
TRANSACTION REPORT

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FOR: SMITH JAMES ROWLETT COHE 3362748490

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DATE: 9/25/98

TO: Gatchen

LOCATION: Center

FROM: _____

MESSAGE: Here is promised report.
I apologize for the length, it is
mainly for me - you use what little
bit you need. I did put in a suggestion
at the end for you guys.
Fight the Good fight.

Number of pages (including cover page): 1

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reflections on kimble:

state v. ronnie lee kimble, 26

david lloyd and jack hatfield of g'd represented d

jack was retained but despite opposition from the state and some bad case-law managed to get re appointed as well

state's case:

d and his brother ted, 28, both sons of local baptist minister, charged with capital murder of ted's wife, conspiracy to commit 1st degree murder with his older brother ted and 1st deg. arson

wife's burned body found in her home shot in head and staged burglary, obvious arson- five gallon gas can found in kitchen with about a gallon of gas still in it. ted had alibi--at work at second job when fire discovered.

motion to sever d's case from his brother granted after state reversed its position and did not oppose severance. (ca's stated reason was that gray v. maryland--recent u.s. supreme ct. case holding you can't redact with simple deletions-- would not support joinder). in my opinion prosecutor made a tactical error based on the hope that if he severed the case and tried ronnie first (without a joint trial where the two brothers would be able to solidify each other in a joint trial. this same prosecutor used this ploy in another capital case I had with him a year and a half ago--where he agreed to severance, called the codefendant's case for trial and got him to roll on our client after three days of jury selection. our client threw in the towel after 2 days of jury selection. this time it didn't work.

state was able to show a strong circumstantial case against ted kimble which we were not able to keep out of our trial.

*state showed that ted forged \$200,000 life insurance policy on his wife

*state's theory that ted married v so that his boss would sell him his successful building supply business

*wife found out and was very upset *insurance application*

*state introduced testimony from the grave that v was terribly scared of ted; that he was not the man she married; that she didn't know whether she was going to wake up when she went to bed.

*state could show ted in very bad light--asked out 18-year old girl two weeks after wife's death

*used part of money raised by church and given to him to help defray funeral expenses to buy expensive motorcycle

we were never able to get around d's alleged confession to marine buddy, mitch, who was in bible college and by trial had become an ordained baptist minister

our client testified that he had not confessed, but only told marine buddy that it was a dream--problem was the entire dream only consisted of his seeing the victim standing with an unidentified man and then his brother announcing that he was give a \$20,000 reward for whoever found the killer of his wife. Then a testified he heard a loud boom which could have been a gunshot. this simply didn't square with the detailed testimony the witness gave that was in the confession, including statements by our client that he was contemplating suicide. according to mitch, ronnie admitted killing his sister in law based on the promise of money from his brother. we could never establish any motive for mitch to lie.

in fact, the jury was impressed by the fact that his wife corroborated the story and both testified that they were very afraid after ronnie had confessed since ronnie had told them mitch was the only one he had told this to

the state presented none other that the rev. jerry falwell to corroborate mitch's story, since mitch had testified that as soon as ronnie had left his home he had gone to rev. falwell for advice and told him about the whole thing

falwell referred him to his lawyer son and the guilford co. sheriff's dept. was notified--all corroborated his testimony

yours truly had the honor of cross-examining dr. falwell and wisely resisted the temptation to call him a fat fascist. the jurors assured me afterwards that they put no more stock in his testimony because he was jerry falwell than they would in any other witness.

we wound up arguing, among other things, that the older brother ted did it and ronnie had nothing to do with it.

the jury stayed out for a whole day and about an hour the next morning before they found him guilty. we could hear them yelling in the jury room and thought we had a 8-4 split against us based on how they separated at break.

from my conversation with three of the jurors after the trial, it turned out we only had one hold-out.

however, there must have been some residual doubt, because they only stayed out an hour and 15 minutes in the penalty phase before coming back with life and finding in our favor on issue 3.

ronnie testified and didn't do badly though the da caught him in a few "inconsistencies"--our courtroom clerk thought

he came across as close to a pathological liar. I don't think the jury saw him that way.

but far more importantly, he did not come across as a mean or bad guy and I think that as much as anything saved his life.

I must admit I was worried during the penalty phase. We decided not to use our shrink, dr. chas. guyer, partly because, in my opinion he's not worth a shit and partly because as jack put it, "ronnie was unrelentingly normal."

we did put up a number of little old ladies from his father's church to testify that he was a great guy and some people from camp lejeune.

we also put up his father to say that he was learning disabled and to give his biographical history

we were afraid to put up his mother because she may have concealed evidence in connection with the investigation

we couldn't put up ronnie's wife because we were worried that panosh would be able to bring in an alleged affair ronnie had with a female jailor while awaiting trial

our entire mitigation evidence didn't last much over 2.5 to 3 hrs. and I felt I dropped the ball on that score

part of the problem is "shooting your wad" in hte guilt phase and part of it was not having a good shrink. It is amazing how much "biographical" mitigation you can get from your shrink

this turned out not to be even a close death case, and I'm not real sure why. here are the most obvious reasons.

*middle-class white boy as defendant

*non-threatening defendant--d had this kind of goofy smile for much of the trial

*good jury (one soft spoken young white juror in his 20's, kind of a redneck, worked as a machine operator in a factory and who gave the standard line on the death penalty, that he was pretty much in the middle would never have voted for the death penalty--just too soft hearted. I talked to him after the trial --he was not the hold-out-- and he told me that he was the one who got the rest to rule our way on issue 3. I left him on the jury figuring he was pretty strongly in favor of the death penalty, but was filler--he obviously wasn't going to convince a lot of people.

*tried in greensboro

*we fought the DA on almost every point (even on ted's guilt, which we eventually conceded) and I think the jury respected us for it

*luck

*the victim's status did not have as much to do with it as I was afraid it would--she was a lovely young woman, working, church-going, killed in the prime of life in her own home by her own brother-in law. the victim's family was there every day--one whole side of the courtroom was filled with her relatives and friends, all wearing little purple ribbons. We had family there, but not in the numbers they had.

suggestions for center: next program get roger and steve smith to talk about jury selection because they are both great and they have lost. get cheshire to talk on jury selection as well.

we need to emphasize this more, get a couple good ones and you are home free.

d. lloyd 9-25-98