

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 96-KA-00441 COA**

**TERRY L. STANFIELD A/K/A TERRY LEWAYNE  
STANFIELD**

**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:	03/18/96
TRIAL JUDGE:	HON. GEORGE B. READY
COURT FROM WHICH APPEALED:	DESOTO COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	JAMES D. FRANKS, JR.
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: BILLY L. GORE
DISTRICT ATTORNEY:	ROBERT L. WILLIAMS
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	DUI, DEATH: SENTENCED TO SERVE A TERM OF 20 YRS IN THE MDOC WITH THE LAST 5 YRS BEING SUSPENDED PENDING FUTURE GOOD BEHAVIOR; DEFENDANT SHALL PAY COSTS OF COURT
DISPOSITION:	AFFIRMED - 2/24/98
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	4/7/98

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

PAYNE, J., FOR THE COURT:

## PROCEDURAL HISTORY

On January 3, 1995, a traffic accident occurred in DeSoto County, Mississippi, involving an automobile operated by Terry Stanfield and an automobile being operated by Kelly Martin. As a result of this accident, Martin was killed. On April 20, 1995, Terry Stanfield was indicted for causing the death of a motorist while he was under the influence of an intoxicating liquor. In a bench trial conducted March 18, 1996, the Circuit Court of DeSoto County, Mississippi, adjudicated Stanfield guilty of the DUI death and sentenced him to serve a term of twenty years in the custody of the Mississippi Department of Corrections with five years suspended and fifteen years to serve. Feeling aggrieved by this judgment, he appeals. After a close review of the record and the law, we affirm the conviction below.

## FACTS

During the early morning hours of January 3, 1995, Terry Stanfield was driving his Chevrolet Malibu southbound on Interstate 55 when his vehicle made contact with the vehicle manned by Kelly Martin. This fatal collision occurred when the right front of Stanfield's vehicle struck the left rear of Martin's Nissan Pathfinder. Martin lost control of her Nissan after the impact. The Nissan rolled several times in the median. Tragically, Martin was ejected from the vehicle into the right southbound lane where she was struck by another motor vehicle. Other occupants in Martin's vehicle at the time of the accident were her husband and two children.

This case was tried by the judge without a jury on stipulation as to the testimony of witnesses had they been called. There were no stipulations as to the testimony of defense witnesses to contradict what the State's witnesses' testimony might be.

Brian Bradley, a police officer, would have testified that he arrived at the scene of the accident and detected the odor of alcohol on the defendant's breath.<sup>(1)</sup> Another officer, John Magness, would have testified that he determined that Stanfield had been driving at an excessive rate of speed. Magness's testimony would have characterized Stanfield as having been "glassy eyed, eyes were bloodshot and he smelled a strong odor of alcohol coming from his person."<sup>(2)</sup> Besides stipulated testimony concerning speed, Mr. Stanfield also conceded that at the time he applied his brakes, just prior to the collision, he was traveling, at a minimum of 81 mph.<sup>(3)</sup> Further, it was stipulated that Michelle Brandon would testify that she was driving at 60 mph and that she exclaimed to her friend, Jodie Joyner, that when she looked in her rearview mirror she noticed a vehicle approaching at a high rate of speed, at such a rate that she exclaimed to Ms. Joyner, "He's going to hit us." Also when asked in a deposition, in one of her statements she said, "He was probably doing 90 maybe to 100."<sup>(4)</sup> Furthermore, it was stipulated that Michelle Brandon and her passenger, Ms. Jodi Joyner, would testify that he (Stanfield) was weaving in the road.<sup>(5)</sup> Further, Officer Brian Bradley would have testified that Stanfield was taken to the station house in Southhaven where a breath analysis machine, commonly known as an intoxilyzer, demonstrated a blood alcohol content of .141%.

The circuit judge found as a fact beyond a reasonable doubt "[t]here was a D.U.I. [and] [t]here was negligence involved on the part of the defendant in operation of his vehicle while under the influence and in a reckless manner in an excessive rate of speed which caused him to run into the back end of the vehicle driven by Mrs. Martin . . . ."

The trial judge announced, both prior to trial and after trial that he would not impose a sentence over and above that authorized for manslaughter via culpable negligence when intoxication is an evidentiary factor. Following the victim impact testimony, the trial judge sentenced Stanfield.

## **ARGUMENT AND DISCUSSION OF THE LAW**

### **I. WHETHER THE TRIAL COURT ERRED IN OVERRULING DEFENDANT'S DEMURRER, WHICH ALLEGED THAT THE INDICTMENT WAS INSUFFICIENT AND UNLAWFUL BECAUSE IT OFFERED THE FINDER OF FACT TWO ALTERNATIVE METHODS OF FINDING THE DEFENDANT GUILTY OF DUI, AND BECAUSE IT ALLEGED MUTUALLY EXCLUSIVE FACTORS BY CHARGING THAT THE DEFENDANT'S ACTS WERE BOTH "WILLFUL" (INTENTIONAL) AND "NEGLIGENT" (UNINTENTIONAL).**

The defendant insists that this indictment offers the finder of fact the disjunctive alternative of finding that the defendant was under the influence of intoxicating liquor or that the defendant registered .10% or more. Consequently, he argues, he must fight a war on two fronts, defending against both Miss. Code Ann. § 63-11-30 (1) (a) (Rev. 1996) and Miss. Code Ann. § 63-11-30 (1) (c) (Rev. 1996).

The indictment in this cause alleges that the defendant caused the death of Kelly Martin "while operating a motor vehicle under the influence of intoxicating liquor by having ten one-hundredths percent (.10%) or more by weight volume of alcohol in his blood, to-wit: .141%" in violation of Miss. Code Ann. § 63-11-30 (4) (Miss. 1972). This section of the Mississippi Code, the statute under which Mr. Stanfield was charged, requires proof of injury or death as a result of the negligence of a driver operating a motor vehicle while he is, *inter alia*, under the influence of intoxicating liquor and/or operating a motor vehicle with a blood alcohol content of ten one-hundredths percent (.10%) or greater. ***Temple v. State*, 679 So. 2d 611, 612 (Miss. 1996).**

Stipulated testimony reflected that Mr. Stanfield had a blood alcohol content of .141%. The import of this testimony was not only to demonstrate that he had a blood alcohol content greater than .10%, but in aid of a permissible conclusion that he was driving under the influence of an intoxicating liquor as charged. As we read the true bill, "[t]he indictment followed the wording of the statute and generally that is all that is necessary to advise an accused of the charge against him." ***Anthony v. State*, 349 So. 2d 1066, 1067 (Miss. 1977)** (citing *State v. Labella*, 232 So. 2d 354 (Miss. 1970)). The defendant also argues that his indictment improperly charged him with "wilful negligence." "Wilful," he argues, means nothing more than doing an act intentionally, ***Perrett v. Johnson*, 253 Miss. 194, 175 So. 2d 497 (Miss. 1965)**, whereas he states, "negligence" has at least twenty-two meanings. ***See Black's Law Dictionary*, pp. 1032-34 (6th 1990)**. Essentially, he argues that the terms are mutually exclusive facts since "wilful" alludes to an intentional act while "negligence" suggest an unintentional act. Further, the defendant insists, that "wilful negligence" amounts to a charge of culpable negligence, and would remove this indictment out of the realm of Miss. Code Ann.

§ 63-11-30 (4), being the DUI, death subparagraph, and move the indictment into the realm of Miss. Code Ann. § 97-3-47, being the culpable manslaughter section. We disagree.

In this case, the prosecutor elected to charge Mr. Stanfield with DUI death under the implied consent law found in Miss. Code Ann. § 63-11-30 (4) (Rev. 1996), rather than charging him with manslaughter via culpable negligence under the vehicular homicide law found in Miss. Code Ann. § 97-3-47 (Rev. 1994). Even had he not so chosen, after a review of the record, there was certainly evidence that Stanfield's negligence was culpable in that Stanfield was driving at an excessive rate of speed while motoring along Interstate 55 with a blood alcohol content of .141%.

The defendant also alleges that the indictment as stated would allow a non-unanimous verdict by the finder of fact in violation of Miss. Const. art. 3, § 31 (1890). Mr. Stanfield's argument that his indictment would allow a non-unanimous verdict by the finder of fact, is misplaced because Stanfield waived a trial by jury and requested a trial by judge alone with stipulated evidence. From our review, it is obvious that the judge's verdict was uncontradicted. Had the defendant been tried before a panel of his peers, these jurors would have had to find unanimously that Stanfield was either under the influence of intoxicating liquor and/or that he had a blood alcohol content greater than .10%. However, this was a bench trial, and we find the defendant's argument devoid of merit.

## **II. WHETHER THE TRIAL COURT ERRED IN OVERRULING DEFENDANT'S MOTION TO DISMISS BASED ON CONSTITUTIONAL INFIRMITIES, IN THAT THE CHARGING STATUTE IS UNCONSTITUTIONALLY VAGUE AND AMBIGUOUS, IS VIOLATIVE OF THE DUE PROCESS CLAUSES, AND IS UNCONSTITUTIONALLY CRUEL AND UNUSUAL.**

Mr. Stanfield asserts that Miss. Code Ann. § 63-11-30 (4) (Rev. 1996) is unconstitutionally vague and ambiguous. In the alternative, he asserts that the statute is overbroad. Specifically, he states that the statute provides that a person, who in a negligent manner, causes death or injury to another shall be guilty of a felony. It appears that his problem with the statute concerns the fact that the statute fails to define a degree of negligence necessary to be guilty of the felony and that the statute does not give notice of what conduct is punishable, thus the statute is void for vagueness. He cites *Gentile v. State Bar*, 501 U.S. 1030 (1991). He further asserts that Miss. Code Ann. § 63-11-30 (4) (Rev. 1996) contains no ascertainable standard from which an objective determination can be made as to whether one's activities constitute negligence as there are twenty-two definitions of negligence in Black's Law Dictionary. *Black's Law Dictionary*, pp. 1032-1034 (6th ed. 1990). Simply put, he argues that the statute fails to inform him of what conduct is prohibited.

Contrary to Mr. Stanfield's argument, we find that the applicable standard of negligence is supplied by case law, and that is where we turn. In *Holloman v. State*, 656 So. 2d 1134, 1140 (Miss. 1995), the Mississippi Supreme Court opined:

Holloman is correct on one point-this Court has said that simple negligence is sufficient for a conviction pursuant to Miss. Code Ann. § 63-11-30 (4) (Supp. 1994). *See Banks*, 525 So. 2d at 402. The statute requires only negligence, not gross or culpable negligence. Miss. Code Ann. § 63-11-30 (4) (Supp. 1994). Had the legislature intended to heighten the standard of negligence required when it increased the penalty for DUI maiming [or DUI death], it could certainly have done so. We therefore decline Holloman's invitation to legislate from the bench.

***See also Banks v. State*, 525 So. 2d 399 (Miss 1988).**

The conduct prohibited in Miss. Code Ann. § 63-11-30 (1) (a) (Rev. 1996) is driving or operating a motor vehicle while under the influence of intoxicating liquor. The conduct prohibited in subsection (c) of the statute is driving or operating a motor vehicle with a blood alcohol content greater than .10%. After adding section (4) (death) to the equation, it is clear that the elements of the offense are given.

Mr. Stanfield further asserts that the standard of simple negligence, which is less than gross or culpable, constitutes an "unconstitutional burden" to defend against because it is akin to the type of negligence a party must establish in civil cases. In further support of his arguments, Mr. Stanfield asserts that Miss. Code Ann. § 63-11-30 (4) (Rev. 1996) is unconstitutional as it mandates that having a .10% blood alcohol content is proof of a defendant's guilt of DUI without forcing the State to prove every fact necessary beyond a reasonable doubt that a defendant was in fact under the influence. He states that this creates an inflexible law which violated his Due Process Clause as well as the Fourteenth Amendment to the United States Constitution. In short, he claims that the statute creates a conclusive presumption that he was under the influence of an intoxicating liquor and gives him no opportunity to rebut this presumption.

Justice Prather, writing for the Mississippi Supreme Court in *Holloman v. State*, confronted a similar argument concerning blood alcohol content of the defendant. In *Holloman*, the defendant was charged under Miss. Code Ann. § 63-11-30 (1)(4) (Supp. 1994) for mutilating another while intoxicated. ***Id.* at 1142.** Much like this present case where the defendant stipulated to the fact that his blood alcohol content was .141%, the defendant in *Holloman* stipulated that he was legally intoxicated, having a blood alcohol content greater than .10%. ***Id.* at 1134.** The Mississippi Supreme Court noted in *Holloman*, that the State was required to prove that (1) Holloman was under the influence of intoxicating liquor or he had .10% or more alcohol in his blood while operating a motor vehicle; (2) Holloman was, while inebriated and operating a motor vehicle, culpably negligent; and (3) Holloman's culpable negligence caused death of another. **Miss. Code Ann. § 63-11-30 (1), (4) (Supp. 1994). *Id.* at 1142-43.**

Additional evidence . . . , particularly the speed of Holloman's truck and his failure to try to stop for the red light, are sufficient to support a finding of culpable negligence. ***See Gibson v. State*, 503 So. 2d 230, 233 (Miss. 1987)** (culpable negligence established by evidence that defendant's car left the road on straight and level stretch, struck [the] rear of decedent's vehicle while [the vehicle] was wholly off road with taillights on, defendant smelled of alcohol, had slurred speech, and had a blood alcohol content of .19%).

***Id.* at 1143.**

In the case *sub judice*, the Mr. Stanfield stipulated his blood alcohol content to be .141%. The defendant stipulated that Brian Bradley would have testified as to the alcoholic smell on his breath. Also the defendant in this case stipulated that Michelle Brandon and Jodi Joyner would have testified as to his excessive speed. In a similar fashion, the defendant stipulated that Brian Bradley would testify that he [Stanfield] said "I'm 'F'd'. I'm going to prison."

Viewing the evidence as stipulated in the light most favorable to the State, no reasonable and fair-minded juror (or as in our case impartial judge) could have found Mr. Stanfield not guilty. He could have had his case tried before a jury of his peers. He was not forced to stipulate the facts as he did. However, he chose to, and of his own volition he chose a bench trial. Now that he has been found guilty he can not expect another bite at the apple.

The defendant is entitled to assault the accuracy and reliability of the test results, and discredit the evidence tendered by the State. *See Hendrick v. State*, 637 So. 2d 834, 838 (Miss. 1994), where a defendant with a blood alcohol content of .13% successfully rebutted the State's theory that Hendrick was intoxicated "at the time of the accident" by establishing that Hendrick drank a half pint of gin during the three hour period after the accident and before taking the intoxilyzer test. In other words, the statute does not create an irrefutable presumption of one's guilt. Rather, to secure a defendant's rights, competent evidence may be introduced to challenge the per se violation.

Finally, Mr. Stanfield asserts that the sentence of up to twenty-five years for violating Miss. Code Ann. § 63-11-30 (4) (Rev. 1996) is suspect as being cruel and unusual in violation of the Eighth Amendment to the United States Constitution, as well as Article 3, Section 28 of the Mississippi Constitution, in comparison to other sentences for similar infractions, and due to the fact that Miss. Code Ann. § 63-11-30 (4) (Rev. 1996) carried a maximum penalty of twenty-five years which is a greater penalty than is carried in Miss. Code Ann. § 97-3-47 (Rev. 1994), despite the fact that Miss. Code Ann. § 63-11-30 (4) (Rev. 1996) has been found to be a lesser included offense to Miss. Code Ann. § 97-3-47 (Rev. 1996). However, the trial judge sentenced Mr. Stanfield to serve twenty years, five years suspended, not twenty-five years, as he recognized the potential conflict posed with the statutes. This sentence is well within the limits prescribed by statute and in symmetry with the twenty year maximum sentence authorized by Miss. Code Ann. § 97-3-47 (Rev. 1994) which defines the offense of manslaughter via culpable negligence. The Mississippi Supreme Court has long held that no sentence will be disturbed that is within the statutory maximum. *See Reynolds v. State*, 585 So. 2d 753, 756 (Miss. 1991) ("[t]he imposition of a sentence is within the discretion of the trial court, and this Court will not review the sentence, if it is within the limits prescribed by statute") (citing *Reed v. State*, 536 So. 2d 1336, 1339 (Miss. 1988); *Boyington v. State*, 389 So. 2d 485, 491 (Miss. 1980)).

## CONCLUSION

After scrutinizing the record, we find Mr. Stanfield's arguments to be devoid of merit in the wake of his bench trial. Thus, we affirm his conviction and the sentence given to him below.

**THE JUDGMENT OF THE DESOTO COUNTY CIRCUIT COURT OF CONVICTION OF DUI, DEATH, AND SENTENCE OF TWENTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, WITH THE LAST FIVE YEARS BEING SUSPENDED PENDING FUTURE GOOD BEHAVIOR, IS AFFIRMED. ALL COSTS ARE TAXED TO THE APPELLANT.**

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

1. Taken from the Court Record, page 48.
2. Taken from the Court Record, page 49.
3. See Court Record, pages 58 (where the issue of speed surfaced), and 59 (where defendant's attorney stipulated the fact).
4. Taken from the Court Record, pages 54-55.
5. Taken from the Court Record, page 55.