CANADA / JUDGMENT

# R. v. Clarke

## 2026 ONCA 201

COURT
Court of Appeal for Ontario

DECIDED
17 March 2026

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R. v. Clarke Collection Decisions of the Court of Appeal Date 2026-03-17 Neutral citation 2026 ONCA 201 Docket numbers COA-24-CR-0525 Judges Fairburn, J. Michal; Simmons, Janet M.; Trotter, Gary T. Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. Clarke, 2026 ONCA 201 DATE: 20260317 DOCKET: COA-24-CR-0525 Fairburn A.C.J.O., Simmons and Trotter JJ.A. BETWEEN His Majesty the King Respondent and Ginye Anthony Clarke Appellant Kayla Tink, for the appellant Dana Achtemichuk, for the respondent Heard and rendered orally: March 16, 2026 On appeal from the convictions entered by Justice Paul M. Cooper of the Ontario Court of Justice on April 28 and May 4, 2023. REASONS FOR DECISION

[1] This is an appeal from convictions for firearm-related offences. The firearm was seized from the appellant's home pursuant to a warrant, along with ammunition and an oversized magazine. The grounds for the warrant came from a threatening interaction between the appellant and his associates, and a restaurant owner.

[2] The appeal focuses upon whether the trial judge erred in dismissing the Garofoli application challenging the search warrant. The appellant maintains that the trial judge erred (i) by failing to appreciate the affiant mischaracterized the video evidence in the information to obtain the search warrant ("ITO"); and (ii) by misapprehending the video surveillance evidence.

[3] On the first point, while the ITO is not a model of commendable clarity, the record demonstrates that the trial judge concluded there was no mischaracterization of the evidence. Having reviewed the ITO, we agree. Read in context, the ITO makes clear there were two surveillance videos.

[4] On the second point, the trial judge did not misapprehend the video evidence from the lobby outside of the restaurant. The complainant described the appellant's associate as making the threatening gun gesture. Having reviewed the video, it is clear that the appellant could be construed as having made more than one gesture fitting the complainant's description. Regardless, it was open to the trial judge to conclude that the appellant's associate could also have made such a gesture that was not caught on video.

[5] We see no error in the trial judge's conclusions. The appeal is dismissed. "Fairburn A.C.J.O." "Janet Simmons J.A." "G.T. Trotter J.A."

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