CANADA
PROVINCE OF NOVA SCOTIA

Case #905383,905386,905381,905387
June 15, 2001

IN THE PROVINCIAL COURT

HER MAJESTY THE QUEEN

versus

BONNIE COLLIER
AGNIESZKA KURZAJ
[Cite as R v. Collier, 2001 NSPC 15]

DECISION

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

PLACE HEARD: **Halifax Provincial Court**

IN THE MATTER OF: **Criminal Code**

COUNSEL: **Mr. J. Scott, Crown Attorney**
Mr. M. Taylor, Defence Attorney for Agnieszka Kurzaj
Mr. K. Serbu, Defence Attorney for Bonnie Collier

Cite as R v. Bonnie Colllier & Agnieszka Kurzaj 2001 NSPC 15

R v. BONNIECOLLIER
AGNIESZKA KURZAJ

Delivered orally June 15, 2001
The Honourable Judge C. H. F. Williams, JPC

Counsel: Mr. J. Scott, Crown Attorney
Mr. M. Taylor, Defence Attorney for Agnieszka Kurzaj
Mr. K. Serbu, Defence Attorney for Bonnie Collier

Introduction

The police have charged the defendants, Agnieszka Kurzaj and Bonnie Collier, jointly with assaulting Constable Lassaline while engaged in the lawful execution of his duty. In addition, they have charged Bonnie Collier with willfully obstructing Constable Roache and willfully resisting Constable Lassaline while engaged in the lawful execution of their duty. Further, they have charged Agnieszka Kurzaj with wilfully obstructing Constable Lassaline while engaged in the lawful execution of his duty. All these alleged offences occurred on 14 June 1999 in the Halifax Regional Municipality.

Summary and Evidential Findings of Fact

As I observed the witnesses as they testified and assessed their testimonies in light of the total evidence, I accept and find as follows:

> (1) Tenants from an apartment building located 36 Abby Road in the Halifax Regional Municipality reported to Hope Ann Jewers, the building superintendent, that they could hear an argument occurring in one of the building's units on the eleventh floor. They reported that they heard a male and a female voice. Allegedly, the male's voice was heard making a threat to strangle the female. Accordingly, Jewers went to an apartment unit on the eleventh floor, stood outside the closed door and listened. She heard a male and a female voice elevated in anger and arguing. She also heard the sound of what she thought was a woman either crying or screaming. Therefore, she called the police.
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> (2) Constables Daniel Roach and Trevor Lassaline of the Halifax Regional Municipality Police Force responded to the call and arrived on the scene. They went to the identified apartment unit, stood outside the closed door for up to three minutes and listened. They could hear voices, in particular an Eastern European accented female voice, inside the apartment but could not discern what was being said. Also, they determined that there was nothing unusual about the tone or tenor of the voices that they heard. Nonetheless, they knocked on the door, identified themselves as police officers and indicated that they were investigating a report of domestic violence. The officers entered when the apartment door was opened by one of its occupants.
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> (3) When the officers were in the apartment, they saw the defendant, Kurzaj seated in the living room drinking from a beer bottle. She appeared to be intoxicated and was speaking in an agitated manner. The defendant Collier was sitting quietly in the nearby kitchen. Another tenant, Jim Walkten, entered the scene from the washroom area. In addition, there was present, from the police perspective, another unidentified female. However, Jewers, the superintendent, had advised them, on their arrival, that the persons in the apartment unit were in actual, lawful and peaceable possession.
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> (4) Constable Roach approached Kurzaj whom he determined was the female voice

that he had heard. He tried to get her to give him her name and other particulars as part of his inquiry. However, she was uncooperative and demanded that he leave the apartment as there was nothing amiss. Constable Lassaline took Walkten outside the apartment, leaving the door open, into the outside hallway. However, Walkten also demanded that the police should leave as there was nothing wrong. However, Constable Roach informed him that should he try to physically remove the police from the apartment they would charge him with "obstruction"as the police were not leaving until they were satisfied that all was in order.

(5) The defendant Kurzaj was becoming more agitated. She insisted that the police should leave. The police were adamant that they were not going to leave, despite the demands of the tenants, until and unless they were assured, at least in their minds, that nothing was wrong or would go wrong when they leave. Constable Roach then approached Collier and asked her for identification particulars. She cooperated and gave him the information that he requested and advised that she was leaving the apartment. Kurzaj became verbally abusive toward the police and the other occupants tried to calm her down but to no avail. She, Kurzaj, approached Constable Roach and tried unsuccessfully to close his notebook as he was writing. As a result, he cautioned her that her conduct could lead to her arrest. She subsequently requested him to arrest her. Constable Roach with the approval of Constable Lassaline arrested Kurzaj for a breach of the peace.

(6) The police arrested Kurzaj for a breach of the peace, inside her private dwelling house because she was angry at their presence inside the apartment and refused to calm down when requested to do so by her friends. In addition, they assessed that she was highly agitated, intoxicated, uncooperative and swearing. They also suspected that she was agitated prior to their arrival and her continuing persistence for them to leave was an incitement to violence. Further, she requested them to arrest her after she had attempted to close Constable Roach's notebook.

(7) Nonetheless, Kurzaj co-operated with the arrest and was handcuffed by Constable Roach. Collier, who is the common-law partner of Kurzaj, then advanced toward Constable Roach, and tried to pull Kurzaj away. Constable Lassaline then arrested Collier and attempted to handcuff her as she began to struggle. He took her outside the apartment and placed her up against the opposite wall of the outside hallway still struggling. Constable Roach, with Kurzaj in his control but kicking and screaming, tried to assist Constable Lassaline to subdue Collier. He was unable to do so but saw Constable Lassaline put Collier to the floor to handcuff her. All the time Kurzaj was kicking and struggling and on one occasion her foot came close to contacting the person of Constable Lassaline who was on the floor subduing Collier. Constable Lassaline was not aware of this action.

Issue

The fundamental issue here is whether the officers were in the lawful execution of their duty when

they arrested Kurzaj for a breach of the peace as that action forms the foundation for the subsequent arrest of Collier and the charges arising therefrom.

Analysis

Basically, it seems to me that the police have a duty to respond to calls alleging domestic violence and, as best as they can, carry out an investigation. Here, whether or not what they did was within their power is the fundamental issue. I conclude, from their testimonies, that they believed that apart from their general investigative authority under statute and common law there exists a protocol of zero tolerance concerning domestic violence complaints. Consequently, they were justified in remaining in the apartment and further, to arrest Kurzaj. Thus, this case is a consideration of the authority of a peace officer to arrest without warrant, in a private dwelling house, for a breach of the peace, an occupant who is in lawful and peaceable possession. It also brings into focus the tensions that exist between law and policy in executing the protocol of zero tolerance toward domestic violence.

Whether the defendants are guilty of the offences charged, depend, in this case, on whether they were under lawful arrest. There is no doubt that they were unco-operative and struggled and offered resistance to the officers when they were detained. However, there is no suggestion that the defendants used excessive force in their contact with the police. Here, it was Kurzaj's arrest that triggered all the subsequent incidents. Therefore, the issues turn upon its lawfulness.

The ***Criminal Code*** subsection 31(1) states:

> Every peace officer who witnesses a breach of the peace and every one who lawfully assists the peace officer is justified in arresting any person whom he finds committing the breach of the peace or who, on reasonable grounds, he believes is about to join in or renew the breach of the peace.

Here, the arrests occurred inside a dwelling house and were without warrants. Both Collier and Kurzaj were in lawful and peaceable possession of the apartment. The police were investigating a complaint of an alleged disturbance inside a private dwelling. This complaint was from a secondary source. However, I can reasonably infer from the evidence, and I do, that with a belief reinforced by the protocol and strategy for dealing with domestic violence complaints, the police felt that they had a duty to enter the residence and to question its occupants. This responsibility, as I determined from the evidence, in their view, necessitated the right to remain inside the residence until they received satisfactory responses. Thus, they were not going to retreat from the apartment, despite the clear commands by the lawful occupants for them to do so, until and unless they were reasonably satisfied that nothing had happened, was happening or will happen.

However, when they listened outside the closed door, the police did not hear anything that would lead them to believe that there was an existing danger or imminent danger to life or property. Further, when they entered the apartment, they did not see any physical disarray of the unit that could lead them to believe that a struggle or an actual confrontation had occurred before they arrived. In addition, they did not observe any injuries on any of the occupants that could reasonably lead them

to conclude that some one in the apartment was assaulted before they arrived. Additionally, on entry and at no time during their presence, did any occupant of the apartment make a complaint to them concerning any misconduct. Thus, on the evidence, they did not enter to effect an arrest and there was nothing occurring that would have prompted them to enter for the purpose of preserving or protecting life or property. They were entering to conduct an investigation and what they encountered inside the apartment were intoxicated tenants who were to some degree unhelpful, agitated and becoming more irritated by the police presence and the police refusal to leave the residence.

However, there should be no doubt that a police officer has a duty pertaining to a breach of the law. The ***Police Act,*** R.S.N.S. 1989 c.348 (as amended) s.15 (1) states:

> Each municipal police force and the chief officer and the officers of each municipal police force are charged with the enforcement of the penal provisions of all the laws of the Province and the municipality and any penal laws in force within the municipality except as otherwise directed by this Act or any other enactment or by the Solicitor General

There is no argument that the provisions of the ***Criminal Code*** are not in force within the Halifax Regional Municipality. In ***R v. Dedman*** [1985] 2 S.C.R.2, when referring to the common law duties of a police officer, Le Dain J. stated at paras. 64 and 65:

> 64 It has been held that at common law the principal duties of police officers are the preservation of the peace, the prevention of crime, and the protection of life and property . . .
>
> 65 The common law basis of police power has been derived from the nature and scope of police duty. Referring to the "powers associated with the [page33] duty", Ashworth J. in R. v. Waterfield, supra, at pp. 661-62, laid down the test for the existence of police powers at common law, as a reflection of police duties, as follows:
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> > In the judgment of this court it would be difficult, and in the present case it is unnecessary, to reduce within specific limits the general terms in which the duties of police constables have been expressed. In most cases it is probably more convenient to consider what the police constable was actually doing and in particular whether such conduct was prima facie an unlawful interference with a person's liberty or property. If so, it is then relevant to consider whether (a) such conduct falls within the general scope of any duty imposed by statute or recognised at common law and (b) whether such conduct, albeit within the general scope of such a duty, involved an unjustifiable use of powers

> associated with the duty. Thus, while it is no doubt right to say in general terms that police constables have a duty to prevent crime and a duty, when crime is committed, to bring the offender to justice, it is also clear from the decided cases that when the execution of these general duties involves interference with the person or property of a private person, the powers of constables are not unlimited. To cite only one example, in Davis v. Lisle, [1936] 2 All E.R. 213; [1936] 2 K.B. 434, it was held that even if a police officer had a right to enter a garage to make inquiries, he became a trespasser after the appellant had told him to leave the premises, and that he was not, therefore, acting thenceforward in the execution of his duty, with the result that the appellant could not be convicted of assaulting or obstructing him in the execution of his duty.

Further, referring to warrantless arrests in a dwelling house, Sopinka J. stated in ***R v. Feeney*** [1997] 2 S.C.R. 13 at para. 43:

> There is no question that the common law has always placed a high value on the security and privacy of the home. This emphasis was illustrated as early as the seventeenth century, as evidenced by Semayne's Case (1604), 5 Co. Rep. 91a, 77 E.R. 194, and has been illustrated more recently by cases such as Colet v. The Queen, [1981] 1 S.C.R. 2, which held that the police entered Colet's home, a rudimentary shelter, illegally since they did not have explicit authority to search for weapons, but only to seize them. Indeed, the existing legal protection of the security of the home was the basis for the dissenting opinion of La Forest J. in Landry, supra, which contained an extensive analysis of doctrine that concluded warrantless searches in dwelling houses were illegal; see also Graham Parker, "Developments in Criminal Law: The 1985-86 Term" (1987), 9 Sup. Ct. L. Rev. 247. Notwithstanding its prior importance, however, the legal status of the privacy of the home was significantly increased in importance with the advent of the Charter.

Thus, our courts have consistently protected the ancient principle as expressed in the ***Semayne's Case***, *supra.* , that a man's house is his castle and that no one may enter onto another's property unless authorized by statute, the common law or the owner's authority. Consequently, there should be no doubt that the powers of a police officer is not unlimited and if a police officer is unlawfully on private premises, the officer is not acting in the execution of his duty with respect to persons who are in lawful and peaceable possession. ***R. v. Thomas*** (1991), 67 C.C.C.(3d) 81 (Nfld. C.A.). Leave to

appeal to S.C.C. granted 71 C.C.C. (3d) vii, affirmed 78 C.C.C. (3d) 575.

In short, as put by Goodridge C.J.N., in ***Thomas***, *supra.* , at p.91:

> The police must, therefore, rely entirely upon a valid and unrevoked invitation to enter and remain in the house. The law is quite clear on this and there is no need to refer to many cases. Unless authorized by statute or the common law, a police officer may not enter the premises of another without the other's permission and must leave when that permission is revoked.

Further, on the exceptions to the sanctity of the home as expressed in cases such as ***Eccles v. Bourque***, [1975] 2 S.C.R.739, ***R. v. Landry***, [1986 1 S.C.R. 145, and ***Feeney***, *supra*. , and in the ***Criminal Code*** ss.529.3 and 529.4, the police must show that:

> (a) there were fugitives hiding in the premises,
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> (b) they were in hot pursuit of a suspect, and
>
> (c) there existed exigent circumstances indicative of imminent danger of loss of life or property of any of the occupants.

Therefore, in this case, in my opinion, the police presence and authority in the apartment, if any existed, must fall within the common law exceptions or be derived by invitation.

On the evidence that I accept, the police were relying on a third party report of an alleged threat. None of the occupants in the apartment had summoned the police. When on the scene, they acquired no personal knowledge of any misconduct**.** From their own assessment when outside the apartment, they did not, on the evidence, formulate the opinion that it was necessary to enter the apartment to prevent imminent bodily harm or death to any person inside. Further, on the evidence, they had no warrant to arrest someone whom they believed to be inside the apartment and neither were they in hot pursuit of someone. Also, there was no proof that there was any criminal evidence inside the apartment that had to be preserved from imminent loss or destruction. Thus, on the evidence that I accept, I find that the police were not relying on a statutory authorization or an exception to the common law.

Nonetheless, they entered the apartment and whether it was by the actual invitation of an occupant is not clear. However, given that they had knocked on the door and announced themselves and the purpose of their presence, it seems to me, that in these circumstances, in the absence of any evidence of a clear objection by any one of the occupants, the police, in my opinion, had an implied authority and tacit consent to enter the apartment. I therefore find that their entry into the apartment was by the tacit invitation of at least one of the occupants.

The police were not clear on who let them into the apartment and whether that person was authorized to do so. However, they had information from the building superintendent that there were four

occupants in the apartment. Two of the occupants, Walkten and his spouse were on the lease. Kurzaj and Collier, at a point in time, had their own unit in the building but with the knowledge of management were currently residing and would be residing with Walkten for an unspecified and undetermined future period. Thus, on the evidence that I accept, I find that Kurzaj and Collier were more than guests of Walkten and I conclude that all four occupants of the apartment were in lawful and peaceable possession at the time when the police entered.

On entry, the police were confronted with a conundrum. Kurzaj whose voice they had identified was unco-operative. She refused to give any information and immediately demanded that they leave the apartment. Walkten, the only male occupant, was also unco-operative. He too demanded that the police leave the apartment and advanced toward Roache with arms gesticulating. However, Roache told him, in no uncertain terms, that should he try physically to remove the police they would charge him with "obstruction." The police officers were adamant that they would not leave until someone told them something. They felt that they had a duty to investigate a complaint and that their investigation would not be completed unless the occupants behaved reasonably, co-operated and tell them something**.**

I do not doubt that the police acted in good faith when they entered the apartment. Even if they had an implied authority or tacit invitation to enter the apartment, in my opinion, the situation changed when Kurzaj and Walkten told them to leave. Afterwards, in my opinion, they could only remain in that apartment if they had some statutory authority or by virtue of the common law. Here, however, there is no evidence that they entered to make an arrest. Further, there is no evidence that they entered to preserve or to protect life or property. They had entered by invitation and wanted to conduct an investigation however that invitation was withdrawn by not only Walkten but also by Kurzaj. In my opinion, both Walkten and Kurzaj had the authority, by virtue of being in lawful and peaceable possession of the apartment, to revoke whatever invitation the police felt that they had. I find that they did revoke the police invitation to be present in the apartment.

However, the Crown argues that the police were present at the apartment to conduct an investigation and they should have been permitted to do so. This submission of the Crown appears to imply that because the occupants were intoxicated and being unco-operative they were impeding the police legitimate efforts. Therefore, the police had a duty to control the situation and to be given a reasonable opportunity to get to the root of the third party report. Thus, they were justified in arresting Kurzaj, who displayed the most hostility toward them, for a breach of the peace. This argument contends, by inference, that the police were witnessing Kurzaj causing a disturbance and, as a result, the public interest outweighed her private rights. They had to act to preserve the peace**.**

On the other hand, defence counsels allude that the police were the problem as their presence in the apartment was an irritant to the occupants. Counsels submit further that persons in the privacy and protection of their homes can, without fear of penal consequences, be intoxicated, can swear if they so desired and are not obliged to speak to the police. Here, according to counsels, the police could have left the apartment and could have made inquiries from those who allegedly reported that they had heard a disturbance. Further, the theory of the defence appears to be that the police abused their authority and had reacted subjectively and out of annoyance and in frustration with the occupants' lack of cooperation.

However, as put by Laskin C.J.C [as he then was] dissenting in ***R. v. Biron*** [1976] 2 S.C.R. 56, 30 C.R.N.S.109, 23 C.C.C.(2d) 513, at para. 57:

> By no stretch of the imagination can either s. 30 or s.31 [***Criminal Code***] be turned into a general power of either arrest or justification in respect of any criminal offence on the theory that all offences under the Criminal Code constitute breaches of the peace. This would eliminate at one swoop, and by a side wind at that, any protection that an accused would have against any consequential charges if he was illegally arrested.

Further, it would appear that ***Criminal Code***, subsection 31(1) does not create the offence of breach of the peace. The case of ***R. v. Lefebvre*** (1982) 1 C.C.C. (3d) 241, affirmed 15 C.C.C. (3d) 503 (B.C. Co.Ct.) decided that "the common law offence of breach of the peace is not incorporated into the criminal statutes of Canada." I also refer to the ***Criminal Code***, subsection 9(a) that essentially states that no one shall be convicted of an offence at common law. In ***R. v.. Januska*** (1996), 106 C.C.C. (3d) 183 (Ont. Gen. Div.), Fleury J., concerning s.31(1), stated at p.186:

> It simply provides a defence to anyone arresting someone who has committed a breach of the peace: "there is no offence in Canada of breach of the peace" (Annotation in *Martin's Criminal Code*, s.31(1). Because there is no offence of committing a breach of the peace in Canada, it stands to reason that any officer wishing to arrest an individual pursuant to s.31(1) must be sure of his facts

Additionally, there appears to be the potential for abuse inherent in a police officer exercising the right to arrest under the breach of the peace provisions. In his analysis of some palpable examples with respect to ***Criminal Code*** subsection 31 (1), Wetmore Co.Ct.J., in ***Lefebvre***, *supra.* , observed, which I apply and adopt, at pp.245-246:

> Much of this concern, however, lies in a public and to a large degree police misconception of what constitutes a breach of the peace giving a right to arrest at common law. In theory any criminal offence is a breach of the peace, but that generality to the common law cannot apply in Canada because of s.8 [now s.9] of the Code. The difficult line is between those matters of annoyance and nuisance in a public sense and those more serious, but falling short of a riot . . . All of which presupposes the police officer is aware of what a "breach of the peace" actually is and is not confusing it with mere annoyance or disturbance of neighbours

Before the police were asked to leave and the tacit invitation to enter was revoked there is no argument that any procedure took place that was unlawfully obstructed**.** On the evidence**,** none of the statutory or common law exceptions apply. Whatever permission they had to be in the apartment was

revoked. In my opinion**,** and the authorities are clear, the police could not insist that they could remain inside a private dwelling house after their invitation to enter is revoked by an occupier who is in lawful and peaceable possession. Here, after the revocation of the permission to enter they had no authority to remain in the apartment.

Even if I were to accept, as suggested by the Crown, that Walkten was the only person who could order the police to leave and that after Roache spoke to him the police then had his tacit permission to stay, I, however, recall that Walkten was threatened with arrest if he insisted that the police leave or attempted to remove them physically. Consequently, I also note and adopt what was expressed by Le Dain J., in ***Dedman,*** *supra.* , at para. 58:

> Because the intimidating nature of police action and uncertainty as to the extent of police powers, compliance in such circumstances cannot be regarded as voluntary in any meaningful way. The possible criminal liability or failure to comply constitutes effective compulsion or coercion.

I therefore find and conclude, on the evidence that I accept, that Walkten did not rescind the demand that the police leave the apartment but that he was uncertain as to the extent of the police powers. That being the case, the police from the time they were told to leave thenceforward became trespassers. Accordingly, they were thenceforward not in the execution of their duty.

Conclusions

I have found that the police were in the apartment by invitation and that the invitation was revoked by tenants who were in lawful and peaceable possession. Further, as the police had no common law nor statutory authority to enter or to remain in the apartment, they thenceforth became trespassers and were not in the execution of their duty. The defendants, at all material times, were in lawful and peaceable possession of the apartment and on the evidence that I accept, Kurzaj's conduct, inside her apartment was not an arrestable conduct. In my opinion, the fact that she was swearing at the police, was agitated by their presence and intoxicated, all within her private dwelling , and without more, was not enough to justify her arrest for breach of the peace. ***R. v. Stevens*** (1976), 33 C.C.C. (2d) 429, 18 N.S.R. 96 (N.S.S.C.A.D.), ***R. v. Zwicker*** (1937), 69 C.C.C. 301, [1938] 1 D.L.R. 461 (N.S.Co. Ct.). There was no evidence to show that any neighbours were in fact disturbed. Thus, in the circumstances of this case, I adopt and apply the words expressed by Fleury J., in ***R. v.. Januska*** (1996), 106 C.C.C. (3d) 183 (Ont. Gen. Div.), at p.187:

> It should not be open to the police officer simply to arrest for breach of the peace an individual who demands even vociferously to be told what he has done wrong in the eyes of the law.

Moreover, it was evident from their testimonies that the police misunderstood what constituted 'criminal' breach of the peace. I find that they were certainly annoyed and frustrated. However, they stated quite candidly that if she had calmed down and let them get some information, events would not have unfolded as it did. Thus, I do not find, on the evidence that I accept, that Kurzaj was

committing a breach of the peace or any criminal offence in the presence of the arresting officer.

Therefore, in my opinion, Kurzaj's arrest, in her dwelling house, for a breach of the peace was an unlawful interference with her liberty. In my opinion, there was no authority to arrest her. Instead of retreating from the apartment as demanded by the occupants, and making further inquires from other potential witnesses or to observe matters from outside the apartment to ensure that nothing was wrong, the police chose to confront the occupants, inside their own private residence, in an authoritarian and domineering manner.

There is no contention that as a legitimate societal goal it is beneficial to curtail the incidents of reported domestic violence by prompt police investigations and arrests that will preserve life and property. Nonetheless, in the campaign to combat domestic violence, the courts, in my opinion, must strike a reasonable balance between protected private rights and policy initiatives and the legal and constitutional safeguards that guarantee those rights. Without these safeguards, as aptly put by Cory J., in ***R. v. Storrey***, [1990] 1 S.C.R. 241, " even the most democratic society could all too easily fall prey to the abuses and excesses of a police state." Thus, here, the kind of police conduct, as disclosed by the evidence that I accept, in my opinion, ought not to be condoned. Accordingly, when Kurzaj struggled as she was being restrained by Constable Roach, on the authorities cited, it cannot be held that she assaulted or obstructed a peace officer while engaged in the lawful execution of his duty.

I am not satisfied, on the evidence that I accept, that Kurzaj's kicking about and out when under restraint by Constable Roache, in the outside hallway, was a deliberate attempt to strike Constable Lassaline with her foot. On the evidence, her kicking was not only consistent with kicking out in the direction where Constable Lassaline was located but the evidence was such that it also was not inconsistent with any other rational conclusion than that she intended to and wanted to kick him. The hallway was narrow and there were lots of physical activity ongoing. Thus, in my opinion, it would be unsafe to conclude beyond a reasonable doubt that she assaulted Constable Lassaline, by attempting to kick him, while he was in the lawful execution of his duty. The Crown has conceded that there was no evidence to support the charge of obstructing Constable Lassaline, if at all.

On the same above stated principles of law, at the time when Collier attempted to prevent Kurzaj from being held and controlled by Constable Roache, also inside the dwelling house, he was not in the lawful execution of his duty. He was a trespasser with no legal authority to detain or to exercise control over her friend inside their apartment. Further, there is no argument that she used excessive force in her attempt to free her friend. Therefore, in my opinion, it cannot be said that she was obstructing a peace officer while he was engaged in the lawful execution of his duty.

Accordingly, when Constable Lassaline held her, as she attempted to pull Kurzaj away from Constable Roache who was not then in the lawful execution of his duty, her arrest for obstructing Constable Roach, in my opinion, on the analysis that I have made, cannot stand. Further, because Constable Lassaline then had no lawful authority of arrest, inside her dwelling house, her subsequent struggling and kicking when being restrained by him, again in my opinion, cannot be considered as assaulting or resisting a peace officer while engaged in the lawful execution of his duty.

Therefore, on the authorities cited and the analysis that I have made**,** I find and conclude that I am

not satisfied that the Crown has proved beyond a reasonable doubt all the essential elements of the offences charged. Consequently, I find the defendants, Agnieszka Kurzaj and Bonnie Collier, not guilty of all the offences of which they were charged on the Information that was tried before me. Accordingly, acquittals shall be entered on the record.