Information No. 0411-998-23-11407651-00

ONTARIO COURT OF JUSTICE

HIS MAJESTY THE KING

v.

HARBY DIALLO

REASONS FOR JUDGMENT

BEFORE THE HONOURABLE JUSTICE M. DEVLIN
on February 26, 2026 at OTTAWA, Ontario

APPEARANCES:

T. Dobec — Counsel for the Crown

P. Azzi — Counsel for Harby Diallo

ONTARIO COURT OF JUSTICE

T A B L E O F C O N T E N T S

LEGEND

[sic] Indicates preceding word has been reproduced verbatim and is not a transcription error.

(ph) Indicates preceding word has been spelled phonetically.

Transcript Ordered:	March 26, 2026
Transcript Completed:	April 1, 2026
Ordering Party Notified:	May 8, 2026

THURSDAY, FEBRUARY 26, 2026

THE COURT: Good morning, Mr. Diallo.

HARBY DIALLO: Good morning, Your Honour.

R E A S O N S F O R J U D G M E N T

DEVLIN, J. (Orally):

All right counsel, I am going to begin.

Harby Diallo is charged with two offences regarding an incident that occurred on October 15th, 2023, causing unnecessary pain, suffering or injury to a dog and willfully obstructing or resisting a peace officer in the execution of his or her duty.

The Crown relied on the evidence of two civilians, Manuel Acosta and Henry Rodriguez and four police officers. Mr. Diallo testified on his own behalf.

At approximately 2:30 a.m., Mr. Acosta was awoken from a deep sleep by the sound of a scream, which he described as long, loud and disturbing. He believed this sound had been made by a dog. When he looked out his window, he saw a black man on a facing balcony drop a small dog onto the floor of the balcony and heard the scream a second time. He described the action as the dog being lifted almost over the head of the man and then "smashed to the ground". He was concerned the dog might be thrown over the balcony.

Mr. Acosta saw the dog get dropped a second time and went to wake up his roommate, Henry Rodriguez. He explained what he had seen and the two discussed

how best to proceed. Eventually they decided to call the police. As Mr. Rodriguez was making the call, the two men saw the man drop the dog a third time. Each time the dog screamed or yelped which sounded to the witnesses as if the animal was in pain.

When the police arrived at Mr. Diallo's apartment, they noticed a broken bottle of liquor in the hallway and blood stains on the wall. Mr. Diallo poked his head out of his door when he heard them knocking on a neighbour's door. At the time, Mr. Diallo was only wearing an undershirt and was naked from the waist down. The police entered the apartment forcefully and immediately arrested Mr. Diallo for cruelty to an animal. According to the police, Mr. Diallo was uncooperative during his arrest.

Post arrest, Mr. Diallo testified that he did indeed try to impede the police because he was upset that they were taking his dogs, Taft and Luna away from him. There is no issue on the obstruct police charged based on the evidence of the police officers and Mr. Diallo's own admission that he actively tried to prevent the police from removing him from his apartment and placing him in the cruiser after his arrest.

There was no evidence that the dog, Luna was injured. Therefore, the only issue is whether the crown has proven beyond a reasonable doubt that Mr. Diallo's actions towards Luna amounted to the willful infliction of unnecessary pain or suffering. This issue involves a credibility

assessment Mr. Diallo denies that he repeatedly dropped his dog from over his head onto the ground.

I turn now to the legal analysis. In cases where credibility is an issue, I am required to apply the tests set out in the 1991 decision of the Supreme Court of Canada in *R. v. WD*.

First, do I believe the evidence of Mr. Diallo. Second, if I do not believe Mr. Diallo, does his evidence raise a reasonable doubt. Third, am I satisfied on the evidence that I do accept that Mr. Diallo is guilty beyond a reasonable doubt.

I have considered Mr. Diallo's evidence in the context of the evidence as a whole. Mr. Diallo testified that he owned two dogs, Taft and Luna. On the date of this incident, Luna was a new puppy that he had owned for just a few weeks.

Earlier in the evening, he went out to go drinking with friends. Prior to leaving, he prepared the apartment because he expected that Luna might poop while he was gone. When he returned to the apartment, he and a friend argued and scuffled in the hallway. During this interaction, he suffered a minor injury to his forehead which bled. After the friend left, he threw a bottle of alcohol and was surprised when it broke. He left this mess and went inside his apartment, where he found dog poop. He started cleaning the poop and at some point, took Luna out to the balcony where he dropped her from chest height onto a dog bed. He agreed that she was screaming when he did this. He has stated that

this happened twice. Some of the poop got on his pants which he removed.

When he heard the police knocking on a neighbour's door, he opened his dog because he assumed they were there about the earlier incident in the hallway between him and his friend. At this point, he was only wearing an undershirt. The police quickly and forcibly entered his unit and arrested him. They then took both of his dogs. He became distraught and tried to stop the police from removing him from his apartment.

I note that I can accept some, none or all of a witness' evidence. I accept Mr. Diallo's evidence of the sequence of events that night. I also accept that his initial refusal to allow the police to enter his apartment was based on him not wearing any pants and wanting to get dressed first.

I reject Mr. Diallo's evidence about how he dropped Luna on the balcony for the following reasons.

1) On his account, he carefully dropped Luna onto a dog bed in a measured and controlled manner. However, this is at odds with how he behaved in the hallway, including physically fighting with a friend, throwing a glass bottle hard enough to break it and leaving the mess, and his entire interaction with the police.

2) He was under the influence of alcohol when he came home.

3) The sound Luna made when she was dropped was so loud and distressing that it woke Mr. Acosta from a deep sleep. He described the sound as a

scream which is not consistent with the almost gentle action described by Mr. Diallo. Mr. Diallo testified that he only dropped Luna twice.

Mr. Acosta testified that it was between three to five times. He was clear that he saw the action twice before getting his roommate and the two of them saw the action once. I therefore conclude that it happened three times.

The nature of Mr. Diallo's treatment of Luna together with the sounds she made as it happened, lead me to conclude that the dog suffered unnecessary pain or suffering, including psychological suffering, despite no evidence of any physical injury. I therefore find Mr. Diallo guilty on this count.

In conclusion, based on the reasons I have provided, the crown has proven both counts beyond a reasonable doubt. I therefore find Mr. Diallo guilty of both.

END OF PROCEEDINGS

FORM 3

ELECTRONIC CERTIFICATE OF TRANSCRIPT (SUBSECTION 5 (2))

Evidence Act

I, **Amanda Borys** ,
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certify that this document is a true and accurate transcript of the recording of

R v Diallo in the **Ontario Court of Justice**
(Name of case) *(Name of court)*

held at **161 Elgin Street, Ottawa Ontario**
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A certificate in Form 3 is admissible in evidence and is proof, in the absence of evidence to the contrary, that the transcript is a transcript of the certified recording of evidence and proceedings in the proceeding that is identified in the certificate.

Superior Court of Justice and Ontario Court of Justice
Request for Judicial Approval of Transcript

1. Transcript Information *(To be completed by the Authorized Court Transcriptionist)*

Name of Judicial Official: M. Devlin Date submitted (*mm/dd/yyyy*): 05072026

In the matter of: R v. Diallo

Transcript ordered by: Crown Attorney Date transcript ordered (mm/dd/yyy): 04262026

The attached transcript(s) submitted for judicial approval is/are from the: ☐ Superior Court ☒ Ontario Court

The transcript(s) contains: ☐ Reasons for Judgment ☐ Reasons for Sentence

☐ Charge to the Jury ☒ Ruling(s) Number of rulings: 3

Proceeding Type: ☐ Civil ☐ Family ☒ Criminal

Event Type: ☐ Continuation of Hearing ☐ Appeal Court ☒ Timelines as per the CTSP Manual

Return of the transcript is requested by *(mm/dd/yyyy)*: 05082026

2. Confirmation and Signature *(To be completed by the Authorized Court Transcriptionist)*

I confirm that, as per section 5.2 of the Court Transcript Standards and Procedures Manual, this transcript has been proofread for accuracy and adheres to the formatting standards set out in Section 3 of the Manual. I will not release this transcript without the required judicial approval. In addition, a signed copy of this approval form will be provided to the ordering party with the final transcript.

Name of Authorized Court Transcriptionist: Amanda Borys

ABorys

Authorized Court Transcriptionist Signature	borys_amanda@me.com *Authorized Court Transcriptionist Email*	05072026 Date (*mm/dd/yyyy*)

3. Judicial Approval *(To be completed by the Justice)*

The attached transcript(s) is/are:

☐ Approved for release.
☑ Approved for release with revisions to be incorporated (as noted below).
☐ Not approved for release. Revisions to be incorporated and returned for further judicial review and approval (as noted below).

MJDevlin

Judicial Signature	05/07/2026 Date (*mm/dd/yyyy*)

Please provide draft #2 with the original draft #!

Thank you -

MJDevlin