ONTARIO COURT OF JUSTICE

DATE: 2020 03 20
COURT FILE No.: Toronto 20-35001184

BETWEEN:

HER MAJESTY THE QUEEN

— AND —

TAVAR KNOTT

Judicial Interim Release Hearing
Before Justice of the Peace K. Lee
Heard on March 20, 2020
Release Ordered Orally on March 24, 2020
Written Reasons for Decision released on March 27, 2020

Rhianna Woodward .... **counsel for the Crown**
Hussein Aly .... **counsel for the accused Tavar Knott**

JUSTICE OF THE PEACE LEE:

1. OVERVIEW

[1] The accused, Tavar Knott, was charged on the 14th day of March 2020, with possession of a prohibited firearm, possession of a restricted firearm, occupy a motor vehicle with a firearm, possession of a loaded firearm, and three counts of possession of a firearm while prohibited.

[2] The matter came before me on the 20th of March 2020 for a Judicial Interim Release Hearing. It must be noted that this hearing was conducted during the escalating shutdowns of both the Superior Court of Justice and the Ontario Court of Justice, due to the increasing concerns over of the COVID-19 pandemic.

2. THE ALLEGATIONS

[3] By way of background, the Crown presented the accused's criminal record, admitted for the purposes of this hearing and marked as exhibit 2, which revealed that in October 2007, Mr. Knott was convicted of possession of a loaded or restricted firearm, careless storage of a firearm, and possession of a Schedule I substance. On sentencing, Mr. Knott was subject to a weapons prohibition order pursuant to section 109 of the *Criminal Code*, RSC 1985, c C-46.

[4] Mr. Knott was then convicted in July 2010 of possession of a Scheduled II substance for the purposes of trafficking, and failure to comply with his recognizance. This conviction lead to a further weapons prohibition order. Mr. Knott was further convicted in August 2010 with drug offences, again leading to a third weapons prohibition order.

[5] It is alleged that on the 14th day of March 2020, Toronto police officers observed a motor vehicle speeding at a high rate of speed. Police began to pace the motor vehicle and determined that the vehicle was travelling at a speed of 90 km/h in a 50 km/h zone. Police pursued the vehicle when it entered a gas station. The driver exited the vehicle and police officers approached him on foot. The driver then began to run. Police pursued and eventually caught up to and arrested him. The Crown submitted evidence hearing in the form of surveillance video from the gas station, allegedly showing the driver pulling up to the gas pump, exiting the vehicle and then running with police in pursuit. This video was received and marked as exhibit 1.

[6] The Crown alleges that the driver refused to identify himself. Officers conducted a search of the motor vehicle incident to the arrest, in order to make a determination of his identity. During the search, a document was located in the centre console of the motor vehicle which bore the name "Tavar Andre Roy Knott". The driver then confirmed his identity. The motor vehicle was identified as belonging to "Cheryl" the mother of one of his children. Photographs were tendered by the Crown, showing the centre console, which were marked as exhibits 3d and 3e. Photographs of the document were also tendered, and were marked as exhibits 3f through 3h.

[7] As police conducted their search, a black Glock mini handgun was also located in the centre console of the motor vehicle. Police cleared the handgun and determined that the it was loaded, with rounds in the magazine. The Crown tendered photographs of the handgun, as well as the loaded magazine, as exhibits 3a through 3c.

[8] During the police investigation, it came to light that Mr. Knott had three weapons prohibition orders. Mr. Knott was subsequently charged with the firearms offences, as well as the highway traffic act offences. The vehicle was seized and sealed, awaiting judicial authorization to search the vehicle. As of the hearing, no search had yet been conducted. Mr. Knott was taken into custody pending a bail hearing.

3. DEFENCE PLAN OF RELEASE

[9] The Defence submits that it can meet its onus to secure the release of Mr. Knott and presented a plan which included three sureties with whom he would reside with a strict condition of house arrest. Should it be required, Defence submits that electronic GPS ankle monitoring provided by Recovery Science is also available to add to the plan.

[10] Surety declarations were submitted by Defence, pursuant to s. 515.1 of the *Code*. These declarations were marked as Exhibits 4 through 6. In addition to the declarations, each of the sureties were examined for the express purpose of giving substance to the Defence release plan.

3.1 SURETY #1 – ARLENE JACKSON

[11] The first surety presented was Ms. Arlene Jackson, the mother of the accused. Ms. Jackson is a Permanent Resident of Canada and has been working as a Customer Service Representative with CIBC Visa for the past 20 years. She is currently off of work for the next month. When she returns, she will be working part-time from 4:00 pm to 12:00 am, on Tuesdays, Wednesdays, and Fridays. Ms. Jackson lives at home with her common-law spouse and her daughter. Ms. Jackson has a total of $5,000.00 in savings and was willing to pledge that full amount in order to secure the release of her son.

[12] Ms. Jackson had previously acted as a surety for her son, Mr. Knott, in 2018, and testified that during that release, he had followed all of his bail conditions and never gave her any trouble. She also served as surety for the brother of the accused on a separate matter and had called police to report when he was not following his bail conditions. She also has previous experience as a surety with electronic GPS ankle monitoring. She stated that she was aware of the costs of electronic monitoring and was willing to pay Recovery Science's fees.

[13] Ms. Jackson is very concerned by her son's past criminal behaviour as well as the current allegations against him. She is also aware of past convictions in July 2010 and October 2012 for failure to comply with his recognizance. However, she was not his surety during those periods, and the accused was not living with her at the time.

[14] However, Mr. Knott was living with his mother during the incidents revolving around the 2007 conviction, and the guns and drugs seized were in his room. She stated that she had no idea why guns and drugs were in her home and admitted that while having a very close relationship with her son, she is not fully aware of the extent of her son's criminal behaviour and activities. She committed to searching through her son's belongings to ensure that he is not in possession of any guns or drugs.

[15] Questions were also raised to Ms. Jackson regarding the ongoing COVID-19 pandemic. She is fully committed to supervising her son during this public health crisis. She conceded that while they are practicing all precautions, it is very possible that she or the other proposed sureties could fall ill due to the coronavirus, limiting their ability to continue supervision of Mr. Knott. Nonetheless, Ms. Knott reaffirmed her commitment to following the conditions of any release, and that should she be unable to continue as surety, she would contact the police or the court.

[16] It was clear to the court that Ms. Jackson understands her responsibilities as a surety, including ensuring that Mr. Knott attends court and obeys any conditions of his release. She stated that she would have no issues with attended with Mr. Knott to any required court appearances. She further stated that she would have no reservations with calling police if her son failed to comply with any of his release conditions.

3.2 SURETY #2 – KAY COPELAND

[17] The second surety presented to the court was Ms. Kay Copeland, the maternal grandmother of the accused. Ms. Copeland is a retired Personal Support Worker (PSW) and medical lab assistant. As a PSW, she had worked in a variety of hospitals, nursing

and retirement homes, as well as in the private homes of her clients. She lives separately with her other daughter, however is willing to move in with Mr. Knott and the other sureties to ensure constant supervision.

[18] Ms. Copeland has accumulated $10,000.00 in savings and stated that she is willing to pledge $2,000.00 to secure the release of her grandson. When asked on cross-examination why she was only willing to pledge $2,000.00, she stated that with the other sureties, she thought that amount would be enough. Ms. Copeland was will to pledge a high amount if required, up to the full $10,000.00.

[19] Ms. Copeland also has experience with ankle monitoring, being a previous surety along with her daughter Ms. Jackson. Ms. Copeland stated that she is very close with her grandson, Mr. Knott, however, conceded that she is not fully aware of the extent of his criminal activities.

[20] Like Ms. Jackson, questions were raised by the Crown regarding the ongoing COVID-19 pandemic. Ms. Copeland conceded that it is very possible that she could contract the coronavirus and fall seriously ill. Like her daughter, she stated that should she be unable to supervise, the authorities would be contacted.

[21] It is clear that Ms. Copeland is fully aware and appreciative of her responsibilities as surety. She stated that she is required to ensure that Mr. Knott attends all of his required court appearances, and that she must ensure that he complies with all of the conditions of his release. To this end, she is fully prepared and willing to call the police should her grandson breach any of his release conditions and can attend court with him as required. In her own words, she is "not playing around".

3.2 SURETY #3 – LEONARD FERRYMAN

[22] The final surety proposed by Defence was Mr. Leonard Ferryman, the step-father of the accused and common-law spouse to Ms. Jackson. Mr. Ferryman has known Mr. Knott for the past 20-25 years, and lives with Ms. Jackson, his common-law spouse. He works as a warehouse supervisor with Rona, whom he has been with for 15 years. His hours of work are from 6:00 am to 2:00 pm every weekday.

[23] Mr. Ferryman has acted as a surety in the past for the brother of Mr. Knott without any problems. As part of the release plan, Mr. Ferryman is aware of arrangements to have Mr. Knott as well and Ms. Copeland move in. He is fully supportive of this plan.

[24] Mr. Ferryman has approximately $15,000.00 in savings, some of which are in Jamaican Dollars, and is willing to pledge $5,000.00 to secure the release of his stepson. On cross-examination, Mr. Ferryman stated that he was willing pledge more, up to his full savings of $15,000.00 if required.

[25] Mr. Ferryman is like a father figure to Mr. Knott and speaks with him everyday. He is very close with Mr. Knott, however conceded that his past efforts to rehabilitate his stepson following his previous criminal convictions may not have been successful, and that he may not be fully aware of Mr. Knotts criminal lifestyle.

[26] Again, questions were raised by the Crown with regard to the plan, should he and/or the other sureties fall seriously ill due to the COVID-19 pandemic. He admitted that this was not discussed with the other sureties, however stated that, should he be unable to act as surety, he would contact the authorities.

[27] It is evident that Mr. Ferryman is aware of his responsibilities as surety. He understands that he would be responsible to ensure that Mr. Knott attends all court appearances and obeys the conditions of his release. He is committed to ensuring constant supervision and has no issue with calling the police should Mr. Knott fail to abide with his release.

3.4 DEFENCE WITNESS – STEPHEN TAM, RECOVERY SCIENCE

[28] As part of the Defence plan of release, Mr. Stephen Tam, part founder and owner of Recovery Science testified regarding services that they provide in the realm of electronic GPS monitoring. Recovery Science is a private company which provides electronic monitoring services within the Canadian legal system. In the area of criminal proceedings, it provides services which includes electronic GPS monitoring through an ankle bracelet that the person being monitored would wear. Mr. Tam stated that his company currently has a caseload of over 200 cases.

[29] Electronic GPS monitoring functions by setting exclusion and inclusion zones on a map. When a person being monitored triggers an alert, Recovery Science, through a sub-contracted monitoring company would confirm any violation of conditions, and subsequently contact police to inform them of the breach. The ankle bracelet is also designed to generate an alert should the device be removed or tampered with, as well as when there is a lost of communication between the device and the monitoring centre.

[30] As a private company, there is a financial cost to engaging the services of Recovery Science. The regular fee for electronic GPS monitoring is $540.00 per month, plus tax. This fee is lowered for clients on legal aid to $450.00, and $350.00 where the release order's promise to pay is less than $5,000.00. Mr. Tam testified that he would work with his clients to deal with issues on non-payment, and that Recovery Science as never terminated monitoring due to non-payment of fees. He suggested that, where non-payment may be an issue at the outset, it be made a condition of a release order to pay the fees of Recovery Science.

[31] Mr. Tam admitted that electronic monitoring is not a perfect system. It is not designed to prevent breaches, and instead monitors for compliance. There are dead zones within the city, including parking garages and subway tunnels where there could be no signal to connect to the monitoring centre. In both occasions however, alerts would be generated, and the police contacted.

[32] Mr. Tam also testified that there are contingency plans in place to address concerns regarding the COVID-19 pandemic. Both staff at Recovery Science and the sub-contractor are setup to be able to conduct their operations from home. Recovery Science is also currently under capacity, and should members of his staff fall ill, there are others that can easily pick up the slack. For whatever reason, should Recovery Science be unable to continue operations, the accused would then have to turn himself in.

4. ANALYSIS

[33] It should be noted for Mr. Knott's benefit, that a bail hearing is a very early stage in the criminal justice process. The charges at this point are simply allegations. In a bail setting, the job of the court is not to make any determination of guilt, but instead, to determine whether an accused may be released until the disposition of these criminal matters. Underlying these principles is the right to be presumed innocent until proven guilty according to law. A right guaranteed under section 11(d) of the *Charter of Rights and Freedoms*. Section 11(e) of *The Charter* also guarantees the right not to be denied bail without just cause and a right to bail on reasonable terms.

4.1 REVERSE ONUS

[34] Pursuant to s. 515(6)(a)(viii) of the *Code*, Mr. Knott is alleged to have committed indictable offences, the subject of which includes a firearm, while under a prohibition order. For this reason, the onus is on him, to show cause why his detention is not justified.

4.2 GROUNDS FOR DETETNION

[35] Subject to s. 515(10) of the *Code*, detention is only justified on one or more of the following three 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, ...

4.2.1 PRIMARY GROUND

[36] The Crown withdrew its primary ground concerns. The Crown concedes that on hearing the evidence the Defence has met its onus, and detention is not justified on the primary grounds.

4.2.2 SECONDARY GROUND

[37] The secondary grounds deal with whether there is a substantial likelihood that should the accused be released from custody; he would commit a criminal offence or interfere with the administration of justice. As this is a reverse onus situation, the Defence must then demonstrate that there is no substantial likelihood, or, that a plan of release can be crafted to mitigate any such possibility to below the threshold of a substantial likelihood.

[38] In *R. v. Morales*, [1992] 3 S.C.R. 711, the Supreme Court of Canada states that it is not possible to make exact predictions of future behaviour and recognized the inherent difficulties in making any such predictions. The test for "substantial likelihood" does not warrant an exact prediction. The Courts have frequently commented that evidence of past conduct can be a predictor of future behaviour. The Hon. Justice Trotter, in his text The Law of Bail in Canada, 3rd ed., (Toronto: Thomson Reuters Canada Ltd., 2017), at Ch. 3, s. 3.3 (b), states:

> A record for offences similar to one(s) on which bail is sought may establish a substantial likelihood that the conduct will be repeated. A number of breaches of undertakings, recognizances and other court orders may be helpful in predicting future criminal behaviour while on bail, and in assessing whether the accused will be compliant with a proposed plan of supervision and the conditions of release.

[39] On reviewing Mr. Knott's criminal record, I note the firearms related convictions from October 11, 2007. These are similar offences to the allegations being brought today. However, I agree with Defence Counsel's submission that this is a dated entry. The incident which led to this conviction occurred over 13 years ago, and following this, there were no further entries for any firearms related offences. There is therefore no evidence before me that there has been any repetition of firearms offences between the conviction in 2007 and the allegations brought in 2020. I therefore assign little weight to this entry.

[40] There are entries within the criminal record of convictions for failure to comply with a recognizance. One on July 29, 2010 and the other on October 9, 2012. These breaches raise concerns as to whether the accused will comply with any order of this court. In the present case, Mr. Knott does not have any outstanding criminal charges. However, He is facing three counts of possession of a firearm while prohibited by reason of a weapons prohibition order. There is strong evidence being led by the Crown on these charges, including video surveillance showing Mr. Knott exiting the vehicle wherein a handgun was located.

[41] Following and extending the logic of Justice Trotter, in addition to evidence of prior breaches, I may consider evidence of successful bail compliance which would mitigate the statutory grounds for detention, and whether the proposed plan mitigates these specific concerns to below that of a substantial likelihood.

[42] I have evidence that all the proposed sureties have successfully supervised prior releases. The convictions for failure to comply with a recognizance occurred when these sureties were not involved. In fact, when these sureties were engaged, Mr. Knott had not breached his release conditions. This is a clear indication that Mr. Knott, with the right release plan, is compliant with its conditions.

[43] I am satisfied that the proposed sureties, would execute their responsibilities to the court to ensure compliance and bring stability to the accused. The sureties are willing to pledge substantial amounts of money, including their entire life savings to this release. They are willing to conduct 24-hour constant and direct supervision and will search Mr. Knott's belongings to ensure no contraband is in his possession. I am confident that they will contact the authorities should Mr. Knott be in breach of any of this release conditions.

[44] For the reasons above, I find that Mr. Knott has discharged his onus on a balance of probabilities. The release plan mitigates the risk of a criminal offence or interference with the administration of justice to a point below the threshold of a substantial likelihood. Detention is therefore not justified on the secondary grounds.

4.2.3 TERTIARY GROUND

[45] Pursuant to s. 515(10)(c) of the *Code*, the tertiary ground, provides that detention is justified if it is necessary to maintain confidence in the administration of justice, having regard to all of 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.

[46] In the leading case of *R. v. St.-Cloud,* 2015 SCC 27, [2015] 2 S.C.R. 328, the Supreme Court of Canada carefully interpreted the tertiary ground. Wagner J. (as he was then) noted that the four factors are neither singularly determinative or exhaustive. The court must consider all the circumstances of the case, paying close attention to the four factors, however, detention is not automatic even where all four enumerated factors support detention.

[47] The court must balance of all the relevant factors and make a determination whether detention is necessary to maintain public confidence in the administration of justice. This public perspective is from that of a reasonable person, with knowledge about the philosophy of the legislative provisions, *Charter* values and the circumstances of the case at bar.

4.2.3.a STRENGTH OF THE CROWN'S CASE

[48] As stated by Wagner J. in *St.-Cloud,* at para 57, the strength of the Crown's case at a bail hearing may appear stronger than at a trial. We are early in these proceedings, and the evidence has not been fully tested at trial. On the face of the allegations, the Crown indeed bears a strong case against Mr. Knott. There is video evidence of the accused exiting the vehicle wherein a handgun was located. All the while, Mr. Knott was subject to three weapons prohibitions orders.

[49] I am also live to any defences being raised. Defence Counsel submitted that there may be triable issues regarding how Mr. Knott's vehicle came to the attention of police, and the speed at which it was travelling. The nature of the police interaction with the

accused, the ownership of the motor vehicle, and appropriateness of the search of the vehicle incident to arrest, are also issues for trial.

4.2.3.b GRAVITY OF THE OFFENCE

[50] As instructed in *St.-Cloud*, at para 60, an objective assessment must be made of the gravity of the offence in comparison with the other offences in the *Criminal Code*. This is done by determining the minimum and maximum sentences for each offence.

[51] Without detracting from the serious nature of these charges, I will note that these are not the gravest offences within the *Criminal Code*. The highest single maximum sentence for these charges is 10 years, and while not a small amount of time, there are other offences in the *Code*, including other firearms offences which attract higher penalties. While the minimum penalties for firearms offences have been struck down, it should be noted that Mr. Knott would not have been liable for those minimum penalties that would have been applied on subsequent convictions, as his last firearms conviction was more than 10 years prior to the current case.

4.2.3.c CIRCUMSTANCES SURROUNDING THE COMMISSION OF THE OFFENCE

[52] When addressing the circumstances surrounding the circumstances of the offence, including whether a firearm was used, Wagner J. in *St.-Cloud*, at para 61, states:

> Without drawing up an exhaustive list of possible circumstances surrounding the commission of the offence that might be relevant under s. 515(10)(*c*), I will mention the following: the fact that the offence is a violent, heinous or hateful one, that it was committed in a context involving domestic violence, a criminal gang or a terrorist organization, or that the victim was a vulnerable person (for example, a child, an elderly person or a person with a disability). If the offence was committed by several people, the extent to which the accused participated in it may be relevant. The aggravating or mitigating factors that are considered by courts for sentencing purposes can also be taken into account.

[53] In the present case, the offences were not violent, heinous or hateful. While they did involve the subject of a firearm, there are no allegations that a firearm was pointed, discharged, or otherwise used in the commission of an offence. The offences were not committed in a context involving domestic violence. There was no evidence led by the Crown about involvement in a criminal gang or terrorist organization. There was no victim involved in the offences as charged. There are no allegations of a criminal conspiracy.

[54] Aggravating factors with regards to sentencing, include the firearms possessions while under three weapons prohibitions orders, his flight from officers, as well as his refusal to identify himself. In addition to the triable issues already discussed, there may be mitigating factors on conviction that the court may consider during sentencing. These may include the firearm being in a vehicle not owned by him and not found immediately on his person.

[55] Both Crown and Defence Counsel agree that handguns are a problem in our city. The public has an interest in ensuring that there are no handguns in the hands of criminals and that such crimes are prosecuted to ensure their safety. There is no doubt that handguns pose a constant and serious threat to public safety. Handguns have led to violence, serious injury and death. However, this must be tempered with the understanding that there is no offence in the *Criminal Code*, where detention on the tertiary grounds is automatic.

4.2.3.d LIABILITY FOR A LENGTHY TERM OF IMPRISONMENT

[56] While not the gravest of offences, the charges faced by Mr. Knott are nonetheless quite serious. The unauthorized possession charge carries a maximum term of 5 years. The remaining charges each carry maximum penalties of 10 years. On conviction, consecutive sentences could lead to a very long term of imprisonment.

4.2.3.e OTHER RELEVANT CIRCUMSTANCES

[57] As addressed in *St.-Cloud*, there are other factors that the court may take into consideration when making an analysis of the tertiary grounds. First is the plan of release being proposed by the Defence. I find the plan to be strong. The three sureties being proposed have a proven track record of successful supervision on bail. The substantial financial commitment shows both confidence from the sureties and would act as significant deterrent to ignorance of non-compliance.

[58] Much was said in both evidence and submission with regard the to current COVID-19 pandemic, and the effect that is having on the courts, the jails and the general public. Incidentally, the decision in *R. v. J.S.*, 2020 ONSC 1710, from the Superior Court of Justice was released the same day of this hearing. In her reasons, the Hon. Justice Copeland states: "In my view, the elevated risk posed to detained inmates from the coronavirus, as compared to being at home on house arrest is a factor that must be considered in assessing the tertiary ground."

[59] I find that the ongoing COVID-19 pandemic is relevant to the tertiary grounds on two fronts. First, following the reasoning of Copeland J., the pandemic has led to instructions to the public to act to mitigate the risk of infection. This includes self isolation, social distancing, and heightened level of vigilance regarding hygiene. These efforts would be very difficult to implement in detention centres where prisoners are kept in close quarters. Indeed, there was news on the day of the hearing that an officer with the Toronto South Detention Centre was confirmed to have contracted the coronavirus. Should there be an order for detention, it would put Mr. Knott and others at increased risk of infection and would divert precious medical and public health resources away from those that may need them.

[60] The Crown argues that we must put our trust in the detention centres that they will do anything and everything necessary to protect both the inmates, the staff and the public. The Crown further submits that the COVID-19 pandemic places this vary bail plan at risk, as it would fall apart once the sureties fall ill. I agree with the Crown that we must keep faith with our public institutions, especially the detention centres, during this pandemic. However, we must also keep faith with those sureties that are appointed by the court to

be the accused's jailers in the community. To do otherwise would lead to a breakdown of the bail system.

[61] Second, while the frontline functions of the Ontario Court of Justice have (as of this date) continued to function. There has been a significant reduction in operational courts, and a suspension of all preliminary hearings and trials. The criminal case management courts have been routinely adjourning matters, with little happening in-between dates, due to the restrictions placed by the COVID-19 pandemic on crowns, duty counsel, private counsel, court staff and police. The Superior Court of Justice has suspended all jury trials.

[62] *St.-Cloud,* at para 71, invites the court to consider the length of time it would take to bring this to trial. Mr. Knott would not likely have had a trial within the year in the best of circumstances. With the increasing delays caused by the spread of this disease, it is very possible that a trial may take years. To continue detention would prejudice Mr. Knott's ability to mount a proper defence, and given the delay, would lead to injustice.

[63] In balancing all the factors and circumstances in this matter, I find that the factors together do not favour detention, and, that taking into consideration the plan of release and the concerns regarding COVID-19, the management of risk is acceptable and favours release. A reasonable member of the public would not lose confidence in the administration of justice should he be released, and in fact, would lose confidence should Mr. Knott be detained. I find that the Defence has met its onus, and that detention is not justified on the tertiary grounds.

5. RELEASE ORDER

[64] For the above reasons, the Defence has on a balance of probabilities, met its onus on both the secondary and tertiary grounds. I therefore order that the accused be released.

5.1 FORM OF RELEASE

[65] With amendments from bill C-75 in effect, there has been significant modification to the nomenclature involved in Judicial Interim Release, and in particular to the forms of release. These forms of release are found in the *Code* at s. 515(2). Following from least to most onerous, they are:

(a) A release order with conditions but no financial obligations.

(b) A release order with an accused promise to pay.

(c) A release order with surety(ies), and with or without an accused promise to pay.

(d) A release order with deposit, and with or without an accused promise to pay.

(e) A release order with deposit and with surety(ies).

[66] The flow from least to most onerous, codifies what is referred to as the ladder principle. The Supreme Court of Canada states in *R. v. Antic*, 2017 SCC 27, [2017] 1 S.C.R. 509, at para 25, "The ladder principle generally requires that a justice not order a

more onerous form of release unless the Crown shows why a less onerous form is inappropriate", Wagner J. The general principle of bail favours release at the earliest opportunity and on the least onerous grounds.

[67] Mr. Knott faces a reverse onus situation. The Crown submits that where the onus lies on the accused, the ladder principle no longer applies. The accused must therefore show cause why a stricter form of release is not justified; a reversal of the ladder principle. Defence submits that it is not settled law as to whether the ladder principle applies to reverse onus situations; however, the plan of release involving sureties and a promise to pay are already the strictest form of release, making the argument moot. This is a common submission where the Defence is presenting a plan on very strict and onerous terms in order to put their best foot forward.

[68] I am forced to disagree with Defence counsel on this point. When considering the forms of release available in s. 515(2) of the *Code*, a release to surety with financial pledges is right in the middle of the proverbial ladder. When the court makes a decision as to the form of release, it makes an intentional decision as to whether they are starting from the bottom of the ladder going up or the other way around. In justifying the form of release, a finding must be made how or if the ladder principle applies.

[69] The Crown referenced the decision in *R v. Ishmael*, 2019 ONSC 596. The Hon. Justice Goldstein for the Superior Court of Justice found that the ladder principle did not apply in reverse onus situations. Goldstein J. relied on the reasons of Bale J. in *R. v. Sakhiyar*, 2018 ONSC 5767 (Ont SCJ), whom in turn relied on Justice Trotter's text, *The Law of Bail in Canada*, at Ch 6, s 6.3:

> The ladder principle is inapplicable to situations in which a reverse onus provision in s. 515(6) is triggered. When this subsection was enacted in 1976, Parliament made no attempt to reconcile the reverse onus provisions with s. 515(3). It follows that when the onus is on the accused, he/she ought to be required to justify why the most onerous form of release should not be imposed. This may well be the reality in practice.

[70] It should be noted that the Hon. Justice Trotter's comments were made before the Supreme Court of Canada's decision in *Antic* and the revisions to the *Code* with bill C-75. While *Antic* at para 50, states that the second bail review was not a reverse onus situation, it goes on at para 67, to give guiding principles to bail decision, including at para 67(d):

> (d) The ladder principle articulates the manner in which alternative forms of release are to be imposed. According to it, "release is favoured at the earliest reasonable opportunity and, having regard to the [statutory criteria for detention], on the least onerous grounds": Anoussis, at para. 23. This principle must be adhered to strictly. [*emphasis added*]

[71] These principles appear without qualification or condition, implying the position that they should be applied regardless of onus in all contested hearings. In addition, there is conflicting case law from the Superior Court of Justice which finds that the ladder principle does indeed apply in reverse onus situations. In *R. v. Downey*, 2018 O.J. No 6133(S.C.),

at para 25, the Hon. Justice Durno wrote "regardless of who has the onus or the positions of counsel, the justice of the peace or judge must be guided by the ladder principle in fashioning a release order". The Hon. Justice Allen come to the same conclusion in the Superior Court's decision in *R. v. Pascal*, [2018] O.J. No. 2715.

[72] I would further note that all of these decisions were made prior to bill C-75 which amended the *Code*, and in particular the provisions of Judicial Interim Release. Section 493.1 added a principle of restraint, which applies to all releases, including reverse onus releases, under Part XVI of the *Code*:

> 493.1 In making a decision under this Part, a peace officer, justice or judge shall give primary consideration to the release of the accused at the earliest reasonable opportunity and on the least onerous conditions [*emphasis added*] that are appropriate in the circumstances, including conditions that are reasonably practicable for the accused to comply with, while taking into account the grounds referred to in subsection 498(1.1) or 515(10), as the case may be.

[73] Further, the ladder principle is codified in section 515(2.01). This was modified from the former version in section 515(3):

> (3) The justice shall not make an order under any of paragraphs (2)(b) to (e) unless the prosecution shows cause why an order under the immediately preceding paragraph should not be made.

Which now reads at section 515(2.01):

> (2.01) The justice shall not make an order containing the conditions referred to in one of the paragraphs (2)(b) to (e) unless the prosecution shows cause why an order containing the conditions [*emphasis added*] referred to in the preceding paragraphs for any less onerous form of release would be inadequate.

While very similar in wording, the provision was nonetheless amended. Therefore, the question must be asked: what turns on these amendments?

[74] The basis of the argument that the ladder principle does not apply in reverse onus situations, appears to be grounded on the premise that "Parliament made no attempt to reconcile the reverse onus provisions with s. 515(3)". With the coming of bill C-75, I find that these issues have now been resolved. Key to this finding is the intentional use of the word "conditions", Trotter J. Per section 515(2.01), what is referred to as "forms of release" are now conditions of a release order. The instruction to make sparing use of conditions also applies to those at subsections (4), (4.1), and (4.2).

[75] In applying the principle of restraint found at section 491.1, which informs all decisions under Part XVI of the *Code*, including reverse onus situations under section 515(6), the court must give primary consideration to imposing the least onerous conditions. I find that there is no longer any ambiguity with whether the former section

515(3) applies to reverse onus situations, and that these issues raised by Trotter J. in <u>*The Law of Bail in Canada*</u>, have been remedied.

[76] The overriding message in *Antic* was that the principles of bail must be followed. The Hon. Justice Di Luca in *R. v. Tunney*, 2018 ONSC 961, wrote at para 57:

> I conclude by recognizing that there is an inherent comfort in "doing things" as they have been done for years. Change is uncomfortable. However, much like the Jordan decision called for a change to the culture of complacency and delay, <u>the Antic decision signals the need for a change in our bail culture. The message is clear. We need to do things differently.</u> [Emphasis added]

For this reason, following the amendments in bill c-75, the changes in nomenclature to the *Code* must not be minimized or characterized as trite. They have substantial meaning, particularly to the context of bail.

[77] I agree with comments made in *Ishmael*, where Goldstein J. writes at para 33. "A justice at a reverse onus bail hearing does not simply make a "yes" or "no" detention decision. A justice must consider whether an accused can be released depending on the conditions." However, I distinguish his reasons, by the fact that they were made prior ro bill c-75. In a reverse onus situation, the onus is of course on the accused to justify release. I must take into consideration all circumstances, including the bail plan, when determining whether the accused has met their onus. However, in considering the plan, including the form, I must follow the principles highlighted in *Antic* and enumerated in the *Code*, and not find that a more onerous and restrictive condition is appropriate without first rejecting less onerous forms of release.

[78] In consideration of all of the circumstances as well as the statutory grounds for detention, I note that Mr. Knott has a history of non-compliance with his bail. He further has a history with firearms related convictions. The matter before me, includes the subject of a handgun, allegedly possessed by Mr. Knott when prohibited by way of a weapons prohibition order.

[79] While the *Code* at section 515(2.3) directs the court to also exercise restraint in the use of a surety, it is clear to me that based on the secondary and tertiary ground concerns, Mr. Knott requires constant supervision while on release. I therefore find that a release on any less onerous form would be entirely inadequate in these circumstances. I am satisfied that a surety release is necessary and justified. The only concern is that individually, neither surety would not be able to conduct the 24-hour supervision that I find is required. Together, however, they would be able to successfully supervise Mr. Knott on bail, and would adequately mitigate those risks involved in his release.

[80] I therefore order that as a condition of my release order, the three sureties be named and the following financial obligations entered:

(a) Arlene Jackson – promise to pay $5,000.00
(b) Kay Copeland – promise to pay $2,000.00
(c) Leonard Ferryman – promise to pay $5,000.00

5.2 ADDITIONAL CONDITIONS

[81] I shall first address the issue of electronic GPS monitoring. In these unprecedented times concerning the COVID-19 pandemic, businesses are closing or reducing hours, savings are being wiped out in the stock market, and people are losing their jobs. To further impose a financial commitment of $610.00 a month would be devastating in these trying times. The three sureties would provide more than adequate supervision, and would on their own, mitigate any concerns regarding bail compliance. I therefore find that such a condition would be highly onerous and not necessary in this case.

[82] While GPS monitoring is not justified; in order to maintain compliance and supervision, I find that a residential condition that Mr. Knott reside with his surety is required as well as house arrest in order to maintain the constant supervision required to justify release. I therefore impose the following additional conditions:

(a) Mr. Knott shall reside with his sureties at 3434 Eglinton Avenue East, Unit 1414, Toronto, ON, and have one of his sureties present in the home at all times.

(b) Mr. Knott shall remain in his residence at all times. Except while in the direct and continuous presence of one of his sureties or his legal counsel.

(c) Mr. Knott shall not be in the driver's seat of any motor vehicle.

[83] I will also impose the following statutory condition pursuant to section 515(4.1) of the *Code*:

(d) Mr. Knott shall not possess a firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all those things, until the accused is dealt with according to law. Any of these things currently in his possession shall be surrendered to the OIC within 24 hours of his release.

(e) Mr. Knott shall not seek or obtain any authorizations, licences and/or registration certificates for any weapon, and any of these things currently in his possession shall be surrendered to the OIC within 24 hours of his release.

[84] This matter returned before me on March 24, 2020, where the order to release was made, with written reasons subsequently released on March 27, 2020.

[85] I thank both Ms. Woodward and Mr. Aly for their thoughtful and impassioned submissions, as well as their understanding and flexibility in addressing this matter despite the constant changing circumstances in these unprecedented times.

Released: March 27, 2020

Signed: Justice of the Peace K. Lee