

New Evidence Suggests Cameron Todd Willingham Prosecutor Deceived Board of Pardons and Paroles About Informant Testimony in Opposition to Stay of Execution

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(Austin, TX; February 28, 2014) – The Innocence Project has filed new documents with the Texas Board of Pardons and Paroles in its posthumous pardon petition for Cameron Todd Willingham pointing to new evidence, including a notation on the DA's own file, strongly suggesting that jailhouse informant, Johnny Webb, received a deal from Navarro County District Attorney John Jackson in exchange for his testimony. This new evidence also strongly suggest that Jackson, who had since become a district court judge, deceived the Board of Pardons and Paroles and the Navarro County District Attorney's Office about the existence of a deal, which had they known about, would have almost certainly spared Willingham's life.

Willingham was executed for the arson murder of his three daughters despite mounting evidence that he was innocent. Subsequent to the trial, Jackson made repeated representations that Webb did not receive any favorable treatment, despite the notation in his file that there was a deal for his cooperation. Evidence also shows that Jackson made several attempts to secure an early release for Webb. Just days before Willingham was executed, it was learned that the testimony of the fire examiners who claimed that Willingham intentionally set the fire was based on outdated arson science, yet the Navarro County District Attorney (no longer Jackson who was then a district court judge) opposed a stay of execution claiming that the faulty science should be disregarded given Webb's testimony implicating Willingham.

February 17, 2014 marked the 10th anniversary of Willingham's Execution.

"It's astonishing that 10 years after Todd Willingham was executed we are still uncovering evidence showing what a grave injustice this case represents," said Barry Scheck, Co-Director of the Innocence Project, which is affiliated with Cardozo School of Law. "The Texas clemency system is severely broken and must be fixed. The Texas Board of Pardons and Paroles can begin that process by conducting a thorough investigation into how the state allowed this execution to go forward in the face of so much evidence pointing to Mr. Willingham's innocence."

The handwritten note that the Innocence Project discovered was on the cover of the District Attorney's file on the robbery charges pending against Webb and stated that the charge should be reduced to the lesser offense of robbery in the second degree "based on coop in Willingham."

At trial, Webb testified that he had been convicted of the more serious charge of aggravated robbery and had already been sentenced to a period of incarceration that would have been appropriate for that crime. In response to leading questions by Jackson, Webb told the jury that he was not offered any incentives for his testimony. The trial transcript reads:

Q. Johnny, have I promised you anything in return for your testimony in this case?

A. No sir you haven't.

Q. As a matter of fact, I told you there is nothing I can do for you.

In addition to the notation on the District Attorney's file on Webb, attorneys also recently discovered a separate notation in the Navarro County District Clerk's file on Webb's case dated just months after Willingham was convicted with instructions from Jackson informing the clerk to tell the Texas Department of Criminal Justice that Webb was convicted of the lesser charge of second degree robbery, despite the judgment's reference to the aggravated robbery penal code provision. Subsequently, there is evidence suggesting that Jackson followed through on his promise to Webb by obtaining an order retroactively reducing the charge from aggravated robbery to second degree robbery. This reduction from an aggravated offense with a deadly weapon to a second degree felony meant that Webb became eligible for parole much sooner.

Jackson also wrote to the Board of Pardons and Paroles on two occasions urging the board to grant Webb early parole. In a letter dated May 8, 1996, Jackson twice noted Webb's testimony in the Willingham case and claimed that Webb testified without incentive to do so – statements that were contradicted by Jackson's conduct and the note in his file.

In the weeks leading up to his execution, Willingham's lawyers sought a 90-day reprieve from the Board of Pardons and Paroles seeking to investigate whether Webb testified against Willingham in exchange for favorable treatment in his robbery case. Jackson, a district court judge at this point, wrote the Board a letter on his judicial letterhead opposing the reprieve where he again says that he didn't offer Webb any consideration for his cooperation.

In this letter, Jackson also attempts to explain why Webb filed a motion in 2000 recanting his testimony, claiming that Webb was coerced into writing the recantation to pacify demands from Willingham who Jackson claims learned his location from a "misguided documentary film maker." (As revealed in an earlier petition to the Board, the prosecution never disclosed this recantation to Willingham's lawyers.) In the letter, Jackson downplays his correspondence with Webb, but evidence shows that Webb began corresponding with Jackson almost immediately after he was sent to prison in 1992, incredibly claiming then that prison staff were threatening him and forcing him to recant. In response, Jackson took extraordinary efforts to assist Webb, including making numerous calls and writing letters to prison officials, issuing bench warrants to remove Webb from prison and filing a clemency petition his behalf.

Willingham's lawyer at the time was never told of Webb's recantation or the assistance provided to Webb, nor was he given the opportunity to review the inaccurate statements provided to the Board by Jackson.

In the days leading up to Willingham's execution, his attorneys sent Governor Rick Perry and the court a report from Gerald Hurst, a nationally recognized arson expert, saying that Willingham's conviction was based on erroneous forensic analysis. Responding to this last minute request for a stay, the Navarro County District Attorney's office dismissed this report, claiming that it was irrelevant given the testimony of Webb. Willingham was executed and pronounced dead on February 17, 2004 at 6:20 pm. After being informed recently of the evidence indicating the plea deal, Bill Price, who was the assistant district attorney who was assigned to the case at the time, said he was unaware of the cooperation agreement and Jackson's letter denying the deal. He also acknowledged that he would have disclosed this

information. According to the Innocence Project, the failure to disclose the deal, especially when coupled with the revelations about the arson science, would have almost certainly resulted in a stay of Willingham's execution and entitled him to a new trial.

"Reasonable people can disagree on whether the death penalty is an appropriate form of punishment, but these deeply disturbing new developments should be proof enough that Texas must enact strong protections to protect the innocent before carrying out any more executions," added Bryce Benjet, a staff attorney with the Innocence Project.

After Willingham's execution, the Innocence Project asked the then newly formed Texas Forensic Science Commission to investigate Willingham's case and the case of Ernest Willis who was convicted based on similarly flawed evidence but later exonerated for the arson murder that put him on death row. During the course of that multi-year investigation, nine of the nation's leading arson scientists reviewed the evidence in Willingham's case and all agreed that the original testimony of the fire investigators was based on outdated arson science. A summary of these findings is available at <http://www.innocenceproject.org/willingham>. The commission was ultimately barred by the Texas Attorney General from making a finding on whether the state was negligent in the wrongful execution of Willingham, however the commission acknowledged that unreliable arson science facilitated Willingham's conviction and recommended that the state conduct a review to determine if there are other people in Texas prisons who were wrongly convicted based on faulty arson science.

The new evidence the Innocence Project submitted to the Board of Pardons and Paroles earlier this month casts even further doubt on the highly unreliable testimony of Webb who incredibly claimed that Willingham told him within earshot of several law enforcement employees that he committed the crime to protect his wife who had injured or killed one of the children the night before.

A copy of the legal documents that have been filed in support of the pardon petition is available at www.innocenceproject.org/willingham.

In addition to Scheck and Benjet, the lawyers representing Willingham's family include Gerry Goldstein of Goldstein, Goldstein & Hilley; Daniel Greenberg, Robert J. Ward and Meghan M. Breen of Schulte Roth & Zabel; and Kathryn Kase, Executive Director of the Texas Defender Service.

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