
CANADA / JUDGMENT

R. v. Mann

2012 BCSC 1265

COURT

Supreme Court of British Columbia

DECIDED

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2012 BCSC 1265 R. v. Mann

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Mann,

2012 BCSC 1265

Date: 20120511

Docket: 24117

Registry: Vancouver

Regina

v.

William Joshua Scott

Rajan Singh Mann

Terry James Richardson

Ban on publication pursuant to s. 517(1) of the Criminal Code

Before: The Honourable Mr. Justice Bernard

Oral Reasons for Judgment

(Re Accused Rajan Singh Mann)

Counsel for the Crown:

G.C. Banning

Counsel for the Accused Rajan Singh Mann:

P.J. Wilson, Q.C. and M. Richards

Place and Date of Hearing:

Vancouver, B.C.

May 11, 2012

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Vancouver, B.C.

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A. Overview

- [1] THE COURT: In the mid-afternoon of June 7th, 2006, Gary Kwong was kidnapped. His ordeal began in the parking lot of Trail Appliances in Richmond, British Columbia. At this location, Mr. Kwong met William Joshua Scott, who was in the company of three other men. Mr. Scott produced a gun and forced Mr. Kwong into the rear passenger area of Mr. Kwong's Ford Ranger pickup truck. Mr. Scott took the front passenger seat, a Caucasian man referred to as "Trev" took the rear passenger seat next to Mr. Kwong, and an East Indian man took the wheel. The truck was driven to Mr. Kwong's apartment on Saba Road in Richmond.
- [2] The Crown's theory is that the driver was the accused, Rajan Mann, and that the fourth man in the group (who did not accompany the others to Mr. Kwong's apartment) was an unindicted accomplice named Bhupinder Benning.
- [3] Upon arrival at the apartment building, Mr. Kwong was removed from the truck by the two Caucasian kidnappers, who then escorted Mr. Kwong up to his suite, where Mr. Kwong's wife, Vivian Ma, was present. While in the suite, the two kidnappers searched for "court papers" related to criminal charges against Mr. Kwong, stolen property (cash, jewellery, computers, etc.), and demanded a \$100,000 ransom in exchange for Mr. Kwong's safe release.
- [4] After approximately one hour in the apartment, the two Caucasian kidnappers escorted Mr. Kwong to his Dodge Caravan, B.C. Licence Number 313 EPK, which was parked in the building's parking lot, and they drove off together. Ms Ma was left behind to gather and deliver the ransom money.
- [5] Over the course of the next 13 hours, Mr. Kwong was held against his will by his kidnappers. At approximately 8:30 a.m. on June 8th, 2006, the kidnapping ended in a Richmond Auto Mall parking lot with Mr. Kwong's release from the trunk of an automobile. Mr. Kwong was relatively unscathed and was in contact with the police shortly thereafter.

- [6] The ransom demand was not met. Shortly after the kidnappers left the apartment building with Mr. Kwong, Ms Ma informed her friend, Cliff Tang, of the kidnapping, and together they reported the crime to the police. Over the course of the night, Ms Ma and Mr. Tang, under police guidance, communicated via cell phones with the kidnappers. Mr. Tang and Ms Ma feigned difficulty with meeting the ransom demand, as the police investigated the kidnapping.
- [7] Eventually, the kidnappers abandoned their plan and released Mr. Kwong, seemingly frustrated by the delays and concerned about detection.
- [8] Following a police investigation, three men were charged with the kidnapping: William Joshua Scott, Terry James Richardson, and Rajan Singh Mann. After the trial commenced, the charges against Mr. Scott were resolved by guilty plea, and the charges against Mr. Richardson were abated, due to his untimely death. The trial continued with Mr. Mann as the sole accused.
- [9] The Crown's trial theory regarding Rajan Mann was that he was a co-principal in the kidnapping. Its position, more specifically, was: (a) that Mr. Mann was the driver of Mr. Kwong's Ford Ranger from Trail Appliances to Mr. Kwong's residence; (b) that Mr. Mann's two accomplices were in the apartment with Mr. Kwong and Ms Ma; (c) that Mr. Mann directed them via cell phone; (d) that Mr. Mann maintained custody of the Ford Ranger when his accomplices departed with Mr. Kwong in the Dodge Caravan; (e) that during the ransom demand period, Mr. Mann was in frequent telecommunication with the other kidnappers in relation to the ransom; (f) that in the wee hours of the morning, Mr. Mann attended to where Mr. Kwong was being held and to Mr. Kwong's pickup truck; and, (g) that it was Mr. Mann who ultimately "called off" the kidnapping when he believed the police had been alerted and were closing in on them.
- [10] At the trial against Mr. Mann, the events described by Mr. Kwong and Ms Ma were not in issue. In other words, there was no suggestion in questioning, evidence, or argument that any of the following crimes to which they testified -- the theft of the Ford Ranger, the kidnapping for ransom of Mr. Kwong, the robbery and unlawful confinement of Mr. Kwong and Ms Ma, and the use of firearms in the commission of these crimes -- did not occur.
- [11] Similarly, it was not in issue that the former co-accused, Mr. Scott, a.k.a. "Beaver", was one of the two Caucasian kidnappers who, inter alia, pushed Mr. Kwong into the Ford Ranger, escorted Mr. Kwong to and from his apartment, and held Mr. Kwong captive during the ransom demand period.
- [12] The principal trial issue was whether Mr. Mann was the "third kidnapper"; i.e., the person who, inter alia, drove the Ford Ranger after Mr. Kwong was forced into it. This third kidnapper was a person previously unknown to Mr. Kwong, and after the kidnapping began Mr. Kwong was only briefly in his presence. The sole opportunity Mr. Kwong had to observe the third kidnapper was as he was being pushed into the rear seat of the Ford Ranger. The third kidnapper was in the driver's seat at the time. Mr. Kwong described this person as

follows: an East Indian man in his twenties, wearing sunglasses, and speaking with a "Punjabi" accent.

- [13] The brief and limited opportunity to see the third kidnapper left Mr. Kwong in a compromised position for the purpose of identifying this man. The security camera at the entrance to Mr. Kwong's apartment captured images of Mr. Kwong being escorted into the building by the two Caucasian kidnappers at 5:03 p.m. The videotape was seized and tendered as trial evidence. It shows that approximately two minutes after Mr. Scott entered the lobby, he returned to the glass entry door, apparently to open it for a tall, slim, young, dark-featured young man wearing sunglasses. This man remained at the door and held it open for approximately 30 seconds. The Crown says that this tall, dark man is the third kidnapper, and that the video images show, by identity of physical features, the third kidnapper to be the accused, Rajan Mann.
- [14] In support of the video identification evidence, the Crown tendered a substantial body of evidence intended to establish links between Mr. Mann and the kidnapping. This evidence includes various things attributed to Mr. Mann, including:
- (a) intercepted communications;
 - (b) associations with the other known kidnappers;
 - (c) links to certain vehicles and communications devices;
 - (d) Mr. Kwong's identification of Mr. Mann as the person he encountered at a Richmond intersection one week after the kidnapping; and,
 - (e) a post-charge attempt to dissuade Mr. Kwong and others from testifying.
- [15] The essence of the defence position is that the Crown's case on the identity of the third kidnapper is a circumstantial one which does not establish, as the only reasonable inference, that Mr. Mann was the third kidnapper.

B. Event Chronology

June 7th, 2006

- [16] 12:20 p.m. to 4:17 p.m.: Gary Kwong is driving his silver Ford Ranger pickup truck, B.C. Plate Number 8213 KB, and using his cell phone, number 778-855-1976. He speaks to Mr. Scott, a.k.a. Beaver, prior to meeting him at Trail Appliances.
- [17] 4:17 p.m.: Mr. Kwong meets Beaver in the parking lot at Trail Appliances. Mr. Kwong is forced at gunpoint into his truck by Beaver and "Trev". A young East Indian man wearing sunglasses is behind the wheel. He drives to Mr. Kwong's Saba Road apartment.
- [18] 4:54:47 p.m.: Beaver is standing outside the locked lobby door of Mr. Kwong's apartment while holding a cell phone to his ear.

- [19] 4:55:33 p.m.: Beaver gains access to the lobby by following behind a woman who has opened the door.
- [20] 5:04:16 p.m.: Mr. Kwong is escorted into the lobby of his apartment building by Beaver and Trev.
- [21] 5:06:09 p.m.: Beaver returns to the lobby door and opens it.
- [22] 5:06:33 p.m.: A young, tall, slim, dark-featured man wearing sunglasses is holding open the lobby door.
- [23] 5:06:50 p.m.: Mr. Kwong, Beaver, and Trev enter the elevator to go up to Mr. Kwong's suite.
- [24] 5:49:21 to 6:21:37: Trev walks out of the elevator, through the lobby, exits, and eventually re-enters the building. He is carrying a suitcase at all times.
- [25] 7:33 p.m.: Vivian Ma calls Cliff Tang after Beaver and Trev depart with Mr. Kwong.
- [26] Approximately 8:00 p.m. to midnight: Communications between kidnappers, Vivian Ma, and Cliff Tang regarding the ransom.

June 8th, 2006

- [27] 12:00 a.m. to 4:32 a.m.: Ransom calls continue.
- [28] 4:30 a.m.: RCMP Constable Athwal, in plainclothes and an unmarked vehicle, observes a dark-coloured pickup truck, B.C. Plate Number 0216 JV, in the parking lot of 16160 River Road, Richmond, across the street from where Mr. Kwong's Dodge Caravan, used in the kidnapping, was later found. He described the lone occupant as an East Indian man, 20 to 25 years of age, short-to-medium-length dark hair, clean-shaven, wearing dark clothing.
- [29] 4:31 a.m.: While Constable Athwal is pulled over on No. 7 Road to make notes of his observations, the same pickup truck and the same driver stops beside him. The man asks why he, Constable Athwal, is in the area and expressed a concern about break-ins. At this moment, a loud police broadcast comes over Constable Athwal's radio and the truck driver departs.
- [30] 4:31 to 4:32 a.m.: The last ransom call is made.
- [31] 4:57 a.m.: RCMP Constable Tarasoff, in plainclothes and in an unmarked police van, is conducting surveillance of Mr. Kwong's Ford Ranger pickup truck (which had been discovered parked in a Richmond mini mall parking lot located near the Ash Street townhouse owned by Mr. Mann and Mr. Benning). Constable Tarasoff sees a dark-coloured pickup truck, B.C. Plate Number 0216 JV, pull up to the Ford Ranger. He sees the front passenger step out, unlock the Ford Ranger using a remote key, open the front passenger door and stand beside it for five-to-10 seconds. The passenger then re-enters the dark-coloured pickup truck and it drives off. Constable Tarasoff follows the vehicle and watches it park nearby on Ash Street. Two men exit the truck and walk down Ash Street

towards him. The driver approaches Constable Tarasoff, asks what he is doing, and expresses concern about thefts. Constable Tarasoff describes the driver as a thin, six-foot tall, Middle Eastern or East Indian-looking man in his mid-twenties, with short, dark, spiky hair, a thin face, and beard stubble. (Constable Tarasoff later identified Rajan Mann as this man in a photo lineup.) Constable Tarasoff described the passenger as similar to the driver in age and ethnicity, but heavier and shorter, five-foot-seven or five-foot-eight, and sporting a baseball cap.

- [32] 8:12 a.m.: Mr. Kwong is released from the trunk of a Volvo sedan by Mr. Scott in a parking lot near the Richmond Auto Mall, and Mr. Scott drives off.
- [33] 12:09 p.m.: Mr. Mann and Mr. Benning arrive at Mr. Scott's New Westminster residence in a Ford Explorer.
- [34] 12:25 p.m.: Mr. Benning is seen in conversation with Mr. Scott outside Mr. Scott's residence.
- [35] 12:35 p.m.: Mr. Benning and Mr. Mann depart in the Explorer and are arrested in it, in an ERT takedown, shortly thereafter.
- [36] 12:40 p.m.: Corporal Lan searches Mr. Mann and says he finds a BlackBerry (BlackBerry #1). The Explorer is seized and in a later search of it the police find the "Vorhees" cell phone and the "Benning" cell phone.
- [37] Approximately 12:45 p.m.: Mr. Scott is arrested after attempting to flee from the police in the Volvo sedan. Mr. Kwong had been held in the trunk of this Volvo during the kidnapping. (In a later forensic examination, Mr. Kwong's fingerprints were found on the underside of the trunk lid.)

June 9th, 2006

- [38] Mr. Mann is released without charge.

June 13th, 2006

- [39] A dark grey 2006 Ford Explorer, B.C. Licence Number 037 BRK, is rented under the name of Rajan Mann.

June 15th, 2006

- [40] Midday: While Mr. Kwong is stopped at a Richmond intersection, a Ford SUV pulls up beside him. The driver is an East Indian man in his twenties with dark hair, wearing sunglasses and showing beard stubble. The driver looks over to him for a period of two-to-five seconds. Mr. Kwong reports this incident to the police, because he believes this may be the man who drove his pickup truck at the outset of his kidnapping. In a photo-pack lineup, Mr. Kwong identifies Rajan Mann as the driver of the Ford SUV.

- [41] Approximately 4:00 p.m.: Constable Khungay sees the same Ford Explorer, B.C. Licence Number 037 BRK, parked outside the Mann/Benning Ash Street residence in Richmond.

June 23rd, 2006

- [42] The police execute a warrant at the family home of Mr. Mann at 7028 Berkeley Street, Vancouver. The police seize a Sony PlayStation, an Xbox game system, games, and a pair of running shoes.

June 27th, 2006

- [43] The police interview Kamiar Aslany. Mr. Aslany is described as a Persian man who is five-foot-six to five-foot-seven in height. (Kamiar Aslany is the registered owner of the Silverado pickup truck, B.C. Licence Number 0216 JV, which stopped at Mr. Kwong's pickup truck at 5:00 a.m. on June 8th, 2006.)

June 28th, 2006

- [44] 1:55 p.m.: Mr. Mann is arrested as he approaches his Ash Street townhouse driving a "Spotlight" courtesy car. He is in the company of Christopher Hodgson, a carpenter who was hired by Bhupinder Benning to do renovations to the townhouse owned by Mr. Mann and Mr. Benning. BlackBerry #2 is seized from the driver's side sun visor.

November 27th, 2006

- [45] Constable Lew says he sees Rajan Mann in the company of Phillip Ley and Kamiar Aslany at a Richmond coffee shop.

December 30th, 2006

- [46] Mr. Kwong says that Cliff Tang introduced him to Phillip Ley, and at this meeting Mr. Ley said he was there to help his "brown friend". He suggested that Mr. Kwong not testify; that he leave town to avoid being subpoenaed; and, that he write a letter to Crown counsel advising that he did not wish to go to court on the kidnapping matter.

February 1st, 2007

- [47] Mr. Ley and Mr. Mann are arrested for obstructing justice. Mr. Ley's computer is searched and "letters of retraction" of charges for signature by Gary Kwong and Cliff Tang are found.

C. Evidentiary Synopsis

- [48] The evidence is voluminous and I will not attempt to restate it, even in synoptic form; rather, I intend to focus on that which I regard as particularly germane to the live issues, which I will frame as follows:

Has the Crown proved beyond a reasonable doubt that the accused Rajan Mann participated in the kidnapping of Gary Kwong and, if so, what was the extent of his participation?

1. The Kidnapping (Gary Kwong's testimony)

- [49] On June 7th, 2006, Mr. Kwong was forced at gunpoint into the rear of his pickup truck by three men. He knew one of them to be the accused William Joshua Scott. He was driven to his apartment building in his truck, where his two Caucasian kidnappers escorted him up to his suite through the building's main entry. Surveillance security cameras were operating at the main entry. The driver did not leave the truck at this time, and Mr. Kwong cannot say that he encountered the driver again during the kidnapping.
- [50] Mr. Kwong did not know the driver and his only view of him was in "quick glances from a sharp angle" from the rear passenger area. He described him as an East Indian man in his twenties wearing sunglasses. He detected a "Punjabi" accent, which he described variously as slight and fairly thick. He said this man was rude, swore, and used an angry tone when speaking to him.
- [51] While in the apartment, the Caucasian kidnappers searched for unspecified court papers, possibly related to the charges against Mr. Kwong. The papers could not be found; however, many valuable items were taken from the apartment by the two men. Mr. Kwong was taken away from the apartment building by the same two men in his blue Dodge Caravan, B.C. Licence Number 313 EPK, and Mr. Kwong's wife, Vivian Ma, was left to gather \$100,000 ransom.
- [52] Mr. Kwong was held by his kidnappers, pending receipt of the ransom, at various locations in Richmond and Delta, until his release by Mr. Scott, whom he knew as Beaver, the next morning.
- [53] During the drive to the apartment, at the initial stage of Mr. Kwong's ordeal, the driver questioned Mr. Kwong about a pending fraud charge, and Mr. Kwong said the driver was rude, spoke angrily and cursed. During the period the kidnappers were in Mr. Kwong's apartment, Mr. Kwong said Beaver communicated by a walkie-talkie style telephone with a person who was located elsewhere. In these communications, Beaver reported that the court papers could not be found and asked what he should do next.
- [54] During the period Mr. Kwong was held for ransom, he overheard his kidnappers speak to his wife and to Cliff Tang in relation to the ransom. He also said the kidnappers were in telephone communications with other persons about subjects such as bringing in the Volvo, seeing police cars, and concerns that Mr. Kwong's friends may have alerted the police. He said that the calls from the kidnappers to Cliff Tang were placed from various locations, including Delta, Silver City in Richmond, and an area the kidnappers referred to as Triangle Beach. Mr. Kwong described Triangle Beach as a muddy area with no buildings and no proper road, near River Road or Dyke Road in Richmond, and about a five-to-10-minute drive from Silver City.

[55] At Triangle Beach, Mr. Kwong said he heard Mr. Scott speaking on the phone about bringing a Volvo and, shortly after this call, a vehicle arrived. Mr. Kwong was blindfolded at the time. He was removed from the Dodge Caravan and placed into a car trunk. Mr. Kwong said the vehicle was driven to a new location where it remained for the night. Mr. Kwong remained in this trunk until he was released by Mr. Scott in a parking lot at the Richmond Auto Mall and given bus fare to get home.

[56] After Mr. Kwong's release, he cooperated with the police. In photo lineups, he identified the accused Scott and Richardson as the two kidnappers who escorted him to and from his apartment and held him for ransom. Mr. Kwong did not identify anyone as the driver of the pickup truck, although a photograph of Rajan Mann was among those shown in a photo-pack presentation.

2. The Saba Road Apartment Security Videotape and Stills

[57] The videotape is a compilation of images captured by security cameras placed in various locations at the apartment building entrance on June 7th, 2006, from approximately 4:54 p.m. to 6:21 p.m. The videotape shows Mr. Kwong being escorted into the lobby of his apartment building by two Caucasian men. Mr. Scott is one of the two men, and after Mr. Scott is inside the lobby, Mr. Scott returns to the lobby door. Shortly after he does so, the videotape shows a young East Indian-looking man propping open the glass entry door. It appears as if Mr. Scott has stepped outside for a short period.

[58] Good quality "stills" were produced from the videotape and tendered into evidence. In these stills, the East Indian-looking man propping open the door appears to be tall, to have a very slight build, and to be in his twenties. The man is wearing a short-sleeved shirt and short pants, revealing long, thin arms and legs. He is wearing white running shoes and dark sunglasses. His hair is very dark and is short-to-medium in length. His ears and hairline are exposed. The young man is shown in profile. He is very distinctive looking. He has a long face, a fairly prominent nose and jaw, and a full head of hair, cut or styled in a way that reveals an angular and distinct hairline. He does not have an obvious moustache or beard, although he may have some facial stubble.

3. Silverado Sighting at 4:30 a.m. (Constable Athwal's testimony)

[59] Shortly before 4:30 a.m., June 8th, 2006, Constable Athwal observed a Silverado pickup truck, B.C. Licence Number 0216 JV, in a parking lot at 16160 River Road in Richmond. The truck was idling with its headlights on. Constable Athwal saw one person in the cab behind the wheel. He described this person as a fit-looking Indo-Canadian male, 20-to-25 years of age, with short-to-medium-length dark hair. Constable Athwal drove westbound along River Road for approximately one minute and stopped at a pull-out to make notes of his observations.

[60] Constable Athwal was in plainclothes and driving an unmarked vehicle. As he was making notes, the pickup truck he had seen stopped about 10 feet ahead of him. He recognized the driver as the same man he had seen in a truck only moments earlier. The driver spoke to him through the passenger window and the following exchange occurred:

Driver: Can I help you?

Constable Athwal: I'm lost.

Driver: There have been a few break-ins in the area, so I was just checking.

[61] During this brief exchange, Constable Athwal said a loud broadcast came over his police radio, at which point the Silverado drove off. Constable Athwal noted the time as 4:30 a.m.

[62] On June 14th, 2006, Constable Athwal was shown a photo-pack lineup to see if he could identify the driver of the Silverado. He selected a photo and said, "This image matches my recollection of the person I had a brief conversation with on June 8th." The photo was not of Rajan Mann. Constable Athwal said he was not a hundred percent sure that the man in the photo was the truck driver.

[63] In relation to the Silverado, various documents were tendered into evidence to show:

- (a) that it was leased to William Scott and a man named Kamiar Aslany on February 10th, 2006;
- (b) that Scott was the principal operator from February 10th to March 17th, 2006, and Aslany was the principal operator thereafter;
- (c) that Mr. Aslany and Bhupinder Benning attended to ICBC to make a theft/damage claim on the Silverado in April 2006;
- (d) that the Silverado was in a body shop for ICBC-approved repairs from May 8th, 2006 to May 19th, 2006;
- (e) that on May 19th, 2006, Bhupinder Benning picked up the truck and certified that the repairs had been done satisfactorily; and
- (f) that the Silverado was at the body shop again on August 8th, 2006, and released to Mr. Benning.

4. Silverado Sighting at 4:57 a.m. (Constable Tarasoff's testimony)

[64] During the kidnapping, Constable Tarasoff was assigned to watch Mr. Kwong's Ford Ranger pickup truck. In the ransom period, the police had located it parked in a Richmond mini-mall parking lot near the intersection of Garden City Road and Blundell; a location about two blocks from an Ash Street townhouse owned by Rajan Mann and Bhupinder Benning. Ricky's Restaurant was one of the businesses in the mall.

- [65] Constable Tarasoff began his surveillance of the Ford Ranger at approximately 3:05 a.m. from an unmarked van parked nearby. His first observation of interest was at 4:57 a.m., when he saw a dark-coloured Silverado pickup truck, B.C. Licence 0216 JV, pull up to Mr. Kwong's truck. It was sunrise at the time, and Constable Tarasoff watched from a distance of 50-to-70 metres. He saw the front seat passenger exit the Silverado, unlock the Ford Ranger truck using a remote key, and open the passenger door. Shortly thereafter, the passenger returned to the Silverado and it drove off. Constable Tarasoff followed it as it travelled eastbound on Dixon Avenue and northbound on Ash Street. He saw the truck park on Ash Street, just south of Blundell Road.
- [66] Constable Tarasoff also parked on Ash Street, and as he watched the Silverado, he saw the driver and passenger exit the truck and walk southbound on Ash Street towards his van. He said the driver of the Silverado approached him and questioned him as he sat in the driver's seat of the van. The following exchange occurred:
- Constable Tarasoff: What's up?
- The Driver: What are you doing?
- Constable Tarasoff: Picking up a friend for work.
- The Driver: There have been vehicle thefts, so I'm wondering why you are here.
- Constable Tarasoff: You can call the police if you want. I'm just here to pick up a friend.
- [67] The passenger remained at the front of Constable Tarasoff's van and said nothing to Constable Tarasoff.
- [68] Constable Tarasoff described the driver as a thin East Indian or dark-skinned man in his mid-twenties with dark, spiky, short hair, a thin, long face, and beard stubble. He estimated the man's height as six feet and his weight as 180 pounds. He described the passenger as a dark-skinned, possibly Middle Eastern, male in his mid-twenties with short hair. He estimated this man's height as five-foot-seven-to-five-foot eight, and described his build as heavy and muscular.
- [69] On June 14th, 2006, Constable Tarasoff was shown photo pack lineups to see if he could identify these two men. In one photo pack, he selected a photograph of Rajan Mann as depicting the driver of the Silverado. He testified that he was a hundred percent certain in this identification. He said that he took 55 seconds to select the photograph because "people make mistakes when they identify quickly". He said that when he made the identification, he did not know anything about his role, if any, in the kidnapping; he was simply identifying the driver of the Silverado.
- [70] Constable Tarasoff denied that prior to his lineup identification he was aware that Mr. Mann was a suspect and/or that he had seen a photograph of him.

- [71] On June 23rd, 2006, Constable Tarasoff participated in the execution of a search warrant at the Mann family home on Berkeley Street in Vancouver. Rajan Mann was not present during this search.
- [72] On June 28th, 2006, Constable Tarasoff was tasked with booking in Rajan Mann following his arrest on that date, and he said he recognized Mr. Mann as the Silverado driver he had seen on June 8th.
- [73] At the trial, Constable Tarasoff identified Mr. Mann, who was seated in the prisoner's box, as the Silverado driver, and agreed that his post-lineup encounters with Mr. Mann likely helped him with his in-court identification.
5. Surveillance of Mr. Mann and Mr. Benning on June 8th, 2006 (Sergeant Thornborough's testimony)
- [74] Shortly before 12:35 p.m. on June 8th, 2006, Sergeant Thornborough had the entrance to William Scott's residence in New Westminster under surveillance. He saw three men, later identified as William Scott, Rajan Mann, and Bhupinder Benning, in conversation. He described Mr. Mann as an Indo-Canadian male, age 25, six-foot-to-six-foot-two, slim, short black hair, with a shadow of a beard. He described Mr. Benning similarly, except for height (five-foot-seven) and build (stocky). He saw Mr. Mann and Mr. Benning enter a Ford Explorer and drive off only moments before their arrests in an ERT takedown.
- [75] In the surveillance photos of Mr. Mann and Mr. Benning outside Mr. Scott's residence, Mr. Mann appears very tall and very slim. Mr. Benning, on the other hand, appears to be of average height and build; much shorter and stockier than Mr. Mann. Mr. Mann looks several days, perhaps, unshaven.
6. The Arrest of Mr. Mann and Mr. Benning on June 8th, 2006 (Sergeant Lan's testimony)
- [76] At 12:35 p.m., Sergeant Lan participated in a "tactical vehicle takedown" of the Ford Explorer. At the time, the driver of the Explorer was Rajan Mann and the sole passenger was Bhupinder Benning. The two men were arrested for kidnapping. Sergeant Lan arrested Mr. Mann. In a cursory search of Mr. Mann incidental to his arrest, Sergeant Lan said he found a BlackBerry (BlackBerry #1) on Mr. Mann, although he could not recall from where, specifically, it was seized.
- [77] In a search of the Explorer, two cell phones were seized from the passenger area: the Vorhees phone and the Benning phone. A cell phone was found in Mr. Mann's rear pocket in a secondary search after his arrest.
7. Arrest Photographs of Rajan Mann and Bhupinder Benning
- [78] Exhibits 112 and 113 are the police booking sheets for Mr. Benning and Mr. Mann, respectively. The booking sheets bear clear photographs of the faces of the two men. The photograph of Mr. Mann depicts a young East Indian-looking man with short dark hair and a long, thin, large-featured face. The photograph of Mr. Benning shows a man of similar age

and ethnic origin to Mr. Mann, but with distinctively different facial characteristics. In general terms, Mr. Benning's face is much fuller and rounder and his facial features are smaller.

8. Gary Kwong's Encounter on June 15th, 2006

[79] On June 15th, 2006, Mr. Kwong was driving a minivan in Richmond. He said that while he was stopped at an intersection, a newish, dark brownish-coloured SUV (a Ford Expedition or Explorer, he thought) pulled up on his right and the driver looked over to him for a period of two to five seconds. Mr. Kwong said the driver was East Indian, had short-to-medium-length gelled hair, was in his twenties, wore sunglasses, and had a two-to-three-day beard growth. Mr. Kwong thought he looked like the man who had driven his pickup truck at the outset of the kidnapping, and he therefore reported the incident to the police. He recalled that the East Indian man who drove his pickup truck in the kidnapping appeared to be "maybe three days unshaven".

[80] Mr. Kwong was shown a photo-pack lineup later the same day and he selected the photo of Rajan Mann as depicting the SUV driver. At trial, he said he could not say with certainty that the SUV driver was the East Indian kidnapper, because of his limited opportunity to see the pickup truck driver.

[81] Car rental records from Avis show that a person presenting a driver's licence in the name of Rajan Mann rented a grey 2006 Ford Explorer from June 13th to June 26th, 2006. Photographs of this vehicle show it to be dark grey. On June 15th, 2006, at approximately 4:00 p.m., Constable Khungay saw this vehicle parked outside the Mann/Benning townhouse on Ash Street in Richmond.

9. Recovery of Gary Kwong's Dodge Caravan

[82] In June 2006, Sean Moir worked at Riverside Towing on River Road near No. 7 Road in Richmond. He saw Mr. Kwong's apparently abandoned Dodge Caravan, B.C. Licence Number 313 EPK, in an outdoor, insecure parking lot shared by two businesses: Riverside and Canwest Marine. After it had sat unattended for approximately two weeks, he reported it to the police. He said Riverside Towing is approximately a 10-minute drive from the intersection of Garden City Road and Blundell Road. He also said a business named Rusty's Towing was within one-to-two blocks of Riverside Towing, and could be seen from it.

10. Rajan Mann's Second Arrest on June 28th, 2006

[83] On June 28th, 2006, at 1:55 p.m., Constable Sutherland arrested Mr. Mann outside Unit 19, 8091 Ash Street, Richmond; the townhouse owned by Mann and Benning.

[84] At the time of the arrest, Mr. Mann was the driver of a grey courtesy car from an autobody shop. A man named Christopher Hodgson was the sole passenger. Constable Sutherland said that Mr. Mann looked the same as he did on June 8th, 2006, the date of his first arrest.

- [85] In a search of the vehicle, a BlackBerry (BlackBerry #2) was found on the driver's side sun visor.
- [86] Christopher Hodgson is a carpenter who was doing renovations at the Mann/Benning Ash Street townhouse in May and June of 2006. He said he had been hired by his friend Bhupinder Benning. He described himself as a friend of both Benning and Mann. During the renovation period, he said he saw Mr. Benning and Mr. Mann together almost every day. He said Mr. Benning was "always typing on his BlackBerry" and that Mr. Mann used "an old StarTAC flip phone".
- [87] He said he was with Mr. Mann and Mr. Benning in the courtesy car just prior to Mr. Mann's arrest. He said Mr. Benning was driving, and when Mr. Benning observed the police in the cul-de-sac of his townhouse, he pulled into the next cul-de-sac and departed the area on foot. He said Mr. Mann then took over the wheel and drove to the townhouse, where the arrest occurred.
- [88] Mr. Hodgson said he knew Gary Kwong through Bhupinder Benning. He said that the three of them had eaten breakfast together five-to-ten times at Ricky's Diner in the nearby mini-mall, a one-to-two-minute walk from the townhouse. He said Rajan Mann had joined them for breakfast, once or twice.
- [89] Mr. Hodgson said he was in various vehicles driven by Mann and Benning during the renovation work because he did not have his own vehicle and supplies needed to be purchased and transported to the townhouse. He said he and Mr. Mann often shopped together for building materials. He said he could not recall the sort of vehicles which were used for these shopping trips.
- [90] Mr. Hodgson said that he also knew Kamiar Aslany through Mr. Benning, and had been in the collective company of Mr. Aslany, Mr. Benning, and Mr. Mann a few times in the past.

12. Witness Interference (Gary Kwong's testimony)

- [91] On December 30th, 2006, Gary Kwong says he was introduced to a man named "Phil", by Cliff Tang. Phil said he wanted to help out his "brown friend" and suggested: (a) that Gary Kwong write a letter to Crown counsel in the kidnapping case to advise that he did not want to testify; (b) that he should avoid service of a subpoena; and, (c) that he should leave town.

13. Mr. Mann's Physical Appearance at Trial

- [92] Mr. Mann is a tall, lanky, dark-featured young man. His ethnic origin appears to be East Indian. His skin is light brown and he has a full head of very dark, short-to-medium-length straight hair. He appears to be in his mid-twenties. He is a very distinctive-looking young man: tall, slim, and long-limbed, with a long face, large eyes, bushy eyebrows, and a prominent nose and jaw. He often appeared to be several days unshaven. He looked very similar to his June 28th, 2006 arrest photo.

14. Cellular Phone and BlackBerry Communications

[93] Evidence relating to the following remote communication devices was tendered at trial:

- (a) the "Kwong" phone, 778-855-1976 (linked to Gary Kwong by his testimony);
- (b) the "Ma" phone, 778-858-5777 (linked to Vivian Ma by her testimony);
- (c) the "Chang" phone, 604-779-4757 (linked to Cliff Tang by Gary Kwong and subscriber records);
- (d) the "Walden" phone, 778-838-9870 (found in William Scott's apartment and linked to the kidnapping through intercepted ransom calls to the Chang phone);
- (e) the "Johnson" phone, 778-834-1405 (in communication with the Walden and Vorhees phones during the kidnapping, and the receiver of birthday wishes from the Walden phone on Rajan Mann's birthday);
- (f) the "Styles" phone, 778-996-7226 (linked to William Scott by Gary Kwong's pre-kidnapping June 7th, 2006 communications with Mr. Scott and to the kidnapping through intercepted ransom calls);
- (g) the Benning phone, 604-767-8611 (linked to Bhupinder Benning by registration and the June 8th arrest);
- (h) the Vorhees phone, 778-838-1403 (linked to Mr. Benning and Mr. Mann by search of the Ford Explorer in the June 8th arrest);
- (i) BlackBerry #1 (linked to Mr. Mann and/or Mr. Benning through their June 8th arrests);
- (j) BlackBerry #2 (linked to Mr. Mann and/or Mr. Benning through Mr. Mann's arrest on June 28th); and
- (k) BlackBerry #3 (linked to alleged witness interference by content).

[94] The evidence of use and communications between these various cell phones and BlackBerrys includes the following:

- (a) The Styles phone was used by Mr. Scott in his communications with Mr. Kwong prior to the kidnapping on June 7th, 2006. In this same period, telephone records show that the Styles phone was in contact with the Johnson and Vorhees phones.
- (b) Between 5:12 p.m. and 6:53 p.m. on June 7th, 2006, records show that there were 21 calls between the Johnson phone and the Walden phone. Mr. Kwong testified that in this period, the kidnappers were in his apartment and using phones to communicate with and seek direction from persons or persons outside the apartment.
- (c) Between 4:50 p.m. and 6:58 p.m. on June 7th, 2006, records show that the Styles phone called the Benning phone four times.

- (d) During the ransom demand period, Ms Ma and Mr. Tang were in cell phone communications with the kidnappers. At 7:57 p.m., 8:20 p.m., and 8:31 p.m., Ms Ma received ransom calls from the Styles phone. In a similar time-frame, records show that between 6:56 p.m. and 8:06 p.m., the Walden phone called the Vorhees phone 10 times, and BlackBerry #1 sent a message to a contact named "Roar!" as follows: "Are you guys collecting info from the guy? Are you guys rolling around or parked?"
- (e) Between 9:30:23 p.m. and 9:37:41 p.m., Ms Ma was connected with the Styles phone. During this lengthy call, Ms Ma said the Styles phone user spoke to someone else. Records show that in the same period, there were six calls between the Johnson and Walden phones.
- (f) Cliff Tang (using the Chang phone) was in communication with the Walden phone in relation to the ransom. Phone records reveal a pattern of communications between the Johnson, Walden, and Chang phones between 10:03:10 p.m. and 11:39:38 p.m. as follows:

22:03:10 hours - Johnson phone in touch with Walden phone, 70 seconds;
22:04:51 hours - Johnson phone in touch with Walden phone, 45 seconds;
22:07:24 hours - Johnson phone in touch with Walden phone, 50 seconds;
22:13:06 hours - Johnson phone in touch with Walden phone, 88 seconds;
22:18:06 hours - Walden phone calls Johnson phone, 40 seconds;
22:21:19 hours - Walden phone calls Chang phone, 36 seconds;
22:25:40 hours - Johnson phone calls Walden phone, 149 seconds;
22:29:09 hours - Johnson phone calls Walden phone, 156 seconds;
22:34:47 hours - Walden phone calls Chang phone, one minute 22 seconds;
22:42:16 hours - Walden phone calls Johnson phone, 226 seconds;
22:43:17 hours - Walden phone calls Chang phone, one minute 19 seconds;
22:55:48 hours - Walden phone calls Johnson phone, 265 seconds;
22:56:27 hours - Walden phone calls Chang phone, one minute five seconds;
23:03:01 hours - Walden phone calls Johnson phone, 48 seconds;
22:06:14 hours - Walden phone calls Chang phone, one minute 12 seconds;
23:18:52 hours - Johnson phone calls Walden phone, 246 seconds;
23:19:21 hours - Walden phone calls Chang phone, one minute five seconds;
23:21:13 hours - Walden phone calls Johnson phone, seven seconds;
23:26:11 hours - Walden phone calls Johnson phone, 135 seconds;

23:31:49 hours - Johnson phone calls Walden phone, 91 seconds; and

23:39:38 hours - Walden phone calls Johnson phone, 232 seconds.

(g) In this same period (10:03:10 p.m. to 11:39:38 p.m.), the Johnson phone communicated with the Walden phone at 10:34 p.m. and 11:04 p.m.

(h) Another calling pattern is established among the Kwong, Chang, Walden, and Vorhees phones between 1:09:04 a.m. and 2:54:31 a.m. on June 8th, 2006, as follows:

1:09:04 hours - Kwong phone calls Chang phone, two minutes 22 seconds;

1:44:53 hours - Kwong phone calls Chang phone, one minute 42 seconds;

2:02:30 hours - Walden phone calls Vorhees phone, 152 seconds;

2:07:54 hours - Walden phone calls Vorhees phone, 305 seconds;

2:10:22 hours - Kwong phone calls Chang phone,

39 seconds;

2:13:22 hours - Walden phone calls Vorhees phone, 117 seconds;

2:17:54 hours - Walden phone calls Vorhees phone, 211 seconds;

2:30:28 hours - Vorhees phone calls Walden phone, 56 seconds;

2:31:13 hours - Walden phone calls Chang phone,

71 seconds;

2:40:48 hours - Johnson phone calls Walden phone, 73 seconds;

2:43:14 hours - Vorhees phone calls Walden phone, 51 seconds; and

2:54:31 hours - Walden phone calls Johnson phone, 20 seconds.

(i) In the foregoing period, the ransom calls to the Chang and Kwong phones were being intercepted by the police.

(j) Between 3:00 a.m. and 4:32 a.m. on June 8th, 2006, there are several more communications between the Chang and Kwong phones in relation to the ransom. In this same period, there are six calls between the Vorhees and Walden phones. The last communication between the kidnappers and Mr. Tang was at approximately 4:32 a.m.

(k) Mr. Kwong said that his Caucasian kidnappers also had a BlackBerry which they used to send text messages during the kidnapping.

(l) At 4:44 a.m., evidence recovered from BlackBerry #1 shows that BlackBerry #1 began communicating with "Roar!", again. At this time the following exchange occurs:

Roar!: Yo, I don't see any suspicious cars, just come back and pick me up.

BlackBerry #1: Already called the cab, just wait in front of Rusty's.

Roar!: Where the fuck is Rusty's? This is a fucking gong show.

BlackBerry #1: Ask Beaver. It's less than a block away.

(m) BlackBerry #1 is then inactive for the next 40 minutes (in this period, Constable Tarasoff encounters the two men in the Silverado which had stopped at Mr. Kwong's pickup truck at 4:57 a.m.).

(n) at 5:28 a.m., BlackBerry #1 is in communication with Roar!, again, and the following exchange occurs:

Roar!: Where are you?

BlackBerry #1: Trying to escape.

Roar!: Have you gotten ahold of the Beaver?

BlackBerry #1: No.

BlackBerry #1: Pull battery out of the phone as well as the chip, the chinks, I mean.

Roar!: So what, the heat's on?

BlackBerry #1: Hell fucking yes, you are more than likely being watched right now.

Roar!: Ouch. So what, are they doing parallels?

BlackBerry #1: I'm not too sure what that means. All I know is I've seen four undies.

D. Discussion

[95] During the course of this trial, the matters in issue narrowed considerably to focus on the essential question of whether Mr. Mann was one of Mr. Kwong's kidnappers; accordingly, it has not been suggested that the evidence does not establish the following:

- (a) that on June 7th, 2006, Gary Kwong was kidnapped at gunpoint and held for ransom;
- (b) that the kidnapping began with Mr. Kwong being forced into the rear seat of his Ford Ranger pickup truck and taken to his apartment on Saba Road by three young men;
- (c) that the driver of his pickup truck was a young East Indian or East Indian-looking man, and that the other two were young Caucasians, one of whom was William Joshua Scott, also known as Beaver;
- (d) that at the apartment building, the two Caucasian kidnappers escorted Mr. Kwong through the secured front entrance;
- (e) that this escort was captured by security cameras;
- (f) that the Caucasian kidnappers entered Mr. Kwong's apartment;

- (g) that while there, these kidnappers communicated, using cell phones, with one or more persons outside the apartment;
- (h) that while in the apartment, the kidnappers looked for court papers, wielded firearms, confined Mr. Kwong and Ms Ma, stole property, and demanded a ransom;
- (i) that the two kidnappers escorted Mr. Kwong to his Dodge Caravan and used it to leave the area and hold Mr. Kwong;
- (j) that Mr. Kwong was held for ransom by his kidnappers for approximately 13 hours;
- (k) that during the time Mr. Kwong was held at various remote locations, the kidnappers had many telephone communications with Vivian Ma, Cliff Tang, and others;
- (l) that during the period Mr. Kwong was held, he was transferred from his Dodge Caravan to the trunk of William Scott's Volvo sedan;
- (m) that the kidnappers did not collect the ransom and Mr. Kwong was released from the Volvo trunk by Mr. Scott at about 8:30 a.m. on June 8th, 2006;
- (n) that after Mr. Kwong was removed from his pickup truck to be escorted into his apartment building, he did not see the East Indian driver of his pickup truck again during the kidnapping;
- (o) that at some point in time between Mr. Kwong's removal from his pickup truck and 3:00 a.m. on June 8th, Mr. Kwong's Ford Ranger was driven from Mr. Kwong's apartment to the mini-mall at Blundell and Garden City Road, where it was parked and locked;
- (p) that at approximately 5:00 a.m., a Silverado pickup truck, B.C. Licence Number 0216 JV, pulled up to the Ford Ranger;
- (q) that a man in the front passenger's seat of the Silverado stepped from the truck and opened the passenger door;
- (r) that after a short time the passenger returned to the Silverado and it drove off;
- (s) that the Silverado parked nearby at Ash and Blundell and two men stepped from it;
- (t) that these men had a brief encounter with Constable Tarasoff before leaving on foot;
- (u) that approximately 35 minutes earlier, Constable Athwal had a brief encounter with the lone occupant of the same Silverado on River Road in Richmond;
- (v) that at approximately noon on June 8th, 2006, Rajan Mann, Bhupinder Benning, and William Scott were in conversation outside Mr. Scott's residence in New Westminster; and
- (w) that at 12:35 p.m. on the same date, Mr. Benning and Mr. Mann were arrested together in a Ford Explorer.

- [96] On the essential question of whether the Crown has proved beyond a reasonable doubt that Mr. Mann was one of Mr. Kwong's kidnappers, I begin with Mr. Kwong's description of his third kidnapper as an East Indian man in his mid-twenties, wearing sunglasses. The significance of this limited description is that it matches that of the man in the surveillance videotape who appears: (a) to be associated with Mr. Scott; and, (b) to be propping open the lobby door for Mr. Scott.
- [97] In addition to the physical similarities and an indication of familiarity with one of the known kidnappers, the links to time and place are noteworthy (i.e., a young East Indian-looking man is captured by the surveillance video very shortly after Mr. Kwong was escorted through the same door by his Caucasian kidnappers); moreover, the lobby is shown to be otherwise quiet during the relevant period.
- [98] The best of the tendered surveillance images of the East Indian-looking man are of relatively good quality. They show that he is tall and very slim, with long arms and legs. They show the features of his face in profile. The man in these images is remarkably similar looking to the accused Rajan Mann, as he appeared: (a) in the courtroom; and, (b) in various photographs taken close in time to June 7th, 2006, and tendered into evidence. In this regard, it is noteworthy that Mr. Mann is very distinctive looking. He is tall and lanky. His face and neck are long. He has a prominent nose and jaw. His hair is relatively short and well-groomed, and his ears are fully exposed. His hairstyle exposes his very angular and well-defined hairline.
- [99] The good quality police surveillance photo of Mr. Mann, taken within 20 hours of the apartment security videotape images, shows the right side of Mr. Mann's face in profile. The images of the East Indian-looking man captured in the security video show the same right-side facial profile. The similarities between Mr. Mann and the East Indian-looking man in the security videotape are remarkable and, thus, the video images are compelling evidence of identification.
- [100] To the extent that this evidence may, however, fall short of establishing beyond a reasonable doubt that the East Indian-looking man was one of Mr. Kwong's kidnappers, and that Mr. Mann is the East Indian-looking man captured on the videotape, the Crown relies upon a substantial body of compelling evidence linking Mr. Mann to the kidnapping, in support of such determinations. Arguably, most compelling among this evidence is Constable Tarasoff's identification of Mr. Mann as the driver of the Silverado truck which stopped at Mr. Kwong's pickup truck at approximately 5:00 a.m. on June 8th, 2006. The pickup truck was unlocked and opened by the Silverado passenger.

- [101] The evidence of Constable Tarasoff establishes important links between Mr. Mann and the Silverado, and Mr. Mann and the Kwong Ford Ranger. In relation to the former, it is noteworthy that the Silverado was seen by Constable Athwal at 4:30 a.m., very close to where Mr. Kwong's Dodge Caravan had been abandoned by the kidnappers. Given the time of day and the nature of the location, the sighting is significant in linking the Silverado to the kidnapping.
- [102] In relation to the latter, the evidence establishes that the East Indian kidnapper was left in possession of Mr. Kwong's pickup truck when Mr. Kwong was escorted into his apartment building by his Caucasian kidnappers. It is also clear that the truck was not used, thereafter, to transport and hold Mr. Kwong. It is evident that at some point after Mr. Kwong was escorted into his apartment, the truck was driven from Mr. Kwong's apartment to the mini-mall where it was parked.
- [103] It is noteworthy that the mini-mall was one frequented by Mr. Mann and Mr. Benning (according to their friend Mr. Hodgson) and located within a very short walk of their townhouse.
- [104] Shortly after 5:00 a.m., Constable Tarasoff had a close encounter and brief conversation with the driver of the Silverado. Dawn had broken and there was nothing impeding his view of this man. When Constable Tarasoff was shown a photo-pack lineup to see if he could identify the driver of the Silverado, he selected the photograph of Mr. Mann, and he expressed his certainty in his identification in his testimony. He was cross-examined extensively about this identification and remained unshaken. I am not persuaded that his certainty was in any way compromised merely because he looked at the photograph of Mr. Mann for 55 seconds before selecting it (particularly when the man in question was not previously known to him).
- [105] In relation to Constable Tarasoff's identification, it is noteworthy that other evidence independently establishes a clear and timely association between Mr. Mann and Mr. Benning, and links Mr. Benning to the Silverado as a user of it. Such evidence must be regarded as supportive of Constable Tarasoff's identification, in all the circumstances. It is also noteworthy that Constable Tarasoff's physical description of the Silverado passenger was consistent with Mr. Benning's physical appearance, and Mr. Mann and Mr. Benning were in one another's company only seven hours later at the New Westminster residence of Mr. Scott.
- [106] Based on the foregoing, I find that Mr. Mann was the driver of the Silverado when it stopped at Mr. Kwong's Ford Ranger at 5:00 a.m., and that such establishes a strong link between Mr. Mann and the kidnapping. It is, thus, very compelling supportive evidence on the question of identity between the East Indian-looking man captured on the security videotape and Mr. Mann.

- [107] Another body of compelling supportive evidence is that which shows a clear and timely association amongst the known kidnappers William Joshua Scott, Bhupinder Benning, and Rajan Mann. Police surveillance evidence establishes that Mr. Mann and Mr. Benning attended to Mr. Scott's New Westminster residence within approximately four hours of Mr. Kwong's release from the trunk of Mr. Scott's Volvo. Discussions among these three men while in front of Mr. Scott's residence suggested a present familiarity with one another, and motor vehicle documentation which showed that Mr. Mann was once the owner of the Volvo registered to Mr. Scott establishes a history of association between Mr. Mann and Mr. Scott. These three men are also linked to one another through remote communications devices, as discussed below.
- [108] Another piece of compelling supportive evidence is Mr. Kwong's identification of the driver in the June 15th, 2006, encounter, as Mr. Mann. Evidence of the car rental agreement strongly supports Mr. Kwong's identification. In all the circumstances, it must be regarded as much more than mere coincidence that this driver was the same man whom: (a) Constable Tarasoff identified as the man who stopped at Mr. Kwong's pickup truck during the course of the kidnapping, and (b) was in the company of the known kidnapper, Mr. Scott, within four hours of Mr. Kwong's release.
- [109] The final body of compelling supportive evidence is found in the communications from and between various remote communications devices during the course of the kidnapping. Two of these remote communications devices (the Styles and Walden phones) have been directly linked to Mr. Scott. Two are directly or indirectly (by close association with Mr. Benning), linked to Mr. Mann through his June 8th arrest with Mr. Benning. At the time of the Mann and Benning arrests, BlackBerry #1 and the Vorhees phone were seized.
- [110] In relation to BlackBerry #1, I am satisfied that the communications in the early evening of June 7th, 2006, and at 4:44 a.m. and 5:28 a.m. on June 8th, 2006, show that the user of this device was an active participant in the kidnapping. The timing of the communications and the references to "collecting info from the guy", "rolling around or parked", "a fucking gong show", "Beaver", "Rusty's", "the chink[']s", "[t]rying to escape", "the heat's on", "being watched", and "undies", are significantly revealing when considered with due regard for the evidence of Mr. Kwong and Constables Athwal and Tarasoff. They lead one to the inescapable conclusion that these are the communications of persons who were active participants in the kidnapping of Mr. Kwong, and that it was a joint criminal venture of three or more persons.
- [111] In relation to the Vorhees phone, there were many communications between it and the Walden phone during the course of the kidnapping. I am satisfied that it defies logic to suggest that they were not directly related to the kidnapping and the efforts to collect a ransom, particularly having due regard for the timing and patterns of these calls.

[112] As evidence tendered to support: (a) the identity between the East Indian-looking man in the security videotape and Mr. Mann; and, (b) the identity of Mr. Mann as one of the kidnappers, I am satisfied that the clear links between Mr. Mann and BlackBerry #1, and Mr. Mann and the Vorhees phone (as established by the timing and circumstances of their seizure) must be regarded as highly probative in all the circumstances. I am not persuaded that much turns on whether Mr. Mann was the actual possessor, or user, of either of these communications devices at the relevant times. The supportive link is established by the physical and temporal nexus.

E. Conclusions

[113] Taking into account all the evidence and admissions of fact, and having due regard for that which has, and has not, been placed in issue at this trial, I am led to the following inescapable conclusions:

- (a) that on June 7th and 8th, 2006, Mr. Kwong was kidnapped by at least three men, two of whom were William Joshua Scott and Rajan Mann;
- (b) that a firearm was used in the kidnapping;
- (c) that Mr. Kwong was kidnapped with the intent that he be held for ransom;
- (d) that Mr. Kwong was held for ransom;
- (e) that during the course of the kidnapping, the kidnappers broke and entered into the residence of Mr. Kwong and his wife, Vivian Ma;
- (f) that during the break-in, the kidnappers unlawfully confined and robbed Mr. Kwong and Ms Ma with the use of a firearm;
- (g) that during the kidnapping, Mr. Kwong's Ford Ranger, valued in excess of \$5,000, was stolen from him; and,
- (h) that during the kidnapping, Ms Ma and Cliff Tang were extorted with the use of a firearm.

[114] In relation to Mr. Mann specifically, I conclude:

- (a) that Mr. Mann is the tall, young East Indian-looking man captured in the apartment security videotape;
- (b) that Mr. Mann was the driver of Mr. Kwong's pickup truck at the initial stages of the kidnapping;
- (c) that Mr. Mann had the keys to Mr. Kwong's pickup truck and maintained care and control over it from the outset of the kidnapping to at least 5:00 a.m. the next morning;
- (d) that Mr. Mann was a willing, informed, and active participant throughout the kidnapping, either with or without Mr. Benning in his company; and,

- (e) that Mr. Mann is, thus, a party to all the kidnapping-related offences for which he stands charged.

[115] In relation to these essential conclusions, I add the following:

- (a) The case against Mr. Mann is overwhelming. To the extent that it is a circumstantial one, I am satisfied that there are no other rational inferences or conclusions which may be drawn from (i) the evidence, (ii) any absences of evidence, or (iii) any frailties within the evidence.
- (b) There is no mistaking Mr. Mann and Mr. Benning for one another in either body type or facial features. One is short and stout, while the other is tall and lean. One is long-faced and large-featured, while the other is round-faced and small-featured. To the extent that some of the evidence is capable of incriminating either Mr. Benning or Mr. Mann, this does not detract from its probative value in relation to the identification of the tall and lean East Indian-looking man captured in the security surveillance tape as Mr. Mann.
- (c) I attach little weight to Mr. Kwong's evidence that he detected a "Punjabi" accent in the East Indian driver's speech, notwithstanding evidence from others that Mr. Mann does not speak with such an accent. In this regard, I note as follows:
- i. that Mr. Kwong was somewhat equivocal in his evidence;
 - ii. that there is no basis upon which I might reasonably assess Mr. Kwong's skill in detecting and identifying various accents;
 - iii. that Mr. Kwong was in the company of the East Indian driver for a very short period of time, during which they were not engaged in anything approaching normal conversation;
 - iv. that many people are capable of adopting various ethnic accents at will, thus accents will often not be very reliable as evidence of identification; and,
 - v. that the evidence which establishes the identity of Mr. Mann as a kidnapper is overwhelming.
- (d) Similarly, I attach little weight to reported differences between the amount of facial hair of the East Indian-looking man in the security video at 5:00 p.m. on June 7th and Mr. Mann in surveillance photos on June 8th at noon. To the extent that there appears to be a difference, I do not regard it as significant in all the circumstances. In this regard, I note:
- i. that 20 hours had elapsed between the taking of these two images;
 - ii. that the lighting and shadowing are quite dissimilar in the two images;
 - iii. that arrest photographs show that Mr. Mann is a man with relatively heavy and very dark facial hair;
 - iv. that in such men, a day's growth might well make a noticeable difference in appearance, especially in some lighting;

- v. that there is no evidence of how quickly Mr. Mann's beard grows; and,
 - vi. that the evidence establishing the identity of Mr. Mann as a kidnapper is overwhelming and is not diminished by the purported differences in facial hair.
- (e) Given the overwhelming case of identification based upon the evidence considered, I am satisfied it is not necessary to address the alleged "after the fact" conduct of interference with Crown witnesses, which the Crown alleges against Mr. Mann; and, lastly,
- (f) I am satisfied that there is no reasonable basis on the evidence to distinguish among these three accused in relation to the kidnapping and the offences committed in the course of it. The evidence establishes that the accused were acting in concert with a common purpose and mutual understanding throughout, notwithstanding any differences in their individual roles.

F. Disposition

[116] Rajan Mann is guilty, as charged, on Counts 1 through 8 on the Indictment. The rule against multiple convictions for the same delict precludes the entry of a conviction in relation to Count 5: see *Kienapple v. The Queen*, [1975] 1. S.C.R. 729. I understand the Crown will enter a stay of proceedings on Count 12.

"The Honourable Mr. Justice Bernard"

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