

ONTARIO COURT OF JUSTICE

CITATION: R. v. FARRELL, MARIA
DATE: 2014 DECEMBER 16

COURT FILE No.: CITY OF ORILLIA #13-0543

B E T W E E N :

HER MAJESTY THE QUEEN

— AND —

MARIA FARRELL

Before Justice W.G. Beatty
Heard on November 7th, 2014,
Reasons for Judgment released on December 16, 2014

M. Villamil counsel for the Crown
A. McLeod counsel for the defend-
ant, Maria Farrell

BEATTY, J.:

- 1) Ms. Farrell is charged with obstructing and assaulting Sergeant Russell Watson of the OPP on April 2, 2013.
- 2) Defence counsel admits the date, jurisdiction and identity of the accused, and that her utterances during the incident and following were voluntary. She also admits that Sergeant Watson was engaged in his lawful duties when he arrived on the scene in response to a report that another female was being assaulted.
- 3) Shortly after 2:00 A.M. on April 2, 2013, William Wright was waiting for fares in his taxi near the West 22 Bar. He saw a male holding a female on the ground in the Petro-Can parking lot across the street.

- 4) The male told another male and female to take off and left himself. Mr. Wright called 911 and shortly thereafter a police officer arrived, then another from a different direction. When he saw 4-5 police officers there, he left.
- 5) The woman who had been assaulted was still on the ground screaming. He returned to provide a statement to police.
- 6) Sergeant Watson testified that he received a radio call at the detachment at 2:15 A.M. that a female was being assaulted about a block away. He could hear screams at the detachment and quickly drove to the Petro-Can at West and Colborne Streets, arriving in less than a minute. He was the first police officer to arrive with P.C. Dongelmans arriving shortly thereafter.
- 7) There were two females in the parking lot yelling and he went to speak to them. Pauline Sherwood was yelling that she had been jumped. She had been drinking, was agitated and did not want to co-operate. However, she said that a female and two men with short brown hair had assaulted her. He got her calmed down and she had a cigarette on the Colborne Street sidewalk, about 15 feet away.
- 8) P.C. Dongelmans was speaking to the defendant, some distance away until he received an emergency assistance call for help with a prisoner at the detachment. He left quickly and Sergeant Watson continued speaking with Ms. Sherwood.
- 9) Sergeant Watson said that he continued talking to Ms. Sherwood and Ms. Farrell approached and stood between him and Ms. Sherwood yelling "Do your job!" He told her to move aside and he would speak to her shortly but she appeared agitated and upset and non-responsive to his direction to move away. He cautioned her that she would be charged with obstruct but she continued yelling and grabbed the right lapel of his patrol jacket, which was open.
- 10) He knocked her hand off his jacket, pushed her away and advised her that she was under arrest for assault police. He grabbed her arm and she tried to pull away, so he took her to the ground. She continued to struggle and pull away, saying: "Why am I under arrest?" She pulled her right arm under her chest saying: "Why am I under arrest? I didn't do anything", while trying to pull her left arm away as well.
- 11) Officers Catterall, Higgs and Taylor arrived and she struggled with all of them and tried to kick Stg. Watson on the legs. He struck her on the left temple to distract her and free her hands for handcuffs and was able to get her hands restrained behind her back.

- 12) While on the ground, Ms. Farrell complained that she had knee pain and her leg was broken. P.C. Taylor helped her bring her to her feet and she was searched by P.C. McLaughlin before being assisted to a police cruiser. She was driven to the hospital and Sergeant Watson was later advised that she had a broken tibia and required surgery. When he spoke to her later at the hospital, he said that she was uncooperative when he asked her name and address. She said "You should say less and listen more." He said that she had been drinking but he was uncertain how much or if she had been in the bar. He could not recall if his opinion was based upon her demeanor or alcohol on her breath.
- 13) The SIU was notified and an investigation commenced because of the injury to Ms. Farrell.
- 14) P.C. Catterall said that he responded to a radio call and arrived at the Petro-Can gas bar at 2:23 A.M. Upon arrival, he saw Sgt. Watson struggling with the Defendant, who was falling backwards. Sgt. Watson fell on top of her and told her to stop resisting and put her hands behind her back. He said that she did not cooperate and was "struggling, fighting basically" and put her hands up to prevent control of her.
- 15) At one point, she put one arm underneath herself and Sgt. Watson did a "hammer strike" – a punch to the face with the side of his hand and P.C. Catterall was able to get control of one arm. They rolled her over and handcuffed her hands behind her. P.C. Taylor and P.C. Higgs arrived and assisted. Ms. Farrell complained of knee pain and that she had a broken leg while still on the ground.
- 16) In cross-examination, he acknowledged Ms. Farrell's hands were in a defensive stance when Sgt. Watson struck her.
- 17) P.C. Dongelmans testified that he was at the detachment with Sgt. Watson and they left for the scene in separate vehicles. Sgt. Watson arrived just before him at 2:20 A.M. They located Ms. Sherwood and Ms. Farrell on the sidewalk in front of the Petro-Can and both appeared intoxicated and very animated. Ms. Sherwood was screaming. Sgt. Watson attended to her and Ms. Farrell was approaching him while he was trying to interview Ms. Sherwood.
- 18) P.C. Dongelmans tried to get Ms. Farrell away and she was very uncooperative. She would not tell him her name and was trying to yell at Sgt. Watson who is behind P.C. Dongelmans, about 5-10 metres. He could not recall what she was yelling and he tried his best to keep in front of her and separated from Sgt. Watson. At 2:22 A.M. he received a radio call for an emergency at the detachment and left immediately upon getting permission from Sgt. Watson.

- 19) At 2:29 A.M. he received a radio call for assistance from Sgt. Watson and quickly returned to the scene. He saw several officers dealing with Ms. Sherwood and several with Ms. Farrell at a cruiser in the parking lot. He did not find Sgt. Watson right away and matters seemed to be under control. When Sgt. Watson came out of the gas station building he told P.C. Dongelmans that Ms. Farrell was under arrest now that she had "taken a poke" at him which he understood meant hitting him.
- 20) Ms. Sherwood said that she had been assaulted by two men and a woman who had short brown hair, which did not describe Ms. Farrell. He patrolled the area for suspects until 4:26 A.M., when he was asked by Sgt. Watson to attend the hospital and supervise, as there was an SIU investigation of the event.
- 21) In-cross-examination he described Ms. Farrell's demeanor when he first arrived at the scene as very animated, very argumentative and not following direction. He agreed with counsel's suggestion that it was possible that she was "just pissed off". She was pacing around 5-10 feet from Sgt. Watson who was not at any risk.
- 22) P.C. Milligan testified that he arrived with P.C. Tozar at 2:30 A.M. in response to Sgt. Watson's radio call for assistance. Ms. Farrell was already under arrest and was put in his cruiser. He said that he left to take her to the hospital at 2:40 A.M. She was extremely upset and said that she was injured, had pain in her left knee and leg and that the police were not careful in moving her around.
- 23) P.C. McLaughlin said that she drove P.C. Catterall, her training officer, to the scene, arriving at 2:23 A.M. at the Petro-Can station. She saw Sgt. Watson on the ground trying to arrest Ms. Farrell who was resisting. She could not recall what they were saying, if anything. P.C. McLaughlin ran to Ms. Sherwood. P.C.'s Catterall, Higgs and Taylor were assisting Sgt. Watson. She had her back to them while dealing with Ms. Sherwood and can't recall what was being said. Once Ms. Farrell was handcuffed and taken to P.C. Milligan's cruiser, she was asked to search Ms. Farrell. She said that Ms. Farrell was very upset and rude to her, although she did not document that in her notes. She said that she saw Ms. Farrell swinging her arms and fighting with Sgt. Watson for only a couple of seconds before she attended to Ms. Sherwood.
- 24) P.C. DeVroom said that upon receiving the initial call of an assault on a female at 2:14 A.M., he did not go to the scene but patrolled the area for suspects. He attended the Tim Horton's up the street and spoke to the employ-

ees who said that the suspects possibly were running east bound on Colborne Street and Elgin Street. He did not find anyone.

- 25) At 2:22 A.M. he responded to a call from Sgt. Watson for assistance and arrived at 2:23 A.M. He saw multiple police officers detaining a female on the ground and she was screaming, twisting and resisting Sgt. Watson, who was on top of her. She was not yet handcuffed. A second female, later identified as Pauline Sherwood, was about 10 feet away and was obviously upset and trying to become involved in the arrest. He could not recall what Ms. Farrell or Sgt. Watson was saying. She was on her stomach and turning to look up. He agreed with defence counsel that Ms. Farrell was possibly screaming in pain from a broken leg.
- 26) Ms. Farrell testified that she had worked all day at Tim Horton's nearby. When she got off work at 8:30 P.M. she met a friend, an older female, in the parking lot whom she helped with her taxes and cleaning. The friend was anxious about a tax refund and Ms. Farrell reassured her. Ms. Farrell said that she was stressed herself after being robbed two days earlier. She went with her friend to her apartment and about 11:00 P.M. went to the West 22 Bar together where she had two beers and her friend bought her a submarine sandwich as she had not eaten all day. At about 2 A.M. they left on foot.
- 27) Her friend wanted her to go to her apartment but first they headed to the Mac's Convenience Store for cigarettes and snacks. She heard a woman screaming and ran full speed behind the store. She saw a blond male punch a female in the face and another female give her an uppercut. The two males and one female assailants ran away. She recognized the woman on the ground as someone she had worked with at another Tim Horton's a few years earlier.
- 28) She saw a smashed phone on the ground and handed it to her. She said that the woman's adrenaline was really high and she was holding her face and out of control. She could not get her to talk or stand still. Ms. Farrell brought her out to West Street where she sat on the ground. When Sgt. Watson arrived, she tried to describe the three assailants and pointed the direction they ran away.
- 29) She said that Sgt. Watson was very aggressive and told her to "shut the fuck up". She took his name and badge number. As she stepped away, Sgt. Watson kicked her to the side, a karate kick that snapped her leg. She denies that Sgt. Watson told her to step back or that she grabbed him. She hit the ground head first, then turned and told Sgt. Watson "You broke my leg". Sgt. Watson then jumped on her and punched her on the left side of her face. She turned face down with both fists under her and Sgt. Watson kept kneeing her in the back and pulling on her left arm. She said "You are going to break my

arm” and he responded “Stop resisting, you are under arrest.” Pauline Sherwood was screaming “she had nothing to do with this.”

30) Ms. Farrell said that the other police officers were good to her. They helped her to the cruiser with her leg dangling. She said that she was screaming in great pain asking to be taken to the hospital. She had injuries to her neck and back, a crushed knee and required two operations to repair her tibia with a plate and seven screws. She had a knee replacement and lost a back left tooth from being punched. She has numbness in both sides of her arms from banging her head on the pavement. She provided photographs of her injuries, Exhibits 1A-K, which showed the damage to her leg and knee and extensive bruising to her legs, arms and left eye. When appearing in court, she walked with difficulty, leaning heavily on a cane. She said that she weighed 140 lbs. at the time of these events.

31) Ms. Farrell said that she was trying to give Sgt. Watson a description of the three assailants and tell him the direction they fled. Ms. Sherwood was hysterical and was screaming and crying. She acknowledged that she can be loud and agitated and was pacing back and forth. When Sgt. Watson told her to “Shut the fuck up” she thought he was rude and aggressive and wanted his name and badge number. She saw his name plate and said “Oh, Watson!” and stepped to the side. She said that she tried to describe “the blond guy and dark haired guy and the girl” who assaulted Ms. Sherwood.

32) For the following reasons I find as follows:

- 1) Ms. Farrell finished her day of work at Tim Horton’s and put her coat over her uniform.
- 2) She left with her older female friend to her apartment to help her with her finances and went to the West 22 Bar with her for a sandwich and two beers.
- 3) She left the bar at 2 A.M. with her friend to the Mac’s Convenience Store. She saw two males and a female assault another female. They ran when she approached and she helped the witness, Pauline Sherwood, to the Petro-Can parking lot until the police arrived shortly thereafter. The above is uncontested and the assault on Ms. Sherwood was corroborated by the taxi driver, William Wright, who called 911.
- 4) Sgt. Watson responded quickly and arrived immediately before P.C. Dongelmans. P.C. Dongelmans had to leave to assist with an emergency at the detachment and when he returned, Ms. Farrell was already under arrest and at the cruiser.

- 5) The times of attendance by P.C. Catterall, P.C. McLaughlin and P.C. DeVroom may not be relied upon to the minute but all arrived to see Sgt. Watson and Ms. Farrell struggling on the ground. P.C. Catterall said he saw Ms. Farrell falling backwards and Sgt. Watson fell on top of her. He saw a sweep or karate kick take her legs from under her.
- 6) Ms. Farrell was acting as a good Samaritan who went to the assistance of Pauline Sherwood who was being assaulted by three others. She had no criminal record and wanted to assist Sgt. Watson in identifying the assailants.
- 7) Ms. Farrell acknowledges that she speaks loudly and was animated and persistent with Sgt. Watson. Sgt. Watson's demeanor on the witness stand was curt and somewhat aggressive. Although his attitude could be caused by concern over an ongoing SIU investigation, it is also indicative of a controlling nature. Ms. Sherwood was hysterical. Sgt. Watson was alone and the scene was chaotic. A reasonable inference is that Ms. Farrell was telling the truth when she said that he told her to "Shut the fuck up". He responded in cross-examination, "I don't believe I said" that rather than denying it.
- 8) Sgt. Watson provided no explanation as to how Ms. Farrell's tibia was broken, or indeed, the reasons for the bruises on her legs, and arms and the loss of a tooth. His notes did not record the "hammer strike" to her left eye which was basically a sucker punch. Only P.C. Catterall saw the blow. Sgt. Watson testified that she grabbed his right lapel, although his notes indicated his left lapel. His recollection of events is suspect.
- 9) Ms. Farrell testified that she fell on her face after being kicked and tried to protect herself by putting her fists under herself. The fall would explain the crushing injury to her knee and banging her head. Sgt. Watson fell on top of her. She weighed 140 lbs at the time and the Sgt. is a large and powerfully built man. There is no doubt that she would be in pain from multiple injuries and trying to cover her face from further damage. P.C. DeVroom acknowledges that she may have been struggling and screaming in pain.
- 10) Had Ms. Farrell grabbed Sgt. Watson's lapel, which I do not find, her intention was to have him focus on finding the people who assaulted Ms. Sherwood. She said "Do your job." If she did

touch him, the assault would be of such minimal consequences as to not attract criminal liability.

- 11) The allegations that Ms. Farrell tried to kick Sgt. Watson's legs is not supported by the evidence. He suffered no injury and her injuries were catastrophic. She fell on her face and would be unable to kick at his legs on the ground. Further, P.C. Cotteroll said he saw Ms. Farrell falling backwards and Sgt. Watson fell on top of her. Again, she would be unable to kick Sgt. Watson in the leg.
- 12) Ms. Farrell showed no intent to obstruct Sgt. Watson in his investigation. Her excitement and zeal may have been distracting for Sgt. Watson who was trying to deal with a hysterical and uncooperative Pauline Sherwood but she intended to assist the investigation.
- 13) Police officers are trained and experienced in handling people who may be intoxicated, drug addicted, mentally ill, armed or violent. They apply their psychological skills and the minimum of force in maintaining the peace and protecting the public. That did not happen in this case. The burden lies with the Crown to prove all the elements of the offence beyond a reasonable doubt. The defendant has raised a reasonable doubt as to the necessary intent for each of these charges and they must be dismissed.

Released: December 16, 2014.

Signed: "Justice W. G. Beatty"