

TEXAS FORENSIC SCIENCE COMMISSION: WILLINGHAM TRIAL TRANSCRIPT EXCERPTS (Part 2-Analysis)

By Richard Schulte

Discussion

The arguments made by the prosecutor, John Jackson, in the trial of Todd Willingham neatly summarizes the evidence presented by the State of Texas against Willingham. Even without reading the entire transcript of the trial testimony, or even the excerpts of the testimony presented in this article, it seems obvious that there is conclusive evidence that Willingham intended to murder his three young children by setting fire to their home.

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Some of that evidence that Willingham is guilty of the crime includes the following:

- Willingham was a substance abuser (“paint sniffing”).
- Willingham beat the mother of his three children during pregnancy in an attempt to cause miscarriages.
- Willingham gave differing accounts of the fire and his escape from the home to his neighbors and to investigators.
- Willingham failed to make any attempts to call for help or call the fire department until a neighbor arrived on the scene of the burning house.
- A blood test taken at the hospital a little over an hour (11:40 a.m.) after the fire indicated that the carbon monoxide level in Willingham’s blood was normal for a smoker.

- Willingham substituted his wife's urine sample for his at the hospital. (The hospital laboratory records indicate that the urine sample was received at the lab at 5:50 p.m.)
- Willingham poured a bottle of cologne on the floor of the children's bedroom and in the hall leading to the front door after the fire.
- Traces of charcoal lighter fluid were found under the threshold of the front door of the home.

Aside from the fire investigator's testimony, the most damning evidence against Willingham was the fact that a neighbor's children smelled smoke at roughly 10 a.m. and reported both seeing and smelling smoke in their backyard to their mother at around 10:10 a.m. When the neighbor went to investigate the source of the smoke, Willingham was observed in front of the home and not until the neighbor arrived at the front of the burning home did Willingham call out for assistance. According to testimony, the fire department was contacted by the neighbor at 10:24 a.m.-a delay of perhaps as long as 24 minutes.

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While Willingham's defense developed a theory that the fire was perhaps caused by his two-year old child playing with a kerosene lantern on a bookshelf in the hallway leading to the front door, the forensic chemist who gave testimony in the case clearly stated that the traces of the combustible liquid found under the threshold of the front door was charcoal lighter fluid (mineral spirits of kerosene), not kerosene.

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Willingham's defense also presented a theory that charcoal lighter fluid from a plastic container of the fluid on the porch roughly 8 to 10 feet from the front door spilled out of the container when the container melted and that the fluid flowed to the front door. This theory was discredited by the fact that the concrete porch sloped away from the front door and by the fact that there was an opening between the edge of the concrete slab and the threshold. In other words, charcoal lighter fluid leaking from the container would have had to flow for a distance of at least 8 feet uphill and then "jump" over an opening to reach the threshold from the location where the container was found on the porch.

Is it possible for two-year old child to have started the fire by playing with matches or a cigarette lighter? Perhaps that is a plausible explanation if the child were a little older, but most parents would conclude that it would be difficult for a 2 year-old child to operate a lighter or to strike a match.

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With the defense attorney's explanations for various facts in the case rendered implausible or impossible by other facts and Todd Willingham unwilling to take the witness stand in his own defense due to the fact that his criminal past and drug use would be revealed to the jury, no explanations were provided for various events.

Why would Willingham tell neighbors he escaped from his burning home through the back door (which was blocked by a refrigerator) and tell investigators he left through the front door? What is the explanation for submitting his wife's urine sample for his at the hospital? Why did Willingham pour cologne in the hallway and in his children's bedroom after the fire?

Of course, there are obvious explanations for these questions. And the obvious explanations all lead to the conclusion that the fire was intentionally set by Todd Willingham.

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Also of interest are the defense attorney statements regarding the reliability of witnesses. The defense attorney indicated that we should discount the testimony of a county jail inmate (Johnny Webb) because the inmate was a felon who used drugs, yet the defendant had a lengthy criminal record and was also a drug-user. If we use the same logic as proposed by the defense attorney, we shouldn't trust any statement made by the defendant either, such as his plea of innocence. Why is it that testimony made in favor of conviction is always claimed to be false by defense attorneys without any evidence?

The defense attorney's statement that we should also discount the testimony of the witness regarding the switching of urine samples is also an interesting bit of logic. The attorney called the witness, Carl Jones, a "liar" because he wore a tee-shirt to testify in court and had a beard. If law enforcement and prosecutors were able to use such logic, it would certainly simplify their jobs, however, it is unlikely that such evidence would stand up to a constitutional challenge by various organizations, such as the ACLU and the Innocence Project.

Admittedly, the testimony by the fire investigator, Manuel Vasquez, was flawed. Although my expertise is not in fire investigation, a number of statements which the investigator made were obviously erroneous. However, simply because there were flaws in Vasquez's investigation does not necessarily mean that his conclusion regarding whether or not the fire was arson was in error. If you discount Vasquez's entire testimony, the conclusion remains the same.

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Clearly, Vasquez's mannerism in his testimony are an easy target. It probably would have been better if the prosecution had led Vasquez through his testimony, rather than allowing him to speak at length in his testimony.

With regard to the defense attorney's question concerning whether or not Vasquez had ever made a mistake and the attorney's mocking comments on Vasquez's response in the final argument, the answer to this question was a "no-win" proposition for Vasquez. If Vasquez had admitted that he had ever made a mistake, the attorney would have exploited that answer to attack the credibility of Vasquez's investigation in the Willingham fire.

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Given that the Willingham's defense attorneys called into the question the veracity of several of the prosecution witnesses, it seems reasonable to also question the veracity of Barry Scheck and the expert retained by the Texas Forensic Science Commission since these two are now attacking the criminal justice system in the State of Texas.

Barry Scheck assisted Johnnie Cochoran with the defense of O. J. Simpson in 1995. If you will recall, the defense attorneys for Simpson turned the trial into a circus and the credibility of Los Angeles Police Department was attacked in the vilest of manner. Clearly, a defense conducted in this manner had nothing to do with determining the truth in that case, but rather in simply obtaining an acquittal by tainting the jury's perception of the prosecution's case, regardless of the impact on the American system of justice and society as a whole.

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With regard to the forensic expert retained by the Texas Forensic Science Commission, Dr. Craig Beyler, Hughes Associates, Inc., Beyler's "track record" as an expert has been covered extensively. In *Merrell vs. Wal-Mart Stores, Inc.*, the Texas Supreme Court ruled that Beyler's expert report and testimony was speculation. It is rather interesting that after the Texas Supreme Court's criticism of Beyler's testimony in *Merrell vs. Wal-Mart* that Beyler would criticize Manuel Vasquez's investigation and testimony in the Willingham trial.

Beyler's conduct as an expert witness in *Ian David McAuslin et al v. Grinnell Corporation, et al* and his presentations on the use of smoke/heat vents in sprinklered buildings to the ICC Code Technology Committee (CTC) in May and November, 2008 also call into question Dr. Beyler's veracity.

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Give the above, it would appear that Dr. Beyler is a "tainted" witness, at least as far as any participation in the consideration of the Willingham conviction before the Forensic Science Commission.

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Barry Scheck has been quoted as follows:

“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 and the Innocence Project are wrong in the Willingham case. There not a doubt in my mind about that and anyone who reads the transcript of the trial, or just the information above, should have no doubt about it either.

It's rather interesting to note that in the newspaper accounts about the Innocence Project complaint on this matter, you don't read about the cologne, the urine sample switching or why Willingham stood silently outside the front door while his children were dying in a fire, rather than calling for help.

If you don't believe that journalists are biased, the Willingham case is a classic example.

“During times of universal deceit, telling the truth becomes a revolutionary act.”

George Orwell

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