

No. 1-12-1022

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 8895
	)	
DARTGAMON WASHINGTON,	)	Honorable
	)	Joseph G. Kazmierski, Jr.,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE PALMER delivered the judgment of the court.  
Presiding Justice McBride and Justice Taylor concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Judgment entered on residential burglary conviction affirmed over defendant's claim that evidence was insufficient to sustain his conviction.
- ¶ 2 Following a bench trial, defendant Dartgamon Washington was found guilty of residential burglary, then sentenced to 30 months' probation. On appeal, defendant contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt, where the expert witness failed to testify that another examiner verified his conclusion regarding the fingerprints

recovered at the scene, failed to disclose the basis for his opinion, and the State failed to establish that these fingerprints were left at the time of the burglary.

¶ 3 Defendant was charged with one count of residential burglary in connection with a break in that occurred in the first floor apartment of Eenjoli Fitzpatrick (the apartment) at 4952 South Laflin Street in Chicago. At trial, Fitzpatrick testified that she and her three children left the apartment between 5 and 6 p.m. on June 24, 2010, after locking all of the doors and windows. When they returned about four hours later, she saw that the dining room window had been "pushed in," the blinds were on the floor, and she discovered that various electronics and loose change were missing. Fitzpatrick testified that she did not know defendant, that he had never been a guest in the apartment, that she had never seen him around the apartment, and that she never gave him permission to enter the apartment or to take her property. Fitzpatrick further testified that one would have to walk through a gate to get to her dining room window, that another building is located approximately 5 to 10 feet across from that window, and that there is no gangway between the two buildings.

¶ 4 Chicago Police Officer Kenneth LeFlore, an evidence technician, testified that when he arrived at the apartment on the night of the incident, Fitzpatrick directed him to a side window, the top of which had been pushed down into the apartment, and was hanging by its bottom edges. Using his flashlight, he observed hand impressions on the outside of the window, then described the method he used to enhance those impressions, which revealed five fingerprints, and recovered them with adhesive tape. Officer LeFlore inventoried those prints under inventory number 12053085, and assigned each individual print a letter from A to E. On cross-examination, Officer LeFlore testified that he did not take any elimination prints, which are usually taken from the victim for elimination purposes, and that he did not find any suitable prints inside the apartment.

¶ 5 The parties then stipulated that Chicago Police Officer Leo Cummings, a latent fingerprint examiner, is an expert in that field. Officer Cummings described the theory behind fingerprint analysis and the process for comparing the friction ridge detail of known prints to that of latent prints in order to make an identification. He explained that the Chicago police department employs seven basic ridge characteristics in the identification process; the dot, the ending ridge, the bifurcation, the trifurcation, the enclosure, the hook or spur and the bridge.

¶ 6 Officer Cummings further testified that he received five latent print impressions under inventory number 12053085 in December 2010, and, after examining the clarity and quality of each one, determined that four were suitable for comparison and identification purposes. He then inserted the clearest of those four prints into an AFIS computer, which generates a list of possible matches. In this case, the computer generated a potential match for prints that were taken from defendant on October 14, 2010. Officer Cummings then conducted a side-by-side comparison of the latent print to defendant's prints, and concluded that defendant was the source of the latent print. The basis for that opinion was that "the ridge characteristics visible to [him] in the latent impression recovered from the evidence technician matched the ridge detail visible to [him] on the fingerprint card bearing [defendant's name]."

¶ 7 Officer Cummings further testified that of the remaining four latent impressions, three matched defendant's prints. Pursuant to a subsequent request by Officer LeFlore, he compared the latent prints recovered from the apartment to prints that were taken from defendant upon his arrest on May 23, 2011, and concluded that the same individual made both sets of prints. The basis for that opinion was that "[t]he ridge detail visible to [him] in the latent impressions from lip D and lip B matched number 2 and 3 finger of the fingerprint card bearing [defendant's name] printed on the 23rd of May, 2011." On cross-examination, Officer Cummings stated that a

fingerprint can remain on a glass surface for an indeterminate amount of time, even "thousands of years."

¶ 8 Officer Rene Arriazola testified that he arrested defendant on May 23, 2011, and transported him to the police station, where his fingerprints were taken. Officer Arriazola further testified that the apartment was "miles and miles" away from the location where defendant was arrested and approximately 25 blocks away from defendant's residence at that time.

¶ 9 Prior to announcing its decision, the trial court stated as follows:

"The location of the prints were [*sic*] not, I believe, be there under a circumstance of where you might say there was somebody passing by and touched the window. It did not appear from the evidence that it was in a gangway area or anything along those lines. Also, another factor in looking at the – how the prints were on there, the entry was made in a forceful way and shows without authority. I believe the State proved their case beyond a reasonable doubt."

The court then found defendant guilty of residential burglary.

¶ 10 On appeal, defendant contends that the evidence was insufficient to prove that he was the source of the recovered latent prints in that Officer Cummings failed to verify his conclusion with another qualified examiner, and failed to disclose the basis of his opinion. Defendant further contends that the State failed to prove that the prints were made at the time of the burglary.

¶ 11 The standard of review on a challenge to the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v.*

*Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). This standard applies to all criminal cases, whether the evidence is direct or circumstantial, and acknowledges the responsibility of the trier of fact to determine the credibility of witnesses, to weigh the evidence, and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence. *People v. Campbell*, 146 Ill. 2d 363, 374-75 (1992). A reviewing court will not reverse a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 12 In this case, defendant was found guilty of residential burglary. 720 ILCS 5/19-3(a) (West 2010). Proof of an offense requires proof that a crime occurred, and that it was committed by the person charged. *People v. Ehlert*, 211 Ill. 2d 192, 202 (2004). Fingerprint evidence is circumstantial evidence which can connect a defendant to the charged offense. *People v. Ford*, 239 Ill. App. 3d 314, 317 (1992). Defendant does not question that the crime was committed, but challenges the sufficiency of the fingerprint evidence to establish that he was the perpetrator.

¶ 13 Defendant first takes issue with the State's failure to establish that Officer Cummings' conclusion was verified by another examiner, in contravention of the ACE-V framework utilized by latent print examiners. Although defendant couches this argument in terms of sufficiency of the evidence, we find that he is actually raising an admissibility argument in which he is contending that the State failed to lay the proper foundation for the admission of Cummings' expert testimony. Because defendant's challenge is to the admissibility of the evidence, it is subject to the normal rules of forfeiture. *People v. Alsup*, 241 Ill. 2d 266, 275 (2011).

¶ 14 To preserve an issue for appeal, defendant must both object to it at trial and raise it in a post-trial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Here, defendant did not object to Officer Cummings' testimony in any way, and also failed to raise the verification issue in his

post-trial motion. Accordingly, he has waived the issue for review. *People v. McCarter*, 2011 IL App (1st) 092864, ¶ 34.

¶ 15 Although the plain error doctrine allows a reviewing court to consider unpreserved claims of error under certain limited circumstances (*People v. Naylor*, 229 Ill. 2d 584, 593 (2008)), defendant has not asked for plain error review, and thus has not presented an argument on how either of the two prongs of the plain error doctrine is satisfied in this case. Accordingly, we honor his forfeiture of the issue. *People v. Hillier*, 237 Ill. 2d 539, 545-46 (2010).

¶ 16 Defendant next contends that Officer Cummings' testimony identifying him as the source of the latent fingerprints is insufficient due to his failure to disclose the basis of his opinion. Defendant specifically points out that Officer Cummings did not specify how many points of comparison he identified between the sets of prints he examined in reaching his conclusion. We observe, however, that there is no minimum or requisite number of points of similarity for identification purposes (*Campbell*, 146 Ill. 2d at 384), and an expert's failure to describe points of similarity in rendering an opinion has been held to go to the weight of the proffered fingerprint evidence (*Ford*, 239 Ill. App. 3d at 319).

¶ 17 In *Ford*, a case similar to the case at bar, defendant was convicted of residential burglary, with fingerprint evidence serving as the only evidence connecting him to the crime. *Ford*, 239 Ill. App. 3d at 316-17. On appeal, defendant attacked the sufficiency of this evidence, arguing that the fingerprint specialist did not state the number of points of similarity between the two sets of prints at issue. *Ford*, 239 Ill. App. 3d at 317. The reviewing court affirmed defendant's conviction, noting that the expert testified that his opinion was based on his comparison of the latent prints and the exemplar of defendant's prints, then found that the expert's failure to describe the points of similarity went to the weight of the evidence, and declined to substitute its

opinion on issues concerning the weight of the evidence and witness credibility. *Ford*, 239 Ill. App. 3d at 318-19.

¶ 18 Here, as in *Ford*, Officer Cummings testified that his opinion that defendant was the source of the latent fingerprints was based on his comparison of the latent prints and defendant's known prints, taken at the time of his arrests. In fact, the weight of the fingerprint evidence supporting defendant's conviction here is stronger than that in *Ford* in that the amount of specificity and detail provided by Officer Cummings surpassed that of the expert in *Ford*, who testified that he based his conclusion on his "experience and training" in addition to comparing the latent print to the exemplar print. *Ford*, 239 Ill. App. 3d at 316. Here, Officer Cummings testified that the "ridge characteristics" from the latent prints matched the "ridge detail" from defendant's prints taken on October 14, 2010, and that "[t]he ridge detail visible to [him] in the latent impressions from lip D and lip B matched number 2 and 3 finger of the fingerprint card bearing [defendant's name] printed on the 23rd of May, 2011."

¶ 19 Defendant, however, analogizes his case to *People v. Safford*, 392 Ill. App. 3d 212 (2009), in which defendant was convicted of aggravated battery with a firearm and attempted murder. In *Safford*, the fingerprint expert testified that he arrived at his conclusion that a latent print matched defendant's fingerprint based on his "experience and training," but gave no specifics as to how he arrived at that conclusion, and testified that he took no notes in that regard. *Safford*, 392 Ill. App. 3d at 220-21. In reversing defendant's conviction, this court found that the trial court erred in admitting this testimony because the foundational requirements for its admission were not met. *Safford*, 392 Ill. App. 3d at 226, 230-31. This court found that *Ford* did not control the outcome of the case before it because the defendant in *Ford* raised an argument relating to sufficiency of the evidence, whereas the issue with which it was confronted was the admissibility of the evidence. *Safford*, 392 Ill. App. 3d at 222-23. Here, unlike *Safford*,

defendant has raised a sufficiency of the evidence argument based on the fingerprint evidence, and, as such, we find the reasoning in *Ford* applicable, and *Safford* clearly distinguishable.

¶ 20 Defendant also contends that Cummings' testimony bears no weight because the State failed to introduce the fingerprint card into evidence which, he claims, would have helped the trial court assess the reasonableness of Cummings' opinion, and because he failed to explain discrepancies in his testimony. However, defendant cites no authority for the proposition that the State was required to submit the fingerprint card or that Cummings' testimony bore no weight due to its omission. Rather, as noted above, the trial court, as trier of fact, had the responsibility to weigh the evidence, resolve any discrepancies contained therein, and draw reasonable inferences therefrom. *Campbell*, 146 Ill. 2d at 374-75. When viewed in the light most favorable to the State (*Siguenza-Brito*, 235 Ill. 2d at 224), we conclude that the State's evidence was sufficient to allow the trial court to find that defendant was the source of the latent fingerprints recovered from the apartment (*Ford*, 239 Ill. App. 3d at 319).

¶ 21 Defendant next contends that, even if the State proved that he was the source of the latent fingerprints at issue, it failed to prove that he left those fingerprints at the time of the burglary. Where a conviction is based solely on fingerprint evidence, that evidence must satisfy both physical and temporal proximity criteria in that the fingerprints must have been found in the immediate vicinity of the crime and under circumstances such that they could have been made only at the time the crime occurred. *Ford*, 239 Ill. App. 3d at 317. Here, defendant does not contest that the physical proximity criteria has been met, focusing solely on the temporal proximity requirement.

¶ 22 Defendant relies heavily on *People v. Poole*, 99 Ill. App. 3d 939, 942 (1981), a case in which defendant's convictions were reversed based on the possibility that his fingerprints may have been made at a time other than the burglary. In doing so, the reviewing court noted that

where the proof against defendant is entirely circumstantial, if there is any reasonable hypothesis arising from that evidence consistent with defendant's innocence, it must be adopted. *Poole*, 99 Ill. App. 3d at 942. We note, however, that the reasonable hypothesis of innocence standard of review in circumstantial evidence cases was subsequently rejected by the supreme court (*People v. Pintos*, 133 Ill. 2d 286, 291 (1989), and cases cited therein), and, accordingly, that defendant's reliance on *Poole* is misplaced. This case is clearly subject to the reasonable doubt test that is applicable to all criminal cases (*Pintos*, 133 Ill. 2d at 291), which includes the premise that it is the province of the trier of fact to draw reasonable inferences from the evidence presented (*Campbell*, 146 Ill. 2d at 374-75).

¶ 23 Here, the evidence showed that fingerprints which originated from defendant were made on a glass window that was the point of entry for the burglary that occurred at the apartment. Fitzpatrick testified that to reach that window, one would have to walk through a gate, and that there was no gangway between her building and the building that was located approximately 5 to 10 feet away. Although, as defendant points out, Officer Cummings testified that fingerprints can remain on a glass surface for an indeterminate amount of time, Fitzpatrick testified that she did not know defendant, that he had never been inside the apartment, nor had she ever seen him around the apartment, and no evidence indicating otherwise was presented.

¶ 24 In fact, when the trial court rendered its decision, it drew the reasonable inference from the evidence that, based on the location of the fingerprints, it did not believe they had been placed there by someone who merely passed by and touched the window, and observed that the entry through the window was made in a forceful way and without authority. Although defendant maintains that the State failed to disprove that the fingerprints were not left at another undisclosed time, his argument relies on pure speculation, as no evidence was presented to support an inference that the fingerprints were made at a time other than the burglary. Mere

possibilities or speculation are insufficient to raise a reasonable doubt of guilt (*People v. Phillips*, 215 Ill. 2d 554, 574 (2005)), and we find none here.

¶ 25 We disagree with defendant's contention that in arguing that the presence of his fingerprints at the apartment "remained unexplained," the State was shifting the burden of proof to him. We find that this argument may reasonably be interpreted as an assertion that the evidence presented did not support an inference that the fingerprints were made at a time other than the burglary.

¶ 26 Viewing the evidence in the light most favorable to the State (*Siguenza-Brito*, 235 Ill. 2d at 224), we find that it was not unreasonable for the trial court to infer that defendant left his fingerprints on that window at the time of the burglary, and that the State satisfied the temporal proximity test. *People v. Woods*, 225 Ill. App. 3d 988, 994-95 (1992).

¶ 27 In reaching that conclusion, we have considered *People v. Gomez*, 215 Ill. App. 3d 208, 216 (1991), cited by defendant, and find it factually distinguishable from the case at bar. In *Gomez*, defendant's conviction for first-degree murder was reversed based, in part, on the reviewing court's finding that the State failed to satisfy the temporal proximity requirement for the fingerprint evidence it presented against defendant. *Gomez*, 215 Ill. App. 3d at 216-17. In doing so, the court noted that defendant had rented a room from the victim at a boarding house located next door to the victim's home, and that defendant had been in the victim's kitchen, where the murder took place, on prior occasions in order to pay his rent. *Gomez*, 215 Ill. App. 3d at 211, 216. Here, in contrast, the evidence presented showed that defendant had never been inside the apartment, had never been seen near the apartment, and no evidence was presented that he lived near the apartment at the time of the burglary.

¶ 28 For the foregoing reasons, we find that the evidence presented in this case was not so unreasonable, improbable or unsatisfactory as to justify a reasonable doubt of defendant's guilt

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(*Jackson*, 232 Ill. 2d at 280-81), and, accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 29 Affirmed.