
CANADA / JUDGMENT

R. v. Nguyen

2007 BCSC 1976

COURT

Supreme Court of British Columbia

DECIDED

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2007 BCSC 1976 R. v. Nguyen

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Nguyen,

2007 BCSC 1976

Date: 20071212

Docket: 24248

Registry: Vancouver

Regina

v.

Hieu Thanh Nguyen

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Before: The Honourable Mr. Justice Cullen

Oral Reasons for Judgment

December 12, 2007

Counsel for the Crown

B. McCabe

Counsel for the Accused

I.M. Carter

Place of Trial:

Vancouver, B.C.

- [1] THE COURT: In this case, the accused faces two counts of kidnapping, one count of extortion, and one count of possession of stolen property. The charges arise out of events which occurred on May 7, 2006, during the course of which, three Caucasian males broke into premises occupied by Dong Quang [phonetic] Nguyen and his common-law wife, Eliza Wong, their two children, Diamond then aged eight, and Viet then aged seven, and as well as Ms. Wong's grandmother.
- [2] The break-in occurred about 6:20 p.m. when one of the three males, described as wearing a suit and tie, went to the front door of the premises which were located at 6631 Imperial Avenue in Burnaby. When Ms. Wong opened the door in response to the doorbell, two other men, described as taller than the first man, jumped from hiding places and joined the first man as he pushed his way into the house. One of the larger men pulled out a gun as they entered the hallway inside the front door. The three immediately and persistently asked Ms. Wong for money and to tell them where there was a safe located in the house. She denied having money or a safe in the house, at which point they told her to take them to the master bedroom which was located upstairs in the living area of the house. They continued there to ask her where the safe was despite her denials of one being in the house. She testified that, in fact, there was no safe in the house.
- [3] As she was ascending the stairs with the three men behind her, she saw her two children in the hallway at the top of the stairs. She said the men would have been able to see them, as well. She told the children to go to their rooms. She then went into her bedroom with the three men who continued to demand money and the location of the safe. They searched through her drawers and closets and, as well, she did, too. She found her purse which she emptied onto the bed. It contained the keys to her car, which was a Lincoln Town Car, licence plate 851DTB, her wallet with credit cards and \$200 in cash, and her cell phone. She suggested to the men that they could take her money and her car. The men took her keys, wallet, and cell phone from the contents of her purse. She remained in the room with at least one of the men throughout that period. One or two of the men left and returned at various times while they searched throughout the rest of the house.
- [4] At one point, she heard the smaller, well-dressed man on a cell phone in the hall outside her room. She overheard him use the name John, but was unsure if he was referring to himself as John, the person he was talking to, or someone else. She also heard him say something to the effect that, "Everything is under control." At one point before the phone call, she heard the men discussing taking someone with them. She agreed they appeared to be trying to decide who to take. Before hearing this, she heard no mention made of the children. At one point, there was discussion about taking Ms. Wong or her grandmother, but it ultimately was determined to take the children. That, she said, coalesced after the telephone call. They also took Ms. Wong's bracelet, watch, and necklace.

- [5] When she came out of her room, she saw Viet in the hallway, but not Diamond. She testified that one of the men told her he knew that her husband was at the casino. She was surprised to hear that because her husband, although he did go to the casino on a frequent basis, did not have a regular schedule of when he went there. The man told her to have her husband call him on her cell phone within an hour. When the man left with the children in her car, she telephoned her husband and told him what happened and to call her cell phone. She, in fact, had two phones with one SIM card which would render the phone that had it operable. The one taken by the kidnappers did not have the SIM card so when the husband called, it rang on her other phone which was in the bedroom.
- [6] A neighbour across the street had witnessed the three men going into the house at about 6:20 p.m. He called the police approximately five minutes later. Then he saw Ms. Wong's Town Car being driven out of the alley adjacent to the house onto Imperial and then down to Brantford. He thought the driver was the well-dressed man who initially approached the front door and rang the bell. He could see the other two in the vehicle. He could not see any distinguishing features of any of the three men.
- [7] The police arrived about five minutes later. Diamond Nguyen, who testified, agreed with her mother that there were three white males who came into the house. She and her brother were in the room for a while and could hear the men going through the house. She and her brother were taken by the men and put in the trunk of her mother's car. They were driven somewhere, during which a period Diamond estimated as over an hour, and then the car stopped. She thought one man remained in the car and she thought she heard the other two leave. She could hear the man in the car breathing and, at one point, he opened the rear seat connecting to the trunk space, handed her a telephone and, after asking for her mother's number, dialled it himself and told Diamond to tell her mother if they gave the kidnappers \$20,000 the children would be released. Later, the same thing happened again, except she was told to ask for \$200,000.
- [8] The man then left and Diamond managed to open the trunk by finding and pulling on a trunk release lever. She got out, looked around, and saw that they were in an enclosed parking lot. She got back in the trunk with her brother, but left the trunk open so they could breathe and so that if someone came by they could be rescued. She was unable to describe the man who handed her the phone as she was not able to see him and had no recollection of whether his hand was that of a Caucasian or some other racial origin.
- [9] In fact, someone did come by and rescue the two children in the form of Mr. and Mrs. Haddad who lived at the premises where the cars had been driven to. That is the Odyssey Apartments at 13880 101 Avenue in Surrey. Shortly before 8:00 p.m., Mrs. Haddad drove into the penthouse parking lot of that complex with her husband in the front passenger seat. As they drove towards their parking spot, they noticed the Lincoln parked in a neighbour's stall. The trunk appeared to be open and Mrs. Haddad noticed that their vehicle lights illuminated somebody inside the trunk. Mr. Haddad immediately jumped out of their vehicle while Mrs. Haddad parked it. He went to the trunk, opened it, and got the children out. At that point,

Mrs. Haddad approached and, using her cell telephone, telephoned the police.

- [10] After she spoke to the police concerning the matter, they then went directly from the parkade into the lobby of the building to wait for the police to arrive. In doing so, they were talking to the children and she was relaying information to the police. To get to the lobby, they had to go through a series of four doors and hallways. The first door required an access card to open as did the vehicle entrance from the street to the parkade. It would not be possible to get into the lobby of the building either from the penthouse parkade or the general parkade without an access card.
- [11] Mrs. Haddad testified that, as she and her husband and the two children made their way towards the lobby, at about the second door leading from the parkade towards the lobby, she noticed a person, whom she identified as the accused, coming from the direction of the lobby towards the parkade. She described him as Asian, wearing a blue baseball cap and jacket and blue jeans. She testified he looked very "bewildered and flustered." She said that as she walked through the third door towards the lobby, she looked back and noticed that the accused had come back towards her and he looked kind of flustered and then he was gone. She signified that she did not notice where he went. It was a short period of time between first seeing him and then seeing him coming back towards her.
- [12] She said that they took the two children quickly to the safety of the lobby to wait for the police and when the police eventually arrived they went to the front doors and let them in. In the meantime, Ms. Wong, the children's mother, and her husband had been taken to the Burnaby detachment of the RCMP. While there in the company of Constable Douglas of the RCMP at 7:19 p.m., Ms. Wong received a call on her cellular telephone from a phone with the number 604-506-1669. It was the first call made by Diamond at the instance of the man in the car and, in it, Ms. Wong confirmed that she told her mother that she and her brother would be released for \$20,000. A second call was made at 7:21 from the same telephone and, in it, she told her mother they would be released for \$200,000.
- [13] Shortly after the police arrived at the apartment complex at 13880 101 Avenue in Surrey at approximately 8:00 p.m. following Mrs. Haddad's call, the accused was apprehended as he attempted to drive Ms. Wong's Lincoln Town Car out of the parkade of the building. He was searched at the time of his arrest and found to be in possession of two cell phones, one of which in his left pants pocket was a Nokia cell phone with the number 604-506-1669, the phone which made the two ransom calls. A subsequent search of the phone showed it had also been used to call the home phone number of Ms. Wong on three occasions at 7:12:42, 7:14:25, and 7:16:30 p.m. In addition, in his left pocket were found a pair of latex gloves. At the detachment when the accused was further searched, a package of Wet-Wipes was located in his possession. In the Lincoln, the police found an access card for the Odyssey building numbered 6E:04592 which was registered to apartment 1207, 13380 101 Avenue, Surrey, B.C., which the accused had been the tenant of since July 20, 2005.

- [14] Some additional evidence of the unfolding of the events relative to the matters before the court came from four video surveillance cameras located at various points in the premises of the Odyssey Apartment. The first camera covered the vehicle entrance to the parkade from the inside. The second camera was located in the lobby of the building and was directed at the elevator doors. The third camera was also in the lobby and showed the area immediately in front of the main entrance/exit doors inside the lobby. The fourth camera depicted the area immediately outside the lobby entrance/exit to the complex.
- [15] There is evidence that clips from those four cameras which correspond to time periods around the use of the access card, 6E:04592, registered to the accused's apartment were seized by the police. Those clips from the various surveillance cameras were consolidated onto a CD disk which was marked as Exhibit 6 on the trial. The surveillance cameras display the hours, minutes, and seconds on a 24-hour-clock basis. The officer who reviewed the cameras and extracted the relevant portions testified that they were out of synchronicity with real time by being approximately one hour and 10 minutes slower. The surveillance camera clips provide some insights as to the unfolding of events which occurred at the accused's apartment complex between approximately 6:57 p.m. real time (17:47:07 camera time) and 8:03 p.m. real time (18:53 camera time).
- [16] There is an admission by the accused that his brother is the owner of a green Honda Accord, Washington plate number 728JO1, and there is evidence which I accept that the accused was the operator of that vehicle in the period leading up to the events of May 7, 2006. The accused also admitted that on May 7, 2006, at approximately 1857 (real time), a black four-door Lincoln sedan entered the parking garage at 13880 101 Avenue, Surrey, British Columbia, using the access card, 6E:04592, registered to the accused's suite, 1207, and it was followed by a green two-door Honda Accord. I am satisfied in light of the admissions and the balance of the evidence taken as a whole that the two vehicles were Ms. Wong's Lincoln and the accused's brother's vehicle. I am also satisfied at the time the vehicles entered the garage, the two children, Diamond and Viet, were in the trunk of the Lincoln.
- [17] The video clip associated with the two cars entering the parking garage shows the Honda following immediately after the Lincoln requiring no separate access card, and both cars turned to the left which, according to the evidence of Ms. Haddad, was where the entrance to the penthouse parkade was located. The penthouse parkade, according to the evidence of Ms. Haddad, had only 12 stalls and was accessible to the elevators and the lobby of the building through the doorways and hallways as earlier described. I infer that there was less likelihood of traffic in the penthouse parkade and I infer that that was the reason why the drivers chose to go to that area of the parking garage.
- [18] From the video, it is not possible to ascertain whether there was anyone in the Lincoln vehicle apart from the driver who can be discerned. There does not appear to be anyone in the front passenger seat, but it is difficult to conclude definitively. Similarly, as far as the Honda is concerned, it is not possible to tell whether there is anyone in it apart from the driver. Not long after the two vehicles entered the garage, at 7:04 p.m. real time (17:54 clock

time), the Honda was shown leaving the garage. It was apparently being driven by a Caucasian male who appears to be wearing a suit jacket or sports jacket. Before leaving the garage, he can be seen putting on his seatbelt. It is not possible to say whether there is another person in the vehicle.

- [19] Approximately five minutes later at 7:10 p.m. (17:59:56 clock time), the Honda returned to the garage using the accused's access card. There appears to be a second person in the front passenger seat on that occasion. The Honda turned left towards the penthouse parkade entrance. It is after the return of the Honda that the various calls are made from 604-506-1669 to initially Ms. Wong's home phone at 7:12, 7:14, and 7:16 p.m. and then the two actual ransom calls at 7:19 and 7:21 p.m. I infer that all the calls made were in furtherance of the extortion attempt set out in Count 3 of the indictment.
- [20] Some 13 minutes later after the last call was made, the Honda was again shown leaving the parking garage at about 7:34 p.m. (18:24:36 clock time). The video appears to reveal the driver wearing a cap of some sort, possibly a baseball cap, and, as well, a jacket or top with a hood. There also appears to be a passenger in the front-passenger seat. The Honda was away from the parking garage for about 16 to 17 minutes returning via the accused's access card at 7:52 p.m. (18:41:54 clock time). On this occasion, the Honda is not driven towards the penthouse parkade, but into the general parking area where the accused's parking presumably would be. It does not appear that there is any passenger in the vehicle at this point.
- [21] A little more than a minute later at approximately 7:53 p.m. (18:43:07 clock time) the Haddads' vehicle can be seen entering the parking garage and turning left towards the penthouse parkade. At approximately 7:54 p.m. (18:44:33 clock time), some two minutes and 40 seconds after the Honda entered the parking garage, the camera shows the elevator doors opened at the lobby to admit two people, revealing an Asian male in the elevator wearing a baseball cap and a jacket with a hood, dark pants, and white shoes. From all of the evidence, including Mrs. Haddad's description of the Asian man she saw moments later and her identification of him as the accused, and the subsequent video footage of the accused as he went into the parkade to drive the Lincoln out immediately before his arrest, I infer that the man in the elevator with the baseball cap and jacket with hood, dark pants, and white shoes was indeed the accused.
- [22] While the video does not show where the elevator was before it opened at the lobby, I infer from all the evidence, including the recent entry of the vehicle associated to the accused into the parkade, the apparently consistent (or at least not inconsistent) type of apparel worn by the driver with the accused when the Honda left the parkade at 7:34 p.m., the fact that the accused remained in the elevator after the door opened at the lobby level and the other people got on, and the fact that the elevator ascended to the 12th floor where the accused's apartment was, where it stopped, that the accused was the driver of the Honda both when it left the garage at 7:34 p.m. and when it returned at 7:51 p.m. I further conclude that after parking his Honda in the general parking lot area, he got into the elevator to

ascend to his 12th floor apartment. The elevator appears to have stopped on the 12th floor at 7:56 p.m. It descended to the 11th floor and then returned to the 12th.

- [23] It then returned to the lobby about 45 seconds later at 18:46:46 clock time or approximately 7:57 p.m. real time, and the accused alighted from the elevator and turned to his right which, according to the diagram prepared by Ms. Haddad and marked as Exhibit 2 in these proceedings, would take him towards the series of halls and doors leading to the penthouse parkade where the Lincoln was parked and where by this time the Haddads had entered the parkade, seen the children in the trunk of the Lincoln, parked their car, got the children out, and called the police before going toward the lobby. I infer from the timing and all of the evidence that the accused was going to the parkade via the hallways described by Mrs. Haddad and it was at this time, between three and four minutes after the Haddads entered the parking garage, that as they were coming out with the children, they encountered the accused going towards the Lincoln.
- [24] I accept Mrs. Haddad's evidence that when the accused encountered them he seem confused and bewildered and that he turned and came back towards them. I conclude that his reaction was not the product of being confused about where he was or how to get to the parkade or merely because of the overt circumstances of two small Asian children in the company of two older Caucasian adults apparently in some turmoil. Rather, in light of all the evidence, I infer that the accused's reaction to what he encountered was because he was aware of the abduction and confinement of the children and realized that they had been rescued.
- [25] What followed thereafter, according to the front lobby door surveillance tape, is that, at 7:58 p.m. (18:48:20 clock time), the accused left via the main lobby doors (about one to one-and-a-half minutes after the encounter with the Haddads in the hallway). A little under a minute later (at 18:49:20 clock time), he entered the parking garage on foot via the vehicle entrance. Shortly after that (at 18:49:50 clock time), the Haddads and the children came within the range of the surveillance camera inside the main lobby doors and approximately one-and-a-half minutes later the police arrived and were admitted to the lobby by the Haddads. They also took up positions at the garage entrance as the accused attempted to leave in the Lincoln. He was, as earlier noted, stopped and arrested in the Lincoln shortly after 8:00 p.m. (18:52:20 clock time).
- [26] I conclude that although Mrs. Haddad did not testify to seeing the accused in the lobby or going out via the lobby doors, that is consistent with her being preoccupied with looking after the children and speaking to the police on her cell phone, not with it not happening or happening at a different time. I further conclude that the fact that the Haddads and the children were not detected on the video camera at the front door until after the accused left the lobby does not demonstrate anything more than that, before then, they were outside the range of the lobby-door camera, which is limited to the area immediately in front of the doors and to one side.

- [27] I conclude from Mrs. Haddad's evidence that once parked, in communication with the police, and with the children out of the trunk, they then moved directly to the lobby and would have been there for a minute or two before the time they were picked up on the video camera surveillance in front of the lobby doors. I thus conclude from a consideration of all the evidence that the accused was first captured on the video surveillance tape at 7:34 p.m. driving out of the parking garage, probably with a second person in the vehicle, before returning apparently alone at approximately 7:51 p.m., getting on the elevator where he was seen when the doors opened in the lobby about two-and-a-half minutes later after he entered the parking garage in the Honda en route to the 12th floor where his apartment was located.
- [28] There is a further overlay of evidence to consider on the issue of the accused's complicity. Both Ms. Wong and the children's father, Quong Dong Nguyen, testified that they knew the accused and that he had been over to their house on Imperial on a number of different occasions. The father also testified that he had socialized with him previously, as well, outside the home. The father, Mr. Nguyen, also testified that some months previously the accused had telephoned him on his cell phone and asked to borrow 20 to \$30,000 which the father declined to lend as he said he did not have the money right then.
- [29] The accused's apartment and the Honda Accord were searched after his arrest. In addition, photographs of the accused's apartment were taken and admitted as exhibits. The photographs of the apartment reveal a mattress in the living room with four pillows and a bed covering, as well as a bed in the bedroom, suggestive of the presence of more than one person staying in the apartment around the time of the offence. A pad of paper was found in the apartment on the lower shelf of a two-shelf coffee table under a Bible. The first nine pages of the pad were covered with apparently unrelated writing and doodling.
- [30] On the tenth and eleventh pages respectively were two notes each of which were titled, "Proposal." The first note reads as follows:
- Step #1: Follow, take & bring back to base.
- Step #2: The team should do as instructed & take actions if advise to.
- Step #3: Hold til full achievement is complete, should be no more than 3 business days and even shorter of time if actions has been made as instructed.
- [31] The second proposal reads as follows:
- Step #1: Follow, take & bring back to base.
- Step #2: Take actions if advise to.
- Step #3: Hold til full achievement, which shall not more than 3 business days
- Step #4: Achieved & let go, depends on how fast one will co-operate. Should not be more than 2 days if actions has been made.

- [32] In addition, there were several documents, including a Unitow invoice and a Mr. Lube bill, which connected the accused to the possession and operation of the Honda vehicle and copies of several money transfers from the accused to his brother, Tran Dong [phonetic] Nguyen, the registered owner of the vehicle, care of the Federal Bureau of Prisons where he was apparently incarcerated in the U.S.A. The Honda vehicle was also searched on May 8, 2006. In it, the police found and seized a box for a Nokia cell phone from behind the driver's seat. The box had a sticker on it with the number of the phone, 604-506-1669, which corresponded to the phone found in the possession of the accused at his arrest and which was used to make the ransom calls. Additionally, a roll of duct tape was found on the rear seat behind the driver's seat and a can of bear spray from the glove box. In addition, Ms. Wong's cell phone taken at the time of the kidnapping was found in the door panel beside the front passenger seat. Ms. Wong's stolen watch and necklace were not recovered from the Honda or otherwise, nor was the handgun which had been used in the robbery and kidnapping.
- [33] The issue before the court is not whether the accused was involved in the events leading up to the kidnapping and confinement of Viet and Diamond Nguyen and the subsequent attempt at extortion. The issue is whether I am satisfied beyond a reasonable doubt, based on the evidence I accept, that he knowingly participated in the kidnapping, confinement, and extortion attempt in a way that renders him complicit of those offences, or whether the evidence or lack of evidence leaves me with a reasonable doubt of his involvement in those particular offences.
- [34] In the course of his thorough and helpful submissions, counsel for the accused, conceded that the evidence before the court implicates the accused in the offence of breaking and entry and robbery in relation to the events that took place at 6631 Imperial. Given the use of his vehicle, his apartment complex garage, and his access card, given the evidence of his knowledge of the complainants' home and his apparent belief that (some months before) Mr. Nguyen had significant money, and the evidence of his subsequent possession of the complainant's vehicle, his involvement in the breaking and entry and robbery is an inescapable conclusion.
- [35] However, counsel for the accused questioned whether the evidence of his knowledge and involvement in the breaking and entry and robbery proves beyond a reasonable doubt that he knew the principal perpetrators of those offences kidnapped and confined the children and sought to extort money for their release. In making that submission, counsel for the accused relied on evidence that the undertaking to kidnap arose only after the perpetrators were unable to find a safe and money in the house which appeared to be their primary objective and after Ms. Wong gave them her keys and told them to take her car. The defence points to evidence that the perpetrators had not even determined whom they would take until after a phone call which Ms. Wong heard one of the perpetrators make to someone else outside.

[36] The defence further submits that there is no direct evidence of the accused's physical participation in any of the events until after the kidnapping was complete and rely on obiter in *R. v. Bell*, [1983] S.C.J. No. 82 at p. 13 as follows:

The offence of kidnapping would not be a continuing offence, but that of wrongful detention of the victim would be.

[37] And the decision in *R. v. Metcalfe* in which it was held:

The crime (of kidnapping) is complete when a person is picked up and transported to a place of confinement.

[38] The defence further submits that given the lack of any direct evidence of the accused's physical participation in the events comprising the kidnapping, confinement, or extortion, and given the evidence from which it could be concluded that those offences were improvised by those who actually perpetrated the breaking and entry and robbery, the evidence falls short of establishing that the accused knew of or participated in those offences. The defence questions the probative value of the "proposals" on the writing pad in the apartment, pointing out that they are non-specific, somewhat opaque, and not fixed to any particular time frame or person. The defence also questions the probative value of the bear spray and duct tape in the Honda, pointing out that it was not, in fact, used in the kidnapping, but remained in the Honda.

[39] The defence submits that while there is evidence one of the perpetrators was communicating with someone outside the house shortly before the kidnapping, there is no evidence that it was the accused with whom they spoke. The defence further submitted that the first direct evidence of the accused's physical involvement in the events arises from the video of him in the elevator at approximately 7:54 p.m. over one-half hour after the last extortion calls. The defence also submits that the accused was found in possession of the phone used to make the ransom calls, but that was after the fact. He further submitted there was evidence that the accused spoke with a stutter and Diamond testified that she did not notice anything funny about the way the man talked who told her what to say to her mother on the ransom calls. The defence submitted on all the evidence there is a reasonable doubt whether the accused knowingly participated in the events with which he is charged except for the possession of the stolen vehicle.

[40] I conclude after considering all of the evidence that the Crown has proved the accused's guilt on all four counts beyond a reasonable doubt. While I accept that there is no direct evidence of the accused's physical involvement in the events at issue until the video surveillance of him in the elevator approximately one-half hour following the final ransom call, I conclude, based on the indirect evidence which I have already referred to, that it was he who was captured on the video driving the Honda from the penthouse parkade out of the garage at 7:34 p.m. and then returning at 7:51 p.m. shortly before he was depicted in the elevator ascending to his apartment.

- [41] Thus, there is a body of evidence, which the defence properly concedes, that implicates the accused in the enterprise leading to the kidnapping, confinement, and extortion and there is evidence that, within 12 minutes of the ransom calls, the accused was present with those or some of those who actually committed the kidnappings in the precise location where the victims were at least temporarily being held. The immediate resort of the kidnappers with the victims to the accused's apartment complex where his access card was used to enter his parking garage followed by what was, for all intents and purposes, his car into an area of the parkade implying some knowledge of its layout and nature all contributes to a body of evidence consistent with the accused's knowing participation in the kidnapping and extortion.
- [42] When there is added to that the evidence that shortly before his arrest and after returning from his apartment, he went towards the penthouse parkade where the Lincoln was parked in possession of a pair of latex gloves, the ransom phone, the packaging for which was found in his vehicle, and apparently the keys to the Lincoln, and reacted in confusion and bewilderment in seeing the kidnapped victims walking out of the parkade with the Haddads, the conclusion that he played a significant role in the enterprise as a whole is inescapable. There is no evidence of the involvement of anyone other than the accused and the three actual perpetrators in the enterprise leading to these offences, and there is undeniable evidence of his involvement in that enterprise.
- [43] It was he who knew the intended victims and it was he who saw the father as a source or a potential source of money. There is, thus, no basis, save conjecture, to conclude that the call from the actual perpetrators, which the kidnappings followed on the heels of, was to anyone other than the accused, and the events that followed thereafter support that conclusion. In my view, the only reasonable conclusion based on all the evidence is that the accused played an active and knowing role in the unfolding events when his participation would not expose him to the view of those who would recognize him. In turn, that supports the conclusion that although he was not physically present at the actual kidnapping, he was at all material times a party to that offence either by virtue of the provision of s. 21(1)(a) or s. 21(1)(b) of the Criminal Code.
- [44] In coming to the conclusion I have, I did not find the written proposals in the accused's apartment apparently referring to kidnapping and extortion to be of much probative value as it is not clear who wrote those proposals or when they were written and they do not, on their face, appear to be more than generalized ruminations, not particularly applicable to the facts at bar. Similarly, the presence of the bear spray and the duct tape in the accused's car, while suggestive of a plan to kidnap, is also suggestive of a plan to subdue and confine consistent with a home invasion.
- [45] I am satisfied, however, that whether the plan to kidnap was concocted in advance of the home invasion or whether it was an improvisation in the course of the home invasion, that the accused was a knowing and active, albeit behind-the-scenes, participant.

[46] I, accordingly, find him guilty on all counts.

Cullen J.

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