

**IN THE COURT OF APPEALS 04/09/96**  
**OF THE**  
**STATE OF MISSISSIPPI**  
**NO. 93-KA-00730 COA**

**CAROL ANN EDWARDS**

**APPELLANT**

**v.**

**STATE OF MISSISSIPPI**

**APPELLEE**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND  
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. JOHN B. TONEY

COURT FROM WHICH APPEALED: RANKIN COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

JOHN M. COLETTE

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: SCOTT STUART

DISTRICT ATTORNEY: JOHN KITCHENS

NATURE OF THE CASE: CRIMINAL: HOMICIDE (CULPABLE NEGLIGENCE)

TRIAL COURT DISPOSITION: CONVICTED AND SENTENCED TO EIGHTEEN YRS IN  
CUSTODY OF M.D.O.C.

BEFORE THOMAS, P.J., BARBER, AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

Carol Edwards was convicted of culpable negligence homicide and sentenced to serve eighteen years in prison. She appeals her conviction, contending that blood samples were improperly admitted in evidence and that she was not competent to stand trial. We affirm.

### FACTS

On the night of July 3, 1992, Edwards was driving on the wrong side of the road on Highway 80 when she collided with a truck, seriously injuring herself and resulting in the death of the truck's driver. A blood test was taken that revealed the presence of Fiorinal, a prescription pain medication.

Edwards was indicted for the death pursuant to section 97-3-47 of the Mississippi Code of 1972, criminalizing killings resulting from culpable negligence. Prior to trial, Edwards raised the issue of her competency to stand trial, and she was examined by a variety of experts. The experts opined and the trial court concluded that Edwards suffered from amnesia and could not relate her recollection of the events of July 3. Nevertheless, some of the experts and the trial court found Edwards to be competent to stand trial.

A jury convicted Edwards of the charge, and she was sentenced to serve eighteen years in prison.

### DISCUSSION

#### *1. Admissibility of Blood Test*

Edwards filed a motion to suppress evidence of the blood test administered to her by the police in the hospital. She argued to the trial court that the test was taken without probable cause. The probable cause asserted by the State was the evidence known to the officer that Edwards had driven for approximately half a mile on the wrong side of a divided highway, scattering oncoming cars until she collided with the victim.

The trial court never ruled on the motion to suppress. The failure to rule was not objected to at the time of the introduction of the blood test, nor was a new objection made to the admission. Consequently, we are precluded from considering whether the motion should have been granted. *Gayten v. State*, 595 So. 2d 409, 413 (Miss. 1992) (citations omitted). Edwards had the responsibility of preserving this issue for review on appeal, and she failed to do so.

#### *2. Amnesia and Competency to Stand Trial*

Edwards contends that her inability to recall the facts of the accident renders her incompetent to stand trial and precluded her prosecution under the United States Constitution. In support of her position, Edwards cites *Emanuel v. State*, 412 So. 2d 1187 (Miss. 1982). Specifically, Edwards points to the following passage from *Emanuel*:

The trial of a defendant, when his mind is so clouded that he cannot remember and intelligently relate what occurred at the time of the commission of the alleged offense is a denial of due process and contrary to public policy, and when it appears to the trial court

that there is a probability that [the] defendant is incapable of making a rational defense, the trial should not proceed until the defendant's mental condition has been investigated and it appears that he is sufficiently rational to make a defense.

*Emanuel*, 412 So. 2d at 1188 (citations omitted). The language of the first part of this quote suggests an accused must remember the facts of the incident giving rise to their prosecution. Such a rule has never been applied in Mississippi, nor have we been cited to any precedent from another state. The reason may be the second part of the quote, which requires a trial court to stay proceedings "when there is a probability that the defendant is incapable of making a rational defense . . . ." There was no question in *Emanuel* concerning whether the defendant in that case could recall the facts of the crime. *Id.* at 1189. All of the physicians in *Emanuel* testified that the defendant had the ability to recall events. *Id.* Instead, the contention in *Emanuel* was that the operation of a psychiatric disorder made it unlikely that the defendant could remain stable during the trial and that his low intelligence also posed problems in terms of his ability to appreciate the proceedings. *Id.* at 1189-90.

Consistent with federal authority interpreting the United States Constitution, we conclude that an inability to recall the facts of an incident giving rise to a prosecution does not by itself render an accused incompetent to stand trial. The due process test is "whether [a defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him." *Dusky v. United States*, 362 U.S. 402, 402 (1960). In this context, amnesia precluding recollection of the events of the criminal conduct "is not a bar to prosecution of an otherwise competent defendant." *Leach v. Kolb*, 911 F.2d 1249, 1260-61 (7th Cir. 1990) (quoting *United States v. Stevens*, 461 F.2d 317, 320 (7th Cir. 1972) (citing *Davis v. Wyrick*, 766 F.2d 1197, 1202 (8th Cir. 1985)), *cert. denied*, 498 U.S. 972 (1990); *Holmes v. King*, 709 F.2d 965, 968 (5th Cir. 1983), *cert. denied*, 464 U.S. 984 (1983). We adopt the test of a neighboring federal circuit that a defendant with amnesia is competent to stand trial where evidence against the defendant is strong, where the defendant is able to reconstruct events from materials available to him, and "there does not appear to be any real possibility [that] the amnesia is 'locking in' exculpatory information." *United States v. Rinchack*, 820 F.2d 1557, 1569-70 (11th Cir. 1987).

On the facts of this case, it is apparent that the trial court was correct in concluding that Edwards was competent to stand trial. Edwards understood the nature and consequences of the proceedings against her. She had a present ability to consult with her lawyer at trial. Here Edwards' admitted that her inability to recall events was expressly due to facts that supported the State's theory of culpability, i.e., her taking of Fioral. It is evident that there was no real possibility that Edwards' amnesia was locking in any exculpatory information. Admitting that she was driving on the wrong side of the road, Edwards developed evidence that the area where the accident occurred has been the scene of many accidents and that the road markings are confusing. Her amnesia did not prevent her from reconstructing the facts of the accident with the explanation that the road was dark and the lanes were poorly marked.

We find no error in the determination that Edwards was competent to stand trial.

**THE JUDGMENT OF THE RANKIN COUNTY CIRCUIT COURT OF CONVICTION OF**

**MANSLAUGHTER BY CULPABLE NEGLIGENCE AND SENTENCE OF 18 YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.**

**FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, AND PAYNE, JJ., CONCUR.**