

CANADA / JUDGMENT

R. v. Hassan

2026 ONCA 66

COURT

Court of Appeal for Ontario

DECIDED

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R. v. Hassan

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COA-24-CR-0670

Judges

Tulloch, Michael H.; Copeland, Jill M.; Madsen, Lene

Subject

Criminal

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Hassan, 2026 ONCA 66

DATE: 20260202

DOCKET: COA-24-CR-0670

Tulloch C.J.O., Copeland and Madsen JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Ugas Hassan

Appellant

Mark C. Halfyard and Samantha Bondoux, for the appellant

Robin Flumerfelt, for the respondent

Heard: January 23, 2026

On appeal from the conviction entered by Justice Nyron Dwyer of the Ontario Court of Justice, on April 24, 2024.

REASONS FOR DECISION

A. Overview [1] The appellant appeals from his conviction for attempted murder arising from a single gunshot fired during a chaotic melee in the parking lot of a bar in the early morning hours of October 31, 2021.

[2] At trial, the central issues were the identity of the shooter and the appellant's intent at the time the shot was fired. The trial judge, sitting alone, convicted the appellant after a three-day trial.

[3] On appeal, the appellant advances two grounds. First, he submits that the verdict is unreasonable because it rests on illogical reasoning and insufficient evidence, particularly when the video evidence is considered together with the medical evidence concerning the bullet's path. Second, in the alternative, he argues that the trial judge misapplied the mens rea required for attempted murder and effectively convicted on the basis of recklessness.

[4] The governing principles are well settled. A verdict is unreasonable only where it is one that no properly instructed trier of fact, acting judicially, could reasonably have rendered, having regard to the whole of the evidence and appellate disadvantage: *R. v. Biniaris*, 2000 SCC 15, [2000] 1 S.C.R. 381, at para. 36; *R. v. W.H.*, 2013 SCC 22, [2013] 2 S.C.R. 180, at para. 34. The "illogical or irrational" route arises where an inference or essential finding is plainly contradicted by the evidence relied upon, or is incompatible with evidence not otherwise rejected: *R. v. C.P.*, 2021 SCC 19, [2021] 1 S.C.R. 679, at paras. 29-30. Reasons are read functionally and contextually, in light of the issues and the record: *R. v. R.E.M.*, 2008 SCC 51, [2008] 3 S.C.R. 3, at paras. 37-38.

[5] For the reasons that follow, we are not persuaded by either submission.

B. The Evidence and the Trial Judge's Findings [6] The incident was captured on surveillance video. The trial judge viewed the footage repeatedly and treated it as the most reliable evidence in the case. He was entitled to do so.

- [7] The video established that earlier in the evening, the appellant and the victim were involved in a brief physical altercation inside the bar, which the appellant lost. The appellant then left the premises, spent several minutes at a vehicle in the parking lot, and returned visibly angry.
- [8] Upon his return, the appellant is seen repeatedly handling an object in his back right pants pocket. Although the appellant testified that the object was his cell phone, the trial judge rejected that explanation based on the object's appearance on the video and the manner in which it was held and handled. He found that the object was a handgun.
- [9] The video further shows that when another individual pointed toward the parking lot, the appellant immediately changed direction and moved purposefully toward the victim while continuing to handle the gun.
- [10] As a chaotic fight unfolded around the victim, the appellant walked around the melee, positioned himself close to the victim, raised the handgun to a horizontal position, and fired. A loud bang was heard at that moment, and the victim immediately collapsed. Bystanders fled, as if surprised by the shot. The appellant, by contrast, walked calmly away.
- [11] The trial judge found that no other individual on the video was observed pointing an object at the victim at the moment the shot was fired. A shell casing was later recovered in close proximity to where the appellant and the victim were located at that time.

C. Ground 1: Unreasonable Verdict 1. The medical trajectory and positioning argument [12] The appellant's primary submission is that the verdict is unreasonable because the medical evidence suggested that the bullet entered the victim from the front and right, while, he argues, the video shows the appellant positioned behind or to the left of the victim at the moment of the shot. He argues that this inconsistency makes it "impossible" for the appellant to have been the shooter.

- [13] This argument fails for several reasons.
- [14] First, the trial judge expressly considered and rejected the invitation to make precise findings about the victim's posture, the relative positioning of the parties, or the bullet's trajectory. He explained that the melee was fast-moving, bodies were constantly shifting, and the video view was partially obstructed at critical moments. Those conclusions were grounded in the evidence and reflected appropriate caution, not illogical reasoning: C.P., at para. 30.

- [15] The trial judge was not required to resolve speculative trajectory questions in the absence of reliable expert evidence. The medical evidence relied upon by the appellant did not establish the bullet's path with the precision now asserted on appeal. The victim did not see who shot him, and no expert testimony was called to translate wound descriptions into definitive conclusions about shooter positioning.
- [16] The appellant's argument depends on appellate reconstruction of the incident using still frames and inferential geometry. That is not the appellate function on an unreasonable verdict claim: *Biniaris*, at para. 36; *W.H.*, at para. 34. The trial judge, who saw the video in motion and in context, was entitled to conclude that the victim's exact body position at the instant of the shot could not be reliably determined.
- [17] Moreover, the trial judge did not ignore the defence theory. He rejected it because it depended on assumptions the evidence could not support. That rejection was neither illogical nor irrational: *C.P.*, at para. 30.
2. Circumstantial evidence and alleged evidentiary gaps [18] The appellant further submits that even if positioning cannot be definitively resolved, the verdict remains unreasonable under a circumstantial evidence analysis. He points to the absence of forensic evidence, the failure to recover the firearm, and the presence of other angry individuals in the melee.
- [19] We disagree.
- [20] The video evidence was not only circumstantial in the sense contemplated by *R. v. Villaroman*, 2016 SCC 33, [2016] 1 S.C.R. 1000. It was direct evidence of the appellant's conduct before, during, and after the shooting. The trial judge relied on what he observed: the appellant's acquisition and possession of a handgun, his pursuit of the victim, the raising of the gun when the shot was fired, and his calm departure while others fled.
- [21] Even if *Villaroman* applied, that case does not require the Crown to rule out every other conceivable scenario. Instead, it requires the trier of fact to consider whether alternative inferences are reasonable enough to raise a doubt on the evidence: at paras. 42, 56.
- [22] Here, the trial judge relied on what the video showed before, during, and after the shot, together with the surrounding circumstances. On the findings he made, he was entitled to conclude that the only reasonable inference was that the appellant fired the shot.
- [23] In the circumstances of this case, the absence of forensic evidence did not, without more, provide a reasonable alternative inference. Reasonable doubt does not arise from speculative or merely possible alternatives unsupported by the record: *Villaroman*, at para. 66. A conviction does not require ballistic testing, recovery of the firearm, or DNA evidence where other reliable evidence establishes guilt. Nor does the presence of other angry individuals in a chaotic scene, without more, give rise to a reasonable alternative explanation when the video shows only one person pointing a gun at the critical moment.

- [24] The trial judge acknowledged that he could not see the hands of every participant in the melee. That acknowledgment does not undermine his conclusion. Reasonable doubt does not arise from theoretical possibilities unsupported by the evidence: Villaroman, at para. 66.
- [25] The suggestion that another individual may have fired the shot was fully canvassed at trial and rejected. The trial judge was entitled to conclude that the only reasonable inference available on the totality of the evidence was that the appellant was the shooter.
- [26] This court is not permitted to reweigh the evidence or to substitute its own preferred inferences. The verdict was one that a reasonable trier of fact, acting judicially, could reach: Villaroman, at para. 50.

D. Ground 2: Mens Rea for Attempted Murder [27] In the alternative, the appellant argues that the trial judge convicted him of attempted murder on the basis of recklessness, not the specific intent to kill.

- [28] The mens rea for attempted murder is a specific intent to kill; recklessness is insufficient: R. v. Ancio, [1984] 1 S.C.R. 225, at pp. 248-51; R. v. Boone, 2019 ONCA 652, 56 C.R. (7th) 432, at paras. 52, 57, 61. Specific intent may be established where killing is the accused's purpose or where the accused acts for another purpose while believing that death is a virtually certain consequence: Boone, at paras. 52, 57-60.
- [29] This submission is based on an isolated reading of the trial judge's reasons. Read as a whole, the reasons demonstrate that the trial judge correctly instructed himself on the law, including the requirement of specific intent to kill and the distinction between recklessness and belief in virtual certainty of death. He expressly stated that recklessness was insufficient.
- [30] The trial judge found that the appellant deliberately fired a handgun at close range into the middle of the victim's body. He concluded that even if killing the victim was not the appellant's subjective purpose, the appellant believed that such conduct was virtually certain to cause death: Boone, at paras. 52, 63. That finding was open to him on the evidence.
- [31] The fact that the victim survived, or that the injury was ultimately not life-threatening, does not negate intent. Intent is assessed at the time of the act, not in hindsight: R. v. Walle, 2012 SCC 41, [2012] 2 S.C.R. 438, at para. 65.
- [32] The appellant's reliance on cases involving shots to clearly non-vital areas, accidental discharges, or materially different circumstances does not assist. Intent is fact-specific. Here, the trial judge was entitled to infer intent to kill from a close-range shooting aimed at the mid-section of the victim's body by an accused who, while enraged with the victim following a prior confrontation, used a handgun in precisely the manner for which it is designed: R. v. Bains (1985), 7 O.A.C. 67 (C.A.), at para. 27, leave to appeal refused, [1985] S.C.C.A. No. 158; see also R. v. Guedez-Infante, 2009 ONCA 739, at para. 3, application to appoint counsel dismissed, [2011] S.C.C.A. No. 122.

E. Disposition [33] The trial judge's findings on identity and intent were firmly grounded in the video evidence and the surrounding circumstances. They were neither illogical nor unsupported by the record.

[34] The appellant has not demonstrated that the verdict was unreasonable or that the trial judge committed an error of law.

[35] The appeal is dismissed.

"M. Tulloch C.J.O."

"J. Copeland J.A."

"L. Madsen J.A."

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