded to a jury trial on January 17, 1987, and the jury found her guilty as charged of First Degree Murder of "L.J." (R535). After hearing additional evidence during the penalty phase of the trial, the jury recommended a life sentence. Judge Coe then adjudicated Carla Caillier guilty and sentenced her to death. (R535).

In his written findings to support the death sentence Judge Coe found two (2) aggravating circumstances: (1) "The crime for which the defendant is to be sentenced was committed for financial gain." (2) "The crime for which the defendant is to be sentenced was committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification.

(R508-509, 549). The Court also considered two (2) mitigating circumstances: (1) "The Defendant had no prior criminal activity," and (2) "The co-defendant/'trigger man' received a life sentence without the possibility of parole for twenty-five (25) years" , but the Court ruled that the second mitigating circumstance that was considered did not apply. (R551)

Caillier filed her notice of appeal on March 26, 1987. (R557).

2. Facts - Guilt Phase

Carla Caillier and Louis J. Caillier were married on September 17, 1982. (R363). They had what was considered a "normal/average" marriage insofar as their relationship appeared to outsiders. (R195). They had lived together for two (2) years prior to the marriage and had one child, Brian Joseph Caillier, who was three years old at the time of the murder. (R187, 229-230, 363-364, 384, 489, 494).

Louis J. "L.J." Caillier's occupation was as a subcontractor/cabinet-maker. (R364) He had moved to Tampa from Mandeville, Louisiana because subcontracting work was in short supply, planning to move his family to Tampa at a later date. (R364-365). A short time after L.J. moved to Tampa, Carla got a job as a receptionist at a dance studio, where she met the co-defendant Ty Payne. (R227, 370).

After a short period of time, Carla and Ty Payne started to date and slept together four to five times. (R229, 232, 370-373). Carla told Ty Payne that she was married. (R228,371). Ty

Payne told Carla that he loved her, to which she replied "You can't love me. You don't know me." (R373-374, 378,395).

Several witnesses testified as to the circumstances indicating a relationship/affair between Carla and Ty Payne, including Carla herself. (R211, 338-339, 342, 375-376). Carla testified that she loved her husband and slept with Ty Payne because she thought it was fun. (R393). Phyllis Beatty, a supervisor/manager at the dance club, testified that Carla hated her husband, (R219), as did Murray "Mike" Campbell whom Carla and L.J. had known for several years. (R217, 390). Campbell was a former reserve police officer who was fired for associating with known drug dealers and/or for arresting a judge. (R220-222). Campbell also testified that Carla had approached him to find somebody to do a contract killing. (R218-219). Carla denied that such a conversation ever took place. (R390).

Co-defendant Ty Payne testified that Carla planned the killing of L.J. and had previously hired an unnamed person to commit the crime. (R232-237). He also testified that Carla went to a pawn shop in Slidell, Louisiana, with him and her son Brian, to buy a gun for the purpose of killing L.J. (R239, 241), which was supported by the testimony of James David Boos, Jr., who worked at the pawn shop where the murder weapon was purchased. (R340-342). Mr. Boos identified Carla from a police photo-pak, but stated that he could not positively identify her from a picture. (R347). Carla denied going to the pawn shop. (R400).

Ty Payne also testified that after the weapon was purchased, he and Carla went out and test fired the gun to make sure it would work. (R244). He also testified that Carla, her son Brian, and he next went to the bus station and she purchased his ticket to go to Tampa. (R244, 246). He testified further that Carla suggested that he ask L.J. for a job as a pretense to get close enough to kill L.J. (R248). In her testimony, Carla denied any involvement in the planning of the murder or the procurement of the gun or bus tickets, or that she had ever discussed killing her husband with anyone. (R378-380). Payne also testified that the reason that Carla wanted her husband dead was that she was afraid that she would lose her son Brian if she filed for divorce. (R237). He further testified that there was insurance money and money in the bank. (R238).

After arriving in Tampa, Ty Payne took a cab to the apartments that L.J. worked at. (R248). He then scouted the area of L.J.'s residence. (R250). He hid a change of clothes to be used after the commission of the murder. (R250-251). He stood around outside L.J.'s residence and was observed by L.J.'s next door neighbor. (R201-203, 251-252). He shot L.J. three times and left the scene. (R253-254). He then returned to Louisiana where he was arrested on December 1, 1986, and confessed to committing the murder, implicating Carla as an accessory for soliciting him to commit the murder. (R254, 256, 513).

Two days after the murder, Carla , in the presence of her mother-in-law, called Mike Palliser, the insurance agent for L.J.

(R329). She notified him of L.J.'s death and inquired into the claims procedure. (R331-332). Carla was the sole beneficiary of the life insurance policy, which Palliser testified to being usual. (R329-331, 333).

3. Penalty Phase and Sentencing

The State and the defense relied primarily on testimony given and the evidence presented during the guilt phase of the trial. In argument, the State presented two (2) aggravating circumstances for consideration by the jury. (R484-485). The first was that the crime for which the defendant was to be sentenced was committed for financial gain. (R484). The second was that the crime for which the defendant was to be sentenced was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification. (R485). During argument, the State pointed to the life insurance proceeds and that Ty Payne and Carla had intended to wait until the situation calmed down and then, with Carla's son Brian, to live off the proceeds. (R484). The State further argued that Carla had planned the murder, the murder would never have taken place but for Carla's planning, that she paid for the gun, and that she paid for the bus ticket for Ty Payne. (R487-488).

The state, in argument, pointed to several possible mitigating circumstances. The first being that Carla had no prior criminal activity or record. (R485). The second being that Carla was only twenty-three (23) years old. (R486). The third being that Carla was the mother of a three (3) year old

son. (R490). The fourth being that Carla was an accomplice in the capital felony committed by another person, and her participation was relatively minor. (R486). The fifth being that the gunman/co-defendant Ty Payne avoided the electric chair by pleading guilty and was sentenced to life imprisonment without possibility of parole for twenty-five (25) years. (R486-487).

The defense, in argument, asked the jury to disregard the aggravating circumstance of committing the crime for pecuniary gain. (R491-492). Also pointed out to the jury by the defense was that the co-defendant could have or may have planned the murder without the assistance of Carla. (R493-494). The defense also pointed to the mitigating circumstance that Carla was deprived of her father by death when she was three (3) years old, and that she had recently lost her mother. (R496-497). The defense further pointed out that she possibly did not appreciate the criminality of her conduct and was substantially impaired. (R496-498).

The jury recommended a life sentence by a vote of 11-1, (R508-509), and Judge Coe then adjudicated Carla guilty and sentenced her to death, citing two aggravating circumstances and only one mitigating circumstance. (R508-509).

SUMMARY OF ARGUMENTS

Carla Caillier should not have been sentenced to death. The trial court lacked a sufficient basis to override the jury's 11-1 recommendation of a life sentence in this case. The evidence heard during the guilt phase of the trial supported a

jury finding that the mitigating circumstances outweighed the aggravating circumstances. This was a reasonable basis for the jury's recommendation. Moreover, the Court improperly evaluated and weighed the aggravating and mitigating circumstances which further skewed it's sentencing decision. Finally, the jury's recommendation of life is even more compelling since it was rendered in spite of the absence of additional mitigating testimony during the penalty phase of the trial.

ARGUMENT

THE TRIAL COURT ERRED IN SENTENCING CARLA CAILLIER TO DEATH OVER THE JURY'S RECOMMENDATION OF LIFE IMPRISONMENT BECAUSE THE FACTS SUGGESTING DEATH AS THE APPROPRIATE SENTENCE WERE NOT SO CLEAR AND CONVINCING THAT VIRTUALLY NO REASONABLE PERSON COULD DIFFER.

A jury's recommendation of life imprisonment must be given great weight, and

in order to sustain a sentence of death following a jury's recommendation of life, the facts suggesting a sentence of death should be so clear and convincing that virtually no reasonable person could differ.

Tedder v. State, 322 So.2d 908, 910 (Fla. 1975). This Court has consistently and repeatedly held that a life sentence must be imposed if a reasonable basis for the jury's recommendation for life exists. Hawkins v. State, 436 So.2d 44 (Fla. 1983), Cannady v. State, 427 So.2d 723 (Fla. 1983), Walsh v. State, 418 So.2d 1000 (Fla. 1982). The fact that the sentencing judge disagrees is not determinative. Rivers v. State, 458 So.2d 762, 765 (Fla. 1984). It is this Court's consistent application of this standard in life recommendation cases which has preserved the constitutionality of Florida death penalty sentencing procedures.

Spaziano v. Florida, 469 U.S. 447 (1984).

A reasonable basis for the jury's recommendation for life exists in this case. The sentencing judge's decision to override the jury recommendation was incorrect. Carla Caillier's death sentence must be reversed.

Carla Caillier was twenty three years old at the time of the crime. (R186). She had been raised by her mother after the death of her father when she was three years old. (R496-497). Her mother died just prior to the crime. (R496-497). She has one child, Brian, who was three years old at the time of the crime, whom she cared for in the absence of her husband. (R490). Carla Caillier and her young son were virtually inseparable. She was convicted as an accomplice based primarily on the testimony of the confessed triggerman, who testified against Carla Caillier in exchange for a life sentence without possibility of parole for twenty five years. (R486-487). The jury could have concluded from the testimony and evidence that Carla Caillier's participation in the crime was of a minor nature, and not deserving of a death sentence when compared to the actions of the confessed triggerman, Ty Payne.

The sentencing judge was legally compelled to follow the jury's recommendation. Cannady v. State, 427 So.2d 723, Shue v. State, 366 So.2d 387 (Fla. 1978), Burch v. State, 343 So.2d 831 (Fla. 1977).

The record does not support the sentencing judge's finding that the crime was committed for pecuniary gain. The triggerman

Ty Payne testified that Carla Caillier's fear of losing her son Brian in a divorce action was the reason she wanted her husband killed. (R237). While decisions of this Court permit the sentencing judge's conclusion, Pope v. State, 441 So.2d 1071 (Fla. 1983), King v. State, 390 So.2d 315 (Fla. 1980), the jury is not required to reach the same one. Regardless of the propriety of the finding, the jury could give each circumstances such weight as the jury thinks is deserving.


The jury's recommendation of life is entitled to even more weight than the law requires. It was returned in spite of little or no relevant mitigating circumstance evidence introduced during the penalty phase. (R475-480).

The jury's sentencing recommendation was reasonable. It was the trial judge, not the jury, who incorrectly evaluated the mitigating and aggravating circumstances. It was the trial judge, not the jury, who reached the wrong sentencing decision. This Court must reverse Carla Caillier's death sentence.

Conclusion

Upon the foregoing reasons and authorities, Carla Caillier asks this Court to reduce her death sentence to a sentence of life imprisonment.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail to The Attorney General's Office, Park Trammel Building, 1313 Tampa Street, 8th Floor, Tampa, Florida 33602, on this ^{21 (see letter)} 17th day of July, 1987.



MICHAEL A. HANSON, ESQUIRE