

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

JOE RUBEN JUNIOR

Transcript of the Decision (Section 525 review) delivered by
The Honourable Justice L. Charbonneau, in Yellowknife, in
the Northwest Territories, on the 26th day of February,
2013.

APPEARANCES:

Ms. J. Porter: Counsel on behalf of the Crown

Mr. M. Martin: Counsel on behalf of the Accused

Charges under ss. 267(a) C.C., 85(1)(a) C.C., 86(1) C.C.,
87(2) C.C., 88 C.C., 91(1) C.C., 244 C.C.,
and 264.1(1)(a) C.C.

1 February 26th, 2013

2 R. v. Joe Ruben Jr.

3 Section 525 Review - Reasons for Decision
4

5
6 THE COURT: It is often said that
7 sentencing is one of the most difficult tasks of
8 a judge, and that is true, but decisions about
9 bail are also very difficult because they require
10 consideration of competing factors that are all
11 very important but often point in opposite
12 directions. In considering my decision on this
13 particular application, I have had the benefit
14 yesterday of very thorough submissions by both
15 counsel and at the outset I want to thank them
16 for those submissions because they underscored
17 all the considerations and factors that are
18 relevant for the purpose of the decision that I
19 have to make.

20 This bail review comes before the court by
21 operation of section 525 of the Criminal Code.
22 The accused faces eight charges arising from an
23 incident dating back to June 2012. He has been
24 in custody since his arrest in June 2012. He has
25 never had a bail hearing. So far, he has been on
26 remand by consent.

27 As part of his review pursuant to section

1 525 of the Code, he now seeks to be released to
2 return to live in Paulatuk. He proposes to live
3 with his parents, abstain from the consumption of
4 alcohol, and comply with a number of conditions
5 that are attached as an exhibit to the affidavit
6 that he has filed on his application for release.

7 His father has signed an acknowledgement of
8 surety form where he confirms that he is willing
9 to be a surety for his son, and he confirms that
10 he is prepared to commit the forfeiture of \$500
11 should there be any breach of release conditions.

12 The Crown is opposed to the accused being
13 released at this time.

14 The charges arise from an incident that is
15 alleged to have occurred in Paulatuk on June 25,
16 2011. To the extent I refer to the circumstances
17 that form the subject matter of these charges, of
18 course at this stage they are only allegations.
19 What is alleged is that in the early morning
20 hours of that day the accused went to a residence
21 in Paulatuk and, with other people, consumed home
22 brew. After several hours of drinking and for
23 reasons that are unclear on the allegations I
24 heard, the accused became involved in an
25 altercation with another man, Dale Ruben. The
26 alleged victim of the offences is Whalen Green,
27 who was 21 years old at the time and had nothing

1 to do with the altercation in question. He had
2 been sleeping in the residence and woke up at
3 7:30 a.m., apparently while the altercation was
4 going on outside the residence. He went outside
5 apparently to try and stop the fight. By the
6 time he got outside, the fight, as I understood
7 the allegations, had already ended. The accused
8 was leaving the scene, running away, and is
9 alleged to have told Dale Ruben, "I'm going to
10 kill you" or words to that effect. Dale Ruben
11 left the area on his all-terrain vehicle.

12 I also heard, and saw in court, that the
13 accused wears glasses and he had apparently lost
14 those at some point during the altercation, so he
15 left the scene without them.

16 Whalen Green decided to go to the accused's
17 house to see if he was okay. Ryan Green went
18 with him. Together, they walked to the accused's
19 house. Whalen went up the stairs and got onto
20 the porch. He heard noises coming from inside
21 the house. He heard clicking noises which he
22 believed were a gun being loaded. He heard other
23 noises which he believed were the noise of a gun
24 being cocked. And then, allegedly, he saw the
25 barrel of a shotgun coming out from the doorway.

26 Whalen knew that the accused had lost his
27 glasses. He believed the accused thought that

1 he, Whalen, was someone else.

2 Whalen jumped off the stairs, and then he
3 heard four shots being fired in close succession.
4 The shots hit the ground behind him, and one of
5 the pellets, I heard, hit his sweater. At that
6 point Whalen thought he was going to die.
7 Meanwhile, Ryan Green was still apparently at the
8 top of the stairs watching what was happening.

9 Whalen ran to the back of the house. He
10 then saw Ryan and the accused walking away from
11 the house and he joined up with them a short time
12 later.

13 Whalen told the accused that he would go
14 back to look for the accused's glasses. This was
15 a lie. What Whalen wanted to do was go and find
16 the firearm. So he went to the accused's
17 residence, he found the firearm, he rendered it
18 inoperable and put it under a sofa. Whalen was
19 trying to do other things to the gun to further
20 disable it but was shaking and scared and was not
21 able to do what he was trying to do. But he did
22 leave the firearm under the couch.

23 Whalen then went back to his own home. His
24 family members encouraged him to report what had
25 happened to the police, and so he did.

26 The RCMP in Paulatuk got the complaint at
27 8:20 in the morning. Because the accused's house

1 is near the school in the community, police
2 contacted the school principal and asked him to
3 shut down the school. Whalen saw the police
4 truck on the road and flagged them down, advising
5 them that he had seen the accused going to Ryan
6 Green's residence, so the police officers went
7 there. When they got to that house, they came
8 across a few people inside the house who were
9 either passed out or highly intoxicated. They
10 asked about where the accused was, and it appears
11 they did not receive much cooperation from those
12 in the house, nor did they get great cooperation
13 as they asked people to leave the house in
14 question. By this point the officers had their
15 sidearms drawn. They called out the accused's
16 name and he answered from the bedroom. They went
17 inside the room and found him smoking a
18 cigarette. They asked him to get down on the
19 ground and he did not comply, so they eventually
20 forced him down and handcuffed him. There were
21 no further incidents.

22 After his arrest, it is alleged that the
23 accused made some utterances to the effect that
24 he was sorry that his life had been threatened
25 and that he was scared he was going to get beaten
26 up. Later, he provided a warned statement to the
27 police where he said he was drinking on the night

1 in question and had very limited recollection of
2 what happened. He remembered fighting with Dale
3 Ruben and he remembered the barrel of the shotgun
4 being in the air. He apparently said he thought
5 the shot might have gone off by accident.

6 As part of the investigation, the police
7 obtained a warrant to search the accused's house.
8 They found a shotgun under a couch in a condition
9 consistent with what Whalen had described doing
10 before putting it there, and they also found four
11 spent shells outside the residence in the porch
12 area.

13 The accused filed an affidavit in support of
14 his release application, and he also testified at
15 the hearing yesterday. He is 42 years old and
16 has lived in Paulatuk most of his life. He has a
17 criminal record that contains a few entries
18 unrelated to the charges that he now faces and
19 are also quite dated. The most recent entries
20 are from April 2003. He does not have any prior
21 convictions for crimes involving the use of
22 firearms. He also does not have any prior
23 convictions for breaching court orders.

24 The release plan that he proposes through
25 his affidavit and through his testimony is that
26 he would stay in the house where his parents and
27 other family members live. He would endeavour to

1 find work to keep himself busy because he
2 believes that this would assist in keeping him
3 out of trouble. He hopes to get a job monitoring
4 beluga whales, which runs for about a month in
5 the summer. He has done this type of work
6 before, and in fact he was to do that type of
7 work last summer before his arrest. The work had
8 not started but he was lined up to do that work
9 last summer.

10 He has talked to his father about seeing
11 whether there might be some labourers work for
12 him with the Hamlet of Paulatuk. He has done
13 that kind of work before, but it was several
14 years ago. And, he proposes to spend some time
15 working at fixing up his father's cabin which is
16 about 35 miles outside of Paulatuk. As I
17 understand his evidence, he would go there
18 probably with his father for a few days at a time
19 to fix the cabin up.

20 At the time of his arrest, as I mentioned,
21 the accused was not working but testified that he
22 had been hired to work on beluga whale monitoring
23 later in the summer.

24 The living arrangements that are proposed is
25 that the accused would live with his parents.
26 Their house, he says, is on the other side of
27 town in relation to where the complainant lives,

1 which is a 20 or 30 minute walk. The parents'
2 house is a three bedroom house. Apart from his
3 parents, he has two brothers, a sister, and some
4 other children who live in that house already.
5 His father has a firearm but proposes to turn it
6 over to someone else, someone who works for
7 Renewable Resources in town, for safekeeping if
8 the accused is released to live in the family
9 home. The accused has also testified that he and
10 his father would not need to take a firearm with
11 them if they went to the cabin out on the land.
12 He says if large animals come close, they can be
13 scared off by driving an ATV towards them. He
14 added that other people have cabins in the same
15 area and sometimes have firearms with them.

16 I will just pause to note that the accused's
17 evidence on that point is somewhat surprising to
18 me as the court hears often in the context of
19 bail but also in other contexts, that generally
20 when people go out on the land they consider it
21 an essential safety feature to have a firearm
22 with them. But the accused was not really
23 challenged on his assertion so I accept that in
24 the circumstances he described, he may be able to
25 go to the cabin without having a firearm with
26 him.

27 The accused testified that he is prepared to

1 abstain from consuming alcohol and believes that
2 he can do this. He was asked how he proposed to
3 do this, and he said that he would stay away from
4 all the people who drink. He said his parents do
5 drink alcohol occasionally but do not drink every
6 day. He said he has spoken to his father about
7 not having any alcohol in the house if he goes to
8 live there. He was asked what he would do if
9 someone else did bring alcohol in the home, and
10 he said he would then go stay with someone else
11 who does not drink alcohol.

12 When dealing with pre-trial bail there are
13 two overarching principles that must always be
14 taken into account. The first is that people who
15 face criminal charges are presumed innocent. The
16 second is that the Canadian Charter of Rights and
17 Freedoms guarantees the right not to be denied
18 bail without just cause. Because of those
19 principles, and in particular because of the
20 presumption of innocence, people facing serious
21 charges are often granted pre-trial bail.

22 The Criminal Code sets out what grounds
23 pre-trial detention can be based on; in other
24 words, it sets out what "just cause for
25 detention" means under our law. There are three
26 reasons why our law recognizes bail can be
27 denied. The first is that detention is required

1 to ensure that the person will appear before the
2 court; the second is that detention is required
3 to protect the safety of the public; and the
4 third is that detention is required to maintain
5 the public's confidence in the administration of
6 justice. Here, the Crown concedes that it is not
7 necessary to detain the accused to ensure that he
8 will appear before the court. That is a
9 reasonable and fair concession because on the
10 evidence before me, the accused has strong ties
11 to the community of Paulatuk and has no history
12 of failing to appear in court. The Crown is
13 concerned about the two other grounds. The Crown
14 argues that it is necessary to detain the accused
15 for public safety reasons, and also that it is
16 necessary to detain him to maintain the public's
17 confidence in the administration of justice.

18 Bail reviews held pursuant to section 525 of
19 the Criminal Code of Canada are triggered by
20 operation of the law. The objective of that
21 provision is to ensure that a person's detention
22 status is reviewed periodically. The right to
23 such a review is triggered simply by the passage
24 of time - 90 days in the case of indictable
25 offences, 30 days in the case of summary
26 conviction offences. The mere passage of those
27 time periods does not, however, create a

1 presumption that a person should be released.
2 Nowadays, if a person elects to be tried in the
3 Supreme Court after a preliminary hearing, it
4 would be very rare that they would be able to
5 have their trial within 90 days. If their
6 election is one of judge and jury, it would be
7 impossible, at least in this jurisdiction, and I
8 suspect it would be impossible in other
9 jurisdictions in Canada as well, to have a trial
10 held within 90 days.

11 Section 525 has been the subject of much
12 debate as noted, among others, by author Justice
13 Gary Trotter in his text *The Law of Bail in*
14 *Canada*. Many commentators and courts have said
15 that the wording of that provision is obscure and
16 of little assistance in establishing the criteria
17 that govern the inquiry, but it is clear that one
18 of the factors to be considered in such a hearing
19 is the delay in the matter coming to trial. The
20 weight of the jurisprudence across the country,
21 and certainly the jurisprudence in this
22 jurisdiction, is that unless the delay is
23 extraordinary or inordinate it is not a basis for
24 granting bail.

25 The next thing to be considered in reviews
26 of this kind is whether there have been changes
27 in circumstances since the question of bail was

1 last examined. This is where changes in the
2 proposed release plan, new evidence that may have
3 surfaced, a change in the location of witnesses,
4 or other changes in the overall situation, mean
5 that the picture painted at the section 525
6 review is different than the picture painted at
7 the original bail hearing. Here, there never was
8 a bail hearing so that notion of change in the
9 circumstances is less relevant.

10 Turning specifically to this case and to
11 these factors, I will deal first with delay.

12 This trial is now set to proceed in November
13 2013 so we know how much time will have passed
14 between the time the accused was charged and the
15 time he will have his trial on these offences.
16 That delay is one year and five months.
17 Obviously the sooner a trial can proceed, the
18 better. But a delay of one year and five months
19 between the time a person is charged and the time
20 a person has a jury trial is not inordinate. The
21 delay must be looked at in context. It must be
22 understood that this court sits not only in
23 Yellowknife every week to deal with civil, family
24 and criminal matters, but it is also a circuit
25 court that travels to the many communities across
26 the Northwest Territories, which is a
27 jurisdiction where a relatively small population

1 is spread out over a large geographical area.
2 The large majority of the circuits that this
3 court holds are held for the purpose of holding
4 criminal trials, and a very large proportion of
5 those trials are jury trials. Circuits in
6 general, and circuits where jury trials are held
7 in particular, require a lot of planning and
8 present logistical constraints and challenges.
9 In scheduling these circuits the court has to
10 contend with geography, a finite level of
11 judicial resources, a small criminal bar whose
12 members have a very heavy case load and many
13 circuit and court commitments. In that context,
14 it is simply not realistic for people to expect
15 to have their jury trial within a matter of
16 months from charges being laid. The court
17 strives to give priority in assigning dates to
18 matters where the accused are in custody or to
19 matters that are getting more dated. Still, the
20 reality is that it takes time for the various
21 processes to take their course. People do have
22 the right to choose to be tried by a court
23 composed of a judge and a jury when they are
24 charged with an indictable offence, but one of
25 the consequences of that choice is having to wait
26 longer before being able to have their trial.
27 All that to say the delay here is not an

1 inordinate one within which to have a jury trial
2 in this jurisdiction. In fact I expect it would
3 be considered a reasonable period of time in most
4 jurisdictions, particularly northern regions and
5 jurisdictions such as this one. The turnaround
6 time in this jurisdiction for holding trials is
7 better than in many other places.

8 The next consideration, changes in
9 circumstances, as I have already mentioned, is
10 not really applicable here because this accused
11 has never sought release so no court has ever had
12 to consider a release plan that he has presented
13 or analyze the situation in light of the grounds
14 for detention that are set out in the Criminal
15 Code. So that aspect of a section 525 review
16 does not arise here.

17 The analysis here really boils down to
18 whether the accused's detention is required for
19 public safety reasons or to maintain the public's
20 confidence in the administration of justice, and
21 rightfully so, that is where counsel have focused
22 most of their submissions.

23 With respect to the protection of the
24 public, The factors that are usually considered
25 in deciding whether a person's detention is
26 required for public safety reasons include
27 consideration of the criminal record when there

1 is one, whether the person was on bail or on
2 probation when the allegations arose, the nature
3 of the alleged offence and the alleged
4 circumstances of its commission, the
5 characteristics of the accused, whether he is a
6 stable person or whether there are any addictions
7 or mental or behavioural issues that increase his
8 dangerousness.

9 Concerns that the accused may interfere with
10 the administration of justice, if released, are
11 also part of what is considered under this ground
12 for detention. Here the Crown is not raising
13 those types of concerns. Of course the community
14 of Paulatuk is small and there is a very real
15 risk that the accused may run into some witnesses
16 if he is released, but that is often the case in
17 small northern communities and it is not in and
18 of itself a reason to detain someone unless there
19 is evidence showing specific concerns about the
20 possibility of interference with the witnesses.
21 There do not appear to be any such concerns here.

22 The accused's criminal record is limited and
23 it is somewhat dated. The last entries are not
24 for minor offences but they date back ten years,
25 and the sentences imposed suggest that they were
26 not at the most serious end of the spectrum of
27 seriousness.

1 The record does not include any breaches of
2 court orders so this is not an accused who has
3 demonstrated a pattern of making promises to the
4 court and not complying with them, and he was not
5 on probation and he was not on bail when these
6 allegations surfaced.

7 The concerns that arise here from a public
8 safety point of view do not arise from the
9 accused's past record. They arise from the
10 circumstances of the incident alleged. Those
11 circumstances involve a very dangerous and often
12 lethal mix, a mix of alcohol and firearms.

13 Bearing in mind, as I have already said,
14 that the allegations are at this stage
15 allegations only, it remains that they are very
16 serious allegations and very disturbing ones.
17 Aspects of the complainant's account of events
18 appear to have been confirmed by the
19 investigation, for example, with respect to where
20 the gun was found and in what condition, and the
21 four spent shells that were found near the house.
22 The allegations suggest that the shotgun was
23 fired several times at relatively close range at
24 someone, in a context where the accused did not
25 have his glasses on and was mistaken or unclear
26 about who he was shooting at. The allegations
27 suggest that this occurred a short time after an

1 altercation between the accused and another
2 person and a short time after the accused had
3 uttered a threat to kill that other person. They
4 include the fact that these shells were fired
5 near a school in hours of the day where one could
6 expect children to be in the vicinity. The
7 allegations suggest a completely disproportionate
8 and very dangerous and reckless reaction to
9 whatever had occurred before between the accused
10 and the other person.

11 The misuse of a firearm is always a very
12 dangerous matter. It is especially so when it is
13 done by someone who is intoxicated. Firearms are
14 everywhere in northern communities. They are an
15 essential tool for many activities that the
16 people in this jurisdiction take part in. They
17 are readily available in most communities because
18 they are a part of life. In that context, the
19 allegations are in and of themselves very
20 serious, but they also to my mind raise some
21 concerns about the accused's stability. There is
22 no specific evidence of addiction and no evidence
23 at all of any psychological problems. The
24 accused appears to acknowledge through his
25 testimony that if he is to abstain from consuming
26 alcohol he cannot have alcohol around him. This
27 to me does suggest an unhealthy relationship with

1 alcohol, and his behaviour while intoxicated also
2 suggests that he presents a serious risk to the
3 safety of others while he is intoxicated.

4 The alleged circumstances here, the
5 accused's reaction after this fight, his conduct
6 with the firearm, the fact that he is alleged to
7 have shot at someone four times, raise concern
8 about the risk he presents because this is
9 extreme behaviour. It is a grossly
10 disproportionate action.

11 The other thing that is of particular
12 concern is that these allegations are such that
13 it cannot be characterized as a spur of the
14 moment thing. On the contrary, they suggest a
15 certain level of deliberateness notwithstanding
16 the accused's intoxication. The allegations are
17 that he uttered a threat as he was leaving the
18 scene of the altercation; but then he went home,
19 he had to retrieve the firearm from wherever it
20 was, he loaded it and he cocked it and he pointed
21 at the victim before the shots were fired. The
22 evidence appears fairly strong that he fired four
23 times, so this is not just a spur of the moment
24 or instantaneous reaction type of behaviour and
25 that is why I say that the behaviour alleged here
26 is very disturbing and raises huge concerns from
27 a public safety point of view.

1 To alleviate those concerns, the release
2 plan has to address, the way I see it, two main
3 components: the consumption of alcohol and the
4 access to firearms.

5 I have given this a lot of thought and I am
6 not satisfied that the release plan addresses
7 those things in a way that would alleviate the
8 public safety concerns that I have talked about.
9 I have no doubt that the accused's father wants
10 to help him and is a respectable, law abiding
11 member of the community. There is absolutely
12 nothing before me that would suggest otherwise.
13 But there are already a large number of people
14 living in that house and I am not sure, frankly,
15 how feasible it is to have one more adult added
16 to the already large number of people who live in
17 this three bedroom home. I am sure that all
18 family members would pull together to try to
19 assist the accused, but that does not mean that
20 this can work.

21 In addition, this is not a non-drinking
22 home. As Crown counsel pointed out, the court
23 cannot control the behaviour of the other people
24 who live in that house. The accused testified
25 that he talked to his father about not letting
26 alcohol in the house, but there is no evidence
27 from the father on that point. There is no

1 evidence that the father and other residents of
2 that house are prepared to commit to keep that
3 home alcohol free. The accused is proposing to
4 reside there, abide by a curfew, which means he
5 would have to be inside the residence at certain
6 hours. He also said that if alcohol is brought
7 in he would go somewhere else to a non-drinking
8 home. I do not doubt that he sincerely proposes
9 to do that, that is what he thinks he would do,
10 but it is far from clear to me that he
11 necessarily would, and there is no evidence from
12 this other person that he mentioned in his
13 evidence that that person would be prepared to
14 take him in if this were to occur. If there was
15 a non-drinking home where this accused could
16 stay, that would make his release plan stronger.
17 But what he is proposing today is to live in a
18 house with several other people who from time to
19 time drink; and while he and others may have the
20 best intentions about there being no alcohol
21 brought in, he will not have any more control
22 over those other people than the court does.

23 And I think some of the same can be said
24 with respect to access to firearms. The
25 accused's father can choose to store his firearms
26 somewhere else, but again there is no evidence
27 from him about that. I only have the testimony

1 of the accused that this is what he and his
2 father have talked about. But even assuming his
3 father would do this, other relatives have
4 firearms. People who have other cabins near his
5 father's cabin have firearms. I am not satisfied
6 that the accused's access to firearms would be
7 truly curtailed under the proposed plan.

8 The alleged conduct here, as I already
9 mentioned, seems to have been completely out of
10 proportion with what had happened. It was
11 directed at someone the accused had no quarrel
12 with and certainly was not threatened by. It
13 seems to have been erratic and somewhat
14 inexplicable conduct.

15 The plan proposed addresses to an extent the
16 two identified risks - consumption of alcohol and
17 access to firearms - but not in a way that I find
18 compelling. As I have said, I am also concerned
19 about the proposed living arrangements and
20 considering the sheer number of people who are
21 already living in that house.

22 As for the accused spending his time at the
23 cabin, what is proposed seems to be that he would
24 go for a few days at a time to do work, so it is
25 not as though what is being suggested is that he
26 be in a remote place for an extended period of
27 time with no access to alcohol.

1 Those are the reasons why I am not satisfied
2 that the accused has established through this
3 plan that his detention is not required for
4 public safety reasons.

5 Although I would not, strictly speaking,
6 need to consider the third ground for detention
7 given my conclusion on the second one, I have
8 considered it and will address it to an extent.

9 The third ground for detention is not one
10 that should be invoked routinely. When the
11 Supreme Court of Canada examined its
12 constitutional validity in *R. v. Hall*, it made
13 various comments suggesting that this ground is
14 to be resorted to in rare circumstances. Section
15 515 of the Criminal Code has been amended since
16 Hall was decided, but subsequent cases have
17 reaffirmed that the third ground, while it can
18 justify detention in some cases, is only engaged
19 in exceptional cases. The case law shows that it
20 is often resorted to in cases involving
21 homicides, particularly brutal or horrific facts,
22 as defence counsel properly noted yesterday.
23 There is no question that the allegations here do
24 not come anywhere near the allegations in most of
25 the cases where the third ground has been used as
26 a basis for detaining an accused.

27 That said, the provision as it now reads

1 sets out specific considerations that the court
2 must examine when considering whether detention
3 is required to maintain the public's confidence
4 in the administration of justice. And as Crown
5 counsel pointed out, many of those are engaged
6 here. The accused faces significant penalties if
7 convicted. One of the offences carries a minimum
8 jail term of four years. Even taking into
9 account that the eight counts on the Indictment
10 all arise from the same transaction, there is no
11 question that the accused faces significant
12 consequences, if convicted. The Crown's case
13 appears to be strong, considering where the gun
14 was found, the accused's utterances, the facts
15 that the Crown's case rests on the evidence of an
16 apparently sober witness who is basically just
17 trying to do the right thing that day.
18 Importantly, a firearm was used and was used at
19 the start of a day near a school. The concerns
20 that this engages are evidenced by the police's
21 decision to ask the principal to shut down the
22 school when they were responding to this
23 complaint.

24 The use of a firearm is a specific factor
25 listed as part of the considerations under the
26 tertiary ground. In my view, it takes on
27 particular importance and can give rise to

1 particular concerns in the unique context of our
2 northern communities. There have been several
3 tragic circumstances involving the misuse of
4 firearms in this jurisdiction and in our
5 neighbouring jurisdiction of Nunavut over the
6 past several years. In communities where
7 firearms are a part of life, readily accessible,
8 and used by many community members to hunt, and
9 for protection when travelling on the land,
10 offences involving the misuse of firearms raise
11 particular concerns. So in the context of our
12 northern communities, I think the use of firearms
13 while committing an offence takes on special
14 importance when assessing whether detention is
15 required to maintain the public's confidence in
16 the administration of justice.

17 Here on the allegations, it would have been
18 a matter of a few feet, and pure luck, between
19 the accused facing the charges that he now faces
20 and him facing far more serious ones. Of course
21 whether the public's confidence in the
22 administration of justice can be maintained in
23 the face of such allegations with a person being
24 released, also depends on the proposed release
25 plan. Because even with serious allegations, a
26 strong release plan that addresses the underlying
27 concern may balance out the concern that informed

1 members of the public would have about an accused
2 being permitted to remain at large facing a
3 serious allegation. As things now stand here,
4 for the same reasons I am not satisfied that the
5 release plan addresses public safety concerns, I
6 am also not satisfied that it is sufficient to
7 maintain the public's confidence in the
8 administration of justice given the nature of the
9 allegations, the somewhat inexplicable conduct
10 alleged to have taken place, the apparent
11 strength of the prosecution's case, and the
12 penalty the accused will necessarily face if he
13 is convicted. It may be that a stronger release
14 plan could address those concerns as well. But
15 as things now stand, the accused has not
16 satisfied me that his detention is not required
17 to preserve the public's confidence in the
18 administration of justice.

19 I want to make it very clear that this is
20 not a case where detention is being ordered
21 primarily because of the criminal record, so that
22 endorsement will not be made on the warrant of
23 committal. On the contrary, the criminal record
24 has had little to no impact on the decision I
25 have made today.

26 Presumably, there is already a detention
27 order on this file because the accused has so far

1 consented to being detained. But because we have
2 had a hearing this week, a new Form 8 will issue,
3 it will reflect that the accused has failed to
4 show cause that he should be released and that he
5 is ordered detained on the secondary and tertiary
6 ground, and it will not include the endorsement
7 that relates to detention being ordered because
8 of the record, which in practical terms means
9 that if this matter ever reaches the point of
10 sentencing, the sentencing judge will have the
11 option of giving enhanced credit for the remand
12 time.

13 The accused's counsel has asked me to use
14 the powers set out in section 525 to take steps
15 to have the matter expedited in the event that I
16 dismiss the application for release. One of the
17 things this could mean is attempting to find an
18 earlier trial date for this matter. As I have
19 already mentioned, the court ordinarily gives
20 priority, when it sets dates, to matters where
21 the accused is in custody and I fully expect that
22 this was done in this case. I will undertake to
23 discuss this matter with the senior judge and see
24 whether an earlier date can be arranged but it is
25 simply may not be possible. I suspect if one had
26 been possible it would have been set sooner. But
27 it may be that, as a jury trial, this matter

1 cannot proceed any sooner than the date for which
2 it is currently scheduled.

3 As for the possibility of having a further
4 pre-trial conference, if counsel feel that it
5 would assist in expediting matters they can
6 request one. For now, I do not really have a
7 clear indication of what could be achieved and
8 how a further pre-trial could expedite things.
9 So I will leave that with counsel. As counsel
10 know, and I only say this for their benefit in
11 the event that it is a possibility, one of the
12 options, if there is any possibility for
13 resolution of this matter, if counsel wish to
14 have a resolution focused, a pre-trial
15 conference, that can be arranged. It would be
16 done by a judge who is not the assigned trial
17 judge so if that kind of request is made counsel
18 should clearly indicate that this is the purpose
19 of the pre-trial conference that they are
20 seeking. But apart from that, if counsel are of
21 the view that a further regular pre-trial could
22 assist in expediting matters, then they are
23 welcome to ask for one to be arranged.

24 For those reasons the application is
25 dismissed.

26 Mr. Clerk, if you want, I can review the
27 warrant of committal before it is issued.

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Thank you again for your submissions,
counsel.

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Certified to be a true and
accurate transcript pursuant
to Rule 723 and 724 of the
Supreme Court Rules of Court.

Annette Wright, RPR, CSR(A)
Court Reporter