

CANADA / JUDGMENT

R. v. Latimer

2020 BCSC 892

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Supreme Court of British Columbia

DECIDED

20 April 2020

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2020 BCSC 892 R. v. Latimer

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Latimer,

2020 BCSC 892

Date: 20200420

Docket: 27798-1

Registry: Vancouver

Regina

v.

Kyle Latimer, Craig Latimer, Jacob Pereira, Anduele Pikientio, Csongor Szucs

Restriction on Publication: A publication ban has been mandatorily imposed under s. 517(1) of the Criminal Code restricting 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 (bail).

Before: The Honourable Madam Justice Ker

On judicial review from: Provincial Court of British Columbia, January 4, 2019

(R. v. Latimer, Vancouver Docket No. 247235-1)

Oral Reasons for Judgment at s. 520 Bail Review Hearing

(Re Accused Craig Latimer)

Counsel for the Crown appearing by teleconference:

M. Loda

Counsel for the Accused Craig Latimer appearing by teleconference:

R. Mansoori-Dara

Place and Date of Hearing:

Vancouver, B.C.

April 14, 2020

Place and Date of Judgment:

Vancouver, B.C.

April 20, 2020

- [1] These Reasons for Judgment were delivered as oral reasons. They have since been edited for distribution.

INTRODUCTION

- [2] The accused, Craig Latimer, has applied pursuant to s. 520(1) of the Criminal Code, R.S.C. 1985, c. C-46 [Code] for a review of the order of the Provincial Court of British Columbia made on January 4, 2019, wherein the Honourable Judge Galati detained Mr. Latimer in custody on the tertiary ground pursuant to s. 515(10)(c) of the Code.
- [3] The accused is charged on a multi-count direct indictment with four other accused, including his son Kyle Latimer. Craig and Kyle Latimer are jointly charged with four offences that relate to weapons found in a secret room in Craig Latimer's auto body shop (Counts 8 to 11).

BACKGROUND

- [4] On April 10, 2018, police executed a general warrant at Craig Latimer's shop, referred to as the Graybar location in these proceedings. They were looking for a drug press that had been referred to in intercepted conversations between Kyle Latimer and another co-accused. When the secret room was discovered, the police entered it and found a veritable arsenal of prohibited and restricted weapons--69 in total--all but one were functional. In addition to the firearms, the police located

- 20 silencers,
- 29 oversize magazines for ammunition,
- a grenade,
- an RCMP uniform,

- approximately 16,690 rounds of ammunition organized in crates,
 - \$30,680 in cash in an open safe, and
 - a binder entitled "FLEET", referring to the vehicles used by the criminal organization that this group of five accused, as well as others, are said to comprise.
- [5] Upon discovery of the arsenal of weapons, the police applied for and obtained a search warrant and searched the Graybar location, seizing the above-enumerated items on April 11, 2018. Craig Latimer was arrested and subsequently released without charge while the overall investigation that grounds this indictment continued.
- [6] On August 7, 2018, Craig Latimer was arrested along with many other individuals who were all charged in connection with an extensive investigation by the Vancouver Police Department (the "VPD") named Project Territory. The investigation commenced in May 2017 and concluded with a large "takedown" operation in August 2018. The takedown resulted in the arrests of numerous targets, including Craig Latimer.
- [7] The weapons offences (Counts 8 to 11) are the only offences that Craig Latimer faces on the indictment before me. However, he is named as one of the members of the criminal organization which his son is said to lead (Count 1). He is also named as an unindicted co-conspirator in a charge of conspiracy to traffic in drugs, Count 3 of the direct indictment.
- [8] Overall, 12 of the targets of Project Territory face numerous offences related to activities of alleged criminal organizations, conspiracy to traffic, trafficking, and possession for the purpose of trafficking controlled substances, including fentanyl, cocaine, methamphetamine, and/or heroin.
- [9] All of the accused were initially charged on informations in the Provincial Court of British Columbia.
- [10] Between August 2018 and January 2019, various of the accused had judicial interim release hearings in the Provincial Court. All but two were detained, albeit some consented to remain in custody.
- [11] In January 2019, the Crown filed three direct indictments in this court, organized by group. Five accused are charged on Indictment 27786 (the "Kang Indictment"). Two accused are charged on Indictment 27787 (the "Second Kang Indictment"). Craig Latimer, Kyle Latimer, and three others are charged on Indictment 27798 (the "Latimer Indictment").
- [12] Three of the accused on the Kang Indictment have since been released on bail following s. 525 detention review hearings before me. The reasons from those hearings are as follows: *R. v. Ghuman*, 2019 BCSC 1708; *R. v. Braich*, 2019 BCSC 1918; and *R. v. Kang*, 2019 BCSC 2321 [Kang 2321].

- [13] In respect of Mr. Kang's s. 525 detention review hearing noted above, Mr. Kang originally had a s. 515 judicial interim release hearing before me in the summer of 2019, and I detained him on the secondary ground: see *R. v. Kang*, 2019 BCSC 1711. A far more comprehensive bail plan was proffered at the s. 525 detention review hearing such that I ordered his release.
- [14] In addition to the three accused on the Kang Indictment who have been released, one of the accused on the Latimer Indictment, Jacob Pereira, was released following a s. 515 judicial interim release hearing before Madam Justice DeWitt-Van Oosten (as she then was). The reasons for judgment on Mr. Pereira's bail hearing are found at *R. v. Pereira*, 2019 BCSC 634.
- [15] Together, these various bail decisions provide a detailed outline of the circumstances of the offences grounding the Project Territory indictments, which I incorporate into these reasons by reference hereto.

POSITIONS ON BAIL

- [16] Mr. Latimer seeks to have the detention order made by Judge Galati reviewed under s. 520(1) of the Code. Judge Galati found that Mr. Latimer had not discharged the reverse onus situation he was in. The detention order was justified on three bases: first, by all four statutory criteria in s. 515(10)(c): *R. v. Latimer* (January 4, 2019), Vancouver Registry 247235 (B.C.P.C.) at paras. 17 and 29-32 [Latimer]; second, by an insufficient evidentiary basis to establish that Mr. Latimer's health needs were not being adequately addressed in custody (para. 33); and third, by the absence of a proper release plan (para. 34).
- [17] Mr. Latimer seeks his release on stringent terms and conditions, including house arrest at a recovery house in Vancouver, BC. He cannot provide any cash deposit and has no sureties to perform the sort of civilian monitoring function that sureties perform when an accused is released on surety bail.
- [18] Mr. Latimer asserts that four factors satisfy the material change in circumstances criteria required by *R. v. St-Cloud*, 2015 SCC 27, the seminal decision governing the parameters of s. 520 bail reviews. Those four factors are:
- i. The COVID-19 pandemic: Mr. Latimer is within the COVID-19 high-risk category due to his age and medical condition. Judge Galati accepted and found that Craig Latimer suffers from "congestive heart failure related to morbid obesity" and "respiratory issues" and that he "can only ambulate slowly over what appear to be short distances": Latimer at para. 20.
 - ii. New disclosure and viable Charter defences: Mr. Latimer says he is able to raise a viable Charter argument due to new disclosure that was not available at the time of the detention order. He argues that this undermines the conclusion that the case against him is strong.

iii. The impact of the COVID-19 pandemic on Mr. Latimer's constitutional rights: To prevent the spread of COVID-19, the federal and British Columbia correctional authorities have placed significant restrictions on all in-custody visits. While counsel are somewhat accommodated, the present restrictions place significant restraint on detained accused, making Mr. Latimer's access to counsel, trial preparations, and the right to make full answer and defence more difficult.

iv. The new release plan: Mr. Latimer argues he has a strong out-of-custody plan advising that he has been offered admission to a residential treatment house in Vancouver (Reaching out Recovery); he will be under house arrest; and he will be subject to the electronic monitoring system ("EMS").

[19] On this last point, counsel were advised at the commencement of this bail review hearing that it was the Court's understanding, based on the results of a s. 525 detention review hearing in Kelowna, *R. v. Pavlik* (April 3, 2020) Vancouver Registry 30240-W (B.C.S.C.) heard by Mr. Justice Wilson, that B.C. Corrections has suspended the availability of the EMS program (and the accompanying Technical Suitability Report assessments) while the physical distancing recommendations issued by the Provincial Health Officer ("PHO") in response to the COVID-19 pandemic remain in effect.

[20] This application came about through Crown counsel properly and fairly raising the issue of the COVID-19 pandemic and its potential impact on Mr. Latimer's health with Mr. Latimer's counsel. Without making any concessions, Crown counsel invited defence counsel to propose a release plan.

[21] At the outset of this bail review, Crown counsel fairly conceded that the material and relevant change in circumstances of the case and, by implication, the fresh evidence criteria as discussed in *St-Cloud* at paras. 121 to 139 had been satisfied on this application. As the decision in *St-Cloud* directs:

[138] If the new evidence meets the four criteria for admissibility, the reviewing judge is authorized to repeat the analysis under s. 515(10)(c) Cr. C. as if he or she were the initial decision-maker. The reviewing judge must therefore consider all the circumstances of the case, focusing in particular on the circumstances specified in that provision. The judge must then undertake a balancing exercise and determine, from the perspective of the public, whether the detention of the accused is still justified. The [*Palmer v. The Queen*, [1980] 1 S.C.R. 759] criteria, modified as I have just done, must not be applied in a manner that delays or needlessly complicates the release process. As I explained above, that process, by its very nature, generally requires an expeditious and flexible procedure. The criteria therefore serve as guidelines for the reviewing judge, but they must not have the effect of creating a procedural straightjacket that would interfere with the administration of justice.

[22] Given the Crown's concession that the material change in circumstances and fresh evidence criteria have been satisfied, I am prepared to admit the evidence of the new proposed bail plan, the new disclosure made since the bail hearing before Judge Galati, and the potential

impacts of the COVID-19 pandemic on Mr. Latimer's health and preparation of his defence, pursuant to s. 520(7)(c) of the Code. As a result, I now have jurisdiction to repeat the interim release analysis as if I was the initial decision-maker on bail under s. 515(10) of the Code: St-Cloud at para. 138.

- [23] Although the Crown concedes the material change in circumstances criteria, the Crown is opposed to Mr. Latimer's release on the current proposed plan, arguing that it does not adequately address either the health issues for Mr. Latimer nor does it address other tertiary ground concerns as has been interpreted in the jurisprudence. The Crown explained that it had anticipated Mr. Latimer proffering a far more stringent release plan that would have included house arrest, self-isolation in his own residence, a significant surety bail, and electronic monitoring. As I noted previously, this last plank of the release plan is not available to Mr. Latimer or any accused during the currency of the COVID-19 pandemic and the PHO's direction for physical distancing.
- [24] The Crown argues that Mr. Latimer has failed to discharge his burden of establishing that his release would not be contrary to maintaining confidence in the administration of justice as mandated by s. 515(10)(c) of the Code:

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:

...

- (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.
- [25] No issue is taken with the correctness of Judge Galati's decision. Indeed, counsel described it as representing a careful and thoughtful analysis. There is, however, one minor quibble with Judge Galati's analysis of the tertiary ground. The defence argues Judge Galati failed to consider the potential delay in getting to trial and failed to consider the absence of any facts justifying detention under the primary and secondary ground as relevant factors when assessing the tertiary ground.

- [26] As I am conducting the s. 520 bail review in conformity with the St-Cloud direction as if I was the initial decision-maker (para. 138), my point in referring to the absence of error in Judge Galati's decision is to note that no issue is taken with his recitation of the facts alleged against Mr. Latimer or with respect to Mr. Latimer's antecedents.
- [27] I consider Judge Galati's reasons to represent a careful, succinct, and comprehensive review of the circumstances of the offence and Mr. Latimer's personal circumstances, and I adopt them for the purposes of this bail review. Rather than excerpting lengthy passages from Judge Galati's decision, I attach his decision as Appendix A to this ruling.
- [28] My decision is informed by Judge Galati's recitation of the circumstances of the offences and Mr. Latimer's antecedents.

GOVERNING PRINCIPLES

- [29] I turn now to the legal principles governing the analysis for assessing the tertiary ground under s. 515(10)(c) of the Code.
- [30] The tertiary ground relates to public confidence in the administration of justice and how that may be impacted by an accused's release or detention. In this case, Mr. Latimer 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.
- [31] In St-Cloud, Mr. Justice Wagner (as he then was) noted in the opening paragraphs of the decision:
- [4] The ground for detention in s. 515(10)(c) Cr. C. requires that an effort be made to strike an "appropriate balance between the rights of the accused and the need to maintain justice in the community": Hall, at para. 41. In addition, judges must adopt the perspective of the public in determining whether detention is necessary. What the word "public" means is not always easy to understand. These difficulties no doubt explain why s. 515(10)(c) Cr. C. has generated so much discussion among legal experts and led to inconsistent results across the country.
- [5] In my opinion, the scope of s. 515(10)(c) Cr. C. has been unduly restricted by the courts in some cases. This ground for detention is not necessarily limited to exceptional circumstances, to the most heinous of crimes involving circumstances similar to those in Hall, or to certain classes of crimes. The interpretation of s. 515(10)(c) Cr. C. has also been truncated by a misunderstanding of the meaning of the word "public" used in the provision's French version (and implied in the word "confidence" used in the English version), which I will discuss below. For now, I will simply note that the "public" are reasonable, well-informed members of the community, but not legal experts with in-depth knowledge of our criminal justice system.

- [32] Justice Wagner went on to explain what was meant by the "reasonable, well-informed member of the community", writing:
- [79] Thus, a reasonable member of the public is familiar with the basics of the rule of law in our country and with the fundamental values of our criminal law, including those that are protected by the Charter. Such a person is undoubtedly aware of the importance of the presumption of innocence and the right to liberty in our society and knows that these are fundamental rights guaranteed by our Constitution. He or she also expects that someone charged with a crime will be tried within a reasonable period of time, and is aware of the adage that "justice delayed is justice denied": *R. v. Trout*, 2006 MBCA 96, 205 Man. R. (2d) 277, at para. 15. Finally, a reasonable member of the public knows that a criminal offence requires proof of culpable intent (*mens rea*) and that the purpose of certain defences is to show the absence of such intent. A well-known example of this type of defence is the mental disorder defence. The person contemplated by s. 515(10)(c) Cr. C. therefore understands that such a defence, once established, will enable an accused to avoid criminal responsibility. However, it would be going too far to expect the person in question to master all the subtleties of complex defences, especially where there is overwhelming evidence of the crime, the circumstances of the crime are heinous and the accused admits committing it.
- [80] In short, the person in question in s. 515(10)(c) Cr. C. is a thoughtful person, not one who is prone to emotional reactions, whose knowledge of the circumstances of a case is inaccurate or who disagrees with our society's fundamental values. But he or she is not a legal expert familiar with all the basic principles of the criminal justice system, the elements of criminal offences or the subtleties of criminal intent and of the defences that are available to accused persons.
- [33] Before summarizing the essential principles governing the tertiary ground analysis, Wagner J. went on to note that there are two ways that the public confidence in the administration of justice can be undermined:
- [86] In short, there is not just one way to undermine public confidence in the administration of justice. It may be undermined not only if a justice declines to order the interim detention of an accused in circumstances that justify detention, but also if a justice orders detention where such a result is not justified.
- [34] The essential elements of the tertiary ground analysis for s. 515(10)(c) were enumerated in *St-Cloud* as follows:
- [87] I would summarize the essential principles that must guide justices in applying s. 515(10)(c) Cr. C. as follows:
- Section 515(10)(c) Cr. C. does not create a residual ground for detention that applies only where the first two grounds for detention ((a) and (b)) are not satisfied. It is a distinct ground that itself provides a basis for ordering the pre-trial detention of an accused.

- Section 515(10)(c) Cr. C. must not be interpreted narrowly (or applied sparingly) and should not be applied only in rare cases or exceptional circumstances or only to certain types of crimes.
 - The four circumstances listed in s. 515(10)(c) Cr. C. are not exhaustive.
 - A court must not order detention automatically even where the four listed circumstances support such a result.
 - The court must instead consider all the circumstances of each case, paying particular attention to the four listed circumstances.
 - The question whether a crime is "unexplainable" or "unexplained" is not a criterion that should guide the analysis.
 - No single circumstance is determinative. The justice must consider the combined effect of all the circumstances of each case to determine whether detention is justified.
 - This involves balancing all the relevant circumstances. At the end of this balancing exercise, the ultimate question to be asked by the court is whether detention is necessary to maintain confidence in the administration of justice. This is the test to be met under s. 515(10)(c).
 - To answer this question, the court must adopt the perspective of the "public", that is, the perspective of a reasonable person who is properly informed about the philosophy of the legislative provisions, Charter values and the actual circumstances of the case. However, this person is not a legal expert and is not able to appreciate the subtleties of the various defences that are available to the accused.
 - This reasonable person's confidence in the administration of justice may be undermined not only if a court declines to order detention where detention is justified having regard to the circumstances of the case, but also if it orders detention where detention is not justified.
- [35] Before applying these principles to the circumstances of Mr. Latimer's case, I acknowledge two very important principles that also inform and animate the analysis in this case. They were conveniently summarized by DeWitt-Van Oosten J. in *Pereira*. I adopted the observations outlined in *Pereira* in my decision in *Braich* at para. 143:
- [143] In *Pereira*, DeWitt-Van Oosten J. set out the guiding framework on judicial interim release applications. Mr. *Pereira* is also charged on an indictment arising out of the VPD's Project Territory investigation, albeit a separate indictment that relates to a different alleged criminal organization referred to as the Latimer group. In *Pereira*, DeWitt-Van Oosten J. noted:
- [44] In *R. v. Myers*, 2019 SCC 18, the Supreme Court once again emphasized that "pre-trial detention is a measure of last resort":

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

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

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

[45] The Court also re-affirmed that:

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

[36] There is also a legislative development that must be factored into my assessment of the tertiary ground in Mr. Latimer's case. I addressed that development in my decision releasing Gary Kang on bail at his s. 525 detention review hearing in December 2019 (Kang 2321):

[38] Gary Kang's revised proposed release plan must be assessed in the context of the legislative amendments to the bail provisions in the Code that came into effect on December 18, 2019. These amendments were part of the omnibus Bill C-75 that amended many areas of the Code. It received Royal Assent on June 21, 2019. The amendments to the bail provisions were not in effect at the time of the initial bail hearing, however, they are now in effect. The amendments are, in part, a response to the trilogy of bail decisions from the Supreme Court of Canada: *R. v. St-Cloud*, 2015 SCC 27 at para. 70; *R. v. Oland*, 2017 SCC 17; and *R. v. Antic*, 2017 SCC 27 at paras. 1 and 39-40. The Supreme Court's recent decision in *Myers* only serves to re-emphasize the principle that bail pending trial is the rule and detention is the exception: *Myers* at paras. 1 and 67.

[39] The amendments to the bail provisions in the Code now in effect serve to reiterate the Supreme Court of Canada's direction in the aforementioned decisions.

[40] The amendments are not only the product of this jurisprudence from the Supreme Court of Canada but also, as noted in the Department of Justice Canada's August 2019 Legislative Background to Bill C-75, a response to years of study and calls for reforms:

The bail provisions in the Criminal Code had not been comprehensively amended since 1972, although they have been studied over the years, especially in light of the growing remand population. There have been many calls for reforms, including for comprehensive reform such as in the Senate Committee's Report, by the Steering Committee and in resolutions for more discrete amendments from the Uniform Law Conference of Canada . . . Many bail rules were unnecessarily complex and/or redundant, which added to criminal justice system delays, without

necessarily contributing to public safety. In addition, unnecessary bail conditions were being imposed too frequently resulting in increased breaches and overburdening sureties.

The bail amendments in the Act have also been informed by the rights of accused persons under the Charter, namely the right not to be denied reasonable bail without just cause under section 11(e), as well as the right to liberty and the presumption of innocence. The SCC in *Antic* (2017) recently affirmed that these rights require that an accused person not be denied bail without just cause and that any bail conditions placed on release be reasonable. The Honourable Wagner J. (now Chief Justice) writing for the Court, stated that the bail review judge's errors in *Antic* were "symptomatic of a widespread inconsistency in the law of bail" and that "the bottom line so far has been that remand populations and denial of bail have increased dramatically in the Charter era". The Court emphasized a number of key principles and guidelines to apply in a contested bail hearing, including that releasing the accused without conditions should be the default position when granting release and that "release is favoured at the earliest reasonable opportunity on the least onerous grounds."

[Footnotes omitted.]

[41] The amendments to the Code brought about by Bill C-75 are said to "modernize and streamline the bail regime, while ensuring public safety, and help maintain public confidence in the criminal justice system."

[42] One of the most significant amendments, in my view, is found at the start of Part XVI of the Code in s. 493.1 which provides:

Principle of Restraint

493.1 In making a decision under this Part, a peace officer, justice or judge shall give primary consideration to the release of the accused at the earliest reasonable opportunity and on the least onerous conditions that are appropriate in the circumstances, including conditions that are reasonably practicable for the accused to comply with, while taking into account the grounds referred to in subsection 498(1.1) or 515(10), as the case may be.

[43] This new provision legislates and codifies the "principle of restraint" for police and courts to ensure that release at the earliest opportunity is favoured over detention, and that bail conditions are reasonable, relevant to the offence, and necessary to ensure public safety.

[44] A Legislative Summary on Bill C-75 authored by members of the Legal and Social Affairs Division of the Parliamentary Information and Research Service (July 25, 2019) notes (at p. 2) that Bill C-75 amends many aspects of criminal law and criminal procedure in the Code. Some of the amendments were intended to "modernize bail practices and procedures by providing that any bail decision must give primary consideration to releasing the accused at the earliest reasonable opportunity and on the least onerous conditions possible..." The legislative summary provides (at p. 13) an explanation for the need for reform as follows:

In recent years, the number of accused persons detained on remand has increased considerably. According to Statistics Canada, the remand population over the last 10 years in provincial/territorial prisons has consistently exceeded the sentenced population. For instance, adults in remand accounted for 60% of the custodial population in 2015-2016, an increase of 35% over 2005-2006. Among the provinces and territories, seven out of 13 jurisdictions had higher proportions in remand versus sentenced custody.

Bail reform has been an ongoing subject of discussion for many years. More recently, in 2015, a report commissioned by the Department of Justice Canada and written by Professor Cheryl Marie Webster described what she referred to as Canada's "broken bail system" and the problems with the remand system. Webster reviewed the relevant statistics and the consequences of the high number of persons on remand, and noted that this has placed a strain on limited resources and created challenges in managing the remand population. She added that bail has become more difficult to obtain due to an increased number of offences involving a shift in the onus of proof from the Crown to the accused (making it particularly hard for self-represented accused persons). Other factors behind this trend include a "tough-on-crime mentality"; the interest of a judge or justice of the peace in maintaining confidence in the administration of justice; and the use of increasingly stringent release orders. She recommended a systemic change:

[A] different mindset is needed that will force the key players to reconceptualise bail as it was originally intended: a summary procedure which upholds and defends the presumption of innocence while ensuring - above all - the attendance of the accused in court.

During its study on court delays, the Standing Senate Committee on Legal and Constitutional Affairs heard from a range of witnesses from across Canada, including Professor Webster, who discussed the high numbers of individuals detained in remand and the need for reform in this area. The Committee recommended reform and the prioritization of reducing the number of persons on remand across Canada.

[Footnotes omitted.]

[45] The amendments to the Code incorporate the ladder principle from *Antic*, as can be seen in ss. 515(1) through s. 515(2.03) and (7) of the Code, which provide as follows:

Release order without conditions

515 (1) Subject to this section, when an accused who is charged with an offence other than an offence listed in section 469 is taken before a justice, the justice shall, unless a plea of guilty by the accused is accepted, make a release order in respect of that offence, without conditions, unless the prosecutor, having been given a reasonable opportunity to do so, shows cause, in respect of that offence, why the detention of the accused in custody is justified or why an order under any other provision of this section should be made.

Release order with conditions

- (2) If the justice does not make an order under subsection (1), the justice shall, unless the prosecutor shows cause why the detention of the accused is justified, make a release order that sets out the conditions directed by the justice under subsection (4) and, as the case may be,
- (a) an indication that the release order does not include any financial obligations;
 - (b) the accused's promise to pay a specified amount if they fail to comply with a condition of the order;
 - (c) the obligation to have one or more sureties, with or without the accused's promise to pay a specified amount if they fail to comply with a condition of the order;
 - (d) the obligation to deposit money or other valuable security in a specified amount or value, with or without the accused's promise to pay a specified amount if they fail to comply with a condition of the order; or
 - (e) if the accused is not ordinarily resident in the province in which they are in custody or does not ordinarily reside within 200 kilometres of the place in which they are in custody, the obligation to deposit money or other valuable security in a specified amount or value, with or without the accused's promise to pay a specified amount by the justice if they fail to comply with a condition of the order and with or without sureties.

Imposition of least onerous form of release

(2.01) The justice shall not make an order containing the conditions referred to in one of the paragraphs (2)(b) to (e) unless the prosecution shows cause why an order containing the conditions referred to in the preceding paragraphs for any less onerous form of release would be inadequate.

Promise to pay favoured over deposit

(2.02) The justice shall favour a promise to pay an amount over the deposit of an amount of money if the accused or the surety, if applicable, has reasonably recoverable assets.

Restraint in use of surety

(2.03) For greater certainty, before making an order requiring that the accused have a surety, the justice shall be satisfied that this requirement is the least onerous form of release possible for the accused in the circumstances.

...

Release order

- [7] If an accused to whom subsection (6) applies shows cause why their detention in custody is not justified, the justice shall make a release order under this section. If the accused was already at large on a release order, the new release order may include any additional conditions described in subsections (4) to (4.2) that the justice considers desirable.
- [46] Thus, Parliament, through the recent amendments to the bail provisions of the Code, and the Supreme Court of Canada, in its jurisprudence, have made it abundantly clear that detention pending trial is only to be used as a last resort.
- [47] Pursuant to *Antic* and ss. 515(2)-(2.03) of the Code, surety bail is to be used with restraint and only if it is the least-onerous form of release possible for the accused. Given the statutory construction of ss. 515(2)(c) and (d) of the Code, particularly when read together with s. 515(2.01) and an application of the modern principles of statutory interpretation, a cash deposit release order under s. 515(2)(d) is a more onerous form of release order than the surety release order of s. 515(2)(c). Equally clear is the fact that a surety release order under s. 515(2)(c) does not permit both a surety and a cash deposit. It is either or, not both.

[Footnotes omitted.]

- [37] These amendments to the bail provisions and my comments in *Kang* 2321 apply with equal force to Mr. Latimer's bail review application.

ANALYSIS

- [38] I turn now to the application of these principles to the circumstances of Mr. Latimer's case. I will first address the statutory criteria of s. 515(10)(c) of the Code and then turn to Mr. Latimer's personal circumstances and the material and relevant change of circumstances that he urges must recalibrate the balancing exercise in his case and lead to a different result than the January 4, 2019, detention order of Judge Galati.
- [39] In order to determine whether Mr. Latimer's detention is still necessary to maintain confidence in the administration of justice, the apparent strength of the Crown's case remains a consideration. The new disclosure received in the form of the intelligence analyst's overnight reports and other documents serves to demonstrate that, rather than being an unknown prior to the issuance of the wiretap authorization on February 14, 2018, Craig Latimer appears to have been known to Project Territory investigators, and they were actively making inquiries about him. The written submissions of defence counsel at para. 40 filed on this application refer to documents in the new disclosure that make reference to Mr. Latimer or his vehicles going back to May 9, 2017.
- [40] While this new disclosure no doubt provides the defence with more evidence to support the intended known/unknown person argument based on *R. v. Chesson*, [1988] 2 S.C.R. 148 and challenge the Part VI wiretap authorization in this case, it only takes the analysis so far. Even without the Part VI wiretap authorization and the intercepted conversations, the

Crown's case against Craig Latimer is a strong circumstantial one. The warrants executed at the Graybar location on April 10 and 11, 2018, while based in part on intercepted conversations between Kyle Latimer and another co-accused, may or may not be impacted by the results of the Chesson argument that Mr. Latimer intends to advance in his s. 8 Charter challenge to the wiretap authorization. And so, while the new disclosure may well favourably move the needle for Mr. Latimer on the wiretap authorization such that the apparent strength of the Crown's case is less than it was before *Galati P.C.J.*, it nevertheless remains a significant circumstantial case against Mr. Latimer, even in the absence of the intercepted conversations. Accordingly, this factor still militates in favour of detention.

- [41] The remaining three statutory factors in s. 515(10)(c) of the Code are, in my view, unaltered by the new disclosure and the invigorated Chesson argument.
- [42] The weapons offences that Craig Latimer faces are very serious and reflect a high level of moral blameworthiness. Craig Latimer had hidden in his auto body shop an arsenal of deadly firearms, a grenade, and an RCMP uniform. Nothing has been adduced to suggest that the possession of the RCMP uniform was for innocuous purposes. I am not reversing the onus here and am completely cognizant that Craig Latimer is entitled to the protection of the presumption of innocence. Nevertheless, possession of an RCMP uniform in circumstances where neither Craig nor Kyle Latimer have ties to the RCMP as former members is a deeply troubling circumstance that features in the assessment of the circumstances of the offence. Added to this is the overall circumstances of the Project Territory and other investigations under the Task Force Tourniquet umbrella, which were focused investigations into the activities of a number of alleged criminal organizations. These investigations were commenced in an effort to reduce the carnage on the streets wrought by: (i) the turf war for the control of the drug trade in the Lower Mainland--a war fought with repeated resort to firearms; and (ii) the scourge of the opioid crisis, which has been and continues to be a public health emergency in this province.
- [43] In my view, the gravity of the offence and the circumstances surrounding its commission both militate in favour of continued detention in this case: *Ghuman* at para. 185.
- [44] In so far as the fourth statutory factor is considered--the potential for a lengthy term of imprisonment--the weapons offences carry a maximum period of imprisonment of 10 years and a minimum sentence of at least three years for the s. 95(1) Code offences (Counts 8 to 10).
- [45] While all four statutory factors militate in favour of continued detention, this does not mean that a detention order must follow: *Ghuman* at para. 184; *Braich* at para. 184; and *Kang* 2321 at para. 67.
- [46] Other factors must be weighed in the balancing exercise. Participation or involvement in an alleged criminal organization, as the disclosure and evidence appear to support, is very troubling and a relevant consideration: *St-Cloud* at para. 71.

[47] Having noted that, it is also a relevant consideration that the conspiracy and overall drug enterprise in this case, which 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 very stringent and restrictive conditions: Kang 2321 at para. 69. This factor militates in favour of release, just as it did in Ghuman, Braich, Kang 2321, and R. v. Fleming, [2015] O.J. No. 4380 (Ont. S.C.J.).

The COVID-19 Pandemic

- [48] A further factor that must be included in the balancing of factors under the tertiary ground assessment, particularly with respect to Mr. Latimer, is the COVID-19 pandemic. Counsel for Mr. Latimer properly concedes that the COVID-19 pandemic must not be treated as a freestanding ground in favour of release but rather as part of the totality of the circumstances informing the inquiry. In R. v. T.K., 2020 ONSC 1935, Mr. Justice Goodman observed:
- [72] When I consider the current state of affairs in the detention centres and with due consideration to the COVID-19 pandemic, I am persuaded by Ms. McCourt that the applicant will abide by the release conditions imposed instead of remaining in detention awaiting trial months, if certainly not longer.
- [73] In adding the COVID-19 pandemic into the proposed release plan's "mix" and as expressed in [R. v. J.S., 2020 ONSC 1710], in this case, I am persuaded that the release plan proffered will address the Crown's primary, secondary and tertiary concerns. At the same time, this decision is not intended to send out a message that due to the pandemic there exists a revolving door policy for offenders to commit crime with the expectation of release or that offenders can now benefit with a "get out of jail free" card. Indeed, if this were the case generally, it would erode the public confidence in the criminal justice system, especially as it pertains to violent offenders or crimes of violence.
- [74] In summary, even in these very challenging times, the court must fully recognize the potential harmful health impact on detained persons in the various institutions, while at the same exercising the balancing required to sustain its fundamental role in the administration of justice and protection of the public.
- [49] Counsel for Mr. Latimer placed before the Court a number of decisions from Ontario that have addressed the COVID-19 pandemic in the context of bail decisions. While those decisions are informative, they must be approached with caution, particularly given the very different context of Ontario's COVID-19 pandemic experience vis-à-vis BC's experience.

- [50] Mr. Justice Riley of this court has rendered two thoughtful judgments in the context of s. 525 detention review hearings: *R. v. Berlinguette*, 2020 BCSC 477 at paras. 35 to 37 and *R. v. Leppington*, 2020 BCSC 546 at paras. 27 to 32. In both cases, the detention of the accused was continued and the s. 525 applications dismissed, with a direction pursuant to s. 525(4)(b) of the Code for another s. 525 detention review hearing in the Leppington case (para. 48).
- [51] In *Berlinguette*, Riley J. wrote:
- [35] Insofar as COVID 19 is concerned, I have also been provided with the decision in *R. v. J.S.*, 2020 ONSC 1710, in which J.M. Copeland J. at para. 18-19 expressed concern about the elevated risk to detained persons being held in a confined space. The Court noted that one of the main strategies advocated by public health officials to combat the spread of COVID 19 is social distancing and self-isolation, a strategy which is problematic in institutions where inmates do not normally have single cells. I acknowledge the logic behind that concern, but on the other hand I have been provided with some information to indicate that those responsible for the administration of pre-trial detention facilities in this province have specific measures in place to monitor and address COVID 19 risks.
- [36] The J.S. decision addressed the implications of the coronavirus specifically in the context of the tertiary ground in s. 515(10)(c) of the Criminal Code. That particular provision is concerned with situations in which bail can justifiably be denied based on the need to maintain public confidence in the administration of justice. The Court in J.S. was satisfied that there was an independent basis for revisiting the finding that the accused's detention was required to maintain public confidence, namely a material change in circumstance based on the availability of new sureties, and then also took into account concerns about COVID 19 in the custodial setting in Ontario.
- [37] I consider myself obliged to take Mr. Berlinguette's submissions on the COVID 19 situation into account in considering how it may impact on the health concerns of a detained accused as explained by the Court in *Myers* at para. 27. However, on the record placed before me in this particular case I do not find that the COVID 19 concerns tip the scale so as to affect the result, one way or the other, so I will not say any more about it.
- [52] And in *Leppington*, Riley J. wrote:
- [27] Third, there are developments with respect to the emergence of the COVID-19 pandemic and its implications for the criminal justice system in general and for those in custody in pre-trial detention facilities in particular.
- [28] One facet here is the fact that both the Provincial Court of British Columbia and the Supreme Court of British Columbia have issued notices suspending their normal court operations for a period of time in response to recommendations or directions from public health officials to reduce the spread of COVID-19 throughout our communities. This has scheduling implications for criminal cases. In Mr. Leppington's case, we can see that his fix date appearances on two of the three Informations have been adjourned. This may lead to

some delay in scheduling of the trials in those matters.

[29] Another facet of the COVID-19 situation is the health risk associated with the virus itself. For those who are in custody in remand facilities, the risk is heightened or magnified by the fact that prisoners are held in confined spaces, in close quarters with other prisoners. This poses an obvious challenge in observing practices of social distancing and voluntary self-isolation, strategies that public health officials have advocated to reduce the spread of COVID-19. See *R. v. Berlinguette*, 2020 BCSC 477 at para. 35, citing *R. v. J.S.*, 2020 ONSC 1710 at para. 18-19.

[30] I have been provided with information from the authorities responsible for administering remand facilities in British Columbia indicating that every effort is being made to address COVID-19 risks. These efforts include but are not limited to minimizing close contact, close monitoring of newly admitted inmates for symptoms, and isolation of inmates who show overt symptoms. I accept on the materials I have been provided that the responsible officials are doing all that might reasonably be done to limit the risk that COVID-19 poses to the inmate population. Still, one cannot ignore the reality that individuals who are being held in custody in confined spaces, often in close quarters with others, are subject to increased health risks associated to exposure to, and challenges associated with treating of COVID-19 in the custodial setting. Moreover, the institutional response can be expected to result in restriction of the few privileges and limited programming available to inmates in pre-trial detention, making the circumstances of detention even more burdensome than would ordinarily be the case.

...

[32] For my part, I will say that the health risks of the COVID-19 pandemic, and the institutional response, are matters that are certainly relevant to the impact of detention on the physical and mental well-being of Mr. Leppington as an accused person as discussed in *Myers* at para. 27. This does not mean Mr. Leppington should be released if it is determined that his detention is required on any of the grounds specified in s. 515(10) of the Criminal Code. It does however heighten the court's concern about the impact and potential implications of ordering Mr. Leppington's detention, which under the law is only justified as the option of last resort. In this, I agree with the comment of A.J. Goodman J. in *R. v. T.K.* at para. 74, that "even in these very challenging times, the court must fully recognize the potential harmful health impact on detained persons in the various institutions, while at the same time exercising the balancing required to sustain its fundamental role in the administration of justice and protection of the public".

[53] These observations are equally apposite to the instant application, and I adopt them.

- [54] In *R. v. Cota Garcia*, 2020 BCPC 64, the Honourable Judge Jetté addressed the issue of COVID-19 in the context of the primary ground (s. 515(10)(a) of the Code) for four accused, all Mexican nationals, charged with importing and possession for the purpose of trafficking of over 100 kilograms of methamphetamine. Notwithstanding no ties to Canada, the accused were ordered released with a \$10,000 cash deposit each and stringent terms. The COVID-19 pandemic and its impact on detention centres figured prominently in Judge Jetté's reasoning:
- [60] The third relates to the impacts brought about by the COVID-19 pandemic, which I find have application to all three grounds for detention in s. 515 of the Code.
- [61] Despite recent reports from BC Corrections that, to date, the crisis is being successfully handled inside our detention facilities, it appears to me inevitable that these places cannot remain as infection free zones while the virus continues its relentless march into every corner of the planet. The conditions which are inherent to a custodial setting suggest that, most unfortunately, the battle will be lost here as well, with predictable consequences for inmates, staff, and the community at large. As an aside, and not to suggest that I have a special ability to see in into the future, about half an hour after writing this part of my judgment the Chief Medical Officer for BC announced at her daily briefing that an inmate at the Okanagan Correctional Centre has tested positive for COVID-19. I think that almost anyone who is paying attention to what has been going on all around us would have come to the same conclusion that I did.
- [62] COVID-19 has also caused a significant disruption to the operations of this court. All non-custodial trials have been adjourned to fix dates in June. Most in-custody trials have now also been adjourned and will not be set down again until months into the future. The stacking of all of these cases will inevitably push newer matters like this one, which sits at the back of the queue, much further down the line.
- [55] In *Mr. Latimer's* case, there are two facets of the COVID-19 argument: one is health-related and one is access to counsel and the ability to prepare for trial. Both facets are very concerning.
- [56] In so far as the health facet of COVID-19 is concerned, *Mr. Latimer* suffers from a number of significant medical conditions, including:
- a) congestive heart failure related to morbid obesity;
 - b) respiratory issues and can only ambulate slowly over what appear to be short distances;
 - c) sleep apnea;
 - d) atrial fibrillation;
 - e) high blood pressure; and
 - f) high cholesterol.

He also suffers from alcohol dependency.

- [57] Mr. Latimer's pre-existing physical health issues combined with his age (57) puts him into the category of persons for whom contracting the coronavirus could result in severe health issues or even death. He fits the "vulnerable population" profile that the Government of Canada has described in an online publication, "Coronavirus Disease (COVID-19): Vulnerable Populations and COVID-19"[1].
- [58] Mr. Latimer is detained at Fraser Regional Correctional Centre and is said to be self-isolating, although certain communal areas such as the showers and meals present difficulties for him.
- [59] At the time of this bail review, there were no further cases of COVID-19 in the BC provincial correctional facilities, apart from the one case at the Okanagan Correctional Centre as mentioned in Cota Garcia at para. 60. Included in the materials on this bail review is an excerpt from the April 6, 2020, letter from Elenore Arend, the Assistant Deputy Minister of Public Safety and Solicitor General that was provided to the chief justices of the province, the heads of the two prosecution services, and to the Legal Services Society. The excerpt outlines the considerable, concerted, and proactive measures that B.C. Corrections has implemented to address and minimize the risks presented by COVID-19. The information appears similar to the information summarized by Riley J. in Leppington at para. 30, although it is more recent and more detailed.
- [60] The fact that there remains only one known case of COVID-19 in the provincial correctional facilities and detention centres at least implicitly demonstrates the effectiveness of the measures in place.
- [61] In Mr. Latimer's case, his vulnerability, given his precarious state of health, is very concerning. However, it presents as a double-edged sword when assessed against his proposed release plan.
- [62] Mr. Latimer's proposed release plan has him residing at a recovery house in Vancouver where there are only five other residents. However, his release plan requires him to make his own way to the recovery house with a stop at Social Services on the way. He would have to rely on either public transit, a cab, or possibly a ride from a friend, all of which will expose him to far greater interactions and potential exposures than if he remains detained.
- [63] Similar concerns arise if he has to travel either to the hospital to see his cardiologist at Richmond General or to travel to other locations for other medical appointments. Mr. Latimer advises that, if released, he would have access to his own older vehicle to transport himself to medical appointments. While that is a way to reduce his health risks, it provides no supervision over him while out in the community.
- [64] The other factor of the implications of COVID-19 on Mr. Latimer is the further limitations it places on his ability to prepare his defence and consult with counsel. While counsel are not prohibited from attending the detention facilities, the interactions they can have with their

clients is even more constrained by the physical distancing requirements of the PHO and B.C. Corrections' requirement that all such visits be behind a glass partition. While such measures are clearly necessary in light of the current circumstances, it places further constraints on meaningful consultation with counsel.

- [65] The COVID-19 pandemic will also have some delay impacts on the Latimer Indictment proceedings, although not nearly as grave as those matters fully adjourned between March 17, 2020, and May 29, 2020, in light of this court's suspension of regular operations. Pre-trial applications and voir dires have been scheduled on the Latimer Indictment to carry on through June 2020, the latter part of August 2020, and all through the fall of 2020 and into the winter of 2021. The actual trial is not scheduled to commence until September 7, 2021.
- [66] The suspension of regular operations has resulted in the adjournment of one joint hearing with the Kang Indictment and Second Kang Indictment, which was to occur April 14-17, 2020. It has also resulted in the adjournment of another component of the challenge to the Part VI wiretap authorization, which was to have been heard April 20 through May 1, 2020.
- [67] Unfortunately, phase two of the challenge to the Part VI authorization currently scheduled for June 1 through July 10, 2020, will likely be unable to commence on June 1, 2020, as the excision issues must be addressed first. So the COVID-19 pandemic will impact the scheduling of the pre-trial applications in that the current schedules will have to be revised. However, at this juncture, I do not anticipate a complete adjournment of all applications and the trial; rather, the schedules and the start of the trial will likely have to shift by a few months. While certainly daunting for all, the Latimer Indictment does not face the same rescheduling difficulties that other trials will face once the suspension of regular operations is lifted.
- [68] I accept that the COVID-19 pandemic concerns vis-à-vis Mr. Latimer's health are real and significant. However, as other decisions have noted, including T.K., Berlinguette, and Leppington, the balancing that the Court must engage in under the tertiary ground does not mean that Mr. Latimer should be released because of the COVID-19 concerns if it is determined that his detention is otherwise justified on the tertiary ground.

The Proposed Release Plan

- [69] This brings me to Mr. Latimer's proposed release plan. Before Judge Galati, it was proposed that Mr. Latimer be released on a cash deposit recognizance in the amount of \$50,000, with a reporting condition, the deposit of his passport, a no contact order with his son, a curfew, and any other appropriate conditions.
- [70] Mr. Latimer's new release plan has more conditions proffered; these conditions essentially mirror the ones that Mr. Pereira, Mr. Ghuman, Mr. Braich, and Mr. Kang have all been released upon.

- [71] Notably absent from Mr. Latimer's release plan is either a significant surety or significant cash deposit. He has been accepted into the Reaching Out Recovery House in Vancouver, BC and proposes that he be subjected to a condition of house arrest with certain exceptions such as medical appointments, meetings with legal counsel, and other ancillary exceptions. What is completely absent from his proposed release plan is anyone like a surety offering to escort him on any of his proposed exceptions to the house arrest or monitoring his behaviour in the community. The recovery house cannot and will not take on that role.
- [72] In the case of Mr. Ghuman, there is a \$300,000 surety bail with his parents, grandmother, or employer escorting him in the community when out of his house pursuant to any of the exceptions to the house arrest condition.
- [73] Mr. Braich was released on a \$500,000 surety bail with his parents escorting him in the community pursuant to any of the exceptions to the house arrest condition.
- [74] Mr. Kang was released on a \$500,000 cash deposit with his grandparents escorting him in the community when out of his home pursuant to the exceptions to the house arrest condition. Mr. Kang has promised to pay the full \$500,000 if he fails to comply with any of his release conditions.
- [75] Mr. Pereira was released on \$150,000 surety bail with his parents escorting him on any trips in the community when out of his home pursuant to the house arrest condition.
- [76] It was the combination of substantial sureties or cash deposit coupled with individuals escorting these four accused on any trips into the community that provided the court with the assurance that concerns with respect to the tertiary ground could be adequately addressed in the proposed release orders.
- [77] Indeed, in Ghuman, Braich, and Kang 2321, I noted that the strength of the proposed release plan was a factor that is to be balanced and considered under the tertiary ground analysis.
- [78] In Braich, I concluded with the following observations in respect of release plans and maintaining public confidence in the administration of justice:
- [195] Finally, in balancing all these factors, it is important to recall what a reasonable member of the public means. As Trotter J.A. noted in [R. v. Papasotiriou, 2018 ONCA 719]:
- [45] Public confidence is to be measured by the standard of a reasonable member of the public. As Moldaver J. said in Oland, at para. 47: "This person is someone who is thoughtful, dispassionate, informed of the circumstances of the case and respectful of society's fundamental values." See also R. v. St-Cloud, 2015 SCC 27, [2015] 2 S.C.R. 328, at paras. 74-80.
- [196] To borrow from Trotter J.A.'s observations in Papasotiriou, a reasonable member of the public--properly informed about the philosophy of the legislative provisions of the Code, Charter values, the presumption of innocence, the right to make full answer and defence and meaningfully prepare for trial (something much more effectively accomplished while released on bail), the actual circumstances of the case, and the fact that Mr. Braich is not

simply being "turned loose" on society without precautions or safeguards while his case works its way through the trial process--would realize that Mr. Braich's release is not contrary to the interests of justice nor is it necessary to maintain confidence in the administration of justice.

[197] Indeed, on the point of simply being "turned loose", to the contrary, Mr. Braich will be released on very stringent conditions, including house arrest, non-association and non-communication clauses, and other restrictive terms, all supported by a significant surety bail with his proposed sureties prepared to monitor his behaviour in the community.

See also: Ghuman at paras. 190 to 192; Kang 2321 at paras. 78 to 80; and Pereira at paras. 77 to 79 and 86.

[79] While Mr. Latimer has certainly provided more detail of his proposed release plan, in some respects it offers less assurances than what was before Judge Galati, as at least previously there was an offer of a cash deposit.

[80] I acknowledge that the courts have been told repeatedly, both jurisprudentially and now legislatively, that pre-trial detention is the exception, not the rule--detention is a measure of last resort. I acknowledge the ladder principle from *R. v. Antic*, 2017 SCC 27 (para. 67) now codified by Bill C-75 in Part XVI of the Code--the provisions governing an accused's release. I further acknowledge that a release order with sureties is recognized as one of the most onerous forms of release.

[81] Finally, in *R. v. Duncan*, 2020 BCSC 590, Mr. Justice Kent addressed the impact of COVID-19 in the balancing assessment that must be undertaken when considering the provisions of s. 515(10)(c). He succinctly observed:

[40] A number of BC cases have held that COVID-19 concerns in the institutional setting will not warrant release from detention in the absence of an adequate release plan: *R. v. Yaman*, 2020 BCPC 56; *R. v. Peters* (BCSC, VA 30484W, April 3, 2020); *R. v. Leppington*, 2020 BCSC 546; and *R. v. Pavlik* (BCSC, VA 30240W, April 8, 2020). Other cases have held that a satisfactory release plan, combines with COVID-19 concerns, warrants release on bail: *R. v. Janvier-Charland* (BCSC No. KE 91113, April 3, 2020), *R. v. Garcia* (BCPC, Surrey File No. 236955-1, April 3, 2020), (*R. v. Duncan* (BCSC, VA30577W, April 8, 2020).

[82] Nevertheless, when I balance all the factors enumerated that are to be balanced in considering the tertiary ground, even taking into account the COVID-19 pandemic--which ought not overwhelm the tertiary ground analysis--I am not satisfied that Mr. Latimer's release on the proposed plan would maintain confidence in the administration of justice. In my view, at the very least either a significant cash deposit with trustworthy individuals prepared to monitor Mr. Latimer's behaviour in the community when he is out of his residence pursuant to limited exceptions to house arrest or a significant surety or sureties prepared to do the same thing is necessary in order for Mr. Latimer to be released.

[83] The absence of anyone monitoring Mr. Latimer's behaviour in the community and escorting him in the community when outside the recovery house pursuant to any exception to a house arrest condition is much closer to the "being turned loose" on society without safeguards end of the spectrum than it is to the virtual "jail in the community" end of the spectrum that Mr. Pereira, Mr. Ghuman, Mr. Braich, and Mr. Kang occupy.

CONCLUSION

[84] For the reasons provided, I am not satisfied that Mr. Latimer has shown cause that his continued detention is not necessary in order to maintain confidence in the administration of justice. Accordingly, Mr. Latimer remains detained on the tertiary ground.

"Ker J."

APPENDIX A

File No: 247235-1

Registry: Vancouver

In the Provincial Court of British Columbia

REGINA

v.

CRAIG LATIMER

REASONS FOR JUDGMENT AT JUDICIAL INTERIM RELEASE HEARING OF

THE HONOURABLE JUDGE GALATI

COPY

BAN ON PUBLICATION 517 CCC

Crown Counsel:

M. Loda

Defence Counsel:

J. Narwal

Ms. Mujay, Articled Student

Place of Hearing:

Vancouver, B.C.

Date of Judgment:

January 4, 2019

- [1] THE COURT: On Information 247235, Craig Latimer is charged on four separate counts with possession of prohibited and restricted firearms as well as prohibited devices. Count 12 alleges possession of a loaded prohibited Colt .32 pistol, Count 13 alleges possession of 22 prohibited firearms, Count 14 alleges possession of 19 restricted firearms, and Count 15 alleges possession of 14 silencers. On each of those counts, he is charged in conjunction with his son, Kyle Latimer, who is also charged with various other offences as are several other individuals named in the information.
- [2] The Crown alleges that Kyle Latimer is the leader of a criminal organization and that Craig Latimer engaged in criminal behaviour by storing weapons for the criminal organization as reflected in Counts 12 through 15 of the information. The Crown also alleges that Craig Latimer occasionally couriered drugs for the criminal organization, that he supplied and serviced vehicles used by members of the criminal organization, and that he participated in laundering proceeds of crime for the criminal organization through the purchase and sale of luxury vehicles. Craig Latimer does not currently face any charges in respect of these latter allegations, but he is named in Counts 1 and 2 in the information as a member of the criminal organization referred to and, in Count 3, as an unindicted co-conspirator with respect to the offence of trafficking in controlled substances.
- [3] The evidence against all of the accused generally as presented at Mr. Latimer's bail hearing here consists largely of surveillance, wiretap intercepts, and seizures pursuant to warrants. The Crown filed a timeline or chronology of events that relates to various of the co-accused and probably all of the co-accused including, of course, Craig Latimer. From that chronology of events, it appears that there is significant evidence incriminating Kyle Latimer as a high-ranking member of a criminal organization, namely, the Red Scorpions, which appears to have been involved in drug trafficking.
- [4] The wiretap intercepts that relate to Craig Latimer are, for the most part, conversations with Kyle Latimer which are indicative of Craig Latimer having some knowledge of the operation of the criminal organization and some involvement in activities undertaken by the criminal organization. For example, on February 22nd of 2018, Craig Latimer and Kyle Latimer discussed the storage of a press which is alleged by the Crown to have been a drug press, in other words, an implement involved in the manufacture of drugs, and they also discussed the organization of some items that were referred to as "teeth" which I accept is slang for ammunition.
- [5] On March 12th of 2018, there were further discussions regarding Craig Latimer's involvement in a vehicle transaction by which his son, Kyle, was going to exchange one vehicle and \$140,000 in cash for what I am told is a rare Dodge Demon vehicle. During the course of that conversation, Craig Latimer asked to speak to another person who is one of the co-accused, Jacob Pereira, and that conversation involved a request for some of the same "stuff" that Mr. Pereira had apparently previously provided to Craig Latimer indicating that

he was almost out of it and using the slang terminology for heroin.

- [6] Ultimately, it turned out that Craig Latimer was the registered owner of the Dodge Demon. That vehicle was eventually seized together with three other vehicles located in Craig Latimer's automotive shop and I will get to that later. The evidence presented by the Crown generally indicates that Kyle Latimer is involved in money laundering through the purchase of expensive vehicles for cash.
- [7] On March 27th of 2018 one of the intercepts indicates that Kyle Latimer directed one of the co-accused, a Csongor Szucs, to go to a place that was referred to as the "warehouse" to pick up what was referred to as "toys," which I accept, again, is a slang reference for guns. A male believed to be Mr. Szucs is subsequently seen to be picked up by Craig Latimer and driven to his automotive shop.
- [8] On April 10th of 2018, the police searched that automotive shop pursuant to a search warrant and inside a room, the opening to which was hidden by a bookshelf, the police found and seized 69 firearms including 20 of which are prohibited and 19 of which are restricted. They also found 20 silencers, 29 over-sized magazines, a grenade, an RCMP uniform, approximately 16,690 rounds of ammunition, over \$30,000 in cash, and a binder labelled, "Fleet," which the Crown alleges relates to vehicles used by the criminal organization.
- [9] Craig Latimer had been renting the automotive shop premises since August of 2017 and it is alleged that he paid the monthly rent for those premises, being \$3,862, in cash.
- [10] Mr. Latimer was arrested and released following the search and subsequently discussed the search and seizure with his son, Kyle, who upon learning that the cash had been seized by the police indicated that he would have \$5,000 or \$6,000 dropped off the next day which should do Mr. Craig Latimer until he saw what was referred to as his "guy" at some unspecified location.
- [11] A week later, on April 18th of 2018, the police executed a general warrant at a condominium on Kwantlen Street which on the evidence is a place associated to many of the co-accused, but not Craig Latimer. They discovered 3.3 kilograms of cocaine, 583 grams of fentanyl, one-and-a-half kilograms of heroin, 10 kilograms of methamphetamine, 20 kilograms of cutting agents, and \$181,000 in cash.
- [12] That same condominium was searched again, this time pursuant to a search warrant, on May 15th of 2018, at which time, the police seized \$492,000 in cash, 12.4 kilograms of cocaine, 4.1 kilograms of fentanyl, 1.6 kilograms of heroin, and 8.9 kilograms of methamphetamine.
- [13] The next day, which would be May 16th of 2018, Kyle Latimer discussed that search and seizure with Craig Latimer and told Craig Latimer that he would need him to go somewhere as he would need the cash, and I believe the phrase used was "from up there."

- [14] A few days later, on May 22nd, Kyle Latimer spoke to Craig Latimer about meeting the "Penticton guy" and, thereafter, they exchanged text messages and phone calls which indicate that Craig Latimer was waiting in his vehicle on the side of a road somewhere with, in his words, "a lot of funds on board" and that in the circumstances, they, which I took to mean he and his son, were "risking everything" while waiting for the Penticton guy.
- [15] Craig Latimer was checked by the Princeton Police. The materials before me do not indicate where exactly that was, but I am assuming it was somewhere near Princeton, that same day which, in all of the circumstances, is consistent with the Crown theory that Craig Latimer was involved in some sort of illicit transaction at that point in time at the request of his son. One of the intercepts has Craig Latimer telling Kyle Latimer that he had been checked by the police and that, although they did not get anything, it was his cue to leave.
- [16] Viewed in its entirety, the evidence relied upon by the Crown supports the theory of the Crown with respect to the existence of the criminal organization and the involvement of Craig Latimer in relation to some of its activities. That being said, I agree with the defence characterization of the evidence being largely circumstantial in respect of the actual offences with which Craig Latimer is charged.
- [17] Notwithstanding potential defences that at this stage of the proceedings are, in my view, speculative, the case against Craig Latimer appears to be quite strong. He rented and resorted to the place where the guns were found. The layout of the shop and the nature of the opening into the room where the guns and other items were found does not, in all of the circumstances, easily lead to the inference that he was an unwitting dupe who had no knowledge of or control over the guns and other items in that room. The evidence from the intercepts, if it is admissible against Craig Latimer at trial, will make a strong Crown case even stronger. Even if it is not admissible, the Crown case will still be quite strong unless the guns are excluded from evidence on a Charter application which, based on the submissions of counsel, appears to me to be unlikely at this stage.
- [18] The Crown seeks detention of Craig Latimer on all three of the grounds set out in s. 515(10) of the Criminal Code, but relies primarily on the secondary and tertiary grounds.
- [19] Craig Latimer has been in custody since August 7th of 2018. He seeks his release on a cash deposit recognizance in the amount of \$50,000 with a reporting condition, the deposit of his passport, no contact with his son, Kyle, and a curfew together with any other appropriate conditions.
- [20] Mr. Latimer is 56 years old. Evidence has been tendered to establish that he has some significant health issues, the most serious of which appears to be congestive heart failure related to morbid obesity. The medical and correctional facility records provided by the defence indicated that Mr. Latimer has respiratory issues and can only ambulate slowly over what appear to be short distances. He is on medications, but he is concerned that he is not receiving the appropriate care in custody. However, the medical records also indicate that notwithstanding numerous hospital visits in the several months prior to his arrest, Craig

Latimer was not always compliant with the course of treatment recommended for him.

- [21] It appears he had a brief hospital stay in March of 2018, but left against medical advice and that in late May or early June, he stopped taking all medications which had been prescribed for him which may have been what resulted in his further hospitalization in late June at which time he is described in one of the records put before me as a "time bomb for sudden cardiac death." The material before me, however, does not establish that Craig Latimer was making medical progress prior to his arrest and has been in steady decline while in custody as was submitted.
- [22] I am, however, satisfied that his health issues must be taken into account with respect to whether or not he should be granted bail. His health issues are relevant to all three grounds on which his detention is sought.
- [23] The primary ground concern submitted by the Crown is that Craig Latimer may have access to the resources of the criminal organization that is involved in the context of the charges he is facing to assist him in absconding. In my view, the primary ground concerns are greatly reduced by reason of Mr. Latimer's health limitations and can be satisfactorily addressed by the conditions proposed by the defence.
- [24] The more salient concerns are those posed by the secondary and tertiary grounds. In both cases, the analysis starts from the constitutional presumption of innocence until proven guilty and the constitutional right not to be denied reasonable bail without just cause.
- [25] The test for the secondary ground was set out by the Supreme Court of Canada in *R. v. Morales* which, very briefly put, provides that bail is denied only where there is a substantial likelihood the accused will commit further offences or interfere with the administration of justice which will endanger the protection and safety of the public to the extent that detention is necessary.
- [26] With respect to Craig Latimer, he is alleged to have been involved in ongoing and serious criminal conduct. He does have a criminal record largely for property and driving offences which is extremely dated and not of great significance, although the most recent of his convictions are in 2010 for unauthorized possession and storage of firearms or a firearm, but I note that those matters, presumably, were not very serious as they were dealt with by way of fines.
- [27] Mr. Latimer's health is again relevant as to whether there is a substantial likelihood that he will commit further offences as is required by the secondary ground. Although it appears that his health issues existed during a period of time the evidence connects him to the criminal organization and, more particularly, to the time that the guns were stored in his shop and notwithstanding that Mr. Latimer appears to have been undeterred by police enforcement actions thereafter, on a review of all of the evidence, I am unable to conclude that there is a substantial likelihood he would commit further offences if he was to be released on strict conditions. Although the risk he does pose would constitute a danger to

public safety, it is reduced by reason of his health issues and can be further reduced to an acceptable level by the proposed conditions and the cash deposit. I would not deny bail on the secondary ground.

- [28] With respect to the tertiary ground, the leading case is *R. v. St-Cloud*. The ultimate question according to the Supreme Court of Canada is whether detention is necessary to maintain confidence in the administration of justice. That question is to be addressed after taking into account and balancing the circumstances expressly referred to in s. 515(10)(c) and any other relevant circumstances.
- [29] Firstly, as I have already indicated, the Crown's case against Craig Latimer in respect of the offences with which he is charged appears to be quite strong even taking into account potential Charter applications to exclude the guns from evidence.
- [30] Secondly, the offences with which he is charged are serious, although not in the most serious categories of offences found in the Criminal Code in that they only carry a maximum sentence of 10 years. However, more significant in my view is the fact that the offences are alleged to have been committed in a context involving a criminal gang.
- [31] Further, the sheer number of guns and other related items alleged to have been possessed would serve to increase the potential upon conviction for a lengthy sentence of imprisonment. Although the offences charged do not involve the use of a gun, in my view, the number of guns, the presence of silencers, the amount of ammunition, and the presence of a grenade, in particular, are all aggravating circumstances.
- [32] From the perspective of a reasonable properly informed person as described by the Supreme Court of Canada in *St-Cloud*, an accused against whom there is a strong case for possession of a large arsenal of guns and other dangerous items in the context of a criminal organization involved in trafficking dangerous illicit drugs would, in my view, lose confidence in the administration of justice if the accused were to be released on posting cash bail in an amount which appears less than significant compared to the value of the monies and drugs and other personal property seized which are alleged to belong to the criminal organization.
- [33] That is the situation that Craig Latimer is in. His health issues deserve consideration, but the reasonable person would take into account that they existed while he was allegedly committing the crimes with which he is charged and that there is an insufficient evidentiary basis at this point to establish that his health needs are not being adequately addressed in custody.
- [34] The reasonable person would take into account that the proposed release plan is for Mr. Latimer to go to hospital for immediate treatment that the evidence shows he was unwilling to follow through with prior to having been arrested. The reasonable person would take into account that the proposed release plan does not address the specifics of what Mr. Latimer would do upon release from hospital other than a submission that his friends will give him a

place to stay and that, if he is well enough, he can earn money buying and selling cars. The reasonable person would take into account that other than a reporting condition in a curfew, there is no provision in the proposed release plan for Craig Latimer's movements or activities to be monitored.

- [35] On a balancing of all of the relevant circumstances with particular emphasis on the statutorily required factors, particularly with respect to the strength of the Crown's case and the number and nature of the guns and other items seized, the reasonable person would conclude that the proposed release plan is not sufficient to maintain confidence in the administration of justice and that Craig Latimer's detention is necessary to do so. I am detaining Mr. Latimer on the tertiary ground.
- [36] MR. NARWAL: I thank the court. I thank my friend. If I could just pass a message off to Mr. Latimer for a moment.
- [37] THE COURT: Go ahead.
- [38] MR. NARWAL: Mr. Latimer, could you call my office, please, this afternoon?
- [39] THE ACCUSED: Yes.
- [40] MR. NARWAL: Thank you.
- [41] MS. LODA: Your Honour, first, Mr. Craig Latimer has been subject to an ongoing non-communication order. I am asking now that it be made permanently a part of his detention order subject to s. 515(12). If my friend has submissions with respect to it --
- [42] MR. NARWAL: I have no submissions.
- [43] THE COURT: Presuming that is the right section, I will make the order.
- [44] MS. LODA: It is. I did bring a copy of the section of the Criminal Code if you would like to see it.
- [45] THE COURT: No, I believe you.
- [46] MS. LODA: So it is all the same names. I do not know if Mr. Latimer would like to hear them again.
- [47] THE COURT: Is he familiar with the names?
- [48] MR. NARWAL: Your Honour, he is familiar with the names.
- [49] THE COURT: All right. They are all the same names that he is currently been prohibited from contacting.
- [50] MS. LODA: Yes, they are all the same.

- [51] THE COURT: All right, just so that you are clear in that regard, Mr. Latimer, although the section number changes, the actual provision does not change much. You are not allowed to have any contact with any of the people that you have not been allowed to have any contact with up to this point. Do you understand that, sir?
- [52] THE ACCUSED: Yes, I do.
- [53] THE COURT: Thank you.
- [54] MS. LODA: Three of the accused have been adjourned to next Tuesday, but Kyle Latimer earlier today was adjourned to January 18th to try to retain counsel. I am wondering if it makes more sense for Craig Latimer to go to that date as nothing substantial will be happening on the 8th.
- [55] MR. NARWAL: I agree that January 18th is more appropriate. Thank you.
- [56] THE COURT: All right. So January 18th here.
- [57] MS. LODA: 9:30 in 101, please, and he can appear by video.
- [58] MR. NARWAL: Yes, please, thank you.
- [59] THE COURT: All right, next appearance for Mr. Latimer by video, January 18th, 9:30, Court 101.

(REASONS FOR JUDGMENT CONCLUDED)

- [1] Public Health Agency of Canada, Coronavirus disease (COVID-19): Vulnerable populations and COVID-19, <<https://www.canada.ca/en/public-health/services/publications/diseases-conditions/vulnerable-populations-covid-19.html>>.

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Prepared on 25 October 2026 · Esheria