

CANADA / JUDGMENT

R. v. Hasell

2025 BCSC 142

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 142 R. v. Hasell

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Hasell,

2025 BCSC 142

Date: 20250114

Docket: 37049-1-W

Registry: Vancouver

Rex

v.

Michael Joseph Hasell

Before: The Honourable Justice Mayer

Oral Reasons for Judgment

Re s. 525 detention review hearing

Counsel for the Crown:

S. Whyte

Counsel for the Accused:

K.K. Chase

Place and Date of Trial/Hearing:

Abbotsford, B.C.

January 8, 2025

Place and Date of Judgment:

Abbotsford, B.C.

January 14, 2025

- [1] THE COURT: The accused, Michael Joseph Hasell, appeared before me in his wheelchair from Surrey Pretrial Services Centre on January 8, 2025, for a detention review hearing pursuant to s. 525 of the Criminal Code, R.S.C. 1985 c. C-46. I now provide my reasons with respect to whether Mr. Hasell's continued detention while awaiting trial is warranted.
- [2] At this time, Mr. Hasell stands, under a four-count indictment, with, on July 19, 2024, in Mission, B.C., assault of Constable Jordan Scott while carrying or threatening to use a weapon, contrary to ss. 270 and 270.01(1)(a) of the Criminal Code; assault of Timothy Raw, while carrying or threatening to use a weapon, contrary to s. 267(a) of the Criminal Code; operating a conveyance in a manner dangerous to the public, contrary to s. 320.13(1) of the Criminal Code; and failing to stop a motor vehicle while being pursued by police, contrary to s. 320.17 of the Criminal Code.
- [3] The Crown advises that a five-day trial is in the process of being set at this time.
- [4] With respect to circumstances of the alleged offences, on September 9, 2024, Mr. Hasell appeared before Judge Mengerling seeking judicial interim release. In oral reasons rendered the same day, Judge Mengerling denied release on the secondary and tertiary grounds set out in s. 515(10) of the Criminal Code, being to ensure protection or safety of the public and to maintain confidence in the administration of justice. The circumstances of the alleged offences were summarized in Judge Mengerling's reasons, which I will review now, starting at paragraph 6:
- [6] It turns out that July 19 the Mission RCMP received a call of a theft in progress. It is alleged that Mr. Hasell and a female friend had been to Mission City Motors shop the day before, getting some help with a flat tire or something. They returned the next day for a quote. The lady that was asked to provide the quote went into the back. At the end of the day, some car keys were missing for a couple of vehicles that were on the lot. It is alleged that Mr. Hasell and the same female drove by later, clicking the key fob, presumably to see which vehicle would light up.
- [7] By then the owner of the Mission City Motors shop, Mr. Timothy Raw in Count 2, was already in the process of removing the tires, so the vehicles could not be stolen overnight, until they could track down those keys. From there, things kind of went sideways: it is alleged that Mr. Hasell, who had got into a Chevy Silverado and was hiding, was approached by Mr. Raw and some other people to get these keys back. They tried to block him in with Mr. Raw's vehicle. Police were arriving at approximately the same time.

- [8] The video shows the vehicle Mr. Hasell is alleged to have been driving suddenly pinning it forward and hitting Timothy Raw, sending him flying. It comes to a stop and then the two police vehicles approach from the front and do a front pin. Eventually Mr. Hasell is tasered a couple of times; then he pins it again and cruises past Mr. Raw's pickup truck on the passenger side, clipping it I am told - sideswiping it. The video shows people, including Cst. Scott and multiple civilians, fleeing for their lives while the truck hurtles out of there with little to no regard for the people that were on foot. It is remarkable that nobody else was hit. It is remarkable that Mr. Raw was not killed.
- [9] A helicopter goes mobile, and we watched a 10-minute clip of Air 1 following Mr. Hasell as he went through some farmland and then into Chilliwack through a residential area. It is partially narrated but we can also see some vehicles evading the fleeing vehicle. It appears to be going faster than other vehicles. He passes on a double solid line, he is going over the fog line, he passes on a corner on a double line. There is an unsafe passage on the right lane shoulder at about 105 kilometres an hour. He almost has a head-on passing on a double solid in a residential area. The urgency with which a person watches the flight unfolding is shocking and the necessity of the police stopping that vehicle before somebody gets killed is palpable. He blows through a four-way stop. The police say that he is doing 145 to 150 kilometres per hour; it is unclear whether it was actually at that time or before, but nevertheless he blew through a four-way stop on a city street.
- [10] Finally, mercifully, pulls into a parking lot in front of an apartment building and gets out. The police arrive, box in the truck and they arrest him on the other side of the building. He is taken down, during which, I am told, his leg was broken: he had previously broken it as a young man and it had never really properly healed so he sustained some injury in that. The arresting officers described him as being combative and resistant, curling his arms up and kicking. He got tasered again.
- [11] A search of the vehicle, characterized as incidental to arrest, found a loaded sawed-off shotgun on the backseat under the centre console, along with some ammunition; and a bag of meth on the front passenger seat.
- [5] I note that Mr. Hasell has not been charged with weapons or drug possession offences.

Circumstances of Mr. Hasell

- [6] With respect to Mr. Hasell's circumstances, Mr. Hasell is 36 years old. He has a Grade 7 education and lives in the Fraser Valley. He has three children, two living in Alberta and one living in Campbell River. In 2018, he broke his back and legs. His leg injury was aggravated during his most recent arrest, requiring him to use a wheelchair.

- [7] Mr. Hasell's counsel advises that he has a history of substance abuse, including having used methamphetamines since he was 13. He has a poor relationship with his father, who his counsel advises physically and sexually abused him. As well, his mother has Stage 4 cancer and may not live beyond this year.
- [8] Mr. Hasell has an extensive criminal record going back to 2007, which was summarized by Judge Mengerling as follows at paragraph 4 of her reasons:
- [4] Mr. Hasell has, by my quick count on his JUSTIN Conviction List, 64 convictions in the last 17 years since his first in 2007 at the age of 19: lots of violent offences; some property offences; 28 breaches which are breaches of release orders, probation, 810s as well as CSOs. It seems like there have been not too many forms of orders that have been imposed on him that he has not breached. He has an impaired; he falsely reported an offence; he has got three convictions for flight; a couple of drive while suspended; a couple of escape lawful custodies and the dangerous operation that I have already referred to.
- [5] He had just come off of probation perhaps in the six months preceding these allegations, when he was subject to a 16-month probation order for a theft of motor vehicle which would have been conducted while he was prohibited from driving. Of course, the December 11, 2020 dangerous operation was committed while he was prohibited, and in fact, within three weeks of his having been prohibited it looks like. Those are historical ones on his JUSTIN Conviction List so that is sort of the background.
- [9] Mr. Hasell submits that his criminal history results from personal trauma and related relapses into drug use. This includes events in 2009 when he lost his son, and recently just prior to the events which currently find him in custody when his best friend died.
- [10] Now, with respect to the proposed release plan, Mr. Hasell proposes that he be released on various conditions. He submits that these conditions and, considering his current physical condition, sufficiently mitigate the risk of him reoffending. He proposes that typical bail conditions be imposed, including that he keep the peace and be of good behaviour, report regularly to his bail supervisor, and that he be prohibited from possessing weapons. In addition, he proposes the following: that he pay a \$2,000 deposit, \$1,000 more than he had proposed when he appeared before Judge Mengerling; reside seven days a week at the Night & Day Recovery centre in Surrey, subject to specified exemptions; be subject to electronic monitoring to be fitted on his release from custody; and that he be prohibited from going within 100 metres of Mr. Raw. He submits that while at the Night & Day Recovery centre, he will undergo substance abuse treatment, which he says is the underlying cause of his criminal behaviour.
- [11] Mr. Hasell submits that his activities since his most recent arrest demonstrate that his behaviour is improving. This includes attending at group and individual counselling sessions, and the Inside Out Prison Exchange Program run by Kwantlen Polytechnic University, where he obtained good grades.

- [12] Mr. Hasell's mother has provided a letter of support in Mr. Hasell's judicial interim release in which she expresses a desire to spend more time with him before she dies, and her view that Mr. Hasell's recent criminal conduct results from a drug-use relapse, and that he will benefit from substance abuse counselling.

Position of the Crown

- [13] The Crown is opposed to Mr. Hasell's judicial interim release and submits that his continued detention remains justified under the secondary and tertiary grounds. They submit that his criminal history is significant, including 16 incidents of violence, a number of theft and property offences, a number of driving offences, and a number of breaches of release conditions, probation orders, and undertakings given to police.
- [14] The Crown submits that the TSR report (technical suitability report) obtained for Mr. Hasell does not support his release, and that his proposed plan is not materially different than that which was put before Judge Mengerling, who found that it did not sufficiently reduce the risk of Mr. Hasell reoffending if released.

Legal Principles

- [15] A summary of relevant legal principles in a s. 525 review were succinctly set out by Justice Riley in *R. v. Leppington*, 2020 BCSC 546, starting at paragraph 18:
- [18] The purpose of the 90 day bail review provision in s. 525 of the Criminal Code is to prevent accused persons from languishing in custody pending trial and to ensure matters are tried promptly: *Myers* at para. 24.
- [19] The reviewing judge is expected to show deference to any findings of fact made by the first instance decision maker unless there is some demonstrated basis for reconsidering them: *Myers* at para. 47.
- [20] The overarching question for the reviewing judge under s. 525 of the Criminal Code is whether the continued detention of the accused is justified having regard to the grounds set out in s. 515(10): *Myers* at para. 46. Section 515(10) sets out three different grounds for detention, which I would briefly summarize as: (1) to ensure attendance at trial per s. 515(10)(a), (2) to protect safety of the public as contemplated in s. 515(10)(b), and (3) to maintain confidence in the justice system per s. 515(10)(c).
- [21] In considering the question of judicial interim release, the court must bear in mind that throughout the process the accused is presumed innocent unless and until there has been a trial leading to a finding of guilt based on proof beyond a reasonable doubt, or a guilty plea: *Antic* at para. 1, 66, 67(a); *Myers* at para. 1, 59.

- [22] The default position is that the accused should be released at the earliest opportunity and on the least onerous terms available in the circumstances: Myers at para. 1; Antic at para. 29, 67(d). Detention in custody is the exception and should be regarded as the option of last resort: Myers at para. 67.
- [23] In deciding the overarching question of whether continued detention is justified under the grounds set out in s. 515(10), the reviewing judge should consider (a) any new evidence or change in circumstance, (b) impact of the passage of time and any unreasonable delay on the proportionality of detention, and (c) the rationale offered for the initial detention: Myers at para. 63.

Analysis

New Evidence or Change in Circumstance

- [16] During submissions, Mr. Hasell did not specify the changes in circumstances since his judicial interim release was rejected by Judge Mengerling. Arguably, his proposal to increase the amount of his cash deposit from \$1,000 to \$2,000 represents a change, but I am not satisfied that it is material. As well, arguably, Mr. Hasell's completion of some counselling, a total of four sessions, and in-custody educational programs through Kwantlen Polytechnic constitutes a change in circumstance, but again I am not satisfied that these activities materially reduce the risk of Mr. Hasell reoffending if released, given his admitted underlying drug addiction.

Impact of the passage of time and any unreasonable delay on the proportionality of detention

- [17] Mr. Hasell has been in custody for approximately 173 days, or had been at the time he appeared before me on this application, which, with enhanced credit, is equivalent to 260 days' time served. The Crown submits that given his criminal history and the circumstances of the offences for which he has been charged, that the Crown will be seeking federal time, that is a sentence of two years or more. The Crown submits, from a proportionality standpoint, that it is unlikely that Mr. Hasell's pretrial custody, even with enhanced credit, will exceed a potential sentence.

The rationale offered for the initial detention

- [18] As I mentioned earlier, Judge Mengerling detained Mr. Hasell under the secondary ground, being the risk that he would reoffend if released, and the tertiary ground, being, given the circumstances of the alleged offences and his criminal history, that his continued detention is required to maintain confidence in the administration of justice.

- [19] The analytical process for considering detention under the secondary grounds comes from *R. v. Myers*, 2019 SCC 18, and earlier decisions including the oft-cited case of *R. v. Abdel-Rahman*, 2010 BCSC 189, which in turn derives from an earlier case called *R. v. Wilcox*, 2005 BCSC 1785.
- [20] This process includes considering the following: whether there is a risk that the accused will either commit an offence or will interfere with the administration of justice if released; secondly, is the risk such a magnitude that it amounts to a substantial likelihood; and third, does the risk constitute a danger to public safety if the accused is released; and fourth, is the detention of the accused necessary because the identified risk of offending and danger to the public is not one that can be satisfactorily attenuated by the imposition of appropriate conditions.
- [21] In my view, the above factors applied to the circumstances of Mr. Hasell justify his continued detention under the secondary ground.
- [22] The allegations of criminal conduct leading to Mr. Hasell's arrest on July 19, 2024, are made more serious, in that it is alleged he sought to evade arrest and endangered the public while doing so. As well, as the Crown submits, this is not his first charge for a vehicle-related offence.
- [23] The risk of reoffending is demonstrated by Mr. Hasell's extensive criminal record going back to 2007. I am aware that there appears to have been a hiatus in his criminal conduct for a few years prior to 2024, but Mr. Hasell's own submission suggests that he is at risk of reoffending if he experiences a further triggering event. In considering continued detention under the secondary ground, protection of the public is the primary consideration.
- [24] In my view, Mr. Hasell has not provided a release plan which suitably addresses the risk that he may reoffend. Given that Mr. Hasell has a history of failing to adhere to previous electronic monitoring requirements, which the evidence set out in the TSR provided in this application satisfies me is the case, I am not satisfied that the imposition of this requirement would prevent Mr. Hasell from leaving the Night & Day facility if he relapses.
- [25] I find that there is a substantial risk that, if released, Mr. Hasell will commit an offence which may put the public at risk, which is not attenuated by the proposed release plan.
- [26] With respect to the tertiary ground, I agree with the finding of Judge Mengerling that the Crown appears to have a strong case against Mr. Hasell. As well, I agree that the offences in issue are serious including, in particular, the vehicular assault of Mr. Raw and the high-speed and dangerous flight from police along public roads. Mr. Hasell may be subject to a lengthy sentence which, assuming that his trial proceeds relatively quickly, may exceed any credit for pretrial custody.
- [27] Although I am sympathetic to Mr. Hasell's personal circumstances, including his current use of a wheelchair and his mother's poor health, this does not change my views with respect to justification for his continued detention under the tertiary grounds. Mr. Hasell's release,

given the number and frequency of his criminal offences and in particular the vehicle and property offences and the potential risk that he might reoffend, would, in my view, be of great concern to the general public. I am satisfied that his continued detention is also warranted under the tertiary ground; that is, to maintain public confidence in the justice system.

[28] In conclusion, Mr. Hasell's application for judicial interim release under s. 525 of the Criminal Code is denied on the basis that his continued detention is justified under the secondary and tertiary grounds set out in s. 515(10) of the Criminal Code.

"Mayer J."

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