IN THE COURT OF APPEAL
OF NEWFOUNDLAND AND LABRADOR

Citation: *R. v. King*, 2026 NLCA 35
Date: October 14, 2026
Docket Number: 202601H0027

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BETWEEN:

JORDAN KING

APPLICANT/APPELLANT

AND:

HIS MAJESTY THE KING

RESPONDENT

Coram: G.L.C. Noel J.A.

Court Appealed From:	Provincial Court of Newfoundland and Labrador, Gander 0924A00262
Application Heard:	October 1, 2026
Judgment Rendered:	October 14, 2026
Reasons for Judgment by:	G.L.C. Noel J.A.
Counsel for the Applicant/Appellant:	Robby D. Ash
Counsel for the Respondent:	Shawn I. Patten

Authorities Cited:

CASES CITED: *R. v. Oland*, 2017 SCC 17, [2017] 1 S.C.R. 250; *R. v. Manasseri*, 2013 ONCA 647; *R. v. Tulk*, 2025 NLCA 36; *R. v. Ferwerda*, 2018 NLCA 14; *R. v. T.S.D.*, 2020 ONCA 773; *R. v. C.L.*, 2018 ONCA 470; *R. v. Johnson*, 2024 NLCA 33; *R. v. Zora*, 2020 SCC 14, [2020] 2 S.C.R. 3; *R. v. Parsons*, 1997 CanLII 10870 (NLSCAD); *R. v. Thompson*, 2020 ONSC 3503; *R. v. Payne*, 2018 NLCA 2; *R. v. M.A.*, 2021 NLCA 41; *R. v. I.W.*, 2021 ONCA 628; *R. v. S.B.K.*, 2022 BCCA 446; *R. v. W.(D.)*, [1991] 1 S.C.R. 742; *R. v. Ward*, 2008 NLCA 38; *R. v. Buonomo*, 2025 ONCA 62.

STATUTES CONSIDERED: *Criminal Code,* RSC 1985, c. C-46, sections 266, 271, 679(3), 515(10)(b), 515(10)(c).

G.L.C. Noel J.A.:

OVERVIEW

[1] Jordan King applies for release from custody pending the determination of his appeal from convictions in the Provincial Court of Newfoundland and Labrador for sexual assault and assault. The trial judge sentenced Mr. King to 33 months incarceration and ancillary orders.

[2] The Crown concedes that Mr. King meets the first two statutory criteria for release pending appeal. His appeal is not frivolous and he is not a flight risk.

[3] The Crown, however, opposes Mr. King's release because he has not met his onus of establishing the third criterion, that is, his detention is not necessary in the public interest, because of public safety concerns and public confidence in the administration of justice. The public confidence component involves weighing two competing interests: enforceability and reviewability.

[4] Balancing the competing interests of enforceability and reviewability, the Crown submits that enforceability is paramount in this case. Despite the ground of appeal meeting the very low bar of raising an arguable issue, the Crown argues the appeal ground is weak. Furthermore, the Crown asserts that there is a substantial likelihood that Mr. King will reoffend if released.

[5] Mr. King argues the trial judge made an obvious and clear error of law by relying upon the complainant's prior consistent statements, and that this error tainted the trial judge's assessment of credibility. Mr. King is seeking a new trial.

[6] Mr. King proposes that his release be subject to stringent and onerous conditions, effectively house arrest while living with his parents, and having his mother, S.H., act as his Surety with a promise to pay $25,000.00 if Mr. King does not comply with his conditions of release.

[7] The main issue to be considered, then, is whether Mr. King's detention is necessary in the public interest.

[8] Mr. King's conviction of sexual assault with vaginal penetration is a very serious offence, coupled with an assault conviction for punching the complainant in an altercation after the sexual assault. Mr. King has outstanding criminal charges before the Provincial Court that occurred after the sexual assault and assault on the complainant, including charges for breaching release orders in connection with the outstanding charges. Nevertheless, but for his incarceration for the convictions under appeal, Mr. King would have been released on all outstanding charges under a release order, issued by the Provincial Court with the consent of the Crown.

[9] For the reasons that follow, I would conclude that, Mr. King has met his onus of establishing the minimum standard that weighs in favour of reviewability. I am also satisfied that concerns for public safety and the maintenance of public confidence in the administration of justice can be sufficiently mitigated and managed through the proposed release conditions.

[10] I would grant Mr. King's release, subject to the terms and conditions of the release order set out herein (the "Release Order").

BACKGROUND

[11] The Crown alleged Mr. King sexually assaulted and assaulted the complainant on or about June 27, 2023.

[12] On December 10, 2025, the trial judge convicted Mr. King of the offences contrary to sections 266 and 271 of the *Criminal Code,* RSC 1985, c. C-46. The Crown had no concerns with Mr. King attending court for his sentencing and did not seek his remand into custody (Transcript, Vol. 2, at p. 301). The trial judge did not

order his remand pending sentencing. The date for sentencing was adjourned for the trial judge to receive the pre-sentence report Mr. King's trial counsel requested and the trial judge ordered.

[13] On April 16, 2026, the trial judge sentenced Mr. King to 30 months incarceration for sexual assault and three months consecutive incarceration for assault, for a total of 33 months, and made a DNA order, a SOIRA order, and a firearms prohibition.

[14] On April 22, 2026, Mr. King filed a Notice of Appeal with this Court in relation to the convictions. The transcript of the trial proceedings was filed on August 13, 2026. The Appeal Book and Mr. King's Factum have not been filed.

[15] Mr. King's application for release pending appeal was filed September 18, 2026 (the "Application"). I heard Mr. King's Application on the earliest date agreeable to the parties on October 1, 2026, and reserved my decision.

ISSUE

[16] Has Mr. King met his onus to show why he should be released pending determination of the appeal?

ANALYSIS

Statutory Criteria for Release Pending Appeal

[17] To justify his release, Mr. King must establish, on a balance of probabilities, the three criteria for release pending appeal prescribed in section 679(3) of the *Criminal Code,* as noted in *R. v. Oland*, 2017 SCC 17, [2017] 1 S.C.R. 250, at paragraph 19:

> (a) the appeal … is not frivolous;
>
> (b) he will surrender himself into custody in accordance with the terms of the order; and
>
> (c) his detention is not necessary in the public interest.

Applying the Criteria and Governing Principles to this Case

1. The Appeal is Not Frivolous

[18] The first criterion requires that I examine the grounds of appeal to ensure that they are "not frivolous". The "not frivolous" test is "a very low bar". An appeal is not frivolous as long as one ground of appeal raises a viable and arguable issue that would warrant appellate intervention if established (*Oland*, at para. 20; *R. v. Manasseri*, 2013 ONCA 647, at para. 38; and *R. v. Tulk*, 2025 NLCA 36, at para. 9).

[19] The grounds of appeal, as found in Appendix A of the Notice of Appeal, state:

> 1. The learned trial judge erred in law by relying on prior consistent statements of the complainant in her credibility assessment of the complainant; and
>
> 2. Such further and other grounds as the Appellant may advise and this Honourable Court may allow following a review of the trial transcript.

[20] Mr. King, in his Application, at paragraph 6, states:

> …In finding the complainant's allegations credible, the trial judge explicitly relied upon prior consistent statements made by the complainant [Transcript, Vol. 2, at p. 299]. This is a clear error of law. The trial judge's reasons for conviction appear at [Transcript, Vol. 2, at pp. 277-304].

[21] The trial judge, reviewing the testimony of the complainant stated in her oral decision:

> As I've indicated, [the complainant's] … demeanour in a court is not demonstrative of someone's credibility or reliability, and we know that as trial judges; some people are very nervous in court and are telling the absolute truth; some people are very stoic in court and are telling lies. So she was, you know, she was upset at times, she was argumentative at times, there were aspects of her physical presentation, like I said, the moving around and the bobbing and so forth, at times, but she was absolutely consistent. She was consistent from the statement that she gave to the police to the evidence that she gave in court. … Her mother's testimony was consistent with what [the complainant] said.
>
> (Underlining added; Transcript, Vol. 2, at p. 299)

[22] Whether the trial judge relied on a prior consistent statement in assessing the complainant's credibility is a viable ground of appeal and raises an arguable issue on Mr. King's appeal.

2. Surrender into Custody

[23] Mr. King must next satisfy the Court that he will not flee the jurisdiction and will surrender into custody in accordance with the terms of the order. The term "order" refers to the order the Court will impose if Mr. King is released (*Oland*, at para. 21; and *R. v. Ferwerda*, 2018 NLCA 14, at para. 42).

[24] The Crown is not arguing that Mr. King will fail to surrender himself into custody in accordance with the terms of any order made by this Court. Mr. King always appeared in court as and when required.

[25] He has a young child, stepson, and parents who live in Newfoundland and Labrador. He works with family-related enterprises, as a fisherman during fishing season and snow clearing and other odd jobs in the winter months.

[26] Mr. King has satisfied me that he will not flee the jurisdiction and will surrender into custody as required.

3. Whether Detention is Necessary in the Public Interest

[27] The third criterion requires Mr. King establish that "his detention is not necessary in the public interest" (*Criminal Code*, at s. 679(3)(c)). It is upon this criterion that the Crown strongly opposes Mr. King's release. The public interest criterion consists of two components: public safety and public confidence in the administration of justice (*Oland,* at paras. 23, 26).

Public Safety

[28] Public safety involves the protection of the public and mirrors the secondary ground requirements of section 515(10)(b) of the *Criminal Code*. Protection of the public includes the general public and specifically the victim. To be denied bail for public safety considerations: (1) Mr. King must pose a "substantial likelihood" of committing an offence or interfering with the administration of justice; (2) the "substantial likelihood" must endanger the "protection or safety of the public"; and

(3) his detention must be "necessary" for public safety (*Oland*, at para. 24; and *R. v. T.S.D.*, 2020 ONCA 773, at para. 47).

[29] To assess public safety, the Court may consider many factors such as the seriousness and nature of the offence, the surrounding circumstances of the offence and offender, risk of harm to the victim, the offender's criminal record, and the offender's experience in abiding by conditions in prior court orders (*Ferwerda*, at para. 68).

[30] Public safety considerations alone can justify refusing release in the public interest (*Oland*, at para. 27; and *T.S.D.*, at para. 48).

[31] The Crown submits that Mr. King (1) poses a substantial likelihood to commit an offence or interfere with the administration of justice, (2) will endanger the protection or safety of the public, and (3) that his detention is necessary for public safety.

[32] Mr. King, in his Application, disclosed to the Court his outstanding charges and the release order issued by the Provincial Court covering these charges (Application, at para. 5, Schedule "A", Schedule "B").

[33] The Crown states there are 20 outstanding charges and all these alleged offences occurred after the sexual assault and assault on the complainant in this matter. The offences include:

- [Section 266] Assault on domestic partner K.H. on 4 August 2025. [Mr. King] was released on a peace officer's undertaking on that date.

- [Section 348(1)(a)] Break and enter into a residence occupied by K.H. on 9 August 2025. Various breaches of the 4 August 2025 undertaking including attending the residence of the break and enter, contact with K.H. and her mother, A.H., and exposure contrary to s. 173(1)(b). [Mr. King] was arrested on 20 August 2025 and was released by consent on a personal promise to pay Release Order on 21 August 2025.

- [Section 349(1)] Unlawfully in a dwelling house of another female, J.S. on 22 August 2025. [Mr. King] was also charged with mischief to J.S.'s property, breach of the 21 August 2025 Release Order for failing to not possess, consume or traffic in any illegal drug or substance, obstruction

of a police officer contrary to s. 129(a) and failure to comply with a demand contrary to s. 320.28. [Mr. King] consented to remand, and was released on a Release Order with a surety, [name omitted], on 25 August 2025.

- [Section 145(5)(a)] Failure to comply with the Release Order of 25 August 2025 to remain in his residence between 10 PM and 6 AM on 27 November 2025. [Mr. King] was released on a new Release order on 1 December 2025. His prior process was cancelled, and he was released on that date with surety, [S.H.]. The new Release Order encompassed all outstanding charges.

- [Section 320.17] Flight from a peace officer on 15 December 2025. [Mr. King] was also charged with breach of his 1 December 2025 Release Order for consuming drugs. He was given an appearance notice at that time. Blood analysis results were subsequently obtained by police and [Mr. King] was charged on 23 February 2026 with contravention of ss. 320.14(1)(a) and (c). He consented to an indefinite remand on 24 February 2026.

- [Section 145(5)(a)] Contravention of the 1 December 2025 Release Order for contacting A.H. on 12 January 2026. [Mr. King] was also charged with assaulting and resisting a peace officer on that date. [Mr. King] consented to remand leading up to his indefinite remand on 24 February 2026.

- On 16 April 2026, [Mr. King] was sentenced to 33 months custody for the sexual assault and assault of [the complainant]. In relation to the outstanding charges, on 12 June 2026, [Mr. King] was released on a new Release Order with surety, [S.H.]. The new Release Order encompassed all outstanding charges. As [Mr. King] was serving a sentence at the time of the 12 June 2026 Release Order, he was not released from custody.

(Response to the Applicant's Application, at para. 34 ("Crown's Response"))

[34] Mr. King, at this stage, is presumed innocent of any outstanding charges. That, however, does not eliminate their relevance and importance to release pending

appeal (*R. v. C.L.*, 2018 ONCA 470, at para. 16; and *Criminal Code*, at s. 515(10)(c)(v)).

[35] The Crown submits Mr. King poses a substantial likelihood to reoffend if released. By August 9, 2025, after his first release on August 4, 2025, Mr. King is alleged to have breached his undertaking by breaking into the home of a domestic partner he was ordered to stay away from. After his release on August 21, 2025, Mr. King allegedly unlawfully entered the home of another woman the following day. Upon being released again on August 25, 2025, within a few months (November 27, 2025), he allegedly breached his release conditions by failing to abide by his curfew. After being released on December 1, 2025, with Surety S.H., within two weeks (December 15, 2025), Mr. King again breached for alleged flight from police and consumption of drugs. Released on an appearance notice, Mr. King allegedly breached again within a month (January 12, 2026) by breaching a no-contact provision (Crown's Response, at para. 35).

[36] The Crown states Mr. King has shown that he has no respect for court orders. If released, based on his past behaviour, the Crown submits he will endanger the protection or safety of the public. The fact that he is alleged to have contravened no-contact orders for two women adds an extra layer of concern for the safety of the complainant. As noted in the trial judge's sentencing decision, Mr. King, while having a limited record, has been convicted for uttering threats to an intimate partner. His detention, the Crown asserts, is therefore necessary for public safety (Crown's Response, at para. 36, citing to *R. v. Johnson*, 2024 NLCA 33, at para. 49, *Ferwerda*, at para. 68, Crown's Response, Tab 15, Provincial Court Record, Tab 16, CPIC printout, and Transcript, Vol. 2, at p. 340).

[37] To manage the risk, Mr. King, in his Application, proposes that his Release Order be secured by a Surety, his mother, S.H. She agrees to sign a promise to pay in the amount of $25,000.00. S.H. is a retired person who resides with Mr. King's father, R.K. If released, Mr. King proposes to reside with his parents, allowing for a high degree of supervision.

[38] The Crown further submits Mr. King's release plan provides the Court no assurance that public safety will be protected. The proposed Surety, S.H., was a Surety for Mr. King on his December 1, 2025, release order. Within two weeks, Mr. King had breached his release conditions for alleged flight from police, consumption of drugs, and impaired operation of a motor vehicle. Regardless of the amount of money S.H. pledges, her past difficulties supervising Mr. King, the Crown states,

establish that she is unable to effectively monitor his activity. This lack of effective monitoring further exacerbates the risk to public safety (Crown's Response, at para. 37).

[39] I find there is no greater risk to public safety releasing Mr. King pending his appeal now than when the Provincial Court, with the consent of the Crown, issued the release order on June 12, 2026, with the following conditions:

> (1) You must attend Court as required.
>
> (2) You must reside at [your parents' residence].
>
> (3) You must not contact or communicate, directly or indirectly, in any manner with [certain individuals] and you must stay away from their person and from their place of residence, employment, or school.
>
> (4) You must not enter and remain away from [certain address].
>
> (5) You must not conceal on your person any knife and not possess or be in any dwelling where there is storage of any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance.
>
> (6) You must remain within your residence between the hours of 10:00 p.m. and 7:00 a.m., daily and present yourself at the door upon request. Failure to do so within 15 minutes is a breach of this condition.
>
> (7) You must not possess, consume or traffic in any illegal drug or substance.
>
> (8) You must arrange any access to your children only through the assistance of an acceptable intermediary or in accordance with any court order.
>
> (9) Curfew and residence conditions are required except for work purposes when fishing or traveling to and from work, at which point you are to notify the RCMP in [location omitted] of your travel/work schedule.

[40] There is always some risk with release, particularly in a case like this where Mr. King has been charged with repeated breaches of release orders. The risk to public safety can never be fully eliminated. The question is whether the risk can be mitigated to a sufficient level to warrant release.

[41] Mr. King proposed in his Application, at paragraph 12, the following conditions of his release:

> (i) Immediately surrender yourself into police custody (and within 24 hours that judgment is filed) if your appeal is dismissed, unless otherwise specified in the filed judgment or by court order.
>
> (ii) Reside with your Surety, [S.H.], at [address omitted].
>
> (iii) Report to RCMP at [location omitted], NL in person every Wednesday between 9 am and 4 pm and sign the registration book. If you are engaged in the fishery in the course of your employment on a Wednesday during the time you are required to report, you may report by telephone.
>
> (iv) Remain within Newfoundland and Labrador.
>
> (v) Do not communicate, directly or indirectly, with [the complainant] and remain away from any place of residence, employment or schooling you know to be frequented by her.
>
> (vi) Do not conceal on your person any knife and not possess or be in any dwelling where there is storage of any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition or explosive substance.
>
> (vii) Unless required for the purposes of your employment or otherwise in the continuous presence of a Surety, remain within your residence between the hours of 10PM and 7AM daily and present yourself at the door upon request [by the RCMP].
>
> (viii) Do not possess or acquire a passport and immediately surrender any valid passport in your possession to the Court of Appeal of Newfoundland and Labrador.

[42] In addition to (vi) above, I would add in continuing the sentence: "and surrender any of them in your possession and any authorization, licence or registration certificate or other document enabling the acquisition or possession of a firearm to the RCMP detachment at [location omitted]".

[43] To the end of (vii) above, I would add that Mr. King is to notify the RCMP of his work and travel-related schedule.

[44] I am satisfied that the proposed release conditions, along with further conditions that Mr. King expressed willingness at the hearing to accept, reasonably mitigate and manage the risk to public safety. The following additional conditions are to be included in the Release Order:

(ix) You must abstain from the possession or consumption of alcohol.

(x) You must abstain from the possession or use of controlled drugs or substances unless in accordance with a current medical prescription.

(xi) You must follow the directions of your Surety with respect to attendance at any counselling or treatment for drug/alcohol abuse.

(xii) You must submit to alcohol and drug testing as may be required and arranged from time to time by the RCMP.

[45] Counsel provided support for the legality of including these additional Court conditions with the consent of Mr. King (*R. v. Zora*, 2020 SCC 14, [2020] 2 S.C.R. 3, at para. 98; *R. v. Parsons*, 1997 CanLII 10870 (NLSCAD); and *R. v. Thompson*, 2020 ONSC 3503, at para. 67).

[46] Mr. King's outstanding charges show a pattern of involvement with law enforcement arising from Mr. King's propensity to abuse alcohol and drugs. Mr. King and S.H. readily acknowledge this. Mr. King says he has been free of drug use during the months since his incarceration. He is prepared to abstain from alcohol and drugs while under interim release, and S.H. undertakes to assist him and get him the support and treatment help he needs.

[47] Mr. King has demonstrated a genuine desire to maintain sobriety. By adhering to the conditions pertaining to sobriety and S.H.'s willingness to offer her son directions and guidance on available counseling and treatment options, I am satisfied public safety concerns are sufficiently ameliorated to consider the availability of release.

Public Confidence

[48] Public confidence in the administration of justice involves weighing two competing interests: enforceability and reviewability. Enforceability reflects the general rule of the immediate enforcement of judgments. Reviewability reflects society's acknowledgment of the fallibility of our justice system and the need for a meaningful review process. One which does not require an appellant to serve all or a significant part of a custodial sentence only to discover the conviction is set aside on appeal (*Oland*, at paras. 24-25).

[49] To determine how, if at all, release pending appeal is likely to affect public confidence in the administration of justice, factors pursuant to section 515(10)(c) modified for the post-conviction context are considered (*Oland*, at paras. 31-32). Those factors are: (1) the seriousness of the crime; (2) public safety concerns that fall short of a substantial risk along with flight risks below the threshold in section 679(3)(b); and (3) the apparent strength of Mr. King's ground of appeal (*R. v. Payne*, 2018 NLCA 2, at para. 11).

[50] In assessing the enforceability interest, the first factor, the seriousness of the crime, plays an important role. To release an offender convicted of a serious crime may undermine public confidence. I have the benefit of the trial judge's reasons on sentence to determine the seriousness of the crime (*Oland*, at paras. 37-38).

[51] The second factor, public safety concerns that fall short of a substantial risk, also require consideration when gauging the need to enforce convictions. In some cases, this factor can "tip the scale in favour of detention". Considerations such as an offender's lack of adherence to court orders and/or outstanding charges may raise public safety concerns. Similarly, lingering flight risks that fall short of a substantial risk under section 679(3)(b), may gravitate towards continued detention. Conversely, a lack of flight risk may diminish the enforceability interest (*Oland*, at para. 39; *R. v. M.A.*, 2021 NLCA 41, at para. 20; *R. v. I.W.*, 2021 ONCA 628, at para. 17; and *Tulk*, at paras. 20-23).

[52] In assessing the reviewability interest, the third factor, the strength of Mr. King's ground of appeal, plays a central role. Even if Mr. King establishes that his ground of appeal is not frivolous pursuant to section 679(3)(a), the preliminary merits of the appeal shall be considered from a public interest perspective (*Oland*, at paras. 40-41; and *Ferwerda*, at paras. 85-86, 90).

[53] Appellate judges can draw on their "knowledge and experience" in conducting a "preliminary assessment" of the strength of an appeal. The basis of the inquiry shall include the materials provided by counsel, aspects of the record, along with authorities. For the purposes of assessing the preliminary merits, the test is whether "the grounds of appeal clearly surpass the minimal standard required to meet the "not frivolous" criterion" (*Oland*, at paras. 44-45; *Ferwerda*, at para. 89; and *Payne*, at para. 18).

[54] When balancing these factors, appellate judges should be cognizant to measure public confidence through the eyes of the reasonable member of the public. That person is "thoughtful, dispassionate, informed of the circumstances of the case and respectful of society's fundamental values" (*Oland*, at para. 47).

Enforceability Factor #1 - Seriousness of the crime

[55] Mr. King has convictions for sexually assaulting and assaulting the complainant. The Crown submits while all sexual assaults are serious, this sexual assault is amplified as Mr. King was found to have engaged in non-consensual intercourse with the complainant.

[56] The trial judge describes the offences and the impact of the crime:

> ...in this case, there was vaginal intercourse; it was brief and a one-off, but it is significant. The degree of violence or force used, both significant in this particular case. The aspect of a sexual assault is fundamentally and inherently a violent offence. The amount of force used was not exaggerated by the victim in her evidence; however, it carried on through and continued into the physical assault.
>
> (Transcript, Vol. 2, at p. 344)

[57] As the trial judge noted, the complainant was subject to a violent sexual encounter. The trial judge accepted the elevated level of physical force Mr. King used to sexually assault and, subsequently, physically assault the complainant. The Crown argues there is a significant risk that public confidence in the administration of justice will be undermined should release be granted given the seriousness of the crime.

[58] Mr. King's convictions for these serious offences pull towards enforceability. Nevertheless, the seriousness of the crime must always be balanced with the other factors.

Enforceability Factor #2 - Public safety concerns that fall short of a substantial risk along with flight risks below the threshold in section 679(3)(b)

[59] Even when an applicant meets the public safety threshold, residual public safety concerns should still be considered as part of the public confidence analysis (*Oland*, at para. 27; and *T.S.D.*, at para. 48).

[60] The Crown reiterates that Mr. King poses a substantial risk of reoffending based on Mr. King's alleged failure to comply with recent court orders. I accept there is a risk of recidivism on Mr. King's part; however, the proposed release conditions satisfy me that the risk is manageable and tolerable within the limits that the law provides.

[61] The Crown also "feels there is a lingering flight risk based on the information before it" (Crown's Response, at para. 41). I reject the Crown's contention that there is a residual flight risk. There is no evidence to suggest any such risk and, in fact, Mr. King's past conduct before the courts demonstrates otherwise.

Reviewability Factor - The apparent strength of Mr. King's appeal

[62] The Crown argues the ground of appeal, specifically on the trial judge's acceptance of the complainant's prior consistent statements, does not clearly surpass the minimal standard required to meet the "not frivolous" criterion. I disagree and find Mr. King has established the minimum standard on the strength of his appeal.

[63] The Crown submits because the complainant's police statement was not tendered into evidence, the trial judge could not conduct an analysis to find consistency between her statement and her testimony.

[64] Defence counsel presented the complainant with excerpts of her police statement to impeach her testimony. Those excerpts were not tendered into evidence (Transcript, Vol. 1, at pp. 50-52, 62-78, 92-95, 101-104).

[65] The Crown argues the trial judge was presented with inconsistencies, not consistencies, between the complainant's statement and testimony. The Crown concedes that perhaps the trial judge should have chosen better words to describe the unsuccessful impeachment, but no error was committed. No prior consistent

statements, the Crown submits, were offered for the trial judge's consideration and comparison.

[66] The Crown submits that a similar situation was addressed by the British Columbia Court of Appeal in *R. v. S.B.K.*, 2022 BCCA 446. The court stated:

> [15] Counsel for the appellant says the trial judge addressed the implausibility of the complainant fabricating the allegations (and does not suggest she erred in doing so), but contends she then makes inappropriate use of the police statements as proof that the complainant could not have fabricated the allegations.
>
> [16] I would not accede to that argument. Given that the statement was not in evidence, the trial judge's reference in para. 130 to the complainant "consistently relaying" her allegations in her statement to the police and at trial can only have been a reference to the circumstances in which the allegations were made or to the unsuccessful attempt at impeachment, not the content of the statements.
>
> [17] The only evidence before the trial judge with respect to the content of the police statement were the few questions posed in cross-examination. They established that there was no significant inconsistency in the complainant's evidence, nothing else.

[67] Mr. King raises a cogent and rational argument to support the strength of his appeal. He submits that not only did the trial judge accept the consistency of the complainant's testimony and her police statement but also accepted the consistency of what the complainant told her mother on a call that night. The trial judge, when referring to the mother's testimony stated:

> [The complainant's] mother's testimony was consistent with what [the complainant] said. She got a call that night, [the complainant] was crying, she said she had been raped, she had been raped by Jordan King…
>
> (Transcript, Vol. 2, at p. 299)

[68] Mr. King argues the trial judge erred in her *R. v. W.(D.)*, [1991] 1 S.C.R. 742, analysis on reasonable doubt, when she relied on the evidence of the complainant's mother and the prior consistent statement that the complainant made to her that she had been raped (Transcript, Vol. 1, at p. 300).

[69] Mr. King's appeal counsel argues there is authority from this Court that it is an error of law for the trial judge to use the complainant's prior consistent statements

as evidence supporting the truth of allegations. As Rowe J.A. (as he then was) stated in *R. v. Ward*, 2008 NLCA 38, at paragraph 23:

> To use [the complainant's] prior consistent statements [as evidence supporting the truth of allegations] was an error of law. It is a serious error in the context of this case, where credibility of the complainant was a critical factor.

[70] The Crown submits the *Ward* case is quite distinguishable from the facts of this case. And that may be so.

[71] It is not appropriate for me to assess the strength of the appeal beyond whether "the grounds of appeal clearly surpass the minimal standard required to meet the "not frivolous" criterion" (*Oland*, at para. 44). I am satisfied that has been established.

Balancing the Factors

[72] The factors are not to be assessed in silos and a "qualitative and contextual assessment is required" (*Oland*, at para. 49)

[73] On balancing all the factors, I am mindful that the Supreme Court of Canada made clear "that our justice system is not infallible and that a meaningful review process is essential to maintain public confidence in the administration of justice" (*Oland*, at para. 45).

[74] Despite the seriousness of the crime and the public safety concerns, Mr. King has established his continued detention is not necessary in the public interest. Mr. King's ground of appeal clearly surpasses the minimum standard required. Unless Mr. King is released pending appeal, he will have served a substantial portion of his custodial sentence by the time his appeal is heard and determined (*R. v. Buonomo*, 2025 ONCA 62, at para. 12)

[75] The public safety concerns are sufficiently addressed by the terms of the Release Order, together with the consequences for non-compliance set out therein. In the circumstances, I would conclude that a reasonable and informed member of the public will not lose confidence in the administration of justice if Mr. King is released while awaiting determination of his appeal.

CONCLUSION

[76] My decision to release Mr. King is a "close call" in light of the public safety concerns the Crown quite properly identified (*Buonomo*, at para. 25).

[77] I am trusting Mr. King has had ample time to reflect on the deprivation of his liberty, having spent the last several months in custody, and he will indeed respect and comply with the conditions of his release. Otherwise, he will bear the consequences of his non-compliance, as could his Surety.

CONDUCT OF THE APPEAL

[78] Given Mr. King is being granted interim release pending appeal, he has the responsibility to advance his appeal. Mr. King shall file the Appeal Book and his Factum on or before December 16, 2026. The Crown shall have until January 22, 2027, to file its Factum. Upon perfection of the appeal, the parties shall request a date for the hearing of the appeal.

DISPOSITION

[79] I grant Mr. King's application for release pending appeal, subject to the terms and conditions set out at paragraphs 41 to 44 above.

[80] The Release Order is to be signed and filed accordingly. The appeal shall be perfected as ordered.

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G.L.C. Noel J.A.