

# Montgomery County POLICE REPORTER

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## **CAPITAL MURDER CONVICTION FOR 1998 BURNING OF ROBERT MIDDLETON STANDS**

On Friday, October 20, 2017, the Supreme Court of Texas denied Don Collins's request to have his capital murder conviction reviewed by that court. District Attorney Brett Ligon and County Attorney J D Lambright have both expressed their satisfaction with the ruling.

District Attorney Ligon commented that "the prosecutors who secured justice for Robert Middleton are the best Montgomery County has to offer. They each left their families for two weeks to live in hotel rooms in Galveston where the case had been transferred on a change of venue. The Middleton family deserved this justice and we were proud to be able to deliver".

Shortly after being elected County Attorney in November 2012, J DLambright was asked about pursuing criminal charges in this 14 year old case. He stated emphatically that "I would rather step up to the plate and strike out than to never have stepped to the plate at all. The County Attorney is the only person with the statutory authority to pursue this case, and on behalf of Robert and his family, we will use our best efforts to see that justice is done and that the family might someday have closure." With this latest word from the Supreme Court of Texas, that day has finally come.

On February 11, 2015, Collins was convicted in the 359<sup>th</sup> District Court of murdering Robert Middleton by setting him on fire in 1998. It was on Robert's 8<sup>th</sup> birthday that 13-year-old Collins doused him with gasoline and burned him over 99% of his body. Although Collins was a suspect at the time, Montgomery County authorities were unable to produce sufficient evidence to proceed with probable cause against Collins.

It was not until after Robert died in 2011 from an aggressive cancer resulting from his burn wounds that Montgomery County authorities learned of new evidence believed to be the underlying motive for the horrific burning: Collins had sexually assaulted him in the days preceding the attack. Based on that new evidence, the case was reopened and Detectives Thomas Duroy and Terance Greenwood with the Cold Case Division of the Montgomery County Sheriff's Office were able to develop substantial new information regarding the heinous crime. In 2013, newly-elected County Attorney Lambright filed a petition for discretionary transfer against Collins, who was then 28 years old.

Lambright explained, "Because Collins committed the crime as a juvenile and our office has jurisdiction over juvenile cases, the first stage of the prosecution began with the County Attorney's Office. We had to prevail in the juvenile court before the case could be transferred to the District Attorney's Office for prosecution in adult court."

At the transfer proceeding, the defense team argued that prosecuting Collins as an adult for conduct he committed as a juvenile violated constitutional and statutory legal standards. Lambright's office disagreed. "The chief of our Juvenile Division, Marc Brumberger, had been an appellate prosecutor for many years and was confident that we had a solid legal basis for bringing the prosecution. In essence, we simply needed the trial court to apply the punishment range that existed for a juvenile in 1998." Following three days of testimony and the arguments of counsel in March of 2014, the juvenile court ruled that the case against Collins could be transferred to district court. Once transferred, the case fell under the jurisdiction of the District Attorney's Office. Assistant District Attorneys Kelly Blackburn and Rob Freyer were assigned to the case and Assistant County Attorney Brumberger was invited to remain part of the prosecution team due to his familiarity with the unique legal issues.

At trial, the defense continued to argue that the prosecution was illegal, but 359<sup>th</sup> District Judge Kathleen Hamilton disagreed. After the jurors found Collins guilty of capital murder, they assessed the maximum 40-year sentence allowed under the applicable 1998 juvenile law.

"Once the trial was over, Mr. Brumberger continued to represent the State on appeal," said Ligon. "His legal argument had already prevailed at two stages of the proceedings, so it only made sense that he present it to the Ninth Court of Appeals. The appellate

court agreed with that argument and affirmed Collins's capital murder conviction in March of this year."

After the Ninth Court of Appeals upheld the conviction, Collins's attorney filed a petition for review with the Supreme Court of Texas. Upon learning that the petition request was denied, Ligon stated, "I was glad to hear that the justices of the Supreme Court were equally convinced by the State's argument. We believed we had a solid legal basis from the outset, and this puts the matter to rest in the state appellate process."

Lambright noted that Collins still has other avenues for possible review, including a writ of habeas corpus or a federal appeal, but says, "It is highly unlikely Collins could prevail now that his claims have been litigated up through the state appellate courts. I am very pleased that Robert's family now has this degree of closure on the case. It was a long time coming.