

IN RE: § SUBMISSION TO THE
§
§ TEXAS FORENSIC
§
SONIA CACY § SCIENCE COMMISSION

**MEMORANDUM IN SUPPORT OF
COMPLAINT REGARDING THE BEXAR COUNTY
MEDICAL EXAMINER/FORENSIC SCIENCE CENTER**

TO THE HONORABLE TEXAS FORENSIC SCIENCE COMMISSION:

NOW COMES the Innocence Project of Texas on behalf of SONIA CACY and submits this Complaint Regarding the Bexar County Medical Examiner/Forensic Science Center.

SUMMARY OF THE CASE AND COMPLAINT

Sonia Cacy was convicted of arson/murder for allegedly dousing her uncle with gasoline, setting him and the house they lived in on fire and burning him to death. Sonia Cacy is absolutely innocent of this charge. Contrary to the erroneous testimony from the Bexar County Medical Examiner’s Office, Toxicology Section, she did not kill her beloved uncle, she did not douse him with gasoline, and she did not set him or the house on fire. Irrefutable scientific evidence from some of the nation’s leading experts have proven her innocence.

Evidence of Professional Negligence or Misconduct by Bexar County Medical Examiner/Forensic Science Center

Included with this Memorandum is significant evidence of professional negligence and misconduct by the Bexar County lab. This includes affidavits, scientific articles and

investigations by news organizations that all attest to the error in the laboratory analysis of Bill Richardson's clothing in this case. The evidence is as follows:

Exhibit 1 This notebook contains affidavits from various experts who have reviewed the testing performed by the Bexar County Medical Examiner/Forensic Science Center, Toxicology Laboratory, and concluded that their analysis and testimony concerning the presence of gasoline on Bill Richardson's clothing is absolutely incorrect and that, in fact, there was no gasoline present.

Exhibit 2 This notebook is the complete set of exhibits submitted to the Texas Board of Pardons and Paroles on July 4, 1998 in support of Sonia Cacy's parole request. This request for parole was subsequently granted.

Exhibit 3 This notebook contains the actual testing charts and testimony from the Bexar County lab personnel.

Exhibit 4 This exhibit is a DVD of a Dateline/NBC Program concerning Sonia Cacy.

Procedural History

Sonia Cacy, was convicted of murder on February 26, 1993. The jury assessed her punishment at 55 years incarceration and a \$10,000 fine. She later appealed and won a new punishment trial. That trial resulted in a 99-year sentence.

As a result of the obvious problems with the evidence used to convict Cacy, local and

national scientific experts took an interest in her case. A team of attorneys represented Cacy *pro bono* on proceedings in front of the Texas Board of Pardons and Paroles. After presenting a comprehensive packet to the Board detailing extensive evidence in support of Cacy's innocence, Cacy successfully won her release from prison on November 23, 1998. She is currently on parole and living in Fort Worth, Texas.

Summary of the Facts

The undisputed facts leading up to Cacy's arrest are as follows. In the early morning hours of November 10, 1991 a fire was reported in the small Fort Stockton, Texas home occupied by Cacy and her uncle, William Richardson (Uncle Bill). Authorities arrived at the scene to find portions of the house full of smoke and flames. Cacy had already escaped the home through a bedroom window, but Uncle Bill was still inside.

The first responder, a local police officer, attempted to enter the home by kicking down the front door, but he was unable to make it very far. This officer was forced to restrain Cacy, who attempted to enter the home with him. Later, additional officers arrived on the scene. The officers located a garden hose and used it to douse the flames and enter the house. They discovered Uncle Bill's body inside.

Pecos County Fire Chief, Jimmy Jackson, and representatives from the local volunteer fire department arrived at the scene shortly thereafter. At Jackson's direction, the firefighters used a fog spray to extinguish the remaining flames. They then used fans to expel the heat and smoke from the home.

Once the house was clear, Chief Jackson entered the home and confirmed that Uncle

Bill lay deceased on the floor in the corner of the living room; he had a metal object clasped in his right hand. Also in the room were two coffee tables, an overturned rocking chair, a bookcase and the melted frame of an aluminum cot. The bodies of two dogs were discovered as well: one in the hallway and one in a bedroom.

Trial Evidence

The Circumstances

During the guilt innocence phase of Cacy's trial, the state argued that Cacy murdered Uncle Bill by dousing him with an accelerant and setting him on fire. This claim was based entirely on the erroneous conclusion by the Bexar County Medical Examiner's Office that gasoline was found on uncle Bill's clothing.

The state's first witness was Dois Clawson, a neighbor who awoke to knocking on her front door around 6:15 on the morning of the fire. Although no one was at the door when Clawson went to open it, she looked out her window to see Cacy walking around in circles in front of the burning home. When Clawson approached Cacy, Cacy told her that the house was on fire and that Uncle Bill was still inside.

When Dois went back outside, she discovered that Cacy had just broken two windows panes with her fists in an attempt to re-enter the house. Dois then pulled Cacy away from the window; she was concerned that the flow of air caused by the windows being opened would accelerate the spread of the fire. The two women then went to the window Cacy used to escape the fire earlier that morning. Cacy again indicated that she wanted to enter the house to find Uncle Bill. She leaned in to the opened window but backed away as a result of smoke

in the room.

Later, Dois with the assistance of a police officer, took Cacy to her house. According to Dois, Cacy was very emotionally upset. Dois held on to Cacy's arm, but Cacy knocked over a lamp in Dois's living room while trying to escape the home and go back outside toward the burning house. Dois testified that:

Q. And do you remember what the policemen did when they arrived?

A. One of them had to help me to calm her down in the front yard because I could not hold her. I couldn't hold on to her and keep her away from the house. She kept insisting on trying to go back in the house.

Q. When the other policemen arrived, did this Defendant stay by the side of the fire, or what did she try to do?

A. She tried to – to stay at the fire. She tried to go back into the house, even after the fire department got there. (25)

Likewise, Officer Robert Curtis, the first officer to arrive on the scene described Cacy as “very uncooperative.” He stated that Cacy was “scratching, trying to get back into the house, ... , and she was highly emotional, crying, and just struggling, trying to break loose.”

Ultimately, officers placed Cacy in the back of a patrol car in order to calm her down and prevent her from re-entering the home. Dois testified that Cacy was “mad” at the officers. Officers on the scene acknowledged that Cacy was kicking and cursing at them. On one occasion, Cacy shoved Betsy Spencer, the police department's victim's services coordinator who had arrived on the scene to consult with Cacy.

There was also evidence of previous fires at Bill Richardson's house. One of those fires occurred in the early morning hours of November 2nd in the home's office area. It originated in a box of electrical devices located underneath a window and draperies, which eventually caught fire. Officer Villesca responded to the call and was able to extinguish the

fire with a hose. Fire Chief Jimmy Jackson, who also investigated that event, noted in his report that both Cacy and Uncle Bill thought that someone broke into the home and set the fire.

Another fire occurred in the storeroom on the back side of the same property on the same day as the office fire. During his investigation of this event, Chief Jackson inquired into Cacy and Uncle Bill's possessions. He discovered that Uncle Bill had few personal possessions that would be attractive to an intruder; however, in addition to the house, he also owned real property in the form of a few acres of land with a small oil production operation. At the time, Uncle Bill relayed to the Chief that the land was costing him more than it was producing in income. He also told the Chief that he did not have a will. In fact, Uncle Bill had absolutely no assets at all, disproving the state's claim that Cacy murdered him for his money.

The "Science"

The Fire Marshal

At trial, the state called Fort Stockton Fire Marshal Frank Salvato to the stand. Salvato examined the scene of the fire and analyzed the burn and smoke patterns in the home. He testified that the living room was the area of origin for the fire; however, there were no signs that the fire began as a result of an electrical failure, gas leak or explosion, or weather conditions. Salvato testified that the smoking was the only natural or accidental cause that could not be ruled out as the cause of the fire.

The Medical Examiner

The state also called Dr. Charles Bux, a Deputy Chief Medical Examiner for Bexar County. Dr. Bux was responsible for examining the body of Bill Richardson. He testified that he located soot in the oral cavity and nose of the deceased. However, the soot did not extend into the windpipe, lungs, or nasal passages. This, Dr. Bux asserted, was an indication that the deceased was alive at the time the fire started.

Dr. Bux also confirmed that the deceased's lungs were edematous, heavily congested, and that they contained a bright red frothy fluid. He testified that these conditions could have resulted from the smoke and that they were an indication of acute congestion and rapid heart failure. During cross-examination, he admitted that the condition of the lungs and carbon monoxide levels detected in the deceased's blood could also result from years of heavy smoking. At the time of his death, Uncle Bill was 76 years of age and smoked, on average, two to three packs of cigarettes per day.

The Bexar County Toxicologist

Joe Castorena, Bexar County's Assistant Chief Toxicologist testified regarding the testing of clothing remnants collected from the deceased's body. He said that atomic absorption is the technique used to detect whether accelerants are present on a particular item or piece of clothing. After performing the analysis on the items of clothing submitted in relation to this case, Castorena claimed that the test showed the presence of a Class II accelerant, like gasoline, gasohol or some types of Coleman fuels.

The Fire Investigator – Consultant

Like Castorena, fire investigator and President of AID Consulting Engineers, Gary Gillmore, also received several pieces of evidence collected in relation to the fire investigation. His chemists were requested to analyze that evidence to determine whether an accelerant was present. They tested carpet remains from underneath the body of the deceased, carpet remains from underneath the aluminum cot found burned in the living room, and the remains of a foam pillow. All tests yielded the same result. The results were negative as no traces of an accelerant were found.

The Ozona Fire Marshal

John Kenley, the Ozona Fire Marshal, also testified about his investigation of the scene of the fire. Specifically, he testified that the pattern of the fire was consistent with a fire caused by an accelerant.

In support of these theories, he noted that the rafters above the body in the living room were charred and that the heat source for that charring was the body itself. He also asserted that the human body is not very combustible and that it does not burn easily absent the presence of an accelerant. Finally, he explained the lack of accelerants located underneath the body and cot. He stated that traces of the accelerant in those areas could have burned up in the fire and therefore would not have been detected by forensic testing. Despite all of this, he acknowledges during cross-examination that he did not come to the realization that the home was a crime scene until he received the medical examiner's report.

Defense Evidence

The Circumstances

In response to the state's case against Cacy, the defense put on a handful of witnesses who testified to the close and caring relationship between Uncle Bill and Cacy and who spoke to other circumstances suggesting that Cacy is innocent of the crime of murder.

During the trial, William Cacy, Cacy's son, testified that Uncle Bill was a poor man. His oil leases were not producing a profit, and his truck was in poor condition with more than 150,000 miles: facts that would call into question any alleged motive for Cacy to murder Uncle Bill in order to collect on a will which would have also provided her with the uninsured house destroyed during the fire. In addition, William Cacy testified that he observed Uncle Bill drafting his will by hand. He did so, William Cacy said, a day after he experienced tingling in his arm – a symptom William Cacy told Uncle Bill could be indicative of an oncoming heart attack. According to William Cacy, Uncle Bill wasn't feeling well, an observation that could explain the informal drafting of the will and the will's opening statement: "I, Bill R. Richardson, feel like I may die tonight."

Perhaps most tellingly, William Cacy responded to questioning by describing Uncle Bill's odd behavior with fire. He testified that Uncle Bill would use a small propane torch to light a furnace in the home. He would also use the torch to roast marshmallows while sitting on his recliner. In addition, Cacy testified that Uncle Bill was a very heavy smoker. At times, he was careless and would light a second cigarette while the first still burned in his hand.

William Cacy even described an accident Uncle Bill had once when he used the furnace to heat up a paint can. He forgot about the can, so it caught fire and burned. Uncle Bill, William Cacy explained, was embarrassed after this event occurred. Cacy noticed the same level of embarrassment when Uncle Bill told him about the small office fire that occurred just a little more than a week before the deadly fire that took his life.

In addition to Cacy's testimony, defense witness Joy Grant, another of Uncle Bill's nieces, spoke about how Cacy was very close with Uncle Bill. Cacy, she said, was Uncle Bill's caretaker.

Post-Trial Investigation

The Science

Subsequent to the conviction of Cacy, several forensic experts studied the physical evidence in this case and determined not only that the deceased died of a heart attack prior to the fire, but also that there were no accelerants detected during the testing of the decedent's clothing, the key to the prosecution's case. In addition, fire investigation experts have disproven the state's "fireball" theory in the years since Cacy's conviction. Modern fire investigation protocols indicate that the fire in this case is explained by the materials found at the scene.

Death by Heart Attack, NOT Fire

The prosecution's theory of the case is that Cacy doused the deceased with gasoline and set him on fire causing his death. Dr. Bux, the Medical Examiner who examined Uncle Bill's body, concluded that the man died of multiple burn wounds; however, a subsequent

review of the evidence by several experts indicates that Uncle Bill actually suffered a heart attack prior to the fire starting.

- One such expert was Dr. Edward Friedlander, Chairman of the Department of Pathology at the University of Health Sciences. Dr. Friedlander discovered the following: There was no soot in the deceased's larynx or trachea (this fact alone rules out death by fire);
- The high lung weight indicating pulmonary edema was inconsistent with death by incineration;
- The low carbon monoxide levels of the blood were inconsistent with death by fire;
- The severe coronary atherosclerosis detected in the deceased were signs of a sudden cardiac death; and
- The marked congestion of the liver did not support a theory of a fire-caused death.

Based on these observations and data, Dr. Friedlander concluded that Richardson died of a heart attack with incineration of the body occurring afterwards. Other experts in the field have come to the same conclusion, independent of Dr. Friedlander. They include Dr. Ronald Wright, a board certified pathologist with 25 years of experience who serves as Director of the Division of Forensic Pathology of the University of Miami School of Medicine, and Dr. Scott Denton, Deputy Medical Examiner for Cook County, Illinois.

Applying these expert reports to the facts of this case supports the defense's theory that Uncle Bill suffered a heart attack thus causing him to drop his cigarette, igniting a fire in the living room. Both Drs. Wright and Denton referred to the deceased's addiction to

cigarettes as a potential cause of the fire. Uncle Bill was known by his family and friends to be a heavy and careless smoker. Even John Kenley, the fire investigator who testified on behalf of the state, describes in his report the deceased's carelessness with cigarettes and the scores of cigarette burns found on various pieces of furniture in the home.

No Accelerants Found on the Deceased's Clothing

The only item of physical evidence allegedly indicating that an accelerant was used by Cacy to set Uncle Bill on fire was from a testing report prepared by the Bexar County Medical Examiner's Office. According to the testimony of Joe Castorena, the Assistant Chief Toxicologist for Bexar County, a test of the deceased's clothing tested positive for a Class II accelerant. Although Castorena initially testified that he personally conducted this testing, he acknowledged during Cacy's second punishment trial that the test was actually conducted by analyst Robert Rodriguez.

According to Castorena's report detailing the results of the gas chromatography/mass spectrometry test, a Class II accelerant was found in the sample labeled "Case No. ME: 1578-91, Pants/Underwear." However, the jury never had the chance to hear evidence that the results of the test actually indicate the opposite of Castorena's report. There was no accelerant found. This information was discovered by several experts who reviewed the evidence in Cacy's case *pro bono* after her conviction was obtained.

These experts, who analyzed the *same* Bexar County Forensic Lab gas chromatography/mass spectrometry test results on the sample tested by Robert Rodriguez, and testified to by Joe Castorena, came to the conclusion that results do not indicate the

presence of gasoline or any other form of accelerant. Dr. Richard Henderson, a certified fire investigator who has been actively involved in the chemical analysis of fire debris for more than 20 years, is one of those experts. In his report, he noted the very common error of mistakenly attributing the presence of gasoline to pyrolysis patterns seen in fire debris. Likewise, Dr. Gerald Hurst analyzed the Bexar County lab's data and came to the same conclusion. The results do not indicate an accelerant was found on the deceased's clothing. Rather, they are representative of pyrolysis products.¹

In fact, at the state's own request, samples from the same underwear tested by the Bexar County lab were later sent in a metal container to AID Laboratories in Dallas, an independent forensics lab. The prosecution requested that the lab test the contents of the container for signs of an accelerant using more sophisticated techniques than those possessed by the Bexar County lab. The sample was labeled ME 1578-91, the same sample number as the evidence tested by Rodriguez and later testified to by Joe Castorena. The results of the AID test coincide with the expert opinions of Drs. Hurst and Henderson. There was no sign of an accelerant on the samples tested.

Fireball Theory Impossible, Fire Explained by Materials at Scene

The jury that convicted Cacy was told by the state that burn patterns and smoke evidence indicated that the fire in this case was started by the burning of an accelerant. The state's witness, investigator John Kenley, testified that the gasoline-produced fire created a

¹Other experts who also concluded that there were no accelerants on the clothing were Dr. Richard W. Henderson, Laurel V. Waters, Dr. John d. DeHaan, Gary Gilmore, John J. Lentini, Dr. Andrew Armstrong, Drik L. Hedglin, Dennis C. Akin, Anthony Dennis Café, and Craig A. Balliet

fireball that rose like a chimney to the rafters above the living room then came back down to singe Cacy's hair. Experts who have reviewed evidence collected and observed at the scene have since come to a contrary theory. In fact, they contend that the state's theory is impossible and that the fire is explained by the materials at the scene.

Arson investigators Ken Gibson, Gary Fye, and Dr. Gerald Hurst reviewed the fire scene, studied photos and reports, and examined the transcripts from both the original trial and the second punishment trial. They each concluded that burn patterns, cited by the prosecution as evidence of arson, were actually the result of the burning of items in the house such as the curtains and polyurethane mattress that caught fire and fell to the ground.

In addition, experts Gibson and Hurst find the state's fireball theory to be considerably flawed. In fact, gasoline initiated fires, according to these experts, do not produce bouncing fireballs. Instead, when gasoline mixes with air, a flash fire can occur. The resulting flash of fire would seriously or fatally burn anyone caught in the midst of the fire. This means that it would have been impossible for Cacy to douse Uncle Bill with gasoline then set him on fire without serious physical consequences (much more significant than singed hair or soot on the face).

CONCLUSION

The evidence presented by the experts who have come forward since the time of Cacy's trial show, beyond any question, that she is absolutely innocent of these charges. The only substantive evidence against Cacy was the claim by the Bexar County Medical Examiner's Office, Toxicology lab that there was gasoline on Bill Richardson's clothing.

This conclusion has been shown to be false. Based on this professional negligence and misconduct by the Toxicology Section of the Bexar County Medical Examiner's Office, The Innocence Project submits this complaint to the Texas Forensic Sciences Commission.

Respectfully submitted,

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