

REC'D

OCT 11 2012

King County Prosecutor
Appellate Unit

NO. 68575-9-1

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

STATE OF WASHINGTON,

Respondent,

v.

T.H.,

Appellant.

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

The Honorable Bruce Hilyer, Judge

BRIEF OF APPELLANT

DANA M. NELSON
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC
1908 E Madison Street
Seattle, WA 98122
(206) 623-2373

Handwritten signature
DANA M. NELSON
Attorney for Appellant
10/11/12

EM18

TABLE OF CONTENTS

	Page
A. <u>INTRODUCTION</u>	1
B. <u>ASSIGNMENTS OF ERROR</u>	2
<u>Issues Pertaining to Assignments of Error</u>	3
C. <u>STATEMENT OF THE CASE</u>	4
1. <u>Shower Rod Count</u>	4
2. <u>JVC Box Count</u>	6
D. <u>ARGUMENT</u>	8
THE EVIDENCE WAS INSUFFICIENT TO CONVICT T.H. OF RESIDENTIAL BURGLARY.	8
E. <u>CONCLUSION</u>	18

TABLE OF AUTHORITIES

	Page
<u>WASHINGTON CASES</u>	
<u>State v. Bridge</u> 91 Wn. App. 98, 955 P.2d 418 (1998)	1, 2, 11, 12, 13, 14, 15
<u>State v. Chapin</u> 118 Wn.2d 681, 826 P.2d 194 (1992)	8
<u>State v. Colquitt</u> 133 Wn. App. 789, 137 P.3d 892 (2006)	8
<u>State v. Kroll</u> 87 Wn.2d 829, 558 P.2d 173 (1976)	9
<u>State v. Lucca</u> 56 Wn. App. 597, 784 P.2d 572 (1990)	9, 10, 12
<u>State v. Smith</u> 155 Wn.2d 496, 120 P.3d 559 (2005)	8
<u>FEDERAL CASES</u>	
<u>Beithly v. Intelius Inc.</u> 764 F. Spp. 2d 1257 (W.D. Wash. 2011)	17
<u>Borum v. United States</u> 380 F.2d 595 (D.C. Cir. 1967)	9, 12
<u>In re Winship</u> 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970)	8
<u>Mikes v. Borg</u> 947 F.2d 353 (9 th Cir. 1990) <u>cert. denied</u> 505 U.S. 1229, 112 S. Ct. 3055, 120 L. Ed. 2d 921 (1992)	9, 10, 11
<u>Rivera v. Philip Morris, Inc.</u> 395 F.3d 1142 (9 th Cir. 2005)	17

TABLE OF AUTHORITIES (CONT'D)

	Page
<u>United States v. Miller</u> 688 F.2d 652 (9 th Cir. 1982)	9

<u>United States v. Talbert</u> 710 F.2d 528, (9 th Cir. 1983) <u>cert. denied</u> 464 U.S. 1052, 104 S. Ct. 733, 79 L. Ed. 2d 192 (1984)	10
---	----

OTHER JURISDICTIONS

<u>Malone v. Berry</u> 174 Ohio App.3d 122, 881 N.E.2d 283 (Ohio Ct. App. 2007)	16
--	----

RULES, STATUTES AND OTHER AUTHORITIES

<u>5 Karl B. Tegland</u> Washington Practice: Evidence Law and Practice § 201.7 (2007)	18
--	----

<u>Wright & Miler</u> Federal Practice and Procedure: Evidence § 5109	18
--	----

ER 201	2, 15, 18
--------------	-----------

U.S. Const. amend. XIV	8
------------------------------	---

Wash. Const. art. I, § 3.....	8
-------------------------------	---

A. INTRODUCTION

Juvenile appellant T.H. is appealing his convictions for two counts of residential burglary, following an adjudicatory hearing. CP 24-31, 10. There were no eyewitnesses to the burglaries, no stolen property recovered and no incriminating statements made by T.H. RP 89-90, 168. Rather, the only evidence linking him to the crimes was fingerprints purportedly matching his, which were found on moveable objects located within the homes. RP 96-97, 101-102, 123-25, 155.

In the first home, prints matching T.H.'s were located on a shower curtain rod purchased by the home owner within the last year. RP 33, 39-40, 96-97, 123-25. In the second home, prints matching T.H.'s were located on a box in which a JVC camcorder was stored following an online purchase by the home owner sometime in the past year. RP 64, 73, 101-102, 130-31, 155.

As the evidence against T.H. consisted of "fingerprints-only" located solely on moveable objects, T.H. argued the evidence was insufficient to convict him. RP 169-173; see e.g. State v. Bridge, 91 Wn. App. 98, 955 P.2d 418 (1998) (holding that in "fingerprint-only" case, state must make showing that object upon which fingerprint

was found was generally inaccessible to the defendant at a previous time).

The court rejected T.H.'s challenge to the sufficiency of the evidence, albeit with some pause as to the JVC box count. RP 186. In resolving the issue against T.H., however, the court took "judicial notice" of "the fact that online purchases are not through publicly accessible retail outlets in the same way as presumably occurred in the Bridge case." RP 187.

T.H. maintains the evidence was insufficient to convict him of either burglary. Moreover, T.H. contends the court improperly took "judicial notice" of a disputed fact not generally known within the territorial jurisdiction of the trial court or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. ER 201(b).

B. ASSIGNMENTS OF ERROR

1. The evidence was insufficient to convict T.H. of either burglary.

2. The court erred in taking judicial notice of facts subject to reasonable dispute.

3. The court erred in entering findings of fact 6, 9, 11, 13, 18 and 19. CP 18-21.¹

Issues Pertaining to Assignments of Error

1. Whether the evidence was insufficient to convict T.H. of residential burglary where the only evidence connecting him to the first burglary was fingerprints purportedly matching his found on a moveable shower curtain rod purchased by the home owner at Tuesday Morning, a discount retail store that is open to the public in Bellevue?

2. Whether the evidence was insufficient to convict T.H. of residential burglary where the only evidence connecting him to the second burglary was fingerprints purportedly matching his found on a moveable box which previously housed a JVC camcorder, where the owner's daughter testified only that her father purchased the camera "online" and that it came in the mail, but did not testify as to where it was purchased or the manner in which it was shipped?

3. Whether the trial court erred in taking "judicial notice" that "online purchases are not through publicly accessible retail outlets," where this purported "fact" is subject to reasonable

¹ A copy of the court's Findings of Fact and Conclusions of Law Pursuant to CrR

dispute, in light of the broadness of the online marketplace, which includes warehouse-type retailers, but also includes Craigslist and Amazon, where new and used goods are gathered and sold from an infinite number of sources and retailers, both public and private? In other words, did the court err in finding that goods purchased online necessarily come from a warehouse?

C. STATEMENT OF THE CASE

1. Shower Rod Count

E. Merle Hooley lives in a two-story home at 310 142nd Avenue NE in Bellevue. RP 17. Hooley testified that she came home on the evening of May 8, 2011, to find that it had been ransacked. RP 17, 21-23, 26-30. Drawers were pulled out from dressers and cabinets in a number of rooms throughout the house, Hooley's television set was busted and someone took quarters she collected and kept on a napkin by her bed. RP 21-23, 26-30., 38

It appeared the culprit entered through the downstairs bathroom window, as the window was open, the screen was cut, and the outdoor housing for the garden hose had been positioned underneath the window. RP 19, 32, 34-37, 47, 51. One of the

6.1(d) is attached as an appendix.

responding officers testified he observed a faint footprint on top. RP 52-53.

Police dusted the ledge and area surrounding the bathroom window for fingerprints, as well as the shower curtain rod adjacent to the window. RP 95-96. Police were able to obtain prints of comparison value from the shower curtain rod. RP 96-97.

When fingerprint examiner Carl Nicholl ran the prints through the Automated Fingerprint Identification System (AFIS), they reportedly came back as a possible match for T.H. RP 115, 120-21. Based on this, police physically took T.H.'s prints and provided them for Nicholl to compare to the prints taken from the shower curtain rod. RP 122-23. Nicholl testified they were a match. RP 123-25.

Significantly, Hooley testified she purchased the shower curtain rod from Tuesday Morning store, "a discount type store," in Bellevue, approximately one year before the burglary. RP 33, 39. As Hooley explained, Tuesday Morning is "a clearance house for, like catalog stores so they carry all kinds of diverse things. RP 40.

Although she purchased it a year before, it remained unused in its packaging for six months, until her son finally installed it for her. RP 40. Hooley testified that her son and his wife visit

approximately twice a year (her son a little more frequently) and use the downstairs shower when they stay. RP 33.

2. JVC Box Count

Ilin Tsai lives with her parents and sister in a three-story home at 15015 NE 10th Place in Bellevue. RP 56-57. Tsai's parents reside there on a part-time basis every couple of months. RP 57.

Tsai testified she returned home around 7:00 p.m., on June 19, 2011, and noticed the sliding glass door was open, although it was closed when she left earlier in the day. RP 60. Fearful someone might be in the house, Tsai went to a neighbor's and called police. RP 61.

After officers arrived and cleared the house, Tsai returned to look around. She testified three computers and a gaming station were missing. RP 71-72. RP 62. In the bedroom next to the bathroom on the first floor, Tsai also noticed a JVC camcorder box was on the floor with the camera's manual and accompanying CD strewn beside it. RP 62, 64. The camcorder was missing from the box. RP 63.

Tsai testified the camcorder belonged to her father and had been stored in the closet for "roughly a year." RP 64. To Tsai's

knowledge, the camera was purchased "online" and came to the house "[b]y package." RP 73.

Upon going upstairs with the officers, Tsai noticed the screen for the second floor bathroom window was missing. RP 66-67; see also RP 78. Tsai typically left the bathroom window open, because of a cat litter box she kept in the bathroom. RP 66-67. Nonetheless, she testified the screen had been on the window when she left earlier that day. RP 66. Police located the screen outside on a hedge below the window. RP 102.

As illustrated by a picture taken from inside of the bathroom window, the top of the backyard fence is six feet high and stands just two-and-a-half feet shy of the roof. RP 68-70. One of the officers speculated the burglar entered through the second floor bathroom window, but left through the sliding glass door. RP 79-80.

Police dusted the house for fingerprints. RP 100. Police were able to obtain prints of comparison value from the bottom of the JVC box. RP 101-102, 155. As in the other case, fingerprint examiner Nicholl ran the prints through AFIS and received a list of possible matches, including T.H. RP 128, 143-44. Upon comparing the latent prints from the JVC box to T.H.'s exemplar

prints taken after the AFIS search, Nicholl concluded they were a match. RP 130-31.

D. ARGUMENT

THE EVIDENCE WAS INSUFFICIENT TO CONVICT T.H. OF RESIDENTIAL BURGLARY.

Because both counts of burglary rested on “fingerprints-only,” and the state failed to show that either object upon which T.H.’s purported fingerprints was found was generally inaccessible to T.H. at a previous time, the evidence was insufficient to convict. Due process requires the state to prove all necessary facts of the crime beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); State v. Smith, 155 Wn.2d 496, 502, 120 P.3d 559 (2005); U.S. Const. amend. XIV; Wash. Const. art. I, § 3.

Evidence is sufficient to support a conviction only if, viewed in the light most favorable to the state, a rational trier of fact could find each essential element of the crime beyond a reasonable doubt. State v. Chapin, 118 Wn.2d 681, 691, 826 P.2d 194 (1992). In determining the sufficiency of evidence, existence of a fact cannot rest upon guess, speculation, or conjecture. State v. Colquitt, 133 Wn. App. 789, 796, 137 P.3d 892 (2006).

Fingerprint evidence is sufficient to support a conviction if the trier of fact (here the judge) could infer from the circumstances that the fingerprint could only have been impressed at the time of the crime. State v. Lucca, 56 Wn. App. 597, 599, 784 P.2d 572 (1990). Circumstantial evidence is as probative and reliable as direct evidence. State v. Kroll, 87 Wn.2d 829, 842, 558 P.2d 173 (1976).

However, in order to support a finding of guilt beyond a reasonable doubt in a “fingerprint-only” case, the state must make a showing, reflected in the record, that the object upon which the fingerprint was found was generally inaccessible to the defendant at a previous time. Mikes v. Borg, 947 F.2d 353, 357 n.6 (9th Cir. 1990) (citing Borum v. United States, 380 F.2d 595 (D.C. Cir. 1967)), cert. denied, 505 U.S. 1229, 112 S. Ct. 3055, 120 L. Ed. 2d 921 (1992). This showing by the state is essential. Id. at 356-57.

“While the government need not exclude all inferences or reasonable hypotheses consistent with innocence, ... the record must contain sufficient probative facts from which a factfinder could reasonably infer a defendant’s guilt under the beyond a reasonable doubt standard.” Id. at 357 (citing United States v. Miller, 688 F.2d 652, 663 (9th Cir. 1982); Borum, 380 F.2d at 597). “[T]here must, at

the very least, be sufficient evidence in the record to permit the factfinder to determine when the fingerprints were impressed; otherwise, any conviction would be based on pure speculation.” Id.

When fingerprint evidence is the only evidence linking a defendant to a crime and the fingerprint is found on a moveable object, the state must show that the fingerprint could only have been impressed during the commission of the crime, and not earlier. Mikes, 947 F.2d 353, 356-57; Lucca, 56 Wn. App. at 599-600. The distinction is between moveable objects generally accessible to the public and fixed objects generally inaccessible to the public. Mikes, 947 F.2d at 357; Lucca, 56 Wn. App. at 602-03.

In Mikes, the Ninth Circuit held that if fingerprint evidence is the only evidence linking a defendant with a crime, the government “must present evidence sufficient to permit the jury to conclude that the objects on which the fingerprints appear were inaccessible to the defendant prior to the time of the commission of the crime.” Mikes, 947 F.2d at 357 (citing United States v. Talbert, 710 F.2d 528, 530-31 (9th Cir. 1983), cert. denied, 464 U.S. 1052, 104 S. Ct. 733, 79 L. Ed. 2d 192 (1984)).

In light of these principles, Division Three of this Court found the evidence insufficient to sustain a burglary conviction in State v.

Bridge, 91 Wn. App. 98, 955 P.2d 418 (1998). The evidence there showed that someone broke into Lee Verment's barn. The burglar entered by destroying the barn door. Miscellaneous hardware items were moved. A new 18-inch magnetic tool with the store tag still attached was moved from its usual resting place and dropped at the point of entry. Bridge, 91 Wn. App. at 99.

A police expert identified a latent thumbprint on the tag as Andrew Bridge's. The expert testified that no conclusive determination can be made as to how long a fingerprint would last, but that "a print is very fragile ... [s]o it doesn't last very long [] especially on the tag." Id. Based on this, Bridge was convicted of second degree burglary. Id.

In reversing the conviction, Division Three reasoned:

Here, the tag on which Mr. Bridge's fingerprint was found was affixed to a tool that had been recently purchased. And although the state presented evidence that fingerprints are fragile, and therefore do not last very long, it did not show how long fingerprints can last. Nor did the state rule out the possibility that Mr. Bridge's fingerprint might have been impressed while the tool was recently in the stream of commerce. The tool had been purchased in an area open to the public. The tool was accessible to Mr. Bridge before being moved by the victim to his barn.

We agree with Mikes that "to allow this conviction to stand would be to hold that anyone who touches anything which is found later at the scene of

a crime may be convicted” of burglary. Mikes, 947 F.2d at 361 (quoting Borum, 380 F.2d at 597). We conclude that the evidence of a latent fingerprint absent proof by the state that the print could “only have been impressed at the time the crime was committed” is insufficient to support a conviction for burglary. Lucca, 56 Wn. App. at 599, 784 P.2d 572.

Bridge, 91 Wn. App. at 101.

The circumstances here are directly analogous to those in Bridge. Just as the only evidence linking Bridge to the burglary at Verment’s barn was fingerprints on a moveable object – a tool – that was recently in the stream of commerce, the only evidence linking T.H. to the burglary at Hooley’s house was fingerprints on a moveable object – a shower curtain rod – that was recently in the stream of commerce. Indeed, Hooley testified she purchased the rod within the last year at a retail store in Bellevue.

Although the rod was packaged when purchased, it could have been an item that had been returned, repackaged and resold. Significantly, Hooley testified the store, Tuesday Morning, is essentially a “clearing house” for catalog stores. Accordingly, the state failed to prove T.H. generally did not have access to the item at a previous time. The evidence therefore was insufficient to convict and the court erred in holding otherwise.

Likewise, the evidence in the Tsai case consisted solely of fingerprints on a moveable object – a JVC box – that was recently in the stream of commerce. In that vein, Tsai testified her father bought the camera online, that it came “by package” and had been stored at the house for roughly a year.

At least initially, the court recognized the similarity between the present circumstances and those in Bridge, noting:

With Count II, Respondent’s Counsel gave the Court considerable pause and made an interesting and initially persuasive argument about the fingerprints on the camcorder box. And her – Counsel’s citation to the Bridge case was a good tactic and raises a legitimate issue.

RP 186.

Regardless, the court distinguished Bridge, based on when and how the camcorder was purchased:

But, the difference between the Bridge case and this case with respect to the fingerprint evidence is, first of all, in this case, the camcorder was in the house for about a year. . . . in the Bridge case, the time was recently – recently purchased. I’m thinking “recently” was within the last month; I don’t remember exactly when it was. But, a year is not recently purchased. But most importantly, the camcorder – the evidence before the Court – the only evidence before the Court is that the camcorder was purchased online, and then taken to the father’s house, and then taken to – to her house. And, unlike the Bridge case where the concern is that the respondent’s fingerprints could have been placed on the price tag, quote, “in the

stream of commerce,” I think the Court can take judicial notice of the fact that online purchases are not through publicly accessible retail outlets in the same way as presumably occurred in the Bridge case. So, you have a [sic] item that was purchased by her father online, taken to his house, then taken to her house. There’s no plausible way that the respondent’s fingerprint could have been on that box other than that he was the person who opened the box in the course of the burglary.

RP 186-87.

There are at least two problems with the court’s reasoning. First, while the facts in Bridge indicate the tool had been purchased within a month or two of the burglary,² the state here (as in Bridge) presented no evidence as to how long a fingerprint can last. Although Nicholl testified fingerprints are “fragile,” he also acknowledged “they withstand all manner of handlings[.]” RP 116. In the absence of any testimony a fingerprint could not last beyond a year, the fact the item in Bridge was purchased within the last two months, whereas the item here reportedly was purchased within the last year, is a distinction without a difference. It does not in anyway prove T.H. generally did not have access to the JVC box previously.

² Bridge, 91 Wn. App. at 99

Nor did the manner in which the camcorder was purchased disprove the possibility of previous access. In this regard, the court took “judicial notice” that “online purchases are not through publicly accessible retail outlets in the same way as presumably occurred in the Bridge case.” However, such is not a “fact” that is subject to “judicial notice.”

Under ER 201, a judicially noticed fact must be “one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” ER 201(b).

The fact in question here meets neither criteria. Where products are located before their online purchase and shipment is neither generally known nor capable of accurate and ready determination by outside sources whose accuracy cannot reasonably be questioned. Granted, there are online retailers who ship directly from the warehouse to the customer. However, it is not “generally known” that all products purchased online will be delivered in this same manner, particularly in light of online retailers such as Amazon, Craigslist and eBay, where new and used goods are bought and sold. See e.g. Malone v. Berry, 174 Ohio App.3d

122, 881 N.E.2d 283, 287 (Ohio Ct. App. 2007) (court took limited judicial notice of the fact that a certain website was an online website providing a forum for buyers and sellers, much like eBay).

Defense counsel pointed out as much:

MS. CARTER [defense counsel]: And I just would like to state for the record then that she could have purchased it online directly from a person, that person being Temetrius Hollis. There needed to be evidence showing that he had no access to it.

THE COURT: The Court disagrees with that. I don't think that's reasonable. I think that's –

MS. CARTER: Or eBay –

THE COURT: that's a one-in-a-

MS. CARTER: -- or through anywhere.

THE COURT: -- billion type of thing. The Court disagrees.

RP 197-98.

Contrary to the trial court, the possibility pointed out by defense counsel was not a “one-in-a-billion” and illustrates persuasively why it was inappropriate for the court to take judicial notice of the disputed fact.

While not case directly on point, but perhaps likewise illustrative, is a fraud case in which a federal district court found it inappropriate for the court to take “judicial notice” of “screen shots”

a customer may have seen on his or her computer while making an online purchase. Beithly v. Intelius Inc., 764 F. Spp. 2d 1257 (W.D. Wash. 2011). In its reasoning, the court noted there was no way to test the accuracy of the purported web pages, and that the effect of taking judicial notice would be to deprive one party of its ability to conduct discovery and rebut the other party's evidence:

The screen shots are not generally known: the webpages have been removed from the internet and now exist, in whole or in part, only within the defendant's archives. Nor is the Court (or the plaintiffs) able to resort to any source other than the defendants to determine the accuracy of these documents. There is no indication that plaintiffs downloaded each of the webpages they viewed as part of the transactions or that this information was maintained by an uninterested third-party that can attest to its provenance and accuracy. Because the effect of judicial notice is to deprive a party of an opportunity to conduct discovery and rebut the moving party's evidence, the Court's inability to confirm the accuracy of the facts presented in these documents suggests that judicial notice is not appropriate. See Rivera v. Philip Morris, Inc., 395 F.3d 1142, 1151 (9th Cir. 2005).

In sum, it is not appropriate for the court to base a judicially noted fact on speculation, which is essentially what the court did here. There was no basis for the court to find the camcorder was not in the stream of commerce prior to its arrival in Tsai's father's possession.

Finally, if a court intends to take judicial notice of a fact on its own initiative, it should give the parties notice and an opportunity to be heard. ER 201(e); 5 Karl B. Tegland, Washington Practice: Evidence Law and Practice § 201.7 (5th ed. 2007) (citing Wright & Miler, Federal Practice and Procedure: Evidence § 5109). That did not happen here. For all these reasons, the court erred in taking judicial notice of a disputed fact in order to find T.H. guilty of the JVC burglary.

E. CONCLUSION

Because both burglaries were based on “fingerprints-only” evidence, located on moveable objects within the home, and the state failed to prove the fingerprints could only have been impressed at the time the crimes were committed, this Court should reverse both of T.H.’s convictions.

Dated this 10th day of October, 2012

Respectfully submitted

NIELSEN, BROMAN & KOCH



DANA M. NELSON, WSBA 28239
Office ID No. 91051
Attorneys for Appellant

ORIGINAL
12 MAR 27 AM

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY
JUVENILE DIVISION
KING COUNTY
CLERK
SEATTLE, WA

STATE OF WASHINGTON,

Plaintiff,

No 11-8-017577

vs

TEMETRIUS HOLLIS,
DOB 01/10/1996

Respondent

STATE'S PROPOSED FINDINGS OF
FACT AND CONCLUSIONS OF LAW
PURSUANT TO CrR 6 1(d)

A fact finding was held in this case on February 28, 2012, and March 5, 2012, before Judge Bruce Hilyer The State of Washington was represented by Deputy Prosecuting Attorney Benjamin Halasz Respondent appeared in person and was represented by his attorney, Twyla Carter The Court heard sworn testimony and arguments of counsel, and now makes and enters the following findings of fact and conclusions of law

Findings of Fact

- 1 On May 8, 2011, Eleanor Hooley left her residence at 310 142nd Avenue in Bellevue in the morning When she left, the lights inside were off The doors were closed and locked, and the window to the first floor bathroom was closed and locked
- 2 She returned to her residence that evening As she pulled into the driveway, she noticed that the lights were on She came in through the garage and went straight to the bathroom in the master suite Once out of the bathroom, she observed that the drawers of her dresser in her bedroom were open and their contents strewn about Those drawers had been closed when she left The television set in her bedroom had the screen smashed, it was intact when she left Her white rug was covered with dirt where a plant had been knocked over, when she left the plant was upright on the television Jars that she had used to store change were on her bed The larger change denominations were missing, and the smaller change denominations were strewn across the bed Ms Hooley then called 911
- 3 Officer Brack responded to the scene He cleared the house and then walked through it with Ms Hooley The trunk in the middle of her living room had been newly opened, and its contents strewn about A TV cabinet, a doll house, and several toy cabinets were also left open, they had been closed when she left the house in the morning Cutlery was strewn about the floor of the dining nook, and a large bureau in the dining nook was open, the bureau was

STATE'S PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW PURSUANT TO CrR 6 1(d)

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

7A The ACE-V method consists of analysis, comparison, evaluation, and independent verification, of the same two prints

7B The Bellevue Forensic Sciences Unit utilizes the ACE-V method

1 closed and the cutlery in place when she left earlier that day. The drawers in the office were
2 open and appeared to have been rifled through, they had been closed when she left

4 They went to the first floor bathroom. There, the bathroom window, which measured 20
3 inches by 13 inches, was open and the screen had been cut. A few pine needles were in the
4 bathtub below. The toilet seat was up, with pieces of feces and toilet paper in it. When Ms
Hooley left the house earlier that day, the toilet seat was down

5 Outside the house and underneath the first floor bathroom window, they discovered a hose
6 housing placed just underneath the window, with a partial shoe print on it. The hose housing
had been farther down the house when Ms Hooley had left that morning

7 6 Officer Akahane also responded to the scene, and dusted for fingerprints. Inside the lower-
level bathroom, he found numerous prints on the shower curtain rod. He lifted the prints. The
8 rod was across from the window. The rod had been installed about a year prior to the
9 burglary, and people had used that shower -- running the curtain across the rod -- about once
10 a month since then. Ms Hooley bought the curtain rod at a store in Bellevue. When she
bought it, it was enclosed in a hard plastic shell. It remained in that shell, in her house, for six
months after she bought it before she installed it

11 7 Fingerprint Examiner Carl Nicoll of the Bellevue Fingerprint Lab is a qualified expert, with
12 over 40 years of experience. He has extensive training and experience, and his lab has
received a \$1 million grant from the federal government

13 8 Examiner Nicoll ran the prints found on the curtain rod through the AFIS system and found a
14 match with those on file for Temetrius Hollis. On October 27, 2011, Respondent's
15 fingerprints were later taken in Examiner Nicoll's presence at the Juvenile Court building.
Using the October 27 prints, Examiner Nicoll matched the prints taken from the shower rod
16 to Respondent's left thumb, left index finger, left middle finger (twice), left ring finger
(twice), and left little finger. A total of eight latent fingerprints matched to Respondent's
known prints. The matches were made independently

17 9 Respondent entered Ms Hooley's residence at 310 142nd Avenue, Bellevue, in King County,
Washington, while she was away during the day on May 8, 2011. He committed the
18 disturbances described in paragraphs 2 through 5 above. That included cutting Ms Hooley's
19 bathroom window screen, smashing her television set, and stealing her change. He entered
20 through the lower level bathroom window after pushing the hose housing underneath the
window, standing on it, forcing the window open, and cutting the screen. He then grabbed
the shower curtain rod on his way in through the window, leaving the fingerprints described
in paragraphs 6 and 8 above

21 10 Ms Hooley does not know Respondent, and he did not have permission to be in her house

22 11 Respondent's fingerprints were where one would expect them to be -- on the shower curtain
23 rod -- based on his entry through the bathroom window. There is no plausible alternative
explanation for them being there other than that he put them there during the burglary

24 ~~STATE'S PROPOSED~~ FINDINGS OF FACT AND
CONCLUSIONS OF LAW PURSUANT TO CrR 6 1(d)

- 2

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

- 1 12 On June 19, 2011, Ilin Tsai left her residence at 15015 NE 10th Place in Bellevue, in King
 2 County, Washington, in the early afternoon. She came back in the early evening. Walking
 3 inside the residence, she noticed that her rear sliding door was wide open, it had been closed
 4 and locked when she left. She closed and locked that door, and then started to notice missing
 5 electronics, including two laptops and a JVC camcorder. The laptops and the JVC camcorder
 6 were in the house when she left.
- 7 13 The JVC camcorder was her father's, and had been kept in the house for about a year. It had
 8 been obtained through an online retailer. It was not sold through a publicly accessible outlet.
- 9 14 The box the JVC camcorder had been kept in was lying on the floor of a room near the
 10 garage, among other items, such as the instruction manual, that had been in the box. When
 11 she had left the house that day, the camcorder had been in the box, and the box had been in a
 12 closet in a storage room on a shelf.
- 13 15 Ms. Tsai walked over to her neighbor's house and called 911. Officers Perreira and Akahane
 14 responded to the scene. Ms. Tsai and Officer Perreira noticed that the screen on the window
 15 to the second-floor bathroom was missing. Ms. Tsai often left that window open, since she
 16 kept a kitty litter box in that bathroom. When she left the house earlier that day, the window
 17 was open but the screen was on it. Officer Akahane found the screen on bushes in the
 18 neighbor's yard.
- 19 16 Officer Akahane then proceeded to dust items in the house for fingerprints. He found several
 20 prints on the bottom of the box for the missing JVC camcorder. He lifted those prints, and
 21 submitted them to the fingerprint lab for comparison. Examiner Nicolls matched those prints
 22 to the Respondent's profile in AFIS. Later, Examiner Nicolls matched Respondent's October
 23 27 prints to those latent prints -- in particular, Respondent's left middle finger and left ring
 24 finger. A total of four latent fingerprints were matched to Respondent's known fingerprints.
 Each match was made independently.
- 17 Ms. Tsai does not know Respondent, and he did not have permission to enter her house. Ms.
 Tsai lived there at the time. Ms. Tsai had dominion and control of the house, and was the
 lawful occupant of the house.
- 18 Upon going through her house, Ilin found that in addition to the two laptops and the JVC
 camcorder, she was missing a netbook computer, a backpack with books in it, a camera, a
 Playstation 3 console and accessories, an Ipod, several textbooks, and a Sony Handicam.
- 19 On June 19, 2011, Respondent entered Ms. Tsai's residence at 15015 NE 10th Place in
 Bellevue through the second-floor bathroom window while she was away. He removed the
 screen to the bathroom and discarded it in the bushes. He took the missing items listed in
 paragraph 18, and then exited Ms. Tsai's house through the rear sliding door. He left his
 fingerprints on the JVC camcorder box during the burglary. There is no reasonable
 alternative explanation for how Respondent's fingerprints came to be on the camcorder box
 other than that he put them there during the commission of the burglary.

Conclusions of Law

STATE'S PROPOSED FINDINGS OF FACT AND
 CONCLUSIONS OF LAW PURSUANT TO CrR 6 1(d)

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

I

This court has jurisdiction of the subject matter and of Respondent Temetrius Hollis in this cause

II

The following elements of Residential Burglary have been proven by the State beyond a reasonable doubt

- 1 That on or about May 8, 2011, Respondent entered unlawfully in the dwelling of Eleanor Hooley, located at 310 142nd Avenue, Bellevue,
- 2 The entering was with intent to commit a crime against a person or property therein, and
- 3 This act occurred in King County, WA
- 4 That on or about June 19, 2011, Respondent entered unlawfully in the dwelling of Ilin Tsai, located at 15015 NE 10th Place, Bellevue,
- 5 The entering was with intent to commit a crime against a person or property therein, and
- 6 This act occurred in King County, WA

III

Respondent is guilty of twice committing the crime of Residential Burglary as charged in Counts I and II of the original Information

IV

Judgment should be entered in accordance with Conclusion of Law III

DATED this 9 day of March, 2012,

Presented by DANIEL T SATTERBERG
King County Prosecuting Attorney



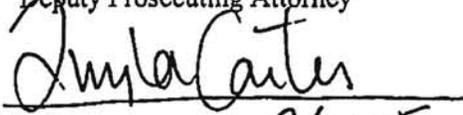
JUDGE ROJICE SILVER

By Benjamin Halasz, WSBA #38437
Deputy Prosecuting Attorney



As to Form

3-21-12



39405

STATE'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW PURSUANT TO CrR 6 1(d)

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

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

STATE OF WASHINGTON)	
)	
Respondent,)	
)	
v.)	COA NO. 68575-9-1
)	
T.M.,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 11TH DAY OF OCTOBER 2012, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] T.M.
7351 126TH PLACE S.E.
NEW CASTLE, WA 98056

SIGNED IN SEATTLE WASHINGTON, THIS 11TH DAY OF OCTOBER 2012.

x Patrick Mayovsky

2012 OCT 11 Fri 11:16
COURT OF APPEALS
STATE OF WASHINGTON