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NO. 70429-0-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JAHAD HILL,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE BARBARA A. MACK

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

Evidence is sufficient if, taken in the light most favorable to the State, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. Here, the State presented evidence that two of Hill's fingerprints were on the inside and the outside of a dining room window that was the point of entry for a residential burglary. The dining room window was not accessible to the public as it was on the back of the house in a fenced backyard. Is there substantial evidence in the record to support Hill's conviction for residential burglary?

B. STATEMENT OF FACTS

1. PROCEDURAL FACTS

The State charged Jahad V.D. Hill by information with one count of residential burglary. CP 1. Fact Finding took place before the Honorable Barbara Mack, where she found Hill guilty as charged. CP 13; 1RP 146.¹ The court sentenced Hill on four separate cases for the following offenses: two counts of residential burglary; one count of attempted residential burglary; and criminal

¹ The Verbatim Report of the Fact Finding and Disposition Proceedings consists of volumes referred to in this brief as: 1RP (April 1 & 2, 2013); and 2RP (May 29, 2013).

trespass in the first degree.² The trial court imposed a standard range of 52-65 weeks on each residential burglary, to run consecutively, and no further sanctions on the remaining charges. CP 14-18; 2RP 56-59. The court entered Findings of Fact and Conclusions of Law pursuant to CrR 6.1(d). CP 23-27.

2. SUBSTANTIVE FACTS

Therese and Chester Pasternak live in Des Moines, Washington.³ 1RP 5, 28. The house has a fenced backyard, not accessible to the public, and is equipped with an ADT alarm system. 1RP 29, 40, 54. On September 14, 2012, at approximately 6:00 a.m., Chester took Therese to work, went back home, and left again at about 11:30 a.m. to run errands. 1RP 31, 46. Prior to leaving the house, Chester set the alarm and made sure the doors and windows were locked. 1RP 49, 54. At about 1:00 p.m., Therese received a call from ADT advising her that the burglar alarm had been activated. 1RP 28. Therese called her next-door neighbor, Barbara Headley, and asked her to please check on the house and determine whether the alarm was in fact

² Hill has appealed all four convictions (70428-1-I, 70427-3-I, and 70426-5-I).

³ Because Therese and Chester Pasternak share the same last name they will be referred to by their first names. No disrespect is intended.

the result of a break-in. 1RP 5-7, 30. Headley went to the Pasternaks' backyard and noticed that a window screen was on the ground, and another screen was hanging from the window. 1RP 8, 13. Headley called 911. 1RP 14.

Des Moines Police Officer Langhofer was one of the first officers to respond to the scene. 1RP 66-67. Officer Langhofer went to the backyard of the house and noted that almost all the window screens on the backside of the house were removed and there was one open window. 1RP 66-67. Officer Langhofer checked the exterior windows where the screens were removed for fingerprints. 1RP 72. On the open window, Officer Langhofer saw a hand mark impression consistent with someone trying to push the window open. 1RP 73, 94. Officer Langhofer then checked the inside and the outside for latent prints. 1RP 72. Officer Langhofer had some difficulty lifting the prints, so he contacted a Des Moines detective, and the Automated Fingerprint Identification System (AFIS) lab. 1RP 73-74. The detective suggested Officer Langhofer take a photograph of the prints, and the AFIS technician suggested that he use more powder. 1RP 73. Officer Langhofer first took two photographs, and also followed AFIS' suggestion to add more powder. 1RP 74. Officer Langhofer successfully recovered two

latent prints: one on the inside sill on the lower right-hand corner of the window, and another one on the outside of the window. 1RP 73, 79, 94. Officer Langhofer determined the point of entry to be the window where the prints were recovered, because all the other windows and doors were secured; in addition the height of the window and the placement of the prints was consistent with someone reaching in and pulling himself up. 1RP 79, 88.

Bolney Wade Anderson, a King County latent print examiner, who was a ten-print examiner for 11 years and has been a latent print examiner for four years, received the latent prints from the Des Moines Police Department. 1RP 101, 103, 114. When Anderson received the latent prints he did not have any suspect information. 1RP109. Anderson looked at the prints and determined the two prints were of comparison value. 1RP 109. Anderson conducted an AFIS computer search with one of the latent prints, and the system matched the print to Hill. 1RP 109. Anderson obtained Hill's known fingerprints and did his own comparison. 1RP 109. Given that there was sufficient detail on both prints, Anderson was able to individualize the prints to Hill – the left middle and little fingers. 1RP 111, 113. Anderson's conclusions and work were checked by another reviewer, who

reproduced his work to make sure the documentation was adequate. 1RP 121. Anderson's work was also verified by a quality control person who ensured the individualization complied with the established procedures. 1RP 121. Essentially, Anderson's conclusion that the two latent prints recovered at the burglary scene belonged to Hill was checked twice, and confirmed by two separate individuals. 1RP 121.

Hill went through the Pasternaks' bedroom and stole Therese's jewelry box, which contained family heirlooms, jewelry and other personal property. 1RP 32-34. Chester and Therese do not know Hill and did not give him permission to be in their house. 1RP 38, 57.

C. ARGUMENT

1. SUFFICIENT EVIDENCE IN THE RECORD SUPPORTS HILL'S RESIDENTIAL BURGLARY CONVICTION.

Hill's sole claim on appeal is that the State's evidence was insufficient to support a conviction for residential burglary. Specifically, Hill argues that the evidence was insufficient to show that he left his prints behind because fingerprint evidence is not "especially reliable." Hill's claim should be rejected. The reliability

of fingerprint evidence has been tested, and accepted, in our adversarial system for over a century. Thus, fingerprint evidence was sufficient to support Hill's conviction.

It is not the role of the reviewing court to determine whether or not it believes the evidence at trial established guilt beyond a reasonable doubt; "[i]nstead 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." State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (italics added). "A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences that reasonably can be drawn therefrom." State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Unchallenged findings of fact are verities on appeal. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). Thus, in reviewing a juvenile court adjudication, the appellate court must decide whether substantial evidence supports the trial court's findings of fact and, in turn, whether the findings support the conclusions of law. State v. Alvarez, 105 Wn. App. 215, 220, 19 P.3d 485 (2001).

The State must prove each element of the charged crime beyond a reasonable doubt. State v. Ware, 111 Wn. App. 738,

741, 46 P.3d 280 (2002). 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(1).

At trial, the evidence established that the dining room window was the point of entry. Chester testified that before he left the residence he made sure all of the windows were closed; after the burglary the dining room window was the only one open. 1RP 53-54, 88. The State presented evidence that two of Hill's fingerprints were found on that particular dining room window – one on the outside, and one on the inside. 1RP 73. Additionally, the burglar went through the Pasternaks' bedroom and stole Therese's jewelry box, which contained family heirlooms, jewelry and other personal property. 1RP 32-34. Chester and Therese do not know Hill and did not give him permission to be in their house. 1RP 38, 57. There was no reason for Hill's fingerprints to be on their window.

Nonetheless, Hill claims that the fingerprint evidence in this case was insufficient to prove that he was the burglar. In State v. Lucca, 56 Wn. App. 597, 784 P.2d 572 (1990), this Court adopted the federal law rule that fingerprint evidence alone is sufficient to

support a conviction where a trier of fact could reasonably infer that the fingerprint could only have been impressed at the time of the crime. The State proved exactly that. Here, the State presented evidence that the fingerprints were on a fixed item inaccessible to the public. The prints were on a window at the rear of the house, which was enclosed by a fence; and the fingerprints were found in a position consistent with someone reaching in and pulling himself up.⁴

2. HILL'S CHALLENGE TO THE RELIABILITY OF FINGERPRINT EVIDENCE IS MISPLACED, IRRELEVANT, AND SHOULD BE IGNORED.

Hill devotes five pages of his brief to the history of fingerprint evidence, and then devotes the remainder of his brief denigrating the validity of fingerprint evidence. But Hill did not contest the validity of the fingerprint evidence at trial. He does not assign error on appeal to the trial court's factual finding that the prints left on the Pasternaks' window belonged to Hill. His challenge to the scientific basis of fingerprint evidence should be disregarded.

⁴ This case is in fact quite similar to Lucca; in that case, the court determined that evidence was sufficient to support a conviction where the defendant's fingerprints were on broken glass from a garage window (the point of entry), and the garage was in a fenced area inaccessible to the public. 56 Wn. App. at 598-99, 603.

First, Hill attempts to make his discussion about the validity of fingerprint evidence relevant by highlighting the high-profile misidentification of Brandon Mayfield made by the Federal Bureau of Investigation in its investigation into the terrorist bombing of a train in Madrid, Spain. However, the reliability of fingerprint identification has been tested in our adversarial system for over a century and routinely subjected to peer review. People v. Jennings, 252 Ill. 534, 549, 96 N.E. 1077 (1911); State v. Johnson, 194 Wn. 438, 442, 78 P.2d 562 (1938); United States v. John, 597 F.3d 263, 274-75 (5th Cir. 2010); United States v. Plaza, 188 F. Supp. 2d 549 (E.D. Pa. 2002).

Hill compares fingerprint evidence to dog-tracking evidence. However, unlike dog-tracking evidence, which requires corroborative evidence,⁵ fingerprint evidence has been admissible as reliable evidence in criminal cases in the United States since at least 1911. See United States v. Crisp, 324 F.3d 261, 266 (4th Cir. 2003). Hill does not cite to a single case in which fingerprint identification evidence has been found inadmissible. In fact, every federal case to examine the admissibility of expert fingerprint identification evidence after Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), which established the federal

⁵ State v. Loucks, 98 Wn.2d 563, 656 P.2d 480 (1983).

standard for admissibility of expert evidence, has found such evidence admissible. See Crisp, 324 F.3d at 266 (citing cases).

Second, Hill did not contest the admissibility of Anderson's testimony. He did not seek a Frye⁶ hearing to contest the soundness of the scientific basis for fingerprint identification. He did not move to exclude the evidence as unreliable. He did not argue that the methodology underlying fingerprint evidence is not generally accepted within the scientific community. He did not proffer his own expert to undermine Anderson's conclusions. All that Hill did during the trial was state during closing arguments that the National Academy of Sciences has raised critical questions about fingerprint evidence. 1RP 137. This one statement during argument is not sufficient to preserve his challenge to the evidence or its accuracy on appeal.

"When a party fails to raise a Frye argument below, a reviewing court need not consider it on appeal." In re Taylor, 132

⁶ Frye v. United States, 293 F. 1013 (D.C. Cir.1923), provides the standard for admissibility of scientific evidence in Washington. E.g., State v. Russell, 125 Wn.2d 24, 40-41, 882 P.2d 747 (1994). Under this test, scientific evidence is admissible if it is generally accepted in the relevant scientific community. State v. Hayden, 90 Wn. App. 100, 103-04, 950 P.2d 1024 (1998) (citing State v. Copeland, 130 Wn.2d 244, 255, 922 P.2d 1304 (1996)). However, if the evidence does not involve new methods of proof or new scientific principles, then a Frye inquiry is not necessary. State v. Ortiz, 119 Wn.2d 294, 311, 831 P.2d 1060 (1992).

Wn. App. 827, 836, 134 P.3d 254 (2006). “Error may not be predicated upon a ruling which admits . . . evidence unless . . . a timely objection or motion to strike is made, stating the specific ground of objection, if the specific ground was not apparent from the context.” ER 103(a)(1). Further, a defendant may not attempt to transform an issue that should have been raised as an evidentiary challenge below into a question of constitutional significance on appeal. In re Post, 145 Wn. App. 728, 755-56, 187 P.3d 803 (2008) (rejecting attempts to sidestep the fact that the defendant did not seek a Frye hearing in the trial court), aff’d, 170 Wn.2d 302 (2010). Moreover, particularly where evidence is based upon a routinely used and “familiar forensic technique,” an objection to that evidence must be sufficiently specific to inform the trial court that a Frye challenge is intended. State v. Wilbur-Bobb, 134 Wn. App. 627, 634, 141 P.3d 665 (2006); see also State v. Newbern, 95 Wn. App. 277, 288-89, 975 P.2d 1041 (1999) (declining to review Frye issue on appeal where the defendant did not invoke Frye or otherwise argue that the methodology employed was not accepted within the relevant scientific community). Fingerprint evidence is plainly a familiar forensic technique, and Hill

does not even attempt to argue how this issue can be raised for the first time on appeal; it cannot.

Third, Hill does not assign error to the trial court's finding of fact regarding Hill's identification as the source of the fingerprints on the Pasternaks' dining room window, the burglar's point of entry.⁷ Hill assigns error only to the court's finding that Hill's prints were left at the Pasternaks' residence at the time of the burglary. As such, the trial court's findings are verities on appeal. State v. Goodman, 150 Wn.2d 774, 781, 83 P.3d 410 (2004). Thus, the court's finding that Anderson determined the prints left on the window belonged to the fingerprints AFIS had collected from Hill admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. Salinas, 119 Wn.2d at 201. His lengthy discussion of the reliability of the fingerprint evidence underlying his conviction and his invitation for the Court to find that fingerprint evidence is only corroborative evidence is misplaced and entirely irrelevant.

In short, an appeal claiming insufficient evidence to support the conviction is not the correct vehicle to explore the validity of fingerprint evidence. Rather, a case that raised a Frye or other

⁷ See CP 23-26 (Finding of Fact 27).

challenge to the admissibility of such evidence, or that involved testimony of defense experts, could perhaps provide this Court with an adequate factual record to address the issues Hill raises. But in the absence of such a record, and in the setting of a challenge to the sufficiency of the evidence, this Court must decline Hill's invitation to rethink evidence that has been routinely admitted in Washington for nearly a century. His lengthy discourse on the allegedly unscientific nature of fingerprint evidence should not be credited.

D. CONCLUSION

For the foregoing reasons, the State asks this Court to affirm Hill's conviction for residential burglary.

DATED this 4th day of April, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

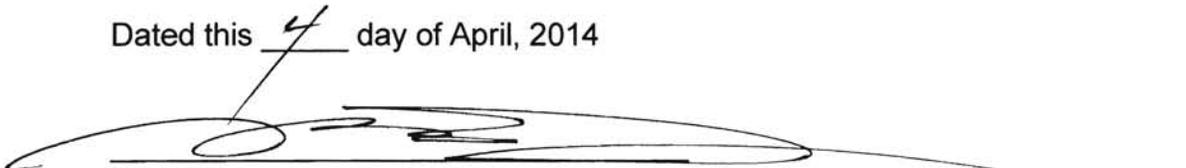
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Richard W. Lechich, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the BRIEF OF RESPONDENT, in STATE V. JAHAD HILL, Cause No. 70429-0 -I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 4 day of April, 2014



Bora Ly
Done in Seattle, Washington