

At a defendant's robbery trial, the state called the victim to testify that the defendant pointed a gun at him before grabbing his briefcase and running away. The state then called a bystander who testified that she saw the defendant take the victim's briefcase but saw no gun.

For which of the following offense(s) could the jury properly return a verdict of guilty?

- A.           Larceny only.
- B.           Robbery only.
- C.           Either larceny or robbery.
- D.           Both larceny and robbery.

### Explanation:

**Larceny** is (1) the unlawful taking and carrying away of another's personal property (2) with the specific intent to permanently deprive the victim of that property. It **escalates to robbery** when **property is taken** from the victim's person or presence **by force or intimidation**. As a result, larceny is necessarily committed during a robbery—making it a lesser included offense of robbery. And since larceny (lesser offense) **merges** into robbery (greater offense) once the robbery is completed, a defendant can only be convicted of larceny *or* robbery (**Choice D**).

Here, the defendant was tried for robbery. The victim and bystander testified that the defendant took the victim's briefcase and ran off with it. Though the victim also testified that the defendant pointed a gun at him (robbery), the bystander testified that she did not see a gun (larceny). Since the jury can choose whom to believe, it can return a guilty verdict for either crime—but not both (**Choices A & B**).

### Educational objective:

Larceny is (1) the unlawful taking and carrying away of another's personal property (2) with the specific intent to permanently deprive the victim of that property. It merges into robbery if the property is taken from the victim's person or presence by force or intimidation. Therefore, a person can be convicted of larceny or robbery—not both.

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