NO. COA06-469

NORTH CAROLINA COURT OF APPEALS

Filed: 20 March 2007

STATE OF NORTH CAROLINA

v. Wake County
No. 03 CRS 86465

LARRY BERNARD HARRIS

Appeal by defendant from judgments entered 24 August 2005 by Judge W. Osmond Smith in Wake County Superior Court. Heard in the Court of Appeals 26 February 2007.

Attorney General Roy Cooper, by Special Deputy Attorney General Joseph Ellis Herrin, for the State.

Allen W. Boyer for defendant-appellant.

ELMORE, Judge.

Defendant appeals from judgments entered on convictions by a jury of breaking or entering a motor vehicle and misdemeanor larceny.

The State presented evidence tending to show that on the night of 3 October 2003, two officers of the Raleigh Police Department observed a man, dressed in a t-shirt and wearing a backpack, ride a bicycle through a parking lot and look into parked vehicles. They notified a third officer, I.O. Smith, who encountered defendant, wearing a white t-shirt and black gloves, seated in the driver's seat of a Jeep vehicle in which the window glass had been

broken out. A bicycle was beside the vehicle. Officer Smith observed defendant reach into a bookbag positioned on his lap. Officer Smith directed defendant to exit the vehicle. Defendant exited the vehicle and ran, leaving behind the bookbag. Officer Smith chased and apprehended defendant. Officer Smith looked inside the bag and found music compact discs which were not store bought and some coins.

Meanwhile, other Raleigh Police Department officers knocked on the doors of nearby businesses and found the owner of the vehicle, identified as Marshall Wyatt. Mr. Wyatt is the proprietor of a business named "Old Hit Records" located adjacent to the parking lot in question. Mr. Wyatt testified that his business remasters music from the 1920's and 1930's onto compact discs. He kept some of the remastered compact discs in his 2001 Jeep Cherokee. Each had a typewritten list of songs slipped into the case. He also kept a roll of dimes and a roll of quarters in his vehicle. On the evening of 3 October 2003, he parked his vehicle in the parking lot adjacent to his business. At that time his vehicle was in good condition with no damage whatsoever. As he worked inside his business that evening, he heard a rapping sound on the door. He looked outside and saw police vehicles. He also saw that his vehicle had been damaged. He walked out to his vehicle and observed that the driver's side window had been broken out and the turn signal on the steering column had been broken off. The police held a knapsack containing compact disc cases and coins.

In his sole assignment of error brought forward in his brief,

defendant contends that the trial court erred in denying his motion to dismiss at the close of all the evidence.

A motion to dismiss requires a court to determine whether there is substantial evidence to establish each element of the offense charged and to identify the defendant as the perpetrator. *State v. Earnhardt*, 307 N.C. 62, 65-66, 296 S.E.2d 649, 651 (1982). In making this determination the court must consider the evidence in the light most favorable to the State. *State v. Brown*, 310 N.C. 563, 566, 313 S.E.2d 585, 587 (1984). Whether the evidence is direct, circumstantial or both, if there is substantial evidence to support a finding that the defendant committed the charged offense, then the case is for the jury and the motion to dismiss should be denied. *State v. Locklear*, 322 N.C. 349, 358, 368 S.E.2d 377, 382-83 (1988).

Defendant argues that the evidence is insufficient to identify him as the perpetrator because he was not in the courtroom when Officer Smith identified him as the person found seated in the Jeep.[1] We disagree. Although defendant may not have been present in the courtroom at the precise time Officer Smith made his identification, Officer Smith testified that he saw defendant in the courtroom earlier that day and that defendant is the same person he extracted from Mr. Wyatt's vehicle. We hold that this testimony is sufficient to establish defendant as the perpetrator.

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[1]Prior to the time Officer Smith testified, defendant had been ordered removed from the courtroom because of his disruptive conduct. Defendant has not brought forward any assignment of error regarding the court's order removing him from the courtroom.

Defendant also argues the evidence is insufficient to establish all of the elements of the offense of misdemeanor larceny. "The essential elements of larceny are that the defendant: (1) took the property of another; (2) carried it away; (3) without the owner's consent; and (4) with the intent to deprive the owner of his property permanently." *State v. Perry*, 305 N.C. 225, 233, 287 S.E.2d 810, 815 (1982). Defendant argues that the evidence does not establish the taking and carrying away of another's property. He submits that the evidence at best establishes an attempt to steal.

Defendant's argument lacks merit.

> While there must be a taking and carrying away of the personal property of another to complete the crime of larceny, it is not necessary that the property be completely removed from the premises of the owner. 'The least removal of an article, from the actual or constructive possession of the owner, so as to be under the control of the felon, will be a sufficient asportation.'

State v. Walker, 6 N.C. App. 740, 743, 171 S.E.2d 91, 93 (1969) (quoting *State v. Jones*, 65 N.C. 395, 397 (1871)). Here, the evidence shows that two officers saw defendant, wearing a backpack, riding a bicycle through the parking lot. Officer Smith found defendant holding a bookbag on his lap while seated in another's vehicle in which the window had been broken out. Inside the bag were compact disc cases and coins, items identified by the vehicle owner, as having been left in his vehicle while he worked. Mr. Wyatt did not give defendant permission to enter his vehicle. We hold that based upon this evidence a jury could find that defendant took and carried away the personal property of Mr. Wyatt.

No error.

Judges WYNN and GEER concur.

Report per 30(e).