

CANADA / JUDGMENT

R. v. Kesminas

2026 ONCA 256

COURT

Court of Appeal for Ontario

DECIDED

9 April 2026

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Collection

Decisions of the Court of Appeal

Date

2026-04-09

Neutral citation

2026 ONCA 256

Docket numbers

COA-24-CR-0552

Judges

van Rensburg, Katherine; Roberts, Lois B.; Gomery, Sally A.

Subject

Criminal

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Kesminas, 2026 ONCA 256

DATE: 20260409

DOCKET: COA-24-CR-0552

van Rensburg, Roberts and Gomery JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Giedrius Kesminas

Appellant

Michelle M. Biddulph, for the appellant

Bari Crackower and Sarah Malik, for the respondent

Heard: October 17, 2025

On appeal from the conviction entered by Justice R. Cary Boswell of the Superior Court of Justice, on February 1, 2024, with reasons reported at 2024 ONSC 666.

L.B. Roberts J.A.:

Overview

- [1] On February 1, 2024, the appellant was convicted of one count of conspiracy to import cocaine into Canada. The trial judge imposed a 7.5-year custodial sentence. The appellant appeals only his conviction.
- [2] No issue is taken with the trial judge's findings of fact, including that there was a conspiracy to import cocaine into Canada and that the appellant engaged in discussions with the other conspirators with respect to that conspiracy. As at trial, this appeal turns principally on the characterization of the appellant's discussions with the other conspirators during their meeting on June 16, 2021: whether those discussions went no farther than mere discussions and negotiations or whether they culminated in a concluded agreement to import cocaine into Canada.
- [3] For the reasons that follow, I see no error in the trial judge's conclusion that the appellant concluded an agreement with the other conspirators to import cocaine into Canada and that he was a member of that conspiracy. I would dismiss the appeal.

Brief background

- [4] At the time of the offence, the appellant was a student pilot[1] and operated a flight school. The trial judge found that the appellant was approached by his friend, Hans Lauro, to join a scheme to import 300 kilograms of cocaine from the Caribbean into Canada. The other members of the importation conspiracy were Messrs. Luangphasi, Brown, Le, Walters, Vogelsson and Dixon.

- [5] The trial judge found that the appellant's agreement to join the conspiracy was completed at the June 16, 2021 meeting. The trial judge relied on over 100 intercepted conversations among the members of the conspiracy, as well as the agreed statement of facts, to find that prior to the June 16, 2021 meeting between the appellant and the other conspirators, the other conspirators had formulated a plan to recruit a pilot to bring cocaine into Canada and that the appellant was approached for that purpose. The appellant's role was to act as a pilot, or find a pilot, and source a plane to pick up the cocaine from the Caribbean and bring it back to Ontario.
- [6] The June 16, 2021 meeting included the appellant and Messrs. Luangphasi and Brown. The trial judge concluded that it was "patently clear" from the intercept transcript that the appellant had discussed at length the use of a plane to import cocaine. On the basis of the whole of the evidence that he reviewed, the trial judge found that the Crown had proved that the appellant knowingly agreed to assist in the drug importation scheme:

I find that Hans Lauro approached [the appellant] about assisting with the importation of cocaine by airplane. I further find that [the appellant] agreed to provide such assistance. The meeting with Adam Luangphasi and Nathan Brown would never have happened without that agreement. Hans Lauro would never have vouched for [the appellant] if he was not satisfied that [the appellant] was a willing participant.

I further find that [the appellant] knew what the purpose of the meeting with Messrs. Luangphasi and Brown was and that he would not have attended that meeting unless he intended to agree to assist with the goal of the conspiracy – the importation of cocaine by airplane.

...

In the result, I am satisfied beyond a reasonable doubt that [the appellant] was, as of June 16, 2021, a member of the conspiracy.

- [7] The trial judge convicted the appellant.

Issues

- [8] The appellant raises the following grounds of appeal that he says warrant quashing the conviction or, alternatively, ordering a new trial:
- 1) The trial judge erred in conflating discussions and negotiations surrounding a criminal objective with an agreement to achieve that objective; and
 - 2) The trial judge erred in his application of the co-conspirators' exception to the hearsay rule, relying on inadmissible communications for the truth of their contents and discounting any hearsay evidence that tended to undermine the inference that an agreement with the appellant had been reached.
- [9] I am not persuaded that the trial judge made any reversible error.

1. The trial judge made no error in finding that there was an agreement to carry out a conspiracy to import cocaine into Canada [10] With respect to the first ground of appeal, the thrust of the appellant's argument is that the requisite agreement to commit a conspiracy could not be reached on the evidence before the trial judge and that, essentially, the verdict was unreasonable. The appellant takes no issue with the trial judge's findings of fact, including that there was a pre-existing conspiracy to import cocaine into Canada among the other conspirators who were all found to be members. The appellant acknowledges the correctness of the trial judge's recitation of the law of conspiracy. However, the appellant argues that, at its highest, the evidence supports that he participated in negotiations about joining the conspiracy but not that he reached any agreement to join the conspiracy.

[11] I disagree. Although the appellant does not purport to challenge the trial judge's findings of fact, his argument nevertheless amounts to a quarrel with the trial judge's factual findings based on his application of the correct governing principles of conspiracy. Deference is owed to the trial judge's findings, unless speculative or tainted by legal error, which is not the case here: *R. v. Root*, 2008 ONCA 869, 241 C.C.C. (3d) 125, at para. 74, leave to appeal refused, [2009] S.C.C.A. No. 282.

[12] As the appellant acknowledges, the trial judge correctly set out the governing principles respecting the formation and existence of a conspiracy. Referring to *Papalia v. R.*, [1979] 2 S.C.R. 256, *Root* and *United States of America v. Dynar*, [1997] 2 S.C.R. 462, the trial judge summarized them as follows:

A conspiracy is an agreement between at least two people to commit a crime. The agreement itself is the gist of the offence. The actus reus "is established upon proof of the agreement to commit the predicate offence[".]

...

The mens rea of the offence of conspiracy involves the intention to put the common design into effect. In other words, the goal of the agreement – the commission of the substantive offence – is part of the mens rea of the offence of conspiracy. [Citations omitted.]

[13] Moreover, the trial judge clearly understood that the central question was not whether the appellant simply participated in discussions about the importation of cocaine into Canada but whether there was a common agreement between the appellant and others to do so. As he stated: "Mere knowledge of, discussion of, or acquiescence in a plan of criminal conduct is not, on its own, sufficient to make out conspiracy. The accused must be shown to have agreed with one or more others to commit the predicate offence."

[14] The trial judge applied this understanding to the whole of the evidence. He rejected the argument that the appellant did no more than offer advice about how to rent a plane or smuggle cocaine into Canada. Rather, he found that the appellant "agreed to assist in making it happen" and "agreed to be part of the conspiracy and to help achieve its goal." He considered the June 16, 2021 discussions as a whole and concluded that it was "inescapable"

that the appellant had agreed “to aid in achieving the common goal” of the conspiracy to import cocaine into Canada. He found that conclusion was “particularly supported” by the following intercepted exchange between the appellant and Mr. Luangphasi:

[The appellant]: (Speaking about a purchased plane) ... I’d register it in my fucking uh my company no problem.

...

[The appellant]: Right, so I know I can fly that I can guarantee from point A to point B, from that point is that your fucking problem, not my problem.

...

Adam Luangphasi: So maybe you can and when you have time you look for one [a plane] to rent.

[The appellant]: I will look.

[15] The appellant’s statements about what he was going to do to further the conspiracy, including agreeing to look for a plane to rent, went beyond discussions or negotiations and supported the trial judge’s conclusion that the appellant had indeed agreed to join the conspiracy to import cocaine.

[16] The trial judge rejected the appellant’s submission that the June 16, 2021 meeting represented the appellant’s introduction to the idea of the conspiracy to import cocaine. This meeting was not the appellant’s “job interview”, as the appellant analogized. Rather, the trial judge found that, when the appellant attended the meeting, he knew it was for the purpose of discussing the importation of cocaine into Canada through the use of a plane. As the trial judge found, at the June 16, 2021 meeting, the appellant clearly expressed his willingness to assist with the goal of the conspiracy. These findings were open to the trial judge.

[17] The trial judge applied the correct legal principles to the evidence. There was strong evidentiary support for his findings. I am not persuaded that the trial judge’s findings were either speculative or tainted by legal error. I would reject this ground of appeal.

2. The trial judge did not err in his application of the co-conspirators’ exception to the hearsay rule [18] After deciding that the Crown had proven beyond a reasonable doubt that there was a conspiracy to import cocaine, the trial judge turned to the final two stages set out in *R. v. Carter*, [1982] 1 S.C.R. 938, and *R. v. Cargioli*, 2023 ONCA 612, 430 C.C.C. (3d) 308. He summarized his further analysis, as follows:

At the first step, Crown counsel must establish, on a balance of probabilities, that [the appellant] was a member of the conspiracy. At this step, the court may only consider evidence directly admissible against [the appellant].

Should the Crown succeed in establishing that [the appellant] was probably a member of the conspiracy, then the court will go on to assess whether the evidence proves beyond a reasonable doubt that he was a member of the conspiracy. The evidence that may be considered at stage two includes not only evidence directly admissible against [the appellant], but also the acts and declarations done or made while the conspiracy was ongoing and in furtherance of the agreement by anyone else who was found to be a probable party to the agreement. [Citations omitted.]

[19] The appellant takes no issue with the trial judge's articulation of the relevant legal principles. Moreover, as earlier noted, the trial judge's finding that there was a conspiracy is not in dispute on appeal. However, the appellant submits that the trial judge erred in his application of the relevant legal principles by:

- 1) considering and treating as true the hearsay evidence from the other conspirators that was not directly admissible against the appellant and that overstated the appellant's probable membership in the conspiracy; and
- 2) failing to consider all of the evidence, including evidence from the other conspirators that tended to undermine the existence of an agreement to which the appellant was a party.

[20] With respect to the first prong of these submissions, the appellant highlights para. 65 of the trial judge's reasons as problematic, arguing that it shows his reliance on hearsay evidence of conversations among the other conspirators that was not directly admissible against the appellant:

Hans Lauro was a long-time friend of [the appellant]. Mr. Lauro, I find, was probably a member of the conspiracy to import cocaine into Canada. This conclusion readily flows from the conversations Mr. Lauro engaged in with Adam Luangphasi, as set out in Appendix "A". Mr. Lauro arranged for [the appellant] to meet with Adam Luangphasi and Nathan Brown, two other individuals who I find were probably members of the same conspiracy, again based on their intercepted communications as set out in Appendix "A". [Emphasis added.]

[21] I disagree that this passage reveals any error. This passage indicates that the trial judge did not rely on hearsay but on the evidence from the intercepts of the other conspirators' own utterances to find that Mr. Lauro and the others were probably members of the conspiracy. This finding was made before the trial judge determined that the appellant was a member of the conspiracy. As I earlier stated, it is uncontroversial that there was a pre-existing conspiracy to import cocaine. Moreover, the trial judge understood that "[p]roof that there was a conspiracy and proof that [the appellant] was a participant in the conspiracy are two different things."

[22] Further, the trial judge did not use his findings in para. 65 of the other conspirators' membership in the conspiracy as proof of the appellant's probable membership in the conspiracy. Rather, the trial judge's finding of the appellant's membership in the conspiracy was based on the appellant's own actions and utterances, including his evidence in chief that

he became involved in the June 16, 2021 conversation with Messrs. Luangphasi and Brown at the request of his friend, Mr. Lauro, as well as what he said during the intercepted June 16, 2021 discussions. The impugned paragraph of the trial judge's reasons properly provided context as part of the narrative for the appellant's involvement.

[23] As for the second prong of this argument that the trial judge failed to consider all of the evidence, especially exculpatory evidence, the appellant argues in particular that the trial judge erred in his reliance on Mr. Luangphasi's intercepted June 9, 2021 statement that the appellant had already agreed to arrange for the importation of cocaine. In particular, he argues that the trial judge ignored: 1) evidence that Mr. Luangphasi was not being truthful about the appellant in that conversation; and 2) Mr. Luangphasi's expression of doubt following the June 16, 2021 meeting that there had been an agreement with the appellant.

[24] The impugned June 9, 2021 intercepted conversation was between Messrs. Luangphasi, Vogelsson and Dixon, as well as another unknown male:

Adam Luangphasi: My guy here [referring to the appellant] he has his pilot license he has planes everything can we do anything with that

Owen Vog[el]son: Could he go

Adam Luangphasi: Yeah he can go he has to bring passengers or he has to go vacation

[25] The trial judge concluded that "[t]his passage suggests that there had already been a discussion with [the appellant] about his willingness and ability to participate in the importation of cocaine by plane."

[26] The appellant takes issue with the trial judge's interpretation of and reliance on this conversation, arguing that Mr. Luangphasi made statements about the appellant that were clearly wrong – including that the appellant had a pilot's licence at that time – which should have caused the trial judge to question Mr. Luangphasi's credibility and reliability.

[27] I do not accept that the trial judge made any error. That Mr. Luangphasi may have overstated or misunderstood details about the appellant, including his qualifications as a pilot, does not undermine the evidence on which the trial judge relied to conclude that the appellant had prior discussions concerning the conspiracy and was a willing participant. As the trial judge found:

I need not be satisfied that [the appellant] was capable of piloting a plane to the Caribbean or arranging for someone else to do so. I need not be satisfied that the balance of the probable members of the conspiracy would ultimately use [the appellant] to do so. I need only be satisfied, to the reasonable doubt standard, that [the appellant] understood what the goal of the conspiracy was, intended to agree to help the conspiracy achieve that goal, and ultimately did agree to help the co-conspirators achieve that goal.

[28] Specifically, it was open to the trial judge to infer from not only the June 9, 2021 intercept, but from other intercepted discussions, that the appellant had conversed with a member or members of the conspiracy prior to the June 16, 2021 meeting and therefore knew the purpose of the meeting and was a willing participant. Notably, the appellant admitted that his friend, Mr. Lauro, had asked him to attend the June 16, 2021 meeting to speak about aircrafts, and at the beginning of the meeting, he corrected Mr. Luangphasi's reference to importing cocaine from Jamaica by stating, "You said Dominican".

[29] With respect to the appellant's argument that the intercepted discussions following the June 16, 2021 meeting evidenced no agreement with the appellant, as at trial, the appellant highlights the intercepted discussions that Mr. Luangphasi had with Mr. Brown,[2] following their discussions with the appellant. The appellant says these discussions confirm that he was not yet an accepted member of the conspiracy. For example, the appellant referred to the following intercepted discussions that continued between Messrs. Luangphasi and Brown about the appellant after the discussion with the appellant was completed:

Adam Luangphasi: Well I trust my buddy the guy that introduced me to him I trust him I've been working with him for like 10 fucking years selling fucking shit to him all fucking 10 years.

[Nathan Brown]: Yeah.

Adam Luangphasi: And he owns part of the private school with him so ...

[Nathan Brown]: Yeah.

Adam Luangphasi: Yeah he partnered like they opened it together one of them not the other one not the one in Grimsby or whatever the one in Hamilton he partnered with him.

[Nathan Brown]: Oh.

Adam Luangphasi: So he's known him for as longer than I know him I think he's known him for like 20 years but my buddy vouches for his he knows where he lives he knows his family (unintelligible) I don't know if it's good if we have him it's doable I don't (unintelligible).

[30] In his appeal factum, the appellant highlights the following excerpts from the same June 16, 2021 discussion between Messrs. Luangphasi and Brown:

[Nathan Brown]: So you think you got the guy

Adam Luangphasi: I don't know I just met him but

[Nathan Brown]: (Unintelligible)

Adam Luangphasi: My guy is a good guy

[Nathan Brown]: Your guy knows him

Adam Luangphasi: Yeah for long longer than I've known him I know my guy for ten years he's known him longer but I never talked to my guy about business I just chill with him give him work I never talk about the fast or whatever you know (unintelligible) fucking guy's (unintelligible) okay send him to Vancouver they did (unintelligible) trying to (unintelligible) you know what I mean

[31] The trial judge rejected the appellant's submission that, based on the referenced conversations, the other conspirators had not yet accepted the appellant into the conspiracy, and, accordingly, that there was no agreement. The trial judge explained his reasoning as follows:

I accept that no final decision had been made whether to use [the appellant's] services. And I accept that not every member of the conspiracy had agreed that [the appellant] would play a role in it. But the focus here is on whether [the appellant] committed the actus reus of the offence and whether he had the requisite mens rea at the relevant time. I am satisfied beyond a reasonable doubt that he did. In essence, he was asked if he would help achieve the goal of importing cocaine into Canada. And in essence he agreed that he would. It matters not whether it went any further than that. [Emphasis added.]

[32] The above passage does not undermine the trial judge's unchallenged finding that there was a conspiracy, nor his finding that the appellant was invited and agreed to participate in it. In this passage, the trial judge quite rightly points out that the lack of agreement by some of the other conspirators does not affect his finding that one or more of the conspirators asked the appellant to join the conspiracy and that he agreed to do so: Root, at paras. 70-71.

[33] I would reject this ground of appeal.

Disposition

[34] For these reasons, I would dismiss the appeal.

Released: April 9, 2026 "K.M.v.R."

"L.B. Roberts J.A."

"I agree. K. van Rensburg J.A."

"I agree. S. Gomery J.A."

[1] He did not receive his pilot's licence until January 2023.

[2] In his reasons for judgment, the trial judge refers to the intercepted conversations that follow as being between Mr. Luangphasi and an unknown male. However, Appendix "A" of the reasons makes clear that these conversations were between Mr. Luangphasi and Mr. Brown. Nothing in the appeal turns on this point.

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Prepared on 29 October 2026 · Esheria