

CANADA / JUDGMENT

R. v. Mare

2025 ONCA 890

COURT

Court of Appeal for Ontario

DECIDED

19 December 2025

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R. v. Mare Collection Decisions of the Court of Appeal Date 2025-12-19 Neutral citation 2025 ONCA 890 Docket numbers COA-23-CR-0916 Judges Trotter, Gary T.; Thorburn, Julie; George, Jonathon C. Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. Mare, 2025 ONCA 890 DATE: 20251219 DOCKET: COA-23-CR-0916 Trotter, Thorburn and George JJ.A. BETWEEN His Majesty the King Respondent and Abdoul Mare Appellant Myles Anevich, for the appellant Jennifer Lynch, for the respondent Heard and rendered orally: December 17, 2025 On appeal from the convictions entered by Justice Mark L. Edwards of the Superior Court of Justice, on May 8, 2023. REASONS FOR DECISION

- [1] The appellant was convicted of multiple drug offences after the police seized 29.8 grams of fentanyl and 38.4 grams of cocaine, pursuant to a search warrant.
- [2] The trial judge dismissed the appellant's challenge to the seizure of the drugs under s. 8 of the Charter.
- [3] However, the trial judge found that the appellant's s. 10(b) rights were infringed. This was based on the following. The appellant was cautioned about his right to counsel upon arrest, and while he was transported to the police station. The appellant indicated he wished to speak to a specific lawyer. After he was paraded and strip searched, the police attempted to contact this lawyer. They received a voicemail indicating that the lawyer was on vacation and that calls should be made to the main office number. The police left messages on both voicemails. They did not receive a response.
- [4] The trial judge found that there was a serious breach of the appellant's s. 10(b) rights because the police failed to take any further steps to facilitate the appellant's right to counsel. However, he decided that the evidence should not be excluded under s. 24(2) of the Charter. His core finding that the breach was serious but not intentional; instead, it was due to a laissez faire attitude on the part of the police officers.

- [5] The appellant challenges the trial judge's assessment of the seriousness of the breach, submitting that he minimized it because it was not intentional. We do not agree. The trial judge's characterization of the seriousness of the breach is a matter that is entitled to deference on appeal, absent a clear and determinative error. A reviewing court should not substitute its views of police conduct for that of the trial judge: see *R. v. Ismail*, 2024 ONCA 945, at para. 15.
- [6] The appellant further submits that the trial judge failed to engage in an analysis of the second Grant factor – i.e., the impact of the Charter breach on the accused person's Charter-protected interests.
- [7] Upon review of the reasons as a whole, the trial judge appreciated the importance of the impact of the Charter breach on the appellant. He acknowledged that the appellant's security of the person was compromised by being detained for a long period without access to counsel. However, he also considered the lack of any causal connection between the seizure of the drugs and the subsequent breach of s. 10(b) of the Charter.
- [8] Although we recognize that another judge may have decided this case differently, in our view, absent an error of law or principle, the trial judge's decision under s. 24(2) is entitled to deference on appeal.
- [9] The appeal is dismissed. "Gary Trotter J.A." "Thorburn J.A." "J. George J.A."

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