

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Ahmed, 2020 ONCA 572

DATE: 20200918

DOCKET: M51389 (C68112)

Hourigan J.A. (Motion Judge)

BETWEEN

Her Majesty the Queen

Respondent

and

Rashid Ahmed

Applicant/Appellant

DOCKET: M51391 (C68113)

AND BETWEEN

Her Majesty the Queen

Respondent

and

Liiban Yusuf

Applicant/Appellant

Alan Gold and Laura Metcalfe, for Rashid Ahmed

Lindsay Board, for Liiban Yusuf

Katie Doherty, for the Crown

Heard: September 15, 2020

REASONS FOR DECISION

**(a) Introduction**

[1] On the evening of March 23, 2017, the Toronto Police Service investigated reports of gunshots in the area of 3001 Finch Ave. West. The police observed a vehicle pull up to that address. Mr. Ahmed was the driver and Mr. Yusuf was in the right rear passenger seat. A search of the appellants revealed no weapons. However, a search of the vehicle yielded a loaded restricted firearm and extended magazine, which were located on the floor close to where Mr. Yusuf had been seated.

[2] Mr. Ahmed was convicted of (i) occupying a motor vehicle knowing that there was in that vehicle a restricted firearm, contrary to s. 94 (2); and (ii) occupying a motor vehicle knowing that there was in that vehicle a prohibited device, contrary to s. 94 (1). He was sentenced to a total of 18 months' imprisonment, less credit of 141 days, resulting in a net sentence of one year, one month and 10 days.

[3] Mr. Yusuf was convicted of (i) unauthorized possession of a loaded restricted firearm, contrary to s. 95 (1); (ii) possession of a weapon for a dangerous purpose, contrary to s. 88 (1); (iii) possession of a prohibited device (an extended magazine) for a dangerous purpose, contrary to s. 88 (1); (iv) unauthorized possession of a restricted firearm, contrary to s. 91 (1); (v) possession of a restricted weapon knowing its possession is unauthorized, contrary to s. 92 (2); and (vi) possession of a prohibited device knowing its possession is unauthorized,

contrary to s. 92 (2). He was sentenced to a total of 40 months imprisonment, less credit of 137 days, for a net sentence of two years, 11 months, and 15 days.

[4] The appellants seek bail pending appeal. The Crown opposes the orders sought on the public interest criterion. For the reasons that follow, the applications are granted.

**(b) Analysis**

[5] There are two components to the public interest criterion: public safety and public confidence in the administration of justice: *R. v. Oland*, 2017 SCC 17, at para. 23.

[6] The appellants have satisfied me that there is no concern regarding the public safety component. Neither appellant has a criminal record and they have been on bail related to these charges for almost three and a half years, including 19 months of post-conviction bail, without incident. There is no substantial risk for public safety in the circumstances.

[7] Regarding the public confidence component, I note that rarely does the public interest component play a role, much less a central role, in the decision to grant or deny bail pending appeal: *Oland*, at para. 29.

[8] The Crown submits that the combination of weak grounds of appeal and the serious nature of the offences establishes that there is a strong public interest in the enforcement of the convictions. I accept that the offences are serious, and that

this factor weighs in favour of the enforceability interest, as does the fact that Mr. Yusuf was on bail at the time of his arrest.<sup>1</sup>

[9] On balance, however, I am satisfied that the appellants have met their onus of establishing that their detention is not necessary in the public interest. The grounds of appeal asserted surpass the frivolous standard and are clearly arguable. Without undertaking a detailed review of the merits of the appeals, I observe that there is a serious issue about whether the Crown proved beyond a reasonable doubt Mr. Ahmed's knowledge of the presence of a restricted firearm and extended magazine. Regarding Mr. Yusuf, there are good arguable grounds of appeal about the trial judge's analysis of the investigative detention and his reliance on photographs of a similar weapon found on Mr. Yusuf's phone.

[10] The length of the sentences imposed is also a significant factor. As first-time offenders, it is very possible that both appellants would be released before their appeals can be heard. This is almost undoubtedly the case for Mr. Ahmed. There are also no residual flight risk or public safety concerns. In my view, an order that is essentially a continuation of the appellants' bail of over three years would not adversely affect public confidence in the administration of justice.

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<sup>1</sup> Those charges did not proceed to trial.

**(c) Disposition**

[11] The applications are granted. The parties have agreed on the terms of Mr. Ahmed's bail and the draft order they have filed shall issue. The only issue regarding Mr. Yusuf's bail order is whether he should be subject to a curfew (the position of the defence) or to house arrest (the position of the Crown). Mr. Yusuf has been abiding by his curfew in his most recent bail order and I see no reason why a house arrest order should be made. Accordingly, Mr. Yusuf's bail order including a curfew shall issue.

"C.W. Hourigan J.A."