



182 A.D.2d 646, 582 N.Y.S.2d 240
(Cite as: 182 A.D.2d 646, 582 N.Y.S.2d 240)

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Supreme Court, Appellate Division, Second Department, New York.
The PEOPLE, etc., Respondent,
v.
Terence MURNANE, Appellant.
April 6, 1992.

Following jury trial before the County Court, Westchester County, West, J., defendant was convicted of second-degree murder. Defendant appealed. The Supreme Court, Appellate Division, held that circumstantial evidence was insufficient to support conviction.

Reversed.

West Headnotes

Homicide 203 1184

203 Homicide

203IX Evidence

203IX(G) Weight and Sufficiency

203k1176 Commission of or Participation in Act by Accused; Identity

203k1184 k. Miscellaneous Particular Circumstances. **Most Cited Cases**

(Formerly 203k254)

Evidence was insufficient to support defendant's conviction of second-degree murder, notwithstanding his statements to police that he awoke with bloody knife in his jacket and that he had been wearing hat found at scene of crime; knife was never found and examination of defendant's jacket revealed no traces of blood, and another witness testified that defendant was not wearing hat found at scene of crime on night of crime.

****240 Joel A. Brenner**, East Northport (**John Kuttas**, of counsel, Richard Langone, on the brief), for appellant.

Carl A. Vergari, Dist. Atty., White Plains (John Charles Zuroski and **Maryanne Luciano**, of coun-

sel), for respondent.

Before **MANGANO**, P.J., and **BRACKEN**, **PIZZUTO** and **SANTUCCI**, JJ.

MEMORANDUM BY THE COURT.

***646** Appeal by the defendant from a judgment of the County Court, Westchester County (West, J.), rendered August 14, 1987, convicting him of murder in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is reversed, on the law, the indictment is dismissed, and the matter is remitted to the County Court, Westchester County, for the purpose of entering an order in its discretion pursuant to **CPL 160.50**.

The defendant was convicted of murdering Marjorie Myers Lodes on October 25, 1986. On appeal, he argues that the proof of guilt adduced at trial, which consisted entirely of circumstantial evidence, was legally insufficient to support the verdict of guilt. We agree and, accordingly, reverse the judgment of conviction, and dismiss the indictment.

The proper standard for testing the sufficiency of evidence of guilt consisting entirely of circumstantial evidence is that "the facts from which the inference of the defendant's guilt is drawn must be established with certainty, must be inconsistent with his innocence and must exclude to a moral certainty every other reasonable hypothesis" (*People v. Williams*, 35 N.Y.2d 783; see also, *People v. McClean*, 65 N.Y.2d 758, 492 N.Y.S.2d 31, 481 N.E.2d 571, affg 107 A.D.2d 167, 485 N.Y.S.2d 1019 for reasons stated at the Appellate Division; *People v. Washington*, 157 A.D.2d 872, 873, 550 N.Y.S.2d 436; *People v. Padilla*, 146 A.D.2d 813, 814, 537 N.Y.S.2d 290). The circumstantial evidence adduced in this case fails to satisfy this standard. The chief evidence against the defendant was a state-

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ment he made to an investigator, that he had awakened to find, in his jacket, a bloody steak knife and he knew that he did something wrong. However, the knife was never found and examination of the defendant's jacket revealed no traces of blood whatever. In addition, **241 the defendant, in his statement to the police, identified a hat found at the scene of the crime as his. However, another witness for the People testified that the defendant was not wearing the hat found at the scene of the crime on the night of the crime. None of the other forensic evidence tied the defendant to the offense. There was testimony*647 that placed the defendant, at closest, half a mile away from the scene of the crime. In the absence of any evidence, circumstantial or otherwise, linking the defendant to Mrs. Lodes' death, his conviction must be reversed and the indictment dismissed.

In light of the foregoing, we do not reach the defendant's remaining contentions.

N.Y.A.D. 2 Dept.,1992.
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