

CANADA / JUDGMENT

R. v. Wannamaker

2020 BCSC 351

COURT

Supreme Court of British Columbia

DECIDED

6 March 2020

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2020 BCSC 351 R. v. Wannamaker

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Wannamaker,

2020 BCSC 351

Date: 20200306

Docket: 108163-1;108163-2

and 108163-3

Registry: Kamloops

Regina

v.

Patrick Charles Wannamaker

Before: The Honourable Justice Dley

Oral Ruling on Application

Counsel for the Crown:

L.M. Winters

Counsel for the Accused:

C.E. Johnson

Counsel for the Minister of Public Safety, Solicitor General of B.C. and Attorney General of B.C.:

K. Chewka

Place and Date of Hearing:

Kamloops, B.C.

March 6, 2020

Place and Date of Judgment:

Kamloops, B.C.

March 6, 2020

- [1] THE COURT: I can tell you that I am not particularly enamoured with the position taken by the Solicitor General. To be blunt, I find it offensive that the Solicitor General would, based on the material that I have seen, essentially thumb his nose at the court and say, frankly, I don't care what the court orders for release provisions, I'm going to ignore those comments and do as I wish.
- [2] That does not speak well of the judicial system, nor does it speak well of those that are within the system and entrusted to carry out their duties as prescribed by statute.
- [3] Mr. Wannamaker is presumed innocent. The courts have repeatedly emphasized that fundamental notion which is the foundation of our justice system and how criminal matters are approached.
- [4] These are serious charges. The charges involve a vulnerable victim. If the Crown satisfies its burden, the sentence can be significant.
- [5] There is always a concern that the court has, for the safety of the public. That concern is present during an assessment of the risk that a defendant may pose to the community pending trial. There may be a risk to the community if a defendant is released pending trial. As long as the risk can be managed appropriately, through specific conditions, there is a presumption, in these circumstances, that the defendant should be released into the community pending trial.
- [6] I have canvassed the options that are open to the court to manage the risk. One of the highest forms of management are with the requirement that a surety be in place. In this case, one of the other options is that Mr. Wannamaker would be in the company of an adult if in the community.
- [7] The only other way of satisfying the Solicitor General seems to be that Mr. Wannamaker be in prison. That seems to be a rather Draconian view of what bail is intended to be, and the comments the Supreme Court of Canada has made, particularly in *R. v. Antic*, 2017 SCC 27 and *R. v. Myers*, 2019 SCC 18.
- [8] In some circumstances, it may be appropriate for the posting of notices as described by Ms. Chewka. This does not appear to be one of those circumstances.

- [9] The process that is described by the Solicitor General is that residents in the townhouse complex would only be notified if they have children. The reality is that as soon as one person in that townhouse complex was notified, it may as well be published. That is no more than common sense or a reasonable inference to be drawn. I take no comfort from the representation that only those with children would be approached.
- [10] It is a balancing act the Solicitor General must engage in to determine under which circumstances a notice is to be published, and in which circumstances it should not.
- [11] I am considering a s. 520 review. This review amounts essentially to a de novo hearing because of the circumstances in which the matter has come before the court. The hearing before Judge Frame was brief because all parties had come to an agreement on the terms of the release. It is apparent that, at that time, no one envisaged the kind of intervention the Solicitor General would have in the proceedings.
- [12] I am going to treat this application as if it was a hearing afresh, because on the record before Judge Frame, there is little, if any, evidence or facts that require an assessment to determine whether that court fell into error in granting the terms of the consent order. The agreed statement of facts set out the allegations of the Crown.
- [13] For the purposes of this hearing, I accept the allegations. There is some dispute as to what occurred, but again, for the purposes of this hearing, I am prepared to accept the allegation that Mr. Wannamaker touched his six year old victim and over which he had assumed a position of trust in his capacity as a babysitter.
- [14] The issue does not depend on the strength of the Crown case because the Crown has conceded that Mr. Wannamaker should be released. The only issue is the terms upon which the release should be made. The terms of the release need to address public safety, but that consideration has to be taken in light of the circumstances surrounding the case.
- [15] Mr. Wannamaker has a criminal record. It is dated, and it is not relevant to these charges.
- [16] Mr. Wannamaker has limited resources. Mr. Johnson has outlined the difficulties that Mr. Wannamaker has with respect to finding a place to live and the difficulties to provide the appropriate instructions so that he can mount a full answer and defence.
- [17] The imposition of unreasonable terms of release will hamper Mr. Wannamaker's ability to provide instructions to counsel and thereby hamper his ability to defend himself.
- [18] It cannot be that various arms of the state can reach out to prevent Mr. Wannamaker from defending himself against criminal charges. That applies not only to Mr. Wannamaker, but any person accused of criminal offences.
- [19] I am satisfied that, in these circumstances, the concerns raised by the Crown can be addressed by ensuring that Mr. Wannamaker has supervision within the community.

- [20] I will go through the details of that release order in due course, but it shall include a surety with no deposit. The surety will be in the amount of \$1,000, and it will also include a term that when Mr. Wannamaker is within the property boundaries of the townhouse complex, he must be accompanied by an adult.
- [21] The actual details of the balance will not differ much from the terms of the consent release that is already in place, but I am going to stand down so the Crown has an opportunity to address its concerns regarding a surety and any adult that may be proposed. I think it is important that we get those details in place rather than leaving them open and uncertain.
- [22] I am also mindful that the trial of this matter is scheduled to proceed in a month. It is critical that Mr. Wannamaker be provided with every opportunity within that month to make sure that he and his counsel are prepared for trial. That is why there is some urgency that this matter be dealt with today.
- [23] I am not going to make an order essentially in the forms requested with respect to the ban on publication or notification. I am hopeful that the Solicitor General will take the comments that I have made to heart because the terms of the release are different than the terms of the release that had previously been granted. In other words, the terms of the release will not contain the wording as set out in condition 7. Based on that, it may be premature to see what the Solicitor General is going to do.
- [24] MS. WINTERS: My Lord, if I may, I didn't hear what you said, the last part when you had referred to condition 7. Can you repeat that part? I'm sorry, I didn't catch it.
- [25] THE COURT: It will not be --
- [26] MS. WINTERS: Condition 7 will not be there?
- [27] THE COURT: Will not be there. The term will be that Mr. Wannamaker be accompanied by an adult or the surety.

"S.D. Dley J."

DLEY J.

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