

Elements of Assaults

Daniel Spiegel
Assistant Professor of Criminal Law, Procedure, and Evidence

Basic School for Magistrates:
Criminal Session
August 2024

1

Five Core Components

#1: Assault

#2: Injury

#3: Weapon

#4: Victim



#5: Job/Duty

2

#1: Assault



- **Striking, Battery**
 - Overt act or attempt
 - Force and violence, reasonable fear
- **Show of Violence**
 - Apparent ability to carry out
 - Reasonable fear of immediate injury
 - Victim changes activity/response
- **Culpable negligence**
 - Intentional act
 - Reckless disregard for safety of others

3

#2: Injury

▪ Serious Bodily Injury

- Risk of death, permanent disfigurement, coma
- Ex: broken bones, jaw wired shut, scars
- More than serious injury

▪ Serious Injury

- Pain and suffering, blood loss, hospitalization
- Ex: shot, stabbed, head injury, tooth knocked out

▪ Physical Injury

- Cuts, scrapes, bruises
- Less than serious injury



4

#3: Weapon or Means



▪ Deadly Weapon

- Under circumstances, capable of causing death or serious bodily injury
- AWDW, AWDWISI

▪ Intent to Kill

- AWDWIK, AWDWIKISI

▪ By Pointing a Gun

- Intentionally pointed at a person

▪ Firing into Occupied Property

- Three versions: occupied? moving? injury?

▪ Secret Assault

- AWDWIK + "secret"

5

#4: Based on Victim

▪ Female

- By a male, over 18

▪ Child Under 12

- More than moderate punishment
- Lasting injury? Parent? Child abuse?

▪ Unborn Child

- Battery of mother + AISI/AISBI on child

▪ Disabled/Handicapped

- Simple or Aggravated

▪ Ethnic Intimidation

- Race, religion, nationality



6

#5: Based on Job



- Government Officer/Employee
- Law Enforcement Officers
- Executive/Legislative/Court Officers
- School Personnel
- Sports Officials
- Public Transit Operators
- Firefighters
- Emergency Personnel

7

#6: Other Enhancements, Offenses

- Habitual Misd. Assault
 - 2+ prior offenses
 - New assault + physical injury
- A few others...
 - Bombs/explosives
 - Maiming/castration
 - Throwing acid

8

Threats/Harassment



- Communicating Threats
 - Threat to injure person property
 - Reasonable belief, did believe
- Harassing Phone Calls
 - Threat by phone
- Cyberstalking
 - Threat and harassment by email
- Cyberbullying
 - Computer harassment/embarrassment
- Stalking
 - Repeat harassment causing fear/distress

9

Most Common Issues in Practice

- **Certain charges much more common than others**
 - Simple Assault, AOF, AOGO, AWDW
- **Serious injury vs. Serious BODILY injury**
 - See Brittany's Chart – have to draw lines as best you can
- **Communicating Threats**
 - Need objective AND subjective belief threat will be carried out
- **Discharging a Weapon into Occupied Property**
 - Operation or not, serious bodily injury, multiple counts?
- **Malicious Conduct by a Prisoner**
 - Spitting at officer
