

CANADA / JUDGMENT

R. v. C.J.M.

2020 BCSC 912

COURT

Supreme Court of British Columbia

DECIDED

2 April 2020

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2020 BCSC 912 R. v. C.J.M.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. C.J.M.,

2020 BCSC 912

Date: 20200402

Docket: 30461-1-W

Registry: Vancouver

Regina

v.

C.J.M.

Before: The Honourable Mr. Justice Baird

Oral Reasons for Judgment on Bail Review

Counsel for the Crown

appearing by teleconference:

R. Ellsay

T. Morgan

Counsel for the Accused

appearing by teleconference:

S. Runyon

Place and Date of Hearing:

Nanaimo, B.C.

April 1, 2020

Place and Date of Judgment:

Nanaimo, B.C.

April 2, 2020

INTRODUCTION

- [1] THE COURT: C.J.M. is before the court on six criminal charges preferred by the Crown arising from an incident reported by the Campbell River RCMP on November 1, 2019, specifically assaulting a police officer using a motor vehicle, dangerous operation of a motor vehicle, flight from a police officer, obstruction of a peace officer in the lawful execution of his duty, and breach of probation.
- [2] On January 14, 2020, the accused had a bail hearing before Judge Rogers in the Provincial Court at Campbell River. The Crown opposed bail relying on the secondary ground articulated in s. 515(10)(b) of the Criminal Code, R.S.C. 1985, c. C-46. That is, that the accused's detention in custody was necessary for the protection or safety of the public having regard to all the circumstances including the substantial likelihood that he will commit further criminal offences if released from custody.
- [3] The accused sought his release. He offered to deposit cash. He claimed that he intended to undergo counselling and treatment in a residential drug addiction recovery house. His plan was not particularly specific. The court was notified merely that a bed at a given facility would be available within a short period of time. Judge Rogers denied bail on the basis, not that the accused's bail proposal lacked specificity, but because she had no confidence that he would abide by any bail order, however specific or detailed it might be.
- [4] In other words, the accused was detained in pretrial custody by a valid order made on authority of s. 515(5) of the Criminal Code. However, this is not a s. 520 bail review application. Counsel advised me that the accused comes before this court instead by operation of s. 525 of the Criminal Code. The question to be answered, therefore, is whether the continued detention of the accused in custody is justified with recourse, once again, to the grounds set out in s. 515(10) of the Criminal Code, *R. v. Myers*, 2019 SCC 18.
- [5] In answering this question, I have considered the transcript of the proceedings in the court below, Judge Rogers' reasons for making the detention order in question, various documents filed electronically by Crown and defence, the submissions of counsel for both sides, and a brief statement from C.J.M. himself.

BACKGROUND

- [6] The accused will soon be 32 years old. He is a heroin and methamphetamine addict. He has no history of gainful employment. He has a lengthy criminal record dating back to 2005 when he was a youth. By my count, he has in excess of 70 previous criminal convictions. Many of these are for property crimes: break and enter, theft, possession of stolen property, mischief, possession of house-breaking instruments, motor vehicle theft, identity theft, fraud, and false pretences. He also has convictions for violent offences such as robbery and assault, and a significant and repetitive history for violating bail and probation orders.
- [7] Pertinently to the matters at hand, the accused has never been issued a driver's licence. He persists in driving, anyway, and has been statutorily prohibited from operating any motor vehicle in British Columbia for over a decade. These prohibition orders have had absolutely no effect. The accused has consistently disregarded and flouted them. He has multiple convictions for driving while disqualified. Along the way, he has aggregated a serious record of Criminal Code driving convictions for impaired driving, dangerous operation of motor vehicles, and causing police pursuits whilst operating stolen motor vehicles.
- [8] For present purposes, I will emphasise the accused's most recent matters before the court. On the night of June 18, 2017, the accused and an associate named Gibbons unlawfully entered the garage of a Campbell River residence belonging to a person named Mr. Abihana. Mr. Abihana was awakened by the noise and went to investigate. He found the accused and Gibbons in the midst of stealing his minivan. He saw the vehicle reversing from his garage. He gave chase on foot. The minivan became stuck in a ditch. The accused and Gibbons bailed and ran away.
- [9] Mr. Abihana caught up with Gibbons and apprehended him. The accused, meanwhile, got into Mr. Abihana's pickup truck, started it somehow, and drove towards Mr. Abihana and Gibbons as if to run them over. Mr. Abihana let go of Gibbons and got out of the way. The accused threatened to kill Mr. Abihana and made a throat-slashing gesture. Gibbons leapt into the pickup truck and the accused drove away smashing into Mr. Abihana's minivan on the way out. Mr. Abihana called the police and reported the pickup stolen.
- [10] Some time later, the Campbell River RCMP located the pickup truck on a residential side street. Two different police units approached from opposite directions. Gibbons was in the driver's seat with the accused as passenger. Cst. Boucher drove towards the front of the pickup truck while Cst. Janssen pulled in behind it. Gibbons accelerated towards Cst. Boucher's police car and rammed it. Somehow Gibbons managed to maneuver around Cst. Boucher and fled the scene. A police pursuit was abandoned as too dangerous.

- [11] Later on, the pickup was found abandoned. A police dog was brought to where it was located. The dog detected a scent and started a track that led directly to the accused hiding in a bush. The accused was confronted with stealing the vehicle and attempting to run over Mr. Abihana. His response, apparently, was, "Yeah, but I need treatment. I know I need help. I shouldn't have done that." The accused appeared to be intoxicated by substances.
- [12] The accused remained in custody from the date of this arrest until September 26, 2017, when he was released on bail. The bail conditions included a form of house arrest at a residential treatment facility on the Lower Mainland, and to obey all of the rules and regulations thereof. In short order, he left this facility in breach of his bail. On November 26, 2017, he was found somewhere in Campbell River with a female companion in possession of yet another stolen vehicle.
- [13] On this occasion, at least, he did not bolt, but he was clearly under the influence of narcotics at the time. He gave the police a false name when asked to identify himself. He was in breach of his bail not only because he had left the treatment facility, but also because he was in the driver's seat of a motor vehicle. The vehicle, as I have said, was recently stolen and its ignition was punched out. The accused never came clean about his true identity. Instead, he put the police to the task of confirming his identity by independent investigation.
- [14] As I understand it, the accused remained in custody after this latest arrest without seeking bail. On August the 1st, 2018, he entered guilty pleas to the underlying charges of breach of bail, obstruction of a peace officer by giving a false name, and possession of stolen property, along with some other charges that were then on the books. He was sentenced to a period of further incarceration.
- [15] On September 23, 2019, the accused entered guilty pleas to the charges involving Mr. Abihana back on June 18, 2017. Specifically, he pled guilty to being unlawfully in a dwelling house, possession of stolen vehicles, and dangerous driving. By that time, he had completed the jail sentence imposed on August 1, 2018, and had accumulated the equivalent of 15.5 months of pretrial time on the Abihanna charges alone. The Crown sought an 18-month total sentence which worked out to a further 82 days in jail.
- [16] On this sentencing the accused was before Judge Cowling in the Campbell River Provincial Court. Once again, he claimed that his problem was primarily one of drug addiction. He said, apparently, that he had seen the light and would take treatment. He told Judge Cowling that the court system would never see him again. Judge Cowling obviously decided to give the accused the chance to prove himself and ordered that his remaining 82 days of jail time should be served on an intermittent basis, that is, on weekends. The accused was also bound by the conditions of a probation order during the week. This order was not produced for my inspection, but it would have contained the statutory terms including to keep the peace and be of good behaviour, and the condition that he surrender himself each Friday to serve his weekend in custody.

- [17] Only days later, the accused failed to surrender himself to serve his weekend sentence. A warrant was issued for his arrest and a charge of being unlawfully at large was duly preferred. The accused did not contact the authorities or turn himself in. Instead, on November 1, 2019, he was arrested in the circumstances giving rise to the present set of charges that I mentioned at the outset: assaulting a peace officer using a motor vehicle, dangerous operation of a motor vehicle, flight from a police officer, obstruction of a peace officer in the lawful execution of his duty, and breach of probation.
- [18] The facts underlying these charges are basically that the Campbell River RCMP were conducting surveillance on a house for reasons unrelated to the accused. The accused came out of the house and entered a vehicle where there was a female passenger waiting for him. He drove away. The police pursued him. He attempted to flee. Along the way, he rammed a couple of police cars that were trying to box him in. He fled on foot and was taken down by a police dog. He fought with the police before he was subdued and arrested. He was searched and narcotics were found on him.
- [19] Apparently this entire incident was captured on video. Defence counsel on this hearing expressly conceded that there was no conceivable defence to the charges of flight from police, obstruction, and breach of probation. I was urged to consider, however, that there were triable issues on the assault and dangerous driving charges. That may be, but I would note that the accused has served a previous sentence of 18 months for causing a police pursuit and, especially given the lack of deterrence created by that sentence, a step up on that count alone might very well be required. At the bail stage, furthermore, the presumption of innocence must be evaluated in light of defence counsel's concessions on the evidence.
- [20] On December 24, 2019, the accused pled guilty to being unlawfully at large in relation to his failure to surrender himself for his intermittent sentence. That sentence was ordered to be served on consecutive days in custody and he was given a disposition of time served on the substantive charge. Since the date of this disposition, he has been on pretrial remand related to the November 1, 2019 charges alone.

DISCUSSION

- [21] As I have already said, the accused had a bail hearing on January 14, 2020, and was detained. In her ruling, Judge Rogers made the following comments with which I wholeheartedly agree:

I am of the view that despite [his release plan], C.J.M. must be detained. His history is almost unbroken as an adult since 2006. His recent history has shown little or no inclination to comply with court orders of any sort. When he chooses not to comply with court orders and to commit criminal activity, it is activity that is extremely dangerous to the public. The pattern of behaviour involves flight from the police, it involves driving vehicles despite numerous driving prohibitions, and it involves driving them in a dangerous manner and using vehicles as a weapon in attempts

to evade capture.

- [22] Judge Rogers went on to conclude that even if a residential treatment bed were immediately available for the accused, she would not release him. She had no confidence that he would abide by the terms and conditions of any bail order. She did not believe that he would attend and successfully complete a recovery treatment program as promised. She was persuaded to the contrary that he would revert as usual to his long-established pattern of endangering the public by committing criminal offences.
- [23] Before me, no argument was made, nor could it be made, that Judge Rogers' detention order proceeded from any misapprehension of the facts or an error in principle. Her order, in my view, was completely sound. I am being urged instead to conclude that, since the order was made, there have been changes of circumstance that tip the scales in favour of release.
- [24] It was submitted first and foremost that the accused's release plan is now more specific than the one placed before Judge Rogers. Secondly, it was argued that with the ongoing Coronavirus pandemic and the risk of the accused's exposure to infection in the closed setting of a prison, his release on rehabilitative house arrest conditions would be reasonable in all of the circumstances.
- [25] I reject both of these arguments. In my view, the release proposal being made by the accused is substantially identical to that made before Judge Rogers. He is merely representing, as he did in the court below, that he has found a recovery house willing to take him. His claims to have lined up a friend to transport him to the facility amount to very little. Given the accused's history, it would not be reasonable to release him yet again on his promise to take and successfully complete rehabilitative treatment.
- [26] This, as I have already said, is a promise that the accused has made before. He has failed to follow through. To the contrary, his established pattern is to revert immediately to criminal misconduct whenever he is released into the community. I have no confidence whatsoever that he will abide by the terms of any bail order that I might impose. I am more or less certain that if he is released he will either not show up at the proposed recovery facility, or he will leave it in short order without deriving any substantial benefit, and that while he is at large in contravention of his bail, he will commit further criminal offences, and serious ones at that.
- [27] It was not argued nor could it be that the Covid-19 pandemic constitutes some kind of free-standing ground for release. I was merely urged to consider that the accused's release plan amounted to reasonable bail, especially combined with the possibility of viral infection in a closed custodial setting where social distancing is not possible. I have already explained why release on the terms proposed would not be reasonable.
- [28] I agree, furthermore, with the opinion of Gorman P.C.J. in *R. v. Alexander*, [2020] A.J. No. 69, at para. 7, that "[t]he health and safety of remand prisoners is the responsibility of prison officials. Those who pose a substantial risk to the safety of the public cannot be released on

the basis that detention might pose a heightened health risk to them." Additionally, I received no evidence of any Covid-19 infections at our local regional correctional centre, or to suggest that the accused falls within a category of persons susceptible to serious complications if infected.

[29] Finally, although the point was not argued in the court below, in my view, the outstanding charges are serious. The Crown's case is very strong. In fact, as I have said, in material aspects, the facts are not contested. The likelihood of a lengthy jail sentence is high. Especially in light of the accused's history of misconduct while on bail and probation, I am strongly of the view that public confidence in the criminal justice system would be shaken if I ordered his release.

CONCLUSION

[30] It follows that the accused's pretrial detention on the charges at bar continues to be justified. The application for review is hereby dismissed and the detention order made by Judge Rogers on January 14, 2020, is confirmed. That is all.

"Baird J."

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Prepared on 26 October 2026 · Esheria