

CANADA / JUDGMENT

R. v. Roy

2026 ONCA 6

COURT

Court of Appeal for Ontario

DECIDED

8 January 2026

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R. v. Roy Collection Decisions of the Court of Appeal Date 2026-01-08 Neutral citation 2026 ONCA 6 Docket numbers COA-24-CR-0972 Judges George, Jonathon C.; Favreau, Lise G.; Pomerance, Renee M. Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. Roy, 2026 ONCA 6 DATE: 20260108 DOCKET: COA-24-CR-0972 George, Favreau and Pomerance JJ.A. BETWEEN His Majesty the King Respondent and Marcus Roy Appellant Simon Kim, for the appellant Samuel G. Walker, for the respondent Heard and rendered orally: November 21, 2025 On appeal from the conviction entered by Justice Donohue of the Superior Court of Justice, on April 2, 2024. REASONS FOR DECISION

- [1] The appellant appeals from convictions for various offences flowing from the robbery of a convenience store. The central issue is whether the trial judge erred in failing to stay the proceedings based on the use of excessive force by an officer during the appellant's arrest.
- [2] The appellant argues that the trial judge misapprehended the evidence. We do not agree. The trial judge expressly considered the testimony of the police witnesses, and the extent to which it was contradicted by the video of the arrest. The trial judge was alive to the apparent testimonial dishonesty of officer Powell, who was responsible for the excessive force, but did not find the other officers to have deliberately misled the court.
- [3] These findings were within the purview of the trial judge and are entitled to deference. We do not see any misapprehension of evidence or palpable and overriding error.
- [4] Nor do we see error in the trial judge's choice of remedy, that being a sentence reduction of six months duration. Section 24 (1) of the Canadian Charter of Rights and Freedoms confers a broad sphere of remedial authority. As it was put in R. v. O'Connor, [1995] 4 S.C.R. 411, at para. 69, it provides judges with a scalpel rather than an axe. While the use of force in this case was excessive and violated the appellants rights under s. 7 of the Charter, there was a strong societal interest in seeing these serious charges tried on the merits. It was open to the trial judge to find that this was not one of the clearest of cases commanding a judicial termination of the prosecution.
- [5] For these reasons, the appeal is dismissed. "J. George J.A." "L. Favreau J.A." "R. Pomerance J.A."

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