

CANADA / JUDGMENT

R. v. Cantrill

2021 BCSC 1652

COURT

Supreme Court of British Columbia

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2021 BCSC 1652 R. v. Cantrill

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Cantrill,

2021 BCSC 1652

Date: 20210716

Docket: 65047-2

Registry: Chilliwack

Regina

v.

Neil Cantrill; Stephan Cantrill; Robert Lowry

Corrected Judgment: The text of the judgment was corrected on the front page on January 12, 2022.

Before: The Honourable Mr. Justice Branch

Oral Reasons for Sentence

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Place and Date of Hearing:

New Westminster, B.C.

June 2-4, 2021

Place and Date of Judgment:

Chilliwack, B.C.

July 16, 2021

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I. INTRODUCTION

- [1] This is my decision on sentencing arising out of a violent kidnapping and extortion effort by three men of a former marijuana supplier. My reasons for convicting the offenders are reported at R. v. Cantrill, 2020 BCSC 1110. The offenders were convicted of five counts: kidnapping, extortion, aggravated assault, forcible confinement, and overcoming resistance.

II. THE LEGAL FRAMEWORK

- [2] The purpose, objectives and principles of sentencing are set out in s. 718 of the Criminal Code, R.S.C. 1985, c. C-46. It provides that the fundamental purpose of sentencing is to contribute to respect for the law and the maintenance of a just, peaceful, and safe society by imposing just sanctions.
- [3] A proper sentence may have one or more of the following objectives set out in s. 718:
- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
 - (b) to deter the offender and other persons from committing offences;
 - (c) to separate offenders from society, where necessary;
 - (d) to assist in rehabilitating offenders;
 - (e) to provide reparations for harm done to victims or to the community; and
 - (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.
- [4] Sentences must be proportionate to the gravity of the offence and to the degree of responsibility of the offender (s. 718.1). The sentence should be increased or reduced to account for aggravating or mitigating circumstances (s. 718.2). Consecutive sentences should not be unduly long or harsh in total (s. 718.2(c)). Aboriginal offenders require the court to take notice of systemic or background factors which may have played a part in the circumstances of the offence (s. 718.2(e)). Sentencing is also guided by the principle of restraint (s. 718.2(d)).

- [5] The medical and mental health of an offender is also a factor that the court will consider in imposing a fit and proper sentence: *R. v. Haworth*, 2012 BCPC 144 at paras. 9-12 and 16-19; *R. v. Earnshaw*, 2013 BCSC 2272 at para. 104.
- [6] The offences at issue contain their own individual guidance and controls on the appropriate sentence.
- [7] The kidnapping, extortion, and overcoming resistance offences carry a maximum penalty of life imprisonment: Criminal Code, ss. 246(b), 279(1.1)(b), 346(1.1)(b). For aggravated assault, the maximum sentence is 14 years: Criminal Code, s. 268(2).
- [8] Some of the specific factors relevant to determining an appropriate sentence for kidnapping were discussed in *R. v. McKinnon*, 2015 BCSC 998:
- [17] As noted in a range of authorities, the offence of kidnapping is a very serious one. It attracts significant sentences of incarceration depending on the circumstances of the particular case. In *R. v. Brar*, the Court identified the criteria that influenced the gravity of the offence as follows in para. 23:
- [23] Kidnappings do not fall into distinct categories. However, the jurisprudence identifies multiple criteria that are indicative of the gravity of the offence on a spectrum, including:
- a) the purpose of the kidnapping, specifically whether it is carried out for ransom or as a means of extorting a payment or repayment from the victim;
 - b) the extent to which there is planning and premeditation;
 - c) the length and conditions of the confinement;
 - d) the extent to which there is violence, torture or significant physical injuries;
 - e) whether third parties are threatened;
 - f) whether guns are used;
 - g) whether there is gang involvement;
 - h) whether the kidnapping occurs in the course of the commission of another offence; and
 - i) the circumstances in which the kidnapping ends.
- (the "Brar Factors")
- [9] In the related reasons *R. v. McKinnon*, 2015 BCSC 1116, the court noted:
- [18] It is clear that for offences of this nature involving calculated schemes for violent abduction solely for profit require a sentence emphasizing deterrence and denunciation. In *R. v. Wong and Poon*, 2008 BCCA 64, at para. 26, the Court held as follows:

This Court has made it clear that periods of imprisonment of ten years or more are appropriate in cases involving planned schemes of kidnapping for ransom. It has also made it clear that denunciation and deterrence are the principal factors in sentencing for this type of offence [citations omitted] This is so even when the offender is young: *R. v. Mulvahill* (1993), 21 B.C.A.C. 296

- [10] Our Court of Appeal has rejected the establishment of rigid categories of kidnapping for sentencing purposes. In *R. v. Deo and Mangat*, 2007 BCCA 626, Chief Justice Finch stated:
- [12] I do not read *Mills* as establishing two distinct and exclusive categories for the offence of kidnapping, nor as ruling out the possibility of sentences for kidnappings in an "intermediate range" of seven to nine years.
- [13] Given the infinite range of personal circumstances of those convicted of kidnapping, and the infinite variety of circumstances that can occur in the commission of the offence itself, it seems evident to me that the full spectrum of penal consequences should be open to a trial judge when sentencing for this offence. Although this Court sometimes expresses views as to an appropriate range of sentence for certain classes of offences, it has no mandate to exclude from consideration any sentence that is permitted by law under the Criminal Code.
- [14] While it may be useful to identify factors in the offence that demonstrate a lesser or a greater degree of culpability, at the end of the day the sentencing process requires the judge to consider carefully all factors relevant to both the offender and the offence, in fixing a sentence, within any limits set by the code, that is fit in all the circumstances.
- [11] In relation to the overcoming resistance count, the court in *R. v. Law*, 2018 BCSC 1683 provided the following sentencing guidance:
- [103] The Alberta Court of Appeal extensively analyzed sentencing for offences under s. 246 in *R. v. Lemmon*. Mr. Justice Martin for the Court said:
- [27] Parliament's recognition of the inherent dangerousness of rendering a person unconscious to facilitate the commission of another offence is reflected by the maximum penalty prescribed for that offence: life imprisonment. Put in context, that is a significantly greater sentence than could have been imposed for the underlying offence in this case, the sexual assault, which carries a maximum penalty of ten years imprisonment. In other words, what is usually seen as the "incidental" offence, carries a much greater penalty than the one it facilitates. The only other related offences of personal violence subject to such a serious penalty are attempted murder and aggravated sexual assault.
- [105] Martin J.A. acknowledged that exceptions may be warranted where the underlying charge fully captures the section 246 offence, such as aggravated sexual assault involving choking. He also made the following comments about the offence of administering a stupefying or overpowering drug:

- [36] In terms of proportionality, both strangulation and administering a stupefying or overpowering drug that renders the victim unconscious, will inevitably be a most serious offence and one where the offender's degree of responsibility is very high.
- [37] In my opinion, where unconsciousness or bodily harm results, whether by strangulation or the administration of a drug, a penitentiary sentence is appropriate for that offence alone. As noted above, that may be expressed as a consecutive sentence to any underlying offence that the act was intended to facilitate, or as a greater sentence to that otherwise appropriate for the underlying offence, to be served concurrently.
- [12] The determination of the appropriate sentence is challenging where there are multiple offenders. Where there are multiple parties to the same offences, fine distinctions are generally inappropriate, but where there is a clear distinction in culpability, differing sentences may well be in order: *R. v. Sidhu*, 2011 BCCA 246 at para. 20; *R. v. Brar*, 2014 BCCA 175 at paras. 29-30. For example, the court may differentiate in a kidnapping case based on the degree of violence each offender engaged in: *R. v. Hiltz*, 115 B.C.A.C. 315, 1998 CanLII 6235 at para. 17. As is noted in Clayton C. Ruby, *Sentencing*, 10th ed. (Markham, Ont.: LexisNexis, 2020) at §23.354:

An important mitigating factor in cases of kidnapping by several co-accused is their role in the commission of the offence. For example, in *Zebedee* [[2006] O.J. No. 2628, 81 O.R. (3d) 583 (Ont. C.A.)], the leader of the kidnapping group received a seven-year sentence, while the two co-accused received slightly reduced six-year sentences. Similarly, in *Blair* [2007 MBQB 287, aff'd 2008 MBCA 68], discussed above, the leader of the kidnapping group received an eight-year sentence, while three of his co-accused received six-year sentences and the fourth received a four-year sentence.

- [13] In relation to the forcible confinement count, the Kienapple principle bars multiple convictions for two or more offences arising out of the same criminal act or transaction in circumstances where the essential elements of the offences are meant to cover the same wrong, which is the case here as between the kidnapping and forcible confinement counts: *R. v. Crawford*, 2013 BCSC 2121 at para. 3. The Crown agrees that this count should be stayed.

III. ANALYSIS

A. Robert Lowry

1. Background information

- [14] Mr. Lowry is 49 years old. He had a relatively normal upbringing, although his father could not work due to mental instability. He was heavily involved in boxing. He moved out of his parents' house at 15, although he was still able to graduate from high school. At 18 years old, Mr. Lowry developed a computer program that facilitated the diagnosis of engines in used cars. He started a business called "Lemon Finders". He ran this company while attending business classes at Athabasca University. Mr. Lowry did not complete the business program

because he became more interested in computer programming. Mr. Lowry taught himself several programming languages. He developed Canada's first commercialized artificial intelligence application to control process plants. He was awarded a \$970,000 grant from the Canadian Government to continue his software development efforts.

[15] Mr. Lowry married his wife Tonya on September 26, 1998. They have two children, who are now 18 and 20 years old. They are a close family. They have owned and lived in the same home in Sherwood Park, Alberta for 16 years.

[16] In 2007, Mr. Lowry was diagnosed with an array of mental health problems. He has been under treatment and on medication since that point. In 2009, Mr. Lowry was in a car accident and suffered a brain injury. The injury has caused a series of ongoing problems. Mr. Lowry is said to presently suffer from the following conditions:

- a) anxiety, depression & insomnia;
- b) mood and sleep disorder with short term memory loss;
- c) depression, bi-polar disorder, anger management;
- d) hypogonadism; and
- e) syncope.

[17] The accident seems to have caused Mr. Lowry's life to take a turn for the worse. He became less productive. His former corporate counsel reported a major change in Mr. Lowry's personality after his medical problems became prominent. His counsel advised that he eventually became a "hangaround" with the Hells Angels chapter of which his co-accused Neil Cantrill is a member, according to Neil Cantrill's ex-wife. That said, he did have support from a new employer, who said he looks forward to Mr. Lowry starting work. Mr. Lowry also has strong community support.

2. Role in the Offences

[18] Mr. Lowry submits that he was not involved in planning the attack, and that he did not know Mr. Houle before the incident. His counsel advised that Neil Cantrill called Mr. Lowry while he was on holiday in BC to come and help him address a "financial issue", and that Mr. Lowry agreed to help.

[19] I find that, while Mr. Lowry may not have intended to participate in such a violent attack before Neil Cantrill called him, he must have been aware of the plan to extort Mr. Houle by the time the offenders arrived at the pullout. His reaction when Neil Cantrill grabbed Mr. Houle on the top of the embankment was not one of surprise. Rather, Mr. Lowry continued the attack seamlessly and without pause. Furthermore, he continued his attack in the vehicle with tactical precision, making a series of threats. Finally, when they arrived at Mr. Houle's home, Mr. Lowry assisted in the effort to find records that would facilitate the extortion plan, all without any obvious contemporaneous instruction from his co-accused.

This all suggests that he understood the basic parameters of the kidnapping and extortion plan in advance: Brar at para. 38.

[20] Mr. Lowry was directly involved in the choking at the pullout, an attack that caused the victim to soil himself and nearly blackout. He was also involved in an aggressive, targeted beating within the vehicle.

[21] However, I do accept that Neil Cantrill was the leader of the group, and was most likely responsible for the organization of the attack, as he was the only member of the group who knew the victim.

3. Mitigating Factors

[22] Mr. Lowry's lack of a criminal record is a mitigating factor: R. v. Leclerc, 2017 BCCA 228 at para. 32. He has substantial family and community support: Law at para. 114. He also expressed some remorse, but it was not particularly heartfelt or directed to the victim personally; I am not convinced that Mr. Lowry truly "recognize[s] the magnitude of [his] wrongdoing": R. v. Anderson, 16 B.C.A.C. 14, 1992 CanLII 6002 at para. 46.

4. Aggravating Factors

[23] The significant effect of the crime on the victim is an aggravating factor: Criminal Code s. 718.2(iii.1). When Mr. Lowry was choking him, Mr. Houle thought he was going to die, as he was losing consciousness as well as control of his bowels. Since the attack, Mr. Houle's life has been turned upside down through his participation in the witness protection program. He has lost the use of his own name. He had to move away from the home where he had lived for many years. He lost friends. He left town in fear that his "life was on the line". Substantial public resources had to go into protecting Mr. Houle. Physically, Mr. Houle has been left with a small scar. All of this creates a relatively weighty aggravating factor.

5. Case Law

[24] The Crown put forward a number of cases to assist the Court in determining a just and appropriate sentence. I review those that I found the most helpful below:

- a) R. v. Brar, 2014 BCCA 175: The victim lost control of a large sum of money he was given to launder. The client wanted the money back, and a meeting was arranged at a pub where Mr. Brar knew the owner. Mr. Brar was in charge of the meeting. Later, after having been enticed outside by Mr. Brar, the victim was told by a co-accused Mr. Carr that he would get hurt if he did not cooperate. Mr. Carr held the victim until a Mr. Crawford arrived. Cell phone records indicated Mr. Brar and Mr. Crawford were acquainted. Mr. Brar returned to the restaurant. The victim was taken away to an apartment, bound and masked. Mr. Crawford threatened the victim's life with a weapon. However, he was not physically harmed. The victim was released the next day, less than 24 hours after he was first collected. The trial court found Mr. Brar guilty of kidnapping, unlawful confinement, and extortion. However, he was not convicted of any weapons offences, as there was no indication that he

knew that weapons would be used by others. The court found that, although it could not be proven he knew where the victim would be taken or that he was involved in events after the victim was taken from the restaurant, he was found to have been at least wilfully blind to the intention of the other offenders to unlawfully confine the victim and extort money from him. The court found that Mr. Crawford was the leader of the group, and issued a 10-year sentence to him. Mr. Carr's role as the "muscle" resulted in a sentence of 9 years, as discussed further below. In contrast, the trial court initially sentenced Mr. Brar to only 3.5 years. The court noted that he had a stable family supporting him, as well as strong community support. He had only a minimal, unrelated, and dated criminal record. He had written an apology letter. Notwithstanding this evidence, the Court of Appeal increased Mr. Brar's sentence to five years, stating:

- [24] The judge placed some weight upon the fact that the victim was confined for less than 24 hours, was released without the necessity of police intervention, and was not physically harmed. In that respect, she found the kidnapping resembled an extortion for a drug debt during a short period of confinement. On the other hand, she clearly recognized what she referred to as aggravating features of the case. The kidnapping was a sophisticated plan with monetary gain as its sole motive. The victim was threatened with death and bodily harm and suffered serious psychological harm. The trial judge expressly considered the psychological trauma experienced by the victim's family and friends during the kidnapping
- [35] The differentiation of Brar's role is reflected in the judge's finding that he was aware of the intentions "of the principals" to kidnap, unlawfully confine and extort money from Safi, clearly referring to Carr and Crawford. The judge did not consider Brar to be a principal. In the circumstances it cannot be said, in my view, that she erred in differentiating between participants in this crime, according to whether they were proved to be principals or agents, and imposing sentences tailored to their particular roles
- [38] Brar's direct involvement was limited but he was involved in planning the kidnapping for a matter of days before October 20, 2011. The abduction reflected that planning; there was nothing improvised or haphazard in the commission of the offences. By facilitating the kidnapping when he knew extortion would follow, Brar was found to have aided in the commission of the offences within the meaning of s. 21(1) of the Criminal Code. Although it could not be proven he knew where the victim would be taken or that he was involved in events after Safi was taken from the restaurant, he was found to have been at least wilfully blind to the intention of the other offenders to unlawfully confine Safi and extort money from him
- [47] Brar was a party to a significant offence that would ordinarily call for a period of incarceration in a mid-range of sentences described by the Chief Justice in *Deo and Mangat*
- [48] Similar mid-range sentences were imposed in *R. v. Ward*, *R. v. Thammavongsa*, 2009 BCCA 556, where effective sentences of three and five years were raised on appeal to five and seven years, respectively. In *Ward*, a Mr. Fannin was kidnapped by Ward, Thammavongsa, and

several others having been suspected, by the accused, to have stolen money from a drug dealer. While the kidnapping did not last long, as a result of a severe assault (without the use of weapons), Mr. Fannin fell into a coma and was on life support for ten days; he was left with life-long injuries.

- [49] In *R. v. Lavallee*, 2011 BCCA 531, a drug courier was kidnapped and beaten by a drug dealer that believed the victim had stolen from him. The accused's five-year effective sentence at trial was raised on appeal to eight years, as this Court felt the five-year sentence minimized the circumstances of the case and was, therefore, unfit.
- [50] Where a kidnapping victim is taken to a hidden or unknown location, the psychological damage to the victim is more significant
- [51] Carefully planned kidnapping, confinement at another location and extortion, even without a ransom demand, usually attracts a sentence in the five to ten-year range, depending upon the violence inflicted on the victim, among other factors.
- [52] Bearing in mind the judge's conclusion that Brar was not a principal, and giving appropriate weight to the mitigating factors reviewed at length in the reasons for sentencing, and cited above, it is my view that Brar ought to have been sentenced to a period of imprisonment at the low end of the appropriate range. The sentence imposed was, in my respectful view, below that range.

Conclusion

- [53] [Brar] had no criminal record, good support, and reasonable prospects for rehabilitation. Those factors ought to have been considered in determining where his sentence should fall within the appropriate range for this type of serious offence.
- [54] In my view, a sentence of 3.5 years' imprisonment, in the circumstances of this case, is demonstrably unfit as falling outside the appropriate range of sentences for kidnapping from a public place, involving threats of death and confinement over a period of many hours in an unknown location. Having been involved in the planning of the kidnapping and having been instrumental in the delivery of the victim into the hands of his captors, the offender, in my view, ought to be sentenced as a party to a kidnapping of the gravity of that which occurred. He ought not to be sentenced as a participant in a lesser offence on the basis that he was wilfully blind to what might occur after he had done so.
- b) *R. v. Carr*, 2015 BCCA 293: The Court of Appeal refused Mr. Carr's appeal from the 9-year sentence discussed above. As noted, Mr. Carr served as the "muscle" for the kidnapping, although the court was unable to find that he was aware of Mr. Crawford's intention to use a weapon. Mr. Carr argued there should have been a greater disparity between his 9-year sentence and the 10 years received by the ringleader Mr. Crawford. The trial court noted that Mr. Carr had "terrified the victim with gruesome threats of torture to him and harm to his family and was a major interrogator during the confinement" (para. 5). Mr. Carr did have a

prior record, including a conviction for violent offences and a weapons conviction involving a restricted firearm. He committed the offences while he was on bail for robbery. Mr. Carr had been a difficult prisoner while in pre-trial custody. He had mental health problems likely due, in part, to a troubled childhood and a traumatic brain injury. He had support in the community. The court found that he was remorseful for his misconduct, but that he had little insight into the reasons behind his criminal behaviour and that he tended to blame outside influences rather than accept any responsibility himself. The court found that Mr. Carr and Mr. Crawford's respective moral culpability was different, but not substantially so.

- c) R. v. Crawford, 2013 BCSC 2121 [Carr/Brar Sentencing]: This was the trial decision that issued the original 9-year sentence for Mr. Carr, the original 3.5 years for Mr. Brar, as well as sentences for two other lesser participants who received three years each.
- d) R. v. Crawford, 2014 BCSC 852 [Crawford Sentencing]: This was the trial decision that issued the 10-year sentence to Mr. Crawford. Mr. Crawford was hired to execute the kidnapping and extort money from the victim. He was second in command in a Kamloops criminal gang and had a significant, but not long, criminal record. He appeared to be giving the instructions during the kidnapping. Mr. Crawford drove the vehicle containing the victim from the restaurant. He required that the victim be blindfolded. He put a pistol to the victim's head and threatened him with death and that he would cut his fingers off. The victim had to move away after the event to ensure their safety. Mr. Crawford had drug addiction problems. He was found to be remorseful, and he had strong family support.
- e) R. v. McKinnon, 2015 BCSC 1116: The offender, John Powers, pleaded guilty to three counts flowing from an armed kidnapping. The kidnapping involved an elaborate, sophisticated, and coordinated effort to track the target using devices and computers, all with the intent to extort a significant sum of money. The kidnapping was very brief. Although not a planner or leader of the enterprise, Mr. McKinnon was involved in maintaining surveillance on the victim, and he participated in the actual abduction in which a restricted weapon was used to strike the victim. At the time of the offence, he was 25 years old. He had no prior criminal record. He had suffered a closed-head injury and he was addicted to pain medications. He came from a very disadvantaged background. He was suffering from addiction at the time of the offences. At the time of sentencing, he was in a new relationship. He fully accepted responsibility for his offences. He was sentenced to a total of six years and two months, along with a one-year probation order.
- f) R. v. McKinnon, 2015 BCSC 998: This decision deals with another co-accused from the same scheme as the prior subparagraph. Mr. Sleigh pleaded guilty to three counts including kidnapping. Mr. Sleigh and Mr. Powers had participated in the actual physical abduction. Mr. Sleigh had no criminal record, although he was on stringent bail terms on another matter at the time of the offence. The court relied primarily on the following factors: (a) the offender's young age, (b) the offender's possession of a weapon and ammunition, (c) his involvement in the infliction of violence to the victim, and (d) that he was on bail for a very serious offence at the time of the kidnapping. He also continued to have a poor attitude, and

he had a drug problem. After applying the totality principle, the court imposed a sentence of six years, two months, and 10 days.

- g) R. v. Vu, 2015 BCSC 1441, appeal allowed in part 2017 BCCA 452: This was the sentencing of another participant in the McKinnon kidnapping. This offender was not involved in the kidnapping itself. Rather, his role was limited to driving certain other participants and installing certain tracking devices. Notwithstanding this limited role, he received a sentence of five years, which was described as being at the bottom of the appropriate range.
- [25] Other kidnapping cases provided by the Crown included Hiltz (9 years for kidnapping with a firearm); Deo and Mangat (7, 8 and 9 years for three co-accused for kidnapping with a firearm); R. v. Randhawa, 2007 BCCA 598 (11 years for kidnapping and robbery after a guilty plea); R. v. Mann, 2012 BCSC 1266 (10 years for the directing mind of a kidnapping involving a firearm); R. v. Wong & Poon, 2008 BCCA 64 (12 years for a kidnapping and extortion that lasted over several days); R. v. Hernandez, 2009 BCSC 474 (13 years for a kidnapping and extortion that lasted over eight days); and R. v. Nguyen, 2009 BCCA 546 (13 years for another participant in the same incident as Hernandez).
- [26] The Crown provided additional cases on the administration of a stupefying drug, an offence contained within the same Criminal Code provision as the choking offence at issue here. These included R. v. Lai, 2018 BCSC 2441 (2 years for drug administration, total sentence including sexual assault of 3 years, five months and 3 days); Law (3 years for each of two counts of drug administration, 11-year total sentence including two counts of sexual assaults), and R. v. Roshinsky, 2015 BCSC 842 (6 years in total for drug administration, theft over \$5,000, and theft of a motor vehicle).
- [27] Mr. Lowry's counsel provided a series of home invasion-type cases, but I did not find these as helpful as the cases specifically involving kidnapping and extortion.

6. Conclusion on Lowry Sentence

- [28] The Crown proposed a 9-10 year sentence for Mr. Lowry, along with a DNA order under s. 487.05 and a firearms order under s. 109. The defence submits that the proper range is 3-4 years.
- [29] In terms of assessing the appropriate kidnapping sentence, I start by applying the Brar Factors:
- a) The purpose of the kidnapping was to extort a payment from Mr. Houle, and the demand was significant given there was about \$200,000 in equity in Mr. Houle's home. As the Crown put it, Mr. Houle was effectively being pressured to finance his own ransom.
- b) The scheme was certainly planned and premeditated, although it was relatively simple: Brar at para. 51. The planning is reflected in part by Neil Cantrill's initial refusal to meet at a more public location, and his immediate attack once they reached a more secluded location on the top of the embankment.

- c) The incident took place over several hours.
- d) Mr. Houle suffered substantial violence and moderate physical injuries, including the choking and the aggravated assault. His head was kept down to make it difficult for him to keep track of his location: Brar at para. 50.
- e) Mr. Lowry was the person who actually choked the victim and who dealt repeated blows to the same eye while inside the vehicle.
- f) No third parties were threatened and no one in Mr. Houle's family was made aware of the kidnapping: Brar at para. 43.
- g) No weapons were used.
- h) In terms of gang involvement, the Crown advised that it was not relying on the existence of this factor to support a longer sentence for any of the three offenders.
- i) The kidnapping occurred along with the choking, extortion and unlawful confinement, although the kidnapping, confinement and choking were all effectively subsidiary to the overriding extortion objective.
- j) The kidnapping ended as a result of police attending at Mr. Houle's home. This police effort was a heavy draw on the limited resources of a small detachment: Mann at para. 21. There was at least a risk of further violence had the police not intervened.

[30] Beyond the Brar factors, I have relied upon:

- a) the aggravating and mitigating factors discussed above; and
- b) the application of the parity principle. I had particular regard to the decision in Carr, which is the closest parallel to the present fact pattern. Both Mr. Carr and Mr. Lowry served primarily as the "muscle" for extortion schemes orchestrated by others. Mr. Carr had a more extensive prior criminal record than Mr. Lowry. However, there was more violence inflicted in the present case, and the situation only ended as a result of police intervention.

[31] I find that the appropriate sentence for Mr. Lowry is 9 years for the kidnapping. The overcoming resistance count merits a 5-year sentence running concurrently. His role in the extortion plot merits 3 years running concurrently, and the aggravated assault merits 4 years running concurrently.

[32] I would also issue the ancillary orders sought by the Crown.

B. Stephen Cantrill

1. Background

[33] Stephen Cantrill ("Stephen") is 38 years old. His father is Neil Cantrill. When he was about six years old, his mother left Neil when he indicated his intention to join the Hells Angels motorcycle club. His mother later remarried. Neil's access to his children was limited.

- [34] Stephen discovered that he had Metis heritage on his mother's side when he was about eight years old. His great-grandmother was raised at a Catholic Hospice. The Gladue Report indicates that, given the "typical stereotypes against Indigenous people", Stephen kept this information quiet. He avoided joining any Metis groups when he was younger for fear of being subjected to racism. He describes this denial of his own heritage as having left the family in a "trauma cycle that I am still trying to recover from". He is now enrolled as a Metis citizen.
- [35] When he obtained the age of majority, he and his brother began spending more time with their father. His younger brother in particular became involved in criminal activity and drugs. Stephen himself has no criminal record. Eventually, the younger brother cut off contact with their father and started trying to find ways to give back to the community through charitable efforts. Stephen's brother passed away recently, which caused Stephen to suffer some depression. His mother testified at the sentencing hearing that Stephen has been making efforts to carry on his brother's charitable work.
- [36] Stephen has his own children, but his contact with them is limited.
- [37] Stephen has worked as a mechanic, landscaper, and home care assistant, but he is presently on disability. He reports certain mental health challenges. He was diagnosed with Attention Deficit Hyperactivity Disorder.
- [38] Stephen has very strong and broad community support from family, friends, and employers, who indicated great surprise that Stephen would have become involved in an incident such as this. They report their experience of Stephen as a good man and employee, with considerable involvement in charitable activities.

2. Role in the Offences

- [39] Stephen's involvement was more limited than Mr. Lowry's, although I find that, as with Mr. Lowry, his conduct on the day was so well choreographed that he must have been aware of the general parameters of the extortion plan beforehand. His mother's statement suggests that he asked to go on the trip with his father, and that he was aware that the trip had to do with a debt owing to his father. He was apparently looking for a fresh start in British Columbia after a break-up.
- [40] Stephen served a crucial role in the plot by driving the vehicle in which the victim was kept for some time. He was not an active participant in the attack at the top of the Pullout. Further, he was not primarily responsible for the beating that occurred in the vehicle, although he did hit the victim at least once. He was active in trying to convince Mr. Houle to sign over his home with threats of violence.

3. Mitigating Factors

- [41] The mitigating factors in assessing Stephen's sentence include:

- a) his lack of a criminal record; and
- b) his very strong community and family support.

[42] Stephen also expressed remorse, but again, it was not particularly heartfelt nor directed towards the victim personally. He seeks to place some of the blame for his current predicament on his counsel's approach to this case, rather than on himself.

4. Aggravating Factors

[43] Once again, the long-term effects of the kidnapping on the victim is an aggravating factor.

5. Case Law

[44] The relevant case law has been reviewed above in relation to Mr. Lowry.

6. Conclusion

[45] The Crown proposed an 8-9 year sentence for Stephen, along with the DNA and firearms orders.

[46] I have already reviewed the application of the Brar Factors above in relation to his co-accused, Mr. Lowry. I have also relied on the following factors:

- a) the noted aggravating and mitigating factors reviewed above;
- b) a consideration of the Gladue factors: Criminal Code, s. 718.2(e). The relevance of Stephen's Metis heritage is muted in that his heritage was not known to him until he was in grade school, he never told anyone about his heritage, and he seemed to have had a reasonably good childhood with his mother and stepfather notwithstanding any fears of discrimination. His involvement in this crime appears to have been more the result of seeking his father's approval rather than any shame about his Aboriginal background: Crawford Sentencing at paras. 24-27. That said, there is no onus on an offender to prove a direct connection between their Aboriginal heritage and the index offence that must be satisfied under s. 718.2(e): Carr/Barr Sentencing at para. 93. I accept that the Gladue Report still supports a more controlled sentence;
- c) the application of the parity principle. Stephen's role was less active than that of the other two offenders. However, it was more active than, for example, Mr. Brar, who nonetheless received a sentence of 5 years. Stephen was directly involved in the extortion and participated personally in the violence. Furthermore, as noted, this present kidnapping was more violent even though it was over a shorter period. One can reasonably surmise that Mr. Houle would have preferred a longer kidnapping without the beating; and
- d) Stephen's otherwise strong pro-social behaviour suggests that restorative objectives should be given a greater weight in his case, particularly given his involvement in charitable efforts.

[47] I find that an appropriate sentence for Stephen Cantrill for the kidnapping is 6 years. His role in the extortion merits 3 years running concurrently. His role in the overcoming resistance offence merits 2 years running concurrently, and the aggravated assault charge merits 2 years running concurrently.

[48] I make the same ancillary orders as for Mr. Lowry.

C. Neil Cantrill

1. Background

[49] Neil Cantrill ("Neil") is 62 years old. He was first arrested at 15 years old. He has a relatively extensive criminal record, including convictions for assault, but:

- a) there was a gap after 2001 up to the present charges, and
- b) the prior convictions were for much less serious crimes.

[50] Neil's pre-sentence report was limited due to difficulties the report writer had in making contact with him. However, it included the following notable findings:

The Subject attributes his offences to poor decision-making skills and appears to justify his actions by stating the victim "should have known what the consequences for lying would be". The Subject attributes his lengthy criminal history to his associations with pro-criminal peers but does not report having removed himself from these affiliations

When asked about the index offences the Subject appears to minimize the seriousness of his actions. He admits wanting to have a "civil conversation" with the victim but turning to violence in order to "get his attention". He states he felt he was "definitely owed some money" and he was only trying to get what was rightfully his. The Subject feels bad "the guy got hurt" but he "should have known what was coming".

The Subject did not express any remorse or regret for his behaviours and justifies his actions as being expected in business transactions such as these. The Subject lacks insight on how his behaviour impacts the victim and others in the community. He maintains his position that the victim knew this would be the end-result of their transactions and businesses together.

[51] Neil suffers from prostate cancer, which is currently stable. He has diabetes. He has obstructive urinary symptoms, which required him to leave the courtroom frequently throughout the trial. He is hard of hearing, and required headphones throughout the trial. He also recently had a serious fall from his motorcycle, the injuries from which required an adjournment of the proceedings.

[52] He has some community support, but it is far more limited than that of his co-offenders.

[53] He seems to have little insight into his actions and little empathy for the victim. He indicated he felt bad that the victim was hurt, but that he should have known what was coming.

2. Role in the Offences

[54] I find that Neil was the leader of the extortion effort. He was the party who had the business relationship with Mr. Houle. He was the only one that knew Mr. Houle. He is the party who lured Mr. Houle to the Pullout, a semi-private location where Mr. Houle would be more vulnerable. He was the party who started the attack and announced its purpose. He continued his assault in the vehicle, burning the victim's head with a hot spoon.

[55] Based on the information provided at sentencing, he was the party who recruited the others to the effort. He had influence over Stephen as his father, and over Mr. Lowry given Mr. Lowry's "hangaround" status in Neil's chapter of the Hells Angels.

[56] All these factors increase Neil's moral responsibility.

3. Mitigating Factors

[57] Neil is suffering from some serious health conditions that will make any custodial time more difficult for him.

4. Aggravating Factors

[58] Once again, the effect on the victim is an aggravating factor.

[59] While the absence of remorse is not an aggravating factor, it can be relevant to the question of whether the accused presents an ongoing risk to the public: Lai at para. 49, citing R. v. Alderman, 2017 BCCA 26 at para. 15. His response in the pre-sentence report suggests that he may well present an ongoing risk.

5. Case Law

[60] Neil's counsel relied on two additional authorities:

- a) R. v. Violette, 2009 BCSC 1557, aff'd 2013 BCCA 31: The offender received 4 years for extortion and 2 years consecutive for handgun offences.
- b) R. v. Widdifield, 2015 BCSC 643: In this case involving "a protracted, repetitive, and aggressive extortion", the offender received a sentence of 5 years. The offender had a dated minor criminal history and there was gang involvement.

6. Conclusion

[61] The Crown proposed a 10-11 year sentence for Neil, along with a DNA and firearms orders. The defence proposed 3-5 years.

[62] I find that a custodial sentence of 10 years would be appropriate for the kidnapping count based on the Brar Factors discussed above, as well as:

- a) the noted mitigating and aggravating factors;
- b) his challenging health situation; and

- c) the application of the parity principle. In this regard, I find that Neil's role as the leader of the extortion effort aligns reasonably closely to the position of Mr. Crawford in Crawford, which also resulted in a 10-year sentence. It is true that the Crawford case involved use of a weapon, but the present case involved the choking offence, another factor enhancing the seriousness of the incident. Further, police intervention was required to bring this incident to a close. As between Neil and the other co-accused, I find that his leadership role puts him at a higher level of moral culpability, and that his relative lack of remorse and insight creates a higher societal concern, thereby justifying a relatively higher sentence.
- [63] His role in the extortion merits 5 years running concurrently, the overcoming resistance offence merits 4 years running concurrently, and the aggravated assault charge merits 3 years running concurrently.
- [64] On the overcoming resistance and aggravated assault offences, the higher sentences for Neil and Mr. Lowry are supported by the fact that they were directly involved in the choking: Hiltz at paras. 14-16. On the extortion count, Neil's role in the planning merits a higher sentence: Hernandez at para. 12.
- [65] Again, I impose the same ancillary orders as his other two co-accused.

IV. CONCLUSION

- [66] Would the three offenders please stand.
- [67] I find that the appropriate kidnapping sentences are 9 years for Mr. Lowry, 6 years for Stephen Cantrill, and 10 years for Neil Cantrill.
- [68] The other sentences will run concurrently as follows:
- a) Overcoming Resistance: 5 years for Mr. Lowry, 2 years for Stephen Cantrill, and 4 years for Neil Cantrill.
 - b) Extortion: 3 years for Mr. Lowry, 3 years for Stephen Cantrill, and 5 years for Neil Cantrill.
 - c) Aggravated Assault: 4 years for Mr. Lowry, 2 years for Stephen Cantrill, and 3 years for Neil Cantrill.
- [69] As discussed, the unlawful confinement charge will be stayed.
- [70] I also impose 10-year firearms prohibitions and DNA orders pursuant to ss.109 and 487.051 of the Criminal Code.

"Branch J."

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