

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *R. v.* [REDACTED]
2019 BCSC 145

Date: 20190110
Docket: 174193
Registry: Victoria

Between:

Regina

Respondent

And

[REDACTED] [REDACTED] [REDACTED]

Applicant

Restriction on publication: Pursuant to s. 517(1) of the *Criminal Code of Canada*

Before: The Honourable Madam Justice Ker

Oral Reasons for Judgment re Application for Judicial Interim Release

Counsel for Crown:

K. Henders Miller

Counsel for Accused:

R. Neary

Place and Date of Hearing:

Victoria, B.C.
December 3-6, 2018

Place and Date of Judgment:

Victoria, B.C.
January 10, 2019

Table of Contents

INTRODUCTION	3
THE FACTUAL BACKGROUND.....	4
a. The Offence Charged.....	5
i. Circumstances leading up to the offence	5
ii. The investigation of Mr. Brown's murder.....	10
iii. The arrests of Mr. [REDACTED].....	13
iv. The defence case.....	15
b. Mr. [REDACTED] Background	17
c. The Proposed Release Plan	23
POSITIONS OF THE PARTIES.....	24
LEGAL PRINCIPLES GOVERNING JUDICIAL INTERIM RELEASE	26
ANALYSIS.....	27
a) The Primary Ground (s. 515(10)(a) of the <i>Code</i>)	28
b) The Secondary Ground (s. 515(10)(b) of the <i>Code</i>).....	29
c) The Tertiary Ground (s. 515(10)(c) of the <i>Code</i>).....	36
DISPOSITION AND RELEASE ORDER	44
APPENDIX A	45
CONDITIONS OF RELEASE	45

Introduction

[1] Before commencing these reasons I remind those present that pursuant to s. 517(1) of the *Criminal Code* [the *Code*], there is a publication ban on the evidence taken, the information given, the representations made and the reasons given in this matter until such time as the accused is discharged following a preliminary inquiry or found guilty or acquitted after trial.

[2] As this is an oral judgment, it is subject to editing for grammar and style before it is published and released to the parties.

[3] [REDACTED] is charged with one count of first degree murder in relation to the shooting death of John Dillon Brown on March 11, 2016, contrary to s. 235(1) of the *Code*. The offence is said to have occurred between 1:45 p.m. and 2:00 p.m. in the Devils Army Motorcycle Club clubhouse (the “Clubhouse”). The Devils Army Motorcycle Club (the “DAMC”) is a support club of the Hells Angels Motorcycle Club (the “HAMC”). Mr. [REDACTED] is the president of the DAMC and owns the property where the Clubhouse is located in Campbell River, B.C.

[4] Mr. Brown attended at the Clubhouse on March 11, 2016 ostensibly to receive a settlement payment in return for withdrawing his Small Claims Court action against the “Voodoo Lounge” establishment in Campbell River. Instead, he was shot in the back of the head shortly after he arrived.

[5] The Crown asserts that Mr. [REDACTED] was the shooter and that his then DAMC associate, [REDACTED], assisted him in removing Mr. Brown’s body from the Clubhouse and into the trunk of Mr. Brown’s vehicle. It is the Crown’s theory that Mr. [REDACTED] never intended to “settle” Mr. Brown’s civil suit: rather, the Crown argues, Mr. [REDACTED] led Mr. Brown to believe he would be paid out but then lured him to the Clubhouse where he was executed.

[6] Mr. [REDACTED] denies engaging in any such ruse or plan and also denies that he shot Mr. Brown. He conceded, however, based on the current state of the evidence (in the disclosure), that he was involved in the movement and disposal of

Mr. Brown's body from the Clubhouse. His position appears to be that his then associate, [REDACTED], was the shooter.

[7] [REDACTED] entered into a limited immunity agreement on August 11, 2017 and is now a co-operating witness in the witness protection program. [REDACTED] is expected to give evidence in this case implicating Mr. [REDACTED] as the shooter. As such, he is a significant *Vetrovec* witness. The defence maintains that [REDACTED] claims are wholly unreliable.

[8] The Crown concedes that its case against Mr. [REDACTED] is not "overwhelming" but argues it is a "good" case with both circumstantial and confirmatory evidence supporting [REDACTED] claim against Mr. [REDACTED]

[9] The defence asserts that the Crown's case is far from "good." Defence submits that the entire Crown case is dependent upon the word of [REDACTED], who—according to defence—was addicted to cocaine and had been experiencing significant psychological problems around that time. In fact, the defence advises, [REDACTED] had been medically discharged from the Navy one day prior to the shooting. Moreover, at the time of the offence and during the investigation, he had the animus and motive to implicate Mr. [REDACTED] in the shooting of Mr. Brown.

[10] Mr. [REDACTED] seeks his release from custody pending his trial. Pursuant to s. 522(2) of the *Code*, Mr. [REDACTED] is to be detained unless he shows cause why his detention is not justified within the meaning of s. 515(10) of the *Code*. Thus, Mr. [REDACTED] is in a "reverse onus" situation and assumes the complete burden of proof in this respect: *R. v. Rondeau* (1996), 108 C.C.C. (3d) 474 (Que. C.A.) at 478.

The Factual Background

[11] This bail hearing was conducted over four full court days: December 3-6, 2018 inclusive. A voluminous amount of material was filed in the form of written submissions, exhibits and numerous authorities. Counsel adroitly and helpfully reviewed aspects of these materials in their comprehensive and detailed submissions on this hearing. Significantly, Crown counsel augmented her oral and

written submissions on this hearing by using a PowerPoint presentation that clearly and forcefully distilled significant aspects of the circumstantial evidence (including various text messages, cell phone calls, and video footage of the deceased's vehicle both before his death and after he had been shot). The slideshow of that presentation was shown through the course of the Crown's submissions on this hearing.

[12] No *viva voce* evidence was adduced at this hearing; that was not necessary based on the materials filed.

[13] As indicated, counsel thoroughly reviewed the materials on this application and I have since had the opportunity for reflection while this decision has been under reserve. So though I may not refer to every last item of evidence adduced, I have considered the totality of the evidence, authorities and submissions presented in coming to my conclusion on this judicial interim release application.

[14] Finally, it should be noted that for the entire four days of this hearing, there were between seven and eleven interested and concerned friends of Mr. [REDACTED] present in the courtroom as well as three to five police officers observing the proceedings. Significantly, Mr. [REDACTED] proposed surety, Ms. [REDACTED] was present for the entire four days. Ms. [REDACTED] had the opportunity to hear about Mr. [REDACTED] current charges and to learn about his DAMC and HAMC affiliations—a side of him that she may have previously been unaware of. Notwithstanding this information, Ms. [REDACTED] remains unwavering in her support and offer to be a surety in the amount of \$300,000. This amount represents, in essence, her life savings tied up in the equity in her property.

a. The Offence Charged

i. Circumstances leading up to the offence

[15] The deceased, Mr. Brown, was a 30-year-old mixed martial arts fighter and construction worker. At the time of his death, it appears he was training both in Campbell River and Victoria, B.C. He spent part of his time in Victoria, with one girlfriend and another part of his time in Campbell River with another girlfriend and

their young son. Mr. Brown was also known to the police in the Campbell River area as a mid-level drug trafficker.

[16] On November 22, 2015, Mr. Brown was involved in a fight at the Voodoo Lounge. Three full patch members of the HAMC, one full patch member of the DAMC and an “associate” of the HAMC were also involved in the fight. As a result of the injuries he sustained in that fight, Mr. Brown decided to sue the Voodoo Lounge for wages he lost as a result of his injuries (\$1,250) and for expenses incurred and non-pecuniary damages (\$1,900), totalling \$3,326 including filing and service fees. He filed his notice of civil claim naming the Voodoo Lounge as the defendant on January 11, 2016 in Small Claims Court in Campbell River, B.C. Mr. Brown’s intention was to collect from the insurer for the injuries he sustained in the fight, ostensibly intending to argue that the bar staff failed to intervene when the fight broke out.

[17] Ownership in the Voodoo Lounge, as I understood from counsel’s submissions, was transferred to an associate of the HAMC sometime prior to the fight on November 22, 2015.

[18] Though it is not clear whether the Voodoo Lounge had actually been served with the notice of claim, somehow Mr. [REDACTED] became aware of it. On January 30, 2016, Mr. [REDACTED] contacted Mr. Brown to discuss non-judicial alternatives to the settlement of his dispute.

[19] Between January 30, 2016 and March 11, 2016, the cellphone records of the deceased and Mr. [REDACTED] establish approximately 90 communications either by means of a cellphone call, an SMS text message or an instant iMessage. The last communication between the two was a call from Mr. [REDACTED] to Mr. Brown on March 11, 2016 at 1:33:16 p.m. Almost immediately thereafter, Mr. Brown left his sister-in-law’s residence where he had been visiting for about an hour. His car was observed by another friend travelling towards the area of the Clubhouse at about 1:45 p.m.

[20] Mr. [REDACTED] and Mr. Brown met in Victoria on one occasion to discuss settlement of the lawsuit. They eventually arranged to meet in Campbell River on March 10, 2016 to finally settle. Mr. [REDACTED] assured Mr. Brown that he would be paid. Several of the text messages from February 27, 2016 through March 4, 2016 demonstrate that Mr. [REDACTED] wanted to meet at the courthouse in Campbell River so that he could give the money to Mr. Brown's lawyer and obtain the paperwork confirming the withdrawal of the claim.

[21] The meeting between the two did not occur on March 10, 2016, as Mr. [REDACTED] was in transit from the Lower Mainland to Campbell River that day.

[22] On March 11, 2016, the two started communicating via text messages and calls after 9:20 a.m. These communications show the two trying to meet up by 11:00 a.m. but that did not happen either. Eventually, Mr. [REDACTED] called Mr. Brown at 1:33 p.m. and shortly thereafter Mr. Brown left his sister-in-law's residence to meet Mr. [REDACTED] at the Clubhouse. At least two civilian witnesses were aware that Mr. Brown was meeting with a biker that day to settle his lawsuit with the Voodoo Lounge.

[23] It is believed Mr. Brown arrived at the Clubhouse between 1:45 p.m. and 1:55 p.m. He was met by Mr. [REDACTED] and [REDACTED], the latter of whom had been staying at the Clubhouse since the evening of March 10, 2016. [REDACTED] wife was asleep upstairs in the Clubhouse.

[24] On [REDACTED] account of the events, Mr. [REDACTED] introduced Mr. Brown to him when he arrived in the parking area behind the Clubhouse. Mr. [REDACTED] then instructed [REDACTED] to close the gate to the driveway at the side entry of the Clubhouse. Mr. [REDACTED] and Mr. Brown went into the Clubhouse while [REDACTED] attended to the gate closure. Less than three minutes elapsed between [REDACTED] closing the gate and entering into the Clubhouse. When he got into the bar area, [REDACTED] saw Mr. Brown lying on the floor. He went over to see what was wrong and realized that Mr. Brown had been shot in the back of the head.

[25] According to [REDACTED] he assisted Mr. [REDACTED] in putting Mr. Brown's body in the trunk of the deceased's vehicle. Thereafter, Mr. [REDACTED] drove the deceased's vehicle out of Campbell River travelling north on Highway 19.

[REDACTED] was instructed to follow Mr. [REDACTED] in his own vehicle, ostensibly to drive Mr. [REDACTED] back to the Clubhouse once he disposed of the deceased's vehicle.

[26] At 2:12 p.m., Mr. Brown's vehicle is captured on the surveillance video of Wacor Holdings, a business at the north end of Campbell River. [REDACTED] vehicle is captured approximately three seconds later. They were, on [REDACTED] account, heading to Sayward.

[27] At the junction of Highway 19 (north to Sayward) and Highway 28 (west to Gold River), [REDACTED], who decided to abandon Mr. [REDACTED] intentionally took a wrong turn to head to Gold River. Mr. [REDACTED] continued north on Highway 19 towards Sayward, B.C. Sayward is approximately 68 km from Campbell River.

[28] At approximately 3:11 p.m., Mr. Brown's vehicle is captured by video surveillance at the Sayward Gas Station and Sayward Valley Resort. The vehicle turned off Highway 19 at the junction with Sayward Road and headed to Sayward. Shortly thereafter, Mr. [REDACTED] abandoned the vehicle at the west end of the one lane cable bridge to Sayward on the south side of the road.

[29] That afternoon, a North Vancouver Island Traffic Services officer was patrolling in the area. The dash cam of the vehicle was recording the patrol and captured Mr. [REDACTED] at three different points in its patrol:

- i. At 3:15 p.m., Mr. [REDACTED] can be seen walking west on the north side of Sayward Rd and at 3:15:43 p.m., the patrol vehicle pauses beside Mr. Brown's vehicle that is abandoned at the side of the road at the west end of the cable bridge – the patrol vehicle paused for the light to turn green to permit the east bound traffic to cross the bridge;
- ii. At 3:24 p.m., Mr. [REDACTED] is again captured in the dash cam video walking south on the west side of Highway 19 across from the Rainbow Golf Course; and,

- iii. At 3:36 p.m., Mr. [REDACTED] is again captured in the dash cam video still walking south on the west side of Highway 19, having just crossed the Salmon River Bridge.

[30] The police retrieved the key to Mr. Brown's vehicle under the bridge in the Salmon River.

[31] Mr. [REDACTED] continued to walk south on Highway 19 until he reached the Allcroft residence, approximately 3.2 km from where he left Mr. Brown's vehicle. Mr. Allcroft is someone the police know to be "biker friendly" and his residence may have presented welcoming clues to Mr. [REDACTED] who went down the driveway and sought Mr. Allcroft's assistance for a ride back to Campbell River. Mr. Allcroft agreed to drive Mr. [REDACTED] to Campbell River. The pair stopped at the Sayward Gas Station at the junction of Highway 19 and the Sayward Road where Mr. Allcroft filled his vehicle. Various video surveillance images have Mr. Allcroft, his vehicle and a passenger in his vehicle at the Sayward Gas Station between 4:01 p.m. and 4:04 p.m.

[32] Mr. Allcroft's vehicle is captured in video surveillance from Impact Reforestation on the North Island Highway in Campbell River first heading south at 4:43 p.m. and then returning north at approximately 5:36 p.m.

[33] After [REDACTED] took his intentional wrong turn to Gold River, he turned around after a few minutes of driving and returned to the Clubhouse where he started to clean up the scene inside the Clubhouse and burn materials in the fire pit in the backyard.

[34] Between 1:33 p.m. and 5:35 p.m. on March 11, 2016, Mr. [REDACTED] cellphone received 15 calls that went unanswered. It is the Crown's theory that Mr. [REDACTED] left his cell phone in the Clubhouse while he was disposing of Mr. Brown's vehicle. Support for this lies in a call from Frank Cirone, a friend of Mr. [REDACTED] who had accompanied him to Campbell River from the Lower Mainland on March 10, 2016. Mr. Cirone called at 3:39 p.m. and the call was answered. Thereafter, between 3:47 p.m. and 3:51 p.m., Dean Warner, another

DAMC associate, is captured on video surveillance at the Chances Casino in Campbell River picking up Mr. Cirone. The theory is that Mr. Warner was watching over the phone and it was him who answered the call.

[35] By 5:35 p.m., Mr. [REDACTED] had returned to the Clubhouse and was reunited with his cellphone and made an outgoing call to his friend Teyha Lafleur.

[36] Mr. Brown was reported missing the next day, March 12, 2016. By 8:49 p.m. on March 12, 2016, Sayward RCMP located Mr. Brown's vehicle at the west end of the bridge to Sayward. Mr. Brown's body was discovered in the trunk of his vehicle at 11:20 p.m. He was wearing the clothing he had been wearing the day before as depicted in video surveillance footage inside the Campbell River Walmart on the morning of March 11, 2016.

ii. The investigation of Mr. Brown's murder

[37] The investigation of Mr. Brown's murder commenced the same day his body was discovered on March 12, 2016. An autopsy determined that the cause of death was a single gun shot wound to the back of his head with the bullet exiting out through his right eye.

[38] Mr. [REDACTED] quickly became a person of interest, and then later a suspect. This was largely based on witness accounts that said that Mr. Brown had been meeting "a biker" in relation to the lawsuit. By March 15, 2016, Mr. [REDACTED] cellphone number and messages with Mr. Brown were located on Mr. Brown's iPad. This established that Mr. [REDACTED] was the last person that Mr. Brown had contact with before his disappearance. Mr. Brown's cellphone has not been recovered.

[39] On March 16, 2016, the RCMP seized Mr. [REDACTED] cellphone from him at the Port Coquitlam courthouse where he was attending for a court appearance. The encounter was audio recorded and Mr. [REDACTED] was advised that he was a suspect in the murder of Mr. Brown.

[40] At 9:00 a.m. on June 8, 2016, Cst. Dean Miller and other officers of the Vancouver Island Integrated Major Crime Unit attended at Mr. [REDACTED] residence

in the Lower Mainland. They served two search warrants, one to search Mr. [REDACTED] previously seized cellphone and one to search his residence. This encounter was also audio recorded and Mr. [REDACTED] was again advised that he was a suspect in the murder of Mr. Brown.

[41] The investigation remained ongoing but largely stalled until July 2017. Over the course of the investigation, police obtained numerous judicial authorizations, including the aforementioned search warrants, production orders and eventually Part VI wiretap orders which ran from March 28, 2017 to November 13, 2017.

[42] The turning point in the investigation came when [REDACTED] (who, by May 2016, had become a full patch member of the DAMC holding the position of Sergeant At Arms) accepted an invitation to speak with investigators on June 21, 2017. This occurred one day after the police interviewed his wife and advised her that they could place her cellphone at the Clubhouse at the time Mr. Brown was murdered.

[43] During his approximately two-and-a-half-hour interview with the officers, [REDACTED] was advised that he was a suspect in the murder of Mr. Brown, that his wife's cellphone had been traced to the location of the murder and that the police suspected he knew something about the murder. It was intimated that the police did not believe he was the shooter. During the interview, [REDACTED] discussed his background in the Navy and his medical discharge the day before the murder as well as his associations with the DAMC and Mr. [REDACTED]

[44] [REDACTED] met with investigators again on June 22, 2017 for a further two-hour interview. He was presented with the police theory of the murder and asked whether he was the shooter or whether he was simply present when the shooting occurred. At one point, he was told that investigators did not think he was the shooter. He was also told that he was the first person to speak to the police and that the police would believe him if he chose to speak. [REDACTED] told the investigators that he knew who shot Mr. Brown. He agreed to co-operate with them and assist in the investigation but first wanted to consult with counsel. The investigators arranged

for [REDACTED] to obtain independent legal advice. [REDACTED] expressed considerable fear for his safety as well as the safety of his wife.

[45] On July 3, 2017 and July 4, 2017, [REDACTED] again met with investigators and provided a statement to them that identified Mr. [REDACTED] as the shooter of Mr. Brown. [REDACTED] said he helped dispose of the body and assisted in cleaning up the Clubhouse. This included burning clothing and other items of evidence. [REDACTED] and his wife went into witness protection at this time, where they remain to this day.

[46] In his July 2017 interviews, [REDACTED] advised that during the cleanup, he may have left some blood spatter on a picture on the wall in the Clubhouse's bar area. [REDACTED] also advised that Mr. Warner came by the Clubhouse after the shooting while [REDACTED] was cleaning up. According to [REDACTED], Mr. Warner intimated that he had prior knowledge that Mr. [REDACTED] was going to be meeting with Mr. Brown and that Mr. Brown was a "bad, bad guy" who "was gonna rat on Ali" and others – seemingly a reference to the Voodoo Lounge incident.

[47] The information that [REDACTED] provided to the police in July 2017 assisted them in obtaining a search warrant for the Clubhouse.

[48] On August 10, 2017, a search warrant for the Clubhouse was obtained. It was executed the next day on August 11, 2017. The search of the Clubhouse took three or four days. Mr. [REDACTED] was aware that the search warrant was being executed on the property. Minute traces of Mr. Brown's DNA and blood were found in two places on a wall in the bar area of the Clubhouse.

[49] On August 11, 2017, [REDACTED] entered into a limited immunity agreement in connection with this investigation.

[50] On October 31, 2017, [REDACTED] pleaded guilty to a charge of accessory after the fact in connection with Mr. Brown's murder and received a 22-month sentence of imprisonment. He has served that sentence and remains in the witness

protection program. [REDACTED] is the only person who directly implicates Mr. [REDACTED] in the murder of Mr. Brown. He clearly is a *Vetrovec* witness.

[51] Excerpts from interviews as well as intercepted conversations filed by the Crown on this hearing provide evidence that approximately 16 potential witnesses (either present during the Voodoo Lounge fight or who were aware of Mr. Brown's efforts to sue the establishment) have expressed reluctance to speak to the police for fear of reprisals by the HAMC. In the excerpts provided, however, there does not appear to be mention of Mr. [REDACTED] specifically and thus, it is difficult to determine whether the apparent fear and reluctance of these witnesses relates specifically to Mr. [REDACTED] or to the HAMC more generally.

[52] By November 2017, the investigation was substantially complete.

iii. The arrests of Mr. [REDACTED]

[53] On or about November 6, 2017, Mr. [REDACTED] was arrested for the murder of Mr. Brown. He was permitted access to counsel and received legal advice. Thereafter, Sgt. Blaine Mumford and other members of the RCMP interviewed Mr. [REDACTED] from approximately 3:11 p.m. to 8:26 p.m. The interview was audio and video recorded. Mr. [REDACTED] was told that [REDACTED] had told the police that Mr. [REDACTED] shot Mr. Brown. Mr. [REDACTED] was told that [REDACTED] was co-operating and that the police had no doubt Mr. [REDACTED] had murdered Mr. Brown.

[54] The interview continued on November 7, 2017 from 8:32 a.m. for about another hour. At that time, Mr. [REDACTED] was provided with documentation confirming that [REDACTED] had pleaded guilty to accessory after the fact in the murder of Mr. Brown.

[55] During these interviews, Mr. [REDACTED] was told a fair amount of information about what the police had in terms of their investigation, who they had spoken to and who they intended to interview. It was clear throughout the course of the two interviews that Mr. [REDACTED] had been arrested for the murder of Mr. Brown and

was being investigated as the shooter of Mr. Brown. Mr. [REDACTED] was aware of the extent of his legal jeopardy at that time: he had received advice from counsel, exercised his right to silence and ultimately provided no information to the police.

[56] Notwithstanding that the investigation was substantially complete and that Mr. [REDACTED] had been identified as Mr. Brown's killer, the Crown declined to approve the charges at that time. Mr. [REDACTED] was released from police custody on or about November 7, 2017.

[57] At this hearing, the Crown explained that charges were not approved in November 2017 due to the size of the investigation, the amount of disclosure that had to be processed and the limits on the police and Crown resources to do so in an expeditious manner. In her comprehensive written submissions provided on this hearing, Crown counsel explained the dilemma the Crown was facing this way:

18. The presumptive time limits for trial set out in *R. v. Jordan*, and presumptive limits for trial and disclosure established in the Supreme Court Practice Direction for Complex Criminal Trials require the Crown to conduct prosecutions in accordance with timelines in order to mitigate delay. In addition to creating a more efficient system, mitigating delay in this way also streamlines the process by eliminating the need for additional court applications based on delay, and is more likely to result in trials that are decided on the merits of the case.

19. This investigation was lengthy and complex. It was over 20 months in length and involved over seventy judicial authorizations, including four Part VI authorizations.

20. The disclosure in this matter involves agencies other than the investigating agency, including Special I, the Integrated Witness Protection Section, and the Confidential Informant and Agent Unit. Disclosure in this matter required review of file materials by all of these agencies.

21. In addition to the above agencies, the Crown review of the evidence collected in this file has been undertaken by one to four full time Crown Counsel and a staff member over the past year.

22. While the investigation was largely complete in November 2017, it would not have been feasible to substantially complete disclosure within the guidelines set out by the Courts at that time. As a result, the decision was made to ensure Crown could meet these obligations prior to laying a charge.

[58] The Crown advised that it received approximately 106,000 documents (some of them hundreds of pages in length) for review from the police investigation and that counsel has been reviewing the disclosure since November 2017 when Mr. [REDACTED] was first arrested. It has taken almost a year for between one and four Crown counsel and a staff member to process this disclosure.

[59] On October 26, 2018, almost one year later, Crown counsel approved a charge of first degree murder in this case. Mr. [REDACTED] was arrested without incident later that same day and has been in custody ever since.

[60] By the time the charges were approved and Mr. [REDACTED] was re-arrested, the Crown was able to “substantially complete disclosure, providing approximately 86,000 documents to counsel for [Mr. [REDACTED]]. The Crown further advises that the majority of the remaining disclosure will be completed in the next two months, with any further or new disclosure ongoing.

iv. The defence case

[61] Mr. [REDACTED] defence will be that he was not the shooter and that [REDACTED] evidence ought not to be believed.

[62] Counsel for Mr. [REDACTED] took the Court through aspects of [REDACTED] statements to the police in this investigation to support his argument that [REDACTED] is a significant *Vetrovec* witness. Although he has a dated criminal record, it is for offences of dishonesty including theft from his employer at the time, Canadian Tire. He also admitted to an insurance fraud scheme as part of a criminal history interview conducted by two RCMP handlers on July 5, 2017.

[63] [REDACTED] was medically discharged from the Navy the day before Mr. Brown’s murder. The defence understands the discharge related to mental health concerns about [REDACTED]. And though he had been under a cloud of suspicion for a number of months and knew that the discharge was coming, it nevertheless was a significant psychological blow to [REDACTED]. He had spent years fighting to get into the Navy and it was the career he hoped to retire from

years later. In interviews with the investigators, [REDACTED] wife described the medical discharge as having a devastating impact on her husband. [REDACTED] served with the Navy for a decade including as a bosun and small arms instructor.

[64] About 10 months before his discharge from the Navy, [REDACTED] met Mr. [REDACTED] through their mutual affinity for motorcycles. [REDACTED] was a member of a veterans' motorcycle club called the "Falcons" when he met Mr. [REDACTED] at a local strip club. Mr. [REDACTED] invited [REDACTED] up to the Clubhouse and their association progressed from there. Eventually, [REDACTED] and his wife started spending weekends up at the Clubhouse. [REDACTED] was displeased with his wife's partying and dancing with DAMC members late into the night and early morning hours. Although a number of other practices of the DAMC irked [REDACTED], he remained affiliated with them because, according to the defence, it gave him a sense of belonging. His wife likewise indicated that the DAMC gave [REDACTED] a sense of belonging in her police interview on June 20, 2017.

[65] Around the time of the offence, [REDACTED] was distributing approximately one kilogram of cocaine a month with another DAMC associate (Mr. Warner). He kept a half ounce for himself for personal use. Defence submits that [REDACTED] was using cocaine at relevant times around the commission of the offence.

[REDACTED] told the investigators that he had stopped using cocaine in June 2017. His wife told investigators that on the day of the offence (when she saw her husband "cleaning like crazy"), she also observed signs of cocaine use in the Clubhouse.

[REDACTED] added that when her husband approached her, he was "all sweaty, clammy, like he was gonna be sick". She thought he had been using cocaine and told him he "should probably not do so much" of it.

[66] [REDACTED] was not a full patch member of the DAMC at the time of the offence but became one in May 2016 attaining the position of Sergeant at Arms.

[67] Defence counsel argues that although [REDACTED] claimed in his interview with the police in June 2017 that he was not a violent person, the disclosure indicates otherwise. Specifically, a month prior in May 2017, [REDACTED] took it

upon himself, as the Sergeant at Arms of the DAMC, to administer a beating upon Morgan Howard, a DAMC prospect who had behaved disrespectfully towards a visiting HAMC member's wife. Mr. Howard had already been beaten by the HAMC member but [REDACTED] continued the beating, unprompted, and ripped the DAMC's identifying patches off Mr. Howard's vest. Mr. [REDACTED] was not present when this incident occurred at the Clubhouse but learned about it almost immediately thereafter.

[68] It is not disputed by the defence that Mr. [REDACTED] had regular communications with Mr. Brown right up to the day of his killing. He was endeavouring to settle Mr. Brown's lawsuit against the Voodoo Lounge out of court. The defence strenuously challenges the Crown's theory that Mr. [REDACTED] groomed Mr. Brown from January 2016 through March 2016 on a pretext to settle the lawsuit so that he could kill him. The defence argues that a number of the text message communications between February 27, 2016 and March 4, 2016 clearly establish that Mr. [REDACTED] wanted the meetings and settlement of the lawsuit to occur at the courthouse in Campbell River in the presence of the deceased's lawyer.

[69] The defence concedes for the purposes of this hearing that the deceased was killed in the bar area in the basement of the Clubhouse. It also concedes, based on the evidence available at this time, that one can assume Mr. [REDACTED] was involved in moving the deceased's vehicle and body.

[70] However, in light of the aforementioned impediments to [REDACTED] character, integrity, credibility and reliability, the defence asserts that while there is no question that Mr. Brown was killed at the Clubhouse on March 11, 2016, the "who did it" and "how was it done" are very much in issue and will be vigorously contested at Mr. [REDACTED] trial.

b. Mr. [REDACTED] Background

[71] Mr. [REDACTED] is 64 years old. He is separated from his former partner but enjoys an amicable relationship with her. They co-parent their 10-year-old son and split parenting time equally. By all accounts, including the observations of various

surveillance officers, Mr. [REDACTED] has a very close bond with his son. Ms. [REDACTED] a long-time friend and the proposed surety in this case, describes Mr. [REDACTED] as “a responsible and loving father to [his son] and that he deeply values being a father and his regular parenting role.”

[72] Mr. [REDACTED] also has an adult son who lives in the Lower Mainland and is supportive of his father’s release on bail. [REDACTED] [REDACTED] Jr. appears to have experience in a number of different fields, most recently in the field of real estate work. He has filed a letter of support for his father on this application. He writes that his father is not a violent man, rather, he is someone who helps his family and friends and enjoys having fun and hanging out with “the motorcycle crowd”.

[73] In total, 10 letters of support were filed on this application. Although none of the authors express in their letters that they are aware of the nature of the charges against Mr. [REDACTED] or of his close personal connections with the DAMC and the HAMC, several of the authors were present in court throughout the entirety of this bail hearing. They now have a very clear picture of Mr. [REDACTED] involvement with outlaw motorcycle clubs and his alleged role in the murder of Mr. Brown. To the best of my knowledge, none of those present at the bail hearing have withdrawn their support for Mr. [REDACTED] or indicated that they have changed their minds in light of the information they heard over the course of this hearing.

[74] Moreover, some of the authors firmly state their view that Mr. [REDACTED] would not breach any of his bail conditions, largely due to their belief that he would not do anything to jeopardize contact and time with his young son. His adult son states unequivocally that his father is not a flight risk as he loves his country and his family.

[75] Mr. [REDACTED] owns four properties in British Columbia:

- i. The Clubhouse at 70 Peterson Road in Campbell River that he purchased in a cash transaction on August 17, 2015. The 2018 assessed value for this property is \$311,000;

- ii. A condominium on Erickson Drive in Burnaby. The 2018 assessed value for this property is \$346,000. This property shares a \$323,700 mortgage with the Clubhouse property that was obtained in September 2015;
- iii. He is the co-owner of a condominium on Meadow Gardens Way in Maple Ridge where his former partner and young son live. The 2018 assessed value for this property is \$368,000. The mortgage on this property was cancelled on February 24, 2016;
- iv. His residential property on Campion Street in Mission. The 2018 assessed value for this property is \$1,031,000. A mortgage in the amount of \$675,000 was registered for this property in 2006.

[76] Mr. [REDACTED] owns two vehicles and a motor home and leases two additional vehicles. In addition, he owned a 1972 Cessna Skyhawk, a single-engine, high wing, fixed-wing aircraft of exceedingly utilitarian and popular design. Mr. [REDACTED] adult son now owns it and pilots this plane.

[77] In 2011, Mr. [REDACTED] was listed as a co-director (with his adult son) of Suriname Resources Inc., a numbered company that was involved in a granite quarry in Suriname, South America. The company was dissolved in 2013 for failure to file but Mr. [REDACTED] phone records disclose communications with a business associate in Suriname as recently as January 4, 2017.

[78] Mr. [REDACTED] also travels to Mexico on an annual basis and corresponds with friends in that country. The Crown indicates that the disclosure suggests Mr. [REDACTED] “has a place there” but they are unable to verify this information.

[79] Mr. [REDACTED] connection to Mexico and Suriname as well as his access to a small aircraft ground the Crown’s concerns that there is a real risk that Mr. [REDACTED] will flee the jurisdiction if he is released. The Crown submits that he could have his son fly him out of the country without the need for filing a flight plan at smaller regional airports or landing strips.

[80] Significantly, however, Mr. [REDACTED] did not try to do so during the 31.5 months he was at large in the community and was well aware that he was the primary suspect in the murder of Mr. Brown.

[81] Mr. [REDACTED] has significant roots in the community in the Lower Mainland: he owns property here and more importantly, his 10-year-old son lives here.

[82] As part of the evidence adduced on this hearing, the Crown filed a 132-page opinion report provided by Cpl. Sergio Da Silva, a former member of the RCMP now retired after 28 years of service. Cpl. Da Silva is currently a designated Peace Officer for the Province of British Columbia with the Organized Crime Agency of BC assigned to the Combined Forces Special Enforcement Unit (CFSEU) as a Provincial Outlaw Motorcycle Gang Coordinator. It is not necessary to go through the details of Cpl. Da Silva's 132-page opinion report. The parties did not refer to it extensively in their submissions. The evidence establishes that Mr. [REDACTED] exercises a significant amount of authority over the members of the DAMC and in the town of Campbell River generally. It also appears that he is called upon as an authority to intervene in conflicts between different motorcycle clubs. Most recently, he was observed meeting with members of a motorcycle club in Smithers, B.C. Cpl. Da Silva opines that Mr. [REDACTED] was sent as a proxy for the HAMC to deliver a message to a rival motorcycle club to cease their operations (which they subsequently did).

[83] Significantly, for the purposes of this hearing, it is not disputed by the defence that Mr. [REDACTED] has a long-time personal association with members of the HAMC, that he is the President of the DAMC and that there is a link between the two outlaw motorcycle clubs. However, the defence does not concede every aspect of Cpl. Da Silva's report. The defence concession on Mr. [REDACTED] affiliations with the HAMC and DAMC, however, is more than sufficient for the purposes of this hearing vis-à-vis the assessment of all three grounds in s. 515(10) of the *Code*. Indeed, it is a highly relevant contextual consideration in respect of these grounds. A decision of Madam Justice Fuerst in *R. v. Lindsay*, [2005] O.J. No. 2870 (S.C.J.) found that the HAMC as it existed in Canada was a criminal organization. That decision was upheld by the Ontario Court of Appeal: 2009 ONCA 532 (leave to appeal to the Supreme Court of Canada was dismissed: [2009] S.C.C.A No. 540).

[84] Mr. [REDACTED] has a criminal record with a number of convictions for serious offences:

1972-03-08 Vancouver BC	(1) Robbery while armed – s. 302 CC (2) Break and enter with intent – s. 306(1)(a) CC	15 months definite & 2 years less 1 day indefinite on each charge concurrent
1975-05-01 West Vancouver BC	Dangerous driving – s. 233(4) CC	\$500 I-D 3 months, 2-year driving prohibition
1976-01-14 Nanaimo BC	Wounding with intent – s. 228 CC	2 years less 1 day, 1-year probation
1976-04-12 Victoria BC	Escape lawful custody – s. 133 CC	2 months
1978-12-14 Nanaimo BC	(1) Traffic in narcotic – NC Act (2) Possession of narcotic for the purpose of trafficking – NC Act	(1) 3 years (2) 2 years concurrent
1979-03-14 Victoria BC	Escape lawful custody – s. 133 CC	6 months concurrent with sentencing being served
1984-03-07 New Westminster BC	Possession of a narcotic for the purpose of trafficking – NC Act	8 years
1984-11-01 Burnaby BC	Traffic in a narcotic – NC Act	3 months consecutive to sentence being served
2001-04-25 Vancouver BC	Possession of a prohibited or restricted firearm with ammunition – s. 95(1) CC	22 months and mandatory s. 109(1) CC weapons prohibition

[85] Significantly, he has two convictions for escaping lawful custody from 1976 and 1979. The longest sentence he has received was eight years imprisonment in November 1984. He was released on parole in 1988. There was then a 13-year gap in his record. However, on April 5, 2001, that gap in offending ended when

Mr. [REDACTED] was arrested surveilling the homes of persons believed to have been involved in the murder of Donald Roming, a member of the HAMC, who was shot on March 9, 2001.

[86] Mr. [REDACTED] had a loaded .22 calibre semi-automatic handgun concealed in the front waistband of his pants. Another loaded .22 calibre handgun was located in the trunk of the vehicle. Also located in the search of the vehicle was a list of names (with descriptions and some addresses) of people believed to have been involved in the murder of Mr. Roming. The Crown could not go so far as to say that Mr. [REDACTED] was in the area to avenge the death of Mr. Roming but, nevertheless, the circumstances were suspicious.

[87] Mr. [REDACTED] entered an early guilty plea on April 25, 2001, before the Honourable Judge Godfrey and was sentenced to two years less a day imprisonment minus presentence custody (leaving 22 months left to serve) for what Judge Godfrey described as a serious and dangerous situation.

[88] Mr. [REDACTED] was released from prison approximately one year later. He has no further convictions and thus, there is another gap in his record of about 13 to 14 years before the events of March 11, 2016 and the death of Mr. Brown.

[89] Since March 16, 2016 when the police seized his cellphone, Mr. [REDACTED] has known he was a suspect in the murder of Mr. Brown. Since his November 6, 2017 arrest for the murder of Mr. Brown, Mr. [REDACTED] has known [REDACTED] has been co-operating with the police and has identified him as the shooter in connection with the death of Mr. Brown.

[90] Mr. [REDACTED] has been under intensive police surveillance since March 2016. There is no evidence that Mr. [REDACTED] has engaged in criminal activity over the 31.5 months that he has been at large in the community without conditions. Nor is there evidence that he endeavoured to interfere with the investigation or intimidate witnesses or to flee the jurisdiction. There is one equivocal exception, that being on November 7, 2017 when, shortly after being released from police custody, Mr. [REDACTED] telephoned [REDACTED] and left him a message asking if he was okay

and to give him a call. In my view, this call is equally consistent with an effort to determine whether the police were being straight with him about [REDACTED] cooperation and sentence. No other evidence has been proffered to suggest that Mr. [REDACTED] has tried to contact [REDACTED] since.

[91] Mr. [REDACTED] previously worked in the tree-topping business and according to the transcript of the sentencing before Judge Godfrey, he was earning a significant income from that line of work in 1999. It is less clear whether he is still an active arborist or if he is retired from that profession.

c. The Proposed Release Plan

[92] Mr. [REDACTED] has put forward a considered release plan and is agreeable to most of the conditions the Crown has proposed should the Court determine that he has discharged his onus.

[93] Ms. [REDACTED] a friend of many years and business owner of two yoga studios in Langley, has filed an affidavit outlining her support of Mr. [REDACTED] and her willingness to be a surety. Although she deposes in her affidavit that she would be willing to put up \$100,000 of the equity in her home, she later advised defence counsel that she was, in fact, prepared to offer \$300,000, which represents her life savings tied to the equity of her property. Appended as exhibits to the affidavit of Ms. [REDACTED] are various documents relating to the property, namely, a 2018 provincial property assessment notice, a State of Title Certificate as of November 17, 2018 and a mortgage disclosure statement dated October 27, 2018. These materials support the conclusion that Ms. [REDACTED] could be a surety in the amount of \$300,000.

[94] Mr. [REDACTED] counsel had originally suggested he also put up a cash bail as part of a recognizance but was advised by Crown counsel that the decision in *R. v. Antic*, 2017 SCC 27 affirmed that s. 515(2)(e) of the *Code* only permitted a cash deposit in conjunction with a surety bail where the accused resides either out of province or more than 200 km away from the place where they are in custody. Mr. [REDACTED] does not meet either of those conditions and thus, a cash-plus-surety release is prohibited by the *Code*.

[95] As an alternative, Mr. [REDACTED] proposes a \$300,000 pledge as his personal recognizance to secure his release.

Positions of the Parties

[96] As Mr. [REDACTED] is charged with first degree murder, he is in a reverse onus situation. Mr. [REDACTED] bears the onus of establishing why his custody is not justified.

[97] The Crown opposes Mr. [REDACTED] release citing concerns on the primary, secondary and tertiary ground.

[98] On the primary ground, the Crown submits that Mr. [REDACTED] is a flight risk and is unlikely to remain in the jurisdiction based on the following collective factors:

- i. He has the incentive to leave given the seriousness of the charge he now faces;
- ii. He owns a small plane and his adult son is a pilot;¹
- iii. He regularly travels to Mexico;
- iv. He has an interest in a gravel quarry in Suriname in South America; and
- v. He has two convictions for escape lawful custody from 1976 and 1979.

[99] On the secondary ground, the Crown raises concerns about the lack of control of his proposed surety. The Crown argues that the release plan does not provide for effective supervision or control of Mr. [REDACTED] especially as it relates to monitoring his activities with DAMC and HAMC associates.

[100] On the tertiary ground, the Crown points to the extremely aggravated and calculated nature of the offence and the strength of the Crown's case against Mr. [REDACTED]

¹ On January 10, 2019, when these oral reasons were pronounced, counsel for Mr. [REDACTED] advised that his client no longer owns the Cessna 172 and ownership had been transferred to Mr. [REDACTED] adult son.

[101] Notwithstanding the substantial completion of the investigation by November 2017 and the Crown's subsequent decision to release Mr. [REDACTED] without charges (which, I pause to note, implicitly suggests that the Crown was satisfied he did not pose a flight or public safety risk), the Crown now asserts that he poses primary and secondary grounds risks. The Crown submits that this is because charges have since been laid and Mr. [REDACTED] legal jeopardy has crystallized. Further, the Crown asserts that his release would erode confidence in the administration of justice.

[102] In summary, the Crown asserts that Mr. [REDACTED] is unable to demonstrate that his detention is not necessary on each of the three grounds enumerated in s. 515(10) of the *Code*.

[103] Counsel for Mr. [REDACTED] argues that he has met the onus and that his detention in custody pending trial is not justified on any of the three enumerated grounds in s. 515(10) of the *Code*. The defence asserts that the comprehensive release plan provided to the Court (including a suitable surety and Mr. [REDACTED] substantial pledge amount) coupled with Mr. [REDACTED] good behaviour during the 31.5 month period between March 2016 and October 2018 when he was in the community and fully aware that he was under investigation for this offence should more than satisfy any concerns the Court may have in respect of each ground in s. 515(10) of the *Code*.

[104] Defence counsel submits that Mr. [REDACTED] did not suddenly become more dangerous by virtue of the charges being laid on October 26, 2018. Defence counsel further asserts that the Crown and police would have been derelict in the discharge of their duties to release Mr. [REDACTED] on November 7, 2017 if there was any concern that he was a flight risk or that he represented a danger to the public either through committing further offences or interfering with the administration of justice.

Legal Principles Governing Judicial Interim Release

[105] Section 515(10) of the *Code* outlines the factors the Court must consider in determining whether Mr. [REDACTED] has established he can be released pending his trial:

515(10) For the purposes of this section, the detention of an accused in custody is justified only on one or more of the following grounds:

- (a) where the detention is necessary to ensure his or her attendance in court in order to be dealt with according to law;
- (b) where the detention is necessary for the protection or safety of the public, including any victim of or witness to the offence, or any person under the age of 18 years, having regard to all the circumstances including any substantial likelihood that the accused will, if released from custody, commit a criminal offence or interfere with the administration of justice; and
- (c) if the detention is necessary to maintain confidence in the administration of justice, having regard to all the circumstances, including
 - (i) the apparent strength of the prosecution's case,
 - (ii) the gravity of the offence,
 - (iii) the circumstances surrounding the commission of the offence, including whether a firearm was used, and
 - (iv) the fact that the accused is liable, on conviction, for a potentially lengthy term of imprisonment, or, in the case of an offence that involves, or whose subject-matter is, a firearm, a minimum punishment of imprisonment for a term of three years or more.

[106] Much has been written in the jurisprudence and legal treatises about the parameters of the primary, secondary and tertiary grounds, in particular *The Law of Bail in Canada*, 3rd ed. (Toronto: Thomson Reuters Canada Ltd., 2017) (loose-leaf updated 2018, release 2) by Mr. Justice Trotter (*"The Law of Bail"*). On the tertiary ground, the Supreme Court of Canada's decision in *R. v. St. Cloud*, 2015 SCC 27 is the governing authority.

[107] Both counsel painstakingly reviewed numerous authorities which addressed the legal principles. I do not propose to go through each authority in this decision. Counsel have reviewed them in their submissions, I have read them and considered them. I am well familiar with the governing legal principles.

Analysis

[108] In my view, the only ground that presents as troubling in Mr. [REDACTED] case is the tertiary ground. Accordingly, I will only address it in more detail and will review the primary and secondary grounds in brief compass only. First, however, I will comment on the delay in charging Mr. [REDACTED] and the implications it has on this judicial interim release hearing.

[109] I agree completely with defence counsel's submission that Mr. [REDACTED] arrest on October 26, 2018 did not suddenly make him more dangerous than he was before the charges were approved.

[110] In my view, any concerns with respect to the primary and secondary grounds are largely illusory in light of the Crown's decision to release Mr. [REDACTED] on November 7, 2017 without charge notwithstanding the fact that the investigation was substantially complete. This was a calculated choice made in an effort to avoid perceived difficulties processing and providing disclosure and keeping this case within the timelines promulgated in *R. v. Jordan*, 2016 SCC 27 and in the Supreme Court of British Columbia's Criminal Practice Direction #3 ("CPD #3"). CPD #3 describes the process for case management of large or complex criminal cases that show potential to occupy significant amounts of court time. CPD #3 will apply once a file reaches the Court following a direct indictment or after committal at a preliminary hearing. It seems fundamentally apparent that this prosecution of Mr. [REDACTED] will fall under CPD #3 once the file is in this Court.

[111] In my view, the Crown and the police must have conducted some sort of comprehensive risk assessment and been confident that Mr. [REDACTED] release on November 7, 2017 did not pose a risk to public safety or raise concerns that he would flee the jurisdiction. Had their risk assessment been otherwise, either

Mr. [REDACTED] would have been charged and not released, or, the Crown and police were derelict in their duties in releasing Mr. [REDACTED] and exposing the safety of the public to an unwarranted risk.

[112] The fact that Mr. [REDACTED] has now been formally charged with first degree murder does not alter the risk assessment in my view, particularly given the uncontradicted fact that Mr. [REDACTED] has been aware of his status as a suspect in this case in excess of two and half years and has been under intense surveillance without incident during that time.

[113] Thus, the Crown's decision to release Mr. [REDACTED] without charge following his November 7, 2017 arrest, is, in my respectful view, largely determinative of the primary and secondary ground concerns in Mr. [REDACTED] favour.

[114] Notwithstanding my conclusions above, for the sake of completeness, I will briefly review the Crown's primary and secondary grounds submissions as they relate to Mr. [REDACTED]

a) The Primary Ground (s. 515(10)(a) of the Code)

[115] Mr. [REDACTED] must demonstrate to the Court that his detention is not necessary to ensure his attendance in Court. Although accused persons who have resources and high status in a criminal organization may have the means to abscond, it does not necessarily mean they must be detained. Their ties to the community, or lack thereof, remain an important consideration: *R. v. Sweeney*, 2002 MBQB 93 at paras. 18-19;² *R. v. Tse*, 2012 SKQB 26 at para. 9. In *Tse*, however, the accused had no ties or roots in the community where he was arrested. Mr. [REDACTED] has significant roots in the community. His family and friends reside here. His assets are here. Most importantly, his 10-year-old son, whom he is devoted to, lives here.

² See also *R. v. Pink*, [2006] O.J. No. 5816 (S.C.J.) at paras. 22-24; *R. v. Ward*, 2007 CarswellOnt 10338 at paras. 43-45 (Ont. S.C.J.).

[116] The Crown has expressed concerns that Mr. [REDACTED] access to a small plane, his significant resources, his ties to a criminal organization, his two prior convictions for escape lawful custody, his ties to Mexico and Suriname, and his incentive to flee present a constellation of factors that justify his detention on the primary ground.

[117] I respectfully disagree. For the reasons noted, it is my view that there is more than sufficient evidence to satisfy the Court that he will not abscond. Moreover, the onerous terms of release which Mr. [REDACTED] is prepared to be bound by while in the community, as well as further conditions the Court concludes are appropriate (such as: surrendering his passport and travel documents, prohibiting him from applying for further travel documents, prohibiting him from flying on private aircraft, non-association with members of the HAMC and DAMC, a curfew, random checks of his residence) would all ameliorate concerns insofar as the primary ground is related.

[118] On balance, I am satisfied that Mr. [REDACTED] has met the onus of showing his continued detention is not warranted on the primary ground.

b) The Secondary Ground (s. 515(10)(b) of the Code)

[119] Insofar as the secondary ground is concerned, Mr. [REDACTED] must demonstrate to the Court that his detention in custody is not necessary for the protection or safety of the public (including any victim of or witness to the offence) or to prevent interference with the administration of justice.

[120] The secondary ground focuses on the protection of the public and thus entails an assessment of the likelihood of the dangerousness of the accused: *R. v. Cheung*, 2016 BCCA 221 at para. 51 citing *R. v. Wu*, 1998 CanLII 4378 (B.C.C.A.); *R. c. Rondeau*, 108 C.C.C. (3d) 474 (Q.C.C.A) at 478.

[121] In *Rondeau*, Mr. Justice Proulx for the Quebec Court of Appeal set out a number of factors to consider when assessing the likelihood of dangerousness and the secondary ground. These factors were approved in *Cheung* and *Wu* as well as in

R. v. Ali, 2017 ONSC 4731 at para. 26. Collectively these authorities make it clear that the Court must consider the accused's past behaviour and the circumstances of the offence in order to determine whether detention is justified under the secondary ground.

[122] The above authorities enumerate the likelihood of dangerousness factors to be as follows:

- i. The nature of the offence;
- ii. The relevant circumstances of the offence, which may put in issue events prior to and subsequent to the offence;
- iii. The likelihood of a conviction;
- iv. The degree of participation of the accused;
- v. The relationship between the accused and the victim;
- vi. The profile of the accused (his occupation, his lifestyle, his criminal record, his family situation, his mental state);
- vii. His conduct prior to the commission of the alleged offence;
- viii. The danger which the interim release of the accused represents for the community specifically affected by the matter.

[123] Some of these factors are also considerations under the tertiary ground.

[124] In *Ali*, the allegation was first degree murder involving an execution on a main thoroughfare in downtown Toronto on a busy summer night. The offence was believed to be gang-related and it precipitated a retaliatory shooting as the accused fled in his vehicle. At the judicial interim release hearing, Mr. Justice Quigley noted that in some cases, the circumstances of the offence on their own can support a conclusion that there is a substantial likelihood that the accused will re-offend.

[125] The accused in *Ali* had been involved in altercations with other inmates while in custody on the very charges for which he was seeking bail. He also had a recent criminal record that included convictions for violence, firearms-related offences, and

breaches of court orders. The accused in *Ali* was detained, largely on the tertiary ground but with some expressed concerns in relation to the secondary ground.

[126] The constitutional limits by which detention on the secondary ground may be justified were described by Chief Justice Lamer in *R. v. Morales*, [1992] 3 S.C.R. 711 at 737:

I am satisfied that the scope of the public safety component of s. 515(10)(b) is sufficiently narrow to satisfy the first requirement under s. 11(e). 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).

[127] In *R. v. Wilcox*, 2005 BCSC 1785 at para. 22, Mr. Justice Barrow further clarified the limits of the secondary ground by echoing Lamer C.J.C's comments in *Morales* that bail is not denied for all individuals who pose a risk of committing an offence or interfering with the administration of justice, rather, it is denied "only when that risk cannot be adequately addressed through the imposition of appropriate terms of release."

[128] In regards to the secondary ground in this case, if I was to simply consider the fact that this is an execution-style first degree murder, committed in the context of a dispute with individuals involved with a notorious criminal organization, I might be inclined to conclude that, like *Ali*, the circumstances of the offence support a conclusion that there is a likelihood the accused will re-offend.

[129] In my view, however, to adopt such an approach would amount to automatic detention on the secondary ground for any execution-style murders, particularly those committed within the context of a criminal organization. And yet, notwithstanding the seriousness of a planned first degree murder, the jurisprudence clearly demonstrates that individuals charged with such offences or similarly serious

offences (conspiracy to commit murder, trafficking, conspiracy to traffic and trafficking for the benefit of a criminal organization) are indeed released: see for instance *R. v. Coates*, 2009 QCCS 4011; *R. v. Dockerill*, (June 25, 2010), Nanaimo 71171 (B.C.S.C.); *R. v. A.*, [2006] O.J. No. 1154 (S.C.J.).

[130] And even where convicted of first degree murder, offenders can be released on bail pending conviction appeal. This is due to the consideration of the individual applicant's personal history and circumstances in light of the offence committed, not just the circumstances of the offence committed: *R. v. Mapara*, 2001 BCCA 508; *R. v. Papasotiriou*, 2018 ONCA 719; *R. v. Badgerow*, 2017 ONCA 670.

[131] While Mr. [REDACTED] has a criminal record, it is dated. His last conviction was in 2001. The circumstances of it were extremely serious, with a clear overtone of affiliation with the HAMC, but it was not asserted or established that Mr. [REDACTED] actions were for some sinister purpose related to the death of Mr. Roming. The offence for which Mr. [REDACTED] received his most significant sentence was for the possession of one ounce of heroin for the purpose of trafficking in 1984.

[132] The profile of Mr. [REDACTED] is mixed: the letters of support filed on his behalf demonstrate that he is a committed, generous, and helpful friend and family man. And yet, he has another side to him that establishes an entrenched affiliation with the HAMC through long-standing friendships with known members of that organization and through his presidency of an outlaw motorcycle club, the DAMC. One need only review the photographs found inside the Clubhouse, supplemented by Cpl. Da Silva's report, to see the strong link between the two organizations and Mr. [REDACTED] seeming pride in that relationship.

[133] The Crown submits that the purpose of a surety is to provide a supervisory role but argues that in this case, the proposed surety has effectively no control over Mr. [REDACTED]. In this case, the Crown contends, the surety merely provides a monetary pledge. Crown counsel argues that there is no co-existence between that financial component and the supervisory role that is expected of sureties, citing the decisions in *R. v. Ellis*, 2016 ONCJ 168 and *R. v. Sharif*, 2012 ONCJ 379.

[134] While it may be preferable to have a surety who can provide a greater supervisory role, in my view, the fact that the proposed surety does not live with Mr. [REDACTED] is not an impediment to having her as a surety in this case.

[135] In *R. v. Patko*, 2005 BCCA 183, Madam Justice Ryan succinctly noted that the duty of the surety is to ensure the good behaviour of the accused while on bail and to render him into custody if he does not appear to be keeping the peace and being of good behaviour (para. 22). *Patko* is instructive. In that case, the accused, charged with second degree murder, sought a review of his bail conditions arguing the curfew imposed ought to be deleted. The application was denied, in part because his surety was no longer available, and so alternate conditions (i.e. the curfew) to secure the good behaviour of the person – which is ultimately the purpose of bail – had to be imposed to achieve the same end.

[136] In chapter seven of his text *The Law of Bail*, Trotter J.A. reviews the origins and evolution of the role of sureties as well as their obligations and powers. In *Ellis*, Mr. Justice Crewe of the Ontario Court of Justice, quotes from this treatise that “...an accused person on bail is considered to be in the constructive custody of his/her sureties. Thus the law contemplates some measure of physical control by the accused's sureties” and that “while the constructive jailer model, in its literal sense, may be anachronistic, requiring the surety to provide some measure of supervision over the accused's daily activities is both realistic and desirable” (paras. 25, 27).

[137] While it is true that the text states as much, it also notes that a surety is “not require[d] to become responsible for every aspect of an accused's life; instead they need only be required to ensure that the specific conditions of release ... are observed” (*Trotter*, 7-8). Moreover, the text also notes that the measure of physical control is tied to the surety's common law power to serve at his or her own will and the ability to render an accused (or as is noted in the text, “pull the string”) whenever he or she pleases (*Trotter*, 7-10, 7-11).

[138] While it is true that sometimes a surety, such as a parent or grandparent, may have more control over an accused, I do not interpret the jurisprudence to mean that

the surety must constantly exercise a measure of physical control over the accused. To require such an engaged form of supervision would return the role of the modern day surety to that of the historical “living prison” role that Mr. Justice Trotter describes in his text as an out-dated, romanticized notion. After Mr. Justice Trotter points out the role of surety as a constructive jailer is more metaphorical than literal, he goes on to note at 7-5: “[e]ven while being supervised by a surety or sureties, an accused person still enjoys a large measure of independence in the community.” Indeed, the jurisprudence is replete with instances of sureties who have far less ties to an accused than Mr. [REDACTED] proposed surety. And in some instances, seemingly limited or no supervisory function, including in *R. v. Beckett*, 2011 BCSC 1941 as well as both decisions in *R. v. Moir*, 2013 BCSC 1696 and 2016 BCSC 2685 where the accused persons in both cases were charged with first degree murder.

[139] Accordingly, the surety need not be the physical keeper of the accused in the community in a literal sense. It is through the combined operation of trust the surety has in the accused to obey the terms of their release (as evidenced by the surety’s willingness to assume the risk of financial loss) coupled with the significant power to render an accused whenever the surety pleases that the supervisory role can be achieved, particularly if onerous conditions are included in any release order.

[140] Mr. [REDACTED] proposed surety deposes that she is well aware of her role and responsibilities as a surety and swears she would not hesitate to report any breaches of conditions that might be imposed if Mr. [REDACTED] is released. Ms. [REDACTED] places considerable trust in Mr. [REDACTED] and deposes as follows:

9. I firmly believe [REDACTED] would not be so disrespectful of my assistance to him as surety, as to breach any conditions imposed on him should he be released. In support of this belief I rely on our long friendship as well as what I know to be [REDACTED] loving relationship with his young son, and my confidence that [REDACTED] absolutely would not jeopardize that relationship for the sake of breaching a bail condition at any time.

[141] The Crown also asserts that given Mr. [REDACTED] ties to the HAMC and the reluctance and fear expressed by a number of potential witnesses (as outlined in the

materials in Exhibit 1), this demonstrates the reach of Mr. [REDACTED] influence and intimidation. The Crown adds that given that Mr. [REDACTED] has been charged and now has disclosure of the statements of the witnesses, “the risk that specific witnesses may be targeted for interference increases significantly.” The statement excerpts provided at this hearing indeed appear to contain expressions of reluctance with respect to the HAMC, but nothing specific to Mr. [REDACTED]. In my view, the lack of interference over the past 31.5 months while Mr. [REDACTED] has been in the community largely undercuts the Crown’s thesis that Mr. [REDACTED] will target these individuals. To further ensure that there is no influence or untoward pressure brought to bear on any of these individuals, no-contact and non-association terms can be included as part of the terms of any release order.

[142] Finally, the factors enumerated in *Rondeau* are not exhaustive. And so, as I have indicated, the decision of the Crown and police to release Mr. [REDACTED] on November 7, 2017 so that they could organize the disclosure before the *Jordan* clock started is relevant on the secondary ground. It bears repeating that at this time the investigation was substantially complete: Mr. [REDACTED] could have been charged with first degree murder on November 7, 2017 but was not for the reasons just cited.

[143] Related to this assessment is Mr. [REDACTED] lack of misconduct in the past 31.5 months. To employ the vernacular, “the proof is in the pudding”.

[144] Indeed, this very factor was a significant consideration in the decision of Madam Justice Molloy of the Ontario Superior Court of Justice in *R. v. A*. There, the accused was at large for 14 months after the commission of a gang-related first degree murder. While at large, he did not accrue further criminal charges nor was there any evidence to indicate that he threatened or intimidated the surviving victim or any witness to the incident.

[145] In *Badgerow*, Mr. Justice Trotter likewise considered an accused’s lack of misconduct while free in the community (para. 41). There, the accused was at large

without conditions for 18 months following a stay of proceedings until a successful Crown appeal resulted in a new trial.

[146] Similar to the circumstances in *A*, if Mr. [REDACTED] was intent on silencing witnesses, causing harm to those involved or becoming involved in further criminal activity, the logical time to have done that was while he was at large and unsupervised. As he did not engage in such conduct while free and unsupervised, there is no reason to conclude he would do so while on a stringent bail with a curfew, extensive no-contact and non-affiliation conditions, and conditions allowing supervision by authorities.

[147] On balance, I am satisfied that Mr. [REDACTED] has met the onus of showing that his continued detention is not necessary on the secondary ground.

c) The Tertiary Ground (s. 515(10)(c) of the Code)

[148] The tertiary ground relates to public confidence in the administration of justice and how that may be impacted by an accused's release or detention. In this case, Mr. [REDACTED] is required to show cause why his detention is not necessary to maintain confidence in the administration of justice having regard to all the circumstances, including the apparent strength of the prosecution's case, the gravity of the offence, the circumstances surrounding the offence (including whether a firearm was used), and the potential for a lengthy term of imprisonment.

[149] In *St-Cloud*, Mr. Justice Wagner (as he then was) held that the scope of s. 515(10)(c) of the *Code* had been unduly restricted and that the tertiary ground for detention was not necessarily limited to exceptional circumstances, the most heinous of crimes, or to certain classes of crimes.

[150] As Wagner J. noted in the opening paragraphs of the *St-Cloud* decision:

[4] The ground for detention in s. 515(10)(c) *Cr. C.* requires that an effort be made to strike an "appropriate balance between the rights of the accused and the need to maintain justice in the community": *Hall*, at para. 41. In addition, judges must adopt the perspective of the public in determining whether detention is necessary. What the word "public" means is not always easy to understand. These difficulties no doubt

explain why s. 515(10)(c) *Cr. C.* has generated so much discussion among legal experts and led to inconsistent results across the country.

[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. The interpretation of s. 515(10)(c) *Cr. C.* has also been truncated by a misunderstanding of the meaning of the word "*public*" used in the provision's French version (and implied in the word "*confidence*" used in the English version), which I will discuss below. For now, I will simply note that the "*public*" are reasonable, well-informed members of the community, but not legal experts with in-depth knowledge of our criminal justice system.

[151] Mr. Justice Wagner went on to explain what was meant by "reasonable, well-informed member of the community", writing:

[79] Thus, a reasonable member of the public is familiar with the basics of the rule of law in our country and with the fundamental values of our criminal law, including those that are protected by the *Charter*. Such a person is undoubtedly aware of the importance of the presumption of innocence and the right to liberty in our society and knows that these are fundamental rights guaranteed by our Constitution. He or she also expects that someone charged with a crime will be tried within a reasonable period of time, and is aware of the adage that "justice delayed is justice denied": *R. v. Trout*, 2006 MBCA 96, 205 Man. R. (2d) 277, at para. 15. Finally, a reasonable member of the public knows that a criminal offence requires proof of culpable intent (*mens rea*) and that the purpose of certain defences is to show the absence of such intent. A well-known example of this type of defence is the mental disorder defence. The person contemplated by s. 515(10)(c) *Cr. C.* therefore understands that such a defence, once established, will enable an accused to avoid criminal responsibility. However, it would be going too far to expect the person in question to master all the subtleties of complex defences, especially where there is overwhelming evidence of the crime, the circumstances of the crime are heinous and the accused admits committing it.

[80] In short, the person in question in s. 515(10)(c) *Cr.C.* is a thoughtful person, not one who is prone to emotional reactions, whose knowledge of the circumstances of a case is inaccurate or who disagrees with our society's fundamental values. But he or she is not a legal expert familiar with all the basic principles of the criminal justice system, the elements of criminal offences or the subtleties of criminal intent and of the defences that are available to accused persons.

[152] Before summarizing the essential principles governing the tertiary ground analysis, Wagner J. went on to note that there are two ways that the public confidence in the administration of justice can be undermined:

[86] In short, there is not just one way to undermine public confidence in the administration of justice. It may be undermined not only if a justice declines to order the interim detention of an accused in circumstances that justify detention, but also if a justice orders detention where such a result is not justified.

[153] The essential elements of the s. 515(10)(c) analysis were enumerated in *St-Cloud* as follows:

[87] I would summarize the essential principles that must guide justices in applying s. 515(10)(c) *Cr. C.* as follows:

- Section 515(10)(c) *Cr. C.* does not create a residual ground for detention that applies only where the first two grounds for detention ((a) and (b)) are not satisfied. It is a distinct ground that itself provides a basis for ordering the pre-trial detention of an accused.
- Section 515(10)(c) *Cr. C.* must not be interpreted narrowly (or applied sparingly) and should not be applied only in rare cases or exceptional circumstances or only to certain types of crimes.
- The four circumstances listed in s. 515(10)(c) *Cr. C.* are not exhaustive.
- A court must not order detention automatically even where the four listed circumstances support such a result.
- The court must instead consider all the circumstances of each case, paying particular attention to the four listed circumstances.
- The question whether a crime is “unexplainable” or “unexplained” is not a criterion that should guide the analysis.
- No single circumstance is determinative. The justice must consider the combined effect of all the circumstances of each case to determine whether detention is justified.
- This involves balancing all the relevant circumstances. At the end of this balancing exercise, the ultimate question to be asked by the court is whether detention is necessary to maintain confidence in the administration of justice. This is the test to be met under s. 515(10)(c).
- To answer this question, the court must adopt the perspective of the “public”, that is, the perspective of a reasonable person who is properly informed about the philosophy of the legislative

provisions, *Charter* values and the actual circumstances of the case. However, this person is not a legal expert and is not able to appreciate the subtleties of the various defences that are available to the accused.

- This reasonable person's confidence in the administration of justice may be undermined not only if a court declines to order detention where detention is justified having regard to the circumstances of the case, but also if it orders detention where detention is not justified.

[154] I turn now to the application of these principles to the circumstances of the current case.

[155] Objectively speaking, Mr. [REDACTED] is charged with the most serious offence known to Canadian law: first degree murder. It was committed with a firearm, and on the Crown's theory, done to eradicate a problem that the deceased presented in his small claims action against the Voodoo Lounge and by implication, the HAMC and DAMC. The penalty if convicted of first degree murder is life imprisonment without eligibility for parole for 25 years.

[156] In this case, Mr. [REDACTED] counsel properly concedes that three of the four factors enumerated in s. 515(10)(c) of the *Code* militate in favour of detention. Issue is joined, however, on the apparent strength of the Crown's case.

[157] Defence counsel asserts that the following nine factors are germane to the considerations of the tertiary ground and inform the assessment of it in this case:

- i. In Canadian law, release of the accused is the cardinal rule and detention is the exception: *St-Cloud* at para. 70;
- ii. The previous point is inextricably linked to the fact that the presumption of innocence, a cornerstone of Canadian criminal law, is something that Mr. [REDACTED] is entitled to, like any other accused facing criminal charges;
- iii. Denial of bail will create a serious impediment to Mr. [REDACTED] ability to prepare his defence with his counsel which has a detrimental effect on the presumption of innocence: *R. v. Hall*, [2002] 3 S.C.R. 309 at paras. 59-60;

- iv. The fact that Mr. [REDACTED] has been in the community under a cloud of suspicion for 31.5 months incident free: *A., Badgerow*;
- v. Members of the community have vouched for Mr. [REDACTED] as evidenced by their letters of support in Exhibit 2 in these proceedings along with the presence of between seven and eleven people supporting Mr. [REDACTED] throughout the four-day judicial interim release hearing;
- vi. A close friend is prepared to provide a significant surety for Mr. [REDACTED];
- vii. Mr. [REDACTED] himself is prepared to pledge a significant amount of property;
- viii. Mr. [REDACTED] proposed release plan evidences a willingness to abide by stringent release terms: *R. v. Dang*, 2015 ONSC 4254 at para. 58; *R. v. Legare*, 2018 BCPC 254 at para. 47; and
- ix. His close and loving relationship with his young son.

[158] When the above factors are all considered in context with the overall factual matrix, the defence argues that they coalesce to tip the balance in favour of Mr. [REDACTED] having met his onus on the tertiary ground.

[159] Given the concession by the defence that three of the four factors militate in favour of detention, I accept the Crown's characterization of those aspects of the s. 515(10)(c) criteria as outlined both in her comprehensive oral submissions and detailed written argument (paras. 133-135).

[160] Insofar as the apparent strength of the Crown's case is concerned, it is, as the Crown points out, a circumstantial case. The main witness is a former DAMC associate. He is currently in witness protection and has agreed to testify as a result of a limited immunity agreement.

[161] In oral argument, the Crown described its case against Mr. [REDACTED] as "good" but not overwhelming. The Crown does submit, however, that the case is not dependent solely on one witness. Rather, other pieces of evidence lend strength to the Crown's case, including:

- i. The circumstances of the fight at the Voodoo Lounge;
- ii. The resulting small claims action by Mr. Brown;
- iii. The communications between Mr. Brown and Mr. [REDACTED];
- iv. The communications between Mr. [REDACTED] and others;
- v. The circumstances of the final meeting between Mr. Brown and Mr. [REDACTED];
- vi. The discovery of Mr. Brown's DNA evidence which corroborates [REDACTED] account of the events; and
- vii. The video evidence of Mr. [REDACTED] following the abandonment of Mr. Brown's vehicle.

[162] From the perspective of the defence, the Crown's main witness, [REDACTED], is a *Vetrovec* witness of the highest order. Counsel argues that he has motive and animus towards the DAMC and Mr. [REDACTED]. In addition, argues the defence, [REDACTED] was provided a "first in" opportunity by the police in their approach to his interrogation, allowing him to place the blame on Mr. [REDACTED] which the defence submits was irresistible in terms of his own culpability.

[163] As well, the defence asserts that [REDACTED] appears to have had a substance abuse problem and may well have consumed cocaine on the day of the offence. Moreover, the disclosure supports the defence proposition that [REDACTED] is a man prone to impulsive and unpredictable violence, in part in an effort to curry favour with individuals of a higher status within the DAMC and HAMC. Finally, the defence points to [REDACTED] medical discharge from the Navy the day before the offence on the basis of possible mental health concerns. The defence asserts that this represents a significant psychological blow which could have impacted his actions the following day. Collectively, these factors demonstrate serious impediments in respect of [REDACTED] credibility and reliability as the main witness.

[164] Insofar as the communications between the deceased and Mr. [REDACTED] are concerned, the defence also points to a number of text messages that demonstrate

that Mr. [REDACTED] wanted to settle the Voodoo Lounge action at the courthouse, with the assistance of the deceased's lawyer. Further, that the video evidence of Mr. [REDACTED] walking away from the area where Mr. Brown's vehicle was left is equally consistent with him having committed the offence of accessory after the fact.

[165] In the end, of course, these are matters for the trier of fact to determine. As the Crown fairly concedes, this is not the most overwhelming case. Suffice to say, for the purposes of this application, there is an arguable case to be made from both sides and it will be vigorously contested at trial.

[166] Counsel for Mr. [REDACTED] also points to Mr. [REDACTED] good behaviour for the past 31.5 months, aware for the first 20 months that he was a suspect and then for the last 11.5 months that he was likely to be charged with murder at any point. He argues that this awareness of the case against him is a factor to also consider on the tertiary ground. The decisions in *Badgerow* and *A* support this point and in my view, it is a significant point, not only in respect of the primary and secondary grounds but also informing the tertiary ground from the perspective of the reasonable person informed of all the circumstances.

[167] As Trotter J.A. noted in *Papasotiriou*:

45 Public confidence is to be measured by the standard of a reasonable member of the public. As Moldaver J. said in *Oland*, at para. 47: "This person is someone who is thoughtful, dispassionate, informed of the circumstances of the case and respectful of society's fundamental values." See also *R. v. St-Cloud*, 2015 SCC 27, [2015] 2 S.C.R. 328, at paras. 74-80.

[168] To borrow from Trotter J.A.'s observations in *Papasotiriou*, a reasonable member of the public (properly informed about the philosophy of the legislative provisions of the *Code*, *Charter* values, the actual circumstances of the case and the fact that Mr. [REDACTED] is not simply being "turned loose" on society without precautions or safeguards while his case works its way through the trial process) would realize that Mr. [REDACTED] release is not contrary to the interests of justice nor is it necessary to maintain confidence in the administration of justice.

[169] Indeed, on the point of simply being “turned loose”, to the contrary, Mr. [REDACTED] will be released on very stringent conditions, including a curfew, non-association and non-communication clauses and terms subjecting him to random searches, all supported by a financial pledge from him and his proposed surety.

[170] I acknowledge that the proposed release plan predominantly deals with secondary ground concerns, but as the decisions in *Papasotiriou* and *Legare* demonstrate, the release plan also informs the analysis of the tertiary ground: a reasonable person aware of such stringent conditions would be further satisfied that the release is not contrary to the interests of justice.

[171] The weight of the authorities provided by the defence, in particular the decisions in *Moir*, *Badgerow*, *Oland*, *Papasotiriou*, and *Mapara* all support the conclusion that release on first degree murder charges pending trial (or, appeals following conviction in some of those cases) is not inappropriate when there are potential difficulties with the strength of the Crown’s case and where a comprehensive and stringent release plan is provided. Mr. [REDACTED] case falls within this genre of case.

[172] Moreover, Mr. [REDACTED] performance in the community without incident for 31.5 months, with the threat of charges hanging over him, is something that a reasonably informed person would accept as a factor militating in favour of release.

[173] In my view, this is one of those cases where the Supreme Court’s observation in *St-Cloud* at para. 87 that the “reasonable person’s confidence in the administration of justice may be undermined not only if a court declines to order detention where detention is justified having regard to the circumstances of the case, but also if it orders detention where detention is not justified.”

[174] When all the circumstances are taken into account, considered dispassionately and objectively, I find that Mr. [REDACTED] has satisfied the onus placed upon him in respect of the tertiary ground.

[175] In conclusion, it is my view that a reasonable member of the public would accept that, in all of the circumstances of this case, Mr. [REDACTED] release pending his trial is consistent with the just and proper functioning of our justice system.

Disposition and Release Order

[176] I am satisfied that Mr. [REDACTED] has discharged the onus on him in this case and that his further detention on these charges is not necessary on any of the grounds enumerated in s. 515(10) of the *Code*. The application is allowed.

[177] I order that Mr. [REDACTED] is to be released upon entering into a recognizance in the amount of \$600,000, with one or more sureties in the amount of \$300,000. Pursuant to s. 515(2.1) of the *Code*, I am exercising my discretion to name the surety as Ms. [REDACTED] [REDACTED]. The terms and conditions that attach to that recognizance are included as Appendix A to these reasons.

[178] Pursuant to section 515(13), I have considered the safety and security of every “victim” of the offence when making this order.

[179] Mr. [REDACTED] next appearance will be on September 9, 2019 at 9:00 a.m. in courtroom 104, at the courthouse at 850 Burdett Avenue in Victoria.

“Ker J.”

APPENDIX A
CONDITIONS OF RELEASE

- a) You must keep the peace and be of good behavior.
- b) You must report to the bail supervisor at 836 Courtney Street in Victoria, within four hours of your release from custody, unless you have obtained, prior to your release, written permission from your bail supervisor to report elsewhere or within a different timeframe. After that, you must report as directed by the bail supervisor and you will report to the bail supervisor no less than once per week in person.
- c) If at any time prior to the expiration of this order, you are arrested, detained or have served a sentence for another offence, you must report to the bail supervisor within two business days of your release from custody.
- d) When first reporting to the bail supervisor, you must inform them of your residential address and phone number. You must not change your residence or phone number without obtaining prior written permission from your bail supervisor.
- e) You must reside at [address redacted] in Mission and you must not change your residence without prior written permission of your bail supervisor.
- f) You must not leave British Columbia unless you have the written permission of the bail supervisor, such permission to be restricted to travel only within Canada. You must carry a copy of this written permission when you are outside the province. You must not leave the country of Canada and the bail supervisor is not authorized to permit travel outside Canada.
- g) You must have no contact or communication, directly or indirectly, with [26 named individuals (names omitted)]. No communications or attempts at communications directly or indirectly includes resort to e-mails,

messaging, Facebook posts and Facebook Messenger, WhatsApp, Myspace, Instagram, Twitter or any other like service.

- h) You must not go to (or be within 300 metres of) any residence, school or workplace of [26 named individuals (names omitted)].
- i) You must have no contact or communication directly or indirectly with any hang-around, prospect, former member or member of any motorcycle club, including the Hells Angels Motorcycle Club and the Devils Army Motorcycle Club. No communications or attempts at communications directly or indirectly includes resort to e-mails, messaging, Facebook posts and Facebook Messenger, WhatsApp, Myspace, Instagram, Twitter or any other like service.
- j) You must not go to or be on or in the property of any clubhouse of any motorcycle club, including the Hells Angels Motorcycle Club and the Devils Army Motorcycle Club.
- k) You must not publish or publicly make available any information respecting the prosecution of this offence, including the identities of the individuals and motorcycle clubs named in clauses (g), (h) and (i) of this order that you are prohibited from contacting or communicating with.
- l) You must not go to Vancouver Island, except for the purpose of attending court appearances or meeting with your defence lawyer. You must provide your bail supervisor with details of your travel in advance, including travel times and the address and phone number of the place you will stay.
- m) Immediately upon your release from custody, you must telephone and speak to Cpl. Shane Rappel at [phone number omitted]. You must tell the officer about this order and arrange to surrender all travel documents issued to you in your name, [REDACTED] [REDACTED] [REDACTED] or issued to you in any other name, including any passport, Nexus card, travel visa or enhanced driver's license. You must surrender all of these items in the

manner directed by the peace officer and such surrender can be facilitated through your lawyer. Thereafter, you must not apply for or obtain any further travel documents either in your name, [REDACTED] [REDACTED] [REDACTED] or in any other name.

- n) You must obey a curfew by being inside your residence, or on the lot of your residence, between the hours of 7:00 p.m. and 7:00 a.m., each day. You must present yourself immediately at the door to your residence or answer the phone when any peace officer or bail supervisor attends at your residence or calls for the purpose of determining your compliance with the curfew condition of this order. You may be away from your residence during the curfew hours in the following circumstances:
- i. In the event of a medical emergency and then, only while at a health care facility, or when traveling directly to, or returning directly from the facility. If requested, you must provide your bail supervisor with written confirmation that you went to the facility, signed by a representative of the health care facility that you attended.
 - ii. When in the immediate presence of your surety.
 - iii. When travelling to or from Victoria for the purposes of attending court appearances or meetings with your defence lawyer, and while attending court or meeting with your defence lawyer. You must provide your bail supervisor with details of your travel arrangements and attendance in advance, including travel times and the address and phone number of the place you will stay. Upon receipt of this information, your bail supervisor will provide you with written permission which you must carry with you.
 - iv. Your curfew and all related conditions will continue to apply while travelling pursuant to this condition.

- o) When you first report to your bail supervisor, you must tell your supervisor the names of all permanent and temporary occupants of your residence and immediately tell the bail supervisor of any change in occupants of your residence.
- p) You must have no visitors at your residence during your curfew, except your sureties, your child, [name omitted], or his school friends and playmates, or others with the prior written permission of your bail supervisor. You must keep a copy of the permission at your residence.
- q) You must carry a copy of this order and any written permission from your bail supervisor with you at all times when you are outside your residence. If a peace officer stops you for any reason, you must immediately provide the peace officer with a copy of this order and any written permission without being requested to do so.
- r) You must not possess or use any mobile communication device, except you may possess one cell phone with one phone number, which can only be used for the purposes of contacting your bail supervisor, your child [name omitted], your child's mother, your lawyer, your son [REDACTED] Jr., for lawful employment, or in an emergency. You must provide your bail supervisor and the RCMP with the telephone number and service provider and not change it without the prior written permission of the bail supervisor and the RCMP. Having consented, you must:
 - 1. Sign any release of information forms as will enable your bail supervisor or RCMP to monitor your compliance with this term. Any information obtained by the bail supervisor can be given to a peace officer.
 - 2. Provide the device and any password used to lock the device to your bail supervisor and the RCMP or peace officer upon their request in order for them to monitor your compliance with this order.

3. Provide your bail supervisor and the RCMP with a copy of your monthly cell phone bill with details of all phone, text and instant message activity. A peace officer may obtain a copy of these records from your bail supervisor.

4. Once a week you will turn over your cellphone to the nearest RCMP detachment or an officer identified by Cpl. Shane Rappel, for 24 hours for the purposes of searching your cellphone, should they elect to do so, to ensure compliance with the terms of this order.

5. You must retain a history of and not delete any of your call, text and instant message communication usage.

- s) Immediately upon your release from custody, you must cancel or disable all other mobile communication devices and surrender any other cell phones you may possess or own in your name, [REDACTED] [REDACTED] [REDACTED] or issued to you in any other name, to Cpl. Shane Rappel of the RCMP in the same manner as the surrender of your travel documents as provided in condition (m) of this order. Thereafter you must not apply for or obtain any further mobile communication devices either in your name, [REDACTED] [REDACTED] [REDACTED] or in any other name.
- t) Having consented, you must submit to a search by a peace officer, on demand without warrant or reasonable suspicion, of your person, or any vehicle, laptop, home computer, place or residence which you own or control or possess, but any search of your residence is limited to no more than once a month for a three hour period.
- u) You are prohibited from travelling at anytime in the Cessna 172 airplane owned by your son, [REDACTED] [REDACTED] Jr., and any other aircraft that is not a commercial airline. Any travel by air must be with the prior written approval of your bail supervisor.

- v) You must not possess, either personally or through another person, any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition or explosive substance, anything that resembles a weapon or firearm, any weapon as defined in s. 2 of the *Code*, or any related authorizations, licences or registration certificates.
- w) You must not reside in any residence in which any other person keeps or stores any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition or explosive substance.
- x) Immediately upon your release from custody, you must telephone and speak to Cpl. Shane Rappel at [phone number omitted]. You must tell the officer about this order and arrange to surrender all firearms, crossbows, prohibited weapons, restricted weapons, prohibited devices, ammunition or explosive substances and all weapons, imitation weapons including imitation firearms possessed by you or through another person, and any related authorizations, licenses or registration certificates. You must surrender all of these items in the manner directed by the peace officer.
- y) You must not wear, own, possess or display any clothing, jewelry or any other property of any kind with the names, logos or insignias of the Hells Angels or the Devils Army including any of the above that display support for the Hells Angels or the Devils Army. You will surrender any such items you do own or possess to Cpl. Shane Rappel of the RCMP within 72 hours of your release from custody or at such other time and to such other RCMP officer as directed by Cpl. Rappel.
- z) You must cover all tattoos displaying the names, logos or insignias of the Hells Angels or the Devils Army when you are outside your residence, so that they are not visible.