

CHAPTER 13: CRIMES AGAINST PROPERTY

The text discusses a number of property crimes. The Ohio Revised Code contains a wide variety of such crimes. This chapter will discuss a few of them, including robbery, theft, fraud, and forgery

Robbery

People disagree about whether robbery is a property crime or a violent crime. Arguably, 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 is an aggravated offense in certain circumstances. Under Ohio law, aggravated robbery involves actual or potential harm to another. Among other things, the aggravated robbery statute provides, in part, that:

no person, in attempting or committing a theft offense...or in fleeing immediately after the attempt or offense, shall...

- (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, 1997, available at <http://codes.ohio.gov/orc/2911.01>).

Note, that although carjacking, which is discussed in the text, is not a separate offense under Ohio law, it could constitute an aggravated robbery statute if a deadly weapon is displayed or used during the course of a car theft. See e.g., *State v. Hess*, 2004 Ohio 6820 (Ct. App. 2004). Aggravated robbery is considered a first-degree felony.

“Simple” robbery is similar to aggravated robbery. In relevant part, the Ohio Revised Code provides:

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 or under the offender's control;
- (2) Inflict, attempt to inflict, or threaten to inflict physical harm on another;
- (3) Use or threaten the immediate use of force against another.

(see <http://codes.ohio.gov/orc/2911.02>)

The essential distinction between aggravated and simple robbery is in the degree of threat or harm. For example, the law provides that brandishing a weapon results in an aggravated offense, while merely possessing one results in simple robbery. (Compare §2911.01(1) to §2911.02(1)). Similarly, inflicting serious physical harm constitutes an aggravated offense, while inflicting physical harm does not. (Compare §2911.01(2) to §2911.02(2)).

An issue that can arise in a case involving robbery is what constitutes “fleeing immediately after” a theft. In *State v. Thomas*, 106 Ohio St. 3d 133 (2005). The Ohio Supreme Court interpreted the meaning of these terms.

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. 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. During the struggle, the defendant used his head to strike the officer in the face. The defendant was charged and convicted with robbery pursuant to Section 2911.02 of the Ohio Revised Code.

On appeal, the defendant argued, and the Ohio Supreme Court ultimately agreed, that he could not be charged with robbery because when he struck the officer he was not committing the theft or “fleeing immediately” after it took place. The court noted that the statute did not define fleeing immediately. Nonetheless, the court explained that it is commonly understood that “to flee” means to run away from, or to try to escape, while “immediately” means without delay or lapse of time. In this case, the defendant had put the groceries down, walked to a Laundromat, and then walked back to the store before he struck the officer. Because of this lapse, the altercation did not occur during the theft or while the offender was immediately fleeing from it. Accordingly, the Ohio Supreme Court reversed the defendant’s robbery conviction.

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.

Theft includes a variety of conduct, but the statute governing “simple” theft provides that:

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, 2007, available at <http://codes.ohio.gov/orc/2913.02>).

These prohibitions are 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 \$5,000, the offense is a fifth-degree felony (6-12 months)
between \$5,000 and \$100,000, the offense is a fourth-degree felony (6-18 months)
between \$100,000 and \$500,000, the offense is a third-degree felony (1-5 years)
between \$500,000 and \$1 million, the offense is a second-degree felony (2-8 years)
more than \$1 million, the offense is a first-degree felony (aggravated theft) (3-10 years)

In addition the offense is more serious if the victim of theft was elderly or disabled. If the victim is either of these, the offense is one degree higher in seriousness than it would be for other victims (e.g., theft of valued at \$500 or less is a fifth-degree felony instead of a first degree misdemeanor; theft of property valued between \$500 and \$5,000 is fourth-degree felony instead of a fifth-degree felony).

Finally, the type of offense can also vary on the basis of the property that was stolen. For example, if the property stolen was a firearm (fourth-degree felony), a car (fourth-degree felony) or dangerous drug (third-degree felony)

Fraud

The text discusses various types of fraud in chapter 14 regarding white-collar crime, but Ohio primarily categorizes 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 elements: receiving some sort of benefit by means of deception, falsification, trick, 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) he is not actually injured. Either way, the individual is using deception or trickery to receive benefits to which he is not entitled.

Computer crime and Identity theft

Computer crime is considered a specific kind of theft offense under Ohio law. The Ohio Revised Code provides that:

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, 2004, available at <http://codes.ohio.gov/orc/2913.04>).

This offense is called "unauthorized use of property" Depending upon certain factors, including the value of what was obtained through the unauthorized use, the type of victim involved, and the type of computer that is accessed (i.e., a law enforcement database), the offense ranges from a fourth-degree misdemeanor to a second-degree felony. An interesting case concerning this offense involved a police officer who used a law enforcement database to obtain information about another person. This case is *State v. Moning*, 2002 Ohio 5097 (2002) from Ohio's First District Court of Appeal.

State v. Moning

The Regional Crime Information Center (RCIC) was one of three databases utilized by a police department to investigate the criminal history of suspects. Access to these databases was restricted; they were only to be used for "legitimate law enforcement purposes." Nonetheless, a defendant police officer used the RCIC to review information about a man he knew personally and did not like. At trial, the

evidence showed that the man was not under investigation for any criminal activity and that the defendant officer used the RCIC simply because he hoped to find negative information about a man he disliked. The results of the RCIC query revealed that the man had a previous drug conviction. The defendant officer, printed off the information, and eventually confronted the man with it and gave him the print-out. An investigation was launched after the man called the police department and inquired how and why the defendant officer “ran a check on him.” The defendant officer was then charged and convicted of unauthorized use of property in violation of §2913.04 (B) of the Ohio Revised Code.

The defendant officer raised a number of issues on appeal, including that the jury was given improper instructions about the crime of unauthorized use. When over-ruling on that challenge, the Ohio Supreme Court noted in *passim* that the unauthorized use statute does not require one to use or misuse information obtained from a computer. Rather, despite the label “unauthorized use,” the statute criminalizes unauthorized access. The jury properly found that the defendant had engaged in that prohibited activity, even if he did not “use” or “misuse” the information.

In Ohio, identity theft is called identity fraud. The Ohio Revised Code provides, in part, that:

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, §2913.49,2005, available at <http://codes.ohio.gov/orc/2913.49>).

The seriousness of identity fraud depends on a variety of factors, including how the identifying information is used, the value of anything obtained as a result of the identity theft, and the victim of the identity theft (elderly, disabled, etc.). The offense can range from a fifth to a first-degree felony.

Forgery

The final theft-related offense discussed here is forgery. As explained in the text, forgery is the creation of false documents or the alteration of existing documents for the purpose of defrauding others. In Ohio, forgery includes impersonating the writing of another (i.e., effect, signing another person’s name to a document without that person’s authority). It also consists of “uttering” or trying to pass off that document as one’s own. Finally, forgery can also involve the forging of identification cards and the subsequent sale of these cards to others. As with other theft offenses, the seriousness of the offense depends on a variety of factors, such as the amount that is stolen, and whether the victim is disabled or elderly. (Ohio Revised Code, §2913.22, 1999, available at <http://codes.ohio.gov/orc/2913.31>).

Criminal simulation can loosely be considered a type of forgery. It 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, available at <http://codes.ohio.gov/orc/2913.22>).

REFERENCES

Ohio Revised Code – <http://codes.ohio.gov/orc>

State v. Moning, 2002 Ohio 5097 (2002)

REVIEW QUESTIONS

1. Which of the following is true regarding robbery?
 - a. it is considered a property crime only
 - b. it can arguably be 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. Which of the following is true about Ohio's crime of "unauthorized use of property?" one cannot be charged if nothing of value is stolen
 - a. a defendant cannot be charged if he uses the proper password for computer programs
 - b. a defendant is guilty of unauthorized use even if he does not use or misuse information that he obtains from a computer that he is not authorized to use
 - c. 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 on the basis of the monetary value of the goods that are stolen. For instance, in Ohio, stealing merchandise with a value over \$100,00 is a third-degree felony.) Is this a good way to determine the seriousness of a theft offense? Some items have very little market value even though they may mean a great deal to an owner (e.g., an heirloom passed down from generation to generation, or a laptop that has a purchase price that does not reflect the value of documents created on it). How should we determine the seriousness of theft of such items?

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