
CANADA / JUDGMENT

R. v. Doczi

2019 BCSC 2275

COURT

Supreme Court of British Columbia

DECIDED

19 November 2019

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Doczi,

2019 BCSC 2275

Date: 20191119

Docket: 29624W

Registry: Vancouver

Regina

v.

Paul Joseph Doczi

Before: The Honourable Mr. Justice G.C. Weatherill

Oral Reasons for Judgment re Detention Review

Counsel for the Crown:

J. Horneland

Counsel for the Defence:

S.R. Bunn

Place and Date of Hearing:

Vancouver, B.C.

November 19, 2019

Place and Date of Judgment:

Vancouver, B.C.

November 19, 2019

- [1] THE COURT: The accused, Paul Joseph Doczi, is before the court for a detention review hearing pursuant to s. 525 of the Criminal Code, R.S.C. 1985, c. C-46.
- [2] The offences for which the accused is charged occurred on June 14, 2019. He was initially charged with one count of aggravated assault contrary to s. 268(2) of the Criminal Code and one count of breaking and entering a dwelling house and committing an indictable offence therein, to wit, theft, contrary to s. 348(1) of the Criminal Code.
- [3] The accused was arrested on June 15, 2019. On the following day, he appeared before a Provincial Court judge and indicated, through duty counsel, that he consented to remain in custody.
- [4] On June 28, 2019, the Crown elected to proceed on a new Information which added a third count of robbery, contrary to s. 344(1)(b) of the Criminal Code. On that same day, the accused appeared in the Provincial Court and again advised that he consented to remain in custody.

circumstances of the offences

- [5] On June 14, 2019 at approximately 6:20 a.m., Ms. Andrea Stevenson awoke to find a man wearing a red T-shirt crawling on the floor of her apartment. When confronted by her, the man stood up, got on top of her while she was still in her bed, and violently struck her with a hammer multiple times on her head, hands, left wrist and left shoulder. Her injuries were severe and included a fractured skull, a brain haemorrhage, a broken finger, and various lacerations.
- [6] The attack ended when Ms. Stevenson stopped moving and played dead. She heard the perpetrator rummaging through the apartment. The items that were stolen included a debit card belonging to Ms. Stevenson's husband.
- [7] The accused matched Ms. Stevenson's description of the assailant. He also resembled the likeness of an individual depicted in video surveillance obtained by the police from around the exterior of Ms. Stevenson's apartment building.
- [8] Video surveillance in the area of five nearby business locations where Ms. Stevenson's husband's debit card was used within minutes and hours of the home invasion also matched the appearance of the same individual. Ms. Stevenson's husband's debit card was in the accused's possession at the time of his arrest the following day on June 15, 2019.

procedural history

- [9] Between July 19 and November 1, 2019, the accused and his counsel made six appearances in Provincial Court in respect of this matter. On each occasion, the accused chose not to seek his release at a judicial interim release hearing but, instead, indicated that he was consenting to remain in custody.
- [10] A trial date has not yet been fixed. The Crown advises that a trial date in Provincial Court is available in January 2020. Defence counsel advised that a trial in Supreme Court is likely in this case.

the accused's circumstances and proposed release plan

- [11] The accused is currently 52 years old. He deposes that he began using drugs when he was 17 years old, although he denies having been addicted until 2007 when his father died. The subsequent death of his mother and two brothers exacerbated his drug use. He deposes that he mainly smoked crystal methamphetamine.
- [12] The accused has a lengthy criminal record in Ontario, comprising a total of 61 convictions between 1993 and 2016. Seven of the convictions were for breaking and entering. Eight of the convictions involved the commission of violent offences, including three convictions for assault, three convictions for assault causing bodily harm, one conviction for assault with a weapon, and one for forcible confinement.
- [13] His most recent conviction was on July 7, 2016 for one count of break and enter for which he was sentenced to two years plus one day, and one count each of mischief under \$5,000 and failing to comply with a probation order for which he was sentenced to two years on each count to be served concurrently.
- [14] The accused was paroled after having served two-thirds of those sentences. He moved from Ontario to Vancouver and obtained employment as a painter.
- [15] The accused says that all of his past criminal conduct was the result of his addiction to drugs. While he has previously attended counselling and has taken courses in an attempt to deal with his addiction issues, none of the steps he has taken in the past were of help to him.
- [16] On May 31, 2018, while working as a painter, the accused fell from a ladder and severely injured his left elbow. The injury required surgery during which screws and wires were inserted to hold the fractured bones in place. He received compensation from WorkSafeBC in respect of the injury.
- [17] While in custody on the current charges, the accused has completed all of the substance abuse, substance education, healthy relationships, and employability courses that are available to him in the pretrial detention facility. The accused says that if he is to address his addiction and substance abuse issues in any meaningful way, he requires a substantive treatment program that is not available in pretrial detention.

analysis

- [18] The question to be determined is whether the continued detention of the accused is justified under s. 515(10) of the Criminal Code.
- [19] The release of accused persons pending trial is the cardinal rule and detention, the exception: *R. v. Myers*, 2019 SCC 18, at para. 25. Pretrial detention can have serious detrimental impacts on an accused person's ability to raise a defence and comes at significant cost in terms of an accused's loss of liberty and livelihood and can impact on an accused's mental and physical well-being: *Myers*, at para. 27.
- [20] Here, the accused proposes that he be released pending trial to a residential treatment facility called the John Volken Academy in Surrey, B.C. He applied for and has been accepted into its treatment program. According to its literature, John Volken Academy offers a stringent extended addiction treatment program requiring a full-time commitment of a minimum length of two years. The literature indicates that "inductees" are initially isolated from the outside world for the first two months, at a minimum, and have an escort assigned to them. The escort is a more seasoned program participant who has demonstrated his or her ability to be a role model by exemplifying all that the John Volken Academy stands for. The program "fundamentals" stipulate that "violence, the threat of violence, possession of a weapon, destructive behaviour, insubordination, or the use or possession of alcohol or drugs ... break the 'cardinal rules' and may result in dismissal."
- [21] Counsel for the accused submits that the John Volken Academy will provide the accused with a realistic opportunity to progress and work towards a future without addiction, whereas the pretrial detention facility where the accused is currently being held will not. Defence counsel has put forward 17 proposed bail conditions which include most, if not all, of the usual conditions.
- [22] The Crown submits that the accused's continued pretrial detention is necessary on both the secondary and tertiary grounds, namely for the protection or safety of the public, having regard to the likelihood that the accused will reoffend if released, and in order to maintain confidence in the administration of justice, having regard for the strength of the case against him, the gravity of the offences, the circumstances of the offences, and that the accused is liable, on conviction, to receive a lengthy term of imprisonment.

Secondary Ground

- [23] There is no question that the accused's criminal record is lengthy. Eight of the accused's previous convictions were for violent offences and seven were for break and enter, the very offences in respect of which the accused now stands charged. Moreover, the accused has been convicted 18 times for failure to abide court orders. One such conviction was included among his most recent convictions in July 2016. No less than seven probation orders have been made against the accused in an effort by the courts of Ontario to control his offending behaviour. He continued his offending behaviour there despite those orders.

- [24] There was nothing in the accused's release plan that provides the court with even a modicum of confidence that the accused will abide by the proposed conditions of his release. There is nothing indicating that John Volken Academy is equipped to deal with and overcome the accused's history of violence. There is no evidence regarding how that risk would be addressed. Indeed, it appears that the John Volken Academy responds to violent behaviour by immediate expulsion from the program of the person involved. If that were to happen, there is nothing to indicate that the accused would not simply be left to his own devices.
- [25] Of more than particular concern is the fact that the accused did not acknowledge his past aggression and violence towards others when that question was specifically asked of him on the John Volken Academy application form which he completed on October 9, 2019.
- [26] I agree with Crown counsel that the accused's proposed release plan does not reduce the risk the accused poses to the public safety to an acceptable level.

Tertiary Ground

- [27] Although there is no DNA evidence linking the accused to the crimes, there is an abundance of evidence regarding the identity of the perpetrator of these crimes including eyewitness and video surveillance evidence, both around Ms. Stevenson's apartment and in the vicinity of the places where her husband's debit card was used in the minutes and hours immediately following the home invasion. The stolen debit card was in the accused's possession at the time of his arrest. In my view, the Crown's case against the accused is strong.
- [28] The charges the accused faces are serious. They involve a vicious unprovoked attack with a hammer on an innocent, vulnerable victim in her own home. Given the nature of these offences, there is a potential for a lengthy term of imprisonment.
- [29] The accused has been in pretrial custody for approximately five months. There is no reason to believe that his trial will not take place within the timelines mandated by the Supreme Court of Canada in *R. v. Jordan*, 2016 SCC 27. In my view, the accused's continued detention will not be disproportionate to the sentence he would likely receive if convicted.
- [30] Having considered the principles set out in *Myers*, including that pretrial detention is a measure of last resort when released into treatment with appropriate conditions can adequately address the risk raised under s. 511(10) of the Criminal Code, I am not persuaded that this is an appropriate case for such release. I find that the accused's continued detention pending trial is justified on both the secondary and tertiary grounds under s. 515(10)(b) and (c) of the Criminal Code.
- [31] The accused's application for release pending trial is dismissed.

"G.C. Weatherill J."

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