

Citation: *R. v. Hartling*, 2025 YKTC 47

Date: 20250505
Docket: 25-00255
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge Cairns

REX

v.

RAYMOND JOHN HARTLING

Appearances:
Neil Thomson
Norah A. Mooney

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] CAIRNS T.C.J. (Oral): These are my reasons on Mr. Hartling's application for release, which was heard on Friday.

[2] Mr. Hartling is before the Court seeking judicial interim release. This is a contested reverse onus bail application. Mr. Hartling has the onus of satisfying the Court on a balance of probabilities that his detention is not required on the primary, secondary, or tertiary grounds. The Crown indicated they oppose release on the secondary and tertiary grounds.

[3] Mr. Hartling is facing the following indictable *Criminal Code* of Canada (the “Code”) charges, all of which are alleged to have occurred on April 7, 2025, in the City of Whitehorse. There is also one charge contrary to the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 (the “CDSA”).

[4] Count 1 is assault with a weapon, a revolver, contrary to s. 267(a) of the *Code*.

[5] Count 2 is carrying a weapon, a revolver, for the purpose of committing an offence, contrary to s. 88 of the *Code*.

[6] Count 3 is possession of a prohibited weapon, a revolver, without being the holder of a licence to possess it, contrary to s. 91(2) of the *Code*.

[7] Count 4 is possession of a loaded prohibited weapon without being the holder of an appropriate authorization, contrary to s. 95(1)(a) of the *Code*.

[8] Count 5 is possession of a revolver without a licence, contrary to s. 92(1) of the *Code* .

[9] Count 6 is carrying a concealed weapon without being so authorized, contrary to s. 90 of the *Code* .

[10] Count 7 is possession of cocaine for the purpose of trafficking, contrary to s. 5(2) of the *CDSA*.

[11] Count 8 is discharge of a prohibited weapon with attempt to wound, contrary to s. 244(1)(a) of the *Code*.

[12] Count 9 is assault carrying a weapon, a revolver, contrary to s. 267(a) of the *Code* .

[13] Count 10 is, without lawful excuse, using a firearm, a revolver, in a careless manner, contrary s. 86(1) of the *Code* .

[14] Count 11 is use of a firearm, a revolver, while committing the indictable offence of assault, contrary to s. 85(1)(a) of the *Code*.

[15] And finally, Count 12 is having in his possession a prohibited weapon and ammunition while being prohibited from doing so by reason of an order made pursuant to s. 109 of the *Code*, contrary to s. 117.01(1) of the *Code*.

[16] The reverse onus provisions in the *Code* are triggered pursuant to Count 4, which is the allegation contrary to s. 95(1)(a), possession of a loaded prohibited weapon, that triggers s. 151(6)(a)(vi) of the *Code* .

[17] Count 8, the offence contrary to s. 244(1)(a), the discharge of a prohibited weapon with intent to wound triggers s. 151(6)(a)(vii) of the *Code*.

[18] Count 12, the offence contrary to s. 117.01(1), possession of a prohibited weapon or ammunition contrary to a prohibition order, triggers s. 515(6)(a)(viii) of the *Code* .

[19] And Count 7, the *CDSA* offence allegation, contrary to s. 5(2), trafficking in a Schedule 1 substance, cocaine, pursuant to s. 5(3)(a) is punishable by imprisonment for life, and that triggers s. 515(6)(d) of the *Code*.

[20] The Crown alleges the following facts.

[21] The RCMP received a complaint from the front counter staff at the Quality Inn at 3:20 a.m. on April 7, 2025, in the City of Whitehorse. A male was in the front lobby consuming drugs. Four officers attended. The male was identified as Anthony Braun, who had entered the lobby to get away from an incident that had occurred in front of a car dealership on 4th Avenue in Whitehorse. He was struck with a revolver in the ribs. A bullet fragment was found on his shoes. He gave a description of the assailant, describing him as either “white or First Nations”, small, wearing a jean jacket, and carrying a boom box.

[22] Police went on patrol to the Whitehorse Emergency Shelter and located a male matching the description, along with two others, who were also arrested. Mr. Hartling was arrested and, during a safety pat-down and the post-arrest searches, five bullets for a revolver were located, as well as over \$500 in small bills, cash, and a number of containers of cocaine in various quantities.

[23] Two other individuals, as noted, were also arrested, one who was in possession of a revolver that used the type of bullets that were found on Mr. Hartling.

[24] Photographs were filed as exhibits by the Crown. A number of the photographs were screen shots from videos alleged to depict Mr. Hartling with a revolver during the course of an assault in front of the car dealership on 4th Avenue. The Crown also advised that these were taken from a video which showed Mr. Hartling striking the victim, Mr. Braun, before firing a round into the ground.

[25] There are other photographs that allegedly depict him drug trafficking, and those are taken from videos from the Whitehorse Emergency Shelter, and there is a photograph of the firearm seized from one of the other individuals who was arrested.

[26] Mr. Hartling's rather extensive criminal record was also filed. There are somewhere close to 50 entries on that record dating between 1991 and 2022. His criminal record includes a wide variety of offences, including numerous breaches of numerous court orders, including undertakings, recognizance, probation order and conditional sentence order breach. There is one dated failure to attend court. There is a conviction for being unlawfully at large and intimidation of a justice participant and obstruction of a peace officer. Additionally, there are driving offences, offences of violence and uttering threats, and property crimes.

[27] The criminal record is lengthy and somewhat unabated, spanning over approximately 30 years. Mr. Hartling is now 54 years of age, I am advised.

[28] The plan put forward by Mr. Hartling is to reside at Connective, a structured residence described by his counsel, Ms. Mooney, as part of the Whitehorse Correctional Centre ("WCC"). A letter confirming that Mr. Hartling has been accepted at Connective was filed. However, other than advising that Connective is a structured environment, little detail was provided about that structure or how Mr. Hartling would be supervised while residing there.

[29] A letter confirming that Mr. Hartling completed the "Challenging Thinking" program while detained at WCC on these charges was also filed.

[30] A letter confirming that Mr. Hartling has confirmed employment by a person named Donnie Williams was filed. It was unclear Mr. Williams' relationship to Mr. Hartling, what type of company he ran, when the position would begin, or anything else about this employment offer.

[31] In terms of the facts alleged by the Crown, Ms. Mooney drew my attention to the fact that the revolver was not on Mr. Hartling's person when he was arrested, but on a person nearby. As well, Ms. Mooney suggests that the description of the suspect does not perfectly match Mr. Hartling, in particular, regarding the description of the assailant's hair and the potential for First Nations status. She advises that Mr. Hartling is not First Nation. I note that the description was "either white or First Nation".

[32] In the reverse onus situation, the onus is on Mr. Hartling to establish, on a balance of probabilities, that his detention is not justified under any of the criteria listed under s. 515(10)(c) of the *Code*, and I note that this is different from a Crown onus show cause where the Crown need only show that detention is required under any of the three grounds. Mr. Hartling must satisfy me, on a balance of probabilities, that, in all the circumstances, his detention is not required on any of the three grounds.

[33] The first ground is the primary ground to ensure that the accused will attend court when required to do so. The secondary ground is if the detention is required to reduce to a level below substantial the likelihood that the accused will commit a further offence that will endanger the safety and protection of the public. The third, or tertiary, ground is to maintain confidence in the administration of justice.

[34] I am mindful that all accused have the right to reasonable bail, a right enshrined in the *Charter*. I am mindful that, even when the reverse onus applies, the presumption of innocence remains and, therefore, the denial of bail should be the exception rather than the norm.

[35] Turning to address the primary grounds. As noted, these arise where it is necessary to detain the accused to ensure his attendance at court.

[36] Looking at Mr. Hartling's criminal record, I find there are numerous convictions for failing to comply with court orders, including an entry for being unlawfully at large. I do note there was only one dated entry for a fail to attend court.

[37] In terms of flight risk, I am advised that Mr. Hartling is a long-time resident of the Yukon, with a significant connection to the community, including his daughter and a grandchild. I find that he has connection and roots in the community.

[38] In addition, as noted to the dated failure to attend court, there are other criminal entries of concern, being unlawfully at large, breaches of bail, probation and conditional sentence, and I note that one of the allegations before the Court involves a breach of a weapons prohibition order that Mr. Hartling was on at the time.

[39] Given Mr. Hartling's ties to the community and the fact that there is only one failure to attend court, which is dated, I do not have significant concerns on the primary grounds.

[40] Turning to the secondary grounds.

[41] Detention is justified on the secondary ground where it is necessary for the protection and safety of the public having regard to all the circumstances, including any substantial likelihood that the accused will, if released, commit a criminal offence or interfere with the administration of justice. This ground is largely concerned with the risk of further offences both through frequency and seriousness, and I must consider the safety and the protection of the public.

[42] As noted, the Crown has indicated concerns for the protection of the public on the basis of the risk of Mr. Hartling reoffending, drawing my attention to the numerous breaches of court orders on Mr. Hartling's record and the allegation that he breached a weapons prohibition order.

[43] In considering the secondary ground, I consider the type and seriousness of the offences alleged. In this case, there are allegations of drug trafficking in a Schedule 1 substance, violence, firearms, and breaches of a prohibition order. I note that the case law has found that those accused of more serious offences pose a greater risk to the public than those charged with less serious offences. I note that the allegations involve the discharge of a revolver, which is a prohibited weapon, and that Mr. Hartling was on a prohibition order at the time these allegations arose. I also note that while the revolver was not found on his person, ammunition that matched the revolver was.

[44] I now turn to the strength of the Crown's case.

[45] The Crown has put forward photographic evidence drawn from video footage on which it is said Mr. Hartling can be seen pointing a firearm at the complainant and thereafter discharging the weapon. I am also told there is video footage alleged to show

Mr. Hartling trafficking in what has been alleged to be cocaine. Ammunition, cocaine and cash were found during the arrest of Mr. Hartling.

[46] While I am mindful of the weakness of the description provided by Anthony Braun of his assailant, as drawn to my attention by Ms. Mooney, there were identifiers that did match Mr. Hartling upon his arrest.

[47] I have already gone over Mr. Hartling's lengthy criminal record and I note that, while a criminal record is not determinative, it is a relevant consideration to whether there is a substantial likelihood that Mr. Hartling will reoffend. A criminal record that is lengthy, serious and uninterrupted, as here, weighs heavily in favour of detention. A record of breaches of prior court orders has significant impact on the secondary ground, as it demonstrates a likelihood that the accused will not comply with future orders.

[48] Breaches of conditional sentence orders are of particular concern because they indicate the accused is willing to ignore court orders even when faced with almost certain incarceration.

[49] I move now to the tertiary ground. The tertiary ground justifies detention where it is necessary to maintain confidence in the administration of justice. Here I rely on the discussion in *R. v. Manasseri*, 2017 ONCA 226, by Justice Watt, and I will read from that decision starting at para. 89:

89 The *tertiary* ground holds that detention is justified if it is necessary to maintain confidence in the administration of justice. Several brief observations about the content and operation of this ground are germane.

90 First, as in the case of the secondary ground, whether detention is or is not necessary on this ground is to be determined by a consideration of all the circumstances, but in particular, the four factors Parliament has marked out for specific consideration in s. 515(10)(c) [citations omitted].

91 Second, as in the case of the secondary ground, the use of the term “including” in relation to the listed factors negates any suggestion that the listed factors are dispositive of an order of detention on the tertiary ground: *St-Cloud*, at para. 68.

92 Third, to determine whether detention is justified on the tertiary ground, a judge is to make his or her appraisal objectively, through the lens of the four factors Parliament has specified, and with particular focus on those factors [citations omitted].

93 Fourth, detention can only be justified on the tertiary ground if the judge, having considered the listed factors and related circumstances, is satisfied that a reasonable member of the community would be satisfied that denial of release is necessary to maintain confidence in the administration of justice [citations omitted].

94 Fifth, the term “public” in s. 515(10)(c) refers to reasonable members of the public who are properly informed about the philosophy of the legislative provisions; *Charter* values; and the actual circumstances of the case [citations omitted].

95 A “reasonable member of the public” is familiar with the basics of the rule of law in Canada and with the fundamental values of our criminal law, including those protected by the *Charter*. He or she knows the importance of the presumption of innocence and the right to liberty and that 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 [citation omitted].

96 A final point before turning to the specific factors requiring consideration under s. 515(10)(c). In Canada, pre-trial release of those charged with crime is the cardinal rule and detention, the exception: *St-Cloud*, at para. 70; *R. v. Morales*, 1992 CanLII 53 (SCC), [1992] 3 S.C.R. 711,

at p. 728. That said, sometimes, as here, the onus of demonstrating release is shifted to an accused who is required to demonstrate that detention is not necessary on the primary, secondary or tertiary ground.

[50] In considering the tertiary ground, I first consider the strength of the Crown's case, which I have already gone over to some extent. As noted, while the presumption of innocence applies, the strength of the Crown's case is a factor for consideration under the tertiary ground. This is, in part, because detention of an accused based on a weak case tends to undermine, not maintain, the public's confidence in the administration of justice. As noted above, the Crown has indicated that they have video evidence of Mr. Hartling involved in these allegations.

[51] The second factor is the gravity of the offence, and this is objective gravity based on the minimum and maximum sentences in the *Code*. Mr. Hartling is facing indictable offences that carry the potential for significant sentences ranging from five years as a maximum to 10 years to 14 years, and to life as a maximum.

[52] The third factor is the circumstances surrounding the commission of the offence, including whether a firearm was used, as it was in this case.

[53] The more serious the offence, the higher the risk that public confidence in the administration of justice will be undermined if the accused is released on bail. Parliament incorporated the requirement to consider if a firearm was used, as it was here, because of the prolific increase in gun crimes. It is an important factor here, as the discharge of a firearm, a revolver, is a type of gun that is only used to harm people.

Here, the allegation includes the discharge of a weapon in the downtown core of Whitehorse.

[54] The fourth factor is whether Mr. Hartling is liable on conviction to a potentially lengthy term of imprisonment and, as noted, reviewing the sentences available for the charges he is facing, that is the case.

[55] The plan put forward by Mr. Hartling is that he would have no communication, directly or indirectly, with the complainant, Anthony Braun, and another individual arrested at the time, Mr. Schinkel, that he not attend anywhere the known place of residence, employment, or education of Mr. Braun and Mr. Schinkel, residence at Connective, abide by the rules of the residence and not change that residence without the prior written permission of the bail supervisor, abide by a curfew from 9:00 p.m. to 6:00 a.m., report, not possess or consume alcohol, no go liquor stores, not to have weapons, and remain within the Yukon Territory.

[56] As I mentioned earlier, Mr. Hartling's counsel has told me that there are strict rules at Connective and that Mr. Hartling will have to earn liberty from there, as Connective requires compliance with the house rules. I am told that he will likely need to call in when he leaves every two or four hours and tell staff where he is, and so on.

[57] However, in the end, despite this plan, I am not satisfied that Mr. Hartling has met the required burden under either the secondary or tertiary grounds that his detention is not justified and that he should be released. With respect to the secondary grounds, given the apparent strength of the Crown's case, the serious nature of the charges, particularly the allegation that a prohibited weapon was discharged on a public

street in the community of Whitehorse, coupled with his history of non-compliance, including that he was on a prohibition order at the time of these allegations, I am not satisfied that the proposed plan will address the substantial risk that he will commit further offences that will pose a risk to the safety and protection of the public.

[58] With respect to the tertiary grounds, I come to the same view. The majority of the factors militate against release. There is the evidence available to the Crown, the multiple serious charges, the variety of charges, his significant record, including non-compliance and the potential for a lengthy sentence of imprisonment. In my view, a reasonable member of the public would not be confident in the administration of justice if Mr. Hartling was released on the plan proposed.

[59] Mr. Hartling, you are detained on the secondary and tertiary grounds.

CAIRNS T.C.J.