

2010 / ~~KM001~~ 00263 - T

CERTIFICATE OF INTERESTED PERSONS

I, Tommy W. Defer, Counsel for the Appellant, hereby certify that the following individuals have an interest in the outcome of this appeal:

(1) Debbie Mills, Appellant, Water Valley, Mississippi;
(2) Tommy W. Defer, Counsel for the Appellant, Water Valley, Mississippi;
(3) John J. Crow, Jr., Prosecuting Attorney for the City of Water Valley, Mississippi; &

(4) Daniel M. Martin, Prosecuting Attorney for the City of Water Valley, Mississippi;

So certified,

This the 5th day of August 2010.

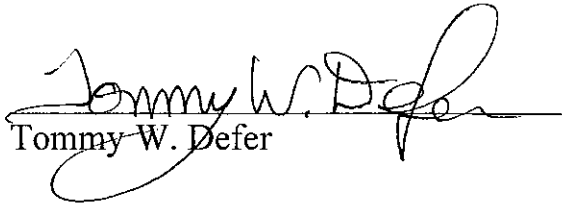

Tommy W. Defer

TABLE OF CONTENTS

Certificate of Interested Persons.....	i
Table of Contents.....	ii
Table of Authorities.....	iii
Statement of the Issues.....	p.1
Statement of the Case.....	p.2
Appellee’s Trial Witnesses.....	p.3-5
Summary of the Argument.....	p.6
Argument.....	p.7-12
Conclusion.....	p.12
Certificate of Service.....	p.13

TABLE OF AUTHORITIES

CASES

<u>Bush v. State</u> , 895 So.2d 836, 843 (Miss. 2005).....	p.7-8
<u>Christmas v. State</u> , 10 So.3d 413, 422 (Miss. 2009).....	p.7
<u>Danner v. State</u> , 748 So.2d 844, 846 (Miss. Ct. App. 1999).....	p.8
<u>Evans v. State</u> , 547 So.2d 38, 40 (Miss. 1989).....	p.8
<u>Ford V. State</u> , 753 So.2d 489, 490-491 (Miss. Ct. App. 1999).....	p.8
<u>Jackson v. State</u> , 815 So.2d 1196, 1202 (Miss. 2002).....	p.8
<u>McClain v. State</u> , 625 So.2d 774, 778 (Miss. 1993).....	p.7
<u>Moore v. State</u> , 873 So.2d 129, 132 (Miss. Ct. App. 2004).....	p.8,11
<u>Tate v. State</u> , 20 So.3d 623, 643 (Miss. 2009).....	p.7

STATEMENT OF THE ISSUES

1. Whether the trial court erred in denying Appellant's Motion for Judgment
Notwithstanding the Verdict on in the Alternative for a New Trial.

STATEMENT OF THE CASE

PROCEDURAL HISTORY

Appellant Debbie Mills was convicted in the Municipal Court of Water Valley, Mississippi, on July 9, 2009, for the criminal offense of Simple Assault Domestic Violence and was sentenced by the said lower court to pay a fine and court costs. Clerk's papers at 11. Appellant was accused of committing an act of domestic violence by causing physical bodily injury to Timothy Tidwell by biting him and striking him with a closed fist. Clerk's papers at 18. The Parties allegedly resided in the same household and had a current dating relationship at the time of the alleged assault. Id. Following her conviction in the lower Municipal Court Appellant timely filed her notice of appeal to the Circuit Court of Yalobusha County, Second Judicial District, for a trial de novo. Clerk's papers at 6.

The lower Circuit Court conducted a bench trial on October 13, 2009, and after hearing testimony from three witnesses found Appellant guilty of Simple Assault Domestic Violence and assessed Appellant a fine in the amount of \$300.00 and ordered Appellant to attend anger management. Clerks papers at 52-53. Appellant subsequently and timely filed a Motion for Judgment Notwithstanding the Verdict or in the Alternative for a New Trial. Clerk's papers at 49-50. The trial court denied Appellant's motion, and Appellant following this denial timely appealed her conviction to this Court. Clerk's papers at 51 and 55-56.

APPELLEE'S TRIAL WITNESSES

CHRISTOPHER BLAIR

Christopher Blair is a patrol officer employed with the City of Water Valley, Mississippi, Police Department. Officer Blair testified that at about 12:24 A.M. on May 17, 2009, while on patrol, he received a radio call from dispatch regarding an alleged "physical disturbance between a man and a woman" at the home of Appellant. R. at 3. Upon entering Appellant's home Officer Blair noticed a white male, later to be identified to the alleged victim Timothy Tidwell, standing to his left and a young juvenile restraining Appellant. R. at 4. Officer Blair described Appellant's behavior as "screaming and squirming" and attempting to move towards the alleged victim. R. at 4-5.

Officer Blair also noticed that the alleged victim's shirt had been torn and that he had a large bite mark on his chest as well as a cut on his cheek. R. at 6. The Officer also noticed alleged bruises and cuts on the alleged victim's back. Officer Blair further observed blood coming from Appellant's mouth and that one of Appellant's teeth "was broken in half." Id. It was at this time that Officer Blair placed Appellant under arrest and handcuffed her. R. at 7. Officer Blair next took photographs of the alleged victim's injuries and summonsed an ambulance for him. R. at 7-10. However, the victim declined medical attention. R. at 11.

When asked on cross-examination regarding the injuries allegedly suffered by both the alleged victim and Appellant Officer Blair stated that he did not see who inflicted the alleged injuries to either Party. R. at 11. Appellee attempted during the testimony of Officer Blair to elicit hearsay testimony regarding the injuries allegedly suffered by the victim and who inflicted them, but the trial court sustained Appellant's hearsay objection in that such testimony violated Appellant's constitutional rights to confront and cross-examine her accusers and excluded this evidence. R. at 5-6.

STEVEN STORY

Steven Story is a patrol officer employed by the City of Water Valley, Mississippi, Police Department and was so employed on May 17, 2009, the date of the alleged domestic assault herein. R. at 12. Officer Story assisted Officer Blair in responding to the domestic disturbance call at the home of Appellant. R. at 12-13. Officer Story noticed the alleged victim's physical injury and allegedly detected alcohol on Appellant's breath. The trial court sustained Appellant's hearsay objections as to the cause of the alleged victim's physical injuries as the officer did not have personal knowledge as to what happened at Appellant's home prior to his arrival. R. at 13-14.

VIVIAN SNIDER

Vivian Snider is employed by the City of Water Valley, Mississippi, as its City Clerk. Ms. Snider testified as to the filing of a domestic violence protection order by Appellant against the alleged victim in the Municipal Court of Water Valley, Mississippi. R. at 16-18. Clerk's papers at 38-42. The lower municipal court granted the petition. Id.

Appellee rested its case in chief at the conclusion of Ms. Snider's testimony. R. at 18. The alleged victim, for whatever reason, despite being subpoenaed and served with a subpoena, did not testify. Clerk's papers at 45-46. Appellant, following the conclusion of Appellee's case in chief, accordingly made a motion for a directed verdict arguing the lack of proof necessary to convict Appellant. R. at 17-18. The trial court denied the motion. R. at 20-21. Appellant, feeling that the City had failed to meet its required burden of proof, rested its case. R. at 21. The trial court disagreed and convicted Appellant. R. at 21.

SUMMARY OF THE ARGUMENT

1. The trial court erred in denying Appellant's Motion for Judgment Notwithstanding the Verdict or in the Alternative for a New Trial. The sufficiency and overwhelming weight of the evidence did not support the verdict as there was not any sufficient evidence to warrant a conviction. Appellee simply failed to prove beyond a reasonable doubt the elements of the offense of simple assault. There was not any testimony as to how the alleged victim was allegedly injured or who allegedly inflicted his injuries or whether his own actions caused him to suffer injury. There was not any eye witness testimony to the alleged incident, and Appellant did not confess to committing a crime. The investigating police officers did not have any personal knowledge as to what transpired prior to their arrival at Appellant's home or how the alleged victim became injured. The alleged victim, for unknown reasons, failed to testify at trial. He could have testified as to how he allegedly became injured and the person responsible for inflicting his alleged injuries. The record is therefore silent as to how the alleged victim was allegedly injured.

ARGUMENT

I. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND IN THE ALTERNATIVE FOR A NEW TRIAL.

A motion for Judgment Notwithstanding the Verdict ("JNOV") challenges the legal sufficiency of the evidence. McClain v. State, 625 So.2d 774, 778 (Miss. 1993). This Court properly reviews the ruling of the trial court as to the sufficiency of the evidence on the final occasion the challenge was made. Id. This occurred in the present case when the trial court denied Appellant's post-trial motion for JNOV.

When asked to consider the legal sufficiency of the evidence there is a very specific standard of review.

This Court should consider all the evidence in the case before us, as well all inferences which reasonably might be drawn from the evidence, and then view this evidence in the light most favorable to the prosecution. In so doing, if we conclude that reasonable and fair-minded jurors, in the exercise of their impartial judgment, could reach different conclusions as to each element of the criminal offense for which the defendant is on trial, we are duty-bound to find that the evidence is legally sufficient to sustain the conviction and thus we must affirm on appeal.

Tate v. State, 20 So.3d 623, 643 (Miss. 2009) (citing Christmas v. State, 10 So.3d 413, 422 (Miss. 2009)). See also Bush v. State, 895 So.2d 836, 843 (Miss. 2005).

However, if "the facts so considered point so overwhelmingly in favor of appellant that reasonable men could not have arrived at a contrary verdict, we are

required to reverse and render.” Moore v. State, 873 So.2d 129, 132 (Miss. Ct. App. 2004) (quoting Jackson v. State, 815 So.2d 1196, 1202 (Miss. 2002)).

The appellate review of the denial of a motion for a new trial considers whether the verdict is against the overwhelming weight of the evidence as the evidence is weighed in the light most favorable to the verdict. Bush, 895 So.2d at 844. “[W]e will disturb a jury verdict only when convinced that the circuit court has abused its discretion in failing to grant a new trial or if the final result will result in an unconscionable justice.” Ford v. State, 753 So.2d 489, 490-491 (Miss. Ct. App. 1999) (quoting Danner v. State, 748 So.2d 844, 846 (Miss. Ct. App. 1999)). In a bench trial, such as in the present case, the trial judge is the jury for all purposes resolving issues of fact. Evans v. State, 547 So.2d 38, 40 (Miss. 1989).

A person is guilty of simple assault domestic violence if they attempt or actually cause bodily injury to another and this person resides with or formerly resided with the defendant. Miss. Code Ann. § 93-3-7(3) (1972).

The trial court erred in denying Appellant’s Motion for Judgment Notwithstanding the Verdict or in the Alternative for a New Trial. The sufficiency and overwhelming weight of the evidence did not support the verdict as there was not any sufficient evidence to warrant a conviction beyond a reasonable doubt.

Appellee simply failed to prove beyond a reasonable doubt the elements of the offense of simple assault.

There was not any testimony as to how the alleged victim was allegedly injured or who allegedly inflicted his injuries or whether his own actions caused him to suffer injury. The Officers testified as to Appellant being upset when they found her and that she was bleeding from the mouth and had a broken tooth. They also testified as the alleged victim having physical injuries, but there was not any eye witness testimony to the alleged incident, how these alleged injuries were inflicted or by whom, and Appellant did not confess to anyone to committing a crime.

Based upon the lack of proof in the record it can argued that the alleged victim was injured somewhere other than Appellant's home and came to Appellant's home injured. It could also be argued based upon the lack of proof in the record that the alleged victim became injured due to his own actions. Assuming for the sake of argument that the Parties had a physical altercation, the question must be asked did Appellant act in self-defense? As testified to by Ms. Snider it was Appellant, not the alleged victim, who petitioned the lower municipal court and received a domestic violence protection order against the alleged victim. Again, assuming for argument's sake, the record establishes an altercation between the Parties prior to the arrival of the police officers, Appellee cannot prove beyond

a reasonable doubt that Appellant caused the alleged victim's injuries. Did the alleged victim attack Appellant causing her to act in self-defense? These questions cannot be answered because Appellee did not present any eye witness testimony at trial or any other evidence to prove beyond a reasonable doubt that Appellant caused any injuries to the person of the alleged victim. The investigating police officers did not have any personal knowledge as to what transpired prior to their arrival at Appellant's home or how the alleged victim became injured as there is not an evidentiary basis in the record for an altercation between the Parties. Therefore, no inference can be drawn as to what happened. It is a given fact that a person can be convicted of a crime without eyewitness testimony. However, in this case Appellee failed to present any evidence proving Appellant guilty beyond a reasonable doubt. One could argue that Appellee proved there was some type of altercation between the Parties resulting in injuries. Appellee however cannot prove beyond a reasonable doubt who inflicted these injuries, when these injuries occurred, or that Appellant did not act in self-defense. Appellee simply cannot beyond all of the elements of simple assault domestic violence beyond a reasonable doubt.

The evidence in the record or the lack thereof is speculation at best as to what happened at Appellant's home, if anything. The alleged victim, for unknown reasons, despite being subpoenaed, failed to testify at trial. He could have testified

as to how he allegedly became injured and the person responsible for inflicting his alleged injuries. (It should be noted that the record is void of any request by Appellee to continue the trial due to the unavailability of the alleged victim). He is the one person who could have testified with personal knowledge as to the early morning's events. The police officers did not know what transpired prior to their arrival at Appellant's home, did not witness any acts of violence, and did not testify that Appellant confessed to them. Appellee failed to present any eye witness testimony or any evidence as to the events of May 17, 2009, in the early morning hours.

A person can speculate as to what may have transpired at Appellant's home and say what they believe probably happened, but the record is lacking of proof beyond a reasonable doubt as to what actually took place. The record is therefore silent as to how the alleged victim was allegedly injured as Appellee failed to meet its required burden of proof of guilty beyond a reasonable doubt.

Appellant's conviction should accordingly be reversed and rendered based upon insufficient evidence. Moore v. State, 755 So.2d 1276, 1280 (Miss. Ct. App. 2000). Reversals of a criminal conviction based upon a finding of insufficient evidence are rendered and not remanded. Id. In the alternative Appellant's conviction should be reversed and remanded for a new trial on the basis the verdict was against the overwhelming weight of the evidence. Id. Reversals of a criminal

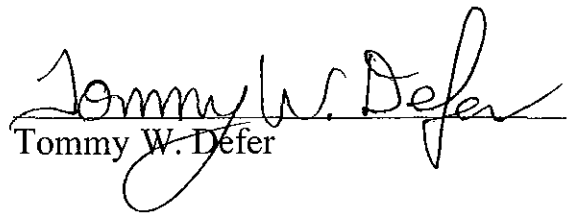
conviction based upon a finding that the verdict was against the overwhelming weight of the evidence result in a remand for a new trial. Id.

CONCLUSION

In conclusion, based upon the foregoing arguments and authorities, Appellant respectfully urges the Court to reverse and render her conviction, or in the alternative to reverse and remand for a new trial.

Respectfully submitted,

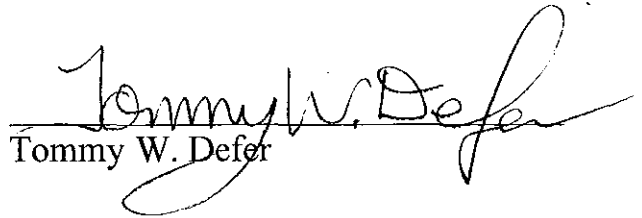
This the 5th day of August 2010.


Tommy W. Defer

CERTIFICATE OF SERVICE

I, Tommy W. Defer, Counsel for the Appellant, do hereby certify that I have this day mailed postage prepaid a true and correct copy of the foregoing *Appellant's Brief* to Hon. Jimmy McClure, Circuit Court Judge, and John J. Crow, Jr., and Daniel M. Martin, Prosecutors for the City of Water Valley, at their usual business mailing addresses.

This the 5th day of August 2010.


Tommy W. Defer