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COA No. 67658-0

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

BOGDAN FEDAS,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT
OF KING COUNTY

The Honorable Laura Gene Middaugh

APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

A. ASSIGNMENT OF ERROR 1

B. ISSUES PERTAINING TO ASSIGNMENT OF ERROR 1

C. STATEMENT OF THE CASE 2

D. ARGUMENT 4

THE DEFENDANT’S CONVICTIONS FOR THEFT
OF THE TRUCK AND DAMAGE TO THE BUSINESS
WERE THE SAME CRIMINAL CONDUCT WITH THE
BURGLARY, IN ADDITION TO THE FIRST DEGREE
THEFT 4

1. Sentencing facts. 4

2. A *de novo* standard is appropriate on review of the same
criminal conduct issue. 7

3. Burglary anti-merger statute immaterial on appeal. 8

4. Two offenses that occur at the same time and place, involve
the same victim, and result from the same objective criminal intent
amount to the "same criminal conduct" for sentencing purposes. . 12

5. The defendant’s four statutory offenses furthered one
objective criminal purpose – “to deprive Metropolitan Appliance
from its property” – and thus amounted to the “same criminal
conduct” as a matter of law. 13

E. CONCLUSION 22

TABLE OF AUTHORITIES

WASHINGTON CASES

State v. Adame, 56 Wn. App. 803, 785 P.2d 1144 (1990) 12,13,18

State v. Bickle, 153 Wn. App. 222, 222 P.3d 113 (2009) 7

State v. Burns, 114 Wn.2d 314, 788 P.2d 531 (1990). 19,20,21

State v. Collins, 110 Wn.2d 253, 751 P.2d 837 (1988) 20

In re PRP of Connick, 144 Wn.2d 442, 28 P.3d 729 (2001) 12,14

State v. Davis, 90 Wn. App. 776, 954 P.2d 325 (1998) 9,10,11

State v. Dunaway, 109 Wn.2d 207, 749 P.2d 160 (1987) 7,14,18

State v. Graciano, 173 Wn.2d 1012, 266 P.3d 221 (Wash. Jan 05, 2012) (NO. 86530-2). 8

State v. Grantham, 84 Wn. App. 854, 932 P.2d 657 (1997) 21

State v. Hoyt, 29 Wn. App. 372, 628 P.2d 515 (1981) 9

State v. Johnson, 147 Wn. App. 276, 194 P.3d 1009 (2008) •8

State v. Kisor, 68 Wn. App. 610, 844 P.2d 1038, review denied, 121 Wn.2d 1023, 854 P.2d 1084 (1993) 10,11

State v. Lessley, 118 Wn.2d 773, 827 P.2d 996 (1992) 8,10

State v. Saunders, 120 Wn. App. 800, 86 P.3d 232 (2004), review denied, 156 Wn.2d 1034, 137 P.3d 864 (2006) 12

State v. Saunders, 120 Wn. App. 800, 86 P.3d 232 (2004), review denied, 156 Wn.2d 1034, 137 P.3d 864 (2006) 20

State v. Tili, 139 Wn.2d 107, 985 P.2d 365 (1999) 21

State v. Torngren, 147 Wn. App. 556, 196 P.3d 742 (2008) 7

<u>State v. Ustimenko</u> , 137 Wn. App. 109, 151 P.3d 256 (2007)	7
<u>State v. Vike</u> , 125 Wn.2d 407, 885 P.2d 824 (1994).	12
<u>State v. Webb</u> , 64 Wn. App. 480, 824 P.2d 1257 (1992)	14,16

STATUTES

RCW 9A.48.080(1)(a).	16
RCW 9A.52.050	8,9,10,11,12
RCW 9.94A.589(1)(a).	passim

A. ASSIGNMENT OF ERROR

At sentencing following jury verdicts on charges of second degree burglary, first degree theft, theft of a motor vehicle, and malicious mischief, Bogdan Fedas' offender scores were incorrectly calculated.

B. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

1. Mr. Fedas, allegedly with accomplices, burglarized an appliance store, using the company's own delivery truck to transport the merchandise from the business, and abandoning the truck the next day. The burglars' entry into the premises was accomplished by dismantling the alarm system, and additional damage was caused in the process of removing the heavy refrigerators, stoves and appliances from the premises. The defendant's conviction for theft of the property taken from the store, including an office safe that required a door to be knocked from its hinges, was properly scored as the same criminal conduct as the burglary conviction. Where all the convictions occurred at the same time and place, against the same victim, and shared the same objective criminal purpose of depriving the business of its property, did the trial court abuse its discretion in failing to find that all four convictions were the "same criminal conduct" under RCW 9.94A.589(1)(a)?

2. Is the standard of review de novo on a “same criminal conduct” issue under RCW 9.94A.589(1)(a), where the facts are undisputed, and the application of law is clear?

C. STATEMENT OF THE CASE

Following a first trial which ended with a deadlocked jury, Bogdan Fedas was convicted at a second jury trial in June of 2011, on counts of second degree burglary, motor vehicle theft, first degree theft, and malicious mischief. CP 92-95.

The original charges against Mr. Fedas arose when Seattle police were dispatched to the Metropolitan Appliance store in Seattle on November 3, 2009. CP 4-5 (affidavit of probable cause). The owners of the business, which sells large refrigerators, stoves, and washer/dryers, had discovered a burglary and theft of multiple large expensive appliances, that had occurred while the business had been closed overnight. CP 4. The burglars’ entry into the premises required breaking open the key box, dismantling the alarm system, and cutting the phone lines. CP 4. In addition to taking the company’s safe, the perpetrator(s) “were able to remove the appliances from the business by loading them into the business’ delivery box truck and stealing the vehicle.” CP 4. The delivery truck had been physically backed from the outside loading dock into the stock room, in order to load it with the merchandise. CP 4.

Additional damage was caused when the door to the store's office had to be removed "in order to remove the safe from the building." CP 4.

Later that same day, police discovered the Metropolitan Appliance delivery truck, sitting abandoned in a parking lot on C Street NW in Auburn, near a business with surveillance cameras. CP 5. In the footage that was filmed overnight, the truck can be seen pulling into the lot. An individual who could not be identified is seen exiting the truck, and entering a white Ford van. CP 5.

Some months later, a burglary investigation team from the Seattle Police Department concluded that Bogdan Fedas was a suspect in the burglary, after he was contacted in Mount Vernon in February of 2010, in a white Ford van registered to him. CP 5. In June of 2010, the burglary team received a DNA report from the Washington State Patrol Crime Laboratory. The report indicated that Mr. Fedas matched the typing profile of DNA collected from the rim of a "Coca-Cola Zero" can, which had been found in the showroom of Metropolitan Appliance on the morning the burglary was discovered. CP 5.

Mr. Fedas was sentenced to standard range terms and a total of 33 months in prison, based the trial court's ruling that the first degree theft was the same criminal conduct as the burglary

conviction under RCW 9.94A.589(1)(a), but the motor vehicle theft and the malicious mischief were not. CP 187-94.

D. ARGUMENT

**THE DEFENDANT’S CONVICTIONS FOR
THEFT OF THE TRUCK AND DAMAGE TO
THE BUSINESS WERE THE SAME CRIMINAL
CONDUCT WITH THE BURGLARY, IN
ADDITION TO THE FIRST DEGREE THEFT.**

The defendant’s convictions for theft of the Metropolitan Appliance truck which was used to steal the appliances (and abandoned a day later), and for property damage to the business caused by the break-in and during physical removal of the items, should properly have been scored as the “same criminal conduct” with the burglary, in addition to the theft of property from the store.

1. Sentencing facts. At the August 5th sentencing, in briefing and in argument, Mr. Fedas urged the court to find that the theft of the appliances (count 3), the theft of the company van (count 2), and the damage to the business (count 4, malicious mischief), were all the same criminal conduct along with the primary charge of second degree burglary of Metropolitan Appliance (count 1). 8/5/11RP at 187; CP 167-71 (Defense Presentence Report). Mr. Fedas emphasized that all four convictions were characterized by a single objective purpose – “to deprive Metropolitan Appliance from its property.” CP 172.

The prosecutor essentially agreed with Mr. Fedas' same criminal conduct analysis, but urged the court to apply the burglary anti-merger statute. 8/5/11RP at 189.¹

The trial court, looking to the "same intent" requirement of RCW 94A.589(1)(a), reasoned that the break-in of Metropolitan Appliance, and the taking of property – the burglary and the first degree theft -- shared the same criminal purpose and were the same criminal conduct. 8/5/11RP at 195.²

The court ruled, however, that there was a new or different intent for the theft of the motor vehicle (the company's truck), and the malicious mischief count. The court stated:

He [Mr. Fedas] appears to have a kind of a history of that. He broke into new homes and stole appliances and he broke into this appliance store and then in

¹ The prosecutor all but conceded that the four counts were the same criminal conduct, but urged the court to exercise its authority under RCW 9A.52.050 to override that categorization, based in part on Mr. Fedas prior record:

I would just urge the court to apply the anti-merger statute in this case. The statute is there for a purpose, I mean the state concedes that you can very likely find that these four offenses are same criminal conduct though I made arguments to support that the four are not same criminal conduct. But the fact of the matter remains that Mr. Fedas has made a lot of choices in his years since he has been permitted to live in this country.

8/5/11RP at 189.

² The "same intent" requirement was the sole aspect of "same criminal conduct" in dispute.

February 2010 he stole high-end barbecues and then tried to steal appliances. There is a consistent pattern that he had. So it seems clear to me that his intent was to break in and steal the appliances. And then when he got there they found the car, they found the safe, and decided to expand their intent. I would merge the burglary and the theft because I think those did involve the same criminal intent, but breaking outside of that and taking the van, destroying the door frame, taking the safe -- that was clearly separate, opportunistic activities and I don't think it's fair to merge those and I am not going to do that.

8/5/11RP at 195.³

The court's categorization of the convictions was contrary to statute and must be reversed, under any review standard. Whether this Court, per State v. Torngren, *infra*, applies de novo review of "same conduct" law to the undisputed facts from the State's case below (the defense did not present a case), or employs a deferential standard requiring Mr. Fedas to make out an abuse of discretion, all four statutory crimes shared the same, substantially unchanging objective criminal purpose – depriving Metropolitan Appliance of its property. The court's contrary ruling was either wrong or untenable. See State v. Bickle, 153 Wn. App. 222, 222 P.3d 113

³ As an initial matter, the court appeared to reason that the taking of the safe constituted a different intent than the taking of appliances. However, the taking of all the property (except for the vehicle) from the store was subsumed under the single count of first degree theft. Same criminal conduct must be shown to be shared by the multiple crimes of conviction. Same criminal conduct is not defeated by the fact that different kinds of property were intentionally taken.

(2009) (court abuses discretion in its same criminal conduct ruling if it adopts a position no reasonable court would adopt).

2. A *de novo* standard is appropriate on review of the same criminal conduct issue. As a general rule, where the relevant facts are undisputed and the only issue is the correct application of a legal analysis to those facts, the proper standard of review is *de novo*. See, e.g., State v. Ustimenko, 137 Wn. App. 109, 115, 151 P.3d 256 (2007) (applying *de novo* standard to objective custodial interrogation issue). Accordingly, in State v. Torngren, 147 Wn. App. 556, 196 P.3d 742 (2008), the Court of Appeals applied this non-deferential standard in an appeal involving the question whether certain prior offenses were the same criminal conduct, carefully reasoning as follows:

The statutory elements for “same criminal conduct,” however, are clear. And the test is described as “objective.” [citing State v. Dunaway, 109 Wn.2d 207, 216–17, 749 P.2d 160 (1987) (referring to intent prong of same conduct analysis)]. It seems to us, then, that we are in as good a position as the sentencing court to apply these objective standards to uncontroverted facts. A *de novo* standard of review of the question of “same criminal conduct” would, then, seem more appropriate.”

Torngren, 147 Wn. App. at 562–63. The Supreme Court is presently reviewing an unpublished Court of Appeals decision that applied the *de novo* standard to a same criminal conduct question.

See State v. Graciano, 173 Wn.2d 1012, 266 P.3d 221 (Wash. Jan 05, 2012) (NO. 86530-2).

3. Burglary anti-merger statute immaterial on appeal. First, as a result of the arguments of the parties below and the specificity of the trial court’s ruling, the burglary anti-merger statute, RCW 9A.52.050, is not at issue in the present appeal. Compare State v. Johnson, 147 Wn. App. 276, 194 P.3d 1009 (2008) (affirming denial of motion to treat offenses as “one crime” because trial courts possess authority to do so under anti-merger statute even if convictions were same criminal conduct).⁴

When one of multiple current offenses is burglary, the burglary anti-merger statute gives the sentencing judge discretion to punish the defendant for burglary and for the other convictions committed “in the commission” of the burglary, irrespective of whether it and the additional crimes might, or might not, encompass the “same criminal conduct” following an analysis under RCW 9.94A.589(1)(a). RCW 9A.52.050; State v. Lessley, 118 Wn.2d 773, 781, 827 P.2d 996 (1992) (anti-merger statute provides that

⁴ As another example, where a defendant’s counsel did not argue same criminal conduct at sentencing, an appellant alleging ineffective assistance of counsel could likely not be able to establish that the court would probably have scored the convictions as one crime, because the anti-merger statute gives the trial court sole discretion to count burglary and other committed crimes separately irregardless of whether they are the same criminal conduct.

burglary and any other crime committed during the burglary may be punished separately).

Specifically, the anti-merger statute says that the sentencing court may punish such crimes separately:

Every person who, in the commission of a burglary shall commit any other crime, may be punished therefor as well as for the burglary.

RCW 9A.52.050. The anti-merger statute is itself discretionary – “Conversely, the court may also decline to apply the statute.” State v. Davis, 90 Wn. App. 776, 783-84, 954 P.2d 325 (1998).

Both parties presented their respective arguments regarding whether the trial court should exercise its discretion to apply the anti-merger statute. CP 167-71 (Defense Presentence Report); 8/5/11RP at 187 (defendant’s argument that “the court has discretion to either apply the anti-merger statute or not in the current case”); CP 126 (State’s Sentence Recommendation); CP 130, 133-39 (State’s Response to Defendant’s Sentencing Memorandum); 8/5/11RP at 189 (prosecutor’s argument stating, “I would argue that you should apply the anti-merger statute to score everything separately”).⁵

⁵ The defendant specifically argued that it was an initial question whether the court should apply RCW 9A.52.020 in the first place, noting that the statute gave the court the means to impose punishment reflecting separate treatment of the crimes, or to “withhold from exercising this discretionary power.” CP 168-70. Similarly, the prosecutor noted that the

Had the court done so, the analytical test for same criminal conduct would be immaterial – application of the statute may, in the court’s discretion, be a first determination, in which instance, RCW 9.94A.589(1)(a) and the question of same criminal conduct is effectively ‘off the table.’ Davis, at 783 and n. 15 (court may decide to punish offenses separately under anti-merger statute) (citing Lessley, at 780-81; and State v. Kisor, 68 Wn. App. 610, 618, 844 P.2d 1038, review denied, 121 Wn.2d 1023, 854 P.2d 1084 (1993)).

But here, the court decided that it would not apply the anti-merger statute, and it did not do so. This the court was also entitled to do. Davis, at 783 (court also has "discretion to refuse to apply" statute).

Instead, the trial court expressly addressed all four counts under .589(1)(a)’s “same criminal conduct” analysis. 8/5/11RP at --195. The court acknowledged the parties’ briefs addressing the burglary anti-merger statute, and RCW 9.94A.589(1)(a), and then declined the State’s request that it exercise discretion to apply the statute.

question whether the statute should be invoked was a distinct issue from same criminal conduct. CP 136 (citing State v. Hoyt, 29 Wn. App. 372, 628 P.2d 515 (1981) (Perhaps over-optimistically, the State’s memorandum described the statute as directing that trial courts “should” punish burglary and other offenses separately).

This rendered the pertinent question at sentencing, and on review for error, solely “same criminal conduct.” Kisor, at 618; Davis, at 783; RCW 9.94A.589(1)(a). Once the trial court takes argument on the matter of RCW 9A.52.050 and decides to not apply it, the question before it becomes a routine matter of application of RCW 9.94A.589(1)(a). For example, in State v. Davis, the defendant had been convicted for burglary, and also two counts of assault. The State appealed when the trial court concluded that counts 2 and 3 were the same criminal conduct as the burglary.

After considering argument from both sides, [the court] concluded it had discretion to decide whether or not to punish each crime committed during the burglary under RCW 9A.52.050, the burglary anti-merger statute. It declined to apply the anti-merger statute based on the facts of the case.

State v. Davis, 90 Wn. App. at 781. Where the court so rules, on appeal the sole issue is whether the court’s subsequent ruling on “same conduct” under RCW 9.94A.589(1)(a) was tenable, or an abuse of discretion.

RCW 9A.52.050 does not have some lingering penumbra of influence that carries over to the second, separate question. The trial court’s same criminal conduct ruling must stand fully on its own under the criteria of RCW 9.94A.589(1)(a), and, in particular

in the present case, on case law defining when multiple crimes share the same “objective criminal purpose.” State v. Saunders, 120 Wn. App. 800, 824-25, 86 P.3d 232 (2004), review denied, 156 Wn.2d 1034, 137 P.3d 864 (2006); see also State v. Adame, 56 Wn. App. 803, 811, 785 P.2d 1144 (1990) (same).

4. Two offenses that occur at the same time and place, involve the same victim, and result from the same objective criminal intent amount to the "same criminal conduct" for sentencing purposes. When a person is convicted of two or more offenses, the sentencing court “shall” count them as “one crime” in the offender score if they “encompass the same criminal conduct.” RCW 9.94A.589(1)(a). This statute instructs the court that multiple offenses qualify as “same criminal conduct” when they share “the same criminal intent, are committed at the same time and place, and involve the same victim.” RCW 9.94A.589(1)(a); see, e.g., State v. Vike, 125 Wn.2d 407, 409-10, 885 P.2d 824 (1994).

Thus, when the defendant’s jury has issued verdicts of guilty in a case of multiple charges arising out of a single episode or incident, the multiple offenses “shall be counted as one crime” where the three requirements of the statutory definition are established. RCW 9.94A.589(1)(a).

5. The defendant's four statutory offenses furthered one objective criminal purpose – “to deprive Metropolitan Appliance from its property” – and thus amounted to the “same criminal conduct” as a matter of law. The taking of property from Metropolitan Appliance was charged as four statutory offenses under RCW 9A.52, RCW 9A.56 and RCW 9A.48, and the jury found that the conduct satisfied the charged counts. CP 92-95.

However, the offenses were the same conduct because Mr. Fedas' criminal intent, objectively viewed, was substantially the same, and indeed identical, for the offenses. In re Pers. Restraint of Connick, 144 Wn.2d 442, 459, 28 P.3d 729 (2001) (citing State v. Dunaway, 109 Wn.2d at 215).

The singular principle for purposes of same criminal conduct is that “intent,” as used in the “same intent” requirement, is not the specific statutory *mens rea* listed in the Legislature's definition of the offense. Rather, it is the offender's “objective criminal purpose in committing the crime.” State v. Adame, 56 Wn. App. 803, 811, 785 P.2d 1144 (1990). In general, where this objective purpose does not substantially change for one crime or the other, the “same intent” requirement of the statute is met, and the crimes must be categorized as the same conduct, and counted as one offense.

Connick, 144 Wn.2d at 459; Dunaway, 109 Wn.2d at 215; RCW 9.94A.589(1)(a).

Under these standards, the offender scoring advocated by defense counsel is the only categorization of the offenses under RCW 9.94A.589(1)(a) that is consistent with the State's proof of the crimes to the jury, in the evidence phase and in closing argument. The police witnesses noted that the store owners could tell that the burglars had specifically selected the more expensive items, such as "Sub-Zero" refrigerators, to take from the business. 6/6/11RP at 96-97. Consistent with a sophisticated, coordinated plan, the burglars used equipment likely to be located inside the burglarized store, such as wooden dollies and various tools, to assist in removing and stealing the merchandise. 6/6/11RP at 97.

Most importantly, the State's witnesses established that the company's own delivery truck was used to transport the appliances away from the business, and attested to the fact that any damage caused to the property was a necessary aspect of both the burglary and the theft.

The trial court deemed the theft of the Metropolitan Appliance truck to be a crime with a new or different intent, but the trial witnesses made clear that the truck was crucially necessary for removing and transporting the multiple heavy appliances. Seattle

police officer Daljit Gill noted that the delivery truck had been moved from the loading dock area and backed up into the stockroom of the store, so that merchandise in boxes could be loaded in. 6/6/11RP at 54-55. Detective Friesen described how appliances were moved from the showroom to the rear of the building, in order to be loaded into the truck. 6/6/11RP at 105.

Plainly, the taking of the delivery truck was simply for purposes of the appliance heist, which was the “objective criminal purpose” of the offenses. So stated the police officers on the burglary investigation team:

What occurred is during the investigation we determined that the box truck belonging to the business had been stolen to transport the appliances from the business.

6/6/11RP at 107. Notably, the delivery truck was abandoned less than a day after the burglary. 6/6/11RP at 60-62 (Auburn police officer John Bruce). The intent of the truck theft was indeed *solely* to use the large vehicle to effect the removal of the property from the burglarized premises, and once that goal was accomplished, the burglars had no interest in it.

The trial court therefore erred in concluding that the taking of the truck was “opportunistic,” or reflected a new or different intent. The intent in the taking of the truck was identical to the

intent of the burglary and theft – hauling the store’s property away. The evidence that exists of pre-planning in this crime, indeed suggests that the presence of the delivery truck in the loading dock of Metropolitan Appliance may have been the very spur to the whole scheme. Certainly, the defendant would not be able to cart away \$40,000 of appliances in his Ford van.

The damage to the business, which was charged as the offense of “malicious mischief,” was also the same criminal conduct as the burglary in this case. State v. Webb, 64 Wn. App. 480, 491, 824 P.2d 1257 (1992) (burglary and malicious mischief should be counted as one crime for offender score). Malicious mischief is merely damage to property in willful disregard of the rights of the owner. CP 119 (jury instruction 21); RCW 9A.48.080(1)(a). Here that conduct of damaging property at Metropolitan Appliance shared the same objective criminal purpose as the burglary – getting the valuable property – rightfully owned by others – out of the building.

Seattle police detective Wes Friesen’s testimony about what security apparatus in the store was damaged made clear that any property harm was caused in pursuit of successfully accomplishing the felonious entry, transporting property out of the premises, and doing so undetected. The crime began with forcing open an exterior

key box, allowing access to keys to enter the premises from outside. 6/6/11RP at 76. The burglar alarm's flashing light and "sound box" were pulled from the wall, and a dummy security camera had been moved. 6/6/11RP at 73-75. The alarm panel had been removed from the wall. 6/6/11RP at 82.

It is likely tempting for the Respondent to focus on the "malice" element of the crime of malicious mischief, as charged in count 4, and contend that this crime involved some special, new or different intent (beyond the purpose of taking property) that was to "vex" or annoy the victim – an intent, different from the purpose of stealing, to cause the victim distress or upset by harming the company's property.

However, the prosecutor herself explained in closing argument that the jury should not become confused that the requirement of "malice" involves some unique intent, because under the law, "malice" is nothing more than intent to injure another, and was established in this case simply by the act of causing damage in willful disregard of Metropolitan Appliance's property rights. The prosecutor argued:

We have to show that the person who did the damage or the accomplice who did the damage had malice. This is such an archaic term isn't it? But it is still in our law people intend to design to injure another person. And you can infer malice from an (inaudible)

disregard to the rights of another. If someone is burglarizing a business and they break open the key box to get inside and they damage all of the alarm panels and they take doors off hinges in order to move out (inaudible), they are doing all of those acts willfully and they are doing it in complete and utter disregard of the rights of the owners of Metropolitan Appliance. So based on those logical inferences, we can infer that this defendant had malice.

6/13/11RP at 134-35. Malicious mischief was defined for the jury as “knowingly and maliciously” causing “physical damage to the property of another[.]” CP 119 (jury instruction 21). Breakage of property or apparatus at the business, because it was done to effect the burglary and thefts, was committed knowingly. And malice may certainly involve “evil,” but it can also be inferred simply from an act done in willful disregard of the rights of another.” CP 121 (jury instruction 23). Thus, there is nothing unique or special about committing the crime of malicious mischief, except its somewhat archaic name, that diverges from the overall criminal objective in this case, shared by the burglary, theft, and malicious mischief: taking property by theft from the appliance store.

Furthermore, as noted, the intent requirement for some criminal conduct specifically does not look to the listed *mens rea* element in the offense statute in the RCW’s, but rather, examines the defendant’s overall criminal purpose. State v. Dunaway, 109 Wn.2d at 215; State v. Adame, 56 Wn. App. at 811.

Here, the trial evidence and the State's argument showed that the property damage was caused as part and parcel of the burglary and the thefts. The cutting of the telephone and connected alarm lines allowed the burglary to proceed. 6/6/11RP at 109. And taking the office door off its hinges was necessary, because this had to be done in order to remove the large safe from that room. 6/6/11RP at 99. There was no gratuitous damage. The burglars could have started the delivery truck by breaking apart the ignition column, but they did not do so, instead using the keys (located at the business). 6/6/11RP at 60-62. Simply put, the damage caused at the business does not reflect any intent to cause property damage just for the sake of vandalism – rather, any damage was a result of the burglar's objective intent, to complete the criminal taking.

Additional measurements of objective criminal intent lead to the same result. In categorizing the objective purpose of the defendant's conduct, the court will also look at the following factors: how intimately related the crimes are, whether the criminal objective changed substantially between the crimes, and whether one crime furthered the other. State v. Burns, 114 Wn.2d 314, 318, 788 P.2d 531 (1990).

Here, there was no substantial change or difference in Mr. Fedas' criminal objective. The defendant's crimes were "intimately

related,” not discrete offenses each with their separate purpose or goal, because each crime furthered the others, showing the same objective intent. For example, in State v. Saunders, 120 Wn. App. 800, 824-25, 86 P.3d 232 (2004), review denied, 156 Wn.2d 1034, 137 P.3d 864 (2006), a rape and kidnap, to very different crimes by their *mens reas*, were the same conduct, where the defendant’s primary motivation for both crimes was to dominate the victim and cause her pain and humiliation. See also State v. Collins, 110 Wn.2d 253, 263, 751 P.2d 837 (1988) (burglary furthered rape and assault, where defendant committed burglary to accomplish attacks).

Each crime also furthered the others in an interlocked pattern of conduct, because the focus of each crime was the overall objective of the taking of property. The burglary furthered the theft of the truck, because the delivery truck was driven using the keys retrieved by breaking into the store. 6/6/11RP at 60-62 (Auburn police officer John Bruce). And ultimately, the theft of the delivery truck is what enabled the large-scale property taking which was the singular objective purpose of the entire criminal episode. The prosecutor’s summation was correct, that this was sophisticated heist, but a simple case:

The burglars stole the victim's, the Metropolitan Appliance box truck to haul away all of their goods which were worth over forty thousand (40,000)

dollars, and they caused over seven hundred and fifty (750) in damages to the business, to the lock box, to the door, to certain appliances. Essentially the entire case arises out of those few facts.

6/13/11RP at 131.

It is also significant for same criminal conduct purposes whether the defendant “had the time and opportunity to pause, reflect, and either cease his criminal activity or proceed to commit a further criminal act” in between the different criminal offenses. If so, the record supports a finding of new intents, and thus separate criminal conduct. State v. Tili, 139 Wn.2d 107, 123-25, 985 P.2d 365 (1999) (citing State v. Grantham, 84 Wn. App. 854, 860, 932 P.2d 657 (1997)).

However, if both crimes are continuing, and share the same objective purpose, they constitute the same criminal conduct. State v. Grantham, 84 Wn. App. at 859. Here, the defendant and his accomplices were committing burglary (entering, and remaining) during the same time they were committing theft of the vehicle (taking control of the delivery truck and depriving the owner of its rightful use) in order to commit theft of the appliances.

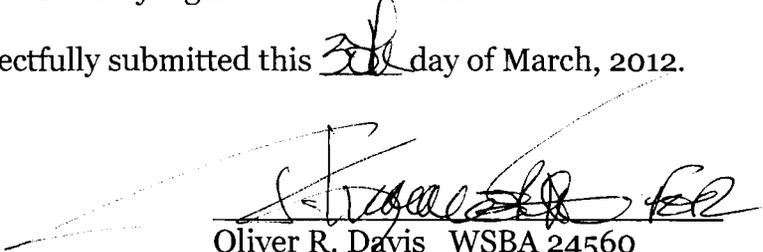
The overall goal of Mr. Fedas’ criminal conduct was objectively the same, and did not substantially change among the multiple crimes. State v. Burns, 114 Wn.2d at 318. As a matter of

law, the four convictions should have counted as a single crime in the defendant's offender score. RCW 9.94A.589(1)(a). This Court should reverse the sentences and remand for resentencing.

E. CONCLUSION

Based on the foregoing, Mr. Fedas respectfully requests that this Court reverse his judgment and sentence.

Respectfully submitted this 30 day of March, 2012.


Oliver R. Davis WSBA 24560
Washington Appellate Project - 9105
Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

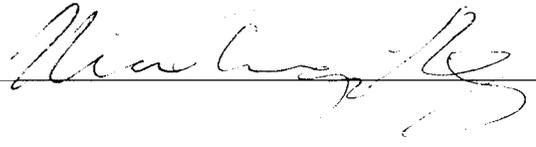
STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	NO. 67658-0-I
)	
BOGDAN FEDAS,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, NINA ARRANZA RILEY, STATE THAT ON THE 30TH DAY OF MARCH, 2012, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

- | | | |
|--|-------------------|-------------------------------------|
| <input checked="" type="checkbox"/> KING COUNTY PROSECUTING ATTORNEY
APPELLATE UNIT
KING COUNTY COURTHOUSE
516 THIRD AVENUE, W-554
SEATTLE, WA 98104 | (X)
()
() | U.S. MAIL
HAND DELIVERY
_____ |
| <input checked="" type="checkbox"/> BOGDAN FEDAS
351733
STAFFORD CREEK CORRECTION CENTER
191 CONSTANTINE WAY
ABERDEEN, WA 98520 | (X)
()
() | U.S. MAIL
HAND DELIVERY
_____ |

SIGNED IN SEATTLE, WASHINGTON THIS 30TH DAY OF MARCH, 2012.

x 

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Seattle, WA 98101
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