An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA04-77

NORTH CAROLINA COURT OF APPEALS

Filed: 2 November 2004

STATE OF NORTH CAROLINA

v.

BRADLEY MAURICE FAULKNER

Union County
Nos. 03 CRS 4349
03 CRS 50552

Appeal by defendant from judgment entered 20 August 2003 by Judge Kimberly Taylor in Union County Superior Court. Heard in the Court of Appeals 22 September 2004.

Attorney General Roy Cooper, by Special Deputy Attorney General W. Dale Talbert, for the State.

Office of the Public Defender, by Assistant Public Defender Julie Ramseur Lewis, for defendant-appellant.

CALABRIA, Judge.

Bradley Maurice Faulkner ("defendant") appeals from a conviction for larceny from the person and a guilty plea of attaining the status of a habitual felon. We find no error.

On 26 January 2003 at approximately one o'clock a.m., Elva Williams (the "victim") and her husband, Lewis Williams, an elderly couple, parked their car in a handicapped parking space near the entrance of a Wal-Mart store. The victim, who walks with the aid

of a cane, exited the car to move two shopping carts from the parking space so her husband could park in the space. Then the victim placed her handbag in one of the carts, specifically in the portion of the cart closest to her. The victim's husband, who also has difficulty walking, took the other cart.

Holding the handles of their respective carts for balance, the couple walked toward the entrance of the store. As they neared the entrance, defendant approached the victim from the right, grabbed her purse from the cart, and ran away quickly. The victim yelled to her husband that her purse had been taken and told him to call "911." A police officer on patrol saw defendant running from the Wal-Mart parking lot, stopped him, found he was carrying a ladies purse, and arrested him after receiving a radio call that a "purse-snatching" had just occurred at Wal-Mart.

Defendant asserts the trial court erred in denying his motion to dismiss the charge of larceny from the person. In ruling on a defendant's motion to dismiss, "the trial court must determine only whether there is substantial evidence of each essential element of the offense charged and of the defendant being the perpetrator of the offense." *State v. Crawford*, 344 N.C. 65, 73, 472 S.E.2d 920, 925 (1996). "Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *State v. Vick*, 341 N.C. 569, 583-84, 461 S.E.2d 655, 663 (1995). "In considering a motion to dismiss, the trial court must analyze the evidence in the light most favorable to the State and give the

State the benefit of every reasonable inference from the evidence." *State v. Parker*, 354 N.C. 268, 278, 553 S.E.2d 885, 894 (2001).

Under N.C. Gen. Stat. § 14-72(b)(1) (2003), larceny from the person "is a felony, without regard to the value of the property in question . . . ." However, "none of our statutes define the phrase 'from the person' as it relates to larceny[.] [Thus,] the common law definition controls." *State v. Buckom*, 328 N.C. 313, 317, 401 S.E.2d 362, 364 (1991). Under the common law,

> [p]roperty is stolen "from the person," if it was under the protection of the person at the time. Property attached to the person is under the protection of the person[.] . . . Moreover, property may be under the protection of the person although not actually "attached" to him. Thus if a man carrying a heavy suitcase sets it down for a moment to rest, and remains right there to guard it, the suitcase remains under the protection of his person. And if a jeweler removes several diamonds and places them on the counter for the inspection of a customer, under the jeweler's eye, the diamonds are under the protection of the person. . . .

State v. Barnes, 345 N.C. 146, 148, 478 S.E.2d 188, 190 (1996) (quoting Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 342-43 (3d ed. 1982)). In essence, "for larceny to be 'from the person,' the property stolen must be in the immediate presence of and under the protection or control of the victim *at the time the property is taken*." *Id.* at 149, 478 S.E.2d at 190.

Defendant argues the State failed to produce substantial evidence that he took the purse from the victim's immediate presence and protection or control, because the purse was not attached to her person and her attention was on pushing the cart.

Defendant attempts to distinguish the instant case from *Buckom*, in which the defendant stole money from a cash register drawer as the clerk made change for him, and analogize the instant case to *State v. Lee*, 88 N.C. App. 478, 363 S.E.2d 656 (1988), in which the defendant stole a purse from a shopping cart while the victim was four to five steps away looking for a product. However, the facts of the instant case are more analogous to *Buckom* than *Lee*.

In the instant case, the victim was pushing a shopping cart with both her hands on the cart handle and her purse in the portion of the cart nearest her, when defendant stole the purse. The victim was almost certainly within arm's reach of her purse, similar to a man who sets a heavy suitcase down next to him to rest. Furthermore, the victim testified she placed the purse nearest her in the cart "to keep my eye on it," similar to a jeweler when setting diamonds on a counter for a customer's inspection. These facts constitute substantial evidence showing the victim's purse was in her immediate presence and protection or control. Accordingly, the trial court did not err in denying defendant's motion to dismiss.

Defendant next asserts the trial court erred by not dismissing the habitual felon charge, because one of the predicate felonies for the habitual felon indictment was possession of cocaine. For this assertion, defendant relies on *State v. Jones*, 161 N.C. App. 60, 588 S.E.2d 5 (2003), and *State v. Sneed*, 161 N.C. App. 331, 588 S.E.2d 74 (2003), which hold that possession of cocaine is a misdemeanor. Our Supreme Court has recently reviewed *Jones* and

Sneed and held that "the offense of possession of cocaine is classified as a felony for all purposes." *State v. Jones*, 358 N.C. 473, 486, 598 S.E.2d 125, 131 (2004). In light of our Supreme Court's holding, defendant's assertion is without merit.

Defendant raises three remaining assignments of error to preserve them for further appeal. Defendant asserts: (1) the discretion granted the prosecutor, under the Habitual Felons Act, to determine the mandatory minimum sentence and the range of a defendant's possible sentence for a given offense, violates the Separation of Powers Clause of the North Carolina Constitution; (2) having both the Habitual Felons Act and the Structured Sentencing Act applied against him violates his right to be free from double jeopardy; and (3) the Habitual Felons Act violates his constitutional right to be free from cruel and unusual punishment. Defendant candidly acknowledges that the following decisions from this Court and our Supreme Court have decided these issues: (1) *State v. Wilson*, 139 N.C. App. 544, 550, 533 S.E.2d 865, 869-70 (2000) (holding the Habitual Felons Act does not violate N.C. Const. art. I, § 6); (2) *State v. Brown*, 146 N.C. App. 299, 302, 552 S.E.2d 234, 236 (2001) (holding "the Habitual Felons Act used in conjunction with structured sentencing [does] not violate . . . double jeopardy protections") ; and (3) *State v. Todd*, 313 N.C. 110, 119, 326 S.E.2d 249, 254 (1985) (stating "legislation which is designed to identify habitual criminals and which authorizes enhanced punishment has withstood eighth amendment challenges[,] . . . [and] '[o]nly in exceedingly unusual non-capital cases will the

sentences imposed be so grossly disproportionate as to violate the Eighth Amendment[] . . .'"). In light of this precedent, defendant's remaining three assignments of error are overruled.

No error.

Judges STEELMAN and GEER concur.

Report per Rule 30(e).