SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Johnson*, 2022 NSSC 393

Date: 20220627
Docket: BRW No. 507737
Registry: Bridgewater

Between:

Her Majesty the Queen

v.

Terry Johnson

DECISION ON BAIL

Restriction on Publication: s.517(1) – expired on November 23, 2023

Judge:	The Honourable Justice Frank P. Hoskins
Heard:	June 10, 2022, in Bridgewater, Nova Scotia
Counsel:	Leigh-Ann Bryson and Bryson McDonald, for the Crown Laura McCarthy and Godfred Chongatera, for the Accused

Order directing matters not to be published for specified period

- **517 (1)** If the prosecutor or the accused intends to show cause under section 515, he or she shall so state to the justice and the justice may, and shall on application by the accused, before or at any time during the course of the proceedings under that section, make an order directing that the evidence taken, the information given or the representations made and the reasons, if any, given or to be given by the justice shall not be published in any document, or broadcast or transmitted in any way before such time as

    (a) if a preliminary inquiry is held, the accused in respect of whom the proceedings are held is discharged; or

    (b) if the accused in respect of whom the proceedings are held is tried or ordered to stand trial, the trial is ended.

By the Court (Orally)

[1] This is a decision in the matter of *The Queen* & *Terry Johnson*, who is charged with having committed the offence of Second-Degree Murder, contrary to s. 235 (1) of the *Criminal Code.* The seriousness of this offence is reflected in the imposition of a life sentence, which is a minimum sentence and is also reflected by the imposition of a *reverse onus* on an accused to justify their release from detention.

[2] In the present case, it is alleged that on or about June 17, 2021, at or near West Dublin, Lunenburg County, Nova Scotia, Mr. Johnson committed second degree murder by striking Mr. Kenneth Savory with his motor vehicle thereby causing his death.

[3] Given the nature and circumstances surrounding the commission of the alleged offence, the burden is on Mr. Johnson to justify his release from custody. The onus is upon Mr. Johnson to discharge the burden, on the balance of probabilities, why detention is not justified under either ground under s. 515(10) (a), (b), and (c) of the *Criminal Code*.

[4] By virtue of s. 522 of the *Criminal Code*, Ms. Johnson is placed in a reverse onus position because it is alleged that he committed second degree murder, a section 469 listed offence.

Reasons for the Order

[5] I have had the opportunity to listen intently to the submissions that have been made by Counsel and have considered all the evidence that has been presented, including the *viva voce* evidence, and the exhibits.

[6] I am grateful for the able submissions that Counsel have made, including the written submissions, which were helpful.

[7] I should also note that if at some point in time, this decision is reduced to writing, I retain the right to edit for grammar and readability.

[8] In the course of assessing this matter, as with any judicial interim release hearing, there are a myriad of factors to consider, including:

1. The accused's residence;
2. The accused's employment situation or lack thereof;
3. A criminal record - related, lengthy, and continuous, and any recent entries in it;
4. Any sentence that the accused is presently serving;
5. Outstanding charges;
6. Other forms of judicial interim release;
7. The proximity of friends and relatives and other relationships he has in the community;
8. Other ties to the community;
9. Whether there is any substance abuse problems;
10. The mental health of the Accused;
11. The facts which are being alleged which underlie the charges before this Court; in particular whether there is evidence of violence or the threat of violence, or the existence of weapons;
12. The likely sentence if the accused was to be found guilty of the charges before this Court;
13. The nature and number of offences before the Court; and
14. The strength of the Crown's case.

The Relevant *Criminal Code* Provisions

[9] Section 515(10) of the *Criminal Code* provides that 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.

Nature and Scope of a Judicial Interim Release Hearing

[10] As repeatedly emphasized by the Supreme Court of Canada, the release of accused persons is the cardinal rule and detention the exception, and release is favoured at the earliest reasonable opportunity and on the least onerous grounds. Recently, the Supreme Court also clarified the *ladder principle* in the law of bail and the framework for authorizing release under s. 515 of the *Criminal Code*.

[11] It may be appropriate at this juncture to make a few *brief* comments about the nature and scope of a show-cause hearing.

[12] While the judicial interim release hearing (often referred to as a “bail hearing or “show cause hearing”) is not a trial, it is adversarial in nature. The purpose of a show cause hearing is not to determine the guilt or innocence of an accused, but rather to determine whether it is necessary to detain the accused. Thus, the judicial interim release hearing involves an analysis of risk, which is highly contextual and necessarily an individualized process.

[13] The presumption of innocence is expressed and guaranteed in s.11(d) of the *Charter*. However, 11(e) of the *Charter* also recognizes, notwithstanding the presumption of innocence, that just cause may exist for denying liberty to an accused pending trial. Section 11(e) of the *Charter* provides that "any person charged with an offence has the right not to be denied reasonable bail without just cause". The right conferred is a basic entitlement to be granted reasonable bail *unless* there is *just cause* to do otherwise. This entitlement rests on the presumption that an accused person is innocent until found guilty at trial. However, s. 11(e) also recognizes that, notwithstanding the presumption of innocence *just cause* may exist for denying liberty to an accused person pending trial.

[14] It must be stressed that there is no rule or principle of law requiring that there always be detention in a particular class of case, such as murder or drug importation or trafficking. Indeed, as emphasized earlier, the judicial interim release hearing is highly contextual and necessarily an individualized process. Therefore it is difficult, if not impossible, to compare one bail case with another. However, what is clear, and applies to all bail matters, is that the right conferred on an accused person is a basic entitlement to be granted reasonable bail *unless* there is just cause to do otherwise. This entitlement to bail rests on a presumption that the accused person is innocent until found guilty at trial.

[15] Section 515 of the *Criminal Code* provides the general framework for the analysis. It sets out a liberal and enlightened system of pre-trial release, under which an accused must normally be granted bail. Section 515(10)(a),(b), and (c) of the *Criminal Code* clearly articulates three grounds under which pre-trial detention of an accused is justified. They are commonly referred to as the *primary ground*, *secondary ground*, and *tertiary ground*.

[16] The primary ground, s. 515(10)(a), refers to whether detention is necessary to ensure the accused's attendance in court. The secondary ground, s. 515(10)(b), refers to whether detention is necessary for the protection or safety of the public, including any substantial likelihood that the accused will, if released from custody, commit a criminal offence, or interfere with the administration of justice. The tertiary ground, s. 515(10)(c), refers to whether detention is necessary to maintain confidence in the administration of justice.

[17] As previously mentioned, there are a myriad of factors for consideration under these three grounds. The analysis necessarily requires a balancing of the need for the protection or safety of the public with the presumption of innocence.

[18] The underpinning of this analysis is the over-arching concern of maintaining *public confidence* in the effectiveness of the criminal justice system. "Public confidence" as that term is used in the context of bail, is assessed through the lens of an ordinary, reasonable, fair-minded, and well-informed member of society who is fully apprised of the circumstances of the offence and offender and is well-informed about the philosophy of the legislative provisions and *Charter* values.

[19] The jurisprudence is instructive: bail must *not* be denied to a person who may pose a risk of committing an offence, but rather only where there is a *substantial likelihood* of committing an offence or interfering with the administration of justice,

and only where there is a *substantial likelihood* endangers the protection or safety of the public.

[20] As expressed by Lamer, C.J.C., for the majority, in *R. v. Morales*, [1992] 3 S.C.R. 711, in these terms:

> [39] … Bail is not denied for all individuals who pose a risk of committing an offence or interfering with the administration of justice while on bail. Bail is denied only for those who pose a "substantial likelihood" of committing an offence or interfering with the administration of justice, and only where this "substantial likelihood" endangers "the protection or safety of the public". Moreover, detention is justified only when it is "necessary" for public safety. It is not justified where detention would merely be convenient or advantageous. Such grounds are sufficiently narrow to fulfil the first requirement of just cause under s. 11(e).

[21] In *Morales*, the Supreme Court of Canada recognized the difficulty of accurately predicting *dangerousness*. In recognizing that it is impossible to make exact predictions about future dangerousness, the majority held that the *substantial likelihood test* does not mandate such exact predictions. Lamer, C.J.C. pointed out that *exact predictability* is not constitutionally mandated, and that it is sufficient to establish the likelihood of dangerousness expressed by the words *substantial likelihood* in s. 515(10). In essence, the standard is not one of absolute certainty as there is always some risk (para. 43).

[22] There must be evidence to support a finding of substantial likelihood in order to deny release under any of the three grounds. Moreover, such a determination can only be made after an adversarial proceeding, which takes place under exacting procedural protections (*Morales*, para. 45).

[23] It must be emphasized that detention is not justified where detention would be merely *convenient* or *advantageous* or a means of *punishment* (*Morales*, para. 39).

[24] The denial of bail must not be undertaken for any purpose *extraneous* to the bail (*Morales*, para. 38). As MacEachern, C.J.B.C., in *R. v. Nguyen* (1997), 119 C.C.C. (3d) 269 (B.C.C.A.), aptly stated:

> [21] In my view, the status of the appellant in society, or the high or relatively unknown profile of the appellant or the offence, are not factors that should be given much or any prominence because those matters often result from circumstances extraneous to the criteria for release. They should not usually affect public respect for justice in the minds of reasonable persons having knowledge of the facts.

[25] In *R. v. Pearson*, [1992] 3 S.C.R. 665, the Supreme Court of Canada defined the scope of the right contained in s. 11(e) of the *Charter*. Lamer, C.J.C., for the majority, noted that the nature of the right under s. 11(e) contains two distinct elements, namely a *reasonable bail* element and a *just cause* element (para. 45). *Reasonable bail* relates to the *terms* of bail, while *just cause* relates to the *grounds* on which bail is granted or denied (*Pearson,* para. 46).

[26] The court identified in *Pearson* two factors which are vital to a determination that there is *just cause* under s. 11(e). First, the denial of bail must occur only in a *narrow* set of circumstances. Second, the denial of bail must be necessary to promote the proper functioning of the bail system and must not be undertaken for any purpose extraneous to the bail system (*Pearson,* para. 58). The quantum of bail and the restrictions imposed on the accused's liberty while on bail must be "reasonable" (*Pearson,* para. 46).

[27] "Just cause" refers to the right to obtain bail. Thus, bail must not be denied unless there is *just cause* to do so. The *just cause* aspect of s. 11(e) imposes constitutional standards on the grounds under which bail is granted or denied (*Pearson,* para. 46).

The Burden and Standard of Proof

[28] The standard of proof at the bail stage is equivalent to the civil standard of more probable than not. The term *substantial likelihood* means a real likelihood that is not conjectural or illusory.

[29] In the present judicial interim release hearing, as previously stated, the burden is upon the defence to establish on the *balance of probabilities* that the detention of Mr. Johnson is not *necessary* on any of the grounds set out in s. 515(10).

[30] In light of the foregoing, I will now briefly review the following:

1. The circumstances surrounding the alleged offence;
2. The respective positions of the Crown and the Defence;
3. The general suitability of prospective sureties;
4. The relevant statutory provisions;

5. The relevant factors with respect to the secondary and tertiary grounds; and
6. Mr. Johnson' s proposed Release Plan.

The Circumstances Surrounding the Offences

[31] The Crown provided a synopsis of the circumstances surrounding the commission of the offence, which I do not intend to repeat, as the facts alleged are not complicated or convoluted in any way. Rather, I would note that the offence involves an allegation of an extreme act of violence that seems to have been fueled by jealously and rage. The Crown alleges that Mr. Johnson intentionally struck Mr. Savory with his vehicle, and knowing that he had done so, kept driving with Mr. Savory under his vehicle, notwithstanding being told that Mr. Savory was under his vehicle.

The Crown's Position

[32] The Crown is opposed to the release of the accused on the Secondary and Tertiary grounds, with emphasis on the tertiary ground. The Crown contends that the serious nature of the offence, second degree murder that arises from a domestic context, is extremely aggravating, because it demonstrates Mr. Johnson's propensity to become violent, irrational, and dangerous.

[33] The Crown submits that Mr. Johnson's proposed release plan does not reduce or minimize the risk to the protection and safety of the public, or the interference of the administration of justice: that is, the risk of re-offending. Thus, his detention is necessary to maintain public confidence in the administration of justice.

The Defence Position

[34] The defence position is that the proposed release plan is appropriately structured to allow Mr. Johnson to be placed under house arrest at his home so he can work. He will be under supervision and monitoring by his sureties, and will wear an ankle bracelet, which will minimize the risk to the protection and safety of the public, or the interference of the administration of justice. The proposed plan imposes stringent conditions to ensure close supervision. The defence submits that the proposed plan is sufficient to minimize the risk of Mr. Johnson re-offending,

coupled with close supervision at his home with restrictive conditions, including house arrest on his property.

General Suitability of Prospective Sureties

[35] Before embarking upon an analysis of the proposed release plan, it seems appropriate at this juncture to make some general comments about the surety's important obligation, and the role a surety serves in maintaining public confidence in the effectiveness of the administration of justice.

[36] These comments will hopefully serve as a backdrop to my findings regarding the prospective sureties being proffered in the present case.

[37] Sureties are required to take on an important role in the supervision and/or monitoring of the accused in the community. They are responsible for ensuring that the accused complies with all of the conditions of release. Sureties are seen as the eyes and ears of the Court. Consequently, it is critical in managing the risk to ensure that the surety has the ability to act as an appropriate and effective surety. In order for a surety to be effective, they must be generally concerned of the prospect of forfeiture should the accused breach a condition of release. An effective surety possesses strong moral characteristics, including being conscious of taking the appropriate action if required while being concerned for the welfare of the accused person. On the other hand, the accused person must understand and appreciate the real risk of loss to the surety should there be a breach of a condition of release. This requires the accused person to possess a genuine concern for placing the surety's property in jeopardy coupled with a concern for breaching the trust reposed in him or her by the surety, the Court, and the public. All of this concern is meant to bind the conscience of the accused person to ensure that he or she complies with the conditions of release.

[38] In determining whether a surety arrangement is suitable, the focus must be on whether the supervision plan or release plan realistically provides assurance that the objectives of the bail system will be met, not on whether the person applying for bail has put together the best plan available.

[39] The Crown has expressed substantial concern in the present case about the proposed surety's ability to adequately supervise and/or monitor Mr. Johnson while

on bail. The central focus of these concerns is the surety's ability or inability to prevent the accused from engaging in further criminal activity while on bail.

[40] It is fair to say that a surety must be a person of responsible character and devoted to the task of ensuring that the accused person is compliant with the conditions of release, especially in respect to the considerations under the secondary ground, where the emphasis must be on the surety's character and reliability rather than on their financial resources. An effective surety must be able to give guidance to and assert control over the accused person to avoid any further criminal charges or breaches of bail.

[41] As Justice Trotter stated in his authoritative text, *The Law of Bail in Canada*, Loose-leaf, 3dn. Edn. (Thompson Reuters: loose leaf) at section 7-19:

> Just as important as the surety's **character is the nature of the relationship between the proposed surety and the accused.** On a view of the surety relationship that contemplates any degree of supervision of the accused, **it is critical to know whether the relationship is one which will realistically permit the infusion of these obligations and their potential enforcement.** ...
>
> Thus, it is important to inquire beyond the mere informalities of the surety's relationship with the accused and determine its nature. Factors such as how long the surety has known the accused, whether they are related, how frequently they see each other and how close they live to one another (indeed, whether they live together) should give some indication of how well a surety can be expected to supervise an accused and take action if the accused will not be in a position to effectively supervise the accused. The same may be said of a close friend or family member who lives a long way from the accused. Thus, the circumstances of each case will be important.
>
> Many people who are proffered as sureties are relatives or close friends of the accused. Even if some of the above-mentioned criteria are met, a person may still be unsuitable as a surety. A parent who has no effective control over a grown child who still lives in the family home will not be a good candidate…
>
> (Emphasis added)

[42] A surety must realize that if the accused person commits another criminal offence or else fails to abide by his or her conditions of release, the surety may be obligated to pay to the Court the amount pledged or paid into Court. This is called "bail estreat". Thus, to avoid bail estreat, a surety should do everything possible to assist and make sure that the accused abides by the rules imposed on him or her. The

surety should also contact the police and inform the court or withdraw himself or herself as surety if there are problems. Otherwise, the surety's pledge of funds is at risk.

The Relevant Statutory Provisions:

[43] As previously mentioned, the relevant statutory provisions are contained in s. 515(10) of the *Criminal Code*, in particular: subsections (10)(a), the primary ground, (b) the secondary ground, and (c) the tertiary ground.

The Primary Ground: s. 515(10)(a)

[44] As stated, the primary ground is concerned with ensuring that an accused will attend court as required. There are a number of factors that should be considered under the primary ground including the nature of the offences, and the potential punishment; the strength of the Crown's case; the ties that the accused has to the community; the accused's record for compliance with court orders, particularly previous offences of failing to attend court; and the accused's behaviour prior to apprehension, such as evidence of flight.

Secondary Ground: s. 515(10)(b)

[45] The secondary ground under s.515(10)(b), focuses on the concern that an accused person will re-offend or interfere with the administration of justice while awaiting their trial. There are several significant factors that should be considered under this ground, including the following:

(i) The nature of the offence and the potential punishment

[46] This is a significant factor on the secondary ground. The offence Mr. Johnson is alleged to have committed is a very serious violent offence, murder. The punishment is life.

(ii) The nature and quality of the accused's alleged conduct

[47] The nature and quality of Mr. Johnson's alleged conduct in murdering Mr. Savory suggest that he has a real propensity for violence when he becomes jealous and irrational.

(iii) The Apparent Strength of the Prosecution's case

[48] The *apparent strength* of the Prosecution's case is another important factor to consider in the context of the risk to the protection or safety of the public, or the risk of interfering with the administration of justice. Usually, it is difficult to assess the strength of the Crown's case at the stage of the show cause hearing. Generally, the record consists only of general allegations contained in the Crown sheet or police briefing note, and counsel have not at this early juncture thoroughly assessed their respective cases for trial.

[49] The apparent strength of the Prosecution's case, however, is a significant factor to be considered among several others in relation to the secondary ground. It is not determinative of the issue, but rather is only one significant factor among others that the Court must carefully assess.

(iv) The Criminal Record of the Accused

[50] The criminal record of an accused person is an important consideration because it may contain previous offences relating to breaches of court orders relating to offences which occurred while on bail or while serving a sentence. Moreover, the criminal record may also suggest that there is a substantial likelihood that the accused will re-offend or interfere with the administration of justice. For example, a long and continuous pattern of criminal conduct would suggest that there is a substantial likelihood that the criminal misconduct will continue. The recency of the criminal record and the nature of the previous convictions are also relevant and deserve careful consideration.

[51] In the present case, Mr. Johnson has a dated criminal record. He has two prior convictions. He has a conviction for refusing a breath demand contrary to s. 254(5) of the *Criminal Code*, which was registered on September 1, 1999. He also has a conviction that was registered on December 4, 1991, for having a blood alcohol level exceeding the legal limit, contrary to s. 253(1)(b) of the *Criminal Code.*

(v) The Accused's Character

[52] Unlike at a trial, the character of an accused is relevant and admissible at a show-cause hearing. Character evidence refers to a person's disposition for a

particular trait or a general trait. As Justice David Watt of the Ontario Court of Appeal (as he then was) stated, "Character connotes a person's disposition, whether a particular trait or sum of all traits" (*Watt's Manual of Criminal Evidence,* Thompson Reuters (2022 edition), at 573). Often character evidence is proven by adducing evidence of the person's general reputation in the community, or by opinion evidence, or by the specific acts. Often in the show-cause hearing, the accused's criminal record is used to demonstrate misconduct and/or bad character. The purpose of s. 666 of the *Criminal Code* is to ensure that prior convictions are admitted as evidence of bad character.

[53] It should be noted that a significant criminal record is not determinative of the bail issue, as the accused's criminal record may also demonstrate that they have consistently complied with bail orders. A history of compliance is a very significant factor for the Court to seriously consider in respect to the primary and secondary grounds under s. 515(10) of the *Criminal Code*.

[54] Again, there is no evidence that Mr. Johnson has been conflict with the law since 1999. Therefore, I place very little, if any, weight to his criminal record.

(vi) The Accused's Record for Compliance with Bail or Sentence orders

[55] Although Mr. Johnson possess a dated criminal record, I will briefly comment on the significance of an accused's record for compliance with bail release orders or sentence orders.

[56] Obviously, some criminal convictions will have more probative value than others in respect to bail. For example, convictions for breaches of bail or breaches of sentence orders are considered significant aggravating factors. These types of convictions usually demonstrate that the accused cannot be trusted to abide by Court Orders. As Lamer, C.J. stated in *Morales*:

> [63] As the intervener of the Attorney General for Alberta expresses one who re-offends while on bail was previously judged to be trustworthy. If there are reasonable grounds to believe that this trust has been violated, some further basis is required to trust the accused again.

[57] Indeed, in my view there is no better predictor of future behaviour than past behaviour. Therefore, evidence which demonstrates compliance or non-compliance

with previous Court Orders will be critical in assessing the grounds under s.515 (10) of the *Criminal Code*.

(vii) The potential to Interfere with the Administration of Justice

[58] This aspect of the secondary ground is an important consideration, as it strikes at the heart of the effectiveness of the administration of justice, particularly the proper functioning of the bail system. As Justice Trotter expressed in his text:

> …The integrity of the system is dependent upon the ability of the courts to ensure that a proper trial is conducted and that the process is not undermined by those inclined to threaten or intimidate [section 3:15].

[59] In *Pearson* and in *Morales*, the Supreme Court recognized that the bail system does not function properly if those who are released on bail undermine the prosecution against them. Courts must be vigilant of how this conduct can subtly manifest itself. There are two ways in which one can interfere with the administration of justice: by destroying or tampering with evidence, or intimidating or dissuading witnesses from testifying.

[60] In this case, there is no evidence that Mr. Johnson has destroyed evidence, or will destroy evidence, or intimidate or dissuade witnesses from testifying. However, in view of all the foregoing, I have concluded that, given the nature the offence, the apparent strength of the Crown's case, the seriousness of the offence (murder, which is a serious personal violence offence, including a lesser included offence), and the circumstances surrounding its commission, a *concrete and structured supervisory plan* is required to appropriately minimize the risk of Mr. Johnson re-offending or interfering with the administration of justice, to provide adequate protection or safety to the public, and to maintain the public confidence in the administration of justice.

[61] Given that the primary focus of this judicial interim release hearing is on the tertiary ground, I will address that ground first in my analysis before I comment on the other grounds.

The Tertiary Ground: 515(10(c) of the *Criminal Code*

[62] The tertiary ground for detention requires an effort be made to strike a balance between the rights of the accused and the need to maintain justice in the community.

[63] Thus, before embarking on my analysis of this ground, I will address the essential principles and relevant factors that guide judges in applying s. 515(10)(c), in the context of pretrial detention.

[64] The Supreme Court of Canada's decision in *R. v. St-Cloud,* 2015 SCC 27, clarified and explained the appropriate interpretation of the tertiary ground set out in s. 515(10)(c) of the *Criminal Code,* that is, that the detention of the accused is necessary to maintain confidence in the administration of justice. In doing so, the Court pointed out that the scope of s. 515(10)(c) had been restricted by the courts is some cases. The Court emphasized that this ground for detention was not necessarily limited to exceptional circumstances, to the most heinous of crimes, to unexplained crimes, or to certain classes of cases. Rather, it is a distinct ground that itself provides a basis for ordering pre-trial detention of an accused. Moreover, it is not a residual ground for detention that applies only where the pre-trial detention provided for under ss. 515(10)(a), the primary ground, and (b), the secondary ground, are not satisfied. The Court emphasized that the fact that detention may be justified only in rare cases is but a consequence of the application of the tertiary ground, and not a precondition to its application.

[65] In delivering the unanimous judgment for the Court, Justice Wagner (as he then was) stressed that the four circumstances listed in s. 515(10)(c) are not exhaustive. A justice must consider all the circumstances surrounding the accused and the offence, with particular attention to the four listed circumstances (at para. 68).

[66] In addition, a justice must adopt the perspective of the public in determining whether detention is necessary. The word “public”, used in the context of s. 515(10)(c), consists of reasonable, well-informed persons, and not overly emotional members of the community. Nor does it mean that members of the community must be legally knowledgeable or legal experts. The reasonable member of the public, however, is familiar with the fundamental values of the criminal law, including the bail provisions, and the *Charter* (*St-Cloud*, para. 74).

[67] At this juncture, it may be helpful to provide some legislative and judicial context for s. 515(10)(c).

[68] As discussed earlier, since the enactment of the *Charter* in 1982, any person charged with an offence has the right not to be denied reasonable bail without just

cause: s. 11 (e) of the *Charter*. Section 11(e) creates a basic entitlement to be granted reasonable bail *unless* there is just cause to do otherwise. Indeed, pre-trial detention for an accused is the general rule and detention is the exception.

[69] In *Morales*, the Supreme Court of Canada struck down the component of s. 515(10)(b) that authorized pre-trial detention on the ground that detaining the accused was necessary in the "public interest". The Court held that this wording was vague and imprecise, and it authorized a standardless sweep permitting a court to detain a person as it deemed fit.

[70] In 1997, Parliament changed the wording in s. 515(10) and added paragraph (c), which included a separate tertiary ground. The new provision stated:

> (c) on any other just cause being shown and, without limiting the generality of the foregoing, where detention was necessary in order to maintain public confidence in the administration of justice, having regard to all of the circumstances, including the apparent strength of the prosecution's case, the gravity and nature of the offence, and circumstances surrounding its commission and the potential for a lengthy term of imprisonment.

[71] In 2002, the constitutionality of this provision was considered by the Supreme Court of Canada in *R. v. Hall*, 2002 SCC 64. In *Hall*, a bare majority (5:4) held that the first part of s. 515(10)(c), which authorized the denial of bail for "any other just cause", was unconstitutional because it was inconsistent with the presumption of innocence and with s. 11(e) of the *Charter*. McLachlin C.J., writing for the majority, concluded that the phrase "any other just cause" conferred an open-ended judicial discretion to refuse bail, in that it did not specify any particular basis upon which bail could be denied. In concluding that the impugned phrase was not justified under s. 1 of the *Charter*, the majority emphasized that Parliament must clearly lay out narrow and precise circumstances in which bail can be denied. However, the majority did find that the balance of s. 515(10)(c), which authorizes the denial of bail in order "to maintain confidence in the administration of justice", was valid, as it provides a basis for denying bail not covered by s. 515(10)(a) and (b). Chief Justice McLachlin noted that although the circumstances requiring recourse to this ground for bail denial may not arise frequently, when it does, it is essential that a means of denying bail be available.

[72] Justice Iacobucci, writing for the minority, stressed that s. 515(10)(c) must be assessed as a whole, as its structure belied piecemeal analysis. He expressed the view

that to ignore the words at the heart of the provision and to focus only on the single listed example disregarded the required analysis. Moreover, Iacobucci J. commented that even if the two components of s. 515(10)(c) were considered independently, neither could withstand constitutional scrutiny. In other words, the provision should have been struck down in its entirety.

[73] Although both the majority and minority judgments in *Hall* focused on the constitutionality of s. 515(10)(c), McLachlin C.J. provided some guidance on how to interpret the provision. She explained that in some circumstances it may be necessary to deny an accused bail, even when there are no concerns regarding the primary and secondary grounds, as it would be necessary in those *exceptional* or *rare circumstances* to deny bail to maintain the public confidence in the administration of justice. In other words, s. 515(10)(c), the tertiary ground, represents a separate and discrete basis for bail denial not captured by the other grounds for detention set out in ss. 515(10)(a) and (b).

[74] While the Chief Justice did not provide a comprehensive analysis to be conducted under s. 515(10)(c), she did explain that the tertiary ground sets out factors which delineate a narrow set of circumstances under which bail can be denied on the basis of maintaining confidence in the administration of justice. The justice must consider all of the circumstances, particularly the four factors that Parliament has set out in s. 515(10)(c): the apparent strength of the prosecution's case, the gravity of the nature of the offence, the circumstances surrounding its commission and the potential for a lengthy term of imprisonment. The justice conducts the assessment objectively through the lens of the four factors that Parliament has specified. McLachlin C.J. concluded:

> [41] … At the end of the day, the judge can only deny bail if satisfied that in view of these factors and related circumstances, a reasonable member of the community would be satisfied that denial is necessary to maintain confidence in the administration of justice. … The provision does not authorize a "standardless sweep" nor confer open-ended judicial discretion. Rather, it strikes an appropriate balance between the rights of the accused and the need to maintain justice in the community. In sum, it is not overbroad.

[75] Some appellate and trial court decisions interpreted the majority decision in *Hall* as standing for the proposition that the tertiary ground for detention under s. 515(10)(c) is to be construed narrowly and applied sparingly, in only rare

or exceptional cases involving grave or inexplicable crimes. Others endorsed a less stringent approach to the tertiary ground.

[76] In 2008, Parliament amended s. 515(10)(c) to make its language consistent with the Court's decision in *Hall*. The current provision, as set out above, did not resolve the uncertainty surrounding the scope of its application.

[77] The uncertainty created from the varying interpretations made it necessary for the Supreme Court in *St-Cloud* to provide further guidance on its application, including guidance on the application of the four statutory factors set out in s. 515(10).

[78] *St-Cloud* reaffirmed the majority reasons in *Hall* that s. 515(10)(c) is a distinct ground that itself provides a basis for ordering the pre-trial detention of an accused. It is not a residual ground for detention that applies only where the primary and secondary grounds are not satisfied. As Wagner J., writing for the court, expressed it:

> 5. In my opinion, the scope of s. 515(10)(c) Cr.C has been unduly restricted by the courts in some cases. This ground for detention is not necessarily limited to exceptional circumstances, to the most heinous of crimes involving circumstances similar to those in Hall, or to certain classes of crimes.

[79] Wagner J. further explained that s. 515(10)(c) is not limited to the most heinous of crimes. He observed that some courts had misinterpreted the majority decision, in *Hall*:

> 46. I am of the opinion that some courts have misinterpreted this Court's decision in *Hall*. First of all, the Court's comments must be viewed in the context of that case and analyzed in light of the case's very specific circumstances: the crime was an extremely horrific one. It was therefore natural for the Court to take this into account when applying s.515(10) Cr. C. The Court's description of the crime as horrific, heinous and unexplained was simply an observation, a description of the facts considered by the Court in its analysis of s. 515(10)(c) Cr. C. It cannot be read as imposing conditions or prerequisites.

[80] Wagner J. concluded that the application of s. 515(10)(c) is not limited to exceptional circumstances, to unexplainable crimes or to certain type of crimes such as murder. He said:

> 50. I agree that detention may be justified only in rare cases, but that this is simply a consequence of the application of s. 515(10)(c) and not a precondition to its application, a criterion a court must consider in its analysis or the purpose of the provision.

[81] Wagner J. reiterated what was emphasized in *Hall*, that s. 515(10)(c) must be read and assessed as a whole, and in its entirety, as the structure of the provision is one that belies a piecemeal analysis.

The Four Circumstances Set Out in Section 515(10)(c) of the *Criminal Code*

[82] As clearly stated by the Chief Justice in *Hall*, and reaffirmed by Justice Wagner in *St-Cloud*, each of the four listed factors in s. 515(10)(c) and their combined effect must be considered, together with all of the relevant circumstances. This is a balancing exercise that will enable the justice to decide whether detention is justified. In this balancing exercise, Wagner J. underscored the importance of being mindful that at the pre-trial detention stage the accused is still presumed innocent regardless of the gravity of the offence, the strength of the prosecution's case, or the possibility of a lengthy term of imprisonment.

(i) The Apparent Strength of the Prosecution's Case

[83] The apparent strength of the prosecution's case is a significant factor that must be carefully assessed and balanced against the presumption of innocence. In *St-Cloud*, Justice Wagner recognized that an interim release hearing is a summary proceeding in which more flexible rules of evidence apply. Consequently, some of the evidence admitted at the hearing could later be excluded at trial. Thus, at this early stage of the process, it is often difficult to assess the strength of the prosecution's case because of the expeditious and sometimes informal nature of a hearing where neither both Crown nor Defence counsel have had sufficient time to fully assess the strength of their respective cases. Generally, the record consists of only general allegations contained in the Crown sheet or police briefing note. Despite these inherent difficulties in the process, the justice must determine the apparent strength of the prosecution's case, which could be different at trial. Moreover, at this early stage of the proceeding, the Crown is not required to prove beyond a reasonable doubt that the accused committed the offence, and the justice must be careful not to engage in the role of trial judge; that is, to engage in assessing the credibility of witnesses and the reliability of scientific evidence. However, the justice must consider the quality of the evidence proffered by the Crown in order to

determine the weight to be given to this factor in the balancing exercise. Wagner J. suggested for example that physical evidence may be more reliable than a mere statement by a witness, and circumstantial evidence may be less reliable than direct evidence.

[84] Justice Wagner also commented on the relevance of the accused raising a defence at this stage of the proceeding. If the accused raises a defence to the allegation, then this becomes one of the factors the justice must assess in analyzing the apparent strength of the prosecution's case. He quoted with approval the following comment from the Quebec Court of Appeal in *R. v. Coates*, 2010 QCCA 919, at para. 19:

> [I]t would be unfair to allow the prosecution to state its case if the justice is not in a position to consider not only the weakness of that case, but also the defence that it suggests.

[85] As Justice Trotter noted, although *St-Cloud* does not impose any sort of hierarchy on the enumerated factors in s. 515(10)(c), the strength of the prosecution's case is both historically and conceptually a significant factor that should be given some priority in the application of the section. In *R. v. Dang*, 2015 ONSC 4254 Trotter, J., (as he then was), observed that *St-Cloud* "signaled the importance of an authentic appraisal of the strength of the Crown's case at the bail stage" (para. 53). In that case, Trotter J. upheld the justice of the peace's decision to release the accused charged with attempted murder, which was gang related and involved the use of firearms, because, in essence, the Crown's case was not overwhelming against the accused. He recognized that the denial of an accused's liberty on the basis of a weak or doubtful case runs the real risk of undermining the public confidence in the administration of justice.

[86] In the present case, as previously mentioned the Crown has an apparently strong case for second degree murder, based on the evidence proffered in this interim hearing. Indeed, as previously stressed, it is fair to say that the Crown that based on the evidence adduced in this hearing the Crown has an overwhelming case for second degree murder.

[87] I am also mindful of the of instructive comments of the Saskatchewan Court of Appeal's decision in *R. v. Blind*, (1999), 139 C.C.C. (3d) 87, wherein the Court wrote:

> 15 In considering all of the relevant circumstances, the hearing judge must not become so focused on the gravity of the offence and the strength of the Crown's case as to overlook that there are no categories of offences for which bail is not a possibility. There are few crimes of violence or of murder where one could not say that the gravity of the offence, considered on its own, without regard for the purpose of bail, justifies detention. There are also many cases where the strength of the Crown's case appears, at the pre-trial stage, to be overwhelming only to have it unravel as the trial progresses. It is also dangerous to place too much emphasis on the possibility of a lengthy prison term as all serious crimes carry the possibility of such. Giving undue weight to this factor becomes a means to start punishment before conviction.

(i) Gravity of the Offence

[88] The justice must consider the objective gravity of the offence in comparison to other offences in the *Criminal Code*. This is assessed on the basis of the maximum sentence and the minimum sentence, if any is provided in the *Criminal Code* for the offence.

[89] In this case, if Mr. Johnson is convicted of second-degree murder he will receive a life sentence, which clearly speaks to the gravity of the offence in this case.

(ii) Circumstances Surrounding the Commission of the Offence

[90] This factor requires a qualitative and contextual assessment. In *St-Cloud*, Wagner J. acknowledged that there is a limitless list of possible considerations surrounding the commission of the offence, including specific aggravating factors, such as acts of violence, particularly heinous or hateful offences, offences involving organized crime or terrorism offences, and offences involving vulnerable persons.

[91] The use of a firearm in the commission of the offence, which imposes a minimum sentence, is obviously an aggravating factor that will invariably merit serious consideration given the inherent dangerousness of a firearm, The personal circumstances surrounding the accused (age, criminal record, physical or mental health condition, membership in a criminal organization, etc.) may also be relevant. Wagner J. also recognized that in some cases the fact that the trial might be held at a much later date should also be considered.

(iii) The Accused is liable for a Potentially Lengthy Term of Imprisonment

[92] The fourth factor requires the justice to subjectively consider whether the accused, on conviction, could receive a lengthy term of imprisonment. Justice Wagner recognized the difficulty of this exercise, given that the phrase does not refer only to a life sentence, and that it is not desirable to establish a strict rule regarding the number of years that constitutes a "lengthy term of imprisonment". In an effort to provide some guidance, he acknowledged that the justice would have to conduct a qualitative and contextual assessment of each case at the early stage of the process, which will include consideration of the relevant principles of sentencing. He cautioned, however, that "this does not mean that the justice would be justified in embarking on a complex exercise to calculate the sentence the accused might receive" (para. 65).

[93] It is noteworthy that Justice Wagner emphasized that the four enumerated factors listed in s. 515(10)(c) are not exhaustive. He cautioned that a justice must not order detention automatically even where the four listed factors support such a result. Rather, the justice must consider and weigh the combined effect of all of the factors or circumstances of each case to determine whether detention is justified. At the end of this balancing exercise, the ultimate question to be asked by the justice is whether detention is necessary to maintain confidence in the administration of justice.

[94] In his concluding remarks on the interpretation of s. 5 15(10)(c), Justice Wagner expressed the view that "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 (*St-Cloud*, para. 88).

[95] Similarly, in *R. v. Oland*, 2017 SCCC 17, the Court, in assessing whether public confidence concerns support a pre-trial detention order under s. 515(10)(c), observed that the seriousness of the crime for which the person is charged plays an important role. Moldaver J. noted that the more serious the offence, the greater the risk the public confidence in the administration of justice will be undermined if the accused is released on bail pending trial. He also recognized that justices are required to draw on their legal expertise and experiences in evaluating the factors that inform public confidence, mindful that public confidence is to be measured through the eyes of a reasonable member of the public. This person is someone who is thoughtful, dispassionate, informed of the circumstances of the case and respectful of society's

values. In that sense, as Moldaver J. stressed, "public confidence in the administration of justice must be distinguished from uninformed public opinion about the case, which has no role to play in the decision to grant or not" (para. 47).

Mr. Johnson's Release Plan

[96] The defence proposes that Mr. Johnson be released on a court order with sureties. The plan includes that he resides at his house in Luneburg County on very strict release conditions, including house arrest and close supervision and monitoring by the proposed sureties, coupled with imposition of an ankle bracelet to control his movements. He is prepared to always wear an ankle bracelet to ensure his compliance with the conditions of his release order.

[97] The plan proposes that Mr. Johnson will not operate or drive any motor vehicles, at any time. He plans on working in his house, running his landscaping/snow removal business. The plan contemplates exceptions to leave his house for medical emergencies or appointments with his legal counsel. Other than those two exceptions, he is prepared to always remain in his home.

[98] The Plan proposes that Mr. Johnson's wife, Nancy Johnson, will be a surety. She will monitor Mr. Johnson and ensure that he is in complete compliance with his release conditions. She is prepared to call the police, the RCMP, immediately. She will pledge a 1970 Boston Whaler valued at approximately $15,000 as security for Mr. Johnson's release and understands that she could lose the boat if he breaches his release.

[99] In addition, the plan proposes to have Mr. Johnson's parents, his mother and father, to act as securities. They are both prepared to ensure their son complies with all his release conditions and will call the police, the RCMP, in the event that he was to breach any of his release conditions. They are aware that they could lose their pledge: the property.

The Evidence of Ms. Nancy Johnson

[100] The proposed surety, Ms. Nancy Johnson testified. She struck me as being honest and seemed to have testified to the best of her abilities. She is 60 years old. She works for her son's landscaping business, at the Lunenburg Arms Hotel, and

babysits. She was married to her husband for 31 years but was in relationship with him for approximately 40 years. She said they were on and off for the last six years.

[101] Ms. Johnson testified that she is offering to be a surety to show support for her husband. She added that she is willing to be a co-surety with her mother-in-law. She also is prepared to pay for an ankle bracelet for Mr. Johnson to wear while he is confined in his house, which is commonly referred to as house arrest.

[102] Ms. Johnson testified that she sees a change in Mr. Johnson since he has been in custody. She says he is not the same person as he was before, where he would not listen nor seek help. She stated that she has recently spoken to her husband, and he seems to have changed. She stated in the past, Mr. Johnson would not tell her the whole truth. She also mentioned that there was friction between Mr. Johnson and his parents.

[103] Ms. Johnson testified that she and her husband did have volatile arguments when they were together, which she felt were degrading as he showed no respect for her. She added that she does, however, feel that Mr. Johnson will comply with her supervision.

[104] While Ms. Johnson struck me as being a sincere person, who is well-intended, and seems to understand and appreciate the role and responsibilities of a surety, I am not satisfied that she has the ability to effectively monitor or supervise her husband in the community, because I have no confidence that Mr. Johnson's conscience would be bound by his wife's assertion of control over him.

[105] It is reasonable to infer from Ms. Johnson's evidence that her husband has a strong and controlling personality, expecting things to go his way or nothing. Ms. Johnson left me with the impression that she is willing to take on the role as a surety to help her husband in any way she can, which is admirable, but her evidence did not provide me with the level or degree of confidence that she is able to effectively assert control over Mr. Johnson.

[106] The ability of the proposed surety to effectively control the accused is a significant factor for consideration, particularly in this type of case, where it is alleged by the Crown that the accused committed a serious act of violence that arose from a domestic context, where, in a fit of rage or jealous anger, he lost control and committed an extremely dangerous violent act. Moreover, it is concerning that Ms.

Johnson, knew that her husband placed a tracking device on his girlfriend's vehicle and did nothing to persuade him to remove it. This suggests that she either does not care about what he does in his relationship with his girlfriend, or that she could not persuade him to remove it even if she tried, because she has never had an effective control over him.

[107] As she stated, her husband's attitude with her during their relationship was "either his way or the highway", which to me patently suggests that she had no ability to effectively assert control over Mr. Johnson.

[108] I am mindful that Ms. Johnson is prepared to move into the house with her husband, which raises the concern whether they would be compatible, given that they have not lived together for two years and had experienced a difficult relationship. This is particularly concerning when one considers that Mr. Johnson will be under the stress of house arrest, and the stress associated with going to trial.

[109] It should be noted that I have considered Ms. Johnson's evidence that they have remained friends and that she feels that he will listen to her, but having listened intently to her, and having carefully observed her testify, she left me with the impression that she was somewhat reluctant to take on the responsibility of being a surety for her husband, but felt she had to out of a sense of loyalty or friendship. Put differently, she did not strike me as being confident and assured that she could effectively monitor and supervise her husband as required. Her deportment during her testimony left me with the impression that she was not confident that her husband would comply with her supervision. She seemed cautious and hesitant in answering questions about her husband's behaviour. For example, her comment, "it is his way or the highway", suggest a lot about their relationship. As Justice Trotter observed, it is critical to know whether the relationship is one which will realistically permit the infusion of these obligations and their potential enforcement. Having considered Ms. Johnson's evidence, I have no confidence that she could effectively supervise her husband, particularly if he disagrees with her, and wants to do something which she does not want him to do. Again, to be clear, Ms. Johnson's evidence left me with the impression that she is somewhat reluctant to take on the responsibility but would do so because she feels obligated out of a sense of loyalty or friendship to her husband.

[110] I have no confidence in Ms. Johnson's ability to assert control and supervision over her husband. Therefore, in my view, Ms. Johnson is not a suitable surety for

Mr. Johnson because I do not have confidence that she can effectively assert the necessary control over her husband for the purposes of supervising and monitoring his behaviour. Indeed, based on her evidence, I have no confidence that he would comply with her constant supervision.

The Evidence of Mrs. Victoria Rhodenizer

[111] The accused's mother, Victoria Rhodenizer testified. She also struck me as being honest, sincere, and seemed to have testified to the best of her abilities. Mrs. Rhodenizer is obviously a very devoted mother who wants to support her son. She is aware of the circumstances surrounding the outstanding charge and remains supportive of her son. She understands the responsibilities of being a surety and is willing to take on the responsibility.

[112] Mrs. Rhodenizer described her relationship with Nancy Johnson as being good and confirmed that she is willing to be a co-surety with her. She stressed that she would have no difficulty in calling the police, the RCMP, if her son breach his release order. She also understands and appreciates that she could lose her pledge of $100,000 if her son breaches a condition of his release order.

[113] Mrs. Rhodenizer stated that she has a good relationship with her son and is not fearful of him.

[114] She testified that she is 76 years old and lives approximately ten minutes from her son's home. She stated that she owns her house, which is valued at approximately $250,000.

[115] Mrs. Rhodenizer stated that the last time that she lived with her son was a long time ago, just before he got married. Her son has not lived with her for over 30 years. It should be noted that I am mindful that Mr. Johnson is 58 years old.

[116] Mrs. Rhodenizer stated that there was no friction between her and her son. She said she is willing to drive to her son's home and stay there until Nancy Johnson arrives home.

[117] She was not sure if she knew that her son put a tracking device on his girlfriend's vehicle. She stated that he "may have told her that."

[118] Mrs. Rhodenizer has never acted as a surety. She said she does not feel any pressure to act as a surety for her son. She stressed that she does not want to see her son in jail. She added that she would, however, call the police if she had to call them. She testified that her son sometimes listens to her and sometimes he does not.

[119] Mrs. Rhodenizer obviously loves and cares for her son, as she is prepared to offer him support and do whatever she has to do to help him, including being a surety, which would require her to drive over to his house everyday, regardless of the weather conditions.

[120] Though Mrs. Rhodenizer described her relationship with her son in broad or general terms, there is insufficient evidence before me to provide me assurance that Mr. Johnson's conscience would be bound by their relationship, as there is insufficient evidence regarding the nature of their relationship. Moreover, there was also insufficient evidence about Mr. Johnson's relationship with his father.

[121] In my view, given the proposed release plan, it is crucial to know whether the relationship is one which will realistically permit the infusion of these obligations and their potential enforcement. As previously emphasized, the ability of the proposed surety to effectively control the accused person is a significant factor for consideration. In this case, there is insufficient evidence to provide me with the necessary confidence that Mr. Johnson has the ability and willingness to permit his sureties to assert control and influence over him in order to effectively supervise and monitor his behaviour while he is subject to very restrictive conditions of release.

Ruling

[122] Based on the totality of the evidence, it is my view that the Crown does *apparently* have a strong case for second degree murder given that the evidence that Mr. Johnson was told that Mr. Savory was under his vehicle and kept driving. I stress that word "apparently" because it is only an allegation at this stage, but it does describe the strength of the Crown's case at this early juncture in the proceedings.

[123] Based on the evidence proffered in this hearing, it clear that the mental state of Mr. Johnson will likely be a real issue, that is, whether the Crown can prove beyond a reasonable doubt that he possessed the requisite *specific intent* to kill Mr. Savoury when he hit him with the vehicle and drove over him.

[124] While specific intent is an issue, there is overwhelming evidence to support the Crown's allegation that Mr. Johnson committed a serious violent offence by using his vehicle, as a weapon, to cause serious bodily harm to Mr. Savory. It is an extremely aggravating feature of this case that the circumstances surrounding the commission of the offence arise out of a domestic context where it is alleged that Mr. Johnson in a rage or fit of jealousy decided to smash his vehicle into two other vehicles, strike Mr. Savoury with his vehicle, and with knowledge that he struck Mr. Savory with his vehicle, did not stop the vehicle.

[125] If the Crown allegations are true, there is reason to be concerned for both the level of danger Mr. Johnson posesses if he is not detained, and whether he will comply with court-ordered restrictions on his liberty, given the nature and circumstances surrounding his conduct on the date and time in question, which clearly demonstrates that he can be spontaneously explosive, irrational, and extremely violent. This is very concerning because there is no evidence of past misconduct or similar behaviour that could explain why he suddenly lost his control on the date and time in question and flew into a violent rage.

[126] In my view, this case is the kind of situation, where a strong, confident surety is required that can effectively assert control and influence over Mr. Johnson, particularly if there are any signs of irrationality or sudden and unexpected urges to spontaneously commit a dangerous act or breach his release order by wanting to contact or communicate with his former girlfriend, a material witness in this case.

[127] Given the apparent strength of the Crown's case, the gravity of the offence, the circumstances surrounding its commission, including the use of a vehicle as a weapon, and the life sentence if convicted, in my view a reasonable person who is a fair minded and well informed member of society, who is fully aware and apprised of all of the circumstances surrounding the offence and Mr. Johnson, and is well informed about the philosophy of the legislative provisions and *Charter* values, would come to the conclusion that the proposed release plan does not ensure that Mr. Johnson has the ability and/or willingness to comply with the proposed release plan.

[128] Therefore, Mr. Johnson's detention is necessary to maintain public confidence in the administration of justice, having regard to all of the circumstances including the apparent strength of the prosecution's case, the gravity of the offence, the

circumstances surrounding the commission of the offence, and the fact that the accused is liable to a life term of imprisonment if convicted.

[129] In other words, I am not satisfied that Mr. Johnson has discharged the burden of proving on a balance of probabilities that his detention is not necessary to maintain confidence in the administration of justice having regard to all the circumstances, including the circumstances as described in s. 515(10)(c) of the *Criminal Code*. Having considered all the evidence, it is my view that a more structured and concrete supervisory release plan is required for Mr. Johnson to discharge the burden of establishing on the balance of probabilities that detention is not necessary under the tertiary ground.

[130] A structured and concrete supervisory release plan, including strong and confident sureties that have the ability to assert control and influence over Mr. Johnson, is necessary, as well as cogent evidence that his conscience will be bound by the release plan, demonstrating his willingness to be supervised and controlled by the sureties responsible for enforcing a release plan that imposes stringent conditions of release, including an ankle bracelet and house arrest. This is necessary for all the foregoing reasons.

[131] Accordingly, Mr. Johnson will be remanded in custody because he has not shown cause why his detention in custody is not necessary within the meaning of subsection 515(10) (c) of the *Criminal Code.*

[132] In accordance with s. 522(2) of the *Criminal Code*, I order Mr. Johnson to be detained in custody.

[133] Having reached that conclusion, I will not make any comments about the primary and secondary grounds.

Conclusion

[134] In Summary, having carefully reviewed all the evidence proffered in this judicial interim release hearing, including the *viva voce* evidence and the exhibit, I am not satisfied that the defence has discharged the burden of establishing on the balance of probabilities that detention is not necessary in order to maintain the public

confidence in the administration of Justice, the tertiary ground: s. 515(10) of the *Criminal Code.*

Hoskins, J.