

CANADA / JUDGMENT

R. v. Mohamed

2025 ONCA 839

COURT

Court of Appeal for Ontario

DECIDED

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C70716

Judges

Huscroft, Grant; George, Jonathon C.; Gomery, Sally A.

Subject

Criminal

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Mohamed, 2025 ONCA 839

DATE: 20251204

DOCKET: C70716

Huscroft, George and Gomery JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Tanade Mohamed

Appellant

Lance Beechener, for the appellant

Emily Marrocco, for the respondent

Heard: November 12, 2025

On appeal from the convictions entered by Justice Peter Bawden of the Superior Court of Justice, on July 30, 2021, with reasons reported at 2021 ONSC 5234, and from the sentence imposed on October 14, 2021.

Gomery J.A.:

- [1] In the early hours of October 1, 2017, the appellant, Tanade Mohamed, shot and killed two young men, Tyler McLean and Zemarai Khan Mohammed, in the parking lot outside Rebel, a Toronto nightclub. He then fled in a Dodge Durango driven by Abdirisaq Ali, a friend who had accompanied him to Rebel that night.
- [2] Two days later, the appellant and Mr. Ali were arrested and each charged with two counts of second degree murder. At trial, the appellant admitted to firing the fatal gunshots but contended he acted in self-defence or, alternatively, that he was provoked in killing Mr. Khan Mohammed. He said that he killed Mr. McLean by accident.
- [3] The appellant was convicted of the second degree murder of Mr. Khan Mohammed and the manslaughter of Mr. McLean, and sentenced to life in prison with no possibility of parole for 18 years. Mr. Ali was acquitted.
- [4] The appellant challenges the convictions on four grounds: (i) the application judge should have excluded some or all of the evidence obtained during the police investigation; (ii) the trial judge misapprehended the evidence of a key eyewitness; (iii) the trial judge erred in his consideration of the provocation defence; and (iv) the appellant's motion for a mistrial ought to have been granted. If the conviction appeal is allowed, he seeks a new trial. Should we dismiss the conviction appeal, the appellant seeks leave to appeal his sentence on the basis that it is unfit.
- [5] For the reasons that follow, I would dismiss both appeals.

The application judge did not err in admitting evidence obtained by the police despite a breach of the appellant's s. 8 rights

- [6] The appellant contends his application to exclude evidence under ss. 8 and 24(2) of the Canadian Charter of Rights and Freedoms ought to have been granted, in whole or in part. I disagree.

The s. 8 violation

- [7] Police officers arrived at Rebel shortly after the shootings. The identities of the shooter and the driver of the Durango were unknown to the police at the time. The Durango was spotted traveling on the Don Valley Parkway, but police failed to intercept it despite a high speed chase.
- [8] Surveillance footage showed that the two suspects each withdrew money from an ATM inside Rebel when they arrived there. Having obtained the bank card numbers used by the suspects from the ATM operator, the police asked the two banks that had issued the cards to provide them with the names, contact information and addresses of the cardholders. The banks provided this information, despite the absence of a search warrant or production order.
- [9] This information led police to the residence where the appellant and Mr. Ali were staying. Based on surveillance of the residence, the police obtained and executed search warrants, seizing cell phones, clothing, ammunition and the Durango. In a police interview following the appellant's arrest on October 3, 2017, he denied any involvement in the shootings and provided a false alibi about his whereabouts when they occurred.

The application judge's decision

- [10] The application judge dismissed pre-trial applications by the appellant and Mr. Ali to exclude the identification evidence obtained by police from the banks as well as the derivative evidence obtained based on this information.
- [11] The application judge found that the police had violated the applicants' s. 8 rights. The applicants had a reasonable expectation of privacy in their banking records. The Crown conceded that exigent circumstances did not exist on October 1, 2017 that would have justified the demand for disclosure of the applicants' identifying information from the banks without a warrant or court order.
- [12] Weighing the factors in *R. v. Grant*, 2009 SCC 32, [2009] 2 S.C.R. 353, however, the application judge concluded that admitting the evidence would not bring the administration of justice into disrepute. With respect to the seriousness of the violation, he found that the police acted in good faith, given the threat to public safety posed by shooting suspects at large and an unrecovered firearm, and the risks that evidence would be lost and that the suspects would leave the jurisdiction. He found that the breach had a limited impact on the applicants. In using the ATM in Rebel, they would have realized that they might be identified by other nightclub patrons, and the information obtained from the banks was not core biographical information. Finally, granting the applications would have gutted the Crown's

case, and there was a significant societal interest in a trial on the merits.

The absence of a reversible error in the application judge's decision

[13] The appellant contends that the application judge made three errors:

- (i) he concluded that the police acted in good faith, even though he found that an officer attempted to mislead the court in her testimony at the voir dire;
- (ii) he failed to treat this misleading testimony as “an important pro-exclusionary consideration” in his Grant analysis; and
- (iii) he failed to consider the possibility of excluding some, rather than all, the evidence obtained as a result of the Charter violation.

- i. The application judge did not err in finding that the police acted in good faith [14] The application judge found that one of the officers who testified, Officer Stephenson, was not “complete and forthright” about how long it had taken the police to obtain records pursuant to a production order in another, unrelated investigation. Despite this, he found that the police acted in good faith when they asked the banks for the applicants’ identifying information without first obtaining a search warrant or disclosure order.

[15] The application judge was entitled to find that the police acted in good faith in breaching the appellant’s Charter rights, despite his finding about Officer Stephenson’s evidence. Although the two officers who asked the banks for disclosure of the suspects’ identifying information reported to Officer Stephenson, she did not give them any specific directions. As a result, her evidence had little value in determining why the police decided to seek information from the banks without a warrant or production order.[1]

[16] In light of this, the application judge reasonably found that the seriousness of the police misconduct turned on his assessment of the evidence of the two officers directly responsible for the Charter violation. He concluded that they honestly and reasonably believed that there were exigent circumstances justifying their request for disclosure of basic cardholder information without a production order or warrant, even though the Crown conceded, at the application, that the legal standard of exigent circumstances was not met.

- ii. The application judge was not required to treat Officer Stephenson’s evidence as “an important pro-exclusionary consideration” [17] Relying on *R. v. Lai*, 2019 ONCA 420, 438 C.R.R. (2d) 1, at para. 13, the appellant argues that the application judge was bound to treat Officer Stephenson’s misleading testimony as “an important pro-exclusionary consideration”.

- [18] This case is distinguishable from *Lai* and the other cases cited by the appellant in support of this argument. These cases concern police officers who, after violating a defendant's rights, attempted to minimize or conceal their misconduct during their testimony. That is not what happened here. The application judge took no issue with the evidence of the officers directly involved in obtaining information from the banks. Officer Stephenson's misleading testimony concerned a completely different investigation.
- [19] In these circumstances, the application judge was not required to give Officer Stephenson's testimony significant weight in assessing the state conduct at issue in the s. 24(2) analysis. Furthermore, having found that Officer Stephenson's testimony bore little weight in his analysis of the first Grant factor, the application judge was not required to expressly mention it again in the final balancing stage of s. 24(2).
- iii. The application judge did not err by failing to consider a partial exclusion order [20] The appellant contends that the application judge failed to consider the possibility of an order excluding some, but not all, of the derivative evidence obtained following the s. 8 violation. The appellant's trial counsel proposed that, if the court determined that the violation did not justify the wholesale exclusion of the Crown's evidence, at least the appellant's statement to the police should be excluded.
- [21] The application judge was not required to address this submission. Given his findings of fact, the exclusion of any evidence obtained directly or indirectly as a result of the s. 8 violation was unwarranted.

The trial judge did not misapprehend evidence

- [22] The appellant contends that the trial judge misapprehended the evidence of Rasha Alnaaj, an independent eyewitness to the shootings, about what occurred in the seconds between the appellant's exit from the Durango and his shooting of Mr. Khan Mohammed. He further contends that this misapprehension may have affected the trial judge's evaluation of the appellant's credibility and the provocation defence. I find no error in the trial judge's reasoning, let alone an error that would justify this court's intervention.

The events preceding the shootings and the shootings themselves

- [23] The appellant and Mr. Ali met Mr. McLean and Mr. Khan Mohammed for the very first time at 3:03 a.m. on October 1, 2017, shortly after Rebel closed and about 8 minutes before the shootings. Mr. McLean and the appellant got into a series of verbal and physical altercations outside the nightclub after Mr. Ali spoke to the two young women accompanying Mr. McLean. Mr. Khan Mohammed and a paid duty police officer intervened. Mr. McLean, Mr. Khan Mohammed and the two young women then walked towards their car in the parking lot.

- [24] The appellant was a drug dealer and habitually carried a gun. He testified that he decided he would confront Mr. McLean with a loaded handgun that he had stowed in the Durango, unbeknownst to Mr. Ali. The appellant denied that he had any murderous intent. He said that he simply wished to intimidate Mr. McLean.
- [25] When the valet attendant arrived with the appellant's Durango, the appellant directed Mr. Ali to drive it into the parking lot and to park a short distance from the spot where Mr. McLean, Mr. Khan Mohammed and the two women had stopped to talk. The appellant did not exit the Durango immediately. He testified that he was awaiting the right moment to confront Mr. McLean.
- [26] Roughly 1 minute and 45 seconds after the Durango parked near the victims, video surveillance showed that the appellant bolted out of the front passenger door. Both the appellant and Mr. Ali testified that he did so after they heard one or more loud bangs at the back of the vehicle. The appellant had his gun in his waistband and ran towards Mr. McLean, who was standing nearby.
- [27] Mr. Khan Mohammed intercepted the appellant and punched him in the right temple. In response, the appellant pulled out his gun and shot Mr. Khan Mohammed in the head, killing him instantly. He then ran back to the Durango and got in. The trial judge found that Mr. McLean jumped onto the sideboard, likely hoping to slow the Durango's escape or draw attention to it. The appellant responded by firing at Mr. McLean from the still open passenger door. Mr. McLean would die from the bullet in his chest.
- [28] Mr. Ali then sped off with the appellant. About seven seconds passed between the time the appellant ran out of the vehicle and the time it drove away, leaving Mr. Khan Mohammed and Mr. McLean with fatal gunshot wounds.

The evidence about what happened in the seconds before the appellant shot Mr. Khan Mohammed

- [29] The evidence about what occurred in these seven critical seconds included the appellant's testimony; the testimony of MacKenzie Cornall, one of the women who accompanied Mr. McLean to Rebel that night; video surveillance evidence; forensic evidence from the scene; and Ms. Alnaaj's evidence.
- [30] Ms. Alnaaj had been at Rebel until it closed, and she was in the parking lot when the shootings occurred. She went home without talking to anyone about what she saw but called the police a few hours later. Her unsworn telephone interview with an officer lasted 26 minutes and was recorded. Ms. Alnaaj also gave a sworn video statement at the police station later that day.

- [31] At trial, the Crown and defence agreed that both of Ms. Alnaaj's statements should be admitted for the truth of their contents since she made them within 12 hours of the shooting, said she had been truthful at the time, and had little memory of the events of October 1, 2017 by the time she was called to testify four years later.
- [32] The trial judge found Ms. Alnaaj's evidence largely reliable and gave it significant weight. While recognizing that she was mistaken about some details and was under the influence of alcohol and drugs when she made the first statement, he accepted the defence submission that her account should be preferred to Ms. Cornall's evidence, which was not supported by any objective evidence.
- [33] Ms. Alnaaj repeatedly told police that her attention was drawn to the vicinity of the Durango by an angry verbal exchange. In her first statement, she said that "a black truck just pulls up a guy jumps out and he starts talking to him and then, um, the victim punches the guy in the face". She later clarified that "by the time I saw [the shooter], he was already outside, like they were like already in ... each other's faces." She said that "[t]hey were just like screaming at each other, like — like, the guy was like 'Yo, what the', like, 'What the fuck?'". In her second statement, Ms. Alnaaj told police, "I heard somebody say, 'What the fuck'. I looked up; a guy had punched somebody". She repeated that her attention was drawn to the Durango because of "[l]oud noises like they were like arguing." When asked, "[W]hat did you hear?", she replied, "'What the fuck', that's all I heard."
- [34] Based on Ms. Alnaaj's evidence, the trial judge found that the appellant exchanged words with Mr. Khan Mohammed after he got out of the Durango. He further concluded, based in part on this same evidence, that the appellant was surprised when Mr. Khan Mohammed punched him, but that the punch did not injure the appellant or cause him to black out. He rejected the appellant's testimony that he was completely blindsided by Mr. Khan Mohammed's punch.

The trial judge's assessment of Ms. Alnaaj's evidence reveals no error

- [35] The appellant contends that the trial judge misapprehended Ms. Alnaaj's evidence in determining that he and Mr. Khan Mohammed exchanged words prior to the shooting. The appellant's trial counsel argued that, based on Ms. Alnaaj's statements, an exchange may have taken place between the appellant and Mr. McLean, rather than the appellant and Mr. Khan Mohammed. Alternatively, he argued that either of the two shooting victims may have spontaneously yelled "what the fuck" after the appellant emerged from the Durango. The trial judge rejected this proposed reading of Ms. Alnaaj's evidence.

[36] The appellant has not identified any palpable and overriding error in the trial judge's assessment of Ms. Alnaaj's evidence and the other evidence about what occurred in the seconds before Mr. Khan Mohammed was shot. He considered the same argument about Ms. Alnaaj's evidence that the appellant now advances on appeal. He found that the angry words she heard prior to the shooting were exchanged between the appellant and Mr. Khan Mohammed. This was a finding open to him to make on the evidence.

[37] In contending that the trial judge misapprehended Ms. Alnaaj's evidence, the appellant focuses on the following passage in her first statement to police:

Q: Okay. And did you hear them say anything except, "What the fuck", like what about the shooter?

A: No.

Q: Did you hear him say anything?

A: No.

Q: Okay. But you saw him get punched in the...

A: He didn't say one word.

[38] The appellant relies on this excerpt to argue that there was no exchange of words between the appellant and Mr. Khan Mohammed. He made this same submission at trial. In explaining why he did not accept this argument, the trial judge noted that Ms. Alnaaj was occasionally imprecise in her language and "[a] single statement which is not supported by any context is not as reliable and should be viewed with caution." Considering her statements as a whole, he had "no doubt that Ms. Alnaaj meant that the shooter was involved in the initial exchange but said nothing after being punched."

[39] The trial judge's assessment of the provocation defence and his rejection of the appellant's evidence about the punch did not, in any event, hinge solely or even primarily on his finding of a verbal exchange between the appellant and Mr. Khan Mohammed. The trial judge's key factual finding regarding the seconds preceding the shooting was that the appellant was surprised by the punch but not dazed, blacked out, or incapacitated by it. He reached this conclusion for two reasons.

[40] First, the appellant's testimony that he blacked out for a moment after the punch could not be accepted because it was incompatible with the timeline of events. The trial judge found that the time between the punch and the shot was less than two seconds and that only seven seconds elapsed between the appellant's exit from and re-entry into the Durango. As the trial judge observed, "When one considers all that occurred in only seven seconds, there is no realistic possibility that [the appellant] was dazed or blacked out. His actions had to be immediate and precise in order to have caused so much mayhem in such a short period of time."

[41] Second, the trial judge accepted Ms. Alnaaj's evidence that, after the punch, the appellant took one step back, pulled out his gun and shot Mr. Khan Mohammed in the head, in the absence of any attempt by Mr. Khan Mohammed to rush at or attack the appellant after the punch. These findings were not challenged on appeal. They are again incompatible with the theory that the appellant was incapacitated, even briefly, by the punch.

The trial judge did not err in his consideration of the provocation defence

[42] As the trial judge correctly instructed himself, the defence of provocation has four elements:

- (1) There must be some conduct on the part of the victim which would constitute a criminal offence punishable by five years or more of imprisonment;
- (2) The conduct of the victim must be sufficient to deprive an ordinary person of the power of self-control;
- (3) The accused must have acted in response to the provocation; and
- (4) The accused must have acted on the sudden before there was time for his passions to cool: Criminal Code, R.S.C. 1985, c. C-46, s. 232(2); *R. v. Williams*, 2025 ONCA 467, 450 C.C.C. (3d) 336, at para. 13.

[43] The trial judge found that the appellant had established the first, third and fourth elements of the defence, but that the punch that Mr. Khan Mohammed delivered to the appellant would not have been sufficient to deprive an ordinary person in the appellant's position of the power of self-control.

[44] The appellant contends that the trial judge erred in his assessment of the range of predictable responses by Mr. Khan Mohammed, in finding that Mr. Khan Mohammed's punch was a proportionate application of force, in focusing on the reasonableness of the appellant's precipitating conduct, and in relying on public policy considerations.

[45] None of these arguments has merit.

[46] In considering whether the appellant could have reasonably expected Mr. Khan Mohammed's punch, the trial judge correctly assessed what happened in the context of the events that preceded it. The appellant and Mr. McLean's series of confrontations a short time earlier culminated in a shoving match and a wild punch thrown by Mr. McLean that narrowly missed the appellant's head. Mr. Khan Mohammed acted as a peacemaker, physically intervening to stop the fight. The appellant directed Mr. Ali to drive the Durango into the parking lot, following Mr. McLean and Mr. Khan Mohammed. The appellant exited the vehicle with a gun, prepared for a further confrontation, after hearing a loud bang at the back of the Durango. Mr. Ali testified that he knew someone would get hurt if the appellant got out of the Durango.

- [47] Given this context, I see no error in the trial judge's conclusion that an ordinary person in the appellant's circumstances would have foreseen the "virtual certainty that either Tyler McLean or Zemarai Khan Mohammed would strike him in self defence or anger" when he emerged from the Durango. As a result, the appellant could not have been surprised by the punch thrown by Mr. Khan Mohammed.
- [48] I likewise see no error in the trial judge's finding that the punch would not have caused a reasonable person to lose self-control. In finding that the punch was a measured application of force proportionate to the threat posed by the appellant, the trial judge noted that it was thrown by someone who had, to that point, been a peacemaker, and it was unaccompanied by any aggravating factor such as a racial slur or a follow-up attack. He also rejected the appellant's evidence that the punch was so forceful that it left him dazed.
- [49] The trial judge did not place undue emphasis on the reasonableness of the appellant's precipitating conduct. The trial judge characterized the events in the parking lot as self-induced provocation and assessed whether, in this context, an ordinary person would have lost the power of self-control in reaction to the punch. As he correctly observed, referring to *R. v. Land*, 2019 ONCA 39, 145 O.R. (3d) 29, at paras. 61-62, "[t]he defence of provocation is available in cases where the accused initiated the fatal confrontation, but such actions tend to undermine the defence."
- [50] I see no error in the trial judge's rejection of the defence argument, advanced at trial, that the bang at the back of the Durango was the precipitating act for what followed. The trial judge reasonably found that the immediate precipitating act for the confrontation was the appellant's emergence from the Durango. The appellant incited a physical confrontation by directing Mr. Ali to follow Mr. McLean and his companions into the parking lot and by waiting for an opportunity to confront Mr. McLean with a loaded handgun. The timing of his exit from the Durango was linked to the bang at the back of the vehicle, but the exit itself was the product of the appellant's decision to confront Mr. McLean in the parking lot.
- [51] Finally, I do not agree that the trial judge's rejection of the provocation defence turned on public policy considerations. The trial judge referred to public policy considerations solely to underscore the distinction between a case like this, where an accused instigates a confrontation for motives of rage or retribution, and a case like *Land*, where an accused's actions should be assessed in the context of their history as an Indigenous man with a significant history of drug and alcohol abuse and a cognitive impairment. I see no error in the trial judge's observation that there is "no public policy consideration which favors the contemplation of human frailty in these circumstances."

The trial judge did not err in refusing to grant a mistrial

- [52] The appellant contends that the trial judge erred in refusing to grant a mistrial. I disagree.

The roundtable discussions and mistrial application

- [53] Early in the trial, the trial judge told counsel that, before closing arguments, he would ask them to participate in “roundtable” discussions to assist him with findings of fact. During these discussions, he would advise counsel of the findings of fact he was inclined to make and invite them to persuade him of any perceived errors. The appellant’s trial counsel did not object to this way of proceeding.
- [54] On the first day of the roundtable discussions, the trial judge made two comments that later became the focus of the appellant’s mistrial application. First, he acknowledged that he might be predisposed to accept Mr. Ali’s testimony because of evidence of his good character and because the trial judge “liked” him. Second, he asked the appellant’s trial counsel whether, if the appellant’s evidence were rejected, Ms. Alnaaj’s evidence could give rise to reasonable doubt.
- [55] At the beginning of the second day, the trial judge suggested that he would suspend the roundtable discussions and see if his remaining questions were answered by counsel’s closing submissions. The appellant’s trial counsel responded that the defendants were in favour of completing the discussions before moving on to written and oral submissions. The roundtable discussions accordingly continued.
- [56] The next morning, the appellant’s trial counsel moved for a mistrial. He argued that the two comments set out above, in combination, gave rise to a reasonable apprehension of bias against the appellant.[2] He also took the position that, during the discussions, the trial judge called on other counsel more often than they called on him, and that the trial judge’s comments to the Crown were calculated to encourage her to present an alternative theory of the case.
- [57] The trial judge dismissed the motion after hearing argument on it. He reiterated that any comments he made at the roundtable concerning the facts were “entirely preliminary” and “stated for the purpose of inviting correction.” He rejected the suggestion that defence counsel were not given an opportunity to address the court on relevant points, noting that they would have an opportunity to make final submissions prior to any further discussion of the evidence. Finally, the trial judge held that there was no reasonable basis to apprehend that he prejudged the issues in the case or was biased against the appellant.

The trial judge did not err in refusing to grant a mistrial

- [58] The appellant contends that the trial judge’s ruling did not address the two specific comments that, in his submission, give rise to a reasonable apprehension of bias. He argues that this suggests that the trial judge’s conduct was unjustifiable and that a mistrial should have been granted.

- [59] It is important to note that the appellant does not say that it was inherently improper for the trial judge to invite counsel to engage in roundtable discussions before the parties made final submissions.
- [60] Judges are presumptively impartial and fair. A trial judge is entitled to express tentative views, so long as they could not reasonably be perceived as having closed their minds to counsel's arguments: *R. v. Grant*, 2016 ONCA 639, 342 C.C.C. (3d) 514, at para. 128 ("Grant (ONCA)"), at paras. 127-130. A party seeking a mistrial must establish that a reasonable person, properly informed and viewing the matter realistically and properly, would conclude that the judge would be unable to decide the case fairly: *R. v. Jaser*, 2024 ONCA 448, 172 O.R. (3d) 1, at para. 311, leave to appeal refused, [2015] S.C.C.A. No. 127; *Grant (ONCA)*, at para. 128; and *Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369, at p. 394.
- [61] The appellant has not rebutted the presumption of impartiality.
- [62] The trial judge's hypothetical question to the appellant's trial counsel, premised on his potential rejection of the appellant's evidence, was not surprising. It merely anticipated the *R. v. W.(D.)*, [1991] 1 S.C.R. 742 analysis that he would have to engage in to reach a verdict. The trial judge asked other hypothetical questions, including a question premised on the acceptance of the appellant's evidence. He repeatedly stated that he had not made up his mind. In these circumstances, a reasonable person would not conclude that the trial judge would be unable to decide the matter fairly because his mind was closed or he was predisposed against the appellant.
- [63] In the circumstances of this case, the trial judge's comment about "liking" Mr. Ali likewise cannot reasonably be interpreted as an indication that he was biased against the appellant. On the contrary, it shows that the trial judge was alive to the need to guard against inherent biases that might skew his assessment of the evidence. This understanding of his comment about Mr. Ali is consistent with his thorough consideration, in his reasons for judgment, of Mr. Ali's credibility and reliability.
- [64] The trial judge was not required to respond in detail to every submission by the appellant's trial counsel. His ruling explains why he dismissed the motion for a mistrial. He did not err in doing so.

The sentence is not unfit

- [65] The appellant contends that the sentence is unfit and that a sentence in the range of 16 years parole ineligibility ought to have been imposed. He argues that the trial judge erred by relying on *R. v. Kyle Sparks MacKinnon*, 2019 ONSC 3436, in setting parole ineligibility at 18 years. Mr. Sparks MacKinnon was convicted of murdering two people and wounding two others and was foreclosed from parole eligibility for 22 years. The appellant argues that the offences in that case were markedly more serious than his offences and therefore should not have been used as a benchmark.

[66] I do not agree.

[67] The trial judge acknowledged important differences between the facts in Sparks MacKinnon and here. The appellant had no prior criminal record; he had significant rehabilitative potential; and he injured no bystanders. This did not foreclose the trial judge from finding that the appellant's killing of Mr. McLean to escape responsibility for the shooting of Mr. Khan Mohammed was an aggravating factor in sentencing him for second degree murder. The trial judge also observed that the circumstances of Mr. McLean's death brought it within "the narrowest of margins" of murder rather than manslaughter. This was an additional relevant factor in setting the appellant's parole ineligibility.

[68] An 18-year period of parole ineligibility for the two killings in this case is not disproportionate: see e.g., *R. v. Chambers*, 2023 ONCA 444; *R. v. Gager*, 2020 ONCA 274, leave to appeal refused, [2020] S.C.C.A. No. 444; *R. v. Weese*, 2016 ONCA 449, 350 O.A.C. 170; *R. v. Ahmed*, 2023 ONSC 1364; and *R. v. Belic*, 2011 ONCA 671.

Disposition

[69] I would dismiss the appeal from conviction. I would grant leave to appeal the sentence but dismiss the sentence appeal.

Released: December 4, 2025 "G.H."

"S. Gomery J.A."

"I agree. Grant Huscroft J.A."

"I agree. J. George J.A."

[1] Crown counsel had not, in fact, planned on calling Officer Stephenson as a witness at the voir dire, but did so at the request of the defence.

[2] In his arguments on the motion for a mistrial, the appellant identified a third comment by the trial judge which, in his view, demonstrated a predisposition against him. His arguments on appeal do not refer to this comment, however.

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