

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 96-KA-00442 COA**

**LYNDA DAVIS A/K/A LYNDA H. DAVIS**

**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

DATE OF JUDGMENT:	02/26/96
TRIAL JUDGE:	HON. JANNIE M. LEWIS
COURT FROM WHICH APPEALED:	HOLMES COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	EDWARD BLACKMON
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: W. GLENN WATTS
DISTRICT ATTORNEY:	NOEL D. CROOK
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	AGGRAVATED D.U.I.: SENTENCED TO 6 YRS WITH 4 YRS SUSPENDED; DEFENDANT ORDERED TO OBTAIN ALCOHOL & PSYCHOLOGICAL TREATMENT WHILE IN THE CUSTODY OF MDOC
DISPOSITION:	AFFIRMED - 1/27/98
MOTION FOR REHEARING FILED:	2/11/1998
CERTIORARI FILED:	4/20/1998
MANDATE ISSUED:	

BEFORE McMILLIN, P.J., KING, AND PAYNE, JJ.

KING, J., FOR THE COURT:

**I.**

On the evening of September 4, 1994, in Tchula, Mississippi, the appellant, Lynda Davis, and her husband were leaving a Labor Day bar-b-que held at the home of a local resident. Although she had

consumed several alcoholic beverages during the course of the evening, Davis drove the couple home from the gathering. Witnesses testified that Davis left the gathering driving her car at an excessive rate of speed. Robert Stamps, who also attended the bar-b-que, left the affair on foot, traveling down Highway 49.

Robert Stamps was reported as consuming large quantities of corn whiskey at the bar-b-que. As Stamps attempted to cross the roadway, he was struck and killed by the car which Davis was driving.

After the impact, Davis continued to travel for a short distance. Davis then stopped and her husband ran back to the scene of accident to determine what she had hit. Her husband asked a nearby resident to contact the police and Davis went home.

Davis returned to the scene of the accident during the investigation and informed Police Chief Sharkey Ford that she was operating the vehicle involved in the accident. Chief Ford told her not to say anything else and that he would speak with her later. Chief Ford testified that Davis indicated that she was engaged in an argument with her husband when she noticed Stamps on the roadway and could not avoid hitting him.

Davis's intoxilyzer reading was .223. Stamps's blood alcohol level was .17.

Davis was indicted and found guilty of the crime of aggravated driving under the influence (D.U.I.). Aggrieved by the sentence and conviction, Davis has appealed and assigned the following as error:

- 1. The trial court erred in allowing the State to put on improper rebuttal testimony by Chief Sharkey Ford which only served to bolster the State's case against Davis.**
- 2. Whether the trial court abused its discretion in allowing the admission of the intoxilyzer results through Officer Frank Siddon.**
- 3. Whether the trial court committed reversible error when it refused to grant a directed verdict.**

**Finding no reversible error, we affirm.**

## **II.**

### **DID THE TRIAL COURT ERR IN ALLOWING THE STATE TO OFFER THE REBUTTAL TESTIMONY OF CHIEF FORD?**

Davis argues that Chief Ford's rebuttal testimony was improper and violated her right to a fair trial. The facts relevant to this issue are as follows:

During the State's case-in-chief, Chief Ford testified on direct examination that Davis said she was engaged in an argument with her husband when her vehicle struck and killed Stamps. During her case-in-chief, Davis testified that she did not give that statement and that Chief Ford was lying. At the close of Davis's case, the State then sought permission to recall Chief Ford to rebut Davis's testimony that he lied. Chief Ford testified that he had not lied during his earlier testimony. The State then offered Davis's transcribed statement. Chief Ford testified that his practice was to make a tape recording of statements, but that the recording of the statements given in the investigation of this

matter were inaudible. The State next proceeded to have the tape marked for identification.

A trial judge enjoys great latitude in ruling on the admissibility of testimony. Absent a showing that the trial judge abused his discretion in such a manner as to cause a prejudicial effect upon the accused, this Court will not reverse the trial judge's ruling. *Shearer v. State*, 423 So. 2d 824, 826 (Miss. 1982). We hold that the trial court's admission of Chief Ford's rebuttal testimony was not an abuse of discretion.

Davis's testimony that Chief Ford was lying had the undeniable effect of discrediting him as a witness. It was, therefore, proper to allow the State to put on additional proof of Davis's statement to combat the prejudicial effect of her contention that Chief Ford's earlier testimony was fabricated. *Payne v. State*, 204 Miss. 455, 463, 37 So. 2d 743, 744 (Miss. 1948). While it is true that one effect of Chief Ford's rebuttal testimony was that it bolstered the State's case, the purpose behind offering the testimony was to rebut Davis's attack on Chief Ford's veracity. *See Tippit v. Hunter*, 205 So. 2d 267, 273 (Miss. 1967).

### III.

#### **DID THE TRIAL COURT ABUSE ITS DISCRETION IN ALLOWING THE ADMISSION OF THE INTOXILYZER RESULTS THROUGH OFFICER FRANK SIDDON?**

After Davis arrived at the Tchula Police Department, Officer Frank Siddon performed a chemical analysis of her breath to determine her blood alcohol concentration level. Officer Siddon was certified to operate the intoxilyzer at the time the chemical analysis was run on Davis. The analysis revealed an alcohol concentration of .223, well above the legal limit.

Officer Siddon testified that he followed the procedure for operating the intoxilyzer machine as outlined on the checklist issued by the crime lab. The State introduced through Officer Siddon the log of D.U.I. tests conducted and calibration checks performed during the relevant period.

Davis argues that the admission of the intoxilyzer results was prejudicial to her because: (1) the log indicating the date and result of the calibration check was insufficient, (2) Officer Siddon did not testify to the accuracy of the intoxilyzer, and (3) the officer who actually calibrated the intoxilyzer was not identified. Finding no merit in this argument, we affirm.

As discussed, *supra*, this Court will not reverse a trial court's ruling on the admissibility of evidence in the absence of an abuse of discretion. *Shearer*, 423 So. 2d at 826. In *Johnson v. State*, 567 So. 2d 237, 238 (Miss. 1990), the supreme court set forth the following three prong test for admission of intoxilyzer test results. The trial court must determine whether (1) the proper procedures were followed, (2) the operator of the machine was certified to perform the test, and (3) the accuracy of the machine had been certified.

A condition precedent to the admissibility of evidence is that it be authenticated or identified. **M.R.E. 901(a)**. In the case *sub judice*, authentication of the intoxilyzer results with the intoxilyzer log of calibration checks was sufficient to support a finding that the results were accurate.

**Mississippi Code Annotated § 63-11-19** reads in pertinent part as follows:

The State Crime Laboratory shall make periodic, but not less frequently than quarterly, tests of the methods, machines or devices used in making chemical analysis of a person's breath as shall be necessary to ensure the accuracy thereof, and shall issue its certificate to verify the accuracy of the same.

The intoxilyzer log presented by the State is the certificate of the intoxilyzer machine's accuracy. Contrary to the suggestion of Davis, it is not necessary that the State present the certificate of accuracy and the testimony of the calibrating officer to lay the proper predicate for the admission of the intoxilyzer results. *McIlwain v. State*, 700 So. 2d 586, 591 (Miss. 1997).

Finding that the three prong test outlined in *Johnson*, 567 So. 2d at 238 was satisfied and the certificate of accuracy was properly authenticated, we hold that the admission of the intoxilyzer results through Officer Siddon was not in error.

#### IV.

#### **DID THE TRIAL COURT ERR IN ITS REFUSAL TO GRANT DAVIS A DIRECTED VERDICT?**

This Court's review of the denial of directed verdicts was recently outlined in *Coleman v. State*, 697 So. 2d 777, 787-8 (Miss. 1997) as follows:

[T]his Court will consider the evidence in the light most favorable to the appellee, giving that party the benefit of all favorable inference [sic] that may be reasonably drawn from the evidence. If the facts so considered point so overwhelmingly in favor of the appellant that reasonable men could not have arrived at a contrary verdict, we are required to reverse and render. On the other hand if there is substantial evidence in support of the verdict, that is, evidence of such quality and weight that reasonable and fair minded jurors in the exercise of impartial judgment might have reached different conclusions, affirmance is required. . . .

Davis contends that the evidence in this case was legally insufficient for a reasonable and fair minded jury to have found beyond a reasonable doubt that she was guilty. During it's case-in-chief, the State presented eyewitness testimony that Davis left the bar-b-que driving in an erratic manner, a statement that she was arguing with her husband at the time of accident, and the intoxilyzer results which revealed that her blood alcohol concentration level exceeded the legal limit.

During the presentation of her own case, Davis testified on her own behalf that she was not having an argument with her husband in support of her contention that Stamps negligently caused his own death.

The jury could have believed the eyewitness accounts that Davis was engaged in a heated argument with her husband and concluded that she failed to keep a proper lookout while driving. Most damaging to Davis's case was the evidence that her blood alcohol level of .223 was more than two times higher than the legal limit of .10. In light of the cumulative effect of the evidence presented by the State, it cannot be said that the jury's verdict of guilty was unreasonable. The trial judge did not err in denying Davis's motion for directed verdict.

**THE JUDGMENT OF THE HOLMES COUNTY CIRCUIT COURT OF CONVICTION OF AGGRAVATED D.U.I. AND SENTENCE OF SIX (6) YEARS WITH FOUR (4) YEARS SUSPENDED AND ORDER TO OBTAIN ALCOHOL AND PSYCHOLOGICAL TREATMENT WHILE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO HOLMES COUNTY.**

**BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.**