

Texas woman wrongly convicted of murder exonerated after serving 18 years of life sentence

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Rosa Jimenez has been exonerated by the Texas Court of Criminal Appeals following the overturning of her murder conviction in May for the 2003 accidental death of a toddler. Jimenez was 20 and babysitting Bryan Gutierrez at the time that he choked to death.

Now forty and a grandmother, Jimenez spent 18 years of her 99-year prison sentence and missed her childrens' childhoods. Her conviction was a travesty of justice and her acquittal followed years of appeals and campaigning for her release. The case drew widespread attention among Mexican immigrants in the United States and a 2007 Spanish-language documentary, *Mi Vida Dentro (My Life Inside)*, documented her plight.

Jimenez was released from jail in 2021 on an order from Travis County District Court Judge Karen Sage, who concluded that she was subjected to a trial that included "false and misleading testimony" and was "infected with constitutional error," concluding she was "likely innocent."

According to Vanessa Potkin, director of special litigation for the Innocence Project and Jimenez's attorney, "Her wrongful conviction was not grounded in medical science, but faulty medical assumptions that turned a tragedy into a crime — with her own attorney doing virtually nothing to defend her. I wish we could say that what happened to Rosa was an isolated occurrence, but we have a real, pervasive problem in our country when it comes to how the criminal legal system treats the caregivers of children who are hurt or die. There are hundreds, if not thousands, of innocent caregivers and parents in prison today based on faulty, unscientific medical testimony misclassifying accidents or illness as abuse."

In fact, it was already evident that the trial was flawed from the outset, meaning that it was not merely the outcome of faulty medical assumptions but a deliberate policy pursued by the courts to obtain and uphold a conviction. Hearsay on the part of the prosecutor was allowed into the trial and left unchallenged by Jimenez's head public

defender, whose colleagues publicly denounced as "a hack" in November 2005. No physical evidence was produced by the prosecutor, with their whole case mainly revolving around the claim that the wad of five paper towels the toddler choked on formed a "lemon shape" which a child could not possibly swallow on their own initiative due to its size.

Jimenez is now suffering from end-stage kidney disease and is on a waiting list for a kidney transplant. She was diagnosed with Chronic Kidney Disease while in prison in 2013 and started dialysis months after her release in 2021.

Her page on the National Kidney Registry, where she is asking for a donor kidney, reads: "I developed kidney disease while wrongly incarcerated and have been told by my doctors that it is most likely the result of overuse of non-steroidal anti-inflammatory drugs like ibuprofen and naproxen, which were the only medications the prison gave me to deal with the pain of subchondral sclerosis in my hip, a pain so severe some mornings I could barely move. But I still had to endure the pain of working in the prison's fields, cutting grass, and picking vegetables."

Acquiring diseases, infectious or not, is common in American prisons. As the American Civil Liberties Union noted in 2022 article "Two Cups of Broth and Rotting Sandwiches: The Reality of Mealtime in Prisons and Jails," prison diets, which are "high in salt, sugar, and refined carbohydrates" and all but devoid of fruits and vegetables, "foster diabetes, hypertension, kidney disease."

By early 2020, five judges found that Jimenez was likely innocent. In a 2021 hearing, four experts in pediatric airways testified it was much more likely the boy swallowed the fatal paper towels, with Jimenez's legal team arguing that false evidence was presented at trial. The judge found that "There was no crime committed here ... Ms. Jimenez is innocent" and Jimenez was released on bond. The prosecution's expert submitted an affidavit in support of Jimenez's release, stating she had changed her opinion.

At the time of her arrest, Jimenez was a recent working class immigrant from Mexico who spoke no English and could not afford a lawyer, being assigned a public defender. She had no criminal history or history of physical abuse or drug abuse. While babysitting the 21-month-old Gutierrez at her apartment, she turned her attention away from him to prepare lunch for a few minutes. Following this she noticed him struggling to breathe, bringing him in her arms to a neighbors apartment. Paramedics later pulled out a wad of five bloody paper towels from the boys throat. Gutierrez suffered brain death as a result. The first responders and police concluded that the paper towels could have only been forced down the boys throat and Jimenez was arrested later that day at 11 p.m.

The sole defense medical expert witness produced by Leonard Martinez, Jimenez's head lawyer, was Ira Kanfer, who while being a Connecticut state medical examiner, "had no pediatric training and little clinical experience, and he wasn't a member of any relevant professional organizations, such as the American Academy of Forensic Scientists" according to a 2020 article by *Texas Monthly*.

Martinez had tried to acquire additional witnesses, especially ones with pediatric training or who knew something about choking, but they refused, "one because he felt the expert-witness fee Martinez offered wasn't sufficient and another because she said she was still owed payment from a previous case in Travis County." Martinez said he had requested more funds for another expert but was denied, but that this was not in writing as he had not filed this as an "ex parte motion." Meanwhile the prosecution was generously afforded four expert witnesses by the government.

Kanfer testified that the towels could have been self-ingested. He pointed to the fact that the autopsy found no signs of a struggle which would be conducive with forcing paper towels down the boy's throat. An August 30, 2005 *Austin American Statesman* article explained that, "During that struggle, Bryan's lips and the inside of his mouth would have been cut and bruised, and the paper towels might have been ripped apart, Kanfer said. The jury has heard no evidence of such injuries, and the paper towels weren't ripped."

Kanfer further pointed out that the "lemon" sized wad extracted from the child's throat—the dimensions of which the prosecution claimed proved an accident was impossible—was in that shape as a result of the process of extracting the towel and not originally in that shape in the child's airway.

Kanfer's testimony proved to be less than useful. Kanfer told the prosecution in the hallway they could "go f— themselves" after they badgered him on his credentials in

court. This may have proved to be merely a particularly tense out-of-court personal moment, had Jimenez's lawyer objected to a line of questioning in the courtroom which revealed this confrontation. Martinez refused to object to the line of questioning, despite it being unrelated to the case, allowing it to be introduced and as a result discredit his sole medical expert witness, despite the pleading of his co-counsel Catherine Haenni who whispered to him to "Object! Object!"

A girl who Jimenez cared for several years before the trial and her mother both testified they never knew Jimenez to be violent, and that Gutierrez "would open his arms, like he wanted to hug her" whenever he saw her coming to visit.

According to an August 27, 2005 article in the *Statesman*, at the trial Jimenez's husband Fidel Jaurez testified that "When I was sitting (down to eat), [Gutierrez] was always tempted to play with that roll of paper towels."

After Jimenez's conviction on November 11, 2005 the *Statesman* ran another article "Colleagues assail lawyer's defense—Local defense attorneys contend that ineffective work on behalf of baby sitter led to murder verdict." In the article, it was reported that "eight lawyers either testified or wrote in affidavits that Rosa Estela Olvera Jimenez should get a new trial because defense lawyer Leonard Martinez had been ineffective," with his co-counsel questioning his courtroom decisions and an appeal lawyer calling him "a hack" who "should have spent more time learning the rules of evidence."

The main point made by the lawyers was that Jimenez's public defender, Martinez, failed to object during the trial to the introduction of police affidavits as evidence as they included hearsay and denied Jimenez the right to cross-examine the witnesses. Austin appellate lawyer Terrence Kirk testified in a hearing for a retrial that "It's a tragedy because if hacks like this are allowed to continue to represent defendants, eventually an innocent person is going to be convicted because the state knows how to run over hacks."

Jimenez's lawyer was one of only 13 people qualified eligible to be appointed to death penalty cases at the time, according to State District Judge Bob Perkins. Her conviction illustrates the sort of class justice practiced under American capitalism.



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