**SIMILAR, BUT DIFFERENT, CRIMES – PART 2**

How does a prosecutor or district attorney decide with what crime to charge someone who has been arrested? Sometimes, this is an easy call to make, but other times, it can be difficult. Why? Many crimes are similar in their descriptions. It’s very important that the prosecutor makes this decision correctly. If they do not, someone may be charged with a lesser crime than the one they actually committed and (if found guilty) serve a lesser punishment than what they should be serving. On the other side, someone could be charged with a more serious crime than the one that they actually committed, and this may result in a jury finding them innocent of that more serious crime when they would normally find them guilty of a lesser crime. This could allow a criminal to walk free.

Last class, we looked at the difference between homicide (killing someone, which may or may not be a crime), manslaughter (killing someone unintentionally or through reckless behavior), and murder (killing someone intentionally). Let’s look at some more differences between similar types of crimes.

**What's the difference between different types of theft?**

Not all thefts, or acts of stealing something, are created equal. Instead, there are different ways of dividing up the unlawful acts of taking (or attempting to take) someone’s personal property. These acts are usually divided into three categories of crimes: larceny, robbery, and burglary.

Larceny

Larceny involves taking someone’s property without the owner’s consent and with the intention to permanently deprive the owner of its use or possession. This form of theft can be called grand theft or grand larceny if the value of the property taken exceeds a certain amount, or it can be called petty theft or petty larceny if the value is below a certain amount. These are different crimes with different punishments. Shoplifting is an example of larceny.

To commit larceny, someone must take another person’s personal, tangible property. You can’t be convicted of larceny if, for example, you try to take someone else’s land. Larceny usually involves money, physical goods, or any other physical object you can move or transport. Intent also matters – you must act against the owner’s interest and take an object without the owner’s informed consent. For example, if your friend gives you her bicycle because you asked to borrow it, this isn’t theft. However, it is theft if you ask to borrow the bicycle and intend not to return it.

Robbery

Theft is taking something that doesn’t belong to you, but a robbery is taking something from a person AND using force, or the THREAT of force, to do it. Robbery, like larceny, involves taking someone’s property without the owner’s consent, but it has some elements that larceny doesn’t require. For instance, robbery can be committed when taking property that is not owned by another person but rather is in that person’s control. Property within someone else’s control includes, for example, property located in a safe that a convenience store employee can access.

Robbery is a violent crime, but that doesn’t mean the victim has to suffer any type of injury. It’s enough to commit a robbery if you use any type of force to take property from someone. This includes taking property if you use the threat of violence. It also includes using violence or the threat of violence to take property that is under the victim’s control, even though it isn’t necessarily in that person’s possession. For example, forcing a bank clerk to open a bank vault to take money is robbery, even though the clerk doesn’t physically possess the currency.

Burglary

Though burglary is often a crime that involves theft, you don’t necessarily have to take any property to be convicted of this crime. To commit a burglary, you must enter a structure or dwelling with the intent to commit a crime within it. You can be convicted without actually committing a crime within the building, and the crime you intend to commit does not have to be theft or robbery.

In past years, burglary crimes most often targeted breaking into someone else’s home. Today, burglary laws are much broader. You can commit burglary if you enter into any structure with the intent to commit a crime inside. For purposes of burglary laws, a “structure” includes nonresidential buildings, natural formations such as caves, and even temporary structures such as tents. Some people mistakenly believe that you have to use force or violence to enter a structure in order to commit a burglary, but that isn’t the case. You can commit a burglary even if the only force you use to enter a building is pushing open a door or slightly lifting an already unlocked and open window.

You can even be convicted of burglary if you don’t completely enter into a structure! For example, lifting up a window and extending your arm, or an object, to take something from inside is enough to commit a burglary.

**What's the difference between different types of crimes that harm others (i.e. assault and battery)?**

In Florida, there is a difference between assault and battery – they are two separate and distinct crimes and you can be charged with either or both. An assault is where you threaten to do violence to someone and that threat puts that person in fear. A battery is simply touching someone against his or her will OR causing bodily harm to someone. You do not have to actually hurt someone to be convicted of battery. An example of the difference is say, for example, you sneak up on someone and slap them in the back of the head. That’s a battery whether you hurt them or not – but it’s not an assault if they didn’t see you coming and were not afraid of getting hit.

Assault

An assault in Florida is when you threaten (either by word or by act) to do violence to someone. At the time of the threat, you must have the ability to carry out the threat. Additionally, your threat must create a well-founded fear that violence is about to take place.

Often times, the only evidence against you in these types of cases is the word (or testimony) of the other person (or victim).  In other words, someone calls 911 and says you assaulted them.  In a case like that, the strength of the evidence will depend on the credibility of the witness.  If there are multiple witnesses saying the same thing or video of the assault, the evidence is obviously much stronger.  Witnesses and video can work just as much for you as it can against you.

Aggravated assault

Aggravated assault is just like a simple assault but the state must additionally prove that you committed the assault with a deadly weapon OR with the intent to commit a crime. Aggravated assault with a firearm is like a simple assault but the state must additionally prove that you committed the assault with a firearm. While a simple assault is often classified as a misdemeanor, or less serious crime, aggravated assault is usually a felony, and can be an even more serious one if committed with a firearm.

Battery

A battery in Florida is when you intentionally touch or strike another person against their will. It can also be a battery if you intentionally cause harm to someone else. Like it or not, the simple act of touching someone against their will is technically a battery. No injury is necessary. A standard that is often cited is that if the touching offends a reasonable person, it is a battery. Getting on a crowded elevator and bumping into a person is not usually offensive. However, pushing someone out of the way to get on the elevator probably is. Most minor incidents would result in a misdemeanor battery charge.

When battery is committed in Florida onto a family member or a person with whom you are in a dating relationship, it is considered domestic violence battery.  It can even be applied to someone you had had a relationship with in the past.

Felony battery

Felony battery is a more serious version of simple battery.  It is enhanced only by virtue of victim injury.  If you cause great bodily harm, permanent disability or permanent disfigurement to the other person, you may be charged with felony battery. Often times people charged with this crime argue that it is not fair to charge them as a felony just because the other person suffered great bodily harm.  For example, one person may push a guy who falls the ground and only scrapes his knee a bit.  That’s a misdemeanor.  But you push a guy with the same amount of force and your guy falls to the ground and shatters his knee.  That’s a felony.

Aggravated battery

Like felony battery, aggravated battery is a more serious version of simple battery.  It is different in that you must intend to cause bodily harm to the victim AND you must intend either (1) great bodily harm, permanent disability or permanent disfigurement to the other person, or (2) use a deadly weapon.  A deadly weapon can be anything used or threatened to be used in a way that is likely to produce death or great bodily harm.  For example, a car, an axe, a machete, or even a baseball bat can all be considered deadly weapons.