

Theft, Possession, and Hendricksen

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Defendant commits an armed robbery in county A, obtaining stolen goods that he transports to county B. May the defendant be prosecuted and punished for armed robbery in county A and be separately prosecuted and punished for possession of stolen goods in county B?

Since this is a law blog, you already know the answer: [It depends](#).

The general rule. In most circumstances, a defendant may not be punished for both the felonious taking of goods and their possession. That rule is derived from an examination of legislative intent rather than principles of double jeopardy, which is not implicated when each offense contains an element the other lacks.

The North Carolina Supreme Court concluded in *State v. Perry*, 305 N.C. 225 (1982), *overruled in part on other grounds*, *State v. Mumford*, 364 N.C. 394 (2010) (discussed [here](#)), that “although it could have done so, the Legislature, by creation of the statutory offense of possession of stolen property, did not intend to punish an individual for both [the stealing of the property and possession of the property stolen].” *Perry* explained that the legislature created the offense of possession of stolen property (G.S. [14-71.1](#), [14-72](#)) to facilitate the prosecution of individuals found in possession of such property, including known dealers in stolen goods, who otherwise escaped prosecution because the State could not prove that they stole the property (G.S. 14-72) or that they received the property from another person who had stolen it (G.S. [14-71](#), 14-72). The possession of stolen property statutes provide the State “a position to which to recede when it cannot establish the . . . larceny but can [prove] possession of the stolen goods.” *Id.* at 236. Possession of stolen property is thus a “sort of secondary crime based on a prior commission of the primary crime of larceny.” *Id.* (internal quotations omitted).

The *Perry* court held that while a defendant may be prosecuted for larceny, receiving, and possession of the same property, he or she may be convicted of only one of those offenses. The court of appeals in *State v. Moses*, 205 N.C. App. 629 (2010), expanded *Perry*'s application, holding that a defendant could not be sentenced to separate and consecutive punishments for robbery and possession of the stolen goods taken during the robbery.

An exception. Last week, the court of appeals in [State v. Hendricksen](#) recognized an exception to this general rule.

The defendant in *Hendricksen* robbed a convenience store clerk at gunpoint in Johnston County, stealing cash and hundreds of lottery tickets. Two days later, he attempted to cash in two of the stolen lottery tickets at gas stations in Harnett County. The defendant was charged with armed robbery in Johnston County and, in Harnett County, with misdemeanor possession of stolen goods. While awaiting trial in Johnston County, Hendricksen resolved the Harnett County charges—pleading guilty to two counts of misdemeanor possession of stolen goods.

Months later, at his armed robbery trial, Hendricksen moved to dismiss the charges on the grounds that he had already been punished for the crime, citing his guilty plea in Harnett County. The superior court judge in the Johnston County case rejected his argument. The jury found him guilty, and he was sentenced to 70 to 96 months imprisonment.

Hendricksen appealed, and the court of appeals affirmed the trial court's ruling.

The analysis. After reciting the general rule for prosecutions of this type, the court of appeals considered whether, in Hendricksen's circumstances, the Johnston County robbery charge was separate and distinct from the possession of stolen property charges to which he previously pled guilty. The court noted that while the two counts of misdemeanor possession of stolen goods were based on Hendricksen's attempt to cash in *two* lottery tickets, the Johnston County prosecution was based on his theft of money and *hundreds* of additional lottery tickets. The principles of legislative intent articulated in *Perry*, the court reasoned, apply to "proscribe punishment for possession during the course of the same conduct, and where the property is the 'same property.'" (Slip op. at 9-10, quoting *Perry*, 305 N.C. at 234). Hendricksen's Harnett County convictions did not involve the same conduct or the same property, said the court. The possession of the tickets in Harnett County was related to the defendant's attempt to cash them in at local gas stations rather than his seizing of them at gunpoint days earlier. In addition, the Johnston County armed robbery charges involved the theft of "a substantial amount of additional different property." (Slip op. at 11).

Invited error. The court further held that *Hendricksen* was not entitled to the relief he requested because he opposed the State's attempts to remove the two tickets that led to the misdemeanor convictions from consideration or mention at his armed robbery trial. The court described Hendricksen's acts of opposition as including his rejection of the State's offer to "avoid the mention at trial of the two lottery tickets" and its offer to amend the indictment to omit the mention of these tickets. I'm surprised that these acts are described as inviting error, since the State—not the defendant—controls its presentation of the evidence and the defendant's consent is not required to amend an indictment. Had the two lottery tickets been the bulk of the property stolen, I wonder whether the court would have adopted the same view of the defendant's behavior.

Takeaway. What are the broader lessons to be gleaned from *Hendricksen* given the somewhat unusual facts of the case? For the State, the lesson might involve joinder. The charges from both counties could almost certainly have been joined for trial as they were part of a series of connected transactions. G.S. [15A-926](#). If the offenses were properly joined, Johnston and Harnett Counties would have had concurrent venue over all the charges. [G.S. 15A-132\(b\)](#). Though the State prevailed in *Hendricksen*, it might not have had the earlier convictions been based on a more substantial portion of the property stolen. For defense counsel, *Hendricksen* is a helpful reminder of the general rule that prohibits cumulative punishment in many cases involving theft and the possession of stolen property.