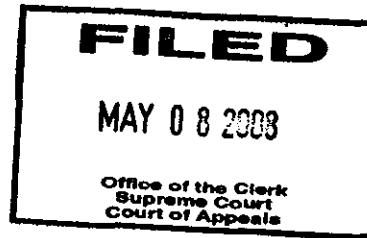


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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

DELORIS JEAN WATSON



APPELLANT

VS.

NO. 2007-CA-1199

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE ISSUES

- I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ALLOWING OFFICER PETERSON TO TESTIFY REGARDING THE STATEMENT OF AN UNIDENTIFIED WAL-MART MANAGER.

STATEMENT OF THE FACTS

Officer Todd Peterson and Officer Ricky Townsend went to the Wal-Mart in Clinton to do a courtesy walk through on December 23, 2004 at 3:45 a.m. (Transcript p. 90). They were approached by the front-end manager informed them that there were two individuals in the store whom she believed were shoplifting. (Transcript p. 91). The manager pointed out the Defendant, Deloris Jean Watson, and a companion. (Transcript p. 92). Officer Peterson then noticed the two walking past the registers toward the exit. (Transcript p. 92). He testified that their clothes were bulky and that they appeared to have something underneath their clothes. (Transcript p. 92). He ordered the two to stop as they began leaving the store. (Transcript p. 92). Officer Peterson testified

that “the defendant and the other individual looked directly at me and then turned and continued toward the exit.” (Transcript p. 93).

Officer Peterson then began to follow the two out of the store and into the parking lot. (Transcript p. 93-94). He announced himself as a Clinton Police Officer and again ordered them to stop. (Transcript p. 94). Both individuals got into a green Dodge Shadow. (Transcript p. 93). The Defendant got into the driver’s seat and began to back the vehicle into the parking lot. (Transcript p. 95). Officer Peterson drew his weapon and once again ordered the two individuals to stop. (Transcript p. 95). He testified that “she continued to back the vehicle up and put it in drive, and rather than turning or continuing to exit the parking lot to the north, she turned and came back toward the store in my direction at a high rate of speed.” (Transcript p. 95). He further testified that “during the point where she had backed the vehicle up she made eye contact with me through the drivers side door, and when she began coming at me, she made eye contact with me again and continued at a high rate of speed and increased her speed coming directly at me.” (Transcript p. 96). Officer Peterson had to jump out of the way to avoid being hit. (Transcript p. 96). Officer Townsend testified that afterward “she turned towards the front of the store coming toward the fire lane, which is where I was, and the car came right at me, and I had to jump into the handicapped area to get out of the way.” (Transcript p. 118). She then proceeded down Highway 80. (Transcript p. 97).

The officers identified the defendant after running her tag number and obtained an arrest warrant. (Transcript p. 98). The next day the officers went to her home but she nor her vehicle were found. (Transcript p. 99). The officers began searching the area near her home and found the vehicle approximately one fourth of a mile from her house with the defendant sitting inside the car. (Transcript p. 99). After the officers approached the defendant, she told Officer Peterson:

I didn't do it. That wasn't me that tried to run you down at the Wal-Mart. My car had been stolen, and I have a report from JPD that shows it.

(Transcript p. 100).

The defendant was arrested, tried, and convicted of feloniously fleeing police pursuant to Mississippi Code Annotated §97-9-72(2) and was sentenced to serve five years in the custody of the Mississippi Department of Corrections with one year suspended and two years of supervised probation.

SUMMARY OF THE ARGUMENT

The trial court did not abuse its discretion in allowing Officer Peterson to testify regarding the statement of the unidentified Wal-Manager. The testimony did not constitute hearsay as it was not offered to prove the truth of the matter asserted. Further, even if the testimony did constitute hearsay, it was admissible to the extent necessary to show why Officer Peterson acted as he did on the day in question. Moreover, a substantial right was not affected.

ARGUMENT

“The admissibility of evidence is within the discretion of the trial court, and absent abuse of that discretion, the trial court's decision on the admissibility of evidence will not be disturbed on appeal.” *Porter v. State*, 869 So.2d 414, 417 (Miss. Ct. App. 2004) (citing *McCoy v. State*, 820 So.2d 25, 30 (Miss. Ct. App. 2002)). “When the trial court stays within the parameters of the Rules of Evidence, the decision to exclude or admit evidence will be afforded a high degree of deference.” *Id.*

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ALLOWING OFFICER PETERSON TO TESTIFY REGARDING THE STATEMENT OF AN UNIDENTIFIED WAL-MART MANAGER.

Watson argues that “the trial court abused its discretion and engaged in a fiction to permit the officer to testify to otherwise inadmissible hearsay regarding an essential element of the crime, *reasonable suspicion* a crime had been committed.” (Appellant’s Brief p. 9). However, the “fiction” that Watson speaks of is actually a rule of law. This Court has previously held that Mississippi law provides that “if the significance of a statement is simply that it was made and there is no issue about the truth of the matter asserted, then the statement is not hearsay.” *Arnold v. State*, 809 So.2d 753, 758 (Miss. Ct. App. 2002) (quoting *Mickel v. State*, 602 So.2d 1160, 1162 (Miss. 1992)). *See also Arnold v. State*, 739 So.2d 422, 424 (Miss. Ct. App. 1999) (holding that “the trial court was correct in finding that the statement made by [the officer] was not hearsay because the statement was ‘not for the truth but to explain what the witness did in response.’”); *Singleton v. State*, 948 So.2d 465, 470 (Miss. Ct. App. 2007) (holding that the statement in question was not hearsay because it was not offered to prove the matter asserted); *Stubbs v. State*, 878 So.2d 130, 135 (Miss. Ct. App. 2004) (holding that a statement “not introduced for the purpose of proving the truth of the assertion” was not inadmissible hearsay); and Mississippi Rule of Evidence 801(c) (defining hearsay as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted”).

At trial, Officer Peterson was asked what happened when he arrived at Wal-Mart. The following exchange took place:

A: When I arrived at the Wal-Mart, myself and another officer entered the Wal-Mart. I was approached by the front end manager who stated that she had observed - -
Defense counsel: - - object to hearsay, Your Honor.
By the Court: I’m going to allow the witness to answer for a limited

purpose. Whatever this other person informed the officer you're not to consider that as far as establishing the truth of the matter asserted but only to explain the reasons why the officer may have taken the actions that he took in response to that. In other words, it's not germane as to whether or not the response was true or untrue, only why it explains what the officer did. All right. Go ahead.

Prosecutor: Thank you, Your Honor.

Q: What did the front end manager tell you?

A: She stated that she had observed two individuals in the store who she believed to have been shoplifting at the time.

(Transcript p. 91). Clearly, Officer Peterson's testimony was not hearsay as it was not offered to prove that Watson was, in fact, shoplifting. Whether or not she was *actually* shoplifting has absolutely nothing to do with the charges against her. The purpose of the testimony was to show why Officer Peterson's attention was directed toward Watson and her companion at that particular time. As set forth above, Mississippi case law and the Mississippi Rules of Evidence are very clear that testimony regarding another person's comments is ONLY HEARSAY WHEN IT IS OFFERED TO PROVE THE TRUTH OF THE MATTER ASSERTED. Thus, Officer Peterson's testimony was not inadmissible hearsay. Furthermore, Officer Peterson's testimony was "admissible to the extent required to show why he acted as he did and where he was at a particular place at a particular time." *Singleton v. State*, 948 So.2d 465, 470 (Miss. Ct. App. 2007) (quoting *Jackson v. State*, 935 So.2d 1108 (Miss. Ct. App. 2006). See also *Stubbs v. State*, 878 So.2d 130, 134-35 (Miss. Ct. App. 2004); *Hill v. State*, 865 So.2d 371, 380 (Miss. Ct. App. 2003); and *Arnold v. State*, 809 So.2d 753, 758 (Miss. Ct. App. 2002).

Additionally, Watson's substantial rights were not affected. She argues that she was unable to fully confront the "witness or witnesses who accused her of a crime - shoplifting - for which she was never charged, that led to trial for assault on a policeman and feloniously eluding an officer who attempted to stop her on the basis of accusations from unknown, unidentified and untested

witnesses.” (Appellant’s Brief p. 8). However, this Court previously held in *Hill v. State*, that “[t]he central concern of the Constitutional Confrontation Clause is to ensure the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of an adversary proceeding before a trier of fact.” 865 So.2d at 380. This Court then noted that “the evidence used to accuse [the defendant] was not the various statements of anonymous tipsters but the evidence acquired by [the officer] which resulted in [the defendant’s] arrest” and that the officer “for all practical purposes of this issue, was the accuser and [the officer] was confronted and cross-examined by [the defendant] at trial.” *Id.* Similarly, in the case at hand, the evidence that the jury used to convict Watson of feloniously fleeing police was not Officer Peterson’s testimony regarding what the front end manager of Wal-Mart stated, but instead was the following evidence:

- (a) Officer Peterson’s testimony that Watson and her companion’s clothes were bulky and that it appeared that they had something under their clothes as they left Wal-Mart. (Transcript p. 92).
- (b) Officer Peterson’s testimony that he asked Watson to stop numerous times. (Transcript p. 92 - 95).
- (c) Ms. Watson’s acknowledgment that she saw the officers attempting to stop her. (Transcript p. 140).
- (d) Officer Peterson’s testimony that Watson got in her vehicle and continued to ignore his command to stop. (Transcript p. 94).
- (e) The testimony of both Officer Peterson and Officer Townsend stating that Watson almost ran over both officers and that both officers had to jump out of the way. (Transcript p. 95- 96 and 117 - 188).
- (f) Watson’s testimony that she “kept going because I panicked when I should have stopped” and her admission that she fled (Transcript p. 141 and 146).

Accordingly, Ms. Watson’s argument that “to permit such testimony under such a shallow fiction, is to foster shoddy police investigations and result in the conviction of innocent persons” is without merit.

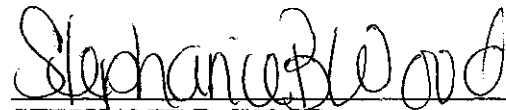
CONCLUSION

The State of Mississippi respectfully requests that this Honorable Court affirm the conviction and sentence of the Defendant Deloris Jean Watson as there were no reversible errors.

Respectfully submitted,

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CERTIFICATE OF SERVICE


I, Stephanie B. Wood, 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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