

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**NO. 2007-KA-01199-COA**

**FILED**

**MAY 15 2008**

**OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS**

**DELORIS WATSON**

**APPELLANT**

**VERSUS**

**STATE OF MISSISSIPPI**

**APPELLEE**

**APPEAL FROM THE CIRCUIT COURT OF THE 1<sup>ST</sup> JUDICIAL DISTRICT OF  
HINDS COUNTY, MISSISSIPPI**

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**REPLY BRIEF BY APPELLANT**

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**Oral Argument is Requested**

**OFFICE OF THE PUBLIC DEFENDER,  
HINDS COUNTY, MISSISSIPPI**

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STATEMENT REGARDING ORAL ARGUMENT

The undersigned counsel of record respectfully seeks oral argument in this case. Counsel for Ms. Watson believes the issue presented here, failure to permit confrontation of the absent witness who first accused Ms. Watson and set in motion the train of events that culminated in her conviction, is of fundamental importance. Oral argument may offer this honorable Court the opportunity to explore further what counsel for Ms. Watson feels are the significant constitutional contours of this assignment of error.

Respectfully submitted,

  
Virginia L. Watkins, MSB [REDACTED]  
Certifying Attorney

*Deloris Watson v. State of Mississippi*

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## ARGUMENT

**I. The trial court erred in permitting Officer Todd Peterson to offer hearsay testimony from an unidentified Wal-mart employee that Ms. Watson was shoplifting in the store, as it provided a necessary element of the crime, and thus deprived her of fundamental rights under AMEND. V, VI and XIV, U.S. CONST., and ART. 3, §§ 14, 26, MISS. CONST.**

Ms. Watson agrees with honorable counsel for the state that our law gives the trial court both the discretion and deference regarding the admissibility of evidence so long as the trial court operates within the boundaries of the Mississippi Rules of Evidence. *Summary, Brief of Appellee*, p. 3. Ms. Watson, however, would add one important corollary to that exercise of discretion, which she submits is *circumscribed by fundamental constitutional minimums*.

In this case, the trial court clearly abused its discretion due in failing to abide by either fundamental constitutional minimums or the Mississippi Rules of Evidence in permitting hearsay testimony by Officer Todd Peterson that an unidentified Wal-mart store manager or clerk allegedly said Ms. Watson either *had* shoplifted in the store in the past or was in the process of *currently* shoplifting in the store. T. 102-103; RE 11. Peterson's testimony was certainly offered to prove the truth of the matter asserted, that Ms. Watson was committing the crime of shoplifting, an essential element of the crime of feloniously eluding a police officer, as demonstrated by Jury Instruction S-2A, which *required* the jury to find Ms. Watson guilty of the crime of shoplifting. *Supplemental Clerk's Papers*, CP 5.

With all due deference to honorable counsel for the state, Ms. Watson would take issue with the misrepresentation of her argument that the trial court engaged in a fiction to permit Peterson to parade otherwise inadmissible hearsay before the jury. *Brief of the Appellee*, p. 4. The relevant rules of law involved here are basic and simple. First and foremost, Ms. Watson was denied the fundamental and substantial right secured under both state and federal constitutions to confront a witness against her, the unidentified and unknown Wal-mart

employee whose accusations set this entire incident in motion. AMEND. VI, XIV, U.S. CONST.; ART. III, §§ 14, 26, MISS. CONST. The second relevant rule of law is MISS.R.EVID. 802, "Hearsay is not admissible except as provided by law."

While there are indeed cases permitting the admission of otherwise inadmissible hearsay testimony under certain circumstances, Ms. Watson firmly asserts this is not present in this case. The supremacy of the confrontation right when in collision with state evidentiary rules was forcefully re-affirmed by the U.S. Supreme Court in the case of *Crawford v. Washington*, 541 U.S. 36 (2004) and companion cases, *Davis v. Washington* and *Hammon v. Indiana*, 547 U.S. 813 (2006).

In *Davis*, the Court found that a complainant's 911 call identifying her attacker was *not* testimonial, in that the primary purpose of the information was necessary for police to meet an ongoing emergency, one in which the life of the complainant, a domestic violence victim, was arguably at stake. No lives were at stake here; as the record shows, Peterson testified it was unclear whether the clerk referred to *past* or *present* conduct. T. 102-104. In *Hammon*, however, the Court found that written statements by a domestic violence victim in response to police interrogation was testimonial and therefore, within the ambit of the Confrontation Clause, because "there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution." *Hammon v. Indiana*, 547 U.S. 813, ---; 126 S.Ct. 2266, 2274. Ms. Watson would respectfully submit to this Court that by any analysis, the statements by the absent Wal-mart clerk were most relevant to later criminal prosecution.

The paramount right here is the fundamental right of confrontation; the alleged accusation by the unknown, unidentified store employee. What did this individual say? Did the clerk point out Ms. Watson or her companion? Did the statements of the clerk provide a

*reasonable* basis for Peterson to form a *reasonable* suspicion that a crime was *currently then being committed*? Peterson and Townsend were present to perform a courtesy “walk-through” at the store, not for the purpose of investigating any crime. T. 90. Peterson himself admitted he failed to observe Ms. Watson concealing anything and clearly testified he did not know if the store clerk referred to prior conduct on a past occasion or a crime currently in progress. T. 102-103. Jury Instruction S-2A, submitted by the prosecution, *required* the jury to find Ms. Watson guilty of shoplifting as a predicate offense to the crime of feloniously eluding Peterson. *Supplemental Clerk’s Papers*, CP 5. Therefore, the testimony of unknown and unidentified Walmart employee was absolutely vital for the jury to evaluate the reasonableness of Peterson’s suspicions, as the jury is the arbiter of the probative weight, worth and credibility of all witnesses and other evidence. See *Crane v. Kentucky*, 476 U.S. 683, 689 (1986).

Honorable counsel for the state attempts to hang the jury’s verdict on other evidence of reasonable suspicion, such as the fact that Peterson observed Ms. Watson in “bulky clothing” in which she *could* have concealed something, although he also admitted he never saw her conceal anything. T.103. Peterson’s belief as to the bulky clothing was meaningless without the hearsay statement of the clerk for basic, common sense reasons. This was late December, a winter month, when many individuals frequently wear bulky clothing. Is it reasonable, therefore, for this officer to believe that every person in bulky clothing leaving a store may be concealing something in commission of a crime? Particularly when the officer clearly testified he failed to observe her conceal anything. T. 102-103. Ms. Watson was justifiably scared when the officer spoke to her; her uncontroverted testimony was she was driving with a suspended license; another Clinton officer had warned her against coming into Clinton again. T. 140.

The state was required to prove all essential elements of the crime of feloniously eluding, including (1) that Ms. Watson willfully failed to obey a visible or audible signal to stop given by

a law enforcement officer (2) in the lawful performance of duty (3) who had a *reasonable suspicion to believe the driver has committed a crime*. MISS.CODE ANN. § 97-9-72 (1972) [emphasis added].

Yes, Ms. Watson fled, but how *reasonable* was the suspicion of this officer that a crime had been committed? If so, which crime? Jury Instruction S-2A, submitted by the prosecution, specified shoplifting; the indictment offers no predicate offense at all. Thus, it was most crucial for prosecutors to secure the presence and testimony of the Wal-mart clerk so that the jury could evaluate evidence on an essential element of the alleged felonious flight from a law enforcement officer, commission of the crime of shoplifting.

Furthermore, the admission into evidence of this inadmissible and unsupported hearsay essentially deprived Ms. Watson of her fundamental due process right, “the meaningful opportunity to present a complete defense.” *Crane v. Kentucky*, 476 U.S. at 689-690, citing *California v. Trombetta*, 467 U.S. 479, 485 (1984) ; AMEND. VI, XIV, U.S. CONST. In *Crane*, the U.S. Supreme Court reversed the teen-aged defendant’s murder conviction because the trial court refused to permit any testimony regarding the circumstances under which police extracted a confession from the boy. The Court held this amounted to deprivation of his fundamental right to mount a defense, as his prime aim at trial was to attack the confession as coercive. *Id.*, *Crane v. Kentucky*, 476 at 685; 687.

Therefore, with all due deference to arguments by counsel for the state, Ms. Watson respectfully seeks reversal and remand of her cause for a new trial and full observance of her constitutional right to confront witnesses against her.




### CONCLUSION

Counsel for Ms. Watson respectfully submits the admission of hearsay evidence described herein deprived her of her constitutionally guaranteed right to confront witnesses arrayed against her, a crucial element of her right to a fair trial secured under AMENDS. V, VI, XIV, U.S. CONST. and state constitutional guarantees. Without the testimony of the anonymous Wal-mart employee and without specification of a suspected crime in the indictment, the jury lacked critical information to judge whether or not Peterson had reasonable suspicion to suspect a crime had been committed, an essential element of feloniously eluding a law enforcement officer in a motor vehicle.

Based on the authority recited above, Ms. Watson humbly asks this honorable Court to vacate this conviction and reverse and remand for a new trial.

Respectfully submitted,

  
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Certificate of Service

I, the undersigned attorney, do hereby certify that I have this day caused to be hand-delivered a true and correct copy of the foregoing REPLY BRIEF OF APPELLANT to the following:

Honorable Robert Shuler Smith,  
DISTRICT ATTORNEY  
Hinds County Courthouse  
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Office of Bobby B. DeLaughter  
CIRCUIT JUDGE  
Breland Hilburn,  
SPECIAL CIRCUIT JUDGE  
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And by United States Mail, postage prepaid, to

Deloris Watson  
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Honorable James Hood III  
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So certified, this the 15<sup>th</sup> day of May, 2008.

  
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