

IN THE COURT OF APPEALS 12/12/95

OF THE

STATE OF MISSISSIPPI

NO. 94-KA-00153 COA

THOMAS A. CHATMAN

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. RICHARD T. WATSON

COURT FROM WHICH APPEALED: ADAMS COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

PAMELA A. FERRINGTON

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: PAT FLYNN

DISTRICT ATTORNEY: FORREST A. JOHNSON, JR.

NATURE OF THE CASE: CRIMINAL / BURGLARY AND LARCENY OF A DWELLING
HOUSE

TRIAL COURT DISPOSITION: SENTENCED TO SERVE TEN YEARS IN THE CUSTODY OF
THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

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

BARBER, J., FOR THE COURT:

Thomas Chatman was indicted and convicted of burglary and larceny of a dwelling house. He was sentenced to ten years in prison. He now appeals his conviction on the following grounds:

I. THE VERDICT RENDERED BY THE JURY WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE BECAUSE THE PROOF WAS NOT SUFFICIENT TO SUSTAIN THE CONVICTION.

II. THE TRIAL COURT ERRED IN GRANTING INSTRUCTION S-2 BECAUSE APPELLANT'S TESTIMONY OFFERED AN EXPLANATION FOR HIS POSSESSION OF THE MICROWAVE OVEN.

III. THE STATE DID NOT MEET ITS BURDEN TO PROVE CHATMAN GUILTY BEYOND A REASONABLE DOUBT AND TO THE EXCLUSION OF EVERY REASONABLE HYPOTHESIS CONSISTENT WITH INNOCENCE AS IS CONSONANT WITH A CASE BASED WHOLLY UPON CIRCUMSTANTIAL EVIDENCE.

FACTS

Robert Pulley returned to his home on December 19, 1992, and found his kitchen door had been forced open and a microwave oven was missing. Mr. Pulley had been away from home since December 17, so that was established as the earliest time at which the burglary could have occurred. Mr. Pulley reported the incident to the Natchez Police Department. Officer Mike Mullins found Pulley's microwave had been pawned on December 17. Sandra Stampley, an employee of Old South Pawn Shop, wrote a pawn ticket on December 17 for a microwave oven fitting the description given by Mr. Pulley. The person pawning the microwave had identified himself to Stampley as "Robert Smith," although he provided no form of identification. Later, Stampley picked Chatman from a photo lineup as the person who had pawned the microwave oven.

A warrant was then issued for the arrest of Thomas Chatman charging him with burglary of a dwelling house. Neither at the time of his arrest, nor prior to trial, did Chatman give any explanation for his possession of the stolen oven. At trial, Chatman admitted to pawning the oven under an alias but denied that he had stolen it from Pulley's house. According to Chatman's account of events, he was standing on a street corner where he often would "hang out" when an acquaintance he knew only as "Little Man" approached him. "Little Man" then offered Chatman ten dollars to pawn the microwave oven. Chatman testified that "Little Man" did not want to try to pawn the microwave himself because he had no identification. Chatman did not explain why he used false identification himself when he pawned the oven or why he signed a paper stating that it was his property.

ANALYSIS

I. WHETHER THE VERDICT RENDERED BY THE JURY WAS AGAINST THE OVERWHELMING WEIGHT OF THE EVIDENCE BECAUSE THE PROOF WAS NOT SUFFICIENT TO SUSTAIN THE CONVICTION.

It is unclear from the way the assignment of error is phrased whether the appellant is asserting that the evidence was insufficient to support a conviction, thus requiring a JNOV, or whether he is asserting that the conviction was against the weight of the evidence, thus warranting a new trial. Since Chatman never moved for a JNOV, we will only consider whether there was error in the trial court's denial of Chatman's motion for a new trial.

Motions for a new trial challenge the weight of the evidence and "[implicate] the trial court's sound discretion." *McClain v. State*, 625 So. 2d 774, 781 (Miss. 1993). The test for reviewing a denied motion for a new trial is as follows: "New trial decisions rest in the sound discretion of the trial court, and the motion should not be granted except to prevent an unconscionable injustice. [The Mississippi Supreme Court will] reverse only for abuse of discretion, and on review [the Court will] accept as true all evidence favorable to the State." *Id.*

Chatman cites *Murphy v. State*, 566 So. 2d 1201 (Miss. 1990), in support of the proposition that mere possession of stolen articles alone is not enough to convict a person for the crime of burglary. In this case, however, there was more than mere possession. Chatman was in possession of the stolen oven within a very short time period after the theft. He gave a false name when he pawned the oven. He represented that he was the owner of the oven. He never mentioned the alibi of receiving the stolen oven from "Little Man" until trial. Finally, when questioned as to where "Little Man" might be found, Chatman could neither supply the Court with his actual name, nor could he furnish any information as to his whereabouts. While acknowledging that the evidence in this case is circumstantial, we find that taking the evidence and the circumstances surrounding it, in the light most favorable to the State, a reasonable juror could find Chatman guilty of burglary, beyond a reasonable doubt.

II. WHETHER THE TRIAL COURT ERRED IN GRANTING INSTRUCTION S-2 BECAUSE APPELLANT'S TESTIMONY OFFERED AN EXPLANATION FOR HIS POSSESSION OF THE MICROWAVE OVEN.

In the case at bar, the trial court instructed the jury that "the possession of property recently stolen is a circumstance which may be considered by the jury and from which, in the absence of a reasonable explanation, the jury may infer guilt." The appellant cites *Rushing v. State*, 461 So. 2d 710 (Miss. 1984), and *Engbrecht v. State*, 268 So. 2d 507 (Miss. 1972), in support of his assertion that because he offered an explanation for his possession of the stolen oven, the instruction should not have been given. In so doing, Chatman is requesting this Court to rule that a jury may not infer guilt, where the defendant has offered any explanation for his possession of the stolen goods, regardless of how implausible that explanation might be. To do so would defy logic and would obviate the usefulness of

any such instruction which would allow the jury to infer guilt from possession of recently stolen property.

Additionally, the case cited by the appellant does not support this proposition. In *Rushing*, the court provided:

Under Mississippi law, possession of recently stolen property is a circumstance which may be considered by the jury and from which, in the absence of a reasonable explanation, the jury may infer guilt. In order to give rise to an inference of guilt from the fact of possession, the State has the burden of proving possession by the accused of stolen property to have been personal, recent, unexplained, and exclusive.

Rushing, 461 So. 2d at 711.

The appellant focuses his argument on the requirement in the last sentence which requires that the possession be unexplained. He does not, however, acknowledge the qualification contained in the first sentence that the explanation be reasonable. Therefore, we find Chatman's interpretation to be taken out of context and not an accurate statement of the law. *See also Engbrecht v. State*, 268 So. 2d 507, 509 (Miss.1972) ("It is well settled in this State that the possession of property recently stolen is a circumstance which may be considered by the jury and from which, in the absence of a reasonable explanation, the jury may infer guilt of larceny.") (citations omitted.) We find this assignment of error to be wholly without merit.

III. WHETHER THE STATE WAS REQUIRED TO PROVE CHATMAN GUILTY BEYOND A REASONABLE DOUBT AND TO THE EXCLUSION OF EVERY REASONABLE HYPOTHESIS CONSISTENT WITH INNOCENCE AS IS CONSONANT WITH A CASE BASED WHOLLY UPON CIRCUMSTANTIAL EVIDENCE.

Rule 3.07 of the Uniform Circuit and Chancery County Court Rules requires each party to serve on the other party his proposed instructions at least 24 hours prior to trial. The Rule also requires that the attorneys dictate into the record their specific objections to the requested instructions stating the grounds for each objection. The Mississippi Supreme Court in *Barnett v. State*, 563 So. 2d 1377, 1380 (Miss. 1990), stated, "[t]here simply is no justification for counsel to make a general objection to any proposed instruction when he has time to review and ascertain in advance of submission of the instruction to the circuit judge the specific ground for his objection." In *Rayburn v. State*, 312 So. 2d 454,455 (Miss. 1975), the Court explained:

The necessity for these rules is obvious. It is essential that specific objections to instructions be made to the trial judge, in order that errors and omissions may be corrected or supplied before any possible harm can result. A defendant may not tacitly reserve an objection at that point, or wait until after a guilty verdict is returned, meanwhile having

availed himself of the chance to be acquitted, or call attention to an omission or error for the first time on appeal in order to have his conviction set aside.

In *Course v. State*, 469 So. 2d 80 (Miss. 1985), as in the case *sub judice*, the appellant complained that the court should not have granted the State's instructions. Both appellants argue that the instructions failed to set forth the appropriate burden of proof because the State's evidence was wholly circumstantial. Both claim, therefore, that they were entitled to an instruction that the jury must prove their guilt not only beyond a reasonable doubt, but also to the exclusion of every reasonable hypothesis consistent with innocence. *See Course*, 469 So. 2d at 82-83. The supreme court in *Course* was not persuaded by this argument, and in the instant case, neither are we. The court in *Course* noted that, "[a]t no time did the defense fault [the instructions] for failing to set forth a circumstantial evidence burden of proof. Neither did the defense offer a circumstantial evidence burden of proof instruction on its own. We, therefore, find no merit to this assignment of error." *Id.* at 83. In reviewing the record, we can find neither where the defense objected to the State's instruction, nor where they offered a circumstantial evidence instruction of their own. Therefore, in adopting the reasoning of the holding in *Course*, we find no merit in this assignment of error.

THE JUDGMENT OF THE ADAMS COUNTY CIRCUIT COURT OF CONVICTION OF BURGLARY AND LARCENY OF A DWELLING HOUSE AND SENTENCE OF TEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. COSTS ARE ASSESSED AGAINST ADAMS COUNTY.

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