

### ANSWER TO QUESTION NO. 13

The masked man should be charged with (1) bank robbery; (2) armed robbery; (3) assault with a dangerous weapon; and (4) fleeing and eluding police.

**Bank Robbery:** The germane elements of bank robbery are: (1) putting another person in fear for the purpose of stealing money and (2) from a bank or depository. CJI2d 18.5.

A person who intends to commit any felony and who confines, maims, injures, wounds or attempts or threatens to do so or puts any person in fear thereof for the purpose of stealing from any bank is guilty of bank robbery regardless of his success or failure in the perpetration of the crime. *People v Vannoy*, 106 Mich App 404 (1981), rev'd on other grounds 417 Mich 946 (1983). See also MCL 750.531.

In this case, the elements are presented because the facts describe the place of the robbery as a bank. Moreover, the first teller is pushed away from the drawer, an act that could put the teller in fear. The purpose for this contact with the teller was to take money from her drawer, which the masked man did.

These facts demonstrate proof of the elements of bank robbery.

**Armed Robbery:** The elements of armed robbery are: (1) the defendant used force or violence or put fear in another person; (2) the defendant did so while he/she was in the course of committing larceny, i.e., the taking and moving of someone else's property/money with the intent to take it away from that person permanently; (3) the person was present while defendant was in the course of committing the larceny; and (4) while in the course of the larceny, the defendant (a) possessed a weapon designed to be dangerous and capable of causing death or serious injury, or (b) possessed any other object capable of causing death or serious injury and the defendant used it as a weapon, or (c) possessed any other object used or fashioned in a manner to lead the person who was present to reasonably believe it was a dangerous weapon, or (d) represented orally or otherwise that he/she was in possession of a weapon. CJI2d 18.1.

In this case, the masked man put the second teller in fear by what he said--she moved aside because of his threat. The masked man took the money from her drawer which establishes the larceny

element. Clearly, the second teller was present during the larceny. Although the masked man was not said to have had a weapon, his oral statement, "Give me what you got or I will blow your face off" establishes an oral representation that the masked man was in possession of a weapon (i.e., a gun--an item capable of blowing face off).

Concerning the armed robbery charge, robbery is a continuing crime that does not end until the offender reaches a point of safety. A person can be convicted of robbery if, before reaching a place of temporary safety, such person uses force to permanently deprive an owner of the actual or constructive possession of his property. *People v Morton*, 471 Mich 248 (2004). Moreover, the robbery statute defines "in the course of committing a larceny" as including "acts that occur . . . in flight or attempted flight after commission of the larceny, or in an attempt to retain possession of the property or money." MCL 750.530.

Here, the defendant threw the chair at the security guard to escape detention and to attempt to retain possession of the bank's money. Because the crime of robbery is a continuing crime, the use of the chair could also satisfy the "armed" requirement as an object used as a weapon that could cause injury.

**Assault With a Dangerous Weapon/Felonious Assault:** The elements of assault with a dangerous weapon are: (1) the defendant either attempted to commit a battery on someone or did an act that would cause a reasonable person to fear or apprehend a battery; (2) the defendant intended to injure the person or to make the person reasonably fear an immediate battery; (3) at that time, defendant had the ability to commit a battery, appeared to have the ability, or thought he/she had the ability; and (4) the defendant committed the assault with a dangerous weapon. CJI2d 17.9.

In this case, the defendant throwing the chair at the security guard satisfies all the elements above. Of particular significance is the last element. While a chair is not typically a dangerous weapon, the use of it by the defendant (i.e., picking it up and throwing it at the security guard) qualifies it as being used as a dangerous weapon if death or serious injury could result. CJI2d 17.10. The heavy-wooded chair, with its hard metal pronged feet, thrown with velocity, could have seriously injured the security guard.

**Fleeing and Eluding Police:** The elements of fleeing and eluding are: (1) a police officer in uniform was performing his/her lawful duties and was driving an adequately marked police vehicle; (2) the defendant was driving a motor vehicle; (3) the officer

ordered defendant to stop his vehicle; (4) the defendant knew of the order; and (5) the defendant refused to obey the order by trying to flee or avoid being caught. CJI2d 13.6d See also MCL 750.479a.

In this case, the officer was in uniform, was performing his duty, and was in a marked police car. The facts also indicate the defendant drove around the car that had lights flashing and its siren blaring, clear indications the defendant was to stop. The defendant went around the police vehicle, establishing an effort to evade or avoid being caught as further evidenced by the high-speed chase for ten miles.