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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,)	Criminal Case No. 93-137
)	
Plaintiff,)	DECISION AND ORDER ON
)	DEFENDANT'S MOTION
v.)	FOR JUDGMENT OF
)	ACQUITTAL
THEODORE MITCHELL,)	
)	
Defendant.)	
_____)	

This matter came before the Court on November 14, 1994, on the motion of Defendant Theodore Mitchell for a judgment of acquittal of the offense of assault and battery, following his conviction by jury verdict on September 30, 1994. Defendant argues that the evidence presented at trial is insufficient to sustain the verdict because the evidence supports a reasonable inference that Defendant acted lawfully in pushing and injuring James Grizzard on August 9, 1993.

I. FACTS

At trial, the Government presented six witnesses to the events of August 9, 1993 at the Cafe Mogambo, a bar on Saipan.

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1 The testimony showed that Defendant was involved in a verbal
2 argument with other persons, and that one or more of those persons
3 had already placed their hands on him, when James Grizzard left
4 his seat elsewhere in the bar and approached Defendant.

5 The parties disagree over the manner of Mr. Grizzard's
6 approach. According to the Government, "[t]he uncontroverted
7 evidence was that Mr. Grizzard calmly approached the defendant in
8 a non-offensive manner with the intent to appease the defendant,
9 not attack him." *Memorandum in Opposition* at 4. Defendant
10 counters thus:

11 James Grizzard did not approach Theodore Mitchell
12 calmly; the manner in which he approached Mr. Mitchell
13 was offensive; he did not approach Mr. Mitchell with the
14 intent to appease. Mr. Grizzard said, "I guess I'll
15 have to help these children out!" He said, "I'm going
16 to break this up!" He said, "We shouldn't have to
17 listen to this crap!" He came at Mr. Mitchell at 10
18 feet per second. (Angelita Caputol told a police
19 officer that Mr. Grizzard ran.) Mr. Mitchell had just
20 freed himself from William Fitzgerald. Mr. Grizzard
21 accosted Mr. Fitzgerald from the side. He intruded
22 himself between Mr. Fitzgerald and Mr. Mitchell. Mr.
23 Grizzard's hands were chest high. He was obviously
24 drunk.

18 *Reply Memorandum* at 2. After Mr. Grizzard's approach, Mr.
19 Mitchell placed his hands on Mr. Grizzard's chest and pushed him,
20 propelling his body backwards, and his head struck a cigarette
21 machine, sustaining severe injuries to the brain.

22 Mr. Mitchell was charged with the offense of aggravated
23 assault and battery,^{1/} which included the lesser offense of
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28 ^{1/} 6 CMC § 1203(a) provides: "A person commits the offense
of aggravated assault and battery if he or she commits serious
bodily injury, purposely, knowingly or recklessly."

1 assault and battery." The Court instructed the jury that in
2 order to convict Defendant of either the charged offense or the
3 lesser-included offense, it must find that Defendant did not act
4 in self-defense. After deliberation, the jury acquitted Defendant
5 of aggravated assault and battery but convicted him of assault and
6 battery.

7
8 **II. ISSUE**

9 The issue raised by this motion is whether the evidence
10 presented at trial is sufficient to sustain Defendant's conviction
11 of the crime of assault and battery in violation of 6 CMC §
12 1202(a).

13
14 **III. ANALYSIS**

15 **A. REVIEW OF EVIDENCE UNDER RULE 29**

16 Motions for judgment of acquittal are brought under Com. R.
17 Crim. P. 29, which provides in part that "[t]he court on motion of
18 a defendant or of its own motion shall order the entry of judgment
19 of acquittal of one or more of the offenses charged in the
20 information [...] if the evidence is insufficient to sustain a
21 conviction of such offense or offenses." In reviewing the
22 sufficiency of the evidence, a court must draw all reasonable
23 inferences in favor of the government and ask whether any
24 reasonable trier of fact could have found beyond a reasonable
25 doubt the essential elements of the offense. Commonwealth v.

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27 _____
28 ^{2/} 6 CMC § 1202(a) provides: "A person commits the offense
of assault and battery if the person unlawfully strikes, beats,
wounds, or otherwise does bodily harm to another, or has sexual
contact with another without the person's consent."

1 Tenorio, 3 CR 679, 683 (D.N.M.I. App. Div. 1989), (citing United
2 States v. Toomey, 764 F.2d 678, 680 (9th. Cir. 1985), cert. den.
3 474 U.S. 1069 (1986)). However, where the evidence submitted at
4 trial is wholly consistent with an innocent explanation for the
5 charged conduct, and where the government fails to submit
6 sufficient evidence from which a rational factfinder could infer
7 an explanation consistent with guilt, the conviction cannot be
8 sustained. United States v. *Wiseman*, 25 F.3d 862, 866-7 (9th Cir.
9 1994).

10 Here, Defendant claims that the evidence cannot sustain the
11 inference that his conduct was "unlawful," an essential element of
12 the offense of assault and battery under 6 CMC § 1202(a). He
13 presents two arguments in support of this claim.

14 15 **B. DEFENDANT'S MENTAL STATE**

16 First, Defendant argues that, in acquitting him of the charge
17 of aggravated assault and battery, the jury found that he had not
18 acted recklessly in pushing Mr. Grizzard. In this view, the
19 Defendant's actions must be deemed to be either negligent or
20 wholly without fault. However, Defendant's contention
21 misconstrues the mental state element in the crime of aggravated
22 assault and battery under 6 CMC § 1203(a). By its terms, that
23 statute requires an actor to "cause serious bodily injury,
24 purposely, knowingly or recklessly"; the required mental state
25 thus relates to the injury resulting from the act, not to the act
26 itself. This requirement is in keeping with the aggravated
27 assault and battery statutes of other jurisdictions, which
28 generally require an intent to injure by the means used. See

1 Commonwealth v. Alexander, 383 A.2d 887, 889 (Pa. 1978)
2 (conviction of aggravated assault cannot stand where no showing of
3 intent to inflict serious bodily injury); State v. Sorenson, 359
4 P.2d 289 (Haw. 1961); 6A C.J.S. Assault & Battery, § 72.

5 In contrast, a simple battery requires no mental state as to
6 any injury resulting from the act, but rather a simple intent to
7 do the act itself. See Torcia, 2 Wharton's Criminal Law, § 187
8 (15th Ed. 1994); United States v. Masel, 563 F.2d 322, 324 (7th
9 Cir. 1977) (spitting on face sufficient for battery); Ngiralai v.
10 Trust Territory, 2 T.T.R. 445, 449 (High Ct. Tr. Div. 1963)
11 ("slightest unlawful touching" may result in assault and battery);
12 Commonwealth v. Jaynes, 10 A.2d 90 (Pa. 1939); Commonwealth v.
13 Hawkins, 32 N.E. 862 (Mass. 1893). Under the terms of 6 CMC §
14 1202(a), the relevant act is the doing of "bodily harm," which is
15 not defined in the Code. However, according to common law
16 precedents, "[o]ne receives bodily harm, in a legal sense, when
17 another touches his person against his will with physical force
18 intentionally hostile and aggressive, or projects such force
19 against his person." People v. Moore, 2 N.Y.S. 159, 160 (N.Y.
20 1888); People v. Tanner, 44 P.2d 324, 332 (Cal. 1935).

21 Here, the evidence was ample to sustain the jury's finding,
22 implicit in the conviction of assault and battery, that Defendant
23 put his hands on Mr. Grizzard's chest and pushed him with physical
24 force in an intentionally hostile and aggressive manner.
25 Moreover, such a finding of intentional conduct is perfectly
26 consistent with the finding, implicit in the acquittal of
27 aggravated assault and battery, that Defendant was not reckless as
28 to whether his act would cause Mr. Grizzard's injuries.

1 C. "UNLAWFULNESS"

2 According to 6 CMC § 103(v), the term "unlawfully" is defined
3 in the Code as "without lawful authority or purpose, or contrary
4 to law, regulation or order of the detaining authority." At the
5 hearing on this motion, Defendant argued in essence for exclusive
6 adoption of the second half of this definition; he claimed that
7 the use of the word "unlawfully" in the assault and battery
8 statute means that his act must be prescribed by some other
9 portion of the Criminal Code besides § 1202(a) in order to sustain
10 a conviction. The Government argues that the first half of the
11 definition of § 103(v) should apply, claiming that the evidence
12 amply sustains the jury's finding that Mr. Mitchell acted "without
13 lawful authority or purpose" in pushing Mr. Grizzard.

14 While no Commonwealth court has considered this precise
15 question, other jurisdictions consider intentionally striking
16 another to be criminal in and of itself unless performed with some
17 legal justification. See *Blue v. State*, 67 N.E.2d 377, 379 (Ind.
18 1946) (sustaining conviction where defendant blocked person who
19 was pushed against him); *People v. Grieco*, 255 N.E.2d 897, 899
20 (Ill. 1970) (statute criminalizes causing bodily harm "without
21 justification"). In view of these authorities, the Court rejects
22 Defendant's claim that his conduct must be proscribed by some
23 other statute beyond the terms of 6 CMC § 1202(a). Thus, unless
24 the evidence as viewed in the light most favorable to the
25 Government suggests that Mr. Mitchell had a legal justification
26 for his act, the conviction must stand.

27 Defendant does not explicitly name any legal justification
28 for his act, other than the claim of self-defense which the jury

1 rejected. However, self-defense is only one of several possible
2 justifications which may excuse an otherwise criminal battery,
3 rendering it not "unlawful." Other common-law defenses to the
4 charge are defense of others, defense of property, consent,
5 accident or mistake, or resisting an unlawful arrest. See
6 generally 6A C.J.S. Assault & Battery, §§ 83-99. Defendant's
7 recitation of the alleged manner in which Mr. Grizzard approached
8 him, quoted earlier, suggests a claim that Mr. Grizzard provoked
9 the shove he received.

10 In some jurisdictions, criminal statutes recognize
11 provocation as a defense to a charge of assault and battery. See
12 *Maund v. State*, 361 So.2d 1144, 1147 (Ala. Crim. App. 1978)
13 However, the common law is clear that, absent such a statutory
14 provision, provocation cannot be considered a valid defense.
15 *United States v. Taylor*, 680 F.2d 378, 380 (5th Cir. 1980); *State*
16 *v. Frommelt*, 159 N.W.2d 532, 535 (Iowa 1968). This rule accords
17 with the reasoning implicit in *Fattun v. Trust Territory*, 3 T.T.R.
18 571, 574 (H.C. App. Div. 1965). There, the Defendant had been
19 pushed three times before wounding the victim with a knife. The
20 High Court Appellate Division affirmed the denial of a motion for
21 acquittal, stating "we feel that the accused was not justified in
22 taking the knife from his basket and using it, even if his intent
23 was just to defend himself." *Id.* Like the Trust Territory Code
24 before it, the Commonwealth Code has no statute recognizing
25 provocation as a valid defense to an assault and battery charge.


26 Furthermore, even if provocation were a valid defense in the
27 Commonwealth, the evidence at trial was more than sufficient to
28 support a jury finding that Mr. Grizzard did not provoke

1 Defendant's act. Since the Court must view the evidence in the
2 light most favorable to the Government on a Rule 29 motion, it
3 agrees with the Government's view that much, if not most, of the
4 evidence portrayed Mr. Grizzard as having approached Defendant
5 calmly and with the intent to appease him. In sum, the jury's
6 implicit finding that Mr. Mitchell acted unlawfully -- i.e.,
7 without lawful authority or purpose -- rests on substantial
8 evidence.

9
10 **IV. CONCLUSION**

11 For the foregoing reasons, Defendant Theodore Mitchell's
12 motion for judgment of acquittal is hereby DENIED.

13
14 So ORDERED this 14TH day of December, 1994.

15
16 
17 MARTY W.K. TAYLOR, Associate Judge