

PROVINCIAL COURT OF SASKATCHEWAN

PRINCE ALBERT

IN THE MATTER OF
INFORMATION #45413408

HER MAJESTY THE QUEEN

- and -

Yvonne Jean Merasty

DECISION - S.C. Carter, P.C.J

P. Hryhorchuk, Crown Prosecutors, Prince Albert, SK. FOR THE CROWN.

E. Layton, Legal Aid, Prince Albert, SK. FOR THE DEFENCE.

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1. Yvonne Jean Merasty is charged that on or about the 2nd day of December, 2001, at or near Prince Albert, Saskatchewan, she did commit an assault on Kyle Wayne Stenson contrary to Section 266 of the Criminal Code.

Findings of Fact

2. Based upon all of the testimony I find the facts to be as follows:

3. On December 2, 2001, the accused and her friend, Lisa Lafond, left Uncle Charlie's Bar at the Prince Albert Inn after last call and walked next door to the Imperial 400 Motel. The time was somewhere between 2:30 and 3:00 in the morning. The accused was drunk having consumed six or seven bottles of beer. Lafond was sober because she had only been drinking coke. The accused knew that her boyfriend was at the Imperial 400 staying in a room rented by his uncle P.J.. The two women walked to the lobby and had the desk clerk call P.J.'s room. The accused spoke to P.J. hoping to get a ride home. P.J. could not help. They called a cab and waited in the lobby. The cab seemed to take forever. They went outside and called for a cab again from a pay phone. Cabs drove by on the street but did not stop. They walked around and found the accused's boyfriend's car parked in front of a motel room door. They knocked or pounded on the door but got no response. Carl Stenson and Gary Gibb, security guards at the motel, received a complaint about people pounding on doors. They came upon two women standing outside a motel room door. They asked if they were registered guests. When the women responded that they were not, Mr. Stensen told them that they had to leave. The guards called for a taxi.
4. When the taxi arrived the women did not take it because they decided to go back to the PA Inn to find their friends and get home with them. Instead of walking directly south to the fence line between the two motel properties the women began walking east to go to the Prince Albert Inn from around the back. The security guards interpreted this as the two going back into the Imperial 400 exterior hallways. They decided that they would have to escort the women to the property line. They yelled at them to get off the property and followed behind them as they walked away.

5. One of the guards, described by the accused as “the tall one”, yelled out that this was his land and that they had to listen to him because he was God. The accused and Lafond walked to the property line. Lafond crossed over to the Prince Albert Inn property first. The accused stopped at the property line, bent over, and told the security guards to “kick me in the butt”, “kick me in the butt”. She then turned around and faced Stenson who was only two or three feet away. With one leg over the line and still on the Imperial 400 property, she hollered out “this is your land, this is my land”. She then struck Stenson lightly in the chest. Stenson and one of the other guards grabbed her and threw her to the ground. One guard kneeled on her neck while the other, Stenson, managed to hand-cuff her after a struggle during which the guard who was kneeling on her neck got punched in the jaw. She was left lying face down in the snow for a few moments. Cst. Verge arrived on the scene almost immediately.

Reasons

6. Given the testimony of Stenson, Gibb and the accused, which clearly established that the accused was facing Stenson when she hollered out the words “this is my land, this is your land”, I could not accept Lafond’s version of the events at the property line. Even though Lafond was sober, my impression of her testimony was that she was doing her best to help her friend as opposed to truthfully relating the facts to the court. She said that they did not knock on any doors. The accused herself said that they did. She said that the tall guard just started shouting at them to leave. The accused admitted that they were asked to leave after knocking on the door where her

boyfriend's car was parked. As to when they were asked to leave or what started the animosity Lafond did not understand the question. She said that she was confused. Clearly, if the accused was facing Lafond when she shouted out those words and then slipped and fell backwards, the actions of Stenson and the others would have been totally unjustified. Indeed those actions would have been an assault upon the accused. However, that is not what happened.

7. Some of Lafond's testimony corroborated the Crown's evidence as well as that of the accused. She agreed that the accused hollered out the words "this is my land, this is your land", she admitted that the accused said "what am I, too native?" Which is close to what Stenson and Cst. Verge testified to which was that she yelled "I'm too black".

Decision

8. Although I am persuaded that the accused struck Stenson lightly on the chest with one of her fists, I am not prepared to find her guilty of assault. In my view the legal maxim *de minimus non curat lex* applies to these facts. The accused was drunk and being obnoxious after being ordered to get off the property. There seems to have been some kind of racial undertone to all of this. That appears to be behind the words "this is my land, this is your land" and "what, am I too native?". The accused clearly over-reacted to the situation. In my view Stenson and the other security people did not need to react in the fashion in that they did.
9. I therefore find the accused not guilty of assault on the basis of the legal maxim

Decision
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de minimus non curat lex.

DATED this 23rd day of September, A.D., 2002, at the City of Prince Albert, in the
Province of Saskatchewan.

S.C. Carter, Provincial Court Judge

SCC/jmj