

July 11, 2017

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

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

JESSE LEO ARNESTAD,

Appellant.

No. 48802-7-II

UNPUBLISHED OPINION

WORSWICK, J. — Jesse Arnestad appeals his convictions for residential burglary and first degree theft, asserting insufficient evidence. He argues that this is a “fingerprint-only” case and that the State did not prove that his fingerprint could have only been placed during the commission of the crimes. We disagree and hold that sufficient evidence supports Arnestad’s convictions. Consequently, we affirm.

**FACTS**

Annie Padgett and her boyfriend at the time, Brandon O’Neal, lived with Padgett’s mother, Hwa Cha Park, for some time in 2014, until Park kicked them out. Padgett and O’Neal did not return Park’s house keys to her, despite Park’s request.

After Padgett and O’Neal moved out, Park came home from work to find that her house had been burglarized. There were no signs of forced entry, but the living room television was missing and the master bedroom had been ransacked. The mirrored closet doors had been removed from their tracks and a safe containing Park’s valuables and important paperwork had been ripped out of the wall and taken. Law enforcement officers found blood smeared around

the back wall of the closet and a fingerprint on one of the closet doors. The print's placement was consistent with someone holding the door to remove it from its tracks.

On the night of the burglary, Padgett went with O'Neal to pick up some heroin from his friend Jesse Arnestad, whom Padgett had never met before. She noticed that Arnestad's hands were swollen and had fresh cuts on them. She thought that the cuts matched up with the bloodstains found around where her mother's safe had been. Padgett immediately assumed that Arnestad had burgled her mother's house. Park testified that Arnestad had never been to her house before and that she never gave him permission to be there.

Park called Padgett to tell her that she thought O'Neal was responsible for the burglary and asked her to convince O'Neal to return the stolen papers from the safe. Padgett then pleaded with O'Neal to return at least some of the important personal and legal documents. Several days after the burglary, Padgett found a file with some of the stolen papers on her doorstep.

The fingerprint found on the closet door matched Arnestad. Law enforcement officers located Arnestad and questioned him. When shown a picture of Park's house, Arnestad said that he did not recognize it and had never been to the house. But when told about the presence of his fingerprint on the closet door, he asked, "Is this about Brandon [O'Neal]?" 3 Verbatim Report of Proceedings (VRP) at 437. At the time, the officers had no idea who O'Neal was or that he may have been involved.

The State charged Arnestad with residential burglary and first degree theft either as a principal or as an accomplice. A jury found Arnestad guilty of both charges. Arnestad appeals his convictions.

## ANALYSIS

### I. LEGAL PRINCIPLES

Arnestad argues that the State did not present sufficient evidence to support his convictions. He argues that because the only evidence connecting him to the crimes was his fingerprint, the State bore the burden of proving the fingerprint could only have been impressed when the crimes were committed. We disagree because other evidence, viewed in the light most favorable to the State, links Arnestad to the crime, and because the fingerprint evidence alone supports Arnestad's conviction.

#### A. *Burglary and Theft*

To convict Arnestad of residential burglary, the State was required to prove that either he or an accomplice entered or remained unlawfully in a dwelling with the intent to commit a crime against a person. RCW 9A.52.025. To convict Arnestad of first degree theft, the State was required to prove that he or an accomplice committed theft of property which exceeded \$5,000 in value. RCW 9A.56.030. Theft is defined as “wrongfully obtain[ing] or exert[ing] unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services.” RCW 9A.56.020. In order to convict Arnestad as an accomplice, the State had to prove that with knowledge that his actions would promote or facilitate the commission of the crime, he either (1) solicited, commanded, encouraged, or requested another person to commit the crime, or (2) aided or agreed to aid another person in planning or committing the crime. RCW 9A.08.020(3)(a).

B. *Standard of Review*

Evidence is sufficient to support a conviction if any rational trier of fact, viewing the evidence in the light most favorable to the State, could find the elements of the charged crime beyond a reasonable doubt. *State v. Rich*, 184 Wn.2d 897, 903, 365 P.3d 746 (2016). “In claiming insufficient evidence, the defendant necessarily admits the truth of the State's evidence and all reasonable inferences that can be drawn from it.” *State v. Homan*, 181 Wn.2d 102, 106, 330 P.3d 182 (2014). We defer to the jury on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Andy*, 182 Wn.2d 294, 303, 340 P.3d 840 (2014). Circumstantial evidence and direct evidence carry equal weight. *State v. Varga*, 151 Wn.2d 179, 201, 86 P.3d 139 (2004).

Where the State produces no other evidence linking a defendant to the crime, fingerprint evidence is sufficient to support a conviction if the trier of fact could infer from the circumstances that the fingerprint could only have been impressed at the time of the crime. *State v. Jacobs*, 121 Wn. App. 669, 682, 89 P.3d 232 (2004), *rev'd on other grounds*, 154 Wn.2d 596, 115 P.3d 281 (2005). “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.” *State v. Bridge*, 91 Wn. App. 98, 100, 955 P.2d 418 (1998). If the object bearing a fingerprint is fixed and generally inaccessible to the public, it supports the inference that the print was impressed during the commission of the crime. *State v. Lucca*, 56 Wn. App. 597, 602-03, 784 P.2d 572 (1990).

## II. SUFFICIENT EVIDENCE SUPPORTS ARNESTAD'S CONVICTIONS

### A. *The Fingerprint is Not the Only Evidence Supporting Arnestad's Convictions*

Arnestad first argues that the only evidence linking him to the crimes is his fingerprint, and the State did not prove that the fingerprint could only have been impressed when the crimes were committed. We disagree because his fingerprint is not the only evidence that links him to the burglary.

First, Arnestad was friends with O'Neal, providing a connection between Arnestad and Park. When law enforcement officers questioned Arnestad about the burglary, Arnestad asked, "Is this about Brandon [O'Neal]?" 3 VRP at 437. The officers had not mentioned O'Neal to Arnestad and did not know about any potential involvement on O'Neal's part.

Second, Padgett saw fresh wounds on Arnestad's hands the night of the burglary. While the blood found where the safe was ripped out of the wall was not DNA tested, it is reasonable to infer that the blood on the wall was Arnestad's because the bloodstains found in the closet match stains that would have been left by his wounds and were located near his fingerprint.

Third, O'Neal had information about the house and its contents, and was in possession of a key to the house, allowing entry without any use of force.

Fourth, after Padgett pleaded with O'Neal to return some of the important stolen documents, those documents ended up on Padgett's doorstep only a few days later. While the return of the documents does not directly implicate Arnestad in the burglary, it does tend to show that either O'Neal, or someone with whom O'Neal had contact, burglarized Park.

Finally, the focus of the burglary was the safe in the master bedroom closet. A rational jury could infer that O'Neal provided information about the safe given that it was not in an obvious place.

Considering all the evidence in the light most favorable to the State, sufficient evidence exists to convince a rational trier of fact that Arnestad burglarized the Park's home and committed theft of her property.

B. *The Fingerprint Alone is Sufficient to Support Arnestad's Convictions*

Moreover, Arnestad's fingerprint alone is sufficient to support his convictions. Fingerprint evidence is sufficient to support a conviction if the trier of fact could infer from the circumstances that the fingerprint could only have been impressed at the time of the crime. *Jacobs*, 121 Wn. App. at 682.

The fact that law enforcement officers found Arnestad's fingerprint on a fixed object in a location that is generally inaccessible to the public supports the inference that Arnestad left his print during the burglary. *Lucca*, 56 Wn. App. at 602-03. By his own account, Arnestad had never been to Park's home before. Arnestad never had permission to be in Park's home, and, as far as Park knew, he had never been there. Therefore, the only time that Arnestad's fingerprint could have been impressed on the closet door was during the burglary. Because Arnestad's fingerprint could only have been impressed on the closet door at the time of the commission of the crime, his fingerprint alone is sufficient evidence to support his convictions.

APPELLATE COSTS

Arnestad requests that, should the State substantially prevail in this case, we decline to impose appellate costs because he is indigent. On January 31, 2017, RAP 14.2 was amended to

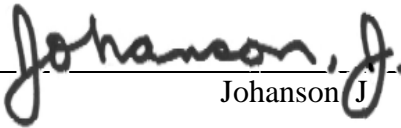
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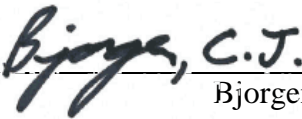
provide that appellate costs will not be awarded if a commissioner of this court determines that the party against whom costs are sought does not have the current or likely future ability to pay such costs. Because Arnestad's ability to pay costs on appeal may be addressed by a commissioner of this court, we decline to exercise our discretion to waive appellate costs in this decision terminating review. RAP 14.2; RCW 10.73.160(1).

We affirm Arnestad's convictions.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

We concur:

  
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Johanson J

  
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Bjorgen, C.J.

  
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Worswick J.