

**IN THE COURT OF APPEALS OF IOWA**

No. 6-733 / 05-1084  
Filed October 11, 2006

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**TYRONE BRUCE REAMES,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Don C. Nickerson,  
Judge.

Tyrone Bruce Reames appeals his convictions for robbery in the first  
degree, burglary in the first degree, and theft in the first degree. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Dennis Hendrickson,  
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney  
General, John P. Sarcone, County Attorney, and John Judisch, Assistant County  
Attorney, for appellee.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

**MILLER, J.**

Tyrone Bruce Reames appeals his convictions, following jury trial, for robbery in the first degree, burglary in the first degree, and theft in the first degree. He contends the trial court erred in failing to merge his conviction for first-degree robbery into his conviction for first-degree burglary. We affirm.

On November 5, 2004, eighty-six-year-old Alice Roberts was discovered by her cleaning lady on the floor of her apartment, unable to get up and badly bruised. Roberts testified at trial that Reames had appeared outside her apartment on November 5 and she allowed him ground level entrance into her building because she recognized him as having lived with her upstairs neighbor. Roberts's stated that Reames went upstairs but returned shortly to her apartment, pushed his way inside, and closed the door. He was not invited. Reames asked Roberts where her purse was. She refused to tell him because she had just been to the bank and had \$120 in cash in her purse. He grabbed her, twisting her arm, and asked about her purse again. In twisting Roberts's arm Reames broke it in three places. The pain from the fractures caused Roberts to pass out. While Roberts was passed out Reames stole Roberts's purse, a jewelry box with jewelry in it, and three rings from Roberts's fingers.

The State charged Reames, by trial information, with robbery in the first degree, in violation of Iowa Code sections 711.1 and 711.2 (2003), a class "B" felony, burglary in the first degree, in violation of sections 713.1 and 713.2, another class "B" felony, and theft in the first degree, in violation of sections 714.1(1) and 714.2(1). The case proceeded to jury trial. The parties stipulated

at the start of trial that Roberts sustained a serious injury during the incident. The jury found Reames guilty as charged. The court sentenced Reames to a term of imprisonment not to exceed twenty-five years on the burglary conviction, twenty-five years on the robbery conviction, and ten years on the theft conviction. It ordered the sentences to run concurrently.

Reames appeals, claiming the robbery charge is a lesser included offense of the burglary charge and the trial court therefore erred in failing to merge the first-degree robbery conviction into the first-degree burglary conviction as required by Iowa Code section 701.9. We review such merger claims for correction of legal error. *State v. Rodriguez*, 636 N.W.2d 234, 246 (Iowa 2001).

Iowa Code section 701.9 provides

No person shall be convicted of a public offense which is necessarily included in another public offense of which the person is convicted. If the jury returns a verdict of guilty of more than one offense and such verdict conflicts with this section, the court shall enter judgment of guilty of the greater of the offenses only.

Reames argues that first-degree robbery is “necessarily included” in first-degree burglary and thus the court was required to merge the robbery and burglary convictions under this statute. Iowa courts apply a legal elements test when determining whether one crime is a lesser included offense of another. *State v. Mulvany*, 600 N.W.2d 291, 293 (Iowa 1999).

Under this test, we place the applicable statutes

side by side and examine their elements in the abstract. The comparison must produce a nearly perfect match. If the lesser offense contains an element that is not part of the greater offense, the lesser cannot be included in the greater.

*Id.* (quoting *State v. Jeffries*, 430 N.W.2d 728, 730 (Iowa 1988)).

Robbery in the first degree as submitted to the jury in this case requires the infliction or attempted infliction of “serious injury.” See Iowa Code §§ 711.1, 711.2. However, burglary in the first degree as submitted to the jury in this case requires the intentional or reckless infliction of only “bodily injury.” See Iowa Code §§ 713.1, 713.3(1)(c). Reames concedes in his brief that the trial court correctly instructed the jury on the elements of these crimes as well as the proper and distinct definitions of “serious injury” versus “bodily injury.” Because first-degree robbery contains an element, infliction of serious injury, which is distinct from the elements required for first-degree burglary, it cannot be a lesser included offense of burglary. Thus, first-degree robbery is not “necessarily included” in first-degree burglary. Stated another way, burglary in the first degree may be committed by means of reckless infliction of physical pain on the victim, without also committing robbery in the first degree, which requires the purposeful infliction or attempted infliction of the more severe physical harm defined as serious injury. Accordingly, we conclude the legal elements test does not require the merger of Reames’s robbery and burglary convictions.

The State argues in the alternative that even if the two offenses did meet the legal elements test for merger, separate punishment is permissible because the legislature intended that a defendant receive sentences for both offenses. It suggests this is evidenced by the fact both crimes are class “B” felonies and each statute is aimed at protecting the public against a different sort of illegal

conduct. Because we have determined the legal elements test for merger is not met here we need not address this alternative argument for affirmance.

We conclude the district court was correct in not merging Reames's conviction for robbery in the first degree into his conviction for burglary in the first degree.

**AFFIRMED.**