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SUPREME COURT  
COURT OF APPEALS**

**SANDRA D. DEAR**

**V.**

**STATE OF MISSISSIPPI**

**NO.2006-KA-01560-COA**

**Appeal from Circuit Court of Leake County, Mississippi**

**BRIEF FOR APPELLANT**

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**Oral argument not requested.**

**CERTIFICATE OF INTERESTED PERSONS**

**SANDRA D. DEAR**

**V.**

**STATE OF MISSISSIPPI**

**NO. 2006-KA-01560-COA**


**Appeal from Circuit Court of Leake County, Mississippi**

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.

SANDRA D. DEAR  
Appellant

Hon. Jim Hood  
Attorney General  
State of Mississippi

Hon. Mark Duncan  
District Attorney

  
EDMUND J. PHILLIPS, JR.  
Attorney of record for Appellant

## **TABLE OF CONTENTS**

	<b><u>Page No.</u></b>
CERTIFICATE OF INTERESTED PERSONS	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF ISSUES	1
STATEMENT OF THE CASE	1-2
SUMMARY OF THE ARGUMENT	2
ARGUMENT:	3-4
CONCLUSION	5
CERTIFICATE OF SERVICE	6

## **TABLE OF AUTHORITIES**

### **Page No.**

#### **Cases**

Anderson v. State, 571 So. 2d 961, 964 (Miss. 1990)	4
King v. State, 560 So. 2d, 1356, 1359 (Miss. 1988)	4
Lee v. State, 469 So. 2d 1225, 1230-1231 (Miss. 1985)	4

## **STATEMENT OF THE ISSUES**

The Court erred in refusing jury instruction D 7.

## **STATEMENT OF THE CASE**

The Appellant, Sandra D. Dear, appeals her conviction by the Circuit Court of Leake County, Mississippi, of the sale of a Schedule II controlled substance, namely cocaine, in Leake County, Mississippi, and a sentence of 20 years in the custody of the Mississippi Department of Corrections.

“Confidential Informant” Larry Gardner, a drug addict (T-68) and sex crime convict (T-69, 70), was the primary witness against the Appellant. Unaccompanied, he went to Appellant’s mobile home and returned with a .18 gram rock of crack cocaine (T-86), (T-78).

Gardner testified that he bought the cocaine from Appellant Sandra Dear (T-59), that (T-57):

Q. Did you go in that trailer house?

A. Yes, sir.

Q. Was there anyone else there? Somebody meet you at the door?

A. Yes, sir. It was—it was a guy. Yes, sir.

Q. What was his name?

A. I’m not for sure. I want to say Lester but I—I’m not for sure if it was Lester or not.

Q. But some man met you at the door?

A. Yes, sir.

He later identified this person as Lester Windham (T-63).

Although Gardner was wearing a wire so that the transaction could be overheard by 2 (two) deputy sheriffs (T-77), neither of them testified that he overheard a drug transaction of any type.

A sixty second videotape of Gardner's time (T-67) in the trailer was shown to the jury. It was unclear and no drug transaction was discernible from it (T-90).

### **SUMMARY OF THE ARGUMENT**

An accused is entitled to have a jury consider his or her theory of a criminal case. Thus, a court should grant a jury instruction he or she proposed, unless the court is persuaded that, taking the evidence in the light most favorable to the accused and considering all reasonable inferences that may be drawn from the evidence in favor of the accused, no hypothetical reasonable jury could find the facts as the accused suggests.

**THE COURT ERRED IN REFUSING JURY INSTRUCTION D-7**

The Trial Court refused jury instruction D-7, proposed by Appellant (T-90), which instruction read as follows (c.p. 14):

The Defendant, Sandra D. Dear, is charged by indictment with the crime of sale of a controlled substances, namely cocaine.

If after consideration of the evidence presented by the State in this case you believe that the State has failed to satisfactorily identify Sandra D. Dear, beyond a reasonable doubt, as the individual who committed the crimes of sale of cocaine, it is your duty to find Sandra D. Dear, “not guilty.”

The presentation and refusal of the instruction is contained in the following colloquy (T-90):

BY MR. THAMES: No objection to all of them except the last one and I just – I just—I don’t think that’s an issue.

INSTRUCTION NO. D-7: BY THE COURT: D what?

BY MR. THAMES: D-7.

BY COURT REPORTER: D-7 ?

BY THE COURT: I’m going to sustain your objection.

BY MR. COLLINS: Your Honor, may I be heard?

BY THE COURT: I don’t think it’s supported, but yes. I don’t think it’s supported by the evidence at all.

BY MR. COLLINS: Your Honor, the video that the state presented did not show any drug transaction on the video, but it did show that there were two individuals present in the home.

BY THE COURT: Her and him.

BY MR. COLLINS: Yes, sir. And he identified the man as someone that he had actually smoked cocaine with in the past. There’s nothing on the video that would show my client committed a crime. Your Honor, I would certainly intend to argue that to the jury.

BY THE COURT: There’s a positive identification by –uh—by the witness, too.

BY MR. THAMES: He identified her on the stand as the person in the picture, that that was Sandra Dear, and that’s where he was going to start with, to her house to buy the cocaine.

BY THE COURT: I don’t think it’s supported by evidence. I’m going to refuse it.

“Confidential Informant” Larry Gardner was paid for successful drug purchases. His compensation for the transaction in the case before the court was \$60.00 (T-56). Unsuccessful efforts to purchase drugs were not compensated.

Appellant was the designated target of Gardner’s endeavor (T-57), however he was greeted at her front door instead by Lester Windham (T-63), who remained inside. Gardner testified that Appellant sold him cocaine. His testimony was the only evidence that Appellant was the source of the cocaine he returned with to claim his compensation (apparently the videotape did not show the transaction (T-90), and neither deputy testified that he overheard sale take place).

Gardner’s drug addiction and sex crime conviction were in evidence (T-68, 69), and naturally diminished his credibility as a witness. Had Appellant been able to place before the jury the issue of whether she was the source of the cocaine, the verdict might have been different, given her presumption of innocence and the prosecution’s obligation to prove guilt beyond a reasonable doubt.

A jury instruction may be denied only if the trial court can say, taking the evidence in the light most favorable to the accused, and considering all reasonable inferences that may be drawn from the evidence in favor of the accused, that no hypothetical reasonable jury could find the facts as the accused suggests. *Anderson v. State*, 571 So. 2d 961, 964 (Miss. 1990); *King v. State*, 530 So. 2d 1356, 1359 (Miss. 1988); *Lee v State*, 469 So. 2d 1225, 1230-1231 (Miss. 1985).


In refusing jury instruction D-7, the Court denied Appellant the right to have the jury consider her theory of the case. The verdict must be overturned.



### CONCLUSION

Appellant was denied her right to have the jury court consider her theory of the case when the court denied proposed jury instruction D-7. Her conviction should be overturned and she should be granted a new trial.

RESPECTFULLY SUBMITTED,  
SANDRA D. DEAR, APPELLANT

BY:   
EDMUND J. PHILLIPS, JR.  
ATTORNEY FOR APPELLANT

**CERTIFICATE OF SERVICE**

I, EDMUND J. PHILLIPS, JR., Attorney for Appellant, Sandra D. Dear, do hereby certify that on this date a true and exact copy of the Brief for Appellant was mailed to:


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Sandra D. Dear  
Appellant

DATED, this 19<sup>th</sup> day of March, 2007.

  
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Attorney for Appellant