

1976

State of Utah In The Interest of Kenneth Eugene Marquez A Person Under Eighteen Years of Age : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

STATE OF UTAH in the
interest of

KENNETH EUGENE MARQUEZ

Case No. 14571

A person under eighteen
years of age.

BRIEF OF APPELLANT

Appeal From an Order of the Second
District Juvenile Court for Salt
Lake County, State of Utah, The
Honorable Regnal W. Garff, Jr.,
Presiding.

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JUL 30 1976

Clerk, Supreme Court, Utah

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IN THE SUPREME COURT
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KENNETH EUGENE MARQUEZ

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BRIEF OF APPELLANT

ISSUES PRESENTED ON APPEAL

- I. DID THE JUVENILE COURT ERR IN ADMITTING INTO EVIDENCE FINGERPRINT RECORDS OF THE APPELLANT WITHOUT REQUIRING ANY FOUNDATION THAT SUCH PRINTS WERE TAKEN IN COMPLIANCE WITH UTAH STATUTORY PROVISIONS AND JUVENILE COURT RULES.
- II. DID THE JUVENILE COURT ERR AS A MATTER OF LAW IN DECLARING FINGERPRINT RECORDS OF THE APPELLANT ADMISSABLE UNDER THE BUSINESS RECORDS EXCEPTION TO THE HEARSAY RULE.

- III. EVEN AFTER DECLARING THE ADMISSABILITY OF FINGERPRINT EVIDENCE OF THE APPELLANT UNDER THE BUSINESS RECORDS EXCEPTION TO THE HEARSAY RULE, DID THE JUVENILE COURT ERR IN NOT REQUIRING SUFFICIENT FOUNDATION UNDER THE EXCEPTION ITSELF.
- IV. DID THE JUVENILE COURT ERR IN ADMITTING FINGERPRINT RECORDS OF THE APPELLANT WITHOUT REQUIRING SUFFICIENT FOUNDATION AS TO THE AUTHENTICITY OF THE RECORDS.
- V. DID THE JUVENILE COURT ERR IN NOT GRANTING APPELLANT'S MOTION TO DISMISS BASED UPON INSUFFICIENT EVIDENCE TO SUSTAIN A CONVICTION.

STATEMENT OF THE CASE

This is an appeal from an Order of the Second District Juvenile Court for Salt Lake County, State of Utah, dated April 12, 1976, committing Kenneth Eugene Marquez, a juvenile to the Utah State Industrial School. Commitment occurred subsequent to an adjudicatory hearing conducted March 18, 1976 at which appellant was found guilty of the offenses of burglary and theft.

The offenses charged were allegedly committed on November 2, 1975, at a single-family dwelling in the "Avenues" area

of Salt Lake City. According to the testimony of the investigating police officer and the owner of the home, access was gained by means of a forced entry through a back door to the house. The house was entered and several items of personal property were reported missing from the living area of the house. The only window to an unconnected cellar of the house was reported by the owner to have been found by him with the glass unbroken and in its permanent frame lying on the floor of the cellar. This finding was concurrent with discovery of the burglary and theft of the upstairs portion of the house. No property was discovered missing from the cellar, nor was entry to the upstairs portion of the house possible from inside the cellar.

Two days later, on November 4, a latent fingerprint was lifted from the cellar window by the Salt Lake City Police. (State's Exhibit 2). The police officer who lifted his print testified that the window had been replaced in the cellar wall, contrary to previous police instructions to owner of the home. No testimony was presented in explanation of when or by whom the cellar window was replaced. One investigating officer had previously testified that he advised the victim on November 2, the day of the burglary, not to move the window until the crime lab technician was able to process it.

At trial, the only evidence introduced by the State against the appellant was testimony by Officer Bill D. Simpson, a technician in the Identification Division of the Salt Lake City Police

Department. Officer Simpson testified that one latent fingerprint was taken by him on November 4, 1974 from the outside surface of the window to the cellar which, again, had no inside connection to the living portion of the home, that the latent print was then compared to a fingerprint card which reportedly had been in the possession of the Salt Lake City Police Department since 1973, and that the card purportedly identified the print as belonging to the appellant. (State's Exhibit 1) Mr. Simpson testified that the latent print from the window was comparable to one of the prints on file. (State's Exhibit 3) No further evidence of any kind was introduced by the State against the appellant.

Although timely objection by defense counsel was made as to the lack of foundation showing compliance with statutory provisions and juvenile court rules governing the fingerprinting of juveniles and as to the competency of the fingerprint evidence itself, such objections were overruled. Defense counsel also moved to dismiss the case based upon insufficient evidence to support a determination that the appellant was guilty of burglary or theft. Counsel's Motion was denied.

Appellant was found guilty of burglary and theft and subsequently committed to the Utah State Industrial School.

INTRODUCTORY DISCUSSION

Where a court is considering a delinquency charge pursuant to the special procedures established by the Juvenile Court

and Rules which pointedly state that such proceedings are not criminal in nature, there is grave danger of injustice in the elimination of the usual safeguards surrounding a criminal trial. 43 ALR 2d 1130. In this vein, Dean Wigmore in his Treatise on Evidence, Vol. 5.3d ed § 1400, has said:

The procedure devised for juvenile courts is apt and enlightened. Nevertheless, the promoters of that legislation in their enthusiasm for its benefits and their determination to eliminate the conditions of the usual criminal court, have gone to the borderline of prudence in their iconoclasm....

During the past decade the United States Supreme Court has determined in three cases the boundaries of constitutional rights afforded children who come within the jurisdiction of the juvenile court, and it is important that those be acknowledged here at the outset. Kent v. United States, 383 U S 541 (1966), In Re Gault, 387 U S 1 (1967), In Re Winship, 397 U S 583 (1970). Although these landmark cases are well known, the principles of those decisions are set forth herein because of the collective mandate they set forth for provision of due process protections in delinquency proceedings parallel to those involved in adult criminal proceedings.

In Kent v. U.S., supra, the transfer of jurisdiction from Juvenile Court to the adult court of a 16 year old boy was held illegal. The Court decried the long, procedurally irregular history of the case and reasoned that denial to a juvenile of procedural protections available to an adult could

not be justified by any of the special protections allegedly provided by the juvenile system under the doctrine of "parens patriae." The court relied heavily on the transfer statute of the District of Columbia but clearly spoke in broad instructional terms of the right of the juvenile to procedural protections.

In Re Gault, supra, expanded and clarified the general ruling of Kent, supra, and unequivocally held that within the Juvenile Court system the essentials of due process and fair treatment in delinquency proceedings require: (1) the giving of adequate and timely notice of the charges against the juvenile; (2) notice that the child is entitled to be represented by counsel; (3) that the privileges against self-incrimination afforded by the Fifth Amendment apply in juvenile proceedings, and (4) that a child involved in an adversary proceeding has the right to confront and cross examine witnesses as guaranteed by the Sixth Amendment. The Gault holding has been the foundation of juvenile delinquency proceedings since 1967.

The standard by which a juvenile may be deemed guilty of a delinquency charge was determined in In Re Winship, supra. The standard established there was "proof beyond a reasonable doubt", that required in adult criminal proceedings. Here the court refused to accept the argument that a juvenile proceeding which could result in punishment through confinement in an institution was not criminal and that due process protections were therefore unnecessary.

The court reasoned:

"Civil labels and good intentions do not themselves obviate the need for criminal due process safeguards in juvenile courts. 397 U S at 365.

With these specified constitutional guarantees identified, the extension of applicable rules of evidence to juveniles in adjudicatory settings as demanded by due process is clear. With the exception of the right to a jury trial enjoyed by adults, the juvenile delinquency adjudication must, to be consistent with the Supreme Court Opinions, be conducted just as an adult criminal trial.

As stated in People v. Fitzgerald, 244 N.Y. 307, 155 N.E. 584 (1927),

"A child who commits an act which would be burglary or larceny in an adult, may be tried in the children's court and convicted and sent away...The Act, however, must be proved; and it must be proved by some kind of evidence. There must be a trial; the charge against the child cannot be sustained upon mere hearsay or surmise; the child must first have committed the act of burglary or of larceny before it can be convicted of being a delinquent child. The act remains the same, and the proof of the act is equally necessary whether we call it burglary, larceny or delinquency. The name may change the result; it cannot change the facts.

Utah recognizes the applicability of evidentiary safeguards in juvenile proceedings. As set forth in Rule 2 of the Utah Rules of Evidence (effective July 1, 1971), the application

of the rules in judicial proceedings is defined as follows:

Except to the extent to which they may be relaxed by other procedural rule or statute applicable to the specific situation, these rules shall apply in every proceeding, both criminal and civil, conducted by or under the supervision of a court, in which evidence is produced.

The Utah Rules of Evidence are clearly those applicable to the case herein as there are no provisions in the Juvenile Court Act to limit or modify their application in delinquency adjudications.

ARGUMENT

- I. THE JUVENILE COURT ERRED IN ADMITTING INTO EVIDENCE FINGERPRINT RECORDS OF THE ACCUSED WITHOUT PROPER FOUNDATION THAT SUCH FINGERPRINTS WERE TAKEN IN COMPLIANCE WITH UTAH STATUTORY PROVISIONS AND JUVENILE COURT RULES.

Two sets of fingerprints identified as belonging to the appellant were introduced at trial. The fingerprint card held by the Salt Lake City Police Department since 1973 was admitted over defense counsel's objection that there was insufficient foundation laid by the state to determine if the prints taken in 1973 were taken and held by the police in compliance with the Utah statute governing the taking of fingerprints of juveniles (Transcript, P.20). The record indicates that the fingerprints

card used as a comparison with a latent print found on an outside cellar window of the burglarized home provided the only basis for a determination of identification and guilt of the appellant.

Because no foundation was laid by the State to assure compliance with Section 55-10-116 and Rule 39, Utah Juvenile Court Rules of Practice and Procedure (hereafter U.J.C.R.P.P.), admission of State's Exhibit No. 1 was reversible error.

Section 55-10-116 U.C.A. (1953) governs the fingerprinting of juveniles. The statute provides:

...Without the consent of the (juvenile court) Judge, no fingerprints shall be taken of any child taken into custody unless the case is transferred for criminal proceedings.

No transfer for criminal proceedings was initiated against the appellant herein. Therefore, in accordance with Section 55-10-116, the fingerprints taken in 1973 are inadmissible without proper foundation that such prints were obtained legally as the result of obtaining judicial consent. If there is insufficient foundation to prove the legality of the taking of the appellant's prints, such prints must be presumed to have been illegally obtained and therefore are inadmissible as the fruits of an illegal act by the police.

There is no recognized Utah case law on this question. However, the United States Supreme Court has ruled on the admissibility of fingerprint evidence. In Davis v. Mississippi, 394 U S 721 (1969), the Supreme Court ruled that all evidence obtained

illegally, including fingerprints, is inadmissible in a state court. The opinion states:

Our decision recognizes no exception to the rule that illegally seized evidence is inadmissible at trial however relevant the seized evidence may be as an item of proof....To make an exception for illegally seized evidence which is trustworthy would fatally undermine [the sanction to redress and deter overreaching conduct prohibited by the Fourth Amendment].

The Utah Juvenile Court has promulgated administrative Rules relating to the means by which police agencies may obtain the consent of the juvenile court to take a juvenile's fingerprints. Rule 39 UJCRPP embodies Section 55-10-116 U.C.A. (1953) and was originally modified by general order No. 3, dated May 4, 1966, which specified those circumstances under which the consent of a juvenile court judge is implied. General order No. 3 states:

IT IS HEREBY ORDERED by the Judges of the Utah State Juvenile Court that duly appointed and acting law enforcement officers in the State of Utah may take the fingerprints of any person under the age of eighteen years, which such officer has lawfully taken into custody:

1. When such person has committed one of the following acts:
 - (a) Any offense which would be a felony if committed by an adult.
 - (b) Any offense that would be petit larceny if committed by an adult.
 - (c) Any offense of depriving a motor vehicle owner of possession.
 - (d) Any offense involving a sexual exhibition.
 - (e) Running away from home without the consent of parents or guardian.

2. In any other case when such person has been lawfully taken into custody upon sufficient evidence tending to connect said person with the commission of an offense that would be a crime if committed by an adult, and fingerprints are reasonably necessary for comparison with latent prints obtained at the crime scene to further establish that said person perpetrated the offense or that he is innocent of the offense.

During the trial of the appellant the court refused to make a determination as to whether general order no. 3 applied for foundation purposes to the fingerprints in question or whether Rule 39 as amended in March 1975 was applicable.

The 1975 amendment reads:

RULE 39. Fingerprinting Persons under Eighteen Years of Age.

A juvenile may not be fingerprinted without the express permission of a Judge of the Juvenile Court except that consent is hereby given in accordance with this rule in the following cases:

1. If the juvenile is 14 years or older and is taken into custody and referred to the Juvenile Court for allegedly committing a criminal act which would be a felony if committed by an adult. Said prints may be filed by law enforcement agencies. If the Court does not find that the child committed the alleged felony, the fingerprint card and all copies of the fingerprints shall be destroyed by the law enforcement agency, or upon request of the Juvenile Court, shall be delivered to the Juvenile Court for the purpose of destroying said prints.
2. If latent fingerprints are found during the investigation of a criminal offense and the law enforcement officer has reason to believe that they are those of the juvenile in custody, he may fingerprint the juvenile regardless of age or

offense for purposes of immediate comparison with the latent fingerprints. If the comparison is negative the fingerprint card and other copies of the fingerprints taken shall be immediately destroyed. If the comparison is positive and the juvenile is under 14 years of age and referred to the Court, the fingerprint card and other copies of the fingerprints shall be delivered to the Court for disposition. If the juvenile is not referred to Court, the prints shall be immediately destroyed by the law enforcement agency, or upon request of the Juvenile Court, delivered to the Juvenile Court for the purpose of destroying the prints.

3. If the Juvenile Court finds that a juvenile 14 or more years of age has committed a felony, the prints may be retained in the local police file and copies sent to the State Bureau of Criminal Identification, provided that said bureau and local police agency shall insure that no copies of said fingerprints shall be delivered or sent to any other agency or individual without the express permission of the Juvenile Court and shall maintain said prints in a separate juvenile file. However, law enforcement officers and staff of the bureau may have access to the fingerprints for comparison purposes.
4. Under no circumstance shall copies of the fingerprints be sent to the Federal Bureau of Identification without the express permission of the Juvenile Court.

In those instances where the juvenile in custody does not fall within the above exceptions and the law enforcement officer deems it advisable to have the juvenile fingerprinted, application for such consent shall be made by the officer or official who proposes to take the fingerprints with the reasons set forth.

The safeguards and procedures set out in these rules, whichever is applicable, are very clear and specific, as they should be. The Juvenile Court in promulgating these rules was pressing the limits of permissible delegation of legislatively mandated responsibilities by providing a mechanism that allows police officers to fingerprint juveniles without obtaining the specific consent of the Juvenile Court Judge. The dangers that this delegation may be abused if not closely scrutinized and jealously monitored by the Juvenile Court is obvious. The only means available is that requested by defense counsel here - a foundation laid by the State showing that the rules had been complied with in the taking and keeping of appellant's fingerprints.

The issue here is thus not which set of rules is applicable. Rather, the legality of the taking of the prints through foundation evidence must be shown under either rule, since the same purpose is effected by both. Further, Rule 21 U.J.C.R.P.P. (1974) requires that only evidence that is "competent...shall be admitted." To be admissible as competent evidence, the state must sustain the burden of showing, through adequate foundation, that the comparison prints were obtained in compliance with Section 55-10-116 and Rule 39 U.J.C.R.P.P.

It is clear from the trial transcript that absolutely no foundation showing compliance with the forgoing statute or

rules was laid by the State or required by the Juvenile Court. (Transcript beginning at Page 20). The Court thus admitted the comparative fingerprint card into evidence without assurance that the protections embodied within the statute and rules were afforded the appellant. The admission of the prints into evidence was reversible error and a denial of Due Process of Law as guaranteed by Article I, Sec. 7 of the Constitution of Utah.

II. THE JUVENILE COURT ERRED AS A MATTER OF
LAW IN DECLARING FINGERPRINT RECORDS
ADMISSABLE UNDER THE BUSINESS RECORDS
EXCEPTION TO THE HEARSAY RULE.

The state was allowed, over counsel's objection, to admit the comparative fingerprints purportedly of appellant under the Business Records Exception to the Hearsay Rule. Rule 63(13) Utah Rules of Evidence. The substance of this rule and exception is:

Evidence of a statement which is made other than by a witness while testifying at the hearing offered to prove the truth of the matter stated is hearsay evidence and is inadmissible except:

(13) Writings offered as memoranda or records of acts, conditions or events to prove the facts stated therein, if the Judge finds that they were made in the regular course of a business at or about the time of the act, condition or event recorded, and that the sources of information from which made and the method and circumstances of their preparation were such as to indicate their trustworthiness.

It is appellant's contention that the admission of fingerprint records under the Business Records Exception was reversible error.

In the case of People v. Zerbes, 6 Cal. 2d 425, 57 P.2d 1319 (1936), the California Supreme Court ruled that where the state's fingerprint expert had not known the person fingerprinted personally and had not personally recorded the prints on the fingerprint card, his testimony was correctly excluded by the trial court as hearsay and the fingerprint card was properly rendered incompetent. The foundational requirements set forth by the court clearly exceed those requirements under the Business Records Exception, supra. Appellant respectfully submits that the Zerbes rule, applicable to the facts in this case, is sound judicial precedent which should be recognized and adopted by this court.

III. EVEN ASSUMING FINGERPRINT EVIDENCE
IS ADMISSIBLE UNDER THE BUSINESS
RECORDS EXCEPTION TO THE HEARSAY
RULE, THE JUVENILE COURT ERRED IN
ADMITTING FINGERPRINT RECORDS
BECAUSE OF INSUFFICIENT FOUNDATION
UNDER THAT EXCEPTION.

If it was not error to admit the fingerprint card into evidence as an exception to the Hearsay Rule, Rule 63(13) still requires that the presiding judge base the decision to admit on the "trustworthiness" of the evidence offered. This trust-

worthiness must be demonstrated to the court.

Fingerprint evidence is certainly no more trustworthy than other types of evidence such as weapons or narcotics. The fact that matter offered into evidence in support of the claim or defense of a party is logically relevant to the issues raised does not mean it is admissible. What may be relevant may be rendered incompetent and inadmissible as to the rules of evidence. 20 ALR 246.

The Utah Supreme Court in State v. Davie, 121 Utah 184, 240 P.2d 265 (1952) ruled that regular entries made in the course of business are admissible in evidence only when proper foundation is laid in order to insure proof of the trustworthiness of the records submitted. The recognized Utah foundational standard is that set forth in Clayton v. Metropolitan Life Ins. Co., 96 Utah 331, 85 P. 2d 819 (1938). This case allowed the introduction of business entries "made in the usual course of business, introduced from proper custody, and upon a showing of general authentication." Clayton also requires the offering party to show the necessity of admitting records without requiring the person making the entry to testify, the custody from which the records were taken, and that the records were prepared in the due course of the business' work. Foundation testimony offered by the state in the instant case does not meet even the standard required by State v. Davie, supra, and Clayton v. Metropolitan Life Ins. Co., supra.

Therefore, the court failed even to require a sufficient foundation to assure that the comparative prints were, in fact, taken and maintained by the police as a "business record" as contemplated by the Utah Rules of Evidence. The admission of the prints was reversible error.

IV. THERE WAS INSUFFICIENT FOUNDATION
 LAID TO INSURE THE AUTHENTICITY
 OF THE FINGERPRINT CARD ADMITTED
 INTO EVIDENCE.

Fingerprint evidence when competent, relevant and material and when presented by qualified experts, is admissible for the purpose of establishing the identity of an individual. People v. Van Cleave, 208 Cal. 295, 280 Pac. 983 (1929), Commonwealth v. Bartolini, 299 Mass. 503, 13 N.E. 1d 382 (1939) Cert. denied 304 U.S. 562 (1939), State v. Kuhl, 42 Nev. 185, 175 Pac. 196 (1918), Commonwealth v. Loomis, 270 Pa. 254, 113 Atl. 428 (1921). Yet, to be competent the fingerprint evidence must be admitted only after sufficient foundation is laid by the State to authenticate the fingerprint evidence admitted.

The amount of authentication required should vary with the purpose of the evidentiary matter offered. State v. Suing, 210 Kan. 363, 502 P.2d 718 (1972). Where evidence is offered as a general representation, very slight proof of reliability may be sufficient, but where offered to prove individualized traits, much more convincing proof of dependability is required. Suing, supra.

Fingerprint evidence is of the most delicate nature; it may be clearly developed, improved and intensified or just as easily destroyed, dependent upon the equipment used, and the experience, interest, knowledge, skill and versatility of the persons working with it.¹ Therefore, convincing proof of authentication is essential.

This theory is clearly supported by Professor McCormick in his treatise on Evidence. 2d Ed., § 212: Demonstrative Evidence, P. 524 wherein he states that when evidence is of such a nature as not to be readily identifiable or to be susceptible to alteration by tampering or contamination, a substantially more elaborate foundation for admissibility should be required. Such foundation should track the chain of evidence with: "sufficient completeness to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with." Id at P.254.

Clearly analogous to the instant case are the foundation and authentication standards required for the admission of narcotics, based upon the destructible nature of the evidence itself. The Utah Supreme Court in State v. Madsen, 28 Utah 2d 108, 495 P.2d 670 (1972), ruled in a prosecution for the sale of amphetamines.

¹ Walter Scott, Fingerprint Mechanics,
Charles C. Thomas, (1951)

that the circumstances surrounding the preservation and custody of the physical objects or substances connected with the commission of the alleged crime and the liklihood of tampering are factors to be considered in determining admissability. Further cases supporting the proposition that a continuous chain of custody is necessary for admissability of a controlled substance include Jackson v. State, 552 P.2d 1356, cert. denied 95 S.Ct. 637 (1974), Ryder v. State, 513 P.2d 593 (1973), and People v. Atencio, 529 P.2d 636 (1974).

Actual authentication is essential in this case since almost three years had passed since the taking, processing and classifying of the fingerprint card offered as primary evidence of appellant's guilt. Also, by Mr. Simpson's own testimony, he had no first-hand knowledge of the actual taking of prints placed on the card and his initial experience with the prints in question occurred when he classified them. Further, there is testimony that the envelope containing the fingerprint card had never been sealed. Without proper authentication as to the competency of the evidence as required under Rule 21 it is open to question whether the prints admitted into evidence were those of the appellant, or whether the chain of custody may have been broken during the three year period between the initial taking of the disputed prints in 1973 and the time of trial in 1976.

It is again clear from the record that the foundation laid by the State did not prove a chain of custody sufficient

to assure the authenticity or reliability of the prints. The admission of the prints by the Juvenile Court Judge constitutes a reversible error.

V. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR DISMISSAL BECAUSE THE EVIDENCE FAILED TO ESTABLISH, AS A MATTER OF LAW, THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

In order to overcome a Motion to Dismiss, the State must have introduced evidence which, standing alone, is sufficient to prove appellant's guilt beyond a reasonable doubt. In re supra. In this case, the state's evidence only showed that burglary and theft occurred. There was presented no substantial evidence that the appellant was the perpetrator of the burglary or theft of the upstairs living portion of the victim's home.

The question of whether or not the prosecution has satisfied its burden of proof can be analyzed in terms of an evidentiary principle forwarded by Wigmore.

"(The proposition) cannot be, 'Is there evidence?'. . . Rather the proposition seems to be this: Are there facts in evidence which, if unanswered, would justify men of ordinary reason and fairness in affirming the question which the plaintiff is bound to maintain?"
9 Wigmore 3d Ed. Section 2494.

This principle has been recognized in Seybold v. Union Pac. Ry. Co., 121 Utah 6, 239 P.2d 174, 177 (1951); Continental Bank and Trust Co. v. Stewart, 4 Utah 2d 228, 291 P.2d 890, 892 and State v. Garcia, 11 Utah 2d 167, 355 P.2d 57 (1960).

In State v. Garcia, supra, the court affirmed a conviction of first degree murder but in its opinion delineated that standard by which substantial evidence as proof of guilt beyond a reasonable doubt should be judged. The opinion stated:

It is universally recognized that there is no . . . question (for the trier of fact) without substantial evidence indicating defendant's guilt beyond a reasonable doubt. This requires evidence from which the . . . (trier of fact) could reasonably find the defendant guilty of all material issues of fact beyond a reasonable doubt. Id at 59.

The only evidence presented against the appellant is circumstantial as well as insubstantial in nature. Only one latent fingerprint identified as belonging to the appellant was taken in the area of the crime scene. The print was taken two days after the burglary. It was found on the outside surface of the window to a cellar disconnected from the area of the house which was burglarized and from which personal property was taken. The window had been tampered with during the two day period, contrary to police instructions. The print was then matched and found comparable to an unauthenticated fingerprint card identified as containing prints purportedly of the appellant.

The appellant contends that no trier of fact could reasonably and fairly have found the appellant guilty of burglary or theft beyond a reasonable doubt given the insubstantial evidence presented by the state.

CONCLUSION

Based on the facts, law and reasoning set forth herein, the decision of the Second District Juvenile Court for Salt Lake County, State of Utah should be reversed and Mr. Marquez should be granted an immediate release from the Utah State Industrial School.

Respectfully submitted,

James T. Massey
JAMES T. MASSEY
Attorney for Appellant
by Gordon F. Esplin
Attorney at Law

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY that I hand-delivered a copy of the foregoing Brief of Appellant to the office of the Attorney General, State Capitol Building, Salt Lake City, Utah 84114, and to the Salt Lake County Attorney, 3522 South 700 West, Salt Lake City, Utah 84119, this 30th day of July, 1976.

Brooke Wells