

CANADA / JUDGMENT

R. v. Jackson

2025 ONCA 717

COURT

Court of Appeal for Ontario

DECIDED

22 October 2025

Source: norma.lexum.com · Research copy typeset by Esheria. Not court-issued or certified.

R. v. Jackson

Collection

Decisions of the Court of Appeal

Date

2025-10-22

Neutral citation

2025 ONCA 717

Docket numbers

COA-24-CR-1178

Judges

Gillese, Eileen E.; Zarnett, Benjamin; Thorburn, Julie

Subject

Criminal

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Jackson, 2025 ONCA 717

DATE: 20251022

DOCKET: COA-24-CR-1178

Gillese, Zarnett and Thorburn JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Tyler Jackson

Appellant

Tyler Jackson, acting in person

Erin Dann, appearing as duty counsel

Laura Precup-Pop, for the respondent

Heard: October 9, 2025

On appeal from the conviction entered by Justice Mark L. Edwards of the Superior Court of Justice on January 8, 2024.

REASONS FOR DECISION

A. OVERVIEW [1] The appellant, Mr. Jackson, appeals his conviction for possession of fentanyl, a Schedule I substance, for the purpose of trafficking.

[2] Mr. Jackson brought a Charter application to exclude the drugs found after a search of his person and the vehicle in which he was a passenger. He claimed his s. 8 Charter right to be secure against unreasonable search or seizure, and his s. 9 right not to be arbitrarily detained, were infringed. His Charter application was dismissed, after which he did not contest the facts and was found guilty.

[3] Through duty counsel, Mr. Jackson claims the application judge erred by misapprehending the facts and conducting an incorrect s. 9 analysis. He argues that the application judge erred in finding that (1) the police officers had lawful authority to stop the vehicle pursuant to the Highway Traffic Act, S.O. 2006, c. 25; and (2) the subsequent search of the vehicle was legal pursuant to the Cannabis Control Act 2017, S.O. 2017, c. 26, Sched. 1 (the “CCA”).

[4] Mr. Jackson claims the police used the false pretext that he was not wearing a seatbelt, to arbitrarily detain him and search for drugs. He claims the evidence should have been excluded pursuant to s. 24(2) of the Charter and his conviction should therefore be overturned.

[5] We begin our analysis with a review of the evidence before the application judge.

B. THE EVIDENCE BEFORE THE APPLICATION JUDGE [6] On February 4, 2021, the police observed Mr. Jackson in the front passenger seat of a vehicle that police believed was used in a suspected drug transaction. The vehicle drove away and was followed by two police officers in their vehicle.

- [7] Officer Hatzes, who had an unobstructed view of the vehicle through its rear window, testified that he believed that Mr. Jackson was not wearing his seatbelt contrary to s. 106 of the Highway Traffic Act. As the officers pulled up beside the vehicle to get a different view of the occupants and the potential seatbelt offence, Officer Hatzes confirmed that Mr. Jackson was indeed not wearing his seatbelt. Mr. Jackson does not dispute this. Section 106 of the Highway Traffic Act provides in part that,
- (3) Every person who is at least 16 years old and is a passenger in a motor vehicle on a highway shall, (a) occupy a seating position for which a seat belt assembly has been provided; and (b) wear the complete seat belt assembly as required by subsection (5).
- [8] The officers initiated a traffic stop pursuant to the Highway Traffic Act.
- [9] Officer Hatzes testified that while he was beside the vehicle speaking to Mr. Jackson, he smelled an odour of fresh cannabis. He also saw what he believed to be pieces of cannabis, or “cannabis shake,” mixed with tobacco on the dashboard. He said that because of his training, he was familiar with the difference in smell between fresh and burnt cannabis and that the presence of fresh cannabis often suggests there is more cannabis present. He also observed an air freshener in the vehicle, and noted that Mr. Jackson displayed a “change in demeanour” once asked about the potential cannabis shake on the dashboard.
- [10] As a result, the officers testified that they believed cannabis was in the vehicle contrary to s. 12(1) of the CCA. They ordered Mr. Jackson and the driver to exit the vehicle to conduct a search pursuant to s. 12(3) of the CCA.
- [11] Mr. Jackson fled but police found him and placed him under arrest for obstructing police. During the search incident to arrest, police discovered 60 grams of fentanyl in Mr. Jackson’s trousers, and 20 grams of cannabis and a pill of oxycodone in the vehicle.
- [12] Mr. Jackson was subsequently placed under arrest for possession of a controlled substance for the purpose of trafficking contrary to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19.

C. THE APPLICABLE LEGAL PRINCIPLES 1. Detention [13] Section 216(1) of the Highway Traffic Act provides that, “A police officer, in the lawful execution of his or her duties and responsibilities, may require the driver of a vehicle, other than a bicycle, to stop ...”: *R. v. Gonzales*, 2017 ONCA 543, 136 O.R. (3d) 255, at para. 55.

- [14] Detention may be for both purposes of road safety and investigation of criminal activity. However, s. 216 (1) does not provide lawful authority to stop the vehicle and detain the occupants if the highway safety concerns are merely a “ruse” or “pretext” to stop the vehicle for some other reason: *R. v. Mayor*, 2019 ONCA 578, 378 C.C.C. (3d) 453, at paras. 8-9; and *R. v. Tully*, 2022 ONSC 1852, 505 C.R.R. (2d) 87, at para. 25.

[15] Determining police purpose is a factual inquiry that requires consideration of all the circumstances including the officers' evidence, the evidence of the detained person, the circumstances of the stop, and police conduct during the stop: *Mayor*, at para. 10. Deference is owed to a trial judge's findings of fact.

[16] As noted by Binnie J. for the Supreme Court in *R. v. Nolet*, 2010 SCC 24, [2010] 1 S.C.R. 851, at paras. 3-4:

Clearly random checks of vehicles for highway purposes must be limited to their intended purpose and cannot be turned into "an unfounded general inquisition or an unreasonable search" ...

Nevertheless, roadside stops sometimes develop in unpredictable ways. It is necessary for a court to proceed step by step through the interactions of the police and the appellants from the initial stop onwards to determine whether, as the situation developed, the police stayed within their authority, having regard to the information lawfully obtained at each stage of their inquiry. [Citations omitted.]

2. Search [17] A search incident to detention may be justified provided it is reasonably necessary in the totality of the circumstances: see *R. v. Buakasa*, 2023 ONCA 383, 426 C.C.C. (3d) 279, at para. 26. What is reasonably necessary will depend on circumstances including the nature of the detention and the seriousness of the offence, the information known to police, and the geographic and temporal scope of the detention: *R. v. Clayton*, 2007 SCC 32, [2007] 2 S.C.R. 725, at paras 25-26, 30-31.

[18] Where there is a warrantless search, the Crown bears the burden of establishing, on a balance of probabilities, that the search was authorized by law. If the search was authorized by law and the law is reasonable, there is no Charter violation: *R. v. Reeves*, 2018 SCC 56, [2018] 3 S.C.R. 531, at para. 14; *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145, at p. 161.

[19] In this case, the Crown argued that the search was conducted pursuant to s. 12(3) of the CCA. Section 12(1) of the CCA provides that "No person shall drive or have the care or control of a vehicle or boat, whether or not it is in motion, while any cannabis is contained in the vehicle or boat." Section 12(3) of the CCA provides that if a police officer has reasonable grounds to believe that cannabis is being contained in a vehicle in contravention of s. 12(1), they may, at any time and without a warrant, enter and search the vehicle and its occupants.

D. ANALYSIS OF THE APPLICATION JUDGE'S REASONS 1. The Highway Traffic Act Stop [20] The application judge accepted that the police may not use a Highway Traffic Act detention as a pretext to do something else. The application judge correctly noted however that, "[T]here is no dispute that a police officer who is in the lawful execution of his or her duties may require a driver of the motor vehicle to stop in order to ensure compliance with highway regulation and road safety" pursuant to s. 216(1) of the Highway Traffic Act: *Brown v. Durham Regional Police Force*, (1998) 43 O.R. (3d) 223 (C.A.), leave to appeal granted but appeal discontinued, [1999] S.C.C.A. No. 87.

[21] The application judge did not find that the police used the Highway Traffic Act stop as a pretext to conduct a criminal investigation into the suspected drug transaction. He noted that Mr. Jackson agreed that he was not wearing a seatbelt and accepted that:

Officer Hatzes readily acknowledged that he did not have enough evidence to arrest Mr. Jackson for a drug offence—he merely had a suspicion. Officer Hatzes was credible in his evidence that if he had not seen an actionable Highway Traffic Act offence, he would not have initiated a stop of the West vehicle. Put differently if Mr. Jackson had been wearing his seatbelt, he and Ms. West would never have been investigated.

[22] After stopping the vehicle because he believed Mr. Jackson was not wearing his seatbelt, the officer approached the vehicle and confirmed that Mr. Jackson was not wearing a seatbelt. This was not a pretext; it was a reasonable step and a valid reason to stop the vehicle for a Highway Traffic Act violation.

[23] For these reasons, we find no error in the application judge’s conclusion that Mr. Jackson was not arbitrarily detained pursuant to s. 9 of the Charter because, although the police had a suspicion that Mr. Jackson was in possession of drugs, they had legitimate grounds to stop him for the Highway Traffic Act offence.

2. The Cannabis Control Act Search [24] Moreover, we find no error in the trial judge’s analysis or his conclusion that the search of Mr. Jackson’s person and the vehicle were both lawful and reasonable.

[25] Although Mr. Jackson disputed the police officer’s evidence, the application judge preferred the officer’s evidence that upon stopping the vehicle because of the Highway Traffic Act offence, he (1) observed cannabis shake on the dashboard of the vehicle, (2) smelled fresh cannabis, and (3) noticed air freshener in the vehicle. The application judge explicitly considered the reasoning in *R. v. Moulton*, 2023 ONCJ 140, 524 C.R.R. (2d) 168, in assessing whether the quantity of cannabis observable to police officers was “miniscule.”

[26] Although the cannabis shake was described as “green specs and flakes,” the application judge concluded that the quantity was sufficient to confirm that it was indeed cannabis and the search was not based on the smell alone.

[27] For these reasons, we see no error in the application judge’s conclusion that the police had reasonable and probable grounds to believe that cannabis was in the vehicle and therefore, to conduct the search pursuant to s. 8 of the Charter: *Moulton*, at para. 228.

E. CONCLUSION [28] The appeal is dismissed.

“E.E. Gillese J.A.”

“B. Zarnett J.A.”

“Thorburn J.A.”

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://norma.lexum.com/coa/coa/en/item/23646/index.do>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-jackson-2025>

Prepared on 28 October 2026 · Esheria