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COURT OF APPEALS
STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

Appellant,

-against-

NO. 100

REBECCA RUIZ,

Respondent.

20 Eagle Street
Albany, New York
November 17, 2022

Before:

ACTING CHIEF JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE SHIRLEY TROUTMAN

Appearances:

ANDREW M. MOLITOR, ESQ.
CHAUTAUQUA COUNTY DISTRICT ATTORNEY'S OFFICE
Attorney for Appellant
1 N. Erie Street
Mayville, NY 14757-1000

JOHN J. MORRISSEY, ESQ.
LEGAL AID BUREAU OF BUFFALO
Attorney for Respondent
290 Main Street, Suite 400
Buffalo, NY 14202

Kelly Vadeboncoeur
Official Court Transcriber



1 ACTING CHIEF JUDGE CANNATARO: Our next appeal is
2 number 100, People v. Rebecca Ruiz.

3 MR. MOLITOR: Good afternoon. May it please the
4 Court. My name is Andrew Molitor from the Chautauqua
5 County District Attorney's Office, for the People of the
6 State of New York.

7 This case is unlike many temporary lawful
8 possession cases that have been before this court. This is
9 not a situation where the defendant fortuitously found a
10 gun, and intended to surrender that gun to the authorities,
11 nor is it a case where the defendant was - - - came into
12 possession of the gun by disarming an attacker.

13 JUDGE SINGAS: Do you think you can have
14 temporary and lawful possession in your home?

15 MR. MOLITOR: Is it possible? I'm - - - I'm - - -
16 it may be possible under a different fact pattern than this
17 case, but I don't think it was possible in this case, for a
18 variety of reasons. I think a review of the evidence - - -
19 a reasonable view of the evidence in this case would show
20 that the defendant had a prior criminal conviction and was
21 not allowed to possess a firearm.

22 JUDGE TROUTMAN: Is constructive possession
23 preserved here?

24 MR. MOLITOR: I believe it is, Your Honor. And
25 if it isn't, I don't think anything is preserved. This



1 case never should have been decided in the Appellate
2 Division. Because the defendant asked for temporary lawful
3 possession, and we objected, and we cited the relevant
4 standard. And the lower court can view all the evidence.

5 JUDGE WILSON: When you objected, you didn't
6 object - - - you didn't say constructive possession when
7 you objected, but I believe in the post-trial motion, you
8 made it - - - several statements that could be construed as
9 constructive possession. Let's assume that just for a
10 second, do we - - - do we nevertheless, have what the
11 Appellate Division identified as a LaFontaine problem?

12 MR. MOLITOR: I don't - - - I don't believe that
13 this is a a LaFontaine problem, Your Honor. Because when
14 the court is making a decision like it did in Butts, this
15 court, and when the court is making a decision as to
16 whether it should give a charge as to a defense, it can
17 view all - - - it takes a reasonable view of all the
18 evidence. And all the reasonable inferences that flow from
19 that evidence. And so I think the Appellate Division
20 could've, you know, looked at all the evidence, and all the
21 reasonable inferences that flowed therefrom, and said yeah,
22 this clearly, there was a constructive possession, she was
23 in constructive possession, and that precludes us from ever
24 getting to the temporary lawful possession defense. And
25 then - - - and the court did not abuse its discretion. If



1 you think about some of the facts that are cited in defense
2 of the, what I would say the justification argument, those
3 are also facts that were never raised as part of the - - -
4 the argument at the trial level. But they're being used
5 here, I believe, to conflate justification and temporary
6 lawful possession.

7 Beyond that, you know, if we don't even get to
8 temporary lawf - - - if you we don't get there with
9 construction possession, she is in actual possession of the
10 weapon, and you know, as I said before, there is no - - -
11 this is not a situation where she was disarming an
12 attacker, or a situation where she fortuitously found the
13 weapon. And then - - -

14 JUDGE WILSON: Well, that's what she claims
15 though, right? That's her testimony. She fortuitously
16 found it.

17 MR. MOLITOR: That's her testimony, yes. And
18 I - - -

19 ACTING CHIEF JUDGE CANNATARO: We do have to view
20 the evidence in the light most favorable to the defendant,
21 don't we?

22 MR. MOLITOR: That's true, but it still needs to
23 be reasonable and rational. And I, you know, lay out in
24 my - - - in my papers all of how all the evidence and the
25 reasonable inferences show that that testimony really isn't



1 rational.

2 ACTING CHIEF JUDGE CANNATARO: Why is not
3 rational?

4 MR. MOLITOR: Well, Your Honor, I think it's
5 illogical for someone to be under the situation that she
6 describes. And to go into the kitchen towards the
7 perceived threat, and pull out of a kitchen drawer, just by
8 happenstance, a gun that's fully loaded and ready to go,
9 and not know that that gun is there.

10 ACTING CHIEF JUDGE CANNATARO: Is it possible
11 that, you know, there's a commotion, there's some banging
12 at the door, she runs to the kitchen. Even if I knew I
13 didn't have a gun in the house, I don't think it's beyond
14 the realm of possibility that one could open a kitchen
15 drawer to see if there's something heavy or sharp, or
16 something in there that you could use to defend yourself.
17 She just happened to find a gun when she opened it.

18 MR. MOLITOR: I completely agree with you about
19 that, Your Honor. But she wasn't supposed to have guns in
20 house, and she said - - - you know, she said, look - - -

21 ACTING CHIEF JUDGE CANNATARO: So you're saying
22 she didn't have the right to pick up that gun, having found
23 it?

24 MR. MOLITOR: - - - I - - - I'm saying that she
25 knew about it, and she didn't have the right to pick up



1 that gun.

2 JUDGE WILSON: Well, so suppose it was actually
3 her ex-husband, Spoons, or Waldo, or whatever you want to
4 call him. And he had broken down the door. At that point,
5 she opens the drawer, finds the gun. You still think she
6 can't use it? That's temporary, that doesn't meet
7 temporary lawful possession?

8 MR. MOLITOR: Yes.

9 JUDGE WILSON: And he's armed, and he fires a
10 shot first and misses?

11 MR. MOLITOR: I understand - - - I understand the
12 emotional component to what I'm saying, but yes, I don't
13 think she can. And - - - or at least, it's not lawful for
14 her to do so. Because the legislature never intended for
15 justification to be a defense to a possessory crime. And
16 this court in Pons made it clear - - -

17 JUDGE RIVERA: Oh, I thought you were going to
18 argue the legislature never intended for her to have the
19 gun in the house to begin with.

20 MR. MOLITOR: That also. That's also the case,
21 Your Honor. That's also the case.

22 JUDGE GARCIA: Counselor, could you tell me, what
23 happens to the gun? What's in the record about what
24 happens to the gun?

25 MR. MOLITOR: We don't know, per se. Exhibit 6,



1 which was in evidence at the 50-second mark, is when she
2 says "get rid of this, I can't go to jail." And she
3 testifies that she wasn't say - - - what - - - she
4 testified that in explaining that 911 call, that it wasn't
5 the gun that she used. She had just dropped the gun, and
6 she didn't know what happened to it. She says instead,
7 what she was doing is telling someone to get rid of the gun
8 and the drugs that was on he victim. So we don't know.

9 JUDGE GARCIA: How long is it between the
10 shooting and the time the police arrive?

11 MR. MOLITOR: I'm not sure exactly. But it was
12 a very quick time period.

13 ACTING CHIEF JUDGE CANNATARO: The other part of
14 the charge in this case, besides the legal possession of
15 the gun, is the intent to dispose of it safely, as quickly
16 as possible, is it not?

17 MR. MOLITOR: It is, Your Honor.

18 ACTING CHIEF JUDGE CANNATARO: And it occurs to
19 me here that she said got - - - get rid of this, but we
20 don't really know what this is, but even leaving that out
21 of it, I don't see an effort on her part to help the police
22 find the gun, she just said it's over there somewhere, and
23 is there any evidence in this case that you can point to.
24 And I'll ask this question of your adversary, but is there
25 any evidence that you can point to that speaks to an intent

1 to dispose of the gun?

2 MR. MOLITOR: No, Your Honor. None. I don't
3 think there's any at all. In fact, that original 911 call,
4 you can hear the operator saying "where's the shooter,
5 where's the shooter." And she says "he ran, he's gone."
6 So I don't think there was ever any intent to safely
7 dispose of that weapon.

8 JUDGE RIVERA: Well, given the circumstances, is
9 it possible that - - - this - - - as you've said, it's been
10 a short period between the - - - in response to Judge
11 Garcia, a short period between the shooting and when the
12 police arrived, that perhaps you didn't have the
13 opportunity to really think that through. Having been - -
14 - she says, right, this is her testimony, feared for her
15 life, shoots through, then she realized, shot someone else,
16 and she's distraught, and just releases the gun. Is it
17 possible that, in that moment, perhaps there's not an
18 opportunity really to think coolly about well, what will I
19 do with this gun?

20 MR. MOLITOR: Well, I would Your Honor, that the
21 facts, at least - - - at least that 911 call points to the
22 exact opposite, which is that she coolly told the 911
23 operator that it was someone - - - that the shooter was
24 somebody else, and she's inadvertently caught saying get
25 rid of this, I can't go to jail.



1 So - - - and then I'll just conclude with, you
2 know, even if there is a legal excuse for possessing the
3 weapon, she uses it in a quintessentially dangerous way.
4 And justify - - - you know, justification does not mean
5 safe. Here, what she did was very dangerous. And we just
6 can't get around the fact, you know, no one can get around
7 the fact - - -

8 JUDGE WILSON: But when you say "dangerous", not
9 because she killed somebody, but because she shot through a
10 door without knowing who was on the other side?

11 MR. MOLITOR: Yeah, and she says she fired a
12 warning shot through a door, in - - - from the inside of
13 her to the outside where it could have struck someone in
14 another house, someone driving in a car, or someone walking
15 nearby.

16 ACTING CHIEF JUDGE CANNATARO: Thank you.

17 MR. MOLITOR: Thank you, Your Honor.

18 ACTING CHIEF JUDGE CANNATARO: Counsel, before I
19 forget, is there any evidence of this record of your client
20 making an effort to safely dispose of the gun as quickly as
21 possible?

22 MR. MORRISSEY: John Morrissey, on behalf of Ms.
23 Ruiz - - -

24 ACTING CHIEF JUDGE CANNATARO: Sorry.

25 MR. MORRISSEY: - - - Ms. Ruiz. The first thing



1 that she does upon leaving the house is she begins to try
2 to render medical aid to - - - to Mr. Duman. So she drops
3 the gun outside, and immediately begins trying to help him.
4 She calls 911, and is on the phone with them, begging for a
5 police to get there.

6 JUDGE TROUTMAN: Is she required to safely
7 dispose of it, in order to get the benefit of the charge?

8 MR. MORRISSEY: I do not believe so. It's
9 certainly an underlying policy justification of the - - -
10 of the defense, but I disagree with the idea that it is one
11 of the requirements of the charge. I think this - - -

12 ACTING CHIEF JUDGE CANNATARO: Isn't it in the
13 charge? Isn't that specific language in the charge?

14 MR. MORRISSEY: Or - - - I think I misspoke, the
15 charge, what this court's to determine when the defense
16 applies, and those two requirements are that there be a
17 legal excuse, and it not be used in a dangerous manner. If
18 we look at the charge, the charge contains almost like a
19 catch-all of possible elements, and then looking at some of
20 the Appellate Division case law, we tailor the specific
21 parts of that charge. But I don't believe it is required
22 to immediately dispose of the gun to police. She wants
23 police there. She's telling the police the gun is over
24 there. She dropped it. She relinquishes possession very
25 early on into the encounter. As soon as she no longer

1 needs to - - - to defend herself. And there's also no
2 evidence that she's trying to hide.

3 JUDGE SINGAS: Didn't we decide this case already
4 in Williams?

5 MR. MORRISSEY: I don't believe we decided this
6 case, or - - - not we, that this court has decided this
7 case in Williams, for two reasons. The first, the only
8 issue before this court is dangerous use. That's the only
9 preserved issue, and that's the only issue that was ruled
10 on adversely by the trial court. And Williams, 2020, I
11 assume - - - well, Williams, 2020, not 1980, correct?

12 JUDGE SINGAS: Yes.

13 MR. MORRISSEY: And Williams, 2020, the majority
14 explicitly says we're not talking about dangerous use. But
15 even if we set aside those procedural issues. There's a
16 key factual distinction. In Williams, 2020, you have
17 possession, imminent threat, and then use. So the
18 possession, the crime, has been completed before there's
19 any legal excuse to pick up the gun. In this case, we have
20 a situation of imminent threat, then picking up the gun - -
21 - picking up the gun exclusively to deal with that threat,
22 and then relinquishing possession as soon as the threat has
23 been erased. So that timing component is a key
24 distinction.

25 JUDGE RIVERA: The threats erased, she shot him



1 and killed him, but what - - - why isn't dangerous use?
2 Since you say that's the preserved question. Why isn't it?
3 Why didn't she use it in a dangerous way?

4 MR. MORRISSEY: Because at the time she believed
5 her estranged husband was beating in the door, something he
6 had done before, to break in, possibly kill her. She has
7 four children in the house, and so she had a need to defend
8 her house, her children, her property from this man. Not
9 only that - - -

10 ACTING CHIEF JUDGE CANNATARO: This is a
11 windowless door, was it not? You - - - you couldn't see
12 through the door that - - - that she shot through, could
13 you?

14 MR. MORRISSEY: It is a windowless door, but
15 there was someone banging on the door that's identifying
16 themselves as her estranged husband's, in very loud,
17 threatening - - -

18 JUDGE RIVERA: Well, that might be why she
19 shoots, that's about justification, and the - - - and the
20 finder of fact agreed there. What about the dangerous use
21 when it comes to the possession of the weapon?

22 MR. MORRISSEY: I think when we consider
23 dangerous use, we need to consider how and why Ms. Ruiz
24 used the weapon. And some of the facts that relate to
25 justification are naturally going to relate to dangerous



1 use.

2 ACTING CHIEF JUDGE CANNATARO: Such as? Which -
3 - - which parts of justification are a factor in dangerous
4 use? Because we've opined that there isn't much of a
5 connection between those two.

6 MR. MORRISSEY: So the legal doctrines are
7 distinct, but some of the facts that may support a
8 justification may also support temporary lawful possession.
9 And I think we see that in the Almodovar case, where
10 this - - - we had a situation in which the accused shot
11 someone four times, point blank range, in self-defense, and
12 this court said no justification, but in those
13 circumstances the accused is entitled to a temporary lawful
14 possession charge. That is after Williams, 1980, after the
15 court has taken dangerous - - - or after the court has
16 announced the dangerous requirement. So we have a
17 situation where justification and temporary lawful
18 possession are not only not mutually exclusive, but also
19 some of the same facts are going to - - -

20 ACTING CHIEF JUDGE CANNATARO: Can I ask you a
21 different dangerous use question? After she used the gun,
22 and you have your argument about, you know, the
23 responsibility of the way she used the gun, she then
24 apparently, by her own testimony, throws it into the yard.
25 Is that a safe use of a gun?



1 MR. MORRISSEY: So she drops it in the yard. I
2 think it's important to remember why she's doing that. She
3 is trying, at that point, to save the life of someone.
4 This is a very, very emotional time. I disagree very much
5 with this idea that you could listen to her 911 call or
6 hear her phone calls and think this is a cool situation.
7 She had just believed her estranged husband was going to
8 break in and possibly kill her. So she makes a very
9 difficult decision and then finds out that she just shot
10 the person that that she loves, and so she immediately
11 begins trying to give a - - - putting possession of the
12 weapon, relinquishing possession - - -

13 JUDGE TROUTMAN: And you argue that the 911 tape
14 doesn't suggest otherwise?

15 MR. MORRISSEY: So in the light most favorable,
16 because we have Ms. Ruiz' testimony about what happened to
17 the gun. She said "I dropped it, I was not telling anyone
18 else to take it." And in the light most favorable, the
19 jury credits that testimony. And to the extent that we
20 have arguments that have been advanced differently, saying
21 well, there's actually a couple factors that - - - that
22 weigh against it, I think those are better for a closing
23 argument than a light most favorable.

24 JUDGE WILSON: If the construction possession
25 argument is preserved, I'm not saying it is, if it is, is



1 there a LaFontaine problem?

2 MR. MORRISSEY: I certainly think there is. The
3 words constructive possession aren't even mentioned in
4 trial. If we look at the People's bill of particulars - -
5 -

6 JUDGE WILSON: Well, how about post-trial?

7 MR. MORRISSEY: I think it's still - - - there's
8 still a LaFontaine issue, because we're talking about the
9 trial court denying the instruction. And when it denied
10 the instruction it's only citing to the - - - to the
11 dangerous use component. So I think that the LaFontaine
12 issue persists.

13 Well, speaking of dangerous, I think the
14 Williams, 1980, case also illustrates a - - -

15 JUDGE RIVERA: If this is not dangerous use,
16 what - - - what would have been dangerous use?

17 MR. MORRISSEY: I think if you - - -

18 JUDGE RIVERA: When you're shooting through a
19 door, when you can't see who's behind it, shooting out
20 into, right, a residential area, if that's not dangerous
21 use, what - - - what would have been dangerous use?

22 MR. MORRISSEY: So I think there's a fuller way
23 to view Ms. Ruiz' action, that she says gives a verbal
24 warning before firing, fires a single shot, and it is only
25 after you have a person identifying themselves. She's not



1 guessing at that. She's entitled to believe that that is
2 Walter Duprey outside the door. Because he said his name,
3 and he's done it before. I think if there - - - if she had
4 continued to fire, if she had fired multiple shots, that's
5 something that could distinguish, or - - -

6 JUDGE SINGAS: What if she fired only once and
7 didn't hit Mr. Duman, but hit one of the passerbyers?

8 MR. MORRISSEY: I think we have a situation in
9 which she tried to mitigate that. She says even though she
10 was firing a warning shot, it was pointed at the door. The
11 passerbys, they are not - - -

12 ACTING CHIEF JUDGE CANNATARO: Could you just go
13 - - - I don't understand how that's a mitigation. If
14 you're firing a warning shot at the door, and of which you
15 believe there's someone standing on the other side of it.
16 And you probably should be charged with knowing that
17 there's a street beyond that where people are passing by.
18 How does that justify her actions?

19 MR. MORRISSEY: I think, because it shows she's
20 trying to keep the gun directed toward the threat that
21 she's facing. That she's not - - - if we look at something
22 that happened - - -

23 ACTING CHIEF JUDGE CANNATARO: But she can't see
24 the threat. I know that she - - - I know that she - - -
25 you are arguing that she thinks her ex-husband, or husband,



1 is there. And I'm not debating that. But she can't see
2 who's on the other side of the door or where they are. So
3 what - - - how did she even know it's warning shot, how
4 does she not know that it's a kill shot?

5 MR. MORRISSEY: I think we have her testimony
6 that it was her intent not to - - - not to kill the person.
7 And we, in the light most favorable - - -

8 ACTING CHIEF JUDGE CANNATARO: I don't doubt that
9 either. But I'm saying given the circumstances, given the
10 lack of visibility, she has no idea what she's shooting at.

11 MR. MORRISSEY: I disagree with the idea that she
12 has no idea what she's shooting at. I appreciate the
13 court's point in that she can't see, but there is a lot of
14 other information available to her about who is on the
15 other side of the door.

16 I don't think it would have been very safe if,
17 you know, she's going to open the door to see who it really
18 is. If she had done that in March, the last time this had
19 happened, she would have been in much greater danger. If
20 someone's banging on the door saying hey, it's Spoons, and
21 she says well, I'm going to go double check that. I think
22 that would be a much more dangerous situation. And I
23 apologize - - - I see my - - - may I please?

24 ACTING CHIEF JUDGE CANNATARO: Finish your
25 comment.



1 MR. MORRISSEY: And when we have seen this court
2 talking about dangerous, I think we have the quintessential
3 example of Williams, 1980, in which the person is spinning
4 the gun on their finger like a cowboy and it goes off. So
5 something far and away more reckless and unreasonable that
6 put other people's lives at risk as opposed to taking a
7 single shot because you believed your abusive husband was
8 trying to break the down the door again and possibly kill
9 you in front of your children.

10 JUDGE GARCIA: But it wasn't him at the door,
11 right? It wasn't the estranged husband.

12 MR. MORRISSEY: It was not. It was her - - - it
13 was her current boyfriend, but he had identified himself
14 as Spoons, Walter Duprey, the estranged husband's nickname.

15 JUDGE GARCIA: She testifies he's identifying
16 himself as my ex-husband at the door?

17 MR. MORRISSEY: Yes. And then I think you
18 combine that with the fact that her ex-husband had done
19 pretty much this exact same thing before - - - that is a
20 very reasonable and fair belief to assume that that person
21 is telling the truth.

22 ACTING CHIEF JUDGE CANNATARO: Thank you,
23 counselor.

24 MR. MORRISSEY: Thank you.

25 (Court is adjourned)



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C E R T I F I C A T I O N

I, Kelly Vadeboncoeur, certify that the foregoing transcript of proceedings in the Court of Appeals of The People of the State of New York v. Rebecca Ruiz, No. 100 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Signature: Kelly Vadeboncoeur

Agency Name: eScribers

Address of Agency: 7227 North 16th Street
Suite 207
Phoenix, AZ 85020

Date: November 23, 2022

