

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Lawrence*, 2014 NSSC 451

Date: 2014/12/18

Docket: Pictou, CRP No. 432803

Registry: Pictou

Between:

Her Majesty the Queen

v.

Steven James Lawrence

Judge: The Honourable Justice N. Scaravelli

Heard: December 18th, 2014, in Pictou, Nova Scotia

Counsel: Patrick Young, for the Crown
Robert Sutherland, for the Defendant

By the Court Orally:

[1] Steven James Lawrence faces a charge of aggravated assault contrary to *Section 260 of the Criminal Code*. Mr. Lawrence has made an application to review a bail detention order made by Judge Del Atwood made on October 28, 2014. Review of a bail order is dealt with under *Section 520 of the Criminal Code*. *Section 520 (7)* of the Code provides that:

- (7) On a hearing of application under this section the judge may consider
 - (a) the transcript, if any, of the proceedings heard by the justice and by any judge who previously reviewed the order made by the justice,
 - (b) the exhibits, if any, filed in the proceedings before the justice, and
 - (c) such additional evidence or exhibits as maybe tendered by the accused or the prosecutor,and shall either
 - (d) dismiss the application, or
 - (e) if the accused shows cause, allow the application, vacate the order previously made by the justice and make any other order provided for in section 515 that he considers as warranted.

[2] The grounds for denying judicial interim release are set out in *Section 515 (10) of the Criminal Code*:

- (10) For the purpose 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 potentially lengthy term of imprisonment...

[3] The bail judge detained Mr. Lawrence on the second and third grounds, namely that his detention was necessary in order to maintain public confidence in the administration of justice and for public safety.

[4] The onus lies with the applicant on a review application. *Section 520* does not expressly define the process to be followed by the reviewing court. It has often been described by courts, including Nova Scotia, that a review hearing is not limited to an appeal nor is it as wide as a de novo hearing but a combination of both. See *R v. Charter [2008] N.S.S.C. 299*. I have also reviewed the detailed analysis of the review process by Chief Justice Wachowich in *R. v. Lysyk [2003] ABQB 256*

[5] In summary, absent new evidence the purpose of bail review is to review the transcript of evidence, submissions and the decision of the judge to assess whether there is any error made which justifies setting aside the order. Serious misunderstanding of the evidence or error in law are reversible errors. Where there is new evidence that was not before the bail judge or material change in circumstances not before the judge, the reviewing court must decide whether it justifies a determination that the bail judge's decision is no longer appropriate. The role of the review court is not to substitute its own opinion for the opinion of the bail judge.

[6] Mr. Lawrence seeks a review on the grounds of material change in circumstances that affects the validity of the bail judges reasoning in denying bail.

[7] I have reviewed the transcript of evidence and the video, that was played both at the original bail hearing and on today's bail review.

[8] Briefly Mr. Lawrence is alleged to have assaulted the victim outside of a local bar in downtown New Glasgow in the early morning hours. Both the accused and the alleged victim had consumed alcohol. There was evidence that the victim and the accused exchanged words. The victim was pushed. The video shows the victim taking a swing or attempting to take a swing, kicking or attempting to kick

the accused, who then struck the victim in the head with one punch. The victim fell backwards striking his head on the concrete sidewalk. There is also evidence from the video showing persons attempting to assist the victim and dropping him on the sidewalk after attempting to pick him up.

[9] According to the crown the victim suffered a skull fracture and possible brain damage.

[10] Mr. Lawrence provided the following bail plan to the bail judge.

1. That upon his release he would reside with his partner Ariel MacDonald and their young child at their residence at Foxbrook Road, Westville.
2. That Mr. Lawrence would be subject to a curfew of 10:00 p.m. That he would agree to conditions including non-consumption of alcohol and non-attendance at bars.
3. That he be able to travel to Western Canada for his employment and report to the RCMP while out there.
4. His partner Ariel MacDonald was willing to act as a surety in the amount of , I quote “a few hundred dollars”.

5. Ariel MacDonald's mother, Ria MacDonald agreed to act as a surety in the amount of \$7,000 to \$10,000.
6. Mr. Lawrence offered to make a \$1,300 cash deposit which was refused by the crown.

[11] The crown submitted today that part of the plan was house arrest. That was not the plan presented to the trial judge. It appears as though the trial judge raised the issue himself during submissions, after which defence counsel agreed. House arrest would appear meaningless in any event as it was clear that Mr. Lawrence intended to travel out west to work at that time.

[12] The bail judge correctly set out the law on bail applications. He referenced the presumption of innocence, the right not to be denied bail except for just cause and the burden on the crown to prove detention was justified.

[13] The bail judge considered the evidence adduced at the hearing, the photographs and the video of the incident recorded at the local bar, the evidence of witnesses. The judge also considered Mr. Lawrence's criminal record including his record as a youth that contained related convictions for violent offences, breach of probation, and breaching bail conditions.

[14] The bail judge clearly comprehended the evidence as set out in the relevant legal tests. In my view it is apparent, however, that his decision to deny bail on the second and third grounds was in a large part due to the original plan of release.

[15] He prefaced his decision to deny bail by stating:

I have heard the proposal presented to the court in relation to a bail plan for Mr. Lawrence. In my view this is a vague plan that would essentially leave him unsupervised by the proposed major surety, allowing him to remain or to resume his employment out west.

[16] Having reviewed the transcript evidence and the video evidence presented today I agree with the bail judge that there is an arguable issue of self defense. I also agree that the denial of bail under the tertiary grounds is rare. It applies usually in the more serious offences with serious surrounding circumstances.

[17] As a result I believe it was in this context that the bail judge was influenced to a great extent by the original plan that would have the accused at large.

[18] Mr. Lawrence is scheduled for trial on February, 2015. The plan presented on this review is materially different than the one presented to the bail judge.

[19] The plan is for house arrest 24 hours per day, 7 days a week, with Mr. Lawrence only leaving the residence for purposes of court attendance or scheduled

lawyer visits, requiring him to be accompanied by one of the sureties. He is agreeable to conditions including no contact, no alcohol, and proven compliance.

[20] He has increased posted bail from each surety. Ariel MacDonald is prepared to post bail in the amount of \$3,200, Ria MacDonald is prepared to post bail in the amount of \$15,000. I note that the accused offered cash bail in an increased amount of \$3,200.

[21] Also of material significance is the fact that there will be full time supervision by the sureties. Mr. Lawrence to reside with both sureties at Ria MacDonald's residence until January 1, 2015 after which Ria MacDonald, the major surety, shall move with Ariel MacDonald and Mr. Lawrence to their residence in Foxbrook Road until the trial date.

[22] Under these circumstances I am satisfied that Mr. Lawrence has shown cause and I will allow the application, vacate the order previously made and grant bail upon the terms and conditions proposed.

[23] What I intend to do counsel is adjourn to allow counsel to work out the terms of the language with respect to these conditions. When you are ready we will come back and read that into the record.

MR YOUNG: Thank you My Lord.

THE COURT: Thank you.

CLERK: All rise, court is in recess.

CLERK: All Rise, court is reconvened following recess.

THE COURT: Thank you.

CLERK: Please be seated.

MR. SUTHERLAND: Your Honour.

THE COURT: Thank you counsel.

MR. YOUNG: Thank you My Lord. We've placed before the court a sheet outlining the conditions that my friend and I have agree to. I wasn't able to fit all the names of the people that, ah, my friend and I agree the accused should be prohibited from contacting, so I have provided a separate list.

THE COURT: Okay can you read the names on record, just if you would, or do you want me to read them on the record?

MR. YOUNG: Well I can.

THE COURT: Okay. This is for me is it?

MR. YOUNG: Thank you.

THE COURT: Okay, so the no contact list, Glenn Fraser, Christa Hutchinson, Ashley Gerrior, Colin Fraser, Connar MacLellan, Joseph O'Donnell, Sarah Rehill, and Bradley Turnbull. And I have reviewed the release conditions, acceptable in this form to both counsel?

MR. YOUNG: Yes.

THE COURT: Okay, thank you. Anything further?

MR. YOUNG: No My Lord.

THE COURT: Okay.

Scaravelli, J.