

6/3/97

IN THE COURT OF APPEALS

OF THE

STATE OF MISSISSIPPI

NO. 95-KA-00969 COA

THALMUS WILLIAMS

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

**PER CURIAM AFFIRMANCE MEMORANDUM OPINION**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. KENNETH LEVENE THOMAS

COURT FROM WHICH APPEALED: COAHOMA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

ALLAN D. SHACKELFORD

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: BILLY L. GOREDISTRICT ATTORNEY: MELLEN, LAWRENCE Y.,

NATURE OF THE CASE: CRIMINAL- SHOOTING INTO DWELLING

TRIAL COURT DISPOSITION: GUILTY: SENTENCED TO SERVE A TERM OF 9 YRS IN THE MDOC; THE SENTENCE SHALL RUN CONSECUTIVE TO ANY SENTENCES IMPOSED; THE DEFENDANT SHALL MAKE RESTITUTION IN THE AMOUNT OF \$100.00

MANDATE ISSUED: 6/24/97

BEFORE THOMAS, P.J., DIAZ, AND PAYNE, JJ.

PER CURIAM:

Thalmus Williams (Williams), the Appellant, was convicted in the Coahoma County Circuit Court for the crime of shooting into a dwelling. Williams was sentenced to serve a term of nine years in the Mississippi Department of Corrections and make restitution in the amount of \$100.00. Aggrieved from this judgment, Williams appeals asserting that the verdict was against the overwhelming weight of the evidence. Finding no merit to this appeal, we affirm the judgment.

In determining whether the verdict is against the overwhelming weight of the evidence, we must accept as true the evidence which supports the verdict. We will reverse only where the trial court abused its discretion in not granting a new trial. *Robinson v. State*, 662 So. 2d 1100, 1104 (Miss. 1995). The appropriate standard of review when considering directed verdicts has been stated many times:

In considering a motion for a directed verdict, this Court on review must consider all evidence introduced in the light most favorable to the State, accepting all evidence introduced by the State as true, together with all reasonable inferences therefrom. If there is sufficient evidence to support a guilty verdict, the motion for a directed verdict must be overruled.

*Id.* at 1104-05. We will not order a new trial unless convinced that the verdict was so contrary to the overwhelming weight of the evidence that, to allow it to stand, would be to sanction an unconscionable injustice. *Id.*

On February 26, 1995, a shot was fired into the bathroom window of Curtisine Cochran's house. Robert, Mrs. Cochran's eleven-year-old son, identified Williams as the man he saw standing at the bathroom window with a shotgun in his hand. Robert's testimony was corroborated by Takiaki Jones. Jones testified that earlier that afternoon, she had gotten into an argument with Regina Holland, Mrs. Cochran's daughter. Following the argument, Jones returned home at which time, Ellis Hunter, and Thalmus Williams visited her. Hunter asked Jones if she was going to settle the issue with Regina; to which she replied that she was not going to worry about it. At that point, Hunter told Jones that if she did not resolve her problem with Regina, then he would do it for her. Williams also told Jones that he would "take care of her business." Jones then testified that Williams fired the shot with a gun and that Robert Cochran was standing in his own backyard at the time. Williams denies that he fired the gun into the Cochran's window. He testified that he was either at his mother's house, or at the game room at the time of the incident.

Applying our standard of review, we find that the evidence supports the verdict. We must note however, that Williams was indicted for shooting into a dwelling house pursuant to section 97-37-29 of the Code. The verdict form indicated that Williams was found "guilty as charged," however, the judgment indicates that Williams was found guilty of a drive by shooting. Finding no amendments in the record to the indictment, we must remain consistent with the indictment. Therefore, the judgment should read that Williams was found guilty of shooting into a dwelling house; otherwise, we affirm the judgment in all other respects.

**THE JUDGMENT OF CONVICTION IN THE COAHOMA COUNTY CIRCUIT COURT**

**OF SHOOTING INTO A DWELLING HOUSE AND SENTENCE OF NINE YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND PAYMENT OF RESTITUTION IN THE AMOUNT OF \$100.00 IS AFFIRMED. SENTENCE SHALL RUN CONSECUTIVE TO ANY AND ALL SENTENCES PREVIOUSLY IMPOSED. THE TRIAL COURT SHALL AMEND THE JUDGMENT TO REFLECT CONVICTION OF THE CRIME OF SHOOTING INTO A DWELLING. COSTS OF THIS APPEAL ARE TAXED TO COAHOMA COUNTY.**

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