

After waiting until all the customers had left, a man entered a small grocery store just before closing time. He went up to the lone clerk in the store and said, "Hand over all the money in the cash register or you will get hurt." The clerk fainted and struck his head on the edge of the counter. As the man went behind the counter to open the cash register, two customers entered the store. The man ran out before he was able to open the register drawer.

Of which crime(s) could the man be properly convicted based on this evidence?

- A. Assault and attempted robbery.
- B. Assault and robbery.
- C. Attempted robbery.
- D. Robbery.

## Explanation:

**Robbery** requires proof of *all* of the following elements:

The defendant **unlawfully took and carried away** the victim's personal property.

The property was taken from the victim's person or presence **by force or intimidation** (eg, assault).

The defendant **specifically intended to permanently deprive** the victim of the property (ie, to steal).

But a defendant who does **not complete** all of these elements can still be convicted of **attempted robbery** if he/she (1) had the specific intent to commit robbery and (2) committed an **act** in furtherance of that crime.

Here, the man did not commit robbery since he ran out of the store before he could take the money (**Choices B & D**). But since he specifically intended to steal the cash by intimidation and committed an act in furtherance of the robbery when he threatened to hurt the clerk, he can be convicted of *attempted* robbery.

**Assault** is (1) an attempted battery *or* (2) conduct that intentionally puts the victim in reasonable apprehension of imminent bodily harm. Therefore, the man committed assault in the **course of the attempted robbery** when he threatened to hurt the clerk if he did not comply. But since assault satisfies the intimidation requirement for robbery, it is a **lesser included offense**. As a result, the assault **merges** with the attempted or completed robbery. This means that the man can be convicted of assault *or* attempted robbery—not both (**Choice A**).

## Educational objective:

Robbery requires a taking of the victim's property by force or intimidation. Since assault satisfies that intimidation requirement, it is a lesser included offense that merges with the completed robbery or attempted robbery.

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**Robbery  
(greater offense)**

**Larceny (lesser offense)**

- Unlawful taking & carrying away of victim's property
- Specific intent to permanently deprive

**+**

**Battery (lesser offense)**

- force used to cause bodily injury or offensive touching

**OR**

**Assault (lesser offense)**

- attempted battery or conduct causing apprehension of imminent harm