

Philly.com

news

Once again, man convicted in deaths of 2 sons

Updated: April 12, 2016 — 1:08 AM EDT

by **Jeff Gammage**, Staff Writer

An angry, shouting Daniel Dougherty was escorted from a courtroom Monday moments after being convicted for a second time of setting the fire that killed his two young sons in 1985.

"You got it wrong!" Dougherty, 56, yelled at the jury, rising to his feet as the foreman somberly delivered guilty verdicts on arson and murder charges.

The judge told Dougherty to sit down and be quiet. Dougherty shot back: Why should I?

"You threw the Constitution out the window," he told Common Pleas Court Judge J. Scott O'Keefe.

Dougherty attempted to leave the courtroom to go to a holding cell, then seemed to stop. The judge told him to obey the instructions of the sheriff's deputies who surrounded him.

"What are they going to do?" Dougherty snapped. "Beat me up?"

A full courtroom of 50 spectators, including relatives and fire investigators, sat silent as Dougherty erupted, having been warned in advance that no outbursts would be tolerated.

Assistant District Attorney Jude Conroy asked the judge to immediately sentence Dougherty to two consecutive life terms - and the judge agreed, adding a 10-to-20-year concurrent penalty for arson.

"I haven't seen this despicable of a crime in a long time," O'Keefe said.

Dougherty's grown son, Stephen, wept as the verdict was read. He had been ordered to keep away from witnesses in the case, and the judge specifically warned him to behave in the moments before the jury returned.

The trial spanned 15 days, including seven days of deliberations by the jury of nine women and three men. One juror was replaced after becoming emotionally unable to go on.

Jurors declined to discuss their discussions - twice they had reported they were deadlocked - as they left the courthouse Monday.

"After 31 years, those two little boys, Daniel and John Dougherty, can finally rest in peace," Conroy said outside the courtroom. "This was tried twice, two separate juries, and both were convinced beyond a shadow of a doubt."

He credited the jury with working thoughtfully and methodically through the evidence to finally grant resolution to the family.

The mother of the dead boys, Kathleen Dippel, declined to comment at length, saying she needed time. Asked if the jury reached the correct verdict, she said, "Yeah."

When Dougherty was convicted at his first trial in 2000, she said she believed he was innocent. "He loved the children," she said then.

On Monday, Dougherty was convicted of arson and second-degree murder. That indicates the jury believed he set the fire but did not necessarily think he intended to kill the children when he did so.

"We're incredibly disappointed," said defense lawyer David Fryman, who with cocounsel Shannon Farmer has represented Dougherty for 12 years. "We're absolutely going to appeal. We think there were numerous rulings that were erroneous, and those rulings made for an unfair trial."

On an August night in 1985, the Oxford Circle rowhouse where Dougherty lived with his girlfriend, her young son, and his two boys erupted in flames.

Dougherty was not charged until 14 years later - a delay that his lawyers argued constituted doubt. In 2000, he was tried, convicted, and sentenced to death for killing 3-year-old John and 4-year-old Daniel Jr. in the Carver Street home.

Dougherty's death sentence was reduced to life in 2012 due to the ineffectiveness of his trial lawyer. In 2014, an appeals court ordered a new trial, saying his original lawyer's failings were so serious that no reliable determination of guilt or innocence occurred.

Those faults centered on the defense failure to challenge the fire science against Dougherty. In the retrial, the defense produced nationally known expert John Lentini, head of Scientific Fire Analysis L.L.C. in Florida.

Lentini said that the rowhouse was so badly damaged that it was impossible to determine the cause of the fire - and that "undetermined" should have been the classification.

It could have been arson, Lentini said on the stand. But it also could have been a cigarette, dropped and smoldering in a household of smokers.

Conroy, imploring the jury to see contradictions in Lentini's testimony, called the scientist a disgrace who would "whore himself and say anything" in exchange for a consultant's fee.

The 1985 findings of Assistant Fire Marshal John Quinn gained fresh support from consultant and former Fire Marshal Thomas Schneiders. After reviewing the case file, he testified that burn patterns definitively showed the fire was set in three places - a sofa, a love seat, and under a dining-room table.

Dougherty has always maintained his innocence, saying he loved his sons and tried to save them that night. He was counting on advances in fire science to free him, contending that the original inquiry was flawed, that what once was once proof of arson is today known to be proof of nothing.

His case had been closely watched by legal experts who say the use of outdated fire science has put innocent people in jail.

Marissa Boyers Bluestine, legal director of the Pennsylvania Innocence Project, which has supported Dougherty, said the case "should never have been allowed to go to trial."

"There's certainly no scientific validity in the testimony from the commonwealth experts. To be able to put that in front of a jury today, in 2016, was a travesty," she said.

Prosecutors then and now insisted that the fire was set - and that Dougherty, the last person out of the house, ignited it.

No one at either trial said Dougherty was seen striking a match. No one said that he talked about burning the house or that he disliked his children.

Prosecutors say Dougherty sought to hurt two women - his girlfriend, Kathleen Schuler, who owned the home, and the boys' mother, Dippel, from whom he was separated. In anger over their rejections that night, he destroyed the house of one and the children of the other, prosecutors said.

During the long jury deliberation, the former mechanic stood perched between prison and freedom, absolution and guilt.

Testimony showed the toll that time has taken. Quinn was too ill to testify. His testimony from the 2000 trial was read aloud for the jury.

Others witnesses have died, including a police officer. More than one witness in the retrial strained to try to recall a fact that was once fresh.

Dougherty chose not to testify in his own defense at his retrial.

But the testimony he gave in 2000 was read to the jury - and was no help to his cause.

Immediately after the fire, Dougherty gave police a straightforward account of waking up in a burning home, running outside, then trying to get inside to save his children, only to be forced back by smoke and flames.

On the stand in 2000, he said he got into the burning home not just once but twice - a story punctuated by superhuman rescue efforts that had him pulling down fences and fighting off police officers.

The jury in the retrial listened closely as Dougherty's earlier testimony was read, and to a police officer who encountered him outside the burning home. On Monday, when jurors walked into the courtroom, they did not look at him.

http://www.philly.com/philly/news/20160412_For_second_time_man_found_guilty_of_murder_in_arson_fire_that_killed_his_sons.html#BIHYo78k17c1fi7x.99