

## New Trial Granted After Finding Lawyers Ineffective

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The Texas Court of Criminal Appeals has ordered a new trial for a woman convicted of capital murder of a 4-year-old boy, finding that her trial lawyers were ineffective for failing to introduce expert testimony that might have altered the jury's verdict.

In the case, centered around the child's death of salt intoxication, the five-lawyer defense team for Hannah Ruth Overton failed to show the jury deposition testimony by a salt intoxication expert, Dr. Michael Moritz, who testified about the likelihood of the child not surviving, even if taken to the hospital sooner.

"We believe that Dr. Moritz's credibility, combined with his testimony, would have had a strong impact on the jury and sufficiently undermines the outcome of the trial. But for the defense team's failure to present Dr. Moritz's testimony to the jury in some way, there is a reasonable probability that the outcome of applicant's trial would have been different," said the 7-2 majority opinion in *Ex Parte Overton*.

The attorneys who scored the victory for Overton were also involved in freeing Michael Morton, who won a claim of actual innocence after he spent 25 years in prison because he was wrongfully convicted of the murder of his wife. Cynthia Orr, the original appellate lawyer for Overton, noted that she and John Raley are working pro bono for Overton, as they did for Morton.

"It's my personal case I decided to take on," said Orr, an attorney at Goldstein, Goldstein & Hilley in San Antonio. She said she appreciates the court "having the courage and wisdom to grant her relief."

Raley, partner in Raley & Bowick in Houston, said, "It's reassuring to know the system can work; if you keep fighting to bring the truth to light, then someone will hear it."

Nueces County Assistant District Attorney Douglas K. Norman, who worked on the appeal, referred comment to D.A. Mark Skurka. Skurka didn't return a call seeking comment.

### Salt Intoxication

Details of the child's death are recounted in the Sept. 17 majority opinion by CCA Judge Larry Meyers, who was joined by Judges Tom Price, Paul Womack, Cheryl Johnson, Barbara Hervey, Cathy Cochran and Elsa Alcalá. Cochran also wrote a concurrence, joined by Johnson and Alcalá.

The opinion referred to the boy as "A.B.," and noted that Overton and her husband were in the process of adopting him.

Overton testified at trial that A.B. was "obsessed with eating" and would eat off the floor or trash. On the day A.B. died, Overton woke from a nap to find A.B. on

a stool in the pantry eating something. He threw several tantrums that day over food, and Overton eventually fed him a couple of servings of chili and some Zatarain's seasoning.

While in another tantrum, A.B. "suddenly stumbled to the floor, said he was cold, and threw up," said the opinion. Later, he was "moaning and 'lethargic,'" with abnormal breathing. Eventually, Overton and her husband took A.B. to an urgent care center; he was transferred to a nearby hospital and then to a children's hospital. He died of salt intoxication the next day.

His death was ruled a homicide, and Overton was charged with capital murder.

"The indictment alleged that she caused the death of A.B. by giving him an acute toxic level of sodium or by failing to provide him with adequate or timely medical care," explained the opinion. A jury poll after Overton's trial showed the jurors "found applicant guilty based on her failure to obtain medical care," said the opinion.

Moritz's depo "contained much testimony that was favorable to the defense," said the opinion. Among other things, he testified that if a child had salt poisoning, it would take a while for a parent to figure out it was serious and go to the hospital. Once at the hospital, it might take three to four hours for doctors to get a diagnosis; it would still be unclear how to treat the problem, Moritz testified.

One of Overton's trial attorneys suggested that the lead trial counsel should

not use the depo because it "contained objectionable material and was too 'messed up' to be edited and played for the jury," said the opinion.

At a habeas hearing, two of Overton's trial lawyers testified that it was ineffective not to use the testimony. One said it would have convinced the jury that Overton was innocent.

"Given the pertinence of that testimony, and no convincing strategy or reason to keep it from the jury, it was objectively unreasonable for applicant's counsel to not attempt to present it," said the opinion.

### Opening the Door

Presiding Judge Sharon Keller wrote a dissent, joined by Judge Michael Keasler. Keller wrote that she disagreed with the majority because Moritz's depo could have "opened the door" to "damaging" evidence.

Moritz said he would feel misled "if there was a witness not provided to him who would testify that the child was punished by being forced to ingest salt," said the dissent. The state asked Moritz such questions because two of Overton's children said she punished them by placing sprinkles of spicy and hot "pepper" into their mouths.

"Eyewitness evidence from applicant's own children that 'spicy stuff' was used as punishment could have devastated applicant's case in the eyes of the jury," wrote Keller.



John Raley