TRUMP CAMPAIGN FOCUSES SPOTLIGHT ON ASSAULT AND BATTERY

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On March 8, 2016, following a Trump campaign event at the Trump National Golf Club in Jupiter, Florida, Michelle Fields accused Corey Lewandowski, Trump's campaign manager, of grabbing her and bruising her left arm.

Fields, at the time a reporter with Breitbart News, wrote:

> *". . . I was jolted backwards. Someone had grabbed me tightly by the arm and yanked me down. I almost fell to the ground, but was able to maintain my balance. Nonetheless, I was shaken."*

Ben Terris, a reporter at The Washington Post, witnessed the incident, and identified Lewandowski as the culprit. Fields posted a picture of her bruises on Twitter. Lewandowski responded, calling Fields "delusional." An audio recording from the event provides support to Fields' story. Later, videos surfaced purporting to show Lewandowski's actions.

> *@MichelleFields you are totally delusional. I never touched you. As a matter of fact, I have never even met you.*
>
> *— Corey Lewandowski (@CLewandowski_) March 11, 2016*

Simple Battery Charges Filed

On March 11, 2016, Fields filed a complaint with the Jupiter Police Department. On March 29, 2016, Lewandowski was arrested and charged with simple battery. Trump continues to support his campaign manager.

In fact, Trump shot back on Twitter, claiming Fields' initial contact with him was the real battery.

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> *Wow, Corey Lewandowski, my campaign manager and a very decent man, was just charged with assaulting a reporter. Look at tapes-nothing there!*
>
> *— Donald J. Trump (@realDonaldTrump) March 29, 2016*

Despite news coverage to the contrary, Lewandowski faces charges for criminal battery only; no criminal assault charges have been filed. In addition, as of the date of this post, Fields has not filed a civil lawsuit seeking damages from Lewandowski based upon assault or battery.

Had these events transpired in Missouri, what potential criminal charges would Lewandowski face? And, what civil remedies are available in Missouri to a victim like Fields?

Criminal Assault in Missouri

In Missouri, misdemeanor battery charges, like those facing Lewanowski, fall within the crime of assault in the third degree. (Until December 31, 2016.) On January 1, 2017, S.B 491 of 2014 becomes effective.

Third degree assault in Missouri may be found when a person:

1. Attempts to cause or recklessly causes physical injury;
2. Causes physical injury to another by acting with criminal negligence using a deadly weapon;
3. Places another in apprehension of immediate physical injury;
4. Recklessly engages in behavior which creates a grave risk of death or serious physical injury;
5. Knowingly causes physical contact with another knowing the other will regard the contact as offensive or provocative; or
6. Knowingly causes physical contact with an incapacitated person.

Mo. Rev. Stat. § 565.070 Criminal charges are brought by the county prosecuting attorney's office. As in any criminal matter, the prosecution must establish that defendant's guilt "beyond a reasonable doubt."

Mo. Rev. Stat. § 558.011 Numbers 1, 2, 4 and 6 above are class A misdemeanors punishable by up to one year in prison; Numbers 3 and 5 are class C misdemeanors punishable by up to 15 days in jail.

Had this alleged incident occurred in Missouri, based upon the "facts" as presented in the media thus far, **a Missouri prosecuting attorney would most likely seek charges based upon offensive touching**, found in Number 5 above. Reports have surfaced that Lewandowski may seek to present a defense based upon a concern for Trump's safety, known in Missouri as "defense of another."

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Civil Liability for Assault and Battery in Missouri

In Missouri, an alleged victim of non-consensual touching, like Michelle Fields, may also file a civil lawsuit for assault or battery. Such a lawsuit would ask for an award to the victim of monetary damages.

For assault in Missouri, the plaintiff must establish that the defendant:

- (1) acted with intent to cause plaintiff offensive contact, bodily harm or apprehension of offensive contact or bodily harm, and
- (2) apprehension resulted.

MAI 23.01

For battery in Missouri, the plaintiff must establish that the defendant

- (1) intentionally caused contact with plaintiff, and
- (2) defendant caused plaintiff bodily harm, or defendant's contact was offensive to plaintiff and such contact would be offensive to a reasonable person.

MAI 23.02

Unlike the heightened burden in a criminal case, the burden on the plaintiff in a civil case is whether it is more likely true than not true that each required element occurred.

MAI 3.01

Again, based upon the currently available "facts," had these events transpired in Missouri, Fields could file suit against Lewandowski under either civil assault or civil battery, but with no guarantee of her likelihood for success.

But then one asks, how has Fields been damaged? Per her photograph on Twitter, she may have merely suffered a minor bruise to her arm.

However, in addition to seeking damages for physical injuries sustained, Missouri law allows for the recovery of damages for the "the indignity, disgrace, humiliation and mortification to which the plaintiff was subjected."

Mansfield v. Smithie, 615 S.W.3d 649, 655 (Mo. Ct. App. 1981) (*citing State ex rel. Donelon v. Deuser*, 134 S.W.3d 132 (1939)

Conclusion

No matter the outcome of Lewandowski's criminal case, or your personal politics, Trump's campaign scuffles have provided a forum for public discussion on the extent to which our laws protect individuals from unwanted physical contact.

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