

IN THE PROVINCIAL COURT OF NOVA SCOTIA

**Citation:** R. v. Darrell Viner, 2003 NSPC 023

**Date:** 20030530

**Case No.(s):** 1118906

**Registry:** Halifax

**Between:**

**R.**

v.

**Darrell Viner**

**Judge:** The Honourable Judge C. H. F. Williams, JPC

**Heard:** Decision rendered orally May 30, 2003  
in Halifax Nova Scotia

**Counsel:** Eric R. Woodburn for the Crown  
Catherine Benton for the Defence

## **BY THE COURT**

### **INTRODUCTION**

- [1] In the early morning of October 13, 2001, when he was on private security detail at a local bar, Constable Robert Oostveen of the Halifax Regional Police Force asserted that he saw the accused, Darrell Viner, strike a short black female in her mouth. Subsequently, he arrested the accused and charged him with assault.

### **Findings of Fact and Analysis**

- [2] At trial, the alleged victim, Tiesha Allison, did not testify as the Crown was unable to secure her presence. In addition, the police investigator, although aware of the trial date, did not attend as required. Despite these deficits, and with the accused in custody, having been denied bail, the Crown presented its case through the testimony of Constable Oostveen.
- [3] On the evidence before me and on my assessment of the witnesses as they testified, I conclude and find that the accused and the alleged victim were once in a close intimate relationship that produced a child. On the evening in question, they encountered each other in a local bar where the accused intimated that he wanted to have no interaction with her. Nonetheless, Allison made several attempts to inveigle the accused's attention by confronting him particularly concerning a young lady with whom he was conversing outside the bar at closing time. I accept and find that Allison was confrontational and aggressive in her inept overtures to the accused that resulted in the accused, to protect himself from any and any further abuses incited by her, took preventative action.
- [4] Overall, I find that the evidence for the Crown was curtailed, subjective, speculative and, in the circumstances, somewhat exaggerated. The Constable related that in his opinion, Allison was rendered unconscious by the blow she received and, in the presence of the police, with a duty to investigate, was picked up and carried away by her friends. Apparently, the police did nothing to assist the fallen victim nor then to determine her identity or injuries, if any. It would also appear that the crowd was hostile toward the police. I am not convinced that this view was in harmony with the preponderance of the probabilities which a practical, and informed person would readily recognize as reasonable in the scenario described by all the witnesses. In my view, particularly when assessed along with the testimonies of other witnesses, it was also inconsistent with the probabilities that surrounded the existing conditions.
- [5] Further, I think that given the circumstances as disclosed by the total evidence, I find that there was room for errors in observation. Thus, the Constable's rigid assertion and as I observed him as he testified, led me to conclude that, in the case at bar, it would be unsafe to conclude beyond a reasonable doubt without more corroborative proof of facts, that the

accused was culpable.

- [6] On the other hand, the evidence for the accused placed the issues in a context that was in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in the circumstances. This body of evidence described Allison as a jealous ex-lover who took exception to the accused talking to another lady. In her confrontational and argumentative mood she tugged at the accused's clothing and slapped him in the face as he was attempting to avoid any contact with her. When she persisted in tugging or holding on to his clothing and striking him in the back as he walked away from her, he turned and pushed her to prevent her from continuing to strike him. She fell and he continued to walk away.
- [7] Although I do not wholly accept the evidence for the accused, in the absence of more salient and convincing testimony, what I accept was, in my view, consistent with the probabilities that was contemporaneous with the circumstances as described by them. In short, after hearing the accused testify, I am left in doubt by his testimony. I therefore think that, in the circumstances, he is entitled to rely upon the defence of self-defence, and I do find accordingly.

### **Conclusion**

- [8] On my assessment of the total evidence and that of all the witnesses as they testified, I conclude and find that Allison was the aggressor. The accused, in the circumstances and on the evidence that I accept, took justifiable defensive action to prevent any and any further attacks upon his person. Consequently, the Crown has not proved beyond a reasonable doubt that Darrell Viner on October 13, 2001 assaulted Tiesha Allison. In the result, I find him not guilty as charged and will enter an acquittal on the record.