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A MATTER OF FACTS

Did flawed science place an innocent man on death row?



For Police Issues by Julius (Jay) Wachtel. Advocates of the wrongfully convicted have many compelling stories to tell. Few are more intriguing than the current imbroglio over Texas inmate Robert Roberson, who's been imprisoned for over two decades awaiting execution for murdering his two-year old daughter, Nikki. Convicted of capital murder in 2003, he's repeatedly dodged meeting his Maker – most recently, through [a last-minute stay](#) granted by the Texas Supreme Court. It was issued *about one hour* before his most recent death warrant was set to expire. Along the way, Roberson has gained a mountain of support, and not just from advocacy groups. Legislators and even a former police detective have joined his cause.

How did it all come to be?

For the “facts” let's turn to the June, 2007 [Texas Supreme Court decision](#) that affirmed Roberson's conviction. Its detailed account reveals that at the time of his child's death, Roberson was living with a lady friend, Teddie Cox, and her young teen daughter Rachel. Nikki, whom Roberson had fathered with a former girlfriend, was then being cared for by her maternal grandparents. Teddie Cox testified that at her urging Roberson took custody of Nikki, and she came to live with them in November 2001. But he proved disinterested as a father. He also “had a bad temper” and often yelled at, struck and shook the child.

Nikki was temporarily staying with her grandparents in January, 2002, when Teddie Cox was hospitalized for health issues. On January 30, 2002, as Ms. Cox readied to leave the hospital, she had Roberson bring Nikki home. He was displeased. And the next morning, when she called to be picked up, Roberson said that the child was unresponsive. Nikki supposedly fell from bed the previous evening. He had returned her to bed and went back to sleep. But when he awoke she wasn't breathing.

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Roberson brought the child to the hospital. She couldn't be revived. According to the E.R. nurse, Nikki's body was extensively bruised, far more than would have been caused by falling from bed. Fearing that the child had been severely abused, she had her staff call the Palestine Police Dept. They arrested Roberson for murder the very next day, February 1st. And one day after that, [an autopsy](#) – it was attested to by *seven* physicians – reported that the child's body evidenced “abrasions of face and extremities,” “contusions of head, lip, and left shoulder,” and subdural bleeding near the brain. Nikki, it concluded, died from a homicide caused by “blunt force head injuries.”

According to the Justices, medical testimony about the child's injuries and witness accounts of her past abuse conclusively pointed to Robinson's guilt. Curiously, “shaking” wasn't mentioned in their decision. But at Robinson's trial expert witnesses called by the prosecution [had indeed made extensive reference](#) to both “shaken baby syndrome” and “shaken impact syndrome.”

Between 1992 and 2024, courts around the U.S. [tossed thirty-four convictions](#) (including nineteen for murder) that were supposedly based on shaken baby syndrome. “SBS” has clearly fallen on hard times, and challenging it became a mini-industry. But with apologies to Jerry Lee Lewis, there was always a lot more than “shaking” going on. To address the misconception that “SBS” means shaking and nothing but, in 2009 the American Academy of Pediatrics renamed it and its fellow syndromes “[Abusive Head Trauma](#)” (AHT).



Alas, the Academy's attempt to clarify things failed to take hold with the criminal justice system. So in 2020 [it published a formal paper](#) re-emphasizing that “shaking” syndromes had *always* incorporated “multiple mechanisms” of injury. Such as the purposeful blows to the body and head that Nikki's autopsy declared caused her death:

Legal challenges to the term ‘shaken baby syndrome’ can distract from the more important questions of accountability of the perpetrator and/or the safety of the victim. The pediatric practitioner should be prepared to use the term ‘abusive head trauma’ rather than a term that implies a single injury mechanism, such as shaken baby syndrome, in their diagnosis and medical communications.

Judging by this case, the Academy's re-do had little effect. As rounds of appeals forestalled Mr. Roberson's execution, he accumulated champions in the unlikeliest places. Say, the police. Former Palestine police officer Brian Wharton, the lead detective in the case, now deeply regrets his involvement. Mr. Wharton – he left policing mid-

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career to become a Methodist pastor – authored [a detailed op-ed](#) last May that attributed his supposedly mistaken belief in Mr. Roberson’s guilt to the flawed “science” of shaken baby syndrome:

...I have come to believe that Nikki died of accidental and natural causes. I am convinced that she was not murdered. Roberson is innocent. There was no crime. I believe this because the science that was used to obtain Roberson’s arrest and conviction has changed drastically since his arrest....

“Junk science” has proven to be a splendid foundation for claims that Mr. Roberson wasn’t simply overcharged: he’s in fact *innocent*. Citing [a decade-old Texas law](#) that allows challenges to convictions “based on disproven or incomplete science,”

AN ACT
relating to the procedure for an application for a writ of habeas corpus based on relevant scientific evidence.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
SECTION 1. Chapter 11, Code of Criminal Procedure, is amended by adding Article 11.073 to read as follows:
Art. 11.073. PROCEDURE RELATED TO CERTAIN SCIENTIFIC EVIDENCE. (a) This article applies to relevant scientific evidence that:
(1) was not available to be offered by a convicted person at the convicted person's trial; or
(2) discredits scientific evidence relied on by the state at trial.

[eighty-four members of the Texas House](#) recently called on the State Board of Pardon and Paroles to grant Mr. Roberson clemency. “Dismayed” that the law “has not been a pathway to relief – or even a new trial – for people like Robert,” they also recently [held a hearing about junk science](#). On its first day legislators vigorously encouraged medical and scientific experts “to poke holes in Roberson’s conviction, illustrate how the scientific understanding of shaken baby diagnoses had evolved and explain how the junk science law had been misapplied.”

Naturally, Mr. Roberson was subpoenaed to testify. Since his appearance was scheduled for October 21, 2024, four days *after* the scheduled execution, a court granted him the “last minute stay” mentioned at the start of this piece. Alas, [Mr. Roberson didn’t show](#). Texas Attorney General Ken Paxton (he’s definitely *not* on the condemned man’s team) nixed the condemned man’s personal presence. And his testimony by video was ruled out by the committee, which cited Mr. Roberson’s autism and inability to use modern technology.

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Still, the hubbub forced the State to seek a new execution date (it remains up in the air.) Meanwhile the hearing *did* take place, *sans* Mr. Roberson. Co-chair Rep. Jeff Leach opened the proceedings by calling Mr. Roberson “fully innocent.” In his view, the Committee’s purpose was “...to find the truth. To figure out where the system went wrong, where it failed Nikki and where it failed Mr. Roberson.” And there were witnesses. Say, psychologist Dr. Phil McGraw. According to “Dr. Phil,” Roberson never got due process. “I don’t think he’s had a fair trial and I think he should.” In his view, the child’s death was caused by pre-existing illnesses and the effects of drugs prescribed by the hospital. Traumatic brain injuries caused by physical abuse “were not present in this case.” Taking direct aim at the syndrome that ostensibly condemned an innocent man, another witness, a lawyer, roundly criticized the “outdated, unverified, unreliable science that was presented to the jury as fact.”

Texas Attorney General Ken Paxton is definitely *not* on board with Mr. Robinson’s defenders. [His vigorous objection to delaying the execution](#) (“Office of the Attorney General Sets the Record Straight About Nikki Curtis’s Death, Rebutting Jeff Leach’s and Joe Moody’s Lies About Convicted Child Murderer”) offers extensive details about the pummeling and physical abuse that Robinson allegedly inflicted on Nikki. Paxton also mentions that according to a cellmate, Roberson also admitted sexually abusing his child. “Syndromes,” the A.G. insists, were immaterial to the verdict:



Despite these eleventh-hour, one-sided, extra-judicial stunts that attempt to obscure the facts and rewrite his past, the truth remains: Robert Roberson murdered two-year-old Nikki by beating her so brutally that she ultimately died. The jury did not convict Roberson on the basis of “Shaken Baby Syndrome.” The “junk science” objection that has been used as a pretext to interfere with the proceedings has no basis in reality.

What’s more, the testimony had also revealed that Nikki wasn’t Roberson’s only victim:

The jury also heard that Roberson, who had over a dozen prior arrests, had strangled his ex-wife with a coat hanger, punched her in the face and broke her nose while she was pregnant, and beat her with a fireplace shovel.

Yet the most consequential decisions in this case weren’t made by lawyers, experts or jurors. They were made by an E.R. nurse who didn’t buy the “fall from bed” story and called the cops. And by the officers who showed up. Even if they didn’t know Roberson (unlikely, given the A.G.’s “dozen arrests” remark) a record check would have quickly

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labeled the father as a potential no-goodnik and placed his words into question. Here is Roberson's criminal conviction record from [Texas DPS](#):

Arrest			Conviction	
Date	Agency	Charge	Date	Sentence
2/1/2002	Palestine PD	Murder	2/19/2003	Death
8/19/1997	Waco PD	Misd. trespass	9/19/1997	45 days jail
10/16/1992	Smith Co. SO	Larceny (2 cts.)	Not given	7 yrs. prison
5/6/1992	Corrects. Dept.	Larceny	Not given	4 yrs. prob.
11/27/1989	Not given	Burg of resid.	7/11/1991	10 yrs. prison
8/19/1989	Houston SO	Burg of veh.	7/11/1991	10 yrs. prob

In "[Switching Sides](#)" we related the tale of Marcellus Williams, who was recently executed in Missouri for a fatal stabbing. While we, too, [have long opposed](#) the death penalty, "facts" do matter, and those that were arrayed against Mr. Williams – *and* Mr. Roberson – seem, well, overwhelming. Yet in both instances, advocacy groups came to insist that these men weren't simply deserving of life: they were truly *innocent*. That certitude, and what's followed, has placed a lot more than the *defendants'* reputations at stake. And if (as we believe) the [Innocence Project](#) again got it wrong, they *also* have victims. Here is an extract from [a recent letter](#) sent by Nikki's maternal side of the family to the Texas House committee that held the hearing:

...in a last-ditch effort, some Members of your committee are proclaiming his innocence, and you have held hearings in an attempt to halt Roberson's execution. Lost in this parade of people who are overeager to proclaim the innocence of a man found guilty by a jury of his peers, are the facts about Nikki Curtis' murder and the voice of those who knew him best and who witnessed the repeated abuse by Mr. Roberson – Nikki's family.

Enough said.