

Robbery s 409

The prosecution must prove that:

1. The defendant stole something.¹
2. At the time of, or immediately before, or immediately after, stealing it, the defendant used or threatened to use actual violence to any person or property.²

Any degree of violence is sufficient.³

Use of violence means that some degree of force is used.⁴

The use or threat of violence must be done in order to obtain the thing stolen or to prevent or overcome resistance to it being stolen.

Refer to any circumstances of aggravation.⁵

¹ See note to Stealing.

² Stealing is open as an alternative verdict on a charge of robbery; however assault is not. If in doubt about the element of violence, the prosecution usually charge stealing from the person: s 398(4)(a). Attempted robbery is a substantive offence: s 412.

³ *R v Jerome and McMahon* [1964] Qd R 595. The fear of violence without a threat is not sufficient: *R v Parker* [1919] NZLR 365.

⁴ It means no more than physical force which is real and not merely threatened or contemplated: *R v De Simoni* (1981) 147 CLR 383.

⁵ Eg being armed/offensive weapon/in company with wounding. See Circumstances of Aggravation (robbery, assault, burglary). In *R v Graham* [2016] OCA 73 the Court of Appeal held that when the elements of the offence are to be proved by s 7(1)(a), any circumstance of aggravation cannot be established by s 7(1)(c) (at [59]-[63]).