

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

GOVERNMENT OF THE VIRGIN ISLANDS,	)	
	)	
Plaintiff,	)	
	)	CRIMINAL NO. 138/84
v.	)	
	)	
ORLANDO REMAK,	)	AGGRAVATED ASSAULT
Defendant.	)	AND BATTERY
	)	

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PETERSEN, Judge

MEMORANDUM OPINION
January 25, 1985

This is an action for aggravated assault and battery, pursuant to 14 V.I.C. 298(5). For the reasons set forth below, this Court finds the defendant guilty, beyond a reasonable doubt, of aggravated assault and battery.

FACTS

On or about March 28, 1984 Defendant Remak appeared at the Office of Recorder of Deeds to register a deed. The defendant submitted the deed to the recorder who stamped and processed it. The defendant requested that his document be returned. The recorder stated that it would take two weeks before the document could be returned. At this point, the complainant asserts that the defendant tried to pull the document from her hands by bending back her finger and prying the deed away from her. Defendant, on the other hand, claims that the deed was lying on the desk and that he picked up the deed from the desk. Defendant asserts that the complainant grabbed the deed and both held on to it. Then, defendant alleges that the complainant released the deed but ran to the door to prevent him from exiting. Complainant Bruce claims, however, that upon having the paper pryed away, she told the defendant he could not leave with the document. While attempting to lock the door, the complainant was pushed against the door which she was blocking.

ISSUE

The issue before this Court is whether the defendant committed aggravated assault and battery upon the complainant.

DISCUSSION

The Virgin Islands Code defines assault and battery as "any unlawful violence upon the person of another with intent to injure him whatever the means or the degree of violence used". 14 V.I.C. Section 292. In order to obtain a conviction, three elements must be established: (1) that violence was perpetrated upon another; (2) that such violence was an unlawful violence; and (3) that there was intent to injure. Government of the Virgin Islands v. Frett, 14 V.I.315, 321 (1976). In assault and battery cases, the intent of the defendant may be inferred from the facts and circumstances surrounding the act, the situation of the parties at the time, and the objective to be accomplished. Id. Each element will be considered seriatim.

The facts are undisputed that violent acts, the bending back of complainant's finger, the prying away of the paper from complainant's hand, and the shoving of the complainant against her door, occurred.

The intent to injure can be inferred from defendant's actions and the surrounding circumstances. In the instant case, defendant appeared at the Office of the Recorder of Deeds to register the deed. Defendant submitted the deed to Complainant Bruce. The complainant stamped and processed

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it. When Defendant Remak requested that the deed be returned immediately, plaintiff stated that the deed would not be returned for two weeks. Defendant Remak, motivated by frustration and anger, attempted to physically retrieve the paper. Because Complainant Bruce would not release the deed, the intent of the defendant was to obtain the deed by any means necessary. The record does not indicate that Defendant Remak sought peaceful means of retrieving the document, by either asking to see Complainant Bruce's supervisor or by obtaining a copy of the deed. Further the record does not indicate that the force used was necessary or that the defendant was provoked. Therefore, the acts of bending back the fingers in order to pry the papers loose and of pushing the complainant against the door clearly demonstrate that Defendant Remak intended to injure Complainant Bruce in order to retrieve the deed.

The last element to be considered is unlawful violence. Lawful violence does not amount to an assault or assault and battery when the person is "preventing or interrupting an intrusion upon the lawful possession of property, against the will of the person in charge". 14 V.I.C. Section 293(a)(4). The applicability of this section to the case at bar depends upon which party had rightful possession of the property before the alleged assault and

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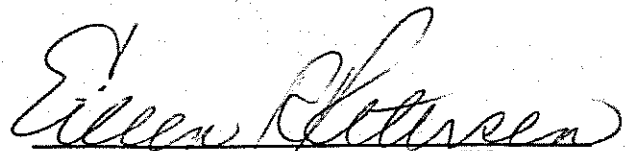
battery occurred. Considering the discussion above and the credibility of the witnesses, this Court believes that Defendant Remak had relinquished dominion and control of the deed at the time of the assault. Complainant Bruce had accepted the deed for filing and thus, had obtained possession and control over it.

At the time the assault occurred, the defendant tried to retrieve possession. It is well established that when a person has voluntarily parted with possession of personal property, he is not entitled to regain it by force amounting to an assault or a breach of the peace. State v. Rullis, 191 A.2d 197 (1963). In People v. Whearty, 337 P.2d 873 (1959), an automobile owner, who had agreed to pay cash for the service, authorized a tow truck driver to take possession of his automobile and to tow it to the home of the owner. The driver had legal possession of the automobile. Even if the driver were wrong in refusing to relinquish possession of the automobile until the owner had paid the agreed service fee in cash, the owner had no right to invoke force in regaining possession of the vehicle. Any action by the owner, other than legal proceedings, amounted to assault upon the driver. Id. at 876. Therefore, even if Defendant Remak believed that he were the rightful owner of the deed, he had no right to invoke force to regain possession of it. The

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violent force he used was unlawful.

By applying the elements of assault and battery to the case at bar, this Court finds the defendant guilty of assault and battery. However, the assault and battery charge is upgraded to aggravated assault and battery when "whoever commits an assault and battery being an adult male, upon the person of a female or child, or being an adult female, upon the person of a child". 14 V.I.C. Section 298(5). In the instant case defendant is an adult male who committed assault and battery upon a female. Thus, for the reasons set forth above, this Court finds the defendant guilty, beyond a reasonable doubt, of aggravated assault and battery, pursuant to 14 V.I.C. 298(5).



EILEEN R. PETERSEN
Judge