

IN THE COURT OF APPEALS

8/12/97

OF THE

STATE OF MISSISSIPPI

NO. 95-KA-00471 COA

SAMMIE SIPP A/K/A SAMMY LEE SIPP 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. JAMES W. BACKSTROM

COURT FROM WHICH APPEALED: JACKSON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: CALVIN DANIEL TAYLOR

ATTORNEYS FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL

BY: DEIRDRE MCCRORY

DISTRICT ATTORNEY: HARKEY, DALE

NATURE OF THE CASE: CRIMINAL

TRIAL COURT DISPOSITION: BURGLARY OF A DWELLING: SENTENCED TO SERVE A TERM OF 7 YRS WITHOUT THE BENEFIT OF PAROLE IN THE CUSTODY OF THE MDOC; DEFENDANT PAY ALL COSTS ACCRUED IN THIS PROSECUTION

MANDATE ISSUED: 9/2/97

BEFORE McMILLIN, P.J., COLEMAN, AND PAYNE, JJ.

McMILLIN, P.J., FOR THE COURT:

Sammie Sipp was convicted by a jury in the Circuit Court of Jackson County of burglary of a dwelling. Sipp has appealed his conviction to this Court asserting that the evidence against him was insufficient as a matter of law to sustain the jury verdict. Specifically, he argues that the State failed to prove that at the time of entry into the dwelling, he possessed the necessary intent to commit a

separate crime once inside. He asserts, therefore, that at most he is guilty only of the crime of trespass. We disagree with Sipp's contentions and affirm the conviction.

This Court, when considering a challenge to the sufficiency of the evidence in a criminal conviction, reviews the evidence in the light most favorable to the State. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993) (citations omitted). We accept as true all credible evidence consistent with guilt and give the State the benefit of all reasonable inferences that may be drawn from the evidence. *Id.* (citations omitted). We may reverse only upon reaching a conclusion that, when considered in this light, the evidence as to one or more of the essential elements of the crime is so lacking that reasonable and fair-minded jurors could only find the accused not guilty. *Id.* (citations omitted).

There are a number of elements necessary to establish the crime of burglary, but only one has any relevance in this appeal in view of the issue framed by the appellant. We must determine if there was sufficient evidence to permit the jury to reasonably infer that at the time Sipp broke and entered the dwelling in question, he possessed the requisite intent of committing a crime therein -- in this particular case, the crime of larceny. Miss. Code Ann. § 97-17-19 (1972) (repealed in 1996 and replaced by Miss. Code Ann. § 97-17-23 (Supp. 1996)); *Alford v. State*, 656 So. 2d 1186, 1190 (Miss. 1995).

Darlene Sipp, whose residence was alleged to have been burglarized by the defendant, testified that she left home on the day of the crime for a brief period and returned to find the screen of her front window removed. Checking further, she discovered that a dustbuster and an alarm clock were missing from her residence. Though the defendant was her brother, she testified that he did not have permission to enter her house. A neighbor testified that he observed the defendant remove the screen from Darlene Sipp's window and crawl through the window into the house.

The defendant, testifying in his defense, claimed that he had no intention to steal the items he removed from his sister's home. Rather, he claimed that this sister was holding funds that belonged to him, and he was obtaining her property to hold as ransom to secure the delivery of his money. Sipp claimed also to be suffering from a schizophrenic condition; however, his mental capacity was not an issue at trial. Despite his testimony concerning holding his sister's property for ransom, when asked by the prosecution on cross-examination if he intended to steal these items, Sipp responded that he did.

The trial court instructed the jury, at Sipp's request, on the lesser included offense of trespass, yet the jury returned a verdict of guilt on the greater crime of burglary. This Court is of the opinion that the evidence presented by the State, as summarized in this opinion, when viewed in a light favorable to the State, was sufficient to permit the jury to reasonably infer that Sipp possessed the necessary intent to commit a larcenous act at the time he entered the window of his sister's dwelling. Having resolved the sole issue before the Court against the defendant, our duty is to affirm.

**THE JUDGMENT OF THE CIRCUIT COURT OF JACKSON COUNTY OF CONVICTION OF BURGLARY OF A DWELLING AND SENTENCE TO SEVEN YEARS WITHOUT THE BENEFIT OF PAROLE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO JACKSON COUNTY.**

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