

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: R. v. Devonte Michael Martin
BEFORE: Mr Justice Ramsay
COUNSEL: W. Milko and D'Arcy. Wilson for the Crown; J. Goldlist for the accused
HEARD: December 8, 2015 at Hamilton

Publication ban: this endorsement may not be published until the jury is sequestered or the right to a trial by jury is waived by all co-accused and the Attorney General.

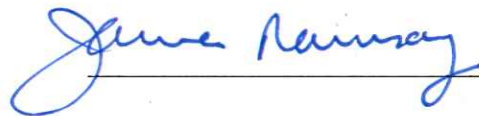
ENDORSEMENT

- [1] The accused applies for release under s.522 of the Criminal Code on a charge of first degree murder.
- [2] The Crown has a strong circumstantial case that the accused and four other men went together to a house in Hamilton on January 8, 2015. They confronted Brandon Miller, a drug dealer, and Nathan Miller, his cousin. After a few words were spoken the co-accused Akindejoye produced a 9 mm handgun and shot Nathan Miller to death. Brandon Miller ran away. The motive for the killing was a turf contest between competing drug dealers, Brandon Miller and the co-accused Jemaal Wilson. Objectively, it looked like a planned murder and it looked as if the five men were acting in concert. The accused told the police that he did not know that anyone was going to get shot. I think it probable that he will be convicted of something serious.
- [3] The accused is 21 years old. He has a minor criminal record that includes two convictions for failing to appear in court, for which he was fined. Unfortunately, the accused person's mother died when he was only four or five years old. His father is in England. The accused was raised by his maternal aunt, Donna Martin, who offers herself as surety. She has acted for him as surety before without problems. It is proposed that the accused will live with her and, if medically possible, will work as a cleaner with his paternal aunt, Yvonne Connage.
- [4] The accused in recent years has not emulated the pro-social and hardworking values of his relatives. He has been hanging around with drug dealers and underage prostitute. I think that he is probably a pimp. His explanation for being found in hotel rooms with underage prostitutes was not plausible. In cross-examination he often resorted to the tired

device of not remembering in circumstances that make lack of memory unlikely. He does not inspire confidence.

- [5] Recently the accused has been diagnosed with cancer, specifically an ameloblastoma of the right mandible. In January, if not sooner, the doctors will remove part of his jaw and replace it with a piece of his tibia. He will likely require a tracheostomy. I imagine it will be followed up with other therapy, depending on the extent of metastasis, if any. This factor tips the balance on the primary and secondary grounds, to my way of thinking. The accused has a serious interest in remaining in Ontario and not going underground so that he can be treated. He will not be substantially likely to reoffend given the temporary disabilities that his treatment will occasion. As far as the tertiary ground is concerned, all four statutory factors highly favour detention. But looking at the question as a whole, I think that the public would understand a release in the circumstances provided a sufficient level of supervision.
- [6] Reluctantly, I have concluded that the accused has shown cause for his release on the conditions set out in the accompanying judicial interim release order. They include a substantial surety and electronic monitoring.
- [7] I am prepared to order electronic monitoring because the surety has requested it. In her judgment, she can provide proper supervision with the aid of this tool. She would be in the best position to know what value electronic monitoring will provide her.
- [8] In general, I would not be inclined to order private electronic monitoring of bail because I think it undermines the aim of the bail reform legislation to move away from bail that depends on the availability of cash. Furthermore, in most cases it does not add much. It does not prevent anyone from absconding, re-offending or obstructing justice. It just gives a bit of advance notice, which an attentive surety can also provide.

In the result, the accused will be released on a recognizance without deposit but with Donna Martin as named surety in the amount of \$100,000, on conditions set out in the attached judicial interim release order.



J.A. Ramsay J.

Date: 2015-12-09

JUDICIAL INTERIM RELEASE ORDER

Return date: October 14th, 2016

CANADA
ONTARIO
CENTRAL SOUTH REGION

AFTER A HEARING

WHEREAS Devonte Martin, d.o.b. 1994-10-25, hereinafter called the accused, has been charged with first degree murder IT IS ORDERED that the accused be released upon entering into a recognizance without deposit but with surety in the amount of \$100,000.

DONNA MARTIN is named surety.

The conditions of release are that the accused:

1. Attend court as required;
2. Remain in the Province of Ontario;
3. Reside at 7 Costomline Drive, Brampton and not change address without permission of the court;
4. Be in his residence every day between 9 pm and 6 am unless in the company of the surety or Yvonne Connage, or unless staying in hospital as an in-patient.
5. Comply with the surety's house rules, which may include rules that restrict his movements and the persons with whom he may associate.
6. Not possess any items mentioned in s.515 (4.1) of the Criminal Code.
7. Be subject to electronic monitoring by Recovery Science Corporation ("RSC"), which shall include
 - a. Entering into RSC's Participant Agreement and complying with its terms;
 - b. Wearing a GPS ankle bracelet at all times;
 - c. Permitting RSC to install supplementary equipment and to inspect, replace and maintain equipment as it deems necessary;
 - d. Complying with RSC leave notification and battery charging requirements; and
 - e. Cooperating fully with RSC staff.
8. Notwithstanding condition 7, if the bracelet must be removed for medical purposes, the accused, with the surety's consent, may have the service provider remove the bracelet provided that the accused
 - a. Notifies the police before the bracelet is removed and provides a letter from a physician confirming the medical necessity of removal;
 - b. Has the bracelet re-installed as soon as possible; and
 - c. Notifies the police when the bracelet is re-installed.
9. Abstain from communicating with his co-accused, including the separately charged young person, and with any Crown witnesses whose names appear on a list to be provided by Crown counsel to defence counsel; and

10. Abstain from associating with persons with a criminal record, apart from immediate family members.

ANY JUSTICE IN THE PROVINCE MAY RELEASE THE ACCUSED.

DATED AT HAMILTON this 9th day of December 2015.

A handwritten signature in blue ink, appearing to read "J.A. Ramsay". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Mr Justice J.A. Ramsay, Superior Court of Justice