

Professor David was quoted or noted as counsel in articles posted on the Houston Chronicle, Waco Tribune-Herald, and other newspaper web sites, concerning the recent execution of his client, Texas death row inmate Khristian Oliver.

The following article was posted on the Waco Tribune-Herald Website on Friday, November 6, 2009:

Waco High School graduate executed for slaying of East Texas man

HUNTSVILLE — Khristian Oliver, a 1997 Waco High School graduate who was convicted of fatally beating an East Texas man with a rifle, was executed Thursday night.

He became the 20th inmate executed in Texas this year.

At 6:18 p.m., Oliver, 32, was pronounced dead. In his last words, Oliver, the son of Waco artists, told his family he loved them.

He also addressed the family of the victim, 64-year-old Joe Collins.

“I know you’re not going to get the closure you are looking for tonight,” Oliver said. “I wish you the best. I prayed for y’all every day and every night. I have only the warmest wishes. I’m sorry for what you are having to go through.”

Oliver, who appeared calm, then recited Psalm 23, which begins, “The Lord is my shepherd.”

At a news conference held by Collins’ family after the execution, Collins’ son, Joe Collins Jr., called Oliver remorseless.

“I felt it was more self-healing for him than us,” Collins said. “I didn’t see no remorse in his eyes.”

Collins also said that contrary to what Oliver said, the death would allow him and his family to move on.

“For 11 years, he’s been alive and doing things, and I’ve been without a dad. But there is closure,” he said.

When asked whether the family was worried the execution might be stopped or delayed, Collins said there was always that chance but then said, “The good Lord was on our side this time.”

Oliver’s parents, Kermit and Katie; Oliver’s sister and her husband; and Oliver’s brother witnessed the execution.

A witness at Oliver's trial who saw Collins being beaten over the head by a rifle-swinging assailant compared it to someone getting pummeled with an ax or golf club.

Collins, who also was shot five times, was nearly unrecognizable when a neighbor found him dead in the front yard of his home in a rural area about 20 miles north of Nacogdoches.

Attorneys for Oliver appealed his sentence after post-trial interviews with jurors revealed some members of the jury brought Bibles with them to punishment deliberations and may have reviewed a biblical passage stating that a murderer who used an iron object to kill "shall surely be put to death."

State and federal courts upheld Oliver's death sentence. Though testimony showed some jurors consulted the passage, the federal court ruled that Oliver's lawyers could not prove the jury had been influenced in its decision.

In April, the U.S. Supreme Court refused to hear Oliver's appeal, and the court refused to consider the case again Thursday.

Oliver's attorney, David Dow, wrote a letter to Gov. Rick Perry this week asking him to grant Oliver a 30-day reprieve, stating the Nacogdoches County jury "was improperly influenced, and a reprieve is required to correct that improper influence."

"It is troubling because if jurors consult the Bible, they are consulting a legal authority that is inconsistent with Texas law," Dow said.

The governor did not intervene.

Collins was slain March 17, 1998, when he came home after picking up dinner to find Oliver, then 20, and 16-year-old Benny Rubalcaba inside his home. Rubalcaba's 15-year-old brother, Lonny, and Oliver's girlfriend were outside waiting in a pickup.

As the two intruders tried to run away, evidence showed that Collins got a rifle and shot Benny Rubalcaba in the leg. Oliver fired his pistol at Collins, then grabbed the man's rifle and beat him with it.

One of the teenagers testified that he saw Oliver swinging the rifle at Collins, who also was shot. Evidence showed that at least two of the five shots were fired while Collins was on his back on the ground outside his house.

Rubalcaba, taken by friends to a hospital, told police about the attack. Oliver was arrested in Houston with his girlfriend, Sonya Reed. She received 99 years in prison. Benny Rubalcaba got five years, and his brother got 10 years. They are now free.

A spokesman for the Texas Department of Criminal Justice who saw Oliver in the afternoon before the execution described him as quiet.

His last meal was fried chicken, chocolate ice cream and coffee.

mshapiro@wacotrib.com

The following article was posted on the Houston Chronicle on Thursday, November 5, 2009:

Bible plays role in case of condemned E. Texas killer

HUNTSVILLE — A man convicted of using a rifle to fatally beat and shoot an east Texas man during a burglary almost 12 years ago headed for execution today in a case that became focused on whether jurors improperly consulted a Bible to justify their decision to send him to death row.

Khristian Oliver, 32, looked to the U.S. Supreme Court and Gov. Rick Perry to keep him from lethal injection for the March 1998 slaying of Joe Collins, 64. Collins was killed when he interrupted the break-in of his rural home outside Nacogdoches.

State and federal courts, including the Supreme Court, earlier upheld Oliver's conviction and death sentence, but Oliver's attorney renewed his appeal to the high court and urged Perry to invoke a rarely used authority and issue a one-time 30-day reprieve.

There was no immediate response from the governor's office.

The execution would be the 20th this year in Texas.

A witness to the beating attack on Collins compared it to someone getting bashed with an ax or a golf club. Oliver's lawyers argued jurors who improperly brought Bibles with them into deliberations without the knowledge of the trial judge in Nacogdoches County likened the rifle to a biblical iron object. In Chapter 35 of Numbers, a murderer who uses an iron object to kill "shall surely be put to death."

Oliver's lawyer, David Dow, said there was nothing wrong with people bringing their religious values into the jury room.

"But they must take great care to insure that, in sentencing a murderer, they follow Texas law rather than religious law, and in this case, the jurors did not do so," he said.

At an evidentiary hearing, jurors gave various accounts, ranging from one Bible to several being present in the jury room. One testified they had them because they went to Bible study after court proceedings. Another said any reading from the books came after they reached a decision. A third said the reading of Scripture was intended to make them feel better about their decision.

The 5th U.S. Circuit Court of Appeals said evidence was contradictory on whether jurors consulted the Bible before or after deliberations and that several jurors testified the Bible "was not a focus of their discussions."

Prosecutors said Oliver's trial lawyer initially made the Bible an issue when he referred to biblical verses during his jury arguments.

"Defense counsel invited it and should not now benefit from complaining about it," Sue Koriath, a special prosecutor who handled some of Oliver's earlier appeals, said.

Collins was hit so severely and so many times — and also was shot five times — he was nearly unrecognizable when a neighbor found him dead in the front yard of home.

Collins had left home to pick up dinner on March 17, 1998, and returned to find Oliver, then 20, and 16-year-old Benny Rubalcaba inside his home. Rubalcaba's 15-year-old brother, Lonny, and Oliver's girlfriend were outside waiting in a pickup truck.

As the two intruders tried to run away, testimony showed Collins grabbed a rifle and shot Benny Rubalcaba in the leg. Oliver fired his pistol at Collins, then retrieved the man's rifle and beat him with it.

One of the teenagers testified he saw Oliver swinging the rifle at Collins. Evidence showed at least two of five shots to hit Collins came while he was on his back on the ground outside his house.

"We had a lot of evidence, a lot of DNA, a lot of testimony," Tim James, the trial prosecutor, said. "It was a pretty conclusive case."

Rubalcaba, taken by friends to a hospital, told police about the attack. Oliver was arrested in Houston with his girlfriend, Sonya Reed. She turned down a 10-year plea deal, went to trial and received 99 years in prison. Benny Rubalcaba got five years and his brother 10 years. Both are now out of prison.

Dow argued the sentences were inequitable, that Oliver denied taking part in the beating and that a reprieve was needed so new DNA tests, not available a decade ago, could be made on the rifle to see if someone other than Oliver handled it during the beating.

Evidence showed Oliver over the year-and-a-half period that culminated with Collins' murder was responsible for numerous burglaries and thefts, many in the Waco area where his parents live.

The following article was posted on the Nacogdoches, Texas Daily Sentinel Website on Thursday, November 5, 2009:

Khristian Oliver executed

Thursday, November 05, 2009

For the first time since 1928, a man sentenced to death in Nacogdoches County has been executed.

Khristian Oliver, 32, was pronounced dead at 6:18 p.m. Thursday in Huntsville. He was convicted in 1999 of the brutal murder of Joe Preston Collins Sr. The case gained national attention after it was reported that jurors may have referenced Bible verses during deliberation.

In his last statement, Oliver said to the Collins' family that he knew they would not get the closure they were looking for, but that he wished them the best. He said, "I prayed for y'all every day and every night. I have only the warmest wishes. I am sorry for what you are having to go through."

To his own family, he said that he loved them and thanked his spiritual advisor, Wayne Whiteside.

He then began quoting Psalm 23 with his voice trailing off as he said "my cup over runneth," as the drugs took effect. His family cried softly as they stood in a small room looking through the glass at their son strapped to a gurney.

Joe Collins Jr. said in a press conference after the execution that he thought Oliver's last statement was more for self-healing than for the Collins family.

"He didn't admit to much" Joe said. "He wanted us to feel better and have some closure, but it's kind of hard."

As for the actual execution, Joe said it was not difficult.

"Wasn't nothing difficult," Joe said about the execution. "I looked at him. I didn't see no real remorse in his eyes."

"Everything was good," Gary Collins said, describing his father. "A lot of good times (to remember).

"For 11 years he's been alive and doing things. For 11 years, I've been without a dad."

Gary and Joe Collins stated none of their family ever approached the district attorney or the Oliver family to seek a lesser sentence. They said they always wanted the death penalty. They said they have not had or wanted any contact with the Olivers.

"Justice was served," Gary said. "I feel a lot better. We can move on."

"There is not full closure," Joe said, referring to the three people with Oliver the night of the murder, "but it's better than what it was."

Collins was found dead in his yard on March 18, 1998, by his neighbor. According to court testimony, Oliver, then 20, and Lonny Rubalcaba were searching inside Collins' home off Camp Tonkawa Road the previous night looking for things to steal when Collins came home and surprised them. Collins shot Lonny, hitting him in the leg. Lonny testified that Oliver fled the room and he heard several more gunshots before Oliver returned. Oliver's girlfriend, Sonya Reed, and Benardo (Benny) Rubalcaba, Lonny's brother, were waiting in a vehicle parked on the side of the road. Benny testified that as he ran toward the home, he saw his brother on the ground and Oliver beating Collins with the butt of a rifle.

Both Rubalcaba boys took plea agreements with Lonny serving 10 years and Benny serving 5. Reed went to trial and is currently serving a 99 year sentence.

Dr. James Bruce, a Lufkin pathologist, said during the trial that any one of the gunshot wounds or the blunt trauma could have caused Collins' death, according to previous Daily Sentinel articles.

The U.S. Supreme Court declined to review the case or to give him a stay of execution after a last minute petition just before 5 p.m. today filed by Oliver's defense lawyer, David Dow.

Texas Gov. Rick Perry did not intercede.

Oliver's execution was witnessed his parents, Kermit and Katie Oliver, of Waco, as well as his sister and brother-in-law, Kristy and Tony Pullings, his brother, Khristopher Oliver, and spiritual advisor, Wayne Whiteside.

The victim's children were in attendance, including sons Joe Preston Collins Jr., Gary Allen Collins, Alton Ray Collins, and his daughter, Elsie Faye Walker. One son, Alvin Lee Collins, was not present.

Nacogdoches County Sheriff Thomas Kerss and District Attorney Nicole LoStracco were present to support the family but did not witness the execution.

In 1928, Tom Ross, 35, was the 56th person executed by electrocution in Texas, according to the Texas Department of Criminal Justice Web site. He was convicted of murder in Nacogdoches. Edward Hagans was also sentenced to death but his sentence

was commuted to life in prison in November of 1973 after the U. S. Supreme Court ruled the year before that capital punishment was "cruel and unusual" punishment.

Lethal injection consists of three injections. The first is sodium thiopental, a sedative. Second is pancuronium bromide, a muscle relaxant that collapses the diaphragm and lungs. Finally, potassium chloride is used to stop the heart. The cost of the drugs used for an execution is \$86.08.

Oliver's death by lethal injection was the 20th this year in Texas, according to the Associated Press.