

# Robbery

KIM D. CHANBONPIN

Robbery is considered an aggravated larceny (theft), and those who perpetrate this crime are subject to more severe criminal penalties than those who commit theft alone because of the violent manner in which the taking of property is achieved.

According to the United States Bureau of Justice Statistics (BJS), between the years 2001 and 2010 robbery was the offense most likely to involve an armed offender (Truman 2011). Of all robberies reported to the National Crime Victimization Survey during that time, 44% were committed with weapons, and firearms were the most commonly used weapons in robberies (Truman 2011).

Most robberies involve the perpetrator's use of violence against a stranger. Of the violent crimes counted by the BJS between the years 2001 and 2010, including rape and aggravated assault, robbery is the most likely to involve victimization by a stranger (Truman 2011). While violent victimization perpetrated by strangers declined overall during this period (from 44% to 39%), at least 72% of all robberies were committed by strangers (Truman 2011).

At common law, robbery was defined as the taking of personal property from the person or presence of another, by force or by putting the other in fear. That is, robbery includes all the elements of common law larceny, with the addition of two elements: (1) the taking must be from the victim's person or presence; and (2) the taking must be accomplished by force or by putting the person in fear. Larceny is thus a lesser crime, included within robbery.

The actual commission of a larceny, however, is not necessary to sustain a conviction for robbery. It is enough that the robbery was committed during the course of committing a larceny, even if the larceny ultimately failed (*Magaña v. State* 2011).

Larceny crimes are typically graded by degree, depending on the value of the property stolen.

Unlike larceny, a charge of robbery does not depend on the value of the property taken, and even property of meager value can be the subject of a robbery (*State v. Goodley* 2002). In fact, most street robberies involve relatively small amounts of money. According to Cook's (1987–1988: 357) study of violent crimes in the United States in 1983, only 15% of non-commercial robberies resulted in a theft of property valued at more than \$250.

The crime of robbery is also graded by degrees. But the degrees of robbery, unlike those of larceny, depend on the circumstances of the crime, for example, the method of perpetration or the *situs* of the crime. Robberies effected through the use of dangerous weapons or with cars or masks are considered greater offenses, and so are robberies of particular places, such as banks or trains. Robberies of banks and trains involve a degree of planning and precise execution that are indications of serious and dangerous criminals, more deserving of punishment. The assistance of a confederate during a robbery is an additional aggravating factor.

The elements of robbery are: (1) the taking of personal property from another's person or in that person's presence; (2) the use of actual or constructive force; (3) the existence of *animus furandi* or intent to steal on the part of the offender; and (4) the absence of consent on the part of the one from whom the property is taken (*State v. Greene* 1998). Each of these elements will be discussed below.

1 The taking of personal property from the person or presence of another. For an act to qualify as robbery, there must be a taking from the victim's person or presence. Property is on the victim's person when it is in her hands, or in her pockets, or attached to her body or clothing (LaFave 2010). Taking the earrings out of a victim's ears satisfies this element.

A dead person can be the victim of a robbery. If Jack kills Jill during a fight, then takes money from her purse erroneously, believing her still to be alive, this is robbery. The victim is still a "person" for the purpose of prosecuting the crime.

A taking from the presence or view of the victim amounts to a constructive taking from the victim's person (Freeman 1886). It is not necessary that the robber actually touch the victim. Nor does the property actually have to be in contact with the victim at the time of the taking. In this regard, "in the presence of the victim" is a matter of proximity and control of the victim, such that, had she not been subjected to force or fear by the robber, she could have prevented the taking (LaFave 2010). So, for example, when the offender uses force or a threat of force to compel a woman to throw her purse to the ground, this is an act of robbery if the offender picks up the property.

The common law mandated that the initial taking had to be in the owner's actual or constructive presence, but this rule has been relaxed in some jurisdictions. For example, in California, the forceful retention of the subject's property in the owner's presence is enough to satisfy this element, even if the initial taking was outside of the owner's presence (*Miller v. Superior Court* 2004). In *Miller v. Superior Court*, the accused found the victim's pants in an empty stall in a public restroom, and thereupon stole the wallet contained therein. Before the accused could abscond from the restroom, however, the victim returned, having realized his mistake. After hiding in another stall for some time, the accused ran out, in an attempt to escape. He rushed past the victim and a scuffle ensued. On appeal, the accused argued that he could not be properly charged with robbery because he did not take the property from the victim's immediate presence. The Court held that the immediate presence requirement for robbery had been satisfied when the accused attempted to carry the wallet away during the scuffle with the victim. The Model Penal Code takes a similar approach (ALI 1962).

2 The use of actual or constructive force. Robbery is primarily a crime of violence against a person and, although it often involves the taking of another's property, an actual larceny is not required for there to be a robbery, as long as the actor used violence or intimidation against the victim. The element of taking by force or threat of force is, therefore, the essence of the crime of robbery. Either force or threat of force is sufficient. The Model Penal Code contains the requirement that the force or threat of force used to accomplish the robbery be directed towards

placing the victim in "serious" fear for her safety (American Law Institute (ALI) 1962).

"Force denotes any exercise of physical strength against another" (Samuels 1984: 112). Punching, slapping, pushing, and tripping are examples of actual force. Even when only slight force is used, if the victim actually suffers an injury, this qualifies as a robbery (Samuels 1984).

If actual force is used, then it is not necessary also to prove fear, or even an awareness of the taking. In an 1812 case the defendant held the victim's cravat, pushed him up against a wall, and during that encounter took his watch. Although the victim was not aware of the theft at the time of the taking, this was held to be a robbery (*Commonwealth v. Snelling* 1812).

The use of force must normally precede or accompany the taking (Freeman 1886). However, if force is used to retain the property after an initially peaceful taking, there is a robbery (*Miller v. Superior Court* 2004).

The force used to effect a robbery must be sufficient to overcome the victim's resistance, but no particular degree of force is required (Samuels 1984). Resistance can be overcome, for example, by first rendering one's victim helpless by striking him unconscious or administering intoxicating drugs and then taking the property once the victim is incapacitated (LaFave 2010).

Purse-snatching scenarios are familiar hypotheticals to law students. If a thief snatches a purse from its owner's shoulder so suddenly that she could not have offered any resistance, then this is not a robbery (LaFave 2010). Yet, if the purse catches on the victim's arm and she realizes what is happening, this is now a robbery (Samuels 1984). Whenever resistance is overcome by force or threats of force, a snatching becomes robbery (Freeman 1886).

The use of force does not need to be intentional on the part of the criminal actor. For example, if it is the thief's modus operandi to cut at his victim's pocket in order to retrieve the property located inside the pocket, and on the next occasion he accidentally cuts the body of his victim, this is a use of force even if it was not intended (Samuels 1984). The thief's crime is robbery.

The use of force can also be constructed, for instance through threatening words, either spoken or written, or through physical gestures. If no actual force or violence is used to effect the taking,

it is enough that the taking was accomplished by a threat of force or other means of intimidation that put the victim in fear. Threats that produce fear of injury to the person, to property, or to a person's character are sufficient (Freeman 1886). To constitute robbery under the common law, the threat of harm must be directed against the victim or the victim's children. Modern statutes allow that fear of physical injury to the victim, to any member of the victim's family, or to anyone in the company of the victim at the time when the threat is made will suffice.

The threat must put a reasonable person in fear. For a successful robbery prosecution, the fear produced in the victim must be strong enough to overcome resistance and to compel the victim to part with her property. The robber must intend to cause fear in the victim, and this will be judged by an objective test. For example, even if the robber did not actually intend to intimidate the victim or to cause fear, if a reasonable person under the circumstances would have felt sufficiently threatened to comply with the robber's demands, there is a robbery. As LaFave (2010: 1058–1059) notes, however, if a victim is actually, but unreasonably, frightened into parting with her property, no good reason exists to prevent the prosecution of the robber.

Under the common law, the threat to inflict physical injury does not need to be accompanied by a present ability to carry it out. The Model Penal Code, however, distinguishes robbery from the independent crime of extortion on the basis of the immediacy or imminence of the threatened harm (ALI 1962). Conditional threats are also sufficient, as long as the victim is put in fear.

A threat to accuse another person of a crime would not constitute "putting in fear" for the purposes of robbery. Under a well-established English common law rule, however, the threat to prosecute a man for sodomy was considered serious enough to satisfy the requirement. The special rule applied to threatened sodomy prosecutions only because of "the loathsomeness of this particular offense that causes one upon mere threat to prosecute him therefor to yield up his money or goods" (Freeman 1886: 186). That the victim was actually guilty of sodomy was not a defense.

3 The existence of *animus furandi* or intent to steal on the part of the offender. Robbery requires the existence of an intent to steal on the part of

the actor. If one uses force or threats of force without the intent to steal, there is no robbery. For example, a taking of property under a claim of right does not constitute robbery because the person who takes property under a claim of right is also less likely to be a dangerous criminal. To make good on the claim of right, however, the actor must have a good faith belief that she owns or is otherwise entitled to possession of the property. Many recent cases, however, have taken the opposite approach, "in furtherance of the public policy of discouraging the use of forcible self-help" (LaFave 2010: 1050).

4 The absence of consent on the part of the one from whom the property is taken. Consent is a defense to robbery. In the context of robbery, consent means a volitional submission by one who is empowered to act. Where there is force or a threat of force, there can be no consent. Conversely, if there is consent, there is no force or intimidation. So, for example, when a person possessing property voluntarily yields possession of that property to another, the essential element of force is missing and there is no robbery. Consent is valid only if given by the victim or some authorized agent of the victim.

Under some statutory schemes, robbery becomes the aggravated offense of "armed robbery" when the actor is armed with, uses, or threatens to use a dangerous or deadly weapon.

Statutes take varying approaches in defining a "deadly weapon." Some jurisdictions define a deadly weapon by reference to its inherent purpose. Under this approach, a gun is a deadly weapon. Other jurisdictions utilize a more elastic definition, providing that a deadly weapon is one that, in the manner it is used, is likely to cause death or serious bodily harm. Under the first definition, a butter knife would not be considered a deadly weapon. Under the second definition, a butter knife could be a deadly weapon, if it was used in a manner likely to cause death or serious bodily harm, for example, by striking a person over the head with it. Pipes, unloaded guns, dogs, and even toy guns have been deemed to be deadly weapons for the purposes of robbery (LaFave 2010).

In many jurisdictions it is enough that the actions of the robber led the victim to a reasonable belief that the robber had a deadly weapon. The actor's verbal representation to this effect is

sufficient to support this belief, and the actual use or display of a deadly weapon during the crime is not required for an armed robbery.

The robber need not be armed prior to the robbery, as long as the use of a deadly weapon can be said to have been part of a continuous transaction, for instance during the actual robbery or in flight from the robbery.

**SEE ALSO:** Common Law Justice Systems; Consent Defense; Larceny (Theft); Mens Rea; Rape and Sexual Assault; Trespass; Victimization Patterns.

## References

- American Law Institute (1962) *Model Penal Code*. Philadelphia, PA: American Law Institute.
- Cook, P. J. (1987–1988) Robbery violence. *Journal of Criminal Law and Criminology* 78, 357–376.
- Commonwealth v. Snelling*, 4 Binn. 379 Pa. (1812).
- Freeman, A. C. (1886) *The American Decisions: Containing the Cases of General Value and Authority*, vol. 70. San Francisco, CA: Bancroft-Whitney.
- State v. Goodley*, 820 So. 2d 478 La. (La. 2002).
- State v. Greene*, 967 P.2d 106 (Ariz. 1998).
- LaFave, W. R. (2010) *Criminal Law*. St. Paul, MN: West.
- Magaña v. State*, 351 S.W.3d 501 (Tex. App. 2011).
- Miller v. Superior Court*, 115 Cal. App. 4th 216 (2004).
- Samuels, A. (1984) Force in robbery. *Journal of Criminal Law* 48, 112–114.
- Truman, J. L. (2011) National crime victimization survey: Criminal victimization, 2010. *Bureau of Justice Statistics Bulletin* (No. NCJRS 235508). Washington, DC: US Department of Justice, Bureau of Justice Statistics. <http://www.bjs.gov/content/pub/pdf/cv10.pdf>, accessed May 1, 2012.

## Further Readings

- Carey v. United States*, 296 F.2d 422 D.C. Cir. (1961).
- Conklin, J. E. (1972) *Robbery and the Criminal Justice System*. Philadelphia, PA: J. B. Lippincott.
- Glenn, J. A., Kimball, C. E., & Surette, E. C. (2013) Robbery. In *Corpus Juris Secundum*, vol. 77, § 1. St. Paul, MN: West.
- Lee, C., & Harris, A. (2009) *Criminal Law: Cases and Materials*. St. Paul, MN: West.
- McBride, E. J., Jr. (1987–1988) Criminal law: Accomplices: Liability for first degree (armed) robbery requires proof that accomplice shared perpetrator's purpose to commit a robbery with a weapon. *Rutger's Law Journal* 19, 1079–1100.
- Rex v. Mason*, 168 Eng. Rep. 876 (1820).
- Rigell v. State*, 782 So. 2d 440 Fla. Dist. Ct. App. (2001).
- State v. Ruggles*, 394 S.E.2d 42 W. Va. (1990).
- Stephen, J. F. (1883) *A History of the Criminal Law of England*. London: MacMillan.
- Tigar, M. (1984) The right of property and the law of theft. *Texas Law Review* 62, 1443–1475.
- Torcica, C. E. (2012) Offenses against property. In *Wharton's Criminal Law*, vol. 4, § 454, 15th edn. Deerfield, IL: Clark Boardman Callaghan.
- Zimring, F. E., & Zuehl, J. (1986) Victim injury and death in urban robbery: A Chicago study. *Journal of Legal Studies* 15, 1–40.