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TIBA's Case of the Week

Case Name: **Ex parte Cathy Lynn Henderson**

- OFFENSE: Post-Conviction Habeas Corpus (Capital Murder - Death Sentence)
- COUNTY: Travis
- CCA. CASE No. AP-76,925 DATE OF OPINION: December 5, 2012
- DISPOSITION: Relief Granted
- OPINION: [Per Curiam](#) VOTE: 0-5-3
- TRIAL COURT: 299th District Court
- LAWYERS: [Jani Maselli](#) (Defense);

Ed Note: (Background Facts) The 3½ month-old deceased was left with Applicant, the family's regular babysitter. Both Applicant and the baby disappeared, and a kidnapping investigation began the next day. Applicant was later arrested by the FBI in Kansas City, and, at first, denied any knowledge of the deceased's location or well-being. Later, she stated that the baby's grandmother had picked him up. Eventually, Applicant admitted that the baby was dead, but claimed that his death was an accident. Applicant contended that the baby accidentally fell from her arms onto a linoleum-covered concrete floor. After the baby died, Applicant wrapped his body in a blanket and put it in a wine cooler box in the trunk of her car. She packed a suitcase and put her daughter and the deceased's older sister in her vehicle. On her way out of town, Applicant withdrew \$1,000.00 from her bank account and drove to her husband's relatives' house, unannounced. She told them that she needed to go to the store and would be back soon and asked her 11-year-old niece to babysit the two girls. Applicant never returned. Instead, she continued north, and she buried the victim's body in a wooded area. After she had made her way to Missouri, Applicant admitted to a friend that she had "killed somebody or murdered somebody." Applicant stated that she wanted to change her hair and her identity, and when asked about this, she said, "I can't do life. I don't want to talk about it anymore." After being arrested, Applicant was charged with capital murder. The single contested issue at Applicant's 1996 trial was whether she intended to kill the baby or recklessly, negligently, or accidentally caused his death. The medical examiner who performed the autopsy testified that it was "impossible" for the deceased's extensive brain injuries to have occurred in the way that Applicant stated. He said that Applicant's story was false and "incredible," and he believed that the deceased's injuries must have resulted from an intentional blow. He concluded, "I would say the baby was caught up with the hands by the arms along the body and then swung and slammed very hard against a surface." He testified that "this is the worst case of head injury [at the hands of a person] I [have] ever seen." He testified unequivocally that the deceased "came to his death as a result of a severe closed head injury. . . characteristic of abuse, homicide." He concluded, without a scintilla of doubt, that the cause of the baby's death was a severe closed-head injury and the manner of death was homicide. The jury

found Applicant guilty of capital murder, and she was assessed the death penalty. Her conviction and sentence were affirmed on direct appeal. See [Henderson v. State](#), 962 S.W.2d 544 (Tex.Cr.App. 1997)(see [§§](#), [Vol. 5, No. 48](#); 12/08/1997). Her initial habeas corpus application was filed in 1998 and denied in 2002.

[§§](#) [563.01 Post-Conviction Habeas Corpus / Sufficiency of Supporting Evidence / Actual Innocence](#): In 2007, Applicant filed a subsequent application for a post-conviction writ of habeas corpus, in which she claimed that she had newly available evidence that: (1) showed that she was innocent of the capital murder of the three-and-one-half-month-old victim; and (2) but for constitutional errors, she would not have been found guilty. At an evidentiary hearing, the defendant presented the testimony of six expert witnesses. Relying on new developments in the science of biomechanics, these witnesses testified that the type of injuries that the victim suffered could have been caused by an accidental short fall onto concrete. The medical examiner who had conducted the victim's autopsy and testified at the defendant's trial then testified that he believed that there was no way to determine with a reasonable degree of medical certainty whether the victim's injuries resulted from an intentional act of abuse or an accidental fall. The State presented five expert witnesses who testified that, notwithstanding the studies cited by the defendant's experts, it was very unlikely that the victim's injuries were caused by an accidental short fall onto concrete. Nevertheless, all but one of ten medical and scientific experts agreed that the medical examiner's trial testimony was scientifically inaccurate. All but one of these experts admitted that science could not answer the question of whether the victim's death was the result of an intentional homicide. The trial court recommended granting a new trial. The court found that all of the expert witnesses were truthful and credible, and further found that the medical examiner's re-evaluation of his initial opinion was based on credible, new scientific evidence and constituted a material exculpatory fact. The trial court concluded that the defendant had proven by clear and convincing evidence that no reasonable juror would have convicted her of capital murder in light of her new evidence. The State responded that it did not oppose the habeas court's recommendation that the defendant's cause be remanded for a new trial.

Holding: The trial court's findings of fact were supported by the record, and we accept the court's recommendation to grant relief and remand for a new trial.

Concurring / Dissenting Opinions: [Judge Price](#) filed a concurring opinion. He noted that Applicant's evidence fell short of satisfying the burden imposed on defendants making a bare claim of actual innocence. However, since the convicting court recommended that the court grant Applicant a new trial, and since the State had declared itself content to go along with that ultimate recommendation, he would grant a new trial based upon the inadvertent use of false evidence, rather than actual innocence. [Judge Cochran](#) filed a concurring opinion, and found that Applicant did not receive a fundamentally fair trial based upon reliable scientific evidence, and that she should receive a new trial that was based on scientifically reliable evidence. [Judge Alcalá](#) filed a concurring opinion and would issue a narrow holding that due process prohibits the execution of a person when faulty science was essential to the State's establishment of an element necessary for conviction-that the victim's cause of death was intentional-and the habeas record shows that today's scientific community reaches a different consensus-that the cause of death was undetermined. [Judge Keasler](#) delivered a dissenting opinion, stating that he believed Applicant was being granted relief without identifying a legal basis for that relief. He would deny Applicant's [Herrera](#) claim of actual innocence, and remand her [Schlup](#) claim of actual innocence for findings of fact and conclusions of law. "It is a travesty to grant this child killer relief on some unknown legal principle while her tiny, defenseless victim lies dead and reburied. Therefore I dissent with all the vigor at my command." [Judge Hervey](#) filed a separate dissenting opinion. She does not believe that advances in science necessarily entitled Applicant to relief. She also does not believe that the medical examiner's unreliable testimony had a substantial and injurious effect or influence in determining the jury's verdict. Judge Meyers did not participate.