IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2007-KA-00607-COA

DEXTER LIPSEY — APPELLANT

VERSUS

STATE OF MISSISSIPPI — APPELLEE

APPEAL FROM THE CIRCUIT COURT OF THE 1ST JUDICIAL DISTRICT
OF
HINDS COUNTY, MISSISSIPPI

BRIEF ON THE MERITS BY APPELLANT

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CERTIFICATE OF INTERESTED PERSONS

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 state Supreme Court and the judges of the Court of Appeals may evaluate disqualification or recusal.

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So certified, this the 5th day of May, 2009.

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B. Granted prosecutors' *Motion in Limine* to restrict testimony as to cocaine found in the blood of Ray, Rankin and Gilbert or to refer to 3520 Cromwell as a "crack house;" CP 26-27; T. 35; RE 19

C. Refused to permit Mr. Lipsey to make a proffer, and T. 404-407; RE 23-26

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III. The trial court erred in denial of the *Motion to Dismiss* for failure to grant Mr. Lipsey a speedy trial as guaranteed by both state and federal constitutions. T. 24; RE 18; CP 33

the gun dropped on Old Agency Road. T. 326. No fingerprints of value were lifted from the weapon. T. 244. Photographs of a tire tread and shoe prints near where the driver's side would be were also taken by Jackson Police Department crime scene investigators. T. 247.

Det. Tyree Jones was assigned as lead detective on the case. Jones first testified that he developed Mr. Lipsey as a suspect by talking to Virden, but later admitted under cross-examination that he got the name of Mr. Lipsey from an anonymous caller on November 11, 2005 that "D" was Dexter Lipsey, who lived at 2322 Margaret Walker Alexander. T. 350. Jones acknowledged that Virden did not give him Mr. Lipsey's name, but that based on the anonymous caller's information, he placed the photograph of Mr. Lipsey in the photo line-up and Virden later identified him as "D." T. 350; 352. Jones also acknowledged the contradiction in his testimony at Mr. Lipsey's preliminary hearing, that the photographic line-up was composed of photographs of individuals who went by the name of "D." T. 353.

Jones also acknowledged that he never followed through on the request for a gunshot residue test on Virden's hands (T. 358), nor did he run a search to determine the owner of the rifle dropped on Old Agency Road. T. 360. Although Jones also acknowledged as lead detective he was in charge of ordering testing for evidence, no comparison testing was done of the tire tread photographs taken on Old Agency Road or the pictures of shoe impressions near where the driver's side door would have been, according to Crime Scene Investigator Charles Taylor. T. 247. Nor was the house at 3520 Cromwell dusted for possible fingerprints. T. 276.

Based on Virden's identification of Mr. Lipsey from the photographic line-up, police arrested Mr. Lipsey at Rebelwood Apartments on November 13, 2005. T. 331; 332.

Sheila Galloway, Mr. Lipsey's girlfriend, testified that Mr. Lipsey took her to work the afternoon of November 10 and picked her up at 11 P.M. when her shift ended. T. 282; 283. Mr. Lipsey drove Ms. Galloway's car, a white Oldsmobile. T. 282. When he picked her up that evening, Mr. Lipsey was wearing the same clothes that he had on that afternoon and Galloway testified she saw no blood or any sign of a gun. T. 289.

SUMMARY OF THE ARGUMENT

The trial court's suppression of the testimony of Vanessa Sims, whom defense counsel identified as an alibi witness as soon as she knowledge of Sims' name, coupled with the refusal to permit Mr. Lipsey to place evidence of the cocaine found in the blood stream of Ray, Gilbert and Rankin and denial of re-cross examination and rejection of efforts to make an evidentiary proffer all combined to deny him the "meaningful opportunity to present a complete defense" to the charges against him. States may not use procedural rules in an arbitrary manner so as to defeat basic constitutional rights of the accused, yet that is exactly what happened here.

Further, although counsel for Mr. Lipsey repeatedly objected, the trial court permitted twenty (20) photographs of the crime scene and autopsy to be displayed to the jury. The court's own actions testify as to the gruesome nature of the photographs; the judge refused to permit display of the photographs during *voir dire* and in response to requests from the prosecutor, excused family members from the courtroom during display of the autopsy photographs. Mr. Lipsey contends these pictures were not as useful to the jury as anatomical line drawings, as the photographs were a piecemeal display of the wounds, rather than a demonstration of the bullet trajectory through the body.

Finally, Mr. Lipsey contends his right to a speedy trial was violated, as more than 600 days elapsed between his arrest and trial, although he never sought a continuance. The docket was set by the prosecutor's priority list of cases and although Mr. Lipsey sought trial, his case was never placed on the docket until August 14, 2007, nearly two years after his arrest. Upon a balancing of the factors

required to evaluate a violation of the right to a speedy trial, Mr. Lipsey contends the factors weigh heavily against the state, necessitating that his conviction be reversed and rendered.

ARGUMENT

I. The trial court deprived Mr. Lipsey of his "meaningful opportunity to present a complete defense" when it

A. Barred him from presenting the testimony of an alibi witness by using the wrong legal standard; T. 175; RE 21

B. Granted prosecutors' *Motion in Limine* to restrict testimony as to cocaine found in the blood of Ray, Rankin and Gilbert or to refer to 3520 Cromwell as a "crack house;" CP 26-27; T. 35; RE 19

C. Refused to permit Mr. Lipsey to make a proffer, and T. 404-407; RE 23-26

D. Denied Mr. Lipsey re-cross examination of Steven Hayne; T. 403; RE 22

"The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations." *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973).

The trial court arbitrarily applied URCCC 9.05 to deny testimony by an recently discovered alibi witness

That hallowed right of due process, " a fair opportunity to defend against the State's accusations," was denied here to Dexter Lipsey when the trial court granted the state's *Motion to Suppress* the testimony of alibi witness Vanessa Sims for failure to observe the dictates of UNIFORM RULE OF CIRCUIT AND COUNTY COURT PRACTICE (URCCC) 9.05 regarding disclosure of alibi witnesses. T. 24; 175; RE 21.

Fundamental to our system of justice is the right of an accused to present a defense, guaranteed under the Sixth Amendment as applicable to the states through the Due Process clause of the Fourteenth Amendment. *Washington v. Texas*, 388 U.S. 14 (1967). "A person's right to reasonable notice of a charge against

him, and an opportunity to be heard in his defense-a right to his day in court-are basic in our system of jurisprudence; and these rights include, as a minimum, a right to examine the witnesses against him, *to offer testimony*, and to be represented by counsel." *In Re Oliver*, 333 U.S. 257 (1948) [emphasis added]. These are the irreducible constitutional minimums below which the states may not go, under *In re Oliver*.

In *Washington v. Texas*, the United States Supreme Court invalidated a Texas law which barred criminal defendants from use at trial of statements of co-participants unless the individual had been acquitted. In so doing, the Court held such a law violated the Sixth and Fourteenth amendments. "The right to offer the testimony of witnesses, and to compel their attendance, if necessary, *is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies*," the Court wrote. *Id.*, at 19. [emphasis added]. "Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has *the right to present his own witnesses* to establish a defense. This right is a fundamental element of due process of law. " *Id.* In *Manzo v. Armstrong*, the United States Supreme Court invalidated a Texas adoption after the adoptive parents failed to give the biological father notice of parental termination proceedings as a denial of due process. Upon discovery of the adoption, the biological father immediately moved to set aside the decree and was given a hearing into the matter; the adoption was ultimately affirmed by the Texas high court. In reversing the Texas court, the Supreme Court noted the hearing granted to the biological father

after his parental rights had already been terminated was insufficient to cure the constitutional error. "A fundamental requirement of due process is 'the opportunity to be heard.' [internal citations omitted] It is an opportunity which must be granted at a *meaningful time and in a meaningful manner*." *Manzo v. Armstrong*, 380 U.S. 545, at 552 (1965). [emphasis added]. In the case of *California v. Trombetta,* 467 U.S. 479 at 485, (1984), the Supreme Court declared that the Sixth and Fourteenth Amendments together give criminal defendants "a *meaningful opportunity* to present a *complete defense*." *Id.* at 485. [emphasis added]

The Mississippi Supreme Court has traditionally heeded these principles in reversing similar cases. In *Hentz v. State*, 542 So.2d 914 (Miss. 1989), this Court reversed a conviction for jail escape in part because the trial court quashed the defendant's subpoenae for witnesses thus depriving Hentz of his ability to mount a defense, in violation of the Sixth and Fourteenth amendments. *Id.*, at 517. And, in *Tucker v. State*, 647 So.2d 699 (Miss. 1994), this Court reversed the robbery conviction of the defendant, who sought to present a theory of misidentification, when the trial court held that such a defense qualified as an alibi and barred Tucker from use of witnesses not listed in a notice of alibi.

In this case, counsel for Mr. Lipsey notified the state as soon as she received the information about Ms. Sims. T.30. True, it was outside the time limits established by URCCC 9.05 but the prosecutor got it almost as soon as defense counsel herself received it. In fact, defense counsel had not yet personally located Ms. Sims; Mr. Lipsey's investigator was still trying to locate Sims to confirm that

she was with Mr. Lipsey from about 6:30 P.M. until he left her to pick up his girlfriend, Sheila Galloway, from work. T. 27; 30.

Mr. Lipsey would submit to this honorable Court that the case of *Holmes v. South Carolina* answers the issue the posed here and requires reversal and remand. "Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.' " (internal citations omitted). "This right is abridged by evidence rules that "infring[e] upon a weighty interest of the accused" and are " 'arbitrary' or 'disproportionate to the purposes they are designed to serve.' " [additional citations omitted]. *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006).

Mr. Lipsey does not challenge URCCC 9.05 as "arbitrary" or "disproportionate to the purposes" the rule is designed to serve. Certainly, timely notice to the prosecution of an alibi witness, who may prove conclusively the state has charged the wrong person, may avert a true miscarriage of justice. When, however, defense counsel turns over the information as soon as he or she receives it and given the "weighty interest" of the accused to all the rights the notion of a fair trial affords him under our constitutional scheme of justice, Mr. Lipsey would argue that it was an arbitrary application of a rule that denied him the fair right to present a complete and meaningful defense.

Barring mention of cocaine found in the bloodstream of Ray, Gilbert and Rankin and description of the house at 3520 Cromwell as a "crack house" was an abuse of discretion prejudicial to Mr. Lipsey.

Mr. Lipsey would contend that much of the authority recited above applies applies here as well. On the morning of trial, the judge granted the prosecutor's motion to bar any mention that toxicology tests on the blood of Louise Ray, J.W. Gilbert and Bruce Rankin showed the presence of cocaine. T. 35; CP 26-27; RE 19. In addition, the trial court granted the *ore tenus* motion of the prosecutor to ban any reference to the house at 3520 Cromwell Street as a "crack house" on the basis of relevancy. T. 33; 35.

On the contrary, the evidence was highly relevant to show that someone other than Mr. Lipsey could have killed the three. Had the jury heard the residence at 3520 Cromwell was known as a "crack house," and that Ray, Gilbert and Rankin had shortly before death ingested cocaine, the inference is that cocaine had been used that night on the premises. Where there are drugs, there is usually money and the case law of this state is replete with the tragedy that ensues from the confluence of drugs, money and greed, making it easier for jurors to believe that a third party committed the crime of which Mr. Lipsey was charged. MISSISSIPPI RULE OF EVIDENCE (Miss. R. EVID) 401 defines relevant evidence "as that having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would *without the evidence.* [emphasis added] The basis of Mr. Lipsey's defense was simply he was not there and identification of him by a clearly intoxicated Rebecca Virden was a case of misidentification. Had the jury heard that all three decendents had cocaine present

in their bloodstream, that the house was known as a "crack house," and that Mr. Lipsey was with Vanessa Sims when the crime occurred, the jury might well have acquitted Mr. Lipsey.

Therefore, particularly when considered with the refusal to permit Mr. Lipsey's alibi witness to testify, this error is of constitutional proportions as it essentially deprived Mr. Lipsey of his "meaningful opportunity to present a complete defense."

The trial court erred in denying Mr. Lipsey the right to make a proffer and to re-cross examine Steven Hayne as to new matters brought out on re-direct examination.

"The rule to be applied to recross examination is that: It is proper to exclude questions as to matters which were not opened up or brought out on redirect examination, or as to matters already fully covered, or discussed at length on cross-examination, where there is no claim of oversight and no reason stated why the matter was not inquired into on the cross-examination proper. 98 C.J.S. ***Witnesses*** § 429. *Hubbard v. State,* 437 So.2d 430, 434 (Miss. 1983). The Court in *Hubbard* ultimately decided that the trial court evenly applied the denial of re-cross examination, but such is not the case here.

The trial court here abused his discretion in refusing to permit Mr. Lipsey to engage in re-cross examination of Hayne regarding personal effects found with Ray, Gilbert and Rankin and questions as to the time of death for each of three. The trial court further abused its discretion when it denied counsel for Mr. Lipsey the right to proffer what she would have elicited. T. 403-407; RE 22-26; Exhibit 39 for Identification (composite exhibit of autopsy reports on Ray, Gilbert and Rankin).

In *Cooper v. State*, 628 So.2d 1371, 1374-1375 (Miss. 1993), the Mississippi Supreme Court reversed Cooper's conviction for sale of cocaine because the trial court cut off the proffer of the accused. The questions were to a police officer about the truthfulness of the confidential informant upon whom the state relied for its case. In *Young v. State*, the trial judge committed a similar abuse of discretion constituting reversible error. *Young v. State*, 731 So.2d 1145, (Miss. 1999). The state Supreme Court reversed the murder conviction of Frank "Bo" Young for abuse of discretion by the trial court in refusing to allow impeachment of the state's chief witness with a prior conviction after the witness denied the previous felony conviction. *Young*, 731 So.2d at 1151.

"The right to impeach or to attack a witness' credibility is considered the most valid safeguard for providing the trier of fact complete access to the truth." *Valentine v. State*, 396 So.2d 15, 16 (Miss. 1981). In *Valentine*, the Mississippi Supreme Court reversed the sale of marijuana conviction against Doyle Valentine due to the trial court's grant of a *motion in limine* barring any cross-examination or impeachment as to the undercover buyer's convictions with the exception of those bearing on Plymale's veracity. More recently in *White v. State*, 785 So.2d 1059 (Miss. 2001), Justice Waller reiterated the necessity for full confrontation and emphasized its fundamental nature in our criminal justice system. White's three convictions for selling methamphetamines were reversed due to the failure of the trial court to permit White to fully cross examine and impeach the state's primary witness with evidence of prior felony drug convictions. "To deny the accused the right to explore fully the credibility of a witness testifying against him, is to deny

him the Constitutional right of a full confrontation." *White v. State,* at 1063, (1999) (additional citations omitted).

Mr. Lipsey would ask that this Court take judicial notice of the fact that the state Department of Public Safety has removed Steven Hayne from the list of forensic pathologists who may conduct forensic autopsies. He would also ask this Court take notice of the serious questions raised publically as to Hayne's handling of forensic autopsies. As such, Mr. Lipsey would submit that it was an abuse of discretion to prevent him from inquiring into Hayne's estimate of time of death and the inventory of personal effects found with Ray, Gilbert and Rankin, as it may have led the jury to infer illicit drug use and a greater likelihood that someone other than Mr. Lipsey may have committed the crimes.

Given that Mr. Lipsey was denied the right of full examination of Steven Hayne, he would humbly ask this Court to reverse his conviction and remand this cause for a new trial.

II. The trial court failed to use the correct legal standard in admitting autopsy photographs that were submitted primarily to inflame and prejudice the jury against Mr. Lipsey so as to deny him his fundamental right to a fair and impartial trial, and CP 57; T. 174; 218; 261; 373 (Ray) 380; (Rankin) 386 (Gilbert). RE 20;27-31.

The trial court abused its discretion in overruling the objections of Mr. Lipsey to Exhibits 2-A, B and C, as well as admitting the plentitude of autopsy photographs during the testimony of Steven Hayne. Mr. Lipsey argues the prosecution's purpose in admitting so many photographs – so gruesome the State

warned the judge each time to permit the exit of family members – was primarily to inflame and prejudice the jurors against him and in violation of Mississippi case law and were far more prejudicial than probative under MISS.R. EVID. 403. CP 57; T.174; 261; 373; 380; 386; RE 20; 27-31; Trial Exhibits. 24-38. 7-8; 10-16; 18-19; 21-24.

A review of our case law reveals that the admission of photographs into evidence is within the discretion of the trial judge, and such admission will be upheld on appeal absent a showing of an abuse of that discretion. Mr. Lipsey contends that is the case here.

Photographs of bodies may be admitted into evidence in criminal cases when they have probative value and when they are not so gruesome or *used in such a way as to be overly prejudicial or inflammatory. Davis,* 551 So.2d at 165 at 173 (Miss. 1989); *Griffin v. State,* 504 So.2d 186, 191 (Miss.1987); MISS.R.EVID. 403. [emphasis added] Here, the prosecution sought the introduction of *seventeen* photographs – all shown in living color, blown up far beyond life size and vividly visible to the jury and the public on a projection screen.

The judge refused to permit use of any of the photographs during *voir dire.* T. 46. If the photographs were not so overly gruesome, why prohibit their use during *voir dire*? Not only did the prosecutor refuse any effort to make the photographs less gruesome by depicting them in black and white rather than color, on at least *three* occasions, he asked the judge to excuse family members and, presumably, members of the public before he exhibited the photographs. T. 170; 372; 378; 385.

Mr. Lipsey did not contest that Louise Ray, J.W. Gilbert and Bruce Rankin all died violently at 3520 Cromwell or their identities; he simply denied he was the perpetrator. At best, one photograph of the scene as officers first found it on Nov. 10, 2005 was sufficient. The injuries Hayne painstakingly showed piecemeal with lurid photographs could have been presented much more effectively with the use of anatomical line drawings of the human body, demonstrating bullet trajectory and testimony, as usual, of the damage done to internal organs.

"In *Welch v. State,* 566 So.2d 680, 685 (Miss.1990), we found no probative value in autopsy photographs of a dissected cadaver which demonstrated neither the circumstances surrounding death, the cruelty of the crime, the location of the wounds nor the extent of the force and violence used. *Noe v. State,* 616 So.2d 298, at 303-304, (Miss. 1993).

In *Palmer v. Volkswagen of America, Inc.,* 905 So.2d 564 (Miss. Ct. App. 2003), *overruled on other grounds, Palmer v. Volkswagen of America, Inc.,* 904 So.2d 1077 (Miss. 2005), this Court and the Mississippi Supreme Court properly upheld the exclusion of autopsy photographs of a 12-year-old child killed in a car accident as inflammatory and of no assistance to the jury, noting that the autopsy report, read into evidence, extensively informed the jury as to the nature of the child's injuries suffered during deployment of an automobile airbag after a rear-end collision. The same is true here. The use of three crime scene photographs and seventeen autopsy photographs was overkill, in violation of the discretion vested in our trial court judges and to the fatal prejudice of Mr. Lipsey.

"In *McNeal v. State,* 551 So.2d 151 (Miss.1989), we cautioned our trial judges to carefully consider the circumstances surrounding the admission of photographs. The trial judge must *specifically consider whether the proof is absolute or in doubt as to the identity of the guilty party, as well as whether the photographs are necessary evidence or simply a ploy on the part of the prosecutor to arouse the passion and prejudice of the jury. Hewlett v. State,* 607 So.2d 1097, 1103, (Miss. 1992) citing *McNeal,* 551 So.2d at 159.[emphasis added].

Mr. Lipsey submits that the trial court abused its discretion in admission of so many photographs, which the prosecutor nakedly used to inflame and prejudice the jury against him. His conviction should be vacated and this cause remanded for trial in accord with Mississippi case law and the Mississippi Rules of Evidence.

III. The trial court erred in denial of the *Motion to Dismiss* for failure to grant Mr. Lipsey a speedy trial as guaranteed by both state and federal constitutions. T. 24; RE 18; CP 33

The trial court erred in denial of the *Motion to Dismiss* filed by Mr. Lipsey, based on rejection of his demand for a speedy trial, as it was a violation of both his statutory and constitutional rights to a speedy and public trial. MISS. CODE ANN. § 99-17-1 (1972); AMEND. VI, XIV, U.S. CONST.; ART. III, § 26, MISS. CONST. CP 33; 39-49; T. 24; RE 18.

Mississippi law requires that an accused be brought to trial within 270 days of arraignment unless there is a showing of "good cause." MISS. CODE ANN. § 99-17-1 (1972) Even more stringent than the statutory speedy trial right, however, is the constitutional right to a speedy trial, which begins when the individual is accused. *Jenkins v. State,* 607 So.2d 1137, at 1138 (Miss. 1992) (additional citations omitted).

Dexter Lipsey was arrested on November 19, 2005, the date on which he was effectively accused for constitutional purposes. T. 6. While an eight-month delay under Mississippi law is presumptively prejudicial under state law, the sole remedy for violation of the *constitutional* right to a speedy trial is reversal and discharge of the accused. *Jenkins v. State*, 607 So.2d 1137, 1138 (1992), citing *Spencer v. State*, 592 So.2d 1382, 1387 (Miss. 1991); *Strunk v. United States*, 412 U.S. 434, 439-440 (1973); *Smith v. State*, 550 So.2d 406, 409 (Miss. 1989). Once attached, the denial of the right to speedy and public trial is analyzed under the familiar, four-prong standard of *Barker v. Wingo* 407 U.S. 514, 515 (1972) length of delay; reason for delay; assertion of the right to a speedy trial and prejudice to the accused. *Id.*, 515. It is the burden of the State to demonstrate good cause for delays in prosecution; improper motives weigh heavily in the balancing conducted for violation of speedy trial rights. Furthermore, when the record is silent as the reason, such time is counted against the state. *Jenkins*, at 1139.

According to counsel for Mr. Lipsey at trial,

- Nov. 19, 2005 – Arrest; 6th Amend. speedy trial right attaches;
- Apr. 11, 2006 – Indictment filed;
- July 3, 2006 – Arraignment; statutory speedy trial right attaches.
- Aug. 24, 2007 – Mr. Lipsey files Demand for a Speedy Trial. CP 33.
- Sept. 4, 2007 – Trial begins, 421 days after arraignment. T. 6.

As the state clearly failed to give Mr. Lipsey trial within 270 days of arraignment as required by statute and more than eight months following his arrest, analysis of the delay under *Barker v. Wingo* is required. *See Smith v. State*, 550 So.2d 406, as cited above.

Length of delay

The delay from arrest to trial was 654 days; from arraignment to trial, 428 days. This factor weighs in favor of Mr. Lipsey.

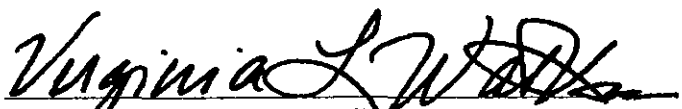
Reason for delay

Mr. Lipsey never sought a continuance and continually announced he was ready for trial. T. 6. While the prosecutor at trial argued that the case was never put on the court docket until August 14, 2007 due to handling of older cases, the unrebutted fact is that the docket of cases set for trial is determined by a "priority list" of cases from the Office of the District Attorney and the district attorney's office never put Mr. Lipsey's case on "priority status" until August of 2007. T. 23. Therefore, this factor weighs in favor of Mr. Lipsey.

This prosecutor also argued that testing of evidence was another reason, yet the prosecutor is the one responsible for the testing of evidence. Mr. Lipsey would like the Court to take judicial notice of the fact that it has been the general policy of the Mississippi State Crime Laboratory that evidence is not tested until the prosecution notifies the laboratory of a trial date. Mr. Lipsey would also like to refer to the case of *Flora v. State*, 925 So.2d 797 (Miss. 2006) cited by the prosecutor. In that case, the trial record clearly shows that this same prosecutor misrepresented to the trial judge in *Flora* that a continuance was necessary because DNA evidence was still being tested at an out-of-state laboratory *when the prosecutor failed to send the evidence until months later*. The dissent by Justice Dickinson in *Flora* as to the denial of speedy trial rights in a case handled by this very same prosecutor is

Therefore, based on the foregoing assignments of error and authority cited herein, Mr. Lipsey humbly asks this honorable Court to vacate his conviction and sentence and reverse and render this matter. Alternatively, he would seek remand for a new trial to the Circuit Court of the First Judicial District of Hinds County, Mississippi.

Respectfully submitted,



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Certificate of Service

I, the undersigned attorney, do hereby certify that I have this day caused to be hand-delivered a true and correct copy of the foregoing BRIEF OF APPELLANT ON THE MERITS to the following:

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