

CANADA / JUDGMENT

R. v. Cetin

2022 BCSC 1620

COURT

Supreme Court of British Columbia

DECIDED

16 May 2022

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2022 BCSC 1620 R. v. Cetin

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Cetin,

2022 BCSC 1620

Date: 20220516

Docket: 32701W

Registry: Vancouver

Regina

v.

Yakup Cetin

Before: The Honourable Madam Justice Sharma

Oral Reasons for Judgment

(Section 525 Detention Review Hearing)

Counsel for the Crown (Respondent):

S. Bains

Counsel for the Accused (Applicant):

M.J. Swartz

Place and Date of Trial/Hearing:

Vancouver, B.C.

May 16, 2022

Place and Date of Judgment:

Vancouver, B.C.

May 16, 2022

- [1] THE COURT: Mr. Cetin is before me today seeking bail. The procedural background is a bit complicated. My understanding is that he consented to going into custody. This is a section 525 hearing -- essentially is the equivalent of his first bail hearing.
- [2] Because it relates to his breach of a release order, there is a reverse onus. In relation to the legal principles, the Crown relies on the secondary ground and the approach to that has been set out in, among others, the Abdel-Rahman case.
- [3] With regard to the secondary ground, the analytical process involves four questions that the court must look at. There must be a risk that the accused will either commit an offence or will interfere -- sorry.
- [4] [INTERUPTION BY MR. CETIN]
- [5] THE COURT: There are four factors that I consider in looking at the secondary ground. The first is the risk that the accused will commit an offence or interfere with the administration of justice if released. The second is that the risk is of such a magnitude, that it amounts to a substantial likelihood. The third is whether the risk constitutes a danger to public safety. The fourth is whether the continued detention is necessary because there are no conditions that could attenuate those risks in appropriate circumstances.
- [6] In this case, there is a reverse onus, meaning Mr. Cetin has a persuasive burden to show why he should be released.
- [7] The Crown's position is there are no conditions that can attenuate the risks given the facts and procedural history that were reviewed.
- [8] On behalf of Mr. Cetin, counsel says that there is evidence before me he would have a bed at the Union Gospel Mission, and that it would be appropriate to have conditions of weekly reporting and no-contact imposed.
- [9] I will review some of the factual circumstances, and I wonder if we can try it without the interpreter. Mr. Cetin, you can let me know if you are having trouble understanding now. Is that all right?
- [10] THE ACCUSED: Yeah, I am okay now, thank you.
- [11] THE COURT: Thank you very much, sir. If you do have a problem, let me know, okay.
- [12] THE ACCUSED: Okay.

- [13] THE COURT: The Crown reviewed several circumstances relating to the charges that Mr. Cetin faces. In terms of his circumstances, he was, at the time, a maintenance person at an apartment building located on Homer Street in Vancouver. He provided maintenance to the tenants.
- [14] On March 8, 2021, he spoke with one of the tenants, a Ms. Stephanie Clogg, and fixed her garburator.
- [15] The Crown says that the evidence and circumstances are that for a period of time after that, he came up with excuses or reasons to come to Ms. Clogg's apartment to try and meet her, and he communicated with her for that purpose. Crown has set out at least ten occasions between March 10, 2021, and March 25, 2021, where he contacted Ms. Clogg. She either did not respond or she indicated she did not want to meet with him.
- [16] There was an incident on March 29, 2021. Ms. Clogg had a friend over (Mr. Kee), and around midnight, she started receiving calls from an unknown caller. The friend answered the calls, and it turned out that he recognized Mr. Cetin's voice. Mr. Cetin was angry and spoke words that are consistent with him being jealous of the friend's visiting Ms. Clogg. Mr. Cetin's behaviour (he was knocking on the door loudly) was captured on a video taken by Ms. Clogg.
- [17] The police were called. Mr. Cetin was seen leaving the building and was seen at the time screaming on the phone. He was arrested and taken into custody. He was given conditions. On the release order dated March 31, 2021, there were conditions of no-contact, not to be on the third floor, and have no contact with the complainants or their place of work.
- [18] He breached that order between March 31 and April 23 by having contact with both people. In the material it seems he had contact with Ms. Clogg at least five times between March 31 and April 20. There was an incident of a corrosive substance being put under Mr. Kee's doorway. Mr. Kee believes that was done by Mr. Cetin, but Mr. Cetin has not been charged in relation to that. Mr. Kee also believes he received a text message from him that was unusual.
- [19] Ms. Clogg reported Mr. Cetin's contact with her, which was a breach of his release. Mr. Cetin was taken into custody. There was a show cause hearing, and the Crown sought his detention. He was detained.
- [20] As I said, the procedural history is a bit complicated. At the time, he entered guilty pleas to three charges of harassment and two other charges on May 28. However, those pleas have now been withdrawn and are part of the indictment that is going to this Court. There is a fix-date for that indictment later this week.
- [21] In any event, at that time, he was placed again under a release order with a deposit. There was an additional condition that he report to the Forensic Outpatient Clinic. He again breached the no-contact order on August 31, 2021, by attending at Ms. Clogg's workplace. He was arrested again. He was released again, although the Crown sought his detention. He was released and, again, asked to attend at the Forensic Outpatient Clinic.

- [22] There is then a series of events that relate to charges of break and entering and arson. It is alleged that he found out where Ms. Clogg's mother lived, he went to her home in North Vancouver, and he set fire to her car and to her door.
- [23] There was a fire, and the Crown alleges that Mr. Cetin set that fire. The case is circumstantial. The Crown relies on information obtained from CCTV footage and from materials seized from Mr. Cetin's residence. The Crown also relies on evidence that, viewed together, are consistent with his being in the area of Ms. Clogg's mother's residence looking for her, including that Mr. Cetin travelled by bus, he was seen at a particular station and he did Google searches.
- [24] On September 4, Mr. Cetin again breached his release order by being near Ms. Clogg's residence and attempting to gain entrance, which was confirmed by CCTV footage. It is also alleged that on September 5, he was seen around Ms. Clogg's mother's residence. The evidence about that is based on CCTV footage.
- [25] He was taken into custody and remained in custody between September 6 and October 18. He was released again, and again there was an increase in his conditions that included a curfew. The conditions included a requirement that he attend a particular recovery house. He was also supposed to report for electronic monitoring. He never reported for electronic monitoring. He left the house after five hours, so he again breached conditions.
- [26] He was then taken into custody on October 20, and he consented to remain in custody until today.
- [27] Crown also alleges there were further breaches of contact on October 19 by his contacting Ms. Clogg by sending flowers.
- [28] The law is not in dispute. I have already set out the four factors that I am obliged to consider. I am obliged to consider those in relation to a situation where the onus is on Mr. Cetin to establish that he should be released.
- [29] His counsel says on his behalf that given how long he has now been in custody (since October), Mr. Cetin understands that a breach means he could be put back into custody and perhaps spend a long time being detained pretrial because no trial dates have been set.
- [30] I am not persuaded that factor weighs in his favour because that situation is not new, and has been the case for a while. He has been placed under increasing strict conditions with each release, and each time he breaches his conditions. In my view, there is a risk that he will re-offend and will breach the no-contact orders. I find the risk is quite high, given what is in front of me.
- [31] I am satisfied this presents a danger to Ms. Clogg.

- [32] I appreciate defence pointing out that with regard to the serious charges of arson and break and enter, the Crown's case is circumstantial. Counsel has not yet seen the ITOs relating to the evidence seized by the Crown. Those ITO's could be challenged, and, of course, those challenges might be successful. However, my primary concern is Mr. Cetin's inability to abide by conditions of no-contact. In my view, he has shown continually an absolute disregard for those conditions.
- [33] The fact that he has a bed at Union Gospel Mission does not provide the Court with any confidence. He was given the opportunity to go to a recovery house before, and he left immediately. I am now told that place was not appropriate for him because he does not have any substance abuse issues, but that does not give me any comfort. He understood that he did not have substance abuse issues; He naturally wanted to be released, and he agreed to something that was not suitable for him. However, he then did not stay there. He did not turn up for electronic monitoring.
- [34] He has shown a remarkable inability to refrain from contacting Ms. Clogg. The concern with the actions against her mother, is that may be seen as amounting to an escalation of his behaviour. I appreciate those charges are different, but I am concerned both by the numerous breaches, and by their character in that they are blatant, and occur immediately after his release. Mr. Cetin has not persuaded me that he should be released. He has not persuaded me that there are conditions that can attenuate the risk that I find he poses. He has not proposed conditions for his release that give the Court any confidence whatsoever to attenuate the high likelihood of risk that he will reoffend, nor the risk to public safety.
- [35] For all those reasons, he will remain detained.
- [36] CNSL S. BAINS: One more thing, Madam Justice. I am seeking an order pursuant to s. 515(12), a no-contact order. When a justice orders that an accused be detained in custody under this section, the order can include a direction that the accused abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the order. I'm asking for a no-contact order with respect to Stephanie Clogg, Yana Clogg, and Hanjoo Kee.
- [37] THE COURT: Mr. Swartz, any objection?
- [38] CNSL M. SWARTZ: No.
- [39] THE COURT: I do grant that order.
- [40] CNSL S. BAINS: Thank you.
- [41] CNSL M. SWARTZ: And sorry, Justice, has the court given consideration to a direction for expediting the trial?

- [42] THE COURT: I meant to ask Ms. Bains about that. In a practical way, given the charges are serious, what can I do usefully to try and expedite matters? I am not sure, Mr. Swartz, if you were asking for something specific?
- [43] CNSL M. SWARTZ: I guess we'll be hitting up against fix-dates and I don't know what the assigned Crown's availability is, but certainly there should be some direction that the Crown ought to make themselves available for the earliest or close to the earliest times that the court can accommodate this matter, so this isn't a situation that is dragging on, where the Crown's persistently saying, "I'm not available." That this should be seen as a trial that should be set on an expedited basis.
- [44] THE COURT: Well, I have yet to see a Crown who does not make themselves available, but I appreciate you probably see more Crown than I do. In my experience, Crown typically make someone available in the appropriate amount of time. I am not sure a direction to that effect is needed at this point or appropriate, unless I have indication that Crown are not going to make themselves available, which is not the case. Is there anything else that I could do?
- [45] CNSL M. SWARTZ: Perhaps some form of direction that the Crown should seek to get the Information to Obtain to defence counsel in a timely fashion.
- [46] THE COURT: Ms. Bains, do you have any information about the status of that?
- [47] CNSL S. BAINS: I don't, but I can relay to the trial Crown that this ITO should be provided as soon as possible.
- [48] THE COURT: Yes, I would appreciate it if you would do that. He has been in custody for a while
- [49] CNSL S. BAINS: Yes.
- [50] THE COURT: And certainly the ITOs on the search is something that his counsel should get sooner rather than later, which will facilitate moving this matter along. This is not a court order, but I am asking that be done. I would appreciate that.
- [51] CNSL S. BAINS: Yes, I will.
- [DISCUSSION ABOUT DETAILS OF THE NO CONTACT ORDER]
- [52] THE COURT: Okay, thank you, Madam Registrars for staying a bit late. Thank you.
- "Sharma J."

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