

**CRIMINAL LAW: ROBBERY - ON LINE**

**OUTLINE**

**PRESENTED BY:**

DPS – Law Enforcement Academy  
Santa Fe, New Mexico

Date: \_\_\_\_\_

**GOALS**

- Students will gain a working knowledge of the elements of robbery.
- Students will learn what is required to prove robbery.
- Students will learn the difference between larceny and robbery.
- Students will learn the difference between robbery and armed robbery.
- Students will learn what is required to prove armed robbery.

**OBJECTIVES**

Upon completion of this course, students will be able to:

- List the elements of robbery.
- Explain how a “purse snatching” can be a larceny or a robbery.
- Define the difference between a larceny and a robbery.
- Use of force to retain property – articulate whether this is a larceny or robbery.
- Explain the difference between robbery and armed robbery.
- Use of toy or simulated gun – articulate whether this is robbery or armed robbery.
- One robber, three victims – articulate whether one count or three counts.
- State how to charge different crimes related to robbery: larceny, false imprisonment, etc.
- State what dollar amounts, if any, exist for robbery.

**SOURCES**

- New Mexico Criminal and Traffic Manual.
- New Mexico Statutes Annotated.
- State and federal case law.

**ESTIMATED TIME**

Included in ten hour block of Criminal Law.

**PREPARED BY**

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**DATE APPROVED** \_\_\_\_\_

**ACCREDITATION NUMBER** \_\_\_\_\_

## INTRODUCTION

Robbers are desperate people. Who else, for example, would commit a felony offense while looking right into a camera? And, unfortunately, robbery can quickly escalate into a deadly situation.

There's always a sense of relief when a robber is caught. But what happens afterwards? That's where this class, by reviewing the elements of robbery, can be helpful.

## Statute on Robbery

- Robbery consists of the theft of anything of value from the person of another or from the immediate control of another, by use or threatened use of force or violence.
- Whoever commits robbery is guilty of a third degree felony (three years). NMSA 1978, Section 30-16-2.

## Elements of Robbery

- Robbery can be divided into three elements:
  - 1) theft of anything of value.
  - 2) from the person of another or from the immediate control of another.
  - 3) by use or threatened use of force or violence.

Reminder:

[We need all three elements to prove robbery.](#)

- Reviewing case law on robbery can help us better understand robbery.
- **theft of anything of value**
  - NOTE: The first element of robbery is the definition of larceny.
- **from the person of another or from the immediate control of another**
  - The following cases will help us understand this element:  
Defendant locked jailer into cell before taking a money bag from a drawer in the control room of the jail. State v. Pitts (1985)

Was the money bag taken from the "immediate control" of another?

Answer:

Yes. Since the money bag was in the jailer's immediate control prior to being forcibly locked into the jail cell, this is robbery.

- The victim was a manager of a restaurant in Albuquerque. The robber met the victim outside the restaurant and used a weapon to force her inside. The victim led the robber to the office. The robber took the money from a file cabinet. State v. Kenny (1991).

Is this action within the immediate control of another?

Answer:

His conviction for armed robbery was affirmed. The jury could infer that money taken from the filing cabinet was within her immediate control.

- **by use or threatened use of force or violence**

This is the most complex element of robbery.

But first, some questions:

What is a purse snatching? (not found in state statute)

What is a mugging? (not found in state statute)

What is a car jacking? (federal but not state statute)

People use these terms but they are not found in state statutes. Reviewing this element will give us a better idea of what to charge.

- The defendant entered the Cross Roads Bar, a combination bar and package store in Albuquerque. Defendant ordered a quart of beer and, as the cashier started to ring up the sale, he jumped over the counter with a butcher knife in his hand and took the money.

Defendant ran towards the door. As he reached it, he collided with another employee. A scuffle ensued and defendant fled. About \$275 was missing from the cash register. The cashier testified that he was surprised.

Was this a robbery? State v. Baca (1971).

Answer:

Robbery conviction reversed. The employee testified only that he was surprised. There was no testimony that the employee parted with anything of value through the use or threatened use of force or violence on the part of the defendant. Surprise is not equivalent to force.

Lesson:

In a robbery, when someone parts with property, there must be a reason – fear – that

caused the person to part with his or her property.

## LARCENY OR ROBBERY?

### PURSE SNATCHING Larceny or Robbery?

- A purse snatching, depending upon the facts, can be a larceny or robbery.
- Larceny consists of the stealing of anything of value which belongs to another. NMSA 1978, Section 30-16-1.
- Larceny, although an essential element of robbery, is distinguished from robbery by the violence which precedes or accompanies the taking in robbery. The presence of violence is an essential ingredient of robbery, but not of larceny. State v. Wingate (1975).

### LARCENY + FEAR = ROBBERY

- Victim was using a restroom in a bar in Albuquerque. Defendant entered the restroom, took a wallet containing money from the victim's pocket and backed out of the restroom. Defendant ran away when the victim yelled.

The victim testified that in taking the wallet, the defendant put his hand or fist against the victim's back. Victim also testified he wasn't sure whether a fist was made because defendant was behind him. No weapon was used. No blows were struck. State v. Sanchez (1967)

Based upon these facts, what charge?

Answer:

Court of Appeals said larceny, not robbery. The force or fear must overcome the victim's resistance. It must compel one to part with his/her property. Even though there was touching, the crime was larceny because of the absence of force or fear.

### Some factors in a purse snatching to determine if its larceny or robbery

- It's a larceny when there is absence of force or fear.
- It's larceny if the victim's reaction is simply surprise . . .  
. . . a "mere snatching" or sudden taking of money.
- Force does not refer to the taking of something from another, i.e., the grabbing of a purse.
- Force refers to intimidating the victim or putting the victim in fear in order

to take something.

- Force or fear must be the moving cause inducing the victim to part unwillingly with property.
- The issue is not how much force is used. Rather, it is whether the force used caused the victim to apprehend danger and part with property.

How would you decide the following fact situation? Larceny or robbery?

- It was a dark and stormy night. Victim is lying down in a parking lot. Offender brutally kicks victim, hits him, and reaches down and takes victim's wallet. Later we learn victim was dead before offender got there. Larceny or Robbery?

Answer:

One of the requirements of robbery is a person giving up property because he or she is in fear. If an offender points a gun at a victim or hands a bank teller a note, and the victim gives up property out of fear, that's robbery. But a dead man has no fear. This is a larceny, not robbery.

Larceny or Robbery? You decide!

- The victim was visiting Albuquerque to see his former girlfriend. First, however, he met a prostitute and they went to a motel. The motel room had a front room connected to a back room. She instructed him to remove his clothing.
- He put his clothing on a chair in the front room. He had between \$1500 and \$1600 in his coat pocket. They had sexual intercourse in the back bedroom. While so engaged, he heard noises that she said were probably the neighbors. After intercourse, she went into the front room and the victim stayed in bed for a few minutes. When he got up and went into the front room to get dressed, he noticed that his coat was not in the same position as he had left it.
- When he turned around, the prostitute was pointing a gun at him. A man came out from a closet in the front room and she handed the gun to him. They left and the victim chased after him. State v. Lewis (1993). Larceny or robbery?

Answer:

For robbery, the use or threatened use of force must be the means by which the property is removed from the victim's possession. Here, the victim's money was removed by stealth. The use of force to retain property or to facilitate escape does not satisfy the force element of robbery.

**USE OF FORCE TO RETAIN PROPERTY OR TO ESCAPE Larceny or Robbery?**

- If the theft has been completed, anything after would be a separate crime.

- A person shoplifts from a store. The person is in a parking lot when store security chase him. The person turns around, pulls a knife, and the store security backed off. What charges?

Answer:

**Shoplifting and Aggravated Assault (Deadly Weapon).**

Reminder:

Force or intimidation by a thief subsequent to a theft does not change a larceny into a robbery.

## **ARMED ROBBERY**

### **STATUTE ON ARMED ROBBERY**

- Whoever commits robbery, while armed with a deadly weapon, is, for the first offense, guilty of a second degree felony and, for second and subsequent offenses, is guilty of a first degree felony.
- The key difference between robbery (three years) and armed robbery (nine years) is the use of a deadly weapon. A look at the jury instruction for deadly weapon will be helpful.
- 14-1621. Armed robbery; essential elements.

For you to find the defendant took and carried away (identify property) from (name of victim) or from his or her immediate control intending to permanently deprive (name of victim) of the (identify property); (the property had some value);

----- and now to the heart of armed robbery

The defendant was armed with a (insert the name of the weapon when the instrument is a deadly weapon as defined in Section 30-1-12(B), NMSA 1978, or use the phrase “an instrument or object which, when used as a weapon, could cause death or very serious injury.”)

- What is a deadly weapon? We need to look at our state statutes for a definition. NMSA 1978, Section 30-1-12 (B):
- “deadly weapon” means any firearm, whether loaded or unloaded, or any weapon which is capable of producing death or great bodily harm, including but not restricted to any types of daggers, brass knuckles, switchblade knives, bowie knives, poniards, butcher knives, dirk knives and all such weapons with which dangerous cuts can be given, or with

which dangerous thrusts can be inflicted, including swordcanes, and any kind of sharp pointed canes, also slingshots, slung shots, bludgeons; or any other weapons with which dangerous wounds can be inflicted;

- What is a firearm? We need to look at our state statutes for a definition. NMSA 1978, Section 30-7-16:
- “Firearm”: any weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosion; the frame or receiver of any such weapons; or any firearm muffler or firearm silencer.
- “firearm” includes any handgun, rifle or shotgun.

Note:

A BB gun is not a firearm because it does not expel a projective by the action of an explosion.

Is a BB gun a deadly weapon?

- Defendant, in Dona Ana County, pointed a BB gun at a woman’s stomach and demanded money. She quickly complied. Robbery or armed robbery? For defendant the stakes are high: if robbery it’s three years but if armed robbery it’s nine years. State v. Fernandez (2007).
- Is a BB gun a deadly weapon?

Answer:

Court of Appeals held that depending upon how it is used – and ultimately it’s a question for the jury – it can be a deadly weapon. A blast from a BB gun at close range can be serious. Also, holding the gun as he did, the gun could have been used as a bludgeon or club. Given facts such as these, a BB gun can be a deadly weapon.

Use of toy or simulated guns . . . should this be armed robbery?

- There are a lot of questions - and confusion - on the topic of using toy or simulated guns. Some cases may be helpful to us.
- Use a gun, go to jail. Use a gun and the penalty increases from three years (robbery) to nine years (armed robbery). This may be the reason so many robbers use toy guns or simulate having guns when committing robberies.

The victim’s perspective

- A major question is what happens when a victim says he or she saw a gun but the robber says no guns existed. What happens if no gun is recovered? Is the word of the victim, that he or she believed it was a real gun, enough?
- The victim saw the barrel which was black; she did not see the handle. She



testified it might have been a realistic toy gun. The victim said, “it looked like a gun to me.” State v. Black (1968).

- In another case the victim said it was a short snub gun. Defense lawyer asked, “You didn’t actually know if there was a gun or not?” and the victim answered, “No sir, not really” and “all I could see was the snub.” State v. Sweat (1972).

Is this a robbery or armed robbery?

Answer:

The Court of Appeals upheld convictions for armed robbery in both cases. Even though the gun was not recovered, the victim in each case believed it was a firearm.

What if the gun is recovered and it really is a toy gun?

- No New Mexico case law on this so we’ll have to think this one through. But consider this: at the time of trial, according to the jury instructions, we have to show the Jury (and Judge) that a deadly weapon was used. By definition, a toy gun is not a deadly weapon.

Hand in pocket? Is that enough for armed robbery?

Suppose an officer arrives quickly at a robbery and determines that the “weapon” was a hand in the pocket. The victim thought it was a deadly weapon but the officer knows it wasn’t. Robbery or armed robbery?

Answer:

- Same argument as for a toy gun. At the time of trial, we have to show the jury that a deadly weapon was used. By definition, a hand in the pocket is not a deadly weapon.
- Some officers are upset when armed robbery isn’t charged. We must keep in mind that the rationale for the armed robbery statute is to discourage the use of firearms. This seems to be working: many robbers use a toy gun or hand in the pocket to avoid being charged with armed robbery.

## **ROBBERY - ONE COUNT OR TWO?**

FACTS:

It’s early morning in Belen, New Mexico. Suddenly, two masked gunmen break into Felipe Giron’s house, intent on robbing him. Rumor was he had nearly \$10,000 in cash in his house from illegal drug sales. They entered Giron’s bedroom where he and his live-in girlfriend, Carey Romero, were sleeping. Almost immediately, one of the gunmen shot Giron in the head, killing him.

Most unfortunate – he could have told them where the money was. They pointed their guns at Carey Romero and forced her out of bed. Poking her with their weapons, they demanded she find the money. They followed her from room to room. In a moment of distraction, she managed to escape. They left without getting any money. State v. Bernal (2006).

- Defendant argued that he intended to take money from only one victim, Mr. Giron. Do we have one (attempted) armed robbery or two?

Answer:

Supreme Court of New Mexico said robbery is a crime against a person, not property. Since the robbery statute is designed to protect citizens from violence, separate charges are permitted for each individual against whom violence or the threat of violence has been used.

Charging is not controlled by the intent of the Defendant but by the number of victims of violence. Here, there were two counts of attempted armed robbery.

### **ROBBERY AND RELATED CRIMES**

- Whether robbery merges with another offense or can be charged separately can change depending upon the facts of the case. Case law, however, provides guidance for most of the cases officers encounter.

- Aggravated Assault

Crimes of aggravated assault and robbery must merge as the main elements of the two are the same. State v. Maes (1983).

- False Imprisonment

Possible to charge both since elements of the two crimes are different and the evidence required to establish each crime is different. State v. Moore (1989).

- Larceny

Charge of larceny is necessarily included in charge of robbery. State v. Eckles (1968).

- Unlawful Taking of Vehicle

A suspect points a gun at a victim and takes his/her car. Two possible charges exist: armed robbery and unlawful taking of a vehicle. How the charges are written can determine if the courts find double jeopardy or not.

#### Problems in charging that led to double jeopardy

FACTS:

Defendant went to victim's home in Farmington, New Mexico. When the resident opened his door, Defendant killed him and took his vehicle. He was charged with armed robbery (taking the keys and the vehicle) and unlawful taking of a vehicle. In other words, in both statutes, he was charged with taking a vehicle. State v. Gutierrez (2011). Double jeopardy?

Answer:

Supreme Court held this was double jeopardy and vacated the unlawful taking of a vehicle charge.

How to avoid double jeopardy when charging a Defendant

FACTS:

Defendant went into an apartment, pointed a gun at the victim, and stole her truck. Armed robbery was based upon taking her keys, not the truck. Defendant was also charged with unlawful taking of a vehicle. State v. McGruder (1997). Double jeopardy?

Answer:

Supreme Court concluded defendant's act of taking the keys (robbery) and then using the keys to drive the truck away (unlawful taking) supported two convictions and wasn't double jeopardy.

Robbery is taking anything of value and keys have value: value to the victim who had to replace them and value to Defendant who was able to take her truck with less difficulty. Unlawful taking of the vehicle was based upon the taking of the truck.

Lesson:

When it comes to robbery and unlawful taking of a vehicle, it's possible for a defendant to commit two separate and distinct criminal offenses, and the fact that one succeeds the other as part of one episode of criminal activity does not automatically mean double jeopardy.

- Robbery and Aggravated Battery

FACTS:

Defendant entered a convenience store in Roswell, New Mexico. He pushed the cashier toward the cash register and said, "Give me the money or I'm going to stab you." He then stabbed and slashed the cashier with a knife. Immediately thereafter, he stole money from the store register and took five dollars from the cashier's wallet. States v. Fuentes (1994).

What charges?

Answer:

Even though this happened in a very short time period, the Court of Appeals concluded that two different crimes (Robbery and Aggravated Battery) occurred.

Robbery requires the specific intent to deprive the victim of his or her property; it is a crime primarily directed toward protection of property interests. Battery, on the other hand,

requires the specific intent to injure a victim, which is not present in robbery.

It is true that both armed robbery and aggravated battery may involve the use of force and to that extent the two statutes share common ground. But a person can use force or violence (a robber pointing a gun or knife at a robbery victim) without intending to injure the victim. Both robbery and aggravated battery convictions were affirmed.

- Felony murder & robbery  
A person robbed another person and killed him. Defendant was convicted of felony murder. Supreme Court, concerned about double jeopardy, held that the defendant couldn't be charged with the additional and underlying offense of armed robbery. State v. Garcia (2010).

### **An example of Attempted Armed Robbery**

- Evidence that one of defendant's companions went into a liquor store, pulled a gun on the manager and told him to lie down behind counter, but fled when a witness walked in from adjoining lounge, saw gun, and started screaming, sustained conviction of attempted armed robbery. State v. Paul (1972).

### **CONCLUSION**

The knowledge we gained in this class will assist us in cases involving robbery.

