

CANADA / JUDGMENT

R. v. Evans

2025 BCSC 2655

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 2655 R. v. Evans

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Evans,

2025 BCSC 2655

Date: 20251219

Docket: 185440-2

Registry: Victoria

Rex

v.

Allen Dolphus Evans

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Before: The Honourable Mr. Justice Brongers

Oral Reasons for Judgment

Re: Crown Application to Revoke Bail Pending Sentencing

Counsel for the Crown:

C. C. Fisher

Counsel for the Accused:

P. A. Blokmanis

Place and Dates of Hearing:

Victoria, B.C.

November 28, 2025 and

December 16, 2025

Place and Date of Reasons for Judgment:

Victoria, B.C.

December 19, 2025

- [1] THE COURT (by videoconference): This is an application by the Crown to revoke Allen Evans' bail following his conviction. Mr. Evans opposes the application and says he should remain on conditional release until the sentencing. After hearing submissions from counsel, I granted the Crown's application with reasons to follow. These are my reasons for this ruling.

Background

- [2] Mr. Evans was charged with one count of sexual assault. The charge arose from an incident that took place on or about January 14, 2023, when Mr. Evans engaged in sexual activity with M.L. Mr. Evans was arrested and then granted judicial interim release effective January 15, 2023. He has complied with his release conditions since that time.
- [3] Mr. Evans' trial took place before a jury from November 24 to 28, 2025. The primary issue was consent. Both M.L. and Mr. Evans testified that he provided her with a mixture of fentanyl and benzodiazepine (benzos), which she smoked from a bong. M.L. testified that she has no memory of what occurred afterwards until several hours later when she woke up naked in Mr. Evans' bed, after which he told her that they had had sexual intercourse. Mr. Evans testified that he thought M.L. was participating in this activity willingly.
- [4] The jury found Mr. Evans guilty of sexual assault on November 28, 2025. Following the verdict, the Crown immediately applied for revocation of Mr. Evans' bail pending sentencing. Mr. Evans indicated that he was opposed to the application. Counsel then made brief informal submissions in support of their respective positions.
- [5] At that point, I told counsel that I was not prepared to decide the Crown's unanticipated application in the absence of considered submissions. A continuation was therefore scheduled for December 16, 2025. In the meantime, Mr. Evans' bail conditions were modified to provide that he is not to leave the province and that he is to report to his bail supervisor with increased frequency.

- [6] The continuation took place on December 16, 2025. Mr. Evans attended the hearing and there is no indication that he breached his bail conditions or otherwise conducted himself inappropriately in the interim.
- [7] At the continuation, counsel for both parties provided helpful written and oral submissions. At the end of the hearing, I stated that I was in general agreement with the position of the Crown and am ordering that Mr. Evans' bail be revoked, with reasons to follow. Mr. Evans was then taken into custody.

Legal Framework

- [8] In his very recent decision in *R. v. F.C.M.*, 2025 BCSC 2242, Justice Hewson examined the question of what principles should apply when the Court contemplates revocation of an offender's bail following conviction and while awaiting sentencing.
- [9] First, he noted that while s. 11(e) of the Canadian Charter of Rights and Freedoms provides that any person charged with an offence has the right not to be denied reasonable bail without just cause, this right is lost upon conviction. At that point, the presumption of innocence is replaced with a conclusive finding of guilt: *F.C.M.* at paras. 7-8.
- [10] Second, while the usual practice in British Columbia has generally been to allow offenders to remain on release orders following a finding of guilt, that practice may be evolving. Courts have the authority to review release orders post-conviction and to revoke them when appropriate: *F.C.M.* at para. 9.
- [11] Third, this authority flows from s. 523(1)(b)(ii) of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. It effectively provides that an accused who is on judicial interim release maintains their status following conviction until sentencing, unless the Court orders that the accused be taken into custody pending sentencing. A judge's authority to revoke bail in this situation can be exercised on a judge's own motion: *F.C.M.* at para. 16. Obviously, it can also be exercised further to an application by the Crown.
- [12] With respect to the specific principles to be applied when exercising this authority, Justice Hewson wrote the following at paras. 18-21 of *F.C.M.*:
- [18] In exercising the jurisdiction conferred by s. 523(1)(b)(ii), I considered three principles. First, a conviction should not automatically lead to the revocation of bail, especially where the accused has complied with all conditions up to that point. Detention prior to sentencing will make it more difficult for an offender to marshal their submissions for a sentence hearing and might lead to an unnecessarily harsh penalty in any case in which further incarceration was ultimately found to be unnecessary.
- [19] Second, the finding of guilt results in the loss of the presumption of innocence.

- [20] Third, the decision to detain or release should be assessed under s. 515(10) as adapted to the circumstances. That well-known section sets out the primary, secondary, and tertiary grounds for detention. In simple terms, those three grounds are:
1. To ensure the offender's attendance in court.
 2. To protect the public, including victims and witnesses.
 3. To maintain public confidence in the administration of justice.
- [21] To be clear, s. 515(10) does not strictly apply to consideration of release or detention following a finding of guilt. I reach that conclusion for two reasons. First, the provision begins with the words, "[f]or the purposes of this section", so the words of the section itself restrict its ambit. Second, the abatement of the presumption of innocence and the finding of guilt colour the consideration of all three factors listed in the section, particularly as they require an assessment of the risk of further offences. However, s. 515(10) and the jurisprudence developed under it can still serve as a guide to some of the factors for consideration following a finding of guilt.
- [13] In other words, the legal framework for considering whether to maintain or revoke bail post-conviction is a modified version of the one that is employed when considering judicial interim release applications generally. In particular, the Court's focus remains on the well-known "primary", "secondary", and "tertiary" factors set out in s. 515(10) of the Code, namely, whether in-custody detention is necessary to:
- (a) ensure the person's attendance in court (i.e., the primary ground);
 - (b) protect the safety of the public (i.e., the secondary ground); and
 - (c) maintain confidence in the administration of justice (i.e., the tertiary ground).
- [14] However, the presumption of innocence no longer applies and the fact that the person on bail has now been found guilty of a particular offence must be taken into account for all three factors. Should the Court then find that any of the s. 515(10) grounds are present, it may exercise its discretion to revoke bail and order the offender to be taken into custody while awaiting sentencing.

The Position of the Crown

- [15] Counsel for the Crown says that Mr. Evans' bail ought to be revoked on all three s. 515(10) grounds.
- [16] With respect to the primary ground, the Crown submits that Mr. Evans poses an increased flight risk now that he is facing a long jail sentence. The Crown cites *R. v. B.T.Q.*, 2017 ABQB 715 at para. 19, in support of this proposition.

- [17] With respect to the secondary ground, the Crown points to Mr. Evans' lengthy and serious criminal history. The Crown notes that he was recently convicted of possession for the purpose of trafficking in January 2025, and was convicted of two assaults and an assault with a weapon in 2012, 2016, and 2017. Most significantly, the Crown says that Mr. Evans' trial testimony indicates that he offers drugs to vulnerable and addicted young women like M.L. in order to obtain sex. As such, he poses a public safety risk.
- [18] With respect to the tertiary ground, the Crown submits that Mr. Evans should be detained pending sentencing to maintain confidence in the administration of justice. He has been convicted of the serious crime of sexual assault and now faces a significant jail sentence. The Crown says that the public will lose confidence in the administration of justice if Mr. Evans is nevertheless allowed to remain in society post-conviction.

The Position of the Offender

- [19] Counsel for Mr. Evans disputes that any of the three s. 515(10) grounds justify a revocation of his bail pending sentencing.
- [20] With respect to the primary ground, Mr. Evans notes that he has been on judicial interim release for almost three years without a single breach or failure to attend court. He is an elderly 67-year-old man, has deep ties to the community, and has no history of absconding, even after his conviction. Mr. Evans says there is no evidence before the Court to suggest that there has been any change in Mr. Evans' conduct or intentions since the verdict.
- [21] With respect to the secondary ground, it is acknowledged that Mr. Evans has a serious criminal record. However, it is largely dated with the most serious offences occurring 40 to 50 years ago. There is no evidence that he continues to have contact with vulnerable persons or provides them with drugs in exchange for anything since his 2023 arrest. Mr. Evans submits, therefore, that he does not pose an identifiable public safety risk, and that any residual concerns can be addressed with targeted bail conditions rather than detention.
- [22] With respect to the tertiary ground, Mr. Evans submits that revoking his bail is not necessary to maintain public confidence. To the contrary, detaining him simply because he has been convicted gives an appearance of symbolic retribution. Mr. Evans argues that a reasonable and informed member of the public would understand if he were to remain on conditional release pending sentencing, given his particular circumstances and his demonstrated respect for the court process.

Analysis

- [23] It is important to reiterate that a conviction should never automatically lead to the revocation of bail: F.C.M. at para. 18. I would add that such an approach would appear to be contrary to Parliament's intention in enacting s. 523(1) of the Code, which reads as follows:

523 (1) If an accused, in respect of an offence with which they are charged, has not been taken into custody or has been released from custody under any provision of this Part, the appearance notice, summons, undertaking or release order issued to, given or entered into by the accused continues in force, subject to its terms, and applies in respect of any new information charging the same offence or an included offence that was received after the appearance notice, summons, undertaking or release order was issued, given or entered into,

- (a) where the accused was released from custody pursuant to an order of a judge made under subsection 522(3), until his trial is completed; or
- (b) in any other case,
 - (i) until his trial is completed, and
 - (ii) where the accused is, at his trial, determined to be guilty of the offence, until a sentence within the meaning of section 673 is imposed on the accused unless, at the time the accused is determined to be guilty, the court, judge or justice orders that the accused be taken into custody pending such sentence.

[24] The wording of this provision indicates that there is an effective presumption that an offender who was out on bail at the time they were found guilty will remain on bail until sentencing. This is because s. 523(1)(b)(ii) contains the conjunction "unless", which suggests that a court order taking the offender into custody post-conviction is an exception to the general rule that bail remains in effect until sentencing, even after a finding of guilt.

[25] I highlight this because I was concerned when Crown counsel intimated initially on November 28, 2025 that her office had become more inclined to apply for post-conviction bail revocation in the wake of a high-profile incident that took place earlier this year in Kelowna when an offender who had just been convicted of an offence was freed on bail shortly before having allegedly attacked and killed his estranged spouse. At the continuation of the hearing on December 16, 2025, however, counsel helpfully clarified that the Crown's current policy on bail revocation upon conviction remains one where such applications are case-specific and dependent upon the particular circumstances at the time of conviction.

[26] I turn now to a consideration of the three grounds upon which the Crown bases its request for an order that Mr. Evans' bail be revoked.

Primary Ground - Attendance in Court

[27] I do not consider the detention of Mr. Evans is warranted to ensure his attendance in court.

- [28] As was persuasively noted by his counsel, Mr. Evans has been on bail since January 15, 2023, a period of almost three years. He has not breached his conditions or failed to attend court. While originally from Alberta, Mr. Evans has lived in Victoria for about eight or nine years. He rents an apartment and is in a relationship. He does not have a passport. Now 67 years old, he is a pensioner after retiring from his trade as a welder, but occasionally works as a roadside flagger and a first-aid attendant.
- [29] Most significantly, Mr. Evans has remained on conditional release since his conviction by a jury on November 28, 2025. His attendance at court for the continuation of this application hearing on December 16, 2025 belies the Crown's speculative assertion that the prospect of almost inevitable incarceration post-sentencing creates an unacceptably elevated flight risk.
- [30] I therefore do not revoke Mr. Evans' bail on the primary ground.

Secondary Ground - Protection of the Public

- [31] There are two elements to the Crown's argument that detention is justified on the secondary ground.
- [32] The first is the fact that Mr. Evans has a lengthy criminal record. It begins with a conviction for the since-abolished offence of "rape" in 1975, when he was 17 years old. It also includes a conviction for manslaughter and assaulting a peace officer in 1986, as well as assault convictions in 2012, 2016, and 2017. In addition, Mr. Evans has been convicted of a number of property and narcotics offences.
- [33] While this record is troubling, I agree with counsel for Mr. Evans that it is largely dated and that his client is not the same person now, at 67 years of age, that he was when he committed his particularly serious crimes in his younger days. Much of this information was presumably known to the judicial official who granted Mr. Evans his interim release in January 2023, and he has lived in the community ever since without any apparent issues. There is also no evidence that Mr. Evans has reoffended or breached any of his conditions. I therefore do not find that Mr. Evans' criminal record, without more, warrants revocation of his bail at this time.
- [34] However, that does not end the matter. Counsel for the Crown correctly notes that Mr. Evans has now been found guilty of sexually assaulting a vulnerable young woman after providing her with a potent and dangerous illicit substance. The issue is whether this fact gives rise to a public safety concern that ought to be addressed by bringing Mr. Evans into custody.
- [35] While the question is not free from doubt, I am ultimately not persuaded that this is the case. As noted by counsel for Mr. Evans, there is no indication that his client has had contact with vulnerable persons or otherwise breached his bail conditions since January 2023. In particular, there is no reliable information before me, including Mr. Evans' trial testimony, that he continues to "use drugs to get sex" as counsel for the Crown alleges.

[36] In sum, given the lengthy period Mr. Evans has been on bail without incident and his current circumstances, I am not revoking Mr. Evans' bail on the secondary ground.

Tertiary Ground - Public Confidence in the Administration of Justice

[37] The Supreme Court of Canada's decision in *R. v. St-Cloud*, 2015 SCC 27 remains the leading case that provides guidance on how to apply the tertiary ground set out in s. 515(10)(c) of the Code; that is, that detention is necessary to maintain confidence in the administration of justice.

[38] Section 515(10)(c) sets out four particular circumstances that must be considered when assessing the tertiary ground, although they are not exhaustive:

- (i) the apparent strength of the prosecution's case,
- (ii) the gravity of the offence,
- (iii) the circumstances surrounding the commission of the offence, including whether a firearm was used, and
- (iv) the fact that the accused is liable, on conviction, for a potentially lengthy term of imprisonment or, in the case of an offence that involves, or whose subject-matter is, a firearm, a minimum punishment of imprisonment for a term of three years or more.

[39] In *St-Cloud* at paras. 72-86, it was noted that consideration of the tertiary ground must be guided by the perspective of the "public", that is, of a reasonable person who is properly informed about the philosophy that underpins the Code, the values of the Charter, and the circumstances of the case. That person is thoughtful and not prone to emotional reactions, but is not a legal expert who understands all of the nuances of the criminal law. The reasonable person's confidence in the administration of justice may be undermined not only if a court refuses to detain where detention is justified, but also if it orders detention where it is not justified.

[40] Our Court of Appeal in *R. v. Maslehati*, 2024 BCCA 207, provided a thorough review of the principles that apply to sentencing sexual offenders. Those that are of particular relevance to this case include the following:

- a) all sexual assaults are serious, irrespective of the nature of the physical acts involved (*Maslehati* at para. 72);
- b) the generally applicable sentence range for sexual assault cases is two to six years' imprisonment (*Maslehati* at para. 58);
- c) in the absence of diminished moral blameworthiness or compelling mitigation, a penitentiary term of at least two years' imprisonment will generally be required for an adult sexual assault that is prosecuted by indictment and involves aggravating circumstances (*Maslehati* at para. 92);

- d) in cases involving an adult sexual assault with aggravating circumstances, a conditional sentencing order will rarely be available (Maslehati at para. 11); and
- e) circumstances that may be found to elevate the already inherent seriousness of a sexual assault that are therefore aggravating include:
 - i. administering drugs or alcohol to incapacitate the victim, or taking advantage of incapacity;
 - ii. the age of the victim; and
 - iii. a particularly vulnerable victim (Maslehati at para. 74).

[41] Turning to the present application, I wish to make it clear that I have yet to decide what sentence should be imposed upon Mr. Evans. That decision must await a sentencing hearing, at which time I will hear full submissions from counsel for the Crown and counsel for Mr. Evans. That said, I can and will assess the apparent strength of the prosecution's likely case on sentencing based on my appreciation of the evidence led at the trial and by application of the Maslehati principles.

[42] Further to this assessment, I find that the apparent strength of the prosecution's case on sentencing is considerable. I also agree with the Crown that it is highly likely Mr. Evans will receive a custodial sentence, a proposition that his counsel does not dispute. This flows in particular from the evidence that Mr. Evans administered drugs that incapacitated M.L., a particularly vulnerable 21-year-old drug-addicted victim, and then took advantage of the situation by sexually assaulting her when she was incapable of consenting. These are aggravating factors that render it very unlikely that Mr. Evans will receive a conditional sentencing order. To the contrary, it is much more likely that Mr. Evans will be sentenced to at least two years, and possibly longer, in a penitentiary.

[43] Accordingly, all four of the s. 515(10)(c) factors militate in favour of a conclusion that it is now necessary to detain Mr. Evans immediately in order to maintain confidence in the administration of justice. In particular, I am of the view that a reasonable, thoughtful, and properly informed person would lose confidence in the justice system if they were to learn that Mr. Evans, after having been found guilty by a jury of sexually assaulting M.L. in the manner that he did, is then able to still remain in the community on conditional release when he faces the near certainty of a long custodial sentence.

[44] This is especially the case since it is apparent that Mr. Evans' sentencing hearing will not take place until all of the necessary presentencing reports are prepared, which will likely take several months. In addition, that same hypothetical person would understand that Mr. Evans will likely receive credit for his presentencing time in custody, thereby alleviating any reasonable concerns about excessive punishment.

[45] I am therefore revoking Mr. Evans' bail on the tertiary ground as I find this to be necessary in order to maintain confidence in the administration of justice.

Disposition

[46] For all of these reasons, pursuant to the Court's authority provided by s. 523(1)(b)(ii) of the Code, I order that Allen Dolphus Evans be taken into custody pending the imposition of his sentence further to his having been found guilty of one count of sexual assault by a jury on November 28, 2025.

"Brongers J."

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