

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Clarke, 2024 ONCA 302

DATE: 20240423

DOCKET: COA-22-CR-0299

Benotto, Coroza and Dawe JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Shakur Clarke

Appellant

Shakur Clarke, acting in person

Frank Au, for the respondent

Heard: April 10, 2024

On appeal from the conviction entered on June 15, 2022 and the sentence imposed on October 7, 2022 by Justice Jennifer D. Strasberg of the Ontario Court of Justice.

REASONS FOR DECISION

[1] Shakur Clarke was convicted of offences in relation to a drive-by shooting. He was sentenced to 10.5 years. Ivan Cortez, Mr. Clarke's co-accused, was also charged and convicted.

[2] Shortly before midnight on August 5, 2020 a witness saw a gun extended from the driver's window of a lime green Kia. It was pointed in the direction of a white Mazda when three or four shots were fired. The two vehicles then sped off, with the Kia in pursuit of the Mazda. The witness went home and called 911. Police responded quickly.

[3] At approximately 12:15 a.m., Detective Constable Cheung spotted the green Kia with its headlights off. DC Cheung and several other police cars converged to box the Kia in. The Kia made deliberate contact with DC Cheung's car and was ultimately immobilized. Mr. Clarke was pulled from the driver's seat and resisted arrest, requiring the intervention of several officers. Mr. Cortez fled from the rear passenger seat and was later arrested.

[4] Mr. Clarke challenged his convictions on ground that the circumstantial evidence relied on by the trial judge to establish that he was the driver and the shooter was open to other reasonable inferences. The gap in time between the shooting and when the car was pulled over by the police created the possibility that he was not in the car when the shooting took place. He says that he could have gotten into the car after the shooting.

[5] This submission was also made to the trial judge who concluded that this possibility was not reasonable.

[6] A similar submission regarding the inference that Mr. Cortez was also implicated in the shooting was also made by Mr. Cortez on his appeal to this court:

R. v. Cortez, 2023 ONCA 636. At paragraph 21, this court said:

On these facts, the trial judge properly concluded that the cumulative effect of the circumstantial evidence was that the only reasonable inference was that [Mr. Cortez] was acting in concert with Mr. Clarke in planning and carrying out of the shooting. No other reasonable conclusion was available on the totality of the evidence.

[7] We agree that the trial judge properly considered and rejected alternate inferences and concluded that the only reasonable inference from the circumstantial evidence was that Mr. Clarke and Mr. Cortez acted in concert in the planning and carrying out of the shooting.

[8] Mr. Clarke effectively abandoned the sentence appeal.

[9] The appeal is dismissed as to conviction and sentence.

“M.L. Benotto J.A.”

“S. Coroza J.A.”

“J. Dawe J.A.”