



358 N.E.2d 1034  
 40 N.Y.2d 948, 358 N.E.2d 1034, 390 N.Y.S.2d 409  
 (Cite as: 40 N.Y.2d 948, 358 N.E.2d 1034, 390 N.Y.S.2d 409)

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Court of Appeals of New York.  
 The PEOPLE of the State of New York, Respondent,  
 v.  
 Frederick E. CARBONELL, Appellant.  
 Nov. 18, 1976.

Eugene Gold, District. Atty. (Steven T. Wax, Pleasantville, and Eugene H. Scher, Brooklyn, of counsel), for respondent.

## MEMORANDUM.

Defendant's conviction of robbery in the third degree in the Supreme Court, Kings County, John J. Ryan, J., was affirmed by the Appellate Division, 49 A.D.2d 604, 373 N.Y.S.2d 515, and defendant appealed. The Court of Appeals held that where defendant was charged with various counts of robbery and larceny and the jury was instructed that if it found no larceny it must acquit on all charges, a verdict finding defendant guilty of robbery in the third degree and acquitting defendant on all larceny counts was contradictory, in that robbery could not have occurred unless, as essential element of that crime, there had been larceny in some degree.

Order of the Appellate Division reversed, the judgment of conviction vacated and the indictment dismissed. The jury verdict was internally self-contradictory both logically and pursuant to the charge of the court. By acquitting defendant of all the larceny counts the verdict of guilty of robbery in the third degree was contradicted, since the robbery could not have occurred unless, as an essential element of the crime, there had been a larceny in some degree (cf. *People v. Cole*, 35 N.Y.2d 911, 364 N.Y.S.2d 899, 324 N.E.2d 366). As pointed out by defendant's appellate counsel there need not have been an acquittal on the larceny counts so long as the jury under proper instructions\*949 returned a verdict of guilty under the robbery count. But the fact is that the jury did both. It had not been advised by the trial court that if it found defendant guilty of robbery, it did not have to reach the larceny counts. On the contrary, the jury was instructed that if it found no larceny it must acquit on all charges. The other issues raised by defendant do not need address in light of the disposition.

Reversed.

## West Headnotes

**Criminal Law 110** **878(4)**

110 Criminal Law

110XX Trial

110XX(K) Verdict

110k878 Several Counts

110k878(4) k. Inconsistent Findings.

**Most Cited Cases**

Where defendant was charged with various counts of robbery and larceny and jury was instructed that if it found no larceny it must acquit on all charges, verdict finding defendant guilty of robbery in third degree but acquitting him on all larceny counts was contradictory, in that robbery could not have occurred unless, as essential element of crime, there had been larceny in some degree.

\*\*\*409 \*\*1035 **Joel A. Brenner** and Martin S. Dorfman, Mineola, for appellant.

BREITEL, C.J., and JASEN, GABRIELLI, JONES, WACHTLER, FUCHSBERG and COOKE, JJ., concur in memorandum.

Order reversed, etc.

N.Y. 1976.

*People v. Carbonell*

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