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IN THE SUPREME COURT OF MISSISSIPPI

No. 2024-CT-00435-SCT

TAMESHIA SHELTON, Appellant

v.

STATE OF MISSISSIPPI, Appellee

On Appeal from the Circuit Court of Clay County, Mississippi

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

This is a heartbreaking case. A young man, deeply in love, had an upsetting argument with his girlfriend about their future. He walked across the yard to his girlfriend's older sister's home, knocked on her door, woke her up and asked to borrow her handgun. According to Tameshia Shelton's seventeen-minute long call to 911, in which she begged for help to come to save Danelle Young's life, and according to every statement she gave to law enforcement, Young told her he wanted the gun to kill a raccoon in a tree and that he needed only a single bullet. Believing it would take more than one bullet to kill the raccoon, Shelton retrieved her .22 caliber revolver, loaded it with six bullets, and handed it to Young. She asked him to show her the raccoon after he shot it. Instead, Young died of a single gunshot to his left chest fired from less than an inch away. The gun was found at his feet. There was gunshot residue on his hands. He left behind a note to Shelton in which he thanked her for being good to him, spoke of his love for her sister around whom he had planned to live his life, and wrote, "I have no life without her. **These are my last words**." Op. 12 (emphasis in op.).

At Shelton's trial, the defense theory was that Young died by suicide. Dr. Liam Funte, however, gave unchallenged testimony that, to a reasonable degree of medical certainty, the manner of death was homicide. The sole autopsy finding upon which he based this opinion was the bullet trajectory through Young's left chest: straight and down, without significant deviation to the left or right. He told the jury: "You have to be able to get that [gun] barrel against your chest. And the way you have to turn your wrist is going to deviate that bullet to the left or right." CP 662.

With greater professional experience, including firsthand observation of suicidal gunshots to the left chest that took the same path as the bullet here, with newly-acquired knowledge about the small size of the handgun and the ease with which it could be fired straight into one's chest (a

fact Dr. Funte *demonstrated* during the evidentiary hearing), and with access to scientific studies of which he had been uninformed that showed "**the trajectory of the bullet that caused the fatal injuries to Danelle Young was entirely consistent with the data on the path of the bullet in suicidal gunshots to the left chest,**" op. 8 (emphasis in op.), Dr. Funte recognized that he had been wrong. He attested: "I now regard my determination of the manner of death of Danelle Young to be in error. … **I see no evidence at this point to support homicide."** *Id.* (emphasis in op.). Dr. Funte, and every expert who gave evidence in this case, agreed that the pathway of the bullet does not provide a basis for determining whether a gunshot to the left chest is the result of homicide or suicide.[1] At the evidentiary hearing, Dr. Funte testified to a reasonable degree of medical certainty, that the manner of Young's death is undetermined. CP 2831.

Nevertheless, the circuit court denied relief. The Court of Appeals reversed and remanded the case for a new trial on two grounds: First, the court found that the circuit court "clearly erred" when it ruled that Dr. Funte's revised opinion did not merit a new trial. Op. 11. It found that the State had "substantively relied" on Dr. Funte's testimony at trial that the death was a homicide, *id.,* and that his revised opinion that it was undetermined withdrew "a crucial piece of the evidentiary foundation upon which the State's case rested." Op. 10. Second, the Court of Appeals

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[1] Dr. Funte testified: "Q. Is it still your opinion that the trajectory of the bullet in this case is a basis for determining that Mr. Young's death was homicide? A. It is not." Op. 9. Dr. Randall Frost testified: "Q. In your professional opinion, is the trajectory of the bullet relevant to a determination of the manner of death? A. Only insofar as if the wound itself is in a position that cannot be reached by the decedent. Otherwise, the trajectory of the bullet has little relevance." CP 2992-93. Dr. Robert Bux attested: "I know of no scientific support for Dr. Funte's testimony that the lack of significant deviation of the bullet path to the left or to the right is a basis for concluding that the manner of death was homicide. I am certain there is none." CP 159. Dr. James Filkins attested: "In my expert opinion, Dr. Funte's conclusion that the manner of death of Danelle Young was a homicide has no scientific or pathological basis. As is demonstrated in the Cook County study and in other earlier studies, the lack of significant deviation to the left or to the right in Danelle Young's left chest is not a basis for determining that the manner of death was homicide. The trajectory of the bullet that killed Danelle Young is, however, entirely consistent with the data for self-inflicted injuries." CP 1559.

held that trial counsel was ineffective for failing to seek admission of Young's despairing letter for its bearing on his state of mind. It wrote, "Considering the potentially exculpatory nature of this letter, we find it difficult to conclude that its absence did not prejudice Shelton's defense." Op. 15. Shelton's remaining *Strickland* and *Napue* claims were deemed moot. Op. 15, 16.

The State seeks review by this Court. But it offers no meritorious grounds for its request. None of the enumerated factors for discretionary review under Rule 17(a) are satisfied, nor are there other factors present that warrant this Court's review. Instead, echoing the three dissenting judges, the State seizes upon what it terms "quantitative[]" proof that Dr. Funte's now disavowed opinion was correct. Pet. 3. The State, like the dissenters, makes profound errors of logic and interpretation that are fatal to its argument.

ARGUMENT

I. The Medical Examiner's Change of Opinion Merits Reversal

The Court of Appeals reversed the circuit court not because it made a different credibility finding, as the State suggests, Pet. 4, nor because it "misapplied" the standard of review, as the State insists, Pet. 2, but because it concluded that the circuit court "clearly erred" in finding that Dr. Funte's change of opinion "did not merit relief." Op. 11. Its ruling was a proper exercise of appellate review and entirely supported by the record.

The circuit court relied on *Shelby v. State,* 311 So. 3d 613, 623 (Miss. App. 2020), for the proposition that the "mere fact an expert changes his opinion does not require a new trial." R.E. 23. The Court of Appeals found that this was error, as *Shelby* is easily distinguished. *Shelby* held that an expert's change of opinion did not **necessarily** require a new trial, not that it never could:

> In *Shelby,* the trial court had determined that the expert's "changed opinions were unreliable and unpersuasive" because there was "little evidence to support *any* such family history" of seizure disorders of the decedent. Here, on the other hand, the circuit court was not dealing with unreliable, recanted testimony from a prior fact

> witness. … Unlike the "unreliable" family medical history relied on by the expert in *Shelby*, Dr. Funte relied on the bullet pathway *and* scientific studies reviewed since the trial in now opining that the manner of death is "undetermined."

Op. at 7-8 (italics in original).[2]

Dr. Funte's original opinion, based only on his experience at the time, and on his mistaken belief that the wrist would constrain a self-inflicted gunshot from going straight, was wrong. With greater experience, he has seen suicidal gunshot wounds that took the same path as the bullet that killed Young. Op. 9. Scientific studies of which he had been unaware confirm what his new experience has shown: "[t]hat any bullet trajectory can occur in both homicides and suicides." *Id.* One study, that considered the trajectory of the bullet on a single plane – left, parallel or right – found that 36.4% took the parallel path the bullet took here. Op. 6. Another study, that considered the bullet trajectory on two planes, found that the parallel and downward path of the bullet here was the third most common of nine possible directions. *Id.* "Thus, Dr. Funte opined, based upon the autopsy finding alone, that it is not possible to determine the manner of death." *Id.* His revised opinion "**is undetermined, but leaning toward suicide.**" Op. 8 (emphasis in op.).

The Court of Appeals also found that the circuit court erred in concluding that Dr. Funte's change of opinion and the reasons for the changed opinion did not merit relief because the circuit court misinterpreted statistics in the record as "strongly suggest[ing]" homicide as the manner of death. Op. 7. Nor could the circuit court's unnamed "other evidentiary supports for the jury's verdict" R.E. 25, save the conviction. Op. 10.

[2] Significantly, the "PCR hearing" in *Shelby* involved a "battle of the experts," with a "qualified expert witness" who "testified that the conclusions reflected in the autopsy and Dr. Riddick's testimony at trial … **remained correct**." *Id*. at 624-25 (emphasis added). Here, unlike in *Shelby*—there is no battle of the experts. To the contrary, three other experts expressly rejected Dr. Funte's original manner of death determination *and* his reasons for making it. CP 151-55, CP 159-62, CP 1556-60. *No expert* has endorsed his original manner of death determination or his reasons for making it.

Importantly, the Court of Appeals correctly held that although the circuit court engaged in an extended discussion of "the statistical probabilities of whether the wound in question could be caused by suicide or homicide," at trial the government's burden was proof "*beyond a reasonable doubt*." Op.10 (emphasis in op.). The circuit court questioned whether Dr. Funte's testimony was even necessary to sustain the conviction.[3] But given the circumstantial case against Shelton, this Court, in affirming her conviction, and the Court of Appeals, in granting a new trial, rightly viewed it to be essential. The Court of Appeals examined the record, including the State's argument against a directed verdict, its closing argument to the jury, and this Court's opinion rejecting Shelton's claim on appeal that the verdict was against the weight of the evidence,[4] all of which relied on Dr. Funte's opinion at trial. The Court of Appeals held:

> We thus find it apparent that the State substantively relied on this testimony by Dr. Funte that the manner of death was "homicide" – testimony that Dr. Funte has since revised to "undetermined" based on newly obtained scientific knowledge.
>
> Accordingly, we find that the circuit court clearly erred in holding that the revised expert opinion testimony of Dr. Funte "does not merit reversal."

Op. 11 (footnote omitted).[5]

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[3] *See* R.E. 26 ("Dr. Funte indicated that now he would classify this case as undetermined. However, nothing in Mississippi statutory and caselaw requires that the Forensic Pathologist must determine the manner of death to be a homicide before the jury may convict a defendant of murder.").

[4] Op. 10, citing *Shelton v. State*, 214 So. 3d 250, 257 (Miss. 2017).

[5] The State errs when it argues that Ms. Shelton has not met the "newly discovered evidence" standard of Miss. Code Ann. § 99-39-23(6). Pet. 7-8. Section 99-39-23(6)—which provides an exception to the bar on second or successive motions for post-conviction relief—has no application here. This was Ms. Shelton's *first* motion for post-conviction relief and it was timely filed "within three (3) years after the time in which [her] direct appeal [was] ruled upon." Miss. Code Ann. § 99-39-5(2). Thus, her claims for relief did not face any procedural bars. The provision of the Uniform Post-Conviction Collateral Relief Act that applies here is Miss. Code Ann. § 99-39-(5)(1)(e), which requires Ms. Shelton to show, by a preponderance of the evidence, "[t]hat there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction … in the interest of justice." Dr. Funte's changed opinion—and the unrebutted evidence supporting his changed opinion—easily meet *that* standard. *See* Op. 7-11. In any event, here, the Court also found that Dr. Funte's revised opinion was "based on newly obtained scientific knowledge," Op. 11, and, in a footnote to this ruling, "consider[ed] Dr. Funte's revised opinion to be new scientific evidence not available at trial," op. 11, n.4, citing *Ex parte Robbins,* 478 S.W.3d 678, 690 (Tex. Crim. App. 2014).

II. The State, the Dissent, and the Circuit Court Fatally Misconstrue the Data

The thrust of the State's argument, which it borrows from the three dissenting judges, is that the circuit court was correct to find that studies offered into evidence by Shelton and relied upon by Dr. Funte, actually "quantitatively showed that Dr. Funte's original opinion was still the most probable manner of death." Pet. 3. But no competent medical examiner would rely on *statistical probabilities* to determine, to a reasonable degree of medical certainty, the manner of death.[6] Instead—as the experts in this case explained—the relevant conclusion from the statistical data is that the trajectory of the bullet is not a basis for determining manner of death because "any bullet trajectory can occur in both homicides and suicides." CP 2761.[7] In any event, even if it were reasonable to rely on statistical probabilities to make a manner of death determination, the State, the dissent, and the circuit court fatally misconstrue the data.

The dissent begins with an assertion regarding a chart contained in an article relied on by Dr. Funte. The chart, neither relied upon nor cited by Dr. Funte or any of the other experts, is entirely irrelevant. The table appears as follows:

Table 8 Distribution of the 189 entrance wounds in the chest

Location of chest wounds	Suicide	Homicide
Left chest	45	86
Presternal	3	10
Right Chest	2	43
Total	50	139

CP 1251. The dissent states:

[6] Dr. Funte's trial testimony that it was "possible but not probabl[e]" that a person could "shoot themselves straight back" was not based on *statistical probabilities*. *See* CP 663. Instead, it was based on his mistaken belief that the wrist would interfere with such a shot. *See id*.

[7] Dr. Frost explained that the data "support[s]" his "observation[s]" that with respect to self-inflicted gunshot wounds to the chest "any … directionality is possible" and "a variety of directionalities are common." CP 152-53. Dr. Filkins, a co-author of one of the studies, likewise explained that "[o]ur study is consistent with what earlier studies have shown—a suicidal gunshot wound to the left chest can take any direction on the sagittal plan." CP 1557.

> A review of Table 8 of the 2002 article shows that 73.5% of deaths caused by gunshot wounds to the chest were determined to be homicides, while only 26.5% were determined to be suicides. Thus, at the outset, because Young died from a single gunshot wound to his chest, statistics show that the manner of his death was probably a homicide.

Op. 24 (Emfinger, J., dissenting). Table 8 counts **entrance wounds**, not the number of suicides or homicides by **single** gunshot to the chest. There may be vastly more entrance wounds in homicides than suicides since, in homicides, the shooter may fire as many times as the capacity of his firearm allows, or he may reload or use a second weapon, while in suicides, the first shot is often incapacitating, if not immediately fatal. Thus, as Table 4 in the study shows, over half of the homicides (53.9%) involved multiple gunshot injuries, some with as many as 7-12 entry wounds, and one with 23, while only a few suicides had more than one entry wound (5.6%). CP 1250. Table 8 thus provides no basis *at all* for concluding that Young's death was a homicide. No expert in this case claimed that it did.[8]

The dissent next writes, "Table 6 also supports this conclusion because it shows that 83.4% of suicides were the result of gunshot wounds to the head or neck, while only 16.3% were to the chest." Op. 24. The dissent commits the logical fallacy of assuming that because more suicides aim for the brain than the heart, that answers the question posed in this case: Given that the fatal gunshot was to Young's left chest, was it a homicide or a suicide? Table 6 does not answer that question. The record does provide the answer. It is that it could be either.

Dr. Frost testified, "Q. Is there any statistical basis to [f]avor homicide over suicide based on the fact that entry wound was to the chest? A. No." CP 3012. He cited two different studies in

[8] Furthermore, the dissent gives the totals of entrance wounds to the chest in percentages in homicides versus suicides (73.5% v. 26.5%), obscuring the fact that Table 8 shows that in homicides the entrance wound is much more likely to be to the right chest or presternal (the region overlaying the breastbone), than in suicides. This makes sense since suicides typically aim for the heart at close range, while homicidal gunshots, often from a distance, may strike anywhere. Thus, the dissent's reliance on Table 8 is not only irrelevant, it is also misleading.

evidence that provided the relevant data. In each, less than one percentage point separated the number of suicides by gunshot to the chest from the number of homicides by gunshot to the chest. In one study of 1450 non-accidental deaths by handgun, the data showed 12.7% suicides and 12.1% homicides were single gunshots to the chest.[9] In another study, the data showed that 14.5% of suicides were by single bullet to the chest, while just over 15% of homicides had such an injury.[10] Dr. Frost testified: "In other words, as we've said before a gunshot wound to the chest can be either suicide or homicide based on the location. There's really no statistical difference between the two." CP 3016. *See also* CP 3084 ("If you just look at the location of the wound in isolation, taking into account nothing else, it's pretty much evenly split between suicides and homicides.").

Finally, the dissenting opinion, the circuit court and the State cite two charts Dr. Funte relied on as support for his revised opinion as actual support for a homicide determination. They provide none. The dissent writes:

> Table 10 shows that of the suicides resulting from gunshot wounds to the left chest, only 36.4% matched the bullet path in Young's case, while 63.6% did not. The 2012 study is even more supportive of homicide in Young's case, by showing that less than 15% of suicides where the death is caused by a chest wound have the same bullet trajectory as is present here.

Op. 24-25. Table 10 is as follows:

Table 10 Entrance wound left chest, sagittal plane.

Direction of bullet path	Suicides	Homicides
Right-to-left	17 (38.6%)	6 (7.0%)
Parallel	16 (36.4%)	10 (11.6%)
Left-to-right	11 (25.0%)	70 (81.4%)

CP 1251. While it is true that 36.4% of suicidal gunshots to the chest took a parallel path, only 11.6 % of homicidal gunshots took the same path. Thus, *even if* the path of the bullet were a means

[9] CP 1261, 1263, 1264.

[10] CP 1268, 1270.

of determining whether a gunshot to the chest was the result of a homicide or a suicide (and it clearly is *not*), this study actually supports the conclusion that the manner of Young's death was suicide, not homicide.

The 2012 study fares no better for the dissent and the State. It does not compare the bullet paths of suicidal and homicidal gunshots to the chest. Measuring the trajectory of the bullet in suicides to the left chest on two planes, the study finds that the path the bullet took here, parallel and downward, was the third most common of nine possible directions. CP 1246. And again, the authors state, "Although certain directions are significantly more common [of which this was one] Figure 1 illustrates that *any direction is possible*." *Id.* (emphasis added). The data thus supports Dr. Funte's new opinion that the path of the bullet through Young's chest was *not* a basis for determining the manner of his death. The Court of Appeals was correct in finding that the circuit court erred in concluding that these studies support homicide as the manner of Young's death.

II. The Failure to Submit the "These Are My Last Words" Note

The State offers no meritorious reason to overturn the Court of Appeals' well-reasoned decision that Shelton's attorney was ineffective for failing to submit Young's "**These are my last words**" note to the jury. The letter was relevant to Young's state of mind where the asserted defense was suicide, as the Court of Appeals correctly holds. Op. 14-15.

The State asserts, "The circuit court found that counsel made a reasonable strategic decision" not to offer the letter. Pet. 8 (citing CP 3157-58). The State errs. The circuit court *never* mentioned the letter or trial counsel's failure to seek its admission in its order. The pages the State cites in support of its claim are actually those in which trial counsel makes clear that his s*trategic decision* was to have the jury consider the letter for its bearing on Young's suicidal state of mind:

> Q. And you thought the letter was important, is that right?
> A. Uh-huh (yes). I did.

> Q. Why so?
> A. Well, I think it corroborated through a couple of sentences our theory that suicide may have been on Young's mind.
> ***
> Q. *And your desire was to introduce that letter into evidence at the trial, correct?*
> A. *That is correct.*

CP 3158-59 (emphasis added). Counsel's deficient performance was in failing to prepare and to act to accomplish this end, prejudicing Shelton's defense of suicide. Op. 13.

Counsel did not seek expert assistance to authenticate Young's handwriting, CP 3159, which was authentic. CP 1333-38. Had he informed Shelton that she "had to testify to explain where the note came from, [she] would have." CP 200. And notwithstanding defense counsel's belief that he may have "examined [a] witness about it" and the "judge [may] have allowed him to ask some questions related to it," the trial record shows that neither of these things happened. CP 3199. Instead, he sought to admit through Ketina Tutton—Shelton's sister—a different note, written on the back of a flyer for an apartment complex, in which he "was basically saying I'm sorry for acting silly." CP 888. Notably, Tutton identified the handwriting as Young's. *Id*.

Finally, the dissent writes, "While I would agree that Ray failed to obtain an on-the-record ruling from the court on this issue so that the issue could be addressed on direct appeal, that is not an issue presented by Shelton's PCR motion." Op. 46. This is incorrect. Shelton's Amended Petition for Post-Conviction Relief states, "Most strikingly, he failed to present Danelle Young's 'these are my last words' note to the jury. Indeed, he failed even to make a record of his inability to do so." CP 42. The PCR further states: "His failure to make a record … prevented appellate review." CP 135-36.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Sandra K. Levick, do hereby certify that I have electronically filed the foregoing document with the Clerk of Court using the MEC system, which sends notification of such filing to all counsel of record, and mailed, via U.S. Mail, postage pre-paid to the following:

Honorable James T. Kitchens, Jr.
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This, the 21th day of April, 2026.

/s/ Sandra K. Levick