

**IN THE PROVINCIAL COURT OF NOVA SCOTIA**

**R**

**vs**

**JASON KEIZER**  
**(Cite as R v. Keizer, 2001 NSPC 28)**

**DECISION**

**The Honourable C. H. F. Williams , JPC**  
**Delivered orally October 16<sup>th</sup>, 2001**

**COUNSEL: Mr. D. MacRury, Crown Attorney**  
**Ms. M. Longley, Defence Attorney**

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**Introduction**

On 29 December, 2000, Karry Reginato, her boyfriend, Scott Morrison, and another friend, were leaving an apartment building in the Halifax Regional Municipality. The elevator that they had taken was not working so they exited on the second floor with the intention of walking down the stairwell to the lobby. On exiting the elevator they met Jason Keizer who was arguing with his girlfriend, Maxine Atherden. They asked Keizer and Atherden about the location of the stairwell.

After pointing out the stairwell and as Reginato and her friends were going down the stairs, Keizer said “fruit” which was overheard by Reginato. She returned up the stairs and wanted to know why he directed that comment at them. Keizer wanted to know if her group had a problem. He followed them into the lobby where he and Reginato confronted each other. She asserted that she chided him for what he said as she felt that the comments were directed at her boyfriend. In addition, she alleged that he pushed her forcibly out of his way and consequently her head struck a nearby wall. As a result, she received an inch and a half laceration over her left eye.

Keizer asserted that Reginato, without cause, slapped him in the face several times. He did nothing physically to resist her unwarranted attack although he requested someone to separate them. Scott Morrison stepped in between them and pushed Reginato away. It was when Morrison pushed Reginato that she fell and struck her head.

Dr. Douglas Sinclair attended to Reginato at the QE II Hospital. Subsequently, the police have charged Jason Keizer with assault causing bodily harm to Karry Reginato.

**Issue**

The central issue that I must decide is whether, on the evidence adduced, the Crown has satisfied me beyond a reasonable doubt, that Keizer caused Reginato’s injuries.

**Evidential Findings of Facts**

Here, there is a conflict of evidence. However, applying the principles of assessment of credibility as expressed in *Faryna v. Chorny*, [1952] 2 D.L.R. 354, 357 (B.C.C.A.), *R.v. C.R.B.* [1999] N.S.J.

No. 217 (Prov. Ct.) at para.11, and in addition, my assessment of the witnesses as they testified, I accept and find the material and relevant facts to be as follows:

1. Reginato and her friends were exiting the elevator when they encountered Keizer and Atherden near the entrance of the stairwell. They asked for the location of the stairwell.
2. Keizer who was arguing with Atherden was also in a bad mood. He felt that Reginato and friends, who all appeared to be intoxicated as they were giggling and laughing, were also staring at them.
3. Keizer showed them the location of the stairwell and then uttered the word “fruit,” that Reginato heard. He also ran after them. When all the parties were in the lobby, Keizer was confrontational with Morrison. Thinking the comment that was made earlier by Keizer was directed at her boyfriend, Reginato stepped in between him and Morrison. She argued and had words with Keizer. It was then that she was pushed.
4. As a result of the pushing, Reginato’s head struck the wall and she sustained a cut over her left eye for which she received medical attention. The expert opinion was that it would require significant force to cause the wound. Further, the stitches that she received to close the wound remained in place for five days. She was discomforted both physically and emotionally for one month.

### **Analysis**

As I have indicated, credibility is the paramount issue. In assessing the reliability of the conflicting testimonies, certain salient points remain constant. From the evidence, it is reasonable to infer, and I do, that because Keizer believed that Reginato and her friends were under the influence of alcohol, when he felt that they had stared at him and his girlfriend their general conduct irritated and annoyed him. I recall that he was already in a bad mood as he was arguing with Atherden. Thus, it is further reasonable to infer that he demonstrated his annoyance and perhaps intolerance to them by uttering the word “fruit.” This word apparently found some resonance in Reginato who felt that it was directed at her boyfriend, Morrison. Morrison, however, told her to ignore the statement. As Reginato and her friends continued on their way, Keizer followed them wanting to know if they had a problem and words were exchanged between them.

When they finally met in the lobby, I accept that Keizer was attempting to confront Morrison. Reginato stepped in between them and inquired of Keizer why was he upset with Morrison. Keizer related that Reginato approached him and, for no apparent reason, slapped him several times in the face. This was after he followed them only to ask them if they had a problem when he said “fruit.” Further, he declared that he did nothing, not even an evasive move or a reflexive defensive action when she slapped him. He stood and asked for someone to separate her from him.

However, it seems to me that in following them from the second floor into the lobby, Keizer had

a purpose in mind. That purpose may be gleaned from the mood that he was in, his perception of their demeanor and the comment that he made. It is therefore reasonable to infer that he was prepared to confront them if they responded to his comments. Thus, in that context, it is highly improbable that when he was slapped, for no apparent reason, by a stranger who was argumentative and confrontational, he did absolutely nothing physical in his own defence.

Therefore, in my opinion, when I consider the total evidence, Keizer's recall of what happened next was implausible. It was inconsistent and inharmonious with the preponderance of probabilities that a practical and reasonably informed person would expect in the circumstances. This was further compounded, in my opinion, by the testimony of Atherden. In my view, her testimony was an exaggeration of his story with substantial inaccuracies and crucial inconsistencies that were never corrected to rehabilitate her creditworthiness.

Reginato and Morrison, as they testified impressed me as being frank and sincere. Their recollection of the event "was in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and conditions." I accept that Keizer went up to Morrison and pushed him. Further, I accept that Reginato stepped in between them and that it was Keizer who pushed her away and struck her head, with force, against the wall. When her head struck the wall, she received the injury. On the evidence that I accept, the injury was neither trivial nor transient.

### **Conclusion**

Thus, there is no doubt in my mind that Jason Keizer, in committing an assault on Karry Reginato, caused her bodily harm. I am satisfied that the Crown has proved its case against him beyond a reasonable doubt. Accordingly, I find him guilty of the offence of assault causing bodily harm and will enter a conviction on the record.