

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2003-417

MARCH TERM, 2004

	} APPEALED FROM:
	}
State of	} District Court of Vermont, Unit No. 2,
Vermont	} Chittenden Circuit
	}
v.	}
	}
Arnold E.	} DOCKET NO. 2367-4-02 CnCr
Slocum	}
	} Trial Judge: James R. Crucitti
	}

In the above-entitled cause, the Clerk will enter:

In this appeal following his conditional no-contest plea to a charge of larceny from a person, defendant argues that the facts presented by the State were insufficient to support the charge. We affirm.

Defendant was charged with theft from a person after snatching a woman's wallet from her shopping cart at a grocery store. He filed a motion to dismiss the charge, arguing that the State would be unable to prove that he stole the wallet directly from the person and custody of another, in violation of 13 V.S.A. ' 2503. The court denied the motion, ruling that defendant had encroached on the zone of protection safeguarded by the larceny from a person statute. In his appeal to this Court, defendant renews his argument that his conduct does not support a conviction under ' 2503.

In State v. Brennan, 172 Vt. 277, 284 (2001), this Court recently construed ' 2503. After examining the history of the statute, we concluded that the phrase and custody of another indicated that the legislature intended to protect an area or region distinct from the physical person of the victim. Id. Accordingly, we held that the statute should be construed broadly to create a zone of protection around a person's body that warrants a higher penalty when a theft occurs within this zone. Id. We also stated that some of the factors that could be considered in determining whether that zone of protection had been violated are whether the thief's actions were assaultive in nature, whether the victim was aware of the theft when it occurred because the stolen item was in the victim's immediate presence, and whether the thief's conduct posed a potential risk of violence and danger to the victim. Id. at 285.

Here, in arguing that the evidence does not support a conviction under ' 2503, defendant states that he did not engage in assaultive behavior and that the victim was neither in contact with her shopping cart nor aware of the theft until after it occurred. We find defendant's argument unpersuasive in light of the arresting officer's affidavit and the victim's deposition, both of which the parties agreed could be considered as the factual basis for the ruling on defendant's motion to dismiss. In her deposition, the victim stated that after she entered the grocery store, she set her wallet in the bottom of her empty shopping cart close to the handle of the cart. At one point, she let go of the cart and turned her back for a split second to look at something on a shelf. As she turned, she noticed within her peripheral vision a man go past the cart and her wallet disappear. She turned, saw the man fleeing with her wallet, and yelled for help.

Although this is a close case, these facts indicate that the wallet was within the victim's zone of control when defendant snatched it from the shopping cart. Compare People v. Harrell, 795 N.E.2d 1022, 1025 (Ill. App. Ct. 2003) (theft-from-person conviction supported by facts showing that defendant reached around victim to take purse from shopping cart located immediately next to victim, and that victim was aware of theft as it occurred); State v. Boss, 848

So. 2d 75, 78 (La. Ct. App. 2003) (purse snatching conviction supported by facts showing that defendant took purse from victim= s shopping cart as victim briefly turned away to retrieve milk located only three feet from cart, and victim became aware of theft immediately after it occurred) with People v. Sims, 614 N.E.2d 893, 896 (Ill. App. Ct. 1993) (theft-from-person conviction not supported by facts showing that victim was two-and-one-half feet from shopping cart, looking in another direction, and unaware of theft of her purse from cart as it occurred); State v. Lee, 363 S.E.2d 656, 656 (N.C. Ct. App. 1988) (theft-from-person conviction not supported by facts showing that defendant surreptitiously stole victim= s handbag from her shopping cart while he distracted her several feet from cart). The undisputed facts of this case show that the victim was only a matter of inches from her shopping cart when the theft occurred in her presence, that she noticed out of the corner of her eye defendant walk by and her wallet simultaneously disappear as she turned away from the cart, and that she reacted immediately to the theft by calling for help. Defendant= s brazen conduct certainly created the potential for violence. Given these facts, we conclude that the State= s evidence was sufficient to support a conviction under ' 2503. See State v. Dixon, 169 Vt. 15, 17 (1999) (standard for addressing Rule 12 (d) motion to dismiss is whether evidence, when viewed most favorably to State and excluding modifying evidence, fairly and reasonably tends to demonstrate defendant= s guilt beyond reasonable doubt).

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Paul L. Reiber, Associate Justice