

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

LEE ROY RETTLEY,

Appellant,

v.

Case No. 5D18-4002

STATE OF FLORIDA,

Appellee.

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Opinion filed July 17, 2020

Appeal from the Circuit Court  
for Hernando County,  
Stephen E. Toner, Jr., Judge.

James S. Purdy, Public Defender, and  
Kevin R. Holtz, Assistant Public Defender,  
Daytona Beach, for Appellant.

Ashley Moody, Attorney General,  
Tallahassee, and Wesley Heidt, Assistant  
Attorney General, Daytona Beach, for  
Appellee.

WALLIS, J.

Appellant, Lee Roy Rettley, appeals his judgment and sentence for robbery by sudden snatching. Because there was insufficient evidence supporting the conviction, we reverse and remand.

Appellant was charged with five crimes, including strongarm robbery, after the victim was attacked in her apartment. At trial, the victim testified that Appellant broke into her apartment, beat her, threatened to kill her, and stole approximately \$800 from her. Although the victim testified that Appellant "took" her money, she never clarified where the money was located when Appellant stole it. Other witnesses confirmed that the victim told them that Appellant stole her money. The jury found Appellant guilty of robbery by sudden snatching, a lesser included offense of strongarm robbery, and all other crimes as charged.

On appeal, Appellant argues that his motion for judgment of acquittal should have been granted because there was no evidence that he stole the victim's money while it was on her person.<sup>1</sup> Section 812.131(1), Florida Statutes (2017) defines "robbery by sudden snatching" as "the taking of money or other property from the victim's person, with intent to permanently or temporarily deprive the victim or the owner of the money or other property, when, in the course of the taking, the victim was or became aware of the taking." Robbery by sudden snatching is more limited than other types of robbery because the focus is on whether the victim was in actual physical possession of the property when it was taken rather than only in close proximity to it. Wess v. State, 67 So. 3d 1133, 1135 (Fla. 1st DCA 2011). Thus, it is error to deny a defendant's motion for judgment of acquittal on the charge of robbery by sudden snatching when the only testimony at trial established that the property was near the victim at the time it was taken. See id. at 1136–37.

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<sup>1</sup> We reject the State's argument that Appellant failed to preserve this issue for appeal.

Here, there was absolutely no evidence establishing that Appellant stole the victim's money while it was on her person. At most, the testimony established that Appellant stole the money while he was in the victim's apartment. Therefore, the trial court should have granted Appellant's motion for judgment of acquittal. See id. at 1137 (reversing the denial of a motion for judgment of acquittal on the charge of robbery by sudden snatching where the evidence at trial established that the victim's purse was on a bench and touching her leg when it was stolen); State v. Floyd, 872 So. 2d 445, 446–47 (Fla. 2d DCA 2004) (finding that the trial court erred in denying the motion for judgment of acquittal on the charge of robbery by sudden snatching where the evidence established that the victim's purse was taken from the car seat next to her). As such, we reverse the judgment for robbery by sudden snatching. We also remand for the trial court to enter a judgment for the lesser included offense of theft and to resentence Appellant accordingly.

REVERSED and REMANDED with Instructions.

ORFINGER and EISNAUGLE, JJ., concur.