

**SMITH, RODGERS & STRICKLAND, PLLC**

**ROLL CALL TRAINING  
FROM NORTH CAROLINA'S 24/7 POLICE  
ATTORNEY LAW FIRM**

**APRIL 14, 2003  
VOLUME II NUMBER 9**

**FIRST: PARDON OUR EMAIL CRASH –**

**Dear Roll Call Readers:** If you requested a copy of our firm's "bench brief" in *State v. Wilson* (see previous edition of Roll Call) and have not received it, please resubmit your request at this time. The high volume of email traffic apparently knocked our server off-line, and many requests did not get through. To resubmit your agency's request for a copy of our brief discussing traffic stops and reasonable suspicion, the email address is [info@policehelp.net](mailto:info@policehelp.net). Thank you for your patience.

**TODAY'S TOPIC:**

HOW A DEFENDANT COMMITTED ONLY ONE LARCENY THOUGH HE STOLE GOODS FROM MORE THAN ONE VEHICLE AND HOW THE SAME DEFENDANT COULD NOT BE CONVICTED OF BOTH LARCENY AND POSSESSION OF THOSE SAME STOLEN GOODS. MERCY!

**THE CASE:**

*State v. Hargett*, North Carolina Court of Appeals, COA02-710, 1 April 03

**COMMENTARY BY:**

**Ralph B. Strickland, Jr.**, SR&S Resident Expert on Bathrooms, Graveyards, and Tripping

**FACTUALLY SPEAKING:**

On 10 June 02 a Charlotte-Mecklenburg Police Officer, David Collins, received a report that someone was breaking into work vans of the Queen City Electric Company. At 2230 hours Collins found that the lock had been cut from the gate leading to the company parking lots where the vans were parked.

Collins also saw someone lying beside one of the vans. The man fled into a nearby graveyard and Collins gave chase. He found a Mr. Rudolph Marcel Hargett, alive and un-interred, lying in some weeds about half a football field's length from the parking lot.

Collins, not yet certain Hargett was his man, placed him in handcuffs and discovered Queen City Electric Tools on the ground near where Hargett lay in repose.

Back at the company parking lot Collins found a pair of bolt cutters and vans with smashed windows. He found Hargett's car 1/10th of a mile away on a dirt service road.

## WHAT RUDOLPH MARCEL HARGETT SAID:

“I stopped my car that night about 10PM to use the bathroom. I noticed a person in the graveyard and wanted to see what was happening. When I started to return to my car I tripped and fell. I didn’t steal the tools found near me.”

## TO WHICH SHAKESPEARE SAID:

**With a hey, and a ho, and a hey nonino.** [*As You Like It, Act 5, Scene 3*]

## SHAKESPEARE ASIDE:

I can understand driving down a dirt service road seeking privacy when “nature calls;” who among us, especially in patrol, has not done that very thing? (..and may I add to one’s great relief!). But your average citizen will not investigate a lone, dark figure skulking amongst the tombstones late in the evening when most folks are already abed. No way, Mr. Hargett – you were not *that* curious. And it also strains credulity that you tripped and then *lay in the weeds until the nice officer came along and found you*. And what’s the chance of tripping near stolen tools? One might likely trip *over* them, but not necessarily *near* them. Hey nonino.

## NOW SOME LAW ON HOW THE SAME DEFENDANT COULD NOT BE CONVICTED OF BOTH LARCENY AND POSSESSION OF THOSE SAME STOLEN GOODS:

Mr. Hargett was convicted of three counts of breaking and entering of three motor vehicles, two counts of misdemeanor larceny from two motor vehicles, and one count of misdemeanor possession of stolen property. In 1982, the North Carolina Supreme Court ruled, in *State v. Perry*, that a court might not sentence a defendant for both larceny and possession of the same stolen property. That Court researched the legislative intent of our General Assembly and held that it was not the legislative intent to punish the defendant for both crimes in that situation. So be it.

## WHAT FIRST LINE SUPERVISORS NEED TO KNOW, PART I:

The law merely prohibits punishment for both larceny and possession of the same stolen goods. It is probably impossible to take and carry away goods without possessing them, and different elements are involved to establish each crime. So, a person may be legally charged with both larceny and possession of the same stolen goods, the District Attorney can elect to go forward at trial on both charges, the jury may convict on both charges, but the court may only punish for one of the charges. I would advise that you contact your District Attorney’s Office for advice on whether to charge both crimes in this situation. In any event, while you are not legally wrong for charging both offenses in a given situation, it is always best to follow your DA’s lead.

## SOME LAW ON HOW A DEFENDANT COMMITTED ONLY ONE LARCENY THOUGH HE STOLE GOODS FROM MORE THAN ONE VEHICLE:

In 1986, in the case of *State v. Froneburger*, the North Carolina Court of Appeals stated: “A single larceny offense is committed when, as part of one continuous act or transaction, a perpetrator steals several items at the same time and place.” Citing a 1996 North Carolina Supreme Court case, *State v. Marr*, the Court

here said that there was only one larceny. Hargett “took tools from multiple vans owned by the company, but the vans were parked inside the same locked fence in close proximity. The larcenies from the separate vans occurred within the same general time period.” And there you are.

## **WHAT FIRST LINE SUPERVISORS NEED TO KNOW, PART II:**

When criminal charges are preferred or taken out against a person, the charging officer needs probable cause that a crime was committed and that the charged person committed it. But the officer must also act reasonably and in good faith. When faced with a similar fact situation, and where your officer has a good faith belief that more than one larceny occurred, charge multiple larcenies. But if the fact pattern is very similar to Hargett’s case, make a single larceny charge. When time permits you should consult your District Attorney’s Office for advice about how to proceed. But remember: always act in good faith. Generally speaking, the DA’s Office can correct good faith charging errors by indicting the defendant on the more legally correct charge(s) if the case goes to Superior Court; or, where the defendant meets the DA’s plea negotiation guidelines, by negotiating a plea to the appropriate misdemeanor(s) in District Court.

**SMITH, RODGERS & STRICKLAND PLLC PROVIDES 24-HOUR REAL-TIME LEGAL SUPPORT FOR  
CLIENT LAW ENFORCEMENT AGENCIES.**