

1976

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

Utah Supreme Court

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

STATE OF UTAH in the  
interest of

Case No.  
14571

KENNETH EUGENE MARQUEZ

A person under eighteen  
years of age.

BRIEF OF RESPONDENT

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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FILED

SEP 2 1976

Clk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE  
STATE OF UTAH

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STATE OF UTAH in the	:	
interest of	:	
KENNETH EUGENE MARQUEZ	:	Case No.
	:	14571
A person under eighteen	:	
years of age.	:	

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BRIEF OF RESPONDENT

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STATEMENT OF THE NATURE OF THE CASE

The appellant, Kenneth Eugene Marquez, appeals from an Order of the Second District Juvenile Court for Salt Lake County, State of Utah, dated April 12, 1976, committing Mr. Marquez, a juvenile, to the Utah State Industrial School.

RELIEF SOUGHT ON APPEAL

Respondent seeks an order of this Court affirming the decision and order rendered by the Juvenile Court.

STATEMENT OF THE FACTS

On November 2, 1975, Mr. John G. Cowan left his home at 10:00 o'clock in the morning. When he left, all windows and doors were secure. On his return at approximately

9:00 p.m., he discovered that the back door had been forced open, the garage window had been punched out and several items of value were missing. On November 3, 1975, Officer Thompson of the Salt Lake City Police Department observed what appeared to be fingerprints on the garage window, and he requested that they be processed by the Police Crime Lab. On November 4, 1975, Officer Simpson lifted the prints from the window, and later conclusively identified the prints as belonging to the appellant. A trial was held on March 10, 1976, where the appellant offered no evidence in his own behalf. Judge Regnal W. Garff, Jr., found the allegations of burglary and theft true beyond a reasonable doubt, and ordered the appellant committed to the Utah State Industrial School.

## ARGUMENT

### POINT I

THE JUVENILE COURT DID NOT ERR IN ADMITTING INTO EVIDENCE FINGERPRINT RECORDS OF THE ACCUSED WITHOUT REQUIRING THAT A FOUNDATION BE LAID TO SHOW THAT SUCH FINGERPRINTS WERE OBTAINED IN COMPLIANCE WITH UTAH STATUTORY PROVISIONS AND JUVENILE COURT RULES.

Utah Code Ann. § 55-10-116 (1953), provides that "Without consent of the [juvenile court] judge, no fingerprint

shall be taken of any child taken into custody. . . ."

Appellant asks this Court to adopt rules of law which would require the State to lay a foundation showing compliance with the above statute before fingerprint evidence may be admitted in evidence in a juvenile court proceeding. Appellant has asserted that such a rule is the only means available to enforce the statute, and that in the absence of a sufficient foundation, the evidence must be conclusively presumed to have been illegally obtained. Appellant's argument is premised on the notion that fingerprint evidence obtained in violation of Utah Code Ann. § 55-10-116 (1953), as amended, would be inadmissible in court proceedings. Respondent respectfully submits that the adoption of the above rule on such reasoning would be unwise, unnecessary and contrary to public policy.

Appellant has admitted that there is no recognized case law on this subject, but has quoted Davis v. Mississippi, 394 U.S. 721 (1969), in support of the proposition that fingerprint evidence obtained illegally is inadmissible in a state court. More precisely stated, the holding in that case is that a suspect may not be detained in violation of



the Fourth and Fourteenth Amendments to the United States Constitution, and that fingerprint evidence obtained as a result of that illegal detention is "tainted" and inadmissible. The Court did not hold that the taking of fingerprints was a search or seizure subject to Fourth Amendment limitations, and specifically found "no occasion in this case . . . to determine whether the requirements of the Fourth Amendment could be met by narrowly circumscribed procedures for obtaining, during the course of a criminal investigation, the fingerprints of individuals for whom there is no probable cause to arrest." Davis at 728. It has been held that absent an illegal detention, there is no basis for objecting to the admission of fingerprint evidence. Redd v. Decker, 447 F.2d 1346 (5th Cir. 1971). Voluntary submission to fingerprinting has been held a waiver of any Fourth Amendment rights, People v. Hannaman, 507 P.2d 466 (Colo. 1973), and it has been held that fingerprints may be taken absent a warrant or arrest, State v. Dillon, 93 Idaho 698, 471 P.2d 553 (1970). Despite the slim authority available for the proposition that fingerprints are subject to Fourth Amendment protections, appellant contends that fingerprint evidence should not be admitted even if it is obtained by procedures

that comport with constitutional commands. Appellant is urging that Utah Code Ann. § 55-10-116 (1953), supplies an additional and independent ground for the exclusion of evidence. Such a rule would be analogous to the present "exclusionary rule" only in its draconian effect of denying to the courts relevant evidence. The rule would be based not on the requirements of constitutional construction, but rather on implication from the statute, and it is a hazardous guess at best that the legislature would have afforded juveniles the protection found in the statute at the cost of allowing juvenile offenders to escape punishment. Fashioning a rule as prayed for by appellant would constitute an unwarranted incursion into the legislative sphere.

Contrary to appellant's contention, an exclusionary rule is not the only, or even the best, means of enforcing Utah Code Ann. § 55-10-116 (1953). A juvenile who felt that his fingerprints had been unlawfully taken or filed should be able to bring an action to compel destruction of the record. Davidson v. Dill, 180 Colo. 123, 503 P.2d 157 (1972); Eddy v. Moore, 5 Wash.App. 334, 487 P.2d 211 (1971); and Menard v. Mitchell, 430 F.2d 486 (D.C. 1970). Such an action would be analogous to a proceeding to restore property improperly seized under a warrant. Utah Code Ann. §

77-54-18 (1953). This procedure would give a remedy to all juveniles wrongfully fingerprinted, not just to those returned to court under suspicion of misbehavior; but it would not forbid a court to receive relevant evidence. A process for destruction of records under court order would also have a greater deterrent effect on official misconduct than an exclusionary rule. Under an exclusionary rule, the police could keep an illegally obtained set of fingerprints for comparison purposes, obtain probable cause for an arrest from those fingerprints, and then take an admissible set of prints at the time of the arrest. It is precisely this type of circular procedure which led Justice Stewart to characterize the Davis decision as a "useless gesture." Davis at 730. The conviction in the Davis case was eventually affirmed, see Davis v. State, 255 So.2d 916 (Miss. 1971), cert. denied 409 U.S. 855 (1972). See also Bynum v. United States, 262 F.2d 465 (D.C. 1959), and 274 F.2d 767 (D.C. 1960). The harmful effects of a rule that excludes relevant evidence from a court proceeding has long been recognized. As Chief Justice Burger said:

"The history of the suppression doctrine demonstrates that it is both conceptually sterile and practically ineffective in accomplishing its stated objective. . . ."  
Bivens v. Six Unknown Fed. Narcotics Agents,  
403 U.S. 388, 415 (1970).

Accordingly, the Supreme Court has resisted efforts to expand the scope of the exclusionary rule. See Stone v. Powell, 44 U.S.L.W. 5313 (U.S. July 6, 1976), holding that where a state has provided a full and fair litigation of a Fourth Amendment claim, a convict is not entitled to federal habeas corpus relief on the grounds of an unconstitutional search; United States v. Jains, 44 U.S.L.W. 5303 (U.S. July 6, 1976), holding that the exclusionary rule does not apply to forbid the use in the civil proceedings of one sovereign the evidence seized by an agent of another sovereign. State court decisions have been consistent with this trend to limit the scope of the exclusionary rule, i.e., People v. Coleman, 120 Cal.Rptr. 384, 533 P.2d 1024 (1975), stating that the exclusionary rule is not applicable to parole revocation hearings.

In addition to expanding the substantive scope of the exclusionary rule, appellant has urged its adoption in an entirely one-sided procedural framework. Ordinarily, a criminal defendant cannot require a prosecutor to "lay a foundation" to show that all evidence that he intends to admit was legally obtained. Evidence obtained in violation of constitutional rights is kept out of court by means of a motion to suppress, and the defendant has the burden of

showing a prima facie case of unreasonable search and seizure to support his motion. United States v. Warrington, 17 F.R.D. 25 (N.D. Cal. 1955); People v. Manning, 33 Cal.App. 586, 109 Cal.Rptr. 531 (1973); and People v. Valdez, 173 Colo. 410, 480 P.2d 574 (1971). As this Court said in State v. Montayne, 18 Utah 2d 38, 414 P.2d 958 (1966), cert. denied 385 U.S. 939:

"Evidence is suppressed or excluded only if the same was obtained by a violation of the Fourth Amendment . . . Therefore it is entirely proper to require of one who seeks to challenge the legality of a search as a basis for suppressing relevant evidence that he alleges, and if the allegation be disputed, that he establish that he himself was a victim of an invasion of privacy."

In the present case, the appellant has not produced a scintilla of evidence that the fingerprint record was obtained in violation of Utah Code Ann. § 55-10-116 (1953)

There are, in fact, indications that the fingerprint record was obtained in an entirely legal fashion. The fingerprint card is dated as having been made on June 20, 1973. The rule governing the taking of fingerprints at the time was General Order No. 3, Rule 39, Utah Juvenile Court Rules of Practice and Procedure, which provided:

"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."

The fingerprint card indicates that it was taken incident to an arrest for "Auto Theft" and "Run A-way," and is clearly within the above rule. The later rule which requires the destruction of records of arrest not resulting in action by the court, U.J.C.R.P.P. Rule 39 (1975), was not in effect at the time the fingerprint record was made, and according

to accepted rules of construction, it should not be given a retroactive interpretation so as to require the destruction of records already filed. Utah Code Ann. § 68-3-3 (1953).

The fact that the record was in official custody and was not destroyed gives rise to the presumption that the officers were under no duty to destroy it. Contrary to appellant's contention, where the record is silent, officers are conclusively presumed to have performed their duty. Utah Liquor Control Comm'n v. District Court of the Seventh Judicial District, 100 Utah 135, 111 P.2d 144 (1941); People v. Collins, 172 Cal.App.2d 295, 342 P.2d 370 (1959); and Painter v. Peyton, 257 F.Supp. 913 (E.D. Virginia 1966).

As this Court has said, ". . . peace officers should not be unduly hampered in legitimate attempts to investigate crimes and to seek out and identify those who have committed them." State v. Perry, 27 Utah 2d 48, 492 P.2d 1349 (1972). Exclusion of fingerprint evidence in this case would clearly hamper police activity without providing a corresponding benefit. For the reasons stated above, respondent respectfully submits that the Juvenile Court committed no error in the admission of the fingerprint evidence.

POINT II

THE JUVENILE COURT DID NOT ERR AS A MATTER OF LAW IN ADMITTING FINGERPRINT EVIDENCE AS AN EXCEPTION TO THE HEARSAY RULE.

Appellant contends that fingerprint evidence is inadmissible hearsay unless authenticated by the officer who made the record, and has cited People v. Zirbes, 6 Cal. 2d 425, 57 P.2d 1319 (1936) as authority. However, it is no longer the law of California that fingerprint records are inadmissible as hearsay. People v. Crosslin, 251 Cal. App. 968, 60 Cal. Rptr. 309 (1967). That court held fingerprint cards admissible under the Uniform Business Records as Evidence Act. In almost every American jurisdiction, properly authenticated fingerprint records are admissible in evidence as an exception to the hearsay rule. Brown v. People, 124. Colo. 412, 238 P.2d 847 (1951); State v. Morris, 222 La. 480, 620 So. 2d 649 (1953); Brown v. State, 413 S.W. 2d 922 (Tex. Crim. 1967); State v. Gagallarritti, 377 S.W. 2d 298 (Mo. 1964); State v. O'Neal, 204 Kan. 226, 461 P.2d 801 (1969); Plunkett v. State, 437 P.2d 92 (Nev. 1968). This court has held police "rap sheets" admissible as exceptions to the hearsay rule.



Price v. Turner, 28 U.2d 328, 502 P.2d 121 (1972). The fingerprint card as offered in evidence satisfied the requirements of both the business records exception to the hearsay rule URE 63(13), and the reports of persons exclusively authorized exception URE 63(16). Statutory authorization for making fingerprints is found in Utah Code Annotated §§ 77-59-9, 77-59-29 (1953). Utah Code Annotated § 77-59-26 provides that:

"Any copy of a . . . fingerprint . . . in the files of the bureau (of criminal identification) certified by the director to be a true copy of the original, shall be admissible in evidence in any court of this state in the same manner as the original might be."

This necessarily implies that original fingerprint records are admissible without direct testimony by the officer who made them.

As Dean Wigmore has said:

"The purpose and reason of the hearsay rule is the key to the exceptions to it.

The theory of the hearsay rule is that the many possible sources of inaccuracy and untrustworthiness which may lie underneath the bare untested assertion of a witness can best be brought to light and exposed, if they exist, by the

test of cross-examination. But this test or security may in a given instance be superfluous; it may be sufficiently clear, in that instance, that the statement offered is free enough from the risk of inaccuracy and untrustworthiness, so that the test of cross-examination would be a work of supererogation." 5 Wigmore, Evidence § 1420 (Chadbourn rev. 1974).

In applying this test to fingerprint records, the following result is obtained:

"In evidencing the identity of a party to the case with some other person, how may fingerprint records kept elsewhere be evidenced? . . . the official record of such prints, kept under authority express or implied, is admissible," 2 Wigmore, Evidence § 414a (3d. Ed. 1940)

Respondent respectfully submits that the juvenile court's admission of the fingerprint record as an exception to the hearsay rule was based on sound and recognized principles of law, and as such constituted no error.

### POINT III

A SUFFICIENT FOUNDATION WAS LAID FOR THE ADMISSION OF THE FINGERPRINT RECORD AS AN EXCEPTION TO THE HEARSAY RULE.

Appellant has cited two Utah cases which demonstrate the proper rule as to the foundational requirement for the admission of evidence under the business records exception to the hearsay rule.

State v. Davie, 121 Utah 189, 240 P.2d 265 (1952) and Clayton v. Metropolitan Life Insurance Co., 96 Utah 331, 85 P.2d 819 (1938). Appellant has correctly isolated the elements of a proper foundation from these cases: the records must be made "in the usual course of business", they must be "generally authenticated", they must be introduced from proper custody, and there must be a showing of necessity for the introduction of the evidence without requiring the person who made the print to testify. Appellant has not indicated which of these foundational requirements he feels is unsatisfied. Officer Simpson testified that he was employed as a fingerprint technician for six years (T.15), that fingerprint cards are made during the regular course of "business" at the Salt Lake City Police Department (T.17), that these cards are filed under the "Henry System" at the Police Departments Identification Bureau, that he recognized the card introduced as Exhibit #1 as a card used at the Police Department, and that he obtained the card from the Fingerprint File (T.18,19). Such testimony is sufficient to satisfy the requirements that the record be made in the regular course of business, and that it be generally authenticated. In Norchcrest Inc. v. Walker Bank & Trust Co., 122 Utah 268, 248 P.2d

692 (1952), this court held that a bank officer

was competent to testify as to bank records and their contents, even though he was not associated with the bank until some years after the transaction in question had occurred. The fact that he was familiar with bank records made concurrent with the transaction was sufficient to qualify him as a witness. The witness testified that the fingerprint card was obtained from the files of the Salt Lake City Police Department. This is sufficient to establish proper custody, and a fingerprint technician is competent to testify as a custodian. Lester v. State, 416 P.2d 52, 58-59 (Okla. Crim. 1966). When a fingerprint record has been produced from official custody, a sufficient foundation has been laid for its admission. State v. Polson, 93 Idaho 912, 478 P.2d 292 cert. denied 402 U.S. 930 (1971).

The appropriate degree of necessity required to be shown in order to admit a record made under an express statutory duty is something less than absolute impossibility. The fact that public officers have more important duties than the verification of the records they have made is most often regarded as sufficient to satisfy the necessity requirement. 5 Wigmore, Evidence § 1631 (Chadbourn Rev. 1974).

In addition, although counsel for the appellant objected to the admission of the records on the grounds of an insufficient showing of compliance with statute, and on the ground that an insufficient chain of custody was established, no objection was made to the introduction of the evidence on the ground that an insufficient foundation had been laid for their admission under the business records exception. Appellant should not be heard to complain for the first time on appeal that an insufficient foundation was laid when no such objection was presented in the juvenile court. People v. Lopez, 60 Cal. 2d 223, 384 P.2d 16, 32 Cal. Rptr. 424 (1963) cert. denied 375 U.S. 994 (1964).

Respondents respectfully submit that the juvenile court committed no error in admitting the evidence on the foundation shown.

#### POINT IV

A CHAIN OF CUSTODY WAS SUFFICIENTLY ESTABLISHED TO INSURE THE AUTHENTICITY OF THE FINGERPRINT CARD ADMITTED INTO EVIDENCE.

Appellant has cited a number of cases involving the admissibility of narcotics as evidence, and has

stated that the "chain of custody" requirements for that type of evidence is clearly analogous to the case at bar. The rationale for the chain of custody requirement was specified by this court in State v. Madsen, 28 U.2d 108, 498 P.2d 670 (1972), where it was stated that a physical object or substance must be shown to be in substantially the same condition as at the time of the criminal act before it would be admissible in a court of law. The court in that case propounded the factors it would consider in determining whether that showing had been made: circumstances surrounding the preservation and custody of the object, and the likelihood of tampering. Finally, the Court held in Madsen that the determination as to whether a sufficient chain of custody had been established was in the first instance for the trial court to make, and that such finding would not be disturbed on appeal absent a clear abuse of discretion. All of the above factors undercut appellants assignment of error.

First, an inked fingerprint card held in the files of a police identification bureau is not even

slightly analogous to narcotics evidence. An inked fingerprint can no more change over a period of time so as to resemble another fingerprint than an ink signature can cease to be unique. Unlike a signature, a fingerprint cannot be forged. An inked fingerprint card is not physical evidence, but is essentially documentary in nature. Documents do not need to be placed in sealed envelopes to guarantee their integrity. In addition to being virtually impossible to create a spurious fingerprint, appellant has not demonstrated any credible motive on the part of any individual who had access to the records for attempting to do so. In this situation, the likelihood of tampering is essentially zero. The circumstances surrounding the custody of the card are equally unassailable. As stated above, the introduction of a fingerprint card from official custody is held to be a sufficient foundation to guarantee accuracy. Polson, supra. Utah Code Annotated § 78-25-3 (1953), provides that:

"Entries in public or other official books or records, made in the performance of his duty by a public officer of this state or by any other person in the performance of a duty specially

enjoined by the law, are prima facie evidence of the facts stated therein."

As stated above, the duty to take fingerprints is specifically required by Utah Code Annotated §§ 77-59-9, 77-59-29 (1953).

Respondent is unaware of any authority pertinent to the question of the appropriate chain of custody requirement for fingerprint records, but can suggest a more useful analogy than narcotics evidence. There are a few cases that deal with the necessary chain of custody for latent fingerprints to be admissible as evidence. In State v. Viola, \_\_\_ Ohio \_\_\_, 82 N.E. 2d 306 the chain of custody was held to be sufficiently shown even though the evidence was not held in a sealed envelope. In Eades v. State, 232 Ga. 735, 208 S.E. 2d 791 (1974), the testimony of a police officer that the prints never left police custody was held sufficient to establish a chain of custody, and in People v. Riser, 47 Cal. 2d 566, 305 P.2d 1, cert. denied 353 U.S. 930 (1957) it was held not error to admit a latent fingerprint into evidence, even where it had been left in an unlocked office without a showing



how the fingerprint could have been forged or that they had been tampered with. The chain of custody requirement for fingerprint records was met and exceeded in the instant case. As Dean Wigmore has stated in 7 Wigmore Evidence (3d Ed. 1940) § 2158:

"When in a government office are kept permanent records under the custody of an officer appointed to that duty, there is commonly little danger in inferring that records found there existing are genuine. It would be difficult as well as criminal to substitute or to insert false records. Moreover, the usual mode of authenticating such documents (as by proving the clerk's or officer's handwriting) would be both highly inconvenient, on account of its repeated necessity, and also often impossible, on account of the change of officials as well as the antiquity of many portions of the records.

It seems, therefore, never to have been doubted that the existence of an official document in the appropriate official custody is sufficient evidence of its genuineness to go to the jury."

Respondent respectfully submits that the juvenile court committed no error in allowing the fingerprint record into evidence.

#### POINT V

THE JUVENILE COURT DID NOT ERR IN DENYING APPELLANT'S MOTION FOR A DISMISSAL BECAUSE THE EVIDENCE WAS SUFFICIENT TO ESTABLISH DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

Appellant contends that there is insufficient evidence to support the juvenile courts verdict. Respondent submits that a review of the record will show the verdict to be amply supported. It is uncontested that the evidence indicates a burglary and theft was committed on the date in question. Uncontradicted evidence offered by the State established that the garage window was punched out and placed inside the garage on the same date as the burglarious entry. (T.6). Fingerprints were discovered on the window on the day after the burglary (T.14). These prints were lifted and found conclusively to be those of the appellant (T.29). The appellant was unknown to the victim of the burglary, and no evidence was offered to explain the presence of appellant's prints at the scene of the crime.

The appropriate test to be applied in this circumstance was discussed by this court in State v. Sullivan, 6 Utah 2d 110, 307 P.2d 212 cert. denied 355 U.S. 848 (1957):

"[1] The defendants essay to demonstrate that the evidence leaves such doubt as to their identification as the culprits in this crime that they were entitled to a dismissal. For them to prevail on that pro-

position it must appear that, viewing the evidence and all fair inferences reasonably to be drawn therefrom in the light most favorable to the jury's verdict, reasonable minds could not believe them guilty beyond a reasonable doubt, but would necessarily entertain some substantial doubt of their guilt.... the practical exigencies of crime detection and prosecution are to reckoned with and allowance made for the fact that proof beyond all peradventure of doubt could seldom be had. Nor does the law require it. It is to be borne in mind that most crimes, and particularly burglary, are committed with whatever stealth and cunning the perpetrator can devise to escape detection and identification. All law enforcement officers and those victimized can do is to make such observations and piece together such evidence as they are able to obtain and, if it warrants doing so, present it to courts and juries. The standard which must be met is only that proof of guilt be established beyond a reasonable doubt. Where circumstances otherwise strongly suggest guilt, the doubt should be real and substantial and not one that is merely possible or imaginary." 6 Utah 2d at 112, 114.

Respondent submits that the burden was met in this case.

In State v. Washington, 17 Utah 2d 149, 405 P.2d 793 (1965) this court held that where fingerprint evidence was offered to connect a defendant with a burglary, and no explanation is offered

indicating anything other than guilt, the evidence is sufficient to support a guilty verdict. In Hervey v. People, 495 P.2d 204 (Colo. 1972), the court held that fingerprint evidence on a bottle found near the scene of a murder is sufficient to support a guilty verdict, where it appears that the fact-finder was convinced that the fingerprints were impressed at the time of the crime. In State v. Tew 234 N.C. 612, 688 S.E. 2d 291 (1951), where fingerprint evidence was discovered on a piece of glass inside a burglarized gas station, and the attendant testified that she had never seen the accused prior to the time of the crime, the evidence was held sufficient to present a question for the jury. In State v. Hanna, 1 Or. App. 110, 459 P.2d 564, the court held that where defendant's fingerprints were found on a piece of glass located near a broker window, the evidence was sufficient to support the inference that defendant was the person who entered the home.

The fact that the fingerprint was found on the garage window, and that there is no direct access from the garage to the house does not undercut the State's case. In People v. Lyles, 156 Cal. App.

2d 482, 319 P.2d 745 (1957), the court held that a defendant found in an adjacent but unconnected structure could be found guilty of attempted burglary. Viewing the evidence and the inferences to be drawn therefrom in the light most favorable to the verdict, the fingerprints on the garage window were not so far removed from the admitted burglary and theft in terms of either space or time as to allow a reasonable doubt of the appellants guilt.

Respondent respectfully submits that the evidence was sufficient to justify the trier of fact in finding the appellant guilty of burglary and theft beyond a reasonable doubt.

#### CONCLUSION

Based on the facts, law and reasoning set forth herein, the decision and order of the Second District Juvenile Court for Salt Lake County, State of Utah, committing Mr. Marquez to the Utah State Industrial School should be affirmed.

Respectfully submitted,

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