IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI
NO. 2009-KA-01665-COA

CHAZ PINKSTON — APPELLANT

V.

STATE OF MISSISSIPPI — APPELLEE

BRIEF OF APPELLANT

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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. Chaz Pinkston

THIS 28th day of January, 2010.

Respectfully submitted,

CHAZ PINKSTON

By: George T. Holmes

George T. Holmes,
Mississippi Office of Indigent Appeals

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

STATUTES

none

OTHER AUTHORITIES

STATEMENT OF THE ISSUES

ISSUE NO. 1: WHETHER APPELLANT'S CONFESSION WAS PROPERLY ADMITTED?

ISSUE NO. 2: WHETHER APPELLANT WAS PREJUDICED BY LATE DISCOVERY?

ISSUE NO. 3: WHETHER THE CONVICTION IS SUPPORTED BY THE WEIGHT OF EVIDENCE?

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of the First Judicial District of Hinds County, Mississippi where Chaz Pinkston was convicted of armed robbery in a jury trial held May 11-13, 2009, with Honorable W. Swan Yerger, Circuit Judge, presiding. Pinkston was sentenced to thirty-five (35) years imprisonment and is presently incarcerated with the Mississippi Department of Corrections.

FACTS

When the manager of the LeFluer's Gallery branch of Merchants & Farmers Bank on I-55 Frontage Road in Jackson arrived for work around 7:45 a. m. on June 16, 2008, he was met by two men with guns who escorted him into the bank. [T. 272-76]. The men demanded money and that the safe be opened. *Id.* The safe was on a timer and could not be accessed. *Id.* The two men rummaged through the bank looking for money which

activated an alarm. [*Id.*, T. 286]. The would-be robbers exited the bank, and on the way out, one of them discharged his weapon into two bank computers. *Id.* Then the two men then left in what was described as an older model dark Mercury Cougar. [T. 283, 286].

Some of the attempted robbery episode was captured on bank security video. [T. 288-89; Ex. 7]. After portions of the video recordings were shown on local news broadcasts, the appellant Chas Pinkston became a suspect. [T. 351]. The branch manager picked Pinkston out of a photographic line-up. [T. 284-85, 351].

A warrant was issued for Pinkston and he turned himself in at police headquarters. [T. 10, 554]. He initially refused to make as statement. [T. 11].

After being in jail for several days however, it was reported that Pinkston, while in a padded cell, requested to speak with law enforcement. [T. 12-15, 17]. The state presented testimony that a subsequent interview with investigators produced a voluntary written confession from Pinkston. [T. 29-33, 89-100; Exs. 26-27]. Pinkston maintained that he made no such confession and that the written statement is a forgery. [T. 43-53].

It was determined that Pinkston owned a dark Mercury Cougar. [T. 342-45, 352-54]. An executed search warrant for Pinkston's residence produced clothes allegedly matching one of the robbers'. [*Id.*, T. 378].

Dissatisfied with his retained lawyer, Pinkston was allowed to proceed *pro se* with advisory assistance from counsel, after being found competent to stand trial. [T. 148-58]. Pinkston testified that he had no recollection of being involved in an attempted robbery

and put on evidence of good character. [T. 494-95, 582-94].

SUMMARY OF THE ARGUMENT

Pinkston's confession should not have been admitted into evidence; he was prejudiced by alleged late discovery; and, the verdict is not supported by the weight of evidence.

ARGUMENT

ISSUE NO. 1: WHETHER APPELLANT'S CONFESSION WAS PROPERLY ADMITTED?

Involuntary confessions are inadmissible. *Carley v. State*, 739 So. 2d 1046, 1500 (Miss. Ct. App. 1999), *Neal v. State*, 451 So. 2d 743, 750 (Miss. 1984), *Morgan v. State*, 681 So. 2d 82, 87 (Miss. 1996), Fifth, Sixth and Fourteenth Amendments to the U. S. Constitution and Article 3, § 26 of the Mississippi Constitution of 1890. The state has the burden to prove voluntariness of a confession beyond reasonable doubt, and may meet this burden "by offering the testimony of those individuals having knowledge of the facts that the confession was given without threats, coercion, or offer of reward." *Carley*, 739 So. 2d 1500. See also *Haymer v. State*, 613 So. 2d 837, 839 (Miss. 1993); *Kirkland v. State*, 559 So. 2d 1046 (Miss. 1990).

The burden is met and a prima facie case is established with testimony from

officers, or persons with knowledge of the facts, that the confession was voluntarily given free from threats, coercion, or offers of reward. *Cox v. State*, 586 So. 2d 761, 763 (Miss. 1991). In the present case, it is suggested that the state failed to meet its burden.

Pinkston was unstable. [T. 16-17, 45-55, 69, 74]. He was paranoid and being kept in protective custody. *Id.* He did not fully understand the charges. [T. 65-66, 71-72]. He was allegedly advised that other charges against him were being dropped. [T. 73].

Pinkston allegedly gave his statement with the impression that an attempted armed robbery was a lesser offense than armed robbery. *Id.* So, in effect, he had an impression of hope of reward. Pinkston said he was coerced. [T. 78, 81]. If he made inculpatory statements, they were made with the impression that by admitting an attempted robbery, he could and would avoid a more serious armed robbery charge. His admissions were made without a complete knowing of the charge or the consequences of the admission.

The standard of review regarding the admissibility of a confession is for the reviewing court to determine under the totality of the circumstances whether the "correct legal standard was applied ..., [whether] manifest error was committed, or [whether] the decision [of the trial court] is contrary to the overwhelming weight of the evidence. *Tyler v. State*, 911 So. 2d 550, 554-56 (Miss. Ct. App. 2005).

Pinkston was *Mirandised* for his second interview. [T. 23-25]. However, according to *Neal v. State*, *supra*, regardless of the number of times the *Miranda* warnings are given, or how "meticulous", inculpatory statements are not automatically

admissible. 451 So. 2d at 753. Even when the trial court record shows the warnings have "been fully and fairly given," the State nevertheless "shoulders a heavy burden to show a knowing and intelligent waiver." *Id.*

So, even though Pinkston was given the required warnings, under a totality of the circumstances, with his instability and a misunderstanding of the charges, his purported confession should have been suppressed. A new trial is respectfully requested.

ISSUE NO. 2: WHETHER APPELLANT WAS PREJUDICED BY LATE DISCOVERY?

During the direct examination of the state's first witness, the defendant was handed six photographs which had just been disclosed to defense counsel the morning of trial. [T. 278-83, 401; Ex. 1-6]. Pinkston also said the DVD of robbery was disclosed late. [T. 288-89; Ex 7]. Pinkston's position is, therefore, that he was irreparably prejudiced by the state withholding these disclosures which prevented him from fully preparing for trial.

Pre-trial discovery is required "to avoid ambush or unfair surprise to either party at trial." *Blanton v. State,* 727 So.2d 748, 752 (Miss. Ct. App. 1998). See also *Frierson v. State,* 606 So.2d 604, 607 (Miss. 1992). Rule 9.04 of the Uniform Circuit and County Court Rules proscribes that the disclosure of the state's evidence and witnesses in chief.

Pinkston suggests that his case is akin to the facts in *Box v. State*, 437 So.2d 19, 20 (Miss. 1983), where the defendant was charged with armed robbery, and the State failed

to disclose the information on the identity of the owner an automobile used to perpetrate the robbery who was to be a state witness, until the evening before trial. *Id.* In the present case, Pinkston claims that the state failed to produce photographs of the bank, the Mercury Cougar and the video of the robbery.

In *Box*, the court found the late disclosure deprived the defendant of adequate time to prepare for trial. *Id.* at 21. The *Box* court recognized that "[a] rule which is not enforced is no rule" and reversed *Id* .

In *Fulks v. State*, 18 So.3d 803, 805 (Miss. 2009) the State was tardy in disclosure of the content of a witness's testimony which was found to be tantamount to a trial by ambush, because, the defense counsel did not have time investigate or make preparation to deal with the testimony. Citing *Box*, the *Fulks* court reversed because of the prejudice to the defendant; and, the Court is now respectfully requested to, likewise, reverse Pinkston's conviction for the same reasons. *Id.*

ISSUE NO. 3: WHETHER THE CONVICTION IS SUPPORTED BY THE WEIGHT OF EVIDENCE?

The manager of the bank did not really have an opportunity to see the two men who tried to rob the bank in this case. [T.275-83]. He could not recall the make of the get-away car. *Id.* An eye-witness misidentified the get away car. [T. 361].

Pinkston's clothing which allegedly matched one of the robbers was merely coincidental. Even Pinkston's friend could not conclusively recognize him on the video

of the robbery. [T. 586-92]. Pinkston's confession is suspect.

The standard is that the court on appeal will not reverse under a weight of the evidence challenge unless, accepting as true the evidence supporting the verdict, the record shows that the jury's verdict "is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice. " *Herring v. State*, 691 So. 2d 948, 957 (Miss. 1997). See also, *Boone v. State*, 973 So. 2d 237, 243 (Miss. 2008).

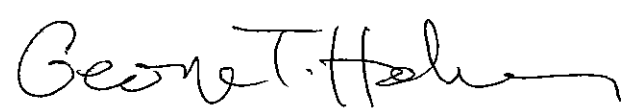
In this case the testimony and physical evidence are, at best, unreliable and insufficient to support the conviction, and a reversal with acquittal is called for. See *Edwards v. State,* 736 So. 2d 475 (Miss. 1999), *Hall v. State*, 644 So. 2d 1223, 1228 (Miss. 1994), and *Guilbeau v. State*, 502 So. 2d 639, 641 (Miss. 1987).

CONCLUSION

Chaz Pinkston is entitled to have his convictions reversed with remand for a new trial.

Respectfully submitted,

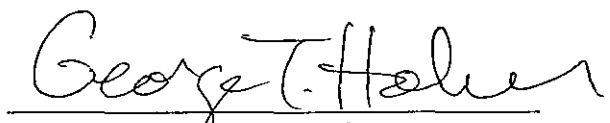
CHAZ PINKSTON

By: 

George T. Holmes,
Mississippi Office of Indigent Appeals

CERTIFICATE

I, George T. Holmes, do hereby certify that I have this the 28th day of January, 2010, mailed a true and correct copy of the above and foregoing Brief Of Appellant to Hon. W. Swan Yerger, Circuit Judge, P. O. Box 327, Jackson MS 39205, and to Hon. Scott Rogillio, Asst. Dist. Atty., P. O. Box 22747, Jackson MS 39225, 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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