

Citation: *R. v. A.B.W.*, 2021 YKTC 58

Date: 20211102
Docket: 21-03500
21-03515
21-03516
21-03518
21-03519
20-03530
Registry: Whitehorse

YOUTH JUSTICE COURT OF YUKON
Before His Honour Chief Judge Cozens

REGINA

v.

A.B.W.

Publication of information identifying the young person charged under the *Youth Criminal Justice Act* is prohibited by s. 110(1) of that *Act*.

Publication of information that could identify the complainant or a witness is prohibited by s. 111(1) of the *Youth Criminal Justice Act*.

Publication of information that could identify the complainant or a witness is prohibited pursuant to s. 486.4 of the *Criminal Code*.

Appearances:

Melissa McKay

Gregory Johannson (by telephone)

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] COZENS C.J.T.C. (Oral): A.B.W. has been charged on a number of Informations.

[2] At the outset of my oral decision, I stated that I retained the right to edit the decision if a transcript was to be prepared. As a transcript was ordered, I subsequently

reviewed the transcript, and have made such changes as I believe are required to ensure that the transcript of my decision was able to be read more easily and in context, including moving subsequent discussions about a term of the release order into an area of proximity within the decision to the term being discussed. I have also made other minor alterations, such as using initials instead of "him" for example, and deleting unnecessary and extraneous comments. None of the alterations that I have made, however, in any way impact upon the substantive aspects of my decision.

[3] With respect to Information 20-03530, A.B.W. is charged with uttering a threat to M.S. to cause bodily harm to E.F., contrary to s. 264.1(1)(a) of the *Criminal Code*. The alleged circumstances are that on or about March 15, 2021, A.B.W. communicated a threat to M.S. to beat up, kill, jump, and stab E.F. A.B.W. is 13 years old. E.F. is 15 years old. A.B.W. asked M.S. to arrange to meet with E.F. at a location where he and "his boys" would beat up E.F. M.S. believed that A.B.W. was serious when he told her that he would stab E.F. and he did not care if he got into trouble. E.F. said that A.B.W. had threatened him before. The Crown has elected to proceed by way of summary election. No plea has been entered on this charge. A.B.W. was released on an undertaking on March 17, 2021.

[4] A.B.W. is then charged on Information 21-03500 with having committed the offence of sexual assault against K.B.

[DISCUSSIONS]

[5] The alleged circumstances are that on March 28, 2021, K.B., who is 15 years old, told the RCMP that on March 16, while at A.B.W.'s residence, he pinned her down,

removed her pants, and forcibly had vaginal intercourse with her over her protests while continuing to pin her down by her arms. This occurred for approximately 10 minutes. No condom was used. DNA evidence has been obtained and sent for analysis, and text messages are available which show A.B.W. admitting to having had sex with K.B. They were friends before that, but were not in an intimate relationship. The Crown has elected to proceed by way of indictable election. A.B.W. has entered a not guilty plea to this charge. He was released on an undertaking on March 28, 2021. This undertaking was only in relation to this offence and did not replace the undertaking for the previous s. 264.1(1) offence.

[6] Information 21-03515, alleges offences with a co-accused, N.C., contrary to ss. 88 and 90 of the *Code*. A.B.W. is separately charged with offences under s. 270(1)(b), and two offences under s. 129(a).

[7] The alleged circumstances are that on May 17, 2021, RCMP were responding to a complaint that there was a group of youths on Front Street, and that one of the youths had pulled out a knife. Cst. Lightfoot attended and located N.C., the youth alleged to have had a knife. N.C. attempted to flee from Cst. Lightfoot by struggling, and in the course of that struggle, N.C. pulled out a knife. Cst. Lightfoot took him to the ground. While on the ground, A.B.W. intervened and pushed Cst. Lightfoot twice and pulled at him. Backup RCMP arrived as Cst. Lightfoot was telling A.B.W. to stand down. A.B.W. is alleged to have taken a fighting stance and said, "Come on nigger". A.B.W. then fled from Csts. Locke and Leary before he was ultimately arrested by them shortly afterwards.

[8] Civilian witness D.P. said that he had seen N.C. and A.B.W. outside Tim Hortons. He got into an argument with A.B.W., and A.B.W. pulled out a knife and chased him.

[9] The Crown has elected to proceed by way of summary election. Not guilty pleas have been entered by A.B.W. on the ss. 88, 90, and 270(1)(b) charges. He was released on a release order on May 18, 2021, in respect of all the Informations that I have noted.

[10] An intervening incident was placed before me that provided other information regarding A.B.W. that did not result in charges. It is in the form of an e-memo dated July 7, 2021, prepared by the Crown based on information from Probation Officer Mike de Koning. Reading a couple of the excerpts in paragraphs 3, 4, and 5, Mr. de Koning had said:

In April I mentioned in a meeting with [A.] that most kids who utter threats don't actually intend to follow through with violence, but rather are cathartically venting anger. His response, while alluding to a specific past event, was that he absolutely would have stabbed the peer in response to the perceived injustice committed by the peer and that, "I'm not afraid to stab someone."

Only two weeks ago, a youth attendee at the YAC [Youth Achievement Centre] complained to a program facilitator that [A.] and a friend threatened him at a party the night prior with what was described as a 12 inch knife. Police were notified, but I am unsure if any charges will ensue.

In several conversations I have had with [A.], he has alluded to past events where he "jumped a guy" in response to a perceived injustice or that he held bear spray at someone he felt threatened by. ...

[11] Information 21-03516, alleges offences committed on August 14, 2021, contrary to ss. 88, 90, and 267(a) of the *Criminal Code*, as well as s. 264.1(1)(a) and s. 145(5)(a) offences. The Crown has proceeded summarily on this matter.

[12] The allegations are that A.B.W. was at the skate park in Whitehorse on August 14, 2021. In the course of a dispute with D.W., he pulled out what was stated to be a black Glock handgun after an altercation, and pointed it at D.W.'s head from about two feet away. He threatened to shoot D.W. in the head and kill him. There was a civilian witness who confirmed this. On August 23, A.B.W. repeated his threat to D.W. and said he should have shot him at the skate park. I note that there is no indication if the RCMP ever obtained a warrant to search for the alleged handgun. D.W. said he believed the handgun was real, and he believed that A.B.W.'s threat to kill him was real. The Crown has proceeded by way of summary election. No pleas have been entered on these charges. A.B.W., with the consent of the Crown, was released on a release order with his mother as surety on August 26, 2021. This release order was in respect of all Informations before the Court. I note that the release order included Information 21-03502, which was replaced by Information 21-03515, but had not yet been withdrawn.

[13] Information 21-03519, alleges an offence contrary to s. 266 committed on September 3, 2021. The Crown has reserved its election on this file. The allegations are that at about 3:30 p.m. on that day, the RCMP responded to a complaint of an assault on Second Avenue. The complainant, L.N., stated that A.B.W. had punched him in the right eye, injuring him. A.B.W. was identified by L.N. at the RCMP detachment. There is no information before me as to whether A.B.W. knew L.N.,

although it would seem to me that the need for the complainant to attend at the RCMP to identify A.B.W. would support an inference that they certainly were not well known to each other, if known at all. The Crown has reserved its election on this Information. A.B.W. was released on an undertaking to a police officer on September 6, 2021, on this Information only.

[14] Information 21-03518 alleges offences committed on September 15, 2021, contrary to s. 267(a) (x2), and s. 88. Crown has again reserved election on this file. The allegations are that the RCMP, at about 3:00 p.m., responded to a complaint on Main Street that two youths had bear-sprayed two people, being B.K. and L.K., with a third person accidentally sprayed as well. A.B.W. was arrested at the scene, seemed surprised by his arrest, and his initial cooperation turned to uncooperativeness to the point where several police officers had to take him to the ground. When he was being read his rights, he said, "I don't give a fuck" and "Eat shit" to the police officers.

[15] Counsel for A.B.W. states that a likely self-defence issue will be raised, as this may be a vigilante justice attack related to the allegation of sexual assault. That said, the fact that even if it is self-defence, there may be an issue raised as to why A.B.W., who was under a no-weapons condition at the time, would have been in possession of bear spray, even for the need to defend himself. That is a matter for trial, should it get there.

[16] A.B.W. has remained in custody since his arrest on that day.

[17] The plan in brief proposed before me, at its core, is that A.B.W. will, at some point, attend for residential treatment at Ranch Ehrlo in Saskatchewan. No start date is

available. It appears he has been approved for attendance, and will be attending, but is simply awaiting the funding to allow for his attendance. The Crown has indicated its consent to release A.B.W., if the release plan is for him to attend at Ranch Ehrlo.

[18] The Crown is opposed to A.B.W.'s release not on the primary grounds, but on the secondary and tertiary grounds, as I understand it, in the absence of a plan such as his attendance at Ranch Ehrlo and, I would assume, "or equivalent," but no equivalent was placed before me.

[19] The plan proposes that, in the interim, A.B.W. would reside under house arrest at his mother's residence in a line-of-sight supervision until he goes to Ranch Ehrlo. His mother testified, and I have no doubt that she would make every effort to fulfill her obligations as a surety. I note that the previous release order in which she was a surety had a curfew only, and the alleged subsequent offences occurred outside of curfew hours when A.B.W. was lawfully in the community. She also indicated that she would and has called the police before if he were to violate any of the terms of the release order.

[20] There was some discussion about A.B.W. attending at the Youth Achievement Centre ("YAC"), but that would not be in line of sight of his mother. He would then be subject to the authority of the YAC. No one was present from the YAC to say how they would supervise A.B.W. I certainly have a concern about the difference between line-of-sight supervision under his mother as the surety, and with respect to him being at the YAC under the supervision of the individuals there, and their ability to perhaps enforce any of the terms, or at least ensure they are being complied with.

[21] I note that A.B.W.'s mother stated that he responds well to her, and that may be true while in her presence, but she has also agreed with the assessment that took place, with what it states are a lot of the issues that arise with A.B.W. The concern for me is how well A.B.W. is prepared to actually comply.

[22] There was a s. 34 Risk Assessment Report (the "Report"), that I will go through in some detail. It states at the outset that:

The purpose of this assessment report is to determine the subject's suitability for being released on bail and for risk mitigation strategies for when/if he will be released back into the community.

[23] I note on page 3, dealing with current psychological test results, that Ms. O'Donnell, who prepared the Report, and who is a clinical counsellor of the Forensic Complex Care Team at Mental Wellness and Substance Use Services, indicates that:

...[A.]'s responses were considered valid. [A.] endorsed items probing *Atypicality, Social Stress, Anxiety, Depression, and Self-Esteem* in a **Clinically Significant range**. [A.] endorsed *Attitude to Teachers*, meaning that he considers his teacher(s) to be unfair, uncaring, and/or overly demanding in the At-Risk Range. He endorsed items probing *Locus of Control, Somatization, Anger Control, Mania, and Ego Strength* in the **At-Risk range**. Overall, his scores indicated a Depressive, Anxious, Socially stressed and poor self-esteem presentation.

[24] Under the Parent/Caregiver Report on page 4:

...Ms. [W.] [A.'s mother] endorsed items probing *Conduct Problems*, in the clinically significant range. Ms. [W.] endorsed *Hyperactivity, Anxiety, Depression, Atypicality, and Attention Problems* in the At-Risk range. On the Content Scales, Ms. [W.] scores indicated At-Risk difficulties in *Bullying, Developmental Social Disorders, Emotional Self-Control, and Negative Emotionality*. On the Executive Functioning Index, Ms. [W.] endorsed Extremely Elevated concerns related to: *Attentional Control*

(distracted, trouble following directions and unable to focus attention on any single task for an extended period of time), and *Behavioural Control* (maintaining self-control and difficulty regulating impulsive behaviours). Ms. [W.] endorsed elevated concerns related to *Emotional Control* (outbursts, sudden/frequent mood changes and/or periods of emotional instability).

[25] The risk assessment results, which were considered valid only for six months and were noted earlier as having some limitations with respect to A.B.W.'s use of substances that may have affected what is still nonetheless considered a valid assessment of his risk, had a number of risk factors identified in the historical, social contextual, individual, clinical, and additional range. Noted as critical within these ranges were his history of violence, being a static risk factor, and his history of non-violent offending, also a static risk factor.

[26] I will say that notwithstanding that A.B.W. has no criminal history before this Court, in these two categories A.B.W. and his mother acknowledged at least three acts of violence, and five acts of non-violent offending.

[27] With respect to early initiation of violence with an acknowledgement that his first known violent act occurred prior to age 11, this static risk factor was considered a critical factor.

[28] There are other factors that I am not noting here and that are not noted as critical, and for the purposes of this oral decision, I am not going to state them.

[29] There is the factor of early caregiver disruption, as a static risk factor coded as a critical factor. I do note that A.B.W. was raised by his mother. His father was not

present in his life, and was just becoming present when he was the victim of a homicide in Quebec not all that long ago.

[30] In the category of social contextual risk factors, there is also peer rejection, being a dynamic risk factor, noted as being a critical factor. There is peer delinquency, as another dynamic risk factor that is a critical factor. A.B.W.'s frequent association with criminal or anti-social peers is very much a part of the context in which he finds himself before the Court facing so many charges. Another dynamic risk factor is stress and poor coping.

[31] Poor parental management is a dynamic risk factor, because there has been somewhat inconsistent parental management, and the lack of personal and social support.

[32] A critical factor is negative attitudes that are supportive of crime or violence. It is a dynamic risk factor. It is a critical one. Risk-taking is a dynamic risk factor. Substance use difficulties is another dynamic risk factor that is noted as being critical. Anger management problems is a dynamic risk factor, as are low empathy and remorse.

[33] An additional risk factor — and this is of considerable note — is impulsivity. And it notes that A.B.W. exhibits significant impulsivity problems. This is a dynamic risk factor that is malleable and changeable. It has been quoted as being a critical factor in relation to A.B.W.'s violent recidivism.

[34] There are protective factors identified such as his involvement in recreational activities, in particular hockey, although in the current circumstances, he is not registered and not going to be in a situation where he is playing hockey. There are other strong social supports and attachment and bonds with his mother. There appears to be a positive attitude towards intervention and authority in relation to remediation and authority figures, but this seems somewhat counterintuitive, since some of the negative areas that were raised before are with his approach to authority figures. This is a critical factor. He does also exhibit positive and resilient personality characteristics, quoted as being a critical factor. He has some self-generated insight that has been quoted as being a critical factor.

[35] The key factors related to risk for further violent behaviour were noted as follows: A.B.W. appears to have cognitive distortions about violence and aggression. His first violent act was prior to the age of 11 years old. He has a history of violent behaviour. He is frequently associated with criminal and anti-social peers. He continues to experience conflict with other peers where acts of violence have been threatened towards him. He appears to appreciate the harm his actions have caused to others. He regularly uses illegal psychoactive substances. He has problems with impulse control. He subscribes to some anti-social beliefs. He struggles with his self-esteem.

[36] Factors that mitigate the risk for further violent behaviour for A.B.W. are that, although there appears to be cognitive distortions about aggression and violence, he does not appear to have entrenched anti-social attitudes and beliefs. He identifies having strong social support. He enjoys playing in organized activities such as hockey. He enjoys being employed and learning hands-on skills, and is committed to graduating.

He states that he has made efforts to associate with pro-social peers. He has goals for a future that involve long-term planning. He has some insight into his violent, aggressive behaviour, and he is willing to attend in-patient treatment, and attend counselling and life skills programming.

[37] The conclusion as to risk is that A.B.W. was deemed to be in the moderate risk category for future violence at the time of this assessment, if no efforts were made to manage his risk, which of course, if efforts were made to manage his risk, would logically have the potential to reduce his risk from moderate.

[38] I do note, as stated in the assessment, that the risk assessment was done with "...none of Mr. [W.'s] current criminal charges before the court being taken into consideration when the evaluator was conducting this assessment, as they have not been adjudicated to date".

[39] The recommendations at the conclusion of the report were that A.B.W. be supervised by an approved adult at all times while in the community and outside his residence; that he and his mother receive parental support through the Child Youth Family Treatment Team at Mental Wellness Substance Use Services or a similar provider; that he attend an in-patient youth program to address substance use issues, grief, and behavioural issues; that he undergo a psycho-educational assessment to determine if he requires extra support in school; that he be referred to an adolescent psychiatrist for an assessment specifically ruling out Axis I disorders in the DSM-5 — depression, anxiety, post-traumatic stress disorder, and attention-deficit/hyperactivity disorder — and Axis II disorders in the DSM-5 — being conduct disorder — and that he

participate in aggression replacement training, as it is specifically designed to assist youth 13 to 18 years of age with aggressive and violent behaviour.

[40] I note that with respect to the actual treatment aspects of these recommendations, these interventions are likely to be available at Ranch Ehrlo, and it is likely the case that minimal if any progress on any of these, from the in-patient, psycho-education, attendance with a psychiatrist, and aggression replacement training, can be made with A.B.W. in Whitehorse in the interim while he is awaiting attendance at Ranch Ehrlo. It is because we do not have this type of programming that youth from the Yukon go to places such as Ranch Ehrlo, where they are able to get this kind of programming.

[41] There is a case, *R. v. K.F.*, [2021] O.J. No. 4546 (O.N.C.J.), from April of this year, that sums up some of the legal considerations in considering release of a youth, who was 17 years old in that case. Starting at para. 34 - and I am going to read more of this, because rather than reduce it into my own words, as it says what I would have otherwise tried to frame:

34 I often state when presiding in bail court that my role is not to make any findings of guilt or innocence; I am not the trier of fact in this case. Rather, I see my role as a trier of risk. The function of the bail court is not to punish the accused for crimes which he is alleged to have committed, but rather to assess the risk to public safety and the risk of loss of public confidence in the administration of justice posed by K.F.'s release on bail and also determine whether conditions can be crafted to ensure that he will not re-offend or interfere with the administration of justice and attend court.

[42] The Court goes on to say:

35 The Charter of Rights and Freedoms and abundant case law on the subject of bail supports the conclusions that:

- * The accused is presumed innocent of these offences and that a reasonable bail shall not be denied without just cause;
- * Pre-trial custody is truly a last resort. Liberty deprived can never be regained and is lost forever;
- * There is no category of offence for which bail is not a possibility;
- * Bail will be denied only in a narrow set of circumstances;
- * Detention must be necessary, not merely advisable;
- * The right not to be denied bail recognizes the right to a fair trial before punishment;
- * The *cardinal rule* of bail is that pre-trial release should be the norm, detention must be the exception and that release should be favoured at the earliest reasonable opportunity and on the least onerous conditions.

36 There is an inherent tension in the bail court, however. The rights of an accused are not absolute and must be balanced against the community's right to public safety and security and the expectation that society has trust and confidence in the administration of justice.

[43] The Court considers key observations with respect to the *Youth Criminal Justice Act*, S.C. 2002, c. 1 (“YCJA”), on bail starting at paras. 37 to 39:

37 The YCJA fundamentally modifies the provisions for judicial interim release applicable to adults as a presumption in favour of release is much stronger. Further, the Supreme Court of Canada in *R. v. D.B.*, [2008] S.C.R. 3, recognized a diminished moral blameworthiness of young persons is a principle of fundamental justice given their level of immaturity, lack of experience and sophistication and diminished judgment making capabilities to appreciate the significance of poor decisions.

38 The preamble to the YCJA states that Canadian society should have a youth criminal justice system that “reserves its most serious intervention for the most serious crimes and reduces the over-reliance on incarceration for non-violent young persons”. “Further, the codified Declaration of Principles contained in s. 3 of the YCJA emphasize the promotion of rehabilitation and reintegration of young persons.

39 Young persons are entitled to enhanced procedural safeguards which prescribe that the onus for establishing that bail should be denied rests with the Crown. There is no reverse onus provision which establishes a presumption in favour of detention. Additionally, the gateway for detention is very narrow as are the grounds for detention. There is a prohibition against detention as a “substitute for appropriate child protection, mental health or other social measures”, a requirement further to seriously consider the availability of a responsible person as an alternative to detention as well as a bail de novo procedure before a Provincial Court Youth Judge prior to initiating a bail review at the Superior Court level.

[44] The bail regime in *YCJA* is found in s. 29(2) and (3). A young person can only be detained if all three requirements are met. And under the justification for detention in custody it states that:

29(2) A youth justice court judge or a justice may order that a young person be detained in custody only if

(a) [they have] been charged with

(i) a serious offence...

This applies here, because the category of there being a historical pattern of findings of guilt does not apply. Under the definition of serious offence, it is to be:

...an indictable offence under an Act of Parliament for which the maximum punishment is imprisonment for five years or more.

[45] That threshold has been established here on the charges that are before the Court, and the elections or the reserving of elections that the Crown has made.

[46] The grounds for detention under 29(2)(b) are that I must be:

...satisfied, on a balance of probabilities,

- (i) that there is a substantial likelihood that, before being dealt with according to law, the young person [either, (i),] will not appear in court...

- which is not an issue here, or:

- (ii) that detention is necessary for the protection or safety of the public, including any victim of or witness to the offence, having regard to all the circumstances, including a substantial likelihood that the young person will, if released from custody, commit a serious offence...
- (iii) in the case where the young person has been charged with a serious offence and detention is not justified under subparagraph (i) or (ii), that there are exceptional circumstances that warrant detention and that detention is necessary to maintain confidence in the administration of justice, having regard to the principles set out in section 3 and to all the circumstances, including
 - (A) the apparent strength of the prosecution's case,
 - (B) the gravity of the offence,
 - (C) the circumstances surrounding the commission of the offence, including whether a firearm was used, and
 - (D) the fact that the young person is liable, on being found guilty, for a potentially lengthy custodial sentence...

[47] Under subsection 3, there must be a clear finding that there is no viable alternative to detention, as stated in s. 29(2):

...

- (c) the judge or justice is satisfied, on a balance of probabilities, that no condition or combination of conditions or release would, depending on the

justification on which the judge or justice relies under paragraph (b),

- (i) reduce, to a level below substantial, the likelihood that the young person would not appear in court when required by law to do so,
- (ii) offer adequate protection to the public from the risk that the young person might otherwise present, or
- (iii) maintain confidence in the administration of justice.

[48] Finally, with respect to the law on this issue, at paras. 43 to 45, the main differences between the youth bail regime and the adult system are noted to be that the Crown always bears the onus of establishing that a detention order should be made, and there is never a reverse onus on the accused. This is pursuant to s. 29(3) of the *YCJA*. There was discussion on this yesterday. I said it was not clear what the answer was. However in reviewing this case and in reviewing the law, I note that s. 29(3) says:

The onus of satisfying the youth justice court judge or the justice as to the matters referred to in subsection (2)...

- which is the matters on which a youth may be detained in custody -

...is on the Attorney General.

[49] In the annotation, it notes that:

Bill C-10, (the *Safe Streets and Communities Act*, S.C. 2012) dramatically altered the law of judicial interim release in relation to young people. The former s. 29(2) ... had created a presumption against denial in the judicial interim release pursuant to s. 515(10)(b) ... Section 29(2) no longer contains this presumption and it creates a comprehensive scheme for judicial interim release: ...

[50] So, to make it clear, the onus is on the Crown in this case.

[51] Detention is only justified for a serious offence, defined in s. 2 of the *YCJA* as an indictable offence with a maximum sentence of five years or more. In here we have an indictable sexual assault, and we have assault with a weapon which is deemed indictable until Crown elects otherwise.

[52] Skipping the primary ground, the overarching standard in the secondary ground of the protection of the safety of the public remains from s. 515(10)(b), but the substantial likelihood of criminal offences now only relates to a serious offence, again, defined as an indictable offence punishable by at least five years.

[53] The tertiary ground is the same as for adults, except that it only operates against an accused if there are exceptional circumstances. Unlike the adult bail provisions, subs. (c) specifically requires the bail justice or judge to look at whether release conditions can reduce the risk on the primary, secondary, or tertiary grounds in order to permit release.

[54] The Court goes on to say at para. 44 that:

I believe that a reversal of the order of analysis for the grounds for determination appropriate in the circumstances because this case attracts strong secondary ground concerns and the tertiary ground for detention can be displaced...

[55] The Court at para. 45 goes on to consider the tertiary ground concerns and how they apply to the *YCJA*.

[56] I have a 13-year-old accused before me with no prior criminal history, although admitted incidents of violence occurred before the current charges. A.B.W. has been in custody since September 15, which is not an insubstantial period of time for a youth to be in custody who has never really been in custody before.

[57] I have a risk assessment that places him at moderate risk, which I am unsure exactly how to take, because there was no consideration of the alleged offences. It would seem to me that assessing an individual without any idea of what they have been accused of doing, must be different from assessing someone where they are not accused of anything. I do not actually know what to make of it, and that the moderate risk in this case is uncertain to me as to what it means.

[58] What I am clear on is that the moderate risk has the ability to be reduced if there is intervention, particularly if therapeutic intervention takes place. In my opinion, such intervention is unlikely to occur until A.B.W. attends at Ranch Ehrlo. I do not believe that the environment in Whitehorse right now with what we are able to offer in treatment, is able to make any probative inroads into the areas in which it is specifically recommended that A.B.W. have those inroads made.

[59] Of particular concern with respect to some of the risk factors is A.B.W.'s impulse control, which was noted as an additional factor. The plan that has him basically living 24/7 under his mother's line of sight until he goes to Ranch Ehrlo is not the most ideal situation with respect to dealing with someone like A.B.W. who has, both by his mother's input and by the report itself, difficulty with impulse control.

[60] There are numerous allegations against A.B.W. after being released on court-ordered conditions. I have no problem believing that his mother's expectations were, as communicated to A.B.W., that he comply with his requirements. However, there are a lot of allegations that would seem to show, if proven, that he did not do so. His mother's ability to supervise him while in line of sight may not be the same if he is not in line of sight.

[61] A.B.W.'s bravado attitude that seems to be exhibited in some of these allegations - again allegations only - and the non-contentious factor that peer pressure, and negative peer associations, are problematic for A.B.W. has a significant impact here.

[62] In my opinion, the risk of A.B.W. committing or being alleged to have committed further serious offences is significant. I recognize that the incident at the skateboard park about a gun is not necessarily strong, as I am not sure that the Crown is going to be able to prove it was a firearm. However, the fact is that they may be able to prove something that certainly is still significant with respect to the threats that were uttered. I recognize that self-defence may be an issue on the latter set of charges, but that still does not explain why, even if self-defence is raised and that bear spray is used, A.B.W. would lawfully have the bear spray in his possession, which is problematic, especially in light of some of the admissions that he seems to have access to bear spray.

[63] In my opinion, A.B.W. needs intervention. We all agree on that: the Crown, defence, and myself. I am not satisfied that the short, sharp shock that he has had now is a sufficient intervention to provide the necessary assurances regarding his risk

mitigation. In my opinion, without ongoing current risk intervention of the kind that is available at Ranch Ehrlo, A.B.W. is at significant risk of committing further offences. I have a concern that if he is released, these further offences might in fact - if he does commit any and what follows, or if he is alleged to have committed any as well - could interfere with his ability even to attend at Ranch Ehrlo. That's not a primary concern; it is just something that I am aware of.

[64] My concern is that based on all the release orders and undertakings, all the allegations that have taken place since, the concerns in the report, and the need for intervention, that there is only one way that A.B.W. can be released, and that is to go directly to Ranch Ehrlo. In the end, I am not prepared to release him with his mother as a surety to go live with his mother. However, I am going to release him to attend at Ranch Ehrlo. And he will stay in custody until he goes to Ranch Ehrlo. I am not sure if that will speed up the process on their end, but he needs to be released to go to Ranch Ehrlo, and the Crown agrees on that. Therefore, that is what he will be released to do.

[65] I am going to say my suggested conditions, and counsel can comment.

[66] His mother is not going to be a surety on this release.

[67] He is going to be released, and these are the terms, and I will go through them in the order they are on the sheet here. I know that may not be the most logical order.

You must:

1. Not communicate directly or indirectly with D.P., K.B., E.F., N.C., D.W.,
C.T.,

...

— and he is not going to be at Porter Creek Secondary School, so that is not going to be included.

[DISCUSSIONS]

... L.D., B.K., L.K., M.S.;

2. Not go to any known place of residence, employment, or education of D.P., K.B., E.F., N.C., D.W., C.T., L.D., B.K., L.K., M.S.;

[DISCUSSIONS]

3. Report to a youth probation officer immediately and thereafter when and in the manner directed by the youth probation officer;
4. Not possess or consume alcohol and/or illegal drugs not prescribed to you by a medical doctor;

[DISCUSSIONS]

5. Not attend any premises whose primary purpose is the sale of alcohol, including a liquor store, off sales, bar, pub, tavern, lounge, or nightclub;
6. Not possess any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, or explosive substance;

[DISCUSSIONS]

[68] MS. W.: Okay. Just the only reason I say that is because we have had conversations and he is a little bit hesitant to stay there for family treatment.

[69] THE COURT: He has to stay at Ranch Ehrlo until he completes all the programming they recommend. If part way through he has done reasonably well, but he does not want to stay for family treatment, and there is some idea that that might be good and everyone agrees, fine. However if the family treatment is part of the programming as a matter of fact, I will include in the clause. "Including family treatment." Just include that: until successful completion of treatment including family treatment. So if that is there, he has to successfully complete it. There is no room for hesitancy here.

7. Attend and actively participate in all programming, including family treatment, at the Ranch Ehrlo Youth Treatment Centre, and complete this programming to the satisfaction of a youth probation officer and provide consents to release information to the youth probation officer regarding your participation;
8. You will be released from custody under the supervision of a staff member of the custodial facility to be taken directly to the Whitehorse Regional Airport for transportation to Ranch Ehrlo, with the exception that, if in the presence of this staff member, you may attend at your and your mother's residence solely for the purposes of retrieving any belongings you may need to take with you to Ranch Ehrlo, unless otherwise directed by the Court.

[DISCUSSIONS]

[70] So I am going to leave it that the young offenders' facility ensures he gets all the way to Ranch Ehrlo by accompanying him unless I or another judge directs otherwise. The thought has crossed my mind as to whether his mother could be able to accompany him or not. At this point in time, I am not sure how that would work, because I do not know the time frames. I am open to the Court providing a different direction should it be brought back before the Court. If, for example, everyone agrees that this is a suitable way to do it and it might involve a responsible adult, it might involve his mother; it might involve both of you that are present in court. I do not know. So there will be some flexibility in there. But yes, he is not going to be dropped at the airport and travel to Ranch Ehrlo without someone from the young offenders' facility, unless this Court orders otherwise.

[71] I am going to make a direction on the file that if at all possible, if this matter needs to come back before the Court for this, a condition like this, it should really try to be in front of myself or Justice of the Peace Morrison-Harvey, who is also aware of the circumstances, unless it is with clear consent. If there were an issue of any dispute, it would be preferable if myself or Justice of the Peace Morrison-Harvey were able to hear it. I may not be in the jurisdiction for a while, but I will be available by phone if necessary, possibly.

[72] Now I need to contemplate A.B.W.'s return to the Yukon in the event he actually completes programming, because if he is discharged from there, I guess there needs to be an appropriate residency clause. I want him to be in a situation that if he is

discharged and these matters are still not dealt with that there is a secure residency. If we were in a situation for whatever reason that the youth probation officer is not satisfied that such a residency can be recommended, I do not want A.B.W. to be finding himself in breach of anything through no fault of his own.

[73] I do not have a problem in saying — if counsel agree, everyone agrees — that:

9. Reside at the Ranch Ehrlo youth treatment centre, abide by the rules of the residence and not change that residence without the prior written permission of a youth probation officer. In the event you are discharged after successful completion of all your programming at Ranch Ehrlo, you will reside with your mother at #5 - 2 Road, Whitehorse, Yukon, and not change that residence without the prior written permission of your youth probation officer.

[74] That at least puts A.B.W. back into his mother's residence post-successful treatment. I do not actually have a concern with that.

[75] I would include, just for the interests of absolute safety:

10. If you are residing at your mother's residence, you will at all times remain in your residence or on your property unless in the direct line of sight of your mother, or as otherwise directed by your youth probation officer.

[76] That can be easily amended, but that at least provides the safest thing for when A.B.W. returns to the Yukon.

[DISCUSSIONS]

[77] So I will leave it — it is inferentially in there that you must attend and successfully complete. I will include a condition that:

[DISCUSSIONS]

11. Until such time as you have successfully completed all your programming and are discharged from Ranch Ehrlo, you are not to reside at any other residence.

[78] That puts him in automatic breach.

COZENS C.J.T.C.