

CANADA / JUDGMENT

R. v. Folk

2025 ONCA 834

COURT

Court of Appeal for Ontario

DECIDED

1 December 2025

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R. v. Folk Collection Decisions of the Court of Appeal Date 2025-12-01 Neutral citation 2025 ONCA 834 Docket numbers M56476 Judges Paciocco, David M. Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. Folk, 2025 ONCA 834 DATE: 20251201 DOCKET: M56476 Paciocco J.A. (Motion Judge) BETWEEN His Majesty the King Respondent/ Respondent and Jeremy Folk Appellant/Applicant Mark Halfyard and Ema Ibrakovic, for the applicant Andrew Hotke, for the respondent Heard: November 28, 2025 REASONS FOR DECISION

- [1] Jeremy Folk was convicted of unlawful act manslaughter and received a five-year sentence after he was found to have caused the overdose death of the deceased through his illegal act of trafficking narcotics to the brother of the deceased, who then shared the drugs with the deceased. Mr. Folk, who has been on release on these charges for five years without incident, applies for release pending appeal, pursuant to s. 679 of the Criminal Code, R.S.C. 1985, c. C-46.
- [2] The Crown does not dispute that Mr. Folk's grounds of appeal, which I identify below, are not frivolous, but submits that it cannot be said that they are clearly not frivolous. The Crown also concedes that Mr. Folk has established on a balance of probabilities that he will surrender into custody if released. And the Crown does not suggest there are any residual public safety concerns. It argues that Mr. Folk has not established that his detention is not necessary in the public interest to preserve public confidence in the administration of justice since he has failed to show that the interest in appellate review of the challenged decision outweighs the public interest in the immediate enforcement of the judgement, per the test in R. v. Oland, 2017 SCC 17, [2017] 1 S.C.R. 250, at paras. 23-26. The Crown argues I should consider the manifest seriousness of the offence, the weakness of the grounds of appeal, and lingering concerns that the bail plan may not be adequate to prevent breaches of a release order.
- [3] In R. v. H.C., at para. 34, Coroza J.A. reviewed the elements of manslaughter that the Crown must prove beyond a reasonable doubt:

- (i) [A]n unlawful act or omission (actus reus); (ii) that the unlawful act or omission was inherently dangerous in that it presented an objectively foreseeable risk of causing injury and was a marked departure from the standards of a reasonable person (mens rea); and (iii) that the act or omission caused the death (causation). [Citations omitted.] Mr. Folk challenges the trial judge's reasoning relating to elements (ii) and (iii). In my view, those grounds of appeal are clearly not frivolous.
- [4] With respect to element (ii), Mr. Folk argues that the trial judge erred in his objective foreseeability analysis by failing to employ a case-specific analysis. Mr. Folk submitted the trial judge's reasoning was based on (1) his general observation that "[c]ourts have regularly accepted that there is an objectively foreseeable risk of bodily harm that is neither trivial nor transitory where the predicate offence is trafficking in a controlled substance", and (2) his conclusion that "[s]treet cocaine and fentanyl are both dangerous drugs, the supply of which to another person creates a foreseeable risk of bodily harm". In attacking this line of reasoning, Mr. Folk argues that the trial judge failed to grapple with the fact that none of the decisions he referred to involved cocaine, most addressed the injection of the drugs, and he did not consider the effect of his finding (made clear in his sentencing decision) that Mr. Folk did not know the substance, which he believed to be cocaine, was laced with fentanyl.
- [5] With respect to element (iii), Mr. Folk submits that the trial judge erred by finding that "the concepts of factual causation and legal causation merge in this case". He argues that this proposition is wrong in law and that even where there is "but-for" factual causation, a trial judge is required to consider case-specific circumstances. In this case, that might have included whether the chain of causation or moral responsibility may have been broken by the fact that the narcotics were "re-trafficked" by the purchaser when he gave them to the deceased, or by the deceased's voluntary ingestion of the drugs after seeing the adverse effect they had on the purchaser, who was the first to ingest some of the drugs.
- [6] I have considered the well-presented and thoughtful submissions made by the Crown, which may well prevail on appeal, but I have been convinced by Mr. Folk that the grounds of appeal are "clearly not frivolous". These are issues that warrant close consideration by this court and give weight to the reviewability interest.
- [7] I also recognize that Mr. Folk accumulated a serious criminal record that ended 15 years ago, and that it was confirmed during sentencing that he was trafficking in cocaine at least five years before this tragic incident. However, I am persuaded on a balance of probabilities that the antiquity of his breach convictions, his five years of compliance with bail conditions on this charge, the escalation in conditions in the bail release terms negotiated by the parties should I release him, and the suitability of his surety, will prevent breaches of the release order.

- [8] I also accept that there is a real likelihood that Mr. Folk could well serve the bulk of the actual incarceration required by his custodial sentence before his appeal can be heard and decided by this court, especially given it is funded by Legal Aid and there is a lengthy trial record.
- [9] In these circumstances, Mr. Folk has met his burden of proving that the public interest in immediate enforcement is outweighed by the public interest in reviewing his convictions before he must begin serving his incarceration.
- [10] Mr. Folk is ordered to be released on the terms of release agreed to by the parties. “David M. Paciocco J.A.”
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