

EXAMINER'S ANALYSIS OF QUESTION NO. 6

Carjacking is established by MCL 750.529a:

(1) A person who in the course of committing a larceny of a motor vehicle uses force or violence or the threat of force or violence, or who puts in fear any operator, passenger, or person in lawful possession of the motor vehicle, or any person lawfully attempting to recover the motor vehicle, is guilty of carjacking.

(2) As used in this section, "in the course of committing a larceny of a motor vehicle" includes acts that occur in an attempt to commit the larceny, or during commission of the larceny, or in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the motor vehicle.

The elements of the crime of carjacking are:

1. the defendant used force or violence; or threatened the use of force or violence; or assaulted; or put the victim in fear;
2. the defendant did so while in the course of committing larceny of a motor vehicle;
3. the victim was the: operator/passenger/person in lawful possession/person attempting to recover possession of the motor vehicle. MCL 750.529a; M Crim JI 18.4a.

"A 'larceny' is the taking and movement of someone else's motor vehicle with the intent to take it away from that person permanently." M Crim JI 18.4a(3); see *People v Gimmotty*, 216 Mich App 254, 257-258 (1996).

"Larceny" is a specific intent crime and so is carjacking. "Larceny" is defined in its common law sense. *People v March*, 499 Mich 389, 399-400 (2016). To prove larceny, the prosecutor must establish a trespassory taking and carrying away the personal property of another with the intent to steal. *March*, 499 Mich at 401. The prosecutor must also show the defendant intended to steal or permanently deprive the owner of the property. *People v Cain*, 238 Mich App 95, 119 (1999). See *People v Haverson*, 291 Mich App 171, 177 (2010); *People v Williams*, 288 Mich App 67, 72 n 3 (2010), aff'd 491 Mich 184 (2012). The requirement of "intent to permanently deprive" has been defined in several ways, including: (a) retention of the property without returning it within a reasonable time; (b) the intent to return it only on the condition that the owner pays some compensation or reward for its return;

(c) disposing of the property in a way that it is unlikely the owner will get it back; (d) to sell, give, transfer any interest in the property; (e) other action inconsistent with the owners right of possession. "Permanently deprive" has been defined to mean the same thing as the intent to "steal." *People v Jones*, 98 Mich App 421, 425-426 (1980).

Any movement of the property is sufficient for a larceny. *People v Alexander*, 17 Mich App 30 (1969). There is no legal requirement that the owner of the property be permanently deprived of the car. *Haverson*, 291 Mich App at 178; *People v Williams*, 491 Mich 164, 174 (2012).

"`In the course of committing a larceny' includes acts that occur in an attempt to commit the larceny, or during commission of the larceny, or in flight or attempted flight after the commission of the larceny or in an attempt to retain possession of the motor vehicle." M Crim JI 18.4a(3); MCL 750.529a; *Williams*, 491 Mich at 171.

In this case, Dan committed a larceny of a motor vehicle. With respect to the elements required for larceny, the facts show that Dan took and moved the vehicle of another (Jack). There is a question of whether Dan did so with the intent to permanently deprive Jack of the vehicle. Dan asserted that because he only wanted to drive the car to a particular location, he did not intend to permanently deprive Jack of the motor vehicle. Under *Haverson*, Dan took action inconsistent with Jack's right of possession by taking it and driving it away. This action is sufficient to satisfy the requirement of larceny under the statute. Dan took the car and moved it to another location, the party. The larceny was complete when Dan took the car and drove off. Dan did not intend to keep the car forever, but he took it from Jack, which is inconsistent with Jack's right of possession. Points, however, should be accorded if a thorough analysis leads to the opposite conclusion, that there was no intent to permanently deprive Jack or no intent to steal.

On the element of force, the issue is whether Dan used force in the course of committing the larceny. The statute does not require any particular amount of force. Dan cutting in front of Jack and bumping him at the front door, in order to prevent Jack from getting to the car first, constituted force. The act made Jack apprehensive with the result that it enabled Dan to get to the car before Jack. However, points should be accorded if the reasoning is correct but the opposite conclusion is drawn, that the force was insufficient to constitute a carjacking.