

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

FOR PUBLICATION
May 3, 2012
9:00 a.m.

v

CHANDRA VALENCIA SMITH-ANTHONY,

Defendant-Appellant.

No. 300480
Oakland Circuit Court
LC No. 2010-232465-FH

Advance Sheets Version

Before: SHAPIRO, P.J., and WHITBECK and GLEICHER, JJ.

GLEICHER, J.

Defendant, Chandra Valencia Smith-Anthony, placed a \$58 box of fragrance in a shopping bag and left the Macy’s department store in Northland Mall without paying for it. After completing her larceny and leaving the store, defendant engaged in a scuffle with a store security officer. A jury acquitted defendant of unarmed robbery but convicted her of larceny from the person in violation of MCL 750.357. Because the statute punishes “stealing from the person of another” and defendant’s conduct does not fall within that definition, we reverse.

I. FACTUAL BACKGROUND

While monitoring a closed-circuit television in Macy’s loss-prevention office, Khai Krumbhaar, a loss-prevention detective, observed defendant “darting her eyes around and holding her handbags very, very closely.” Krumbhaar believed that defendant looked suspicious, and paid close attention to the television monitors as defendant traversed the aisles. In the women’s fragrance department, Krumbhaar saw defendant select “a large gold White Diamonds box,” priced at \$58, from a display. Krumbhaar walked from her office vantage point to an area within “visual range” of defendant and “kept watching her” while pretending to be just another shopper. Under Krumbhaar’s surveillance, defendant carried the White Diamonds box to the women’s shoe department, sat down, and tried on some shoes. Defendant then rose from her seat and while making her way to the optical department, pushed the box into her shopping bag. After stopping to verify that defendant had not paid for the fragrance, Krumbhaar followed in pursuit. As defendant browsed near the fashion jewelry area, Krumbhaar “stayed back giving her some space.” Krumbhaar then caught sight of defendant “walking very quickly” out of the store. Krumbhaar confronted defendant approximately 30 or 35 feet into the mall surrounding the store, and the two scuffled. Krumbhaar claimed that during the struggle, defendant bit and scratched Krumbhaar’s arm.

The prosecution charged defendant with unarmed robbery, MCL 750.530, second-degree retail fraud, second or subsequent offense, MCL 750.356d(4), and possession of marijuana, MCL 333.7403(2)(d). On the day of trial, the prosecution dismissed the marijuana and retail-fraud charges.¹ The jury acquitted defendant of unarmed robbery, but convicted her of the lesser offense of larceny from the person, MCL 750.357. The court subsequently sentenced defendant to 4 to 20 years' imprisonment.

II. ANALYSIS

Defendant argues that the prosecution presented no evidence that she stole any item from the person of another and therefore failed to sufficiently support the convicted offense. When reviewing a defendant's challenge to the sufficiency of the evidence, we review "the evidence in a light most favorable to the prosecutor to determine whether any trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt." *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006). We review de novo underlying issues of statutory interpretation. *People v Tennyson*, 487 Mich 730, 735; 790 NW2d 354 (2010). We must apply the plain, unambiguous language of a statute as written and may only engage interpretative tools when the statutory language is equally susceptible to more than one meaning. *People v Valentin*, 457 Mich 1, 5-6; 577 NW2d 73 (1998).

The statute at issue in this case could not be simpler. It provides: "Any person who shall commit the offense of larceny by stealing *from the person of another* shall be guilty of a felony, punishable by imprisonment in the state prison not more than 10 years." MCL 750.357 (emphasis added). To establish a larceny-from-the-person charge beyond a reasonable doubt, the prosecution must prove "(1) the taking of someone else's property without consent, (2) movement of the property, (3) with the intent to steal or permanently deprive the owner of the property, and (4) the property was taken *from the person or from the person's immediate area of control or immediate presence*." *People v Perkins*, 262 Mich App 267, 271-272; 686 NW2d 237 (2004), *aff'd* 473 Mich 626 (2005) (emphasis added).

In *People v Adams*, 128 Mich App 25, 31-32; 339 NW2d 687 (1983), this Court explained that separate and distinct policies animate the statutes punishing simple larceny and larceny from the person:

[T]he Legislature decided that larceny from a person presents a social problem separate and apart from simple larceny. This separate social problem must be *the invasion of the person or immediate presence of the victim*, because that is what distinguishes larceny from a person and simple larceny. Because the Legislature clearly intended the statute defining the crime of larceny from a person *to protect the person or immediate presence of the victim from invasion*, the Legislature clearly intended to permit a separate conviction for each victim

¹ The prosecution likely dismissed the second-degree retail-fraud charge because the statute proscribes the theft of items priced between \$200 and \$1,000. See MCL 750.356d(1)(b).

whose person or immediate presence is invaded. [Emphasis added; citation omitted.]

In *United States v Payne*, 163 F3d 371, 375 (CA 6, 1998), the United States Court of Appeals for the Sixth Circuit construed larceny from the person in violation of MCL 750.357 as “a crime that creates a substantial risk of physical harm to another.” The Sixth Circuit reasoned:

Michigan law interprets “from the person” narrowly to require that the property be taken from the possession of the victim or be taken from within the immediate presence or area of control of the victim. This is clearly the type of situation that could result in violence. Any person falling victim to a crime involving such an invasion of personal space would likely resist or defend in a manner that could lead to immediate violence. [*Id.*]

Thus, theft from the person constitutes an aggravated offense because of its hybrid nature as a crime against both a person and a person’s property rights.

The larceny-from-the-person statute punishes pickpockets, purse- and wallet-snatchers, and others who invade the person or “immediate presence” of the victim to accomplish a theft. See *People v Gould*, 384 Mich 71, 80; 179 NW2d 617 (1970); *Perkins*, 262 Mich App at 272. Indirect contact with the victim may also constitute larceny from the person. For example, a thief who snatches a suitcase that the victim has momentarily set down while hailing a cab commits larceny from the person, as does a customer who snatches a diamond ring from a tray presented by a jeweler for inspection. In both instances, the theft instills fear or places a resistant victim in danger. The statute enhances punishment in these situations precisely because violating a person’s privacy or personal space results in a risk of violent confrontation. *Perkins*, 262 Mich App at 272.

The prosecution presented no evidence that defendant committed larceny from Krumbhaar’s person when she stole the fragrance box from Macy’s. No testimony supported that Krumbhaar ever possessed the fragrance box or that the merchandise was in Krumbhaar’s area of immediate presence or control at any point during the larceny. When defendant first removed the White Diamonds box from the display, Krumbhaar sat in an office around the corner from the women’s fragrance department, watching the event on closed-circuit television. As defendant made her way through Macy’s with the box in hand, Krumbhaar remained “in visual range.” But Krumbhaar never testified that she was even within an arm’s length of defendant or that defendant knew Krumbhaar was nearby. Nor does the record substantiate that Krumbhaar was within defendant’s “immediate presence” when defendant pushed the perfume box into her brown grocery bag, completing the act of larceny. See *People v Randolph*, 466 Mich 532, 549; 648 NW2d 164 (2002) (“[W]hen defendant placed the merchandise under his clothing, he committed a taking without force, and his conduct constituted a completed larceny.”).² Although Krumbhaar could see defendant commit the larceny, the prosecution failed

² Krumbhaar testified that she “was able to stay fairly close” to defendant in the fragrance department. In our view, that testimony does not describe being within defendant’s “immediate

to establish that defendant was ever close enough to Krumbhaar to invade Krumbhaar's personal space.³

We respectfully disagree with the dissent's proposition that larceny from the person may be accomplished if the victim and the perpetrator are merely in sight or hearing range of each other. *Post* at 6. Proof of "stealing from the person of another" requires more than vague proximity between victim and perpetrator. See *People v Gadson*, 348 Mich 307, 308-310; 83 NW2d 227 (1957) (overturning a larceny-from-the-person conviction when the prosecution failed to establish beyond a reasonable doubt that the defendant took the money from the victim's person rather than simply "surreptitious[ly] taking" the money after it fell from the victim's pocket). As interpreted by our Supreme Court in *Gould*, the statute protects property on a victim's person or within a victim's "immediate" custody and control, and the prosecution must present proof beyond a reasonable doubt of that proximity element. *Gould*, 384 Mich at 80.

Further, we find no support in any jurisdiction's caselaw for the dissent's broad definition of "immediate presence." To the extent that the dissent relies on *Gould*, we believe that reliance is misplaced. The defendant and the codefendants in *Gould* entered a restaurant, announced a holdup, and forced a waitress and a customer to lie on the floor of another room. *Gould*, 384 Mich at 73-74. The robbers took \$77 from a cash register and a cigar box and \$7 from the customer's wallet. *Id.* at 74. A jury convicted the defendant of larceny from the person. *Id.* at 73. This Court had reversed the defendant's conviction because "the criminal information on which defendant was tried alleges only the taking of the money from the cash register and cigar box in the presence of the waitress." *Id.* at 74-75, quoting *People v Gould*, 15 Mich App 83, 86-87; 166 NW2d 530 (1968). A majority of this Court determined that because the information omitted reference to the theft from the customer's wallet, "larceny from the person was not an included offense." *Gould*, 384 Mich at 75, quoting *Gould*, 15 Mich App at 92. No objection to the information had been raised in the trial court. *Gould*, 384 Mich at 76.

The Supreme Court reversed, citing four different reasons. First, the Supreme Court determined that the information adequately alleged the theft from the customer's wallet. *Id.* at 76-77. Second, the Court held that the defendant qualified as an "accessory" to the theft from the wallet. *Id.* at 78. Third, the Court noted that MCL 767.76 provides that a conviction may not be reversed "on account of any defect in form or substance of the indictment" unless an objection presence." Defendant completed her larceny in the shoe department. Krumbhaar's location at that point is not mentioned in the record. No testimony supports that before defendant left the store, Krumbhaar was ever close enough to defendant to have touched her or to have snatched the box from defendant's hands.

³ We note that the plain and unambiguous statutory language punishes larceny committed "from the person." Other courts construing identical statutory language have rejected the "immediate presence" gloss added in *Gould*. See *Terral v State*, 84 Nev 412, 414; 442 P2d 465 (1968) ("The crime is not committed if the property is taken from the immediate presence, or constructive control or possession of the owner. Other crimes may be committed in those circumstances, but not the crime of larceny from the person. The statutory words 'from the person' mean precisely that.") (citations omitted); *State v Crowe*, 174 Conn 129, 134; 384 A2d 340 (1977) ("In our view, larceny from the person requires an actual trespass to the person of the victim.").

was made “prior to the commencement of the trial or at such time thereafter as the court shall in its discretion permit.” *Id.* Finally, the Supreme Court held “that the taking of property in the possession and immediate presence of the waitress and customer in this case was sufficient to sustain a verdict against defendant Gould of larceny from the person.” *Id.* at 80. In contrast with *Gould*, no testimony in this case supports a finding that Krumbhaar ever got close enough to the White Diamonds box to immediately possess it or that defendant stole the item while invading Krumbhaar’s person or encroaching on her “immediate presence.”⁴

We do not imply that defendant’s conduct of resisting detention or stealing the store’s merchandise was lawful; defendant’s conduct simply did not implicate the larceny-from-the-person statute. The prosecution could have easily established that defendant committed third-degree retail fraud. See MCL 750.356d(4)(b) (proscribing the theft of merchandise priced less than \$200). Defendant’s violent actions during her attempted escape also potentially fell within the ambit of the transactional-unarmed-robbery statute. That statute specifically proscribes the use of “force or violence against any person who is present” or assaulting or putting a victim in fear while “in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the property.” MCL 750.530. However, the jury acquitted defendant of unarmed robbery, and we may not second-guess its judgment. See *United States v Scott*, 437 US 82, 91; 98 S Ct 2187; 57 L Ed 2d 65 (1978) (noting that reconsideration of a jury’s judgment of acquittal violates a criminal defendant’s constitutional protection against double jeopardy). We must take the charges as we find them, and defendant’s actions did not support a charge, let alone a conviction, under the plain language of the larceny-from-the-person statute.

Reversed.

/s/ Elizabeth L. Gleicher
/s/ Douglas B. Shapiro

⁴ We further find the dissent’s reliance on *People v Beebe*, 70 Mich App 154; 245 NW2d 547 (1976), misplaced. In *Beebe*, this Court construed the armed robbery statute, which at the time applied to armed thefts from a victim’s person “or in his presence.” Unlike the statutory prohibition of larceny from the person, the armed robbery statute protects an area outside the victim’s personal space.