IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CHAZ PINKSTON — APPELLANT

VS. — NO. 2009-KA-1665

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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VERSUS — NO. 2009-KA-1665-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR APPELLEE

STATEMENT OF THE CASE

Procedural History

Chaz Pinkston was convicted in the Circuit Court of the First Judicial District of Hinds County on a charge of armed robbery and was sentenced to a term of 35 years in the custody of the Mississippi Department of Corrections. (C.P.31) Aggrieved by the judgment rendered against him, Pinkston has perfected an appeal to this Court.

Substantive Facts

Jeffery Jackson was employed as the branch manager for Merchants and Farmers Bank on Frontage Road in Jackson. On June 16, 2008, Mr. Jackson arrived at the bank between 7:30 and 7:45 a.m. As he "pulled into the bank," he

"noticed two ... individuals at the end of the bank" that appeared to be holding paint brushes. Mr. Jackson parked his car, got out, and "started to open up the bank" when "an individual approached" him and demanded that he open the door and let him enter. This man, who was wielding a firearm, "motioned for his friend," also armed with a gun, "to come in." They both began demanding that Mr. Jackson "open up the vault" and give them the cash inside. Mr. Jackson "started pleading with them," explaining that he could not open the vault because it was "on a time mechanism." At that point, the men demanded that he "go around to the corner of the bank to ... the teller windows" and get on his knees. After "rambling, going through stuff," they ordered him to open the door of the "cash room." (T.272-75) Mr. Jackson recounted what happened next as follows:

> About that time, the alarm was going off. You know, probably been going off a little while before then. And one of the individuals said, "What's that?" And I said, "That's the alarm, you know."
>
> And then one of the gentlemen just started walking down the teller window and he ... shot one of the computers and then walked around and shot another computer. Then he just exited the bank.
>
> (T.276)[1]

The men left the scene in a dark, older model Thunderbird or Cougar. (T.282-83)

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[1]The victim went on to testify that after the men departed, he got on his knees and prayed. He had thought he was going to be killed. (T.277)

Mr. Jackson identified the defendant as the shooter. He testified that Pinkston had been wearing a ball cap and a yellow or gold tee shirt. (T.276-79) Pinkston had not been wearing a mask, and Mr. Jackson eventually had been able to get a clear look at his face and to identify him from a photographic lineup. Ultimately, he testified that he had "no doubt" that Pinkston was the man who shot the gun and committed the armed robbery. (T.284-85) He maintained this position on redirect examination. (T.305)

Officer Donald Broom of the Jackson Police Department responded to the report of the armed robbery. He secured the scene, interviewed Mr. Jackson, obtained a description of the suspects, and called for the Crime Scene Investigation (CSI) unit. (T.308-09)

Sheryl Matorie, employed by the Jackson Police Department as a CSI investigator, testified that she responded to the bank on June 16. She photographed the scene and discovered two projectiles and computer fragments. (T.317-26) She also processed the Mercury Cougar in question. (T.329) Inside the car, she found a Comcast bill addressed to Chaz Pinkston. (T.344)

On June 16, Detective Juan Cloy of the Jackson Police Department was dispatched to the bank, where Mr. Jackson told him what had happened and described the suspects. (T.348-50) The following day, "the actual video footage from the surveillance footage was placed on the local news stations." Thereafter, "an individual ... called dispatch" to report the names of the suspects. Once Pinkston was developed as a suspect, Detective Cloy and Detective Tyrie Jones obtained warrants to arrest him and search his residence. Upon execution of the search

warrant, officers discovered a yellow tee shirt and a UPS cap that appeared to have been worn during the armed robbery. They also determined that Pinkston was the owner of a 1993 Mercury Cougar listed to the same address. (T.351-52)

Detective Jones testified that he was "called in" to interview Pinkston after he turned himself in. Having received the *Miranda* warnings, Pinkston elected not to give a statement. (T.388-91)

Two days later, while he was incarcerated in the Raymond Detention Center, Pinkston told facility commander John Cooley that he wanted to speak to a detective about his case. Officer Cooley then notified the detectives of this development. (T.425-26)

Sergeant Eric Smith of the Jackson Police Department testified that he and Lieutenant Joseph Wade interviewed Pinkston on June 18, 2008. Again, Pinkston was advised of his *Miranda* rights. (T.428-32) On this occasion, he executed a waiver of those rights and gave a statement set out below:

> Chuck and Ken planned a robbery at M & F Bank Monday, the 16th, 2008. Tamaris drove the vehicle. I sat in the passenger seat and Mallard in the back. We went inside the bank. I told the manager to lay down and then proceeded to go through the drawers and search for the money. I went in the room and made the alarm go off, and so while running away, the gun fired twice. Everyone was dropped off at their home and we went our separate ways.
>
> (T.438)

Lieutenant Wade corroborated Sergeant Smith's testimony. (T.465-70)

Pinkston testified that he did not make the statement admitted into evidence. (T.560) He testified that he was "at home" at the time of the armed robbery. On

cross-examination, the assistant district attorney asked him, "Mr. Pinkston, it comes down to your word against all these officers, Mr. Jackson and a video; is that correct?" Pinkston answered, "Exactly." (T.576-77)

SUMMARY OF THE ARGUMENT

The trial court did not err in admitting the defendant's statement into evidence. The state presented compelling proof that Pinkston gave the statement freely and voluntarily after a valid waiver of his rights. Pinkston's testimony during the suppression hearing simply created a factual issue which was properly resolved by the trial court.

Furthermore, Pinkston's failure to move for a continuance waived the alleged discovery violations. The defense gave the court no indication that it was unprepared to meet the evidence in question; thus, it cannot put the court in error on this point.

Finally, the state submits the record contains substantial credible evidence of Pinkston's guilty. The trial court did not err in overruling the motion for new trial.

PROPOSITION ONE:

THE TRIAL COURT DID NOT ERR IN ADMITTING THE DEFENDANT'S STATEMENT INTO EVIDENCE

Pinkston argues first that his statement should have been suppressed as involuntary. The state counters that the trial court did not err in resolving this issue against him.

Prior to trial, the court conducted a hearing on the defendant's motion to suppress his statement. The state first called Detective Tyree Jones, who testified that he and Detective Reginald Cooper interviewed Pinkston on June 18, 2008. After

Detective Jones gave him the *Miranda* warnings, Pinkston elected not to make a statement, and the interview ended immediately thereafter. (T.3-8)

Jon Cooley, the facility commander of the Raymond Detention Center, testified that he was "walking through booking" at the center when Pinkston told him that "he wanted to speak to a detective" about his charge.[2] Mr. Cooley then notified the Jackson Police Department of this development. (T.12-15)

Sergeant Eric Smith testified that on June 19, he "received word that Mr. Pinkston ... wanted to talk to a detective regarding ... the incident." Thereafter, Sergeant Smith and Lieutenant Joseph Wade interviewed Pinkston. Initially, Pinkston told the officers "that he had been in Raymond for the last two days, and he was tired and wanted to get everything over with." Once more, Pinkston was given the *Miranda* warnings. He initialed each sentence, indicating that he understood them. He then signed the waiver. Sergeant Smith testified that no one had threatened, coerced or in any way influenced him in order to obtain the waiver. Pinkston appeared to be awake and alert and to knowingly and voluntarily waive his rights. (T.20-26)

Pinkston went on to give a handwritten statement which he signed. Again, Sergeant Smith testified that the statement was not induced by threats, coercion, or promises of reward. After Pinkston gave the statement in his own words, the officers asked follow-up questions which he answered voluntarily. (T.26-32)

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[2]Mr. Cooley testified unequivocally that Pinkston initiated this conversation. (T.14)

After the state rested, Pinkston testified that he had not signed the waiver. He also denied authorship of the statement in question. He did testify that he had written a statement of approximately three lines, but that the officers "must have threw it away ... " (T.48-49) On cross-examination, he also testified that "[it] was a coerced statement. They told me to write it. They told me what to write." (T.78)

In rebuttal, Lieutenant Wade refuted Pinkston's testimony. Specifically, the lieutenant testified that Pinkston signed the waiver, gave the statement freely and voluntarily without coercion or promises of reward, and that he in fact wrote the statement and signed it as well. (T.89-95)

Sergeant Smith corroborated Lieutenant Wade's testimony in rebuttal. He also testified that to his knowledge, no one ever took a statement from Pinkston and threw it away. (T.98-100)

After hearing argument of counsel, the trial court ruled that the statement had been freely and voluntarily given. Accordingly, the motion to suppress was denied. (T.111-13)

In his challenge to the court's ruling, Pinkston suggests that this Court should take his testimony as true. (Brief for Appellant 4) To the contrary,

> [t]he resolution of issues of credibility is the province of the trier of fact. *Hester v. State*, 753 So.2d 463(¶ 24) (Miss. Ct. App. 1999). In a suppression hearing, that trier of fact is the trial judge. Where supported by credible evidence, the findings of fact of the trial court must be accepted by this Court. *Id.* Whether this Court, sitting as trier of fact, would have found otherwise is immaterial.
>
> *Jackson v. State*, 778 So.2d 786, 789 (Miss. App. 2001).

Here, the state offered the testimony of the officers present during the taking

of the statement. Those officers testified unequivocally that the statement was given without improper inducements, threats or coercion. They also specifically rebutted Pinkston's contradictory testimony. Obviously, "[t]here is credible evidence upon which the trial court could, and did, find this confession to be properly admissible." *Jackson*, 778 So.2d at 789. Under these circumstances, Pinkston cannot sustain his "heavy burden" to show error in the trial court's ruling. *Blakeney v. State*, 29 So.2d 46, 50 (Miss. App. 2009).

The state asserts the trial court's denial of the motion to suppress "was not manifestly wrong or contrary to the overwhelming weight of the evidence." *Chim v. State*, 972 So.2d 601, 606 (Miss. 2008). Pinkston's first proposition should be rejected.

PROPOSITION TWO:

PINKSTON'S FAILURE TO MOVE FOR A CONTINUANCE WAIVED THE ALLEGED DISCOVERY VIOLATIONS

During his direct examination of Jeffery Jackson, the assistant district attorney handed the witness a set of photographs of the bank. (T.278) Thereafter, this exchange was taken:

> BY MS. PALMER: Your Honor ... we'd just like to make an objection at this time.
>
> BY THE COURT: All right. What's the basis of the objection?
>
> BY MS. PALMER: Basically, that my client is asserting that this is the first opportunity that he has had to view these photographs.
>
> **BY THE COURT: All right. Well, had you reviewed them?**

BY MS. PALMER: I did this morning, Your Honor.

BY THE COURT: All right. Thank you. Overruled. They may be admitted.

(emphasis added) (T.278-79)

A second discovery issue arose later during the direct examination of Mr. Jackson, when the state sought to introduce the DVD taken from the bank security footage. Defense counsel objected on the ground that he defendant was "asserting that he just received his copy today. Indeed, we received it this morning." The court then asked, "When did you first see it?" (T.288-89) This discussion ensued:

BY MS. PALMER: We've had an opportunity, myself and Mr. Pinkston, to review it prior to the– another proceeding in this matter. Would have been at least–

BY MR. ROGILLIO: Yeah. He watched it.

BY MS. PALMER: –six to eight weeks ago.

BY MR. ROGILLIO: He watched the video several weeks ago. I mean, he's seen this. This certainly is not a shock to him.

BY THE COURT: All right. Overruled.

(emphasis added) (T.289)

Pinkston now contends his conviction should be reversed on the ground of "late discovery." (Brief for Appellant 5) The state counters that Pinkston's failure to request a continuance constitutes a waiver of the alleged discovery violations. *Murray v. State*, 20 So.3d 739, 743 (Miss. App. 2009), citing *Sims v. State*, 928 So.2d 984, 988 (Miss. App. 2006). Accord, *Willis v. State*, 911 So.2d 947, 950 (Miss. 2005), and *Shook v. State*, 552 So.2d 841, 850 (Miss. 1989). Defense counsel

acknowledged that she had reviewed the exhibits in question. By declining to move for a continuance,[3] she gave the court no indication that she was not prepared to meet the evidence.[4]

Pinkston cannot put the trial court in error for failing to grant relief which was not requested. His second proposition should be denied.

PROPOSITION THREE:

THE VERDICT IS NOT CONTRARY TO THE OVERWHELMING WEIGHT OF THE EVIDENCE

Pinkston contends finally that he is entitled to a new trial because the verdict is against the overwhelming weight of the evidence. To prevail, he must satisfy this standard of review:

> "[T]his Court must accept as true the evidence which supports the verdict and will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial." *Dudley v. State*, 719 So.2d 180, 182(¶ 8) (Miss.1998). On review, the State is given "the benefit of all favorable inferences that may reasonably be drawn from the evidence." *Griffin v. State*, 607 So.2d 1197, 1201 (Miss.1992). "Only in those cases where the verdict is so contrary to the overwhelming

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[3]It may be inferred from the record that counsel did not move for a continuance because she did not need one. She did not appear to be surprised by these exhibits.

[4]*Fulks v. State,* 18 So.3d 803, 805 (Miss.2009), is distinguishable on this basis. In that case, the court denied the defendant's request for a continuance. No such request was made here.

> weight of the evidence that to allow it to stand would sanction an unconscionable injustice will this Court disturb it on appeal." *Dudley*, 719 So.2d at 182. "This Court does not have the task of re-weighing the facts in each case to, in effect, go behind the jury to detect whether the testimony and evidence they chose to believe was or was not the most credible." *Langston v. State*, 791 So.2d 273, 280 (¶ 14) (Miss. Ct. App. 2001).
>
> *Smith v. State*, 868 So.2d 1048, 1050-51 (Miss. App. 2004).

It has been "held in numerous cases that the jury is the sole judge of the credibility of the witnesses and the weight to be attached to their testimony." *Kohlberg v. State*, 704 So.2d 1307, 1311 (Miss.1997). As the Mississippi Supreme Court reiterated in *Hales v. State*, 933 So.2d 962, 968 (Miss. 2006), criminal cases will not be reversed "where there is a straight issue of fact, or a conflict in the facts..." [citations omitted] Rather, "juries are impaneled for the very purpose of passing upon such questions of disputed fact, and [the Court does] not intend to invade the province and prerogative of the jury. " [citations omitted]

In this case, the prosecution presented substantial credible evidence, including eyewitness testimony and the defendant's confession, that Pinkston was guilty of armed robbery. Pinkston's testimony to the contrary simply created an issue for the jury's resolution. Allowing the verdict to stand would by no means constitute sanctioning an unconscionable injustice. It follows that the trial court did not abuse its discretion in refusing to order a new trial. Pinkston's final proposition should be denied.

CONCLUSION

The state respectfully submits the arguments presented by Pinkston are without merit. Accordingly, the judgment entered below should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, John R. Henry, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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