

NO. 42548-3-II
Cowlitz Co. Cause NO. 10-1-00998-9

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

SHELLEY L. CLARK,

Appellant.

BRIEF OF RESPONDENT

SUSAN I. BAUR
Prosecuting Attorney
AARON BARTLETT/WSBA #39710
Deputy Prosecuting Attorney
Attorney for Respondent

Office and P. O. Address:
Hall of Justice
312 S. W. First Avenue
Kelso, WA 98626
Telephone: 360/577-3080

TABLE OF CONTENTS

	PAGE
A. ANSWERS TO ASSIGNMENTS OF ERROR.....	1
B. STATEMENT OF THE CASE.....	1
1) Procedural History.....	1
2) Statement of Facts.....	2
C. ARGUMENT.....	4
1) THE TRIAL COURT’S APPLICATION OF THE BURGLARY ANTI-MERGER STATUTE WAS REASONABLE AND WITHIN ITS DISCRETION.....	4
2) THE TRIAL COURT PROPERLY CONCLUDED THAT THE CRIMES MS. CLARK WAS CONVICTED OF DID NOT ENCOMPASS THE SAME CRIMINAL CONDUCT.....	9
D. CONCLUSION	15
APPENDIX A	i

TABLE OF AUTHORITIES

Page

CASES

<i>In re Rangel</i> , 99 Wn.App. 596, 996 P.2d 620 (2000).....	10
<i>Seattle Times Co. v. Benton County</i> , 99 Wash.2d 251, 661 P.2d 964 (1983)	4
<i>State ex rel. Carroll v. Junker</i> , 79 Wn.2d 12, 482 P.2d 775 (1971)	4
<i>State v. Balkin</i> , 48 Wn.App. 1, 737 P.2d 1035 (1987).....	4
<i>State v. Bonds</i> , 98 Wn.2d 1, 653 P.2d 1024 (1982).....	6
<i>State v. Dainard</i> , 85 Wash.2d 624, 537 P.2d 760 (1975)	5
<i>State v. Davis</i> , 90 Wn.App 776, 954 P.2d 325 (1998).....	7
<i>State v. Dunaway</i> , 109 Wn.2d 207, 743 P.2d 1237 (1987).....	14
<i>State v. Elmore</i> , 154 Wn.App. 885, 228 P.3d 760 (2010)	5
<i>State v. French</i> , 157 Wn.2d 593, 141 P.3d 54 (2006).....	6
<i>State v. Grantham</i> , 84 Wn.App. 854, 932 P.2d 657 (1999).....	10
<i>State v. Johnson</i> , 92 Wn.2d 671, 600 P.2d 1249 (1979).....	7
<i>State v. Lessley</i> , 118 Wn.2d 773, 827 P.2d 996 (1992)	6
<i>State v. Price</i> , 103 Wn.App 845, 14 P.3d 841 (2000).....	9
<i>State v. Rienks</i> , 46 Wn.App 537, 731 P.2d 1116 (1987).....	14
<i>State v. Sweet</i> , 138 Wn.2d 466, 980 P.2d 1223 (1999).....	6

<i>State v. Tili</i> , 139 Wash.2d 107, 985 P.2d 365 (1999)	10
<i>State v. Vike</i> , 125 Wn.2d 407, 885 P.2d 824 (1994)	9
<i>State v. Wilson</i> , 136 Wn.App 596, 150 P.3d 144 (2007)	10

STATUTES

RCW 9.94A.[589](1)(a)	9, 15
RCW 9.94A.589(1)(a)	6, 9
RCW 9A.28.020(1)	1
RCW 9A.52.020(1)(b)	1, 11
RCW 9A.56.190	11, v

A. ANSWERS TO ASSIGNMENTS OF ERROR

1. The trial court's application of the burglary anti-merger statute was reasonable and within its discretion.
2. The trial court properly concluded that the crimes did not encompass the same criminal conduct.

B. STATEMENT OF THE CASE

1) Procedural History

Shelley Clark was charged with Burglary in the First Degree – Assault and Attempted Robbery in the Second Degree for an incident occurring on or about October 01, 2010, in Cowlitz County Washington. CP 40-41; RCW 9A.52.020(1)(b); RCW 9A.28.020(1). Ms. Clark pled not guilty to the charges and proceeded to a jury trial on August 22, 2011. *See* 2RP. On August 23, 2011, the jury returned verdicts of guilty on both crimes. CP 91, 92; 3RP 114-115.

At sentencing on August 31, 2011, the parties argued about whether the two crimes for which Ms. Clark was convicted encompassed the same criminal conduct and whether the burglary anti-merger statute applied. 1RP 29-42. The trial court decided to apply the burglary anti-

merger statute and agreed with the State that the offenses did not encompass the same criminal conduct, calculated Ms. Clark's offender score as 8, and imposed a standard range sentence of 95 months. IRP 43-45, 50; CP 99. Ms. Clark then filed a timely notice of appeal. CP 108.

2) Statement of Facts

On October 01, 2010, in Cowlitz County Washington, Ashley Loven heard a knock on the door of her apartment that she shared with Mary Richards and answered it. 2RP 87-88. The person at the door was Shelley Clark. 2RP 89. Ms. Clark asked Ms. Loven "is Mary here"? 2RP 89. Ms. Loven replied that she was not, but that Ms. Clark could come back later and that Ms. Loven would tell Ms. Richards that she had stopped by. 2RP 89. Ms. Clark responded that Mary owed her money and that she wanted to know where Mary was. 2RP 90. Ms. Loven testified that Ms. Clark seemed very aggravated and that she "was high and drunk." 2RP 91.

Ms. Loven did not invite Ms. Clark into the apartment, instead she was holding the door open with just space enough for herself, but Ms. Clark came in anyway by pushing Ms. Loven out of the way. 2RP 89, 91-92. At that point, Ms. Clark started walking towards the back of the

apartment looking for Ms. Richards stating things like “Where is the bitch hidin’”? 2RP 92. Ms. Loven testified that Ms. Clark was looking everywhere and began screaming profanities. 2RP 92. Finally, Ms. Clark stated that Ms. Richards owed her money that she wasn’t leaving until she got something of value or Ms. Richards came home and paid her. 2RP 92-93.

Next, Ms. Clark told Ms. Loven to pack the computer downstairs for her, explicitly, “[y]our’re gonna pack this shit down to my house for me.” 2RP 94-95. Then Ms. Clark started unplugging the modem and moving everything like she was going to start “takin’ it down.” 2RP 95. Ms. Loven told Ms. Clark to put down the computer and that she was not going to let Ms. Clark leave the apartment with stuff that didn’t belong to her. 2RP 95. That’s when Ms. Clark got violent. 2RP 96. Ms. Clark pushed Ms. Loven into the kitchen counter and when Ms. Loven once again tried to stop Ms. Clark from packing up the computer, Ms. Clark grabbed her by the neck and started lifting. 2RP 96-97. Ms. Loven began screaming for help and testified that she had a few small cuts on her collarbone as a result of Ms. Clark’s attacks. 2RP 97. Photographs were admitted that showed Ms. Loven’s injuries as well as various parts of the

computer in disarray and moved from their original position. 2RP 100-106; Exs. 2, 3, 4, 5, 6, 7.

When the police arrived at the scene and spoke with Ms. Clark she denied there had been a physical confrontation and claimed that Ms. Richards had given her permission to be at her apartment. 2RP 157. Ms. Richards testified that Ms. Clark did not have permission to be at her apartment. 2RP 136. Ms. Clark did not testify. 3RP 19

C. ARGUMENT

1) THE TRIAL COURT'S APPLICATION OF THE BURGLARY ANTI-MERGER STATUTE WAS REASONABLE AND WITHIN ITS DISCRETION.

In determining the proper sentence for a defendant, “a trial court is vested with broad discretion.” *State v. Balkin*, 48 Wn.App. 1, 4, 737 P.2d 1035 (1987). “Where the decision or order of the trial court is a matter of discretion, it will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971) superseded by statute on other grounds as recognized by *Seattle Times Co. v. Benton County*, 99 Wash.2d 251, 661 P.2d 964 (1983). The discretion to

determine a proper sentence, includes the ability to take into account past crimes committed by the defendant. *State v. Dainard*, 85 Wash.2d 624, 626, 537 P.2d 760 (1975).

When a defendant commits multiple crimes by way of a single act the merger doctrine is implicated. *State v. Elmore*, 154 Wn.App. 885, 899, 228 P.3d 760 (2010). “Under the doctrine, when a particular degree of crime requires proof of another crime,” the presumption is that “the legislature intended to punish both offenses through a greater sentence for the greater crime.” *Id.* (citations omitted). On the other hand, when the legislature expresses its intent to punish each crime separately, the merger doctrine does not apply, and punishments for each crime “will not violate the prohibition on double jeopardy.” *Id.* at 899-900.

The burglary anti-merger statute codified at RCW 9A.52.050 states that “[e]very person who, in the commission of a burglary shall commit any other crime, may be punished therefor as well as for the burglary, and may be prosecuted for each crime separately.” The plain language of the burglary anti-merger statute “shows that the legislature intended that crimes committed during a burglary do not merge when the defendant is convicted of both.” *Elmore*, 154 Wn.App at 900 citing *State v. Sweet*, 138

Wn.2d 466, 478, 980 P.2d 1223 (1999); *State v. Bonds*, 98 Wn.2d 1, 15, 653 P.2d 1024 (1982).

Similar to the merger doctrine, when a defendant is convicted of two or more crimes the sentencing court “may enter[] a finding that some or all of the current offenses encompass the same criminal conduct.” RCW 9.94A.589(1)(a). A court will consider two or more crimes the “same criminal conduct” if they: (1) require the same criminal intent, (2) are committed at the same time and place, and (3) involve the same victim. *State v. French*, 157 Wn.2d 593, 613, 141 P.3d 54 (2006). If the sentencing court finds that the crimes encompass the same criminal conduct “then those . . . offenses shall be counted as one crime.” RCW 9.94A.589(1)(a).

State v. Lessley, 118 Wn.2d 773, 779-782, 827 P.2d 996 (1992), recognized that the two statutes, the burglary anti-merger statute and the same criminal conduct statute, appear to conflict when two committed crimes encompass the same criminal conduct, but one of the crimes is a burglary and the other is committed during the burglary. That is, the anti-merger statute would allow the judge to punish each crime separately,

whereas the same criminal conduct statute would require the two crimes to be counted as one for the purposes of sentencing.

Lessley resolved this apparent conflict by holding that the “the antimerger statute gives the sentencing judge discretion to punish for burglary” and an additional crime “even where it and an additional crime encompass the same criminal conduct.” 118 Wn.2d at 781. “This result accords with the well-established rules that the more specific statute controls over a conflicting, more general statute.” *Id.* at 781. Thus, “even when the trial court decides that the defendant's crimes constitute the same criminal conduct, it has discretion to punish for each crime under the burglary antimerger statute.” *State v. Davis*, 90 Wn.App 776, 783, 954 P.2d 325 (1998); *Lessley*, 118 Wn.2d at 781-782. As a result, “[a] defendant who commits multiple crimes after breaking into a home should not be able to escape a more serious offender score.” *Id.* at 782.

Here, the trial court was well within its discretion when it applied the anti-merger statute to punish Ms. Clark for both her burglary conviction and attempted robbery conviction.¹ The trial court properly

¹ Ms. Clark’s reliance on *State v. Johnson*, 92 Wn.2d 671, 600 P.2d 1249 (1979) is misplaced and unpersuasive. To the extent it wasn’t overruled by *Sweet*, the convictions at issue in that case did not involve a burglary. 138 Wn.2d at 476-479.

took into account Ms. Clark's history when it noted "somebody with a history – with a strike offense should know better, you need to – and need to be careful not to do – commit different crimes." 1RP at 44. A criminal history, which includes a very serious offense, can evince a greater degree of culpability when committing current offenses, because the person commits the crimes despite knowing the potential serious consequences of their actions.

The trial court also explained its sentence by stating "the home is a sanctuary, it should never be invaded by force, and here that is exactly what happened." 1RP at 44. Such reasoning is in accordance with *Pressley* wherein our Supreme Court recognized that "burglaries involve a breach of privacy and security often deserving of separate consideration for punishment." 118 Wn.2d at 782. Furthermore, the trial court's same criminal conduct analysis is persuasive as to why the two crimes should be punished separately. The trial court indicated that the evidence supported the fact that Ms. Clark first pushed her way through and into the home, and then, after seeing the computer making a decision to take it. 1RP 42-43. As a result, the trial court's application of the burglary anti-merger statute was reasonable and within its discretion. Moreover, this issue is

dispositive provided this Court agrees that the trial court's application of the anti-merger statute was reasonable.

2) THE TRIAL COURT PROPERLY CONCLUDED THAT THE CRIMES MS. CLARK WAS CONVICTED OF DID NOT ENCOMPASS THE SAME CRIMINAL CONDUCT

As noted above, when a defendant is convicted of two or more crimes the sentencing court “may enter[] a finding that some or all of the current offenses encompass the same criminal conduct.” RCW 9.94A.589(1)(a). A finding that the offenses did not encompass the “same criminal conduct” will be reversed by an appellate court only when there is a clear abuse of discretion or misapplication of the law. *French*, 157 Wn.2d at 613. A court will consider two or more crimes the “same criminal conduct” if they: (1) require the same criminal intent, (2) are committed at the same time and place, and (3) involve the same victim. *Id.* The absence of any one of the prongs prevents a finding of “same criminal conduct.” *State v. Vike*, 125 Wn.2d 407, 410, 885 P.2d 824 (1994); *Lessley*, 118 Wn.2d at 778. Courts “must narrowly construe RCW 9.94A.[589](1)(a) to disallow most assertions of same criminal conduct.” *State v. Price*, 103 Wn.App 845, 855, 14 P.3d 841 (2000); *State v. Wilson*,

136 Wn.App 596, 613, 150 P.3d 144 (2007). If the sentencing court finds that the crimes encompass the same criminal conduct, however, “then those . . . offenses shall be counted as one crime.” RCW 9.94A.589(1)(a).

“The relevant inquiry for the [criminal] intent prong is to what extent did the criminal intent, when viewed objectively, change from one crime to the next.” *State v. Tili*, 139 Wash.2d 107, 123, 985 P.2d 365 (1999) (citations omitted). This inquiry is a two-step process. *Price*, 103 Wn.App. at 857. “First, we must objectively view each underlying statute and determine whether the required intents are the same or different for each count. If they are the same, we next objectively view the facts usable at sentencing to determine whether a defendant's intent was the same or different with respect to each count.” *Id.*

The objective criminal intent of a defendant can be determined by whether one crime furthered the other. *Vike*, 125 Wn.2d at 411. Where crimes are “sequential, not simultaneous or continuous,” a defendant is generally deemed to have sufficient time to form a new criminal intent. *State v. Grantham*, 84 Wn.App. 854, 859, 932 P.2d 657 (1999); *In re Rangel*, 99 Wn.App. 596, 600, 996 P.2d 620 (2000) (“Like the defendant in *Grantham*, Mr. Rangel was able to form a new criminal intent before

his second criminal act because his crimes were sequential, not simultaneous or continuous.”). On the other hand, a defendant’s criminal intent may not have changed when he or she engages in an “unchanging pattern of conduct, coupled with an extremely close time frame” *Tili*, 139 Wash.2d at 125.

First, there is no dispute that the crimes at issue involved the same victim, and occurred at the same time and place. In dispute, is whether Ms. Clark’s objective intent changed. Here, when objectively viewing each of the underlying statutes the required intents are different. For the burglary conviction, under RCW 9A.52.020(1)(b) the State had to prove that Ms. Clark, “with intent to commit a crime against a person or property therein, . . . enter[ed] or remain[ed] unlawfully in a building and . . . in entering or while in the building or in immediate flight therefrom, [she] . . . assault[ed] any person.” CP 40. For the attempted robbery conviction, under RCW 9A.56.190 the State had to prove Ms. Clark did “with intent to commit theft,” “take[] personal property from the person of another or in his or her presence against his or her will by the use or threatened use of immediate force, violence, or fear of injury to that person or his or her property.” CP 41. While both statutes require an intentional mind state to

be proven, objectively, the intents of the statute differ with regard to what end the intent is directed. The burglary requires a general intent to commit a crime against a person or property after entering or while remaining unlawfully in a building, whereas the attempted robbery requires the specific intent to commit a theft against a person by taking personal property from the person. Because the required intent for each count is different, Ms. Clark did not act with the same objective intent when she committed the crimes. As a result, the crimes do not encompass the same criminal conduct.

Clearer, however, is that when objectively viewing the facts usable at sentencing, Ms. Clark's objective criminal intent was different with respect to each count. Moreover, this was the basis on which the trial court found that Ms. Clark's crimes were not the same criminal conduct.

1RP 42. The trial court stated:

"My sense, from hearing the evidence, was that Ms. Clark went there to collect money – collect money from Mary Richards; once she got there, saw that Ms. Richards wasn't there; the door was open; I think she had – the evidence would probably support that she pushed her way through and saw that computer there, and there were some words; and, then there was a change, at that point to take the computer. . . I think the intent – that she went there, and I think the evidence supports that, is that she went there to

collect dollars, money. . . . Then she gets there, there's a bit of an argument, not coming in, I am coming in; she comes in, sees the computer. There's some jostling about, and then the computer is – tried to be removed. So I'll find that it's not same criminal conduct.”

1RP 42-43. The trial court's view of the evidence is corroborated by the trial record. Ms. Loven indicated that Ms. Clark pushed her out of the way to gain access to the apartment and then began looking all over the apartment for Mary Richards. 2RP 91-92. Ms. Loven testified that Ms. Clark, after being unable to find Ms. Richards, “went for the computer.” 2RP 93. When Ms. Loven tried to stop her, Ms. Clark assaulted Ms. Loven. 2RP 96-97. The trial court recognized Ms. Clark's change in intent, from assaulting Ms. Loven to enter the apartment in order to look for Ms. Richards to abandoning that search in order to attempt to steal the computer. These facts support the view that Ms. Clark did not commit the burglary to further the robbery.

Furthermore, this evidence shows that Ms. Clark had the time and opportunity to pause, reflect, and either cease her criminal activity or proceed to commit a further criminal act. She chose the latter, here by forming a new criminal intent to commit the attempted robbery. Ms. Clark assaulted Ms. Loven in order to unlawfully gain entry into the apartment

to look for Ms. Richards. This completed the burglary, and because she could have stopped there rather than walking over and attempting to steal the computer and assaulting Ms. Loven again, these crimes were sequential, not simultaneous or continuous and each crime was complete in itself.

In contrast, is *State v. Rienks*, 46 Wn.App 537, 731 P.2d 1116 (1987) relied upon by Ms. Clark, where convictions for robbery, burglary, and assault were held to encompass the same criminal conduct.² There the defendant went to a man named Kenny's home and knocked on the door. A man named Jeffrey answered and the defendant shoved a pistol into his face and pushed him into a wall. Once he realized that Jeffrey was not Kenny the defendant searched the apartment, found Kenny and then took items from a briefcase. The court found the defendant had one criminal objective, to rob Kenny, and that defendant's only purpose in assaulting Jeffrey was to get to Kenny.

² *Rienks* is very unlikely to be good law. Review was granted in the case, and it was later remanded by the Supreme Court, *State v. Rienks*, 110 Wn.2d 1021, 755 P.2d 173 (1988) in light of *State v. Dunaway*, 109 Wn.2d 207, 743 P.2d 1237 (1987) which held that that crimes involving two victims constitute two separate incidents of criminal conduct. The State cannot find an opinion subsequent to the remand.

Here, Ms. Clark did not enter the home for the purpose of committing a theft. Rather the objective evidence suggests the intent to commit a theft or robbery only arose after she entered the home and could not find Ms. Richards. As a result, Ms. Clark did not have the same objective intent when she committed the two crimes and the trial court was correct to conclude that they do not encompass the same criminal conduct. Because courts “must narrowly construe RCW 9.94A.[589](1)(a) to disallow most assertions of same criminal conduct ” and only reverse a trial court’s finding of same criminal conduct when there is a clear abuse of discretion or misapplication of the law, the trial court’s findings should be affirmed. *Price*, 103 Wn.App at 855

D. CONCLUSION

Because the trial court properly exercised its discretion in applying the burglary anti-merger statute and Ms. Clark’s crimes did not encompass

the same criminal conduct, this court should affirm the trial court's holdings and sentence.

Respectfully submitted this 12th day of April, 2012.

SUSAN I. BAUR
Prosecuting Attorney

By:

A handwritten signature in black ink, appearing to read 'A. Bartlett', written over a horizontal line.

AARON BARTLETT
WSBA # 39710
Deputy Prosecuting Attorney
Representing Respondent

APPENDIX A

RCW 9.94A.589 - Consecutive or concurrent sentences.

(1)(a) Except as provided in (b) or (c) of this subsection, whenever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: PROVIDED, That if the court enters a finding that some or all of the current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. Sentences imposed under this subsection shall be served concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.535. "Same criminal conduct," as used in this subsection, means two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim. This definition applies in cases involving vehicular assault or vehicular homicide even if the victims occupied the same vehicle.

(b) Whenever a person is convicted of two or more serious violent offenses arising from separate and distinct criminal conduct, the standard sentence range for the offense with the highest seriousness level under RCW 9.94A.515 shall be determined using the offender's prior convictions and other current convictions that are not serious violent offenses in the offender score and the standard sentence range for other serious violent offenses shall be determined by using an offender score of zero. The standard sentence range for any offenses that are not serious violent offenses shall be determined according to (a) of this subsection. All sentences imposed under (b) of this subsection shall be served consecutively to each other and concurrently with sentences imposed under (a) of this subsection.

(c) If an offender is convicted under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, the standard sentence range for each of these current offenses shall be determined by using all other current and prior convictions, except other current convictions for the felony crimes listed in this subsection (1)(c), as if they were prior convictions. The offender shall serve consecutive sentences for each conviction of the felony crimes listed in this subsection (1)(c), and for each firearm unlawfully possessed.

(2)(a) Except as provided in (b) of this subsection, whenever a person while under sentence for conviction of a felony commits another felony and is sentenced to another term of confinement, the latter term shall not begin until expiration of all prior terms.

(b) Whenever a second or later felony conviction results in community supervision with conditions not currently in effect, under the prior sentence or sentences of community supervision the court may require that the conditions of community supervision contained in the second or later sentence begin during the immediate term of community supervision and continue throughout the duration of the consecutive term of community supervision.

(3) Subject to subsections (1) and (2) of this section, whenever a person is sentenced for a felony that was committed while the person was not under sentence for conviction of a felony, the sentence shall run concurrently with any felony sentence which has been imposed by any court in this or another state or by a federal court subsequent to the commission of the crime being sentenced unless the court pronouncing the current sentence expressly orders that they be served consecutively.

(4) Whenever any person granted probation under RCW 9.95.210 or 9.92.060, or both, has the probationary sentence revoked and a prison sentence imposed, that sentence shall run consecutively to any sentence

imposed pursuant to this chapter, unless the court pronouncing the subsequent sentence expressly orders that they be served concurrently.

(5) In the case of consecutive sentences, all periods of total confinement shall be served before any partial confinement, community restitution, community supervision, or any other requirement or conditions of any of the sentences. Except for exceptional sentences as authorized under RCW 9.94A.535, if two or more sentences that run consecutively include periods of community supervision, the aggregate of the community supervision period shall not exceed twenty-four months.

[2002 c 175 § 7; 2000 c 28 § 14; 1999 c 352 § 11; 1998 c 235 § 2; 1996 c 199 § 3; 1995 c 167 § 2; 1990 c 3 § 704. Prior: 1988 c 157 § 5; 1988 c 143 § 24; 1987 c 456 § 5; 1986 c 257 § 28; 1984 c 209 § 25; 1983 c 115 § 11. Formerly RCW 9.94A.400.]

RCW 9A.52.050 - Other crime in committing burglary punishable.

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

[1975 1st ex.s. c 260 § 9A.52.050.]

RCW 9A.52.020 - Burglary in the first degree.

(1) A person is guilty of burglary in the first degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building and if, in entering or while in the building or in immediate flight therefrom, the actor or another participant in the crime (a) is armed with a deadly weapon, or (b) assaults any person.

(2) Burglary in the first degree is a class A felony.

[1996 c 15 § 1; 1995 c 129 § 9 (Initiative Measure No. 159); 1975 1st ex.s. c 260 § 9A.52.020.]

RCW 9A.28.020 - Criminal attempt.

(1) A person is guilty of an attempt to commit a crime if, with intent to commit a specific crime, he or she does any act which is a substantial step toward the commission of that crime.

(2) If the conduct in which a person engages otherwise constitutes an attempt to commit a crime, it is no defense to a prosecution of such attempt that the crime charged to have been attempted was, under the attendant circumstances, factually or legally impossible of commission.

(3) An attempt to commit a crime is a:

(a) Class A felony when the crime attempted is murder in the first degree, murder in the second degree, arson in the first degree, child molestation in the first degree, indecent liberties by forcible compulsion, rape in the first degree, rape in the second degree, rape of a child in the first degree, or rape of a child in the second degree;

(b) Class B felony when the crime attempted is a class A felony other than an offense listed in (a) of this subsection;

(c) Class C felony when the crime attempted is a class B felony;

(d) Gross misdemeanor when the crime attempted is a class C felony;

(e) Misdemeanor when the crime attempted is a gross misdemeanor or misdemeanor.

[2001 2nd sp.s. c 12 § 354; 1994 c 271 § 101; 1981 c 203 § 3; 1975 1st ex.s. c 260 § 9A.28.020.]

RCW 9A.56.190 - Robbery — Definition.

A person commits robbery when he or she unlawfully takes personal property from the person of another or in his or her presence against his or her will by the use or threatened use of immediate force, violence, or fear of injury to that person or his or her property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

[2011 c 336 § 379; 1975 1st ex.s. c 260 § 9A.56.190.]

RCW 9A.56.210 - Robbery in the second degree.

(1) A person is guilty of robbery in the second degree if he or she commits robbery.

(2) Robbery in the second degree is a class B felony.

[2011 c 336 § 380; 1975 1st ex.s. c 260 § 9A.56.210.]

RCW 9A.52.030 - Burglary in the second degree.

(1) A person is guilty of burglary in the second degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building other than a vehicle or a dwelling.

(2) Burglary in the second degree is a class B felony.

[2011 c 336 § 370; 1989 2nd ex.s. c 1 § 2; 1989 c 412 § 2; 1975-'76 2nd ex.s. c 38 § 7; 1975 1st ex.s. c 260 § 9A.52.030.]

CERTIFICATE OF SERVICE

Michelle Sasser, certifies that opposing counsel was served electronically via the Division II portal:

Mr. Peter Tiller
The Tiller Law Firm
P.O. Box 58
Centralia, WA 98531-0058
ptiller@tillerlaw.com

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on April 13th, 2012.


Michelle Sasser
Michelle Sasser

COWLITZ COUNTY PROSECUTOR

April 13, 2012 - 11:45 AM

Transmittal Letter

Document Uploaded: 425483-Respondent's Brief.pdf

Case Name: State of Washington v. Shelley L. Clark

Court of Appeals Case Number: 42548-3

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Other: _____

Sender Name: Michelle Sasser - Email: sasserm@co.cowlitz.wa.us

A copy of this document has been emailed to the following addresses:
ptiller@tillerlaw.com