

CANADA / JUDGMENT

R. v. Gordon

2026 ONCA 171

COURT

Court of Appeal for Ontario

DECIDED

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R. v. Gordon Collection Decisions of the Court of Appeal Date 2026-03-09 Neutral citation 2026 ONCA 171 Docket numbers C68296 Judges Gillese, Eileen E.; Dawe, Jonathan; Madsen, Lene Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. Gordon, 2026 ONCA 171 DATE: 20260309 DOCKET: C68296 Gillese, Dawe and Madsen JJ.A. BETWEEN His Majesty the King Respondent and Reen Phembi Gordon Appellant Richard Litkowski, for the appellant Ildiko Erdei, for the respondent Heard: March 5, 2026 On appeal from the convictions entered by Justice Michael G. Quigley of the Superior Court of Justice, sitting with a jury, on January 13, 2020, and from the sentence imposed on March 30, 2020.[1] REASONS FOR DECISION Overview

- [1] Following a trial by jury, the appellant Reen Gordon was convicted of two counts of trafficking cocaine and one count of assaulting a peace officer with a weapon. He appeals against conviction on the grounds that the trial judge erred in (1) failing to instruct the jury on the defence of mistake of fact in respect of the assault police officer count and (2) failing to relate the summary of the evidence to the material issues and to the defence position on those issues.
- [2] After hearing the appellant's oral submissions, the court found it unnecessary to call on the Crown in response. We advised the parties that the appeal was dismissed and that short reasons would follow. These are the promised reasons.

Background

- [3] On March 6, 2018, police executed a search warrant on an apartment using a battering ram to open the door. It took officers approximately 20 hits of the ram to breach the door. Throughout their efforts to gain entry, the police were yelling "Police! Search Warrant!" The officers heard someone inside the apartment ask something to the effect of who was at the door, to which they responded "Police!" Officer Abramovitz was the first officer to enter. He was dressed in full police uniform. The unit was small and cluttered, but well-lit with artificial lighting. As the officers entered, they were yelling "Police! Search Warrant". A total of six police officers were involved in the entry and search of the apartment.

- [4] Officer Abramovitz saw the appellant 12-15 feet away from the door, inside the unit's kitchenette. He felt pain on the left side of his head as he approached the appellant and realized the appellant was striking his head with a hammer. Officers eventually subdued and arrested the appellant. He was the only person found inside the apartment.
- [5] The police found 25.32 grams of crack cocaine and 5.17 grams of powder cocaine inside the apartment. They also found indicia of drug trafficking including multiple cell phones, multiple digital scales, \$5,860 CAD, and \$145 USD.
- [6] At trial, the appellant testified in his own defence. Mr. Gordon maintained that he never held the hammer or assaulted anyone during the incident. He also testified that none of the officers who initially entered the apartment were wearing police uniforms or other identifying clothing, and that he did not hear any of them identify themselves as police officers. The appellant also denied that it was his apartment and maintained that he did not know about the drugs and other items.

Analysis

- [7] We see no merit in either ground of appeal as the trial judge made neither of the alleged errors.
- [8] The trial judge instructed the jury that the Crown had to prove beyond a reasonable doubt that the appellant knew that Officer Abramovitz was a peace officer engaged in the execution of his duty. It was not necessary for him to also instruct the jury that a mistake of fact by the appellant about these matters would give rise to a defence. If the appellant mistakenly believed that Officer Abramovitz was not a peace officer who was executing a search warrant, he could not be said to have known either of these things: see *Sansregret v. The Queen*, [1985] 1 S.C.R. 570, at pp. 580-81. The trial judge's instructions made it clear that the Crown had to prove knowledge on the criminal standard. The following passages in the charge to the jury are a sample of these instructions. So finally, relative to this charge, you must consider whether Mr. Gordon knew Officer Abramovitz was a peace officer in the execution of his duty at the time he assaulted him with a hammer. In considering this question, you will need to consider Mr. Gordon's state of mind based on all of the evidence before you regarding the circumstances surrounding the encounter between himself and Officer Abramovitz that morning. Carefully consider all of the evidence concerning what Mr. Gordon was able to see and hear in the moments leading up to the incident. [...] If you find that Mr. Gordon did not know that Officer Abramovitz was a peace officer in the execution of his duty when the assault took place or you have a reasonable doubt about whether he knew that fact, you must enter a verdict of Not Guilty to this charge. If you find that the Crown has proven beyond a reasonable doubt that Mr. Gordon knew that Officer Abramovitz was a peace officer executing his duty when he assaulted him with a weapon, namely a hammer, then you must enter a verdict of Guilty as Charged with assaulting a peace officer in the execution of his duty, with a weapon.

- [9] The trial judge also repeatedly told the jury of the appellant's claim that he did not know that Officer Abramovitz was a police officer or that he and the other officers were executing a search warrant. He reminded the jury of the appellant's position that the apartment was not his and had no knowledge of the drugs and paraphernalia. In this way, the trial judge reviewed the appellant's evidence and explained his position to the jury so they could appreciate its value and how they were to apply it to their factual findings. In short, the trial judge met his obligation to substantially review the evidence and provide the jury with the defence position.

Disposition

- [10] Accordingly, the appeal from conviction is dismissed. The appeal against sentence is dismissed as abandoned. "E.E. Gillese J.A." "J. Dawe J.A." "L. Madsen J.A."
- [1] The appellant's Notice of Appeal sought leave to appeal against the sentence imposed. No formal Notice of Abandonment on the sentence appeal was filed but no reference was made to the sentence appeal in the appellant's factum nor was the matter pursued in oral submissions.

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