IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

SARAH LYNN HUDSPETH — APPELLANT

VS. — NO. 2008-KA-0097

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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VERSUS — NO. 2008-KA-0097-COA

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STATEMENT OF THE CASE

Procedural History

This appeal is taken from the Circuit Court of Kemper County, wherein Sarah Lynn Hudspeth was convicted of DUI-Manslaughter and sentenced to a term of 20 years with 14 years suspended. (C.P.51) Aggrieved by the judgment rendered against her, Hudspeth has perfected an appeal to this Court.

Statement of Substantive Facts

Robert Bickley testified that he was employed by the Mississippi Crime Laboratory to repair, calibrate, maintain and certify the Intoxilyzer 8000. Mr. Bickley had certified that on December 4, 2006, "the instrument in Kemper County– Kemper SO was operating properly." (T.107-09)

Officer Anthony Cunningham testified that he had been the "calibration officer for District 6" for the past 14 years of his 20-year career with the Mississippi Highway Patrol. On

January 16, 2007, he performed calibration checks on the Intoxilyzer 8000 machines at the Kemper County Sheriff's Department and certified that they were in proper working order. (T.118-20)

Deputy Gregory Campbell of the Kemper County Police Department testified that he was authorized to perform field sobriety tests and to operate the intoxilyzer. At approximately 10:00 p.m. on December 27, 2006, he was at home[1] when a neighbor telephoned him and informed him about a motor vehicle collision which recently had occurred "right up the road" from Deputy Campbell's house. Deputy Campbell then drove to the scene of the crash on Sport Watkins Road. Officer Bill Walters, emergency medical personnel, fire fighters and bystanders were already at the location.[2] (T.126-30)

Deputy Campbell first looked "into the first car," where he observed that Victoria Edwards appeared to be deceased. Sarah Hudspeth "was crying, and someone was over comforting her."[3] Officer Walters offered to complete the accident report but asked Deputy

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[1]While Deputy Campbell was not on duty at this time, he was "on call." (T.128)

[2]Deputy Campbell answered affirmatively to the question whether Officer Walters was "no longer with us"; apparently, Officer Walters had died after the collision and prior to trial. (T.128)

[3]Victoria Edwards and Sarah Hudspeth were the sole occupants of their respective cars. (T.142)

Campbell to take care of Sarah because he (Officer Walters) was a friend of Ms. Hudspeth's family. Acting on information provided by some bystanders, Deputy Campbell asked her whether she had drunk any alcoholic beverages recently. She replied that she had "had a couple Bud lights." At this point, Ms. Hudspeth was standing outside her car. She did not appear to have physical injuries other than some bruising, but she "was very upset and she was crying." Deputy Campbell asked whether she would "mind coming back to the station" and submitting to a breath test, and she agreed to do so. (T.129-33)

Before Deputy Campbell left the scene, he took some photographs and observed that both vehicles were secured. He asked Patricia Haskins, an emergency medical responder (EMR) and a fire fighter, to supervise Ms. Hudspeth while he was taking photographs. When he finished his tasks at the location of the collision, he put Ms. Hudspeth in the back seat of his patrol car; Ms. Haskins sat next to her; and Deputy Campbell drove to the sheriff's office. (T.134-37)

Deputy Campbell described the procedures incident to giving the breath test as follows, verbatim:

> Well, after we got to the Sheriff's Department with her, we take them in. We read them the instructions on the intoxilyzer advising them, you know, that they have the right to not take the intoxilyzer test which is being authorized to them. So she have the right to know whether she want– if she going to give us a breath test or she not going to do the breath test. So she did agree to giving a breath test. And so after that was checked, yes, that she going to give the breath test; then, you know, the intoxilyzer run its course, so we got to wait until the intoxilyzer run its course. And after it run its course, within like within minutes on the intoxilyzer, then the intoxilyzer will tell us when it's ready for the subject to blow.
>
> (T.137)

As required by the Intoxilyzer 8000, Ms. Hudspeth gave two breath samples, which showed that she had a blood alcohol content of .24%. At this point, Deputy Campbell "basically just transferred her on down to the jail. And after that, Trooper [Mike] Cain came in, ... then he went down and read her her rights and took a statement from her." (T.138-42)

Testifying further about the scene of the collision, Deputy Campbell stated that the Chevrolet Cavalier which had been driven by Ms. Edwards was entirely on its proper side of the road, in the northbound lane. The Nissan which had been operated by Ms. Hudspeth "was on the other side of the road," i.e., in the northbound lane, "where the Cavalier would be traveling. When the assistant district attorney asked, "So was there some part of the Nissan that was not in the northbound lane?" Deputy Campbell answered, "Probably just the back and probably where the collision hit and it pushed back. Could have been pretty much offset on the other side." (T.142-44)

Ms. Haskins testified that at the time of this collision, she was a licensed EMR and Fire Chief for the DeKalb Fire Department. When she arrived at the scene, she ascertained that Ms. Edwards had no vital signs and advised the ambulance personnel accordingly. She then turned her attention to Ms. Hudspeth, with whom she was acquainted. She found Ms. Hudpseth "real upset, incoherent." She "had a bruise on her shoulder from the seat belt and an abrasion from the seat belt on her hip." Ms. Haskins smelled alcohol on Ms. Hudspeth's breath. Ms. Hudspeth told her, "Oh, God. I killed somebody." (T.153-56)

During her interview with Sergeant Cain, Hudspeth admitted that she had been driving in the middle of the road when when the collision occurred. (Exhibit 5) The remainder of the testimony of Sergeant Cain is summarized under Proposition Three, below.

Kathy Lanier testified that she had been a registered nurse for 17 years and the coroner for

Kemper County for the past ten years. After she became coroner, she underwent a 40-hour certification class; each year, she was required to earn 24 continuing education units to maintain her position. During her career she had attended on "over 400" death scenes, approximately 150 to 200 of which involved car accidents with fatalities. On December 27, 2006, she was dispatched to the scene of the collision at issue here. She observed "a 43-year-old black female pinned inside a car," lying "kind of down in the seat," with her legs and knees "just bent up under the dashboard." Ms. Lanier determined that the victim, who had no pulse and was not breathing, was deceased. While she did "draw toxicology to test for drugs and alcohol," Ms. Lanier did not order an autopsy. At the time, she was not aware that Ms. Hudspeth would be charged with DUI homicide. (T.203-09)

Ms. Lanier went on to testify that she had found nothing in Ms. Edwards' blood work which would have contributed to her death. Ms. Edwards' blood sample tested negative for alcohol. Based on her experience as a coroner, Ms. Lanier concluded that Ms. Edwards died of internal injuries caused by the automobile collision. (T.209-11)

The defense did not put on evidence. (T.254)

SUMMARY OF THE ARGUMENT

The trial court did not err in overruling the motion to suppress the results of the defendant's blood alcohol test. The state properly proved the required predicates to the admission of this evidence, i.e., that Hudspeth was under proper observation for the required 20 minutes prior to testing, and that Deputy Campbell was certified to perform the test.

The state presented sufficient proof of the *corpus delicti.* The testimony of the coroner was adequate to prove the death of a human being and a criminal agency causing the death.

The trial court did not err in allowing Sergeant Cain to testify as an expert in the field of

accident reconstruction. Sergeant Cain's testimony *was* based on sufficient facts and data, and that it was the product of reliable principles and methods applied reliably to the facts of the case.

Finally, Hudspeth's conviction is based on legally sufficient proof and is not contrary to the overwhelming weight of the evidence. The state presented ample proof that Hudspeth committed a negligent act which caused the collision.

PROPOSITION ONE:

THE TRIAL COURT DID NOT ERR IN OVERRULING THE MOTION TO SUPPRESS THE RESULTS OF THE DEFENDANT'S BLOOD ALCOHOL TEST

Prior to trial, the defense filed a Motion to Suppress Breath Test, alleging that the test was administered in "in violation of policies and procedures, as the required twenty (20) minutes was not honored before performing the test." (C.P.8) This motion was called for a hearing on July 3, 2007. (T.6) During that hearing, Deputy Campbell testified that this collision "was supposed to have happened around 22:18, pretty much when" he "received the call" to report to the scene. He arrived eight minutes later, at 22:26 or 10:26 p.m. Deputy Walters was already at the location. About five minutes later, Deputy Walters asked Deputy Campbell to deal with Hudspeth. Deputy Campbell noted that she smelled strongly of alcohol, that she was glassy-eyed, and that she could not "just walk straight on her own." Shortly afterward, he asked her "[d]id she mind coming with" him to the sheriff's department for a breath test. She agreed to do so. (T.8-12)

Deputy Campbell went on to testify that the observation time

> really pretty much started from the time that Officer Bill Walters got her. Then after he got her, since she had like bruises and stuff on her, he turned her over to the Fire Chief. So the we used the Fire Chief's time also as the observation. Then from the time I got with the– from the Fire Chief, she was with me as observation.

(T.12)

Deputy Campbell testified that during the time the EMTs were attending to her, "[s]he didn't put anything in her mouth." Nor did she put anything into her mouth while she was in the patrol car. (T.13)

After they arrived at the sheriff's office, Deputy Campbell started the intoxilyzer at 22:46. He "typed in" the observation time as having begun at 22:31. From 22:31 until 22:46, Hudspeth was under his personal supervision. The first sample was taken at 23:00, the second, at 23:02. When asked, "And during your observation period between 22:31 and 2300 hours, did Ms. Hudspeth have anything in her mouth, put anything in her mouth, having anything to drink or anything of that nature?" he answered, "No." (T.16-19)

During argument, the assistant district attorney pointed out that no evidence contradicted Deputy Campbell's testimony to the fact that Hudspeth had not had anything to eat or drink during the during the observation period and that she had not vomited in the patrol car. (T.33) Ultimately, the court found that

> Ms. Hudspeth was told that she was coming in for a test, and she was placed in his observation, and she was in the backseat of his car. There was nothing available for her to drink, eat or smoke there. She was monitored by the Fire Chief there with instructions not to allow her to smoke or put anything in her mouth. He had no rearview mirror where– adjusted to where he could observe her from the time that she got in the car. Clearly, the test was– the subject sample was not taken until– first sample until 12– excuse me– 11:00 which is 20 minutes after 10:40 and ... 29 minutes after the typed-in observation time of 10:31.
>
> The observation period was definied by the glossary terms of the Intoxilyzer 8000 does require an officer to observe an individual before he takes a test and observe that that person had not ingested alcohol– I don't think there's any question about that here– or other fluids. I don't think there's any question about that.

She did not regurgitate or vomit in the car. She didn't eat anything. And he's observing her with a Fire Chief there in the back seat with her. And his testimony here is clearly that she didn't place anything in her mouth during the 20 minutes prior to the test and the sample being taken at 11:00.

(T.37-38)

The testimony of Deputy Campbell supports the conclusion that Hudspeth was under proper observation for the required amount of time before she underwent the test. According, the trial court did not abuse its discretion in overruling the motion to suppress. *Sheppard v. State*, 2003, 834 So.2d 743, 745 (Miss.App.2003).

The defense argues additionally that the state failed to present sufficient proof that Deputy Campbell was certified to operate the subject intoxilyzer. This issue arose during the direct examination of Deputy Campbell at trial, when the following was taken:

Q. Okay. So you have training in running the intoxilyzer machine?

A. Correct.

Q. Okay. And then December the 27th of 2006, did you have a certificate that allowed you to run the intoxilyzer machine that was current?

A. That's right.

BY MR. PARRISH: Your Honor, we would object until the original certificate can be produced for examination.

BY THE COURT: Objection's overruled. I think he's sworn to tell the truth. The question is did he have one. I'll allow the question. Answer yes; correct?

BY THE WITNESS: Yes, sir.

(T.127)

On cross-examination, the defense pursued the matter in this line of questioning:

Q. Do you have your Intoxilyzer 8000 card with you?

A. That's right.

Q. Okay. Can we see that, please?

A. (Witness complies with request.)

Q. This was issued April the 11th of 2007?

A. Now, it– it's actually been renewed. We have to renew them like every year.

Q. Well, where– where's your certificate that shows that you were certified to give the Intoxilyzer 8000 in December of 2006?

A. Well, all of that would be kept at the Kemper County Sheriff's Department.

Q. Okay. Would you be able to provide that to us today?

A. That's right. I can have someone bring it.

(T.145)

At the conclusion of the cross-examination of Deputy Campbell, the following was taken:

BY THE COURT: I guess the pertinent question is, Mr. Parrish, that– he would be released as a witness here. If you want to call him back on your case, I'll instruct him to have that documentation if you wish to call him back. I think the State has presented the evidence they feel like is necessary.

BY MR. PARRISH: We would request that the document be produced for our inspection.

BY THE COURT: Mr. Campbell, just– I will release you as a witness here today. Have that certificate available, and you may be called as a witness later. I'll instruct you not to discuss your testimony with other potential witnesses here in this case in the event you may be called back.

BY THE WITNESS: Okay.

(T.151-52)

After the court overruled the motion for directed verdict, the stated the following to defense counsel outside the presence of the jury: "Stewart, you asked as to the verification of the certification status of Deputy Campbell. They're securing that information now." (T.228) The state has located no further reference to this issue in the record.

The appellant now argues that Deputy Campbell's testimony was insufficient to prove that he was certified to operate the intoxilyzer. In support, she cites *Johnston v. State*, 567 So.2d 237, 238-39 (Miss.1990), which held that the police officer's testimony was insufficient to establish proper calibration of the intoxilyzer, absent a certificate of calibration establishing that the machine had been calibrated on a quarterly basis. Johnston did not hold, however, that such testimony is insufficient to establish that the officer himself is certified to operate the machine. The distinction is reasonable. A police officer is a human being, sworn to tell the truth and subject to the penalty of perjury if he does not, with personal knowledge whether he was or was not certified at the time of the administration of the test. A machine cannot testify. Its proper functioning therefore must be proved extraneously, i.e., by a certificate of calibration and/or testimony of the person who calibrated it. See *McIlwain v. State*, 700 So.2d 586, 591 (Miss.1997).

Hudspeth also cites *Henley v. State*, 885 So.2d 89, 91 (Miss.App.2004), wherein the appellant argued that the trial court had erred in allowing the state to introduce into evidence an uncertified copy of the officer's certification to operate the intoxilyzer. This Court denied the proposition with this analysis:

> After reviewing the evidence before us, though, we are certain that the trial court committed no such abuse. The State had to prove as part of its authenticity burden that Henley's breath test

was "performed by an individual possessing a valid permit issued by the State Crime Laboratory for making such analysis." Miss.Code Ann. § 63-11-19 (Supp.2003). This statute, however, "is not a rule of evidence," so that evidence "otherwise admissible" will not be excluded because of failure to comply with the statute. *Jones v. State*, 858 So.2d 139, 143(¶ 10) (Miss.2003).

> The fact that the copy of Officer Clark's permit was not certified is inconsequential because **the same result was effectuated by him testifying at trial.** When asked about the copy on direct examination, he testified that "[t]his is my permit to conduct breath analysis on the Intoxilyzer 5000." Officer Clark was then subject to cross-examination on any and all matters concerning his knowledge and experience with the machine. Accordingly, the trial court properly admitted the permit into evidence, and the State proved that Officer Clark was certified to perform the breath test in compliance with Section 63-11-19. We, therefore, find no merit with this issue.

(emphasis added) *Henley*, 885 So.2d at 91.

The state respectfully submits that *Henley* does not hold that the state is required to introduce a copy, certified or otherwise, of the officer's permit.[4] Rather, his testimony on the issue is sufficient to establish the fact.[5]

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[4]The fact that a certain action is held to meet the minimum legal requirements of a given situation does not signify that such action defines the minimum requirements. See *Fleming v. State*, 604 So.2d 280, 292 (Miss.1992).

[5]The state submits that the court assured defense counsel that the documentation was forthcoming and that he would be allowed to inspect it. From the record's ensuing silence on the point, the reasonable inference is that the document was produced and found to be satisfactory. In any case, no further issue was made of it.

The state submits the court did not abuse its discretion in admitting the results of the intoxilyzer test. Hudspeth's first proposition should be denied.

PROPOSITION TWO:

THE STATE PRESENTED SUFFICIENT PROOF OF THE *CORPUS DELICTI*

The county coroner, Kathy Lanier, testified that when she arrived at the scene, she found Ms. Edwards "pinned inside a car" with her "legs and knees ... just bent up under the dashboard." The victim was deceased. Ms. Lanier found nothing in the victim's blood work which would have contributed to her death. Based on her experience as a coroner, Ms. Lanier concluded that Ms. Edwards died of internal injuries caused by the automobile collision. (T.203-11)

On redirect examination, Ms. Lanier testified that she had obtained a medical history from the victim's mother. Nothing in that history indicated that Ms. Edwards suffered from a medical condition which would caused her death that evening. Ms. Lanier had no reason to conclude that Ms. Edwards died of anything other than internal injuries from the car crash. (T.218)

The appellant now asserts that the state presented insufficient proof of the *corpus delicti*. A similar argument was raised and rejected as follows in *Gibson v. State*, 503 So.2d 230, 233 (Miss.1987):

> Gibson also argues that an autopsy is the "only sure means" to determine the cause of death. Its absence then required the trial judge to find for Gibson, as there was no evidence of criminal agency. Yet, in *King v. State*, 251 Miss. 161, 176, 168 So.2d 637, 643 (1964), the Court stated,
>
> The law does not require an autopsy or medical evidence to establish death. These facts are ordinarily proved by witnesses who saw the deceased after his death and who testified that the

CAUSE OF DEATH? NOT DEATH

> deceased was dead. The criminal agency or cause of death is usually shown by witnesses who saw the homicide, or by circumstances sufficient to establish the crime to the exclusion of every other reasonable hypothesis.
>
> See also, Miskelley v. State, 480 So.2d 1104, 1107 (Miss.1985); Ford v. State, 226 So.2d 378, 380 (Miss.1969). Likewise, in *Goldman v. State*, 406 So.2d 816, 820 (Miss.1981), the Court said, "Death of a victim and criminal agency may be established by circumstantial evidence and by reasonable inferences to be drawn from such evidence." [citations omitted]
>
> Here, Jimmy L. Roberts, Rankin County Coroner, testified that he removed the decedent to a local funeral home for examination, and based on his observations, the "immediate cause of death was head injuries." Additionally, the four-wheel drive truck sustained rear-end damage, immediately following Alford's pass, during which he saw the decedent, standing near the driver's door. Indeed, the victim's presence, thirty-seven feet from the point of impact is in line with Alford's observation that someone or something was hurled into the air by the force of the collision. With no other facts on which to base an alternative "reasonable hypothesis," the circumstances of the wreck are sufficient to provide the cause of death.

In *Goldman v. State,* 406 So.2d 816, 819 (Miss.1981), the Supreme Court analyzed a similar issue by noting that the victim, who had died in a car crash, was "a young woman in her late teens, whom the record does not show suffered from any physical or mental impairment ..." The Court went on to state,

> **The coroner testified that he viewed the body of Miss Crane and that, in his opinion, she died from internal injuries.** Although he was permitted to testify about the procedure in the coroner's inquest, no verdict or documentary evidence was offered by the state, as in Blackwell v. State, 166 Miss. 524, 146 So. 628 (1933), **Death of a victim and criminal agency may be established by circumstantial evidence and by reasonable inferences to be drawn from such evidence.** Elliott v. State, 183 So.2d 805 (Miss.1966); King v. State, 251 Miss. 161, 168 So.2d 637 (1964).

Id.

Ultimately, the court held that the state had presented sufficient proof of the *corpus delicti*. Accord, *Hopson v. State*, 615 So.2d 576 (Miss.1993).

In light of these authorities, the state contends the trial court properly overruled the motion for directed verdict on this ground. The appellant's second proposition should be denied.

PROPOSITION THREE:

THE TRIAL COURT DID NOT ERR IN ALLOWING SERGEANT CAIN TO GIVE CERTAIN TESTIMONY BASED UPON HIS OBSERVATIONS RATHER THAN TESTS

The state called Sergeant James Michael Cain, who testified on voir dire that he was employed as an accident reconstructionist for the Mississippi Highway Patrol. He had completed extensive training in accident reconstruction and held "a certificate from the state minimum standards in training." He had been so certified at the time of the collision in question. Sergeant Cain had testified as an expert in accident reconstruction in several circuit courts in Mississippi and "in the Southern Judicial District in Federal Court." He had been accepted as an expert as recently as six months previously in the Circuit Court of Neshoba County. (T.160-62)

On cross-examination, still during voir dire, defense counsel asked "what scientific methods" Sergeant Cain had utilized to arrive at his conclusions. Sergeant Cain answered that he had not performed any scientific calculations in investigating this case. (T.162) Defense counsel explored this issue with the following line of questioning:

> Q. Okay. Are you familiar– well, there are scientific methods that can be used to analyze crush damage; correct?
>
> A. There are. There– you can do equivalent barrier speeds. The data that I have seen and the papers that I have read when you're doing crush of one vehicle as opposed to another, there's a lot of discussion as to whether agreed estimation from that is really

accurate, and no speed estimation using crush was done in this case. Had it been a fixed barrier, then I would be much more comfortable in using crush deformation.

Q. So the answer is you didn't use any scientific formulation in analyzing the crush damage of these automobiles.

A. No, sir, I did not.

Q. Okay. Are you familiar with the conservation of energy formula?

A. Conservation of linear momentum? Yes, sir.

Q. Yes sir. Did you use that in this case?

A. No, sir, I did not use any momentum. The departure angles are critical and also knowing where maximum engagement of the vehicles are located when you make a determination because you have to know what distance center mass travels from that area of impact. There was no way of determining the area of impact as far as narrowing it down close enough to where I would have felt the momentum would be an accurate calculation.

Q. Okay. So because you did not have an exact point of impact or even a pretty close point to the– close point of impact, you were not able to use any scientific calculations in arriving at your opinion in this case?

A. That's correct.

(emphasis added) (T.163-64)

The defense then argued that any expert testimony by Sergeant Cain would not meet the *Daubert*[6] test because it would not be based on scientific methods and procedures. The state countered as follows, in pertinent part:

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[6]*Daubert v. Merrell Dow Pharmaceuticals, Inc.* 509 U.S. 579 (1993).

> Mike's opinion in this case is based on what he saw at the scene relative to the position of the vehicles, not a scientific calculation that might be examined this way or that way. He's not only the– I would say the primary investigator in the case, but he's also the person who has vast experience in dealing with these. And because of that, I think that his opinion is helpful to the jury even though he's already– he readily admits that it's not a scientifically-determined opinion. I think the jury can take that for what it's worth.
>
> (T.166)

The court then made this ruling:

> I understand the objection. In this situation, I think the objection will be overruled. Sergeant Cain certainly is a Trooper with many years experience with the Mississippi Highway Patrol. He's been certified as an accident reconstructionist and has been accepted as an expert in both State and Federal Count in that area. I think his training is certainly sufficient to qualify him as expert status, and you may cross-examine as to opinions that he holds. But I think I'm going to allow him to express his opinion based on his training and experience.
>
> (T.166-67)

The clear import of Sergeant Cain's testimony during voir dire on his qualifications was that he did not perform scientific tests in this case because the physical conditions presented would have made it impossible to obtain reliable data from such testing. During his testimony before the jury, he did not surmise about what such testing would have revealed; rather he based his opinions completely on his personal observations in light of his training and experience as an accident rconstructionist, as well as upon the statement given to him by Hudspeth. This point is crystallized in the following line of questioning, taken during direct examination:

> Q. And based upon what she [Hudspeth] told you as well as what you actually saw and witnessed and measured for yourself at the scene, did you may any determination or conclusion as to what had happened on December the 27, 2006 there on Sport Watkins Road?

A. Yes, sir, I did.

Q. What was that?

A. After reviewing the interview with Ms. Hudspeth and reviewing the evidence at the scene along with the measurements that we had made, photographs of the vehicle, that type of thing; it was my determination that she was traveling south that night, that the Edwards vehicle was traveling north on Sport Watkins Road. As they entered the curve, Ms. Hudspeth's vehicle crossed across the centerline thereby impacting relatively head-on with the Edwards vehicle.

(T.187)

The defense conducted an extensive cross-examination.[7] (T.189-98) On redirect examination, the prosecutor asked whether Sergeant Cain's conclusions were arbitrary or without any scientific basis. Sergeant Cain answered, "It's based on all of the facts in the totality." (T.199)

The appellant now contends the trial court committed reversible error in allowing Sergeant Cain to testify as an expert. Specifically, she contends that because Cain's opinion was based on nothing more than speculation, i.e., that it was not grounded on sufficient facts or data, and that the court therefore failed its gatekeeping duty in allowing the testimony. The state counters that the testimony quoted above shows that Sergeant Cain's testimony *was* based on sufficient facts and data, and that it was the product of reliable principles and methods applied reliably to the facts of the case. M.R.E. 702.

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[7]During that cross-examination, Sergeant Cain testified that he had not performed momentum tests or any other scientific tests because he did not have sufficient physical evidence to do so. (T.197)

In *Lawrence v. State*, 931 So.2d 600, 606 (Miss.App.2005), this Court rejected the argument that the trial court had failed its gatekeeping function in allowing an accident reconstructionist to testify as an expert.[8] The Court should likewise reject Hudspeth's argument.

PROPOSITION FOUR:

THE VERDICT IS BASED ON LEGALLY SUFFICIENT PROOF AND IS NOT CONTRARY TO THE OVERWHELMING WEIGHT OF THE EVIDENCE

Hudspeth finally challenges the sufficiency and weight of the evidence undergirding her conviction. To prevail on the assertion that she is entitled to a judgment of acquittal, she must satisfy the following formidable standard of review:

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[8]The Court held as follows:

> Admissibility and relevancy of evidence are within the discretion of the trial court and, "absent an abuse of that discretion, the trial court's decision will not be disturbed on appeal." [citation omitted] The trial court found that Steed and Phillips were qualified by either education, training or experience to render their respective opinions. Their areas of expertise have been accepted by the courts of this state for many years as recognized areas of expertise. In Roberts v. Grafe Auto Co., 701 So.2d 1093, 1099 (Miss.1997), the supreme court held that "[i]t is well-entrenched in Mississippi law that a qualified expert's opinion testimony regarding accident reconstruction may be admissible."
>
> *Lawrence,* 931 So.2d at 606.

> When on appeal one convicted of a criminal offense challenges the legal sufficiency of the evidence, our authority to interfere with the jury's verdict is quite limited. We proceed by considering all of the evidence--not just that supporting the case for the prosecution--in the light most consistent with the verdict. We give [the] prosecution the benefit of all favorable inferences that may reasonably be drawn from the evidence. If the facts and inferences so considered point in favor of the accused with sufficient force that reasonable men could not have found beyond a reasonable doubt that he was guilty, reversal and discharge are required. On the other hand, if there is in the record substantial evidence of such quality and weight that, having in mind the beyond a reasonable doubt burden of proof standard, reasonable and fair-minded jurors in the exercise of impartial judgment might have reached different conclusions, the verdict of guilty is thus placed beyond our authority to disturb.
>
> *Manning v. State*, 735 So.2d 323, 333 (Miss.1999), quoting *McFee v. State*, 511 So.2d 130, 133-34 (Miss.1987).

This rigorous standard applies to the claim that Hudspeth is entitled to a new trial:

> The standard of review in determining whether a jury verdict is against the overwhelming weight of the evidence is well settled. "[T]his Court must accept as true the evidence which supports the verdict and will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial." *Dudley v. State*, 719 So.2d 180, 182(¶ 8) (Miss.1998). On review, the State is given "the benefit of all favorable inferences that may reasonably be drawn from the evidence." *Griffin v. State*, 607 So.2d 1197, 1201 (Miss.1992). "Only in those cases where the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice will this Court disturb it on appeal." *Dudley*, 719 So.2d at 182 .
>
> *Smith v. State*, 868 So.2d 1048, 1050-51 (Miss.App.2004),

In this case "[t]here was not a great deal of evidence for the fact finder to weigh since the defendant did not testify." *White v. State*, 722 So.2d 1242, 1247 (Miss.1998). The defendant's failure to do so left the jury free to give "full effect" to the testimony of the state's witnesses. *Id.*

The state contends the proof is not such that a rational juror could have returned no

verdict other than not guilty, or such that to allow it to stand would be to sanction an unconscionable injustice. Countering Hudpseth's specific arguments, we maintain that the prosecution presented sufficient proof of the *corpus delicti*. We also dispute that the prosecution failed to prove that Hudspeth committed a negligent act which caused the death of the victim. The evidence supports the conclusion that Hudspeth drove her car into the victim's lane of traffic and hit the victim's car head-on. This is sufficient proof of a negligent act to support a conviction of aggravated DUI. *Yazzie v. State*, 366 So.2d 240 243 (Miss.1079); *Gandy v. State*, 355 So.2d 1096, 1098 (Miss.1978). See also *Beard v. State*, 795 So.2d 551 (Miss.App.2001). Hudspeth's final proposition should be denied.

CONCLUSION

For the reasons set out above, the state submits Hudspeth's propositions should be denied. The judgment entered below should be affirmed.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI

BY: DEIRDRE McCRORY
SPECIAL ASSISTANT ATTORNEY GENERAL

CERTIFICATE OF SERVICE

I, Deirdre McCrory, 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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Circuit Court Judge
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Meridian, MS 39302

Honorable E. J. (Bilbo) Mitchell
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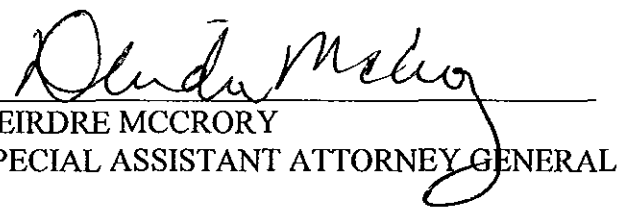
This the 25th day of September, 2008.



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