

CANADA / JUDGMENT

## R. v. Nguyen

2026 ONCA 214

### COURT

Court of Appeal for Ontario

### DECIDED

26 March 2026

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R. v. Nguyen

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COA-25-CR-0148

Judges

van Rensburg, Katherine; Thorburn, Julie; Gomery, Sally A.

Subject

Criminal

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Nguyen, 2026 ONCA 214

DATE: 20260326

DOCKET: COA-25-CR-0148

van Rensburg, Thorburn and Gomery JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Tranh To Nguyen

Appellant

Tranh To Nguyen, acting in person

Laura Precup-Pop, for the respondent

### **Heard: February 3, 2026**

On appeal from the conviction entered by Justice David E. Harris of the Superior Court of Justice, on May 24, 2024, with reasons reported at 2024 ONSC 2953.

#### **REASONS FOR DECISION**

- [1] The appellant was convicted of importing heroin, contrary to s. 6(1) of the Controlled Drugs and Substances Act. He received a sentence of nine years' imprisonment, less credit for pre-sentence custody, for a total of five years. He appeals his conviction.[1]
- [2] On March 27, 2022 the appellant, a resident of the United States, flew to Johannesburg, South Africa, where he stayed for a week before flying to Toronto. His flights and most of his accommodation were paid for by a third party. On April 4, 2022, the appellant arrived at Toronto's Pearson Airport, where a secondary customs inspection revealed just under 11 kilograms of heroin in one of the suitcases he had checked. The majority of the heroin was in a well-concealed false bottom. The rest of the heroin was sewn into two computer bags located in the suitcase.
- [3] The appellant told a border services officer that he was in South Africa to purchase an apartment or make a real estate investment, and that he was in Toronto visiting a friend on the way back to California. He was asked whether the suitcase was his, whether he had packed it himself, and whether he knew what was in it, and he responded "yes" to each question.
- [4] The issue at trial was the appellant's knowledge of the heroin he brought into Canada. He testified that he was a successful and experienced business person who had travelled to Johannesburg in pursuit of an investment for his business. The potential investment opportunity was initiated by "Colin Cramer", someone he had never met before and with whom he had communicated by WhatsApp. While in Johannesburg he did not meet Mr. Cramer, who stopped returning his messages, there were no investor meetings, and he did not leave the hotel except to get a COVID-19 test and vaccination, to go shopping on the last day, and to go to the airport. The appellant testified that he was frustrated with the lack of progress and that the trip was not profitable. While at the hotel, he met with "Pam Daniels",

who was supposedly a banker, who had him open a bank account and, on the last day, notwithstanding his testimony that the trip was unprofitable, he signed what he described as a fund transfer authorization form in respect of a \$6 million investment. He missed his flight on the Saturday and was told by Mr. Cramer that he would be flying to Toronto to take a suitcase containing a gift for a banker. The ticket was sent to him seconds after he sent a picture of the suitcase to Mr. Cramer. He testified that he opened the suitcase and saw that it contained souvenirs, and that he did not know the suitcase contained drugs.

- [5] The trial judge rejected the appellant's evidence about the purpose of the trip and his lack of knowledge of the contents of the suitcase. The trial judge concluded that the only reasonable inference on all the evidence that he did accept was that the appellant was a knowing importer of the heroin contained in the suitcase.
- [6] In support of his arguments on appeal, the appellant provided a written argument in table form containing a line-by-line review of the trial judge's findings. Some he claims are illogical or contradictory; others are the product of bias or indicate that the trial judge was acting as prosecutor. In some cases, the appellant puts forward what he characterizes as "independent" evidence. He submits that his acquittal depends not on his credibility, but on the fact that the specific evidence he refers to is only consistent with his lack of knowledge of the contents of the suitcase. He submits that the most logical and reasonable conclusion is that he did not plan the trip to Toronto or have any knowledge of the drugs hidden in the suitcase, and that the verdict is unreasonable.
- [7] The appellant also asserts that there was a miscarriage of justice because exonerating evidence on his laptop and mobile phone was not disclosed by the Crown, despite his requests that his previous lawyers subpoena the evidence. He states that his devices contained a picture of the fund transfer authorization for \$6 million to his business bank account in the USA, that showed the trip to South Africa was purposeful and successful, and a memorandum of understanding ("MOU")/investment agreement with his business partner that supported the purpose for his trip to South Africa. He asserts that evidence of other business he transacted while in South Africa, evidence of transfers of funds to his vice president, and an invitation to a week-long all-expenses paid business trip to Halifax, confirming that he was operating a legitimate business, were also on his devices.
- [8] Further, the appellant submits that his ineligibility to fly to Toronto during the COVID-19 pandemic, because he had not been vaccinated, is important new evidence that would have established his innocence had the trial judge considered it.
- [9] We do not give effect to these arguments.

### **The Appellant's Attack on the Trial Judge's Findings**

- [10] The trial judge considered the evidence of the appellant and concluded that several aspects of the business he was to transact in South Africa were unusual: he embarked on a distant trip based on a text from a stranger; the business reason for the trip and its details were

exceedingly vague; the appellant did not really know why he was going to South Africa; he took no business clothes; he had no credit card and carried little cash. The business documents he signed in South Africa were vague and nebulous. The plane ticket purchases were ad hoc and spur of the moment. There was no explanation for why the appellant was sent to Toronto and the request to carry a suitcase as a gift to a banker was implausible. It would have been hard for the appellant not to have noticed the weight of the drugs in the small bag he was carrying. The trial judge rejected the appellant's evidence with respect to the suitcase: it was unbelievable that the appellant was given a suitcase as a gift to give to a phantom person in Toronto without knowing what was inside it, and the persons behind the importation would not likely have entrusted drugs worth between \$900,000 and \$2 million to a blind courier. The trial judge also considered it important that the appellant admitted lying to the border security officer when he answered "yes" to the standard three questions. If his account were true, there would have been no reason to lie.

- [11] After rejecting the appellant's evidence that this was a bona fide business trip or a trip with some other legitimate purpose, and concluding that it did not raise a reasonable doubt, the trial judge found that the only reasonable inference on the evidence was that the appellant had full knowledge that the suitcase he brought into Canada contained heroin.
- [12] We agree with the Crown that the appellant is challenging the trial judge's findings of fact and attempting to substitute other findings and inferences for those that were reasonably rejected by the trial judge. We see no reversible error in the trial judge's assessment of the appellant's evidence.
- [13] Nor do the various items that the appellant points to in his written submissions and oral argument as "independent" evidence affect the verdict. In assessing the appellant's evidence, the question for the trial judge was not whether individual parts of his account were plausible or consistent with a lack of knowledge. The trial judge considered the appellant's evidence as a whole and observed that "[i]n their cumulative weight, the business steps and the surrounding circumstances were more than just atypical. They made no logical sense."
- [14] The trial judge's findings were open to him and, on the evidence accepted by the trial judge, the appellant's conviction was inevitable. Contrary to the appellant's submission, as the trial judge correctly observed, "the decision largely depend[ed] on [the appellant's] credibility": if his evidence that he did not know about the drugs, in the context of all of the evidence, was believed or raised a reasonable doubt, he was entitled to be acquitted. If, however, the trial judge found the appellant's account incredible and found it raised no reasonable doubt, there was ample basis to convict based on the uncontroverted evidence that the appellant arrived in Canada with 11 kilograms of heroin.

## The Alleged Withholding of Evidence

- [15] On this ground of appeal, the appellant alleges a miscarriage of justice as a result of evidence he claims was on his cell phone and computer and was withheld by the Crown.
- [16] Three cell phones and a laptop were seized from the appellant. The Crown advises that the contents of the cell phones and computer were not accessed and downloaded by the police, and accordingly there was no withholding of disclosure. There is nothing in the record to support the appellant's assertion that evidence was withheld, nor is ineffective assistance of counsel raised as a ground of appeal.[2]
- [17] In any event, what the appellant refers to as exonerating evidence would support a narrative that is fundamentally different from the account he provided at trial. At trial, the appellant's counsel argued that he had been brought to South Africa under false pretences, believing he was there for a legitimate business reason, and that he had been used by an international drug trafficking ring to smuggle drugs as an unwitting dupe. While he claimed to have signed a fund transfer authorization on the last day, he did not suggest that any business transaction had occurred, instead complaining that the trip was not profitable. On appeal, the appellant suggests that the evidence that was on his cell phone and laptop would have demonstrated that he did in fact transact business while he was in South Africa. However, the "undisclosed" records from his cell phone that the appellant refers to – pictures of a fund transfer authorization for \$6 million to his business bank account in the USA, an MOU/ investment agreement with his business partner that supported the purpose for his trip to South Africa, and evidence of other business he transacted while in South Africa – would have contradicted and undermined his account of having been duped into travelling to South Africa.
- [18] We accept that there was no failure on the part of the Crown to disclose documents; the issue was not pursued in the court below, and there is no allegation of ineffective assistance of counsel. In any event, as they are inconsistent with the defence presented at trial, such documents could not have assisted the appellant at trial.

## Evidence about the Appellant's Inadmissibility to Canada

- [19] Finally, the appellant argues that the "most salient fact" for this court to consider is that he could not have planned the trip to South Africa to traffic drugs to Toronto because he was not eligible to enter Canada in 2022 due to COVID-19 entry restrictions. He says that the restrictions prohibiting unvaccinated persons from entering Canada at the time constitutes new evidence on appeal that this court should consider.

- [20] There is no transcript of the appellant's evidence in the appeal record. The Crown submits, however, that we should infer that the argument that the appellant was not admissible to Canada because of his vaccination status, and therefore would not have intentionally smuggled drugs into Canada, was raised at trial, based on references to the appellant's testimony in the Crown's closing submissions and the trial judge's reasons.
- [21] We agree with the Crown's submission. The transcripts of the closing submissions contain references to the appellant's testimony that he was reluctant to travel to Canada because of his vaccination status, and to messages to this effect that the appellant exchanged with "Colin Cramer". The Crown also referred to the fact that the appellant had left the hotel to take a COVID-19 test and to get vaccinated. Whether or not Canada's COVID-19 policy was in evidence, the appellant's evidence on these points was considered and referred to by the trial judge, who noted the appellant's evidence that he had never discussed going to Toronto with Colin Cramer, that he did not like the idea of going to Toronto, and that he did not have his COVID-19 vaccination.
- [22] In any event, we do not see this issue as determinative. The appellant argues that, because of the COVID-19 restrictions he could not have planned the trip to Toronto and the importation of the heroin into Canada. It was not however the Crown's case that the appellant was the person who planned the importation or the route that he would take in carrying the drugs. And, notwithstanding his professed reluctance to travel to Canada because of concerns about his immunization status, the appellant ultimately boarded the flight to Canada.

## Disposition

- [23] For these reasons the appeal is dismissed.

*"K. van Rensburg J.A."*

*"Thorburn J.A."*

*"S. Gomery J.A."*

- [1] The appellant initially appealed both his conviction and sentence but filed an amended notice of appeal abandoning his sentence appeal.
- [2] In the course of the appeal proceedings, the appellant had raised but ultimately abandoned ineffective assistance of counsel as a ground of appeal.

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