

SCHULTE & ASSOCIATES

Building Code Consultants
880D Forest Avenue
Evanston, IL 60202
fpeschulte@aol.com
847/866-7479

THE WILLINGHAM RESIDENCE FIRE: THE STATE OF TEXAS CASE AGAINST WILLINGHAM

By Richard Schulte

An article titled "*Texas prosecutor denies showing bias in arson case*" dated October 15, 2010 published by the Associated Press includes the following excerpts:

"Williamson County District Attorney John Bradley said lawyers trying to clear Cameron Todd Willingham's name are using the case to further their effort to abolish the death penalty."

"We are being used, and we should recognize that," Bradley said. "When do we get to respond to those lies? Who is going to correct the record?"

"Bradley chairs the Texas Forensic Science Commission, which is investigating whether fire investigators committed professional misconduct in determining arson caused the 1991 Corsicana house fire that killed Willingham's daughters. At least nine fire experts have said the fire was an accident, not arson."

"Williamson County District Attorney John Bradley said lawyers trying to clear Cameron Todd Willingham's name are using the case to further their effort to abolish the death penalty."

Was the fire at the Willingham residence in Corsicana, Texas on December 23, 1991 accidental or did Todd Willingham commit arson and murder his three young daughters?

The following are excerpt from the prosecutor's summation to the jury after the jury heard the testimony of witnesses in the trial:

[Page 10, Volume XIII]

Prosecuting Attorney: Members of the jury, I want to thank you very much for your service in this case.

[Break in transcript]

[Page 11, Volume XIII]

Prosecuting Attorney: Now members of the jury, we've reached that stage of trial know variously as the "Arguments" or "Summations". Lawyers generally call this stage of trial "Argument part of trial." I don't think it's really an argument; I'm not going to stand up here and argue with anybody unless I have to. It's really a summation. . .

I want you to fully understand, though, members of jury, what the attorneys say is not evidence. The only evidence that you are authorized to consider in this case comes from that witness stand, as well as these exhibits, photographs, documents and other articles that have been admitted into evidence by the Court. I want you to fully understand that.

I want you to understand that the State has the right to open and close Arguments because the State has the burden of proof in this case. We both have an identical amount of time to argue to the jury, but my Argument will be split up. I'll - - my Summation to you will be brief in my opening here. It will be passed to Mr. Martin [defense attorney], he will make his Summation, then I will speak to you in closing, and only to respond and comment to the remarks that he may have made. I want you to fully understand that.

. . . 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 you have to throw your common sense out the window, members of jury. We expect you to use your common sense. We expect you to use your life experience. We expect you to use the same though processes in arriving at your verdict that you do in all your important decisions. I want you to keep that in mind.

I want you, as you listen to the evidence - - excuse me; listen to the Arguments of counsel, I want you to think about the evidence in the case. As you listen to what an attorney - - an attorney says in his Summation, I want you to ask yourself; Is that statement supported by the evidence? I want you to ask yourself: Is that what I heard in this case? I want you to test that Argument, that Summation, in light of the evidence you heard. I believe if you do that, you'll arrive at the proper verdict in this case. I'll complete my opening; I'll give the floor to Mr. Martin. I'll speak to you once again. Thank you.

The Court: Mr. Martin.

[Break in transcript]

[Page 30, Volume XIII]

Prosecuting Attorney: Members of the jury, the first thing I'd like to do is respond to some of the remarks that Mr. Martin [defense attorney] has made in his Closing Argument. . .

[Break in transcript]

[Page 32, Volume XIII]

Prosecuting Attorney: Mr. Martin [the defense attorney] talked to you about refrigerators. Well, members of the jury, I don't know what significance the refrig - - what the significance of refrigerators is - - two refrigerators; refrigerators blocking the door, except for one thing that I think you'll remember. It points out that the statement Mr. - - Mr. Willingham made to Mrs. Barbee is false. Do you remember what he told her? "I ran out the back of the house." Something is wrong here, members of the jury. Something is wrong; and I want you [to] think about that. That's the significance of the refrigerator blocking the back door. And I want you to consider that.

[Break in transcript]

[Pages 34-36, Volume XIII]

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 lamp, went back over the child's gate, into the babies' rooms, sprinkled it on the floor in this distinctive cross-type pattern, came out of the room, into the hall, spread it in the hall; somehow got back in, set fire to the floor in the babies' room, came back out, set fire to the floor in the hall, went out on the porch, poured it and set it on - - in some order. And then he wants you to believe, members of the jury - - I want you to think about this - - he wants you to believe that that bottle of lighter fluid got melted by the fire, the fluid inside ran down the porch, somehow jumped across the crack between the concrete porch and the threshold and ran up into the threshold. Think about that. Does that make sense? Is that reasonable? You have the photographs before you, members of the jury, and you can take them into the jury room and you can ask yourself how that lighter fluid runs down to this concrete porch, jumps the crack and goes up into that threshold. I want you to think about that as you consider your verdict in this case. Think about that. Think about how it makes sense. Think about how the fluid in that threshold is not lamp fluid at all. A petroleum distillate, a kerosene base. It's lighter fluid; it's not lamp oil. . . .

. . . Think about that. Does that make sense? Is that reasonable?

[Break in transcript]

[Page 36, Volume XIII]

Prosecuting Attorney: Mr. Martin talked to you about Cameron Todd Willingham's conduct; and he said, "Gee, I don't really know what he did and maybe he doesn't know what he did either because he was a victim of carbon monoxide poisoning." The problem was he was not a victim of carbon monoxide poison. And the medical records will tell you that and Dr. Shaw told you yesterday. Do you remember the carbon monoxide level in the defendant's blood? The same as an ordinary smoker - - which he is; . . .He wasn't disoriented. He knew exactly what he was doing when he set that house on fire.

Think about how the fluid in that threshold is not lamp fluid at all. A petroleum distillate, a kerosene base. It's lighter fluid; it's not lamp oil. . . .

[Break in transcript]

[Pages 38 and 39, Volume XIII]

Prosecuting Attorney: Members of the jury, as you consider your verdict in this case, I want you to consider the images that you have seen here in the last few days. I want you to consider the image of Diane Barbee, who burst out of her house when her little girl ran in, shouting about the smoke that she smelled and then saw in the back yard. I want you to think about the image of her testimony, about Cameron Todd Willingham, who according to evidence, never uttered a cry, never uttered a word until she burst out her front door after the fire had been burning for some time. She burst out the door and saw that smoking house where she knew three children lived.

I want you to consider the image of Diane Barbee, who burst out of her house when her little girl ran in, shouting about the smoke that she smelled and then saw in the back yard. I want you to think about the image of her testimony, about Cameron Todd Willingham, who according to evidence, never uttered a cry, never uttered a word until she burst out her front door after the fire had been burning for some time.

I want you to imagine her first sight of Cameron Todd Willingham kneeling on the front porch, crouched in front of his front door as smoke poured out through that door. And imagine her confusion and her dismay, members of the jury, when she asked Cameron Todd Willingham to go back in that smoking house, where no flames were visible at that time, and rescue his children. I want you to think of the positive action she took. She ran down the street. She ran down the street, yelling at the top of her lungs, and she called the Fire Department. She called 911. Think of the positive action she took back when she - - after she got back from down the street and there were still no visible flames and she saw that Cameron Todd Willingham had not done anything to rescue his children; and she started toward the house, she and her daughter - - her older daughter - - started toward the house to see if they could do something, when the fire flashed and the children's rooms were engulfed in flames. I want you to think of another image, members of the jury; I want you to think of the image of little Buffie Barbee smelling smoke, discounting at first, hearing no cries for help until she raised the cry, herself. She was the first person who raised a cry in this case. Think about that image in her mind, members of the jury, as she watched the smoking house, asking Cameron Todd Willingham to go back in the house and get his babies. Members of the jury, she was 11 years old, and she knew what was right. She knew what needed to be done. And what did Cameron Todd Willingham do? He took a pool cue and broke out the front window so that fire could get more air; and then he went and pushed his car out of the way so it wouldn't catch on fire. I want you to think about that, members of the jury.

Did things happen the way David Martin told you? No; members of the jury, they didn't. But, you know, members of the jury, he forgot a lot of those things, too. He forgot to inflict anything but the most superficial kind of wounds or injuries on himself. He was holding as if he - - or hands or arms as if he were burned, Mrs. Barbee said. Pure affectation. The lies started there with the first person he saw. His arms weren't burned; he had a blister on his finger and a two-inch burn on his shoulder; hair was singed a little bit. I want you to think about that.

Think of the image of Brandy Barbee, the older child, begging. Her testimony was she begged Cameron Todd Willingham to go back in that smoking house and get the babies. And do you remember what he did, based on the evidence? Jerry Long, the witness, told you that he started talking about electrical problems and squirrels in the attic. I want you to think about that when you consider your verdict in this case. I guess he didn't seem to notice that the back of the house wasn't on fire, not involved at all. I guess he didn't seem to think that there was a child in the same bed that he just left. But I guess he knew it would be too much trouble to try to get back in the back of that house because the refrigerator was in the way. I don't know. Think about that. Think about his statement that he came out the back of the house. Does any of this make any sense? Did things happen the way David Martin told you? No; members of the jury, they didn't. But, you know, members of the jury, he forgot a lot of those things, too. He forgot to inflict anything but the most superficial kind of wounds or injuries on himself. He was holding as if he - - or hands or arms as if he were burned, Mrs. Barbee said. Pure affectation. The lies started there with the first person he saw. His arms weren't burned; he had a blister on his finger and a two-inch burn on his shoulder; hair was singed a little bit. I want you to think about that.

He wanted people to believe he was awakened at the last minute, in a smoke-filled house, that he was overcome with smoke from searching for the babies. And you remember what the carbon monoxide content of his blood was. I believe the doctor said it was really less than that of - - of a normal smoker. Think about that. I asked the witness, "Was he coughing?" "No; not really." You heard Manuel Vasquez talk about what it is to be over - - overcome by smoke, suffer smoke in - - inhalation. He used very graphic terms to describe what smoke inhalation is like.

[Page 41, Volume XIII]

He just didn't do a good enough job to cover up, members of the jury. Cameron Todd Willingham wanted someone to believe that he had a serious burn, a serious injury; and then it turned out to be like a sunburn on his face. He wanted people to believe he was awakened at the last minute, in a smoke-filled house, that he was overcome with smoke from searching for the babies. And you remember what the carbon monoxide content of his blood was. I believe the doctor said it was really less than that of - - of a normal smoker. Think about that. I asked the witness, "Was he coughing?" "No; not really." You heard Manuel Vasquez talk about what it is to be over - - overcome by smoke, suffer smoke in - - inhalation. He used very graphic terms to describe what smoke inhalation is like. And those terms don't fit the defendant, Cameron Todd Willingham. You know, the type of burns that showed up on this defendant, they tell a little bit about the kind of person he is. Cameron Todd Willingham is a coward. He couldn't inflict substantial burns on himself to make himself look good. I want you to think about that when you consider your verdict in this case.

You know, just as important in this case as the inconsistencies of what Mr. Martin wants us to believe are the strange little - - little psychological bits, factors that we have to consider in light of the evidence, members of the jury.

[Page 42, Volume XIII]

Ron Franks is a Corsicana firefighter who risked his life to go into a burning house out there on 11th Avenue to look for those children. Members of the jury, he told you, on Tuesday, how he went to the fire scene after the funeral, right after the children's funeral on the 27th. Well, the defendant, Cameron Todd Willingham, showed up out there about the same time. And he starts asking questions about the origin of the fires, about what the investigators had found. Minutes after his children had been buried. But his conduct, members of jury, is so transparent that it shocks us when we think about it. Nobody ever accused him of being smart. It's so transparent that it - - it almost makes us sick to our stomachs.

Members of the jury, he told you, on Tuesday, how he went to the fire scene after the funeral, right after the children's funeral on the 27th. Well, the defendant, Cameron Todd Willingham, showed up out there about the same time. And he starts asking questions about the origin of the fires, about what the investigators had found. Minutes after his children had been buried.

He told the firefighter, Franks, when they are walking through the burning remains of the home, the children's room, "Oh, yeah, if you guys take any more samples out here, then you'll probably find that stuff I poured on the floor in the hall and the children's room because the children liked it so much." Why didn't he go in there and pour it on the bed where his two-year-old daughter was found dead? Because he knew where he had poured the accelerant and he was trying to mess up any samples that the Police Department or investigators might take. What do you make of conduct like that? Does that make sense to you? Does that comport with your common sense? No; it does not. I want you to think about that when you consider your verdict in this case.

[Page 47, Volume XIII]

That's a decision you have to make if you elect to turn this defendant loose.

Well, members of the jury, if I - - if I could get down on my knees and beg you, I would do it if I thought it would do any good. I beg you to find Cameron Todd Willingham guilty of the offense of capital murder. That's why I'm pleading with you now, to do what the evidence requires in this case, members of the jury.

[Break in transcript]

He told the firefighter, Franks, when they are walking through the burning remains of the home, the children's room, "Oh, yeah, if you guys take any more samples out here, then you'll probably find that stuff I poured on the floor in the hall and the children's room because the children liked it so much." Why didn't he go in there and pour it on the bed where his two-year-old daughter was found dead? Because he knew where he had poured the accelerant and he was trying to mess up any samples that the Police Department or investigators might take. What do you make of conduct like that? Does that make sense to you? Does that comport with your common sense? No; it does not.

The last thought I want to leave you with is one that was inspired by Mr. Martin in his Argument. He talked about Biblical considerations. I want to talk to you about Biblical considerations, too. Members of the jury, if we could turn to the second (sic) chapter of Matthew in this Bible, we could read the words of Jesus. . .He said, "Whomever shall harm one of my children, it's better for a millstone to be hung around his neck and for him to be cast in the sea and drowned." . . .I read the Indictment to you at the first of this case. It ended in the words, perhaps inconse - - inconsequential words, about peace and dignity of the State. Please lend peace and dignity to this proceeding. Please find Cameron Todd Willingham guilty of the crime he committed. Thank you.

Discussion

The prosecuting attorney in this case, John Jackson, made a strong case for the conviction of Cameron Todd Willingham. The State's case against Willingham consisted of more than just the technical evidence from the investigation of the fire and the fire investigator's testimony.

Even if the testimony of the fire investigator is ignored, all of the other evidence in the case points to Willingham, without considering Willingham's prior criminal record or his drug abuse. (Willingham's prior criminal record and his drug abuse were not introduced as evidence until the penalty phase of the trial because Willingham did not testify in his own defense.) Given the weight of the evidence against Willingham, excluding the fire investigator's testimony, there seems to be little doubt as to what happened in Corsicana, Texas on the morning of December 23, 1991.

One can argue about the morality of the death penalty "until the cows come home", but based upon the above, there seems to be little doubt that the State of Texas most certainly did not execute an innocent man.

* * * * *

Copyright © 2010
Richard C. Schulte