VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 14th day of December, 2017.

Raekwon Da'Rel Collins, Appellant,

against Record No. 161559
Court of Appeals No. 0133-16-1

Commonwealth of Virginia, Appellee.

Upon an appeal from a judgment rendered by the Court of Appeals of Virginia.

The trial court convicted Raekwon Da'Rel Collins of statutory burglary under Code § 18.2-91 and grand larceny under Code § 18.2-95. In the Court of Appeals, Collins unsuccessfully challenged the sufficiency of the evidence to support his convictions, and he now argues that the Court of Appeals erred in finding the evidence sufficient. We agree with Collins and reverse.

I.

"On appeal, we review the evidence in the 'light most favorable' to the Commonwealth, the prevailing party in the trial court." *Vasquez v. Commonwealth*, 291 Va. 232, 236, 781 S.E.2d 920, 922 (citation omitted), *cert. denied*, ___ U.S. ___, 137 S. Ct. 568 (2016). "Viewing the record through this evidentiary prism requires us to 'discard the evidence of the accused in conflict with that of the Commonwealth, and regard as true all the credible evidence favorable to the Commonwealth and all fair inferences to be drawn therefrom.'" *Bowman v. Commonwealth*, 290 Va. 492, 494, 777 S.E.2d 851, 853 (2015) (quoting *Kelley v. Commonwealth*, 289 Va. 463, 467-68, 771 S.E.2d 672, 674 (2015)).

So viewed, the evidence at trial showed that on December 4, 2014, Cheryl Bland left her home around 6:00 p.m. and locked the doors and checked the windows of her home before she left. At 7:22 p.m., police officers responded to a call from someone in Bland's neighborhood

who observed people running with items in their hands.[1] When the officers arrived, a man flagged down the officers and pointed them to three flat-screen televisions lying on the ground next to the road in a cul-de-sac that shared a back yard with the homes on Bland's street. The man told the officers that "somebody cut through his yard . . . carrying items." J.A. at 30. The televisions were discovered within "a minute, two minutes at best," of walking distance from Bland's home. *Id.* at 32.

One officer stayed with the televisions until the evidence technician arrived, while the other officer looked for the home from which the televisions were taken. Around 9:00 p.m., the officers discovered that Bland's home had been broken into when they observed a side "door [that] had been kicked in" with "a footprint" visible on the outside of the door. *Id.* Bland arrived back home as the officers were inspecting her kicked-in door. The officers cleared the home before she entered, and Bland then discovered that multiple items had been taken from her ransacked home. Bland identified the three televisions on the side of the road as items that had been taken from her home. The televisions were returned to Bland that evening, but two of the three televisions no longer functioned properly. *See id.* at 19. The following items were also taken from Bland's home but were never recovered: an X-Box gaming system, an iPod, a laptop, tennis shoes, birth certificates, Social Security cards, death certificates, and a life insurance policy.

Before returning the televisions to Bland, the evidence technician dusted each of them for fingerprints and lifted several latent,[2] partial fingerprints off of each television. The technician placed each of the lifted fingerprints on the back of separate cards, and on the front of the cards, he marked the location of the fingerprints with an "X" on the outer edges of a rudimentary, hand-drawn box representing the television. *See id.* at 50-51, 120-45. The technician also searched unsuccessfully for fingerprints in Bland's home. A few months later, a fingerprint examiner for the police department rolled Collins's fingerprints and compared them to the latent fingerprints

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[1] The record does not reflect the exact time of this call.

[2] A fingerprint examiner testified at trial that "[a] latent fingerprint is an invisible print that you can't see with the naked eye" and must "be developed by fingerprint powder or some form of chemicals in order to bring it out." J.A. at 54.

lifted from the televisions.[3] The fingerprint examiner matched only Collins's left index and left middle fingerprints to latent, partial fingerprints obtained from the right corner of a 28.5" black flat-screen Sharp television. *See id.* at 80, 120-21, 152. The two-dimensional nature of the drawing of where the evidence technician found the fingerprints does not reveal whether the fingerprints were on the front or back side of the television. *See, e.g., id.* at 120. The fingerprint cards also do not indicate the angle at which Collins's fingerprints lay on the television. The fingerprint examiner could not match any of the other fingerprints found on the three televisions with Collins's rolled fingerprints, although three of the other lifted prints were sufficient for comparison. *See id.* at 84, 152.

Collins presented no evidence or testimony, but he made a motion to strike the evidence at the conclusion of the Commonwealth's case-in-chief and immediately renewed the motion at the close of all of the evidence, both of which the trial court denied. The trial court found Collins guilty of statutory burglary and grand larceny but dismissed a misdemeanor charge for destruction of property. The trial court sentenced Collins to concurrent five-year terms of imprisonment for both convictions but suspended the entire sentence with three concurrent years of supervised probation for each conviction. Collins appealed to the Court of Appeals, challenging the sufficiency of the evidence and the qualification of the fingerprint examiner to be an expert witness, but the Court of Appeals denied his petition. Collins then appealed to this Court, and we granted his appeal limited to the question of the sufficiency of the evidence.

II.

Collins challenges his statutory burglary conviction on the grounds that the fingerprint evidence alone is insufficient to prove that he took or even possessed the television and that possession of recently stolen goods does not permit the inference that the possessor also

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[3] The record gives no indication of why or when Collins became a suspect in this case or why the fingerprint examiner obtained his rolled fingerprints in order to compare them with the fingerprints obtained from the televisions. The Probable Cause Summary submitted to obtain the arrest warrants for Collins merely states that the fingerprint examiner "compared Raekwon Collins['s] prints to the prints recovered from the televisions" on March 5, 2015, which was four months after the burglary. R. at 1 (altering capitalization). Collins was not arrested until April 7, 2015. *See id.* at 8, 10.

burglarized Bland's home. *See* Appellant's Br. at 16-18.[4] On the grand larceny conviction, Collins asserts that the evidence is insufficient because the fingerprint evidence by itself failed to prove that he stole the television or that he even possessed it so as to give rise to a presumption of larceny. *See id.* at 21-23.

When reviewing the sufficiency of the evidence, the trial court's "judgment is presumed correct and will not be disturbed unless it is 'plainly wrong or without evidence to support it.'" *Commonwealth v. Moseley*, 293 Va. 455, 463, 799 S.E.2d 683, 686-87 (2017) (quoting Code § 8.01-680). In light of this presumption, this Court does not "ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt." *Williams v. Commonwealth*, 278 Va. 190, 193, 677 S.E.2d 280, 282 (2009) (emphasis in original) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). Instead, the only "relevant question is, after

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[4] At oral argument, Collins expanded this latter argument by contending that this Court's opinion in *Guynn v. Commonwealth*, 220 Va. 478, 259 S.E.2d 822 (1979) (per curiam), was incorrect and not "the most soundly reasoned case." Oral Argument Audio at 27:18 to 28:20. *Guynn* held that the unexplained possession of recently stolen goods "established a prima facie case of the defendant's guilt of breaking and entering *and* theft of the goods" when the Commonwealth (1) proved that the goods found in the defendant's possession were stolen from a house that was burglarized; (2) "justif[ied] the inference that both offenses were committed at the same time, by the same person, as a part of the same criminal enterprise"; and (3) proved that the goods were found in the defendant's possession soon after the burglary. 220 Va. at 480, 259 S.E.2d at 823-24 (emphasis added).

We have never overturned *Guynn*, and its holding is far from an aberration in Virginia law. *See Brown v. Commonwealth*, 213 Va. 748, 749-50, 195 S.E.2d 703, 705 (1973) (distilling from a "line of cases . . . [that] the rule in Virginia is that when the Commonwealth's evidence proves a breaking and entering and a theft of goods and justifies an inference that both offenses were committed at the same time by the same person as a part of the same criminal enterprise, if the evidence proves further that the goods stolen were found soon thereafter in the possession of the accused, the Commonwealth has made a prima facie case that the accused broke and entered"); *see also Schaum v. Commonwealth*, 215 Va. 498, 501, 211 S.E.2d 73, 75-76 (1975); *Sullivan v. Commonwealth*, 210 Va. 201, 203, 169 S.E.2d 577, 579 (1969); *Christian v. Commonwealth*, 210 Va. 117, 119-20, 168 S.E.2d 112, 114 (1969); *Miller v. Commonwealth*, 185 Va. 17, 21-24, 37 S.E.2d 864, 866-67 (1946); *Gravely v. Commonwealth*, 86 Va. 396, 400-01, 10 S.E. 431, 432-33 (1889); *Lunsford v. Commonwealth*, 55 Va. App. 59, 63, 683 S.E.2d 831, 833-34 (2009). *See generally* 7 Ronald J. Bacigal, Virginia Practice Series: Criminal Offenses and Defenses 89-90, 92 (2016-2017 ed.); John L. Costello, Virginia Criminal Law and Procedure § 9.2[1], at 163-64 (4th ed. 2008). The applicability of this permissible inference is irrelevant here though because we agree with Collins that the fingerprint evidence in this case was insufficient to prove that Collins even possessed the television.

reviewing the evidence in the light most favorable to the prosecution, whether *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Sullivan v. Commonwealth*, 280 Va. 672, 676, 701 S.E.2d 61, 63 (2010) (emphasis added) (citing *Jackson*, 443 U.S. at 319). Thus, "it is not for this court to say that the evidence does or does not establish his guilt beyond a reasonable doubt because as an original proposition it might have reached a different conclusion." *Cobb v. Commonwealth*, 152 Va. 941, 953, 146 S.E. 270, 274 (1929).

In order for evidence to be sufficient "to show or to support a rational inference that the [defendant] was the criminal agent," the general rule is "that finger print evidence must be coupled with evidence of other circumstances tending to reasonably exclude the hypothesis that the print was impressed at a time other than that of the crime." *Avent v. Commonwealth*, 209 Va. 474, 479, 164 S.E.2d 655, 659 (1968) (citation omitted). *See generally* 5 Ronald J. Bacigal, Virginia Practice Series: Criminal Procedure § 8:5, at 267 (2016-2017 ed.) (acknowledging and quoting general rule from *Avent*); Charles E. Friend & Kent Sinclair, The Law of Evidence in Virginia § 14-2, at 849 (7th ed. 2012) ("'When the evidence supports a credible exculpatory explanation of the existence of fingerprints,' case law in Virginia indicates that fingerprint evidence *alone* may be insufficient to sustain a conviction." (emphasis in original) (quoting *Henderson v. Commonwealth*, 215 Va. 811, 813, 213 S.E.2d 782, 784 (1975))).

"While a factfinder may 'draw reasonable inferences from basic facts to ultimate facts,' the inferences cannot become so attenuated that they 'push "into the realm of *non sequitur*."'" *Bowman*, 290 Va. at 500, 777 S.E.2d at 857 (citations omitted). This principle aptly describes what happened in this case. The Commonwealth relies only on two fingerprints from Collins's left index and left middle fingers lifted from the television found nearby shortly after the burglary without providing sufficient circumstantial evidence to reasonably exclude the hypothesis that Collins left the fingerprints at some time other than during the commission of the crimes. The circumstantial evidence necessary to exclude such a hypothesis "need not be . . . completely independent of the fingerprint, and may properly include circumstances such as the location of the print, the character of the place or premises where it was found and the accessibility of the general public to the object on which the print was impressed." *Avent*, 209 Va. at 479, 164 S.E.2d at 659 (citation omitted). Additionally, the Commonwealth need not

negate "every conceivable possibility that an accused, shown to be at the scene of a crime by his fingerprint, was present other than at the time of the commission of the crime" nor "affirmatively and conclusively prove that the accused could *not* have been there other than [at the] time when the crime was committed." *Id.* at 480, 164 S.E.2d at 659 (emphasis in original) (citation omitted); *see also Ricks v. Commonwealth*, 218 Va. 523, 526-27, 237 S.E.2d 810, 811-12 (1977) (noting that "the Commonwealth had no duty to go further than it did in negating [a] hypothesis of innocence" when "[t]he evidence of the [fingerprint] *and the attendant facts* demonstrate[d] the accused was present at the scene when the crimes were committed" (emphasis added)). "[W]hen the Commonwealth relies solely upon fingerprint evidence to identify a criminal agent, it bears the burden of excluding every *reasonable* hypothesis of innocen[ce], that is, those 'which flow from the evidence itself, and not from the imagination of defendant's counsel.'" Friend & Sinclair, *supra*, § 14-2, at 849 (emphasis in original) (quoting *Tyler v. Commonwealth*, 254 Va. 162, 166, 487 S.E.2d 221, 223 (1997); *Turner v. Commonwealth*, 218 Va. 141, 148, 235 S.E.2d 357, 361 (1977)).

Here, the fingerprint evidence was not "coupled with evidence of other circumstances tending to reasonably exclude the hypothesis that the print was impressed at a time other than that of the crime." *Avent*, 209 Va. at 479, 164 S.E.2d at 659 (citation omitted). To begin, the fingerprint evidence itself does not demonstrate that Collins gripped, lifted, or carried the television because Collins's thumb print was not found near his left index and left middle fingerprints. The Commonwealth conceded the lack of thumb-print evidence, *see* Oral Argument Audio at 21:40 to 22:05 ("I would concede that there . . . wasn't a thumb print that was lifted that was consistent with Collins's thumb."), and the fingerprint cards do not reveal any evidence of partial or even illegible thumb prints near Collins's fingerprints on the television, *see* J.A. at 120-25, 130-31, 136-43. *Cf. Tyler*, 254 Va. at 164, 167, 487 S.E.2d at 222, 224 (finding sufficient circumstances to exclude a hypothesis of innocence when the presence of the defendant's thumb print and index print appeared on both sides of shattered pieces of glass from a window seven feet above ground level, indicating that someone had picked up and moved the pieces in order to gain access through the broken window). The fingerprint cards also do not indicate the angle at which Collins's fingerprints were positioned on the television or whether the fingerprints were lifted from the front or back side of the television. The technician merely

placed an "X" on the outer edge of a two-dimensional, hand-drawn box to indicate the placement of the fingerprints, *see, e.g.*, J.A. at 120, and no trial testimony clarified these points further.

Finally, the Commonwealth relies on the short timeframe between Bland leaving her home and the officers' discovery of the stolen televisions in a nearby cul-de-sac, which shared a backyard adjacent to Bland's home, as circumstantial evidence that tends to exclude the hypothesis that Collins left his fingerprints on the television at a time other than during the commission of the crimes. However, "the character of the place or premises where [the television] was found and the accessibility of the general public to the [television] on which the print[s] w[ere] impressed," *Avent*, 209 Va. at 479, 164 S.E.2d at 659 (citation omitted), undermine that circumstantial evidence because it does not exclude the reasonable hypothesis that Collins was merely a passerby who touched the television while inspecting it as it sat on the side of a publicly accessible road. To conclude that the fingerprint evidence, coupled with the inconclusive circumstances of temporal and geographic proximity to the burglary, allows a factfinder to infer that Collins burglarized Bland's home and stole the television is to "push 'into the realm of *non sequitur*.'" *Bowman*, 290 Va. at 500, 777 S.E.2d at 857 (citation omitted).

III.

The evidence thus was insufficient to convict Collins of statutory burglary and grand larceny because the fingerprint evidence was not "coupled with evidence of other circumstances tending to reasonably exclude the hypothesis that the print was impressed at a time other than that of the crime." *Avent*, 209 Va. at 479, 164 S.E.2d at 659. Therefore, the trial court was plainly wrong in convicting Collins of statutory burglary and grand larceny, and the Court of Appeals erred in affirming those convictions. We reverse the judgment of the Court of Appeals and vacate Collins's convictions.

This order shall be certified to the Court of Appeals of Virginia and the Circuit Court of the City of Portsmouth.

A Copy,

Teste: Patricia L. Harrington

Clerk