# APPENDIX F: Case Synthesis Example

Case Synthesis Chart - Battery

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Cases** | **Consent? (defense)** | **Touching?** | **Intentional touch?** | **Offensive?** | **Intent to cause harm?** | **Intent to cause insult or offense?** | **Result** |
| ***Arthur v. Henry*** | Probably no | Yes by door (given) | Probably yes | Probably yes | Probably yes | Probably yes | **Battery** |
| ***Lawson v. Bloodsworth*** | No | Student yes, chair  Teacher no | Student yes  Teacher no | Yes | No | Student yes  Teacher no | **Battery** |
| ***Kohler v. Van Peteghem*** | No | Yes | Kohler no  Van Peteghem yes | Yes | No | Kohler no  Van Peteghem yes | **Battery** |
| ***Greenfield v. Cunard*** | No | Yes | Yes | Yes | Yes | Not addressed | **Battery** |
| ***Richardson v. Hennly*** | No | Richardson yes  Hennly no | Richardson yes  Hennly no | Yes | Richardson yes  Hennly no | Not addressed | **Battery** |
| ***Rose v. Braciszewski*** | No | Yes | No | Not addressed | Not addressed | Not addressed | **Not Battery** |
| ***Harvey v. Speight*** | Yes, plaintiff invited touch | Yes | Yes | No | No | No | **Not Battery** |
| ***Houston et al. v. Holley*** | Yes, plaintiff’s parents consented to touch | Yes | Yes | No | No | No | **Not Battery** |
| ***Everett v. Goodloe*** | Everett no,  Goodloe yes | Yes | Yes | No | No | No | **Not Battery** |

Case Synthesis Outline - Battery

1. Battery requires lack of consent
   1. Inviting someone to touch you is consent and is therefore not a battery.
      1. ***Arthur v. Henry*** - probably no consent where Arthur was hit by the door but did not invite nor contract for the touch.
      2. ***Harvey v. Speight*** - yes consent where Plaintiff asked if Defendant “wanted to see” inside his jacket and pulled his jacket open. Plaintiff admitted to inviting the search.
      3. ***Houston v. Holley*** - yes consent where child at daycare was only touched when being put in time out because any touching that occurred was contracted for when the child’s parents placed their child in this daycare.
2. Battery requires a touching
   1. A touching can occur with a third object other than a body part.
      1. ***Arthur v. Henry*** - yes touching where Arthur was hit by the door opened by Henry.
      2. ***Lawson v. Bloodworth*** - maybe touching where teacher pushed chair towards student. Student alleges that the chair hit him. Teacher says that it didn’t.
      3. ***Kohler v. Van Peteghem*** - yes touching where Defendant’s spit landed on Plaintiff’s face.
      4. ***Hendricks v. Harper*** - yes touching where Defendant tricked Plaintiff into putting loud phone up to his ear.
      5. ***Richardson v. Hennly*** - yes touching where pipe smoke made contact with coworker and caused multiple adverse reactions.
   2. A touching can occur through bodily contact.
      1. ***Ellison v. Peterson*** - yes touching where Defendant put Plaintiff in a semi head lock while Plaintiff was a customer at Burger King.
      2. ***Greenfield v. Cunard*** - yes touching where Defendant’s painfully pulled Plaintiff’s arms behind his back.
3. Battery requires an intentional touching
   1. Because battery is an intentional tort, accidental touching does not constitute a battery.
      1. ***Arthur v. Henry*** - maybe an intentional touch where Henry hit Arthur in the face with the door when Henry knew someone was at the door but possibly did not mean for the door to hit Arthur.
      2. ***Kohler v. Van Peteghem*** - maybe an intentional touch where Defendant was yelling at Plaintiff and some of his spit hit her face. Defendant says this was accidental but Plaintiff said it was intentional.
      3. ***Richardson v. Hennly*** - maybe an intentional touch where Defendant smoked a pipe near Plaintiff while at work. Plaintiff had multiple severe adverse reactions to the smoke. If Defendant was deliberately smoking in Hennly’s direction, this was an intentional touch.
      4. ***Lawson v. Bloodworth*** - maybe an intentional touch where teacher pushed chair and says the chair made an unintentional “bad bounce” in student’s direction.
      5. ***Ellison v. Peterson*** - yes intentional touch where Defendant put Plaintiff in a semi head lock while Plaintiff was a customer at Burger King.
      6. ***Rose v. Braciszewski*** - no intentional touch where Defendants did not intend for their smoke from burning waste to end up in their neighbors’ home.
4. Battery requires an offensive touching
   1. An offensive touching is "one which proceeds from anger, rudeness, or lust." The test for offensive touching is “what would be offensive to an ordinary person not unduly sensitive as to his dignity?”
      1. ***Arthur v. Henry*** - probably offensive touching where Arthur was hit in the face by a door. The court likely would find that an ordinary person would be offended by this conduct.
      2. ***Everett v. Goodloe*** - no offensive touching where Plaintiff claimed Defendant sexually assaulted her on multiple times, but her own journal and emails contradicts this claim. Because Plaintiff contradicts even herself on whether she found the conduct to be offensive, there is no battery.
      3. ***Hendricks v. Harper*** - maybe offensive touching where Plaintiff alleges that Defendant intentionally tricked him into putting a phone to his ear that was emitting a loud signal. If Defendant acted in anger and an ordinary person would be offended by this conduct, there was a battery.
      4. ***Vasquez v. Smith*** - maybe offensive touching where Defendant slammed her body into Plaintiff’s body or chair on five separate occasions.
5. Battery requires either intent to make either harmful contact or insulting or provoking contact
   1. Court will find that harmful touching exists when there is physical violence or harm.
      1. ***Arthur v. Henry -*** probably yes harmful touching where Arthur was injured by the door hitting his face.
      2. ***Greenfield v. Cunard*** - yes harmful touching where Defendants grabbed Plaintiff painfully by the arms and pulled them behind his back.
      3. ***Richardson v. Hennly*** - maybe harmful touching where Defendant smoked a pipe near Plaintiff while at work and Plaintiff had multiple severe adverse reactions to the smoke. Plaintiff alleges that Defendant deliberately blew smoke in her direction in order to injure her.
   2. Courts will not distinguish between degrees of violence.
      1. ***Greenfield v. Cunard*** - Battery can be established if there is a physically harmful contact. The Defendants hurt the Plaintiff so there was a battery.
   3. Even in the absence of physical violence, court will find that there was a battery if there was an insulting or provoking touching.
      1. ***Arthur v. Henry*** - probably yes insulting touching where Henry laughed at Arthur after he was hit by the door.
      2. ***Hendricks v. Harper*** - maybe insulting touching where Defendant tricked Plaintiff into putting loud phone up to his ear. It does not matter that the touching did not physically harm Plaintiff.

Case Synthesis Chart – Aggravated Assault

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Cases** | **Instrument** | **Assault?** | **Against** | **Manner/Means Used** | **Likely to Result in Serious Bodily Injury?** | **Actually Results in Serious Bodily Injury?** | **Result** |
| **Femmio v. State** | Venomous snake | Yes | Willy Zapka | Threw snake into victim’s bathroom stall | Probably yes | Probably yes | **Agg. Assault** |
| **Banks v. State** | Ceramic statue | Yes, two counts | Mrs. Benton, police officer | Used to strike both victims | Police officer – yes  Mrs. Benton – no | Not addressed | **Agg. Assault / No Agg. Assault** |
| **Braziel v. State** | Dog (pit bull) | Yes | Peace officer | Commanded dog to attack | Not addressed | Yes – severe dog bite, left hole in leg | **Agg. Assault** |
| **Crane v. State** | Claw hammer | Yes – victim reasonably apprehensive of injury | Ex-wife’s father | Held while walking towards victim during confrontation | Yes | No | **Agg. Assault** |
| **Dasher v. State** | Hands and feet | Yes | Jimmy D. Burke | Repeatedly punched and kicked victim’s face/head | Not addressed (implied: kicks w/ shod feet would qualify) | Yes - resulted in death | **Agg. Assault** |
| **Durrance v. State** | Truck | Yes – general intent | Two sheriffs, one state trooper | Crossed centerline, sped towards officers | Yes | No | **Agg. Assault** |
| **Hambrick v. State** | Pocket knife | Yes | Wife’s elderly stepgrandfather | Cut stockings from victim’s neck to take snuff cans | Yes – pocket knife could inflict typical knife injuries | Yes – cut victim’s finger | **Agg. Assault** |
| **LaPann v. State** | Firewood (16” long, ¾” wide, 1 ½” thick) | Yes | Daughter | Delivered forceful blows to victim’s leg/shoulder/head | Yes – each blow left bruises | Yes – gash to head requiring ten stitches | **Agg. Assault** |
| **Reese v. State** | Beer bottle (12 oz) | Yes | Police officer | Threw with force at officer (hit door) | Yes | No | **Agg. Assault** |
| **Talley v. State** | Lamp (no evidence of size/weight/shape) | Yes | 76-year-old grandfather | Hit victim on head (# of blows struck = unknown) | Not addressed | Yes – severe lacerations, bruises | **Agg. Assault** |
| **Tyson v. State** | Hands and feet | Yes | Seven-month pregnant girlfriend | Throwing punches and kicks, kicked victim in stomach | Yes – beat victim’s head/face with hands | Yes – injuries (facial, bleeding down leg) requiring hospitalization | **Agg. Assault** |
| **Ware v. State** | Box cutter (“non-business end”) | Yes (“conduct here was certainly criminal”) | Ware’s husband | Stabbed at victim’s face with non-working end | No – blade never exposed | No – minor facial cut & mouth injury | **No Agg. Assault** |
| **Weaver v. State** | Pepper spray/mace | Yes | Unnamed victim | Sprayed victim directly in the face | Yes – mace used for self-defense, can cause extreme pain | Yes – intense burning sensation in face/eyes, temporarily blinded | **Agg. Assault** |

Case Synthesis Outline – Aggravated Assault

1. Aggravated Assault requires an assault
   1. It is the victim’s reasonable apprehension of injury from an assault by an offensive instrument that establishes aggravated assault, not the Defendant’s intent.
      1. **Femmio v. State** – yes assault where Zapka was reasonably apprehensive of being bitten by a snake that Femmio threw into Zapka’s bathroom stall.
      2. **Crane v. State** – yes assault where Defendant’s ex-wife’s father defended himself with a baseball bat out of fear Defendant was going to strike him with a claw hammer. Defendant claimed he had no intent to hit the father.
      3. **Durrance v. State** – yes assault where Defendant drove his truck at pursing officers. Defendant claimed he never intended to strike the officer’s vehicles and was only trying to flee, but officers were forced off the road and into a ditch to avoid being hit. Unlike aggravated assault with intent to murder, rape, or rob, aggravated assault with an offensive instrument does not require specific criminal intent.
2. Aggravated Assault requires a deadly weapon OR the use of an object, device, or instrument
   1. Deadly weapon
   2. Instrument
      1. An animal can be considered an offensive instrument.
         1. **Femmio v. State** – probably yes offensive instrument where Femmio threw a likely venomous snake within striking distance of Zapka.
         2. **Braziel v. State** – yes offensive instrument where Defendant commanded his pit bull to attack a deputy. Previous encounters with the police showed Defendant could control his pit bull.
      2. Hands and fists can be considered offensive instruments.
         1. **Dasher v. State** – maybe offensive instrument depending on the manner and means of their use and the wounds inflicted. A jury can find hands and fists qualify as offensive instruments when a victim suffers abrasions and bruising “most probably” the result of having been punched and bruising and scraping “very characteristic” of having been kicked with shod feed.
         2. **Tyson v. State** – maybe offensive instruments if they are used to strike another person. A jury can find hands and fists qualify as an offensive weapon where Defendant beat the victim about the head and face with his hands.
3. Aggravated Assault requires the instrument to be used offensively against a person
   1. Striking with the instrument is not necessary to establish offensive use
      1. **Crane v. State** – yes offensive use where Defendant held a claw hammer while walking towards his ex-wife’s father and yelling about his right to be on the property.
      2. **Reese v. State** – yes offensive use where Defendant threw a 12-ounce glass beer bottle from close range at a police officer entering Defendant’s home with enough force that the bottle shattered upon impact with the doorway. It was immaterial that the bottle did not strike the officer or injure him.
   2. Striking with the instrument, without more, is not sufficient to establish offensive use.
      1. **Banks v. State** – no offensive use where Defendant struck a woman with a ceramic statue in a way that was not likely to produce death or great bodily injury. Yes offensive use where Defendant struck a police officer with the same statue in a way that was likely to produce death or great bodily injury.
      2. **Ware v. State** – no offensive use where Defendant only hit her husband once with the “non-business end” of a box cutter.
   3. Targeting the head or face with an instrument indicates offensive use.
      1. **Femmio v. State** – probably yes offensive use where Femmio threw a pillowcase containing a venomous snake at Zapka’s head.
      2. **Dasher v. State** – yes offensive use where Defendants repeatedly punched and kicked the victim’s face and head.
      3. **Talley v. State** – yes offensive use where Defendant hit victim on the head with a lamp.
      4. **Weaver v. State** – yes offensive use where Defendant sprayed the victim “directly in the face with mace.”
   4. Offensive use may depend on the capabilities of the instrument as used by the defendant.
      1. **Femmio v. State** – probably yes offensive use where the snake Femmio threw into Zapka’s bathroom stall was likely capable of striking Zapka and inflicting a venomous bite.
      2. **LaPann v. State** – yes offensive use where Defendant using a 16″ long by ¾″ wide by 1 ½″ thick piece of firewood drew back and delivered forceful blows to his daughter’s leg, shoulder, and head.
      3. **Weaver v. State** – yes offensive use where Defendant sprayed the victim’s face with pepper spray given pepper spray’s use as a self-defense tool to injure and incapacitate attackers.
      4. **Hambrick v. State** – yes offensive use where Defendant used a pocket knife to cut stockings containing cash-filled snuff cans from around his wife’s elderly step-grandfather’s neck. Defendant used the pocket knife “directly [like a knife] to take the money from the victim’s person.”
      5. **Ware v. State** – no offensive use where Defendant stabbed at her husband’s face with the “non-working end” of a box cutter. The Defendant never exposed the blade or threatened the husband with an exposed blade.
4. Aggravated Assault requires the offensive use of the instrument to be likely to or actually does result in serious bodily injury
   1. Whether an offensive instrument is likely to produce serious bodily injury depends on the manner and means of the instrument’s use, as well as any wounds inflicted and other evidence of the capabilities of the instrument.
      1. Bruises, lacerations, and other visible injuries provide evidence that the offensive use of an instrument was likely to cause serious bodily injury.
         1. **Femmio v. State** – maybe likely to cause serious bodily injury as evidenced by Zapka’s nose bleeding profusely all over his clothes.
         2. **Talley v. State** – yes likely to cause serious bodily injury where, despite not knowing the number of blows struck or the characteristics of the lamp the defendant used, bruises and severe lacerations to the victim’s ear established that the defendant used the lamp as an offensive instrument.
         3. **Tyson v. State** – yes likely to cause serious bodily injury where Defendant’s use of hands and feet resulted in visible injuries to the pregnant victim’s head and face and caused her to bleed down her legs.
         4. **Hambrick v. State** – yes likely to cause serious bodily injury where Defendant cut the victim’s finger when the victim tried to stop Defendant from using a pocket knife to take money from him. The pocket knife, though small, could inflict the same injuries as a typical knife.
         5. **LaPann v. State** – yes likely to cause serious bodily injury where each of Defendant’s forceful blows with a piece of firewood resulted in bruising.
      2. Instrument’s ability to cause temporarily debilitating injury may qualify instrument as likely to cause serious bodily injury.
         1. **Femmio v. State** – probably likely to cause serious bodily injury where Femmio threw snake at Zapka whose bite could cause temporary tissue damage and inflict severe pain and swelling.
         2. **Weaver v. State** – yes likely to cause serious bodily injury where Defendant sprayed the victim’s face with pepper spray given pepper spray’s common use as a self-defense tool to injure and incapacitate attackers.
   2. Whether an offensive instrument actually does result in serious bodily injury depends on the extent of the injury inflicted with the instrument.
      1. Minor injuries are insufficient to show the offensive use of an instrument resulted in serious bodily injury.
         1. **Ware v. State** – no serious bodily injury where Defendant hit her husband once with an unexposed box cutter, inflicting only a minor facial cut and an injury to the inside of his mouth.
      2. Injuries requiring professional medical treatment indicate that serious bodily injury resulted.
         1. **Femmio v. State** – probably yes serious bodily injury where Zapka suffered a concussion that should have been checked out at hospital.
         2. **LaPann v. State** – yes serious bodily injury where Defendant’s blow with a piece of firewood glanced off his daughter’s arm and left a gash to her head requiring ten sutures to close.
         3. **Tyson v. State** – yes serious bodily injury where the pregnant victim sustained an injury that caused her to bleed down both of her legs, requiring examination and treatment at a hospital.
      3. The offensive use of an instrument is established when permanent injury or death results.
         1. **Braziel v. State** – yes serious bodily injury when Defendant’s pit bull attacked a deputy on command, leaving a permanent hole in his leg.
         2. **Dasher v. State** – yes serious bodily injury when Defendants’ caused the victim’s death by kicking the victim’s head, turning it violently enough to tear the artery at the base of the brain.
      4. Serious bodily injury can be found when the offensive use of an instrument produces extreme physical pain, even if only temporarily.
         1. **Femmio v. State** – probably yes serious bodily injury where Zapka suffered “a pretty wicked headache” for a full day.
         2. **Weaver v. State** – yes serious bodily injury when Defendant’s use of pepper spray caused the victim to suffer a burning sensation in his eyes and face, a great deal of pain, and temporary blindness.

Case Synthesis Chart – Aggravated Assault

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Cases** | **Instrument** | **Assault?** | **Against** | **Manner/Means Used** | **Likely to Result in Serious Bodily Injury?** | **Actually Results in Serious Bodily Injury?** | **Result** |
| **Femmio v. State** | Snake | Yes | Willy Zapka | Threw snake into victim’s bathroom stall | Probably no | Probably no | **No Agg. Assault** |
| **Banks v. State** | Ceramic statue | Yes, two counts | Mrs. Benton, police officer | Used to strike both victims | Police officer – yes  Mrs. Benton – no | Not addressed | **Agg. Assault / No Agg. Assault** |
| **Braziel v. State** | Dog (pit bull) | Yes | Peace officer | Commanded dog to attack | Not addressed | Yes – severe dog bite, left hole in leg | **Agg. Assault** |
| **Crane v. State** | Claw hammer | Yes – victim reasonably apprehensive of injury | Ex-wife’s father | Held while walking towards victim during confrontation | Yes | No | **Agg. Assault** |
| **Dasher v. State** | Hands and feet | Yes | Jimmy D. Burke | Repeatedly punched and kicked victim’s face/head | Not addressed (implied: kicks w/ shod feet would qualify) | Yes - resulted in death | **Agg. Assault** |
| **Durrance v. State** | Truck | Yes – general intent | Two sheriffs, one state trooper | Crossed centerline, sped towards officers | Yes | No | **Agg. Assault** |
| **Hambrick v. State** | Pocket knife | Yes | Wife’s elderly stepgrandfather | Cut stockings from victim’s neck to take snuff cans | Yes – pocket knife could inflict typical knife injuries | Yes – cut victim’s finger | **Agg. Assault** |
| **LaPann v. State** | Firewood (16” long, ¾” wide, 1 ½” thick) | Yes | Daughter | Delivered forceful blows to victim’s leg/shoulder/head | Yes – each blow left bruises | Yes – gash to head requiring ten stitches | **Agg. Assault** |
| **Reese v. State** | Beer bottle (12 oz) | Yes | Police officer | Threw with force at officer (hit door) | Yes | No | **Agg. Assault** |
| **Talley v. State** | Lamp (no evidence of size/weight/shape) | Yes | 76-year-old grandfather | Hit victim on head (# of blows struck = unknown) | Not addressed | Yes – severe lacerations, bruises | **Agg. Assault** |
| **Tyson v. State** | Hands and feet | Yes | Seven-month pregnant girlfriend | Throwing punches and kicks, kicked victim in stomach | Yes – beat victim’s head/face with hands | Yes – injuries (facial, bleeding down leg) requiring hospitalization | **Agg. Assault** |
| **Ware v. State** | Box cutter (“non-business end”) | Yes (“conduct here was certainly criminal”) | Ware’s husband | Stabbed at victim’s face with non-working end | No – blade never exposed | No – minor facial cut & mouth injury | **No Agg. Assault** |
| **Weaver v. State** | Pepper spray/mace | Yes | Unnamed victim | Sprayed victim directly in the face | Yes – mace used for self-defense, can cause extreme pain | Yes – intense burning sensation in face/eyes, temporarily blinded | **Agg. Assault** |

Case Synthesis Outline – Aggravated Assault

1. Aggravated Assault requires an assault
   1. It is the victim’s reasonable apprehension of injury from an assault by an offensive instrument that establishes aggravated assault, not the Defendant’s intent.
      1. **Femmio v. State** – yes assault where Zapka was reasonably apprehensive of being bitten by a snake that Femmio threw into Zapka’s bathroom stall.
      2. **Crane v. State** – yes assault where Defendant’s ex-wife’s father defended himself with a baseball bat out of fear Defendant was going to strike him with a claw hammer. Defendant claimed he had no intent to hit the father.
      3. **Durrance v. State** – yes assault where Defendant drove his truck at pursing officers. Defendant claimed he never intended to strike the officer’s vehicles and was only trying to flee, but officers were forced off the road and into a ditch to avoid being hit. Unlike aggravated assault with intent to murder, rape, or rob, aggravated assault with an offensive instrument does not require specific criminal intent.
2. Aggravated Assault requires a deadly weapon OR the use of an object, device, or instrument
   1. Deadly weapon
   2. Instrument
      1. An animal can be considered an offensive instrument.
         1. **Femmio v. State** – probably no offensive instrument where Femmio lobbed a pillowcase in Zapka’s vicinity containing an untrained snake that was likely to retreat rather than strike.
         2. **Braziel v. State** – yes offensive instrument where Defendant commanded his pit bull to attack a deputy. Previous encounters with the police showed Defendant could control his pit bull.
      2. Hands and fists can be considered offensive instruments.
         1. **Dasher v. State** – maybe offensive instrument depending on the manner and means of their use and the wounds inflicted. A jury can find hands and fists qualify as offensive instruments when a victim suffers abrasions and bruising “most probably” the result of having been punched and bruising and scraping “very characteristic” of having been kicked with shod feed.
         2. **Tyson v. State** – maybe offensive instruments if they are used to strike another person. A jury can find hands and fists qualify as an offensive weapon where Defendant beat the victim about the head and face with his hands.
3. Aggravated Assault requires the instrument to be used offensively against a person
   1. Striking with the instrument is not necessary to establish offensive use
      1. **Crane v. State** – yes offensive use where Defendant held a claw hammer while walking towards his ex-wife’s father and yelling about his right to be on the property.
      2. **Reese v. State** – yes offensive use where Defendant threw a 12-ounce glass beer bottle from close range at a police officer entering Defendant’s home with enough force that the bottle shattered upon impact with the doorway. It was immaterial that the bottle did not strike the officer or injure him.
   2. Striking with the instrument, without more, is not sufficient to establish offensive use.
      1. **Femmio v. State** – probably no offensive use where the snake-filled pillowcase Femmio threw merely glanced off Zapka’s head.
      2. **Banks v. State** – no offensive use where Defendant struck a woman with a ceramic statue in a way that was not likely to produce death or great bodily injury. Yes offensive use where Defendant struck a police officer with the same statue in a way that was likely to produce death or great bodily injury.
      3. **Ware v. State** – no offensive use where Defendant only hit her husband once with the “non-business end” of a box cutter.
   3. Targeting the head or face with an instrument indicates offensive use.
      1. **Femmio v. State** – probably no offensive use where the snake-filled pillowcase Femmio lobbed over the side of the bathroom stall coincidentally contacted Zapka’s head.
      2. **Dasher v. State** – yes offensive use where Defendants repeatedly punched and kicked the victim’s face and head.
      3. **Talley v. State** – yes offensive use where Defendant hit victim on the head with a lamp.
      4. **Weaver v. State** – yes offensive use where Defendant sprayed the victim “directly in the face with mace.”
   4. Offensive use may depend on the capabilities of the instrument as used by the defendant.
      1. **Femmio v. State** – probably no offensive use where snake Femmio threw into bathroom stall was probably nonvenomous and was highly unlikely to strike at Zapka without provocation.
      2. **LaPann v. State** – yes offensive use where Defendant using a 16″ long by ¾″ wide by 1 ½″ thick piece of firewood drew back and delivered forceful blows to his daughter’s leg, shoulder, and head.
      3. **Weaver v. State** – yes offensive use where Defendant sprayed the victim’s face with pepper spray given pepper spray’s use as a self-defense tool to injure and incapacitate attackers.
      4. **Hambrick v. State** – yes offensive use where Defendant used a pocket knife to cut stockings containing cash-filled snuff cans from around his wife’s elderly step-grandfather’s neck. Defendant used the pocket knife “directly [like a knife] to take the money from the victim’s person.”
      5. **Ware v. State** – no offensive use where Defendant stabbed at her husband’s face with the “non-working end” of a box cutter. The Defendant never exposed the blade or threatened the husband with an exposed blade.
4. Aggravated Assault requires the offensive use of the instrument to be likely to or actually does result in serious bodily injury
   1. Whether an offensive instrument is likely to produce serious bodily injury depends on the manner and means of the instrument’s use, as well as any wounds inflicted and other evidence of the capabilities of the instrument.
      1. Bruises, lacerations, and other visible injuries provide evidence that the offensive use of an instrument was likely to cause serious bodily injury.
         1. **Femmio v. State** – probably not likely to cause serious bodily injury where Zapka’s injuries were limited to a headache and a nosebleed.
         2. **Talley v. State** – yes likely to cause serious bodily injury where, despite not knowing the number of blows struck or the characteristics of the lamp the defendant used, bruises and severe lacerations to the victim’s ear established that the defendant used the lamp as an offensive instrument.
         3. **Tyson v. State** – yes likely to cause serious bodily injury where Defendant’s use of hands and feet resulted in visible injuries to the pregnant victim’s head and face and caused her to bleed down her legs.
         4. **Hambrick v. State** – yes likely to cause serious bodily injury where Defendant cut the victim’s finger when the victim tried to stop Defendant from using a pocket knife to take money from him. The pocket knife, though small, could inflict the same injuries as a typical knife.
         5. **LaPann v. State** – yes likely to cause serious bodily injury where each of Defendant’s forceful blows with a piece of firewood resulted in bruising.
      2. Instrument’s ability to cause temporarily debilitating injury may qualify instrument as likely to cause serious bodily injury.
         1. **Femmio v. State** – probably not likely to cause serious bodily injury since the snake would not likely strike Femmio unless provoked, and bite would not incapacitate.
         2. **Weaver v. State** – yes likely to cause serious bodily injury where Defendant sprayed the victim’s face with pepper spray given pepper spray’s common use as a self-defense tool to injure and incapacitate attackers.
   2. Whether an offensive instrument actually does result in serious bodily injury depends on the extent of the injury inflicted with the instrument.
      1. Minor injuries are insufficient to show the offensive use of an instrument resulted in serious bodily injury.
         1. **Femmio v. State** – probably no serious bodily injury where Zapka’s readily-apparent injuries were limited to a bloody nose.
         2. **Ware v. State** – no serious bodily injury where Defendant hit her husband once with an unexposed box cutter, inflicting only a minor facial cut and an injury to the inside of his mouth.
      2. Injuries requiring professional medical treatment indicate that serious bodily injury resulted.
         1. **Femmio v. State** – probably no serious bodily injury where hospitalization for Zapka’s injuries was purely discretionary.
         2. **LaPann v. State** – yes serious bodily injury where Defendant’s blow with a piece of firewood glanced off his daughter’s arm and left a gash to her head requiring ten sutures to close.
         3. **Tyson v. State** – yes serious bodily injury where the pregnant victim sustained an injury that caused her to bleed down both of her legs, requiring examination and treatment at a hospital.
      3. The offensive use of an instrument is established when permanent injury or death results.
         1. **Braziel v. State** – yes serious bodily injury when Defendant’s pit bull attacked a deputy on command, leaving a permanent hole in his leg.
         2. **Dasher v. State** – yes serious bodily injury when Defendants’ caused the victim’s death by kicking the victim’s head, turning it violently enough to tear the artery at the base of the brain.
      4. Serious bodily injury can be found when the offensive use of an instrument produces extreme physical pain, even if only temporarily.
         1. **Femmio v. State** – probably no serious bodily injury where Zapka’s only suffered from a day-long headache.
         2. **Weaver v. State** – yes serious bodily injury when Defendant’s use of pepper spray caused the victim to suffer a burning sensation in his eyes and face, a great deal of pain, and temporary blindness.