

70427-3

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No. 70427-3-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

J.H.,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON JUVENILE DIVISION FOR KING  
COUNTY

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APPELLANT'S REPLY BRIEF

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2014 MAY -3 PM 4:52  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON

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## A. ARGUMENT

### **The evidence was insufficient to prove J.H. guilty of residential burglary beyond a reasonable doubt.**

The State maintains that the circumstantial evidence in this case was sufficient to find J.H. guilty of residential burglary beyond a reasonable doubt. It is true that circumstantial evidence is not necessarily less reliable than direct evidence. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980); State v. Gosby, 85 Wn.2d 758, 765-66, 539 P.2d 680 (1975) (adopting federal approach that multiple hypothesis instruction with regard to circumstantial evidence should not be given). Nevertheless, circumstantial evidence has its limits. For example, possession of property from a burglarized residence is circumstantial evidence of guilt. Yet, Washington has retained the rule “that proof of possession of recently stolen property, unless accompanied by other evidence of guilt, is not prima facie evidence of burglary.” State v. Mace, 97 Wn.2d 840, 843, 650 P.2d 217 (1982). The court in Mace, a case decided after Gosby and Delmarter, went on to note that the “reason for the rule is more evident when such possession is established by inference or circumstantial evidence . . . .” Id. Here, as in Mace, the circumstantial evidence linking J.H. to residential burglary was similarly insufficient to find him guilty beyond a reasonable doubt.

To support its argument, the State relies heavily on the testimony of Phan's neighbor across the street, Mendes. See Br. of Resp't at 12-14. The State contends that based on Mendes' description of the person he saw knocking on Phan's door, it is likely that this was J.H. Br. of Resp't at 12-14, 18. The problem with this argument is twofold. First, Mendes did not identify J.H. as the person knocking on the door. RP 28. Second, the trial court did not find that J.H. was the person who knocked on the door. CP 15-20. A finding that J.H. knocked on Phan's door around the time of the burglary would have been a material fact. The absence of a finding regarding a material fact is presumptively regarded as a finding against the party having the burden of proof. State v. Armenta, 134 Wn.2d 1, 14, 948 P.2d 1280 (1997). Thus, in analyzing whether the findings of fact are sufficient to support the conclusion of guilt, this Court must assume that the person who knocked on Phan's door was not J.H.

Under the court's findings and the evidence, a reasonable trier of fact could not conclude that J.H. was guilty of residential burglary beyond a reasonable doubt. J.H. was not found to have knocked at any of the doors in Phan's neighborhood. J.H. was not found to have possessed the bag containing the stolen items. J.H.'s fingerprints were not found at Phan's residence. J.H. was merely seen walking in the area with a person who might have burglarized Phan's home. J.H.'s mere presence and his

possible association with this person does make him guilty of that person's crimes. In re Welfare of Wilson, 91 Wn.2d 487, 491-92, 588 P.2d 1161 (1979); State v. Robinson, 73 Wn. App. 851, 857-58, 872 P.2d 43 (1994). The evidence was insufficient to rationally support a conviction for residential burglary.

## **B. CONCLUSION**

Because the evidence was insufficient for a rational trier of fact to find J.H. guilty of residential burglary beyond a reasonable doubt, this Court should reverse and order the charge dismissed with prejudice.

DATED this 5th day of May, 2014.

Respectfully submitted,



Richard W. Lechich – WSBA #43296  
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Attorneys for Appellant

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DIVISION ONE**

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 70427-3-I
v.	)	
	)	
J. H.,	)	
	)	
Juvenile Appellant.	)	

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 5<sup>TH</sup> DAY OF MAY, 2014, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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X \_\_\_\_\_ 

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