

**IN THE COURT OF APPEALS 12/17/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 95-KA-00619 COA**

**MICHAEL HARRISON**

**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

TRIAL JUDGE: HON. MIKE SMITH

COURT FROM WHICH APPEALED: PIKE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

WILLIAM E. GOODWIN

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: CHARLES W. MARIS, JR, SPECIAL ASSISTANT ATTORNEY GENERAL

DISTRICT ATTORNEY: DUNN LAMPTON

NATURE OF THE CASE: CRIMINAL (FELONY)-BURGLARY OF A DWELLING

TRIAL COURT DISPOSITION: BURGLARY OF DWELLING: SENTENCED TO 10 YRS IN  
THE MDOC; PAY FULL RESTITUTION TO THE VICTIM,

BEFORE THOMAS, P.J., BARBER, AND MCMILLIN, JJ.

MCMILLIN, J., FOR THE COURT:

Michael Harrison, standing convicted of burglary by a Pike County Circuit Court jury, appeals to this Court claiming that the evidence against him was insufficient, as a matter of law, to sustain his conviction.

The State's proof showed that Harrison was routinely questioned by a police officer in the early morning hours of the night the crime was committed. At the time, Harrison was walking along a public street and was in possession of several items that would seem unusual for a pedestrian to be carrying at four in the morning. The items included a maroon bag and a black bag, both containing a quantity of individually-wrapped frozen meat cuts. He also had a "party ball" that contained money inside. The officer observed a fresh cut on his hand. Harrison told the policeman that he and his sister, with whom he had been residing, had been in an altercation which resulted in his injury. He explained that he was carrying the various items because he was in the process of moving from his sister's home.

Later that morning, Douglas Hall, who lived in the area, returned to his apartment after working the night shift to discover a broken window in his apartment and blood stains on the glass and drapes. He also discovered a number of missing items, including a maroon bag, a black bag, a quantity of individually-wrapped frozen meat cuts, and a "party ball" that he had converted into a bank in which he estimated there was in excess of \$100.00 in cash. The officer investigating the burglary was the same one who had earlier had the street encounter with Harrison, and, not surprisingly, he recalled the circumstances of their early morning meeting. Harrison was arrested and charged with the crime. None of the stolen items was ever recovered.

In the face of this evidence against him, Harrison claims that the proof was insufficient as a matter of law to sustain a burglary conviction. He relies upon *Murphy v. State*, 566 So. 2d 1201 (Miss. 1990), for the proposition that the State's proof, being entirely circumstantial, was insufficient to convict for its failure to exclude every reasonable alternative hypothesis consistent with innocence. By way of example, he claims that one reasonable explanation for the facts was that someone else stole the items and gave them to him.

In the *Murphy* case, the defendant, convicted of stealing two chainsaws from a business, testified that he had found the chainsaws at a garbage dump while searching for cans to sell. *Murphy*, 566 So. 2d at 1203. There was no direct evidence indicating Murphy's presence at the store where the saws were stolen. The supreme court concluded that, on these facts, his version of the facts was equally as reasonable as the hypothesis advanced by the State, and that the possession of recently stolen property, standing alone, was insufficient to sustain his burglary conviction. *Id.* at 1206.

This case is distinguishable from *Murphy*. Unlike *Murphy*, Harrison offered the jury no evidence in support of an alternate hypothesis that would reasonably explain his possession of the burgled items under what were certainly unusual circumstances. The unsupported hypothesis advanced on appeal appears to conflict directly with the previous explanation offered by Harrison -- the statement made to the police officer that the items were his personal possessions in transit from his sister's residence. This conflict substantially undermines the reasonableness of Harrison's more recent hypothesis.

Harrison advances no other reasonable hypotheses that would support his innocence, and this Court is not inclined to attempt to conjure them on his behalf.

Additionally, the fresh cut on Harrison's hand, coupled with evidence that the burglar had apparently cut himself while breaking out the window at Hall's apartment, would permit a reasonable inference that Harrison was physically at the scene of the burglary, which is one of the key elements missing in the State's proof in the *Murphy* case.

We conclude that the sole hypothesis advanced by Harrison to explain his possession of the fruits of the burglary so near the time of its occurrence is, on the proof, not so 'reasonable' as to compel reversal under *Murphy*. We, therefore, affirm the conviction.

**THE JUDGMENT OF THE PIKE COUNTY CIRCUIT COURT OF CONVICTION OF BURGLARY OF A DWELLING AND SENTENCE OF TEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND ORDER TO PAY RESTITUTION TO VICTIM IS AFFIRMED. COSTS OF THIS APPEAL ARE ASSESSED TO PIKE COUNTY.**

**FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.**