

New Medical Knowledge Debunks Shaken Baby Conviction

[Joel Stashenko](#), New York Law Journal

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Renee Bailey in court for a hearing on her shaken baby conviction from the 2001 incident.. Jamie Germano/Democrat and Chronicle

The 2001 conviction of a woman for murdering a toddler whose death was ascribed by medical experts to shaken baby syndrome was vacated by a judge who ordered a new trial after he was convinced in a CPL 440.10 proceeding by new medical knowledge that it was more likely the child died from an accidental fall from a chair.

Monroe County Judge James Piampiano said there has been a "compelling and consequential shift" among medical experts over the past 13 years, bolstered by improved medical imaging technology, that persuasively argue against 2 1/2-year-old Brittney Sheets having died from shaken baby syndrome at the hands of Renee Bailey.

Bailey operated a home daycare center that Brittney attended.

"New research into the biomechanics of head injury reveals that the doctors who testified on behalf of the prosecution at trial misinterpreted the medical evidence to conclude that shaking, or shaking with impact, was the only mechanism capable of causing Brittney's injuries," Piampiano ruled in [People v. Bailey](#), 2001-0490.

In particular, the judge said, a "sea change" has occurred among medical experts over the potential of young children to suffer fatal head injuries in falls from relatively low heights.

The prosecution experts at Bailey's 2001 trial were in agreement that a fall was highly unlikely as the source of Brittney's injuries, Piampiano said. Now, most experts are in "general agreement" that a

toddler falling on his or her head from a low height under the right circumstances can sustain a fatal injury, the judge said.

Piampiano said prosecution experts also used the retinal hemorrhages noted in Brittney's eyes at her death to confirm their finding of shaken baby syndrome. Experts said such hemorrhages indicated a "rotational head injury" such as those suffered by children as they are violently shaken.

But since at least 2010, the judge said, it has been generally accepted that retinal hemorrhages can have multiple causes and that they are not specific to shaken baby syndrome cases.

"The credible and persuasive evidence presented by the defense established, by a preponderance of the evidence, a significant change in medical science relating to head injuries in children, generally, and the Shaken Baby Syndrome hypothesis, in particular, since the time of the trial in this matter," Piampiano wrote from Rochester.

If the same prosecution experts who appeared at Bailey's trial were to testify today, it is "unlikely" that they would "testify as adamantly, if at all," that Brittney died from being shaken, the judge said.

Piampiano's ruling was based on testimony from 13 medical experts, nine from the defense and four from the prosecution, at a hearing in April on Bailey's CPL 440.10 motion.

Monroe County District Sandra Doorley has not said whether her office will appeal Piampiano's Dec. 16 ruling or retry Bailey. She did not return a call for comment Friday.

Bailey, who is now 55, is serving a 15-year-to-life sentence for second-degree murder at Albion state prison.

She has maintained that Brittney jumped or fell from an 18-inch-high chair in the playroom of the home daycare center. Bailey said she was in the bathroom when Brittney was injured.

Piampiano noted that at least one defense expert witness testified at trial that Brittney's injuries were consistent with a fall, but that the other experts overwhelmingly opined that she died from a brain injury inflicted by being shaken.

Among the medical experts testifying in support of Bailey's position at the 440.10 hearing were Dr. Michael Baden, the former chief New York City medical examiner and Dr. John Plunkett, a forensic pathologist who has challenged the medical community's acceptance of some conditions as conclusive indicators of shaken baby syndrome.

Plunkett presented a videotape, viewed by Piampiano in camera, in which a 23-month-old child is seen falling on her head from the top of a 3 1/2-foot-high plastic playhouse-type toy to the carpeted floor of her garage. The girl died from the same kind of subdural hematoma blamed for killing Brittney. A family member caught the accidental fall on camera while videotaping the unidentified girl in 1993, Plunkett said.

Piampiano said in his ruling that the videotape showed precisely the kind of "low-velocity impact" fall that the experts at Bailey's trial said was highly unlikely to cause fatal injuries, yet which Bailey maintained was responsible for Brittney's death.

The prosecution's expert witnesses at the 440.10 hearing testified that shaken baby syndrome remained a more likely cause of Brittney's death than a fall.

Adele Bernhard, an adjunct professor at New York Law School and supervising attorney of the school's Post-Conviction Innocence Clinic, represented Bailey pro bono.

She said the ruling was the first she knows of in which a judge in New York has vacated a conviction where its determination of "new" evidence under CPL 440.10 were changes in the science underlying the defendant's conviction.

She said the ruling is a reminder that scientific or medical experts are not infallible.

"I think what this does is that it tells us all to be skeptical about science," Bernhard said. "When a doctor says something [as a witness], we should think hard about it. What is the basis for that conclusion? What facts are you relying on? What are the facts that are true?"

She said the prosecution's witnesses at Bailey's trial were not intentionally trying to mislead the jury. But she said that, over time, their testimony has proven to be misleading.

"It was wrong at the time, but they didn't realize it was wrong," Bernhard said. "They weren't misrepresenting the information. But it was inaccurate information that they gave the jury."

Bernhard said she learned about the case when Bailey, then an inmate in Bedford Hills state prison, wrote Bernhard an unsolicited letter seeking help.

"I thought the case was very convincing right off the bat," Bernhard said.

She said she was aided in her representation by Keith Findley of the University of Wisconsin School of Law's Innocence Project and the Innocence Network.

Assistant Monroe County District Attorneys Matthew Dunham and Andra Ackerman argued for the prosecution.

@/Joel Stashenko can be reached [via email](#) or on Twitter [@JoelStashenko](#).

Related Decisions:

- [The People of the State of New York, Plaintiff v. Rene Bailey a/k/a Renee Bailey, Defendant, 2001-0490](#)

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