

LARCENY

Defendant May Be Convicted of Felonious Possession of Stolen Goods Although Jury Found Defendant Not Guilty of Breaking or Entering and Larceny of Same Goods—Ruling of Court of Appeals Is Reversed

State v. Tanner, ___ N.C. ___, ___ S.E.2d ___ (17 June 2010), reversing, 193 N.C. App. 150 (7 October 2008).

The defendant was indicted for felonious breaking or entering, felonious larceny, and felonious possession of stolen goods. The jury convicted the defendant of felonious possession of stolen goods but acquitted him of felonious breaking or entering and felonious larceny. The court noted its ruling in *State v. Perry*, 305 N.C. 225 (1982), that a defendant may not be convicted of felonious larceny if he was acquitted of breaking or entering on which the charge of felonious larceny was based. However, while a conviction of felonious larceny based on the theory of the larceny being committed pursuant to a breaking or entering requires that the defendant also be the perpetrator of (or have aided or abetted) a breaking or entering, this is not so with felonious possession of stolen goods, which only requires proof that the defendant knew or had reasonable grounds to believe that goods were stolen pursuant to a breaking or entering. A jury's finding that a defendant did not take part in a breaking or entering but did possess stolen goods is not fatally contradictory as in *Perry*. The jury in this case could have found that the defendant knew the goods had been stolen pursuant to a breaking or entering based on the defendant's statements to an officer that the man who provided the stolen property to the defendant had made a "score" from the place that had been broken into. Thus, the court ruled that the defendant was properly convicted of felonious possession of stolen goods. In addition to reversing the court of appeals opinion in this case, the court also overruled contrary rulings in *State v. Marsh*, 187 N.C. App. 235 (2007), *State v. Goblet*, 173 N.C. App. 112 (2005), and other cases.

Defendant's Entry Into Manager's Video Store Office Not Open to Public to Steal Money in Bank Deposit Bag Was Sufficient Evidence to Support Conviction of Felonious Breaking or Entering

State v. Rawlinson, ___ N.C. App. ___, ___ S.E.2d ___ (19 May 2009).

(Author's note: There was a dissenting opinion in this case, but not on this issue.) The court ruled, relying on *In re S.D.R.*, ___ N.C. App. ___, 664 S.E.2d 414 (5 August 2008), that the defendant's entry into the manager's video store office that was not open to the public to steal money in a bank deposit bag was sufficient evidence to support a conviction of felonious breaking or entering.

(2) Fatal Variance Existed Between Felonious Larceny Indictment and Evidence Showing Ownership of Stolen Property Did Not Belong to Victim as Alleged in Indictment

State v. Gayton-Barbosa, ___ N.C. App. ___, ___ S.E.2d ___ (19 May 2009).

The defendant was convicted of two counts of felonious assault, first-degree kidnapping, felonious larceny, and other offenses. (2) The court ruled that there was a fatal variance between the felonious larceny indictment and evidence showing ownership of stolen property did not belong to the victim as alleged in the indictment. The victim alleged in the indictment neither owned nor had a special property interest in the stolen property.

(1) Indictment Charging Larceny of Church Was Fatally Defective Because It Did Not Indicate That Church Was Legal Entity Capable of Owning Property

(2) Doctrine of Possession of Recently-Stolen Property Was Properly Applied to Charge of Breaking or Entering of Church

State v. Patterson, ___ N.C. App. ___, 671 S.E.2d 357 (6 January 2009).

The defendant was convicted of felonious breaking or entering of a church, larceny of property pursuant to the breaking or entering, and felonious possession of stolen goods pursuant to the breaking or entering. The trial judge arrested judgment for the conviction of possession of stolen goods. (1) The court ruled, relying on *State v. Thornton*, 251 N.C. 658 (196), and *State v. Cathey*, 162 N.C. App. 350 (2004), that the indictment charging larceny of the church (alleged as “First Baptist Church of Robbinsville”) was fatally defective because it did not indicate that the church was a legal entity capable of owning property. The court noted that this ruling did not apply to the offense of possession of stolen goods. (2) The evidence showed that property stolen from the church—as well as other stolen property and tools often used for breaking and entering—were found in the defendant’s exclusive control twenty-one days after the church break-in. The defendant argued on appeal that twenty-one days was not “recent” for application

of the doctrine of possession of recently-stolen property, which permits an inference of guilt. The court ruled, distinguishing *State v. Hamlet*, 316 N.C. 41 (1986), that the doctrine was properly applied to the breaking and entering charge and there was sufficient evidence to support the conviction.

(2) Sufficient Evidence to Prove Larceny of Motor Vehicle When Defendant Took Victim's Vehicle to Virginia and Abandoned It There

State v. Allen, ___ N.C. App. ___, ___ S.E.2d ___ (21 October 2008).

The defendant was convicted of assault with a deadly weapon inflicting serious injury and larceny of a motor vehicle. (2) The court ruled, relying on *State v. Kemmerlin*, 356 N.C. 446 (2002), that there was sufficient evidence that the defendant committed larceny of the assault victim's motor vehicle. After assaulting the victim, the defendant drove her vehicle to Norfolk, Virginia and abandoned it there. The defendant's abandonment of the vehicle placed the vehicle beyond his power to return it to the victim and showed his indifference whether she ever recovered it.

No Reversal of Conviction When There Was a Variance Between Indictment's Allegation and Proof of County Where Offense Was Committed

State v. Spencer, 187 N.C. App. 605, 654 S.E.2d 69 (18 December 2007).

The indictment charged that the defendant committed felony larceny in Cleveland County. The evidence at trial in Cleveland County Superior Court proved that the offense was committed in Gaston County. The court ruled that the defendant was not entitled to a reversal of his conviction. First, the defendant waived any question of venue because he failed to make a pretrial motion to dismiss for improper venue; see G.S. 15A-631 and *State v. Brown*, 85 N.C. App. 583 (1987). Second, the variance in this case between the indictment and proof at trial was not fatal; see *State v. Brown*, *supra*.

(3) Sufficient Evidence of Felony Larceny By Acting in Concert With Accomplice

(4) Trial Judge Erred in Finding That Verdicts of Misdemeanor Breaking or Entering and Felony Larceny Were Inconsistent

State v. Perkins, 181 N.C. App. 209, 638 S.E.2d 591 (2 January 2007).

The defendant was seen in the morning with another person (Brooks) in a hallway of a law office and beyond the public reception area. Neither had permission to be there, and the defendant gave a false explanation for her presence. That afternoon a person matching Brooks' description was seen coming from a lawyer's office, where it was later discovered that the lawyer's credit and check cards were stolen and used by the defendant and Brooks to buy merchandise at a grocery store. The defendant admitted to an officer that she was given the cards by "Steve" (the first name of Brooks), and the stolen cards were found at the same house where the defendant and Brooks were arrested. The jury returned verdicts finding the defendant guilty of misdemeanor breaking or entering, felony larceny, and obtaining property by false pretenses. The trial judge determined that the verdicts of misdemeanor breaking or entering and felony larceny were legally inconsistent and ordered further deliberations. The jury deliberated and found the defendant guilty of felony breaking or entering and felony larceny. (3) The court ruled there was sufficient evidence of felony larceny by acting in concert with Brooks. (4) The court ruled that the trial judge erred in finding that the verdicts of misdemeanor breaking or entering and felony larceny were inconsistent. The court stated that a jury could reasonably find that the defendant had committed an unauthorized entry in the morning but the state had failed to prove the defendant's intent to commit a larceny then. The jury also could have determined that the defendant did not act in concert with Brooks' entry in the afternoon but she did act in concert concerning the larceny.

Defendant Was Properly Convicted of Two Counts of Felony Larceny

State v. West, 180 N.C. App. 664, 638 S.E.2d 508 (19 December 2006).

The defendant was convicted of second-degree murder, two counts of felony larceny, and one count of breaking and entering a vehicle. The defendant entered a truck owned by the victim's employer and stole the victim's shotgun that was locked behind the truck's seat. The defendant then stole an automobile owned by the victim. Both vehicles were parked in the same driveway and both takings occurred during the same time period. The court ruled, distinguishing *State v. Marr*, 342 N.C. 607, 467 S.E.2d 236 (1996), that the defendant was properly convicted of two counts of felony larceny. The defendant's motive for stealing the shotgun was to use it as an outlet for his anger when he

shot and killed a stranger. The defendant's motive for stealing the automobile was to use it to travel to his mother's house. These were two separate takings to support the two larceny convictions.

Larceny_indictment--corporation--entity capable of owning property

State v. Cave, 174 NCA 580 (2005)

An indictment was sufficient to charge defendant with larceny and possession of stolen items even though defendant contends the named owner-entity "N.C. FYE, Inc." does not import an entity capable of owning property, because: (1) the fact of incorporation need not be alleged where the corporate name is correctly set out in the indictment; and (2) the abbreviation "Inc." imports the entity's ability to own property. { Better: have indictment allege, after the description of the owner, the words: "a legal entity capable of owning property." }

Burglary and Unlawful Breaking or Entering; Larceny_breaking and entering_larceny--possession of stolen goods--motion to dismiss--sufficiency of evidence

State v. Goblet, 173 NCA 112 (2005)

The trial court did not err by denying defendant's motion to dismiss multiple

charges for felony breaking and entering, felony larceny, and felony possession of stolen goods at the close of the State's evidence, because: (1) although the evidence on the charges of felony breaking and entering and felony larceny was almost entirely circumstantial, this fact does not preclude it from being substantial evidence; and (2) the evidence presented by the State, including testimony from a witness who drove defendant to the pertinent houses, was sufficient to support a reasonable inference that defendant committed the offenses charged.

Possession of Stolen Property_-found not guilty of underlying breaking and entering charge_possession conviction vacated

State v. Goblet, 173 NCA 112 (2005)

Defendant's conviction on the charge of felony possession of stolen goods in case number 02 CRS 4610 is vacated because the jury found defendant not guilty of the underlying breaking and entering charge.

Possession of Stolen Property--multiple convictions erroneous--single continuous transaction

State v. Phillips, 172 NCA 143 (2005)

The trial court erred by sentencing defendant on five counts of felonious possession of stolen goods, and the case is remanded for entry of conviction on only one charge, because: (1) the number of stolen items that a defendant possesses does not necessarily dictate the proper number of charges for possession of stolen goods; (2) when, as part of one continuous act or transaction, a perpetrator comes into possession of several stolen items at the same time and place, only one count of possession of stolen goods may be sustained even though defendant in the instant case could not have physically taken all five ATVs at one time from the same victim during one break-in occurring on the same night when there was no interruption in the events once the transaction began; and (3) the time at which defendant acquires stolen property, not when he is dispossessed of it, more correctly controls the number of offenses that may be sustained.

Larceny; Personal Property--larceny--injury to personal property--indictment--entity capable of owning property

State v. Price, 170 NCA 672 (2005)

Defendant's convictions for larceny of parking meters and injury to personal property are vacated because the indictments named "City of Asheville Transit and Parking Services" as the owner of the property which did not clearly indicate an entity capable of owning property.

Burglary and Unlawful Breaking or Entering--breaking into coin-operated machine--indictment--allegation of ownership unnecessary

State v. Price, 170 NCA 672 (2005)

Defendant's convictions for breaking into a coin-operated machine under N.C.G.S. § 14-56.1 is upheld even though ownership was not alleged in the indictment, because an allegation of ownership is not necessary to sustain this charge.

Burglary and Unlawful Breaking or Entering--breaking in to sleep--instructions on lesser included offenses

State v. Friend, 164 NCA 430 (2004)

Evidence in a felonious breaking and entering prosecution that defendant had admitted breaking into a house to sleep but not to commit a larceny or another felony should have resulted in an instruction on the lesser included offense of misdemeanor breaking and entering. However, defendant was not entitled to an instruction on misdemeanor larceny because any larceny that occurred pursuant to a breaking and entering is a felony regardless of the value of what was stolen.

Possession of Stolen Property—instruction on lesser included offense—no conflicting evidence

State v. Friend, 164 NCA 430 (2004)

Defendant was not entitled to an instruction on the lesser included offense of misdemeanor possession of stolen goods where there was no conflicting evidence. Defendant's assertion that the jury accepted a portion of the State's case and rejected other parts of it was not sufficient.

Larceny--indictment--owner of property--substantial alteration

State v. Cathey, 162 NCA 350 (2004)

The trial court erred by allowing the State to amend a fatally defective larceny indictment that listed the owner of the property as "Faith Temple Church of God" instead of "Faith Temple Church--High Point, Incorporated," because: (1) a bill of indictment is fatally defective if it does not allege that an incorporated legal entity is a corporation or the name of the legal entity does not import that it is a corporation; and (2) the owner of the property in question is an essential element of larceny.

Larceny--indictment--allegation of ownership--insufficient

State v. Phillips, 162 NCA 719 (2004)

Indictments were fatally defective where Count I of each alleged larceny from "Parker's Marine," did not allege that Parker's Marine was a legal entity capable of ownership, and did not incorporate by reference information about Parker's Marine in Count II. Each count should be complete in itself, although allegations in another count may be incorporated by reference.

Larceny; Possession of Stolen Property—larceny and possession—same property—only one conviction

State v. Owens, 160 NCA 494 (2003)

While a defendant may be indicted and tried on charges of larceny and possession of the same property, the defendant may be convicted of only one of those offenses. Therefore, where the trial court entered judgment for felonious larceny and felonious possession of the same cigarettes, judgment should have been arrested as to the felonious possession conviction, and the consolidation of the convictions for judgment did not cure this error.

Robbery--armed--motion to dismiss--sufficiency of evidence--lesser-included offense of common law robbery

State v. Gaither, 161 NCA 96 (2003)

The trial court did not err by denying defendant's motion to dismiss the charge of armed robbery, or in the alternative, refusing to instruct the jury on the lesser-included offense of common law robbery, because: (1) there was an unlawful taking of shirts from store premises, defendant showed the security officers that he possessed a gun, and the security officers testified that they believed defendant might use the gun; (2) while defendant's use of intimidation occurred after the taking of property, defendant's effort to avoid apprehension by store and mall security officers is an action continuous with the taking and therefore constitutes a part of the robbery attempt; (3) the fact that only one witness to the incident actually observed the gun in defendant's possession goes to the weight of the evidence; and (4) there was no evidence presented to support an instruction on the lesser-included offense of common law robbery. See Farb p13. Put in Larceny also

Larceny--by employee—identity of person giving money to employee—not required

State v. Morris, 156 NCA 335 (2003)

Indictments charging larceny by an employee were sufficient where they alleged that money was delivered to defendant for the use of her employer without alleging who delivered the money.

Larceny–by employee–identity of employer–evidence sufficient

State v. Morris, 156 NCA 335 (2003)

The evidence in a prosecution for larceny by employee sufficiently identified the employer where the indictments named the employer as “AAA Gas and Appliance Company, Inc.,” and witnesses referred to the company as “AAA” and “AAA Gas.”

Larceny–by employee-sufficiency of evidence–relationship of trust

State v. Morris, 156 NCA 335 (2003)

The evidence in a prosecution for larceny by employee was sufficient to prove a trust relationship between defendant and her employer where defendant was solely responsible for depositing money received on the days she worked. The fact that her position was not managerial did not prohibit a trust relationship.

Larceny–by employee–sufficiency of evidence–fraudulent intent

State v. Morris, 156 NCA 335 (2003)

The evidence in a prosecution for larceny by employee was sufficient to establish fraudulent intent where there were discrepancies in the records for monies received and deposited on fourteen separate days when defendant was working and managing the accounts.

Possession of Stolen Property–stolen vehicle–sufficiency of evidence–circumstantial evidence

State v. Bailey, 157 NCA 80 (2003)

There was sufficient evidence of possession of stolen goods and possession of a stolen vehicle where defendant was found driving a Suburban several hours after it was stolen, defendant claimed that the vehicle belonged to a friend but would not give the friend's name, the employee driving the company-owned Suburban testified that he had not given anyone permission to drive the vehicle on that day, and defendant was found with the employee's keys. Although the evidence of knowledge that the vehicle was stolen was circumstantial, the rule for determining sufficiency of evidence is the same for circumstantial or direct evidence.

Constitutional Law–double jeopardy–possession of stolen property and possession of stolen vehicle–same stolen vehicle

State v. Bailey, 157 NCA 80 (2003)

Sentences for possession of stolen goods and possession of a stolen vehicle based on possession of the same stolen Suburban violated double jeopardy. Although one requires proof of a fact which the other does not, the Legislature did not intend to punish defendant twice for possession of the same property. While defendant could be indicted and tried for both offenses, he could be convicted only once, and the conviction for possession of stolen goods was vacated.

Larceny–possession of stolen property–sentencing for both–improper

State v. Hargett, 157 NCA 90 (2003)

Sentencing defendant for both larceny and possession of the property that he stole was plain error, although the court did not err by submitting both charges to the

jury.

Larceny–stealing from multiple vans inside one fenced area–single transaction

State v. Hargett, 157 NCA 90 (2003)

Two larcenies were part of a single transaction where defendant took tools from multiple vans which had the same owner and which were in close proximity inside the same locked fence, and the larcenies occurred within the same general time period. The trial court erred by convicting and sentencing defendant for both larcenies.

Larceny–by trick–test driving automobile

State v. Barbour, 153 NCA 500 (2002)

The trial court did not err by denying defendant’s motion to dismiss a charge of felonious larceny of a motor vehicle and by instructing the jury on larceny by trick where defendant was given permission to take a truck for a test drive but was not given permission to keep the truck, defendant did not return the truck by the time he was expressly told to do so, defendant was discovered driving the truck several days later, and there was evidence that defendant had been convicted of similar crimes. Larceny by trick is not distinct from common law larceny, it is not necessary for the State to allege the manner in which the stolen property was taken and carried away, and the words “by trick” need not be found in an indictment charging larceny.

Larceny–from person–reaching into cash register

State v. Wilson, 154 NCA 686 (2002)

There was sufficient evidence of larceny from the person where defendant

reached into cash registers and removed money which was in the immediate presence and protection of the cashiers, sometimes grabbing or touching the cashier's hands. Discrepancies in identification testimony were for the jury to resolve.

Larceny—from the person—instruction on misdemeanor—no evidence of lesser offense*****

State v. Wilson, 154 NCA 686 (2002)

The trial court did not err in a prosecution for larceny from the person by not charging on misdemeanor larceny because all of the evidence supports the charged offense and there was no evidence of the lesser offense.

Larceny—fatal variance in indictment—property of evicted tenant stolen—no possessory interest in landlord

State v. Craycraft, 152 NCA 211 (2002)

The trial court erred by not dismissing a felony larceny charge for a fatal variance between the indictment and the evidence where the indictment alleged that defendant had taken items belonging to the landlord of a mobile home from which defendant's father had been evicted, but the evidence was that the items belonged to defendant's father. No civil ejectment documents were introduced into evidence and the landlord did not have any special possessory interest in the items, although he was maintaining them for his former tenant.

Criminal Law—instructions—doctrine of recent possession

State v. Smith, 152 NCA 29 (2002)

The trial court did not err by instructing the jury on the doctrine of recent possession in a prosecution for burglary and robbery where defendant maintained

that there was significant evidence of intervening agency. By its nature, the doctrine involves a gap in the evidence of possession of the stolen goods.

Evidence—value of murder victim’s car—lab technician’s testimony

State v. Cobb, 150 NCA 31 (2002)

The trial court did not err in a first-degree murder prosecution by allowing a crime lab technician to testify that the victim’s car had a value greater than \$1,000. The lab technician’s experience and close personal observation of the vehicle, viewed alongside evidence as to how the victim maintained the vehicle, provides an ample foundation for an opinion as to its value.

Possession of Stolen Property—indictment—ownership of property—not an essential element

State v. Jones, 151 NCA 317 (2002)

The trial court did not err by denying defendant’s motion to dismiss the charge of felonious possession of stolen goods where Salvador Santos initially told officers that the items recovered belonged to “us”; Santos later clarified that the property belonged to his 17 year old stepson, Ever Antonio Hernandez; and the court allowed the State to amend the indictment accordingly. The name of the person from whom the goods were stolen is not an essential element of the indictment and a variance between the allegations of ownership and proof is not fatal.

Robbery - intent to deprive owner of property - sufficiency of evidence

State v. Mann, 355 N.C. 294 (2002)

The trial court did not err by denying defendant's motion to dismiss the charge of robbery with a dangerous weapon based on defendant's taking of his victim coworker's vehicle, because defendant took and subsequently abandoned the

vehicle which was enough to show his intent to permanently deprive the victim of her property.

Larceny–felonious–sufficiency of indictment

State v. Osborne, 149 NCA 235 (2002)

An indictment was sufficient to charge felonious larceny where it alleged that defendant “unlawfully, willfully and feloniously did steal, take, and carry away (see attached list), the personal property of [a named person], such property having a value of \$3,700.00. This is in violation of N.C.G.S. 14-72(a).” It was not necessary for the indictment to allege specifically that defendant did not have consent to take the property or that defendant had the intent to permanently deprive the owner of his property.

Larceny–indictment–identity of corporate victim–insufficient

State v. Norman, 149 NCA 588 (2002)

A larceny indictment which alleged that property was taken from “Quail Run Homes Ross Dotson, Agent ” was fatally defective because it lacked any indication of the legal ownership status of the victim.

Larceny--felonious possession of stolen property--sufficiency of evidence

State v. Parker, 146 NCA 715 (2001)

The trial court erred by convicting defendant for felonious possession of stolen property instead of misdemeanor possession of stolen property based on the State’s failure to introduce sufficient evidence of the value of the stolen goods in defendant’s possession, because: (1) although the owner of the stolen property testified that the total estimated value of all stolen items was \$5,000, there is no

evidence regarding the total value of the items contained in the trial court's charge; and (2) the testimony of two pawn shop employees regarding the money they loaned defendant for some of these stolen items is not sufficient evidence from which a jury could determine to any certainty the value of the VCR, cameras, and photography equipment.

Larceny--employee--inmate performing mandatory work assignment not an employee

State v. Frazier, 142 N.C. App. 207 (2001)

The trial court erred by denying defendant's motion to dismiss the charge of larceny by employee and defendant's conviction of larceny by employee is vacated, because an inmate performing a mandatory work assignment cannot be convicted of larceny by employee when such an inmate is not an "employee" within the meaning of N.C.G.S. § 14-74.

Larceny--felonious--doctrine of recent possession

State v. Pickard, 143 N.C. App. 485 (2001)

The trial court did not err in a prosecution for felonious larceny by instructing the jury on the doctrine of recent possession, because: (1) if a stolen article is of a type not normally or frequently traded, then the inference of guilt would survive a longer period of time for the interval of time between the theft and finding a defendant in possession of the item; (2) an officer observed the victim's address book in defendant's vehicle less than three days after the victim's purse was stolen; (3) the victim's address book is unique in that it contains names, addresses, and phone numbers of her family and friends; and (4) at the time the address book was seen by an officer, the vehicle and its contents were in the possession and under the control of defendant.

Larceny--indictment--variance--owner of stolen property

State v. Salters, 137 N.C. App. 553 (2000)

The trial court committed reversible error by failing to dismiss the charge of larceny when there was a fatal variance between the indictment and the evidence as to who was the actual owner of the stolen suitcase because: (1) the indictment did not name the proper owner of the blue suitcase allegedly stolen by defendant since it named the grandmother, and the evidence reveals the suitcase belonged to her grandchild; and (2) the grandmother did not have a "special property interest" in the child's belongings because the grandmother was not standing in loco parentis since the child's mother also lived in the home.

Larceny § 147 (NCI4th) larceny from the person insufficiency of evidence sufficiency of evidence of misdemeanor larceny

State v. Barnes, 121 N.C. App. 503, 466 S.E.2d 294 (1996)

The evidence was insufficient to support a conviction of larceny from the person where the evidence tended to show that defendant entered an unattended kiosk in a mall, concealed a bank bag containing approximately \$50 under his shirt, and left the kiosk before the sales person who manned the kiosk realized that the bank bag was missing;

Robbery § 5 (NCI4th) spouses exempted from larceny prosecutions rule inapplicable to armed robbery

State v. Mahaley, 122 N.C. App. 490, 470 S.E.2d 549 (1996)

The common law rule exempting spouses from prosecution in larceny cases in order to preserve family unity did not apply to these prosecutions, since defendant was convicted of robbery with a dangerous weapon, a crime involving dangerous violence and an offense mainly against the person rather than against property.

Larceny § 147 (NCI4th) larceny from the person insufficient evidence

State v. Barnes, 345 N.C. 146, 478 S.E.2d 188 (1996)

The evidence did not support defendant's conviction of larceny from the person where it tended to show that defendant removed a bank bag containing money from below the cash register in a kiosk at a shopping mall and hid it under his shirt while the victim was in a store twenty-five to thirty feet from the kiosk, that the victim confronted defendant while he was in the kiosk, and that defendant left the kiosk before the victim discovered that the bank bag was missing, since the crime of larceny was completed when defendant removed the bank bag from below the cash register, and the bank bag was not in the immediate presence of and under the protection or control of the victim at the time of the taking. The case is remanded for entry of judgment as upon a conviction of nonfelonious larceny because the jury found all of the elements of the submitted lesser included offense of nonfelonious larceny and defendant concedes that he committed nonfelonious larceny.

Constitutional Law § 189 (NCI4th)- robbery and larceny - separate takings - not double jeopardy

State v. Jordan, 128 N.C. App. 469 (1998)

The trial court did not err in finding that defendant's constitutional rights against double jeopardy were not violated by his being sentenced for both larceny and armed robbery in that there were two separate takings where there was a lapse of time between the defendant's taking of credit cards and jewelry in the victim's house and his leaving the house and stealing the victim's car.

Larceny - sentencing - larceny after breaking or entering and larceny of firearm

State v. Suggs, 130 N.C. App. 140 (1998)

The trial court erred by sentencing defendant for both larceny of a firearm and the separate charge of felonious larceny which included the same firearms.

Crimes, Other - possession of stolen property - sufficiency of evidence - grounds to believe car stolen

State v. Vaughn, 130 N.C. App. 456 (1998)

The trial court did not err by not dismissing a charge of possession of stolen goods for insufficient evidence that defendant knew or had reasonable grounds to believe that the car in which he was found had been stolen where he was found sleeping in the stolen car with the key in the ignition, the car was strewn with items not belonging to the car's owner, and he lied about his name and falsely stated that the car belonged to a friend.

Larceny - sufficiency of evidence - fingerprints

State v. Hamilton, 132 N.C. App. 316 (1999)

The trial court did not err by denying defendant's motion to dismiss charges of breaking or entering, felonious larceny, and felonious possession of stolen goods where a Belk's store was found with a hole in the roof and \$24,000 of merchandise missing, defendant's fingerprints were recovered from the top of an awning more than eleven feet above the ground, the store manager testified that the building had received no roofing work at all in recent months and that no one had permission to enter the building through the roof, and defendant was acquainted with the modus operandi of such a crime as evidenced by a prior conviction of a rooftop breaking or entering.