
CANADA / JUDGMENT

R. v. Marozoff

2010 BCSC 178

COURT

Supreme Court of British Columbia

DECIDED

9 February 2010

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2010 BCSC 178 R. v. Marozoff

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Marozoff,

2010 BCSC 178

Date: 20100209

Docket: 27082-3

Registry: Prince George

Regina

v.

Steve Marozoff

Restriction on publication: A publication ban has been imposed under section 486.4(1) restricting the publication, broadcasting or transmission in any way of evidence that could identify a complainant or witness, referred to in this judgment by the initials M.S. This publication ban applies indefinitely unless otherwise ordered.

Edited for Publication Purposes

Corrected Judgment: The front page and the text of this judgment were corrected at paragraphs 35, 56, 65, 66, 98 and 99 where changes were made on December 19, 2012.

Before: The Honourable Madam Justice Bruce

Reasons for Judgment

Counsel for the Crown:

C. Fedder, G. McDonald

Counsel for the Accused:

K. Aartsen

Place and Date of Trial:

Prince George, B.C.

January 18 - 22, 2010

Place and Date of Judgment:

Prince George, B.C.

February 9, 2010

INTRODUCTION

- [1] The accused is charged with kidnapping and unlawful confinement of M.S. (the "complainant") between March 30, 2008 and April 8, 2008 at or near the City of Prince George, British Columbia contrary to s. 279(1.1)(b) and s. 279(2) of the Criminal Code. He is also charged with assault causing bodily harm, assault with a weapon, threatening, sexual assault and extortion of the complainant between March 30, 2008 and April 8, 2008 contrary to s. 346(1.1)(b), s. 267(a), s. 267(b), s. 271, and s. 264.1(1) of the Code. The Crown maintains the offences took place when the complainant was abducted, transported to, and confined against his will in and about a residence located at 2225 Victoria Street, Prince George, BC (the "Victoria Street residence"). The Crown says the complainant was being punished for taking drugs and money that belonged to Odessa Marchand. The Crown also says there were five other persons involved in the offences, apart from the accused. These persons include Amanda Hanschen, Carlin Sponagle, Odessa Marchand, and Tyler Coe; the fifth person was not identified by the complainant. Tyler Coe has since died of a drug overdose.
- [2] The Crown called three RCMP witnesses and the complainant. The accused did not call evidence. There were two with warrant searches of the subject residence. The first search occurred on April 9, 2008. The accused was present at the residence when the search warrant was executed and was subsequently arrested. The second search occurred on April 12, 2008. There were no persons found in the residence at the time of this search. The RCMP did not secure the residence between April 9, 2008 and April 12, 2008; however, one of the two entry doors was blocked from the inside and the other door was locked when the police attended to conduct the search.

- [3] There are no Charter issues raised by the defence. The accused does not dispute the admissibility of the evidence obtained during the searches of this residence.

ADMISSIONS

- [4] The accused has made admissions concerning the continuity of the police exhibits once they came into police custody; however, there is a dispute concerning the discovery of a cellular telephone in the possession of the accused at the time of his arrest. It is the accused's position that the Crown has not proven beyond a reasonable doubt that Cst. Charlebois located the cellular telephone in the accused's possession on April 9, 2008 at the time of his arrest at the Victoria Street residence.
- [5] The two forensic expert reports authored by Ms. Meagan Clark concerning forensic data recovered by the RCMP and an expert report by Ms. Megan Ritchie concerning electronic data recovered from a cellular telephone are admitted by consent. The accused admits the conclusions contained in Ms. Ritchie's expert report. The accused also admits the following conclusions from Ms. Clark's reports:
1. Mr. Sponagle's DNA was located on portions of clear tape (police exhibit 4 and identified by Marker 3 in police photographs).
 2. M.S.'s DNA was also located on portions of that same clear tape (police exhibit 4), on another piece of clear tape (police exhibit 8 and identified by Marker 6 in police photographs), the swab from the seat of the wicker chair (police exhibit 10), and the interior (as received) index finger of the latex glove (police exhibit 56).
 3. DNA profiles from the bottom portion of the handle, head, and upper portion of the handle of the Oral B toothbrush (police exhibit 54) and the exterior and interior of the latex glove (other than the index finger), are of mixed origin consistent with having come from at least three individuals, at least one of which is male. However, due to the complexity of the mixtures and the weakness of some components, it was not possible to make meaningful comparisons with M.S.'s DNA samples.
- [6] Ms. Ritchie's expert report relates to the data recovered from an LG cellular telephone seized by the RCMP on April 9, 2008. It is admitted that the number associated with this telephone was 250-208-5123. The accused also admits that data recovered from this telephone included stored telephone numbers and associated nicknames as follows: "Od" associated with 1-250-613-8715; "C" associated with 640-1551; and "M" associated with 1-250-617-0742.
- [7] It is admitted that between April 1, 2008 and April 2, 2008, there are four logged calls from the LG telephone to "M"; 11 logged calls to "C" between April 1, 2008 and April 4, 2008; and 64 logged calls to or from "Od" between April 1, 2008 and April 4, 2008.

- [8] The accused admits that when Carlin Sponagle was arrested on May 7, 2008 he had in his possession a Motorola cellular telephone with a telephone number of 250-640-2495. In addition, the accused admits that in her statement of May 8, 2008, Amanda Hanschen provided her telephone number as 250-617-4156.
- [9] Telus records were obtained for telephone numbers: (1) 250-208-5123; (2) 250-613-8715; (3) 250-640-1551; and (4) 250-617-4156. The accused admits that the LG telephone number was registered to Wess Reid; that the "Od" number was registered to Nicole Gatekeeper; that Amanda Hanschen's telephone number was registered to Miss Kali Project; and that the "C" telephone number was registered to Kenny Kemp.
- [10] The Telus call logs were entered by admission and, further, the accused specifically admits the following telephone calls were made:
1. 250-298-5123 (LG cellular telephone) called "C" at 17:39 hours on April 1, 2008.
 2. The LG cellular telephone called "Od" seven times between 18:42 and 20:53 hours on April 1, 2008.
 3. The LG cellular telephone called "M" four times between 23:21 hours on April 1, 2008 and 02:53 hours on April 2, 2008.
 4. The LG cellular telephone called "Od" seven times between 05:17 and 11:18 hours on April 2, 2008.
 5. The LG cellular telephone called "Od" five times between 11:18 and 18:31 hours on April 3, 2008.
 6. The LG cellular telephone called Amanda Hanschen eight times between 17:38 hours on April 3, 2008 and 00:37 hours on April 4, 2008.
 7. The "Od" telephone called Amanda Hanschen's telephone number 10 times between 19:54 and 22:11 hours on April 3, 2008.
 8. The "Od" telephone number received calls from the "C" telephone throughout the day and up until 23:36 hours on April 3, 2008.
 9. On April 4, 2008 the "Od" telephone called Amanda Hanschen's telephone at 10:11 hours and 250-617-4156 called the "Od" number at 10:13 hours on the same day.

SUMMARY OF THE EVIDENCE

- [11] The complainant is 56 years old. He is 5'6" and in April 2008 he was about 160 lbs. Until the year 2000, he lived a rather normal lifestyle. He married his first wife in 1975 while working as a cook and had two sons who are now in their late 20s. In the late 1970s he trained to be a plumber and completed an apprenticeship at BCIT. The complainant worked in this trade until the mid-1990s. In 1989, he divorced his first wife and later remarried. He has a daughter from this second marriage. In 1995 they moved to Vanderhoof where he began a

business with his wife doing graphic design, printing, and silk screening. The business did very well and the family prospered. The complainant became involved in the community of Vanderhoof; he became president of the Kinsmen club, vice president of the Chamber of Commerce, and a member of several committees struck for public purposes. He was even approached to run for city council.

- [12] The good life enjoyed by the complainant began to unravel in 2000 when his second wife left him to reside in Salmon Arm with their daughter. She was unable to manage the stress associated with their businesses. Because she was the graphic designer, the complainant could not carry on business without his wife's assistance. He was forced to wind down the business and seek other work. The complainant moved to Prince George later in 2000 and attempted to reconcile with his wife. She surprised him by filing for divorce and garnishing his bank accounts. Although he was able to obtain work as a plumber, and was earning a good income, the complainant was devastated by the loss of his family.
- [13] At some point in 2000 the complainant went to a party and was offered cocaine. While at first he was able to limit his smoking of crack cocaine to weekends, it quickly became a serious addiction and his use was almost daily. Because the complainant realized the addiction was taking a strong hold on him, he travelled to the coast to stay with his sister while he waited for a place at the Maple Ridge Recovery Centre. It took almost six months to secure a place at the Centre and during this time he abstained from drugs. The complainant completed the drug program and returned to Maple Ridge. However, within a month of his return, the complainant relapsed and began using drugs again.
- [14] The complainant continued to work as a plumber in Prince George doing service work and spent a lot of money on cocaine. After two years he obtained a job doing construction plumbing, which required him to travel to different places outside of Prince George. Even though he was seriously addicted to cocaine, the complainant was able to work and was promoted to supervisor and placed in charge of a small group of workers.
- [15] In early 2008 the complainant began working on a job in Quesnel and his employer rented a house for the crew to stay during the week. On the weekends the complainant went back to Prince George and resided with his girlfriend, Sandra. She lived at 4321 Chingle Street. This is the address used by the complainant for his vehicle insurance and registration. At this time he owed a 2007 Pontiac Torrent.
- [16] The complainant's cocaine addiction continued to be an ever present part of his life and it began to interfere with his work. One weekend his employer asked him to work on a project in Prince George and he failed to complete the work due to a cocaine binge. When he arrived for work in Quesnel on the following Monday, he was told that he would no longer be required as a supervisor and should return to Prince George to await a call about any additional work that might be available. The complainant returned to Prince George with many of his clothes and other belongings in the back of his vehicle, intending to reside with Sandra. Unfortunately, he did not go to her home and, instead, went looking for cocaine.

- [17] At this time, in or about March 2008, the complainant's major supplier of cocaine was a friend named Calvin Brown who lived in an apartment, forming part of a six-suite building at 2224 Upland Street in Prince George (the "Upland Street residence"). This apartment was a "crack shack" where drugs were bought and sold and the complainant had obtained cocaine there on many occasions. Usually Calvin would make a call and someone would deliver the drugs. Calvin's boss and main supplier of cocaine was Odessa Marchand. Odessa is a First Nations/Aboriginal woman who is about 5'4" to 5'6" tall; she has long dark hair, a fair complexion and weighs about 150 to 160 lbs. The complainant met Odessa when she delivered drugs to Calvin's apartment. He became friendly with Odessa and they consumed cocaine together. Eventually, Odessa gave the complainant her cellular telephone number and permitted him to buy drugs from her directly. She did this because he had a car and was not on the street attracting the police. The complainant also spent a lot of money on drugs; at that time he was working and could spend \$100 to \$300 each time he purchased cocaine.
- [18] The complainant and Odessa consumed drugs at the Upland Street residence and at her home, which was the Victoria Street residence. The Victoria Street residence was a duplex. Although there were two doors, the side door was used for entry because the front door was blocked by stacks of furniture and other items on the inside. A steel bar was used to secure the side door, as well as a portion of a bi-fold door on occasion. The complainant also described the residence as having a main floor with a kitchen, two bedrooms, a bathroom and a living room. There was an unfinished basement with an open space and an area partly bounded by three unfinished walls. Carlin Sponagle, who was Odessa's boyfriend, lived with her at this residence and they shared one of the bedrooms. The Victoria Street residence was not a crack shack similar to the Upland Street residence where people came and went regularly to buy drugs. Only a few of Odessa's friends came to the Victoria Street residence.
- [19] The complainant testified that he met a man named "Steve" at the Victoria Street residence. Steve worked for Odessa selling drugs either out of the Upland Street residence or on the streets of downtown Prince George. The complainant also provided rides to Steve based on Odessa's direction. The complainant identified the accused as "Steve" in a photograph line up on April 10, 2008. He also described "Steve" in evidence as a white male, about 6 ft or taller, short brown hair, fairly stocky build, and about 180 lbs or more. The complainant made an in court identification of the accused as "Steve". While in his first statement to the police the complainant described "Steve" as having tattoos all over, mostly on his arms, he testified in cross examination that he was in error in regard to the tattoos. Photographs of the accused's upper body show only one tattoo on his upper arm. The complainant denied that this mistake caused him to believe that he had identified the wrong person as having abducted and beaten him. He remained certain that Steve was the accused and that he had committed the acts leading to the charges. In addition to the physical description of "Steve", the complainant also told the police that Steve did not have a vehicle and used a bicycle to go downtown to sell drugs on the street.

- [20] Through Odessa, the complainant was also introduced to a residence located at the corner of Ahbau Street and Chilaklo Street (the "Ahbau Street residence") which was used as a safe house where Odessa and Carlin could rest and store their personal belongings.
- [21] When the complainant was fired from his job in Quesnel, he immediately went to see Odessa for cocaine. He became heavily involved in consuming drugs full time. He would meet Odessa at the Victoria Street residence or at the Upland Street residence. Odessa and Carlin asked him to provide them with rides in his vehicle for drug transactions and other errands. He was paid for this in cocaine. He eventually moved all his boxes from the vehicle into the basement of the Victoria Street residence and slept in his vehicle. He took on jobs at the Upland Street residence; he acted as the door security and also sold drugs from the apartment. Carlin became known to the complainant as "C" and Odessa was known as "O" or "Od". Carlin was described as a white male, slight build, 140 to 150 lbs, about 5'9" or 5'10" tall, short light brown hair, and in his early 20's.
- [22] When the complainant began selling drugs for Odessa, she would determine when he worked and how much he could sell and for what price. Odessa would provide him with a quantity of cocaine and indicate how much money she wanted to get in return after it was sold. The complainant was paid with whatever amount of cocaine was left over after he secured the money Odessa dictated. She would often come to collect money after a couple of hours selling time or would send someone to pick up a specified amount of money. The complainant both sold drugs and collected money for Odessa.
- [23] The complainant testified that Tyler, who was a 17 year old male, worked for Odessa at the Upland Street residence. The accused also worked at the Upland Street residence, along with Calvin and his wife Sharon. Carlin worked there on occasion. The complainant testified that he worked with the accused at the Upland Street residence on a number of occasions before the events giving rise to these charges.
- [24] When Odessa first began using the complainant as an employee, she would contact him through Carlin; however, a week after he began working for her, she provided him with a cellular telephone. It was a pay and talk telephone that used minute cards that were purchased. It had no service contract. The phone was activated by a friend of Carlin's and the complainant did not know what information was given to Telus to activate the phone. Nor could he recall the telephone number. For the most part it was Odessa who contacted the complainant on his cellular telephone number; however, Amanda, Carlin, Tyler, Sharon, Lynn and the accused also called him to arrange for rides. Amanda is a woman who worked as a prostitute and who often smoked cocaine with the complainant. The complainant had met her a year before meeting Odessa. He described Amanda as fairly short at 5'2" or 5'3" tall, short dark hair, a little plump, and about 30 years old.
- [25] At some point in early April 2008 Odessa gave the complainant \$200 and a substantial amount of cocaine to be hidden in his vehicle for safe keeping. She was paranoid of the police discovering cocaine on her person. She also gave him payment in cocaine, an amount

equal to \$300 in value. This was for the complainant's personal use. The exchange occurred in the parking lot behind the Upland Street residence where the complainant usually parked his vehicle and slept at night. When he received the cocaine from Odessa, the complainant had been on a cocaine binge and had not slept for two or three days. Cocaine makes him euphoric and unable to sleep.

- [26] Although he wanted to sleep after receiving Odessa's property, he got a call from Amanda who wanted a ride to an apartment on Cuddie Crescent in Prince George. This was Rocky Peckett's apartment. He and Amanda drove there and they remained in the apartment smoking cocaine for several hours. (I note that the complainant's evidence about times are only estimates because when he is high on cocaine, he loses track of time and what day it is.) They finished all but a small portion of the complainant's personal cocaine while at this apartment and then left. He drove with Amanda to another residence at 5th Avenue and Johnston Street. They finished off the complainant's cocaine at this residence. With no cocaine left, the complainant decided to sell some of Odessa's drugs to make money and thereby make more cocaine available for himself as profits. At the 5th and Johnston apartment he sold \$400 worth of cocaine. At some point he and Amanda left this residence and went out of town to a BC Rail site and smoked cocaine with a night watchman in his trailer. They stayed at the trailer for several hours. When they left the trailer, the complainant drove Amanda to an apartment at 15th Avenue and Foothills Street (the "Foothills apartment"). He waited outside for about three quarters of an hour and then returned to the BC Rail site without Amanda. He did more cocaine with the night watchman and a few hours later got a call from Amanda. She wanted to be picked up at the Foothills apartment. The complainant obliged her and stayed at the Foothills apartment and smoked the rest of Odessa's cocaine. He also used the money he earned selling her cocaine to buy more for himself and Amanda. By this time one or two days had passed since he was given the cocaine by Odessa.
- [27] In cross examination, the complainant testified that he had smoked several grams of cocaine from his own supply and estimated that he had been up for three days before he started to use Odessa's cocaine. At that time the main symptom of the cocaine use was disorientation as to day and time so he could be mistaken on this estimate. He also estimated it took about two days to consume all but a small amount of Odessa's cocaine and, by the time he was abducted, he had been up for five days without sleep. He testified, however, that he remained reasonably aware of his surroundings while he used the drug and it was only after he stopped using that he crashed. While he agreed he told the police he had "lost a sense of reality", the complainant testified that he meant in terms of days and times. The complainant also testified that he does not lose track of who he is with while using cocaine.
- [28] Over this one to two day period, the complainant's cellular telephone kept ringing, but he did not answer it. He knew it was Odessa and that he would be in trouble for using her cocaine. The complainant testified that he believed he would be beaten when he was

discovered. As a consequence, he told Amanda that he was going to go to the coast to hide and asked if she wanted to come along. She agreed but first wanted to go to an apartment behind the BX pub on Carnie Street and 5th Avenue to make contact with a friend. The complainant drove Amanda to this apartment building and waited in the alley while she walked up some stairs to an apartment. The complainant remained in his vehicle and waited only a few minutes before Amanda returned. She was hungry and wanted to walk down the alley to a Petro Canada gas station at the corner of 5th Avenue and Carney Street. He agreed and they walked down only a few hundred meters to the gas station. The complainant was feeling nervous; he stood outside the gas station in the alley around the corner from the entrance and smoked a cigarette while Amanda went inside the station. It was early evening and just getting dark.

- [29] A short while later Amanda came out of the gas station and grabbed his left arm and pulled him toward a pizza place on the other side of the alley. Before they reached the half way point in the alley, Carlin came up on his right and the accused on his left and both grabbed an arm and coat sleeve. Carlin warned him not to struggle or try to get away. Carlin threatened to shoot him in the alley if he tried to escape. Carlin was always seen with a knife so the complainant knew the threat was serious. Although the accused did not appear to have a knife on this occasion, the complainant had seen him with a knife and a steel bar up his sleeve in the past. A vehicle pulled up behind them in the alley and Carlin directed the complainant to get in. Carlin opened the passenger door and pulled back the rear seat; the accused got in first and pulled the complainant in beside him. Carlin pushed him from behind. The complainant described the vehicle as a two door, light coloured Charger or Challenger that was fairly new. He had seen it on another occasion. The complainant was not able to identify the driver.
- [30] Once inside the vehicle, Carlin turned around in the front seat and, while on his knees, began to punch the complainant in the head; he said, "This is for treating Odessa like a bitch". The accused also began to punch him in the head. Both Carlin and the accused went through his jacket pockets. The accused held his arm and leaned into him. Carlin wanted to know where the complainant had left his vehicle. Carlin explained that he now owned the Pontiac Torrent because of what the complainant had done and it would have to be signed over to him. Carlin said there was no choice in the matter. Amanda remained outside the vehicle on the driver's side. The complainant heard Amanda tell Carlin where the Pontiac Torrent was parked. In response, the driver drove down the alley a short distance to where the complainant's vehicle was parked. Carlin and the accused forced the complainant out of the two door vehicle and pushed him into the rear seat of his Pontiac. Carlin said they were going back to the Victoria Street residence. Carlin told the complainant that if he did not cooperate things would go very badly for him. To the complainant this meant more beatings or maybe death. Still holding on to the complainant, the accused retrieved his keys from a pocket and Carlin drove the Pontiac to the Victoria Street residence. The accused remained in the rear seat immediately beside the complainant.

- [31] Amanda did not accompany them to the residence on Victoria Street; however, she arrived at some later time. Carlin told the complainant that Amanda had "set him up".
- [32] Once they arrived at the residence, the accused held on to him while Carlin walked up to the door. Carlin knocked and was let in by someone who the complainant did not see. They both took hold of the complainant and led him inside. The complainant was directed down the stairs to the basement; Carlin went first and the complainant followed with the accused close behind. Carlin directed him to sit in a white wicker chair in the small area bounded by three roughed in walls. While he and the accused waited, Carlin went upstairs to see if Odessa was awake. Carlin returned a few minutes later and told the accused that they would begin without Odessa. Carlin made it clear to the complainant that he was to get a beating for what he had done to Odessa.
- [33] Carlin and the accused began to punch the complainant in the face and head; the accused stood on the left side and Carlin was on the right side. They kicked him and punched him in the ribs. Both the accused and Carlin wore bicycle gloves with the fingers cut out. The complainant lowered his head and put his arms up to block their punches. While there was lots of talking by the accused and Carlin, the complainant could not recall precisely what was said. However, he recalled that Carlin asked about Odessa's money and her cocaine a couple of times. During this beating the accused and Carlin went through the pockets of the complainant's jacket and jeans searching for Odessa's drugs or money. They threw on the floor some small change, cigarettes, a lighter, and a small piece of rock cocaine. Later, when Amanda came into the basement, she rummaged through the complainants' property indicating that she was entitled to some of the items. Carlin told her that she would be getting her \$100 from Odessa.
- [34] The complainant testified that the accused and Carlin were very aggressive with him during the beating. While Carlin was all business, the accused appeared to be enjoying himself. He laughed while the complainant endured the beating. The complainant was very scared and in a great deal of pain.
- [35] At some point during this beating Tyler came into the basement and Carlin invited him to take a few punches at the complainant. Tyler connected a couple of times; however, they were not hard and the complainant blocked the blows with his arms.
- [36] During this first beating Carlin ordered the complainant to undress and he felt forced to comply. When he was naked, the complainant was ordered to sit in the wicker chair again. The accused and Carlin used clear packing tape to bind his hands behind his back. At some point his legs were also bound to the chair with the packing tape. One of the complainant's white socks was pushed into his mouth and taped over with the packing tape. The complainant identified a bloodied sock seized by the RCMP on April 9, 2008 as the style of sock he was wearing at the time. When the complainant was tied in this fashion, Carlin took out a crack pipe and smoked the small piece of cocaine that had been in the complainant's pocket. When the bowl from the crack pipe was very hot, he pressed it against the

complainant's chest and burnt his skin. The burn left a scar on his chest. The beating continued with several more blows to his head. The complainant was hit directly on the nose and this made it difficult to breathe with the sock in his mouth. He began to choke on the blood and mucus in his mouth and, when Amanda yelled out that he was choking, Carlin took the sock out of his mouth. Amanda left the basement shortly after this incident.

- [37] At this time Carlin urinated on the complainant while the accused laughed. At some point thereafter the complainant ended up on the floor with his hands still tied behind his back. His legs had come undone or had been released. Carlin kicked him in the hip. The complainant could barely remain conscious due to the pain and exhaustion. He remained unclothed and began to shake from cold. Carlin placed a cloth on top of him. It was at this point that Carlin said the beating was over. He told the complainant to go upstairs and take a shower and rest. They were then going to discuss how the complainant was to repay the debt owed to Odessa. Carlin also indicated that he would be taking possession of the Pontiac Torrent as part of the repayment. The complainant identified his insurance papers which were seized by the police during a search of the Victoria Street residence on April 9, 2008.
- [38] While the complainant was permitted to have a shower and rest, he was not allowed to leave the residence. The accused watched him while he showered and insisted that the bathroom door and the shower curtain remain open. To taunt him, the accused threw laundry detergent in the complainant's face while he showered causing his eyes to sting. Carlin told the complainant he would not be leaving until the debt was settled. The complainant was battered and bruised and barely able to walk. Thus he was in no position to argue with Carlin. After the shower the complainant was given some clothes to wear but no towel to dry off. He was then permitted to sleep in a rear bedroom across from Odessa and Carlin's room.
- [39] The complainant was able to sleep and was woken up when it was light. Carlin ordered him to go into the kitchen and he sat on an orange plastic chair that was positioned near the stove. The accused was in the kitchen at this time. Carlin left the residence and directed the accused to keep an eye on the complainant. After Carlin left, Odessa came into the kitchen. Without looking at the complainant, she opened the freezer and took out her crack pipe. She kept it there so that she could smoke the resin in the pipe after the cocaine was finished. The crack pipe was described as a long brass stem with a glass bowl at one end and a plastic tube at the other end. The glass bowl had angular sides. Odessa struck the complainant across the bridge of his nose with the bowl of the pipe with full force. This caused a cut on his nose that bled down his shirt and on to the floor. Odessa just said, "Why?" and seemed angry and disappointed. Odessa told the complainant to clean up the blood and immediately thereafter she left the residence. The accused gave the complainant a dish cloth to clean the floor and his nose and then directed him to clean the kitchen. The complainant mopped the floor, he washed the dishes, wiped the stove and cleaned the bathroom.
- [40] After Odessa left the residence, the accused began drinking vodka out of the bottle. At first, the accused's attitude softened toward the complainant; however, as he continued to consume alcohol his mood became more restless and aggressive. Lynn, an IV drug user who

is a friend of Odessa's, came to the residence and saw the complainant in the kitchen. She went into the bathroom and stayed there for some time. The accused did not let the complainant out of his sight and did not permit him to go into other rooms in the residence. Again, the complainant feared a beating if he argued with the accused. The complainant was also very weak; he had not eaten in four days and had no money and no vehicle or cellular telephone.

- [41] While Lynn was in the bathroom, the accused ordered the complainant to go down into the basement. He was told to sit on a wooden chair (identified in Exhibit 3, photo No. 29). The accused had the vodka bottle in his left hand and picked up a golf club that was either on the floor or leaning up against a wall. The accused smacked the club on the floor and then struck the complainant across his forehead just above the left eye. The blow caused a 2 inch bump to appear. The accused laughed and stuck his finger into the swelling, pressing down to cause the complainant more pain. The complainant identified the golf club used by the accused as the one seized by the police during their search of the Victoria Street residence on April 9, 2008.
- [42] After striking the complainant with the golf club, the accused ordered him to take off his clothes and sit in the white wicker chair (also identified in Exhibit 3, photo No. 29). The complainant obeyed feeling he had no choice after being struck with the golf club that the accused still held in his hand. The complainant was beaten by the accused after removing his clothing. At some point the accused picked up a long rope that was tied into a noose and struck the complainant on the back of his head. The complainant described the rope as quite sturdy, about 10 to 12 feet long, and about three quarters of an inch thick. The accused began talking about a friend who tried to commit suicide and placed the noose over the complainant's head. The accused tried to tighten the noose, but the knot would not slide. The accused ordered the complainant to retie the knot so it would tighten. The complainant did as he was directed and the accused again placed the noose around his neck. This time the knot tightened up and the accused looked around for a place on the ceiling to tie the rope, but could not find one. The accused yanked on the rope and pulled the complainant out of the chair and he fell to the floor. The complainant identified the rope as one seized by the RCMP during their search of the Victoria Street residence on April 9, 2008.
- [43] The complainant was ordered back into the wicker chair. The accused tied the complainant's hands behind his back with a belt that the complainant had been wearing the previous night. The accused then crouched in front of the complainant within inches of his face and told him that this was now just for his own pleasure and enjoyment and had nothing to do with Odessa's debt. The accused told the complainant that he was going to kill him. The beating continued and the accused picked up the golf club and swung it at the complainant's groin. The complainant moved and it struck his left inner thigh and left a large bruise. The accused became very angry and told him to keep his legs apart.

- [44] The accused then picked up an aerosol can that the complainant thought was hair spray because of the sweet perfume odour produced when it was sprayed. The accused sprayed the can in the direction of the complainant's chest and groin and then ignited the spray with a lighter. While the flame did not burn the complainant's flesh, it singed his pubic hair and was very painful. When the complainant cried out, the accused told him to be quiet and then tied a dark coloured bandana over his mouth. The burning continued and the complainant rolled off the chair to protect himself. The accused continued to light the aerosol spray over his back and buttocks. The last time the accused used the aerosol spray he sprayed it directly on to the complainant's back and lighted it. This was extremely painful, but did not burn the skin.
- [45] The accused picked up a utility blade from the floor and put his knee or foot on the complainant's back. The complainant was still on the floor at the time. The accused began carving letters into the complainant's left shoulder blade area. He told the complainant that he was going to carve the word, "goof" into his back. When he finished carving letters, the accused used the blade to cut deeper lines down the centre of the complainant's back. These cuts were very painful and bled. The accused poured vodka on the cuts and urinated on the complainant's back. The complainant testified that it is common to find blades in a place where drug users frequent because they are used to cut up the rock cocaine.
- [46] The accused then grabbed the complainant's arm and flipped him over on to his back. He grabbed the complainant's penis and tried to pick him up by it. He succeeded in lifting all but the complainant's head and heels. This was excruciatingly painful. After this event, the accused ordered the complainant to get on his knees and lean forward. The accused then penetrated the complainant's rectum with a toothbrush. The complainant testified that he got a glimpse of the toothbrush when his head was turned to the side. This occurred at least twice. The accused then ordered the complainant to kneel in the wicker chair facing the back of the chair. The accused picked up a rubber glove and put it on his hand and then forced two fingers into the complainant's rectum at least twice. With the rubber gloves still on the accused tried to force his fingers up the complainant's nose.
- [47] At some point after these events the accused removed the bandana and the belt from the complainant's hands. He ordered him to stand at the foot of the basement stairs and called up to Lynn to come to the top of the landing. She came and sat at the top of the stairs. The accused ordered her to look at the complainant who stood hiding his private parts with his hands. The accused then struck the back of the complainant's hands with the golf club. The complainant described Lynn to police but he did not have her last name. He has not seen her since these events occurred.
- [48] Not long after this occurred Carlin came back to the residence. When he came downstairs to the basement and saw what the accused had done to the complainant and, in particular, the bruises to his face, Carlin was very angry. He had made a plan for the complainant to do something that was now ruined because the accused made a mess out of the complainant's face. He instructed the complainant to go take a shower and clean up and apologized for

what the accused had done. There was an angry exchange between Carlin and the accused and the accused was ordered not to touch the complainant again. The accused supervised the shower again and would not permit the complainant to put on clothing. He demanded that the complainant wear a curtain like a dress. The accused grabbed the complainant's moustache and tried to pull it off. He ordered the complainant to shave it off and he complied against his will. He was again ordered to clean the house. The complainant washed the dishes, cleaned the counter tops and the stove and cleaned up the bathroom.

- [49] The complainant had still not eaten after four or five days. At some point he was given a slice of bread; however, this was all he was given to eat. While the complainant still wore the curtain, Tyler came into the residence. The accused said that if the complainant fought Tyler, he could put on some clothes. This did not occur and thus the complainant continued to wear the curtain. When Odessa returned to the residence she permitted the complainant to put on the clothes that had been given to him the night before.
- [50] In the days that followed, Odessa made it clear that the complainant was not to leave the residence. He was not permitted in any rooms but the kitchen and the bathroom unless someone was with him. He could not go into the living room where there was a large picture window. Odessa and the complainant began to discuss repayment of the debt. The complainant suggested \$2,500 and she agreed. He told Odessa that he could contact a family member to ask for money and she loaned him a cellular telephone to make the call. This call was made on Saturday, April 5, 2008. His sister, Sylvia, agreed to speak with her husband about the money and told the complainant to call back later that day. All of this was relayed to Odessa. Sylvia is 64 years old and has Leukemia. The complainant called Sylvia later that day but she could not manage a loan at that time. In cross examination, the complainant testified that he advised Sylvia that he was in grave danger; that he was being held and needed money. He did not give her an address where he was being held.
- [51] Once the beating stopped, Odessa sent the complainant out of the residence to do errands for her. She got him to go to the store a few blocks away to buy cigarettes and lottery tickets. He was given just enough money to buy these items and was ordered to return immediately or they would go out and find him. Odessa cautioned the complainant that if he did not come back he would be tracked down and beaten again. The complainant believed this would occur and returned each time to the residence.
- [52] When Sylvia was unable to loan the complainant the money he needed to pay the debt, he asked to use Odessa's cellular telephone to call his ex employer, Mr. McMullen. Odessa agreed and he made a call. Mr. McMullen said he would help, but they would have to meet first at the parking lot of the A & W located about six or seven blocks from the Victoria Street residence and two blocks from the Upland Street residence. Odessa asked the complainant to walk with her to the Upland Street residence. From there, she permitted him to continue on to the A & W to meet with Mr. McMullen. Odessa ordered him to come right back to the Upland Street residence after the meeting. The complainant met with Mr. McMullen in his service van in the parking lot of the A & W. Mr. McMullen agreed to help, but he needed to

talk to his accountant first. While in the van, the complainant saw Odessa drive into the A & W parking lot in his Pontiac Torrent accompanied by her mother and daughter. Mr. McMullen dropped him off at the Upland Street residence. The complainant testified that he did not believe he could go with Mr. McMullen out of fear that Odessa and the others would track him down.

- [53] In cross examination, the complainant testified that during his first telephone call with Mr. McMullen, he told him that he was being held against his will and that he was in pretty rough shape. When he met with Mr. McMullen at the A & W, the complainant disclosed that he was being threatened with more beatings if he did not return to the crack house. When Mr. McMullen saw his injuries, he asked what had occurred and the complainant said he was beaten. Mr. McMullen did not urge him to go to the police at this first meeting.
- [54] Also in cross examination, the complainant agreed that he tried to convince Mr. McMullen that he was in danger and needed the money to be safe from Odessa and her crew. He agreed that addicts commonly lie to dealers and others to get drugs and that they become adept at lying for this purpose.
- [55] The complainant waited in the back bedroom at the Upland Street residence and a few familiar people came by. The accused came to the room and nudged the complainant as he sat on the floor; however, the accused did not assault him at this time. By this point, the complainant had decided that his only choice was to wait for Mr. McMullen to get him the money to repay Odessa. When Odessa arrived at the Upland Street residence she was told that Mr. McMullen would help the complainant and that he was to call Mr. McMullen the next day.
- [56] The following day, April 8, 2008, Odessa gave the complainant permission to walk to a nearby pay telephone at a pub to call Mr. McMullen. The complainant made the call and Mr. McMullen picked him a short time later. Mr. McMullen did not have the money for Odessa. Instead, he told the complainant that they were going to the RCMP detachment to speak with Sergeant Sidhu. The complainant testified that he had not thought that going to the police was an option because he believed that only paying the debt would address the problem. Before going to the police station, Mr. McMullen took the complainant to the White Spot and he had his first meal in five days. Later that day he provided a statement to Cst. Charlebois. The complainant did not disclose the sexual assaults in the first statement because he was too ashamed to disclose these humiliating events. He was also exhausted and so much had happened over the course of his confinement. The RCMP arranged for the complainant to stay at a hotel and he slept that night. The complainant returned to the detachment two days later and provided an audio and videotaped statement when he was more rested. This statement disclosed the full details surrounding the offences charged.

- [57] The complainant identified the wounds inflicted during the beatings he received from the photographs taken by Cst. Charlebois after the first statement on April 8, 2008. In particular, he identified the burn mark on his chest as inflicted by Carlin with a crack pipe bowl and the large cut on his nose from the slash with a crack pipe by Odessa. He also identified the carving and cuts made by the accused on his back.
- [58] After providing the first statement, the complainant drove with Cst. Charlebois in an unmarked police vehicle to show them the residences on Upland, Victoria and Ahbau. While on Victoria Street, the complainant pointed out Odessa and Tyler walking up the street away from the Victoria Street residence where he was held captive. As they went by the Ahbau residence, the complainant saw his Pontiac Torrent parked in the driveway of the residence. He had not been in this vehicle as a driver or a passenger since the night he was forced into it by Carlin and the accused. Further, he had not given permission to anyone else to drive it.
- [59] After the first statement to the police, the complainant attended at the PG hospital to see a doctor about his injuries. He did not disclose the sex assaults to the doctor and he was not examined for rectal damage. After the second interview, he did not have the police take photographs of his singed pubic hair.
- [60] The complainant denied going back to the Victoria Street residence at any time after he gave his first statement to the police. While he agreed in cross examination that he went to the police partly to get protection from Odessa and her crew, he denied that he thought about the need to broaden his allegations to include more than just Odessa to fully protect himself. He also denied going to the police knowing that the more severe the allegations he made, the longer the sentence those accused of the offences would receive. The complainant testified that it was Mr. McMullen who convinced him to go to the police and to leave the drug lifestyle behind him. The complainant is now employed and has abstained from the consumption of drugs for a considerable period of time.
- [61] Cst. Charlebois was the officer in charge of the investigation. He first interviewed the complainant at the Prince George detachment on April 8, 2008 in the mid-afternoon. During this interview, the complainant made disclosures to Cst. Charlebois that led to subsequent steps taken in furtherance of the investigation. In particular, the complainant identified three residences associated with his kidnapping and confinement: (1) a residence described as located on Victoria Street, Prince George; (2) a residence described as located on Upland Street, Prince George; and (3) a residence located on Ahbau Street, Prince George.
- [62] The complainant also named the persons who were involved in the kidnapping and confinement as: (1) Odessa who also known as "Od"; (2) Carlin who was also known as "C"; (3) Steve; (4) Tyler; (5) Amanda; and (6) an unidentified person. The complainant did not know Steve's last name. He described "Steve" as about 210 lbs; very husky build; short or shaved head; 26 to 27 years old; 6'2" tall; Caucasian; and lots of tattoos, mainly on his arms. Apart from the tattoo description, the other descriptors are consistent with the accused's appearance. The accused has only one tattoo on his upper arm and one tattoo on his leg.

The complainant also described "Carlin" as having short hair; very slender build; about 5'10" tall; skinny face; hawkish nose like a beak, but not overly prominent; calm; about 180 lbs; and tattoos on his arm. Apart from the tattoos, Cst. Charlebois was able to confirm that this was an accurate description of Carlin Sponagle, who was subsequently arrested and charged along with the accused.

- [63] During the first interview, the complainant indicated that his vehicle, a silver coloured Pontiac Torrent, had been taken from him during the period of his confinement.
- [64] Cst. Charlebois made observations of the complainant during the first interview and, after it concluded, he took photographs of the injuries he could detect visually. During the interview, Cst. Charlebois observed the complainant to be nervous; the complainant appeared to be cautious of his movements indicating soreness in his shoulder areas, lower back and hands. He often touched these areas during the interview. In cross examination, Cst. Charlebois testified that the complainant seemed to be coherent during the interview; he was able to explain the events and answer questions coherently. He did not appear to be under the influence of drugs.
- [65] Based on this interview, Cst. Charlebois came to understand that the complainant had been free from his captors for a couple of days before he came to the police.
- [66] The photographs of the injuries show a distinct yellow colouring on the entire left side of the complainant's face and Cst. Charlebois testified that the same yellow colour was on the right side of his face. The forehead has three lacerations of half a centimetre in length; there is a two centimetre laceration on the left side of his nose and a bruised left eye. On his chest is a large scab similar to a burn mark. On his back there are two lacerations that are three to four centimetres long and one centimetre wide; a bruise three to four centimetres long, a bruise two to three centimetres long and a letter "G" carved into skin with other scrapes surrounding it.
- [67] At the conclusion of the first interview, the complainant was asked to point out the residences he referred to in his statement during a drive by. Cst. Raju drove an unmarked police vehicle with Cst. Charlebois in the rear seat and the complainant in the front passenger seat. While driving on Victoria Street, the complainant pointed out a residence located at 2225 Victoria Street as the residence where he was taken. At that time the complainant also pointed out two persons walking north on the west side of the sidewalk as Odessa and Tyler. While driving on Ahbau Street, the complainant pointed out a residence located on the corner of Ahbau Street and Chilaklo Street, with a street address of 1103 Chilaklo Street, as a safe house where "Od" and "Carlin" could be found. At this time the complainant also noted that his vehicle, a silver coloured Pontiac Torrent with licence plate number 869 CLM, was in the driveway of the Ahbau residence. Cst. Charlebois confirmed that this vehicle was registered to the complainant and subsequently arranged for it to be seized and towed to a secure bay adjacent to the RCMP detachment in readiness for a search. Lastly, while driving on Upland Street, the complainant pointed out a residence

located at 2102 Upland Street as associated with the offences charged.

- [68] Cst. Charlebois obtained a search warrant for the Victoria Street residence on April 9, 2008 for the purpose of recovering items that the complainant disclosed were used in the course of his captivity. These items included clear tape, a sock, a bandana, an Exacto type knife or razor blades, a copper crack pipe, a spray can and a lighter. In addition, the search warrant specified blood, saliva, and urine stains on the basement carpet, and blood-stained clothing. These were also sought as a result of disclosures made by the complainant.
- [69] In preparation for the search of the Victoria Street residence on April 9, 2008, Cst. Charlebois asked the complainant to describe the layout of the house. Cst. Charlebois prepared two rough sketches of the upper and lower floors of the residence in accordance with the complainant's instructions.
- [70] The RCMP arrived at the Victoria Street residence at 14:30 hours on April 9, 2008. The accused opened the door and they entered pursuant to the search warrant. Once the premises were cleared, the accused was arrested, Chartered and warned and taken to the RCMP detachment in Prince George. When the accused was arrested he had possession of a cellular telephone described as an LG telephone in his right hand. Cst. Charlebois took possession of this telephone but did not immediately give it over to Cst. Raju who was appointed exhibit officer. Cst. Charlebois testified that due to his inexperience with police investigations for serious crimes, and the excitement of the moment, he did not immediately realize that the cellular telephone could be relevant evidence.
- [71] Later, when the accused was booked into cells, Cst. Charlebois returned the LG telephone to the accused momentarily when it was recorded along with his other personal possessions. The original Prisoner Report or, as it is otherwise known, the booking sheet, dated April 9, 2008, indicates that included in the accused's personal effects lodged in a locker were a coat, pants, shoes, belt, hat, and cellular telephone. While a scanned copy of this document sent to counsel for the accused omitted all items except for the belt, I am satisfied based on the evidence of Linda Carter, who is the computer technician employed by the Prince George RCMP detachment, that the scanned document is in error. Ms. Carter testified that the scanner primarily recognizes text and sometimes does not properly read a symbol such as a check mark. As a matter of practice, all scanned documents are checked for accuracy; however, the documents are given only a cursory examination due to the volume of documents scanned for each police investigation.
- [72] After going through the personal effects with the accused present, Cst. Charlebois had the accused sign the Prisoner Report attesting to the accuracy of the items recorded as personal effects. Cst. Charlebois also signed the Prisoner Report and then lodged all of the accused's personal effects in a locker.
- [73] Sometime later on April 9, 2008, Cst. Charlebois retrieved the LG cellular telephone and the accused's shoes from the locker and handed them over to Cst. Raju to be marked as exhibits in the investigation. There is no indication on the Prisoner's Report that the cellular phone

was removed from the accused's personal effects, which is standard practice; however, there does not appear to be an area on the form for recording changes to the personal effects except when they are returned to the accused. Cst. Raju testified that Cst. Charlebois provided him with the LG telephone on the evening of April 9, 2008 while at the detachment and he marked it as police exhibit 27. In cross examination, Cst. Raju testified that he believed Cst. Charlebois told him that he found the cellular telephone in the accused's possession, but he has no written record of this. Cst. Charlebois' notes indicate that he seized the cellular telephone and the accused's shoes at 17:30 hours on April 9, 2008 after taking photographs of his clothing. The accused's shoes also became an exhibit and were given to Cst. Raju at the same time.

- [74] Returning to the search of the Victoria Street residence, after the residence was cleared, Corporal Kovacs, an officer trained in forensic investigation techniques, took photographs. The other officers waited outside. When Corp. Kovacs finished taking photographs, Cst. Raju entered the residence and was standing in the kitchen when Tyler Coe walked into the room. He arrested Mr. Coe for extortion at 15:45 hours on April 9, 2008 and Cst. Charlebois transported Mr. Coe to the detachment and lodged him into cells.
- [75] During the search of the residence, Cst. Raju recorded a number of police exhibits that represented items of interest to the investigation. A copper crack pipe was located in the freezer compartment of the kitchen fridge. Insurance papers and registered owner certificate for the complainant's Pontiac Torrent were located on the kitchen table. The complainant's address was noted as 4321 Chingle Street, Prince George. A roll of clear tape and tape pieces, a bandana, a utility blade, a long rope with a noose at one end, and a bloodied sock were located in the basement. The carpet in the basement was found to have blood stains. There were also blood stains on a white rattan chair.
- [76] Corp. Kovacs' photographs also show a can of lighter fluid on the basement floor, a golf club leaning up against a basement wall, a red tooth brush and a green tooth brush. Although the photographs did not clearly show a latex glove, Corp. Kovacs recalled seeing one in the basement under a tan coloured rattan chair. There appears to be a white object in Exhibit 3, photograph 25, that resembles a latex glove.
- [77] When the RCMP left the Victoria Street residence, they did not secure entry to it. The side door was locked and the front door was barricaded from the inside; however, no officer was posted at the residence for security.
- [78] On April 11, 2008 the complainant's vehicle was searched in the secure bay. The accused's fingerprints were not found in the vehicle. Cst. Raju located a lottery ticket that was dated Sunday, April 6, 2008 at 22:08 hours. It was purchased at a Husky gas station in Prince George. The RCMP seized the video surveillance tape from the gas station and it revealed the complainant at the counter in the gas station and he appears to be alone.

- [79] Cst. Charlebois conducted a second interview of the complainant on April 11, 2008 between 17:08 and 19:07 hours. This was a KGB statement. After the interview, it became apparent that there may be additional items of interest at the Victoria residence due to further disclosures by the complainant. Cst. Charlebois examined Corp. Kovacs' photographs and identified a golf club and two toothbrushes in them. On April 12, 2008 he obtained another search warrant for the residence on Victoria Street and attended at the residence at 20:29 hours. The side door was locked and the front door was still barricaded from the inside. No one answered his knock and announce and thus Cst. Charlebois battered down the door to gain entry.
- [80] Cst. Charlebois entered and cleared the residence with a number of other officers. There was no one inside. He took photographs of the basement of the residence, moving a bicycle wheel and a broom so that a latex glove found in that location could be photographed. In addition, he took photographs of a red toothbrush and a green toothbrush found on the floor in the basement. Although it appears that the red toothbrush is in a different position than in the first photographs taken during the April 9, 2008 search, neither Cst. Charlebois nor Cst. Raju knowingly moved it. In addition, photographs were taken of the golf club. These items were seized along with an aerosol can containing body spray and labelled AXE. The aerosol can was seized because the complainant indicated it had been used as a blow torch to burn him. The complainant also said that the spray can released a perfume odour. Cst. Charlebois experimented with the aerosol can by releasing its contents and holding a lighter to it. This caused a two foot long flame to come from the can that continued to burn as long as the lighter was activated. The constable also noted that the flame produced a perfume like odour.
- [81] On April 24, 2008 Cst. Charlebois met with Cst. Raju and Corp. Kovacs to determine which of the seized exhibits would be sent to the laboratory for DNA analysis. Because they were limited to eight items, they had to select the ones believed to have the best chance of producing identifiable DNA. They chose the items and sent them to the RCMP laboratory for analysis. While the DNA analysis found matches for the complainant and Mr. Sponagle, none of the samples were even possible for a match to the accused. As a consequence, a DNA sample was not sought from him.
- [82] Carlin Sponagle, Odessa Marchand, Amanda Hanschen, and Tyler Coe were subsequently arrested for the kidnapping and unlawful confinement of the complainant.

ARGUMENT

- [83] The Crown argues that the charges against the accused have been proven beyond a reasonable doubt by the complainant's testimony as corroborated by the evidence produced during the two searches of the Victoria Street residence, the DNA evidence, the telephone records and the data taken from the accused's LG cellular telephone. The Crown argues that the complainant was a credible witness whose evidence was not seriously challenged in cross examination. He gave detailed evidence surrounding the events and what he told the

police is corroborated by what was found in the Victoria residence the day after he escaped from his captors.

- [84] The Crown maintains the evidence establishes beyond a reasonable doubt that the accused was the person named "Steve" as described and identified by the complainant. The complainant not only provided a good physical description matching the accused, but he had known the accused for some time before these events. They worked together on occasion and the complainant provided rides to the accused. The complainant also knew other facts about the accused and the accused's cellular telephone had in its databank the name of "M" and a telephone number associated with this name that he called during the relevant period.
- [85] The Crown argues the evidence establishes beyond a reasonable doubt that the accused assisted Carlin Sponagle to abduct the complainant against his will and forcibly take him to the Victoria Street residence where he was confined and beaten. At this residence the Crown argues the evidence establishes beyond a reasonable doubt that the accused assaulted the complainant causing bodily harm, assaulted him with a weapon, the golf club, and sexually assaulted him by forcing his fingers and a toothbrush up his rectum. Lastly, the Crown argues the evidence establishes beyond a reasonable doubt that the accused was a party to extortion; that is, he was complicit in the plan to deprive the accused of his vehicle and money to repay the debt owing to Odessa by beating the complainant into submission.
- [86] The Crown argues that while the complainant was permitted to do two errands for Odessa during his captivity, his confinement continued until he went to the White Spot with Mr. McMullen. Until this time the complainant reasonably believed, due to the events that had recently occurred, that he would be in grave danger if he tried to escape or if he failed to return to the Victoria Street residence or the Upland Street residence.
- [87] The Crown argues that the Telus records of the calls being made to and from the accused's cellular phone evidence a plan among Amanda, Carlin, the accused and Odessa, to kidnap the complainant and that this culminated in his capture on April 3, 2008. This date is consistent with the timing of the calls and their abrupt end at 22:00 hours on that date. The dates of his captivity are also evidenced by the call to Sylvia on April 5, 2008, and by his attendance at the Husky station on April 6, 2008.
- [88] The accused argues the Crown's case stands or falls on the evidence of the complainant. In this regard, the accused says that the complainant's evidence lacks credibility for a number of reasons. First, at the time of these events the complainant was a drug addict and it is well known, and admitted by the complainant, that addicts are adept and compulsive liars. Second, at the time of these events the complainant had been on a five day drug binge and was sleep deprived. In that state the complainant admits he lost a sense of reality. Thus his perception of what occurred has to be distorted. Third, the complainant did not go to the police out of a sense of duty, but because he needed protection from Odessa and her crew. Thus he had a motive to cast the net wide when naming the participants involved in the

events and to exaggerate the events to ensure anyone he knew was associated with Odessa would be put in jail for a long time. Lastly, the video of the complainant at the Husky gas station during his supposed capture clearly shows that he was free to go out alone and that he was moving normally. This is inconsistent with his evidence that he could hardly walk and was under the control of his captors.

- [89] In addition, the accused argues that his identification by the complainant is so fraught with difficulties that it raises a reasonable doubt on its own. The accused says the material error in the complainant's description of him to the police and, in particular, that he had tattoos all over and mostly on his arms, is clear evidence that the complainant identified the wrong person. Because the complainant knew the accused was associated with Odessa, it is not surprising that he recognized the accused in the photographic line up. However, the accused argues the complainant simply cast the net wide to get everyone associated with Odessa in police custody for his own protection. The accused cautions the court that there are many frailties in eyewitness testimony and the confidence of a witness does not make his identification any more credible.
- [90] The accused also argues that the DNA evidence does not connect him to the crimes. While someone may have beaten the complainant, there is no DNA evidence to identify the accused as that person. The accused also points to the fact that there is no medical evidence of the sexual assault and the complainant did not seek medical treatment for any rectal damage.
- [91] The accused maintains that there are serious credibility issues surrounding the LG cellular telephone. He says that Cst. Charlebois did not notice the telephone when he first saw the accused upon entry to the Victoria Street residence. Thus it is likely that the accused simply picked it up from somewhere in the home. The lack of proper police procedure with regard to the seizure of the telephone also weakens its evidentiary value. Further, the accused says that even if he can be associated with the LG cellular telephone, this does not provide proof that he used this telephone to make the calls connecting him to Odessa and the others.

DISCUSSION AND CONCLUSIONS

- [92] The onus rests with the Crown to prove the charges against the accused beyond a reasonable doubt. The defence argument raises the following issues:
1. Whether the LG cellular telephone was found in the possession of the accused at the time of his arrest at the Victoria Street residence and whether an inference can be drawn that he used this telephone.
 2. Whether overall the complainant provided credible evidence due to his description of the events, his character as a drug addict, his physical and mental state during the events, and his motivation for going to the police.

3. Whether the accused was properly identified by the complainant as the person described by him as "Steve" and who committed the acts attributed to Steve.
- [93] Turning first to the issue of the LG cellular telephone, the accused argues that the Crown's evidence is insufficient to prove that this telephone was found in his possession when he was arrested at the Victoria Street residence. There is no doubt that the LG cellular telephone was treated in a manner quite different from the other items that became police exhibits in the investigation of the offences charged. Cst. Raju, as exhibit officer, tagged and seized all of the exhibits, except for the cellular telephone, as and when they were found in the residence. The LG telephone, however, was given to him after the search of the residence was completed on April 9, 2008 and while he was at the detachment. In addition, the Crown concedes that Cst. Charlebois did not follow standard police procedures when he removed the LG telephone from the accused's personal effects locker without making a notation on the Prisoner Report.
- [94] Despite these irregularities, I am satisfied that the Crown has proven beyond a reasonable doubt that Cst. Charlebois seized the LG telephone from the accused when he was arrested at the Victoria Street residence. In my view, Cst. Charlebois provided a reasonable and credible explanation for his failure to pass on the LG telephone to Cst. Raju while at the Victoria Street residence. He was a relatively new officer and this was the first time he had been placed in charge of a serious crime investigation. Many things were going through his mind at the time of his entry to the residence. There was also the distraction of having to supervise the accused while he put on some clothing. In these circumstances, it is reasonable that Cst. Charlebois did not realize the evidentiary value of the cellular telephone until he returned to the detachment and had time to think about where the investigation was going.
- [95] In addition, I find the evidence clearly establishes that the LG telephone was included in the accused's personal effects when he was booked into cells on April 9, 2008. Cst. Charlebois testified that he itemized all of the items taken from the accused, including the cellular telephone, on a counter in plain view of the accused. At the same time he completed the Prisoner Report checking off all of the personal effects, including the cellular telephone. The accused signed this form just below the personal effects section thereby acknowledging the accuracy of the listing of his personal items. Moreover, the accused has admitted continuity of the LG cellular telephone from the moment it came into police custody. Thus the fact that Cst. Charlebois did not sign out the cellular telephone from personal effects before passing it on to Cst. Raju, as a matter of procedure, is essentially irrelevant.
- [96] Lastly, I am satisfied that Ms. Carter's evidence provides a satisfactory explanation for why the scanned copy of the Prisoner Report disclosed to the defence did not contain a full description of the personal effects logged when the accused was booked into cells. The scanner primarily recognizes text and, without careful examination, a document containing symbols or checkmarks can be scanned incorrectly and escape detection by the technician. This is particularly true where, as in this case, the technician is scanning a large number of

documents. Thus I find no evidence to support a conclusion that the original Prisoner Report was altered after it was signed by the accused.

- [97] The accused also argues that even if I conclude the cellular telephone was found in his possession at the Victoria Street residence, an inference cannot be drawn that he used this telephone to make the calls relied upon by the Crown. Cst. Charlebois did not see the telephone in his possession until he returned to the living room where the accused was being watched by another officer. It is reasonable, therefore, to assume that the accused picked up the telephone from somewhere in the house. Further, it is argued that, in these circumstances, it is unreasonable to infer that it was his telephone and that he used it to make the alleged calls.
- [98] In my view, finding the accused in possession of a cellular telephone in these circumstances calls out for an explanation by the accused that is inconsistent with the logical inference that it was his telephone. Without a contrary explanation, it is mere speculation to maintain the accused must have picked up the telephone from somewhere in the house. If I am wrong in this conclusion, the fact that the accused acknowledged the cellular telephone as one of his possessions when he was booked into cells is cogent evidence that it was his cellular telephone. Coupled with the evidence that he was found in possession of this telephone, this acknowledgement permits the court to draw an inference that it was the accused's telephone and that he used it to make the calls as argued by the Crown.
- [99] Turning to the overall credibility of the complainant's evidence, I find that the complainant was a very forthright, credible witness. He provided a detailed account of the events that led to his capture and confinement; his subsequent beatings and his attempts to find the money to repay Odessa. His recollection of the events was entirely consistent and not challenged in cross examination. I found nothing about his evidence was improbable or unlikely. The complainant had clearly committed an unforgiveable crime in the world of drug dealers; he had stolen money and drugs belonging to Odessa who was a very important person as a major drug supplier and employer of street dealers. In this milieu, it is clear that the complainant's actions would not go unpunished. Indeed, the complainant had witnessed others being physically punished for similar offences.
- [100] While he was permitted to leave the control of his captors once the beatings stopped, I find nothing unreasonable or incredible about the complainant's explanation for why he did not attempt to escape. For two days he was confined against his will and tortured. He was weak and exhausted from the beatings, the lack of sleep, and hunger. He was terrified of what would be done to him if he did not return to Odessa's house. He was verbally threatened with reprisals and had not the means to escape in any event. He had no funds, no cellular telephone, and no vehicle. His captors had proven capable of horrific assaults and humiliations and he was rightfully afraid of being caught and subjected to this torture all over again. It is also significant that Odessa had many people working for her who could carry out her threats to track the complainant down should he decide to run away. In addition, it is apparent that she was not entirely trusting of the complainant because she

followed him to the A & W parking lot when he first met with Mr. McMullen.

- [101] I have carefully examined the Husky gas station video taken at about 22:07 hours on April 6, 2008. I find this video does not provide evidence inconsistent with the complainant's testimony. Nothing may be inferred from the complainant's ability to walk from a one second view of his steps to the cash counter. His movements thereafter are only arm and hand motions and he appears to lean on the counter for support. Consistent with the complainant's evidence that the accused forced him to shave off his moustache, he is clean shaven in the video.
- [102] The accused argues that the complainant's credibility is suspect because as a drug addict he is an adept liar and, further, that his recollection of the events is questionable considering his drugged and exhausted state at the time of the events. While I accept these are important factors to consider when examining the credibility of the complainant's testimony, there are far more cogent reasons for accepting the complainant's version of the events. He had a clear recollection of the events that was not challenged in cross examination. His only difficulty was pinpointing dates and times. There were no inconsistencies in his story either internally or externally. If the complainant was lying about the events, or had imagined the offences against him as a result of a deluded state of mind, one would expect there to be material inconsistencies in his story.
- [103] The fact that the complainant failed to disclose all of the events when making his first statement to the police is also a factor tending to discredit his testimony. However, I find the complainant provided a credible explanation for his failure to be entirely candid with the police on this occasion. He had been subjected to the most humiliating physical acts and found it difficult to disclose them to the police. In light of his state of mind at this time, it is reasonable to believe that he was not yet ready to disclose these humiliating and degrading violations of his person. Moreover, it was very shortly thereafter that the complainant made a full statement to the police.
- [104] Of great significance is the fact that there is a cogent body of evidence to corroborate the complainant's testimony concerning the events leading to these charges. This evidence includes the following:
1. The accused was able to point out the Victoria Street residence to the police on April 8, 2008 and when the police searched the Victoria Street residence on April 9, 2008, they located many of the items the complainant referred to in his first statement to the police and about which he testified in court. These included a copper crack pipe located in the freezer compartment of the refrigerator in the kitchen; clear packaging tape, a bloodied sock, an Exacto type knife blade, a black bandana, and a rope with a noose at one end, all which were found in the basement where the complainant testified the beatings occurred.
 2. After the complainant made further disclosures in his KGB statement, the RCMP searched the Victoria Street residence a second time and found additional items referred to by the complainant and about which he testified in court. These items included a green toothbrush

and a red toothbrush, a golf club and latex gloves. These items were all found in the basement of the Victoria Street residence. The defence argues that the second search is tainted because the RCMP did not guard the house against tampering in the three days between the first and second searches. However, it is apparent that the photographs taken by Stg. Kovacs clearly show a golf club in the basement leaning against a wall and the two toothbrushes. While the red toothbrush was moved between the first and second searches, the possibility of any tampering with the evidence is substantially lessened because this toothbrush was present during the first search and the doors to the residence were locked or barricaded when the police arrived. Moreover, a comparison of the basement photos taken by Sgt. Kovacs with the photos taken by Cst. Charlebois in the second search shows no other changes that were not accounted for. Further, the latex glove was noted by Sgt. Kovacs but not photographed because he was not aware of its significance. Sgt. Kovacs testified that he recalled seeing a latex glove approximately where it was subsequently found by Cst. Charlebois, who had to move a bicycle wheel to make the glove visible for the photograph. Thus I am satisfied beyond a reasonable doubt that all of the evidence secured in the second search is probative of the offences charged.

3. The two sketches of the Victoria Street residence that Cst. Charlebois drew with instructions from the complainant were entirely accurate if one examines the photographic evidence and Sgt. Kovacs' description of the residence. These sketches were drawn on April 8, 2008, prior to the first search of the residence.
4. Forensic examination of some of the items seized from the Victoria Street residence corroborates the complainant's evidence of the events. In particular, the complainant described being tied to a white wicker chair with his hands tied behind his back. A blood swab taken from a blood stain found on the arm of that chair, which was located in the basement of the Victoria Street residence, was found to have DNA matching the complainant's. A sample of the clear packing tape that the complainant testified was used to bind his hands and his mouth was found to contain DNA matching that of Carlin Sponagle and another piece of this tape had the complainant's DNA on it. The complainant's DNA was also found on the bloodied sock found in the basement of the Victoria Street residence. The complainant identified this sock as the type he was wearing at the time of his capture and which was used to gag his mouth. In addition, the complainant's DNA was found on the interior of the index finger of the latex glove seized from the basement of this home. The complainant testified a rubber glove was used to penetrate his rectum and his nostrils.
5. A person matching the complainant's description of Steve was found at the Victoria Street residence on April 9, 2008 when the RCMP arrived to search the residence. This person was subsequently identified as the accused. In addition, when the complainant drove with Cst. Charlebois and Cst. Raju pointing out the residences involved in the events, he pointed out Odessa and Tyler walking on Victoria Street near the subject residence. Both of these individuals were subsequently identified by the complainant in a photographic line up.

6. When the complainant attended at the detachment for his first statement, he presented with injuries that were consistent with the events he described. His face was yellow with bruises on both sides and on his forehead; he had lacerations on his forehead and a bruised left eye. There was a substantial laceration on the bridge of his nose. On his back were two long and deep lacerations consistent with a knife blade and there was a visible letter "G" carved in the area of his left shoulder. Cst. Charlebois also testified that the complainant had the demeanour and presentation of a person who was injured. He moved as if in pain and kept touching his shoulder and other areas of his body. Further, there is evidence that the complainant sought medical treatment for his physical injuries.
7. The data secured from the LG cellular telephone and the Telus records revealing the telephone calls to and from the number associated with this telephone support the complainant's evidence. The accused's cellular telephone had recorded in its phonebook the nicknames of two of the people the complainant testified were involved in the events: Odessa and Carlin. The complainant testified that they were also known as "Od" and "C", which were the names in the accused's phonebook. In addition, the accused's phonebook had a number associated with a "M" which, of course, is a shortened version of the complainant's first name. Further, during the first week of April 2008, the accused's cellular telephone made or received calls from the numbers associated with Odessa, Carlin, "M" and Amanda Hanschen. These telephone calls, in my view, provide some evidence of a connection between these persons at the relevant time. Further, the frequency and timing of the telephone calls is consistent with the complainant's evidence that while on the cocaine binge he was receiving calls on his cellular telephone but did not answer these calls. In this regard, the accused's telephone called the complainant four times between 23:21 hours on April 1, 2008 and 2:53 hours on April 2, 2008. The calls between the accused's cellular telephone and the numbers associated with Carlin, Amanda and Odessa between April 1, 2008 and April 3, 2008 also support the complainant's evidence. From the frequency and timing of these calls it may be inferred that during this time the accused, along with Carlin, Odessa and Amanda were in communication, which would have been necessary to locate the complainant and devise a plan to kidnap him.
8. The evidence surrounding the complainant's Pontiac Torrent corroborates his version of the events. When he gave the first statement to the police, the complainant claimed that his vehicle had been confiscated by Carlin, Odessa and the others. He pointed out this vehicle to Cst. Charlebois on April 8, 2008, when they drove by the Ahbau Street residence which had been described by him as belonging to Odessa. A silver coloured Pontiac Torrent was parked in the driveway of this residence and Cst. Charlebois confirmed through the licence plate number that it was registered to the complainant. In addition, when the RCMP searched the Victoria Street residence on April 9, 2008, they found the complainant's insurance and registered owner's certificate on a table in the kitchen. These documents confirmed the complainant's ownership of the Pontiac Torrent and indicated the address he provided in evidence.

- [105] Thus, in my view, there is ample evidence to corroborate the complainant's testimony. For these reasons, I accept the complainant's testimony and find that it proves the events occurred, as he described, beyond a reasonable doubt.
- [106] Turning to the issue of identification, I am satisfied beyond a reasonable doubt that the person described by the complainant in his testimony as "Steve" is the accused. While the description of "Steve" that the complainant provided to the police in his first statement on April 8, 2008, is in error in that the accused does not have tattoos all over, at least not on his upper body, there is cogent evidence that establishes the accused's identity as Steve.
- [107] The complainant provided a detailed description of Steve that matched the accused in all other respects. This is both apparent from my observations of the accused in court and based on Cst. Charlebois' recollection of the accused as he appeared in April 2008. Significantly, the accused has at least one tattoo on his arm. Further, the complainant had known Steve for some time before the events giving rise to these charges occurred. He had worked with Steve selling drugs for Odessa and had given Steve rides in his Pontiac Torrent. Moreover, the complainant's encounter with Steve was not fleeting; for over two days he was confined and beaten by Steve in the basement of the Victoria Street residence. While at the beginning of his confinement the complainant was under the influence of drugs, there is no evidence he was given any cocaine after his initial capture. Thus there is no reason to doubt his recollection of the persons who beat and confined him.
- [108] In addition, the complainant identified the accused in a photographic line up that contained a photo of the accused taken when he was arrested on April 8, 2008. I have examined this photograph and it is a good likeness of the accused. The complainant's identification of the accused was immediate and without hesitation and the complainant demonstrated that he knew substantial details about Steve's life. There is also evidence that connects the accused to the Victoria Street residence where the complainant says he regularly attended and where the confinement and the assaults took place. Cst. Charlebois arrested the accused at this residence when the RCMP attended for the purpose of searching it on April 9, 2008, just one day after the complainant left his captors. Cst. Charlebois booked the accused into cells, lodged his personal effects, and identified the accused in court as the person he so arrested.
- [109] Thus, bearing in mind the frailties in eyewitness evidence, I find there is no support for the accused's argument that the complainant mistakenly identified him as one of the perpetrators of the offences charged.
- [110] The accused argues that the complainant's identification of him as one of the perpetrator of the offences charged is coloured by his motive for reporting the events to the police and his knowledge of the accused as an associate of Odessa. The accused essentially argues that it served the complainant's purpose to cast the net broadly so as to protect himself from any known associates of Odessa. The complainant agreed that self protection, along with a desire to leave the drug lifestyle behind him, were the underlying motives for reporting

these crimes to the police. However, there is no evidence to support the defence theory that the complainant purposefully misidentified the accused. In my view, it is merely speculation. The complainant was very careful to identify only those persons he was 100% certain were involved in the crimes. He testified that, although there was another person involved, he was not 100% sure of his identification of this person during the photographic line up and, as a consequence, refused to make a selection. In addition, during the video of the photographic line up in which the accused's photograph was identified as "Steve", it became apparent that the complainant recognized a number of individuals in the photographs shown to him. He was careful, however, to explain that these persons, although known to him, were not parties to the offences charged. Had the complainant been motivated to cast a broad net for self protection, he would have pointed a finger at all those he recognized and not simply the accused. I am thus unable to accept the accused's argument on identification.

- [111] The accused does not argue that the Crown has failed to prove any of the elements of the offences charged. I find the evidence led by the Crown proves beyond a reasonable doubt each and every element of the offences charged and, in particular, that the complainant was kidnapped, unlawfully confined for a period of several days, assaulted repeatedly by punches and kicks leading to bodily harm, assaulted with a golf club used as a weapon, threatened with bodily harm, and sexually assaulted with a toothbrush and fingers covered by a latex glove forced into his rectum. In addition, I find the Crown has proven beyond a reasonable doubt that the complainant was a victim of extortion; he was kidnapped, confined against his will, beaten, and threatened with bodily harm for the purpose of obtaining money from him in repayment of a debt.
- [112] Further, the evidence led by the Crown proves beyond a reasonable doubt that these offences committed against the complainant occurred in and about Prince George in the province of British Columbia between in March 30th and April 8, 2008. While the complainant's evidence was somewhat vague in regard to the dates of these offences, he was certain that the events occurred after he lost his job in Quesnel and returned to Prince George toward the end of March, 2008. In addition, the complainant testified that he called his sister on April 5, 2008 while still in the control of his captors. The Husky gas station video is dated April 6, 2008 and the complainant testified that he was still captive at that time. Lastly, the complainant's testimony is corroborated by the telephone records entered as an exhibit in these proceedings by consent. These records show telephone calls between the accused and the other persons implicated in the offences between April 1, 2008 and April 3, 2008 which, considered in conjunction with the complainant's testimony, as well as the corroborating evidence, are consistent with communication for the purpose of arranging for the capture of the complainant on April 3, 2008. The telephone calls began in the early morning hours of April 1, 2008 and continued until late in the evening of April 3, 2008 when they abruptly stopped.

- [113] I am also satisfied beyond a reasonable doubt that the accused committed the offences charged or was a party to the offences charged. For the reasons described above, I find the Crown has proven the identity of the accused as one of the persons who abducted the complainant and forced him into a vehicle. The accused maintained control over the complainant while he was driven to the Victoria Street residence. Further, the accused and others confined the complainant in this residence against his will. The accused kept the complainant tied to a chair in the basement and beat the complainant with his fists about the head and body thereby causing him bodily harm. While still a captive in the residence, the accused struck the complainant in the head with a golf club used as a weapon. The accused sexually assaulted the complainant by forcing a toothbrush and his fingers, covered by a latex glove, into his rectum. The accused threatened the complainant with death while the complainant was bound to a chair in the basement of the residence. Lastly, the complainant was a party to extortion. He assisted others in the kidnapping, unlawful confinement, and beating of the complainant for the purpose of extorting money from him.
- [114] I thus convict the accused of all seven counts in the Indictment. I will hear submissions as to which, if any, of the counts should be stayed conditionally due to the Kienapple principle.
- "Bruce J."

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