

**FILED: November 14, 2013**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,  
Plaintiff-Respondent,

v.

RONALD FRANCIS PITTS,  
Defendant-Appellant.

Josephine County Circuit Court  
11CR0129

A148787

Thomas M. Hull, Judge.

Argued and submitted on June 19, 2013.

Marc D. Brown, Deputy Public Defender, argued the cause for appellant. With him on the brief was Peter Gartlan, Chief Defender, Office of Public Defense Services.

Andrew M. Lavin, Assistant Attorney General, argued the cause for respondent. With him on the brief were Ellen F. Rosenblum, Attorney General, and Anna M. Joyce, Solicitor General.

Before Schuman, Presiding Judge, and Wollheim, Judge, and Duncan, Judge.

SCHUMAN, P. J.

Affirmed.

1 SCHUMAN, P. J.

2 Defendant was charged with, among other crimes, first-degree burglary,  
3 ORS 164.225,<sup>1</sup> on the ground that he entered a dwelling with the intent to commit the  
4 crime of interfering with a peace officer therein, ORS 162.247,<sup>2</sup> by refusing to obey the  
5 officer's lawful order to "stop." Defendant moved for a judgment of acquittal on the  
6 theory that his refusal to obey the order was completed when he first disobeyed the  
7 officer's command to stop; therefore, defendant argued, he could not have intended to  
8 commit that already-completed crime within the dwelling when, thereafter, he  
9 concededly entered it. The court denied the motion, and defendant was convicted.<sup>3</sup> He  
10 appeals, and we affirm.

---

<sup>1</sup> ORS 164.225, in conjunction with ORS 164.215, provides, in part:

"(1) A person commits the crime of burglary in the first degree if the person [enters or remains unlawfully in a building with intent to commit a crime therein] and the building is a dwelling[.]"

<sup>2</sup> ORS 162.247 provides, as relevant:

"(1) A person commits the crime of interfering with a peace officer or parole and probation officer if the person, knowing that another person is a peace officer or a parole and probation officer as defined in ORS 181.610:

"\* \* \* \* \*

"(b) Refuses to obey a lawful order by the peace officer or parole and probation officer."

<sup>3</sup> Defendant was also convicted of two additional counts of burglary in the first degree, two counts of theft in the second degree, one count of theft in the first degree, one count of theft in the third degree, one count of interfering with a police officer, one count of unlawful entry into a motor vehicle, and one count of criminal mischief in the second degree. Those convictions are not at issue in this appeal.

1           In reviewing the denial of a motion for a judgment of acquittal, we view the  
2 evidence and all reasonable inferences that may be drawn from it in the light most  
3 favorable to the state to determine whether a rational trier of fact could have found that  
4 the state proved each element of the offense beyond a reasonable doubt. *State v. Hall*,  
5 327 Or 568, 570, 966 P2d 208 (1998). Consistent with that standard, the relevant facts  
6 are as follows. Grants Pass Police Officer Daniel and another officer arrived at an  
7 apartment complex to investigate several thefts that had occurred the night before. Some  
8 of the tenants identified defendant as a suspect, and the officers decided to speak with  
9 him. While the other officer approached the front of the apartment that defendant was in,  
10 Daniel went to the back, where he saw defendant standing at the base of a six-foot chain-  
11 link fence approximately 10 to 15 yards away. Defendant made eye contact with Daniel  
12 and then began climbing over the fence. Daniel yelled for defendant to "stop"; defendant,  
13 however, jumped down on the other side of the fence, paused for a couple of seconds,  
14 and then began running across the backyard of the neighboring residence. Daniel again  
15 yelled for defendant to stop and identified himself as a police officer, but defendant  
16 continued to flee.

17           Moments later, defendant entered the neighboring residence through the  
18 back door and went into the attached garage. One of the residents saw defendant enter  
19 and alerted her fiancé, who went into the garage to investigate. He saw defendant hiding  
20 there, yelled at him, and asked him what he was doing. Defendant said that he had just  
21 been in a fight and that the police were involved. He also said that he did not want to go

1 to jail and asked the resident for help. The resident declined and told defendant to leave.  
2 Defendant left the garage, and within one minute he was in police custody. While in  
3 custody, he told police that he had fled because there were warrants for his arrest. Daniel  
4 estimated that less than two minutes had elapsed between the time when he ordered  
5 defendant to stop and when defendant was taken into custody. Defendant was arrested  
6 and charged with 10 burglary- or theft-related crimes, including first-degree burglary for  
7 the unlawful entry described above.

8           At trial, as described above, defendant moved for a judgment of acquittal  
9 on the charge of first-degree burglary for entering the residence with the intent to  
10 interfere with a police officer. He argued that the state had not presented sufficient  
11 evidence of his intent to commit a crime within the residence. According to defendant,  
12 because the crime of interfering with a peace officer by refusing to obey a lawful order  
13 was complete at the moment he refused to obey Daniel's order at the chain-link fence, and  
14 no further orders were given, defendant could not have entered the house with the intent  
15 to commit that already-completed crime. The state responded that it had provided  
16 sufficient evidence that defendant entered the dwelling with the intent to avoid capture,  
17 that is, to refuse to obey the order from Daniel. The trial court denied the motion, finding  
18 that there was a "continuation of his attempt to get away." Defendant was subsequently  
19 convicted.

20           On appeal, defendant assigns error to the trial court's denial of his motion  
21 for a judgment of acquittal. He reasons that the legislature could not have intended

1 interfering with a peace officer by refusing to obey a lawful order to be a continuous,  
2 ongoing crime. Such an interpretation, defendant reasons, would compel the conclusion  
3 that a defendant who disobeys an order and flees from the police may commit the offense  
4 for months or years thereafter until his capture, with the result that every trespass during  
5 that period would automatically become a burglary.

6           In response, the state does not focus its argument on the question of  
7 whether the crime of refusing to obey the lawful order was complete once defendant first  
8 disobeyed it. Rather, the state argues that defendant's subsequent actions were additional  
9 violations of the same, single lawful order to stop. Under the state's theory, defendant  
10 could be charged with a separate count of interfering with a peace officer for each of his  
11 actions motivated by an intent to disobey that order; at oral argument, the state agreed  
12 that, if the state so desired, it could charge defendant for every step he took after hearing  
13 the order. The state provides two arguments for why this theory of criminal liability  
14 would not produce absurd results: First, a defendant's intent to disobey a lawful order  
15 would dissipate over time and become more difficult to prove; and, second, the multiple  
16 counts of the crime would be merged into a single conviction at trial. Applying that  
17 theory to this case, the state maintains that a jury could find that defendant committed the  
18 crime multiple times, including when he entered the dwelling, if the jury was persuaded  
19 that, at the time of the entrance, defendant intended to continue disobeying. Therefore,  
20 this subsequent and additional refusal to obey the lawful order could properly act as the  
21 underlying crime required for first-degree burglary. Although we agree that the state has

1 the better argument, our reasoning is somewhat different.

2           The requirement that a defendant intends to commit a crime within the  
3 unlawfully-entered building is an essential feature of burglary. "Since the time of  
4 Blackstone, the defendant's intent to commit a crime in the building has been the  
5 characteristic distinguishing burglary from mere trespass." *State v. Chatelain*, 347 Or  
6 278, 286, 220 P3d 41 (2009) (citing 4 William Blackstone, *Commentaries on the Laws of*  
7 *England* 227 (1769) ("[I]t is clear, that [the] breaking and entry must be with a felonious  
8 intent, otherwise it is only a trespass.")). Furthermore, the defendant must possess the  
9 intent to commit a crime *at the time* of the unlawful entry. *State v. Chatelain*, 220 Or  
10 App 487, 492, 188 P3d 325 (2008), *aff'd*, 347 Or 278, 220 P3d 41 (2009). This  
11 requirement is consistent with the underlying legislative purpose of burglary, which is to  
12 punish trespass for the purpose of committing a crime. *State v. J.N.S.*, 258 Or App 310,  
13 319, 308 P3d 1112 (2013).

14           As it is used in the burglary statute, the phrase "with intent" means "that a  
15 person *acts with a conscious objective*" to engage in certain conduct. ORS 161.085(7)  
16 (emphasis added). Thus, to determine whether defendant's actions constitute burglary,  
17 the determinative question is whether defendant entered the building with the conscious  
18 objective to disobey a lawful order. Because burglary turns on the person's intent upon  
19 entry, it is not necessary that the person actually *accomplish* the crime within the  
20 dwelling. *See State v. Kelly*, 5 Or App 103, 107-08, 482 P2d 748 (1971) (circumstantial  
21 evidence was sufficient to prove an intent to steal, even though nothing was actually

1 taken). Indeed, it is not even necessary for the person to know that the opportunity to  
2 accomplish the crime will arise. In *State v. Batson*, 35 Or App 175, 178, 580 P2d 1066  
3 (1978), for example, we held that, where the defendant removed a screen from a window  
4 and fled when police arrived, a jury could find that the defendant attempted to enter the  
5 dwelling with the intent to commit a crime inside. Intent is necessarily prospective; a  
6 person cannot at one moment in time intend to commit an action that occurred at an  
7 earlier moment. Thus, a burglary is complete the moment the person enters the building  
8 with intent to commit a crime, necessarily not yet committed, therein--notwithstanding  
9 what occurs afterwards.

10           With that background, defendant's argument that the earlier completion of  
11 the crime negates any evidence of his intent to commit a crime upon entry is not  
12 persuasive; a jury could find that defendant committed burglary based on a present intent  
13 (as of the time of entry) to continue refusing to obey the officer's lawful order. Defendant  
14 contends that his case is comparable to *State v. Lonergan*, 344 Or 15, 176 P3d 374  
15 (2008), where the Supreme Court held that the crime of escape does not continue  
16 throughout the duration of a person's attempt to flee the police, but rather is complete  
17 once the individual leaves police custody. Relying on that decision, defendant argues  
18 that, had he been charged with escape instead of interfering with a peace officer, it would  
19 be clear that the crime had been completed. As we have noted above, that analogy fails  
20 to address the crucial question of burglary: Did the defendant enter the dwelling with  
21 intent to commit the alleged crime therein? That inquiry cannot depend on whether the

1 crime was completed earlier.

2           At the same time, we are not persuaded by the state's argument that  
3 defendant repeatedly disobeyed the officer's order with every step defendant took. As  
4 defendant maintains, that argument proves too much by potentially converting every  
5 future unlawful entry of a building into a burglary. To limit the reach of the state's  
6 argument, we conclude that the intent to refuse to obey the officer's order can serve as the  
7 basis for a burglary conviction only if the original order, the unlawful entry, and the  
8 intent to refuse to obey that order, all take place as part of a single continuous criminal  
9 episode. That concept--a single criminal episode--is far from novel in Oregon law,  
10 appearing in several statutes.<sup>4</sup> While distinguishing a single continuous criminal episode  
11 from a sequence of such episodes is not always self-evident, it is a serviceable construct  
12 well within the ability of jurors to apply.

13           And even if it could present some difficulty in other cases, in this case it  
14 does not. Here, the state adduced evidence, both direct and circumstantial, of defendant's  
15 intent when he entered the dwelling. Defendant had disobeyed two lawful orders by

---

<sup>4</sup>       *E.g.*, ORS 131.505(4) (for purposes of double jeopardy, a single criminal episode "means continuous and uninterrupted conduct that establishes at least one offense and is so joined in time, place and circumstances that such conduct is directed to the accomplishment of a single criminal objective"); ORS 137.717(7)(a) ("[W]hen sentences are imposed for two or more convictions arising out of the same conduct or criminal episode, none of the convictions is considered to have occurred prior to any of the other convictions arising out of the same conduct or criminal episode."); ORS 161.067(1) ("When the same conduct or criminal episode violates two or more statutory provisions and each provision requires proof of an element that the others do not, there are as many separately punishable offenses as there are separate statutory violations.").



1 Daniel moments before he entered the dwelling. The dwelling that defendant entered was  
2 very close to the chain-link fence where defendant had disobeyed those orders. While in  
3 the dwelling, defendant stated that he was hiding from the police and wanted the  
4 resident's help to continue hiding from the police. Finally, upon apprehension, defendant  
5 testified that he was running from the police because there were warrants out for his  
6 arrest. The entire episode took around two minutes. Taken together, the evidence is such  
7 that a rational trier of fact could conclude that defendant entered the dwelling with the  
8 intent to continue to disobey a lawful order and that the entrance was part of a single  
9 continuous episode of flight. The trial court did not err in denying defendant's motion for  
10 judgment of acquittal on first-degree burglary.<sup>5</sup>

11 Affirmed.

---

<sup>5</sup> We emphasize the specificity of our holding in this case; it applies only to a charge of first-degree burglary where the intended crime upon unlawful entry into a building is interfering with a police officer by refusing to obey a lawful order to stop.