

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2024-KA-01417-COA

**TARIUS J. HARTZOG A/K/A TARIOUS
HARTZOG A/K/A TARIUS HARTZOG**

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF JUDGMENT:	11/21/2024
TRIAL JUDGE:	HON. STANLEY ALEX SOREY
COURT FROM WHICH APPEALED:	COVINGTON COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	OFFICE OF STATE PUBLIC DEFENDER BY: JUSTIN TAYLOR COOK
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: SCOTT STUART
DISTRICT ATTORNEY:	CHRISTOPHER DOUGLAS HENNIS
NATURE OF THE CASE:	CRIMINAL - FELONY
DISPOSITION:	AFFIRMED - 09/29/2026
MOTION FOR REHEARING FILED:	

EN BANC.

LASSITTER ST. PÉ, J., FOR THE COURT:

¶1. Tarius Hartzog was indicted and convicted in Covington County of one count of automobile burglary. On appeal, he argues that the State’s sole evidence connecting him to the burglary was a handprint and that this is insufficient to support his conviction. After review, we find that the circumstances and testimony, in conjunction with the handprint, are sufficient to support the conviction, and we affirm.

FACTS AND PROCEDURAL HISTORY

¶2. Chance Mooney and Cade Eiland planned to meet at the Okatoma Golf Club one day to play a few holes. Eiland got there first, unloaded his gear, locked his truck, and headed to

the course. Mooney called Eiland to tell him he was on the way. Mooney arrived, and he noticed that the lights of Eiland's truck were flashing. He did not see anyone else around.

¶3. Eiland walked back to the parking lot to meet Mooney, and Mooney told him that the truck's lights were flashing, though the horn was not beeping. Eiland walked to the truck and saw that his truck had been damaged. Eiland and Mooney noticed that the keypad on the driver's door had been popped open and the door handle had been pried open. Eiland looked inside the truck and realized that three of his guns were missing—a .45-caliber pistol and two shotguns. Eiland testified that the pistol had been in the driver's side door, and the two shotguns were in the backseat.

¶4. Eiland called the Collins Police Department, who responded to the scene. Officer Pam Wade-Smith dusted the truck for fingerprints. Officer Wade-Smith noticed smudges on the driver's side door, but she was not able to procure a viable print from the smudges. She saw a "very evident" print on the truck's console, which was "very, very dusty because [Eiland] . . . use[d] the truck on his farm." Officer Wade-Smith dusted near the handprint on the console, which she was able to lift and transfer to the crime laboratory for analysis. She was also able to lift a partial fingerprint from the same area. Analysis matched the partial handprint to Hartzog. The fingerprint submitted did not match Hartzog.

¶5. At trial, Eiland and Mooney both testified that they did not know Hartzog and had never seen him before trial. Eiland testified that he had not given Hartzog permission "to go inside" the truck and that he knew of no "reason whatsoever" for Hartzog to have been inside

the truck. Eiland testified, “I know that [Hartzog] did not have permission to be in my vehicle.”

ANALYSIS

¶6. The sole issue raised by Hartzog is that the State failed to present legally sufficient evidence to support the conviction because “its case rested solely on an uncorroborated palm print.”

¶7. When we review a challenge to the sufficiency of the evidence, we “must determine whether, after viewing the evidence 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.” *Ambrose v. State*, 133 So. 3d 786, 791 (¶16) (Miss. 2013). In doing so, “[t]he State receives the benefit of any favorable inferences that reasonably can be drawn from the evidence,” and we should reverse “only where the facts and inferences which were considered point in favor of the defendant on any element of the offense with sufficient force that reasonable men could not have found beyond a reasonable doubt that the defendant was guilty.” *Id.*

¶8. Hartzog argues that a trio of cases from our Supreme Court support a reversal of his conviction, but each is distinguishable.

¶9. In *McLain v. State*, 198 Miss. 831, 24 So. 2d 15 (1945), McLain’s fingerprint was found on the rearview mirror of a car that had been stolen. *Id.* at 15. The driver’s car was stolen from a café and recovered two days later, some miles away. *Id.* at 15-16. The

fingerprint was matched a month later to McLain, who was arrested on an unrelated charge. *Id.* at 16. McLain was charged with stealing the vehicle, and on appeal, the Supreme Court reversed, noting that “[t]he thumb print established conclusively that appellant had been in this car; but when, and under what circumstances[] it was placed on the rear-view mirror, is not revealed by the mere presence of the print, nor is it definitive, of itself, of the specific crime of larceny of the car, since it would be equally as potent as evidence on a charge of trespass or of receiving the car as stolen property.” *Id.*

¶10. In *Corbin v. State*, 585 So. 2d 713 (Miss. 1991), a grocery store was burglarized, and cartons of cigarettes, a coin box, a bag of quarters, and a glove were stolen. *Id.* at 714. Before the burglary was reported, a patrol officer encountered Corbin roughly two blocks from the grocery store, who then dropped the items he was carrying—cigarettes, a coin box, a bag of quarters, and a glove—before fleeing. *Id.* Corbin’s fingerprints were lifted from the cigarette package and later matched to him. *Id.* He was charged with the burglary of the grocery store. *Id.* At trial, an officer testified that the fingerprints indicated that Corbin had touched the cigarette cartons “at some point in time.” *Id.*

¶11. The Supreme Court reversed, noting that the fact that Corbin was later seen possessing items that had been stolen in the burglary could not prove beyond a reasonable doubt that “Corbin was the person who unlawfully entered M & M Grocery with the intent to steal merchandise in that business” and that “the State did not present any evidence placing [Corbin] at the business at any time.” *Id.* at 715. In reversing Corbin’s conviction, the

plurality “announce[d] that a fingerprint as the sole and only proof of guilt is insufficient. Fingerprint evidence must be coupled with some other evidence, especially so when the fingerprint was not found at the crime scene but on some object away from the scene. The State must corroborate this physical evidence with other proof of guilt.” *Id.* at 716.

¶12. And in *Deloach v. State*, 658 So. 2d 875 (Miss. 1995), Deloach was convicted of burglary of a business after his fingerprints were found on a vending machine inside a vocational school that had been vandalized and where Deloach was not a student. *Id.* at 876. A plurality¹ of the Supreme Court noted that the fingerprint proved only that Deloach “had access to the machine at some point in time” and that the “State failed to address the very reasonable hypothesis that Deloach placed his palm print on the vending machine during a time when he had lawful access to the machine.” *Id.* at 877.

¶13. At first glance, these three cases cited by Hartzog seem to support his argument for reversal. But a closer inspection reveals important distinctions. In *McLain*, as noted by the Supreme Court, the fingerprint “established conclusively” that McLain was in the stolen car, but it could not establish that he was the one who stole it—he could have simply trespassed into the car or received it from the actual thief. And in *Corbin*, the fingerprints on the stolen materials similarly linked Corbin only to the stolen materials and not to the scene of the crime itself, leaving open the possibility that he had received the stolen cigarette cartons from

¹ “[A] majority of all sitting judges is required to create precedent, and therefore, it follows that a plurality vote does not create a binding result.” *Buffington v. State*, 824 So. 2d 576, 580 (¶15) (Miss. 2002).

the true burglar. Finally, in *Deloach*, there was no evidence that Deloach could not have touched the vending machine at a lawful time, perhaps at a time when he was lawfully present at the school despite not being a student.

¶14. Here, Hartzog’s handprint establishes conclusively that he was in the truck. Eiland’s testimony establishes that he locked the truck before it was broken into and guns were stolen. Eiland’s testimony also establishes that Hartzog did not have permission to be in the vehicle at any time. Thus, unlike *McLain*, Hartzog’s presence in the truck under these circumstances does not merely raise the possibility that he trespassed or received stolen property. Unlike *Corbin*, the handprint was linked to the scene of the crime—it was *on* the scene of the crime. Unlike *Deloach*, Eiland’s testimony established that there was no lawful time in which Hartzog could have touched the interior of his truck.

¶15. The present case is more analogous to *Cavitt v. State*, 159 So. 3d 1199 (Miss. Ct. App. 2015). In *Cavitt*, law enforcement recovered a latent fingerprint on the metal frame of an apartment window that had been burglarized. *Id.* at 1201 (¶3). The apartment door had been locked and the window screen removed, leading law enforcement to determine that the burglar had entered through the window. *Id.* Fingerprint analysis later led law enforcement to Cavitt, who was found guilty at trial. *Id.* at (¶4). On appeal, this Court rejected Cavitt’s argument that the fingerprint on the window, being the sole piece of evidence against him, was insufficient to support the conviction. *Id.* at (¶8).

¶16. This Court distinguished Cavitt’s case from those in *Corbin* and *Deloach*, noting that

“[u]nlike the print impressions at issue in *Corbin* and *Deloach*, here the location of the fingerprint tends to exclude the possibility that the fingerprint was left at a time other than [that] of the burglary.” *Id.* at 1203 (¶15). The Court stated that law enforcement officers determined that the entry to the apartment was made by forcing the lock on the window, which could only have been reached by removing the screen. *Id.* Plus, other testimony excluded the possibility of an innocent explanation for the removed screen and fingerprint: witnesses testified that the window screen had not been removed recently, and there was no reason that Cavitt would have touched the window. *Id.* at 1203-04 (¶16).

¶17. The same reasoning applies here. The defendant’s palm print was not simply somewhere on the vehicle; it was inside the vehicle. The State presented evidence that the truck door had been forced open. Eiland testified that he did not know Hartzog and that Hartzog “did not have permission to be in” the truck, showing there was no innocent reason for Hartzog to have been in the truck. *Cavitt* makes clear that the relevant inquiry is whether the fingerprint evidence, considered together with the circumstances surrounding its discovery, tends to reasonably “exclude the possibility” that the print was made at a time other than during the commission of the crime.

¶18. As discussed, our review must view the evidence in the light most favorable to the prosecution and grant the State the benefit of any reasonable inference that can be drawn from the evidence. Here, it is reasonable to infer that Hartzog’s handprint was left on the console after he broke into Eiland’s vehicle with the intent to steal the guns that were lying

in the backseat. The jury was presented with evidence that a locked vehicle had been unlawfully entered; that Hartzog's palm print was recovered from inside the vehicle; that the owner did not know Hartzog and had never given him permission to enter the vehicle; and that items were taken from the vehicle.

¶19. Taken together in the light most favorable to the State, this evidence created a reasonable inference from which the jury could conclude beyond a reasonable doubt that Hartzog was the one who broke into the truck with the intent to steal the guns inside. This was all the State had to prove, and although the evidence was circumstantial, it was sufficient. *See* Miss. Code Ann. § 97-17-33(1).²

¶20. Hartzog's conviction and sentence are hereby **AFFIRMED**.

CARLTON AND WILSON, P.JJ., LAWRENCE, EMFINGER AND WEDDLE, JJ., CONCUR. WESTBROOKS, J., DISSENTS WITH SEPARATE WRITTEN OPINION, JOINED BY BARNES, C.J., McDONALD AND McCARTY, JJ.

WESTBROOKS, J., DISSENTING:

¶21. I respectfully dissent. I would find that the sole latent palm print taken from the inside console of a burglarized vehicle is insufficient evidence to support Hartzog's conviction of automobile burglary. Of particular concern is the lack of corroborating evidence of when and under what circumstances the print was made. As a general rule, "a fingerprint as the sole

² "Every person who shall be convicted of breaking and entering, in the day or night, any . . . automobile, truck or trailer in which any goods, merchandise, equipment or valuable thing shall be kept for use . . . with intent to steal therein, . . . shall be guilty of burglary." Miss. Code Ann. § 97-17-33(1) (Rev. 2020).

and only proof of guilt is insufficient.” *Corbin v. State*, 585 So. 2d 713, 716 (Miss. 1991) (quoting *McLain v. State*, 198 Miss. 831, 24 So. 2d 15, 16 (1945)). And of particular significance to this case, “[e]vidence of identity and of presence alone is not equivalent to evidence of guilt of a particular crime[.]” *Id.* (emphasis omitted).

¶22. The majority posits that *Cavitt v. State*, 159 So. 3d 1199 (Miss. Ct. App. 2015), presents a parallel degree of corroborating circumstances to the case at hand. I disagree. In *Cavitt*, an apartment was broken into via a window. *Id.* at 1201 (¶3). The burglar removed the exterior window screen and then forced open the lock on the window. *Id.* The defendant’s fingerprint was found on the metal frame of the window, which could only have happened if the screen was removed. *Id.* The residents testified that the window screen had not been removed during the time they had lived at the apartment. *Id.* at 1203 (¶16). Apartment maintenance staff testified that no recent maintenance had been performed that would require the removal of the screen. *Id.* The detective in the case went back to the apartment complex to speak with the manager to find out whether Cavitt had a known association with the apartment complex. The manager revealed that the defendant’s sister resided at the complex. *Id.* at 1201 (¶4).

¶23. After reviewing all of that corroborating evidence, we concluded that “here the location of the fingerprint tends to exclude the possibility that the fingerprint was left at the time other than at the time of the burglary.” *Id.* at 1203 (¶15). The same degree of corroboration is simply not present in this case. Unlike the defendant whose sister lived at

the apartment complex that was burglarized in *Cavitt*, here the State presented zero evidence that Hartzog had a connection with the golf course or that he had ever been physically present at the golf course—or its vicinity—at any time. The record only shows that the detectives asked if there was video surveillance available, which there was not.

¶24. The majority emphasizes Eiland’s testimony that Hartzog “did not have permission to be in my vehicle.” As analyzed in detail in *McLain*, 24 So. 2d at 15-16, it is insufficient to demonstrate that the print was impressed without permission. In *McLain*, the Mississippi Supreme Court determined that a sole thumbprint found on the rearview mirror was insufficient evidence to uphold a larceny of an automobile conviction. *Id.* at 16. The Court stated that “under what circumstances[] it was placed on the rear-view mirror[], is not revealed by the mere presence of the print, nor is it definitive, of itself, of the specific crime of larceny of the car[.]” *Id.* Further, “[n]o witness testified to having seen appellant in [the town] on the night the car was stolen, or on the day it was recovered; and, as stated, there is no evidence in the record of any kind as to when, or under what circumstances, this print was made on the rear-view mirror.” *Id.* And significantly, even if the print had been made during the course of the defendant committing a crime, the State had the burden to demonstrate proof that it was made at a time corresponding to the specific crime charged. *Id.*

¶25. Similarly, in *Deloach v. State*, 658 So. 2d 875, 876 (Miss. 1995), the defendant’s palm print was recovered from the side of a burglarized vending machine. The vending machine was located in the locked storage room of a school vocational complex that had been

burglarized. *Id.* Noting that the case was entirely circumstantial, the Supreme Court cited the well-established standard at the time that to rely wholly on circumstantial evidence, “the state must prove [the defendant’s] guilt beyond a reasonable doubt and to the exclusion of every reasonable hypothesis consistent with innocence.” *Id.* (quoting *Murphy v. State*, 566 So. 2d 1201, 1204 (Miss. 1990)). The Court rejected the State’s reliance on the “inference that if Deloach ever had access to the machines then it was necessarily at the time of the burglary.” Additionally, the Court compared the ways in which the evidence presented was “analogous” to the evidence presented in *Corbin* and *McLain*. *Deloach*, 658 So. 2d at 877. This included that (1) the defendant had access to the item the fingerprint was left on at some point in time, (2) no testimony placed the defendant in the vicinity, and (3) no stolen items were found with the defendant. *Id.*³

¶26. Hartzog did not have the burden of proof to demonstrate when, where, or why his palm print was in the vehicle. Rather, as in *McLain*, the State had the burden of proof to present corroborating evidence that the print was made contemporaneously to the robbery. It is insufficient that Hartzog did not have permission to be in the vehicle or that the print, whenever it was made, was for a non-innocent reason. While it is accurate that “fingerprint evidence, coupled with evidence of other circumstances tending to reasonably exclude the

³ See also *Corbin*, 585 So. 2d at 716. Our Supreme Court determined in *Corbin* that fingerprints on a stolen pack of cigarettes were insufficient to support a conviction. “The State will not be required to disprove every hypothesis in a criminal trial. The State here, however, did nothing to focus the possibilities of the fingerprints being concurrent with the robbery.” *Id.* at 715-16.

hypothesis that the print was impressed at a time other than that of the crime, will be sufficient to support a conviction[.]” the corroborating circumstances here fall short of the evidence necessary to legally support the conviction. *See DeLoach*, 658 So. 2d at 876-77 (quoting *Wooten v. State*, 513 So. 2d 1251, 1252 (Miss. 1987)). No evidence connected Hartzog with the location of the crime or the stolen items.

¶27. I am concerned that the majority’s holding expands the “reasonable exclusion” standard to permit speculation and assumptions that should not be permissible in the absence of sufficient corroborating evidence of when and under what circumstances the fingerprint was made. Because the prosecution failed to present sufficient evidence to support Hartzog’s conviction for automobile burglary, I would find that the proper disposition to this appeal should be to reverse and render. “In reviewing the sufficiency of the evidence, we ‘will reverse and render if the facts and inferences favor the defendant with such force that reasonable jurors could not find him guilty beyond a reasonable doubt.’” *Jackson v. State*, 372 So. 3d 1080, 1093-94 (¶31) (Miss. Ct. App. 2023) (quoting *Melendez v. State*, 354 So. 3d 944, 952 (¶30) (Miss. Ct. App. 2023)). “[T]he Double Jeopardy Clause precludes a second trial once the reviewing court has found the evidence legally insufficient[.]” *Id.* at 1094 (¶31) (quoting *Burks v. United States*, 437 U.S. 1, 18 (1978)).

¶28. I therefore respectfully dissent.

BARNES, C.J., McDONALD AND McCARTY, JJ., JOIN THIS OPINION.