The Negligent Battery in Criminal Law

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In its early history, criminal law was based on the concept of punishment of an individual for his intentional wrongful act. However, with the progress of the criminal law has come a broadening of the concepts on which it is based. The purpose of punishment for crime is now based on the theory of preventing injury to the public and not primarily to punish the accused.¹ However, the courts still give lip service to the old doctrine that intent is a necessary element of all crime. For example, in order to convict a defendant of battery, it is said the defendant must have intended to strike the person injured or some other person. But contemporary writers generally recognize that negligence will supply the general criminal intent necessary for the crime of battery,² although the courts have had difficulty in circumventing the alleged requirement of criminal intent. It is the purpose of this paper to show that the courts do in fact recognize the negligent battery and to point out the methods by which they have disposed of the requirement of intent to cause the injury.

A few courts have stated outright that negligence will not sustain a conviction of assault and battery.³ Others, while enunciating the same rule, have upheld convictions of battery resulting from nothing more than grossly negligent conduct.⁴ For example, State v. Schutte,⁵ the defendant was driving down the street at an excessive rate of speed and ran over and injured a pedestrian. In upholding a conviction of assault and battery, the court said that assault and battery required intent, and that it could not be based on negligence. However, the court went on to say that the defendant intentionally drove the car

¹ Clark, Criminal Law, (3rd ed., 1915), sec. 2.
² Clark, op. cit. supra note 1, secs. 81, 82, 83; Clark and Marshall, Crimes (3rd ed., 1927), sec. 204; Miller, Criminal Law, (1934), sec. 101; Hall, Assault and Battery By the Reckless Motorist, (1940), 31 J. Crim. Law 133; Tulin, The Role of Penalties in Criminal Law, (1927), 37 Y.L.J. 1048.
³ Commonwealth v. Adams, 114 Mass. 323 (1873); Atkinson v. State, 62 Tex. Cr. 419, 138 S. W. 125 (1911)
⁵ 87 N. J. L. 15, 93 Atl. 112 (1915); affirmed 88 N. J. L. 396, 96 Atl. 659 (1916), cited supra note 4.
at an excessive speed; that therefore the act could not have been negligent; and that the conviction was proper. There was no intention on the part of the defendant in this case to injure the pedestrian, but the injury was caused by a grossly negligent act. It is apparent from these cases that courts will convict for a battery caused by a negligent act, even though they say that intent is necessary to such a conviction. It remains to be considered on what grounds the courts avoid the requirement of intent.

In several cases, by drawing a purported analogy to the negligent murder the courts have stated that negligence is sufficient to convict a person of battery. It is argued in these cases that if the person injured had been killed by the wanton negligence of the defendant, he would have been guilty of homicide; since the victim did not die but was only injured, the defendant should be convicted of battery. If the crimes differed only in degree this would be valid reasoning. However, since the two crimes are separate and distinct offenses, neither being necessary to or contained in the other, this analogy cannot be supported.

Other jurisdictions, although not expressly repudiating the doctrine of the negligent battery, supply the intent to commit the crime from the intentional doing of the act which causes it. For instance, in McGee v. State, the Alabama court, interpreting a case in which they had expressly recognized the negligent battery four years previously, pointed out that if there was gross negligence in pointing the gun at the victim, that act was intentional, and this was sufficient intent for a conviction of assault and battery. But the courts which follow this

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7State v. Thomas, 65 N. J. L. 598, 48 Atl. 1007 (1901).

8McGee v. State, 4 Ala. App. 54, 58 So. 1008 (1912); Hill v. State, 63 Ga. 578 (1879); Luther v. State, 177 Ind. 619, 98 N.E. 640 (1912); cited supra note 6; Bleiweiss v. State, 188 Ind. 186, 122 N.E. 577 (1919) (denying re-hearing); 188 Ind. 186, 119 N.E. 375 (1918); Singer v. State, 194 Ind. 397, 142 N.E. 364 (1924); Radley v. State, 197 Ind. 200, 150 N.E. 97 (1926); Commonwealth v. Hawkins, 157 Mass. 551, 32 N.E. 862 (1893), cited supra note 6.

94 Ala. App. 54, 58 So. 1008 (1912), cited supra note 8.

10Medley v. State, 156 Ala. 78, 47 So. 218 (1908).
argument have confused the intent to commit the act which caused the injury with the intent to cause the injury.

In some cases, the courts state that a person is presumed to have intended the natural and probable consequences of his act, and that due to this presumed intent, a defendant can be convicted of criminal assault and battery. This argument is not valid, for the courts have evaded the issue by developing an irrebuttable presumption of intent when in fact, in the particular case there may be no such intent but merely gross negligence.

In more recent cases, the courts have inclined toward convictions of assault and battery without attempting to find any criminal intent, basing the conviction entirely on the criminal negligence of the defendant. As was pointed out above, the purpose of criminal law is the protection of the public from injury, and one who acts in such a wanton manner as to inflict corporal hurt on another, should be convicted regardless of whether or not he intended to cause the injury, in order that the protection of the public may be furthered. This group of cases, accomplished that purpose by repudiating any requirement of intent in the case of battery.

After considering the cases pointed out above, it is submitted that a criminal intent to strike the injured party is no longer an essential for conviction in the case of battery. The courts for some time have been using fictions, fallacious analogies, and false presumptions to reach this result, but these subterfuges are only marks of a transition period. Already a few criminal cases have frankly based convictions of battery on negligence. In the opinion of the writer, these cases represent the correct result and also the proper method of attaining that result.

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