

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

DEMARCO WILKINS

APPELLANT

VS.

NO. 2009-KA-0253

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE ISSUES

- I. The trial court correctly denied Wilkins' Motion for a New Trial as the verdict was supported by the overwhelming weight of the evidence.

STATEMENT OF THE CASE

On or about May 27, 2008, Demarco Wilkins A/K/A "Rambo", was indicted in Count I for the aggravated assault of Michael Martin on or about November 27, 2007, in Count II for the aggravated assault of Thaddeus Houston with a deadly weapon, in Count III for the murder of Michael Martin, in Count IV for possession of a firearm by a felon, and in Count V for discharging a firearm into a dwelling house. On each count, Wilkins was charged as an habitual offender and was further charged by the authority of Section 97-37-37, **Mississippi Code of 1972**, as amended, as a felon in possession of a firearm. (C.P. 3) Wilkins trial commenced on January 20, 2009. On January 22, 2009, The jury found Wilkins guilty of aggravated assault as charged in Count I of the indictment, for which Wilkins was sentenced to a term of twenty (20) years in an institution under the supervision and control of the MDOC. (C.P. 33-34) The jury found Wilkins not guilty of aggravated assault as charged in Count II of the indictment. (C.P. 36) The jury found Wilkins guilty of the murder of Michael Martin as charged in Count III of the indictment and the trial court sentenced him to life imprisonment without eligibility for parole or probation. (C.P. 38-39) The jury found Wilkins guilty of possession of a firearm by a known felon as charged in Count IV of the indictment and the trial court sentence Wilkins to five years in the custody of the MDOC without eligibility for parole or probation. (C.P. 41-42) The jury found Wilkins guilty of shooting or discharging a firearm into a dwelling house as charged in Count V of the indictment and the trial court sentenced him to a term of ten years in the custody

of the MDOC without eligibility for parole or probation. (C.P. 44-47) Wilkins filed his Motion for JNOV or, in the Alternative, a Motion for New Trial on January 28, 2009. (C.P. 21) The trial court denied Wilkins' post trial motions on January 29, 2009. (C.P. 24) The instant appeal ensued.

SUMMARY OF THE FACTS

Testimony of Curtis Cooley

Curtis Cooley testified that he was walking and his friend Michael Martin approached him and asked where he was going. Cooley told Martin he was going to the Eighth Street Grocery. Martin asked Cooley to bring back a grape soda for him. On the way back, Cooley called Martin out of his house to give him the grape soda. Martin came outside and Cooley and Martin were talking. A man came out from the side of the house and yelled, "What's up now, bitch," and fired two shots. Thaddeus Houston, who was also present, took off running. (Tr. 95) Cooley was shocked and remained standing in the street. Martin took off and ran into the home of Ella Sherrod. The person who was shooting chased Martin into the house. The person who was shooting, Demarco Wilkins, came out of the house and walked towards Cooley, looked at Cooley and then took off running. Martin remained in the house. Cooley testified that there were gunshots while Wilkins was in the house. Cooley testified that Martin did not have a gun, but that Wilkins had a nine millimeter, black and chrome gun. (Tr. 97, 107) A woman named Cortney came out of one of the houses and asked what was going on. Cooley went in the house to check on Martin and found Martin laying on the ground asking for help. (Tr. 98) Cooley found a little girl in the house and checked to see if she had been shot. (Tr. 99) Cooley used Cortney's phone to call 911 to get help for Martin. (Tr. 98) Martin did not appear to be ok, since

he was bleeding from the head, the hand and the leg. (Tr. 99) The little girl was the daughter of Sherrod. Cooley put the little girl in the care of people at a church nearby and then stayed on the scene until the ambulance came. Cooley testified that Martin was not responding to him but was just laying there on the floor. (Tr. 98-99) Cooley identified the shooter as Demarco Wilkins. (Tr. 99) Cooley testified that Martin did not have a gun or any other weapon and did not do anything to provoke Wilkins. Cooley testified that he heard two shots when Wilkins first appeared and then heard 4 or 5 more when Wilkins chased Martin into the house. (Tr. 101) Cooley also testified that he found Houston laying on Ms. Windfield's porch knocking on her door with a gunshot wound to the leg. (Tr. 110)

Testimony of Dr. Steven Hayne

Dr. Hayne, a forensic pathologist, testified that he performed an autopsy on Michael Martin. (Tr. 122) Dr. Hayne's external examination revealed three small abrasions, one located over the left arm on the front surface, and one located on the front of the right knee. There was also a cut or a slash wound located over the bridge of the nose that measured approximately one inch. There was evidence of five gunshot wounds, two of which were lethal and three of which were nonlethal. (Tr. 123) One gunshot wound had been inflicted immediately prior to the other four gunshot wounds, as indicated by the fact that there was a bandage around that wound indicating that medical intervention had been initiated prior to the additional four gunshot wounds. (Tr. 123)

There was a lethal gunshot wound over the right side of the back that travel through the right lung and struck the abdominal aorta causing extensive bleeding in the right chest cavity and the abdominal cavity. A large caliber copper bullet was recovered from the abdomen. (Tr. 124)

There was a nonlethal gunshot wound that entered the back of the right hand and exited through the palm. This wound was consistent with a defensive posturing injury. (Tr. 126) A nonlethal gunshot would struck the decedent on the front surface of the left thigh and that bullet was noted to travel across the thigh, going slightly down. This was the wound that had a bandage around it and had been treated immediately prior to the other gunshot wounds. (Tr. 126) There was also a gunshot wound to the right thigh that traveled through the thigh and exited the right buttocks and perforated the buttocks on the left side. (Tr. 128) There was a lethal gunshot wound to the head, producing a wound track through the cerebral hemispheres approximately the size of a quarter and producing a large subdural hemorrhage. (Tr. 130) Dr. Hayne testified that Martin died from two gunshot wounds, one to the back and another to the top of the head. Dr. Hayne testified that he ruled the death a homicide. (Tr. 131)

Testimony of Officer Steve Simpson

Clarksdale Police Officer Steve Simpson testified that on November 27, 2007, he received a "shots fired" call and when he arrived on the scene, he found Thaddeus Houston laying on a porch. Houston had been shot in the leg. Cooley came running up to him hollering, "Steve, Steve." Cooley told Simpson that, "There's a guy shot over there in that second apartment on Baird Street. Simpson left Officer Clayton with Houston and went to the house on Baird Street. The door was partially open and a young black male was laying on the floor face down in a puddle of blood. The young man had been shot in the head. (Tr. 141) Simpson called for back up. When the S. O. Unites arrived they secured the residence and the entire front yard. Simpson found a trail of bullets coming from half way or two thirds of the way from the driveway to the house. There was a line of bullets beginning with stump and there were bullet

holes in the door. (Tr. 143) Cooley told Officer Simpson that “Rambo” did it. Rambo was later identified as Demarco Wilkins. (Tr. 144)

Testimony of Sergeant Robbie Linley

Sergeant Linley testified that he was a detective with the Clarksdale Police Department. (Tr. 146) He testified that on November 27, 2007, he was called out to investigate a shooting that occurred in the 600 block of Baird Street. He was called by the dispatcher at 7:22 p.m. and arrived shortly thereafter. He went to 606 Baird Street, which he later learned was the residence of Ella Sherrod who lived there with her daughter. When Linley arrived, he discovered that two subjects had been shot. One was fatally wounded and was inside of 606 Baird. Linley went in and observed Michael Martin, who was deceased, laying on the floor just inside the living room area. Linley collected and marked pieces of evidence, shell casings, spent projectiles, and collected those as evidence. (Tr. 147)

Linley described 606 Baird as a duplex with two apartments, side by side. Martin was found in the south apartment. The doors face west onto Baird Street. There was an iron and glass outer door as well as an inner door. The glass in the iron door had been shot out and there were several bullet strikes into the inner door. Outside, five of the shell casings and one spent projectile were recovered in the yard of 606 Baird Street. There was one projectile and a partial projectile found inside the residence in the living room and a shell casing found just inside the door. (Tr. 148) Six hulls were recovered in all, five from outside the house and one inside the house. Linley identified all the hulls as spent nine millimeter shell casings. (Tr. 152, 156) Linley testified that Cooley was able to identify the person who did the shooting right after the shooting. He identified the person as the defendant at trial, Demarco Wilkins. (Tr. 168)

Linley testified that witnesses placed Wilkins in the doorway of the house at the time Martin was shot. Further, there was the smell of smoke from gunshots in the doorway. (Tr. 172) Linley testified that he was certain, due to the condition of the casings, that they were left in the yard that night and were not from a prior incident. (Tr. 175) He testified that they had not received any other "shots fired" called in the area. (Tr. 175) Linley testified that the motive was that Wilkins and Martin had been in an argument for a couple of weeks over a nickle bag of marijuana that was sold to Wilkins, which contained stems and seeds instead of marijuana. The initial argument was with Jerry Johnson, but Michael Martin was an associate or friend of Johnson and the argument carried over to the victim, Michael Martin. (Tr. 177)

Linley testified that witnesses indicated that the victim and the defendant were arguing earlier the day of the first shooting, before the first shooting occurred. (Tr. 177)

Testimony of Rosie James

Rosie James testified that Michael Martin, age 23, was her brother. James testified that Martin called her on November 27, 2007 and she went to pick him up and take him to the hospital between 4:30 and 5:00 p.m. (Tr. 183) An individual named Tony Bone was present and he opened the back seat of James' car and helped Michael get in. Michael explained that he had been shot. James testified that Michael looked like he had injured his left leg. (Tr. 184) Michael told James that "Rambo" shot him. James dropped Michael off at the hospital. James testified that she did not stay with Michael and that she did not ever see him again. (Tr. 187)

Testimony of Michael Moore

Moore testified that on November 27, 2007, in the late afternoon hours, he was at the six hundred block of Paul Edward with Willie Perryman, Curtis Cooley and Demarco Wilkins.

Sherman (Michael Martin) and "Head" walked up and "Rambo" (Demarco Wilkins) got into an argument with them. Wilkins called Martin out into the street and wanted to fight. Johnson told Martin that they should get a pistol and "burn" Wilkins. (Tr. 195) Seconds later two shots were fired. (Tr. 192) Moore testified that someone gave Wilkins a gun right before the two shots were fired. The sound of the shots came from a blue apartment. (Tr. 190-191) Moore testified that "Head" was Jerry Johnson. (Tr. 193) Moore testified that neither Johnson or Martin had a gun at the time of the shooting. (Tr. 192) Moore testified that he saw someone give Wilkins a gun, but that he did not see Wilkins shoot the gun. Once the gun was in Wilkins hand he shot off around the blue apartment and Moore then heard two shots. (Tr. 197)

Moore testified that the argument was over an incident in which Johnson and Martin had previously sold Wilkins' brother a bag of seeds and sticks. Wilkins went to get his money back from Johnson. Johnson pulled a pistol on him and slapped him. Michael Martin was present when the incident occurred. (Tr. 193) The incident happened on the morning of the 27th.

Testimony of Ella Sherrod

Ella Sherrod testified that she got home around 7:00 that day. Everything was fine and her two daughters, Shanika and Dalita were there. Shanika was with Sherrod in the back of the house where Sherrod was getting dressed to go out. (Tr. 200) Between 7:00 and 7:30, Sherrod sent her daughter out across the street to get the kids. Just previously, Sherrod had heard gunshots but did not realize that they were outside in front of her house. When Shanika made it to the door and opened the door and rushed in behind her. Sherrod heard gunshots, but no voices. Sherrod began hollering and dropped down and told her daughter to get down. Sherrod testified that Shanika did not make it out the door. Before that incident, there were no shells or

bullets in the yard or house and the glass front door was not broken. There were no holes in the inside door before that incident. No shells, bullets or guns had been discharged in the house before that incident occurred. (Tr. 203)

Testimony of Shanika Sherrod

Shanika Sherrod testified that she was thirteen or fourteen at the time Martin was killed. (Tr. 204) It was about seven o'clock and she was on her way out of the house and began to hear gunshots. When she opened the door everything went black. There was gun smoke and a gunshot in her eye, a red spot. (Tr. 205) Shanika felt someone rushing in. She began moving back and trying to get out and the someone was coming into the house. Something burned her on her neck and she was scared. She remembered Curtis Cooley carrying her to the church and then he went somewhere else. She had a ringing sound in her ears from the gunshots. (Tr. 206)

Testimony of Linda Whitfield

Ms. Whitfield testified that she was dating Demarco Wilkins. She testified that between 4:30 and 5:00 p.m., but closer to 5:00 p.m., on November 27, 2007, she was at her grandmother's house on 90 Sixth Street and that Wilkins was with her. (Tr. 256, 261) She testified that they heard two gunshots and that Wilkins then ran down the street towards where the shooting took place. (Tr. 257) She testified that she heard police cars and saw Jerry Johnson easing around the side of his house to go into the back door. (Tr. 259) She testified that later, there was a person on her grandmother's porch who had been shot. She learned of this while she was at work, around 7:30 p.m. Ms. Whitfield testified that she was not sure the noises she heard between 4:30 and 5:00 were gunshots. (Tr. 261) Ms. Whitfield's time sheet showed that she clocked in a Walmart at 5:00 p.m. The time sheet showed that she left at 7:41 p.m. (Tr. 264)

Testimony of Lisa Marbley

Marbley testified that Michael Martin was her uncle. She testified that on November 27, 2007, Martin called her from the hospital. Marbley testified that he had been shot, but he told her that he did not know who shot him. (Tr. 276)

Testimony of Steven Poer

Poer testified that he was a patrolman for the Clarksdale Police Department on November 27, 2007 and that he spoke with Michael Martin on that date. Martin was on the 600 block of Paul Edwards and had been shot in the back of the leg. Poer testified that Martin stated that he did not know who shot him. (Tr. 278) Poer testified that in Clarksdale it was not unusual for a victim to deny knowing their assailant or to refuse to identify who shot them. (Tr. 281) He testified that his conversation with occurred at about 4:44 p.m. (Tr. 281)

Testimony of Charles Wilder

Wilder testified that He saw Michael Martin at a little after 1:00 p.m. on the afternoon of November 27, 2007 at a house on Baird Street. Martin picked him up and dropped him off on Baird. He testified that Parnell Harris told him that Michael Martin had been on the corner making pistol breaks at them as though he had a pistol. (Tr. 292) Parnell Harris was alleged to be the person who handed Wilkins the gun right before Michael Martin was killed.

Testimony of Roy Washington, III

Washington testified that he heard the second shooting right before it got dark. He testified that Wilkins was in a house at 512 Sunflower drinking with him when the shots were fired. (Tr. 295) Washington testified that the marked up statement with instructions for his testimony that he received the week before was from Wilkins. The letter instructed him to

testified only to certain things in the statement and to tell “Betty” to say the same things. (Tr. 297-298) Washington testified that his father dates Wilkins’ aunt. He testified that he had been convicted of two or three felonies. (Tr. 300)

Testimony of Minnie Collins

Minnie Collins testified that on November 27th, 2007, during the daylight hours, she was inside her house getting her hair fixed and heard two shots. Her daughter called in the shooting. The police arrived within about 20 minutes of the shooting. (Tr. 323-324)

Testimony of Master Sergeant Leroy Austin

Austin testified that he is employed at the Coahoma County Sheriff’s Department at the jail. Austin testified that according to jail records, Wilkins sent a piece of mail to Roy Washington at 512 Sunflower County on January 13th just a few days before trial. (Tr. 327)

Testimony of Zachary Peyton

Peyton testified that he is employed by Wal-mart in loss prevention and that on November 27, 2007, he was contacted by Detective Robbie Linley to find out when Linda Whitfield came and went from Wal-Mart on that day. (Tr. 330) Records at Wal-Mart show that Whitfield walked in the door at Wal-Mart at 4:58 p.m. and clocked in at 5:00 p.m. He testified that she clocked out at 7:41 p.m. and left the building at 7:42 p.m. (Tr. 333)

SUMMARY OF THE ARGUMENT

The trial court correctly denied Wilkins’ Motion for a New Trial as the verdict was supported by the overwhelming weight of the evidence. [An appellate court] must accept as true the evidence which supports the verdict and will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial. A new trial will not be ordered

unless the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction unconscionable injustice. Valmain v. State, 5 So.3d 1079, 1086 (Miss.2009) (quoting *Todd v. State*, 806 So.2d 1086, 1090 (Miss.2001)). “There is a presumption that the judgment of the trial court is correct, and the burden is on the appellant to demonstrate some reversible error to [an appellate court].” *Id.* (quoting King v. State, 857 So.2d 702, 731 (Miss.2003)).

ARGUMENT

I. The trial court correctly denied Wilkins’ Motion for a New Trial as the verdict was supported by the overwhelming weight of the evidence.

Wilkins argues that the trial court erred by denying his motion for new trial. A motion for new trial challenges the weight of the evidence. Jones v. State, 962 So.2d 1263, 1277(54) (Miss.2007). Appellate courts review the denial of a motion for new trial under an abuse of discretion standard of review. *Id.* On appeal, the court views the evidence in the light most favorable to the verdict and will not reverse unless “it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice.” Bush v. State, 895 So.2d 836, 844 (Miss.2005).

The standard of review of a denial of a motion for new trial has recently been stated as such:

[w]hen reviewing a denial of a motion for a new trial based on an objection to the weight of the evidence, we will only disturb a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice. We have stated that on a motion for new trial, the court sits as a thirteenth juror. The motion, however, is addressed to the discretion of the court, which should be exercised with caution, and the power to grant a new trial should be invoked only in

exceptional cases in which the evidence preponderates heavily against the verdict. However, the evidence should be weighed in the light most favorable to the verdict. A reversal on the grounds that the verdict was against the overwhelming weight of the evidence, “unlike a reversal based on insufficient evidence, does not mean that acquittal was the only proper verdict.” Rather, as the “thirteenth juror,” the court simply disagrees with the jury’s resolution of the conflicting testimony. This difference of opinion does not signify acquittal any more than a disagreement among the jurors themselves. Instead, the proper remedy is to grant a new trial.

Jones v. State, 962 So.2d 1263, 1277 (Miss.2007) (quoting *Bush v. State*, 895 So.2d 836, 844 (Miss.2005)) (internal citations omitted).

Furthermore, the Mississippi Supreme Court has held:

[An appellate court] must accept as true the evidence which supports the verdict and will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial. A new trial will not be ordered unless the verdict is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction unconscionable injustice.

Valmain v. State, 5 So.3d 1079, 1086 (Miss.2009) (quoting *Todd v. State*, 806 So.2d 1086, 1090 (Miss.2001)).

“There is a presumption that the judgment of the trial court is correct, and the burden is on the appellant to demonstrate some reversible error to [an appellate court].” *Id.* (quoting *King v. State*, 857 So.2d 702, 731 (Miss.2003)). The evidence, viewed in the light most favorable to the verdict, overwhelmingly supports Wilkins convictions for the aggravated assault of Michael Martin, the murder of Michael Martin, discharge of a firearm into a dwelling house and the possession of a firearm by a felon.

A. The Jury’s Verdict of guilty for Count I, the Aggravated Assault to Michael Martin, was Supported by the Overwhelming Weight of the Evidence.

The autopsy clearly showed that Michael Martin had a bullet wound that was not inflicted

at the same time as the shots that killed him. The evidence revealed conflict had developed between Wilkins and Martin over the sale of marijuana by Martin's associate, Jerry Johnson. Rosie James, Martin's sister, testified that Martin called her on November 27, 2007 and that she went to pick him up and take him to the hospital between 4:30 and 5:00 p.m. (Tr. 183) Martin told his sister that he had been shot. After she pressed him, Martin told James that "Rambo" shot him. "Rambo" was the street name for Appellant, Demarco Wilkins. (Tr. 187) While others testified that Martin did not identify the shooter, James saw Martin immediately after the shooting and while he was under the duress of the event.

Wilkins relies on the testimony of his girlfriend, Linda Whitefield to establish an alibi for the shooting which occurred between 4:30 and 5:00 p.m. wounding Michael Martin. However, Whitefield's testimony conflicted with the time she was at work. Whitefield testified that she was with Wilkins in her grandmothers back yard closer to 5:00 than to 4:30, but Wal-Mart surveillance video established that she arrived at work at 4:58 p.m. She testified that Wilkins then ran down toward the gunshot noises and that she heard police cars and sirens. Whitefield's testimony is less than credible since she arrived at work at 4:58 p.m. during the time she alleges that she was with Wilkins.

The trial court correctly overruled Wilkins Motion for New Trial as to the conviction for the aggravated assault of Michael Martin. The coroner's testimony clearly established that Martin had a gunshot wound to the leg from earlier in the day. His sister's testimony established that he was taken to the hospital for treatment. Martin further told his sister that Demarco Wilkins shot him. It is reasonable for the jury to believe that Martin would tell his sister who shot him even when he denied to others that he knew who shot him. The possibility of being

assaulted again or killed for revenge if he told the identity of the shooter would certainly motivate him not to tell the police or others in the community. Further, the evidence established a motive for Wilkins to shoot Martin since the two had been arguing about the sale of unsatisfactory marijuana. The evidence, viewed in the light most favorable to the verdict, overwhelmingly supports Wilkins conviction for the murder of Michael Martin.

B. The Jury's Verdict of guilty for Count III, the murder of Michael Martin, was Supported by the Overwhelming Weight of the Evidence.

The eye witness testimony of Curtis Cooley established that Martin was talking with Cooley while the two were standing in the street in front of Ella Sherrod's house. Wilkins came running from around the side of the house shouting "What's up now, bitch," and fired two shots. Martin ran into the house of Ella Sherrod. Wilkins chased Martin into the house, shooting. Wilkins came out of the house and took off running, but Martin did not. A child was present in the doorway of the house. Cooley unequivocally identified Demarco Wilkins as the shooter to Clarksdale police officer Steve Simpson. (Tr.95-101)

Further, the eye witness testimony of Michael Moore established that a group of men were gathered a block over on Paul Edward Street. Wilkins was in the group and got into an argument with Martin. Moore testified that someone in the group, apparently Parnell Harris, gave a gun to Wilkins. Wilkins then took off after Martin around a blue apartment, and Moore heard shots fired.

Two witness, therefore, saw Wilkins with the gun. Moore saw Wilkins run after Martin with the gun and Cooley saw Wilkins shooting at Martin. Cooley saw Wilkins chase Martin into the house and found Martin, mortally wounded immediately afterwards. He identified the gun Wilkins used as a nine millimeter. Sergeant Robbie Linley identified the spent hulls found in the

front yard and inside Ella Sherrod's house as nine millimeter shells. (Tr. 152, 256)

The motive for the killing was further established. Wilkins and Martin had been in an argument for a couple of weeks over a nickel bag of marijuana that was sold to Wilkins, but which contained stems and seeds. The initial argument was with Jerry Johnson, but Michael Martin was an associate or friend of Johnson and the argument carried over to Martin. (Tr. 177)

Ella and Shanika Sherrod were home at the time of the murder and heard the gunshots. Ella Sherrod testified that prior to that incident there had been no gunshots in or around her house. Prior to the shooting there were no holes or shattered glass in her doors and no shells in the yard or house. (Tr. 203)

The witnesses who testified for Wilkins were not credible. Linda Whitefield testified that she was Wilkins girlfriend and testified that she was with him the same time she was clocking in for work at Wal-Mart. Wilkins' friend, Roy Washington, III, testified that the week before trial, he received a statement with instructions for his testimony from Wilkins. He testified that he also made some markings on the statement. He testified that he had been convicted of two or three felonies. Further testimony established that Wilkins sent a letter to Washington from the Coahoma County Jail on January 13, one week before trial. (Tr. 327)

Wilkins' argument that Cooley's testimony should be treated as uncorroborated accomplice testimony in Counts III and V is without a foundation in the evidence. There is no evidence that Cooley had a gun or any reason to shoot at Martin. Further, there is evidence that Parnell Harris gave Wilkins a gun with which to go after Martin and that he did. Michael Moore saw Wilkins take the gun and pursue Martin and heard shots moments later. There is absolutely no evidence in the record to support the contention that Cooley was an accomplice. Cooley

testified that he called the ambulance which arrived a few moments later. He did not leave the scene, but stayed, first helping the child and then coming back to check on Martin and Houston. An accomplice to murder would have been long gone before the officers arrived, but Cooley ran to Officer Steve Simpson when he arrived and found Houston wounded on the neighbor's porch, shouting, "Steve, Steve!" Further, Cooley's testimony was never impeached.

The trial court correctly overruled Wilkins Motion for New Trial as to the conviction for the murder of Michael Martin. Eye witness testimony establishes that the Wilkins committed the murder. The evidence, viewed in the light most favorable to the verdict, overwhelmingly supports Wilkins conviction for the murder of Michael Martin.

C. The Jury's Verdicts of guilty for Count V, the discharge of a weapon into a dwelling house, and Count IV, Possession of a Weapon by a Felon, Were Supported by the Overwhelming Weight of the Evidence.

Mississippi Code Annotated Section 99-37-29 provides, "If any person shall willfully and unlawfully shoot or discharge any pistol, shotgun or rifle or firearm of any nature or description into any dwelling house whether actually occupied or not, he shall be guilty of a felony." Again, two eye witnesses established that Wilkins had a gun and was chasing Michael Martin. Further, Cooley saw Wilkins chase Martin into Ella Sherrod's house. He testified that Wilkins was firing the gun as he was chasing Martin into the house. (Tr. 148) Cooley testified that both men went into the house, but only Wilkins came back out. Cooley's testimony further established that Wilkins had a nine millimeter gun and the hulls found in and around Ella Sherrod's house were spent nine millimeter shells. Further, the spent shells were found outside the door of the house and the door itself was badly damaged by the gunshots. The glass of the outer door was shatter and the inner door had bullet strikes. One projectile, a partial projectile,

and a spent shell were found inside the house. (Tr. 148) The victim was found on the floor inside the house with a fatal wound to the head. A child standing in the doorway of the house was so close to the shots that she received powder burns and was momentarily blinded by the shots. (Tr. 204)

The evidence clearly establishes that DeMarco Wilkins shot into the dwelling house of Ella Sherrod. Further, Wilkins prior conviction for the felony crime of burglary of a dwelling was entered into evidence at trial. The evidence, viewed in the light most favorable to the verdict, overwhelmingly supports Wilkins convictions for discharging a firearm into a dwelling house and possession of a firearm by a felon. The trial court correctly overruled Wilkins' Motion for New Trial and the jury's verdict and the rulings of the trial court should be affirmed.

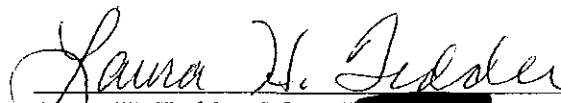
CONCLUSION

The assignments of error presented by the Appellant, Demarco Wilkins, are without merit and the jury's verdict and the rulings of the trial court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

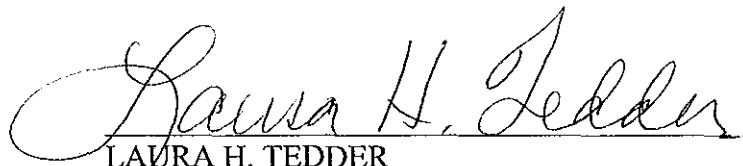
I, Laura H. Tedder, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Charles E. Webster
Circuit Court Judge
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