

CANADA / JUDGMENT

R. v. R.K.

2014 BCCA 119

COURT

British Columbia Court of Appeal

DECIDED

2 April 2014

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2014 BCCA 119 R. v. R.K.

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. R.K.,

2014 BCCA 119

Date: 20140402

Docket: CA041099

Between:

Regina

Respondent

And

R.K.

Appellant

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, or the representations made and the reasons, if any, given or to be given by the judge presiding over the application for judicial interim release (bail).

Restriction on Publication: A publication ban has been automatically imposed under s. 110(1) of the Youth Criminal Justice Act restricting the publication of information that would identify young persons referred to in this judgment by the initials R.K. and M.S. This publication ban applies indefinitely, unless the information is published by that young person under s. 110(3) or the court has ordered publication.

Corrected Judgment: The text of the judgment was corrected on the front page on April 7, 2014.

Before:

The Honourable Mr. Justice Donald

The Honourable Madam Justice Newbury

The Honourable Madam Justice Garson

On appeal from: An order of the Provincial Court of British Columbia, dated January 16, 2013 (R. v. M.S., Salmon Arm Docket 1853).

Counsel for the Appellant:

D. M. Turko

Counsel for the Respondent:

W. J. Hilderman

Place and Date of Hearing:

Vancouver, British Columbia

March 13, 2014

Place and Date of Judgment:

Vancouver, British Columbia

April 2, 2014

Written Reasons by:

The Honourable Madam Justice Garson

Concurred in by:

The Honourable Mr. Justice Donald

The Honourable Madam Justice Newbury

Summary:

The appellant, R.K. appeals an order detaining him in custody pending his trial on a charge of first degree murder. Pursuant to s. 29(2) of the Youth Criminal Justice Act, S.C. 2002, c. 1, a provincial court judge ordered the appellant detained. R.K. is charged with shooting a seventeen year old boy three times in a planned, deliberate, brutal murder. His detention was sought by the Crown on the sole ground that, in the exceptional circumstances of this case, R.K.'s detention was justified in order to maintain confidence in the administration of justice. On appeal it was held that the Crown had satisfied its onus of establishing that this case is "exceptional" as

contemplated by s. 29(2)(b) of the YCJA. The appeal was dismissed.

Reasons for Judgment of the Honourable Madam Justice Garson:

1. Introduction

[1] The appellant, R.K., applies for a review of the order of Provincial Court Judge de Walle ordering his detention pending trial for first degree murder. Detention was, and is, sought by the Crown on the sole ground that, in the exceptional circumstances of this case, R.K.'s detention is justified in order to maintain confidence in the administration of justice. This Court hears R.K.'s application pursuant to the direction of the Chief Justice as per s. 680 of the Criminal Code, R.S.C. 1985, c. C-46.

[2] For the reasons that follow, I would dismiss the application.

2. Circumstances of the Offence

[3] The appellant is charged under s. 235(1) of the Criminal Code with first degree murder for a death that occurred in November 2008.

[4] The Crown sought the appellant's detention pursuant to s. 29(2) of the Youth Criminal Justice Act, S.C. 2002, c. 1. On January 16, 2013, the application judge ordered the appellant detained. He is now detained at the Prince George Regional Correction Center, an adult facility.

[5] The circumstances of the offence are set out at paras. 6-16 of the application judge's reasons for judgment. I quote from those reasons as follows:

The body of the victim was found at 7:15 p.m. on November 21, 2008, by a person who was walking across the Bastion Elementary school grounds in Salmon Arm, British Columbia. Police attended the scene and determined that the victim had been shot three times. There were two bullets that had entered the victim's back and one bullet wound in the back of his head.

Police initially identified M.S. and R.K. as persons of interest. Investigation revealed that M.S. had been a girlfriend of the victim for a couple of months. Prior to that, she had been in a relationship with her co-accused, R.K.

Text messages between the two accused suggest this relationship was back on and that Tyler Myers was interfering in their relationship. Investigation also revealed that on November 10, 2008, a dispute had occurred between R.K. and Tyler Myers that had led to some pushing and shoving.

The police investigation stalled when no physical evidence could be found linking either accused to the crime. On November 21, 2008, the accused R.K. was 16 years of age. His 17th birthday was three weeks away. He is now 21 years of age.

In November 2011, the RCMP Unsolved Crime Unit became involved with the investigation. This investigation, that included an undercover "Mr. Big" component, resulted in the charges of first degree murder that R.K. is now facing.

The accused M.S. provided the following information to undercover police officers during the investigation: She said that she and R.K. had staked out the school grounds after forming a plan to get rid of Mr. Myers. R.K. had arranged to borrow a rifle from his friend, Mr. D.

M.S. then made arrangements with Tyler Myers to meet him at the school grounds, while R.K. hid in some nearby bushes.

After the two of them met, M.S. told Tyler Myers that she needed to go to the bathroom, and at that time, as she walked away, R.K. came out of the bushes and shot Tyler Myers. She saw Tyler Myers start to run when he was shot a second time. At that point, Tyler Myers fell to the ground. R.K. walked over to him and shot him a third time while he was on the ground.

Subsequently, R.K. also confirmed some of the details of M.S.'s statements to the undercover police officers and as well provided more detail. He told police that the gun came from his friend's home. He also said that he was wearing gloves and that there were no loose ends. He further told police that he threw his jacket into nearby bushes, and that he threw the shell casings, as well as a wallet and cellphone belonging to the victim, into a nearby lake.

R.K. also assisted the undercover police officers to recover the murder weapon from Mr. D. The weapon was a .22 calibre rifle. The bullets seized from the victim's body came from a .22 calibre firearm.

Following his arrest in the fall of 2012, R.K. provided a warned statement to police. The statement of the accused R.K. provides what can only be described as a planned, premeditated, and execution-style killing of a young man. He told police that he and M.S. made a plan to lure Myers to the school and to kill him. He admitted that he fired three shots into the victim, killing him.

He took a wallet and cellphone from Myers' pocket to make it appear as if the killing involved a robbery. He also did a videotaped re-enactment of the incident for police detailing the events, including the area where he disposed of the jacket, the shell casings, the wallet, and the cellphone.

3. Background of the Appellant

[6] The appellant was 21 years of age at the time of his application for judicial interim release ("bail hearing"). He has no criminal record and has lived in Salmon Arm all of his life. He completed high school.

[7] He was 16, attending high school, and living with his parents when the offence took place.

4. Statutory Provisions

- [8] The appellant is detained under s. 29(2) of the Youth Criminal Justice Act. That section provides as follows:
29. (2) A youth justice court judge or a justice may order that a young person be detained in custody only if
- (a) the young person has been charged with
 - (i) a serious offence, or
 - (ii) an offence other than a serious offence, if they have a history that indicates a pattern of either outstanding charges or findings of guilt;
 - (b) the judge or justice is satisfied, on a balance of probabilities,
 - (i) that there is a substantial likelihood that, before being dealt with according to law, the young person will not appear in court when required by law to do so,
 - (ii) that detention is necessary for the protection or safety of the public, including any victim of or witness to the offence, having regard to all the circumstances, including a substantial likelihood that the young person will, if released from custody, commit a serious offence, or
 - (iii) in the case where the young person has been charged with a serious offence and detention is not justified under subparagraph (i) or (ii), that there are exceptional circumstances that warrant detention and that detention is necessary to maintain confidence in the administration of justice, having regard to the principles set out in section 3 and to all the circumstances, including
 - (A) the apparent strength of the prosecution's case,
 - (B) the gravity of the offence,
 - (C) the circumstances surrounding the commission of the offence, including whether a firearm was used, and
 - (D) the fact that the young person is liable, on being found guilty, for a potentially lengthy custodial sentence; and
 - (c) the judge or justice is satisfied, on a balance of probabilities, that no condition or combination of conditions of release would, depending on the justification on which the judge or justice relies under paragraph (b),
 - (i) reduce, to a level below substantial, the likelihood that the young person would not appear in court when required by law to do so,
 - (ii) offer adequate protection to the public from the risk that the young person might otherwise present, or
 - (iii) maintain confidence in the administration of justice.

[Emphasis added.]

- [9] It is common ground that the section under which the Crown sought, and the judge ordered, the appellant's detention is s. 29(2)(c)(iii). The Crown did not allege any grounds to detain the appellant under ss. (a) or (b).
- [10] Section 31(1) of the Youth Criminal Justice Act provides as follows:
31. (1) A young person who has been arrested may be placed in the care of a responsible person instead of being detained in custody if a youth justice court or a justice is satisfied that
- (a) the young person would, but for this subsection, be detained in custody under section 515 (judicial interim release) of the Criminal Code;
 - (b) the person is willing and able to take care of and exercise control over the young person; and
 - (c) the young person is willing to be placed in the care of that person.
- [11] In this case the appellant's parents are the proposed responsible persons.
- [12] The review of Judge de Walle's order is made under s. 680 of the Criminal Code. It provides as follows:
680. (1) A decision made by a judge under section 522 or subsection 524(4) or (5) or a decision made by a judge of the court of appeal under section 261 or 679 may, on the direction of the chief justice or acting chief justice of the court of appeal, be reviewed by that court and that court may, if it does not confirm the decision,
- (a) vary the decision; or
 - (b) substitute such other decision as, in its opinion, should have been made.
- [13] It is thus this Court's task to determine whether the application judge erred in finding it necessary to detain R.K. pending his trial in order to maintain confidence in the administration of justice. First, I will review the application judge's decision.
5. Reasons for Judgment of the Application Judge
- [14] The application judge began by reviewing the circumstances of the offence and the provisions of s. 29. Having noted that the Crown relied only on the tertiary ground set out in s. 29(2)(c)(iii), namely to maintain confidence in the administration of justice, the judge instructed himself that to deny bail on the basis of the tertiary ground "will be exceptional" (para. 20). At para. 21, the judge said:

In the Bhullar decision, the B.C. Court of Appeal went on to say that a court must be satisfied that detention is not only advisable, but necessary, and necessary not just to any goal, but to maintain confidence in the administration of justice.

- [15] The judge reviewed the personal circumstances of the appellant noting the absence of a criminal record, deep roots in the community, and a stable family background. He noted the 16 letters of support and character references. He noted the proposed bail plan, which included a \$75,000 no deposit surety by the appellant's parents, as well as strict bail conditions including residing at his parent's home.
- [16] The judge noted the apparent strength of Crown's case, the gravity and circumstances of the offence, as well as the appellant's efforts, in conjunction with his co-accused, to cover up their actions. The judge described the offence as a "brutal execution-style killing". He noted that the Crown expected to apply for the imposition of an adult sentence. Regardless of the outcome of such an application, the judge noted that the accused was clearly facing a lengthy custodial sentence if convicted.
- [17] Turning to s. 29(2)(c)(iii), the judge reviewed the law, noting the importance of the presumption of innocence prior to trial and that detention on the tertiary ground is relatively rare. He then turned to the circumstances which he considered weighed in favour of the appellant's detention. At paras. 44-47 he explained his reasons for detaining the appellant in custody:

Salmon Arm is a smaller community. Over 50 percent of the population is retired. The killing of Tyler Myers attracted a great deal of local and even national attention. There was a great deal of local concern and anxiety over the unsolved crime.

The accused in this case avoided detection for approximately four years. From the point of view of the public perception, a killer was on the loose.

I conclude, in all the circumstances that I have considered, that the detention of the accused is necessary in this case to maintain public confidence in the administration of justice from the perspective of the ordinary, reasonable, fair-minded members of our society.

I am of the view that should the accused be released on bail, the public confidence in the administration of justice would be eroded.

- [18] The judge continued at paras. 56-58 describing the factors favouring release, but, ultimately, he concluded detention was necessary to maintain public confidence in the administration of justice:

The facts in this case before me are somewhat unique. Although charged as a youth, the accused is now 21 years of age. Factors such as the dependency of a young person, their reduced level of maturity, the need to be connected with their family and loved ones is clearly more relevant for a 14 or 15-year-old and far less relevant than for a 21-year-old.

The accused in this case has been gainfully employed for the past four years. He has travelled to South East Asia, worked in Australia, and currently has a steady girlfriend. In these particular circumstances, I find it would not be appropriate to release the accused into the care of his parents.

I have concluded, based on the constellation of factors referred to in this case, that the public confidence would not be satisfied by a release to his parents, and in the result I order the detention of K.

6. Discussion

a. The Jurisprudence

[19] In *R. v. L.(D.C.)*, [1991] B.C.J. No. 387 (B.C.C.A.), Mr. Justice Taylor, writing for the Court, reviewed an order granting bail to two youths then aged 17 and 16 who were charged with first degree murder of the mother and grandmother of an 18-year-old friend. The murder was particularly brutal. However, he noted that neither offender had a criminal record, both had roots in the community, and both had parents willing to accept responsibility for the youths. Similar to this case, their detention was sought in order to maintain confidence in the administration of justice. In upholding the order for release, Taylor J.A. referred to *R. v. Dakin*, [1989] O.J. No. 1348 (Ont. C.A.), a case in which the Crown had "particularly strong" evidence in a vicious murder and said (at p. 11):

[Dakin] seems to me to stand for the proposition that it may be contrary to the public interest that someone against whom a particularly compelling case of brutal murder can be established at the bail hearing should be released. The Youth Court judge did not see this as so compelling a case, however, and it cannot be said that he erred in that regard.

[20] He continued (at p. 13):

Having in mind that the judge below was exercising a jurisdiction created by the Young Offenders Act, under which the court must lean against institutional confinement of young people in favour of parental custody, where that seems to be practicable, and considering the conditions imposed by the judge on the release of these accused, and the position taken by the Crown, I cannot say that his order failed properly to provide for the protection of the public. Nor is it, in my view, correct, in light of the applicable statutory provisions, to say that the "public interest" requires that young people charged with such serious offences should not be in the custody of their parents pending trial. I think that guidance as to the public interest should, in the first instance, be sought in the governing statutes which Parliament has itself enacted, and that the policy to be found in the Young Offenders Act and Criminal Code will not support that contention.

[21] *R. v. L.(D.C.)* would seem to be authority for the proposition that the strength of the Crown case may be an important factor for consideration under s. 29. Certainly, the absence of a compelling case in *R. v. L.(D.C.)* seemed to have tipped the scales in favour of release despite the horrific nature of the murders.

[22] Chief Justice McEachern considered the meaning of the phrase "public interest" in *R. v. Nguyen* (1997), 119 C.C.C. (3d) 269 at para. 15 (Chambers). He stated that the public interest requirement found in both ss. 679(3) and 515(10) of the Code means that the court should consider an application for bail with the public in mind. Section 29(2) of the YCJA uses the term "to maintain confidence in the administration of justice" rather than "public interest"

but, in my view, the concepts are similar. I find the Chief Justice's discussion on this point helpful to the case at bar.

[23] At paras. 16 and 17 he stated:

Considering bail applications with the public in mind can mean different things in different contexts. In some cases, it may require concern for further offences. In other cases, it may refer more particularly to public respect for the administration of justice. It is clear, however, that the denial of bail is not a means of punishment. Bail is distinct from the sentence imposed for the offence and it is necessary to recognize its different purpose which, in the context of this case, is largely to ensure that convicted persons will not serve sentences for convictions not properly entered against them.

From the foregoing, it should be clear that I am not suggesting that all those convicted of spousal murder should be released, while those convicted of other kinds of murder should not be released, or vice versa. Similarly, I would not suggest that everyone involved in a street fight, whether there is a killing or not, or narcotics distribution or sexual assaults should or should not be allowed bail. It must be remembered that Parliament made general provision for release following conviction which means that at least some of those convicted of all classes of offences may qualify for release.

[24] Turning to the kinds of factors that ought to be considered in weighing the public interest he said at paras. 20, 22-23:

While murder is a heinous crime, the circumstances of some murders are much worse than others. The same may be said for other offences. For this reason, release in the lesser class of serious cases will not always harm public respect for the administration of justice while the opposite may be true in the more serious cases. Where is the line to be drawn?

Moreover, as a great many offences involve some violence, the fact that there is violence cannot of itself be conclusive against release as there would otherwise be very few cases where a detention order should not be made. An important consideration is whether the violence occurred in circumstances of malevolent rather than foolish or spontaneous intent. It is important to consider whether the applicant is a person prone to violence or cruelty or whether she or he became caught up in circumstances where awful things sometimes happen. Without stating any rule which can be applied to every case, it is my view that detention pending appeal will not always be necessary for young men or women fighting on a Saturday night, even though awful consequences sometimes result.

On the other hand, where the offence appears to have been committed with wanton, deliberate or cruel violence, particularly against vulnerable victims such as children or aged persons, or by persons with substantial criminal records or by persons already on bail or parole for similar offences, then the public may well lose respect for the administration of justice if detention is not continued after conviction.

[25] In *R. v. Hall*, 2002 SCC 64, the Court discussed the meaning of "public confidence" at paras. 27 and 31. McLachlin C.J. (for the majority) said:

Public confidence is essential to the proper functioning of the bail system and the justice system as a whole: see *Valente v. The Queen* (No.2), [1985] 2 S.C.R. 673, at p. 689. Indeed, public confidence and the integrity of the rule of law are inextricably intertwined. As Hall J.A. stated in *MacDougal*, *supra*, at p. 48:

To sustain the rule of law, a core value of our society, it is necessary to maintain public respect for the law and the courts. A law that is not broadly acceptable to most members of society will usually fall into desuetude: witness the unhappy prohibition experiment in the United States. Courts must be careful not to pander to public opinion or to take account of only the overly excitable, but I believe that to fail to have regard to the provisions of s. 515(10)(c) in the relatively rare cases where it can properly be invoked would tend to work against maintaining broad public confidence in the way justice is administered in this country. [Emphasis added in original.]

...

I conclude that a provision that allows bail to be denied on the basis that the accused's detention is required to maintain confidence in the administration of justice is neither superfluous nor unjustified. It serves a very real need to permit a bail judge to detain an accused pending trial for the purpose of maintaining the public's confidence if the circumstances of the case so warrant. Without public confidence, the bail system and the justice system generally stand compromised. While the circumstances in which recourse to this ground for bail denial may not arise frequently, when they do it is essential that a means of denying bail be available.

[26] In *R. v. Bhullar*, 2005 BCCA 409, Madam Justice Rowles, speaking for the Court, considered the tertiary ground. *Bhullar* was also an application for review under ss. 522 and 515(10) of the Code. Though the statutory provisions are different, as I noted above, the discussion is helpful given that the tertiary ground in both *Bhullar* and this case relates to maintaining confidence in the administration of justice. At paras. 60-62 Rowles J.A. stated:

In my respectful view, the hearing judge's brief analysis of the tertiary ground does not accord with the constitutional constraints discussed by the Chief Justice in *Hall*. In relation to the tertiary ground, McLachlin C.J. made clear that s. 11(e) of the Charter does not permit Parliament to confer a broad discretion on judges to deny bail; rather, s. 515(10)(c) must be considered having regard in particular to the four enumerated factors set out in that subparagraph. Moreover, the court must be satisfied that detention is not only advisable but necessary and necessary not just to any goal, but to maintain confidence in the administration of justice.

Further, the analysis must be made from the perspective of a reasonable and informed member of the public. As noted by McEachern C.J.B.C. in *R. v. Nguyen*, supra, at para. 18, and referred to with approval in *Hall*, the reasonable person making this assessment must be one properly informed about "the philosophy of the legislative provisions, Charter values and the actual circumstances of the case." The Charter values include the presumption of innocence and the recognition of the importance of bail to the proper administration of justice.

Assuming the primary and secondary grounds are met, the denial of bail on the tertiary ground will be exceptional.

[27] In *R. v. Adiwal*, 2003 BCSC 740, an adult accused was charged with several serious offences including kidnapping. Romilly J., in comments with which I agree, noted that the strength of the prosecution's case was an important aspect in the consideration of the tertiary ground. He stated at para. 41:

An important factor in the tertiary ground analysis is the strength of the Crown's case. As McLachlin, C.J. stated at paras. 26 and 40 of *R. v. Hall*, supra, to release an accused following a heinous crime in the face of "overwhelming evidence" that may be "strongly linked to the accused" could erode the public's confidence in the administration of justice. The "strength of the case" factor has been significant in the decision to grant bail in a number of murder proceedings, which always involve serious and grave allegations that could result in life imprisonment: see *R. v. Wilson*, supra, at paras. 24-28; *R. v. Hadani*, supra, at para. 13; *R. v. Copeland*, supra, at paras. 27-31.

In conclusion, the case law supports the view that the tertiary ground should only be used in rare cases. However, one important factor to consider when determining whether to rely on that provision, despite the strong statutory preference for release, is the strength of the Crown's case.

b. Standard of Review

[28] In *Bhullar* Madam Justice Rowles described the type of review that is conducted pursuant to s. 680 of the Code at para. 8:

The nature of a review under s. 680 of the Code was described by Cumming J.A. for the Court in *R. v. Wu* (1998), 117 B.C.A.C. 305 at 307:

[6] A review under s. 680(1) of the Criminal Code is in the nature of an appeal on the record and not a hearing de novo. While the reviewing court exercises an independent discretion and may substitute its own opinion for that of a single judge under review, it must base its review on the facts found by the single judge's evaluation of the evidence. It is not necessary that a reviewing court, before intervening, come to a conclusion that the decision of the single judge under review was unreasonable or that an error in principle was committed. See *R. v. D.S.H.* (1991), 2 B.C.A.C. 309.

[Emphasis added.]

The Crown and the appellant agree this is the applicable standard of review.

c. Application to this Case

- [29] In submissions before the application judge, the Crown emphasized the strength of its case, including the unequivocal admissions made by the appellant to both the undercover officers and to the police in a warned statement following his arrest. The Crown also noted the planning and deliberation that went into the commission of the murder.
- [30] The Crown referred to evidence that R.K.'s co-accused, M.S., had previously been the girlfriend of the victim, Mr. Myers. There seemed to be some jealousy between Mr. K. and Mr. Myers. Mr. K. and Ms. S. along with Mr. D. (who is charged as an accessory after the fact) spent the day together. They obtained a gun from Mr. D.'s home. They exchanged a series of text messages with Mr. Myers. Mr. Myers asked his mother to give him a ride to Salmon Arm Secondary School where he said he would be meeting Ms. S. and Mr. K. His mother dropped him off at the entrance to the school and drove home. Ms. S. took him to where R.K. was waiting behind the school. M.S. walked away and R.K. shot Mr. Myers once. Mr. Myers tried to run and Mr. K. shot him again. M.S. came out of the bushes where she had gone after leaving Mr. Myers with the appellant. At M.S.'s urging, Mr. K. went up to Mr. Myers and shot him a third time. This last shot was to the back of the head.
- [31] Although M.S. and R.K. were identified as suspects early in the investigation, there was insufficient evidence to charge them.
- [32] In June 2012, an undercover operation targeted M.S. She had several meetings with undercover police operators posing as "crime bosses". She told the undercover police about her involvement in the murder. She told the police she had brought the victim and the shooter together. The undercover operators took M.S. to a meeting with R.K. under the pretext that it was necessary to assist her. They also convinced her to obtain the gun from Mr. D. in order to tie up loose ends. Mr. D. produced the gun and it was turned over to the undercover operators. The gun matched the type of gun used to shoot Mr. Myers. Notably, the police did not disclose the type of gun used to kill Mr. Myers in public accounts of the murder. R.K. admitted the murder to the undercover operator. He said:
- I think it was November 21st yeah, we didn't go to school that day. Went over to our buddy's house. His dad does a lot of hunting, borrowed one of his guns, then it just kind of happened. That's all I can say. There's no loose ends. I don't know what you guys are worried about.
- [33] After R.K. made this admission to the undercover officer, he was arrested for Mr. Myers' murder. He provided a warned statement to the police in which he confessed to having, with Ms. S., contrived a plan to murder Mr. Myers. He told the police that he could not live with it anymore and needed to deal with the consequences. Then he took the police on a re-enactment of the murder. He showed the officers where he had disposed of the shell casings, the jacket and the gloves that he had been wearing.

- [34] Based on the Crown's summary of the evidence, it appears that the Crown has a compelling case against the appellant, as well as M.S.
- [35] M.S. also applied for bail under s. 29 of the YCJA. Her application was granted on June 25, 2013. We have been provided with the reasons for judgment of Takahashi P.C.J. Her detention was similarly sought on the tertiary ground; however, in her case, the judge decided release was appropriate. That decision is, of course, not binding on us.
- [36] Returning to the case at hand, I note that R.K. was a juvenile at the time of the offence. As is evidenced by the principles outlined in s. 3 of the YCJA, the underlying philosophy of the Act is one favouring release pending trial and recognizing that youth bear a lesser degree of responsibility for their actions than do adults. Indeed, the Supreme Court of Canada has recognized that the presumption of diminished moral blameworthiness for young persons is a legal principle fundamental to the operation of a fair legal system: *R. v. D. B.*, 2008 SCC 25 at para. 61. This is in keeping with the widely acknowledged role that age plays "in the development of judgment and moral sophistication" (*R. v. D. B.* at para. 62).
- [37] Similarly, the statutory preference against pre-trial detention reflects Parliament's concern with the rehabilitation and reintegration of young people charged under the Act (YCJA, s. 3.1(a)(ii)). It is widely accepted that there are unique and potentially harmful consequences to youth detained prior to their hearing. Denying bail to youth can result in disrupted familial and peer relationships as well as academic interruption, both of which can interfere with their development and make reintegration into the community more difficult (Nicholas Bala and Sanjeev Anand, *Youth Criminal Justice Law*, 2d ed. (Toronto: Irwin Law, 2012) at 311).
- [38] Counsel for Mr. K. urges us to apply this heavy statutory onus favouring release to the appellant. Since the murder of Mr. Myers, the appellant has become an adult and by all accounts up until his incarceration was living a responsible, mature lifestyle. Counsel notes that, if Mr. K is convicted, living with his family pending trial will ultimately contribute to his rehabilitation after his release. In other words, the longer he is established in a responsible adult lifestyle in his community the better are his prospects for rehabilitation. She contends that his release under the proposed conditions would be in the public interest. She relies on the decision of the application judge in the case of M.S. as indicative of release being consistent with the public interest.
- [39] There is no principle of law that accused persons charged with first degree murder may not be released on bail. The only question is whether there are any conditions under which the appellant might be released into the community which would maintain confidence in the administration of justice. The application judge thought not.

- [40] Here the appellant has lived in Salmon Arm his entire life, either going to school or working. He has a stable, close-knit family. His bail plan includes a curfew, surrender of his passport, agreement not to travel more than 100 kms from Salmon Arm, limitations on the use of a cell phone, plus the usual reporting requirements and restrictions on contacting the co-accused and others. These are factors that would favour granting bail.
- [41] The question of maintaining confidence in the administration of justice requires a somewhat holistic view of all the circumstances of the accused and the offence, including the impact of the factors listed in s. 29(2)(iii)(A)-(D). One of those circumstances may be the impact on the community of the commission of the offence. As Hall J.A. noted in *R. v. MacDougal*, 1999 BCCA 509 at para. 24, in some relatively rare cases the release of an accused person may work against broad public respect and confidence in the administration of justice. The factors that may be relevant in a given case cannot be defined with precision.
- [42] Section 29(2)(b)(iii) requires "exceptional circumstances" in order to detain a young person. As noted above, in assessing whether "exceptional circumstances" exist the Act directs a court to have regard to:
- (A) the apparent strength of the prosecution's case
 - (B) the gravity of the offence,
 - (C) the circumstances surrounding the commission of the offence, including whether a firearm was used, and
 - (D) the fact that the young person is liable, on being found guilty, for a potentially lengthy custodial sentence.
- [43] All these factors weigh heavily against R.K. The prosecution's case is strong. The offence is first degree murder. The surrounding circumstances do not demonstrate any mitigating factors. A firearm was used. R.K. faces a custodial sentence of ten years before he is eligible for parole if he is sentenced as an adult (Criminal Code, s. 745.1(b)). A "young person" to whom the YCJA applies is defined as a person who is older than twelve and not yet 18. Thus, R.K. will be tried under the YCJA. His age is at the upper end of the definition of a young person, which places him at a higher degree of responsibility for the commission of an offence as compared to a younger person, although not at the level of an adult. The nature of this murder is fairly described as planned, cold blooded, brutal, and senseless.
- [44] In this case, at para.44, the judge found as a fact that there was a "great deal of local concern and anxiety over the unsolved crime". He found a relevant factor to be that, "The accused avoided detection for approximately four years. From the point of view of the public perception, a killer was on the loose" (para. 45). No doubt the application judge, who sits in Salmon Arm, is in a good position to assess the impact of the murder on that community. Without pandering to public sentiment, the judge was of the opinion that the public would lose confidence in the administration of justice if the accused were to be released back into the same small community after four years in which this murder was left unsolved. I see no

indication that he was not referring to properly informed members of the public. In my view, the Crown has satisfied its onus of establishing that this case is "exceptional" as contemplated by s. 29(2)(b) of the YCJA. The application judge's decision is reasonable and I would not substitute another view for that of the judge.

[45] I would dismiss the application for review.

"The Honourable Madam Justice Garson"

I agree:

"The Honourable Mr. Justice Donald"

I agree:

"The Honourable Madam Justice Newbury"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/ca/14/01/2014BCCA0119.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-r-k-2014>

Prepared on 26 October 2026 · Esheria