

A woman drove her car through the drive-through lane of a fast-food restaurant one afternoon. When she reached the microphone used to place orders, she said, "There's a man across the street with a rifle. He can see everything you do. If you do not do exactly what I tell you, he will shoot you. Put all the money from the register into a sack and give it to me when I drive up." The clerk did not see anyone across the street and was unsure whether anyone was there. However, unwilling to risk harm to himself, he put \$500 in a paper bag and handed it to the woman when she drove up to the delivery window. The woman drove off with the money but was arrested a short time later. She had lied about there having been a man with a rifle and had acted alone.

What is the most serious crime of which the woman can be convicted?

- A. Embezzlement.
- B. False pretenses.
- C. Larceny.
- D. Robbery.

Explanation:

Robbery

(larceny by force v. intimidation)

Force Use of more force than necessary to acquire property or retain the property immediately thereafter

Intimidation Threat that places victim in reasonable apprehension of immediate death or serious physical injury to victim, close family member, or person present

Larceny is (1) the unlawful taking and carrying away of the victim's personal property (2) with the specific intent to permanently deprive the victim of that property. And larceny **becomes robbery** when:

the property is taken from the victim's person or presence *and*
the taking is accomplished **by force or intimidation**.

Since larceny is necessarily committed during robbery, it is a lesser included offense of robbery. And under the **merger doctrine**, a defendant can only be convicted of larceny (lesser offense) *or* robbery (greater offense).

Here, the woman committed larceny when she took \$500 from the clerk and drove away. But she acquired the money by threatening to have the clerk immediately shot if he did not comply. And since the clerk gave her the money because he was unwilling to risk being harmed, the woman can be convicted of the more serious crime of robbery **(Choice C)**.

(Choice A) Embezzlement occurs when a person in *lawful* possession of another's property fraudulently converts it. Since the woman took *unlawful* possession of the money, she cannot be convicted of embezzlement.

(Choice B) False pretenses requires proof that the defendant (1) knowingly misrepresented a past or existing material fact (2) with the intent to defraud and (3) thereby obtained title to another's property. Here, the woman lied to the clerk when she said that a man with a rifle was ready to shoot him. But since the woman never obtained title to the money, she cannot be convicted of false pretenses.

Educational objective:

Larceny becomes robbery when property is taken from the victim's person or presence by force or intimidation. Since larceny merges into the completed robbery, a defendant can be convicted of either crime—but not both.

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