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Court of Appeals
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No. 50949-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

GREGORY SHARLOW
Appellant.

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

The Honorable John C. Skinder
Cause No. 17-1-01272-34

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether the State produced sufficient evidence such that when viewed in a light most favorable to the State, any rational jury could find beyond a reasonable doubt that Sharlow committed attempted burglary in the first degree and burglary in the second degree.

2. Whether the trial court acted within its discretion when it decided that the charges of attempted burglary in the first degree and burglary in the second degree did not have the same intent, and therefore were not the same criminal conduct.

3. Whether Sharlow's trial counsel was ineffective for not requesting lesser included instructions of criminal trespass for counts one and two when the charge of criminal trespass in count seven would cover Sharlow's conduct if the jury did not believe he had formed the requisite intent for the burglaries.

B. STATEMENT OF THE CASE.

1. Procedural History:

The appellant, Gregory Sharlow, was charged with attempted first degree burglary, second degree burglary, fourth

degree assault, obstructing a law enforcement officer, third degree malicious mischief, and two counts of second degree criminal trespass on August 31, 2017. CP 12-13.

A jury trial was held on September 25, 26, and 27, 2017. RP at 12-500. Counts 4, 5, 6, and 7 went uncontested at trial. RP 481-482, 510-511. The jury found Sharlow guilty on all counts. CP 86; 123-124; 164-167.

Sentencing was held on October 3, 2017. RP 501-522. The state argued that Sharlow's 2005 conviction for attempted second degree assault should be scored as a completed offense. RP 506. The defense opposed the state's argument. RP 504. The defense argued that Counts 1 and 2 should be considered the same criminal conduct. RP 506.

The court found that Counts 1 and 2 did not count as the same criminal conduct and that the 2005 assault conviction counted as a "two-point multiplier." RP 518. The court then imposed for Count 1 a sentence of fifty months, for Count 2 a sentence of twenty months, for Count 3, 4, and 5, a sentence of 364 days, and for Counts 6 and 7, a sentenced of ninety days, all of which were to be served concurrently. Eighteen months of community custody were to follow. CP 208. The court additionally imposed a \$500.00

crime victim penalty assessment, \$200.00 filing fee, and \$100.00 DNA collection fee. CP 209-210. On October 3, 2017, Sharlow filed a Notice of Appeal. CP 191-203

2. Substantive Facts:

While doing yard work at her home in Thurston County, on July 16, 2017, Tristin Atwood's shirt was grabbed by Sharlow. RP 262, 270. This abrupt interruption scared her. RP 271. She informed Sharlow that he was trespassing and demanded that he leave her property. RP 271. He refused, even when she continually requested he leave at least eight times. RP 274. Sharlow appeared disheveled and was mumbling unintelligibly. RP 274. Atwood offered to call an ambulance or the police for Sharlow, but he did not respond to her offer. RP 274. After her multiple demands that he leave her property he eventually crossed the street while shouting something incomprehensible, and Atwood called 911. RP 277-278; Exhibit 22.

Atwood entered her home and locked the door while reporting the incident to 911. RP 284. While she waited for the police to arrive she heard noises from her backyard, RP 286-287, which is enclosed by a wooden privacy fence and chain link fence. RP 257. She went to investigate and saw Sharlow attempting to

open the gate. RP 287. Her fence was damaged. RP 267. She reentered her home and once again called 911. RP 288. She ended the call when a police car arrived at her home. RP 293.

Officer Eric Henrichsen of the City of Olympia Police Department responded. RP 188. Officer Henrichsen saw Sharlow lying on Atwood's roof. RP 193. In order to get onto the roof from the backyard an individual would have to enter the fenced in portion of the property. RP 309. Sharlow upon spotting the officer rolled off of the roof onto his feet. RP 194. Sharlow advanced towards the officer and ignored the officer's demands that he sit. RP 198-200. Atwood was unaware that Sharlow was no longer behind her property and exited the front of her home, RP 206-207, to inform the officer of where she believed he was. RP 293-294. The officer motioned for her to reenter her home, but before she was able to do so Sharlow began charging towards her. RP 206. He had his head lowered and his arms extended in front of him, similar to a football player ready to tackle. RP 298. Atwood fled back into her home and dead bolted the door. RP 207. Sharlow reached the door right after it had been closed and after unsuccessfully attempting to turn the handle and enter he rammed into the door three times. RP 207-208. The door was hit with such force that the doorjamb

cracked. Exhibit 16. He then ran down the street and into a parking lot, with the officer close behind. RP 209-211. After the officer threatened to taze Sharlow if he did not stop running, Sharlow sat down and was taken into custody. RP 211-213.

C. ARGUMENT.

1. The State presented sufficient evidence for the crimes of attempted burglary in the first degree and burglary in the second degree.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). There, the jury convicted a defendant for possession of cocaine with intent to deliver relying only upon trial testimony to establish his intent. Id. at 201-202. The Supreme Court of Washington confirmed his conviction finding that when the evidence is taken as true it was sufficient to warrant conviction and that when reviewing a claim of insufficiency of evidence the evidence must be taken as true. Id.

“[T]he critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be not simply to determine whether the jury was properly instructed, but to determine whether the record

evidence could reasonably support a finding of guilt beyond a reasonable doubt.” (Cite omitted.) This inquiry does not require a reviewing court to determine whether it believes the evidence at trial established guilt beyond a reasonable doubt. “Instead, the relevant question is whether, 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. (Cite omitted, emphasis in original.)

State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

“A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.” Salinas, 119 Wn.2d. at 201. Circumstantial evidence and direct evidence are equally reliable, and criminal intent may be inferred from conduct where “plainly indicated as a matter of logical probability.” State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). There, the Supreme Court of Washington affirmed the defendant's conviction for attempted theft, even though the only evidence of his intent, which was an element of the crime, was logical reasoning based upon trial testimony regarding the defendant's conduct. Id. at 638.

Credibility determinations are for the trier of fact and are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d

850 (1990). There, a jury convicted a defendant of indecent liberties with a child based upon the child's testimony at trial. Id. at 70. The Supreme Court of Washington affirmed the ruling holding that determinations of witness truthfulness are within the complete purview of the trier of facts and not subject to review. This court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992). There, a defendant denied living at a residence where heroin was found, but was convicted under a theory of constructive possession, because the jury believed the testimony of his neighbors regarding his habitation at the home. Id. at 413.

It is the function of the fact finder, not the appellate court, to discount theories which are determined to be unreasonable in light of the evidence. State v. Bencivenga, 137 Wn.2d 703, 709, 974 P.2d 832 (1999). There, an individual was convicted of attempted burglary in the second degree based upon circumstantial evidence that could have had other rational explanations. Id. at 708-709. The Supreme Court of Washington affirmed the conviction finding that the existence of rational alternative conclusions from the evidence

does not void a conviction because the trier of fact is allowed to logically infer intent from facts. Id. at 708-709.

Here, similar to Salinas and Delmarter when the testimony is accepted as true it supports a finding of intent necessary for conviction. The testimony at trial, showed that Sharlow charged at the victim, "like he was in a football game running to tackle someone." RP 298. Furthermore, he rammed the door with such great force that the doorjamb cracked and Atwood legitimately believed he would break through. RP 300. A claim of insufficiency of the evidence admits the truth of all inferences that can be reasonably drawn from the evidence. Salinas, 119 Wn.2d. at 201. Here, the evidence clearly supports the inference that Sharlow intended to harm either Atwood or her property if he had been able to breach the door.

Additionally, similar to Walton and Camarillo the jury in this case found the testimony credible. In Walton, the jury believed the neighbor's testimony regarding the defendant's occupation of the home. State v. Walton, 64 Wn. App at 413. In Camarillo, the jury found the testimony of the victim was credible and convicted based solely upon that evidence. Camarillo 115 Wn.2d at 70. Here, the jury also found the testimony of the responding officer and victim

credible enough to convince them beyond a reasonable doubt that Sharlow was guilty of the charged crimes and their determination of credibility is not under review. Id. at 71.

Finally, similar to Bencivenga, the jury was allowed to infer intent from facts and reject rational alternative explanations that they found unreasonable in light of the evidence. There, the jury rejected the defendant's claim that he was merely behind the pharmacy counter to pick up change and instead inferred his intent to commit theft from his conduct. Bencivenga, 137 Wn.2d at 708. Here, the jury rejected the defense's claim that the defendant was merely trying to flee the police, finding instead that his actions demonstrated his intent to commit additional crimes. This was a permissible inference and as such should not be disturbed upon review. Id. at 708.

2. The trial court did not abuse its discretion in finding that the counts of attempted burglary in the first degree and burglary in the second degree were not same criminal conduct.

When calculating an offender score, RCW 9.94A.589(1)(a) provides that all "current and prior convictions [should be treated] as if they were prior convictions for the purpose of the offender

score,” but recognizes the exception 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.” RCW 9.94A.589(1)(a).

The “same criminal conduct” “means two or more crimes that require the same criminal intent, involve the same victim, and are committed at the same time and place.” All of these elements must exist in order for a court to make a finding of same criminal conduct. State v. Haddock, 141 Wn.2d 103, 110, 3 P.3d 733 (2000); State v. Porter, 133 Wn.2d 177, 181, 942 P.2d 974 (1997); State v. Vike, 125 Wn.2d 407, 410, 885 P.2d 824 (1994). Courts narrowly construe this analysis and a trial court’s finding on the issue is reviewed under an abuse of discretion standard. Porter, 133 Wn.2d at 181 (1997); State v. Saunders, 120 Wn. App. 800, 824, 86 P.3d 232 (2004); Haddock, 141 Wn.2d at 110; State v. Tili, 139 Wn.2d 107, 122-23, 985 P.2d 365 (1999); State vs. Aldana Graciano, 176 Wn.2d 531, 540 (2012). Abuse occurs if the trial court “arbitrarily counted the convictions separately.” Haddock, 141 Wn.2d at 110. Thus, “when the record supports only one conclusion on whether crimes constitute the ‘same criminal conduct,’ a sentencing court abuses its discretion in arriving at a

contrary result.” Aldana Graciano, 176 Wn.2d at 537-538, *citing*, State v. Rodriguez, 61 Wn.App. 812, 816, 812 P.2d 868 (1991). “But where the record adequately supports either conclusion, the matter lies in the court’s discretion.” Aldana Graciano, 176 Wn.2d at 538.

The burden is on the defendant to establish that the crimes constitute the same criminal conduct. Id. at 539. Because a finding that two offenses constitute the same criminal conduct favors the defendant, “it is the defendant who must establish the crimes constitute the same criminal conduct.” Id.

Here, the trial court specifically noted,

“the court’s view of the evidence and the court’s view of the findings of the jury in this particular case would support the State’s argument in this court’s view that these crimes should be treated as separate courses of conduct. While the time element that [the defense attorney] argues is certainly a very powerful argument, it does not change what occurred here in the court’s mind and what the jury found by their verdicts, that there was a completed crime of burglary that had ended and that Mr. Sharlow then made a separate decision to commit the attempted burglary in the first degree when he charged Ms. Atwood and slammed into her door on three occasions trying to force entry.”

RP 518. The burglary in the second degree ended when Sharlow rolled off of the roof. The record supports the trial court’s

conclusion that Sharlow then formulated a separate criminal intent prior to committing the attempted burglary in the first degree offense.

Sharlow's case is analogous to State v. Grantham, 84 Wn. App. 854, 932 P.2d 657 (1997), when looking at the criminal intent issue. In Grantham, the defendant was convicted of two counts of second degree rape against the same victim. The defendant took his victim to a nearby apartment after the two met at a party. Mr. Grantham forced the victim to remove her clothes and slammed her head into a wall as she attempted to resist. Grantham then anally raped his victim. When he finally stopped and withdrew, the victim remained in a crouched position in the corner of the room. The defendant began kicking her and telling her to turn around. She did not respond and he started kicking her again until he finally grabbed her face and turned it towards him. He threatened her not to tell anyone. The victim asked him to stop his conduct and take her home. At this point, Grantham demanded oral sex. The victim resisted but was forced to comply with his request. Id. at 855-856. The trial court found the two offenses did not constitute the same criminal conduct. Id. at 857.

In reviewing the same criminal conduct determination, the Grantham court upheld the trial court's decision. In reaching this decision, it adopted the State's position that the two intents differed because Grantham's intent to commit the first rape was complete when he stopped and withdrew. He formed a second, new objective intent, which was completed with the accomplishment of the second rape. Id. at 859. The court reasoned " . . . upon completing the act of forced anal intercourse, [he] had time and opportunity to pause, reflect and either cease his criminal activity or proceed to commit further criminal acts. He chose the latter, forming a new intent to commit a second act. The crimes were sequential, not simultaneous or continuous." Id. at 859.

Like Grantham, Sharlow had time and opportunity to pause, reflect, and proceed to further criminal activity. Each burglary was separate and distinct in the manner of commission. The first burglary was based on the entry into the fenced area and climbing on the roof. The second burglary conviction was based on his attempt to attack the victim and enter through her front door. The commission of the first burglary offense was completed when he jumped down from the roof when the police officer arrived. He then

began a new offense against Atwood when she came out of the residence to talk to the officer.

In State v. Channon, 105 Wn. App. 869, 20 P.3d 476 (2001), the court dealt with the issues of successive assaults and determining whether they constituted “same criminal conduct.” Channon was charged with three counts of assault in the first degree for shooting at a police officer. The officer attempted to stop Channon’s vehicle after seeing some suspicious activity. Channon opened the door of his vehicle and fired three gunshots. Channon’s vehicle then sped off and the officer followed. Channon again stopped his vehicle a couple blocks away and began firing at the officer. He then sped off a second time and went a couple more blocks. This time, Channon leaned out his vehicle and shot a third time at the officer. Id. at 871-872.

The Channon Court had to consider whether the three counts of assault in the first degree constituted the same criminal conduct. The court ruled the assaults occurred at three different places and there were definite time breaks between the successive assaults. Both of these factors led the court to conclude the successive assaults were not the same criminal conduct. “There was a distance of eight blocks between the first and second

shootings episodes, and a distance of approximately one mile between the second and third shooting episodes. The record also establishes definite time breaks between the successive assaults . . .” Id. at 877.

The Channon court seemed to recognize that short geographical distances and periods of time could give rise to a finding of separate criminal conduct. The break in time it would have taken to drive eight blocks and approximately one mile would only be seconds or minutes at the most. The Grantham court also addressed the issue of the two rapes being committed at the same time. It found the two acts of intercourse were separate in time even though they occurred one right after the other. Grantham at 860.

Here there was a short, but distinct time break between Sharlow’s two burglary offenses. One offense involved being in the yard and on the roof, the other involved attempting to enter the residence. Even if the record supports both a conclusion that the offenses did constitute the same criminal conduct and a conclusion that the offenses did not constitute same criminal conduct, it is clear that the trial court acted within its discretion in finding that the offenses did not constitute the same criminal conduct.

3. Sharlow's defense counsel was not ineffective by failing to offer an instruction for first degree trespass because he clearly made a tactical decision to argue that the conduct Sharlow committed was included in the criminal trespass charged in count seven.

Claims of ineffective assistance of counsel are reviewed de novo. State v. White, 80 Wn. App. 406, 410, 907 P.2d 310 (1995). To prevail on a claim of ineffective assistance of counsel, an appellant must show that (1) counsel's performance was deficient; and (2) the deficient performance prejudiced him. State v. Thomas, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987). Deficient performance occurs when counsel's performance falls below an objective standard of reasonableness. State v. Stenson, 132 Wn.2d 668, 705, 940 P.2d 1239 (1997), *cert. denied*, 523 U.S. 1008 (1998). An appellant cannot rely on matters of legitimate trial strategy or tactics to establish deficient performance. State v. Hendrickson, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996). Prejudice occurs when, but for the deficient performance, the outcome would have been different. In re Pers. Restraint of Pirtle, 136 Wn.2d 467, 487, 965 P.2d 593 (1996). There is great judicial deference to counsel's performance and the analysis begins with a

strong presumption that counsel was effective. Strickland v. Washington, 466 U.S. 668, 689, 104 S.Ct. 2052, 80 L. Ed. 2d 674 (1984); State v. McFarland, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). A reviewing court need not address both prongs of the test if the defendant makes an insufficient showing on one prong. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 104 S. Ct. at 1069-70.

The decision to exclude lesser-included offenses is a decision that should be made after consultation with the defendant, but in the end it is a decision to be made by counsel. State v. Grier, 171 Wn.2d 17, 31-32, 246 P.3d 1260 (2011). Where trial counsel's decision can be described as legitimate trial tactics or strategy, and it was reasonable, it cannot be deficient performance. Id. At 33-34. There, the court held that the defense's "all or nothing" tactic was legitimate. Id. at 20. Sharlow relies on the test utilized by Division I of this Court in State v. Pittman, 134 Wn.App. 376, 166 P.3d 720 (2006). The test in Pittman was first announced in State v. Ward, 125 Wn. App. 243, 104 P.3d 670 (2005), although he does not provide a citation. The court in Grier, however, disapproved the three-pronged test set

forth in Ward, Id. at 38, finding that it was inconsistent with the standard of Strickland.

The Supreme Court followed Grier when it decided State v. Breitung, 173 Wn.2d 393, 267 P.3d 1012 (2011). In that case, the Court found that seeking a lesser-included instruction would have weakened the defendant's claim of innocence and because the only evidence against the defendant was circumstantial and testimonial that this was a reasonable strategy. Id. at 398-400. "Where a lesser included offense instruction would weaken the defendant's claim of innocence, the failure to request a lesser included offense instruction is a reasonable strategy." State v. Hassan, 151 Wn.App. 209, 220; 211 P.3d 441 (2009).

Here, the facts are similar to Grier, where the counsel pursued a legitimate strategy. In Grier, the defense argued that Grier lacked the requisite intent necessary to commit the crime for which she was charged. Grier 171 Wn.2d at 28. Here, the defense argued similarly, that Sharlow lacked the necessary intent to commit the crime with which he was charged. RP 476-478. Like, Grier, this was a legitimate trial tactic and should not be found deficient if it is reasonable. In contrast to Grier, however the defense here did not pursue a complete "all or nothing" strategy,

because they did not contest the charge of criminal trespass. RP 472. The defense sought to prove that Sharlow did not commit the crime of burglary because he instead committed criminal trespass. RP 476-478. There was no need to request a lesser-included charge instruction because Sharlow was already charged with the lesser offense of criminal trespass. CP 12-13.

During the trial Court's discussion with the attorneys regarding jury instructions, the defense attorney stated:

“from the facts that are here I think that there's multiple different possibilities for a jury to find criminal trespass in the second degree, even more than just the two depending on how exactly a jury can think about this.”

RP 400-401.

The deputy prosecutor described the facts alleged in count seven, stating, “the second, count seven, refers to when he comes back onto the property and any time thereafter.” RP 404. He went on to state, “the second act being when he came back to the property after he had walked down the street, and the time thereafter all is encompassed in that count.” RP 404.

Sharlow's attorney specifically discussed requesting a lesser included instruction with the court, stating,

“So Your Honor, the concern that I have is that I’m entitled to argue some lesser instructions, and I haven’t done that in this case just because of the way it has been charged.”

RP 405. Sharlow’s attorney later noted, “I’m entitled to a lesser included instruction, but they’ve already charged it.” RP 406.

Defense counsel further noted:

“The main problem is I wasn’t sure what the court was going to do regarding my – because the court dismissed the – if the court was going to dismiss the burglary in the second degree charge, I didn’t need instructions for that and I didn’t need the lesser includes, and if the state is electing to have the burglary charged be the side yard plus being on the roof, I don’t know that I’m entitled to a lesser included instruction for something the state is already charging. Does that make sense?”

RP 408. The prosecutor responded with,

“Just in response to counsel’s argument, and I don’t know if I can say this any clearer, that the second act of criminal trespass occurs the moment he enters onto the property. And it’s continuous. There can’t be separate acts.”

RP 409. The prosecutor later continued,

“I understand the lesser included argument, but it’s all included in count seven of criminal trespass because you can’t just - - if you’re there illegally, you didn’t just jump over everything and land on the roof. He continued his trespass. It’s all one act of trespass, and that’s what I thought I said is that from that point on, from the point he reenters the property in the back, that’s trespass all the way to the conclusion, and that’s the State’s argument, and I think that

allows the defense their position that well, he didn't really commit a burglary in the second degree. He didn't really commit a burglary in the first degree. All he did was this criminal trespass."

RP 409-410.

After the State clarified its theory of the case his attorney, however, decided against it, stating.

"If – so if the State is going to make that clear election to the jury and be as clear and articulate as what he said here and now I don't think I am entitled to a lesser instruction because basically he has an umbrella – I'm fine with that if that is going to occur. It's just that - I'll be honest. And it hasn't occurred from my point of view. And so if the court – and I don't think a *Petrich* instruction is required if the State makes that articulate of a point of view about the position on the criminal trespass. And so my argument is kind of moot at those points and I don't really need any and I'm probably not entitled to any lesser instructions because of that."

RP 411-412.

Sharlow's defense counsel made a clear strategic and tactical choice to not request lesser included offense instructions for the burglaries because the conduct that would constitute lesser included offenses of criminal trespass was already charged in count seven. The defense claim was that Sharlow only committed criminal trespass, not burglary in the second degree or attempted burglary in the first degree. If they had requested lesser-included

instructions the jury could have taken that as an admission that something in addition to the trespass in count seven had occurred, thus undermining the defense's claims and potentially subjecting Sharlow to additional convictions for criminal trespass if the jury believed the defense argument that Sharlow did not have intent to commit a crime against a person or property.

The strategy the defense counsel pursued was reasonable. It was possible that the jury would have found that Sharlow lacked the requisite intent for both burglary counts and instead would have just found him guilty of only the criminal trespass charged in count seven and the other uncontested charges.

During his closing argument, Sharlow's counsel specifically noted that the defense was not contesting the second criminal trespass in count seven. RP 468. The defense then focused its closing arguments on Sharlow's intent. RP 469. Defense counsel was not ineffective for failing to request further instructions for lesser included offenses.

Further, Sharlow cannot show prejudice from his counsel's actions because the jury had the opportunity to convict him of only criminal trespass in the second degree, and did not do so. Prejudice occurs when, but for the deficient performance, the

outcome would have been different. Pirtle, 136 Wn.2d at 487. Because the jury could have reached the outcome that would have been desired by a lesser included instruction, and chose not to do so, Sharlow cannot demonstrate that the outcome of the trial would be different but for the tactical decisions of his attorney.

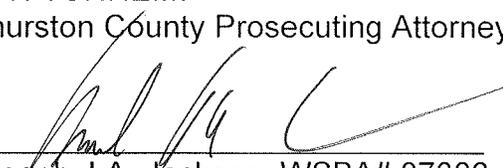
D. CONCLUSION.

The State presented sufficient evidence, when viewed in a light most favorable to the State and considering all rational inferences therefrom, for a rational juror to conclude the Sharlow committed both attempted burglary in the first degree and burglary in the second degree. The trial court acted within its discretion in finding that the completed burglary in the second degree and the attempted burglary had separate criminal intents and therefore did not count as same criminal conduct. Sharlow's counsel tactically chose not to request lesser included instructions for the burglary charges because the State had already charged criminal trespass in the second degree in count seven and the jury could have concluded that Sharlow committed only that offense instead of the burglaries if the jury had believed the defense argument that

Sharlow lacked criminal intent. The State respectfully requests that this Court affirm Sharlow's convictions.

Respectfully submitted this 27 day of June, 2018.

JON TUNHEIM
Thurston County Prosecuting Attorney



Joseph J.A. Jackson, WSBA# 37306
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that I served a copy of the Brief of Respondent on the date below as follows:

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I certify under penalty of perjury under laws of the State of Washington that the foregoing is true and correct.

Dated this 27th day of June, 2018, at Olympia, Washington.


CYNTHIA WRIGHT, PARALEGAL

THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE

June 27, 2018 - 3:41 PM

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