

**IN THE COURT OF APPEALS 12/17/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 95-KA-00587 COA**

**SPENCER PERKINS**

**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

TRIAL JUDGE: HON. ROBERT G. EVANS

COURT FROM WHICH APPEALED: SIMPSON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

L. WESLEY BROADHEAD

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL BY: BILLY L. GORE

DISTRICT ATTORNEY: DEWITT L. FORTENBERRY, JR.

NATURE OF THE CASE: CRIMINAL: AGGRAVATED ASSAULT

TRIAL COURT DISPOSITION: GUILTY: SENTENCED TO SERVE A TERM OF 15 YRS IN  
THE MDOC

BEFORE FRAISER, C.J., DIAZ, AND KING, JJ.

DIAZ, J., FOR THE COURT:

The Appellant, Spencer Perkins (Perkins) was convicted in the Simpson County Circuit Court of aggravated assault. He was sentenced to serve a term of fifteen (15) years in the Mississippi Department of Corrections. Aggrieved, he appeals to this Court asserting that the verdict was against the overwhelming weight of the evidence, and that the trial court erred in denying his post-trial motions. Finding no reversible error, we affirm.

### FACTS

On December 14, 1993, between 10:30 and 11:00 P.M., Alton Sullivan (Sullivan) responded to a knock on his door. The two young men at his door were Chris Moore, and Spencer Perkins, the Appellant. Sullivan had known Perkins for about ten to twelve years, and had known Moore because Moore had worked for Sullivan in the past. Moore and Perkins asked Sullivan to help them jump start a car. Sullivan agreed, and the three got into Sullivan's pickup truck with Moore seated in the middle, and Perkins sitting by the door. After driving a few miles and making several turns onto different rural roads, Sullivan began to suspect that there was in fact no stranded vehicle. Although Moore and Perkins tried to convince Sullivan that the car was further down the road, Sullivan decided to turn around before they headed into an area bordered by a swamp.

As Sullivan turned the truck around, Perkins reached around Moore and shot Sullivan in the right shoulder with a gun. At that point, Moore and Perkins got out of the truck and ran into the nearby woods. Sullivan drove home and called the Sheriff's Department. Deputy Sheriff Paul Mullins arrived at Sullivan's house and escorted him to the hospital where Sullivan was treated and released for his gunshot wound. Sullivan recounted to Mullins the events of the evening. The two men drove by the scene of the shooting. Mullins searched for Moore and Perkins for two hours that night to no avail; however, Perkins was arrested two days later.

### DISCUSSION

Perkins' argues on appeal is that the trial court erred in denying his motion for a new trial and that the verdict was against the overwhelming weight of the evidence. Perkins also argues that the State failed to meet their burden of proof because (1) the State did not show that Perkins "willfully, unlawfully, feloniously and knowingly" caused injury to the victim; and (2) no weapon was ever produced.

Our standard of review for the legal sufficiency of the evidence is well-settled:

We must, with respect to each element of the offense, consider all of the evidence--not just the evidence which supports the case for the prosecution--in the light most favorable to the verdict. The credible evidence which is consistent with the guilt must be given the benefit of all favorable inferences that may reasonably be drawn from the evidence.

Matters regarding the weight and credibility to be accorded the evidence are to be resolved by the jury. We may reverse only where, with respect to one or more of the elements of the offense charged, the evidence so considered is such that reasonable and fair-minded jurors could only find the accused not guilty.

*Franklin v. State*, 676 So. 2d 287, 288 (Miss. 1996).

At trial, Sullivan testified that Perkins reached across Moore, who was sitting between Sullivan and Perkins, and shot Sullivan in the right shoulder with a gun. This testimony was uncontradicted because the defense offered no witnesses to testify otherwise. Apparently, the bullet still remains in Sullivan's shoulder because the doctors felt that it would cause more problems trying to extract the bullet than it would to leave it in Sullivan's shoulder. Considering all the evidence presented in the record, we do not think that fair-minded jurors could *only* find the accused not guilty. When we consider whether the jury's verdict is against the overwhelming weight of the evidence, we accept as true all evidence supporting the verdict. *Ellis v. State*, 667 So. 2d 599, 611 (Miss. 1995). Reversal is warranted only if there was an abuse of discretion in the circuit court's denial of a new trial. *Ellis*, 667 So. 2d at 611.

Considering the above, we find no abuse of discretion.

**THE JUDGMENT OF CONVICTION IN THE SIMPSON COUNTY CIRCUIT COURT OF AGGRAVATED ASSAULT AND SENTENCE OF FIFTEEN (15) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. COSTS OF THIS APPEAL ARE TAXED TO SIMPSON COUNTY.**

**FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.**