

IN THE SUPREME COURT OF MISSISSIPPI  
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

DIANN WRIGHT GOODEN

APPELLANT

VS.

CASE NUMBER 2009 - KA - 00027 - COA

STATE OF MISSISSIPPI

APPELLEE

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BRIEF OF APPELLANT

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APPEAL FROM THE CIRCUIT COURT OF  
WASHINGTON COUNTY, MISSISSIPPI  
CAUSE NUMBER CR - 2007 - 425

PREPARED BY:

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## CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for Appellant, namely Diann Wright Gooden, hereby certify that the following list of parties have an interest in the outcome of the instant criminal action. These representations are made in order that the Judges of this Honorable Court may evaluate the possible disqualification(s) and/or recusal pursuant to Rule 28.1.1 of the Mississippi Rules Of Appellate Procedure, to wit:

1. Diann Wright Gooden, Appellant
2. James "Jim" Giddy, Esquire  
MISSISSIPPI ATTORNEY GENERAL'S OFFICE  
Post Office Box 220  
Jackson, Mississippi 39201
3. Honorable Richard A. Smith  
CIRCUIT COURT JUDGE - DISTRICT # 4  
Post Office Box 1953  
Greenwood, Mississippi 38935 - 1953  
( Lower Court / Trial Judge )
4. Barbara Estes - Sanders, Clerk  
CIRCUIT COURT OF WASHINGTON COUNTY  
Post Office Box 1276  
Greenville, Mississippi 38702 - 1276
5. Brandon I. Dorsey, Esquire  
BRANDON I. DORSEY, PLLC  
Post Office Box 13427  
Jackson, Mississippi 39236 - 3427  
Attorney Appointed For Appellant

## STATEMENT REGARDING ORAL ARGUMENTS

Appellant, namely Diann Wright Gooden, by and through her undersigned attorney of record, namely Brandon I. Dorsey, BRANDON I. DORSEY, PLLC, Post Office Box 13427, Jackson, Mississippi 39236 - 3427, respectfully request that this Honorable Court grant oral argument in these premises.

## TABLE OF AUTHORITIES

### CASE LAW

1. Bush v. State, 895 So.2d 836, 843 ( Miss. 2005 )
2. Chim v. State, 2008 - MS - R0118.007 ( Miss. 2008 )
3. Coverson v. State, 617 So.2d 642 ( Miss. 1993 )
4. Edwards v. State, 469 So.2d 68, 70 ( Miss. 1985 )
5. Frost v. State, 453 So.2d 695 ( Miss. 1984 )
6. Goodin v. State, 2006 - KA - 00756 - COA ( Miss. 2007 )
7. Hawthorne v. State, 883 So.2d 86 ( Miss. 2004 )
8. Holloway v. State, 312 So.2d 700, 701 ( Miss. 1975 )
9. Humphrey v. State, 883 So.2d 86 ( Miss. 2004 )
10. Miranda v. Arizona, 384 U.S. 436 ( 1966 )
11. Richmond v. State, 751 So.2d 1038, 1046 ( Miss. 1999 )
12. Seeling v. State, 844 So.2d 439 ( Miss. 2003 )
13. Shelton v. State, 853 So.2d 1171, 1186 ( Miss. 2003 )

### STATUTES

1. Section 97 - 7 - 10 Of The Mississippi Code Annotated Of 1972, as amended

## STATEMENT OF THE ISSUES

- I. WHETHER THE VERDICT FINDING DIANN WRIGHT GOODEN GUILTY AS TO COUNT NUMBER 2 OF THE INDICTMENT IS AGAINST AND/OR INCONSISTENT WITH THE OVERWHELMING WEIGHT OF THE EVIDENCE.
- II. WHETHER THE VERDICT FINDING DIANN WRIGHT GOODEN GUILTY AS TO COUNT NUMBER 3 OF THE INDICTMENT IS AGAINST AND / OR INCONSISTENT WITH THE OVERWHELMING WEIGHT OF THE EVIDENCE.
- III. WHETHER THE LOWER COURT ERRED IN OVERRULING DIANN WRIGHT GOODEN'S MOTION FOR DIRECTED VERDICT.
- IV. WHETHER THE LOWER COURT ERRED IN DENYING DIANN WRIGHT GOODEN'S MOTION TO SUPPRESS

## STATEMENT OF THE CASE

### A. NATURE OF THE CASE

The instant case is submitted to this Honorable Court to determine: ( 1 ) whether the verdict finding Diann Wright Gooden guilty of Count Number 2 of the indictment was against and / or inconsistent with the overwhelming weight of the evidence; ( 2 ) whether the verdict finding Diann Wright Gooden guilty of Count 3 of the indictment was against and / or inconsistent with the overwhelming weight of the evidence; ( 3 ) whether the lower court erred in overruling Diann Wright Gooden's Motion For Directed verdict and ( 4 ) whether the lower court erred in denying Diann Wright Gooden's Motion To Suppress.

Appellant, Diann Wright Gooden, by and through her attorney, argue, contend and submits to this Honorable Court the lower court has committed reversible error and as a result, the verdicts should be overturned and/or reversed and remanded.

B. THE COURSE OF THE PROCEEDINGS IN THE LOWER COURT

That Appellant, namely, Diann Wright Gooden, was indicted by the grand jurors of Washington County, Mississippi on or about December 14, 2007 on four ( 4 ) counts of fraud in accordance with Section 97 - 7 - 10 of the Mississippi Code Annotated of 1972, as amended. ( TR 1, 2 RE 5, 6 ). Subsequent thereto, on or about February 1, 2008, Appellant, namely Diann Wright Gooden was arraigned and the matter was set for trial. ( TR 7, RE 7 ).

That on or about August 18, 2008, Appellant, Diann Wright Gooden moved the lower court to suppress any and all statements, whether oral and / or written made by her during the investigation conducted by the Mississippi Attorney General's Office, the Washington County Sheriff's Office and / or the Greenville Police Department. ( TR 44 - 47, RE 8 - 11 ). That on or about September 24, 2008, the lower court entered its Order denying Diann Wright Gooden's Motion To Suppress. ( TR 87 - 90, RE 12 - 15 )

That the trial in these premises commenced on or about September 30, 2008 and concluded October 1, 2008, where Appellant was found not guilty as to Count Number 1 ( TR Exhibit 70, RE 16 ), but guilty as to Count Number 2 ( TR 133, RE 17 ) and Count

Number 3 ( TR 130, RE 18 ), respectively. Prior to the start of any and all testimony, the State moved to dismiss Count Number 4 of the indictment.

### C. THE DISPOSITION OF THE LOWER COURT

That the trial in these premises commenced on or about September 30, 2008 and concluded on or about October 1, 2008, where Appellant was found not guilty as to Count Number 1 , but guilty as to Count Number 2 and Count Number 3 respectively.

As a direct and proximate result thereof of the guilty verdicts, Appellant, by and through her attorney of record, moved the lower court for a motion for judgment notwithstanding jury verdict or in the alternative a new trial and for reasonable bail pending appeal. ( TR 159 - 161, RE 19 - 21 ) The lower court denied the Motion in part as it relates to the request for judgment notwithstanding the jury verdict and new trial, but granted the Motion in part as it related to granting bail pending an appeal.

( TR 166, 167, RE 22, 23 ) As a result of the jury verdict, Diann Wright Gooden was sentenced to a term of five ( 5 ) years in the custody of the Mississippi Department Of Corrections and ordered to pay a fine in the amount of \$5,000.00 as to Count Number 2 and a term of five ( 5 ) years in the custody of the Mississippi Department Of Corrections and ordered to pay a fine in the amount of \$5,000.00 as to Count Number 3, with the understanding that such sentences would run consecutive with one another. ( TR 134, 135, RE 24, 25 ).

That Diann Wright Gooden filed her Notice Of Appeal ( TR 171, 172, RE 26, 27 ) and subsequently thereto, moved the lower court to allow her to appeal as a "pauper." ( TR 174, 175, RE 28, 29 ). In response, the lower court found the Motion well taken. ( TR 191, 192, RE 30, 31 ). Subsequent thereto, Diann Wright Gooden filed her Designation Of The Record ( TR 179 - 181, RE 32 - 34 ) and appropriate Certificate Of Compliance. ( TR 182, 183, RE 35, 36 ).

#### STATEMENT OF THE FACTS

In May of 2007, the Washington County Board Of Supervisors contacted the Mississippi Attorney General's Office with respects to investigating deputy clerks inside of the Washington County Tax Collector's Office that were allegedly changing people's taxing districts from the city to the county in order to obtain cheaper tags. ( TR 89, RE 37 ). In response, Carl Pree headed the investigation. During the course of the investigation, Mr. Pree learned that there were ten ( 10 ) deputy clerks employed at that time. ( TR 91, RE 38 ). In addition to clerks, Mr. Pree talked with Marcus Cannon, Bernard Marsalis and Cordell Gray, who alleged that Diann Wright Gooden changed their taxing districts so as to allow each of them to receive cheaper tags.



## SUMMARY OF THE ARGUMENT

Diann Wright Gooden contends that the lower court committed reversible error in ( 1 ) that the verdict finding Diann Wright Gooden guilty of Count Number 2 of the indictment was against and / or inconsistent with the overwhelming weight of the evidence; ( 2 ) that the verdict finding Diann Wright Gooden guilty of Count 3 of the indictment was against and / or inconsistent with the overwhelming weight of the evidence; ( 3 ) that the lower court overruled Diann Wright Gooden's Motion For Directed verdict and ( 4 ) that the lower court erred in denying Diann Wright Gooden's Motion To Suppress.

## ARGUMENT

### I. WHETHER THE VERDICT FINDING DIANN WRIGHT GOODEN GUILTY AS TO COUNT NUMBER 2 OF THE INDICTMENT IS AGAINST AND/OR INCONSISTENT WITH THE OVERWHELMING WEIGHT OF THE EVIDENCE.

A new trial should be granted if the jury's verdict "so contradicts the overwhelming weight of the evidence that, to allow it to stand, would be to sanction an unconscionable injustice. Hawthorne v. State, 883 So.2d 86 ( Miss. 2004 )( Citing Frost v. State 453 So.2d 695 ( Miss. 1984 )). If the verdict is against the overwhelming weight of the evidence, a new trial should be ordered. Holloway v. State, 312 So.2d 700, 701 ( Miss. 1975 ).

In Hawthorne, the Court opined that the evidence introduced by the state was “too weak” to prove sanity. The Court went further, and opined that the state did not prove beyond a reasonable doubt that defendant Hawthorne was sane. Consider in the instant case, Bernard Marsalis testified in pertinent part that he did not remember having a conversation with Diann Wright Gooden.<sup>1</sup> ( TR 168, RE 39 ). Moreover, Mr. Marsalis could not identify Diann Wright Gooden as the clerk that sold him his tag.<sup>2</sup> ( TR 169, RE 40 ). In addition, Mr. Marsalis testified that he executed the affidavit in another portion of the courthouse, not in Diann Wright Gooden’s presence, knowing same to be false.<sup>3</sup>

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<sup>1</sup>Question: Okay, now this affidavit says that you certify that you haven’t driven this vehicle for a year, to repair brakes. Is that correct?

Answer: Yes, sir.

Question: Now, when you went to get your tag, to renew your truck tag, the clerk that waited on you, do you recall telling her that your truck had not been driven for a year?

Answer: I will be honest with you. I really don’t remember what the conversation was.

Question: Did you tell her your truck had been in a repair shop for a year?

Answer: Like I said, I don’t recall.

<sup>2</sup>Question: You say you don’t recall obtaining it?

Answer: That’s correct.

Question: You don’t know who gave it to you?

Answer: Well, it had to be the clerk that sold me my tag.

Question: Do you know which clerk gave it to you?

Answer: The lady that, as I recall, she kind of had long hair.

<sup>3</sup>Question: Then there are two signatures. I believe that’s Ms. Hansell’s name as Chancery Clerk and then it says “by” and that would have been obo of her deputy clerks, is that correct?

Answer: Right.

Question: So, Ms. Hansell’s office, her office is in another part of the building from the courthouse, is that correct? Let me ask you this: Is Ms. Hansell’s office in the same office where you buy your tag?

Answer: I believe she is across the hall.

Question: Across the hall. So, you would have had to take this form across the hall to get it

In light of the afore referenced testimony, Diann Wright Gooden asserts that to allow the jury verdict as to Count Number 2 to stand, when the State, through the testimony of Bernard Marsalis, could not even identify Mrs. Gooden as the person that even sold him ( i.e. Mr. Marsalis ) the tag in question in these premises. Therefore, Mrs. Gooden further asserts that the State has failed to introduce any evidence to meet its burden of proof for the charge of fraud with respects to Count Number 2.

II. WHETHER THE VERDICT FINDING DIANN WRIGHT GOODEN GUILTY AS TO COUNT NUMBER 3 OF THE INDICTMENT IS AGAINST AND / OR INCONSISTENT WITH THE OVERWHELMING WEIGHT OF THE EVIDENCE

When inquiring whether sufficient evidence exists to support a conviction, "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the

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notarized, is that correct?

Answer: Yes.

Question: Okay. Now, also this document says, it is kind of small, but I am going to read it for you. It says, " I hereby certify that the vehicle described below was not operated upon the streets or highways of this state from the date of acquisition or from the expiration of said vehicle's last privilege license to the current date." Did I read that correct?

Answer: Yes, sir.

Question: So, you, when you signed the affidavit, you understood that what you were signing, you understood that you weren't telling the truth as ( sic ) relates to this document, is that correct?

Answer: Can you repeat that?

Question: I said, let me ask you this: You knew, when you were signing this document, that this was not true. You knew that, right?

Answer: Right.

Question: Okay. But you signed it anyway, right?

Answer: Right.

Question: Had it notarized, right?

Answer: Yes, sir.

crime beyond a reasonable doubt. *Goodin v. State*, 2006 - KA - 00756 - COA ( Miss. 2007 ) ( Citing *Bush v. State*, 895 So.2d 836, 843 ( Miss. 2005 )). This Court must reverse and render if the facts and inferences “point in favor of the defendant on any element of the offense with sufficient force that reasonable men could not have found beyond a reasonable doubt that the defendant was guilty. *Id.* ( Citing *Edwards v. State*, 469 So.2d 68, 70 ( Miss. 1985 )). Emphasis added.

In the instant case, Marcus Cannon testified that he never saw Mrs. Gooden actually change his taxing district.<sup>4</sup> ( TR 140, 141, RE 41, 42 ). In addition, Mr. Cannon testified that he did not see Mrs. Gooden even “prepare” the document ( s ) at issue in these premises.<sup>5</sup> ( TR 145, RE 43 ).

In addition, there was no testimony proffered by any witness tendered by the State regarding the monies lost by either the State Of Mississippi or Washington County. In *Richmond v. State*, 751 So.2d 1038, 1046 ( Miss. 1999 ), the Mississippi

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<sup>4</sup>Question: As it relates to your wife’s vehicle, did you see Mrs. Gooden change any taxing district?

Answer: No, I called her.

<sup>5</sup>Question: But, did you see her prepare it?

Answer: No.....

Question: Okay. So, you don’t know if another clerk prepared the document, do you?

Answer: No.

Question: You don’t know if another clerk changed the taxing district, do you?

Answer: No.

Question: Just because Ms. Gooden handed it to you, that doesn’t mean she prepared it, is that right?

Answer: No.

Supreme Court held that the State was required to prove an unnecessary element alleged in the indictment. In the instant case, each indictment concludes with the language " .... causing the State Of Mississippi to loose revenue to which it was entitled, in violation of Section 97 - 7 - 10 of the Mississippi Code Annotated of 1972, as amended."

In pertinent part, Carl Pree testified as follows:

Question: All right. Can you tell us how much of the money goes to the City, what percentage?

Answer: I don't have those calculations in front of me, sir.

Question: Okay. What percentage goes to the county?

Answer: I don't have any of those calculations.

Question: What percentage goes to the State?

Answer: I don't have any of those calculations.

( TR 114, RE 44 ). Therefore, because Carl Pree, nor any other witness proffered by the State could articulate the monies actually lost by the State, county or city, the State failed meet its burden, thus demonstrating that the verdict, as it relates to Count Number 3 is against and / or inconsistent with the overwhelming weight of the evidence.

III. WHETHER THE LOWER COURT ERRED IN OVERRULING  
DIANN WRIGHT GOODEN'S MOTION FOR DIRECTED VERDICT

The standard of review for the denial of a motion for directed verdict and judgment notwithstanding the verdict is the same. *Humphrey v. State*, 883 So.2d 86 ( Miss. 2004 ) ( Citing *Shelton v. State*, 853 So.2d 1171, 1186 ( Miss. 2003. )). A directed verdict challenges the sufficiency of the evidence presented at trial. *Id.* This Court demands that the lower court reverse and render if the facts, viewed in the light most favorable to the State, point in favor of the defendant that reasonable men could not have arrived at a guilty verdict. *Id.* ( Citing *Seeling v. State*, 844 So.2d 439 ( Miss. 2003 ).

In the instant case, even when looking at the evidence in the light most favorable to the state, the evidence was not sufficient for fraud. No witness proffered by the State Of Mississippi testified that they witnesses Diann Wright Gooden. In fact, one ( 1 ) witness testified that he never even met Diann Wright Gooden, while another witness testified that he did not know he actually gave him his tag, in fact, he believed that the lady that gave him the tag had long hair. Regardless, based on the testimony proffered, and with all inferences most favorable to the State, the lower court erred in denying Diann Wright Gooden's Motion for directed verdict.

#### IV. WHETHER THE LOWER COURT ERRED IN DENYING DIANN WRIGHT GOODEN'S MOTION TO SUPPRESS

In *Miranda*, the United States Supreme Court held that the Fifth and Fourteenth Amendments' prohibitions against compelled self - incrimination require that, prior to custodial interrogation, the accused must be advised of his right to remain silent and his right to counsel. *Chim v. State*, 2008 - MS - R0118.007 ( Miss. 2008 ) ( Citing *Miranda v. Arizona*, 384 U.S. 436 ( 1966 ) ). For a waiver of one's *Miranda* rights to be considered valid, the state must prove beyond a reasonable doubt that the waiver was made voluntarily, knowingly and intelligently. *Id.* ( Citing *Coverson v. State*, 617 So.2d 642 ( Miss. 1993 ) ). A waiver is considered voluntary if it is the result of a free and deliberate choice rather than intimidation, coercion or deception. *Id.* A waiver is knowing and intelligent if it is made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it.

In the instant case, Carl Pree never advised Diann Wright Gooden of the protections afforded pursuant to *Miranda*. Carl Pre testified that he interviewed over four thousand people prior to questioning Diann Wright Gooden, and he stated in pertinent part that at lease five ( 5 ) such persons implicated Diann Wright Gooden. Therefore, prior to questioning Diann Wright Gooden, Carl Pree knew and / or reasonably should have known that Mrs. Gooden was a suspect and that she would make self incriminating statements, thus, requiring that he advise her of her *Miranda*

warning ( s ), but he failed t do so. Instead, he deceived her into believing that if she cooperated, everything would be alright. Appellant contends that the lower court committed reversible error in denying her Motion To Suppress.

### CONCLUSION

For the foregoing reasons, Appellant asserts the lower court has erred and should therefore, be reversed and same shall be rendered and/or in the alternative remanded to the lower court.

Respectfully submitted,

DIANN WRIGHT GOODEN., APPELLANT

BY:

BRANDON I. DORSEY, MSB [REDACTED]  
ATTORNEY FOR DEFENDANT

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CERTIFICATE OF SERVICE

I, Brandon I. Dorsey, the undersigned attorney and counselor in these premises, hereby certify that I have on this day caused to be served, via United States mail, postage prepaid, a true and correct copy of the above and foregoing Appellant's Brief to the following:

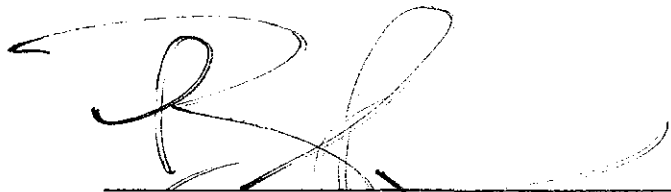
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Honorable Richard A. Smith  
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Post Office Box 1953  
Greenwood, Mississippi 38935 0 1953

Barbara Estes - Sanders, Clerk  
CIRCUIT COURT OF WASHINGTON COUNTY  
Post Office Box 1276  
Greenville, Mississippi 38702 - 1276

SO CERTIFIED, this the 26<sup>th</sup> day of October of

2009.

  
\_\_\_\_\_  
BRANDON I. DORSEY