

COPY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI
NO. 2007-KA-00217-COA

ADAM TROY PETERS

APPELLANT

V.

FILED

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STATE OF MISSISSIPPI

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COURT OF APPEALS

APPELLEE

BRIEF OF APPELLANT

MISSISSIPPI OFFICE OF INDIGENT APPEALS

George T. Holmes, MSB No. [REDACTED]

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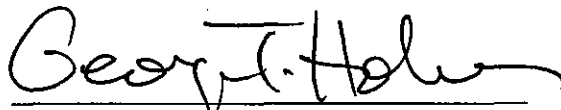
APPELLEE

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 this Court may evaluate possible disqualifications or recusal.

1. State of Mississippi
2. Adam Troy Peters

THIS 11th day of May 2007.



GEORGE T. HOLMES
Mississippi Office of Indigent Appeals
Counsel for Adam Troy Peters

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STATEMENT OF THE ISSUES

**ISSUE NO. 1: WHETHER THE TRIAL COURT ERRED IN NOT
REQUIRING THE STATE TO IDENTIFY A CONFIDENTIAL
INFORMANT?**

ISSUE NO. 2: WHETHER THE EVIDENCE SUPPORTS THE VERDICT?

STATEMENT OF THE CASE

This appeal proceeds from a judgment of conviction against Adam Troy Peters for armed robbery out of the Circuit Court of Marion County, Mississippi, following a jury trial held July 10, 2006, with the Honorable Michael R. Eubanks, Circuit Judge, presiding. Mr. Peters was sentenced to a term of twenty-five (25) years imprisonment as an habitual offender under MCA §99-19-81 (1972), and, is presently incarcerated with the Mississippi Department of Corrections.

FACTS

According to the trial testimony, the Subway Sandwich Shop in Columbia MS, in Marion County, was robbed by a man brandishing a pistol on September 19, 2001. The two clerks on duty at the time said the robber entered the store through a back door, by force, at closing time about 10:00 p. m. and informed them that this was a robbery. [T 94-98, 112-17, 123-34, 138-39, 144-54, 158-59]. The cash register was relinquished and the

robber left with about \$500.00. *Id.*

Mr. Peters, who had been arrested on an unrelated warrant from Ohio, became a suspect in the robbery when a confidential informant allegedly identified Peters to investigating officers as having been seen coming out of the back of the sandwich shop about the time of the robbery looking nervous and shaking. [T. 61-64]. The informant also said that the nervous person got into a white automobile with two females and left. *Id.* A motion to require the state to disclose the confidential informant was overruled. [*Id.*; R. 89-90].

Initially, the two store workers failed to recognize Adam Troy Peters in a photographic line-up and identified someone else as the perpetrator. [T. 89-98, 115-17, 138, 151-52, 158-59]. Subsequently, the employees identified Adam Troy Peters in a live line-up as the robber. *Id.*

Mr. Peters was interviewed by investigators and allegedly confessed to the details of the crime. [Exs. 21, 22; T. 104-110; R. 93-122] The purported confession included details that the robber was aided by two females, one of whom furnished the weapon which was used, and that all of them fled in a white automobile. *Id.*

SUMMARY OF THE ARGUMENT

The defense was hindered by the state not being required to disclose the identity of a confidential informant in investigating the case thus denying Mr. Peters full access to

his rights of confrontation under the United States and Mississippi Constitutions. The verdict was not supported by the evidence.

ARGUMENT

ISSUE NO. 1: WHETHER THE TRIAL COURT ERRED IN NOT REQUIRING THE STATE TO IDENTIFY A CONFIDENTIAL INFORMANT?

Arguing that the confidential informant was an eye witness to the offense in this case, the defense asked the trial court by motion to require full disclosure of the informant; but, the court denied the request. [T. 61-64; R. 89-90]. This denial appears to rule afoul of applicable rules and case law.

According to *Turner v. State*, 950 So.2d 243, 246-47 (Miss. App. 2007) a confidential informant's identity is required to be disclosed if that person:

is to be produced at hearing or trial, or failure to disclose his or her identity will infringe on the constitutional rights of the accused, or the informant is an eyewitness to the events which lead to the charges against the defendant. URCCC 9.04(B)(2). If the informant "is not a material witness to the guilt or innocence of the accused," disclosure is within the discretion of the trial court. [cite omitted] . . . when the disclosure of the confidential informant's identity is warranted, "[a]t a minimum, ... the [S]tate must, in good faith, disclose all information in its possession, including that of location." [cite omitted]

Peters' defense was one of misidentification. Both of the sandwich shop workers independently identified another person as the robber in a photographic line-up missing the appellant, whose photograph was in the line-up, in the process prior to the live line-up

where Peters was identified. [T. 89-98, 115-17, 138, 151-52, 158-59]. In order for the appellant here to have had the benefit of all of his fundamental due process rights and rights of confrontation, under Miss. Const., Article 3, § 26 , U. S. Const., Sixth Amend, and U. S. Const., Fourteenth Amend., the state should have been required to disclose the identity and whereabouts of the confidential informant in this case. The informant saw the crime as it was in progress. He was, therefore, an eyewitness under URCCC 9.04(B)(2).

The remedy is reversal. In *Graves v. State*, 767 So.2d 1049, 1054 (Miss. App.2000), a trial court refused to require the state to identify a confidential informant who participated in a drug sale. The *Graves* court reversed citing *Cousan v. State*, 543 So.2d 177 (Miss.1989) Here, the confidential informant did not participate in the crime, but, was clearly a contemporaneous eye witness to the offense, which alone should have required disclosure; but, in conjunction with the limitation of the appellants cross-examination rights certainly requires reversal if the above authorities are applied.

ISSUE NO. 2: WHETHER THE EVIDENCE SUPPORTS THE VERDICT?

Normally, conflicting testimony is relegated to the jury for resolution. This is as it should be, in most cases. However, there is a dividing line when discrepancies are so conflicting, in the state's case in chief, that this court has to say that a verdict of guilty cannot be supported. *McClain v. State*, 625 So.2d 774, 778 (Miss.1993). In this case the

testimony is at best unreliable and insufficient to support the conviction due to the identification of another person by the state's witnesses who only identified Peters after multiple exposures to him or his photograph at the Columbia Police Station.

Moreover, without reliable independent proof of guilt, Peters' alleged confession alone is insufficient to support a verdict of guilty in a capital case. In *Harris v. State*, 155 Miss. 398, 124 So. 493, 494-95 (1929), Harris was charged with killing a man named George Gaden who's actual identity was never proven, nor was it shown that the body in question belonged to George Gaden. The state argued that Harris admitted hitting Gaden in the head with an ax during an argument, and that the *corpus delicti* was thereby established. The *Harris* court rejected this argument with the observation that Harris confessed that Gaden was hit in the head, Harris did not confess that Gaden was dead. *Id.* The *Harris* court reversed on the ground that the state had not presented proof of identity sufficient to establish the requisite *corpus delicti*. *Id.*

The *Harris* court stated that:

the confessions of the prisoner out of court even that he did kill a certain man for whose murder he was indicted [is] not sufficient to establish corpus delicti.

* * *

... The corpus delicti must be proved beyond a reasonable doubt by evidence other than such extrajudicial confessions. 124 So. at 495 [cite omitted]

This statement of the law, has been quite longstanding. In *Stringfellow v. State*, 26 Miss. 157, 59 Am. Dec. 247 (1853), the court said:

We believe that the doctrine which holds that, in capital felonies, the prisoner's confession, when the corpus delicti is not proven by independent testimony, is insufficient for his conviction, best accords with the solid principles of reason... 26 Miss. at 165-66.¹

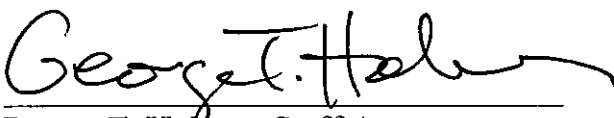
Looking at the facts of this case in the light most favorable to the state, a reasonable juror could not conclude guilt beyond a reasonable doubt. The testimony would lead a reasonable juror to have reasonable doubt about the guilt of Adam Troy Peters. It follows that the jury's verdict is not supported by credible evidence and is contrary to the overwhelming weight of evidence. Peters respectfully requests that the Court reverse his conviction, and order a new trial.

CONCLUSION

Therefore, Peters is entitled to a new trial.

Respectfully submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS
For Adam Troy Peters, Appellant

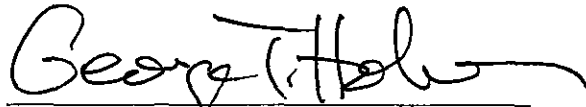
By: 
George T. Holmes, Staff Attorney

¹

See also Roberts v. State, 121 So. 279 (MS 1929), and Burkhalter v. State, 302 So. 2d 503 (MS 1974) ["The rule is that the state must establish corpus delicti aliunde an out of court confession of the crime with which the accused is charged."]

CERTIFICATE

I, George T. Holmes, do hereby certify that I have this the 1st day of May, 2007, mailed a true and correct copy of the above and foregoing Brief Of Appellant to Hon. Michael R. Eubanks Circuit Judge, P. O. Box 488, Purvis MS 39475, and to Hon. Hall Kittrell, Dist. Attorney, 500 Courthouse Sq., Columbia MS 39429, and to Hon. Charles Maris, Assistant Attorney General, P. O. Box 220, Jackson MS 39205 all by U. S. Mail, first class postage prepaid.


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