# State v. Cheeks

Court of Criminal Appeals of Tennessee, At Knoxville

December 23, 2002, Remanded By Supreme Court ; October 17, 2003, Filed

No. E2002-03083-CCA-RM-CD

**Reporter**
2003 Tenn. Crim. App. LEXIS 882 *; 2003 WL 22362766

STATE OF TENNESSEE v. CLAUDE W. CHEEKS

**Subsequent History:** Appeal denied by State v. Cheeks, 2004 Tenn. LEXIS 233 (Tenn., Mar. 8, 2004)

**Prior History: [*1]** Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court are Affirmed. Direct Appeal from the Criminal Court for Hamilton County. Nos. 222245, 222283, and 223379. Rebecca J. Stern, Judge.

State v. Cheeks, 2002 Tenn. LEXIS 672 (Tenn., Dec. 23, 2002)

**Disposition:** Affirmed.

## Core Terms

offenses, team, walked, insanity defense, schizophrenia, bag, forensic, deposit, mental illness, arrest, cinder block, stand trial, trial court, suffering, downtown, assault, dad, ran

## Case Summary

**Procedural Posture**
Appellant was convicted by a jury in the Hamilton County Criminal Court (Tennessee) of especially aggravated robbery and aggravated assault. On appeal, the convictions were reversed on the basis that appellant establishing an insanity defense. The Tennessee Supreme Court granted the State's application for permission to appeal, for the sole purpose of remanding the case for reconsideration in light of its opinion in State v. Flake.

**Overview**
The proof adduced at trial revealed that after making repeated withdrawals of $ 2 from his account, appellant assaulted the victim outside the bank, took the victim's money bag and fled. Appellant defied a concerned citizen who attempted to stop his escape. However, when appellant was approached by an armed, uniformed police officer, appellant submitted to the officer's control without offering resistance. The tests that appellant took as part of his evaluation reflected that appellant was malingering in order to gain support for his insanity defense and to show his innocence of the charged offenses. It was also noted that appellant gave conflicting reports during two evaluations concerning whether he heard voices at the time of the offenses. Based upon the standard adopted by the Tennessee Supreme Court, the court concluded that the jury could have reasonably found that appellant appreciated the wrongfulness of his acts. Therefore, the court was constrained to conclude that it could not overturn the factual findings of the jury.

**Outcome**
The judgments of the trial court were affirmed.

## LexisNexis® Headnotes

Criminal Law & Procedure > Defenses > Insanity > Insanity Defense

Criminal Law & Procedure > Defenses > General Overview

Criminal Law & Procedure > Defenses > Insanity > General Overview

***HN1***[] **Insanity, Insanity Defense**

A defendant may establish the affirmative defense of insanity if he proves by clear and convincing evidence that at the time of the commission of the acts

constituting the offense he was unable to appreciate the nature or wrongfulness of his acts as a result of a severe mental disease or defect. Tenn. Code Ann. § 39-11-501(a) (1997).

Criminal Law & Procedure > Defenses > Insanity > Burdens of Proof

Criminal Law & Procedure > Defenses > Insanity > General Overview

Criminal Law & Procedure > Defenses > Insanity > Insanity Defense

***HN2***[] **Insanity, Burdens of Proof**

Appellate courts in Tennessee should apply the reasonableness standard when reviewing a jury's rejection of the insanity defense. This standard is properly deferential to the finding of the trier of fact, yet does not totally insulate the jury's finding from appellate review. The Tennessee Supreme Court has explicitly rejected the notion that the State must rebut defense proof of insanity with substantial evidence.

**Counsel:** Bryan Henry Hoss, C. Leland Davis, and David W. Wallace, Chattanooga, Tennessee, for the appellant, Claude W. Cheeks.

Paul G. Summers, Attorney General and Reporter; Angele M. Gregory, Assistant Attorney General; William H. Cox, District Attorney General; and Dean Ferraro and ***Mary Sullivan Moore***, Assistant District Attorneys General, for the appellee, State of Tennessee.

**Judges:** NORMA MCGEE OGLE, J., delivered the opinion of the court, in which GARY R. WADE, P.J., and JOSEPH M. TIPTON, J., joined.

**Opinion by:** NORMA McGEE OGLE

## Opinion

The appellant, Claude W. Cheeks, was convicted by a jury in the Hamilton County Criminal Court of one count of especially aggravated robbery and two counts of aggravated assault. The trial court sentenced the appellant to a total effective sentence of twenty-five years incarceration in the Tennessee Department of Correction. The appellant appealed and on July 22, 2002, this court reversed his convictions, finding **[*2]** that the appellant had met his burden of establishing his insanity at the time of the offenses. The State filed an application for permission to appeal to our supreme court pursuant to Rule 11 of the Tennessee Rules of Appellate Procedure. The supreme court granted the State's application for the sole purpose of remanding the case to this court for reconsideration in light of its opinion in *State v. Flake*, 88 S.W.3d 540 (Tenn. 2002). Upon reconsideration, we affirm the judgments of the trial court.

This Court's original opinion summarized the facts underlying the appellant's convictions as follows:

On the morning of June 24, 1998, at approximately 10:30 a.m. or 11:00 a.m., the victim, Frederick Stuart Newman, and his son, Christopher, walked from Newman's restaurant to AmSouth Bank in downtown Chattanooga to get change for the restaurant. At trial, Newman testified that he and eight-year-old Christopher walked into the bank, talked with some people they knew, and then requested the change from the teller. He placed the change in a blue AmSouth deposit bag and picked up the bags from the previous day's deposit. Newman noted that, after collecting money from the bank, **[*3]** his normal procedure was to walk into the outer lobby of the bank, look around for anything that might be of concern, and light a cigarette before leaving the building.

As Newman and Christopher walked into the outer lobby of the bank, the appellant approached and asked Newman for a cigarette. Newman replied that he was sorry, but the cigarette in his hand was his last. Newman recalled at trial that the appellant did not appear angry or agitated by his response, and Newman and Christopher continued to walk out of the building. Newman further testified that he has no memory of leaving the bank, but he does remember falling onto the pavement outside the bank, explaining that "I was you know, thinking, you know, 'What a dummy, you just tripped over your shoelaces.'" He recounted that he had "tunnel vision" and then felt himself hit the pavement. He heard Christopher scream but was unable to get up. Newman related that he next remembers being dragged into the bank where he drifted in and out of consciousness while his wife, a nurse who was called to the scene, worked to stabilize him until an ambulance arrived.

When Newman regained consciousness, neither he nor

his son had possession **[*4]** of the deposit bag. He explained that he received lacerations to the back of his skull, which injuries required thirty to forty stitches, and his skull was fractured. He also had "a brain hemorrhage," as well as additional fractures. Newman stated that he continues to have pain, mobility problems, and memory problems. Specifically, he estimated that he has "about 70 percent of my abilities back, and that [is] probably about as far as I [can] go."

Christopher Newman testified that he was with his dad on the day of the offenses. He saw the appellant as they walked out of the bank. As they left, he saw his dad fall to the ground, and the appellant started beating his dad on the head with a cinder block. Christopher screamed and ran into the bank for help. When he ran back to his dad, he saw a man named Ron Hines stop his car and attempt to assist Newman. The appellant then attacked Hines. Christopher noted that the appellant took the bag of change from his dad.

Teresa Bailey, an employee of AmSouth Bank, was working at the bank's downtown branch on June 24, 1998. She testified that, on the morning of the offenses, she observed the appellant come into the bank on two separate occasions **[*5]** and was informed that he withdrew two dollars ($ 2) from his account on each visit. Bailey recounted that she had known the appellant "years ago" when she worked at the Freight Depot office where the appellant had an account. She recalled that the appellant frequently came into the Freight Depot office to cash checks or make deposits. She did not know if the appellant was a frequent customer at the downtown AmSouth Bank because she had "just been back to that bank." Although she did not assist the appellant on the morning of the offenses, she did observe him walk across the lobby of the bank during both visits. Bailey concluded that the appellant appeared to act normally and seemed to be in control of his physical and mental facilities. She contended that two withdrawals of two dollars ($ 2) each within a two-hour period was not abnormal banking procedure. Bailey conceded that she was in a separate room and did not witness the assault on Newman.

Kimberly Needham Day testified that, on the day of the offenses, she was walking out of a building next to AmSouth Bank in downtown Chattanooga when she saw the appellant walk behind Newman and Christopher, raise a cinder block, and hit Newman **[*6]** on the head two or three times. She asserted that the appellant quickly walked away holding a blue deposit bag. The area was busy because of the lunchtime crowd, and the appellant was followed by several people who attempted to detain him. She did not see the arrest and was unable to say whether the appellant resisted arrest. Day acknowledged that she observed the appellant for only ten or fifteen seconds from a distance of forty feet. However, she positively identified the appellant as the perpetrator.

Ronald Hines testified that, on June 24, 1998, he was driving through downtown Chattanooga when he saw the appellant standing over Newman, beating Newman on the back of the head. Hines jumped from his vehicle and ran toward the appellant, ordering the appellant to stop. The appellant stopped, looked up at Hines with his hand raised, snatched the deposit bag, and ran down the street. Hines continued shouting, demanding that the appellant stop. The appellant stopped in a crowd of people, turned to Hines, and said, "Oh, you want some of this?" The appellant then lunged at Hines and struck him in the head with the cinder block. The two men "tussled," and Hines forced the appellant against **[*7]** a tree. The appellant hit Hines in the shoulder with the cinder block, and Hines struck the appellant in the groin. When the appellant dropped to his knees, Hines ran to the nearby Justice Building to obtain assistance. The appellant was eventually apprehended by police. As a result of the altercation, Hines sustained a bruise on his shoulder and received eleven stitches in his head.

Officer James T. Chapin of the Chattanooga Police Department testified that he was having lunch at a restaurant in the area when he received a report of a robbery in progress. As he stepped outside the restaurant, he looked across the street and saw the appellant walking on the sidewalk. The appellant was being followed by a crowd of people who were pointing at him and also by a truck whose driver was honking the horn. The appellant was not running or fleeing but appeared to be "just walking." Officer Chapin approached the appellant and told him to stop. The appellant complied, offering no resistance. Officer Chapin then placed the appellant under arrest. Officer Chapin testified that, at the time of the arrest, he was in uniform and visibly armed. A deposit bag was in the appellant's hand, and a piece **[*8]** of cinder block was found in the appellant's jacket pocket.

Following the appellant's arrest, Officer Chapin transported him to the police station. The appellant remained mostly uncommunicative and sat on a bench with a "blank look on his face." When Officer Chapin asked the appellant why he had committed the crime, the appellant replied, "I was hungry," asked "When is

lunch?" and began laughing. Officer Chapin conceded that, immediately upon encountering the appellant, it was apparent that "there was something wrong with this guy." The appellant's eyes were vacant and emotionless, he had been followed by a vocal crowd without seeming to notice, and he laughed and smiled inappropriately during the booking procedure.

Dr. David Ciraulo, a trauma critical care surgeon at Erlanger Medical Center, treated Newman following the assault. He reported that Newman was hospitalized for three to four days following his injuries. As a result of the injuries, including a closed head injury, Newman suffered extreme pain and extensive blood loss. At the time of discharge, Newman had problems maintaining his gait and was sent home with a walker. Newman also complained of headaches and memory problems. **[*9]** Dr. Ciraulo opined that such an injury poses a substantial risk of death.

After presenting the foregoing proof, the State rested. The defense moved for judgments of acquittal, which motions were denied. Thereafter, the defense presented the testimony of two mental health professionals, Dr. Bob Brown and Dr. Madhusudham Mudiam.

Dr. Brown testified that he is a psychologist and is employed by the State of Tennessee at Moccasin Bend Mental Health Institute (MBMHI). In 1998, in response to a request by the trial court, an evaluation team at MBMHI performed a forensic evaluation of the appellant for the court. Dr. Brown, a member of the team, explained that, when the court requests a forensic evaluation, typically the questions to be answered are: whether the individual is competent to stand trial, whether the individual can defend himself against the charges in a court of law, and whether there is support for the insanity defense. Accordingly, the evaluator must determine the mental state of the individual at the time of the crime as well as at the time of trial. Dr. Brown stated that, of all cases referred by the courts in a given year, only four percent (4%) to six percent (6%) can **[*10]** support an insanity defense. Dr. Brown stated that a finding of incompetency to stand trial is also rare.

In October 1998, following the forensic evaluation at MBMHI, the evaluation team deemed the appellant incompetent to stand trial due to his confusion and paranoia. Dr. Brown explained that the appellant was unable to understand the charges against him, was unable to cooperate with his attorney, did not understand a court proceeding, and "could not even manage his behavior appropriately in a courtroom setting." Notably, during a meeting with the evaluation team, the appellant claimed that "Dr. Nickerson is the judicial judge." Dr. Brown concluded that the appellant was in need of "extensive, intensive, inpatient psychiatric services."

Dr. Brown further related that the appellant has a history of treatment for mental illness, which history began in April 1980 when the appellant was admitted to MBMHI and was diagnosed with paranoid schizophrenia, a diagnosis that was reiterated in later years. Dr. Brown explained that schizophrenia is, "in the opinion of most mental health clinicians, probably the most severe form of mental illness." Specifically addressing the appellant's mental **[*11]** condition in 1998, Dr. Brown noted that "[he] had the disorganized behavior, which is one of the prominent features [of paranoid schizophrenia]. He could not adequately monitor his behavior, behave himself adequately the first time we wanted to meet with him and the second time, we had to terminate because he was so agitated, and we felt that the [evaluation] team was at risk of being harmed by his behavior." Dr. Brown observed, however, that someone suffering from paranoid schizophrenia could also appear superficially normal.

Dr. Brown additionally recalled that, during an interview on November 3, 1998, the appellant told the evaluation team that he attacked Newman because he was chosen by the Lord to intervene in Newman's life. Additionally, the appellant stated that "Satan saved my life. I read the Bible through twice, took three years. God asked me to rule the world." Dr. Brown reported that the appellant then began to stare at the members of the team and laugh inappropriately. It was on this occasion that the interview was terminated due to concern that the team was at "risk of harm" from the appellant. Dr. Brown reported that, following this interview, the appellant responded **[*12]** well to antipsychotic medication, and, on November 12, 1998, he was discharged. At that time, the appellant was deemed competent to stand trial. However, Dr. Brown asserted that the forensic team unanimously concluded that an insanity defense could be supported. Following his discharge, the appellant was returned to jail, and his treatment was monitored through the Sheriff's Department by Johnson Mental Health Center.

In early 2000, the trial court ordered a reevaluation of the appellant. The appellant was readmitted to MBMHI on February 16, 2000, and an evaluation team was

again assembled to assess the appellant. [1] The team once again concluded that the appellant was competent to stand trial but noted that "it has been determined that a defense of insanity on the charges of aggravated assault and aggravated robbery can be supported on the basis of a severe mental illness as a result of a psychotic spectrum disorder, in [the appellant's] case, schizoaffective disorder."

**[*13]** Specifically, Dr. Brown explained that "the conclusion in '98 and in 2000 are the same. And in probably the most basic terms, the [appellant] could not appreciate the rightfulness or the wrongfulness of his conduct" because "[all] the data that we have available indicates that he was suffering from the acute phase of schizophrenia at the time of the alleged offenses."

On cross-examination, Dr. Brown conceded that there were some inconsistencies in the appellant's version of events. Dr. Brown also acknowledged that, on the day of the offenses, the appellant was in sufficient control of his behavior to go into the bank where he had an account, withdraw funds from his account, and, after the offenses, submit to an armed, uniformed police officer. Finally, Dr. Brown admitted that, during the 2000 evaluation, two tests showed that the appellant was malingering to gain support for his insanity defense and to show his innocence of the crimes charged. Nevertheless, Dr. Brown maintained that the malingering was taken into account by the team in their evaluation, and Dr. Brown unwaveringly asserted that an insanity defense could be supported.

The second witness to testify for the defense **[*14]** was Dr. Mudiam, a psychiatrist who worked at MBMHI and was a member of the forensic team that evaluated the appellant in 2000. At the time of Dr. Mudiam's evaluation, the appellant was receiving antipsychotic medication. Dr. Mudiam testified that the appellant was diagnosed with "Schizoaffective Disorder and what that means is a person sometimes in the course of the mental illness, in addition to the symptoms that are primarily associated with schizophrenia, which are like hearing the voices that are not there or feeling like people are out to get them. The patients also suffer from associated symptoms of what we call as either mania or depression."

According to Dr. Mudiam, the appellant exhibited the features of mania, namely elation and excess energy. He opined that the appellant was "suffering from severe mental illness at the time of the alleged events," and, based upon the information he obtained, the appellant "was not able to appreciate the nature of the wrongfulness of the alleged act."

Dr. Mudiam noted that, in addition to the facts regarding the appellant's account of his offenses, the forensic team also strongly considered the statements of the arresting officer. Specifically, **[*15]** the psychological report noted Officer Chapin's comments that he recognized that the appellant was suffering from a mental illness and that he knew "right away that this was going to be one of those cases." The report also noted that, prior to the offenses, the appellant had two previous admissions to MBMHI. The admissions followed two incidents in which the appellant was apparently "acting bizarre on the streets" and was picked up by police after threatening to kill people. The appellant also reported hearing voices that only he could hear. Although Dr. Mudiam conceded that the appellant gave conflicting reports in 1998 and 2000 as to whether he heard voices at the time of the offenses, Dr. Mudiam reiterated his belief that an insanity defense could be supported.

On cross-examination, Dr. Mudiam admitted that he did not meet the appellant until the 2000 evaluation, almost two years after the offenses. He agreed that assessing an individual's mental state so long after the offenses is more difficult. He also noted that he received most of the information regarding the offenses from the District Attorney General's Office. Additionally, in response to the State's question concerning **[*16]** whether the appellant knew the difference between right and wrong, Dr. Mudiam testified that "at the time he was seen in the forensic team [in 2000] he knew but not on the day of the alleged crime." Dr. Mudiam explained that, at the time of trial, the appellant knew right from wrong and could control his behavior because, unlike the day of the offenses, the appellant was taking his medication and receiving mental health treatment.

*State v. Claude W. Cheeks*, 2002 Tenn. Crim. App. LEXIS 609, No. E2001-00198-CCA-R3-CD, 2002 WL 1609743, at **1-6 (Tenn. Crim. App. at Knoxville, July 22, 2002). The instant opinion solely concerns our reconsideration of whether the appellant met his burden of establishing the affirmative defense of insanity by clear and convincing evidence in light of our supreme

[1] The "attending members of the forensic team" for the 2000 evaluation were Dr. Bob Brown, Wilbert Bunch, Dr. Madhusudham Mudiam, Dr. John Lowe, Dr. Willis Marshall, John Hartman, Ed Rocca, Donald Bailey, Ursula Bell, and Patricia Alverson.

court's recent rulings in *State v. Flake*, 88 S.W.3d 540 (Tenn. 2002) (*Flake* I) and in *State v. Christopher M. Flake*, 114 S.W.3d 487, 2003 Tenn. LEXIS 696, __ S.W.3d __, No. W2001-00568-SC-R11-CD, 2003 WL 21788920 (Tenn. at Jackson, Aug. 5, 2003) (*Flake* II).

***HN1***[] A defendant may establish the affirmative defense of insanity if he proves by clear and convincing evidence that at the time of the commission of **[*17]** the acts constituting the offense he was unable to appreciate the nature or wrongfulness of his acts as a result of a severe mental disease or defect. *See* Tenn. Code Ann. § 39-11-501(a) (1997). In both *Flake* opinions, our supreme court concluded that ***HN2***[] "appellate courts in Tennessee should apply the reasonableness standard when reviewing a jury's rejection of the insanity defense." *Flake*, 88 S.W.3d at 554; *see also* *Flake*, 114 S.W.3d 487, 2003 Tenn. LEXIS 696, __ S.W.3d __, No. W2001-00568-SC-R11-CD, 2003 WL 21788920, at *15. The court further concluded that this standard is "properly deferential to the finding of the trier of fact," yet "does not totally insulate the jury's finding from appellate review." *Flake*, 88 S.W.3d at 554. Moreover, the court "explicitly rejected the notion that the State must rebut defense proof of insanity with substantial evidence." *Id.* Applying this newly established standard of review, we conclude that we are compelled to uphold the jury's rejection of the insanity defense and affirm the appellant's convictions.

In the instant case, the proof adduced at trial revealed that after making repeated withdrawals **[*18]** of two dollars from his account at AmSouth bank, the appellant assaulted the victim outside the bank, took the victim's money bag, and fled. The appellant defied a concerned citizen who attempted to stop his escape. However, when the appellant was approached by an armed, uniformed police officer, the appellant submitted to the officer's control without offering resistance. Upon questioning, the appellant indicated that he committed the instant offenses because he was hungry.

Dr. Brown testified that the appellant had been diagnosed with paranoid schizophrenia. Dr. Brown stated that the appellant's version of events contained some inconsistencies. Dr. Brown concluded that the appellant "was suffering from the acute phases of schizophrenia at the time of the alleged offense." Based upon his findings, Dr. Brown opined that the insanity defense could be supported. However, Dr. Brown conceded that two tests that the appellant took as part of his evaluation reflected that the appellant was malingering in order to gain support for his insanity defense and to show his innocence of the charged offenses. Dr. Mudiam noted that the appellant gave conflicting reports during two evaluations concerning **[*19]** whether he heard voices at the time of the offenses.

Based upon the standard adopted by our supreme court in both *Flake* opinions, we conclude that the jury could have reasonably found that the appellant appreciated the wrongfulness of his acts. *See* *Flake*, 88 S.W.3d at 555. Therefore, based upon our standard of review, we are constrained to conclude that we may not overturn the factual findings of the jury in the instant case. *Id.* at 554.

### *III. Conclusion*

Accordingly, we affirm the judgments of the trial court.

NORMA McGEE OGLE, JUDGE

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