COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Zarama, 2015 ONCA 860
DATE: 20151208
DOCKET: C59115

Feldman, Gillese and Watt JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Catalina Zarama

Appellant

Bruce Simpson, for the appellant

Phillippe Cowle, for the respondent

Heard: December 3, 2015

On appeal from the convictions entered on April 30, 2014 by Justice Diane M. Lahaie of the Ontario Court of Justice.

ENDORSEMENT

[1] Two police officers responded to a 911 call in the middle of the night. The appellant made the call but it had been disconnected before she said anything.

[2] The officers went to the home from which the call had been placed. It was the appellant's parents' home. The parents invited the officers in and explained that the call had probably been placed by the appellant, who lived with them and

suffered from mental health challenges. They indicated that she had not been taking her medication. The officers indicated that they needed to speak with the appellant to determine why she had called and if she needed help. The appellant was in her bedroom, yelling, and would not open her locked bedroom door.

[3] The appellant's mother "picked" the lock on the bedroom door. When the officers stepped into the bedroom they saw the appellant lying on her bed, holding a serrated kitchen knife. She got up and walked toward the officers, yelling "You want this? You want this?"

[4] The officers drew their guns and yelled at the appellant to drop the knife. When the appellant moved towards her mother and one of the officers, that officer dove at the appellant (and her mother who was standing between the appellant and the officer) to take the knife away. While he attempted to wrestle the knife from the appellant, she resisted and cut his lip and scratched the back of his ear and neck.

[5] The appellant was convicted of a number of assault offences, but was later found to be not criminally responsible. She appeals against the findings of guilt only.

[6] The foundation for the appeal is the appellant's submission that the officers were trespassing when they entered her bedroom and, consequently, she was justified in repelling them.

[7] We reject this submission.

[8] In our view, the police officers were acting reasonably, and within the scope of their duties, in responding to a disconnected 911 call. Therefore, they were never trespassing.

[9] The officers were entitled to assume that the appellant, as the maker of the 911 call, was in distress. They were also entitled to physically locate the appellant within the home so that they could determine her reasons for making the call and provide such assistance as might be required. This is so despite the assurances of the appellants' parents that she was not in need of aid. Consequently, as the appellant refused to leave her bedroom, the officers had the right to enter it because there was no other reasonable alternative for ensuring that she would receive any needed assistance in a timely manner. See *R. v. Godoy,* [1999] 1 S.C.R. 311, 1999 CanLII 709, at paras. 16-18, 19.

[10] The trial judge's findings with respect to what transpired in the bedroom, including the struggle, are well-founded in the evidence. In any event, the appellant's use of force cannot be said to have been reasonable, in the circumstances of this case.

[11] These determinations are dispositive of the substance of the appeal, apart from two remaining matters.

[12] First, the Crown asks that this court amend count #1 of the indictment, pursuant to s. 683(1)(g) of the *Criminal Code*, R.S.C. 1985, c. C-46, to particularize the use of a weapon as part of the aggravated assault charge, in

order to regularize the conviction on the included offence of assault with a weapon. Counsel for the appellant conceded that no prejudice will ensue from the amendment.

[13] We would make the requested order and amend the charge in the manner sought by the Crown. Consequently, the amended charge would read as follows:

> On or about the 5th day of May in the year 2010 at the City of Ottawa in the East/De L'Est Region did, in committing an assault on Cst. Earl COOK, wound, maim, disfigure, or endanger the life of the said Cst. Earl COOK by using a weapon, namely a knife, and thereby commit an aggravated assault, contrary to section 268, subsection (2) of the Criminal Code of Canada.

[14] Second, we are satisfied that pursuant to s. 270(2) of the *Criminal Code*, in light of the conviction on count #1, the conviction on count #2 – assault of Cst. Cook with intent to resist or prevent lawful arrest or detention – should be stayed in accordance with the *Kienapple* principle.

[15] Accordingly, the amendment to count #1 is ordered, in accordance with the foregoing, and the appeal is allowed in one respect only, namely, count #2 is stayed.

"K. Feldman J.A."
"E.E. Gillese J.A."
"David Watt J.A."