

VERDICTS & SETTLEMENTS

Redskins-Colts game ends with nose-biting fracas

Type of Action: Personal injury

Injuries Alleged: Human bite to plaintiff's nose

Name of Case: Ford v. Pettway and United Restaurant Group (TGIFriday's) et al.

Court: Henrico County Circuit Court

Case No.: (06-353)

Verdict Date: Oct. 17, 2007

Tried Before: Jury

Name of Judge: Catherine C. Hammond

Demand: Lost before trial — \$135,000; at trial — \$110,000

Offer: \$0

Verdict/Settlement: Defense verdict

Special Damages: Plaintiff alleged permanent scarring to his nose and difficulty breathing due to scar tissue. He claimed past and future (revision surgery for scarring and related surgery) special medical damages of \$10,000.

Insurer: Travelers Indemnity Co.

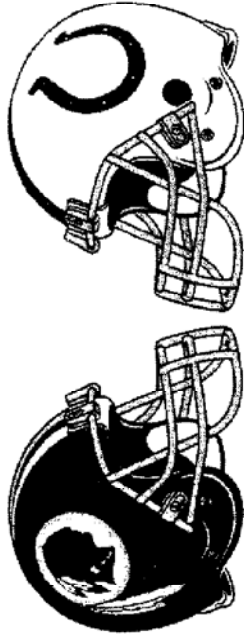
Defense Attorneys: Dennis J. Whelan III and Diane L. Lynch, Richmond

Defense Verdict

Plaintiff and defendant Pettway were involved in an altercation outside defendant TGIFriday's Restaurant in Short Pump during a Washington Redskins v. Indianapolis Colts football game. Pettway admitted biting the plaintiff's nose during the fight, but claimed that he acted in self-defense and that the plaintiff had initiated the incident.

Plaintiff, a Colts fan who was wearing team colors and cheering for his favorite team, claimed that Pettway, a Redskins fan who was wearing a Redskins team jersey, singled him out and "verbally abused" him from across the bar. Plaintiff testified that he reported his "fear and concern" about Pettway to TGIFriday's staff, but that "TGIFriday's did nothing." Plaintiff claimed that Pettway later initiated a physical altercation by pushing him out of the restaurant and biting him on his nose.

Pettway testified that the plaintiff and he were yelling at each other from across the bar. Pettway stated that the plaintiff initiated the fight by approaching him and stating, "I was just kidding about the Redskins, but if you want to go outside, I'll beat the #@&! out of you." Pettway



matter behind him."

Plaintiff argued that Pettway's guilty plea in the preceding criminal case estopped him from raising self-defense (or any other defense that could have been asserted at the criminal trial) during the subsequent civil case.

The court disagreed, holding that under Virginia law defendant's prior guilty plea is treated as a party admission, but that it did not bar defendant from explaining his motivation for pleading guilty in the prior criminal case, or from asserting any defenses in the civil case.

The court also issued instructions to the jury based upon the doctrines of *ex turpi causa non oritur actio* (a dishonorable cause does not give rise to an action) and *volenti non fit injuria* (to a willing person, no injury is done) which instructed the jury that if it found that the plaintiff was a "willing participant in an unlawful or immoral act, to wit: a public fight," plaintiff could not recover damages that resulted from the consequences of the unlawful or immoral act.

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testified that he said, "sure," and that the two men thereafter walked outside the restaurant. Pettway stated that the plaintiff initiated the physical altercation by punching him as he exited the restaurant. Pettway stated that he bit the plaintiff's nose in self-defense after being punched repeatedly in the face.

Pettway was later charged with malicious wounding, a felony. He pleaded guilty to assault and battery in a plea agreement and served one week in jail. At the civil trial, Pettway—over plaintiff's objection—explained that he pleaded guilty based upon advice of counsel and because he "just wanted to put this