

A man walked into a store that had a check-cashing service and tried to cash a \$550 check that was payable to him. The attendant on duty refused to cash the check because the man did not have two forms of identification, which the store's policies required. The man, who had no money except for the check and who needed cash to pay for food and a place to sleep, became agitated. He put his hand into his pocket and growled, "Give me the money or I'll start shooting." The attendant, who knew the man as a neighborhood character, did not believe that he was violent or had a gun. However, because the attendant felt sorry for the man, he handed over the cash. The man left the check on the counter and departed. The attendant picked up the check and found that the man had failed to endorse it.

Of which crime is the man guilty?

- A. Robbery.
- B. Attempted robbery.
- C. Theft by false pretenses.
- D. Larceny by trick.

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

Robbery requires proof of *all* 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**.

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 intentionally took \$550 in cash after he threatened the attendant by stating, "Give me the money or I'll start shooting." But this taking was not accomplished by force. Nor was it accomplished by intimidation since the attendant gave the man the money out of pity—not fear. As a result, the man is *not* guilty of robbery (**Choice A**). But since he specifically intended to steal the cash by intimidation and committed an act by threatening to shoot the attendant, the man *is* guilty of attempted robbery.

(Choices C & D) The knowing **misrepresentation** of a past or present material fact made with the intent to defraud is either:

larceny by trick – if the defendant thereby obtains *possession* of the victim's property *or* false pretenses – if the defendant thereby obtains *title* to the victim's property.

Here, the man might have misrepresented his intent to shoot. But since he only obtained possession of (not title to) the stolen cash, he did not commit false pretenses. And since the attendant's pity—not the man's misrepresentation—caused him to acquire the cash, he is not guilty of larceny by trick.

Educational objective:

Robbery requires proof that property was taken from the victim's person or presence by intimidation (or force). So if the victim was not fearful of the defendant's threat, any taking was not by intimidation.

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