

CANADA / JUDGMENT

R. v. Celenk

2026 ONCA 60

COURT

Court of Appeal for Ontario

DECIDED

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R. v. Celenk

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Judges

Simmons, Janet M.; Favreau, Lise G.; Rahman, Moiz

Subject

Criminal

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Celenk, 2026 ONCA 60

DATE: 20260203

DOCKET: COA-23-CR-1266

Simmons, Favreau and Rahman JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Uygar Kaan Celenk

Appellant

Myles Anevich and Arif Hussain, for the appellant

Ira Glasner, for the respondent

Heard: January 14, 2026

On appeal from the convictions entered by Justice Andrew Pinto of the Superior Court of Justice, sitting with a jury, on March 31, 2023, and from the sentence imposed on November 21, 2023.

REASONS FOR DECISION

- [1] Following a jury trial, the appellant was convicted of three of the eight offences with which he was charged: possession of fentanyl for the purpose of trafficking, possession of a loaded restricted or prohibited weapon (a Smith & Wesson handgun), and possession of the Smith & Wesson handgun. The jury acquitted the appellant of five other offences, three of which related to a Ruger handgun. The fourth offence of which the appellant was acquitted was occupying a vehicle knowing that a restricted or prohibited weapon (the Smith & Wesson handgun) was in the vehicle. The fifth offence of which the appellant was acquitted was possessing a prohibited firearm (the Smith & Wesson handgun) with an altered or defaced serial number. The appellant's co-accused was acquitted on all of the charges.
- [2] The appellant was sentenced to 13 years' imprisonment for possession for the purpose of trafficking. He was also sentenced to 3 ½ years and 3 years for the weapon possession convictions involving the Smith & Wesson, to be served concurrently. He further received 12 months' credit for presentence custody (8.8 months) and other credits (Duncan, Downes and Nasogaluk credits).
- [3] He appeals his convictions and seeks leave to appeal his sentence.
- [4] Following the oral hearing, we dismissed the appellant's conviction appeal for reasons to follow but reserved our decision on his sentence appeal. The following are our reasons for dismissing the conviction appeal and our decision on the sentence appeal.

Background

- [5] The police found an unlocked, unoccupied tow truck on fire in the parking lot of a Toronto apartment building in the early hours of May 13, 2020. The appellant subsequently arrived at the scene and gave a statement to a police officer. In his statement, the appellant confirmed that he lived in the nearby apartment building and that he had all the keys to the truck. He

said that he had driven the truck for a towing company for several weeks but sometimes left the truck in a pound so others could use it. However, the appellant had not been driving the truck for about two and half to three and a half weeks because of the pandemic and had simply parked it. The appellant said the truck was part of a fleet owned or leased by the towing company.

- [6] Later the same day, the police executed a search warrant on the truck. They found 1.35 kilograms of fentanyl in four locations in the back seat area of the truck: on the back seat in zip-lock baggies contained in a clear food-saver bag that was inside a striped black leather satchel; in a pouch on the back side of the front passenger seat in a zip-lock bag; on the back seat in a vacuum sealed bag found in an orange bag; and in an inner-facing cubby at the back of the centre console in a baggy.
- [7] The police also found a zip-lock bag containing a loaded Ruger handgun partially concealed under a t-shirt on the back passenger seat of the truck and a Smith & Wesson handgun loaded with a prohibited magazine in a blue satchel on the front passenger seat of the truck. The black leather satchel and orange bag containing fentanyl were stacked on top of the t-shirt under which the Ruger was partially concealed. Personal items belonging to the appellant were also found in the blue satchel.
- [8] The police subsequently used a key seized from the appellant or his car to turn the truck's ignition and tailgate lock but determined there was no power in truck. The appellant's fingerprints were found on four documents in the back seat of the truck, but not on either of the handguns or the bags/package in which the drugs were found. The appellant's co-accused's fingerprints were found on the clear food-saver bag containing smaller zip-lock baggies of fentanyl and he could not be excluded as a contributor of DNA found on the Smith & Wesson handgun. The appellant was excluded. The police also found a utility bill addressed to the appellant's boss on the driver's side dashboard of the truck. The appellant's co-accused's name was written, albeit misspelled, on the corner of the envelope.
- [9] No illicit substances were found on a subsequent search of the appellant's car and apartment.

The conviction appeal

- [10] The appellant raises two issues on his conviction appeal.
- [11] First, he submits that the guilty verdict on the possession of fentanyl for the purpose of trafficking charge is inconsistent with the acquittals on the charges related to the Ruger handgun. He submits the verdicts are inconsistent because of the proximity of a large quantity of fentanyl to the Ruger handgun.

- [12] Second, he submits that the guilty verdicts in relation to possession of the Smith & Wesson handgun are inconsistent with the acquittal on the charge of occupying a vehicle while in possession of the Smith & Wesson handgun. He submits that this acquittal is also inconsistent with the guilty verdict in relation to the fentanyl charge.
- [13] We do not accept these submissions.
- [14] Although the Ruger handgun was located in the same area of the vehicle as the fentanyl, we are satisfied that it was open to the jury to find that the appellant knew about and was in constructive possession of the fentanyl but to have a reasonable doubt concerning whether the appellant was in constructive possession of the Ruger handgun.
- [15] On appeal, the appellant does not dispute that the evidence was sufficient to support a finding that he was in possession of the Smith & Wesson handgun. Further, as we have said, a large quantity of fentanyl was found in four locations in the back of the truck. The appellant had the only keys to the truck, had driven it, and had it parked near his residence. Those factors together with the significant quantity and value (approximately \$270,000) of the fentanyl were sufficient to support a compelling inference that the appellant must have been aware of, and exercised some control over, the fentanyl such that he was in constructive possession of it.
- [16] Having found that the appellant was in possession of the Smith & Wesson handgun and the fentanyl, it was open to the jury to have a doubt concerning whether he was also in possession of the Ruger handgun. He was not in physical possession of the Ruger handgun when it was found. DNA, fingerprints and documents belonging to other parties were also found in the truck, including a document addressed to the appellant's boss. The same considerations that supported a compelling inference that the appellant must have known about and had some control over the fentanyl (in particular, the significant quantity and value of the illicit drug and the appellant's possession of a loaded prohibited or restricted firearm) did not apply to the Ruger. In short, it was open to the jury to view the evidence relating to the fentanyl as being stronger than the evidence relating to the Ruger, leaving the jury with a reasonable doubt in relation to the Ruger but not the fentanyl.
- [17] Similarly, given that the truck had been parked for some period and was apparently inoperable, it was open to the jury to have a doubt concerning whether the appellant was ever actually in the truck, and therefore in occupation of it, at the same time as the Smith & Wesson handgun. Indeed, the jury asked for clarity on the definition of the word "occupied" and whether it included opening the door. The trial judge explained to the jury that "the definition of occupy or occupied is that someone enters a vehicle with the intention of being in it" and that "[a] momentary opening of a door or window to put something in or take something out would not constitute occupying the vehicle." In all the circumstances, it was open to the jury to find beyond a reasonable doubt that the appellant possessed the Smith & Wesson handgun while having a reasonable doubt that he occupied the vehicle at a time when the gun was in it.

The sentence appeal

- [18] Concerning sentence, the appellant submits that the sentence imposed is demonstrably unfit because of the trial judge's flawed approach to proportionality and failure to meaningfully apply the restraint principle. The appellant was a youthful offender, aged 23 at the time of the offence. The appellant submits that the trial judge failed to properly balance his personal circumstances against the seriousness of the offence, with the result that he imposed a sentence that was grossly disproportionate. We agree.
- [19] In his reasons, the trial judge referred to the need for restraint given that the appellant was a youthful first-time offender. He also recognized that the appellant had strong rehabilitation prospects. But the sentence he imposed does not reflect these factors or the principle of restraint. Rather, it is more consistent with the length of sentences imposed in the cases the trial judge reviewed for convictions involving similar significant amounts of fentanyl against older offenders, many with prior records, for example: *R. v. Olvedi*, 2021 ONCA 518, 157 O.R. (3d) 583, leave to appeal refused, [2021] S.C.C.A. No. 340 (33-year-old first-time offender sentenced to 12 years for 499.5 grams of 100% fentanyl citrate); *R. v. Hoang*, 2022 ONSC 2534 (38-year-old first time offender sentenced to 18 years for over 16 kilograms of narcotics, including over 3 kilograms heroin and fentanyl)[1]; *R. v. Dalia*, 2023 ONSC 2114, aff'd 2025 ONCA 772 (offender with a prior criminal record sentenced to 13 years for 1.7 kilograms of fentanyl); *R. v. Abdelgadir*, 2023 ONCJ 446 (28-year-old repeat offender with a record for similar offences sentenced to 13 years for approximately 2 kilograms of fentanyl).
- [20] As recognized by the trial judge, fentanyl is more dangerous than almost all other drugs: *R. v. Lynch*, 2022 ONCA 109, 160 O.R. (3d) 241, at para. 15. Moreover, there is no doubt that offences involving large quantities of fentanyl, especially when combined with guns, require significant sentences that reflect the principles of denunciation and general deterrence: *R. v. England*, 171 O.R. (3d) 401, at paras. 96-102; *R. v. Wong*, 2012 ONCA 767, at paras. 11-13.
- [21] However, as this court held in *R. v. Habib*, 2024 ONCA 830, 99 C.R. (7th) 110, even when dealing with serious offences that require a sentence that emphasizes denunciation and deterrence, it is nevertheless an error in principle to lose sight of the principle of restraint when dealing with a youthful first-time offender. In *Habib*, at paras. 30-32, Tulloch C.J.O. explained the challenging, but necessary, balance courts must strive for when sentencing youthful first-time offenders for convictions for serious offences, including offences that endanger the public:

The courts respect the need to hold young adults accountable for serious crimes that, like the ones the appellant committed, involve significant personal violence. The courts must denounce the actions of young adults who commit these offences and impose sentences that, to the extent possible, adequately deter them from reoffending. General deterrence also gains importance. Due to these offences' gravity and public safety risks, significant prison terms may be necessary. It is not always possible to avoid incarceration, impose only a very short prison term, or select a sentence at the low end of the range. These principles may help prevent older, more

sophisticated perpetrators and organized criminal groups from preying on and recruiting young adults to commit violent crimes on the theory that those young adults will not be imprisoned if apprehended.

Sentencing judges must also respect several other settled principles when sentencing youthful offenders for their first criminal offence. First, they must practice restraint. This requires them to avoid imprisoning young adults when possible. When imprisonment is necessary, it also requires them to make the sentence as short as possible to achieve the principles and objectives of sentencing. Second, they must prioritize rehabilitation as the paramount sentencing objective. Where necessary, they must also prioritize specific deterrence. Third, they cannot focus exclusively on denunciation and general deterrence or elevate those objectives above rehabilitation and specific deterrence. Fourth, they must consider young adults' reduced moral culpability and the harsher impact that incarceration causes them due to their stage of life.

Sentencing judges must always give serious and sufficient consideration to all these principles. Merely referring to them as relevant is not always sufficient to show their proper application. Failing to apply or unreasonably underemphasizing them is an error in principle. [Citations omitted, emphasis added.]

[22] In this case, the trial judge recognized that the appellant was only 23 years old when he committed the offences and that he had no criminal record. He also recognized his strong rehabilitative potential, including the support from his mother and others, the college courses he had taken since he committed the offences and his expression of remorse. However, the sentence the trial judge imposed did not reflect the principle of restraint because it was consistent with sentences imposed on older offenders or offenders with existing records for drug trafficking and did not in fact reflect that the appellant is a youthful first-time offender. In other words, the sentence was not proportionate to the gravity of the offence and the appellant's circumstances. This was an error in principle.

[23] Having found that the trial judge made an error in principle in sentencing the appellant, it falls to this court to impose an appropriate sentence. We substitute a 10-year sentence for the 13-year sentence for the conviction for possession for the purpose of trafficking. Ten years takes account of the seriousness of the offence while reflecting that the appellant is a youthful first-time offender. We maintain the concurrent sentences for the appellant's other offences and the one-year credit granted by the trial judge, resulting in a total sentence of 9 years.

Disposition

[24] The appeal from conviction is dismissed. We grant leave to appeal the sentence, and the sentence appeal is allowed. The sentence for possession for the purpose of trafficking is reduced from 13 years to 10 years, resulting in a total sentence of 9 years after deducting one year of credit.

“Janet Simmons J.A.”

“L. Favreau J.A.”

“M. Rahman J.A.”

- [1] This court subsequently reduced Mr. Hoang’s sentence to 15 years, but the trial judge in this case did not have the benefit of that decision when sentencing the appellant: *R. v. Hoang*, 2024 ONCA 361, 172 O.R. (3d) 97, leave to appeal refused, [2024] S.C.C.A. No. 221.
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