

Arizona woman's murder conviction overturned after 22 years on death row

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A federal appeals court has thrown out the murder conviction and death sentence of Debra Milke. Milke, now 49, has spent the last 22 years on Arizona's death row for the 1989 murder and kidnapping of her four-year-old son. She was the first woman sentenced to death in Arizona since 1932.

Rebuking the prosecution in Milke's case for remaining "unconstitutionally silent" on the "history of misconduct" of its key witness, a Phoenix police detective, Chief Judge Alex Kozinski of the federal 9th Circuit Court of Appeals threw out Milke's October 12, 1990 conviction and her death sentence.

Kozinski wrote, "The Constitution requires a fair trial. This never happened in Milke's case." The judge also mandated that Arizona authorities must provide Milke's attorneys with the detective's previously undisclosed personnel files. After doing so, the prosecution then has 30 days to decide whether or not they will retry Milke.

Arizona Attorney General Tom Horne has indicated he plans to appeal the judge's decision to the US Supreme Court. "If the court takes the appeal," he said, "I will argue it personally, as I have done in two previous cases over the past five months."

The continued use of capital punishment in more than 30 US states is a barbaric practice condemned and outlawed by the vast majority of the world's industrialized nations. But even within the framework of this depraved system, the conviction and death sentence of Debra Milke stands out for the prosecution's brazen disregard of constitutional principles and basic democratic rights.

The details of the crime for which Milke was convicted are horrific. A day after visiting Santa Claus at a mall, Christopher Milke asked his mother if he could see him again. The young boy got into a car with Milke's roommate, James Styers, hoping to make a return visit to the mall to see Santa.

According to Judge Kozinski's summary of the trial, Styers then picked up a friend, Roger Scott, "but instead of heading to the mall, the two men drove the boy out of town to a secluded ravine, where Styers shot Christopher three times in the head." Styers was convicted of first-degree murder and sentenced to death.

The only evidence presented by the prosecution at Debra Milke's trial was the testimony of Detective Armando Saldate, Jr., who claimed that Milke had confessed that her role in the murder and kidnapping was a "bad judgment call." Milke has maintained her innocence for the last 23 years.

Detective Saldate also testified at trial that Scott told him that Milke was involved in a plot to kill her son. Neither Scott nor Styers testified against Milke, and both have consistently maintained that she was not involved.

As Judge Kozinski notes, there were "no other witnesses or direct evidence linking Milke to the crime," other than Saldate's testimony. "The trial was essentially a swearing contest between Milke and Saldate," Kozinski wrote.

As the judge's summary of the case explains, not only was Saldate's interrogation of Milke a sham, but the detective's record of previous blatant misconduct was covered up by the Arizona authorities. This included a pattern of violations of suspects' Miranda rights and other constitutional violations during interrogations, in addition to other gross misconduct in the course of police duties.

There is no written or recorded record of Saldate's interrogation of Debra Milke. Despite a request from his superior that he record the interrogation, Saldate didn't take a recording device with him into the interrogation room. Additionally, Saldate claims he tore up the notes he supposedly took of the interrogation. There were no other witnesses to the interrogation and no one observed through a two-way mirror.

At trial, Milke testified that she requested an attorney.

Her request was ignored by Saldate, who testified that he doesn't have to stop talking to suspects just "because they asked for an attorney. That would be ridiculous." Saldate also claimed that Milke refused to have the conversation recorded, but admitted in court that he "basically didn't want to record it anyway," saying that "a tape recorder is an obstacle for [him] to get to the truth" and so "it's [his] practice never to use a tape recorder."

Kozinski writes in the court's ruling: "Saldate never asked Milke to put her confession in writing or initial a single sentence acknowledging she had confessed. Nor did Milke sign a Miranda waiver. Saldate testified that '[t]here was no document ... we had available to us' where 'we could have a suspect sign that they waive their rights.' And what of the practice of having a suspect sign the officer's Miranda card? 'I never knew that ever happened with my case or any other case I was involved in.' This, from an officer with twenty-one years on the Phoenix Police force."

Detective Saldate's misconduct was so egregious and his violations so numerous that an appendix to the appeals court ruling includes a pages-long chart documenting it. The misconduct includes "Lying to Internal Affairs Investigators," four instances of "Lying under oath," three "Fifth Amendment Violation[s]," and one "Fourth Amendment Violation."

It is only possible to provide a partial account here of Saldate's misconduct, but it is documented extensively in the appeals court's ruling. In one instance, Saldate ordered a juvenile to be detained in an interrogation room, handcuffed to a table, despite the police having "no information linking the Defendant" to a crime. The ruling notes: "The trial court suppressed the resultant murder confession and called the illegal detention 'a show of flagrant misconduct.'"

In another case: "Saldate admitted interrogating a suspect who was strapped to a hospital bed, incoherent and disoriented, after apparently suffering a skull fracture. When interviewed by doctors, the suspect did not know his own name, the year or the name of the president, but the state nonetheless presented the suspect's statement at trial." The defendant's conviction was subsequently vacated and a new trial ordered.

A 1973 police Internal Affairs Investigation found that Saldate stopped a motorist with a faulty headlight and possible outstanding warrant, but let her go without checking her warrant. Saldate initially lied to the investigators, but after his supervisors administered a polygraph he confessed to his misconduct. He said that

after stopping the motorist the woman allegedly offered him a kiss. According the appeals court ruling: "The two went to a 'less conspicuous place' where Saldate 'leaned inside her car, kissed her and deliberately began making advances and took liberties.' They agreed to meet later for sex."

The testimony of the perpetrator of this despicable behavior was the sole evidence presented by the Arizona authorities in their case against Debra Milke, which would serve as the basis for sending this woman to death row where she would serve more than two decades. Judge Kozinski asks in the appeals court ruling how this detective came to be the one tasked with interrogating—on his own—such a high-profile murder case.

"Is this par for the Phoenix Police Department," he writes, "or was Saldate called in on his day off because his supervisors knew he could be counted on to bend the rules, even lie convincingly, if that's what it took to nail down a conviction in a high-profile case?"

Despite the court's overturning of her conviction, Milke has not been removed from death row, due to Department of Corrections policy. She will be released only if prosecutors decide not to retry the case within 30 days of the release of Saldate's personnel file.

Milke's attorney Michael Kimerer told ABC News that his client is in a state of shock. "You sit there almost 23 years on death row with the specter of death hanging over your head and suddenly it's gone, and she needs to adjust how to react to it all," Kimerer said.

According to the latest figures available, there are 128 prisoners on death row in Arizona. According to the Death Penalty Information Center, as of 2012 there were 3,146 condemned inmates languishing in prisons across the US. The methods used in the trial and conviction of Debra Milke are an indication of what is included in the arsenal of police and prosecutors used to obtain convictions and death sentences in many of these cases.



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