

Case Name:

R. v. [REDACTED]

**Between
Her Majesty the Queen, and**

[REDACTED]

[2014] O.J. No. 6606

Ontario Superior Court of Justice
Toronto, Ontario

J.D. McCombs J.

Heard: October 30, 2014.
Oral judgment: October 30, 2014.

(40 paras.)

Counsel:

J. Briscoe, Ms., Counsel for the Crown.

A. Stastny, Esq., Counsel for the Accused.

1 J.D. McCOMBS J. (orally):- [REDACTED] is facing very serious charges. The Crown's case is, on the face of it, very strong. The applicant is 38 years old. He has a dated criminal record. With the exception of a conviction for Impaired Driving in 2013, he has not been proven to have been involved in any criminal activity for over a decade. He has a very strong, supportive family who are present in court today.

2 As a result of search warrants executed by Metropolitan Toronto Police Service officers forming part of the Organized Crime Enforcement Unit known as the Gun and Gang Task Force, very substantial quantities of heroin and cocaine were seized.

3 Mr. [REDACTED] has a brother, [REDACTED], who is also charged in relation to the execution of

these search warrants. The brother is not facing quite as many charges, but he is also facing very serious charges.

4 The brother also has a criminal record which arguably is more serious than the criminal record of ██████████ who is before me. ██████████, following a contested bail hearing, was ordered released by a Justice of the Peace. That release order has not been appealed by the Crown. In ██████████ case, a bail hearing was conducted before a very experienced Justice of the Peace who came to a different conclusion.

5 He held that ██████████ should be detained in custody. In support of his conclusions, he cited a number of factors. I think it is fair to say, however, that viewed in their totality the principal concern was a concern about the ability of the proposed sureties to ensure that ██████████ would comply with the terms of his bail if he were released.

6 The proposal is that ██████████ be under house arrest. I am satisfied, on the evidence that I have heard, that there would be a surety present in the home virtually all the time.

7 Ms. Briscoe, with the fairness that she is known for, concedes that the proposed sureties are responsible, decent people who only want to get on with their own lives, and do everything they can for their families.

8 ██████████ has been out of any meaningful contact with his family for the last several years. From what I understand, it has been a cordial and affectionate separation, but ██████████ has not been seeing his family as much as his sister, who has given evidence today, does, because she lives with her family, and with her husband and children, all in the same house, under the same roof.

9 The proposal that is put forward is that ██████████ live with that family under that same roof, and be under house arrest 24 hours a day, seven days a week.

10 With the very greatest of respect for the learned and experienced Justice of the Peace, I do not agree that this is an appropriate case for detention on the secondary ground, or indeed on either of the other enumerated grounds.

11 The outcome of all that I am saying is that I am going to release him. And right now I am going to turn to ██████████, and I am going to say, listen to me.

12 Look over there, sir. Look over there, look over there. These people love you. They have given everything they have, to give you a chance. Over there is your sister. She has had her hands full.

13 Her husband lugs tile around, crawls around on the floor, to bring home money to feed her family. She has got a terrific job, but she cannot work full-time because she has to take care of her kids.

14 And here she is, going to bat for you. You have been sitting in jail for a while, and no doubt you have met many people in jail who do not have what you have.

15 They do not have a loving family. They do not have anyone to care about them. I am going to give you an opportunity, sir, and if you mess up... I think you have seen enough of me to know that I would not hesitate to put you behind bars, and keep you there.

16 Ms. Briscoe, what I propose to do is to take a short recess, and invite you to confer with your colleague, and in light of the ruling that I have reached, I know it is not the ruling you were seeking, but I know, having dealt with you for many years, that you will respect it, and I would invite you to confer with Mr. Stastny and draw up an order that reflects what I have said.

17 For greater clarity, I will not sign any order that does not ensure that he is in the presence of his surety within the home at all times. If you are unable to agree on that, then when I return you can tell me that you are unable to agree on that, and then we will have to address that question.

REPORTER'S NOTE: Discussion occurs between counsel and the Court on acceptable bail conditions.

UPON RESUMING:

18 THE COURT: Thank you very much for the hard work you have done in my absence. The Registrar has brought me the document that has been prepared, and I have taken a moment to read it.

REPORTER'S NOTE: Further discussion occurs between counsel and the Court on acceptable bail conditions.

19 THE COURT: I would be more comfortable having him on a very, very tight set of conditions, and after time passes a judge of this court may be persuaded that some of these conditions can be relaxed.

20 MR. STASTNY: I'll just briefly comment, Your Honour. I - the con - the conditions that are there I think are extremely strict, as they should be. He - he's not allowed anywhere, even including the home, without a surety.

21 He's not allowed a cell phone. My perspective, it's - it's near impossible for him to get involved in activity if he's always in the direct company of one surety, so I think it's, respectfully, overkill to require a surety to be there while he uses the landline, but if that's Your Honour's views, then I will --

22 THE COURT: Well, it would not be the first time I have been accused of that, but if I am uncertain, I prefer to err on the side of ensuring that he is controlled.

23 Certainly there is a solid foundation for me to have dismissed this application. I am taking a chance on this client of yours, and well, I just know from experience that, you know, he seems to me, as I observe him, to be sincere in his desire not to hurt his family, but I do not pretend to have a crystal ball, or that I can read his mind.

24 And I do know from experience that people, quite often they may mean well, but after two or three months of house arrest they start getting impatient, and they start cutting corners, and they end up back in front of a judge.

25 MR. STASTNY: Yes.

26 THE COURT: And this man...

27 MR. STASTNY: That's my --

28 THE COURT: ...needs to understand that if that happens, if I have anything to say about it, he is going to spend the rest of his time in jail until his charges have been dealt with.

29 MR. STASTNY: No, I will bring it home to him, if it hasn't already been done, that it would be near impossible for him to be released if there was even the slightest breach.

30 THE COURT: Those of us who are involved in the justice system, such as yourself, and Ms. Briscoe and myself, know that when you have several accused, and some are in custody and some are out of custody, the people in custody are often in custody for a very long time, because people who are out of custody are not in any great hurry to have their trial.

31 That is the fact of the matter. So, this could go on for a while.

32 MR. STASTNY: No doubt. So if Your Honour wants that term, about the landline, we could do that.

33 THE COURT: I do. And if after a few months the Crown is not in a position to suggest if anything has happened that has come to the Crown's attention, then...

34 Your client is lucky he has got a good lawyer who is willing to roll up his sleeves and do the work that needs to be done.

35 MR. STASTNY: I'm grateful for Your Honour saying that. It's the first time...

36 THE COURT: Well, you have done a great job for him.

37 MR. STASTNY: ...I've appeared in front of you. Hopefully not the last time I appear in front of you.

38 THE COURT: Well, just because you succeeded this time, do not be under any delusions. So, I am just going to ask you to add something that reflects that,...

39 MR. STASTNY: Yes.

40 THE COURT: ...and then I will sign it after that?

REPORTER'S NOTE: Bail conditions finalized with counsel and the Court and matter completed.