

CANADA / JUDGMENT

R. v. Yizhak

2026 ONCA 100

COURT

Court of Appeal for Ontario

DECIDED

10 February 2026

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COA-23-CR-0346

Judges

Tulloch, Michael H.; Roberts, Lois B.; Rahman, Moiz

Subject

Criminal

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Yizhak, 2026 ONCA 100

DATE: 20260210

DOCKET: COA-23-CR-0346

Tulloch C.J.O., Roberts and Rahman JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Alex Yizhak

Appellant

Breana Vandebeek and Nathan Gorham, for the appellant

Martin Heslop, for the respondent

Heard: February 2, 2026

On appeal from the conviction entered by Justice Patrice F. Band of the Ontario Court of Justice, on February 17, 2022, and from the sentence imposed on March 3, 2023, with reasons reported at 2023 ONCJ 95.

Tulloch C.J.O.:

I. overview [1] Police, while executing a search warrant on September 25, 2019, located a loaded, chambered, prohibited handgun in the appellant's small, one-bedroom condominium unit. The appellant was alone in the unit at approximately 5:00 a.m., having been roused from bed. The firearm, a Beretta handgun containing seven rounds in the magazine and one in the chamber, was wrapped in clothing and placed in a shelving unit near the entrance.

[2] After a judge-alone trial at which the defence called no evidence, the appellant was found guilty of possession offences under ss. 92 and 95 of the Criminal Code, R.S.C. 1985, c. C-46. The trial judge entered a conviction on the s. 95 offence and stayed the s. 92 offence pursuant to *Kienapple v. The Queen*, [1975] 1 S.C.R. 729. The appellant received a sentence of two years less a day, reduced by four months' Downes and presentence custody credit, resulting in a custodial term of 20 months.

[3] The appellant appeals both conviction and sentence.

[4] Although the appellant's factum framed the conviction appeal primarily as one of misapprehension of evidence and unreasonable verdict grounded in alleged investigative deficiencies, the emphasis at oral argument shifted. The oral submissions concentrated on whether there was a plausible inference that the appellant's brother, or some unidentified third party, had access to the condominium and may have placed the firearm there without the appellant's knowledge.

[5] Properly understood, however, both the written and oral arguments ultimately challenge the trial judge's factual inferences. When the governing legal principles are applied to the objective evidentiary record, no legal error is disclosed. The conviction was reasonable and free from misapprehension of evidence. The sentence likewise reveals no error in principle and is not demonstrably unfit, and deference is owed to the trial judge's determination that a

conditional sentence would be inappropriate. Accordingly, for the reasons below, both appeals are dismissed.

II. THE CONVICTION APPEAL A. Governing Legal Principles [6] A claim of misapprehension of evidence is subject to a stringent standard. The error must be “readily obvious”, “real rather than speculative”, and plain in the reasons. It must concern material evidence and play an essential role in the reasoning process: *R. v. B.B.*, 2025 ONCA 318, at para. 4 (citation omitted), *aff’d* 2026 SCC 1.

- [7] An unreasonable verdict is one that no properly instructed trier of fact, acting judicially, could reasonably render: *R. v. R.P.*, 2012 SCC 22, [2012] 1 S.C.R. 746, at para. 9.
- [8] In circumstantial cases, guilt must be the only reasonable inference available on the whole of the evidence. However, the Crown need not exclude every conceivable inference. As the Supreme Court explained in *R. v. Villaroman*, 2016 SCC 33, [2016] 1 S.C.R. 100, at para. 42, the Crown is not required to prove that no other inference is possible, and the trier of fact is not required to consider all conceivable inferences.
- [9] Appellate courts owe substantial deference to a trial judge’s assessment of whether an alternative inference is reasonably available on the record: *Villaroman*, at paras. 56, 71.

B. The Objective Evidentiary Record [10] The trial judge carefully reviewed the evidence establishing that the appellant resided in and controlled the condominium unit. That evidence included:

- The appellant’s presence alone in the small unit at 5:00 a.m., having been roused from bed;
 - A keychain labelled “Alex” bearing the unit key;
 - A power company invoice in his name;
 - A certified driver’s licence history listing the condominium address since 2016; and,
 - The lived-in condition of the unit, including male clothing and personal effects.
- [11] The firearm was located in an open shelving unit near the entrance. It was wrapped but readily accessible. It was loaded and chambered.
- [12] The trial judge applied the correct principles governing circumstantial evidence and constructive possession.

C. Alleged Misapprehension: Third-Party Access [13] In the factum, the appellant asserted that the trial judge misapprehended the evidence by stating there was no foundation for an inference that others occupied the unit and no evidence connecting anyone else to it.

- [14] At oral argument, the focus shifted from “occupation” to “access.” Counsel argued that several circumstances, such as early morning phone calls from the appellant’s brother, the brother’s attendance at the building, alcohol bottles in the unit, and the absence of further investigative evidence, rendered plausible a theory that the brother or another person placed the firearm in the condominium.
- [15] These submissions do not establish misapprehension of evidence.
- [16] The trial judge did not ignore or misunderstand the evidence concerning the brother. He accepted the evidence of the phone calls and attendance. That evidence established a familial relationship and contact. It did not lend support to the inference that the brother resided in the unit, possessed keys beforehand, stored belongings there, attended a gathering the night before, or placed a firearm inside.
- [17] The inference advanced on appeal – that the brother may have urgently needed to retrieve a firearm, may have left it at a social gathering, and/or may have had unsupervised access – rests entirely on conjecture. No evidence supported those propositions. The brother did not testify. No independent evidence linked him to the premises beyond his relationship with the appellant.
- [18] The presence of alcohol bottles proves only that alcohol was present. It does not establish a party, the identity of attendees, or the placement of a firearm. The police decision to leave keys with a family member following arrest does not retroactively support an inference of prior access.
- [19] The appellant’s argument, particularly as refined orally, asks this court to treat speculative possibilities as reasonable inferences. That is precisely what Villaroman instructs courts not to do. Plausibility must be assessed against the whole of the evidence and grounded in logic and common sense. It is not enough that a theory is imaginatively conceivable.
- [20] The trial judge was entitled to conclude that there was no evidentiary foundation connecting any third party to the firearm or establishing access sufficient to render the alternative inference reasonable.
- [21] There was no misapprehension of evidence.

D. The Firearm’s “Value” [22] The appellant further argued, in writing and orally, that the trial judge erred in inferring that the firearm was “valuable” absent evidence of its monetary value.

- [23] This submission is foreclosed by binding authority. This court has repeatedly affirmed the common sense inference that guns are valuable, particularly where they are loaded and prohibited: see, e.g., *R. v. Thompson*, 2020 ONCA 361, at para. 11; *R. v. Bonilla-Perez*, 2016 ONCA 535, at para. 16; *R. v. Buchanan*, 2020 ONCA 245, 150 O.R. (3d) 209, at para. 61; *R. v. Walters*, 2023 ONCA 4, at paras. 21, 29.

[24] The inference reflects not merely market price, but the inherent danger, difficulty of acquisition, and severe legal jeopardy associated with illegal firearms. The trial judge applied settled law. There was no legal error.

E. Reasonableness of the Verdict [25] The appellant called no evidence. He provided no innocent explanation for the presence of a loaded, chambered handgun in his small, one-bedroom condominium. The absence of such an explanation in the face of a strong Crown circumstantial case supports the reasonableness of the trial judge's conclusion on appellate review: *R. v. George-Nurse*, 2019 SCC 12, [2019] 1 S.C.R. 570, at paras. 1-2; *R. v. Noble*, [1997] 1 S.C.R. 874, at para. 103.

[26] The objective evidence established his longstanding connection to and control over the unit. The firearm was readily accessible within that space.

[27] The trial judge considered and rejected the alternative theory advanced at trial.

[28] When the law governing circumstantial evidence is applied to the objective facts of this case, the conclusion that guilt was the only reasonable inference was well within the bounds of reasonableness.

[29] The conviction appeal is dismissed.

III. THE SENTENCE APPEAL A. Aggravating Circumstances [30] The appellant argues that the trial judge erred by treating possession of a loaded, chambered handgun in a condominium building as aggravating.

[31] Section 95 does not require that a firearm be chambered and ready to fire, stored insecurely, or kept in a densely populated residential building. Those circumstances heighten risk to public safety.

[32] The trial judge was entitled to treat those additional features as aggravating. No error in principle is established.

B. Family Circumstances and Delay [33] The appellant is a first offender with family responsibilities and stable employment who was 29 years old at the time of the offence. Approximately six years elapsed between arrest and appeal. Counsel emphasized that much of that delay arose from defence counsel's health issues.

[34] At sentencing, however, defence counsel expressly declined to rely on the consequences of incarceration on the appellant's family when asked directly by the trial judge. No presentence report was tendered. The appellant did not address the court.

[35] The trial judge recognized the appellant's personal circumstances and rehabilitative prospects, accepted that his apparent fear of being shot modestly attenuated his high degree of responsibility, and relied on all these factors to impose a reformatory sentence rather than a penitentiary term.

[36] In the circumstances of this case, the passage of time, in the absence of demonstrated prejudice or state misconduct, does not justify transforming a restrained and fit custodial sentence for a serious firearms offence into a conditional sentence. No legal error arises.

C. Fitness and Parity [37] The jurisprudence consistently affirms that possession of a loaded prohibited firearm ordinarily requires a custodial sentence to reflect denunciation and deterrence: *R. v. Morris*, 2021 ONCA 680, 159 O.R. (3d) 641, at paras. 71, 151.

[38] The sentence of 20 months' incarceration was restrained and consistent with parity. It is neither demonstrably unfit nor the product of legal error. As the trial judge found, the conditional sentence cases cited by the appellant were distinguishable because they involved mitigating factors absent here – guilty pleas, remorse, stronger evidence of diminished moral responsibility, and/or harsh conditions of pre-trial detention.

IV. DISPOSITION [39] The conviction appeal is dismissed. Leave to appeal sentence is granted but the sentence appeal is dismissed.

Released: February 10, 2026 “M.T.”

“M. Tulloch C.J.O.”

“I agree. Roberts J.A.”

“I agree. M. Rahman J.A.”

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