

CANADA / JUDGMENT

R. v. J.D.

2026 ONCA 316

COURT

Court of Appeal for Ontario

DECIDED

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R. v. J.D. Collection Decisions of the Court of Appeal Date 2026-05-05 Neutral citation 2026 ONCA 316 Docket numbers COA-23-CR-1133 Judges Huscroft, Grant; Thorburn, Julie; Dawe, Jonathan Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. J.D., 2026 ONCA 316[1] DATE: 20260505 DOCKET: COA-23-CR-1133 Huscroft, Thorburn and Dawe JJ.A. BETWEEN His Majesty the King Respondent and J.D. Appellant Alexander Ostroff, for the appellant Dana Achtemichuk, for the respondent Heard: April 20, 2026 On appeal from the findings of guilt entered by Justice Joseph Callaghan of the Ontario Court of Justice, on March 2, 2023. REASONS FOR DECISION

- [1] The appellant appeals from his convictions on firearm offences and from the dismissal of his s. 11(b) Charter application. The convictions arise out of two shootings that occurred in Toronto on August 19, 2020. The first shooting took place at a housing complex, where seven men wearing masks and hoods fired at least 36 times at residents. The second shooting happened an hour and a half later at a residential community and involved five men wearing masks and hoods, who fired at least 50 times at residents. The trial judge found that the appellant was one of the shooters in both shootings.
- [2] The appeal is dismissed for the reasons that follow. The trial judge did not err by permitting the Crown to bring its Leaney application
- [3] The appellant argues that the trial judge should have dismissed the Crown's Leaney application[2] because it failed to comply with the rules. Specifically, the Crown brought its Leaney application just four days before the trial's scheduled start date, and the material did not contain sufficient detail to provide adequate notice of the factual and legal basis for the application.
- [4] We do not agree.
- [5] There is no question that the Crown's application was late. But it was within the trial judge's discretion to decide the application on its merits under r. 5.3 of the Criminal Rules of the Ontario Court of Justice. The trial judge noted that it had been known for months that the Crown was bringing a Leaney application and that the Crown should have provided full disclosure much earlier, but defence counsel was also obligated to follow up with the Crown

if it knew of disclosure deficiencies. Both sides could have acted more diligently concerning the Leaney evidence.

- [6] Having regard to all of the circumstances, including the nature and seriousness of the charges, the trial judge decided not to dismiss the Leaney application. He concluded that the situation could be remedied and did so by exercising his discretion to grant an adjournment, which allowed the Crown time to provide further information and gave the defence time to review all of the Crown's materials. The trial judge also waived the requirement that the defence file a written response.
- [7] This approach was open to the trial judge. It remedied the Crown's late application and redressed any prejudice the Crown's lateness or lack of details might have caused. There is no basis for this court to interfere with the trial judge's discretionary decision. The trial judge did not err in dismissing the appellant's s. 11(b) application.
- [8] The trial judge found that the net delay was 17.1 months (519 days), which is below the presumptive ceiling of 18 months for cases in provincial court set in *R. v. Jordan*, 2016 SCC 27, [2016] 1 S.C.R. 631. Starting from a total delay of 24.3 months (738 days), the Crown and defence agreed to deduct a 41-day period as defence delay. The trial judge deducted three further contested periods of time: 98 days (August 12, 2022 to November 17, 2022) as defence delay because the Crown and the court were ready to proceed in August but the defence was not; 20 days (from November 17, 2022 to December 7, 2022) because the parties underestimated the time required to go through surveillance video with the witnesses; and 60 days because of the COVID-19 pandemic and its effect on the courts. The trial judge found that the case would have proceeded more expeditiously but for the effects of the pandemic, and that the real impact was likely more than 60 days. The trial judge found the net delay, which fell below the presumptive Jordan ceiling, was not unreasonable.
- [9] The appellant argues it was an error to deduct each of these periods of time. We do not agree.
- [10] Although the adjournment was initially caused by the lateness of the Crown's Leaney application, it does not follow that all of the delay until the matter was scheduled should be attributed to the Crown. It was reasonable to attribute delay to the defence given counsel's unavailability for the range of dates offered by the trial coordinator, all of which the Crown was available for. The trial judge was not precluded from doing so by his oral ruling to hear the Leaney application on its merits, in which he said that "any possible adjournment will fall at the hands of the Crown." While he appropriately held the Crown responsible for the delay caused by the need for an adjournment in June, he was not bound to attribute defence counsel's unavailability for reasonable future continuation dates to the Crown's late application. The delay caused by that rejection was no longer attributable to the late filing. The trial judge properly instructed himself that he had to "consider all relevant circumstances before apportioning delay": *R. v. Boulanger*, 2022 SCC 2, [2022] 1 S.C.R. 9 at para. 8; *R. v. Hanan*, 2023 SCC 12 [2023] 1 S.C.R. 467, at para. 9. He did not err in

apportioning the delay between June and November 2022 as he did or in characterizing the period from August 12 to November 17 as defence delay.

- [11] The trial judge's finding that both parties failed to anticipate the time required to complete the trial was open to him on the record and supports the deduction of 20 days from November 17, 2022 to December 7, 2022 as a discrete exceptional circumstance.
- [12] The appellant focused his submissions on the deduction of 60 days for delay caused by the pandemic. Specifically, he argues that the deduction was improper because of the absence of a clear, articulable link between the impact of the pandemic and delays in the case. Again, we do not agree. As this court noted in *R. v. K.D.*, 2025 ONCA 639, 178 O.R. (3d) 721, at paras. 62-63, a general deduction for pandemic delay may be appropriate based on the trial judge's knowledge of the local conditions. In this case, the Crown presented evidence about how the pandemic had slowed the disclosure process, and the trial judge described a link between the pandemic and delays in case management. He found that it was reasonable to deduct a minimum of 60 days and stated that in his view the real impact of the pandemic was likely much more. He made no error in doing so. The trial judge's reasons on the finding of identity were sufficient
- [13] The appellant argues guilt beyond a reasonable doubt was not proven even if the trial judge accepted the Leaney identification evidence, and that the trial judge did not explain why he rejected defence arguments about the identity of the shooter. There is no merit in this argument.
- [14] The only issue at trial was whether the appellant was one of the shooters in both shootings. The police officers, who were well familiar with the appellant, identified him on the videos and their evidence was corroborated by J.A.'s evidence that he lent his car to the appellant and two other men on the day of the shootings. The Leaney witnesses identified the appellant as one of the males in the car, and J.A. confirmed that the car shown in video resembled the car he lent to the men.
- [15] The trial judge was satisfied beyond a reasonable doubt that the appellant was one of the shooters. He acknowledged the defence position that even if the Leaney witnesses identified the appellant on the videos they reviewed, that did not necessarily mean the appellant was one of the shooters. He relied on video evidence connecting the appellant to the cars used in the shootings and to the other men who participated in the shootings, in addition to video evidence of the shootings that enabled him to note the physical similarities between one of the shooters and the appellant, as identified by the Leaney witnesses. He found that there was an overwhelming case that the appellant was one of the shooters.
- [16] We agree. The reasons sufficiently explain why the appellant was convicted.
- [17] Accordingly, the appeal is dismissed. "Grant Huscroft J.A." "Thorburn J.A." "J. Dawe J.A."

- [1] This appeal is subject to a publication ban pursuant to ss. 110 and 111 of the Youth Criminal Justice Act, S.C. 2002, c.1.
- [2] Pursuant to R. v. Leaney, [1989] 2 S.C.R. 393.
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