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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER:

HER MAJESTY THE QUEEN

VS

MATTHEW EARL NESSEL

- and -

EMIL TRIP DE ROCHE

Transcript of Proceedings of an Oral Judgment given
by His Honour Judge R. W. HALIFAX, sitting at Fort
Smith in the Northwest Territories on Monday, June 18,
A.D. 1984.

APPEARANCES:

MS. N. BOILLAT Counsel for the Crown
MR. L. SEBERT Counsel for the ~~Defendant~~ ^{Respondent}



1 THE COURT: This is a matter that came on last sitting
2 for trial. The matter was adjourned to today's date for
3 judgment. Just have a chair, gentlemen.

4 Matthew Earl Nessel and Emil Trip de Roche
5 are both charged contrary to Section 246(1) of the Criminal
6 Code, an alleged assaulting a Police Officer, one Jacques
7 Labine. The incident giving rise to this matter occurred
8 in the early morning hours of December 31, 1983, on the
9 third floor of Spruce Manor in the Town of Fort Smith.

10 There is some conflict in the evidence;
11 however, most of what occurred is fairly clear. Constable
12 Labine was in his apartment on the third floor of Spruce
13 Manor when he heard a noise in the hallway outside; and
14 then, he heard some banging on the door of his apartment.
15 Constable Labine then went to investigate and found the
16 accused Trip de Roche sitting on the floor leaning against
17 the wall opposite his apartment door. Mr. Trip de Roche
18 at the time was in a very intoxicated condition. Constable
19 Labine advised the accused Trip de Roche he was a member of
20 the R.C.M. Police and that he was under arrest, and it was
21 stated that Mr. Trip de Roche's intoxication caused some
22 concern in this area as to whether he understood the
23 situation or not. I will deal further with that later. At
24 this point, the accused Nessel came upon the incident, and
25 he came up the back stairs and into the hallway. It should
26 be noted that the accused Nessel was carrying a baseball bat
27 in his hand at this time. Initially, from Constable Labine's

1 evidence, he thought Mr. Nessel was going to go after
2 Mr. Trip de Roche. However, after some discussion, he
3 found that that was not the case; but initially, he advised
4 that he thought Nessel was as well intoxicated and advised
5 him he was under arrest as well.

6 It then came to Constable Labine's
7 attention that Mr. Nessel and Mr. Trip de Roche were
8 actually looking for some other people who had allegedly
9 assaulted Mr. Trip de Roche earlier on the first floor of
10 the Manor. It seems from the evidence that Mr. Trip de
11 Roche arrived at Mr. Nessel's apartment earlier seeking
12 help as he had been assaulted downstairs in the apartment
13 building. Mr. Nessel got up and got dressed, grabbed a
14 baseball bat; and the two of them went down to the first
15 floor to see who was responsible and what was going on.
16 Mr. Nessel indicated he took the baseball bat with him so
17 that he had some protection. Finding nobody on the first
18 floor, then, Mr. Nessel proceeded down the second floor and
19 Mr. Trip de Roche down the third floor. It was at this
20 point that Mr. Trip de Roche came in contact with
21 Constable Labine.

22 Mr. Trip de Roche has very little
23 recollection as to the incident, and I am satisfied that
24 there was some heated conversation, at least between
25 Constable Labine and Mr. Nessel and that Constable Labine
26 then tried to take the baseball bat from Nessel which
27 caused a further altercation. There is no doubt in my mind

1 that Mr. Nessel knew that Constable Labine was a Police
2 Officer and a member of the R.C.M. Police.

3 They were both advised that they were
4 under arrest, and Mr. Nessel and Mr. Trip de Roche tried to
5 leave; and they were told to stay. A further scuffle
6 occurred; and eventually, Constable Labine got the baseball
7 bat away from Mr. Nessel while he was being pushed up
8 against the wall; and I am satisfied that during this
9 altercation, Constable Labine was kicked in the groin. At
10 that point, Constable Labine obtained possession of the
11 baseball bat, struck both Mr. Nessel and Mr. Trip de Roche;
12 and I accept his evidence that at that point he felt he was
13 in trouble and was having some difficulty with the two
14 accuseds. A neighbour called the R.C.M. Police, and other
15 officers arrived. That was basically the end of the
16 incident.

17 It should be noted that although the
18 apartment building does have a security locking system,
19 such was not working; and both Mr. Nessel and Constable
20 Labine indicated that there have been problems in the
21 building because the public have free access to the
22 building.

23 Now, the first question to be answered is
24 whether or not the hallway in this apartment is a public
25 place within the legal meaning of that term. I have had
26 an opportunity to review various cases including R. versus
27 Murphy from the Nova Scotia Court of Appeal, 58 Canadian Criminal

1 Cases, page 56; R. versus Panipatsek, a case of Mr. Justice
2 W. G. Morrow of the Territorial Court as it then was (now
3 N.W.T.S.C.), 4 Canadian Criminal Cases, page 1, a matter
4 arising from Frobisher Bay; the case of Regina versus Stubs
5 and Rogers, a New Brunswick County Court descision, 120
6 Canadian Criminal Cases, page 186; as well as the British
7 Columbia Court of Appeal in R. versus Cottam, (1969)
8 7 Criminal Reports, New Series, page 179. It should be
9 noted that the present case is somewhat different than the
10 Panipatsek case in that in that case in Frobisher Bay, there
11 was a security locking system so that members of the public
12 did not have free access to the building. That, to me, is
13 very distinguishable from the circumstances we have before
14 us.

15 I am satisfied that the hallway in this
16 particular building, under the circumstances of this case,
17 comes within the definition of a public place as the public
18 did have free access at least to the hallways of the
19 building. There are no security systems to ensure any
20 restrictions on the public access. I further come to this
21 conclusion in light of the provisions of the Liquor
22 Ordinance of the Northwest Territories as it existed at the
23 time of this offence.

24 As a result, both accusedswere arrested
25 by Constable Labine; and under those circumstances, being
26 in a public place, it was a lawful arrest; and they did not
27 have the right to resist. I am satisfied that at that

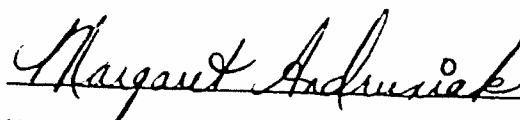
1 point Constable Labine was operating within the scope of
2 his duties when this incident occurred.

3 I am further satisfied that there was an
4 assault on Constable Labine by Mr. Nessel and, to a lesser
5 degree, by Mr. Trip de Roche within the definition of
6 assault under Section 244 of the Criminal Code. I have
7 given consideration to the facts of Mr. Trip de Roche's
8 intoxication; but looking through the total evidence, it
9 seems to me that he was in a sufficient position to realize
10 what was going on. I am not satisfied it has been established
11 that anything different than that occurred.

12 As a result, I find both accused guilty of
13 the offence charged. However, I should say it seems to me
14 that if there was a little more tact in the handling of the
15 situation by the Police Officer, the incident probably
16 would have never got to the stage it did. It is unfortunate
17 that the incident did go this far and that the matters
18 wound up before the Court.

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22 Certified a Correct Transcript:

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25 Margaret Andruniak
26 Court Reporter