

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**ADAM CHISM**

**APPELLANT**

**VS.**

**NO. 2016-KA-01404-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

**JIM HOOD, ATTORNEY GENERAL**

**BY: JOSEPH HEMLEBEN  
SPECIAL ASSISTANT ATTORNEY GENERAL  
MISSISSIPPI BAR NO. 104684**

**OFFICE OF THE ATTORNEY GENERAL  
POST OFFICE BOX 220  
JACKSON, MS 39205-0220  
TELEPHONE: (601) 359-3680**

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES . . . . . iii

STATEMENT REGARDING ORAL ARGUMENT. . . . . 1

STATEMENT OF THE ISSUES. . . . . 1

STATEMENT OF THE CASE. . . . . 1

STATEMENT OF FACTS . . . . . 1

SUMMARY OF THE ARGUMENT. . . . . 5

ARGUMENT. . . . . 5

I. THE TRIAL COURT DID NOT ERR IN PERMITTING THE STATE TO  
INTRODUCE EVIDENCE OF CHISM’S PRIOR CONVICTION FOR  
BURGLARY.

II. THE TRIAL COURT DID NOT ERR IN REFUSING PROPOSED JURY  
INSTRUCTION D-7.

III. THE JURY'S VERDICT WAS SUPPORTED BY LEGALLY SUFFICIENT  
EVIDENCE AND WAS IN ACCORD WITH THE OVERWHELMING  
WEIGHT OF THE EVIDENCE.

CONCLUSION . . . . . 11

CERTIFICATE OF SERVICE. . . . . 12

**TABLE OF AUTHORITIES**

**Cases**

*Arbuckle v. State*, 894 So. 2d 619 (Miss. Ct. App. 2004)..... 9

*Bennett v. State*, 933 So. 2d 930 (Miss. 2006)..... 7

*Bullins v. State*, 868 So. 2d 1045 (Miss. Ct. App. 2004)..... 9

*Bush v. State*, 895 So. 2d 836 (Miss. 2005)..... 9, 10

*Carter v. State*, 953 So. 2d 224 (Miss. 2007). .... 6

*Garrett v. State*, 921 So. 2d 288 (Miss. 2006)..... 7

*Grayer v. State*, 120 So. 3d 964 (Miss. 2013)..... 7, 8, 9

*Jones v. State*, 904 So. 2d 149 (Miss. 2005)..... 5, 6

*Kniep v. State*, 525 So.2d 385 (Miss.1988)). .... 7

*Parker v. State*, 962 So. 2d 25 (Miss. 2007)..... 9, 10

*Rubenstein v. State*, So.2d 735 (Miss. 2006). .... 7

*Windless v. State*, 185 So. 3d 956 (Miss. 2015)..... 6, 7

**Statutes & Rules**

Mississippi Code Annotated section 97-17-23. .... 9

Mississippi Code Annotated section 99-19-83. .... 2

Mississippi Rule of Evidence 404..... 5, 6

## **STATEMENT REGARDING ORAL ARGUMENT**

The State of Mississippi submits that the issues raised by the appellant involve well settled principles of law. Due to the straightforward application of the law and facts in this case, which are fully set forth in the record, the State of Mississippi does not request oral argument.

## **STATEMENT OF THE ISSUES**

- I. THE TRIAL COURT DID NOT ERR IN PERMITTING THE STATE TO INTRODUCE EVIDENCE OF CHISM'S PRIOR CONVICTION FOR BURGLARY.
- II. THE TRIAL COURT DID NOT ERR IN REFUSING PROPOSED JURY INSTRUCTION D-7.
- III. THE JURY'S VERDICT WAS SUPPORTED BY LEGALLY SUFFICIENT EVIDENCE AND WAS IN ACCORD WITH THE OVERWHELMING WEIGHT OF THE EVIDENCE.

## **STATEMENT OF THE CASE**

Adam Chism was convicted, in the Circuit Court of the First Judicial District of Hinds County, the honorable Jeff Weill, Sr. presiding, of burglary of dwelling. Chism was sentenced, as a habitual offender, to life in the custody of the Mississippi Department of Corrections (MDOC) without the possibility of parole.

## **STATEMENT OF FACTS**

On January 16, 2016, Angela Nichols, a patrol officer with the Jackson Police Department, was dispatched to 434 Decelle Street in Jackson to respond to a burglary in progress. T. 132-133. According to Officer Nichols, the police were notified of the suspected burglary in progress by an alarm company. T. 132. Upon arriving on the scene, Officer Nichols observed Chism exiting the

residence carrying a bag. T. 133. Officer Nichols drew her service weapon and ordered Chism to drop the merchandise and get on the ground. T. 133. Chism complied and Officer Nichols placed Chism in handcuffs. T. 133. Officer Nichols inspected the bag and discovered an X-Box One game console. T. 133.

On February 26, 2016, Chism was indicted, as a habitual offender pursuant to Mississippi Code Annotated section 99-19-83, of burglary of a dwelling. C.P. 4. On July 8, 2016, Chism filed a motion in limine seeking to preclude the State from introducing or otherwise referencing at trial, his prior felony convictions. C.P. 28. The trial court heard arguments on the motion during a pretrial hearing on November 18, 2016. T. 8. The trial court reserved ruling on the motion until the appropriate time during trial, and instructed the State to make no references to Chism's prior convictions until addressing the matter with the trial court. T. 9.

A jury trial was held on November 19, 2016. Officer Nichols testified about the events of January 16, 2016, including arresting Chism as he carried stolen property out of the house. Officer Nichols testified that, after placing Chism in custody, she along with other officers, entered the house through the basement door in order to secure the house. T. 137-137. According to Officer Nichols, the door was "totally destroyed" and "torn completely in half." T. 136. Inside the house, Officer Nichols found the living room area in disarray. T. 135. According to Officer Nichols, the couch was "in disarray and messed up . . . thrown about" as though it had been searched for concealed property. T. 165-136. Officer Nichols also testified that there was a bicycle leaning against the wall outside the residence which was later determined to belong to the Kenneth Gray, the owner of the residence. T. 137.

Detective Michael Pugh, of the Jackson Police Department also testified. T. 146. According

to Detective Pugh, he was assigned to investigate the burglary. T. 146. Detective Pugh testified that he took documentary photographs of the scene of the crime and his photographs were introduced into evidence during his testimony.<sup>1</sup> T. 152. According to Officer Pugh, the owner of the residence, Kenneth Gray, was not home at the time of the burglary and he returned to the residence the following day to interview Gray. T. 158.

Kenneth Gray also testified. Gray, who was a student minister at the First Baptist Church of Richland, testified that, at the time of the burglary, he and his wife were in Louiseville, Mississippi leading a youth retreat. T. 172. Gray testified that he was notified of the break-in by his alarm company. T. 172. Through photographic evidence, Gray identified his X-Box One game console that was recovered from Chism, as well as his bicycle that was found outside the house. T. 180. According to Gray, he always kept his bicycle inside the basement. T. 180. Gray also testified that the bag that the X-Box One game console was found in was his wife's work bag and that the bag's contents had been dumped out and the X-Box placed inside. T. 176; 180. Finally, Gray testified that Chism did not have permission to enter his home. T. 182. Following Gray's testimony, the State rested its case-in-chief. T. 190. Chism moved for a directed verdict which the trial court denied. T. 190; 192.

Chism testified in his own defense. T. 196. According to Chism, on the morning of January 16, 2016, his wife was driving him to his father's house for work when the two began arguing because Chism had stayed out late the previous evening. T. 199. Chism testified that he "didn't want it to get violent" so he had his wife pull over and he exited the vehicle. T. 199. As he began

---

<sup>1</sup> Before Detective Pugh was able to document the scene, Gray's father-in-law nailed the door back on the frame to secure the residence. T. 160-61; 174.

to walk down the road, his wife “pulled off [and] she burned a little rubber in her truck.” T. 199. Chism said that he was concerned with his wife’s safety due to the way that she sped off and he wanted to get to a telephone to make sure she was safe. T. 200. Chism stated that he wanted to get to the nearest house to access a telephone. T. 201. Chism claimed that when he came upon Gray’s house the door was opened and he could hear the alarm sounding. T. 202. Chism testified that he approached the house “thinking somebody was hurt . . . or somebody done (sic) burglarized or hurt somebody.” T. 204. Chism claimed that his intention was not to go inside the house and take anything, however, upon entering the house, he saw a bag laying on the floor and as soon as he walked in and picked up the bag, Officer Nichols appeared and placed him under arrest. T. 205-206.

Chism’s wife, Mary Chism, testified that, on the morning in question, she was driving Chism to his father’s house to work when the two began arguing and Chism jumped out of the car. T. 229-230. Chism’s father, Freddy Chism testified that on the day in question, Chism was supposed to come to his house to work but did not show up. T. 232.

The jury found Chism guilty of burglary of a dwelling. T. 290. On July 28, 2016, Chism filed a motion for a new trial and a motion for judgment notwithstanding the verdict (JNOV). C.P. 70; 73. A sentencing hearing was held on September 6, 2016. T. 1. Chism was sentenced, as a habitual offender, to life in the custody of the MDOC without the possibility of parole. C.P. 76; T. 37. Chism filed an amended motion for a new trial on September 14, 2016. C.P. 78. The trial court entered an order denying the post-trial motions on September 22, 2016, and Chism timely appealed. C.P. 83; 86.

## SUMMARY OF THE ARGUMENT

The issues raised by Chism are without merit. The trial court did not err in permitting the introduction of evidence of Chism's prior burglary conviction as the evidence was relevant to demonstrate intent. Likewise, Chism was not entitled to a circumstantial evidence instruction as the State's case consisted of both direct and circumstantial evidence and the jury instructions, when read together, fairly announce the law of the case and create no injustice. Finally, the jury's verdict was supported by legally sufficient evidence and was in accord with the overwhelming weight of the evidence.

## ARGUMENT

### **I. THE TRIAL COURT DID NOT ERR IN PERMITTING THE STATE TO INTRODUCE EVIDENCE OF CHISM'S PRIOR CONVICTION FOR BURGLARY.**

Chism first argues that the trial court erred in permitting the State to introduce evidence concerning his prior conviction for burglary. Rule 404(b) of the Mississippi Rules of Evidence provides:

Other Crimes, Wrongs, or Acts. Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

The Mississippi Supreme Court has held that “[u]sually, evidence of another crime or prior bad act is not admissible. . . . However, evidence or proof of a prior crime or bad act is admissible where it is necessary to show identity, knowledge, intent, motive or to prove scienter.” *Jones v. State*, 904 So. 2d 149, 152 (¶6) (Miss. 2005) (internal citations omitted).

In *Jones*, the defendant, who was on trial for burglary of a dwelling testified that he entered



the residence in order to obtain help after his vehicle broke down. *Id.* at 152 (¶9). The State then introduced evidence of five prior burglary convictions in order to prove intent. As the Mississippi Supreme Court found, “[t]he prior convictions tend to prove, along with other facts, that Jones’ intent was to burglarize the house, not to obtain help.” *Id.* at 153 (¶9). See also *Carter v. State*, 953 So. 2d 224, 231 (¶17) (Miss. 2007) (“[Defendant’s] intent was a necessary element for his conviction, and his prior felony convictions were admitted for limited purposes, permissible under Miss. R. Evid. 404(b), including intent. As such, this Court cannot conclude that the trial court abused its discretion in admitting [Defendant’s] prior felony convictions into evidence.”).

Likewise here, Chism testified that he approached Gray’s home in search of a telephone so that he could call and check on his wife. According to Chism, he heard the alarm and saw the door opened and entered the residence, not with the intent to commit a crime, but because he thought someone inside may have needed help. The trial court found that “given [Chism’s] vigorous assertion of lack of intent . . . the admission of the burglary conviction . . . is extremely relevant and appropriate, in the State’s effort to rebut the defendant’s assertion that he did not intend to burglarize the home.” T. 265. Just as in *Jones* the introduction into evidence of the prior burglary conviction tended to prove that Chism’s intent was in fact to burglarize the home. Accordingly, this issue is without merit.

## **II. THE TRIAL COURT DID NOT ERR IN REFUSING PROPOSED JURY INSTRUCTION D-7.**

Chism next argues that the trial court erred in refusing proposed Defense Instruction D-7, which was a circumstantial evidence instruction.

The grant or denial of jury instructions is reviewed for an abuse of discretion. *Windless v. State*, 185 So. 3d 956, 960 (¶8) (Miss. 2015). The Mississippi Supreme Court has held that “[w]hen

jury instructions are challenged on appeal, [the Court does] not review them in isolation; rather, [the Court] read[s] them as a whole to determine if the jury was properly instructed.” *Id.* (quoting *Rubenstein v. State*, 941 So.2d 735, 787 (¶ 224) (Miss. 2006)). When read together, “if the instructions fairly announce the law of the case and create no injustice, no reversible error will be found . . . . There is no error if all instructions taken as a whole fairly, but not necessarily perfectly, announce the applicable rules of law.” *Rubenstein*, 941 So. 2d at 785 (¶224) (internal citations and quotation marks omitted).

Proposed Defense Instruction D-7 provided:

The Court instructs the jury that if you determine that the State's proof against the Defendant is wholly circumstantial, in that event, the guilt of the Defendant must not only be proved beyond a reasonable doubt but also to the exclusion of every other reasonable hypothesis consistent with innocence.

C.P. 66. The Mississippi Supreme Court has held that “[a] circumstantial evidence case is one where the State is ‘without a confession and wholly without eyewitnesses to the gravamen of the offense charged.’” *Garrett v. State*, 921 So. 2d 288, 291 (¶17) (Miss. 2006) (quoting *Kniep v. State*, 525 So.2d 385, 392 (Miss.1988)). In other words, “[c]ircumstantial evidence cases lack direct evidence[.]” *Bennett v. State*, 933 So. 2d 930, 948 (¶66) (Miss. 2006). However, “[a] defendant is entitled to a circumstantial-evidence instruction; i.e., an instruction that every reasonable hypothesis other than guilt must be excluded to convict, only when the case against him is based entirely on circumstantial evidence, as opposed to direct evidence.” *Grayer v. State*, 120 So. 3d 964, 968 (¶11) (Miss. 2013).

Here, Officer Nichols testified that she observed Chism exiting from within the residence, carrying stolen property. Officer Nichols later observed that the door to the residence had been destroyed. Chism argues that Officer Nichols’ testimony was circumstantial because Officer Nichols

did not see Chism break into the residence. The Mississippi Supreme Court encountered a similar scenario in *Grayer*, 120 So. 3d 964. In *Grayer*, Officer Jason Payne responded to a burglary call at a business in Gulfport, Mississippi. *Grayer*, 120 So. 3d at 966 (¶3). The business was described as two buildings enclosed by a fence. *Id.* Officer Payne observed a man, who was later determined to be Grayer, standing on the inside of the fence in a walkway between the two buildings. *Id.* Officer Payne ordered Grayer to get on the ground, however, Grayer fled and was later apprehended. *Id.* During the ensuing investigation, Officer Payne inspected one of the buildings and discovered an area of sheet metal that had been puled back to make a point of entry. *Id.* at 966 (¶5). A set of speakers were also discovered on the ground in the breeze way, and the business owner later testified that the speakers were not normally kept outside in the breeze way. *Id.* Grayer was convicted of burglary and, on appeal, argued that his trial counsel was ineffective for failing to request a circumstantial evidence instruction. *Grayer*, 120 So. 3d at 966 (¶2). However, the Mississippi Supreme Court held that Grayer was not entitled to a circumstantial evidence instruction noting that “[t]he State produced an eyewitness, Payne, who testified that he saw Grayer inside the perimeter of the business and that he saw speakers on the ground outside the business building . . . . The State also produced the business owner, who testified that the speakers were always kept inside the building[.]” *Id.* at 968 (¶12). Thus, “the State produced direct evidence to the gravamen of the offense charged in the form of eyewitness testimony.” *Id.* at 968 (¶13).

Similarly here, Officer Nichols, responded to the residence and witnessed Chism exit form inside the residence with the X-Box. Officer Nichols also testified that the door of the residence had been “completely destroyed.” She further testified to observing a bicycle leaning against the rear of the house near the basement door. Gray testified that Chism did not have permission to enter his

home, identified the X-Box and the bicycle and testified that the bicycle had been stored inside the residence. Just as in *Grayer*, here, Chism was not entitled to a circumstantial evidence instruction due to the presentation of direct evidence.

Chism was not entitled to a circumstantial evidence instruction because the State's case did not consist entirely of circumstantial evidence. Here, the jury instructions, when read together, fairly announce the law of the case and create no injustice. Accordingly, this issue is without merit.

**III. THE JURY'S VERDICT WAS SUPPORTED BY LEGALLY SUFFICIENT EVIDENCE AND WAS IN ACCORD WITH THE OVERWHELMING WEIGHT OF THE EVIDENCE.**

Chism next argues that the trial court erred in denying his motions for a new trial and for JNOV.

A motion for a judgment notwithstanding the verdict implicates the legal sufficiency of the evidence. *Arbuckle v. State*, 894 So. 2d 619, 622 (¶16) (Miss. Ct. App. 2004) (citing *Bullins v. State*, 868 So. 2d 1045, 1048 (¶12) (Miss. Ct. App. 2004)). The Mississippi Supreme Court has held that “[w]hen reviewing a case for the sufficiency of the evidence, ‘the relevant question is 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.’” *Parker v. State*, 962 So. 2d 25, 26 (¶8) (Miss. 2007) (quoting *Bush v. State*, 895 So. 2d 836, 843 (¶16) (Miss. 2005)).

Mississippi Code Annotated section 97-17-23 provides the elements of the crime of burglary of a dwelling:

Every person who shall be convicted of breaking and entering the dwelling house or inner door of such dwelling house of another, whether armed with a deadly weapon or not, and whether there shall be at the time some human being in such dwelling house or not, with intent to commit some crime therein, shall be punished by imprisonment in the Penitentiary not less than three (3) years nor more than

twenty-five (25) years.

Thus, the elements of burglary are: “(1) the unlawful breaking and entering; and (2) the intent to commit some crime when entry is attained.” *Parker*, 962 So. 2d at 27 (¶9).

Here, Officer Nichols witnessed Chism exiting from inside the residence carrying stolen property. Both she and Detective Pugh testified that back door of the residence had been damaged during entry. Gray identified the X-Box that Chism was carrying as his own, testified that his bicycle had been removed from inside the home, and testified that Chism did not have permission to enter the residence.

The State submits that, viewing the evidence in the light most favorable to the State, it is clear that any rational juror could have found that the State did prove, beyond a reasonable doubt, that Chism committed the crime of burglary as charged in the indictment. Accordingly, this issue is without merit.

Chism also claims that the verdict was against the overwhelming weight of the evidence. When reviewing a claim that a conviction is against the weight of the evidence, a reviewing court will not disturb the verdict unless allowing it to stand would sanction an unconscionable injustice. *Bush v. State*, 895 So.2d 836, 844 (¶18) (Miss. 2005). Even a cursory examination of the facts as stated above shows that the verdict was supported by overwhelming evidence of guilt. To argue otherwise is simply incredulous. No unconscionable injustice occurred, and Chism’s claim is meritless.

**CONCLUSION**

The State of Mississippi submits that the issues raised by Adam Chism are without merit. Based upon the arguments presented herein, as supported by the record on appeal, the State respectfully request that this Court affirm Chism's conviction and sentence.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: /s/ Joseph Hemleben  
JOSEPH HEMLEBEN  
SPECIAL ASSISTANT ATTORNEY GENERAL  
MISSISSIPPI BAR NO. 104684

OFFICE OF THE ATTORNEY GENERAL  
POST OFFICE BOX 220  
JACKSON, MS 39205-0220  
TELEPHONE: (601) 359-3680

**CERTIFICATE OF SERVICE**

I, JOSEPH HEMLEBEN, hereby certify that on this day I electronically filed the foregoing pleading or other paper with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Phillip W. Broadhead, Esq.  
Criminal Appeals Clinic  
University of Mississippi School of Law  
P.O. Box 1848  
University, MS 38677

Further, I hereby certify that I have mailed by United States Postal Service the document to the following non-MEC participants:

Honorable Jeff Weill, Sr.  
Circuit Court Judge  
P.O. Box 22711  
Jackson, MS 39225

Honorable Robert Shuler Smith  
District Attorney  
P.O. Box 22747  
Jackson, MS 39225-2747

This the 30th day of June, 2017.

/s/ Joseph Hemleben  
JOSEPH HEMLEBEN  
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
POST OFFICE BOX 220  
JACKSON, MS 39205-0220  
TELEPHONE NO. (601) 359-3680  
FAX NO. (601) 576-2420