

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**GREGORY WAYNE HUDSON**

**APPELLANT**

**VS.**

**NO. 2008-KA-0387**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE ISSUES .....	1
STATEMENT OF THE FACTS .....	1
SUMMARY OF THE ARGUMENT .....	2
ARGUMENT .....	2
I.    THE TRIAL COURT PROPERLY DENIED THE APPELLANT’S MOTIONS FOR DIRECTED VERDICT AS THERE WAS SUFFICIENT EVIDENCE TO ESTABLISH THE APPELLANT’S GUILT .....	2
II.   THE TRIAL COURT PROPERLY DENIED THE APPELLANT’S MOTION FOR NEW TRIAL AS THE VERDICT WAS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE .....	6
III.  THE TRIAL COURT ACTED WITHIN ITS DISCRETION IN GRANTING JURY INSTRUCTIONS P1 AND P2 .....	8
IV.  THE TRIAL COURT ACTED WITHIN ITS DISCRETION IN DENYING JURY INSTRUCTIONS D1, D2, D3, AND D4 .....	10
CONCLUSION .....	13
CERTIFICATE OF SERVICE .....	14

## TABLE OF AUTHORITIES

### STATE CASES

<i>Alonso v. State</i> , 838 So.2d 309, 313 (Miss. Ct. App. 2002) .....	8
<i>Berry v. State</i> , 859 So.2d 399, 404 (Miss. Ct. App. 2003) .....	8, 12
<i>Drennan v. State</i> , 695 So.2d 581, 585 (Miss. 1997) .....	10
<i>Evans v. State</i> , 562 So.2d 91, 95 (Miss. 1990) .....	3
<i>Goldman v. State</i> , 406 So.2d 816, 820 (Miss. 1981) .....	4
<i>Hales v. State</i> , 933 So.2d 962, 968 (Miss. 2006) .....	7
<i>Hopson v. State</i> , 615 So.2d 576, 579 (Miss. 1993) .....	4
<i>May v. State</i> , 460 So.2d 778, 781 (Miss. 1984) .....	3
<i>McClain v. State</i> , 625 So.2d 774, 781 (Miss.1993) .....	7
<i>Miskelley v. State</i> , 480 So.2d 1104, 1107 (Miss. 1985) .....	4
<i>Montgomery v. State</i> , 910 So.2d 1169, 1173 (Miss. Ct. App. 2005) .....	3, 4
<i>Moody v. State</i> , 841 So.2d 1067, 1092 (Miss. 2003) .....	3
<i>Pearson v. State</i> , 428 So.2d 1361, 1364 (Miss. 1983) .....	3
<i>Phinisee v. State</i> , 864 So.2d 988, 992 (Miss. Ct. App. 2004) .....	3
<i>Pierce v. State</i> , 860 So.2d 855 (Miss. Ct. App. 2003) .....	7
<i>Ramage v. State</i> , 914 So.2d 274, 276 (Miss. Ct. App. 2005) .....	3, 5
<i>Ramsey v. State</i> , 959 So.2d 15, 21 (Miss. Ct. App. 2006) .....	8
<i>Ross v. State</i> , 954 So.2d 968, 987 (Miss. 2007) .....	8
<i>Shumpert v. State</i> , 935 So.2d 962 (Miss. 2006) .....	8

### STATE STATUTES

Mississippi Code Annotated §97-3-47 .....	3
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**STATEMENT OF THE ISSUES**

- I. THE TRIAL COURT PROPERLY DENIED THE APPELLANT'S MOTIONS FOR DIRECTED VERDICT AS THERE WAS SUFFICIENT EVIDENCE TO ESTABLISH THE APPELLANT'S GUILT.
- II. THE TRIAL COURT PROPERLY DENIED THE APPELLANT'S MOTION FOR NEW TRIAL AS THE VERDICT WAS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.
- III. THE TRIAL COURT ACTED WITHIN ITS DISCRETION IN GRANTING JURY INSTRUCTIONS P1 AND P2.
- IV. THE TRIAL COURT ACTED WITHIN ITS DISCRETION IN DENYING JURY INSTRUCTIONS D1, D2, D3, AND D4.

**STATEMENT OF THE FACTS**

Zelma Holcomb was killed as a result of an automobile collision on Alice Hall Road in Itawamba County, Mississippi on November 19, 2005. (Transcript p. 75 and 80). Ms. Holcomb's green Cadillac was hit by a red Dodge truck driven by the Appellant, Gregory Wayne Hudson. (Transcript p. 76 - 77). An investigation into the collision revealed that Hudson ingested barbiturates, amphetamine, and methamphetamine prior to the accident. (Transcript p. 199). The

investigation further revealed that Hudson was driving on the wrong side of the road at the time of the accident and was driving at an excessive rate of speed for the circumstances. (Transcript p. 152).

Hudson was thereafter arrested, tried, and convicted of culpable negligence manslaughter. He was sentenced to twenty years with six years suspended and fourteen years to serve in the custody of the Mississippi Department of Corrections and with five years of post-release supervision.

### **SUMMARY OF THE ARGUMENT**

There was sufficient evidence to support the verdict. The State presented evidence showing that Ms. Holcomb was killed as a result of the collision in question, that Hudson ingested certain drugs prior to the collision, and that Hudson was driving on the wrong side of the road and at an excessive rate of speed for the circumstances. Moreover, the verdict was not against the overwhelming weight of the evidence. Accordingly, the trial judge properly denied Hudson's motions for directed verdict and motion for new trial.

The jury was properly instructed. Jury Instructions P-1 and P-2 state the law of Mississippi regarding culpable negligence manslaughter and were supported by the evidence presented in the case. Jury Instructions D-1, D-2, D-3, and D-4 were not necessary in properly and fully instructing the jury as P-1 and P-2 better instructed the jury regarding the elements of the crime.

### **ARGUMENT**

#### **I. THE TRIAL COURT PROPERLY DENIED THE APPELLANT'S MOTIONS FOR DIRECTED VERDICT AS THERE WAS SUFFICIENT EVIDENCE TO ESTABLISH THE APPELLANT'S GUILT.**

Hudson first argues that the trial court improperly denied his motions for directed verdict. (Appellant's Brief p. 1). This Court has previously held that the standard of review for issues regarding the legal sufficiency of the evidence is as follows:

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 prosecution - in the light most consistent with the verdict. We give the prosecution the benefit of all favorable inferences that may be reasonably drawn from the evidence. If the facts and the inferences so considered point in favor of the accused with sufficient force that reasonable men could not have found beyond a reasonable doubt that the defendant was guilty, reversal and discharge are required. On the other hand, if there is in the record such substantial evidence of such quality and weight that, having in mind the beyond a reasonable doubt burden of proof standard, reasonable and fairminded jurors in the exercise of impartial judgment might have reached different conclusions, the verdict of guilty is thus placed beyond our authority to disturb. *Moody v. State*, 841 So.2d 1067, 1092 (Miss. 2003) In other words, once the jury has returned a verdict of guilty in a criminal case, we are not at liberty to direct that the defendant be discharged short of a conclusion on our part that given the evidence, taken in the light most favorable to the verdict, no reasonable, hypothetical juror could find beyond a reasonable doubt that the defendant was guilty. *May v. State*, 460 So.2d 778, 781 (Miss. 1984) (citing *Pearson v. State*, 428 So.2d 1361, 1364 (Miss. 1983))

*Phinisee v. State*, 864 So.2d 988, 992 (Miss. Ct. App. 2004) (*Emphasis added*).

Hudson was convicted of culpable negligence manslaughter under Mississippi Code Annotated §97-3-47 which reads as follows:

Every other killing of a human being, by the act, procurement, or culpable negligence of another, and without the authority of law, not provided for in this title, shall be manslaughter.

“Culpable negligence manslaughter requires only an unlawful killing by the culpable negligence of another.” *Ramage v. State*, 914 So.2d 274, 276 (Miss. Ct. App. 2005). The Mississippi Supreme Court has previously held that in order to prove culpable negligence, “the State must prove, beyond a reasonable doubt, guilt of such gross negligence on the occasion complained of as to evince a wanton or reckless disregard for the safety of human life, or such an indifference to the consequences of an act under the surrounding circumstances as to render such conduct tantamount to willfulness.” *Evans v. State*, 562 So.2d 91, 95 (Miss. 1990) (citing *Hynum v. State*, 77 So.2d 313, 314 (Miss. 1955)). See also *Montgomery v. State*, 910 So.2d 1169, 1173 (Miss. Ct. App. 2005) (quoting *Smith*

v. *State*, 20 So.2d 701, 705 (Miss. 1945)) (holding that the definition of culpable negligence is “the conscious and wanton or reckless disregard of the probabilities of fatal consequences to others as a result of the willful creation of an unreasonable risk thereof”). Accordingly, the State had to prove that Hudson acted in such a reckless manner as to show a disregard for the safety of human life or to show an indifference to the consequences of his actions and that said actions caused the death of Ms. Zelma Holcomb. The State contends that this burden was met.

In support of his argument that the trial court should have directed the verdict in his favor, Hudson first argues that “the State failed to prove that the accident at issue in this case caused the death of the alleged victim.” (Appellant’s Brief p. 10). Specifically, Hudson argues that no autopsy was performed on Ms. Holcomb and that the coroner’s testimony did not fully establish the cause of death. (Appellant’s Brief p. 7 and 10). Similarly, the defendant in *Montgomery v. State*, argued that “the State produced no evidence proving the corpus delicti, or the evidence providing the link between Montgomery’s culpable negligence and the death of [the victim].” 910 So.2d 1169, 1174 (Miss. Ct. App. 2005). The *Montgomery* Court held that “neither an autopsy nor medical evidence is required to establish corpus delicti.” *Id.* (quoting *Hopson v. State*, 615 So.2d 576, 579 (Miss. 1993)). The Court further held as follows:

The cause of a victim’s death is usually proven by witnesses who saw the deceased after his death and testified that the deceased was dead. *Miskelley v. State*, 480 So.2d 1104, 1107 (Miss. 1985). “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.” *Id.*

*Id.* See also *Goldman v. State*, 406 So.2d 816, 820 (Miss. 1981) (holding that the “death of a victim and criminal agency may be established by circumstantial evidence and by reasonable inferences to be drawn from such evidence”). In Hudson’s case, there was more than sufficient testimony regarding Ms. Holcomb’s death. (Transcript p. 119 - 123 and 190). This testimony along with the

other evidence presented at trial established that Ms. Holcomb was killed as a result of the collision of Hudson's vehicle with her own.

Furthermore, there is testimony which dispels Hudson's theory that Ms. Holcomb could have had a heart attack prior to the wreck and that this heart attack is actually what caused the wreck. Bobby Patterson, an eyewitness, testified that just before impact Ms. Holcomb "tried to slow down herself and swerved and he still hit her." (Transcript p. 187). *See also* the Testimony of James Easterling p. 139). A woman in the midst of a heart attack could not take steps to attempt to avoid the accident. Accordingly, the evidence presented at trial does not support Hudson's theory.

Hudson also argues, in support of his contention that the trial court improperly denied his motions for directed verdict, that "the State has totally failed to prove the drugs listed in the indictment contributed in any manner to this accident." (Appellant's Brief p. 11). This Court has held that "operation of an automobile while under the influence is rightly considered a factor 'indicating criminally culpable negligence if the intoxicants proximately contributed both to the negligence of the defendant and to the resulting death.'" *Ramage*, 914 So.2d at 277 (quoting *Hopson v. State*, 615 So.2d 576, 578 (Miss. 1993)). In the case at hand, the State certainly does not assert that Hudson's ingestion of the drugs at issue was the sole reason he was culpably negligent as this alone cannot lead to a finding of culpable negligence. *See Ramage*, 914 So.2d at 277 (*Beckham v. State*, 735 So.2d 1059, 1061 (Miss. Ct. App. 1999)). However, the State does assert that Hudson's ingestion of these drugs, as established by the testimony of Emily Jochimsen Harper, forensic toxicologist, of the Mississippi Crime Lab (Transcript p. 199), along with his reckless driving, i.e., excessive speed and driving on the wrong side of the road, establish beyond a reasonable doubt that he was acting in a manner that can only be described as culpably negligent.

The influence of these ingested drugs on Hudson's behavior was also established at trial.



(Transcript p. 84 - 85). Moreover, Ms. Harper of the Mississippi Crime Lab testified that the amount of drugs in Hudson's system would have been higher at the time of the wreck than at the time his blood was drawn, approximately three hours later. (Transcript p. 213). As such, there is ample evidence in the record from which the juror could find that Hudson's ingestion of these drugs contributed both to his negligence and the death of Ms. Holcomb.

In addition to the proof discussed above, there was also evidence that Hudson operated his vehicle in a reckless manner in that he was driving on the wrong side of the road and at an excessive rate of speed for the roadway. (Transcript p. 147, 152, 168, 171, 186, and 188). Moreover, the following testimony was given by Steve Thrasher of the Itawamba County Sheriff Department: "I asked Mr. Hudson what happened, he stated that he didn't know what happened, he had just lost control of the vehicle." (Transcript p. 108). Additionally, as noted by the trial judge when denying Hudson's first motion for directed verdict, the State alleged and illustrated that Hudson "had, along with his speed, ingested barbiturates, amphetamine, and methamphetamine." (Transcript p. 221).

As such, there is absolutely no question that the State met its burden of proof in this case. Thus, the trial court properly denied Hudson's motions for directed verdict.

## **II. THE TRIAL COURT PROPERLY DENIED THE APPELLANT'S MOTION FOR NEW TRIAL AS THE VERDICT WAS NOT AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.**

Hudson next argues that "the verdict of the jury was against the overwhelming weight of the evidence." (Appellant's Brief p. 1). The appellate standard of review for claims that a conviction is against the overwhelming weight of the evidence is as follows:

[This 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. A new trial will not be ordered unless the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an "unconscionable injustice."

*Pierce v. State*, 860 So.2d 855 (Miss. Ct. App. 2003) (quoting *Smith v. State*, 802 So.2d 82, 85-86 (Miss. 2001)). On review, the Court must accept as true all evidence favorable to the State. *McClain v. State*, 625 So.2d 774, 781 (Miss.1993).

In support of this argument, Hudson asserts that “the State has failed to prove a level of negligence against the Appellant that rose to a level of culpable negligence but could only be termed as simple negligence if any at all.” (Appellant’s Brief p. 13). Specifically, Hudson contends that “if the trial court had sustained the Appellant’s Motion concerning the use of the language insinuating that the Appellant was intoxicated, the only evidence left against the Appellant would be allegations of excessive speed under conditions as existed on the roadway at that time.” (Appellant’s Brief p. 13 - 14). Hudson goes on to implore the Court that it “should not hold that the allegations of excessive speed should hold to convict this Appellant.” (Appellant’s Brief p. 15). However, the jury was properly instructed regarding Hudson’s ingestion of various drugs as set forth below. Furthermore, there is much more evidence of culpable negligence than simply excessive speed as set forth above. Certainly the ingestion of the drugs shown at trial coupled with driving on the wrong side of the road in a curve along with excessive speed on a curvy and hilly road combine to constitute culpable negligence. The jury clearly believed that it did as they had the proper instructions before them as well as the evidence and determined that Hudson was guilty of culpable negligence manslaughter. The Mississippi Supreme Court has held that “we do not reverse criminal cases where there is a straight issue of fact, or a conflict in the facts; juries are impaneled for the very purpose of passing upon such questions of disputed fact, and we do not intend to invade the province and prerogative of the jury.” *Hales v. State*, 933 So.2d 962, 968 (Miss. 2006)(quoting *Hyde v. State*, 413 So.2d 1042, 1044 (Miss.1982)). As such, it is clear that the verdict was not against the overwhelming weight of the evidence. Thus, the trial court properly denied Hudson’s motion for

new trial.

### III. THE TRIAL COURT ACTED WITHIN ITS DISCRETION IN GRANTING JURY INSTRUCTIONS P1 AND P2.

Hudson also urges this Court to hold that “the trial court erred in granting State’s Jury Instructions P-1 and P-2.” (Appellant’s Brief p. 2).<sup>1</sup> Jury instructions are within the sound discretion of the trial court. *Shumpert v. State*, 935 So.2d 962 (Miss. 2006) (citing *Goodin v. State*, 787 So.2d 639, 657 (Miss. 2001)). “In determining whether error lies in the granting or refusal of various instructions, the instructions actually given must be read as a whole. When so read, if the instructions fairly announce the law of the case and create no injustice, no reversible error will be found.” *Berry v. State*, 859 So.2d 399, 404 (Miss. Ct. App. 2003) (quoting *Johnson v. State*, 823 So.2d 582, 584 (Miss. Ct. App. 2002)) (*emphasis added*).

Hudson simply states in his brief that these instructions “do not set forth the law of the State in regard to the facts of this case” and then refers to the arguments made on the record at trial. (Appellant’s Brief p. 15). The instructions at issue are set forth below:

#### Jury Instruction P-1:

The defendant, GREGORY WAYNE HUDSON, has been charged by indictment with the felony crime of Culpable Negligence Manslaughter. The Court instructs the jury that if you believe from the evidence in this case beyond a reasonable doubt that the defendant, in Itawamba County, Mississippi, on or about the time and date charged and testified about, did unlawfully and feloniously kill and slay Zelma Holcomb, a human being, by culpable negligence by driving his vehicle

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<sup>1</sup> Hudson’s arguments regarding Jury Instruction P-2 are procedurally barred as no objection was made at trial. When P-2 was presented to the trial judge, Hudson responded, “no objection to that one, Your Honor, as long as cumulative instructions on culpable negligence are considered by the court and - - which I’ll object to at that time.” (Transcript p. 292). No subsequent objections were made to the instruction. Furthermore, the issue was not raised in Hudson’s motion for new trial. See *Ramsey v. State*, 959 So.2d 15, 21 (Miss. Ct. App. 2006) (holding that no contemporaneous objection made to a jury instruction at trial bars the issue on appeal); *Alonso v. State*, 838 So.2d 309, 313 (Miss. Ct. App. 2002) (holding that the issue in question was procedurally barred even though an objection was raised at trial because the matter was not raised in the motion for new trial); and *Ross v. State*, 954 So.2d 968, 987 (Miss. 2007) (holding that “an objection must be made with specificity, and failure to articulate the grounds for objection constitutes a waiver of the alleged error”).

on the wrong side of a public roadway at an excessive rate of speed, after having ingested barbiturates, amphetamine, and methamphetamine, and causing a collision with the vehicle occupied by Zelma Holcomb, then you shall find the defendant, GREGORY WAYNE HUDSON, guilty of Culpable Negligence Manslaughter.

If the State has failed to prove any one or more of these elements beyond a reasonable doubt, then you shall find the defendant, GREGORY WAYNE HUDSON, not guilty.

(Record p. 5).

Jury Instruction P-2:

Culpable Negligence is conduct which exhibits or manifests a wanton or reckless disregard for the safety of human life, or such indifference to the consequences of the defendant's act under the surrounding circumstances as to render his conduct tantamount to willfulness. Therefore, if you believe from the evidence in this case beyond a reasonable doubt that the defendant, GREGORY WAYNE HUDSON, exhibited or manifested wanton or reckless disregard for the safety of human life, or such indifference to the consequences of his act under the surrounding circumstances as to render his conduct tantamount to willfulness, then you may consider that the defendant acted with or by culpable negligence.

(Record p. 6). In his brief, Hudson cites no case law and makes no arguments, but instead, simply refers to the arguments he made at trial. During trial, Hudson argued as follows:

Judge, I am objecting to P-1, primarily the language concerning the drugs barbiturates, amphetamine, methamphetamine and I would renew our argument that I made at the end of the directed verdict and at the end of the case. I don't think the proof has been that intoxicants were involved in this case to the level that the case law requires for that proof to be put before the jury and considered by them. . . . So I'm specifically objecting to that language. I'm also objecting to language as to the acts allegedly committed by my client, primarily driving his vehicle on the wrong side of a public highway and so forth and so on. . . .

(Transcript p. 290 - 291). Thus, it appears that Hudson is arguing that the evidence does not support the instruction. However, as noted by the State at trial, the instruction tracks the language of the indictment. Further, evidence was presented at trial which showed that Hudson "ingested barbiturates, amphetamine, and methamphetamine" (Transcript p. 199) and that Hudson "[drove] his vehicle on the wrong side of a public roadway at an excessive rate of speed." (Transcript p. 147, 152, 168, 171, 186, and 188). Thus, the evidence presented at trial does support the instruction.

As noted in Footnote 1, no objection to Jury Instruction P-2 was made at trial; therefore, there are no arguments in the record for Hudson to reference. Thus, not only are Hudson's arguments regarding Jury Instruction P-2 procedurally barred for failure to object, but also because Hudson cited to no legal authority to support his argument that the instruction should not have been given. *See Drennan v. State*, 695 So.2d 581, 585 (Miss. 1997) (holding that "it is the duty of the appellant to provide authority and support of an assignment").

Nonetheless, Hudson argues that both instructions do not reflect the law of the State of Mississippi. The trial judge disagreed specifically holding that P-1 was proper "especially in light of the next instruction P-2, which defines wanton or reckless disregard on the culpable negligence theory." (Transcript p. 292). The State asserts that the trial judge was correct as shown by the case law set forth above in its arguments on Issue 1 with regard to what is required to establish culpable negligence manslaughter. As such, the trial court did not err in granting these two instructions.

#### **IV. THE TRIAL COURT ACTED WITHIN ITS DISCRETION IN DENYING JURY INSTRUCTIONS D1, D2, D3, AND D4.**

Lastly, Hudson argues that "the trial court erred in denying the Defendant's Jury Instructions D-1, D-2, D-3, and D-4." (Appellant's Brief p. 2).<sup>2</sup> Hudson simply argues on appeal that "D-1, D-2, D-3, and D-4 state the proper law and should have been given by the Court" and again references the arguments made during trial regarding the instructions. (Appellant's Brief p. 16). The instructions at issue are set forth below:

##### Jury Instruction D-1:

The Defendant, Gregory Wayne Hudson, has been charged by indictment with the felony crime of culpable negligence manslaughter. The Court instructs the jury that if you find from the evidence in this case beyond a reasonable doubt that the

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<sup>2</sup> The State incorporates the case law setting forth the standard of review as stated in this brief with regard to Issue 3 as if set forth in full herein.

Defendant, in Itawamba County, Mississippi, on or about the time and date charged and testified about, then unlawfully and feloniously kill Zelma Holcomb, a human being, by culpable negligence through his actions or inactions of the operation of his vehicle then you shall find the Defendant Gregory Wayne Hudson, guilty of culpable negligence manslaughter.

If the State failed to prove anyone or more of these elements beyond a reasonable doubt, then you shall find the Defendant, Gregory Wayne Hudson, not guilty.

(Record p. 57).

Jury Instruction D-2:

The Court instructs the jury that a person may be guilty of simple negligence or carelessness of the operation of a vehicle but not guilty of culpable negligence. The degree of negligence necessary to constitute manslaughter cannot be predicated upon mere negligence or carelessness, but it must be predicated upon that degree of negligence or carelessness, but it must be predicated upon that degree of negligence or carelessness which is denominated as gross and which constitutes such a departure from what would be the conduct of an ordinarily careful and prudent man under the same circumstances as to furnish evidence of indifference to consequences. If you find from the evidence in this case that the Defendant was not negligent or careless in the operation of his vehicle or that he was only guilty of simple negligence or carelessness but said negligence did not rise to the level of culpable negligence, then you must find the Defendant not guilty of the offense charged.

(Record p. 58).

Jury Instruction D-3:

The Court instructs the jury that the operation of a motor vehicle while under the influence of intoxicants may be a factor indicating criminally culpable negligence if the influence of intoxicants proximately contributed both to the negligence of the Defendant and to the resulting death. The influence of intoxicants must have created an abnormal mental and physical condition in the Defendant which deprived said Defendant of the clearness of intellect and control of himself in which he would otherwise possess. If you as a jury cannot find these conditions then you cannot and must not consider in your deliberations the State's allegations that the Defendant operated his vehicle after having ingested barbiturates, amphetamine, and methamphetamine.

(Record p. 59).

Jury Instruction D-4:

The Court instructs the jury that you cannot consider in your deliberations in this cause the State's allegations that the Defendant operated his vehicle after having ingested barbiturates, amphetamine, and methamphetamine.

(Record p. 60).

With regard to Jury Instruction D-1, the trial court properly held that it was “repetitious and better covered by P-1.” (Transcript p. 297). The trial judge also held that the instructions in D-2 were properly covered in P-1 and P-2. (Transcript p. 299). Mississippi law is well-settled that “the refusal to grant an instruction which is similar to one already given does not constitute reversible error.” *Berry v. State*, 859 So.2d 399, 405 (Miss. Ct. App. 2003) (quoting *Montana v. State*, 822 So.2d 954, 961 (Miss. 2002)). As set forth above, P-1, which was already granted, tracked the language of the indictment and properly set forth Mississippi law with regard to culpable negligence manslaughter especially when coupled with P-2. Thus, the trial court properly refused Jury Instructions D-1 and D-2.

Instructions D-3 and D-4 address again Hudson’s arguments regarding his ingestion of the drugs listed in the indictment. The indictment simply alleges that Hudson drove recklessly after ingesting the drugs listed. There was testimony presented at trial evidencing the fact that Hudson ingested the drugs. As such, the jury was properly instructed with regard to Hudson’s drug use. As set forth above, this Court has held that “[w]hen so read, if the instructions fairly announce the law of the case and create no injustice, no reversible error will be found.” *Berry v. State*, 859 So.2d 399, 404 (Miss. Ct. App. 2003) (quoting *Johnson v. State*, 823 So.2d 582, 584 (Miss. Ct. App. 2002)). The instructions given in the case at hand more than sufficiently informed the jury regarding the elements of the crime, their duty with regard to the evidence, and the requirements for finding Hudson guilty or not guilty. Thus, the jury was properly instructed and the trial judge properly refused these instructions.

## CONCLUSION

The State of Mississippi respectfully requests that this Honorable Court affirm the conviction and sentence of Gregory Wayne Hudson as there was sufficient evidence to support the verdict, the verdict was not against the overwhelming weight of the evidence, and as the jury was properly instructed.

Respectfully submitted,

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## 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:

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