# APPENDIX C: Briefing Cases

**Case Name**:

BANKS v. The STATE

**Case Citation**:

Banks v. State, 314 S.E.2d 235, 169 Ga.App. 571 (1984).

**Legal issue/question**:

Can a ceramic statue qualify as an offensive instrument?

**Rule statement/Rule of law**:

“The term offensive instrument as used in Code Ann. § 26–1902 [now OCGA § 16–8–41] includes not only instruments which are offensive per se (such as firearms loaded with live ammunition), but also other instrumentalities not normally considered to be offensive instruments per se which may be found by a jury to be likely to produce death or great bodily injury depending on the manner and means of their use.” Meminger v. State, 160 Ga.App. 509(2). [page number]

**Court’s reasoning**:

1. “[W]hether the instrument used constitutes a deadly (or offensive) instrument is properly for the jury's determination.” Quarles v. State, 130 Ga.App. 756(2), 757, 204 S.E.2d 467.
2. A ceramic statue is not necessarily an offensive instrument, but a jury could find it to be an offensive instrument if it was used in a manner likely to produce death or great bodily injury.

**Court’s holding**:

A ceramic statue is not necessarily an offensive instrument but can be considered one depending on how it was used.

**Relevant Facts**:

Defendant struck three alleged victims with a ceramic statue: his wife, Mrs. Benton, and a police officer.

**Procedural history**:

1. Defendant was indicted for three counts of aggravated assault for striking three different people with a ceramic statue.
2. Defendant was acquitted of the first count, found guilty of the lesser offense of simple assault on the second count, and found guilty of aggravated assault on a police officer on the third count.
3. The State entered a nolle prosequi on count 2, sentencing Defendant on count 3 only.
4. Defendant appealed his conviction for aggravated assault on a police officer.

**Disposition**:

Affirmed.

**Case Name**:

BRAZIEL v. The STATE

**Case Citation**:

Braziel v. State, 739 S.E.2d 13, 320 Ga.App. 6 (2013).

**Legal issue/question**:

Could the jury reasonably find that the appellant had used his dog as an offensive instrument, thus supporting his conviction for aggravated assault?

**Rule statement/Rule of law**:

“A person commits the offense of aggravated assault when he assaults ... [w]ith a deadly weapon or with any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury.” OCGA § 16–5–21(a)(2). [page number]

**Court’s reasoning**:

1. “The use of a dog can be considered use of an offensive instrument.” Michael v. State, 160 Ga.App. 48(1) (1981).
2. The appellant commanded his dog to attack the deputy.
3. Past encounters with law enforcement showed that the appellant was able to control his dog.
4. Used offensively, the dog inflicted serious bodily injury on the deputy.

**Court’s holding**:

Evidence showed the appellant used his dog as an offensive instrument, authorizing the jury to find him guilty of aggravated assault.

**Relevant Facts**:

1. Appellant resisted arrest; while struggling with the deputy, he told his dog “sic him boy, get him, sic him.”
2. Appellant’s pit bull bit the deputy’s leg; Appellant continued telling his dog “sic him boy, bite him.”
3. After the dog was pulled off the deputy by Appellant’s grandfather, Appellant bragged about his dog attacking the deputy as Appellant was being detained.
4. The victimized deputy testified to the severity of the dog bite which left a permanent hole in his leg.
5. The dog had been aggressive in past encounters with law enforcement at the Appellant’s home, but Appellant “usually called it off.”

**Procedural history**:

1. Appellant was found guilty of aggravated assault.
2. Appellant’s motion for a new trial was denied.
3. Appellant appealed, contending the evidence as insufficient to sustain his aggravated assault conviction.

**Disposition**:

Affirmed.

**Case Name**:

CRANE v. The STATE

**Case Citation**:

Crane v. State, 678 S.E.2d 542, 297 Ga.App. 880 (2009)

**Legal issue/question**:

Can a claw hammer qualify as an offensive instrument supporting a conviction for aggravated assault?

**Rule statement/Rule of law**:

“A person commits the offense of aggravated assault when he or she assaults ... [w]ith a deadly weapon or with any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury....” OCGA § 16–5–21(a)(2). [page number]

**Court’s reasoning**:

1. “[A] hammer can be considered an offensive instrument for purposes of an aggravated assault charge.” In the Interest of C.B., 288 Ga.App. 752, 753 (2007).
2. Although Appellant sought to portray the father as the aggressor, the jury determined otherwise.
3. “It is the victim's reasonable apprehension of injury from an assault by an offensive instrument that establishes the crime of aggravated assault, not the assailant's intent to injure.” Bostic v. State, 289 Ga.App. 195, 197 (2008).

**Court’s holding**:

A claw hammer can qualify as an offensive instrument if the victim is reasonably apprehensive of being injured from an assault by it.

**Relevant Facts**:

1. Appellant who was no longer permitted on his ex-wife’s property confronted his ex-wife’s father there while holding a claw hammer.
2. The father defended himself with a baseball bat out of fear that Appellant would strike him, hitting Appellant in the arm.
3. Appellant claims to have had no intention of hitting his ex-wife’s father with the hammer and that the father had instead attacked him.

**Procedural history**:

1. Appellant was found guilty of aggravated assault.
2. Appellant’s motion for a new trial was denied.
3. Appellant appealed, contending the evidence as insufficient to sustain his aggravated assault conviction.

**Disposition**:

Affirmed.

**Case Name**:

DASHER v. The STATE

**Case Citation**:

Dasher v. State, 676 S.E.2d 181, 285 Ga. 308 (2009).

**Legal issue/question**:

Could the jury reasonably find that Appellants had used hands and fists as offensive instruments, thus supporting their convictions for felony murder predicated on aggravated assault?

**Rule statement/Rule of law**:

1. OCGA § 16– 5–21(a)(2) criminalizes an assault made with the offensive use of any object that “actually does result in serious bodily injury....”. [page number]
2. “Hands and fists may be offensive instruments depending upon the circumstances, including the extent of the victim's injuries.” Wright v. State, 211 Ga.App. 474(1) (1993).

**Court’s reasoning**:

1. “Although fists and feet are not considered offensive instruments . . . they may be found to be an offensive instrument by the jury depending on the manner and means of their use, the wounds inflicted, etc....” Kirby v. State, 145 Ga.App. 813(4) (1978).
2. The victim suffered serious bodily injury as the likely result of Appellants’ punches and kicks.

**Court’s holding**:

The jury was authorized to conclude that Appellants’ hands and feet were used as offensive weapons.

**Relevant Facts**:

1. The victim suffered extensive damage to his face/head, evidenced by abrasions and bruising.
2. The victim died from a forceful blow to the head consistent with being kicked.
3. Appellants repeatedly punched and kicked the victim’s face/head, causing him to lose consciousness and die.

**Procedural history**:

1. Appellants were convicted for felony murder (aggravated assault).
2. Both Appellants separately filed for new trials, with both motions being denied following individual hearings.
3. Both Appellants filed appeals which were submitted for decision on the briefs.

**Disposition**:

Affirmed.

**Case Name**:

DURRANCE v. The STATE

**Case Citation**:

Durrance v. State, 549 S.E.2d 406, 250 Ga.App. 185 (2001).

**Legal issue/question**:

Did the State show Defendant used his truck as an offensive instrument, thus nullifying the need to show specific criminal intent to support an aggravated assault conviction?

**Rule statement/Rule of law**:

Pursuant to OCGA § 16–5–21(a)(2), an assault becomes aggravated when it is committed “with any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury.” [page number]

**Court’s reasoning**:

1. Aggravated assault by means of an offensive instrument does not require specific criminal intent.
2. Although an automobile is not per se a deadly weapon or offensive instrument, it may become one depending on the manner and means by which the vehicle is used
3. Evidence showed that by speeding and driving in the wrong lane, Defendant used his vehicle in a way that was likely to result in serious bodily injury.

**Court’s holding**:

Evidence sufficiently showed Defendant used his truck as an offensive instrument, allowing the jury to find intent to commit aggravated assault.

**Relevant Facts**:

1. Officers responding to a domestic disturbance call pursued Defendant when he fled the scene.
2. During the chase, Defendant spun around and sped toward two officers in their lane of traffic, forcing them off the road and into a ditch to avoid being hit.
3. Defendant testified he did not intent to hit the officers and was simply trying to flee.
4. Defendant testified that he had crossed the centerline and was speeding.

**Procedural history**:

1. Defendant was charged with three counts of aggravated assault.
2. The jury returned a guilty verdict on all counts and Defendant was sentenced to serve fifteen years for each aggravated assault.
3. Defendant appealed, contending the evidence as insufficient to sustain his aggravated assault conviction.

**Disposition**:

Affirmed.

**Case Name:** Ellison v. Peterson

**Case Citation:** Ellison v. Peterson., 294 Ga. App. 1 (2008).

**Legal Issue:**

Whether the plaintiff’s evidence raised an issue of material fact as to whether a battery had potentially occurred and, if so, whether the trial court erred in granting summary judgment in favor of the defendant.

**Rule**:

1. Under OCGA § 9-11-56(c), summary judgment is proper when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law.
2. Unwanted touching constitutes an injury in battery cases.

**Court’s Reasoning:**

1. When considering conflicting evidence in an appeal from summary judgment, the evidence must be viewed in favor of the nonmovant (Ellison).
2. Ellison presented evidence that the manager put Ellison in a head lock.
3. Because such unwanted contact constitutes an injury in battery claims, Ellison’s evidence presents the possibility that the manager committed battery.
4. Additionally, the manager did not show why she should prevail as a matter of law.

**Relevant Facts:**

The plaintiff entered a Burger King and waited to order. Nobody came to take her order for some time, so she spoke up requesting for someone to do so. After an employee offered to take her order, the manager emerged asking why the plaintiff had to make so much noise every time she comes. Then the manager allegedly put her hands around the plaintiff’s neck in a semi-head lock position and began shaking. The plaintiff filed a complaint seeking damages for battery, but the defendant successfully moved for summary judgment. The plaintiff then appealed.

**Court Holding:**

The court reversed the trial courts granting of summary judgment for the defendants.

**Procedural History:**

1. The plaintiff filed a complaint seeking damages for battery
2. The defendant moved for summary judgment
3. The trial court granted the defendant’s motion for summary judgment
4. The plaintiff appeals the grant for summary judgment

**Disposition:**

Reversed.

**Case name:** Everett v. Goodloe, Court of Appeals of Georgia, July 15, 2004

**Case citation:** 268 Ga. App. 1

**Legal issue:**

Was the trial court correct in granting summary judgement to the appellee because the appellant’s testimony was self-contradictory and could not sustain all elements of her claim of battery?

**Rule statement:**

*Summary judgement:*

“‘Summary judgment is appropriate where the moving party can show that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. [OCGA §](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST9-11-56&originatingDoc=Ic87e9f3d040511dab386b232635db992&refType=SP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_4b24000003ba5) 9–11–56[(c)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000468&cite=GAST9-11-56&originatingDoc=Ic87e9f3d040511dab386b232635db992&refType=SP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_4b24000003ba5). A defendant meets this burden by showing the court that the documents, affidavits, depositions and other evidence in the record reveal that there is no evidence sufficient to create a jury issue on at least one essential element of plaintiff’s case...’” 268 Ga. App. at 1.

*Battery:*

“‘[T]he act of intentionally causing actual physical harm to another is civilly actionable as a battery.... It is the intent to make either harmful *or* insulting or provoking contact with another which renders one civilly liable for a battery.’ The test as to whether a battery has occurred ‘ “ ‘is what would be offensive to an ordinary person not unduly sensitive as to his dignity.’ ” ’ ” 268 Ga. App. at 3.

*Contradictory testimony:*

“A party/witness’ testimony ‘is to be construed ... against him when ... self-contradictory.’ On summary judgment, the trial judge decides whether the testimony is contradictory, and if so, whether the witness has offered a reasonable explanation for the contradiction.” 268 Ga. App. at 3.

**Court’s reasoning:**

1. The court found that Everett’s testimony was contradictory and could not sustain her claim.
   * It reasoned that if she had truly suffered battery, she would have mentioned it in her diary or in her emails.
   * Therefore, it construed her testimony against her.
     + Everett asserted that she did not write about the attacks for fear of losing her job
       - The court discounted this because she’d written to Goodloe about other ways he had offended her
       - Therefore, it found no reasonable explanation for the contradictory testimony.

**Court’s holding:**

The court chose to apply the rule on contradictory testimony and found no reasonable explanation for the contradiction. It held that Everett could not sustain her claim and that summary judgment was appropriate.

**Relevant facts:**

Everett (plaintiff/appellant) and Goodloe (defendant/appellee) dated in 1997, until he ended the relationship because they were not having sex. When Everett told him she needed a job, Goodloe hired her as his personal secretary at his estate brokerage.

Everett asserted that while she worked for Goodloe, he battered her several times because she refused to pursue a sexual relationship with him. The batteries included grabbing at her breasts and legs and forced kisses hard enough to make her bleed. He in turn maintained that she was suing him because he hadn’t paid her a commission on a sale.

The court considered several of Everett’s emails and journal entries. In one email following the first alleged battery, she wrote to Goodloe that she had had a good time. In another, she asked him to treat her more respectfully after he insulted her work experience. She signed two emails with “Love, Donna.” She also wrote in her diary that she wanted to borrow money from him, and that she sought power over him because it was “the only way [she felt] safe.” In a later email, she wrote that she forgave him for wronging her and wasn’t angry at him anymore, and wanted to renew their friendship.

**Procedural history:**

Goodloe filed a motion for summary judgment which was granted by the trial court, and Everett appealed.

**Disposition**: Affirmed.

**Greenfield v. Cunard, 110 Ga.App. 1 (1964).**

Procedural Facts: Greenfield sued Colonial Stores, Inc. on a claim of battery carried out by a Colonial Stores employee, Cunard. The trial court dismissed the claim after sustaining the defendant’s motion to dismiss. The plaintiff appealed to the Georgia Court of Appeals.

Substantive Facts:

* Greenfield (plaintiff) went to the defendant’s store and bought several items.
* Greenfield left the store and entered an adjacent store.
* Two employees in green jackets (store uniform?), Cunard and Speights, entered the adjacent store after Greenfield.
* The two employees were acting as managers and agents of the employee
* The facts from the opinion state they were “acting within the scope of their duties.”
* The men grabbed Greenfield by the arms and pulled them behind his back in a swift manner that brought on pain.
* Cunard accused Greenfield of having meat in his coat
  + Cunard was insinuating that Greenfield stole from his store
  + Greenfield claimed he paid for his purchases
  + The managers insisted he hid some meat under his coats
  + Greenfield unbuttoned his coats to reveal he was hiding nothing
    - These facts (after the touching) probably advance an assault claim, not battery. It depends on the state of tort law in Georgia at the time (’64 is a long time ago in terms of the law)

Issue: Should the court dismiss the plaintiffs claim of assault and battery?

Holding: No, because the plaintiff’s allegations are enough that the case should remain in court. The plaintiff sufficiently alleged a cause of action for assault and battery.

Rule: An act of violence inflicted on another person that constitutes harmful or offensive contact also constitutes an assault and battery

Reasoning:

The facts are “obviously sufficient”. The facts, applied to the rule, show that the claim should not be dismissed. ‘Where all the apparent circumstances, reasonably viewed, are such as to lead a person reasonably to apprehend a violent injury from the unlawful act of another, there is an assault.’ Quaker City Life Ins. Co. v. Sutson, 102 Ga.App. 53, 56(1), 115 S.E.2d 699, 702.

Disposition:

The judgment below is reversed. The claim will not be dismissed and the case will proceed.

**Case Name**:

HAMBRICK v. The STATE

**Case Citation**:

Hambrick v. State, 330 S.E.2d 383, 174 Ga.App. 444 (1985).

**Legal issue/question**:

Can a pocketknife qualify as an offensive instrument?

**Rule statement/Rule of law**:

The term “offensive instrument” includes not only instruments which are offensive per se, such as firearms loaded with live ammunition. It also embraces other instrumentalities not normally considered to be offensive instruments in and of themselves, but which may be found by a jury to be likely to produce death or great bodily injury depending on the manner and means of their use. Meminger v. State, 160 Ga.App. 509, 287 S.E.2d 296 (1981) [page number]

**Court’s reasoning**:

1. Even though the pocketknife was small and easily concealed in one’s pocket, a jury could determine it was capable of inflicting serious injury just like other knives.
2. Evidence showed Appellant did use the knife directly against the elderly victim in a manner likely to produce death or great bodily injury.

**Court’s holding**:

A pocketknife can be considered an offensive instrument, supporting Defendant’s conviction for aggravated assault.

**Relevant Facts**:

1. Appellant visited his wife’s nearly blind elderly step-grandfather while he was alone, claiming to be another one of the man’s grandsons.
2. Appellant tried to take cash-filled snuff cans wrapped in a stocking around the elderly man’s neck but could not remove them initially.
3. Appellant took a pocketknife and cut the snuff cans loose.
4. When the elderly man tried to stop Appellant, the pocketknife cut the man’s finger.

**Procedural history**:

Appellant appealed his conviction and sentence for aggravated assault.

**Disposition**:

Affirmed.

**Case Name:** Harvey v. Speight

**Citation:** 178 Ga. App. 1 (1986).

**Legal Issue:**

Can a touching, which someone admits was invited and without any other evidence, be considered battery?

**Rule of Law:**

The appellee admitted that any touching of his person had been invited by him; and such invitation is inconsistent with the tort of assault and battery. (Paragraph 4)

**Court’s Reasoning:**

1. The tort of battery rests upon a lack of invitation for the touching
2. The appellee/plaintiff admitted that the search was invited
3. Because there was an invitation, there is insufficient evidence to prove battery.

**Court’s Holding**:

Because the appellee/plaintiff invited the touching of his jacket to prove to the appellant that he (plaintiff) was not the thief, the appellee/plaintiff, without other additional evidence, could not recover for battery regardless of Harvey’s perceived anger or the lack of courteousness.

**Relevant Facts**

1. After exiting a store, plaintiff Speight walked outside and was subsequently confronted by defendant Harvey.
2. Harvey, acting on information that someone had just stolen cigarettes from the store, approached Speight and asked if he had stolen anything.
3. To prove his innocence, Speight opened his jacket and allowed Harvey to look for the cigarettes.
4. Speight notes that he felt the manager was angry and noticed that other people had followed the manager out
5. Finding nothing, Harvey stopped the search. There is dispute as to the length of the search (15-30 seconds v. 45 seconds)

**Procedural History:**

1. The appellee (plaintiff) sued the appellant (defendant) in a civil suit to recover for damages for battery
2. Lower court ruled in favor of plaintiff and awarded $32,500 in damages
3. Appellant appealed the denial of his motion for a directed verdict for battery charge
4. Court of Appeals reverses the lower court ruling, holding that the lower court erred in denying the appellant’s motion for directed verdict

**Disposition:**

Reversed.

**Case Name:**

Hendricks v. Harper

**Case Citation:**

Hendricks et al., v. Harper, 193 Ga. 264, 387 S.E.2d 593

**Legal Issues:**

1. *Main Issue:* Did the trial court commit and error in accepting the appellee’s jury instruction rather than the appellants on the determination of battery liability?
2. *Sub-Issue:* Whether a person must show actual intent to hurt or cause harm to be liable for battery.

**Rule of Law:**

Liability for battery arises where there is physical injury done to another and the actor intended for contact with the injured party to occur.

**Reasoning:**

Liability for battery does not rest on intent to cause actual physical harm. Intent for contact that is offensive or harmful to occur satisfies the burden of proof for a battery claim. The question of whether the appellee acted with intent other than to cause contact with the appellant belongs to the determination of damages, not liability for the act itself.

**Holding:**

The appellee is liable for punitive damages as well as compensatory damages if it can be shown merely that the appellee intended for contact to occur. There is not a requirement for the intention to wanton, willful, or malicious. Thus, the court erred in giving appellees instruction to the jury rather than directing the jury according to the appellant’s instruction.

Relevant Facts:

The appellee induced the appellant to put a telephone, emitting high frequency noise capable of causing harm or offense, to appellant’s ear. The lower court accepted the appellee’s jury instruction to weigh liability for battery on whether the appellee acted with the intent to cause actual physical harm to the appellant.

**Procedural History:**

The appellant brought a claim of battery against the appellee. The trial court/lower court ruled in favor of the appellee by a jury decision. The appellant appealed to the court of appeals.

**Disposition:**

The lower court ruling is undone, and the case must be tried again by the lower court.

Houston v. Holley, 208 Ga. App. 1 (1993).

Facts:

* Defendant was a childcare provider at Kinder-Care, Plaintiff was one of the children in her care
* Plaintiff was badly behaved and disruptive
* Kinder-Care had a timeout policy of separating bad children from the others within sight of the teacher
* John was so bad that his timeouts were moved from the standard corner to the bathroom, where he would not be a disruption to the rest of the class. Teacher held the door open slightly, but not all the way so she could talk to John and observe the other children
* Director was aware of and unconcerned with this time-out mechanism
* John was later evaluated and diagnosed w/ trauma, which was traced back to his bathroom time-outs, which is the impetus for the case

Procedural History:

* Initial jury verdict entered for Defendant (Holley)
* Plaintiff (Houston) appeals

Issue:

* Does a childcare workers’ placement of a toddler into time-out in a bathroom after the toddler had numerous instances of bad behavior qualify as assault and battery under Georgia law?

Holding:

* No assault/battery. Trial court affirmed.

Reasoning/Argument:

* There was no evidence of an unlawful touching in the facts alleged that would amount to assault or battery in this case.
* The touchings enumerated in the case were lawful – they were part of the established childcare the Houstons contracted for

Other/Dicta:

* Actual text of rule: Any unlawful touching is a physical injury to the person and is actionable as a battery.
* Other interview of another teacher – not super relevant but casts some questions and doubt on the reliability of factual testimony in the case
* Kid got evaluated by a therapist – diagnosed w/ behavior disorder.

Kohler et al v. Van Peteghem et al, 330 Ga. App. 1 (2014).

Issues: In evaluating the counterclaimant (VP, who is defendant in main claim)’s battery counterclaim, based on the incident of defendant (Kohler, who is plaintiff in main claim) allegedly spitting in counterclaimant’s face, **did the trial court err** in:

1. Directing a verdict in favor of defendant Kohler on battery counterclaim
2. Giving the jury instruction on the battery counterclaim

because the evidence was inconclusive on intent to commit battery?

Holding: **Yes, the trial court erred** in 1) directing a verdict and 2) giving the jury instruction, because the evidence was inconclusive on intent to commit battery.

1. There was at least some evidence such that the jury could have found Kohler only accidentally spit, without requisite intent for battery, and never physically toucher her.
2. Directed verdict can only be granted when there is no possible conclusion but that in favor of movant.
3. Give Kohler a new trial on battery counterclaim.

Facts:

* Main claim: Parties became involved in legal action originally in a main claim, brought by Kohler against VP, alleging that VP’s actions were the cause of the drainage problem in their next-door neighbor Kohler’s backyard.
* VP answered Kohler’s complaint:
  + denying that they caused the drainage problem
  + asserting **battery counterclaim against Kohler** for spitting in VP’s face while yelling
* Main claim goes to trial
  + VP: Kohler spit in my face
    - Claims he intentionally spit on her face while yelling at her, after she asked him to step back
    - Claims he stood so close to her that their bellies were touching after she asked him to step back
  + President of HOA: they were standing in a circle of people, and if he spit on her face, “it wasn’t like it was one-on-one” between the two of them; Kohler was “expressing his point of view”
* **Trial court holds** 1) directed verdict in favor of VP on the drainage claim, 2) directed verdict in favor of VP on battery counterclaim. In giving jury instructions on battery claim, court says he “action of spitting on VP constituted a battery” but allows jury to decide harm/damages.
  + Jury awards $250k in damages to VP

Procedural history

* Trial court holds in favor of VPs, jury awards damages to VP
* Trial court denies Kohler’s motion for new trial
* Kohler appeals to Ga Ct. App. We are here now.

Standard of review: abuse of discretion

Counterclaim Plaintiff (Kohler) arg.: Trial court erred in 1) directing verdict in favor of VP and 2) giving jury instruction because **evidence was in dispute** as to whether the spitting incident was intentional.

* Uses evidence of HOA president’s testimony
* Court agrees.

Counterclaim Defendant (VP) arg.: Trial court did not err because of the “right for any reason” rule, and there was other uncontroverted evidence that Kohler had committed battery.

* “Right for any reason” rule: Sims v GT Architecture – If a judgment related to a directed verdict is “right for any reason,” it will be affirmed.
  + VP argue that evidence undisputedly shows Kohler touched VP with his body – VP’s testimony.
* Court disagrees.

Rules

* Issue #1: directed verdict
  + Battery
    - Lawson v Bloodsworth: touching of another without her consent, even if minimal, constitutes battery, even if indirect touching, as in throwing a substance at someone else.
    - Hendricks v Southern Bell: unauthorized touching is not enough; must also have intent to make harmful, insulting, or provoking contact.
      * Reeves v Bridges: substantial certainty that touching will occur as a result of actions = intent.
      * Stack-Thorpe v State: intent is a question of fact, “peculiarly within the province of the jury.”
  + Directed verdict standard
    - Svc Merchandise v Jackson: court should grant directed verdict “only where the evidence is truly clear, palpable and undisputed.”
    - Franklin v Augusta Dodge: “if there is any evidence to support the case of the non-moving party, a directed verdict must be reversed.”
* Issue #2: jury instruction
  + same battery rules as above

Court’s Analysis

* Issue #1: directed verdict
  + Spitting may occur accidentally when someone is yelling in someone else’s face. Webster’s Dictionary; Engle v Bosco
  + Applying battery standard, it is ambiguous whether Kohler had requisite intent to spit on VP or not, or even if he touched her. The jury could have drawn either conclusion with the evidence presented at trial, especially the HOA president’s testimony.
  + Applying directed verdict standard, the evidence and all reasonable inferences do not demand a finding that battery occurred  error to grant directed verdict in favor of VP.
* Issue #2: jury instruction
  + Same reasons as above  trial court’s jury charge was wrong. Entitled to new trial.

**Case Name**:

LaPANN v. The STATE

**Case Citation**:

LaPann v. State, 382 S.E.2d 200, 191 Ga.App. 499 (1989).

**Legal issue/question**:

Was there sufficient evidence to show Appellant used a piece of firewood as an offensive instrument?

**Rule statement/Rule of law**:

A person commits aggravated assault when he assaults with any object, device, or instrument which, when used offensively against another, is likely to or actually does result in serious bodily injury. Miller v. State, 174 Ga.App. 703, 331 S.E.2d 616. [page number]

**Court’s reasoning**:

“What constitutes an offensive instrument capable of doing serious damage to the victim of an assault depends not necessarily on the nature of the object itself but on its capacity and the manner of its use, to inflict serious bodily harm.”

**Court’s holding**:

Evidence sufficiently showed Appellant used a piece of firewood as an offensive instrument.

**Relevant Facts**:

1. Appellant was very upset when his daughters returned home at 5:00AM after the parents discovered the daughters did not report to work where they said they had been all night.
2. Following 30 minutes of heated discussion, Appellant took a 16” long piece of ¾” thick firewood from a kindling box and began to strike one daughter.
3. Appellant struck the victim on the leg and around the shoulder. When the victim used her arm to defend herself, the next blow hit her head, resulting in a gash requiring ten stitches.
4. The 235lb Appellant drew back and delivered each blow with force, resulting in bruising to the victim.

**Procedural history**:

1. A bench trial convicted Appellant of aggravated assault and cruelty to a child.
2. The trial court merged the cruelty charge with the aggravated assault charge.
3. Appellant appealed, contending the evidence was insufficient to sustain his aggravated assault conviction.

**Disposition**:

Affirmed.

**Case Name:** Lawson v. Bloodsworth

**Case Citation:** Lawson v. Bloodsworth, 313 Ga. App. 1 (2012).

**Legal Issue(s)/Question(s):**

* Did the trial court err in granting summary judgment to the teacher, Mr. Bloodsworth, for an alleged battery against his student, Lawson?
  + Yes.

**Rule Statement:**

* A cause of action for battery will lie for any unlawful touching, that is, a touching of the plaintiff's person, even if minimal, which is offensive.

**Court’s Reasoning:**

* Summary judgment is only appropriate if the moving party can show that there is no genuine issue of material fact.
  + The defendant must show that there is no evidence in the record to support any essential element of the plaintiff’s care.
  + Here, an unlawful touching and tortious intent are essential elements of the plaintiff’s case.
* There is a factual dispute whether the chair touched Lawson and whether the chair was pushed with tortious intent.
* Therefore, there is a genuine issue of material fact and Lawson presented evidence of essential elements of his battery claim.

**Court’s Holding:**

* Because there was a genuine issue of material fact, the trial court erred in granting summary judgment to Mr. Bloodsworth.
* Summary judgment reversed.

**Relevant Facts:**

* Mr. Bloodsworth claims he tried to slide a chair toward Lawson which may have unintentionally nicked him.
* Lawson claims that Mr. Bloodsworth intentionally threw or pushed the chair towards Lawson in anger, which hit him in the back of the leg. Lawson was not physically injured.

**Procedural History:**

* Trial court granted summary judgment to the teacher, Mr. Bloodsworth.
* Student, Lawson, appealed.

**Disposition:**

* Reversed.

**Case Name**:

REESE v. The STATE

**Case Citation**:

Reese v. State, 695 S.E.2d 326, 303 Ga.App. 871 (2010).

**Legal issue/question**:

Did the State prove the bottle at issue constituted and offensive instrument?

**Rule statement/Rule of law**:

“Where, as here, the defendant has assaulted the victim with an object which is not per se a deadly weapon, the jury may nevertheless find the object to be an instrument that is likely to result in serious bodily injury depending on the manner and means of the object's use, as well as any wounds inflicted and other evidence of the capabilities of the instrument.” [page number]

**Court’s reasoning**:

1. Evidence showed Defendant was reacting to the officer entering his home against his objection.
2. Defendant approached the doorway and threw the 12oz glass bottle with enough force that it shattered upon impact.
3. That the bottle did not actually strike the officer or injure him is immaterial.

**Court’s holding**:

The jury could conclude Defendant used the bottle as an offensive instrument in a manner likely to have resulted in serious bodily injury.

**Relevant Facts**:

1. An officer responding to a domestic violence dispatch at Defendant’s residence was granted entry by Defendant’s visibly upset, but Defendant audibly protested the officer’s entry.
2. When the officer entered, Defendant approached the doorway and threw a beer bottle at the officer before tackling the officer back outside.
3. An investigator found beer bottles scattered through the residence and wet markings inside doors consistent with beer bottles having been thrown.

**Procedural history**:

Defendant appealed his conviction for aggravated assault upon a peace officer.

**Disposition**:

Affirmed.

*Richardson v. Hennly*, 209 Ga. App. 1 (1993)

**Issue:**

* Whether pipe smoke is an immaterial substance incapable of battering another, thus entitling Hennly to summary judgment on Richardson’s battery claim.

**Rule:**

* Pipe smoke is a substance material enough to satisfy the “touching” element of a battery claim.

**Facts:**

* Richardson and Hennly were coworkers at First Federal. Hennly’s office was located approximately 30 feet from Richardson’s desk. Hennly would often pipe smoke in his office. Richardson had an allergic reaction to Hennly’s pipe smoke that caused her to experience nausea, stomach pain, loss of appetite, weight loss, headaches, and anxiety. Richardson’s adverse reaction to the pipe smoke caused her to be hospitalized twice. While Hennly did stop pipe smoking for a period of time (using cigarettes instead), he resumed pipe smoking in his office for fear of becoming addicted to cigarettes. It is undisputed that Hennly was aware of Richardson’s adverse reactions and hospitalizations as a result of his pipe smoke. Whether Hennly pipe smoked anywhere at work other than his office, intentionally smoked around Richardson to annoy her, or made teasing or offensive remarks regarding his smoking to Richardson are in dispute.

**Procedural History:**

* Richardson filed suit in three counts against Hennly alleging claims of battery
* Hennly moved for summary judgment
  + The superior court granted partial summary judgment (**SJ for claim of battery**)
* Richardson appeals the grant of partial summary judgment to Hennly

**Reasoning:**

* Common law rule: any unlawful touching is actionable as a battery. *Haile v. Pittman,* 194 Ga.App. 105, 106(3), 389 S.E.2d 564 (1989).
* ‘”The unlawful touching need not be direct, but may be indirect, as by the precipitation upon the body of a person of any material substance.” *Hendricks v. Harper,* 193 Ga.App. 264, 265, 387 S.E.2d 593 (1989).
* “Touching” within the meaning of battery can be satisfied if the defendant merely “sets a force in motion which ultimately produces the result.” Prosser & Keeton, The Law of Torts § 9, p. 40 (5th ed. 1984).
* Pipe smoke is material enough “touch” someone within the meaning of battery.
  + It is visible, detectable through the senses, and may be ingested or inhaled
  + Smoke is capable of making contact with a person
* Richardson has alleged that Hennly directed his pipe smoke in her direction intentionally, either for the purpose of injuring her or with conscious disregard of the knowledge that it would injure her.
  + Because Hennly’s pipe smoke was capable of indirectly battering Richardson, the “touching” element of Richardson’s battery claim does *not* fail as a matter of law.
  + None of the other elements of battery are able to be conclusively negated at this time

**Holding:**

* Reversed
* Hennly has not shown as a matter of law that he is entitled to summary judgment – there are genuine issues of facts regarding whether the elements of battery are satisfied.

**Case Name**:

J. A. TALLEY, Jr. v. The STATE

**Case Citation**:

Talley v. State, 224 S.E.2d 455, 137 Ga.App. 548 (1976).

**Legal issue/question**:

Was there sufficient evidence to show Appellant used a lamp as an offensive instrument?

**Rule statement/Rule of law**:

“[Because a] lamp is not, per se, an offensive instrument . . . [i]t was, therefore, incumbent on the state to show the circumstances of its use by appellant which made it an offensive instrument. See, e.g., Williams v. State, 127 Ga.App. 386(1, 2). [page number]

**Court’s reasoning**:

1. The lack of evidence as to the instrument’s characteristics or how it was used supported a reversal in Williams but does not support a reversal in this case.
2. Here, the granddaughter’s testimony that she saw Appellant hitting the victim on the head with the lamp and medical testimony establishing that the victim suffered bruises and severe lacerations showed the lamp was used as an offensive instrument.

**Court’s holding**:

Evidence sufficiently showed Appellant used a lamp as an offensive instrument.

**Relevant Facts**:

1. The victim’s granddaughter testified she saw Appellant hitting her grandfather on the head with a lamp.
2. The state did not introduce the lamp into evidence and did not describe its size, weight, or sharpness.
3. The jury was not informed how many blows Appellant struck, the degree of force used, or what part of the lamp inflicted the wounds.
4. The victim’s injuries were severe, as he suffered bruises and had his ear completely torn in two places.

**Procedural history**:

1. Appellant was convicted of aggravate assault.
2. Appellant appealed, contending the evidence was insufficient to sustain his aggravated assault conviction.

**Disposition**:

Affirmed.

**Case Name:** Rose v. Braciszewski

**Case Citation:** Rose v. Braciszewski, 220 Ga. App. 1 (2009).

**Legal Issue(s)/Question(s):**

* Did the trial court err in granting the defendants’ motion for summary judgment?
  + No.

**Rule Statement:**

* In order to establish claims of battery, a plaintiff must demonstrate that the defendant had the requisite intent.

**Court’s Reasoning:**

* Battery requires intent.
* There was no evidence that the defendants took any action with the intent for smoke and fumes to come in contact with the plaintiff, nor did they have the knowledge that their actions were substantially certain to cause any contact.
* Because the plaintiff failed to present evidence to prove intent to support her battery claim, the trial court did not err in dismissing her claim.

**Court’s Holding:**

* Trial court’s dismissal of plaintiff’s battery claim affirmed.

**Relevant Facts:**

* Rose (plaintiff) and Braciszewskis are neighbors.
* Braciszewskis burn yard waste on their property in compliance with a local ordinance. They also ran their care in their barn.
* Rose reported smoke in her home. She also complained about the leaf burning at a township board meeting. The fire department investigated and told Rose that the township permitted the burnings.

**Procedural History:**

* Rose sued defendants for battery.
* Rose filed a motion for a permanent injunction to enjoin defendants’ burning and running their car for long periods of time.
* Trial court granted the defendants motion for summary judgment and denied the plaintiff’s motion to amend her complaint.
* Plaintiff appealed trial court decision.

**Disposition:**

* Affirmed

**Case Name**:

TYSON v. The STATE

**Case Citation**:

Tyson v. State, 855 S.E.2d 66, 358 Ga.App. 329 (2021).

**Legal issue/question**:

Did the State show Defendant’s hands and feet constituted offensive instruments?

**Rule statement/Rule of law**:

To prove an aggravated assault, the State was required to show that Tyson committed the assault “[w]ith a deadly weapon or with any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury[.]” OCGA § 16-5-21 (a) (2). [page number]

**Court’s reasoning**:

1. “Although hands and feet are not offensive instruments per se, they can become offensive instruments when used to strike another person.” In the Interest of T. W., 280 Ga. App. 693, 694 (2006).
2. “Whether hands and feet constituted offensive instruments in a particular case is a question for the jury.” Goodrum v. State, 335 Ga. App. 831, 832 (1) (2016).
3. To prove hands and feet qualify as an offensive instrument, the State may show circumstantial evidence surrounding the assault including the way the hands and feet were used and the victim’s injuries.
4. The State need not prove the victim sustained serious injury; only that the victim was likely to receive serious bodily injury given how Defendant’s hands and feet were used.
5. “Evidence showing that the defendant ‘beat the victim about the head and face with his hands is sufficient to authorize the jury's verdict that [the defendant] is guilty, beyond a reasonable doubt, of aggravated assault.’” Scott v. State, 243 Ga. App. 383, 385 (1) (d) (2000).

**VI. Court’s holding**:

Evidence supported the jury’s conclusion Defendant used his hands and feet as offensive instruments in assaulting the victim.

**VII. Relevant Facts**:

1. Multiple witnesses testified Defendant violently beat the pregnant victim with his hands and feet.
2. Defendant’s use of hands and feet caused the victim to sustain visible injuries to her head and face.
3. Defendant kicked the pregnant victim in the stomach, causing an injury that caused her to bleed down both legs.
4. Medical personnel determined he victim’s injuries were severe enough to require hospitalization.

**Procedural history**:

1. Defendant was charged with aggravated assault against the victim by using his hands and feet to push, strike, and kick in an attempt to inflict violent injury.
2. The jury found Defendant guilty of committing aggravated assault with his hands and feet; the trial court entered judgement on the jury verdict.
3. Defendant moved for a new trial, asserting that evidence was insufficient to sustain his aggravated assault conviction.

**IX. Disposition**:

Affirmed.

**Case Name: Vasquez v. Smith**

**Case Citation: Vasquez v. Smith**, 259 Ga. App. 1 (2003).

**Legal Issue:**

1. Under Georgia law, is the grant of summary judgement appropriate in tort cases when there is minimal evidence of intentional touching?
   1. No.

**Rule of Law:**

1. **Summary Judgment:**
   1. Under O.C.G.A § 9-11-56, a moving party, in a motion for summary judgment, must demonstrate that there is not genuine issue of material fact and that the undisputed facts, viewed in light most favorable to the non-moving party warrant judgment as a matter of law.
2. **Assault/Battery:** The Court concluded in Greenfield v. Colonial Stores, “any act of physical violence (and the law will not draw a line between different degrees of violence), inflicted on the person of another, which is not necessary is not privileged, and which constitutes a harmful or offensive contact, constitutes an assault and battery. 110 Ga.App. 572, 574-575.

**Court’s Reasoning:**

1. The Court’s precedent holds that an unwanted touching alone constitutes enough injury to a plaintiff in battery cases.
   1. Darnell v. Houston County Bd. of Ed., 234 Ga.App., 488, 490. “a cause of action for assault and battery can be supported by even minimal touching.”
2. An unlawful touching, the Court explains, follows an offensive test
   1. An offensive touching proceeds from anger, rudeness, or lust.
   2. Offensive, according to the 2nd Restatement of Torts is “what would be offensive to an ordinary person not unduly sensitive as to his dignity.”

**Court’s Holding:**

1. A touching under intentional torts standards, is actionable even if that touching is minimal.
2. To support a claim for battery, a plaintiff need only provide evidence that a touching occurred out of anger, rudeness, or lust even without physical injury.
3. Weighing the facts most favorable to the non-moving party, there is enough evidence to demonstrate that there are differing issues of material fact.

**Relevant Facts:**

1. Vasquez (appellant) brought suit against Smith (appellee) in trial court alleging battery within the workplace. The facts indicate various touching’s between the parties, while the manner and extremity of these touching’s are disputed.
2. The trial court granted the appellee’s motion for summary judgment on the ground that the appellant did not demonstrate actual physical injury for her battery claim.

**Procedural History:**

1. The case currently before the court is on appeal from a trial court. The appellant (Vasquez) now appeals the grant of a motion for summary judgment in favor of the appellee (Smith).

**Disposition:**  Judgment reversed.

**Case Name**:

WARE v. The STATE

**Case Citation**:

Ware v. State, 658 S.E.2d 441, 289 Ga.App. 860 (2008).

**Legal issue/question**:

Was there sufficient evidence to show Defendant’s committed aggravated assault by using a box cutter an offensive instrument?

**Rule statement/Rule of law**:

1. “OCGA § 16–5–21(a) provides in relevant part: A person commits the offense of aggravated assault when he or she assaults: (1) With intent to murder, to rape, or to rob; [or] (2) With a deadly weapon or with any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury.” [page number]
2. “For objects not considered deadly weapons per se, the State has the burden of showing that the circumstances under which the object was used made it a deadly weapon.” In the Interest of T.W., 280 Ga.App. 693, 634 S.E.2d 854 (2006).

**Court’s reasoning**:

1. The manner in which Defendant used the box cutter and the wounds inflicted did not meet the burden of proof the State had to meet to show the box cutter was an offensive instrument.
2. The State only showed Defendant hit her husband with the back of the box cutter and did not inflict serious bodily injury.
3. There was no evidence the box cutter blade was ever exposed or that Defendant threatened her husband with the blade.

**Court’s holding**:

Evidence was insufficient to show Defendant committed aggravated assault with an offensive instrument.

**Relevant Facts**:

1. Defendant got into an argument with her husband.
2. Defendant took a box cutter out of her pocket and, making a stabbing motion, hit her husband on the side of his face with the back end of the box cutter.
3. The husband sustained a small cut to his face and injured the inside of his mouth.

**Procedural history**:

1. Defendant’s probation was revoked for committing aggravated assault.
2. Defendant appealed, arguing there was insufficient evidence to support aggravated assault as a basis for revoking her probation.

**Disposition**:

Affirmed.

**Case Name**:

WEAVER v. The STATE

**Case Citation**:

Weaver v. State, 752 S.E.2d 128, 325 Ga.App. 51 (2013).

**Legal issue/question**:

Was the fact that Defendant sprayed the victim in the face with mace sufficient to support a guilty plea for aggravated assault for using an offensive instrument likely to cause serious bodily injury?

**Rule statement/Rule of law**:

“Whether an offensive instrument is ... one likely to cause serious bodily injury is a question for the jury, which may consider all the circumstances surrounding the instrument and the manner in which it was used. [Cits.]” Harwell v. State, 270 Ga. 765, 767–768(1) (1999). [page number]

**Court’s reasoning**:

1. The circumstances the jury may consider include “the manner and means of the object's use, as well as any wounds inflicted and other evidence of the capabilities of the instrument.” (Citation and footnote omitted.) Reese v. State, 303 Ga.App. 871, 872, (2010).
2. The court previously held bruises provided evidence that an instrument was likely to cause serious bodily injury.
3. Cases from other jurisdictions support the conclusion that pepper spray can be considered an offensive instrument given that it is: 1) used as a self-defense tool to injure and incapacitate attackers; and 2) can produce extreme physical pain.

**Court’s holding**:

The trial court did not abuse its discretion in holding that pepper spray could be considered an offensive instrument likely to cause serious bodily injury, thus supporting Defendant’s guilty plea for aggravated assault.

**Relevant Facts**:

1. Defendant called the victim to his vehicle and sprayed him in the face with mace/pepper spray.
2. The victim suffered an intense burning sensation in his face/eyes, was temporarily blinded, and remained in great pain while stumbling home and later returning to the scene to talk to police.

**Procedural history**:

1. Defendant pled guilty to aggravated assault for spraying another man with pepper spray.
2. Defendant filed a pro se motion to withdraw his guilty plea two weeks later.
3. The trial court denied Defendant’s motion.
4. Defendant appealed the trial court’s decision to deny his motion to withdraw his guilty plea.

**Disposition**:

Affirmed.