
CANADA / JUDGMENT

R. v. Tse

2007 BCSC 783

COURT

Supreme Court of British Columbia

DECIDED

16 February 2007

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2007 BCSC 783 R. v. Tse

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Tse,

2007 BCSC 783

Date: 20070216

Docket: 23900

Registry: Vancouver

Regina

v.

Yat Fung Albert Tse, Viet Bac Nguyen,

Nhan Trong Ly, Daniel Luis Soux, Huong Dac Doan

and Myles Alexander Vandrick

BAN ON PUBLICATION s. 517(1) CCC

Before: The Honourable Madam Justice H. Holmes

Ruling on Bail Application re Accused Doan

In Chambers

February 16, 2007

Counsel for Crown

S.P. Lakshman

Counsel for Accused Doan

K.S. Westlake

No other appearances

Place of Hearing:

Vancouver, B.C.

- [1] THE COURT: Mr. Doan seeks his release under s. 515 of the Criminal Code from pre-trial detention. The Crown opposes, relying on all three of the available grounds for detention in s. 515(10) of the Criminal Code, but mainly on what are often called the secondary and tertiary grounds in s. 515(10)(b) and (c) respectively.
- [2] Mr. Doan submits that the allegations against him must be viewed in light of the presumption of innocence, as well as what he submits are inherent and obvious weaknesses in the Crown's case, and that his detention is not justified because very substantial surety bail and restrictive conditions can satisfy the concerns that underlie s. 515(10).
- [3] Mr. Doan has been in custody since March 26, 2006. His trial is scheduled for September 2007, this year, to run for three months.
- [4] I will first outline the Crown allegations.
- [5] Mr. Doan is charged with five other persons on a direct indictment. Nine of the 11 counts on the indictment charge all six accused with offences of kidnapping, unlawful confinement, and extortion against three victims: Peter Li, his wife Jennifer Pan, and their friend Xiao Cheng. Mr. Doan is not charged with the remaining two charges on the indictment which allege an aggravated assault of a fourth person (a cousin of one of the three victims) at the time the alleged victims were released from the confinement alleged in the preceding counts, and also possession of a firearm, (a semi-automatic pistol) alleged to have been in the residence where the three victims are said to have been confined after their kidnapping.
- [6] The kidnapping of the three victims is said to have taken place on February 22, 2006. Mr. Li is alleged to have been the primary target. The Crown alleges that Mr. Cheng, a friend who was visiting Mr. Li, simply happened to be in the wrong place at the wrong time.
- [7] Mr. Li, who is a property developer and has considerable assets, was on bail for what I am advised are very serious drug charges said to have arisen from or in association with organized criminal activity. As a term of his bail, he wore an electronic monitoring device. I am advised that Mr. Li's own charges have not yet proceeded to trial.

- [8] The Crown alleges that on February 22, Ms. Pan went downstairs to check the mail and was met by several large men and taken into a van with something pressed into her back and her mouth covered. She was told that the men had knives and guns. Two other men waited in the van, and they drove her away while the first group of men entered her apartment building. Ms. Pan was driven for approximately 25 minutes. She was able to see the first part of the route, and was then blindfolded.
- [9] The Crown alleges that Ms. Pan was taken to a residence that she described in some detail, both the yard around the residence and the residence itself, and there she was tied up. She was asked where Mr. Li and Mr. Cheng kept their money, and she was not harmed. She advised that Mr. Li and Mr. Cheng arrived at the residence the next day.
- [10] The Crown alleges that after confronting Ms. Pan and forcing her into the van, the first group of men then knocked on Mr. Li's door. As Mr. Li opened the door, they barged in. All were wearing gloves. They took control of Mr. Li and Mr. Cheng, and took their phones from them. At that point, Mr. Li received a call from a realtor, and one of the men instructed him to tell the realtor that he would call back the next day.
- [11] The Crown alleges that Mr. Li and Mr. Cheng were threatened, and were told that Ms. Pan had already been taken. Some of the men had pepper spray, and Mr. Li and Mr. Cheng surmised, from bulges in pocket areas, that some of them had guns; however, no firearms were produced. Mr. Li was forced to open his safe and to leave the room, and various items were taken, mostly jewellery and a wallet which had several thousand dollars in cash; that wallet was returned much later.
- [12] The next day Mr. Li and Mr. Cheng were told to get ready to leave. Some of the men began to vacuum and wipe down the apartment. Mr. Li and Mr. Cheng were taken to the underground parking lot and put in an older green van. One of the men told them that the boss wanted to talk and that this would take only a few hours.
- [13] The Crown alleges Mr. Li and Mr. Cheng were driven to a residence, escorted into it from the rear, their eyes covered, and there were reunited with Ms. Pan. Ms. Pan was at that point being watched over by more than ten men.
- [14] A few hours after their arrival at the residence, Mr. Li was taken for a drive and his electronic monitoring device was cut off.
- [15] The Crown alleges that the three victims were from then on kept in a single bedroom under constant guard. The bedroom had covered windows and was installed with cameras. The three alleged victims were fed every day, but inadequately and infrequently. Their confinement in this manner lasted approximately three-and-a-half weeks.
- [16] The three alleged victims each took steps to ensure that they placed samples of their own bodily substances, such as blood, in inconspicuous places in the residence. These were later found and identified by the police.

- [17] The Crown alleges that on occasions during the three-and-a-half-week confinement, Mr. Li and Mr. Cheng were taken to another room in the house which was entirely lined with plastic. There, they were zap-strapped to two chairs facing each other and were beaten and, on several occasions, tasered. Physical marks on their bodies seen after their release provided some support for these allegations. Mr. Cheng advised that after one such taserings he was unable to swallow for three days. The alleged victims recounted that they were threatened during the beatings and were forced to watch each other being beaten. Some of the threats referred to removing fingers or a foot, or to the victims never being released.
- [18] Mr. Li was reported missing by his daughter on February 23. However, the Crown acknowledges that Mr. Li's family and, indeed, the police for some time doubted that there had, in fact, been a kidnapping, given Mr. Li's circumstances, background, and associations.
- [19] Mr. Li contacted his daughter on February 28; the Crown alleges that he did so under the direction of the kidnappers. This was the first of a series of phone calls requesting ransom money. Steps had been taken to prevent the police tracing the source of the calls.
- [20] The Crown alleges that Mr. Li had been forced to write out names and contact information of his family members. One of the men dictated a script that Mr. Li was to use in phone calls to family members asking them to raise funds.
- [21] As a result of the calls for ransom money, about \$495,000 in cash was turned over to a person in Markham, Ontario. Another \$400,000 was turned over in Vancouver under police surveillance; however, the person who picked up that money was able to evade the police after the pickup. A further amount of between \$300,000 and \$600,000 was turned over in China. These amounts, which total between \$1.2 and \$1.5 million, have not been recovered.
- [22] On one occasion later in the three-and-a-half-week confinement, all three victims were, by the Crown's allegations, tied together and made to lie on a sheet of plastic for about 10 hours; they were told that their families were not cooperating and that they, the victims, would be killed. They were terrified. Mr. Li at that point offered to sell a building; he was then forced to write out a statement indicating how he would do so. There then seemed, by the Crown's allegations, to have been an agreement that in return for the release of the victims, Mr. Li would pay an additional \$1.7 million by the end of the week, which I understand was then to have been March 24.
- [23] The alleged victims were released on March 19. However before then, the kidnappers photographed them and demanded their family members' names and addresses and phone numbers, including of people in China. The kidnappers then took about a week to verify that information. One of the kidnappers told Mr. Li that it did not matter where the money came from because the kidnappers had connections in Japan, Australia, Taiwan, Hong Kong, China, India, South America, and the U.S.

- [24] After the release, the kidnappers maintained contact with Mr. Li and returned his wallet and keys to him, and with Ms. Pan who, by the Crown's allegations, the kidnappers expected to liquidate assets for further ransom. The primary contact with Ms. Pan was through one of the co-accused, and not through Mr. Doan. Ms. Pan was in fact in touch with the police, and she attempted to stall. Threats continued, referring to what others -- "they" -- would do if Ms. Pan did not quickly produce the money.
- [25] The six accused on this indictment were arrested on March 26.
- [26] In outlining the Crown's allegations thus far, I have spoken without reference to who, of the men alleged to have taken part in the offences, did what. I will now outline briefly the allegations as they relate specifically to Mr. Doan.
- [27] The Crown's position is that Mr. Doan or Ah Hung, as he was known to the three victims, was the leader of the men to whom I have referred. The Crown alleges that Mr. Li believed Ah Hung to be the mastermind behind the kidnapping, and that the other men who took significant parts in the kidnapping appeared to take directions from Mr. Doan, even though Mr. Doan was not always at the scene at the time that these directions appeared to have been given.
- [28] The Crown alleges, based on Mr. Li's statements, that Mr. Doan or Ah Hung spoke to Mr. Li on the second day after Mr. Li's arrival at the residence. Mr. Li believed that this was in follow-up to Mr. Li having been told the day before that the boss wanted to speak to him. Mr. Doan essentially outlined the terms of release to Mr. Li. He told him that this was not personal, they just wanted money. Mr. Doan advised Mr. Li that he believed Mr. Li made a lot of money dealing in drugs and real estate, and asked him what three lives were worth to him. He told him that nobody knew where the three victims were, and killing them would be as easy as squishing an ant. Mr. Li advised that Ah Hung demanded \$10 million.
- [29] Mr. Li advises that he told Ah Hung that he did not have that amount of cash available, and that it would take some time to liquidate his assets. He was then taken to the plastic-lined room, tied to a chair, and threatened with what appeared to be a taser gun or some form of electricity. It was several days later, as I understand the allegation, that the actual beatings, which I described earlier, began.
- [30] Mr. Li advises that in connection with one of the later beatings, Ah Hung demanded that Mr. Li get as much money as he could, and Mr. Li said he would try to get \$2 - \$3 million.
- [31] Both Mr. Li and Mr. Cheng identified Mr. Doan as Ah Hung in photo lineups.
- [32] I will now address Mr. Doan's background and his circumstances.

- [33] Mr. Doan was granted Convention Refugee status as a refugee from Vietnam on his arrival in Canada in 1991 at the age of 14. However, his permanent resident's status has been revoked as a result of his criminal convictions, which I will address in a moment, and he was ordered deported as a danger in 1997. He has not been deported thus far because, as I am advised, documents from North Vietnam are to date not available to establish his origin there; however, Immigration authorities are still pursuing the matter.
- [34] Mr. Doan is subject to an Immigration release document that requires him to report regularly. I am advised that except when he was detained after his arrest on these charges, he reported regularly as required.
- [35] Mr. Doan has a criminal record beginning as a young offender with offences that included, in June of 1993, attempted robbery for which he was given 15 months secure custody and probation for a year and a firearms prohibition for 10 years, and in August of 1993, theft under \$1,000 for which he was given probation for six months.
- [36] As an adult, in 1996 he was convicted of aggravated assault, robbery, and the use of a firearm. For the aggravated assault, he was sentenced to four years' imprisonment and was placed on a lifetime firearms prohibition. For the robbery, he was sentenced to three years; I take it that was concurrent. For the use of the firearm, he was sentenced to an additional two years' consecutive to the four-year sentence on the aggravated assault. The combined sentences resulted in imprisonment for six years.
- [37] I am told that those offences, for which he was convicted in 1996, were committed in December 1994 in the course of a home invasion which Mr. Doan committed believing there to be a marihuana grow operation in the home and wanting to rob it. In the course of that home invasion, the family were tied up. Mr. Doan shot the father at close range, and he then continued to threaten him.
- [38] Mr. Doan is now in what is evidently a secure and loving relationship with his common-law wife who he met in the year 2000. They have a son who is three. Mr. Doan has a close relationship with his family and with his in-laws and the extended in-law family. As Mr. Westlake points out, he now has strong roots here in the community, and there is no reason to think that he has any roots anywhere else.
- [39] Mr. Doan is involved in two businesses, with partners in each. One business imports marble from Pakistan and bamboo flooring from China. The other business specializes in residential development, including construction and renovations. Mr. Doan deposes that both businesses are suffering from his absence and that his immediate family's finances are also suffering very seriously from his absence.

- [40] Not only are finances suffering from Mr. Doan's absence; he is also missed for his role in his family and his community. This is made clear in the body of letters of reference and character references submitted on Mr. Doan's behalf. Among these are letters written by members of his immediate family, members of his wife's family or his in-laws, and letters written by his business partners.
- [41] Mr. Doan's common-law wife, who he met in the year 2000, speaks very highly and lovingly of Mr. Doan's commitment to her and to their young son, and of his loyalty and his support. She speaks also of the need for his financial support. She herself is reluctant to return to paying work because of her concerns about the effect that that might have on their three-year-old, but she would at least like the indirect financial support that Mr. Doan could give by remaining in the home, perhaps under house arrest, so that he could act as a caregiver for the child if she is obliged to take paying work outside the home.
- [42] The letters from Mr. Doan's in-laws speak highly of him as a man of his word. They have evidently grown very fond of Mr. Doan over the few years that they have known him. They claim to be aware of his past, although I do have to wonder whether they are aware of the details. One family member spoke of being aware of his past incarceration, but described it as resulting from the normal indiscretions of a young person.
- [43] Mr. Doan's own family members speak strongly of their faith in him as a person and, on several occasions, use the expression, "it breaks my heart" to see that he is not now with his common-law wife and son and able to give them the support they need. They speak of him as a good person, generous, and active in social life and community activities. Some of them ask that the court be "objective" and "fair" so that Mr. Doan may have a chance to become a productive member of the community; they may rest assured that the courts of this province make their decisions in that fashion.
- [44] Mr. Doan's business partners also speak of him as kind, generous, and a man of high values.
- [45] Mr. Doan himself deposes that he learned a significant lesson from the incarceration after his armed robbery that he notes he committed at age 18, two years after he had run away from home. He deposes that he has since then tried to give back to the community through financial donations and through volunteer work, and there is evidence from other individuals that Mr. Doan has, indeed, engaged in activity of that type.
- [46] I mentioned earlier that there are five other accused people charged on this indictment. Terms of release have been ordered for three of them, requiring several sureties each and in amounts of near or more than a million dollars, together with, in some but not all of the cases, very restrictive conditions such as house arrest.
- [47] Mr. Westlake submits that similar conditions here could answer the concerns that underlie the three available grounds for detention.

- [48] The main difficulty with the submission is that, as I am advised, the other accused persons have little if any criminal background and, in particular, do not have Mr. Doan's record for serious violence. Also, Mr. Doan is alleged, as I have indicated and I will later address in a bit more detail, to have had a leading role in the kidnappings and extortions charged. He is also alleged to have referred to his record for violence when outlining to the victims why they should comply with the demands.
- [49] I will now speak about the apparent strength of the Crown's case. Much attention was given to this in counsels' submissions as relating either directly or indirectly to all three of the available grounds for detention.
- [50] Mr. Lakshman submits that a court must not weigh evidence in a bail hearing. That is so as a general proposition, but it requires careful application in this context because some, though not all, of Mr. Westlake's submissions in this area relate not to the weight but to the availability or existence of evidence to support the Crown's allegations.
- [51] I note also that while Mr. Lakshman submits that the three alleged victims' accounts of the events are corroborated in many ways, that may be so in relation to the details of what happened between February 22 and March 26, but it is less true in relation to the allegations that Mr. Doan was involved and that he had a leading role. Both Mr. Li and Mr. Cheng identified Mr. Doan as involved in the kidnapping, but in so far as the Crown alleges that Mr. Doan had a leading role, the allegation appears to rest almost entirely on Mr. Li's evidence.
- [52] I therefore accept Mr. Westlake's submission that the Crown's case against Mr. Doan at this stage rests very heavily on the evidence of Mr. Li and, to a lesser extent, Mr. Cheng.
- [53] Mr. Westlake, in very able submissions, casts doubt on the credibility and reliability of Mr. Li's and Mr. Cheng's identifications of Mr. Doan, and submits that the Crown's case, even taken at face value, exposes such significant difficulties in this area as to seriously undermine the strength of the Crown's case as a whole.
- [54] Among the weaknesses Mr. Westlake notes are the following. First, Mr. Li and Mr. Cheng made at least one identification of another person they said was present at and involved in abducting them that the Crown now concedes (after reviewing evidence obtained by the defence) was false, because the person was out of the country at the time. Second, Mr. Li knew Mr. Doan before the alleged kidnapping and knew him to be associated with others who were involved, by the Crown's allegations, in a kidnapping and may therefore have either knowingly or unwittingly implicated Mr. Doan in the kidnapping conducted by Mr. Doan's associates. Third, the identifications of Mr. Doan or Ah Hung made by Mr. Li and Mr. Cheng were made five days apart, during which time these alleged victims may well have been in communication with each other, so that Mr. Li's version of the events and the respective roles of the various people who may have been involved may have spilled over to contaminate Mr. Cheng's own version or recollection.

- [55] Mr. Westlake then points to Mr. Li's criminal background and involvement and to other bases to doubt his credibility or reliability. In relation to Mr. Cheng, Mr. Westlake, as I have already noted, submits that there is a basis for concluding that his evidence as to Mr. Doan's involvement is tainted by Mr. Li or Mr. Li's version of the events.
- [56] However, those are issues for the trier of fact.
- [57] The Crown's case, as it rests on Mr. Li's evidence and Mr. Cheng's, is to be taken at face value for the purpose of this hearing. In my view, it does provide a basis for the Crown's position that Mr. Doan was in a superior decision-making position in the hierarchy of the group that committed these alleged offences.
- [58] As I indicated at the outset, the Crown, although relying on all three grounds, seeks Mr. Doan's detention mainly on the secondary and tertiary grounds.
- [59] I will say that in my view, several of the Crown's submissions paid insufficient attention to the presumption of innocence, and in some instances overstated the available evidence. The Crown also invited some unsupported inferences: for example, that the six accused are shown together in a photograph at what appears to be a wedding, is unlikely to provide evidence of their criminal association in these alleged offences given that, as is common ground, they were also family or social friends and business associates.
- [60] The secondary ground for detention appears in s. 515(10)(b):
- (b) where the detention is necessary for the protection or safety of the public, including any victim of or witness to the offence, having regard to all the circumstances including any substantial likelihood that the accused will, if released from custody, commit a criminal offence or interfere with the administration of justice.
- [61] Mr. Doan is alleged to have had a leading role in these offences. During the course of the offences, the victims are alleged not only to have themselves been abused, but also to have had to draw into the scope of potential extortion their friends, families, and associates. Threats are alleged to have been made that related not only to the three confined victims, but also to others in the larger community, including outside Canada. On these allegations, there is a basis for serious concern, that Mr. Doan would commit a further criminal offence or interfere with the administration of justice if he were released. In my view, his detention is required on the secondary ground.
- [62] I will comment also on the tertiary ground, which appears in s. 515(10)(c):
- (c) . . . where the detention is necessary in order to maintain confidence in the administration of justice, having regard to all the circumstances, including the apparent strength of the prosecution's case, the gravity of the nature of the offence, the circumstances surrounding its commission and the potential for a lengthy term of imprisonment.

Mr. Justice Romilly noted in the case of *R. v. Aulakh* 2003 BCSC 740 at para. 38 that public confidence in the administration of justice must be considered in light of the presumption of innocence. Also, the assessment of public confidence in relation to the pre-trial release or detention of the accused must be made in relation to an informed and reasonable public, and not according to public opinion or according to a general expectation that persons charged with very serious offences will always be detained pending trial. In most cases, public confidence will be enhanced by the pre-trial release of an accused who is not required to be detained on the primary or secondary ground, and only in relatively rare cases will detention be required on the tertiary ground.

[63] I agree with Mr. Westlake that the fact that a person is charged with a serious offence, even an offence as serious as murder, is not alone sufficient to justify detention on the tertiary ground. However, I do conclude that this is one of those relatively rare cases where detention is justified on the tertiary ground.

[64] Kidnapping and extortion are among the most serious offences in our criminal law, with maximum sentences of life imprisonment.

[65] The Crown's case on its face here alleges a kidnapping that was ambitious, calculated, brutal, and extended. The abduction of three people, two from their own home, and their confinement and abuse for three-and-a-half weeks was followed by extensive and reasonably sophisticated efforts to extract further money from them. The criminal conduct alleged, taken in the aggregate, reflects very sustained targeting of not only the three individuals and the financial resources available to them either directly or indirectly through their friends, associates and families, but also of the circle of those who might have provided further ransom money to those people. The scope of the effect of the alleged conduct is very wide, and extends across the globe.

[66] These alleged offences were not offences committed in the heat of the moment. They were premeditated, carefully planned, and involved a large number of people, preparation, and coordinated action. They showed considerable determination to extract as much money as possible from the alleged victims and those over whom they had influence over an extended period of time. They were sophisticated but also brazen, apparently committed in confidence that the victims and the authorities would be powerless against the perpetrators.

[67] Those features, as I have outlined them, in my view, raise very serious concerns for a reasonable and informed public.

[68] So, Mr. Doan, your application for release is denied.

"H. Holmes, J."

The Honourable Madam Justice H. Holmes

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