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Court of Appeals Division I

State of Washington

Opinion Information Sheet

Docket Number: 48013-8-I

Title of Case: State of Washington, Respondent

v.

Jeffrey S. Brooks, Appellant

File Date: 09/16/2002

SOURCE OF APPEAL

Appeal from Superior Court of King County

Docket No: 001048811

Judgment or order under review

Date filed: 02/07/2001

Judge signing: Hon. Deborah D. Fleck

JUDGES

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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
) DIVISION ONE
 Respondent,)
) NO. 48013-8-I
 vs.)
) PUBLISHED OPINION
 JEFFREY D. BROOKS,)
) FILED:
 Appellant.)
)

BAKER, J. - Jeffrey Brooks appeals his convictions on two counts of first degree burglary. Because his assaults on two individuals during the same

incident did not constitute two distinct acts of burglary, we reverse one of his convictions.

I

Jeffrey Brooks entered onto the patio of Christina Beckler's apartment, and broke through the sliding glass door after she refused to let him in. He assaulted Beckler's guest, Christopher Meeks, pushing him onto the patio. He then stepped back inside the apartment, pushed Beckler to the floor, and held and shook her. Brooks was charged and convicted of two counts of first degree burglary. He was not charged with first degree burglary and second degree assault.¹ He appeals.

II

Brooks argues that his two convictions of first degree burglary arising out of one incident violates his constitutional guarantee against double jeopardy. The Fifth Amendment of the United States Constitution and article I, section 9 of the Washington Constitution prohibit multiple punishments for the same offense.² When a defendant is convicted more than once for violation of a single criminal statute, we review the statute in question to determine the criminal conduct or "unit of prosecution" the Legislature intended to be a punishable act.³ If a defendant has committed only one "unit of prosecution," he may only be convicted once.⁴ Washington courts have not yet interpreted the burglary statute to determine the unit of prosecution in first degree burglary. Interpretation of a statute is a question of law that we review de novo.⁵ Our first task

is to determine if the statute is ambiguous. It is ambiguous if it is susceptible to two or more reasonable interpretations.⁶ If a statute is not ambiguous, we derive its meaning from the wording of the statute itself.⁷ Statutory construction is not necessary. ⁸ In this case, the statute is not ambiguous.

A person is guilty of first degree burglary if:

{W}ith 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.^{9}

Thus, for each count of burglary, the defendant must have both:

- 1) Unlawfully, and with intent to commit a crime against a person or property,
 - a) entered a building; or
 - b) remained in a building

and

- 2) During the entry, exit, or while in the building,
 - a) Been armed with a deadly weapon; or
 - b) Assaulted any person; or

- c) Accompanied a participant armed with a deadly weapon; or
- d) Accompanied a participant who assaulted any person.

In this case, the State does not assert that Brooks committed two distinct acts of entering or remaining in the apartment.¹⁰ Instead, it analogizes burglary to the crime of robbery, making the number of victims the dispositive issue. According to this view, if one breaks into a building and separately assaults 10 persons inside, 10 counts of first degree burglary have been committed. But the elements of robbery differ from burglary. In *State v. Rupe*,¹¹ the Washington Supreme Court held that the crime of robbery consists of a) the taking of personal property and b) the use or threat to use force on an individual.¹² Thus, in *Rupe*, the defendant twice satisfied both elements of the crime when he took money from each of two bank tellers during a bank robbery.¹³ In this case, Brooks did assault two victims. But it is undisputed that he only committed one act of entering the building. His acts support one conviction of first degree burglary.

Brooks raises several issues in his pro se supplemental brief involving allegations of ineffective assistance of counsel, prosecutorial misconduct, and prejudicial evidentiary rulings. Because he cites neither to authority nor to the record, and provides no analysis, we decline to consider them.¹⁴

REVERSED in part/AFFIRMED in part.

WE CONCUR:

1 Cf., *State v. Davison*, 56 Wn. App. 554, 555, 784 P.2d 1268 (1990).

2 *In re Personal Restraint Petition of Sarausad*, 109 Wn. App. 824, 852, 39 P.3d 308 (2001) (six shots fired into crowd constituted separate acts for which defendant could be charged and convicted).

3 *State v. Adel*, 136 Wn.2d 629, 634, 965 P.2d 1072 (1998); *In re Personal Restraint of Davis*, 142 Wn.2d 165, 171, 12 P.3d 603 (2000).

4 *Adel*, 136 Wn.2d at 634.

5 *State v. Bright*, 129 Wn.2d 257, 265, 916 P.2d 922 (1996).

6 *State v. Tili*, 139 Wn.2d 107, 115, 985 P.2d 365 (1999).

7 *Tili*, 139 Wn.2d at 115.

8 *Tili*, 139 Wn.2d at 115.

9 RCW 9A.52.020(1).

10 The parties agree that Brooks continued to be in the bounded area of the residence when he fell onto the patio before returning inside the apartment.

11 101 Wn.2d 664, 683 P.2d 571 (1984).

12 *Rupe*, 101 Wn.2d at 693. See also, *State v. Larkin*, 70 Wn. App. 349, 351, 357, 853 P.2d 451 (1993) (convictions on two counts of robbery affirmed where the defendant forced his way into a residence and took property belonging to two separate individuals).

13 *Rupe*, 101 Wn.2d at 693.

14 RAP 10.3, 10.4; *State v. Berrysmith*, 87 Wn.App. 268, 279, 944 P.2d 397 (1997), review denied, 134 Wn.2d 1008 (1998) (appellate court need not

reach pro se argument that is unsupported by authority); State v.

Marintorres, 93 Wn. App. 442, 452, 969 P.2d 501 (1999) (conclusory pro se supplemental brief that identified no specific legal issues not considered).

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