

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARRELL WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

May 22, 1998

No. 195914

Washtenaw Circuit

LC No. 95-004645-FC

Before: Young, Jr., P.J., and Kelly and Doctoroff, JJ.

PER CURIAM.

After a jury trial, defendant was convicted of unarmed robbery, MCL 750.530; MSA 28.798. He was sentenced to nine to twenty-five years in prison with the sentence enhanced pursuant to MCL 769.12; MSA 28.1084, because he was an habitual offender, fourth offense. He had originally been charged with armed robbery, MCL 750.529; MSA 28.797. Defendant now appeals as of right. We reverse and remand for a new trial.

Defendant and codefendant Paul Willis approached the complainant at a pay phone at night. Defendant inquired as to the gold chains the complainant was wearing. Willis then pointed a brown paper bag at the complainant, which concealed an L-shaped object as if he were holding a gun. Defendant indicated to the complainant that he would be shot if he did not hand over the chains. The complainant complied, and defendant and Willis absconded with the chains.

Defendant argues that the trial court erred in refusing to instruct the jury as to the lesser offense of larceny from the person. We agree. Jury instructions are to be read as a whole rather than extracted piecemeal to establish error. *People v Bell*, 209 Mich App 273, 276; 530 NW2d 167 (1995). Even if the instructions are imperfect, there is no error if the instructions fairly protected the defendant's rights. *Id.*

Regardless of the evidence in a given case, the court must instruct the jury on necessarily included lesser offenses. *People v Lemons*, 454 Mich 234, 254; 562 NW2d 447 (1997). An offense is a necessarily included lesser offense if the defendant cannot commit the greater offense without also committing the lesser offense. *People v Heflin*, 434 Mich 482, 495; 456 NW2d 10 (1990). Larceny

from the person is a necessarily included lesser offense of robbery. *People v Beach*, 429 Mich 450, 484; 418 NW2d 861 (1988). Therefore, the trial court erred in refusing defendant's request to instruct the jury as to larceny from the person. Furthermore, this error was not harmless because the jury rejected the primary charge of armed robbery and found defendant guilty of the least serious charge it was instructed on. See *People v Taylor*, 195 Mich App 57, 63; 489 NW2d 99 (1992). Moreover, defendant disputed the elements of force, violence, and assault, which distinguish the offense of robbery from that of larceny from the person. See *People v Mosko*, 441 Mich 496, 505-506; 495 NW2d 534 (1992). Therefore, we hold that defendant's conviction must be reversed and this matter remanded for a new trial, because the trial court's error in refusing to instruct the jury as to the necessarily included lesser offense of larceny from the person cannot be deemed harmless beyond a reasonable doubt.

Defendant also argues that the trial court erred in denying his motions to quash the information and for directed verdict at the end of the prosecution's proofs. We disagree. Because the evidence presented at the preliminary examination was sufficient to warrant a cautious person in believing that defendant was guilty of the charged offense of armed robbery, we hold that the district court did not abuse its discretion in binding defendant over for trial. See *People v Orzame*, 224 Mich App 551, 557; 570 NW2d 118 (1997), and *People v Tower*, 215 Mich App 318, 319-320; 544 NW2d 754 (1996). Moreover, sufficient evidence was presented to permit a rational trier of fact to find that the elements of armed robbery and unarmed robbery were proven beyond a reasonable doubt. Therefore, the trial court did not err in denying defendant's motion for a directed verdict. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993).

Further, we note that defendant's argument that reversal of his unarmed robbery conviction is required because his conviction represented an impermissible compromise verdict is not properly preserved for appeal because the issue was not set forth in defendant's statement of the questions involved. See *People v Yarbrough*, 183 Mich App 163, 165; 454 NW2d 419 (1990).

Reversed and remanded for a new trial on the charge of unarmed robbery. Defendant may not be retried on the armed robbery charge. We do not retain jurisdiction.

/s/ Robert P. Young, Jr.

/s/ Michael J. Kelly

/s/ Martin M. Doctoroff