
CANADA / JUDGMENT

R. v. Kang

2019 BCSC 1711

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Supreme Court of British Columbia

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2019 BCSC 1711 R. v. Kang

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Kang,

2019 BCSC 1711

Date: 20190912

Docket: 27786

Registry: Vancouver

Regina

v.

Gary Kang

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 judicial interim release.

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

Before: The Honourable Madam Justice Ker

Oral Reasons for Judgment - Judicial Interim Release

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Place and Date of Hearing:

Vancouver, B.C.

June 17, 19-21, 2019

August 7-8, 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, Gary Kang, is before the Court for a decision on his application for judicial interim release pursuant to s. 515 of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. He has been in custody since his arrest on August 8, 2018. Following his arrest, Gary Kang consented to remain in custody. His judicial interim release hearing was conducted before me over five and a half days.
- [4] Gary Kang is charged with criminal organization offences and also charged with distributing Schedule I controlled substances. As such, Mr. Kang is to be detained unless he shows cause why his detention is not justified within the meaning of s. 515(10) of the Code: s. 515(6)(a)(i) and (6)(d) of the Code. Thus, Mr. Kang is in a "reverse onus" situation and assumes the complete burden of proof in this respect: *R. v. Rondeau* (1996), 108 C.C.C. (3d) 474 (Que. C.A.) at 478.
- [5] The charges Mr. Kang 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 "take-down" operation more than a year later resulting in the arrest of many targets.
- [6] Mr. Kang now seeks his release on bail while awaiting trial. Three of his co-accused, his older brother Sameet (Sam) Kang, Manveer Braich, and Kristoffer Ghuman, had judicial interim release hearings in the Provincial Court of British Columbia throughout the fall of 2018. All three men were detained. 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. Kristoffer Ghuman was detained on the tertiary ground by the Honourable Judge Sutherland on December 20, 2018. The fourth co-accused, Jitesh Vagh, has, thus far, consented to remain in custody.

- [7] When Gary Kang 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.
- [8] In January 2019, the Crown filed three direct indictments, breaking the group of 18 accused into different groups. Five of the 18 accused now form the Kang indictment that Gary Kang is charged on (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). Trial dates have yet to be set on all three indictments.
- [9] The two accused charged on the second Kang indictment are Mr. Kang's parents. They face one count that between February 14 and August 7, 2018 they did knowingly participate in or contribute to the activities of a criminal organization. The substance of the charges against Mr. Kang's parents are that they laundered the proceeds of their sons' drug trafficking business through their family business to make the drug proceeds appear legitimate. They are also said to have put their sons on the payroll of the business when required.
- [10] 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 to one year imprisonment by Judge Harris in the Provincial Court on April 1, 2019. 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.
- [11] 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.
- [12] 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.
- [13] Mr. Kang 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 dires may well take the same amount of time as the Latimer indictment's, perhaps even longer.

[14] Prior to the setting of the Latimer indictment pre-trial applications, the Crown estimated the pre-trial applications in this case would take about six months and the trial itself a further six months. 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.

[15] There are nine counts on the Kang indictment. Gary Kang is charged on six of the counts, along with other members of the Kang group.

[16] Specifically, Gary Kang and Sam Kang are jointly charged that:

Count 1: between May 4, 2017 and August 8, 2018, in various locations around the Lower Mainland and elsewhere in British Columbia, they were members of a criminal organization and they knowingly instructed others to traffic in a variety of controlled substances for the benefit of the criminal organization contrary to ss 5(1) of the Controlled Drugs and Substances Act [CDSA] and 467.13(1) of the Code;

[17] Gary Kang is also jointly 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 or in association with a criminal organization contrary to ss. 5(1) of the 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 contrary to s. 5(1) of the CDSA.

[18] Gary Kang is also charged on two counts of the indictment with only one co-accused, Kristoffer Ghuman, 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] Counts 1 through 5 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 pursuant to a general warrant executed on May 25, 2018. This location is alleged to be one of several "stash sites" that the Kang group used to conduct its drug business.
- [20] The alleged criminal organization, known as "the Kang group" is said to be headed by Gary Kang's older brother, Sam. It is alleged that throughout the course of the investigation, the Kang group's drug business was run by both Sam Kang from inside prison walls while serving a sentence for a drug related offence and his brothers, Gary Kang and Randy Kang, who were not imprisoned at the time.
- [21] The Crown says the offences covered by the indictment in this case 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 stash sites in May 2018 also 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, Gary Kang is likely to receive a significant penitentiary sentence.
- [22] 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.
- [23] 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.
- [24] 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.
- [25] At this bail hearing, a voluminous amount of material was filed in the form of exhibits, including timelines (Exhibit 1), transcript excerpts of intercepted conversations (Exhibit 2), photographs (Exhibit 3), prior recognizances on other matters (Exhibits 6-8), an affidavit from a surety and letters of reference in support of Gary Kang's release (Exhibit 5), newspaper articles (Exhibit 10), and a Technical Suitability Report (Exhibit 11) as well as a number of authorities. Counsel adroitly and helpfully reviewed these materials in their comprehensive and detailed submissions on this hearing.

[26] 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 at this hearing in coming to my conclusion on this judicial interim release hearing.

CIRCUMSTANCES OF THE ALLEGED OFFENCES

[27] 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 sentiment 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".

[28] 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 drug products around the province and supplied a number of the Kang group's dial-a-dope lines that were operated by recruits, some as young as 15 years of age.

[29] The leaders of the Kang group were believed to be three brothers - Sam Kang, Randy Kang and Gary Kang.

[30] On May 1, 2017, Sam Kang was sentenced to two years and seven months' imprisonment for possession for the purpose of trafficking. He served his sentence at Kent Institution and the Fraser Regional Correctional Centre.

[31] Project Territory was initiated at this time and carried on from May 2017 through to the take down 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 production orders ceased);
 - Key fob records for the stash sites (initially obtained through production orders until November 2017 when the practice of seeking production orders ceased);
 - Telephone conversations intercepted at the detention and jail centres where Sam Kang was located (obtained 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 house locations that were the subject of general search warrants (May 5, 2018 at the Tomicki Avenue stash house in Richmond; May 25, 2018 at the Royal Avenue stash house in Burnaby; May 31, 2018 and June 7, 2018 at the 33rd Avenue stash house in Surrey); and,
 - Search warrants issued June 22, 2018 for four different locations - two of the stash houses being Tomicki and 33rd Avenue and two Vancouver residences being Alberni Street (the residence of Gary Kang) and Quebec Street (the residence of co-accused Jitesh Vagh).
- a. The allegations relating to the drug trafficking business of the Kang group and Gary Kang's alleged role
- [32] In their thorough reasons for judgment detaining three of the co-accused, three different Provincial Court Judges have outlined the circumstances behind both the structure of the Kang group and the alleged involvement of the co-accused within the group. They have also referenced the broader context of violence occurring within the Lower Mainland as various criminal organizations jockey for control of drug lines and engage in retaliatory hits on rivals: R. v. Braich (October 12, 2018) Vancouver Registry 247234 (BCPC), October 12, 2018 at paras. 7-40; R. v. Sameet Kang (December 12, 2018) Vancouver Registry 247234 (BCPC) at paras. 4-15; R. v. Ghuman (December 20, 2018) Vancouver Registry 247234 (BCPC) at paras. 9-44. Their reasons all assist in informing my assessment of the circumstances of the offence.
- [33] Briefly, Project Territory was an investigation by the VPD into the drug trafficking activities and associated violence of the Kang Group, led by three brothers - Randy Kang, Sam Kang and Gary Kang. The investigation began in May 2017, shortly after Sam Kang was sentenced to imprisonment for drug offences. While Sam Kang was in jail, his brothers carried on with the drug trafficking business.

- [34] 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 is alleged to have continued to run the drug business, in consultation with and at the direction of his imprisoned brother, Sam. There are numerous intercepted conversations between the two Kang brothers over the course of the investigation that provide evidence in support of this contention.
- [35] Through surveillance, the police identified Manveer Braich as one of the members of the Kang group. Observations of his movements led the police 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 to supply various drug lines controlled by the Kang group.
- [36] 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 suspicious bag exchanges near these stash sites. These individuals were later arrested and the ensuing vehicle searches resulted in seizures of bulk quantities of cocaine and fentanyl.
- [37] 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).
- [38] For the purposes of this bail hearing the main stash sites in issue have been referred to as "Tomicki" (located on Tomicki Ave in Richmond); "33rd Avenue" (located on 33rd Avenue in Surrey) and "Royal Oak" (located on Royal Oak Avenue in Burnaby).
- [39] According to the timeline (Exhibit 1) provided by the Crown on this bail hearing, Gary Kang was observed attending at only three of the seven alleged stash site location and only on one occasion each time - Bidwell Street on September 11, 2017, Richards Street on December 8, 2017, and Tomicki Avenue on January 12, 2018. His role, as alleged by the Crown, was more in the vein of leadership; he is alleged to have exercised managerial oversight of the group's activities rather than mixing drugs or moving them from the stash houses to supply the drug lines.

- [40] Counts 5 and 6 of the indictment charge Mr. Kang with possessing cocaine for the purpose of trafficking cocaine and possession of a loaded restricted firearm. As I understood Crown's submissions, these two counts relate to the activities around the Royal Oak stash site. The timeline does not provide any outline of evidence that supports the contention that Mr. Kang was observed attending this location. That, however, is not inconsistent with the oversight role alleged by the Crown.
- [41] 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 a greater understanding of and evidence as to the workings and reach of the Kang group's drug trafficking enterprise.
- [42] 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.
- [43] The dial-a-dope drug lines were 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.
- [44] Other intercepted conversations, largely between Sam Kang and Gary Kang, provide evidence that, on February 27, 2018, Gary Kang was concerned that there was animosity from Kyle Latimer and that Kyle Latimer's drug prices were too high.
- [45] Other conversations between the two brothers provide evidence of a growing rift between Gary Kang and Manveer Braich that Sam Kang tried to mediate, impressing on his younger brother the value of Mr. Braich as an asset to their organization.
- [46] As well, intercepted conversations and communications provide evidence of Gary Kang expressing concern to Sam Kang and other members of the group about how much money he was expending in providing funds to associates detained in custody and for legal fees, bail, and the like.
- [47] In other intercepted conversations and communications, Gary Kang is overheard discussing the nature and potency of the controlled substances that the group is dealing with including fentanyl, carfentanil, and powdered cocaine.

- [48] A number of intercepted conversations between Sam Kang and Gary Kang that the Crown will rely upon to establish Gary Kang's role and the breadth of the group's activities include conversations about taking violent actions against rivals within the detention centres and taking precautions against detection by the police.
- [49] 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.
- [50] 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.
- [51] 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 on Quebec Street in Vancouver was a meeting place for the group, equipped with a money counter and ledger. Numerous conversations throughout the duration of the wiretap were intercepted inside this residence. They provide insight into how the Kang group's business was operated.
- [52] Gary Kang was present for many of the intercepted communications that occurred at Jitesh Vagh's residence and participated in the conversations about how the Kang group's business is run, how the "office" is supplied, and other topics related to the enterprise.
- [53] In some footage from covert video probes installed in two of the stash sites, Mr. Vagh and Mr. Braich are depicted wearing protective gear and engaged in the mixing of drugs - believed to be fentanyl.
- [54] During the course of the Project Territory investigation, police 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, as outlined in the timeline, 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.

[55] 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 drug production and a trafficking operation.

- [56] Nearly a kilogram of fentanyl and smaller amounts of other drugs were found during the covert searches of 33rd Avenue.
- [57] 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.
- [58] On June 22, 2018, search warrants were executed at two of the Kang group stash sites (Tomicki Avenue and 33rd Avenue) as well as two residences (one associated to Gary Kang and one to Jitesh Vagh).
- [59] Seized from Gary Kang's residence was a score sheet, radio jammer, contact list, documents in Gary Kang's name, and photos of associates.
- [60] 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.
- [61] 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 bail hearing.
- [62] 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

[63] 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

[64] 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.

[65] It would be fair to say that the case against Gary Kang turns almost entirely on the intercepted conversations between his brother, himself, the co-accused, and others. The totality of the intercepted conversations are said to provide evidence that Gary Kang was involved in instructing others on how much product needed to be moved a week, pricing the product, recruitment initiatives, arranging to have associates pass out samples of their product, contracting of drug lines, taking care of funding the canteen accounts of jailed associates, paying legal fees for jailed associates, discussing arranging the assaults of rivals who were in custody, and other related matters surrounding the Kang group's business operations. The intercepted conversations are also said to provide evidence that Gary Kang had knowledge about the nature of fentanyl and carfentanyl.

b. The allegations surrounding the firearms charge

[66] Count 6 of the indictment charges Kristoffer 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 was the firearm that the police removed, examined, disabled, and returned to Royal Oak during the hours of that general warrant attendance. It is the firearm that the Crown asserts was removed by Mr. Ghuman when he attended 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. Mr. Kang's connection to this firearm is not entirely clear from the submissions made at this bail hearing, and the Crown appeared to acknowledge that this was not the strongest count that Mr. Kang is facing.

[67] Indeed, the timeline does not have Mr. Kang entering this stash site. The case for this count is based entirely on circumstantial evidence. My preliminary assessment of this count is that it is far from the strongest charge that the Crown has against Gary Kang. No doubt 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 and that Gary Kang was not observed attending this suite.

- c. The uncharged allegations of murders and street violence related to the activities of the Kang group, their associates, and rival groups

[68] 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 and the continuing incidents of retaliatory violence since the August 8, 2018 arrests in this case. A number of incidents were of particular concern.

[69] First, on August 6, 2014, the Kang family home in East Vancouver was the subject of a drive-by shooting. Randy and Gary Kang spoke to the police at the time of the incident, acknowledging the shooting, but were otherwise uncooperative with the police. This incident caused the family to vacate the residence and move to another property. The home was rented out to tenants.

[70] On August 21, 2017, the residence was the subject of a second drive-by shooting that targeted the main and upper floor of the residence. The basement suite was occupied by tenants at this time, but they were not harmed.

[71] Second, the smashed window and then subsequent drive-by shooting at the Ghuman home on March 18 and May 6, 2017, respectively.

[72] Third, the murder of Randy Kang and shooting of Gary Kang on October 27, 2017, which the Kang group is alleged to believe to be the work of the Grewal / Dhaliwal group, formerly a group they allied with but, due to a falling out, turned into a rival faction. The police also suspect the murder of Randy Kang is the work of the rival Grewal/Dhaliwal group.

[73] Fourth, on December 22, 2017, Gavinder Grewal was shot and killed in his North Vancouver home. Mr. Grewal was part of the Grewal / Dhaliwal group and a member of the Brothers Keepers, another rival faction. Mr. Grewal was one of the men whom the Kangs blame for the earlier murder of Randy Kang and shooting of Gary Kang. The Crown referred to pieces of circumstantial evidence that are said to place Mr. Ghuman as well as Mr. Braich and Dilraj Gill in North Vancouver at the time of the murder. Mr. Ghuman and Mr. Braich are said to be a suspects in the murder, but no charges have been laid. The defence takes serious issue with the suggestion that the evidence establishes Mr. Kang had anything to do with this event or that it is even the work of the Kang group and points to the lack of charges as support for this position.

- [74] Fifth, 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 are said to be members of the rival Grewal / Dhaliwal group. Three men were charged with the stabbing and have now pleaded guilty in Provincial Court to various assault-related offences.
- [75] Sixth, on January 6, 2018, Mr. Ghuman and Mr. Gill were present when two other people were shot in another 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 Mr. Ghuman was actually the intended target and that the attack was in retaliation the murder of Gavinder Grewal. Mr. Ghuman was present when the police arrived but was not cooperative in the interview that ensued.
- [76] Counsel for Mr. Kang points to a gap in the intercepted conversations of about four months between November 3, 2017 and February 27, 2018 where he is not involved in any calls related to retaliatory steps insofar as the Grewal murder, the stabbing of Jitesh Vagh, and the targeted shooting of Mr. Ghuman's cousin are concerned and argues this points to his client having nothing to do with the ongoing street violence. However, the timeline contains reference to a series of conversations where the two brothers discuss taking control of the prisons and "greenlighting" members of the Grewal / Dhaliwal group who they believed were responsible for the death of Randy Kang. The defence takes issue with this interpretation of these calls.
- [77] The seventh violent event that the Crown referred to was the execution of two teenagers in Surrey on June 4, 2018. One of the victims is said to have worked for Moeen Khan (a Kang associate) on one of the Kang drug lines. The second victim was an innocent bystander.
- [78] The execution of June 4, 2018 caused the Kang group to purportedly take retaliatory steps to avenge the death of the teens which they believed had been the work of the Grewal / Dhaliwal group. Intercepted conversations that occurred at Mr. Vagh's residence provide evidence of Gary Kang and Pashminder Boparai discussing the hiring of two individuals from Ottawa to come out and hunt down those responsible for the June 4, 2018 murders. An intercepted call from June 5, 2018 between Sam and Gary Kang is said to provide evidence that Gary Kang took responsibility for protecting Moeen Khan's family by moving them to a new location after the June 4, 2018 shooting of the two teenagers.
- [79] On June 12, 2018, Kristoffer Ghuman and Gary Kang can be seen on 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.

- [80] On June 13, 2018, Mr. Kang and Mr. Ghuman left the country and travelled to Thailand, returning to Canada on July 11, 2018.
- [81] 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. A search of the residence where the two men from Ottawa were staying located \$10,900 in cash. A search of Mr. Vagh's residence pursuant to a search warrant on June 22, 2018, located a sticky note connected to payment of the two men from Ottawa with reference to the same amount as the cash found on June 18, 2018 in the residence where the two men were staying.
- [82] A direct indictment (Vancouver Registry 28709) 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 that charge.
- [83] 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.
- [84] Finally, the Crown outlined a number of instances of violence inside the detention centres and ongoing shootings around the Lower Mainland since the August 8, 2018 arrests, where associates and members of the Brothers Keepers have either been murdered or injured or associates of the Brothers Keepers group have been apprehended with firearms and other paraphernalia.

GARY KANG'S ANTECEDENTS

- [85] Gary Kang is a 23-year-old Canadian citizen, born and raised in the Lower Mainland. His parents, both released on bail for the charge contained in the second Kang indictment, currently reside at the family home in Burnaby. However, they are proposing to move to a rented condominium suite in downtown Vancouver should their son be released on bail pending his trial.
- [86] Mr. Kang is the youngest of three sons born to the Kangs. His eldest brother, Randy, was older by seven years. He was murdered on October 27, 2017 and Gary Kang himself was wounded by gun shots and hospitalized. His other brother, Sam Kang, is five years older than him and currently detained in custody on these charges.
- [87] In addition to his immediate family, Mr. Kang has a large network of extended family and friends in the Lower Mainland area.

- [88] Gary Kang lived with his parents until he was 21 years old. At the time of his arrest, he was 22 years old and living in a condominium in downtown Vancouver at 1111 Alberni Street (the residential portion of the Shangri-La tower).
- [89] Gary Kang did very well in high school and excelled at sports, football in particular, while attending Moscrop Secondary School. According to his counsel, unfortunately for Mr. Kang, a police officer took a "keen interest" in him, warning school authorities that Mr. Kang was a threat to the school. This occurred at some point in his Grade 12 year. The school district took the warning seriously and asked him to leave and to continue his studies online. Instead, Mr. Kang was enrolled at a high school in North Vancouver where he lasted a further three months. Once school officials learned of the Moscrop expulsion, he was asked to leave there too. Counsel asserts there was no basis for this warning vis-à-vis Gary Kang other than perhaps the fact it related more to the two older brothers, who by this time were known to the police. In any event, the expulsions resulted in Mr. Kang being unable to finish his Grade 12 and graduate with his cohort.
- [90] In addition to interfering with his high school education, counsel for Mr. Kang asserts that the police also interfered with Mr. Kang's extra-curricular activities by giving a similar warning to a martial arts club that he belonged to and where he was part of a kick boxing club. He was told to leave the club.
- [91] After Mr. Kang was asked to leave the North Vancouver high school, he enrolled at BCIT and took a three-month electrical course as a step towards becoming an electrician. At the age of 18 years, he went to work for CM Electrical for about six months. In addition to this employment, Mr. Kang has done some work for his father's business, a construction development company.
- [92] Mr. Kang has an unrelated criminal record with the following convictions:
- Driving while prohibited (offence occurred on June 23, 2015 when the accused was 19 years old) - a fine and a one-year driving prohibition imposed on May 24, 2016;
 - Dangerous driving causing bodily harm (offence on July 27, 2016 when the accused was 20 years old and prohibited from driving as per the above entry) - Effective sentence of six months imprisonment reduced to 79 days for PTC, followed by a one year probation order and three year driving prohibition imposed on May 15, 2017;
 - Driving while prohibited (offence occurred on February 18, 2017 when the accused was 20 years old) - 21 days imprisonment and a two-year driving prohibition imposed on July 6, 2017;
 - A breach of recognizance (offence occurred on February 18, 2017) - 1 day imprisonment imposed on July 5, 2017;
 - A breach of recognizance (offence occurred May 7, 2017) - 7 days imprisonment consecutive to the sentence being served imposed on July 5, 2017 (presumably consecutive to the sentence of May 15, 2017).

- [93] The dangerous driving conviction arose out of Mr. Kang driving away from a police roadblock in West Vancouver on July 27, 2016, at a high rate of speed. He lost control of the vehicle. He had three passengers in the vehicle with him. As he lost control of the vehicle, a West Vancouver police officer on a motorcycle was forced to take evasive action to avoid a head on collision. The officer sustained a broken arm and was taken to hospital. At the time of this offence, Mr. Kang was prohibited from driving due to a license suspension imposed on May 24, 2016 following a motor vehicle accident. He was also bound by an earlier recognizance that prohibited him from being in the driver's seat of any motor vehicle for driving offences from June 1, 2016. Those charges were subsequently stayed on July 6, 2017.
- [94] The breach of recognizance and driving while prohibited convictions from February 18, 2017 relate to an incident in Metrotown Mall in Burnaby. Police were called to view security video and observed four males walk through Metrotown Mall and then leave in a motor vehicle driven by Mr. Kang. At the time of this offence, Mr. Kang was prohibited from driving and subject to a bail order that prohibited him from being in the driver's seat of any motor vehicle.
- [95] The breach of recognizance conviction for the May 17, 2017 offence relates to a breach of a curfew of 11:00 p.m. imposed on Mr. Kang in respect of three different recognizances. A curfew check was conducted on that date at his home at 11:00 p.m., and Mr. Kang's father advised the police his son was not home. Mr. Kang arrived home at 11:15 p.m.
- [96] In addition to these convictions, the Crown referred to other breaches of bail orders that did not result in charges against Mr. Kang. Those incidents relate to violating a no-contact condition and a cell phone prohibition.
- [97] On July 25, 2017, the police checked a party boat docked in Coal Harbour, Vancouver. Noted as present on the boat and checked were Gary Kang, Moeen Khan, and Amrit Manhas. At the time, Mr. Kang was bound by a recognizance for charges from June 1, 2016 that related to trafficking in controlled substances and being in possession of various firearms. The charges were in Surrey Provincial Court. Mr. Kang was prohibited from contact with these two individuals (condition 4) and was also prohibited from possessing more than one cell phone (condition 7). His parents acted as his sureties for this recognizance.
- [98] Counsel for Mr. Kang advised that Mr. Kang was unaware that Mr. Khan and Mr. Manhas were on the boat, which was a very large vessel.
- [99] On February 4, 2018, Mr. Kang left on a trip to India. He had one cell phone in his carry-on luggage. Canadian Border Services agents and police located three cellphones in his checked luggage. Counsel for Mr. Kang advised that Mr. Kang's mother put the cellphones in his checked luggage as gifts for family in India and that, when Gary Kang returned to Canada after his visit, he did not bring the cell phones back with him.

[100] On May 26, 2018, police responded to a call to the Presidential Suite at the Trump Tower Hotel on Georgia Street, Vancouver. Security had contacted the police advising they believed known gang members were in attendance, and they wanted them removed. The police believe, based on numerous messages sent by Gary Kang inviting people to the suite, that he had organized the party. Police reviewed surveillance footage as they were advised that security believed one of the attendees was carrying a firearm. As a result of their observations, the floor where the party was held was locked down, and the occupants were summonsed out one at a time. Mr. Kang exited as did a number of others, including, purportedly, Moeen Khan. Mr. Kang was still bound by the recognizance for the June 1, 2016 Surrey charges that prohibited him from having contact with Mr. Khan. Counsel for Mr. Kang advised that the party was quite large and that Mr. Khan was not at the party and not arrested in the suite; rather, he was arrested outside the suite.

THE PROPOSED RELEASE PLAN

[101] The release plan put forward by Mr. Kang is for him to be released on a recognizance with a substantial surety bail with two named sureties, one pledging \$250,000 and the second pledging \$500,000. If released, Mr. Kang intends to reside with his parents in a condominium that they intend to rent in downtown Vancouver.

[102] Mr. Kang's cousin, Sukhwinder Johal, is prepared to act as the surety, pledging \$250,000 of the equity in her townhouse to secure Mr. Kang's release. Ms. Johal lives in Surrey, BC with her 25 year old son. The familial nexus is that Ms. Johal's mother and Mr. Kang's father are siblings.

[103] The evidence of the nature of their relationship, apart from being cousins, is limited. However, Ms. Johal deposes she is prepared to do all she can to ensure that Mr. Kang follows his bail conditions and, to that end, will keep in contact with him. She is aware of her obligations as a surety and the risk to her financial situation if Mr. Kang were to fail to follow any conditions of bail. She supports his release and states she will immediately contact the police or his bail supervisor if she sees or hears that Mr. Kang is not complying with the conditions of his bail. It is not proposed that Mr. Kang live with his cousin.

[104] Mr. Kang has proposed that his mother, Mohanbir (Monica) Kaur Kang be the primary surety and that the amount she can pledge is \$500,000. No evidence has been provided to substantiate the ability of Mrs. Kang to support such a pledge or whether her proposed property is the subject of encumbrances such as mortgages, liens, charges, and the like.

[105] Mrs. Kang and her husband live at the family home in Burnaby. Indeed, as the probation officer noted in the Technical Suitability Report for Gary Kang (Exhibit 11), they are required by their conditions of bail on the second Kang indictment to reside at this address and not change it without prior approval. The bail supervisor for Mr. Kang's parents has indicated to counsel that he would approve a variation of the residency for Mr. Kang's parents so that they could move in with their son as proposed.

- [106] The proposed move by Mr. Kang's parents to a condominium in downtown Vancouver would likely be more convenient for them given the significant health issues that Mr. Kang's father, Gurcharn Singh Kang, has developed since suffering a major heart attack earlier this year on March 15, 2019. Gurcharn Kang was in St. Paul's Hospital for almost a month following the heart attack and has been in and out of St. Paul's Hospital ever since. Mrs. Kang has largely been at her husband's side throughout. Counsel has described Gurcharn Kang's health as tenuous but showing some signs of improvement. Counsel asserts that releasing Gary Kang would allow him to provide better emotional support to his parents and to assist with any emergency should one arise.
- [107] Counsel for Mr. Kang urges me to name both Ms. Johal and Mrs. Kang as the approved sureties pursuant to s. 515(2.1) of the Code. He urges this for Mrs. Kang in particular as it seems fairly clear that the screening process used by the justices of the peace in British Columbia will screen Mrs. Kang as unsuitable given that she is charged with a criminal offence. As noted earlier, that offence is tied to the indictment Gary Kang is charged on as the allegation is that Mr. Kang's parents assisted the Kang group, an alleged criminal organization, by laundering the proceeds of the group's drug enterprise. No affidavit has been provided by Mrs. Kang due to her own charges before the court and counsels' concerns that s. 13 of the Charter may not operate to protect her.
- [108] In terms of conditions of release, Gary Kang is prepared to abide by any conditions the court determines appropriate and relies upon the conditions imposed upon Jacob Pereira by Madam Justice DeWitt-Van Oosten (as she then was) in *R. v. Pereira*, 2019 BCSC 634 at para. 97 as the proper framework for him. Accordingly, he would be subject to house arrest if released.
- [109] It is Mr. Kang's intention to continue his education through online studies with UBC's Real Estate Division. To that end, on July 17, 2019, he enrolled online in UBC's Real Estate Trading Services Licensing Course 2019. It is Mr. Kang's long-term plan to operate a company similar to that operated by his father.
- [110] Counsel advised that Gurcharn Kang is prepared to assist his son with applications for loans and perhaps provide loans of his own to further his son's long-term business plans.
- [111] Gary Kang has been assessed as suitable for electronic monitoring supervision if released on bail (Exhibit 11). However, the probation officer who prepared the Technical Suitability Report noted that he had not been provided a copy of the lease for the proposed residence, a condominium on Howe Street in what is known as the Private Residences at the Hotel Georgia. The Crown advised that the police did an internet search of the unit proposed to be leased by Mr. Kang and his parents and learned it had been rented as of February 2019. No copy of the lease documentation was provided at this bail hearing, and so there is no evidence as to the ownership of the suite proposed as the residence, nor is there any evidence as to a lease agreement for the Kangs or who is leasing it at the present time.

POSITIONS OF THE PARTIES

- [112] The Crown opposes Mr. Kang's release citing concerns on the secondary and tertiary ground. Passing reference was made to the primary ground, but in the end, the Crown did not argue that Mr. Kang's detention was necessary on the primary ground.
- [113] 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 Mr. Kang and, in particular, monitoring whom he is associating with and his activities with them.
- [114] The Crown also asserts that Mr. Kang's mother is not a suitable surety for two reasons. First, Mrs. Kang is effectively an accomplice, and while not a co-accused on indictment 27786, she and her husband are charged on a separate indictment with an offence that relates to providing support to the alleged criminal organization captured by indictment 27786 - the Kang group - which the Crown alleges is headed by their elder son Sam and was effectively managed by Gary Kang during the course of the Project Territory investigation. Second, Mrs. Kang has demonstrated an inability to control Gary Kang's behaviour based on her acting as a surety for him on earlier charges and his breaching his conditions of release at that time.
- [115] The Crown asserts that Ms. Johal is an unsuitable surety as the true nature of and strength of her relationship with Gary Kang is unknown. More significantly, argues the Crown, Ms. Johal lives in Surrey and has no ability to monitor Mr. Kang's performance on bail and so cannot meaningfully fulfill her obligations as a surety.
- [116] On the tertiary ground, the Crown points to the extremely aggravated and calculated nature of the offence and the strength of the Crown's case against Mr. Kang.
- [117] The Crown further asserts that Mr. Kang's release on these charges would erode confidence in the administration of justice, especially given the backdrop of a seemingly unrelenting turf war between rival criminal groups such as the Brothers Keepers, the Grewal / Dhaliwal group, the Kang group, and others. The Crown asserts that this incessant turf war 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.
- [118] Counsel for Mr. Kang asserts that he has met the onus for all three grounds with the release plan that has been provided to the Court. He takes significant issue with the Crown's suggestion that Mrs. Kang is not a suitable surety and argues that the "pigeon-hole" approach to automatic unsuitability because of outstanding charges does not conform with the jurisprudence from the Supreme Court of Canada on detention being a last resort.

[119] Counsel for Mr. Kang further asserts that any concerns with respect to the secondary and tertiary ground are more than adequately addressed through the onerous conditions and house arrest that Mr. Kang is prepared to abide by.

LEGAL PRINCIPLES GOVERNING JUDICIAL INTERIM RELEASE

[120] Section 515(10) of the Code outlines the factors the Court must consider in determining whether Gary Kang has established he can be released pending his trial:

515(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:

- (a) where the detention is necessary to ensure his or her attendance in court in order to be dealt with according to law;
- (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.

[121] Much has been written in the jurisprudence and legal treatises about the parameters of the primary, secondary and tertiary grounds, in particular *The Law of Bail in Canada*, 3rd ed (Toronto: Thomson Reuters Canada Ltd., 2017) (loose-leaf updated 2018, release 2) by Mr. Justice Trotter ("The Law of Bail"). On the tertiary ground, the Supreme Court of Canada's decision in *R. v. St-Cloud*, 2015 SCC 27 is the governing authority.

[122] Both counsel reviewed a number of authorities that addressed the legal principles. I do not propose to go through each authority in this decision. Counsel have reviewed them in their submissions, and I have read them and considered them. I am well familiar with the governing legal principles.

[123] The recent decision of *R. v. Myers*, 2019 SCC 18 builds on and confirms the Supreme Court's earlier jurisprudence that bail pending trial is the rule and detention is the exception: *Myers* at paras.1 and 67; see also *R. v. Antic*, 2017 SCC 27 at paras. 1, 39-40 and 67; *R. v. Oland*, 2017 SCC 17; and *St-Cloud*, 2015 SCC 27 at para. 70.

Bail Decisions in Related or Similar Cases

[124] Counsel put various authorities before me that speak to the principles governing bail 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.

[125] 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:

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

[126] 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).

[127] 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.

[128] 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.

[129] 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 the surveillance of items being exchanged, 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.

- [130] 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.
- [131] 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.
- [132] 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.
- [133] 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 but also uncharged breaches of bail. 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. The first instance bail hearing was held in this Court as the Crown had proceeded by direct indictment. Accordingly, any bail review of a judicial interim release hearing held in the Supreme Court occurs in the Court of Appeal: *Cheung*, para. 35.
- [134] In *Cheung*, the accused 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 the common denominator that all victims had a connection with the Justice Institute of British Columbia.

[135] 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

[136] Gary Kang is in a reverse onus position and as such bears the burden of establishing that his detention is not necessary

- a. to ensure his attendance at court: *Myers*, para. 46; s. 515(10)(a) of the Code;
- b. to ensure the protection or safety of the public: *Myers*, para. 46; s. 515(10)(b) of the Code, and

- c. in order to maintain confidence in the administration of justice: Myers, para. 46; s. 515(10) (c) of the Code.

[137] I bear in mind that Mr. Kang is presumed innocent and has a constitutional right not to be denied reasonable bail without just cause. Moreover, as has been made clear by the Supreme Court of Canada in its jurisprudence, release pending trial is the default presumption and pre-trial detention is a measure of last resort: Myers at paras. 1 and 67; Pereira at para. 44.

- a. The Primary Ground (s. 515(10)(a))

[138] On the primary ground, Gary Kang must demonstrate to the Court that his detention is not necessary to ensure his attendance in court. Although accused persons who seemingly have resources and status in a criminal organization may have the means to abscond, it does not necessarily mean they must be detained. Their ties to the community, or lack thereof, remain an important consideration: R. v. Sweeney, 2002 MBQB 93 at paras. 18-19; [1] R. v. Tse, 2012 SKQB 26 at para. 9. The question is whether any flight risk can be sufficiently ameliorated through appropriate release conditions.

[139] As previously noted, the Crown made passing reference to concerns about the primary ground in this case but did not argue Mr. Kang's continued detention should be based on this branch of the test for release. In my view, there is nothing to support the assertion that the primary ground is engaged in the case of Gary Kang. He was born in Vancouver and has lived here all his life. His parents, older brother, and some extended family live in the Lower Mainland. His friends and community supports are all located here. Any residual concerns about the primary ground can be alleviated by requiring Mr. Kang to surrender his passport and all travel documents, prohibiting him from applying for any other travel documents, and prohibiting him from leaving the Province of British Columbia.

[140] On balance, I am satisfied that Mr. Kang has met the onus of showing his continued detention is not warranted on the primary ground.

- b. The Secondary Ground (s. 515(10)(b))

[141] Insofar as the secondary ground is concerned, Mr. Kang must demonstrate to the Court that his detention in custody is not necessary for the protection or safety of the public (including any victim of or witness to the offence) or to prevent interference with the administration of justice.

[142] The secondary ground focuses on the protection of the public and thus entails an assessment of the likelihood of the dangerousness of the accused: Cheung at para. 51 citing R. v. Wu, 1998 CanLII 4378 (B.C.C.A.); R. c. Rondeau, (1996) 108 C.C.C. (3d) 474 (Q.C.C.A) at 478.

[143] In *Rondeau*, Mr. Justice Proulx for the Quebec Court of Appeal set out a number of factors to consider when assessing the likelihood of dangerousness and the secondary ground. These factors were approved in *Cheung and Wu*. Collectively, these decisions make it clear that the Court must consider the accused's past behaviour and the circumstances of the offence in order to determine whether detention is justified under the secondary ground.

[144] The above authorities enumerate the likelihood of dangerousness factors to include:

- i. The nature of the offence;
- ii. The relevant circumstances of the offence, which may put in issue events prior to and subsequent to the offence;
- iii. The likelihood of a conviction;
- iv. The degree of participation of the accused;
- v. The relationship between the accused and the victim;
- vi. The profile of the accused (his occupation, his lifestyle, his criminal record, his family situation, his mental state);
- vii. His conduct prior to the commission of the alleged offence;
- viii. The danger which the interim release of the accused represents for the community specifically affected by the matter.

[145] Some of these factors are also considerations under the tertiary ground.

[146] The constitutional limits by which detention on the secondary ground may be justified were described by Chief Justice Lamer in *R. v. Morales*, [1992] 3 S.C.R. 711 at 737:

I am satisfied that the scope of the public safety component of s. 515(10)(b) is sufficiently narrow to satisfy the first requirement under s. 11(e). Bail is not denied for all individuals who pose a risk of committing an offence or interfering with the administration of justice while on bail. Bail is denied only for those who pose a "substantial likelihood" of committing an offence or interfering with the administration of justice, and only where this "substantial likelihood" endangers "the protection or safety of the public". Moreover, detention is justified only when it is "necessary" for public safety. It is not justified where detention would merely be convenient or advantageous. Such grounds are sufficiently narrow to fulfil the first requirement of just cause under s. 11(e).

[147] In *R. v. Wilcox*, 2005 BCSC 1785 at para. 22, Mr. Justice Barrow further clarified the limits of the secondary ground by echoing Lamer C.J.C's comments in *Morales* that bail is not denied for all individuals who pose a risk of committing an offence or interfering with the administration of justice, rather, it is denied "only when that risk cannot be adequately addressed through the imposition of appropriate terms of release."

[148] And, in *R. v. Abdel-Rahman*, 2010 BCSC 189 at para. 23, Mr. Justice Halfyard distilled the decisions that a judge must necessarily make in order to reach the conclusion that detention is justified on the secondary ground, to the following:

- a. First, that there is a risk that the accused will either commit an offence, or will interfere with the administration of justice, if he is released;
- b. Second, that this risk is of such magnitude that it amounts to a "substantial likelihood;"
- c. Third, that the said risk would constitute a danger to public safety (in general, or to a specific victim or witness) if the accused is released; and
- d. Fourth, that the detention of the accused is "necessary," because the identified danger to public safety cannot be prevented or reduced to an acceptable level by bail conditions (such as reporting to authorities, curfew, no-contact, mobility restrictions, sureties or cash bail).

[149] In regard to the secondary ground in this case, if I was to simply consider the fact that the allegations in this case are about a sophisticated and ongoing drug enterprise undertaken by an alleged criminal organization dealing in significant quantities of lethal controlled substances, I might be inclined to conclude that the circumstances of the offence support a conclusion that there is a likelihood the accused will reoffend.

[150] In my view, however, to adopt such an approach would amount to automatic detention on the secondary ground for any sophisticated drug offences, particularly ones committed within the context of a criminal organization. And yet, notwithstanding the seriousness of such offences and the even more serious offence of first degree murder, the jurisprudence clearly demonstrates that individuals charged with such offences or similarly serious offences (conspiracy to commit murder, attempted murder in the context of gang violence, trafficking, conspiracy to traffic, trafficking for the benefit of a criminal organization, importing controlled substances, and the like) are indeed released: *R. v. Coates*, 2009 QCCS 4011; *R. v. Fleming*; *R. v. Moir*, 2016 BCSC 2685; *R. v. Dang*, 2015 ONSC 4254; *R. v. Inclima*, [2014] O.J. No. 6410 (S.C.J.).

[151] And even where convicted of first degree murder, offenders can be released on bail pending conviction appeal. This is due to the consideration of the individual applicant's personal history and circumstances in light of the offence committed, not just the circumstances of the offence committed: *R. v. Mapara*, 2001 BCCA 508; *R. v. Papasotiriou*, 2018 ONCA 719; *R. v. Badgerow*, 2017 ONCA 670.

[152] Of course, I must take Mr. Kang's criminal record into account on this ground, and I do. Counsel for Mr. Kang argues that the other uncharged breaches evident from the surrounding circumstances that the Crown outlined are of no value and that there are explanations for three of the incidents.

- [153] Based on the authority of Cheung cited above, I am of the view that the uncharged breaches are relevant to the assessment to be made under the secondary ground. Though the uncharged breaches are not connected to the current charges, they certainly provide fuller context to Mr. Kang's behaviour while subject to prior court-imposed conditions of release or prohibitions. They establish a cavalier disregard for conditions imposed upon him by order of the court. The only thing that can be said in Mr. Kang's favour on this point is that they are dated. Nevertheless, they cause some concern as to whether Mr. Kang would abide by conditions of release. It may be, however, that Mr. Kang has matured and understands the gravity of the situation he finds himself.
- [154] Insofar as the incidents of uncharged acts of violence including murder, drive-by shootings, and the like are concerned, there is limited evidence provided on this hearing to support the inference that Gary Kang is directly involved in instigating the violence or ordering that it be done. His role appears to be more in the nature of following the directions of his older brother Sam and other associates. While this is still concerning, I am of the view that these allegations are more appropriately considered under the tertiary ground in this case.
- [155] While the incidents of uncharged violence are very concerning, insofar as being tied to the secondary ground and this accused, I am not persuaded on the evidence adduced that if Mr. Kang were released on bail with stringent conditions including house arrest he would commit offences of violence or incite or direct them to be committed.
- [156] The more pertinent issue is whether Mr. Kang, if released, would continue operating the Kang group's drug operation once released. 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. Kang's trial. At this stage under s. 515(10)(b), the focus is on the future. While there may well be incentive to return to the activities and profit-making that so clearly animated Mr. Kang as evident from the intercepted conversations adduced, that issue must be assessed within the context of the release plan advanced.
- [157] One factor that militates in favour of release, as it did in *Fleming*, is that 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 been largely dismantled, with most of the key players either detained in custody or released on stringent and restrictive conditions.
- [158] Nevertheless, when the totality of the evidence against Gary Kang about the operations of the Kang group during the time that the Project Territory investigation was extant is considered in the context of the bail hearing, it supports the Crown's inference that Gary Kang was involved in a leadership role, ostensibly running his brother Sam's operation from the outside while Sam Kang was imprisoned. The intercepted calls provide evidence that Gary Kang appeared concerned about the need to recruit more workers - "kids" - to work on the drug lines and was involved in the operations of the drug lines and their sales,

the quality of the product being sold, money and expenses and all matters related to the running of the enterprise. Items found in his residence on June 22, 2018, pursuant to a search warrant, also provide evidence of his role in the enterprise - he had a score sheet, a contact list, photographs of associates, and a radio jammer.

- [159] In the circumstances of this case and considering the totality of the evidence adduced and applying the Abdel-Rahman test to the circumstances, I am satisfied that there is a substantial likelihood that if Mr. Kang is released from custody, he will commit further offences and that this risk would constitute a danger to public safety. As DeWitt-Van Oosten J. observed in Pereira (para. 63), this is self-evident from the circumstances surrounding his charges.
- [160] The three stash sites affiliated with the Kang group - Tomicki, 33rd Avenue, and Royal Oak - revealed significant quantities of drugs, including fentanyl.
- [161] The intercepted calls reveal conversations and dealings between Gary Kang and his co-accused on the running of the Kang group's business, including mounting expenses, the need to recruit more workers, the amounts of product that need to be moved, and so on.
- [162] The calls also reveal that during the course of the Project Territory investigation, Mr. Kang was aware of the purity of the substances involved, the dangerousness of the substances being distributed, and the ongoing rivalry and violence impacting the Kang group. And so, like the findings in Pereira (paras. 63-64), the public is obviously at risk from the Kang group's activities in general and, "in particular, vulnerable members of society who suffer from drug addiction and receive unregulated, uncontrolled and potentially lethal product" from the Kang operation.
- [163] In my view, the real issue for me to decide under the secondary ground is whether Mr. Kang has shown that his detention is not necessary because the identified risks can be prevented or reduced to an acceptable level by the proposed release plan.
- [164] While I am prepared to find that the stringent conditions of release attached to the recognizance in Pereira, if imposed on Mr. Kang would likely reduce the risk to an acceptable level, there remain insurmountable flaws with the proposed release plan related to the proposed sureties and the living arrangement.
- [165] On the issue of the proposed sureties, I will first address the issue of whether I should name the proposed sureties and then will move to an assessment of their suitability as sureties.
- i. Naming Sureties Pursuant to s. 515(2.1) of the Code
- [166] Counsel for Mr. Kang urges that I name the two proposed sureties, Ms. Johal and Mrs. Kang, Gary Kang's mother. Section 515(2.1) of the Code provides that a judge presiding over a judicial interim release hearing can name sureties:

Power of justice to name sureties in order

(2.1) Where, pursuant to subsection (2) or any other provision of this Act, a justice, judge or court orders that an accused be released on his entering into a recognizance with sureties, the justice, judge or court may, in the order, name particular persons as sureties.

[167] As Justice Trotter notes in *The Law of Bail* (p. 200), the suitability of proposed sureties may be determined either by the judge conducting the bail hearing or by the justice of the peace who actually takes the recognizance. This of necessity requires an inquiry or investigation as to the suitability of the proposed surety, including evidence as to their financial means including whether they possess real property or other property that could be seized if the recognizance is breached by the accused and their ability to supervise the accused's behaviour in the community to ensure compliance with the conditions of bail.

[168] While there is evidence as to Ms. Johal's financial means in terms of the assessed value of her property and the equity in her townhome through a mortgage statement, there is nothing to assist in determining if there are other encumbrances on the property that impact the available equity. Moreover, apart from her deposing she will keep in contact with her cousin, there is no evidence as to her ability to supervise Mr. Kang's behaviour in the community to ensure his compliance with the conditions of bail. Accordingly, I decline to formally name Ms. Johal as a surety pursuant to s. 515(2.1) of the Code.

[169] Insofar as Mrs. Kang is concerned, there is no evidence to substantiate her financial standing to demonstrate that she possesses real or other property in the amount counsel proffered - \$500,000 (or any other amount for that matter) - that could be seized if the recognizance was breached by her son. Nor is there any evidence that would support a conclusion that she would be able to supervise her son's behaviour in the community to ensure his compliance with the conditions of bail. Indeed, the totality of the evidence is to the contrary in these circumstances. Accordingly, I decline to formally name Mrs. Kang as a surety pursuant to s. 515(2.1) of the Code.

[170] If I was to order Mr. Kang's release on a substantial recognizance his sureties would have to appear before a justice of the peace and fully substantiate their suitability as sureties.

[171] However, I am not satisfied that the secondary ground concerns are reduced to an acceptable level by having either of these two women act as Mr. Kang's sureties in the circumstances.

ii. The suitability of Sukhwinder Johal as a surety

[172] Ms. Johal, as noted previously, is a cousin of Gary Kang. While familial bonds no doubt are of significance in Mr. Kang's family, there is no evidence adduced that assists in informing whether Ms. Johal has any sort of close relationship with Mr. Kang such that she is able to influence and control his behaviour and provide any measure of supervision over Mr. Kang's daily activities. The evidence is silent on how frequently Ms. Johal and Mr. Kang see each other, the nature of their relationship - apart from being cousins - the extent of the

bond between the two, or how close they live to one another: *The Law of Bail*, p. 198.

[173] From what I am able to infer from the evidence before me, Mr. Kang proposes to live in downtown Vancouver and his cousin Ms. Johal lives in a townhome in Surrey or North Delta on the south side of the Fraser River. A proposed surety who has little contact with the accused will not likely be in a position to effectively supervise the accused: *The Law of Bail*, p. 199. In the circumstances, I am left with no information as to how well Ms. Johal, acting as a surety, can supervise Mr. Kang, know whether he is following his conditions or about to breach them, and take action if he fails to live up to the conditions of release given the distance they live away from each other and the lack of a demonstrated history of contact between the two.

[174] Accordingly, I am not satisfied on the evidence before me that Ms. Johal is in a position to fulfill her obligations as surety, which include having a measure of supervision and control over Mr. Kang's behaviour such that if compliance became an issue she would even be in a position of knowing that she needed to alert the authorities and render him into custody.

iii. The suitability of Monica Kang as a surety

[175] Counsel asserts that Mrs. Kang, Gary Kang's mother, is a suitable surety in the circumstances. He asserts that the "pigeon-hole approach" that excludes categories of persons as sureties should be eschewed and a more functional approach ought to be adopted. He relies upon the comments in *The Law of Bail* at p. 197 in support of this proposition.

[176] In the *Law of Bail*, Mr. Justice Trotter refers to the exclusionary criteria outlined in a 1927 article by Eric Armour where that author enumerates a list of individuals who should not be accepted as sureties, including, for the purposes of this case, accomplices and individuals on bail awaiting trial on a criminal offence. Justice Trotter argues that the exclusionary perspective or pigeon-hole approach ought not to be the governing framework. Instead, Justice Trotter opines (p. 197) that:

it is more desirable to consider that matter from a functional stand-point by deriving the appropriate criteria from what the law expects from sureties. In this way, persons who appear to be able to competently assume the obligations of a surety and who are likely to be able to exercise the powers afforded a surety in appropriate circumstances will be most qualified. While this approach may well encompass many of the exceptions identified by Armour, it puts them in perspective and provides a framework for evaluating the suitability of those who may not fall into any of the enumerated categories.

[177] While I agree that the functional approach to assessing the suitability of a proposed surety is the more appropriate way to proceed, the exclusionary criteria proffered by Mr. Armour in his article remain relevant to informing the court about the character and therefore suitability of the proposed surety.

- [178] As The Law of Bail goes on to note (p. 197), in assessing whether a person will be able to properly discharge the duties of a surety, it is necessary to know something about that person's character, as a court considering releasing an accused "places a great deal of trust in the surety to help achieve the objectives of the release provisions."
- [179] The main objective of any release provisions in the case of Gary Kang would be to ensure that he does not return to his prior activities or engage in further criminal offences. The only information I have in respect of Mrs. Kang's character, apart from being Mr. Kang's mother, is that she too is charged in relation to the activities of her sons' organization. While she is clothed with the presumption of innocence in that regard, that cannot be employed as a blindfold such that her status as an accused in respect of the activities of the same alleged criminal organization are irrelevant to the consideration of her suitability as a surety. Not only was she not able to prevent her sons from engaging in the conduct they are now charged with, she too is charged with an offence of facilitating the alleged criminal organization by laundering the proceeds from the enterprise through the legitimate family business.
- [180] This is not the first time that judicial reservations have been expressed as to the suitability of Mrs. Kang as a surety due to her pending charges. Indeed, Judge Doherty noted the same concern in his decision on Sam Kang's bail application:
- [31] I should also note that Mr. Kang put forward his parents as sureties in this matter. This is somewhat unusual since he is charged on the same information as his parents who are said by the Crown to have facilitated the criminal organization in some ways by including laundering its drug profits. It seems to me that the duty of a surety to keep a person on bail out of conflict with the law and the duty to immediately report any breaches of bail conditions by the accused to the court are at odds by a proposed surety who is charged on the same information. I have serious concerns about either of Mr. Kang's parents acting as sureties for him.
- [181] And so, Gary Kang's circumstances vis-à-vis his parents' knowledge of his alleged criminal activities is distinguishable from the circumstances in Pereira (para. 69) where the accused's parents knew nothing of their son's involvement in the offences before the court, and there was no suggestion that they condoned his activities. To the contrary, in this case, Mr. Kang's parents are alleged to have facilitated the operation of the organization. The fact that they are now charged on a separate indictment from their sons is immaterial.
- [182] Moreover, the only other information available to the Court in respect of Mrs. Kang's suitability as a surety is her inability to control her son's behaviour while he was released on bail in respect of earlier drug offences (granted, they have been stayed) when it appears he breached the terms of the recognizance by being in contact with people he was prohibited from contacting and by being in possession of more than one cell phone when he travelled to India. On this latter point, even if the assertions by counsel for Mr. Kang are correct that it was Mrs. Kang who placed the three cell phones in her son's luggage, such an

act demonstrates a fundamental misunderstanding as to the nature of the conditions that her son had placed upon him and her role to ensure that the conditions were not breached.

- [183] Furthermore, Mr. Kang's convictions for breaches of recognizances and driving prohibitions all appear to have occurred at a time when he lived with his parents. Thus, it is difficult to conceive how his mother is able to exercise any degree of control over him given his prior performance while released on conditions or while prohibited from driving. To borrow from *The Law of Bail* (p. 199) "a parent who has no effective control over a grown child who still lives in the family home will not be a good candidate." Mrs. Kang appears to have had no effective control over Gary Kang while he resided in the family home as he amassed criminal charges and convictions during his tenancy there.
- [184] Finally, I have reservations about the residence where the Kangs propose to reside pending trial. There is a dearth of evidence on this point - no lease agreement, no evidence of ownership of the proposed suite, and no evidence that the suite is actually available or that there is an alternate suitable accommodation available.
- [185] After having considered the various factors and evidence affecting this branch of the test for release, on balance, I am not satisfied that Mr. Kang has met the onus of showing his continued detention is not warranted on the secondary ground. Specifically, I am not satisfied that the substantial likelihood of the risk of further offences or the danger to the public that Mr. Kang presents can be adequately reduced to an acceptable level through the proposed release plan with Ms. Johal and Mrs. Kang as his sureties and residing in a suite of unknown ownership and provenance.
- [186] I find that the detention of Gary Kang is necessary on the secondary ground as the evidence about the proposed sureties does not satisfy me that they are suitable to supervise and control his behavior in the community and ensure compliance with the stringent Pereira conditions that I would impose if I was satisfied that his release could be ordered on the secondary ground. Moreover, there is little to no evidence to substantiate their financial standing to be able to pledge the proposed significant amounts as a surety.
- [187] Accordingly, I order Gary Kang's detention on the secondary ground.
- c. The Tertiary Ground (s. 515(10)(c))
- [188] 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, Gary Kang 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.

[189] In St-Cloud, Mr. Justice Wagner (as he then was) enumerated the essential elements of the s. 515(10)(c) analysis 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.

[190] In light of my finding on the secondary ground, it is not strictly necessary to deal with the tertiary ground in this case.

[191] The only observation that I make in respect of the tertiary ground, in light of Myers' recapitulation that release pending trial is the default position and that detention a measure of last resort is the following.

- [192] In my view, the four factors enumerated in s. 515(10)(c) of the Code, given the circumstances of this case as outlined in these reasons, militate in favour of detention. Similarly, Mr. Kang's alleged leadership role in a criminal organization militates in favour of detention: St-Cloud, para. 71.
- [193] So too does the broader social context in which the offences were committed. I note Mr. Kang is not charged with, and does not appear to be a suspect in, the incidents of uncharged acts of violence including murder, drive-by shootings, and the like. He is, however, named as an unindicted co-conspirator in respect of the charges that Mr. Boparai, Mr. Khan and the two men from Ottawa now face. And, while a target of violence on a number of occasions, those events are dated.
- [194] The events the Crown referred to post-August 8, 2018, do not appear to suggest that the Kang group are suspects in the murders of individuals affiliated with the Brothers Keepers, although the police may have a theory about the source of these events. Mr. Kang is not charged with any offences in relation to the ongoing gang warfare being carried out on the streets of the Lower Mainland. Nevertheless, the fact of the matter remains that he is involved in a group that appears to have enemies / rivals and so, to that limited extent, I consider the overall nature of the uncharged violence to be relevant. It provides the broader context to what was occurring before, during, and after the Project Territory investigation. It is of considerable concern.
- [195] Other factors can, obviously, militate in favour of release, including:
- i. the fact that the Kang group has seemingly been dismantled by the arrests in this case;
 - ii. 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: Pereira para. 45);
 - iii. there may well be a number of defences to advance at the pre-trial and the trial stages of this litigation; and
 - iv. the fact that this case will not come on for trial for many, many months, given the magnitude of the anticipated pre-trial applications and the sheer length of time the trial itself may well take.
- [196] Critical in the balancing, and something that may well tip the balance in favour of release where the circumstances point to it being a "close call", is the need for a comprehensive release plan that includes not only adherence to strict conditions - house arrest, electronic monitoring, non communication orders, and the like - but the proffer of suitable and appropriate sureties whose circumstances, character, and commitment to oversight of the accused are such that the court is assured that they are able to fulfill their duties. The duties of sureties can include, and in this case would require, significant supervision of Mr. Kang's daily activities to ensure compliance with the conditions of release, an ability to know whether there was a potential for breach, and the willingness to report Mr. Kang to the authorities if a breach was suspected or known.

Conclusion

[197] For the reasons provided, I am satisfied that Gary Kang has met his onus of showing that his continued detention in custody is not necessary on the primary ground. I am, however, not satisfied that he has met the onus on him in respect of the secondary ground and I order his detention on the secondary ground. Given this conclusion, it is unnecessary to make a finding in respect of the tertiary ground of s. 515(10)(c) of the Code, and I have not done so.

[198] Anything else counsel?

[199] Pursuant to s. 515(12) of the Code, I order that you must have no contact or communication directly or indirectly with [list of names provided by counsel].

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

"Ker J."

[1] See also R. v. Pink, [2006] O.J. No. 5816 (S.C.J.) at paras. 22-24; R. v. Ward, 2007 CarswellOnt 10338 at paras. 43-45 (Ont. S.C.J.).

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