

CANADA / JUDGMENT

R. v. Ghuman

2019 BCSC 1708

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Supreme Court of British Columbia

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2019 BCSC 1708 R. v. Ghuman

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Ghuman,

2019 BCSC 1708

Date: 20190912

Docket: 27876W

Registry: Vancouver

Regina

v.

Kristoffer Ghuman

Pursuant to s. 517(1) of the Criminal Code, R.S.C. 1985, c. C-46, there is a ban on the publication, broadcasting or transmission in any way of the evidence taken, the information given, the representations made and the reasons, if any, given in respect of the application for a detention review hearing.

Corrected Judgment: The text of the judgment was corrected on the cover page on October 7, 2019.

Before: The Honourable Madam Justice Ker

On review from: Provincial Court of British Columbia, December 20, 2019 (R. v. Ghuman, Vancouver File No. 247234-1)

Oral Reasons for Judgment at Detention Review Hearing

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Place and Date of Hearing:

Vancouver, B.C.

June 3, 4, 6, 2019

July 29, 2019

August 8, 2019

Place and Date of Judgment:

Vancouver, B.C.

September 12, 2019

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- [1] These Reasons for Judgment were delivered as oral reasons. They have since been edited for distribution.
- [2] All of the assertions of criminality and accusations against the individuals involved in the criminality that are outlined in these reasons remain allegations. In order to facilitate the flow of these reasons, the word "alleged" may not appear in front of each assertion. Where it is omitted, its absence should not be construed to mean that a factual finding has been made by the Court in respect of the charges or the underlying criminal activity said to form the bases of the charges covered by this indictment or any other pending charges.

INTRODUCTION

- [3] The accused, Kristoffer Ghuman, is before the Court for a detention review hearing pursuant to s. 525 of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. He has been in custody since his arrest on August 8, 2018.
- [4] Mr. Ghuman had a bail hearing pursuant to s. 515 of the Code, in the Provincial Court of British Columbia. The Honourable Judge Sutherland heard Mr. Ghuman's bail hearing on October 15, 25, 26, November 19, and December 6, 2018. On December 20, 2018, Judge Sutherland detained him on the tertiary ground as set out in s. 515(10)(c) of the Code: *R. v. Ghuman*, (December 20, 2018), Vancouver 247234 (B.C.P.C.) paras. 84-119.
- [5] Judge Sutherland was satisfied that any concerns with respect to the primary and secondary grounds could be alleviated and reduced to an acceptable level through the imposition of a substantial surety pledged by family members with conditions that severely restricted his associations and liberty: *Ghuman*, at paras. 60-79.
- [6] There are five co-accused under this indictment, including Mr. Ghuman. Two of Mr. Ghuman's co-accused, Manveer Braich and Sameet (Sam) Kang, also had judicial interim release hearings in the Provincial Court in the fall of 2018. Manveer Braich was detained on the tertiary ground by the Honourable Judge Harris on October 12, 2018. Sam Kang was detained on the secondary ground by the Honourable Judge Doherty on December 12, 2018. A third co-accused, Gary Kang, consented to remain in custody until June 2019. His judicial interim release hearing was conducted before me in June, July, and August 2019. The fourth co-accused, Jitesh Vagh, has, thus far, consented to remain in custody.

- [7] In accordance with s. 525 of the Code, B.C. Corrections forwarded a Notice of Application to the Court advising that Mr. Ghuman was entitled to a 90-day detention review hearing pursuant to s. 525 of the Code. Mr. Ghuman seeks his release on bail while awaiting trial. Mr. Ghuman remains in a reverse onus position. This means that in order to obtain his release, he must show cause that his continued detention in custody is not justified: ss. 515(6)(a)(ii) and (d), 525 of the Code; R. v. Sarkozi, 2010 BCSC 1410, para. 24.
- [8] The charges Mr. Ghuman and his co-accused face stem from an extensive investigation by the Vancouver Police Department (the "VPD") named Project Territory. Project Territory started in May 2017 and concluded with a large "takedown" operation more than a year later resulting in the arrest of many targets.
- [9] When Kristoffer Ghuman was arrested, he was originally charged with approximately 17 others on Information 247234-1 (Vancouver Registry) with a number of offences related to activities of an alleged criminal organization, conspiracy to traffic, and trafficking in various controlled substances including fentanyl, and firearms offences.
- [10] In January 2019, the Crown filed three direct indictments, breaking the group of 18 accused into different groups. Five of the 18 accused, including Mr. Ghuman, now form the "Kang indictment" (Vancouver Registry 27786); two of the 18 accused are now before the court on the "second Kang indictment" (Vancouver Registry 27787) and one of the 18 accused has been joined with four different accused on the "Latimer indictment" (Vancouver Registry 27798). No trial dates have been set on any of these three indictments.
- [11] One other accused from the group of 18, Ranbir Kang (a cousin of Sam and Gary Kang) entered a guilty plea to knowingly contributing to the activities of a criminal organization contrary to s. 467.11(1) of the Code and was sentenced by the Honourable Judge Harris of the Provincial Court on April 1, 2019 to one year imprisonment. Ranbir Kang's role was as the trusted intermediary for the Kang group in renting various condominium suites that the Kang group used as "stash sites" for their drug enterprise.
- [12] Of the remaining nine accused from the original information charging 18 people, one is charged with conspiracy to commit murder (Pashminder Boparai - Vancouver Registry 28709). The remaining eight names, as well as Ranbir Kang, Pashminder Boparai, and Kyle Latimer, appear in various iterations on the indictment before me, as either unindicted co-conspirators in count 3 or as named members of the criminal organization covered by counts 1 and 2 of this indictment.
- [13] The five accused on the Latimer indictment completed their Application Screening Conference ("ASC"), as mandated by the British Columbia Supreme Court's Criminal Practice Direction for Complex Criminal Cases ("CPD-3"), on August 15, 2019, setting various pre-trial applications and voir dires that started on July 31, 2019 and are set to continue intermittently through April 2021.

[14] Mr. Ghuman and his four co-accused have their ASC pursuant to CPD-3 set to commence on September 16, 2019. It is anticipated that their pre-trial applications and voir dres may take the same amount of time as the Latimer indictment's, perhaps even longer. Previously, the Crown estimated that the pre-trial applications in this case would take six months and the trial itself a further six months.

[15] Given the ASC experience from the Latimer indictment, it would not be unreasonable to assume that the pre-trial applications on the Kang indictment will take much longer than the Crown's six-month estimate. At least two of the applications from the two Kang indictments and the Latimer indictment are likely to be the subject of joint hearings pursuant to s. 551.7 of the Code.

[16] There are nine counts on the Kang indictment. Mr. Ghuman is charged on seven of the counts, along with other members of the Kang group.

[17] Specifically, Mr. Ghuman is charged with his four co-accused that:

Count 2: between May 4, 2017 and August 7, 2018, in various locations around the Lower Mainland and elsewhere in British Columbia, they trafficked in a variety of controlled substances, including fentanyl, cocaine, methamphetamine and/or heroin for the benefit of, at the direction of, or in association with a criminal organization contrary to ss. 5(1) of the Controlled Drugs and Substances Act [CDSA] and 467.12(1) of the Code;

Count 3: between May 4, 2017 and August 7, 2018, in various locations around the Lower Mainland and elsewhere in British Columbia, they unlawfully conspired with a number of named individuals to traffic in a variety of controlled substances, including fentanyl, cocaine, methamphetamine and/or heroin contrary to ss. 5(1) of the CDSA and 465(1)(c) of the Code; and,

Count 4: between May 4, 2017 and August 7, 2018, in various locations around the Lower Mainland and elsewhere in British Columbia, they trafficked in a variety of controlled substances, including fentanyl, cocaine, methamphetamine and/or heroin contrary to s. 5(1) of the CDSA.

[18] Mr. Ghuman is also charged on two counts of the indictment with only one co-accused, Gary Kang, that:

Count 5: between April 16, 2018 and May 25, 2018, in the City of Burnaby, they possessed cocaine for the purpose of trafficking contrary to s. 5(2) of the CDSA; and,

Count 6: between April 16, 2018 and May 25, 2018, in the City of Burnaby, they possessed a loaded restricted firearm (a .45 calibre automatic pistol) contrary to s. 95(1) of the Code.

[19] Mr. Ghuman is further charged on one count of the indictment with a different co-accused, Manveer Braich, that:

Count 8: between April 21, 2018 and August 7, 2018, in the City of Surrey, they possessed fentanyl, cocaine, methamphetamine and / or heroin for the purpose of trafficking contrary to s. 5(2) of the CDSA.

[20] Finally, Mr. Ghuman is charged alone on one count of the indictment that:

Count 9: on May 8, 2018 at or near the City of Vancouver, he transferred a loaded restricted firearm (a .40 calibre semi-automatic pistol) knowing he was not authorized to do so, contrary to s. 99(1)(a) of the Code.

[21] Counts 1 through 4 of the indictment cover the entirety of the investigative period between May 4, 2017 and August 7, 2018. Counts 5 and 6 relate to items observed inside a suite located on Royal Oak Avenue in Burnaby, BC pursuant to a general warrant executed on May 25, 2018. Count 8 relates to items observed in a suite on 33rd Avenue in Surrey, BC and later seized from that location. These locations are said to be two of several "stash sites" that the Kang group used to conduct its drug enterprise.

[22] The alleged criminal organization known as "the Kang group" is said to be headed by Sam Kang and his brothers Randy and Gary. It is alleged that Sam Kang ran the Kang group's drug business from inside prison walls throughout the course of the investigation. He was allegedly aided by his older brother, Randy, and his younger brother, Gary, who were not imprisoned at the time.

[23] The Crown says that the offences covered by the indictment were the result of a sophisticated criminal organization's commitment to distributing drugs throughout the province. The venture was solely for profit, with complete indifference to the risk of death associated with fentanyl, one of the controlled substances seized when search warrants were executed on June 22, 2018 at two different condominium units the Kang group is said to have used as "stash sites" for their enterprise. Two earlier general warrants executed at two other stash sites in May 2018 revealed a significant quantity of controlled substances and one firearm (count 6). These would certainly be aggravating factors for the purpose of sentence, and, if convicted of these offences, Mr. Ghuman is likely to receive a significant penitentiary sentence.

[24] The investigation that culminated in the charges currently before the Court began in early May 2017, shortly after the co-accused, Sam Kang, received a sentence of imprisonment in relation to an earlier drug-related offence.

[25] The backdrop to the investigation was the perceived escalating turf war between alleged criminal organizations in the Lower Mainland, which resulted in an alarming proliferation of firearms-related offences, violence, and murder as various factions competed for control of the lucrative illegal drug business in the province.

[26] The Kang group is alleged to have rented a variety of different condominium suites throughout the Lower Mainland that were used as "stash sites" to mix and hold their drug products and proceeds as well as a variety of other items including firearms.

[27] Mr. Ghuman's detention review hearing was conducted over four and a half court days. On this detention review hearing, the Crown filed a very detailed timeline or chronology in relation to the investigation (Exhibit 1), photographs, and excerpts of transcripts of various

intercepted communications (Exhibits 2 and 3). The defence also filed a number of exhibits, including affidavits from proposed sureties. Indeed, a voluminous amount of material was filed in the form of written submissions and exhibits as well as numerous authorities. Counsel adroitly and helpfully reviewed these materials in their comprehensive and detailed submissions on this hearing.

- [28] I do not intend to reference the entirety of this material. Instead, I will outline some of the more salient pieces to provide an explanatory context for my ruling, with a specific focus on Mr. Ghuman's involvement. While I may not refer to every last item of evidence or submission adduced on this hearing, given the thorough review during the course of this hearing and while I have had this decision under reserve, I have considered the totality of the evidence, authorities, and submissions adduced in coming to my conclusion on this detention review hearing.
- [29] I will note that for the entire four and half days of this hearing, Mr. Ghuman's parents remained present. His prospective employer was present for the last half day of the detention review hearing on August 8, 2019.

CIRCUMSTANCES OF THE ALLEGED OFFENCES

- [30] In the spring of 2017, the VPD and other neighbouring police agencies commenced an investigation into a number of criminal groups operating in the Lower Mainland. These groups were believed to be in conflict with one another and responsible for numerous acts of violence across the Lower Mainland. In many instances, firearms were involved in the spate of offences the police were investigating. Public concern about the unprecedented level of gun violence in the community was running high. This proactive task force operated under the name of "Task Force Tourniquet".
- [31] One of the groups under investigation was the Kang group, an organization believed to be operating a sophisticated drug dealing business that included a number of stash sites used to store bulk drugs and paraphernalia related to the drug trade. The stash sites were used as mixing and storage locations from which the group distributed bulk quantities of drugs around the province and also supplied to a number of their dial-a-dope lines operated by recruits, some as young as 15 years of age.
- [32] The leaders of the Kang group were believed to be three brothers - Randy Kang, Sam Kang and Gary Kang.
- [33] On May 1, 2017, Sam Kang was sentenced to 2 years and 7 months' imprisonment for possession of controlled substances for the purpose of trafficking. He served his sentence at Kent Institution and the Fraser Regional Correctional Centre.

[34] Project Territory was initiated at this time and carried on from May 2017 through to the takedown final arrests on August 7 and 8, 2018. Numerous associates were identified through the duration of the project. The associates and their movements were identified through a number of investigative techniques including:

- Informant information;
 - Surveillance and observation;
 - Arrests and searches of vehicles incidental to arrest;
 - Tracking devices placed on the vehicles of certain associates (pursuant to tracking warrants obtained by police);
 - CCTV security video from the common areas of seven different stash sites in condominium towers in the Lower Mainland (initially obtained through production orders until November 2017, when the practice of seeking a production order ceased);
 - Key fob records for the stash sites (initially obtained through production orders until November 2017 when the practice of seeking a production order ceased);
 - Telephone conversations intercepted at the detention and jail centres where Sam Kang was located (obtained by the police pursuant to production orders);
 - intercepted conversations in the visiting areas of the detention and jail centres where Sam Kang was located;
 - A formal authorization to intercept communications obtained on February 15, 2018 (P.2018/05F);
 - Audio and video room probes installed at stash site locations that were the subject of general warrants (May 5, 2018 at the Tomicki Avenue stash site in Richmond; May 25, 2018 at the Royal Avenue stash site in Burnaby; May 31, 2018 and June 7, 2018 at the 33rd Avenue stash site in Surrey); and,
 - Search warrants issued for June 22, 2018 in respect of four different locations - two of the stash sites, being Tomicki Avenue and 33rd Avenue and two Vancouver residences being Alberni Street (the residence of the co-accused Gary Kang) and Quebec Street (the residence of the co-accused Jitesh Vagh).
- a. The allegations relating to the drug trafficking business of the Kang group and Mr. Ghuman's alleged role

[35] In his thorough reasons for judgment detaining Mr. Ghuman, Judge Sutherland succinctly outlined the circumstances behind both the structure of the Kang group and Mr. Ghuman's alleged involvement with the group: Ghuman, paras. 9-44. While the Crown adduced more detailed allegations and more intercepted conversations in this detention review hearing than what was placed before Sutherland P.C.J., the seriousness of the allegations and the

overall subject matter of criminality remain the same. I adopt Judge Sutherland's characterization of the Kang group and the allegations against Mr. Ghuman as they mirror and fairly summarize the circumstances that were adduced before me on this detention review hearing.

- [36] Randy Kang was murdered on October 27, 2017 as a result of a targeted shooting. His brother, Gary Kang, was shot six times but survived. Thereafter, Gary Kang continued to run the drug business, in consultation with his imprisoned brother, Sam Kang. There are numerous intercepted conversations between the two Kang brothers that support this contention.
- [37] Through surveillance, the police identified Manveer Braich as one of the members of the Kang group. The police conducted surveillance on Manveer Braich, and his movements led them to a number of suspected drug stash sites. During the investigation, the police identified seven stash sites, which are believed to be locations where drugs were mixed, packaged, stored and then removed for distribution.
- [38] With the exception of Sam Kang, who was in jail, the Crown alleges that Gary Kang, Manveer Braich, Kristoffer Ghuman and Jitesh Vagh attended at the stash sites at various times between May 2017 and August 2018. Individuals were often seen carrying items into and out of these stash sites. On two occasions in the summer of 2017, the police followed individuals after observing suspicious bag exchanges near these stash sites. Their arrests resulted in seizures of bulk quantities of cocaine and fentanyl.
- [39] The seven stash sites were at the following locations:
- Bidwell Street (Vancouver, BC);
 - Tomicki Avenue (Richmond, BC);
 - Seymour Street (Vancouver, BC);
 - Homer Street (Vancouver, BC);
 - Richards Street (Vancouver, BC);
 - 33rd Avenue (Surrey, BC); and
 - Royal Oak Avenue (Burnaby, BC).
- [40] For the purposes of this detention review hearing, the main stash sites in issue have been referred to as "Tomicki" (located on Tomicki Avenue in Richmond, BC); "33rd Avenue" (located on 33rd Avenue in Surrey) and "Royal Oak" (located on Royal Oak Avenue in Burnaby).
- [41] According to the timeline (Exhibit 1) provided by the Crown on this detention review hearing, Mr. Ghuman was observed attending at each of the seven alleged stash site location on at least one occasion.

- [42] Counts 5 and 6 of the indictment charge Mr. Ghuman with possessing cocaine for the purpose of trafficking and possession of a loaded restricted firearm. As I understood the Crown's submissions, these two counts relate to the activities around the Royal Oak stash site. Mr. Ghuman was observed attending this location on 11 different occasions including an attempt to access the building in the early morning hours of May 25, 2018 when the police were executing a general warrant on the premises.
- [43] There are limited observations of Mr. Ghuman at the 33rd Avenue and Tomicki stash sites. Mr. Ghuman appears to have been observed attending Tomicki on only two occasions - once on October 12, 2017 with Mr. Braich and once on November 16, 2017 in the parking lot affiliated with Tomicki. On this latter attendance, he was observed to enter the parking lot with Mr. Braich and then leave 35 minutes later carrying a white shopping bag.
- [44] Similarly, Mr. Ghuman was only observed going into 33rd Avenue on one occasion, May 6, 2018, when he was assisting others in moving some furniture into the location.
- [45] None of Mr. Ghuman's charges appear to relate specifically to the Tomicki stash site, but he is charged in respect of the Royal Oak and 33rd Avenue stash sites.
- [46] In February 2018, the Crown obtained a wiretap authorization (P.2018/05F) to intercept the communications of the Kang group and others, including Kyle Latimer from the Latimer indictment. Through these intercepted communications, the police gained evidence as to the workings and reach of the Kang group's drug trafficking enterprise.
- [47] The Crown alleges that the Kang group is involved in the distribution of bulk quantities of drugs, including fentanyl, and the running of dial-a-dope drug lines throughout the province of British Columbia and into parts of Alberta.
- [48] The dial-a-dope drug lines are staffed by young people, and intercepted calls show recruitment was a recurring theme for the Kang group. Indeed, intercepted conversations provide evidence that Sam Kang and Gary Kang continually exhorted others in the group to recruit new workers, often referred to as "kids". One conversation provides evidence that Gary Kang was of the view that a 15-year-old was old enough to work for the group. Other intercepted conversations provide evidence that Gary Kang offered incentives to other members of the group to recruit more "kids" - \$1,000 for each new recruit.
- [49] The intercepts of Mr. Ghuman's conversations, in particular, are said to support the inference that he was often involved in recruitment and direction of the younger, less experienced individuals who operated various dial-a-dope drug lines. To that end, the Crown asserts the evidence will establish that Mr. Ghuman was much more than a street-level dealer. Indeed, they assert Mr. Ghuman was higher up in the organization and was involved in both the cooking of drugs as well as recruiting the dial-a-dope line operators and supplying drugs to the group's street-level traffickers. The intercepted communications reviewed at this hearing appear to support this inference.

- [50] The Crown alleges there were numerous intercepted conversations involving Sam Kang and Gary Kang where they instructed members of the group to recruit workers, take violent actions against rivals, and take precautions against police detection. The intercepted conversations also show the workings of the Kang group and the roles of each accused within the group. The Crown alleges Sam Kang and Gary Kang are the leaders, with Manveer Braich, Kristoffer Ghuman, and Jitesh Vagh as trusted associates holding high-ranking positions.
- [51] The Crown alleges that Manveer Braich was trusted to access many of the group's stash sites, and his role included the mixing, packaging, and distribution of drugs.
- [52] The Crown alleges that Jitesh Vagh was the accountant for the group. He was responsible for keeping track of the group's drug inventory and finances. His residence in Vancouver was a meeting place for the group, equipped with a money counter and ledger. Many conversations inside this residence are intercepted and provide insight into how the Kang group's business was operated.
- [53] Insofar as Kristoffer Ghuman is concerned, the Crown asserts that he too was trusted to access many of the stash sites, and he ran a number of drug lines for the group. The defence disputes this and argues that the evidence from disclosure establishes that, at most, Mr. Ghuman was a worker and "gofer" for Gary Kang. Defence counsel asserts that the disclosure reveals Mr. Ghuman to be involved in the supply of street-level workers make dial-a-dope deliveries.
- [54] Some of the intercepted calls provide evidence of Mr. Ghuman discussing samples of drugs that have been mixed and handing out those samples. In other intercepted conversations, he is discussing the need for more recruits and targeting young teenage recruits as well as directing them on their work ethic and work rules.
- [55] Overall, the intercepted conversations between March and May 2018 provide evidence that Mr. Ghuman was involved in mixing drugs, providing samples, "reloading" dial-a-dope line operators, and running dial-a-dope lines, as well as recruiting, training, and enforcing a measure of discipline in the recruited workers. The admissibility of all intercepts will be a hotly contested issue for the pre-trial applications, and the meaning of the conversations, if admitted into evidence at trial, will be the subject of considerable challenge as well.
- [56] Mr. Ghuman is also present for many of the intercepted conversations at Jitesh Vagh's residence. Mr. Ghuman participates in the conversations about how the Kang group's business is run, how the office is supplied, and topics related to the enterprise.
- [57] In some video footage from covert video probes installed in two of the stash sites, Mr. Vagh and Mr. Braich are depicted wearing protective gear and are said to be engaged in the mixing of drugs.

[58] During the course of the investigation, officers involved with Project Territory obtained general warrants for three of the stash sites. During the execution of these general warrants, audio and video room probes were installed. The following items were found inside the locations:

Date

Location

Materials found

May 5, 2018

Tomicki Avenue, Richmond

§ Vacuum sealer and bags, Ziploc bags, gloves

§ Disposable face masks/respirators

§ Disposable full body anticontamination suit

§ Safety glasses

§ Score sheets

§ Blue reusable Walmart bag

§ Two scales, with cocaine residue on one and cocaine and methamphetamine residue on the other

§ A blender, bowls, and utensils with cocaine, fentanyl, fentanyl T, and methamphetamine residue on them

§ Bags marked "Ming" (containing cocaine) and "SB" (containing cutting agents)

§ A box with 214 grams of powder fentanyl, 229.6 grams of small "bricks" of fentanyl, a bag containing 735 grams of powder marked "CAFF", and a small baggy containing pills marked "XANAX", which analyzed as cocaine, fentanyl, fentanyl T, and methamphetamine

§ A black duffle bag containing three bags of fake oxycodone pills which analyzed as fentanyl: 1139 grams, 1041 grams, and 848 grams

§ A bag marked "Pure Bunk Shit 47 sold us"

§ Cutting agents

§ A canvas bag with a hydraulic jack and metal box

May 25, 2018

Royal Oak Avenue, Burnaby

§ In a garbage bag, an empty white padded envelope with cocaine and fentanyl residue, empty small Ziploc bags labeled "C-Town", and small ripped cellophane knots with fentanyl residue

§ In another garbage bag, Ziploc and sandwich bags, three scales with cocaine and fentanyl residue, a large Ziploc bag with smaller bags marked "night", "c town" and "VAN" (which contained cocaine and fentanyl residue)

§ A Suzuki bag with two baggies, each marked "c town", containing seven 8-balls of cocaine and eight 8-balls of cocaine, respectively

§ A grey bag with empty Ziploc bags marked "Van", "C-Town and "N. Van"

§ A black Lululemon bag containing a Ziploc bag marked "ABOOG" containing several 8-balls of cocaine; a Ziploc bag marked "VAN" containing several 8-balls of cocaine; a large Ziploc bag containing two smaller bags, one marked "VAN 40g" containing seven 8-balls (39.93 grams) of cocaine and fentanyl and one marked "VAN" with several 8-balls and several small wrapped balls of crack cocaine

§ In a kitchen cupboard, a loaded .40 calibre handgun (This item was removed, examined, disabled, and returned during the course of the execution of the general warrant. This item is the subject of count 6 on the indictment. The Crown alleges Mr. Ghuman entered Royal Oak on June 4, 2018 at 23:47 hrs., the first time anyone entered the location after the general warrant was executed on May 25, 2018. Mr. Ghuman is alleged to have removed this firearm in a box at this time and exited the unit at 23:52 hrs.)

May 31, 2018

33rd Avenue, Surrey

§ A black Sterilite bin containing a vacuum sealed brick of cocaine and methamphetamine mix

§ A Ziploc bag containing 758 grams of methamphetamine

§ A Ziploc bag with 148.36 grams of cocaine

§ A Ziploc bag with 84.44 grams of fentanyl

§ A Christmas gift bag containing 871.57 grams of cocaine, fentanyl, fentanyl T, and methamphetamine mix

§ In the kitchen, Ziploc bags, vacuum sealer and bags, masks and latex gloves, duct tape, used gloves and paper towels, and a black scale with cocaine and methamphetamine residue

June 7, 2018

33rd Avenue, Surrey

Police found the same approximate items and drugs as the May 31, 2018 general warrant but found more fentanyl and methamphetamine:

§ A black Sterilite bin containing 771.63 grams of fentanyl

§ A Ziploc bag containing 147.99 grams of cocaine

§ A Ziploc bag containing 330.47 grams of cocaine

§ A Ziploc bag containing 85.92 grams of fentanyl

§ A Ziploc bag containing 743.62 grams of methamphetamine

June 8, 2018

Royal Oak Avenue, Burnaby

Police make a covert entry into the stash site and confirm that the firearm observed in the unit on May 25, 2018 has been removed

[59] The covert search of Tomicki on May 5, 2018 resulted in the police finding approximately three kilograms of fentanyl inside the suite, along with production and packaging materials consistent with a drug production and trafficking operation.

[60] Nearly a kilogram of fentanyl and smaller amounts of other drugs were found during the covert searches of 33rd Avenue.

[61] Only fentanyl residue and several packages of "8-balls" of cocaine were found at Royal Oak during the covert search of that location. In addition, there was the loaded .40 calibre handgun found inside Royal Oak.

[62] On June 22, 2018, search warrants were executed at two of the Kang group stash sites (Tomicki and 33rd Avenue) as well as two residences (one associated to Gary Kang and one to Jitesh Vagh).

[63] Seized from Gary Kang's residence was a score sheet, radio jammer, contact list, documents in Gary Kang's name, and photos of associates.

[64] Included in the items seized from Jitesh Vagh's residence were:

- 18 cellphones,
- five boxes for GPS trackers (three with the trackers inside, two empty),
- documents in Mr. Boparai's name and Mr. Vagh's name,
- a tenancy agreement listing Mr. Vagh as the tenant,
- a plugged-in money counter,
- \$67,070 in bundled cash, with one bundle labelled "Nanaimo Pros 795 June 16",

- a yellow and orange sticky note said to correspond to the amount of money found in the residence where the Ottawa hitmen who the Kang group is alleged to have hired were living on June 18, 2018,

- a day timer with drug inventory amounts,

- brass knuckles and a baton, and

- a diamond encrusted Breitling watch.

[65] A detailed list of the items seized during the June 22, 2018 searches of the Tomicki Avenue and 33rd Avenue stash sites is outlined in the Crown's timeline (Exhibit 1) filed on this detention review hearing.

[66] The total amount of drugs seized from Tomicki Avenue on June 22, 2018, is listed as:

- 4.4 kilograms of heroin

- 2.1 kilograms of cocaine

- 227 grams of fentanyl powder

- 5 kilograms of fentanyl pills

[67] The total amount of drugs seized from 33rd Avenue on June 22, 2018, is listed as:

- 917 grams of heroin

- 4.99 kilograms of cocaine

- 884 grams of fentanyl

- 878 grams of methamphetamine

[68] The stash sites at Bidwell, Seymour, Homer, and Richards Streets were short-lived locations that were never the subject of search warrants or covert searches by the police.

b. The allegations surrounding the two firearms charges

Count 6

[69] Count 6 of the indictment charges Mr. Ghuman and Gary Kang that between April 16 and May 25, 2018, in the City of Burnaby, they possessed a loaded restricted firearm, to wit a Dominion Arms (1911 A1 .45 calibre automatic pistol) contrary to s. 95(1) of the Code. As I understood the Crown's submissions and the timeline filed on this hearing, this count relates to what is described as a loaded .40 calibre firearm that the police found in a cupboard in the Royal Oak Avenue stash site during the execution of the general warrant on May 25, 2018. This firearm was removed by the police examined, disabled, and returned to Royal Oak during the hours of the general warrant attendance. It is the firearm that the Crown asserts was removed by Mr. Ghuman when he was observed to attend the location for about five minutes, shortly before midnight on June 4, 2018. The police re-entered the unit

on June 8, 2018 and determined the firearm had been removed.

- [70] Other members of the Kang group also entered the Royal Oak location at various times during the course of the investigation. The case for this count is based entirely on circumstantial evidence. My preliminary assessment of this count is that it is not the strongest charge that the Crown has against Mr. Ghuman. I understand that the defence will challenge this count on a number of bases including attacks on the general warrant and pointing to the evidence that shows that a number of people had access to the suite during the time frame outlined in the count on the indictment.

Count 9

- [71] Based on intercepted calls, the police believed that Mr. Ghuman provided a loaded handgun to two males on May 8, 2018 for the purpose of a retaliatory hit. Intercepted telephone calls between Mr. Ghuman and his mother provide evidence of him contacting her and asking her where "the thing that was in the garage" was located. Mrs. Ghuman endeavoured to deflect the request but eventually revealed where the thing was hidden. The Crown alleges this item was the firearm that Mr. Ghuman is alleged to have possessed and hidden in his parent's garage and that was relocated to the attic area of the garage by Mr. Ghuman's mother.
- [72] Further intercepted calls, occurring minutes after the conversation between Mr. Ghuman and his mother concluded provide evidence of Mr. Ghuman speaking to someone named Chittar (LNU) and directing the individual to an area east of Knight Street along East 49th Avenue towards McKinnon Street in Vancouver.
- [73] Surveillance of Mr. Ghuman at this time is said to establish that Mr. Ghuman's vehicle met with two males in a rented SUV. The vehicles parked adjacent to each other and something was exchanged between the two drivers. Police subsequently stopped the rented SUV and arrested Indervir Johal and Gurmandeep Atwal. A search of the vehicle located a loaded .40 calibre handgun under the front passenger seat. This is the firearm in count 9 of the indictment.
- [74] Counsel for Mr. Ghuman asserts that the surveillance observations that ground count 9 are extremely limited and do not place Mr. Ghuman at the scene of the meeting, only his vehicle. However, the overall context of this event is important as an intercepted conversation between Mr. Ghuman and Mr. Vagh on May 9, 2018, the day after the arrests of Mr. Johal and Mr. Atwal, has Mr. Ghuman telling Mr. Vagh that the two men "had a play lined up and were just about to do it" when they were stopped by the police. My preliminary assessment of this count is that it is stronger than what appears to be the case for count 6.

- [75] Of course, in respect of these two counts, indeed the entirety of the indictment, and the overall arc of the trial of this matter - with its evident, considerable complexity and attendant propensity to be very lengthy - I find that the astute observations of Sutherland P.C.J. at para. 94 of his decision detaining Mr. Ghuman remain apposite: "in such a trial there are inherent uncertainties that may adversely affect the Crown or defence."
- c. The uncharged allegations of murders and street violence related to the activities of the Kang group, their associates, and rival groups
- [76] The Crown made extensive submissions about the related street violence and unsolved murders that occurred prior to and during the course of the Project Territory investigation. Seven incidents were of particular concern.
- [77] First, on October 27, 2017, Randy Kang was murdered and Gary Kang shot six times. The Kang group believes that Gavinder Grewal and the Grewal group, allies with the Kang group until the summer of 2017, was responsible for this targeted hit. The police ascribe to this theory as well.
- [78] Second, on December 22, 2017, Gavinder Grewal was shot and killed in his North Vancouver home. Mr. Grewal was part of the Grewal group and likely a member of the "Brothers Keepers". Until shortly before the murder of Randy Kang, the Kang group and the Grewal group were believed to be allied. There was a falling out, and by December 22, 2017, the Kang group and the Grewal group were rivals. Mr. Grewal was one of the men whom the Kangs blamed for the murder of Randy Kang and shooting of Gary Kang on October 27, 2017.
- [79] The Crown referred to pieces of circumstantial evidence said to place Mr. Ghuman as well as Mr. Braich and Dilraj Gill in North Vancouver at the time of Mr. Grewal's murder. Mr. Ghuman is said to be a suspect in the murder but no charges have been laid. The defence takes serious issue with the suggestion that the evidence establishes Mr. Ghuman had anything to do with the murder of Mr. Grewal and points to the lack of charges as support for this position.
- [80] Third, on December 24, 2017, two days after Mr. Grewal's murder, Jitesh Vagh was stabbed 15 times outside the entry to his residence and robbed of a blue reusable Walmart shopping bag (believed to contain drugs). Five men were present and/or participated in the attack, all members of the rival Grewal group. Three men were charged with the stabbing and have now pleaded guilty in Provincial Court to various assault-related offences.
- [81] Fourth, on January 6, 2018, Mr. Ghuman and Mr. Gill were present when two other people were shot in a drive-by shooting. The shooting occurred in a parking lot on East Kent Street, Vancouver in a light industrial business complex. One of the victims of the shooting was Mr. Ghuman's cousin. Both victims survived the attack. The police believe that Kristoffer Ghuman was actually the intended target and that the attack was in retaliation for the murder of Gavinder Grewal. Mr. Ghuman was present when the police arrived but was not cooperative in the interview that ensued.

- [82] The fifth violent event referred to by the Crown was the execution of two teenagers in Surrey on June 4, 2018. One of the victims had worked for Moeen Khan (a Kang associate) on one of the Kang drug lines. The second victim was an innocent bystander.
- [83] The sixth violent incident the Crown relies upon is in response to the execution of June 4, 2018. The execution is said to have caused the Kang group to purportedly take retaliatory steps to avenge the death of the victims, which they believed was the work of the Grewal group. Intercepted conversations that occurred at Mr. Vagh's residence provide evidence that Gary Kang and Pashminder Boparai were discussing hiring two individuals from Ottawa to come out and hunt down those responsible for the June 4, 2018 murders. Mr. Ghuman was present for this meeting and participated in the conversation, but only to a limited extent.
- [84] On June 12, 2018, Mr. Ghuman and Gary Kang can be seen in CCTV surveillance footage at YVR Airport in the company of three males who had arrived from Ottawa that evening. The Crown contends that Mr. Ghuman and Mr. Kang picked up the three males in a rental vehicle driven by Mr. Ghuman.
- [85] On June 13, 2018, Gary Kang and Mr. Ghuman left the country and travelled to Thailand, returning to Canada on July 11, 2018.
- [86] On June 18, 2018, in the later evening, Mr. Boparai and Mr. Khan were driving out to Langley in tandem with two of the males from Ottawa. Surveillance followed the two vehicles, and at 22:45 hrs., members of the RCMP Emergency Response Team intercepted the vehicles and arrested all four men. Police found two loaded handguns in and near the vehicles and walkie talkies in both vehicles.
- [87] A search of the residence where the two men from Ottawa were staying located \$10,900 in cash. A June 22, 2018 search of Mr. Vagh's residence located a sticky note that appears to be related to the payment of the two men from Ottawa with reference to the same amount as the cash found in the residence where the two men were staying.
- [88] A direct indictment has been filed in this court charging Mr. Boparai, Mr. Khan and the two men from Ottawa, Noebin Malonga-Massamba and Mustaph Ali, with conspiracy to commit murder. Sam Kang and Gary Kang are named as unindicted co-conspirators in this charge.
- [89] Mr. Malonga-Massamba and Mr. Ali have both since been released on surety bail with stringent conditions in place as ordered by Madam Justice Duncan (April 24, 2019) and Madam Justice Winteringham (June 4, 2019) respectively.
- [90] The seventh violent incident that Crown relies upon relates to Mr. Ghuman's home, where he lived with his parents, sibling, and grandmother. The home was the target of a drive-by shooting on May 6, 2017. Family members were in the home when the shooting occurred. Mr. Ghuman was not prepared to cooperate with or accept the assistance offered from the police department.

MR. GHUMAN'S ANTECEDENTS

- [91] Mr. Ghuman is 22 years old and was born and raised in Vancouver. He has no criminal record.
- [92] Mr. Ghuman graduated from Killarney Secondary School in 2014.
- [93] Mr. Ghuman has worked in a variety of positions since 2013 - as a delivery driver delivering construction materials, as an electrician's apprentice, and as a labourer at the Port of Vancouver and North Vancouver.
- [94] Mr. Ghuman intended to become an electrician and, to that end, enrolled in a pre-requisite Math 12 Pre-Calculus course in July 2016 offered through the Vancouver School Board's adult education program at the Main Street location in Vancouver. He then enrolled at Thompson Rivers University in the School of Trades and Technology in Kamloops. He was in the Electrical Level 1 program from October 11 until December 3, 2016.
- [95] Just before the accused was to write his exams in the Electrical Level 1 program, his uncle, Harjinder Ghuman, became very ill, was hospitalized, and unexpectedly passed away on December 3, 2016. Mr. Ghuman, who was very close to his uncle, was profoundly impacted by his uncle's sudden death. He was unable to write his exams and returned to Vancouver.
- [96] While detained in custody, Mr. Ghuman has applied himself, completing and obtaining his Forklift License, a certificate in Workplace Hazardous Materials Information System and a Fall Safety course.
- [97] Mr. Ghuman's immediate and extended family all reside in Vancouver. He lived with his parents and sibling until his father kicked him out of the family home after it was the subject of violence in the spring of 2017.
- [98] However, since his arrest on the current charges, Mr. Ghuman's family has come to stand behind him, and they offer considerable support for his release. His father and grandmother are prepared to act as sureties, as is his proposed employer. All three proposed sureties have filed affidavits and include in their affidavits that they are willing to closely supervise Mr. Ghuman if he is released on bail.
- [99] Mr. Ghuman's parents are aware of the charges their son is facing. Indeed, they were present for the entirety of this lengthy detention review hearing. His prospective employer is also aware of the charges and was present for the last day of the detention review hearing. As well, Mr. Ghuman's grandmother is aware of the charges that her grandson is facing and was present at part of the proceedings in the Provincial Court before Judge Sutherland.
- [100] Mr. Ghuman's father and grandmother own a property in Vancouver as joint tenants. There is, from their affidavits at least, significant equity in the property. They are prepared to pledge a significant amount of the equity in the property in the form of a surety bail. Both have filed affidavits on this hearing. Neither has a criminal record. Mr. Ghuman's grandmother lives with her son and daughter-in-law, and it is proposed that the Ghuman

family will move from their current residence to the jointly owned property if Mr. Ghuman is released. It is intended that Mr. Ghuman would reside with his family in the residence and that his parents and grandmother would closely monitor his behaviour and movements.

- [101] The property that the Ghuman family proposes to move into consists of an upper level and two ground-level suites. As of August 4, 2019, only one of the two ground-level suites is occupied by a tenant. This tenant is of long-standing duration, approximately 11 years. She has filed an affidavit in support of Mr. Ghuman's application for release. She has known Mr. Ghuman since 2008 and has watched him grow up. She is aware of the charges he is facing and is also aware that the other family home was the subject of a drive-by shooting on May 6, 2017.
- [102] Mr. Ghuman's proposed employer is a family friend. He has known the accused for 10 years. He too has filed an affidavit deposing that he is aware of the charges and aware of the circumstances from the May 6, 2017 drive-by shooting. The employer has no criminal record and owns his home and his business. He is prepared to offer a portion of the equity in his home, in the amount of \$20,000, in the form of surety bail. The employer is also prepared to closely supervise Mr. Ghuman's conduct if he is released on bail. He proposes to pick Mr. Ghuman up for work and return him home at the end of the workday. Mr. Ghuman would be employed as a labourer with the proposed employer's construction business working Monday to Saturday 8:00 a.m. to 6:00 p.m.
- [103] Mr. Ghuman's father, grandmother, and proposed employer have all deposed in their affidavits that they understand their duties as sureties and if they see any problem with compliance with any bail conditions they will not hesitate to report him to the VPD.
- [104] A technical suitability report has been prepared for Mr. Ghuman. He is a suitable candidate for this form of supervision.

MR. GHUMAN'S RELEASE PLAN

- [105] Mr. Ghuman's release plan differs slightly from what was presented to Judge Sutherland at his initial bail hearing in Provincial Court.
- [106] At his Provincial Court bail hearing, Mr. Ghuman proposed he be released on a "substantial" surety bail with his father and grandmother as potential sureties. The proposal included him either living at his parents' home or at an apartment rented for him, no contact with his co-accused, area restrictions, a curfew, possession of only one cellular phone, surrendering his passport, and any other condition the court deemed appropriate: Ghuman, paras. 52-54.

- [107] At this detention review hearing, Mr. Ghuman has provided a revised bail plan. His counsel asserts that it is more robust than the bail plan presented to Judge Sutherland. He again proposes being released on a substantial surety bail in the amount of \$250,000 to \$300,000 with his father, grandmother, and now his proposed employer acting as his sureties.
- [108] Mr. Ghuman now proposes that the bail conditions include house arrest, residing at a different address than where he and his family previously resided (and where shots were fired at that home in May 2017), electronic monitoring and supervision, and that he have conditions that mirror those imposed on Jacob Pereira by Madam Justice DeWitt-Van Oosten (as she then was) in *R. v. Pereira*, 2019 BCSC 634, para. 97.
- [109] Also not before the Provincial Court at his initial bail hearing but before this Court are the filed affidavits of Mr. Ghuman's father, grandmother and proposed employer. All three depose as follows:
- i. they are aware of the charges and that they understand Mr. Ghuman is alleged to be a member of a criminal organization and is charged with drug trafficking and firearms offences;
 - ii. they are aware of the circumstances from May 6, 2017 when the Ghuman residence was targeted in a drive-by shooting;
 - iii. they are prepared to act as sureties in this case;
 - iv. they understand their obligations as sureties;
 - v. they are prepared to closely supervise Mr. Ghuman in the community if he is released on bail; and
 - vi. they will not hesitate to report Mr. Ghuman to the VPD if they see any problem in compliance with any of the bail conditions.

POSITIONS ON RELEASE

- [110] The Crown opposes Mr. Ghuman's release citing concerns on both the secondary and tertiary ground.
- [111] On the secondary ground, the Crown raises concerns about the lack of control his proposed sureties have over him and argues that the release plan provides for no one effectively supervising and controlling him and, in particular, monitoring whom he is associating with and his activities with them. The Crown also asserts that the proposed release plan differs little in substance than what was proffered at the Provincial Court bail hearing.
- [112] On the tertiary ground, the Crown points to the extremely aggravated and calculated nature of the offences and the strength of the Crown's case against Mr. Ghuman.

- [113] The Crown further asserts that Mr. Ghuman's release on these charges would erode confidence in the administration of justice, particularly given the backdrop of a seemingly unrelenting turf war between rival criminal groups such as the Brothers Keepers, the Grewal group, the Kang group, and others. The Crown asserts that this incessant turf war is being played out on the streets of Vancouver and the Lower Mainland with the resort to firearms, and the related carnage of deaths and severe injuries, including to innocent bystanders caught in the crossfire, is an unacceptable risk. The targeted drive-by shooting on Mr. Ghuman's family home in 2017, the attack on his cousin in January 2018 (where it is believed Mr. Ghuman was actually the intended target), and the gang war that has continued unabated as well as the utter disregard for human life evidenced by the trafficking in large amounts of fentanyl in this case ought to be of considerable concern to the Court such that Mr. Ghuman's detention on the tertiary ground is easily justified and must continue.
- [114] Finally, the Crown argues that the proposed sureties can offer no comfort to the Court about their willingness to notify the authorities about violations of bail conditions. To support this contention, the Crown points to the circumstances underlying count 9 to argue that Mr. Ghuman's mother has no control over her son and, in fact, succumbed to his pressures to provide him with the firearm hidden in the attic of the garage rather than refusing to provide it to him and turning it over to the authorities. The Crown relies upon the circumstances of this charge to provide a concrete example of the concerns the Court should have in respect of the secondary and tertiary grounds such that Mr. Ghuman's continued detention is justified.
- [115] Counsel for Mr. Ghuman takes issue with the interpretation of the intercepted conversation between Mr. Ghuman and his mother. Defence counsel argues that there is a less sinister interpretation available: it is not clear that the "thing" they were discussing is actually a loaded handgun, and when read in context, the mother is pleading with her son to leave the item and forget about it.
- [116] Counsel for Mr. Ghuman asserts that he has met the onus for both the secondary and tertiary grounds with the stringent release plan that has been provided to the court. Defence counsel points out that Mr. Ghuman is a young man with no criminal record. Together with his family, he has put forward a stringent release plan that adequately addresses all bases for detaining someone pre-trial. Moreover, there is no evidence of a history of non-compliance with court-ordered conditions.
- [117] The defence also asserts that of significance now is the fact that the charge of possession of fentanyl for the purpose of trafficking as related to the Royal Oak Avenue stash site that was before the Provincial Court on the previous information is not contained on this direct indictment. While that may be true, and the evidence against Mr. Ghuman may be strongest in respect of the Royal Oak location, the fact remains that he is still charged with a number of counts that allege possession of fentanyl for the purpose of trafficking or trafficking in that controlled substance along with other substances (counts 2-4 and 8).

- [118] The defence also reminds the Court of the principles governing detention review hearings and judicial interim release, which repeatedly establish that detention is a last resort and release pending trial is the default position.
- [119] Counsel for Mr. Ghuman argues that this is an exceedingly complex case, which will involve multiple and potentially prolonged pre-trial motions, with a considerable amount of time passing before completion of a trial. Furthermore, the last day of this detention review hearing was conducted on the first anniversary of Mr. Ghuman's arrest. Pre-trial applications and a trial date have not been set but will be during the course of a weeklong ASC set for the week of September 16, 2019, pursuant to paras. 46-47 of CPD-3. The defence argues that within this context, the continued detention of Mr. Ghuman in custody pending his trial is not justified.
- [120] Defence counsel further asserts that Judge Sutherland's finding in respect of the secondary ground ought to remain undisturbed but that if there is any sort of error in his reasons, it is the failure of Judge Sutherland to consider the proposed release plan when assessing the tertiary ground.
- [121] Finally, the defence argues that the release plan presented at this hearing is more stringent than what was presented to Judge Sutherland. There is now approval for supervision through electronic monitoring, the Ghuman family proposes to move to a different address, and Mr. Ghuman's prospective employer has offered to be a surety and to supervise Mr. Ghuman in the community when he is working.

LEGAL PRINCIPLES GOVERNING S. 525 DETENTION REVIEW HEARINGS

- [122] Section 525 of the Code governs this application and provides as follows:

525 (1) Where an accused who has been charged with an offence other than an offence listed in section 469 and who is not required to be detained in custody in respect of any other matter is being detained in custody pending his trial for that offence and the trial has not commenced

- (a) in the case of an indictable offence, within ninety days from
- (i) the day on which the accused was taken before a justice under section 503, or
- (ii) where an order that the accused be detained in custody has been made under section 521 or 524, or a decision has been made with respect to a review under section 520, the later of the day on which the accused was taken into custody under that order and the day of the decision

Matters to be considered on hearing

- (3) On the hearing described in subsection (1), the judge may, in deciding whether or not the accused should be released from custody, take into consideration whether the prosecutor or the accused has been responsible for any unreasonable delay in the trial of the charge.

Order

- (4) If, following the hearing described in subsection (1), the judge is not satisfied that the continued detention of the accused in custody is justified within the meaning of subsection 515(10), the judge shall order that the accused be released from custody pending the trial of the charge on his giving an undertaking or entering into a recognizance described in any of paragraphs 515(2)(a) to (e) with such conditions described in subsection 515(4) as the judge considers desirable.

[123] Section 525 detention reviews were discussed at length in *R. v. Myers*, 2019 SCC 18, which has revived the vitality of s. 525 of the Code in the pre-trial release repertoire of jurisprudence and mandates that the overriding consideration is whether an accused's continued detention in custody awaiting trial is justified within the meaning of s. 515(10) of the Code (para. 46).

[124] As noted by the Court in *Myers*, this review takes place in the context of two fundamental principles that animate the criminal justice system in Canada, namely, (i) the presumption of innocence and (ii) the right not to be denied reasonable bail without just cause: *Myers* at paras. 1, 22, and 25.

[125] Accordingly, the sole question on this review is whether Mr. Ghuman's continued detention is justified under s. 515(10) of the Code: *Myers* at paras. 46 and 63. In particular, on this review, the Crown asserts both the secondary and tertiary grounds are in issue, leading to the more specific question to be determined - whether Mr. Ghuman's continued detention is justified in order to protect the public from further offences and ensure public safety and to maintain public confidence in the administration of justice as mandated by ss. 515(10)(b) and (c) of the Code:

- (10) For the purposes of this section, the detention of an accused in custody is justified only on one or more of the following grounds:
- (b) where the detention is necessary for the protection or safety of the public, including any victim of or witness to the offence, or any person under the age of 18 years, having regard to all the circumstances including any substantial likelihood that the accused will, if released from custody, commit a criminal offence or interfere with the administration of justice; and
 - (c) if the detention is necessary to maintain confidence in the administration of justice, having regard to all the circumstances, including
 - (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.

[126] The nature of a s. 525 detention review is such that it requires consideration of a number of factors. It is not simply a review of Judge Sutherland's bail decision or bail pursuant to s. 520 of the Code; nor, is it simply a rehearing of the matter of bail. As stated in Myers, the detention review requires both deference to any original bail decision (where appropriate) and an independent analysis of the justification for the continuation of the detention in light of current circumstances:

[47] This means that the judge at the s. 525 hearing should in his or her analysis show respect for any findings of fact made by the first-level decision maker if there is no cause to interfere with them. Similarly, any balancing exercise or weighing of factors conducted by the initial bail judge must be reviewed in light of the time that has already elapsed and any other relevant considerations, as will be discussed below.

[55] Finally, there may be cases in which it is necessary for the reviewing judge to scrutinize the rationale offered for the original detention order against the accused. While any previous bail decisions will be relevant and will likely inform the proceedings, reviewing judges must be careful not to simply "rubber-stamp" such decisions. The need to revisit an initial detention order will not arise in every case, and in the absence of a basis for judicial intervention, there is no need for a s. 525 hearing to become a protracted or formal proceeding. However, the judge must be alive to these issues when they arise, and must be prepared to respond to them appropriately.

[127] I have read and considered Judge Sutherland's reasons and the transcript of the proceedings before him. The defence has filed more recent evidence, being affidavits and a slightly revised detailed release plan, which I will discuss in more detail below.

[128] In Pereira, DeWitt-Van Oosten J. set out the guiding framework on judicial interim release applications. Mr. Pereira is also charged on an indictment arising out of the VPD's Project Territory investigation, albeit a separate indictment that covers a different alleged criminal organization referred to as the Latimer group. In Pereira, DeWitt-Van Oosten J. noted:

[44] In R. v. Myers, 2019 SCC 18, the Supreme Court once again emphasized that "pre-trial detention is a measure of last resort":

The right to liberty and the presumption of innocence are fundamental tenets of our criminal justice system. In the pre-trial context, release -- at the earliest opportunity and in the least onerous manner -- is the default presumption in Canadian criminal law. Pre-trial detention is the exception, not the rule.

At paras. 1 and 67. [Emphasis added.]

See also: R. v. Antic, 2017 SCC 27 at paras. 1, 39-40 and 67; R. v. Oland, 2017 SCC 17; and R. v. St-Cloud, 2015 SCC 27 at para. 70.

[45] The Court also re-affirmed that:

27 the experience of pre-trial detention can have serious detrimental impacts on an accused person's ability to raise a defence: see R. v. Hall, 2002 SCC 64, [2002] 3 S.C.R. 309 at para. 59. It also comes at a significant cost in terms of their loss of liberty, the impact on their mental and physical well-being and on their families, and the loss of their livelihoods: Friedland, at p. 172; Ell v. Alberta, 2003 SCC 35, [2003] 1 S.C.R. 857, at para. 24; Antic, at para. 66

[129] In my view, those observations are equally apposite to the circumstances of a s. 525 detention review hearing. I adopt these observations, and they inform my decision in this application.

Bail Decisions in Related or Similar Cases

[130] Counsel put various authorities before me that speak to the principles governing bail and detention review hearings, and/or provide examples of the application of those principles within the context of large-scale drug operations. This includes cases directly connected to the Project Territory investigation. I have reviewed them.

[131] I will not canvass each of the authorities in depth. However, I will reference those with connections to the matter before me by adopting the comments of DeWitt-Van Oosten J. from Pereira, which is the most similar case to the one before me save for the fact that Mr. Pereira had remained in custody by consent and had his initial s. 515 bail hearing before Madam Justice DeWitt Van Oosten:

R. v. Manveer Braich (Vancouver 247234, BCPC, October 2018)

· The accused is charged with nine offences involving drug trafficking, spanning a period of one year. The charges arose out of Project Territory. Mr. Braich is alleged to have actively assisted the Kang drug trafficking group, described as a sophisticated and "very profitable" organization operating numerous stash sites, with access to large quantities of drugs for street distribution. Among other things, Mr. Braich is alleged to have mixed drugs for sale; assisted in distribution; had access to the group's money; and, is suspected to have had direct involvement in violence toward rival gang members, including a homicide. He is 30 years old, with no criminal record. His release was denied on the tertiary ground. The bail judge found that the Crown has a strong case against Mr. Braich, including evidence that supports a "powerful inference" that he was aware fentanyl was being distributed by the Kangs, and its risks. The charges are serious, including assisting a criminal organization. Mr. Braich is alleged to have occupied a mid- to upper-level position in the manufacture and distribution of large quantities of highly addictive and dangerous drugs that placed vulnerable drug-addicted persons at substantial risk. If convicted, the accused likely faces a prison sentence of 8-10 years. In the whole of the circumstances, Mr. Braich's detention was seen as necessary to maintain public confidence in the

administration of justice.

R. v. Sameet Kang (Vancouver 247234, BCPC, December 2018)

· The accused is charged with three counts of conspiring with others to traffic in controlled substances on behalf of a criminal organization. The charges arise out of Project Territory. Mr. Kang is said to have been the leader of the Kang drug trafficking group. He was incarcerated when the alleged offences were committed, and is said to have directed the distribution of drugs from jail. The evidence before the bail court was that he also ordered acts of violence from jail. He was 27 years old and sought his release on the conspiracy offences, proposing a minimum \$300,000 surety bail. He has one prior conviction for possession for the purpose of trafficking, for which he was sentenced to two years and seven months' imprisonment. Bail was denied on the secondary and tertiary grounds. Among other things, at the time of the offences, the accused was "subject to the most secure form of restraint a citizen can face at the instance of the state", and yet he was able to direct business for a "sophisticated multimillion dollar drug enterprise". One of the accused's brothers was murdered by a rival gang during Project Territory; Mr. Kang was aware that his group was distributing fentanyl, a drug that was claiming many lives; and, even though a young person who was working for his organization had been killed, Mr. Kang encouraged his associates to find a replacement. The bail court found that these events had no deterrent effect on Mr. Kang. There was no indication he was prepared to abandon a criminal lifestyle.

R. v. Craig Latimer (Vancouver Registry 247235, BCPC, January 2019)

· This decision also arises out of Project Territory, but in relation to offences committed in association with the Kyle Latimer organization. Craig Latimer is a co-accused to Mr. Pereira and charged with four counts, including firearms offences. He is alleged to have stored weapons for his son's criminal group; couriered drugs; supplied and serviced vehicles for members of the organization; and, laundered proceeds of crime through the purchase and sale of luxury vehicles. On April 10, 2018, police executed a search warrant at Craig Latimer's automotive shop and seized 69 firearms, 20 of which were prohibited. Nineteen were restricted. They also found 20 silencers, 29 over-sized magazines, a grenade, a RCMP uniform, approximately 16,690 rounds of ammunition, and more than \$30,000 in cash. Craig Latimer is 56 years old, with significant health issues. He has a criminal record for property and driving offences, as well as a 2010 conviction for unauthorized possession and storage of firearms. He was denied release on the tertiary ground. The bail judge found that the Crown's case is "quite strong", even taking into account potential Charter applications. Mr. Latimer is charged with serious offences alleged to have been committed in connection with a criminal organization. Given the number and nature of weapons involved, if convicted, he likely faces a lengthy sentence of imprisonment. His proposed release plan was to go to hospital for treatment; however, no specifics were provided on what he would do when released, or how he might be monitored in the community. The bail judge held that in all of the circumstances, a reasonable person would conclude that Craig Latimer's detention was necessary.

- [48] These cases exemplify how bail hearings for persons alleged to be involved in sophisticated drug trafficking schemes, within a criminal organization context, raise secondary and tertiary ground concerns even where the accused has no, or a limited criminal history. This is because of the inherently dangerous nature of the alleged criminality; the risks that organized groups are recognized to pose to the public, in terms of unregulated and uncontrolled drug supply and the potential for violence; the incorrigibility of offending that is driven by significant profit; and, the objective gravity of production and trafficking offences, which often carry considerable jail sentences in the event of a conviction.
- [49] As noted by the Supreme Court in *R. v. Pearson*, [1992] 3 S.C.R. 665 at p. 695, these cases stand out because:

Trafficking in narcotics occurs systematically, usually within a highly sophisticated commercial setting. It is often a business and a way of life. It is highly lucrative, creating huge incentives for an offender to continue criminal behaviour even after arrest and release on bail

- [132] Madam Justice DeWitt-Van Oosten went on to observe:

- [50] However, this does not mean detention orders are automatic. Even with the reverse onus provisions under s. 515 of the Code, and the existence of secondary and tertiary ground concerns, detention orders are to be treated as the exception, not the rule.
- [51] Indeed, some of the cases placed before the Court by counsel for Mr. Pereira make this point. Whether an accused charged with a reverse onus offence satisfies the court that their continued detention is not necessary is an individualized determination, made on a case-by-case basis and informed by the whole of the context. This necessarily includes the strength of the release plan put forward by the accused.
- [52] For example, see the following cases in which persons were charged with serious offences carrying a substantial risk of harm to the public, and yet were released on bail even though for some of them, their offences were said to have been committed in connection with a large-scale, structured drug operation: *R. v. Badran*, [2017] O.J. No. 6830 (Ont. C.J.); *R. v. Fleming*, [2015] O.J. No. 4380 (Ont. Sup. Ct.); *R. v. Mok*, [2014] O.J. No. 2833 (Ont. Sup. Ct.); *R. v. Inclima*, [2013] O.J. No. 6410 (Ont. Sup. Ct.); *R. v. Campbell*, [2007] O.J. No. 1269 (Ont. Sup. Ct.); *U.S.A. v. Ellingson*, 2018 BCSC 1962; and *R. v. Naidu*, 2018 BCSC 2365 (involving fentanyl).
- [133] In addition to the cases cited by DeWitt-Van Oosten J., the circumstances of the case against the accused in Pereira also fall into this category of serious offences carrying a substantial risk of harm to the public. Mr. Pereira is charged on two different indictments, one related to a precursory investigation conducted by the Delta Police Department known as "Project Green Planet" and then the Project Territory indictment that pertains to the Latimer group.

- [134] Mr. Pereira surrendered to the police on the Project Green Planet investigation and was released a month later, on July 31, 2018, on consent of the Crown with strict conditions. The Project Green Planet indictment charges Mr. Pereira along with Kyle Latimer and Billie Kim with nine counts of possession of a variety of controlled substances, including fentanyl and carfentanil, for the purpose of trafficking and five counts of possession of a variety of loaded and unloaded prohibited and restricted firearms: Pereira paras. 7-18.
- [135] Insofar as the Project Territory circumstances are concerned, Mr. Pereira's alleged role includes attendances at an alleged stash site for the Latimer group moving materials in and out of the location and, on one occasion after surveillance of exchanges of bags, the arrest of a co-accused, Anduelle Pitkientio, in Merritt, BC, who was found in possession of fentanyl and / or methamphetamine. Mr. Pereira is not charged with any firearms offences in relation to the Project Territory indictment. Mr. Pereira is alleged to be a close and trusted associate of Kyle Latimer, the head of the Latimer group, and to have played a significant role in that group's drug trafficking enterprise. The fact that Mr. Pereira is not charged with weapons offences in respect of Project Territory is, in my view, immaterial. He is charged with very serious firearms offences in respect of the Green Planet investigation and was released on those charges, on the consent of the Crown.
- [136] While Mr. Pereira's role may be different to that alleged in respect of Mr. Ghuman, in my view, it is a distinction without a difference. Both are young men without criminal records. Both are young men facing very serious criminal organization, conspiracy, drug trafficking, and firearms offences. Both are said to play significant roles in sophisticated criminal organizations that have as their *raison d'être* the running of large-scale, sophisticated illicit drug enterprises. Both have the support of their families for their release on stringent bail terms. Both families are prepared to pledge a substantial surety to secure their son's release.
- [137] The only significant difference between the two men is the fact that Mr. Pereira's family was not aware of his activities at the time, whereas Mr. Ghuman's family was aware of his activities and were unable to prevail upon him to stop and discontinue his associations with Gary Kang. Shortly before the family home was shot at on May 6, 2017, Mr. Ghuman was banished from the family's residence, following the smashing of a window in March 2017. He moved out and continued his affiliations with the Kang group and their illicit and dangerous activities. Interventions and encounters with the police seemed to have no effect on curbing Mr. Ghuman's activities and associations.
- [138] One further decision I find to be of considerable assistance in this case is *R. v. Fleming*, [2015] O.J. No. 4380 (S.C.J.), by Mr. Justice Trotter (as he then was) on a s. 521 bail review initiated by the Crown following the accused's release on stringent bail terms by a justice of the peace. The accused in that case was charged with being part of multiple conspiracies to import large amounts of cocaine into Canada. The details of the offence are succinctly described as being a multi-dimensional and extensive operation, involving efforts to imports tens of thousands of kilograms of cocaine from Venezuela and Antigua. On the

evidence, the conspiracy went back more than a year. The accused was said to have travelled extensively during that time for the purposes of arranging the transactions, flying to the Bahamas to meet associates, as well as to Guyana.

- [139] In Fleming, the accused delivered two kilograms of cocaine to an undercover officer, was charged with trafficking in firearms, and engaged in discussions with undercover officers to buy as many as 30 guns from a source in Vancouver. Justice Trotter upheld the decision to release the accused. Although troubled by secondary and tertiary ground concerns, the proposed bail plan (albeit with a few amendments), the dismantled network of associates, and the virtual lack of a criminal record offered Justice Trotter sufficient comfort to uphold the release of the accused on the secondary ground.
- [140] On the tertiary ground, Trotter J. found that the four enumerated factors in s. 515(10)(c) of the Code to be "clearly engaged and at a high level" in respect of the accused, which I take to mean militated in favour of detention: Fleming, para. 23. Balanced against the enumerated factors were two other considerations: a credible release plan that Trotter J. strengthened by adding GPS electronic monitoring and the fact that the case would likely not get on to trial for a number of years: Fleming, paras. 23 and 24. In the end, Justice Trotter concluded that the accused had met his onus of satisfying the court that detention pending trial was not necessary and upheld the decision to release the accused.
- [141] One final area of the law to be addressed is the Crown's reference to and reliance on uncharged offences - here, most particularly, the violence that has resulted in retaliatory shootings and murders. I am mindful of the decision in R. v. Cheung, 2016 BCCA 221, where Madam Justice Bennett conducted a s. 520 bail review for an accused ordered detained pending trial. The s. 520 review was conducted in the Court of Appeal as the first instance bail hearing was in this Court as the Crown had proceeded by direct indictment. Accordingly, any bail review occurs in the Court of Appeal: Cheung, para. 35.
- [142] Mr. Cheung was charged with 17 counts of arson of homes and/or vehicles and four counts of recklessly discharging a firearm. The counts related to a spree of attacks over a number of months with a common denominator that all victims had a connection with the Justice Institute of British Columbia.
- [143] One issue raised in Cheung was that the bail hearing judge had erred in considering uncharged offences. Bennett J.A. concluded that he had not, noting:
- ii) Are Acts that Were not the Subject Matter of any Charge or Conviction Admissible on a Bail Hearing?
- [76] Mr. Cheung objects to the bail judge considering the items found in his home and his mother's home including a large quantity of ammunition, more than 20 high-capacity ammunition magazines that are alleged to be prohibited, some loaded with similar ammunition found at the crime scenes, and potentially related to seven different weapons, which were not found. In addition, the police found a loaded handgun, improvised explosive

device, night-vision lens, counter-surveillance probe, and almost \$10,000 in counterfeit United States money. In addition, the police found memory cards containing more licence plate numbers unrelated to the victims.

[77] Mr. Cheung relies on two decisions where unproven allegations were not admitted on bail hearings: *R. v. Boroumand*, [2011] O.J. No. 6431 (Sup. Ct.) and *R. v. Corbett*, 2013 ONSC 3141. There may well be cases, where the evidence is unconnected to the charges, that it would be unjust to admit the evidence. However, this is not such a case. The allegations here involve firebombing and shooting up homes and cars of targeted people. The presence of guns, ammunition, and explosives is very relevant to the bail hearing, as are photos of the licence plates of non-victims, which is consistent with allegations of how the victims were identified.

[78] The answer to the question is, in my view, found in *Toronto Star*, at para. 28 noted above, the relevant part of which is repeated below for convenience:

the prosecutor may lead any evidence that is "credible or trustworthy", which might include evidence of a confession that has not been tested for voluntariness or consistency with the Charter, bad character, information obtained by wiretap, hearsay statements, ambiguous post-offence conduct, untested similar facts, prior convictions, untried charges, or personal information on living and social habits. The justice has a broad discretion to "make such inquiries, on oath or otherwise, of and concerning the accused as he considers desirable" (s. 518(1)(a)).

[79] I conclude that the bail judge committed no error in considering the evidence.

ANALYSIS

a. Judge Sutherland's Reasons for Detention

[144] I will start my analysis by making some observations of Judge Sutherland's reasons for detention. I consider that Judge Sutherland's reasons represent a careful, detailed, and comprehensive analysis of the relevant factors to be considered within the rubric of the overarching question as to whether Mr. Ghuman's detention was justified under both the secondary and tertiary ground. He clearly considered the relevant authorities as referred to him by counsel, including leading cases on the secondary ground - *R. v. Morales*, [1992] 3 S.C.R. 711 (para. 39), *R. v. Wilcox*, 2005 BCSC 1785 (para. 22), and *R. v. Abdel-Rahman*, 2010 BCSC 189 (para. 23) - and the leading authority on the tertiary ground - *R. v. St-Cloud*, 2015 SCC 27.

[145] Insofar as the secondary ground was concerned, Judge Sutherland appropriately considered the various factors under this branch of the bail provisions, and although he had concerns both about (i) the potential reach and control of the Kang group over other members on the street and (ii) the family's ability to control Mr. Ghuman given his prolonged involvement with the Kang group before his arrest, Judge Sutherland was

satisfied that a substantial surety pledged by a family member coupled with onerous and restrictive release conditions could reduce the risk of reoffence to an acceptable level such that detention on the secondary ground was unwarranted: Ghuman, paras. 71-79. This reasoning is unassailable.

- [146] With respect to his analysis of the tertiary ground, Judge Sutherland conducted the balancing exercise mandated by the jurisprudence and legislation on the tertiary ground. He reviewed a wide range of factors, including the enumerated factors found in s. 515(10)(c) of the Code and discussed in paras. 57-65 of St-Cloud:
- a. The strength of the Crown's case: setting out the positions of the parties in respect of the case against Mr. Ghuman (defence at paras. 84-89; Crown at para. 90), observing that given the complexity of the case and the nascent stages of the prosecution, it was difficult to assess the overall strength of the Crown's case, and concluding that the case on some counts had strength whereas on others the strength was less so: Ghuman, paras. 91-92.
 - b. Mr. Ghuman's potential defences or arguments: concluding that it was difficult to assess the strength of the defences as it appears to be foremost grounded in a successful Charter challenge to the Part VI authorization, which was difficult to assess let alone the implications of any s. 24(2) analysis. In the end, Sutherland P.C.J. concluded there were triable issues that will take time to resolve: Ghuman, paras. 93-94.
 - c. The gravity of the offence: concluding the obvious in the circumstances of this case, Judge Sutherland noted that the criminal organization, drug, and firearms offences covered by the indictment are very serious offences. The drug offences carry a potential for a sentence of life imprisonment. The other offences have lesser maximum sentences but nevertheless remains very serious in the context of the offending said to be captured by the indictment: Ghuman, paras. 97-98.
 - d. The circumstances surrounding the commission of the offences including whether a firearm was used: Judge Sutherland considered Mr. Ghuman's argument that he was not a major player in the Kang group's business. Notwithstanding that assertion, Judge Sutherland fairly observed that Mr. Ghuman's alleged role had him managing or supplying drug lines with lethal drugs, the addictive properties of which were well known by the public at large at the time of the offences. Moreover, Mr. Ghuman's alleged involvement in the two firearms counts placed him in the picture of assisting in making firearms available for use in the ongoing violent conflict on the streets and in maintaining the group's drug enterprise: Ghuman, paras. 99-109.
 - e. The potential for a lengthy sentence of imprisonment: Judge Sutherland observed that if convicted of the offences, Mr. Ghuman was liable to receive a significant penitentiary sentence. Appropriately, he was unprepared to specify what significant meant as it depended upon the findings at trial as to Mr. Ghuman's role: Ghuman, para. 110.

- [147] It would be fair to conclude that, with the exception of the defences portion of his analysis, Judge Sutherland's conclusions on the enumerated factors appear to militate in favour of detention pending trial.
- [148] In addition, as further factors assessed under the tertiary ground balancing exercise, Judge Sutherland considered:
- i. the broader context of the violence connected to factions in the drug trade causing fear and concern in the broader community (paras. 111-112),
 - ii. that public campaigns aimed at educating youth about the dangers of drugs and the drug trade are waged in light of the romanticized image of wealth and freedom peddled to recruits by those running these insidious enterprises (paras. 113-114),
 - iii. the disadvantage visited upon an accused in terms of the ability to prepare for trial if detained (para. 115), and
 - iv. the fact that the case was complex and as such, it would take time to get to trial and would be a lengthy trial and that Mr. Ghuman remains clothed with the presumption of innocence (para. 116).
- [149] Judge Sutherland concluded that, after considering the enumerated factors in s. 515(10)(c) and other relevant circumstances including the broader social context of the offences and the proliferation of dangerous drugs on the street, Mr. Ghuman's detention was necessary to maintain public confidence in the administration of justice (paras. 117-119).
- [150] Absent from Judge Sutherland's otherwise careful and thoughtful analysis of the tertiary ground is any assessment of Mr. Ghuman's personal circumstances and his proposed release plan. I acknowledge that he considered them under the secondary ground and concluded they militated in favour of release. While these two factors find their primary strength in the assessment of the secondary ground considerations, their force is not spent by the time the tertiary ground is considered: *St-Cloud*, paras. 69-71; *R. v. Papasotiriou*, 2018 ONCA 719, para. 46; *R. v. Legare*, 2018 BCPC 254, para. 47; *R. v. Deko*, 2019 ONSC 2468, para. 36; *R. v. Denesevich*, 2019 ONSC 3823, para. 73; *R. v. Fleming*, [2015] O.J. No. 4380 (S.C.) at paras. 22-23; *R. v. Dang*, 2015 ONSC 4254 at paras. 56-58.
- [151] Apart from Judge Sutherland's failure to consider Mr. Ghuman's proposed release plan and personal circumstances under the tertiary ground, I conclude that his reasons on all three grounds is unassailable. Accordingly, I propose to afford Judge Sutherland's reasons on the primary ground and secondary ground the deference they are entitled to: *Myers*, para. 47. His reasoning on the tertiary ground, insofar as the factors that he did consider are concerned, is similarly unassailable. However, the failure to consider or balance the proposed release plan and personal circumstances in the analysis of the tertiary ground represents an error in principle that must be considered in the reassessment of the question that I must answer on this detention review - whether the continued detention of the accused is justified within the meaning of s. 515(10)(c) of the Code on this detention:

Myers, paras. 46-48, 55.

- [152] I turn now to my assessment of the secondary and tertiary ground of s. 515(10) of the Code, within the parameters established by Myers. As Judge Sutherland did not find that detention on the primary ground was necessary in this case and the Crown takes no issue with that finding, it is unnecessary to consider this ground further - detention on the primary ground is not necessary in this case.
- b. The secondary ground (s. 515(10)(b))
- [153] Judge Sutherland did not find that detention on the secondary ground was necessary in this case. The Crown maintains that the secondary ground has not been satisfied by the proposed release plan put forward by Mr. Ghuman and that Mr. Ghuman's continued detention is necessary on the secondary ground.
- [154] This detention review hearing started with the Crown arguing that Mr. Ghuman's continued detention was justified on the tertiary ground.[1]
- [155] The Crown made no submissions that suggested it was seeking to revisit Judge Sutherland's conclusion that Mr. Ghuman's detention was not required insofar as the secondary ground was concerned until reply submissions were made.[2]
- [156] The Crown relies upon the June 19, 2019 decision of Denesevich to support its position that detention of Mr. Ghuman on the secondary ground is also warranted. Denesevich is a decision on a s. 525 detention review hearing, post Myers.
- [157] In Denesevich at para. 52, Mr. Justice Grace held that where detention on one of the grounds of s. 515(10) is not ordered by the first-instance bail judge, but the Crown seeks to have continued detention justified on that basis, in the absence of demonstrated error, the Crown "must satisfy the court that continued detention is warranted on the basis of a ground that did not find favour in the bail hearing based on new evidence, a material change of circumstances and/or unreasonable delay for which the defence bears responsibility."
- [158] The Crown has not alleged that Judge Sutherland erred in his approach to the secondary ground. Rather, the Crown relies on new evidence not placed before Judge Sutherland with respect to Mr. Ghuman's lack of responsiveness to earlier police interventions in May 2016 as well as on March 18 and May 6, 2017. The Crown acknowledges that this is not a criminal record, but it argues that these police interventions did not dissuade Mr. Ghuman from engaging in the ongoing drug trafficking enterprise the Kang group was operating. The Crown further argues that given the substantial expenses the Kang group had in respect of the business and the reach of their influence, there is a substantial likelihood that Mr. Ghuman will continue to traffic drugs if he is released, which will endanger the safety of the community.

[159] I would not accede to this submission. Mr. Ghuman's failure to respond to police interventions in May 2016 as well as March and May 2017 are hardly what one would characterize as new evidence. It may be that the May 2016 and the March 2017 incident were not presented at his initial bail hearing, but the May 2017 incident was certainly before the Provincial Court.

[160] Insofar as revisiting the secondary ground is concerned, I am not satisfied that the Denesevich review test as outlined above has been met by the Crown.

[161] Moreover, even if the Crown has satisfied the Denesevich test to revisit Judge Sutherland's conclusion on the secondary ground, I would not disturb his conclusion. Certainly, I am concerned about the overall allegations that portray Mr. Ghuman as being embedded in a drug-trafficking enterprise and in a capacity above street-level dealing such that the evidence suggests he:

- i. mixed fentanyl on some occasions,
- ii. was involved in the supplying the dial-a-dope line operators,
- iii. was involved in recruiting and instilling discipline for those working the lines, and
- iv. appears on the evidence to possibly be involved in moving illegal firearms. Insofar as this last point is concerned, I note that the case on count 6 might be described as not the strongest circumstantial case and, while the evidence with respect to count 9 is stronger than on that pertaining to count 6, both present triable issues.

[162] However, my concerns, like Justice Trotter's concerns outlined in Fleming at para. 15, are attenuated when the proposed bail plan is considered. As Justice Trotter noted in Fleming and the Supreme Court of Canada observed in R. v. Pearson, [1992] 3 S.C.R. 665, when drug trafficking conduct is played out on a large scale, as it is in this case, it gives rise to serious bail concerns. However, what happened in the past will be determined at Mr. Ghuman's trial. At this stage under s. 515(10)(b) of the Code, the focus is on the future. The question is whether Mr. Ghuman has demonstrated that a proper supervision plan can establish that there is no substantial likelihood that he will reoffend if released on bail: Morales. Again, I look to Mr. Ghuman's lack of criminal record.

[163] Additionally, just like the circumstances in Fleming, the conspiracy and drug enterprise in this case that was alive and active prior to and during the course of the Project Territory investigation has now been dismantled, with most of the key players either detained in custody or released on stringent and restrictive conditions.

[164] Buttressing all this is a surety arrangement in Mr. Ghuman's case which could involve more than \$250,000 from his father and grandmother and a further \$20,000 from his prospective employer. All three are prepared to supervise Mr. Ghuman closely if he is released into the community.

- [165] Finally, there is the added feature of electronic monitoring for which Mr. Ghuman has been approved.
- [166] The Crown relies upon the recent decision in *R. v. Moazami*, 2019 BCCA 226 to suggest that electronic monitoring does little to address secondary ground concerns because it only establishes where the person is, not who they are affiliating with or what they are doing. That was a criticism levied in the *Fleming* case as well (para. 18), which Justice Trotter partially accepted but did not find it completely undermined the efficacy of it for the purposes of the secondary ground.
- [167] In my view, while the observations of Mr. Justice Frankel in *Moazami* at para. 37 about the efficacy of electronic monitoring are salutary, they must be read in the context of Mr. Moazami's circumstances - a man convicted of 30 prostitution related and sexual offences on 11 different vulnerable teenage victims. Those offences occurred in the home he resided in with his mother. He proposed that his mother could be his surety for the purposes of bail pending his conviction appeals.
- [168] Mr. Moazami was also convicted of obstruction of justice and breaching a court order that prohibited him from communicating with one of the victims. Mr. Moazami had an intermediary try to dissuade one of the victims from testifying in his trial.
- [169] In addition, Mr. Moazami had a not insignificant criminal record that included two prior convictions for obstruction of justice and two separate breaches of recognizance, one being contacting a witness he was prohibited from contacting and the other prohibiting him from possessing electronic communication devices. Mr. Moazami's criminal record and circumstances clearly supported the inference that he would not abide by any sort of bail conditions and that his mother had no control over him.
- [170] Moreover, Mr. Moazami had not undergone a technical suitability assessment for the purposes of electronic monitoring. Finally, Mr. Moazami's mother was specifically found not to be a suitable surety given her inability to influence her son's behaviour when she acted as his surety previously (para. 36) and he committed the prostitution related offences.
- [171] It was in this context that Frankel J.A. was not satisfied that electronic monitoring would adequately address the concerns he had about Mr. Moazami's heightened risk to re-offend while released. Indeed, Frankel J.A. quoted Justice Mainville's observations in *R. v. Chun*, 2015 QCCA 1021 at paras. 30-31, review dismissed 2016 QCCA 164, that "[i]n the absence of appropriate sureties, electronic monitoring will rarely be sufficient in itself to support the release of an appellant:" *Moazami*, para. 37.
- [172] In my view, the circumstances in Mr. Ghuman's case are distinguishable and far less aggravated than the demonstrated contempt for court orders that Mr. Moazami so clearly had pending his trial while initially released on bail. Unlike Mr. Moazami, Mr. Ghuman's sureties have provided sworn evidence that they will monitor him closely if he is released; they are prepared to put up a substantial pledge of property to secure his release and they

will not hesitate to contact the police if Mr. Ghuman demonstrates even the slightest inclination to deviate from any conditions of release.

- [173] The Crown asserts that Mr. Ghuman's parents are not suitable sureties as they were unable to control his behaviour in the past, even when the police were endeavouring to assist and intervene. This argument is a variation on the argument advanced by the Crown in Deko. In that case, the accused was initially detained on drugs (fentanyl) and firearms offences but was released following a successful s. 520 bail review. In that case, Justice Dawe released the 29-year-old accused on stringent terms. In dealing with the issue of the parents being unable to previously control their son, Dawe J. found it unfair to suggest the parents were unsuitable sureties by pointing to the fact that their son stood charged with criminal offences. It appears that Mr. Deko's parents did not know about his criminal behaviour in the intervening years between a conviction in 2010 and his arrest in 2018.
- [174] While I acknowledge that this is a distinguishing feature in respect of Mr. Ghuman, as his parents appear to have had some knowledge of his associations and activities, in my view, the concluding observations of Dawe J. in Deko at para. 23 are equally apposite in Mr. Ghuman's case. If Mr. Ghuman is now released into his parents' and grandmother's custody, they will be equipped with powerful new tools to regulate his conduct that they did not have previously. They will also have a significant financial incentive to use these tools appropriately, and Mr. Ghuman himself will also be subjected to the "pull of bail".
- [175] Thus, I do not agree that Mr. Ghuman's father and grandmother are unsuitable sureties or that their past actions demonstrate that they will be incapable of controlling him. To the contrary, my own impression of the parents, gleaned through the father's affidavit and the attendance of both parents throughout the course of the proceedings, is that they are both hardworking and responsible people who will take their role seriously. Their role in the proposed bail plan, as well as the role of the proposed employer, weighs in favour of release on the secondary ground.
- [176] They all, of course, will have to justify before a Justice of the Peace that they are indeed suitable sureties. On the evidence provided, it appears that they likely are and that, together with the availability of electronic monitoring and stringent terms of release, satisfies me that Mr. Ghuman has discharged his onus of establishing that his detention pending trial is not necessary on the secondary ground.

c. The Tertiary Ground (s. 515(10)(c))

- [177] The tertiary ground relates to public confidence in the administration of justice and how that may be impacted by an accused's release or detention. In this case, Mr. Ghuman is required to show cause why his detention is not necessary to maintain confidence in the administration of justice having regard to all the circumstances, including the apparent strength of the prosecution's case, the gravity of the offence, the circumstances surrounding the offence (including whether a firearm was used), and the potential for a lengthy term of imprisonment.

- [178] In *St-Cloud*, Mr. Justice Wagner (as he then was) noted in the opening paragraphs of the decision:
- [4] The ground for detention in s. 515(10)(c) Cr. C. requires that an effort be made to strike an "appropriate balance between the rights of the accused and the need to maintain justice in the community": *Hall*, at para. 41. In addition, judges must adopt the perspective of the public in determining whether detention is necessary. What the word "public" means is not always easy to understand. These difficulties no doubt explain why s. 515(10)(c) Cr. C. has generated so much discussion among legal experts and led to inconsistent results across the country.
- [5] In my opinion, the scope of s. 515(10)(c) Cr. C. has been unduly restricted by the courts in some cases. This ground for detention is not necessarily limited to exceptional circumstances, to the most heinous of crimes involving circumstances similar to those in *Hall*, or to certain classes of crimes. The interpretation of s. 515(10)(c) Cr. C. has also been truncated by a misunderstanding of the meaning of the word "public" used in the provision's French version (and implied in the word "confidence" used in the English version), which I will discuss below. For now, I will simply note that the "public" are reasonable, well-informed members of the community, but not legal experts with in-depth knowledge of our criminal justice system.
- [179] Mr. Justice Wagner went on to explain what was meant by the "reasonable, well-informed member of the community", writing:
- [79] Thus, a reasonable member of the public is familiar with the basics of the rule of law in our country and with the fundamental values of our criminal law, including those that are protected by the Charter. Such a person is undoubtedly aware of the importance of the presumption of innocence and the right to liberty in our society and knows that these are fundamental rights guaranteed by our Constitution. He or she also expects that someone charged with a crime will be tried within a reasonable period of time, and is aware of the adage that "justice delayed is justice denied": *R. v. Trout*, 2006 MBCA 96, 205 Man. R. (2d) 277, at para. 15. Finally, a reasonable member of the public knows that a criminal offence requires proof of culpable intent (*mens rea*) and that the purpose of certain defences is to show the absence of such intent. A well-known example of this type of defence is the mental disorder defence. The person contemplated by s. 515(10)(c) Cr. C. therefore understands that such a defence, once established, will enable an accused to avoid criminal responsibility. However, it would be going too far to expect the person in question to master all the subtleties of complex defences, especially where there is overwhelming evidence of the crime, the circumstances of the crime are heinous and the accused admits committing it.

[80] In short, the person in question in s. 515(10)(c) Cr.C. is a thoughtful person, not one who is prone to emotional reactions, whose knowledge of the circumstances of a case is inaccurate or who disagrees with our society's fundamental values. But he or she is not a legal expert familiar with all the basic principles of the criminal justice system, the elements of criminal offences or the subtleties of criminal intent and of the defences that are available to accused persons.

[180] Before summarizing the essential principles governing the tertiary ground analysis, Wagner J. went on to note that there are two ways that the public confidence in the administration of justice can be undermined:

[86] In short, there is not just one way to undermine public confidence in the administration of justice. It may be undermined not only if a justice declines to order the interim detention of an accused in circumstances that justify detention, but also if a justice orders detention where such a result is not justified.

[181] The essential elements of the s. 515(10)(c) analysis were enumerated in St-Cloud as follows:

[87] I would summarize the essential principles that must guide justices in applying s. 515(10)(c) Cr. C. as follows:

- Section 515(10)(c) Cr. C. does not create a residual ground for detention that applies only where the first two grounds for detention ((a) and (b)) are not satisfied. It is a distinct ground that itself provides a basis for ordering the pre-trial detention of an accused.
- Section 515(10)(c) Cr. C. must not be interpreted narrowly (or applied sparingly) and should not be applied only in rare cases or exceptional circumstances or only to certain types of crimes.
- The four circumstances listed in s. 515(10)(c) Cr. C. are not exhaustive.
- A court must not order detention automatically even where the four listed circumstances support such a result.
- The court must instead consider all the circumstances of each case, paying particular attention to the four listed circumstances.
- The question whether a crime is "unexplainable" or "unexplained" is not a criterion that should guide the analysis.
- No single circumstance is determinative. The justice must consider the combined effect of all the circumstances of each case to determine whether detention is justified.
- This involves balancing all the relevant circumstances. At the end of this balancing exercise, the ultimate question to be asked by the court is whether detention is necessary to maintain confidence in the administration of justice. This is the test to be met under s. 515(10)(c).

· To answer this question, the court must adopt the perspective of the "public", that is, the perspective of a reasonable person who is properly informed about the philosophy of the legislative provisions, Charter values and the actual circumstances of the case. However, this person is not a legal expert and is not able to appreciate the subtleties of the various defences that are available to the accused.

· This reasonable person's confidence in the administration of justice may be undermined not only if a court declines to order detention where detention is justified having regard to the circumstances of the case, but also if it orders detention where detention is not justified.

[182] Recently in *Myers*, Chief Justice Wagner reiterated that bail is the default presumption and pre-trial detention the last resort, no doubt in part due to the recognition that denial of bail creates serious impediments to the accused's ability to prepare their defence with their counsel which has a detrimental effect on the presumption of innocence: *R. v. Hall*, 2002 SCC 64 at paras. 59-60; *Pereira*, para. 45.

[183] I turn now to the application of these principles to the circumstances of the current case, which I acknowledge is the most challenging ground to consider in this case. As mandated by *Myers*, the overwhelming question before me on this s. 525 detention review hearing is whether the continued detention of the accused is justified under s. 515(10)(c) of the Code.

[184] I accept Judge Sutherland's findings and conclusions in respect of the enumerated factors contained in s. 515(10)(c). They all seemingly tend to favour detention. But as Trotter J. noted in *Fleming* at para. 21, the decision in *St-Cloud* rejected the previous argument that once the four factors under s. 515(10)(c) were engaged a detention order had to be made. As Trotter J. stated:

The object of the exercise under Section 515(10)(c) is to determine whether detention is necessary to maintain confidence in the administration of justice. The four enumerated factors feed into that determination, but they are not exhaustive. Writing for the court, Justice Wagner identified other factors that might be important. Adverting to Section 515.10(c)(iii), i.e. the circumstances surrounding the commission of the offence, he said the following:

"I would add that the personal circumstances of the accused, age, criminal record, physical and mental condition, membership in a criminal organization, may also be relevant. The justice might also consider the status of the victim and the impact on society of a crime committed against that person. In some cases, he or she might take into account the fact that the trial of the accused will be held at a much later date."

[185] I also accept Judge Sutherland's findings and conclusions in balancing the broader social context in which these offences occurred and the community concern about both the scourge of fentanyl as well as the increasing use of firearms in dangerous circumstances to settle rivalry and turf disputes. These factors also militate in favour of detention.

- [186] While the factors that Judge Sutherland considered tend to favour detention on the tertiary ground, the question is do they require detention? Other factors, which do not appear to have been considered by him, are to be balanced against the factors that favour continued detention. Those other factors include the efficacy of a credible release plan, electronic monitoring, and very stringent conditions of release, as well as Mr. Ghuman's young age and lack of criminal record. His involvement in an alleged criminal organization as the indictment charges and the evidence appears to disclose is very troubling, but as I noted under the secondary ground, that organization is effectively dismantled through the detention of most of the key players on these charges and related charges.
- [187] A further consideration that I take into account in the balancing exercise mandated by s. 515(10)(c) and the St-Cloud and Myers decisions and their progeny is that this case will not come on for trial for many, many months, if not over a year, given the magnitude of the anticipated pre-trial applications and the sheer length of time the trial itself may well take. As noted previously, the companion case of the Latimer indictment now has pre-trial applications set on a fairly onerous timeline through April 2021. The actual trial date has yet to be set and obviously will not occur before the summer of 2021. In this case, proportionality concerns are not really a factor here, as any sentence imposed if convicted will likely not have already been served fully by the pre-trial custody credit route: Myers, paras. 50-53.
- [188] Insofar as unreasonable delay is concerned, in my view, neither the Crown nor the defence, at this juncture, are responsible for any unreasonable delay in getting this case to trial. Both sides are working assiduously to get the matter set for trial. The reality of the situation is, however, that this is an exceptionally complicated case that has
- i. voluminous electronic disclosure - approximately 130,000 files - for the defence to work through,
 - ii. hundreds of intercepted communications that had to be translated and transcribed and now must be carefully reviewed by the defence,
 - iii. approximately 60 prior judicial authorizations preceding the issuance of the Part VI wiretap authorization, many of which will be challenged as will the Part VI authorization itself,
 - iv. anticipated constitutional challenges to at least two statutes, and
 - v. multiple accused (five) being prosecuted by means of a direct indictment with nine counts that include criminal organization charges and a conspiracy charge.
- [189] Moreover, defence counsel all have other commitments beyond this indictment. Organizing schedules to run the pre-trial applications and the trial in a timely manner no doubt will be a daunting task for all parties.
- [190] Finally, in balancing all these factors, it is important to recall what a reasonable member of the public means. As Trotter J.A. noted in Papasotiriou:

- [45] Public confidence is to be measured by the standard of a reasonable member of the public. As Moldaver J. said in *Oland*, at para. 47: "This person is someone who is thoughtful, dispassionate, informed of the circumstances of the case and respectful of society's fundamental values." See also *R. v. St-Cloud*, 2015 SCC 27, [2015] 2 S.C.R. 328, at paras. 74-80.
- [191] To borrow from Trotter J.A.'s observations in *Papasotiriou*, a reasonable member of the public - properly informed about the philosophy of the legislative provisions of the Code, Charter values, the presumption of innocence, the right to make full answer and defence and meaningfully prepare for trial (something much more effectively accomplished from out of custody than when detained in custody), the actual circumstances of the case, and the fact that Mr. Ghuman is not simply being "turned loose" on society without precautions or safeguards while his case works its way through the trial process - would realize that Mr. Ghuman's release is not contrary to the interests of justice nor is it necessary to maintain confidence in the administration of justice.
- [192] Indeed, on the point of simply being "turned loose", to the contrary, Mr. Ghuman will be released on very stringent conditions, including house arrest, non-association and non-communication clauses, and other restrictive terms, all supported by a significant surety bail with proposed sureties prepared to monitor his behaviour.
- [193] In my view, the tertiary ground factors in this case are finely balanced. It is a case where reasonable people can disagree. However, when all the circumstances are balanced dispassionately and objectively, I find that Mr. Ghuman has satisfied the onus placed upon him in respect of the tertiary ground.
- [194] In conclusion, it is my view that a reasonable member of the public would accept that, in all of the circumstances of this case, Mr. Ghuman's release pending his trial is consistent with the just and proper functioning of our justice system.

DISPOSITION AND RELEASE ORDER

- [195] For the reasons provided, I am satisfied that Kristoffer Ghuman has met his onus of showing that his continued detention in custody is not necessary on the secondary or tertiary grounds.
- [196] Pursuant to s. 515(13) of the Code, I have considered the safety and security of every victim of the offence when making this order.
- [197] Accordingly, I order Kristoffer Ghuman's release on a \$300,000 recognizance, without deposit and with one or more sureties, on the following terms:
- a. You are to keep the peace and be of good behaviour.

- b. Within 72 hours of your release, you must report in person to a bail supervisor at 275 East Cordova Street, Vancouver, British Columbia. After that, you must report where and as directed by the bail supervisor, but no less than once per week. All reporting shall be in person.
- c. You must reside at [address redacted] Vancouver, British Columbia and not change your residence without the approval of this Court.
- d. On your first attendance at the bail supervisor, you must inform the bail supervisor of your residential address of [address redacted] Vancouver, British Columbia as well as all phone numbers at which you may be contacted during the day and night hours. You must also identify, for your bail supervisor, the phone number associated with your personal phone, and you must not change that number without the advance written permission of your bail supervisor.
- e. You are to possess only one cellular telephone, and it must be under the number provided to your bail supervisor. You are to surrender all other cellular phones that you own or possess to the Vancouver Police Department and you are not to purchase any new cellphone or device for the purposes of communications.
- f. Upon receipt, you are to provide your bail supervisor with a copy of any monthly statement you receive in relation to the use of this cellular telephone, including any portion of the statement showing usage and the calls made and received by you.
- g. You are not to possess any PGP encrypted mobile devices.
- h. While residing at [address redacted] Vancouver or any other residence approved by this Court, you must be in your residence 24 hours per day. This condition is to be electronically supervised.
- i. You must not leave your residence unless for personal medical emergencies or you are under the supervision of one or more of your parents, [name redacted] or [name redacted], or your grandmother, [name redacted], or your employer, [name redacted]. You may leave your residence under the supervision of one or more of your parents, your grandmother, or your employer, [name redacted], solely for the purpose of employment, reporting to your bail supervisor, attending court as required, or meeting with legal counsel. You may also leave your residence with the advance written permission of your bail supervisor, so long as you are accompanied by one of your parents or your grandmother. If your bail supervisor provides you with advance written permission, you must comply with any conditions set by the bail supervisor. This condition is to be electronically supervised.
- j. You must present yourself immediately at the door to your residence or answer your personal cellular telephone when your bail supervisor, staff of the BC Corrections Branch, or any other peace officer attends at the residence or calls to check on compliance with your house arrest and/or electronic supervision.

- k. You are not to be in any private motor vehicle without the presence of the registered owner.
- l. You must not leave the province of British Columbia.
- m. Within 72 hours of your release from custody, you must surrender to the Vancouver Supreme Court Registry all of your travel documents, including any passport, Nexus card, travel visa, or enhanced driver's license, and thereafter, you must not obtain any further travel documents.
- n. You must carry a copy of this recognizance, as well as any written permission provided by your bail supervisor, at all times when you are outside of your residence. If a peace officer stops you for any reason, you must provide the peace officer with a copy of those documents upon request.
- o. You must not possess or consume drugs except in accordance with a medical prescription.
- p. You must not possess drug paraphernalia that is suitable for the sale or consumption of drugs that has not been prescribed for you.
- q. You must have no contact or communication, directly or indirectly, including participating in any telephone calls or telephone conferencing with [list of names provided by counsel] or any person known to you to be associated with the Red Scorpion gang, the Brothers Keepers or any other criminal gang, except as may be necessary and incidental to making full answer and defence and, where such contact is necessary, it must be conducted through your legal counsel.
- r. You must have no contact or communication, directly or indirectly, with any person housed in a Canadian jail, pre-trial centre, or correctional institution, except as may be necessary and incidental to making full answer and defence and, where such contact is necessary, it must be conducted through your legal counsel.
- s. You are prohibited from possessing a firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, or explosive substance, or all of those things, until you are dealt with according to law.
- t. You are prohibited from possessing any weapon as defined in the Criminal Code of Canada.
- u. You are prohibited from possessing any replica firearms or pellet guns of any type.
- v. If you have any such items in your possession, prior to or immediately upon your release from custody, you must contact the Vancouver Police Department, or have someone contact the Vancouver Police Department on your behalf, and make arrangements with a peace officer for the surrender of those items in compliance with the terms of this order.

- w. You must comply with all of the rules of electronic supervision as explained to you upon your release from custody. You must also comply with the electronic supervision regulations as explained to you, including the wearing of, and care for, the electronic supervision equipment.

[198] Anything else counsel?

[199] Mr. Ghuman is going to need to perfect the bail, and he will be in custody until that occurs. Is it necessary for me to direct that the non-communication order attached to his current custodial status remain in existence until released and the recognizance takes effect?

[200] Pursuant to s. 516(2) of the Code, I order that the non-communication terms attached to Mr. Ghuman's current custodial status remain in place, unless and until the bail recognizance is perfected and he is released from custody.

[201] Mr. Ghuman, it should be clear from my reasons that I consider this case to be a close call for release, particularly on the tertiary ground. It is my intention and hope that the stringent bail conditions I have placed upon you for your release will be successful in maintaining public confidence in the administration of justice in the circumstances of this case. It may go without saying, but I am going to say it anyway - Mr. Ghuman, it is my expectation that your compliance with this order will be flawless, indeed perfect. While it would undoubtedly be for someone else to decide, if there is a breach of any of these conditions, in any manner whatsoever, I would fully expect your bail to be revoked under s. 524 of the Code and that you would be detained in custody pending trial. I also expect that if your parents and sureties have even a scintilla of a belief that you are about to breach any conditions of your bail they will immediately report you to the police and render you into custody forthwith.

[202] I wish to thank counsel for their very detailed and careful submissions in this case.

"Ker J."

[1] These submissions were made on June 4, 2019 after the afternoon break.

[2] These submissions were made on July 29, 2019 during the afternoon portion of the hearing.

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