

CANADA / JUDGMENT

United States v. Patterson

2015 BCCA 327

COURT

British Columbia Court of Appeal

DECIDED

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2015 BCCA 327 United States v. Patterson

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

United States v. Patterson,

2015 BCCA 327

Date: 20150720

Docket: CA42903

Between:

The Attorney General of Canada

on behalf of the United States of America

Respondent

And

Kevin David Patterson

Applicant

Before:

The Honourable Madam Justice Kirkpatrick

(In Chambers)

Reasons for Judgment

(Judicial interim release)

The Applicant:

In Person

Counsel for the Respondent:

S. Amanda Lord

Written Submissions Received:

June 30 and July 3, 2015

Place and Date of Judgment In Writing:

Vancouver, British Columbia

July 20, 2015

Summary:

Application for bail pending a decision by the Minister of Justice on whether to surrender him to the United States of America for the corresponding Canadian offences of murder (contrary to ss. 229 and 235 of the Criminal Code) and theft (contrary to s. 322 of the Criminal Code). Held: application dismissed. The applicant has failed to discharge his burden; he has not indicated on what basis he intends to persuade the Minister not to order his surrender; he is a flight risk, with proposed alternatives to detention are insufficient to attenuate that risk; and given the violent nature of the alleged offence, his criminal history, and his being a flight risk, interim release would not be in the public interest.

I. Introduction

- [1] On May 6, 2015, Kevin David Patterson was committed into custody to await surrender to the United States of America, pursuant to s. 29 of the Extradition Act, S.C. 1999, c. 18, for the corresponding Canadian offences of murder and theft (contrary to ss. 229, 235 and 322 of the Code), which offences were allegedly committed on or about September 17, 2014 in King County, Washington State.
- [2] Mr. Patterson now applies for bail pending the decision of the Minister of Justice (the "Minister") regarding his surrender and any resultant judicial review pursuant to s. 20 of the Extradition Act and s. 679 of the Criminal Code, R.S.C. 1985, c. C-46 (the "Code"). The application is made in writing pursuant to the British Columbia Court of Appeal Criminal Appeal Rules, 1986, R. 19(4).
- [3] The Attorney General of Canada (the "Attorney General") takes the position that there is no basis on which to grant bail. The Attorney General submits that Mr. Patterson has not indicated the basis on which he intends to persuade the Minister not to order his surrender; that he is a flight risk; and that his release would not be in the public interest.
- [4] For the reasons that follow, I conclude that I should not grant Mr. Patterson bail pending the surrender decision.

II. Background

- [5] Mr. Patterson was arrested in Abbotsford, British Columbia on September 17, 2014, with \$5,000 in cash in his possession. Mr. Patterson is sought for prosecution by the United States. He is accused of murdering his roommate, Richard Bergesen, in King County, Washington State, on or about September 17, 2014. He also is alleged to have robbed Mr. Bergesen (stealing, among other things, his vehicle and credit card).
- [6] Following the procedure in ss. 32-33 of the Extradition Act, the United States provided the Minister with a certified record of the case ("ROC") dated December 10, 2014, setting out the anticipated evidence against Mr. Patterson. A supplemental record of the case ("SROC") was provided on March 27, 2015. The ROC and SROC indicate that:
- a) Mr. Patterson resided with Richard Bergesen in King County, Washington State;
 - b) on September 17, 2014, Mr. Bergesen was found dead in his bedroom with his hands and legs bound with rope;
 - c) Mr. Bergesen died from multiple skull fractures;
 - d) a small shovel stained with Mr. Bergesen's blood was located in a room containing documents in Mr. Patterson's name;
 - e) forensic analysis found DNA consistent with that of Mr. Patterson on the handle of the small shovel;
 - f) Mr. Patterson was identified on videos from two retail outlets taken on September 17, 2014 during times when Mr. Bergesen's credit card was used;
 - g) Mr. Bergesen's BMW was missing from his residence. The anti-theft device installed in the BMW was transmitting from Abbotsford, British Columbia on September 17, 2014;
 - h) Mr. Patterson picked up various friends in Abbotsford, British Columbia, while driving a BMW;
 - i) a number of witnesses reported calls from Mr. Patterson on the morning of September 17, 2014 stating that he had hit Mr. Bergesen over the head with a shovel after Mr. Bergesen had made a sexual move on him and that Bergesen was either knocked out or dead. Mr. Patterson also told them that he took Mr. Bergesen's money, credit cards and BMW and left.
- [7] On December 11, 2014, following receipt of the ROC, the Minister authorized the Attorney General to proceed in the Supreme Court of British Columbia to seek an order for Mr. Patterson's committal pursuant to s. 15 of the Extradition Act.
- [8] The equivalent Canadian offences corresponding to the alleged conduct are murder, contrary to ss. 229 and 235 of the Code and theft, contrary to s. 322 of the Code.

- [9] Mr. Patterson applied for bail in the Supreme Court pending his committal hearing pursuant to s. 515(10) of the Code on February 11, 2015. The reasons for judgment are indexed as *United States of America v. Patterson*, 2015 BCSC 579. At paras. 3-4 and 15-16, the judge summarized Mr. Patterson's background, his family circumstances, and his relationship with the deceased:
- [3] Mr. Patterson is currently 21 years of age. He was born in Canada to Jennifer Timpany. Ms. Timpany eventually gave her son up for adoption to a couple who moved to Washington State many years ago. Mr. Patterson has dual citizenship.
- [4] In his affidavit, Mr. Patterson states that when he was 15, he was ejected from his adopted family's home. He lived in several areas in Washington State for a number of years. In about mid-2013, Richard Bergesen invited Mr. Patterson, who was homeless at the time, to live with him at his home in Sammamish, Washington. Mr. Patterson and Mr. Bergesen had met through their church. It is Mr. Bergesen's murder with which Mr. Patterson has now been charged.
- [15] Ms. Timpany has not sworn an affidavit. She has written a letter that was appended to Mr. Patterson's affidavit. She confirms that she had no contact with Mr. Patterson for many years until September 2014 when she learned of the charges her son now faces. She has maintained telephone contact since September of 2014, and in her letter says she is willing to take Mr. Patterson into her home in Edmonton, Alberta. She is a single parent with three teenaged children and works outside of the home in the oil and gas industry. She does not say how she would supervise Mr. Patterson should he be released into the community on conditions. Mr. Patterson has provided no evidence sworn or unsworn as to the means of his supervision should he be released into his mother's care in Edmonton.
- [16] Though he is 21 years of age, Mr. Patterson has a substantial criminal record. He has an adult criminal conviction for first degree criminal trespass, fourth degree assault, and custodial assault. He also has a juvenile record which I am advised a Washington State court can take into account. It includes second degree theft, forgery, first degree identity theft, and second degree identity theft.
- i. The Bail Application in the Supreme Court of British Columbia
- [10] Mr. Patterson's bail application was denied on all three grounds under s. 515(10) (the primary ground in s. 515(10)(a), the secondary ground in s. 515(10)(b), and tertiary ground in s. 515(10)(c)). For reference, s. 515(10) provides:

Justification for detention in custody

- (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:
- (a) where the detention is necessary to ensure his or her attendance in court in order to be dealt with according to law;

- (b) where the detention is necessary for the protection or safety of the public, including any victim of or witness to the offence, or any person under the age of 18 years, having regard to all the circumstances including any substantial likelihood that the accused will, if released from custody, commit a criminal offence or interfere with the administration of justice; and
- (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.

[11] With respect to the primary ground, the judge found Mr. Patterson to be a flight risk because he lacked ties to Canada or British Columbia (he had no property, family or employment in the province). Her findings are set out at paras. 18-21:

[18] The primary ground under s. 515(10)(a) is concerned with ensuring Mr. Patterson's attendance in court. Mr. Patterson is a Canadian citizen. However, he has lived in the United States for the majority of his life. He has very few ties to Canada. While his birth mother, Ms. Timpany, lives in Alberta and has offered her support, Mr. Patterson has had very little contact with her over the years. There has been a recent phone-based relationship, but in my view, that falls far short of providing Mr. Patterson with a connection to Canada. Mr. Patterson has no property, no family, and no employment here in British Columbia.

[19] Mr. Patterson was 20 years old when he allegedly beat Mr. Bergesen to death in his home. His flight from the home on the day of the murder and fleeing to Canada is, as the Crown submits, evidence of him taking measures to avoid arrest and prosecution, and his conduct suggests an intention to do what he can to avoid participating in a trial in the United States. While he is charged with two offences, the more serious one, the offence of murder, is punishable in Washington State by life imprisonment, a fact which the Court may consider in assessing the likelihood that if he is released on bail, Mr. Patterson would flee.

[20] As I have already noted, Mr. Patterson seeks conditional release and proposes to live with his mother in Edmonton, but has provided no evidence or information as to the means of such supervision, and, as I noted earlier, in extradition cases the risk of nonappearance weighs more heavily than in domestic proceedings.

- [21] I am satisfied, for all of these reasons, that Mr. Patterson should be held in custody pending the extradition proceeding because there is a good likelihood that, if released, he will not attend his committal hearing.
- [12] With respect to the secondary ground, (i.e., whether the detention is necessary to protect the safety of the public) the judge considered the violent nature of the alleged offence and Mr. Patterson's violent criminal record. She explained at paras. 22-23:
- [22] I am also satisfied that Mr. Patterson should be detained on both the secondary and tertiary grounds, as well. The secondary ground under s. 515(10)(b) is concerned with protection of the public. Mr. Patterson has a criminal record which includes acts of violence. In the present circumstances, the Record of the Case suggests that at a time where Mr. Patterson should have been concerned with the police tracking him for the murder of Mr. Bergesen, he proceeded to use Mr. Bergesen's credit cards to go on a shopping spree in Abbotsford. He also used that time to drive his friends around in the stolen BMW and host a party at the Best Western. Mr. Patterson has shown an alarming inability to control any impulse toward engaging in criminal behaviour.
- [23] I must conclude that Mr. Patterson might commit another crime involving violence or theft against another member of the community. As submitted by the Crown, Mr. Patterson appears to lack maturity and emotional control and I am satisfied that at present he is a danger to the community.
- [13] The judge's conclusion on the tertiary ground is succinctly set out at para. 25:
- [25] The strength of the prosecution's case for committal appears strong from the record. The record sets out evidence tying Mr. Patterson to the scene of the crime, engaging in behaviour to suggest that he was the one to kill Mr. Bergesen, and physical video evidence of his escape to Canada. Mr. Patterson was arrested the same day as the murder and his identity is confirmed by the arresting officers. I am satisfied that to release an individual on bail who is charged with first degree murder and theft who has a history of recent and serious violent acts who fled the United States to avoid arrest and has no substantial ties to Canada would undermine public confidence in the administration of justice.

ii. Committal Pending the Minister of Justice's Surrender Decision

- [14] On May 6, 2015, Mr. Patterson was committed into custody pending the Minister's decision on surrender. The reasons for committal are indexed as *USA v. Patterson*, 2015 BCSC 1018. The committal judge held that there was sufficient evidence on which a reasonable and properly instructed jury could find that Mr. Patterson murdered the deceased and stole his car: at paras. 56-79 and 88-89.
- [15] The essential conclusions as to the corresponding Canadian offence of murder are set out at paras. 61-65:

- [61] [T]he requisite elements for murder are the death of the victim, identity, causation, and the requisite mental state. There is no issue that Mr. Bergesen died as a result of being struck in the head. The evidence in the ROC is that Mr. Bergesen died as a result of multiple skull fractures between 6:30 p.m. on September 16, 2014 and 11:00 a.m. on September 17, 2014.
- [62] I turn next to the identification of Mr. Patterson as the alleged offender. The ROC provides evidence that connects Mr. Patterson to the residence. There is evidence that Mr. Patterson was living at Mr. Bergesen's residence at the time of the incident. The cell phone records show that the number associated with Mr. Patterson was using cell phone towers in the vicinity of Mr. Bergesen's residence between 11:24 p.m. on September 16, 2014, and 12:21 a.m. on September 17, 2014.
- [63] Two shovels were found in the residence, one under the body of Mr. Bergesen, and a smaller shovel in a room where there were also documents in the name of Mr. Patterson. On the smaller shovel there was red-brown staining. The expected evidence is that the DNA profiles from the red-brown staining match the known profile of Mr. Bergesen. A mixed profile from the handle was consistent with originating from known DNA profiles of Mr. Patterson and Mr. Bergesen.
- [64] This evidence permits the drawing of reasonable inferences that Mr. Patterson was in the area of Mr. Bergesen's residence at the time of his death and had contact with the shovel on which Mr. Bergesen's blood was found. This inference is consistent with the anticipated evidence of Ms. Newman and Mr. Dreiblatt that Mr. Patterson called them on the morning of September 17, 2014, and told them that Mr. Bergesen made a move on him and he grabbed a shovel and then hit Mr. Bergesen on the head with it. All of this evidence forms a basis on which a reasonable, properly instructed jury could find Mr. Patterson struck Mr. Bergesen with a shovel.
- [65] I turn next to the required mental element for murder. The body of Mr. Bergesen was discovered in the master bedroom of his residence near a bloodstained bed and blood-soaked pillows with his hands and legs tied with rope. The anticipated evidence from Mr. Dreiblatt is that Mr. Patterson told him that he hit Mr. Bergesen over the head with a shovel and did not know if he was knocked out or dead. As stated earlier, Ms. Newman is expected to testify that Mr. Patterson told her that he bashed Mr. Bergesen's head in with a shovel and he thought Mr. Bergesen was still alive when he left, but if he was dead it would be a couple of days until anyone noticed. In my view, this evidence forms a basis from which a reasonable, properly instructed jury could find that Mr. Patterson had the requisite intent for murder.
- [16] The essential conclusions as to the corresponding Canadian offence of theft are set out at paras. 76-79:

- [76] There is evidence that Mr. Bergesen owned a BMW and a MasterCard. As set out earlier, Mr. Dreiblatt and Ms. Newman are expected to testify that Mr. Patterson told them during telephone conversations that he took Mr. Bergesen's car and credit cards after hitting him with the shovel.
- [77] There is evidence that Mr. Bergesen's MasterCard was used on September 17, 2014, including for purchasing items at Tribal Trails Travel Plaza in Omak, Washington. Mr. Patterson has been identified in video surveillance footage from the Plaza arriving and leaving in a BMW and making a purchase.
- [78] Mr. Bergesen's BMW's anti-theft system showed the vehicle was in Abbotsford, B.C. on September 17, 2014. Both Ms. Smith and Ms. Latray are expected to testify that Mr. Patterson picked them up in a BMW automobile on September 17, 2014. Ms. Latray is expected to testify that Mr. Patterson told her that the car was his.
- [79] This evidence forms a basis upon which a reasonable, properly instructed jury could find that Mr. Patterson converted the credit cards and the BMW to his possession fraudulently and without colour of right.
- [17] Mr. Patterson does not appeal the committal order, although he indicates that he will be making submissions to the Minister regarding his surrender to the United States.

III. The Applicable Framework

- [18] This Court's jurisdiction to hear an application for "judicial interim release" is set out in s. 20 of the Extradition Act, which incorporates by reference s. 679(3) of the Code. Section 20(b) of the Extradition Act provides:

Section 679 of the Criminal Code

20. Section 679 of the Criminal Code applies, with any modifications that the circumstances require, to the judicial interim release of a person pending
- (b) the Minister's decision under section 40 respecting the surrender of the person

- [19] Section 679(3) of the Code provides:

Circumstances in which appellant may be released

- (3) [T]he judge of the court of appeal may order that the appellant be released pending the determination of his appeal if the appellant establishes that
- (a) the appeal or application for leave to appeal is not frivolous;
- (b) he will surrender himself into custody in accordance with the terms of the order; and
- (c) his detention is not necessary in the public interest.

- [20] It is generally accepted that when the application for bail is brought pending the decision of the Minister on surrender, s. 679(3)(a) is modified to require only that the submissions to be made to the Minister are not frivolous or vexatious, i.e., that there are issues that warrant the Minister's consideration: see e.g. *United States of America v. Schreiber*, 2014 ABCA 368 at para. 6 (Picard J.A., in Chambers), and *Canada (Attorney General) v. Raghoonanan* (2003), 63 O.R. (3d) 465 (C.A.) at para. 36-39 (Simmons J.A., in Chambers).
- [21] Unlike those persons subject to a domestic proceeding, an applicant for bail pending the outcome of an extradition proceeding is not under any sentence: see e.g. *France (Republic) v. Ouzghar*, 2009 ONCA 137 at para. 11 (Doherty J.A., in Chambers). As Mr. Justice Doherty said in *Ouzghar*, in the context of an applicant awaiting the determination of a committal order appeal:
- [12] In addressing the public interest, it is important to understand the purpose for which the applicant is in custody in Canada. The only reason Canada has any cause to place him in custody is to facilitate his surrender to France. The applicant will not be surrendered while his application for leave to appeal to the Supreme Court of Canada is outstanding. It cannot be said to be in the public interest to hold the applicant in custody to facilitate his surrender when his surrender will not take place before the application for leave is decided. Absent some substantive cause specific to the applicant to justify detention, the public interest considered in the context of an extradition proceeding is not served by incarceration that does not facilitate the applicant's surrender to the requesting country.
- [22] As this Court explained in *United States of America v. Wakeling*, 2013 BCCA 166 (Frankel J.A., in Chambers):
- [24] In this regard, it is important to keep in mind the distinction that exists between an extradition and a domestic prosecution. As Mr. Wakeling points out, his situation is different from that of an offender who applies for bail pending an appeal from conviction. Mr. Wakeling has not been convicted and, therefore, the presumption of innocence has not been displaced: see *United States of America v. Le*, [2012] O.J. No. 2802 at paras. 15, 16 (C.A., Chambers).

IV. Discussion

i. Are Mr. Patterson's submissions to the Minister "frivolous"?

- [23] Mr. Patterson has not provided any indication as to his proposed submissions to the Minister. He has provided no factual or legal grounds which he submits should warrant the Minister's refusal of his surrender.

- [24] As stated above, an applicant for bail pending an extradition appeal must satisfy the court that the submissions are not frivolous or vexatious. "Frivolous" is a term of art and means the party bringing the case can be said to be trifling with the court or wasting the time of the court, or that the case is not capable of reasoned argument: see *R. v. Barling*, [1993] B.C.J. No. 3138 (C.A.) at paras. 3-4 (Wood J.A., in Chambers). Thus, the bar is not set high.
- [25] The power of the Minister to order the surrender of a person is generally discretionary and set out in s. 40(1) of the Extradition Act. The bases on which the Minister may (or must) refuse to order the surrender of a person committed for trial are set out in ss. 44-47:

When order not to be made

44. (1) The Minister shall refuse to make a surrender order if the Minister is satisfied that
- (a) the surrender would be unjust or oppressive having regard to all the relevant circumstances; or
 - (b) the request for extradition is made for the purpose of prosecuting or punishing the person by reason of their race, religion, nationality, ethnic origin, language, colour, political opinion, sex, sexual orientation, age, mental or physical disability or status or that the person's position may be prejudiced for any of those reasons.

When Minister may refuse to make order

- (2) The Minister may refuse to make a surrender order if the Minister is satisfied that the conduct in respect of which the request for extradition is made is punishable by death under the laws that apply to the extradition partner.

When order not to be made

46. (1) The Minister shall refuse to make a surrender order if the Minister is satisfied that
- (a) the prosecution of a person is barred by prescription or limitation under the law that applies to the extradition partner;
 - (b) the conduct in respect of which extradition is sought is a military offence that is not also an offence under criminal law; or
 - (c) the conduct in respect of which extradition is sought is a political offence or an offence of a political character.

When Minister may refuse to make order

47. The Minister may refuse to make a surrender order if the Minister is satisfied that
- (a) the person would be entitled, if that person were tried in Canada, to be discharged under the laws of Canada because of a previous acquittal or conviction;

- (b) the person was convicted in their absence and could not, on surrender, have the case reviewed;
 - (c) the person was less than eighteen years old at the time of the offence and the law that applies to them in the territory over which the extradition partner has jurisdiction is not consistent with the fundamental principles governing the Youth Criminal Justice Act;
 - (d) the conduct in respect of which the request for extradition is made is the subject of criminal proceedings in Canada against the person; or
 - (e) none of the conduct on which the extradition partner bases its request occurred in the territory over which the extradition partner has jurisdiction.
- [26] The Attorney General submits that Mr. Patterson has given no indication as to the content of his submissions to the Minister and is not aware of any circumstances that might support refusal of surrender by the Minister. This appears to be the product of Mr. Patterson being self-represented: he is under a misapprehension that the governing legislative provision is s. 515(10) of the Code (which governs bail pending trial and, in the extradition context, bail pending the committal decision).
- [27] With regard to the application of s. 44(1), the Attorney General submits that only circumstances that "shock the conscience" of the Canadian public would justify the Minister refusing surrender (e.g., risk of torture, the death penalty or mutilation), citing *United States of America v. Burns*, 2001 SCC 7 at para. 69. The Attorney General submits that, on the record, no such risk has been identified and there is no chance that Mr. Patterson can establish a basis that would justify the Minister refusing to surrender him to the United States.
- [28] The materials provided by Mr. Patterson are sparse regarding the submissions he might make to the Minister. It is apparent that one position he will advance is that "the investigation into the surrounding circumstances will exonerate him." It appears the theory he will advance is that Christopher John Slade, whom he describes as a homophobic drifter from Texas, murdered Mr. Bergesen and that he was only a witness to that murder. He says that he fled to Canada on instruction from Mr. Slade and that he deliberately used the GPS system in his car so that the police could apprehend him.
- [29] In other words, Mr. Patterson suggests an alternative and possibly exonerating account of events. As has been said many times, the question of guilt or innocence is properly for a court in the foreign state to determine: see *United States of America v. Kwok*, 2001 SCC 18. The submissions on his innocence are not germane. Mr. Patterson makes no submissions on the application of ss. 44-47. As I have said, this is because of his apparent confusion as to the provisions governing bail pending the Minister's surrender decision. However, in my view, this confusion is of no moment because, as I indicate below, Mr. Patterson cannot meet his burden as set out in ss. 679(b)-(c).

ii. Will Mr. Patterson surrender himself into custody?

- [30] The ultimate question with regard to s. 679(3)(b) is simple: is the applicant at risk of absconding if he or she were to be released pending appeal? The question of whether an applicant will surrender himself into custody is fact-specific and requires an inquiry in the totality of the circumstances. Specifically, this includes: age; state of health; employment status; and general family circumstances: see e.g. *Italy v. Seifert* at para. 21 (Prowse J.A., in Chambers); *R. v. Schiel*, 2011 BCCA 160 (Ryan J.A., in Chambers); and *R. v. Jahanrakhshan*, 2012 BCCA 341 at para. 79 (Frankel J.A., in Chambers). Although Mr. Patterson does not make submissions on s. 679(b), his submissions on ss. 515(10)(a) of the Code address the same issue.
- [31] Mr. Patterson submits that his continued detention is not necessary to ensure his attendance in court. He submits that he is not a flight risk because, among other things, his birth mother will provide surety while he is living at the Luke 15 Recovery House for Men (the "Recovery House"). He submits that, unlike in *United States of America v. Edwards*, 2010 BCCA 149 (Low J.A., in Chambers), he will have both a fixed address and a plan to support himself. He says this Court can have confidence that he will obtain a degree at Athabasca University; establish stronger ties with BC; avoid committing crimes to support himself; and rely on his birth mother and his adopted uncle for support. He indicates that, were he to be granted bail, he will consent to being placed on house arrest at the Recovery House. He stresses that, at the Recovery House, he would be monitored and could not leave the premises unsupervised.
- [32] The Attorney General submits that Mr. Patterson is a serious flight risk, and stresses that there has not been a change in circumstance from when his initial bail application was denied in the Supreme Court. The Attorney General submits that, as the bail judge in the Supreme Court found, he has no ties to the country or the province, and that he has already demonstrated that he is a flight risk by fleeing from the United States to Canada. In this regard, the Attorney General emphasizes that Mr. Patterson will face an onerous prison sentence if he is convicted which provides clear temptation for him to attempt to flee. Lastly, the Attorney General submits that his proposal for bail supervision by his birth mother as surety and attendance at a treatment program do not provide adequate protection from that serious risk of flight, thereby warranting detention.
- [33] The determinative feature of this case is that Mr. Patterson fled from the United States to Canada. The only reasonable inference from his behaviour, on the record, is that this flight was an attempt to evade the charge of murder. This situation makes the case distinguishable from *Raghoonanan*, in which Madam Justice Simmons found that facing the death penalty in a foreign jurisdiction does not automatically lead to the conclusion that the applicant would flee when there is no evidence of a previous attempt to flee. Combined with Mr. Patterson's limited ties to British Columbia and to Canada, as well as the seriousness of the ultimate sentence he is facing (maximum life), the possibility and temptation for Mr. Patterson to flee is, in my view, substantial. Thus, it is of no moment that Mr. Patterson does

not have a history of breaching court orders and has no history of failing to appear in court.

[34] The ultimate question is whether Mr. Patterson's residence at the Recovery House under house arrest would attenuate the concern that he would flee. In my view, it does not. This is because Mr. Patterson has minimal connections with this province or Canada. Furthermore, in my view, the strength of the case against Mr. Patterson is a relevant factor. Apart from the severity of the sentence he faces, the likelihood he will face it is also an operative factor in evaluating whether he is likely to attempt to flee. Mr. Patterson's proposal for bail with his birth mother as surety and his living under house arrest at the Recovery House do not provide sufficient guarantee that against the risk of flight. Apart from the proposed house arrest at the Recovery House, there is no change in circumstances since Mr. Patterson's application for bail was first considered in the Supreme Court prior to the committal hearing.

iii. Does the public interest favour Mr. Patterson's continued detention?

[35] The public interest under s. 20 of the Extradition Act is understood to have the same meaning as in applications for bail pending a conviction appeal under the Code: see *United States of America v. Wakeling*, 2013 BCCA 166 at para. 20 (Frankel J.A., in Chambers). In *R. v. B.S.B.*, 2008 BCCA 483, Madam Justice Smith, in chambers, explained that s. 679(3)(c) involves two considerations: (i) the protection and safety of the public and (ii) the maintenance of the public's confidence in the administration of justice.

[36] In essence, Mr. Patterson submits that it is not in the public interest to detain him. He also submits that, notwithstanding the serious and violent nature of the offence he is alleged to have committed, it is contrary to the public interest and established jurisprudence to detain him if this Court finds that he has satisfied his burden under ss. 679(3)(a)-(b), citing *United States of America v. Graham*, 2004 BCCA 162 (Levine J.A., in Chambers) at paras. 33-35. He submits that he did meet his burden under the antecedent grounds. He further submits that he is not a danger to the public, stressing that his prior convictions were either a product of necessity when he was homeless or the product of his being denied proper medication while in custody.

[37] The Attorney General submits it would undermine the public confidence in the administration of justice if Mr. Patterson were to be released, for four reasons. First, the Attorney General submits that he has established that he is a threat to the safety of the public (focusing, *inter alia*, on his violent criminal record and the nature of the alleged offence in this case). Second, the Attorney General submits that the evidence against him is "extremely strong", that he has given no indication as to what basis he opposes his surrender, and that he has not challenged the finding that the ROC and SROC established a case upon which a reasonable and properly instructed jury could find him guilty of the corresponding Canadian offences. Third, the Attorney General submits that there is no possibility that Mr. Patterson would be able to persuade the Minister to refuse to order his surrender. Fourth, the Attorney General stresses that the consideration of s. 679(3)(c) must

be done with the aim of ensuring that Canada is in a position to fulfill its treaty obligations to the United States and surrender Mr. Patterson if his surrender is ordered and upheld: *Thailand v. Saxena*, 2006 BCCA 145 at para. 14 (Saunders J.A., in Chambers).

- [38] In the Attorney General's submission, all of these factors support Mr. Patterson's continued detention pending the Minister decision, which is expected on November 2, 2015.
- [39] In *R. v. St-Cloud*, 2015 SCC 27, the Supreme Court recently considered the proper interpretation of the public confidence in the administration of justice with respect to s. 515(c) of the Code. Though the language of s. 515(c) is not identical to s. 679(3), the discussion of the proper inquiry into assessing the effect of granting bail on the public's confidence in the administration of justice issue is informative. I note on this point that both the Alberta Court of Appeal and the Saskatchewan Court of Appeal relied on *St. Cloud* in assessing s. 679(3)(c): see *R. v. Malley*, 2015 ABCA 213 (Côté J.A., in Chambers) and *R. v. Chu*, 2015 SKCA 60 (Ottenbreit J.A., in Chambers). The Supreme Court of Canada summarized its analysis in *St. Cloud* at paras. 87-88:
- [87] I would summarize the essential principles that must guide justices in applying s. 515(10) (c) Cr.C.as follows:
- [T]he 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.
- [88] In conclusion, if the crime is serious or very violent, if there is overwhelming evidence against the accused and if the victim or victims were vulnerable, pre-trial detention will usually be ordered.
- [40] On the basis of the above principles, in my view, it would not be in the public interest to grant bail.
- [41] In this case, the crime allegedly committed in the United States was both very serious and very violent. It is significant in this regard that Mr. Patterson does not intend to challenge the committal order, which is to say that he does not challenge the threshold reliability of the anticipated evidence: see *United States of America v. Doak*, 2015 BCCA 145 at paras. 35-39. On my review of the ROC and SROC, the United States' case against Mr. Patterson is

strong. Importantly, Mr. Patterson is a flight risk. A reasonable person's confidence in the administration of justice would, in my view, be undermined if this Court were to release a potentially violent offender, accused of committing a serious and violent murder in a foreign jurisdiction, against whom there is evidence of an attempt to flee from these very charges.

[42] Furthermore, given Mr. Patterson's flight risk, the caution by the Attorney General that bail pending the Minister's surrender decision may jeopardize Canada's treaty obligation to the United States is justified.

VI. Disposition

[43] For all of the above reasons, I decline to grant Mr. Patterson bail pending the Minister's surrender decision.

"The Honourable Madam Justice Kirkpatrick"

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