

# Texas prepares to execute Robert Roberson, an innocent man, for a crime that never took place

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Texas death row inmate Robert Leslie Roberson III exhausted his last legal avenue to avoid execution Tuesday when a judge in Anderson County District Court ruled against vacating his execution warrant. Roberson's attorneys had argued before the district court that the previous judge, Deborah Oakes Evans, had not been properly assigned to his case and that Evans' apparent bias, including her repeated denial of a hearing on Roberson's previous motions, warranted her removal from the case.

NBC affiliate KETK-TV in Tyler reported that Judge Alfonso Charles, the Tenth Administrative Judicial Region presiding judge, denied the defense's motion to vacate Roberson's execution warrant. Charles also denied the motion to vacate the previous judge, Deborah Oakes Evans, from the case. Evans is now retired.

Unless Texas Governor Greg Abbott grants him a 30-day stay of execution, Roberson will die by lethal injection on Thursday, October 17. The Republican governor—who boasts that the death penalty is “Texas justice”—has overseen 77 executions since taking office and granted clemency to a condemned inmate only once.

Roberson, 57, is an innocent man. However, not only is he innocent, but the crime he was convicted of committing never happened. He has spent more than two decades on death row after being convicted for the violent murder of his two-year-old daughter Nikki Curtis. However, the child's death was in fact the result of long-standing illness, misdiagnosis and the administration of medication inappropriate for a child of her age and in her condition.

Roberson has argued since his conviction that he is the victim of a justice system that wrongly attributed his daughter's tragic death to “shaken baby syndrome” (SBS) and falsely pointed to him as the vicious perpetrator. Roberson—who suffers from autism spectrum disorder, which was diagnosed only after his conviction—is not a murderer but a concerned father who urgently sought medical treatment for his daughter in the days before her death.

If his execution goes forward, Roberson will be the first person convicted and executed based on the now discredited scientific criteria for determining “shaken baby syndrome.” His impending execution has been decried by a bipartisan group of Texas legislators, the Autistic Self Advocacy Network, author John Grisham, myriad death penalty opponents and many others.

Reverend Brian Wharton, a former police officer who investigated Roberson's case and testified against him at trial, now believes Roberson is innocent and has become one of his strongest advocates. Wharton says that Roberson's conviction and sentence would not have happened if there had been a more thorough investigation of the circumstances surrounding Nikki's death, and the medical professionals involved had not jumped to conclusions.

Nikki Curtis's life was short and tragic. She was born to a mother suffering from addiction and homelessness, and Roberson gained custody of the child in 2001. He was not fully aware of his daughter's medical history, including “breathing apnea,” which would lead her to stop breathing and collapse.

Despite living in poverty in Palestine, Texas, and suffering from an undiagnosed condition, Roberson did the best he could to support Nikki. When she became severely ill, he took her to the ER and to her pediatrician, who both wrote prescriptions for Phenergan/promethazine, which is no longer prescribed in such cases because it suppresses breathing.

On the night Nikki collapsed, Roberson heard a “strange cry” and awoke to find her lying on the floor at the foot of the bed. They both went back to sleep, but when he awoke several hours later he found her unconscious and rushed her again to the ER.

Doctors and nurses at the hospital treated Roberson with suspicion due to his lack of emotion over his child's condition, which can now be assumed was due to his autism. A head CT scan performed on Nikki found a small subdural bleed and brain swelling but no skull fractures, broken bones or signs of battery. Nikki never regained consciousness and was later pronounced dead.

Before an autopsy was even performed, Dr. Janet Squires—the in-house “child abuse pediatrician”—submitted an affidavit with her diagnosis of “shaken baby syndrome” to the Palestine police. Medical Examiner Jill Urban claimed that Nikki's death was caused by “blunt force head injuries” consistent with SBS based on the presenting triad of subdural bleeding, brain swelling and retinal hemorrhages. She ruled the death a homicide.

Roberson was arrested and charged with murder. At his 2003 trial, he was convicted based largely on the testimony of doctors, who said his daughter had died from SBS by his hand. They argued that if Nikki was shaken to death and he was her caregiver, then he must be guilty.

The key defense put forward by Roberson, whose case has been taken up by the Innocence Project, is that he was arrested, charged, convicted and sentenced to death for killing his daughter based on now discredited scientific criteria for determining SBS as the cause of death.

Roberson's defense states that medical specialists from multiple disciplines, including a lung pathologist, a medical toxicologist and a pediatric radiologist, have now conclusively established

beyond any doubt, that [Nikki] died of a severe undiagnosed pneumonia that progressed to the point of sepsis, a demise likely accelerated by the wholly inappropriate medications she was prescribed during her final days that would only have made it harder for her to breathe. [Emergency Motion for Stay of Execution before the Texas Court of Criminal Appeals]

In 2013, the Texas Legislature passed Article 11.073, known as the Junk Science Writ, which created a pathway for prisoners to challenge their convictions if new scientific evidence emerges which challenges the integrity of their convictions. Such new evidence can include new forensic evidence, such as DNA, as well as debunked medical science. The now discredited criteria for determining "shaken baby syndrome" is the type of "junk science" that this law was written to address.

But no court has ever heard the new evidence in Roberson's case, which proves that his daughter did not die of "shaken baby syndrome," and he is therefore not guilty of murder. In fact, *no crime even took place*. At every turn, the legal system has accepted Nikki's faulty SBS diagnosis and refused to grant him the right to present this new evidence in court to prove his innocence.

- Roberson was convicted of capital murder and sentenced to death by an Anderson County jury on February 21, 2003. At trial, the "expert" presented by his defense said that Roberson "lost it" and shook Nikki, despite Roberson's insistence that he did not. He refused to accept a plea deal and has consistently maintained his innocence.

- An appeal filed by Roberson to the Texas Court of Criminal Appeals (CCA) was dismissed in July 2007.

- The US 5th Circuit Court of Appeals rejected another two appeals, in May and August 2015.

- Four days before Roberson's first execution date, set for June 21, 2016, he was granted a stay of execution and a court hearing to review his case. The evidentiary hearing concluded on March 19, 2021.

- On January 11, 2023, the CCA ruled there was insufficient basis for the court to intervene in Roberson's case.

- The US Supreme Court rejected an appeal from Roberson on October 2, 2023.

- On July 1, 2024, the trial court approved a death warrant for Roberson and scheduled his execution for October 17, 2024.

- A final appeal to the CCA was rejected on October 11, 2024.

- On October 15, Anderson County District Court rejected Roberson's arguments that Judge Deborah Oakes Evans, the

previous judge, was not properly assigned to his case and that her apparent bias warranted her removal from the case. Roberson's defense argued that Judge Evans should be removed because she failed to follow the required statutory procedure for a retired judge to become eligible to accept assignments to preside over cases in lieu of elected judges. Evans repeatedly denied a hearing on Roberson's previous motions before and after an execution date was set, even though hearings on such motions are routine.

The CCA's denial of a new trial for Roberson followed a ruling of the same court on October 9, 2024 that the 2000 conviction of Andrew Roark, whose case was remarkably similar to Roberson's, must be overturned and Roark granted a new trial because scientific understanding of SBS has evolved since that time.

Gretchen Sween, an attorney for Robert Roberson, commented after the Anderson County's ruling Tuesday:

It is terrifying that Robert, an innocent, disabled man with the most gracious heart, is scheduled to be executed under an invalid warrant issued by a seemingly biased judge in just two days' time. Governor Abbott can prevent an irreparable mistake by commuting Mr. Roberson's death sentence or, at the very least, granting him a reprieve so that the overwhelming evidence that no crime occurred can be heard. This is especially true in light of the Court of Criminal Appeals' recent recognition last week in the Roark case of the unreliability of the very same Shaken Baby pseudo-science that was used to convict Mr. Roberson. We are grateful for the outpouring of bipartisan support for Robert in these challenging times. And we are not giving up.



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