

COURT OF APPEAL FOR BRITISH COLUMBIA

**CA042488
Vancouver Registry**

**VANCOUVER
AUG 05 2020
COURT OF APPEAL
REGISTRY**

REGINA

RESPONDENT

v.

MATTHEW JAMES JOHNSTON

APPELLANT

and

**CA042490
Vancouver Registry**

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RESPONDENT

v.

CODY RAE HAEVISCHER

APPELLANT

JOINT STATEMENT OF FACTS

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INTRODUCTION

1. During the afternoon of Friday, October 19, 2007, six men were executed in suite 1505 of the Balmoral Tower (“Balmoral”), a residential apartment building in Surrey, British Columbia. They were shot to death as they lay defenceless on the floor. The victims were Corey Lal, aged 21; his brother Michael Lal, aged 26; Ryan Bartolomeo, aged 19; Edward Narong, aged 22; Christopher Mohan, aged 22; and Ed Schellenberg, aged 55.

2. The trial judge, Madam Justice Wedge, found that there were three co-perpetrators of the “Surrey Six murders” (as this prosecution has come to be known). Two, the appellants, Cody Rae Haevischer and Matthew James Johnston, were convicted on October 2, 2014 in B.C. Supreme Court in Vancouver following trial by judge alone of six counts of first degree murder and one count of conspiracy to murder Corey Lal. The third, an unindicted co-conspirator, referred to in these proceedings as “Person X”, pleaded guilty before another judge of the same court in April 2009 to the second degree murders of three of the victims and to conspiracy to commit murder. All three men are serving life sentences.

3. All three persons found to be the co-perpetrators were tattooed members of the Red Scorpions gang. The two co-leaders of the Red Scorpions, James Kyle (Jamie) Bacon and Michael Le, were also charged with conspiracy to commit the murder of Corey Lal and with his murder in the first degree. Both of these men were initially indicted jointly with the two appellants. Their cases unfolded differently:

- a. Mr. Bacon was severed from the indictment when the Crown initiated separate proceedings against him in August 2012. On December 1, 2017, Madam Justice Ker entered a judicial stay of proceedings in the case against him. A Crown appeal against this ruling, heard over five days in December 2019, was allowed in a judgment released on May 21, 2020 (*R. v. Bacon*, 2020 BCCA 140). The stay of proceedings was set aside and Mr. Bacon was remanded to the B.C. Supreme Court to stand trial. Subsequently, on July 9, 2020, Mr. Bacon pleaded guilty to conspiring to murder Corey Lal and to a charge of counselling to commit

murder, a charge not directly related to the Surrey Six murders but in respect of which he had been standing trial in B.C. Supreme Court. He is scheduled to be sentenced on these two charges on September 11, 2020 after sentencing submissions made on August 28, 2020.

- b. Mr. Le remained on the same indictment as the two appellants, and was present for the first months of the trial at issue in this appeal. During the trial, in December 2013, Mr. Le pleaded guilty to conspiracy to commit murder. He was sentenced to a term equivalent to 12 years' jail, and later testified as a Crown witness at the appellants' trial before Wedge J.
4. By way of overview and not to be considered as agreed facts for the purpose of this document, the case, as found by the trial judge, can be summarized as follows:
- a. The genesis of the conspiracy to murder Corey Lal lay in the illicit drug trade in the Lower Mainland of B.C. Corey Lal trafficked in narcotics as did the Red Scorpions. Suite 1505 of the Balmoral was his drug supply, or "stash", house. It was not his, or anyone's, place of residence.
 - b. Bad blood developed between Corey Lal and Mr. Bacon. Approximately one month before the commission of the murders, in an attempt to resolve this dispute, Mr. Lal was "taxed" \$100,000. That same evening, the deadline passed and the "tax" remained unpaid. At Mr. Bacon's instigation, and with Mr. Le's concurrence, the Red Scorpions decided that Mr. Lal had to be murdered as a failure to exact such a penalty would leave the gang looking weak and ineffectual. Thus, motive was established and the conspiracy hatched. Its objective was attained when the two appellants and Person X forced their way into suite 1505 and murdered Mr. Lal. They murdered the additional five victims to avoid detection.
 - c. The motive for Mr. Haevischer and Mr. Johnston, as well as Person X, to kill Corey Lal was consistent with their group's motive to kill Mr. Lal. The

trial judge found that the evidence established that as Red Scorpions tattooed gang members, Mr. Haevischer, Mr. Johnston and Person X were obliged to assist fellow members, which is relevant to their motive for participating in the plan to kill Corey Lal, a rival drug trafficker against whom they had no apparent individual animus.

5. The Crown's case against the appellants at trial consisted of a body of circumstantial evidence including evidence of the group motive described in the preceding paragraph and of means and opportunity. In addition, the Crown led evidence of admissions made by both appellants to various persons in the hours, days, weeks and months following the murders. There was no other direct evidence against the appellants because Person X ultimately did not testify at trial. Wedge J prohibited him from doing so following *in camera* proceedings which took place *ex parte* the appellants and their counsel.

6. This agreed statement of facts is to serve as a free-standing document setting out the material evidence adduced at trial and the findings of fact made by the trial judge. Madam Justice Wedge's lengthy reasons for judgment ("RJ") bear the citation of 2014 BCSC 1863; they contain a helpful executive summary in the last portion of the decision. This agreed statement of facts will relieve the parties and *amici* from drafting individual Parts I for the various factums to be filed in connection with these appeals. All parties and *amici* will nevertheless be at liberty to augment this statement's references to the evidence and the trial judge's findings in their respective factums as they deem appropriate.

7. By agreement, the document draws heavily from Wedge J's reasons for judgment. The rationale for doing so can be found in the RJ as indicated in the following excerpt:

[17] Much of the Crown's evidence was not contentious in its material respects. The resident managers of the Balmoral testified about events at the Balmoral on the afternoon of October 19, culminating in the discovery of the six bodies late that afternoon. A series of witnesses comprising family members, friends and associates of the victims gave evidence

about the known telephone numbers and last known movements of the deceased the afternoon of the 19th. Police officers who attended the crime scene testified about their observations and the processing of the scene. Experts in forensic pathology, bloodstain pattern analysis, DNA and firearms also gave evidence in relation to the crime scene. Detailed evidence was led regarding the fob system at the Balmoral and the use of a particular fob on October 19.

[18] A series of witnesses testified about the Stanley apartment building and its layout. Mr. Haevischer lived at the Stanley at the time of the murders. Police personnel who obtained and dealt with the Stanley's internal CCTV video gave evidence at trial, as did officers who conducted a search of Mr. Haevischer's apartment after the murders.

[19] Police officers who conducted covert surveillance of people of interest on or about October 19 testified about their observations. Police and expert witnesses testified in detail about call detail records in relation to phone numbers of interest, as well as information obtained from cell phones that had been seized.

[20] The foregoing evidence was not seriously challenged by the accused.

[21] By their closing submissions, the accused's challenge to the evidence was essentially limited to six witnesses. . . .

8. Paragraph 21 of the reasons goes on to identify these six witnesses. Two, Helen Lee and Youngmee Kim, were individuals who happened to be at the Balmoral on the afternoon of October 19 and saw three young men arrive at, and depart from, its parkade. Their evidence and the trial judge's treatment thereof, is not an issue on the appeals.

9. The remaining four are:

- a. Michael Le;
- b. Person Y, a career gangster, Red Scorpions member and another co-conspirator;

- c. K.M., Mr. Haevischer's girlfriend; and
- d. D.Y., a young man who trafficked drugs for the Red Scorpions and who resided at the Balmoral in October 2007.

10. These four witnesses were *Vetrovec* witnesses and the trial judge's assessment of K.M., Person Y and Mr. Le's evidence is at issue on these appeals. Mr. Le in particular presented certain challenges as a former co-accused who was in receipt of Crown disclosure, turned Crown witness. In addition to the non-contentious evidence as described by Justice Wedge, the material evidence given by the *Vetrovec* witnesses, as a matter of narrative necessity, will be referenced in this agreed statement, but will not be considered as agreed facts for the purpose of this document. Those paragraphs setting out testimony given by these witnesses are included solely to provide context to the narrative to make sense of non-contentious evidence, including cell phones, physical and video surveillance and CCTV footage. In Parts I or III of their respective factums, the parties will be able to supplement and otherwise comment on the credibility of these witnesses, the reliability of their evidence and, where appropriate, the trial judge's assessment of their evidence as *Vetrovec* witnesses.

THE VICTIMS

11. Corey Lal was the occupant of suite 1505 at the Balmoral. He was involved in the drug trade in the Lower Mainland. Together with Edward Narong, he led a group that operated primarily in Surrey and Abbotsford. Suite 1505 was used as a "stash house" for the group's drugs and money. No one actually resided in the suite. Corey Lal was present in the suite when the three perpetrators forced their way inside.

12. Edward Narong was not in the suite when the perpetrators broke in. He arrived approximately ten minutes after them.

13. In suite 1505 with Corey Lal when the perpetrators broke in were Michael Lal, Corey's older brother, and Ryan Bartolomeo. They were cooking crack cocaine in the kitchen just prior to the entrance of the perpetrators.

14. Edward Schellenberg was hired to service all of the gas fireplaces in the Balmoral apartment complex during the week leading up to October 19. Beginning on the Monday and continuing through the week, Mr. Schellenberg and his nephew, Zach Brown, attended the Balmoral to undertake this work. Mr. Schellenberg was partway through servicing suite 1505's fireplace when the perpetrators forced entry into the suite.

15. Christopher Mohan lived with his parents in suite 1504 located directly across the hall from 1505. Although there was no evidence how he came to be into the suite, the trial judge inferred that by chance he was in close proximity and was brought into the suite.

THE BALMORAL

16. The Balmoral residential complex, located at 9830 East Whalley Ring Road, Surrey, consisted of one 15 floor high-rise tower and four low-rise buildings collectively known as "the Court". The complex had an underground parkade which was accessed from the outside by a ramp. Some parking stalls were provided for visitors in an insecure portion of the parkade. Secured resident parking was accessed through either a west or south gate. Both these gates had pedestrian gates within them. Once through the west gate, the residential floors could be accessed by elevator. Fobs were required to gain entry to the building through its perimeter doors, as well as through these parkade gates. (RJ, 227; T, 20(22) to 21(33); 24(45) to 25 (18); 34(32) to 37(42))

THE CRIME SCENE AND FORENSIC EVIDENCE

17. The judge concluded from the crime scene evidence that there were two shooters, the murders were execution-style shootings, and the victims were under the domination of the perpetrators when they were shot. (RJ, 64-70; 71-72; 73-76)

Suite 1505

18. Suite 1505 in the Balmoral was a one-bedroom unit. To the left upon entering was the living room. An L-shaped glass computer desk occupied the corner of the living room closest to the door. A gas fireplace was at the other end of the room. Positioned

on an angle close to the middle of the living room was a love seat. A sofa sat against the wall. The layout of the suite is shown in a crime scene diagram, Exhibit 68 at trial, a copy of which is appended as Exhibit "A" to this Statement. (RJ, 27; T, 701(32) to 702(5); AB, Ex. 11, p. 299)

19. The six victims were found in two groups of three at opposite ends of the living room. Corey Lal, Mr. Narong and Mr. Schellenberg were by the fireplace at one end of the room, while Michael Lal, Mr. Mohan and Mr. Bartolomeo were by the front door at the other end. All had been in submissive positions — face down with their arms by or above their heads — when they were shot in the back of the chest or head. The victims by the fireplace had their heads covered before they were shot. (RJ, 28, T, 218(21-26); 219(32) to 220(11); AB, Ex. 68; Ex. 2, photo nos. 030-033, pp.219-222; Ex. 13 photo nos. 008-013, pp. 312-317, photo nos. 018-023, pp. 322-327)

20. The bloodstain pattern analysis established in relation to five of the six victims (the exception being Michael Lal) that they were lying prone, at or near their final positions, when they were shot. Michael Lal was lying face up, but forensic evidence established that he was face down when shot. (RJ, 28; 37; 38; 43; T, 1053(44) to 1054(37); 1055(23) to 1056 (3); 924(14-25); 926(18-40); 931(2-8); 931(26-40); 936(3-18); 939(33-40); 941(7-16); 946 (35-41))

21. Two semi-automatic 9 mm black handguns — a Glock and an Ultrastar — were found at the scene; both had been emptied. (RJ, 30; T, 735(6-8); 748(1-21); 220(20-23); 633(40) to 634(1); 637(16-20); AB, Ex. 13, photo nos. 008-015 pp. 312-319))

22. The gunshots had been fired with precision, hitting their targets 16 times from a total of 19 shots fired. (RJ, 39,45,46,49,50,65(vi); T, 1363(27) to 1364(2); 1364(33-36); 1366(32-37); 1357(13-14); 1374(37-39); 1407(24-40))

23. The victims' pockets had been emptied and no cell phones were found in the suite although several of the victims had used their cell phones the afternoon of October 19. (RJ, 75; T, 661(14-23); 726(33-43); 231(45) to 232(7); 238(16-29); 254(18-26);

278(35-44); 324(32) to 325(32); 3199(2) to 3200(16); 4231(1-18); AB, Ex. 13, photo no. 92, p. 96))

24. Forensic testing of the Glock revealed the presence of Person Y's DNA on the outside of the gun. (RJ, 58,59; T, 1210(5-42))

25. A white sweatshirt was located on the 15th floor by a resident of the Balmoral sometime after 4:00 p.m. on October 19. Mr. Bartolomeo's DNA was extracted from the manufacturer's label inside the garment. There was gunshot damage in two areas: the inside of the left abdomen area and the left sleeve. Expert evidence established that the firearm was in contact or near contact (a distance of less than one inch) with both damaged areas of the sweatshirt when discharged, and that it was possible that the sweatshirt had been used as a muffler or silencer to dampen the noise of the firearm. There is no evidence that the sweatshirt had blood stains on it, yet the gun, when discharged, was either touching or close to touching it. It is thus highly unlikely that any of the deceased was wearing it when shot. The judge concluded that a logical inference is that the sweatshirt was used as a silencer in the shootings. (RJ, 60-63; T, 1202(31) to 1203(33); 1414(38) to 1417(4); AB, Ex. 37 (Admissions), paras. 45-54, pp. 727-728))

There were two shooters

26. The crime scene evidence established that there were two shooters: one person shot the group of victims by the computer desk near the front door, and a second and different person shot the three victims by the fireplace. The Ultrastar fired the bullets that killed Corey Lal, Mr. Schellenberg and Mr. Narong; and the Glock was used to kill Michael Lal, Mr. Mohan and Mr. Bartolomeo. The evidence is as follows:

(RJ, 64-65)

- a. Two guns were found at the scene;
- b. There were two distinct groupings of three victims each, separated by the love seat in the middle of the living room;

- c. The three victims by the fireplace all had their heads covered with clothing prior to their shooting, while those in the other group did not;
- d. The Ultrastar was used to kill the victims by the fireplace while the Glock was used to kill the victims by the computer desk;
- e. The white sweatshirt was likely used as a silencer. The shooter who used the sweatshirt in this manner must have required two hands to shoot his gun: one to hold the gun and the other to hold the sweatshirt over the gun while shooting. This shooter could not have been holding two guns at the same time. As two guns were used in the murders, the use of the sweatshirt as a silencer diminishes the possibility that a single person used both guns; and
- f. The pathology evidence shows that the shots were administered carefully and with precision, finding their target with at least 16 of the 19 shots fired. It is highly unlikely that one shooter, standing in one place, could have targeted the victims with such accuracy, particularly those who had their heads covered. The shooter of each group of victims must have been within close range to fire shots of such precision.

The murders were execution-style shootings

27. The crime scene evidence established that the murders were execution-style shootings. The evidence is as follows:

(RJ, 71-72)

- a. The pathology and bloodstain pattern evidence establish that all six were lying prone, at or near their final resting positions;
- b. The crime scene photographs indicate that five of the six victims had their arms near or above their heads, suggesting that they had been commanded to position themselves in this way before they were shot;

- c. The three deceased by the fireplace also had their heads covered;
- d. The precision with which the shots were administered, especially in respect of the victims whose heads were covered, suggests an execution rather than the random or haphazard shots of a panicked shooter.

The victims were under the domination of the perpetrators at the time they were shot

28. The crime scene evidence established that the victims were under the domination of the perpetrators at the time they were shot. The evidence is as follows:

(RJ, 73-76; T, 778(24-28); 886(24-30))

- a. The victims had been separated into two groups and were in submissive positions prior to their deaths: face down with their arms by or above their heads. It is logical to infer that the deceased had been commanded by the perpetrators to assume these positions;
- b. Three of the victims also had coverings over their heads;
- c. Each of the victims carried a cell phone and had a specific cell phone number (the one exception being Mr. Mohan). The cell phone numbers were used on the day of the murders and, in some cases, just prior to the deaths. No cell phones were found at the crime scene. The pockets of Mr. Bartolomeo, Mr. Narong and Corey Lal had been turned inside out. The judge concluded that the search for the phones must have occurred *prior to* the murders as the perpetrators would not have lingered at the scene after shooting six people. Moreover, there were no bloody footprints or similar transfer stains in the small living room, which also suggests that the perpetrators did not walk among the deceased to take their phones.

TIMING OF THE MURDERS IN SUITE 1505

29. The judge found that the perpetrators of the Surrey Six murders entered suite 1505 of the Balmoral at approximately 2:30 p.m. on October 19, 2007, and began their domination of those present in the suite at that time. They executed the six victims approximately ten minutes later, shortly after 2:40 p.m.;

- a. Jason Le was a Surrey drug dealer. He had been in phone contact with Mr. Narong on the morning of October 19 and had been instructed to meet him at the Balmoral. Jason Le arrived at the building at around 1:30 p.m., and had two further brief phone conversations with Mr. Narong to get his buzzer and unit numbers. He made the latter of these calls as he was getting off the elevator on the 15th floor. Cell phone records confirm that the phone Jason Le was using that day made two calls to Mr. Narong's phone using the Balmoral Tower cell site at 1:41 p.m. and 1:43 p.m. When he got off the elevator on the 15th floor, he saw Tracy Carothers, one of the two resident building managers. This encounter was confirmed by Ms. Carothers. Jason Le went to suite 1505. Mr. Lal was seated at the computer desk and two men were in the kitchen cooking what Jason Le believed to be crack cocaine. One of the men was Mr. Bartolomeo, whom Jason Le knew from high school, the other was proven to be Michael Lal. Mr. Narong was not there. Jason Le estimated he was in the suite for approximately 15 minutes. He left suite 1505 at approximately 2:00 p.m.

(RJ, 79-81,85,86; T, 354(45) to 360(25); 114(5-27); A.B., Ex. 228, Tab 12, p. 3198; Tab 11, p. 3143; Ex. 230, p. 3376; Ex. 239 (Admissions), paras. 9, 10, p. 3402))

At approximately 2:00 p.m., Eileen Mohan, Christopher Mohan's mother, phoned home and spoke to Christopher, who told her that the fireplace technician was in the suite. The phone call lasted between one and one-and-a-half minutes, and was to be the last time Ms. Mohan ever spoke with her son. Ms. Mohan tried calling Christopher at home again at around

4:00 p.m. but there was no answer. (RJ, 88,89; AB, Ex. 37 (Admissions), paras. 6,7, p.721)

- b. Mr. Schellenberg's cell phone used the Balmoral cell tower for the last time at 1:42 p.m. At approximately 2:00 p.m. he went with Ms. Carothers to suite 1507. About five minutes later, Mr. Brown joined them. Mr. Schellenberg told Mr. Brown to service suites 1504 and 1508, and that he would then be done for the day. After Mr. Schellenberg finished servicing suite 1507, he and Ms. Carothers stood talking in the hallway. The plan was for Mr. Schellenberg to finish up with suite 1505 and then contact Ms. Carothers so that she could give him access to a unit in the Balmoral Court. Ms. Carothers saw Mr. Schellenberg head in the direction of suite 1505. She heard him knock and someone reply "just a moment". She then heard the door open. Ms. Carothers never saw or heard from Mr. Schellenberg again. Ms. Carothers testified that it took Mr. Schellenberg approximately 15-20 minutes to service a fireplace. Mr. Brown testified that he took 15-20 minutes to service a fireplace and that his uncle could be a couple of minutes faster than him. When shown a photograph depicting the state of the fireplace in suite 1505 at the time police were processing the scene, Mr. Brown said that the servicing work on the fireplace appeared to be about three-fourths completed. (RJ, 87,90,91,93; T, 4268(7) to 4266(3); 117(20) to 119(16); 120(26-32); 192(30-43); 198(36) to 199(9))
- c. Eric Akai, a friend of Mr. Bartolomeo, spoke with Mr. Bartolomeo on the phone about their plans for the evening. Cell phone records confirm that the call was made at 2:27 p.m. and that Mr. Bartolomeo's phone used the Balmoral cell site (the cell-signal antennae located there). Mr. Akai said there was no distress in Mr. Bartolomeo's voice or anything unusual about the call, suggesting that nothing untoward had yet happened. Phone records indicate that this call was the last active use of Mr. Bartolomeo's cell phone. Mr. Akai said that he tried to contact Mr. Bartolomeo later in the day around 5:30 or 6:00. However, Mr. Bartolomeo's phone was off

and his calls went straight to voicemail. (RJ, 94-96, 115b; T, 324(32) to 325(34); A.B., Ex. 239 (Admissions), p. 3402, para. 11; Ex. 228, p. 3089; Ex. 230, p. 3380)

- d. A brief call was also made to Mr. Narong's cell phone at 2:27 p.m. Mr. Narong's phone used the Balmoral Tower cell site for the call. The cell phone records indicate that no further phone calls or texts were sent from or received by Mr. Narong's cell phone after this call at 2:27.

(RJ, 97, 115d;)

- e. Milad Lari was a friend of Corey Lal and Mr. Narong. He spoke with Corey Lal on the afternoon of October 19. Cell phone records indicate that this call occurred at 2:29 p.m. and lasted 50 seconds. Mr. Lal's cell phone used the cell site at the Balmoral. The trial judge concluded from Mr. Lari's evidence that there was nothing unusual about the conversation until the call ended abruptly 50 seconds later with Mr. Lal saying "oh fuck, the door" and sounding very worried. Mr. Lari was unsuccessful in his subsequent efforts to contact Mr. Lal and Mr. Narong. The trial judge concluded it was reasonable to infer that unwelcome visitors had come to the door of suite 1505 at that time. (RJ, 98-100, 115c; T, 4224(29-33); 4227(28) to 4228(15); 4230(13) to 4231(8); 4233(30-36); A.B., Ex. 239 (Admissions), paras. 12, 14, p. 3402; Ex. 228, p. 3110; Ex. 230, p. 3381)
- f. Justin Chahil was friends with both Corey Lal and Mr. Narong. He spent the early part of October 19 with Mr. Narong. Mr. Chahil dropped Mr. Narong back off at the Balmoral at 2:40 p.m. Fob records for the Balmoral confirm that a fob associated to suite 1505 was used at the entrance doors at 2:39 p.m. Mr. Chahil tried to contact both Mr. Narong and Mr. Lal later that afternoon but his calls did not go through. He also tried to "pin" (message) Mr. Narong on his Blackberry but it would not deliver. Mr. Chahil said he found this odd since both men were usually very attentive

to their phones. (RJ, 103-105; T, 141(7-36); 607(30) to 608(16); 611(24-32); 616(42) to 617(16); 1029(26) to 1030 (33))

- g. The trial judge concluded that the murders occurred not long after Mr. Narong entered suite 1505. After entering the Balmoral at 2:39 p.m. and allowing a couple of minutes for him to take the elevator to the 15th floor, Mr. Narong would have arrived at the suite just after 2:40 p.m., approximately ten minutes after the others in the suite were already under the control of the perpetrators. The trial judge made the following factual findings: Mr. Narong was shot at the same time as the other five victims and they were shot in rapid succession as evident by the positioning of Mr. Narong's body between Mr. Schellenberg and Corey Lal; and the fact that they were each shot by the same gun. (RJ, 116)
- h. Mr. Brown went to suite 1508, the last suite he was to service that day, at around 2:30. He started servicing the fireplace but realized that he did not have enough paint so he went to retrieve more paint from his van. He did not see anyone on the 15th floor or in the lobby. After retrieving the paint, he returned to the suite and continued his service call. At one point he heard four or five steady noises coming from that direction. He described them as very steady and grouped together with no pause between the sounds. He agreed the sounds did not sound like gunshots and he described them as more of a banging noise. (RJ, 106, 107; T, 194(3-5); 194(24-39); 194(42) to 195(27); 196(1-3); 204(15-44))

THE DISCOVERY OF THE BODIES

30. By 3:00 p.m., Ms. Carothers began to wonder why she had not yet heard from Mr. Schellenberg since his service calls only took 15-20 minutes. She called him numerous times on his cell phone but the calls all went to voicemail. Ms. Carothers became concerned and contacted her husband, the other of the Balmoral's building managers, to inquire whether he had seen Mr. Schellenberg. (RJ, 111; T, 120(20) to 121(16))

31. Mr. Carothers went to suite 1505, since that was the last unit Mr. Schellenberg was to service. When he got there, he heard music coming from the suite but there was no answer when he knocked. The door was closed but not latched. Mr. Carothers then searched other areas. Mr. Carothers then returned to suite 1505. The music was still playing and the door was still closed but not latched. Feeling that there might be an emergency, Mr. Carothers opened the door and immediately saw six people on the floor. His initial thought was that there had been a gas leak since he saw that the fireplace had been taken apart. He saw Mr. Schellenberg lying prone by the fireplace and began to pull him away from the fireplace by his legs. However, he immediately noticed the blood and left the apartment without touching anything further. (RJ, 112, 113; T, 61(42) to 62(18); 65(15-40); 66(15) to 69(9))

32. Mr. Carothers radioed his wife to call 911. Ms. Carothers called 911 at 4:28 p.m.

(RJ, 114; T, 69(10-14); 122(33-45); AB, Ex. 37 (Admissions), paras. 9-11, p. 721)

THE RED SCORPIONS

33. As already stated, the appellants and Person X were tattooed members of the Red Scorpions gang. The two co-leaders of the Red Scorpions were Jamie Bacon and Michael Le. Much of the evidence about the Red Scorpions came from K.M., Person Y and Michael Le, three of the *Vetrovec* witnesses. This summary of facts found by the trial judge about the Red Scorpions is set out as a matter of narrative necessity, but will not be considered as agreed facts for the purpose of this document.

34. Mr. Le was a founder of the original RS, as well as its leader. The Red Scorpions were involved in drug dealing in New Westminster, Surrey and other areas. The hallmark of full membership was the Red Scorpions tattoo. (RJ, 118-121; T, 4308(37-45); 4311(9-12); 4314(28-34); 4319(21-34))

35. Jamie Bacon and his crew operated drug lines in Chilliwack and Langley. The Bacon group took over rival drug lines using intimidation and violence, and expanded into Surrey. (RJ, 132; T, 3572(17-21); 3573(11-20); 3573(35) to 3574(41))

36. Around June or July 2007 the Bacon group merged with the Red Scorpions. With the merger, members of the Bacon group took on the Red Scorpions name and got Red Scorpions tattoos. Mr. Le and Mr. Bacon were co-leaders of the merged Red Scorpions.

(RJ, 138,139; T, 3581(35) to 3582(2); 3591(23-34); 3589(39) to 3591(2); 4328(18-30); 4329(13-30))

37. The judge found that drug trafficking was the main activity of the merged Red Scorpions, a business the group advanced and expanded through violence and intimidation. Red Scorpions members were expected to be loyal to the group and its objectives, and to assist one another when called upon. (RJ, 169; T, 3588(10) to 3589(2); 4331(3-18))

38. The appellants were members of the original Red Scorpions. The judge found that the appellants and Person X, as of October 2007, were significantly involved in its activities of the Red Scorpions. The appellants were close friends as well as Red Scorpions associates. Although a member of the original Red Scorpions, Mr. Johnston was an enforcer for both Mr. Le and Mr. Bacon. Mr. Johnston vouched for Mr. Haevischer when the latter got his Red Scorpions tattoo. (RJ, 151-153, 157-160, 167, 168; T, 2255(22-37); 2256(9-25); 2262(18-45); 2265(38-42); 2266(37-44); 2294(8-46); 2428(42) to 2429(4); 3579(15-28); 3581(43) to 3584(21); 3680(10-15); 4316(6-10); 4317(11-23); 4319(43) to 4320(1); AB, Ex. 37 (Admissions), paras. 95-96, p. 734)

THE GENESIS OF THE CONSPIRACY

39. Most of the evidence about the genesis of the conspiracy to murder Corey Lal came from Person Y and Michael Le, two of the *Vetrovec* witnesses. This summary is set out as a matter of narrative necessity, but will not be considered as agreed facts for the purpose of this document.

40. Corey Lal was a rival drug dealer who operated mainly in Surrey and Abbotsford, both areas in which the Red Scorpions also operated. A dispute arose between Mr. Lal and Mr. Bacon. This led to a meeting at a McDonald's in Surrey and the imposition of a \$100,000 tax on Mr. Lal. Person Y confiscated Mr. Lal's Glock handgun at that meeting. This occurred about a month or so before the Surrey Six murders. (RJ, 171-181; Para.

171: T, 346(37) to 347(14); 349(37) to 350(41); 354(45) to 359(33); 619(43) to 620(12); 620(38) to 622(45); 3606(42) to 3607(4); 4299(36-39); 4341(40-44); 4342(29-45); Para. 172: T, 232(14-26); 237(22-32); AB, Ex. 37 (Admissions), paras. 14, 15, pp. 722-3; Para. 173: T, 3605(10-3609(1)); Para. 174: T, 4341(25-31); 4345(8)-4346(46); Para. 175: T, 3608(12)-3609(24); Para. 176: T, 3609(25)-3611(20); Para.177: T, 3611(21) to 3611(37); 3613(21-35); Para.178: T, 3611(38) to 3613(12); Para. 179: 3610(17-35); 3613(36) to 3615(13); 3616(3-24); Para. 180: T, 3615(14) to 3616(2))

41. A regular Red Scorpions dinner meeting had been scheduled at a hot pot restaurant the evening of Mr. Bacon's and Person Y's meeting with Mr. Lal. During the dinner, the deadline for Mr. Lal to pay the tax passed and he had not been in contact. Mr. Bacon saw Mr. Lal's failure to pay the tax as a Red Scorpions problem because the gang would look weak if the failure to pay went unanswered. Mr. Bacon wanted Mr. Lal killed and, by the end of the evening, he had secured Mr. Le's agreement that Mr. Lal had to be killed. At that point, the plan involved Person Y doing the job on his own in a parking lot, once Mr. Le had arranged the set up with his associate, Sophon Sek. (RJ, 184-187, 193,194; Para. 184: T, 3616(35) to 3618(2); Para. 185: 3618(3-29); 3620(17-21); 4115(41) to 4116(10); Para. 186: T, 3618(32) to 3619(19); 4123(47) to 4124(14); Para. 187: T, 3619(14-46); 3620(32) to 3621(13))

42. Soon after the discussion at the hot pot restaurant, the plan changed from one in which Person Y, acting alone, would kill Mr. Lal in a parking lot, to one in which Red Scorpions members, not including of Person Y, would break into Mr. Lal's stash house in order to kill Mr. Lal and take his money and drugs. (RJ, 195-197; Para. 195: T, 3626(7) to 3627(1); 4004(6-30); Para. 196: T, 3627(2-9); Para. 197: T, 3627(10-30))

THE MEETING OF CONSPIRATORS IN ADVANCE OF THE MURDERS

43. Just prior to the murders in suite 1505 of the Balmoral, there was a meeting at the Seoul House, a Korean restaurant in Surrey. Most of the evidence came from Person Y and Michael Le. This summary is set out as a matter of narrative necessity, but will not be considered as agreed facts for the purpose of this document.

44. The meeting occurred during the early afternoon of October 19. Person Y and Mr. Le both testified that Mr. Johnston and Person X were present in or outside the restaurant, and that Sophon Sek was also present. Person Y testified that Person X approached and asked to borrow his gun, so Person Y handed Person X a Glock handgun. As mentioned under the crime scene evidence, the Glock seized at the crime scene had Person Y's DNA on it. This is the same Glock Person Y had seized from Corey Lal when he and Mr. Bacon met with Mr. Lal at the McDonald's in Surrey. (RJ, 235-238 (Person Y): T, 3637(32) to 3641(38); 3642(9) to 3644(5); RJ, 239-242 (M. Le): T, 4356(12) to 4357(25); 4357(38-45); 4359(10-25); 4360(1-19); 4360(27) to 4361(1))

45. Pertinent cell phone evidence surrounding this meeting is as follows:

- Calls and texts made from Mr. Johnston's phone between 1:02 and 1:09 p.m. used the dominant cell-signal site for the Korean restaurant. A call from Mr. Johnston's phone at 1:19 p.m. used the cell site at the Balmoral. (RJ, 250; A.B., Ex. 239 (Admissions), para. 1, p. 3401; Ex. 228, p. 2950; Ex. 230, p. 3342)
- Person Y received a phone call from Michael Le at 12:11 p.m. and he called Mr. Le at 1:02 p.m. Cell sites in use during the call are consistent with Person Y being *en route* to the Korean restaurant. (RJ, 234, 249; A.B., Ex. 239 (Admissions), paras. 4, 5, p. 3401; Ex. 228, p. 3015; Ex. 230, pp. 3356-3357)
- The call detail records for Michael Le's phone indicate that at 1:02 p.m., Mr. Le received the call from Person Y; the second of the two cell towers utilized for Mr. Le's phone during that call was the dominant server for the Korean restaurant. (RJ, 248; A.B., Ex. 239 (Admissions), paras. 4,5, p. 3401; Ex. 228, p. 3034; Ex. 230, p. 3357)
- The cell phone records for Sophon Sek's phone show that at 1:01:58 p.m. on October 19, 2007 the phone used a cell site that was within the expected coverage area of the Korean restaurant. (RJ, 254; A.B., Ex. 239 (Admissions), para. 6, p. 340)

- The cell phone records for Person X's phone show that at 12:54:25 p.m. and 1:05:13 p.m. on October 19, 2007 (thereafter the phone was not active again until 1:48:58 p.m.) his phone was within the expected coverage area of the Korean restaurant. (RJ, 255; A.B., Ex. 239 (Admissions), para. 2, p. 3401; Ex. 228, p. 2973)

D.Y.'S EVIDENCE: HE PROVIDES MR. JOHNSTON WITH HIS FOB FOR BALMORAL

46. D.Y. testified that that he sold drugs for the Red Scorpions. He lived in suite 1207 of the Balmoral and gave his fob to Mr. Johnston, who he knew as Josh, in the early afternoon of October 19. Mr. Johnston drove to the Balmoral in a dark grey, newer model SUV, similar in appearance to a Porsche Cayenne. It was an admitted fact at trial that a VW Touareg is similar in appearance to a Porsche Cayenne. (RJ, 258-261; T, 3245(31) to 3246(17); 3249(11-23); 3255 (44-47); 3260(45) to 3261(29); 3263(16-21); 3269(20) to 3270(16); 3281(47) to 3286(5))

47. D.Y. realized he had given Mr. Johnston his apartment keys as well as the fob. He called one of his workers, "Johnny", to come pick him up and take him to lunch. Johnny and his girlfriend arrived and the three went to a McDonald's located at Prince Charles and 96th Street in Surrey. (RJ, 265; T, 3287(16) to 3288(42))

48. As the trial judge's treatment of D.Y.'s evidence and conclusions with respect to his evidence are issues on these appeals, his evidence will not be considered as agreed facts for the purpose of this document. The above paragraph is included merely to provide the Court with context to the narrative as a whole and to make sense of the evidence detailed below.

49. The following evidence is considered as agreed facts for the purpose of these appeals and pertains to D. Y.'s evidence.

50. The Balmoral fob records show that 2:23 p.m. on October 19, 2007 was the last time that the fob registered to D.Y. was used. The fob was used to gain access to the west pedestrian gate in the underground parkade. Tracy Carothers testified that D.Y. asked for a replacement about two weeks after the murders, reporting that he had lost his fob. (RJ, 267; T, 1019(41) to 1020(1); 1022(9-20); 123(20) to 124(26))

51. Cell phone records show Mr. Johnston's cell phone used a tower within the coverage area of the Balmoral at 1:19:46 p.m. (the end of a 61 second call placed at 1:18:45 p.m.). D. Y.'s phone used the same sector of the same cell site at the end of a 6 second call placed at 1:17:37 p.m. (RJ, 264; AB, Ex. 239 (Admissions), para. 1)

52. D.Y.'s cell phone records for October 19, 2007 show that prior to 2:08 p.m., his phone was at the Balmoral. Between 2:08 p.m. and 2:20 p.m. his phone was not in use so its location is unknown. Then between 2:20 p.m. and 2:32 p.m. it used a cell tower within the coverage area of the McDonald's restaurant at Prince Charles and 96th in Surrey. D.Y.'s phone records also show that although there were numerous calls between his friend Johnny and himself at other times of the day, there were no calls between the two during this time period. (RJ, 265-266; AB, Ex. 239 (Admissions), para. 8)

POLICE SURVEILLANCE AND SECURITY VIDEO SYSTEM AT THE STANLEY

53. In October 2007, Mr. Haevischer and his girlfriend K.M. lived in suite 1601 of the Stanley. The Stanley is a 22-floor apartment complex located at 10082 – 148th Street. The building had two parkade levels, P1 and P2. Fobs were required to access the main perimeter doors, including the P2 parkade gate. (RJ, 230; T, 1796(47) to 1797(8); 2298(7) to AB, Ex. 37 (Admissions), paras. 55-62, pp.728-9)

54. On October 19, the RCMP Surrey Drug Section was conducting covert surveillance at the Stanley in the context of an unrelated operation. Neither appellant was a target. One of the officers had captured some video, and those clips were entered as exhibits and played at trial. (RJ, 218; T, 1447(20) to 1448(13); 1452(25-40); AB, Ex. 37 (Admissions), paras. 68-72, p.730))

55. In October 2007, the Stanley had in place an internal security video system. When activated by motion, cameras in various areas of the building recorded onto a hard drive. Following the murders, police investigators seized footage from cameras covering the main lobby and the two parkade levels. Videos recorded on October 19 and October 21 were entered as exhibits and played during the trial. (RJ, 219-221; Para. 219: T, 1615(6) to 1616(31); 1706(4-12); 1783(17) to 1784(43); Para. 220: T, 1633(20-27); 1677(41) to 1678(18))

56. The Stanley CCTV videos were played for several witnesses, including K.M. She identified the people and vehicles captured on the video, and the appellants did not challenge her identifications. (RJ, 222; T, 2351(14) to 2358(35))

Mr. Johnston and Person X arrive at the Stanley at 1:48 p.m.

57. [*This paragraph is for context and its contents are not admitted.*] K.M. testified that she and Mr. Haevischer were at home on October 19 when Mr. Johnston and Person X arrived, unannounced, sometime after lunch. K.M. sat beside Mr. Johnston on the couch and Person X sat on the loveseat. K.M. saw guns on the table. She said that she did not recall Mr. Johnston or Person X taking the guns out of their bags; she just recalls them being out on the table when she first saw them. They asked if they could clean the guns and K.M. helped them clean the guns with Windex and paper towels. (When searching the apartment on October 23, 2007 the police found two rolls of paper towels on the coffee table in the living room and Windex on the kitchen counter.) Once the guns were cleaned, Mr. Haevischer, who had changed his clothes, Mr. Johnston and Person X left the apartment. Mr. Johnston asked K.M. to move his Touraeg from the front visitor area to the rear of the building. (RJ, 279-286; T, 2333(7) to 2339(2))

58. As the trial judge's treatment of K.M.'s evidence and conclusions with respect to her evidence are issues on these appeals, her evidence will not be considered as agreed facts for the purpose of this document. The above paragraph is included merely to provide the Court with context to the narrative as a whole and to make sense of the surveillance and other evidence detailed below.

59. Police surveillance establishes that Mr. Johnston and Person X arrived at the Stanley at approximately 1:48 p.m. on October 19. The police surveillance video shows that: Mr. Johnston was wearing a black hoodie with an intricate white design covering its left side; Person X was wearing a light grey hoodie with a black Nike “swoosh” prominently displayed on the back and a smaller black “swoosh” on the front, and had a black bag with a strap going diagonally across his chest; neither Person X nor Mr. Johnston was wearing gloves; Person X had a brief, six-second phone conversation. The internal Stanley CCTV video then recorded Mr. Johnston and Person X moments later entering the building and heading in the direction of the elevators. (RJ, 278; T, 1506(17) to 1507(22); 1550(29) to 1552(5); 1456(6) to 1457(46); 1553(26) to 1555(12))

The appellants and Person X depart the Stanley at 2:16 p.m.

60. Police surveillance, the Stanley CCTV video system and a witness, Ray Weldon, who resided in the Stanley, establish that Mr. Johnston, Mr. Haevischer and Person X left the Stanley in K.M.’s black BMW model 745 at approximately 2:16 p.m. K.M. then moved Mr. Johnston’s Touareg from the front of the Stanley to the back. (RJ, 303-317; T, 1766(4) to 1767(8); 1466(13) to 1467(19); 2338(26) to 2339(32))

61. The Stanley CCTV video system shows that Person X was wearing a grey hoodie with the hood up; Mr. Johnston was wearing a black hoodie with a white design on the left side, and a baseball cap; Mr. Haevischer was wearing a black hoodie with the hood down. (RJ, 303; T, 2353(2) to 2353(1))

62. The judge concluded that Person X was the driver of the BMW. When the Stanley CCTV video of the BMW leaving the parkade is viewed frame by frame, it is possible to momentarily see the driver’s lower arm. The driver is wearing a black glove and the cuff of his shirt is light in colour. Person X was wearing a grey hoodie while both of the other men were wearing dark hoodies. (RJ,315)

Distance between the Stanley and the Balmoral

63. The distance between the Stanley and the Balmoral is about three kilometers. A police officer drove from parking stall no. 89 in the Stanley parkade (the parking stall associated to suite 1601), departing at 2:16 p.m. on a Friday afternoon and travelled at a speed of 60 to 70 km/h. He arrived at the front of the Balmoral at 2:23 p.m., a driving time of seven minutes. He made the return trip to the Stanley, departing the Balmoral at 2:45 p.m. and drove at slightly faster speed using the most direct route in normal traffic conditions for the area. This trip took him four minutes. (RJ, 318; T, 1639(8) to 1640(34))

The appellants and Person X arrive at the Balmoral at 2:20 p.m.

64. Mr. Haevischer, Mr. Johnston and Person X arrived at the Balmoral parkade in K.M.'s BMW at approximately 2:20 p.m. Person X was the driver and Mr. Haevischer was in the front passenger seat. Mr. Johnston had been in the rear of the vehicle but exited at some point before the other two, as he held the west pedestrian gate open to permit their entry into the secure area of the Balmoral. The three men were hooded and wearing gloves. Less than 30 minutes later at approximately 2:47 p.m., they left the Balmoral parkade in a hurry. The evidence is as follows.

65. Helen Lee and Youngmee Kim both attended a Bible study at the Balmoral on October 19th. The weekly Bible study was hosted that day by a Ms. Choi. (RJ, 319, 321; T, 392(21-39))

66. Ms. Lee parked in the Balmoral's underground visitor parking area in stall 10. She had her three-year-old son with her. Ms. Lee estimated that she left the Bible study at 2:25 p.m. Other evidence, mentioned below, suggests that Ms. Lee left Ms. Choi's apartment closer to 2:15 p.m. (RJ, 321,322; T, 393(30-44); 406(11-19))

67. Ms. Lee left the building through the lobby doors with her young son and began walking down the ramp toward the visitor parking area. Ahead of her on the ramp were two vehicles, a Dodge Caravan and a black BMW 745 sedan with tinted rear windows.

Ms. Lee recognized the model of the BMW because she saw the numbers “745” on the vehicle. Further, that particular model was one that her husband liked, and he would point the car out to her when he saw one on the road. (RJ, 323; T, 406(20-47); 408(29) to 409(5); 457(40-46); 458(43) to 459(1))

68. By the time Ms. Lee reached the bottom of the ramp, the Caravan was no longer there and the BMW was stationary. Ms. Lee testified that she thought the BMW was going to back into a stall and so she waited to the side of the vehicle. When it did not move after 10 to 20 seconds, Ms. Lee and her son started to walk around it. As she did so, the BMW suddenly reversed into either stall 4 or 5, nearly striking Ms. Lee and her son. Ms. Lee was stunned and angry, and looked toward the vehicle. She saw two Caucasian men in the front seats of the car who “had very angry faces”. She could not see into the back of the car. She observed that the car had chrome detailing in the area of the front bumper. Ms. Lee became frightened, and hurried toward her car with her son. (RJ, 324; T, 407(1-18); 410(16-28); 410(47) to 411(2); 413(29-45); 414(6-11))

69. After putting her son in the car, she reversed out of the parking stall. As she was heading toward the ramp to leave the parkade, she saw two men exit the BMW and cross approximately 4 to 5 metres in front of her car. She described the male who exited the driver’s side as Caucasian, approximately 183 cm tall, and between 18 and 22 years of age. He was wearing a grey hoodie with a Nike swoosh on the back, and his hood was up. He was wearing black leather gloves. He did not have facial hair. (RJ, 325; T, 407(19-31); 413(35-37); 420(3) to 421(33))

70. Ms. Lee described the male who exited the passenger side of the BMW as shorter than the driver, approximately 170 cm tall. He, too, was Caucasian and between 18 and 22 years of age. He was wearing a black hoodie with the hood up and black leather gloves. He did not have facial hair. (RJ, 326; T, 413(35-37); 421(34) to 422(19))

71. Ms. Lee also saw a third male, who was holding open the west pedestrian gate. [As already stated, the fob assigned to D.Y. was used to gain access to the west pedestrian gate in the underground parkade at 2:23 p.m.] She had not seen where this man came from, nor had she seen him open the door. He was approximately 170 cm

tall, and was wearing a black hoodie with white markings on it. He, too, was wearing black leather gloves. He was holding the gate open with one hand, and was using his other hand to pull down his hood to cover his face. Ms. Lee thought he was Caucasian but was not entirely certain, as she was not able to see his face. (RJ, 327; T, 407(32-36); 414(44) to 415(11); 422(23) to 423(14))

72. The first two men were walking in the direction of this third man, toward the west pedestrian gate. Ms. Lee reasoned that the three men were associated because they were similarly dressed with gloves and hoods covering their faces, and because the two were walking toward the one holding the gate open. That she later heard from Ms. Kim that she had seen three men get into a BMW and drive out of the parkade only solidified the view she had already formed that the three men were associated. Ms. Lee thought the three men were thieves, and that it was important to be observant. (RJ, 328; T, 407(37-39); 423(15-31); 432(43) to 434(39))

73. Because she was troubled by what she had seen, Ms. Lee placed a call to Ms. Choi as soon as she was on the road. She wanted to report to Ms. Choi that there were some “strange men” in the parkade, and to suggest that Ms. Kim, who had not yet left Ms. Choi's apartment, delay her departure. Ms. Lee's cell phone records indicate that she placed the call at 2:24 p.m. This evidence suggests that Ms. Lee left the Choi apartment at approximately 2:15 p.m. rather than the 2:25 p.m. she approximated in her testimony. That timing is also in accord with the evidence of Ms. Kim. (RJ, 329; T, 407(40-45); 423(32-47); 424(1-36); AB, Ex. 41 p. 736)

74. The trial judge compared the images of the two appellants and Person X on the Stanley CCTV video and of Mr. Johnston and Person X on the police Stanley surveillance video with Ms. Lee's description of the three men she saw. The judge concluded that Ms. Lee's description of the driver, and in particular the details of his clothing, matched Person X. The judge was satisfied that the Stanley CCTV video of the BMW leaving the Stanley parkade also supports the inference that Person X was the driver and that he was wearing gloves. Ms. Lee's description of the clothing and general physical characteristics of the man in the passenger seat is consistent with the images

of Mr. Haevischer on the Stanley CCTV videos. Finally, her description of the man holding open the pedestrian gate, especially his black hoodie with white markings on it, is consistent with the video images of Mr. Johnston. Stanley CCTV video of the two appellants arriving back at the Stanley a short time later indicates that both were wearing gloves. (RJ, 338)

The appellants and Person X depart the Balmoral at 2:47 p.m.

75. When Ms. Kim arrived at the Balmoral the morning of October 19, she parked her Dodge Caravan in stall 1 in the visitor's area of the underground parkade. (RJ, 330; T, 493(5-42); 498(36-38))

76. Ms. Kim testified that Ms. Lee left the Bible study at around 2:15 p.m. After Ms. Lee had left but while Ms. Kim was still at Ms. Choi's apartment, Ms. Choi received a phone call from Ms. Lee advising that there were strange people in the parkade and that Ms. Kim should not leave the building right away. Ms. Kim had been expecting her daughter to be dropped off at Ms. Choi's at around 2:30 p.m. When that did not occur, Ms. Kim went down to the lobby to wait for her daughter, accompanied by Ms. Choi. Ms. Kim testified that at about 2:45, she called the person who had her daughter and discovered there had been some sort of miscommunication; in fact, she was supposed to pick up her daughter. (RJ, 331; T, 500(18) to 501(32))

77. Telus billing records for Ms. Kim's cell phone confirm that her call was placed at 2:45 p.m. with a duration of two minutes. According to the evidence of Telus representative Don Calpito, Telus records round call durations up to the minute, thus the call could have lasted anywhere from one to two minutes. (RJ, 332; T, 509(2) to 510(6); Ex. 43, p.742)

78. Although she remained concerned that the suspicious men might still be in the parkade, Ms. Kim prepared to leave. She told Ms. Choi she would immediately return if they were there. Ms. Kim did not see anyone when she arrived in the parkade, and she got into her vehicle. As she was reversing out of the stall, Ms. Kim turned her head and shoulders toward the rear of her vehicle and saw three young men in dark tops come

out of the west pedestrian gate and get into a black BMW parked a few stalls away in either stall 3, 4 or 5. She explained that she recalled the make of the vehicle because she had thought it strange that young men could afford such a high-end car. (RJ, 333; T, 501(32-39); 502(14-26); 503(12-16); 503(21-40); 508(15-19); 526(8-33); 532(25-31); 547(19-22))

79. Ms. Kim was on the ramp exiting the underground parkade when the black BMW passed her on the left at a very high rate of speed. The vehicle continued onto the left (and wrong) side of the traffic circle or island in front of the Balmoral as it drove away. (RJ, 334; T, 505(39)-506(3))

80. Ms. Kim's evidence about the departure of the BMW matched up with police surveillance evidence. One of the surveillance officers was in the area of 144th Street and 100th Avenue, close to the Stanley, when he observed K.M.'s BMW pass by him at a high rate of speed. He followed the BMW to the Stanley and observed it park in the P1 visitor parking area. Three men then emerged from the P1 visitor's parkade where the BMW had just parked. (RJ, 339; T, 1556(39) to 1558(8); 1559(5-11); 1560(22-29))

The trial judge concluded, based on the physical appearance and attire of the appellants and Person X as observed by a surveillance officer at the Stanley, surveillance video and the Stanley CCTV video, and the evidence of K.M., that the three men emerging from the P1 visitor's parkade were Mr. Haevischer, Mr. Johnston and Person X. She concluded that they departed the Balmoral in a hurry at approximately 2:47 p.m. (RJ, 337-340, 344)

The appellants and Person X return to the Stanley at 2:56 p.m.

81. Mr. Haevischer and Mr. Johnston and Person X returned to the Stanley at approximately 2:56 p.m. based on police surveillance and the surveillance video.

82. Mr. Johnston was observed carrying a white bag, and he and Mr. Haevischer walked quickly along the north side of the Stanley toward the front of the building. Mr. Haevischer threw an object, possibly a hoodie or other piece of clothing into the bushes;

it was not the hoodie he was wearing. Person X, who had stayed back, retrieved the item and waited at that location as the other two carried on toward the front of the building. (RJ, 345; T, 1562(19) to 1563(9); 1563(30) to 1564(6); 1564(19-33))

83. Police surveillance video at 2:54:58 captures two individuals in black hoodies with hoods up. Mr. Haevischer is seen only briefly and from behind, running in the direction of the front entrance to the Stanley. Mr. Johnston can be seen walking toward the front entrance. He is wearing black gloves and carrying a white grocery-style plastic bag. The Stanley CCTV video shows the two men entering the building at 2:56 p.m. and heading in the direction of the elevators. Both are hooded and wearing gloves, and Mr. Johnston is still holding the white bag. (RJ, 346; T, 1469(20) to 1470(47); AB, Ex. 120,121,122)

84. Police surveillance video captures Mr. Johnston, wearing a brown T-shirt without a jacket or hoodie, exit the Stanley through the east side door and get into the driver's side of the Touareg. Person X, who had been waiting by the vehicle, got into the passenger seat. The Touareg drove away from the Stanley at 3:04 p.m. (RJ, 347, 353, 354; T, 1566(32-36); 1570(31-43); 1571(39-42); AB, Ex. 120)

Post-offence destruction of evidence

85. *[This paragraph is for context and its contents are not admitted.]* K.M testified that about an hour after they had left, Mr. Haevischer and Mr. Johnston returned to the apartment. Person X was not with them. Mr. Johnston emptied the contents of a black garbage bag onto the living room floor. The bag contained bundles of cash and cell phones. She said that she thought the cell phones went into the kitchen with Mr. Haevischer. Although she did not see Mr. Haevischer take the phones, at one point she smelled something burning so went into the kitchen to investigate and saw him boiling the phones in a pot on the stove. She saw two Blackberries and approximately three or four other phones. She said Mr. Haevischer and his brother Justin were writing stuff on a whiteboard and she saw the words "People Died". She retrieved an old laundry bag and watched as items were thrown into it, including the cell phones, a pair of shoes, the clothes Mr. Haevischer had been wearing, and a towel they used to wipe down the bag.

Once the items were thrown into the laundry bag, Mr. Haevischer told her to do whatever his brother instructed. She and Justin Haevischer left the apartment with the laundry bag, and headed out in her white Acura Integra. They went first to a gas station where they purchased a can of gas. They eventually went to a place in Surrey where Justin Haevischer burned the laundry bag and its contents. (RJ, 348, 350, 351, 355, 356, 369; T, 2340(1) to 2345(21); 2346(29) to 2348(43))

86. As the trial judge's treatment of K.M.'s evidence and conclusions with respect to her evidence are issues on these appeals, her evidence will not be considered as agreed facts for the purpose of this document. The above paragraph is included merely to provide the Court with context to the narrative as a whole and to make sense of the surveillance evidence detailed above and below.

87. At 3:58 p.m. the Stanley CCTV video shows Justin Haevischer arrive at the Stanley and buzzed in the front doors. (This contradicts K.M.'s testimony that Justin was present in the apartment when Mr. Haevischer and Mr. Johnston returned there.)

88. The Stanley CCTV video captured K.M. and Justin Haevischer headed toward the P2 parkade at 4:34 p.m. Justin Haevischer was carrying a large cloth bag that appeared full. The size and shape of the bag was consistent with it containing not just cell phones, but bulky items such as clothing. At 4:35 p.m. K.M.'s white Acura Integra departed the parkade. The vehicle returned at 6:41 p.m., and a few minutes later K.M. and Justin Haevischer were seen heading from the parkade toward the elevator without the cloth bag. (RJ, 357; AB, Ex.120)

89. Mr. Johnston returned to the Stanley at 5:00 p.m., entered through the front door, appeared to be buzzed in and then walked in the direction of the elevators. He was not wearing a jacket or a hoodie. He departed again at 6:39 p.m., as shown by the Stanley CCTV, and was wearing the same clothing as when he arrived at 5:00 p.m. He was carrying a black bag over his shoulders which matched in appearance the bag Person X was seen wearing when he and Mr. Johnston arrived at the Stanley earlier that day, but was not wearing when he left the Stanley with Mr. Haevischer and Mr. Johnston. (RJ, 354)

Mr. Haevischer and K.M leave their apartment; Mr. Haevischer's admissions

90. [This paragraph is for context and its contents are not admitted.] K.M. testified that upon her return to the Stanley with Justin Haevischer after destroying the contents of the laundry bag, Mr. Haevischer was still in the apartment and he told her to pack some bags. She believed the three of them left the apartment 15 to 20 minutes later and she and Mr. Haevischer went to Richmond where they stayed at Windsor Nguyen and his roommate Hayden's house for three to four days. On the night of October 19, she said that Mr. Haevischer told Windsor on a whiteboard that "six people died". There was a meeting there the following day when Mr. Haevischer asked K.M. a question written on a whiteboard, "Burnt it all, all gone" to which K.M. nodded "yeah". (RJ, 370, 373, 380; T, 2349(26) to 2350(29); 2359(42) to 2360(15); 2361(10-26); 2362(16-19); 2363(31) to 2365(40))

91. As the trial judge's treatment of K.M.'s evidence and conclusions with respect to her evidence are issues on these appeals, her evidence will not be considered as agreed facts for the purpose of this document. The above paragraph is included merely to provide the Court with context to the narrative as a whole and to make sense of the surveillance evidence detailed below.

92. The Stanley CCTV video shows Justin Haevischer leaving the Stanley alone on October 19 at 7:33 p.m. The video also shows (RJ, 371):

- (a) Cody Haevischer exiting the P1 elevator at 8:15 p.m. in a white hoodie and with a black bag worn diagonally across his body; (T, 2449(46) to 2452(30); AB, Ex. 120, Storyboard from 19:27:53 – 19:27:58 on camera 11)
- (b) K.M. walking away from the P2 elevator with a suitcase a few seconds later; (T, 2356(28-44); AB, Ex. 120, Storyboard from 20:10:22 – 20:10:25 on camera 9)
- (c) K.M.'s BMW driving into the parkade through the P2 gate at 8:17 p.m., the driver in a white top and with a black strap running diagonally across the chest; and (AB, Ex. 120, Storyboard from 20:12:34 – 20:12:46 on camera 16)

(d) K.M.'s white Integra heading toward and then out through the P2 gate at 8:20 p.m. The passenger is wearing a white top. (T, 2357(34) to 2358(15); AB., Ex. 120, Storyboard from 20:15:45 – 20:15:48 on camera 13)

93. The trial judge concluded that the only logical inference to be drawn from this evidence is that Cody Haevischer drove the BMW back into the secured parking area of the Stanley from the unsecured visitor's parking area and, thereafter, he and K.M. departed in K.M.'s Integra at 8:20 p.m. (RJ, 372)

Police seizure of K.M.'s BMW

94. *[This paragraph is for context and its contents are not admitted.]* K.M. testified that on the night of the murders, Mr. Haevischer told her that her BMW was going to get cleaned. On another day Mr. Haevischer told her that Mike Nguyen was supposed to sit with the BMW until it was finished being cleaned, but he did not do that. (RJ, 376; T, 2362(10-15); 2366(28) to 2367(4))

95. As the trial judge's treatment of K.M.'s evidence and conclusions with respect to her evidence are issues on these appeals, her evidence will not be considered as agreed facts for the purpose of this document. The above paragraph is included merely to provide the Court with context to the narrative as a whole and to make sense of the Stanley CCTV evidence and admissions of fact detailed below.

96. The Stanley CCTV video captured two males, identified by K.M. at trial as Windsor's brother Mike and another Red Scorpions member, Kyle Ali, arriving at the Stanley on October 21 at 4:01 p.m. K.M.'s BMW then left the parkade at 4:16 p.m. It was admitted at trial that the BMW was eventually driven to Soundworks Car Audio and Security in Burnaby on October 22. The driver was an Asian male. The Asian male asked an employee of Soundworks to have the BMW fully detailed. The driver then left Soundworks. The police seized the BMW from the Soundworks location the same day. (RJ, 377; T, 2358(16-35); 2275(45-47); AB, Ex. 37 (Admissions), paras. 74-82, pp.730-733)

MR. JOHNSTON'S ADMISSIONS

97. The Crown led evidence of admissions made by Mr. Johnston to both Michael Le and Person Y. As the trial judge rejected Le's evidence in relation to Mr. Johnston's (and Mr. Haevischer's) admissions, no further reference to his evidence in this context will be provided. (RJ, 531-533, 548, 566)

98. As the trial judge's treatment of Person Y's evidence and conclusions with respect to his evidence are issues on these appeals, his evidence concerning the admissions he attributes to Mr. Johnston will not be considered as agreed facts for the purposes of this joint statement. The following paragraphs are included to provide the Court with context to the narrative as a whole and to make sense of the surveillance and cell phone evidence noted below. In addition, the findings made by the trial judge with respect to this body of evidence are also set out, in brief.

October 19 admission

99. Person Y testified that he received admissions of Mr. Johnston's knowledge of and involvement in the events at the Balmoral on October 19 on three separate occasions. The first occurred on the evening of October 19 as Person Y sat in Jamie Bacon's car outside the apartment building in Coquitlam where Person X lived, waiting for Mr. Bacon to return after speaking with Person X inside. Person Y testified that, as he waited, Mr. Johnston unexpectedly climbed into the car and excitedly spoke to him about what had transpired that afternoon. Details of Mr. Johnston's admissions will be elaborated upon in the parties' factums. (RJ, 402-407; T, 3646(37) to 3651(12))

100. Police officers carrying out surveillance on Mr. Bacon that evening observed his Mercedes SL55 enter the parking lot and park in front of Person X's building at 7:10 p.m. The vehicle remained parked there for ten minutes before departing whereupon it was followed back to Mr. Bacon's residence, arriving at 7:35 p.m. An officer watching Mr. Bacon's vehicle while it was parked outside Person X's building did not see anyone leave the car. Similarly, he did not see anyone enter and subsequently get out of the vehicle. He did see a male approach the car's driver's side and get in. The car then

departed. (RJ, 410-411; T, 2207(18) to 2208(21); 2210(5-21); 2211(9-20); 2215(3-8); 2217(17-24); 2220(40) to 2221(5))

101. At the time of these police observations, the surveillance team had a “target book” which included Mr. Johnston’s grey Touareg. The surveillance officer watching Mr. Bacon’s car in front of Person X’s building did not see the grey Touareg in the area of Mr. Bacon’s vehicle or anywhere else in the parking lot. However, Constable White (who was conducting surveillance of the parking lot) testified that he did not look around for other vehicles when he entered the lot as he was focused on the Mercedes at the time. (RJ, 413; T, 2214(8) to 2215(2); 2222(19-24))

102. Call detail records show five uses of Mr. Johnston’s cell phone between 7:15 and 7:30 p.m. The cell site used by these calls was in Coquitlam. Person X’s apartment was within the expected coverage area of this cell site. (RJ, 420; T, 5462(19) to 5463(12))

103. The cell phones of Mr. Bacon, Person Y and Person X were placed within the expected coverage area of the same cell site: Mr. Bacon’s between 7:09 and 7:25 p.m.; Person Y’s between 7:27 and 7:29 p.m.; and Person X’s between 7:25 and 7:29 p.m. (T, 5464(6) to 5465(33))

February 17, 2008 admission

104. The second and third occasions on which Person Y spoke to Mr. Johnston about the murders occurred on February 17 and March 23, 2008 respectively, when Person Y was acting as an agent for the police. These conversations were surreptitiously recorded as Person Y was wearing a wire. He augmented both the transcribed recordings and his spoken account of their conversations with descriptions of various hand gestures Mr. Johnston made as they conversed. The trial judge accepted his evidence about the gestures. (T, 5464(6) to 5465(33))

105. The context for the February 17 scenario was that Person Y, Mr. Johnston and Person X were to be arrested. Person Y was to be told that his DNA had been found on a handgun recovered at the crime scene, and he was then to be released with Mr.

Johnston. As the scenario unfolded, Person Y was released from custody along with Mr. Johnston, and the two spoke outside on the street. Person Y asked Mr. Johnston how it was possible that Person Y's DNA was found on the gun. Mr. Johnston said that he never touched it. When asked where the gun was left, Mr. Johnston said he did not know, Person Y would have to talk to Person X. Mr. Johnston also said he watched "him" (contextually referring to Person X) clean them with Windex. (RJ, 432-437, 457; T, 3665(39) to 3666(11); 3667(47) to 3669(34); 3673(41) to 3675(13); AB, Ex. 182, pp. 1437-8 and pp. 1458-9)

March 23, 2008 admission

106. The context of the March 23 admission was a police scenario in which an undercover officer posed as a drug importer using Person Y as the middle man in a drug transaction with Michael Le. The three met with Mr. Johnston present as Mr. Le's bodyguard. The undercover officer told Mr. Le that Person Y was unhappy and stressed about being set up, and that the undercover officer wanted the matter addressed. Consequently Person Y and Mr. Johnston left the room and talked together in a stairwell. (RJ, 438-439; T, 3678(23-45); 3679(47) to 3680(9); 3680(29) to 3681(47); 3682(8-17))

107. Person Y told Mr. Johnston that Person X had claimed that he had boiled the guns and asked Mr. Johnston if he had seen Person X boil the guns. Mr. Johnston responded "I'm not exactly sure about that, but clearly one was left there and one wasn't". Person Y asked Mr. Johnston why Person Y's gun was left at the scene. Mr. Johnston responded that he was not sure who had which but "I can tell you who didn't," "and that was me". Person Y asked Mr. Johnston why guns were used. Mr. Johnston responded that he did not know and added "all I know is I was told to do somethin'". Mr. Johnston pointed to his eye indicating that he was keeping point, that is, he was the lookout. Person Y later corrected himself and said that Mr. Johnston rubbed his fingers together to indicate money (but Person Y was 80 to 90 percent certain Johnston also pointed to his eye). Person Y also testified that Mr. Johnston said the other person was

supposed to “do this”, and that he made a gun gesture with cocked thumb and forefinger and middle fingers extended, and that Mr. Johnston said “like I did what I had to do”. (RJ, 440-442; T, 3685(31-46); 3707(47) to 3708(19); AB, Ex. 183, pp. 1638-9)

108. In attempting to answer Person Y’s questions about the gun which had Person Y’s DNA found at the scene, Mr. Johnston said that there were some things he could not answer and said “I watched — I watched him do this on. Both of them”. Person Y said Mr. Johnston was using a gun gesture shooting downwards with thumb cocked and forefinger and middle finger extended. (RJ, 443-444; T, 3686(35) to 3687(16); AB, Ex. 183, pp. 1641-2)

109. Person Y asked why his gun with his DNA was left at the scene and Mr. Johnston replied “I was just told to get this [Mr. Johnston rubbed his fingers together to indicate money] and everybody else like” [Mr. Johnston made a hand gesture with his fingers cocked like a gun.] (RJ, 445; T, 3688(29) to 3689(1); AB, Ex. 183, pp. 1642-3)

110. Person Y then told Mr. Johnston that Person X had claimed that there had been fifty thousand dollars obtained from the suite, but Mr. Johnston responded “I swear on fuckin’ like anything, you name it, man—that was—there was nineteen five. I swear.” (RJ, 448; T, 3689(2-13); AB, Ex. 183, p. 1643)

111. In defending himself against Person X’s allegation that Mr. Johnston had stolen some of the money, Mr. Johnston said to Person Y “You know who counted the money?” When Person Y responded “Blake” (Mr. Haevischer), Mr. Johnston said “exactly”. (RJ, 451; T, 3690(2) to 3691(8); AB, Ex. 183, p. 1647)

112. When Person Y asked Mr. Johnston why there were six dead and whether Person X panicked, Mr. Johnston replied “I wasn’t inside (ph), man. The-you know that. You-and [Person X] has already told you...”. (RJ, 449; AB, Ex. 183, p. 1644)

113. Person Y said that he (Person X) did not boil the guns and Mr. Johnston replied “I never had this in my – I never had one in my hand the whole entire time”. [Mr. Johnston used a gun gesture with his hand.] (RJ, 449; AB, Ex. 183, p. 1645)

THE POSITIONS OF THE PARTIES AND THE FINDINGS OF THE TRIAL JUDGE

114. In relation to the charge of conspiracy to murder (count 7 on the indictment), the Crown alleged that the two appellants agreed with each other and/or with any of the other co-conspirators named in count 7 to murder Corey Lal. The Crown's position was that there was clear evidence of a conspiracy to kill Mr. Lal, and the evidence regarding the conduct of the two appellants before, during and after the murders amply proved their membership in it. Mr. Johnston was an early member of the conspiracy; Mr. Haevischer was a latecomer to it. (RJ, 592)

115. For their part, the appellants did not take serious issue with the existence of a conspiracy of which Corey Lal was the subject. Mr. Johnston instead argued that the conspiracy of which he was a member was only to rob, and not to murder, Mr. Lal. Mr. Haevischer took the position that he was not a member of the conspiracy. In both respects, the trial found liability for conspiracy to commit murder proved beyond a reasonable doubt. (RJ, 593-595, 622, 635)

116. In relation to the six counts of first degree murder, the Crown put forward routes to liability for first degree murder for both Mr. Haevischer and Mr. Johnston on two, alternative bases. First, the murders were planned and deliberate *per s. 231(2)* of the *Criminal Code*. Second, the deaths of all six victims were caused while they were unlawfully confined *per s. 231(5)(e)*. In terms of their individual culpability, the Crown submitted that both men were liable as co-perpetrators under s. 21(1)(a) and/or as aiders or abettors under s. 21(1)(b) or (c). (RJ, 637)

117. For his part, Mr. Johnston, consistent with his position on count 7, argued that the Crown failed to prove the requisite *mens rea*, beyond a reasonable doubt, specifically the subjective foresight of death. He argued that the facts at their highest proved only that he had the mental intention of a participant in a robbery. (RJ, 640)

118. Mr. Haevischer first argued that the evidence was insufficient to place him inside suite 1505. Alternatively, he argued that if he was in the apartment it was to commit a robbery and the Crown failed to prove he was still inside the apartment when the murders occurred. He also sought to take advantage of the proven fact that there were

two shooters and therefore one non-shooter. He argued that the Crown failed to prove that he was one of the shooters and therefore failed to prove causation, namely that the actions of the non-shooter were either a significant contributing cause of the deaths of the victims (required for culpability for second degree murder), or an essential, substantial and integral part of the killings (required for culpability for first degree murder). He further argued that the Crown had failed to prove the *mens rea* of the non-shooter, that is, subjective foresight of death. Finally, he argued that there had been a failure to prove that the non-shooter aided or abetted one of the principals to commit murder with the requisite intent. (RJ, 639)

119. [*The following three paragraphs summarize the trial judge's conclusions, which the appellants take issue with on this appeal.*] The trial judge found that Mr. Haevischer accompanied his Red Scorpions associates into suite 1505. She found that the three of them were acting according to a common purpose. Both appellants were liable for the murders of the six victims either as co-principals or, alternatively, their participation rendered one of them a principal (the second shooter in addition to Person X) and the other (the non-shooter) an aider or abettor who, with the requisite intent, actively assisted the shooters from the time the first victims were confined until all six were executed. (RJ, 689, 690, 705-708)

120. Lastly, the trial judge found the appellants guilty of first-degree murder on both bases put forward by the Crown. The murder of Corey Lal was clearly planned and deliberate, being the object of the conspiracy. The murders of the other five victims was not the original plan but, in the fluid and dynamic circumstances that transpired, they became the plan. The other five men could identify the killers of Corey Lal so they were executed in a calculated and deliberate fashion, carried out after real consideration. The shootings were not the random or scattered shots of a panicked shooter reacting impulsively to an unexpected situation. (RJ, 710, 712-716)

121. With respect to liability pursuant to s. 231(5)(e), the finding that the six victims were confined by the perpetrators for a period of time before they were killed, and that the confinement constituted an act distinct from the murders was, in the trial judge's

view, the only reasonable inference arising out of the crime scene evidence. On the question of causation, the trial judge noted that it was obvious that the two shooters were a substantial and integral cause of the victims' deaths. She found that the actions of the third perpetrator — managing the scene during those chaotic 15 or so minutes, dealing with unexpected arrivals (Mr. Mohan and Mr. Narong) and preventing eyewitnesses from escaping — were similarly an essential, substantial and integral part of the killing of the victims. (RJ, 722, 724-726)

CHRONOLOGY OF PROCEDURAL HISTORY

122. The parties agree on the following procedural history of this case:

October 19, 2007	The Homicides (the Surrey Six murders)
April 3, 2009	Cody Haevischer arrested for the Surrey Six murders
April 4, 2009	Matthew Johnston arrested for the Surrey Six murders
June 12, 2009	Crown filed Indictment No. 72945-1 charging James Bacon, Cody Haevischer, and Matthew Johnston with the first-degree murder, and conspiracy to commit the murder, of Corey Lal. On the same Indictment, Haevischer and Johnston were charged with the first-degree murder of the other five victims
July 23, 2009	Crown filed Indictment No. 72945-2 charging James Bacon, Cody Haevischer, Matthew Johnston, and Michael Le with the first-degree murder, and conspiracy to commit the murder, of Corey Lal. On the same Indictment, Haevischer and Johnston were charged with the first-degree murder of the other five victims
August 2, 2012	Crown filed separate Indictment No. 26150-1 charging James Bacon with the first-degree murder, and conspiracy to commit murder, of Cory Lal <ul style="list-style-type: none"> • The proceedings against Haevischer, Johnston, and Le continued on Indictment No. 72945-2
September 4, 2012	Appellants filed Notice of Application No. 65 <ul style="list-style-type: none"> • This application sought disclosure and challenged the Crown's assertion of confidential informer privilege over an alleged informer code-named E5

September 18, 2012	Crown filed a Reply to Application No. 65
November 6, 2012	Order appointing <i>amicus</i> on Application No. 65
February 12, 2013	Procedural ruling on Application No. 65 allowing the Crown to proceed <i>in camera</i> and <i>ex parte</i> the accused
30 July 2013	Johnston files Application #97 challenging the defendants' ongoing exclusion from, and additional information about, the ongoing Application No. 65
1 August 2013	Crown files reply submissions on Application #97
2 August 2013	Hearing on Application #97
August 14, 2013	Ruling on Application No. 65 (under seal)
August 23, 2013	Ruling on Application No. 65 (<i>R. v. Haevischer</i> , 2013 BCSC 1526) <ul style="list-style-type: none"> • The trial judge ruled that (1) the Crown had established that confidential informer privilege applied to E5 and (2) that Person X cannot be called by the Crown as a witness, finding that his evidence is inadmissible.
September 30, 2013	The trial commenced before Madam Justice Wedge (sitting without a jury) <ul style="list-style-type: none"> • During the trial, Le pleaded guilty to conspiracy to murder Corey Lal. Le testified for the Crown.
May 20, 2014	Crown closes its case before Madam Justice Wedge
May 28, 2014	Ruling on Motion for a Directed Verdict (<i>R. v. Haevischer</i> , 2014 BCSC 1007) <ul style="list-style-type: none"> • This motion was brought by Haevischer at the conclusion of the trial solely in respect of the charge of conspiracy to murder Corey Lal
June 9, 2014	Appellants elect to call no evidence and file Notice of Applications Nos. 136 (Haevischer) and 137 (Johnston) <ul style="list-style-type: none"> • These applications were for a stay of proceedings based upon an alleged abuse of process arising from police misconduct with respect to their treatment of witnesses and their improper direction of the Appellants' custodial circumstances

August 6, 2014	<p>Crown filed Reply to Applications Nos. 136 and 137</p> <ul style="list-style-type: none"> • The Crown applied for a <i>Vukelich</i> hearing • A portion of the <i>Vukelich</i> application was held <i>in camera</i> and <i>ex parte</i>, with the assistance of <i>amici</i>
October 2, 2014	<p>Reasons for Judgment convicting the appellants</p> <ul style="list-style-type: none"> • The verdicts were not entered pending determination of Applications No. 136 and 137
October 9, 2014	<i>Amici Curiae</i> appointed to assist the Court during the <i>ex parte</i> portion of the <i>Vukelich</i> application.
November 19, 2014	Ruling dismissing Application Nos. 136 and 137 per <i>Vukelich</i> (<i>R. v. Haevischer</i> , 2014 BCSC 2172)
December 12, 2014	Sentence Imposed
January 8, 2015	Appellants filed Notices of Appeal from convictions
May 8, 2015	Haevischer filed an Amended Notice of Appeal
June 30, 2015	<p>Order appointing <i>amicus</i> to assist in the appeals (Stromberg-Stein, JA)</p> <ul style="list-style-type: none"> • <i>Amicus</i> were appointed during the trial on Application Nos. 65, 136, and 137
February 11, 2016	Appellants received post-trial disclosure (Sets #121-128 and others)
June 8, 2016	Appellants received post-trial disclosure (Sets #130-131)
July 22, 2016	<p>Letter from <i>amici</i> to Appellants counsel advising that certain <i>Stinchcombe</i> disclosure may be forthcoming from the Bacon proceedings before Ker, J</p> <p>Appellants received post-trial disclosure (Sets #132)</p>
December 7, 2016	Appellants filed an Application for Post-Trial Disclosure
December 1, 2017	Judicial Stay of Proceedings entered in the Bacon proceedings (<i>R. v. Bacon</i> , 2017 BCSC 2207)

- Justice Ker ruled that Person X cannot be called by the Crown as a witness, finding that his evidence is inadmissible.

December 1, 2017	Bacon trial judge Madam Justice Ker issues companion ruling directing that “a significant number of documents” of new disclosure be made to Haevischer and Johnston (<i>R. v. Bacon</i> , 2017 BCSC 2208, at para. 4)
December 1, 2017	Appellants received post-trial disclosure (Set #133)
January 24, 2018	Appellants received post-trial disclosure (Set #134)
March 1, 2018	Appellants received post-trial disclosure (Set #135)
April 23, 2018	Johnston filed Notice of Application for Post-Trial Disclosure seeking, <i>inter alia</i> , information and all materials relating to Person Y seeking and being afforded entry into the Federal Witness Protection Program.
April 24, 2018	Johnston filed an Amended Notice of Appeal
April 25, 2018	Haevischer filed Notice of Application for general Post-Trial Disclosure
October 5, 2018	Appellants received disclosure further to their Applications for Post-Trial Disclosure
April 10, 2019	Judgment of the BCCA dismissing the Appellants’ Applications for Post-Trial Disclosure (<i>R. v. Johnston</i> , 2019 BCCA 107)

ALL OF WHICH IS JOINTLY SUBMITTED BY:

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August 4, 2020
Vancouver, B.C.

APPENDIX

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Exhibit 68

