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TEXAS FORENSIC SCIENCE COMMISSION: COMMON SENSE

By Richard Schulte

On December 23, 1991, a fire took the life of three young children at the Willingham residence in Corsicana, Texas. On January 8, 1992, Cameron Todd Willingham, the father of the three victims, was arrested for the murder of his children.

On August 18, 1992, the trial of Todd Willingham commenced and on the morning of August 20, 1992, the jury found Willingham guilty of the charge of capital murder. A little after noon on August 21, 1992, the jury recommended that Willingham be executed for the crime for which he was convicted. On February 17, 2004, the State of Texas carried out the sentence.

Shortly before Todd Willingham was executed, a fire investigator from Austin, Texas reviewed the fire investigation conducted by the Texas State Fire Marshal's Office and the Corsicana Fire Department and expressed an opinion that the fire may not have been arson.

After the execution, the Innocence Project claimed that the investigation of the Willingham residence fire was flawed and that the State of Texas executed an innocent man.

In an effort to determine whether or not the investigation of the fire was faulty, the Texas Forensic Science Commission retained the services of Dr. Craig Beyler, Hughes Associates, Inc., to review the case. Beyler submitted his report to the Commission on August 17, 2009. A few days before Craig Beyler was scheduled to testify before the Commission on the Willingham matter, the governor of the State of Texas, Governor Rick Perry, replaced the chairman of the Commission and two other members. Given this, the meeting at which Beyler was scheduled to testify was cancelled.

After some reorganization of the Commission due to the appointment of a new chairman, the Commission met on September 17, 2010 to consider the Willingham matter. At this meeting, the Commission voted to hear testimony from Dr. Beyler and other fire investigators, as well as the Texas State Fire Marshal, on the Willingham case. This testimony will occur at the next meeting of the Forensic Science Commission scheduled for November 19, 2010 in Austin, Texas.

Previously, the “Beyler Report” on the Willingham fire has been reviewed in this column. In order to gain a better understanding of the issues involved, it is necessary to review the testimony at Willingham’s trial. Given that the trial only lasted two days, the record of the trial is relatively short, however, an overview of the issues involved can be developed by taking a look at excerpts from the conclusion of the trial.

The following excerpts are from the transcript of the final two days of the trial, August 20 and 21, 1992:

The Court: . . .The prosecution has the burden of proving the defendant guilty, and it must do so by proving each and every element of the offense charged beyond a reasonable doubt. And if it fails to do so, you must acquit the defendant. It is not required that the prosecution prove guilt beyond all possible doubt. It is re - - it is required that the prosecution’s proof excludes all reasonable doubt concerning the defendant’s guilt. (Page 8, Volume XIII)

Prosecuting Attorney: I want you to understand something else. And I think you already understand it, but I want to remind you of it. You know, when you take that oath as a - - as a juror to do your duty according to the law and the evidence, that doesn’t mean that you have to throw your common sense out the window, members of the jury. We expect you to use your common sense. We expect you to use your life experience. We expect you to use the same thought processes in arriving at your verdict that you do in all your important decisions. I want you to keep that in mind. (Page 12, Volume XIII)

. . .that doesn’t mean that you have to throw your common sense out the window, members of the jury. We expect you to use your common sense. We expect you to use your life experience. We expect you to use the same thought processes in arriving at your verdict that you do in all your important decisions.

Defense Attorney: -- unlike, for example, the witness, Mr. Vasquez [fire investigator from the Texas State Fire Marshal Office], who has never erred, God recognizes that we can make mistakes.

Now, ladies and gentlemen, the ultimate question is guilt or innocence, but you decide that based upon the presence or the absence of a reasonable doubt in this case. Have the accusers so convinced you that you can act without hesitation?

Prosecuting Attorney: You know, Mr. Martin's case consisted, basically, of parlor tricks, with trays and carpet and lighter fluid. . . They want you to believe that this little two-year-old girl somehow got out of her room, over the child's gate, rambled around through the house, found a [kerosene] lamp, went back over the child's gate, into the babies' rooms . . . and set it on [fire] - - in some order. . . Does that make sense? Is that reasonable?. . . (Page 35, Volume XIII)

The Court: By your verdict in this case, you have found the defendant, Cameron Todd Willingham, guilty of the offense of capital murder, as charged in the Indictment. . . (Page 4, Volume XV)

The Court: Our law [law] provides that the punishment for the offense of capital murder in this state is death, or by confinement in the Institutional Division of the Texas Department Corrections of Criminal Justice, for life. (Page 4, Volume XV)

The Court: . . . You shall consider mitigating evidence that you might regard as reducing the defendant's moral blameworthiness. . . (Page 6, Volume XV)

Defense Attorney: . . . Now - - and I regretfully tell you this is the hard part of the case.

You people, on one side of this, are to be the conscience of the community. . .

He tries his case as I try my case. . . We are here to do the impossible. We're here for you people to be exposed to this whole case and our own theory on it, and then we're going [to] turn you back in that jury room, and we're going to ask you to do something that may or may not haunt you for the next 10 years. . . It's a hard choice; it's a hard deal. . . So for 12 times we agreed to create a terrible burden on each of you individuals.

. . . But, ultimately, you must agree unanimously - - all 12 of you - - to answer certain questions that will cause the death - - the death by injection of this young man, or 10 of you must agree to answer the questions according to the instructions that will assess a life sentence. . .

Remember, when you consider the first issue: Do you find from the evidence beyond a reasonable doubt there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing t[h]reat to society? Remember the definition of reasonable doubt. . .

Now, Mr. Jackson [the prosecuting attorney] is going to tell you that the sheer horrible nature of this offense would make anyone believe that this person would commit further acts of violence. . . Mr. Jackson is going to say the defendant's violent because he beats his wife. Well, the wife didn't say that.

. . .Members of the jury, there is not enough evidence here for you to answer this question in any other way but by the bottom verdict form “no.”

Special Issue No. 2 addresses a new charge in our law which states: . . .Most of his problems with the law have been caused because of the sniffing of paint. . .It’s the devil that has controlled him, that he can’t control. Those are mitigating factors. No one has ever informed you people; no one has ever defined what mitigating factor is. . .

You know, this situation is tragic. The whole - - the whole thing is tragic. . .Mr. Jackson is going to ask an eye for an eye. The children’s mother asked for the defendant’s life. . .

[Break in transcript]

Prosecuting Attorney: . . .And I think you will remember that Mr. Dunn [defense attorney] said what we do, we do on the behalf of our clients. And I’m certainly not ashamed of that. I am not ashamed to represent the people of the State of Texas.

Mr. Dunn said this is an offense of arson. Members of the jury, this is not an arson; this is a murder. . .

. . .Mr. Dunn says, “Think about that paint sniffing addiction; it’s like the alcoholic, it’s not the man, it’s the booze.” Well, I guess that’s - - that’s what we expect in the world we live in now; it’s never anybody’s fault; if we mess up, it’s not our fault; shift the blame to somebody else. That’s - - that’s the game we play nowadays and I hope you won’t fall prey to that fallacy. Members of the jury, please don’t do that. . .

Mr. Dunn says, “Think about that paint sniffing addiction; it’s like the alcoholic, it’s not the man, it’s the booze.”

You know, this case is disturbing, I guess, because the facts are so shocking and so contrary to our own values. . .

Members of the jury, you grappled with those issues and you arrived at the truth in this case; that Cameron Todd Willingham two days before Christmas killed his three children by setting fire to the house there on 11th Avenue here in Corsicana, by pouring a combustible liquid on the floor of the babies’ room, setting it on fire and standing outside while those children burned up. I want you to think about the enormity of that crime, members of jury, as you consider the issue of punishment in this case. . .

. . .You know, based on your verdict, based on the evidence we have seen this week, we can only reach one conclusion and that's that Cameron Todd Willingham, the defendant in this case, has committed the ultimate crime. He's committed the ultimate crime, members of the jury. He's committed the horrible and senseless and selfish murder of his three children. . .

. . .Ms. Mawoloney, the Oklahoma prosecutor, told you that no one she can think of in her long career has had more changes [chances] than Cameron Todd Willingham. But it didn't do any good, members of the jury. Crimes continued; the abuse continued; the violence continued. The paint sniffing and the manipulation of children gave way to the theft; it gave way to burglaries; it gave way to the torture of animals; it gave way to abuse of his wife in an attempt to cause miscarriages of his own children; to this murder, members of the jury. You've heard about the spiral of violence. This is the spiral of violence. This is what it means. You've gotten a graduate education in the last week about what violence is and how it happens and how it starts and how it ends. You have seen, members of the jury, the perversion of moral values in this case. . .

. . .And I guess that you can agree, if you want to, with the social worker that told you that, really, that society failed Cameron Todd Willingham. And I guess - - I guess you can help her try to shift the blame, too, along with the defendant. They'd like you to shift - - they'd like you to shift it to lots of people. They'd like to shift it to the police; they'd like to shift it to the justice system; they'd like to shift it to society, but that's not where it lies. . .The real evidence that you heard showed that Cameron Todd Willingham is known as an outlaw from Ardmore, Oklahoma, to Gainesville, Texas, to Corsicana, Texas, to West 11th Avenue. The real evidence showed that he's dangerous, that's he violent; and, perhaps, most important of all, that he's not going to get any better. The real evidence, members of the jury, shows that he's a continuing threat to society, that he has no conception of the value of life. And there is absolutely nothing anybody can do about it, except for you, by your verdict here today.

. . .the plain fact is that you're not really not the ones responsible for the imposition of the ultimate punishment in this case because, members of the jury, Cameron Todd Willingham wrote his own sentence when he committed each crime. He wrote his own sentence when he abused his wife, when he tortured a dog, when he tried to kill his children before they were ever born, when he refused every attempt at rehabilitation. He refused - - he refused every single piece of help that was ever proffered to him. And, members of the jury, he wrote his own sentence when he poured that lighter fluid on the floor of the babies' room here in Corsicana, Texas, and he set it ablaze and he killed those children. He is the one responsible; not you.

(The jury entered the jury room to begin deliberations at approximately 10:15 a.m.)

(The jury returned to the courtroom at approximately 12:05 p.m. and the following occurred:) (Page 25, Volume XV)

The Court: Members of the jury panel, have you reached a verdict?

Foreperson: Yes, sir.

(Page 25, Volume XV)

[Break in transcript]

The Court: You're hereby sentenced to - - to the - - to - - given the death penalty. And you're hereby remanded into the custody of the Navarro County Sheriff, who will deliver you to the Texas Department of Corrections. No date for your - - no date for the sentence to be carried out at this time because it requires an automatic appeal to the Court of Criminal Appeals. And that concludes this hearing. And you're remanded into the custody of the Sheriff.

The Court: I want everyone in the courtroom to remain in the courtroom until the defendant is out of the courtroom and out of the courthouse.

Discussion

It's difficult to read the transcript above without getting tears in your eyes. To sentence someone to death, even in the case of the murder of three young children, is difficult. It appears that even the judge in the case had difficulty announcing the sentence in court.

If you read Dr. Craig Beyler's report, all of the above would be new to you and, of course, that is the tactic being used in this matter-conceal the facts in the case and make it look like the (now deceased) State Fire Marshal's fire investigator was incompetent. You might be familiar with those tactics-those same tactics were utilized by the attorneys representing O. J. Simpson back in the "trial of the century" in 1995.

Let's briefly review some of the facts in the case:

- Todd Willingham was a long-time abuser of chemical inhalants (paint fumes), what is referred to as "paint sniffing".
- One of the effects of "paint sniffing" can be permanent brain damage.
- Chronic "paint sniffing" may also cause "anxiety, excitability, irritability, or restlessness", all of which "can lead to violent behavior".

- Testimony indicated that Willingham substituted a urine sample from his wife for his own sample at the hospital after the fire.
- Testimony by a doctor indicated that the carbon monoxide level in Willingham's blood sample taken at the hospital after the fire was normal for a smoker. (Willingham was a smoker.)
- The neighbor's children playing in their back yard smelled smoke from the fire for roughly 10 minutes without hearing any calls for help.
- Willingham did not attempt to call the fire department, nor did Willingham call out for help as his children were dying in the fire until neighbors arrived on the scene.
- After the fire, Willingham poured a bottle of cologne in his children's bedroom and in the hallway between the bedroom and the front door of the house.

Why did Willingham substitute a urine sample from his wife and represent that sample as his?

Why was the carbon monoxide level in Willingham's blood normal if Willingham entered the bedroom where the 1 year old twins were sleeping in an attempt to rescue them from the fire before he exited the house as he stated to investigators?

Why did Willingham not call out for help or attempt to find someone to assist him for perhaps as long as 10 minutes as his three daughters were dying in a fire?

Why did Willingham pour cologne in his children's bedroom and in the hallway between the bedroom and the front door after the fire?

Perhaps the fire investigation by itself did not conclusively prove that the fire was arson, but taken together with the above, it's not too difficult for anyone with "common sense" to come to that conclusion. As the judge in the trial stated, in order to find the defendant guilty, the prosecution must prove that the defendant committed the crime beyond a reasonable doubt. Just the facts outlined above would appear to be pretty conclusive as to what happened.

The Innocence Project and others have pointed out that Willingham claimed to be innocent of the crime until he was executed. Does that make Willingham innocent, or could it be that Willingham has no recollection of the fire because he was "sniffing paint" that morning? Why else would Willingham want to submit someone else's urine sample, rather than his own, at the hospital?

There were apparently only 4 people in the house at the time of the fire and three of them died in the fire. That left only one eye-witness to the fire and that eye-witness chose not to testify at his trial (because he didn't want the jury to hear about his drug use and criminal past) prior to the jury's determination of guilt or innocence.

Conclusion

“Whether our criminal justice system has executed an innocent man should no longer be an open question. We don't know how often it happens, but we know it has happened. Cameron Todd Willingham's case proves that.”

Barry Scheck, Innocence Project

Johnnie Cochran, with the assistance of Barry Scheck, turned the O. J. Simpson murder trial into a “circus”. The purpose of creating the “circus” was not to establish the truth in the case, but solely to influence the vote of one juror on the jury.

After Simpson was acquitted, a wrongful death lawsuit was filed by the relatives of the victims who were murdered. The jury in that lawsuit found that O. J. Simpson was liable for the death of his former wife and the young man who happened to be with her at the time of the attack.

It should be noted that an acquittal in a criminal case is not the same as being innocent. Did O. J. Simpson actually commit the crime that he was accused of having committed? That's a question that I would like to ask Barry Scheck.

In the end, there are only two questions in the Willingham case which need to be answered-similar to the two questions which arose in the Simpson case. Those questions are:

- Did Willingham commit arson and, in so doing, murder his three children?
- Did the State of Texas prove that Willingham committed arson, and, in so doing, murder his three children?

Those two questions are two entirely different questions. While the Innocence Project would like us to focus on the second question, it is my guess that the public is more interested in the answer to the first question.

If Willingham committed the crime, the people of Texas are likely to conclude that justice was done in this case, regardless of whether or not the evidence against Willingham was flawed. The attorneys for the Innocence Project only appear to be interested in whether or not the case was proved beyond a reasonable doubt, regardless of guilt or innocence.

Something tells me that the people of Texas aren't too interested in Barry Scheck's legal technicalities. The Texas Forensic Science Commission should focus on answering the first question and let the attorneys haggle over the second on their own time.

Simply because a lawyer involved in defending O. J. Simpson says that the State of Texas executed an innocent man "doesn't mean that you have to throw your common sense out the window".

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