# APPENDIX E: Summary of Law Example 1

Summary of Law

In Georgia, to establish a civil claim for battery, the plaintiff must show that the defendant intentionally touched them without consent in an offensive manner with *either* the intent to cause harm *or* to cause insult or offense, or both. Vasquez v. Smith, 259 Ga. App. 1, 3 (2003).

First, the civil tort of battery requires an intentional touch. A touching can be established through bodily contact. Bodily contact includes putting someone in a headlock, Ellison v. Peterson, 294 Ga. App. 1, 2 (2008), or pulling someone’s arms behind their back, Greenfield v. Cunard, 110 Ga. App. 1, 1 (1964). A touching can also be made with an object, other than the offender’s body, that then makes contact with the individual complaining of the harm. Lawson v. Bloodworth, 313 Ga. App. 1, 1 (2012). Objects that have been found sufficient to establish a touching include: a chair, Lawson, 313 Ga. App. at 1, spit, Kohler v. Van Peteghem, 330 Ga. App. 1 (2014), a noisy phone, Hendricks v. Harper, 193 Ga. App. 1 (1989), and smoke, Richardson v. Hennly, 209 Ga. App. 1 (1993). As the court in Lawson explains: “[a]n unlawful touching of a person's body is actionable even if the unlawful touching is indirect, as by throwing an object or substance at the person.” Chairs, spit, noisy phones, and smoke were all objects and substances that unlawfully touched a person after the offender manipulated the object in a way that it could make contact with the complaining party, and therefore were sufficient to establish a battery.

Further, the contact must be intentional. For example, in Ellison, the court found that there was an intentional touch by a fast-food manager when she purposefully put a customer into a “semi headlock position” and began shaking her. Ellison, 294 Ga. App. at 2. Even if the defendant did not intend the touching in an offensive way, she did purposefully touch the plaintiff, and therefore the intentional touching element is satisfied. Alternatively, in Rose, the court found there was not an intentional touch by the defendants when they set fires on their property to burn waste and the smoke from the fires entered the plaintiffs home nearby. Rose v. Braciszewski, 220 Ga. App. 1, 1 (2009). The court held that because the defendants did not cause the smoke to come in contact with the plaintiff, nor did they have “knowledge that their actions were substantially certain to cause such contact,” the defendants did not have the necessary requisite intent, and therefore they did not commit a battery. Id. at 3. To summarize, a touching can occur from bodily contact or an object, but it must be intentional to establish a battery. Lawson, 313 Ga. App. at 1.

Second, battery requires a lack of consent. If the touch is invited, there cannot be a battery. Harvey v. Speight, 178 Ga. App. 1, 1 (1986). In Harvey, the court found that there was consent to touch the plaintiff where plaintiff asked if defendant “wanted to see” inside his jacket and then pulled his jacket open; plaintiff admitted to inviting the search. Id. at 1. Similarly, in Houston v. Holley, 208 Ga. App. 1, 3 (1993), the court found that there was consent sufficient to negate a battery claim where a child at daycare was only touched when being put in time out, which fell in the normal course of activities for a childcare center. The court reasoned that any touching that occurred was contracted for when the child’s parents placed their child in this daycare. Houston, 208 Ga. App. at 3.

Third, battery requires that the touch be offensive. An offensive touching is "one which proceeds from anger, rudeness, or lust." Vasquez v. Smith, 259 Ga. App. 1, 3 (2003). The test for offensive touching is whether it “would be offensive to an ordinary person not unduly sensitive as to his dignity” Id. In Everett v. Goodloe, 268 Ga. App. 1, 3 (2004), the court found there was no offensive touching where plaintiff claimed defendant sexually assaulted her multiple times, but her own journal and emails contradicted this claim. The court specifically pointed out a passage from her journal which stated, “At least I’ve gotten rid of that sucking on my lip kiss. I hated it. Why do I want them totally under my spell? It’s the only way I feel safe. . . . The weight is heavy as shown by this relationship with John.” Id. at 2. The court also includes an email to defendant in which the plaintiff states, “I miss your dear company and hope that you will be comfortable in renewing our friendship on a friendship basis.” Id. at 3. In the court’s view, these statements indicate that the touching was consensual and that it was only later that the plaintiff decided to state she did not agree to being touched. Alternatively, there was potentially an offensive touching in Hendricks, where the defendant tricked the plaintiff into putting a phone up to his ear that was emitting a loud noise because the court held that a jury could find that the defendant’s actions proceeded from rudeness and were therefore offensive. Hendricks v. Harper, 193 Ga. App. 1, 2 (1989).

Last, battery requires *either* an intent to cause harm *or* to cause insult or offense, or both. A court will find that intent to cause harm exists when there is physical violence or harm to the victim, but will not distinguish between degrees of violence. Greenfield v. Cunard, 110 Ga. App. 1, 2 (1964). In Greenfield, the defendants painfully pulled the plaintiff’s arms behind his back. Because this physically harmed the plaintiff, the court found that there was intent to cause harm sufficient to establish a battery. Id. However, an intent to cause harm is not necessary. Plaintiffs can also establish a claim for battery by showing that the defendant had an intent to cause insult or offense. In Vasquez, the court held that the defendant purposefully pushing into the plaintiff on multiple occasions was sufficient to establish a battery, even if the defendant did not mean to hurt the plaintiff. 259 Ga. App. at 3. Therefore, intent to cause harm is not necessary for a battery if the defendant intended to cause insult or offense.

In conclusion, battery is an intentional tort which must be established through a showing that there was a touching, there was no consent to the touching, the touching was intentional, the touching was offensive, and there was an intent to cause harm *or* an intent to cause insult or offense.

# Example 2

SUMMARY OF LAW

To prove a civil battery occurred, the plaintiff must demonstrate that the defendant (1) intentionally touched him or her, (2) without consent, (3) in an offensive manner, and (4) with either the intent to cause harm, or to cause insult or offense, or both. See Vasquez v. Smith, 259 Ga. App. 1, 3 (2003).

*Intentional Touching*. Battery requires an intentional touching. A touching need not be direct bodily contact; rather, an unlawful touching may be actionable even if the touching was indirect, “as by the precipitation upon the body of a person of any material substance.” Hendricks v. Harper, 193 Ga. App. 1, 2 (1989). Touchings have been found where the defendant put the plaintiff in a headlock, see Ellison v. Peterson, 294 Ga. App. 1, 1 (2008), and where the defendant pulled the plaintiff’s arms behind his back, see Greenfield v. Cunard, 110 Ga. App. 1, 1 (1964). The court in Hendricks found a touching to have occurred when the defendant tricked the plaintiff into a placing a telephone up to his ear. 193 Ga. App. at 1. The phone was playing a “high frequency/high intensity tone[.]” Id. When a defendant deliberately touches another, the intentional touching elements are satisfied. Id. at 2; see also Richardson v. Hennly, 209 Ga. App. 1, 1 (2003) (finding that smoke from a pike is sufficiently material to be a touching within the meaning of battery).

Further, a battery can also occur when “the defendant sets a force in motion which ultimately produces the result. Id. ( “If the tortfeasor acts with the belief that such unauthorized contact is substantially certain to result from his actions, that too can constitute the requisite intent to prove battery.” Kohler v. Van Peteghem, 330 Ga. App. 1, 3 (2014) (citations omitted)). The headlock in Ellison was clearly intentional; and so too was the pulling of the plaintiff’s arms in Greenfield. In Kohler, however, intent was unclear. 330 Ga. App. at 3. There, the parties were in an argument and the court was uncertain whether spit flying from the defendant’s mouth that landed on the plaintiff was indeed intentional. Id. Similarly, in Lawson v. Bloodsworth, 313 Ga. App. 1, 1 (2012), it was not a definitive intentional touch when a teacher pushed a chair and claimed the chair made a “bad bounce” towards the student. Id. In any event, there was no intent when smoke from burning waste accidentally ended up in a neighbor’s home. See Rose v. Braciszewski, 220 Ga. App. 1, 1 (2009). Touchings can occur in two ways: from bodily contact, or from an object whose movement is set in motion by the plaintiff. To establish battery, the touching must have been intentional.

*Consent*. For a person to be liable for battery, the plaintiff must not have consented to the touching. See Harvey v. Speight, 178 Ga. App. 1, 1 (1986). There, the plaintiff invited the touching by asking the defendant if he “wanted to see” inside his jacket.” Id. When the defendant did look, there was no battery. Id. Consider too Houston v. Holley, 208 Ga. App. 1, 3 (1993), where parents placed their unruly child in daycare and the child was touched when being placed in timeout. The court determined the touching was consensual because the child’s parents “contracted for” this sort of touching. Id.; but see Ellison, 294 Ga. App. at 1 (finding no consent when the defendant placed the plaintiff in a headlock); Richardson, 209 Ga. App. at 1 (finding no consent when the defendant smoked next to the plaintiff).

*Offensive Manner*. Battery requires a non-consensual intentional touching be offensive, where “an offensive touching is one which proceeds from anger, rudeness, or lust. The test is what would be offensive to an ordinary person not unduly sensitive as to his dignity.” Lawson, 313 Ga. App. at 1. For instance, the blaring phone in Hendricks would be offensive if the intent stemmed from rudeness or “a lack of proper respect for the person on whom the contact was made.” 193 Ga. App. at 2. And in Vasquez, the battery claim would hold should the plaintiff successfully show the touching proceeded from anger, rudeness, or lust. 259 Ga. App. at 3. Contrast the plaintiff in Hendricks with the plaintiff in Harvey, who invited the touching; battery would not hold regardless of perceived anger or lack of respect from the defendant because the touching was consensual. 178 Ga. App. at 2. Like the plaintiff in Harvey, the plaintiff in Houston did not act offensively because the daycare center was following its policy, and the child’s parents’ contracted for its care. 208 Ga. App. at 2. Intentional, non-consensual touchings proceeding from anger, rudeness, or lust satisfy this requirement.

*Intent to Cause Harm, or Insult or Offense, or Both.* The alleged tortfeasor must have committed the touching with intent to cause harm, or to cause insult or offense, or both. See Rose, 220 Ga. App. at 1. The intensity or violence of the physical touch is not relevant to the Court’s calculus. See Greenfield, 110 Ga. App. at 1 (finding that a person commits a battery so long as there is a physically harmful contact). A court will find a harmful touching when there is physical violence or harm, or an insulting or provoking touching. See id. For instance, though there was no intent to cause harm, there was intent to cause insult or offense when the defendant tricked the plaintiff into placing the blaring phone up to his ear. Hendricks 193 Ga. App. at 1–2. Similarly, there was intent to cause both harm and insult or offense in Vasquez when the defendant slammed her body into the plaintiff’s multiple times. 259 Ga. App. at 1; see also Ellison, 294 Ga. App. at 2 (holding that the defendant intended to cause harm and insult or offense when she placed the plaintiff in a headlock). On the other hand, this element was not satisfied when the defendant asked the plaintiff if he had stolen anything and examined the plaintiff’s person to make sure he had not. Harvey, 178 Ga. App. at 1. This element was also not satisfied when a daycare provider was doing her contractually obligated duties when placing the child in timeout. Houston, 208 Ga. App. at 1–2. In sum, the alleged tortfeasor must have committed the touching with the requisite intent or will not be liable for battery.

At bottom, each element must be present for a civil action to lie for battery: (1) intentional touching; (2) lack of consent; (3) performed in an offensive manner; and (4) intent to cause harm, or to cause insult or offense, or both.

# Example 3

Summary of Law

In Georgia, to sustain a conviction for aggravated assault under O.C.G.A. § 16-5-21(a)(2), the State must prove that the defendant committed an assault with *either* 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. Tyson v. State, 358 Ga.App. 329, 329(2) (2021) (emphasis added).

First, the crime of aggravated assault requires an assault. An assault occurs where the defendant “attempts to commit a violent injury to the person of another or commits an act which places another in reasonable apprehension of immediately receiving a violent injury.” Hambrick v. State, 174 Ga.App. 444, 444 (1) (1985). 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. Crane v. State, 297 Ga.App. 880, 880(2) (2009). Where a defendant holding a claw hammer walks towards a victim during a confrontation, provoking the victim to defend himself with a baseball bat, the victim’s reasonable apprehension of injury from an assault by an offensive instrument establishes aggravated assault. Id. at 880(1–2). That the defendant claims he never intended to strike the victim is immaterial. In Durrance, a defendant who accelerated his truck directly towards pursuing officers argued that he never intended to strike the officers’ vehicles and was only trying to flee. Durrance v. State, 250 Ga.App. 185, 185(1) (2001). Unlike “aggravated assault with the intent to murder, rape, or rob,” said the court, “[a]ggravated assault committed by means of a deadly weapon or offensive instrument . . . does not require specific criminal intent”—the State need only prove “a general intent to injure.” Id. The court held that because the defendant intentionally crossed the centerline and sped towards officers, forcing them to drive off the road and into a ditch to avoid being hit, the defendant possessed the requisite criminal intent to commit aggravated assault. Id. at 185(1–2). Thus, an attempt to violently injure a victim or the commission of an act that makes a victim reasonably apprehensive of immediate violent injury satisfies the first element of aggravated assault, regardless of the defendant’s specific intent.

Second, aggravated assault requires a deadly weapon *or* the use of an object, device, or instrument. A dog can be considered an offensive instrument when a defendant commands his pit bull to attack a deputy and previous encounters with police showed the defendant could control the dog. Braziel v. State, 320 Ga.App. 6, 6(1) (2013). Although hands and feet are not offensive instruments per se, they can become offensive instruments when used to strike a victim. Tyson, 358 Ga.App. at 329(1). Whether hands and feet qualify as offensive instruments depends on the manner and means of their use and the wounds inflicted. Dasher v. State, 258 Ga. 308, 308(1) (2009). Hands and feet can qualify as offensive instruments when a defendant beats a victim’s head and face with their hands. Tyson, 358 Ga.App. at 329(2). When a victim suffers abrasions and bruising “most probably” the result of being punched and bruising and scraping “very characteristic” of being kicked with shod feet, hands and feet will be considered offensive instruments. Dasher, 258 Ga. at 308(1).

Further, an object, device, or instrument that is not a deadly weapon per se must be used offensively against a person. The defendant need not strike a person with the instrument to establish offensive use. The Crane court determined a defendant used a claw hammer offensively by holding it while walking towards his ex-wife’s father and yelling about his right to be on the property. Crane, 297 Ga.App. at 880(1). In Reese, a defendant threw a 12-ounce glass beer bottle from close range at a police officer entering the defendant’s home with enough force that the bottle shattered upon impact with the doorway. Reese v. State, 303 Ga.App. 871, 871(1) (2010). Even though the projectile did not strike or injure the officer, the court held the defendant used the “normally non-offensive nondeadly” beer bottle in an offensive manner. Id. On the other hand, striking with the instrument—without more—is not sufficient to establish offensive use either. The Banks court found no inconsistency between a jury verdict declaring a defendant guilty of aggravated assault for striking a police officer with a ceramic statute while acquitting the defendant of another aggravated assault count for striking a woman with the same statue in a way that was not likely to produce death or great bodily injury. Banks v. State, 169 Ga.App. 571, 571(1) (1984). In Ware, the court found that a defendant who struck her husband in the face with the “non-business end” of a box cutter had not used the instrument offensively. Ware v. State, 289 Ga.App. 860, 860(2) (2008). Still, targeting the head or face with an instrument normally indicates offensive use. Courts have found offensive use in cases where defendants: repeatedly punched and kicked a victim’s face and head, Dasher, 258 Ga. at 308(1), hit a victim over the head with a lamp, Talley v. State, 137 Ga.App. 548, 548(1), and sprayed a victim “directly in the face with mace,” Weaver v. State, 325 Ga.App. 51, 51(1) (2013).

Ultimately, offensive use may depend on the capabilities of the instrument as used by the defendant. The LaPann court found offensive use where a 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. LaPann v. State, 191 Ga.App. 499, 499(1) (1989). The Weaver court found that pepper spray—“‘a device typically chosen for self-defense precisely because it injures and incapacitates attackers’”—was used offensively by a defendant who called the victim over to his car before macing him from a foot away. Weaver, 325 Ga.App. at 51(2) (quoting State v. Harris, 966 So.2d 773, 779–779 (La.App. 2007)). In Hambrick, the defendant used a pocket knife to cut stockings containing cash-filled snuff cans from around his wife’s elderly step-grandfather’s neck. Hambrick, 174 Ga.App. at 444(1). The court found offensive use because the defendant used the pocket knife “directly [like a knife] to take the money from the victim’s person.” Id. Conversely, the Ware court found the defendant did not use a box cutter offensively when she stabbed at her husband’s face with the “non-working end” considering the defendant never exposed the blade or threatened the husband with an exposed blade. Ware, 289 Ga.App. at 860(1–2). To summarize, striking with an instrument is neither necessary nor sufficient to establish offensive use—while striking the victim’s head or face typically indicates offensive use, courts will consider the capabilities of the instrument as used by the defendant to determine if it was used offensively.

Finally, aggravated assault requires the offensive use of the instrument to be likely to or actually does result in serious bodily injury. Whether an offensive instrument is likely to produce serious bodily injury depends on the manner and means of the instrument’s use. Banks, 169 Ga.App. at 571(1). Bruises and lacerations show that the offensive use of an instrument was likely to cause serious bodily injury. In Talley, the court did not know the number of blows the defendant struck or the size, weight, or shape of the lamp the defendant used. Talley, 137 Ga.App. 548(1). Still, the court found that bruises and severe lacerations to the victim’s ear established that the defendant used the lamp as an offensive instrument likely to result in serious bodily injury. Id. The Tyson court held that visible injuries to the victim’s head and face showed the defendant’s use of hands and feet was likely to result in serious bodily injury. Tyson, 358 Ga.App. at 329(2). In Hambrick, the defendant cut the victim’s finger when the victim attempted to stop the defendant from using a pocket knife to take the victim’s money. Hambrick, 17 Ga.App. at 444(1). The court reasoned that the pocket knife, “though rather small,” could inflict the types of injuries generally produced by knives and was thus used “in a manner likely to produce death or great bodily injury.” Id. Together, courts will consider the manner and means of the instrument’s use, the wounds inflicted by the instrument, and other evidence of the instrument’s capabilities when determining whether use offensive use of the instrument is likely to produce serious bodily injury.

Whether an offensive instrument actually does result in serious bodily injury depends on the extent of the wounds inflicted with the instrument. The Ware court found no serious bodily injury resulted from a single hit to the defendant’s husband’s face with an unexposed box cutter that inflicted only a minor facial cut and an injury to the inside of his mouth. Ware, 289 Ga.App. at 860(2). Conversely, injuries requiring hospitalization indicate that serious bodily injury resulted. The LaPann court found that a blow inflicted by the defendant with a piece of firewood that glanced off his daughter’s arm and left a gash to her head requiring ten sutures to close resulted in serious bodily injury. LaPann, 191 Ga.App. at 499(1). The Tyson defendant’s use of his hands and feet resulted in serious bodily injury to his pregnant girlfriend by causing her to bleed down both her legs, requiring examination and treatment at a hospital. Tyson, 358 Ga.App. at 329(2). When permanent injury or death occurs, it establishes that the offensive use of an instrument resulted in serious bodily injury. In Braziel, the defendant’s offensive use of his attack dog against a deputy resulted in serious bodily injury when the pit bull left a permanent hole in the deputy’s leg. Braziel, 320 Ga.App. at 6(1). The Dasher court found the victim suffered serious bodily injury when the 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. Dasher, 258 Ga. at 308(1). Still, serious bodily injury can be found when the offensive use of an instrument produces extreme physical pain, even if only temporary. The Weaver court found that the defendant’s use of pepper spray resulted in serious bodily injury by causing the victim to suffer a burning sensation in his eyes and face, a great deal of pain, and temporary blindness. Weaver, 325 Ga.App. at 51(1–2). Therefore, where wounds inflicted by an instrument do not necessarily establish that the offensive use of the instrument is *likely to result* in serious bodily injury, a court may still find the offensive use of the instrument *did result* in serious bodily injury when the victim’s injuries are more than minor.

In conclusion, aggravated assault is a criminal offense which requires the State to prove: (1) the defendant committed an assault, and (2) the defendant did so with a deadly weapon *or* by using an object, device, or instrument offensively in a manner that is likely to or actually does result in serious bodily injury.

**Example 4**

Summary of Law

The use of any item, if used in an offensive manner that is likely to or does cause serious bodily harm, may be sufficient to sustain a conviction for aggravated assault. Under O.C.G.A. § 16-51-21(a)(2) (2020), the state must show the defendant committed an assault with a deadly weapon or by using an instrument (1) in an offensive manner (2) likely to cause or actually resulting in serious bodily harm. Crane v. State, 297 Ga.App. 880, 880(1) (2009). Whether an item is used in an offensive manner will depend on the manner and means of which the instrument was used and the wounds inflicted. Dasher v. State, 258 Ga. 308, 308(1) (2009). To find serious bodily harm, courts consider if the wounds inflicted by an instrument are sufficient to infer the defendant’s offensive use of the instrument was *likely* to great bodily harm or *actually resulted in* great bodily harm where evidence shows more than minor injuries. Watson v. State, 301 Ga. App. 824, 826 (2009).

First, the State must show the defendant committed an assault. An assault occurs when a defendant “attempts to commit a violent injury to the person of another or commits an act which places another in reasonable apprehension of immediately receiving a violent injury.” Hambrick v. State, 174 Ga.App. 444, 444 (1) (1985). It is not the defendant’s intent to injure that establishes aggravated assault, but rather the victim's reasonable apprehension of injury by an offensive instrument. Crane, 297 Ga.App. at 880(2). It is a question of fact for the jury to assess any conflicts of evidence and determine the witnesses’ credibility. Id.

In Durrance v. State, 250 Ga.App. 185, 185(1) (2001), the defendant argued he was trying to flee the scene and never intended to strike the officers’ vehicles. The court held that, while *specific* intent to injure the officers was not required, the evidence that the defendant accelerated towards the officers and crossed the centerline while speeding was “sufficient to enable any rational trier of fact to find beyond a reasonable doubt that he possessed the requisite criminal intent to commit aggravated assault.” Id.

Likewise, in Crane, the defendant claimed he did not intend to hit the victim when he walked toward the victim while yelling and holding a claw hammer in one hand and a screwdriver in the other. 297 Ga.App. at 880(2). The court found the evidence sufficient for the jury to conclude the defendant committed an assault because the victim reasonably apprehended injury and defended himself with a baseball bat based on his fear that the defendant was going to strike him. Id. Thus, an assault is established where a victim reasonably apprehends injury from a defendant’s offensive use of an instrument regardless of the defendant’s specific intent.

Next, the state must show the defendant committed the assault with a deadly weapon or any object, device, or instrument used offensively against a person *and* in such a manner likely to or actually resulting in death or serious bodily injury. First, if the instrument is not a deadly weapon *per se*, the state must show that the offensive circumstances under which the instrument was used made it likely to result in serious bodily injury. Ware v. State, 289 Ga.App. 860, 860(2) (2008) (citing Ellison v. State, 288 Ga.App. 404, 405 (2007)). Whether an instrument is considered an offensive instrument depends on the manner and means of the instrument’s use and the wounds inflicted. Dasher, 258 Ga. at 308(1).

Targeting the victim’s head or face typically indicates offensive use of an instrument, such as spraying the victim in the face with mace, Weaver v. State, 325 Ga.App. 51, 51(1) (2013), or hitting the victim in the head with a lamp, Talley v. State, 137 Ga.App. 548, 548(1). Hands and feet were also deemed offensive instruments where the defendants repeatedly punched and kicked the victim’s head and face, causing the victim to lose consciousness and eventually die. Dasher, 258 Ga. at 308(1).

However, even where resulting injury occurs, striking with the instrument alone is neither dispositive of an offensive use nor necessary. In Banks v. State, 169 Ga.App. 571, 571(1) (1984), a ceramic statute was deemed an offensive instrument when the defendant used it to strike an officer in a manner that the jury determined was likely to cause death or great bodily injury, but *not* when the defendant used it to strike another victim in a manner that the jury found was *not* likely to produce death or great bodily injury. Similarly, in Ware, the defendant’s use of a box cutter was not offensive despite the resulting cuts to the victim’s face and mouth because the defendant only used the “non-business end” of the cutter. 289 Ga.App. at 860(2). Additionally, offensive use has been found without any striking where the defendant walked toward the victim while yelling and holding a claw hammer and a screwdriver, Crane, 297 Ga.App. at 880(2), and where a defendant threw a glass bottle from close range with enough force to shatter against a door, despite missing the victim, Reese v. State, 303 Ga.App. 871, 871(1) (2010).

Besides the manner of the instrument’s use, offensive use may depend on the instrument’s capabilities as used by the defendant. This depends not on the nature of the instrument itself but “on its capacity and the manner of its use to inflict serious bodily harm.” LaPann v. State, 191 Ga.App. 499, 499(1) (1989). In LaPann, the defendant’s use of a firewood log to beat his daughter in the leg and shoulder was offensive where he “drew back from each blow and delivered it with force.” Id. A defendant’s use of mace against a victim after calling the victim over to the defendant’s car was offensive because mace is an object of “self-defense precisely because it injures and incapacitates attackers” and “presents a serious *potential* risk of physical injury.” Weaver, 325 Ga.App. at 51(2) (emphasis added) (quoting United States v. Mosley, 635 F.3d 859, 864(II) (6th Cir.2011)). In Hambrick, the jury could have found that the defendant’s use of a pocketknife to take money off the victim’s boy was offensive as “arguably *capable of* inflicting the types of injuries which generally can be produced by knives, including death or great bodily injury.” 174 Ga.App. at 444(1) (emphasis added).

In contrast, even where a defendant used a box cutter by stabbing it at the victim’s face causing minor cuts, this was insufficient to establish offensive use because there was no evidence that the blade was ever exposed or that the defendant ever threatened the victim with an exposed blade. Ware, 289 Ga.App. at 860(2). In sum, an instrument’s offensive use can typically be established when the victim’s head or face is targeted, though striking the victim is not necessary and offensive use may turn on the manner and means of which the instrument was used and the wounds inflicted.

Next, to establish aggravated assault the state must show the defendant’s offensive use of the instrument was likely to or actually did result in serious bodily injury. Watson, 301 Ga. App. at 826. First, to determine if an offensive instrument is *likely to cause* serious bodily harm, “the jury [may] infer the ‘serious injury-producing character of the instrument in question from the nature and the extent of the injury,’ along with all the facts and circumstances” such as the manner and means of which the instrument was used. Dasher, 258 Ga. at 308(1).

Injuries such as bruises or lacerations can be a sufficient indication of the severity of the defendant’s offensive use of the instrument. In Talley, the testimony of a girl who saw the defendant “hitting [the victim] on the head with the lamp” plus the medical testimony and photographs of severe lacerations and bruises was sufficient to show the defendant’s use of the lamp was likely to cause serious bodily injury. 137 Ga.App. at 548(1). The evidence of the victim’s physical injuries was enough even where the state did not submit evidence of the lamp’s size or weight, the amount of force used by the defendant, or what part of the lamp inflicted the victim’s injuries. Id.

Similarly, in Tyson v. State, a witness testified that she saw the defendant “beat the tar out of the victim” and described the incident as “one of the worst things she had ever witnessed.” 358 Ga.App. 329, 329(2) (2021). Together with the pregnant victim’s own testimony that the defendant “pushed her from his truck … and kicked her in the stomach,” causing her to “bleed down both of her legs,” evidence was sufficient to establish that the defendant’s use of his hands and feet was likely to cause serious bodily harm. Id. Additionally, evidence was sufficient to find the defendant’s offensive use was likely to cause serious bodily injury where the defendant used a pocket knife to cut the victim’s finger when the victim tried to stop the defendant from taking his money, Hambrick, 174 Ga.App. at 444(1), and where the defendant’s forceful blows of a firewood log resulted in bruising, LaPann, 191 Ga.App. at 499(1).

In addition, temporary debilitating injuries may also qualify the defendant’s use of an instrument as likely to cause serious bodily harm. In Harwell v. State, 231 Ga.App. 154 (1998), the Court held that the defendant’s use of a stun gun to administer temporary shock at least presented a jury question as to whether it was likely to cause serious bodily harm. Similarly, in Weaver, the defendant’s use of mace was sufficient to show it was likely to cause serious bodily harm where the victim suffered a burning sensation in his eyes and face, was in a great deal of pain, and was temporarily blinded. 325 Ga.App. at 51(2). Thus, courts may infer the serious injury-producing character of the instrument in question from facts and circumstances including the wounds inflicted by the instrument and the manner and means of which the instrument was used.

Second, to show *actual* serious bodily injury, courts look to the nature and the extent of the injury inflicted by the instrument. Injuries alone are not dispositive, as courts have found evidence to be insufficient to establish aggravated assault where the victim’s injuries are minor. For example, even where the defendant stabbed at the victim’s face with the round end of a box cutter, the resulting minor cuts on the victim’s face and mouth were not considered serious bodily injuries. Ware, 289 Ga.App. at 860(2).

On the other hand, courts have found evidence to be sufficient where medical treatment was required, such as where a victim needed ten sutures to close a gash on her head resulting from the defendant’s beating her with a firewood log, LaPann, 191 Ga.App. at 499(1), or where a pregnant victim needed a medical examination and treatment after the defendant pushed and kicked the victim, making her bleed down her legs, Tyson, 358 Ga.App. at 329(2).

Thus, it is not surprising that courts have also found sufficient evidence where a victim suffered permanent injury or death. Examples include the offensive use of the defendant’s feet by kicking the victim’s head, causing an artery tear at the base of the victim’s brain, resulting in death, Dasher, 258 Ga. at 308(1), as well as a defendant’s offensive use of his pitbull to attack a deputy at the defendant’s demand, leaving a permanent hole in the deputy’s leg, Braziel v. State, 320 Ga.App. 6, 6(1) (2013).

However, the victim’s injuries do not need to be permanent. Serious bodily injury can be found when offensive use of an instrument causes extreme physical pain even if it is only temporary. For example, the victim’s blindness and eye burning from the defendant’s offensive use of pepper spray was temporary—yet the court held these injuries to be serious bodily harm sufficient to establish aggravated assault. Weaver, 325 Ga.App. at 51(2). Accordingly, while wounds inflicted by an instrument may be sufficient for a jury to infer the defendant’s offensive use of the instrument was *likely* to cause death or great bodily harm, *actual* death or great bodily harm can be established where there is evidence showing more than minor injuries.

In conclusion, aggravated assault is established where the defendant commits an assault with a deadly weapon or by using an instrument in an offensive manner likely to cause or actually resulting in serious bodily harm.