

**STATE OF LOUISIANA** : **SECOND JUDICIAL DISTRICT COURT**  
**VERSUS** : **PARISH OF BIENVILLE**  
**BARRY BAKER** : **DOCKET # 37, 464**  
**FILED:** \_\_\_\_\_ : \_\_\_\_\_  
**DEPUTY CLERK**

**MOTION FOR NEW TRIAL**

NOW INTO COURT, through undersigned counsel, comes and appears Defendant, Barry Baker, who respectfully moves that this Honorable Court Grant a new trial in this matter, pursuant to LSA C. Cr. P. Article 851 (3), (4), and (5), for the following causes and reasons, to-wit:

1.

Barry Baker was prosecuted in Bienville Parish, Louisiana. His indictment bears Bienville Parish Docket number 37, 464. On November 30, 2005, Mr. Baker was found guilty as charged of one count of second degree murder. Mr. Baker was sentenced to serve a life sentence on January 11, 2006.

2.

Following the trial and sentencing of Mr. Baker, undersigned counsel learned that an investigation into the practices of Dr. George McCormick in the Caddo Parish Coroner's Office and his private corporation, Forensic Pathology, Inc., revealed information that could affect Mr. Baker's case. Recently, the Caddo District Attorney's office has delivered in excess of 500 pages of documents to undersigned counsel as a result of a "Freedom of Information" request, concerning the investigation.

3.

Based on this newly discovered evidence, undersigned counsel has determined that the evidence of a key state witness, namely Lisa Rebecca Hayes, or Forensic Pathologists, Incorporated, was apparently, at least partially false. If so, because she was a key state witness, this information was deemed to be known by the state and discoverable pursuant to *Brady v. Maryland*. She testified on page 567 of the record that she *assisted* Dr. McCormick in performing the autopsy and that everything taken from the body, the report, autopsy photographs, and other evidence all bear the same autopsy number. She was shown S-11, on page 568 of the record and testified that it was autopsy number FA5203, prepared on the victim, date of death, November 15, 2003, autopsy performed, November 18, 2003, and that it was the report that Dr. McCormick prepared and she assisted in performing.

4.

At that time, defense counsel objected to the report as hearsay, its inconsistent dates of November 18, 2003, and November 18, 2004, and the denial of the right to confront Dr. McCormick. In response, the state directed the Court's attention to C. Cr. P. Article 105 which states the coroner's report and a process verbal of an autopsy shall be competent evidence of death and the cause thereof, but not of any other fact. Reference was also made to the case of *State v. Michael Rhodes*, 688 So. 2d 628, wherein the court stated that the autopsy report was competent evidence in and of itself without really any other evidence.

5.

Based on these statements, this Honorable Court allowed the introduction of the autopsy report, overruling defendant's objection, assuming that the autopsy was actually performed by a licensed medical Dr. and was therefore genuine.

6.

Defendant will show at the hearing of this motion that the autopsy was not performed by Dr. McCormick, but was, in fact, performed by Lisa Hayes, the state's witness, who had no medical degree whatsoever, that it should not have been admitted to prove the cause of death, that no autopsy photograph should have been admitted, because they were neither taken by, nor in the presence of a licensed medical examiner, and that all of this was known to Lisa Hayes, a state witness, at the time she testified for the state. This information should have been made known to the defendant pursuant to *Brady v. Maryland*, which now requires a new trial with defendant in possession of the exculpatory evidence.

7.

In the attached statement, taken by the Caddo District Attorney's Office, a copy of which has now been furnished to the Second Judicial District Attorney's office, Nancy Hartwell, who was employed by the Caddo Parish Coroner's office and Forensic Pathology, Inc., from August 11, 2004, will testify that she performed several autopsies, and that when she did so, the doctor was not present. When asked who examined the wounds of a shooting victim, she replied that Lisa Hayes did it. She stated that Lisa would examine the wounds prior to dissecting the body, make notes, and would probe the body to determine missile paths. She also stated Lisa would take all of the photographs during the autopsy. She further testified that she and Lisa and

Katy would have as many as five autopsies going on at one time that no medical expert would be anywhere around. She stated that it was the practice of forensic pathology incorporated to complete these beginning at 7:30 in the morning ending between 4:00 and 5:00 in the evening, at which time doctor McCormick would come in, review the notes and sign the autopsies. He would get to the lab at 4:00 or 5:00 in the evening and leave around 6:00 or 6:30. Nancy Hartwell was not even trained by Dr. McCormick, but rather by Lisa Hayes, who held no medical degree of any kind. She further testified that, after the death of Dr. McCormick, she saw Lisa Hayes forging his name to several unsigned autopsies.

8.

Because all of the foregoing newly discovered information was not furnished to defendant, though deemed to be known to the state, defendant is entitled, of right, to a new trial. Defendant's conviction and sentence should be vacated and a new trial ordered in the interest of justice.

9.

It is in the best interest of all parties to resolve the Motion for New Trial prior to proceeding with the appeal.

THEREFORE, undersigned counsel moves this Honorable Court to grant this motion, and after hearing on the merits, to grant a new trial, vacating the conviction and sentence previously imposed.

RESPECTFULLY SUBMITTED,

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BAR ROLL #02878

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing motion has this day been mailed, postage prepaid, to Russell Davis, Assistant District Attorney, Bienville Parish Courthouse, Room 103, 100 Courthouse Drive, Arcadia, LA 71001, on this 2<sup>nd</sup> day of August, 2006.

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**JAMES E. BEAL**