

SUPREME COURT OF CANADA - APPEAL HEARD

OTTAWA, 2005-11-18. THE SUPREME COURT OF CANADA ANNOUNCED TODAY THAT THE FOLLOWING APPEAL WAS HEARD ON NOVEMBER 18, 2005.

SOURCE: SUPREME COURT OF CANADA (613) 995-4330

COUR SUPRÊME DU CANADA - APPEL ENTENDU

OTTAWA, 2005-11-18. LA COUR SUPRÊME DU CANADA A ANNONCÉ AUJOURD'HUI QUE L'APPEL SUIVANT A ÉTÉ ENTENDU LE 18 NOVEMBRE 2005.

SOURCE: COUR SUPRÊME DU CANADA (613) 995-4330

Elidio Donato Escobar-Benavidez v. Her Majesty the Queen (B.C.) (Criminal) (As of Right) (30917)
2005 SCC 68 / 2005 CSC 68

Coram: The Chief Justice McLachlin and Bastarache, LeBel, Deschamps, Fish, Abella, Charron JJ.

DISMISSED / REJETÉ

The oral judgment will be available within 48 hours at / Le jugement oral sera disponible dans les 48 heures à:
<http://www.scc-csc.gc.ca>

30917 **Elidio Donato Escobar-Benavidez v. Her Majesty The Queen**

Criminal law - Trial - Jury instructions - Whether the majority of the Court of Appeal erred in finding that the trial judge's parting comment in the recharge on the Appellant's criminal record did not constitute reversible error - Whether the majority of the Court of Appeal erred in applying s. 686(1)(b)(iii) of the *Criminal Code* finding that the result would have been inevitably the same had the jury been properly instructed on post-offence conduct.

In January 2002, the deceased Douglas Loken was living with Patti Johnson and her son Dylan at Ms. Johnson's home in Vernon. At some time on 12 January, Loken told Ms. Johnson that the Appellant was coming to see him in order to discuss some contentious matters. He told her that he wanted her to remain in the house because he and the Appellant had been involved in some heated arguments in the past. He also told her son Dylan not to remain in the house because "he didn't want bullets flying through and hitting" him. In contemplation of the meeting with the Appellant, Loken brought a baseball bat and a drywall hatchet into the living room.

The Appellant and the deceased Loken had known each other for some time. They were both drug dealers. There was some animosity between the two relating to drug debts and apparent threats that Loken had made to two of the Appellant's associates. The Crown's theory was that these factors together with Loken's apparent display of disrespect towards the Appellant went to the issue of motive. The Crown's main witness was Luis Romero. He testified that he went to the Loken residence with the Appellant and the Appellant admitted to him that he had killed Loken. The Appellant testified that it was Romero who had killed Loken.

At trial, the defence position was that it was Romero and not the Appellant who had killed Loken. Romero denied any involvement in the shooting. He said that he had only met Loken once and consequently had no motive to kill him. In his evidence the Appellant denied that he had killed Loken. He said that he was selling drugs to Loken but at Romero's request.

At the close of the Crown's case, the Appellant made a *Corbett* application to exclude any reference to his criminal record when he testified. There is no dispute that in the main part of his charge the judge correctly charged the jury as it related to the Appellant's criminal record. However, in his recharge, the trial judge ended with the words "those offences may say something to you of the kind of person Escobar is".

N° du greffe :

30917

Arrêt de la Cour d'appel :

8 avril 2005

Avocats :

Timothy J. Russell pour l'appelant
Fred Tischler pour l'intimée
