

No. 23-2960
In The
SUPREME COURT OF THE UNITED STATES

TASHA MERCEDEZ SHELBY,

Petitioner,

v.

STATE OF MISSISSIPPI,

Respondent.

Reply Brief in Support of
Petition for a Writ of Certiorari
to the
Supreme Court of Mississippi

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Cases

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Constitutional Provisions

U.S. CONST. amend. XIV, § 1 Due Process Clause 4

Respondent's brief in opposition might have been responsive had petitioner sought review of the December 10, 2018 decision which respondent attached to its brief. But petitioner did not seek review of that ruling. Rather, she petitioned over the subsequent refusal of the Mississippi Supreme Court in October 2023 to reopen the case against her when she presented new evidence that was different in kind, and not just degree, and because that evidence only came into existence *after* the hearing that led to the December 2018 decision had concluded.

Three Key Facts Undermine the State's Conviction

Indeed, despite its length and its extensive discussion of the facts elicited at trial and during the 2018 post-conviction hearing, respondent's brief fails to include the three facts that are undisputed and that lay at the heart of the petition:

- The 180-degree reversal in the official position of the State that occurred when Dr. Riddick changed the cause of death of Bryan Thompson from "homicide" to "accidental."
- The State waited for two months after Bryan's death to charge petitioner with homicide, and it was only after Dr. Riddick filed his autopsy report, attributing the death to homicide, that the State immediately arrested petitioner and indicted her for causing Bryan's death.
- On the day that Bryan was found on the floor of their trailer, petitioner was still recovering from emergency c-section surgery, including specific instructions not to lift heavy objects which would include Bryan, who was 30 inches long and weighed 33 pounds. Ex. D Post-Conviction Relief

Hearing, April 2018 (petitioner's May 17, 1997 hospital discharge summary). Even without the surgery, petitioner, who is only 4' 10" tall, probably could not have lifted Bryan, let alone shaken him and tossed him onto a hard surface, which is how the State now envisions his death was caused.

Each of these facts has great significance on its own, but in combination they cry out for at least a resentencing for petitioner, instead of remitting her to life without parole for what the State's key witness at trial has now concluded was not a crime at all.

First, the reversal by Dr. Riddick was unlike a witness changing her recollection of what she saw of the crime scene, or even experts having second thoughts about their opinions previously offered in court. At trial, Dr. Riddick was the state's primary witness, testifying far longer than any other witness, and serving as the only expert witness on the cause of death. This new autopsy report was a change in official positions from one that convicted petitioner to one that exonerated her. Moreover, when Dr. Riddick expressed doubts about petitioner's guilt in the 2018 hearings, he was attacked by the State's lawyers and by an expert witness brought in to disagree with Riddick's tentative conclusions as to petitioner's innocence. Despite these strong disagreements with his new-found views, Dr. Riddick doubled down and took the legally significant step of changing the official diagnosis from homicide to accident. Because the new autopsy report was not issued until the record leading to the December 2018 decision was closed, it could not have been presented in any prior proceedings and thus was truly "new evidence" that the

Mississippi courts have refused to consider, even though it plainly meets the standard that the evidence “would probably produce a different verdict.” *Pruitt v. State*, 100 So.3d 971, 973 (Ms. Ct. App. 2013).

Second, the best evidence of the significance of Dr. Riddick’s 1997 conclusion as to the cause of Bryan’s death is what the State did and did not do in the months after Bryan died on May 31, 1997. The State interrogated petitioner on May 30, after she rushed Bryan to the hospital. The State, however, did not bring criminal charges against petitioner until August 13, 1997, when it arrested her, two days after Riddick’s report, pointing to SBS and petitioner as the cause of death, was issued on August 11. (TT 346, 375). Given that otherwise inexplicable gap, there can be no doubt of the importance of Dr. Riddick’s conclusion to the State’s decision to charge petitioner, let alone to convict her at trial. Put another way, can there be any doubt that the State would have halted its investigation of petitioner if the prosecutors had been provided the 2018 Riddick report, listing the cause of death as accidental, instead of the August 1997 report which ascribed the death to homicide?¹

Third, especially now that the State apparently believes that shaking Bryan alone would not have killed him, it cannot close its eyes to the near impossibility that petitioner could have done what it contends caused Bryan’s death. Bryan was not an infant, but a 30-inch, 33-pound child, and petitioner who is less than five feet tall, was recovering from recent major surgery. How could she have picked him up, and

¹ Respondent now suggests that petitioner, who had no criminal record nor history of prior child abuse, may have had a motive to murder Bryan because he was a difficult child for her to control. That suggestion is pure speculation and is belied by the fact that Bryan’s father and petitioner were married in June 1997, after Bryan’s death but before Dr. Riddick issued his findings.

then tossed him to the ground without encountering the resistance from Bryan needed to break his fall? Bryan had no skull fractures, no broken ribs, nothing to indicate violent abuse. (HT 502). Needless to say, no jury was ever presented with this scenario, and no jury would have believed it if the State had pursued that theory.

In short, if the jury that convicted petitioner had been presented with Dr. Riddick's June 2018 new findings and death certificate, rather than the original one, there would have been no basis to find her guilty, let alone guilty beyond a reasonable doubt. Because the State bears the responsibility for the original and the now superseded autopsies, the Due Process Clause and fundamental fairness preclude it from walking away from this conflict and allow petitioner to remain in prison for the rest of her life.

Respondent's Other Contentions Lack Merit

There are three additional points that should be noted because respondent places so much emphasis on them. It is true that Bryan had bruises on the front and back of his head, and petitioner concedes that a single fall almost certainly did cause them both. However, the record is clear that the cause of the frontal bruise was that the deceased child's father accidentally hit Bryan's head on the frame of the car door when they were taking him to the hospital, as he himself testified at trial. (TT 329-330; 347-48).

Respondent now claims that Shaken Baby Syndrome (SBS) had essentially nothing to do with petitioner's conviction so that Dr. Riddick's about face is irrelevant.

It can make that claim only by disregarding the original trial record, in particular the opening and closing statements by the prosecutor and Dr' Riddick's testimony as to the cause of Bryan's death.

The first words the prosecutor spoke to the jury at trial were, "Good morning. On May 30th, 1997, Tasha Shelby shook a two-and-a-half-year-old child, Bryan Thompson, so violently that the child died the next day from those injuries." (TT 243, ln. 10-16). He continued: "[Dr. Riddick] will tell you that in no way, shape or form is this an accident... He will tell you that this is no accident. It is a violent, violent shaking." (TT 248, ln. 11-17).

At trial, Dr. Riddick testified to shaking under direct examination by the State (TT 424, ln. 15-20; TT 425, ln. 7-18). Then, the defense expert testified to shaking under cross examination by the State (TT 507, ln. 2-12; 516, ln. 13-16; 523, ln. 12-22). Thus, in closing, the State was able to argue to the jury, "I would like to go over some things that are not in dispute...Bryan Thompson IV was violently shaken to death. That is undisputed. Even their [expert] testified to that. He was violently shaken to death. This was not an accident." (TT 583, ln. 17-29). In explaining the charge, the prosecutor told the jury, "When a baby is shaken to death, they can't defend themselves, and therefore the defendant is guilty of capital murder." (TT 587, ln. 7-9).

Nor was SBS out of the case at the time of the post-conviction hearing in 2018. Here are a few excerpts from the opinion appended to respondent's opposition that demonstrate how central SBS is to the State's case:

- “The State has never alleged that shaking alone caused Bryan's death” (App. 19).
- “Shaken baby syndrome may have been involved in legitimate debates in the years since Bryan's death and Shelby's trial but it has not been ‘debunked’ as alleged” (App. 20).
- “Shelby has failed to prove by a preponderance of the evidence that shaken baby syndrome with impact is either debunked or unreliable particularly as applied to the facts in this case” (App. 21).

And in the respondent’s opposition in this Court (pp. 10-14), the State continues to defend SBS, although qualifying its defense by admitting that “SBS alone” did not cause Bryan’s death. Regardless of whether SBS – an allegation of murder – was allegedly the sole cause of Bryan’s death or only a significant contributing factor, the jury surely relied on it and on the now-reversed death certificate, with Dr. Riddick’s testimony explaining it.

One last point: petitioner is entitled to have her conviction overturned for the reasons set forth above and in the petition. What she wants most is to be released from confinement so that at age 48 she can recapture some part of her life. The State refuses to recognize that the heart of its case against her collapsed when Dr. Riddick revoked the official document that produced her conviction and, in its place, he ascribed Bryan’s death to an accident. There is no more for the parties to say if the Court were to set the case for full briefing. Accordingly, petitioner urges the Court to grant the petition, to reverse the decision below summarily, and to order petitioner

released from custody, with the State given the option to retry her or grant her a new hearing on her sentence.

Conclusion

For the foregoing reasons, the petition for a writ of certiorari should be granted.

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