

CHAPTER 13: CRIMES AGAINST PROPERTY

The text discusses other crimes against property, including robbery, theft, fraud, identity theft, and others. There are numerous crimes against property in all state statutes and the numbers are simply too vast to go into detail here. Therefore, this chapter will focus on some of the property offenses outlined in the text.

Robbery

Depending on whom you ask, robbery could either be considered a property crime or a violent crime. In essence, it is both. Robbery involves the use of force or threatened use of force to commit a theft. If no force or threat of force is used, then the offense is simply theft. Thus, it is not wrong to consider robbery either a violent crime or a property crime, since elements of both are present.

As with other offenses in Ohio, robbery can be considered “aggravated” or not depending on the circumstances of the offense. Aggravated robbery involves actual or potential harm to another and is defined as,

no person, in attempting or committing a theft offense...or in fleeing immediately after the attempt or offense, shall do any of the following: (1) have a deadly weapon on or about the offender’s person...and either display the weapon...or use it; (2) have a dangerous ordnance on or about the offender’s person...(3) inflict or attempt to inflict, serious physical harm on another (Ohio Revised Code, §2911.01, 1996).

Aggravated robbery also involves the removal or attempted removal of a law enforcement officer’s weapon during the course of the officer’s duties. Also, carjacking, as mentioned in the text, could be considered a type of aggravated robbery if a deadly weapon is displayed or used during the course of the theft. It is not a separate offense under Ohio law. Aggravated robbery is considered a first-degree felony.

Robbery involves the same underlying elements of aggravated robbery (attempting or committing a theft offense, fleeing immediately after, etc.), but does not involve the risk of serious physical harm. If an offender merely possesses a dangerous weapon (he does not need to show it or use it), inflicts or threatens to inflict physical harm on another, or uses or threatens to use force against another, then robbery has been committed. If a person possesses a dangerous weapon or inflicts physical harm, it is considered a second-degree felony. If a person uses or threatens to use force, it is considered a third-degree felony.

One of the issues involving robbery is the “fleeing immediately after” element of the offense. One case, *State v. Thomas*, 106 Ohio St. 3d 133 (2005) questioned the definitions of “fleeing” and “immediately” when one is charged with robbery.

State v. Thomas

The defendant left a grocery store with two bags of goods that he did not purchase. As he left the store, he dropped the bags and walked away from the store. An off-duty police officer followed the defendant into a nearby laundromat and asked him to step outside. They proceeded to walk back to the grocery store. At the front door of the grocery store, the defendant struggled with the officer in an attempt to run away. In the process, the defendant struck the officer in the fact with

his head. The defendant was charged and convicted of robbery because the court felt that the defendant was “fleeing immediately” from a theft and, in the process, inflicted physical harm on another (the officer).

The defendant appealed, claiming that he was not “fleeing immediately” from a theft when the officer was struck. He claimed that he dropped the bags and walked away. The defendant claimed that, when the officer was struck, the defendant was not running away from a theft. As a result, the defendant claimed that he should only be charged with theft, not robbery, since he did not engage in the infliction of physical harm after fleeing immediately from a theft.

The Ohio Supreme Court stated that neither “fleeing” nor “immediately” are defined in the Ohio Revised Code, so they would have to examine their common usage in the Oxford English Dictionary. “To flee” means to run away from, to try to escape, while “immediately” means without delay or lapse of time. Based on the circumstances of this case, the Ohio Supreme Court ruled that the defendant was not doing either of these. There was a lapse of time between the theft and the attempt to flee, so the “immediately” element was not satisfied. The court ruled that, if the defendant had attempted to flee when he had the bags in his hand or as he dropped the bags, then it would be considered “immediately after” the theft. Because this did not occur, the Ohio Supreme Court reversed the defendant’s robbery conviction, stating that he should only have been charged with theft.

Theft

The text states that some states have combined larceny, embezzlement, and other offenses into a single offense of theft; Ohio is one of those states. Chapter 2913 of the Ohio Revised Code contains numerous theft offenses as well as the offenses of passing bad checks, misuse of credit cards, forgery, various frauds, and receiving stolen property.

The theft offenses cover a range of conduct but simple “theft” is defined as,

no person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways: (1) without the consent of the owner or person authorized to give consent; (2) beyond the scope of the express or implied consent of the owner or person authorized by give consent; (3) by deception; (4) by threat; (5) by intimidation (Ohio Revised Code, §2913.02, 2005).

The definition of theft is broad enough to cover other offenses, such as embezzlement and false pretenses. Punishment for theft depends on the value of the property. If the value of the stolen property is,

- less than \$500 , the offense is a first-degree misdemeanor (petty theft)
- between \$500 and \$5000, the offense is a fifth-degree felony (theft)
- between \$5000 and \$100,000, the offense is a fourth-degree felony (grand theft)
- more than \$100,000, the offense is a third-degree felony (aggravated theft)

Additionally, punishment varies depending on whether the victim of theft was elderly or disabled. If the victim is either of these, the level of theft begins as a fifth-degree felony and then increases by one degree as the amount of property stolen increases according to the information above. For

example, if the victim is an elderly person AND the amount stolen was less than \$500, the theft is treated as a fifth-degree felony; if the amount was between \$500 and \$5000, the theft is considered a fourth-degree felony, and so on.

Finally, the punishment also varies if the property stolen was a firearm (fourth-degree felony), a car (fourth-degree felony) or dangerous drug (third-degree felony).

Fraud

The text covers various types of fraud in the next chapter (Chapter 14) regarding white-collar crime, but Ohio treats fraud as a type of theft offense. The types of fraud covered in Chapter 2913 of the Ohio Revised Code are Medicaid fraud, tampering with records, defrauding creditors, illegal use of food stamps, insurance fraud, and worker's compensation fraud. Despite these different types of fraud, each involves the same element: receiving some sort of benefit by means of deception, falsification, etc. For instance, an individual with a back problem may claim that he was injured on the job. If his employer provides worker's compensation, that individual may receive benefits or reimbursement for the medical expenses or time off from work spent recuperating. An individual engages in worker's compensation fraud if a) his back pain was not the result of a job injury or b) there is no injury and the individual is faking. Either way, the individual is deceiving his employer in order to receive benefits that he is not entitled to.

Computer crime and Identity theft

Computer crime is considered a specific kind of theft offense in the Ohio Revised Code. It is defined as,

no person shall knowingly gain access to, attempt to gain access to, or cause access to be gained to any computer, computer system, computer network...without the consent of, or beyond the scope of the express or implied consent of, the owner of the computer, computer system, computer network...or other person authorized to give consent by the owner (Ohio Revised Code, §2913.04, 2002).

This offense is called "unauthorized use of computer" and is considered a fifth-degree felony. An interesting case concerning this offense involves a police officer using a law enforcement database to obtain information on another person. This case is *State v. Moning*, 2002 Ohio 5097 (2002) from Ohio's First District Court of Appeal.

State v. Moning

In this case, the defendant, a police officer, used a computer terminal in the police department's impound lot to access the Regional Crime Information Center (RCIC) in order to get some information on another person. The RCIC is one of three databases utilized by the department to inquire about the criminal history of suspects. Access to these databases is restricted; they may only be utilized for "legitimate law enforcement purposes" and officers are trained and informed about the use of these databases.

The defendant used the database to inquire about a man whom he had known for most of his life; they grew up together and frequented the same neighborhood bar. Despite this, the men did not like each other. According to the evidence at trial, the officer, out of animosity, accessed the

RCIC to find out if he could get some information on the other man, perhaps to “hold it over him.” The officer found that the man had a previous drug conviction, printed off the information, and gave it to the man. The man was not under investigation for any criminal activity. The man proceeded to call an acquaintance at the police department to inquire how and why this police officer “ran a check on him.” This prompted an investigation and the officer was charged and convicted of violating §2913.04 (B) of the Ohio Revised Code.

On appeal, one of the police officer’s arguments was that he did not utilize the information in an improper manner; in effect, he did not take the information that he had accessed and publicize it, etc. The court, however, stated that it was irrelevant whether the information was utilized in an improper manner; by simply accessing the information absent a “legitimate law enforcement purpose,” the officer violated the statute in question. Additionally, the officer did not have express or implied consent to utilize the database in this way. As a result, the conviction of the police officer was affirmed.

The identity theft offense in Ohio is called “taking personal identifying information of another” or “identity fraud” and is considered a type of fraud. This offense is defined as,

no person, without the express or implied consent of the other person, shall use, obtain, or possess any personal identifying information of another person with intent to do either of the following: (1) hold the person out to be the other person; (2) represent the other person’s personal identifying information as the person’s own personal identifying information (Ohio Revised Code, §2913.49, 2002).

The punishment for identity fraud depends on the value of what was involved in the violation. The most severe punishment for identity fraud involves defrauding a person of over \$100,000 (a second-degree felony), while the least amount of punishment involves defrauding a person of less than \$500 (a fifth-degree misdemeanor).

Forgery

The final theft-related offense that is discussed here is forgery. Forgery offenses in Ohio include simple forgery, criminal simulation, and counterfeiting. As stated in the text, forgery is the creation of false documents or alteration of existing documents for the purpose of defrauding others. In Ohio, forgery includes impersonating the writing of another; in effect, signing another person’s name to a document without that person’s authority. It also consists of trying to pass off that document as one’s own (i.e., uttering, according to the text definition). Finally, forgery can also involve the forging of identification cards and the subsequent sale of these cards to others. The punishment for forgery varies depending on the loss to the victim, similar to theft. If there is no loss to the victim, forgery is considered a fifth-degree felony. Any loss to the victim, in the same increments as found in theft offenses, increases the severity of punishment for forgery. The most severe level of punishment for forgery is a second-degree felony, when the loss to the victim exceeds \$25,000 (Ohio Revised Code, §2913.31, 1999).

Criminal simulation involves defrauding others by altering an object so that it appears to have value or altering or reproducing photographs, videos, etc. to appear genuine. For instance, if a person takes a video camera to a movie theatre, tapes the movie, and then sells the tape to others, that person would be guilty of criminal simulation (Ohio Revised Code, §2913.22, 1999).

REFERENCES

Ohio Revised Code, www.ohio.gov/ohio/ohiolaws.html

State v. Moning 2002 Ohio 5097 (2002)

State v. Thomas 106 Ohio St. 3d 133 (2005)

REVIEW QUESTIONS

1. Which of the following is true regarding robbery?
 - a. it is considered a property crime only
 - b. it is considered both a property crime and a violent crime
 - c. it does not involve the infliction or threat of harm to others
 - d. a and c are correct

2. What was the ruling in *State v. Moning*?
 - a. one cannot be charged with theft if nothing of value was stolen
 - b. a victim must not use the same password for computer programs
 - c. a police officer cannot use offender databases unless it is for a “legitimate law enforcement purpose”
 - d. an offender must sell pirated videos in order to be charged with criminal simulation

DISCUSSION QUESTION

Most, if not all, states provide for different punishments for theft depending upon the monetary value of the goods that were stolen. For instance, in Ohio, stealing merchandise with a value over \$100,00 is treated as a third-degree felony. Do you think there should be different punishments based on the monetary value of stolen goods. Should sentimental value also play a role (e.g., an heirloom passed down from generation to generation that has very little monetary value)?

WEB RESOURCES

- www.ag.state.oh.us/victim/idtheft/index.asp - website of the Ohio Attorney General provides information about identity theft in Ohio

- www.usdoj.gov/criminal/cybercrime/cc.html - website of the U.S. Department of Justice contains information about cybercrime, with the latest news and cases dealing with the issue