

CITATION: R. v. Murray, 2011 ONCA 174

DATE: 20110304

DOCKET: C51043 and C49408

COURT OF APPEAL FOR ONTARIO

Moldaver, Cronk and Juriensz JJ.A.

BETWEEN:

Her Majesty The Queen

Respondent

And

Mark Murray

Appellant

Mark Halfyard, for the appellant

Jason J. Wakely and Kandia A. Aird

Heard and endorsed: March 2, 2011

On appeal from conviction entered by Justice John McIsaac of the Superior Court of Justice, dated May 23, 2008.

APPEAL BOOK ENDORSEMENT

[1] Assuming, without deciding, that the arrest of the appellant in the circumstances was unlawful, given the knowledge the police officers had, they were fully justified in taking control of the appellant and taking steps to ensure their safety as part of a lawful investigative detention. In this context, the police would have been entitled to conduct a

protective pat-down search of the appellant. Had this been done, the officers would inevitably have discovered a digital scale in the appellant's left pants pocket. They would also have felt a large bulge, soft in texture, in his right pants pocket. Further investigation would have revealed that the appellant had eight prior trafficking and/or possession convictions. In combination, this would have afforded the police ample reasonable grounds to arrest and search the appellant, at which point the drugs in his right hand pocket would have been discovered.

[2] Thus, even if the police lacked reasonable grounds to arrest the appellant when and as they did, he would have been lawfully arrested in any event and the drugs seized. Consequently, the impact on the appellant's *Charter* rights is minimal. Given that there is no finding that the police deliberately or flagrantly breached the appellant's *Charter* rights and having regard to society's interest in an adjudication on the merits, the evidence in our view would have been admitted.

[3] Accordingly, the appeal from conviction is dismissed.