

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Peloso, 2012 ONCA 870

DATE: 20121210

DOCKET: C53337

Goudge, MacPherson and Pepall JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Giuseppe Peloso

Appellant

Bruce Engel, for the appellant

Croft Michaelson, for the respondent

Heard: December 7, 2012

On appeal from the conviction entered on September 27, 2010 by Justice Robert Smith of the Superior Court of Justice, sitting without a jury.

APPEAL BOOK ENDORSEMENT

[1] In our view, the motion judge who dealt with the s. 11(b) issue did not err in her determination that the unreasonable delay required her to go on to balance the prejudice to the appellant against the societal interest in having a trial. We agree with her that the delay here was unreasonable and that the absence of an explanation from the Crown meant that the Crown had to bear full responsibility for the delay in producing the forensic audit report.

[2] Nor would we interfere with the motion judge's weighing of the prejudice to the appellant against societal interest in having a trial.

[3] In doing so she was alive to any inferred prejudice to the appellant from delay. Her finding that this being a documents case made the possibility of fading memories less significant was entirely open to her. We do not view the trial judge's findings on the appellant's credibility as based in any way on the passage of time and therefore on the fading memory.

[4] We would therefore dismiss the appeal.