

IN THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

LEROY HARRIS

APPELLANT

VS.

CASE NUMBER 2013 - KA - 02009 - COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF APPELLANT

APPEAL FROM THE CIRCUIT COURT OF
WASHINGTON COUNTY, MISSISSIPPI
CAUSE NUMBER CR - 2012 - 0069

PREPARED BY:

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for Appellant, namely Leroy Harris, hereby certify that the following list of parties have an interest in the outcome of the instant criminal action. These representations are made in order that the Judges of this Honorable Court may evaluate the possible disqualification(s) and/or recusal pursuant to Rule 28.1.1 of the Mississippi Rules Of Appellate Procedure, to wit:

1. Leroy Harris, Appellant
2. Barbara Parker, Clerk
CIRCUIT COURT OF WASHINGTON COUNTY
Post Office Box 1276
Greenville, Mississippi 38702 - 1276
3. Takiyah Perkins, Esquire
WASHINGTON COUNTY DISTRICT ATTORNEY
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4. Honorable Richard A. Smith
Circuit Court Judge
Post Office Box 1953
Greenwood, Mississippi 38935 - 1953
5. Brandon I. Dorsey, Esquire
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Attorney Appointed For Appellant

Respectfully submitted,

LEROY HARRIS, APPELLANT

BY: /s/ Brandon I. Dorsey
BRANDON I. DORSEY, MSB # 100291
ATTORNEY FOR APPELLANT

STATEMENT REGARDING ORAL ARGUMENTS

Appellant, namely Leroy Harris, by and through his undersigned attorney of record, namely Brandon I. Dorsey, BRANDON I. DORSEY, PLLC, Post Office Box 13427, Jackson, Mississippi 39236 - 3427, respectfully request that this Honorable Court grant oral argument in these premises.

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TABLE OF AUTHORITIES

CASE LAW

1. Barker v. Wingo, 407 U.S. 514 (1972)
2. Folk v. State, 576 So.2d 1243, 1247 (Miss. 1991)
3. Frost v. State, 453 So.2d 695 (Miss. 1984)
4. Hawthorne v. State, 883 So.2d 86 (Miss. 2004)
5. Holloway v. State, 312 So.2d 700, 701 (Miss. 1975)
6. Humphrey v. State, 883 So. 2d 86 (Miss. 2004)
7. Johnson v. State, 68 So. 3d 1239, 1241 (Miss. 2011)
8. Myers v. State, 2013 - KA - 00226 - SCT (2013)
9. Seeling v. State, 844 So.2d 439 (Miss. 2003)
10. Shelton v. State, 853 So.2d 1171, 1186 (Miss. 2003)
11. State v. Ferguson, 576 So.2d 1252, 1254 (Miss. 1991)
12. State v. Galloway, 2010 - DP - 01927 - SCT (2013)
13. State v. Magnusen, 624 So.2d 1275, 1284 (Miss. 1994)
14. U.S. v. Renfro, 620 F. 2d 497 (5th Cir. 1980)

STATUTES

1. Section 97 - 37 - 37 (1)

STATEMENT OF THE ISSUES

- I. WHETHER THE LOWER COURT VIOLATED LEROY HARRIS' CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL.
- II. WHETHER THE VERDICT FINDING LEROY HARRIS GUILTY OF ARMED ROBBERY IS AGAINST AND / OR INCONSISTENT WITH THE OVERWHELMING WEIGHT OF THE EVIDENCE.
- III. WHETHER THE LOWER COURT ERRED IN OVERRULING LEROY HARRIS' OBJECTION TO THE ADMISSION OF THE STATE'S DVD MARKED, IDENTIFIED AND ADMITTED AS S - 1 ON THE BASIS THAT SUCH DVD'S PROBATIVE VALUE WAS OUTWEIGHED BY ITS PREJUDICIAL EFFECT.
- VII. WHETHER THE LOWER COURT ERRED IN OVERRULING LEROY HARRIS' MOTION FOR DIRECTED VERDICT.

STATEMENT OF THE CASE

A. NATURE OF THE CASE

The instant case is submitted to this Honorable Court to determine: (1) whether the lower court violated the Leroy Harris' constitutional right to a speedy trial; (2) whether the verdict finding Leroy Harris guilty of armed robbery is against and / or inconsistent with the overwhelming weight of the evidence; (3) whether the lower court erred in overruling Leroy Harris' objection to the admission of the state's DVD marked, identified and admitted as S -1 on the basis that such DVD's probative value was outweighed by its prejudicial effect and (4) whether the lower court erred in overruling Leroy Harris' motion for directed verdict.

Appellant, Leroy Harris, by and through his attorney, argue, contend and submits to this Honorable Court the lower court has committed reversible error and as a result, the verdict should be overturned and / or reversed and remanded.

B. THE COURSE OF THE PROCEEDINGS IN THE LOWER COURT

That Appellant, Leroy Harris, on or about June 12, 2012 was indicted by the grand jurors of Washington County, Mississippi on the charge of armed robbery pursuant to Section 97 - 37 - 37 (1) of the Mississippi Code Annotated of 1972, as amended.

(TR 0001, RE 11). Subsequent thereto, Leroy Harris was arraigned and the matter was set for trial.

That Appellant filed a Motion To Withdrawal Of Counsel on or about December 14, 2011. (TR 00009 - 00010, RE 12 - 13). In addition, Appellant filed a Request Motion For Reduction Of Bond. (TR 00012 - 00013, RE 14 - 15). On or about July 11, 2012, Appellant filed a Motion To Vacate Retired Indictment - Answer To State Indictment Said Filed On June 12, 2012. (TR 00017 - 00017 - 00019, RE 16 - 18). Appellant filed his Motion To Dismiss For Failure To Provide Speed Trial on or about December 6, 2012. (TR 00048 - 00049, RE 19 - 20). In addition, Appellant filed a Requesting Motion For Dismissal also on or about December 6, 2012. (TR 00051 - 00053, RE 21 - 23). That Appellant filed a subsequent Motion To Dismiss For Failure To Provide Speedy Trial on or about August 5, 2013. (TR 00079 - 00084, RE 24 - 29).

That an Order Setting Trial was entered on or about December 17, 2012, setting this mater for trial February 20, 2013. (TR 00054, RE 30). That an Order Re - Setting Trial was entered February 25, 2013 re - setting the matter for trial on May 21, 2013. (TR 00068, RE 31). That on or about May 22, 2013, a subsequent Order Re - Setting Trial was entered re - setting the matter for trial on July 23, 2013. (TR 00073, RE 32). That on or about July 29, 2013, a subsequent Order Re - Setting Trial was entered re - setting the matter for trial October 1, 2013. (TR 00077, RE 33). That on or about October 14, 2013, the lower court entered its Order Denying Defendant Harris' Motion To Dismiss (SpeedY Trial). (TR 00102 - 00105, RE 34 - 37). That Defendant filed his Motion For Severance And Separate Trials on or about October 16, 2013. (TR 00106 - 00108, RE 38 - 40). That the trial of the instant matter commenced on or about November 13, 2013, resulting in "the verdict" that

serve as the basis for the instant brief. (TR 00143, RE 41).

C. THE DISPOSITION OF THE LOWER COURT

That as a result of the trial that commenced on or about November 13, 2103, Appellant was found guilty of armed robbery and the firearm enhancement. (TR 00143, RE 41). As a direct and proximate result thereof, Appellant, by and through his attorneys' of record, moved the lower court for a motion for judgment notwithstanding jury verdict or in the alternative a new trial and for reasonable bail pending appeal. (TR 00160 - 00162, RE 42 - 44). Prior to the actual filing of the "motion for judgment notwithstanding the jury verdict", the Court had entered its Order Denying Motion For Judgment NOV, even though such Motion had not actually been filed. (TR 00147, RE 45). Subsequent thereto, the lower court entered its Sentencing Order, wherein he was directed and ordered into the custody of the Mississippi Department Of Corrections. (TR 00151 - 00153, RE 46 - 48).

STATEMENT OF THE FACTS

The instant matter arose out of an incident that occurred on or about April 23, 2011. According to the alleged victim, namely Jing Rosella, on the day in question, she was parking her car in her garage at her home. (TR 153, RE 49). Ms. Rosella represented that "the blue car" followed her and drove behind her towards her driveway. (TR 153, RE 49). Ms. Rosella testified that she saw someone coming from out the passenger seat through

¹At the time that Leroy Harris' Motion For Judgment Notwithstanding Jury Verdict Or In The Alternative A New Trial And For Reasonable Bail Pending Trial, the Washington County Public Defender's Office was still listed as "counsel of record", but Brandon I. Dorsey filed said Motion so as to make a record.

the rearview mirror and that person came quickly to her car along side the left side. Ms. Rosella testified that “the person” yelled out “ give me your money!” Ms. Rosella testified that “the person” had a gun that “glittered” and told her that if she closed the window that she knew what he was going to do with the gun. (TR 155, RE 50). Ms. Rosella testified “the person” took her purse, ran back to the car behind her, backed out of the driveway and took off. (TR 157, RE 51). Ms. Rosella testified that the vehicle was a truck with a tool box in the back. (TR 157, RE 51).

According to Deputy Marvin Marshall, on the day in question, he was patrolling when he received traffic from dispatch in reference to an armed robbery in the north end of the county. (TR 91, RE 52). As he started in the direction of Abide Road, he saw a vehicle that fit the description of the vehicle that was given by dispatch. (TR 92, RE 53). Deputy Marshall testified that he got behind the truck, put his lights on and the truck pulled into an apartment complex. (TR 92, RE 53). According to Deputy Marshall, when he ordered the occupants out of the truck, the occupants fled. (TR 92, RE 52). Subsequent thereto, an inventory of the truck was completed, resulting in the discovery of a cell phone and the cell phone contained a picture and said picture identified Appellant as the other occupant that fled the vehicle who was not apprehended at the scene. (TR 92, RE 52).

SUMMARY OF THE ARGUMENT

Leroy Harris contends that the lower court committed reversible error when it violated his constitutional right to a speedy trial. Leroy Harris also contends that the verdict of armed robbery is against and / or inconsistent with the overwhelming weight of the evidence. Mr. Harris also contends that the lower court erred in overruling his objection to the admission of the state's DVD marked, identified and admitted as S -1 on the basis that such DVD's probative value was outweighed by its prejudicial effect. Mr. Harris also contends that the lower court erred in overruling his motion for directed verdict.

ARGUMENT

I. WHETHER THE LOWER COURT VIOLATED LEROY HARRIS' CONSTITUTIONAL RIGHT TO SPEEDY TRIAL

That both the United States Constitution and the Mississippi Constitution provide an accused the right to a speedy and public trial. *State v. Galloway*, 2010 - DP - 01927 - SCT (2013). Four factors guide this Court when determining whether an accused's right to speedy trial has been violated, which include: (1) length of delay; (2) reason for delay; (3) whether the defendant asserted his right to a speedy trial and (4) whether the defense suffered prejudice from the delay. *Id.* (Citing *Johnson v. State*, 68 So.3d 1239, 1241 (Miss. 2011); (citing *Barker v. Wingo*, 407 U.S. 514 (1972)). The "review" of a speedy trial claim encompasses a fact question of whether the delay rose from good cause. *Myers v. State*, 2013 - KA - 00226 - SCT (2013). Under this Court's standard of review, this Court will uphold a decision based on substantial, credible evidence. *Folk v. State*, 576 So.2d

1243, 1247 (Miss. 1991). If no probative evidence supports the trial court’s finding of good cause, this Court will ordinarily reverse. Id. The state bears the burden of proving good cause for speedy trial delay, and thus the risk of non - persuasion. Id.

In the instant matter, Appellant filed “motions” with the lower court on or about December 6, 2012 and August 5, 2013, respectively, asserting his claim for “speedy trial.” (TR 00048 - 00049, RE 19 - 20, TR 00051 - 00053 RE 21 - 23). Appellant was arrested on or about April 23, 2011 for armed robbery. On or about June 12, 2012, Appellant was indicted on the charge of armed robbery. On or about July 16, Appellant was arraigned. The length of time between when Appellant was arrested until the date of trial is approximately 891 days. The length of time between Appellant’s arraignment unto the date of trial is approximately 441 days. Whether this Court analyzes the “speedy trial” claim from the date of arrest of the date of arraignment, the State exceeded the “270 day” time frame in which to try Appellant. The statutory right to speedy trial found in Section 99 - 17 - 1 of the Mississippi Code Annotated of 1972, as amended, states in pertinent part as follows:

Unless good cause be shown, and a continuance duly granted by the court, all offenses for which indictment are presented to the court shall be tried no later than two hundred seventy (270) days after the accused has been arraigned.

The state, in regards to “the reason for the delay”, represented that “ there were fingerprint examination that needed to be done..... there was also a gun that needed to be analyzed at that time so that was the delay in regards to this defendant being indicted.

(TR 4, RE 54). The state further represented that “ there were several items that were sent to the crime lab for analyzation, including some fingerprints that were found - lifted from the vehicle which matched this defendant...” (TR 4, RE 54). Appellant contends that the State failed to demonstrate good cause in its explanation that it presented to the lower court. For example, the state never indicated: (a) when the fingerprint evidence was obtained nor (b) when the fingerprint evidence was forwarded to the Mississippi Crime Lab for testing. Appellant avers that the lower court erred in not requiring the state to represent the date of obtaining the fingerprints and the date that same were submitted to the “crime lab” and that the ruling to deny his “speedy trial” violated his constitutional right, as such “ruling” was not supported by any evidence.

Next, the state represented that “the delay” was also due to the alleged victim’s nationality. Specifically, that said victim was a Madarin Chinese, and they had difficulty in communicating with her. (TR 4, RE 54). However, “the record” reveals that the state did not move the lower court for authority to appoint an interpreter until on or about February 13, 2013. (TR 00055 - TR 00067, RE 55 - 67). The lower court entered its Order granting said motion on or about February 21, 2013. (TR 00067, RE 67). Appellant avers that the lower court erred in denying its speedy trial motion as the record is “void” of any inquiry by the Court regarding the efforts, if any, demonstrated on the part of the state ether prior to the appointment of an interpreter or after such appointment.

The Appellant avers that there is no dispute that he timely asserted his claim for “speedy trial.” Same is memorialized by the filing of the subsequent “Motions” that he filed with the lower court on December 6, 2012 and August 5, 2013 respectively. The Appellant avers that he was “prejudiced” by the delay in bring this matter to trial. In *State v. Magnusen*, 624 So. 2d 1275, 1284 (Miss. 1994), this Court found presumptive prejudice from a fifteen - month delay between arrest and trial. Any delay over eight (8) months is presumptively prejudicial and triggers balancing of the other three (3) factors. *State v. Ferguson*, 576 So. 1252, 1254 (Miss. 1991). Once so found, the burden shifts to the state to produce evidence justifying the delay and persuade as to the legitimacy of the reasons. Appellant contends that he was incarcerated and detained on the charge of armed robbery, and such charges are “anxiety - producing.”

II. WHETHER THE VERDICT FINDING LEROY HARRIS GUILTY OF ARMED ROBBERY IS AGAINST AND / OR IS INCONSISTENT WITH THE OVERWHELMING WEIGHT OF THE EVIDENCE

A new trial should be granted if the jury’s verdict “so contradicts the overwhelming weight of the evidence that, to allow it to stand, would be to sanction an unconscionable injustice. *Hawthorne v. State*, 883 So.2d 86 (Miss. 2004)(Citing *Frost v. State* 453 So.2d 695 (Miss. 1984)). If the verdict is against the overwhelming weight of the evidence, a new trial should be ordered. *Holloway v. State*, 312 So.2d 700, 701 (Miss. 1975).

In *Hawthorne*, the Court opined that the evidence introduced by the state was “too weak” to prove sanity. The Court went further, and opined that the state did not prove beyond a reasonable doubt that defendant Hawthorne was sane. Consider in the instant

case, there was absolutely no evidence whatsoever, presented by any witness, that Appellant Harris were ever seen with one another. To allow the jury verdict to stand on the charge of armed robbery, when the state failed to introduce any evidence to meet its burden of proof for a charge of armed robbery, has resulted in an unconscionable injustice.

III. WHETHER THE LOWER COURT ERRED IN OVERRULING
LEROY HARRIS' OBJECTION TO THE ADMISSION OF THE
STATE OF MISSISSIPPI'S DVDS MARKED AS S - 1
ON THE BASIS THAT SUCH PHOTOGRAPHS' PROBATIVE VALUE
WAS OUTWEIGHED BY ITS PREJUDICIAL EFFECT

Relevant evidence may be inadmissible when its probative value is outweighed by its tendency to mislead, to confuse, or to prejudice the jury. If the introduction of the evidence would waste more time than its probative value was worth, then a trial judge may rightly exclude such otherwise relevant evidence. U.S. v. Renfro, 620 F.2d 497 (5th Cir. 1980). Appellant avers that the lower court erred with respects to the “admission” of S - 1 as it failed to articulate “what aspects” of said evidence “passed” through the filter of Rule 403 of the Mississippi Rules Of Evidence. That Appellant concedes that the lower court judge was charged with the non - delegable duty of considering carefully, all the facts and circumstances surrounding the admission of the subject DVD identified, marked and admitted as S - 1, however, said lower court failed to make “careful consideration” and “that” is reversible error in these premises. Appellant further maintains that the introduction of such DVD was solely meant for the purpose of inflaming the jury.

IV. WHETHER THE LOWER COURT ERRED IN OVERRULING
LEROY HARRIS' MOTION FOR DIRECTED VERDICT

The standard of review for the denial of a motion for directed verdict and judgment notwithstanding the verdict is the same. *Humphrey v. State*, 883 So.2d 86 (Miss. 2004) (Citing *Shelton v. State*, 853 So.2d 1171, 1186 (Miss. 2003.)). A directed verdict challenges the sufficiency of the evidence presented at trial. *Id.* This Court demands that the lower court reverse and render if the facts, viewed in the light most favorable to the State, point in favor of the defendant that reasonable men could not have arrived at a guilty verdict. *Id.* (Citing *Seeling v. State*, 844 So.2d 439 (Miss. 2003).

In the instant case, even when looking at the evidence in the light most favorable to the state, the evidence was not sufficient for the armed robbery conviction.

CONCLUSION

For the foregoing reasons, Appellant asserts the lower court has erred and should therefore, be reversed and same shall be rendered and/or in the alternative remanded to the lower court.

Respectfully submitted,

LEROY HARRIS, APPELLANT

BY: /s/ Brandon I. Dorsey
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CERTIFICATE OF SERVICE

I, Brandon I. Dorsey, the undersigned attorney and counselor in these premises, hereby certify that I have on this day caused to be served, via United States mail, postage prepaid, a true and correct copy of the above and foregoing Appellant's Brief to the following:

Barbara Parker, Clerk
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Honorable Richard A. Smith
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SO CERTIFIED, this the 10th day of October of 2014.

/s/ Brandon I. Dorsey
BRANDON I. DORSEY