

THE ADVOCATE

Louisiana lawyer who felt 'ethical duty' to save client's life over honoring his wishes at center of Supreme Court case

Lea Skene

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Defense attorney Larry English found the evidence against his client overwhelming — evidence that Robert McCoy fatally shot three people in Bossier City before hitchhiking to Idaho with the murder weapon still in his possession.

The attorney told McCoy he planned to share that opinion with the jury in hopes of ultimately avoiding a death sentence. But McCoy vehemently objected and pleaded with English to maintain his innocence in the 2008 shootings, which left the parents and son of his estranged wife dead inside their home, according to court records.

English nonetheless told jurors during his opening statement at his state trial that his client was guilty.

McCoy interjected: "I did not murder my family, your honor. I had alibis of me being out of state. Your honor, this is unconstitutional for you to keep an attorney on my case when this attorney is completely selling me out."

Now more than five years later, the U.S. Supreme Court will consider on Wednesday whether the choice English made was unconstitutional: whether a defense attorney has the authority to concede guilt even when the defendant expresses the clear opposition.

English testified after the trial that he feared losing credibility with the jury by contesting "overwhelming" evidence and presenting instead the defense McCoy wanted — a conspiracy involving corrupt law enforcement officers who framed him in the killings to cover up their drug trafficking operation.

The evidence against McCoy included a recorded 911 call from the victims' house in which the caller addresses someone named Robert; video footage of his car fleeing the area; and ballistics

matching bullets at the scene to a gun found inside the truck where authorities finally located McCoy. His estranged wife had recently fled to Dallas with her infant daughter and remained there in protective custody, hiding from McCoy after a domestic violence incident.

English said his ultimate goal was persuading jurors to forgo the death penalty by convincing them McCoy was suffering "from serious emotional issues" that hinder his ability "to function in society and to make rational decisions," court records show.

"Robert was furious. ... He told me not to make that concession," English testified. "I felt I had an ethical duty to save his life, regardless of what he wanted to do. ... This was essentially the end of our professional relationship. From that time on he saw me not as his lawyer but as his enemy."

The strategy English adopted proved unsuccessful. McCoy was convicted on three counts of first degree murder in 2011 and sentenced to death the following year.

McCoy appealed unsuccessfully to the Louisiana Supreme Court, arguing that his attorney betrayed him and that the lower court wrongly denied his request to replace English with a new attorney, or alternatively allow him to represent himself. The court had ruled that the request — filed two days before trial was slated to begin — was untimely.

The Louisiana Supreme Court affirmed McCoy's convictions and sentences in 2016, endorsing the trial court ruling that "counsel could decide to concede guilt over his client's objection where conceding guilt was a reasonable strategy in the face of overwhelming evidence."

Richard Bourke, director of the Louisiana Capital Assistance Center and one of the attorneys representing McCoy in his current appeal before the U.S. Supreme Court, said during an interview last week that the case presents a clear violation of constitutional rights.

"The Sixth Amendment guarantees every one of us the choice of whether to defend against a criminal charge ... and whether to use a lawyer as a tool to assist in that defense," Bourke said. "Ultimately though, the decision of whether to say you are guilty or not is a personal decision for each individual, not a legal decision and not a decision your lawyer can make against your wishes."

He said the case has important implications for the relationship between defense attorneys and the people they represent, with the possibility of dramatically expanding the role lawyers play in deciding whether cases are fought.

In a brief supporting the appeal, the Cato Institute, a libertarian think tank, argued English had committed "a brazen violation of McCoy's autonomy."

Jay Schweikert, a policy analyst for the organization, said that questions of mental illness — for a defendant already deemed competent to stand trial — should not give the defense attorney a free pass to override explicit instructions from his client.

"Even mentally ill defendants have the right to decide what their own interests are and what it is they care the most about, whether that's minimizing the risk of the death penalty ... (or) maintaining what they see as their innocence," Schweikert said.

He and other supporters of McCoy said the Louisiana Supreme Court took a stance that conflicts with other state court decisions in denying the initial appeal, relying mostly on the 2004 Supreme Court ruling in *Florida v. Nixon*. That decision stated defense attorneys may concede guilt without express approval from their client, but did not address whether the same standard applies in the face of express objection.

In an opposing brief asserting that the Louisiana Supreme Court decision should stand, J. Schuyler Marvin, the district attorney for Bossier and Webster parishes, argued that a defense attorney's "strategic choices should not be impeded by a rigid blanket rule demanding the defendant's consent" — especially "in a capital murder trial where evidence of guilt is overwhelming, the crime is heinous and the defendant refuses to cooperate with counsel."

McCoy was also consistently disruptive inside the courtroom, Marvin said. "When you can't ever have that meaningful civilized discussion (between an attorney and his client), what do you do, where do you go?"

With the Supreme Court decision approaching, English said in an interview last week that he stands firmly behind the choice he made five years earlier.

English practiced law in Shreveport for more than 20 years. He agreed to represent McCoy after the man's parents approached English and offered him \$5,000, which they borrowed using their car title as collateral because McCoy believed his public defender would not adequately represent him, according to court documents.

English declined to comment on specifics about his decision to concede guilt, but said that he drew upon decades of experience representing criminal defendants and expert advice from several other attorneys.

"Representing Robert McCoy in that case is the most important thing I ever did in my professional life," English said. "I believe it was the best lawyering I'll ever do. I brought everything I had to the table. ... Whether it was good enough or not, or constitutional or not constitutional is for somebody else to decide."

Having the Supreme Court agree to hear the case was humbling, and the implications are big, English said.

"What is a lawyer's responsibility and what is an individual's right when their life is hanging in the balance?" he said. "This case is as much a philosophical debate as it is a legal debate."