
IN THE SUPREME COURT OF MISSISSIPPI

No. 2025-DR-01074-SCT

DEVIN ALLEN BENNETT

Petitioner

v.

STATE OF MISSISSIPPI

Respondent

**RESPONSE IN OPPOSITION TO MOTION TO DISMISS AND
IN SUPPORT OF PETITION FOR
POST-CONVICTION RELIEF**

ORAL ARGUMENT REQUESTED

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RESPONSE BRIEF INTRODUCTION

The State spends 6 of its 15 pages on *Shelby v. State*—a case in which an evidentiary hearing was ordered. *Shelby v. State*, 311 So. 3d 613 (Miss. Ct. App. 2020). As in *Shelby*, an evidentiary hearing is warranted here. That should be the beginning and end of the inquiry. But lest there be any doubt, the remainder of the State’s brief is equally unpersuasive.

For example, the State says Bennett’s petition is time barred because he was required to file a petition in 2020. Mot. at 11. Yet that can’t be right. While a major paradigm shift occurred in the relevant scientific community for SBS in 2018 and again in 2020, courts do not catch up with scientific advances straight away. And, in 2021 in Mississippi, this Court reversed the Mississippi Court of Appeals after it granted relief in a SBS case. *Clark v. State*, 315 So. 3d 987, 996 (Miss. 2021). Bennett thus had reason *not* to file a petition—*until* a drove of key cases were recently decided, most notably in 2024 and 2025, emphasizing the scientific unreliability of the SBS hypothesis:

- *State v. Nieves*, 302 A.3d 595 (N.J. Super. Ct. App. Div. 2023).
- *State v. Butts*, No. 22AP-763, 2023 WL 4883377 (Ohio Ct. App. Aug. 1, 2023).¹
- *Ex parte Roark*, 707 S.W.3d 157 (Tex. Crim. App. 2024).²
- *People v. Lemons*, 22 N.W.3d 42, 2024 WL 3543728 (Mich. July 25, 2024).

¹ Butts was exonerated in 2024. <https://exonerationregistry.org/cases/13694> (last visited Feb. 17, 2026).

² Roark also has now been exonerated. See, e.g., M. Cardona, *North Texas man exonerated for 'shaken baby' conviction — 24 years later*, KERA News (Nov. 19, 2024) available at <https://www.keranews.org/criminal-justice/2024-11-19/north-texas-man-exonerated-for-shaken-baby-conviction-24-years-later> (last visited Feb. 15, 2026).

- *State v. Joshua Burns*, No. 14-22070-FH, Circuit Court for the 44th Judicial Circuit, Livingston County, State of Michigan, Order to Vacate Conviction and Dismiss Charge (Nov. 20, 2024).³
- *Ex parte Robert Leslie Roberson, III*, Cause No. WR-63,081-03, 2025 WL 2877824 (Tex. Crim. App. Oct. 9, 2025).
- *Smith v. State*, 922 S.E.2d 6, 2025 WL 2918738 (Ga. Oct. 15, 2025) (*Smith III*).
- *State v. Nieves*, 262 N.J. 161, 345 A.3d 1127 (Nov. 20, 2025).

In the last few years, a tidal wave of new cases and scientific studies have emerged—all eviscerating the State’s SBS hypothesis. In fact, *seven* people have been exonerated just in 2023 through the date of this writing based on the faulty “science” of SBS.⁴ Because the impact of junk science knows no jurisdictional boundary, Bennett properly filed his petition in 2025. *See Smith v. State*, 922 S.E.2d 6, 16 (Ga. 2025) (“[A] prudent defendant predicating [a post-conviction] motion on scientific developments would wait until he is confident in the materiality of those developments’ before presenting the new evidence to the court.”).

The State’s briefing here is also inconsistent. On the one hand, the State says Bennett should have filed a petition in 2020 because the science on SBS had evolved enough by then. On the other hand, the State says that the science has not evolved enough and Bennett is thus presenting an “identical defense” to that made at trial. Mot. at 11, 1, 3.

³ <https://www.wxyz.com/news/local-news/investigations/after-years-of-fighting-father-convicted-of-child-abuse-in-baby-naomi-case-now-exonerated> (last visited Feb. 16, 2026).

⁴ https://exonerationregistry.org/cases?search_api_fulltext=shaken%20baby&f%5B2%5D=n_pre_1989%3A0&f%5B3%5D=date_of_exon%3A%28min%3A1672531200%2Cmax%3A1771372800%29 (last visited Feb. 19, 2026).

Not only are the State’s shifting positions antithetical, but Mississippi’s PCR Act is not a complex game of gotcha. There is not a single preternatural day, hour, and minute on which petitioners must venture a guess of when to file a petition. *Bell v. State*, 66 So. 3d 90, 93 (Miss. 2011) (“Noticeably absent from this statute is a time limitation in which to file a second or successive application if such application meets one of the statutory exceptions.”). This is notably true when the issue is newly discovered evidence based on the evolving changes in science. *Cf. Han Tak Lee v. Tennis*, No. 4:08-CV-1972, 2014 WL 3894306, at *1 (M.D. Pa. June 13, 2014) (“Slow and painful has been man’s progress from magic to law.”); *Howard v. State*, 300 So. 3d 1011, 1015 (Miss. 2020); *Howard v. State*, No. 2014-DR-01305-SCT (Aug. 6, Miss. 2015 Order); *Smith*, 922 S.E.2d at 16 (“Smith’s evidence — the experts’ testimony — is based not on historical fact or direct observation of an alleged crime but rather on their understanding of scientific knowledge. And the materiality of scientific development often becomes apparent only with the passage of time as new theories are subjected to the rigors of scientific testing, peer review, and the general scrutiny of the scientific community.”).

Similarly problematic for the State is that this case presents changes in the relevant scientific community as well as false testimony from Steven Hayne. Hayne would be subject to a winning *Daubert*⁵ motion today, as the State must admit—since it too successfully filed

⁵ *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993).

Daubert motions against Hayne after his credibility was shattered.⁶ The same is true for Michael West, who performed (and botched) the autopsy here with Hayne. As perhaps best noted in the 2025 Jimmie Duncan case from Louisiana, we now know (but did not at the time of Bennett’s trial) that Hayne is responsible for noted wrongful convictions, “untruthful” expert testimony, unethical business practices, and being untruthful about his credentials. April 23, 2025 Order, Written Reasons for Judgment, *Jimmie C. Duncan v. Tim Hooper*, 1994-F-42, Ex. H to Petition.

Lastly, the State misses the mark in trying to reinvent this as not a shaken baby case. Here, the jury heard from Steven Hayne, Dr. Emily Woodall, and Dr. Andrew Parent that this case was one of shaking and impact. Indeed, Hayne testified that the purported fractures (that are not even fractures—they are wormian bones)⁷ would not have caused death. “A fracture in and of itself is not going to produce death.” Tr. 1241.⁸ “A skull fracture did not kill the baby.” Tr. 1291. The same is true for Drs. Woodall and Parent. Dr. Woodall, for example, testified that impact would not result in subdural hematomas, Tr. 935, and that the injuries in this case are consistent with someone “grab[bing] the baby”

⁶ *E.g.*, *Thomas v. State*, 249 So. 3d 331, 337 (Miss. 2018) (“Pretrial, the State had moved *in limine* to exclude the testimony of Dr. Hayne.”). Establishing that Hayne’s testimony would be excluded plainly is evidence that would “probably produce a different result or verdict.” *Ormond v. State*, 599 So.2d 951, 962 (Miss. 1992).

⁷ Dr. Julie Mack’s recent 3D reconstruction of the imaging of Brandon Bennett’s brain/skull confirms that Dr. Hayne mistook “wormian bones” for fractures. Mack Report pp. 1, 12 (“There are no fractures on the right and no fractures in the area of the coronal suture. The appearance of the right coronal and sagittal sutures are due to wormian bones (normal developmental variants).”); *see also* Ophoven Report p. 2 (explaining that there is only one fracture and “[t]here were no other skull fractures identified, specifically to the right skull or at the coronal suture”).

⁸ In fact, Steven Hayne’s autopsy report on the cause of death “does not mention any fractures.” Mack Report p. 6.

and “shak[ing] the baby,” Tr. 946. The jury was told repeatedly that the cause of death is impact and “changes consistent with concurrent shaken baby syndrome.” Tr. 1233; Tr. 1624 (government closing) (“Every witness we put up there told you about shaken baby syndrome.”).

The testimony in this case was false and scientifically invalid. Because in the early 2000s, the medical community presumed abuse when the triad was presented, Bennett’s explanation of his son Brandon’s short fall was outright rejected. But Brandon’s records, when viewed with today’s more advanced scientific understanding, do not establish abuse, but instead indicate that his death was due to accidental causes. *See* Report of Dr. Chris Van Ee, Biomechanical Engineer, p. 5, Ex. L to Reply⁹ (“Since Mr. Bennett’s trial in 2003 there have been a few key scientific studies published in the peer reviewed literature that clearly document that infants can sustain both skull fractures and intracranial hemorrhage as a result of falls generally consistent with the circumstances described by Mr. Bennett.”); Report of Dr. Janice Ophoven, Pediatric Forensic Pathologist, pp. 3-4, Ex. F to Petition (“I have serious concerns for an unsafe conviction of Mr. Bennett ... The autopsy does not confirm a fatal impact to the child’s head—but certainly could have been the result of the fall described by his father.”); Report of Dr. Julie Mack, Diagnostic Radiologist, pp. 2, 8, 14, Ex. A to Petition (“The radiology images are consistent with the reported accidental impact followed by a physiological cascade that may have included thrombosis, loss of

⁹ Dr. Van Ee’s Expert Report is attached as an exhibit to this Reply as well as to a separation Motion to Amend/Supplement.

oxygen and loss of autoregulation. There is nothing in the radiological images supporting a theory of multiple impacts to the skull, rupture of macroscopic bridging veins, or a violent shaking event.”); Report of Dr. John Galaznik, Pediatrician, pp. 11-12, Ex. G to Petition (“Given this advancement in our understanding of the issues in the case arising from the death of Brandon Allen Bennett, in my opinion to a reasonable degree of medical certainty, the accidental short fall event from the bed as reported can no longer be denied as a plausible explanation for this infant’s presentation and findings and outcome.”).

Devin Bennett did not abuse or murder his son. And no one reviewing the evidence today could find the contrary beyond a reasonable doubt. At a minimum, Bennett deserves an evidentiary hearing.

RESPONSE ARGUMENT

- I. Bennett’s Petition Raising Newly Discovered Evidence, Factual Innocence, and Due Process is Statutorily Alive and Proper Under Mississippi’s PCR Act.**
 - A. The State’s argument misses the point of newly discovered evidence based on changes in the relevant scientific community.**

Even setting aside its shifting positions on timeliness, the State’s brief only proves Bennett’s point that this case presents a substantial change in the relevant scientific community. For example, the State laments that Bennett is “trying to relitigate his original trial defense strategy.” Mot. at 1. This contention misses the big-picture point. All cases presenting a change in science present some of the same underlying evidence; science just finally proves false the way the evidence was originally construed and presented. Indeed,

DNA evidence is a widely accepted form of “newly discovered evidence.” Yet it is the result of the DNA testing—*not the DNA itself*— that is the newly discovered evidence.

Here, Bennett has always claimed his factual innocence. But at the time of trial and initial post-conviction, science had yet to step in and fully support Bennett’s innocence. *See, e.g., Wilkerson v. State*, 307 So. 3d 1231, 1243 (Miss. App. 2020)(“[A]lthough the underlying physical evidence (the medical and autopsy records) remains the same, changes in experts’ scientific understanding on issues such as bitemark analysis and SBS may constitute newly discovered evidence, excepting such claims from procedural bars under the UPCCRA.”)(internal citations and quotations omitted); *Souter v. Jones*, 395 F.3d 577, 592 (6th Cir. 2005) (explaining that when an expert “testif[ies] at trial as an expert witness, [] it is his opinion itself, rather than the underlying basis for it, which is the evidence presented”); *Smith v. State*, 922 S.E.2d 6, 14 (Ga. 2025) (explaining that “new expert analysis of existing physical evidence may relate to new and material facts and, thus, may constitute newly discovered evidence”).

The State’s argument is also a recycled one borrowed from the argument rejected by this Court in *Howard v. State*, 300 So. 3d 1011 (Miss. 2020). Eddie Lee Howard presented the validity of bite-mark evidence at trial, on direct appeal, and in initial post-conviction proceedings. On appeal from a denial of post-conviction relief, the State argued that Howard had simply “repackage[ed] rejected claims.”¹⁰ This Court expressly rejected

¹⁰ See Brief of Appellee, *Howard v. State*, 2019 WL 8361982, at *2.

that contention. Howard's newly discovered evidence claims were not barred, and he was granted post-conviction relief in 2020.

Here, Bennett's newly discovered evidence claim is stronger than that presented in *Howard*. Unlike in *Howard*, where the validity of bite-mark evidence had been argued many times before the successive post-conviction proceedings, the medical community's change in consensus on the SBS hypothesis was not discoverable at the time of Bennett's trial, direct appeal, or 2007 initial post-conviction. The same is true for new scientific understanding of short falls and lucid intervals. In 2001, the American Academy of Pediatrics (AAP) concluded that the constellation of shaken baby symptoms does *not* occur in short falls. In 2001, it was recognized that short falls could cause serious injury, but it was thought that they could not cause the shaken baby constellation/triad. *Id.* Changes in scientific understanding have demonstrated that this prior conclusion is wrong. Galaznik Report pp. 7-8; Van Ee Report p. 7 ("The new studies published since the time of Mr. Bennett's trial have provided an evidence base to clearly show that infant skull fracture can occur for falls of 12-20 inches onto a residential surface and in some cases as low as 6". Further, these studies also clearly document that infants can also sustain intracranial hemorrhage for falls where the head fall height is on the order of 24-36 inches. Such clear demonstrations of the injury potential for infants for conditions much more comparable to the bed fall scenario presented at Mr. Bennett's trial were not available in the scientific literature in 2003.").

B. Bennett’s case presents newly discovered evidence and is thus not barred.

Newly discovered evidence is an express statutory exception to the PCR Act’s statutory bars. *Cf. Howell v. State*, 358 So. 3d 613 (Miss. 2023). Newly discovered evidence is evidence discovered after the conviction that could not have been discovered through due diligence at the time. *Crawford v. State*, 867 So. 2d 196 (19) (Miss. 2003). It consists of newly discovered evidence that is material and likely to produce a different verdict. *Ormond v. State*, 599 So. 2d 951, 962 (Miss. 1992). A new trial is warranted where “the newly discovered evidence will probably produce a different result or induce a different verdict.” *Id.* A petitioner is entitled to relief even where newly discovered evidence could only mitigate guilt, reduce a sentence, or cast some meaningful doubt on the prosecution’s theory of the case. *See Tobias v. State*, 584 So. 2d 1276, 1279 (Miss. 1991).

As pediatrician Dr. John Galaznik explains in his Affidavit, the AAP’s institutional positions began to evolve in the years following Bennett’s conviction—this evolution was informed by developments in the scientific literature that called into question many of the premises underlying the AAP guidance that applied at the time of Bennett’s trial, direct appeal, and initial post-conviction proceedings. The AAP changed its position on at least three critical points:

- (1) The AAP shifted from endorsing a presumption of abuse in the presence of certain symptoms to requiring that *all plausible alternatives be ruled out* before diagnosing SBS.
- (2) The AAP expanded the constellation of relevant symptoms from focusing on the traditional “triad” of symptoms to emphasizing the

need to consider a broader range of symptoms and disavowed the notion that any single injury is diagnostic of SBS.

- (3) The AAP expanded the scope of the applicable differential diagnosis so as to expressly consider natural disease processes (i.e., mimics).

Galaznik Report pp. 6-7.

Each of these changes is highly relevant to determining how this case would be assessed today. Unfortunately, Bennett did not have the benefit of these future medical developments in the early 2000s. The medical community's incorrect presumption of child abuse at the time resulted in Bennett being convicted of a crime that did not occur. This is thus a paradigmatic case of newly discovered evidence. Galaznik Report p. 7 ("Now that the AAP recognizes that there is a controversy surrounding the abusive shaking allegation (SBS diagnosis), including the recommendation that even the term 'Shaken Baby Syndrome (SBS)' not be used in the medical record, and that there are other causes of the traditionally asserted triad of injuries, it firmly establishes that the controversy surrounding Abusive Shaking Mechanism/SBS has entered the mainstream ... That the AAP now must acknowledge that much of what was previously thought to be true regarding the abusive shaking allegation has actually turned out to either be incomplete or has failed to be validated by experimental research, raises serious doubts about the validity of previous convictions based on shaking as a mechanism for the death of an infant or toddler.").

Thankfully, young children do not die often. And when such tragedies occur, the cause of death is often fairly obvious—complications of pregnancy, witnessed accidents or car crashes, leukemia. The SBS hypothesis emerged as a hypothesis to explain the *non-*

obvious. But SBS is a hypothesis that was never scientifically validated before it was nonetheless accepted as “fact.” See Keith A. Findley, et al., ed., *Shaken Baby Syndrome: Investigating the abusive head trauma controversy* (Cambridge Univ. Press 2023). Today, it is widely recognized that a host of issues—from birth trauma, birth defects, infections, congenital disorders, pneumonia, as well as accidental falls with head impact—can cause the very conditions once assumed to be “diagnostic” of shaking and/or shaking with abusively inflicted head trauma. Galaznik Report pp. 10-12.

The medical consensus and scientific evidence now show that many phenomena can cause the SBS triad, including short falls, and thus a differential diagnosis is essential. A “diagnosis of exclusion” refers to a diagnosis that can be “assigned only when all known and possible causes of death have been ruled out.” *State v. Morrison*, 470 Md. 86, 101 n.17 (2020); Galaznik Report pp. 10-11 (“[T]he abusive shaking hypothesis has become controversial and the diagnosis of Abusive Head Trauma is now a rule-out diagnosis. Unlike when Devin Bennett’s case presented and was tried, medical diseases that can mimic the findings commonly attributed to AHT have been increasingly recognized. Because of this, the 2020 Policy Statement emphasizes that the workup done on a patient in making a medical diagnosis of AHT must be complete and must rule out any medical diseases that can mimic AHT. Any non-abusive cause that is consistent with the documented findings should preclude a diagnosis of AHT based on medical findings.”); Ophoven Report p. 4 (“The diagnosis of the shaken baby is now recognized by many as a highly controversial and unproven theory of injury in evaluating infant head injuries. In this

case the presence of the so-called triad of injuries - retinal hemorrhages, subdural hemorrhage and brain swelling is not at all diagnostic of abusive head injury.”).

Contemporary medical standards do not support the medical and scientific evidence that was used to accuse, convict, and sentence Bennett to death. The SBS hypothesis of that time allowed presuming abuse whenever the intracranial conditions observed in Bennett were found. A differential diagnosis is now required, because it is now a consensus medical understanding that many things can cause the intracranial conditions found in Brandon, other than abuse from shaking or shaking and impact. The version of SBS that the State relied on at trial is scientifically unsound. Numerous courts in other jurisdictions have relied on the same change in scientific understanding to grant relief to habeas applicants like Bennett. *See supra* pp. 1-2 (collecting new cases).

Here, when Brandon was hospitalized, there was *no differential diagnosis undertaken*. Abuse was the first, and only, assumption. As discussed, in the early 2000s, the SBS triad was treated as a *res ipsa loquitur* of abuse, because it supposedly “proved” that shaking, combined with blunt head impact, had occurred. That is, virtually all physicians and forensic pathologists then believed that, absent evidence of a high-speed car crash or similar event, seeing the triad was sufficient *to presume* intentionally inflicted head injury.

The SBS hypothesis operative in the early 2000s also assumed that violent shaking/blunt impact would lead to *immediate* brain damage and thus a change in consciousness—a premise that experts conveyed to Bennett’s jury as fact. The incorrect understanding about the injury-potential of short falls led to the improper branding of

Bennett as a liar whose description of Brandon’s final hours should be entirely rejected. Indeed, Steven Hayne all but called Bennett a liar on this point. Tr. 1295. But new scientific studies—including ones published recently—demonstrate that many cases of presumed SBS were in fact the result of accidents. Galaznik Report pp. 7-8; Van Ee Report pp 5-7.

All four of Bennett’s experts agree that the report of Brandon’s fall from Bennett’s bed fits within the evidentiary picture based on a holistic understanding of all relevant factors that explain Brandon’s tragic death. Indeed, the core SBS premise, used to attribute guilt to whoever was with an infant or child when he collapsed, has been entirely falsified too. Now, the medical community recognizes that it can take hours or even days for a subdural bleed, whatever the origin, to lead to brain swelling and loss of consciousness. *See e.g., Ex parte Roark*, 707 S.W.3d 157, 185 (Tex. Crim. App. 2024) (“We believe there would be a marked shift in the testimony today concerning the effect of a short-distance fall to a child, the effect of shaking a child, rebleeds in subdural hematomas, lucid intervals, retinal hemorrhaging, and SBS in general as applied to B.D.’s injuries.”).

Today, while everyone agrees that violently shaking an infant is horrible, no study has shown that shaking can cause any of the internal head conditions associated with the SBS hypothesis. It is well understood today that shaking, if it causes physical injury, would be experienced first and foremost in a child’s neck. Bennett’s son Brandon had no neck injuries of any kind. Nor did Brandon suffer any injuries to his ribs. Galaznik Report p. 9 (“In my opinion, to a reasonable degree of medical certainty, the absence of demonstrated acute rib fractures should serve as additional evidence that this infant was not the victim of

an abusive shaking on August 25, 2000 ... In this case, there is also no demonstrated structural ligament injury of Brandon Bennett’s neck at autopsy or in the imaging reports from 2000. Since 2003 the strength of the cervical ligaments of an infant’s neck has been studied. In an alleged abusive shaking, the head cannot hit the back, and the force that would be required decelerate the head in full neck extension has also been studied. Hence the motion of the head along its tangential arc of motion into full extension must be stopped by the neck—specifically the anterior ligaments of the lower cervical vertebra. In my opinion, to a reasonable degree of medical certainty, an abusive shaking of an infant of Brandon Bennett’s size would result in structural failure—i.e., tearing/rupture of the ligaments of the anterior lower neck before any head injury. The absence of structural ligament injury would be additional evidence that this infant was not the victim of an abusive shaking on August 25, 2000.”).

Many pages of Bennett’s opening petition are dedicated to showing that, as science and medicine advance, people convicted based on outdated medical evidence that is now known to be unreliable must have their new evidence heard in court. Given this, it is curious that the State’s default position is to complain that Bennett is simply presenting an “identical defense” to that at trial. Mot. at 3. That makes no sense. Indeed, Bennett could not have used the new evidence at the time of his trial because it did not yet exist. The new evidence in this case, like in other cases that have found similar evidence warranting relief, is not that SBS is controversial—but instead that today, applying modern medicine, four nationally-accredited medical and scientific experts can state that Brandon Bennett did not

die from shaking or intentional abuse. Medical experts would have lacked necessary tools and knowledge to present the same analysis in the early 2000s. Bennett thus cannot be found to have lacked diligence in failing to uncover evidence that did not yet exist at the time of his trial.

Not only has there been significant scientific research and advanced medical understanding of abusive head trauma in children since Bennett's trial, appeal, and initial post-conviction, but there also has been interdisciplinary advancement in understanding the etiologies of each of the now-discredited "triad" of symptoms: retinal hemorrhaging, subdural hemorrhaging, and cerebral edema. It is now known that these symptoms are *not* uniquely diagnostic or pathognomonic of shaking or abuse. *See generally* Galaznik Report. Hence SBS today, unlike before, is a diagnosis of exclusion, or last resort. And this is not mere controversy; it is now established medicine that has allowed for a previously unavailable explanation for Brandon's death.

Bennett's claim is thus not statutorily barred by the PCR Act. It is timely filed based on evolving changes in science and newly discovered evidence. The newly discovered evidence was not and could not have been presented previously—thus it is not waived, successive writ barred, or barred by res judicata. Further, Bennett's new evidence would constitute cause and actual prejudice under the PCR Act, even if the Court needed to reach the cause and prejudice analysis. *See* Miss. Code Ann. § 99-39-21.

II. Recent Cases Decided in 2025, After Bennett Filed his Petition, Continue to Support Bennett’s Request for Post-Conviction Relief.

Three decisions were handed down in 2025 after Bennett filed his petition. All three cases support Bennett’s Petition and request for an evidentiary hearing.

1. The first decision is *Ex parte Roberson*. There, the Texas Court of Criminal Appeals stayed the October 2025 execution of Robert Roberson—a man convicted of murdering his infant daughter in 2003—and remanded Roberson’s petition to the trial court in light of recent developments concerning the SBS hypothesis. *See Ex parte Roberson*, 2025 WL 2877824, at *1.¹¹ In concurring opinions in *Ex parte Roberson*, Texas Judges Richardson, Schenck, and Finley each emphasized that advances in medical and scientific understanding of SBS warrant a reexamination of Mr. Roberson’s conviction. *See* 2025 WL 2858392, at *3 (Richardson, J., concurring) (“The Court is correct in remanding the case to develop the evidentiary record in light of the 20 years of medical scientific advancement acknowledged in [*Ex parte Roark*].”);¹² *id.* at *8 (Schenk, J., concurring in relevant part) (“Because our holding in *Roark* undermines the evidence relative to Shaken Baby Syndrome, we must speculate as to what the jury did (or another jury would do) with the evidence presented of shaking, as compared to blunt force impact evidence.”); *id.* at *35 (Finley, J., concurring in relevant part) (“[Roberson’s] case rested on the same triad symptoms [as in *Roark*]; the evidence against him was circumstantial; there were no

¹¹ The decision in *Ex parte Roberson* was the subject of a Rule 28(k) letter filed by Bennett. The more recent decisions discussed in this brief are also being discussed in an additional Rule 28(k) letter.

¹² *Ex parte Roark* was decided in 2024 and is discussed in Bennett’s opening briefing.

eyewitnesses to the events that transpired; and the most persuasive evidence in trial was medical testimony. When the sole basis of conviction is forensic testimony later discredited, confidence in the verdict cannot be maintained.” (emphasis added)). Judge Finley’s opinion is particularly notable as he specifically credited the testimony of Roberson’s expert witnesses—two of which are also expert witnesses on Bennett’s behalf here: Dr. Janet Ophoven and Dr. Julie Mack. *See id.* at *26, *28–29.

2. Next is the decision in *Smith v. State*, 922 S.E.2d 6, 2025 WL 2918738 (Ga. Oct. 15, 2025) (*Smith III*). Smith was convicted of felony murder and aggravated battery in 2003 for the death of his two-month-old son based on a diagnosis of SBS. In 2008, Smith’s conviction was affirmed on direct appeal by the Georgia Supreme Court.

Over a decade later, in 2022, Mr. Smith filed an extraordinary motion for a new trial based on newly discovered evidence, which the trial court denied. Smith appealed that ruling up to the Georgia Supreme Court, which remanded the case back to the trial court, because the trial court denied Smith’s motion without an evidentiary hearing. (As in *Smith*, Bennett deserves an evidentiary hearing).

In *Smith*, the trial court eventually held an evidentiary hearing, at which Smith presented testimony from eight expert witnesses who “testified about changes in the medical understanding of three hallmark injuries underlying an SBS diagnosis—subdural hemorrhage, retinal hemorrhage, and diffuse axonal injury in the brain—and how that changed understanding would affect [Smith’s son’s] diagnosis.” *Id.* at 12. Nevertheless, the trial court found that Smith failed to show “that the new evidence was in fact newly

discovered, that he exercised diligence in obtaining and presenting that evidence to the court, or that the evidence was material.” *Id.* at 12-13.

Smith appealed again, arguing that the trial court did not apply the correct legal framework to its analysis. The Georgia Supreme Court unanimously agreed with Smith, finding the trial court erred at all three steps of the analysis. *Id.* at 14-18 (remanding the case to the trial court for a third time to reconsider Smith’s motion).

As to whether the changes in scientific understanding of diagnoses of brain injuries in infants constitutes “newly discovered evidence,” the Georgia Supreme Court rejected the trial court’s rationale as “wholly unsupported by decisional authority.” *Id.* at 14-15. It emphasized that “[t]he fact that the witnesses at Smith’s trial testified consistently with the then-current understanding of SBS has no bearing on whether the particular evidence supporting Smith’s extraordinary motion for new trial was unknown to Smith and his counsel at the time of trial.” *Id.* at 15. The court reasoned that “‘new expert analysis of existing physical evidence’ may ‘relate to new and material facts’ and, thus, may constitute newly discovered evidence.” *Id.* at 14.

The same is true for Bennett’s case. Approximately 40 people have been released from prison and exonerated based on the faulty “science” of the SBS hypothesis.¹³ Importantly, there have been 15 people exonerated *just since 2020*. None of these

¹³https://exonerateregistry.org/cases?search_api_fulltext=shaken+baby&f%5B0%5D=n_pre_1989%3A0 (last visited Feb. 19, 2026); *see also* <https://www.cato.org/blog/shaken-baby-syndrome-hypothesis-keeps-sending-innocent-people-prison> (last visited Feb. 19, 2026).

exonerations would have been possible without the recognition by courts nationwide that, as science and medicine advance, people convicted based on outdated medical evidence that is now known to be unreliable must have their new evidence heard in court.

As to diligence, the Georgia Supreme Court highlighted that Smith's newly discovered evidence was not just "generally critical" of SBS, but rather "relies on the testimony of eight expert witnesses that ... offer[] a new analysis of [the son's] medical records rooted in a new understanding of the underlying science and a medically based alternative explanation for [the son's] injuries." *Id.* at 16. The Georgia Supreme Court concluded that the trial court's "singular focus on identifying a precise date at which, in the court's estimation, Smith's new evidence could have been obtained" was improper, because "*a prudent defendant predicating [a post-conviction] motion on scientific developments would wait until he is confident in the materiality of those developments' before presenting the new evidence to the court.*" *Id.* at 16 (emphasis added, brackets added).

The same is equally true in Bennett's case. Bennett had reason not to file a petition in 2021 in Mississippi given the Joshua Clark decision. *Clark, supra.* But Bennett filed his petition immediately after a host of courts from across the country (decided after Mississippi's *Clark* decision) emphasized the scientific unreliability of the SBS hypothesis and the growing and vital need for courts to correct unsafe convictions.

As to materiality, the Georgia Supreme Court rejected the trial court's assessment that Smith's evidence was unpersuasive, stating that "the pertinent inquiry is not whether

the trial court found the newly discovered evidence persuasive in light of the other evidence presented at trial, but whether ‘a reasonable juror’ probably would.” *Id.* at 17-18 (citation and quotation marks omitted). The Georgia Supreme Court explained that “[u]nder that framework, a court must attempt to account for how the new evidence would have influenced the jury’s assessment of the evidence presented by the State at the defendant’s trial, had the new evidence been available to the defendant at that time.” *Id.* (citation and quotation marks omitted).

Smith III provides persuasive guidance here. Like Smith, Bennett has presented testimony from four different expert witnesses—and each opine how advancements in medical-scientific understanding cast significant doubt on whether the presence of the “triad” (subdural hemorrhage, retinal hemorrhage, and brain injury) is sufficient to support an SBS diagnosis. This evidence is newly discovered, was diligently obtained and presented to the Court, and is material to Bennett’s case.

3. The third recently decided case is *State v. Nieves*, 262 N.J. 161, 345 A.3d 1127 (Nov. 20, 2025). In *Nieves*, the New Jersey Supreme Court considered the admissibility of the State’s medical expert testimony on the SBS triad under the *Frye* standard.¹⁴ *Nieves*, 262 N.J. 161, 171, 345 A.3d 1127, 1132 n.1. Under that standard, “testimony must not only be reliable, but its proponent must establish that the information to which the expert will testify is generally accepted in the relevant community to which the expertise belongs.” *Id.*

¹⁴ *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923). New Jersey used the *Frye* standard for expert evidence at the time of the trial court proceedings in *Nieves*.

The New Jersey Supreme Court concluded that one of the relevant scientific communities under *Frye* for adjudging expert testimony on the SBS triad without evidence of impact was the biomechanical engineering community. *Id.* at 262 N.J. at 230, 345 A.3d at 1166. The court further concluded that “the State has not shown general acceptance within the biomechanical community regarding whether shaking without impact can produce the ‘triad’ of symptoms associated with SBS/AHT.” *Id.* at 262 N.J. at 230, 345 A.3d at 1167. In its reasoning, the New Jersey Supreme Court emphasized that “questions regarding the scientific reliability of an SBS/AHT diagnosis, in search of truth and understanding in the ever-evolving realm of science, are appropriate scientific inquiries.” *Id.* at 262 N.J. at 233, 345 A.3d at 1168.

So too here. Bennett presents the report of a biomechanical engineer expert. *See* Report of Van Ee, Ex. L, p. 5 (“Since Mr. Bennett’s trial in 2003 there have been a few key scientific studies published in the peer reviewed literature that clearly document that infants can sustain both skull fractures and intracranial hemorrhage as a result of falls generally consistent with the circumstances described by Mr. Bennett.”), p. 7 (The new studies published since the time of Mr. Bennett’s trial have provided an evidence base to clearly show that infant skull fracture can occur for falls of 12-20 inches onto a residential surface and in some cases as low as 6”). Further, these studies also clearly document that infants can also sustain intracranial hemorrhage for falls where the head fall height is on the order of 24-36 inches. Such clear demonstrations of the injury potential for infants for conditions much more comparable to the bed fall scenario presented at Mr. Bennett’s trial

were not available in the scientific literature in 2003.”). Also, the State’s expert (Hayne) has been entirely discredited, and the additional expert testimony presented by Bennett calls into serious question the reliability of the State’s case against him.

These recent decisions clearly demonstrate the emerging and continuing recognition of the change in scientific understanding underlying the issues in Bennett’s case. Bennett deserves post-conviction relief.

III. The State Misses the Mark in Now Trying to Reinvent this Case as Not a Shaken Baby Case.

Bennett’s jury heard from Steven Hayne, Dr. Emily Woodall, and Dr. Andrew Parent that this case was one of shaking and impact. Indeed, Hayne testified that the purported fractures (that are not even fractures—they are wormian bones)¹⁵ would not have caused death. “A fracture in and of itself is not going to produce death.” Tr. 1241.¹⁶ Hayne also testified that “a skull fracture did not kill the baby.” Tr. 1291.

The same is true for Drs. Woodall and Parent. Dr. Woodall, for example, testified that impact would not result in subdural hematomas, Tr. 935, and that the injuries in this case are consistent with someone “grab[b]ing the baby” and “shak[ing] the baby,” Tr. 946. Dr. Parent also testified that a skull fracture did not cause the death, Tr. 1030, and that the

¹⁵ Dr. Julie Mack’s recent 3D reconstruction of the imaging of Brandon Bennett’s brain/skull confirms that Dr. Hayne mistook “wormian bones” for fractures. Mack Report pp. 1, 12 (“There are no fractures on the right and no fractures in the area of the coronal suture. The appearance of the right coronal and sagittal sutures are due to wormian bones (normal developmental variants).”); *see also* Ophoven Report p. 2 (explaining that there is only one fracture and “[t]here were no other skull fractures identified, specifically to the right skull or at the coronal suture”).

¹⁶ In fact, Steven Hayne’s autopsy report on the cause of death “does not mention any fractures.” Mack Report p. 6.

cause of death was “consistent with non-accidental trauma, shaken baby syndrome,” Tr. 1019-1020. The jury was told repeatedly that the cause of death is impact and “changes consistent with concurrent shaken baby syndrome.” Tr. 1233.

The jury heard the same from the prosecution: “Every witness we put up there told you about shaken baby syndrome.” Tr. 1624. “The cause of death in this instant is craniotrauma to the brain consistent with shaken baby syndrome.” Tr. 1624. “What happened was this child was shaken and its life was thrown away[.]” Tr. 1626. “[T]his baby’s cries could be and were stopped by his father’s shaking[.]” Tr. 1630.

Unlike at Bennett’s trial, the medical community now accepts that any SBS/AHT diagnoses can only be assessed after all other potential natural and accidental causes of the intracranial triad have been considered *and excluded*. That is diametrically different from what happened with Bennett’s son Brandon.

The scientifically invalid and false testimony heard by the jury creates a serious due process issue. The jury heard evidence that Bennett violently shook his child and then tossed him down causing two skull fractures (i.e., the false testimony from Dr Hayne). And the jury convicted Bennett and sentenced him to death essentially agreeing with the State’s theory of the case and disregarding Bennett’s version of events that a short accidental fall occurred. What the State ignores is that the improper and unsupported shaken baby testimony at trial bolstered the State’s theory of the case that Brandon died from abuse. The jury was told that Bennett shook his infant son violently and the only explanation for the triad symptoms was violent shaking.

Essentially, the false and prejudicial SBS evidence is akin to character evidence. *See* MRE 404. The jury was “told” that because Bennett had conclusively shaken his son so violently (which was the only purported way to cause SBS symptoms), it was more likely than not that Bennett engaged in further abusive behavior resulting in not one, but two skull fractures. Put differently, the SBS testimony was so prejudicial that it left the jury with no other option than to view the fall as abusive. And the United States Supreme Court has been clear that where, as here, prejudicial evidence “so infected the trial with unfairness” it renders the resulting conviction or sentence “a denial of due process.” *Andrew v. White*, 145 S. Ct. 75, 83 (2025). *See* also MRE 403. The SBS testimony was “inflammatory, highly prejudicial and reasonably calculated to unduly influence the jury.” *Minor v. State*, 402 So. 3d 1272, 1280 (Miss. 2025) (internal citations omitted).

The change in science surrounding the SBS hypothesis is relevant because testimony prejudiced the jury into believing that Bennett was abusive, making it more likely than not that the State’s version of events (i.e., that Brandon was thrown) was correct and disregard the defense’s claim of a short accidental fall. Post-conviction relief in the form of an evidentiary hearing is warranted.

IV. Bennett’s Case is Doubly Problematic Because It Presents a Significant Paradigm Shift on the SBS Hypothesis and False Testimony from Steven Hayne—An Issue the State Ignores.

Here, the key case relied on by the State is *Shelby v. State*, 311 So. 3d 613 (Miss. Ct. App. 2020). But *Shelby* received an evidentiary hearing and proves only that Bennett

deserves a hearing as well. Indeed, the Mississippi Court of Appeals in the *Shelby* decision was reviewing a trial court sitting as finder of fact after a hearing.

Shelby is also not this case. Bennett's case not only involves the invalid SBS hypothesis, but it also involves false testimony from Steven Hayne. False testimony from a discredited figure like Hayne was not at issue in *Shelby*.¹⁷

Today, Hayne would be subject to a winning *Daubert* motion, as the State has to admit—since it too successfully filed *Daubert* motions against Hayne after his credibility was shattered. *E.g., Thomas v. State*, 249 So. 3d 331, 337 (Miss. 2018) (“Pretrial, the State had moved *in limine* to exclude the testimony of Dr. Hayne.”). Establishing that Hayne’s testimony would be excluded plainly is evidence that would “probably produce a different result or verdict.” *Ormond v. State*, 599 So.2d 951, 962 (Miss. 1992). The same is true for Michael West, who performed (and botched) the autopsy here with Hayne. As perhaps best noted in the 2025 Jimmie Duncan case from Louisiana, we now know (but did not at the time of Bennett’s trial) that Hayne is responsible for noted wrongful convictions, “untruthful” expert testimony, unethical business practices, and being untruthful about his credentials. April 23, 2025 Order, Written Reasons for Judgment, *Jimmie C. Duncan v. Tim Hooper*, 1994-F-42, Ex. H to Petition.

¹⁷ *Shelby* is also different on the facts. The child in *Shelby* had old injuries—thus further supporting the idea of abuse. *Shelby*, 311 So. 3d at 615 (“Some of the bruises were three to five days old....”). There is nothing of the sort in this case. As this Court previously stated, “[t]he record in this case discloses no evidence of premeditation. Nor is there evidence that Bennett abused his son in any way prior to the incident which led to his death.” *Bennett v. State*, 990 So. 2d 155, 159 (Miss. 2008).

That the State chooses not to address the false testimony from Hayne should be treated as a concession that the testimony was indeed false. *E.g.*, *Moore v. State*, 203 So. 3d 775, 780 (Miss. Ct. App. 2016) (“The State does not address and effectively concedes these points.”). Bennett’s jury heard that Hayne was an objective and highly-qualified forensic pathologist who could provide critical testimony about Bennett’s culpability. Hayne not only attested to the alleged scientific basis of SBS, but he also presented false testimony that there were two skull fractures – *a finding disputed by radiology and all other medical doctors*.

As discussed in Bennett’s opening Petition, Dr. Julie Mack’s 3D reconstruction of the imaging of Brandon Bennett’s brain/skull confirms that Dr. Hayne mistook “wormian bones” for fractures. Mack Report pp. 1, 12 (“There are no fractures on the right and no fractures in the area of the coronal suture. The appearance of the right coronal and sagittal sutures are due to wormian bones (normal developmental variants).”); *see also* Ophoven Report p. 2 (explaining that there is only one fracture and “[t]here were no other skull fractures identified, specifically to the right skull or at the coronal suture”).

In fact, if Brandon had any fracture to his skull at all, “it is likely subacute or old” because “[t]here is no adjacent soft tissue swelling or radiographic evidence of hemorrhage.” Mack Report p. 1; *see also* p. 8 (“On radiographic exams the absence of hemorrhage or swelling over a fracture is an indication that the fracture is likely older (multiple days to multiple weeks) and not acute. There is no evidence of additional fractures.”); p. 11 (“[T]here is no soft tissue swelling over the left parietal lucency. This

indicates that it may be an old fracture (potentially dating back to birth).”); p. 11-12 (“There is a lucency in the left parietal bone consistent with a non-displaced fracture. There is no soft tissue swelling associated with this lucency and no CT evidence of blood in the area of the fracture. Therefore, this fracture may be subacute or old.”); Ophoven Report p. 2 (“It is my opinion to a reasonable degree of scientific certainty based on the information available to me that the left parietal fracture was not a recent injury. This is based on the absence of any documented soft tissue swelling and/or hemorrhage in the subgaleal space and absence of hemorrhage in the tissues on the surface of the skull [periosteal hemorrhage] around the fracture.”); Ophoven Report p. 3 (Brandon “had a complicated delivery requiring the use of forceps on the baby’s head. The probability of this ‘fracture’ being a residual complication of his traumatic birth is high”). Thus, the only “fracture” cataloged by Drs. Woodall and Parent was *not the result of any blunt force trauma or abusive shaking experienced by Brandon while in the care of Devin Bennett.*

Because the State has nothing to rely on in its briefing, it falls back to just repeating what Steven Hayne said at trial. What this means is that the only expert on the State’s side is one whose professional reputation is stained with ethical issues and a series of exonerations and reversed convictions. The State of Mississippi’s position is thus essentially this: everyone else in the scientific, medical, and academic community is wrong about the injury to Brandon’s skull, and Steven Hayne (an “expert” even the State resorted to using *Daubert* against) is still the only one correct. In that regard, the Mississippi Attorney General is isolated on an island, alone but for one other inhabitant: one of the

most prolific peddlers of untruthful testimony, and as a necessary consequence, one its most prolific frauds.

V. Bennett is Factually Innocent, and His Case Warrants an Evidentiary Hearing In the Interest of Justice.

Bennett has satisfied the PCR Act’s newly discovered evidence standard. He has shown that the new evidence presented would “probably produce a different result or induce a different verdict.” *Howard*, 300 So. 3d at 1016. The changes and advancements in the medical and scientific community combined with the discreditation of both Hayne and West necessitate a post-conviction evidentiary hearing. Indeed, under the PCR Act, a court may summarily dismiss a PCR petition *only* “[i]f it plainly appears from the face of the motion, any annexed exhibits and the prior proceedings in the case that the movant is not entitled to any relief.” Miss. Code Ann. § 99-39-11(2); *see also Neal v. State*, 525 So. 2d 1279, 1281 n.2 (Miss. 1987) (noting the court cannot “resolve genuine issues of material fact by a process of trial by affidavit”).

While demonstrating actual innocence is not required at this stage in the proceedings, Bennett also has made a showing of innocence. It is certainly in the interest of justice to grant relief when a petitioner, like Bennett, has made a showing of actual innocence. Mississippi cases have turned to *Schlup v. Delo*, 513 U.S. 298, 327–28 (1995)¹⁸ when addressing actual innocence cases in post-conviction. *See Bell v. State*, 66 So. 3d 90,

¹⁸ *Schlup* was decided as a means to correct a miscarriage of justice despite procedural bars in the federal habeas statute. Similarly, innocence provides an exception to a statute of limitations in federal habeas proceedings.

92 (Miss. 2011). For example, in *Trotter v. State*, 907 So. 2d 397 (Miss. Ct. App. 2005), the appellate court acknowledged the “actual innocence” doctrine and held that the petitioner must demonstrate that, “‘in light of all the evidence,’ ‘it is more likely than not that no reasonable juror would have convicted him.’” *Id.* at 402 (quoting *Schlup*); *Henderson v. State*, 170 So. 3d 547, 554 (Miss. Ct. App. 2014).

Bennett has demonstrated that, but for false science and Hayne’s false testimony, it is more likely than not that no reasonable juror would have convicted him. Brandon’s tragic death was due to accidental causes. *See* Report of Dr. Chris Van Ee, Biomechanical Engineer, p. 5, Ex. L to Reply; Report of Dr. Janice Ophoven, Pediatric Forensic Pathologist, pp. 3-4, Ex. F to Petition; Report of Dr. Julie Mack, Diagnostic Radiologist, pp. 2, 8, 14, Ex. A to Petition; Report of Dr. John Galaznik, Pediatrician, pp. 11-12, Ex. G to Petition.

The PCR Act is also predominantly concerned with providing relief in the interest of justice. Miss. Code § 99-39-5(1)(e) provides:

Any person sentenced by a court of record of the State of Mississippi, including a person currently incarcerated ... may file a motion to vacate, set aside or correct the judgment or sentence ... if the person claims ... [t]hat there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence *in the interest of justice*. (Emphasis added).

See also Brewer v. State, 819 So. 2d 1169, 1172 (Miss. 2002) (“Prisoners may file an action to vacate or set aside a judgment on the ground ‘[t]hat there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or

sentence in the interest of justice.’”). In fact, in all arenas, Mississippi strives to “avoid sanctioning an unconscionable injustice.” *Woods v. State*, 242 So. 3d 47, 62 (Miss. 2018).

Cases like this one are the reason Mississippi’s newly discovered evidence and interest of justice exceptions exist: to unwind fundamental miscarriages of justice arising from an unreliable SBS cause-of-death hypothesis. The outdated SBS hypothesis and the numerous errors related to Brandon’s autopsy and Hayne’s testimony were decidedly material to Bennett’s conviction. Scientific and medical developments in the years since Bennett’s trial render the State’s cause-of-death theory not just flawed and unreliable but patently false. These flaws could not have been exposed to the jury through vigorous cross-examination, as the SBS hypothesis was considered so unassailable when Bennett was tried. Allowing Bennett’s conviction to stand risks a grave moral wrong—executing an innocent; but it also threatens fundamental conceptions of justice upon which we all depend.

VI. Bennett’s Conviction and Death Sentence Based on Discredited “Science” Violates the Right to Basic Due Process.

Both the quality and quantity of faulty evidence used to obtain Bennett’s 2003 conviction and death sentence undermined his constitutional right to a fundamentally fair trial, denying him the due process the U.S. Constitution guarantees. Due process does not permit a conviction obtained by scientific evidence, later learned to be unvalidated and unreliable, to stand. Here, Bennett’s jury heard that the only explanation for Brandon’s death was violent shaking and other inflicted abuse.

The State's experts testified to the then-prevailing belief that a short fall, like the fall Bennett had reported, could not produce a serious injury, even in a predisposed child (like Brandon). *Compare with* Mack Report p. 13 (While this child appears healthy and well-nourished, he had several risk factors that may have made him susceptible to disproportionate effects from minor head injury. These include: • Possible pre-existing skull fracture and/or damage to the dura (high risk with forceps delivery). • Difficulty and delay in intubation (prolonged lack of oxygen).”). Also, for many years, doctors were taught that retinal hemorrhages alone proved that abusive shaking had occurred. But in fact, many phenomena can cause retinal hemorrhages that have nothing to do with trauma, let alone inflicted trauma. Galaznik Report pp. 9-10 (“At the time Devin Bennett’s case presented and was tried, retinal hemorrhages were considered to be a primary result of repetitive acceleration/deceleration from abusive shaking according to the AAP and the U.S. DOJ. For example, per the DOJ in 2002, ‘retinal hemorrhage in infants is, for all practical purposes, conclusive evidence of shaken baby syndrome.’ U.S. DOJ Guide to Investigating Child Abuse, Battered Child Syndrome: Investigating Physical Abuse and Homicide. As discussed, that has not been proven true and there has been a significant change in the medical community ... It is also now recognized in published literature that resuscitation from a cardiorespiratory arrest with coagulopathy can result in extensive retinal hemorrhages. In this case, Brandon Bennett endured prolonged CPR before return of spontaneous circulation (ROSC) and had evidence of coagulopathy before any eye exam ... Given changes in the medical community, and the increased intracranial pressure here, the

retinal hemorrhages serve no purpose in defining the medical issues at presentation in this case. This is my opinion to a reasonable degree of medical certainty.”)

Because the SBS triad was seen as “diagnostic” of abuse at the time of Bennett’s trial, doctors *did not* conduct a differential diagnosis. That now discredited notion explains why medical professionals did not investigate Brandon’s medical history or an accidental cause for his death. Worse, in this case, the faulty evidence was used in combination with false testimony from Hayne that Brandon suffered two skull fractures. Mack Report p. 1 (“Radiological reconstructions confirm that there are no skull fractures on the right and no fractures in the area of the coronal suture. The abnormalities in the area of the right coronal and sagittal suture are developmental variants (wormian or intrasutural bones.”).

The U.S. Supreme Court has previously recognized that introducing faulty evidence is unconstitutional when “its admission violates ‘fundamental conceptions of justice.’” *Dowling v. United States*, 493 U.S. 342, 352 (1990) (quoting *United States v. Lovasco*, 431 U.S. 783, 790 (1977)). Junk-science claims are, in essence, a species of false-testimony claims. A conviction based on discredited science violates the right to due process if the scientific testimony contributed to the conviction, as it plainly did here.

VII. The Cumulative Impact of All Errors Warrants Post-Conviction Relief.

This Court has found that the cumulative effect of the errors in death penalty cases require reversal because “the fundamental respect for humanity underlying the Eighth Amendment’s prohibition against cruel and unusual punishment gives rise to a special ‘need for reliability in the determination that death is the appropriate punishment’ in any

capital case.” *Randall v. State*, 806 So. 2d 185, 234 (Miss. 2001) (internal citations omitted). The cumulative effect of the errors here denied Bennett a fair trial. *See Minor v. State*, 402 So. 3d 1272, 1280 (Miss. 2025) (“These errors—errors that may not be reversible when standing alone—are precisely what the cumulative-error doctrine was crafted to remedy.”) (internal citations omitted).

Refusing post-conviction relief, especially a post-conviction evidentiary hearing, when no legitimate basis exists for the causation theory the State relied on to convict, contravenes the basic truth-seeking function that is supposed to animate criminal justice.

CONCLUSION

Bennett’s conviction and sentence should be set aside in the interest of justice. Alternatively, Bennett should be granted an evidentiary hearing.

Dated: February 19, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been filed with the Clerk of the Court using the Court's MEC system, which sent notification of such filing to all counsel of record.

Dated: February 19, 2026.

Respectfully submitted,

/s/ Krissy C. Nobile
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