IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JOHN DEEDS — APPELLANT

VS. — NO. 2008-KA-0148

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

BY: STEPHANIE B. WOOD
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [redacted]

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680

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STATEMENT OF THE ISSUES

I. THE TRIAL COURT DID NOT ERR IN REFUSING TO DISMISS THE CHARGES AGAINST THE APPELLANT ON THE GROUNDS OF DOUBLE JEOPARDY.

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ADMITTING THE RESULTS OF THE APPELLANT'S BLOOD TEST INTO EVIDENCE.

STATEMENT OF THE FACTS

On November 6, 2004, an automobile collision involving three vehicles occurred on Goodman Road near the intersection of Craft Road in Olive Branch, Mississippi. (Transcript p. 81). Faye Bridges testified that she was driving her GMC van westbound when "a car came across. Looked like to me he was flying, and he just came across and hit me nearly head on." (Transcript p. 155). The vehicle she spoke of was driven by the Appellant, John Deeds. He was driving east

bound with one passenger when the collision occurred. (Transcript p. 83 and Exhibit 2).[1] When officers arrived on the scene, Deeds was semi-conscious and unable to respond to commands. (Transcript p. 25). Both he and Ms. Bridges were taken to a nearby hospital. (Transcript p.87 - 88).[2]

Prior to Deeds and his passenger being removed from their vehicle, officers noticed a very strong smell of alcohol coming from Deeds' vehicle and found a half full bottle of Evan Williams whiskey inside. (Transcript p. 85- 87). This prompted Officer Gibbs's supervisor to order him to obtain a blood kit and travel to the hospital to get a blood sample from Deeds. (Transcript p. 88). When Officer Gibbs arrived at the hospital, Deeds was still semi-conscious and unable to respond. (Exhibit 6). A nurse at the hospital drew Deeds' blood and Officer Gibbs transported it back to the police department. (Transcript p. 88). The blood was later sent to the Mississippi Crime Lab for testing. (Transcript p. 112 - 113). The results of the blood test concluded that Deeds blood contained .13 percent ethyl alcohol. (Transcript p. 70 and Exhibit 1).

Deeds was originally given citations for DUI first offense and no proof of insurance. The charge for DUI first offense was dismissed after the city prosecutor informed the municipal judge that the city did not intend to proceed on this charge. Deeds pleaded guilty to no proof of insurance. Deeds was later indicted, tried, and convicted of violating Mississippi Code Annotated §63-11-30(5). He was sentenced to fifteen years with eight years suspended and seven to serve in the custody of the Mississippi Department of Corrections.

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[1] The third vehicle involved was a Dodge truck. (Transcript p. 93). This vehicle struck the rear of the van Ms. Bridges was driving. (Transcript p. 93). Murray Duran and Nancy Duran were in this vehicle. (Transcript p. 83). The expert accident reconstructionist testified that this vehicle had nothing to do with the cause of the collision. (Transcript p. 108).

[2] The parties stipulated to the permanent nature of Ms. Bridges's injuries. Details were not given in the record. (Transcript p. 196).

SUMMARY OF THE ARGUMENT

The trial court properly denied Deeds' motion to dismiss on the grounds of double jeopardy as jeopardy never attached with regard to the previous charge of DUI first offense. Jeopardy did not attach because there was no trial and no adjudication on the merits.

The trial court did not abuse its discretion in admitting the results of Deeds' blood test into evidence. The proper chain of custody was established. Further, neither Deeds' Sixth Amendment right to Confrontation nor his Fourth Amendment right to privacy were violated.

ARGUMENT

I. THE TRIAL COURT DID NOT ERR IN REFUSING TO DISMISS THE CHARGES AGAINST THE APPELLANT ON THE GROUNDS OF DOUBLE JEOPARDY.

Deeds' first argument on appeal is that "the trial court improperly denied [his] motion to dismiss based upon double jeopardy." (Appellant's Brief p. 5). In his motion to dismiss, Deeds noted that he was initially issued a citation for DUI first offense and a citation for no proof of insurance. (Record p. 105). He further noted that prior to the start of trial in municipal court, the prosecution announced that they would not proceed on the DUI first offense charge. (Record p. 106). He then stated that he pleaded guilty to no proof of insurance and the court entered an order dismissing the DUI first charge. (Record p. 106). Deeds argued that his being subsequently charged and arrested for violating Mississippi Code Annotated §63-11-30(5) constituted double jeopardy. (Record p. 107). A hearing was held on the matter after which the trial judge denied the motion. (Transcript p. 3 - 17). Deeds filed a petition for interlocutory appeal which was also denied. (Record p. 124 - 138).

Article 3, Section 22 of the Mississippi Constitution states that "no person's life or liberty shall be twice placed in jeopardy for the same offense; but there must be an actual acquittal or

conviction on the merits to bar another proceeding." (*emphasis added*). The municipal judge in this case, as shown by his Order, did NOT acquit or convict Deeds of DUI first offense. (Record p. 129). He simply dismissed the case after being told by prosecutors that they did not intend to proceed with the charge. As noted by the State at the hearing on the matter, "in the Deeds' case in Olive Branch Municipal Court, when the case was called up, as is clearly noted, the City said, 'we are unable to proceed.' They did not present any evidence. They did not call any witnesses. . ." (Transcript p. 11). As such, there is absolutely no way the trial judge could have decided the case on the merits.

Moreover, as noted in *Winters v. State*, "in the case of a bench trial, double jeopardy does not attach until the first witness is sworn." 797 So.2d 307, 311 (Miss. Ct. App. 2001) (citing *King v. State*, 527 So.2d 641, 643 (Miss. 1988)). As noted above, no witnesses were called and no evidence was presented. The only thing that occurred with regard to the DUI charge was the prosecutor's comments that he did not intend to go forward with the charges. In response, the municipal judge simply dismissed the charge without considering it on the merits. As noted by the trial judge during his ruling on the motion to dismiss, there was no indication that the case was dismissed with prejudice. (Transcript p. 17).

Nonetheless, Deeds argues that the language of the dismissal order illustrates that "the municipal court clearly considered the merits of the prosecution's case against the Defendant." (Appellant's Brief p. 9). However, the State would first point out that the municipal judge marked the DUI charge as "(X) other: Dismiss DUI" as opposed to marking "( ) found the Defendant not guilty of the charge." (Record p. 129). While the municipal judge did add a paragraph to the end of the Order noting some factual circumstances surrounding the crime charged, those appear to simply be an attempt to note the reasons given by the prosecutor for his decision not to go forward with the charge. This paragraph does not in any way indicate that the municipal judge was in any

way ruling on the merits of the case but instead was merely reiterating the prosecutor's reasons for not proceeding.

Deeds also argues that the case of *Jamison v. City of Carthage*, 864 So.2d 1050 (Miss. Ct. App. 2004) is analogous to the situation at hand. (Appellant's Brief p. 7). In *Jamison*, the defendant was charged with DUI second offense and was tried. The court ultimately held that the prosecution was unable to prove that Jamison had a prior DUI conviction and dismissed the charge. The prosecution then attempted to amend the indictment to DUI first offense and the court refused. Deeds' case, however, is easily distinguishable. As noted by Deeds, himself, in his brief with regard to the *Jamison* case, "the trial court refused to allow this amendment because the case was concluded and the State had already rested." (Appellant's Brief p. 8) (*emphasis added*). In *Jamison*, the prosecution put on evidence showing that Jamison was guilty of DUI and rested. After that presentation of evidence, the court held that the State failed to show that Deeds had been previously convicted of DUI. Conversely, Deeds' case was never concluded with regard to the DUI charge as it never began. Moreover, the prosecution in Deeds' case never rested its case as it never began its case.

Additionally, Deeds argues that the case of *Bennett v. State*, 528 So.2d 815 (Miss. 1988) is analogous to the present case. (Appellant's Brief p. 8). In *Bennett*, the defendant was charged with misdemeanor DUI and was tried by the justice court in absentia after failing to appear for trial. The justice court found him guilty of misdemeanor DUI even though no witnesses were called. He was later indicted for felony DUI. The trial court refused to dismiss the case on the grounds of double jeopardy and the Supreme Court reversed. The obvious difference between this case and Deeds' case is the fact that Bennett was tried and found guilty of misdemeanor DUI. The municipal judge in Deeds' case not only failed to find him guilty but also did not try him.

Clearly, the glaringly important fact distinguishing both cases relied upon heavily by Deeds, is the fact that in both cases THE DEFENDANTS HAD A COMPLETE FIRST TRIAL AND WERE ADJUDICATED. In *Jamison*, the court determined that there was insufficient evidence to convict him of DUI second offense at the conclusion of the State's case as the State failed to show that he had a first DUI. In *Bennett*, the court not only tried Bennett but found him guilty of misdemeanor DUI.

As noted by the Court of Appeals, "[t]he Double Jeopardy Clause of the Fifth Amendment protects a criminal defendant from repeated prosecutions for the same offense." *Loveless v. City of Booneville,* 972 So.2d 723, 727 (Miss. Ct. App. 2007) (quoting *Oregon v. Kennedy*, 456 U.S. 667, 671, 102 S.Ct. 2083, 72 L.Ed.2d 416 (1982)). Deeds was not repeatedly prosecuted for the same offense. He was never prosecuted for DUI first offense. Therefore, he was not subjected to double jeopardy. Accordingly, the trial judge properly denied his motion to dismiss on these grounds.

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ADMITTING THE RESULTS OF THE APPELLANT'S BLOOD TEST INTO EVIDENCE.

Deeds next argues that "the trial court erred when it admitted the results of the test performed on [his] blood." (Appellant's Brief p. 5). "The admissibility of evidence is within the discretion of the trial court, and absent abuse of that discretion, the trial court's decision on the admissibility of evidence will not be disturbed on appeal." *Porter v. State*, 869 So.2d 414, 417(Miss. Ct. App. 2004) (citing *McCoy v. State*, 820 So.2d 25, 30 (Miss. Ct. App.2002)). "When the trial court stays within the parameters of the Rules of Evidence, the decision to exclude or admit evidence will be afforded a high degree of deference." *Id.*

A. A proper chain of custody was established.

With regard to this issue, Deeds first contends that his "blood alcohol test results are inadmissible because the State failed to establish the first link in the chain of custody when it failed to identify the individual who took the Defendant's blood sample, failed to establish that the individual who to took the blood sample was qualified to perform the procedure, and failed to establish the specific procedure the individual utilized to take the Defendant's blood sample." (Appellant's Brief p. 10). It is well-established that "[t]he purpose of requiring a chain of evidence gathered by law enforcement officials is to afford reasonable assurance that the evidence is genuine and that there has been no substitution through inadvertence or malfeasance." *Jones v. State*, 761 So.2d 907, 911 - 912 (Miss. Ct. App. 2000) (citing *Wells v. State*, 604 So.2d 271, 277 (Miss. 1992)) (*emphasis added*). The record does not in any way indicate that the blood evidence at issue here is not genuine.

Nonetheless, Deeds argues that "the State's inability to identify the name and qualifications of the individual who took the Defendant's blood sample or the specific procedure which the individual used to draw the Defendant's blood for the test results in the State's complete failure to lay the proper foundation and establish the first link in the chain of custody." (Appellant's Brief p. 10 - 11). However, the State would point the Court to the case of *Ellis v. State*, 934 So.2d 1000 (Miss. 2006). In *Ellis*, the defendant argued that the trial court erred in admitting four tubes of blood into evidence as the chain of custody was not properly established. *Id.* at 1004. He specifically argued that the nurse who drew the blood may have mislabeled the tubes and that she should have been required to testify as to how she labeled the tubes and packaged them for shipment to the lab. *Id.* He further argued that without her testimony the chain of custody was incomplete or broken. *Id.* The Court, however, noted that the deputy witnessed the blood being drawn and even though he

could not recall the exact process used by the nurse to label the tubes, he did recall seeing the nurse label the tubes. *Id.* The defendant, nonetheless, continued to assert that because the deputy could not state with certainty when and how the nurse labeled the tubes, there was a reasonable inference of substitution. *Id.* at 1005. In response to this argument, the *Ellis* Court first held that "Mississippi law has never required a proponent of evidence to produce every handler of the evidence." *Id.* (citing *Ormond v. State*, 599 So.2d 951, 959 (Miss. 1992)). The Court then ultimately held that the blood was admissible and specifically noted that:

> In *Gibson v. State*, 503 So.2d 230, 234 (Miss.1987), this Court opined:
> The test for the continuous possession i.e. "chain of custody" of evidence is whether or not there is any indication or reasonable inference of probable tampering with the evidence or substitution of the evidence. (*citations omitted*). "In such matters, the presumption of regularity supports the official acts of public officers" and the burden to produce evidence of a broken chain of custody (i.e. tampering) is on the defendant. *Nix v. State*, 276 So.2d 652, 653 (Miss. 1973).

> *Hemphill v. State*, 566 So.2d 207, 208 (Miss. 1990). While it could be argued that the nurse's actions do not enjoy the presumption of regularity because she is not a public official, [the defendant] still has the burden of proving that the tubes substituted. He simply offers no proof that substitution occurred. A mere suggestion that substitution could possibly have occurred does not meet the burden of showing probable substitution. . . . No witness who did testify gave any reason for the jury to believe that anything irregular occurred with this evidence.

Id. at 1005 - 1006 (*emphasis added*). Similarly, in the case at hand, the nurse who drew the blood did not testify to the specific method used to draw the blood; however, Officer Gibbs testified that he saw her draw the blood. (Transcript p. 28). Although he could not give specific details as to the method used to draw the blood because he lacked the medical training necessary to do so, he did testify that the method used appeared to be the normal method used to draw blood. (Transcript p. 105). As in *Ellis*, the simple fact that the nurse did not testify regarding the method used does not

in and of itself show a break in the chain of custody. Deeds must show that "there is an indication or reasonable inference of probable tampering with the evidence or substitution of the evidence." *Vaughn v. State*, 972 So.2d 56, 61 (Miss. Ct. App. 2008).

Instead Deeds only offered speculation which the *Ellis* Court held was not enough. Furthermore, like in *Ellis*, no witness gave any reason for the judge to believe that anything irregular occurred. *Ellis*, 934 So.2d at 1006. In fact, just the opposite, Officer Gibbs testified that as follows regarding the method of drawing the blood used by the nurse: "I mean, it looked like what a normal person would do as far as drawing blood based on what I know, yes, sir, me not being an expert." (Transcript p. 105). Also, J.C. Smiley of the Mississippi Crime Lab testified that there was nothing odd or out of the ordinary about the chain of custody or the testing of this blood. (Transcript p. 78 - 79). As Deeds, himself, notes, "the fundamental inquiry under [Mississippi Rule of Evidence 901(a), the applicability of which Deeds claims is significant,] is whether sufficient evidence exists to enable a reasonable juror to find beyond a reasonable doubt that the evidence is what it is claimed to be." (Appellant's Brief p. 14). There is no indication in the record that the blood tested was anything other than the blood drawn from Deeds shortly after the accident. Thus, a proper chain of custody was established.

Deeds blood was taken pursuant to Miss. Code Ann. §63-11-7 which reads in pertinent part as follows:

> If any person be unconscious or dead as a result of an accident, or unconscious at the time of arrest or apprehension or when the test is to be administered, or is otherwise in a condition rendering him incapable of refusal, such person shall be subjected to a blood test for the purpose of determining the alcoholic content of his blood as provided in this chapter, if the arresting officer has reasonable grounds to believe the person to have been driving a motor vehicle upon the public highways, public roads and streets of this state while under the influence of intoxicating liquor. . . . Blood

may only be withdrawn under the provisions of Section 63-11-9. . . .[3]

Deeds bases much of his argument on this point on the fact that the above referenced statute requires that the blood be drawn under the provisions of §63-11-9 which reads as follows:

> Under Section 63-11-7, any qualified person acting at the request of a law enforcement officer may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of breath or urine specimens.

Deeds claims that the State failed to establish that his blood test met the requirements set forth in this statute. However, "[s]ince at least the effective date of the Mississippi Rules of Evidence on January 1, 1986, the Mississippi Supreme Court has made it quite clear that matters regarding the admissibility of evidence in a judicial proceeding are to be decided by judicial rather than legislative pronouncement." *Acklin v. State*, 722 So.2d 1264, 1266 (Miss. Ct. App. 1998). In fact the defendant in *Acklin*, similarly to Deeds, argued that the results of his blood test should not have been admitted as the manner in which his blood test was taken did not explicitly conform to the provisions of Miss. Code Ann. §63-11-8, which provides the methods for testing the driver of a motor vehicle operator involved in an accident resulting in death. The *Acklin* Court first noted that "the admissibility of evidence in a criminal proceeding does not depend upon legislative enactment" but rather "hinges in the first instance on whether the information is relevant to the matter being tried." *Id.* The Court next noted that Mississippi Rule of Evidence 1103 states that "all evidentiary rules, whether provided by statute, court decision, or court rule, which are inconsistent with the Mississippi Rules of Evidence are hereby repealed." *Id.* After citing to *Whitehurst v. State,* 540 So.2d 1319 (Miss. 1989), the *Acklin* Court ultimately held that to the extent statutes such as §63-11-8:

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[3] This statute also states that "the results of such test or tests, however, shall not be used in evidence against such person in any court or before any regulatory body without the consent of the person so tested. . . ." However, this Court, in *Whitehurst v. State*, held that the results of blood tests taken pursuant to this statute are admissible if the results are admissible under the Mississippi Rules of Evidence. 540 So.2d 1319, 1323 (Miss. 1989).

> purport to be a rule of evidence governing the admissibility of evidence having probative value in this proceeding, we conclude that the rules of evidence must prevail over the statute's provisions. A demonstration that the statute was not precisely complied with when Acklin's blood was obtained, unaccompanied by proof that the lack of strict compliance had an actual adverse impact on the probative worth of the test results, is not enough to require the evidence to be excluded.

Id. at 1267 (*emphasis added*). *See also Murphy v. State*, 798 So.2d 609, 614 (Miss. Ct. App. 2001). Thus, strict compliance with §63-11-9 as argued by Deeds is not required for the blood to be admissible. Furthermore, the record does not support Deeds contention that the person who drew Deeds blood was not qualified. The record establishes that the attending nurse on duty drew Deeds' blood. (Exhibit 6).

Also, with regard to this point, Deeds relies on *Johnston v. State*, 567 So.2d 237 (Miss. 1990) and claims that the requirements of *Johnston* were not met. However, as very recently held by the Court of Appeals in *Lepine v. State*, 2007-KA-02197-COA, (February 17, 2009), "the three-part *Johnston* predicate was not required for the admission into evidence of [the defendant's] BAC test results." "The only requirement was one of proof that the procedure was reasonable." *Id.* There is nothing in the record even hinting that the procedures used in this case were less than reasonable. Accordingly, a proper chain of custody was established.

B. The Appellant was not deprived of his Sixth Amendment right to confront witnesses against him.

Deeds also asserts that his blood alcohol test results were "inadmissible because the State failed to identify or call as a witness the individual who took his blood sample and thereby deprived [him] of his Sixth Amendment right to confront a witness used against him." (Appellant's Brief p. 15). However, this Court has previously held the following with regard to physical evidence and the Confrontation Clause:

Physical objects which are relevant and for which the chain of custody is not broken

> or which are otherwise identified with certainty are admissible in evidence. Fondren Miss. Crim. Trial Prac. § 20-38 (1980). Matters regarding the chain of custody of evidence are largely within the discretion of the trial court, and absent an abuse of discretion, this Court will not reverse. *Morris v. State*, 436 So.2d 1381, 1388 (Miss.1983). However, the Confrontation Clause of the Sixth Amendment is restricted to witnesses, and does not include physical evidence. *United States v. Herndon*, 536 F.2d 1027, 1029 (5th Cir.1976); G.E.G. v. State, 389 So.2d 325, 326 (Fla.Dist.Ct.App.1980); *State v. Armstrong*, 363 So.2d 38, 39 (Fla.Dist.Ct.App.1978).

Evans v. State, 499 So.2d 781, 783 (Miss. 1986) (*emphasis added*). Further, as noted by the Mississippi Court of Appeals, "the Confrontation Clause of the Federal Constitution's Sixth Amendment bars the admissibility of out-of-court testimonial statements by an unavailable witness offered in a criminal trial to prove the truth of a matter asserted (also known as hearsay) unless the defendant has had a prior opportunity to cross-examine the witness about the statement." *Bailey v. State,* 956 So.2d 1016, 1027 (Miss. Ct. App. 2007) (quoting *Frazier v. State*, 907 So.2d 985 (Miss. Ct. App. 2005)). The nurse drawing Deeds' blood's "testimony" was not used against Deeds. Thus, the Confrontation Clause does not apply.

Moreover, Deeds was given an opportunity to confront the person who tested the blood samples taken as well as the officer who requested that his blood be drawn. As such, his Sixth Amendment rights were not violated.

C. The taking of the Appellant's blood was not a violation of his Fourth Amendment rights.

Lastly, Deeds argues that the taking of his blood "constituted an unlawful search and seizure in violation of his Fourth Amendment rights." (Appellant's Brief p. 16). Deeds' Fourth Amendment rights were not violated as there was both probable cause to draw his blood and as there was exigent circumstances.

Officer Gibbs had probable cause to draw Deeds' blood and the State would first point to the

case of *Wilkerson v. State,* 731 So.2d 1173, 1177 (Miss. 1999) to support this contention. The *Wilkerson* Court first noted that:

> Probable cause for a search is a common sense determination that the facts and circumstances known to the police officer, either through his own direct knowledge or gained second-hand from reliable sources, are such that contraband or evidence material to a criminal investigation will be found in a particular place. It must be more than mere or reasonable suspicion, but it need not meet the requirements of proof beyond a reasonable doubt. *Rooks v. State*, 529 So.2d 546, 554-55 (Miss.1988). This Court noted in *Longstreet v. State*, 592 So.2d 16, 21 (Miss.1991), that blood searches based upon probable cause are legal. Where the state is justified in requiring a blood test to determine the alcoholic content in a suspect's blood, and the test has been performed, the state is entitled to the benefit of the test results. *Id.* (citing *Ashley v. State*, 423 So.2d 1311, 1314 (Miss.1983)).

Id. at 1177 - 1178 (*emphasis added*). The Court then listed the facts known by the officer who requested the blood test which include the fact that (1) the defendant was involved in a head-on collision; (2) the collision occurred in the other vehicle's traffic lane; (3) the defendant had previously been driving recklessly and at a high rate of speed; and (4) the defendant had a strong odor of intoxicants about him. *Id.* at 1178. These facts are quite similar to those known by Officer Gibbs in the case at hand: (1) Deeds was also involved in a head-on collision (Transcript p. 24); (2) Deeds' collision also occurred in the victim's lane of travel (Transcript p. 89); (3) Officer Gibbs also smelled alcohol both in the vehicle in which Deeds was driving and on his breath while Gibbs was checking to see if Deeds was breathing (Transcript p. 25 and 31); and (4) Officer Gibbs saw a half empty bottle of Evans Williams whiskey in Deeds' vehicle immediately after the collision (Transcript p. 25). Thus, just as the officer in *Wilkerson* had probable cause to draw the defendant's blood, Officer Gibbs had probable cause to draw Deeds' blood.

Additionally, exigent circumstances existed which necessitated the drawing of Deeds blood. In this regard, the State would refer the Court to *Vaughn v. State,* 972 So.2d 56 (Miss. Ct. App. 2008). In *Vaughn*, the Court of Appeals first stated that "[a] warrantless search is permissible in

certain exigent circumstances if it can be shown that grounds existed to conduct the search that, had time permitted, would have reasonably satisfied a disinterested magistrate that a warrant should properly issue." *Id.* at 61 (quoting *Holloman v. State*, 820 So.2d 52, 55 (Miss. Ct. App.2002)). The Court then held that the defendant's "blood needed to be tested quickly in order to preserve the evidence of drugs or alcohol in his system" and that "therefore, exigent circumstances existed to permit a search." *Id.* Officer Gibbs testified that exigent circumstances existed during the suppression hearing:

> Q: Now, the question remains: Why didn't you get a warrant? How long would it have taken you to - - describe to the Court what procedures you would have had to undertake at that point in time to retrieve a warrant?
>
> A: If I did, I would have to go back to the police department, sit down, type up an affidavit at that point as well as the warrant, and then go - - I would have to drive out to Judge - - typically, we have our warrants signed by Judge McGarrh, who lives quite a bit out in the country so to speak, and then after I get it signed, come back and head down to the MED.
>
> Q: Now, based off of your previous experiences, how long would that entire process have taken?
>
> A: It's tough to say, but I mean, it could be anywhere from an hour and a half to two and a half hours.
>
> Q: Now, based off of your experience as a law enforcement officer and having been a DUI officer, as you stated earlier, what affect does time have on the level of blood alcohol in the human system?
>
> A: As time goes on, it decreases.
>
> * * *
>
> A: The one thing I did want on your previous question and just reiterate as far as that time line too, is whether we can get in contact with the judges. A lot of times - - you know, we try to call then first and make sure they're at home before we can get a warrant signed. So sometimes it takes a while to get a judge by phone first.

(Transcript p. 28 - 29). Thus, the record clearly establishes that there were exigent circumstances to justify Officer Gibbs request to have Deeds' blood drawn without a warrant.

Accordingly, the trial judge did not err in allowing the test results into evidence as the chain of custody was properly established and as neither Deeds' Sixth Amendment nor Fourth Amendment

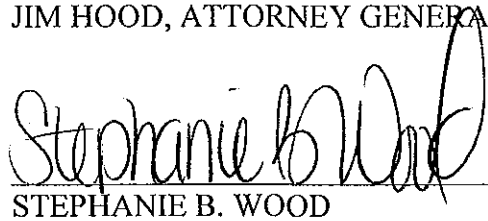
rights were violated.

CONCLUSION

The State of Mississippi respectfully requests that this Honorable Court affirm the conviction and sentence of John Deeds as the trial court did not err in refusing to dismiss the charges against the appellant on the grounds of double jeopardy and as the trial court did not abuse its discretion in admitting the results of the appellant's blood test into evidence.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: 

STEPHANIE B. WOOD
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO [redacted]

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680

CERTIFICATE OF SERVICE

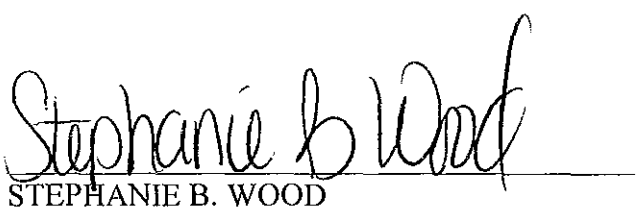
I, Stephanie B. Wood, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Robert P. Chamberlin
Circuit Court Judge
P. O. Box 280
Hernando, MS 38632

Honorable John W. Champion
District Attorney
365 Losher Street, Suite 210
Hernando, MS 38632

T. Swayze Alford, Esquire
Attorney At Law
Post Office Drawer 707
Oxford, MS 38655

This the 23rd day of February, 2009.



STEPHANIE B. WOOD
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MISSISSIPPI 39205-0220
TELEPHONE: (601) 359-3680