

When a Theft is Not a Robbery

By: Lance Hester; Jan 2006

The scenario was *almost* classic. A fellow named Johnson walked into a Wal-Mart in Spokane County. Johnson proceeded to the electronics department and located a t.v./vcr combo. After removing the security tag, he pushed his shopping cart and t.v. out the door.

Of course, the security guards who observed Johnson leave without paying didn't appreciate his actions. Accordingly, they confronted him in the parking lot. The Washington State Supreme Court noted the next order of events as follows,

Johnson abandoned the shopping cart and started to run away, but suddenly turned back. One of the guards grabbed Johnson's arm. Johnson punched the guard in the nose and ran away. The guards were unable to catch him, but a police officer... arrested him. 115 Wn.2d 609, 610 (2005).

Not surprisingly, the state charged Mr. Johnson with Robbery in the First Degree. In fact, this is a common charge to a common scenario of a security guard claiming force was used during a defendant's attempt to steal property from a retailer.

The interesting fact in Johnson's case, however, related to the abandoned cart. Importantly, the Supreme Court held the theft and assault in this case did not become the serious violent felony to which Johnson was charged. It stated the following:

...the force must relate to the taking or retention of the property, either as force used directly in the taking or retention or as force used to prevent or overcome resistance "to the taking." Johnson was not attempting to retain the property when he punched the guard but was attempting to escape after abandoning it. Id. at 611.

Security officers routinely write up their own reports shortly following incidences such as Johnson's. The described scenario must be scrutinized for what it really is. It's not unusual for thieves to abandon goods while running away from enforcement. And commonly they use some level of force against security. The Johnson case gives some help toward defining when such actions constitute a robbery, and when they don't.