

ADA ELLIOTT - LARCENY/ROBBERY

Definition of 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.

NMSA 1978, Section 30-16-2.

The main difference between larceny and robbery is the use or threatened use of force (intimidation).

QUESTION: What do you charge when property is taken without force or intimidation but force is subsequently used to retain the property or to escape?

EXAMPLE: A person steals an item from a store and is in the parking lot when security officers try to apprehend him or her. The offender hits or stabs a security officer and escapes.

LARCENY OR ROBBERY?

RECOMMENDATION:

New Mexico courts have yet to address this question. It is recommended, in order that we might be consistent, that you charge LARCENY (plus related charges).

The reason lies in the definition of larceny and robbery. Larceny is committed when a thief gains peaceful possession of property and no violence is used (except to resist arrest or to try to escape). Robbery, on the other hand, involves taking property by means of force or putting the victim in fear.

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

