

**IN THE SUPREME COURT
OF THE STATE OF MISSISSIPPI**

NO. 2008-TS-00387

GREGORY WAYNE HUDSON

APPELLANT

VS.

STATE OF MISSISSIPPI

APPELLEE

ON APPEAL FROM THE CIRCUIT COURT OF ITAWAMBA COUNTY, MISSISSIPPI

BRIEF OF APPELLANT

ORAL ARGUMENT REQUESTED

RESPECTFULLY SUBMITTED



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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case.

1. Hon. David Daniels
Assistant District Attorney for the First Judicial
District of the State of Mississippi
2. Hon. Dennis Farris
Assistant District Attorney for the First Judicial
District of the State of Mississippi
3. Hon. William C. Stennett
Counsel For Appellant
William C. Stennett Law Firm, PLLC
Tupelo, Mississippi
4. Hon. Jim Pounds
Circuit Court Judge
First Judicial District of the State of Mississippi


WILLIAM C. STENNETT
ATTORNEY FOR APPELLANT

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TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF ISSUES	1
STATEMENT OF THE CASE	3
I. PROCEEDINGS & DISPOSITION IN THE TRIAL COURT.....	3
II. STATEMENT OF FACTS	3
SUMMARY OF THE ARGUMENT	7
ARGUMENT OF APPELLANT	10
I. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR DIRECTED VERDICT BOTH AT THE CLOSE OF THE STATE'S CASE AND AT THE CLOSE OF THE ENTIRE CASE AND IN DENYING THE MOTION FOR NEW TRIAL.....	10
II. THE VERDICT OF THE JURY WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.....	13
III. THE TRIAL COURT ERRED IN GIVING THE STATE'S JURY INSTRUCTIONS P1 AND P5.....	15
IV. THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S JURY INSTRUCTIONS D1, D2, D3 AND D4.....	15
CONCLUSION.....	17
CERTIFICATE OF SERVICE.....	18

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GREGORY WAYNE HUDSON

APPELLANT

VS.

STATE OF MISSISSIPPI

APPELLEE

TABLE OF AUTHORITIES

<u>Beckham v. State</u> , 735 So. 2 nd 1059 (Miss. 1999)	p. 12
<u>Cutshall v. State</u> , 4 So. 2 nd 289 (Miss. 1941)	p. 12
<u>Neal v. State</u> , 451 So. 2 nd 743 (Miss. 1984)	p. 10
<u>Scott v. State</u> , 185 So. 195, 183 Miss. 788 (1938)	p.14
<u>Bailey v. State</u> , 169 So. 765, 176 Miss. 579 (1936)	p. 14
<u>Williams v. State</u> , 544 So. 2 nd 782 (Miss. 1987)	p. 10

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STATEMENT OF THE ISSUES

The Appellant, Gregory Wayne Hudson, assigns as errors, the following issues arising out of the trial in the court below.

I. The trial Court erred in denying Appellant's Motion For Directed Verdict, both at the close of the State's case and at the close of the entire case, and in denying the Appellant's Motion For New Trial.

The Appellant's argument is that the State failed to prove cause of death of the alleged victim in this cause. Further, the Appellant argues that the Court erred in allowing language and proof concerning the presence of drugs and/or intoxicants found in the Appellant's system as a result of blood and urine tests as there was no proof that intoxicants were involved in any manner in the accident.

II. The verdict of the jury was against the overwhelming weight of the evidence.

The Appellant argues that the State failed to prove a level of negligence against the Appellant in this case that rose to the level of Culpable Negligence but negligence, if any, could only be termed as simple negligence.

III. The trial Court erred in granting State's Jury Instructions P1 and P2.

The Appellant argues that these Jury Instructions were improper pursuant to the above arguments and the case law presented hereinafter.

IV. The trial Court erred in denying the Defendant's Jury Instructions D1, D2, D3 and D4.

The Appellant argues that these Jury Instruction were proper pursuant to the above arguments and the case law presented hereinafter.

The Appellant argues that the cumulative effect of the aforementioned errors greatly prejudiced him in this cause and rendered his right to a fair trial impossible under the circumstances.

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STATEMENT OF THE CASE

I. PROCEEDINGS & DISPOSITION IN THE TRIAL COURT

The Appellant, Gregory Wayne Hudson, was found guilty of Culpable Negligence Manslaughter following a three day jury trial conducted in the Circuit Court of Itawamba County, Mississippi, beginning on January 22, 2008.(Transcript-hereinafter (T)-at 332) . The Appellant was represented by the Honorable William C. Stennett and the State was represented by the Honorable David Daniels and the Honorable Dennis Farris. The Circuit Court Judge was the Honorable Jim Pounds.

The Court sentenced the Defendant on January 25, 2008, to 20 years in the custody of the Mississippi Department of Corrections with (6) six of those years suspended leaving the Appellant (14) fourteen years to serve. (T at 345). A timely Notice of Appeal was filed on February 29, 2008, after the Trial Judge denied the Appellant's Motion For JNOV or in the alternative, a new trial. (Record-hereinafter (R)-at 77).

II. STATEMENT OF FACTS

The facts of this case revolve around an automobile accident that occurred on November

19, 2005, on Alice Hill Road in Itawamba County, Mississippi. The drivers of the automobiles involved in the accident were the Appellant, Gregory Wayne Hudson, a 23 year old male and Ms. Zelma Holcomb, a 67 year old female. It is the State's position that Zelma Holcomb was killed as a result of the accident.

Alice Hill Road is a small two lane country road in Itawamba County. There is an incline on Alice Hill Road that leads directly into a right hand curve. (T at 102-103). The evidence showed that the Appellant was driving down the incline into the right hand curve. The deceased was coming from the opposite direction and also entering the curve when the accident occurred. (T at 103). The Road was approximately 20 feet wide at the point of impact. (T at 139). The vehicles were estimated to be approximately 7 feet wide. (T at 156). Therefore, the vehicles would have only a maximum of 6 feet clearance between the vehicles when they passed on Alice Hill Road.

The Appellant's version of what happened on that day is as follows:

Q. Explain in the jury in your own words what happened on that day.

A. On that day I was coming down that road and whenever I topped the the hill I seen the Cadillac coming around the curve in my lane and I braked and done everything I could to get out of the way of the car, it was in my lane. I couldn't have went to the right because I would have went off on that gully and I'd hit all them trees. I done everything possible that I could do to get out of the way of it. And then we hit head on.

(T at 236)

Unfortunately, there was a collision between the two vehicles in spite of all the Defendant could do to avoid the collision. The State has taken the position that Ms. Zelma Holcomb was killed as a result of this automobile accident. However, through testimony of the coroner, the

Appellant and his trial counsel were able to show unto the jury that there was never an autopsy completed on the alleged victim. (T at 120) . The coroner further testified that he could not testify with a certainty as to the cause of death of the decedent. (T at 123). The Appellant took the position that because the decedent was in his lane of travel and because a witness observed the decedent in seizures following the accident that the decedent could possibly have died of a heart attack. (T at 190). The coroner himself testified that he could not say that the decedent did not die of a heart attack. (T at 123). It is from this evidence that the Appellant appeals to this Court that the State has failed to prove one of the elements in the indictment that being the cause of death.

Further, the Appellant was concerned and aggrieved that there was no blood samples taken from the deceased to determine if the deceased was under the influence of some drug or medication. (T at 106).

The Appellant did consent to have his blood withdrawn at the hospital following the accident. The blood was subsequently sent to the Mississippi Crime Laboratory for analysis. (T at 90). The crime lab results revealed at trial that there was no alcohol in the Appellant's system. The test also revealed that there was no methamphetamine or amphetamine in Appellant's blood but traces were found in his urine sample. According to the testimony of the crime lab expert, it could not be shown that the Appellant was under the influence or under the impairment of those drugs. (T at 209). The primary reason being that the drugs were only found in the urine. There must traces of drugs in a person's blood for him to be under any impairment. The body disposes of waste through the urine system which means that the traces

were on the way out of the Appellant's body and in no way could have impaired him at the time of the accident. The crime lab results did reveal a low amount of barbiturate in the Appellant's blood. According to the results, the amount was measured at a .36 on the measuring scale used by the crime laboratory. The report amount of barbiturates would be a .2 which means anything below a .2 would not even be reported. Therefore, the crime lab expert testified that this was a very low level. (T at 210). Further, the expert testified that the range for sedation was 3 to 7 micrograms per milliliter of a person's blood. (T at 211). To repeat, the Appellant's level was at a .36 which was much lower than the sedation range of 3 to 7. The expert could not testify that this amount of barbiturate would have any effect at all on the Appellant. (T at 212-213). From this information, the State included in its indictment of Culpable Negligence Manslaughter against the Defendant that he had ingested amphetamines, methamphetamine and barbiturates which the Appellant contends had a great prejudicial effect upon the jury in its deliberations as the jury was led to believe that the Appellant could possibly be intoxicated from these drugs. (T at 325).

The indictment rendered against the Appellant read as follows:

(R at 3-4) That Gregory Wayne Hudson in said County and State on the 19th day of November, A.D., 2005 did willfully, unlawfully and feloniously kill and slay Zelma Holcomb, a human being, by culpable negligence in that Gregory Wayne Hudson did willfully, unlawfully and feloniously drive his vehicle on the wrong side of a public roadway at an excessive rate of speed, after having ingested barbiturates, amphetamine and methamphetamine in causing a collision with the vehicle occupied by Zelma Holcomb, in such a wonton and negligent manner as to evidence reckless disregard for the value to human life, and as a result of such grossly negligent action caused the death of the said Zelma Holcomb, in violation of Miss. Code, Annotated, Section 97-3-47.

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SUMMARY OF THE ARGUMENT

The Appellant's first issue before the Court is whether the State erred in failing to direct a verdict in favor of the Appellant either at the close of the State's Case or at the close of the entire case. The Appellant bases his argument concerning this issue in two separate arguments to the Court. First, the Appellant argues that the State has failed to prove an essential element of its culpable negligence claim in that the State has failed to prove that the alleged victim died as a result of the actions of the Appellant. The Appellant would point out to the Court that there was no autopsy performed on the deceased nor was there any blood tests drawn after the accident. There was evidence submitted during the trial that the deceased was in the Appellant's lane of travel immediately prior to the accident. It is the Appellant's position that the alleged victim could have suffered a heart attack immediately prior to the accident. This is further substantiated by the fact that there were two witnesses that stated that the alleged victim was having seizures after the accident. This also points to a possible conclusion that something medical had

happened to the victim prior to the accident. At any rate, it is incumbent upon the State in a criminal prosecution to prove beyond a reasonable doubt that this victim died as a result of this accident and not before the accident. This was not done at the trial of this cause.

Secondly, the Appellant would argue that the State has included in the indictment allegations that the Appellant had ingested amphetamines, methamphetamine and barbiturates which is a part of the culpable negligence of which he is accused. The Appellant would argue to the Court that case law states that although driving under the influence of liquor or some intoxicant is a crime in itself, it does not by itself constitute culpable negligence, nor does it make what would otherwise be no more than mere negligence in operating a motor vehicle culpable negligence under the meeting of the statute. The Appellant would show that for the drugs to be probative and therefore admissible the Appellant must have been under the influence of intoxicants so that this condition proximately contributed both to the negligence of the Defendant and to the resulting death. It must have created an abnormal mental and physical condition which deprived one of the clearness of intellect and control of himself which he would otherwise possess. The Appellant argues to this Court that there was no proof brought forward of this required intoxicated state. Clearly, there was no proof to show any type of intoxication as all of the proof showed that there was no evidence of intoxication. Therefore, the State's proof has failed in that regard.

Thirdly, the Appellant would argue unto the Court that the entire proof of this case does not rise to the level of proving the Appellant guilty of culpable negligence but would prove, if anything, that the Defendant was only guilty of simple negligence and should not be held responsible for manslaughter. The Appellant would present case law in support of this argument

in the body of the appropriate section.

Lastly, the Appellant's argument as to jury instructions center around the foregoing arguments and the language in the jury instructions that was objected to and the Defendant's proposed objections to cure what was considered to be in error.

Therefore, the Appellant argues to the Court that the cumulative effect of all of the errors of the trial court should be considered and the Appellant asks the Court to reverse and render the trial court's decision.

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ARGUMENT OF APPELLANT

I. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR DIRECTIVE VERDICT, BOTH AT THE CLOSE OF THE STATE'S CASE AND AT THE CLOSE OF THE ENTIRE CASE AND IN DENYING THE MOTION FOR NEW TRIAL.

1. The State failed to prove that the accident at issue in this case caused the death of the alleged victim.

The Mississippi Supreme Court has stated that for a conviction to stand the prosecution is required to prove every element of the offense beyond a reasonable doubt. Williams v. State, 544 So. 2nd 782 (Miss. 1987); Neal v. State, 451 So. 2nd 743 (Miss. 1984). An essential element of the crime of culpable negligence manslaughter is that the Appellant caused the death of the alleged victim.

The Appellant would draw the Court's attention to the testimony of the coroner in this case located in the transcript at pages 115-124. In his testimony, the coroner confirmed that there had been no autopsy of the victim's body. Further, there was no blood tests done to assure

investigators there was no foreign substance in the victim's blood. But most importantly, the coroner testified that he could not accurately testify as to the cause of death. This is the Appellant's position. The State has totally failed to prove beyond a reasonable doubt to the jury that the victim's death was caused by this accident. There is sufficient proof in the record primarily through the testimony of the Appellant at page 236 of the transcript that the victim was driving in the Appellant's lane of travel. This in itself should create a doubt as to the condition of the alleged victim prior to the accident. After the accident, there were witnesses who testified that the victim appeared to be having seizures. This added to the victim's age at 67, would indicate that the possibility exists that the victim could have had an heart attack prior to the accident which caused her death. However, this was never even considered by the State. The State's focus began immediately upon the Appellant and building its case to convict him of this charge. In this case however the State has failed to meet an essential element of culpable negligence being that it has failed to prove that this accident caused the victim's death.

2. The Appellant argues that the State has totally failed to prove that the drugs listed in the indictment contributed in any manner to this accident.

As stated heretofore in this brief, the indictment against the Appellant in this cause contains language that states that the Appellant did willfully and unlawfully drive his vehicle at an excessive rate of speed after having ingested barbiturates, amphetamine and methamphetamine in causing a collision with a vehicle occupied by the alleged victim. The State by including the language concerning the various drugs in the indictment created a situation which made it imperative for the State to prove that these intoxicants had impaired the Appellant to the point that it possibly contributed to the accident. The State has totally failed in that regard.

The Mississippi Supreme Court addressed this issue in the case of Beckham vs. State, 735 So. 2nd 1059 (Miss. 1959). In this case Beckham's vehicle struck another vehicle from behind. The crash resulted in both cars overturning and the driver of the second vehicle being killed. Beckham was injured and carried to the hospital. Once at the hospital, Beckham was given a blood test which indicted that he had .12 per cent concentration of alcohol in his blood. He was subsequently indicted on one count of manslaughter by culpable negligence in the death of the driver of the second automobile. The Mississippi Supreme Court in addressing the issue of the influence of intoxicating liquors stated that "while driving...under the influence of intoxicating liquor is a crime in and of itself...this in itself does not constitute culpable negligence, nor does it make what would otherwise be no more than the negligent act in operating a motor vehicle culpable negligence under the meaning of the statute Id. at 1061. The Court went on to state that as to what effect driving while intoxicated could have as to one's culpable negligence, the intoxication "must create an abnormal mental and physical condition which tends to deprive one of the clearness of intellect and control of himself which he would otherwise possess". Id. at 1062. The Court further stated that for intoxicants to be a factor indicating criminally culpable negligence the influence of intoxicates must have proximately contributed both to the negligence of the defendant and to the resulting death. Id. at 1062. See also Cutshall vs. State, 4 So. 2nd 289 (Miss. 1941) (the driving of automobile while under the influence of intoxicating liquor is misdemeanor and hence "negligence per se" but evidence thereof does not constitute prima facie case of manslaughter).

In the case at bar, there was absolutely no proof to show that the Appellant was intoxicated. More over, the proof showed that the Appellant was not intoxicated. The

testimony of the crime lab expert as set forth hereinabove is proof to this Honorable Court that the Appellant was not in an intoxicated state and thereof these drugs could not have contributed to his alleged negligence nor could they have contributed to the death of the victim. Therefore, the inclusion of these drugs in the indictment and the inclusion by the testimony of the witnesses and the argument of the State's Counsel particularly in closing arguments as to the Appellant's use of these drugs, constitute reversible error. Appellant's trial counsel argued this at the end of the State's case as well as at the end of the entire case but his Motions were overruled. The Appellant urges and asserts to this Court that this was error. The State's argument as to the use of these drugs in spite of a lack of proof of the Appellant's intoxication and effect on this accident, greatly prejudiced the Appellant in the minds of jury to a point that this case should be reversed. The jury was led to think that this young man was recklessly driving his car in an intoxicated state which was absolutely not true as established by the State's own witness. The trial court should never have let this language stay in the case and should have directed a verdict in favor of the Appellant because of it's effect on the jury.

II. THE VERDICT OF THE JURY WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE

The Appellant asserts to this Court 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.

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