

ROBERT I. PARTRIDGE, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 37

Trial Division of the High Court

Truk District

April 19, 1955

Appeal from conviction in Truk District Court of assault and battery in violation of T.T.C., Sec. 379. Appellant contends that force was justified to remove trespasser from premises. The Trial Division of the High Court, Associate Justice James R. Nichols, held that although complainant was trespasser, use of force by appellant was excessive and that use of more force than is reasonably necessary to eject trespasser constitutes assault and battery.

Affirmed.

1. Assault and Battery—Ejection of Trespasser

Force may be used to eject trespasser if it does not exceed that which is correctly or reasonably believed to be necessary to terminate intrusion.

2. Assault and Battery—Ejection of Trespasser

Use of greater force than is necessary to eject trespasser will make individual liable for assault for so much of force as is excessive. (T.T.C., Sec. 378)

3. Assault and Battery—Self-Defense

Person being rightfully ejected by use of excessive force may defend himself against use of excessive force.

4. Assault and Battery—Ejection of Trespasser

Where person in public place or semi-public place becomes trespasser and upon request to leave fails to depart within reasonable time, proprietor may use such force as is reasonably necessary to eject him, but if more force is used than is necessary, acts constitute assault and battery. (T.T.C., Sec. 379)

5. Assault and Battery—Generally

Where amount of force used in battery is unlawful, degree of force which is used is immaterial. (T.T.C., Sec. 379)

Interpreter: F. SOUKICHI
Counsel for Appellant: SMART LAMPSON
Counsel for Appellee: F. PETER

NICHOLS, *Associate Justice*

Upon motion by the appellant, this court, on March 11, 1955, viewed a re-enactment of the demonstration by the witnesses Kias, Mike, Yosita, Locket, Bernard and Robert I. Partridge in the District Court, and heard their testimony as to the character and length of time of the choking and arm twisting alleged at the trial, and as to the physical conditions under which these witnesses observed the alleged choking and arm twisting. The appellant filed a written argument on March 17, 1955, and the appellee filed a written argument on April 2, 1955. No oral arguments on the merits of this appeal were presented.

OPINION OF THE COURT

The appellant argues that the trial court erred in denying the appellant's motion for acquittal at the close of the case for the prosecution, in finding the appellant guilty of assault and battery and in denying the appellant's motion for a new trial.

At the time this offense occurred, the appellant, an employee of the government of the Trust Territory of the Pacific Islands, was supervising a cargo handling operation on Baker Dock, Moen Island. The complainant, a truck driver, was careless in handling his truck, and was ordered from the dock by the appellant. Due to language difficulties, the complainant apparently could not comprehend the reason that he was ordered from the dock, and remained there contrary to the appellant's instructions.

Both the appellant, Robert I. Partridge, and the complainant, Kias, personally appeared before this court on March 11, 1955, and re-enacted demonstrations they

had performed at the trial in the District Court. The appellant is a tall, robust man, while the complainant is short and of light stature.

Viewing the evidence in a manner most favorable to the appellant, the appellant, who was standing to the right side of the complainant, placed his left hand on the right shoulder of the complainant, his right hand on the complainant's chin, jerked the complainant's head to the right to address him, then twisted the complainant's right arm high behind his back, and ran him off the dock.

While the complainant failed to depart from the dock when ordered to do so, he offered no resistance during the entire altercation and simply stated that he wanted to know why he was ordered off his job.

Evidence was introduced tending to show that the appellant choked the complainant and there was much discussion as to the exact meaning of the word "choke" in this connection. However, it is unnecessary to determine whether or not the appellant choked the complainant for the purpose of this appeal.

CONCLUSIONS OF LAW

[1-5] The complainant was a trespasser at the time of the alleged assault and battery.

The appellant did commit an assault and battery, so the question to be determined by this court is whether or not the appellant was justified in this conduct, in order to eject a trespasser in connection with the performance of his duties.

While the law permits the use of sufficient force to eject trespassers, the employment of punitive force is not tolerated. In 4 American Jurisprudence, Assault and Battery, Section 70, this subject is treated as follows:

"While the force that may be used in ejecting a trespasser depends on the circumstances surrounding each particular case, the

rule that the force must be such as appears to be reasonable in the circumstances finds universal support. It must not exceed that which is correctly or reasonably believed to be necessary to terminate the intrusion. If greater force is used to put the trespasser off the premises, the defendant is liable for the assault by reason of the excess force employed, that is, for so much of the force as is excessive; and under such circumstances, the person being ejected may defend himself against the use or attempted use of excessive force."

On this same subject, the appellee cited the following from 4 Am. Jur., Assault and Battery, § 77:

"Where a person in a public or semi-public place becomes a trespasser by reason of his conduct while there, and, upon request to leave, fails to depart within a reasonable time, the proprietor of such place may use such force, and only such force, as is reasonably necessary to eject him If more force is used than is reasonably necessary, it constitutes an assault and battery."

The appellee also cited the following from 4 Am. Jur., Assault and Battery, § 18:

"Where the force in a battery is unlawful, the degree which is used is immaterial, Any unlawful force used against the person of another will constitute a battery, no matter how slight. . . ."

This court is in accord with the principles set forth in the above citations. Having studied the record, and having viewed a re-enactment of the demonstrations and heard testimony in connection therewith, this court holds that the force exerted by the appellant, according to his own testimony and his re-enactment of his demonstration, was in excess of that which could be reasonably believed to be necessary to eject a trespasser.

JUDGMENT

The finding and sentence, and the order denying a new trial, appealed from in Truk District Criminal Case No. 158, are therefore affirmed.