

CANADA / JUDGMENT

## R. v. Losch

2024 BCSC 2657

### COURT

Supreme Court of British Columbia

### DECIDED

16 December 2024

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2024 BCSC 2657 R. v. Losch

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Losch,

2024 BCSC 2657

Date: 20241216

Docket: 95517-2; 95517-4

Registry: Abbotsford

Rex

v.

Gary Donald Losch

Restriction on publication: s. 517(1) C.C.C.

Before: The Honourable Justice Thomas

Oral Reasons for Judgment on Judicial Interim Review

Counsel for Crown:

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J.A. Cochrane

G.T.S. Talhan

Place and Date of Trial/Hearing:

Abbotsford, B.C.

December 4 and 16, 2024

Place and Date of Judgment:

Abbotsford, B.C.

### **December 16, 2024**

- [1] THE COURT: This is an application brought by the accused for his judicial interim release pending his trial and the indictment involving incidents that allegedly occurred in July of 2017. Pursuant to s. 522(2) of the Criminal Code, the accused must show cause why his detention is not justified within the meaning of s. 515(10) of the Criminal Code.
- [2] This matter is subject to a publication ban pursuant to s. 517 of the Criminal Code and I say that also for the benefit of the people in the courtroom.
- [3] I will summarize the salient features of the facts concerning the alleged offence, review the accused's personal circumstances, relevant history and his proposed release plan. I will then review the relevant legal principles before giving my reasons for the decision I have reached.

### **Summary of Facts Concerning the Alleged Offence**

- [4] These are, in my view, fairly set out in the Crown's submissions at pages 2 to 10, paragraphs 4 to 44 of their written submissions, so I will not repeat them here.

### **Personal Circumstances**

- [5] At the time of the offence, the accused had no fixed address and reported to living in a tent. His transient lifestyle was known to the police in the area with the officers having observed him camping in community parks. He has no history of legitimate employment. He is known to cultivate marihuana for sale and trade.
- [6] His criminal conviction history was set out at pages 10 to 12 of the Crown's submissions. His history in the community and other relevant conduct is set out at page 13 to 14 of the Crown's submissions, and the facts surrounding a 2018 conviction of uttering threats is set out at page 18, paragraphs 72 to 78 of the Crown's submissions.
- [7] Mr. Losch was put on probation and subject to a peace bond following the uttering of threats, remained under surveillance at this time and complied with the terms of both his probation and peace bond. Crown advised despite over 40 investigations made by undercover officers, little additional information was gained except for the fact that Mr. Losch admitted to being with the deceased in July of 2017 at the grow operation at the relevant time, and there also was DNA evidence linking Mr. Losch to the sheets used to bury

the deceased.

- [8] I note that given Mr. Losch's presence at the site, there appears to be some explanations available for the presence of the DNA. In addition, given the statements made by the potential witnesses, it appears that the confirmation of his presence at the site at the relevant time in July was not a significant actual issue in dispute.
- [9] I do not accept that there were significant developments in the case during the prolonged investigation. It appears the Crown was hoping to obtain additional confession-type evidence, but significant evidence was not obtained from the accused during the undercover investigations.
- [10] The police seized a number of documents indicating the accused was a freeman of the land, as is set out on page 20 to 21 at paragraphs 86 to 91 of the Crown's submissions. However, I accept the defence position that this is of little import given Mr. Losch's past compliance with court orders, notably his most recent bail and peace bond.

### **The Proposed Release Plan**

- [11] Financial obligation: \$5,000. This was initially proposed as a promise to pay, but it has now been changed to a deposit prior to release.
- [12] He must keep the peace and be of good behaviour.
- [13] He must report to a bail supervisor at 218-920 Island Highway South, Campbell River, B.C., within two business days of his release from custody. After that, he must report initially every day as directed, and then as instructed by his bail supervisor, but not less than once per week.
- [14] He must reside at number 218-920 Island Highway South, Campbell River, British Columbia, with his son, and will change location as directed by his bail supervisor to ensure the residence is appropriate, given the lack of initial assessment, and thereafter must not change residence without the prior written permission of his bail supervisor.
- [15] He must be in his residence from six o'clock p.m. to six o'clock a.m., seven days per week.
- [16] He must present himself at the door of his residence upon attendance by a police officer or bail supervisor to confirm compliance with curfew conditions.
- [17] He must remain within the province of B.C.
- [18] He must not apply or possess any passport or travel document.
- [19] He must not have any direct or indirect contact with the proposed witnesses at the trial.
- [20] He must not attend any known residence, school or workplace of proposed witnesses at trial.
- [21] He must not go or enter the city of Mission.

[22] He must not possess any weapons as defined in the Criminal Code.

[23] He must not possess any knives except for the immediate preparation and consumption of food or while engaged in employment at a place of employment.

#### The Legal Principles

[24] In my view they are actually summarized by the defence in their written submissions at page 3 to 4, paragraphs 5 to 11.

#### Primary Grounds

[25] I will deal first with two issues: one, the strength of the Crown's case. The Crown says that have a strong, albeit circumstantial case against the accused. This is based on the following:

1. The remote area that the accused and victim were in, in July.
2. The circumstances of the two days surrounding the alleged event that lead to the inference that something changed early in the evening.
3. Statements made by the accused to other people with respect to the deceased, and
4. The implausibility of another person perpetrating the crime, given the remote location.

[26] The accused says that the primary defence is that the accused did not have exclusive opportunity to have committed the crime. In my view, the case against the accused is not overwhelming, yet it is not weak. It is a relatively strong circumstantial case.

#### Amount of Time At Large in the Community Prior to Arrest

[27] The defence relies heavily on the case of R. v. Alexander, 2009 BCSC 145. Specifically, I will refer to pages 13 to 15, paragraphs 53 to 57 and pages 27 to 28, paragraphs 109 to 113.

[28] The Crown says that Alexander is distinguishable given the surety, connection to the community and significant deposit of money.

[29] In my view, however, the critical issue of R. v. Alexander is that Mr. Alexander remained at large for a considerable period of time whilst he was aware that he was suspect for murder. The case against him did not substantially change and the Crown's comfortable leaving him at large in the community while they developed other aspects of the case. This indicated that they had done a risk assessment and were comfortable that he could remain at large in the community.

[30] The Crown says that, in this case, Mr. Losch was not arrested for the crime he faces now, and that is a distinguishing factor.

[31] In my view, this does not directly address the concerns. Mr. Losch had made threats to potential witnesses. Despite this fact and the fact it appears that the Crown could have charged Mr. Losch but preferred to try to obtain additional evidence, the same type of risk

analysis occurred in this case. Mr. Losch was compliant with the peace bond in terms of his probation, and then was not arrested until 2023. He remained at a close undercover investigation until he ascertained that he was under such investigation, after which he was arrested.

- [32] This, in my view, provides more assurances than those that were present in the Alexander case.

### **Inclusion on Primary Grounds**

- [33] The concern under the primary ground is that Mr. Losch has very little in the way of obligations or responsibility that would tie him to the community. I agree with the Crown's interpretation that he has a transient lifestyle with no fixed address. He has a dated history of failing to appear pursuant to court order. There is a relatively strong case against him for a serious offence.
- [34] However, in my view, the majority of these concerns have been alleviated by his lengthy compliance with his peace bond and parole prior to his arrest. I put considerable reliance on *R. v. Alexander* in what I view as Mr. Losch's circumstances providing greater comfort than the circumstances in that case. That is with respect to the pre-detention conduct.
- [35] In addition, Mr. Losch's release plan provides more support than existed at the time that he was on parole and under peace bond. In this case, he will have a fixed residence and be living with his son, regular contact with a bail supervisor and also will provide payment of funds into court, which may not appear as significant to a person of means, but which are significant to a person of the accused's means, whose only source of income will be his disability benefits. In fact, a greater amount of money would, in my view, create financial circumstances that might create a greater risk of recidivism.

### **Secondary Grounds**

- [36] I think the law was fairly described by the Crown at pages 5 to 17, paragraphs 64 to 69 of their submissions. I am cognizant of the Rondeau factors as set out in page 9, paragraph 80, of the Crown's submissions. There is no doubt that this is a serious offence which, if committed by the accused, have a number of aggravating factors.
- [37] His criminal record and record of compliance are somewhat dated, but indicative of an ongoing criminal lifestyle. Most troubling would be the conviction of uttering threats to potential witnesses. However, in these circumstances, following the principles in *R. v. Alexander*, in my view the police decision not to charge Mr. Losch with the offence and place him on parole and peace bond, and Mr. Losch's subsequent conduct while being subjected to undercover surveillance indicate to me that he does not pose a risk on these secondary grounds.

## Tertiary Grounds

[38] The principles that guide justices with respect to the tertiary grounds are set out in *R. v. St-Cloud* at paragraph 87 to 88. I must take the perspective of a reasonable member of the public properly informed about the legislative provisions, Charter values and actual circumstances of the case.

[39] Here, there was a violent crime against a vulnerable member of society. The case is not overwhelming. The accused has been free in the community without incident while on a peace bond for threatening a witness while he was aware that he was a suspect, and there were no real significant developments in the case up to his subsequent arrest.

[40] In my view, a reasonable member of the community would determine that detention is not necessary to maintain confidence in the administration of justice, given the proposed terms of release, which, to be clear, include a payment as a deposit as opposed to a promise to pay of \$5,000.

## Conclusion

[41] The accused has shown cause why his detention is not necessary for any of the enumerated grounds set out in s. 515(10) of the Canadian Criminal Code. I order his release subject to the terms set out in my reasons.

"Thomas J."

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