# STATE OF MICHIGAN

# COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER ALLEN HINTZ,

Defendant-Appellant.

UNPUBLISHED
June 28, 1996

No. 178040
LC No. 93-000365

Before: Markey, P.J., and McDonald and M.J. Talbot,* JJ.

PER CURIAM.

A jury found defendant guilty of larceny from the person, MCL 750.357; MSA 28.589, and defendant pleaded guilty to being an habitual offender, second offense, MCL 769.10; MSA 28.1082. He was sentenced to 48 to 180 months' imprisonment. Defendant appeals as of right, and we affirm.

Defendant first argues that the trial court erred in failing to enter a directed verdict on the charge of unarmed robbery. After considering the evidence presented before the motion was raised in a light most favorable to the prosecution, we believe that a rational trier of fact could find that the essential elements of unarmed robbery were proven beyond a reasonable doubt. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993); *People v Mehall*, 213 Mich App 353, 367-368; 539 NW2d 593 (1995).

In order to establish the crime of unarmed robbery, the prosecution must establish beyond a reasonable doubt that the defendant, by the use of force and violence or assault or putting in fear, feloniously took property that may be the subject of a larceny from a person or in that person's presence without a dangerous weapon. MCL 750.530; MSA 28.798; *People v Johnson*, 206 Mich App 122, 125-126; 520 NW2d 672 (1994). We reject defendant's assertion that the prosecution did not establish that he obtained complainant's property by force or violence because the larceny had already been completed and his physical confrontation with the complainant occurred only during his escape. If the defendant uses force and violence or assault to retain property taken or effectuate his

* Circuit judge, sitting on the Court of Appeals by assignment.

escape, this Court has found the force element established for purposes of sustaining a robbery conviction. *People v Tinsley*, 176 Mich App 119, 121; 439 NW2d 313 (1989). Further, a robbery is not complete until the defendant has accomplished his escape because the victim is still considered to be in possession of the property. *People v Newcomb*, 190 Mich App 424, 430-431; 476 NW2d 749 (1992). Viewing the larcenous transaction as a whole, *People v LeFlore*, 96 Mich App 557, 562; 293 NW2d 628 (1980), we believe the question of whether a purposeful relationship existed between the forceful act and the taking was properly left to the jury and that sufficient evidence existed for the jury to answer this question in the affirmative. Accordingly, the trial court did not err in denying defendant's directed verdict motion.

Second, defendant argues that sufficient evidence did not exist to support the trial court's instruction to the jury regarding larceny from a person, which is a necessarily included lesser offense to unarmed robbery.[1] Upon viewing the evidence in a light most favorable to the prosecution, including circumstantial evidence and the reasonable inferences arising from the evidence, we believe that a rational trier of fact could find that the essential elements of robbery from a person were proven beyond a reasonable doubt. *People v Lugo*, 214 Mich App 699, 710; 542 NW2d 921 (1995), citing *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992); *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995).

To establish larceny from a person, the prosecutor must show that the defendant took goods or personal property belonging to another from that person without consent and against the person's will and carried away or transported the goods or property with a felonious intent. MCL 750.357; MSA 28.589. Although defendant argues that he did not take the money bag from the complainant because complainant was outside the store when defendant grabbed the bag from under the store cash register, we believe that a jury could reasonably find that the money bag was under the complainant's immediate control and possession when defendant took it. *People v Gould*, 384 Mich 71, 79-80; 179 NW2d 617 (1970). Thus, sufficient evidence existed to justify the jury instruction regarding larceny from a person.

Finally, defendant argues that the court also erred in instructing the jury on the cognate offenses of robbery from a person, larceny over $100, and larceny from a building. We disagree. Because defendant failed to object to the trial court's instructions on the challenged lesser included offenses and no manifest injustice would result in the absence of appellate review, we find that defendant failed to preserve this issue for appellate review. *People v Haywood*, 209 Mich App 217, 230; 530 NW2d 497 (1995); see also MCL 768.29; MSA 28.1052.

Affirmed.

/s/ Jane E. Markey
/s/ Gary R. McDonald
/s/ Michael J. Talbot

[1]Because it does not require force, larceny from a person is a necessarily lesser included offense of robbery. *People v Chamblis*, 395 Mich 408, 424-425, 429; 236 NW2d 473 (1975), overruled in part on other grounds *People v Stephens*, 416 Mich 252, 254; 330 NW2d 675 (1982).