

Case Name:
R. v. Kurkukli

Between
Her Majesty the Queen, and
Yildirim Kurkukli

[2010] O.J. No. 3651

Ontario Court of Justice
Toronto, Ontario

S. Ray J.

July 14, 2010.

(80 paras.)

Counsel:

H. Clement, Ms., Counsel for the Crown.

V. **Manoukian**, Mr., Counsel for the Accused.

S. RAY J.:--

- 1 MS. CLEMENT: Line 15 on the Appeals Proper, Yuldirin Kurkukli.
- 2 THE COURT: That is Mr. **Manoukian's** matter and I read the file and the extensive material --
- 3 MR. **MANOUKIAN**: Thank you, Your Honour.
- 4 THE COURT: ... not that extensive -- over the lunch recess.
- 5 MR. **MANOUKIAN: Manoukian**, initial V. M-A-N-O-U-K-I-A-N, initial V, representing Mr. Kurkukli, who's not before you.
- 6 MS. CLEMENT: Your Honour, if I may?
- 7 THE COURT: Yes.
- 8 MS. CLEMENT: The offence is speeding.
- 9 THE COURT: Mm-hmm.

10 MS. CLEMENT: And I believe some issues were raised at trial with regards to an interpreter.

11 THE COURT: Yes.

12 MS. CLEMENT: And at this point, I am prepared to concede with regards to the interpreter issue.

13 THE COURT: Mm-hmm.

14 MS. CLEMENT: And if the Court is in agreement, a new trial be added -- sorry, be ordered on the basis of the -- of the interpreter issue at trial, and that on the trial date, as I have had conversation with Mr. **Manoukian**, the defendant, would apprise the Court as to the interpreter, because as far as I understand, Turkmen, there's a couple of different languages ...

15 THE COURT: Mm-hmm.

16 MS. CLEMENT: ... that could be substituted for that. And having conversation with ...

17 THE COURT: Mm-hmm.

18 MS. CLEMENT: ... Mr. **Manoukian**, he advised that on the new trial date the defendant would apprise the Court as to which one of the languages will be able to ...

19 THE COURT: All right, we should do it ...

20 MS. CLEMENT: ... interpret for him.

21 THE COURT: ... long before the new trial date.

22 MS. CLEMENT: Well, ...

23 THE COURT: And, it should be very -- we should be sure that the correct Turkmen -- my guess is since Turkmen is spoken in more than one country there may be different dialects.

24 MS. CLEMENT: Yes, there's at least five.

25 THE COURT: So, we have got to make sure that, that we pick an interpreter that speaks the correct dialect. So, that all has to be specified in the requisition for an interpreter, and that should all be sorted out before the day of trial, so that the correct interpreter is there, rather than waiting for the day of trial.

26 MS. CLEMENT: I have made notations on the file that is subject to the Court's approval with the recommendation that I have made.

27 THE COURT: All right.

28 MR. **MANOUKIAN**: Your Honour.

29 THE COURT: Before we even get to that issue, the Crown's -- or, the Prosecution has taken a very appropriate position. Clearly, this was a Kafka-esque trial from what I read in the transcript.

30 We had an unrepresented accused who needed an interpreter representing himself, and it -- I am also astonished that the Prosecutor would have agreed to this, but definitely the JP should not have agreed to this. And that is not the only problem. That, in itself is, is grounds for a successful appeal, but there were so many other problems.

31 The defendant did not receive the required assistance from the Court that an unrepresented accused was supposed to -- is supposed to receive. And, I could go on, but that is enough.

32 So, yes, definitely, the appeal is granted and it is to be sent back for a new trial before a tribunal differently constituted.

33 Now, I want to be sure that we do not wait until the trial date to -- for this interpreter issue to be canvassed. The Turkmen interpreter, and the correct dialect -- who speaks the correct dialect and interprets the correct dialect should be requisitioned before the trial date and should be there.

34 And I predict, having had a lot of experience with dealing with interpreters on trials, especially when we are dealing with languages that are less common, that have many dialects, that there is going to be some work that needs to be done by the coordinators for interpreting to find an individual.

35 And we may be even looking outside the normal pool of interpreters. We may be going to the -- we may be borrowing somebody from the Immigration Appeal Board or something like that. So, there is quite a bit of work that has to be done and I definitely do not recommend that it be left for the day of trial.

36 MS. CLEMENT: Your Honour, I wasn't suggesting for the date of trial. I was suggesting that on the set date ...

37 THE COURT: Yes.

38 MS. CLEMENT: ... that the information be provided to the Court in order ...

39 THE COURT: Yes.

40 MS. CLEMENT: ... to have one properly at court.

41 THE COURT: Now, that is an excellent suggestion, so we will remand the matter to the set date, then.

42 MS. CLEMENT: I just want to be clear that the agent present, he is in agreement with us?

43 MR. **MANOUKIAN**: Your Honour, I just want to clarify something.

44 THE COURT: Mm-hmm.

45 MR. **MANOUKIAN**: My conversation with my friend was to the extent that I will ask the defendant ...

46 THE COURT: Mm-hmm.

47 MR. **MANOUKIAN**: ... to see if he speaks any of the other languages that might be spoken in that part of the world ...

48 THE COURT: Mm-hmm.

49 MR. **MANOUKIAN**: ... such as perhaps Russian ...

50 THE COURT: Mm-hmm.

51 MR. **MANOUKIAN**: ... Kurdish, ...

52 THE COURT: Mm-hmm.

53 MR. **MANOUKIAN**: ... Arabic or something else, but I cannot guarantee.

54 THE COURT: Mm-hmm, yes.

- 55 MR. **MANOUKIAN**: And I cannot advise this Court that this defendant ...
- 56 THE COURT: Mm-hmm.
- 57 MR. **MANOUKIAN**: ... would necessarily be able to speak any of the other languages, ...
- 58 THE COURT: Mm-hmm.
- 59 MR. **MANOUKIAN**: ... which means that we are going to be back at square one ...
- 60 THE COURT: Mm-hmm.
- 61 MR. **MANOUKIAN**: ... with regards to the requirement we have a Turkmen Interpreter ...
- 62 THE COURT: Okay.
- 63 MR. **MANOUKIAN**: ... but I will ask the defendant and ask if he speaks ...
- 64 THE COURT: All right, well you have obviously interpreter -- I mean, Madam, T-U-R-K-M-E-N.
- 65 CLERK OF THE COURT: M-E-N?
- 66 MR. **MANOUKIAN**: M-E-N.
- 67 CLERK OF THE COURT: Okay, and that was from which country?
- 68 MR. **MANOUKIAN**: Well, ...
- 69 CLERK OF THE COURT: (Inaudible).
- 70 MR. **MANOUKIAN**: This is a language that's spoken in various countries in the middle east, the far east and ...
- 71 THE COURT: I mean, basically what we can write down for now is the name of the language is Turkmen ...
- 72 CLERK OF THE COURT: Mm-hmm.
- 73 THE COURT: It is spoken, if I understand correctly, primarily in Turkmenistan and this gentleman is northern Iraq.
- 74 CLERK OF THE COURT: Northern Iraq?
- 75 THE COURT: So, what we are going to need is the dialect of Turkmen that is spoken in northern Iraq.
- 76 MR. **MANOUKIAN**: Yes.
- 77 THE COURT: Fairly straightforward I would think. I do not think this is something so astonishing that the courts cannot accommodate it.
- 78 MS. CLEMENT: Okay.
- 79 MR. **MANOUKIAN**: Thank you, Your Honour.
- 80 THE COURT: Okay.
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