

NMDPS BATTERY – ONE COUNT OR TWO?

At about 3:00 a.m., on a cold winter night in Grant County, a young mother was suddenly awakened by screaming in the next room. Her boyfriend was punching her thirteen-month-old son. When she tried to intervene, he punched her in the chest. Some time later, Defendant walked past her son and kicked him in the face. When she tried to help her child, Defendant punched her in the jaw.

One count of domestic violence battery or two? There are two kinds of double jeopardy where multiple punishment is involved: multiple convictions under one statute (known as unit of prosecution, which we have here) and multiple convictions under multiple statutes for the same kind of conduct (known as double description cases). The key question in this case is whether the charged acts are sufficiently distinct.

For example, if one person shoots at another three times, with one intent and no intervening event, we have one count of Aggravated Battery, not three. If one person hits another ten times in a row, with one intent and no intervening event, we have one count of Battery, not ten.

A difference here is the intervening battery against the Child. His first intent was when he committed a battery against her. He then decided to go after the Child. Later, he formed a second intent, a distinct act, when he decided to commit a second battery against her. Court of Appeals upheld his convictions of two counts of domestic violence battery. State v. Stewart (2005). - - ADA Elliott

