Case study 3: Assault & Battery

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[Institutional Affiliation(s)]

Author Note

Assault & Battery

 The case involves a hockey player, Rick Smith, hit by a player from another team, Charles Pullen, while he was observing the play behind the rink. Smith was punched by Pullen on the back of the head and as a result, sustained multiple injuries. The injuries led Smith to incur $60,000 in medical expenses and lost $300,000 in compensation for missing out three subsequent games. However, Pullen claims that he was subject to repeated and aggressive taunts by Smith earlier in a few games which he perceived as threatening. Pullen saw his actions to be necessary in order to protect himself from a potentially hostile situation in the future. The case will be analyzed in terms of battery and assault law to indicate which party is at fault.

# Essential Elements of Law

Battery and assault are both crimes of violent nature that involve causing actual harm or threatening harm to another individual. Among intentional torts, assault refers to any intentional act that gives a reasonable apprehension of immediate offensive or harmful contact. It also includes any willful attempt of threatening to inflict injury to another individual in a manner that the victim fears bodily harm. Conversely, battery refers to wrongful or intentional physical contact with another individual without consent. The two are different in the sense that assault does not require actual harm to have occurred, but considers the threat of harm itself. It has to be committed intentionally, with the element of fear present as a result of a certain knowingly dangerous act. However, merely stating a threat without furtherance through some form of the act is not enough to file assault charges, and therefore, additional action is needed to be accompanied by threatening words to cause fear of harm. On the other hand, battery involves the perpetrator to commit the act itself out of intent, negligence, or criminal recklessness, even if the victim is not severely traumatized. Hence any offensive or harmful form of touching is sufficient to prove battery from the perspective of an ordinary individual (Justia, 2019).

#  In this case, Smith may rightly file a battery lawsuit against Pullen, whereas Pullen may attempt to use self-defense as a defense against the charges. Pullen may argue that he was responding to a threat of harm, as apparent from the words of Smith, to save himself from damages. However, this defense will have to be analyzed if it was a reasonable reaction to the situation Pullen was in. On the other hand, Smith may claim civil and punitive damages, and may even press for criminal charges on Pullen.

# Reference Case

A similar case can be observed in *Averill v. Lutrell* (1957),in which the plaintiff, a professional baseball player, was subject to a threatening verbal gesture and motion by another player. The plaintiff perceived the other player’s baseball pitches to be aggressive in light of the gesture and tossed his bat in the other player’s direction. The other player then proceeded to punch the player at the back of his head knocking the plaintiff unconscious, who subsequently received several injuries and fractures. Likewise, the plaintiff filed assault and battery charges against the attacking player, and successfully claimed a substantial amount in damages. The defendant's actions were considered to be an independent and willful assault that felt outside the scope of the game (Averill v. Luttrell, 1957). A similar incident occurred in the present case, where any verbal cues and gestures, perceived to be threatening by Pullen, were given during the course of a game. When Smith was outside the rick, he was attacked by Pullen, and received multiple injuries that led to bodily as well as financial harm, like the Plaintiff in the Averill case.

It is clear that Pullen’s actions constitute battery and the precedent set by *Averill V. Luttrell (1957)* suggests that Pullen is liable to pay Smith both civil and punitive damages due to the extent of harm he caused. Pullen may pose a defense stating that he perceived imminent harm from Smith owing to his statements during the game. However, to prove an assault, Pullen needs to provide evidence that Smith acted physically in a manner that reflected those in-game verbal gestures. In the absence of action, the defense will be weak. However, Pullen may be able to prevent criminal charges from being filed against him. Criminal liability is only proven when the conduct is outrageous and atrocious in nature and is extreme to the extent that it crosses possible bounds of decency. In general Pullen’s actions may be seen in light of the competitive, physical, and aggressive nature of hockey itself, and thus, a player punching another may not constitute an act that is “utterly intolerable in a civilized society” as argued in *Esshaki V. Millman* (2009).

# Conclusion

To conclude, Smith can rightly file battery charges on Pullen which the latter cannot defend against that he was assaulted. Assault requires an act to accompany a threatening behavior even if the act did not involve touching. Smith’s cues, though threatening, were absent of any movements or gestures that involved a physical act of harm towards Pullen. Therefore, Pullen cannot claim a reasonable apprehension of imminent harm. However, Smith can file a battery charge against Pullen and file for both civil and punitive damages because Pullen’s actions caused significant personal and financial injury to him. However, Pullen may be able to avoid criminal charges as his act does not constitute atrocious conduct that would be deemed utterly intolerable by society.

# References

Averill v. Luttrell, 311 S.W.2d 812 (Court of Appeals of Tennessee, Eastern Section July 9, 1957).

Esshaki V. Millman, COA 283297 (State of Michigan Court of Appeals 2009).

Justia. (2019). *Assault and Battery.* Retrieved July 21, 2019, from Justia: https://www.justia.com/criminal/offenses/violent-crimes/assault-battery/