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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RONALD VAUGHN — APPELLANT

VS. — NO. 2006-KA-0065-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF ISSUES

I. THE TRIAL COURT PROPERLY DENIED VAUGHN'S MOTION TO SUPPRESS.

II. NO BREAK OCCURRED IN THE CHAIN OF CUSTODY, NOR DID VAUGHN RAISE A REASONABLE INFERENCE OF PROBABLE TAMPERING OR SUBSTITUTION OF THE EVIDENCE.

STATEMENT OF FACTS

On the morning of February 9, 2004, a large funeral party was leaving Glenwood Funeral Home in Vicksburg. Sheriff's Deputy Michael Hollingsworth had pulled his vehicle, with blue lights on, onto Highway 80 and stood outside the vehicle to stop westbound traffic so that the funeral procession could proceed to the nearby cemetery. As Hollingsworth was directing traffic, a maroon Oldsmobile came from behind and passed the funeral procession, driving east in the westbound lane. T. 222, 335. The vehicle struck Hollingsworth who was attempting to flag it down. T. 223,335, 342, 350. Hollingsworth's body flew into the air, hit an oncoming truck, and landed face down in a nearby ditch. T. 223.

Several funeral attendees exited their vehicles to check on Hollingsworth. Ronald Vaughn, the driver of the maroon Oldsmobile, eventually exited his car and walked up a hill. T. 336, 342, 351, 360. Several witnesses approached Vaughn to check his condition. Vaughn began cursing and indicated that he was going to leave the scene. T. 343, 360, 367-68. One of the witnesses informed Vaughn that he would not be going anywhere until authorities arrived. T. 351. Thereafter, Vaughn remained silent until he collapsed to the ground. T. 343, 352, 361, 368.

Highway Patrol Officer Scott Henley responded to the emergency call. When he arrived, paramedics and other law enforcement officers were present. 233. Several witnesses approached Henley and described what they had seen. T. 233. Henley then approached Vaughn in an attempt to check his welfare, but he would not respond to Henley. T. 234. Henley noted that Vaughn smelled of alcohol and marijuana, and his eyes were dilated. T. 234. Henley then walked over to Vaughn's car, which also smelled of alcohol and marijuana, and saw in plain view a bottle of gin on the seat and a bag of marijuana on the floorboard. T. 235-36. Vaughn was taken into custody and issued citations for driving under the influence, possession of marijuana in a motorized vehicle, and

failure to yield to blue lights. T. 246-47, Exhibits 11-13.

Vaughn was transported by Trooper Daniel Lewis to River Regional Hospital. Henley, who arrived at the hospital shortly after Vaughn and Lewis, requested that the emergency room nurse draw blood from Vaughn. T. 242. Henley then witnessed nurse Claudia Bottino draw the blood and hand the container to Officer Lewis, who sealed the container. T. 244. Immediately thereafter, Henley delivered the blood sample to the Mississippi Crime Lab. T. 289. Vaughn's blood tested positive for marijuana, ecstacy, and methamphetamine. T. 425.

Deputy Hollingsworth was taken to River Regional Hospital, but then immediately transferred to University Medical Center. T. 374. Hollingsworth was unconscious for several weeks. T. 375. He eventually gained consciousness in the Intensive Care Unit at UMC. Thereafter, he began a four week course of rehabilitation before he was referred to Dr. Stuart Yablon. T. 214. Hollingsworth was still unable to speak, follow simple commands, feed himself, or control his bladder and bowels. T. 215. Although Yablon described Hollingsworth's later recovery as "remarkable," he opined that Hollingsworth suffered a serious, permanent brain injury. T. 217.

Vaughn was eventually indicted , tried, and convicted of aggravated DUI.

SUMMARY OF ARGUMENT

There is no question that without a search warrant, an officer must have probable cause to believe that the operator of a motor vehicle is intoxicated before he can order a blood test. However, a long line of Mississippi case law holds that probable cause is the only prerequisite. Only two Mississippi cases suggest that there must be probable cause plus exigent circumstances for an officer to order a driver to submit to a blood test. The State respectfully submits that because evidence of intoxication dissipates quickly, there will always be an exigency in having an intoxicated driver's blood tested when an officer has probable cause to believe that the driver is intoxicated. In any event, whether only probable cause or probable cause plus a warrant exception is needed, the State met both tests in the case *sub judice*. More than ample probable cause existed for Henley to believe that Vaughn was intoxicated while operating a motor vehicle, and because nearly two hours had lapsed before Vaughn was transported from the scene, exigent circumstances existed. Therefore, the trial court properly admitted Vaughn's blood test results at trial.

The State fully established the chain of custody of Vaughn's blood samples. To prove his claim on appeal, Vaughn must show either a break in the chain of custody, or a reasonable inference of probable tampering or substitution of the evidence. Instead, Vaughn simply suggests that substitution could have occurred. As such, he clearly failed to meet his burden.

ARGUMENT

I. THE TRIAL COURT PROPERLY DENIED VAUGHN'S MOTION TO SUPPRESS.

At trial, Vaughn moved to suppress the blood test results. After a hearing outside the presence of the jury, the trial court denied the motion, finding that Henley had sufficient probable cause to have Vaughn's blood drawn, and that exigent circumstances existed due to the fact that evidence of intoxication dissipates quickly. T. 278.

Vaughn claims on appeal that the blood test violated his Fourth Amendment right against unreasonable search and seizure because Officer Henley failed to obtain his consent or a search warrant before ordering the test. The State first argues that this claim is procedurally barred as Vaughn failed to allege this specific assignment of error in his motion for J.N.O.V or new trial. **Alonso v. State**, 838 So.2d 309, 313 (¶10) (Miss. Ct. App. 2002) (citing **Seals v. State**, 767 So.2d 261 (¶6) (Miss. Ct. App.2000)). Vaughn's only complaint in that motion relating to the blood samples pertain to his chain of custody argument. However, should this honorable Court consider the merits of Vaughn's claim, the State presents the following argument to show that neither Vaughn's consent nor a search warrant were needed for Officer Henley to order the blood test.

According to the Mississippi Implied Consent Law, anyone who chooses to operate a motor vehicle on the public roads of this state has given consent to submit to a breath, urine, or blood test for the purpose of determining the presence of substances which would impair the driver's ability to operate a motor vehicle. Miss. Code Ann. 63-11-5(1). Mississippi Code Annotated 63-11-5(1) requires that the officer who orders such a test to be administered have "reasonable grounds and probable cause to believe that the person was driving or had under his actual physical control a motor vehicle upon the public streets or highways of this state while under the influence of intoxicating liquor or any other substance which had impaired such person's ability to operate a motor vehicle."

Id. The statute lists no other requirement that must be met before an officer may order a driver to submit to a breath, urine, or blood test.

In addition to the plain language of the implied consent statute, a long line of Mississippi cases holds that an officer needs only probable cause to believe that the driver is intoxicated before he can order the driver to submit to a blood test, while a few cases suggest that more may be required. See **Wilkerson v. State**, 731 So.2d 1173, 1177-78 (¶¶13-15) (Miss. 1999); **Longstreet v. State,** 592 So.2d 16, 21 (Miss. 1991); **Gibson v. State,** 503 So.2d 230, 233-34 (Miss. 1987); **Ashley v. State,** 423 So.2d 1311, 1313-14 (Miss. 1982). Each of the aforementioned cases involve a driver who displayed obvious signs of intoxication after being involved in an automobile accident. Each defendant submitted to a warrantless blood test at the direction of an investigation officer. Prior to trial, each defendant moved to suppress the results of the blood test, arguing Fourth Amendment violations. In each case, the trial court overruled the motion. Finally, on appeal, the supreme court held in each case that the trial court properly overruled the defendant's motion to suppress, and that the defendant's Fourth Amendment right to be free from unreasonable searches and seizures was not violated because the officer had sufficient probable cause to believe that the defendant was intoxicated at the time of the accident.

The supreme court most recently discussed the requirements for a valid blood sample to be taken in the case of **McDuff v. State,** 763 So. 2d 850 (Miss. 2000). In **McDuff**, the court was asked to consider the constitutionality of Mississippi Code Annotated § 63-11-8 which required a mandatory blood test of drivers involved in fatal accidents. The court struck down the statute as unconstitutional insofar as it mandated search and seizure without probable cause. **Id.** at 855 (¶16). The court ultimately held that before a driver may be ordered to submit to a blood test, the State must

have either (1) probable cause, (2) a warrant or consent, or (3) search incident to a lawful arrest. **Id.** at 856 (¶19).

In the case *sub judice*, the trial court found, in accordance with **McDuff**, that Officer Henley had probable cause to believe that Vaughn was driving under the influence of intoxicating substances. The trial court cited the following to support its finding. When Henley arrived at the scene, Vaughn was non-responsive and incoherent and smelled of alcohol and marijuana. T. 278. Alcohol and marijuana were also discovered in his vehicle. T. 278. Vaughn was irate when he reached the hospital and displayed obvious signs of intoxication. T. 278. A trial court's finding of probable cause is reviewed for abuse of discretion. **Holloman v. State**, 820 So.2d 52, 55 (¶11) (Miss. Ct. App. 2002) (**Parker v. State**, 606 So.2d 1132, 1137-1138 (Miss. 1992)). The trial court did not abuse its discretion in finding that probable cause existed to order Vaughn to submit to a blood test.

At least one case since **McDuff** has relied on the holding in that case in finding that an officer was justified in ordering a warrantless blood test where he had probable cause to believe that the driver was intoxicated. **Holloman v. State**, 820 So.2d 52, 55 (¶10) (Miss. Ct. App. 2002). However, the **Holloman** Court also found that because exigent circumstances existed, the officer was justified in not obtaining a search warrant. **Id.** In its discussion of exigent circumstances, the Court relied on **Sanders v. State**, 678 So.2d 663, 667 (Miss.1996), which concerned the "automobile exception" to warrantless searches, rather than a blood test based on probable cause. The State submits that the **Holloman** Court's discussion of exigent circumstances was mere dicta as no other implied consent/blood test case, including **McDuff**, had ever held that more than probable cause was required for an officer to order a blood test.

Nevertheless, even if a finding of exigent circumstances is required in addition to probable cause for a warrantless blood test, the trial court in the case *sub judice* properly found that exigent circumstances existed. In **Holloman**, the Court found that "the fact that drug and alcohol content in a person's system can dissipate over the period of any delays incurred in obtaining and serving the warrant" gave rise to exigent circumstances. **Id.** Further, in **Ashley**, while the Court found that only probable cause was needed to order a warrantless blood test, the Court stated the following in dicta,

> [The Supreme Court in **Schmerber v. California**, 384 U.S. 757 (1966)] also recognized, as this Court did in **Jackson v. State**, 310 So.2d 898 (Miss.1975), that the percentage of alcohol in the blood begins to diminish shortly after drinking stops as the body functions to eliminate alcohol from the system.

Ashley, 423 So. 2d at 1313. However, the Court did not state that a finding of exigent circumstances was required to order a warrantless blood test. In the event that this honorable Court finds that exigent circumstances are required, in accordance with **Holloman** and **Ashley**, exigent circumstances exist in any implied consent/blood test case where the officer has probable cause to believe that the driver is intoxicated, as evidence of intoxication dissipates quickly.

As the State has shown, the trial court was correct in finding that the result of Vaughn's blood test was admissible because Officer Henley had probable cause to believe that Vaughn was intoxicated when he hit Hollingsworth with his vehicle. Additionally, if a finding of exigent circumstances is also required, the trial court correctly found that "alcohol content dissipates over a time period so there is an exigent circumstance that exist[s] for the officer to obtain the blood test to insure that a test would be an accurate test to determine the blood alcohol content." T. 278.

The State will briefly respond to Vaughn's reliance on **Shaw v. State**, 938 So. 2d 853 (Miss. Ct. App. 2005). **Shaw** was before this honorable Court on interlocutory appeal for the determination

of whether the trial court properly ruled that Shaw's blood test, ordered pursuant to a search warrant, was admissible at trial. **Id.** This Court found the blood test was not admissible because the officer in that case chose to secure a search warrant prior to ordering the blood test, and the search warrant affidavit contained false information, thereby invalidating the search warrant. **Id.** at 857-58 (¶¶10-11). Such was not the case at hand, and **Shaw** is wholly inapplicable to the present case. The **Shaw** opinion did state in passing, without analysis, and arguably in dicta, that no exigent circumstances existed in that case. Id. at 858 (¶14). However, as previously stated, if exigent circumstances are a prerequisite to a warrantless blood test, **Holloman**, **Ashley**, and **Schmerber**, all make clear that such circumstances existed in the present factual scenario.

Vaughn also claims that he was either not under arrest, or not lawfully arrested at the time his blood was drawn and tested. This contention is both false and irrelevant. The contention is false because one is under arrest when he is taken into custody by an officer to answer for an alleged crime. **Culp v. State**, 933 So.2d 264, 272 (¶13) (Miss. 2005) (citing **Blue v. State**, 674 So.2d 1184, 1202 (Miss.1996) (overruled on other grounds)). Additionally, one is in custody when a reasonable person under the circumstances would not feel free to leave or refuse police demands. **Id.** Although the record does not contain whether Henley or any other officer articulated the words, "you are under arrest," the record is clear that prior to Vaughn's blood being drawn and tested, he was at the scene of the crime in handcuffs, alcohol and drugs were found in his car, he was visibly intoxicated and had just run over an officer, and he was given three citations, and transported to the hospital by a law enforcement officer while still handcuffed for the purpose of confirming that he was indeed driving under the influence of intoxicating substances. Clearly, Vaughn was under arrest.[1] However, as

[1]Although the trial court correctly found that the blood test was admissible based on probable cause and exigent circumstances, the test is also admissible based on search incident to a lawful

previously stated, Vaughn's contention is irrelevant because one need not be under arrest or in police custody prior to submitting to a warrantless blood test where an officer has probable cause to believe the driver was intoxicated. **Green v. State**, 710 So.2d 862, 865 (¶¶7-10) (Miss. 1998); **Longstreet**, 592 So. 2d at 20 (citing **Ashley v. State**, 423 So. 2d 1311 (Miss. 1983)).

For the foregoing reasons, the trial court properly overruled Vaughn's motion to suppress.

II. NO BREAK OCCURRED IN THE CHAIN OF CUSTODY, NOR DID VAUGHN RAISE A REASONABLE INFERENCE OF PROBABLE TAMPERING OR SUBSTITUTION OF THE EVIDENCE.

Reversing a conviction based on a chain of custody violation requires a finding that the trial court abused its discretion in admitting the evidence in question. **Ellis v. State**, 934 So.2d 1000, 1004 (¶20) (Miss. 2006). "The test of whether there has been a break in the chain of custody of evidence is whether there is an indication or reasonable inference of probable tampering with the evidence or substitution of the evidence." **Id.** at 1005 (¶20). The defendant has the burden of producing evidence that the chain of custody has been broken. **Id.** at (¶22). The State is not required to produce every witness who handled the evidence in question in order to establish the chain of custody. **Id.** (citing **Ormond v. State**, 599 So.2d 951, 959 (Miss. 1992)).

Claudia Bottino testified that she was the emergency room nurse who drew two vials of Vaughn's blood. T. 306-07. Officer Henley witnessed Bottino draw the blood and hand the vials to Officer Lewis, who placed the vials in the evidence container, sealed the container, and handed it over to Henley. T. 243-44. Henley then transported the evidence container to the Mississippi Crime Lab. T. 289. John Stevenson, a Mississippi Crime Lab forensic scientist, received the sealed blood specimen kit from Henley at 2:14 p.m. on the day of the accident. T. 314. Stevenson then

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arrest. See **McDuff** at 856 (¶19); **Gregg v. State**, 374 So.2d 1301, 1303-04 (Miss. 1979); **Jackson v. State**, 310 So.2d 898, 900 (Miss. 1975).

entered all information relating to the kit into Justice Track System, the crime lab's information system. 315-16. Stevenson then performed a blood alcohol analysis, which yielded a finding of 0%. T. 316-17. Stevenson sent the remaining untested blood sample to National Medical Laboratory Services (NMLS) to perform a quantitative analysis. T. 317. Vaughn's blood sample was tested at NMLS, where it was determined that Vaughn had marijuana, amphetamine products, ecstacy, and methamphetamine present in his blood at the time of the accident. T. 425. A chain of custody report showing the individuals at NMLS who handled Vaughn's blood sample was admitted into evidence. Exhibit 43, pp. 15, 34, 65.

Vaughn has simply failed to show either a break in the chain of custody, or a reasonable inference of probable tampering or substitution of the evidence. "A mere suggestion that substitution could possibly have occurred does not meet the burden of showing probable substitution." **Id**. at 1006 (¶23).

CONCLUSION

For the foregoing reasons, the State asks this honorable Court to affirm Vaughn's conviction and sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, La Donna C. Holland, 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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