



## Is Spitting on a Person an Assault?

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Several years ago, the Sixth Circuit noted the “timeless question whether “spitting a ‘lugie’ towards someone, by itself, constitutes an ‘assault.’” *United States v. Gagnon*, 553 F.3d 1021 (6<sup>th</sup> Cir. 2009). I’ve been asked this question several times, and in today’s post, I set out to answer it.

**Preliminary matters.** First, I think the accepted spelling is loogie, not lugie, as noted in [this blog post](#). Second, some readers may be interested in the etymology of the term. [According to the Urban Dictionary](#), “loogie” is “a portmanteau word, or alteration and combination, of ‘lung cookie.’” I am a little skeptical, because that explanation would seem to result in “lookie,” not “loogie,” and because of [early uses of the precursor term “louie.”](#) which sounds nothing like “lung cookie.” Third, although the Sixth Circuit referred to loogies, which by common understanding involve a combination of spit and mucus, this post considers spitting more broadly. I don’t think anything important turns on the presence or absence of mucus.

**Assaults generally.** North Carolina doesn’t define assault by statute. Rather, it relies on the common law understanding of assault as an attempt to injure another that puts the victim in fear of harm. *See, e.g., State v. Mitchell*, 358 N.C. 63 (2004) (defining an assault as “an overt act or an attempt, or the unequivocal appearance of an attempt, with force and violence, to do some immediate physical injury to the person of another, which show of force or menace of violence must be sufficient to put a person of reasonable firmness in fear of immediate bodily harm”). I can imagine an argument that spitting is not an assault because it is an attempt to insult rather than an attempt to injure, and because being spit upon would not reasonably create a fear of bodily harm.

However, it is worth noting, as I did in [this prior post](#) on a different topic, that any unconsented touching seems to be a battery, and that any battery is an assault. This is so even if the victim is not placed in fear of bodily harm. *See generally* Jessica Smith, *North Carolina Crimes* 113 (7<sup>th</sup> ed. 2012). Based on this body of law, I can imagine an argument that spitting on another would amount to a battery and therefore to an assault.

Finally, many readers will already be aware of [G.S. 14-258.4](#), malicious conduct by prisoner, which makes it a felony for prisoners to direct bodily fluids or excrement at government employees. That statute is not an assault statute and applies only under limited circumstances, so it does not really resolve the “timeless question” with which this post began.

**North Carolina cases about spitting.** I am not aware of a North Carolina case directly on point, but the court of appeals came quite close to ruling that spitting is an assault in *Phillips v. Restaurant Management of Carolina, L.P.*, 146 N.C. App. 203 (2001). In that case, a Taco Bell employee spit in a trooper’s food, and the trooper sued. The court ruled that the trooper had a viable claim that he had suffered an injury, stating: “Our deliberative process in deciding this novel issue is guided by court decisions in other jurisdictions which hold that spitting upon a person may constitute a criminal assault or battery. . . . We discern from this guidance that if the simple act of spitting on a person may be considered assault or battery despite no physical manifestation of harm, then it appears manifest that there exists a basis for finding that introducing one’s saliva into another person’s internal system would be highly offensive and, as such, constitute a harm or injury.” Another case of some relevance is *State v. Noel*, 202 N.C. App. 715 (2010). In that case, the defendant spit on an officer’s leg. The defendant was charged with, and convicted of, assault on a

government official and other charges. The court of appeals affirmed the conviction, though without directly addressing whether spitting may constitute an assault. Finally, in *State v. Crouse*, 169 N.C. App. 382 (2005), the court stated that “[t]hrough bespattering a law enforcement official with bodily fluids or excrement certainly includes an assault, an assault would also occur where the official is merely placed in reasonable apprehension of such conduct.” All in all, the North Carolina appellate case law suggests that spitting on a person – or even spitting towards a person and missing – would be an assault.

**Cases from other jurisdictions.** The substantial weight of authority in other jurisdictions also supports the idea that spitting on a person is an assault. Cases consistent with that conclusion include:

- *Com. v. Cohen*, 771 N.E.2d 176 (Mass. Ct. App. 2002) (finding it “self-evident” that spitting on a person is an assault and joining “other jurisdictions holding that an intentional and unconsented spitting on another constitutes a criminal battery”)
- *Gilbert v. Com.*, 608 S.E.2d 509 (Va. Ct. App. 2005) (finding sufficient evidence of assault based on spitting: “In spitting on Officer Fletcher, Gilbert committed an act that involved physical contact and was deeply offensive. Thus, it constituted an infliction of bodily harm.”)
- *United States v. Lewellyn*, 481 F.3d 695 (9th Cir. 2007) (“[I]ntentionally spitting on another person is an offensive touching that rises to the level of simple assault under the theory of assault as an attempted or completed battery.”)
- *United States v. Frizzi*, 491 F.2d 1231 (1st Cir. 1974) (“We do not think it could be ruled that spitting in the face is not forcible assault, or, more exactly, a battery . . . . Although minor, it is an application of force to the body of the victim, a bodily contact intentionally highly offensive.”)
- *Ray v. United States*, 575 A.2d 1196 (D.C. Ct. App. 1990) (noting that “the injury resulting from or threatened by an assault may be extremely slight,” the court ruled that “we find ourselves in full agreement with courts in other jurisdictions which have held that spitting on another person is indeed an assault”)
- *People v. Terry*, 553 N.W.2d 23 (Mich. Ct. App. 1996) (“Because spitting upon a person is a battery, which is a consummated assault, spitting falls within the prohibitions of the [assault] statute.”)

There are a few cases pointing in the other direction, including:

- *State v. Sepulveda*, \_\_\_ N.E.3d \_\_\_, 2016 WL 5873905 (Ohio Ct. App. 3d Dist. Oct. 3, 2016) (finding that a defendant’s attempt to spit on an officer was not an assault under Ohio’s statutory definition; the definition requires an attempt to cause physical harm, meaning “any injury, illness, or other physiological impairment”)
- *People v. Lima*, 57 V.I. 118 (Super. Ct. Virgin Is. 2012) (noting the split among jurisdictions and ruling that spitting on a person is not an assault under Virgin Islands law). *But see Murrell v. People of the Virgin Islands*, 54 V.I. 327 (2010) (same jurisdiction’s supreme court states that “spitting on an officer . . . constitutes an actual criminal assault”).

**Concluding thoughts.** In light of the authority collected above, I believe that the answer to the “timeless question” is probably yes in North Carolina. In other words, I would expect our appellate courts to rule that spitting on a person is an assault, regardless of whether there was mucus in the projectile. Potential spitters should also be aware that they will be leaving vital evidence behind. For example, [the police used DNA analysis](#) to prove that a waiter at a New York Chili’s hawked a loogie into a customer’s drink cup, inducing the waiter to plead guilty to disorderly conduct.