

THINK ABOUT THIS

Defendant is walking on the street. She is carrying a branch of an oak tree. The branch is 3 feet long. As she walks, she points the branch aimlessly. The street is crowded.

A police officer sees Defendant and decides that what Defendant is doing is dangerous after a number of people approach the police officer to say how frightened they are of Defendant. The police officer arrests Defendant.

1. The prosecutor charges Defendant with the following crime:
Aggravated Offensive Possession of a Dangerous Object, to wit: “the defendant knowingly possessed an object that could harm people in a public place”.

There is no such crime in the jurisdiction’s penal code and there is no judicial opinion interpreting any existing penal code provision that sets forth such a crime or that announces the creation of that crime. The existing statute, Penal Law Section 375.01 states “A person is guilty of criminal possession of a weapon when she possesses any firearm, electronic dart gun, electronic stun gun, gravity knife, switchblade knife, cane sword, billy, blackjack, bludgeon, or any other dangerous or deadly instrument or weapon with intent to use the same unlawfully against another.”

The case goes to trial. Defendant is convicted. Defendant appeals. What is the outcome?

2. It turns out there is a penal law provision. Penal Law Section 340.01 states, “ A person who knowingly possesses an object that can evince an intent to cause injury to another is guilty of possession of a dangerous instrument.”

The prosecutor decides to charge Defendant with that crime. The case goes to trial. Defendant is convicted. What is the outcome?

3. It turns out there is another penal law provision that is even better. The provision is entitled, Unlawful display of a dangerous weapon.” The provision, Penal Law Section 330.01, states, “A person who displays any of the following weapons on a public street, to wit: a firearm; a knife more than 4 inches long, or a bokken stick (a martial arts weapon); is guilty of unlawful display of a dangerous weapon.”

The prosecutor charges Defendant with that crime. The case goes to trial. Defendant is convicted. Defendant appeals. What is the outcome?

THINK ABOUT THIS:

- A. You don't like the way I take out my garbage cans. I don't close the lids tightly and the garbage can topple over and can pollute the neighborhood, you think. You call the police and you have me arrested for disorderly conduct. I am before the Court. The Prosecutor tells the judge that I have been dirtying up the neighborhood and the Court decides that defiling a public space should be a crime. I am convicted.

Have I committed a crime?

- B. Davida is an urban forager. She goes from dumpster to dumpster looking for things she considers organically savable.

She is in a dumpster. A police officer sees her. He arrests her under a new quality of life policy that the local district attorney has implemented, the appropriate public behavior policy.

The police officer's paperwork lists the criminal charge as "inappropriately and offensively behaving in public by diving into dumpsters."

There is a criminal violation of "disorderly conduct". A person commits the criminal violation of disorderly conduct where, with the intent to cause public inconvenience, annoyance, alarm or recklessly creating a risk thereof, she creates a hazardous or physically offensive condition by any act, which serves no legitimate purpose.

The prosecutor who is writing up the criminal complaint against Davida charges her with disorderly conduct.

Disorderly conduct is:

A person is guilty of disorderly conduct, when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof:

1. He engages in fighting or in violent, tumultuous or threatening behavior; or
2. He makes unreasonable noise; or
3. In a public place, he uses abusive or obscene language, or makes an obscene gesture; or
4. Without lawful authority, he disturbs any lawful assembly or meeting of persons; or
5. He obstructs vehicular or pedestrian traffic; or
6. He congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or
7. He creates a hazardous or physically offensive condition by any act which serves no legitimate purpose.

Has Davida committed a crime?