

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Ladelpha*, 2020 NSSC 53

Date: 20200210
CRH No.: 495699
Registry: Halifax

Between:

Her Majesty the Queen

v.

Colin Eric Ladelpha

DECISION

Judge: The Honourable Justice James L. Chipman
Heard: February 5, 2020, in Halifax, Nova Scotia
Oral Decision: February 10, 2020
Written Decision: February 10, 2020
Written Release: December 2, 2021
Counsel: Eric R. Woodburn and Scott C. Morrison, for the Crown
Billy Joe Sparks, for Mr. Ladelpha

By the Court (orally):

INTRODUCTION

[1] The accused has applied for bail. He is awaiting trial (along with 14 others) on the following serious charges arising from an incident at the Central Nova Scotia Correctional Facility (Burnside Jail) on December 2, 2019:

[That Colin Eric Ladelpha]

1. Did conspire together to murder Stephen Francis Anderson, contrary to Section 465(1)(a) of the *Criminal Code*;
2. AND FURTHER that they at the same time and place aforesaid, did unlawfully attempt to murder Stephen Francis Anderson, contrary to Section 239 of the *Criminal Code*;
3. AND FURTHER that they at the same time and place aforesaid, did without lawful authority confine Stephen Francis Anderson, contrary to Section 279(2) of the *Criminal Code*;
4. AND FURTHER that they at the same time and place aforesaid, did unlawfully wound, maim, disfigure or endanger the life of Stephen Francis Anderson, thereby committing an aggravated assault, contrary to Section 268(1) of the *Criminal Code*;
5. AND FURTHER that they at the same time and place aforesaid, in committing an assault on Stephen Francis Anderson use or threaten to use a weapon, or imitation thereof, contrary to Section 267(a) of the *Criminal Code*;
6. AND FURTHER that they at the same time and place aforesaid did unlawfully and wilfully obstruct Correctional Officers Shane Kent, Thomas Blackburn, Jonathan Hawkins, Matthew Hicks, Devon Stewart, and Andrew Miller, Peace Officers, while engaged in the lawful execution of their duty, contrary to Section 129(a) of the *Criminal Code*;

...

[2] On February 12, 2020 Mr. Ladelpha is scheduled to appear in Provincial Court in Dartmouth for election and plea. Since the most serious of the above offences is a s. 469 offence, the Supreme Court of Nova Scotia has jurisdiction over Mr. Ladelpha's release hearing.

[3] The offences in question took place while Mr. Ladelpha was on remand. He has subsequently been moved from the Burnside Jail to the Northeast Nova Scotia Correctional Facility in New Glasgow.

[4] Mr. Ladelpha is 33 years old. He has a lengthy criminal record, albeit not of nearly the serious nature as the current charges.

[5] The Crown is opposed to Mr. Ladelpha's release. The parties appeared in Crownside on January 20 and on January 24, 2020 an order of this Honourable Court issued confirming the bail hearing for February 5, 2020. Evidence and argument was heard on February 5 and today was scheduled for my oral decision in this matter.

THE EVIDENCE

Crown

[6] The Crown called Detective Constable (DC) Allan MacLennan. Two exhibits were entered by consent during his testimony. DC MacLennan provided background with respect to the Halifax Regional Police (HRP) investigation of the incident which occurred during the evening of December 2, 2019 at the Burnside Jail. With the aid of Exhibit 1, a thumb drive containing five video clips, three of which were played in Court, DC MacLennan explained the circumstances of the charges, including the main one concerning the attempted murder of Stephen Francis Anderson.

[7] DC MacLennan elaborated that his knowledge came from watching the videos on numerous occasions, from interviewing the 21 involved correctional officers, reviewing the HRP investigation file and writing and executing the warrants.

[8] DC MacLennan explained that the videos were of the North 3 Unit of the Burnside Jail and it emerged through watching the videos that the critical time was between approximately 7:45 and 7:52 p.m. on December 2, 2019. That is to say, the assault of Mr. Anderson occurred within this approximate seven minute period.

[9] In providing context, DC MacLennan stated that Mr. Ledelpha and the 14 co-accused as well as the victim were all housed in North 3 at the material time. Mr. Ledelpha was assigned cell 17, Mr. Anderson cell eight and one of the co-accused, Caz Cox, cell 38.

[10] Through the videos played in Court DC MacLennan pointed out that Mr. Ladelpha, Mr. Cox and nine other inmates met in Mr. Cox's cell for 10-12 minutes immediately before Mr. Ladelpha and six (who were among the meeting attendees) other inmates entered Mr. Anderson's cell where Mr. Anderson was present. After entering cell eight, the door was closed and entry was blocked by two other inmates

(who were also in attendance at the meeting). In the result, there were eight inmates, counting Mr. Anderson, in his 4' x 8' cell at the material time.

[11] The video very clearly shows Mr. Ladelpha's actions in the time leading up to him entering Mr. Anderson's cell. After the meeting he can be seen going into his cell and then quickly exiting. He walks down the set of stairs near his cell and, in the words of DC MacLennan, then "picks up the pace and runs" into Mr. Anderson's ground floor cell.

[12] The video does not capture what occurs inside cell eight. Presumably, there are no cameras inside the cell. According to DC MacLennan, a shirt of one of the inmates was placed over the window (from inside the cell) to obstruct any observations that might have been made from outside.

[13] DC MacLennan stated that various correctional officers who were outside the cell (by this point an emergency call had been made for all to assemble in North 3) reported hearing an assault take place inside cell eight; i.e., head banging and stomping. They also reported hearing "its done" from inside the cell and that this was repeated by the several inmates outside of cell eight, who by this time had formed a blockade preventing entry into the cell.

[14] DC MacLennan described this as "the call off" noting that the correctional officers were then permitted to enter the cell as things de-escalated and the inmates dispersed. At this point they found Mr. Anderson slumped over in the corner of his cell. Mr. Anderson is later shown bloodied and shirtless, walking out of his cell through the common area of the unit. DC MacLennan said that when he walked another 15' - 20' (this is not captured on video), Mr. Anderson collapsed and was taken to hospital. DC MacLennan noted he sustained puncture wounds.

[15] On cross-examination DC MacLennan repeated that he believed Mr. Anderson sustained puncture wounds albeit, a weapon was never recovered. Further, a weapon cannot be seen on the videos.

[16] Immediately after the assault Mr. Ladelpha can be seen being escorted back to his cell. DC MacLennan explained that the water was shut off and "continuity maintained" regarding Mr. Ladelpha and the other involved inmates. DC MacLennan confirmed that apart from Mr. Anderson, none of the inmates sustained any injuries.

[17] At some point shortly after the assault Mr. Anderson posted a video clip on his Facebook account stating he had teeth broken, that he was upset with those who did this and that he would seek retribution.

[18] Exhibit 2 was introduced, a disc consisting of hundreds of photographs of the post incident cells of Mr. Anderson and Mr. Ladelpha taken on December 2 and 3, 2019 by HRP officers. In Mr. Anderson's cell blood can be clearly seen on the floor, walls and to a lesser extent, on his sheets. DC MacLennan said that Cst. Wood reported that the blood splatter demonstrates that there was high velocity force.

[19] Photographs taken from Mr. Ladelpha's cell show his grey socks (found in his waste basket) stained with blood. DC MacLennan said they await lab results but that it is presumed to be the blood of Mr. Anderson on Mr. Ladelpha's socks. He reiterated that nobody else was injured or was found bleeding.

[20] On cross-examination DC MacLennan agreed that there was no blood found on Mr. Ladelpha. He thought Mr. Ladelpha wore a slip on shoe and agreed no blood was found on his shoes.

[21] DC MacLennan agreed that none of the statements say Mr. Ladelpha struck the victim. He agreed the guards could not see into the cell. He said that only one inmate, Andrico Crawley, provided a statement.

[22] DC MacLennan conceded that it was possible Mr. Ladelpha merely watched the assault. He agreed that for a brief moment the door to Mr. Anderson's cell was opened and that two inmates – neither of them being Mr. Ladelpha – can be seen on the video assaulting Mr. Anderson.

[23] DC MacLennan noted that Mr. Ladelpha was found at the scene of a January 23, 2019 disturbance at 2013 Gottingen Street. He said the apartment where he was found was known because of the high volume of calls to police concerning drugs and violence. On this occasion there was an incident which led to an arrest for among other crimes, attempted murder. It was alleged Mr. Ladelpha was involved in a physical altercation with the victim; however, this could not be corroborated and he was not arrested. Mr. Ladelpha refused to answer questions from police concerning this matter.

Exhibits 3, 4, 5 and 6

[24] The above exhibits were introduced by the Crown by consent; namely:

3. Bail Report Summary - JEIN Person ID 710680 (Colin Ladelpha);
4. Ladelpha Recognizance dated July 23, 2018;
5. Ladelpha Recognizance dated January 25, 2019; and
6. Ladelpha Recognizance dated March 21, 2019.

Defence

Proposed Surety -- Shawna May Berlemont

[25] Ms. Berlemont met Mr. Ladelpha from seven to ten years ago through her husband, Gunnar Berlemont. Ms. Berlemont is 26 years old, approximately seven years younger than her husband and six years younger than the accused. Mr. and Ms. Berlemont live at 5184 Chester Road, Highway 14, Hants County, Nova Scotia. A friend, Ryan Alexander (close in age to Mr. Berlemont and Mr. Ladelpha) also lives at the residence. Both Mr. Berlemont and Mr. Alexander are known to police and on cross-examination their Bail reports (exhibits 7 and 8) were reviewed with Ms. Berlemont. Ms. Berlemont agreed her husband, were it not for his criminal record, would likely be Mr. Ladelpha's proposed surety.

[26] On cross-examination Ms. Berlemont admitted that she did not know of her husband's trouble with the law dating back to 2007, noting she would have just met him around that time. As for Mr. Alexander's problems with the law, she had no details as she just met him this past summer.

[27] The Berlemont residence is a six-bedroom home located on the Oulton's Farms property. Mr. and Ms. Berlemont and Mr. Alexander rent from Mr. Alexander's boss, the owner of Oulton's Farms. They have lived there since July, 2019. Ms. Berlemont said that she and her husband have cleared out a spare bedroom off the main entry of their home, which is intended for Mr. Ladelpha. Ms. Berlemont said she is home almost all the time tending to household chores and several pets.

[28] Ms. Berlemont demonstrated through her evidence that she understands the role of a surety, agreeing on cross-examination that she would be Mr. Ladelpha's jailer in the community. Apart from her clothes and jewelry, Ms. Berlemont said her only asset is her 2010 KIA Forte with 163,000 kms. She bought this last October for \$4,200 and has had a lot of work done on it since such that she estimates its value between \$4,000.00 and \$5,000.00. She understands that if she becomes Mr. Ladelpha's surety and if he breaches, she "would have to hand over that amount

[referring to the car value] and Colin [Mr. Ladelpha] would go to jail”. Ms. Berlemont said it would “ruin me” if her car was taken away, noting the rural setting of her rental accommodation.

[29] On cross-examination she agreed her car gives her a sense of freedom and that she greatly values the independence it provides her with.

[30] Ms. Berlemont said that if Mr. Ledelpha lived with her the main concern would be keeping him on track. She acknowledged he has an extensive criminal record and believes Mr. Ledelpha has had mental illness as well as drug and alcohol addiction.

[31] Ms. Berlemont admitted there would be a strain on her marital relationship if things did not go well. She said she has discussed the prospect of being Mr. Ladelpha’s surety at length with her husband and stated that if she had to call police her husband said “you’re hurting my brother”, referring to Mr. Ladelpha. She added that her husband would probably be upset with her if she had to report a breach by Mr. Ladelpha to police.

[32] On cross-examination she said her husband “might feel hurt” if she reported Mr. Ladelpha. She added he would be upset, albeit, “he would fully understand”.

[33] Ms. Berlemont is aware of Mr. Ladelpha’s past breaches but cannot speak to his relationship with his former surety, his mother, Karen Ladelpha.

[34] She said that if Mr. Ladelpha comes to live with them she expects he will help out with the farm chores. She added her husband and Mr. Ladelpha are welders and she hopes Mr. Ladelpha can get on a path of success.

[35] Ms. Berlemont acknowledged both her husband and Mr. Alexander have substance abuse issues. They had been a “dry house” this past summer; however, they now drink beer and use cannabis in the home on the weekends.

[36] On re-direct examination she said both her husband and Mr. Alexander were seeing counsellors and both attended Alcoholics Anonymous.

[37] Ms. Berlemont said she last saw Mr. Ladelpha (on perhaps 6 – 12 occasions) in September and October, 2019. This is when their house was dry; she did not see Mr. Ladelpha consume illicit substances.

[38] She said that although she did not get every detail, Mr. Ladelpha told her he breached 13 court orders in the past. She thought it was a mistake during one of the times he did not show up when ordered to jail. Ms. Berlemont said she has discussed with Mr. Ladelpha his drug and alcohol problems “a little, over the phone” since last seeing him in the fall of 2019.

POSITION OF THE PARTIES

Defence

[39] The Defence acknowledges Mr. Ladelpha has recently failed by breaching bail conditions. His mother, Karen Ladelpha, was characterized as an inappropriate surety for allowing these breaches to occur and not reporting to police.

[40] Ms. Berlemont was contrasted as a very forthright proposed surety who is aware of her obligations. Notwithstanding her husband’s acknowledged influence, the Defence submits Ms. Berlemont made it clear she would report any breach.

[41] The Defence asserts that Mr. Berlemont’s and Mr. Alexander’s alcohol and drug issues are being addressed and in any case, do not impact Ms. Berlemont’s ability to monitor Mr. Ladelpha.

[42] The Defence stressed how important Ms. Berlemont’s car is to her and that she knows the stakes are high because she would have to give the car up if Mr. Ladelpha breaches.

[43] The Defence noted Mr. Ladelpha’s involvement in the Gottingen Street matter did not result in any charges for him. Further, the incident did not involve anyone alleged to be involved in Mr. Ladelpha’s current matters before the court.

[44] The Defence acknowledged the current matters are very serious offences but that the circumstances do not support Mr. Ladelpha’s involvement. They argued Mr. Ladelpha was more of a spectator or observer and that there is no evidence he conspired or was involved in the altercation. Whereas the gravity of the offence is serious, the Defence argues the Crown has a weak case with regard to Mr. Ladelpha.

[45] The Defence posits a plan whereby Mr. Ladelpha will live at the Berlemont residence with house arrest conditions. The only exceptions will relate to potential work, education or treatment. There will be a drug and alcohol prohibition. Ms. Berlemont will pledge \$5,000.00 in personal property. The defence submits she is

an appropriate surety and that Mr. Ladelpha can be managed in the community with no risk that he will not show up for Court.

Crown

[46] The Crown characterizes Ms. Berlemont as giving straight-forward evidence but says it is apparent she is “getting a gentle push from behind from her husband and Mr. Alexander”. The Crown notes Mr. Berlemont, Mr. Alexander and Mr. Ladelpha all have alcohol issues and have had run-ins and demonstrated disrespect for the law. Further, all three have recently breached Court orders. The Crown makes the point that the proposed residence is no longer dry and that overall, “there is a great deal for this surety to deal with”.

[47] The Crown emphasizes the importance Ms. Berlemont places on her vehicle and submits that by Ms. Berlemont’s own evidence that it would be “catastrophic” if she lost the vehicle.

[48] Mr. Ladelpha’s record of 13 breaches was reviewed to underscore the point that he is simply not manageable in the community. Despite good intentions, the Crown submits that Ms. Berlemont would not be able to control the situation particularly given her admission that her husband would be upset with her if she called police.

[49] The Crown went through the three grounds summarizing:

- Mr. Ladelpha has consistently failed to show up for Court ordered appearances;
- that his breaches are recorded criminal offences, albeit for the most part they are not violent crimes; and
- given the evidence placed before the Court it is apparent Mr. Ladelpha is guilty of conspiracy to commit murder.

[50] The Crown notes that the grounds are not independent of one another and “grounds for one can be used in the next”. They note the charges before the Court involve serious crimes and that federal time is the likely outcome. The crime was characterized as a gang beating with Mr. Ladelpha having an integral role.

The Canadian Charter of Rights and Freedoms (Charter)

[51] Sections 11(d) and 11(e) of the *Charter* state:

11. Any person charged with an offence has the right

...

(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

(e) not to be denied reasonable bail without just cause;

...

[52] Mr. Ladelpha has significant constitutional protections that influence his pre-trial freedom.

Section 515(10) of the *Criminal Code*

[53] Section 515(10) of the *Criminal Code* sets out the three grounds for consideration in determining judicial interim release:

(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.

Burden of Proof – Reverse Onus

[54] In this case the parties agree and I find that Mr. Ladelpha bears the burden of proof of showing why he should be released. This is on account of s. 515(6) of the *Criminal Code* which lists certain circumstances in which the accused shall be detained unless they have shown cause why their detention is not justified. In Mr. Ladelpha's case he is charged with indictable offences alleged to have occurred while he was on remand.

Supreme Court of Canada Guidelines

[55] The Supreme Court of Canada has established clear guidelines for bail in a number of cases: *R. v. Pearson*, [1992] 3 SCR 665; *R. v. Morales*, [1992] 3 SCR 711; *R. v. St. Cloud*, 2015 SCC 27; *R. v. Antic*, 2017 SCC 27; *R. v. Oland*, 2017 SCC 17; *R. v. Myers*, 2019 SCC 18.

Section 515(10) Analysis

Section 515(10)(a) - where the detention is necessary to ensure his or her attendance in court in order to be dealt with according to law

[56] In assessing the above I am mindful of Mr. Ladelpha's recent track record of not showing up for scheduled Court ordered appearances. The exhibits in evidence confirm 13 breaches of Court orders within the last ten years. Mr. Ladelpha has demonstrated a habitual pattern of not showing up for scheduled Court or jail. He has flouted past house arrest being picked up at large and under the influence of alcohol.

Section 515(10)(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

[57] The Crown emphasizes the first and last part of the above clause. They point to Mr. Ladelpha's prior record of associating with the criminal element as demonstrated by the January 23, 2019 disturbance on Gottingen Street. Nevertheless, the Defence has pointed out the fact that Mr. Ladelpha was not charged.

[58] On the secondary grounds, I am mindful of *R. v. Budge*, [2012] OJ No.2538 and Justice Durno's comments at paras. 59 – 60:

The factors to be considered on this ground include: whether the accused has a criminal record and if so, for what offences, the sentence imposed and the dates of entry. Is the applicant currently subject to any court orders? Are there any outstanding charges, and if so, what are the offences? Does the applicant have legitimate employment to go to? What's the plan of release? Who are the sureties? What are the amounts proposed? Are there concerns based on the accused's background and/or 'personality'. Or as Justice Trotter puts in his text, are there concerns about the stability of the person. Finally, whether there are concerns for interference with the administration of justice.

[59] Justice Durno relied on Justice Hill's decision from *R. v. Whervin*, [2006] OJ No. 443 in noting that the secondary grounds are a two-step analysis:

First, is there evidence from it can be concluded the accused has engaged in an ongoing criminal lifestyle. If the answer to that question is yes as it unquestionably is here, (see *Budge* at para. 64), that does not dictate detention. There is no authority I am aware of that requires a person who has engaged in serious criminal activity must be detained on that finding alone. That finding refers to past conduct. The secondary ground involves the prediction of future conduct, or more appropriately, a risk of future offences or interferences with the administration of justice. There is a second step; the step Justice Hill found was met in *Whervin*. Depending on the onus...has the applicant established he will probably not engage in any criminal activity and probably not interfere with the administration of justice if released. Answering these questions requires an examination of the applicant, the sureties, the amount and the plan. If the onus is not met, the applicant is detained.

[60] For reasons that I will explain, I have grave concerns when I prognosticate the future conduct of Mr. Ladelpha under the proposed plan.

Section 515(10)(c) - if the detention is necessary to maintain confidence in the administration of justice, having regard to all the circumstances.

[61] The *Criminal Code* sets out four grounds for consideration in the tertiary ground, s. 515(10)(c):

- (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.

[62] In *St. Cloud*, Wagner J. (as he then was) spoke for the unanimous court and explained the proper application of s. 515(10) (c) of the *Criminal Code* at paras. 57 – 67, which I have borne in mind on this application.

[63] Justice Wagner later summarized the essential principles that must be considered when applying s. 515(10)(c):

[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.

[64] Justice Wagner then concluded this summary by pointing out:

[88] In conclusion, if the crime is serious or very violent, if there is overwhelming evidence against the accused and if the victim or victims were vulnerable, pre-trial detention will usually be ordered.

ANALYSIS

(i) The apparent strength of the prosecution's case

[65] I am particularly mindful of the video (exhibit 1) and photographic (exhibit 2) evidence in assessing the strength of the prosecution's case. Just because Mr. Ladelpha cannot be observed committing the assault does not mean the Crown does not have a strong case. Indeed, I am of the view that the totality of the evidence demonstrates as the Crown has submitted that Mr. Anderson was the victim of a gang beating and that Mr. Ladelpha played an integral role in this. In my view, Mr. Ladelpha's movements on the video can be objectively and reasonably viewed such that a strong inference arises that he was party to the attempted murder of Mr. Anderson and that he was a part of the conspiracy behind the jail cell assault. To put things another way, I cannot accept on the basis of the video evidence that Mr. Ladelpha was a mere spectator or observer. In this regard, Mr. Ladelpha was clearly one of the attendees in Mr. Cox's cell immediately before the beating occurred. I regard this meeting as an extremely important event in the context of the charges because it is evidence that the inmates, including Mr. Ladelpha, conspired in advance of the beating.

[66] Shortly following the meeting Mr. Ladelpha exits his cell and makes a "beeline" to Mr. Anderson's cell. The video clearly shows Mr. Ladelpha picking up the pace to get into Mr. Anderson's cell before the door is shut and the mayhem ensues. While DC MacLennan acknowledged it is possible that Mr. Ladelpha was a mere observer, on all of the evidence I find this to be a stretch. Rather, I am of the view that Mr. Ladelpha's later recovered bloody socks are confirmation that there is a strong likelihood that he was directly involved in the attempted murder of Mr. Anderson.

(ii) The gravity of the offence.

[67] The parties agree that the offence of attempted murder is indeed a grave offence, attracting significant federal jail time. In *R. v. Oland*, 2017 SCC 17 (SCC), Moldaver, J. for the Court said this at para. 37:

[37] In assessing whether public confidence concerns support a pre-trial detention order under s. 515(10)(c), the seriousness of the crime plays an important role. The more serious the crime, the greater the risk that public confidence in the administration of justice will be undermined if the accused is released on bail pending trial. So too for bail pending appeal. In considering the public confidence component under s. 679(3)(c), I see no reason why the seriousness of the crime for which a person has been convicted should not play an equal role in assessing the enforceability interest.

(iii) The circumstances surrounding the commission of the offence, including whether a firearm was used.

[68] No firearm or other weapon is alleged to have been used by Mr. Ladelpha during the commission of these offences.

(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.

[69] Once again, the parties agree that the charged offences are such that if Mr. Ladelpha is convicted he will be subject to lengthy federal incarceration.

FURTHER DISCUSSION AND DISPOSITION

[70] In assessing this matter I am mindful of the direction from the Supreme Court of Canada with regard to the relevant *Criminal Code* provisions applied to all of the evidence. When I consider all of the circumstances I am not persuaded that Mr. Ladelpha has made the case for bail.

[71] Mr. Ladelpha has been charged with very serious offences warranting significant jail time if convicted. These offences were carried out while he was on remand. Mr. Ladelpha has a long and recent history of breaching orders. He has consistently disrespected the Court's direction to report. While on house arrest he

has been caught away from the designated address and under the influence of alcohol.

[72] I return to the questions suggested by Justice Durno in the *Budge* case. Mr. Ladelpha does not have legitimate employment to go to. The plan of release is spotty; all we have is Ms. Berlemont's testimony that she will do her level best to keep a handle on Mr. Ladelpha. While in no way questioning Ms. Berlemont's sincerity, the Court has to question the viability of the plan. By her own evidence Ms. Berlemont raised the spectre that if she had to call the police this would make her husband angry.

[73] The Berlemont household is already two-thirds occupied by men with criminal records along with drug and alcohol issues, problems which have plagued Mr. Ladelpha. Critically, the proposed residence is no longer drug and alcohol free.

[74] I have concerns regarding any plan of release for Mr. Ladelpha when I consider his background and demonstrated personality. Ms. Berlemont worries about his mental health and actually referenced past suicidal ideation. Mr. Ladelpha demonstrated just 13 months ago that he was associating with the criminal element. We have DC MacLennan's evidence regarding the address in question and Mr. Ladelpha being found there with known criminals.

[75] When I consider all of the circumstances, I simply cannot trust Mr. Ladelpha with any kind of freedom at this time. In my view were I to grant bail there would indeed be a substantial likelihood that he would commit a criminal offence. On balance, Mr. Ladelpha's case represents one of those rare instances when the Court must assert that the reasonable person's confidence in the administration of justice will be undermined if it declines to order detention where it is clearly justified. In the result, I hereby deny the bail application.

Chipman, J.