COURT FILE NO. CR-24-00000116-00BR

SUPERIOR COURT OF JUSTICE

B E T W E E N:

HIS MAJESTY THE KING

- and -

R [redacted] A [redacted]

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R E A S O N S F O R J U D G M E N T

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-- Before the HONOURABLE MR. JUSTICE BAWDEN, at 361 University Ave., CR 4-3, Toronto, Ontario, on the 4th day of April, 2024.

APPEARANCES:

MS. V. DI IORIO/MS. C. JENKINS -- For the Crown
MR. M. CORISTINE -- For the Defence

THURSDAY, APRIL 4, 2024

R E A S O N S F O R J U D G M E N T

Bawden J., (Orally):

R A was arrested on January 29, 2023 on the charge of second-degree murder. He has been in custody for 14 months and this is his first application for bail. He has no criminal record and no other outstanding charges.

Background of the Accused

R A was born on [redacted] in Mississauga. He was the youngest of four boys. His father, [redacted], worked as a regulatory compliance specialist in the transport industry. His mother, [redacted], worked as a quality control associate for a company in Mississauga. The family now lives in a home which they own in Brampton.

In 2005, R 's eldest brother died at the age of 24 from sudden heart failure. R was only 13 years old. His parents attempted to arrange grief counseling for him but he rejected it, saying that the counselors wanted to keep talking about his brother's death and he did not. His mother testified that her eldest son's death affected R in many ways, not the least of which was a lessening of her own ability to parent him. The entire family was stricken with grief.

Not long after his brother's death, R lost a close friend to cancer. He began to show signs of depression and was prescribed medication.

When R was 17 years old, Mrs. A called

police to report concerns about her son's well-being. She and R[redacted] had had an argument concerning chores and R[redacted] left her and went to his bedroom carrying a paring knife. While he was alone in the room, he cut himself on the calf. Police took R[redacted] to hospital to determine if he should be apprehended under the Mental Health Act. R[redacted] told the attending physician that the cut was an accident. The doctor noted that R[redacted] was taking antidepressant medication and was already seeing both a psychiatrist and a counsellor. Based on this information, R[redacted] was released to return home to his parents.

One year later, R[redacted] was arrested on the charge of robbery. He gave an exculpatory statement denying any involvement in the offence. The charge was withdrawn when the victim failed to appear for the trial.

Two months after his arrest on the robbery and while still on release for that alleged offence, Mr. A[redacted] was arrested on a charge of weapons dangerous to the public peace. He and a friend had attended a banquet hall in Brampton. They were refused entry because they were intoxicated. R[redacted] allegedly returned with a baseball bat and attempted to hit someone. There is no evidence to establish how this charge was resolved. Peel Regional Police records reportedly show that Mr. A[redacted] was placed on probation but CPIC does not show any criminal conviction and none are admitted by the defence.

When Mr. A[redacted] was 20 years old, a worker at a pizza store in Brampton called police to report that he had received threatening calls from a customer. The calls were traced to Mr. A[redacted]'s phone and he admitted to police that he placed the calls. He explained that he had ordered a pizza and was told that he would have to pay a delivery fee. Mr.

A[redacted] screamed at the employee and threatened to come and stab him. The worker did not wish to press charges and none were laid.

In February 2013, R[redacted] and his father became involved in a heated argument and the elder Mr. A[redacted] called police. He told the officers that his son had been drinking all day and said that he wanted to kill himself. The officers spoke to R[redacted] and observed that he was upset and verbally aggressive. They again took him to the Brampton Civic Hospital where he was assessed and released to return home. He was 21 years old at the time of this incident.

One year later, in December 2014, police were called to investigate a domestic incident involving Mr. R[redacted] and his same-sex partner, [redacted]. Mr. Y[redacted] complained to police that Mr. A[redacted] drank too much and he wanted the relationship to end. Mr. A[redacted] agreed to leave the apartment which they evidently shared and return to his parents' home. There was no allegation of assault or any other offence. R[redacted] A[redacted] was 23 years old at the time of this occurrence. His partner, Mr. Y[redacted], was 38 years old.

M[redacted] and H[redacted] A[redacted] testified at this hearing that they were aware that R[redacted] was abusing alcohol from his late teens until his early twenties. His father, M[redacted] A[redacted], took his son for psychological counseling at the Centre for Addiction and Mental Health in Toronto, the William Osler Centre in Brampton and to Alcoholics Anonymous sessions in Mississauga. R[redacted]'s behaviour improved significantly between the ages of 23 and 31. He completed a post-secondary degree in culinary arts at Liasion College, held down several jobs and earned enough income to cover all his expenses. His parents believed that his alcohol addiction was under control.

Mr. A[redacted]'s behaviour began to deteriorate again in the second half of 2022. On December 31, 2022, his father again called police to report that R[redacted] was in a violent mood. He had broken the glass in the front door of the house and then damaged another door upstairs. M[redacted] A[redacted] stressed to police that he did not want to press criminal charges but hoped that the officers would take R[redacted] to the hospital for psychiatric help. He reported that R[redacted] was hearing voices, said that he wanted to die, and that he was not caring for himself. The officers took Mr. A[redacted] to Brampton Civic Hospital where a doctor examined him and issued a Form 1 under the Mental Health Act.

Mr. A[redacted] spent a short time in hospital before checking himself out to attend the William Osler Withdrawal Management Centre. His family remained in touch with him during this time but was unable to obtain any information from the hospital due to privacy concerns. Mr. A[redacted] left the withdrawal centre and moved into a Mississauga hotel. His mother and father continued to speak with him regularly, but told him that he could not come home unless he agreed to take counseling and treatment for his alcohol addiction and his mental health problems.

The Facts of the Offence

The facts of the offence are summarized with admirable clarity in the Crown's factum and I will not repeat them here. The following facts bear emphasis:

- The deceased called 911 to report that his wallet was missing. After making the report, the deceased evidently put the phone down but did not end the call. The open

phone line recorded statements which may be relevant to the applicant's defence. A male voice said "I'm going to fuck you up bitch". Another male voice repeatedly said "don't hurt her", and offered money in return for releasing the female. A woman screamed several times. These recorded statements seemingly corroborate the applicant's statement to police that the deceased was beating up a girl and he "had to do what he did".

- The accused further told police that the deceased was "acting crazy", had put a choke-hold on him, and had put a knife to his neck. Exhibit 4 is an image of Mr. A[redacted]'s neck which does show scratches and red lines.
- Security video showed that earlier on the morning of the homicide, the deceased had been in a physical altercation with Y[redacted] M[redacted] (also known as "Y[redacted]") in the foyer of the building. Y[redacted] was one of the females who was present in the room at the time of the 911 call. The deceased put his hand on Y[redacted]'s throat during their earlier altercation.
- The deceased had a blood alcohol concentration between 288 to 345 mg/100ml of blood at the time of his death.
- There is no evidence of any motive for the accused to have attacked the deceased. The two men were strangers to one another.

This evidence will likely raise an air of reality to the defences of self-defence, defence of another, and provocation. There is undoubtedly evidence which is capable of rebutting those defences, most notably the fact that the deceased suffered 35 cuts to his back whereas the accused suffered only a cut to the hand which he acknowledged was not caused by any action by the deceased. Mr. A[redacted] professed

to have been sober at the time of the offence and he did not display slurred speech or impaired balance when he appeared in the booking hall. There is no evidence that the accused was delusional or experiencing any symptoms of mental illness at the time of the offence. On the contrary, he explained his actions to police in rational terms and that explanation accords with independent evidence, most notably the 911 call.

In my view, this is not an overwhelming Crown case for murder. The accused has a viable claim to self-defence. The deceased had a criminal record which included convictions for violent offences and he choked a woman in the foyer of the building not long before his own death. Even if the jury finds that the accused's acts were unreasonable, they could still reach a verdict of manslaughter based on the defence of provocation.

Based on the evidence adduced at this bail application, I believe that it is more likely that this case will end with a conviction for manslaughter than murder.

Sureties and the Plan of Release

Mr. A[redacted]'s parents have offered to act as his sureties. They propose that he be released to live at their home in Brampton and they undertake to ensure that he will never be left unattended. The applicant would only be permitted to leave the home if he is in the company of one of his parents. The sureties further suggest that Mr. R[redacted] should be ordered to attend for mental health and drug counseling at their direction. Compliance with the bail conditions would be confirmed through electronic monitoring. Mr. and Mrs. A[redacted] are people of modest means,

but they own their home and are willing to pledge up to $100,000 to secure their son's release.

I formed a very high opinion of both the prospective sureties during their testimony. They came to Canada in 1975 and have been gainfully employed while raising four children. Their two elder sons are now married, and are entirely self-sufficient.

Mr. M[redacted] A[redacted] has been a good and attentive father to R[redacted]. He has been escorting his son to counseling and medical appointments since R[redacted]'s early teens, and he continued to do so right up until December 2022. The police occurrence reports demonstrate that Mr. A[redacted] has always been frank in describing his son's aberrant behavior and has made earnest attempts to follow up on the medical advice which he has received.

The Crown factum suggests that Mr. and Mrs. A[redacted] have failed in the past to control their son's behavior. With great respect, I find that submission understates the extent of the difficulty which the A[redacted] family faced. Mr. A[redacted] recognized that R[redacted] was showing signs of mental illness shortly after the shocking death of his elder brother and immediately sought psychological treatment for his son. Over the years, he took his son to appointments at the Centre for Addiction and Mental Health, the William Osler Centre in Brampton, and a number of Alcoholics Anonymous meetings. R[redacted]'s mental health improved significantly from 2013 to 2022 which understandably caused his parents to believe that he had outgrown his teenage struggles. The sudden decline in his mental health in the fall of 2022 was undoubtedly a disappointment to the family, but they continued to support the applicant and maintained contact with him even after having shut him out of their

home. In my view, there was nothing unreasonable about telling their 31-year-old son that he could not return to the family home unless he agreed to participate in counseling. No one could have foreseen that the applicant would subsequently be arrested for murder.

Mr. M A is a healthy, 71-year-old retired gentleman who is fully committed to supervising his son. His wife, H , will be able to assist him on weekends and evenings when she is not working. Mrs. A will also be retiring in January 2025, and will then be able to assist on a full-time basis. The sureties' home is equipped with an alarm system which is capable of alerting them if R were to leave the home unescorted.

I find that this is a strong release plan and I have great confidence in both of the proposed sureties. I have no doubt that if they suspected that their son intended to breach the terms of his arrest, they would contact police.

The Primary Ground

The Crown factum raised concerns regarding the primary ground and cited authorities suggesting that the primary ground is an issue in any case where the accused is facing a strong Crown case on a serious charge. In my view, any concerns on the primary ground have been dispelled by the evidence heard on this application.

The applicant's roots are entirely in Canada and there is no cause to believe that he would flee to any other jurisdiction if released. If his passport has not already been seized, that can be included in a release order. Mr. A has previously faced criminal charges and he always

attended court. While this case is obviously extremely serious, the applicant has defences available to him and the Crown's case is not overwhelming. This is not the type of case where the likelihood of conviction is so high that the accused would be motivated to run to escape certain conviction. The applicant has presented two excellent sureties and their supervision will be augmented by electronic monitoring.

I find that the accused has met his onus on the primary ground.

Secondary Ground

The onus is on the applicant to establish on a balance of probabilities that his detention is not necessary for the safety or the protection of the public. This determination is made based on all the circumstances, including any substantial likelihood that the applicant will commit a further offence if he is released.

The Crown opposes release on the secondary ground for three reasons:

i. The Crown's case is very strong. There is no realistic dispute that the applicant caused the death of the victim by stabbing him as many as 40 times, primarily in the back.

ii. The offence demonstrates a callous disregard for human life. Releasing a person into the community who has shown such disregard for human life presents an unjustifiable risk to the safety of the public: See *R. v. Ho*, 2020 ONSC 2508 at para. 30.

iii. The applicant has a long history of committing violent acts while intoxicated which gives rise to a substantial likelihood that he will commit further dangerous offences if he is released. Mr. A[redacted] has failed to address the underlying causes of his violent behaviour despite the repeated urgings of his parents. There is no reason to believe that his parents will be able to control his behaviour if he is released into their custody.

For the reasons previously stated, I do not agree that this is a strong Crown case for murder. Although the injuries suffered by the deceased are grievous, self-defence can excuse an intentional killing, provided that the actions of the accused were reasonable in all the circumstances. If the jury finds that it is reasonably possible that the deceased was choking Mr. A[redacted] and put a knife to his throat, it may be difficult for the Crown to prove beyond a reasonable doubt that his reaction was unreasonable.

I also question whether this killing is properly described as showing callous indifference to human life. "Callous indifference" is not a precise term, but it is customarily associated with the indiscriminate killing of innocent bystanders or the deliberate killing of uninvolved parties, for instance to assert territorial domination. The application of excessive force in self-defence is a criminal act, but it bears little resemblance to the remorseless shootings which frequently occur in gang warfare. This case is not at the most serious end of the spectrum of homicides.

I also cannot agree that the applicant has a long

history of violent, uncontrolled behavior when under the influence of intoxicating substances. Mr. A[redacted] is 33 years old and has no criminal record. In the unusual circumstances of this bail hearing, the defence has not objected to the Crown introducing dated occurrence reports which primarily relate to occasions when the applicant's parents called for assistance because their son was showing signs of mental illness. The accused acknowledged in his own affidavit that he has suffered from undiagnosed mental health problems. The occurrence reports do not, for the most part, disclose criminal acts and certainly do not provide a basis to find that the accused has a propensity for violence. They rather suggest that the accused, like thousands of other Canadians, has experienced episodes of mental illness which have confused and troubled his family. The Supreme Court of Canada has directed trial courts to give careful consideration to release plans which offer supervised treatment to those who suffer from addiction and mental health problems. In *R. v. Myers*, the Supreme Court of Canada stated at paragraph 67.

> ...judges and justices presiding over bail hearings should always give very careful consideration to release plans that involve supervised treatment for individuals with substance abuse and mental health issues. Release into treatment with appropriate conditions will often adequately address any risk raised under s. 515(10), and such a strategy is a less onerous alternative than provincial remand. It may also substantially address the root causes of the accused person's alleged criminal behaviour and reduce the likelihood of future criminal conduct.

That direction applies in this case.

The applicant has no criminal record and no other outstanding charges. His father is a responsible and able

gentleman who is in a position to supervise the accused at all times. This is not a new-found commitment on the part of Mr. A[redacted]. He has been attending medical appointments, counseling sessions and AA meetings with his son since R[redacted] was 13 years old. He and his wife have already taken first steps to arrange for psychiatric treatment if the accused is released and they are committed to doing whatever is necessary to ensure that he has no access to alcohol or any other intoxicating substance if he is released under their supervision. Given the strength of the release plan, I find that it is unlikely that the accused will commit any further offence if released and his detention is not necessary for the protection or safety of the public.

The Tertiary Ground

The Crown also seeks detention on the tertiary ground. In considering whether the accused has met his onus on this ground, I bear the following points in mind:

i. The question of whether detention is necessary to maintain confidence in the administration of justice is viewed objectively, from the perspective of a reasonably informed member of the public.

ii. That hypothetical person is thoughtful, not prone to emotional reactions, has an accurate knowledge of the facts of the case and agrees with our society's fundamental values including the presumption of innocence.

iii. The strength of the proposed plan of release is integral to determining whether detention

is necessary on the tertiary ground.

iv. To deny bail on the tertiary ground, the court must be satisfied that detention is not only advisable, but necessary to maintain confidence in the administration of justice.

I will begin by considering the factors which are expressly identified in section 515(10)(c).

The first factor is the strength of the Crown's case. I do not view this as a strong case for murder. There is no doubt, however, that the accused caused the death of the victim and he stands in serious jeopardy of being convicted of manslaughter.

The second factor is the gravity of the offence. Murder is the most serious offence in the Criminal Code but, on the broad spectrum of intentional killings, this case is towards the lower end of the spectrum. It is clearly a second-degree murder as there is no evidence of planning or forcible confinement. The victim was not a defenceless individual and may well have been the initial aggressor in the events leading to the homicide. The homicide did not involve a firearm and there is no evidence that the accused brought any weapon to the scene. Mr. A[redacted] did not engage in any post-offence conduct to hide his culpability or destroy evidence. On the contrary, he made an immediate utterance to officers at the time of his arrest and followed that with a statement on video when he attended the station.

If the accused is ultimately convicted only of manslaughter, the gravity of the offence would be significantly reduced. Manslaughter is punishable by life imprisonment, but that is a very rare outcome. Depending on the trial judge's findings concerning the facts, the

sentence would likely range between 4 to 8 years. The fact that the accused has no criminal record and may (at least initially) have been acting in self-defence, would tend to result in a sentence at the lower end of the range.

The third factor is the circumstances of the offence including whether a firearm was used. The accused obviously did not use a firearm to commit the alleged offence and did not even bring a weapon to the scene. If the accused's statement to police is true, it was the deceased who first took a weapon in hand.

I have discussed the circumstances of the case throughout this judgment and have little to add at this juncture. The two circumstances which might cause a reasonable member of the community to believe that detention is necessary are the seriousness of the offence and the fact that the accused has previously acted violently while suffering the effects of mental illness. There is, however, a long list of circumstances which would cause a reasonable person to believe that a release is necessary to maintain confidence in the justice system. That list includes:

i. The absence of a criminal record.
ii. The strength of the release plan and the earnestness of the prospective sureties.
iii. The fact that Mr. A[redacted] provided a complete and voluntary explanation of his actions to police immediately upon arrest.
iv. The fact that the actions of the accused may have been affected by mental illness rather than a criminal disposition.
v. The evidence that the offence was precipitated by the accused attempting to

rescue a woman who he believed to be in danger.

The last factor enumerated in section 515(10)(c) is the length of the prospective sentence if the accused is convicted. If Mr. A[redacted] is convicted of murder, he faces a life sentence. If the Crown is unable to disprove self-defence, he will be acquitted altogether. If he is convicted of manslaughter based on provocation or otherwise, he would likely serve a sentence of 4 to 8 years, less any credit for time served in pretrial custody. Mr. A[redacted] has already served the equivalent of a 21 month sentence.

This is not an overwhelming Crown case. It is certainly not a situation where the public could lose confidence in the administration of justice because an obviously guilty accused was released despite facing a lengthy sentence. On the contrary, a reasonable member of the community would consider the presumption of innocence and would fear the possibility that Mr. A[redacted] might be held in custody for a prolonged period of time, only to be acquitted of the alleged offence. It must be recalled that a reasonable person's confidence in the administration of justice may also be undermined if a court orders detention where detention is not justified: See *R. v. St-Cloud*, 2015 SCC 27 at paragraph 87.

Having considered all the circumstances, I am satisfied that detention is not necessary on the tertiary ground. The accused has met his onus.

Conclusion

Mr. A[redacted] will be released on a $100,000 surety

release with the following terms:

1. The applicant is to reside with his sureties at [redacted] in Brampton. He is subject to house arrest at that home, meaning that he cannot leave the home at any time unless he is in the company of one of his two sureties. One of the two sureties must be present in the home with the accused at all times. The only exception to the house arrest provision will be for medical emergencies involving either the accused or his two sureties.

2. The accused will wear an ankle monitor applied by Recovery Science Corporation. He will remain in custody until the GPS monitoring device is in place and will be subject to GPS monitoring by Recovery Science Corporation (RSC). Mr. A[redacted] must agree to abide by all of the rules and protocols of RSC by providing his signature on the GPS Rules and Protocols sheet which will be attached to the release order as Schedule A. The rules and protocols will form part of the Release Order.

3. The accused will attend and complete all counselling as directed by his sureties and as recommended by his doctor(s).

4. The accused will be prohibited from consuming any alcohol or non-prescription drugs.

5. The accused must not communicate with any Crown witness.

6. The accused may not possess any weapon as defined by the Criminal Code.

I will invite counsel to consider these conditions and make recommendations as to alterations or additions to the proposed terms.

Form 2

Certificate of Transcript (Subsection 5(2))
Evidence Act

I, Vanessa Giorno, certify that this document is a true and accurate transcript of the recording of R. v. ALI in the Superior Court of Justice, held at 361 University Ave, Toronto, Ontario, taken from Recording 4899_4-3_20240404_122514__10_BAWDENPE, which has been certified in Form 1.

04/09/2024
(Date)

Vanessa Giorno
Vanessa Giorno