

FILED  
January 13, 2016  
Court of Appeals  
Division I  
State of Washington

No. 73618-3-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

ERIC MICHAEL SHARPE,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF  
THE STATE OF WASHINGTON FOR KING COUNTY

The Honorable Bruce E. Heller

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BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

There was insufficient evidence to support the jury's verdict that Mr. Sharpe entered the residence with the intent to commit a crime.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Due process requires the State prove every element of the offense beyond a reasonable doubt. Mr. Sharpe was convicted of residential burglary, yet the State proved only that he entered the residence but failed to present any evidence that he entered with the intent to commit a crime therein. Is Mr. Sharpe entitled to reversal of his conviction for a failure of the State to carry its burden of proving him guilty beyond a reasonable doubt?

C. STATEMENT OF THE CASE

At about 4:00 pm on May 31, 2013, Kathleen Hess heard someone trying to start a pickup truck that was parked in the yard of her deceased neighbor, Leo Lund. 4/8/2015RP 33-36. The truck would not start and Ms. Hess went out onto her deck to investigate who it might have been in Mr. Lund's yard. 4/8/2015RP 37-38. Ms. Hess saw a man she did not recognize standing at a table near the truck rummaging through things. 4/8/2015RP 39. Ms. Hess called the police. 4/8/2015RP 39.

According to Ms. Hess, Mr. Lund had died two years before and had been known as a hoarder. 4/8/2015RP 43-44. Ms. Hess was aware of a number of break-ins on the property since Mr. Lund's death. 4/8/2015RP 45. Ms. Hess believed Mr. Lund kept the keys to the truck inside his house. 4/8/2015RP 52.

King County Deputies Boggess and Murphy responded to Ms. Hess's call.<sup>1</sup> 4/8/2015RP 95. The two deputies went into the house and the inside "looked like it had been ransacked numerous times before." 4/8/2015RP 106. The deputies searched the house but found no one. They did find a window screen that they opined had been freshly cut and an accompanying open window. 4/8/2015RP 107. They did not believe the screen had been cut when they first entered the house. 4/8/2015RP 107. Looking out the window, Deputy Boggess could see tall grass with a path through it leading to a nearby tree line. 4/8/2015RP 107-08.

Renton Police Officer Trader and his police dog were called to assist. 4/8/2015RP 62. Officer Trader's dog tracked into some thick brush and came upon Eric Sharpe in the grass about 200 feet from the

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<sup>1</sup> Deputy Murphy was not listed as a witness by the State and did not testify as he was the subject of an internal King County Sheriff's Office investigation. 4/6/2015RP 12-14.

Lund house. 4/8/2015RP 64-66. When Mr. Sharpe was searched, the police discovered glasscutters and key rings with keys from different makes and models of cars that had been filed down. 4/8/2015RP 112. The deputies also noticed that Mr. Sharpe was wearing gloves. 4/8/2015RP 112.

Mr. Sharpe was read his *Miranda*<sup>2</sup> rights and told the deputies that he knew the owner of the property, having met him three years earlier. 4/8/2015RP 133. Mr. Sharpe stated that he knew Mr. Lund died the previous year, was aware there had been prior break-ins at the property, but that he did not enter the house and was interested only in a Cadillac car that was also parked on the property. 4/8/2015RP 134.

Mr. Sharpe was subsequently arrested and charged with residential burglary and second degree vehicle prowl. CP 47-48. Following a jury trial, Mr. Sharpe was found guilty as charged. CP 45-46.

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<sup>2</sup> *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

D. ARGUMENT

**The State failed to present any evidence that Mr. Sharpe entered the residence with the intent to commit a crime therein.**

1. *The State bears the burden of proving all of the elements of the offense beyond a reasonable doubt.*

The State is required to prove each element of the crime charged beyond a reasonable doubt. U.S. Const. amend XIV; *Apprendi v. New Jersey*, 530 U.S. 466, 471, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). The standard the reviewing court uses in analyzing a claim of insufficiency of the evidence is “[w]hether, 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.” *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). A challenge to the sufficiency of evidence admits the truth of the State’s evidence and all reasonable inferences that can be drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

In order to establish that Mr. Sharpe committed residential burglary, the State was required to prove: (1) that he entered or remained unlawfully in a dwelling, and (2) that he intended to commit a

crime against a person or property therein. RCW 9A.52.025(a); *State v. Stinton*, 121 Wn.App. 569, 573, 89 P.3d 717 (2004).

2. *The State failed to prove Mr. Sharpe entered the residence with the intent to commit a crime therein.*

While there was arguably evidence that Mr. Sharpe had been inside the residence, the State failed to present any evidence that Mr. Sharpe entered with the intent to commit a crime therein.

The intent required for residential burglary is the intent to commit any crime against a person or property inside the premises. *State v. Bergeron*, 105 Wn.2d 1, 4, 711 P.2d 1000 (1985). Here, upon arriving at the Lund property, the deputies first searched outside and then inside the residence but saw no one. Only upon the completion of their internal search of the house did they see what they believed was an open window and sliced screen that had not been there when they first arrived. Believing that someone had been inside, the officers ordered a search of the exterior of the house with a police dog, which led them to Mr. Sharpe. Thus, the only evidence presented arguably proves Mr. Sharpe had been in the house but nothing more.

Although intent may not be inferred from conduct that is patently equivocal, it may be inferred from conduct that plainly indicates such intent as a matter of logical probability. *State v. Lewis, supra* [69 Wash.2d] at 124 [417 P.2d 618].

*Bergeron*, 105 Wn.2d at 20.

Here, the evidence regarding Mr. Sharpe is at best equivocal. As argued, the only evidence presented arguably established Mr. Sharpe's entry without more. There was no evidence he attempted to take anything inside or damage anything; only that he entered the residence.

Further, the State cannot rely on the permissive inference in RCW 9A.52.040, because the jury was never instructed on it.<sup>3</sup> See WPIC 60.05; *State v. Brunson* 128 Wn.2d 98, 109-10, 905 346 (1995).<sup>4</sup> Thus, the State failed to prove Mr. Sharpe acted with an intent to commit a crime inside the residence.<sup>5</sup>

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<sup>3</sup> RCW 9A.52.040 states:

In any prosecution for burglary, any person who enters or remains unlawfully in a building may be inferred to have acted with intent to commit a crime against a person or property therein, unless such entering or remaining shall be explained by evidence satisfactory to the trier of fact to have been made without such criminal intent.

<sup>4</sup> WPIC 60.05 states:

A person who enters or remains unlawfully in a building may be inferred to have acted with intent to commit a crime against a person or property therein. This inference is not binding upon you and it is for you to determine what weight, if any, such inference is to be given.

<sup>5</sup> To the extent the Court on appeal wishes to rely on the inference in finding there was sufficient evidence presented, an inference cannot be the sole of evidence of intent without offending due process. *See Brunson*, 128 Wn.2d at 107-12 (a permissive inference cannot relieve the State of its burden to prove each element of a crime without violating due process).

3. *Mr. Sharpe's conviction for residential burglary must be reversed with instructions to dismiss.*

Since there was insufficient evidence to support the residential burglary conviction, this Court must reverse the conviction with instructions to dismiss. To do otherwise would violate double jeopardy. *State v. Crediford*, 130 Wn.2d 747, 760-61, 927 P.2d 1129 (1996) (the Double Jeopardy Clause of the United States Constitution “forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding.”), quoting *Burks v. United States*, 437 U.S. 1, 9, 98 S.Ct. 2141, 57 L.Ed.2d 1 (1978).

E. CONCLUSION

For the reasons stated, Mr. Sharpe asks this Court to reverse his conviction for residential burglary with instructions to dismiss.

DATED this 13<sup>th</sup> day of January 2016.

Respectfully submitted,

*s/Thomas M. Kummerow*

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	)	
ERIC SHARPE,	)	
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Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 13<sup>TH</sup> DAY OF JANUARY, 2016, 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:

[X] KING COUNTY PROSECUTING ATTORNEY [paoappellateunitmail@kingcounty.gov] APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	( ) ( ) (X)	U.S. MAIL HAND DELIVERY AGREED E-SERVICE VIA COA PORTAL
[X] ERIC SHARPE 19605 SE 192 <sup>ND</sup> ST RENTON, WA 98058	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

**SIGNED** IN SEATTLE, WASHINGTON THIS 13<sup>TH</sup> DAY OF JANUARY, 2016.

X \_\_\_\_\_  


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