

Sutherland v. HMTQ, 2002 NWTSC 41

Date: 20020516
Docket: S-1-CR2002000003

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

WADE SUTHERLAND

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

Summary conviction appeal on a charge of wilful obstruction of police officers in the execution of their duty.

REASONS FOR JUDGMENT OF THE HONOURABLE JUSTICE J.Z. VERTES

Heard at Yellowknife, Northwest Territories
on April 18, 2002

Reasons Filed: May 16, 2002

Counsel for the Appellant: Scott Duke

Counsel for the Respondent: Ari Slatkoff

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REASONS FOR JUDGMENT

[1] This is a summary conviction appeal on a charge of wilful obstruction of police officers in the execution of their duty.

[2] The appellant and three others were charged with offences arising out of the same event. All were convicted. The appellant, however, appeals his conviction on one count that read as follows:

On or about the 15th day of August 2001, at or near the City of Yellowknife in the Northwest Territories, did wilfully obstruct peace officers of the Royal Canadian Mounted Police engaged in the execution of their duty, to wit the execution of a lawful arrest contrary to Section 129(a) of the Criminal Code.

[3] The evidence at trial related, basically, the story of a drinking party that got out of hand. The appellant and others were in a hotel room late at night. The hotel desk clerk received a complaint about noise in the room. He told the people to leave. They did not. He subsequently received another complaint, this time that people in the room were fighting. This was around 3:30 a.m. He called the police. When the police officers

arrived, they encountered an individual identified as Langan in the parking lot. It appeared to the officers that Langan was the one who rented the hotel room and he told the officers that a party had gotten out of hand and he was in need of assistance. Inside the hotel, the clerk told the officers that management wanted everyone out of the room.

[4] The officers and Langan then proceeded to the room. When it was opened, Langan went inside and then locked the door. He would not let the police in. One of the officers then went back to the front desk to obtain a pass key. During that period another officer could hear fighting inside the room. The police were unable to open the door with the pass key but the door was eventually opened by someone from inside.

[5] There were three officers on the scene, Constables Fehr, Legge and Myers. Once the door was opened, Fehr told everyone to leave. Langan stepped forward and told the police they could not come in to the room. Langan shoved Fehr. Legge then told Langan he was under arrest. Langan became belligerent and Legge pulled him into the hallway and eventually managed to subdue him and place handcuffs on him. During this time the rest of the people in the room became agitated and tried to rush out of the room. Myers stood in the doorway to hold them back. The appellant, in particular, became highly agitated and aggressive. At that point Fehr dispensed pepper spray on the group in the doorway including the appellant. Then Myers directed the appellant into the hallway where he was subdued and handcuffed.

[6] The trial judge held that the police were there for the lawful purpose of investigating possible criminal activity and thus engaged in a proper arrest of Langan. The appellant, who was described as highly intoxicated, wanted to interfere with that arrest. Thus he was guilty of obstruction.

[7] The appeal is brought on two grounds: (1) that the police officers were not in the execution of their duty at the material time; (2) that the appellant's actions did not amount to obstruction.

1. Execution of Duty:

[8] The appellant submits that at the material time the officers were not engaged in the execution of any duty as police officers per se but merely acting as agents of the hotel management in the removal of unwanted guests. It is argued that they were on the premises merely to break up a noisy party and that there was nothing outside of the hotel

manager's request to remove the people that would create a situation where a police duty was engaged.

[9] The *Hotel Keepers Act*, R.S.N.W.T. 1988, c. H-5, provides in s.9 that a hotel keeper may require any person whom the hotel keeper considers undesirable to leave the hotel and, if that person does not leave, the hotel keeper may remove that person from the premises. The statute, however, is silent as to any power or obligation to enlist the aid of the police to enforce this remedy and there are no provisions providing a power of arrest or for an offence should the person refuse to leave. Therefore, in my opinion, if in fact all that could be said is that the police were acting as agents of the hotel management in effecting the removal of undesirable guests, then I would have to conclude that the officers were not engaged in the execution of their duty as police officers. In this respect, I agree with the observation of Ross P.C.J. in *R. v. Fraser*, [2002] N.S.J. No. 169 (Prov. Ct.), that obstruction of a police officer "in execution of his duty" (to quote s.129(a) of the *Criminal Code*) must be obstruction of the police officer *qua* police officer and not merely obstruction of a person who happens to be a police officer or a police officer who is not exercising a power given to him or her in that particular capacity.

[10] In this case, however, there is evidence supporting the trial judge's conclusion that the police were engaged in the execution of a police duty, specifically the investigation of the indictable offence of mischief or other crimes. They were not there to simply do what they were asked to do by the hotel management. The officers not only received a complaint from hotel management but they also received a request for assistance initially from Langan himself. When they were outside of the room the officers heard what sounded like fighting. In these circumstances the officers had a public duty to investigate and to preserve the peace.

[11] The appellant further submits that the police had no authority to enter the hotel room. It is correct to say that one who rents a hotel room has a considerable expectation of privacy and there are limits on the apparent authority of the hotel keeper to consent to police entry of a hotel room for investigative purposes: see *R. v. Wong*, [1990] 3 S.C.R. 36; *R. v. Mercer* (1992), 70 C.C.C. (3d)180 (Ont.C.A.), leave to appeal to S.C.C. refused 74 C.C.C. (3d) vi. But here the door was opened from the inside. The officers, as found by the trial judge, did no more than stand in the threshold of the room. They made no step to enter the actual room. It was when Langan confronted the officers, and pushed Fehr, that he was placed under arrest.

[12] Section 495(1)(a) of the *Criminal Code* authorizes a peace officer to arrest without warrant a person who has committed an indictable offence or who the officer believes “on reasonable grounds” has committed an indictable offence. Langan’s push or shove of Fehr was the offence of assault. The officers also had reasonable grounds to believe that the offence of mischief had been committed. Thus the officers had the authority to arrest Langan.

[13] It was the arrest of Langan that resulted in the officers being in the execution of their duty at the material time and within the context of this charge. This first ground therefore fails.

2. No Act of Obstruction:

[14] The appellant’s second ground is simply that there was no act of obstruction. It is conceded that the appellant may have had the intent and desire to interfere with the arrest of Langan, but, it is argued, he did not do anything that did interfere with it. There was no act in conjunction with that intent that had the effect of obstructing the arrest.

[15] The ingredients of the offence of obstructing a peace officer in the execution of his or her duty are: (a) that there was an obstructing of an officer; (b) that the obstructing affected the officer in the execution of a duty that he or she was then executing; and (c) that the person obstructing did so wilfully. The *mens rea* of the offence is the general intent to obstruct; the *actus reus* is an act of obstruction that affects the officer, to any degree, in the execution of a duty: see *R. v. Gunn* (1997), 113 C.C.C. (3d) 174 (Alta.C.A.), leave to appeal to S.C.C. refused [1997] S.C.C.A. No. 175; *R. v. Tortolano et al* (1975), 28 C.C.C. (2d) 562 (Ont.C.A.); *R. v. Westlie* (1971), 2 C.C.C. (2d) 315 (B.C.C.A.).

[16] In this case the charge specified that the appellant wilfully obstructed police *officers* engaged in the execution of their duty and particularized that duty as the execution of a *lawful arrest*. That can only mean the arrest of Langan by Cst. Legge. Legge, however, testified that no one came into contact with him during his arrest of Langan. The appellant was held back by Cst. Myers and then pepper-sprayed by Cst. Fehr. Myers’ evidence was that she was not engaged in the actual arrest of Langan. Her objective was to prevent anyone still in the room from getting outside and interfering in the arrest. In this she was successful. No one did interfere. Thus, submits appellant’s counsel, even if the appellant had the *mens rea* necessary for conviction, there was no *actus reus*.

[17] Crown counsel responds that in effect all three officers were engaged in the arrest of Langan albeit carrying out different roles. Legge and Fehr did the actual arrest while Myers controlled the others. Crown counsel argues that the purpose of s.129(a) is to prevent people from interfering with the police doing their job. Here, in effect, the job was the arrest and Myers' role in preventing anyone from interfering in that was part and parcel of the job. When the appellant became belligerent, and threatened to escalate the situation, he compelled both Myers and Fehr to take action to hold him back. Thus his acts, while not directly affecting the arrest, obstructed the officers in the orderly execution of their duty by distracting one or both of Myers and Fehr.

[18] This entire argument revolves around the question of whether one can break down the arrest process into divisions of labour, and specifically whether what Cst. Myers did, and did successfully, can be considered part of the arrest process, and, if so, whether the appellant's conduct constituted obstruction.

[19] In my opinion it would be artificial to break down the arrest process into clearly separable parts. In the situation in which these three officers found themselves, it was only reasonable and prudent to have one officer specifically assigned to the task of keeping everyone else away from the officer or officers who are engaged in the physical arrest. Cst. Myers was carrying out a necessary part of the duty being executed.

[20] The evidence was that during the arrest of Langan the group of people still inside the room were becoming emboldened by Langan's resistance and wanted to get out into the hallway. The appellant in particular was described as being quite angry and aggressive and yelling at the officers who were subduing Langan. Pepper spray was used to disable him and the others. These acts were more than a trivial nuisance. The appellant's behaviour was aggressive and potentially dangerous. It compelled the officers to take preventative measures. In my opinion the actions of the appellant constituted obstruction. I therefore reject the second ground of appeal.

[21] The test is whether there has been an error of law or whether the verdict is one that a properly instructed trier of fact, acting judicially, could not reasonably have rendered. That test, in both its aspects, has not been met in this case. The appeal is dismissed.

J.Z. Vertes
J.S.C.

Dated this 16th day of May, 2002.

Counsel for the Appellant: Scott Duke

Counsel for the Respondent: Ari Slatkoff

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