

Lesson 5

What Is A Felony?

High School Level

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BACKGROUND

A colleague once said that the criminal code should be handed out like the phone book, observing that there were many provisions and prohibitions in the code that the average layperson might not know about. Because 17 year olds no longer enjoy the protection of the juvenile statute, an introduction to the criminal code through the “A Lawyer In Every School Program” is timely.

In order to introduce students to the criminal process a hypothetical case, *State v. Tiffany P. Smith* is presented. Ms. Smith is charged with theft of lost or mislaid property. The charge is a felony because the value of the property is over \$500.00. (See RSA 637:11) Because Ms. Smith is 17, she is charged as an adult.

Follow up hypotheticals are developed for the charges of reckless conduct, criminal threatening and felonious sexual assault.

Although many prosecutors might decide not to bring felony charges against someone in Tiffany’s situation, the lesson will teach that it is not Tiffany’s decision. Whether or not Tiffany could be convicted would depend, of course, on the evidence presented at trial and how her jury evaluated that evidence.

PURPOSE

The cognitive objectives of the lesson are that students learn to:

1. Recognize certain conduct which could put a person in jeopardy of a felony prosecution and potential conviction;
2. Describe the process that results from being accused of a felony;
3. Identify the decision makers involved in the felony process and explain their role;

4. Compare potential evidence with the elements of a particular offense; and to
5. Describe the concept of “elements of an offense.”

PROCEDURE

1. Hand out the packet for State v. Tiffany Smith and summarize the police report for the students. The packet should include an indictment, the statute, the elements of the offense, and the police report.
2. Ask a volunteer to read the statute and the elements of the offense to the class out loud.
3. Ask for volunteers to explain what the statute means in their own words.
4. Ask volunteers to think of hypothetical examples of situations where they think a person might be guilty of this type of offense. (Real examples might just open up a can of worms.)

One example might be Joe Thomas who found a sparkling diamond engagement ring on the ground, in the parking lot outside the jewelry store. A red car had just pulled out of the space, with N.H. license “INLOVE.” Joe looked at the license plate, then he looked at the ring, then he looked at the door to the jewelry store. Joe took the ring home and hid it in his dresser drawer.

5. Summarize the key stages in the criminal process.
6. Make a chart of the elements of Tiffany’s charge on the chalk board. Emphasize to the students that in order for her to be found guilty of the charge, the jury must find, by unanimous verdict, that the State has proved each and every element beyond a reasonable doubt.

Then ask each of the students to comb through the police report to identify what evidence the state will want to use in order to try to prove each element of the offense. On the back of their “elements” handout they can make their own chart of the evidence. Give them about 12 minutes to do this. (You might consider letting them do this in groups of two or three.)

Explain to the students that the police report itself is not evidence, but that it gives them an idea about what the witnesses would say on the witness stand.

7. Make a class-wide chart of the answers the students have given and ask the students to explain why they chose a particular answer. There are some answers that will be better than others.
8. Ask the students what other bits of evidence they would like to hear if they were a jury. Phrased another way, if they could ask Trooper Tective or their own private investigator to find out some more information, what information would you want them to find? For example:
 - a. Did Ms. O’Brien see Tiffany look at the sales slip or make a comment about the price of the very dressy scarf?
 - b. Did Tiffany talk to any of her friends about the “steal” of a bargain she got for her Fancy Handmade sweater?
9. What could happen to Tiffany if she were found guilty? (See RSA 651) She is charged with a Class B Felony, so she could be sentenced to the New Hampshire State Prison for a maximum sentence of 3¹/₂ to 7 years. If she got this big a sentence, she would not be eligible for parole for 3¹/₂ years. If she never made parole, she would serve 7 years. She

could be placed on probation for a period of 5 years, and she could be ordered to pay a fine of up to \$4,000.00. She could be ordered to reimburse Neiman Farcus for the value of the sweater.

ELEMENTS OF THE OFFENSE

In order for a jury to convict Ms. Smith of this charge each juror must believe that the State has proved each element of the offense beyond a reasonable doubt. The elements of her charge are:

1. Ms. Smith obtained property of another;
2. Ms. Smith knew the property was mislaid or delivered under a mistake as to the amount of the property;
3. Ms. Smith did not take reasonable measures to return the property to its owner;
4. Ms. Smith had the intent to deprive the owner of the property when she obtained it or prior to taking any reasonable measures to return the property to the owner; and that
5. The value of the property was more than \$500.00.

RSA 637:6 Theft of Lost or Mislaid Property.

A person commits theft when:

- I. He obtains property of another which he knows to have been lost or mislaid, or to have been delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property, without taking reasonable measures to return the same to the owner, and
- II. He has the purpose to deprive the owner of such property when he obtains the property or at any time prior to taking the measures designated in paragraph I.

POLICE REPORT SUMMARY

1. On January 15, 1996 Trooper Tective, NHSP Troop A, was asked to investigate a theft from the Neiman Farcus Store at the Mall of Newington. Ms. Eileen Jones from Neiman Farcus headquarters in New York had written the county attorney with the details.
2. Ms. Jones had been contacted by her Newington, N.H. store manager, Tom Taylor, on January 2, 1996 when Mr. Taylor discovered a \$540.00 error in the previous days receipts. Mr. Taylor had found that at 10:30 A.M. on January 1, 1996 a new employee of his, Amy O'Brien, had handled an exchange of a Christmas gift. Ms. O'Brien told Taylor that a young woman, later identified as Tiffany Smith) had brought back a very dressy scarf that she had been given for Christmas.
3. The woman handed Ms. O'Brien the sales slip (#34nm05006) and Ms. O'Brien entered the information into the cash register, following all of the return policies she had been taught when she was hired the week before. However, she must not have checked the store credit voucher when she handed it to the young woman, (Voucher # 01nm9601550.01) because she entered \$600.00 into the register rather than just \$60.00.
4. At 11:45 A.M. store clerk Alice Burton sold a Fancy Handmade sweater for \$600.00. to a woman matching the description of the person to whom Ms. O'Brien issued the voucher earlier that morning. The sales slip (#34nm 02452) indicates that the sweater was paid for with voucher #01nm9601550.01. Mr. Taylor reports that he located both sales slips and the voucher in the cash drawer.

5. Ms. Jones traced sales slip #34nm05006 in the company's main computer and learned that a very dressy scarf had been sold to a Mrs. Virginia Wolfe of 341 Middle Street, Portsmouth, N.H., on Master Card #5631 9002 2241 2091, on November 26, 1995, for a price of \$60.00.
6. Trooper Tective interviewed Ms. Burton and Ms. O'Brien. Ms. O'Brien reported that she handed the store credit voucher to the young woman and the woman asked Ms. O'Brien if she was sure everything was correct. Ms. O'Brien told the woman everything was all set and the young woman took the voucher and left the register area. Ms. O'Brien states that she wishes now that she had double-checked the voucher.
7. Ms. Burton said that although it was not the most expensive sweater sold in her store, it was not the kind of item she had sold to women under twenty. She said that the young woman who bought the sweater spent quite a long time looking at the sweater, holding it up to herself while looking in the mirror, and asking numerous questions about the Fancy Handmade knitwear line.
8. On January 17, at 10:30 A.M Trooper Tective interviewed Mrs. Virginia Wolfe, DOB 6/04/16, regarding the Neiman Farcus case. She stated that she purchased scarfs for each of her 6 granddaughters, and wool sweaters for her four grandsons. She purchased a scarf at Neiman Farcus for her daughter Amanda's daughter, Tiffany Smith. She said that her daughter always criticizes her for purchasing expensive Christmas gifts. She reported that her grandchildren are very special to her. She said that she has offered to send each of her grandchildren to college as long as they maintain a B average in school.
9. On January 24 at 2:20 P.M. this writer drove to the Smith residence at 155 Old Litchfield Road in Londonderry, N.H. Mrs. Amanda Smith informed this writer that her daughter received an expensive scarf from her grandmother, and that she exchanged it for a very nice sweater. She said she guessed that the scarf probably cost anywhere from \$85 to \$130, and that the sweater appeared to her to be in the same price range.
10. Tiffany Smith confessed that she was the person that had traded a very dressy scarf for the Fancy Handmade sweater. She was wearing the sweater as she spoke. She was surprised that the return voucher was for \$600.00, and she mentioned this to the store clerk, who verified that everything was correct. She said that her grandmother always gave her very expensive Christmas gifts but that \$600.00 gift was more than she would expect. However, she knew that her grandmother was very wealthy and could afford to give a gift that expensive. She admitted that she thought at first it might be a mistake, but that the store clerk said that there was no mistake. She claimed she does not remember whether or not she saw the price of the very dressy scarf on the sales slip when she gave it to the clerk.

(See page 36 for the student handout.)

ACTIVITIES WHICH EXPAND THIS LESSON

1. **WHO CAN BE CHARGED?** Anyone who is 17 or older may be charged with a felony without any protection from RSA 169-B, the juvenile delinquency statute. People who are 15 or 16 may be charged with a felony if they have been certified as an adult pursuant to RSA 169-B:24. This process has been amended to make it easier to certify juveniles as adults. The juvenile certification process may also be used for juveniles aged 13 and older who are charged with first or second degree murder, manslaughter, kidnapping, or aggravated felonious sexual assault. (See RSA 628:1)
2. **RECKLESS CONDUCT:** Daredevil Darrell, age 17, drove three of his friends to the Kancamagus Highway in his new Volkswagen Jetta last March. He drove the 26 miles from Lincoln to Conway in 18 minutes, often driving at over 100 miles per hour. Could Darrell be charged with reckless conduct? As a felony?

- I. **A person is guilty of reckless conduct if he recklessly engages in conduct which places or may place another in danger of serious bodily injury.**
- II. **Reckless conduct is a class B felony if the person uses a deadly weapon as defined in RSA 625:11,V. RSA 631:3**

“Deadly weapon” means any firearm, knife or other substance or thing which, in the manner it is used, intended to be used, or threatened to be used, is known to be capable of producing death or serious bodily injury. RSA 625:11 V

- 3. **CRIMINAL THREATENING:** Angry Anita, age 17, went to softball practice shortly after learning that her boyfriend, Tom, also seventeen had been having an affair with her teammate, Wanda. When Anita saw Wanda she picked up her softball bat, held it as though she were going to swing at Wanda’s head, and walked to within two feet of where Wanda was standing. She looked at Wanda in the eye and cocked the bat back as though she were just about to swing. It was Wanda’s sixteenth birthday. Could Anita be charged with criminal threatening? As a felony?

- I. **A person is guilty of an offense when:**

**By physical conduct, he purposely places or attempts to place another in fear of imminent bodily injury or physical contact; or
(Section I. (b-d) omitted.)**

- II. **Criminal Threatening is a class B felony if the person:**

- (1) **Omitted**
- (2) **Uses a deadly weapon as defined in RSA 625:11,V in the violation of the provisions of subparagraph I(a), I(b), or I(d). RSA 631:4.**

- 4. **FELONIOUS SEXUAL ASSAULT:** When Tom found out what Anita did to Wanda he was so scared for Wanda’s safety that he called Trooper Tective. He told the trooper he was worried about how Anita would react when she found out that Wanda was carrying Tom’s baby. He told the trooper that he started having an affair with Wanda after she came to his seventeenth birthday party. She just found out she was pregnant the day before the incident with Anita. He told the Trooper he is sure that Tom is the father of Wanda’s baby because Wanda said Tom was her first and only love. Tom said he wants to marry Wanda and be a good father for their baby. Can Tom be charged with felonious sexual assault?

- A person is guilty of a class B felony if he:**

Engages in sexual penetration with a person other than his legal spouse who is 13 years of age or older and under 16 years of age; RSA 632-A:3 (Paragraphs I and III omitted. Sexual intercourse fits withing the definition of “sexual penetration,” RSA 632-A:2 V.)

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

At the Superior Court, holden at Exeter, within and for the County of Rockingham aforesaid, on the 15th day of April in the year of our Lord one thousand nine hundred and ninety-six. The grand jurors for the State of New Hampshire upon their oath present that TIFFANY P. SMITH of LONDONDERRY in the County of Rockingham aforesaid on or about the 1st day of January in the year of our Lord one thousand nine hundred and ninety-six at Newington in the County of Rockingham aforesaid, with force and arms,

did commit the crime of theft by obtaining the property of another which she knew to have been mislaid or delivered under a mistake as to the nature or the amount of the property without taking reasonable measures to return the property to the owner, with the purpose of depriving the owner of the property, in that Tiffany P. Smith did obtain one Fancy Handmade sweater with a value of \$600.00, the property of the Neiman Farcus Store, knowing that she had been granted \$600.00 in store credit by mistake, the store credit having been granted to Ms. Smith in exchange for her returning a \$60.00 Scarf, and not taking reasonable measures to return the property to the owner, Ms. Smith having the intent to deprive the owner of the property,

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State.

County Attorney

This is a true bill.

Foreman of the Grand Jury

RSA 637:6 Theft of Lost or Mislaid Property

DOB: 12/25/78