

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

TYRONE FINCHIS

APPELLANT

V.

NO. 2009-KA-0625-SCT

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF THE APPELLANT

**On Appeal from the Second Judicial District of Bolivar County Circuit Court
Bolivar County, Mississippi**

MISSISSIPPI OFFICE OF INDIGENT APPEALS

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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 this court may evaluate possible disqualifications or recusal.

1. State of Mississippi
2. Tyrone Finchis, Appellant
3. Honorable Laurence Y. Mellen, District Attorney
4. Honorable Charles E. Webster, Circuit Court Judge

This the 25th day of August, 2009.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:



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STATEMENT OF THE ISSUE

THE TRIAL COURT ERRED IN DENYING THE MOTION FOR NEW TRIAL.

STATEMENT OF THE CASE

This appeal proceeds from the Second Judicial District of Bolivar County Circuit Court in Bolivar County, Mississippi. A Bolivar County grand jury indicted Tyrone Finchis on three (3) counts : Count I - shooting into a dwelling house, Count II - aggravated assault, and Count III - aggravated assault. [RE 4-5]

On May 15, 2008, Finchis's trial began. Both parties believed the case was based on circumstantial evidence however, at trial, one of the State's key witnesses testified that he was able to positively identify Finchis as the shooter. [Tr. 3] The court granted a mistrial based on the grounds of newly discovered evidence. [RE 6] On December 8, 2008, Finchis' second trial began with the Honorable Charles E. Webster, Circuit Court Judge, presiding. The jury rendered guilty verdicts as to all charges.

The Court sentenced Finchis as follows: Count I - sentenced eight (8) years in the Mississippi Department of Corrections, consecutive to any previously imposed sentence; Count II - sentenced to fifteen (15) years in MDOC, concurrent to Count I; and Count III - sentenced to fifteen years (15) in MDOC, consecutive to Counts I and II. [RE 11-15] Finchis is currently incarcerated with the Mississippi Department of Corrections.

On January 20, 2009, Graves filed his motion for J.N.O.V. , or in the alternative, motion for a new trial. [RE 17] The court denied this motion and Graves timely files this appeal. [RE 19-20]

STATEMENT OF THE FACTS

On June 15, 2007, before dawn, Tyrone and Jennifer Williams were shot inside their home in Cleveland, Mississippi. [Tr. 37-38, 66] A gunman approached the married couple's bedroom

window, pushed in the air conditioner window unit, and fired several shots into the house. [Tr. 88] Jennifer Williams was shot twice in her back and Tyrone Williams was shot once in his leg. [Tr. 113]

The shooting occurred before daylight and there were no lights turned on outside or inside the home at the time. [Tr. 93] The couple's bedroom was located on the south side of the house, away from the illumination of any street lights. [Tr. 39, 45] The couple's television was turned on and happened to be the sole source of light for the room at the time. [Tr. 93] Despite these circumstances, Tyrone Williams identified Tyrone Finchis as the alleged shooter. [Tr. 112-14] Prior to trial, Tyrone Williams's statement to police was that he only saw the shooter's wrist. [Tr. 114] However, at trial, Tyrone Williams testified that he clearly saw Tyrone Finchis' face in the window at the time of the shooting. [Tr. 112-14] Jennifer Williams could not identify the shooter because her back was turned away from the shooter's direction. [Tr. 111]

According to Tyrone Finchis, he was not at the Williams' house on the morning of June 15th. Instead, he was at the home of Bobbie Gill, the mother of his girlfriend, Bridgett Jones. [Tr. 187] Finchis went to Gill's house to get his car keys. Unfortunately, Gill and Finchis got into an argument and Finchis left Gill's house without his keys. [Tr. 188] Gill did not testify at trial.

After leaving Gill's house, Finchis headed to Shondria Howard's house to look for Howard's brother, Quintaurus Howard. [Tr. 189] Days earlier, Finchis' nephew, Chaswick Finchis, reported his gun missing. Finchis and Howard happened to be riding with Chaswick on the day he discovered his gun was stolen. [Tr. 99-100] Chaswick reported to the police that either of the men riding with him could have been responsible for taking his gun. [State's Exhibit 8] Tyrone Finchis went to confront Quintaurus Howard about the missing gun because Tyrone believed Quintaurus was responsible for stealing the gun from his nephew. [Tr. 189-90]. Unsuccessful in obtaining the gun,

Finchis took Quintaurus's gun as collateral until he received Chaswick's gun back from Howard. [Tr. 191]

At trial, Howard acknowledged that Finchis came to her home the morning of June 15th. [Tr. 140] However, Howard's account of the nature of Finchis' visit differed from Finchis' testimony. [Tr. 140-47]

Sometime after Finchis arrived at Howard's house, Derrick Jeremiah (Jennifer Williams' brother) and Antonio Cleveland (Williamses' relative) came looking for Finchis. [Tr. 125-26] The men attempted to confront Finchis because they believed Finchis was responsible for shooting the Williamses. Finchis attempted to avoid a confrontation and asked Shondria Howard to take him to his home in Renova, Mississippi. [Tr. 192]

Jeremiah acknowledged that Cleveland and he followed Finchis to Howard's house that morning, however, Jeremiah claimed they did not want to harm Finchis. [125, 133] Jeremiah and Cleveland testified that backed away from Finchis after he pulled a weapon on them. [Tr. 126-27] According to Finchis, he had Quintaurus' gun in his hand at the time because he was taking the weapon for collateral, not to threaten the men with the gun. [Tr. 191] The parties dispute the color and description of the gun Finchis carried that morning. [Tr. 126, 150, 200]

Finchis and Howard never made it to Renova. [Tr. 192] Howard testified that Finchis directed her to drive to his sister's house. [Tr. 144] According to Finchis, however, Howard voluntarily took him to his sister's house because Howard knew that was where Chaswick's missing gun was located. [Tr. 192-93] Finchis testified that Howard told him the gun was hidden inside a stove located in the shed near the house. [Tr. 193]

Unbeknownst to Finchis, Jeremiah and Cleveland followed Finchis and Howard as she drove Finchis to his sister's house. [Tr. 127] The men parked several houses away and informed police

that Finchis had entered the shed near his sister's house.

The police arrived at the shed shortly after Jeremiah and Cleveland reported Finchis' location. [Tr. 155] According to Finchis, he was only in the shed looking for Chaswick's gun. [Tr. 193] He was unaware that a shooting had occurred that morning. The police arrested Finchis and later located a gun in the shed as well. [Tr. 155,158] Ballistic tests revealed that the gun found in the shed was the same gun used in the shooting at the Williamses' home. [Tr. 181] The gun was also the same weapon that Chaswick Finchis reported as stolen several days prior to the shooting. [Tr. 56] The police did not question Quintaurus Howard as a possible suspect in the Williamses' shooting. [Tr. 61]

During the police investigation, the police tested both of Finchis's hands for the presence of gun shot residue (GSR). Finchis tested negative for both hands. [Tr. 83-84].

Finchis was arrested and jailed for the shootings. While awaiting his initial appearance, he called Shondria Howard from the county jail. [Tr. 146] This phone conversation was taped and transcribed for the jury. [S-26] While the State attempted to argue that several of Finchis' statements amounted to a confession, Finchis attempted to explain to the jury that those statements were taken out of context and that he never confessed to shooting the Williamses. [Tr. 201] During jury deliberations, the jury questioned the court about the contents of the transcribed phone conversation. [Tr. 239-241] The jury requested to review the transcript but, since the transcribed telephone conversation was not admitted into evidence, the jury was unable to review the transcript during jury deliberations. [Court Exhibit A, RE 8]

Finchis was convicted on all counts in his indictment and sentenced to a total of thirty-eight (38) years to serve in the Mississippi Department of Corrections.

SUMMARY OF THE CASE

Tyrone Finchis was a victim of being at the wrong place at the wrong time. His conviction is based on the faulty eye-witness testimony of one victim. At the end of the day, Finchis was a victim of a series of misfortunate events and the trial court should have granted his motion for a new trial.

ARGUMENT

THE TRIAL COURT ERRED IN DENYING THE MOTION FOR NEW TRIAL.

i. Standard of Review

The Mississippi Supreme Court has compared the standard of review of motions for new trials as being similar in nature to the Court sitting as a thirteenth juror. *Ross v. State*, 954 So. 2d 968, 1016 (¶127) (Miss. 2007). "A finding that the verdict was against the overwhelming weight of the evidence indicates that the Court disagrees with the jury's resolution of conflicting evidence and requires a new trial." *Id.*

The Court will order a new trial and allow the evidence to be placed before a second jury if the first jury's guilty verdict was based on "extremely weak or tenuous evidence, even where that evidence is sufficient to withstand a motion for a directed verdict." *Id.* (citing *Lambert v. State*, 462 So. 2d 308, 322 (Miss. 1984) (Lee, J., *dissenting*). The Court will only disturb the jury's verdict when the verdict is so contrary to the overwhelming weight of the evidence that it would cause an unconscionable injustice if the verdict were allowed to stand. *Bush v. State*, 895 So. 2d 836, 844 (¶18) (Miss. 2005).

ii. The Police Investigation was based on Tyrone Williams' faulty eye-witness account

Despite the unreliable eye-witness testimony of Tyrone Williams, the impermissible hearsay of unnamed declarants, and a lack of physical evidence to support the conviction, Finchis was found

guilty of all three charges in his indictment. The trial court erred in denying Finchis' motion for a new trial because the verdict was based on extremely weak and tenuous evidence.

The initial identify of Tyrone Finchis as a the sole suspect in the shooting of Tyrone and Jennifer Williams was based on a series of hearsay statements. Jennifer Williams testified that she did not see the shooter at the time of the shooting. [Tr. 89] She acknowledged that it was pitch black outside and her back was turned away from the shooter's direction. Without her ability to identify the shooter, the State's case rested on Tyrone Williams' identification of the shooter.

Tyrone Williams first informed police that he only saw the shooter's wrist. [Tr. 114] Both the prosecution and defense attorney believed that the trial would be based on circumstantial evidence based on this testimony. [Tr. 3] However, at Finchis's first trial in May 2008, Williams changed his testimony to say that he identified Finchis as the shooter because he could see his face through the window. The court granted a mistrial based on this newly discovered evidence. [RE 9] At the second trial, Williams attempted to explain that he initially informed the police that he saw the shooter's face but that information was just not recorded. [Tr. 114] However, nearly a year past from the actual shooting until the day of trial before Tyrone Williams decided to testify that he actually saw the shooter's face.

Aside from Tyrone Williams' substantial delay in identifying Finchis as the shooter, there were large inconsistencies in his trial testimony. At trial, Williams told the jury that he immediately identified Finchis as the shooter by calling out his name. [Tr. 112]. However, Jennifer Williams made no mention that her husband called out Finchis' name during the gunfire. [Tr. 88]

Jennifer's belief that Finchis was the shooter was based on her assumption that Finchis had been calling her phone prior to the shooting and hanging up without talking. [Tr. 92] Jennifer acknowledged that she never spoke to the person on the phone and the phone's caller ID feature did

not identify the caller's number. Her belief that Finchis was the caller was simply based on her husband's accusation that Finchis was the caller. For this reason, she believed that Finchis was also the shooter. According to Tyrone Williams, however, he never spoke with Finchis on the telephone. [Tr. 120]

The remaining witnesses and police officers all received information that Tyrone Finchis was the shooter, based on Tyrone Williams' faulty testimony. Investigator Melvin Sparks testified that he observed the Williams' home after the shooting but he did not collect any evidence. [Tr. 67] Instead, he developed Finchis as a suspect after speaking with the Tyrone Williams at the hospital. Derrick Jeremiah also relied on Tyrone Williams' accusation when he pursued Finchis. [Tr. 130]

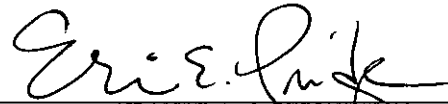
CONCLUSION

Tyrone Williams' identification Tyrone Finchis was implausible at best. The shooter was enveloped in complete darkness at the time of the shooting. The only light that shown in the house came from the television screen and Tyrone Williams lay on the farthest side of the bed, away from the window. Finchis' testimony was consistent with his theory of innocence and he prays that this Court would reverse his convictions for shooting into a dwelling and aggravated assault.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Erin E. Pridgen, Counsel for Tyrone Finchis, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

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This the 25TH day of August, 2009.


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