

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
August 14, 2001 Session

STATE OF TENNESSEE v. ERNEST EDWARD WILSON

**Direct Appeal from the Criminal Court for Davidson County
No. 98-D-2474**

No. M2000-01997-CCA-R3-CD - FILED OCTOBER 17, 2001

James Curwood Witt, Jr., J., concurring and dissenting.

Although I agree with Judge Welles that it is problematic to use voluntary manslaughter as the intermediate offense for the purposes of applying the *Williams* harmless error rule, I concur with Judge Riley in affirming the conviction, based on the facts of the present case and the defendant's use of those facts in formulating a theory of defense. Given the facts, the defendant's theory of defense, and the jury's verdict of second-degree murder, I conclude that the failure to charge the included offenses lesser than voluntary manslaughter was harmless error.

James Curwood Witt, Jr., Judge