

"Client granted bail on charge of murder involving stabbing of man client found with his common law wife." [COMMENTS BY RICHARD NEARY]

## IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20100903  
Docket: 37341-1  
Registry: Campbell River

Regina

v.

R L\_\_\_\_\_

Before: The Honourable Mr. Justice MacKenzie

Oral Ruling re Judicia Interim Release

Counsel for the Crown:

B. Goddard

Counsel for the Defence:

R. Neary

Place and date of Chambers Hearing:

Nanaimo, B.C.  
September 3, 2010

Place and date of Judgment:

Nanaimo, B.C.  
September 3, 2010

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[1] THE COURT: Mr. L\_\_\_\_\_ is charged with the second degree murder of WB\_\_\_\_\_.

[2] The circumstances are tragically brief. Mr. L\_\_\_\_\_ stabbed Mr. B\_\_\_\_\_ with a knife during a brief fight. The fight occurred August the 18th, 2010, in the parking lot of the apartment complex where Mr. L\_\_\_\_\_ lived with S H\_\_\_\_\_, his common law spouse of approximately five years. Mr. B\_\_\_\_\_ lived in the same apartment complex as Mr. L\_\_\_\_\_ and Ms. H\_\_\_\_\_.

[3] At approximately 10 p.m., according to the circumstances that have been provided to the court today, Mr. L\_\_\_\_\_ observed his spouse, Ms. H\_\_\_\_\_, ride into the parking lot on the back of Mr. B\_\_\_\_\_ 's motorcycle, with Mr. B\_\_\_\_\_ obviously operating it.

[4] Ms. H\_\_\_\_\_ advised the police she had known Mr. B\_\_\_\_\_ for approximately 30 years. She stated in her statement that she and Mr. B\_\_\_\_\_ were together that day, riding about on the motorcycle. They visited a drinking establishment and consumed some alcoholic beverages.

[5] It is suggested in some of the disclosure that is contained in the material before me today that Mr. L\_\_\_\_\_ might have been aware Ms. H\_\_\_\_\_ was socializing with Mr. B\_\_\_\_\_. Be that as it may, Mr. L\_\_\_\_\_ advised the police that when he observed Ms. H\_\_\_\_\_ with Mr. B\_\_\_\_\_ they were "necking" and that upon observing this, Mr. L\_\_\_\_\_ says he went into a rage.

[6] The fight was very brief. Mr. B\_\_\_\_\_ apparently fell to the ground during the struggle and then got up. He knew he had been stabbed and asked Ms. H\_\_\_\_\_ to call an ambulance.

[7] The Crown submits today that Mr. B\_\_\_\_\_ might have been stabbed three times, one stab being fatal and penetrating Mr. B\_\_\_\_\_ 's heart.

[8] Mr. L\_\_\_\_\_ had walked away and went to the apartment manager's office.

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[9] None of this is in dispute and has all been conceded by Mr. Neary on behalf of Mr. L\_\_\_\_\_.

[10] Mr. L\_\_\_\_\_ immediately told the manager of the apartment complex he had stabbed Mr. B\_\_\_\_\_. As a result, the police were called by the manager.

Mr. L\_\_\_\_\_ stayed within the apartment with the manager and then left with the manager and was sitting outside when the police arrived a very short time later. The manager advised the police that Mr. L\_\_\_\_\_ was the person who in fact did stab Mr. B\_\_\_\_\_. Mr. L told the officer he had indeed stabbed Mr. B\_\_\_\_\_. He said he had been in a rage when he observed his spouse with Mr. B\_\_\_\_\_. He reiterated the statement to the police without prompting a moment or two later. At that point in time, he was arrested for assault with a weapon.

[11] Tragically, Mr. B\_\_\_\_\_ died of his injuries a short time later at the Campbell River hospital.

[12] Given those circumstances, Mr. L. now seeks his release pending the outcome of a trial or some other judicial disposition. Because the charge is murder, the onus is on Mr. L\_\_\_\_\_ to show cause why his detention in custody is not justified.

[13] The position of the Crown is that Mr. L\_\_\_\_\_ should be detained in custody on the basis that he has not shown cause why he should not be detained. The Crown, in support of their submission, submits it is a strong case. As I have already stated, it has been conceded by the defence that Mr. L\_\_\_\_\_ stabbed Mr. B\_\_\_\_\_ and, as a result, Mr. B\_\_\_\_\_ lost his life.

[14] In addition, and stating the obvious, there cannot be a more serious offence before the court than murder.

[15] In addition, as stated, the onus is on Mr. L\_\_\_\_\_ to show cause why his detention in custody is not justified on the primary, secondary, or tertiary grounds.

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[16] Turning first to the primary ground, the Crown says the accused here has few roots in the community. Having regard to the totality of the circumstances, I cannot agree with that submission. Mr. L\_\_\_\_\_ has lived in British Columbia for approximately 28 years and has resided in the Campbell River area for a considerable period of time. He had, until recently, a stable relationship with Ms. H\_\_\_\_\_ of approximately five years. He has been employed as a miner and more recently as a carpenter, as a result of an accident approximately 10 years ago which limited his ability to work in the former capacity. Even though his immediate family, including father and mother and sisters, live in Ontario, I am unable to find this is a sufficient basis to conclude there is a primary ground concern.

(17) In addition, Mr. L\_\_\_\_\_ has the most modest and dated criminal record. It is comprised of two theft under in 1982, with very nominal fines being imposed, and, in fact, it has been suggested that they involved siphoning gasoline or something of that nature. As a result, there is nothing before the court today to suggest Mr. L\_\_\_\_\_ would not attend future court proceedings.

[1B] I am satisfied, therefore, that he has shown cause why his detention in custody is not justified on the primary ground.

[19] Dealing with the secondary ground, the Crown acknowledges the very, very minimal criminal record. Usually the presence of a lengthy or significant criminal record is often the basis for a conclusion that, if released, a person with such a record would in all likelihood pose a substantial risk that they would commit further criminal offences. That is not the situation here today. In addition, notwithstanding the seriousness of this offence, the Crown has fairly conceded that because of the lack of a significant criminal record, the court today could "probably.. not place much significance on the secondary ground.

[20] In addition, Mr. Neary submits there is no evidence before the court that there is any likelihood Mr. L\_\_\_\_\_ would interfere with the administration of justice or interfere with any potential Crown witnesses. I agree with that submission.



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[21] As a result, I am satisfied Mr. L\_\_\_\_\_ has shown cause why he should not be detained on the secondary ground.

[22] Section 515(10)(c) outlines the third ground which is relevant in considering any application for judicial interim release. That is the tertiary ground. That particular section says that detention is justified:

(c) if the detention is necessary to maintain confidence in the administration of justice, having regard to all the circumstances, including

(i) the apparent strength of the prosecution's case,

(ii) the gravity of the offence,

(iii) the circumstances surrounding the commission of the offence, including whether a firearm was used, and

(iv) the fact that the accused is liable, on conviction, for a potentially lengthy term of imprisonment . . .

[23] These four factors under the tertiary ground have been considered in several cases. Some of them are contained in Mr. Neary's book of authorities. I do not plan to go through all of them, but I do refer to one, our Court of Appeal decision in *R. v. Bhullar*, reported at [2005] B.C.J. No. 1762, a decision of our Court of Appeal rendered by Madam Justice Rowles. In that case the Court of Appeal quotes extensively from the Supreme Court of Canada decision in *HaJJ*, which considered the constitutionality of the tertiary ground. After a lengthy analysis of the tertiary ground, in the end the court in *Bhullar* concluded that the denial of bail on the basis of the tertiary ground should be restricted to exceptional circumstances and that even for very serious offences, such as murder, persons will receive bail "unless there is a constellation of exceptional factors".

[24] Given the totality of the circumstances in this particular case, I am unable to conclude there exists exceptional factors such that bail should be denied.

[25] There is little doubt the Crown has a strong case, given the unequivocal statements by Mr. L\_\_\_\_\_ and the observations of several witnesses. Whether or not it is a strong case with respect to the substantive charge of murder will be determined in due course. For what it is worth, it would appear, based on the

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circumstances that have been put before me today and the contents of the police disclosure, there could very well be a very, very strong case with respect to some other offence.

[26] Similarly, it is a very serious offence, as I have already mentioned. However, it is well settled the seriousness of the offence in and of itself cannot justify detention. Similarly, the potential of a lengthy term of imprisonment goes hand in hand with consideration of the seriousness of the offence.

[27] As a result, because of the lack of any criminal convictions whatsoever since 1982, the absence of any indication that Mr. L\_\_\_\_\_ is a flight risk, and the absence of any suggestion from any police reports, that there has been any violent conduct exhibited by Mr. L\_\_\_\_\_ in the past, coupled with his cooperation and forthright statements to the police, I am satisfied Mr. L\_\_\_\_\_ has shown cause why he should not be detained on the tertiary ground.

[28] I am satisfied that in these particular circumstances confidence in the administration of justice can be maintained by the substantial and detailed bail order proposed by the defence, even though this will result in Mr. L\_\_\_\_\_ residing with his immediate family in Ontario.

[29] As a result, he will be ordered released on a recognizance in the amount of \$50,000, with a cash deposit of \$50,000.

[30] I am going to pause there, gentlemen, because before I get into all of the conditions that will attach to the recognizance, I think it might be helpful for everyone if we take a few moments and let Mr. Neary and Mr. Goddard discuss and work out in detail the conditions. Part of my concern, of course, is the logistics with respect to Mr. L\_\_\_\_\_ being in Ontario. I agree with Mr. Goddard that he should be reporting to a bail supervisor forthwith and that probably should be in Campbell River. I would like you gentlemen to work on the logistical wording with respect to reporting to either a bail supervisor in North Bay or the RCMP in Mattawa, Ontario.

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[31] I also have some concerns with respect to the logistics of any curfew. I have not made my mind up on that, but I do not disagree, Mr. Goddard-- subject, of course, to your persuasive submissions-- that I cannot see a risk to public confidence if Mr. L\_\_\_\_\_ was able to stay with his sister or other immediate relative in the immediate area. So I would like you gentlemen to think about that.

[32] I do not disagree that surrendering of passports and other visas is probably appropriate, but an immediate thought about that would be with respect to travel on the airplane back and forth from Ontario, but I would think a driver's licence and other ID would take care of that.

[33] I also have some concerns with respect to contact or communication with S H\_\_\_\_\_. I am of the view at this point in time that it would be inappropriate to have direct physical contact, but I am open to suggestions with respect to some communication with Ms. H\_\_\_\_\_, if she initiates it, and I would think without trying to burden the bail supervisor in Campbell River that any communication she wishes to initiate should be through the bail supervisor by way of email or other electronic means. I do not want to complicate matters, but if Mr. L\_\_\_\_\_ is in Ontario, it makes it logistically difficult to make changes to the recognizance with respect to a situation such as communication with Ms. H\_\_\_\_\_, and I am just thinking of her statements to the police.

[34] Mr. Goddard, if you have some updated information where Ms. H\_\_\_\_\_ says, "I don't want any contact or communication whatsoever with Mr. L\_\_\_\_\_, " I might just leave it as the usual no-contact or communication, but I put that out there for you gentlemen.

[35] There, of course, will be conditions with respect to knives, firearms. I agree with Mr. Goddard; carrying a copy of the OR is appropriate.

[36] So think about those things. Let me know when you are ready, and the formal wording, Mr. Neary, that you suggested this morning with respect to staying with

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immediate family members might be appropriate. But chat with Mr. Goddard about that, and if there is anything else, I will hear from you in a few moments. Okay.

[37] MR. GODDARD: Thank you very much, My Lord.

(PROCEEDINGS ADJOURNED)

(PROCEEDINGS RECONVENED)

[38] MR. NEARY: Thank you, My Lord. Mr. Goddard and I have discussed terms that we're agreed on in terms of suggestions --

[39] THE COURT: Sure.

[40] MR. NEARY: --and he's written them out, so I'll let him address the court.

[41] THE COURT: Okay. Thank you, Mr. Goddard.

[42] MR. GODDARD: At the outset, My Lord, my understanding is that Mr. L\_\_\_\_\_ intends to travel to Ontario as quickly as possible. We're at Friday afternoon of a long weekend. And in that regard, I'm going to ask that you consider ordering him to report immediately on release to a bail supervisor here in Nanaimo --

[43] THE COURT: Okay.

[44] MR. GODDARD: -- rather than Campbell River.

[45] THE COURT: No problem.

[46] MR. GODDARD: And thereafter as directed. And I'm going to ask you to consider that he report in person to the Mattawa OPP detachment as directed by the bail supervisor, and if Your Lordship is concerned that he report at some specific number of times per week or month, that would be the place to put that, and not less than X times per period.

[47] We're agreed that there should be a term that Mr. L\_\_\_\_\_ reside with his father, R -- it's L\_\_\_\_\_, I think; the spelling's in the affidavit-- at the



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address in Mattawa, and the address is

[48] THE COURT: Yes.

[49] MR. GODDARD: We're asking that you consider a curfew between 11 p.m. and 6 a.m. dally in his residence. So, abide by a curfew, except when he has permission from his bail supervisor to be in the residence of his mother, I B\_\_\_\_\_, or his sisters, M L\_\_\_\_\_, D G\_\_\_\_\_, or N P\_\_\_\_\_, during the curfew hours. If it's specifically in the bail document, the bail supervisor will understand that it was contemplated by the court that he be entitled to go and visit those people, and would be able to give permission for him to be in those residences during curfew hours, so he can keep track.

[50] I'm asking for a term that he travel to and remain in the Province of Ontario, except for attending court or counsel in British Columbia.

[51] A term that he surrender any passport, visa, or other travel document and not apply for any such document.

[52] He has in his possession, as I understand it, a B.C. ID card and a birth certificate. I suspect those are going to be sufficient for him to travel to Ontario, but I doubt that he'd be able to get into the United States with those, so that's why the term is this way.

[53] THE COURT: I agree.

[54] MR. GODDARD: I'm asking for a term that he have no contact with S H\_\_\_\_\_, except as arranged by the bail supervisor. That gives the bail supervisor discretion to allow for letters or emails. It provides some restrictions. [Indiscernible/]  
- Ms. H\_\_\_\_\_, I understand, was in the psychiatric ward at St. Joseph's concerning to suicidal concerns. That she was released on Monday of this week, and the last word I had from the police is that she may well be going back there. I haven't had any direct contact with her. I don't know whether she wants or doesn't want contact

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with Mr. L\_\_\_\_\_, so I'm going to ask that we leave it with the bail supervisor and she can consult with him if she wants contact.

[55] I'm asking for a term he not have any knives, except for the preparation and consumption of food, or on job sites for the purpose of employment, because as a carpenter he may need them.

[56] I'm asking for a term that he not possess any weapons as defined by the Criminal Code, and that he carry the recognizance when he's outside his home.

[57] THE COURT: Thank you very much. That's all agreeable, Mr. Neary?

[58] MR. NEARY: Absolutely, Your Honour -- or My Lord.

[59] THE COURT: I cannot think of anything else, gentlemen.

[60] Mr. L\_\_\_\_\_, make sure you comply completely with all those conditions.

[61] THE ACCUSED: Yes, Your Honour.

[62] THE COURT: All right. That is fine. And thanks very much.

[63] MR. NEARY: Thank you very much, My Lord.

[64] THE COURT: Do we need another date?

[65] MR. NEARY: There's a date in provincial court on--

[66] MR. GODDARD: He's appearing on the -- well, the recognizance should probably show that he's required on the 13th of September in provincial court in Campbell River, at nine-- well, at this point in time, it probably is set for two o'clock, in that it would be by video if he was out of -- in custody. I understand my friend is going to or has obtained a --

[67] THE COURT: Designation?

[68] MR. GODDARD: -- designation of counsel --

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[69] MR. NEARY: I will today.

[70] MR. GODDARD: -- and that there'll be appearances by agents.

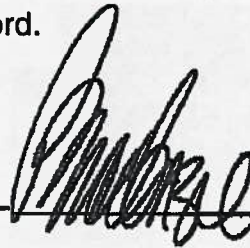
[71] THE COURT: All right. So everything is in order?

[72] MR. NEARY: Yes. Thank you very much, Your Honour.

[73] THE COURT: Thanks, gentlemen.

[74] MR. NEARY: I thank my friend.

(75) MR. GODDARD: Thank you, My Lord.



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Mr. Justice B.D. MacKenzie