

NOV 29 2012
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

FILED

29
DAVID CRENSHAW
BY: [Signature]
Clerk
Deputy

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

RALPH ARNOLD SMITH, JR.

PLAINTIFF

VS.

CAUSE NO. 4:12-cv-113-DAS

**JAMES M. HOOD, III, IN HIS OFFICIAL
CAPACITY AS ATTORNEY GENERAL FOR
THE STATE OF MISSISSIPPI;**

**WILLIE DEWAYNE RICHARDSON, IN HIS
OFFICIAL CAPACITY AS THE DISTRICT
ATTORNEY FOR THE FOURTH CIRCUIT
COURT DISTRICT OF MISSISSIPPI,**

and

**TIMOTHY H. JONES, IN HIS OFFICIAL CAPACITY
AS AN ASSISTANT DISTRICT ATTORNEY FOR
THE FOURTH CIRCUIT COURT DISTRICT OF
MISSISSIPPI**

DEFENDANTS

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

COMES NOW Ralph Arnold Smith, Jr. ("Dr. Smith"), through counsel, pursuant to Rule 57 and Rule 65 of the *Federal Rules of Civil Procedure*, and pursuant to 42 U.S.C. §1983, and files this, his *Complaint for Injunctive and Declaratory Relief*, and in support of this *Complaint*, respectfully shows to this Court the following:

INTRODUCTION

1. This is a civil action under 42 U.S.C. § 1983 seeking injunctive and declaratory relief against Defendants for committing acts, under color of state law, with the intent or

purpose of depriving Dr. Smith of rights secured under the Constitution of the United States, including unlawfully pursuing a criminal action against Dr. Smith for capital murder.

2. Dr. Smith seeks injunctive and declaratory relief against the Defendants and all employees, agents, attorneys and/or other persons who are under the control of or are acting in concert with any or all of the Defendants.

3. Dr. Smith seeks preliminary and permanent injunctive relief against the Defendants under 42 U.S.C. §1983 to enjoin the Defendants from further pursuing any allegation or criminal action against Dr. Smith for capital murder, as alleged in the indictment in Leflore County Circuit Court in Cause Number 2012-0208-CR. A true and correct copy of the subject indictment is attached in support of this *Complaint* and is marked Exhibit "A".

4. Dr. Smith also seeks a declaratory judgment adjudicating that the prosecution of Dr. Smith for capital murder deprives Dr. Smith of his procedural and substantive due process rights under the Due Process clauses of the Fifth and Fourteenth Amendments of the Constitution of the United States. In addition, Dr. Smith seeks a declaratory judgment that the Defendants cannot charge or prosecute Dr. Smith for the Attorney General investigator's killing of Keaira Byrd.

JURISDICTION AND VENUE

5. The Court has jurisdiction over the claims set out in this *Complaint* pursuant to 28 U.S.C. §§ 1331 and 1343. The constitutional and due process claims in this case arise under the Due Process Clauses of the Fifth and Fourteenth Amendments of the Constitution of the United States, as protected by 42 U.S.C. § 1983. Dr. Smith seeks declaratory and

injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202, 42 U.S.C. §1983, and Rules 57 and 65 of the *Federal Rules of Civil Procedure*.

6. Venue is proper in this District under 28 U.S.C. §1391(b), on the ground that some or all of the conduct at issue took place in this District, and/or some or all of the Defendants reside in the Northern District of Mississippi.

PARTIES

7. Dr. Smith is a United States citizen and a resident of Greenwood, Mississippi. Dr. Smith is currently detained in pretrial detention in the Leflore County Adult Detention Center in Leflore County, Mississippi.

8. James M. Hood, III (“AG Hood”) is the duly elected Attorney General for the state of Mississippi. Dr. Smith seeks relief from this Court against AG Hood for declaratory and injunctive relief in his official capacity as the Attorney General for the state of Mississippi. AG Hood and one or more investigators in AG Hood’s office have a vested interest in the outcome of Dr. Smith’s capital murder case. AG Hood and his office should be enjoined from prosecuting the capital murder charge against Dr. Smith.

9. Willie Dewayne Richardson (“DA Richardson”) is the duly elected district attorney for the Fourth Circuit Court District of the state of Mississippi. Dr. Smith seeks relief from this Court against DA Richardson for declaratory and injunctive relief in his official capacity as District Attorney for the Fourth Circuit Court District of the state of Mississippi.

10. DA Richardson and his office have been and continue to unlawfully prosecute Dr. Smith for capital murder.

11. Timothy Jones (“ADA Jones”) is an appointed assistant district attorney for the Fourth Circuit Court District of the state of Mississippi. Dr. Smith seeks relief from this Court against ADA Jones for declaratory and injunctive relief in his official capacity as the Assistant District Attorney for the Fourth Circuit Court District of the state of Mississippi. ADA Jones directly participated with law enforcement officers in making charging decisions and signed the indictment against Dr. Smith for capital murder. ADA Jones continues to unlawfully prosecute Dr. Smith for capital murder.

12. At all times relevant, the Defendants acted and continue to act under color of state law.

13. The Defendants, in their official capacities, do not have immunity from the injunctive and declaratory relief requested by Dr. Smith in this action. See *Morgan v. State of Mississippi*, 2008 WL410645 (S.D.Miss.2008), as amended at 2009 WL 1702262.

GENERAL ALLEGATIONS

14. Dr. Smith is a 70 year old radiation oncologist who founded the cancer center at North Central Mississippi Regional Medical Center in Greenwood, Mississippi.

15. On April 28, 2012, an investigator for AG Hood (“AG’s Investigator”) shot and killed Keaira Byrd in Greenwood, Mississippi.

16. The AG’s Investigator killed Keaira Byrd with a shot to the top left of Mr. Byrd’s head. A true and correct copy of the State Medical Examiner’s “Pathological Examination” is attached and marked Exhibit “B”. The “Pathological Examination” shows the fatal entry wound inflicted by the AG’s Investigator as entry wound “A”.

17. DA Richardson, in his official capacity as the district attorney for the Fourth Circuit Court District, which includes Leflore County, Mississippi, unlawfully filed and is wrongfully pursuing a capital murder charge against Dr. Smith.

18. ADA Jones, in his official capacity as assistant district attorney for the Fourth Circuit Court District, which includes Leflore County, Mississippi, is unlawfully and wrongfully pursuing a capital murder charge against Dr. Smith.

19. The state court case is styled "*State of Mississippi v. Ralph Arnold Smith, Jr. and Derrick Lacy, aka Derrick Lacey*", Cause Number 2012-0208-CR. The case is pending in the Circuit Court of Leflore County, Mississippi.¹

20. The Defendants allege that Dr. Smith is guilty of capital murder in violation of Miss. Code § 97-3-19(2)(e) for causing the death of Keaira Byrd while Dr. Smith was allegedly engaged in the underlying felony crime of burglary.

21. Dr. Smith was arrested in the early morning hours of April 29, 2012.

22. Dr. Smith was served with the capital murder indictment on September 24, 2012.²

23. Dr. Smith was untimely and unlawfully arraigned on November 5, 2012. Judge Hilburn set a deadline of December 5, 2012 for pretrial motions, and set a trial date of April 22, 2013.

¹ DA Richardson filed an additional related case against Dr. Smith for conspiracy to commit murder. This additional case is styled "*State of Mississippi v. Ralph Arnold Smith, Jr. and Cordarious Robinson*", Cause Number 2012-0209-CR. This additional case is also pending in the Leflore County Circuit Court.

² The Circuit Court arraigned Dr. Smith on November 5, 2012. The deadline for the arraignment was October 24, 2012.

24. *Mississippi Code Section 97-3-19(2)(e)* defines capital murder as:

The killing of a human being **without the authority of law** by any means and in any manner shall be capital murder in the following cases . . . When done with or without any design to effect death, **by any person engaged in the commission of [enumerated felonies including burglary]**, or in any attempt to commit such felonies (emphasis added).

25. Dr. Smith did not kill Keaira Byrd.

26. DA Richardson and ADA Jones, acting under color of state law, filed and are pursuing a capital murder charge against Dr. Smith, even though the AG's Investigator killed Keaira Byrd.

27. One or more employees of AG Hood participated in the drafting of the "Statement of Underlying Facts and Circumstances", which the State used to obtain search warrants against Dr. Smith.

28. The "Statement of Underlying Facts and Circumstances" used by the state to obtain search warrants was drafted on a computer from the Attorney General's office.

See the attached preliminary hearing excerpt, marked Exhibit "C", lines 22-27.

29. The state's main witness at the preliminary hearing, Detective Jeff Byars, testified under oath at Dr. Smith's preliminary hearing as follows:

Q. Who drafted the statement of underlying facts and circumstances?

A. The Attorney General's office along with the help from our assistant district attorney.

See the attached preliminary hearing excerpt, marked Exhibit "C", lines 15-18.

30. One or more employees and agents of AG Hood were directly involved in commencing the capital murder case against Dr. Smith, even though AG Hood and his agents had evidence that the AG's Investigator killed Keaira Byrd.

31. At the time that the Attorney General's office drafted the "Statement of Underlying Facts and Circumstances", the Attorney General's office was fully aware that the Attorney General's investigator had shot and killed Keaira Byrd.

32. AG Hood and his agents and employees are in the direct chain of proximate causation that resulted in the filing of the unlawful capital murder charge against Dr. Smith.

33. AG Hood, his agents and any other person who participated in the April 28, 2012 operation at Lee Abraham's office have a vested interest in the outcome of Dr. Smith's case.

34. Dr. Smith cannot be charged with capital murder because *Mississippi Code Section 97-3-19(2)(e)* requires that the killing of Keaira Byrd must have been by a person engaged in the commission of one of the enumerated felonies.

35. Dr. Smith now suffers and continues to suffer the immediate and irreparable harm of exposure to an unlawful and illegal sentence of death or life in prison.

36. There is no adequate remedy at law for the immediate and irreparable harm of a wrongful and unlawful conviction for capital murder.

**VIOLATION OF DR. SMITH'S SUBSTANTIVE DUE PROCESS RIGHT TO
LIFE AND LIBERTY
42 U.S.C. § 1983**

37. Dr. Smith has a substantive due process right under the Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States to protection from government action that unlawfully and illegally deprives Dr. Smith of his fundamental rights to life and liberty.

38. Substantive due process "...protects those rights that are fundamental, that is, rights that are 'implicit in the concept of ordered liberty.'" *Beard v. City of Tupelo*, WL 5185084 (N.D.Miss.2010), citing *Palko v. Conn.*, 302 U.S. 319, 325; 58 S.Ct. 149 (1937).

39. "A finding that a right merits substantive due process protection means that the right is protected against 'certain government actions regardless of the fairness of the procedures used to implement them.'" *Beard v. City of Tupelo*, citing *Daniels v. Williams*, 474 U.S. 327, 331; 106 S.Ct. 662 (1986).

40. Defendants acted and continue to act under color of state law to deprive Dr. Smith of his substantive due process rights.

41. Defendants proximately caused, and continue to proximately cause, this deprivation of Dr. Smith's substantive due process rights by filing and continuing to pursue an unlawful capital murder charge against Dr. Smith.

42. The Defendants' unlawful application of the capital murder statute has deprived and continues to deprive Dr. Smith of his substantive due process right to be protected from government action that unlawfully deprives Dr. Smith of the fundamental rights of life and liberty.

43. The Defendants' pursuit of a capital murder charge against Dr. Smith has no basis in law or in fact.³

44. At all relevant times, the Defendants were in possession of evidence that the AG's Investigator killed Keaira Byrd.

45. Dr. Smith's punishment following an unlawful prosecution and conviction for capital murder includes the irreparable harm of the death penalty or life in prison.

**VIOLATION OF DR. SMITH'S PROCEDURAL DUE PROCESS RIGHT TO A
PRELIMINARY HEARING THAT LAWFULLY DETERMINES PROBABLE CAUSE,
AND TO A TIMELY ARRAIGNMENT
42 U.S.C. § 1983**

46. Dr. Smith has a procedural due process right to a fair determination at a preliminary hearing as to whether probable cause exists for the capital murder charge against Dr. Smith.

47. Dr. Smith also has a procedural due process right to be timely served with an indictment and to be provided a timely arraignment for the charges in the indictment.

48. DA Richardson and ADA Jones acted under color of state law to deprive Dr. Smith of these procedural due process rights.

49. DA Richardson and ADA Jones proximately caused and continue to cause this deprivation of Dr. Smith's procedural due process rights by wrongly alleging at the preliminary hearing that Dr. Smith caused the death of Keaira Byrd, even though the state was in possession of evidence that the AG's Investigator killed Keaira Byrd.

³ Importantly, Dr. Smith seeks relief from this Court based on the state's version of the killing---the AG's Investigator shot and killed Keaira Byrd.

50. DA Richardson and ADA Jones proximately caused this deprivation of Dr. Smith's procedural due process rights by failing to provide Dr. Smith with a timely arraignment.

51. The state court's application of the capital murder statute to the facts as alleged by the state deprived and continues to deprive Dr. Smith of his fundamental procedural due process rights.

52. At all relevant times, the Defendants actively sought and obtained the unlawful application of the capital murder charge.

53. Dr. Smith's punishment if convicted includes the immediate and irreparable harm of the death penalty or life in prison.

PRAYER FOR RELIEF

Preliminary Injunction

54. Dr. Smith adopts by reference all preceding paragraphs outlined in this *Complaint*.

55. Dr. Smith is entitled to a preliminary injunction because:

- a. there is a substantial likelihood that Dr. Smith will prevail on the merits in seeking a permanent injunction, because the state is pursuing a capital murder charge that is not supported by the facts or by the law;
- b. there is a substantial threat that Dr. Smith will suffer irreparable injury if the injunction is not granted because the State will continue to unlawfully seek the death penalty or life in prison, for which there is no adequate remedy at law;

- c. Dr. Smith's threatened injury of the death penalty or life in prison, on its face, outweighs the threatened harm to the Defendants; and
- d. Granting the preliminary injunction will serve the public interest because the Courts have a strong interest in protecting citizens from unlawful and illegal prosecution by the government.

Permanent Injunction

56. Dr. Smith adopts by reference all preceding paragraphs outlined in this *Complaint*.

57. Dr. Smith is suffering and continues to suffer the threat of irreparable injury from an unlawful prosecution that would result in the death penalty or life in prison. The prosecution of Dr. Smith is unlawful, would cause irreparable injury, and has no basis in law or in fact.

58. There is no adequate remedy at law for the unlawful capital murder prosecution of Dr. Smith. This Court should provide the equitable remedy of a permanent injunction enjoining the Defendants from pursuing the capital murder charge against Dr. Smith that is based on the AG Investigator's killing of Keaira Byrd.

59. The burden imposed on Dr. Smith of an unlawful prosecution and conviction for capital murder outweighs, on its face, any hardship or burden that an injunction might impose on the Defendants.

60. As a matter of public policy, no citizen should be subjected to an illegal and unlawful prosecution for any crime. When these Defendants file and pursue a capital murder charge that is clearly not supported by the state's version of the facts, this Court can and should

step in and provide a remedy. When these Defendants actively and in concert with each other undertake an unlawful capital murder prosecution, this Court can and should step in and provide a remedy. The public interest would be served by this Court providing the equitable remedy of enjoining the Defendants from pursuing the capital murder charge against Dr. Smith.

Declaratory Judgment

61. Dr. Smith adopts by reference all preceding paragraphs outlined in this *Complaint*.

62. Dr. Smith is entitled to a declaratory judgment against the Defendants adjudicating the following:

1. The prosecution of Dr. Smith for capital murder for the AG Investigator's killing of Keaira Byrd unlawfully deprives Dr. Smith of his substantive and procedural due process rights under the Fifth and Fourteenth Amendments to the Constitution of the United States.
2. An investigator with the Mississippi Attorney General's office killed Keaira Byrd. As a matter of due process, Dr. Smith cannot be prosecuted for the AG Investigator's killing of Keaira Byrd.

WHEREFORE, PREMISES CONSIDERED, Ralph Arnold Smith, Jr. prays that summons issue to the Defendants, and that the Court will issue a preliminary injunction and a permanent injunction enjoining the Defendants from prosecuting Dr. Smith for capital murder.

Dr. Smith also prays that the Court will enter its declaratory judgment finding and ordering the following: (1) that the prosecution of Dr. Smith for capital murder unlawfully deprives Dr. Smith of his fundamental and substantive due process rights; and (2) that an

investigator with the Attorney General's office killed Keaira Byrd, and Dr. Smith cannot be prosecuted for the AG Investigator's killing of Keaira Byrd.

Dr. Smith prays for such other relief to which he may be entitled in the premises.

Respectfully submitted, this 26th day of November, 2012.

Ralph Arnold Smith, Jr.

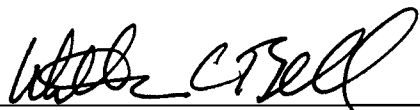
By: 
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Attorney for Ralph Arnold Smith, Jr.

EXHIBIT A

Capital Murder Indictment

Case number 2012-0208

**INDICTMENT CAPITAL MURDER 97-3-19(2)(e)/97-17-33
CONSPIRACY TO COMMIT MURDER 97-1-1/97-3-19(1)(a)**

STATE OF MISSISSIPPI

NO. 2012-0208

COUNTY OF LEFLORE

In the Circuit Court of Leflore County, for the Fourth Circuit Court District of Mississippi at the June 2012, in Vacation Term.

THE GRAND JURORS of the State of Mississippi, taken from the body of the good and lawful men and women of Leflore County, duly elected, empanelled, sworn and charged at the June 2012, in Vacation Term of the Circuit Court, to inquire in and for Leflore County, in the name and by the authority of the State of Mississippi, upon their oaths, present:

COUNT I

That **RALPH ARNOLD SMITH, JR. AND DERRICK LACY A.K.A. DERRICK LACEY**, on or about April 28, 2012 in Leflore County, Mississippi, acting in concert or in conjunction with each other or others, did willfully, unlawfully, knowingly, feloniously and intentionally, without authority of law and with or without any design to effect the death of Keaira Byrd, did then and there, cause Keaira Byrd, a human being, to be killed during the commission of the felony crime of burglary, as defined by Section 97-17-33 of the Mississippi Code of 1972 annotated as amended, where **RALPH ARNOLD SMITH, JR. AND DERRICK LACY A.K.A. DERRICK LACEY** and Keaira Byrd, who acting in concert or in conjunction with each other or others did willfully, unlawfully, feloniously and burglariously, did break and enter the Law Office of Lee Abraham located at 305 West Market Street in Greenwood, Leflore County, Mississippi, by the use of subterfuge or trick, by calling Lee Abraham and seeking entrance to the Office of Lee Abraham, under the pretext to bring him certain items or information to the Office of Lee Abraham and with the intent, upon entrance by such constructive breaking, to kill Lee Abraham, a human being, with deliberate design and without the authority of law by shooting Lee Abraham with a firearm ; in violation of Section 97-3-19(2)(e) and 97-17-33 of the Mississippi Code of 1972, as annotated and amended and against the peace and dignity of the State of Mississippi.

COUNT II

That **RALPH ARNOLD SMITH, JR. AND DERRICK LACY A.K.A. DERRICK LACEY**, on or about April 28, 2012 in Leflore County, Mississippi, acting in concert or in conjunction with each other or others, did willfully, unlawfully, knowingly, feloniously and intentionally, conspire and agree with the now deceased Keaira Byrd, to commit the felony crime of murder, as defined by Section 97-3-19(1)(a) of the Mississippi Code of 1972 annotated as amended, with deliberate design to effect the death of Lee Abraham, a human being, to kill, Lee Abraham without the authority of law, by shooting Lee Abraham with a firearm in violation of Section 97-1-1 and 97-3-19(1)(a) of the Mississippi Code of 1972, as annotated and amended and against the peace and dignity of the State of Mississippi.

A TRUE BILL


ASSISTANT DISTRICT ATTORNEY


FOREMAN OF THE GRAND JURY

Filed and recorded the 24th day of August, 2012.

Elmus Stockstill, Circuit Clerk By:  D.C.

EXHIBIT B

State Medical Examiner's Pathological Examination of Keaira Byrd



**MISSISSIPPI STATE MEDICAL EXAMINER'S OFFICE
1700 E. WOODROW WILSON AVENUE
JACKSON, MS 39216-1700**



PATHOLOGICAL EXAMINATION

Bird, Keard

Case No. ME12-0432 County: Leflore

Sex: M Age: 24 Race: B

Date and Time of Autopsy: May 1, 2012, at 0800 Hours

FINAL PATHOLOGIC DIAGNOSES

PRIMARY DIAGNOSES:

I. Multiple distant type gunshot wounds (x 6).

A. Evidenced by:

1. Gunshot wound to the head (A)
2. Gunshot wound to the left hip (B)
3. Gunshot wound to the left leg (D)
4. Gunshot wound to the left leg (E)
5. Gunshot wound to the left leg (F)
6. Gunshot wound to the right leg (J)
7. Two bullets recovered (A and D)

B. Resulting in:

1. Skull fractures and brain lacerations (A)
2. Soft tissue lacerations of lower extremities (B, D, E, F and J)

C. Associated with:

1. Two bullets on x-ray

CERTIFIED COPY

I hereby certify that this is a true and accurate copy of the records on file at the Office of the Medical Examiner, Jackson, MS.

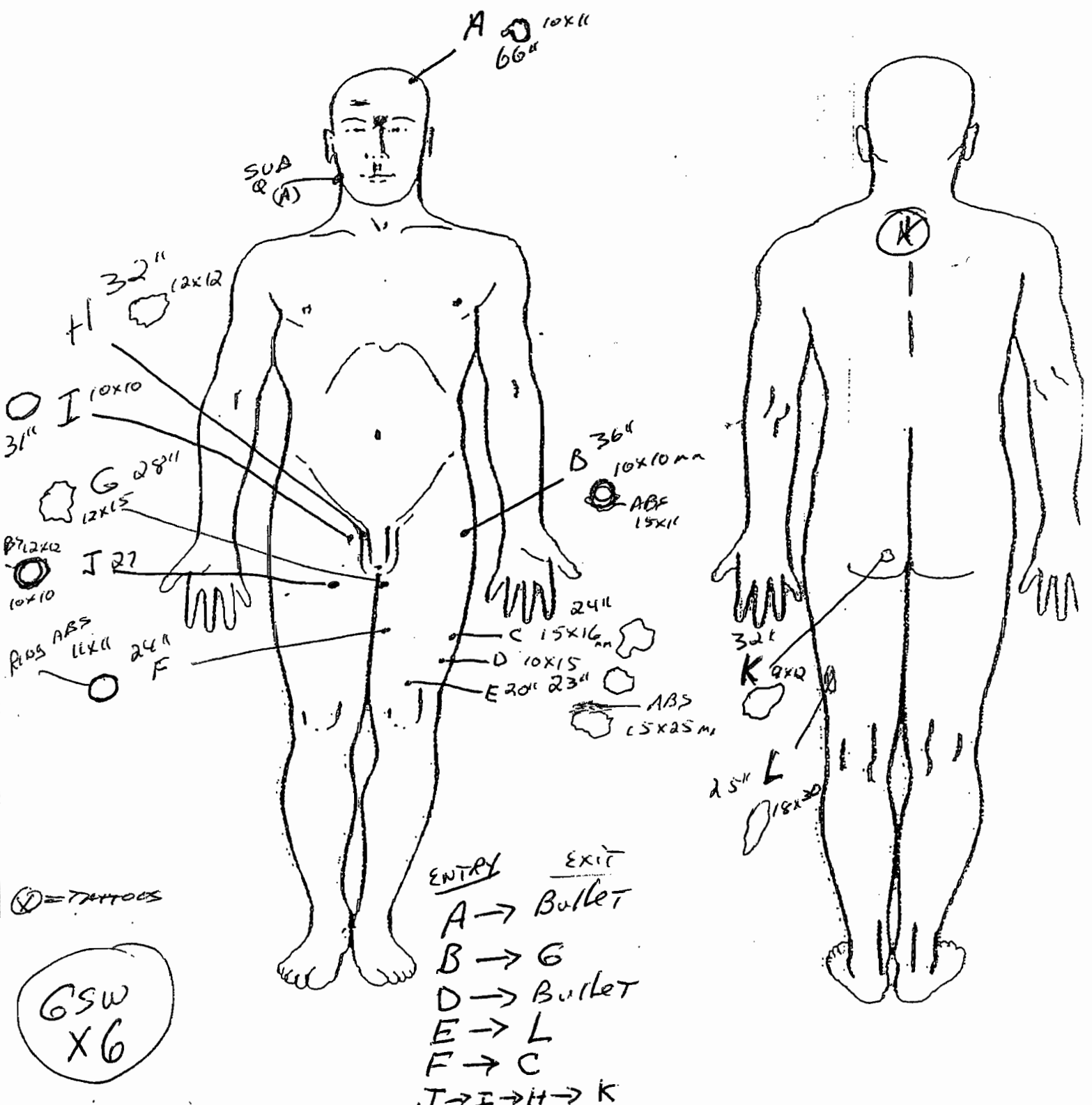
By MS Date 7-19-12

(A)

**LEFLORE COUNTY
ME#12-0432
BYRD, KEAIRA**

DATE OF EXAMINATION: 5/1/12

TIME: _____



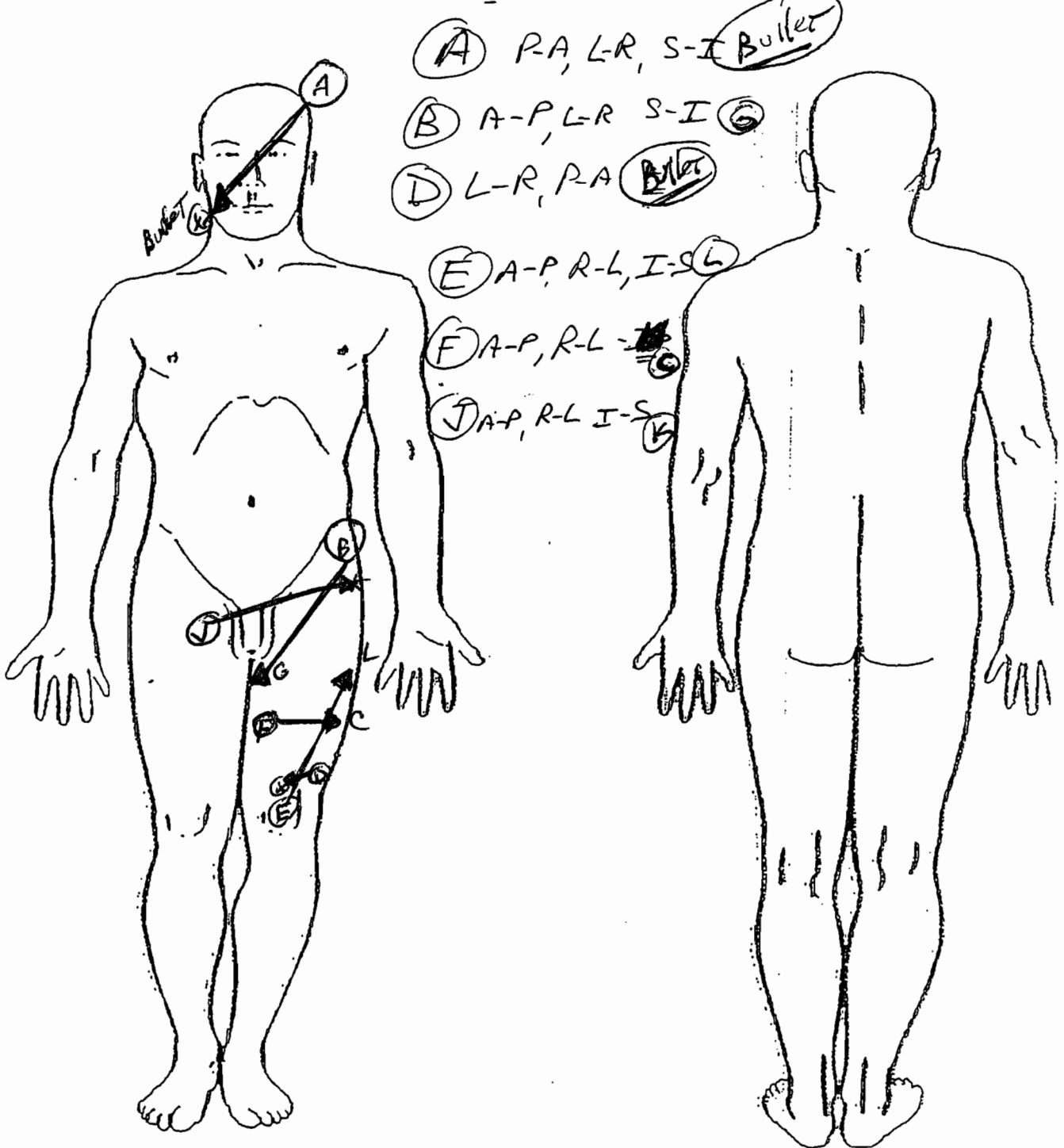
LEFLORE COUNTY
ME#12-0432
BYRD, KEAIRA

ME12-0432

(B)

DATE OF EXAMINATION: _____

TIME: _____



NAME Bird, Keard
CASE # ME12-0432

IDENTIFICATION:

An autopsy was performed on the body of Keard Bird at the Mississippi State Medical Examiner's Office in Jackson, Mississippi, on May 1, 2012, by Dr. Mark M. LeVaughn, Chief Medical Examiner.

EXTERNAL EXAMINATION:

The body is that of a normally developed young adult black male who appears to be the stated age of 24 years. The body is 68 inches long and weighs 144 pounds. The eyes are brown. The hair is black. Rigidity is 4+/4+. Lividity is poorly discernible. Clothing on the body consists of a plaid shirt, 2 white t-shirts, blue plaid boxers, grey shorts with a white belt, 2 red socks, 2 black shoes and a white tank top.

EVIDENCE OF TREATMENT:

None.

EVIDENCE OF INJURY:

There are 6 distant-type gunshot wounds. Two bullets were visible on x-ray. A bullet was in the soft tissue of the lateral right neck. Another bullet was present in the soft tissue of the distal left thigh.

Gunshot wound "A" is a distant-type gunshot wound to the left parietal area of the head. The entry wound is 66 inches above the right heel. The wound is 10 x 11 millimeters with marginal abrasion. There is no soot or stipple. The bullet perforated the left parietal bone producing a hemorrhagic wound track through the left parietal lobe, brain stem and right cerebellar hemisphere. The bullet exited the lateral right occipital bone through the right posterior cranial fossa and was recovered in the soft tissue of the lateral right neck just below and behind the inferior edge of the right ear. The path is left to right, superior to inferior, and posterior to anterior. The bullet was labeled with "A" on the base.

Gunshot wound "B" is a distant-type perforating gunshot wound to the upper lateral left hip 36 inches above the right heel. The wound is 10 x 10 millimeters with a 15 x 11 centimeter area of abrasion. There is no soot or stipple. The bullet perforated the soft tissue of the upper left thigh and exited on the medial left thigh at gunshot wound "G" 28 inches above the right heel.

Gunshot wound "D" is a distant-type penetrating gunshot wound to the lateral left thigh 23 inches above the right heel. The wound is an irregular laceration 10 x 15 millimeters with marginal abrasion. There is no soot or stipple. The bullet penetrated the soft tissue of the lateral left thigh and was recovered in the soft tissue of the left thigh 23 inches above the right heel. The bullet was labeled with "D" on the base. The path is left to right, posterior to anterior and horizontal.

NAME Bird, Keard
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Gunshot wound "E" is a distant-type perforating gunshot wound to the anterior left thigh just above the left knee 20 inches above the right heel. The wound is 15 x 25 millimeters with marginal abrasion. The bullet perforated the soft tissue of the left thigh and exited on the posterior lateral left thigh at gunshot wound "L" 25 inches above the right heel. Wound "L" is 18 x 30 millimeters with no soot, stipple or abrasion. The path is anterior to posterior, right to left and inferior to superior. No bullet was recovered in the wound track.

Gunshot wound "F" is a distant-type perforating gunshot wound to the medial left thigh 24 inches above the right heel. The wound is 11 x 11 millimeters with ring abrasion. The bullet perforated the soft tissue of the left thigh and exited at gunshot wound "C" on the lateral left thigh 24 inches above the right heel. Gunshot wound "C" is an irregular laceration 15 x 16 millimeters. There is not soot, stipple or abrasion. No bullet was recovered in the wound track. The path is interior to posterior, right to left and horizontal.

Gunshot wound "J" is a distant-type perforating gunshot wound to the upper medial right thigh 27 inches above the right heel. The bullet entered the soft tissue of the right thigh and exited the upper medial right thigh at gunshot wound "I" 31 inches above the heel and re-entered the upper lateral right scrotum at gunshot wound "H" 32 inches above the heel and exited the inferior medial left buttocks at gunshot wound "K" 32 inches above the right heel. The entry wound "J" is 10 x 10 millimeters with a 2 millimeter ring abrasion. The exit wound "I" is 10 x 10 millimeters with no soot, stipple or abrasion. The re-entry wound "H" is an irregular laceration 12 x 12 millimeters with no soot, stipple or abrasion. The exit wound "K" is an irregular laceration 9 x 12 millimeters with no soot, stipple or abrasion. The path is anterior to posterior, right to left and inferior to superior. No bullet was recovered from the wound track.

INTERNAL EXAMINATION:

HEAD AND NECK:

Dissection of the scalp shows diffuse subgaleal (soft tissue) hemorrhage. The entry wound is on the upper left parietal bone. There are radiating skull fractures from the entry wound (Gunshot wound "A"). Internal examination of the cranial cavity shows no evidence of exudate. There are patchy areas of thin layering of subdural hemorrhage on the left. There is diffuse bilateral subarachnoid hemorrhage on the superior and inferior aspects of the brain. The dura and leptomeninges are otherwise unremarkable. The brain weighs 1420 grams. The bullet entered the posterior superior left parietal lobe and produced a perforating, hemorrhagic laceration through the parietal lobe, transected the brain stem at the pontomedullary junction and produced a perforating wound track through the right cerebellar hemisphere. The bullet exited through the lateral right posterior cranial fossa and was recovered in the soft tissue of the lateral right neck. The vessels at the base of the brain form an essentially normal circle of Willis but are incompletely represented due to the gunshot wound. The cranial nerves appear to be unremarkable but are incompletely represented due to the gunshot wound. There is mild diffuse brain swelling but no distinct herniation. The sulci and gyri are normally developed. The cerebral and cerebellar hemispheres are otherwise roughly symmetric and the brain stem is in the midline. Multiple sections of the brain show well-demarcated gray and white matter with

NAME Bird, Keard
CASE # ME12-0432

HEAD AND NECK (Continued):

multiple areas of cortical contusion along with the hemorrhagic gunshot wound laceration. The ventricular system is in the midline, not enlarged and wet with blood. The basal ganglia are unremarkable except for contusion on the left. There is no other evidence of pathologic change or traumatic injury on multiple sections of the brain except for multiple scattered deep white matter petechiae and cortical contusions. Multiple sections of the brainstem and cerebellum show massive laceration at the pontomedullary junction, superior left cerebellar hemisphere and a perforating wound track through the right cerebellar hemisphere. Examination of the floor and the base of the skull show linear irregular fractures of the anterior, medial, and posterior cranial fossae. The entry wound on the lateral left parietal bone shows internal beveling.

There is no pathologic change or traumatic injury within the oral cavity. Dissection and examination of the neck shows no pathologic change or traumatic injury to the soft tissue, cartilaginous or vascular structures of the anterior neck. The carotid arteries and jugular veins are patent. The upper airway is patent but contains bloody mucus. The thyroid gland is unremarkable.

CHEST:

Dissection of the anterior chest shows no evidence of deep soft tissue injury, rib or sternal fracture. Internal examination of the chest cavity shows the heart and lungs with the usual shape and in the usual position. The heart weighs 350 grams. The right lung weighs 564 grams. The left lung weighs 480 grams. The pericardial and pleural cavities are wet with serous fluid. The great vessels arise from and return to the heart in a normal manner. There are no pericardial or pleural adhesions. The epicardial and pericardial surfaces of the heart are smooth. Multiple sections of the coronary arteries are patent. Multiple sections of the heart show red-brown myocardium with no hemorrhage, scarring or necrosis. The right ventricle is 5 millimeters thick. The right ventricle diameter is 5 centimeters. The left ventricle is 16-17 millimeters thick. The left ventricle diameter is 3 centimeters. The endocardial surfaces are smooth and the valves are thin and flexible with no fusion, vegetation or thickening. The tricuspid, pulmonary, mitral and aortic valves are 11.0, 6.5, 10.0, and 6.5 centimeters in circumference each, respectively. The posterior mediastinum including the esophagus and lymph nodes are all unremarkable. The external and cut surfaces of both lungs are red-pink and purple. The cut surfaces show congestion and edema with no evidence of consolidation, tumor or emboli. The proximal and distal airways are patent but contain bloody mucus. The posterior ribs, lower cervical and thoracic vertebrae show no pathologic change or traumatic injury. The thoracic aspect of the diaphragm is unremarkable.

ABDOMEN:

The peritoneal cavity is wet with serous fluid. The gastrointestinal tract including the esophagus shows no pathologic change or traumatic injury. The stomach contains approximately 400 cubic centimeters of recently ingested partially digested food. The mucosal surfaces are intact with no evidence of hemorrhage or ulcer. The remaining abdominal visceral organs have the usual shape and are in the usual position. The visceral organ weights are: liver 1220 grams, spleen 110 grams, right kidney 110 grams, left kidney 120 grams and pancreas approximately 100 grams. The external and cut surfaces of the liver, gallbladder, pancreas, spleen, adrenal glands and kidneys show no other pathologic

NAME Bird, Keard
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ABDOMEN (continued):

change or traumatic injury except for marked visceral pallor. Within the pelvis, the ureters and urinary bladder show no traumatic injury or pathologic change.

CAUSE OF DEATH: Multiple gunshot wounds

MANNER OF DEATH: Homicide

OPINION: This 24 year old male identified as Keard Bird died as a result of multiple (6) distant-type gunshot wounds to the head and lower extremities resulting in skull fracture, brain laceration, soft tissue injury and death. There is no other evidence of traumatic injury or natural disease that would have resulted in his death. With the currently available information and the autopsy findings, the cause of death is multiple gunshot wounds and the manner of death is homicide.



Mark M. LeVaughn, MD
Chief Medical Examiner

MML/sp
T: 5/03/2012

EXHIBIT C

Preliminary Hearing Excerpt

IN THE COUNTY COURT OF LEFLORE COUNTY, MISSISSIPPI
STATE OF MISSISSIPPI

VS.

RALPH ARNOLD SMITH, JR.

DEFENDANT

TRANSCRIPT OF THE PROCEEDINGS HAD AND DONE IN
THE PRELIMINARY HEARING OF THE ABOVE STYLED CAUSE,
BEFORE HONORABLE KEVIN ADAMS, COUNTY COURT JUDGE,
LEFLORE COUNTY, MISSISSIPPI, ON THE 16TH DAY OF MAY,
2012, AT THE LEFLORE COUNTY COURTHOUSE, GREENWOOD,
MISSISSIPPI.

APPEARANCES:

Present and Representing The State:

DEWAYNE RICHARDSON, ESQUIRE
TIMOTHY JONES, ESQUIRE
Office of the District Attorney
P.O. Box 253
Greenwood, Mississippi 38935

Present and Representing Defendant:

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Attorney at Law
P.O. Box 1860
Oxford, Mississippi 38655

Court Reporter: Jennifer G. Flautt, CSR #1044
P.O. Box 75
Webb, Mississippi 38966

1 Q. When did you sign that on the 29th?

2 A. I don't know. I don't know what time it was.

3 Q. Approximately.

4 A. I don't remember. For his home, that would --
5 it would have been that morning. Probably before
6 lunch.

7 Q. Probably -- I'm sorry?

8 A. Before lunch time.

9 Q. Before lunch?

10 A. Yes, sir. If I remember correctly, I think
11 those for his house, his clinic and the house, the
12 house at 1201 River Road, were all signed at the same
13 time, approximately I'm going to say around lunch time,
14 a little before noon.

15 Q. Who drafted the statement of underlying facts
16 and circumstances?

17 A. The Attorney General's office along with help
18 from our assistant district attorney.

19 Q. And where was that actually drafted? In
20 Greenwood or Jackson?

21 A. Greenwood.

22 Q. Was it drafted on a computer at the Greenwood
23 Police Department?

24 A. No. It was drafted on the Attorney General's
25 Cyber Crime Unit who was here helping us with our
26 warrants. It was drafted on their computer, their
27 laptop.

28 Q. Who called Dr. Smith at his home at 2:00 a.m.
29 on April 29th? Was that you?

1 STATE OF MISSISSIPPI

2 COUNTY OF LEFLORE

3 CERTIFICATE OF COURT REPORTER

4 I, Jennifer G. Flautt, Official Court Reporter
5 for the County Court of Leflore County, State of
6 Mississippi, do hereby certify that to the best of my
7 skill and ability I have reported the proceedings had
8 and done in the Preliminary Hearing in STATE OF
9 MISSISSIPPI V. RALPH ARNOLD SMITH, JR., and that the
10 foregoing one hundred ten (110) pages contain a true,
11 full and correct transcript of my stenographic notes
12 and digital recording taken in said proceedings.

13 I do further certify that my certificate
14 annexed hereto applies only to the original and
15 certified transcript. The undersigned assumes no
16 responsibility for the accuracy of any reproduced
17 copies not made under my control or direction.

18 This the 20th day of June, 2012.

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Jennifer G. Flautt
JENNIFER G. FLAUTT, CSR# 1044