

Citation: *R. v. Sahal*, 2025 YKTC 23

Date: 20250417
Docket: 25-00272
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REX

v.

ABDULAHI KHADAR SAHAL

Publication of evidence, information, representations or reasons given at the show cause hearing is prohibited by court order pursuant to s. 517 of the *Criminal Code*.

Appearances:
William McDiarmid
J. Robert Dick

Counsel for the Crown
Duty Counsel for the Defence

This decision was delivered from the Bench in the form of Oral Reasons. The Reasons have since been edited without changing the substance.

REASONS FOR JUDGMENT

[1] COZENS T.C.J. (Oral): Abdulahi Khadar Sahal is before the Court for judicial interim release. This is a reverse onus case. The Crown is opposed to his release.

[2] He is co-accused on Information 25-00272 with a Sumit Chandhar, Bret Demchuk, Daniel Horton, John Klemenz, and there is expected to be one other individual charged who is not yet charged in this matter.

[3] The charges are with respect to allegations of offences contrary to ss. 87, 267(a), and 279(1.1)(a.1) of the *Criminal Code*. The allegation under s. 87 particularizes pointing a firearm, being a handgun and a rifle, at two individuals.

[4] I have heard over the last three days, with respect to show cause hearings with other individuals, a number of allegations of the facts and circumstances. For the purpose of this show cause hearing, Crown has repeated these with the additional information that was obtained from further statements and a RCMP search pursuant to a warrant of the residence, the area, and vehicles that were at the residence. I am not going to go in great detail through all these allegations, but I am very sufficiently aware of them.

[5] What happened, allegedly, is that on April 14, 2025, RCMP received a number of pings from a phone at about 8:47 p.m., like RapidSOS. This showed these SOS pings were coming from about 17 metres from the residence at 24 Laberge Road in Whitehorse.

[6] Cst. Bigrig attended at the residence and, with her vehicle, blocked the entrance so no one could come or go. There was an individual outside, a Mr. Chandhar. He said to her someone had been hit by a vehicle. EMS was called. The individual was apparently inside.

[7] Cst. Bigrig walked inside. There were six individuals inside the residence. One of the individuals said, "Can we talk outside?". This was a Mr. Pin Peng. He and Cst. Bigrig started to walk out. While they were partway through, Mr. Sahal pushed his way past the police officer and walked down the stairs.

[8] Mr. Peng had said to her, “These guys have guns. You need to pull out your gun”, and she did so. Another individual, Mr. Lalani, also came outside.

[9] Mr. Sahal went into the black Dodge Ram that was in the driveway and attempted to leave. He was unable to do so because Cst. Bigrig’s vehicle blocked the exit. She called him to come out of his vehicle, which he did. He was arrested and detained with Mr. Chandhar at that time. Back-up was called.

[10] One of the two of them, or both of them, Mr. Chandhar and Mr. Sahal, said they were just smoking weed, and that Mr. Lalani had just been in a fight. The Emergency Response Team arrived as back-up.

[11] The allegations from Mr. Peng and Mr. Lalani, were provided in two statements. To sum up what they said, they said they were in the Yukon to go camping and they were, Mr. Lalani said, trying to get to a gas station with a liquor store — which I do not know if there is one in that area — and made a wrong turn onto Labarge Road, a Kulan Subdivision area. As they went up the road and went to do a U-turn, the black Dodge Ram pulled in behind them, three or four individuals jumped out with guns, two rifles and maybe one handgun. Two of them, I believe I heard, got into their vehicle and said, “Drive ahead”. They drove ahead to where 24 Lebarge is and the Ram pulled in behind them.

[12] As they were walking into the residence, Mr. Lalani said he was struck in the back of the head with a gun. I note that he was taken to Whitehorse General Hospital eventually for treatment for his wound.

[13] Inside the residence, these individuals both said that they were questioned for about one hour. They were terrorized, was the word used. They were told they were going to be held hostage. They were questioned by a black individual with respect to what they were doing selling drugs in Whitehorse; I note that Mr. Sahal would fall within that definition, and the other individual who has not been arrested who ended up with a broken leg may well be black, but I do not know this individual. The other individuals that were in the residence were Bret Demchuk, a young Caucasian person, Daniel Horton, an older Caucasian male, and John Joseph Klemenz, an older Caucasian male as well as both Mr. Peng and Mr. Lalani and then Mr. Abdulahi, the injured person, and this Accused. That, of course, makes seven, but Mr. Horton's statement says that when he saw police arrive, he went into the back bathroom, which would put him out of view of the officer when she walked in, which makes the six make sense to me.

[14] The one individual had a broken leg, the one who has not yet been charged would be Ayub Abdullahi. He was taken to Whitehorse General Hospital, and I understand he is expected to be charged. He has not been charged. The information I have is that he was outside and got struck by a vehicle in the area where all the vehicles were.

[15] The information provided to me indicates that the two individuals that say that they were held hostage or forced into the residence, is that the leader seemed to be a black male. There were balaclavas on, although they could see through the eyes of the balaclava who was white and who was black.

[16] They say that their phones were taken, and they had to provide the passwords, their ID was taken and that the black male made some calls to Vancouver area to find out if these individuals were being looked for by anybody. As it turned out, Mr. Peng had a work phone that had not been taken and that is what he used to do the pings.

[17] They said that they believed that the individuals, including Mr. Sahal, were looking for two people that were people other than who they were. I will say right now that the two complainants' role in this with respect to why they were there, and camping is questionable, and even the RCMP are not satisfied that they are getting the whole story there. I note that when they conducted a search warrant on their vehicle, they found an axe, an ice pick, a machete like a bill hook saw, and a hammer. There were no sleeping bags, no camping gear. That does not mean that it is not true, necessarily, but the story is a little suspect, so there are some credibility issues, possibly, with respect to these two complainants in this case.

[18] The white male who was kind of guarding and holding a handgun is said to have had tattoos, and nose piercings. So far, none of the information that I have received with respect to any of these individuals, Mr. Demchuk, Mr. Horton or Mr. Klemenz, provides me any information that any of them had nose piercings or tattoos. In fact, I understood that Mr. Horton specifically did not, although with respect to him I had heard it was earrings and not nose piercings. That is just a real question mark there.

[19] The RCMP conducted a search yesterday. In the residence itself, they found a pellet gun. Outside the residence on the property behind it, they saw a semi-automatic assault .223/5.56 calibre rifle with an over-capacity magazine loaded with a round in the

chamber that appears to have been thrown from the residence. They also noted a Glock handgun that had been at least partially disassembled with pieces found outside in the same area as the rifle, that also looked like it had been thrown outside.

[20] They also found three bags, one smaller, two large bags, which is unclear from the police report, that had 50 or possibly more small packages/bags of what they believe is cocaine. These were found outside under the Ford vehicle that was out there.

[21] The complainants had indicated that a handgun and a rifle had been placed in a couple of different locations and they thought more guns were in another room. There were no firearms found in the residence, only those two that were indicated located outside. I note that Cst. Bigrig, when she attended, was alone and was outside so it is not like the house was contained completely from the start. I am not making anything of it. I just simply note that.

[22] Inside the vehicle of Mr. Sahal was found a black balaclava, a .22 live cartridge and some brass bars. I have no description of the bars' size, or anything. I do not know anything about them. Inside the Ford vehicle that belonged to Mr. Chandar were two phones, a Samsung and a Motorola, that were seized.

[23] Also found inside the residence beside the air rifle was a bloody jacket that is believed to belong to Mr. Peng, although I note that the person who was injured was not Mr. Peng per se, and I was not aware of any injuries to him, although I understand he also went to Whitehorse General Hospital.

[24] There was a .223 cartridge in a shopping bag, and there was a .223 single cartridge in a black jacket. Inside the black jacket was the identification of Mr. Sahal from Ontario, which would lead me to believe that this was likely his jacket.

[25] Both Mr. Peng and Mr. Lalani told the police that the comments that were made to them included threats that they could be killed, and further discussion with respect to what they were doing, and stated, “This is a war zone and you’re lucky if you don’t get killed”.

[26] In his statement, Mr. Horton said that he was at the house when some other individuals came up to the house. He thought there was a turf war unrelated to him going on. He knew there were two black guys and two more individuals. One of the black guys that he knew as “Mike” is the one that had his leg broken in the driveway. He heard some clicks that he thought were the clicks of guns while he was hiding in the bathroom. When the police came, he walked, I presume, out of the bathroom and out of the house.

[27] Mr. Klemenz said that he was playing games at the house with Mr. Horton when other individual showed up. He did not actually see any violence himself, he said. He did note that someone was carried in with a leg injury.

[28] Mr. Demchuk said he did not know what was going on, that who he referred to as “Monty”, which would appear to be the same person known as “Mike”, was injured and he had helped carry him into the residence. He only saw an Airsoft rifle, he said.

[29] Mr. Chandar did not provide any statement other than to say that he was in disbelief.

[30] Mr. Sahal provided a warned statement in which he says that people are lying. He was in the truck when he was arrested. There was nothing in the truck, and he has little memory of that day because of previous brain trauma, and no one was hurt that he knew of.

[31] The plan for Mr. Sahal is a surety release to his girlfriend of two and one-half years. The Crown has no issue with her qualifications to be a surety.

[32] Mr. Sahal has been here since 2019. He has an uncle who runs a cab company that he sometimes works at, and he would comply with a curfew and no weapons and no contact with the individuals.

[33] The Crown seeks detention on the primary, secondary and tertiary grounds, although the tertiary grounds are probably the most significant.

[34] With respect to the primary grounds, I do not have a particular concern. I appreciate these are serious charges that could well result, even for someone with no criminal record, as Mr. Sahal does not have a criminal record, in a penitentiary sentence. He is 34 years old, I believe.

[35] The fact that he was trying to leave when the police officer showed up, it is not like he had been told he had to stay, from what I understand, and he then tried to flee

directly from a direct command of a police officer. He was trying to leave, but he could not get around the police car. I am not going to put a lot of weight on this for primary grounds.

[36] With respect to the secondary grounds, I'll just go through the principles here from the case of *R. v. Hifato*, 2020 ONSC 4068, at para. 30, which refers to a number of cases that I have used in the past.

The issue under the secondary ground is whether, if released, there is a “substantial likelihood” that the accused will commit further offences or interfere with the administration of justice. In this instance, where the accused has been charged with a robbery alleged to involve a firearm while he was bound by the terms of a weapons prohibition order, pursuant to ss. 515(6)(a)(vii) and (viii) of the *Criminal Code*, it is the accused who bears the onus of satisfying the court that the bail plan proposed meets this threshold.

[37] Of course, that is the onus that Mr. Sahal has here. The meaning of “substantial likelihood” has been considered by the Supreme Court of Canada as confirmed in *R. v. Morales*, [1992] 3 S.C.R. 711. Bail cannot be decided simply because a risk is posed by the offender, but detention is only required for those who pose a substantial likelihood of committing an offence or interfering with the administration of justice and only where the substantial likelihood endangers the protection or the safety of the public. Detention is justified only when it is necessary. It is not justified where it would merely be convenient or advantageous.

[38] Making predictions about “dangerousness” is not an exact science. *Morales* and other cases recognize the difficulties in making exact predictions about future

dangerousness. In *Morales*, the Court indicated that exact predictions are not required, as it held that the impossibility of making exact predictions does not preclude a bail system which tends to deny bail to those who will likely be dangerous.

[39] The substantial likelihood standard requires, according to Trotter at para. 33:

...[t]he proper, and accepted approach is a slightly enhanced balance of probabilities standard. This is a suitable standard, as it reasonably protects the accused from being detained on a mere suspicion of future criminal activity.

[40] In *R. v. Manasseri*, 2017 ONCA 226, at paras. 87 and 88, Watt J.A. held that:

87 ...['substantial likelihood'] refer to a probability of certain conduct, not a mere possibility. And the probability must be substantial, in other words, significantly likely.

88 ...where, as here, the onus of showing cause for release falls on an accused, that accused must demonstrate not only that his or her detention is not necessary for the *protection* of the public, but also that it is not necessary for the *safety* of the public.

[41] With respect to the secondary ground concerns in this case, I recognize that Mr. Sahal has no criminal record. This is not a case where I am looking at someone with a number of breaches, where I am looking at someone who has shown an inability to comply with court orders or court-ordered terms. The secondary grounds do not arise from Mr. Sahal himself. To the extent that they arise, they arise with respect to the circumstances of the alleged offences, these being offences that would clearly appear to indicate a possibly drug gang-related affiliation.

[42] With the calls to Vancouver, the comments about the “turf war”, being a “war zone”, being “selling drugs on my turf, this is my area”, the secondary ground concerns

arise from this set of circumstances, that if, in fact, Mr. Sahal is part of some form of drug dealing in the Yukon that involves violence and conflict with other people that are perceived as interfering with the rest, then there is likely to be violence, and that violence is likely to spill out in a manner that puts the public at risk.

[43] In saying this, I look at what has happened with Mr. Chandhar. He was released. The Crown did not oppose his release. The Crown put forward that the evidence of Mr. Chandhar of having had anything in particular to do with this was weak and that they felt, on the tertiary grounds, that their case at that point in time was weak. They were not in a position where they felt that they could really link him to anything other than being outside the residence and aware that someone inside had been hurt. The Crown did not seek, under a s. 516, additional time to try to get more information from the police and, therefore, I agreed, reluctantly, to release Mr. Chandhar because if that is the best case that I have before me, and at this point the Crown is not seeking more time, then that is what I am going to operate on.

[44] Mr. Horton was released yesterday. The explanation for the Crown consent to his release yesterday was that he appears to really have had very little to do with this other than being the person that lived in the house. They do not associate him, he does not have any of the identifying marks of the white Caucasian person, and it seems they are prepared to accept the fact that there is a good likelihood or possibility he may not have actually been involved in any of these offences. I was not going to challenge that at that point in time given the Crown position and given the circumstances that I heard.

[45] I have not yet made a decision on Mr. Demchuk and Mr. Klemenz on their bail hearings today. The Crown seems to be taking a somewhat similar position to Mr. Chandhar and Mr. Horton with respect to the extent to which they were involved and that the Crown's case against them is not strong. I know that the Crown said Mr. Horton did not have the identifying marks on him.

[46] Mr. Demchuk appears to be younger. He is 21 years old. As to Mr. Klemenz, the Crown has not put any information forward that he has been noted to have any of the identifying marks of the Caucasian that was said to have pointed the gun at the two complainants, so the Crown is consenting to both their releases on that basis. The problem in their two cases is that they do not have residences at this point in time, so the Crown's consent is only contingent on them showing residences, and I will deal with them after.

[47] The Crown is opposed to the release of Mr. Sahal on different evidence, the evidence of the shell found in his jacket, the evidence of him leaving, and the evidence of the balaclava. Certainly, the case with respect to Mr. Sahal appears to be a stronger case than that with respect to the other individuals.

[48] The tertiary ground concerns relate to whether detention is justified because it is necessary to maintain confidence in the administration of justice. There are four factors Parliament has noted in particular, and again, I am in para. 47 of *Hifato* which I cited earlier. This notes the importance of the perspective of a reasonable person. A:

...“reasonable member of the public” is familiar with the basics of the rule of law in Canada with the fundamental values of our criminal law, including those protected by the Charter.

[49] This reasonable member of the public:

... knows the importance of the presumption of innocence and the right to liberty and these are fundamental rights guaranteed by our Constitution. The reasonable member of the public also expects, perhaps even more so now, that anyone charged with a crime is entitled to be tried for it within a reasonable time. ...

[50] The Court notes there is a difference between the secondary and tertiary grounds, they are distinct, and even though detention may not be warranted on the secondary ground, it can still be warranted on the tertiary ground. It is rarely the other way around.

[51] As it says in this case at para. 48:

...the converse will rarely be true. In my view, when there is a substantial likelihood that an individual will commit further offences if released, that person’s detention will almost always also be justified on the tertiary ground...

[52] The enumerated factors are set out in s. 515(10)(c). One is the strength of the Crown’s case. This is not a perfectly put together case at this point in time, certainly, but it is not a weak case with respect to Mr. Sahal. There is more work to be done, I would expect, to shore up this case if the Crown intends to proceed with this prosecution, but we are talking about the combination of firearms and drugs and evidence that has Mr. Sahal in possession of a jacket with his ID that has a shell that matches the semi-automatic weapon that was found outside the residence as though it

had just been tossed there, which is not an inconsistent rifle with what the complainants said that they saw. Certainly I would expect that these items would likely be fingerprinted to find out whether they can make any linkage beyond what is somewhat circumstantial here. So this is not a weak case with respect to Mr. Sahal's role.

[53] As Crown pointed out, a conviction on these offences involving firearms like this, if it happens, could result in a significant period of custody, including a penitentiary term. It is not a home invasion offence, as some of the other ones are, on the evidence I have before me at this point in time.

[54] The remaining factors that are set out with respect to the tertiary ground is the gravity of the offence and, again, the gravity of the offence, while separate from the potentially lengthy period of imprisonment, right now it is well known in the public and the community from recent comments, articles in the paper, and articles from the police that indicate there is a significant gang involvement right now in drugs.

[55] Over the past few years, just from my experience in court in the more recent years, firearms being apparent, people being shot and violence associated with the drug trade in the Yukon, has elevated these offences for consideration, the circumstance of the offences, including whether a firearm was used. Firearms are at the very heart of these allegations here.

[56] I do not want to over-emphasize what is happening in this community based on the cases that are coming before the Court and what I have seen in the court. They need to be properly balanced, and this individual, Mr. Sahal, has to be dealt with on the basis of what the case against him is, taking all these factors into consideration.

However, in my opinion, with all these circumstances as I have outlined them and the evidence that links Mr. Sahal closely to the firearm that was found that, at this point in time, I am not satisfied that he has met his onus on the tertiary grounds.

[57] The secondary grounds are more in the middle for me, but I am detaining him on the tertiary grounds.

[DISCUSSIONS]

[58] While in custody, Mr. Sahal is to have no contact with Sumit Chandhar, Bret Demchuk, Daniel Horton, John Klemenz, Ayub Abdullahi, Pin Peng, and Faizaan Lalani.

COZENS T.C.J.