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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-184

MARCH TERM, 2002

State of Vermont	}	APPEALED FROM:
v.	}	District Court of Vermont,
Montessa Whittemore	}	Unit No. 2, Rutland Circuit
	}	DOCKET NO. 1218-9-98 Rdcr
	}	Trial Judge: Nancy Corsones

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

Defendant appeals her conviction for grand larceny, claiming the evidence was insufficient to prove she intended to permanently deprive the victim of her property and that the property was worth more than $500. We affirm.

In September 1998, defendant was charged with simple assault, grand larceny, and unlawful mischief after a series of events over the July 4 holiday in Killington, Vermont. The victim, Heather Hendrickson, and her friend Cynthia Wielgosz, traveled to Killington from Connecticut to spend the July 4th holiday mountain-biking and camping. They decided to rent a hotel room on the evening of the 4th, and after they unpacked and rested a while, they went out to dinner. At the restaurant, Heather and Cynthia saw some people they had met while camping the night before. They also met defendant. The two women decided to go to a nearby party to which they were invited, and defendant asked them if she could ride with them. Heather and Cynthia were at the party for five to ten minutes before they decided to leave. They agreed to take defendant home.

Heather drove while Cynthia sat in the front seat and defendant in the rear. Next to defendant on the seat, and behind Heather, was Heather's leather backpack, worth approximately $475, which she used as a purse. It contained personal items, including a wallet, personal and corporate checkbooks, identification, a day planner worth between $100 and $200, and $100 in cash. Defendant, who was not carrying anything with her, directed Heather to an unlit parking lot behind a closed restaurant. Defendant asked Heather to drop her off in the back. As defendant got out of the car, she told the other two women to come see her at lunch the following day at Casey's Caboose. As soon as defendant got out of the car, Heather reached behind her and found that her backpack was missing. Heather thought that defendant was carrying something as she walked away from the car so she and Cynthia began calling for defendant. Defendant did not respond. They were unable to locate defendant after shining the car lights into the woods, so they went back to the hotel and called the Vermont State Police.

The following morning, Heather and Cynthia went to Casey's Caboose to find defendant. Although defendant was not there, they obtained her phone number from a schedule posted inside the restaurant. Heather called defendant, and they arranged to meet. When they met, Heather asked defendant about the missing backpack, which defendant denied taking. Defendant suggested that Heather and Cynthia search her apartment for the missing property.

While in defendant's apartment, Heather found the makeup and makeup bag that had been in her backpack. Heather confronted defendant, and defendant began to cry. Defendant apologized and said something to the effect that she was

drunk, had taken the backpack and hid it. Cynthia told defendant that she had to show them where she hid the backpack. Defendant responded by kicking and scratching Cynthia in the neck and ripping off her necklace. Heather picked up the phone to call the police. Defendant then grabbed the telephone's base, threw it at Cynthia, and ran out of the apartment. The police later retrieved Heather's wallet from behind the restaurant where Heather had dropped defendant off the night before.

Defendant was eventually charged with grand larceny, unlawful mischief, and simple assault. At the close of the State's case, defendant moved for judgment of acquittal under V.R.Cr.P. 29 arguing that the evidence was insufficient to sustain a conviction. The court denied the motion. Defendant did not call any witnesses and rested her case. After the jury returned guilty verdicts on the simple assault and grand larceny charges (the jury acquitted her of unlawful mischief), defendant did not renew her motion for judgment of acquittal. She timely appealed the grand larceny conviction to this Court, however.

On appeal, defendant argues that the court should have entered judgment of acquittal because the evidence was insufficient to establish the element of intent. In the last paragraph of her brief, defendant also contends that the record contained insufficient evidence on the value of the property she stole. Defendant did not preserve these claims, however, because she failed to renew her motion for acquittal at the close of the evidence or after the jury's verdict within the time prescribed by V.R.Cr.P. 29(c). See State v. Crannell, 170 Vt. 387, 407-08 (2000) (by failing to move for acquittal at the close of the evidence or within the time allowed by V.R.Cr.P. 29(c) after the jury verdict, defendant waived appellate review of his motion-for-acquittal claim).

Even assuming her claims were properly preserved, we find no merit to them. To prove grand larceny the State must prove that defendant intended to permanently separate the victim from her property, State v. Hanson, 141 Vt. 228, 232 (1982), and that the property's value is more than $500. 13 V.S.A. 2501. "Intent is rarely proved by direct evidence; it must be inferred from a person's acts and proved by circumstantial evidence." State v. Cole, 150 Vt. 453, 456 (1988). In this case, Heather's and Cynthia's testimony of the events, coupled with the testimony of the investigating officer, was sufficient to convince a reasonable trier of fact, beyond a reasonable doubt, that defendant intended to deprive Heather of her backpack and its contents permanently. See Hanson, 141 Vt. at 233 (evidence is sufficient if, when viewed in light most favorable to the State, it could convince a reasonable fact finder to conclude that defendant is guilty beyond a reasonable doubt). Defendant first denied taking the backpack, but later admitted that she had taken it and hid it. Some of the backpack's contents were found in the area where Heather and Cynthia had dropped defendant off the night the backpack was stolen. Other contents were found in defendant's apartment. Those facts alone lead to the conclusion that defendant took the backpack and its contents and had no plan to return them to Heather.

Defendant's claim regarding the insufficiency of evidence on the property's value is equally unavailing. Heather testified that the backpack was worth $475 and that it contained $100 in cash and a day planner worth between $100 and $200. That testimony was enough to allow the jury to conclude beyond a reasonable doubt that the property defendant stole was worth more than $500.

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice