

Ontario Superior Court of Justice File No.: 56/20

Her Majesty The Queen, Respondent

-and-

C.J., Accused/Applicant

ENDORSEMENT ON BAIL REVIEW APPLICATION

Note: this proceeding was brought and determined during the COVID-19 pandemic, after the Notice was issued by the Chief Justice of the Ontario Superior Court of Justice, which said Notice temporarily suspended much of the Court's regular operations. It was heard by audioconference on March 27, 2020. That explains the unusual formatting of this Endorsement.

Appearances by Audioconference:

Ms. C. Israel, for the Accused/Applicant, C.J.

Ms. L. Muller, for the Provincial Crown

Mr. M. Miller, for the Federal Crown

This Endorsement is subject to a publication ban, however, it may be used by these and other counsel in this and other Court proceedings.

1. The Accused/Applicant, C.J., applies for a review of the detention Order made by The Honourable Madam Justice Miller of this Court on January 3, 2020. C.J. had applied, unsuccessfully at that time, for release on bail following the initial detention Order made by the Justice of the Peace.
2. The proposal is that C.J. be released from custody at the Maplehurst Detention Centre and reside with his two sureties, his parents, at their home and be subject to electronic monitoring, through an ankle bracelet, administered by a company called Recovery Science Corporation ("RSC"). Affidavits have been filed on behalf of C.J. and each of his two parents, as well as a sample "Participant Agreement"

with RSC and other related documents which set out the particulars of the monitoring program.

3. C.J., 33 years old, with no criminal record, is charged with eleven (11) offences stemming from September to December 2019: five (5) counts of trafficking cocaine contrary to section 5(1) of the *Controlled Drugs and Substances Act*, two (2) counts of possession of a controlled substance (cocaine and a Schedule IV substance) for the purpose of trafficking contrary to section 5(2) of that same statute, possession of a firearm (a handgun) without a licence contrary to section 91(1) of the *Criminal Code*, possession of a firearm (a handgun) knowing that he was not the holder of a licence to possess it contrary to section 92(1) of the *Criminal Code*, possession of a loaded prohibited firearm contrary to section 95(a) of the *Criminal Code*, and unlawful storage of a firearm contrary to section 88(2) of the *Criminal Code*.
4. The case is still in its early phase in the Ontario Court of Justice.
5. The oral decision of Justice Miller on January 3, 2020 upheld the prior detention Order, but on the tertiary ground alone. At that time, the Court found that any secondary ground concerns had been adequately addressed by the bail plan being proposed – that C.J. live with his parents, as sureties. There was no electronic monitoring proposal at that time, nor was there any wide-sweeping global health crisis that had significantly impacted life in Canada.
6. This Court's decision turns exclusively on a consideration of the tertiary ground. Unquestionably, in my view, the combination of electronic monitoring through an ankle bracelet and the current state in Ontario of the COVID-19 health crisis, combined, constitute a material change in circumstances that has arisen since the record that was before Justice Miller.
7. This Court agrees with the able submission of Ms. Muller that the Crown's case appears to be very strong. Absent any consideration of potential *Charter* arguments, if the loaded handgun and the cellular telephone seized under warrant from the residence in question are ultimately admitted into evidence at trial, C.J. is in serious jeopardy of being found guilty of some or all of the offences. In addition, Ms. Muller is correct that all three of the other tertiary ground considerations discussed in the leading jurisprudence are present on

our facts: the charges are very serious, and they involve a firearm, and they expose C.J. to a potentially lengthy term of imprisonment and, regarding the firearm specifically, a minimum jail sentence.

8. Nevertheless, this is not simply a mechanical exercise of checking boxes. It is much more nuanced than that. In the end, I do not believe that a reasonably informed member of the public would lose confidence in the criminal justice system if she discovered that a fairly young adult with no criminal record who proposes a very stringent bail plan with two residential sureties plus electronic monitoring, presumed to be innocent of the charges that he is facing, is released from the confines of a jail setting in the midst of a global health crisis having arrived, in spades, on our doorsteps in Ontario.
9. As to any suggestion that this Court may need “evidence” that C.J. is, while at the jail, more at risk of contracting COVID-19 than if he was not in jail, I reject that submission. I accept what I already have as evidence from C.J. – Maplehurst Detention Centre has curtailed or eliminated altogether the few niceties that prisoners had available to them previously, such as family visits and religious services. Viewed strictly in the context of the virus, that is welcome news. But I also do not live in a bubble; it is incontrovertible that a jail setting is not conducive to the types of physical distancing and other safety measures being recommended by all of the health authorities to help protect oneself against the virus. To demand some “evidence” in support of that is, with respect to any contrarian view, unnecessary.
10. As to any suggestion that the introduction of electronic monitoring does not change the fact that Justice Miller expressed a total lack of confidence in the willingness or ability of C.J. to abide by a judicial interim release order, I say two things. First, I accept the commentary of the representative from RSC, who participated in the audioconference call during which this Application was heard, that the program has a strong and proven deterrent effect. Further, I am not bound by the findings of my colleague, and I can say on the record before this Court that I am not at all pessimistic about the prospects of C.J. toeing the line.
11. For these reasons, having addressed the tertiary ground and explained why it does not justify the continued detention of C.J., the Application is granted.

12. This Court orders the release from custody of C.J. on a Recognizance of Bail, with two sureties (C.J.'s parents), in the amount of \$25,000.00. To be clear, the \$25,000.00 pledge applies to each surety. The next Court date shall be indicated on the face of the release document. The terms that C.J. must adhere to shall be as follows, subject to my review of the actual wording inserted in the release document: reside with the sureties at their specific address; be subject to RSC's electronic monitoring program, and sign all necessary paperwork therefor, and comply strictly with all requirements thereof; be subject to home confinement at all times except while in the direct and continuous presence of at least one surety or except for medical emergencies for C.J. or a member of his immediate family; not possess any weapon or firearm or any licence or certificate for same; surrender any passport and/or travel document to the police within 24 hours of release from the jail; remain within Ontario; not possess or use any electronic device, whether mobile or otherwise, that is in the nature of a computer including but not limited to a cellular telephone; and not possess any controlled drug or substance except in accordance with a valid medical prescription in C.J.'s name.

13. I direct the staff, who deserve most of the credit for the Court system continuing to function during these very difficult times, to email to all counsel the release documents after they are prepared but before they are reviewed and signed by me. Counsel can then discuss among themselves whether any fine-tuning or additions are required to the terms. I encourage all counsel to cooperate and get this done today, without delay.

14. I wish to thank Ms. Israel, Ms. Muller and Mr. Miller for their assistance in this matter. These are difficult times, and these excellent advocates are doing yeoman's work.

The Honourable Mr. Justice C.J. Conlan

March 27, 2020, at Milton, Ontario