

On December 3, 2021, the Court heard testimony from Dr. Adele Lewis, Chief Medical Examiner for the State of Tennessee. Dr. Lewis testified concerning the new scientific evidence of actual innocence. Additionally, Dr. Lewis testified to the inaccuracy of the medical testimony presented to the jury at trial.

Specifically, Dr. Lewis testified that Dr. Gretel Harlan's methodology for dating the head injury based upon a lack of histiocytic response in the brain tissue is not a legitimate method for dating pediatric head trauma. The State prosecuted the petitioners under a theory that the head injuries and vaginal injuries occurred at the same time. A more reliable indicator of timing of this child's injuries is found in the perineal injury, where Dr. Harlan observed of the presence of macrophages within the wound. In a healthy person, these cells (macrophages) typically respond to a site of injury about two to eight days following the insult to the tissue. In a critically ill child the cellular response could be expected to be delayed to several days or even more than a week following an injury, well before the child was in the care of either Joyce Watkins or Charlie Dunn.

Additionally, Dr. Lewis testified regarding the visual inspection of bruising which Dr. Harlan employed to opine on the timing of the injuries in this case. Over the last thirty years, the medical community has given far less weight to the visual inspection of bruising as a legitimate method for dating an injury. Dr. Lewis specifically cites to a 2005 medical publication, which states, "Any clinician who offers a definitive estimate of the age of a bruise in a child by assessment with the naked eye is doing so without adequate published evidence." Maguire S, MK Mann, J Sibert, A Kemp. Can you age bruises accurately in children? A systematic review. *Arch Dis Child* 2005; 90: 187-189. This new scientific evidence proves that the jury was presented an inaccurate medical opinion on the timing of the head injury. Placed in context with the debunked histiocytic

response methodology employed by Dr. Harlan, it is evident that there is no compelling medical evidence that links Ms. Watkins and Mr. Dunn to these crimes.

The Court additionally heard testimony from Joyce Watkins. Ms. Watkins testified that she served twenty-seven years for these convictions. She was released from custody in 2015 and is currently in good standing on parole. As a condition of parole, she has taken numerous polygraph tests, all of which she passed truthfully. Ms. Watkins continues to maintain that she and Mr. Dunn are innocent of these charges.

Procedural Background

On August 5, 1988, Petitioners were convicted of aggravated rape and felony murder in Davidson County Criminal Court, Division II following a jury trial. Petitioners were sentenced to life imprisonment for the murder and a concurrent sixty-year term for aggravated rape. The convictions were affirmed by the Court of Criminal Appeals on April 11, 1990, and application for permission to appeal was denied on October 1, 1990.

Petitioners filed separate Petitions for Post-Conviction Relief in 1993 alleging ineffective assistance of counsel. The trial court denied relief. The Court of Criminal Appeals subsequently affirmed the denial on October 9, 1999.

On September 25, 2014, Ms. Watkins filed a Petition for Writ of Habeas Corpus in the Shelby County Criminal Court, Division VIII, alleging defects with the indictment. On December 17, 2014, the trial court denied the Petition.

Ms. Watkins served 27 years in prison and was granted parole on October 15, 2015. She is still on the Tennessee Sex Offender Registry. Mr. Dunn died in prison on January 12, 2015, while serving his life sentence.

The current proceedings mark the first in-court proceeding for which all information in the possession of either party has been fully disclosed, one to the other and to the court before which it is being heard. Further, after thorough and detailed review by the parties and the Court, this is the first proceeding in which the evidence has not been tainted by the submission of misinformation – namely the incorrect medical proof and the misstated evidence concerning destruction of evidence. The extraordinary relief requested by Petitioners, and agreed to by the State, is fully supported by the transparency and thoroughness now conducted which simply was not the case in 1988 or 1994. Further, and for the first time, the Court is presented with a claim of actual innocence and the constitutionality of the convictions.

Analysis

Legal Standards Asserted

Petitioners bring this action pursuant to the Post-Conviction Procedure Act as codified in Tennessee Code Annotated § 40-30-101, et. seq. Petitioners assert a claim of actual innocence based on new scientific evidence, that actual innocence is a standalone claim for which they are entitled to relief, that relief is warranted based on constitutional Due Process violations, and that they are actually innocent. The State, in both their filings and oral presentations to the Court, admits to the facts asserted by Petitioners in their Motion to Reopen the Petition for Post-Conviction Relief. Further, the State filed a Notice of Intent according to Tenn. Sup. Ct. R.8, RPC 3.8, asserting that they have an ethical obligation to notify the court when they know of new, credible, and material evidence which demonstrates by clear and convincing evidence that the Petitioners did not commit the crime for which they were convicted.

Facts

Both Petitioners and the State stipulated to the facts as testified to, and those outlined in their respective filings which are Exhibits 1 and 2 to the hearing. Exhibits 1 and 2 contain a detailed recitation of the facts and history of this case. Additionally, both parties agree that Petitioners are actually innocent. The Court adopts the stipulated facts as stated in Exhibits 1 and 2 in conjunction with the testimony outlined *supra*.

Timeliness, Standard of Review and Available Relief

A petition for post-conviction relief must be filed within one (1) year of the final action in the highest appellate state court to which an appeal is taken or upon final judgment where there is no appeal. Tenn. Code Ann. § 40-30-102(a). However, where there is new scientific evidence of actual innocence, an exception is carved out and the statute does not create a time limit in which such a claim must be filed. Tenn. Code Ann. § 40-30-102(b)(2). A motion to reopen a petition based on new scientific evidence is distinct from other exceptions carved out by the Post-Conviction Procedure Act which limits petitions for newly created constitutional claims and the relief from sentence enhancement where a previously relied upon conviction was vacated to one (1) year from the time of the triggering action. A plain language reading of the statute indicates that new scientific evidence is 1) an independent basis for post-conviction relief and 2) is not subject to the same time limits placed on the other avenues for relief. Stated more succinctly, there is no statutory framework that time bars the filing of a motion to reopen a post-conviction petition based on newly discovered scientific evidence. *See also Dellinger v. State*, 279 S.W.3d 282 (Tenn. 2009). The Court finds the Motion to Reopen submitted by the Petitioners is timely filed. As such, Petitioners are entitled to a ruling on their request to vacate their convictions in light of the new scientific evidence presented.

Post-conviction relief is available when “the conviction of sentence is void or voidable because of the abridgment of any right guaranteed” by the Tennessee and United States Constitutions. Tenn. Code Ann. § 40-30-103. Similarly, if new scientific evidence is favorable to a defendant, then a hearing shall be had in accordance with the Post-Conviction Procedure Act. Tenn. Code Ann. § 40-30-312. If granted a hearing, the petitioner bears the burden of proving the allegations by clear and convincing evidence. Tenn. Code Ann. § 40-30-110. Evidence is “clear and convincing when there is no serious or substantial doubt about the accuracy of the conclusions drawn from it.” *Hicks v. State*, 983 S.W.2d 240, 245 (Tenn. Crim. App. 1998) (citing *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n.3 (Tenn. 1992)). “If the court finds that there was such a denial or infringement of the rights of the prisoner as to render the judgment void or voidable . . . the court shall vacate and set aside the judgment or order a delayed appeal as provided in this part and shall enter an appropriate order and any supplementary orders that may be necessary and proper.” Tenn. Code Ann. § 40-30-111.

Previously Determined Claims

As a preliminary matter the Court must determine whether the claims or grounds for relief were waived or previously determined. The issues before this Court were not waived by Petitioners. The information now presented to the Court concerning the destruction of evidence was unavailable to Petitioners at the time of trial, and thus they could not have waived the claims or grounds now addressed. The new scientific evidence on the dating of pediatric head trauma was unavailable to Petitioners at the time of trial, and thus they could not have waived the claims or grounds now addressed, “A claim for relief is previously determined if a court of competent jurisdiction has ruled on the merits of the claim after a full and fair hearing at which petitioner is afforded the opportunity to call witnesses and present evidence.” Tenn. Sup. Ct. R. 28 §2(E).

Generally, a proceeding is deemed unfair when a court is presented with misleading information including false and uncorrected false testimony as to material issues. *See State v. Spurlock*, 874 S.W.2d 602, 621 (Tenn. Crim. App. 1993). Use of such testimony is a violation of Due Process. *Id.*

The evidence presented at trial and post-conviction in this case was misleading, false, and uncorrected as to material issues. At trial, the prosecutor argued to the jury that Ms. Watkins washed a bedsheet to destroy evidence of a rape. The evidence presented in this Motion, proves otherwise. The bedsheet at issue was not washed. It was in the home of Ms. Watkins, unwashed, available for collection. This is documented in a report prepared by the Tennessee Department of Human Services. The State presented inaccurate evidence at trial, which was specifically highlighted in closing argument as direct evidence of the Petitioners' guilt. This misstatement of both the evidence and the law constitutes a due process violation. This is the first court that has ever heard accurate testimony as it relates to this evidence which was used to convict Petitioners.

The Court also notes the inaccurate medical evidence presented at trial and at the post-conviction hearing. The new scientific evidence, proves that the timing of the fatal injury, as presented by Dr. Harlan is erroneous. Dr. Harlan's opinion on the lack of histiocytic response as the basis for the timing of the injury is inaccurate. Dr. Harlan admitted her error at the post-conviction hearing in 1994. Dr. Harlan's use of visual inspection as a methodology to date bruising is a methodology no longer accepted by the medical community.

The evidence presented at trial in 1988, and at the post-conviction hearing in 1994, consisted of inaccurate medical testimony supported by misstated circumstantial evidence. In combination, it is impossible for this Court to find that the post-conviction hearing was "full and fair" or that Petitioners had the opportunity to "call witnesses and present evidence" which were

still not available to him. Petitioners did not even learn about the misstated circumstantial evidence until the documents were first turned over this year in conjunction with this litigation. The Court finds the issues now presented have not been previously determined.

New Scientific Evidence

New scientific evidence is not directly defined in Tennessee Code Annotated § 40-30-102(b)(2). However, new scientific evidence is any evidence not presented or available for presentation to a jury. The Court credits and accepts the testimony and report from Dr. Adele Lewis. Additionally, the Court credits and accepts the affidavit from Dr. Shilpa Reddy.

The scientific evidence presented at trial to establish the timing of the injuries in this case was incorrect. New scientific evidence proves that there is no compelling medical evidence connecting Petitioners to the crimes for which they were convicted

Consideration of Newly Discovered Evidence

When weighing the new scientific evidence of actual innocence, the Court cannot simply consider the evidence in a silo. In addition to the new scientific evidence, material evidence was submitted which was not previously available to Petitioners. This includes the Department of Human Services Report which proves that Ms. Watkins did not destroy evidence as presented to the jury. Consideration of the newly discovered and material evidence in light of the claim of actual innocence based on new scientific evidence is particularly necessary to gain a complete understanding of the issues presented to the Court.

Constitutional Violations

There are three distinct constitutional violations at issue in this matter. First, the failure to disclose the exculpatory Tennessee Department of Human Services Report is in direct

contradiction to the requirements of *Brady* and Tenn. R. Evid., R.16. See *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

Second, discredited scientific evidence presented to a jury constitutes a due process violation. The Due Process Clause guarantees the fundamental elements of fairness in a criminal trial.” *Spencer v. Texas*, 385 U.S. 554, 563-64 (1967). A petitioner can establish a violation of his due process rights under the constitutional due process clause by showing that the effects of evidentiary errors produced a trial that was fundamentally unfair. *Cooper v. Sowders*, 837 F.2d 284, 286, 288 (6th Cir. 1988). Similarly, due process is violated when a conviction rests on evidence shown to be fundamentally unreliable. *Lee v. Glunt*, 667 F.3d 397, 403, 407-08 (3d Cir. 2012).

In *State v. Waterford*, 2018 Tenn. Crim. App. LEXIS 777 at *49. the Tennessee Court of Criminal Appeals, cited *Han Tak Lee v. Superintendent Houtzdale SCI*, 798 F.3d 159, 166 (3d Cir. 2015), for the proposition that discredited scientific evidence presented at trial constitutes a due process violation. In *Lee*, the defendant was convicted of first-degree murder and arson. He sought federal habeas relief, arguing that new developments in fire science discredited the fire science presented at trial. The Third Circuit Court of Appeals held, “if the defendant’s expert’s independent analysis of the fire scene evidence – applying principles from new developments in fire science – shows that the fire expert testimony at trial was fundamentally unreliable, the [defendant] will be entitled to federal habeas relief on his due process claim.” *Id.* The medical evidence presented in this trial on the histiocytic response and the visual inspection of the bruising was unreliable. This unreliable testimony constitutes a due process violation.

Finally, it was an independent due process violation for the prosecutor to erroneously argue to the jury that Ms. Watkins destroyed evidence. Generally, a proceeding is deemed unfair

when a court is presented with misleading information including false and uncorrected false testimony as to material issues. *See State v. Spurlock*, 874 S.W.2d 602, 621 (Tenn. Crim. App. 1993). Use of such testimony is a violation of Due Process. *Id.*

Actual Innocence

The question that remains for the Court is whether Petitioners, after submission of new scientific evidence, made a clear and convincing showing of their actual innocence. Petitioners maintained their innocence since their arrest and Ms. Watkins testified to that effect at the hearing. Ms. Watkins continues to maintain her innocence today. Mr. Dunn, supported by his family, maintained his innocence until his death in 2015.

The Court finds the following facts that support the claims by the Petitioners of actual innocence:

1. There is no compelling scientific evidence that Ms. Watkins or Mr. Dunn committed the crimes for which they were convicted.
2. The medical opinion presented at trial on the timing of the relevant injuries was inaccurate.
3. Dating a head injury based upon a lack of a histiocytic response in the brain tissue is not a legitimate method for dating pediatric head trauma.
4. The presence of macrophages in the perianal injury is evidence that the injuries at issue in this case occurred before the child was in the care of Ms. Watkins or Mr. Dunn.
5. New scientific evidence of published medical research, along with advancements in the medical community over the past thirty years, prove that visual inspection of bruising is not a legitimate approach to dating an injury.
6. Arguments presented to the jury, and Court, concerning destruction of evidence were inaccurate and uncorrected.


7. The State of Tennessee failed to turn over exculpatory evidence, specifically the Department of Human Services Report concerning the alleged destruction of evidence. The State stipulates that it failed to disclose this report, which constitutes a *Brady* violation pursuant to *See Brady v. Maryland*, 373 U.S. 83, 87 (1963).
8. The inaccurate medical opinions, presented in the context of erroneous circumstantial evidence, led the jury and court to rely on inaccurate and misleading information.

In short, the evidence in this case supports the claim that Joyce Watkins and Charlie Dunn are innocent and were convicted of crimes they did not commit.

Conclusion

In consideration of all that which is set forth above, the Court finds that Petitioners have established the claims set forth in their Motion to Reopen their Petition for Post-Conviction Relief by clear and convincing evidence. As such, it is ORDERED, ADJUDGED and DECREED that the Motion to Reopen the Petition for Post-Conviction Relief is hereby GRANTED. Additionally, the relief sought is hereby GRANTED and the convictions in this case are rendered void and shall be vacated. It is further ORDERED, ADJUDGED and DECREED that this case be docketed for further adjudication.

Entered this 6th day of January 2022



Angelita Blackshear Dalton, Judge
Criminal Court, Division II

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