

SUPREME COURT CASE NO. \_\_\_\_\_  
IN THE SUPREME COURT OF ALABAMA

---

*Ex Parte Murray Lawrence*

---

**MURRAY LAWRENCE,**  
Appellant-Petitioner,  
v.  
**STATE OF ALABAMA,**  
Appellee-Respondent

---

**ON APPEAL FROM THE CIRCUIT COURT  
OF BALDWIN COUNTY, ALABAMA  
(CC-2004-1112.61)**

---

**PETITION FOR WRIT OF CERTIORARI TO THE  
COURT OF CRIMINAL APPEALS  
(CR-2024-0490)**

---

Leroy Maxwell Jr.  
Maxwell & Tillman, LLC  
1820 3rd Ave. N. Ste. 300  
Birmingham, AL, 35203  
P: 205-216-3304  
F: 205-409-4145  
[Maxwell@mxmlawfirm.com](mailto:Maxwell@mxmlawfirm.com)

Gabrielle Humber  
Maxwell & Tillman, LLC  
1820 3rd Ave. N. Ste. 300  
Birmingham, AL, 35203  
P: 205-216-3304  
F: 205-409-4145  
[Ghumber@mxmlawfirm.com](mailto:Ghumber@mxmlawfirm.com)

## **TABLE OF CONTENTS**

|                                |     |
|--------------------------------|-----|
| Table of Contents .....        | 2   |
| Table of Authorities .....     | 2-3 |
| Grounds For Petition .....     | 4-5 |
| Attorney Verification.....     | 17  |
| Certificate of Compliance..... | 18  |
| Certificate of Service.....    | 18  |

## **TABLE OF AUTHORITIES**

### **CASES**

|   |        |
|---|--------|
| <i>Banks v. State,</i><br>545 So. 2d 9 (Ala. Crim. App. 2002) .....   | 10-11  |
| <i>Brady v. Maryland,</i><br>373 U.S. 83 (1963).....                  | 6, 8-9 |
| <i>Ex parte Frazier,</i><br>562 So.2d 560 (Ala. 1989) .....           | 12     |
| <i>Ex parte Heaton,</i><br>542 So.2d 931 (Ala. 1989) .....            | 11     |
| <i>Ex parte Ward,</i><br>89 So.3d 720 (Ala. 2011) .....               | 12     |
| <i>Farris v. State,</i><br>890 So.2d 188 (Ala. Crim. App. 2003) ..... | 11     |
| <i>Kyles v. Whitley,</i><br>514 US. 419 (1995).....                   | 12     |

|  |    |
|--|----|
| <i>Lewis v. State,</i>                           |    |
| 741 So. 2d 452 (Ala. Crim. App. 1999) .....      | 16 |
| <i>People v. Dimambro,</i>                       |    |
| 3318 Mich. App. 204, 218 (Mich. App. 2016) ..... | 9  |
| <i>State v. Davenport,</i>                       |    |
| 2014 Del. Super. LEXIS 667, (2014) .....         | 9  |

## **STATUTES**

|                                      |    |
|--------------------------------------|----|
| Ala. Const. art. I, §§ 6, 13.....    | 16 |
| U.S. Const. amends. V, VI, XIV ..... | 16 |

## **RULES**

|   |        |
|---|--------|
| Alabama Rule of Criminal Procedure 32.1(e) .....    | Passim |
| Alabama Rules of Professional Conduct 1.12(c) ..... | 15     |

Petitioner petitions this Honorable Court pursuant to Rule 39(a)(1)(D) to issue writ of certiorari to the Alabama Court of Criminal Appeals (“ACCA”) in the above-styled case. In support of this petition, Petitioner asserts the following:

As Petitioner stated in his Application for Rehearing to the ACCA, he agrees with the appellate court’s concise statement of the underlying facts in the case and adopts and incorporates them by reference for the purpose of this petition. This assertion, however, only applies to the facts of the criminal allegations and procedural history, not the appellate court’s legal rulings stated in the subject memorandum that formed the basis of this petition.

Petitioner asserts that the ACCA overlooked or misapprehended a point of law or relevant facts and requests rehearing on these issues. The court’s unpublished February 14, 2025 memorandum and its denial of Petitioner’s Application for Rehearing on April 4, 2025 reflect decisions that are inconsistent with prior and current jurisprudence. (ACCA Mem., 13; ACCA Application for Rehearing Notice, 1). Consequently, Petitioner submits this petition on the following grounds:

**DECISIONS WHICH CONFLICT WITH PRIOR APPELLATE  
DECISIONS UNDER AL. R. APP. PRO. 39(a)(1)(D)**

Pursuant to Rule 39(a)(1)(D), this Honorable Court should grant this petition and issue writ of certiorari to the ACCA because the decisions conflict with prior appellate decisions. Ala. R. App. P. 39(a)(1)(D). Concerning Petitioner's claims, the ACCA stated: "the judgment of the circuit court is affirmed." (ACCA Mem., 13). The appellate court further stated in its denial of Petitioner's Application for Rehearing, "Application for Rehearing Overruled" without further explanation or consideration of the presented issues. (ACCA Application for Rehearing Notice, 1). For the following reasons, Petitioner is entitled to relief:

**I. The second autopsy presented additional evidence not presented at trial and undermined and contradicted the findings of the initial autopsy.**

The ACCA held in pertinent part:

Lawrence's claim is meritless on its face because it does not satisfy all five of the requirements of newly-discovered evidence in Rule 32.1(e). The DFS autopsy report does not present any additional evidence not presented at trial, nor does it undermine or contradict the findings of the initial Mississippi autopsy report or the State's case . . .

Because Lawrence's claim was meritless on its face, the circuit court did not err in dismissing this claim. See Rule 32.7(d), Ala. R. Crim. P.

(Ct.'s Mem., 10-12).

Lawrence avers that the newly discovered evidence met the criteria of Rule 32.1(e), therefore implicating *Brady*. Respectfully, the ACCA focused its analysis on whether the two autopsies differed with respect to Hasting's purported cause of death, not on the differences within the autopsies themselves and the impact to Lawrence's presentation of evidence and the outcome of trial caused by the State's admitted failure to disclose the second autopsy. *Lawrence v. State*, No. CR-24-0490 (Ala. Crim. App. Feb. 14, 2024), at 8-11. There is no question that additional evidence would have been presented had Lawrence known of the second autopsy, and that the additional evidence would have undermined the State's case. Lawrence's inability to raise these matters at trial was caused by the State's suppression of the second autopsy, which the State admittedly failed to disclose even though it was clearly discoverable. For example, by hiding the second autopsy, the State did not have to admit the following facts:

1. The body presented for the second autopsy did not contain the partial hyoid bone fragments located by Dr. McGarry.
2. The body presented for second autopsy did not contain the “boney fragment” described by Medical Examiner Graham and Dr. McGarry as a fragment of C1.
3. The body presented for second autopsy contained only two cervical vertebrae, instead of the five cervical vertebrae still attached to the spine when the body was presented for autopsy in Mississippi.
4. The matted scalp hair partially obstructing Medical Examiner Graham’s examination of the skull was completely detached from the skull during the second autopsy, which, like the first makes no mention of evidence of gunshot wound to the skull or teeth.
5. The State had in its possession sufficient samples taken during the Mississippi autopsy, making disinterment for the purposes of obtaining tissue samples unnecessary.

As these facts are now known to Lawrence only because of discovery of the second State-withheld autopsy, it is impossible for them to be cumulative to the evidence presented at trial. These facts require the State to explain what happened to portions of Hastings’ body during

the 31 days between the first and second autopsy. Further, these facts require the State to explain how it happened and where the body parts are located and would have required the State to assure the factfinder that given the manipulation of Hastings' body between the autopsies, no other manipulation of evidence occurred. Such evidence would undermine or contradict the State's case, which otherwise had no forensic evidence tying Lawrence to the murder and relied on the presence or absence of cervical vertebrae and hyoid bone fragments. To deny Lawrence's petition based on lack of additional evidence, which could not be presented because the State admittedly hid the information upon which the additional evidence would have been produced, is the very type of harm *Brady* is designed to prevent.

To ignore the significance of changes in the cervical vertebrae and hyoid bone is to ignore the State's theory upon which Lawrence was convicted. Throughout trial, the district attorney emphasized, even though its incentivized witness never stated that Hastings was shot through the front of his neck,<sup>1</sup> that Lawrence shot Hastings in such a

---

<sup>1</sup> *State v. Lawrence*, CR-04-1864 (Baldwin County Circuit Court) R. Trial Tr., at 853, 860, 875-76.



manner as to blow out the center of the hyoid bone, C1 and C2 without causing any damage whatsoever to the skull, mandible, or teeth:

*And I asked that Doctor [McGarry]: Have you had evidence that [Hastings] was shot – a hypothetical question – would it have changed your diagnosis? And he said, Yes, it’s consistent with a shooting just as much as it is consistent with a strangulation by ligature. The only evidence he had of ligature was damage to the neck. Open wound. That’s the only evidence. And that could be done by rope. It can be done by wire. And it can be done by a 9-millimeter bullet. It’s just unusual for somebody to shoot a hyoid bone because it is small.*

(CR-04-1864, R. 1859) (emphasis added)).

*Brady* is implicated where, as here, the State had knowledge of a dispute between two medical examiners regarding the victim’s cause of death and delayed this disclosure. *See People v. Dimambro*, 3318 Mich. App. 204, 218 (Mich. App. 2016); *State v. Davenport*, 2014 Del. Super. LEXIS 667, (2014). The Alabama autopsy determined the cause of death as “homicidal violence” with “circumstances indicative of violent death” based upon a sheriff’s report never produced to Lawrence. This conclusion materially differs from the conclusion of asphyxiation by ligature strangulation reached in the Mississippi autopsy. Further, upon learning of this autopsy, Lawrence retained Dr. Kyle Shaw to analyze the prior autopsies. (CR-2024-0490 R. at 137-40). Shaw concluded there

was insufficient information provided to conclude a cause of death. *Id.* at 137-39. Shaw also concluded “in the absence of additional information, the manner of death [was] best classified as Undetermined.” *Id.* at 139. Shaw’s report also noted numerous deficiencies in the collection of information and the impact that failure had on the ability to determine manner of death. *Id.* at 137-40. Lawrence presented new evidence based on facts that were not previously provided to the Defense that undermined and contradicted the findings of the initial autopsy. Therefore, Petitioner requests that this Court issue writ of certiorari to the ACCA for rehearing on these issues.

## **II. Lawrence pleaded facts beyond impeachment evidence.**

The ACCA held in pertinent part:

Lawrence failed to plead facts that amount to impeachment evidence, let alone constitute more than impeachment evidence . . .

Because Lawrence's claim was meritless on its face, the circuit court did not err in dismissing this claim. See Rule 32.7(d), Ala. R. Crim. P.

(Ct.’s Mem. 11-12).

However, evidence is not impeaching where it is offered “to controvert, that is, dispute[] the State’s witnesses’[] findings and

opinions, not their credibility.” *Banks v. State*, 545 So. 2d 9 (Ala. Crim. App. 2002). Further, evidence is not merely impeachment evidence where it disputes “observations, recollections, opinions, and conclusions [about] the [incident]” and thus, contradicts the State’s evidence at trial. *See Farris v. State*, 890 So. 2d 188, 192 (Ala. Crim. App. 2003). Discrepancies contained within the second autopsy call into question opinions and conclusions regarding the State’s theory of the case – i.e. that Hastings was killed by a unique and rare gunshot that destroyed cervical vertebrae and the hyoid bone. Moreover, where, as here, even if the newly discovered evidence is cumulative or impeaching, it appears probable from looking at the entire case that the new evidence would change the result, then a new trial should be granted. *Ex parte Heaton*, 542 So. 2d 931, 933 (Ala. 1989). Therefore, Petitioner requests that this Court issue writ of certiorari to the ACCA for rehearing on these issues.

**III. Lawrence established the result would have been different and that the report establishes or relates to his innocence.**

The ACCA stated in its memorandum, “Lawrence failed to establish that if the DFS autopsy report had been known at the time of trial or of sentencing, the results would have been different, and he likewise failed to establish that the report establishes or relates to his

innocence.” (Ct.’s Mem. 11). Newly discovered evidence satisfies the requirement of Rule 32.1(3) and (4), where, as here, there is a significant chance that “if the jury had the opportunity to consider the new information along with all other evidence” it would have reached a different result. *Ex parte Frazier*, 562 So. 2d 560, 571 (Ala. 1989). “When the net effect of the evidence withheld by the state raises a reasonable probability that its disclosure would have produced a different result, the defendant is entitled to a new trial.” *Kyles v. Whitley*, 514 US. 419, 421 (1995). Additionally, newly discovered evidence does not have to establish innocence, as such

reasoning would place an almost impossible burden on a criminal defendant to show that any single item of evidence would, by itself, establish his or her innocence. A common-sense reading of Rule 32.1(e) is one that requires a showing that the newly discovered facts *go to the issue of the defendant's actual innocence (as opposed to a procedural violation not directly bearing on guilt or innocence)*.

*Ex parte Ward*, 89 So. 3d 720, 727 (Ala. 2011) (emphasis added)).

A different result is all but assured if the jury were presented a second autopsy demonstrating not only that there was no evidence of a gunshot wound to Hastings, even with a skull unobstructed by hair, but also that the State could not account for all of Hastings’ cervical

vertebrae or hyoid bone fragments. A different result was all but assured if the jury were presented with the disingenuous statement by the State claiming that Hastings' body needed to be exhumed and submitted to a second autopsy for the purpose of obtaining tissue samples even though Mississippi preserved tissue samples within 30 days prior to the ex parte motion to disinter. Had the jury been afforded the opportunity to consider the Alabama autopsy in conjunction with the Mississippi autopsy and all other evidence introduced, it would have reached a different result because the State's circumstantial theory was not supported by any forensic evidence and ample doubt would have been introduced to the jury for acquittal.

The suppression of the report prevented Lawrence from preparing portions of his defense. As referenced above, Lawrence was unable to demonstrate the State's apparent callous disregard to the preservation of Hastings' body and those portions of his body, the cervical vertebrae and hyoid bones, central to the State's theory. There is sufficient question regarding Hastings' skeletal remains and who and why they were manipulated that the court can have no confidence in the verdict or sentence rendered. Further, upon learning of this autopsy, Lawrence

retained Dr. Kyle Shaw to analyze the prior autopsies. (CR-2024-0490 R. at 137-40). Shaw concluded there was insufficient information provided to conclude a cause of death. *Id.* at 137-39. Shaw also concluded “in the absence of additional information, the manner of death [was] best classified as Undetermined.” *Id.* at 139. Shaw’s report also noted numerous deficiencies in the collection of information and the impact that failure had on the ability to determine manner of death. *Id.* at 137-40. All these considerations show that the results would have been different and that the report establishes or relates to Lawrence’s innocence. Further, the ACCA did not make a holding on the newly discovered evidence claim regarding the report from Dr. Shaw. Therefore, Petitioner requests that this Court issue writ of certiorari to the ACCA for rehearing on these issues.

#### **IV. Lawrence was entitled to an evidentiary hearing.**

In its memorandum opinion, the ACCA did not directly address Lawrence’s claim that he was entitled to an evidentiary hearing. Lawrence incorporates his arguments in his opening and reply briefs (*see* Appellant’s Brief and Reply Brief of Appellant, *Lawrence v. State*, No. CR-2024-0490), and reaffirms that his Rule 32 petition properly pled all

five of the requirements of newly-discovered evidence in Rule 32.1(e) and that the circuit court erred by providing no reasoning or analysis in its denial of his Rule 32 Petition. The Petitioner reasserts all issues presented in his principal brief. Therefore, Petitioner requests that this Court issue writ of certiorari to the ACCA for rehearing on these issues.

**V. The District Attorney and the Baldwin County District Attorney's Office should be disqualified from Lawrence's case.**

In its memorandum, the ACCA questioned whether such issue had been preserved for appellate review and held that Lawrence is not entitled to relief because the "Baldwin County District Attorney's Office complied with Rule 1.12(c), Ala. R. of Prof. Cond., by screening the district attorney from any involvement in the case, and Lawrence has not shown that he is entitled to any relief on this claim." (Ct.'s Mem. 12-13).

Although the Baldwin County District Attorney's Office ("BCDAO") voluntarily screened District Attorney Wilters from Lawrence's Rule 32 proceedings, the screening of only District Attorney Wilters is an inadequate remedy in this case. *See* Notice of Compliance with Rule 1.12(c) of the Alabama Rules of Professional Conduct, CR-

2024-0490 R. 419-420). Lawrence's request to disqualify the BCDAO was not speculative or untimely. A district attorney's office in Alabama may be disqualified if a petitioner can demonstrate that they will be prejudiced by the office being permitted to prosecute the case. *Lewis v. State*, 741 So. 2d 452, 456-57 (Ala. Crim. App. 1999). The potential prejudice is serious in this case. The BCDAO admittedly failed to notify Lawrence and his counsel of the of their petition to disinter the remains of and the second autopsy on Hastings. (CR-2024-0490 R. 28-55, 65-67, 121-22.) As a result, Lawrence had no knowledge of the availability of autopsy review or of the possibility of a second autopsy. (R. 65-67).

Moreover, Lawrence's response to the State's notice was not untimely—the State filed its notice of compliance, and the circuit summarily dismissed the Rule 32 petition a little over a month later. The circuit court and the ACCA's opinion also cite no procedural rule that was violated by Lawrence's response. The BCDAO continued participation in this appeal violated Lawrence's state and federal constitutional rights to a fair trial and due process. *See* U.S. Const. amends. V, VI, XIV; Ala. Const. art. I, §§ 6, 13. Therefore, Petitioner



requests that this Court issue writ of certiorari to the ACCA for rehearing on these issues.

**/s/ Leroy Maxwell, Jr.**  
Leroy Maxwell Jr., Esq.  
Counsel for Petitioner

**/s/ Gabrielle Humber**  
Gabrielle Humber, Esq.  
Counsel for Petitioner

### **ATTORNEY'S VERIFICATION**

I verify that any statement of facts set forth in this petition are a verbatim copy of the proposed facts listed in Petitioner's Application for Rehearing to the Alabama Court of Criminal Appeals and that any reference to any unstated facts herein are due to a lack of dispute with the appellate court's version thereof.

**/s/ Leroy Maxwell, Jr.**  
Leroy Maxwell Jr., Esq.  
Counsel for Petitioner

**/s/ Gabrielle Humber**  
Gabrielle Humber, Esq.  
Counsel for Petitioner

### **CERTIFICATE OF COMPLIANCE**

I certify that this petition complies with the word limitation set forth in the Alabama Rules of Appellate Procedure. According to the word count function of Microsoft Word, the petition contains 2,649 words in the body of this petition. I further certify that this petition complies with the font and type requirements of the newly amended Rules of Appellate Procedure.

**/s/ Leroy Maxwell, Jr.**

Leroy Maxwell, Jr., Esq.

Counsel for Petitioner

**/s/ Gabrielle Humber**

Gabrielle Humber, Esq.

Counsel for Petitioner

### **CERTIFICATE OF SERVICE**

I certify that the foregoing document(s) has/have been served upon the following parties via electronic mail and/or hand-delivery on April 18, 2025:

**/s/ Leroy Maxwell, Jr.**

Leroy Maxwell, Jr., Esq.

Counsel for Petitioner

**/s/ Gabrielle Humber**

Gabrielle Humber, Esq.

Counsel for Petitioner

**Alabama Attorney General's Office**

ATTN: Criminal Appeals Section

501 Washington Avenue

Montgomery, AL 36104

**Alabama Court of Criminal Appeals**

300 Dexter Ave

Montgomery, AL 36104

(334) 229-0751

Rel: February 14, 2025

Notice: This unpublished memorandum should not be cited as precedent. See Rule 54, Ala. R. App. P. Rule 54(d) states, in part, that this memorandum "shall have no precedential value and shall not be cited in arguments or briefs and shall not be used by any court within this state, except for the purpose of establishing the application of the doctrine of law of the case, res judicata, collateral estoppel, double jeopardy, or procedural bar."

# ALABAMA COURT OF CRIMINAL APPEALS

---

CR-2024-0490

---

Murray Lawrence v. State of Alabama

Appeal from Baldwin Circuit Court  
(CC-04-1112.61)

## **MEMORANDUM DECISION**

WINDOM, Presiding Judge.

Murray Lawrence appeals from the circuit court's summary dismissal of his Rule 32, Ala. R. Crim. P., petition for postconviction relief. The petition challenged his 2005 capital-murder conviction, a violation of § 13A-5-40(a)(2), Ala. Code 1975, and his resulting sentence of life in prison without parole. This Court affirmed Lawrence's

conviction and sentence in an unpublished memorandum issued on September 22, 2006. See Lawrence v. State (No. CR-04-1864), 988 So. 2d 1075 (Ala. Crim. App. 2006) (table). The certificate of judgment was issued on January 12, 2007.

Lawrence was convicted of capital murder due to his involvement in the robbery and murder of Brandon Hastings. Jarius McNeil, Lawrence's accomplice, testified that he lured Hastings to a location where Lawrence killed Hastings by shooting him in the "head or neck area." Hastings' body was then loaded into the trunk of his vehicle and driven to a remote location in Mississippi, where it was dumped. Hastings' badly decomposed body was discovered roughly a week after he had last been reported missing.

"Testimony indicated that Donna Ford contacted the Jackson County, Mississippi Sheriff's Department on April 11, 2003, reporting that she had seen what she believed to be a human skull in the street near her home. Detective Sergeant Ricky Rader testified that when he arrived at the scene, he observed the skull in the road. He further testified that the lower jaw portion of the skull was found approximately 18 feet away from the skull, and that the body was found approximately 200 feet away across a dirt road. Additional testimony indicated that Ford fed stray dogs in the area, and that she had seen one of the dogs with the skull earlier.

"Grant Graham with the Mississippi Crime Laboratory, who was qualified as an expert in crime scene investigation, testified as to his observations of the scene. Graham stated that the body was laying stomach-down. He testified that the victim's arms were extended straight in front of the body, that the victim's shirt was pulled up over his upper arms, that his shorts were pulled slightly down below his waist, and that his watch was pulled over the back of his hand with the watch face on the victim's palm; he stated that the positioning of the victim's body indicated that the body had possibly been dragged to its final resting position. Graham testified that he observed evidence that dogs had at some point begun feeding on the body. According to Graham, areas with injuries such as gunshot wounds typically decomposed earlier and more rapidly than areas of the body that did not have any injuries; he stated that the head and upper-chest area of the body were severely decomposed and that 'most of the tissue around the neck area was totally gone.' (R. 711.) He further testified that he observed no indications of a struggle in the area and that he did not observe any blood at the scene; he stated that it was possible that the victim was killed in another location and later brought to that location.

"Graham testified on cross-examination that the area where the body was found was approximately three or four miles from Interstate 10 in a rural area near a trailer park and that nothing at the scene indicated how many people may have been involved. He stated that he observed animal bite marks on the jaw bone and other bone fragments. Graham further stated that he did not observe any bullet holes in the skull, although he indicated that a portion of the skull was covered by matted hair which obscured his view of that portion of the skull. Graham testified that it was possible that the cause of death was strangulation, that strangulation could occur without resulting in a bloody crime scene, and that it was possible that the victim was strangled at the scene.

"On redirect examination, Graham testified that he did not observe anything at the scene that suggested a violent struggle such as choking someone to death. He testified that, hypothetically, if a person were shot in one location and bled out and then was later moved to a second location, there would be significantly less blood at the second location.

"Deputy Dean McGowan of the Baldwin County Sheriff's Department testified that he went to the scene when contacted by Mississippi authorities and that he attended the autopsy performed by Dr. Paul McGarry. Deputy McGowan stated that he went back to the scene with Dr. McGarry the following day and observed Dr. McGarry locate two fragments of the hyoid bone in the area where the body had been discovered.

Lawrence, mem. op. at 5-6.

On November 27, 2023, Lawrence, through counsel, filed the instant Rule 32 petition. In his petition, Lawrence claimed that newly-discovered evidence exists entitling him to a new trial. Specifically, Lawrence stated that in June 2023 he discovered that a second autopsy of Hastings had been performed by the Alabama Department of Forensic Sciences ("DFS") six weeks after the initial autopsy in Mississippi and that the State had failed to provide the second autopsy report before trial. Along with other exhibits, Lawrence attached an affidavit from his trial counsel, Willie Huntley, in which Huntley attested that he was never

provided with the second autopsy report and that he had no knowledge that a second autopsy had even been performed.

The first autopsy was performed by Dr. Paul McGarry, a medical examiner in Mississippi. In his autopsy report, Dr. McGarry concluded that Hastings likely died of asphyxia. Dr. McGarry stated that he had arrived at this conclusion based upon finding collapsed congested atelectatic lungs, a fractured hyoid bone, and a congested cyanotic viscera. At trial, Dr. McGarry clarified that Hastings "died of injury to the upper part of his neck and we don't know for sure what that injury was." (C. 225.) Dr. McGarry testified that, given the damage to Hastings' neck area and the animal activity on Hastings' remains, he could not say that the injury was, in fact, a gunshot wound but opined that the injury could have been produced by a bullet.

The second autopsy was conducted after Hastings' body was exhumed pursuant to a court order issued at the request of the district attorney prosecuting the case. Prior to trial, the district attorney filed a motion to disinter Hastings' remains to obtain tissue and blood samples for the purpose of DNA testing and any further forensics testing deemed necessary. The district attorney wanted the State to have these samples



on file in case the State could not obtain the samples from Mississippi authorities. Dr. Leszek Chrostowski from the DFS performed the second autopsy on May 14, 2003. He concluded that, based upon circumstances indicative of a violent death and there being no evidence of a natural cause of death, Hastings died from homicidal violence. In his report, Dr. Chrostowski noted that there were "two loose cervical vertebrae" received, that "structures of the neck, including soft tissue, skeletal muscles, skin and five vertebrae (including C1 and C2) are not received," and that "[a]dvanced decomposition in the area of the neck and head precludes determination of injuries." (C. 120.)

In his petition, Lawrence argued that the DFS "autopsy report notes new forensic evidence that significantly negates the State's theory and, therefore, directly relates to the determination of Mr. Lawrence's guilt or innocence." (C. 29.) Lawrence claimed that, by not disclosing the DFS autopsy report to him before trial, the State violated Brady v. Maryland, 373 U.S. 83 (1963).

On December 23, 2023, the State filed a response and motion to dismiss Lawrence's petition. The State conceded that it had failed to provide Lawrence with the DFS autopsy report but argued that

Lawrence's discovery of the DFS autopsy report does not meet the required criteria to constitute newly discovered evidence pursuant to Rule 32.1(c), Ala. R. Crim. P. Thus, the State argued, the corresponding Brady claim is precluded as time-barred pursuant to Rule 32.2(c), Ala. R. Crim. P., and as successive pursuant to Rule 32.2(b), Ala. R. Crim. P. Additionally, the State argued that the second autopsy report does not violate Brady because it does not provide exculpatory evidence or impeachment evidence. The State attached the transcript of Dr. McGarry's trial testimony to its response along with other exhibits.

On April 18, 2024, the State filed a notice of compliance, asserting that the district attorney had served as the trial judge in this case and that the district attorney had been screened from the handling of the instant petition in accordance with Rule 1.12(c), Ala. R. Prof. Cond.

On May 21, 2024, the circuit court dismissed Lawrence's petition stating, "The court, having considered the pleadings of the parties, including the State's response, The Petition is DISMISSED." (C. 421.)

On June 4, 2024, Lawrence filed a motion to reconsider. Lawrence argued that the State's notice that the district attorney's office had complied with Rule 1.12(c) was untimely and that the circuit court's order

provided no explanation for dismissing his claim. The circuit court denied Lawrence's motion.

On appeal, Lawrence reasserts the claim in his petition and claims that he is entitled to an evidentiary hearing. Lawrence also argues that the Baldwin County District Attorney's Office should have recused from handling the Rule 32 petition.

### I.

Lawrence argues that the circuit court erred in dismissing his claim that the second autopsy report was newly-discovered evidence.

If a petitioner presents a Brady claim in a Rule 32 petition, the evidence must satisfy the newly-discovered evidence requirements found in Rule 32.1(e) in order to entitle the petitioner to relief. Bush v. State, 92 So. 3d 121 (Ala. Crim. App. 2009), citing Payne v. State, 791 So. 2d 383 (Ala. Crim. App. 1999). In Boyd v. State, 746 So. 2d 364 (Ala. Crim. App. 1999), this Court explained:

"Under Rule 32.1, Ala. R. Crim. P., subject to the preclusions in Rule 32.2, a remedy is afforded a defendant when the grounds supporting the requested relief are based on newly discovered facts (1) that were not known by petitioner or petitioner's counsel at the time of trial or sentencing or in time to file a post-trial motion pursuant to Rule 24, or in time to be included in any previous collateral

proceeding and could not have been discovered by any of those times through the exercise of reasonable diligence; (2) that were not merely cumulative to other facts that were known; (3) that were not merely amounting to impeachment evidence; (4) that if they had been known at the time of trial or of sentencing, the result probably would have been different; and (5) that establish that petitioner is innocent of the crime for which petitioner was convicted or should not have received the sentence that petitioner received. Rule 32.1(e)(1) through (5), Ala. R. Crim. P. Rule 32.3 places the burden on the defendant to plead and prove facts necessary to obtain relief. Rule 32.6(b) requires that the petition itself disclose the facts relied upon in seeking relief. Rule 32.6(b), Ala. R. Crim. P. When this is done, the burden shifts to the state to plead preclusionary grounds meriting summary dismissal. Rule 32.3, Ala. R. Crim. P. The burden then shifts to the petitioner to disprove a preclusionary ground plead by the state."

746 So. 2d at 405-6. Before the allegations in Lawrence's current Rule 32 petition can be considered newly-discovered evidence, they must meet all five requirements of Rule 32.1(e). See Tarver v. State, 769 So. 2d 338, 340-41 (Ala. Crim. App. 2000) ("We have repeatedly stated that before a claim may be considered as newly discovered evidence the claim must meet the definition of newly discovered evidence found in Rule 32.1(e).").

"To prove a Brady violation, a defendant must show that "(1) the prosecution suppressed evidence; (2) the evidence was favorable to the defendant; and (3) the evidence was material to the issues at trial.'" Johnson v. State, 612 So. 2d 1288, 1293 (Ala. Cr. App. 1992), quoting Stano v. Dugger, 901 F.2d 898, 899 (11th Cir. 1990), cert. denied, Stano v. Singletary, 516 U.S. 1122, 116 S.Ct. 932, 133 L.Ed. 2d 859

(1996). See Smith v. State, 675 So. 2d 100 (Ala. Cr. App. 1995). "'The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome.'" Johnson, 612 So. 2d at 1293, quoting United States v. Bagley, 473 U.S. 667, 682, 105 S.Ct. 3375, 3383, 87 L.Ed.2d 481 (1985)."

Freeman v. State, 722 So. 2d 806, 810 (Ala. Crim. App. 1998).

Lawrence pleaded in his petition that the DFS autopsy report would contradict his accomplice's testimony and the State's contention at trial that he had shot Hastings. Lawrence based his assertion on his belief that the State primarily relied on the missing hyoid bone and C1 and C2 vertebrae to support its claim that Hastings had been shot in his neck. Lawrence alleged that if one of the two loose vertebrae noted in the DFS autopsy report is the C2 vertebrae, the effect of the absence of such vertebrae would be destroyed.

Lawrence's claim is meritless on its face because it does not satisfy all five of the requirements of newly-discovered evidence in Rule 32.1(e). The DFS autopsy report does not present any additional evidence not presented at trial, nor does it undermine or contradict the findings of the initial Mississippi autopsy report or the State's case. The DFS autopsy

report does not state whether Hastings died as a result of a gunshot wound; rather, it concluded that the specific cause of death could not be determined. Thus, the Mississippi autopsy report, which concluded that asphyxia was the likely cause of death, was more favorable to Lawrence than the DFS report. Further, Lawrence is mistaken in his assertion that the State relied on the destruction of the hyoid bone and the missing C1 and C2 vertebrae to support its claim that Hastings was shot. However, even if Lawrence were correct, there is no evidence that the C2 vertebrae was ever found. Contrary to Lawrence's assertion, the DFS autopsy report does not include the possibility that the C2 vertebrae was found. In fact, the report states that it was not received.

Lawrence failed to plead facts that amount to impeachment evidence, let alone constitute more than impeachment evidence. In addition, Lawrence failed to establish that if the DFS autopsy report had been known at the time of trial or of sentencing, the results would have been different, and he likewise failed to establish that the report establishes or relates to his innocence. Accordingly, because Lawrence cannot satisfy all five requirements of Rule 32.1(e), he is not entitled to relief on his Brady claim. Moreover, the DFS autopsy report does not

constitute a Brady violation because it does not provide any exculpatory or impeachment evidence.

Because Lawrence's claim was meritless on its face, the circuit court did not err in dismissing this claim. See Rule 32.7(d), Ala. R. Crim. P.

## II.

Lawrence contends that the Baldwin County District Attorney's Office should have recused from the case because the District Attorney was the trial judge who granted the State's motion to disinter Hastings' remains and may be a witness at a Rule 32 proceeding about the disinterment of Hastings.

This Court questions whether this claim is preserved for appellate review. Lawrence did not object to the Baldwin County District Attorney's Office involvement until after the circuit court had entered its order dismissing his petition. Lawrence should have raised this objection when the State first gave notice of the conflict on April 18, 2024. Further, Lawrence's objection in his motion to reconsider focused primarily on the timeliness of the notice of compliance with the screening process and only

generally objected to such screening by stating that it "would still be inappropriate given the claims alleged in this case." (C. 422.)

Moreover, even if we reached this issue, Lawrence is not entitled to relief. The Baldwin County District Attorney's Office complied with Rule 1.12(c), Ala. R. of Prof. Cond., by screening the district attorney from any involvement in the case, and Lawrence has not shown that he is entitled to any relief on this claim.

Accordingly, the judgment of the circuit court is affirmed.

**AFFIRMED.**

Cole and Anderson, JJ., concur. Kellum and Minor, JJ., concur in the result.



# ALABAMA COURT OF CRIMINAL APPEALS



April 4, 2025

**CR-2024-0490**

Murray Lawrence v. State of Alabama (Appeal from Baldwin Circuit Court: CC-04-1112.61)

## **NOTICE**

You are hereby notified that on April 4, 2025, the following action was taken in the above-referenced cause by the Court of Criminal Appeals:

Application for Rehearing Overruled.

A handwritten signature in black ink that reads "Scott Mitchell".

D. Scott Mitchell, Clerk