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

STATE OF WASHINGTON, RESPONDENT

v.

NATHANIEL J. HALL, APPELLANT

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Appeal from the Superior Court of Pierce County  
The Honorable KARENA KIRKENDOLL

No. 16-1-04490-7

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**Brief of Respondent**

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MARK LINDQUIST  
Prosecuting Attorney

By  
JASON RUYF  
Deputy Prosecuting Attorney  
WSB # 38725

930 Tacoma Avenue South  
Room 946  
Tacoma, WA 98402  
PH: (253) 798-7400

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Does ample evidence support the "dwelling" element of defendant's residential burglary conviction when the house he broke into met "dwelling's" definition of a building ordinarily used for lodging, as it was the cared-for home of a frail senior citizen who put it to that use for nearly 30 years before dementia-related hardships forced her to temporarily move near a son who was helping her to return home?
2. Has defendant wrongly claimed that dismissal of his residential burglary conviction is the proper remedy attending a failure of the dwelling element when it would only require remand for resentencing on the inferior degree offense of second degree burglary?

B. STATEMENT OF THE CASE.

1. PROCEDURE

Defendant was charged with residential burglary, third degree theft and possession of burglary tools. CP 3-4. Only the sufficiency of evidence underlying the "dwelling" element of residential burglary is challenged in this appeal. Proof the elderly victim's cared-for home was a "dwelling"

despite her temporary displacement from it was adduced through witnesses familiar with her home as well as photographs of the property defendant stole when it was burglarized by him. CP 117-18. Jurors were accurately instructed that residential burglary's "dwelling" element required proof her home was a building ordinarily used for lodging. CP 17-18 (Inst. 9-10). Proper instructions on the inferior offense of second degree burglary were also given without objection. CP 21 (Inst. 13); 2RP 116-138. The difference between those crimes was argued in summation. 2RP 146-47, 152-54. Defendant's jury decided he committed the greater offense. 2RP 162.

He proceeded to sentencing with an offender score 4 based on prior convictions for stolen property, trafficking, theft and attempting to elude. CP 67. At the hearing, the victim's son explained:

[His mother] is in her eighties, and ... in the stages of Alzheimer's and dementia. ... [That] she's a very sweet and giving person. It's sad when people ... try to take advantage of her. And I'm there to protect her. I'm the only one around that can do that. And I can't be there all the time watching her property. We have "No Trespassing" signs everywhere. [Defendant] must have known that he was doing wrong. ... I feel the Court should give him whatever the max is so maybe ... he'll learn to do the correct thing. I don't know that the system is good enough, but at least it's a deterrent of some sort.

3RP 180. A low-end sentence of 15 months was nevertheless imposed. CP 71. Defendant timely appealed. CP 74.

## 2. FACTS

Myrtle Fredson was in her 80s when defendant burglarized her Puyallup home of 30 years in the evening hours of February 2, 2016.<sup>1</sup> She began using that home for lodging in 1986. 2RP 91. It was a single level ranch-style house nestled in thick woods at the end of a 50 foot driveway. 2RP 59-60. Her address was tacked to a tree stump where the driveway began. *Id.* A sign that declared: "Private Property. No Trespassing," was prominently posted four feet up in a tree for all to see midway between the driveway's entrance and her home. 2RP 61, 75. Another "No Trespassing" sign was posted on her garage. 2RP 100. Others were posted around the property in an effort to keep trespassers at bay. 2RP 100.

The years leading up to the burglary had been difficult for Myrtle.<sup>2</sup> Her capacity to manage financial affairs had become compromised by the onset of Alzheimer's dementia. 2RP 92-93. Paranoia attending the condition prompted a refusal to pay utility bills. *Id.* The power company cut off her electricity. *Id.* On three occasions police had to take her to a hospital. 2RP 92. Her son Lloyd became aware of those issues. 2RP 93. In October, 2014, he temporarily relocated her to a house in Port Orchard near his own. 2RP 92-93. The plan was for her to resume living in her Puyallup home once

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<sup>1</sup> 2RP 57, 60, 80, 90-92.

<sup>2</sup> First names will be used for clarity as Myrtle Fredson has the same surname as her son Lloyd Fredson, no disrespect is intended.

utilities could be reestablished. *Id.* It was delayed when her bills went into collection. *Id.* Dementia caused her to resist paying the arrears. *Id.*

Consistent with the plan to return Myrtle to her Puyallup home, it was left fully furnished. 2RP 93. There was clothing for her to wear. 2RP 111. A bed in each of her home's four bedrooms for her to sleep on. 2RP 93. There was furniture in her living room, and throughout the house. *Id.* Appliances remained amid the cabinets of her kitchen. 2RP 93, 107-11. Her personal possessions were stored about, like the commemorative dishware she liked to collect. 2RP 102-03, 107-11. She went with Lloyd to check on her home once, sometimes twice a week. 2RP 96.

Those trips enabled them to discover the vandalism her home was increasingly subjected to over time. 2RP 94. A protracted effort to protect the home from intruders began. *Id.* Lloyd first boarded-up each window broken in turn. *Id.* He eventually boarded them all in a preemptive effort to halt the damage. *Id.* He braced the front door as it was repeatedly breached. 2RP 95. Safety concerns caused him to carry a sidearm to their checks. 2RP 98. "No trespassing" signs were posted throughout the property. 2RP 100. Yet nothing deterred burglars like defendant from invading Myrtle's home. 2RP 94, 101.

On February 2, 2016, Lloyd drove Myrtle to her home for one of their weekly checks. 2RP 96. Trash strewn about outside with items from

inside the home signaled the most recent attack. 2RP 97. Lloyd directed his mother to stay put as he exited their truck to investigate. *Id.* It was getting dark, yet he was armed. *Id.* He noticed a light flash across the living room ceiling through a gap in a boarded window. 2RP 98. Police were called. *Id.*

Deputies arrived around 6:30 p.m. 2RP 57-58. Lloyd was waiting with Myrtle at the end of her driveway. 2RP 59. "She seemed frail but was able to carry on a conversation." 2RP 61. Lloyd told them how to access her home. 2RP 62-65. Deputies walked down her driveway. 2RP 61, 75. They passed her "Private Property. No Trespassing" sign, which remained visible in the dark. *Id.* As they approached her home, it became clear a rear door abutting the woods was ajar. 2RP 62-65.

They paused to listen. *Id.* It was quiet. *Id.* They banged on a wooden panel while identifying themselves and directing anyone inside to exit. 2RP 65-66. A woman emerged. *Id.* She was detained. *Id.* One of the deputies knocked again, this time announcing a K-9 would be released into the home if anyone remained inside. 2RP 80. Defendant emerged carrying a backpack full of burglar's tools and Myrtle's belongings; to include her *Gone with the Wind* commemorative plate—one of a set she was collecting. 2RP 82-85. He also stole one of her twelve golden goblets. 2RP 67, 70, 102.

Police found lockpicks with lighting equipment inside his backpack. 2RP 67, 82-83. Neither he nor his cohort were known to Lloyd or Myrtle.

2RP 101. Defendant admitted to taking property from the home, but claimed he was exercising squatter's rights in a house he perceived to be vacant. 2RP 68. Lloyd was there the week before. 2RP 103. Since then, Myrtle's belongings appeared to have been ransacked for valuables. 2RP 108.

C. ARGUMENT.

1. THERE IS AMPLE EVIDENCE TO SUPPORT THE "DWELLING" ELEMENT OF DEFENDANT'S RESIDENTIAL BURGLARY CONVICTION AS THE BURGLED HOUSE MET "DWELLING'S" DEFINITION OF A BUILDING ORDINARILY USED FOR LODGING BECAUSE IT WAS THE CARED-FOR HOME OF A SENIOR CITIZEN TEMPORARILY DISPLACED FROM IT DUE TO DEMENTIA-RELATED HARDSHIPS HER SON WAS HELPING HER TO OVERCOME.

Equally reliable direct and circumstantial evidence is sufficient to support defendant's residential burglary conviction if it permits a rational trier of fact to find he unlawfully entered a *dwelling* with an intent to commit a crime against a person or property therein. RCW 9A.52.025(1); *State v. McPherson*, 186 Wn.App. 114, 117-18, 344 P.3d 1283 (2015). Dwelling "means any building or structure, though movable or temporary, or a portion thereof, which is used or ordinarily used by a person for lodging." RCW 9A.04.110(7). Only proof of the dwelling element is challenged. It has been left for juries to determine if a building qualifies as a dwelling from all the relevant factors like its intended use and manner in which it was maintained. *State v. McDonald*, 123 Wn.App. 85, 91, n.18, 96 P.3d 468 (2004). Proof

of those factors is to be taken as true with every inference drawn in support of defendant's conviction. *McPherson*, 186 Wn.App. at 117.

- a. Burglars do not get a discounted punishment for targeting the unoccupied homes of senior citizens temporarily displaced from them due to age-related disabilities.

Washington's courts "will not close [their] eyes to the facts of life" when considering burglary laws. *State v. Bergeron*, 105 Wn.2d 1, 10, 11 P.2d 1000 (1985). Burglary continues to be one of the most prevalent crimes society must face. *Id.* at 9. As life-expectancy in our society continues to increase, it is a crime that will be increasingly perpetrated against our elderly as they are periodically forced from their homes to address health problems associated with age. *E.g.*, RCW 18.88A.010(2)(c); *State v. Morin*, 100 Wn.App. 25, 26, 995 P.2d 113 (2000).

Sister states are likewise beset by this problem. They have likewise decided a senior citizen's inability to occupy her home amid a period of age-related disability does not strip the home of the greater protections dwellings receive under the criminal law.<sup>3</sup> Our burglary law cannot be read to support

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<sup>3</sup> *E.g.*, *State v. Smith*, 121 N.C.App. 41, 46, 464 S.E. 2d 471 (1995); *People v. Maquez*, 143 Cal.App.3d 797, 789, 192 Cal.Rptr.193 (1983); *State v. Ervin*, 96 N.M. 336, 367, 630 P.2d 765 (1981); *State v. Motuliki*, 175 Wn.App. 1075 (Aug., 2013) (No. 70363-3-I; 2013 WL 4069535\*3); GR 14.1(a). Unpublished opinions of the Court of Appeals have no precedential value and are not binding on any court. However, unpublished opinions of the Court of Appeals filed on or after March 1, 2013, may be cited as nonbinding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the court deems appropriate.

defendant's contention to the contrary. It was enacted in 1989. *State v. Olson*, 182 Wn.App. 362, 378, 329 P.3d 121 (2014). Legislative history shows that consistent with common law, the crime was intended to punish burglaries in dwellings more harshly in light of their steady increase and inherent potential to result in personal injury. *Id.* Common law regarded burglary a "heinous offense" because it invaded the right of habitation. *Id.* (quoting Lafave, Crim.Law §8.13(c) (1986)); *McClain v. Territory*, 1 Wash. 345, 348, 25 P.453 (1890).

The quality of habitation captured in "dwelling's" definition as "a building ordinarily used for lodging" does not depend on a home's variable state of occupancy. *State v. Kiponen*, 47 Wn.App. 912, 917, 737 P.2d 1024 (1987). Unlawful entry into an unoccupied residential building to commit crime is a residential burglary. *Id.* Even extended periods of vacancy cannot alone deprive a home of its residential character once a person's habitation makes it a dwelling. *McDonald*, 123 Wn.App. at 91, n.18; *Mckenzie v. State*, 407 Md. 120, 127, 962 A.2d 998 (2008).

Washington looked beyond its borders for a standard to test whether homes remained dwellings despite interrupted occupancy. *McDonald*, 123 Wn.App. at 91, n.18. Factors representing patterns of historical, current and planned future use emerged. Courts assess if a house was lived in, deemed a dwelling and treated as such in contemplation of habitation. *Id.* (citing

*State v. Black*, 627 So.2d 741, 745 (1993)). Evidence of the pattern presents in the presence of residential furnishings. *Id.* (citing *Hargett v. State*, 534 S.W.2d 909, 911 (1976)). Or in an inhabitant's intent to resume residence in a temporarily unoccupied home if circumstances permit. *Id.* (citing *Rash v. Commonwealth*, 9 Va. App.22, 383 S.E.2d 749, 751-52 (1989)). As well as interim maintenance for that purpose. *Id.* A home remains a dwelling once ordinarily used for lodging until converted to another use. *Id.*<sup>4</sup>

Each factor was manifest in the circumstances of Myrtle's home. She first put it to ordinary use for lodging in 1986. 2RP 91. Twenty eight years of occupancy followed. 2RP 92-93. But then, as she grew old, she grew ill. *Id.* Alzheimer's took hold. *Id.* That insidious disease temporarily diminished her ability to live without assistance; yet she never surrendered to it by treating her house as anything less than her home.<sup>5</sup> All the accoutrements of its residential purpose remained within it awaiting her return. *Id.* There were beds for her to sleep on. 2RP 93. Appliances for her to cook with. 2RP 93, 107-11. Clothing for her to wear. 2RP 111. And cherished collectables for her to enjoy.<sup>6</sup> All direct evidence corroborating the plan for her to resume occupancy as soon as finances permitted.

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<sup>4</sup> See also e.g., 20 A.L.R. 4<sup>th</sup> 349 (1983) (citing *State v. Bair*, 112 W.Va. 665, 166 S.E.S 369 (1932); *Thomas v. Commonwealth*, 150 Ky 374, 150 SW 376 (1912).

<sup>5</sup> 2RP 93, 96, 102-03, 107-11.

<sup>6</sup> 2RP 67, 79, 82-85, 102.

Those life enabling, personally enriching, possessions of hers were not artifacts of a former occupant who had moved on. Persistent efforts to protect them from people like defendant were undertaken to ensure they would remain for her use when her difficulties could be overcome. 2RP 92-93. "No trespassing" signs were prominently posted around the property. 2RP 61, 75, 100. Despite her dementia and obvious frailty, she endured a roughly 72 mile round trip with her son to check on her home once, at times twice a week. 2RP 61, 96; ER 201. Boards were preemptively placed over her remaining windows to forestall future intrusions. 2RP 94-95. All that could be done was done to maintain the home in a habitable condition for Myrtle's planned return.

Yet according to defendant, Myrtle's disability-based deviation from her nearly three-decade habit of caring for herself with dignity in her own home was enough to downgrade her dwelling to a mere structure. He urges this Court to relegate it to that diminished state despite the jury's verdict to the contrary. He untenably asserts disruptions of occupancy brought about by an elderly resident's illness will reduce the law's protection of her home. His argument seems to derive from a misreading of *McDonald*. That case addressed an omitted inferior offense instruction, so inferences were drawn in McDonald's favor. *McDonald*, 123 Wn.App. at 86. That approach is inverted here where all reasonable inferences must be drawn in support of

defendant's conviction. As there is at least some evidence to support each

**McDonald** factor in this case, defendant's conviction should be affirmed.

Like burglars in other states, defendant urges this Court hold that:

when elderly citizens leave their homes and, due to health problems, move to another residence until they are able to care for themselves, they have abandoned their homes or established domicile elsewhere.

**Smith**, 121 N.C.App. at 46. But it has been more wisely recognized:

[O]ur nation's elderly will increasingly face the need to move into residential care or nursing facilities for various periods of time. But this is not to say that their homes lose their characteristics of being "dwelling places." It would take more than mere absence to negate the nature of the home as being a dwelling place.

*Id.* An unoccupied home's ordinary use as a dwelling is evinced by:

objects of value left in the hom[e] and ... persons who maintain [it] ... [a]ppliances, furniture, and various personal effects belonging to th[e] owne[r,] [as well as] [f]acts and attendant circumstances indicat[ing] ... the requisite intent to return ..., if at all possible.

*Id.*; accord, **Ervin**, 96 N.M. at 367; **Marquez**, 143 Cal.App.3d at 802;

**Course v. State**, 469 So.2d 80, 81-82, 469 So.2d 80 (1985). As these cases applied factors adopted in **McDonald**, their reasoning supports the jury's verdict in defendant's case. **McDonald**, 123 Wn.App. at 91, n.18.<sup>7</sup>

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<sup>7</sup> *E.g.*, **State v. Highsmith**, 192 Wn.App. 1022 \*3 (2016); **State v. Kelly**, 180 Wn.App. 1039 (2014) (No. 69369-7-1); **State v. Boylan**, 182 Wn.App. 1030 \*2 (2014) (No. 71434-1-1 (2014)); **Motuliki**, 175 Wn.App. \*3.

- b. The dangers common to confrontations amid residential burglaries are equally experienced by caretakers who maintain the unoccupied homes of temporarily displaced seniors.

Washington's Legislature enacted the crime of residential burglary into law in part to protect our people from the "potential for personal injury inherent in such crimes." *Olson*, 182 Wn.App. at 378. Residential burglary is a crime of violence. RCW 9A.10.010(3)(a); *United States v. M.C.E.*, 232 F.3d 1252, 1255 (9<sup>th</sup> Cir. 2000). A perpetrator's illegal entry into a dwelling with intent to commit a crime is likely to bring about a violent confrontation through encounters with occupants or investigating officers. *Id.*

The crime was similarly regarded under common law. There it was a "heinous offense" against one's right of habitation, *i.e.*, the right to "feel secure" in one's abode. *Id.* (citing Wharton's Crim. Law § 8.13(c), 253 (15<sup>th</sup> ed. 1995); RCW 9A.04.060; *State v. Byrd*, 125 Wn.2d 707, 712-13, 887 P.2d 396 (1995)). Our people's right to be secure in their "houses" is only surpassed by their right to be secure in their persons. *E.g.*, U.S. Const., amend. IV. And then only slightly, for shelter is often essential to life. RCW 9A.42.010(1) ("Basic necessities of life means ... shelter[.]").<sup>8</sup>

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<sup>8</sup> *Merchant of Venice*, Act. 4, Scene 1: "Nay, take my life and all; pardon not that: You take my house when you do take the prop That doth sustain my house; you take my life When you do take the means whereby I live."

Congruent with the connection linking one's habitation to survival is the deadly force with which a home may be defended. Home invasion was once perceived to be an offence the owner "could punish with death and which, in a civilized society, the law would punish similarly." Lafave, *Crim. Law* 4<sup>th</sup> ed., 1022 (2003). While what we call "civilized society" no longer puts burglars to death; in the name of "defense," it still recognizes its citizens' *right* to repel home invasions with deadly force:

Homicide is ... justifiable when committed ... [i]n actual resistance of an attempt to commit a felony upon the slayer, in his or her presence, or upon or in a dwelling, or other place of abode, in which he or she is.

RCW 9A.16.050(2); *State v. Wooten*, 87 Wn.App. 821, 824, 945 P.2d 1144 (1997) ("No duty to retreat"). Cases that expanded residential burglary's protection to uninhabited areas of a home and commercial spaces attached to homes have done so due to the commensurate safety concerns attending invasions into those places.<sup>9</sup>

Myrtle's son Lloyd became engaged in a protracted battle to protect his mother's home. 2RP 94-95, 98, 100. His frustration was mounting as he returned—week after week—to find his mother's home vandalized again

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<sup>9</sup> See *State v. McPherson*, 186 Wn.App. 114, 119, 344 P.3d 1283 (2015) (jewelry store connected by swinging door to an immediately adjacent apartment was a "dwelling"); *State v. Moran*, 181 Wn.App. 316, 318, 324 P.3d 808 (2014) (utility space under house is a dwelling); *State v. Neal*, 161 Wn.App. 111, 249 P.3d 211 (2011) (tool room within apartment was a "dwelling"); *State v. Murbach*, 68 Wn.App. 509, 513, 843 P.2d 551 (1993) (attached garage was a "dwelling").

despite all the effort he committed to its defense. Everyone has a breaking point. Deadly defensive impulses can have hair triggers, particularly when tied to an elderly parent's home. Lloyd exercised his right to bear arms on his trips to maintain his mother's home. 2RP 98. Fortunately for defendant, and perhaps for Lloyd as well, Lloyd is a careful person who recognized the value of summoning police instead of resorting to violence. *Id.*

But one can envision how a different decision might have ended in death. Lloyd's self-restraint may be attributable to his 22 years of service. 3RP 180.<sup>10</sup> Most lack his training. Chance collisions between caretakers and the criminals who burglarize the temporarily unoccupied homes of ill-senior citizens carry the precise risk of injury or death the increased punishment of residential burglary attempts to avoid through deterrence. For at any given moment, as demonstrated here, a caretaker may return to maintain a home for its temporarily displaced occupant. *E.g., McKenzie v. State*, 407 Md. 120, 136, 962 A.2d 998 (2008).

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<sup>10</sup> This fact from the sentencing record is only mentioned to make a point about policy; it is not offered as evidence to supplement the record being tested for sufficiency.

- c. Our Legislature has several times conveyed its intent that this state's burglary statutes be liberally construed to protect our people from that dangerous or destabilizing crime as well as ensure its perpetrators are duly punished.

"Legislative history shows that consistent with the common law, the crime of residential burglary was enacted in order to punish burglaries occurring in dwellings more harshly...." *Olson*, 182 Wn.App. at 378. That legislation was prompted by the crime's increasing occurrence as well as the risk of harm it posed to everyone involved. *Id.* Statutes are to be construed to effectuate legislative intent. *Wingert v. Yellow Frieght Sys.*, 146 Wn.2d 841, 852, 50 P.3d 256 (2002). Provisions in *pari materia* are read together, so a harmonious scheme that maintains each provision's integrity evolves. *State v. Wright*, 84 Wn.2d 645, 650, 529 P.2d 453 (1974).

The residential burglary statute has been interpreted by this Court to preclude "abandonment" from being raised as a defense. *State v. Jensen*, 149 Wn.App. 393, 401, 203 P.3d 393 (2009) (*declined to follow State v. J.P.*, 130 Wn.App. 887, 125 P.3d 215 (2005)). While defendant rightly did not raise abandonment at trial, he seems to wrongly invoke it on appeal:

There was no evidence presented of a plan to move back in to the house or for anyone else to move there. The plan moving forward may have been eventual demolition.

Def.Br. at 9. His representation is also incorrect. Lloyd planned to return his mother to her home as soon as they could reestablish her utilities. 2RP 92-93. Consistent with related provisions,<sup>11</sup> the protections of the residential burglary statute ought to be broadly construed. Imposition of its increased punishment on those who burglarize the unoccupied homes of temporarily displaced senior citizens easily fits within the main of the statute's intended purpose. Defendant's conviction should be affirmed.

2. A FAILURE OF RESIDENTIAL BURGLARY'S DWELLING ELEMENT WOULD ONLY RESULT IN REMAND FOR RESENTENCING ON THE INFERIOR DEGREE OFFENSE OF SECOND DEGREE BURGLARY SINCE ITS ELEMENTS WERE NECESSARILY FOUND BY THE JURY.

Remand for resentencing on an inferior degree offense is proper if the jury is explicitly instructed thereon. *State v. Green*, 94 Wn.2d 216, 234, 616 P.2d 628 (1980). The existence of such an instruction proves jurors who convict on a superior degree offense necessarily found the inferior offense was committed. *Id.*<sup>12</sup> *State v. Wade*, 98 Wn.App. 328, 989 P.2d 576 (1999).

Second degree burglary is an offense inferior in degree to residential burglary. RCW 9A.52.025(1), .030; see *Bergeron*, 105 Wn.2d at 6. A thief graduates from second degree to residential burglary if he completes the

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<sup>11</sup> RCW 9A.52.040 (intent to commit a crime within an unlawfully entered building may be presumed); RCW 9A.52.050 (burglary anti-merger statute).

<sup>12</sup> See also *In re Pers. Restraint of Heidari*, 174 Wn.2d 288, 294, 274 P.3d 366 (2012); *State v. Atterton*, 81 Wn.App 470, 473, 915 P.2d 535 (1996).

criminally-purposed entry in a "dwelling" instead of a mere "building." *Id.* The distinguishing attribute is that a "dwelling" is a building ordinarily used for lodging. RCW 9A.04.110 (5), (7). So once burglary is proved, degree turns on the use to which the burgled building was ordinarily put. *Id.*

Defendant's jury received accurate instructions on residential as well as second degree burglary. CP 16-23 (Inst.8-15). Definitions jurors required to differentiate them were also given. CP 18 (Inst.10), 21-22 (Inst. 13-14). It is rightly presumed they were followed. *State v. Kalebaugh*, 183 Wn.2d 578, 586, 355 P.3d 253 (2015). Differences between the two crimes were addressed in closing argument. 2RP 146-47, 152-54. Defendant's residential burglary conviction proves the jury necessarily believed he committed second degree burglary as well. 2RP 162; CP 36-37. So the remedy of dismissal he seeks is as erroneous as his substantive claim is meritless. The conviction should be affirmed.

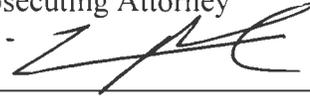
D. CONCLUSION.

Proof of the challenged dwelling element of defendant's residential burglary conviction permeates the record. The burgled home had been used by its 80 year old owner for lodging for 28 years until she was temporarily displaced from it to address her dementia. Yet there was a plan to return her to it so she could again enjoy the fruits of her long life that it contained.

Defendant burglarized it before the financial impediments to accomplishing the plan could be overcome, and despite diligent efforts to protect her home from thieves like him. The relief he seeks is equally flawed. As his success on the merits would require resentencing for second degree burglary, not the dismissal he requests. But the issue is academic as his well-proved crime of conviction should be affirmed along with his unchallenged convictions.

RESPECTFULLY SUBMITTED: March 6, 2018.

MARK LINDQUIST  
Pierce County  
Prosecuting Attorney

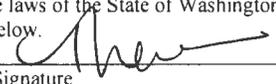


JASON RUYF  
Deputy Prosecuting Attorney  
WSB # 38725

Christopher Paul  
Intern

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

3-6-18   
Date Signature

**PIERCE COUNTY PROSECUTING ATTORNEY**

**March 06, 2018 - 4:30 PM**

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