

FILED
Court of Appeals
Division III
State of Washington
3/31/2021 4:29 PM

FILED
SUPREME COURT
STATE OF WASHINGTON
4/1/2021
BY SUSAN L. CARLSON
CLERK No.
Court of Appeals No. 36816-5-III
99615-6

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

VICTOR JAMES MATHIS,

Appellant.

PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii

I. IDENTITY OF PETITIONER AND DECISION BELOW..... 1

III. ISSUES PRESENTED FOR REVIEW 1

IV. STATEMENT OF THE CASE 1

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED3

VI. CONCLUSION8

TABLE OF AUTHORITIES

Cases

<i>In re Adolph</i> , 170 Wash. 2d 556, 568–69, 243 P.3d 540, 546 (2010).....	7
<i>Nessman v. Sumpter</i> , 27 Wn.App. 18, 24, 615 P.2d 522 (1980).....	1, 3
<i>State v. Buchanan</i> , 79 Wn.2d 740, 745, 489 P.2d 744 (1971)	3
<i>State v. Goggin</i> , 185 Wn. App. 59, 70, 339 P.3d 983 (2014).....	6
<i>State v. Mathis</i> , No. 36816-5-III, 2021 WL 804678 (Wash. Ct. App. Mar. 2, 2021)	1
<i>State v. Wallis</i> , 50 Wn.2d 350, 354–55, 311 P.2d 659 (1957)	3

Statutes

RCW 9.41.010(27).....	1
RCW 9.41.040(1)(a).....	1

Rules

RAP 13.4(b)(2).....	1
RAP 13.4(b)(3).....	1

.....

I. IDENTITY OF PETITIONER AND DECISION BELOW

Victor James Mathis, seeks review of a unpublished Court of Appeals decision, issued March 2, 2021 affirming his conviction and sentence. *State v. Mathis*, No. 36816-5-III, 2021 WL 804678 (Wash. Ct. App. Mar. 2, 2021). See Appendix 1.

III. ISSUES PRESENTED FOR REVIEW

1. Does the Court of Appeals opinion conflict with *Nessman v. Sumpter*, 27 Wn.App. 18, 24, 615 P.2d 522 (1980), with it found that Sergeant Hunziker’s testimony supplied direct evidence contradicting Mr. Mathis’ testimony under oath for the perjury when Hunziker’s testimony was based solely upon Mr. Mathis’s oral admission? RAP 13.4(b)(2).

2. In a perjury prosecution, is a Georgia Department of Corrections fingerprint card listing a charge of armed robbery sufficient to directly contradict Mr. Mathis’s statement under oath he had not been convicted of that charge? RAP 13.4(b)(3).

IV. STATEMENT OF THE CASE

Mr. Mathis was charged with two counts of first degree unlawful possession of a firearm. See *State v. Mathis*, No. 36296-5-III, 2019 WL 3934651 at *1 (Aug. 20, 2019) (unpublished), petition denied, No. 97674- 1, 455 P.3d 124 (Jan. 8, 2020). Those charges required the State to prove Mr. Mathis had a prior conviction for a “serious offense.” See RCW 9.41.040(1)(a); see also RCW 9.41.010(27). In order to establish the prior conviction element, the State introduced evidence it alleged proved Mr. Mathis had been convicted of burglary and armed robbery in Georgia in 1991. See *Mathis*, 2019 WL 3934651 at *1.

The name on the Georgia evidence presented was not Mr. Mathis' name, but "Victor Lewis James," which the State insisted was an alias. During the trial, Mr. Mathis testified in his own defense he had a half-brother named Victor Lewis James, with whom he shared both a father and the same first name. Mr. Mathis explained he referred to this brother as his "twin" because they were conceived around the same time, while acknowledging they were not technically twins because they did not share the same mother. RP 68. Mr. Mathis testified it was his brother, Mr. James, who committed and was convicted of several felonies in Georgia in 1991. RP 67–68. Mr. Mathis further testified he had neither gone by any other name nor been convicted of a felony in Georgia. RP 64–65. Mr. Mathis was convicted by a jury and received concurrent 102- month sentences on each count. See Mathis, 2019 WL 39345651 at *2. The convictions were upheld on appeal. See Id. at *3.

While Mr. Mathis' appeal of the first degree unlawful possession of a firearm charges was pending, the State charged Mr. Mathis with perjury, alleging Mr. Mathis lied under oath in testifying he was not a convicted felon and that he had not used any other name. CP 124.

The State presented the testimony of a Sergeant Hunziker who stated that Mr. Mathis had admitted to him he had been convicted of armed robbery and burglary in Georgia. Then, over repeated defense objections, the State introduced a fingerprint card from the Georgia Department of Corrections the State alleged contained Mr. Mathis' fingerprints. RP 36, 41, 57, 79–81, 90–93; RP 94–95 (trial court's order admitting the fingerprint evidence); see also Ex. 2 (the Georgia fingerprint card). The State offered the testimony of a fingerprint expert that the Georgia fingerprint card matched Mr. Mathis'

prints. See RP 82– 96. In the State’s view, the fingerprint card established that, contrary to Mr. Mathis’ testimony, he had previously been convicted of two serious offenses – burglary and armed robbery.

The trial court found Mr. Mathis guilty of perjury, relying on his statements to police during arrest and the fingerprint evidence. CP 106–113. The court sentenced Mr. Mathis to a standard range sentence of 84 months, to be served consecutive to his sentence for the firearm convictions. RP 120; CP 5.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

As the Court of Appeals acknowledges, to be convicted of perjury, the state must present one credible witness who directly contradicts the defendant’s oath and another direct witness or corroborating circumstances established by independent evidence of a character sufficient to overcome the oath. However, the Court erred when it found the evidence here met that heightened standard.

The “direct testimony” required by the rule must come from a person “in a position to know by his or her own experience that the facts sworn to by the defendant are false.” *Nessman v. Sumpter*, 27 Wn.App. 18, 24, 615 P.2d 522 (1980). Contradictory statements by the defendant, sworn or unsworn, are not direct evidence of the falsity of the testimony that the law requires. See also *State v. Buchanan*, 79 Wn.2d 740, 745, 489 P.2d 744 (1971). *State v. Wallis*, 50 Wn.2d 350, 354–55, 311 P.2d 659 (1957). They can, however, be corroborating of the direct testimony. *Nessman* at 24.

The Court of Appeals opinion conflicts with *Nessman*. In *Nessman*, Ronnie Monroe Howell was arrested and told a booking officer his true name. But at a fugitive

hearing on a California warrant, he said under oath that he was Dale Nessman. The State charged him with perjury. The State's principal evidence to prove defendant's testimony at the fugitive hearing was false, was Officer Cole's testimony that defendant had acknowledged his name was Howie. In addition, the State presented corroborative evidence: a certified copy of a California driver's license issued to Ronnie Monroe Howie with his photograph, a photograph album containing many snapshots of defendant identified as "Ronnie," a small box bearing defendant's name and social security number, and the fact defendant responded to a greeting from a California police officer relayed to him by Washington police. *Nessman* at 22. The Court reversed because there was no witness who testified of his or her own direct knowledge that defendant was not Dale Nessman and was Ronnie Howie. *Nessman* at 25.

The same is true here. No witness had direct knowledge Mr. Mathis had been convicted of an armed robbery or burglary in Georgia. The Court of Appeals simply erred when it found that Sergeant Hunziker's testimony supplied the first condition for the perjury charge when Hunziker's testimony was based solely upon Mr. Mathis's oral admission.¹

The other evidence the State relied on was a fingerprint card from the Georgia Department of Corrections labeled with the name "Victor Lewis James." See Ex. 2. If the

¹ There was no evidence Mathis' statement to the officer was recorded. *State v. Singh*, 167 Wash. App. 971, 977, 275 P.3d 1156, 1159 (2012)(recordings of defendant's admission can serve as the detective's basis of knowledge and could also corroborate that testimony).

fingerprint card can be deemed “one credible witness directly contradicting” Mr. Mathis oath, it too is insufficient.

As the trial court noted, the offered exhibit was “just a fingerprint page . . . I don’t know if it is a document of a judgment entered after a final trial.” RP 80; see also Ex. 2. The document merely indicates a “Victor James Mathis” was “charge[d],” but nowhere does it indicate that any charges led to a conviction. See Ex. 2. As the trial court initially acknowledged, the exhibit itself is “just a fingerprint page,” not a judgment and sentence. RP 80; see also Ex. 2. The exhibit indicates it is from the “Dept of Corr” in Atlanta, Georgia, is labeled with the name “Victor Lewis James” at the top, and contains identifying information, such as race, height, weight, social security number, and a set of fingerprints. See Ex. 2. The exhibit also includes a box labeled “CHARGE,” with the following information listed: “POSS FIREARM CONVICT FELON (91385): POSS OF CERTIAN [sic] WEAPONS (91385): POSS OF FIREARM DUR CRIME (91385): AG AGRAVATED [sic] ASSAULT (91385): ARMED ROB*.” See Ex. 2. Contrary to the trial court’s finding, the exhibit contains no information regarding a burglary conviction. See Ex. 2. The exhibit also includes box labeled “FINAL DISPOSITION,” followed by a string of numbers and letters. See Ex. 2. However, nowhere in the document does it state it is a judgment and sentence, or verify that the individual fingerprinted was actually convicted of any charges. See Ex. 2.

The Court found the fingerprint card was competent proof that Mr. Mathis had been convicted of armed robbery, a “serious offense.”²

The Court reasoned:

Toward the top left, the fingerprint card bears a stamp that reads, “ADDITIONAL SENTENCE.” Ex. 2. An inch or so below this, a section is entitled, “FINAL DISPOSITION.” Ex. 2. In that section, various sentences are paired with various counts. A person is not sentenced unless convicted. We note there are five charges listed in the charges section and five sentences listed in the disposition section. The trial court correctly concluded the fingerprint card reflected criminal convictions.

State v. Mathis, No. 36816-5-III, 2021 WL 804678, at *5 (Wash. Ct. App. Mar. 2, 2021).

The fingerprint card was not direct evidence that Mr. Mathis was convicted of armed robbery and burglary in Georgia. It contains no evidence of a conviction for either armed robbery or burglary. Exhibit 2. Although the card indicates five different “charges” it does not state the person fingerprinted was actually convicted of any crime. And the fact that it lists five charges significantly undermines the conclusion that Mr. Mathis must have been convicted of armed robbery or he would not be “sentenced.” He could have been sentenced on anyone of the other four. Absent a judgment, there is no way to conclude that he was sentenced on the armed robbery.

Further, the best evidence of a prior conviction is a certified copy of a judgment and sentence. *State v. Goggin*, 185 Wn. App. 59, 70, 339 P.3d 983 (2014). The State did not supply such a document here. Proof can be had by a record or transcripts of prior proceedings or other comparable documents of record or transcripts of prior proceedings”

² The Court of Appeals acknowledged that the fingerprint card did not contain any proof that Mr. Mathis had been convicted of burglary.

are admissible to establish criminal history. *In re Adolph*, 170 Wash. 2d 556, 568–69, 243 P.3d 540, 546 (2010). But court must be satisfied this evidence bears some “minimum indicia of reliability. *Id.* In *Adolph*, the Court reviewed the extensive statutory authority for compilation of driving records and concluded that a Washington State driving record abstract was reliable and sufficient proof of a prior conviction. *Id.* at 570.

The fingerprint card is not minimally reliable proof that Mr. Mathis was previously convicted of armed robbery in Georgia. There is no evidence here that the Georgia fingerprint card was subject to the same kind of statutory support or regulation as the Washington DOL records at issue in *Adolph*. It is signed – but only by the person taking the fingerprints. There is no evidence about who prepared the card. There is no attestation the listed charges are true and correct. In fact, there is an unexplained asterisk next to the armed robbery notation.³ And there is no way to determine if the five sentences in disposition section relate to the five charges listed. The Court of Appeals simply made that assumption.

The heightened requirement of proof in perjury cases ensures that there was a genuine or true lie. *State v. Singh*, at 977. The Court of Appeals erred when it found, after making several assumptions about the meaning of the notations on the fingerprint card, that it proved that Mr. Mathis had been convicted of armed robbery. This document simply does not meet the heightened standards of proof required in a perjury case.

³ The “reliability” of the fingerprint card is also undercut by the fact that the State could not produce a judgement for any of these convictions. Georgia has a standard written sentencing form. <https://georgiacourts.gov/statecourt/state-court-behind-the-bench/state-court-forms/#1566242970836-b2a5117a-f6bb>.

For these same reasons, assuming that Court of Appeals was correct in deeming Sergeant Hunziker the “direct witness”, the card is also insufficient to or corroborate evidence that Mr. Mathis was actually convicted of armed robbery.

VI. CONCLUSION

This Court should accept review of this petition.

RESPECTFULLY SUBMITTED this 31st day of March 2021.

/s/Suzanne Lee Elliott

Suzanne Lee Elliott, WSBA #12634
Attorney for Victor Mathis

2021 WL 804678

Only the Westlaw citation is currently available.

NOTE: UNPUBLISHED OPINION,
SEE WA R GEN GR 14.1

Court of Appeals of Washington, Division 3.

STATE of Washington, Respondent,

v.

Victor James MATHIS, Appellant.

No. 36816-5-III

|
FILED MARCH 2, 2021

Appeal from Klickitat Superior Court, Docket No:
18-1-00099-0, Honorable [Randall C. Krog](#), Judge

Attorneys and Law Firms

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UNPUBLISHED OPINION

[Lawrence-Berrey](#), J.

*1 Victor James Mathis challenges his first degree perjury conviction and sentence. The perjury conviction arises out of testimony Mathis gave during his 2018 trial in which he was charged with two counts of first degree unlawful possession of a firearm (UPFA). In that trial, Mathis testified he had never been convicted of any crimes in Georgia and that the Georgia crimes the State asserted he committed were actually committed by his identical twin half-brother, Victor Lewis James. We affirm his conviction but remand for resentencing.

FACTS

Firearms arrest and charges

In January 2018, police responded to a disorderly conduct call in Goldendale, Washington. Officers contacted Victor James Mathis, who permitted them to seize a .30-06 rifle from

his home. Later that day, police learned of Mathis's criminal history and obtained a search warrant. The next day, during a search of Mathis's home, police found another weapon. After advising him of his *Miranda*¹ rights, Sergeant Jay Hunziker told Mathis that he was unable to lawfully possess firearms due to two Georgia felony convictions. Mathis initially denied the convictions, but later said he had been in custody for those crimes but was released when authorities learned his half-brother had used his name. Sergeant Hunziker advised Mathis that his criminal history contained his identifying information. Mathis then admitted to the sergeant that he was a felon and had been convicted of armed robbery and burglary in Georgia and that he knew he was not allowed to possess firearms. Mathis was arrested and charged with two counts of first degree UPFA.

Firearms trial

In August 2018, Mathis went to trial on his firearms charges. Mathis testified in his own defense. Under oath, he stated he had never gone by another name, had never been convicted of crimes in Georgia, and had never been to prison. Yet criminal records from Georgia showed that a Victor Lewis James had been convicted of armed robbery. Mathis explained that Victor Lewis James was his identical twin half-brother from another mother and that both he and James were born on the same day.

The jury found Mathis guilty of two counts of first degree UPFA. Two weeks later, the trial court sentenced Mathis to 102 months for each count, running them concurrently.²

Perjury charge and trial

After the firearms trial, the sheriff's office began investigating the identity of Victor Lewis James, Mathis's purported twin half-brother. Detectives searched Georgia Vital Records and they were unable to locate the birth of Victor Lewis James; they found only Victor James Mathis. Detectives obtained information on some of the prior Georgia convictions, including a Georgia Department of Corrections fingerprint card that listed Victor Lewis James as the person convicted.

*2 Jody Dewey, the State's forensic analyst, compared the fingerprints on the Georgia fingerprint card with those taken during Mathis's booking and his judgment and sentencing. The three sets of fingerprints all had the same pattern types and the same right thumb fingerprint.

The State charged Mathis with one count of perjury for material misstatements he made during his trial testimony. The State alleged Mathis lied under oath when “denying he was a convicted felon or that he had previously gone under a different name.” Clerk's Papers (CP) at 124.

Mathis elected to have the perjury charge tried to the bench. The State called Sergeant Hunziker, the arresting officer from the January 2018 firearms arrest. Sergeant Hunziker explained that after he arrested Mathis and read him his rights, Mathis said he had been convicted but was released from custody because his half-brother had used his name. But when the sergeant explained to Mathis the information in his criminal history included his birth date, FBI³ number, fingerprint classifications, and known aliases, Mathis admitted he was a convicted felon and had been convicted of armed robbery and burglary in Georgia.

The State offered a fingerprint card certified by the Georgia Department of Corrections. Ex. 2.⁴ The fingerprint card contained identifying information, a box stamped “ADDITIONAL SENTENCE,” a box marked “CHARGE,” and a box marked “FINAL DISPOSITION.” The following information was typed in the “CHARGE” box: “POSS FIREARM CONVCT FELON (91385): POSS OF CERTAIN WEAPONS (91385): POSS OF FIREARM DUR CRIME (91385): AG AGRAVATED ASSAULT (91385): ARMED ROB*.” Ex. 2. The following information was typed in the “FINAL DISPOSITION” box: “5Y CT 10 CC: 5Y CT 9 CC: 5Y CT 8 CC: 10Y 2 CTS CC: 20Y SV 15Y B/P CT 1.” Ex. 2.

The parties disputed the admissibility of the fingerprint card. After some discussion, the court found it was properly authenticated, and the hearsay exception for judgment of a previous conviction applied:

In reviewing the documents it does appear that these are pursuant to pleas based upon page—the third page of Exhibit 2 indicates that the State v. Victor Lewis James was concluded by plea, negotiated guilty on Counts 1 through 10. There was a prosecution order on Count 11. That's why I was trying to figure out what that was that appears to be the recidivist count pursuant to the special presentation that was provided in here. The document does then contain essentially the information as to all eleven counts, as well as the judgment and sentence—final disposition, I guess is what it's called, in the State of Georgia. ...

So, with that said, I do change my position with regards to Exhibit Number 2 and do find that Exhibit 2 is admissible. [5]

Report of Proceedings (RP) at 94-95.

The court entered the following findings of fact, which are not disputed on appeal:

11. ... Mathis ... admitted to Sergeant Hunziker that he was in fact a convicted felon and had been convicted of the charges of armed robbery and burglary in Georgia....

*3

14. ... Mathis testified under oath at [the firearms] trial that he did not go by any other name, that he had not been convicted of any crimes out of Georgia, that he had a brother, from another mother but same father, with the name of Victor Lewis James. Mathis testified it was his brother Victor Lewis James that had been convicted in Georgia of burglary and armed robbery and again that he never been convicted....

....

20. Dewey determined that [the Georgia fingerprint card for James and the Washington fingerprint cards for Mathis] all had the same pattern types.

21. Dewey further determined that all 3 fingerprint cards/prints contained the same right thumb fingerprint.

22. Dewey testified that no two fingerprints are the same.

CP at 17-19.

From these and other findings, the trial court entered the following conclusions of law:

9. Mathis [sic] testimony under oath at his trial on the [first degree UPFA] charges that he had never been convicted of the underlying predicate crimes for armed robbery and burglary nor convicted of any crimes are material statements.

10. Sergeant Hunziker was a credible witness that provided testimony that positively and directly contradicted the testimony of Mathis, when Sergeant Hunziker testified that Mathis advised him that he had been previously convicted of the armed robbery and burglary charges out of Georgia.

11. Jody Dewey of the Washington State Patrol Crime Lab provided testimony that the fingerprints of Victor James Mathis were the same as the individual convicted in Georgia for armed robbery and burglary. This testimony was independent testimony that corroborated the testimony of Sergeant Hunziker and clearly contradicted the testimony of Mathis provided under oath that he was not the Victor Lewis James that was convicted of those offenses in Georgia.

12. The testimony provided in this case was of such a character as to clearly turn the scale and overcome the oath of the defendant and the legal presumption of his innocence.

13. Mathis knowingly made a materially false statement, knowing the statement to be false, under oath in an official proceeding when he testified falsely that he had never been convicted of the crime[s] of burglary and armed robbery out of Georgia.

CP at 21-22.

From these, the trial court determined that the State had proved beyond a reasonable doubt that Mathis committed perjury in the first degree.

Perjury sentencing

Defense counsel stipulated that Mathis's offender score was 9. The court then said:

I do find that the offender score of nine is appropriate based upon the stipulation of the parties and also with regards to viewing Mr. Mathis' criminal history, both for those offenses from the unlawful possession of firearm case in 18-1-17-20 points as well as the offenses out of Georgia being comparable offenses after doing both a legal and a factual analysis of those offenses. I do find that they are comparable offenses for making an offender score of nine in this case, standard range seventy-two to ninety-six months.

*4 RP at 120. Defense counsel asked for Mathis's perjury sentence to run concurrent with his firearm sentence. The prosecutor disagreed and argued that a concurrent sentence would constitute an exceptional sentence downward. The trial court agreed and sentenced Mathis to 84 months, to run consecutive with his 102 month firearm sentence. Mathis timely appeals.

ANALYSIS

PERJURY: SUFFICIENCY OF THE EVIDENCE

Mathis contends the trial court erred in finding that the State's fingerprint evidence and expert testimony were sufficient to meet the higher standard of proof for perjury convictions. He alternatively argues the fingerprint card was inadmissible hearsay.

Sufficiency of evidence

The State must prove every element of a crime beyond a reasonable doubt. *State v. Byrd*, 125 Wn.2d 707, 713, 887 P.2d 396 (1995). Where sufficient evidence does not support a conviction, it cannot stand. *State v. Hummel*, 196 Wn. App. 329, 353, 383 P.3d 592 (2016). Insufficient evidence claims admit the truth of the State's evidence and all reasonable inferences drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

“A person is guilty of perjury in the first degree if in any official proceeding he or she makes a materially false statement which he or she knows to be false under an oath required or authorized by law.” RCW 9A.72.020(1). The State must present the testimony of at least one credible witness that directly contradicts the defendant's oath and another direct witness or “ ‘ corroborating circumstances established by independent evidence’ ” of such a character to overcome the defendant's oath and presumption of his innocence. *State v. Buchanan*, 79 Wn.2d 740, 744, 489 P.2d 744 (1971) (quoting *State v. Wallis*, 50 Wn.2d 350, 353, 311 P.2d 659 (1957)); see also *State v. Olson*, 92 Wn.2d 134, 136, 594 P.2d 1337 (1979). “The quantum of proof necessary to sustain a conviction of perjury is the highest known to the law, excepting only treason.” *Buchanan*, 79 Wn.2d at 744.

One credible witness directly contradicting the defendant's oath

At his firearms trial, Mathis testified under oath that he had never been convicted of any crimes out of Georgia. He testified it was his twin half-brother, not him, who had been convicted in Georgia of burglary and armed robbery.

Sergeant Hunziker directly contradicted this. He testified that Mathis, after waiving his *Miranda* rights, “admitted to me he was a convicted felon and was convicted of armed robbery and burglary in Georgia.” RP at 54. This testimony is sufficient to prove the first part of what the State was required to prove.

Independent evidence of corroborating circumstances

The State sought to prove the second part with documentary proof that Mathis had been convicted in Georgia of armed robbery and burglary. The State had a certified copy of the Georgia Department of Corrections fingerprint card admitted for this purpose.

Mathis argues the fingerprint card was insufficient evidence because it does not prove the existence of a prior felony conviction and because it was hearsay. We address the hearsay issue first.

The card was admissible hearsay

The trial court admitted the fingerprint card under ER 803(a)(22) as a judgment of a previous conviction. We agree with Mathis that the fingerprint card is not a judgment. Nevertheless, a trial court's ruling on the admissibility of evidence will not be disturbed if it is sustainable on an alternate ground. *State v. St. Pierre*, 111 Wn.2d 105, 119, 759 P.2d 383 (1988).

*5 The State argues the card was admissible under ER 803(a)(8) as a certified copy of a public record. To be admissible under this hearsay exception, the document must (1) contain facts rather than conclusions that involve judgment, discretion or the expression of an opinion, (2) relate to facts that are of a public nature, (3) be retained for public benefit, and (4) be authorized by statute. *State v. Monson*, 113 Wn.2d 833, 839, 784 P.2d 485 (1989) (quoting *Steel v. Johnson*, 9 Wn.2d 347, 358, 115 P.2d 145 (1941)). We agree that the fingerprint card meets these criteria. See GA. CODE ANN. § 42-2-11 (directing Georgia Board of Corrections to promulgate administrative rules); GA. COMP.

R. & REGS. 125-2-4-.05 (Georgia Department of Corrections must maintain inmate file records).

Mathis does not dispute that the fingerprint card is admissible under ER 803(a)(8). Rather, citing *State v. Ferguson*, 100 Wn.2d 131, 138, 667 P.2d 68 (1983), he argues the State may not argue a different evidentiary ground than argued to the trial court. However, *Ferguson* stands for the proposition that an appellate court will not *reverse* if a trial court admits evidence that could have been excluded had trial counsel objected on the correct evidentiary basis. *Id.* *Ferguson* does not preclude us from *affirming* the admissibility of evidence on an alternate ground.

Evidence of “serious offense” conviction

Mathis argues the fingerprint card is insufficient to establish he was convicted of any crime. We disagree.

Toward the top left, the fingerprint card bears a stamp that reads, “ADDITIONAL SENTENCE.” Ex. 2. An inch or so below this, a section is entitled, “FINAL DISPOSITION.” Ex. 2. In that section, various sentences are paired with various counts. A person is not sentenced unless convicted. We note there are five charges listed in the charges section and five sentences listed in the disposition section. The trial court correctly concluded the fingerprint card reflected criminal convictions.

Mathis next argues the fingerprint card omits any evidence he was convicted of burglary. We agree, but it does show Mathis was convicted of armed robbery. The question then is whether Mathis's first degree perjury conviction can stand without evidence he was convicted of burglary. It can.

As mentioned previously, first degree perjury requires proof that Mathis made a “materially false statement” while under oath. RCW 9A.72.020(1). There is no question that Mathis made a false statement while under oath. Mathis testified in his firearms trial that he had never been convicted of any crimes out of Georgia. He testified it was his twin half-brother, not him, who had been convicted in Georgia of burglary and armed robbery. The fingerprint card showed that Mathis lied. It showed he had been convicted of at least five crimes, one of which was armed robbery. The only question is whether the false statement was material.

A “materially false statement” means “any false statement ... which could have affected the course or outcome of the proceeding.” [RCW 9A.72.010\(1\)](#). Had the jury believed Mathis—that it was his twin half-brother, not him, who had been convicted of crimes in Georgia—this certainly “could have” affected the outcome of the firearms trial. In fact, it would have. Without the Georgia convictions, the State could not have proved the first degree UPFA charges.

CONSECUTIVE SENTENCING

Mathis contends the trial court erred by ordering his perjury sentence to run consecutive to his firearms sentence. The State concedes this issue and recommends resentencing consistent with [RCW 9.94A.589\(3\)](#). For the reasons set forth below, we agree.

*6 The sentencing statute at issue provides:

[W]henver a person is sentenced for a felony that was committed while the person was not under sentence for conviction of a felony, the sentence shall run concurrently with any felony sentence which has been imposed by any court in this or another state or by a federal court subsequent to the commission of the crime being sentenced unless the court pronouncing the current sentence expressly orders that they be served consecutively.

Former [RCW 9.94A.589\(3\)](#) (2015). In other words, the statute directs concurrent sentencing “when (1) a person who is ‘not under sentence of a felony’ (2) commits a felony and (3) before sentencing (4) is sentenced for a different felony.” *State v. Shilling*, 77 Wn. App. 166, 175, 889 P.2d 948 (1995) (quoting former [RCW 9.94A.400\(3\)](#) (1990)⁶). The trial court has discretion to order a current sentence to run concurrently with, or consecutive to, a felony sentence previously imposed. *Id.* at 175-76. But only an express order of consecutive sentencing can overcome the statutory presumption of concurrent sentencing. *Id.* at 176.

Mathis committed perjury on August 9, 2018, during his trial for two counts of unlawful possession of a firearm. He was

sentenced for those crimes on August 31, 2018. As such, he was not yet serving a felony sentence at the time of his perjury and [RCW 9.94A.589\(3\)](#) applies. For this reason, we remand for resentencing.

OFFENDER SCORE

Mathis contends he received ineffective assistance of counsel when his attorney agreed to his offender score of 9 at sentencing instead of challenging the comparability of several out-of-state convictions. He asks that we, for the first time on appeal, perform the comparability analysis of those out-of-state convictions.

The State responds that the comparability analysis of Mathis's prior out-of-state convictions should be performed at resentencing. We agree. The trial court is the best venue for conducting a thorough evidentiary hearing. We remand for this purpose.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to [RCW 2.06.040](#).

WE CONCUR:

[Pennell, C.J.](#)

[Fearing, J.](#)

ATTACHMENT



Brian P. Kemp
Governor

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www.dcor.state.ga.us



Timothy C. Ward
Commissioner

STATE OF GEORGIA, COUNTY OF BUTTS

TO WHOM IT MAY CONCERN:

I, Carol D. Sturdvant, certify that I am an assistant to the Commissioner, Corrections Division, Keeper of the Official Central Office inmate records, for the Department Of Corrections, and as such assistant, I am authorized to certify official inmate records of said Department.

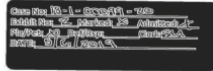
This is to certify that the attached copies from the records of:

Name: JAMES VICTOR LEWIS
GDC #: 522710

are true and correct copies from the Official Records of the Georgia Department of Corrections.

This the 1st day of April, 2019

Carol D. Sturdvant
Carol D. Sturdvant, Manager
Offender Information Services
Offender Administration
Corrections Division



LEAVE BLANK (2) 7-8591

TYPE OR PRINT ALL INFORMATION IN BLACK

LAST NAME NAME FIRST NAME MIDDLE NAME STATE

JAMES VICTOR LA. G

ADDITIONAL SENTENCE

NUMBER OF PERSONS REGISTERED

DATE OF BIRTH

4/17/91

SEX M HT 5 FT 11 IN WT 175 LB HA BRN EYES BRN

DOUGLASSVILLE, GA

DOUGLASSVILLE, GA

7/7/67

GA060025C

DEPT OF CORR

ATLANTA, GA

EP-212539

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CLAIM

NOV

MOCK SECURITY DOC

MOCK CLASS - FCC

CR 1

CR 8 CC:10Y 2 CTS CC:20Y BY 15Y 9/9

CR 9 CC:5Y CR 9 CC:5Y

LEFT FOUR FINGER TAKEN BILATERALLY

RIGHT FOUR FINGER TAKEN BILATERALLY

All Citations

Not Reported in Pac. Rptr., 2021 WL 804678

Footnotes

- 1 [Miranda v. Arizona](#), 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).
- 2 Mathis appealed his firearms convictions to this court, arguing the State brought insufficient evidence to prove the essential element of a constitutionally valid predicate felony conviction. This court affirmed those convictions in an unpublished opinion. [State v. Mathis](#), No. 36296-5-III (Wash. Ct. App. Aug. 20, 2019) (unpublished) http://www.courts.wa.gov/opinions/pdf/362965_unp.pdf, review denied, 194 Wn.2d 1019, 455 P.3d 124 (2020).
- 3 Federal Bureau of Investigation.
- 4 This exhibit is attached as an appendix to this opinion.
- 5 Because of an earlier objection, the State had limited exhibit 2 to a two-page submission. See RP at 36-37. The trial court's reference, earlier in this quote, to the third page was therefore error. Because the State had limited its submission to two pages, this is what was admitted.
- 6 Former RCW 9.94A.400 was recodified as RCW 9.94A.589 by LAWS OF 2001, ch. 10, § 6.

End of Document

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	COA NO. 36816-5-III
v.)	
)	
VICTOR MATHIS,)	
)	
Petitioner.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 31ST DAY OF MARCH, 2021, I CAUSED THE ORIGINAL **PETITION FOR REVIEW TO THE SUPREME COURT** TO BE FILED IN THE COURT OF APPEALS AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] DAVID WALL [davidw@klickitatcounty.org] Klickitat County Prosecutor's Office 205 S Columbus Ave. Stop 18 Goldendale, WA 98620	() () (X) () ()	U.S. MAIL HAND DELIVERY E-SERVICE VIA PORTAL
[X] VICTOR MATHIS 410734 Coyote Ridge Corrections Center PO Box 769 Connell, WA 99326-0769	(X) () () ()	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 31ST DAY OF MARCH, 2021.



X _____

Washington Appellate Project
1511 Third Avenue, Suite 610
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710

WASHINGTON APPELLATE PROJECT

March 31, 2021 - 4:29 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36816-5
Appellate Court Case Title: State of Washington v. Victor James Mathis
Superior Court Case Number: 18-1-00099-0

The following documents have been uploaded:

- 368165_Petition_for_Review_20210331162928D3166091_6269.pdf
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A copy of the uploaded files will be sent to:

- davidq@klickitatcounty.org
- davidw@klickitatcounty.org
- jessica@washapp.org
- paapeals@klickitatcounty.org

Comments:

Sender Name: MARIA RILEY - Email: maria@washapp.org

Filing on Behalf of: Suzanne Lee Elliott - Email: suzanne@washapp.org (Alternate Email: wapofficemail@washapp.org)

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SEATTLE, WA, 98101
Phone: (206) 587-2711

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