

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 96-KA-00078 COA**

**SHAWN LAMAR STALLINGS**

**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:	02/24/95
TRIAL JUDGE:	HON. LEE J. HOWARD
COURT FROM WHICH APPEALED:	LOWNDES COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	RICHARD BURDINE
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: PAT FLYNN
DISTRICT ATTORNEY:	RODNEY RAY
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	MURDER; LIFE SENTENCE
DISPOSITION:	AFFIRMED - 12/2/97
MOTION FOR REHEARING FILED:	12/17/97
CERTIORARI FILED:	
MANDATE ISSUED:	4/28/98

BEFORE BRIDGES, C.J., DIAZ, AND COLEMAN, JJ.

BRIDGES, C.J., FOR THE COURT:

Shawn Stallings was convicted in the Circuit Court of Lowndes County on February 24, 1995, of murder and was sentenced to life imprisonment in the custody of the Mississippi Department of Corrections. Stallings now appeals the following issues: 1) that the verdict was against the overwhelming weight of the evidence, 2) that the State failed to meet its burden of proof necessary to convict the defendant, and 3) that the presence of one of the decedent's co-workers on the jury constituted a violation of the defendant's right to a fair trial. Finding no merit to the issues raised by Stallings, we affirm the jury's verdict.

**FACTS**

On the late evening hours of August 4, 1994, Stallings and three others left an apartment and walked to a pay phone nearby. Upon arriving at the pay phone, they noticed a man, the decedent, standing there holding the telephone. Stallings asked to use the telephone, and the decedent started yelling and cursing. At some point, the decedent changed his demeanor, allowed Stallings to use the telephone, and walked away. He used the telephone and suddenly yelled, "Break out; break" to the other guys. Victor Williams, who was one of the guys with Stallings that evening, testified that this meant run for cover. Williams testified that the decedent was approaching them yelling and pointing a gun. They proceeded to run. In a nearby yard, they picked up baseball bats. Stallings and Williams went one way while two others went another way. Williams testified that they heard somebody hollering so they ran to see what was going on. As Stallings and Williams approached, Williams testified that he saw the decedent lying on the ground face-down with the other two guys standing with bats in their hands. Williams stated that he slowed down, glanced at the body, but continued on across the street. Williams testified that Stallings stopped with the bat in his hands, started to swing, but that Williams turned his head so he never actually saw nor heard him hit the decedent. However after Stallings was arrested, he made a statement admitting that he had hit the decedent with the bat two times to teach him a lesson for chasing them with a gun. Williams testified that Stallings picked up the decedent's gun which was lying down by his legs and then they all ran. A motorist saw the decedent lying on the ground and called 911. The decedent was taken to the hospital, but never regained consciousness. He died shortly thereafter. Stallings was tried and convicted of murder in February of 1995, and was sentenced to life imprisonment.

## **ARGUMENT AND DISCUSSION OF LAW**

### **I. WHETHER THE VERDICT WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE.**

### **II. WHETHER THE STATE FAILED TO MEET ITS BURDEN OF PROOF NECESSARY TO CONVICT THE DEFENDAN**

Since Stallings's issues I and II deal with the weight and sufficiency of the evidence, we shall discuss them together. Where the defendant contends that a new trial should have been granted because the jury verdict was against the weight of the evidence, the standard of review is as follows:

The challenge to the weight of the evidence via motion for a new trial implicates the trial court's sound discretion. Procedurally such challenge necessarily invokes [Mississippi Uniform Criminal Rule of Circuit Court Practice] 5.16. New trial decisions rest in the sound discretion of the trial court, and the motion should not be granted except to prevent an unconscionable injustice. We reverse only for abuse of discretion, and on review we accept as true all evidence favorable to the State.

***McClain v. State*, 625 So. 2d 774, 781 (Miss. 1993).** All matters concerning the weight and credibility of the evidence are resolved by the jury. ***Id.***

The Supreme Court of Mississippi eloquently condensed this standard stating:

[O]nce the jury has returned a verdict of guilty in a criminal case, we are not at liberty to direct that the defendant be discharged short of a conclusion on our part from that [sic] the evidence, taken in the light most favorable to the verdict, no reasonable, hypothetical juror could find beyond a reasonable doubt that the defendant was guilty.

***Williams v. State*, 463 So. 2d 1064, 1068 (Miss. 1985).**

The evidence in this case is clear. Stallings admitted in his statement to police that he had hit the decedent twice with the baseball bat. The State does not have to prove that it was Stallings alone who killed the decedent. The pathologist in the case testified that he could not determine which of the four blows to the decedent's head actually caused his death, but that all were additive in causing the death. We find that a reasonable juror could have found that Stallings struck at least one of the blows that killed the decedent and thus, we will not overturn the jury's verdict in this case. This issue is without merit.

Additionally, Stallings argues that the State failed to make out its prima facie case as required. Specifically, Stallings argues that the State failed to prove that the decedent died as a result of being struck in the head with a blunt object by Stallings. In *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993), the Mississippi Supreme Court stated that since a motion for directed verdict, a request for peremptory instruction, and a motion for JNOV each challenge the legal sufficiency of the evidence, the Court properly reviews the ruling on the last occasion the challenge was made in the trial court. The standard of review applied when the assignment or error turns on the sufficiency of evidence has been stated as:

When on appeal one convicted of a criminal offense challenges the legal sufficiency of the evidence, this Court's authority to interfere with the jury's verdict is quite limited. We proceed by considering all of the evidence--not just that supporting the case for the prosecution--in the light most consistent with the verdict. We give the prosecution the benefit of all inferences that may reasonably be drawn from the evidence. If the facts and inferences so considered points in favor of the accused with sufficient force that reasonable men could not have found beyond a reasonable doubt that he was guilty, reversal and discharge are required. On the other hand, if there is in the record substantial evidence of such quality and weight that, having in mind the beyond a reasonable doubt burden of proof standard, reasonable and fair minded jurors in the exercise of impartial judgment might have reached different conclusions, the verdict of guilty is beyond our authority to disturb.

***Brooks v. State*, 695 So. 2d 593, 594 (Miss. 1997).**

According to **Mississippi Code Annotated § 97-1-3 (Supp. 1972)**:

Every person who shall be an accessory to any felony, before the fact, shall be deemed and considered a principal, and shall be indicted and punished as such; and this whether the principal have been previously convicted or not.

In this case, it is manifest that the evidence was ample to warrant Stallings's conviction of murder, either as a participant in the crime, or an aider or abettor, which are in effect the same. All persons present at the time and place of the crime and aiding an abetting, assisting or advising its commission are guilty as principals. *Shedd v. State*, 228 Miss. 381, 87 So. 2d 898 (Miss. 1956). There was sufficient evidence from which the jury could find that Stallings aided and abetted in the murder of the decedent. There was also sufficient evidence from which the jury could find that he actually delivered the blow that killed the decedent, and in either event, Stallings was guilty of murder.

Accordingly, we find that the evidence in this case is sufficient to support the verdict of guilty. This issue is also without merit.

### **III. WHETHER THE PRESENCE OF ONE OF THE DECEDENT'S CO-WORKERS ON THE JURY CONSTITUTED A VIOLATION OF THE DEFENDANT'S RIGHT TO A FAIR TRIAL.**

Stallings argues that the presence of a juror who was a co-worker of the victim denied him a fair trial. Specifically, Stallings asserts that the juror's service was prejudicial to him and raised the presumption that he did not have a fair and impartial trial. We find Stallings's argument to be procedurally barred. The law is well settled in this state that the assertion on appeal of grounds for an objection which was not the assertion at trial is not an issue properly preserved on appeal. *Ballenger v. State*, 667 So. 2d 1242, 1264 (Miss. 1995). Stallings raises objections on appeal that can be found nowhere in the record; therefore, his objection was not properly preserved on appeal.

In addition, Stallings did not include the jury voir dire in the record as sent to this Court, and he gave no specific facts or case law for his argument. Thus, we have no way of commenting on it. This issue is without merit.

**THE JUDGMENT OF THE LOWNDES COUNTY CIRCUIT COURT OF CONVICTION OF MURDER AND SENTENCE TO LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS HEREBY AFFIRMED. SENTENCE IS TO RUN CONSECUTIVELY WITH SENTENCE APPELLANT IS PRESENTLY SERVING. ALL COSTS OF THIS APPEAL ARE TAXED TO LOWNDES COUNTY.**

**McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.**