

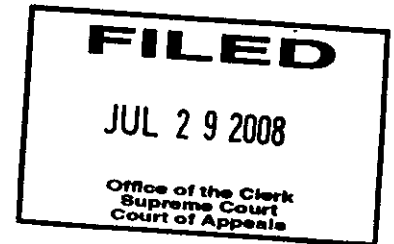
COPY

IN THE SUPREME COURT OF MISSISSIPPI

WENDY MICHELLE CHEATHAM

v.

STATE OF MISSISSIPPI



NO. 2008-KA-00090-COA

Appeal from Circuit Court of Leake County, Mississippi

BRIEF FOR APPELLANT

Edmund J. Phillips, Jr.
Attorney at Law
P. O. Box 178
Newton, MS 39345
Telephone 601-683-3387
Facsimile 601-683-3110

COUNSEL FOR APPELLANT

Oral Argument IS Requested.

CERTIFICATE OF INTERESTED PERSON

WENDY MICHELLE CHEATHAM

v.

STATE OF MISSISSIPPI

NO. 2008-KA-00090-COA

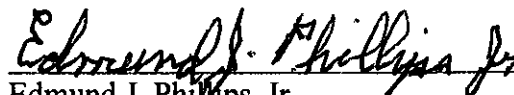
The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or judges of the Court of Appeals may evaluate possible disqualification or recusal.

**Honorable Mark Duncan
District Attorney
P.O. Box 603
Philadelphia, MS 39350**

**Honorable Marcus D. Gordon
Circuit Court Judge
P.O. Box 220
Decatur, MS 39327**

**Honorable Jim Hood
Attorney General of MS
P.O. Box 220
Jackson, MS 39205**

**Wendy Michelle Cheatham
APPELLANT**



Edmund J. Phillips, Jr.
Attorney of Record for Wendy Michelle Cheatham

TABLE OF CONTENTS

	<u>Page No.:</u>
CERTIFICATE OF INTERESTED PERSONS	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF ISSUES	1
STATEMENT OF THE CASE	1-5
SUMMARY OF THE ARGUMENT	5
ARGUMENT	5-7
CONCLUSION	8
CERTIFICATE OF SERVICE	8

TABLE OF AUTHORITIES

Cases

Anderson v. State, 184 Miss. 892, 186 S0. 836 (1939).	Page 7
Edge v. State, 393 So. 2d 1337 (Miss. 1981).	Page 5
Hedrick v. State 637 So. 2d 834 (Miss. 1994).	Page 5
In Re Winship, 397 U.S. 358, 364 90 S. Ct. 1068 (1970).	Page 5
Jones v. State, 798 So. 2d 124 (Miss. 2001).	Page 5
Love v. State, 208 S. 2d 755 (Miss. 1968).	Page 5

STATEMENT OF THE ISSUES

1. The verdict is against the overwhelming weight of the evidence.

STATEMENT OF THE CASE

Wendy Michelle Cheatham appeals her conviction from the Circuit Court of Leake County, Mississippi, of possession of more than 30 grams of methamphetamine, and a sentence of 10 years in the custody of the Mississippi Department of Corrections, four (4) years of which is suspended, with the Defendant placed on post-conviction supervision for a period of four (4) years and ordered to participate in long term drug and alcohol treatment while in confinement.

FACTS

Prior to Appellant's trial co-indictees McKee and Allen pled guilty to possession of methamphetamine.

Jason McKee lived in a trailer in rural Leake County, Mississippi (T-91).

On April 11, 2007, the Leake County sheriff, some deputy sheriffs and some members of the Mississippi Bureau of Narcotics conducted a raid of this trailer pursuant to a search warrant (T-25).

Appellant and her man friend, Malcolm Wayne Allen, Jr., had recently driven to the camper and entered. Just before the raid, Appellant exited the trailer, went to her vehicle to get a telephone, and returned to the trailer.

Thereupon the said law enforcement officers emerged from the woods surrounding the trailer to enforce the search warrant.

Sheriff Waggoner broke a sewer pipe leading from the trailer, and what appeared to be methamphetamine fell out on the ground.

Craig Taylor, who at the time of the search was a Mississippi Bureau of Narcotics

agent (T-32), assisted in the search. Appellant, McKee and Allen were removed from the trailer (T-29).

On a bunk bed in the trailer, Taylor found a bag containing smaller bags of methamphetamine in it and so testified.

Clay McCombs testified that he was both a Leake County Deputy Sheriff and an agent of the Mississippi Bureau of Narcotics, that he took part in the search (T-37), that he put the methamphetamine that had fallen on the ground from the sewer pipe into a paper bag (T-42), that he took charge of the bag of methamphetamine that had been on the bunk, that he found a small metal container with apparent methamphetamine inside, that he found another bag of what appeared to be methamphetamine under the bunk bed (T-49), that he found some methamphetamine on a dining room table, and found more methamphetamine in the toilet in the trailer (T-52), that the three people from the trailer were taken to the Leake County jail and that he questioned the Appellant.

On motion to suppress a statement Appellant had made at said interrogation, the Court held a Jackson-Denno hearing out of the presence of the jury concerning the voluntariness of the confession (T-54 et seq).

McComb testified (T-59, 60):

- A. I asked her whose meth it was, and she claimed that it was hers. She stated that it was all hers. I asked her how she obtained it, who she got it from. She stated that she had made it. I asked her to tell me the process of how she made it. She stated that she could not; that she had that recipe written down. At that point I asked her again was it all hers or was she covering for someone else. At that time she didn't really give me an answer, but her body language changed. She just kind of dropped her head and wouldn't talk to me. ✕

After the State presented jailer Sarah Thames to corroborate McCombs account of

the interrogation, the prosecution rested on the motion. Appellee called Alisa Welsh, employer of Leake County Correctional Facility who testified that Appellant asked her to notify McCombs that Appellant wanted to talk to him (T-72). She testified that she notified the sheriff's office but McCombs never came.

Appellant testified on the motion that she at different times had asked Ms. Welsh and jailer Josh Smith to contact McCombs, but McCombs never came, and that her purpose in making the effort to talk to McCombs was to recant her confession.

She further testified (T-75, 76):

- Q. Well, did you admit to Clay - -
A. Yes, I did. I did say that it was mine.
Q. And why did you do that?
A. Because I didn't want Wayne to go to prison.
He was already a convicted felon.
Q. And he was one of the other defendants in this case?
A. Yes, sir.
Q. All right. Now, was that a truthful statement you gave Clay?
A. No, sir, it was not.
Q. And the reason - - why did you want to talk to him again?
A. Because I wanted to tell him that. I even sent that word to him.
Q. Do you know how to cook meth?
A. No, sir, I do not.
Q. You say the statement was not truthful. Is that correct?
A. That's correct.

*wanted to
recant
his confession*

✱ The Court found the confession voluntary (T-77).

The jury was recalled and McCombs reiterated his account of the confession to the jury, and on cross examination testified that McKee and not Appellant was the subject of the search, as shown on the search warrant, that the trailer was owned by McKee and that it had been located on land owned by McKee or his family (T-91), that when he went in the trailer McKee was standing by the toilet (T-92) and that Allen and McKee had already pled guilty to the charge (T-101).

Sarah Thames again verified McCombs' account of the interrogation.

Keith McMann, forensic scientist at the Mississippi Crime Lab, testified that the various substances found in and around the trailer and delivered to the lab were methamphetamine.

The State rested (T-122) and the Court denied Appellant's motion for a directed verdict.

Appellant's first witness, reiterated her motion testimony and Jason McKee testified that Appellant had accompanied a friend of his to visit him, had been at the trailer five to ten minutes when the raid began (T-127), that he had pled guilty to possession of the methamphetamine, that the drugs were his and not Wendy Cheatham's, that as part of his plea bargain the Court had retained jurisdiction of the case "for truthful testimony" (T-128) and that (T-129):

Q. And so the meth that was found there, one last time,
whose was it?

A. It was mine. It all belonged to me.

that Wayne Allen was probably there to buy drugs and that Appellant had never bought drugs from him.

Appellant testified that she had accompanied Wayne Allen to visit McKee and to get window tint from McKee for Allen's vehicle, that she did not own, touch or cook any of the drugs, that she had been at McKee's trailer five to ten minutes when the raid began, that she did not know how to cook methamphetamine, and that she had confessed that the drugs were hers and that she had cooked or prepared them because she thought in doing so she was protecting Allen, with whom she had a romantic relationship (T-135).

On cross examination she testified (T-136):

Q. If you and Wayne just went there for a window tint,
why didn't you tell them it was all Jason's?

- A. Because when I walked in, Wayne started opening up a can on the - - a can of spray on the seat here and pulling some stuff out. Well, I got up and asked him where the phone was. I wanted a cell phone. He said it was in the truck. So I went to the truck and looked for the cell phone. When I came back, there was dope everywhere, and I knew Wayne was involved in it.

SUMMARY OF THE ARGUMENT

An uncorroborated confession accompanied by credible testimony that the confession is false, from a witness with no apparent motivation to lie, does not authorize conviction. On review such a conviction should be overturned.

ARGUMENT

THE VERDICT IS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE

In a criminal trial, the State bears the burden of proving each element of the offense charged beyond a reasonable doubt and of overcoming the presumption of innocence. *Hedrick v. State* 637 So. 2d 834 (Miss. 1994); *Jones v. State*, 798 So. 2d 124 (Miss. 2001); *Edge v. State*, 393 So. 2d 1337 (Miss. 1981); *Love v. State*, 208 S. 2d 755 (Miss. 1968).

The United States Supreme Court held in *In Re Winship*, 397 U.S. 358, 364 90 S. Ct. 1068 (1970) “that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged”.

The entire set of circumstances surrounding Appellant's arrest, the content of her confession, the response to it by the interrogating officer made unlikely the truth of the content of her confession. In the confession she claimed that she had manufactured the drug, but could not remember how to do it absent a written recipe.

The fact that before the raid she had been at the trailer only five to ten minutes part of which had been spent going back outside to Wayne Allen's vehicle to retrieve a cell phone, made it unlikely that she had prepared and hidden the drugs in the various locations where they were found.

The content of the confession, that she had not only owned the drugs but had cooked or prepared them, made much more likely her testimony that she, in confessing, was simply trying to protect the man with whom she had a romantic relationship.

The testimony of her co-indictee, McKee, who admitted that the contraband was his, and not hers despite the fact that, in testifying so, he endangered his plea bargain if he was untruthful, confirmed her own testimony that the confession was false.

The only evidence against her other than her presence at the trailer for a very short time was her confession. ^① The set of circumstances surrounding her presence there, ^② the unlikelihood of the truth of the content of the confession, ^③ the testimony of McKee that she had no ownership of the drugs (and that they belonged to him), ^④ the fact that this testimony, if untruthful, was against his penal interest, ^⑤ the simple fact that she had no dominion over the trailer (it was McKee's) and that the documents surrounding the

search warrant named McKee and not her as the suspected possessor of contraband drugs, the unlikeliness of the details of the confession, the "believability" of her motive for falsely confessing militate against the credibility of the confession.

If a confession is uncorroborated, that fact is sufficient to require granting a motion for a directed verdict. *Anderson v. State*, 184 Miss. 892, 186 So. 836 (1939). In *Anderson*, the Appellant's confession that he had removed handcuffs from a prisoner's arms was insufficiently corroborated to authorize conviction of aiding the prisoner's escape, in absence of corroborating evidence that the handcuffs were removed by someone other than the prisoner.

In the case before the Court, the absence of corroboration of the confession was accompanied by testimony of a witness, who had a compelling motivation to be truthful and no apparent motive to lie, that the confession was false. McKee's testimony verified Appellant's innocence, and combined with the circumstances of the raid and the unlikeliness of the details of the confession could not make the confession constitute proof of Appellant's guilt beyond a reasonable doubt, because the possibility that Appellant held no dominion over the contraband was not beyond reason. No reasonable juror could have found otherwise.

The verdict should be overturned.

CONCLUSION

The verdict must be overturned.


RESPECTFULLY SUBMITTED,


EDMUND J. PHILLIPS, JR.
Attorney for Appellant

CERTIFICATE OF SERVICE

I, Edmund J. Phillips, Jr., Counsel for the Appellant, do hereby certify that on this date a true and exact copy of the Brief for Appellant was mailed to the Honorable Mark Duncan, P.O. Box 603, Philadelphia, MS 39350, District Attorney, the Honorable Marcus D. Gordon, P.O. Box 220, Decatur, MS 39327, Circuit Court Judge and the Honorable Jim Hood, P.O. Box 220, Jackson, MS 39205, Attorney General for the State of Mississippi.

DATED: July 29, 2008.


EDMUND J. PHILLIPS, JR.
Attorney for Appellant