

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

GREGORY WAYNE HUDSON

APPELLANT

VS.

NO. 2008-KA-0387-SCT

STATE OF MISSISSIPPI

APPELLEE

CERTIORARI FROM THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

SUPPLEMENTAL BRIEF OF THE APPELLEE

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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

GREGORY WAYNE HUDSON

APPELLANT

V.

NO. 2008-KA-00387-SCT

STATE OF MISSISSIPPI

APPELLEE

CERTIORARI FROM THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

SUPPLEMENTAL BRIEF OF THE APPELLEE

On August 9, 2010, this Court granted the State of Mississippi's Petition for Writ of Certiorari. Pursuant to Mississippi Rule of Appellate Procedure 17(h), the State of Mississippi files this Supplemental Brief in support of its claim that the holding of the Court of Appeals should be reversed and Gregory Wayne's conviction and sentence should be reinstated.

**THIS HONORABLE COURT SHOULD REVERSE THE COURT OF APPEAL'S
HOLDING THAT THE DENIAL OF PROPOSED JURY INSTRUCTION D-3 WAS
REVERSIBLE ERROR AND THEREBY REINSTATE
GREGORY WAYNE HUDSON'S CONVICTION AND SENTENCE.**

I. FACTS AND PROCEDURAL HISTORY

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

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.

Hudson was convicted of culpable negligence manslaughter for causing the death of Ms. Holcomb while driving on the wrong side of the road, driving at an excessive rate of speed, and driving after ingesting barbiturates, amphetamine, and methamphetamine. The jury was fully instructed regarding the elements of the crime. However, the Mississippi Court of Appeals reversed and remanded the case based upon the trial court's failure to grant a modified version of proposed jury instruction D-3, which instructed the jury with regard to being "under the influence of intoxicants." The Court of Appeals specifically held, in part, as follows:

While the State in its indictment does not unequivocally allege that Hudson was under the influence of drugs, it does allege a cause and effect relationship between the enumerated items, including the ingestion of drugs and the death of Holcomb. . . . Where the State is allowed to allege the existence of a cause and effect relationship, the defendant has an equal right to question the existence of that cause and effect relationship. . . . we find that there was a foundation in the evidence for Hudson's defense jury instruction D3.

Hudson v. State, No. 2008-KA-00387 (Miss. Ct. App. December 8, 2009) ¶19 and ¶20. The State of Mississippi subsequently filed a Motion for Rehearing arguing that proposed instruction D-3 was not appropriate because the indictment did not allege that Hudson was "under the influence" of intoxicating substances nor was there such a requirement of proof in order to obtain a conviction. The Court of Appeals denied the Motion for Rehearing. The State then filed a Petition for Writ of Certiorari with this Honorable Court which was granted on August 9, 2010.

II. SUMMARY OF THE ARGUMENT

Hudson's conviction and sentence should be reinstated as the jury was fully and fairly instructed and the instructions, as given, created no injustice. The trial court did not abuse its

discretion in denying proposed jury instruction D-3 regarding Hudson “being under the influence.” Hudson’s ingestion of intoxicating substances was not an element of the crime, but instead was merely a factor to be considered in determining whether he exhibited a wanton and reckless disregard for the safety of human life. Additionally, the indictment did not allege that the Appellant was “under the influence” of intoxicating substances nor was there a requirement that the State prove such in order to establish culpable negligence homicide. As such, the jury instructions, as given, fully and fairly announced the applicable law. Moreover, even if it were error to refuse the instruction, the error was harmless as the record did not reflect that the refusal affected the outcome of the trial.

III. ARGUMENT

A. The jury instructions, as given, fairly and fully announced the law.

It is well-established Mississippi law that “no reversible error will be found if the instructions fairly announce the law of the case and create no injustice.” *Williams v. State*, 953 So.2d 260, 263 (Miss. Ct. App. 2006 (citing *Johnson v. State*, 908 So.2d 758, 764 (Miss. 2005))). *See also Fulgham v. State*, 12 So.3d 558, 561 (Miss. Ct. App. 2009) (citing *Dampier v. State*, 973 So.2d 221, 232 (Miss. 2008)) (holding that “if the jury instructions given fairly announce the law and create no injustice, this Court will not find any reversible error”). In the case at hand, the jury was properly instructed regarding the elements of the crime.

Instruction P-1¹ set forth three factors for the jury to consider in determining whether

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 on the wrong side of a public roadway at an excessive rate of speed, after having ingested

Hudson was culpably negligent: (1) his driving on the wrong side of a public roadway; (2) his driving at an excessive rate of speed; and (3) his driving after having INGESTED barbiturates, amphetamine, and methamphetamine. Jury Instruction P-1 further instructed the jury that in order to find Hudson guilty of culpable negligence manslaughter, they had to consider whether these three factors, as stated above, caused the collision which killed Ms. Zelma Holcomb. Additionally, the jury was instructed regarding the definition of culpable negligence manslaughter in Instruction P-2.² These instructions, coupled with the other instructions given to the jury, fully and fairly announced the law of the case. Furthermore, they create NO INJUSTICE. Accordingly, there could be no reversible error.

B. The proposed instruction was not applicable to Hudson's case.

Certainly the proposed instruction at issue, without the last sentence, accurately reflects Mississippi case law.³ However, the Court of Appeals, citing a prior ruling of this Court, has

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.

(Jury Instruction P-1).

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.

(Jury Instruction P-2).

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

previously held that “merely because a refused instruction was a correct statement of the law does not make its refusal reversible error.” *Richardson v. State*, 807 So.2d 1277, 1279 (Miss. Ct. App. 2001) (citing *Holden v. State*, 399 So.2d 1343, 1345-46 (Miss. 1981)).

Additionally, refusal of the proposed instruction was not reversible error in that the instruction was not proper in this particular case. As noted by the Court of Appeals Dissent, “Hudson was not indicted for being under the influence of an intoxicating substance.” (Dissenting Opinion ¶27). “The indictment charged Hudson with committing culpable-negligence manslaughter by exhibiting a wanton disregard of, or utter indifference to, the safety of human life.” (Dissenting Opinion ¶27). The indictment simply charged, as a factor to be considered along with two other factors, that Hudson INGESTED the intoxicating substances. Additionally, the jury instruction also only instructed the jury to consider, as one of three factors, that Hudson INGESTED the intoxicating substances. His ingestion of these substances was but ONE of THREE factors which when considered TOGETHER made him culpably negligent in his operation of his vehicle which lead to the collision which took the life of Ms. Holcomb. Thus, as stated by the Court of Appeals Dissent, “the trial judge properly denied the defendant’s requested instruction as to ‘being under the influence’ since the indictment contains no such allegation or requirement of proof.” (Dissenting Opinion ¶26). This is further illustrated by the numerous cases, albeit dealing with other issues related to culpable negligence, that hold that intoxication is not an element of the crime of culpable negligence manslaughter. *See Evans v. State*, 562 So.2d 91, 95 (Miss. 1990) (holding that “intoxication *could* be a relevant evidential factor in a prosecution for manslaughter by culpable

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.

Proposed Jury Instruction D-3 (without the last sentence).

negligence”); *Mayfield v. State*, 612 So.2d 1120, 1125 (Miss. 1992)(holding that “the State is not required to prove intoxication in order to establish manslaughter by culpable negligence”); and *Whitehurst v. State*, 540 So.2d 1319, 1328 (Miss.1989) (holding that intoxication “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”). Intoxication is merely a factor to be considered. Thus, Hudson’s “theory of defense” that he was not under the influence of intoxicants is not a full defense to the crime. Certainly, Hudson could have been found guilty of culpable negligence manslaughter even had he not ingested the intoxicating substances. Again as noted by

the Court of Appeals Dissent:

. . . Hudson’s knowing act of ingesting controlled substances, without proof of the unindicted requirement of his being ‘under the influence’ of the substances, considered with the other indicted acts of speeding on the wrong side of a public road, reflected an overall spirit of Hudson’s wanton disregard for the safety of others. . . . The majority opinion fails to acknowledge the probative value of the ingestion or the propriety of charging the ingestion as part of the indictment unless the jury first finds that the defendant was under the influence of the intoxicating substances. However, the ingestion of the substances, as charged in the indictment, reflects a spirit of wanton disregard for the safety of others, and a showing of ‘under the influence’ is not a separate element of the crime charged.

(Dissenting Opinion ¶29 and ¶30). A review of the instructions given and the indictment outlining the charges makes it evident that the jury was fully and fairly instructed. Moreover, the instructions did not create an injustice. As such, it was not error to refuse the instruction.

C. Even if it were error to refuse the instruction, the error was harmless in that the refusal did not effect the outcome of the case.

Even if it were error to refuse the instruction, it was not reversible error. “When dealing with constitutional issues such as the right to a fair trial [including the right to have a theory of defense instruction presented to the jury], reversal is not required if on the whole record, the error was harmless beyond a reasonable doubt.” *Alexander v. State*, 749 So.2d 1031, 1038 (Miss.1999).

Unlike the *Alexander* case, wherein this Court found that the defendant was unable to present his theory of defense without the instruction, Hudson was able to present to the jury his “theory of defense” that he was not under the influence of the intoxicating substances through testimony. As noted by the Court of Appeals’s majority opinion, there was testimony from the forensic toxicologist that “the drugs found in Hudson’s urine did not indicate that he was under the influence.” (Majority Opinion ¶20). Additionally the toxicologist testified that the amount of barbiturates found in Hudson’s blood was a “subtherapeutic low” amount and that “it may have an effect on an average person.” (Majority Opinion ¶14). Thus, the jury was made aware of the amount of intoxicating substances that were ingested by Hudson and the possible effects they may have had on him. Additionally, as noted above, Hudson could have been found guilty of culpable negligence manslaughter even had he not ingested the intoxicating substances. As such, the outcome of the trial was not affected by the failure to grant this instruction. “An error is only grounds for reversal if it affects the final result of the case.” *Vardaman v. State*, 966 So.2d 885, 891 (Miss. Ct. App. 2007).

CONCLUSION

A new trial is not warranted as (1) the jury instructions given fairly and fully announced the law; (2) the proposed instruction was not applicable to Hudson's case; and (3) even if it were error to refuse the instruction, the error was harmless in that the refusal did not effect the outcome of the case. Accordingly, the State of Mississippi respectfully requests that this Honorable Court correct the opinion of the Court of Appeals and upon so doing, reinstate the conviction and sentence entered by the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

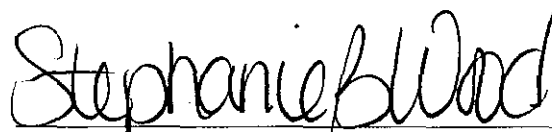
I, Stephanie B. Wood, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **SUPPLEMENTAL BRIEF OF THE APPELLEE** to the following:

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This the 23rd day of August, 2010.

A handwritten signature in black ink that reads "Stephanie B. Wood". The signature is written in a cursive style with a horizontal line underneath it.

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