

CANADA / JUDGMENT

R. v. Soper

2025 BCCA 446

COURT

British Columbia Court of Appeal

DECIDED

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2025 BCCA 446 R. v. Soper

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Soper,

2025 BCCA 446

Date: 20251216

Docket: CA49382

Between:

Rex

Respondent

And

Matthew Sidney Soper

Appellant

FILE SEALED IN PART

Before:

The Honourable Mr. Justice Abrioux

The Honourable Madam Justice Horsman

The Honourable Justice Iyer

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

June 16, 2023 (conviction) (R. v. Soper, Port Coquitlam Docket 105313-1).

Counsel for the Appellant:

C.L. Senini

P.H. Mueller

Counsel for the Respondent:

M. Mereigh

Place and Date of Hearing:

Vancouver, British Columbia

October 29, 2025

Place and Date of Judgment:

Vancouver, British Columbia

December 16, 2025

Written Reasons by:

The Honourable Justice Iyer

Concurred in by:

The Honourable Mr. Justice Abrioux

The Honourable Madam Justice Horsman

Summary:

The appellant appeals his convictions for offences relating to the use of a stolen debit card, breaking and entering a dwelling house, and theft of a vehicle. The central issue at trial was proof of identity. The appellant argues the trial judge made five material misapprehensions of the evidence. Held: Appeal dismissed. The judge's only misapprehension of evidence was about the driving time between the locations where the offences were committed, which was not material to the issue of identity.

Reasons for Judgment of the Honourable Justice Iyer:

Overview

- [1] In the early morning hours of November 12, 2020, two men committed a series of criminal offences using a stolen white Honda Civic. They drove it from Langley to a gas station in Maple Ridge, where they used a debit card that was in the Honda to purchase gas and other items from the gas station's convenience store. They continued in the Honda, stopping at two residential locations, where they tried to enter parked vehicles. At the second residential location, they removed a garage door remote control from a parked vehicle and used it to enter a garage and residence. They took keys to a red Ford 150 truck from the residence and

one man drove away in the truck.

- [2] Anthony Kalt and the appellant were charged on a multiple count indictment. The charges against the appellant related to use of the debit card, breaking and entering a dwelling house, and theft of the Ford. The evidence included video footage from the gas station and convenience store where the debit card was used, videos of the locations where the suspects tried to open parked cars, and videos of the location where the Ford was parked.
- [3] Mr. Kalt pleaded guilty to the charges against him. The only issue at trial was the identity of his accomplice. The appellant did not testify or call other evidence. Based on the Crown's evidence, the trial judge found that the appellant was the person with Mr. Kalt. She convicted him on all charges.
- [4] The appellant appeals from his convictions. He submits the judge's conclusion that he was with Mr. Kalt was based on material misapprehensions of the evidence.
- [5] For the reasons that follow, I would dismiss the appeal.

Trial Proceedings

Evidence

- [6] The Crown called four police witnesses: Sgt. Todd, the lead investigator; Cpl. Barros, who gave recognition evidence; Cst. Long, who captured still images from the videos and circulated them; and Cpl. Lai, who recognized the appellant from the circulated images of him.
- [7] Sgt. Todd provided a comprehensive chronology of the events during the early morning of November 12, 2020. He referred to maps of the various locations, the driving times between them, and the video evidence. Sgt. Todd did not testify as a recognition witness, although he commented on the physical characteristics and clothing of the two suspects from his review of the surveillance tapes. The appellant did not challenge the admissibility of this evidence.
- [8] Together with Mr. Kalt's guilty pleas, the admissions of fact, videos, and still images extracted from them, Sgt. Todd's evidence established the following facts that are not contested on appeal:
- At about 1:00 a.m. on November 12, a 2019 white Honda Civic four-door sedan owned by Raquelle and Alexandra Romero was stolen from their residence ("Romero Honda"). Alexandra Romero's debit card was in the vehicle. Two men wearing dark clothing were near the residence at the time of the theft, but it was not possible to identify them.
 - At about 3:15 a.m., a white Honda Civic four-door sedan similar in appearance to the Romero Honda arrived at a Petro-Canada station in Maple Ridge. Mr. Kalt got out of the driver's side and purchased gas from one of the pumps. Another man got out of the passenger side. He entered the adjacent convenience store, followed by Mr. Kalt.

- In the convenience store, both men selected various items and brought them to the counter, where Mr. Kalt purchased them. Both the gas and the items were purchased with Ms. Romero's debit card.
- Between 3:30 a.m. and 3:36 a.m., two men in a white Honda Civic sedan similar in appearance to the Romero Honda drove slowly along the 11200 block of 238th St. in Maple Ridge. The car parked and two men carrying flashlights got out of it. They checked the doors of parked cars. One man entered a Toyota Tundra truck and checked its interior. The men returned to the Honda and drove away.
- At 3:51 a.m., Mr. Kalt and another man arrived and parked a white Honda Civic sedan similar in appearance to the Romero Honda in the 23000 block of 114A Ave. in Maple Ridge. They located a garage door remote and used it to open a garage door at Darren Priest's residence. The men entered the garage and the Priest residence while Mr. Priest was asleep inside. They took a Samsung tablet and the keys to Mr. Priest's Ford 150 truck. Mr. Kalt left and drove away in the Honda. The other man drove away in Mr. Priest's truck.
- As part of the investigation, Sgt. Todd directed Cst. Long to extract still images of the person with Mr. Kalt from the videos at the convenience store and circulate the images to other police detachments. Cst. Long did so.

- [9] Sgt. Todd testified that the Honda seen in the videos in the various locations matched the Romero Honda, and that the appellant matched the images of the second man captured on the videos at all the locations.
- [10] Cpl. Barros of the Surrey RCMP was called to provide recognition evidence. The trial judge held a voir dire to determine admissibility. Cpl. Barros testified that when he saw the circulated images, he recognized the appellant immediately. Cpl. Barros explained he had conducted surveillance on the appellant multiple times between 2012 and 2020 in relation to auto theft investigations. In November 2019, he had surveilled Mr. Soper for several days and, after arresting him, spent 20 minutes with him in a police vehicle. During that time, Mr. Soper threatened Cpl. Barros and wanted to beat him up. The appellant did not contest the admissibility of Cpl. Barros' evidence, and it was admitted into the trial proper.
- [11] On November 21, 2020, based on information he received about the location of a man matching the appellant's description, Cpl. Lai surveilled that individual at two locations. He recognized the appellant from his PRIME police photograph, the videos and still images.

Closing Submissions

- [12] In closing submissions, the Crown identified the central issue as whether it had proved the appellant's identity as the man with Mr. Kalt beyond a reasonable doubt. The Crown replayed several videos and referred to the features to which Sgt. Todd had pointed as the basis for his evidence that the appellant was the man with Mr. Kalt at all locations and had driven off in Mr. Priest's truck.

- [13] The appellant agreed that identification was the only issue and distinguished between the evidence of the officers and that from the videos and photos:

There is one issue in this trial and it's whether or not the Crown has proven beyond a reasonable doubt the identification of Mr. Soper as one of the culprits. There are two components to this analysis. First, the court must consider what weight, if any, it gives to the evidence of the officers; second, the court must review the video and photographs and is entitled to decide for the court's self whether there is a reasonable possibility that the individual in the videos and the photographs might not be the accused, Matthew Soper.

- [14] After citing authorities on the burden of proof, defence counsel referred the judge to *R. v. Villaroman*, 2016 SCC 33, on how to apply the burden of proof when drawing inferences based on circumstantial evidence, and to *R. v. Atfield*, 1983 ABCA 44, and *R. v. Goran*, 2008 ONCA 195, on the frailties of eyewitness identification and recognition evidence. The defence argued that the officers already had in mind that the appellant was involved in criminal activity, which coloured their perceptions, and that much of the face and head of the second man in the videos and still images were covered, making identification questionable.

Trial Judgment

- [15] After setting out a chronology of events, the trial judge instructed herself on the meaning of proof beyond a reasonable doubt in general, citing *R. v. Lifchus* [1997] 3 S.C.R. 320, 1997 CanLII 319, and in circumstantial evidence cases, citing *Villaroman*.
- [16] She identified the two issues as (1) whether the appellant was the person with Mr. Kalt at the gas station and convenience store who committed the offences there, and (2) whether the appellant was the person with Mr. Kalt at the Priest residence who committed the offences there.
- [17] The judge found that the Honda in which Mr. Kalt and his accomplice travelled was the Romero Honda (Reasons at para. 65).
- [18] With respect to identification, the judge noted Mr. Kalt's guilty pleas meant he was one of the two people at the gas station and convenience store and at the Priest residence. She described Mr. Kalt's features, clothing and shoes, which were clearly depicted in the convenience store videos. While the videos from the 238th St. location and the Priest residence were blurry, the judge was satisfied based on all the evidence that Mr. Kalt was one of the two people in the videos and in all of them, he was distinguishable from the other person.
- [19] Turning to the identification of the other person, the judge described the convenience store videos as showing this individual's "facial features, body type, clothing, and clothing detail". She continued:

- [47] From what I observe, this individual is a Caucasian male with a medium to large build. He has a full, dark beard and a moustache. A COVID-style face mask is worn below his chin and jaw. He wears glasses which could be seen on the videos. The arm of the left side of his frames are shown in the still images.
- [48] The still images show the second suspect wearing a dark-coloured ball cap with an emblem or sticker on the left side of his cap. He is wearing a dark-coloured jacket that is open to a grey-tone, camouflage-print shirt, with a portion of the Nike brand logo letter KE and the N portion of the Nike signature swoosh logo in white, seen in the middle of the shirt. I recognize that logo. It is distinctive. A small, green and brown, taupe-coloured, camouflage-pattern bag or purse is also seen across his body. This man is wearing dark pants and light-coloured running shoes with white soles on his feet.
- [20] The judge reviewed Sgt. Todd's evidence about what the convenience store videos revealed about the second person, including his features, clothing, height, weight and gait, his identification of the appellant from comparing his PRIME photograph to the videos, and his in-court identification of the appellant. Citing *R. v. Nikolovski* [1996] 3 S.C.R. 1197, 1996 CanLII 158, the judge found Sgt. Todd was not in a better position than the Court to identify the appellant and placed limited weight on his in-court identification. However, she found Sgt. Todd's evidence helpful in describing the physical characteristics and clothing of the person with Mr. Kalt on the video tapes (Reasons at para. 55).
- [21] The judge summarized her ruling on the voir dire that the threshold for admissibility of Cpl. Barros' evidence was met because his prior dealings with the appellant put him in a better position than the Court to identify him. She noted that Cpl. Barros "immediately recognized" the appellant from the circulated images "from a 'combination' of the shape of his face, chin and jawline and mouth from these images" (Reasons at para. 57). She referred to Cpl. Barros' cross-examination, in which he said of the COVID mask the second person in the convenience store wore under his chin, that this was a common way the appellant wore his mask in 2020. She wrote that Cpl. Barros also compared the images of the appellant to his PRIME photo and to a surveillance photo that showed him with a grey backpack and "small camouflage fanny pack-type bag or purse with a strap", the latter of which she described as similar to the one seen in the images circulated by Cpl. Lai. (Reasons at paras. 58-59.)
- [22] The trial judge concluded her review of the evidence by describing Cpl. Lai's identification and surveillance of the appellant based on recognizing him from the videos, circulated images, and PRIME photo. She put limited weight on his identification evidence because he had not had prior dealings with the appellant (Reasons at para. 64).
- [23] The judge found that the appellant was the person with Mr. Kalt at the gas station and convenience store. She explained that no other vehicles or individuals were seen on videos of the gas station or inside of the convenience store and rejected the defence's contention that someone else was in the store as speculative (Reasons at para. 68). The judge put weight on Cpl. Barros' evidence that the appellant's "glasses and a number of identifying facial

features" confirmed to him the appellant's identity (Reasons at para. 70), and that the camouflage purse seen on a surveillance photo of the appellant was "strikingly similar" to the camouflage purse worn by the appellant as depicted in the convenience store stills (Reasons at para. 71). She concluded:

[72] In light of Cpl. Barrows' [sic] testimony, coupled with my own assessment of these images, the 7-Eleven surveillance footage, and Mr. Soper's PRIME Police photograph, Cpl. Barrows' [sic] surveillance photograph of Mr. Soper, coupled with my own in-court identification, all of this has led me to conclude beyond a reasonable doubt that Mr. Soper was the second suspect at the Petro-Canada station and 7-Eleven convenience store at the material time of these charges. Accordingly, I find that the accused was the second occupant of the Honda Civic and is the second suspect shown in the 7-Eleven video footage.

[24] The judge rejected as speculative the defence argument that the appellant reasonably assumed Mr. Kalt used his own funds to purchase the items at the convenience store (Reasons at para. 73):

given Mr. Soper's admissions that he knew the Honda Civic was stolen from the Romero residence in Langley, that Alexandra Romero had left her identification and TD debit card in the vehicle at the time it was stolen, and that Mr. Kalt had used the debit card to purchase gas and sundries.

[25] The judge found the appellant was either a party to these offences or was wilfully blind to Mr. Kalt's actions. She convicted the appellant of the charges relating to the gas station and convenience store.

[26] With respect to the charges relating to the Priest residence, the judge relied on Sgt. Todd's evidence to find the distance between the gas station and the two residential locations was short and "could be easily driven to within a 10- to 15-minute time frame" at that time of day (Reasons at para. 77). She continued:

[78] With regard to the second suspect captured on the video surveillance at the Priest residence, I note the still images extracted from the video surveillance provide limited clothing detail worn by this individual. Although the images are blurry, one can see a portion of the shirt worn underneath the jacket of the second suspect seated in the front seat of a vehicle. This image shows the second suspect wearing a print shirt with a partial image of the Nike logo and swoosh. From my observations, this print is similar to the camouflage-print shirt worn by the second male suspect, whom I have identified as Mr. Soper, taken from the 7-Eleven convenience store video footage.

[79] Another image shows the same individual wearing light-coloured running shoes with white soles, which are different than the black running shoes worn by Mr. Kalt on this footage.

[27] The parties agree the judge misspoke in referring to the "Priest residence" in paragraph 78 and was actually referring to the 238th St. location.

- [28] The judge rejected the defence theory that Mr. Kalt switched passengers some time after he left the gas station and before he arrived at the Priest residence:
- [80] Given the proximity and temporal connection for travel between the Petro-Canada station and the two residential locations on 238th Street and 114A Avenue over approximately a 30-minute time period. The only rational inference I can draw from the evidence as whole is that Mr. Soper was the second male suspect involved in the commission of the break and enter and theft at the Priest residence, along with Mr. Kalt.
- [29] Accordingly, the judge convicted the appellant of the charges relating to this location.

Issues

- [30] The appellant submits the trial judge made five errors that he characterizes as "material misapprehensions of evidence that resulted in a miscarriage of justice":
- a) She failed to consider the frailties of recognition evidence;
 - b) She misapprehended Cpl. Barros' evidence about the glasses worn by the person who was with Mr. Kalt;
 - c) She wrongly concluded that the shirt and shoes worn by the person in the convenience store videos matched those of one of the people seen on the subsequent videos;
 - d) She misapprehended the evidence about whether there was time to switch the passengers in the Honda; and
 - e) She mistook the appellant's admission that the Honda and debit card were stolen, as an admission that he knew on November 12, 2020, they were stolen.

The Law on Material Misapprehension of Evidence

- [31] The standard of review for overturning a conviction based on a misapprehension of evidence is high:

2 Morrissey, it should be emphasized, describes a stringent standard. The misapprehension of the evidence must go to the substance rather than to the detail. It must be material rather than peripheral to the reasoning of the trial judge. Once those hurdles are surmounted, there is the further hurdle (the test is expressed as conjunctive rather than disjunctive) that the errors thus identified must play an essential part not just in the narrative of the judgment but "in the reasoning process resulting in a conviction".

R. v. Lohrer, 2004 SCC 80, affirming R. v. Morrissey (1995), 22 O.R. (3d) 514, 1995 CanLII 3498 (C.A.).

- [32] The fact that evidence can be interpreted differently is not sufficient: *R. v. Swales*, 2014 BCCA 350 at para. 49. A misapprehension may arise from a mistake about the substance of the evidence, a failure to consider evidence relevant to a material issue, or a failure to give proper effect to the evidence: *Morrissey* at 218.
- [33] The misapprehension must be material. In *R. v. Kaemmer*, 2019 BCCA 136, this Court summarized the law affirmed in *R. v. Sinclair*, 2011 SCC 40:
- [28] Two principles emerge from the summary of the law set out in *Sinclair*:
- (i) a misapprehension of the evidence will only vitiate a conviction if the error was a central element of the judge's reasoning on which the conviction is based; and
 - (ii) the means of determining whether the error was a central element of the judge's reasoning is to consider whether striking it from the judgment would leave the trial judge's reasoning on unsteady ground.
- [34] In *R. v. Yaman*, 2024 BCCA 141, Justice Winteringham reviewed how an appellate court should approach a trial judge's reasons:
- [65] The fact that a judge does not discuss all of the evidence led on a given point does not mean that the judge ignored it. Judges are not obliged to detail every aspect of their factual deliberations in reasons for judgment: *R. v. Walle*, 2012 SCC 41 at para. 46. Nor are they obliged to spell out every finding or inference of fact or credibility. Reasons must show that the judge grappled with the substance of the live issues for determination and the logical connection between the evidence and the decision must be discernible: *R. v. R.E.M.*, 2008 SCC 51 at para 64. As Justice Cromwell stated in *R. v. Villaroman*, 2016 SCC 33, a judge's reasons:
- [15] ... must be "read as a whole, in the context of the evidence, the issues and the arguments at trial, together with 'an appreciation of the purposes or functions for which they are delivered'": *R. v. Laboucan*, 2010 SCC 12, [2010] 1 S.C.R. 397, at para. 16, citing *R. v. R.E.M.*, 2008 SCC 51, [2008] 3 S.C.R. 3, at para. 16; see also *R. v. C.L.Y.*, 2008 SCC 2, [2008] 1 S.C.R. 5, at para. 11.
- [35] Most recently, in *R. v. X.*, 2025 BCCA 168, Justice Horsman summarized the law as follows:
- [29] An appellant advancing a ground of appeal based on misapprehension of the evidence faces a high hurdle. It is not enough for the appellant to suggest a different interpretation of the evidence or to point to evidence that arguably weighs against the trial judge's factual findings: *R. v. Yaman*, 2024 BCCA 141 at para. 61; S.S. at para. 51. Rather, the appellant must show that the judge failed to consider evidence relevant to a material issue, made a mistake as to the substance of the evidence, or failed to give proper effect to the evidence. Further, it must be shown that the misapprehension goes to the substance of the judge's reasoning process, rather than to the detail: *Yaman* at para. 60. A misapprehension going to the core of the outcome is a palpable and overriding error: S.S. at paras. 51-52.

Issue 1: Failure to Consider Frailties of Recognition Evidence

- [36] The appellant acknowledges that the trial judge assessed the threshold reliability of Cpl. Barros' recognition evidence in the voir dire. However, he submits her reasons do not demonstrate that she cautioned herself about the frailties of recognition evidence. He gives two examples of why the caution was material: first, that Cpl. Barros' opinion was not based on recognizable distinctive characteristics of the appellant; second, Cpl. Barros might have a biased perception of the appellant based on his prior dealings with him.
- [37] In *R. v. Field*, 2018 BCCA 253, this Court reviewed the principles governing recognition evidence. A trial judge's finding on identification, whether in the form of eyewitness testimony or recognition evidence, is entitled to deference: at paras. 39-40, citing *R. v. L. (W.M.)*, 2010 BCCA 355 at paras. 27-28. Further, although any type of identification evidence merits scrutiny, "recognition evidence does not carry with it the inherent unreliability of eyewitness testimony of a stranger" (*Field* at para 42).
- [38] While the judge did not expressly caution herself, she scrutinized Cpl. Barros' recognition evidence carefully. She explained why she found it merited significant weight, pointing to the speed with which Cpl. Barros recognized the appellant, the identifying features to which he pointed, and his prior dealings with the appellant.
- [39] With respect to identifying features, the appellant argues that Cpl. Barros simply pointed to the combined facial features of the person captured in the two circulated still images from convenience store videos, "specifically his jawline, the beard line, the nose, the ears, and the mouth" without explaining what it was about those features that were "distinctively attributable to the appellant".
- [40] It was not necessary for one or more features to be out of the ordinary to support an identification. The fact that a witness' identification is not based on a distinctive characteristic of the accused does not necessarily undermine the efficacy of their identification. It is for the trial judge to assess the sufficiency of identification evidence based on the circumstances: *R. v. L. (W.M.)* at para. 28, citing *R. v. Keshane*, (1992) 11 B.C.A.C. 86, [1992] B.C.J. No. 450.
- [41] I agree the judge did not expressly address in her reasons whether Cpl. Barros' evidence was biased because of his prior dealings with the appellant. The appellant raised that argument with respect to all the police officers, not only Cpl. Barros, and submitted:

When we look at the officers that came before the court, they all strongly believed in their recognition of Mr. Soper, but they already had in their mind this was an individual who was involved in criminal activities and they came in with a coloured perception.

- [42] Further, the thrust of the appellant's closing submission was less about bias and more that identification was not possible because so much of the person's face was covered:

The issue so much here isn't about the honesty or the conviction of the officers, it's a question about whether the person who is seen on the stills of the videos is actually the person that they're alleging did the activities, what matters is their ability to establish beyond a reasonable doubt that the individual is the accused. The strongest, most reliable evidence will generally require a witness who is well-acquainted with the accused, who has ample opportunity to view them, who can point distinctively, objectively to verifiable indicia of why the person in the video or the picture is the accused. It could be said that Mr. -- or [Cpl]. Barros is the best person in that, but at the end of the day the person who he's looking at in the video is essentially covered; glasses, hat, hoody and mask covering their chin. If you take off all those clothing pieces it could be a different person.

[43] In my view, the judge's failure to expressly address the issue of bias in her reasons does not constitute a misapprehension of evidence. The trial judge is presumed to know the law and her reasons must be read in the context of the evidence and submissions of counsel. The trial judge explained her reasons for finding Cpl. Barros's recognition evidence to be reliable. Her findings as to the weight to be given to his evidence are subject to a high degree of deference on appeal.

Issue 2: Misapprehension of Cpl. Barros' Evidence about the Glasses

[44] In summarizing Cpl. Barros' evidence, the judge referred to his recognition of the appellant not only based on his recollection and the appellant's PRIME photo, but also from a third photo he had taken of the appellant during a surveillance operation. The judge wrote that Cpl. Barros testified as to the appellant's features and bags depicted in that photo, including the fact he was wearing glasses (Reasons at para. 58).

[45] After completing her consideration of the evidence, the judge set out her conclusions on the identity of the second person in the convenience store videos. In the course of that discussion, she stated: "[i]n giving his testimony, Cpl. Barrows [sic] noted Mr. Soper's glasses and a number of identifying facial features, which confirmed in his mind his identity" (Reasons at para. 70).

[46] The appellant interprets this sentence as the judge misapprehending Cpl. Barros as having said the glasses worn by the individual in the convenience store video image were an identifying feature. One of the convenience store images of the person later identified as the appellant shows a portion of the frame of the glasses he is wearing, but it is not unusual. I interpret the judge as saying that, taking the fact that the person is wearing glasses together with his facial features was what led Cpl. Barros to confirm the appellant's identity, not that the glasses themselves were distinctive. In my view, she did not misapprehend this evidence.

Issue 3: Misapprehension as to Similarity of Shirt and Shoes

- [47] The appellant submits that it was not possible for the judge to find the pattern on the shirt and the colouring of the shoes worn by the person with Mr. Kalt at 238th St. and the Priest residence matched those of the person with Mr. Kalt at the convenience store because the images from the former locations are too blurry.
- [48] The judge found the images captured from the video at the residential locations "provide limited clothing detail", and continued:
- [78] Although the images are blurry, one can see a portion of the shirt worn underneath the jacket of the second suspect seated in the front seat of a vehicle. This image shows the second suspect wearing a print shirt with a partial image of the Nike logo and swoosh. From my observations, this print is similar to the camouflage-print shirt worn by the second male suspect, whom I have identified as Mr. Soper, taken from the 7-Eleven convenience store video footage.
- [79] Another image shows the same individual wearing light-coloured running shoes with white soles, which are different than the black running shoes worn by Mr. Kalt on this footage.
- [49] The judge's identification of the appellant as the person with Mr. Kalt at the Priest residence was informed by the totality of the evidence and her prior findings of fact. She had the benefit of Sgt. Todd's evidence describing salient features of the videos. She had found that the Romero Honda was the vehicle in the videos from all three locations (Reasons at para. 67) and that Mr. Kalt was one of the two individuals in each of the videos. She found that the clothing worn by the second individual on the video from the 238th St. location was similar to the clothing worn by the individual in the convenience store video, whom the trial judge found to be the appellant.
- [50] In saying the images are too blurry to identify the similarity in the shirt and shoes worn by the second individual in the videos, I consider the appellant to be inviting the Court to interpret the evidence in a different way than the trial judge. Having examined the videos, I am of the view that it was possible for the judge to make the observations she did.

Issue 4: Misapprehension of Evidence of Timing

- [51] The appellant submits the trial judge misapprehended Sgt. Todd's evidence about the time it would take to drive between the various locations and relied on that misapprehension to reject the defence theory that the person with Mr. Kalt at the gas station was not the same person as the one with him at the Priest residence.

- [52] The judge referred to Sgt. Todd as having testified that the driving time between the gas station and the 238th St. location was approximately 20 minutes at that time of day (Reasons at para. 37). Later, she referred to Sgt. Todd's testimony that the driving time between the 238th St. and 114A Ave. locations was 10 to 15 minutes, again having regard to the time of day (Reasons at para. 77).
- [53] I agree that in these paragraphs the trial judge misapprehended Sgt. Todd's evidence about driving times. He testified that the driving time between the gas station and the 238th St. location at that time of day, assuming a speed of 50 km/h, would be about five minutes, and between 238th St. and the 114A Ave location would be about a minute.
- [54] However, the misapprehension played no material role in the trial judge's reasons. In rejecting the defence theory that a third man may have joined Mr. Kalt after leaving the gas station, the judge stated:
- [80] I find it highly unlikely on the evidence as suggested by defence counsel that Mr. Kalt would have been able to switch passengers to another male of similar height, clothing, and footwear in the very early morning hours when most people would have been sleeping. Given the proximity and temporal connection for travel between the Petro-Canada station and the two residential locations on 238th Street and 114A Avenue over approximately a 30-minute time period. The only rational inference I can draw from the evidence as whole is that Mr. Soper was the second male suspect involved in the commission of the break and enter and theft at the Priest residence, along with Mr. Kalt.
- [55] I interpret the trial judge's reference in this passage to be to the actual driving times on the morning in question. She found it unlikely--not impossible--that Mr. Kalt could have found another male passenger of similar height, clothing, and footwear over that period of time during the early morning hours when most people are sleeping. The trial judge's earlier misapprehension about driving times between the various locations did not go to the substance of her reasoning in rejecting the "third man" theory.

Issue 5: Misapprehension of the Appellant's Admission

- [56] The appellant submits the judge misapprehended the appellant's admissions of fact as admitting that he knew the Honda was stolen at the time Mr. Kalt used Ms. Romero's debit card to purchase the items at the convenience store.
- [57] The relevant admissions read:
1. A 2019 white 4 door Honda Civic with licence plates [number omitted], belonging to Raquel Romero and Alexandra Romero (the "Honda Civic") was stolen from the Romero residence at [address omitted] at approximately 0100 hours on November 12, 2020.

2. Alexandra Romero's TD debit card [number omitted] ("Romero's TD Card") along with other identification and cards were inside the Honda Civic when it was stolen from the Romero Residence.
 3. A Honda Civic parked at a Petro-Canada gas station located at 24009 Dewdney Trunk Road, Maple Ridge, British Columbia at approximately 0300, November 12, 2020. Anthony Randy Kalt ("Kalt") used Romero's TD Card to purchase \$20.00 of gas.
- [58] The admissions are silent as to when the appellant learned the Honda was stolen and therefore are susceptible of more than one meaning. They could be interpreted as the appellant suggests, or as implying that he knew the vehicle was stolen that night.
- [59] The judge read the admissions in the second way, and relied on them to reject the defence theory that the appellant understandably assumed Mr. Kalt had paid for the items with his own money:
- [73] Mr. Soper is seen on video selecting items from the 7-Eleven store and bringing them to the front counter for Mr. Kalt to purchase. I reject the defence assertion that it was not unreasonable for Mr. Soper to assume that Mr. Kalt purchased these items with his own funds, as it is common for a friend to do so. I reject this submission as equally speculative, given Mr. Soper's admissions that he knew the Honda Civic was stolen from the Romero residence in Langley, that Alexandra Romero had left her identification and TD debit card in the vehicle at the time it was stolen, and that Mr. Kalt had used the debit card to purchase gas and sundries.
- [60] At trial, the appellant did not argue that the admissions could not fairly be read as imputing knowledge the vehicle and debit card were stolen to the appellant on the night of November 12. Instead, he alluded to having "multiple issues with the testimony" and said that it was not certain that the Honda stolen from the Romero residence was the same vehicle that arrived at the gas station. He added:
- Also, we have to assume that when the Honda was stolen - we have to assume that my client was there when it was stolen and my client knew what was inside that Honda that could be used for any other purposes.
- [61] As I have noted, the judge found as a fact that the Romero Honda was the vehicle in which Mr. Kalt and his passenger arrived at the gas station, based in part on the admissions that Mr. Kalt used Ms. Romero's debit card that was inside the Honda to buy gas and other items (Reasons at para. 65).
- [62] I consider it was open to the judge to interpret the admissions as she did. She was not required to interpret them in isolation. There was a body of evidence available to her that, taken as a whole, supported the inference the judge drew about the appellant's knowledge.

[63] Even assuming the appellant did not admit he knew the vehicle was stolen when Mr. Kalt used Ms. Romero's debit card at the gas station and convenience store, I am satisfied the totality of the evidence supported the judge's rejection of the defence theory and her conclusion that the appellant was either a party to Mr. Kalt's criminal use of the debit card or wilfully blind to it.

Conclusion

[64] I have concluded the only evidence the judge misapprehended was Sgt. Todd's evidence about driving times. This misapprehension was not material and did not go to the core of the judge's reasoning. The appellant has not demonstrated any other misapprehension of the evidence by the trial judge, or any other error that would justify appellate interference.

[65] I would dismiss the appeal.

"The Honourable Justice Iyer"

I AGREE:

"The Honourable Mr. Justice Abrioux"

I AGREE:

"The Honourable Madam Justice Horsman"

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