

**MISSISSIPPI SUPREME COURT DECISIONS – AUGUST 6, 2020*****SUPREME COURT - CIVIL CASES*****GIBBONS V. MISS. BAR****CIVIL - BAR MATTERS**

**BAR MATTERS - REINSTATEMENT - BURDEN OF PROOF** - To be reinstated, the suspended attorney must prove by clear and convincing evidence that they have rehabilitated themselves in conduct and character since the suspension was imposed

**BAR MATTERS - REINSTATEMENT - REQUIREMENTS** - Before an attorney can be reinstated, five requirements must be satisfied, in which the attorney must (1) state the cause or causes of suspension; (2) give the name and current address of all persons, parties, firms, or legal entities who suffered pecuniary loss due to the improper conduct; (3) make full amends and restitution; (4) show that he has the necessary moral character for the practice of law; and (5) demonstrate the requisite legal education to be reinstated to the privilege of practicing law

**FACTS**

In January 2019, the Louisiana Supreme Court suspended David Gibbons from the practice of law in Louisiana for neglecting his client, Greater New Orleans Federal Credit Union (“GNOFCU”), failing to timely disclose his malpractice to GNOFCU, and misleading GNOFCU about his malpractice. In October 2019, the Mississippi Supreme Court imposed a retroactive suspension on Gibbons, taking effect on January 8, 2019. In November 2019, Gibbons filed a petition for reinstatement with the Mississippi Supreme Court.

**ISSUES**

Whether Gibbons (1) stated the cause of suspension; (2) provided the name of the party that suffered a pecuniary loss because of his malpractice; (3) fully recompensed the party that incurred damages; (4) demonstrated that he has the requisite moral character to practice law in Mississippi; and (5) exhibited the legal knowledge and training required to be reinstated in Mississippi.

**HOLDING**

(1) Because Gibbons noted in his petition the various outstanding loan obligations that he allowed to fall outside of the prescription period, Gibbons stated the cause of his suspension. (2) Because Gibbons supplied GNOFCU’s address and telephone number, he provided the name of the party that suffered a pecuniary loss because of his malpractice. (3) Because Gibbons settled a professional-malpractice lawsuit with GNOFCU, Gibbons recompensed the party that incurred damages. (4) Because Gibbons displayed remorsefulness and complied with all terms of his suspension, Gibbons demonstrated that he has the requisite moral character to practice law in Mississippi. (5) Because Gibbons submitted documentation evidencing his continuing legal-education, Gibbons exhibited the legal knowledge and training required to be reinstated in Mississippi. Therefore, the Supreme Court granted Gibbon’s petition for reinstatement.

**Reinstatement Granted - 2019-BR-01672-SCT (Aug. 6, 2020)**

En Banc Opinion by Justice Beam

Andrew Kilpatrick Jr. for Appellant - Adam B. Kilgore for Appellee

Briefed by [John Michael Sweatt](#)

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## S. FARM BUREAU LIFE INS. CO. V. THOMAS

### CIVIL - TORTS - OTHER THAN PERSONAL INJURY & PROPERTY DAMAGE

**EMPLOYMENT LAW - EMPLOYMENT AT-WILL - TERMINATION** - Absent an employment contract expressly providing to the contrary, an employee may be discharged at the employer's will for good reason, bad reason, or no reason at all, excepting only reasons independently declared legally impermissible

**EMPLOYMENT LAW - EMPLOYMENT AT-WILL - EXCEPTIONS** - Creating exceptions to the at-will employment doctrine is generally a legislative task

**EVIDENCE - PRIVILEGES - EMPLOYER/EMPLOYEE RELATIONSHIP** - Mississippi recognizes a qualified privilege for statements made in the context of the employer/employee relationship

**TORTS - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS - EMPLOYMENT DISPUTES** - Only in the most unusual cases does the conduct move out of the realm of an ordinary employment dispute into the classification of extreme and outrageous, as required for the tort of intentional infliction of emotional distress

### FACTS

Southern Farm Bureau Life Insurance Company ("Southern Farm Bureau") terminated Regina Thomas and Pam Pilgrim, accusing them of theft and dishonesty. Thomas and Pilgrim sued Southern Farm Bureau for wrongful termination, defamation, invasion of privacy, negligent infliction of emotional distress, intentional infliction of emotional distress, and other state law claims. Thomas and Pilgrim alleged that their terminations were motivated by age and gender discrimination. Following Southern Farm Bureau's removal of the case to federal court and the subsequent remand back to state court, the Hinds County Circuit Court denied Southern Farm Bureau's motion for summary judgment on all claims. Southern Farm Bureau appealed.

### ISSUES

Whether (1) Southern Farm Bureau abrogated the at-will employment doctrine through its employee handbook; (2) the Supreme Court should have created a common-law cause of action for wrongful termination based on age and/or gender discrimination; (3) Thomas and Pilgrim asserted viable claims for defamation and invasion of privacy; and (4) Thomas and Pilgrim asserted viable claims for negligent infliction of emotional distress and intentional infliction of emotional distress.

### HOLDING

(1) Because the employee handbook began with the express disclaimer that it was not a contract, and because the at-will employment doctrine can be altered only by an employment contract expressly providing to the contrary, Southern Farm Bureau did not abrogate the at-will employment doctrine through its employee handbook. (2) Because creating exceptions to the at-will doctrine is generally a legislative task, and because federal statutory law independently declared terminations motivated by age and gender discrimination legally impermissible, the Supreme Court declined to create a common-law cause of action for wrongful termination based on age and/or gender discrimination. (3) Because Thomas and Pilgrim alleged that Southern Farm Bureau told its employees they were terminated for stealing money from the company, and because Mississippi recognizes a qualified privilege for statements made in the context of the employer/employee relationship, Thomas and Pilgrim did not assert viable claims for defamation and invasion of privacy. (4) Because the exclusivity provision of the Mississippi Workers' Compensation Act barred Thomas and Pilgrim's claim for negligent infliction of emotional distress, and because they failed to allege extreme and outrageous conduct as required for the tort of intentional infliction of emotional distress, Thomas and Pilgrim did not assert viable claims for negligent infliction of emotional distress and intentional infliction of emotional distress. Therefore, the Supreme Court reversed and rendered the judgment of the Hinds County Circuit Court.

### **Reversed & Rendered - 2019-IA-00324-SCT (Aug. 6, 2020)**

Opinion by Justice Maxwell

Hon. Winston L. Kidd (Hinds County Circuit Court)

W. Thomas Siler Jr., Mallory Kaye Bland, Gregory Todd Butler, & Jason Thomas Marsh for Appellant - Dion Jeffery Shanley & Alan M. Purdie for Appellees

Briefed by [Cody Austin](#)

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## TAYLOR CONSTR. CO. V. SUPERIOR MAT CO.

### CIVIL - CONTRACT

**CIVIL PROCEDURE - VENUE - PROPER COUNTY** - Pursuant to Miss. Code Ann. § 11-11-3(1)(a)(i), permissible venues for the plaintiff to select include the county (1) where the defendant resides; (2) if a corporation, in the county of its principal place of business; (3) in the county where a substantial alleged act or omission occurred; or (4) where a substantial event that caused the injury occurred

**CIVIL PROCEDURE - VENUE - SUBSTANTIAL ACT** - A substantial act or event is one that bears more than a mere incidental relationship to the plaintiff's cause of action; substantiality is intended to preserve the element of fairness so that a defendant is not haled into a remote district having no real relationship to the dispute

**CIVIL PROCEDURE - VENUE - BURDEN OF PROOF** - The plaintiff bears the burden of demonstrating credible evidence for a choice of venue, which requires demonstrating credible evidence of acts by the defendant in the chosen venue that have a real, not incidental, relevance to the plaintiff's claim

### FACTS

Taylor Construction ("Taylor") rented more than seven hundred mats from Superior Mat's ("Superior") location in Covington County. Superior alleged that Taylor returned several dirty mats or, in some cases, mats damaged beyond repair. Subsequently, Taylor paid for the mats until Superior additionally billed Taylor for missing mats. Taylor later stopped payment on all invoices from Superior. Superior filed suit against Taylor, alleging breach of contract, open account, quantum meruit, and bad-faith breach of contract. Taylor filed its answer along with a motion to transfer venue under Miss. R. Civ. P. 82(d). The circuit court denied Taylor's motion. Taylor appealed.

### ISSUE

Whether the circuit court abused its discretion by holding that venue was appropriate because a substantial alleged act or omission occurred in Covington County.

### HOLDING

Because Taylor Construction agreed to pick up and return the majority of the mats in Covington County, and because the pickup and return of the mats was a substantial act or omission, the record established that the circuit court found credible evidence that a substantial alleged act or omission occurred in Covington County and the circuit court did not abuse its discretion by denying the motion to transfer venue. Therefore, the Supreme Court affirmed the judgment of the Covington County Circuit Court.

### CONCURRENCE

Justice Griffis specially concurred to express concern regarding the terms "real" or "real, not incidental" in the majority's interpretation of "substantial" as used in the venue statute. Justice Griffis contended that the terms "important," "essential," or "fundamental" would assist in the interpretation of the term "substantial act" as used in the venue statute.

### **Affirmed - 2018-IA-01279-SCT (Aug. 6, 2020)**

En Banc Opinion by Chief Justice Randolph - Concurrence by Justice Griffis

Hon. Eddie H. Bowen (Covington County Circuit Court)

Craig N. Orr for Appellant - Herman M. Hollensed, Jr. for Appellee

Briefed by [Joshua L. Holmes](#)

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## *SUPREME COURT - ORDERS*

### **MISS. BAR V. MAUK-WILLIAMS**

#### **ORDER OF DISBARMENT**

#### **ORDER**

The Mississippi Bar (the Bar”) filed a formal complaint to disbar Charlene Mauk-Williams, a member of the Bar who pled guilty to and was convicted of the felony of contributing to the neglect of a minor, which is a disbarable offense. Mauk-Williams was personally served with the Bar’s summons and complaint, but she did not respond. As a result, the Supreme Court disbarred Mauk-Williams pursuant to Miss. R. Discipline 6, which finds conviction of the crime of contributing to the neglect of a minor as cause for summary disbarment.

**Ordered - 2020-BD-00222-SCT (Aug. 4, 2020)**

Order by Justice Griffis

Briefed by [Blake Tims](#)

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## *SUPREME COURT - CRIMINAL CASES*

### **LATHAM V. STATE**

#### **CRIMINAL - FELONY**

#### **CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF -**

Under *Strickland*, a claimant of ineffective assistance of counsel bears the burden of proof to show that: (1) counsel’s performance was deficient and (2) the deficiency prejudiced his defense; allegations of ineffective assistance of counsel must be made with specificity and detail, and are assessed by the totality of the circumstances

**CRIMINAL PROCEDURE - IDENTIFICATIONS - RELIABILITY -** There are five factors for determining whether a pretrial identification was impermissibly tainted: (1) the opportunity of the witness to view the accused at the time of the crime; (2) the degree of attention exhibited by the witness; (3) the accuracy of the witness’s prior description of the criminal; (4) the level of certainty exhibited by the witness at the confrontation; and (5) the length of the time between the crime and the confrontation

**CRIMINAL PROCEDURE - JURY INSTRUCTIONS - EYEWITNESS IDENTIFICATION -** Jury Instruction C-8 instructs the jury to consider the five factors of impermissibility in determining the accuracy and reliability of the witness identification

#### **FACTS**

While Freddie Jean Williams was retrieving her purse and work bag from the trunk of her car, three men robbed her outside of her home around 11:00 p.m. The men approached her from across the street and demanded she hand over her bags. Williams later testified she was able to see their faces because they did not wear masks, and she recognized one of the robbers as Dalvin Latham. Williams testified that she had seen Latham at her sister’s house, as well as walking by her own home, during a two-week period before the robbery. When the police arrived, Williams stated that one of the robbers had dreadlocks in his hair. Williams relayed the initial description to her niece, LaShonda Hodges. Hodges then pulled up Latham’s picture on Facebook, and Williams immediately confirmed that he was the man she recognized. Williams went to the Cleveland Police Department, where she was presented with a six-person photo lineup. Williams selected Latham’s photo from the lineup. Latham was the only individual with dreadlocks in the lineup, which Latham later alleged to be impermissibly suggestive, notwithstanding reliability. Latham was charged and a Bolivar County grand jury returned a one-count indictment against him for robbery in violation of Miss. Code Ann. § 97-3-73. In November

2018, Latham’s one-day trial occurred and the photo line-up selection was admitted into evidence without objection. Williams also identified Latham in court. Latham’s defense attorney refused the trial court’s jury instruction concerning eyewitness identification in order to focus on Latham’s alibi, which was a witness’s testimony alleging he was not present. The trial court sentenced Latham to five years in the custody of the Mississippi Department of Corrections. Latham’s post trial motions were denied. Latham appealed.

### ISSUE

Whether Latham’s trial counsel was constitutionally ineffective by (1) failing to object to the photo lineup and (2) refusing the trial court’s proffered jury instruction on eyewitness identification.

### HOLDING

(1) Because Latham failed to show, under the totality of circumstances, that an objection would have successfully excluded the photo lineup due to suggestiveness and unreliability or would have changed the outcome of the trial, Latham’s trial counsel was not constitutionally ineffective. (2) Because the decision to affirmatively refuse the identification instruction was strategic and tactical in order to focus on Latham’s alibi, and because the instruction would not have changed the outcome of the case due to the reliability of the photo identification, Latham’s trial counsel was not constitutionally ineffective by refusing the trial court’s proffered jury instruction on eyewitness testimony. Therefore, the Supreme Court affirmed the judgment of the Bolivar County Circuit Court.

### CONCURRENCE

Presiding Justice King agreed that the identification was reliable under the totality of circumstances. However, based on precedent, he argued that the Supreme Court should have directly addressed the issue of impermissibility due to Latham being the only individual with dreadlocks in the photo lineup.

#### **Affirmed - 2018-KA-01711-SCT (Aug. 6, 2020)**

En Banc Opinion by Justice Chamberlin - Concurrence by Presiding Justice King

Hon. Linda F. Coleman (Bolivar County Circuit Court)

Justin T. Cook & George T. Holmes (Pub. Def. Office) for Appellant - Ashley Sulser (Att’y Gen. Office) for Appellee

Briefed by [Madison Reightler](#)

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## **WALKER V. STATE**

### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - NEW TRIAL - SUFFICIENCY OF EVIDENCE** - A new trial will not be ordered unless the court is convinced that the verdict is so contrary to the overwhelming weight of the evidence that to allow the verdict to stand would be to sanction an unconscionable injustice

**CRIMINAL LAW - POST-MIRANDA SILENCE - PLAIN ERROR DOCTRINE** - Under *Swinney*, the court must determine if the trial court deviated from a legal rule, whether that error is plain, clear, or obvious, and whether that error has prejudiced the outcome of the trial

**CRIMINAL LAW - ADMISSION OF EVIDENCE - PARTIES ENTITLED TO ALLEGE ERROR** - Under *Martin*, a defendant who “opens the door” to a particular issue runs the risk that collateral, irrelevant, or otherwise damaging evidence may come in on cross-examination, and the defendant cannot complain on appeal concerning evidence that he himself brought out at trial

### FACTS

In the summer of 2013, Gregory “Peanut” Walker sexually assaulted an eleven-year old girl on several occasions. Walker was indicted and charged with one count of fondling (“Count I”) and two counts of sexual battery (“Counts II and III”). At trial, the prosecutor asked the victim a question, to which Walker’s attorney objected on the ground that the prosecutor was leading the witness. In response, the prosecutor argued that a child witness had to be led to some degree.

The judge allowed the prosecutor to continue, stating “I’ll allow it for now” without making a definitive ruling on the objection. Later in the trial, Walker testified that he refused to give a statement after he was arrested. The State then called a rebuttal witness, who testified that Walker refused to give a statement. The jury found Walker guilty on all three counts. Walker filed a motion for judgment notwithstanding the verdict, which was denied. Walker appealed.

## **ISSUES**

Whether (1) Walker’s sufficiency of the evidence argument was procedurally barred because Walker’s attorney failed to obtain a definitive ruling from the trial judge and (2) the State’s comment on Walker’s post-*Miranda* silence violated his right to due process and a fair trial.

## **HOLDING**

(1) Because Walker’s attorney did not insist that the trial judge make a definitive ruling or request any corrective action, Walker’s sufficiency of the evidence claim in regard to Count II was procedurally barred. (2) Because it was clear from the transcript that Walker, not the State, generated his comments regarding his refusal to give the police a statement, Walker opened the door for the State by voluntarily telling the jury that he had refused to give the police a statement and the State did not violate Walker’s right to due process or to a fair trial by commenting on Walker’s post-*Miranda* silence. Therefore, the Supreme Court affirmed the judgment of the Coahoma County Circuit Court.

**Affirmed - 2019-KA-00511-SCT (Aug. 6, 2020)**

Opinion by Presiding Justice Kitchens

Hon. Albert B. Smith III (Coahoma County Circuit Court)

Hunter N. Aikens (Pub. Def. Office) for Appellant - Scott Stuart (Att’y Gen. Office) for Appellee

Briefed by [Muriel Collins](#)

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## **MISSISSIPPI COURT OF APPEALS DECISIONS – AUGUST 4, 2020**

### ***COURT OF APPEALS - CIVIL CASES***

#### **SMITH V. SAFEWAY INS. CO.**

##### **CIVIL - OTHER**

**CIVIL PROCEDURE - DECLARATORY JUDGMENT - INSURANCE CLAIM** - Miss. R. Civ. P. 57(b)(2) states that when an insurer has denied that a contract covers a party’s claim against an insured, that party may seek a declaratory judgment construing the contract to cover the claim

**CIVIL PROCEDURE - DECLARATORY JUDGMENT - INTERESTED PARTY** - Pursuant to Miss. R. Civ. P. 57(b)(1), a party’s pursuit of its own case, direct opposition to opposing claims and allegations, and timely response to complaints provide sufficient inference that the party is an “interested party” able to seek a declaration of rights under a contract

**CIVIL PROCEDURE - MOOTNESS - LIVE CONTROVERSY** - The doctrine of mootness demands that a case must have an actual controversy that existed at the time of the trial; without a live controversy, an appeal will be dismissed as moot

## **FACTS**

Teenager Madison Brown was driving a car owned by her mother, Altheia Tribble, when she rear-ended Carlo Smith. As a result, Smith sued both Tribble and Brown. Safeway Insurance Company (“Safeway”), Tribble’s insurer, filed its own complaint to obtain a declaratory judgment against Tribble, Brown, and Smith, arguing that it was not required to cover the accident because Tribble never listed Brown as a driver of the vehicle. Tribble and Brown failed to answer Safeway’s complaint, resulting in a default judgment against them. Although Smith timely answered Safeway’s initial complaint, he failed to timely answer Safeway’s amended complaint after it added two additional parties also involved



in Smith’s accident. Safeway sought an entry of default against Smith, to which Smith filed a motion to strike and an answer to Safeway’s amended complaint. The Hinds County Circuit Court never ruled on Smith’s request to set aside the entry of default. After a hearing, the Hinds County Circuit Court granted Safeway’s request for a declaratory judgment, solely holding that Tribble and Brown’s failure to answer Safeway’s initial complaint served as proof that both agreed that Safeway’s policy did not cover Brown’s actions and that such finding made moot any claim Smith may have asserted. The Hinds County Circuit Court did not address any other issues, motions, or entries of default. Smith appealed.

### **ISSUES**

Whether (1) Smith had standing to seek a declaratory judgment and (2) the trial court erred in finding that Smith’s claims were moot because Tribble and Brown did not respond to the request for a declaratory judgment.

### **HOLDING**

(1) Because the doctrine of mootness demands that a case must have an actual controversy existing at the time of the trial, and because Safeway denied that its contract covered Smith’s claim against the insureds, Miss. R. Civ. P. 57 allowed Smith to seek a declaratory judgment. (2) Because Smith’s interest in Safeway’s insurance coverage did not vanish simply because the insureds themselves failed to respond to the suit, and because Smith’s resistance to Safeway’s claims sparked a sufficient “live controversy” between the two parties at the time the trial court dismissed the case, Smith’s claims were not moot. Therefore, the Court of Appeals reversed and remanded the judgment of the Hinds County Circuit Court.

#### **Reversed & Remanded - 2019-CA-01171-COA (Aug. 4, 2020)**

Opinion by Judge McCarty

Hon. Tomie Green (Hinds County Circuit Court, First Judicial Dist.)

Deshun T. Martin, Denise C. Wesley, Samac S. Richardson, & Vatteria M. Mason for Appellant - Goodloe T. Lewis for Appellee

Briefed by [Greyson Young](#)

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## ***COURT OF APPEALS - POST-CONVICTION RELIEF***

### **SHELBY V. STATE**

#### **CIVIL - POST CONVICTION RELIEF**

**POST-CONVICTION RELIEF - PROCEDURAL BAR - EXCEPTION** - Under Miss. Code Ann. § 99-39-23(6) and the Uniform Post-Conviction and Collateral Relief Act (“UPCCRA”), the statute of limitations and the successive-writ bar both make an exception for second or successive PCR motions in which the petitioner can show the existence of “evidence, not reasonably discoverable at the time of trial, which 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”

**POST-CONVICTION RELIEF - NEWLY DISCOVERED EVIDENCE - ELEMENTS** - A movant seeking post-conviction relief under Miss. Code Ann. § 99-39-23(6) must show that: (1) the new evidence was discovered after trial; (2) it could not by due diligence have been discovered prior to trial; (3) it is material to the issue and not merely cumulative or impeaching; and (4) it will probably produce a different result or verdict in the new trial; relief must be denied if the movant fails to meet any of these four elements

**EVIDENCE - WITNESS TESTIMONY - RECANTED PRIOR TESTIMONY** - The fact that a witness changes his testimony after trial does not necessarily entitle the petitioner to a new trial and, as a general rule, recanted testimony is exceedingly unreliable and is regarded with suspicion and skepticism

**POST-CONVICTION RELIEF - EXPERT TESTIMONY - FINDER OF FACT** - When evidence on a critical point is in conflict, the trial court sits as finder of fact in a post-conviction relief proceeding and the trial court’s finding of ultimate fact should not be reversed unless it is clearly erroneous

### **FACTS**

In 1997, two-year-old Bryan Thompson IV (“Bryan”) died from multiple blunt force injuries to his head that caused bleeding and swelling in his brain. At the time of Bryan’s death, Tasha Shelby (“Shelby”) was engaged and living with Bryan’s father, Bryan Thompson III (“Thompson”). The night of Bryan’s death, Thompson was at work and Shelby was the only adult at the home. Around 3:30 or 4 a.m., Shelby claimed that she was awakened when she heard a “big thump.” Shelby claimed that when she went to check on Bryan, Bryan was lying on the floor of his room and not breathing. Shelby was indicted for capital murder for killing Bryan during the commission of felony child abuse and was convicted and sentenced to life imprisonment without parole. On appeal, the Court of Appeals affirmed her conviction and sentence. In 2005, Shelby filed her first application for leave to file a motion for post-conviction relief (“PCR”) and a panel of the Mississippi Supreme Court denied her application. In 2015, Shelby filed a second motion for post-conviction relief based on newly discovered evidence, which consisted of a changed opinion of the State’s expert witness, Dr. Riddick, who performed Bryan’s autopsy and testified at her trial. Dr. Riddick testified that he changed his opinion after being provided information that the family had a long history of seizure disorders, and he concluded that a seizure and short fall were a “better explanation” for Bryan’s death, rather than some form of intentional abuse. Furthermore, Shelby filed the motion claiming there had been post-trial developments in the scientific literature relating to “shaken baby syndrome.” The Harrison County Circuit Court found that Shelby failed to meet her burden of proving that the new evidence would produce a different result in a new trial. Shelby appealed.

### **ISSUES**

Whether the trial court clearly erred in denying Shelby’s PCR motion on the ground that Shelby failed to demonstrate that her new evidence “would probably produce a different result” in a new trial.

### **HOLDING**

Because post-conviction relief must be denied if the movant fails to meet any of the four post-conviction elements pertaining to newly discovered evidence, because the trial court considered all of Shelby’s new evidence and found that the evidence would not “probably produce a different result” in a new trial, because neither expert or lay witnesses have the power to nullify a criminal conviction by simply recanting prior testimony, because the trial court found the reasons for Dr. Riddick’s change of mind were unreliable and unpersuasive, because the testimony at the PCR hearing regarding whether short falls can cause fatal injuries was not materially different from the trial testimony, and because the evidence at the PCR hearing indicated that a majority of practicing physicians continue to accept shaking baby syndrome or abusive head trauma as valid diagnoses, the trial court’s denial of Shelby’s PCR motion on the grounds that Shelby’s new evidence would probably not produce a different result at trial was clearly not erroneous. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

### **DISSENT**

Judge McCarty argued that Dr. Riddick’s recanted opinion would probably produce a different result or verdict in a new trial. He opined that Dr. Riddick’s expert testimony, which was the only evidence regarding cause of death at the original trial, was critical evidence and significantly different than recanted lay testimony. Therefore, he would have reversed and remanded the case for a new trial.

#### **Affirmed - 2019-CA-00034-COA (Aug. 4, 2020)**

Opinion by Presiding Judge Wilson - Dissent by Judge McCarty

Hon. Roger T. Clark (Harrison County Circuit Court, Second Judicial Dist.)

Valena Elizabeth Beety, Greg Polins, Douglas Lamont Tynes Jr., & Daniel P. Gross for Appellant - Alicia Marie Ainsworth, Abbie Eason Koonce, & Ashley Sulser (Att’y Gen. Office) for Appellee

Briefed by [Betsy Lee Montague](#)

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