

Case Name:

R. v. Goldenberger

**Between
Esteban Goldenberger, and
Her Majesty the Queen**

[2012] O.J. No. 3234

Ontario Court of Justice
Toronto, Ontario

J.M. Ritchie J.

May 31, 2012.

(21 paras.)

Counsel:

I. Stamicor Prosecutor for the City.

V. Manoukian Paralegal for the Appellant.

APPEAL PROCEEDINGS

J.M. RITCHIE J.:--

1 MS. STAMICAR: Good morning, Your Honour.

2 THE COURT: Good morning.

3 MS. STAMICAR: Stamicar, initial I, for the City of Toronto. Your Honour, I'm here to speak to an appeal proper matter and that will be line number ten. Esteban Goldberger?

4 MR. MANOUKIAN: Yes, good morning, again, Your Honour. Manoukian, initial V, M-A-N-O-U-K-I-A-N,

5 THE COURT: Right.

6 MR. MANOUKIAN: Appearing for Mr. Esteban Goldberger, the appellant, who is not before you.

7 MS. STAMICAR: Thank you. Your Honour, Mr. Manoukian and I have been reviewing this matter for several months now. We were actually waiting on the last, on the transcript from the last court appearance. Um, I have received that. I've re-read all the transcripts. I'm in agreement with Mr. Manoukian that the s.11(b) application should have been heard, as opposed to have been denied without even being heard. And, I'm going to ask that the appeal be granted and an acquittal be entered at the time -- at this time.

8 MR. MANOUKIAN: Your Honour, if I could add some more things that I'm sure my friend would not have objection to this? Very briefly, this is a problem that we encounter in the Provincial Offences Courts. The three issues that I've raised in this appeal was, is an applicant precluded from raising a Charter s.11(b) argument once it's been abandoned, just abandoned, by the defence.

9 The second issue was, is the Charter s.11(b) application to be raised only at the beginning of a trial, prior to arraignment? And, the third issue was, is there any prejudice to the prosecution in responding to a Charter s.11(b) argument which is brought at a later continued trial date?

10 Of course, we don't want to re-invent the wheel here, but the leading case law is R. V. MacDougall. If I can just help madam monitor with this, M-A-C-D-O-U-G-A-L-L, R. v. MacDougall, [1998] 3rd S.C.R. 45. As well, as reliance has been placed upon R. v. Peressotti, P-E-R-E-S-S-O-T-T-I, R. v. Peressotti, [2008], S.C.R. 313.

11 I just want to put these comments on the record. My friend has no objection to this. And, this was a trial that took place over three different trial dates, and, um, I'm glad that Ms. Stamicar has taken the position that she has, in the customary fairness of her office.

12 THE COURT: Oh, okay. I understood that the justice of the peace would not hear submissions on the application. That is basically what happened?

13 MR. MANOUKIAN: Well, what happened was, it was the first trial date. A paralegal abandoned the Charter s.11(b) argument that he had filed.

14 THE COURT: Right.

15 MR. MANOUKIAN: The trial did not complete on the trial date, unbeknown to anyone. It was continued to a second trial date. On the second trial date, the learned Justice of the Peace Waisberg, if I can spell his name, W-A-I-S-B-E-R-G, indicated to the paralegal that he was precluded from arguing the Charter s.11(b) argument, because he had not raised it, a) prior to arraignment, and b) he didn't care if took the trial to take five years to complete, he should have brought it before the first trial date. This is where you can only bring Charter s.11(b) argument. The matter was then not completed on the second trial date.

16 THE COURT: Right.

17 MR. MANOUKIAN: It was put over to sentencing, yet again, on the third trial date. That was in a nutshell, Your Honour, the summary of the facts of this case.

18 THE COURT: Okay. Got you. Well, the justice of the peace should have heard submissions, that is true. Okay, that is fine. Three in a row. You owe us all a beer.

19 MR. MANOUKIAN: Thank you, Your Honour. I thank my friend.

20 THE COURT: Thank you.

21 MS. STAMICAR: Thank you, Your Honour. If I may be excused, please? Thank you, sir.

qp/s/qljel/qlpmg

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