IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

DOCKET NO. 2006-TS-00065-COA
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RONALD VAUGHN — APPELLANT

V.

STATE OF MISSISSIPPI — APPELLEE

I. CERTIFICATE OF INTERESTED PERSONS

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 the Court of Appeals may evaluate possible disqualification or recusal.

1.	Ronald Vaughn	Appellant
2.	Michael E. Robinson	Appellant Counsel
3.	State of Mississippi	Appellee
4.	Charles W. Maris, Jr.	Appellee Counsel
5.	Jim Hood	Appellee Counsel

CERTIFIED this the 11th day of May, 2007.

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Appellant Brief

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IV.

ISSUES PRESENTED

1. WHETHER TRIAL COURT SHOULD HAVE SUPPRESSED THE BLOOD TEST RESULTS AS VIOLATION OF VAUGHN'S FOURTH AMENDMENT RIGHT FROM UNREASONABLE SEARCH AND SEIZURE.

2. WHETHER THE BLOOD TEST RESULTS SHOULD HAVE BEEN EXCLUDED DUE TO INADEQUATE CHAIN OF CUSTODY

V.

STATEMENT OF THE CASE

A. NATURE OF THE CASE

This is an appeal from a conviction by jury of Mr. Ronald Vaughn in the Circuit Court of Warren County, Mississippi, on January 6, 2006. Vaughn was convicted of one (1) count of aggravated DUI.

B. PROCEEDINGS BELOW

Ronald Vaughn was indicted on one (1) count of aggravated DUI in May 2005, in the Warren County Circuit Court. [CP 2]. Vaughn was tried before a jury on November 28-30. [T 1]. The Defense made Motions in Limine requesting the exclusion of certain photographs and pictures, which were granted by the trial court. Following the start of trial, an ore tenus motion to suppress was made regarding the State's intention to introduce into evidence the results of the blood testing on blood drawn from Vaughn following his car crash. After a hearing, outside the presence of the jury, trial judge denied the motion, and ruled the results could be admitted into evidence. Following the presentation of the State's case, Defense counsel's motion for a directed verdict was denied, as well as the renewed motion following the Defense's presentation. The jury found Vaughn guilty of Aggravated DUI. Vaughn was sentenced to twenty (20) years in the Mississippi Department of Corrections, with five (5) years suspended, and five (5) years post relief supervision.

Post trial motions were heard on January 6, 2006. [T 446]. Defendant made motions for bond pending appeal and for JNOV, or in the alternative, a New Trial. After hearing

arguments from counsel, the trial judge denied the motions.

Vaughn appeals from the trial court's sentencing and denial of his post-trial motions.

VI.

SUMMARY OF THE ARGUMENT

The Fourth Amendment to the United States Constitution protects people from unreasonable searches and seizure by the government. Included is the right of an individual to no have blood drawn from his person without his consent or valid search warrant requesting same. The trial court committed reversible error by denying Vaughn's motion to suppress the blood samples collected from him and the subsequent test results.

Reversible error was also committed by the lower court when the trial judge denied the motions for directed verdict. Vaughn, through counsel, established a clear break in the chain of custody of the blood samples when the samples were sent from the Mississippi Crime Lab to National Medical Services. With the obvious break in the chain of custody, the test results should not have been admitted into evidence.

Accordingly, this Court should reverse the trial court's denial of the motions to suppress and for directed verdict. The jury verdict should be reversed, the charges against the Defendant dismissed and Defendant discharged; or in the alternative, this matter should be remanded to the trial court for a new trial on the merits.

VII.

ARGUMENT

A. TRIAL COURT SHOULD HAVE SUPPRESSED BLOOD TEST RESULTS

The standard of review for a trial judge's ruling on a motion to suppress evidence is well established. This Court must decide whether there was substantial, credible evidence to support the trial judge's ruling. ***Culp v. State***, 933 So.2d 264, 274 (Miss. 2005). This ruling must not be disturbed by our Court unless such substantial, credible evidence is absent. ***Ray v. State***, 503 So.2d 222, 223-24 (Miss.1986). Further, admission of evidence is within the discretion of the trial court, and can only be reversed upon abuse of its discretion. ***Crawford v. State***, 754 So.2d 1211, 1215 (Miss.2000).

The Fourth Amendment to the United States Constitution states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U. S. Const. Amend. IV

The Fourth Amendment prohibition against unreasonable search and seizure applies when an intrusion into the body-such as a blood test-is undertaken without a warrant, absent an emergency situation." ***Cole v. State***, 493 So.2d 1333, 1336 (Miss.1986) (quoting ***Schmerber v. California***, 384 U.S. 757, 777-71, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966)). See also ***Shaw v. State***, 938 So.2d 853 (Miss. Ct. App. 2005). In ***Shaw***, blood was drawn from Shaw, without his consent, and pursuant to an invalid search warrant, following a motor

vehicle collision with resulted in the death of several children riding in the automobile struck by Shaw. *Id.* at 856. The Mississippi Supreme Court ruled that the blood samples drawn and resulting tests should be excluded without a valid warrant, and there were no exigent circumstances. *Id.* at 858.

In this case, Ronald Vaughn's blood was drawn from his person without having provided any consent, and without the authority of a valid search warrant, as required by the Fourth Amendment. The State called several witnesses to the stand, and all testified that Vaughn did not consent to having his blood drawn. Officer Scott Henley testified during the suppression hearing that he requested blood be drawn from Vaughn. [T 242]. He stated he observed the nurse draw the blood. [T 242].

He also testified that Vaughn was under arrest at the time of the drawing. [T 240]. Henley issued citations for (1) failing to yield to blue lights, (2) possession of marijuana and (3) driving under the influence of a controlled substance or any other substance that might affect his ability to operate a motor vehicle. [T 246-47]. At the time of the blood drawing, Vaughn had not been read his Miranda rights or told that he was under arrest. The trial court excluded the substance officer Henley believed to be marijuana and Vaughn had not consumed any alcohol. Even assuming, arguendo, that Vaughn was under arrest, the arrest was not a lawful one. Henley did not attempt to obtain consent. [T 267]. No officer attempted to obtain a search warrant. [T 268-69]. Claudia Bottino drew the blood from Vaughn. She testified she doesn't recall obtaining consent, or hearing the officers present obtain consent. She further stated that when the blood was drawn, Vaughn was restrained

by the officers present.

Henley stated that his probable cause to have the blood drawn from Vaughn was the smell of alcohol and marijuana, and alcohol and marijuana found in Vaughn's car. [T 242]. Henley also relied on some Supreme Court decision that limited the time to withdraw blood from a suspect to within two hours of an accident. [T 243]. On cross examination, Henley admitted that he did not mention smelling alcohol on Vaughn's person or in Vaughn's car his offense report. [T 298-299]. It was established that Vaughn had no blood alcohol content. The contents of the bottle were never tested. It was never established that the leafy substance found in Vaughn's car was marijuana. That evidence was excluded by the trial court. Furthermore, there was no emergency or exigent circumstances that warranted a warrantless drawing of Vaughn's blood. There was more than enough time for officers to obtain a valid search warrant to draw the blood, and Vaughn was not under arrest.

B. STATE FAILED TO PROPERLY ESTABLISH CHAIN OF CUSTODY.

The trial court is vested with the discretion for determining whether an adequate evidentiary chain of custody has been established by the State. ***Morris v. State,*** 436 So.2d 1381, 1388 (Miss.1983); ***Danner v. State,*** 748 So.2d 844, 846 (Miss. Ct. App.1999). The burden of producing evidence to demonstrate a break in the **chain of custody** rests with the defendant, and the applicable test for determining whether the defendant has met this **burden** "is whether there is any reasonable inference of likely tampering with or substitution of evidence." ***Hemphill v. State,*** 566 So.2d 207, 208 (Miss.1990); ***Brooks v. State,*** 761 So.2d 944, 948 (Miss. Ct. App.2000).

The first issue regarding the chain of custody is the labeling of the samples taken from Vaughn. Established procedure calls for samples to labeled immediately to identify who those came from. The samples presented at trial as belonging to Vaughn were not labeled with his name. [T ; 459]. Henley testified he didn't label the vials. [T 301]. Claudia Bottino testified she drew the blood and handed them to a highway patrol officer. [T 307]. On cross examination, she didn't remember if it was a sheriff's deputy or highway patrolman. [T 308]. She did not remember that officer's name. [T 308]. Ms. Bottino never testified that she labeled the vials. A photocopy of the evidence label from the crime lab was introduced, however, it only bore the name of one of the links in the chain of custody, Daniel Lewis. [T ; 459]. Lewis was not presented at trial to establish the identity of the person whose blood was contained in the vial.

Another issue regarding the chain of custody is the transference of the blood sample from the state crime lab to National Medical Services, in Alameda, California. Henley testified he transported the samples to the state crime lab on February 9, 2004. John L. Stevenson, of the crime lab, testified he sent one of the samples to National Medical Services in Alameda, California, on February 10, 2004. for testing. [T 319]. However, on cross examination Dr. Edward Barbers of National Medical Services testified that the Fed Ex shipping label indicated that the samples were sent from the crime lab to National Medical Services in Willow Grove, Pennsylvania. [T 432]. The Pennsylvania site then sent the samples to Alameda site for testing. [T 432]. In addition, the shipping label of the samples received by the Pennsylvania site from the state crime lab shows that the package was not

mailed from the crime lab until February 16, 2004, and not February 10, 2004, as testified to by Stevenson. [T 433].

Finally, no person having any personal knowledge or involvement with the testing of the samples at the Alameda, California site was presented at trial. There were probably about eight people involved in the testing process. [T 448]. The remaining untested samples were discarded six to eight weeks after testing. [T 451]. Dr. Barbers simply testified to what was done according to the reports provided from the Alameda site. He also testified that National Medical Services never received any evidence label indicating where the samples originated. [T 450].

The careless, inefficient and haphazard manner in which the blood samples were collected and passed from person to person and agency to agency not only shows that the chain of custody was not established, it brings into question the true identity of the source of the blood samples. Tampering and/or substitution of the blood sample can easily be reasonably inferred from the way the samples were handled. The state's witnesses didn't know where the samples were sent or when they were sent. The testing company had no idea who the blood belonged to. The vials containing the blood never identified the individual providing the sample. Simply put, the state not only failed to establish the chain of custody, it also failed to establish the blood samples as belonging to Ronald Vaughn. Accordingly, they samples and subsequent test results should have been excluded by the trial court.

CONCLUSION

The preceding clearly illustrate that reversible error was committed by the trial court

in the trial below. The lower court abused its discretion by not excluding blood samples, as well as the results of the blood test. Vaughn never gave his consent to have is blood drawn. Nobody ever bothered to ask. Although there was more than enough time, the officers never bothered to try to obtain a warrant to have Vaughn's blood drawn. Clearly, his Fourth Amendment rights were violated. In addition, the state failed to establish the chain of custody of the blood samples. Nobody labeled the vials of blood drawn at the hospital. No evidence label was presented at trial showing the samples belonged to Vaughn. The state's witnesses were inaccurate in testifying when and where the blood was sent from the crime lab to National Medical Services. No person from National Medical Services with any personal knowledge of the testing appeared to testify.

For these reasons, this Court should reverse the decisions of the trial court and discharge Odom from any criminal liability, or in the alternative, remand the matter to the Hinds County Circuit Court for a new trial on the merits.

Respectfully submitted, this the 11th day of May, 2007.

RONALD VAUGHN, APPELLANT

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CERTIFICATE OF SERVICE

I, Michael E. Robinson, attorney for the Appellant, RONALD VAUGHN, do hereby certify that I have this day delivered, by U. S. Mail, postage prepaid, a true and correct copy of the following Brief of Appellant to the following:

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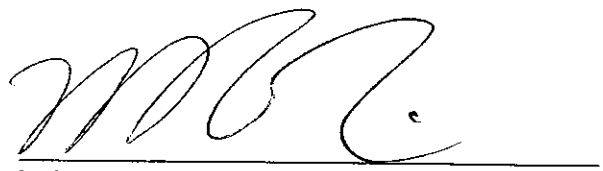
This the 11th day of May, 2007.



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