

***State v. Yen Lin Wan, 251 Or.App. 74 (2012)***

Oregon Court of Appeals

**FACTS**

Defendant (Yen Lin Wan) moved from Taiwan to Portland to be with his girlfriend and study English at Portland State University. About two months later, in the middle of the night, Defendant and his girlfriend had an argument about their relationship. Defendant's girlfriend was upset about the conversation and began crying and continued for hours. Building security of their apartment called the police and two officers arrived at Defendant's apartment.

The officers knocked on the door and asked Defendant if they could check on the woman crying and Defendant denied their request. The officers continued to repeat their requests and Defendant still refused. At some point during the conversation, one of the officers looked through the ajar door and could see a woman on the floor in the fetal position, crying. Police told defendant that they were going to enter and Defendant again told them, 'No,' and asked the officers to leave. As the officers began to push the door open, Defendant pushed back on the door. The officers forced the door open and attempted to subdue the Defendant. Defendant twisted and pulled his arms away from the officers as they attempted to control them—at one point, placing one of Defendant's arms in an 'arm-bar.' One of the officers punched Defendant in the head. Both officers testified that Defendant did not strike either of them. One of the officers removed his taser and ordered the Defendant to the ground and Defendant complied. The police didn't find any physical injuries to the Defendant's girlfriend.

Defendant is charged with resisting arrest and interference with the two officers. Defendant filed a motion to suppress the evidence of resisting and interfering, alleging that the officers violated his article 1 sec. 9 constitutional right:

"No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure; and no warrant shall issue but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched, and the person or thing to be seized."

Defendant further contends that because Defendant hadn't understood the Officers' commands to let them in, he believed the force used was excessive and therefore unlawful, and accordingly, the jury should receive a self-defense instruction if the matter proceeds to trial. Defendant wished to have the following instruction read to the jury:

"If [defendant] believed, and a reasonable person in [defendant's] position would have believed, that the use or imminent use of force against him exceeded the force reasonably necessary to effect the arrest, then he was entitled to defend himself from that force.

"The burden of proof is on the state to disprove the existence of self-defense beyond a reasonable doubt."

### **ISSUES:**

1. Did the Police Officers violate Yen Lin Wan's constitutional right to be secure in his home? If so, should an exception be made because of the Officer's belief that Defendant's girlfriend may have been hurt?
2. Is Defendant entitled to a self-defense jury instruction?

### **QUESTIONS:**

1. If you were the accused (Yen Lin Wan), what arguments might you make to advance your two theories—(1) in favor of suppression and (2) to support the jury instruction
2. If you were the District Attorney, how might you argue against Defendant's two theories. If you were the trial court, how would you rule? Explain why.

### **WHAT HAPPENED AT TRIAL?**

The trial court denied Defendant's motion to suppress, affirming an emergency aid exception to the warrant requirement when police officers have an objectively reasonable belief, based on articulable facts, that a warrantless entry is necessary to either render immediate aid to persons, or to assist persons who have suffered, or who are imminently threatened with suffering, serious physical injury or harm.

Defendant argued the following:

He tried to comply with the officers' orders to let them enter but was blocked due to his position next to the shoe rack. He had to close the door to move out of the way to allow them to enter. When he tried to let the officers enter by closing the door, he was met with force. The officers pushed their way into his apartment and shoved defendant against the wall. In Defendant's view, he was trying to comply with the order to open the door and was immediately met with force by the police. He did not know the officers were trying to arrest him. Based on defendant's circumstances—his limited understanding of English, the limited space at the doorway, and his belief that, although he was complying with the officers' order to let them in, they attacked him—a reasonable juror could find that defendant reasonably believed that he could defend himself from unlawful force by the officers. And accordingly, he was entitled to a self-defense instruction.

The Court denied Defendant's request for a self-defense instruction, concluding that the evidence did not show that the Officer's had used excessive force.

### **MORE QUESTIONS**

1. How did your decision contrast with the trial court's decision?
2. Do you agree with the trial court's rulings? Why or why not?

## ON APPEAL

### Yen Lin Wan's Argument:

1. The trial court erred in denying his motion to suppress.
2. The trial court erred in denying him a self-defense instruction.

### WHO WON?

Both the state and Yen Lin Wan won. On the first issue (motion to suppress the evidence), the Court of Appeals affirmed the trial court. On the second issue, the Oregon Court of Appeals held that Defendant was entitled to a self-defense instruction.

### HOW THE COURT EXPLAINED ITS DECISION

#### On the first issue:

"Here, there were articulable facts to justify a warrantless entry. The officers knew that a woman had been crying in an apartment for four hours after an argument. The officers could hear loud crying as they approached defendant's apartment and confirmed that the crying came from defendant's apartment when defendant opened his door. When defendant opened the door a little wider, the officers saw a woman lying in the fetal position crying. At that point, the officers had an objectively reasonable belief that a warrantless entry was necessary to assist a person who was seriously injured. Thus, the trial court appropriately denied defendant's motion to suppress."

#### On the second issue:

"[A] person is justified in using physical force upon another person for self-defense \* \* \* from what the person reasonably believes to be the use or imminent use of unlawful physical force[.]" However, if a person is being arrested, that person "may not use physical force to resist an arrest by a peace officer \* \* \*, whether the arrest is lawful or unlawful." Read together, the statutes present an apparent contradiction: a person may not use force to resist arrest, even an unlawful arrest, but that person is entitled to use force in self-defense when he reasonably believes that another person, including a police officer, is using unlawful force against him. In *Oliphant*, the Supreme Court resolved that apparent contradiction by highlighting the requirement for an arrestee's *reasonable belief* that the arresting officer's force is greater than necessary to achieve arrest:

"If [the defendant] believed, and a reasonable person in his position would have believed, that the use or imminent use of force against him exceeded the force reasonably necessary to effect the arrest, then he was entitled to defend himself from that use of force. Moreover, \* \* \* the burden of proof was on the state to disprove the existence of that defense beyond a reasonable doubt."

Thus, defendant is entitled to a self-defense jury instruction if there was evidence that he reasonably believed that the officers arresting him were using more physical force than was reasonably necessary to arrest him.

Viewing the evidence in the light most favorable to defendant, there was evidence that he reasonably believed the officers were using unnecessary force to effect an arrest. The officers testified that they told defendant that they were arresting him and to stop resisting arrest. However, there was evidence that defendant did not understand those commands. Defendant had just moved to the United

States two months before the incident and was still learning English. He testified that he tried to comply with the officers' order to let them enter but was blocked due to his position next to the shoe rack. He had to close the door to move out of the way to allow them to enter. When he tried to let the officers enter by closing the door, he was met with force. The officers pushed their way into his apartment and shoved defendant against the wall. The officers tried to grab defendant's arms, and Tobey punched defendant in the face. When the officers did get a hold on defendant's arms, they performed an "arm bar," applying pressure to his shoulder and twisting his arms. Then one of the officers tried to sweep defendant's legs out from under him, forcing defendant to use his arms to brace himself for a fall. In defendant's view, he was trying to comply with the order to open the door and was immediately met with force by the police. He did not know the officers were trying to arrest him.

Based on defendant's circumstances—his limited understanding of English, the limited space at the doorway, and his belief that, although he was complying with the officers' order to let them in, they attacked him—a reasonable juror could find that defendant reasonably believed that he could defend himself from unlawful force by the officers. Accordingly, there was evidence to support defendant's self-defense theory.

The trial court's opinion on the second issue was reversed and remanded.

### APPLICATION

1. This case articulates two basic and important concepts:
  - a. There is an emergency exception to the warrant requirement.
  - b. The law allows for self-defense against illegal force from police officers, but it doesn't allow self-defense against illegal arrests.
2. Which of the following scenarios falls under the court's holding in **Yen Lin Wan**?
  - a. Last night a woman was murdered in an apparent crime of passion. The police go to her husband's house (they've been separated for a couple months) to inform him of the tragedy. As the officer arrives, he notices two drops of blood on the car door registered to the husband. The officer immediately leaps the fence and enters the backyard where he discovers a bloody sock. He takes the sock back to the crime lab and finds that it matches the victims. The husband is tried for the murder of his wife but seeks a motion to suppress the bloody sock because of the officer's warrantless entry. The officer claims that he believed there was an emergency: perhaps the husband had been injured; the murderer may have gone after the husband in some kind of husband-wife targeted killing. How should the trial court rule?
  - b. A man is having a conversation with a plain clothes police officer about the Portland Timbers. The man believes the Timbers have a weak line-up this season. The cop responds by pulling out his badge, identifying himself as an officer and stating that the man is under arrest for talking poorly about the Timbers. The man shouts "that's not legal!" and attempts to run away, the officer subdues him and charges him with resisting arrest. The Defendant asks for a dismissal because the officer illegally arrested him. How should the court rule?
  - c. Same scenario as above, except when the man begins to flee, the officer removes his firearm and says, "Stop or I'll shoot you in the face!" The man turns and fires bear mace into the officer's eyes before fleeing. He is caught later and charged with assault on an officer. The man asks for a self-defense jury instruction. How should the court rule?