

**IN THE
3RD DISTRICT COURT, ANDERSON COUNTY, TEXAS**

EX PARTE)	Trial Cause No. 26,162-C
ROBERT LESLIE ROBERSON III,)	
APPLICANT)	Writ Cause No. WR-63,081-05
)	
)	

APPLICANT’S MOTION FOR IN-PERSON HEARING

Applicant Robert Leslie Roberson III, by and through undersigned counsel, files this Motion for In-Person Hearing. In support thereof, Applicant Roberson respectfully shows the following:

On this date, June 12, 2026, the parties were required to file briefs to address the material similarities and differences between the facts and the Article 11.073 “changed science” claims in Andrew Roark’s and Robert Roberson’s cases. *See* TEX. CODE CRIM. PROC. art. 11.073. Applicant’s brief is lengthy, complex, and likely contain significantly divergent summarizes of the relevant evidence.¹

The Honorable Judge presiding in this proceeding did not preside over the underlying trial in 2003 or over the 2016-2022 habeas proceeding during which a great deal of the relevant evidence was amassed, including during a 10-day

¹ Applicant’s counsel has not yet been served with a copy of the State’s brief, and State’s counsel has filed an opposed motion seeking another extension. However, the position reflected in the State’s previously filed Answer makes clear that the parties have extremely different interpretations of both the content and significance of the trial and post-conviction records.

evidentiary hearing. It would be unreasonable to assume that the presiding judge has had an opportunity to fully analyze the massive evidentiary record or to sort wheat from chaff while juggling a busy trial docket. To have a fair and accurate understanding of the massive body of evidence relevant to the remanded, changed-science claim, an in-person hearing is essential.

An in-person hearing will permit the parties to present documentary and photographic evidence and answer questions about the objective medical evidence and the expert opinions, particularly regarding Nikki's condition (1) before her final medical crisis on January 31, 2002; (2) upon arrival at the Palestine Regional hospital on January 31, 2002; (3) after transfer to the Children's Medical Center of Dallas (CMCD) and then termination of life support on February 1, 2002; and (4) after transfer to the Dallas County medical examiner for autopsy on February 2, 2002. This information is necessary to evaluate Robert's Article 11.073 changed-science claim, specifically, in light of the advances in scientific understanding surrounding the Shaken Baby Syndrome ("SBS") hypothesis, as a diagnosis of exclusion, to be made only after a thorough, multi-disciplined, differential diagnosis has excluded all non-abuse possibilities.

Additionally, an in-person hearing will permit the parties and the Court to access and discuss specific examples of the scholarship related to the evolution of the SBS hypothesis used to convict Robert Roberson, including position papers,

scientific articles, and studies in the record and/or cited in the parties' briefs and/or cited in *Ex parte Roark*, 707 S.W.3d 157 (Tex. Crim. App. 2024).

Further, an in-person hearing will permit the parties and the Court to compare the various findings and conclusions of trial and post-conviction experts to the objective evidence in the record (including Nikki's medical records, law enforcement photographs, and material collected during the autopsy). This expert evidence is directly relevant when considering Robert's Article 11.073 changed-science claim, both in establishing that the relevant scientific beliefs have changes and were not available at the time of Robert's 2003 trial, and to explain how this new scientific evidence makes Robert's conviction unreliable and warrants relief in the form of a new trial, just as in Andrew Roark's case.

In addition to its brief, Applicant has submitted to both the Court and opposing counsel an electronic copy of the entire trial Reporter's Record and the relevant body of post-conviction evidence, per the Court's previous ruling.² This electronic record does not include pleadings or the Reporter's Record of Andrew Roark's 2000 trial, which were submitted previously. The newly Bates-labeled electronic record alone

² The electronic record does not include the additional expert reports that were attached to the -06 habeas application or any of the evidence related to the official misconduct claims raised in the -07 habeas application. The electronic record does include a few additional exhibits that are the subject of Applicant's unresolved Motion to Admit Circumscribed Set of Additional Exhibits or, Alternatively, to Permit Limited Depositions or Live Testimony.

consists of 11,268 pages of testimonial and documentary evidence, some of which needs to be formally moved into evidence. The parties should be able to argue and present evidence with recourse to specific pages of this massive record so that the contents of the evidence are clear and not simply the subject of an adversarial gloss.

Moreover, the parties and the Court need access to the *original* photographs and other evidence stored in the Clerk's Record in Anderson County, particularly, but not limited to:

- the Polaroids taken of Nikki at the Palestine Regional hospital on January 31, 2002, and introduced into evidence during the testimony of nurse Andrea Sims on February 3, 2002;
- the washcloth and bedding collected at the home where Nikki experienced her medical crisis;
- the photographs of the home taken by law enforcement during a consensual search of Applicant's home;
- the autopsy photographs taken by medical examiner Jill Urban on February 2, 2002, and introduced into evidence during Dr. Urban's testimony on February 5, 2003; and
- the X-rays and digital copies of the CAT scans taken of Nikki during her final hospitalizations.

As Applicant explains in his brief, a great deal of this evidence has been disregarded or misrepresented and the post-conviction record includes misleading reproductions of some of the key photographic evidence that was already in the trial record.

Being able to refer to and display specific items of evidence while answering the Court's questions and making meaningful arguments would be impossible over Zoom. And the Court will not be able to make accurate Findings of Fact and Conclusions of Law unless it can test the parties' characterization of the evidence directly relevant to the State's cause-of-death theory at trial via direct access to that evidence and in light of contemporary scientific understanding recognized in *Ex parte Roark*.

The goal here is to seek the truth and move forward expeditiously towards resolution of the remanded claim.

Applicant believes that a one-day, in-person hearing is necessary and will also afford an opportunity to address Applicant's Motion to Admit Circumscribed Set of Additional Exhibits or, Alternatively, to Permit Limited Depositions or Live Testimony (filed on April 22, 2026). Thereafter, unless additional questions remain unresolved, the parties should be able to prepare proposed Findings of Fact and Conclusions of Law for the Court's consideration, the next step toward resolution of this proceeding in the trial court. But without the benefit of an in-person hearing, Applicant fears the scope of material, contested issues of fact could not be resolved accurately, efficiently, or fairly. Indeed, reliance solely on the papers in a matter of this complexity and significance would implicate due process concerns. *See* U.S.

CONSTITUTION, amend. XIV (precluding states from depriving “any person of life, liberty, or property, without due process of law”).

For the foregoing reasons, Applicant respectfully prays that the Court GRANT this motion and set an in-person hearing in this cause as soon as practicable.

Respectfully submitted,

/s/ Gretchen S. Sween

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CERTIFICATE OF SERVICE

Undersigned counsel represents that the foregoing was served on counsel of record for the State in this cause via the Texas efile system and/or by electronic mail as follows:

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June 12, 2016

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