



Response to OAG’s Release About Robert Roberson Case

The OAG’s October 23, 2024, release about Robert Roberson’s case is misleading and in large part simply untrue. It rarely quotes and never cites the record. It doesn’t provide any exhibits except the autopsy report and a statement from the person who performed it. And it fails to acknowledge any of the additional evidence discovered since trial.

The members of the Criminal Justice Reform Caucus who’ve signed below, however, have done their homework. Check our work in the footnotes below. References to R.R. mean the reporter’s record from the original trial, and E.H.R.R. means the record from the habeas court.

OAG Statement

In 2002, two-year-old Nikki Curtis was brought to the hospital close to death with extensive bruising to her chin, face, ears, eyes, shoulder, and mouth. Emergency Room Nurse Andrea Sims, who saw Nikki before medical intervention, testified at trial that, in addition to the bruising, Nikki had a handprint on her face, and that the back of her skull was bruised and “mushy.”

Andrea Sims lied at trial, claiming she was a certified sexual assault nurse examiner (SANE) before admitting that she wasn’t and never had been on cross.¹ We know that her “bruised and ‘mushy’” skull claim is also a lie because there are CT scans, which showed a single minor impact site on the back of Nikki’s head consistent with a short fall out of bed.²

The OAG’s claim that Nikki came in with “extensive bruising to her chin, face, ears, eyes, shoulder, and mouth” is equally untrue. And before diving in, keep in mind that those things *should* have been seen if Nikki was beaten because she had a rare condition known as disseminated intravascular coagulation (DIC), a blood clotting disorder that causes “increased susceptibility to bleeding and bruising.”³

The OAG’s statement didn’t mention the first nurse to see Nikki, Kelly Gurganus, who saw a minimal bruise on the face she described as looking like a handprint, with no black eye, blood, fracture, or any sign that Nikki had been struck with a fist.⁴ The handprint, which faded before it could be captured in any photo, is consistent with what Robert described—when he couldn’t

¹ 41 R.R. at 144.

² 3 E.H.R.R. at 77 & ex. 6.

³ 9 E.H.R.R. at 186.

⁴ 2 E.H.R.R. at 62–65.



wake her up, he said that he “crawled up on the bed and grabbed her face and shook it to wake her up. Then when she didn’t wake up, [he] slapped her face a couple of times.”⁵

The OAG’s statement also didn’t mention Dr. Squires, the state’s principal medical witness, who saw Nikki as soon as she was brought from Palestine that day. She found the same “minimal bruising” and a “little chin abrasion” but “no scars, no unusual bruising or anything.”⁶ She reported that a CT scan revealed a single small impact site that couldn’t explain Nikki’s medical crisis.⁷

We’ve reviewed the autopsy photos and can confirm they show almost no outward injuries. We considered publishing them here because they definitively prove this point but decided not to out of respect for Nikki’s memory and dignity.⁸

But you don’t have to take our word for it: This lack of trauma was actually so pronounced that the prosecution felt the need to get in front of it at trial, asking Dr. Jill Urban for an explanation because there “really is a large discrepancy . . . between what you see on the outside and what you see on the inside” and “you really don’t see [outward trauma] when you look at the picture[s] of her face.” Dr. Urban responded, with no scientific basis, that children have “a lot of fat” and “the skin is very elastic,” so they don’t bruise.⁹ The claim that children don’t bruise rings absurd for anyone who has a small child—let alone one with DIC, which Dr. Urban was unaware of.

Turning back to Dr. Squires, the almost nonexistent external injuries actually set the case in motion. Because she couldn’t explain Nikki’s medical emergency any other way, her “medical findings” were “a picture of shaken impact syndrome,” also known as “shaken baby syndrome,” caused by “very forcefully shaking the head back and forth.” She then identified the triad of symptoms—“subdural hemorrhages, the retinal hemorrhages, and the brain swelling”—that

⁵ 41 R.R. at 170.

⁶ 42 R.R. at 96.

⁷ 42 R.R. at 102–05.

⁸ The photos were admitted at trial and are part of the record but were scanned and misleadingly darkened before being presented to the jury. We’re in possession of the digital originals.

⁹ 43 R.R. at 89.



in her view indicated “shaking” as causing the injuries.¹⁰ Again, she saw “no other indication of traumatic injuries,” including “no bruising,” “no fractures,” and “no old fractures.”¹¹

OAG Statement

Robert Roberson, Nikki’s father, had a history of violently abusing his daughter, and witnesses testified in trial that they were afraid to leave Nikki alone with him because he would repeatedly “whip” her whenever the baby cried. Testimony showed that he often would strike Nikki “hard” with his hands, a board, or a paddle, and on at least one instance threw her off the bed. Robert Roberson’s own mother said at one time, “One of these days he’s going to kill her and it’s going to be too late for anyone to do anything about it.”

It’s important to understand the context of this testimony.

It came primarily from Teddie Cox, Robert’s girlfriend of a few months at the time of Nikki’s death. Teddie was in a bad way at the time of trial. She was recovering from a hysterectomy, had recently overdosed on drugs in a suicide attempt and been institutionalized for it, and was on psychotropic medications. On the social side of things, in addition to Nikki’s death, she’d also just lost her father and was dealing with the incarceration of her previous partner for molesting her daughter, Rachel, who in turn had been taken from Teddie to live with Teddie’s mother. Teddie was also very susceptible to pressure—she was intellectually impaired, only had a ninth-grade education, and was subject to an ongoing investigation she was told might charge her with neglectful supervision of Nikki.¹²

Teddie simply answered a series of leading questions that prodded her to testify that she had seen Robert shake Nikki.¹³ She also claimed Nikki had always been afraid of Robert and always cried whenever he came anywhere near her.¹⁴ In response, the defense introduced a series of photos like these of Robert holding a happy and content Nikki:



Defense Exhibit 8



Defense Exhibit 7

¹⁰ 42 R.R. at 106.

¹¹ 42 R.R. at 123.

¹² 42 R.R. at 131–34.

¹³ 42 R.R. at 175.

¹⁴ 42 R.R. at 131, 158–59, & 165–67.



Teddie had no knowledge of what happened in the days leading up to Nikki’s death because she was in the hospital herself.¹⁵ At trial, she agreed that her story, which wasn’t consistent with prior statements she’d made, kept shifting.¹⁶ She admitted under oath that this was because she changed her story about what happened and her assessment of Robert depending on “how [she] feel[s]” at the moment and whether she was “mad” at him at the time.¹⁷

Teddie’s daughter, Rachel, and her niece, Courtney, (both minors) provided some of this testimony as well, although theirs centered on shaking—the state’s theory of the case.¹⁸ Courtney’s testimony began with a lie about having testified in court before in front of a jury.¹⁹ Teddie herself testified that she did “not trust [her] little girl,” Rachel.²⁰ Years later, Rachel said she had no memory of testifying at trial.²¹

In the end, all of this testimony was so dubious that the prosecution didn’t even mention it in its habeas finding proposals years later. To the contrary, Teddie’s sister, Patricia Conklin, took the stand at trial to say that Robert had always been loving and caring with Nikki and that the only person she’d ever seen strike Nikki was Rachel. Teddie, she also said, was known to lie.²²

OAG Statement

According to doctors testifying at the trial, Nikki died from substantial blunt force head injuries that clearly indicated the girl had been struck. The evidence of blunt force trauma precluded the possibility that the child died from being “shaken.”

This isn’t what the testimony was. We covered what Dr. Squires said at trial. Here’s what Dr. Urban actually said:

Typically in a—Especially in a child this age, blunt force can be caused both by—well, by an impact to the head, so being struck with something or being struck against something. *Shaking also falls into this definition of blunt force* and when enough—And although it doesn't seem like, you know, shaking is not necessarily striking a child, when you are-- When a child is say, shaken hard enough, the brain is actually moving

¹⁵ 42 R.R. at 132.

¹⁶ 43 R.R. at 48.

¹⁷ 43 R.R. at 11 & 36.

¹⁸ 42 R.R. at 44–60 & 64–73.

¹⁹ 42 R.R. at 55–56.

²⁰ 43 R.R. at 19.

²¹ E.H.R.R. ex. 44.

²² 44 R.R. at 10–22.



back and forth within, again, within the skull, impacting the skull itself and that motion is enough to actually damage the brain.²³

Dr. Urban went on to repeatedly describe shaking injuries, including the classic triad of shaken baby symptoms, throughout the trial.²⁴ She testified that any battering was inseparable from any shaking—there was “no way to segregate it out” as causes of Nikki’s death.²⁵

OAG Statement

Nikki was abused by her father and died due to the trauma he inflicted. After hearing this evidence and countless hours of testimony about Roberson’s pattern of losing his temper and violently abusing his daughter, a jury of his peers convicted him of murder in 2003, sentencing Roberson to the death penalty for beating his own daughter so viciously that she died. The law in Texas is clear: the prosecution must prove their case beyond a reasonable doubt as to every element of the offense as it is charged in the indictment. Roberson was charged with capital murder for intentionally and knowingly causing the death of a child by causing blunt force head injuries.

There weren’t “countless hours” of testimony on this point—we can count them, because we have a record—and the “abuse” testimony came from Teddie and her minor relatives on two dates over the course of a few hours.²⁶ We also know what those statements were worth based on its sources and circumstances, which is practically nothing. Still, their false testimony coupled with incomplete science is what railroaded Robert onto death row.

One of the only factual statements in the OAG’s release is that the jury lawfully convicted Robert. That doesn’t mean it was right. To repeat “but the jury!” like a clarion call is to ignore the fact that we have appeals and writs, including the Article 11.073 junk science writ created by the Texas Legislature, exactly because juries sometimes get it wrong. It also ignores the 3,604 verified U.S. exonerations since 1989—484 of them in Texas.²⁷ In each of these cases, a jury found someone guilty who was later proven to be an innocent person.

²³ 43 R.R. at 78-79.

²⁴ 43 R.R. at 76-77 & 80-81.

²⁵ 43 R.R. at 85-86.

²⁶ 42 R.R. at 44, 64, & 129; 43 R.R. at 36.

²⁷ The National Registry of Exonerations, *Texas*, access on October 24, 2024, available at <https://www.law.umich.edu/special/exoneration/Pages/browse.aspx?View=%7BB8342AE7-6520-4A32-8A06-4B326208BAF8%7D&FilterField1=State&FilterValue1=Texas>; see also The Innocence Project, *DNA Exonerations in the United States (1989-2020)*, accessed on October 24, 2024, available at <https://innocenceproject.org/dna-exonerations-in-the-united-states>.



OAG Statement

Dr. Jill Urban, the medical examiner who performed the autopsy on the two-year-old's corpse, testified during the trial using photographic evidence that Nikki's head had been repeatedly struck leaving clear impact wounds totally incompatible with merely being violently shaken. Dr. Urban's findings were reviewed by six supervising medical examiners at the Dallas County Medical Examiner's Office, all of whom agreed and signed off on her autopsy report. In 2016, when Roberson's case was being appealed, Dr. Urban unequivocally affirmed that she "quite clearly defined multiple impact sites to the head and ruled that the death was due to blunt force injuries."

Unlike Dr. Squires, Dr. Urban first saw Nikki *after* days of intense emergency medical treatment. That was after Nikki had been taken off life support without consulting Robert, her father, who at the time hadn't been convicted of anything, which should shock Texans who care about parental rights:

Children's Medical Center of Dallas
1935 Motor Street
Dallas, TX 75235
214-456-7000

MR #: 0000001150101 FIN #: 000000027913011 Room #: A504-01
Name: CURTIS, NIKKI Sex: F
DOB: 01-Jan-1999 Patient Wt.: 12.00
Attending Physician: HICKS BARRY,
Printed: 01-Feb-2002 at 23:10
Requested by: ANEVAN Page 3 of 4

From: 31-Jan-2002 at 19:40
To: 01-Feb-2002 at 23:10

MD Notes

02/01 11:00 -- Continued from previous page -
Ophthalmology to do eye exam today
RESP: PC/PS 14/6, PS 8, R 10, It 0.65 Ventilate with goal PCO2 in normal range after unresponsive to hyperventilation. ABG and CXR this an normal
ID: no issues
FEN: On DNSNS at 3/4 maint, vasopressin @ 8 to decrease UOP (10.3/kg/h). Will monitor serum Na closely. NPO. On insulin gtt at 0.05 for hyperglycemia
HEME: Hgb 7.4. given prbcs 10cc/kg. plt 141, LFTs coags normal
SOC: SW, REACH, and CPS involved. Grandparents updated

Plan:
1) Ophthalmology exam
2) Skeletal survey
3) titrate insulin and decrease glucose delivery
4) follow lytes and gas
5) Brain death exam and Neurology consulted for second exam
6) Continue urine replacement

Hospital record showing simply "grandparents updated"

Dr. Urban's autopsy was conducted at Southwestern Institute of Forensic Sciences, which was unaccredited²⁸ and *busy*—Nikki's was the 456th autopsy performed there in 32 days.²⁹ The multiple signatures on the report were part of standard procedures for this kind of paperwork; Dr. Urban confirmed that she alone performed the autopsy and other doctors simply "all sign off on the homicides."³⁰ Dr. Urban also admitted that she didn't consider any of the following:

²⁸ 9 E.H.R.R. at 158.

²⁹ 9 E.H.R.R. at 86.

³⁰ 43 R.R. at 63-67.



- Nikki's extensive medical history, including her severe illness and medications only days before³¹ and her DIC³²
- ER records from Palestine Regional³³
- CT scans of Nikki's head³⁴
- EMS records from being transported³⁵
- Medical reference books to determine whether her lungs and brain were of normal weight (they weren't)³⁶
- Evidence obtained from the scene where Nikki fell³⁷
- Biomechanical evidence³⁸
- Data about the fall itself (including height and impact surface)³⁹
- Biomedical information about Nikki⁴⁰
- A toxicology report (which later showed lethal amounts of promethazine, which is no longer prescribed for children)⁴¹
- Any of the intervening procedures, including intubation and surgical implantation of a pressure monitor in Nikki's head⁴²
- The results of the very tests she herself ordered⁴³

Her hasty autopsy was conducted after being told by law enforcement that Robert had been arrested for capital murder, and an officer literally sat in on the autopsy itself.⁴⁴ This approach has been roundly disavowed in forensic science because it creates bias.⁴⁵

³¹ 9 E.H.R.R. at 107–08, 138, & 161-63.

³² 9 E.H.R.R. at 186.

³³ 9 E.H.R.R. at 64.

³⁴ 9 E.H.R.R. at 109.

³⁵ 9 E.H.R.R. at 185.

³⁶ 9 E.H.R.R. at 139–40.

³⁷ 9 E.H.R.R. at 145–46 & 153–54.

³⁸ 9 E.H.R.R. at 145–46.

³⁹ 9 E.H.R.R. at 145–46.

⁴⁰ 9 E.H.R.R. at 145–46.

⁴¹ 9 E.H.R.R. at 166–67.

⁴² 9 E.H.R.R. at 183–84.

⁴³ 9 E.H.R.R. at 86.

⁴⁴ E.H.R.R. ex. 25

⁴⁵ See, e.g., National Academies of Sciences, Engineering, and Medicine, *Advancing the Field of Forensic Pathology: Lesson Learned from Death in Custody Investigations*, accessed on October 24, 2024, available at <https://www.nationalacademies.org/our-work/advancing-the-field-of-forensic-pathology-lesson-learned-from-death-in-custody-investigations> (documenting the effects of implicit bias on medical examiners' conclusions regarding cause and manner of death).



The autopsy identified traumas never seen before, such as a minor scrape⁴⁶ and a torn frenulum.⁴⁷ Since Nikki wasn't admitted with these injuries, and especially because she had DIC, it's clear that they came from two days of being picked up, moved, and manipulated during emergency procedures—or in the case of the torn frenulum, intubated twice after a CT scan revealed that the first insertion had been improperly done.⁴⁸

Again, Dr. Urban's trial testimony was that "blunt force trauma" includes shaking injuries, which can't be segregated from impact injuries as a cause of death.⁴⁹ The "multiple impact sites" theory is refuted entirely by the CT scan, which objectively showed a single impact site consistent with a short fall.⁵⁰

OAG Statement

In addition to the medical evidence presented, Roberson repeatedly changed his story during the investigation and trial about what happened to Nikki, contradicting himself and demonstrably lying about the circumstances, his behavior, and the causes of his daughter's condition. When Roberson brought the nearly lifeless Nikki to the hospital, he claimed to the nurses that she had merely fallen off the bed. Then he told different nurses that his daughter had hit her head on a table next to the bed. When questioned by the police, Roberson reverted back to the story that Nikki had simply fallen out of bed. Later, in his official statement to law enforcement, Roberson professed ignorance as to what caused the blunt force injuries to Nikki's head and blamed his daughter for being clumsy and falling often.

Roberson also confessed to slapping his two-year-old daughter to "wake her up" before telling his girlfriend at the time, Teddie Cox, that Nikki had hit her head on "the brick" in the bedroom despite police noting that there was only carpet in the room. When Teddie Cox asked Roberson directly if he had killed Nikki, Teddie Cox testified that Roberson said, "that if he did do it, he don't remember, that he snapped, and he don't remember doing it."

The House Committee on Criminal Jurisprudence took extensive testimony showing that Robert is a person with both autism and intellectual disability.⁵¹ Experts described the pliability and compliance of a person like Robert, and unlike the OAG, members of the Texas House

⁴⁶ 8 E.H.R.R. at 64.

⁴⁷ 8 E.H.R.R. at 114.

⁴⁸ 8 E.H.R.R. at 114.

⁴⁹ 43 R.R. at 78-79 & 85-86.

⁵⁰ 42 R.R. at 102-05.

⁵¹ See generally *Hearing* Before the House Comm. on Crim. Jur., 88th Leg. Interim (October 16, 2024); *Hearing* Before the House Comm. on Crim. Jur., 88th Leg. Interim (October 21, 2024).



have also met him personally. He lacks what’s sometimes called cognitive agility, is social-emotionally underdeveloped, and doesn’t have expected responses, especially in a crisis.⁵²

Still, to say his “story changed” is a mischaracterization. He told investigators that he was awoken by crying at about 5:00 a.m. to find Nikki on the floor at the foot of the bed.⁵³ The bed was mounted on cinder blocks, which jutted out from under it.⁵⁴ He cleaned a small amount of blood and thought Nikki was fine, so they went back to sleep, only to wake up three hours later to find her blue and unresponsive.⁵⁵ As he took Nikki to the hospital, he gave that same account to both Teddie Cox and Verna Bowman, her maternal grandmother.⁵⁶

The OAG’s statement claims that Robert “changed” his story, but what it actually shows is him responding to pressure from Teddie, medical staff, and investigators to explain a medical emergency that didn’t seem to match a short fall alone. For example, Teddie’s account that he said, “she’d fell off and hit her head on the brick” is explained by him considering the cinderblocks holding up the bed.⁵⁷ (The OAG was clearly unfamiliar with the record when claiming “that there was only carpet in the room.”) Similarly, his explanation of the fall was consistent with both medical staff and law enforcement, and his “professed ignorance” about her condition makes complete sense considering it was only later explained by medical experts with science unavailable at the time.

OAG Statement

Similarly, Roberson initially told Dr. Kelly Goodness—who was one of the defense’s own witnesses—that he did not remember what happened to Nikki but then later confessed that he had lost his temper and began abusing Nikki.

The entire defense Robert’s trial lawyer put on—over Robert’s objection—was that Nikki had been shaken (since no other medical explanation was known at the time) and that Robert simply lacked the intent needed for capital murder. So, Dr. Goodness became part of the defense team with the understanding that shaking was a fact and pressured Robert to accept

⁵² *Hearing* Before the House Comm. on Crim. Jur., 88th Leg. Interim (October 21, 2024)(testimony of Dr. Phil McGraw). This matched the experiences of the members who’ve met Robert.

⁵³ 41 R.R. at 70, 86-87; 97, 124, & 162; 42 R.R. at 17, 82.

⁵⁴ R.R. Appx. 40–45.

⁵⁵ 41 R.R. at 168–71.

⁵⁶ 41 R.R. at 168–71; 43 R.R. at 155–56

⁵⁷ *See* 42 R.R. at 188 & appx. 40–45 (evidence of the cinderblocks).



it; she testified that, “he told me he didn’t remember. And after I convinced him that was not going to fly with me, then he told that he lost it” and shook her.⁵⁸ Her testimony wasn’t of a “confession,” but of a person with a doctorate bullying a compliant man with autism and intellectual disability into accepting her version of events.⁵⁹

Strangely, this supposed confession is about shaken baby syndrome, which the OAG claims wasn’t the theory of the case. Nonetheless, it represented such a breach of professional ethics that the prosecution didn’t even include it in its proposed habeas findings.⁶⁰

OAG Statement

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. The jury also heard that Roberson was the girl’s sole caretaker for the very first time on the day that Nikki’s deadly injuries were inflicted, and he was displeased to be obligated to care for the child, according to his girlfriend at the time.

Robert’s “dozen prior arrests” were all for nonviolent property crimes of burglary, writing hot checks, and a probation violation related to those. Robert pled guilty in each case. To imply a violent criminal history is misleading and untrue.

Similarly, Robert’s ex-wife Della Gray had credibility issues just as atrocious as Teddie Cox. She and Robert were married as teenagers and divorced a few years later. Della then left Palestine—and her two severely disabled children, Victoria and Robert IV, who she never saw again despite having visitation rights.⁶¹ She admitted at trial that the divorce had been lengthy and nasty, but no allegations were made then about abuse,⁶² nor were they supported by any police, CPS, medical, or court records.⁶³ Critically, she admitted that she was unhappy with how the divorce had gone and had only come back to testify at the trial involving Nikki to make Robert “pay” by testifying against him.⁶⁴

⁵⁸ 48 R.R. at 24.

⁵⁹ Numerous exonerations also involve false confessions. The National Registry of Exonerations, n. 27, *supra*.

⁶⁰ 7 E.H.R.R. at 133.

⁶¹ 47 R.R. at 26–27 & 29.

⁶² 47 R.R. at 7–32.

⁶³ 47 R.R. at 26 & 31.

⁶⁴ 47 R.R. at 28–32.



Of course, investigators also looked for signs of violence in Robert’s history and home. They found none. At the scene, which Robert cooperatively took them to, they found “no pools of blood anywhere and no signs of violence.”⁶⁵ The only thing they did find was a cloth Robert had used to wipe specks of blood off Nikki’s mouth, which Robert himself gave police, who noted they would’ve missed it otherwise.⁶⁶ This piece of evidence has been sensationalized as a “blood-soaked rag” that proves egregious violence.⁶⁷ Here it is—judge for yourself:



OAG Statement

Further, according to a contemporaneous police report, Roberson admitted to his cellmate that he sexually assaulted Nikki. Roberson told him of “putting his [penis] in the baby’s mouth and rubbing his penis against her vagina.” The cellmate also said Roberson told him that when Roberson was upset with his female partner, he would take his anger out on Nikki. He told the cellmate of hitting Nikki on the back of her head with his hand and then dropping her on her head and leaving her on the floor.

By including this information, the OAG has repeated a lie with, at best, a complete indifference to the truth. The “jailhouse snitch” here wove a tale so outrageously contrary to the evidence that prosecutors didn’t use it at trial, and the very concept of this “confession” is ridiculous to imagine since even actual child molesters go to great lengths to hide their crimes from other people in jail.

⁶⁵ 7 E.H.R.R. at 23–24.

⁶⁶ *Hearing* Before the House Comm. on Crim. Jur., 88th Leg. Interim (October 16, 2024)(testimony of Brian Wharton).

⁶⁷ 10 E.H.R.R. at 63.



Here's what the prosecution's own lead investigator, Brian Wharton, had to say about it. Forgive the length, but understanding this claim should, by itself, cast doubt on everything else in the OAG statement:

"I was the lead detective with the Palestine Police Department in charge of the investigation of the death of Nikki Michelle Curtis, Robert Roberson's daughter. I was involved starting on day one when she was brought to the hospital by her father the morning of January 31, 2002.

"Part of what occurred on that first day was an ER nurse, Andrea Sims, who chose to conduct a sexual assault exam on the comatose child. She was not asked to do so by me or any member of my team that I am aware of. Additionally, as it turns out, she was not a certified Sexual Assault Nurse Examiner.

"That first evening she claimed to see small 'anal tears' on the child. None of us investigated the child's medical history, so we did not know that she had had diarrhea for a week or been prescribed Phenergan suppositories by the same hospital just two days before that. That first day in the hospital, I could not see what this nurse claimed to see as she scrutinized. Pictures of Nikki's bare bottom were taken.

"The suggestion that the anal region showed some sign of sexual assault was not later substantiated by either the child abuse pediatrician at Dallas Children's (Dr. Squires) or the medical examiner (Dr. Urban). Therefore, I assumed that matter was dropped.

"Yet someone in the District Attorney's office, solely based on Nurse Sims' opinions, sought to indict Mr. Roberson for a second count of capital murder alleging that the death of Nikki Curtis was caused while in the course of committing or attempting to commit the offense of aggravated sexual assault. From the outset, I do not believe there was evidence to support that allegation, let alone a conviction. I did not observe the trial so had no knowledge of how the sexual abuse theme was raised at trial or that the State ultimately dropped that count. I now know that it was only dropped at the end, right before the jury began deliberating. In my lay opinion, the damage would have been done at that point. One cannot put the bullet back in the gun and expect a jury to be objective.

"I find it stunning that this failure at trial is now being magnified instead of corrected. Because of that, I feel compel[led] to provide further facts relevant to consider what is going on here.

"On February 2, 2002, a sexual assault kit procured by Nurse Sims from Nikki's body was submitted to DPS by one of my Captains. This, of course, was at the expense of the county, which had to pay for this testing that I had previously deemed unwarranted because of the lack of evidence to justify further inquiry.



“When we got the test results back, my trepidation seemed vindicated. In a DPS report dated March 5, 2002, we learned that the sexual assault examination had come back with the following results:

1. Sexual assault evidence collection kit from victim

Requested Analysis

Process the items for any trace evidence associated with sexual assault.

Results of Analysis

No semen was detected on the anal swabs and debris collection swabs.

No spermatozoa were detected on the anal smear slides.

No trace evidence was detected the debris collection paper.

We are unable to retain this evidence. Please make arrangements to pick it up at your earliest convenience.

A handwritten signature in black ink, appearing to read "R. Greg Hilbig".

R. Greg Hilbig
Criminalist
Texas DPS Garland Laboratory

“Despite the complete absence of objective physical evidence, the District Attorney’s office apparently started working thereafter with a notorious inmate in the local jail, Ryan Lodygowski.

“At some point before trial, I learned that someone in the District Attorney’s Office was talking to this inmate in the Anderson County jail. When I learned of this, I was even more disturbed because he was known to be unreliable. I was confident he would be looking for opportunities to volunteer purported jailhouse ‘confessions’ in hopes of obtaining leniency for himself. In my 10 years as a police officer, I was very aware of the low evidentiary value of this kind of witness. But this particular ‘jailhouse informant’ was obviously problematic, as reflected in multiple letters he sent to members of the District Attorney’s Office and my staff seeking favors.

“I have reviewed the letters he sent back then: two are addressed to ADA Mark Calhoun; the others addressed to Joe Berreth and Detective Mars, both members of my team. In two of the letters, Lodygowski asked for 216 days back, and in one letter he asks for 269 days back. A few others refer to promises to receive ‘back time’ but do not specify the length or who made these promises to him. There is also a reference to a DUI that he had received. I am not familiar with any replies that may have been sent to him.

“His first letter is dated June 18, 2002. This is three months *after* it should have been obvious to those working on the case that there was no basis for his ridiculous claim that Mr. Roberson had confessed to Lodygowksi—a complete stranger—because his story was completely contrary to the known evidence.

“As a detective in Palestine, Texas, I was very familiar with this kind of ‘jailhouse confession’ allegation. That such material has been irresponsibly highlighted and is being treated as truthful information saddens me deeply. The source of this information in 2002, Ryan Lodygowski, was frequently in trouble with the law and never worthy of trust. In my view, he was such an obviously unreliable informant I would not have entertained a conversation with him.

“The prosecutors were aware of Lodygowski’s story in 2002, and they clearly didn’t consider it credible enough to call Lodygowski as a witness at Mr. Roberson’s trial.



Lodygowski’s disgusting story to try to ingratiate himself and obtain a favor simply did not line up with the physical evidence at all and was facially unbelievable.

“Ryan Lodygowski was not credible in 2002. His claims about Robert Roberson were and remain scurrilous and defamatory. **Those who would use his letters to the DA’s office from 22 years ago now and even hint that they represent ‘the truth’ is engaged in an unprincipled exercise and must not care who gets hurt in the process, including the child at the center of this case.**”⁶⁸

This kind of thing isn’t surprising: Jailhouse snitches are notoriously unreliable. They’ve led to so many proven wrongful convictions that in 2017, the Texas Legislature changed the law. HB 34 that session, by Representative John Smithee (R-Amarillo), imposed significant requirements and restrictions on this kind of testimony as part of “measures to prevent wrongful convictions.”⁶⁹ We did our part then to stop Texans from being railroaded with false evidence, and that’s the work we’re doing now with Robert, whose case has shined a light on other legal changes our system needs.

OAG Statement

Now, a coalition of activists and State legislators is interfering with the justice system in an unprecedented way in an attempt to stall or prevent Roberson’s execution. They have attempted to mislead the public by falsely claiming that Roberson was unfairly convicted through “junk science” concerning “shaken baby syndrome.”

The attempt to recast this case as not being about shaken baby syndrome is one of the things that’s worked incredible injustice for Robert and undermined the Article 11.073 writ process our legislature created. This was a shaken baby case, period. As discussed above, Dr. Squires testified to that at trial. Dr. Urban testified that any other injuries “could not be segregated” from shaking. The defense and prosecution both focused almost exclusively on shaken baby syndrome from jury selection to evidence to argument at all stages of the trial. It only became “not a shaken baby case” during Article 11.073 proceedings when it became clear that science no longer supported shaken baby syndrome as it was understood in Nikki’s trial.⁷⁰

That just isn’t our opinion, and it’s not just the opinion of medical experts today—it’s the opinion of the Court of Criminal Appeals. Only weeks ago, it ruled in *Ex parte Roark* that “scientific knowledge has evolved” to “undermine the State’s theory of a case involving SBS,”

⁶⁸ Statement of Brian Wharton, October 23, 2024.

⁶⁹ Tex. H.B. 34, 85th Leg., R.S. (2017).

⁷⁰ *Compare, generally*, R.R. (containing dozens of references to shaken baby and no argument that impacts were sufficient cause of injuries), *with* E.H.R.R. (contrary argument).



citing scientific experts, the *Journal of Neurosurgery* and *Journal for the British Academy for Forensic Science*, and other state and federal courts.⁷¹ It's an unconscionable fiction to treat Robert's case, which featured almost identical testimony from *Dr. Squires*, also the *Roark* expert, any differently.

OAG Statement

Despite these eleventh-hour, one-sided, extrajudicial 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.
- Roberson was lawfully sentenced to death. He has exhausted every legally available appellate avenue.
- A few legislators have grossly interfered with the justice system by disregarding the separation of powers outlined in the State Constitution. They have created a Constitutional crisis on behalf of a man who beat his two-year-old daughter to death.

The OAG's statement makes no reference to the mountain of evidence and changed science that's accumulated since Robert's original trial—the same changed science that caused the Court of Criminal Appeals to reject SBS in *Roark*. But the habeas record is clear:⁷²

- Dr. Francis Green, a 46-year expert in lung pathology, provided a detailed report showing that Nikki's lungs were infected with both viral and bacterial pneumonia, which caused brain damage by oxygen starvation.
- Dr. Keenan Bora, an expert in medical toxicology and emergency room medicine, concluded that the toxicology report showed dangerously high levels of promethazine in Nikki's body, a drug now known to be potentially fatal to children because it impairs breathing.
- Dr. Julie Mack, an expert in pediatric radiology, reviewed the CT scans rediscovered in the courthouse basement in 2018 and determined they showed a single minor impact site consistent with Robert's explanation of a fall off of a bed along with chest x-rays (some produced to Robert's counsel as late as this year) that supported Dr. Green's diagnosis of fatal lung infection.
- Dr. Janet Ophoven, who is board certified in forensic pathology and anatomic pathology with special training in pediatrics and pediatric pathology, held that Nikki's death could not be ruled a homicide and was consistent with irreversible damage from oxygen deprivation. She was confident that Nikki's condition was caused by neither shaking or impacts and that the autopsy was flawed and misleading.
- Dr. Ken Monson, biomechanical engineer who studies head injuries and directs the "Head Injury and Vessel Biomechanics Laboratory," explained that shaken baby syndrome assumptions about how shaking would cause internal head injuries but no neck injuries have been falsified and that the demonstratives used in Nikki's trial misled the jury.

⁷¹ *Ex parte Roark*, No. WR-56,380-03, 2024 WL 4446858, at *51–54 (Tex. Crim. App. Oct. 9, 2024).

⁷² *See generally* E.H.R.R. (the complete record and exhibits in the habeas court).



- Dr. Carl Wigren, a forensic pathologist and member of the American Academy of Forensic Sciences with over 2,000 autopsies, concluded that Nikki’s death was not a homicide based on the CT scan showing a single impact site consistent with a short fall, the toxicology report and prescriptions in use, and the pneumonia, which came together in an “unfortunate accident” that was “absolutely not” a homicide and didn’t involve abusive head trauma.
- Dr. Roland Auer, a neuropathologist board certified in the United States and Canada, who is both a medical doctor and a Ph.D. scientist, the author of a leading neuropathology treatise and over 130 scientific articles in peer-reviewed journals, and a researcher with extensive experience with head trauma, hypoxia, hypoxic ischemia, and pediatric pneumonia, reviewed Nikki’s records and drew the same conclusions. He found it impossible for her internal damage to have been caused by external impacts because they would have left external markers on the skin and likely corresponding skull fractures and found “no support for multiple impact sites neither on the brain nor in the skull nor in the scalp,” and “no evidence for multiple impact sites whatsoever.”

Meanwhile, the state produced only Dr. Urban to reiterate her autopsy claims, which were greatly undermined during the proceedings, and Dr. James Downs—a member of the “Shaken Baby Alliance,” which is dedicated to defending the diagnosis, who claimed that Nikki had “normal little kid lungs” with “no pneumonia.”⁷³ Dr. Downs was recently found to have missed pneumonia in a child autopsy, leading to a new trial for a man sentenced to death who’d been convicted based on Downs’s testimony.⁷⁴

The House Committee on Criminal Jurisprudence also took the testimony of more than a dozen witnesses over two days of hearings. That recorded testimony is available to the public⁷⁵ and includes witnesses ranging from preeminent experts in medicine, law, and psychology to a former justice of the Court of Criminal Appeals to, importantly, the lead investigator for the state in Robert’s case and one of the actual jurors who heard the evidence at trial. These people believe Robert isn’t guilty. These people *know* Robert didn’t get a fair trial. And we know that the laws our legislature created to correct those problems haven’t worked as intended for Robert and people like him. That’s why we’re here and why we won’t quit.

JOE MOODY
Chair

JEFF LEACH
Chair

RHETTA BOWERS
Vice Chair

LACEY HULL
Vice Chair

⁷³ 10 E.H.R.R. at 74, 76, 212, 220, & 242.

⁷⁴ *Ward v. State*, No. CR-18-0316, 2020 WL 4726486, at *4 (Ala. Crim. App. Aug. 14, 2020).

⁷⁵ Available at <https://house.texas.gov/videos/committees>.