

**FEBRUARY 2014 MICHIGAN BAR EXAMINATION
EXAMINERS' ANALYSES**

EXAMINERS' ANALYSIS OF QUESTION NO. 1

Under Michigan law, the scenario presented supports charges against Clark of armed robbery, first-degree home invasion, and carjacking.

The elements of robbery are:

- (1) the use of force or violence against, or an assault on or otherwise putting in fear, any person who is present
- (2) in the course of committing a larceny;
- (3) of any money or other property that may be the subject of larceny. See MCL 750.530; CJI 2d 18.1.

To elevate the offense to armed robbery, an additional element requires that the robber:

- (1) was armed with a dangerous weapon or an article used or fashioned in a manner to lead a reasonable person to believe it was a dangerous weapon; or
- (2) represented orally or otherwise that he or she was in possession of a weapon. See MCL 750.529; CJI 2d 18.1.

The elements of home invasion, first degree are:

- (1) The defendant broke and entered a dwelling, or entered the dwelling without permission.
- (2) a. When the defendant broke and entered the dwelling, or entered it without permission, he or she

intended to commit a felony, larceny, or assault in the dwelling; or

b. When the defendant entered, was present in, or was leaving the dwelling, he or she committed a felony, larceny, or assault;

(3) When the defendant entered into, was present in, or was leaving the dwelling, either the defendant was armed with a dangerous weapon or another person was lawfully present in the dwelling. See MCL 750.110a(2).

The elements of carjacking are:

(1) The defendant used force or violence, threatened the use of force or violence, assaulted or put another person in fear.

(2) The defendant did so while in the course of committing a larceny of a motor vehicle. A "larceny" is the taking and movement of someone else's motor vehicle with the intent to take it away from that person permanently. "In the course of committing a larceny of a motor vehicle" includes acts that occur in an attempt to commit the larceny, or during the commission of the larceny, or in an attempt to retain possession of the motor vehicle.

(3) Another person was the operator, passenger, or otherwise in lawful possession of the motor vehicle. See MCL 750.529a.

Applying the elements listed above to the facts presented yields the following conclusions:

Armed Robbery: Clark accomplished the taking of Garrison's money by using force or instilling fear in Garrison as the facts indicate that Garrison was frightened by Clark's demand and concomitant action (an assault). This suffices to prove robbery. To aggravate robbery to armed robbery, there must be proof that Clark was armed or, more saliently, that he represented orally or otherwise that he was in possession of a dangerous weapon. Here, Clark said if he did not receive Garrison's money, Garrison would "get a bullet." This is an oral representation that Clark was in possession of a weapon (a gun). Relatedly, Clark moved his hand about inside the pocket of his sweatshirt, another non-oral representation he was armed with a gun. His oral representation concomitantly made at the time of his physical action establishes a manner of armed

robbery, even though no gun was seen by Garrison or recovered by police. *People v Jolly*, 442 Mich 458 (1993).

Home Invasion, First Degree: The broken glass demonstrates that Clark broke into Garrison's home and entered, establishing the requisite breaking and entry. While inside Garrison's home, Clark committed a robbery. Although Clark was not armed with a dangerous weapon, nor even became in possession of one, Garrison was lawfully present in his own home. All the elements of first-degree home invasion are established.

Carjacking: Garrison's daughter was in lawful possession of Garrison's vehicle, having been entrusted with it to get the oil changed. Moreover, she was the operator of the vehicle. Clark pulled her out of the vehicle and threw her aside, qualifying as the necessary force. Clark had expressed an interest in Garrison's car after he had stolen Garrison's wallet. Jumping into the car and driving it away establishes the requisite larceny. All the elements of carjacking are established.