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SEP 14 2018

IN THE CIRCUIT COURT OF ADAMS COUNTY, MISSISSIPPI

JEFFREY HAVARD

VS.

STATE OF MISSISSIPPI

**CERTIFIED  
TRUE COPY**

SEP 14 2018

EDWARD C. WALKER, CIRCUIT CLERK  
BY EQ D.C.

PETITIONER

NO. 02-KR-0141-J

(NO. 2013-DR-01995-SCT)

RESPONDENT

EDWARD C. WALKER, CIRCUIT CLERK  
BY EQ

ORDER

This cause, a death penalty case, comes before the Court on petition for post-conviction relief, upon leave granted by the Supreme Court of Mississippi, limited to the issues of newly discovered evidence only. A hearing was conducted and the parties submitted proposed findings of fact and conclusions of law.

Miss. Code Ann. § 99-39-5 (1)(e) provides that one of the grounds for relief is "That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." Pursuant to Miss. Code Ann. § 99-39-23(7) "No relief shall be granted under this article unless the petitioner proves by a preponderance of the evidence that he is entitled to the relief."

Petitioner contends that new evidence and scientific advances show that much of the shaken baby syndrome (SBS) evidence presented by the prosecution has been disproven since 2002, and that there is a substantial controversy, which did not exist in its current form in 2002, regarding whether shaking could cause the victim's (Chloe) injuries, and the development of that controversy is material. Petitioner further contends that new biomechanical research challenges whether shaking can cause SBS related injuries, that the State's own expert concedes that

shaking alone did not cause Chloe's death, and that leading proponents of SBS are now backing off the diagnosis.

Petitioner further contends that the triad is no longer reliable as a diagnostic tool for SBS and that now it is known that there are many non-abusive causes of the triad. Also, that scientists recognize that short falls may cause the medical findings in this case. Petitioner contends that all of this is new evidence and that he is entitled to a new trial.

The State counters that newly discovered evidence is evidence not reasonably discoverable at the time of trial, that is of such nature that it would be practically conclusive that, if it had been introduced at trial, it would have caused a different result in the conviction or sentence. The State contends that the Petitioner has failed to meet this standard by a preponderance of the evidence.

In addition to all the medical and expert testimony and opinions as to SBS and its evolution since the time of the trial, the events born out from the evidence should not be lost. Chloe, the victim, a six-month old girl, was left by her mother with the Petitioner for approximately thirty minutes. Chloe was a living, breathing, normal little girl when her mother left. Upon her return she found Chloe blue and not breathing. Petitioner said that nothing unusual happened while the mother was gone and that he had bathed Chloe, gave her a dose of antibiotics and put her to bed just before her return.

Petitioner and Chloe's mother rushed her to the emergency room. Chloe was bloodied, bruised, blue and not breathing for no apparent reason. She had no pulse and had to be resuscitated. Health care professionals observed multiple contusions on her head, face, and body in addition to her torn frenum and other injuries. Retinal hemorrhages we also observed. The

doctors were not able to stabilize Chloe's condition to maintain a pulse. She died about an hour after presenting to the emergency room on the evening of February 21, 2002.

Petitioner gave a statement to law enforcement officers on February 22, 2002. He stated he did not know who or what caused Chloe's injuries. He never mentioned dropping her. The next day, February 23, 2002, Petitioner gave a second statement inconsistent with the first one. In it he first mentions a fall and dropping Chloe while bathing, leaving her gasping for air. "So I took her and I shook her. I didn't shake her hard. I don't think I did. I shook her back and forth from side to side like this, sideways, and twisted her like that." Petitioner further admitted to shaking Chloe because he was scared he had hurt her.

Petitioner also disclosed personal information about his anger issues, and described instances, or "fits" of anger where he would become violent and act unconsciously with little, if any, recall of his actions. He professed to experiencing flashbacks from time-to-time. Petitioner stated that dropping Chloe triggered a flashback to a specific instance in his childhood when his stepfather beat him in a tub.

The Court finds that the testimony of Dr. Haynes was credible and reasonably consistent with his trial testimony, given the evolution of the SBS science and that he did not change his opinion with respect to the cause and manner of Chloe's death. The Court finds that there was a legitimate debate over the validity of SBS at the time of the trial, as there still is. The Court finds that Dr. Haynes testified as to a legitimate debate over the validity of SBS in another capital murder prosecution approximately two months after the trial in this case. The Court further finds that the testimony of Dr. Scott Benton, Chief of the Division of Forensic Medicine at the University of Mississippi's Medical Center and the Medical Director of the Children's Safe

Center, was credible and persuasive.

As to the conviction, the Court finds that the Petitioner failed to prove by a preponderance of the evidence that there exists new evidence that would have caused a different result. Petitioner simply makes a better argument, not a new one, based on the evolution of the SBS science. This Court can say with confidence that the Petitioner's evidence is not sufficient to undermine confidence in the conviction.

This is not a case where a jury was asked to accept a bare-bones assertion, with medical evidence only, that the defendant must have violently shaken a baby, causing fatal injuries. There was damning evidence against the Petitioner by way of his being the only one with Chloe at the time of the event, his behavior in ignoring and denying knowledge of her grave condition to the mother and medical personnel, and the changing and conflicting statements out of his own mouth. The jury considered it all, including the reasonable inferences therefrom, weighed the evidence and credibility of the witnesses, and found him guilty of the crime. The Petitioner has failed to prove that he is entitled to relief from the conviction.

The sentence by the jury was death. The finality and severity of that sentence render it qualitatively and fundamentally different from other punishments. The Supreme Court of Mississippi and the United States Supreme Court have rightfully applied extraordinary scrutiny where a death sentence is involved. This Court takes no lesser approach.

While the evidence presented by the Petitioner is not sufficient to undermine this Court's confidence in the conviction, there is a cautious disturbance in confidence of the sentence of death, even if slight. Matters and arguments that would not reasonably have changed a juror's vote on the question of guilt, could have, even if slight, as to the decision on the sentence of

death.

It is therefore ordered that the Petitioner's conviction is fully and completely upheld and the jury's verdict in that regard is left undisturbed, and the petition for post-conviction relief on the grounds of newly discovered evidence is denied. It is further ordered on the petition for post-conviction relief that the sentence of death is vacated and the Petitioner is granted a new sentencing hearing before a jury. It is further ordered that the parties confer about the scheduling of a new sentencing hearing before a jury, or status conference with the court, consistent with this order.

The clerk is directed to forward certified copies of this order to all counsel of record, the District Attorney, and also the Supreme Court of Mississippi.

SO ORDERED, this the 14th day of September, 2018.

  
FORREST A. JOHNSON  
CIRCUIT COURT JUDGE