

No. 70427-3-I

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

STATE OF WASHINGTON,

Respondent,

v.

J.H.,

Appellant.

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

APPELLANT'S OPENING BRIEF

RICHARD W. LECHICH
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

TABLE OF CONTENTS

A. INTRODUCTION 1

B. ASSIGNMENTS OF ERROR 1

C. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR..... 2

D. STATEMENT OF THE CASE..... 3

E. ARGUMENT 10

1. The evidence was insufficient to find J.H. guilty of residential burglary..... 10

 a. The State must prove all the elements of the crime beyond a reasonable doubt..... 10

 b. Mere proximity to or association with a probable burglar is insufficient to find a person guilty of burglary. 11

2. Remand for the lesser included offense of criminal trespass would be improper..... 15

F. CONCLUSION..... 16

TABLE OF AUTHORITIES

United States Supreme Court Cases

In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970)..... 10

Washington State Supreme Court Cases

In re Welfare of Wilson, 91 Wn.2d 487, 588 P.2d 1161 (1979)..... 13

State v. Carothers, 84 Wn.2d 256, 525 P.2d 731 (1974) 13

State v. Delmarter, 94 Wn.2d 634, 618 P.2d 99, 101 (1980)..... 11

State v. Hill, 123 Wn.2d 641, 870 P.2d 313 (1994)..... 10

State v. Mace, 97 Wn.2d 840, 650 P.2d 217 (1982) 11

State v. Q.D., 102 Wn.2d 19, 685 P.2d 557 (1984) 11

State v. Rodgers, 146 Wn.2d 55, 43 P.3d 1 (2002)..... 15

State v. Salinas, 119 Wn.2d 192 829 P.2d 1068 (1992). 10

Washington State Court of Appeals

State v. A.M., 163 Wn. App. 414, 260 P.3d 229 (2011)..... 11, 16

State v. Alvarez, 105 Wn. App. 215, 19 P.3d 485 (2001) 10

State v. B.J.S., 140 Wn. App. 91, 169 P.3d 34 (2007)..... 10

State v. J.P., 130 Wn. App. 887, 125 P.3d 215 (2005) 16

State v. Robinson, 73 Wn. App. 851, 872 P.2d 43 (1994)..... 14

Constitutional Provisions

Const. art. I, § 3..... 10

U.S. Const. amend. 14 10

Statutes

RCW 9A.52.025..... 11

RCW 9A.52.070..... 16

RCW 9A.52.080..... 16

A. INTRODUCTION

Guilt by association is a pernicious and fallacious method of deduction. J.H. was seen walking with a person who had likely recently burglarized a home in the neighborhood. Although he did not possess stolen property from the burglarized home and his fingerprints were not found there, the court found J.H. guilty of residential burglary. This finding of guilt rested on J.H.'s mere proximity to and apparent association with the likely burglar, after the purported crime had occurred. Because this evidence was insufficient, this Court should reverse.

B. ASSIGNMENTS OF ERROR

1. Lacking sufficient evidence, the court erred in finding J.H. guilty of residential burglary. Conclusions of Law (CL) II, III; CP 19-20 (court's incorporation of its oral conclusions into the order).

2. The court erred in finding that J.H. broke into Phan's home. Finding of Fact (FF) 3.

3. The court erred in finding that the car Denny saw was following a man. FF 5.

4. The court erred in finding that the person Denny saw going door-to-door was African American. FF 5.

5. The court erred in finding that when people visit Bel-R Greenhouse, they always schedule an appointment. FF 12.

6. The court erred in finding that the two males McCann saw were trying to conceal items into a bag they were carrying. FF 15.

7. The court erred in finding that police responded to numerous 911 calls from Phan's neighborhood. FF 25.

8. The court erred in finding that several witnesses identified J.H. and Ahmed as the reason they called 911. FF 28.

9. The court erred in finding that except for Denny's description of the pants that one of the males wore, the witnesses' testimony was consistent. FF 41.

10. If incorporated into its findings, the court erred in finding that Mendes saw someone carrying a yellow bag. RP 165-66; CP 19-20 (court's incorporation of its oral findings into the order).

11. If incorporated into its findings, the court erred in finding that Mendes identified the people detained by the police as being the same people he saw earlier. RP 165-66; CP 19-20 (court's incorporation of its oral findings into the order).

C. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

J.H. was not identified as being in the neighborhood before the burglary. His fingerprints were not found in the burglarized home. And he did not possess stolen property from the home. He was merely seen after the burglary occurred walking in close proximity with the probable

burglar. Is this evidence insufficient to find J.H. guilty of residential burglary?

D. STATEMENT OF THE CASE

On the morning of September 24, 2012, Thu Phan's residence at 448 SW 126th Street in Burien was burglarized. CP 15 (FF 1).¹ Sometime that same morning, Andrew Denny was driving around his neighborhood. See CP 16 (FF 5-6). Denny lives on 124th Street, which is north of Phan's home on 126th. CP 15-16 (FF 1, 5); see ex. 12;² RP 89. He saw a maroon colored Buick parked on the corner of 124th and 8th Street. RP 7, 13. 8th Street is east of Phan's home. See ex. 12; RP 87. Denny perceived that the two people in the car were staring at him and did not look friendly. RP 8, 12, 14, 17. He described them as big and stocky. RP 15, 17. He also saw a young man leaving a nearby house carrying papers. RP 8. This man was described by Denny as tall, skinny, wearing khaki pants, red hightop tennis shoes, and a red baseball cap.³ RP 8. This situation "bothered" Denny, so he circled around the block. RP 8.

¹ The court's Findings of Fact and Conclusions of Law are attached as "Appendix A."

² A copy of exhibit 12, a map of the area, is attached as "Appendix B."

³ Denny did not testify as to the race, ethnicity, or color of the skin of the people he saw that morning. Accordingly, the court's finding that the young man Denny saw walking house-to-house was African American is not supported by substantial evidence. CP 16 (FF 5). RP 6-20.

After circling around, Denny saw the maroon car was still on 124th Street, but was parked on the wrong side of road. RP 13. Only one person was in the car this time. RP 14. He saw the young man again, who Denny perceived to be going door-to-door, leaving a different house at a jogging pace. RP 13, 14, 17. Before crossing the street, the man waited for Denny to pass and then walked across the street in the direction of the Buick. RP 13, 19. Denny believed that the three males he saw were together.⁴ RP 19. Denny drove home and called 911, telling the operator that he had seen three people, two in a car, and one walking door-to-door. RP 8, 15, 17. In court, Denny testified that J.H. was not the person he saw going door-to-door. RP 15.

50ound 9:30 a.m. that morning, Daniel Mendes was outside his house talking to a neighbor. RP 21-22. Mendes lives on SW 126th Street. He saw a man knock on Thu Phan's door across the street, wait, and leave. CP 16 (FF 8); RP 29. The man did not look through the windows of the

Relatedly, the court also found that except for the discrepancy in Denny's description of the pants one of the males wore, the witnesses' testimony was consistent and credible. CP 19 (FF 41). This finding neglects to mention the red hat and red shoes Denny described was also inconsistent with the descriptions given by the other witnesses of the people they saw. Thus, the discrepancy in Denny's descriptions went further than the pants.

⁴ The court found that Denny saw a maroon car following a young-man who was going house-to-house. CP 16 (FF 5). However, Denny's testimony did not support a finding that the maroon car was following the young man. The finding as to following should be disregarded for lack of substantial evidence.

house. RP 29. Mendes described the man as young, slender, African American, about six-feet tall, wearing dark pants, and having short hair. CP 16 (FF 16). Unlike the person Denny saw, Mendes did not believe the person had papers in his hands and did not remember anything distinctive about his shoes. RP 30-31.

Also that morning, Kimberly McCann was working at Bel-R Greenhouse, which is immediately north of Phan's home on 126th Street and extends further north to 124th Street. CP 16 (FF 11, 13), RP 65. The Bel-R property consists of six green houses and two fields. RP 65. There is not much foot traffic on the property because the company sells wholesale, mostly delivers, and does not get many visitors.⁵ RP 65.

Through a window, McCann saw two people walking north on the driveway of where employees park their cars toward 124th street. RP 68. She identified them as black males of average build and height. RP 69. She believed they had a plastic bag, which they were "juggling" items in and out of.⁶ RP 69, 73. McCann lost sight of them after they reached

⁵ The court found that if "a customer decides to visit, they always schedule an appointment." FF 12 (CP 16). While McCann testified that Bel-R receives few visitors, she did not testify that customers always schedule an appointment. This part of the finding should be disregarded for lack of substantial evidence.

⁶ The court found that both males "were trying to conceal items into the bag they were carrying." FF 15 (CP 16). While McCann saw them "juggling stuff" out of the bag and she saw one hold the bag while the other put an

124th street and turned east towards 4th avenue. RP 69. She left the office and followed. See RP 71. A couple of minutes later she saw them near a house across 124th Street heading back south in her direction. RP 71. They did not have the bag. RP 71. The police arrived and detained the two. RP 73. McCann told the police about the bag and that she thought it might be near a fence. RP 74. McCann believed that she saw a total of four people being arrested. RP 82, 84.

Shortly before the two young men were arrested, William Barker, was at home on 417 SW 124th Street, relaxing. CP 17 (FF 19), RP 46. The Bel-R property surrounds his home except for 124th Street to the north. CP 17 (FF 19). Barker's dog, who barks whenever she hears or sees someone in front of the house, barked sometime around 10:00. RP 52. Barker looked outside to the north and saw two African-American males. RP 55. One was taller than the other and was wearing all black. RP 55. The shorter one was wearing grey. RP 55. Neither was wearing khakis. RP 58. The shorter one was carrying what Barker believed was a small yellow "Prestone" container, but he later identified it as a bag. RP 52, 54, 59. Barker went back to relaxing.

unknown object inside, she did not perceive that they were trying to "conceal" any items. RP 69, 72-73. The court's finding that the two were trying to conceal items into the bag they were carrying should be disregarded for lack of substantial evidence.

About five-minutes later, Barker heard his dog bark again. RP 52. The two young men were across the street in his neighbor's driveway. RP 53. He did not notice a yellow bag or container. RP 53. The taller one was looking around the street like he dropped something. RP 56. The two walked south toward 124th Street. RP 53. Barker, a military police officer, perceived their actions to be "furtive" and "peculiar." CP 17 (FF 19, 21). He called 911.⁷ RP 53. Barker went outside and saw that the police were apprehending the two males he had noticed. RP 56-57.

Deputy Michael Glasgow was one of the police officers who arrived on the scene. RP 89. After some people pointed at the two young men, he and Officer Mansanarez detained them. RP 90. The person Glasgow detained was Zakariah Ahmed while the person Officer Mansanarez detained was J.H. RP 90, 103. Deputy Roy Galusha arrived on the scene. RP 107. The deputies found a yellow bag lying on the ground over a fence at a nearby residence. CP 18 (FF 30).

Inside the bag, police found items belonging to Phan. CP 18 (FF 32). The officers contacted Phan. Phan had left that morning around 9:30

⁷ The court found the police officers had responded to numerous 911 calls from Phan's neighborhood. FF 25 (CP 17). Only Denny and Barker testified to calling 911. While Officer Glasgow testified that he heard on his police radio that there was some people "calling in" about people going door-to-door, the number of people was not quantified. RP 86. Because there was not substantial evidence of a great number 911 calls, the finding that the officers responded to "numerous" 911 calls should be disregarded.

for a doctor's appointment. CP 15 (FF 2). When she got home, the police were at her home. CP 15 (FF 2). Phan's backdoor was broken and items were missing from her home. CP 15 (FF 2). Phan identified some of the items in the bag as belonging to her. RP 38-41. Deputy Galusha gathered latent prints from the home. RP 113, 118. Anne Torres, a fingerprint analyst, testified that one of the print cards taken from a window screen outside was "individualized" to Ahmed. RP 128, 135. All the prints cards, however, excluded J.H. RP 135.

Accused of residential burglary and possession of stolen property in the third degree, J.H. was tried before the bench in juvenile court on March 18 and 19, 2013. CP 5-6, 15. The court, while noting the evidence was circumstantial and that some of the descriptions by the witnesses were inconsistent, determined the evidence was sufficient to find J.H. guilty of residential burglary:

There is a limit to the value of any evidence, including circumstantial evidence, however, sometimes circumstantial evidence adds up and becomes far more than mere coincidence. I do not know and will not conclude that the person that Mr. Denny saw and described as wearing a red hat and red hightops was either Mr. Hill or Mr. Ahmed. It doesn't fit the descriptions by the other people. However, I do believe that in a very short period of time the testimony of Mr. Barker, Ms. McCann and Mr. Mendes, all of whom saw what was happening in a short period of time, all of whom identified the people the police had detained as the people they had seen carrying the yellow bag and then going without the yellow bag combined with the testimony

about this area and the map, Particularly Exhibit 12, which shows the ingress and egress from this property and a driveway that goes, partly paved, mostly not paved, from 124th over to 4th Avenue South. The locations where [J.H.] and Mr. Ahmed were sighted. The fact that [J.H.] was arrested with Mr. Ahmed and Mr. Ahmed's prints were found on the screen, that is far more than coincidence, that is a lot of circumstantial evidence that places Mr. Hill at the scene of this residential burglary.

RP 165-66.⁸ While finding J.H. guilty of burglary, the court found J.H. not guilty of the charge of possession of stolen property, reasoning that there was no evidence establishing that J.H. actually possessed the property. CP 19 (CL IV); RP 167 (“there is no testimony . . . that [J.H.] actually was in possession of that property . . .”).

The court ordered J.H. be committed to Juvenile Rehabilitative Administration for 52 to 65 weeks.⁹ CP 9. J.H. appeals.

⁸ Contrary to the trial court’s statement, Mendes did not testify about seeing a bag, yellow or otherwise, and did not witness the police detaining J.H. and Ahmed. RP 21-33. And the court did not find that the person Mendes saw knocking at Phan’s house was J.H. or Ahmed. CP 16 (FF 8, 9). These findings should also be disregarded for lack of substantial evidence.

⁹ This detention was to run consecutive to another order of detention of identical length based on a separate disposition. CP 10. This disposition, along with two others, are linked on appeal (# 70428-1; # 70429-0; and # 70426-5).

E. ARGUMENT

1. The evidence was insufficient to find J.H. guilty of residential burglary.

a. The State must prove all the elements of the crime beyond a reasonable doubt.

The State bears the burden of proving all the elements of an offense beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); U.S. Const. amend. 14; Const. art. I, § 3. In a sufficiency of the evidence challenge, the test is whether after viewing the evidence in the light most favorable to the State, a rational trier of fact could have found all the elements of the offense beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). In reviewing a juvenile court adjudication, the appellate court decides whether substantial evidence supports the trial court's findings of fact and whether the findings support the conclusions of law. State v. B.J.S., 140 Wn. App. 91, 97, 169 P.3d 34 (2007). “Substantial evidence exists where there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding.” State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). “The findings of fact must support the elements of the crime beyond a reasonable doubt.” State v. Alvarez, 105 Wn. App. 215, 220, 19 P.3d 485 (2001). Conclusions of

law are reviewed de novo. State v. A.M., 163 Wn. App. 414, 419, 260 P.3d 229 (2011).

b. Mere proximity to or association with a probable burglar is insufficient to find a person guilty of burglary.

“A person is guilty of residential burglary if, with intent to commit a crime against a person or property therein, the person enters or remains unlawfully in a dwelling other than a vehicle.” RCW 9A.52.025.

Circumstantial evidence is not necessarily less reliable than direct evidence. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99, 101 (1980). There are, however, limits. For example, it is well settled law in Washington that possession of stolen property, unless accompanied with other evidence of guilt, is insufficient to prove burglary. State v. Q.D., 102 Wn.2d 19, 28, 685 P.2d 557 (1984); State v. Mace, 97 Wn.2d 840, 843, 650 P.2d 217 (1982). Other evidence of guilt that, when accompanied with evidence of possession, is sufficient to prove burglary includes: a false or improbable explanation of possession, flight, use of a fictitious name, or the presence of the accused near the scene of the crime. Q.D., 102 Wn.2d at 28. Hence, in Mace, our Supreme Court reversed a conviction for burglary for lack of sufficient evidence because the evidence proved only that the defendant might had recently possessed stolen bank cards. Mace, 97 Wn.2d at 842-43. The Court noted that the

“reason for the rule is more evident when such possession is established by inference or circumstantial evidence . . . rather than direct evidence.” Id. at 843.

Here, J.H. was not found in possession of Phan’s property. And no evidence showed that J.H. was ever at Phan’s house. J.H.’s fingerprints were not found at Phan’s house. Mendes did not identify J.H. as the person who knocked on Phan’s door that morning. Denny did not identify J.H. as the person who was going door-to-door. Further, his description of that person—someone wearing khakis, red shoes, and a red hat—did not match J.H. Thus, the court did not find that the person Denny saw going door-to-door was J.H. or Ahmed. RP 165; CP 19-20 (court’s incorporation of its oral findings and conclusions).

The evidence in support of guilt was purely circumstantial and, like in Mace, too weak to justify a finding of guilt. No evidence directly placed J.H. at Phan’s residence. The evidence consisted of J.H. being seen walking with Ahmed in Phan’s neighborhood shortly after the burglary had likely occurred. Ahmed was seen carrying a bag, which was later recovered and found to contain items from the burglarized home.¹⁰ Ahmed’s fingerprints were later found at the burglarized home.

¹⁰ While McCann saw two males “juggling” items out the bag, the court found J.H. not guilty of possession of stolen property. RP 69; CP 19 (CL IV).

Based on this evidence, J.H. was charged and found guilty as a principal of residential burglary. CP 5-6, 15. “[A]nyone who participates in the commission of a crime is guilty of the crime and should be charged as a principal, regardless of the degree or nature of his participation.” State v. Carothers, 84 Wn.2d 256, 264, 525 P.2d 731 (1974). “Mere knowledge or physical presence at the scene of a crime neither constitutes a crime nor will it support a charge of aiding and abetting a crime.” In re Welfare of Wilson, 91 Wn.2d 487, 491-92, 588 P.2d 1161 (1979), quoting State v. J-R Distributors, Inc., 82 Wn.2d 584, 593, 512 P.2d 1049 (1973). Accordingly, the State had to prove that J.H. participated in the burglary. The State failed to carry this burden.

This case is analogous to other cases where convictions were reversed on appeal because the defendant was found guilty based on his mere presence or proximity to the crime. For example, in Wilson, the Court reversed a reckless endangerment conviction that was based on the juvenile defendant’s mere presence at the scene of the crime. In re Welfare of Wilson, 91 Wn.2d at 492. There, a group of youths had been pulling a rope taut across a road as the juvenile defendant stood by. Id. at 489-90. He was found guilty as an accomplice. Id. at 490. Our Supreme Court reversed, holding that “something more than presence alone plus

knowledge of ongoing activity must be shown” to find a person guilty. Id. at 492.

For similar reasons, this Court reversed a robbery disposition based on accomplice liability in State v. Robinson, 73 Wn. App. 851, 872 P.2d 43 (1994). There, without any warning, a passenger in the juvenile defendant’s car got out at an intersection, robbed a 14-year-old girl of her purse, and got back into the car. Id. at 852. Because the robbery was completed by the time the robber re-entered the car and the defendant was merely present at scene of the crime, there was insufficient evidence to find that he was an accomplice to the robbery. Id. at 46-47.

Here, while J.H. was seen walking with Ahmed in Phan’s neighborhood, no evidence placed him directly at Phan’s house. He was merely seen later with Ahmed, whom the evidence pointed to as being the probable burglar. Thus, the evidence was even more tenuous than in Wilson and Robinson, where the evidence showed that the defendant was actually at the scene of the crime. And like in Robinson, when J.H. was seen with Ahmed, the crime was completed. As the court’s findings and rejection of the charge of stolen property reveal, J.H. did not possess Phan’s property. Ahmed did. Under Wilson and Robinson, J.H.’s mere presence in the neighborhood and his close proximity to Ahmed was insufficient to prove that he participated in the burglary.

The disposition of guilt in this case rests on a theory of guilt by association. Based on the evidence of Ahmed's guilt, the court essentially inferred that J.H. must also be guilty because he was seen with Ahmed in Phan's neighborhood shortly after the burglary. See RP 166 (noting facts that J.H. and Ahmed were sighted together, J.H. was arrested with Ahmed, and Ahmed's prints were found at Phan's house). This kind of "guilt by association" theory was implicitly rejected in Wilson and Robinson. Moreover, reasoning based on "guilt by association" is fallacious. A person's association does not make him or her responsible for another's acts or views. J.H.'s possible association with a burglar no more makes him guilty of burglary than Jesus of Nazareth's association with sinners and tax-collectors made him a sinner or tax-collector.¹¹

This Court should hold that the evidence was insufficient to find J.H. guilty of residential burglary beyond a reasonable doubt and order the charge dismissed with prejudice. State v. Rodgers, 146 Wn.2d 55, 60, 43 P.3d 1 (2002).

2. Remand for the lesser included offense of criminal trespass would be improper.

This Court should reject any request by the State to remand for entry of the lesser included offense of criminal trespass. See A.M., 163

¹¹ See Mark 2:13-17 (New International Version).

Wn. App. at 421 (when reversing a disposition for insufficient evidence, the appellate court may remand for entry on judgment on a lesser included offense when the offense was necessarily proven). Criminal trespass is a lesser included offense of burglary and requires one enter or remain unlawfully in a building or upon the premises of another. State v. J.P., 130 Wn. App. 887, 895, 125 P.3d 215 (2005); RCW 9A.52.070, 9A.52.080. Here, there was insufficient evidence to prove that J.H. entered Phan's premises. Thus, remand would be improper because criminal trespass was not proven.

F. CONCLUSION

Applying principles from well-established precedent, this Court should hold that a person's mere proximity to or association with a probable burglar, after the crime is complete, is insufficient to prove burglary beyond a reasonable doubt. Because J.H.'s guilty disposition for residential burglary rested on mere proximity and association, this Court should reverse and order the charge dismissed with prejudice.

DATED this 4th day of February, 2014.

Respectfully submitted,



Richard W. Lechich – WSBA #43296
Washington Appellate Project
Attorneys for Appellant

Appendix A

The Honorable Judge Barbara Mack
Hearing Date April 18, 2013 at 1 30 pm
Hearing Location Courtroom 2

FILED
KING COUNTY WASHINGTON
JUN 24 2013
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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY
JUVENILE DIVISION

STATE OF WASHINGTON,

Plaintiff,

vs

JAHAD V D HILL,
B D 04/18/95

Respondent

No 12-8-02567-5

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
PURSUANT TO CrR 6 1(d)

THE ABOVE-ENTITLED CAUSE having come on for fact finding on March 18, 2013, and March 19, 2013, before the Honorable Judge Barbara Mack in the above-entitled court, the State of Washington having been represented by Eric Shelton, the respondent appearing in person and having been represented by Dennis McGuire, the court having heard sworn testimony and arguments of counsel, and having received exhibits, now makes and enters the following findings of fact and conclusions of law

FINDINGS OF FACT

- 1 On the morning of September 24, 2012, between 9 30 and 9 53, the home of Thu Phan, at 448 S W 126th Street in Burien, King County, WA was burglarized
- 2 Ms Phan left for a doctor's appointment at 9 30 that morning, and got a call from a police officer before she arrived home When she got home she found the police were there, her back door was broken, and items were missing from her bedroom

ORIGINAL

FINDINGS OF FACT AND CONCLUSIONS OF LAW
PURSUANT TO CrR 6 1(d) - 1

Daniel T Satterberg, Prosecuting Attorney
Juvenile Court
1211 E Alder
Seattle Washington 98122
(206) 296 9025 FAX (206) 296 8869

1 3 Among the items missing, were an iPhone case, a wallet, a game controller, jewelry, and
2 paperwork Two youths, later identified as Jahad Hill and Zakariya Ahmed broke into Thu
Phan's home—taking her jewelry, wallet, belt, and other personal items

3 4 Phan does not know either the respondent or Zakariya Ahmed and did not give them
4 permission to enter her home or take her belongings

5 5 Andrew Denny lives nearby on SW 124th Street Around 9 30 that morning, Denny saw a
6 maroon car following a young African American male who was walking from house-to-
house There were two other males inside the car

7 6 This concerned Denny, so he drove around the block to see what the male and the car were
8 doing When he returned, he noticed that the car was parked on the wrong side of SW 124th
9 Street Only one male was in the car The younger male, wearing khakis, was walking out
between 7th Avenue SW and SW 124th Street The second time he saw him the younger
male was jogging across the street as Denny drove by

10 7 Mr Denny called 911

11 8 Daniel Mendes lives across the street from Phan on SW 126th Street At 9 30 that morning,
12 Mendes was out in his front lawn He saw a male walk up to Phan's house, knock on her
door, and walk away

13 9 Mendes described the male that knocked on Phan's door as young, African American, six
feet tall, slender, wearing dark pants, with short hair

14 10 Kimberly McCann works for Bel-R Greenhouse in Burien

15 11 The Bel-R property is immediately to the north of Phan's home There are no roads
16 separating Bel-R property and Phan's home—only fences and additional homes

17 12 Bel-R delivers most of its products to retailers or other large businesses, as they only sell
18 wholesale Because Bel-R only sells wholesale, very few people visit its property If a
customer decides to visit, they always schedule an appointment

19 13 After 9 30 that morning, McCann looked out her office window and saw two people
20 walking up the driveway where employees park their cars They were walking away from
Phan's home, heading directly north

21 14 Both males were walking fast, toward SW 124th Street, and were juggling items in and out
22 of a bag they were holding Both males were trying to place the items into the bag they
were carrying They were "in a hurry "

23 15 The two were trying to conceal items into the bag they were carrying, McCann lost sight of
24 them temporarily as they made their way toward the intersection of SW 124th Street and 4th
Avenue SW She went outside so she could see what they were doing

1
2 16 As McCann approached SW 124th Street, she saw the two run from out behind a house with
3 a fence along its driveway as shown in State's Exhibit #11 When she saw them by the
4 fence, they were no longer carrying the bag or items that they had just been carrying

5
6 17 After the two came back toward SW 124th Street, McCann saw William Barker

7
8 18 She also saw a police officer at the corner She told the police officer about the bag after the
9 two males were apprehended

10
11 19 William Barker, who is a military police officer at Joint Base Lewis McChord, rents a house
12 from Bel-R His home is near SW 124th Street and 4th Avenue SW—less than a block
13 away from Phan's home Barker's home is bordered by SW 124th Street to the north and
14 Bel-R property to the west, east, and south

15
16 20 Barker owns a small dog, who barks whenever she hears or sees someone in front of their
17 house Sometime after 9 30 that morning, Barker's dog began to bark When Barker looked
18 outside his window to see what his dog was barking at, he saw two males, later identified as
19 Hill and Ahmed, walking on SW 124th Street right in front of his house The shorter male,
20 Ahmed, was carrying a yellow bag

21
22 21 Barker described Hill's and Ahmed's actions as "furtive" and "peculiar"

23
24 22 Barker went back to watching his television, when—less than five minutes later—his dog
25 started to bark again He looked outside his front window and saw Hill and Ahmed walking
26 down his neighbor's driveway back towards SW 124th Street As they made their way back
27 toward SW 124th Street, Hill and Ahmed walked along his neighbor's fence line as
28 reflected in State Exhibit #11

29
30 23 When Barker saw Hill and Ahmed walk along his neighbor's fence line, the yellow bag that
31 Ahmed had been carrying had disappeared While neither male was holding a bag, both Hill
32 and Ahmed were acting like they were looking for something The taller one, Hill, was
33 wearing dark clothing

34
35 24 Because Barker's neighbor is elderly and hard of hearing, Barker called 911 and went
36 outside to see what was going on At 9 53 a m , when Barker got outside, police had already
37 detained Hill and Ahmed

38
39 25 Officers Glasgow, Galusha, Gates, MPO Mansanarez, and other officers had responded to
40 numerous 911 calls from Phan's neighborhood

41
42 26 When Glasgow got to Phan's neighborhood, Gates had already stopped a maroon car less
43 than a block from Phan's home (and approximately two blocks away from where Denny had
44 reported seeing a maroon car earlier that morning)

1 27 As Glasgow was assisting Gates, he was flagged down by several citizens up on SW 124th
2 Street The citizens were pointing at Hill and Ahmed as they walked west down SW 124th
Street toward 4th Avenue SW

3 28 Glasgow noticed that the males looked like they were in a hurry, but slowed down as he
4 approached Glasgow detained Hill and Ahmed after several witnesses identified them as
being the reason they called 911

5 29 Ahmed was out of breath and sweaty

6 30 Galusha arrived shortly after Glasgow After he spoke with several witnesses, Glasgow and
7 Galusha went into the fenced yard across the street from Barker's home and found a yellow
bag lying on the ground Mansanarez found a PlayStation console in a nearby bush

8 31 Both of these items were found by the driveway where McCann and Barker saw Hill and
9 Ahmed walking as reflected in State Exhibit #11

10 32 Phan's jewelry, wallet, belt, and other personal items were inside the yellow bag

11 33 The yellow bag that Galusha found was the same bag that Hill and Ahmed were carrying
when they cut through Bel-R's property and when they walked past Barker's house

12 34 Because the yellow bag also contained Phan's contact information, officers were able to
13 determine Phan's address and drove to her home

14 35 When they arrived at Phan's home, officers noticed that her back doorframe had been
15 cracked and her backdoor was open One of her windows was also open and one of her
window's screens had been ripped off and was lying on the ground

16 36 Police called Phan to tell her that her home had been broken into

17 37 When Phan returned home from her doctor's appointment in Edmonds, she told police that,
18 when she left, her home's doors and windows were locked, her house clean, and that neither
her backdoor nor her window screen were damaged

19 38 After Galusha secured Phan's home, he lifted several latent fingerprints from her home In
20 particular, he lifted one fingerprint from a window screen that had been ripped off Phan's
window

21 39 Police took Phan to the precinct and she identified some of the items that Hill and Ahmed
were carrying in their yellow backpack as her property

22 40 Latent Print Examiner, Anne Torres, later determined that the fingerprint lifted from Phan's
23 window screen belonged to Ahmed

1 41 Except for a discrepancy in Denny's description of the pants one of the males wore, the
2 witnesses' testimony was consistent and credible

3 **CONCLUSIONS OF LAW**

4 ~ I

5 The above-entitled Court has jurisdiction of the subject matter and of the respondent in
6 the above-entitled cause

7 II

8 The state has proved the following elements of Residential Burglary, RCW 9A 52 025,
9 beyond a reasonable doubt

10 (1) On or about September 24, 2012, the respondent, together with others, unlawfully
11 entered or remained unlawfully in a dwelling,

12 (2) The entering or remaining was with intent to commit a crime against a person or
13 property therein, and

14 (3) That this act occurred in the State of Washington

15 III

16 The respondent is guilty of the crime of Residential Burglary as charged in the Amended
17 Information

18 IV

19 The state has not proven beyond a reasonable doubt that the respondent is guilty of
20 Possession of Stolen Property in the Third Degree

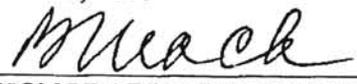
21 V

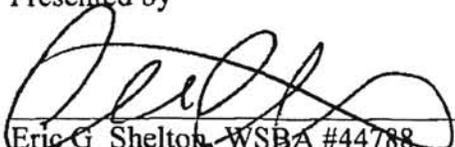
22 Judgment should be entered in accordance with Conclusions of Law III and IV

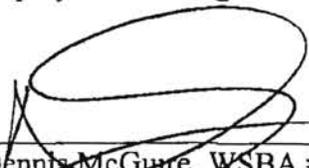
23 In addition to these written findings and conclusions, the Court hereby incorporates its
24

1 oral findings and conclusions as reflected in the record

2 DONE IN OPEN COURT this 24 day of June, 2013

3 
4 THE HONORABLE JUDGE BARBARA MACK

5 Presented by
6 
7 Eric G. Shelton, WSBA #44788
8 Deputy Prosecuting Assistant Attorney

9 
10 Dennis McGuire, WSBA #18114
11 Attorney for Respondent

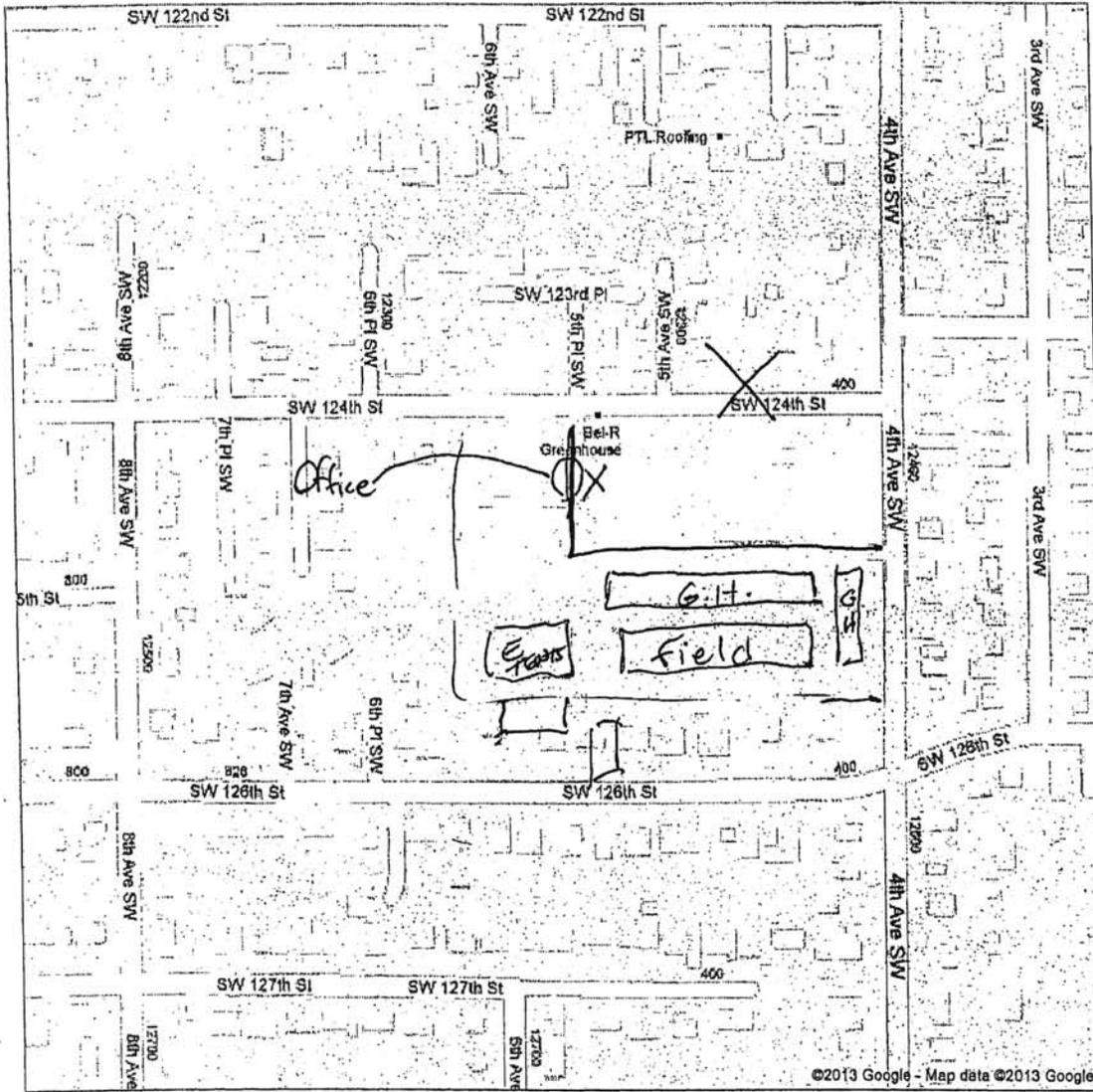
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Appendix B

STATE EXHIBIT
12 Offered and Admitted

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State of Wa.
 #2.
 #12-8-02567-5
 Jahad V. D. Hill

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

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

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 4TH DAY OF FEBRUARY, 2014, I CAUSED THE ORIGINAL **OPENING 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:

[X] KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) () ()	U.S. MAIL HAND DELIVERY _____
[X] J. H. 24513 27 TH AVE S APT 2 DES MOINES, WA 98198	(X) () ()	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 4TH DAY OF FEBRUARY, 2014.

X _____ 

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710