
CANADA / JUDGMENT

R. v. Schuk

2020 BCSC 1470

COURT

Supreme Court of British Columbia

DECIDED

20 April 2020

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2020 BCSC 1470 R. v. Schuk

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Schuk,

2020 BCSC 1470

Date: 20200420

Docket: 30518W

Registry: Vancouver

Regina

v.

Steven Gerald Schuk

Corrected Judgment: The text of judgment was corrected
on December 15, 2020

Before: The Honourable Mr. Justice Tammen

Oral Reasons for Judgment at Detention Review Hearing

(Re Accused Steven Schuk)

(via Videoconference)

Counsel for the Crown:

J. Dufour

Counsel for the Accused:

J. Rempel

Place and Date of Hearing:

Prince George, B.C.

April 20, 2020

Place and Date of Judgment:

Prince George, B.C.

April 20, 2020

- [1] THE COURT: Mr. Schuk is before the Court pursuant to s. 525 of the Criminal Code for what is a detention review hearing. In his unique circumstances, he is facing multiple charges in the Provincial Court, but has thus far not had a bail hearing in respect of those charges. Thus, this is a bail hearing at first instance, and the provisions of s. 515 of the Criminal Code apply.
- [2] In January 2019, on a six-count Information, Mr. Schuk was charged with six separate counts of break and enter dwelling houses and committing the offence of theft, spanning the time period October 19, 2016, through January 5, 2017. The reason for the considerable delay in the laying of those charges is that it was only in the late part of 2018, that DNA evidence linking items found at the scenes of each of those break and entry offences was discovered to be that of the accused.
- [3] According to Crown, there are DNA matches to gloves found at the scenes of Counts 1 through 3, and cigarette butts found at the scenes of Counts 4 and 5, and some blood left on an object at the scene of Count 6, all of which, on a preliminary basis at least, match the DNA of the accused.
- [4] A warrant was issued for the accused. He had just completed serving the custodial portion of a one-year sentence for a break and enter, the offence date of which post-dates the "break and enters" on that Information. In any event, on April 24, 2018, he received a sentence of one year imprisonment and 18 months' probation. At the time for the warrant on the new break and enter charges, he was on probation for those offences.
- [5] He turned himself in and was then in custody until May 1, 2019, at which time he was granted bail in Provincial Court. That bail order contained various conditions, including a curfew of 11:00 p.m. to 6:00 a.m. daily, and initially at least a requirement that he was to reside at a recovery house called It's Up To You Recovery House located on 100th Avenue in Surrey, British Columbia.
- [6] Apparently, after spending 30 days at that recovery house, Mr. Schuk approached his bail supervisor and sought permission to live elsewhere so that he could work and earn some money. That permission was granted. He then worked in the northern part of British

Columbia in the area of Fort St. James for some months and suffered a work-related injury, which I am told by counsel caused him to relapse into substance abuse. Counsel says that from 2010 onward, he has been abusing both alcohol and prescription medications, and that substance use disorder is the root cause of his criminal offending behaviour.

- [7] The new allegations Mr. Schuk faces are these: there is a charge of failing to abide by the terms of recognizance imposed on May 1, 2019, by not being present during a curfew check at his residence on September 6, 2019; a further charge of failing to report pursuant to the 2018 probation order between the period October 30, 2019 and November 6, 2019; a further charge of breaching the curfew condition on November 6, 2019. It appears that, by that time, the accused was living in Williams Lake.
- [8] Mr. Schuk also faces serious substantive charges related to events on November 12, 2019 in Williams Lake. It is alleged that he was found in the passenger seat of a pickup truck driven by another individual after a routine police stop of the truck. There was apparently stolen property in the rear of the truck, a very expensive welder/generator unit, said to be worth approximately \$200,000, and apparently recently stolen. Also of note, there was an unloaded sawed-off shotgun in the area between the passenger and driver's seat in the cab of the pickup truck. Near the foot or wheel well, on the passenger side where Mr. Schuk was seated, was ammunition for that shotgun. Mr. Schuk faces four additional charges related to those events.
- [9] For purposes of the present bail hearing, Mr. Schuk is in a reverse onus situation because of the provisions of s. 515(6) of the Criminal Code. It is alleged that he committed further indictable offences while at large on the present recognizance. It is also alleged that he committed offences pursuant to s. 145(3) of the Criminal Code, failing to abide by terms of the present recognizance.
- [10] The bail plan proposed by counsel is that Mr. Schuk be released once again to the It's Up To You Recovery House in Surrey, British Columbia. There is a letter from that recovery house dated March 9, 2020, which states that they would be able to accommodate housing Mr. Schuk. However, of note, the It's Up To You Recovery House is unable to accept individuals who have electronic monitoring conditions or whose conditions require house arrest.
- [11] Mr. Schuk has a criminal record which has a significant number of break and enter offences committed many years ago when he was a youth. There are some adult offences between the period 1989 and 2005, mostly narcotics, possession of stolen property, and at least two further break and enters. There is then a significant gap in his criminal record until 2016, and then a series of offences: theft, breach of undertaking, and the break and enter from April 2018.
- [12] Crown says that Mr. Schuk has not met the onus of justifying his release pursuant to s. 515(6) and that there is a significant risk to the public that, if he is released, Mr. Schuk will engage in further offences and thereby endanger public safety.

- [13] I am satisfied on the secondary ground that there is a substantial likelihood that, if he is released at bail, Mr. Schuk would commit further offences, which would endanger the public. That is so, particularly in light of the significant number of breaches alleged with respect to the present bail recognizance and, as well, the allegations of serious further criminal offending, including being in possession of a sawed-off shotgun while on bail for these offences.
- [14] With respect to the submissions that were made before me on the impact of the COVID-19 health crisis on this bail application, I simply say this. As it relates to risk of infection to Mr. Schuk in his present circumstances, that is, incarceration at the Kamloops Regional Correctional Centre, there is no evidence of particular risk or indeed any evidence of any inmates at that institution becoming infected or testing positive for COVID-19. I can certainly take notice of the obvious fact that it is extremely difficult for individuals in that sort of custody situation to engage in any meaningful social distancing.
- [15] However, the proposed bail plan of Mr. Schuk, i.e. release to a recovery centre, provides no better opportunity for any social distancing. In fact, it is likely that there would be even less ability to engage in social distancing at the recovery centre.
- [16] The real impact of COVID-19 as it relates to the present bail application is simply that many court operations have been suspended, and indeed Mr. Schuk now finds himself unable to set dates for trial on the more recent charges he is facing. He has four dates set for the completion of his preliminary hearing on the first set of break and enter charges. That preliminary hearing commenced for one day in December 2019 and is now set to continue on October 15, 16, 29, and 30, 2020.
- [17] I am going to make a direction pursuant to s. 525(4) as follows. If Mr. Schuk's preliminary hearing does not conclude on or before October 30, 2020, there shall be a further hearing pursuant to s. 525 as soon thereafter as it can be arranged. And the reason for that direction is simple, it will be open to Mr. Schuk to ask the judge presiding at his preliminary hearing to revisit the issue of bail at the completion of the preliminary hearing. If that does not occur because the preliminary hearing does not conclude as scheduled, he will be entitled to another review of his detention pursuant to s. 525.
- [18] For now, I direct that Mr. Schuk be detained in custody, and that detention order applies on all of the outstanding matters. So bail is cancelled on 27405. The detention order applies on that matter, and as well on 36337-1-A, 36378-1-B, 36337-2-A, and on indictment 36379-2.

"Tammen J."

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Prepared on 26 October 2026 · Esheria