

CANADA / JUDGMENT

R. v. Cran and Rao

2004 BCSC 1635

COURT

Supreme Court of British Columbia

DECIDED

10 December 2004

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2004BCSC1635

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Cran and Rao,

2004 BCSC 1635

Date: 20041210

Docket: 22758

Registry: Vancouver

Between:

Regina

And

Ryan Cran and Danny Rao

Before: The Honourable Madam Justice Humphries

Reasons for Judgment

BAN ON PUBLICATION

The identity of the two youth witnesses and any information that could disclose their identity shall not be published in any document or broadcast in any way pursuant to Section 110 of the Youth Criminal Justice Act.

Counsel for the Crown

G.A. Weber

C. Fleishhaker

Counsel for Danny Rao

K. Bastow

J.W. Millar

Counsel for Ryan Cran

K. Pechet

Date and Place of Trial:

November 15 - 19, 22 - 26,

29 and 30, 2004

Vancouver, B.C.

- [1] Ryan Cran and Danny Rao are charged with manslaughter arising out of the death of Aaron Webster in Stanley Park in the early morning hours of November 17, 2001.
- [2] Two young people who had been out for the evening, Michelle Richmond and Federico Angulo, were driving through Stanley Park early that morning, having entered the park from Beach Drive. Upon reaching the intersection of Stanley Park Drive, which is one-way going counter-clockwise, they were compelled to either turn right towards Lost Lagoon or continue for a short distance and turn down to the left into the Second Beach parking lot which loops around and back onto Stanley Park Drive. Inside the loop is a grassed area with bushes and trees.
- [3] They chose to turn left. As they approached the entrance to the parking lot, they saw a man wearing no shirt standing facing another man at the near end of the angled parking stalls along Stanley Park Drive. As their headlights lit the scene, which was one or two car-lengths away, they saw the man bring a bat-like weapon down on the head of the shirtless man, and the shirtless man fall. Angulo said they were both side-on to him and the assailant was to the left. Both noted the assailant was wearing a baseball cap. Angulo said it black, worn backwards.
- [4] Richmond said she saw two others standing nearby on the same side of the car, but could not see if they had anything in their hands. Angulo saw two or three people, 3 - 5 feet away. He was not really looking at the others, but from what he could see, he noticed nothing in their hands. He saw a car a stall or two away from the people and a blue jeep TJ or Cherokee beyond. He drove down into the parking lot, Richmond called 911 on a cell phone, and they waited for the police.

- [5] Meanwhile, Tim Chisholm, a friend of Mr. Webster's who had seen him earlier in the evening, had been parked in one of the angled parking stalls back along Stanley Park Drive. He heard noises at the end of the parking stalls, and drove his large white Ford Club Wagon along past the stalls and came across the naked body of Mr. Webster lying beside his car. He too called 911 and attempted unsuccessfully to resuscitate his friend.
- [6] Ms. Richmond and Mr. Angulo, still parked back in the parking lot, heard loud voices and noises apparently coming towards them, became alarmed and continued around the loop back onto Stanley Park Drive and past the scene of the beating. Angulo did not recall at trial, but was prepared to adopt his statement to the police that the blue jeep was now gone - he said he recalled saying it to the police and he agreed he would have said it because it was true. They saw the large white van and Mr. Angulo saw Mr. Chisholm bending over the body, although of course he did not know who he was or what he was doing. Angulo assumed it was a further assault. They drove to a parking lot closer to English Bay to await the police.
- [7] Constables Terklja and Chalmers arrived within a few minutes, spoke briefly to Richmond and Angulo and continued to the scene where they found Mr. Chisholm trying to revive Mr. Webster, who was wearing only socks and shoes. They parked across the road to block traffic, called an ambulance and assisted. The ambulance arrived. The attendant determined that Mr. Webster was dead and did not attempt to administer treatment.
- [8] A picture taken of the body that night by Cst. Colonval shows various bruises, including a v-shaped bruise on the right side, which Cst. Colonval compared to the head and shaft of a golf iron.
- [9] Several cigarette butts containing Mr. Webster's DNA were found by his car. A palm print belonging to J.S. was found on the passenger side hood of the car which was next to the body.
- [10] Cst. Colonval, who took pictures of the scene, testified there are no street lights there, and no lighting in the parking stalls, except from the one pay parking machine half way along the stalls on Stanley Park Drive. The area is very dark and there was no moonlight that night.
- [11] According to the pathologist, Dr. Gray, who conducted an autopsy on November 19, Mr. Webster sustained approximately 13 or 14 wounds from a beating with rounded linear objects, one thicker than the other.
- [12] There were five large bruises to the legs, two across the top of the buttocks, two on the mid-back, two on the right chest at the bottom or the ribcage, one to the left forearm, two internal bruises to the back of the neck which were not visible through the skin (one area of deep bruising to the back of the neck and one area of bruising to the left side of the neck), and one severe area of bruising to the right jaw, spreading into the neck. The right jaw bone was broken. The two bruises on the buttocks could have been made by one blow. Two of the bruises on the legs could have been made by one blow.

- [13] The cause of death was a torn artery in the neck, which is often quickly fatal. The artery itself was not directly in the path of a blow, but the artery was torn by a sudden tilting rotational movement of the head and neck imparted by a blow. Not a lot of force is required and such a result is rare, in Dr. Gray's view, but in any case, she concluded, and I accept, that Mr. Webster died as a result of one of the blows to the neck.
- [14] All of the blows to the back, buttocks and legs, with the exception of the two to the right ribcage, were consistent with having been made by a thicker instrument; the other two were much thinner. At the autopsy, Dr. Gray could not see the v-shaped injury which shows clearly in the picture taken at the scene, and said it may have been subsumed in the lividity following death. An examination of the autopsy photographs shows a faint impression of the bruise.
- [15] A broken pool cue was found near the pay parking machine, which is 85 meters away from the scene along the angled parking stalls. This was compared to the thicker bruises and found to be consistent with the weapon used to cause them. The two thinner blows were consistent with having been caused by the shaft of a golf iron or the thin end of a pool cue. Dr. Gray said the injury to the jaw could possibly have been caused by a pool cue, although the severity of the bruising to the neck suggested superimposed impacts with another weapon. No comparisons were done respecting baseball bats.
- [16] Two youths, J.S. and A.C., were charged with manslaughter and entered pleas of guilty in January 2004. In exchange for being sentenced in youth court rather than in adult court, which occurred in April 2004, they agreed to testify for the Crown. They have implicated Ryan Cran and Danny Rao, and I will examine their testimony in detail.
- [17] However, the next event chronologically, according to the evidence before me, involves Ryan Cran. Shortly after the death of Aaron Webster was on the news, Mr. Cran went to a pool hall he frequented. Mr. Morgado worked there. Mr. Cran had invited Mr. Morgado to go to Stanley Park with him on two previous occasions, suggesting they might go there to the Prospect Point area to drink and party, and if they saw anyone peek into vehicle windows while two people were making out, they might beat them up. Mr. Morgado refused to go on both previous occasions.
- [18] On this occasion, following the media coverage of Mr. Webster's death, Mr. Morgado testified he began thinking about the times Mr. Cran had invited him to go along to Stanley Park. He looked at Mr. Cran, and from Cran's expression, thought Mr. Cran might have been involved. Still looking at Cran, Morgado shook his head, and Mr. Cran smiled. Mr. Morgado said "was that you?" Mr. Morgado said Mr. Cran said "Yeah, it was us." Morgado said Cran went into some detail, and said he and some friends from Surrey had parked their vehicle at Second Beach, walked through the trails at Stanley Park and had run into somebody they saw was naked and they started beating him.

- [19] Mr. Cran told Mr. Morgado they were beating him and "he kinda stopped, I guess he thought it was enough and he didn't think...the other people kept on going, kept on hitting him." In cross examination, Morgado said Mr. Cran did not give any detail as to how long he had stopped for, but Morgado agreed he got the impression it was for some considerable time.
- [20] In cross-examination, when asked if he had simply assumed it was Cran who was involved in the beating, Morgado said, "No, he verified that it was him and his friends who had gone down there that night." He agreed Cran had said to him, "you're not being fair to - you know, it just happened."
- [21] Mr. Morgado was asked in examination in chief if Mr. Cran had said anything about what had been used in this beating. Mr. Morgado said, "Uh, he asked, yeah, he said if anyone came to Cue Zone [phonetic] asking about a pool cue, not to say anything." Morgado said he did not know why Cran asked that. He agreed in cross-examination that Cran had never said anything about having a weapon himself or about hitting anyone in any particular place.
- [22] Mr. Morgado gave a statement to the police in February 2002.
- [23] Lance Rudek, who also worked at the pool hall, saw Ryan Cran there often. He testified that one day, he could not remember when, Mr. Cran had come into the pool hall, appearing slightly intoxicated, pulled up a chair to the counter, put down his keys and said "We lynched a guy, Lance, we lynched a guy, we beat this guy up." He mentioned Stanley Park. Mr. Rudek did not think he was serious and shrugged it off.
- [24] Mr. Rudek gave a statement to the police on December 6, 2002, and began to wear a recording device for them.
- [25] Later, Cran called Rudek to come to his house, and told him he thought the police were watching him, and if anyone asked about him, to say nothing. In February of 2003, Cran called Rudek to come to his house to work on a truck. Danny Rao was there. They were installing low glow lights on the truck, and Cran and Rao said they would like to take it downtown to show it off. Rao said they should not make another trip like the last one they made downtown.
- [26] Rudek said Cran seemed annoyed that Rao had made the comment, but then told Rudek that "it was them" on the Aaron Webster incident, that was why his house was being watched, and gave two other names - A.C. and J.S. There was discussion between Cran and Rao about how they were going to stay away from each other to take some pressure off linking them together or to that incident.
- [27] Although Rudek taped 10 - 15 calls with Cran, at no time did Cran provide any details of the event.
- [28] At some unspecified time after the incident, Cole Bunke, J.S.'s best friend, saw Danny Rao at the Royal Oak Sky Train station.

- [29] Bunke had been with J.S., A.C., Cran, Rao, Rao's brother Daniel, and A.C.'s brother the night of November 16, 2001. All of this group had grown up in the same neighbourhood in Burnaby, and were within two or three years of each other in age. They had been at a skating rink earlier in the evening and went back to A.C.'s house to drink with a couple of girls they met at the rink.
- [30] Eventually the girls had to go home and Cran drove them home in his blue Jeep Cherokee. J.S., the two Rao brothers and A.C. went along. Bunke and A.C.'s brother waited for them, expecting them back in half an hour, but after an hour or two, gave up. A.C.'s brother went to a nearby 7-11 and Bunke went home. He was expecting J.S. to sleep over at his house, but J.S. did not come.
- [31] Bunke testified that the Aaron Webster incident had come up in his conversation with Danny Rao at the Sky Train station. The following questions and answers were given in examination in chief:

Q: Now, did this incident that had happened in Stanley Park become a general topic of conversation in among the people that you knew, in your community?

A: Um, it...I brought it, I brought the topic up around them.

Q: Okay. And I'm going to specifically ask you about the person Danny Rao.

A: Okay.

Q: Did you ever have occasion to speak of the topic of that incident occurring with him?

A: Um, we spoke about it. It was, it was spoken about like between us, but it wasn't like...

Q: Okay.

A: ...that wasn't like the main...

Mr. Millar: (over the witness) Just a minute. Don't cut the witness off. Please, I object to that.

The Court: Sorry?

Mr. Millar: He cut the witness off when the witness was explaining "but I" and qualifying. It's improper.

Q: Go ahead.

A: Okay, I was...but it was not the main topic of our conversation, like it was never the main....
(long pause)

Q: When did this conversation occur that you are speaking of?

A: It was quite awhile after the actual incident. Um...(pause).

Q: Could you say in terms of months or years or what?

A: It may have been a few months. I don't really recall off hand to give an exact time frame, it's....
(pause)

Q: And where did this conversation take place?

A: I remember it took place at Royal Oak Station. At Royal Oak Sky Train Station in Burnaby.

Q: Can you tell us what you were doing at the time?

A: I was getting on the Sky Train. I was just finishing a cigarette outside when I saw him...and....

A: Go ahead, and then what happened.

A: ...and after the conversation I left.

Q: And what conversation did you have with him?

A: Well this incident came up in the conversation somehow I don't really recall how.

Q: What incident are you referring to?

A: I'm referring to the Aaron Webster inci-incident, sorry.

Q: Go ahead.

A: It came up in the conversation. And uh, he mentioned uh, being there to me. But he never specifically mentioned that he had anything to do with it. He just mentioned being at Stanley Park and that they were there looking for peeping toms, beating up peeping toms, or whatever it was that they....(long pause).

Q: Is that the extent of what you recall of that conversation?

A: That was the main body, um....I didn't...

Q: How long did you stand talking to him at the station?

A: It was fairly brief, fairly brief, I'd say between maybe ten and fifteen minutes.

[32] Mr. Bunke was not cross-examined by counsel for Danny Rao.

[33] Bunke was approached by the police in February 2003. Also in February 2003, the police interviewed J.S. and took him on a drive-around through Stanley Park.

[34] Cran and Rao were charged on October 8, 2003.

[35] A.C., who had retained a lawyer after his arrest, was interviewed with his lawyer in December 2003, and again on January 8 and 10th, 2004. The deals to testify were entered into with both J.S. and A.C. on January 8, 2004.

[36] The preliminary hearing was held in February 2004.

Testimony of J.S.

- [37] J.S. was 17 on November 16/17, 2001. He is now 20.
- [38] He testified he saw Ryan Cran socially, and was a friend of A.C. and Daniel Rao, brother of the accused Danny Rao. J.S. said he did not consider Danny Rao, who was two years older, a friend, and did not socialize with him.
- [39] J.S. testified that he, Cole Bunke, Ryan Cran, the Rao brothers and A.C. and his brother went to the A.C. residence after skating, with two girls they met at the rink. They were drinking vodka and beers. J.S. was extremely drunk.
- [40] J.S. said they all decided to go to Stanley Park. He was vague about how the subject of going to Stanley Park came up on this occasion, and did not remember anything specific that was said. He did not recall where the two girls were.
- [41] J.S. said he understood they were going to Stanley Park "to fight these peeping tom people. We'd fought them before." He said he, Cran and A.C. had gone to Stanley Park before, would wait until someone came and looked in the windows, and then get out and kick and punch them, then the person would run away and they would leave. He described the peeping toms as voyeurs who would watch people having sex.
- [42] He testified that he, Danny and Daniel Rao, A.C. and Ryan Cran drove to the Third Beach parking lot in Cran's Jeep Cherokee and parked. He does not recall any conversation en route. He said Cran opened the trunk and began handing out weapons - bats and possibly a pool cue. He testified he, J.S., was wearing a black baseball cap that night. He does not recall any one else's clothes, but agreed in cross-examination that only he and A.C. wore baseball caps that night.
- [43] J.S. said each person had a weapon although he does not recall what Cran had. J.S. had a large aluminium bat, Danny Rao had a bat, A.C. had a bat. He said he could not remember Daniel Rao having a weapon. They walked along the seawall to Second Beach and up the trail to the bushes in the parking lot loop and hid, squatting behind a tree. Although nothing was discussed, he understood the purpose to be to find "these Peeping Tom people."
- [44] A naked man came out of nowhere, smoking. They sat there and stared for a few seconds, then someone said "get him." They chased the man; J.S. caught up first and swung his bat at him, hitting his right shoulder blade. He does not remember clearly where anyone else was during the chase; he said he had tunnel vision.
- [45] The man turned, said "that's enough guys" and kept running. They chased him to his car. The man ran to the driver's side, J.S. went around the right side, where his palm print was later found on the hood of the car. His intention was to reach the man.

- [46] J.S. said when he came around the front of the car, the man was on the ground face up. J.S. swung the bat and hit the man's right lower leg. He does not recall Cran swinging. A.C. and Danny Rao were at the upper and lower left side of the body respectively, swinging at him while he was on the ground. J.S. ran into the bushes. So did Cran. A.C. and Danny Rao continued to hit the body for about ten seconds.
- [47] J.S. said "a limo", which I assume was probably Tim Chisholm's Club Wagon, came along Stanley Park Drive towards English Bay and began to pull into the parking lot, and they all ran. They went back to the vehicle and then drove out of the park, past the scene. J.S. testified he saw an ambulance and an attendant giving Mr. Webster CPR, and passed a police car parked some distance away towards English Bay.

CROSS-EXAMINATION

- [48] On cross-examination, J.S. agreed he was very drunk and events were a blur. He agreed he had told the police he was seeing double at some point. He said he had no recollection of any conversation which led to a decision to go to Stanley Park, nor any on the way to the park. He agreed Ryan Cran was the most sober of the group.
- [49] There were many contradictions between J.S.'s evidence in chief, his statement to the police and his evidence at the preliminary hearing. He said many of the things he swore under oath were true were simply guesses or assumptions. I will touch on the main ones.
- [50] In one of his statements, he told the police Cran had parked the vehicle at Second Beach. In the drive-around through Stanley Park with the police, he said the parking lot at Third Beach looked familiar. He agreed in cross-examination that he had not been sure even then.
- [51] At trial he said Cran handed out the weapons, bats and possibly a pool cue. At the preliminary hearing he said he could not remember who handed out the weapons. He said the evidence at trial was a guess. He agreed he mentioned a pool cue only because the police suggested it to him, not because he remembered it himself.
- [52] At trial he said he saw A.C. go around the back of the car after Aaron Webster but did not see him hit him. In his statement he said he thought A.C. hit Aaron Webster in the head the first time and that's when he went down. At trial, he said that was something he was assuming. He also agreed he told the police he, J.S., may well have hit Aaron Webster in the head and knocked him to the ground.
- [53] J.S. said at trial that he and Cran went into the bushes, about 15 feet away, at the same time, immediately after J.S. hit the man on the leg while the man was on the ground. In cross-examination by counsel for Cran, his evidence at the preliminary hearing was put to him in which he said it is possible he followed Cran, and that Cran had gone into the bushes before he, J.S., hit Aaron Webster while he was on the ground. He agreed at trial that was possible. He agreed that once he came around the hood of the car and came up to Mr. Webster, he never saw Cran hit Aaron Webster, although he knew Cran was beside him at some point.

The next he saw Cran, he was in the bushes and could not say how long ahead of him Cran had gone into the bushes.

[54] In cross-examination by counsel for Rao, J.S. agreed he had said at the preliminary hearing he saw Ryan Cran strike Aaron Webster twice, but at trial, in chief he said he did not recall Ryan Cran swinging; he just knew Cran was beside him at the vehicle. In cross examination, he agreed he never saw Cran hit Aaron Webster, despite his evidence at the preliminary hearing. He said he was just given possibilities and was not exactly sure what had happened. He wanted to appear forthcoming and agreed he was trying to get any advantage he could for himself.

[55] He was asked about Ryan Cran's actions in several successive questions:

At the preliminary inquiry into this matter, then, you wrongfully accused Ryan Cran of striking someone when you knew he never did? Yes, I wasn't positive at the time.

You did not tell the court then it was merely a possibility, just a guess? Yes.

You would have it that your sworn testimony could implicate Ryan Cran into a manslaughter, a wrongful death, a homicide of Aaron Webster when you had no idea whether he hit him at all? No.

[56] In cross, he admitted it is a possibility he, J.S., delivered the overhand blow that sent Aaron Webster to the ground, and it is possible he killed Aaron Webster. He also said that as between him and A.C., he could not remember who struck the blow that sent Aaron Webster to the ground.

[57] In his statement, he told the police A.C. hit Aaron Webster right after he, J.S., did. At the preliminary he said he did not remember if A.C. hit Aaron Webster after he, J.S. did, that he was just telling the police things that might have happened, or might not have happened. At trial, he agreed with that and said it was not clear to him then.

[58] J.S. agreed that the first time he had ever mentioned a bat in Danny Rao's hands was in his examination in chief.

[59] In chief and in his statement, he said Danny Rao and A.C. struck Aaron Webster repeatedly while he was on the ground, seven times each. When asked by the policeman during his statement to clarify the number of times, he said he can't be sure, because he could not remember. In cross, he agreed that he could not remember.

A.C.

[60] A.C. testified in chief that he, J.S., and the Rao brothers went with Ryan Cran to drop the two girls off. Then they went to Third Beach, parked and listened to music. Cran suggested they go see if "that guy's there." Cran had told him about an earlier occasion where a man had looked into his car when he was there at Stanley Park with his girlfriend.

- [61] A.C. said Ryan Cran opened the trunk and they began grabbing weapons. A.C. said his own intention was to scare the guy. He said they all grabbed baseball bats, except Daniel Rao who grabbed a golf club. The items were there from an earlier occasion when Cran suspected some people at school of breaking into his Jeep.
- [62] They walked along the sea wall to Second Beach and went up the hill to the parking lot. They saw a guy standing behind a tree. Someone said "there he is" and they began running. The man ran towards the concession stand area. A.C. then saw the man was naked. J.S. caught up to the man first and hit him in the stomach. Daniel Rao tried to hit him, but may have missed. A.C. caught up and swung at him below his left knee, but may have missed because he hit himself in the ankle. Cran caught up behind the man and hit him in the butt. Danny Rao swung at the stomach and right side. None of these actions had any effect on the man, who kept running to his car.
- [63] At the car, Cran, J.S. and Danny Rao went around the front. Daniel Rao had disappeared. The man was facing the other three. A.C. came up behind him and hit his upper back or shoulder blades. The man turned and said "that's enough guys" and turned back. J.S. said "What the fuck you doing naked" and hit him with a two-handed sideswipe to the jaw. The man fell backwards into his car and onto the ground and lay there not moving.
- [64] A.C., Danny Rao and J.S. were standing over him, and J.S. hit him one more time in the chest and ran into the bushes. Cran was gone by that point. A.C. saw a car coming down the street, hit the man once more in the knee and ran. He turned and saw Danny Rao hit the man twice in the chest and then come to them in the bushes. Cran was in the bushes too. They all went back to the vehicle, and drove past the scene, where they saw an ambulance and cop cars, giving the man CPR.
- [65] On the way back, Danny Rao asked J.S. why he did it. J.S. did not respond.
- [66] About a month after, he and Danny Rao and two girls drove past Second Beach. Danny Rao was irritated with one of the girls, and said: keep talking and you're gonna end up dead like that guy.

CROSS-EXAMINATION

- [67] A.C. agreed he retained a lawyer after he was arrested and met with him several times before making a statement to the police in December 2003. Prior to making the statement he was given the autopsy report and J.S.'s statement. A.C. testified that he hoped to make a deal. He agreed his December statement, which was under oath, contained two dozen outright lies, and that he had minimized his own involvement and blamed Danny Rao for a blow he had struck himself.
- [68] He agreed the police had some difficulty with the December statement as it did not account for all the injuries. He and his lawyer discussed the matter again and came back on January 8th for a second sworn statement, which formed the basis of the deal. He agreed that he

looked at the autopsy report and tried to account for the extra injuries in the second statement, and therefore said, for example, that Ryan Cran hit the man in the butt. He had not said this in his first statement. He said he knew if he gave a believable statement he would stay in youth court and he went in ready to lie to save his own skin.

- [69] He agreed in cross that he feels bound by the January statement because of the deal and is going to stick to it.
- [70] At trial he said he did not know if J.S. was drunk; at the preliminary hearing he said J.S. was very drunk. He was not sure which was correct. He would not agree during cross-examination that the purpose of drinking at his house prior to going to the park was to get drunk, although he had agreed with that proposition at the preliminary hearing, and subsequently did agree at trial that it was correct.
- [71] In his December statement to the police A.C. said J.S. noticed the bats in the back of the jeep. At trial he said Cran suggested they go see if "that guy" was there; in his third sworn statement, which was given on January 10, he said it J.S.'s idea. He said he misplaced the name and made a mistake, and although it was J.S. who had first noticed the bats, he maintained it was Cran's idea to go see if the guy was there.
- [72] He agreed he had said at the preliminary hearing that he could see everything by street light illumination. At trial he said there were street lights or moon light; in any event he said he can see well in the dark, to a degree.
- [73] In his December statement, he said J.S. hit the man in the stomach, Danny hit him in the shoulder, A.C. hit him in the arm, Danny hit him in the leg, J.S. hit him in the jaw and he fell and did not move. When the policeman asked where Cran hit him, he said Cran hit him in the shoulder. In cross, he said that was not true, he just said it to please the officer.
- [74] He agreed with his evidence at the preliminary hearing that Cran left for the bushes, which he said were three feet away, before J.S. hit the man, knocking him to the ground. However when he was asked if his evidence at trial was incorrect - that is that Cran was standing there when J.S. hit the man - he would not agree. Counsel then said: "Look, Ryan Cran was never around that vehicle, he was in the bushes while all this hitting took place, that's what you said at the preliminary hearing. Do you agree?" "Yes."
- [75] A.C. agreed that although he had said Danny Rao hit Mr. Webster in the shoulder in his first statement, it was actually he who had done it. He said he was prepared to make up anything he could think of.

- [76] In chief A.C. said he hit Aaron Webster in the shoulder blade area. He agreed that he had been asked about his January 8th statement during the preliminary hearing: he had been asked if he could have hit Aaron Webster in the head and neck, and had said no. He agreed he was asked those same questions in his January 10th statement and said "I could have." In cross he said he knew he had hit Aaron Webster in the left shoulder blade and the bruise could have spread up to his neck.
- [77] In chief, A.C. said he saw Danny Rao hit Aaron Webster in the chest after J.S. had knocked him down. In his first statement he was asked if he saw J.S. and Danny still out there hitting him after J.S. had hit Aaron Webster and Mr. Webster had fallen to the ground, and he said he did not see it. In the second statement he said he could see Danny Rao and he, A.C., had been lying in the first statement. In the second statement, after he had looked at the autopsy report, he said Danny Rao hit Mr. Webster in the chest. He agreed he had not said that in the first statement.
- [78] In chief, A.C. said Danny Rao asked J.S. why he did it as they were driving away from the park. In cross, he agreed with his evidence at the preliminary hearing that he heard Danny Rao ask J.S. "What the hell did you do?"
- [79] At the preliminary hearing he agreed he had put a golf club in Cran's vehicle, although at trial he had said he was not there when the weapons were put in the vehicle. In cross, he said he did not recall putting the golf club in the car now. He did agree the golf club could have been his.
- [80] He agreed in his first statement he had made up random hits to save his own skin. However, now, he said, he has already been sentenced so does not have to decrease his involvement.
- [81] Neither accused called any evidence.

EXTRINSIC EVIDENCE

- [82] The Crown seeks to introduce evidence of prior occasions on which Ryan Cran went to Stanley Park to beat up Peeping Toms in order to prove identity, common purpose, intention, motive and animus in respect of the victim as against Ryan Cran.
- [83] This evidence comes through J.S., John Morgado, and to some extent, A.C., although A.C.'s evidence is not subject to objection by defence as he gave no details of any prior physical confrontations.
- [84] J.S. testified that he understood the purpose for which the group was walking to Second Beach was to find "these Peeping Tom people," that is voyeurs who watch people having sex. He was not sure when he had come to know about this, but he had been there before two or three times with Ryan Cran and A.C., although he could not remember when.

- [85] On each occasion, they would go to the Second Beach parking lot, park, perhaps drink, and wait for someone to come to the door or window. Then they would get out, chase them down, punch and kick them and knock them down. They would lay off, stop fighting, the guy would flee and they would go back to the car and leave. In cross examination he agreed the original story he had heard was that someone had peeked in Ryan Cran's window, although he could not recall if he had been told it was when Cran was with a girlfriend.
- [86] John Morgado testified that he had been told by Ryan Cran on two occasions prior to the Aaron Webster homicide that Cran might go to Stanley Park, drink, and possibly get in to a fight with peeping toms. He agreed that it was fair to say that he was told they would go and party, and if anyone came up and peeked in the vehicle they would chase them away. Morgado refused to go because he did not want anything to do with such a potential confrontation.
- [87] A.C. testified that Cran had told him he had been there on earlier occasions with a girlfriend and a person had come and peeked in the window. In cross, he agreed he had been told Cran did not like the invasion of privacy and chased the person off.
- [88] The Crown contends that the evidence of J.S. and Morgado, though evidence of prior discreditable conduct, has probative value on the issues of identity, unlawful purpose or intention, motive and animus towards the victim that outweighs its potential prejudicial effect.
- [89] Defence for Cran, relying on *R. v. Handy* [2002] 2 S.C.R. 908, submits that the evidence is unreliable, not sufficiently similar to the events of November 17, 2001 to have any probative value, and will inevitably lead to a prohibited chain of reasoning - that is that Ryan Cran has a propensity to commit crimes of this nature and is therefore guilty of this one.
- [90] Defence contends it is also susceptible because most of it comes from the mouth of J.S., who is using it to corroborate his own evidence. Therefore the objective improbability of coincidence is rebutted, in the same way that collusion renders such evidence useless.
- [91] Defence for Rao did not address the issue, except to note that J.S. and A.C. both said they did not socialize with Rao, and he was not there on any prior occasion, thus supporting his contention that the Crown has not proven Rao's participation in the events of November 17, 2001, beyond merely going to Stanley Park in Cran's vehicle.
- [92] Although neither counsel addressed other uses for the evidence, in my view, the evidence is admissible for limited purposes - that is as narrative to explain why Morgado questioned Ryan Cran as he did, and as the basis for J.S.'s understanding as to the purpose of the visit to Stanley Park. Is it also admissible to show intention or motive/animus on the part of Cran?
- [93] Identity is not in issue in this case, in the sense that no issue has been taken with Ryan Cran's presence at the scene. The evidence is therefore unnecessary on that aspect.

- [94] It has some probative value in proving the purpose for which Ryan Cran went to Stanley Park on this occasion. As for the strength of the evidence, it is true J.S.'s evidence in its entirety is fraught with difficulty and is worthy of little weight. It is, however, consistent with John Morgado's evidence insofar as Ryan Cran told Morgado he might go to Stanley Park and might beat up or at least confront peeping toms. It is also consistent with A.C.'s evidence respecting Ryan Cran's reaction to being spied upon while with his girlfriend.
- [95] It is true that the circumstances as described by J.S. and A.C., if accepted, are not directly comparable to the other occasions in which J.S. said they would sit in their vehicle waiting for someone to come and peep in, and would chase them off and beat them with fists or kick them. On this occasion, it is alleged the group walked from Third Beach to Second Beach, carrying weapons and chased and killed a man who was standing naked near a parking lot smoking, not peeping into cars. However this analysis of the difference in scenarios is more appropriate to a consideration of whether the evidence is probative of motive (who they were looking for or why) rather than intention to commit an unlawful act. The motive for the crime committed on November 17, 2001 remains obscure, and this extrinsic evidence offers no probative value on that score, given the difference in the scenarios.
- [96] More importantly, however, on the issue of intention, there is other evidence from Morgado and Rudek of Ryan Cran's intent during the events of November 17, 2001.
- [97] In my view, because of the availability of evidence which is specifically directed at November 17, 2001, the evidence of other occasions is unnecessary. The issue here is what if any participation Ryan Cran had in the events of November 17, 2001 and what his intention was, once he got to Stanley Park and once they came upon Aaron Webster. The extrinsic evidence, being unnecessary to establish that, has the potential to be used to infer that if Ryan Cran, A.C. and J.S. beat up peeping toms before, they were the likely assailants this time, especially since J.S. and A.C. have admitted their involvement. Thus the potential for prejudice outweighs its probative value.
- [98] The evidence is admissible for the narrow purposes outlined above, that is as narrative to explain why Morgado questioned Cran as he did, and to provide background for what J.S. understood their purpose to be, but not as evidence of Cran's intention or purpose on November 17, 2001.

IS AN UNSAVOURY WITNESS WARNING REQUIRED?

- [99] The Crown argues that the evidence of J.S. and A.C. need not be the subject of a warning of the dangers of accepting it, as they are sufficiently trustworthy not to mandate a caution. Despite having made a deal to remain in youth court, they are not inherently unreliable. Defence urges the strongest possible caution with respect to their evidence.

- [100] Having heard the witnesses and considered all the circumstances in which they gave their prior statements leading to their agreement to testify, I have no hesitation in saying I would provide a sharp clear warning to a jury of the dangers of accepting their evidence without looking for other pieces of evidence that tend to convince us each of them is telling the truth, and would also instruct myself accordingly.
- [101] Not only did each make a deal in which they bound themselves to a self-serving story and which J.S. testified is full of guesses and possibilities rather than the truth, but A.C. read J.S.'s statement before he made one himself, and then when told the police questioned the accuracy of it, made a second inconsistent statement admittedly designed to inculcate others and deflect blame from himself. It would therefore be dangerous to base a conviction on their evidence, without finding some support or corroboration for it.
- [102] It is not necessary to look for corroborative evidence which specifically implicates the accused. It is enough if the evidence simply strengthens the credibility of the impugned witness. What is important is not how the trier of fact's trust in the witness is restored, but that it is restored (see *R. v. Vetrovec* [1982] 1 S.C.R. 811). Here, though, the evidence of each of J.S. and A.C. as to the involvement of each of Cran and Rao is so fraught with inconsistencies and self-serving untruths that it would be unsafe to found a conviction on any piece of their evidence unless it is corroborated by other evidence which I find to be reliable. Even if there had not been a deal with the police upon which to found a warning, each one has admittedly lied under oath, contradicted themselves and each other, and offered no plausible explanation for any of the inconsistencies in their evidence.
- [103] Nor is it sufficient to consider their evidence as offering confirmation to each other's, given that A.C. had J.S.'s statement to study for three months before he gave his own first admittedly lie-filled statement, and then gave his second statement hoping to minimize his own involvement and save his own skin. Each has tried to reconstruct a version of events to their own advantage and to satisfy the police, using the autopsy photographs, and in A.C.'s case, J.S.'s statement. The unreliability of their evidence was amply demonstrated in cross-examination.
- [104] There are even more comprehensive problems with using the evidence of J.S. and A.C. as to the specific actions of any particular person on the night of the offence. Neither gave a statement until two years after the event. At the time of the event, J.S. admitted he was extremely drunk and events were a blur. A.C. admitted the purpose of drinking alcohol at his home before they went to the park was to get drunk. The events took place in darkness, with no street light or moonlight. It defies common sense to think that either can accurately recall who struck what blows when and where. Each may well recall their own involvement to some degree. However, in the absence of corroborating evidence against each of the accused, it would be dangerous to base a conviction on J.S. and A.C.'s evidence of Cran and Rao's actions, given the frailties of any eye-witness evidence in such circumstances, to say nothing of their motivation to reconstruct the events of that night in their own favour.

- [105] I will first set out the evidence of J.S. and A.C. in respect of each of the accused and will then turn to the evidence, if any, which is capable of corroborating that evidence.
- [106] Evidence of J.S. and A.C. re Danny Rao: J.S. had not mentioned Danny Rao having a bat in his hands in either his statement or at the preliminary hearing, but did testify at trial that he had one. In his statement, he said Danny Rao and A.C. stayed behind to hit Aaron Webster many times each. Although he first provided a figure of seven times each in his statement, he agreed he could not remember how many times. At trial, he said Danny Rao stayed behind after J.S. ran to the bushes. Rao was standing at the lower left side of Aaron Webster, continuing to hit the body.
- [107] A.C. said in his first statement that Danny Rao hit Aaron Webster in the shoulder, but at trial agreed he himself had done it. He also said Danny Rao had hit Aaron Webster in the leg, but admitted he was just recounting random hits, which later changed after the police questioned his story. He testified at trial he saw Danny Rao hit Aaron Webster while he was on the ground; in his first statement he had been asked about that and had insisted he did not see it. In his second statement, after studying the autopsy photographs, he said he had been lying in the first, and that he had seen Danny Rao hit Aaron Webster twice in the chest.
- [108] Evidence of J.S. and A.C. re Ryan Cran: J.S. testified at trial that Cran handed out the weapons, but in cross said that was a guess. He said he and Cran went into the bushes immediately after J.S. hit Aaron Webster on the leg while he was on the ground. At the preliminary, he said it is possible Cran went into the bushes before J.S. hit Aaron Webster on the leg, and that he saw Cran hit Webster twice. At trial, he said he never saw Cran hit Aaron Webster, although he knew Cran was beside him.
- [109] A.C. testified at trial that it was Cran's idea to go to Second Beach to see if "that guy" was there. In his third statement he had said it was J.S.'s idea. At trial, he said Cran hit Aaron Webster in the butt, which is consistent with his second statement. In his first statement no mention had been made of this. In his first statement he had said Cran hit Aaron Webster in the shoulder, but said at trial this was not true. His evidence at trial was not clear as to the timing, but he testified that Cran left the car and went into the bushes at some point.

Evidence corroborating or supporting J.S. and A.C. on the involvement of Cran and Rao:

Presence at the scene

- [110] There is reliable evidence corroborating that Danny Rao and Ryan Cran went to Stanley Park with J.S. and A.C. on the night of November 17, 2001, and that they drove there in Ryan Cran's Jeep Cherokee. This is confirmed by Cole Bunke and Lance Rudek. John Morgado offers additional confirmation of Ryan Cran's presence.

Participation

- [111] That a group of which Ryan Cran was a member walked through trails and came upon a naked person and started beating him is corroborated by John Morgato's evidence of Ryan Cran's statements to him. That Ryan Cran was involved in beating a person up was supported by the evidence of Lance Rudek who said Cran told him they "lynched a guy."
- [112] The evidence that there were others at the car near J.S. when he struck Aaron Webster on the head is corroborated by Michelle Richmond and Federico Angulo, who saw the assailant and the victim facing each other. There is conflicting evidence whether there were two or three people there, and neither Richmond nor Angulo could provide any description of any of the other people. Ryan Cran, J.S. and A.C. are all young white males of average or thin builds. Danny Rao is a black youth of heavier build.
- [113] It would not be safe to conclude that anyone other than A.C. was one of the others. That Ryan Cran was there and participating when the beating started but then stopped while others continued is corroborated by John Morgado, thus providing some support for the proposition that Ryan Cran was one of the two seen by Richmond and Angulo standing near the assailant.
- [114] There is no other evidence, aside from J.S. and A.C., to corroborate Danny Rao's presence at the car during the beating, except Angulo's evidence that there were possibly three people standing 3 - 5 feet away, not close enough to hit.

Knowledge of weapon

- [115] John Morgado testified that one night in the mid-fall he, Ryan Cran and Lance Rudek had driven to Lance Rudek's mother's house in Cran's Jeep Cherokee because Lance's mother thought someone was in the backyard. Morgado said he took a pool cue for self-defence. He said the others might have taken cues as well; he was uncertain if they did. Morgado had put the pool cue in the back seat of Cran's Cherokee and could not recall whether he returned his pool cue to the pool hall.
- [116] That a pool cue was found at the scene is confirmed by Cpl. Colonval, although Morgado said this was not the two-piece cue Morgado himself had taken to Rudek's mother's. Morgado testified that Ryan Cran was concerned about the police asking about a pool cue and asked Morgado to say nothing if questioned. Dr. Gray testified that a pool cue was a possible weapon.

Injuries

- [117] No specific submissions were directed at the position or nature of the injuries as either corroborative or contrary to the evidence of J.S. and A.C.. The Crown simply submitted that the number of blows suggests multiple assailants and general confirmation of J.S. and A.C.'s description of the events.

- [118] Dr. Gray testified that Aaron Webster suffered injuries to the neck and head and to other parts of his body inflicted with rounded linear instruments. Her evidence that death would be very rapid following the tearing of the artery corroborates the evidence of A.C. that after being struck on the jaw by J.S., Aaron Webster fell and did not move.
- [119] J.S. said the first blow he struck was to the right shoulder blade. A.C. said J.S. struck a blow to the man's stomach. There was no indication of a bruise to the right shoulder blade or to the stomach at the autopsy.
- [120] Each of J.S. and A.C. accuse the other of striking blows to the head, and each admits it is possible he himself struck blows to the head. A.C. admits standing behind Mr. Webster and striking near the neck, on the shoulder blade. There is no injury near the neck on the shoulder blade. The blow is to the neck itself, and those blows were potentially fatal, according to Dr. Gray. She said whichever blow it was, death would be rapid. J.S. admits he may have struck the fatal blow to the head. A.C. said J.S. hit Mr. Webster with a two-handed sideswipe to the right jaw, and Mr. Webster fell and did not move. From all of the evidence, it appears that the fatal blow was the blow to the jaw and neck seen by Richmond and Angulo, struck by the person facing the victim on Angulo's left, that is closest to the front of the car, wearing a black baseball cap - likely J.S.
- [121] Dr. Gray could not say with any certainty if Mr. Webster was standing or prone when the injuries were struck. She suggested the injuries to the legs and buttocks could have been caused while he was moving or standing because they are largely horizontal, and the injury to the arm was possibly defensive.
- [122] A.C., in his second statement in which he tried to reconcile the autopsy photographs with his account, said Danny Rao hit Aaron Webster twice in the chest while he was prone. He had not said this in his first statement and I discount it accordingly. This evidence is also contrary to J.S.'s evidence that A.C. hit Aaron Webster many times on the chest when he was prone, while Danny Rao was beating Aaron Webster's legs. J.S. said both were standing on the left of the body. There are only the two wounds to the chest area (or possibly three, if the V-shaped bruise under the right arm visible in the scene of crime photographs is counted), consistent with a golf club, and there is some evidence connecting A.C. to a golf club. A.C. admitted at the preliminary hearing that he had put one in Ryan Cran's car. He said he did not recall that at trial, but did agree it could have been his golf club.
- [123] The autopsy photographs show that some of the wounds to the legs are slightly slanted from the right to the left, downward. There are three bruises on the right side of the right leg at and above the knee, and one on the thigh which appears to continue onto the left leg inside the knee. It is of course difficult to say where the assailant was when these injuries were inflicted and they could all have been delivered at different times by different people. However, they are not obviously consistent with the assailant standing to the left of the body. If anything, they are perhaps more consistent with having been delivered from the right, particularly the one which continues onto the left thigh.

- [124] As stated above, Dr. Gray suggested that Mr. Webster may have been standing or moving when the leg injuries were inflicted because the bruises are largely horizontal. In any event, I am unable to say that these injuries corroborate J.S.'s evidence that Danny Rao was standing to the left of Mr. Webster, repeatedly striking his legs while he lay on the ground.

Second Beach or Third Beach

- [125] After the drive-around with the police, J.S., who had originally said they went to Second Beach, decided they had parked at Third Beach, but was unsure. A.C., said they went to Third Beach, but agreed in cross that he had said in his statement it was Second or Third Beach. Morgado said Cran told him they went to Second Beach. None of these witnesses appeared to know Stanley Park well. Angulo's evidence provides some support for the presence of a blue Jeep at Second Beach at the relevant time.
- [126] J.S.'s evidence, similar to A.C.'s, that he saw an ambulance as they drove by the scene with an attendant administering treatment and a police car parked further out of the park, suggests the ambulance was really Chisholm's van, and the police were on their way, having stopped to talk to Angulo and Richmond. None of this assists in determining if Cran parked the vehicle at Second Beach or Third Beach, and in my view, when all the other evidence is considered, nothing of significance turns on it. It is just a further reflection of the unreliability of the evidence of J.S. and A.C.

THE LAW

- [127] The Crown contends that Cran and Rao were each principal offenders or aiders and abettors to the unlawful act, the assault, which led to the death of Aaron Webster, thus making each guilty of manslaughter.
- [128] The Crown advanced a second theory based on a common unlawful purpose under section 21(2), but did not press it. For that section to apply, the members of a group must have started out with a common intent to accomplish some criminal purpose, but in the commission of it, another offence, which could be foreseen as a probable consequence of the initial criminal purpose, is committed.
- [129] On the evidence presented at trial, it is difficult to formulate a possible scenario which would engage section 21(2). There is only A.C.'s evidence that he started out with the intention to merely scare a peeping tom, but at some point for an unspecified reason, as he followed the rest, he formed an intention to assault. J.S. said his intention on leaving the car armed with a bat was to fight "these guys" - that is the peeping toms, or voyeurs. There is no evidence of any discussion of the purpose for which the group was going to Stanley Park that night, either in the car or at any subsequent time, and certainly nothing that would suggest the group had any other criminal purpose in mind than beating up peeping toms. In the absence of such evidence, there is no purpose in entering into an analysis of section 21(2). I will concentrate on section 21(1).

- [130] A death amounts to manslaughter where the accused commits an unlawful act which is inherently dangerous, and harm to another which is neither trivial nor transitory is its foreseeable consequence. Manslaughter does not require a subjective appreciation by the accused of the consequences of the unlawful act. The death of the victim, although not intended, is the result of the unlawful act. (R. v. Davy 86 C.C.C.(3d) 385 (S.C.C.)).
- [131] A person aids in an offence under section 21(1)(b) when he knows that someone intends to commit an offence and is present with the intention of helping the other person commit the offence. A person abets an offence under s. 21(1)(c) when he actively and intentionally encourages somebody else to commit an offence.
- [132] A person may be found guilty of aiding or abetting the offence of manslaughter where a reasonable person in all the circumstances would have appreciated that bodily harm was the foreseeable consequence of the unlawful act which was being undertaken (R. v. Davy, supra).
- [133] It is not necessary to find that either accused actually struck blows, if it can be established beyond a reasonable doubt that he helped or encouraged a principal assailant. In the context of a beating administered by members of a group, standing by and preventing the victim from escaping may be sufficient, depending on the circumstances, to constitute aiding or abetting.

APPLICATION OF THE LAW TO THE FACTS

- [134] Despite the concentration in the evidence and in submissions on the details of J.S. and A.C.'s various versions of who struck what blows, the important factors in the circumstances before me are presence at the scene and the acts and intention of each individual.
- [135] The evidence of J.S. and A.C. as to the chase down the parking lot is of no assistance in determining where anyone was or whether anyone except those two were striking Mr. Webster at that point.
- [136] J.S. said he had tunnel vision during the chase and did not really know where anyone was. A.C. described a continued series of swings and strikes by everyone in sequence, some of which connected and some of which didn't, but which he said had no effect on Mr. Webster, who kept running. He maintained he saw all of this by the light of the streetlights or the moon, or by being able to see in the dark, but there is reliable evidence from the police officers that the area was very dark. A.C. admitted on cross examination he did not know where Danny Rao was at this point, although he had initially claimed Danny Rao hit Mr. Webster in the shoulder, something A.C. later said he had done himself. He also admitted he was not telling the truth when he said Ryan Cran hit Mr. Webster's shoulder at this point, and that he only mentioned Ryan Cran hitting Mr. Webster's buttocks during the chase after he had examined the autopsy photographs and decided to change the evidence he had given in his first statement which had been questioned by the police.

- [137] I do not rely on their evidence in respect of the chase, and will move on to a consideration of the evidence of events at or near Mr. Webster's vehicle.
- [138] There are two matters that came up in cross-examination of each of J.S. and A.C. that must be dealt with first. There was a question in A.C.'s cross-examination to the effect of Cran never having been around the vehicle, and being in the bushes when all the hitting took place: "that's what you said at the preliminary", and A.C. agreed. However, this was not what A.C. had said in the preliminary hearing, and it conflicts with credible and reliable evidence which I will refer to. It appears to have been an inadvertent overstatement by counsel. Just prior to this question, A.C. had been referred to a passage from the preliminary hearing in which A.C. had agreed with his previous statement to the police in which he said that Cran had left for the bushes before J.S. hit Mr. Webster and knocked him to the ground. He did not say Cran had never been anywhere near the vehicle and had been in the bushes when all the hitting took place.
- [139] Likewise, the question asked of J.S. - "you wrongfully accused Ryan Cran of striking someone when you knew he never did" might appear to give the impression that J.S. was testifying that he knew Ryan Cran had never hit Mr. Webster. For all of the reasons set out above, it is clear J.S. was in no position to make such a positive statement, but since he agreed with the proposition, it must be analyzed and dealt with. J.S. agreed with every proposition put to him during this series of questions no matter how it was phrased. His position was soon qualified as he agreed to the last question in the series: "you had no idea whether he hit him at all" This is a further indication of how untrustworthy a witness J.S. is, but it cannot be said to be reliable evidence that J.S. knows Ryan Cran did not strike Mr. Webster.
- [140] Cran's intention to participate in the beating and his actual participation in it is confirmed by the evidence of Rudek and Morgado of what Cran told them. Little argument was addressed to this evidence, and Crown referred to it merely as "post-offence evidence." In my view, these are admissions and should be subject to the same scrutiny that any confession would be.
- [141] In my view, both Morgado and Rudek were reliable and credible witnesses. Their evidence as to the content of the conversations they had with Cran was not shaken on cross-examination. Morgado agreed with his statement to the police in which he had said that Cran had mentioned being with three or four buddies from Surrey, and that Cran said he walked into the woods, "I guess to Prospect Point." These details are not accurate but do not detract from the substance of the statement which is clear and unequivocal. I accept that Cran made the statements set out above and considering each of the statements in the context of all of the evidence, am satisfied beyond a reasonable doubt that Cran was telling Morgado the truth when he stated that he had participated in the beating of the naked man at Stanley Park, and that he told Rudek the truth when he said they had "lynched a guy, we beat this guy up."

- [142] The evidence of Richmond and Angulo, who could not of course, identify anyone, but saw at least two people standing near the assailant, is consistent with Cran's presence at the scene of the assault, in light of all of the other evidence.
- [143] As well, Cran drove the group to Stanley Park. Whether they parked at Second Beach or Third Beach is a matter of dispute, but is not of significance except in the context of assessing the reliability of J.S. and A.C.'s evidence, and I have already dealt with that.
- [144] The instruments which were used as weapons were in Cran's car. A broken pool cue was found nearby; the use of a pool cue is consistent with the injuries to the legs and back of Mr. Webster, and Morgado testified that Cran was concerned about the police asking about a pool cue and asked Morgado to say nothing. This conversation with Morgado is a piece of circumstantial evidence, which, when considered in the context of the evidence as a whole, supports an inference of guilt and is inconsistent with any other rational conclusion (see *R. v. White* [1998] 2 S.C.R. 72).
- [145] It is true that by the end of cross-examination, J.S. had backed away from his previous evidence at the preliminary hearing and would not say he had seen Ryan Cran deliver a blow, but did say Cran was beside him at the car at some point. A.C. stuck to his second statement in which he said Ryan Cran struck a blow to the buttocks, something he had not said in his first statement and which I do not rely on. I have set out in detail the frailties of their evidence and will not reiterate it here.
- [146] On a consideration of all of the evidence, I am satisfied that the Crown has proven beyond a reasonable doubt that Ryan Cran was present at the scene of the beating and participated in it as a principal.
- [147] There is no evidence to suggest Mr. Cran delivered the fatal blow, and there is some evidence that Mr. Cran stopped before others did. That is what he told Morgado, and that is consistent with J.S.'s evidence that Cran was not swinging by the time J.S. hit Mr. Webster and that Cran ran into the bushes right after J.S. struck the blow to Mr. Webster's head. This is coincidentally when Angulo shone his lights on the scene, and saw two people besides the assailant standing nearby. A.C.'s evidence was somewhat ambiguous as to whether Cran left for the bushes, which he said were three feet away, before J.S. knocked Mr. Webster down. However, aside from the timing, it is consistent with Cran leaving the scene at the vehicle ahead of him.
- [148] However, those factors do not save Mr. Cran from being guilty of manslaughter. They may have saved him from a conviction for murder, had that been the charge, but he participated in an assault that was inherently dangerous, and a reasonable person would have appreciated that bodily harm was its foreseeable consequence. That is the required intent for manslaughter.

- [149] There is no other conclusion to be drawn than that Cran would know that participation in a beating in all of these circumstances would result in bodily harm that was not trivial. It does not matter that Mr. Cran may not have intended the death of Mr. Webster. Mr. Webster died from the beating in which Ryan Cran participated. I find Ryan Cran guilty of the manslaughter of Aaron Webster.
- [150] Danny Rao's knowledge of the purpose for which the group went to Stanley Park, which he expressed to Cole Bunke some months after the event, and his presence in the vehicle offer an evidentiary basis upon which to infer his involvement. In order to base a verdict upon such evidence, guilt must be the only reasonable inference to be drawn from the established facts. Has Danny Rao's participation as a principal, aider or abettor been proven beyond a reasonable doubt?
- [151] The most important piece of evidence is that of Cole Bunke:
- . "...he mentioned being there to me. But he never specifically mentioned that he had anything to do with it. He just mentioned being at Stanley Park and that they were there looking for peeping toms, beating up peeping toms, or whatever it was that they...."
- [152] As well, Danny Rao said in Lance Rudek's presence that they should not make another trip "like the last one we made to downtown." Ryan Cran then told Lance Rudek in Danny Rao's presence, "it was them with the Aaron Webster incident," and then Cran and Rao discussed not hanging around each other so they would not be linked together.
- [153] In deciding what inference to draw from this evidence, I also consider the evidence of J.S. that Rao was not a friend of his and he did not socialize with him. While I would not use the evidence of the prior occasions against Mr. Cran, it is fair to mention in the context of Mr. Rao that there is no evidence he ever went to Stanley Park on prior occasions or that he had any awareness of Mr. Cran's concern with peeping toms.
- [154] Rao's brother Daniel was a friend of this group, and Danny Rao and Daniel were close, according to J.S. Daniel was also present that night in the vehicle but has not been charged, nor did he testify.
- [155] The evidence of Richmond and Angulo does not offer any certainty as to the presence of a third person standing near the assailant.
- [156] Rao's conversation with Bunke several months later as to why the group had gone to Stanley Park - "looking for, beating up peeping toms, or whatever it was that they...." - may indeed support an inference that Rao went there for that purpose and participated in the beating. However, it may only show that he had been at the park that night and knew what had happened. Bunke was quite vague in his account of the conversation, but said that Rao had never specifically mentioned that he had anything to do with it. The comments in Rudek's presence could also be construed either way.

- [157] The remark Rao made to J.S. upon leaving the park, as testified to by A.C., "What the hell did you do?", is also capable of various interpretations - for example, that he saw what J.S. had done or that he had been told by others what had occurred.
- [158] The case against Danny Rao really comes down to the evidence of J.S. and A.C. that Rao was present at the scene of the beating and was actively participating in it. For the reasons set out above, it would be dangerous to base a conviction on that evidence without something to support it. I am unable to find that the only rational inference to be drawn from the additional evidence is the guilt of Danny Rao, or that it offers sufficient corroboration for the evidence of J.S. and A.C. on which to found a conviction.
- [159] In the result, on a consideration of all of the evidence, I am unable to find that the Crown has proven beyond a reasonable doubt that Danny Rao participated as a principal, an aider or an abetter in the manslaughter of Aaron Webster and I must find him not guilty.

"M.A. Humphries J."

The Honourable Madam Justice M.A. Humphries

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/04/16/2004bcsc1635.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-cran-and-rao-2004>

Prepared on 28 October 2026 · Esheria