

APPENDIX 1

UNITED STATES DISTRICT COURT

Southern District of Mississippi

UNITED STATES OF AMERICA

v.

DAVIAN WILSON

a/k/a Chaba

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:15cr68DPJ-LRA-001

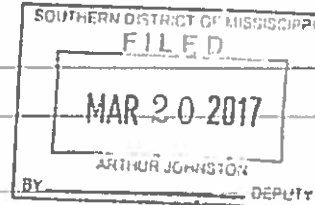
USM Number: 18530-043

Michael L. Scott and Abby W. Brumley

Defendant's Attorney

THE DEFENDANT:

- ☐ pleaded guilty to count(s) _____
- ☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.
- ☒ was found guilty on count(s) the single-count indictment
after a plea of not guilty.



The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 1153, 2 and 1111	Murder (2nd Degree)	08/15/2014	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) _____
- ☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

March 6, 2017
Date of Imposition of Judgment


Signature of Judge

The Honorable Daniel P. Jordan III
Name and Title of Judge

U.S. District Judge

3-20-17
Date

AO 245B(Rev. 11/16) Judgment in a Criminal Case

Sheet 2 — Imprisonment

Judgment — Page 2 of 7

DEFENDANT: DAVIAN WILSON
CASE NUMBER: 3:15cr68DPJ-LRA-001

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
400 months

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends the defendant be housed at FCI Yazoo City, Mississippi, should he meet the designation requirements.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .
☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before _____ .
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
a _____ , with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

AO 245B(Rev. 11/16) Judgment in a Criminal Case

Sheet 3 — Supervised Release

Judgment—Page 3 of 7

DEFENDANT: DAVIAN WILSON
CASE NUMBER: 3:15cr68DPJ-LRA-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of : 5 years

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

AO 245B(Rev. 11/16) Judgment in a Criminal Case

Sheet 3A — Supervised Release

Judgment—Page 4 of 7

DEFENDANT: DAVIAN WILSON
CASE NUMBER: 3:15cr68DPJ-LRA-001

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

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Sheet 3D — Supervised Release

Judgment—Page 5 of 7

DEFENDANT: DAVIAN WILSON
CASE NUMBER: 3:15cr68DPJ-LRA-001

SPECIAL CONDITIONS OF SUPERVISION

- 1) You shall not incur new credit charges or open additional lines of credit without the approval of the probation officer, until such time as the fine is paid.
- 2) You shall provide the probation office with access to any requested financial information, until such time as the fine is paid.
- 3) You shall participate in a program of mental health treatment to include anger management counseling, as directed by the probation office. If enrolled in a mental health treatment program, you shall abstain from consuming alcoholic beverages during treatment and shall abstain for the remaining period of supervision. You shall contribute to the cost of treatment in accordance with the probation office Copayment Policy.
- 4) You shall submit your person, property, house, residence, vehicle, papers, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. You shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.
- 5) You shall participate in a program of testing and/or treatment for alcohol/drug abuse as directed by the probation officer. If enrolled in an alcohol/drug treatment program, you shall abstain from consuming alcoholic beverages during treatment and shall continue abstaining for the remaining period of supervision. You shall contribute to the cost of treatment in accordance with the probation office co-payment policy.
- 6) You shall not possess, ingest, or otherwise use, a synthetic cannabinoid, or other synthetic narcotic, unless prescribed by a licensed medical practitioner and approved by the U.S. Probation Office.

AO 245B(Rev. 11/16) Judgment in a Criminal Case

Sheet 5 — Criminal Monetary Penalties

Judgment — Page 6 of 7

DEFENDANT: DAVIAN WILSON

CASE NUMBER: 3:15cr68DPJ-LRA-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$ 1,500.00	\$

- ☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(f), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$	<u>0.00</u>	\$	<u>0.00</u>
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- ☐ Restitution amount ordered pursuant to plea agreement \$ _____
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

AO 245B(Rev. 11/16) Judgment in a Criminal Case

Sheet 6 — Schedule of Payments

Judgment — Page 7 of 7

DEFENDANT: DAVIAN WILSON
CASE NUMBER: 3:15cr68DPJ-LRA-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
- ☒ in accordance with ☐ C, ☒ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☒ Payment in equal monthly (e.g., weekly, monthly, quarterly) installments of \$ 50.00 over a period of xx xx (e.g., months or years), to commence 60 days (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:

Should the full amount not be paid in full prior to the termination of supervised release, you are ordered to enter into a written agreement with the Financial Litigation Unit of the U.S. Attorney's Office for payment of the remaining balance. Additionally, the value of any future discovered assets may be applied to offset the balance of criminal monetary penalties. You may be included in the Treasury Offset Program allowing qualified federal benefits to be applied to offset the balance of criminal monetary penalties.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVT A assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

APPENDIX 2

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-60197
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

April 20, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

DAVIAN WILSON, also known as Chaba,

Defendant - Appellant

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:15-CR-68-1

Before JONES, SMITH, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Davian Wilson challenges his conviction and sentence, based upon a jury's finding him guilty of second-degree murder, in violation of 18 U.S.C. § 1111. His conviction arose out of an incident in which Wilson, Bell, Cotton, and Willis together attacked Jonis Joe after leaving a party. Joe died of internal bleeding caused by being stabbed numerous times.

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

No. 17-60197

Wilson first contends that, although Joe died of stab wounds, there was insufficient evidence to prove he stabbed him. A jury verdict will be upheld if, when “considering the evidence and all reasonable inferences in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt”. *United States v. Vargas-Ocampo*, 747 F.3d 299, 303 (5th Cir. 2014) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Along that line, the jury “retains the sole authority to weigh any conflicting evidence and to evaluate the credibility of the witnesses”. *United States v. Loe*, 262 F.3d 427, 432 (5th Cir. 2001) (citing *United States v. Millsaps*, 157 F.3d 989, 994 (5th Cir. 1998)). In short, our review is “highly deferential to the verdict”. *United States v. Harris*, 293 F.3d 863, 869 (5th Cir. 2002).

Bell testified he and Wilson each stabbed Joe many times. Bell’s testimony was corroborated by Wilson’s after-the-fact admissions to two separate witnesses that he believed he had killed Joe. It was also corroborated by circumstantial evidence that Wilson possessed a knife on the night of the incident and that he was seen cleaning a knife in a kitchen sink immediately after the incident. Viewing this evidence in the requisite light most favorable to the prosecution, a rational jury could have found Wilson stabbed Joe with malice aforethought. *E.g.*, *Vargas-Ocampo*, 747 F.3d at 303.

Alternatively, Wilson asserts he stabbed Joe in self-defense. Trial evidence established Joe never pointed a gun at Wilson or the other attackers, and Wilson points to no evidence suggesting any of the attackers felt threatened by Joe or believed the force they employed during the assault was necessary to defend themselves. Wilson fails to establish no rational jury could have found he did not act in self-defense. *E.g.*, *id.*

No. 17-60197

Wilson next contends the court abused its discretion in admitting into evidence the clothing Wilson allegedly was wearing on the night of the attack. For the following reasons, the Government met the low evidentiary threshold from which the jury could infer the clothing was removed from Wilson's person after his arrest. *E.g.*, *United States v. Ceballos*, 789 F.3d 607, 618 (5th Cir. 2015) (conclusive proof of authenticity not required for admission).

A photograph of Wilson at the time of his arrest depicts him wearing the same distinctive sweatshirt that was among the clothes admitted at trial; and a law-enforcement officer testified she observed Wilson wearing the same sweatshirt at the time of his arrest. Also among the clothes admitted in evidence was underwear with Wilson's name written on the inside of the waistband. Moreover, the Government presented testimony to establish the chain of custody of the clothes from where they were first examined at a detention center, and their subsequent transfers to an evidence locker at the police station and to the state crime lab—where various items of the clothing were found to have spots of blood belonging to both Wilson and Joe.

Any gaps in the chain of custody or any doubts about authenticity went to the weight of the evidence, not its admissibility. *E.g.*, *United States v. Isiwele*, 635 F.3d 196, 200 (5th Cir. 2011) ("Once the proponent has made the requisite showing . . . flaws in the authentication . . . go to the weight of the evidence"); *United States v. Diggins*, 633 F.3d 379, 383 (5th Cir. 2011) ("Missing links in the chain of custody go to the weight and not the admissibility of evidence and are properly left to consideration by the jury" (internal quotation omitted)). As noted, the court did not abuse its discretion in admitting the clothes in evidence.

Regarding his sentence, Wilson asserts his above-Guidelines sentence of 400 months' imprisonment is substantively unreasonable because the court

No. 17-60197

failed to give sufficient weight to 18 U.S.C. § 3553(a)(6), which required the court to consider “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct”. Wilson preserved in district court his challenge to the substantive reasonableness of his sentence; our review is for abuse of discretion. *E.g.*, *United States v. Diehl*, 775 F.3d 714, 724 (5th Cir. 2015) (citing *United States v. Scott*, 654 F.3d 552, 554 (5th Cir. 2011)).

Wilson’s contention that his sentence is unreasonably long when compared to the average and median sentences federal courts imposed for murder convictions from 2014 to 2016 is unavailing because the national averages “do not reflect the enhancements or adjustments for the aggravating or mitigating factors that distinguish individual cases” and “are basically meaningless in considering whether a disparity with respect to [Wilson] is warranted or unwarranted”. *United States v. Willingham*, 497 F.3d 541, 544–45 (5th Cir. 2007).

Wilson’s assertion that his sentence is unjustly disparate when considering the sentences of Bell (180 months), Cotton (57 months), and Willis (no federal charges brought) is also unavailing. Any disparity between Wilson’s sentence and the sentences of the other parties reflects the fact that Bell and Cotton accepted responsibility, Bell cooperated with the Government, Wilson’s criminal history included more severe and violent offenses, Cotton pleaded guilty to a lesser offense, and Willis was not even indicted in federal court. *E.g.*, *United States v. Kinchen*, 729 F.3d 466, 476 (5th Cir. 2013); *United States v. Guillermo Balleza*, 613 F.3d 432, 435 (5th Cir. 2010); *United States v. Duhon*, 541 F.3d 391, 397 (5th Cir. 2008). Moreover, Wilson instigated the attack on Joe, and there is support in the record for the court’s finding Wilson was primarily responsible for Joe’s death.

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In sentencing Wilson, the district court gave due consideration to 18 U.S.C. § 3553(a)(6) and Wilson's sentencing-disparity claims. Given our highly deferential review, *Diehl*, 775 F.3d at 724, there was no abuse of discretion.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-60197
Summary Calendar

D.C. Docket No. 3:15-CR-68-1

United States Court of Appeals
Fifth Circuit

FILED

April 20, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

DAVIAN WILSON, also known as Chaba,

Defendant - Appellant

Appeal from the United States District Court for the
Southern District of Mississippi

Before JONES, SMITH, and BARKSDALE, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the sentence and conviction of the District Court are affirmed.

APPENDIX 3

720 Fed.Appx. 209 (Mem)

This case was not selected for publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 5th Cir. Rules 28.7 and 47.5. United States Court of Appeals, Fifth Circuit.

UNITED STATES of America, Plaintiff-Appellee
v.

Davian WILSON, also known
as Chaba, Defendant-Appellant

No.

17

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60197

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Summary Calendar

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Filed April 20, 2018

Appeal from the United States District Court for the Southern District of Mississippi, USDC No. 3:15-CR-68-1

Attorneys and Law Firms

Gregory Layne Kennedy, Esq., Assistant U.S. Attorney, Jennifer L. Case, U.S. Attorney's Office, Southern District of Mississippi, Jackson, MS, for Plaintiff-Appellee

Michael L. Scott, Esq., Thomas Creagher Turner, Jr., Esq., Federal Public Defender's Office, Southern District of Mississippi, Jackson, MS, for Defendant-Appellant

Before JONES, SMITH, and BARKSDALE, Circuit Judges.

Opinion

PER CURIAM:

* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

Davian Wilson challenges his conviction and sentence, based upon a jury's finding him guilty of second-degree

murder, in violation of 18 U.S.C. § 1111. His conviction arose out of an incident in which Wilson, Bell, Cotton, and Willis together attacked Jonis Joe after leaving a party. Joe died of internal bleeding caused by being stabbed numerous times.

Wilson first contends that, although Joe died of stab wounds, there was insufficient evidence to prove he stabbed him. A jury verdict will be upheld if, when "considering the evidence and all reasonable inferences in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt". *United States v. Vargas-Ocampo*, 747 F.3d 299, 303 (5th Cir. 2014) (citing *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)). Along that line, the jury "retains the sole authority to weigh any conflicting evidence and to evaluate the credibility of the witnesses". *United States v. Loc*, 262 F.3d 427, 432 (5th Cir. 2001) (citing *United States v. Millsaps*, 157 F.3d 989, 994 (5th Cir. 1998)). In short, our review is "highly deferential to the verdict". *United States v. Harris*, 293 F.3d 863, 869 (5th Cir. 2002).

Bell testified he and Wilson each stabbed Joe many times. Bell's testimony was corroborated by Wilson's after-the-fact admissions to two separate witnesses that he believed he had killed Joe. It was also corroborated by circumstantial evidence that Wilson possessed a knife on the night of the incident and that he was seen cleaning a knife in a kitchen sink immediately after the incident. Viewing this evidence in the requisite light most favorable to the prosecution, a rational jury could have found Wilson stabbed Joe with malice aforethought. *E.g.*, *Vargas-Ocampo*, 747 F.3d at 303.

Alternatively, Wilson asserts he stabbed Joe in self-defense. Trial evidence established Joe never pointed a gun at Wilson or the other attackers, and Wilson points to no evidence suggesting any of the attackers *210 felt threatened by Joe or believed the force they employed during the assault was necessary to defend themselves. Wilson fails to establish no rational jury could have found he did not act in self-defense. *E.g.*, *id.*

Wilson next contends the court abused its discretion in admitting into evidence the clothing Wilson allegedly was wearing on the night of the attack. For the following reasons, the Government met the low evidentiary threshold from which the jury could infer the clothing

was removed from Wilson's person after his arrest. *E.g.*, *United States v. Ceballos*, 789 F.3d 607, 618 (5th Cir. 2015) (conclusive proof of authenticity not required for admission).

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Regarding his sentence, Wilson asserts his above-Guidelines sentence of 400 months' imprisonment is substantively unreasonable because the court failed to give sufficient weight to 18 U.S.C. § 3553(a)(6), which required the court to consider “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct”. Wilson preserved in district court his challenge to the substantive reasonableness of his sentence; our review is for abuse of discretion. *E.g.*, *United States v.*

Diehl, 775 F.3d 714, 724 (5th Cir. 2015) (citing *United States v. Scott*, 654 F.3d 552, 554 (5th Cir. 2011)).

Wilson's contention that his sentence is unreasonably long when compared to the average and median sentences federal courts imposed for murder convictions from 2014 to 2016 is unavailing because the national averages “do not reflect the enhancements or adjustments for the aggravating or mitigating factors that distinguish individual cases” and “are basically meaningless in considering whether a disparity with respect to [Wilson] is warranted or unwarranted”. *United States v. Willingham*, 497 F.3d 541, 544–45 (5th Cir. 2007).

Wilson's assertion that his sentence is unjustly disparate when considering the sentences of Bell (180 months), Cotton (57 months), and Willis (no federal charges brought) is also unavailing. Any disparity between Wilson's sentence and the sentences of the other parties reflects the fact that Bell and Cotton accepted responsibility, Bell cooperated with the Government, Wilson's criminal history included more severe and violent offenses, Cotton pleaded *211 guilty to a lesser offense, and Willis was not even indicted in federal court. *E.g.*, *United States v. Kinchen*, 729 F.3d 466, 476 (5th Cir. 2013); *United States v. Guillermo Balleza*, 613 F.3d 432, 435 (5th Cir. 2010); *United States v. Duhon*, 541 F.3d 391, 397 (5th Cir. 2008). Moreover, Wilson instigated the attack on Joe, and there is support in the record for the court's finding Wilson was primarily responsible for Joe's death.

In sentencing Wilson, the district court gave due consideration to 18 U.S.C. § 3553(a)(6) and Wilson's sentencing-disparity claims. Given our highly deferential review, *Diehl*, 775 F.3d at 724, there was no abuse of discretion.

AFFIRMED.

All Citations

720 Fed.Appx. 209 (Mem)