

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

JEFFREY HAVARD

PETITIONER

VS.

Civil Action No. 5:08cv275KS

CHRISTOPHER EPPS, Commissioner, Mississippi
Department of Corrections, and
JIM HOOD, Attorney General of the State of Mississippi

RESPONDENTS

DECLARATION OF DR. STEVEN T. HAYNE

Pursuant to 28 U.S.C. § 1746, I, Dr. Steven T. Hayne, state as follows:

1. I am a physician practicing in the fields of anatomic, clinical, and forensic pathology. I graduated from medical school at Brown University and did my pathology training at Letterman Army Medical Center at the Presidio at San Francisco, California. I was affiliated with the Medical Examiner's Office with the Mississippi Department of Public Safety for many years.

2. On February 22, 2002, I performed an autopsy on Chloe Britt. Following that autopsy, I prepared a Final Report of Autopsy.

3. In December of 2002, I testified at the trial of Jeffrey Havard in the Circuit Court of Adams County, Mississippi. Mr. Havard was charged with capital murder in the death of Chloe Britt.

4. I recently reviewed the Final Report of Autopsy, my trial testimony in *State v. Havard*, and the report of the Mississippi Crime Laboratory regarding the death of Chloe Britt.



5. The Final Report of Autopsy can neither exclude nor include that a sexual assault occurred, and the origin of the anal contusion and dilation would have to be interpreted in light of other information.

6. The Final Report of Autopsy documents the presence of a one centimeter contusion on the anus of Chloe Britt. This contusion could have a variety of causes, and is not sufficient in and of itself to determine that a sexual assault occurred. The Final Report of Autopsy also notes that Chloe Britt had a torn frenulum. This injury has numerous potential causes. Whether this injury was the result of an iatrogenic injury or an assault cannot be determined with certainty.

7. During the autopsy of Chloe Britt, I found no tears of her rectum, anus, anal sphincter, or perineum.

8. The cause of death of Chloe Britt was not related to the one centimeter anal contusion or injury to her frenulum as noted in the Final Report of Autopsy. There is no evidence that the death of Chloe Britt was caused by any sexual act.

9. Dilated anal sphincters may be seen on persons who have died, as well as on a person prior to death without significant brain function. My experience as well as the medical literature recognize that a dilated anal sphincter is not, on its own, evidence of anal sexual abuse, but must be supported by other evidence.

10. Based upon the autopsy evidence available regarding the death of Chloe Britt, I cannot include or exclude to a reasonable degree of medical certainty that she was sexually assaulted. The presence or absence of sexual assault would require additional evidence above and beyond the autopsy findings.

11. I am willing to be deposed regarding my autopsy of Chloe Britt and related opinions.

I declare under penalty of perjury that the foregoing is true and correct.

This the 5 day of March, 2009.


DR. STEVEN T. HAYNE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

JEFFREY HAVARD

PETITIONER

VS.

CIVIL ACTION NO. 5:08-CV-275-KS

CHRISTOPHER EPPS, et al.

RESPONDENTS

DEPOSITION OF DR. STEVEN HAYNE

Taken at the offices of
Watkins & Eager,
400 East Capitol Street,
Jackson, Mississippi,
on Tuesday, November 23, 2010,
beginning at approximately 8:57 a.m.

APPEARANCES NOTED HEREIN

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<p>1 TABLE OF CONTENTS</p> <p>2 PAGE</p> <p>3 Title Page 1</p> <p>4 Appearance Page 2</p> <p>5 Table of Contents 3</p> <p>6 Index of Exhibits 3</p> <p>7 EXAMINATION INDEX</p> <p>8 Dr. Steven Hayne</p> <p>9 BY MR. JICKA 4</p> <p>10 BY MR. McNAMARA 33</p> <p>11 Certificate Page 39</p> <p>12 EXHIBIT INDEX</p> <p>13 MAR</p> <p>14 Exhibit</p> <p>15 1 Final Report of Autopsy 9</p> <p>16 2 Permit 10</p> <p>17 3 Declaration 14</p> <p>18 4 Medical records 19</p> <p>19 5 Crime lab report 30</p> <p>20 6 Notice 33</p> <p>21 7 Photocopy of 3 photographs 34</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 A. Good morning, Counselor.</p> <p>2 Q. I'm going to ask you some questions today,</p> <p>3 and if you don't understand my questions, will you</p> <p>4 please let me know that?</p> <p>5 A. I will do that, sir.</p> <p>6 Q. And I will probably butcher some of these</p> <p>7 terminologies and pronunciations. So if you'll help</p> <p>8 me, if I say it in the wrong way, you're certainly</p> <p>9 welcome to correct my pronunciations.</p> <p>10 A. Thank you, Counselor.</p> <p>11 Q. Will you please provide the Court with your</p> <p>12 professional qualifications, sir?</p> <p>13 A. I'm a pathologist. I work in the fields of</p> <p>14 anatomic, clinical, and forensic pathology. I've</p> <p>15 worked in the field for some 35 years. I'm certified</p> <p>16 in anatomic pathology, clinical pathology, forensic</p> <p>17 pathology, forensic medicine, forensic physician.</p> <p>18 I've worked in the state of Mississippi for some 20</p> <p>19 years in different capacities in relationship to</p> <p>20 medical-legal investigation of death, including acting</p> <p>21 State Medical Examiner, designated State Pathologist,</p> <p>22 and Chief State Pathologist.</p> <p>23 Q. And tell me a little bit about your</p> <p>24 education, sir.</p> <p>25 A. I did the predominant of my undergraduate</p>

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<p>1 work at North Dakota State, spent two years at the 2 University of North Dakota School of Medicine, and 3 transferred to Brown University in Providence, Rhode 4 Island, where I completed my medical degree, and then 5 I went to San Francisco at Letterman Army Medical 6 Center, where I trained in pathology. I rotated at 7 numerous institutions in the San Francisco Bay area, 8 including Children's Hospital, University of 9 California Moffitt Hospital, Union Memorial Blood 10 Bank, the Medical Examiner's Office for the City and 11 County of San Francisco, as well as others, and then 12 the last six months, I spent in nuclear medicine. 13 Q. Can you list for the Court your 14 qualifications in the area of child sexual abuse 15 investigation and diagnosis? 16 A. It's part of the field of forensic 17 pathology. I've also authored in the field. I wrote 18 a paper with Dr. Hammer, also a resident at the time, 19 at -- stationed at the Presidio with Letterman Army 20 Medical Center, in conjunction with my chief, Colonel 21 Starkey, and the Chief of OBGYN, Colonel Ansbacher. 22 We published that. It was a requirement for 23 graduation of a residency program that you submit and 24 have accepted a paper for publication. So Dr. Hammer 25 and I were pretty good friends, so we co-authored that</p>	<p>1 MR. JICKA: Okay. And I would agree with you 2 on that. 3 BY MR. JICKA: 4 Q. Dr. Hayne, you performed an autopsy on Chloe 5 Britt; is that correct? 6 A. Yes, Counselor. You pronounce it Chole 7 Britt. 8 Q. I think it's Chloe. 9 A. Chloe? 10 Q. But I'm not sure. 11 A. Because it is an Hispanic name. It would be 12 Chole (sic) if it was in Spanish. Maybe it would be 13 Chole. 14 Q. Why don't we call her Miss Britt? And that 15 was part of your duties in your profession; is that 16 correct? 17 A. That's correct. Now, on that date of 2002, 18 actually, it was the 22nd of February when the 19 postmortem examination was conducted. 20 Q. And do you have a copy, Dr. Hayne, of your 21 final report of autopsy with you today, sir? 22 A. I do, Counselor. 23 MR. JICKA: Okay. And, Pat, I'm going to 24 mark that final report of autopsy as an exhibit to his 25 deposition.</p>
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<p>1 paper, and published it. And it was basically 2 identification, collection of evidence, treatment, and 3 the like. It was a comprehensive paper, and it had a 4 long checklist, so it could be posted in an emergency 5 room somewhere, you can go right down the list. And 6 also, when I was in the military, not by choice, but I 7 had to do a lot of sexual assault work-ups in the 8 United States Disciplinary Barracks at Fort 9 Leavenworth, which, as you know, homosexuality in a 10 military institution like that is a major offense 11 under the Uniform Code of Military Justice. So I had 12 to go in night after night and do that work. And many 13 times we have had cases of sexual assault involving 14 death of a human being that we've done medical-legal 15 postmortem examinations on. 16 Q. Have you been accepted as an expert in this 17 field in courts? 18 A. Yes, sir. 19 MR. JICKA: Pat, I know the procedure here is 20 a little different than a typical case, and I don't 21 know if you would have any objection, but -- and I 22 don't know if you have any questions, but we would 23 tender him as an expert witness. 24 MR. McNAMARA: He's already been accepted as 25 an expert in this case.</p>	<p>1 (Exhibit 1 marked.) 2 BY MR. JICKA: 3 Q. Dr. Hayne, what was the purpose for you doing 4 an autopsy on Miss Britt? 5 A. It was to come to conclusions as to cause and 6 manner of death, cause of death being the medical 7 reason Miss Britt died, and the manner of death is the 8 classification of the death. And one has to come to a 9 conclusion, if it's suicide, accident, homicide, 10 natural, pending, or undetermined. Of course, 11 sometimes, cause of death, one cannot come to a 12 conclusion. 13 Q. Okay. And were you asked to do that by the 14 coroner of Adams County, sir? 15 A. The county coroner, medical examiner, 16 investigator is his official title, and it was James 17 Lee. 18 Q. And as part of his request for you to do an 19 autopsy on Miss Britt, was there documentation or a 20 permit that was issued to you by the Adams County 21 Coroner? 22 A. Yes, Counselor, there's a State form called a 23 ME-1, Medical Examiner 1 form, and that I made part of 24 the postmortem examination as a routine practice of 25 business.</p>

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<p>1 MR. JICKA: And I'm going to mark that, Pat, 2 as Exhibit 2, the permit from the Coroner of Adams 3 County. 4 (Exhibit 2 marked.) 5 BY MR. JICKA: 6 Q. What is the purpose when you receive this 7 permit, as you use it in your work? 8 A. Well, it's the request from the County in 9 writing to perform a medical-legal or forensic autopsy 10 the remains so identified on the paperwork, the ME-1 11 -- or ME-17 form. 12 Q. And on the permit that involves Miss Britt, 13 it lists different circumstances, I believe, for you 14 to, I guess, determine or to look at as you're 15 conducting your autopsy; is that correct? 16 A. That's correct. 17 Q. And one of those I see there is a note about 18 sexual assault. Do you see that located? 19 A. I do. 20 Q. And as part of your autopsy, even from the 21 beginning of the autopsy, was it part of your work to 22 determine whether there could be shown that there was 23 a sexual assault in this case? 24 A. In fact, to come to a conclusion, that -- or 25 not come to a conclusion, final conclusion.</p>	<p>1 not able to find any tearing of the anal area on this 2 child; is that right? 3 A. No, there was not. 4 Q. If that is something that you had noted or 5 found, then would you have noted it in your report, 6 correct? 7 A. I would have. 8 Q. And you also would have had photographs that 9 would have shown that on this child, correct? 10 A. I would have. 11 Q. All right. And it's mentioned -- sexual 12 assault or battery is not mentioned anywhere in this 13 report; is that correct? 14 A. No, I did not see evidence of that, 15 Counselor. I was asked in court, but I did not see 16 evidence in the autopsy, and, therefore, did not 17 reflect it in the report. 18 Q. You did find a one-centimeter contusion; is 19 that correct? 20 A. That's correct. 21 Q. Just for the record, how big is a 22 one-centimeter contusion? 23 A. Approximately like that, Counselor. 24 Q. Okay. Now, but that was not listed in the 25 list on the autopsy report as a traumatic injury; is</p>
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<p>1 Q. All right. But even from the beginning of 2 your work in this case, you knew that sexual assault 3 was at least an issue, at least in the minds of the 4 coroner and the district attorney, as presented to 5 you? 6 A. Not only from the paperwork, Counselor, but 7 also from telephonic communication from the County 8 Coroner, Medical Examiner, Investigator. 9 Q. You did conduct an autopsy on Miss Britt; is 10 that correct? 11 A. I did, Counselor. 12 Q. And in the report, there's no mention of a 13 sexual battery on this child; is that correct? 14 A. That is correct. 15 Q. And why is that not listed as something in 16 your final report of autopsy? 17 A. I could not come to a final conclusion as to 18 that, Counselor. 19 Q. Okay. 20 A. There was one injury that I indicated would 21 be consistent with the penetration of the anal area, 22 but that, in and of itself, I didn't feel was enough 23 to come to a conclusion that there was a sexual 24 assault in this particular death. 25 Q. Okay. When you did your autopsy, you were</p>	<p>1 that correct? 2 A. It wasn't, but it was listed in the body of 3 the report, and also in the illustration body diagram. 4 Q. In other words, you noted it in your report, 5 but did not list it as a traumatic injury to this 6 child? 7 A. That's correct. 8 Q. And is that because there could be many 9 possible alternative causes for a contusion such as 10 this found on this child? 11 A. It's probably a typo error, Counselor, 12 because I'm sure I dictated it, but the typist skipped 13 it. 14 Q. All right. The photographs we mentioned 15 didn't show any tearing; is that correct? 16 A. That is correct. 17 Q. All right. And, further, no tearing was 18 listed or noted in the autopsy report? 19 A. No lacerations or abrasions were identified, 20 only a single contusion. 21 Q. In this case, Dr. Hayne, you had prepared 22 earlier a declaration. Have you had an opportunity to 23 look at that? 24 A. I have. 25 MR. JICKA: I'm going to mark this, Pat, as</p>

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<p>1 the next numbered exhibit to Dr. Hayne's deposition, 2 which will be Exhibit 3. 3 (Exhibit 3 marked.) 4 BY MR. JICKA: 5 Q. Dr. Hayne, were you able to review this 6 declaration and correct it for any errors prior to 7 executing it on March 5th, 2009? 8 A. Well, sir, I'm looking to see if I can find 9 in my file here what you're addressing. 10 Q. I've got an extra copy. 11 A. Thank you. 12 Q. In this declaration, Dr. Hayne, it, first of 13 all, involves your work and your opinions in the 14 Jeffrey Havard matter, correct? 15 A. That's true. 16 Q. And you state, again, and forgive me, Pat, 17 I'm going to try not to be too redundant on this in 18 this deposition today, but, in there, you state that 19 you found no tears -- this is in paragraph seven, 20 Dr. Hayne. 21 A. Yes, sir. 22 Q. No tears to the rectum, anus, anal sphincter 23 or perineum; is that correct? 24 A. That's correct. 25 Q. And it's not possible that tears would have</p>	<p>1 also a mention of a sexual assault kit. 2 A. An RSVK 1111 kit was employed to collect 3 evidence that was subsequently submitted to the 4 Mississippi Crime Lab under chain of custody. 5 Q. And as part of your work here, and as a 6 result of the sexual assault kit, isn't it true that 7 there was no semen found after a serological 8 evaluation conducted on this child? 9 A. Actually, by microscopic examination, but no 10 spermatozoa were identified. 11 Q. Okay. And swabs -- I guess what happens is 12 that you will take swabs from different areas of the 13 child's anatomy; is that correct? 14 A. That's correct. 15 Q. And then you will look under a microscope for 16 any evidence that there might be sperm; is that 17 correct? 18 A. That's correct. We look both oral, anal, and 19 vaginal. 20 Q. And on this, it looks like, from the oral 21 swab, the vaginal, and the rectal swab, that there was 22 no evidence found of spermatozoa; is that correct? 23 A. That's correct. There are additional tests 24 that can be performed, serological tests, and I 25 believe those were performed, too, and they were also</p>
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<p>1 healed between the time that Miss Britt was seen in 2 the emergency room and that you performed the autopsy? 3 A. They would not. 4 Q. I want to ask a little bit about this area of 5 the human body. Do you agree that there's a delicate 6 tissue lining of the anus rectum that can be damaged 7 easily in a child of this age? 8 A. It can. It is a squamous mucosa lining, not 9 skin. 10 Q. Okay. 11 A. And that is more easily injured, traumatized, 12 than skin surface. 13 Q. And an injury can occur in a child like this, 14 even by the application of a rectal thermometer; is 15 that correct? 16 A. That could happen, but, Counselor, I think 17 that would be highly unlikely to see an injury of such 18 size as secondary to the placement of a thermometer by 19 medical personnel. 20 Q. Okay. All right. And in reviewing the 21 medical records, did you see where her temperature was 22 taken by rectal thermometer on multiple occasions 23 while she was in the emergency room? 24 A. I did see that, sir. 25 Q. As part of the final autopsy report, there's</p>	<p>1 negative. 2 Q. Okay. And the serological evaluation was 3 done with -- from an oral standpoint, a vulvar 4 standpoint, a vaginal standpoint, and a rectal 5 standpoint; is that -- 6 A. I believe that is correct, sir. 7 Q. Dr. Hayne, what are the signs of brain death 8 or lack of brain function in a child like this? 9 A. If you have brain death, first, there would 10 be flaccidity. There would be unconsciousness. 11 There would be muscle relaxation. There would be lack 12 of breathing, unless there was artificial respiration 13 being delivered. Body functions would essentially 14 cease, either at that time or shortly thereafter. 15 Eventually, there would be breakdown in tissue, 16 lysis, purification, and the like. 17 Q. Okay. Reviewing the medical records for 18 Miss Britt, I noted certain things, and I want to just 19 mention and ask if these are signs or could be signs 20 of lack of brain function, some of which you've 21 already mentioned. Dilated pupils, sir? 22 A. That would be. 23 Q. Fixed pupils? 24 A. That would be. 25 Q. Lack of muscle tone?</p>

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<p>1 A. That would be, also.</p> <p>2 Q. Asystole?</p> <p>3 A. Asystole?</p> <p>4 Q. Asystole, thank you.</p> <p>5 A. Yes. That would be if the heart is no longer</p> <p>6 functioning. You can have brain death and still have</p> <p>7 functioning of the heart. Cardiovascular</p> <p>8 functionality could remain for a period of time, and</p> <p>9 respiratory could for a period of time, too.</p> <p>10 MR. McNAMARA: I would have to interject and</p> <p>11 object at this time based on this is outside the scope</p> <p>12 of what we're here for as far as the sexual assault</p> <p>13 goes, without it being tied together as it is, and I</p> <p>14 would object to the continuing leading of the witness.</p> <p>15 MR. JICKA: Okay. And I'll -- I will try not</p> <p>16 to lead. Dr. Hayne has a kind of interesting position</p> <p>17 in this case, so I'm not sure exactly what witness he</p> <p>18 would be considered by the Court, but I'll -- I don't</p> <p>19 mind asking nonleading questions.</p> <p>20 A. May I interject one part to my -- one last</p> <p>21 part to my answer?</p> <p>22 BY MR. JICKA:</p> <p>23 Q. Sure.</p> <p>24 A. There are many definitions of death. It</p> <p>25 could be cardiovascular, respiratory, central nervous</p>	<p>1 postmortem period?</p> <p>2 A. It can be, yes.</p> <p>3 Q. And do children who have died of brain</p> <p>4 injuries have an increased likelihood of having a</p> <p>5 dilated anus postmortem?</p> <p>6 A. It's possible. I think you supplied me with</p> <p>7 one article from the Orange Journal, '97, "American</p> <p>8 Journal of Forensic Medicine and Pathology." In that</p> <p>9 particular article, there were 65 cases of which only</p> <p>10 a handful were involving children of less than one</p> <p>11 year of age, and of those --</p> <p>12 MR. McNAMARA: I object again. This is not</p> <p>13 relevant to what we're speaking about. This is a</p> <p>14 general study. This is not the case that we're</p> <p>15 talking about.</p> <p>16 BY MR. JICKA:</p> <p>17 Q. Go ahead, sir.</p> <p>18 A. And of all those, only one had suffered a</p> <p>19 traumatic death. In that particular case, the anus</p> <p>20 was described as slit-like. So in that case, there</p> <p>21 was no dilatation in a violent death that</p> <p>22 Dr. Lauridson is referring to in his opinion of 65</p> <p>23 cases published in the Orange Journal.</p> <p>24 MR. JICKA: And, Pat, I don't -- certainly</p> <p>25 I'm not dismissing your objection, but this goes</p>
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<p>1 system, somatic, cellular, and they all vary, you</p> <p>2 know, as to response of an individual.</p> <p>3 Q. Based upon -- you've reviewed the medical</p> <p>4 records for Miss Britt in this case; is that correct?</p> <p>5 A. I have, Counselor.</p> <p>6 MR. JICKA: I'm going to mark those as</p> <p>7 Exhibit 4 to your deposition.</p> <p>8 (Exhibit 4 marked.)</p> <p>9 BY MR. JICKA:</p> <p>10 Q. Based upon the information available to you,</p> <p>11 Dr. Hayne, was Chloe Britt brain dead or lacked brain</p> <p>12 function at the time that her anal dilation was first</p> <p>13 noted?</p> <p>14 A. It was.</p> <p>15 Q. And this was after she was successfully</p> <p>16 intubated; is that correct?</p> <p>17 A. That's correct.</p> <p>18 Q. And is this an opinion within a reasonable</p> <p>19 degree of medical certainty, sir?</p> <p>20 A. As reflected in the medical record, yes.</p> <p>21 Q. Okay. Do you commonly encounter dilated anal</p> <p>22 sphincters during a postmortem examination?</p> <p>23 A. It can occur, but it's not as common as I</p> <p>24 think people think.</p> <p>25 Q. Is that a recognized finding in the</p>	<p>1 directly to what we believe to be an issue in this</p> <p>2 case and allowed by Judge Starrett in his order.</p> <p>3 BY MR. JICKA:</p> <p>4 Q. Can resuscitation efforts result in a large</p> <p>5 amount of gas accumulating in the gastrointestinal</p> <p>6 tract?</p> <p>7 A. Ineffective resuscitation, cardiopulmonary</p> <p>8 resuscitation. I do not believe that was the case in</p> <p>9 this particular individual, in that there was stool in</p> <p>10 the large bowel, and that would have effectively</p> <p>11 blocked the passage of air going down the</p> <p>12 gastrointestinal tract and dilating the distal part of</p> <p>13 the GI tract.</p> <p>14 Q. So can this gas, the air and the amount of</p> <p>15 pressure on the bowel and colon, facilitate the</p> <p>16 passage of stool?</p> <p>17 A. It's possible, yes, ineffective</p> <p>18 cardiopulmonary resuscitation.</p> <p>19 Q. And isn't that what they had at the emergency</p> <p>20 room here, they had an ineffective CPR with this</p> <p>21 child?</p> <p>22 A. It would only be my impression. They are</p> <p>23 medically-trained personnel to deliver cardiopulmonary</p> <p>24 resuscitation in an adequate manner.</p> <p>25 Q. But this child was not revived at any point</p>

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<p>1 in time that you reviewed in the medical records?</p> <p>2 A. No, sir, was not.</p> <p>3 Q. Okay. If the gas enters into the colon,</p> <p>4 could that cause distention of the colon, and the</p> <p>5 rectum, and promote further dilation of the anus?</p> <p>6 A. If that had occurred, yes sir. I saw no</p> <p>7 evidence of that occurring, but if -- in a general</p> <p>8 sense, if gas is pushing stool, it can dilate, pack</p> <p>9 the stool, enlarging the distal bowel, yes, it could</p> <p>10 do that.</p> <p>11 Q. Okay. And could a spontaneous bowel movement</p> <p>12 also contribute to anal dilation?</p> <p>13 A. Only if they're very hard stool would I</p> <p>14 expect to see that, if there's enough pressure with</p> <p>15 force with the chest or enema, you can -- even in</p> <p>16 cases of acute appendicitis, in patients that have</p> <p>17 survived. So that can occur, but that's pushing stool</p> <p>18 down into the space of the vermiform appendix, but I</p> <p>19 didn't see evidence of that in this particular case.</p> <p>20 Q. If Chloe Britt was oxygen deprived for 45</p> <p>21 minutes to an hour before the anal dilation, is it</p> <p>22 possible that she was -- was located, is it probable</p> <p>23 that she lacked brain function?</p> <p>24 A. Forty-five minutes?</p> <p>25 Q. Forty-five minutes to an hour?</p>	<p>1 Q. The inner mucosa of rectum, is it sometimes</p> <p>2 visible after death in an autopsy?</p> <p>3 A. It could be. It's unusual. You would have</p> <p>4 to spread the buttocks to look and see that.</p> <p>5 Q. And what would it look like? Would it have a</p> <p>6 pink or red coloring to it?</p> <p>7 A. Usually be a pinkish color, where there would</p> <p>8 be congestion, usually dependent from the geographic</p> <p>9 or the gravitational pull of blood downward.</p> <p>10 Q. And if that inner mucosal lining was observed</p> <p>11 even by physicians, could it be confused as an anal</p> <p>12 injury?</p> <p>13 A. I would think not, Counselor. I can't speak</p> <p>14 for them, but a contusion is usually fairly-well</p> <p>15 circumscribed and outlined, while congestion would not</p> <p>16 be, but I would hate to speak for them.</p> <p>17 Q. Okay. Flaccid, that's the same as limp; is</p> <p>18 that correct?</p> <p>19 A. That's correct.</p> <p>20 Q. Could a flaccid or limp muscle condition</p> <p>21 contribute to anal dilation?</p> <p>22 A. That could, yes.</p> <p>23 Q. Okay. And a dilated anal sphincter is not,</p> <p>24 on its own, evidence of anal sexual abuse; is that</p> <p>25 correct?</p>
Page 23	Page 25
<p>1 A. That would be reasonable that she would have</p> <p>2 been dead.</p> <p>3 Q. Okay.</p> <p>4 A. You can survive for a few minutes with oxygen</p> <p>5 deprivation, if it's total oxygen deprivation. The</p> <p>6 brain has a store of glucose and oxygen for</p> <p>7 approximately 15 to 30 seconds, then unconsciousness</p> <p>8 will commence, and shortly after that, within two to</p> <p>9 three minutes, death will intervene.</p> <p>10 Q. In your autopsy report, Dr. Hayne, you note,</p> <p>11 several times, congestion. If you'll look -- you see</p> <p>12 on your finding, sir?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Can congestion cause contusions?</p> <p>15 A. No.</p> <p>16 Q. Okay. The congestion that you found with</p> <p>17 Chloe Britt, where was it located?</p> <p>18 A. It was in the viscera, the major organs.</p> <p>19 That's not to be unexpected. I don't think this death</p> <p>20 was an immediate death, and there would be a period of</p> <p>21 time, an agonal phase of death where the</p> <p>22 cardiovascular activity would be diminishing, pumping</p> <p>23 efficiency would also diminish, and blood would have a</p> <p>24 tendency to pool in the different organs, the lungs,</p> <p>25 spleen, kidneys, and the like, the liver.</p>	<p>1 A. It is not by itself, no.</p> <p>2 Q. Okay. To determine that sexual abuse is a</p> <p>3 probability, you would need additional evidence than</p> <p>4 just the dilated anus; is this correct?</p> <p>5 A. I would like to see more evidence as to</p> <p>6 traumatic injuries, also clinical history, and,</p> <p>7 hopefully, by laboratory testing.</p> <p>8 Q. Okay. And we don't have here in your</p> <p>9 analysis, and your autopsy of Miss Britt, that</p> <p>10 additional type of evidence; is that correct?</p> <p>11 A. Do not. I only have a contusion, which is a</p> <p>12 traumatic injury. We do not have abrasions,</p> <p>13 lacerations, presence of seminal fluid, spermatozoa,</p> <p>14 and the like.</p> <p>15 Q. And, Dr. Hayne, can you say from your autopsy</p> <p>16 evidence, and from the coroner's inquest, the medical</p> <p>17 records that you reviewed, the photographs, and the</p> <p>18 laboratory findings, that this child, Miss Britt, was</p> <p>19 sexually assaulted?</p> <p>20 A. I could not come to that final conclusion,</p> <p>21 Counselor. As I remember in trial testimony, I said</p> <p>22 that the contusion would be consistent with a sexual</p> <p>23 abuse, but I couldn't say that there was sexual abuse,</p> <p>24 and, basically, I deferred to the clinical examination</p> <p>25 conducted at the hospital.</p>

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<p>1 Q. And so from your standpoint and from your 2 expertise, you cannot say that this child was sexually 3 abused, to a reasonable degree of medical certainty; 4 is that correct?</p> <p>5 A. I could not now and I could not then, either; 6 at the trial, or when I wrote the report, or discussed 7 the case with the coroner.</p> <p>8 Q. Okay. Is physical sexual abuse of a child a 9 medical diagnosis?</p> <p>10 A. Well, there's a component of a medical 11 diagnosis. You're describing also a legal issue, too.</p> <p>12 Q. Right.</p> <p>13 A. The diagnosis could come from laboratory 14 testing. It could come from physical exam by a 15 treating physician. It could also come from a 16 pathologist in a case where there's death, also from 17 scene investigation. So it's a combination of things, 18 but it's also a legal, and as you notice, I never used 19 the term, "rape." That is a legal term, not a medical 20 term.</p> <p>21 Q. Yes, sir. Are you familiar with the 22 expertise of the doctors and nurses that treated this 23 child at the emergency room?</p> <p>24 A. I'm not.</p> <p>25 Q. Do you know --</p>	<p>1 Havard's trial, correct?</p> <p>2 A. I did, sir.</p> <p>3 Q. And you were not asked, actually, about 4 sexual battery during that trial, were you, sir?</p> <p>5 A. Not specifically, no.</p> <p>6 Q. But you were aware, from even from the 7 coroner's permit, that that was an issue in the case, 8 correct?</p> <p>9 A. Oh, yes, and I knew before I even stepped on 10 the witness stand that was going to be an issue.</p> <p>11 Q. Okay. And prior to the trial, you discussed 12 this with the district attorney whether you could say 13 to a reasonable degree of medical certainty or even to 14 a probability that sexual abuse occurred, correct?</p> <p>15 A. That's correct. But all I could tell the 16 district attorney, prior to trial, was that there was 17 a contusion, and that would be consistent with sexual 18 abuse, but I'd like to see more evidence before I made 19 that next and more significant evaluation and 20 conclusion.</p> <p>21 Q. Okay. You -- if you had been asked the same 22 questions we -- that I've been asking you today in 23 court about sexual abuse, would you have answered them 24 in the same manner, sir?</p> <p>25 A. Exact way. I think I at least touched on</p>
Page 27	Page 29
<p>1 MR. McNAMARA: Object to anything along this 2 line. The doctor has stated he is not familiar with 3 their qualifications. He'd be completely incompetent 4 to answer any questions regarding that.</p> <p>5 BY MR. JICKA:</p> <p>6 Q. Do you know what, if any, experience they had 7 ever treating children that had had sexual abuse?</p> <p>8 A. I don't know that, Counselor.</p> <p>9 Q. Would you agree that it takes a certain 10 medical expertise to determine whether a child has 11 ever been sexually abused?</p> <p>12 A. I would agree with that, yes.</p> <p>13 Q. And in this case, from your work, hired by 14 the State, you could not make a determination that 15 sexual abuse was a probability in this case, correct?</p> <p>16 A. I could not come to a final conclusion, 17 Counselor. I could only come to the conclusion I so 18 testified in court, that the contusion was consistent 19 with what I've seen in a sexual abuse case. And also, 20 just technically, I was contracted not with the State, 21 but by the County.</p> <p>22 Q. Thank you.</p> <p>23 A. Adams County.</p> <p>24 Q. And I appreciate it. Thank you for 25 correcting that. Dr. Hayne, you testified at Jeffrey</p>	<p>1 some of those, and I have not changed my opinion, and 2 it would make no difference whether defense or 3 prosecution was asking me, the answer would be the 4 same.</p> <p>5 Q. That leads me to my next question. Did you 6 ever meet with Gus Sermos or Robert Clark, 7 Mr. Havard's attorneys about this case?</p> <p>8 A. I don't remember that, Counselor, but I --</p> <p>9 MR. McNAMARA: And I object. This is off the 10 subject, not relevant.</p> <p>11 BY MR. JICKA:</p> <p>12 Q. If requested by them, would you have met with 13 the attorneys for Mr. Havard in this case?</p> <p>14 A. I always honor those requests, either 15 prosecution or defense.</p> <p>16 Q. And would you have answered their questions 17 in a meeting the same way you have today, if asked?</p> <p>18 A. If they were asking the same questions, I 19 would respond the same way.</p> <p>20 Q. Dr. Hayne, you can't say, or can you say, 21 that Chloe Britt was sexually penetrated to a 22 reasonable degree of medical certainty in this case?</p> <p>23 A. I cannot. All I can say is the injury 24 sustained would be consistent with that, but that's 25 not a definitive diagnosis. And maybe I should</p>

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<p>1 explain.</p> <p>2 Q. Sure.</p> <p>3 A. I use a series of qualifiers, with reasonable</p> <p>4 medical certainty, I can say exclude, suggestive of,</p> <p>5 may fit, consistent with, and diagnostic of.</p> <p>6 Q. Okay. Let's go off the record for a second.</p> <p>7 Let me review my notes and see what else I have.</p> <p>8 A. Sure.</p> <p>9 MR. MAGEE: Off the record. The time is</p> <p>10 9:30.</p> <p>11 (Recess.)</p> <p>12 (Exhibit 5 marked.)</p> <p>13 MR. MAGEE: Back on the record. The time is</p> <p>14 9:40.</p> <p>15 BY MR. JICKA:</p> <p>16 Q. Dr. Hayne, thank you for helping me through</p> <p>17 this information today. What I'd like to do is show</p> <p>18 you what I've marked as Exhibit 5, and ask you if you</p> <p>19 can identify what that document is, sir?</p> <p>20 A. This is a report from the Mississippi Crime</p> <p>21 Lab, their facility in Jackson, concerning samples</p> <p>22 that were collected. This would be -- appears to be</p> <p>23 from the hospital, including clothing, and then</p> <p>24 there's also a pillow case, and there's a purple-top</p> <p>25 tube of blood, and then it discusses the results of</p>	<p>1 there any evidence or DNA connecting Jeffrey Havard</p> <p>2 with a sexual abuse of Miss -- of the child, Miss</p> <p>3 Britt?</p> <p>4 A. In this particular one, I do not see evidence</p> <p>5 of that. This is basically clothing and other items</p> <p>6 involving the defendant and the decedent. This is not</p> <p>7 the material, that I can determine, that was submitted</p> <p>8 from the autopsy itself.</p> <p>9 Q. So this would be additional materials that</p> <p>10 were tested with -- under the sexual assault evidence</p> <p>11 kit, in addition to the swabs that you've already</p> <p>12 testified about; is that correct?</p> <p>13 A. That's correct. It indicates such items as</p> <p>14 clothes removed at Natchez Community Hospital.</p> <p>15 MR. McNAMARA: And for the record, I continue</p> <p>16 to object. This is not a document that the doctor is</p> <p>17 familiar with or was generated by the doctor.</p> <p>18 A. And fitted sheet beside a stove, and a used</p> <p>19 baby diaper, and items like that, Counselor.</p> <p>20 BY MR. JICKA:</p> <p>21 Q. Thank you, sir. All right. That's going to</p> <p>22 be Exhibit 5. Dr. Hayne, I usually start with this,</p> <p>23 but I guess I'll end at least your direct examination</p> <p>24 with this. We had noticed your deposition and asked</p> <p>25 you to bring anything that you had with you regarding</p>
Page 31	Page 33
<p>1 the studies that --</p> <p>2 MR. McNAMARA: I'll have to object. It</p> <p>3 sounds like the doctor is not familiar with this</p> <p>4 document.</p> <p>5 MR. JICKA: All right.</p> <p>6 BY MR. JICKA:</p> <p>7 Q. Go ahead, sir.</p> <p>8 A. And then remarks that some of the specimens</p> <p>9 were retained for DNA testing, also on an Eddie</p> <p>10 Walker. From an Eddie Walker, I should say.</p> <p>11 Q. And, basically, in Exhibit 5, we have some</p> <p>12 results from a sexual assault evidence collection kit</p> <p>13 labeled Jeffrey Havard; is that correct?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And in your work, are you familiar what makes</p> <p>16 up these sexual assault evidence collection kits?</p> <p>17 A. I am, sir. We use them routinely.</p> <p>18 Q. And what is that, sir?</p> <p>19 A. RSVK 1111 kit, that would be for collection</p> <p>20 of saliva, collection of vaginal in fluid, rectal</p> <p>21 swabs, vaginal swabs, vulvar swabs, oral swabs, any</p> <p>22 clothing, hair samples, and the like, also, DNA tube</p> <p>23 of blood.</p> <p>24 Q. And in all of the evidence that you had</p> <p>25 mentioned and that's shown here on Exhibit 5, was</p>	<p>1 this matter. What do you have in your possession</p> <p>2 involving this Jeffrey Havard matter, sir?</p> <p>3 A. This is the complete file, and I also brought</p> <p>4 a tape. This the complete file that I have,</p> <p>5 Counselor.</p> <p>6 MR. JICKA: Okay. Thank you, sir. All</p> <p>7 right. I'm going to make Exhibit 6 his notice of the</p> <p>8 videotaped deposition. All right. We will tender the</p> <p>9 witness, Pat.</p> <p>10 (Exhibit 6 marked.)</p> <p>11 EXAMINATION</p> <p>12 BY MR. McNAMARA:</p> <p>13 Q. Doctor, let's start off real quickly and just</p> <p>14 ask you, is your -- in your opinion, the testimony</p> <p>15 that you've given today, is it consistent with the</p> <p>16 testimony that you gave at trial?</p> <p>17 A. It is, sir.</p> <p>18 Q. Have you had any change of heart? Would you</p> <p>19 change your testimony?</p> <p>20 A. I've seen no new facts to change my</p> <p>21 testimony, Counselor.</p> <p>22 Q. Okay. I'll ask -- I have here -- have you</p> <p>23 seen the pictures you took at the autopsy --</p> <p>24 A. Not since the trial, sir.</p> <p>25 Q. -- in review? Okay. I'll pass you these</p>

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<p>1 three -- what I have here is a copy of the three, and 2 we'll ask that that be substituted as an exhibit. And 3 can you identify those pictures or do you recall 4 those? They have your markings on there. 5 A. Yes, Counselor, I do recognize these. 6 (Exhibit 7 marked.) 7 BY MR. McNAMARA: 8 Q. Okay. One question I'd ask, as you see those 9 injuries to the child's anus there, do you find that 10 to be consistent with the insertion of a child's 11 rectal thermometer? 12 A. I did not think that was an insertion injury 13 from a rectal thermometer by medical personnel. I 14 could not exclude it, but I think it was unlikely, 15 Counselor. 16 Q. Okay. That is an abnormal anus, isn't it? 17 A. It is, Counselor. 18 Q. Did you -- to the question of the lack of 19 semen or DNA evidence, is there a requirement that 20 someone else's DNA or semen be present? 21 A. No, sir. 22 Q. They're just cause for penetration, is that 23 correct? 24 A. That's correct, sir. It does not necessarily 25 mean that a penis was the device used to penetrate.</p>	<p>1 is that -- that's how I'm looking at it. 2 A. Yeah, it points towards the perineum, yes. 3 Q. Is that indicative of that's not a tear, that 4 would be just a stretch? 5 A. I did not see a tear, Counselor, no. 6 Q. What is that indicative of, that 12 o'clock 7 injury? 8 A. There was dilatation at that site, Counselor. 9 Q. Okay. But it was dilatation of the entire 10 anus, correct? 11 A. Yes, but more pronounced at that point. 12 Q. Okay. In describing that in your report, you 13 say, on page 6 of your report, section F, 14 gastrointestinal system, do you see that one? I'm 15 sorry, I may be -- 16 A. Yes. 17 Q. You've got it? 18 A. Yes. 19 Q. Is it says, "A section of anus reveals 20 submucosal hemorrhage." 21 A. Yes. 22 Q. Where did you explain submucosal hemorrhage? 23 A. That is in the microscopic, "A section of 24 anus reveals submucosal hemorrhage," yes, Counselor. 25 That would be the contusion.</p>
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<p>1 It could be some other object. 2 Q. There are several references throughout the 3 trial, something about 12 o'clock, there was an injury 4 at 12 o'clock of the anal area? 5 A. Yes, Counselor. 6 Q. Where exactly is 12 o'clock on that? 7 A. May I point, Counselor? 8 Q. That would be at the top, where -- 9 A. Yes, Counselor. 10 Q. -- there's sort of a slender -- it's round in 11 one area, and then it goes up and it's sort of 12 slender? 13 A. That's correct, sir. 14 Q. Is that normal for a child to have that -- 15 that wouldn't be a tear, that would just be -- what 16 would that be? 17 A. For what? 18 Q. I'm sorry. The -- at 12 o'clock, it shows -- 19 the pictures you're holding, there is a picture of the 20 baby's anus? 21 A. That's correct. 22 Q. And it's rounded; is that correct? 23 A. It's elliptical. 24 Q. Well, toward the top of that 12 o'clock area, 25 does it -- it peaks, it goes up, and comes to a point;</p>	<p>1 Q. And a contusion is? 2 A. Located at the point that I indicated to you. 3 Q. Okay. The definition of a contusion, what 4 would that be? 5 A. Contusion is a tearing of blood vessels 6 underneath the skin or mucosa with collection of blood 7 at that site manifested by an area of discoloration, 8 when one's looking at the injury, external to the 9 injury itself. The lining, either the skin or mucosa, 10 remains intact, and usually there's no bleeding on the 11 skin or mucosal surface. 12 Q. Okay. 13 A. If one takes a microscopic section, you can 14 see bleeding outside the vessels into the soft tissue, 15 which would separate congestion from a traumatic 16 injury, is a contusion. 17 Q. Okay. Final question, so -- being redundant, 18 but you're saying, your testimony today is it's still 19 consistent with what you testified to at trial, and 20 you wouldn't change it? 21 A. No, sir. I would only change it if I saw 22 additional information. And I'd like to point out, I 23 did not come to a final conclusion. 24 Q. Okay. But you would agree with your 25 testimony then that the injuries were consistent with</p>

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1 **an object being inserted or penetration?**

2 MR. JICKA: Object to the form.

3 **A. Yes, they were consistent with that.**

4 MR. McNAMARA: That's all I have.

5 MR. JICKA: Just one second. Let's go off
6 the record.

7 MR. MAGEE: Off the record. The time is
8 9:53.

9 (Recess.)

10 MR. MAGEE: This concludes the deposition.
11 The time is 9:56.

12 (Whereupon the deposition was concluded at
13 9:56 a.m., the same day.)
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1 CERTIFICATE OF COURT REPORTER

2 I, Catherine M. White, C.S.R. and Notary
3 Public, Hinds County, Mississippi, do hereby certify:

4 That on the 23rd day of November, 2010, there
5 appeared before me, pursuant to notice and the Federal
6 Rules of Civil Procedure, Dr. Steven Hayne as a witness
7 in the above-mentioned cause;

8 That said witness was duly sworn by me to tell
9 the whole truth, and nothing but the truth in said
10 cause;

11 That counsel appeared on behalf of the
12 respective parties as hereinbefore set forth;

13 That the foregoing deposition was taken by me
14 by means of Stenograph machine and translated into
15 transcript form by me, and that the foregoing 38 pages
16 contain a full, true and correct transcription of the
17 testimony of said witness;

18 That I am not in any way associated with any of
19 the parties to said cause of action, or their counsel,
20 and that I am not interested in the event hereof.

21 IN WITNESS WHEREOF, I have hereunto set my hand
22 this the 29th day of November, 2010.
23

24 _____
Catherine M. White

CSR No. 1309

25 My Commission expires: 2/1/2014

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

JEFFREY HAVARD

PETITIONER

VS.

Civil Action No. 5:08cv275KS

CHRISTOPHER EPPS, Commissioner, Mississippi
Department of Corrections, and
JIM HOOD, Attorney General of the State of Mississippi

RESPONDENTS

AFFIDAVIT OF DR. STEVEN T. HAYNE

STATE OF MISSISSIPPI

COUNTY OF HINDS

I, the undersigned, Dr. Steven T. Hayne, being over the age of twenty-one (21) years, and competent to testify to the matters set forth herein, do hereby state the following:

I. I am a physician practicing in the fields of anatomic, clinical, and forensic pathology. I graduated from medical school at Brown University and did my pathology training at Letterman Army Medical Center at the Presidio at San Francisco, California. I was affiliated with the Medical Examiner's Office with the Mississippi Department of Public Safety for many years.

II. On February 22, 2002, I performed an autopsy on Chloe Britt. Following that autopsy, I prepared a Final Report of Autopsy.

III. In December of 2002, I testified at the trial of Jeffrey Havard in the Circuit Court of Adams County, Mississippi. Mr. Havard was charged with capital murder in the death of Chloe Britt.



IV. I recently reviewed the Final Report of Autopsy, my trial testimony in *State v. Havard*, and other documents related to the *Havard* case.

V. I found no definitive evidence of sexual abuse based upon my findings. A finding of sexual assault was not conclusively demonstrated.

VI. At trial, I testified that the cause of death of Chloe Britt was consistent with Shaken Baby Syndrome. Recent advances in the field of biomechanics demonstrate that shaking alone could not produce enough force to produce the injuries that caused the death of Chloe Britt. The current state of the art would classify those injuries as shaken baby syndrome with impact or blunt force trauma.

VII. These statements are made with a reasonable degree of medical certainty.

VIII. I am willing to be deposed or testify to the Court regarding my autopsy of Chloe Britt and related opinions.

Further, affiant sayeth not.

This the 22ND day of JULY, 2013.


DR. STEVEN T. HAYNE

STATE OF MISSISSIPPI

COUNTY OF HINDS

PERSONALLY APPEARED BEFORE ME, the undersigned authority, in and for aforesaid county and state, on this the 20th day of JULY, 2013, within my jurisdiction, the within named, Dr. Steven T. Hayne, who acknowledged to me that he executed the above and foregoing instrument for the purposes therein stated.

Thea M Dixon
NOTARY PUBLIC

MY COMMISSION EXPIRES:

JAN 19 2014



IN THE SUPREME COURT OF MISSISSIPPI

JEFFREY HAVARD, *Petitioner*

vs.

CAUSE NO. 2013-DR-01995-SCT

STATE OF MISSISSIPPI, *Respondent*

AFFIDAVIT OF DR. STEVEN T. HAYNE

STATE OF MISSISSIPPI

COUNTY OF HINDS

I, the undersigned, Dr. Steven T. Hayne, being over the age of twenty-one (21) years, and competent to testify to the matters set forth herein, do hereby state the following:

I am a physician practicing in the fields of anatomic, clinical, and forensic pathology. I graduated from medical school at Brown University and did my pathology training at Letterman Army Medical Center at the Presidio at San Francisco, California. I was affiliated with the Medical Examiner's Office with the Mississippi Department of Public Safety for many years.

On February 22, 2002, I performed an autopsy on Chloe Britt. Following that autopsy, I prepared a Final Report of Autopsy.

In December of 2002, I testified at the trial of Jeffrey Havard in the Circuit Court of Adams County, Mississippi. Mr. Havard was charged with capital murder in the death of Chloe Britt.

I recently reviewed the Final Report of Autopsy, my trial testimony in *State v. Havard*, and other documents related to the *Havard* case.

I have reviewed the article written by Jerry Mitchell, and published in the Clarion-Ledger newspaper on January 19, 2014, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference. The article includes statements and direct quotations attributed



to me. I recall making those statements and quotations, they are accurate, and I stand by them to this day.

Prior to trial and before taking the witness stand at trial, I informed the prosecutor, Ronnie Harper, and members of his office that I could not support a finding of sexual abuse in this case

My statements in this affidavit and in the newspaper article attached as Exhibit "A" are made to a reasonable degree of medical certainty.

I am willing to be deposed or testify to the Court regarding my autopsy of Chloe Britt and related opinions. Indeed, I would prefer to testify regarding all matters related to Mr. Havard's case.

Further, affiant sayeth not.

This the 25th day of July, 2014.


DR. STEVEN T. HAYNE

STATE OF MISSISSIPPI

COUNTY OF HINDS

PERSONALLY APPEARED BEFORE ME, the undersigned authority, in and for aforesaid county and state, on this the 25th day of July, 2014, within my jurisdiction, the within named, Dr. Steven T. Hayne, who acknowledged to me that he executed the above and foregoing instrument for the purposes therein stated.


NOTARY PUBLIC

MY COMMISSION EXPIRES:



The Death of Chloe Britt: Capital murder or accidental fall?

Written by Jerry Mitchell

Jan. 20, 2014 |

EXHIBIT

" A "

edger.com

The Death of Chloe Britt: Capital murder or accidental fall?

Thousands of Americans are behind bars, convicted of shaking babies to death — and some experts now say the science that put them there is blurry. Since 2000, at least 11 Mississippians have been convicted in such cases with two of them sitting on death row. Jeffrey Havard is one of them.

Thousands of Americans are behind bars, convicted of shaking babies to death — and some experts now say the science that put them there is blurry.

Since 2000, at least 11 Mississippians have been convicted in such cases with two of them sitting on death row. Jeffrey Havard is one of them:

Lab technician Shelley Smith dashed into the emergency room of Natchez Community Hospital, holding the limp body of an infant. The skin of 6-month-old Chloe Madison Britt looked blue.

"The baby isn't breathing," Smith screamed. "Call a code."

It was Feb. 21, 2002, a Thursday night in Natchez, hardly as busy as the weekends when they treated their share of bar-stabbing and car-crash victims.

Nurse Patricia Murphy heard the Code 300 — anyone available should rush to the emergency room — and dashed down to where doctors and nurses were already working on the baby, who had no pulse.

At 10:04 p.m., they got their first ray of hope. Chloe's skin began to turn pink.

They could see bruises on her forehead and the front of her thighs. A nurse removed her diaper to take her temperature and said, "Look at this."

They noticed the baby's rectum was dilated and called police.

Not long after, they lost her pulse. Her face swelled; so did her brain. By 10:50 p.m., doctors declared her dead.

Nine days before Christmas, prosecutors and defense lawyers selected a jury for the capital murder trial of Jeffrey Havard, the 22-year-old boyfriend of Chloe's mother, Rebecca. In his opening statement, Assistant District Attorney Tom Rosenblatt told jurors, "Dr. Steven Hayne will come and testify for you and how he confirmed the nurses' and doctors' worst fears this child had been abused and this child had been penetrated, and the child had died (of) what he refers to as shaken baby syndrome."

Defense lawyer Robert Clark told jurors the child had slipped from Havard's arms after he gave her a bath, her head striking a toilet. "Jeffrey did not intend to kill this child," he said. "This was an accident."

Chloe's mother, Rebecca, testified Havard was in the bathroom when she arrived home and she went into

the bedroom, where Chloe was sleeping, and found she wasn't breathing.

She said she tried resuscitation, and they rushed to the hospital.

Havard never mentioned anything happening to the baby, she said.

Jurors watched a videotaped statement in which Havard told deputies he had given Chloe a bath and that he had accidentally dropped her.

"She just kind of gasped for air like I had scared her," he said. "So I took her, and I shook her. I didn't shake her hard. I don't think I did."

She cried, and he comforted her and thought she was OK when he put her back to bed, he said.

When deputies asked him about injuries to her anal area, he said his finger might have slipped. "Maybe I went too far in on her when I was wiping her out, inside of her butt," he said.

One by one, doctors, nurses and others described an anal dilation the size of a quarter. One by one, they described injuries to the anal area — tears, lacerations and blood oozing from the rectum. One by one, they testified these injuries proved sexual assault.

Amy Winter, a forensic biologist with the State Crime Lab, testified she used a rape kit and found no semen or foreign DNA.

Under cross-examination, prosecutors asked her if a bath — which Havard told deputies he had given Chloe before she fell — could have gotten rid of such evidence. She said yes.

All the doctors concluded Chloe had died of shaken baby syndrome, and so did Hayne, who performed the autopsy.

"The type of injuries that you can see that parallel these are in motor vehicle crashes, falls from significant heights and the like, sir," Hayne said.

Asked by District Attorney Ronnie Harper at trial about the injuries to the rectal area, Hayne replied, "It would be consistent with penetration of the rectum with an object, sir."

The jury deliberated 40 minutes before convicting Havard of capital murder. Havard's mother and grandmother begged for jurors to spare his life, but jurors concluded he deserved death.

Circuit Judge Forrest Johnson asked Havard if he had anything to say before sentencing.

"I am innocent of this," Havard replied.

The judge remarked, "Just when you think that you have seen everything and that you have seen or heard of the absolute low point of evil and human depravity, someone like you comes along and shows us a new low in human behavior."

He then sentenced Havard to die by lethal injection.

Pediatric neurosurgeon Dr. Norman Guthkelch had wondered about a medical mystery reported for decades — some babies bleeding atop their brains, despite little outside evidence of head trauma.

When a colleague suffered similar bleeding after riding a roller coaster, Guthkelch suggested whiplash-type injuries were to blame. He published a paper in 1971, warning parents about the dangers of shaking their children.

In the years that followed, shaken baby syndrome became widely accepted in the medical community, diagnosed through a triad of symptoms: subdural bleeding (blood collecting between the brain and the skull), retinal bleeding (bleeding in the back of the eye) and brain swelling.

Courts recognized the syndrome, and the triad became proof of fatal abuse — “a medical diagnosis for murder,” said Deborah Tuerkheimer, author of the new book, “Flawed Convictions: ‘Shaken Baby Syndrome’ and the Inertia of Injustice.”

In 1987, public questions began to arise when biochemical engineers from Penn State University tested the hypothesis. They found shaking alone failed to cause the blood vessels in the brain to rupture. It was only when the head made impact that researchers observed bleeding in the brain.

Despite the findings, shaken baby syndrome continued to be diagnosed and used to prosecute.

In 1995, prosecutors in Wisconsin charged caregiver Audrey Edmunds with murder, concluding she had shaken 7-month-old Natalie Beard to death — despite no witnesses and no outside evidence of trauma.

She told authorities the child was fussy and so she left her with a bottle. When she returned from helping other children, Edmunds found Natalie unresponsive.

At trial, medical experts for the prosecution told the jury that only shaking could explain the injuries, comparing them to a speeding car hitting the baby.

The jury convicted Edmunds, who insisted on her innocence but had no explanation for the injuries. The judge sentenced her to 18 years in prison.

In the years since, medical belief that the shaken baby syndrome’s triad of symptoms provided ironclad proof of homicide has begun to crumble with several studies raising doubts.

Some biomechanical studies suggest shaking a baby to death would be impossible without also injuring the child’s neck or spine.

In 2009, the American Academy of Pediatrics recommended the diagnosis of the syndrome be discarded and replaced with “abusive head trauma.”

Despite the changes, Americans continue to be prosecuted using shaken baby syndrome testimony, with thousands already convicted, said Tuerkheimer, a professor at DePaul University College of Law.

In 2008, the Wisconsin Supreme Court granted Edmunds a new trial.

The emergence of a “significant dispute within the medical community as to the cause of those injuries ...

constitutes newly discovered evidence,” the court concluded.

Her previous trial and hearing lacked “fierce debate,” justices wrote. “Now, a jury would be faced with competing credible medical opinions in determining whether there is a reasonable doubt as to (her) guilt.”

After the Wisconsin court’s decision, prosecutors dismissed the charges against Edmunds, and the mother of three girls walked free from prison, reuniting with her now grown children after 11 years in prison.

“It never, ever got easier, and I never got used to it,” she told Madison Magazine in Wisconsin. “But hope became my religion. Without hope, you’re crushed.”

Mississippi Rep. Kevin Horan, D-Grenada, said he would like to see a review of the cases in this state that have relied on shaken baby syndrome. At least 11 convictions have taken place since 2000.

Horan, a former prosecutor who handled the appeal of a man convicted in a shaken baby case, said, “Most of the shaken baby cases are legitimate. They’re not really shaken baby, but blunt-force trauma.”

District Attorney Willie Dewayne Richardson of Greenville, immediate past president of the Mississippi Prosecutors Association, said prosecutors should be willing to re-examine such cases. “Often science changes, and as it does we need to re-evaluate cases moving forward,” he said.

As for Guthkelch, the pioneer of the shaken baby syndrome, he now has grave doubts about the way his theory is being used.

He told the Medill Justice Center that he now regrets writing his 1971 paper “because people are in jail on the basis of what they claim is my paper, when in fact it is nothing like it.”

At the request of The Clarion-Ledger, New York pathologist Dr. Michael Baden read the autopsy report in the 2002 death of Chloe Madison Britt and examined other evidence in the case.

“There is no autopsy or scientific evidence to support a diagnosis that Chloe died of shaken baby syndrome,” Baden said.

“Chloe had no neck injuries, chest injuries, spine or rib fractures that further research has shown can be produced by the abusive shaking of a baby,” he said in a sworn statement.

Havard’s description of accidentally dropping the baby is “entirely consistent” with the injuries found, Baden said.

In an interview last week with The Clarion-Ledger, Hayne, who concluded in his original autopsy that she died of shaken baby syndrome, acknowledged there is “growing evidence” such a diagnosis “is probably not correct.”

Studies show shaking isn’t able to generate enough force to cause these kinds of injuries to a child, he said.

He mentioned a 1979 study measuring the falls of children. “You can generate tremendous G forces in a

short distance when you hit a very hard surface," he said.

In 2001, Minnesota pathologist Dr. John Plunkett conducted a groundbreaking study, examining Consumer Product Safety Commission reports involving falls from playground equipment. He concluded short-distance falls are capable of producing the triad of symptoms identified as shaken baby syndrome.

"It's clear that low velocity, even a 2- or 3-foot fall can cause serious and fatal brain injury," he told The Clarion-Ledger. "If people had paid attention to the science, it would not have been a mystery."

He also discovered that children could sometimes continue to act normal after falls, developing symptoms days later.

He called comparing the shaking of a child to falling from a three-story building or high-speed car crash "scientifically irresponsible."

Harper, who prosecuted Havard, said authorities studied the bathroom and concluded it was impossible for the injuries to have taken place as Havard described.

The Clarion-Ledger has examined the crime scene photographs taken in the case. None shows the bathroom.

Dr. Scott Benton, medical director of the Children's Justice Center and chief of the division of forensic medicine at the University of Mississippi Medical Center, said they see about 60 abusive head trauma cases of infants each year.

He questioned how short-distance falls can cause such injuries and said studies bear that out.

Each case must be examined on a case-by-case basis, and figuring out what happened can be difficult, he said. "If you get it wrong, an innocent person can go to prison — or an innocent child can go back to the same environment or other innocent children can go into the same environment."

Havard is sitting on Mississippi's death row for a crime the state's pathologist believes never took place.

Sexual assault was the underlying felony charge against Havard that enabled authorities to pursue the death penalty against him.

"I didn't think there was a sexual assault," Hayne said of his 2002 autopsy of Chloe. "I didn't see any evidence of sexual assault."

During Havard's capital murder trial, doctors, nurses, the sheriff and others told jurors about tears, rips, lacerations and bleeding they saw in the child's anal area.

"Maybe they were looking at folds and thought they were tears," Hayne said. "We were very careful, and we also took sections."

He examined those sections under a microscope.

His conclusion? They were no tears, rips or similar injuries to the child's rectum, he said. "I would think that would be a definitive evaluation."

When Chloe was brought into the emergency room of Natchez Community Hospital, physicians were focused on saving her life, Hayne said.

At trial, doctors and nurses each described the dilation of the child's anus.

Hayne said it would be wrong to assume such dilation means sexual assault, saying "that can happen with a child passing a harder stool."

A 1996 study found anal dilation was common among children who died, especially those who suffered brain damage.

Hayne said anal dilation could also take place in patients without significant brain function. One doctor testified Chloe was brain dead before they discovered the dilation.

The pathologist said he informed prosecutors he couldn't say a sexual assault took place.

The district attorney acknowledges Hayne was "probably the weakest (prosecution) witness" on sexual assault but that doctors, nurses and law enforcement verified that sexual abuse had taken place.

Harper said he is convinced abuse took place.

Aside from Hayne, the judge never qualified any witnesses to testify as experts in any area, including sexual assault. Under court rules, fact witnesses are barred from sharing their opinions and conclusions — only experts can do that.

At trial, prosecutors asked Hayne about the small anal bruise, which he described as "consistent with penetration of the rectum with an object."

In a 2009 statement, he told Havard's lawyers the bruise could "have a variety of causes and is not sufficient in and of itself to determine that a sexual assault occurred."

He told The Clarion-Ledger that "you've got to be real careful" with a claim of sexual assault.

The district attorney remains convinced of Havard's guilt. "I feel pretty confident," he said.

He recalled a deputy saying he had "heard of vaginal tears, but I've never seen one until now."

In his autopsy report, Hayne found no vaginal tears or anal tears.

Jurors, however, never saw his report.

Havard is seeking a new trial, citing scientific studies and new evidence.

"Jeffrey's death sentence is built on the twin pillars of sexual abuse and Shaken Baby Syndrome," said defense lawyer Graham Carner of Jackson, part of a team representing Havard on appeal. "Both of those pillars have crumbled under the weight of objective science and undisputed facts."

A competent investigation of medical evidence would have revealed the truth about what happened to

6-month-old Chloe Britt, he said. "Her death was a terrible accident, not murder. The tragedy of her death has been compounded by Jeffrey's unfair conviction and death sentence."

The Clarion-Ledger interviewed several jurors in the case, who described the evidence against Havard as overwhelming.

Jurors said they agreed they didn't want him walking the streets again. One juror called him a "monster" that deserved to die.

Havard told The Clarion-Ledger that he understands why the jury thought of him as a monster.

"With what they saw and what was put in front of them, I would have convicted me," he said. "They had nothing else to go on."

He hopes he can have a day in court, not just for his sake, but also for the sake of Chloe's family, the public and the jury.

"I'd like to see the truth come out," he said. "I want nothing more than to clear my name. It would mean the world for them to know that she didn't suffer like they've been told."

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June 16, 2013

Defense lawyers want review of cases involving pathologist Dr. Steven Hayne

Pathologist's trial testimony at issue

By Jerry Mitchell

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Some defense lawyers are calling for an independent review of cases in which pathologist Dr. Steven Hayne has testified.

"What needs to happen is the attorney general, the Mississippi Supreme Court or the Legislature need to appoint an inspector general or independent counsel to handle it," said Tucker Carrington, who heads the Mississippi Innocence Project.

Hayne, who lacks national board certification in forensic pathology, for many years performed most of the autopsies in the state. He drew criticism for conducting about 1,500 autopsies a year, and in 2008 the state dropped him from its list of recommended pathologists to handle autopsies. Since then, the Mississippi Supreme Court has overturned convictions or ordered a new trial in cases in which he testified.

State Sen. Hob Bryan, D-Amory, chairman of the Judiciary B Committee, agrees with Carrington that something needs to be done. "Our experience with Dr. Hayne is extremely troubling, and there needs to be a look at anything he is involved in," he said. "We need to look at that."

An independent review doesn't bother him, Hayne said. "I don't think I've misstated anything."

Asked about reviewing Hayne's cases, Attorney General Jim Hood said through a spokeswoman that his office has reviewed "the cases which have been brought to our attention."

In the past six years, the state Supreme Court has twice reversed murder convictions in which they concluded Hayne reached beyond his expertise.

In April, the state Supreme Court reversed the 2011 murder conviction of a former Mississippi State University professor, saying jurors should never have heard Hayne's "speculative" testimony.

The prosecution's firearms expert was unable to conclude how far away it was fired, but Hayne testified the blast was fired from about 4 feet, helping to convict David Parvin, who is expected to face a new trial.

Hayne defends his work in the Parvin case, saying the justices will have to argue with the classic literature on gunshot wounds. "Show me where I screwed up," he said.

By his own count, Hayne has testified in thousands of trials, mainly in Mississippi.

But longtime defense lawyer Jim Waide of Tupelo said that number could be culled down to determine which cases need to be reviewed.



What Hayne has done “has no scientific basis,” Waide said.

In any case, whether guilty or not, “Dr. Hayne was the prosecution expert,” he said.

Hayne disagreed. “I’ve had big arguments with district attorneys,” he said.

At a 2004 trial, prosecutors insisted that Tyler Edmonds — 13 at the time of the murder of Joey Fulgham — and Fulgham’s wife killed Fulgham simultaneously.

Hayne said he testified that the wound “would favor two people firing the shot, given the 13-year-old, but I couldn’t exclude one.”

In 2007, the high court tossed out Hayne’s testimony as “scientifically unfounded” and ordered a new trial for Edmonds.

A year later, a jury acquitted Edmonds.

Hayne continues to defend his conclusion, describing Edmonds as “a 13-year-old boy that confessed three times that he assisted his sister in shooting her husband.”

Could the case involving Jeffrey Havard, who has spent more than a decade on Death Row, be the next case in which Hayne’s testimony is scrutinized?

Former state Supreme Court Justice Oliver Diaz Jr. thinks so.

He said Havard was hurt by poor legal representation, nurses being allowed to testify as medical experts and Hayne’s testimony.

Days before Christmas in 2002, Havard was convicted of capital murder, accused of sexually abusing and killing his girlfriend’s 6-month-old baby.

Havard admitted he dropped the child, but denied sexual abuse.

At the 2002 trial, Hayne testified there was a 1-inch anal bruise, “consistent with penetration of the rectum with an object.”

He acknowledged to The Clarion-Ledger that such a bruise can be caused by nothing more than “a hard stool.”

At trial, he testified the baby’s death was a homicide, consistent with shaken baby syndrome.

But Hayne now disavows that conclusion, saying biochemical engineers believe shaking alone doesn’t produce enough force to kill.

After studying the autopsy, renowned pathologist Dr. Michael Baden concluded the baby’s injuries were consistent with Havard’s statement that he accidentally dropped the child.

“Not one morning, noon or night passes that I don’t think about Chloe and her family,” Havard told The Clarion-Ledger. “Words can’t describe how sorry I am for dropping Chloe. Without a second thought, I would do anything to bring her back, including giving my own life.”

The Death of Chloe Britt: Capital murder or accidental fall?

Written by Jerry Mitchell

Jan. 20, 2014 |



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The Death of Chloe Britt: Capital murder or accidental fall?

Thousands of Americans are behind bars, convicted of shaking babies to death — and some experts now say the science that put them there is blurry. Since 2000, at least 11 Mississippians have been convicted in such cases with two of them sitting on death row. Jeffrey Havard is one of them.

Thousands of Americans are behind bars, convicted of shaking babies to death — and some experts now say the science that put them there is blurry.

Since 2000, at least 11 Mississippians have been convicted in such cases with two of them sitting on death row. Jeffrey Havard is one of them:

Lab technician Shelley Smith dashed into the emergency room of Natchez Community Hospital, holding the limp body of an infant. The skin of 6-month-old Chloe Madison Britt looked blue.

“The baby isn’t breathing,” Smith screamed. “Call a code.”

It was Feb. 21, 2002, a Thursday night in Natchez, hardly as busy as the weekends when they treated their share of bar-stabbing and car-crash victims.

Nurse Patricia Murphy heard the Code 300 — anyone available should rush to the emergency room — and dashed down to where doctors and nurses were already working on the baby, who had no pulse.

At 10:04 p.m., they got their first ray of hope. Chloe’s skin began to turn pink.

They could see bruises on her forehead and the front of her thighs. A nurse removed her diaper to take her temperature and said, “Look at this.”

They noticed the baby’s rectum was dilated and called police.

Not long after, they lost her pulse. Her face swelled; so did her brain. By 10:50 p.m., doctors declared her dead.

Nine days before Christmas, prosecutors and defense lawyers selected a jury for the capital murder trial of Jeffrey Havard, the 22-year-old boyfriend of Chloe’s mother, Rebecca. In his opening statement, Assistant District Attorney Tom Rosenblatt told jurors, “Dr. Steven Hayne will come and testify for you and how he confirmed the nurses’ and doctors’ worst fears this child had been abused and this child had been penetrated, and the child had died (of) what he refers to as shaken baby syndrome.”

Defense lawyer Robert Clark told jurors the child had slipped from Havard’s arms after he gave her a bath, her head striking a toilet. “Jeffrey did not intend to kill this child,” he said. “This was an accident.”

Chloe’s mother, Rebecca, testified Havard was in the bathroom when she arrived home and she went into

the bedroom, where Chloe was sleeping, and found she wasn't breathing.

She said she tried resuscitation, and they rushed to the hospital.

Havard never mentioned anything happening to the baby, she said.

Jurors watched a videotaped statement in which Havard told deputies he had given Chloe a bath and that he had accidentally dropped her.

"She just kind of gasped for air like I had scared her," he said. "So I took her, and I shook her. I didn't shake her hard. I don't think I did."

She cried, and he comforted her and thought she was OK when he put her back to bed, he said.

When deputies asked him about injuries to her anal area, he said his finger might have slipped. "Maybe I went too far in on her when I was wiping her out, inside of her butt," he said.

One by one, doctors, nurses and others described an anal dilation the size of a quarter. One by one, they described injuries to the anal area — tears, lacerations and blood oozing from the rectum. One by one, they testified these injuries proved sexual assault.

Amy Winter, a forensic biologist with the State Crime Lab, testified she used a rape kit and found no semen or foreign DNA.

Under cross-examination, prosecutors asked her if a bath — which Havard told deputies he had given Chloe before she fell — could have gotten rid of such evidence. She said yes.

All the doctors concluded Chloe had died of shaken baby syndrome, and so did Hayne, who performed the autopsy.

"The type of injuries that you can see that parallel these are in motor vehicle crashes, falls from significant heights and the like, sir," Hayne said.

Asked by District Attorney Ronnie Harper at trial about the injuries to the rectal area, Hayne replied, "It would be consistent with penetration of the rectum with an object, sir."

The jury deliberated 40 minutes before convicting Havard of capital murder. Havard's mother and grandmother begged for jurors to spare his life, but jurors concluded he deserved death.

Circuit Judge Forrest Johnson asked Havard if he had anything to say before sentencing.

"I am innocent of this," Havard replied.

The judge remarked, "Just when you think that you have seen everything and that you have seen or heard of the absolute low point of evil and human depravity, someone like you comes along and shows us a new low in human behavior."

He then sentenced Havard to die by lethal injection.

Pediatric neurosurgeon Dr. Norman Guthkelch had wondered about a medical mystery reported for decades — some babies bleeding atop their brains, despite little outside evidence of head trauma.

When a colleague suffered similar bleeding after riding a roller coaster, Guthkelch suggested whiplash-type injuries were to blame. He published a paper in 1971, warning parents about the dangers of shaking their children.

In the years that followed, shaken baby syndrome became widely accepted in the medical community, diagnosed through a triad of symptoms: subdural bleeding (blood collecting between the brain and the skull), retinal bleeding (bleeding in the back of the eye) and brain swelling.

Courts recognized the syndrome, and the triad became proof of fatal abuse — “a medical diagnosis for murder,” said Deborah Tuerkheimer, author of the new book, “Flawed Convictions: ‘Shaken Baby Syndrome’ and the Inertia of Injustice.”

In 1987, public questions began to arise when biochemical engineers from Penn State University tested the hypothesis. They found shaking alone failed to cause the blood vessels in the brain to rupture. It was only when the head made impact that researchers observed bleeding in the brain.

Despite the findings, shaken baby syndrome continued to be diagnosed and used to prosecute.

In 1995, prosecutors in Wisconsin charged caregiver Audrey Edmunds with murder, concluding she had shaken 7-month-old Natalie Beard to death — despite no witnesses and no outside evidence of trauma.

She told authorities the child was fussy and so she left her with a bottle. When she returned from helping other children, Edmunds found Natalie unresponsive.

At trial, medical experts for the prosecution told the jury that only shaking could explain the injuries, comparing them to a speeding car hitting the baby.

The jury convicted Edmunds, who insisted on her innocence but had no explanation for the injuries. The judge sentenced her to 18 years in prison.

In the years since, medical belief that the shaken baby syndrome’s triad of symptoms provided ironclad proof of homicide has begun to crumble with several studies raising doubts.

Some biomechanical studies suggest shaking a baby to death would be impossible without also injuring the child’s neck or spine.

In 2009, the American Academy of Pediatrics recommended the diagnosis of the syndrome be discarded and replaced with “abusive head trauma.”

Despite the changes, Americans continue to be prosecuted using shaken baby syndrome testimony, with thousands already convicted, said Tuerkheimer, a professor at DePaul University College of Law.

In 2008, the Wisconsin Supreme Court granted Edmunds a new trial.

The emergence of a “significant dispute within the medical community as to the cause of those injuries ...

constitutes newly discovered evidence,” the court concluded.

Her previous trial and hearing lacked “fierce debate,” justices wrote. “Now, a jury would be faced with competing credible medical opinions in determining whether there is a reasonable doubt as to (her) guilt.”

After the Wisconsin court’s decision, prosecutors dismissed the charges against Edmunds, and the mother of three girls walked free from prison, reuniting with her now grown children after 11 years in prison.

“It never, ever got easier, and I never got used to it,” she told Madison Magazine in Wisconsin. “But hope became my religion. Without hope, you’re crushed.”

Mississippi Rep. Kevin Horan, D-Grenada, said he would like to see a review of the cases in this state that have relied on shaken baby syndrome. At least 11 convictions have taken place since 2000.

Horan, a former prosecutor who handled the appeal of a man convicted in a shaken baby case, said, “Most of the shaken baby cases are legitimate. They’re not really shaken baby, but blunt-force trauma.”

District Attorney Willie Dewayne Richardson of Greenville, immediate past president of the Mississippi Prosecutors Association, said prosecutors should be willing to re-examine such cases. “Often science changes, and as it does we need to re-evaluate cases moving forward,” he said.

As for Guthkelch, the pioneer of the shaken baby syndrome, he now has grave doubts about the way his theory is being used.

He told the Medill Justice Center that he now regrets writing his 1971 paper “because people are in jail on the basis of what they claim is my paper, when in fact it is nothing like it.”

At the request of The Clarion-Ledger, New York pathologist Dr. Michael Baden read the autopsy report in the 2002 death of Chloe Madison Britt and examined other evidence in the case.

“There is no autopsy or scientific evidence to support a diagnosis that Chloe died of shaken baby syndrome,” Baden said.

“Chloe had no neck injuries, chest injuries, spine or rib fractures that further research has shown can be produced by the abusive shaking of a baby,” he said in a sworn statement.

Havard’s description of accidentally dropping the baby is “entirely consistent” with the injuries found, Baden said.

In an interview last week with The Clarion-Ledger, Hayne, who concluded in his original autopsy that she died of shaken baby syndrome, acknowledged there is “growing evidence” such a diagnosis “is probably not correct.”

Studies show shaking isn’t able to generate enough force to cause these kinds of injuries to a child, he said.

He mentioned a 1979 study measuring the falls of children. “You can generate tremendous G forces in a

short distance when you hit a very hard surface,” he said.

In 2001, Minnesota pathologist Dr. John Plunkett conducted a groundbreaking study, examining Consumer Product Safety Commission reports involving falls from playground equipment. He concluded short-distance falls are capable of producing the triad of symptoms identified as shaken baby syndrome.

“It’s clear that low velocity, even a 2- or 3-foot fall can cause serious and fatal brain injury,” he told The Clarion-Ledger. “If people had paid attention to the science, it would not have been a mystery.”

He also discovered that children could sometimes continue to act normal after falls, developing symptoms days later.

He called comparing the shaking of a child to falling from a three-story building or high-speed car crash “scientifically irresponsible.”

Harper, who prosecuted Havard, said authorities studied the bathroom and concluded it was impossible for the injuries to have taken place as Havard described.

The Clarion-Ledger has examined the crime scene photographs taken in the case. None shows the bathroom.

Dr. Scott Benton, medical director of the Children’s Justice Center and chief of the division of forensic medicine at the University of Mississippi Medical Center, said they see about 60 abusive head trauma cases of infants each year.

He questioned how short-distance falls can cause such injuries and said studies bear that out.

Each case must be examined on a case-by-case basis, and figuring out what happened can be difficult, he said. “If you get it wrong, an innocent person can go to prison — or an innocent child can go back to the same environment or other innocent children can go into the same environment.”

Havard is sitting on Mississippi’s death row for a crime the state’s pathologist believes never took place.

Sexual assault was the underlying felony charge against Havard that enabled authorities to pursue the death penalty against him.

“I didn’t think there was a sexual assault,” Hayne said of his 2002 autopsy of Chloe. “I didn’t see any evidence of sexual assault.”

During Havard’s capital murder trial, doctors, nurses, the sheriff and others told jurors about tears, rips, lacerations and bleeding they saw in the child’s anal area.

“Maybe they were looking at folds and thought they were tears,” Hayne said. “We were very careful, and we also took sections.”

He examined those sections under a microscope.

His conclusion? They were no tears, rips or similar injuries to the child’s rectum, he said. “I would think that would be a definitive evaluation.”

When Chloe was brought into the emergency room of Natchez Community Hospital, physicians were focused on saving her life, Hayne said.

At trial, doctors and nurses each described the dilation of the child's anus.

Hayne said it would be wrong to assume such dilation means sexual assault, saying "that can happen with a child passing a harder stool."

A 1996 study found anal dilation was common among children who died, especially those who suffered brain damage.

Hayne said anal dilation could also take place in patients without significant brain function. One doctor testified Chloe was brain dead before they discovered the dilation.

The pathologist said he informed prosecutors he couldn't say a sexual assault took place.

The district attorney acknowledges Hayne was "probably the weakest (prosecution) witness" on sexual assault but that doctors, nurses and law enforcement verified that sexual abuse had taken place.

Harper said he is convinced abuse took place.

Aside from Hayne, the judge never qualified any witnesses to testify as experts in any area, including sexual assault. Under court rules, fact witnesses are barred from sharing their opinions and conclusions — only experts can do that.

At trial, prosecutors asked Hayne about the small anal bruise, which he described as "consistent with penetration of the rectum with an object."

In a 2009 statement, he told Havard's lawyers the bruise could "have a variety of causes and is not sufficient in and of itself to determine that a sexual assault occurred."

He told The Clarion-Ledger that "you've got to be real careful" with a claim of sexual assault.

The district attorney remains convinced of Havard's guilt. "I feel pretty confident," he said.

He recalled a deputy saying he had "heard of vaginal tears, but I've never seen one until now."

In his autopsy report, Hayne found no vaginal tears or anal tears.

Jurors, however, never saw his report.

Havard is seeking a new trial, citing scientific studies and new evidence.

"Jeffrey's death sentence is built on the twin pillars of sexual abuse and Shaken Baby Syndrome," said defense lawyer Graham Carner of Jackson, part of a team representing Havard on appeal. "Both of those pillars have crumbled under the weight of objective science and undisputed facts."

A competent investigation of medical evidence would have revealed the truth about what happened to

6-month-old Chloe Britt, he said. "Her death was a terrible accident, not murder. The tragedy of her death has been compounded by Jeffrey's unfair conviction and death sentence."

The Clarion-Ledger interviewed several jurors in the case, who described the evidence against Havard as overwhelming.

Jurors said they agreed they didn't want him walking the streets again. One juror called him a "monster" that deserved to die.

Havard told The Clarion-Ledger that he understands why the jury thought of him as a monster.

"With what they saw and what was put in front of them, I would have convicted me," he said. "They had nothing else to go on."

He hopes he can have a day in court, not just for his sake, but also for the sake of Chloe's family, the public and the jury.

"I'd like to see the truth come out," he said. "I want nothing more than to clear my name. It would mean the world for them to know that she didn't suffer like they've been told."

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