SUMMARY
July 11, 2024

2024COA72

No. 21CA0267, *People v. Vigil* — Evidence — Authentication — Bases of Opinion Testimony by Experts — Hearsay

The defendant was convicted of attempted second degree murder and second degree assault in connection with a shooting. The police later recovered the gun (with a magazine) used in the crime. At trial, a DNA analyst, relying on a submission letter, testified that she received buccal swabs taken from the defendant and determined that the DNA profile developed from the swabs matched DNA on the gun and magazine. A fingerprint examiner, relying on information printed on an AFIS fingerprint card, testified that she compared fingerprints belonging to the defendant with a latent print recovered from the gun and determined that the prints matched.

On appeal, a division of the court of appeals holds that the experts' testimony identifying the defendant as the source of the buccal swabs and printed fingerprints was inadmissible hearsay, and the trial court erred by admitting it. The division further concludes that without the hearsay testimony, the prosecution failed to establish the necessary connection between the items tested or analyzed and the defendant. As a result, the experts' "match" testimony was irrelevant and therefore inadmissible. Finally, the division determines that the errors were not harmless and thus reverses the defendant's convictions and remands for a new trial.

COLORADO COURT OF APPEALS **2024COA72**

Court of Appeals No. 21CA0267
Adams County District Court No. 19CR3518
Honorable Tomee Crespin, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Julian Vigil,

Defendant-Appellant.

JUDGMENT REVERSED AND CASE
REMANDED WITH DIRECTIONS

Division VI
Opinion by JUDGE HARRIS
Lipinsky and Schutz, JJ., concur

Announced July 11, 2024

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¶ 1 Defendant, Julian Vigil, appeals the judgment of conviction entered after a jury found him guilty of attempted second degree murder and second degree assault.

¶ 2 Vigil argues that the trial court committed reversible error by admitting the testimony of two expert witnesses concerning the results of DNA and fingerprint analysis. According to Vigil, the experts authenticated the analyzed items through inadmissible hearsay testimony. As a result, he says, the prosecution never established that the items had any connection to him, rendering the experts' opinions irrelevant and inadmissible. We agree and therefore reverse the judgment and remand for a new trial.

I. Background

¶ 3 At around three o'clock one morning, police responded to a reported shooting in an apartment. When they arrived, they found Michael Lucero, who had been shot in the arm; Lucero's girlfriend; and the girlfriend's roommate. Earlier in the evening, a larger group, which included Vigil and three others, had eaten dinner together in the apartment. Vigil and Lucero knew each other through the girlfriend, who had a child with Vigil.

¶ 4 Police started searching for Vigil and at least one other person of interest. Hours later, an officer found Vigil in the driver's seat of a parked car. There was a second person in the car and a third person standing outside it.

¶ 5 Officers searched the car and found a gun "stuffed in between" the driver's seat and the center console. Officers also found a shell casing at the apartment. The gun, the magazine inside the gun, and the shell casing were sent to the Colorado Bureau of Investigation (CBI) for testing.

¶ 6 At trial, the primary contested issue was identity. Of the seven people who were apparently at the apartment that evening, only Lucero testified at trial. He identified Vigil as the person who had shot him. But his trial testimony was inconsistent with statements he made to police right after the shooting. For example, the deputy who spoke to Lucero at the hospital testified that Lucero said he knew Vigil and Vigil had been at the apartment, but when the deputy asked who had shot him, Lucero said he did not know. According to a second officer, Lucero said he knew who shot him, but he was "unable to provide a name" and he did not know if the shooter "came into the apartment, then shot him," or if the shooter

"was already inside the apartment when [Lucero] was shot." A third officer testified on direct that Lucero told him that he had been shot by his girlfriend's "baby's daddy," but on cross-examination the officer conceded that his report reflected that Lucero had told him "he did not see who shot him."

¶ 7 The prosecution also called three expert witnesses. The first, a ballistics expert, opined that the recovered shell casing was fired from the gun found in the car where the police located Vigil. The second, a DNA analyst, testified that Vigil's DNA was on the gun and magazine. And the third, a fingerprint examiner, testified that fingerprints on the gun matched Vigil's prints.

¶ 8 The jury acquitted Vigil of the originally charged offenses — attempted first degree murder and first degree assault — but it convicted him of the lesser included offenses of attempted second degree murder and second degree assault.

II. Admission of the Expert Testimony

¶ 9 To perform their analyses, both the DNA analyst and the fingerprint examiner used samples supposedly obtained from Vigil — for the DNA analysis, buccal swabs purportedly containing Vigil's cellular material, and for the fingerprint analysis, a fingerprint card

bearing a name associated with Vigil generated from a fingerprint database. No one with personal knowledge testified about the source of the known samples. Vigil contends that, as a result, the known samples were never authenticated except through hearsay, rendering the experts' testimony concerning "matches" inadmissible.[1] We agree.

A. The DNA and Fingerprint Evidence

¶ 10 A detective testified that after the shooting, "[his] agency submit[ted] . . . evidence to CBI for testing" — the gun, magazine, shell casing, and "some buccal swabs" that had been "obtained . . . from" Vigil a few months after his arrest. The gun, magazine, and shell casing were later admitted into evidence during the crime scene investigator's testimony. But no witness identified any swabs collected from Vigil, and the swabs were not admitted into evidence.

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[1] Vigil also argues for the first time on appeal that admission of the DNA analyst's testimony violated his rights under the Confrontation Clause. But we need not address the constitutional argument because we agree that the court abused its discretion by admitting hearsay testimony. *See People v. Hernandez*, 2019 COA 111, ¶ 50 ("[U]nder the doctrine of constitutional avoidance, we address constitutional issues only if necessary.") (citation omitted).

¶ 11 The DNA analyst testified that in addition to the gun and magazine, she received "a buccal swab collection for Mr. Vigil." The buccal swabs were important, she explained, because they allowed her to determine whether a particular individual was connected to an "evidence item" — by comparing the DNA profile developed from the item with the profile developed from the buccal swabs.

¶ 12 The analyst identified the buccal swabs as belonging to Vigil based on the law enforcement agency's submission letter, which listed Vigil's name, date of birth, and state identification number. However, the analyst was not present when the swabs were obtained, and she had no way to verify that the swabs belonged to Vigil.

¶ 13 The analyst opined that the DNA profile developed from Vigil's buccal swabs matched the DNA recovered from the gun and magazine. Although DNA from two unknown individuals was also present on those items, the analyst testified that Vigil was the major contributor to the DNA — eighty-six percent of the "mixture profile" came from him.

¶ 14 The fingerprint examiner testified that she was able to develop "one latent fingerprint" from the gun. She entered the latent print

into the Automated Fingerprint Identification System (AFIS), a database that holds six million fingerprint records. The AFIS database returned a "hit" to "the right ring finger" of a record with the name Julian Santana Flores and a date of birth that matched Vigil's.[2] The examiner testified that she generated Julian Santana Flores's "ten-print card" from the database, compared the right ring finger print on the card to the latent print from the gun, and determined that the prints matched. Based on the examiner's testimony, the prosecutor argued that "the defendant's fingerprints . . . are on the gun."

B. Legal Principles and Standard of Review

¶ 15 Authentication is a condition precedent to the admission of evidence. CRE 901(a). The condition is satisfied by "evidence

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[2] At trial, the prosecution presented evidence that Vigil went by the first name Santana and that his birthdate matched the birthdate on the AFIS card, but it did not connect him to the last name "Flores." Nonetheless, Vigil appears to concede that jurors could have inferred a connection between him and the name on the card. His argument, after all, is that the fingerprint examiner's testimony identifying Julian Santana Flores as the source of the prints was "offered to jurors for the truth of the matter asserted: that the fingerprints on the [card] actually belonged to Mr. Vigil."

sufficient to support a finding that the matter in question is what its proponent claims." *Id.*

¶ 16 Though CRE 901 relates to the admission of evidence, the same standard applies "if a proper identification of an object is required for other purposes, even if the object itself is not offered" as evidence. *People v. Valencia*, 257 P.3d 1203, 1206 (Colo. App. 2011). For example, before an expert can testify about the results of the testing or analysis of an object, "[t]he object must be identified" — that is, "some proof must be presented of a connection between the object tested and the defendant, the victim, or the crime." *Id.* The rationale for the rule is that the expert's testimony is irrelevant unless the object is what its proponent alleges. *Id.*; *see also People v. Rodriguez*, 2022 COA 11, ¶ 15 (unless the prosecution could establish that the substance tested was the same substance recovered from the defendant, the chemist's testimony that the tested substance was cocaine would be irrelevant); *Commonwealth v. Jones*, 37 N.E.3d 589, 597 (Mass. 2015) (without proof "linking the swabs to the examination performed on the victim," the expert's testimony that the defendant's DNA was on the swabs would be irrelevant); *Young v. United States*, 63 A.3d 1033, 1045 (D.C. 2013)

(without knowledge of how or from what sources the DNA profiles were developed, the expert's testimony "that she matched two DNA profiles she could not herself identify" would be "meaningless").

¶ 17 Sometimes, particularly where the object is "unique, readily identifiable, and relatively resistant to change," the witness can identify the object based on personal knowledge. *Rodriguez*, ¶ 16 (quoting *United States v. Cardenas*, 864 F.2d 1528, 1531 (10th Cir. 1989)). More often, though, the object tested must be identified by "showing a complete chain of custody of the item." *Valencia*, 257 P.3d at 1206; *see also Rodriguez*, ¶ 21.

¶ 18 CRE 703 allows an expert witness to base her opinion on facts or data "made known" to her before trial, regardless of whether the facts and data are independently admissible. *See Leiting v. Mutha*, 58 P.3d 1049, 1054 (Colo. App. 2002). But CRE 703 does not permit otherwise inadmissible facts or data to be presented to the jury merely because the expert relied on them. *Leiting*, 58 P.3d at 1054. And even if the facts and data are admitted, they are admissible only to explain the witness's opinion, not for the truth of the matter asserted. *People v. Ruibal*, 2015 COA 55, ¶ 36, *aff'd*, 2018 CO 93.

¶ 19 We review the trial court's evidentiary rulings for an abuse of discretion. *Campbell v. People*, 2019 CO 66, ¶ 21. A trial court abuses its discretion when its ruling is manifestly arbitrary, unreasonable, or unfair, or when it misconstrues or misapplies the law. *People v. Quillen*, 2023 COA 22M, ¶ 14.

¶ 20 Because Vigil preserved his evidentiary claims, we review for harmless error. *Id.* Under that standard, if we discern an error, we will reverse unless "the People have shown that there is 'no reasonable possibility that [the error] contributed to the defendant's conviction.'" *People v. Baker*, 2019 COA 165, ¶ 13 (quoting *Pernell v. People*, 2018 CO 13, ¶ 22), *aff'd*, 2021 CO 29.

C. Admissibility of the DNA Analyst's "Match" Testimony

¶ 21 Vigil argues that because the DNA analyst lacked personal knowledge of the origin of the tested buccal swabs and no chain of custody was shown, the prosecution improperly relied on hearsay to establish the requisite connection between him and the objects tested. And without the inadmissible hearsay evidence, he says, the analyst's testimony that DNA from swabs of unknown origin matched DNA on the gun and magazine was irrelevant and therefore inadmissible.

¶ 22 The People do not dispute that the prosecution had to prove a connection between the tested swabs and Vigil. They contend, however, that the evidence established a sufficient chain of custody, and, even if it did not, the submission letter[3] could provide the necessary connection because the letter was either not hearsay or fell within an exception to the rule against hearsay. We are not persuaded.

¶ 23 To begin, the prosecution did not establish a chain of custody sufficient to permit identification of the buccal swabs as those taken from Vigil. To establish a chain of custody, the prosecution must introduce evidence showing where the object has been from the time the police took custody of it until it is offered at trial. *Rodriguez*, ¶ 23. True, as the People point out, the burden on the prosecution is not "particularly high" — the proponent need not call each witness who may have handled the object. *Id.* at ¶ 24. Still,

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[3] The parties appear to assume that the buccal swabs were separately labeled with identifying information. Perhaps, but the DNA analyst testified that her knowledge of the source of the swabs came from the law enforcement agency's submission letter. The distinction is immaterial to our analysis.

the object "[must be] accounted for at all times." *Id.* (quoting *People v. Atencio*, 193 Colo. 184, 187, 565 P.2d 921, 923 (1977)).

¶ 24 The tested swabs were not accounted for at any time before the DNA analyst received them. The detective said only that someone had "obtained" swabs from Vigil and that the "agency" had sent the swabs to CBI. No witness testified that they collected the buccal swabs from Vigil or packaged them or sent them to the analyst for testing. In other words, there were no links in the chain of custody until the buccal swabs appeared at CBI. Thus, without relying on the submission letter, the analyst could not say, and the jury had no basis for determining, whether the buccal swabs obtained from Vigil were the same buccal swabs received by CBI and tested by the analyst.

¶ 25 *Valencia* addressed a nearly identical issue. In that case, without first describing the origin of the swabs tested, the expert testified that DNA on a swab from the victim's rape kit matched DNA developed from the defendant's buccal swab. *Valencia*, 257 P.3d at 1205. On appeal, the division concluded that because the swabs were not introduced into evidence, and the expert did not "describe how the items she tested were marked," there was "no

proper evidence establishing that the tested items came from either defendant or the victim," rendering the expert's testimony about the test results inadmissible. *Id.* at 1206; *see also Rodriguez*, ¶ 28 (because the prosecution did not show a complete chain of custody, the jury had no basis to determine that the substance tested was the same substance recovered from the defendant).

¶ 26 As the People point out, the *Valencia* division observed that if an expert "describes an object as having the identifying marks placed on the item or its packaging by an investigator . . . such identification may well be sufficient to justify its admission." 257 P.3d at 1206. But the division's observation is of no help to the People in this case. No one described any "identifying marks" placed by a law enforcement officer on the swabs or their packaging, such that the swabs could be traced back to Vigil.

¶ 27 Even without a chain of custody, the People argue, the analyst could properly identify the tested swabs as those collected from Vigil by referring to the information in the submission letter. According to the People, the identifying information in the letter was "non-assertive" and therefore "not hearsay."

¶ 28 Hearsay is an out-of-court statement offered in evidence to prove the truth of the matter asserted. CRE 801(c). Unless an exception applies, hearsay statements are generally inadmissible. CRE 802. The rule against hearsay encompasses not only verbatim out-of-court statements, but also implied hearsay or testimony that raises an inference of out-of-court statements. *People v. Jiron*, 2020 COA 36, ¶ 70, *cert. granted, judgment vacated on other grounds, and case remanded*, (Colo. No. 20SC344, Jan. 11, 2021) (unpublished order).

¶ 29 The submission letter was not offered into evidence. Rather, the analyst testified about the contents of the letter, which provided Vigil's identifying information. The letter, prepared by a non-testifying law enforcement official and relayed through the analyst's testimony, asserted the origin of the buccal swabs. *See Jones*, 37 N.E.3d at 596 ("In labeling the various swabs and completing the 'rape kit' . . . the nurse essentially made a series of factual statements concerning how the various swabs were collected."). The information had to be offered for the truth of the matter asserted because if the buccal swabs had not been obtained from Vigil, then the analyst's testimony that DNA from the buccal swabs

matched DNA on the gun and magazine was pointless. *See Rodriguez*, ¶ 19 (officer could not identify contents of evidence bag by relying on notations on the bag, as the notations were hearsay); *see also State v. Carmona*, 2016-NMCA-050, ¶¶ 37, 40 (expert could not identify swabs by relying on a label affixed by nurse examiner, as the label was hearsay); *Jones*, 37 N.E.3d at 596 (expert could not identify swabs by relying on an inventory list prepared by nurse, as the inventory list was hearsay); *State v. Mangos*, 2008 ME 150, ¶ 8 (expert could not identify swabs supposedly taken from clothing found at the crime scene by relying on a chemist's report, as the report was hearsay).

¶ 30 Nor was the analyst's testimony admissible under CRE 703. An expert may testify to inadmissible facts only when those facts formed the basis of her expert opinion. *See* CRE 703; *Golob v. People*, 180 P.3d 1006, 1010 (Colo. 2008). The analyst's expert opinion — that the DNA profile developed from the buccal swabs matched the DNA profile developed from the cellular material on the gun and magazine — did not rely on the submission letter's identifying information. *See Valencia*, 257 P.3d at 1205 (DNA expert's testimony did not fall under CRE 703 because the "facts

and data" relied on by such an expert are those "personally perceived by her" in the course of performing tests on various objects).

¶ 31 In any event, because the analyst's testimony about the source of the swabs was offered for the truth of the matter asserted, it was still inadmissible hearsay, regardless of whether it was offered as so-called basis evidence under CRE 703. *See Smith v. Arizona*, 602 U.S. ___, ___, 2024 WL 3074423, at *8 (June 21, 2024) ("[T]here is no meaningful distinction between disclosing an out-of-court statement to explain the basis of an expert's opinion and disclosing that statement for its truth.") (citation omitted).

¶ 32 Finally, the People argue that the analyst could properly testify about the letter's identifying information because the letter is a public record. CRE 803(8) provides an exception to the rule against hearsay for "[p]ublic [r]ecords and [r]eports" that set forth "the activities of [a public] office or agency" or "matters observed" by the office or agency pursuant to a duty to observe and report the matters. By its own terms, though, the exception does not apply, in criminal cases, to records setting forth matters observed by law enforcement personnel.

¶ 33 We need not decide whether, as a general matter, a submission letter from a law enforcement agency to a laboratory could be admitted as a public record because this submission letter was neither authenticated as a public record, *see* CRE 901(b)(7); *People v. Warrick*, 284 P.3d 139, 141-42 (Colo. App. 2011), nor admitted into evidence. Testimony about the contents of a public or business record is admissible only when the record itself is introduced; otherwise, the witness's testimony is inadmissible hearsay. *See, e.g.*, *State v. Jackson*, 4 N.W.3d 298, 307-10 (Iowa 2024) (explaining that the rules of evidence create a "business records exception" to the rule against hearsay, not a "testimony about business records exception," and collecting state and federal cases).

¶ 34 The trial court abused its discretion by admitting the analyst's hearsay testimony about the letter's identifying information. And without the inadmissible hearsay, there was no evidence connecting the buccal swabs to Vigil. As a result, the analyst's testimony that DNA from the buccal swabs matched DNA on the gun and magazine was irrelevant and, therefore, inadmissible.

D. Admissibility of the Fingerprint Examiner's "Match" Testimony

¶ 35 The police did not supply the fingerprint examiner with a set of Vigil's fingerprints. So after receiving a "hit" on the latent print from AFIS, the examiner printed the fingerprint card from the database, compared the latent print to the "record fingerprint of Julian Santana Flores," and determined that one of the fingerprints matched. The AFIS fingerprint card was not admitted into evidence.

¶ 36 Vigil contends that the fingerprint examiner's testimony was inadmissible for the same reason as the DNA analyst's testimony — no witness identified the prints on the AFIS fingerprint card as belonging to Vigil, except through hearsay evidence. Thus, he says, the examiner's testimony that the latent print on the gun matched a print on the AFIS fingerprint card was irrelevant and inadmissible.

¶ 37 Again, the People concede that the prosecution had to establish a connection, through admissible evidence, between the fingerprints on the AFIS card and Vigil. They say that the AFIS card is not hearsay, and, even if it is, the examiner's testimony was admissible under CRE 703 or CRE 803(8). We again disagree.

¶ 38 Before a witness can testify that a latent print matches the defendant's fingerprint, the prosecution must show that the prints

used for comparison are those of the defendant. *De Gesualdo v. People*, 147 Colo. 426, 434-35, 364 P.2d 374, 379 (1961). In *De Gesualdo*, a detective testified that he had compared fingerprints on a card in his possession with fingerprints allegedly taken from the defendant after his arrest in a different jurisdiction. *Id.* at 428, 364 P.2d at 375-76. Neither fingerprint card was admitted into evidence, and no witness "identif[ied] the fingerprints taken by the [other jurisdiction] as those of the defendant." *Id.* at 434, 364 P.2d at 379. The supreme court explained that the prosecutor should have presented a witness who could identify a fingerprint card as bearing the defendant's prints and then called an expert to compare the defendant's known prints with the second fingerprint card. *Id.* at 435, 364 P.2d at 379. But because the only evidence connecting the defendant to the fingerprint card on file in the other jurisdiction was the detective's hearsay testimony, the court reversed the judgment of conviction. *Id.* at 434-35, 364 P.2d at 379; *see also State v. Foster*, 200 S.E.2d 782, 793 (N.C. 1973) (detective's testimony that he compared a latent print to the defendant's fingerprint card on file at the police department did not establish that the fingerprint card bore the defendant's prints, except by

inadmissible hearsay, where the fingerprint card was not admitted into evidence).

¶ 39 The only evidence connecting Vigil to the fingerprints on the AFIS card was the examiner's testimony that identifying information "on the record that the AFIS database hit to" matched to Vigil. Her testimony necessarily conveyed the information on the AFIS card — the name and date of birth of the person from whom the prints were purportedly obtained — for the truth of the matter asserted. Unless the jury accepted the examiner's testimony that the AFIS fingerprint card bore Vigil's prints, her testimony would be irrelevant. *See, e.g.*, *Commonwealth v. Sullivan*, 85 N.E.3d 934, 943 (Mass. 2017) (testimony that DNA recovered from the crime scene matched a database record of the defendant was inadmissible hearsay); *State ex rel. D.H.*, No. A-1654-08T4, 2010 WL 2026778, at *3 (N.J. Super. Ct. App. Div. May 20, 2010) (per curiam) (unpublished opinion) (because detective had no knowledge that the AFIS card contained the defendant's fingerprints, his testimony that a latent print from the crime scene matched the defendant's fingerprints from the AFIS database was inadmissible hearsay); *see also Pierce v. State*, 270 A.3d 219, 231-32 (Del. 2022) (To authenticate prints in the AFIS

database as the defendant's, the prosecution must "provide some evidence from which a reasonable finder of fact would have a rational basis to conclude that the prints derived from the database and used for comparison purposes . . . are the defendant's.").

¶ 40 As an initial matter, we reject the People's argument that the examiner's testimony was not hearsay because she was the "declarant" who asserted that the latent print matched the fingerprint obtained from AFIS. The assertion at issue is not that the fingerprints matched, but that the fingerprint on the AFIS card belonged to Vigil. The examiner was not the declarant of that assertion — her knowledge came from the AFIS card itself.

¶ 41 Nor was the examiner's testimony admissible under CRE 703. While fingerprints from an AFIS card might be data on which fingerprint experts commonly rely, the examiner did not rely on the name and date of birth printed on the card to form her expert opinion. *See Valencia*, 257 P.3d at 1205.

¶ 42 Last, the People argue that the expert could testify about the identifying information on the AFIS card because the card was "computer generated," and therefore not hearsay, or fell within the

public record exception to the hearsay bar. That argument fails for at least two reasons.

¶ 43 A record is likely not hearsay "if [a] computer created the record automatically without human input or interpretation." *People v. N.T.B.*, 2019 COA 150, ¶ 22. But in this case, no one testified that AFIS "created" the fingerprint card at issue without human input. Nor do the People explain how a computer could generate a particular person's fingerprints along with the person's name and date of birth unless some human had first input that information into the computer.

¶ 44 More problematically, though, the prosecution never offered the AFIS card into evidence. So even if the card itself might qualify as a "computer generated" or public record, the examiner's testimony relaying identifying information from the card, about which she had no personal knowledge, was nonetheless inadmissible hearsay. *See Jackson*, 4 N.W.3d at 307-10.

¶ 45 The trial court should have excluded the examiner's hearsay testimony. And without it, the prosecution failed to prove a connection between Vigil and the AFIS fingerprint card, rendering

the examiner's fingerprint "match" testimony irrelevant and inadmissible.

E. Cumulatively, the Errors Were Not Harmless

¶ 46 Vigil says that, cumulatively, the trial court's errors in admitting the expert testimony were not harmless. We agree.

¶ 47 Under the cumulative error doctrine, reversal is required when multiple errors, each of which in itself might be deemed harmless, collectively prejudiced the defendant's substantial rights. *Howard-Walker v. People*, 2019 CO 69, ¶ 24.

¶ 48 To determine whether errors are harmless (individually or collectively), we must conduct a "case specific assessment of the likely impact of the error[s] in question on the outcome of the litigation as a whole." *Pernell*, ¶ 22 (quoting *People v. Rock*, 2017 CO 84, ¶ 22). While that assessment does not turn on a specific set of factors, one important consideration is the strength of the properly admitted evidence supporting the guilty verdict. *Id.* at ¶ 25.

¶ 49 Though more than half a dozen people had been at the apartment on the night of the shooting, only the victim, Lucero, appeared at trial. True, as the People note, Lucero identified Vigil in

court as the shooter. But his statements to police around the time of the incident undercut his in-court identification. Although he knew Vigil through his girlfriend, Lucero told an officer at the scene that he did not know the name of the person who had shot him. At the hospital several hours later, where he appeared more alert than he had at the scene, Lucero told a second officer that "no, he did not know who shot him." A third officer's report reflected that Lucero had said he "did not see who shot him." Even after police interviewed Lucero, they identified at least two people of interest.

¶ 50 Together, though, the DNA and fingerprint evidence definitively tied Vigil to the gun used in the shooting. Without the expert testimony, the prosecution's evidence would have established only that, at the time police contacted Vigil, he was seated in the driver's seat of a parked car where the gun was later found hidden "really low" between the center console and the front seat. There was no evidence showing Vigil's connection to the car or that he was aware of the gun. And when police encountered Vigil in the parking lot, there was another person in the front passenger seat of the car and a third person standing just outside it.

¶ 51 In light of the significance juries place on forensic evidence, *see, e.g.*, *People v. Marks*, 2015 COA 173, ¶ 41 (observing that DNA evidence has "long enjoyed a status of 'mythic infallibility' for jurors") (citation omitted); *State v. Quintana*, 2004 UT App 418, ¶ 13 (Thorne, J., concurring) (observing that "fingerprint evidence has been afforded a near magical quality in our culture"), and the victim's inconsistent statements about the shooting, we conclude that, cumulatively, the errors in admitting the expert testimony prejudiced Vigil's substantial rights, even if each of the errors, on its own, could have been deemed harmless. *See Valencia*, 257 P.3d at 1207 (although the victim identified the defendant as her attacker, she testified that she "was unclear about certain incidents," so the erroneous admission of the DNA expert's testimony was not harmless); *Saxton v. Commonwealth*, 671 S.W.3d 1, 14-15 (Ky. 2022) (although the defendant's fiancée identified him as the assailant, the DNA evidence "substantiated her testimony," so the erroneous admission of the DNA expert's testimony was not harmless); *Mangos*, ¶ 15 (although two eyewitnesses identified the defendant in court and pretrial as the robber, the witnesses also identified another person from the photo lineup, so the erroneous

admission of the DNA expert's testimony was not harmless); *see also People v. Ramos*, 2012 COA 191, ¶ 34 (error in allowing lay witness to give expert testimony concerning blood spatter was not harmless where "portions of [the victim's] testimony were inconsistent with previous statements she had made to police"), *aff'd*, 2017 CO 6.

III. Disposition

¶ 52 The judgment of conviction is reversed, and the case is remanded for a new trial.[4]

JUDGE LIPINSKY and JUDGE SCHUTZ concur.

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[4] In light of our disposition, we need not address Vigil's additional claim that the prosecutor committed misconduct during closing argument.