

SUPERIOR COURT OF JUSTICE

HER MAJESTY THE QUEEN

- v -

FUNMILAYO OLADAPO

CHARGE:

REASONS FOR JUDGMENT

BEFORE THE HONOURABLE MADAM JUSTICE VAN MELLE
on April 19, 2007, at BRAMPTON, Ontario

A P P E A R A N C E S:

K. Slate

R. Odeleye

Counsel for the Crown

Counsel for Funmilayo Oladapo

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April 19, 2007

REASONS FOR JUDGMENT

VAN MELLE J. (Orally):

Funmilayo Oladapo is charged with five counts of assault against Brian O'Bonna. Four of those counts involved a weapon, one a television control, two a belt, three a hairbrush, four a clothes hanger and the fifth charge is a general charge of assault.

After consideration of all of the evidence and after applying R. v. W.(D.) [1991] 63 C.C.C. (3d) to all of the evidence, I find that I must acquit the accused.

R. v. W.(D.) sets out the following:

(1) If I believe the accused I must acquit.

(2) If I do not know whether I believe the accused or the complainant I must acquit.

(3) If I do not reject the evidence of the accused I must acquit.

(4) If I disbelieve the accused I have to be convinced beyond a reasonable doubt of the guilt of the accused on the whole of the

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evidence.

In this case I find that the second and third considerations apply. I do not know whether I believe the accused or the complainant and I do not completely reject the evidence of the accused.

Ms Oladapo was hired as a nanny for the O'Bonna family some time in 2003. Maxwell O'Bonna was in Nigeria on business where he met relatives of Ms Oladapo. He knew that his wife wanted to have a nanny to help with the youngest two of their six children, and he made arrangements for Ms Oladapo to come to Canada. Ms Oladapo arrived in Canada at the end of January, 2004. She was to clean the house, look after Brian and Vanessa and get them ready for school, take them to school and feed them. The assaults complained of are alleged to have been against Brian, the youngest of the O'Bonna children. Brian was seven at the time.

In his testimony, Brian described a number of incidents. He testified that Ms Oladapo struck him with a TV converter when he did not follow his father's directions to

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tidy up the living room. He testified about an occasion when he was getting spaghetti for himself in the kitchen. Ms Oladapo offered to get it for him. She was trying to pull the spoon away from him and got spaghetti sauce on herself. She went to get a belt from the hall closet and started hitting him with the metal end of the belt, causing an injury to his arm. On other occasion, Ms Oladapo accused Brian of stealing \$15 or \$20 from her and hit him with a hairbrush in the family room. He grabbed the brush away from her and she started to hit him with a comb all over his body and on his eye. Another time Brian was watching television. Ms Oladapo told him to tidy up the house. When he refused she hit him with a hanger from the closet. Finally, he described leaving pudding on the table in the family room and falling asleep on the couch in the family room. He said that Ms Oladapo got the pudding and put in his mouth while he was sleeping and he woke up choking. As a result of that incident, Brian said that he stopped eating because he was afraid that he would choke.

Brian said that he did not tell anyone about these incidents because he was scared as Ms Oladapo was still living with them. He testified that he told his parents

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right after Ms Oladapo had left, as he was not scared any more. Two of Brian's sister, Yolanda and Renee, testified. They each testified to different episodes about abuse that they say they witnessed, although Renee did testify that she saw Ms Oladapo hit Brian with a hanger.

Ms Oladapo left the O'Bonna's employ in August of 2004. The O'Bonnas had been in New York. When they returned they changed the locks and Ms Oladapo could not get into the house. She had nowhere to go, eventually ending up at Interstate, an agency that assists domestic workers, caregivers and newcomers.

According to Ms Oladapo, she received no salary, vacation pay or termination fees, and commenced a claim against Mr. and Mrs. O'Bonna with the Ministry of Labour. The claim was filed in October of 2004 with a hearing scheduled for March 8, 2005. After the hearing the O'Bonnas were ordered to pay \$6964.66 for wages, termination pay and vacation pay, an administrative penalty and a \$250 notice of contravention for failing to maintain payroll records. Apparently this was later resolved with what I assume was a lesser payment to Ms Oladapo.

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5 The letter notifying Ms Oladapo of the decision of the Employment Standards Officer is dated April 4, 2005. Presumably a letter went to the O'Bonnas around that date as well, informing them of the decision. The O'Bonnas went to the police on April 11, 2005 to complain of Ms Oladapo's abuse of Brian.

10 The defence position is that the allegations of abuse were fabricated in retaliation because Ms Oladapo went to the Ministry of Labour in the first place. The Crown submits that if this is the case, they would have all had to create a good lie.

15 In my view it is possible that just such a lie was created. Young children are susceptible to suggestion and Brian could well have been coached to tell the stories that he did. Although Brian testified that he did not tell anyone about the assaults by Ms Oladapo while they were happening, both Yolanda and Renee said that they told their mother. On two occasions Yolanda said she actually phoned her mother at work while the assaults were ongoing. Ms O'Bonna agreed that she knew about the assaults, but the only thing she did about it was to speak to Ms Oladapo to tell her

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5 that children in Canada are not to be hit, and in particular that Brian was not to be hit.

10 Renee testified that she witnessed Ms Oladapo assaulting her brother with an iron hanger and yet she did nothing to intervene because her mother had told her not to hit Ms Oladapo who was a guest in their house. That version of events simply makes no sense to me. Yolanda testified that she was in the kitchen one time when Ms Oladapo hit Brian with her hand. She too sat by and did nothing to
15 intervene.

20 Brian's stories at trial and at the preliminary inquiry were different in some important aspects. At the preliminary hearing Brian testified that he received the injury on his arm from the TV converter, while at trial he testified that he received the injury from the metal end of the belt. At the preliminary hearing he testified that Ms
25 Oladapo hit him with the converter because she wanted to watch television in the family room and he would not let her. At trial he was adamant that she hit him because he did not tidy up the living room.
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5 Mr. O'Bonna testified that he went to the
police with the abuse allegations because he was concerned
that Ms Oladapo not be in a position where she could abuse
other children. Yet he had no idea whether or not she was
with children after leaving his employ. Some seven months
10 passed between the time she left the O'Bonna's employ and the
time that the allegations of assault were brought to the
attention of the police.

15 Ms O'Bonna said that the reason they did not
go to the police earlier was that Brian's story kept
unfolding. This also makes no sense, as Yolanda called her
on at least two occasions while Ms Oladapo was assaulting
Brian. Yolanda testified that she was angry and distraught
20 while this was happening. The seriousness of the situation
could not have been lost on Mrs. O'Bonna.

25 Except for an injury on his arm, Brian
testified that he was not injured by any of the beatings. If
the beatings took place as he alleged, I find it hard to
believe that he would not have been injured, particularly if
he was hit with the metal end of a belt and with an iron
30 hanger. His claim of not being injured because he was

5 wearing pajamas and a robe is not believable. Presumably he could have tried to ward off the blows and if he had done so he would have sustained some kind of injuries.

10 The most troublesome allegation is perhaps Brian's description of having been fed pudding while he was asleep. Brian testified, and his parents corroborated his story, that he stopped eating. Brian's parents were concerned and took him to the family doctor on more than one occasion. Brian's parents testified that he told the doctor at some point, after Brian finally told them why Brian stopped eating, yet no medical records were adduced to corroborate their testimony.

20 Renee testified here at trial that Ms Oladapo hit Brian with an iron hanger, yet at the preliminary hearing she said it was a plastic hanger. When confronted with this inconsistency during cross-examination, she said iron or plastic, it was the same thing. I do not accept that being hit with an iron hanger would be the same thing at all as being hit with a plastic hanger.

30 Ms Oladapo denies having abused or hit Brian

in any way whatsoever. She said that they had a great relationship. I do not know whether or not that is true. Perhaps she thought they did. She also said she was doing a good job for the O'Bonnas, yet they described many problems with her work. Ms Oladapo described having to work other jobs to pay her taxes. One job involved one to four hours a week assisting a woman who did hair out of her house. That job lasted approximately one month. After that she was forced to work at a restaurant until she was late one day and was let go by the owner of the restaurant. She also described being sexually harassed by Mr. O'Bonna.

I not know whether I accept Ms Oladapo's version of events as being entirely accurate. However, as I said at the beginning, I find that I am not persuaded beyond a reasonable doubt that the events took place as described and an acquittal will issue.

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Certification

FORM TWO

Certificate of transcript
Evidence Act, Subsection 5(2)

I, Mary Jane Holley, certify that
this document is a true and accurate transcription of the
recording of R. v. Oladapo in the Superior Court of
Justice held at Brampton, Ontario, taken
from recording number 133/2007 which has
been certified in Form One.

May 4, 2007

Mary Jane Holley, CVR
Certified Court Reporter

