IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

DOLAPO BODE-HARRISON

Transcript of the Decision on Bail Review delivered by The Honourable Justice L. A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 20th day of January, 2017.

APPEARANCES:

Ms. M. Zimmer: Counsel for the Crown

Mr. P. Harte: Counsel for the Accused

An Order of the Court has been made prohibiting publication, broadcast or transmission of information contained herein pursuant to s. 517, 520(9) and 525(8) until the trial has ended

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THE COURT: On December 19th, 2016, I heard the Applicant's application for a review of the decision that was made by a Justice of the Peace on August 2nd, 2016, ordering that he be detained pending his trial.

The Applicant has sought review of that decision. He is also seeking release pursuant to Section 525 of the Criminal Code. By operation of Section 525, the Applicant was entitled, quite apart from the bail review application that he filed, to an automatic review of his bail. Both hearings proceeded together.

I will first speak about the show cause hearing that was held back in August because it is an important part of what I had to examine in my deliberations on this matter.

First, dealing with the allegations. The Applicant faces a charge of conspiracy relating to trafficking cocaine and possessing cocaine for the purpose of trafficking. A number of other individuals are charged with him of this count and some of these individuals also face distinct charges aside from the conspiracy charge.

The Applicant was charged as a result of a major investigation which targeted a network that was believed to be responsible for high-level trafficking in the City of Yellowknife. During

the course of that investigation, the RCMP obtained an authorization pursuant to Part VI of the Criminal Code to intercept and monitor private communications of one Norman Hache. He is one of the Applicant's co-accused. Through these intercepted communications, police were able to obtain evidence implicating Mr. Hache as controlling a drug trafficking network and conspiring to carry out this activity with a number of people. It is alleged that the Applicant is one of these people. The operation involved planning to move drugs from southern Canada up to the Northwest Territories for distribution and resale.

At the show cause hearing held in August, a number of those intercepted conversations were played. They were conversations between Mr. Hache and, it is alleged, the Applicant. In this decision, I am going to refer to those calls as calls between Mr. Hache and the Applicant without using the words "alleged" each time, but I do realize the Applicant does not concede that he is, in fact, the person talking to Mr. Hache during those intercepted phone calls.

I am not going to refer to the calls in detail here because they are a matter of record from the transcript of the proceedings before the

Justice of the Peace. Suffice it to say that those conversations suggest that the person Mr. Hache was speaking to was above Mr. Hache in the trafficking organization. And, again, I am going to use "the Applicant" without using the word "alleged". But if, in fact, he was the person speaking to Mr. Hache, he was the one who was coordinating the shipment of drugs from the southern suppliers to Mr. Hache, and Mr. Hache would in turn redistribute the drugs to be resold in various communities in the Northwest Territories. In some of the calls, the Applicant is giving directions to Mr. Hache.

The quantities of drugs talked about in some of those conversations are substantial and the evidence suggests an organized drug trafficking network and ongoing activities. There is reference in some of the calls about how busy things are getting as far as drug sales.

The intercepted conversations also include discussions that took place shortly before a delivery of drugs was to take place to someone in Fort Resolution. That upcoming delivery is discussed on the calls. Police had surveillance on the residence and, after delivery, executed a search warrant in the residence in question and seized the drugs. This was in March 2016.

Conversations intercepted between Mr. Hache and the Applicant after the execution of that search warrant show them discussing things like "How could this happen?" and trying to figure out who "ratted them out". The Applicant expresses serious concern about owing money to his suppliers, says on a number of occasions that he is "fucked". There are subsequent conversations between the two to the same effect.

If this evidence is admitted at trial and if the Crown establishes that the person speaking to Mr. Hache is the Applicant, it will establish that the Applicant was the highest in the hierarchy of those charged in relation to this conspiracy.

The Applicant has a criminal record. He has a number of Youth Court convictions starting in 1998 and then a series of convictions as an adult. He has two convictions for simple possession of drugs in 2003 and 2005. Both times he received fines. He has a large number of convictions for breaching Court orders between 1998 and 2003. There is a gap in his record from 2005 to 2013, and in 2013 he was convicted for refusing to provide a breath sample.

At the original bail hearing, the Applicant proposed to go live with his girlfriend in

Calgary. She was willing to act as a surety and to commit a sum of $1,000, without deposit, in support of his release. The Applicant's brother was also willing to act as a surety and to commit that same amount, $1,000, without deposit, in support of his release. The Applicant's brother operates a work placement agency and was prepared to have the Applicant continue working for him at that agency.

The Applicant himself was proposing to deposit $10,000 in cash to demonstrate his commitment to comply with his release terms.

The circumstances of the Applicant's arrest are also relevant. The charge was sworn and a warrant issued for the Applicant's arrest in 2016. I understand that this warrant had not been extended to Alberta. The Applicant, after having learned of the existence of this warrant, sought legal advice and ultimately travelled to Yellowknife in July and surrendered himself to the custody of the RCMP.

The Justice of the Peace concluded that the Applicant had met his onus on the primary ground. He concluded, however, that he had not met his onus on the secondary and tertiary grounds. He concluded that based on the things the Applicant said to Hache after the execution of the search

warrant, including the fact that he was "fucked", there was a substantial likelihood that he would commit further drug offences upon release given the financial pressures that he was under to reimburse his suppliers.

The Justice of the Peace also noted the Applicant's history for failing to comply with Court orders and the uncertainty in the release plan as far as his residency was concerned. This was because the Applicant's girlfriend testified at the hearing that she would be moving out of her residence in the fall.

On the tertiary ground, the Justice of the Peace noted the Crown's case appeared strong, that the allegations were serious, and that the Applicant faced a potentially lengthy sentence of imprisonment. He noted the effect that drug trafficking has on the community and concluded that the public's confidence in the administration of justice would be undermined if the Applicant were to be released even with cash bail and sureties.

I will now turn to the evidence that was adduced at the December 19th bail review.

At that hearing, the Crown relied on essentially the same allegations as those that were presented at the initial bailing hearing

with one addition. Since the original show cause hearing, the Crown has received a voice identification report. It is alleged that a comparison was done between the intercepted conversations and a known voice sample of the Applicant. This was done by using conversations he had with family members while he was in custody and were recorded at the jail. The conclusion of that report is that the Applicant is the person who was talking to Mr. Hache in the intercepted calls. As I recall what the prosecutor said in the bail review hearing, the person who prepared the report is also of the opinion that the Applicant's voice has some unique features.

The release plan presented in December has some things in common with the one presented in August but also has some differences. The Applicant's brother is continuing to be proposed as one of the sureties and is continuing to say that the Applicant can work for his company, but he is now prepared to be named as a surety and commit $20,000 to his brother's release. This is substantially more than what he was prepared to commit to in August. The second proposed surety is now the Applicant's mother. She lives in Coquitlam, B.C., and is prepared to have the

Applicant reside with her. She is prepared, in other words, to be the residential surety, as opposed to the Applicant's girlfriend being the residential surety. She lives in a housing co-op and has resided there for the last eight years. She is casually employed and appears to be of relatively modest means. She is prepared to commit a sum of $1,000, without deposit, to support her son's release application. She deposes that that is a substantial sum amount of money for her.

The two differences in the release plan are the change in the proposed place of residence for the Applicant and who his residence surety will be, and the increase of the amount that his other surety, his brother, is prepared to risk by supporting his release.

The Applicant says that the door is open for this Court to intervene on his bail review for two reasons. First, he says the Justice of the Peace committed errors in his decision. Second, he says changes in the release plan constitute a change in circumstances that is a basis for this court to make a fresh assessment of whether or not he should be released. With respect to the Section 525 review, the Applicant asks the Court to conclude that this a case where there is going

to be significant delay and that he is entitled to release for that reason also.

The Crown argues that the Justice of the Peace did not commit any errors in his decision. The Crown further argues that the new release plan is not substantially different from the first one and, in some respects, is weaker because the Applicant would not be living anywhere near one of the two sureties as his brother lives in Calgary and the Applicant would be living in British Columbia. The Crown questions whether the Applicant's mother, despite her best intentions, will be in a position to supervise her adult son in a meaningful way.

I will deal first with the Section 525 review.

Section 525 is a mechanism intended to ensure that accused persons who are on remand have the benefit of regular review of their bail status. In some jurisdictions, the approach followed is the accused must first establish as a condition precedent to the Court engaging in any review under that provision that there has been unreasonable delay in proceedings. If the Court finds that there has been, it moves on to examine the release plan in the circumstances; but if delay is not established, that is the end of the

matter and nothing else is considered.

In this jurisdiction, the test applied has not historically been as rigid as that as far as delay being a condition precedent to review. The approach followed for many years in this jurisdiction was the one described in R. v. Caza, [1999] NWTJ 73, where the Court said:

> It seems to me that, having regard to the purpose of Section 525, one would necessarily have to examine whether there have been unreasonable delays in coming to trying, whether the prosecutor or the accused is responsible for any such delay, the original reasons for detention, and any new circumstances that may be relevant; so, it is a mixture of a hearing de novo and an appeal. The ultimate issue, absent extraordinary delay, however, is still the three-pronged test set out in Section 515(10).

Under that approach, delay is an important factor to consider, but not at the complete exclusion of other things. Admittedly, this approach gives rise in some instances to somewhat of an overlap between the considerations that would apply in the Section 525 review and those that would apply in the 520 review. This particular review was not argued before me in this particular hearing. I know that there have been criticisms of this approach. This Court was recently invited to depart from it and adopt the

more strict two-step test. It has declined to do so.

R. v. Stiopu, 2017 NWTSC 7 (currently under a publication ban).

Whatever approach is adopted, as far as delay is concerned, in my view, Section 525 is a curative provision. It does not entail assessing delay yet unknown in a prospective way. In other words, the delay to be considered on a 525 application is the delay that has elapsed to date. This was what the Court said in Stiopu and I completely agree.

In this case, there has not yet been any significant delay. Given the nature of this case, the number of accused, the nature of the evidence, the likelihood that several pre-trial motions may be filed, it may well be that there will be considerable delay before this matter proceeds to trial. But, at this point, projecting into the future when this matter may go to trial is speculative. This leaves as the only potential reasons to intervene alleged errors by the Justice of the Peace and changes in circumstances. Those are the very issues raised in the context of the Section 520 bail review and, in the circumstances of this case, are better addressed in the context of that

application.

Now, I turn to the Section 520 application for review.

The scope of intervention of this Court at a Section 520 bail review has long been the subject of debate and some controversy. That debate has been put to rest in R. v. St-Cloud, 2015 SCC 27. It is now very clear that on a bail review this Court's role is limited. It is appropriate for this Court to intervene (a) if the Justice of the Peace has erred in law, (b) if the Justice of the Peace's decision was clearly inappropriate; that is, excessive weight was given to a factor or insufficient weight was given to another, or (c) if the evidence shows a material and relevant change in circumstances. St-Cloud, para. 129. As I already noted, the Applicant argues that this Court can intervene for two reasons: because the Justice of the Peace made errors and because the evidence presented at the bail review hearing show material and relevant change in circumstances.

I will deal first with the alleged errors made by the Justice of the Peace.

The Applicant says that the Justice of the Peace erred in that, first, he failed to meaningful consider the presumption of innocence

and actually only paid it lip service. Second, that he overemphasized the strength of the Crown's case. Third, that he underemphasized the fact that the Applicant surrendered himself to this jurisdiction even though there was no warrant for his arrest in effect in Alberta where he was at the time.

The Justice of the Peace said in his Reasons that he was taking into consideration the presumption of innocence and the right to bail and that he considered those before reaching his decision. The Applicant's submission that the Justice of the Peace did not actually take the presumption of innocence into account is based, in essence, on his decision to detain him. It seems to me the argument boils down to "the Justice of the Peace cannot possibly have sufficiently taken into account the presumption of innocence, otherwise he would have released me." That is not what counsel said, but that is what I think the argument boils down to. This seems to me to be somewhat of a circular argument. It uses an unfavourable outcome for the basis of saying there was an error in the reasoning process. I do not find this argument convincing, especially when considering as a whole the various things that the Justice of the

Peace said in his decision. The Justice of the Peace said he was mindful of the presumption of innocence, and his careful review of the evidence and the applicable principles suggest to me that he indeed was.

The next alleged error is the overemphasis of the apparent strength of the Crown's case.

Clearly, the Crown's case against the Applicant rests on the wiretap evidence and on the Crown's ability to establish that the Applicant is the person speaking with Mr. Hache.

In assessing the strength of the Crown's case at the bail stage, one must always be cautious because the evidence is not tested. This is especially so with something like wiretap evidence. On its face, it can be very compelling. We also know that wiretap evidence is often, if not always, the subject of challenge. These hearings can take weeks. How then should a court approach this type of evidence in the context of bail?

I agree with the comments made in R. v. Amer, 2016 ABQB 689, one of the cases that the Applicant brought to my attention. At paragraph 42 of that decision, the Court said that the content of the wiretap evidence should be considered as it exists in considering the

strength of the Crown's case. The Court noted that the judicial authorization to intercept the calls, like a judicial authorization for a search warrant, is valid until it is sit aside and successfully challenged.

R. v. Abdllahi, 2013, ONSC 4873, which was referred to by the Crown, is to the same effect. At paragraph 21, the Court says:

> The fact that there are aspects of admissibility to be addressed later in the proceeding, does not, in my mind, alter the fact that a bail hearing, the wiretap evidence must simply be accepted as it is for what it evidently says and for the inferences it reasonably permits to be drawn when it is being considered. It ought not to be discounted on the basis that it will be found to be inadmissible and the absence of evidence on that hearing that seriously calls its admissibility into question, evidence that was not advanced at this hearing.

I agree with those comments.

As for the voice identification evidence, the Applicant says he will challenge its admissibility because of how the police obtained the sample of his voice for comparison. Even more, he says he will bring an application for a judicial stay of proceedings based on abuse of process because of this. He says the authorities' conduct is egregious particularly because they were on notice through a letter from

counsel that the Applicant would not be speaking to them and, if I recall correctly, that he would not agree to being recorded.

The Crown points out that the voice sample that was obtained was obtained in conversations that the Applicant was having while incarcerated using a system in the jail that has a pre-recorded message that warns inmates before each call that the call is being monitored and recorded. Now is not the time for the Court to be assessing the merits of these arguments or purport to assess the chances of success of Charter applications that have not yet been filed. It comes down to this: If the wiretap evidence is excluded or if the Crown fails to demonstrate that the person having the conversations with Mr. Hache is the Applicant, the Crown will not have a case against him. If the wiretap evidence is admitted and the voice identification evidence is admitted and accepted, the case against the Applicant will be very compelling.

The Justice of the Peace was entitled to consider the contents of the intercepted calls and did not err in his conclusion that the calls are very incriminating for the Applicant and cumulatively present strong evidence for the

Crown in support of the charge. He focused on the intercepted calls because that is what the Crown's case rests on. In my view, he did not overemphasize the strength of the Crown's case.

The last error that the Applicant alleges is that the Justice of the Peace placed insufficient weight on the fact he came to the Northwest Territories to voluntarily surrender himself. I disagree with that submission as well for a few reasons. The first is that the Justice of the Peace did refer to the fact that the Applicant came to the Northwest Territories to surrender himself. Moreover, it seems to me that if the Justice of the Peace had not placed weight on that factor, it is difficult to see how he could have found that the Applicant met his onus on the primary ground. As noted by the Justice of the Peace, the Applicant has absolutely no ties to the Northwest Territories. He has several convictions, albeit many of them dated, for breaches of Court orders, including a failure to attend Court. The Justice of the Peace noted that this was a concern but then also noted that the Applicant surrendered himself into custody. Ultimately, he concluded that the Applicant has discharged his onus, that his detention was not necessary to ensure that he would attend court.

This demonstrates, in my view, that contrary to what the Applicant asserts, the Justice of the Peace did attach considerable weight to the fact that the Applicant surrendered himself into custody. That fact weighed a lot less in the analysis of the two other grounds for detention and I do not find any error in that either.

On the whole, having carefully reviewed the Justice of the Peace's Reasons, I am not satisfied that he committed any error that would open the door to this Court's intervention.

That leaves me to consider the changes in circumstances. More specifically, the changes in the release plan.

As I said, the plan presented at the bail review was not identical to the one presented to the Justice of the Peace and the main differences are the increase in the amount pledged by the Applicant's brother from $1,000 to $20,000, without deposit, and the change of the proposed place of residence of the Applicant and the changes to who will be his residential surety.

The Crown argues that despite those differences, the proposed plan boils down to something very similar to what was presented in August and overall is not a stronger plan. The plan is not dramatically different. The

Applicant proposes the same amount of cash bail and he is still proposing sureties who will not deposit any money. But one of the sureties is willing to commit $20,000 instead of $1,000. There is no question there is a difference. The Applicant proposes to reside with his mother in a house where she has lived for eight years as opposed to with his girlfriend who the Justice of the Peace found did not have stable housing.

I am not convinced that the change in surety amount, especially when there is no deposit, would on its own constitute a sufficient change for me to reassess the Applicant's situation. But the change in the proposed residential surety and the residential stability that it now offers is an important difference that goes to an issue that the Justice of the Peace specifically expressed concerns about at the original show cause hearing.

The Justice of the Peace was understandably concerned about the fact that the Applicant would be living with his girlfriend and that she was planning on moving in the fall. There essentially was no residential stability in the proposed plan. The Justice of the Peace concluded that the plan was not strong enough to overcome the concerns he had.

In my view, the change in the proposed residential surety does constitute a material change in circumstances and I must now examine whether, on the basis of this plan, the Applicant has demonstrated that his detention is not necessary. Here, of course, I am speaking only of whether his detention is necessary under the secondary or tertiary ground because the Crown is no longer relying on the primary ground.

Before I turn to those grounds themselves and my assessment, I want to say something about the case law. Counsel have placed before me several cases where bail principles relating to these two grounds of detention were applied. Counsel also placed cases that set out principles such as Pearson, [1992] 3 S.C.R. 665 and St-Cloud. But a large number of the cases filed were basically decisions on bail applying these factors. These cases are useful illustrations of how the principles operate, but comparisons are difficult to make from case to case and are not necessarily helpful in assessing the merits of the matter before me. It is a little bit like comparing sentencing decisions. There are so many variables, so many different factors to consider, and no two cases are ever alike. Comparing bail decisions in cases involving

crimes of violence with bail decisions involving drug cases is not all that helpful because the concerns that come into play are very different. But that said, cases are helpful to identify the governing principles and illustrate the ramifications, and I have reviewed all the cases that were submitted to me with that in mind.

Speaking first of the secondary ground, this ground is concerned with public safety and potential interferences with the potential administration of justice. Unlike what the situation was in Stiopu where some of the intercepted conversations included discussions about telling witnesses to lie and things of that nature, there is nothing like that here. There are discussions where Mr. Hache and the Applicant are wondering who might have "ratted" on them, there are expressions of concern - one might say near panic - after the execution of the search warrant, but there is nothing in the allegations showing discussions about weapons, violence, intimidation, or other forms of potential interference with the administration of justice.

When considering public safety, the issue is whether there is a substantial likelihood that if released, the accused would commit further offences. In that regard, drug offences are

different from any others, as was noted by the Supreme Court in R. v. Pearson. Pearson was a case where the reverse onus provisions and drug cases were reviewed by the Supreme Court of Canada because it was alleged that they violated the Charter, but it gave the Court an opportunity to comment about some of the specificities of drug cases.

Unlike many offences, drug offences are not spontaneously committed. They usually fit in an organized and systemic enterprise. It is a very lucrative activity. The incentive for the activity to continue even after arrest and detention is very high.

So the risk to the public safety presents itself differently than when dealing with crimes of violence and, more importantly perhaps, the means to prevent the commission of further offences in the form of conditions of the release plan are more limited. Coordinating deliveries of drugs and movement of money, which the Applicant is alleged to have done in this case, can be done from anywhere. The usual conditions of house arrest, reporting conditions, things of that nature may not be as helpful in protecting the public as they can be in other types of cases.

This might be an even more pressing concern if there is suggestions and evidence that the accused person is under financial pressures to reimburse money that he owes to his suppliers, as is the case here. At the same time, the Applicant is presumed innocent and the cardinal rule of bail is release. Detention should be the exception.

From the point of view of public safety, the fact that the Applicant faces a serious charge is not in and of if itself reason to detain him under our system, and the risk to public safety cannot be analyzed with an assumption of his guilt as a starting point.

The Applicant proposes to abide by a series of conditions and his brother and mother will be on the hook financial if he breaches any of those terms. I have limited information about his relationship with his mother, but I cannot assume that the risk of creating a financial hardship for her would not have any effect on his actions.

This is what needs to be balanced: The risk of ongoing criminal activity that is very lucrative, considering the evidence about the financial pressures that the Applicant may be under, versus the proposed release plan and the involvement of his mother and brother.

On the secondary ground, the Applicant's criminal record is also a concern because of several breaches of Court orders, but those breaches are, for the most part, dated and go back to when he was younger. They are not necessarily an indication that he would continue to commit offences in breach of his release terms if such terms were imposed.

At the end of the day, the assessment of the secondary ground is a risk assessment. There are no guarantees. No one can ever demonstrate with certainty that they will not commit any offences if released. So on that ground, I am, on the whole, satisfied that based on the release plan now presented, in particular the change in the residential plan, which rests on far more stable ground than was the case in August, the added potential financial consequences to the Applicant's brother if he breaches and potential consequences for his mother, that the Applicant has met his onus and that his detention is not necessary for the protection of the public. That leaves consideration of the tertiary ground.

How this ground should be applied and what it means was explained in detail in St-Cloud. Cases that pre-date St-Cloud must be read with extreme caution, in particular when they refer to

this ground as one that should be resorted to only in rare and exceptional circumstances. That is not the case.

In considering whether the Applicant's detention is necessary under the tertiary ground, I am guided by the principles set out in St-Cloud which are summarized at paragraph 87 of that decision. The Court made it clear this is a stand-alone ground that must be assessed; it is not merely a residual ground. Among other things the Court also said that it must not be interpreted narrowly or applied sparingly, and it should not be applied only in rare or exceptional cases or only to certain types of crime. Rather, all the circumstances must be balanced with special attention to the four factors listed in the Criminal Code, but not exclusively those factors.

These circumstances, as I say, all need to be balanced in deciding whether an accused's pre-trial detention is necessary to maintain confidence in the administration of justice. That said, "necessity" remains the threshold as opposed to desirability or "convenience". Release remains the cardinal rule, and the comments underscoring these principles in earlier cases from the Supreme Court of Canada such as R.

v. Hall, [2002] 3 S.C.R. 309 remain relevant. But the Court has to look at the four factors specifically referred to in Section 515(10)(c). The first is the apparent strength of the Crown's case. I go back to what I have already said about the wiretap evidence. If this evidence is admitted and the voice identification is admitted and relied on, the Crown has a strong case. At this stage, as I have said, the wiretap evidence must be considered as it is. The presumption of innocence is there, yes, but at this stage it appears that the evidence that the Crown proposes to rely on to rebut that presumption is strong.

The second factor is the gravity of the offence. The facts alleged here involve organized drug dealing in this jurisdiction and the Applicant being high up in the hierarchy; he is the highest of those persons who are charged. Drug trafficking is very serious, it is not a victimless crime, and it causes immense harm in this jurisdiction, as I am sure it does elsewhere, and it is of serious concern to the public. It is a serious problem that leads to the commission of many other offences and many social problems. The severity of that problem cannot be overstated.

The third factor relates to the

circumstances of the offence. Here, aside from the inherent seriousness of drug trafficking activities, there are no particular facts that further aggravate matters from the point of view of the tertiary ground. There is no evidence relating to particularly vulnerable people, violence, the use of firearm, for example.

The fourth factor pertains to the penalty the accused will face if convicted. It is not for me to say now what the sentence of the Applicant will be if he is found guilty, but it is clear that in this jurisdiction he will face a significant jail term if he is found guilty of this. There will obviously will be a term of imprisonment counting in years, not months, and it will be a far more significant sentence than anything he has received in the past.

In the written submissions, his counsel estimates that the sentence that he is likely to face if convicted is between two to six years. I think that the lower end of that range is completely unrealistic given the case law in this jurisdiction and the high end of that range would likely be more at the lower end of the actual range available after trial.

To the extent that the prospects of a long jail term could be considered an incentive for

the Applicant to flea, however, it is somewhat counter-balanced by the fact that he did surrender himself into custody, and this is where I think his surrender is relevant to the tertiary ground.

So of the four factors that are specifically listed in the Criminal Code, the first two tend to militate towards detention; the third does not; and the fourth, while it does militate toward detention somewhat, is somewhat tempered for the reasons I have already mentioned.

In terms of additional non-listed factors, one of the things that is specifically referred to in St-Cloud is the impact of crime on society and on its victims. I mentioned this already when talking about the seriousness of the offence but I will say it again: Drugs cause harm everywhere and certainly have in this jurisdiction. Many lives had been ruined and anyone reading the sentencing decisions of this Court in drug matters over the past 10 to 15 years will find multiple examples of it. That is something that has to be considered in assessing whether the Applicant's pre-trial detention is necessary to maintain public confidence in the administration of justice considering the role he is alleged to have played in this organization

and the nature of the evidence that the Crown proposes to adduce to prove his involvement.

The tertiary ground is about maintaining public confidence in the administration of justice. I do keep in mind that in this context the public to be considered is not the excitable, impulsive, or particularly rattled public. Without being a public completely versed in the details of criminal law, it is a public who understands the basic tenets of our legal system, including the presumption of innocence and the constitutionally protected right to bail. That public understands that pre-trial detention is not the norm and that deprival of liberty should not normally happen before a person's guilt has been proven to the standard required by our law.

As was rightly noted during submissions, the confidence of the public in the administration of justice can be harmed by the release of people who ought not to be, but it can also be undermined by the detention of people who ought not to be. These are not easy things to balance.

Because of the seriousness of this offence, the impact that drug trafficking has on our communities, and the apparent strengths of the Crown's case, I do have serious concerns about the effect that the Applicant's release would

have on the public's confidence in the administration of justice.

On this application, the Applicant bears the onus of satisfying me that his release plan is strong enough to address these concerns.

After much consideration, and anxious consideration, I conclude that the release plan that is being proposed, despite its differences from the one proposed at the original hearing, still does not address the concerns I have on the tertiary ground.

The Applicant has work to go back to which he could do from his mother's home even though he will be in a different province, but that in and of itself is not a dramatic change from what his situation was at the time of the allegations. He is in a relationship, but that was also the case when the alleged offence occurred. There are sureties, but there is no surety prepared to commit a cash deposit to secure the Applicant's compliance with his conditions. The Applicant's mother is no doubt well intended, has residential stability, and has deposed that she will report any failures to comply with conditions, but the reality is that she is working herself and I question whether she can be expected to supervise her adult son. The amount of money she is

prepared to commit is no doubt significant for her, but in the grand scheme of things, it is relatively modest. Notwithstanding her good intentions, the evidence, more specifically the Applicant's youth and adult record, does not suggest that her influence in his life has prevented him from committing crimes. How much authority or supervision she can exercise over him at this point remains a large question mark in my mind.

The Applicant's counsel invited me to attach very little significance to the criminal record in assessing all this. I am conscious that many of the convictions are dated. Still, the Applicant has convictions for breaching Court orders. This, to my mind, would have an impact on the perception of a reasonably informed member of the public seeing the Applicant released on a serious charge for which he is in serious jeopardy on the strength of his promise to comply with release terms. And even though the Applicant has never been sentenced to lengthy jail terms, some of the entries on his record, I expect, would raise concerns for the reasonably informed member of the public if he were released on the plan currently being proposed. He has convictions as an adult for uttering threats, for

theft, for impersonation with intent, for carrying a concealed weapon, for obstructing a peace officer, and for possession of illicit drugs, including one count of simple possession of a Schedule I drug. So while I agree with the Applicant's counsel that the significance of the record is lessened by reason of it being dated, I do not think it should be discounted entirely either in assessing the tertiary ground.

To be clear, I am not saying that no release plan could address the concerns on the tertiary ground, but, on the whole, the one presented at that is point, although in some respects is somewhat stronger than the one proposed in August, still falls short of addressing those concerns in my view, having balanced all the circumstances, all the factors, and on my understanding of the law.

For those reasons, I conclude that the Applicant has not met his onus and both the application under 525 and 520 are dismissed.

MR. HARTE: Thank you.

THE COURT: That is all we have today? Thank you. We will close court.

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Certified Pursuant to Rule 723
of the Rules of Court

Jane Romanowich, CSR(A)
Court Reporter