Unlawful Entry but Lawful Detainment: Court Awards Damages for Warrantless Search

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At 4 in the morning, Winnipeg Police receive a 911 call regarding a potential break and enter while the homeowner was thought to be away. A few minutes later, the homeowner was arrested and placed in a police cruiser, while the police returned to her suite to perform a safety check and complete their investigation.

These were the facts of *Ironstand v. The City of Winnipeg et al* (*Ironstand*), in which the trial judge found that although the entry of the police officers into Ms. Ironstand's suite was not justifiable or reasonably necessary, they acted reasonably and proportionally in forcibly detaining and removing her from the suite to properly and safely complete their search. The trial judge awarded Ms. Ironstand $3,000. The decision was appealed by the plaintiff on damages and the Manitoba Court of Appeal recently upheld the decision and damages assessment of the trial judge.

Unlawful Entry

The decision in *Ironstand* provides a useful reminder of the dangers of becoming a "Monday morning quarterback", as described by Justice Cromwell, when courts assess the way in which a warrantless search was conducted and balance the rights of suspects with the requirements of effective law enforcement. While police do not have carte blanche to enter a person's home, they must be allowed a certain amount of latitude in the manner in which they decide to enter premises.

Specifically, determining whether officers' conduct when performing a search was justified requires taking into account the unpredictability of the situation they encounter, coupled with the realization that volatile circumstances require them to make quick decisions. Officers are expected to act reasonably in the circumstances, on the basis of what they know or should reasonably have known at the time.

Applied to Ms. Ironstand's case, the court recognized that the police were called to respond to a potential violent crime. A 911 caller had reported sounds of someone being punched, lots of banging, and there being multiple people in a suite while the homeowner was away. The court was critical, however, that on arrival the officers did not scrutinize the information they had received, given that its source turned out to be an intoxicated and uncooperative neighbour who had called 911. They also did not

consider that there were no signs of a break-in or violence, nor, despite Ms. Ironstand's anger on opening the door, that she did not avoid the police and did not appear to be injured. They further did not ask her who she was or what was going on, and when she told them she was the resident and had just returned from Saskatchewan, they did not pause to assess that information or ask if anything was wrong inside. The court held that, despite their good intentions, these circumstances did not support the conclusion that the officers' entry into the suite was justifiable or reasonably necessary.

Lawful Detainment

Despite the unlawful entry, the court nevertheless held that the officers acted reasonably and proportionally in forcibly detaining and removing Ms. Ironstand from her suite to properly and safely complete the safety check they believed they had to do. The court accepted that Ms. Ironstand remained irate, belligerent, loud and obstructive while the police were in the suite. The police simply wanted to ensure that everyone was safe, but Ms. Ironstand's behaviour was preventing that from happening in a sensible and reasonably calm way. The court recognized that these types of situations can turn violent quickly, and that the risk of violence in such circumstances justified Ms. Ironstand's removal.

In detaining Ms. Ironstand, the police officers took her to the ground and handcuffed her, in the process causing an abrasion and swelling to her eye, bruising her right arm, and causing her glasses to break. After she was taken away, the police were able to speak with the other adult in the residence and confirm that everything was in fact okay and that the children were safe. Ms. Ironstand was then released. The trial judge held, and the Court of Appeal agreed, that this was a proportionate response to her behaviour, and that her minor injuries were unintentional and coincidental with this proportionate response.

Damages

Recognizing that the police acted without lawful justification in entering her home, the court awarded Ms. Ironstand $2,500 for the unlawful entry, and a nominal $500 for the false imprisonment and battery. The Court of Appeal found this total award to be reasonable in the circumstances, and also upheld the dismissal of her claim for punitive damages given that the police conduct was proportional, in good faith, and minimally intrusive.

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