

Sam Tuan Vu (appellant) v. Her Majesty The Queen (respondent)
(34286; 2012 SCC 40; 2012 CSC 40)

Indexed As: R. v. Hernandez (J.) et al.

Supreme Court of Canada
McLachlin, C.J.C., LeBel, Deschamps, Fish, Rothstein, Cromwell and Moldaver, JJ.
July 26, 2012.

Summary:

The victim was abducted and held for eight days during which time he was moved from one house to a second and then a third. Vu was one of five accused charged with kidnapping and unlawful confinement of the victim.

The British Columbia Supreme Court, in a decision reported at [2008] B.C.T.C. Uned. C48, acquitted Vu of kidnapping and convicted him of unlawful confinement. The Crown appealed from the acquittal. Vu cross-appealed from the conviction.

The British Columbia Court of Appeal, in a decision reported at (2011), 302 B.C.A.C. 187; 511 W.A.C. 187, allowed the Crown's appeal, entering a conviction for kidnapping. Vu's cross-appeal was dismissed. The unlawful confinement conviction was stayed in accordance with the principle in *R. v. Kienapple*. The matter was remitted to the trial court for sentencing on the kidnapping count. Vu appealed from the kidnapping conviction.

The Supreme Court of Canada dismissed the appeal.

Criminal Law - Topic 7

General principles - General and definitions - Continuing offence defined - [See both **Criminal Law - Topic 1447**].

Criminal Law - Topic 1447

Offences against person and reputation - Kidnapping and hostage taking - What constitutes - The Supreme Court of Canada reviewed the common law offence of kidnapping and its legislative history in Canada - At common law, kidnapping was viewed as an aggravated form of false imprisonment - It was the element of movement that differentiated kidnapping from the lesser included offence of false imprisonment and made kidnapping an aggravated form of false imprisonment - The first Criminal Code included kidnapping and unlawful confinement under the same section and provided for the same punishment - Subsequent amendments clarified that no specific intent was required to prove unlawful confinement and, in 1954, altered the sentencing scheme such that kidnapping now carried a maximum penalty of life imprisonment, whereas unlawful confinement carried a maximum term of five years - However, nothing suggested that Parliament had intended to abandon the common law definition - Kidnapping remained an aggravated form of false imprisonment and, as such, was a continuing offence - See paragraphs 26 to 41.

Criminal Law - Topic 1447

Offences against person and reputation - Kidnapping and hostage taking - What constitutes - The victim was abducted and held for eight days during which time he was moved from one house to a second and then a third - Vu was one of five accused charged with kidnapping (s. 279(1) of the Criminal Code) and unlawful confinement (s. 279(2)) of the victim - While fingerprint, footprint and DNA evidence connected Vu to all three houses where the victim was held, there was no evidence to place him at the scene of the initial taking - The Supreme Court of Canada affirmed Vu's conviction for kidnapping - The court rejected Vu's assertion that the "kidnapping" ended the moment that the victim was seized and carried away, at which point the comparatively less serious offence of unlawful confinement began - Kidnapping was an aggravated form of false imprisonment and, as such, was a "continuing offence" - This interpretation was "consonant with the intention of Parliament as expressed in the [Criminal] Code, the crime's common law origins and legislative history, modern jurisprudence of Canadian appellate courts, and common sense" - As long as the victim remained unlawfully confined, the crime of kidnapping continued - While the crime was complete in law when the victim was initially apprehended, it was not complete in fact until the victim was freed - See paragraphs 6 and 25 to 56.

Criminal Law - Topic 2742

Attempts, conspiracies, accessories and parties - Parties - Necessary intention or knowledge - [See **Criminal Law - Topic 2747**].

Criminal Law - Topic 2747

Attempts, conspiracies, accessories and parties - Parties - What constitutes a party - The victim was abducted and held for eight days during which time he was moved from one house to a second and then a third - Vu was one of five accused charged with kidnapping (s. 279(1) of the Criminal Code) and unlawful confinement (s. 279(2)) of the victim - While fingerprint, footprint and DNA evidence connected Vu to all three houses where the victim was held, there was no evidence to place him at the scene of the initial taking - The Supreme Court of Canada affirmed Vu's conviction for kidnapping - Having found that kidnapping was an aggravated form of false imprisonment and, as such, was a "continuing offence", the court concluded that Vu was a party to the offence under s. 21(1) of the Code - While the crime was complete in law when the victim was initially apprehended, it was not complete in fact until the victim was freed - The well-established principles of s. 21(1) criminal liability applied with equal force to continuing offences that had been complete in law, but not in fact - Vu joined the kidnapping enterprise while the confinement of the victim was underway - He did so with the intent to aid the kidnappers and with the knowledge that the victim was a kidnapping victim, or, at a minimum, he was wilfully blind to that fact - Vu took steps, of his free will, to assist the kidnappers and further their objectives - See paragraphs 57 to 73.

Statutes - Topic 502

Interpretation - General principles - Intention of Parliament or legislature - [See both **Criminal Law - Topic 1447**].

Statutes - Topic 1624

Interpretation - Extrinsic aids - Other statutes - Prior statutes respecting same subject matter - [See first **Criminal Law - Topic 1447**].

Statutes - Topic 1641

Interpretation - Extrinsic aids - Legislative history - General - [See both **Criminal Law - Topic 1447**].

Cases Noticed:

R. v. Kienapple, [1975] 1 S.C.R. 729; 1 N.R. 322, refd to. [para. 19].
Click v. State (1848), 3 Tex. 282, refd to. [para. 30].
Smith v. State (1885), 63 Wis. 453, refd to. [para. 30].
Midgett v. State (1958), 139 A.2d 209 (Md.), refd to. [para. 30].
People v. Adams (1973), 205 N.W.2d 415 (Mich.), refd to. [para. 30].
United States of America v. Garcia (1988), 854 F.2d 340 (9th Cir.), refd to. [para. 30].
Davis v. R., 2006 NSWCCA 392, refd to. [para. 30].
R. v. Tremblay (1997), 117 C.C.C.(3d) 86 (Que. C.A.), refd to. [para. 43].
R. v. Oakley (1977), 4 A.R. 103 (C.A.), refd to. [para. 45].
R. v. Metcalfe (1983), 10 C.C.C.(3d) 114 (B.C.C.A.), refd to. [para. 46].
Eberling v. State (1894), 35-36 N.E.R. 1023 (Ind. Sup. Ct.), refd to. [para. 46].
R. v. Reid, [1972] 2 All E.R. 1350 (C.A.), refd to. [para. 48].
R. v. Bell, [1983] 2 S.C.R. 471; 50 N.R. 172, refd to. [para. 52].
R. v. Henry (D.B.) et al., [2005] 3 S.C.R. 609; 342 N.R. 259; 376 A.R. 1; 360 W.A.C. 1; 219 B.C.A.C. 1; 361 W.A.C. 1; 2005 SCC 76, refd to. [para. 55].
R. v. Thatcher, [1987] 1 S.C.R. 652; 75 N.R. 198; 57 Sask.R. 113, refd to. [para. 58].
R. v. Briscoe (M.E.) et al., [2010] 1 S.C.R. 411; 400 N.R. 216; 477 A.R. 86; 483 W.A.C. 86; 2010 SCC 13, refd to. [para. 58].
R. v. Hijazi (1974), 20 C.C.C.(2d) 183 (Ont. C.A.), refd to. [para. 61].
R. v. Whynott (1975), 12 N.S.R.(2d) 231; 6 A.P.R. 231 (C.A.), refd to. [para. 61].
R. v. Tanney (1976), 31 C.C.C.(2d) 445 (Ont. C.A.), refd to. [para. 61].

Statutes Noticed:

Criminal Code, R.S.C. 1985, c. C-46, sect. 21(1) [para. 57]; sect. 279(1), sect. 279(2) [para. 24].

Authors and Works Noticed:

Aickin, K.A., Kidnapping at Common Law (1935-1938), 1 Res Judicatae 130, generally [para. 26].
Anderson, Ronald A., Wharton's Criminal Law and Procedure (1957), vol. 1, § 371 [para. 31].
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Crankshaw, James, The Criminal Code of Canada and the Canada Evidence Act: With Their Amendments, Including the Amending Acts of 1900 and 1901, and Extra

Appendices (2nd Ed. 1902), pp. 269, 270 [para. 38].
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Roscoe, Henry, A Digest of the Law of Evidence in Criminal Cases (2nd Ed. 1840), p. 529 [paras. 26, 28].
Russell, William Oldnall, A Treatise on Crimes and Misdemeanors (3rd Ed. 1843), vol. 1, p. 716 [para. 26].

Counsel:

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Jennifer Duncan and Kathleen Murphy, for the respondent.

Solicitors of Record:

Howard Rubin, Q.C., North Vancouver, British Columbia; Chandra L. Corriveau, Burnaby, British Columbia, for the appellant;
Attorney General of British Columbia, Vancouver, British Columbia, for the respondent.

This appeal was heard on February 15, 2012, by McLachlin, C.J.C., LeBel, Deschamps, Fish, Rothstein, Cromwell and Moldaver, JJ., of the Supreme Court of Canada. On July 26, 2012, Moldaver, J., delivered the following judgment for the court in both official languages.

Appeal dismissed.

Editor: Sharon McCartney

Criminal Law - Topic 7

General principles - General and definitions - Continuing offence defined - The Supreme Court of Canada reviewed the common law offence of kidnapping and its legislative history in Canada - At common law, kidnapping was viewed as an aggravated form of false imprisonment - It was the element of movement that differentiated kidnapping from the lesser included offence of false imprisonment and made kidnapping an aggravated form of false imprisonment - The first Criminal Code included kidnapping and unlawful confinement under the same section and provided for the same punishment - Subsequent amendments clarified that no specific intent was required to prove unlawful confinement and, in 1954, altered the sentencing scheme such that kidnapping now carried a maximum penalty of life imprisonment, whereas unlawful confinement carried a maximum term of five years - However, nothing suggested that Parliament had intended

to abandon the common law definition - Kidnapping remained an aggravated form of false imprisonment and, as such, was a continuing offence - See paragraphs 26 to 41.

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General principles - General and definitions - Continuing offence defined - The victim was abducted and held for eight days during which time he was moved from one house to a second and then a third - Vu was one of five accused charged with kidnapping (s. 279(1) of the Criminal Code) and unlawful confinement (s. 279(2)) of the victim - While fingerprint, footprint and DNA evidence connected Vu to all three houses where the victim was held, there was no evidence to place him at the scene of the initial taking - The Supreme Court of Canada affirmed Vu's conviction for kidnapping - The court rejected Vu's assertion that the "kidnapping" ended the moment that the victim was seized and carried away, at which point the comparatively less serious offence of unlawful confinement began - Kidnapping was an aggravated form of false imprisonment and, as such, was a "continuing offence" - This interpretation was "consonant with the intention of Parliament as expressed in the [Criminal] Code, the crime's common law origins and legislative history, modern jurisprudence of Canadian appellate courts, and common sense" - As long as the victim remained unlawfully confined, the crime of kidnapping continued - While the crime was complete in law when the victim was initially apprehended, it was not complete in fact until the victim was freed - See paragraphs 6 and 25 to 56.

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