

CANADA / JUDGMENT

R. v. Semeniuk

2002 BCCA 180

COURT

British Columbia Court of Appeal

DECIDED

12 March 2002

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2002BCCA0180 Citation: R. v. Semeniuk Date: 20020312 2002 BCCA 180 Docket: CA028908
Registry: Vancouver COURT OF APPEAL FOR BRITISH COLUMBIA BETWEEN: REGINA
RESPONDENT AND: MARK KONSTANTIN SEMENIUK APPELLANT Before: The Honourable
Madam Justice Southin (In Chambers) Mark Konstantin Semeniuk Appearing in person Michael
Van Klaveren Counsel for the Respondent Place and Date of Hearing: Vancouver, British
Columbia 5th March, 2002 Place and Date of Judgment: Vancouver, British Columbia 12th March,
2002 Reasons for Judgment of the Honourable Madam Justice Southin:

- [1] This is an application by an appellant who has been convicted of a number of counts of fraud and uttering forged documents for the appointment of counsel, and failing that for an order that the Attorney General purchase the necessary transcripts.
- [2] The trial, which lasted 17 days, took place before Madam Justice Stromberg-Stein. Having found the appellant guilty, the learned judge sentenced him to two and one-half years and ordered restitution in the amount of \$131,833.11, thus: CONDITION 1 on count(s) 3,4,5,8,9,13,14,21,25,28,29, 32: Sand Transaction: 62,480 (half of \$124,960) payable to Royal Bank @ P.O. Box 11141, 1055 West Georgia Street, Vancouver, BC V6E 3S5 CONDITION 2 on count(s) 3,4,5,8,9,13,14,21,25,28,29, 32: Ridley Transaction: \$22,925 (half of \$45,850) payable to the Royal Bank. CONDITION 3 on count(s) 3,4,5,8,9,13,14,21,25,28,29, 32: Wilkinson Transaction: \$46,428.11 (half of \$92,856.21) payable to Gemeco, Suite 300-1111 Melville Street, Vancouver, BC V5E 4H7. [3] The Royal Bank and the Canadian Imperial Bank of Commerce ("Gemeco" is shorthand for General Electric Capital which insured the mortgage to the C.I.B.C. which is in issue) were allegedly duped by the appellant, a sub-mortgage broker, into making loans which, if they had known the truth, they would never have made, the borrowers in these transactions not meeting the lenders' lending criteria.
- [4] There were two other groups of counts relating to what are called the Hubble and Plitt transactions in which the banks had not, at the time of conviction, suffered loss.
- [5] As to each of the five groups, the appellant has given a number of grounds of appeal.

- [6] I address the Ridley transaction grounds because, before me, the appellant submitted that the learned judge had misunderstood the evidence and the Legal Services Society had, on that finding of the learned judge, mistakenly refused legal aid.
- [7] These are the grounds: The learned trial judge erred in law or in fact and in law in the "Ridley" transaction as follows:
- a. Accepting a "gift letter" was false without having heard from the purported author of the "gift letter"; b. In finding reliance upon this "gift letter" without evidence that the mortgage lending institution was relying upon same; c. In finding that an "employment letter" met the definition of "false document" as set out in section 321 of the Code; d. By finding that the information on the "Application for Mortgage Loan" had not been supplied to the appellant by Lajos Gyoffry [sic], Sr., Lajos Gyoffry, Jr. and Christa Ridley; e. In giving any weight to the evidence of Lajos Gyoffry, when he had admitted creating false documentation in order to defraud the Royal Bank; and f. In accepting the testimony of the Crown witnesses without sufficient corroboration.
- [8] This is the passage in issue in the learned judge's reasons:
- [21] Counts 9 to 14 involve Christa Ridley, who received mortgage funds from the Royal Bank in the amount of \$118,797.50, which mortgage went into default and foreclosure. In agreeing to advance these funds, the bank relied on material but false information submitted by the accused in the loan application and supporting documentation to Monty Sitter, the mortgage specialist. [22] Christa Ridley and her common law husband Lejos Gyorffy conspired with her father-in-law and the accused to save the father-in-law's home from foreclosure. The parties devised a scheme whereby the home would be transferred to Ms. Ridley, because her name was different, in what would appear to be an arm's length transaction, and Ms. Ridley would obtain a bank mortgage. Ms. Ridley was on social assistance and would not qualify for a mortgage. This fact was known to the accused. Mr. Gyorffy Jr. wrote a draft letter of false employment and income. This draft handwritten letter contained punctuation and grammatical errors. He sent it to the accused, although initially he did not recollect doing so. The accused created a false employment and income letter, now typed and without any errors, which indicated that Ms. Ridley was employed in a non-existent business, Starbrite Metal Finishing Co., by Mr. Gyorffy Sr. In addition, the accused created a false gift letter alleging that Ms. Ridley's father had contributed a gift of \$16,500 for a down payment. The signature on the letter was not that of the father and there was no gift provided. A copy of this gift letter was found on the hard drive of a computer in the accused's kitchen. [9] In rejecting the application for legal aid, the Legal Services Society said: It would appear that there was sufficient evidence before the court to support the convictions. The appellate court will not interfere with the trial judge's credibility findings unless there are identifiable reasons for so doing. There is no indication that the trial judge misapprehended the evidence or failed to appreciate relevant evidence that may have resulted in a miscarriage of justice. There also appears to have been positive evidence before the court to support the conclusion that you created the false documents. For example, the discovery of the false gift

letter on the hard drive of your computer at home. Given this type of evidence, it is unlikely that the appellate court would find that the trial judge erred in her credibility findings. [10] The appellant, having said to me that there was no "copy of this gift letter" found on the hard drive, I was puzzled and I asked Crown counsel to supply me with the relevant exhibits. I attach copies.

- [11] The first of these was Exhibit 1, Tab 29, Document #773312, which was provided by the appellant to the Royal Bank and its mortgage specialist.
- [12] Exhibit 1, Tab 39b, was a printout of something found on the computer in the appellant's residence.
- [13] Exhibit 1, Tab 39a was found at one of the appellant's business premises.
- [14] It is true that what was found on the computer is not identical to what was supplied to the bank:
 - 1. The letter on the computer contemplates the signature of Mr. Gyorffy (Ms. Ridley's father-in-law) while the letter sent to the bank is signed by Mr. Ridley (her father). 2. The letter on the computer says "__ day of September, 1996", whereas the printed part of the letter sent to the bank says "__ day of ___, 199." [15] The learned judge did make a mistake when she said the letter given was for \$16,500.00. The amount was \$16,150.00. Furthermore, she would have been more exact if she had said that a letter with an identical text but a different proposed signatory was found on the hard drive.
- [16] I cannot accept that these slips of the learned judge would be considered by any panel of this Court to amount to such a misapprehension of the evidence as to warrant allowing the appeal.
- [17] The issue before the learned judge was essentially one of credibility. The learned judge gave no credence to the evidence of the accused of whom she said: ... it was difficult to follow and comprehend his sometimes distorted and convoluted thought processes when he attempted to explain damaging documentary evidence. Much of his evidence defied reason, logic and common sense.... She summed it up by saying, "I conclude most of his evidence was a complete fabrication."
- [18] Undoubtedly most of those who testified for the Crown were particeps criminis in defrauding the banks. They do not seem to understand that if one is going to defraud a bank successfully, one must first borrow millions. But the learned judge took into account that they were wrong-doers.
- [19] Nothing in the argument made by the appellant leads me to think that this appeal has any rational prospect of success. The purpose of an order under s. 684 of the Criminal Code is to ensure that there be no miscarriage of justice. Nothing put before me indicates that there has been any such here.

- [20] I refuse that order and I also refuse, for the same reason, the alternative order asked for that the Attorney General pay for the transcripts.
- [21] It is, I think, unfortunate that, despite all the technologically advanced equipment which has been installed in the courts of this Province, it still costs a great deal of money for an appellant to put before the court on an appeal from a trial of the length of this trial the text of the proceedings below. When an appellant has no money, he is effectively barred from pursuing his appeal as the court cannot consider it without the text. Thus, his right of appeal is illusory. But that is the system and there is nothing I can do about it. "THE HONOURABLE MADAM JUSTICE SOUTHIN" March 15, 2002 Paragraph 19 the reference to s. 694 was a typographical error. The second sentence of paragraph 19 is therefore amended to read: The purpose of an order under s. 684 of the Criminal Code is to ensure that there be no miscarriage of justice. Exhibit 1, Tab 29 (not available electronically) Exhibit 1, Tab 39b (not available electronically) Exhibit 1, Tab 39a (not available electronically)

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Prepared on 25 October 2026 · Esheria