

Citation: *R. v. Jabril*, 2017 YKTC 39

Date:20170908
Docket: 17-00215
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

JIBRIL HOSH JIBRIL

Restriction on publication: Publication of evidence, information, representations or reasons given at the show cause hearing is prohibited by court order pursuant to section 517(1) of the *Criminal Code*.

Appearances:

Jean-Benoit Deschamps
Lindsay C. Hoban

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] Jibril Hosh Jibril has been charged with having committed the offence of possession for the purpose of trafficking contrary to s. 5(2) of the *Controlled Drugs and Substances Act*. He came before the Court for a judicial interim release hearing.

[2] At the conclusion of the hearing I ordered the release of Mr. Jibril on terms with reasons for my decision to follow. These are my reasons.

Background

[3] Crown counsel provided the following allegations of facts in relation to the arrest of Mr. Jibril.

[4] On April 28, 2017, RCMP in Whitehorse received a telephone call from an employee of the local Greyhound Bus depot. The employee had opened a package that he considered suspicious and which had been brought into the depot for shipping outside of the Yukon. The employee was entitled to search the contents of the package in compliance with Greyhound authority.

[5] The shipper of the package had provided the name of "Jamal Ali". The employee was able to provide a description of this individual to the RCMP.

[6] Inside the package was a .40 calibre Smith & Wesson gun magazine and a Glock holster. There were also six individual plastic baggies inside a single plastic bag. Within these six plastic baggies were 535 fentanyl pills, with a value of approximately \$3,000.00.

[7] Three fingerprint impressions were taken. The first was located on the tape on the outside of the box; the second was on the outside of the large plastic bag; and the third was on the outside of one of the six plastic baggies.

[8] The fingerprint impressions were sent to Ottawa for analysis. The two fingerprints on the outside of the box and on the large plastic bag were identified as being a match to an inmate at the Drumheller penitentiary in Alberta. This inmate is the accused before the Court, Jibril Jibril.

[9] The RCMP were provided a photograph of this inmate.

[10] Meanwhile, several days after the package was brought into Greyhound for delivery, an individual calling himself "Ali" called Greyhound to enquire about the package. This caller was told to come down to Greyhound, however, he did not.

[11] On June 30, 2017, an individual who appeared to match the description the RCMP had was located walking to a vehicle in the Riverdale area of Whitehorse. He identified himself as Ahosh Jibril. He was arrested, provided his *Charter* rights and warned.

[12] Obtained during the search of Mr. Jibril were car keys, a cell phone, \$415.00 in cash, a lighter and a prescription pill bottle in the name of David Tuntas. While Mr. Jibril was being processed, it was noted that the cell phone that had been seized received numerous text messages and calls.

[13] Crown counsel produced a criminal record for Mr. Jibril. He is 26 years of age.

[14] He has been convicted of the following offences:

2013-03-18 (Saskatoon, Saskatchewan)

- (1) Possession for the purpose of trafficking, s. 5(2) CDSA
- (2) Possession of property obtained by crime, s. 354(1) CCC
- (3) Assault causing bodily harm, s. 267(b) CCC
 - (1)(2) concurrent sentences of two years custody (with three months' credit for pre-trial custody)
 - (3) 90 days consecutive

2013-11-27 (Lethbridge, Alberta)

- (1-2) Trafficking in a controlled substance, s. 5(1) CDSA
- (3) Possession for the purpose of trafficking, s. 5(2) CDSA
- (4) Take motor vehicle without consent, s. 335(1) CCC
- (5-9) Failing to comply with conditions of undertaking or recognizance
 - (1-3) concurrent sentences of three years and five months
 - (4) 14 days custody
 - (5-9) 30 days custody on each

2014-06-13 (British Columbia)

- Failing to provide necessities of life, s. 215(2) CCC
 - Six months consecutive to sentence being served

2015-05-25

- Statutory release

2016-05-24

- Statutory release violator - recommitted

[15] At one time Mr. Jibril had outstanding warrants in British Columbia, Saskatchewan and Ontario. He was arrested in December 2012 in Alberta and was transferred to Saskatchewan where his outstanding charges in British Columbia and Saskatchewan were dealt with, as well as his Alberta charges. He currently has two outstanding warrants in Ontario in relation to charges for failing to comply with the conditions of a recognizance.

Submissions of Counsel

Crown counsel

[16] Crown counsel is seeking Mr. Jibril's detention on the primary, secondary and tertiary grounds.

Primary grounds

[17] Counsel points out that Mr. Jibril has no ties to the Yukon. He has limited finances. In addition, he has had warrants issued in British Columbia, Saskatchewan and Ontario. He has also violated the conditions of his parole.

Secondary Grounds

[18] Counsel points to the harm that the illicit use of the drug fentanyl has caused and stresses the importance of the protection of the public. Counsel provided numerous reports and articles in support of his position that fentanyl use has become a national crisis.

[19] Mr. Jibril has committed serious offences while he had outstanding warrants for other offences. He has violated his parole and has been convicted on five occasions of breaching the terms of an undertaking or recognizance he was bound by. There is a significant likelihood, based upon his history, that he will re-offend, and that any such re-offending is potentially harmful to the public.

Tertiary Grounds

[20] The offence with which Mr. Jibril has been charged is a serious one, even more so given the devastating harm the illicit trafficking of fentanyl and its use is causing in Canada, and elsewhere, and Mr. Jibril faces a potentially lengthy sentence if convicted. Mr. Jibril should be detained in custody in order to maintain confidence in the administration of justice.

Counsel for Mr. Jibril

[21] Counsel does not take issue with the concerns raised by Crown counsel. Counsel submits, however, that the plan put forward on behalf of Mr. Jibril is sufficient to address these concerns.

[22] The plan is set out in an affidavit sworn by Sagal Sibril, Mr. Jibril's older sister, as well as in a letter that she provided for the judicial interim release hearing. Ms. Jibril also provided evidence at the judicial interim release hearing.

[23] Ms. Jibril is 31 years of age and does not have a criminal record.

[24] She is aware of Mr. Jibril's current charges and that the drug involved is fentanyl.

[25] She is also aware of his prior convictions for trafficking in drugs and that he has served a penitentiary jail sentence. She is also aware that he will face a lengthy jail sentence if convicted of the current offence.

[26] Ms. Jibril has resided with her mother in a two-bedroom apartment in Etobicoke, Ontario for approximately the past five years, with the exception of periods during which

she was working in East Africa doing international development work. She and her mother share one bedroom. Mr. Jibril would be able to stay in the other bedroom.

[27] She is self-employed as an independent project management consultant in the IT and business sector in Toronto, Ontario. She works approximately 35 hours per week and is able to do much of her work from her residence.

[28] Mr. Jibril would be able to work as her Business Administrative Assistant approximately 20 hours per week for her at minimum wage. He would be:

- replying to email requiring client inquiries;
- answering the phone and taking messages;
- assisting with meeting notes and action items;
- assisting with invoicing, purchasing of business items and maintenance of office equipment; and participating in planning or project timelines and other administrative duties as required.

[29] Ms. Jibril states that she believes she will be able to observe and monitor the behaviour of Mr. Jibril. She will also be able to provide any financial support and assistance that he may need. She is prepared to assist him with enrolling in college.

[30] Ms. Jibril states that she understands her role as a surety and will report any breach of his bail conditions to the police. She also states that her mother has indicated that she is prepared to do so as well.

[31] In the event that he is released from custody, she is prepared to come to Whitehorse to accompany him back to Ontario. She is prepared to ensure that he surrenders himself into custody prior to any date set for a trial or preliminary inquiry.

[32] Mr. Jibril has agreed that, shortly after his arrival in Toronto, he will attend at the Toronto Police Services, in order to deal with the outstanding bench warrants there.

Ms. Jibril states that she will ensure that he does so.

[33] Ms. Jibril is aware that Mr. Jibril breached the terms of bail conditions he was subject to previously while living at the same residence with their mother. However, she says this occurred at a time when she was working overseas and was not in a position to provide support and monitor him as she will be able to on this occasion if he is released. In the event that she is away from the residence, she states that her mother will still be there to provide monitoring and supervision, with her support.

[34] Ms. Jibril is prepared to provide \$5,000.00 cash that Mr. Jibril can deposit as a condition of his release. She is aware that this cash will be forfeit if Mr. Jibril breaches the terms of his release.

[35] Ms. Jibril is prepared to allow the police, or any peace officer, entry into her home or any vehicle she owns that Mr. Jibril is in, without the need for grounds to believe an offence has been committed. (I also note that Mr. Jibril's older brother, who resides in Edmonton where he operates a business, was contacted by telephone and, as a co-lessee of the apartment, provided his consent as well).

[36] I find, on the materials filed and after hearing Ms. Jibril testify, that she is a credible and reliable surety.

Law

[37] In the recent case of *R. v. Antic*, 2017 SCC 27, the Supreme Court made the following comment regarding the fundamental principles underlying the judicial interim release provisions of the *Code*:

1 The right not to be denied reasonable bail without just cause is an essential element of an enlightened criminal justice system. It entrenches the effect of the presumption of innocence at the pre-trial stage of the criminal trial process and safeguards the liberty of accused persons. ...

[38] As stated in *R. v. St-Cloud*, 2015 SCC 27 at para. 70 (quoting from *R. v. Morales*, [1992] 3 SCR 711 at p. 728), the release of accused persons "...is the cardinal rule and detention the exception."

[39] Section 11(e) of the *Charter* provides the constitutional right of an accused person not to be denied reasonable bail without just cause.

[40] This said, there are obviously times that the circumstances require, notwithstanding the presumption of innocence, that persons accused of committing a criminal offence be detained in custody until their charges are dealt with.

[41] In this particular case, due to the charge he faces, Mr. Jibril is in a reverse-onus condition by virtue of s. 515(6)(d) of the *Code*. He bears the burden to show cause why his detention in custody is not justified. The Crown is not required to show cause why Mr. Jibril should be detained in custody.

Analysis

Primary Grounds

[42] The primary grounds are concerned with ensuring that Mr. Jibril will attend in court when he is required to do so.

[43] Mr. Jibril's convictions for breaching the terms of undertakings and recognizances he has been bound by, as well as his having had warrants for his arrest issued out of Ontario, British Columbia and Saskatchewan, are material in this regard.

[44] To militate against this concern, \$5,000 cash bail has been posted. While this is not an entirely insignificant amount, I realize it is not so large, in light of the charge Mr. Jibril faces, that it would necessarily ensure his attendance in court.

[45] Counsel for Mr. Jibril advised that monies have already been deposited in her trust account sufficient to pay for Mr. Jibril's flight back to Whitehorse. She confirmed that she has been retained for the entirety of Mr. Jibril's matters, not just for the purpose of conducting the judicial interim release hearing.

[46] I note that Mr. Jibril has no prior convictions for failing to attend court, however, I balance this against the fact that warrants that have been issued for his arrest.

[47] I also consider that Mr. Jibril is prepared to attend at a Toronto police station shortly after his return to Toronto to deal with the outstanding warrants there.

[48] There is, of course, no guarantee that Mr. Jibril will not simply choose to walk out of the door of his mother and sister's apartment and abscond in an attempt to avoid

dealing with this charge. Absolute guarantees are not, however, required in order for an accused to show cause why he or she should be released on a reverse-onus judicial interim release hearing. There needs to be a sufficient basis established for the court to be satisfied that there is a likelihood that the plan for release will satisfy the primary ground concerns.

[49] In this case, I am satisfied that the plan does so. The combination of cash bail, the support and supervision Ms. Jibril offers, the retention of counsel for the purposes of trial, the advance provision of funds held in trust for the transportation of Mr. Jibril back to the Yukon for the purposes of attending court, the restrictive conditions that Mr. Jibril has indicated he is prepared to be bound by, including essentially house arrest, and the attendance at a Toronto police station to deal with the outstanding warrants, provides a satisfactory framework to satisfy the primary ground concerns.

Secondary Grounds

[50] The secondary ground concerns are in regard to the need to protect and provide safety to the public, including witnesses to or alleged victims of the offence, as well as addressing the likelihood that an accused will commit further offences or interfere with the administration of justice.

[51] No concerns have been expressed in regard to witnesses and/or victims or to potential interference with the administration of justice.

[52] There are clearly, however, concerns about the possibility of Mr. Jibril offending if released on bail. These concerns are real, given the criminal history of Mr. Jibril, which

includes offending while released in the community, and the violation of his statutory parole.

[53] Further, if Mr. Jibril commits further offences while on bail, there is a likelihood that any substantive offences would be with respect to the trafficking of illicit drugs, based upon his past convictions and in recognition of the charge he is currently facing.

[54] Trafficking in illegal drugs causes significant harm within Canadian society and it could be presumed that further offences by Mr. Jibril involving the trafficking in illicit drugs would cause significant harm. I am not aware of what drugs his previous convictions were in relation to, however, given that the drug he is currently charged with possessing for the purpose of trafficking is fentanyl, if further offences involve the same drug, it could reasonably be said that there is a risk that Mr. Jibril will be “trafficking in death” so to speak. There is no greater harm than that.

[55] Set against these concerns is the question as to whether the stability offered by the plan for release is sufficient to ensure, at least to the necessary standard, that Mr. Jibril’s movements would be so restricted and monitored as to make the prospects of his offending unlikely.

[56] I am satisfied that this plan does so. I have found Ms. Jibril to be a credible and reliable surety. She offers not only supervision and monitoring, but also a positive opportunity for Mr. Jibril to be engaged in employment and potentially education. I am satisfied that Ms. Jibril will take her responsibilities as a surety seriously and will make her best efforts to ensure that Mr. Jibril complies with the terms of release and, if he does not, will report him to the responsible authorities. I am further satisfied that if Ms.

Jibril needs to be away from the residence for a short period of time, that she will ensure that their mother will provide satisfactory monitoring and supervision. In saying this I am aware that Mr. Jibril had been previously released and required to reside at his mother's residence, and had breached his terms of release. In my view the oversight of Ms. Jibril this time adds an additional factor that was not previously present.

[57] Again, there can be no way to absolutely guarantee that Mr. Jibril will not offend. I am further aware that, unlike the situation in Whitehorse, Etobicoke and the surrounding area is demographically large and the ability of authorities to monitor the activities of an individual in the community is more difficult. If he were to become at-large and commence offending, it would likely be more difficult to locate and arrest him there than it would be if he were here.

[58] This said, I am satisfied that Ms. Jibril's role in the release plan, as older sister, employer and landlord is enough to meet the secondary ground concerns.

Tertiary Grounds

[59] The tertiary grounds as set out in s. 515 require a consideration of four factors.

[60] The first consideration is the strength of the Crown's case. While Mr. Jibril's fingerprints appear to have been located in two locations on the outer packaging of the drugs, another individual's fingerprint appears to be the only one located on the packaging actually containing the fentanyl pills. This is certainly circumstantial evidence connecting Mr. Jibril to the drugs, but a triable issue remains. There has not been any

further evidence of identification brought forward, such as photo line-up or video connecting him to the individual who brought the package to Greyhound for delivery.

[61] As to the second factor, there is no doubt that the alleged offence is a serious one, in particular given the nature of the drug involved.

[62] On the third factor, the circumstances of the offence are aggravated by the fact that items associated with firearms were also located. There is often a connection between drug trafficking and firearms, with the ensuing violence that all too often occurs.

[63] As well, Mr. Jibril has shown that he has not been particularly compliant with court orders in the past and has committed further offences while already facing charges.

[64] While the amount of fentanyl is not insignificant, neither is the amount particularly large, given the value of \$3,000.00 ascribed to them. It also does not appear to be the most sophisticated of operations.

[65] Finally, as to the fourth factor, there is no doubt that, if convicted, Mr. Jibril is facing the potential for a lengthy term of imprisonment, given his prior convictions and the nature of the drug, in particular in light of the current fentanyl crisis in Canada.

[66] There is certainly a fairly persuasive basis for the argument that the tertiary grounds require that Mr. Jibril be detained.

[67] This argument, however, also can be met with a strong plan for release. I as well keep in mind that the fact that the drug is fentanyl must not be a factor that overwhelms consideration of all the relevant information before me. As stated by Hinkson C.J. in **R. v. Friesen**, 2017 BCSC 1391 in para. 22 on a review of a detention order:

...I am persuaded that the detention order of the Provincial Court Judge was clearly inappropriate because it was effectively based on the drug that the applicant allegedly trafficked in. In my view this gave excessive weight to that single factor. If that factor alone warranted the detention of an accused, everyone who is alleged to have trafficked in fentanyl would be detained pending trial.

[68] Mr. Friesen had a lengthy criminal record which included s. 5(2) CDSA conviction. The Provincial Court Judge hearing the judicial interim release hearing did not find the secondary grounds to be a concern but detained Mr. Friesen on the tertiary grounds. The detention order was set aside on review and Mr. Friesen was released on terms.

[69] As was the case with Mr. Friesen, the circumstances of Mr. Jibril, in particular his prior related convictions, differentiate him from an individual without a previous history of involvement with illicit drugs.

[70] However, in considering the impact of Mr. Jibril's release on the public confidence in the administration of justice, the proposed terms of release are also a relevant consideration. There is a significant difference between an individual released on his own recognizance, without restrictive terms or a strong supervisory structure, and the plan for Mr. Jibril. In my opinion, the plan proposed in this case is such that the public confidence will not be compromised by his release.

[71] As such I am satisfied that Mr. Jibril has met his onus to show cause why he should be released.

[72] The release will be on the following terms:

1. Be released from Whitehorse Correctional Centre into the care and custody of Sagal Jibril on a Monday through Friday prior to 3:00 p.m.;
2. Reside with Sagal Jibril at Apt. 207-2493 Lakeshore Boulevard W., Etobicoke, Ontario, abide by the rules of the residence and not change that residence without the further order of the court;
3. Upon your release from the Whitehorse Correctional Centre, you are to be in the line of sight of Sagal Jibril at all times;
4. Report to a Bail Supervisor in Whitehorse, YT, immediately upon your release from custody and thereafter, when and in the manner directed by the Bail Supervisor;
5. Remain inside your residence at all times except in the actual presence of Sagal Jibril, or except as otherwise ordered by the court. You must answer the door or the telephone to ensure you are in compliance with this order. Failure to do so during reasonable hours will be a presumptive breach of this condition. You will provide your Bail Supervisor with the telephone number of the residence;

6. Within 36 hours of arriving in Ontario, you will turn yourself into the Toronto 22nd Division Police detachment to deal with your outstanding charges;
7. Not possess or consume alcohol and/or controlled drugs or substances that have not been prescribed for you by a medical doctor;
8. Not attend any premises whose primary purpose is the sale of alcohol including any liquor store, off sales, bar, pub, tavern, lounge or nightclub;
9. Attend and actively participate in all assessment and counselling programs as directed by your Bail Supervisor, and complete them to the satisfaction of your Bail Supervisor, for substance abuse, and provide consents to release information to your Bail Supervisor regarding your participation in any program you have been directed to do pursuant to this condition;
10. Maintain the employment offered by Sagal Jibril at 940557 Canada Limited, and inform your Bail Supervisor if you stop performing this employment. Provide your Bail Supervisor with the hours you have worked and where you have worked;
11. Not possess or use any firearm, ammunition, explosive substance or any weapon as defined by the *Criminal Code*;

12. Not possess or use any personal cell phone, smart phone, or other personal mobile electronic communications device except one cell phone as required by your employment. Provide you Bail Supervisor with copies of all documentation related to the use of that phone upon request;
13. You will agree that you are waiving your Section 8 rights with respect to your personal e-mail account and you will allow a peace officer or member of the RCMP to access this account upon request;
14. You will surrender yourself into custody at the Whitehorse Correctional Centre 48 hours prior to the commencement of any trial or preliminary inquiry date that is set in the matter. For the purposes of attending at Whitehorse Correctional Centre in order to surrender yourself into custody, you shall travel from your residence in Etobicoke, Ontario to the Whitehorse Correctional Centre in the company of your sister Sagal Jibril, or your legal counsel, or such other person who is approved in advance by the court;
15. Submit to any demand by a Peace officer with or without warrant and with or without reasonable and probable grounds to search your person and the residence of Sagal Jibril, or any vehicle you or Sagal Jibril own, operate, control or possess;
16. Keep the peace and be of good behaviour;

17. Appear before the court when required to do so by the court.

[73] I note that the terms of release were structured in consultation with counsel to ensure that they addressed the salient issues.

COZENS T.C.J.