

STATE OF DELAWARE THE COURTS OF THE JUSTICES OF THE PEACE SZO NORTH FRENCH STREET, 11TH FLOOF WILMINGTON DELAWARE 19801

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NORMAN A SARRON OF SEMAN STRATE

LEGAL MEMORANDUM 82-87

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ALL JUSTICES OF THE PEACE

STATE OF DELAWARS

FROM:

NORMAN A. BARRON

CHIEF MAGISTRATE

DATE:

JUNE 3, 1982

RE:

ASSAULTS UPON PERSONS RENDERING EMERGENCY CARE

Senate Bill No. 280, as amended by House Amendment No. 1, was signed into law by the Governor on May 13, 1982. This new law imposes criminal sanctions upon persons who assault others who are rendering emergency care. The new law affects 11 Del.C., §§612 and 613.

First, a new subsection, subsection (5), is added to $\S612$ so that now, 11 <u>Del.C.</u>, $\S612$ reads as follows:

"§612. Assault in the second degree; class C felony.

A person is guilty of assault in the second degree when:

(1) He intentionally causes serious injury to another person; or

¹63 Del.Laws, c. 237.

- (2) He intentionally causes physical injury to another person by means of a deadly weapon or a dangerous instrument; or
- (3) He recklessly causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument; or
- (4) He intentionally causes physical injury to a law-enforcement officer or a volunteer or full-time fireman who is acting in the lawful performance of his duty [; or]
- (5) He intentionally causes physical injury to the operator of an ambulance, a rescue squad member, licensed practical nurse, registered nurse, paramedic, licensed medical doctor or any other person while such person is rendering emergency care.

Assault in the second degree is a class C felony."

Suppose Johnny Dee, an inmate at the Delaware Correctional Center, is transferred on an emergency basis, to Kent General Hospital, as a result of a broken leg suffered in a fall at said prison facility. While at the hospital, a registered nurse leans over Mr. Dee to inspect his injury. While doing so, Johnny Dee sits up and grabs the nurse around her neck, choking her into unconsciousness. He is subdued by hospital attendants and the nurse soon thereafter regains consciousness.

²A person acts intentionally with regard to conduct when it was his conscious object or purpose to engage in such conduct. See: 11 Del.C., §231(a).

 $^{^3}$ "Physical injury" means impairment of physical condition or substantial pain. 11 <u>Del.C.</u>, §222(19).

The nurse surely suffered a physical injury and Johnny Dee's conduct was, after considering all of the surrounding circumstances, intentional. He may be charged with Assault in the second degree in violation of 11 Del.C., §612(5).

By Senate Bill No. 280, as amended by House Amendment No. 1, a new subsection, subsection (6) is also added to 11 <u>Del.C.</u>, §613 so that now §613 reads as follows:

"§613. Assault in the first degree; class B felony.

A person is guilty of assault in the first degree when:

- (1) He intentionally causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument; or
- (2) He intentionally disfigures another person seriously and permanently, or intentionally destroys, amputates, or disables permanently a member or organ of another person's body; or
- (3) He recklessly engages in conduct which creates a substantial risk of death to another person, and thereby causes serious physical injury to another person; or
- (4) In the course of or in furthersome of the commission or attempted commission of a felony or immediate flight therefrom, he intentionally or recklessly causes serious physical injury to another person; or
- (5) He intentionally causes serious physical injury to a law-enforcement officer or a volunteer or full-time fireman who is acting in the lawful performance of his duty [; or]

(6) He intentionally causes serious physical injury to the operator of an ambulance, a rescue squad member, licensed practical nurse, registered nurse, paramedic, licensed medical doctor or any other person while such person is rendering emergency

Assault in the first degree is a class B felony."

Suppose the same facts as in our first hypothetical, except that this time Johnny Dee gouges the right eye of the nurse, causing permanent blindness to said eye. Under such circumstances, Johnny Dee may be charged with Assault in the first degree in violation of 11 Del.C., §613(6).

Note that in both hypotheticals, the attacker was a prison inmate. ⁵ It is not necessary that a defendant have such a status as a condition precedent for the lodging of a §612(5) or a §613(6) charge. Any person may be so charged if probable cause exists with regard to the elements of the offense. Thus, an otherwise innocent automobile accident victim, for example, may be charged with violating §612(5) or §613(6) if he intentionally causes the requisite degree of injury to a member of the designated class of persons which would include anyone who is rendering emergency care.

^{4&}quot;Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ." 11 Del.C., §222(20).

⁵For prisoners who assault detention facility employees, see 11 <u>Del.C.</u>, §1254.



The defendant need not be the recipient of emergency care. Thus, a bystander who is observing a rescue operation and who punches a rescue squad member in the face, causing said person physical injury, may be charged with violating 11 <u>Del.C.</u>, §612(5).

NAB:pn

CC: The Honorable Daniel L. Herrmann
The Honorable William Marvel
The Honorable Albert J. Stiftel
The Honorable Robert H. Wahl
The Honorable Robert D. Thompson
The Honorable Alfred Fraczkowski
The Honorable Richard S. Gebelein
The Honorable Lawrence N. Sullivan
The Honorable Richard J. McMahon, State Prosecutor
Bruce M. Stargatt, Esquire, Pres., Delaware State Bar Assoc.
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