
CANADA / JUDGMENT

R. v. Charlie-Tom

2020 BCSC 491

COURT

Supreme Court of British Columbia

DECIDED

26 February 2020

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Charlie-Tom,

2020 BCSC 491

Date: 20200226

Docket: 29129-1-W

Registry: Vancouver

Regina

v.

Sakanisin Scotty Charlie-Tom

Before: The Honourable Mr. Justice Edelman

Oral Reasons for Judgment

Counsel for the Crown:

R. Withall

Counsel for the Accused:

J. LeBlond

Place and Date of Hearing:

Prince George, B.C.

February 25-26, 2020

Place and Date of Judgment:

Prince George, B.C.

February 26, 2020

- [1] THE COURT: This is a detention review hearing being conducted pursuant to s. 525 of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. Mr. Charlie-Tom is charged with a number of offences arising out of a home invasion alleged to have taken place in the early morning hours of June 4, 2019. He has been in custody since his arrest on that date with the two other co-accused. A bail hearing was held in the Provincial Court of British Columbia on November 8, 2019, and the bail judge ordered the detention of Mr. Charlie-Tom on secondary grounds, finding his detention necessary for the protection or safety of the public.
- [2] The nature of a review hearing under s. 525 of the Code was clarified in *R. v. Myers*, 2019 SCC 18 [Myers] at paragraph 63:

In determining whether the detention of the accused is still justified, the reviewing judge may consider any new evidence or change in the circumstances of the accused, the impact of the passage of time and any unreasonable delay on the proportionality of the detention, and the rationale offered for the original detention order, if one was made. [] Ultimately, s. 525 requires a reviewing judge to provide accused persons with reasons why their continued detention is, or is not justified. []

- [3] I will begin by setting out relevant aspects of the alleged offences and the legal framework before addressing the issue of continuing detention in the context of Mr. Charlie-Tom's personal circumstances and proposed release plan.

Circumstances of the alleged offences

- [4] The circumstances of the alleged offences were set out at some length by the bail judge, and I do not intend to repeat all the details here, but will focus on some of the new evidence that has come to light since the initial bail hearing.
- [5] As I noted earlier, the allegations involve a home invasion in the early morning hours of June 4, 2019. A Caucasian female knocked on the door of the complainant's residence and when she opened the door, she saw that the female was accompanied by two males she described as a "tall skinny white guy" and "half-breed native", both of whom had their faces covered by bandannas. She described the native man as having a tattoo under his right eye. When they entered the residence, the native man was holding a long barreled gun. He loaded it in front of the complainant and pointed it at her before she grabbed the barrel and pointed it towards the ground. The three individuals took a number of items, including a 24-pack of beer, liquor, and a Samsung phone from the home. They left in a red car for which the complainant was able to note the licence plate number.

- [6] A red car with matching plates was later located a few blocks away. Video surveillance from the address where the car was located shows the co-accused, Mr. Toman, getting out of the car, along with a female and a stockier male with a similar build to that of Mr. Charlie-Tom. The stockier male is seen removing a long object from the back of the car, wrapped in a black cloth said to be consistent with a firearm wrapped in a hoodie.
- [7] Three individuals were seen by police in the general area between the complainant's home and the location where the red car would later be found. The three co-accused were ultimately arrested a few blocks away from where they were first observed. Mr. Charlie-Tom is of aboriginal background, and has a tattoo under his eye.
- [8] A backpack and gloves were located by a police dog on the route suspected to have been taken by the accused. In the backpack, there were release documents from the Prince George Regional Correctional Centre for the co-accused, Thomas Toman, a bandanna, and bottles of liquor. I would note that the bail judge appears to have understood the backpack was found at the home of the complainant and I am told that is incorrect. In my view not much turns on the misunderstanding.
- [9] A few days later, a suspected firearm wrapped in a black hoodie was located on the route between the red car and the location where the three individuals were first seen by police.

Reverse Onus

- [10] A preliminary question before the bail judge was whether Mr. Charlie-Tom was in a reverse onus position pursuant to s. 515(6)(a)(viii) of the Code:
- (6) Unless the accused, having been given a reasonable opportunity to do so, shows cause why the accused's detention in custody is not justified, the justice shall order, despite any provision of this section, that the accused be detained in custody until the accused is dealt with according to law, if the accused is charged
- (a) with an indictable offence, other than an offence listed in section 469, []
- (viii) that is alleged to involve, or whose subject-matter is alleged to be, a firearm, a cross-bow, a prohibited weapon, a restricted weapon, a prohibited device, any ammunition or prohibited ammunition or an explosive substance, and that is alleged to have been committed while the accused was under a prohibition order within the meaning of subsection 84(1);
- [11] It appears clear that Mr. Charlie-Tom was subject to a prohibition under s.84(1) at the time of the alleged offences. The question is whether the allegations bring the section into effect. In the indictment as currently drafted, there are no charges against Mr. Charlie-Tom relating to firearms or prohibited weapons, other than a charge of robbery using an "imitation firearm".
- [12] The Crown's submission that the reverse onus should apply is twofold. First, the Crown takes the position that a charge of robbery alleging the use of an "imitation firearm" is sufficient to bring an accused under the reverse onus provision of s. 515(6)(a)(viii) as it could include one

or more of the listed items. In the alternative, the Crown submits that even if the charging document does not allege the use or involvement of a listed device, it is sufficient that the Crown is alleging the offences to have involved a firearm in submissions at the bail hearing.

- [13] The first line of reasoning can be addressed in a relatively straightforward manner. The Crown's argument appears to be that because a charge involving an "imitation firearm" could include a number of prohibited devices including a "replica firearm" that the reverse onus provision should apply. I do not accept this reasoning. If Parliament had intended for imitation firearms to be included in s. 515(6)(a)(viii) it could have added them to what is a rather explicit list. It is clear that the definition of an "imitation firearm" is broader than the limited list of weapons and ammunition set out in the section, and in my view an allegation of use of an "imitation firearm" would therefore not, on its own, be sufficient to engage s. 515(6)(a)(viii).
- [14] This brings me to the second line of reasoning proposed by the Crown. The bail judge accepted that the allegations made by the Crown that a firearm was involved in the offence was sufficient to engage the reverse onus in s. 515(6)(a)(viii) even if the allegations were not part of the indictment. The Crown before me continues to allege that a firearm was involved. The Crown indicated before the bail judge that charges may or likely will be laid in relation to firearms and other weapons related offences. Despite those indications in November, no such charges have been laid to date, apparently due to a delay in testing I will address later in these reasons. The Crown continued to take the position before me that such charges are likely to be forthcoming. Be that as it may, the current charges do not allege the use of a firearm.
- [15] With the greatest of respect, I disagree with the interpretation of s. 515(6)(a)(viii) accepted by the bail judge. I do not accept that allegations made in the course of submissions in a bail hearing by the Crown are sufficient to engage a reverse onus. In my view, the allegations must be set out in the charging document.
- [16] I base my interpretation on a plain reading of the section and the statutory context. Two aspects of the context are relevant considerations. First, s. 515(6) is contained in the bail provisions and creates a reverse onus provision. It clearly engages the liberty of the accused, and therefore should be strictly construed. Secondly, s. 515(6), read in its full context, provides a list of specific offences, all of which are indictable offences and that would be charged in the circumstances, and (viii) has to be interpreted in a manner consistent with the surrounding subsections.

- [17] Subsection 515(6)(a) as a whole specifically refers to the accused being "[] charged [] with an indictable offence []". Subsection (viii) specifically refers back to the indictable offence in saying "that is alleged to involve []". In other words the indictable offence itself is alleged to involve or the subject matter is alleged to be one of the listed items. If the allegation does not warrant an explicit reference in the charging document, it is difficult to understand why it would warrant the engagement of the reverse onus provisions.
- [18] Neither counsel brought to my attention any cases where this section has been interpreted. In my brief review of the cases where this section has been applied by the courts, it has been in circumstances where firearms or weapons offences have actually been charged. This is unsurprising and consistent with the interpretation set out above. A brief review of the legislative history of s. 515(6)(a)(viii) is also consistent with this interpretation.
- [19] In conclusion, I am of the view that the reverse onus does not apply in Mr. Charlie-Tom's case and that the Crown, therefore, has the onus of justifying the detention in the circumstances.

Circumstances of Aboriginal Accused

- [20] I would also note that there have been recent amendments to the Code directing the Court under s. 593.2, that a judge making a decision on bail shall give particular attention to the circumstances of aboriginal accused. While this provision was not in force at the time of the bail hearing, it appears consistent with the law as it had been set out by the courts at the time. In any event, s. 493.2 applies to all of Part 16 of the Code and is, therefore, properly considered in a review under s. 525.
- [21] I was presented with some brief background information about Mr. Charlie-Tom's aboriginal heritage, and will consider it in coming to my decision. I would note that it is unfortunate that more detail was not available, in particular in the circumstances of an individual like Mr. Charlie-Tom, who has been before the court many times. I would hope that a Gladue (see R. v. Gladue, [1999] 1 S.C.R. 688) report had been prepared at some time in the past, and it would be helpful in the future for such reports to be made available to the court, in particular given the amendments to the Code.

Circumstances of the Accused

- [22] Mr. Charlie-Tom has a lengthy record involving a large number of failures to comply with orders of the court, for offences of serious violence, and weapons offences. The bail judge reviewed those in some detail, and I do not propose to do so again.
- [23] I would note that since the bail hearing, Mr. Charlie-Tom has pled guilty to another offence involving the breach of a court order.

[24] Upon reviewing the record before me and that before the bail judge, I concur with her conclusion that Mr. Charlie-Tom poses a danger to the public if released. Even accepting that Mr. Charlie-Tom is not in a reverse onus position, I am satisfied the Crown has discharged its burden in law to demonstrate the detention is justified.

[25] I come to this conclusion despite the plan presented by the accused. The plan presented before me was not significantly different from the plan proposed to the bail judge, in the sense that the proposal was to go to Joshua House in Chilliwack. The plan was that Mr. Charlie-Tom would attend at a more remote location for 30 days, and then move to another location where he would have electronic monitoring.

[26] I have given very serious consideration to Mr. Charlie-Tom's proposed plan, and in particular have taken guidance from paragraph 67 of Myers:

That being said, judges and justices presiding over bail hearings should always give very careful consideration to release plans that involve supervised treatment for individuals with substance abuse and mental health issues. Release into treatment with appropriate conditions will often adequately address any risk raised under s. 515(10), and such a strategy is a less onerous alternative than provincial remand. It may also substantially address the root causes of the accused person's alleged criminal behaviour and reduce the likelihood of future criminal conduct. In accordance with the principles articulated in *Antic*, we must not lose sight of the fact that pre-trial detention is a measure of last resort.

[27] The problems with the plan as proposed to the bail judge were twofold; one is that Chilliwack is a great distance from Prince George, and at the time of the initial bail hearing, this was a concern with respect to how Mr. Charlie-Tom was going to get to Joshua House. This issue has been addressed before me with the proposal that he be transferred by BC Corrections to the Lower Mainland and then a representative from Joshua House would be able to meet him upon release and accompany him.

[28] The remote location has the problem of not being suitable for electronic monitoring. However, given the remoteness of the location, I do not know that a lot turns on that question. It appears that Joshua House is committed to reporting any absences and would alert authorities promptly.

[29] My greater concern with the plan proposed by Mr. Charlie-Tom was that there did not appear to be a well thought out proposal for how Mr. Charlie-Tom was going to come back to attend for his trial dates. This is a particular challenge because there appear to be six days of trial set over three months, with two days set in July, two in August and the final two days in September. The proposed plan is that Mr. Charlie-Tom would be coming back and forth to Prince George from Chilliwack to attend at those trial dates, and then returning to Joshua House in between. He would not be accompanied by anyone from Joshua House and it is unclear where he would be staying other than a mention of unspecified relatives.

- [30] Given the distance and the challenges that Mr. Charlie-Tom has had in the past with respect to compliance, I am not satisfied that the plan as presented addresses the concerns that were set out by the bail judge, and I therefore concur with her conclusion that, in the circumstance of the case, Mr. Charlie-Tom's detention continues to be justified.
- [31] I have turned my mind to making directions under s. 525(9), and the direction from the Supreme Court in Myers that the Court should make use of discretion under 525(9) to give directions for expediting the trial and related proceedings where it is appropriate to do so. I did not hear submissions from either party with respect to directions and trial dates appear to have been set based in part on the challenges that inevitably arise from a case with three co-accused.
- [32] I am concerned by the submissions from Crown counsel that the suspected firearm was not sent for testing until January 2020, some six months after Mr. Charlie-Tom was taken into custody. This is particularly concerning given the Crown's submissions that a substantially amended indictment is likely to be filed based on the result of that testing. I expect that all efforts will be taken to ensure that testing is done in as expeditious a fashion as possible. I do not propose to make an order to that effect today, but I do express the Court's concern with respect to what appears to be an unexplained delay that may affect these proceedings going forward.

"Edelmann J."

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