

CANADA / JUDGMENT

R. v. Kurzyna

2025 ONCA 725

COURT

Court of Appeal for Ontario

DECIDED

24 October 2025

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

R. v. Kurzyna Collection Decisions of the Court of Appeal Date 2025-10-24 Neutral citation 2025 ONCA 725 Docket numbers COA-23-CR-0069 Judges Gillese, Eileen E.; Zarnett, Benjamin; Thorburn, Julie Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. Kurzyna, 2025 ONCA 725 DATE: 20251024 DOCKET: COA-23-CR-0069 Gillese, Zarnett and Thorburn JJ.A. BETWEEN His Majesty the King Respondent and Kamil Kurzyna Appellant Kamil Kurzyna, acting in person Angela Ruffo, appearing as duty counsel Jacob Millns, for the respondent Heard: October 6, 2025 On appeal from the conviction entered by Justice Shannon B. McPherson of the Ontario Court of Justice on October 5, 2022, and from the sentence imposed on February 1, 2023. REASONS FOR DECISION

- [1] The appellant was convicted of two counts of unlawful possession of a controlled substance and various firearms offences. He was sentenced to 42 months' imprisonment less 6 months of Downes credit. He appeals against conviction and sentence.

Background

- [2] The appellant's car was pulled over during a traffic stop on June 24, 2021. He was driving erratically. During the initial stop, it was discovered that he was driving while his license was suspended. The police officer asked the appellant to turn off the vehicle and exit it, which he did. At that time, the officer noticed that the appellant had been holding a satchel at his feet. The appellant did not take the satchel with him when he exited the car, which the officer found odd.
- [3] The officer arrested the appellant for driving under suspension under the Highway Traffic Act, R.S.O. 1990, c. H.8 (the HTA), and called for backup. When backup arrived, the officer returned to the appellant's car and searched the satchel. In the satchel, the officer found a restricted firearm, 33 rounds of ammunition, and an extended magazine. After the appellant was arrested on the firearm charges, the officer searched the vehicle and found 58 grams of cocaine and 99 oxycodone tablets in the car's centre console.

- [4] The appellant brought an application alleging that his ss. 8 and 9 Charter rights had been violated. The trial judge dismissed his s. 9 claim after determining that he had been lawfully arrested pursuant to the HTA. She made that determination based on the totality of the circumstances which she found made it clear that safety concerns led to the appellant's arrest. She pointed to the facts which included that: the appellant had been driving erratically; the officer's suspicion that the appellant was distancing himself from the police cruiser; the officer was alone on the roadside of a busy roadway; the officer's concern for the safety of other vehicles on the roadway; and the appellant was agitated and had fidgeted with an item at his feet while in the vehicle.
- [5] However, the trial judge found the officer breached the appellant's s. 8 Charter rights when she searched the satchel without legal authority. There was no legitimate basis to search the satchel, incidental to the HTA arrest.
- [6] Despite the s. 8 breach, in full and thorough reasons, the trial judge declined to exclude the evidence under s. 24(2) of the Charter. The appellant conceded that the evidence established proof beyond a reasonable doubt of the offences and he was convicted of all counts.

Analysis

- [7] On the conviction appeal, on behalf of the appellant, duty counsel submits that the trial judge erred in her s. 24(2) determination. She contends that the trial judge erred in assessing the second factor as favouring admission of the evidence. When this error is taken into consideration, duty counsel argues that the trial judge's determination to admit the evidence cannot stand. The sentence is appealed on the basis that it is manifestly unfit. We see no basis for appellate interference with either the conviction or the sentence.
- [8] The trial judge made no error in her determination that the appellant's s. 9 rights had not been breached. As noted above, she identified the totality of circumstances that made clear that safety concerns led to the appellant's arrest.
- [9] Nor would we disturb the trial judge's determination that the evidence should be admitted pursuant to s. 24(2), despite having found that the appellant's s. 8 rights had been breached. We note that the trial judge mistakenly stated that the second Grant factor "pulls towards admission of the evidence". The first two branches of the Grant test never favour admission; at most, they can weakly favour exclusion: *R. v. Zacharias*, 2023 SCC 30, 431 C.C.C. (3d) 421, at para. 75. However, this mistake does not detract from the trial judge's overall determination of the s. 24(2) balancing exercise. As she noted in her reasons for decision, grave problems have been created in our society through illegal guns and drugs, and the reliability of the evidence was not undermined by the s. 8 breach.
- [10] On the sentence appeal, the trial judge was mindful of the mitigating factors, including that the appellant: was a youthful first offender with a pro-social, supportive family and partner; had been working before the arrest; and was committed to completing his trades education. She also observed that the appellant had suffered from substance abuse issues. However, as

the trial judge stated, the aggravating factors were serious and included that: the firearm was loaded and recovered in public in a motor vehicle; the firearm was equipped with an extended magazine; and the potential for extreme harm was high.

- [11] The appellant appeared at the oral hearing of the appeal and made submissions to the court after we heard from duty counsel on this matter. As we noted at the time, it is to the appellant's credit that he has a job and is living with his girlfriend while leading a pro-social life. No doubt it was hard for the appellant to obtain employment because of his criminal record; he is to be commended for doing what it took to obtain and continue with employment. We congratulate him on turning his life around.
- [12] As we see no error in the conviction and the sentence is not manifestly unfit, there is no basis for appellate intervention with either.

Disposition

- [13] For these reasons, the conviction appeal is dismissed and, while leave to appeal sentence is granted, that appeal is also 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/23656/index.do>

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

Prepared on 24 October 2026 · Esheria