

IN THE JUSTICE COURT OF LEFLORE COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VERSUS

CASE NOS.: 154193, 154194, 154195

REGINALD LAMAR MOORE

OPINION AND DISPOSITION

I. PROCEDURAL POSTURE

This case is presented de novo (new case) before this Leflore County Justice Court. On January 4, 2024, Leflore County Justice Court Judge Jim Campbell recused himself from adjudicating this case. On January 11, 2024, Leflore County Justice Court Judge Neysha Sanders recused herself from adjudicating this case. Consequently, the subject case was assigned to this Court. Subsequently, the Leflore County Board of Supervisors appointed (via Justice Court Clerk Martha Howard) Attorney Ryan Taylor as special prosecutor, due to Leflore County Prosecutor Kelvin Pulley recusing himself from prosecuting this case. On April 18, 2024, during his arraignment, Defendant Reginald Lamar Moore (hereinafter "Defendant Moore") entered pleas of "Not Guilty" to the charges of Speeding, Failure to Keep in Proper Lane, and Driving Under the Influence of Intoxicating Liquor. On the same day, this Court advised Defendant Moore of his rights as a defendant before this Court. Upon said advisement, Defendant requested an opportunity to obtain a lawyer for his defense to said charges. Accordingly, this Court set the case for trial on May 9, 2024. Upon appearing before this Court on said date, Defendant Moore opted to proceed in his defense to said charges *pro se* (without an attorney).

II. STATEMENT OF FACTS

On the evening of December 20, 2023, Mississippi Highway Patrolman Marquivious Bankhead, a five-year veteran with his department, received a call from dispatch advising him to

proceed to a wreck that had occurred in Montgomery County, Mississippi. Upon traveling east on Highway 82 in Greenwood, Mississippi toward Montgomery County, the trooper received a subsequent phone call advising him to disregard the previous call to work the wreck. As Trooper Bankhead continued traveling east on Highway 82, a four-lane highway, in the area of Curtis Moore Apartments within said city, he observed a Ford Explorer SUV proceeding toward him in the westbound lane. Said vehicle appeared to be traveling above the posted 45MPH speed limit of said highway. Upon activating his radar, said trooper determined that said vehicle was traveling at 57 MPH in the 45 MPH zone of said highway. Upon this discovery, Trooper Bankhead turned his vehicle around into the westbound lane of said highway to pursue the SUV. Shortly thereafter, Trooper Bankhead followed the SUV and observed said vehicle gradually weaving in the road, twice hitting the fog line and twice grazing the center line said highway. The subject vehicle then switched from the right lane to the left lane, hit its left turn signal light, crossed the eastbound lane of said highway, and turned right to proceed west on Frontage Road within said city. Trooper Bankhead then hit his patrol lights and pulled over the vehicle off Frontage Road into the parking lot of Double Quick/Church's Chicken. The driver of the subject vehicle immediately jumped out after being stopped, but Trooper Bankhead instructed the driver to return to the vehicle, whereas the driver complied with said directive.

The trooper identified the driver of said vehicle as Reginald Lamar Moore (hereinafter "Defendant Moore"). The trooper determined that the vehicle was not registered in Defendant's name. There was also an undisclosed passenger within the vehicle. Trooper Bankhead requested Defendant Moore to produce his driver's license and proof of insurance, which Defendant Moore was unable to present either at the scene. The trooper detected the smell of an alcoholic beverage coming from the vehicle and later from the person of Defendant Moore. Moreover, Defendant

Moore's eyes were glossy, his speech was slurred, and his pupils were dilated. Trooper Bankhead explained to Defendant Moore the probable causes for his stop were the Defendant's excessive speed and the repeated weaving of Defendant's vehicle while on Highway 82. Trooper Bankhead repeatedly offered Defendant Moore the portable (PBT) device, but Defendant Moore repeatedly refused to give Trooper Bankhead a breath sample. Accordingly, Trooper Bankhead charged Defendant Moore with Speeding, Failure to Keep in Proper Lane, and Driving Under the Influence of Intoxicating Liquor.

III. COURT'S ANALYSIS OF DEFENDANT'S CHARGES

A. SPEEDING

Trooper Bankhead charged Defendant Moore with the offense of Speeding, and more specifically, driving his vehicle 57 MPH in a 45 MPH zone. Trooper Bankhead observed a Ford Explorer SUV vehicle traveling in the westbound lane at what appeared to be above the posted speed limit of said highway. Upon activating his radar, said trooper determined that said vehicle was traveling at 57 MPH in the 45 MPH zone of said highway within the city limits of Greenwood, Mississippi. Trooper Bankhead further explained that his radar was working properly and had been calibrated earlier in the day. He affirmed that his radar registered Defendant Moore traveling at 57MPH in the vehicle he was driving, and he accordingly issued Defendant Moore a citation for speeding. Finally, Trooper Bankhead identified Defendant Moore as the driver of the vehicle in question.

During his cross-examination of the State, Defendant Moore denied traveling 57 MPH in a 45 MPH zone. When asked by the State what speed he was traveling, Defendant Moore refused to directly answer the question, but instead only retorted that he was not speeding.

Regarding his speeding charge, Defendant Moore offered no testimony or proof that Trooper Bankhead's radar was not working properly. He further did not subpoena his passenger to testify as to Defendant Moore's speed before being stopped by the trooper. Moreover, there was no allegation Trooper Bankhead's radar had captured the speed of any other vehicle than that driven by Defendant Moore, or that someone else was driving the vehicle Defendant Moore was determined to be within before being stopped by the trooper.

Accordingly, the best evidence of Defendant Moore's speed was the radar reading of Trooper Bankhead, which determined Defendant's Moore's speed to be 57 MPH in a 45 MPH zone. Accordingly, sufficient evidence exists to support the speeding conviction.

B. FAILURE TO KEEP IN PROPER LANE

Trooper Bankhead also charged Defendant Moore with the offense of Failure to Keep in Proper Lane.

Notably, the citation regarding this charge read, " Other Violation – (Code Section M41 Failure to Keep In Proper Lane)." Directly under said citation's specified violation, it recited, "Explanation: IN FRONT OF ME ALL OVER THE ROAD". Said citation did not cite a specific statute within the Mississippi Code.

This Court's review of the Mississippi Code demonstrates §63-3-601 (Vehicles to be driven on right half of roadway; exceptions) governs a driver's lane usage while driving. Said statute reads as follows:

"Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

1. When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

2. When the right half of a roadway is closed to traffic while under construction or repair;
3. Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or
4. Upon a roadway designated and signposted for one-way traffic.”

Miss. Code Ann. §63-3-601. Said statute should be read in conjunction with Miss. Code Ann. §63-3-611 (Overtaking and passing vehicles on left side of roadway). See *Couldery v. State*, 890 So.2d 959, 963 (¶11) (Miss. App. 2004).

Miss. Code Ann. 63-3-611 states:

(1) No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to the right-hand side of the roadway before coming within one hundred (100) feet of any vehicle approaching from the opposite direction.

(2) No vehicle shall, in overtaking and passing another vehicle or at any other time, be driven to the left side of the roadway under the following conditions:

(a) When approaching the crest of a grade or upon a curve in the highway where the driver's view along the highway is obstructed;

(b) When approaching within one hundred (100) feet of any marked or readily distinguishable bridge, viaduct or tunnel on any roadway other than a four-lane roadway;

(c) When approaching within one hundred (100) feet of or traversing any marked or readily distinguishable intersection or railroad grade crossing;

(d) When official signs are in place directing that traffic keep to the right, or a distinctive center line is marked, which distinctive line also so directs traffic as declared in the sign manual adopted by the State Transportation Commission.

Miss. Code Ann. §63-3-611.

The State's prosecution of Defendant Moore for "Failure to Keep in Proper Lane is problematic because the statutes only apply to the act of passing on two lane highways. To be sure, *Couldery* explains as follows:

The Mississippi Attorney General's Office issued an opinion in October 2002 addressing sections 63-3-601 and 611. Citing *Alexander v. Graves*, 178 Miss. 583, 173 So. 417, 420 (1937), the opinion considered the "conditions at the time of [the statutes'] enactment, the evil to be avoided, and the necessary effect produced by the statute[s]." MS AG Op., Blakney (October 11, 2002). *The Attorney General opines that "given the exclusive existence of two lane highways in the state at the time the statutes were enacted, it is apparent that the intent of the legislature was to address dangerous driving conditions on two lane highways." Id. The Attorney General further opined that driving in the left-hand lane of a four lane highway does not violate either statute.* This Court is inclined to agree.

Couldery, 890 So.2d at 963 (¶12) (Emphasis added). The entire portion of Highway 82, where Trooper Bankhead pursued Defendant Moore before the latter's stop, was four-laned.

Therefore, due to the inapplicability of Miss. Code Ann. §63-3-601 and §63-3-611 under the facts of this case, the state's prosecution of Defendant Moore for failure to keep in proper lane must fail.

C. DUI - FIRST OFFENSE

The final charge of Defendant Moore, under this Court's consideration, is DUI First Offense.

Trooper Bankhead issued Defendant Moore a Driving Under the Influence citation which states, "That the aforesaid person did, in violation of §63-11-30(1) Mississippi Code of 1972, willfully and unlawfully drive or otherwise operate a motor vehicle within the state: (a) Under the influence of intoxicating liquor".

"It is unlawful for a person to drive or otherwise operate a vehicle within this state if the person... Is under the influence of intoxicating liquor." Miss. Code Ann. 63-11-30. "A necessary

element of the applicable provision of that statute, requires that the person be 'under the influence of intoxicating liquor' while driving or operating a vehicle. *See Gilpatrick v. State*, 991 So.2d 130 (Miss. 2008)(citing Miss. Code Ann. § 63-11-30(1)).

In *Jenkins v. State*, 2022-KA-00754-SCT (Miss. Sept. 21, 2023), our Mississippi Supreme Court explained:

In prior cases, this Court has defined "under the influence" as "driving in a state of intoxication that lessens a person's normal ability for clarity and control." *Clemons v. State*, 199 So.3d 670, 674 (Miss. 2016) (internal quotation marks omitted) (quoting *Leuer*, 744 So.2d at 268). "This common understanding is consistent with the obvious purpose of drunk driving statutes; i.e., to prevent people from driving unsafely due to an alcohol-induced diminished capacity." *Id.* (internal quotation marks omitted) (quoting *Steven*, 134 F.3d at 528).

In proving such diminished capacity, the State is not required to offer evidence of impairment to the defendant's driving. It may instead offer evidence, as was offered in this case, of slurred speech, bloodshot eyes, an inability to stand or walk, and the odor of alcohol on the defendant's person. *Moore v. State*, 151 So.3d 200, 203 (Miss. 2014) ("The Court has defined sufficient evidence to include 'slurred speech, bloodshot eyes, or erratic driving.'" (quoting *Evans v. State*, 25 So.3d 1054, 1059 (Miss. 2010))).

Jenkins v. State, 2022-KA-00754-SCT (¶22-23)(Miss. Sep 21, 2023).

During his testimony, Trooper Bankhead determined (1) the vehicle, as driven by Defendant Moore, was operating was traveling at 57 MPH in the 45 MPH zone of said highway; (2) during his pursuit of said vehicle he observed it gradually weaving in the road, twice hitting the fog line and twice grazing the center line said highway; (3) Defendant Moore's eyes were glossy, his speech was slurred, his pupils were dilated, and he smelled of alcoholic beverage; (4) Defendant Moore admitted to drinking earlier that day; (5) Defendant Moore repeatedly refused to give a breath sample in the portable breath test device (PBT) despite the trooper's numerous requests; and (6) Defendant Moore's admissions that "he had been in a situation like that before" and later he felt he would "blow over the limit" if he blew into the portable breath test device

(PBT). Due to these findings, Trooper Bankhead expressed his opinion that Defendant Moore was under the influence of alcohol at the time he was operating the vehicle he was driving.

In his defense to this charge, Defendant Moore denied that he was speeding. Moreover, Defendant Moore explained that any appearance of veering by the vehicle he was driving was due to a "bump" he struck within the road of said highway. Defendant Moore presented no witness or other evidence to validate his "bump in the road" claim.

To the contrary, Trooper Bankhead testified that he observed Defendant Moore vehicle hit the fog line of the highway and then graze the center line twice and attributed these actions to Defendant Moore being under the influence of alcohol. Moreover, the State produced a video of the vehicle being driven by Defendant Moore before he was stopped by Trooper Bankhead. The video clearly shows Defendant Moore's vehicle gradually weaving twice in the right lane of said highway. The video does not depict the presence of one or more bumps in the road to cause the series of veering observed by the vehicle operated by Defendant Moore.

Moreover, during his testimony, Defendant Moore refused to admit that he had consumed any alcohol on the day in question during his cross examination. Again, Defendant Moore presented no witness or other evidence to demonstrate he had consumed no alcohol on the day he was stopped by Trooper Bankhead.

Again, to the contrary, Trooper Bankhead testified that he smelled alcohol coming from inside of the vehicle and on the person of Defendant Moore. In fact, he explained that Defendant Moore admitted that he had been drinking alcohol since noon that day. Interestingly, during his direct testimony, Defendant Moore disputed Trooper Bankhead's account and explained he instead told Trooper Bankhead that he had not had anything to drink "since noon that day". Finally, Trooper Bankhead testified that Defendant Moore had repeatedly refused to blow into the PBT

device, during once Defendant Moore explained that “he had been in a situation like that before” and later he did not want to blow into it because he thought he would “blow over the limit”. These admissions by Defendant Moore were corroborated on Trooper Bankhead’s video surveillance of his stop of Defendant Moore.

Defendant Moore asserts that Trooper Bankhead never asked him to blow into the Intoxilizer 8000 while at the station. In fact, Defendant Moore asserted during his cross-examination, “It is law and several cases where BAC level is concrete evidence to show BAC level to give an accurate account of a person investigated.” To bolster this assertion, Defendant presented a 35 minute, 17 second video, without audio, purporting to show him at the Leflore County Sheriff’s station and never being ushered by Trooper Bankhead to be tested on the Intoxilizer 8000 at the station.

To the contrary, Trooper Bankhead testified that he did ask Defendant Moore whether he would blow on the Intoxilizer 8000 upon arriving at the Leflore County Sheriff’s Department but that Defendant Moore declined to do so.

This last point of contention is irrelevant for the purpose of this Court’s analysis in the case *sub judice*. The State’s case-in-chief centers around its ability to demonstrate Defendant Moore’s violation of Miss. Code Ann. §63-11-30(1)(a), (i.e. whether the driver was under the influence of intoxicating liquor) and not subsection (d), the latter of which would require a BAC reading on the Intoxilizer 8000. Miss. Code Ann. §63-11-30(1)(a) does not possess the same requirement. Accordingly, whether Trooper Bankhead offered Defendant Moore an opportunity to test on the Intoxilizer 8000 is not dispositive to the ultimate issue of whether Defendant Moore was 'under the influence of intoxicating liquor' while driving or operating a vehicle.

1. *Defendant Moore's "Statutory Declaration" Affidavit*

Finally, as a part of his defense, Defendant presented the Court with an affidavit entitled, "Statutory Declaration". Defendant Moore authored said affidavit. It was further sworn to by said defendant before Leflore County Circuit Clerk Kelly Roberts on March 14, 2024, approximately three (3) months after the December 20, 2023 incident in question.

The two-page document may be summarized into five parts: (1) Defendant Moore's allegation that Trooper Bankhead had targeted him to be arrested on the night in question; (2) a purported allegation from an Leflore County Deputy Sheriff that someone had placed a \$7,000.00 bounty to arrest Defendant Moore for DUI, (3) a purported allegation from a Greenwood Fire Department employee that Trooper Bankhead both boasted about his arrest of Defendant Moore and further conspired with another State Trooper to have Defendant Moore arrested, (4) Defendant Moore's reasons he did not provide a sample at the scene of his stop and his willingness to give a sample on the intoxilizer at the Sheriff's office, and (5) Trooper Bankhead's interaction with another individual apparently under suspicion of DUI at the sheriff's station on the night of Defendant Moore's arrest.

First, Defendant Moore's affidavit set forth claims of retaliation by Trooper Bankhead. Specifically, Defendant Moore asserts, "I believe I was targeted by State Trooper M. Bankhead on the night of December 20, 2023, to be arrested for DUI." To support his argument, Defendant Moore explained that Trooper Bankhead worked as a part-time firefighter under the present Greenwood City fire chief, said city fire chief had been a board member on the local hospital board, that said fire chief was removed off the hospital board due to Defendant Moore's execution of an injunction as President of the Leflore County Board of Supervisors, and the Leflore County Chancery Court subsequently ordering said city fire chief vacate the hospital board seat on

December 19, 2023, a day before his arrest by Trooper Bankhead. Defendant Moore concluded that his arrest by Trooper Bankhead was in retaliation for the city fire chief's removal from the hospital board.

On his direct examination, Trooper Bankhead affirmed that he had not worked as a part-time firefighter since November 2023. He further explained he had had no conversations with the city fire chief about Defendant Moore's arrest; and he "no ax to grind" against Defendant Moore. Trooper Bankhead stated he had never previously arrested Defendant Moore before the stop in question, and no one had previously instructed him to stop Defendant Moore. Finally, Trooper Bankhead revealed that the vehicle that Defendant Moore was driving the night of the stop in question was not registered to Mr. Moore.

Defendant's allegation of retaliation versus Trooper Bankhead lacks credibility. First, Trooper Bankhead denied all allegations as asserted by Defendant Moore regarding his theory of retaliation. Notwithstanding, Defendant Moore failed to call the city fire chief as a witness or any other witness to corroborate his allegations, although he specifically implicates said city fire chief as part of an alleged retaliatory conspiracy against him. Moreover, for Trooper Bankhead to target Defendant Moore on the night in question, said trooper would have had to have known the specific vehicle Defendant Moore was driving on the night in question. No testimony or evidence was submitted to this Court to demonstrate Trooper Bankhead's advanced knowledge of the specific vehicle Defendant Moore was driving before the subject stop. In fact, it was undisputed Defendant Moore was driving someone else's vehicle on the night in question. This fact further refutes Defendant Moore's retaliation claim.

Secondly, Defendant Moore's allegations regarding the creation of a \$7,000.00 bounty for his arrest for DUI and his claim of Trooper Bankhead boasting throughout the fire station about he

and another trooper conspiring to arrest him both lack merit. These allegations were based entirely on hearsay, as the identity of both sources of the information (i.e. an alleged Leflore County deputy sheriff and City of Greenwood firefighter, respectively) remained unknown. When the State asked Defendant Moore about the identity of the two informants regarding the alleged bounty and Trooper Bankhead's alleged conspiratory actions, he refused to identify the names of those individuals.

"Hearsay is a 'statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted'. *White v. State*, 48 So.3d 454, 457 (¶12) (Miss. 2010). Because Defendant Moore's statements were based on information allegedly conveyed to him by some unidentified persons, the statements were hearsay within hearsay, which is inadmissible unless 'each part of the combined statements conforms with one of the numerous exceptions to the rule against hearsay.'" *Id.*, 48 So.3d at 457 (¶12). This Court has found no such exceptions under the evidentiary rules.

Moreover, Defendant Moore failed to provide any evidence of an alleged "conspiracy" concerning his arrest on December 20, 2023. Our Mississippi Supreme Court has defined a conspiracy as follows: "Conspiracy is a combination of two or more persons to accomplish an unlawful purpose or to accomplish a lawful purpose unlawfully, the persons agreeing in order to form the conspiracy." *Berry v. State*, 996 So. 2d 782, 787 (Miss. 2008)(quoting *Farris v. State*, 764 So. 2d 411, 421 (Miss. 2000)).

As outlined earlier, Trooper Bankhead explained he "no ax to grind" against Defendant Moore, and no one had previously instructed him to stop Defendant Moore. Defendant Moore presented no evidence to rebut Trooper Bankhead's assertions. Defendant Moore further failed to call the "unknown persons" that allegedly supplied him with the information regarding the

\$7,000.00 bounty and Trooper Bankhead's alleged conspiracy with another trooper. He further failed to call any trooper who was allegedly involved in a "conspiracy" with Trooper Bankhead to arrest him on the night of December 20, 2023. Finally, Defendant Moore submitted no evidence setting forth any "unlawful purpose" or a "lawful purpose" accomplished "unlawfully" as committed by Trooper Bankhead and any other person(s) regarding Defendant Moore's stop on the night of his arrest. To the contrary, when the State pressed Moore during his cross examination to answer whether each of his previous December 30, 2008, May 2, 2013, and November 21, 2020 DUI charges were also conspiracies against him by law enforcement, Defendant Moore refused to directly answer the question. Instead, he commented "I also had been sent to the principal's office when I was younger." Defendant Moore subsequently added that he was now a changed man.

Third, Defendant's allegation regarding his reasons for not providing a sample at the scene of his stop and his willingness to give a sample on the intoxilizer at the sheriff's office have previously been addressed in this opinion. In short, the State's pursuit of a charge here pursuant to Miss. Code Ann. §63-11-30(1)(a) does not mandate obtaining a sample of one's breath to determine blood alcohol content. Instead, whether one is under the influence of intoxicating liquor while driving or operating a motor vehicle may be demonstrated in other ways.

Finally, Defendant's allegation regarding another individual being investigated for DUI at the sheriff's station where Defendant Moore was located, after his own stop, has no bearing on the reasons why Defendant Moore was stopped on the date in question or the issue of whether Defendant Moore was driving or operating a motor vehicle while under the influence of alcohol. Accordingly, it lacks any probative value in determining the issues presently before the Court.

IV. CONCLUSION

The State demonstrated sufficient evidence that Defendant Moore, on the day in question, traveled 57 MPH in a 45 MPH zone within the city limits of Greenwood, Mississippi; and therefore engaged in the offense of speeding. The State failed to demonstrate that Defendant Moore failed to keep in proper lane due to the inapplicability of Miss. Code Ann. §63-3-601 and §63-3-611 under the facts of this case. The State demonstrated sufficient evidence that Defendant Moore drove or otherwise operated a vehicle, on the day in question, within Greenwood, Mississippi while under the influence of intoxicating liquor.

V. DISPOSITION

IT IS THEREFORE ORDERED AND ADJUDGED that Defendant Reginald Lamar Moore is found **GUILTY** of SPEEDING and he shall be assessed \$77.50 in fines and \$122.50 in state assessments, for a total of \$200.00.

IT IS FURTHER ORDERED AND ADJUDGED that Defendant Reginald Lamar Moore is found **NOT GUILTY** of FAILURE TO KEEP IN PROPER LANE.

IT IS FURTHER ORDERED AND ADJUDGED that Defendant Reginald Lamar Moore is found **GUILTY** of DUI FIRST OFFENSE, and he shall be assessed \$364.50 in fines and \$365.50 in state assessments, for a total of \$730.00; sentenced to forty-eight hours in jail; and ordered to complete an alcohol safety education program as provided in Miss. Code Ann. §63-11-32 within six months of sentencing.

Dated this 22nd of May, 2024.



JUSTICE COURT JUDGE