IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

TIMOTHY ALLEN WILSON **APPELLANT**

VS. **NO. 2014-KA-01478**

STATE OF MISSISSIPPI **APPELLEE**

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE ISSUES

I. Instruction S-4 was not prejudicially defective and Wilson's trial counsel was not ineffective for failing to object to the instruction.

II. Instruction S-3 was not an improper instruction and Wilson's trial counsel was not ineffective for failing to object to the instruction.

III. Wilson's sentence is not illegal.

STATEMENT OF THE CASE

This appeal by Timothy Allen Wilson proceeds from the Circuit Court of Warren County, Mississippi, with the Hon. Isadore W. Patrick, Jr. presiding. Wilson was indicted and tried with his brother, Randy Wilson, as co-defendant and was convicted by a jury of receiving stolen property.

Wilson was sentenced as a habitual offender on September 29, 2014, to ten (10) years to serve in the custody of the Mississippi Department of Corrections and ordered to pay a fine of $10,000.00. (Tr. 513, C.P. 27).

STATEMENT OF THE FACTS

Between 1:00 and 2:00 p.m. on April 2, 2012, Paul Powers was in his yard at his home in Hinds County when he noticed a blue and white Ford dually truck he had never seen before in the yard of his neighbors, Pauline and Randy Vessel. (Tr. 194, 196, 204). He saw two African American males walking around the Vessel's front yard, where they kept a 16-foot utility trailer; one was wearing a white or light-colored shirt and the other was wearing a green-colored shirt. (Tr. 197). The male with the white shirt picked up a tubular object and began striking the front of the trailer, where the hitch is located. (Tr. 199-200). Meanwhile, the other man got into the truck and backed it up to the trailer. (Tr. 217).

Powers immediately called Pauline Vessel to see if the Vessels had given permission to anyone to borrow their trailer and learned they had not. (Tr. 207-208). As the truck pulled out of the Vessel's yard with the trailer, Powers followed them. (Tr. 208). He followed the truck and trailer onto Highway 27 towards Vicksburg and dialed 911, and was connected to the Hinds County operator. (Tr. 208). He informed the operator someone had stolen a trailer from his neighbor's yard and he was following them and that they were close to the Warren County line. (Tr. 209). Powers pursued them into Warren County. (Tr. 209). The truck took a left off Highway 27 and onto China Grove Road, then pulled over to the side of the road to possibly let Powers pass them. (Tr. 210). Powers gave the 911 operator a description of what occurred at the Vessel's house, a description of the truck, the tag number and a description of the suspects. (Tr. 224, 282). Powers attempted to pull in behind them, but the truck got back onto the road and kept going. (Tr. 210). Powers was still on the phone with 911 and the operator advised him to not put himself in harm's way by confronting the people in the truck. (210).

The truck pulled over a second time on the edge of the road, in a gravel driveway, near China

Grove Lane. (Tr. 211). Powers decided to proceed around a nearby curve in order to turn around safely because he was still on the phone with 911 and knew officers were nearby. (Tr. 211). He lost sight of the truck he had been following, but had kept them in his vision until the truck pulled over at China Grove Lane, a dead end road. (Tr. 212, 260, 271). Around five minutes later, Powers confirmed with 911 that he saw an unmarked law enforcement truck. (Tr. 212, 215). Powers headed back toward the location where he last saw the truck he had been following. (Tr. 216). Powers saw the same two men and the truck that he saw at the Vessel's house. (Tr. 216).

Powers testified at Wilson's trial that he had borrowed the Vessel's trailer before and was familiar with it. (Tr. 219). He testified the value of the trailer is about $1,500.00. (Tr. 223). He said the trailer had a heavy duty lock with a U-bolt going across it, with a two-inch ball size. (Tr. 230, 246). On cross-examination, Powers agreed the men could have been as far away as 134 yards when he saw them in the Vessel's yard, but Powers stated he had eye surgery to correct his vision and holds a Coast Guard eye exam. (Tr. 225, 232).

Randy Lewis, the Lieutenant over the Criminal Investigation Division at Warren County Sheriff's Office, responded to the call to China Grove Lane. (Tr. 269). The Hinds County operator had transferred the call and passed on the suspects' tag information, which came back to a vehicle registered to Wilson. (Tr. 269). Lt. Lewis met with Powers and asked him to leave and at that time, Wilson's truck drove towards them on China Grove Lane. (Tr. 272). Wilson was driving the blue and white Ford with the tag number given by Powers and Randy Wilson was the passenger. (Tr. 272). Lt. Lewis observed Timothy Wilson in a green work shirt and Randy Wilson in a white shirt. (Tr. 272-273). Lt. Lewis asked the men about the trailer and they responded "what trailer?". (Tr 272). Investigators located the Vessel's trailer behind property on China Grove Lane belonging to Eddie Calvin. (Tr. 278). Both Timothy Wilson and Randy Wilson were arrested. (Tr. 274-275).

Pauline Vessel testified that Paul Powers called her that day around 12:30-1:00 in the afternoon and told her two men were getting the Vessel's trailer out of their yard. (Tr. 298, 300). She testified the value of the trailer was $1,400.00. (Tr. 298).

Eddie Calvin testified at trial that he lives on China Grove Lane and that he knows the defendants pretty well. (Tr. 307). He was at his mother's house on April 2, 2012, when he received a call from his wife telling him police were at their house. (Tr. 308). It took him about 20-30 minutes to get home and he saw the Vessel's trailer on his property when he got there. (Tr. 309-310). He testified he did not recognize the trailer, that he did not give anyone permissions to put a trailer on his property and that the trailer was not on his property when he left that morning. (Tr. 310).

Willie Dotson testified that he and Wilson worked together cutting trees at a house on Ft. Hill on April 2, 2012. (Tr. 333). Dotson identified Wilson in a photo and testified the photo was taken on either April 2nd or April 3rd, then he testified he knows it was taken on the 3rd. (Tr. 334-335). He testified the photograph was taken in the evening. (Tr. 335). He stated the work took two days to complete. (Tr. 335). He testified Wilson left around noon and never came back; Dotson later found out Wilson had been arrested. (Tr. 335-336, 342). He then testified he knew the photo in evidence was taken on the 7th, then shortly after, testified it was taken between April 1st and 2nd. (Tr. 340-341).

Henry Ray Hunter testified at trial that Wilson was his neighbor and Hunter worked with Wilson. (Tr. 346). He said that on April 2, 2012, Wilson helped him repair a house on Feld Street and when Wilson left for lunch, he did not come back. (Tr. 346-347).

Wilson's brother and co-defendant, Randy Wilson, testified at trial that he got Wilson to take him to see Shirley Jenkins on China Grove Road about 6:00-6:30 a.m. on April 2, 2012. (Tr. 364). Randy testified that he was with Shirley Jenkins until 12:45 in the afternoon, when Wilson came

back to get him. (Tr. 365). Once they left her house, Lt. Lewis pulled them over. (Tr. 365). Randy said he told Deputy Riggs that he had been at a friend's house and that he had not been to Hinds County at all. (Tr. 366-367). He said Ms. Jenkins lives in Illinois and did not want to be involved in their case because she is married. (Tr. 387).

Randy testified that he does not own a vehicle. (Tr. 368). He said that Wilson's truck has a three and a quarter inch ball in the bed of the truck and a three inch ball on the back of the truck, therefore, there was no way the Vessel's trailer would have been compatible to tow. (Tr. 369-370).

SUMMARY OF THE ARGUMENT

Wilson is procedurally barred from arguing Instruction S-4 prejudicially defective because he did not object to the instruction at trial to preserve the issue for appeal. His trial counsel was not ineffective for failing to object at trial because objections to instructions are within the purview of trial strategy and he was not prejudiced by the instruction. There is also no merit to the issue because the instruction was an accurate statement of the law and all of the instructions, read as a whole, fairly instruct the jury. Also, the instructions state multiple times the burden is on the state to prove every element of the crime beyond a reasonable doubt, so S-4 did not improperly shift the burden of proof to Wilson.

Wilson is also procedurally barred from arguing Instruction S-3 was an improper instruction because he did not object to the instruction at trial to preserve the issue for appeal. The issue also has no merit because the instruction was an accurate statement of the law and the instructions, when read as a whole, properly instruct the jury on the burden of proof. Wilson's trial counsel was not ineffective for failing to request an independent alibi instruction because after his alibi witness testified inconsistently, his decision could have been trial strategy and the trial court may not have granted the instruction based on the weakness of evidence supporting it. Therefore, Wilson did not

suffer any prejudice.

Last, Wilson's sentence is not illegal because he was sentenced pursuant to the applicable statute that was in effect at the time of his commission of the crime. Miss. Code Ann. §99-19-33 states that when a statute is amended with a milder punishment, the court *may* impose the milder punishment. The language indicates the court has the discretion to choose which version of the statute is applicable, so the trial court in this case did not err and Wilson's sentence should be affirmed.

ARGUMENT

I. Instruction S-4 was not prejudicially defective and Wilson's trial counsel was not ineffective for failing to object to the instruction.

Wilson argues on appeal that the trial court erred by giving Instruction S-4 to the jury and that the error was prejudicial to Wilson's case. Instruction S-4 reads, as follows:

> The Court instructs the Jury that proof that a defendant stole the property that is the subject of the charge against him, or her, shall be prima facie evidence that the defendant had knowledge that the property was stolen.

(C.P. 24; Tr. 408-409). As Wilson notes in his brief, the instruction uses the language from Miss. Code Ann. §97-17-70, which states:

> Proof that a defendant stole the property that is the subject of a charge under this section shall be prima facie evidence that the defendant had knowledge that the property was stolen.

Miss. Code Ann. §97-17-70(3)(b) (Rev. 2014).

Neither Wilson, nor his co-defendant, Randy Wilson, objected at trial to the instruction. "Generally, when a jury instruction is offered at trial, it is the duty of the opposing party, in order to preserve the point for appeal, to state a contemporaneous objection in specific terms." *Riley v. State*, 1 So.3d 877, 884 (Miss. Ct. App. 2008) (quoting *Irby v. State*, 893 So.2d 1042, 1047 (Miss. 2004)).

Because Wilson failed to object to Instruction S-4, he did not properly preserve his issue for appeal and he is procedurally barred from now raising the issue on appeal.

Notwithstanding the procedural bar, this issue has no merit. "It is well-settled that jury instructions are within the discretion of the trial court, and the standard of review for the denial of jury instructions is abuse of discretion." *Thompson v. State*, 119 So.3d 1007, 1009 (Miss. 2013) (citing *Newell v. State*, 49 So.3d 66, 73 (Miss. 2010)). "Jury instructions are to be read as a whole, with no one instruction to be read alone or taken out of context." *Wells v. State*, 160 So.3d 1136, 1143 (Miss. 2015) (quoting *Ferguson v. State*, 137 So.3d 240, 244 (Miss. 2014)). "When read together, if the jury instructions fairly state the law of the case and create no injustice, then no reversible error will be found." *Reith v. State*, 135 So.3d 862, 865 (Miss. 2014) (quoting *Newell* at 73)).

Wilson first argues that the instruction unconstitutionally reduced the State's burden of proof on a statutory element of the crime because the instruction does not indicate the proof that Wilson stole the property must be found beyond a reasonable doubt in order to be prima facie evidence of his guilty knowledge. (Appellant's Brief p. 8). However, before the opening arguments, the trial court instructed the jury that the defendant is presumed to be innocent and that presumption of innocence remains with the defendant throughout the trial, unless he is proven guilty beyond a reasonable doubt. (Tr. 174). In *Riley v. State*, this Court held that the language of the instruction at issue did not impermissibly shift the burden of proof from the State to the defendant when, after the definitions of the crimes Riley was accused of committing, the following language was included, "If the State has failed to prove any one or more of the above listed elements beyond a reasonable doubt, then you shall find the defendant not guilty." *Riley v. State*, 1 So.3d 877, 885 (Miss. Ct. App. 2008). In Wilson's case, there were several instructions given to the jury that instructed if the State failed

to prove any one or more of the elements beyond a reasonable doubt, the jury was required to find Wilson not guilty:

> Instruction D-2 states, "If you find from the evidence that the State has failed to prove beyond a reasonable doubt any one of the essential elements of the crime of receiving stolen property, you must find Timothy Allen Wilson not guilty." (C.P. 11).
>
> Instruction D-3, regarding Wilson's decision to not testify, states, in part, "If the State fails to prove beyond a reasonable doubt any one of the essential elements of the crime of receiving stolen property, you must find Timothy Allen Wilson not guilty." (C.P. 10).
>
> Instruction S-7, which lists the elements of the crime, ends with, "If however, you find that the State has failed to prove any one, or more, of the elements listed above, beyond a reasonable doubt, then you shall find Timothy Allen Wilson not guilty." (C.P. 13).
>
> Instruction S-2, regarding aiding and abetting, states, in part, "[Y]ou may not find any defendant guilty unless you find beyond a reasonable doubt that every element of the offense as defined in these instructions was committed by some person or persons, and that the defendant voluntarily participated in its commission with the intent to violate the law." (C.P. 20).

The Court also instructed the jury that the law presumes the defendant to be innocent and that the burden is upon the State to prove otherwise, beyond a reasonable doubt, and the burden is on the State throughout the entire trial. (C.P. 14). Like the instructions in *Riley*, the jury instructions in Wilson's case, when read as a whole, adequately inform the jury that they must find every element beyond a reasonable doubt and that burden is never reduced or shifted from the State to Wilson.

Wilson next argues that the language "prima facie evidence" is confusing to the jury, that an average juror would not know that prima facie evidence is rebuttable. (Appellant's Brief p. 9). The State submits that the language is appropriate, as the instruction set forth an accurate statement of law and other instructions adequately instructed the jury regarding the elements required to convict Wilson. *See Schankin v. State*, 910 So.2d 1113, 1118 (¶14) (Miss. Ct. App. 2005).

Wilson adds that the instruction is also a forbidden comment on the evidence. (Appellant's

Brief p. 9). The Mississippi Supreme Court has held that "instructions which emphasize any particular part of the testimony in such a manner as to amount to a comment on the weight of that evidence is improper. *Mickell v. State*, 735 So.2d 1031, 1033 (Miss. 1999) (citing *Duckworth v. State*, 477 So.2d 935, 938 (Miss. 1985)). Instructions should not "single out or contain comments on specific evidence." *Id.* The jury instruction at issue was not an improper comment on the evidence because the instruction did not improperly emphasize any particular testimony or evidence, or lack thereof.

If this Court finds the instruction at issue was given in error, the State submits that the error was harmless. Error is considered harmless when "it is apparent on the face of the record that a fair minded jury could have arrived at no verdict other than that of guilty." *Hancock v. State*, 964 So.2d 1167, 1174 (Miss. Ct. App. 2007) (quoting *Kolberg v. State*, 829 So.2d 29 (¶34) (Miss. 2002)). Error may also be harmless "if it is clear beyond a reasonable doubt that it did not contribute to the verdict." *Id.* (citing *Conley v. State*, 790 So.2d 773 (¶72) (Miss. 2001)). Powers witnessed Wilson and Randy Wilson stealing the Vessel's trailer and he followed them, gave the 911 operator their tag number and description of the men and truck. The only time the truck was out of his sight was shortly before the Lt. Lewis responded to the scene. The trailer was found on property on a dead end street that Wilson had turned down a few minutes before they were stopped by Lt. Lewis. Although both Wilson and Randy offered alibis, the jury was able to weigh the credibility of those alibis and determine they committed the crime beyond a reasonable doubt. The verdict would have been the same without the instruction, as they could have easily found that Wilson had knowledge the property was stolen. Therefore, the instruction did not contribute to the verdict and any error in granting it was harmless.

Last, Wilson argues that this Court should review this issue as a claim of ineffective

assistance of counsel based on his trial counsel's failure to object to S-4 to preserve the issue for appeal. (Appellant's Brief p. 10). The State respectfully disagrees that this issue should be reviewed for ineffective assistance of counsel and declines to stipulate the record is adequate to review the issue on direct appeal. Notwithstanding, there is no merit to Wilson's claim of ineffective assistance of counsel.

The analysis for an ineffective assistance claim is as follows:

> Claims of ineffective assistance of counsel are reviewed by using the familiar two-pronged test of *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In order to prevail on a claim of ineffective assistance of counsel, [Case] has the burden of proof to show by a preponderance of the evidence that (1) his counsel's performance was deficient, and (2) that the deficiency did, in fact, prejudice the defense's case so as to prevent a fair trial. In determining whether the first prong of *Strickland* concerning counsel's performance has been satisfied, we must 'indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance[.]' The second prong of the *Strickland* test requires that [Wilson] prove prejudice by showing that there was a reasonable probability that but for counsel's errors, the trial court's result would have been different. Whether the prongs of this test are met is determined by a totality of the circumstances.

Moss v. State, 977 So.2d 1201, 1213-1214 (Miss. Ct. App. 2007) (internal citations omitted).

"Decisions to make particular objections fall within the purview of the attorney's trial strategy and 'cannot give rise to an ineffective assistance of counsel claim.'" *Id.* Wilson's trial counsel may not have objected as a matter of trial strategy. Wilson had been granted three instructions regarding the State's burden to prove Wilson guilty of each element of the offense beyond a reasonable doubt, so it is plausible that his trial counsel felt those instructions would mitigate any perceived harm by Instruction S-4. And as argued above, even had counsel objected to the instruction, the verdict against him would have been the same if the instruction had been refused., so he suffered no prejudice.

II. Instruction S-3 was not an improper instruction and Wilson's trial counsel was not ineffective for failing to object to the instruction.

Wilson next argues that Instruction S-3 was an improper instruction because it shifted the burden of proof to Wilson to prove his alibi defense and the jury did not know Wilson was not required to establish the truth of his alibi. (Appellant's Brief p. 11). Instruction S-3 read, as follows:

> The Court instructs the jury that the State is not required to disprove an alibi. In other words, the State is not required to prove that any alibi defense is not true; the State is only required to prove, beyond a reasonable doubt, that the defendants, Randy Charles Wilson and Timothy Allen Wilson, are guilty, beyond a reasonable doubt, of Receiving Stolen Property as charged. (C.P. 23).

Wilson did not object at trial to the instruction. As stated in the first issue above, "[g]enerally, when a jury instruction is offered at trial, it is the duty of the opposing party, in order to preserve the point for appeal, to state a contemporaneous objection in specific terms." *Riley v. State*, 1 So.3d 877, 884 (Miss. Ct. App. 2008) (quoting *Irby v. State*, 893 So.2d 1042, 1047 (Miss. 2004)). Because Wilson failed to object to Instruction S-3, he did not properly preserve his issue for appeal and he is procedurally barred from now raising the issue on appeal.

Notwithstanding the procedural bar, the issue has no merit. To reiterate the authority cited in the previous issue, jury instructions are within the discretion of the trial court and reviewed for abuse of discretion. *Thompson v. State*, 119 So.3d at 1009. Jury instructions are to be read as a whole and no one should be taken out of context. *Well v. State*, 160 So.3d 1143. When read together, if the instructions fairly state the law and create no injustice, then there is no reversible error. *Reith v. State*, 135 So.3d at 865.

The instruction did not impermissibly shift the burden from the State to Wilson to prove his alibi defense. The instruction makes it clear the State still has the burden of proving he was guilty

of the crime beyond a reasonable doubt. The instruction did not state Wilson had to prove his alibi was true, only that the State did not have to prove the inverse. When the instructions are read as a whole, the jury was properly instructed on their duty to deliberate and weigh the credibility of the evidence for themselves and that the burden is on the state to prove every element of the crime beyond a reasonable doubt.

The State acknowledges that when a defendant asserts an alibi and presents evidence in support of that defense, the defendant is entitled to a jury instruction on that theory of defense. *See Cochran v. State*, 913 So.2d. 371, 375 (Miss. Ct. App. 2005) (citations omitted). However, the Mississippi Supreme Court has held that "a trial court is not required to instruct the jury sua sponte or give instructions in addition to those tendered by the parties. *Harris v. State*, 861 So.2d 1003, 1017 (¶36) (Miss. 2003). Wilson's counsel did not offer a instruction on his alibi defense and the Court was not required to give one without such a request.

Moreover, Wilson's trial counsel was not ineffective for failing to request a proper alibi instruction, as Wilson suggests on appeal. The State respectfully disagrees that this issue should be reviewed for ineffective assistance of counsel and declines to stipulate the record is adequate to review the issue now on direct appeal. Notwithstanding, there is no merit to Wilson's claim of ineffective assistance of counsel.

In addition to the authority cited in the previous issue regarding ineffective assistance of counsel claims, this Court has stated, "[t]raditionally, trial counsel's decision regarding whether to request certain jury instruction is considered trial strategy. *Taylor v. State*, 109 So.3 589, 596 (Miss. Ct. App. 2013). The decision for Wilson's trial counsel to not request a separate alibi instruction may have been trial strategy. It is conceivable after the alibi witness, Willie Dotson, testified, trial counsel wanted to focus his strategy on another theory of defense because Dotson gave inconsistent

testimony. Also, the failure to request an alibi instruction did not prejudice Wilson's case. Dotson was offered a photograph purporting to prove that Wilson was working with him all day on April 2, 2012, but Dotson could not get the date right and kept contradicting himself. (Tr. 334-335, 340-341). He even testified that Wilson left around noon for lunch on April 2nd and did not come back because he had been arrested. (Tr. 335-336). Although the judge gave the State's alibi instruction, it would not be error for the court to have refused Wilson's alibi instruction based on the weakness of the evidence supporting his alibi.

Wilson cites *Blunt* and *McTiller* in support of his argument that his trial counsel was ineffective for his first and second issues. In *Blunt*, the Court reversed and remanded the case holding that trial counsel's request for a jury instruction that contained an incorrect recitation of law on self-defense was prejudicial ineffective assistance. *Blunt v. State*, 55 So.3d 207, 211 (¶16) (Miss. Ct. App. 2011). In *McTiller*, the Court reversed and remanded because a jury instruction granted by the trial court did not correctly state the applicable law on accident and trial counsel was ineffective for failing to object to the faulty jury instruction given and did not offer an independent instruction on the law of accident. *McTiller v. State*, 113 So.3d 1284, 1292 (¶12) (Miss. Ct. App. 2013).

Both of these cases are distinguishable from Wilson's case. Instruction S-3 and S-4 both accurately state the law and they create no injustice, as is required to find reversible error. Because neither instruction was faulty, trial counsel's lack of objections and/or submission of independent instructions should fall within the purview of trial strategy that was not prejudicially ineffective.

III. Wilson's sentence is not illegal.

Wilson was convicted of receiving stolen property valued at around $1,400.00, according to the valuation of the owner of the property. (Tr. 298). At the time Wilson committed the crime of receiving stolen property on April 2, 2012, Miss. Code Ann. §97-17-70(4) stated that the sentence

for a person convicted of receiving stolen property valued over $500.00 or more was a maximum of ten years in prison and a potential fine of up to $10,000.00. Miss. Code Ann. 97-17-70(4) (Rev. 2007).

Before Wilson was convicted and sentenced in September of 2012, the legislature amended the statute, effective July 1, 2014, to provide that a conviction of receiving stolen property valued between $1,000.00 and $5,000.00 subjected a defendant to a maximum of five years in prison and a potential fine of $10,000.00. Miss. Code Ann. §97-17-70(4) (Rev. 2014.). Wilson was sentenced by the trial court as a habitual offender to ten years in prison and a $10,000.00 fine. (C.P. 27, Tr. 513).

Miss. Code Ann. §99-19-33 states, as follows:

> If any statute shall provide a punishment of the same character, but of milder type, for an offense which was a crime under pre-existing law, then such milder punishment may be imposed by the court but no conviction, otherwise valid, shall be set aside and new trial granted merely because of an error of the court in fixing punishment.

Miss. Code Ann. §99-19-33. Wilson argued at sentencing that, according to Miss. Code Ann. §99-19-33, he should be sentenced according to the revised version of the statute, with a maximum sentence of five years. (Tr. 511-512).

On appeal, Wilson cites the holding in *Daniel v. State*—"when a statute is amended to provide for a lesser penalty, and the amendment takes effect before sentencing, the trial court must sentence according to the statute as amended." *Daniels v. State*, 742 So.2d 1140, 1145 (¶17) (Miss. 1999). However, the State submits that the trial court has discretion according to the language in §99-19-33 and *may* impose the milder punishment. Therefore, Wilson's sentence is not illegal and should be affirmed.

CONCLUSION

For the foregoing reasons, the State of Mississippi respectfully requests that this Honorable Court affirm Timothy Wilson's conviction and sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing pleading or other paper with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Further, I hereby certify that I have mailed by United States Postal Service the document to the following non-MEC participants:

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