

Capital Murder conviction upheld for 1998 burning of Robert Middleton

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Photo: Andrew Buckley, MBR

In this June 19, 2014 file photo, Don Collins walks back to his seat after his arraignment hearing in the 359th state District Court at the Lee G. Alworth Building in Conroe, Texas.

In a 46-page legal opinion, the Ninth Court of Appeals affirmed the capital murder conviction of Don Collins. District Attorney Brett Ligon and County Attorney J D Lambright have both expressed their satisfaction with the ruling.

On Feb. 11, 2015, Collins was convicted in the 359th District Court of murdering Robert Middleton by setting him on fire in 1998. It was on Middleton's 8th birthday that 13-year-old Collins doused him with gasoline and burned him over 99 percent 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. Middleton died shortly before his 21st birthday in 2011 from an aggressive cancer that medical experts attributed to his burn wounds. Before his passing, Middleton disclosed new evidence that Montgomery County

authorities believed to be the underlying motive for the horrific burning: Collins had sexually assaulted him in the days preceding the attack.

After that new evidence came to light, 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. As the Cold Case investigation was nearing an end in 2013, Lambright filed a petition for discretionary transfer against Collins, who was then 28 years old.

"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," Lambright said. "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. From the very beginning, Ligon was fully supportive of our effort to get the case transferred."

At the transfer proceeding, the defense team argued that prosecuting Collins as an adult for conduct he committed as a juvenile violated both constitutional and statutory standards due to a change that had been made to the applicable law after the offense was committed.

Lambright recognized that "the circumstances of this case were quite unique and involved several complex legal questions about whether the State could bring the prosecution. Fortunately, the chief of our Juvenile Division, Marc Brumberger, had been an appellate prosecutor with the District Attorney's Office for many years and was well-suited to address those legal issues." 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. Brett Ligon stated, "From the start, my office and the County Attorney's Office wanted to not only give the Middleton family their day in court, but to see Don Collins convicted for his crime and have that conviction upheld on appeal. I assigned Assistant District Attorneys Kelly Blackburn and Rob Freyer to the case because they are two of my outstanding senior prosecutors, and I invited Assistant County Attorney Brumberger to continue as part of the prosecution team due to his intimate familiarity with the case and its unusual legal issues."

Concerned with the publicity surrounding the case, District Judge Kathleen Hamilton moved the trial to Galveston County to ensure that an impartial jury would be selected. At trial, the defense continued to argue that the prosecution was illegal, but Judge 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 offered to represent the State on appeal," said Ligon. "He was confident in the State's position, he had fought for it and won in two courts already, so he presented it to the appellate court. I was glad to hear today that the appellate judges were equally convinced by the State's argument, but I'm not surprised. We believed we had a solid legal basis from the time the case first went to court."

Collins raised two issues on appeal. First, Collins argued that his prosecution in the adult system violated the Ex Post Facto Clause of the U.S. Constitution because he became eligible for a greater punishment as an adult than he could have received at the time he committed the offense. At the time of the offense, the maximum punishment Collins could have received was a 40-year sentence, whereas he was eligible for a mandatory life sentence at the time he was transferred into the adult system. Ligon explained, "Both offices, the County Attorney and District Attorney, recognized that potential problem from the outset, which is why we recommended that Judge Hamilton cap the possible sentence at 40 years when Collins was

tried as an adult. Judge Hamilton looked at the law and agreed that was the proper measure to take to avoid an ex post facto violation. The appellate court has now agreed with that decision."

In his second issue on appeal, Collins argued that the State had sufficient evidence to bring the case in the juvenile system prior to his 18th birthday and, for that reason, the State was prohibited by law from getting the case transferred to adult court in 2014. "At the transfer hearing, the County Attorney's Office presented testimony from the prosecutor who had handled the case after the offense occurred in 1998," Lambright said. "That testimony showed that the evidence suggesting Collins was involved was quite flawed back then, and the prosecutor did not have probable cause to bring the case. It was not until 2011, long after that attorney had moved on to private practice, that the County Attorney's Office received the information suggesting there was new evidence to pursue." The Ninth Court of Appeals recounted that testimony in its opinion and held that the transfer to district court was lawful.

Reflecting back on what is now an almost 19 year old case, Lambright recalled being asked to attend a meeting in late 2012, just a few weeks before he was sworn into office. With respect to pursuing criminal charges, Lambright stated that during that meeting "I vividly remember saying that I would rather step up to the plate and strike out than to never have stepped to the plate at all. No one other than the County Attorney had the statutory authority to pursue this case. On behalf of Robert and his family, I was determined that we would use our best efforts to see that justice was done and that the family might finally have closure." Lambright reopened the case and reached out to the Cold Case Division of the Montgomery County Sheriff's Office to conduct a thorough investigation based on this new evidence.

Over the next several months, the Cold Case detectives were able to develop substantial new information regarding the heinous crime. As the investigation was nearing an end in September 2013, County Attorney Lambright filed a petition for discretionary transfer against Collins, who was then 28 years old, charging him with first degree murder. Lambright commented that "I cannot say enough good things about the work done by the Cold Case Division. It was exemplary from beginning to end. When they completed their investigation, the detectives turned over more than 50,000 pages of evidence to my office; all of it was meticulously organized. They left no stone unturned."

"I believed we had a solid legal basis from the time the case first went to court," Ligon said. "We appreciate the close attention to detail the jury gave this case throughout the seven day trial. We are also gratified to see that the appellate court upheld the jury's decision, and we commend the Court of Appeals for its thorough analysis of the trial record and evidence in the case."