

CANADA / JUDGMENT

R. v. Doe

2025 BCCA 444

COURT

British Columbia Court of Appeal

DECIDED

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2025 BCCA 444 R. v. Doe

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Doe,

2025 BCCA 444

Date: 20251211

Docket: CA50001

Between:

Rex

Respondent

And

Fred Doe

Appellant

Before:

The Honourable Madam Justice Fenlon

The Honourable Justice Fleming

The Honourable Justice MacNaughton

On appeal from: An order of the Provincial Court of British Columbia, dated

January 9, 2023 (conviction) (R. v. Doe, 2023 BCPC 161,

Vancouver Docket 262298-5C).

Counsel for the Appellant:

D. Ferguson

Counsel for the Respondent:

M.A. Street

Place and Date of Hearing:

Vancouver, British Columbia

September 17, 2025

Place and Date of Judgment:

Vancouver, British Columbia

December 11, 2025

Written Reasons by:

The Honourable Justice MacNaughton

Concurred in by:

The Honourable Madam Justice Fenlon

The Honourable Justice Fleming

Summary:

The appellant appeals convictions for offences arising from a home invasion on the basis that: (1) the judge ought to have provided him further assistance as a self-represented accused; and (2) the judge gave insufficient reasons for judgment in convicting him as a party under s. 21(2) of the Criminal Code, R.S.C. 1985, c. C-46, for aggravated assault and use and possession of an imitation firearm.

Held: Appeal dismissed. The appellant was represented for the evidentiary portion of the trial. When the appellant became self-represented, the judge provided sufficient assistance to him within the scope of her duty to act as a neutral arbiter. The judge's reasons, read contextually and considering the entire record and the live issues at trial, are functionally sufficient. Identity was the only live issue at trial, and the basis for the conviction under s. 21(2) is clearly grounded in the record.

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Reasons for Judgment of the Honourable Justice MacNaughton:

Introduction

- [1] The appellant, Fred Doe, was convicted of the following offences, under the Criminal Code, R.S.C. 1985, c. C-46 [Code], arising out of a home invasion: break and enter under s. 348(1)(d); robbery under s. 344(1)(b); aggravated assault under s. 286(2); use of an imitation firearm for a dangerous purpose under s. 85(2); possession of an imitation firearm for a dangerous purpose under s. 88(1); and intent to commit an offence while having one's face masked under s. 351(2).
- [2] Mr. Doe appeals his convictions. He seeks to address what he says is a miscarriage of justice and an error of law. Specifically, he submits that the trial judge: 1) did not provide him, as a self-represented person, with the minimal level of assistance required to enable him to bring forth his defence to full force and effect; and 2) failed to give reasons on the application of the party provisions in s. 21(1) and (2) of the Code, thereby frustrating appellate review of his convictions for aggravated assault and possession and use of an imitation firearm.

The Home Invasion

- [3] On September 23, 2020, Brian Wong and Angelica Taylor lived in a basement suite on East 4th Avenue, in Vancouver (the "Home").
- [4] Around 6 a.m., Mr. Wong awoke to the sound of banging on his front door. Through the closed door, a man asked whether a certain person was home. Without opening the door, Mr. Wong said the person no longer lived there and told the man to go away. Five or ten minutes later, he heard banging again. He opened the door and saw a man in a face mask and hoodie. He told the man to get off his property before he called the police, slammed the door shut and locked it.
- [5] Five to seven minutes later, Mr. Wong again heard knocking. He yelled at Ms. Taylor to call 911 and opened the door and this time there were a couple of other people behind the man, one of whom had a gun. He knocked the gun out of the man's hand with nunchucks and closed and tried to lock the door. The intruders kicked in the door. One man pointed a small black handgun in Mr. Wong's face. A second man hit the left side of his head with an aluminum baseball bat about 15-20 times. The man holding the gun pistol whipped his head five or six times with it. A third man got him in a headlock and tried to choke him out. The man with the gun ran down the hallway to Ms. Taylor's room. At this point, the woman held a scalpel or blade to Mr. Wong's face and demanded his "stash" and the key to the shed. Mr. Wong said he had neither and the shed was not locked.
- [6] Mr. Wong did not recognize any of his assailants. They were all wearing hoodies and medical masks. He described the man with the gun as wearing a camouflage track suit with his hood over his head. He was taller than 5'10". The man who had him in a headlock wore gloves. The man with the bat wore a tracksuit and also had his hood over his head. The woman wore track pants and had her hoodie pulled down; Mr. Wong could barely see her eyes. When the

woman went into Ms. Taylor's room, Mr. Wong slipped out of the chokehold and headbutted the man who had been holding him. The man with the bat then hit him in the back of the knee with it, causing him to fall to the ground.

- [7] Ms. Taylor testified that she woke up to a man kicking in her bedroom door and pointing a gun in her face. He told her to, "Shut the fuck up, shut the fuck up, shut the fuck up", and struck her right eye repeatedly with the butt of the gun. She somehow ended up on the floor, at which point the man began to strangle her. He asked her for keys to the shed. She told him to ask Mr. Wong. The man stopped strangling her and left the room when the woman said something. Ms. Taylor then called 911.
- [8] Both Mr. Wong and Ms. Taylor suffered life-altering injuries.
- [9] A detailed police investigation led to surveillance footage from a taxi, a convenience store, and a hotel that, when viewed in sequence, documented the movement of a taxi and the three men who were passengers, from the Riviera Hotel (the "Hotel") on Robson Street to an address on West Cordova Street, where they picked up a woman. The taxi then drove to a convenience store on West Pender Street. Surveillance from the convenience store showed a woman and a man enter, purchase a gaiter-style mask and nitrile gloves, and return to the taxi. The taxi then drove the four passengers to a location near the Home. The taxi driver waited while the passengers exited and returned. The taxi then returned to the Hotel with the four passengers. Hotel surveillance shows the passengers leaving the taxi and entering suite 504.
- [10] DNA evidence established that Mr. Wong's blood was in the taxi and in suite 504 in the Hotel.

The Trial Proceedings

- [11] Mr. Doe was charged with two co-accuseds, Terry Hounbo Gody and Shane Randy White. The third co-accused was a youth, and their charges were disposed of. Mr. Gody remained at large at the time of Mr. White's and Mr. Doe's trial.
- [12] The trial against Mr. Doe and Mr. White began on May 24, 2022. Throughout the evidentiary portion of the trial, Mr. Doe was represented by counsel.
- [13] The Crown's opening statement advised the trial judge that the case was "ultimately going to turn on" the identity of the individuals in the taxi and at the Hotel.
- [14] The Crown called as witnesses: Mr. Wong, Ms. Taylor, and a friend who helped them clean up the Home and cared for Mr. Wong after his injuries; the taxi driver who drove Mr. Doe, Mr. White and the two others to and from the Home; several police officers who processed the scene and led the investigation; seven police officers who recognized Mr. Doe and/or Mr. White from identification posters created from the surveillance videos; and a forensic biologist who provided DNA evidence.

- [15] After the trial judge's August 3, 2022 ruling on the admission of the recognition evidence, the Crown closed its case. Defense counsel advised that they would not be calling any evidence. Court adjourned to August 5, 2022, for closing submissions.
- [16] On August 5, 2022, Mr. Doe's counsel advised that Mr. Doe may want to testify and to retain new counsel. The judge stood down to allow counsel to obtain clear instructions. When court resumed, Mr. Doe's counsel advised that Mr. Doe would "like to retain new counsel and potentially testify". The judge granted counsel's application to be removed as counsel of record and adjourned the proceedings to allow Mr. Doe to find a new lawyer.
- [17] Between August 5 and October 31, 2022, Mr. Doe appeared on 13 occasions to update the court about his efforts to retain new counsel.
- [18] Certain of those appearances are of note.
- [19] On August 23, 2022, his fourth appearance, Mr. Doe advised that he was talking with a lawyer and working on retaining one. The judge advised Mr. Doe that "if there is no counsel retained in short order, [the Crown and Mr. White's counsel would request to] proceed to set a date without your having counsel, so I would have to see what the circumstances are, but it's in your interest to get counsel as soon as possible". The matter was again adjourned.
- [20] On August 25, 2022, a lawyer appeared and confirmed that Mr. Doe had retained her. The matter was adjourned at her request. It was next adjourned on September 1, 2022, as counsel had not yet reviewed the transcripts and she was seeking instructions about whether Mr. Doe wished to seek to reopen his defence.
- [21] On September 16, 2022, the Crown, and an agent for Mr. Doe's counsel, agreed to a continuation date of October 31, 2022.
- [22] On September 29, 2022, Mr. Doe again discharged his counsel and advised that he was working on retaining new counsel. The matter was adjourned, but the court reminded Mr. Doe of the need to conclude the matter because there was a co-accused.
- [23] On October 3, 2022, the Crown sought an adjournment so that Mr. Doe could continue looking for counsel and update the court. The judge advised Mr. Doe that the matter needed to get "back on track", that the counsel issue needed to be addressed "quickly" and that, "it's your responsibility, you've talked to Legal Aid". The matter was adjourned to October 31, 2022.
- [24] On October 11, 2022, the Crown advised that a senior criminal counsel, who had not yet been retained, sought a copy of the Information. Mr. Doe advised that he was still looking for new counsel. The judge told Mr. Doe that the trial was set to continue on October 31, 2022, and she would arrange for him to meet counsel on that date, in person, or allow him to speak to Legal Aid.

- [25] On October 18, 2022, Mr. Doe advised he was still looking for counsel and was unsure about whether he was going to proceed with Legal Aid. Mr. White's counsel and the Crown both made submissions about proceeding on October 31 due to the prejudice caused by delay. The matter was adjourned for Mr. Doe to speak to duty counsel in person, and/or make submissions about whether to proceed with the trial date at the next appearance.
- [26] On October 26, 2022, yet another new counsel appeared and advised that Mr. Doe may wish to retain him, that he was prepared to accept the retainer but needed more than the few days before October 31 to receive transcripts and prepare. Mr. Doe confirmed that he intended to retain that counsel. The matter was adjourned, on the understanding that counsel would apply to adjourn the October 31, 2022 date.
- [27] No adjournment application was brought. On October 31, 2022, an agent for the senior criminal counsel appeared and advised that he had been retained by Mr. Doe. The agent sought an adjournment because counsel had only been retained a few days earlier and had not received the transcripts or reviewed the file. The matter was adjourned to December 5, 2022, over the objection of the Crown and Mr. White's counsel. The Court noted Mr. Doe's discharge of five previous counsel, despite the "ample opportunity" he had been given to retain counsel.
- [28] The judge ordered that Mr. Doe be provided with copies of the trial transcripts in custody. Mr. Doe did not receive the transcripts until a few days prior to the December 5 hearing.
- [29] On December 5, 2022, the senior counsel appeared before the trial judge, and advised that he was uncomfortable acting as counsel, and that Mr. Doe may require further time to review the transcripts that he received a few days before and had begun reviewing. Counsel suggested the possibility of appointing amicus.
- [30] Mr. Doe requested a further adjournment so that he could read the entirety of the transcripts. The Crown and counsel for Mr. White both strongly opposed an adjournment on the basis of Jordan and Mr. White's in-custody status.
- [31] The trial judge noted that senior counsel had reviewed the transcripts and had provided legal advice to Mr. Doe. She reminded Mr. Doe that on October 31, 2022, she told him that the matter would proceed on December 5, regardless of whether he had counsel. She was prepared to give Mr. Doe the morning to finish his transcript review. Mr. Doe repeated that he needed more time and could not proceed on his own. The judge noted that delay was the only apparent motivation for Mr. Doe's refusal to retain counsel. She said it was "the end of the road" and asked Mr. White's counsel to commence his closing.
- [32] Closing submissions were made by Mr. White's counsel and the Crown.

Mr. White's Submissions

- [33] In brief, counsel for Mr. White submitted that the identity of Mr. White was the only live issue and that there was "very little evidence against Mr. White". He reviewed the criminal standard of proof, the legal principles regarding circumstantial evidence, and noted that it was insufficient for the trial judge to be persuaded that Mr. White was likely one of the persons involved in the offence. He submitted that there was very little evidence against Mr. White and compared the identification evidence against each of the accuseds.
- [34] Counsel further contended that the "difference between the case against [Mr. Doe] versus Mr. White [was] astronomical".
- [35] Counsel for Mr. White focussed entirely on identification and made no submissions regarding the party liability provisions in s. 21(2) of the Code.

Crown's Submissions

- [36] The Crown's closing submissions were generally focused on the issue of identification. At the outset, the Crown said:

In order to convict both Mr. Doe and Mr. White of this offence the Crown has to prove beyond a reasonable doubt the following ingredients: First, and the most contentious part of this trial, the fact that Mr. Doe and Mr. White are the persons who actually committed the offence. Second, that the offence occurred at the time and the place set out in the indictment. Third, that Mr. Doe and Mr. White broke into and entered that place. Fourth, that they intended to break and enter that place. And, fifth, that they intended to commit an indictable offence in that place.

- [37] On the issue of liability under s. 21(2) of the Code, the Crown read the section for the Court, and then submitted that:

[I]t's very clear that the four individuals in the taxicab, the three men and the one female, clearly share a common purpose. The three men in leaving the hotel when they're masked, getting into the cab, directing the cab driver to pick up the young woman, who then directs the taxi driver to the house where the break in takes place are in possession of a common intention to break into that house. And so anything that happens, and in fact what does happen is the aggravated assault of the two occupants in the residence, all of the people involved are criminally liable.

- [38] The Crown also said that there was no disagreement that the trial judge should have no difficulty in accepting that all of the essential elements of the offences charged, save for identification, had been established.

- [39] The Crown moved on to the issue of identification, describing it as the issue that was "live throughout the trial". The Crown reviewed the identification evidence extensively.

- [40] During the Crown's closing submissions, the judge noted the main issue was identity, framing it as whether the persons who committed the offences were Mr. Doe and Mr. White.

- [41] The Crown argued the issue of identification was the "most contentious part" of the trial because the uncontested evidence established all remaining elements of the offences charged beyond a reasonable doubt.
- [42] The Crown contended that Mr. Doe and Mr. White were liable under s. 21(2) of the Code. In the Crown's view, it was "very clear that the four individuals in the taxicab clearly share[d] a common purpose", making all involved liable for the aggravated assaults of Mr. Wong and Ms. Taylor and any other offences that occurred.
- [43] The Crown detailed the evidence from the witnesses called and re-played the video evidence in chronological order. Relying on the video evidence, the taxi driver's evidence, the cab's GPS, the recognition evidence, and the DNA evidence, the Crown submitted that they had proven Mr. Doe and Mr. White were two of the four people who broke into Mr. Wong's and Ms. Taylor's Home and committed the offences therein. The Crown submitted that the recognition evidence against Mr. Doe was "overwhelming". In addition, the Crown invited the judge to review the hotel video and determine for herself whether it depicted Mr. Doe and Mr. White.
- [44] For Mr. Doe's benefit, the Crown encouraged the trial judge to analyze the evidence against Mr. Doe using the same framework of analysis Mr. White's counsel set out in his submissions. They also advised Mr. Doe that they would courier him a copy of the video exhibit the next day.
- [45] Following the Crown's closing submissions, the judge adjourned to January 9, 2023, for Mr. Doe's submissions. She adjourned so that Mr. Doe would have the opportunity to "consider the submissions of counsel". She advised him that he had time to retain a lawyer to assist him in preparing and/or making closing submissions if he wished to, but made it clear that the trial would proceed on January 9, 2023, regardless of whether he had retained counsel.
- [46] In the interim, the judge indicated that a laptop would be arranged for Mr. Doe to review the evidence and transcripts in custody.

Mr. Doe's Submissions

- [47] On January 9, 2023, Mr. Doe had not retained counsel, and he made closing submissions on his own behalf. He indicated that he had tried but "it was too late for it [indiscernible] but it's too late now."
- [48] The judge advised Mr. Doe that the law regarding identification was the same as described by counsel for Mr. White, and that he could adopt those submissions if he chose to. Mr. Doe did so. He then went on to say there was no proof he was in the taxi, Mr. Wong's and Ms. Taylor's Home, or that he even committed an offence. He submitted that neither victim, or the taxi driver, picked him out of a lineup, and that his DNA and fingerprints were not located in the Home.

The Trial Judge's Reasons for Conviction

- [49] Following Mr. Doe's submissions, the trial judge delivered her reasons convicting Mr. Doe, and acquitting Mr. White.
- [50] The judge recognized that the "issue at trial was whether the Crown had proven the identification of [Mr. Doe] and Mr. White as two of the persons that committed the home invasion, and the offences that occurred during it, beyond a reasonable doubt".
- [51] To answer this question, the judge reviewed all of the evidence and the relevant legal principles, including the standard and burden of proof, and the frailties of the various forms of identification evidence. She found that the taxi driver's evidence, the videos from the Hotel and the taxi, the GPS from the taxi, and the DNA evidence established, beyond a reasonable doubt, that the three men depicted in the videos committed the Home invasion and the offences against Mr. Wong and Ms. Taylor. The question, she observed, was whether Mr. Doe and Mr. White were two of those men.
- [52] She then went on to assess the recognition evidence. She observed that none of the three officers who identified Mr. White had more than one encounter with him and that two of the officers had very brief interactions, while many of the officers who identified Mr. Doe "had a longstanding acquaintance" with him.
- [53] Ultimately, the judge could not find, beyond a reasonable doubt, that the person depicted in the videos and the images was not Mr. White, but she also could not find beyond a reasonable doubt that it was him. She acquitted Mr. White on all counts.
- [54] Conversely, the judge found that the "totality of the evidence, which includes the video and recognition evidence, establishe[d] beyond a reasonable doubt that [Mr. Doe] [was] the person before the court and identified in the video images and in-court identification". In particular, she noted the "uniqueness of [Mr. Doe's] eyes", referring to what witnesses described as a "lazy eye".
- [55] With respect to the robbery charges, the judge found Mr. Doe guilty pursuant to s. 343(c) of the Code, which states that everyone commits robbery who assaults any person with intent to steal from them. She observed that "[it] was obvious that the purpose of this home break in was to rob the victims" and the presumption of intent with respect to the break-and-enter had not been displaced.
- [56] As a result, the judge found that the Crown had proven Mr. Doe's guilt on all counts under s. 21(2) of the Code beyond a reasonable doubt, stating that:
- [205] There is [no] direct evidence that Mr. Doe committed the aggravated assault of Ms. Taylor, but pursuant to s. 21, which states that:

Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence.

[206] I find him guilty of all offences under that section.

Issues on Appeal

[57] As I have said, Mr. Doe raises the following issues on appeal:

- i. Did the trial judge fail to provide adequate assistance to Mr. Doe as a self-represented accused?
- ii. Did the trial judge give insufficient reasons for convicting Mr. Doe on the aggravated assault and use and possession of an imitation firearm offences as it related to party liability under s. 21(1) and (2) of the Criminal Code?

[58] If successful on appeal, Mr. Doe seeks a new trial.

Discussion

Did the trial judge fail to provide adequate assistance to Mr. Doe?

[59] Trial judges have a duty to provide self-represented accused in a criminal case with sufficient assistance to ensure trial fairness. This Court recently described that duty in *R. v. Woolsey*, 2021 BCCA 253:

[48] Described in *R. v. Darlyn* (1946), [1947] 3 D.L.R. 480 at 482 (B.C.C.A.) as a "helping hand to guide [the accused] throughout the trial", such assistance is required to aid the accused in the proper conduct of the defence so that the defence is "brought out with its full force and effect": *R. v. Richards*, 2017 ONCA 424 at para. 110; *R. v. Moghaddam*, 2006 BCCA 136 at para. 54. Where a self-represented accused contends that a judge failed to provide needed assistance, two questions arise for determination: whether there was such a failure and, if so, whether that failure gave rise to a miscarriage of justice within the meaning of s. 686(1)(a) (iii) of the Criminal Code: *R. v. Leno*, 2021 BCCA 200 at para. 69, citing *R. v. Neidig*, 2018 BCCA 485.

[49] The onus on a trial judge to assist a self-represented accused is a heavy one, rooted in concerns with trial fairness and not with the ultimate verdict. However, the duty owed by the judge is circumscribed. For example, the duty is limited to what is reasonable in the circumstances and the assistance provided need not enable the accused to present the case "as effectively as a competent lawyer". Rather, trial fairness requires that a self-represented accused "be given a fair opportunity to present their case to the best of their ability": *Neidig* at para. 93; *Richards* at paras. 111-12.

- [60] A trial judge must not overstep their role as an impartial arbiter and become an advocate for the accused: *R. v. Wyatt*, 2018 BCCA 162 at para. 12. The extent of the duty in a particular case must balance the need to assist the self-represented accused, on one hand, with the need to remain neutral on the other.
- [61] This balance was recently discussed by the Supreme Court of Canada in *R. v. Kahsai*, 2023 SCC 20 at para. 54, where the Court emphasized the limits of the scope of the trial judge's duty to help an unrepresented accused. The Court held that the judge must always remain neutral, and, while ensuring procedural fairness to the accused, the judge must not offer help that would be seen to undermine the impartiality of the court.
- [62] As set out in *R. v. Sullivan*, 2013 BCCA 32 at para. 40, how far a judge must go in assisting a self-represented accused is a "matter of judicial discretion" and the nature of the required assistance "will vary with each trial", depending on the nature of the offences charged, the facts, the defences raised, and the accused's sophistication. Because it is an exercise of discretion, appellate deference is owed to a trial judge's decision on how to assist a self-represented accused. As explained in *Wyatt*, at para. 13, this Court will only intervene on appeal if the judge "proceeded on a wrong principle or if a miscarriage of justice resulted."
- [63] Mr. Doe argues that the trial judge was required to, but did not: (i) inquire into whether he understood his procedural options; (ii) direct him to available resources, aside from ensuring he received a copy of the transcripts; (iii) explain the concept of recognition evidence, how that evidence might be relied upon to ground a conviction, and the essential elements of the offences charged, and (iv) consider whether *amicus curiae* ought to be appointed. He also argues that the trial judge should have assisted him with respect to the party liability provisions of the Code. He submits that these failures resulted in a miscarriage of justice.
- [64] I would not accede to this ground of appeal.
- [65] A review of the record as a whole demonstrates that the judge did all that she could, within reason, to assist Mr. Doe in bringing out his defence with "full force and effect".
- [66] Although Mr. Doe has no legal training and was in custody, he was represented by experienced criminal counsel throughout the evidentiary portion of the trial. He discharged his counsel after the trial judge rendered her reasons on the voir dire regarding the recognition evidence. Before counsel was removed from the record, he advised the judge that Mr. Doe may wish to testify.
- [67] Thereafter, the trial judge ensured that Mr. Doe received contact information for Legal Aid, ordered in person appearances (as opposed to video appearances) to facilitate Mr. Doe meeting with Legal Aid intake workers, repeatedly urged Mr. Doe to retain new counsel for the purpose of closing submissions, and tried to ensure that he discussed his possible wish to testify with his new counsel. During this time, Mr. Doe retained and discharged one counsel and had another counsel who was prepared to represent him if an adjournment

could be arranged. Mr. Doe then retained, and received advice from another senior criminal counsel, who ultimately declined to become involved so late in the trial process.

- [68] Mr. Doe was present during the 13 court appearances between August 5 and October 31, 2022. All were set for the purpose of discussing Mr. Doe's efforts to retain counsel. Mr. Doe did not raise, either on his own or through the three counsel who appeared on his behalf, the issue of testifying. There were no procedural options to bring to Mr. Doe's attention, prior to him making his closing submissions.
- [69] In his submissions, Mr. Doe does not identify any procedural option about which he says he ought to have been informed.
- [70] As to other resources Mr. Doe ought to have been given, the record indicates that he had been repeatedly put in touch with Legal Aid and was aware of duty counsel. The judge ensured that, before the Crown's and Mr. Whites' counsel's closing submissions, Mr. Doe was given evidentiary transcripts, the exhibits, including the paper and video exhibits, the closing arguments from Mr. White's counsel and the Crown, paper, a pen, and a laptop.
- [71] Mr. Doe knew that identity was the primary issue. It is difficult to conceive of what other substantive assistance the judge could have provided on the issue of identity. It was canvassed at length in the Crown's and Mr. White's counsel's oral and written submissions.
- [72] Mr. Doe was in court for the oral submissions. The judge asked counsel to slow down for Mr. Doe's benefit. Mr. Doe had been provided with copies of their written submissions. Mr. White's counsel canvassed the criminal standard of proof and the law regarding circumstantial evidence and the Crown thoroughly reviewed the evidence against Mr. Doe.
- [73] The judge adjourned the trial to January 9, 2023, for Mr. Doe's closing submissions and she urged Mr. Doe to speak to legal counsel about his submissions between December 5, 2022 and January 9, 2023.
- [74] I would conclude that there were no additional resources necessary for the judge to provide and nothing more that she could have done to assist Mr. Doe in making his closing submissions to the best of his ability in accordance with the obligations set out in Woolsey at paras. 49 and 50.
- [75] Nor would I give effect to the argument that the judge ought to have explained the concept of recognition evidence. In Mr. Doe's closing submissions, he argued that the Crown had not proven his identity beyond a reasonable doubt. He pointed to the lack of proof that he was in the Home--his DNA and fingerprints had not been found. He said he had not been identified by the taxi driver or the two victims. He adopted the legal submissions made by Mr. White's counsel on the law of identification evidence and agreed that the crux of his submission was that "identification evidence has real problems and that there's a risk of convicting the wrong person".

- [76] Mr. Doe argues that the fact that he did not make submissions on the weight to be afforded to the recognition evidence shows that the judge failed to provide sufficient assistance. However, the record shows that the legal principles applicable to recognition evidence were thoroughly canvassed during the voir dire, at which Mr. Doe was represented, and again in both the Crown's and Mr. White's counsel's submissions. The judge asked Mr. Doe whether he wished to adopt the legal framework on identification evidence put forth by Mr. White's counsel and Mr. Doe did so. There is nothing further that the trial judge ought to have done while remaining within the scope of her role as a neutral arbiter.
- [77] Although not specifically addressed in his factum, Mr. Doe also submits that as a result of him adopting Mr. White's counsel's submissions on the recognition evidence, he adopted the portions of those submissions that contrasted the lack of reliable recognition evidence against Mr. White with the substantially more compelling evidence against Mr. Doe.
- [78] I would not give effect to this submission. Before Mr. Doe made his closing arguments, the judge told him, "the law is the same as that which [counsel for Mr. White] reviewed on identification evidence you can adopt that if you wish". The judge then asked Mr. Doe if he wanted to rely on counsel for Mr. White's "legal analysis on the law in terms of identification evidence". Mr. Doe replied saying "that's what I wish to on the law". In effect, the judge offered and Mr. Doe accepted, that he adopt the submissions of Mr. White regarding the legal framework of identification evidence--and not how that legal framework applied to the identification evidence of Mr. White as compared to Mr. Doe.
- [79] There is no indication that, in convicting Mr. Doe, the trial judge gave effect to Mr. White's counsel's submission that the identification evidence against Mr. Doe was much stronger than that against Mr. White.
- [80] Mr. Doe also submits that the judge failed to provide sufficient assistance because she did not identify and explain the elements of the charged offences or provide him with sufficient assistance on party liability as it applied to him. This submission ignores the fact that the parties considered identification to be the only live issue for trial and, as a result, it was not surprising that the judge focussed on ensuring Mr. Doe appreciated the evidence and the law relevant to that issue. Because party liability was not an issue raised at trial, nothing more was required of the trial judge. Party liability had, in effect, been conceded, if the identity of the parties to the home invasion was proven.
- [81] Finally, Mr. Doe argues that the judge failed to provide him sufficient assistance by not considering whether to appoint amicus curiae to assist him.
- [82] The role of an amicus is not to represent a party. The scope of the role is case-specific and will depend on the particular need identified by the trial judge in the particular case. The Supreme Court of Canada recently determined that it may be necessary to appoint amicus with adversarial functions in "unusual cases" where a self-represented accused displays symptoms of mental health challenges, but remains fit to stand trial, where the accused refuses to participate in the trial, or where the nature of the charges or the mode of trial

make an adversarial prospect from amicus necessary for the case to be justly adjudicated: Kahsai at para. 57. Mr. Doe's circumstances do not fall into any of these categories.

- [83] This was not a complex case. It turned on identity, a common issue, and was tried by a judge alone. Finally, Mr. Doe was ably represented during all but the closing submissions. I would conclude that this is not the kind of case in which amicus would be appointed.
- [84] I would add that the judge afforded Mr. Doe a lengthy period of time to retain counsel for the purpose of delivering or advising him with respect to his closing submissions. This, together with Mr. Doe's history of retaining then discharging lawyers, and her conclusion that Mr. Doe was trying to delay the conclusion of the trial, made it reasonable for her to refuse a further adjournment on December 5, 2022: see *R. v. Hazout*, [2005] O.J. No. 3550, at paras. 31, 34-35, 2005 CanLII 30050 (Ont. C.A.), leave to appeal ref'd, [2005] S.C.C.A. No. 501. In any event, Mr. Doe had a further month before making his closing submissions and the judge urged him to speak to counsel in the intervening period.
- [85] I would conclude that the judge made no error in her assistance to Mr. Doe. On the live issues at trial, nothing more was required from her for Mr. Doe to bring out his full answer and defence or to otherwise ensure trial fairness.

Did the trial judge give insufficient reasons for conviction?

- [86] A judge's reasons for conviction must be sufficient to allow for appellate review, and for parties to understand the result: *R. v. Lemoel*, 2025 BCCA 126 at para. 68, citing *R. v. Sheppard*, 2002 SCC 26 at para. 55. In doing so, reasons must make apparent a "logical connection" between the verdict and the basis for it: *Lemoel* at para. 68, *Sheppard* at para. 55. Appellate courts must not finely parse a trial judge's reasons in a search for error: *R. v. G.F.*, 2021 SCC 20 at para. 69. The animating question is whether the trial judge's reasons, read contextually, as a whole, and in light of the live issues at trial, explain what the trial judge decided and why they decided that way, in a manner that permits effective appellate review: *R. v. R.E.M.*, 2008 SCC 51 at para. 17; *G.F.* at paras. 69-70. An error of law will result only if the reasons are functionally deficient: *R.E.M.* at paras. 52-53; *Sheppard* at paras. 28, 55.
- [87] In evaluating whether a trial judge's reasons explain why they reached a particular verdict, appellate courts must consider the broader context in which the reasons were generated, including the full reasons, the evidentiary record, developments within the trial, and counsel's submissions on the live issues. Even where the trial reasons do not explain the "what" and the "why", where the record makes the answers to those questions clear, there will be no error: *R.E.M.* at paras. 17, 37-41, 116; *Sheppard* at para. 42, 46, 50, and *G.F.* at paras. 69-71.

- [88] The inquiry should be directed at whether the reasons respond to the live issues in the case: *R. v. Dinardo*, 2008 SCC 24 at para. 31, G.F. at paras. 69, 86. Trial judges are not required to detail every piece of evidence and examine every question of law that could have been raised: *R.E.M.* at paras. 19-21, 35. If a factual or legal issue is not raised as an issue for consideration, the absence of discussion of that issue is not an error: *R. v. Wang*, 2013 BCCA 311, at paras. 72-81, leave to app ref'd, [2013] S.C.C.A. No. 368; and G.F. at para. 74.
- [89] In this case, Mr. Doe submits that the trial judge's reasons are insufficient on the use and possession of weapons offences and the assault of Ms. Taylor given that there was no evidence linking him directly to these offences. He argues that the Crown misstated the party liability provisions of the Code by linking criminal liability solely to participation in the common unlawful purpose and not discussing the mens rea requirement.
- [90] Section 21(1) of the Code describes three possible distinct parties to a criminal offence:
- i. the principal--the person(s) who actually commits the offence (21(1)(a));
 - ii. the aider--the person(s) who does or omits to do anything for the purpose of aiding the principal (21(1)(b)); and
 - iii. the abettor--the person(s) who abets the principal.
- [91] Section 21(2) of the Code extends criminal liability to persons for offences committed by others. It provides:
- 21(2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence.
- [92] This section holds a person(s) liable, if they participated in an original common unlawful purpose with others, and either knew, or should have known, that one or more of the other participants would likely commit the offence(s) in pursuing their common purpose.
- [93] The offence(s) for which the person is liable is the actual offence(s) committed by the other participant(s) incidental or collateral to the original unlawful purpose: *R. v. Srun*, 2019 ONCA 453 at paras. 60-62.
- [94] In order to rely on this provision, as set out in *R. v. Simon*, 2010 ONCA 754 at para. 43, leave to appeal ref'd, [2010] S.C.C.A. No. 459, the Crown must prove:
- i. the party's participation with the principal in the original unlawful purpose (the "agreement");
 - ii. the commission of the incidental crime(s) by the principal in the course of carrying out the common unlawful purpose (the "offence"); and

iii. the required degree of foresight of the likelihood that the incidental crime would be committed (the "knowledge").

[95] The legal framework, as it relates to each factor, was set out in *R. v. Cadeddu*, 2013 ONCA 729, see also *R. v. Cooper*, 2020 BCCA 206 at para. 27; and *R. v. Stewart*, 2022 BCCA 367 at para. 21.

[96] To establish the agreement element, the Crown must prove beyond a reasonable doubt that "the accused and the other participant(s) agreed to carry out a common unlawful purpose and to help each other to do so": *Cadeddu* at para. 58. This common intention may be formed or articulated in advance, or "may arise at the instant of the offence being committed": *R. v. Vang*, [1999] O.J. No. 91 (C.A.) at para. 24, leave to appeal ref'd, [1999] S.C.C.A. No. 203.

[97] The Crown must further prove that the offence was committed as the participants were carrying out their original unlawful purpose and that the offence was related to (but different from) the original unlawful purpose: *Cadeddu* at para. 59.

[98] Finally, the Crown must prove that the accused knew, or ought to have known, that the offence(s) committed was a probable consequence of the unlawful purpose. To do so, the Crown may point to words and conduct before and after the offence: *Cadeddu* at para. 61.

[99] I would not accede to Mr. Doe's argument that the Crown misled the judge in closing submissions by not discussing the knowledge requirement. Nor would I accede to the argument that the judge gave insufficient reasons for her conviction of Mr. Doe under s. 21(2) of the Code.

[100] First, reading the record holistically, the Crown framed the case at the beginning and end of the trial as one concerned only with identification. Both counsel for Mr. White and for Mr. Doe shared this view as is evident from the nature of their cross-examination questions of the various Crown witnesses, and from the closing submissions of Mr. White's counsel. Because of this, the Crown did not describe the law with respect to common intention in great detail. The Crown submitted that s. 21(2) applied, and read the section, verbatim, to the judge. The wording of the section sets out the three requirements for criminal liability as party to a common intention.

[101] Although later in submissions, the Crown used imprecise language in saying that the group shared a common intention to break into the suite and therefore "anything that happen[ed], and in fact what [did] happen [was] the aggravated assault of the two occupants in the residence, all of the people involved are criminally liable", the Crown did not explicitly or implicitly submit that the judge need not consider the knowledge requirement.

[102] Trial judges are presumed to know and properly apply the law, including the requirements of principal and party liability: *R. v. Harms*, 2020 BCCA 242 at para. 53.

[103] Second, I would conclude that the trial judge's reasons for conviction did not deprive Mr. Doe of his right to appellate review on the possession and use of the weapon. It was uncontroversial that the totality of the evidence established, beyond a reasonable doubt, that:

the group depicted in the surveillance footage formed a plan to break into the home with the intent to rob. They formed an agreement to collectively pursue an unlawful purpose; several collateral offences were committed in pursuit of this unlawful purpose; and each member of the group knew, or ought to have known, that these collateral offences were probable consequences of pursuing the unlawful agreement.

[104] As for the "agreement" element, the evidence of the taxi driver, Mr. Wong, Ms. Taylor, and the surveillance videos make it clear that the group planned to break into the Home together. They booked the Hotel for ten days. Together, the men left from the Hotel and picked up the woman. Once the group gathered, they donned masks, hoodies, and medical gloves (having stopped to obtain a mask and the gloves) and travelled to the vicinity of the Home. The woman left the men in the taxi to confirm the location of the Home. She returned once she had done so. Eventually, the group approached the Home and forced their way inside. They also left as a group when Ms. Taylor called the police and, as a group, returned to the Hotel. In totality, this evidence proved beyond a reasonable doubt that the group formed a common unlawful intention and assisted one another in pursuit of that intention. This conclusion is plain and evident on a contextual review of the entirety of the record.

[105] As for the "offence" element, it was apparent from Mr. Wong's and Ms. Taylor's evidence that all of the charged offences were committed during the group's pursuit of their common unlawful intention. Both were seriously assaulted and injured by the masked intruders while being asked for their alleged "stash" and keys to the shed. One of the men in the group used an imitation firearm to assault Mr. Wong and then Ms. Taylor. Again, this conclusion is plain and evident on a contextual review of the entirety of the record.

[106] As for the "knowledge" element, the only reasonable conclusion from the totality of the evidence is that the group devised a home invasion plan in advance of arriving at the Home, were aware of each other's weapons, and knew or ought to have known that the weapons would be used to overcome any resistance from the Home's occupants. At the risk of belabouring relevant facts, the record discloses:

Room 504 at the Hotel was booked from September 19-29, 2020; The men of the group left together from the Hotel in a taxi in the early morning hours of September 23, 2020. They then picked up the fourth member of the group, a woman. They stopped on the way to the Home to buy additional disguise accessories, before travelling as a group to the vicinity of the Home; The group masked their faces, pulled their hoodies up over their heads and donned gloves. The woman confirmed that they were at the right place; The group, or at least one of its members, was persistent in asking for a particular individual, when knocking on the door three times; The

entire group was present when one of the men pulled out a gun and pointed it at Mr. Wong when he opened the door the third time; The group entered the Home together, after the gun had been pulled out and knocked to the ground by Mr. Wong, and after one or more of the group kicked the front door open; The men assaulted Mr. Wong and hurt him badly, including with the gun, in the presence of one another and before the man with the gun went to Ms. Taylor's room where she was assaulted; Two members of the group asked Mr. Wong for keys to the shed, and one member asked for Mr. Wong's "stash"; The woman member of the group held a blade to Mr. Wong's face in the presence of the two men who remained in the hallway when the man with the gun went to Ms. Taylor's room; The man who went to Ms. Taylor's room hurt her badly with the gun; and Following the Home invasion, the group travelled together back to the Hotel.

- [107] On these facts, Mr. Doe must have known, or ought to have known, that any member of the group was likely to cause bodily harm to the occupants of the Home. The precise harm that resulted may not have been known or foreseeable, but bodily harm of some sort was expected. This conclusion is palpable on the entirety of the record before the trial judge.
- [108] The totality of the circumstances also leads to the inescapable conclusion that Mr. Doe must have been aware that one of the members of his group had what appeared to be a firearm and that he must have been aware, or ought to have been aware, that the use of the firearm to intimidate or inflict violence to overcome resistance to the break-and-enter was a probable consequence of their collective agreement to undertake the home invasion.
- [109] Additionally, the fact that there is no evidence to suggest that Mr. Doe sought to deter the man with the firearm when he used it against Mr. Wong supports an inference that Mr. Doe anticipated that the firearm would be used to effect the groups' collective goal.
- [110] In sum, I would find that the route to conviction on the counts of aggravated assault and possession and use of an imitation firearm are plain on a contextual review of the reasons and that, as a result, the reasons are sufficient. It is evident from the entirety of the record before the trial judge that she convicted Mr. Doe on these counts under s. 21(2) because he was part of the group that: formed a plan to break into Mr. Wong and Ms. Taylor's home with the intent to rob them (the unlawful purpose); that the offences charged under these were committed in pursuit of this unlawful purpose (the offence); and Mr. Doe knew or ought to have known that these offences were the probable consequences of pursuing the unlawful purpose (the knowledge).
- [111] I would conclude that the judge's failure to include a discussion of how s. 21(2) of the Code applied in the circumstances of the case in her reasons for conviction against Mr. Doe was a result of the fact that it was not a live issue at trial.

- [112] The parties, and their counsel, appeared to accept that all of the people who entered the Home had undertaken a joint enterprise, and knew, or ought to have known that the charged offences were probable consequences of carrying out that joint enterprise, leaving the identity of Mr. Doe as a member of the group, as the sole issue for adjudication. As a result, it is not surprising that the judge focussed on the issue of identity in her reasons.
- [113] Mr. Doe relies on *R. v. Cooper*, 2020 BCCA 206, where this Court found that the trial judge erred by not turning his mind to the necessary elements of party liability under s. 21(2) in convicting Mr. Cooper: *Cooper* at paras. 29-30.
- [114] In that case, Mr. Cooper and others participated in a home invasion. Guns were found at the scene, and there was evidence that shots had been fired during the invasion in a bedroom. The trial judge found Mr. Cooper guilty of firearms-related offences as a party, because Mr. Cooper was "actively engaged" in the events in the bedroom. He cited a provision of the Code that did not exist (s. 21(c)) stating:
- I conclude, given the nature and objective of the home invasion, the retrieval of three handguns from the scene, the fact there were no other forms of restraint available to the accused, and that it was known to all participants that guns were going to be used prior to the entry in the residence and that it was objectively foreseeable to all in those same circumstances, (going into a home for a perceived million-dollar robbery), that resistance was foreseeable and that guns might be discharged by one or more of the intruders carrying such.
- [115] This Court held that the trial judge erred by not reviewing the elements that are necessary to attract party liability under s. 21(2), and by applying the wrong test (i.e., whether it was foreseeable that incidental offences might occur, rather than whether they would occur) in finding Mr. Cooper guilty as a party: paras. 29-33.
- [116] *Cooper* is distinguishable for several reasons.
- [117] First, as stated, the judge in that case cited a provision in the Code that did not exist, and convicted the accused for party liability under it. He went on to misstate the elements of party liability in applying the test. In this case, the judge set out s. 21(2) in her reasons--a provision which itself states the actual elements of the offence--and then convicted Mr. Doe under that section.
- [118] Second, the factual circumstances were different such that liability under s. 21(2) did not flow as obviously in *Cooper* as it does here. Specifically, that case lacked the pre-offence circumstances that suggest a high level of planning by the group (in this case, for example, the hotel booking, the travel together to and from the Home, the convenience store stop to pick up materials). In addition, the presence of the gun was known to the group before they entered the Home.

- [119] Furthermore, the issue in the trial judgment of Cooper focused on "who did what and when". In this case, the primary issue was only the "who" aspect, making the issue of party liability in this case peripheral in a way that it was not in Cooper.
- [120] As such, I would not agree that the judge in this case fell into the same error as the trial judge did in Cooper.
- [121] Finally, I would conclude that the judge's reference to s. 21(1) in her reasons for sentence does not disclose a potential error in her reasons for conviction. The impugned reference was simply to correct an oversight in the reasons for conviction: that Mr. Doe was guilty of count 1 (break and enter with intent) under s. 21(1). This was obvious on the totality of the record.

Disposition

[122] I would dismiss the appeal.

"The Honourable Justice MacNaughton"

I AGREE:

"The Honourable Madam Justice Fenlon"

I AGREE:

"The Honourable Justice Fleming"

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