

IN THE SUPREME COURT OF THE STATE OF NEVADA

LERROY GREENWOOD A/K/A JAMONE
SIMMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45556

FILED

MAR 30 2006

JAMIE M. HLODM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT
THE JUDGMENT OF CONVICTION

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Jackie Glass, Judge. Appellant Leroy Greenwood was sentenced to a prison term of 30-120 months, plus an equal and consecutive term for the use of a deadly weapon. Greenwood contends two errors on appeal.

First, Greenwood asserts the jury should have been instructed on the lesser included offenses of larceny from the person and the unlawful taking of a motor vehicle. This court has expressly adopted the elements test set forth in Blockburger v. United States¹, for the determination of whether a lesser included offense instruction is required.² Greenwood invites this court to overrule its precedent and apply the same conduct test for lesser included offenses in his case instead of the elements test. We decline the invitation. The elements of unlawful

¹284 U.S. 299 (1932).

²Barton v. State, 117 Nev. 686, 694, 30 P.3d 1103, 1108 (2001).

taking of a motor vehicle and larceny from the person are not an entirely included subset of robbery with use of a deadly weapon under the elements test. Therefore a lesser included offense instruction was not required.

Second, Greenwood contends the instruction regarding the use of a deadly weapon was misleading and improperly shifted the burden of proof. Greenwood asserts that because the jury instruction indicated that the "State is not required to have recovered the deadly weapon used in an alleged crime, or to produce the deadly weapon in court at trial, to establish that a deadly weapon was used in the commission of the crime," there was an improper shift of the burden of proof. This claim lacks merit. The instruction immediately prior to the deadly weapon instruction clearly and specifically instructed the jury that all of the elements of robbery with use of a deadly weapon had to be found beyond a reasonable doubt. Further, this court has previously determined that a specific instruction informing the jury that the State is not required to recover the weapon in order for the jury to convict a defendant is permissible.³

Having considered appellant's contentions and concluded that they are without merit, we affirm the judgment of conviction. Our review of the judgment of conviction, however, reveals a clerical error. The judgment of conviction incorrectly states that appellant was convicted pursuant to a guilty plea. The judgment of conviction should have stated that appellant was convicted pursuant to a jury verdict. We therefore

³Harrison v. State, 96 Nev. 347, 350-51, 608 P.3d 1107, 1109-10 (1980).

conclude that this matter should be remanded to the district court for correction of the judgment of conviction. Accordingly, we

ORDER the judgment of the district court AFFIRMED and REMAND this matter to the district court for the limited purpose of correcting the judgment of conviction.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Honorable Jackie Glass, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk