

**IN THE
3RD DISTRICT COURT, ANDERSON COUNTY, TEXAS
AND
THE TEXAS COURT OF CRIMINAL APPEALS**

	)	Trial Cause No. 26,162-C
EX PARTE	)	
ROBERT LESLIE ROBERSON III,	)	Writ Cause No. WR-63,081-05
APPLICANT	)	
	)	
	)	

NOTICE OF NEW PERSUASIVE AUTHORITY

Applicant Robert Leslie Roberson III, by and through undersigned counsel, files this Notice of New Persuasive Authority attached here as **Exhibit A** (Order Granting Defendant’s Extraordinary Motion for New Trial in *State of Georgia v. Danyel Smith*, hereafter “EMNT Order”). Danyel Smith was convicted in 2003, the same year as Mr. Roberson, based on the same “Shaken Baby” diagnosis of a child brought to a hospital by a male caregiver seeking medical help. EMNT at 2. The EMNT Order, issued on July 21, 2026, followed a remand from the Supreme Court of Georgia, which recognized, in a unanimous decision, that a previous denial of a new trial needed to be reconsidered. *See id.* at 1.

The EMNT Order grants Smith a new trial and vacates his conviction and sentence based on the change in scientific understanding of Shaken Baby Syndrome (“SBS”), which was renamed Abusive Head Trauma (“AHT”) several years after

both Smith and Roberson were tried. *Id.* at 14. In other words, the case involves a very similar procedural posture and facts.¹

Some of the specific similarities include the following:

- In Smith’s 2003 trial, the State’s theory was that the child’s death could only be explained by “non-accidental trauma; that is child abuse.” *Id.* at 2.
- Previously (in 2007), Smith raised the emerging controversies around SBS as a basis for post-conviction relief but was then denied. *Id.* at 3.
- In 2021, Smith brought evidence of yet more advances in scientific understanding of SBS/AHT and urged application of the new differential-diagnosis approach now associated with AHT. *Id.* at 3.
- Smith proffered opinions from experts in an array of disciplines who attested to the scientific advances in understanding the SBS/AHT hypothesis since 2003 and/or described what had been missed in the child’s medical history/records. *Id.* at 5-6. (Several of the experts cited in the EMNT have also provided opinions in Roberson’s case or their research has been proffered as evidence, including Dr. Patrick Lantz, Dr. Julie Mack, Dr. Michael Laposata, and Dr. Kenneth Monson).

The trial court’s findings are also instructive. The court found all of Smith’s experts to be qualified and found their opinions were based on “reliable principles and methods.” *Id.* at 7. The court found that Smith’s experts relied on scientific

¹ Under Georgia law, the trial court had the authority to grant a new trial. Under Texas law, only the Court of Criminal Appeals has that authority but will do so only after obtaining a recommendation from the trial court as to whether a new trial under Texas Code of Criminal Procedure, Article 11.073 is warranted.

advances and papers published well after the 2003 trial. *Id.* at 9.² The court also found that the scientific advances relied on today were not available in 2003. *Id.*

The trial court agreed with the Supreme Court of Georgia that Smith’s EMNT did not rely on mere questions about the validity of SBS but also on expert testimony “offering a new analysis of [the child’s] medical evidence ‘rooted in a new understanding of the underlying science and a medically based alternative explanation’ for [the child’s] injuries.” *Id.* at 10 (quoting the higher court’s remand order). The trial court further emphasized that the primary change since 2003 is that the presumption-of-abuse approach to SBS/AHT has been rejected and prevailing medical consensus now “require[es] a rigorous differential diagnosis that accounts for alternative causes.” *Id.* at 11.

Finally, the trial court concluded that the new scientific evidence was material, in that the alternative “non-abusive explanation for [the child’s] death,” if presented to a jury, “would probably produce a different verdict.” *Id.* at 13. This materiality standard is comparable to that in Article 11.073, which requires finding that, “had

² The trial court noted that the medical examiner in Smith’s case had conceded that there had been scientific advances “since 2003.” Exhibit A at 9. Here, the medical examiner conceded that there were a host of relevant factors she did not consider but nevertheless testified in 2021 that she had not learned anything since 2003 that would prompt her to revisit her conclusions. That kind of rigidity is inconsistent with both scientific progress and the objectives of Article 11.073.

the scientific evidence been presented at trial, on the preponderance of the evidence, the applicant would not have been convicted.” TEX. CODE CRIM. PROC. art. 11.073.

Respectfully submitted,

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August 10, 2026

EXHIBIT A

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

STATE OF GEORGIA

v.

DANYEL SMITH,

Defendant.

Case No. 02-B-2388-6

**ORDER GRANTING DEFENDANT'S
EXTRAORDINARY MOTION FOR NEW TRIAL**

The above-styled case is before this Court on Defendant Danyel Smith's Extraordinary Motion for New Trial ("EMNT"). The predecessor judge of this Court heard testimony and received evidence on the EMNT on March 29 and April 1, 2, 3, 10, and 11, 2024. The prior judge denied Smith's EMNT. Smith appealed, and the Supreme Court of Georgia reversed the judgment in a unanimous opinion. *Smith v. State*, 322 Ga. 743 (2025) ("*Smith III*"). In remanding, the Supreme Court gave the instruction to apply the "appropriate legal framework" for deciding an EMNT. *Id.* at 743, 756.

While this case was on appeal to the Supreme Court of Georgia, the prior judge who heard the evidence at the EMNT hearing retired. The undersigned ("the Court") took over this division's docket and inherited this case upon remand on November 10, 2025. A status and scheduling conference was held on November 14, 2025. In consideration of everyone's schedules and conflicts, the Court set aside the week of March 16, 2026 for the parties to re-present their witnesses and evidence. However, upon further consideration of the request of both parties, the Court reversed itself on January 16, 2026. The Court then requested updated briefs and allowed the parties to present oral argument on March 16, 2026.

Having now reviewed the entire Record of this case (including but not limited to the transcripts and exhibits from the Preliminary Hearing, the Trial, the Motion for New Trial, and the

Extraordinary Motion for New Trial), and after due consideration of the parties' arguments (written and oral), all evidence in the Record, and applicable law, the Court makes the following Findings of Fact and Conclusions of Law:

I. The Legal Standard

To prevail on his Extraordinary Motion for New Trial, Mr. Smith must satisfy the six-factor test set forth in *Timberlake v. State*, 246 Ga. 488 (1980). Specifically, he must satisfy this Court “(1) that the evidence has come to his knowledge since the trial; (2) that it was not owing to the want of due diligence that he did not acquire it sooner; (3) that it is so material that it would probably produce a different verdict; (4) that it is not cumulative only; (5) that the affidavit of the witness himself should be procured or its absence accounted for; and (6) that a new trial will not be granted if the only effect of the evidence will be to impeach the credit of a witness.” *Timberlake* at 491.

II. Trial Evidence

A more complete recitation of the evidence presented at the 2003 Trial can be found at *Smith v. State*, 283 Ga. 237 (2008) (“*Smith I*”). Most relevant here, the State argued that “there’s no other explanation that the doctors might look for that would explain these symptoms, other than non-accidental trauma; that is, child abuse.” (Prosecutor’s Opening Statement, T. 320). The consulting pediatric neurosurgeon, Dr. William Boydston, who saw Chandler Smith (“Chandler”) at Scottish Rite upon admission, testified about his diagnosis, “Unless somebody could tell me something else was going on with this child, guys, I don’t – You know, I think he was a shaken baby. I’ll be happy if somebody can tell me something else.” (T. 375). The jury found Mr. Smith guilty of felony murder and aggravated battery of Chandler. (T. 795-96.) The Trial Court sentenced him to life plus 20 years in prison, to run concurrently. (T. 802-04.).

III. Motion for New Trial Evidence

At the Motion for New Trial in 2007, Mr. Smith's theory was very similar to the theory he pursues in his Extraordinary Motion for New Trial. He argued, "the skull fracture sustained by Chandler Smith was several months old there was a seizure that occurred that day that resulted in the child going comatose and dying; however, it was as a result of this prior injury that the child had sustained, manifesting itself again as it had on March the 10th of 2002" (Defendant's Opening Statement, MFNT (3/23/07 volume) at 7-8). Mr. Smith presented testimony from Robin deJong, one of the paramedics that responded to the 911 call March 10, 2002, and from Dr. Michael Baden, a forensic pathologist and medical examiner from New York. Dr. Baden testified that diagnosing pediatric abuse was still controversial, "[Shaken Baby Syndrome's] very controversial, and the last meeting of the forensic sciences conferences just now there are a number of papers denying its existence." (MFNT (3/23/07 volume) at 27). Mr. Smith's challenge was presented as an ineffective assistance of counsel claim for trial counsel's failure to present any medical evidence to rebut the State's theory of the case. The Georgia Supreme Court affirmed Mr. Smith's convictions. *Smith I*.

IV. Extraordinary Motion for New Trial Evidence

In 2021, Mr. Smith filed an Extraordinary Motion for New Trial. He argues that advancements in the scientific and medical understanding of Shaken Baby Syndrome (SBS) undermine the validity of his 2003 conviction, and that applying the new diagnostic approach to Abusive Head Trauma (AHT) in children, doctors would now conclude that Chandler died from a natural disease process rather than from abuse. In 2024, at the EMNT hearing, Mr. Smith presented testimony from eight witnesses across various specialties. The State countered with two expert

witnesses and a lay witness, Chandler's mother. The parties entered a stipulation from the medical examiner who performed Chandler's autopsy.

V. Application of *Timberlake* to the Facts of this Case

A. The Evidence is Admissible.

"Implicit in the six requirements for granting a new trial on the basis of newly discovered evidence is that the newly discovered evidence must be admissible as evidence.... Here, in response to Smith's extraordinary motion for new trial in the court below, the State challenged the admissibility of the testimony of Smith's expert witnesses under OCGA § 24-7-702 ("Rule 702"), which would govern in the event of a retrial. Rule 702 requires courts to evaluate the admissibility of expert testimony under the standard set forth in *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993), and its progeny. And the State argued that portions of Smith's experts' testimony failed to meet the *Daubert* standard for reliability." *Smith III* at 747.

"In determining the admissibility of expert testimony under the *Daubert* standard, the trial court acts as a gatekeeper, assessing both the witness qualifications to testify in a particular area of expertise and the relevancy and reliability of the proffered testimony. And the trial court examines reliability through a consideration of many factors, including whether a theory or technique can be tested, whether it has been subjected to peer review and publication, the known or potential rate of error for the theory or technique, the general degree of acceptance in the relevant scientific or professional community, and the expert's range of experience and training." *Arnold v. State*, 321 Ga. 434, 451 (2025).

With these principles in mind, the Court first decides whether the proffered witnesses of Mr. Smith meet the *Daubert* and Rule 702 standard. Except for Jeff Kukucka and Keith Findley, the Court finds that they do and **DENIES** all objections made to the same by the State, finding that their testimony is reliable, relevant, and admissible. With each of these witnesses, the Court finds that the objections raised by the State do not undermine the admissibility of the witness' testimony, but rather go to the weight and credibility of the evidence to be given by the ultimate factfinder.

i. Dr. Patrick Lantz

The State stipulated that Dr. Lantz is “qualified to testify as a forensic pathologist.” (EMNT 30). His CV was admitted into evidence without objection. (EMNT 23, 1417). Specifically, the Court finds that Dr. Lantz has specialized training and significant experience in identifying retinal hemorrhages in infants and young children. Further, due to his expertise, he has been a peer reviewer for scientific journals and has been qualified to testify as an expert witness in the courts of several states. His training and experience have involved distinguished facilities and publications.

ii. Dr. Julie Mack

The State stipulated that Dr. Mack is “qualified as a radiologist.” (EMNT 231). Her CV was admitted into evidence without objection. (EMNT 219, 1598). Specifically, the Court finds that Dr. Mack was educated at Harvard Medical School, completed her Residency at Baylor, and thereafter fulfilled her Fellowship at Children’s Medical Center in Dallas. She has published research and has been qualified to testify as an expert witness in various states. While she currently is employed in the area of breast imaging and intervention, she continues to consult on cases involving pediatric patients. The Court finds that she has specialized training and experience in reviewing and interpreting images of pediatric patients.

iii. Dr. Mark Shuman

The State stipulated that Dr. Shuman is “qualified to testify as a forensic pathologist.” (EMNT 332). His CV was admitted into evidence without objection. (EMNT 332, 1656). Specifically, the Court finds that Dr. Shuman completed his medical degree at the University of Pittsburgh School of Medicine and worked as a medical examiner for over 20 years before retiring from full-time work in 2022. In “retirement,” Dr. Shuman continues to work as a medical

examiner *in locum tenens* and consults in cases involving pediatric head injury. Dr. Shuman has published many articles and presented to various groups about pediatric head injury and retinal hemorrhaging. The Courts finds that he has specialized training and experience involving, among other areas, whether retinal hemorrhages are specific indicators of abuse in children.

iv. Dr. Michael Laposata

Dr. Laposata testified via Zoom and the State stipulated that he “would be able to testify as a pathologist and a hematologist and a medical doctor.” (EMNT 547). His CV was admitted into evidence without any objection. (EMNT 548, 1852). Specifically, the Court finds he was educated at Johns Hopkins University School of Medicine and has been practicing, researching, and teaching for over 40 years in various areas, but most relevant here, bleeding and clotting. He has published hundreds of peer-reviewed articles and book chapters. The Court finds he has specialized training and experience in the area of bleeding and clotting within the human body.

v. Dr. Kenneth Monson

The State stipulated that Dr. Monson was “an expert in biomechanical engineering.” (EMNT 610). His CV was admitted into evidence without any objection. (EMNT 600, 1946). Specifically, the Court finds that Dr. Monson has a Master’s degree and a PhD in mechanical engineering. He has specialized training and experience from his work and research with neurosurgeons. He has been a peer reviewer in over 30 journals and has published his own articles. Currently, he directs a research lab that focuses on “damage to cerebral blood vessels” while “trying to better understand how blood vessels respond to the application of mechanical force.” (EMNT 602).

vi. Dr. Saadi Ghatan

The State stipulated that Dr. Ghatan was an expert in “pediatric neurosurgery and epilepsy surgery.” (EMNT 678). His CV was admitted into evidence without objection. (EMNT 663, 1983). Specifically, the Court finds that Dr. Ghatan is currently the director of epilepsy surgery for the Mount Sinai Health System overseeing all neurosurgeons within the health system. His practice involves both adults and children. The Courts finds he has specialized training and experience in pediatric neurology.

For all the reasons stated herein, the Court finds that Dr. Lantz, Dr. Mack, Dr. Shuman, Dr. Laposata, Dr. Monson, and Dr. Ghatan each individually possess sufficient qualifications to testify in their area of specialty. Their testimony is based upon sufficient facts and data that is the product of reliable principles and methods related to the practice of their specialty. Each witness has reliably applied these principles and methods to the facts of this case. Further, each witness’ testimony is relevant and would assist the trier of fact. Finally, the probative value of the testimony outweighs any prejudice to the State and the same, if any, would be a proper basis for cross examination.

B. The Evidence Has Come to Mr. Smith’s Knowledge Since the Trial.

Having determined that the evidence is admissible, the Court turns to the first *Timberlake* requirement—whether the evidence is newly discovered. To satisfy this prong, Mr. Smith must show that “the new evidence was unknown to him at the time of trial.” *Smith III* at 747 (citing *Timberlake*, 246 Ga. at 491). As the Georgia Supreme Court has recognized, “new expert analysis of existing physical evidence” may constitute newly discovered evidence sufficient to support an extraordinary motion for new trial. *Id.* (quoting *Smith v. State*, 315 Ga. 287, 295-96 (2022) (“*Smith II*”)). This inquiry focuses on the “evidence itself,” and the pertinent question is “whether the

expert opinion testimony underlying his extraordinary motion for new trial was known to Smith or his counsel at the time of his 2003 trial.” *Id.* at 750. Therefore, the relevant question is not whether some general skepticism of SBS/AHT existed at the time, as it did at Mr. Smith’s hearing on his Motion for New Trial, but whether the opinions now offered could have been offered at the time of the 2003 Trial. *Id.* (explaining that “on its face, Dr. Ghatan’s *particular* opinion could not have been offered at the time of trial”) (emphasis in original).

Applying that framework here, the Court concludes that the evidence underlying Mr. Smith’s motion is newly discovered. Mr. Smith’s motion is not premised on a generalized criticism of SBS or AHT that may have existed in 2003 or in 2007. Rather, it is grounded in a fundamental shift in the diagnostic approach to brain findings in infants—as demonstrated by scientific papers introduced by Mr. Smith, including the 2018 Consensus Statement and the 2020 AAP Statement, which were published well after his conviction. (See H’ng Def. Exs. 40 and 41.)

At the time of Chandler’s passing and the time of the 2003 Trial, the prevailing approach treated SBS as a presumptive diagnosis, as reflected in the 2001 AAP Statement and the medical testimony presented at trial. (See H’ng Def. Ex. 36.) In contrast, current medical and scientific standards require a comprehensive differential diagnosis that considers alternative, non-abusive causes before concluding abuse. (See H’ng Def. Exs. 40 and 41.) This Court finds that Mr. Smith’s newly presented evidence, specifically the non-abusive diagnosis, arises from the application of this updated diagnostic approach to SBS/AHT cases, which became accepted after Mr. Smith’s conviction in 2003.

The evidence presented at the EMNT hearing confirms that the opinions of Mr. Smith’s experts—and the scientific foundations underlying them—were not known to Mr. Smith or his counsel at the time of trial. Largely, the experts testified that their current opinions are informed

by scientific literature, research, and medical developments that post-date the 2003 Trial (and the Motion for New Trial in 2007) and that, in several respects, their opinions today differ from what they themselves would have believed in 2003, given the then-prevailing medical understanding. (See, e.g., EMNT H'ng 45-51, 282-83, 726-27.) Mr. Smith's experts relied on advancements in medical and scientific research and on numerous scientific publications, admitted as evidence, that were published years after Mr. Smith's conviction.

The experts' specific testimonies underscore this point. Dr. Mack discussed why the approach of correlating radiology with pathology—which allowed her to arrive at her opinion today—is new and a product of today's evidence-based approach to medicine. (EMNT 230-31, 258, 263, 299.) She also explained that it is currently understood that “metaphyseal lesions” are not necessarily diagnostic of abuse. (*Id.* at 299-301.) Similarly, the research by Dr. Lantz and other pathologists and ophthalmologists questioning the specificity of retinal hemorrhages as being pathognomonic of abuse emerged after Mr. Smith's Trial. (*Id.* at 36.) Dr. Monson relied on studies published in recent years, after 2003, to support the biomechanical basis for his conclusions. (See *id.* at 630-31.) Dr. Ghatan admitted that he, too, would have thought differently in 2003, and in offering his opinion in 2024, he relied on both his experience and on studies regarding seizures in infants published as recently as the year the EMNT hearing was held. (See *id.* at 751-52.) Even the State's medical examiner, Dr. Dunton, conceded that significant findings, including but not limited to the skull fracture, pediatric retinal hemorrhaging, and axonal injury, would differ today based on what he has learned “since 2003.” (*Id.* at 1072.)

Accordingly, the Court finds that the particular expert opinions presented at the EMNT hearing are based on advancements in the research and understanding of SBS/AHT and could not have been offered in their present form at the time of the 2003 Trial (or in 2007). Therefore, they

were unknown to Mr. Smith and his counsel at that time. As such, Mr. Smith has satisfied *Timberlake*'s newly discovered evidence requirement.

C. It Was Not Owing to the Want of Due Diligence that Mr. Smith Did Not Acquire the New Evidence Sooner.

The Court next considers whether Mr. Smith has satisfied the due diligence requirement under *Timberlake*. In addition to showing that the evidence was previously unknown to him and his counsel, Mr. Smith must demonstrate that, even in the exercise of due diligence, he could not have acquired the evidence earlier. *Smith III* at 750 (citing *Timberlake*, 246 Ga. at 491-92). The Georgia Supreme Court has explained that “[t]he grant of an extraordinary motion for new trial on the ground of newly discovered evidence is reserved for cases in which the facts at issue in the motion were previously impossible to ascertain by the exercise of proper diligence.” *Id.* (quoting *Bharadia v. State*, 297 Ga. 567, 573 (2015)). The diligence inquiry also requires the Court to consider whether, once Mr. Smith became aware of the evidence forming the basis for his motion, he acted diligently in presenting that evidence to the Court. *Id.* at 750-751 (citing *Drane v. State*, 291 Ga. 298, 304 (2012)).

The Court agrees with the Supreme Court that the foundation of Mr. Smith's motion in this case is *not* testimony that is “generally critical or merely questions the validity of SBS.” *See Smith III* at 751. Rather, Mr. Smith's motion relies on the testimony of six expert witnesses offering a new analysis of Chandler's medical evidence “rooted in a new understanding of the underlying science and a medically based alternative explanation” for his injuries. *Id.* In a case like this, which involves new expert analysis of existing evidence, “the form and nature of the evidence matters to the diligence inquiry.” *Id.* Mr. Smith's evidence is not based on historical facts or eyewitness testimony, but on expert analysis grounded in the application of evolving scientific knowledge. As the Supreme Court has already explained in this case, “the materiality of scientific

development often becomes apparent only with the passage of time as new theories are subjected to the rigors of scientific testing, peer review, and the general scrutiny of the scientific community.” *Id.* Accordingly, the diligence requirement does not compel a defendant to file an extraordinary motion “at the moment the theory on which [his] motion is based has seeped into the intellectual ether,” without regard to whether that theory is scientifically supported. *Id.* at 752. Nor does it require a defendant to present scientific evidence before he is able to demonstrate its materiality—particularly given that “a convicted defendant may file only one extraordinary motion for new trial.” *Id.* (quoting *Smith II* at 302).

Mr. Smith has established that the expert opinions underlying his EMNT are informed by research advancements in medicine, scientific developments, peer-reviewed literature, and evolving medical standards that post-date his 2003 Trial. (*See, e.g.*, H’ng Def. Ex. 34.) Mr. Smith’s evidence included developments reflected in professional medical guidance, including the change in the diagnostic approach to SBS/AHT from a presumptive diagnosis to one requiring a rigorous differential diagnosis that accounts for alternative causes. Both the expert testimony and the evidentiary record show that these developments gradually matured and gained acceptance over time—as reflected in the AAP report in 2001 (H’ng Def. Ex. 36), then in 2009 (H’ng Def. Ex. 38), and then in the Consensus Statement in 2018 (H’ng Def. Ex. 40). The AAP did not publish its new guidance on AHT until 2020, shortly before Mr. Smith filed his EMNT. (H’ng Def. Ex. 41; *see also* H’ng Def. Ex. 34.)

Considering this gradual evolution, it would be improper for this Court to apply a “singular focus on identifying a precise date” on which Mr. Smith could have been presented his evidence. *Smith III* at 751. The relevant inquiry is whether Mr. Smith acted diligently once the scientific developments matured sufficiently to establish the materiality of his new evidence. The record

demonstrates that he did. Mr. Smith filed his EMNT after the relevant scientific developments had been subjected to testing, subjected to peer review, and had gained sufficient acceptance within the scientific community to support reliable expert testimony.

The Court finds that Mr. Smith acted diligently in presenting his evidence to the Court once its materiality could be reasonably ascertained. As the Supreme Court explained, “a prudent defendant predicated an extraordinary motion on scientific developments would wait until he is confident in the materiality of those developments before presenting the new evidence to the court.” *Smith III* at 752 (quoting *Smith II* at 302). The timing of Mr. Smith’s motion reflects that prudence. While Mr. Smith introduced a similar theory at his Motion for New Trial in 2007, the evidence presented then shows that the medical community was very much in flux about the validity of Shaken Baby Syndrome. (MFNT (3/23/07 volume) at 27). Accordingly, on the unique facts and circumstances of this case, which are heavily science-dependent, the Court finds that Mr. Smith exercised due diligence under *Timberlake*.

D. The New Evidence Is So Material that It Would Probably Produce a Different Verdict.

The Court next considers whether Mr. Smith has satisfied the materiality requirement under *Timberlake*. In applying this factor, this Court must “attempt to account for how the new evidence would have influenced the jury’s assessment of the evidence presented by the State at the defendant’s trial, had the new evidence been available to the defendant at that time.” *Smith III* at 754 (quoting *Gates v. State*, 308 Ga. 238, 259 (2022)).

As the Georgia Supreme Court has already instructed in this case, the “materiality inquiry is a holistic one that must take into account the specific facts and circumstances of the case.” *Smith III* at 755. This analysis should include consideration of “the strengths and weaknesses of both the State’s and the defendant’s case and the nature and strength of the defendant’s new evidence.”

Id. (quoting *Gates*, 308 Ga. at 260). The inquiry, the Supreme Court explained, “may entail an assessment of how the evidence would impact the State’s theory of the case, the theory of the defense, or both, as well as whether the evidence might supply the missing link in the chain of evidence of guilt (or innocence).” *Smith III* at 755 (quotations omitted). This Court therefore evaluates the combined force of Mr. Smith’s newly discovered evidence alongside the evidence presented at trial, and each party’s theory of the case, to determine whether the new evidence is so material that it would probably produce a different verdict as to Mr. Smith’s guilt of the crimes charged.

This Court finds that Mr. Smith’s newly presented evidence meets the materiality standard. Mr. Smith presented a coherent, comprehensive, and medically and scientifically supported alternative explanation for Chandler’s death, corroborated by five medical specialists, including three pathologists, a radiologist, and a pediatric neurosurgeon. The Court need not determine whether this alternative diagnosis is definitively the correct one. Instead, in considering the materiality requirement, the Court must decide whether this new evidence is so material that it would probably produce a different verdict as to Mr. Smith’s guilt when weighed against the trial evidence. The Court finds that Mr. Smith has carried that burden.

Mr. Smith’s newly presented medical and scientific evidence provides a non-abusive explanation for Chandler’s death. In contrast to the State’s theory of the case, as previously referenced herein, the Court finds that a reasonable juror could find Mr. Smith’s newly discovered expert testimony plausible and persuasive. Mr. Smith’s evidence presents an alternative medical explanation for Chandler’s death that is so material that it would probably produce a different verdict.

E. The New Evidence Is Not Cumulative Only.

For the reasons articulated above and recognizing that the prosecution has not contested this factor, the Court finds that Mr. Smith's new evidence is not cumulative.

F. Affidavits and Live Testimony Were Presented.

Mr. Smith submitted an affidavit prior to the EMNT hearing and presented live testimony in support of his EMNT, thereby satisfying this factor, which is uncontested.

G. The Effect of the New Evidence Is Not Only to Impeach the Credibility of a Witness.

For the reasons articulated above and recognizing that the prosecution has not contested this factor, the Court finds that the effect of Mr. Smith's new evidence is not only to impeach the credibility of a witness, but is substantive evidence upon which a reasonable juror would find reasonable doubt.

VI. Conclusion

The Supreme Court of Georgia remanded this case for this Court to consider Mr. Smith's EMNT "within the appropriate legal framework, as outlined in [its] opinion." *Smith III* at 756. Applying that instruction, the Court finds and concludes that Mr. Smith presented newly discovered evidence, that he did so with due diligence, and that his new evidence is material. Having satisfied the *Timberlake* standard, Mr. Smith's EMNT is **GRANTED**. Mr. Smith's convictions and sentences are **VACATED**. This case shall appear on the Court's next trial Calendar Call on September 1, 2026 at 9:00 a.m. in Courtroom 3F.

SO ORDERED THIS 21st DAY OF July, 2026.

Copies to:

All counsel of record and pro se parties


The Honorable Kimberly A. Gallant
Superior Court, Gwinnett County

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