

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

STATE OF MISSISSIPPI

APPELLEE

VS.

NO. 2006-KA-01960 COA

BOBBY RAY STEADHAM

APPELLANT

BRIEF OF APPELLANT

APPEAL FROM THE CIRCUIT COURT OF SCOTT COUNTY, MISSISSIPPI

**Matthew S. Poole
222 N. President St., Suite 100
Jackson, MS 39201
601-353-3000
601-353-3007 (facsimile)**

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

STATE OF MISSISSIPPI

APPELLEE

VS.

NO. 2006-KA-01960 COA

BOBBY RAY STEADHAM

APPELLANT

CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Bobby Ray Steadham, Defendant
2. Robert Brooks, Esq., and Mark Duncan, Esq., Counsel for the State
3. Jim Hood, Attorney General, Appellate Counsel for the State
4. Matthew S. Poole, Esq., Counsel for the Defendant
5. The Honorable Marcus Gordon, Circuit Court Judge

SO CERTIFIED this 9 day of Nov, 2007.



MATTHEW S. POOLE

PRO BONO COUNSEL FOR APPELLANT

TABLE OF CONTENTS

	Page
CERTIFICATE OF INTERESTED PARTIES	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iiii
STATEMENT OF THE CASE	1
ARGUMENT	2-3
I. Whether the trial court erred in allowing the prosecution to proceed with medical evidence which was not made known to the Defendant or his counsel prior to the trial through discovery.	
II. Whether the trial court erred in denying defendant 's Motion for New Trial.	
CONCLUSION	3
CERTIFICATE OF SERVICE	3

TABLE OF AUTHORITIES

Cases

Page

White v. State, 732 So.2d 961 (Miss.1999)

3

Yates v. State, 685 So. 2d 715, 718 (Miss. 1996)

3

May v. State, 460 So.2d 778, 781 (Miss.1984)

3

I. STATEMENT OF ISSUES

1. Whether the trial court erred in allowing the prosecution to proceed with medical evidence which was not made known to the Defendant or his counsel prior to the trial through discovery.
2. Whether the trial court erred in denying defendant 's Motion for New Trial.

II. STATEMENT OF THE CASE

On December 9, 2005, the Grand Jurors for the State of Mississippi, County of Scott, indicted Bobby Ray Steadham for willfully, unlawfully, and feloniously engaging in sexual penetration with C.D., a minor child over the age of 14 but under the age of 16, by inserting his penis into the anus of C.D., when said Bobby Steadham was more than 36 months older than the said C.D., contrary to and in violation of Section 97-3-95(1)(c)Miss Code. Ann.(1972).

Mr. Steadham was charged as a habitual offender pursuant to Section 99-19-81, Miss. Code Ann. (1972). At trial, the state presented testimony from C.D., the alleged victim, Tammy Pilgrim, and Dr. Howard Clark. Dr. Clark testified that he examined C.D. at some time after the incident complained of. He stated that "normally, I would expect a fourteen year old boy, if you do a rectal, one finger's about all you're going to insert without a lot of pain and discomfort. But here was a person that got one finger in, stuck two fingers in, and he had—uh—his rectum was very relaxed" (page 60 transcript). The only discovery that the State provided to counsel for Mr. Steadham consisted of Exhibit "A" herein (which was also Exhibit "A" to the Defendant's Motion for New Trial). Included in that document is no mention which would have placed the Defendant on notice that such testimony would be forthcoming. In fact, the greater part of said medical evidence is not legible at all.

On the 6th day of June, 2006, and after one day of trial, the jury returned a verdict of guilty against Mr. Steadham. Mr. Steadham is now a 30 year sentence in the custody of the Mississippi

Department of Corrections.

III. ARGUMENT

A. WHETHER THE TRIAL COURT ERRED IN ALLOWING THE PROSECUTION TO PROCEED WITH MEDICAL EVIDENCE WHICH WAS NOT MADE KNOWN TO THE DEFENDANT OR HIS COUNSEL PRIOR TO THE TRIAL THROUGH DISCOVERY.

As noted in the foregoing statement of the case, the Defendant was deprived of adequate notice of the substantive testimony which was offered by the prosecution's medical expert, Dr. Howard Clark. In response to the Defendant's Motion for J.N.O.V. and for a new trial, the prosecution points to one simple fact: that the discovery furnished included a copy of Dr. Clark's report (Exhibit "A" to the Defendant's Motion for a New Trial) as well as handwritten notes of Officer Steven Crotwell indicating that he spoke to the Doctor and nurse on Feb. 6, 2006 and that they expressed the opinion that the victim had been assaulted in the past. Simply put, the information provided to the Defendant through discovery regarding Dr. Clark's evaluation was not a full or accurate account of what he later testified to at the trial of this cause when he stated that "normally, I would expect a fourteen year old boy, if you do a rectal, one finger's about all you're going to insert without a lot of pain and discomfort. But here was a person that got one finger in, stuck two fingers in, and he had—uh—his rectum was very relaxed" (page 60 transcript).

**B. WHETHER THE TRIAL COURT ERRED IN DENYING DEFENDANT 'S
MOTION FOR NEW TRIAL OR FOR DIRECTED VERDICT.**

If the court is convinced that, even viewing the evidence in the light most favorable to the prosecution, a manifest injustice has occurred, the court is obligated to set aside the verdict and order a new trial. *White v. State*, 732 So.2d 961 (Miss.1999). In assessing the legal sufficiency of the evidence on a motion for a directed verdict or a motion for JNOV, the trial judge is required to accept as true all of the evidence that is favorable to the State, including all reasonable inferences that may be drawn therefrom, and to disregard evidence favorable to the defendant. *Yates v. State*, 685 So. 2d 715, 718 (Miss. 1996). A finding that the evidence is insufficient results in a discharge of the defendant. *May v. State*, 460 So.2d 778, 781 (Miss.1984). In the case at bar, no credible evidence was presented which was sufficient to defeat the Defendant's Motion for a Directed Verdict. Absolutely no physical or biological evidence existed to tie the Defendant to the alleged crime. Further, the prosecution presented no evidence whatsoever that the Defendant possessed any pornography, an essential element of their claim, other than the testimony of the minor child.

V. CONCLUSION

For all of the above and foregoing reasons, the Defendant/Appellant respectfully submits that the judgment of the lower court should be reversed and this cause be remanded for a new trial.

Respectfully submitted,
Bobby Steadham
APPELLANT

BY: Matthew S. Poole
Pro Bono Attorney for Appellant

Matthew S. Poole, Esq.
The Law Office of Matthew Poole
222 N. President St., Suite 100
601-573-7429

CERTIFICATE OF SERVICE

I hereby certify that I have this date served via U.S. mail, postage prepaid, a true
and accurate copy of the foregoing Brief to the following:

Honorable Robert Brooks, Esq.
Office of the District Attorney
P.O. Box 603
Philadelphia, MS 39350

Honorable Jim Hood, Esq.
P.O. Box 220
Jackson, MS 39205

Honorable Marcus Gordon
Circuit Court Judge
P.O. Drawer 220
Decatur, MS 39327

This the 9th day of Nov, 2007


MATTHEW S. POOLE