

**QUESTION 10 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV
OR IN SOFTEST ANSWER SCREEN 10**

Marty and Joe were charged under Michigan law with armed robbery. At the preliminary examination in district court, the People presented a lone witness, Caroline Clerk. She testified she was working as a convenience store clerk on the date in question. She stated that two men came into the store, looked around a little, looked at each other a lot, and when the store was otherwise empty, approached the cash register together.

Once at the cash register, one man said "give up the money!" When Caroline hesitated, the man repeated "give up the money or we will blow you away." The other man raised the pocket of his jacket where he concealed his right hand and pointed directly at Caroline. Caroline testified she was afraid she would be shot so she opened the cash register. As she gathered the larger bills, a police siren was heard. The two men ran out of the store with no money received.

At the preliminary examination, the People rested after Caroline identified Marty and Joe as the robbers. Defense counsel put Marty and Joe on the witness stand. Both men testified similarly. They were together at a Tiger game, 50 miles away, at the time of the robbery. Both also testified they were often mistaken for others due to their common looks. Defense rested.

The assistant prosecutor moved to bind over both defendants for trial in circuit court on armed robbery charges. Both defendants challenged bind over, albeit for different yet related arguments.

Regarding the factual elements, both defendants argued that, because no money was taken, there was no robbery and, accordingly, no armed robbery. Marty argued that the victim did not testify as to seeing a gun and the quoted words could not be an adequate evidentiary substitute for a gun. Joe argued the hand gesture was equally insufficient to establish a gun.

As to proof of their identities, Marty and Joe argued that their own testimony proved their lack of culpability because the store clerk simply mistook them for the actual robbers. Both Marty and Joe requested dismissal instead of bind over.

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Basing your answer on Michigan law, address each of the arguments made, and indicate whether the armed robbery charges should be dismissed or bound over for trial. Fully explain your answers.

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IV***** OR IN SOFTEST ANSWER SCREEN 10