An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA05-1614

NORTH CAROLINA COURT OF APPEALS

Filed: 5 September 2006

IN THE MATTER OF:
L.A.L.

Durham County
No. 04 J 154

Appeal by respondent from order entered 10 August 2005 by Judge Richard G. Chaney in Durham County District Court. Heard in the Court of Appeals 21 August 2006.

Attorney General Roy Cooper, by Assistant Attorney General Lisa C. Glover, for the State.

M. Victoria Jayne for respondent-appellant.

CALABRIA, Judge.

L.A.L. ("respondent") appeals from a juvenile adjudication order finding him guilty of felonious breaking and entering and felonious larceny. We affirm.

The State presented evidence tending to show that at approximately 9:30 a.m. on 13 May 2005, William Smith ("Smith") returned to his home to investigate the activation of a burglar alarm at his home. At the time Smith returned home, officers from the Durham Police Department had already arrived at the scene, and Smith and a police officer walked through the house and found a bedroom window that had been pushed in and placed on the floor. Smith also saw a pair of tennis shoes in the backyard that did not belong to any members of his family. At that time, Smith noticed

that nothing was missing from the home. Later that afternoon, the burglar alarm at Smith's residence was again activated. Smith returned home and discovered a window in the same bedroom had been broken, and he was missing a .22 caliber pistol and an X-box unit with associated games.

While on the way to investigate the second incident, Officer Moses Irving ("Officer Irving") observed three juveniles sitting on the street near Smith's residence. After returning to the residence, Officer Irving, accompanied in separate vehicles by Smith and other officers, returned to the location where Officer Irving had seen the three juveniles. One of the three juveniles was not wearing any shoes. The officers frisked the juveniles, one of whom was later identified as respondent. The officers found an X-box unit and games in the backpack of one of the juveniles, and the juvenile who was not wearing any shoes removed a firearm from his pocket. The officers found nothing on respondent's person. Smith identified the items found on the juveniles as the .22 caliber pistol and the X-box with games taken from his residence. Also relevant, police officers found fingerprints identified as respondent's on the broken window.

All three juveniles were transported to the police department. Respondent's mother was called, but she was unable to leave the day care where she worked to come to the police station. After an officer read respondent his rights, respondent twice stated that he did not want his mother present. After waiving his rights, respondent gave statements in which he admitted breaking and

entering the residence with the other two juveniles.

In the first of two assignments of error, respondent contends the trial court erred by denying his motion to suppress his statement. Respondent argues that his statement should not have been admitted into evidence because the trial court failed to make a requisite finding of fact that the juvenile "knowingly, willingly and understandingly waived his juvenile rights" prior to admitting the statement. At trial, however, respondent did not argue the statement should have been excluded on the ground his waiver of rights was not knowing or intelligent; rather, he argued the statement should have been excluded on the ground his arrest was illegal. Because the issue raised on appeal was not presented to the trial court, it may not be considered for the first time on appeal. N.C. R. App. P. 10(b)(1) (2006); *State v. Benson*, 323 N.C. 318, 322, 372 S.E.2d 517, 519 (1988) ("Defendant may not swap horses after trial in order to obtain a thoroughbred upon appeal"). Accordingly, we do not consider this issue.

In his remaining assignment of error, respondent contends the court erred by denying his motion to dismiss for insufficient evidence. Respondent specifically argues the evidence is insufficient to prove he took anything from the residence or intended to commit a felony or larceny. We hold respondent's argument is without merit.

To withstand a motion to dismiss in a juvenile delinquency petition, the State must present substantial evidence of each of the material elements of the offense alleged. *In re Bass*, 77 N.C.

App. 110, 115, 334 S.E.2d 779, 782 (1985). In ruling upon a motion to dismiss, the court considers the evidence in the light most favorable to the State, giving it the benefit of every reasonable inference of fact that may be drawn from the evidence. *Id.*

Felonious breaking or entering consists of (1) the breaking or entering (2) of any building (3) with the intent to commit a felony or larceny therein. *State v. Williams*, 330 N.C. 579, 585, 411 S.E.2d 814, 818 (1992). A person's intent at the time he or she breaks and enters a house may be inferred from evidence of what he did after he entered the house. *State v. Gray*, 322 N.C. 457, 461, 368 S.E.2d 627, 629 (1988). Larceny is the felonious taking and carrying away of the goods or personal property of another, without that person's consent, and with the intent to permanently deprive the owner of his property. *State v. McCrary*, 263 N.C. 490, 492, 139 S.E.2d 739, 740 (1965).

The law is settled that a person is a party to an offense and is equally guilty as a principal perpetrator if he or she either: (1) actually commits the offense or does some act which forms a part thereof; (2) assists in the actual commission of the offense or of any act which forms part thereof; or (3) directly or indirectly counsels or procures any person to commit the offense or to do any act forming a part thereof. *State v. Keller*, 268 N.C. 522, 526, 151 S.E.2d 56, 58 (1966). If two or more persons join in a purpose to commit a crime, each of them, if actually or constructively present, is guilty as a principal of any crime committed by the others in pursuance of the common purpose or as a

natural or probable consequence thereof. *State v. Barnes*, 345 N.C. 184, 233, 481 S.E.2d 44, 71 (1997).

The State's evidence established that respondent's fingerprints were found on the broken window through which the juveniles made entry inside Smith's residence. Additionally, respondent confessed that he broke into and entered the residence with the two other juveniles and that after entering the residence, he assisted one of the juveniles in entering. Respondent further stated that he examined the pistol the juveniles found in the residence and decided to allow one of the other juveniles to keep it. Also after the juveniles left the Smith residence, respondent remained with the two other juveniles, who retained physical possession of the items taken from the residence. Based on the evidence, we hold that the State presented substantial evidence of each element of the respective offenses, and the trial court did not err in denying respondent's motion to dismiss.

Affirmed.

Chief Judge MARTIN and Judge JACKSON concur.

Report per Rule 30(e).