

EXAMINERS' ANALYSIS OF QUESTION NO. 11

At common law, the offense of robbery was defined as "the felonious taking of money or goods of value from the person of another or in his presence, against his will, by violence or putting him in fear." *People v Covelesky*, 217 Mich 90, 96 (1921). To constitute robbery, it was essential that there be a "taking" from the person. Thus, common law robbery required a completed larceny. Armed robbery required the same showing with the additional element that the robber was armed with a dangerous weapon.

Applying these principles to the facts at hand, Ray-Ray could not be convicted of common law armed robbery because the completed larceny element is missing. The facts clearly state that the clerk was put in fear by Ray-Ray's use of the gun (a dangerous weapon) and his demand for money. However, the facts are equally clear that the cash register did not open, no money or goods were taken by Ray-Ray, and he left with no more property than he possessed on entry. While Ray-Ray may have attempted a larceny, such an attempt does not satisfy the common law element of a completed larceny. There being no larceny, there is no robbery, armed or otherwise.

The answer, however, under Michigan law would be different. In 2004, the Michigan robbery statutes were amended. In defining robbery, the amended statutes state in pertinent part that:

"(2) As used in this section, 'in the course of committing a larceny' includes acts that occur in an attempt to commit the larceny, or during the 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 property." (emphasis added)

In *People v Williams*, 491 Mich 164 (2012), the Michigan Supreme Court upheld the Court of Appeals' determination that the statute's amendment relieved the obligation to prove a completed larceny as an element of robbery. Rather, the Court held, the language chosen by the legislature intended to remove that element.

"We hold that the Legislature demonstrated a clear intent to remove the element of a completed larceny, signaling a departure from Michigan's historical requirement and its common law underpinnings. Accordingly, an attempted robbery or attempted armed robbery with an incomplete larceny is now sufficient to sustain a conviction under the robbery or armed robbery statutes,

respectively."

Applying the above principles to the facts presented in the question warrants the conclusion that, as opposed to the common law, Ray-Ray could be convicted of armed robbery under Michigan law. The same clear facts are in play here: the fear of the clerk, the use of the gun, and the demand for money. The only remaining issue is whether Ray-Ray attempted a larceny. He clearly did so. He undertook an act with the intent to acquire money but fell short of doing so. In total, those circumstances amount to an "attempt." *Williams* at 173-177. Because a complete larceny is unnecessary to a robbery conviction, Michigan law supports Ray-Ray's conviction of armed robbery.

Michigan law also supports conviction of at least two other gun crimes. Because Ray-Ray concealed the gun on his person, he violated the Michigan concealed weapons statute, MCL 750.227(2). Ray-Ray's carrying and/or use of the gun in the armed robbery exposes him to conviction for possession of a firearm at the time of commission of another felony under MCL 750.227b. Finally, because a gun is a weapon, Ray-Ray could be convicted of crimes where a weapon is an element of any of those crimes, for example, assault with a dangerous weapon. Credit will also be given for other crimes involving guns.