

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v Gowen*, 2010 NSSC 471

Date: 20101231

Docket: Ken No 339306 and 339308

Registry: Kentville

Between:

Regina

Plaintiff

v.

Kyle Gowen and Steven Gowen

Defendant

RESTRICTION ON PUBLICATION: Pursuant to s. 539(1) of the *Criminal Code*, there is a publication ban on this decision. Please review file for details.

Judge: The Honourable Justice Gregory M. Warner

Heard: December 8, 21 and 31, 2010, in Halifax, Nova Scotia

Date: January 6, 2011

Counsel: **Brian Bailey**, Q.C., counsel for the applicants Kyle Gowen and Steven Gowen

Alison Brown, Crown attorney

By the Court:

A. Background

[1] Kyle and Steven Gowen are charged jointly with Amanda Greene that they did on October 3, 2010, at 3660 Beaverbank Road, Hants County, commit first degree murder on the person of Dillon Blair Jewitt, contrary to Section 235(1) of the *Criminal Code*.

[2] Steven Gowen is further charged that between October 3 and 29, 2010, at or near Dartmouth, knowing that Kyle Gowen had murdered Dillon Jewitt, did assist Kyle Gowen for the purpose of enabling him to escape contrary to Section 240 of the *Criminal Code*; that is, was an accessory after the fact to murder.

[3] Kyle and Steven Gowen were arrested on October 30, 2010.

[4] Each has applied for interim judicial release, which I hereafter call “bail.” By agreement between counsel, the evidence in the hearing of Kyle Gowen’s bail application is evidence in Steven Gowen’s application. Each, however, applied for bail separately. Much of the Court’s analysis will apply to both applications but they are separate applications.

[5] While the bail disposition of one co-accused is a material factor for consideration in a show cause hearing, it is not determinative. In some cases, the apparent participation in the offence charged may differ and their personal circumstances may differ. Said differently, there is no absolute principle that because one co-accused is granted judicial interim release or denied it, that all co-accused are, as a matter of fact and law, deserving of the same disposition.

[6] I will give my decision and reasons in Kyle Gowen’s application first. The disposition and reasons respecting Steven’s application will follow. Except where I distinguish the circumstances and analysis as between Kyle and Steven, the analysis made in the bail disposition respecting Kyle will apply to Steven.

B. The Law

B.1 *Criminal Code*

[7] The relevant provisions of the *Criminal Code*, include those which I précis as follows:

Interim release by judge only

522.(1) Where an accused is charged with an offence listed in s. 469, no court, judge or justice, other than a judge of or a judge presiding in a superior court of criminal jurisdiction for the province in which the accused is so charged, may release the accused before or after the accused has been ordered to stand trial.

(2) Where an accused is charged with an offence listed in s. 469, a judge of or judge presiding in a superior court of criminal jurisdiction for the province in which the accused is charged shall order that the accused is detained in custody unless the accused, having been given a reasonable opportunity to do so, shows cause why his detention in custody is not justified within the meaning of subsection 515(10).

Release of accused

(3) If the judge does not order that the accused be detained in custody under subsection (2), the judge may order that the accused be released on giving an undertaking or entering into a recognizance described in any of paragraphs 515(2)(a) to (e) with such conditions described in subsections 515(4), (4.1) and (4.2) as the judge considers desirable.

[8] Under s. 522(3), the conditions could include the existing no communication between the co-accused and witnesses in this matter.

[9] Subsection 515(10) states as follows:

(10) For the purposes of this section, the detention of an accused in custody is justified only on one or more of the following grounds:

a) where the detention is necessary to ensure his or her attendance in court in order to be dealt with according to law;

b) where the detention is necessary for the protection or safety of the public, including any victim of or witness to the offence, having regard to all the circumstances including any

substantial likelihood that the accused will, if released from custody, commit a criminal offence or interfere with the administration of justice; and

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 or, in the case of an offence that involves, or whose subject-matter is, a firearm, a minimum punishment of imprisonment for a term of three years or more.

[10] Finally, Subsection 518(1) applies and states:

518.(1) In any proceedings under section 515,

a) the justice may, subject to paragraph (b), make such inquiries, on oath or otherwise, of and concerning the accused as he considers desirable;

b) the accused shall not be examined by the justice or any other person except counsel for the accused respecting the offence with which the accused is charged, and no inquiry shall be made of the accused respecting that offence by way of cross-examination unless the accused has testified respecting the offence;

c) the prosecutor may, in addition to any other relevant evidence, lead evidence

i) to prove that the accused has previously been convicted of a criminal offence,

ii) to prove that the accused has been charged with and is awaiting trial for another criminal offence,

iii) to prove that the accused has previously committed an offence under section 145, or

- iv) to show the circumstances of the alleged offence, particularly as they relate to the probability of conviction of the accused;
- d) the justice may take into consideration any relevant matters agreed on by the prosecutor and the accused or his counsel;
 - d.1) the justice may receive evidence obtained as a result of an interception of a private communication under and within meaning of Part VI, in writing, orally or in the form of a recording and, for the purposes of this section, subsection 189(5) does not apply to that evidence;
 - d.2) the justice shall take into consideration any evidence submitted regarding the need to ensure the safety or security of any victim of or witness to an offence; and
- e) the justice may receive and base his decision on evidence considered credible or trustworthy by him in the circumstances of each case.

[11] The case law confirms that these *Criminal Code* provisions provide no automatic release for an accused charged with a s. 469 offence. The onus is on him to justify his release. This reverse onus on the accused is to show, on a balance of probabilities, that detention is not required.

[12] Credible or trustworthy evidence includes hearsay evidence and other evidence which are not ordinarily admissible at the trial as long as the opposing party has the opportunity to oppose or contradict it. A statement made by an accused may be admitted without a *voir dire* on a bail hearing.

[13] While an accused charged with murder bears the onus of establishing that his detention is not required, a release should not be refused as a matter of course simply because the community expects the Court to detain those charged with murder. That factor may be considered where the Crown's evidence is particularly strong and where the offence indicates that the accused is dangerous.

B.2 *The Charter*

[14] The reverse onus provisions do not violate s. 7, 9 or 11(e) of the *Charter*. The Supreme Court of Canada decided this in two 1992 cases: *R v Morales*, [1992] 3 SCR 711 and *R v Pearson*, [1992] 3 SCR 665.

[15] However, the *Charter* does control the accused's rights and the Court's analysis.

[16] Section 7 states that everyone has the right to life, liberty and security of the person and not to be deprived thereof except in accordance with the principles of fundamental justice.

[17] Section 9 states that everyone has the right not to be arbitrarily detained or imprisoned.

[18] Section 11(d) states that any person charged with an offence have the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal. This provision continues a long-standing fundamental right of accused persons.

[19] Section 11(e) states that any person charged with an offence have the right not to be denied reasonable bail without just cause. Chief Justice Lamar in the *Pearson* decision stated that this latter right has two distinct elements: The right to reasonable bail, and the right not to be denied bail without just cause.

[20] All this means that if the accused can satisfy the Court on a balance of probabilities that his detention is not necessary for any of the three grounds described in s. 515(10), I am obligated to grant him bail.

B.3 *The Case Law*

[21] I have considered the case law presented by counsel, and other texts and cases to which I referred counsel at the beginning of this hearing on December 8, 2010.

[22] Mr. Bailey, counsel for Kyle and Steven Gowen, referred the Court to: *Hall*, 2002 SCC; *Aucoin*, 2006 AJ 1790; *McGilvray*, 2006 AJ 1801; *NLM*, 2003 AJ 1190; *Hennessey*, 2008 AJ 1521; *Seymour*, 2004 OJ 5843; *Dix* [1998] 224 AR 54; *Lysyk*, 2003 ABQB 256; *Stevenson*, 1998 OJ 4390; *White*, 2006 ABCA 65; *Oliver*, 2008 MJ 166.

[23] Ms. Brown, for the Crown, referred the Court to: *Hall, supra*; *NLM, supra*; *Oliver, supra*; *Mordue* (also cited as *EWM*), 2006 OJ 3654; *Charter*, 2008 NSSC 299; *Harutyunyan*, 2009 ONCJ 116.

[24] In addition, I have reviewed Judge Gary Trotter's seminal text on bail in Canada; Ewaschuck, *Criminal Pleadings and Practice in Canada*, Second Edition (looseleaf) ch. 6; Salheny, *Canadian Criminal Procedure*, Sixth Edition (looseleaf) ch. 4.

[25] The *Bail Reform Act of 1972* changed substantially the law respecting bail in Canada. The *Charter* impacted bail even more, especially the Supreme Court's decisions in *Morales* and later, in 2002, in *R. v Hall*.

[26] To understand the judicial landscape, I searched e-Carswell for all appellate court decisions in Canada in the last five years under the terms "judicial release and murder." I found 13 appellate decisions: six from Ontario; two each from Alberta and Manitoba; one each from British Columbia, Saskatchewan and Newfoundland. In *Laframboise* in 2005; *Heyden* in 2009; *Badgerow* in 2010,

the Ontario Court of Appeal granted bail. In *EWM* (also called *Mordue*) in 2006, it overturned an order granting bail. In *BS* in 2007 and *MP* in 2008, it upheld denials of bail. In *White* (2006), the Alberta Court of Appeal overturned an order granting bail. In *Hennessey* (2008), the same court overturned an order denying bail. In *Trout* (2006), the Manitoba Court of Appeal overturned an order denying bail. In *Le* (2006), it overturned a decision granting bail. In *Brotherston* (2009), the British Columbia Court of Appeal overturned orders denying bail. In *Lewis* (2010), the Saskatchewan Court of Appeal upheld an order denying bail. In *Oliver* (2008), the Newfoundland Court of Appeal overturned an order granting bail.

[27] Justice Beveridge's decision in *R v Charter*, 2008 NSSC 299, and Judge Trotter's decision in *Baba* provide further guidance; in the latter case, to see how Judge Trotter applied the principles he wrote about in his text.

[28] What is clear from these decisions is that the analysis is case specific. There is no standard or easy answer to a request for bail. It is not automatic that a person accused of murder, even first degree murder, is denied bail. Each case depends upon its own facts, analyzed in the context of the primary, secondary or tertiary grounds described in 515(10).

[29] Appellate courts have overturned orders for detention based on the weakness of the Crown's case and some on the length of time that the accused had been in prison. For example, in *Hennessey*, the Alberta Court of Appeal granted bail because the Crown's case was very weak; in *Heyden* and *Badgerow*, the Ontario Court of Appeal granted bail where the accused persons had spent ten and eight years respectively in prison, their convictions had been overturned, and they were awaiting new trials.

[30] In some cases, the charge was not first degree but second degree murder. The circumstances of the accused and of the offence clearly play a part in the analysis. The decisions reviewed dealt with all three grounds.

C. The Evidence

[31] On December 8, 2010, Kyle Gowen and Steven Gowen, along with their father Brian and mother Susan, testified. Each had filed short affidavits with their applications.

[32] Kyle and Steven Gowen propose that they be released on a recognizance with their parents as sureties in the amount of \$15,000.00 each. Justification for the sureties is the equity in their family home at Eastern Passage, which equity the parents estimated at \$30,000.00.

[33] Both accused proposed that, as conditions of their release and recognizance, they reside in their parents' home, under their parent's supervision, with the following additional conditions:

- a) Keep the peace and be of good behavior
- b) Attend Court as and when directed
- c) Remain in Nova Scotia
- d) Periodic reporting to RCMP detachment Cole Harbor in person or by telephone
- e) Refrain from contact with possible witnesses
- f) Refrain from discussing the case between themselves
- g) Abide by a curfew unless working or in the company of either parent
- h) Not possess any weapon, crossbow, ammunition or explosive substance
- i) Not possess or consume any non-medically prescribed drug
- j) Such other conditions as the Court may prescribe

[34] Kyle Gowen's affidavit sets out three facts:

- a) He has a prior criminal record for possession of a narcotic contrary to s. 4(1) *CDSA*, for which he received a conditional discharge after six-month probation, which sentence was completed in or about May 2010;
- b) Prior to his arrest he was living in his own apartment in Dartmouth;
- c) Prior to his arrest, he was steadily employed at the Irving Mainway at Eastern Passage and taking business administration at the Nova Scotia Community College at Dartmouth.

[35] In his brief oral evidence, he acknowledged the contents of his affidavit and agreed to comply with the proposed conditions. He agreed to have no contact with Steven and not to discuss (other than in the Courtroom) with his brother matters involving this case.

[36] Kyle Gowen stated that his employment is now nonexistent. Further, he lost his position at Nova Scotia Community College and would have to reapply. He was prepared to reside with his parents.

[37] Kyle Gowen was not cross-examined.

[38] Steven Gowen's short affidavit contains two facts:

a) He had a prior criminal record for assault causing bodily harm (s. 267(b) CC) for which he received a conditional discharge after 18-month probation, which sentence was completed in or about December 2009;

b) Before his arrest, he was steadily employed at a Dartmouth Crossings' restaurant (Moxie's).

[39] In answer to his counsel's questions, Steven confirmed that he was currently under a "no contact" order with his brother; he promised not to discuss the case with his brother. He stated that he had relinquished his job at the Dartmouth restaurant because witnesses in this case, with whom he is prohibited from having contact, worked there. Respecting his criminal conviction, he added that he had been ordered to see a psychiatrist and to have no contact with the victim.

[40] The only question from Crown counsel on cross-examination was to ask Steven to confirm that before his arrest, and when he committed the assault causing bodily harm, he resided with his parents. His answer was yes.

[41] Brian Gowen is the father of Kyle and Steven. His affidavits for each son state that he and his wife own their own home in Eastern Passage and believe it has a value of \$160,000.00 with a mortgage of \$130,000.00. They are prepared to have their sons live with them, if released, and agree to supervise and act as surety for them.

[42] In direct examination, Brian Gowen stated that he was an avionics installation specialist at IMP at the Halifax International Airport. Before that, he spent 24 years in the military. His home is "just about" his only asset. In order for he or his wife, who also works outside the home, to be available to supervise their sons twenty-four hours a day, seven days a week, he had discussed his circumstances with his boss. His boss was willing to allow Mr. Gowen to work flexible hours.

[43] On cross-examination, Mr. Gowen described his present work shift as 7:30 a.m. to 4:00 p.m. His job, compliance verification, meant that he worked on his own and had some latitude. If his wife worked days, he could work nights.

[44] Steven always lived with him and his wife at their home. Mr. Gowen became aware of the assault causing bodily harm offence when police showed up at their home. He did not adjust his schedule to supervise Steven at that time. While Steven was on probation, he kept himself in line. Mr. Gowen stated that after Steven was convicted, “we” kept a closer awareness of his whereabouts. Steven was 18 years old at the time of the previous offence. His parents had discussions with him when he “drifted off.” Steven did not go to bars regularly and worked long hours at the restaurant.

[45] Mr. Gowen became aware that Steven was using cocaine just before his arrest. Steven was not allowed to use cocaine at home or at work; Mr. Gowen did not know where he used it. Steven’s time was spent between home, work and his friend’s home. Mr. Gowen says that Steven intended to quit using it.

[46] Mr. Gowen stated that the issue with Steven at the time of the assault causing bodily harm sentence was anger management, not alcohol or drugs. Mr. Gowen has not spoken to Steven about this case. He has reviewed the Crown disclosure and is shocked by it.

[47] Mr. Gowen was not aware of Kyle’s use of drugs, until his criminal conviction. He had not witnessed Kyle using drugs. He did not recall whether Kyle’s six-month probation had expired in May 2010; he was not aware if Kyle has used drugs since May 2010.

[48] Mr. Gowen had not discussed and was not aware of the reason that Kyle decided to move away from home. Kyle had moved away twice; this second time was a rather elongated withdrawal. Sometimes he still slept at home.

[49] Susan Gowen is the mother of Kyle and Steven. Her short affidavit is identical to Brian Gowen’s.

[50] Like Brian Gowen, she was prepared to risk their home for their sons and to supervise them. Her work schedule was flexible and varied from week to week. When she was asked how it would work if the Court directed her sons not discuss this case with each other, she simply said: “I would enforce it.”

[51] Ms. Gowen was cross-examined at length by the Crown. The Gowen’s have lived in their home for 12 years. Neither she nor Mr. Gowen is from the Halifax area. Some extended family members now live in the area.

[52] Ms. Gowen had worked at a gift shop for almost two years and described her work schedule. She did not have a regular shift.

[53] She was aware of Steven’s conviction for assault causing bodily harm but did not know if he was under the influence of alcohol or a drug at the time. She does not treat him like a child; he

is older now. She rather reluctantly acknowledged that before his arrest Steven admitted to her that he used cocaine. Initially she did not recall exactly when but later stated it was probably September. She did not recall whether they had discussed ways to get him help. She did not know where he was using the cocaine.

[54] Steven's time was divided between work at the restaurant and home. He did not bring his friends home because he worked with them. Because she and her husband only learned of Steven's cocaine use in September, they were just beginning to open lines of discussion. They have had a "couple" of discussions when he was arrested.

[55] Kyle had not moved out yet but was rather in the process of moving when he was arrested. His reason for moving was that he was 22 and wanted to be on his own.

[56] Like Mr. Gowen, she has seen the Crown disclosure and is shocked by it. She finds it hard to believe. She was asked about discussions she had with Kyle and Steven about Mr. Jewitt's death. In particular, between early October when Mr. Jewitt's body was found, when Kyle's girlfriend was interviewed, when Kyle's car was seized by the police and when Kyle and Steven were interviewed until their arrest on October 30.

[57] While acknowledging that Kyle and Steven spent a lot of time at home during this period, she could not recall specifics about any conversations and was generally very vague about what was discussed. Despite the obvious concern when Kyle's vehicle was seized and when Kyle and Steven were interviewed by the police, she stated that she could not recall the nature of those conversations.

[58] Ms Gowen was evasive both in her answers and in the manner she gave them.

[59] Corporal Fraser Firth, the lead investigator, testified for most of December 21. He outlined the steps taken in the investigation to date, and related, mostly as hearsay from other investigators and other witness statements, the evidence in his possession.

[60] The investigation is not complete. Evidence is still being sought and witnesses interviewed. Most of the forensic evidence has not been analyzed.

[61] The Crown disclosed to defence counsel all of the information and materials (notes, exhibits, statements and other evidence) about which Corporal Firth testified. Corporal Firth's notes consisted primarily of a synoptic report, that is, a document that was basically pieced together excerpts from many of the reports and interviews conducted by investigators since October 3. His evidence was supplemented by a booklet containing photographs of the scene of Mr. Jewitt's death; of Mr. Jewitt's body, and of the sports bag and firearm found nearby. His evidence was also supplemented by 11 pages of transcribed text messages obtained pursuant to production orders for telephone/text records of Amanda Greene and Kyle Gowen, which transcript included texts between Kyle and Steven Gowen, between September 17 and October 8, 2010.

[62] Corporal Firth was at the Enfield detachment on October 3 when a 911 call was received respecting the finding of a dead adult male in the quarry with gunshots to the head. Firth was immediately assigned the position of lead investigator and sent the Major Crimes unit to secure and investigate the scene. The scene was the entrance to the Weeks quarry on the Beaverbank Road (Highway 354) near Uniacke, Hants County. Shortly after the scene was secured, a police dog and dog services officer found a blue sports bag about 100 meters south from Jewitt's body on Highway 354. The bag contained, among other things, a 22-calibre bolt-action rifle, with a sawed-off handle, and a cell phone. Police later learned the cell phone belonged to Dillon Jewitt's mother and had been in Dillon's possession. Spent shell casings were found around Mr. Jewitt and sent to the lab for analysis; a report has not yet been received.

[63] The next day, Dillon Jewitt was identified by his finger prints.

[64] The police then interviewed Dillon Jewitt's family, friends and associates. His mother, Lorena Laffin, and her boyfriend Darryl Myers described Dillon's activities on Saturday, October 2. Dillon was excited and/or elated because he was meeting Amanda Greene for coffee later Saturday night. She was his ex-girlfriend, with whom he was hoping to rekindle their relationship. He went out that night and later returned. At about midnight he received a call on the cell phone. His mother and Mr. Myers saw lights from a vehicle at the back of their apartment. Dillon got up and said he had to go, using words to the effect: "There's my ride." His mother and Mr. Myers were left with the impression that he was meeting Amanda Greene again. It was the last time they saw him.

[65] The police then interviewed Amanda Greene. She stated that she had met Dillon for coffee a week before and had a nice time. They had texted, that is text messaged, with each other. When asked if she had ever been to Beaverbank, she stated that she had never been that way. She stated that she was supposed to meet Dillon later on the night of October 2 but she ditched him because she was dating Kyle Gowen. Kyle Gowen was drinking at Moxie's at Dartmouth Crossing. He called about midnight and asked her to pick him up. Steven Gowen and some friends were going to Ralph's, a strip joint, but Kyle stated that he had too much to drink. She drove to Moxie's, picked Kyle up and returned home to the apartment that Kyle shared with Andrew Brackley at about 12:30 a.m. They played cards, watched TV and never left the apartment until the next morning.

[66] Amanda Greene owned and/or operated an orange Cavalier. Some days after the police interview with her, a CPAC offline search registered a hit on Amanda's Cavalier. The entry had been made at 1:20 a.m. on Monday, October 4 by Constable Jessica MacKenna, who was a crime scene guard at Weeks Quarry on Beaverbank Road at the time she entered the record. Constable McKenna and her partner were recording the license numbers of all vehicles that drove by the crime scene. Dillon's body had been found late Sunday afternoon (October 3). She recalled seeing the orange Cavalier drive by and was not certain whether there were one or more young people in the vehicle.

[67] Constable McKenna's evidence troubled the investigators. Amanda Greene had advised

police earlier that she had never been to Beaverbank and did not know how to get to the quarry but her orange Cavalier had been there a few hours after Dillon's body was found.

[68] Kyle Gowen was interviewed because Amanda stated that he had been with her that night. His statement was similar to Amanda's. He had too much alcohol at Moxie's; he did not want to go to Ralph's; he returned home to his apartment with Amanda. He too had not been to the Beaverbank area and was not familiar with it.

[69] The cell phone found in the blue sports bag was swabbed for DNA. A technical crime's specialist downloaded the information that could be retrieved from it. The specialist's report states that the cell phone belonged to Dillon Jewitt's mother. Ms. Laffin stated that Dillon had it when he left the home late on October 2. The specialist found seven text messages sent between that phone and Amanda Greene's phone on October 2. They read:

I 02-Oct-10 12:48 pm Dillon to Amanda

I thought you said you are off at 12:00.

II 02-Oct-10 11:16 pm Amanda to Dillon

Hey where you at?

III 02-Oct-10 11:18 pm Dillon to Amanda

The path that goes around the lake. I can meet you at the back part.
How far are you?

IV 02-Oct-10 11:20 pm Amanda to Dillon

Okay. About five minutes.

V 02-Oct-10 11:38 pm Amanda to Dillon

I'm passing the bridge now. Had to get gas.

VI 02-Oct-10 11:39 pm Dillon to Amanda

See you soon.

VII 02-Oct-10 11:49 pm Dillon to Amanda

Lost? LOL (which means laugh out loud)

VIII 02-Oct-10 11:53 pm Amanda to Dillon

LOL Found the road, passed it the first time.

[70] These messages tend to contradict Amanda's first statement to police that she ditched Dillon on the evening of October 2 in order to pick up Kyle at Moxie's and drive him to his apartment, where they stayed the night.

[71] Shelly Sullivan is Amanda Greene's friend. In her initial statement to the police, she advised that when Amanda Greene referred to Dillon's death she stated that he was shot three times. This was information that the police had kept secret until the arrest of the three accused. The pathologist had thought there may be three wounds but was not certain until a later autopsy.

[72] Ms. Sullivan also stated that during the summer Amanda Greene was angry with Jewitt, her ex-boyfriend, and talked about a plan to befriend him and that she and her boyfriend would harm him. When police later took a sworn statement from Ms Sullivan, she stated that she was high on drugs at the time of her conversation with Amanda Greene and was not sure whether what she had earlier reported, actually took place or was a dream.

[73] Ms. Sullivan stated that she went to Dillon Jewitt's funeral with Amanda in Amanda's car. Amanda drove and Ms. Sullivan was the front seat passenger. She fumbled with the passenger seat door and hauled out a lighter that she recognized as Dillon's lighter. It was covered in a black leather and diamond pattern. Amanda told Shelley that she got the lighter from Dillon on an earlier date at Tim Horton's.

[74] Dillon's mother was asked about the lighter. She described how Dillon took smoke breaks at work and stuck the lighter in the door so as not to be locked out. Therefore, the lighter had developed a groove. Ms. Laffin stated that Dillon had the lighter with him while they were playing Scrabble at home on the night of October 2. This evidence tends to confirm that Dillon Jewitt was in Amanda's car when he left his mother's home later on the night of October 2.

[75] Brittany Jeffries is another friend of Amanda Greene. When interviewed, she stated that she learned of Dillon Jewitt's death through Facebook. She knew that Dillon Jewitt was Amanda Greene's ex-boyfriend. When she called Amanda to talk about it, she got the impression Amanda already knew. The significance of this to the police was that Amanda Greene had earlier stated that she learned of Dillon's death from Brittany Jeffries.

[76] Brittany Jeffries also said that Amanda told her that Dillon had received three shots to the head. As noted earlier, this information had been held back by the police until after the arrests.

[77] To ensure that Brittany Jeffries had not learned of the three shots to the head from one of the ATV drivers who had discovered the bodies and whom she knew, they interviewed the ATV driver and he stated he did not know how many shots were fired.

[78] Kyle Gowen was interviewed. When asked how he learned of Dillon's death, he referred to being outside an apartment in Highfield with Amanda Greene when Amanda and a blonde who

he thought were Brittany Jeffries walked off; when they returned, Amanda told him of Dillon's death. This version of how Amanda learned of Dillon's death contradicts Amanda's and Brittany Jeffries' statements.

[79] The police interviewed Andrew Brackley, Kyle Gowen's roommate. During the first interview he stated that he was at home at the apartment with Amanda Greene alone while Kyle was at Moxie's. When Andrew was re-interviewed, he changed his version of events. He stated that before his first interview with the police, Kyle had asked him to say that he was at the apartment with Amanda alone when actually it was Kyle, Amanda and Andrew who were at the apartment. Andrew stated that he left the apartment between 10:30 and 11:30, returning at 3:00 a.m. When he returned to the apartment, it was dark and there was no sign of anyone in the apartment. He did not check Kyle's bedroom. The next morning Kyle told Andrew that it had been a late night and Amanda cannot handle the lack of sleep.

[80] On the weekend of October 9 and 10, the police obtained search warrants to seize the cell phones and/or cell phone records of Kyle Gowen and Amanda Greene, as well as the two vehicles, Kyle's Honda and Amanda's orange Cavalier. During the search of Amanda's Cavalier, they found the lighter matching the description given by Dillon's mother and Shelly Sullivan.

[81] A crime scene analysis of many footprints around Dillon Jewitt at the quarry had an "E" impression. The footprints with the distinctive "E" were forwarded to the National Forensic Laboratory. Darlene MacEachern, a forensic investigator, determined that the footwear was from the brand of running shoe known as "Empty." During the first interview with Andrew Brackley, he stated that Kyle Gowen habitually wore sneakers that formerly belonged to Andrew Brackley, which were of that brand. The sneakers have not been recovered.

[82] The police obtained production orders for Amanda Greene and Kyle Gowen's cell phone and text messaging records. The phone company provided all of the incoming and outgoing text messages for these phones. A member of the investigation team has examined all of those text messages and Exhibit #7 was a compilation of some of the texts from Amanda Greene to Kyle Gowen, Kyle Gowen to Amanda Greene, Kyle Gowen to Steven Gowen and Steven Gowen to Kyle Gowen. Some of the text messages refer to Dillon Jewitt by name.

[83] Circumstantial evidence is evidence that tends to prove a factual matter by proving other events or circumstances from which either by itself or in combination with other evidence, the occurrence of the matter in issue can be reasonably inferred. Circumstantial evidence does require inferences to be drawn before it is of use in resolving factual issues.

[84] The extracted text messages contained in Exhibit 7, and read to the Court in combination with the other evidence presented, are independent corroboration of much of the statement obtained from witnesses. The text messages are real evidence. Inferences drawn from real evidence can be as trustworthy, and sometimes more trustworthy, than direct eyewitnesses' evidence.

[85] A series of text messages between Amanda Greene and Kyle Gowen between 5:47 and 8:37 on September 25 confirm that Amanda was at Tim Horton's with a male. In combination with other evidence it is very likely that the male was Dillon Jewitt. The messages reveal that Kyle was in the vicinity keeping an eye on them.

[86] Similar text messages between Amanda and Kyle on October 1 refer specifically to "Dillon" and Amanda follows up with a text to Kyle: "we're gonna have to cruise probably if you don't care and look for a ballin spot" and shortly thereafter "Lol the countdown is in".

[87] A series of text messages between Kyle Gowen and Steven Gowen on the afternoon and late evening of October 2, beginning at 10:14:09 pm until 11:55:53 pm, makes reference to a plan to which Kyle Gowen is committed. It refers to the plan being carried out at Beaverbank and the victim being set up. At 10:29 p.m., Kyle texted Steven: "Going ruin his night. He thinks Amanda is coming alone to smoke some joints. But I'm coming and will be there first." Two minutes and four text messages later, Kyle texted Steven: "I know the spot; pretty secluded. He probably is expecting to get lucky tonight."

[88] The nature of the text messages clearly shows existence of a plan to carry out something to an unsuspecting victim. In the context of the other evidence, the reference is most likely to Dillon.

[89] There are texts between Kyle and Amanda beginning at 11:59:57 pm, on October 2. Kyle texted to Amanda: "You guys leave the beach?" Amanda replied at 12:00:14 am October 3: "yip". Kyle texted Amanda at 12:34:06 am: "Box the car now; roll up all the windows". At 12:39:18 am Kyle texted Steven: "... I'm in beaverbank now...". At 2:04:16 am Kyle texted Amanda: "Is his window down all the way?" At 2:42:53 am, Kyle texted Steven: "I'm heading back to highfield. I'll text you. When I'm there". At 3:32:13 am Kyle texted Steven: "I'm up in highfield now..."

[90] These are examples of telling text messages.

[91] Text messages on October 3 make references to the creation of alibis with respect to the whereabouts of Kyle and Amanda at the time that Dillon was killed.

[92] Exhibit 8 was a booklet of photographs. The first was an aerial photograph showing the isolated wooded portion of Beaverbank Road with the entrance to the Weeks quarry. It is obviously a secluded area. The second aerial photograph is a close up of the entrance to the Weeks quarry. The third photograph was a picture from Beaverbank Road looking at the entrance and gate to Weeks Quarry. The fourth, fifth, sixth and seventh photograph showed Dillon Jewitt's body laying face down in the woods near the entrance to Weeks Quarry. The photographs show gunshot wounds to the back and right side of the head. Two photographs show the 22-caliber bolt-action rifle with the sawed-off handle that was found in the blue sports bag about 100 meters from Dillon Jewitt's body. The last two photographs show the blue sports bag and the contents of the sports bag, other than the rifle and cell phone.

[93] Corporal Lorne MacLean measured the location of Dillon Jewitt's body being 5.7 meters beyond the gate and 10.4 meters into the woods. Forensic specialist Darlene MacEachern photographed Mr. Jewitt's body and reports that the three bullet wounds were all to the head. None of the bullets exited. One entered at the back of the head; two entered on the right side close to the ear.

[94] Early on the morning of October 22, Kyle Campbell, a friend of Steven Gowen, contacted the police claiming to have knowledge of the death of Dillon Jewitt. Two officers were immediately dispatched to take a preliminary statement from him and determine if he had any personal knowledge. He apparently disclosed knowledge of the contents of the sports bag and of the weapon. None of this information had been released by the police.

[95] Because of his knowledge of these facts, he was given some credibility by the police and the next day, they took a sworn statement from him. He expressed a willingness to be a Crown agent; they took steps to have him approach Steven Gowen with a wire.

[96] Apparently Mr. Campbell's statement to the police included the fact that Steven Gowen had admitted to supplying Kyle with the firearm, knowing it would be used to kill Dillon Jewitt. Apparently Steven Gowen counseled Kyle that because it was a 22-caliber rifle, he may have to shoot several times.

[97] Steven Gowen received a phone call from Kyle Gowen and counseled him on how to dispose of the firearm. Steven Gowen assisted in creating an alibi for Kyle Gowen and Amanda Greene.

[98] Mr. Campbell also stated that Steven Gowen asked him to assist in disposing of some items, not knowing that the police had already found them. This evidence was consistent with the fact that the orange Cavalier had driven by the crime scene less than twelve hours after the body was found.

[99] Mr. Campbell advised that Steven Gowen had told him that Kyle Gowen had stated that Mr. Jewitt attempted to crawl away and had to be shot more than once.

[100] Corporal Firth testified about a conversation between Steven Gowen and Kyle Campbell that occurred at 18 minutes past midnight on October 28. The conversation was recorded by the police with the consent of Kyle Campbell and without Steven Gowen's knowledge. Excerpts from the recorded conversation were read to the court. Steven Gowen said that he and Kyle were lying low; he said: "people will be paid to go after her" (Amanda Greene) if she said anything; he refers to Kyle not wanting to let "them" go out and get the stuff (presumably the blue sports bag and contents) that were left near the Quarry. Steven Gowen states that he was not going to go to jail and that Kyle and Amanda were in trouble if any of them were caught. He stated: "He would never have died if she had not been part of it." At one point, Steven Gowen says that his brother did not wish to get him involved and felt bad for getting him involved, but Steven said he did not care; he had been living this life for years.

[101] Steven Gowen was interviewed by police twice; initially as a witness, the second time as an interrogation after he was arrested. He denied knowledge of what happened. He said that Kyle told him that “Buddy got shot making noises.”

[102] Corporal Firth referred to the contents of the video statement taken from Kyle Gowen. He basically said he would give his story later. Corporal Firth read into the record some of the questions and inculpatory acknowledgments made by Kyle Gowen. They appear to include an acknowledgment that he and Amanda were alone when they drove straight home from the quarry.

[103] Finally, Corporal Firth referred to a statement obtained from Kara Fowler. She is an acquaintance of Kyle Gowen and Amanda Greene. On October 2, she saw Kyle Gowen and Amanda Greene together at the Esso station at Beaverbank.

[104] Corporal Firth was cross-examined by Mr. Bailey with respect to the evidence and character of Kyle Campbell. He acknowledged that it was his understanding that Kyle Campbell had been in the drug trade for years, although he advised the police that he did not do so any longer. He referred Corporal Firth to portions of the statements of Mr. Campbell where he acknowledged owning guns and that he never had a gun unless he planned to use it. He acknowledged that he had been advised that Kyle Campbell admitted to the use of illegal drugs. He acknowledged that Kyle Campbell had stated that he could get guns (presumably illegally) if anyone wanted any. He acknowledged Kyle Campbell had assaulted people in the past and acknowledged that fighting was a way of life for him.

[105] Corporal Firth acknowledged that when Kyle Campbell came to the detachment to make a statement that he was intoxicated and that the reason he was there was because “my name was appropriated, I’m not going down.” Corporal Firth understood that a concern on the part of Mr. Campbell that he was with Steven at Moxie’s on the night of October 2 and he was part of the alibi for Kyle and Amanda.

[106] Mr. Bailey directed Corporal Firth to portions of Kyle Campbell’s statement that suggested that Kyle Gowen’s girlfriend had set it up and that it started as a beating and turned into three bullets in the head. Corporal Firth was directed to other parts of Kyle Campbell’s statement, suggesting that Campbell’s evidence was confusing and contradictory.

[107] Mr. Bailey suggested to Corporal Firth alternate and somewhat more innocent interpretations of some of the text messages in Exhibit 7. Corporal Firth confirmed that the Information to obtain the Warrant that lead to the production of the text messages is still sealed.

D. Analysis – Kyle Gowen

[108] A review of the case law confirms the influence of the apparent strength of the Crown’s case in assessing the three grounds that justify detention before trial. The strength of the Crown’s case

impacts the assessment of whether detention is necessary to ensure his attendance in Court – the first ground.

[109] Depending on the nature of the offence alleged, it impacts on whether the detention is necessary to protect the public or witnesses or to prevent interference not just with the investigation but with the administration of justice in all its respects – the second ground.

[110] And it is the first of the four expressly stated factors to be considered in determining whether detention is necessary to maintain confidence in the administration of justice – the third ground.

[111] In assessing the apparent strength of the Crown's case, I am obligated to base my decision on credible or trustworthy evidence. (Section 518(1)(e) CC)

[112] Of course, the investigation is not complete, and the cross-examination at this stage in the process was very limited. Much of the evidence is hearsay; that is, Corporal Firth relayed what other witnesses are expected to testify to. Many unexpected twists and turns can arise during a criminal trial and on the way there.

[113] Kyle Gowen is charged with first degree murder; that is, murder that is planned and deliberate (s. 231(2) CC)

[114] I do not entirely discount the evidence of Kyle Campbell but it is apparent from the limited cross-examination of Corporal Firth that Kyle Campbell may have a questionable background in the drug scene as well as the weapons scene, and is likely the kind of witness for whom the Court would have to give a strong *Vetrovec* warning. That is, a warning that his evidence is to be treated with extreme caution.

[115] For that reason, I am not satisfied that, except to the degree that his evidence may coincide with more reliable evidence, his evidence is credible or trustworthy enough to rely on and I do not rely upon it.

[116] Some of the other evidence with respect to witness statements from close friends and associates of the accused may also be suspect. At least one witness, Shelly Sullivan, appears to have changed her evidence.

[117] While I recognize the very limited ability to assess credibility or trustworthiness in this context, there was little in the evidence from which I could reasonably question the credibility or trustworthiness of the real and witness evidence.

[118] Criminals do not usually commit their crimes within the sight of witnesses. More often than not, direct evidence establishing the act and the intention of a person who commits a crime is not

available. It would be a great blow to the administration of the criminal justice system if convictions could not occur, except by direct evidence.

[119] For that reason, circumstantial evidence is most often the kind of evidence upon which criminal acts are proven. Circumstantial evidence involves the establishment of the facts in issue by proving other facts from which a Court or jury infers the fact in issue.

[120] Circumstances, or other facts, from which a Court may infer the deed and the intent, include events and circumstances that predated the event, circumstances surrounding the time, place and manner of the offence itself, and facts and circumstances that are generally described as post-offence conduct dealing with attempts to escape, resist arrest, cover up, give alibis, destroy evidence, or lie to the investigators.

[121] Circumstantial evidence applies both to the *actus reus* and *mens rea*, that is, to both the deed and the intention of the doer of the deed.

[122] At one time, circumstantial evidence in the criminal context gave rise to the so-called *Rule in Hodge's Case*; that is, a court was entitled to convict an accused solely on the basis of circumstantial evidence only if a special warning or instruction was given to the jury.

[123] In 1978, in *R v Cooper*, the Supreme Court of Canada rejected the notion that exclusive reliance on circumstantial evidence requires a special warning to the jury. The effect of this decision was to remove any relevance to the distinction between direct and circumstantial evidence. In both instances, a jury must be satisfied that the proven facts establish the act alleged and the intention of the accused beyond a reasonable doubt.

[124] In this case, the evidence consists of both real evidence and witness statements respecting the conduct of Kyle Gowen, Amanda Greene and Steven Gowen before, during and after Dillon Jewitt was killed.

[125] I conclude that the circumstantial evidence against Kyle Gowen, as relayed by Corporal Firth, constitutes a strong case that he did, in a planned and deliberate manner, kill Dillon Jewitt on the early morning of October 3, 2010.

[126] The evidence of Dillon's mother as to his belief in the rekindling of his relationship with Amanda Greene, whom other evidence shows was in a relationship with Kyle Gowen, and her evidence about Dillon's activities on the evening of October 2, when combined with the evidence respecting the lighter and Exhibit 7 - the text messages, is strong evidence that Dillon met with Amanda Greene, in her vehicle at about midnight on October 2. The finding of Dillon's lighter in Amanda's car, evidence that I call "real" evidence, corroborates Ms. Laffin's evidence. Amanda Greene's text messages with Dillon confirm Ms Laffin's evidence. The text messages between Kyle and Steven show that Kyle was in the mix with Amanda and Dillon at the same time.

[127] Powerful evidence, that is real evidence, is contained in the text messages between Kyle Gowen, Amanda Greene and Steven Gowen. The text messages deal with their conduct, communications and knowledge: at the pre-offence planning stage, during the evening of October 2 and early morning of October 3, and during the post-offence cover up. The text messages, taken as a whole, and put in context with the other evidence, are very incriminating.

[128] When supplemented by the lighter found in Amanda Greene's car and witness statements, they clearly establish that Dillon Jewitt and Amanda Greene went somewhere at about midnight on October 2. Kyle Gowen, who was in an intimate relationship with Amanda Greene, was aware of this and planning mischief for whomever was with Amanda Greene in an isolated place, and other evidence shows that to be Dillon. The dead body with three bullet holes in the head tells the rest. The "Empty" footprints near Dillon's body adds to an understanding of Kyle's contemporary text messages. The post-offence cover-up attempts adds credence to what was being covered up.

[129] There were inconsistencies within the post-offence statements given by Kyle Gowen, Amanda Greene and Steven Gowen, some of which can be independently disproved. These constitute inculpable post-offence conduct.

[130] There are inconsistencies between and amongst the statements of Kyle Gowen, Amanda Greene and Steven Gowen, some of which can be independently disproved. These inconsistencies also are contraindicative of the credibility or trustworthiness of their evidence.

[131] The "Empty" running shoes of Andrew Brackley that were worn almost exclusive by Kyle Gowen, which running shoes are still missing, and the identification of the footprints found at the quarry where Dillon Jewitt's body was found, is an important piece of the circumstantial evidence.

[132] The evidence that Dillon Jewitt was shot once in the back of the head and twice on the right side near the ear, and the photographs that do not show any apparent struggle or other injury, combined with the text messages, show planning and deliberation. This was not a rumble that went badly.

[133] The evidence may not always turn out as expected. In this case, the investigation is far from complete. But, at this stage, the Crown has a strong case that:

- i) Dillon Jewitt, the ex-boyfriend of Amanda Greene, was seeking to rekindle his intimate relationship with her in late September and early October; Amanda Greene appears to have been enticing or luring him.
- ii) Kyle Gowen, Amanda Greene's current boyfriend, was following their activities closely on September 25 and on October 2, and appears to have Amanda's confidence. They were clearly planning some surprise for Dillon Jewitt.

- iii) Dillon very likely left his home with Amanda Greene in her car about midnight on October 2. Kyle Gowen was in constant communication with her at this time. Dillon's lighter was found in her car. It had not been there since her rendezvous with him at Tim Horton's on September 25.
- iv) Kyle Gowen communicated, including by text messages, with his brother Steven Gowen, on the night of October 2 and early October 3 about his activities in a way that leave little doubt that they involved Amanda and whoever she was within a secluded area in the Beaverbank area.
- v) Kyle Gowen and Amanda Greene were seen in the Beaverbank area on the night of October 2.
- vi) Dillon Jewitt was murdered as a result of three shots to the head in a secluded area on the Beaverbank Road early on October 3.
- vii) The likely weapon was the 22-caliber rifle that had been altered and that was found nearby.
- viii) The text messages between Kyle Gowen, Amanda Greene and Steven Gowen make a lie of their alibi and expose their attempts to cover up whatever Kyle Gowen and Amanda Greene were doing on the night of October 2 and early morning of October 3.
- ix) Other witnesses, mostly friends and associates of the accused, simply confirm many of these circumstances.

D.1 What does this mean respecting the first ground that detention is necessary to ensure his attendance in court?

[134] One of the factors particularly relevant with respect to the first ground is whether the Crown has a strong case. This factor alone is not sufficient to justify detention on the first ground. Where a strong case does exist, a second factor is the potential length of incarceration of the accused if convicted. It is common sense that if the Crown has a strong case and the person is likely to spend the rest of their life, and in any event at least 25 years in prison, that a strong motive exists to disappear and not attend in Court to be dealt with according to law.

[135] The combination of a strong Crown case requiring at least 25 years in jail, and possibly life itself, if convicted, must be viewed in light of the other relevant circumstances. These include where the accused lived, how long he has lived there, his employment and education history and goals, his marital status, his family status, his criminal record, if any, the proximity of close friends and relatives, and his personal history.

[136] Kyle Gowen had just moved out, or was just in the process of moving out, of his parents' home for the second time. He does not own his own home. He had only recently moved in an apartment. His parents have lived in their residence for the last twelve years.

[137] Kyle worked at the Irving at Eastern Passage and had commenced a business administration course at the Dartmouth campus of Nova Scotia Community College. He acknowledged that neither his work nor his school now exists for him. If he is released, he will have to start over again. No evidence was presented with respect to his education or work qualifications or history. There is no evidence that he has a strong, or in fact any, attachment to the work force or to school at the present time.

[138] Kyle is not married, legally or common-law. He has no spouse or children. He does have two parents, two siblings, one accused with him, who live in Eastern Passage. He appears to have a series of friends and acquaintances, but there was no evidence before the Court as to how strong or long standing those relationships were.

[139] Certainly his relationship with his co-accused Amanda Greene is likely compromised by these events.

[140] In my view, his minor criminal record for possession of a drug is not really a negative factor. It does not affect my decision.

[141] There is no evidence about his personal history, about his achievements in the past or about his goals, or whether he had any goals for the future. There is no evidence about the extent of his stake in the community. The Court cannot infer from the absence of any such evidence that he has strong ties with his community, with the workforce, or with school. It appears his only real tie is with his immediate family.

[142] There is some evidence that he and his brother already discussed not going to jail or trying to avoid jail. One of the text messages of October 6 from Steven to Kyle suggests that James will provide Kyle with his place to lie low. Kyle's parents have agreed to put up part of the equity in their home as a guarantee for his attendance at Court if he is released. The information about the value of their home and balance on the mortgage was only what his parents said; it is not supported by any appraisal or other independent evidence. The equity, even based upon their evidence, is minimal.

[143] In summary, based on the Crown's apparent strong case, conviction of which would mean at least 25 years in prison, combined with the lack of evidence of any strong ties between Kyle and the work force or school, or to a spouse or child, or to anyone other than possibly his parents, I am not satisfied that Kyle will attend court to the end of this process; said differently, I find that detention is likely necessary to ensure his attendance for trial.

D.2 Second Ground

[144] If I am wrong, what about the second ground; that is, detention is necessary for public safety or for the protection of witnesses, or on the basis that there is a substantial likelihood that he will interfere with the administration of justice if released.

[145] There is some evidence that Kyle Gowen's detention is necessary for the safety of the public generally. In texts between Kyle and Steven, on October 2 at 11:34:07 pm, when Steven is pushing Kyle to let him come and help, Kyle writes: "He's not the first or the last. You'll get your chance with Henry; the guy I was talking about. I'll need some boys for that."

[146] Furthermore, much of the corroboration for the real evidence in this case, which is a circumstantial case, comes from Kyle and Steven's young friends and associates. There is already evidence on the text messages, corroborated by some of the witnesses, that it was arranged for these friends to provide an alibi for Kyle. The contents of the surreptitious recording of Steven Gowen and some of the text messages are troubling. They lead to the inference that Kyle and Steven would do whatever was necessary to cover up evidence, influence witnesses and interfere with the investigation. The investigation is not complete.

[147] Kyle's post-offence conduct shows an intention to interfere with the investigation and to create false alibis. There is a substantial likelihood that this would continue if he was released.

[148] It is vital to the truth seeking aspect of the criminal process that witnesses, including accused and co-accused, do not attempt to collude respecting their evidence.

[149] The proposed plan for release of Kyle Gowen is that he return to his parents' home to reside with his co-accused and brother Steven Gowen. I have listened to his parents on the stand and have no doubt as to their good intentions. However, I did not get the sense from their evidence, most clearly from Ms. Gowen, that they could, or likely would, do anything to stop Kyle from doing what he thought he had to do so as not to spend the rest of his life in prison.

[150] I am not at all satisfied that Mr. and Ms. Gowen would be able to prevent Kyle and Steven from communicating with each other about the circumstances surrounding the charge against them. Based on their conduct during the first week after October 3, I am satisfied that would include interference with witnesses, many of whom are their friends, and the investigation generally.

[151] The evidence of Kyle's post-offence conduct weighs substantially in favour of the likelihood that he would communicate with Steven and other witnesses.

D.3 What if I am wrong again? The third ground is that detention is necessary to maintain confidence in the administration of justice in all of the circumstances.

[152] The tertiary ground lists four particular circumstances that are relevant. The list is not exclusive.

[153] The first enumerated circumstance is the apparent strength of the Crown's case. As I have already stated, at this stage of the investigation, the case against Kyle Gowen appears to be strong.

[154] The second enumerated circumstance is the gravity of the offence. There is no offence, possibly other than a terrorist offence, which is any graver than a planned and deliberate murder.

[155] The third circumstance is described as "the circumstances surrounding the commission of the offence, including whether a firearm was used".

[156] The circumstances of this case could not be any worse. It is alleged that Amanda Greene enticed her ex-boyfriend to a secluded location where her current boyfriend was hiding out and that upon their arrival Dillon would be dealt with in a manner that was "going to ruin his night...I don't want to go with a crew; I can be quicker quieter alone...I'll call you if I need you. I wanna do this though...Bud earned it". The fact is that Dillon was shot three times in the head. There is no evidence of a fight or any intended result other than the actual result. The result itself can speak to the intent.

[157] This does not have the appearance of a meeting that got out of hand or of a brawl or drunken encounter. It does not have the appearance of a circumstance of self-defence, or of provocation, or of a mistake. There is no evidence Kyle Gowen was somehow mentally deficient or misguided. It has only the appearance of a planned and deliberate hit. The circumstance could not be any worse.

[158] The fourth enumerated circumstance is the potential length of the term of imprisonment if Kyle is convicted. There is no offence with a greater penalty than a life sentence with a mandatory minimum period of imprisonment before eligibility for parole of 25 years. This is not a case where a court has any discretion as to the length of the sentence. The sentence is the mandatory sentence. The potential length of the incarceration of Kyle Gowen if convicted is as serious as it gets.

[159] All four enumerated circumstances that Parliament says should guide the analysis as to whether detention is necessary to maintain confidence in the administration of justice, which I take to mean only the confidence of informed, reasonable and dispassionate members of the public, understanding of objectives and workings of the justice system, mitigates for detention. The score is four circumstances favouring detention, and none against.

[160] For these reasons I deny Kyle Gowen bail.

E. Analysis – Steven Gowen

[161] Some of the factual circumstances described in relation to Kyle do not apply to Steven.

[162] Steven is jointly charged with Kyle and Amanda Greene with first degree murder. He is separately charged with being an accessory after the fact to murder contrary to s. 240 of the *Criminal Code*.

[163] Pursuant to s. 22 of the *Criminal Code*, a person who counsels another person to be a party to the offence is also a party to every offence that the other commits, if he knew or ought to have known the offence was likely to be committed, even if it was committed in a different way from what he counseled.

[164] Counseling includes inciting, procuring or soliciting.

[165] As I stated in my review of the evidence respecting Kyle Gowen, I place no credibility or trustworthiness in the evidence of Kyle Campbell for the purposes of this application. That does not mean that I ignore or discount Steven's words in the recording of the conversation between Kyle Campbell and Steven Gowen.

[166] The evidence of the involvement of Steven in the alleged offence is not identical that of Kyle. The text messages show that Steven had knowledge of what was happening before it happened, and he wanted to be present when Kyle was doing his thing. The texts also suggest that Kyle declined Steven's offer of attendance at the scene to help. I infer that Steven was not likely present at the time Kyle is supposed to have shot and killed Dillon Jewitt. There is some evidence that Steven counseled Kyle, but it is not clear from the text messages, upon which I place substantial reliance, whether Steven simply knew what was happening or whether he incited or counseled Kyle. That is a matter for a jury.

[167] I am not aware of any evidence gathered in the investigation to date, other than Kyle Campbell's evidence, to show that Steven Gowen was the source of the weapon used by Kyle Gowen.

[168] What is clear from the text messaging, and corroborated by the statements of Steven's associates, is that Steven was active in seeking to help Kyle to find a place to stay, to formulate and support Kyle's alibi, to discuss possible consequences to persons who cooperated with the investigation, and to help cover up generally.

[169] Activities carrying out his expressed desire to assist Kyle to find a place to go, to confirm his alibi and to assist in the recovery or destruction of exhibits and evidence, is strong and clearly constitutes being an accessory after the fact to murder.

[170] Whatever conclusion a jury might reach as to the extent of Steven's counseling of Kyle, the evidence in the investigation to date constitutes a strong case against Steven as an accessory after

the fact to murder.

E.1 What affect does this have on the first ground, whether it is necessary to detain Steven to ensure his attendance at Court?

[171] One factor is the strength of the Crown's case of first degree murder. Their case is not weak against Steven, but neither would I describe it, at this stage, as strong. The case against Steven as an accessory after the fact to murder is strong. If convicted of the s. 240 offence, he is liable for imprisonment for life. I am not aware of a minimum sentence for that offence.

[172] Having knowledge of the offence being committed, even if he were not convicted of counseling, and assisting after the fact to cover up a planned and deliberate murder, is extremely serious and would likely result in a significant term of incarceration.

[173] What about the other factors?

[174] Steven has always lived with his parents. He does not own his own home. Steven was employed at a restaurant at the time of the offence. That employment is not open to him now because witnesses he must stay away from work there. The Court has no evidence with respect to his work qualifications or history, or any of his plans and goals in respect of a career, work or education.

[175] Steven is single. No evidence was presented as to whether he is in any kind of a relationship that may be long term or involving him having dependents.

[176] Unlike Kyle, Steven has a criminal record for a serious violent offence. The offence was recent.

[177] No evidence was presented as to how close he is with friends or associates. His parents referred to an unknown friend who he hangs with, which friend does not hang around their house.

[178] No character witnesses were called.

[179] The Court heard no evidence about his personal achievements in the past or his goals or objectives for the future, or what he has done or intended to do to fulfill them.

[180] The Court only heard one fact about his personal history. In or about September 2010 his parents learned that Steven was using cocaine. They do not know where, for how long, how much or in what manner. They made only a few attempts to query him about it. Those queries had not advanced very far. There is no evidence of any assessment of Steven's drug use, or a plan for treatment, or of the extent of his problem.

[181] Cocaine is a very serious drug. Steven did not disclose this aspect of his life in his affidavit or on the stand.

[182] There is some evidence that Steven did not want to go to jail under any circumstance.

[183] I am in no way certain of what the future would hold if Steven was released from detention. Because I am not as certain about Steven's role in this crime or how much time he might receive, if convicted, I cannot say that it is necessary to detain him to ensure his attendance at trial, but that does not end the analysis.

E.2 Secondary Ground

[184] Steven's recent criminal record for a serious violent offence, and his use of cocaine, which was undisclosed for a time as well as has not been assessed or treated. The strong evidence of his involvement in the cover up, make Steven a dangerous person. This is a factor in the assessment of whether he would be a risk to public safety if he is released.

[185] More important is the assessment of the risk to witnesses, many of whom are acquaintances, co-workers or associates, and whether there exists a substantial likelihood that Steven will interfere with the investigation and, more generally, the administration of justice, if he is released.

[186] The real evidence and witness statements show Steven's intention to assist his brother Kyle cover up.

[187] Examples of his intentions and involvements are numerous in the text messaging exhibit. Just one of those texts on October 8 to Kyle read: "Delete everything."

[188] The investigation is not complete. Many of the witnesses who have given statements to date are associates and friends of Steven. I have no doubt whatsoever that Steven would attempt to influence the witnesses and interfere with the investigation in any way he could in order to escape liability if he was released. He showed his intentions before his arrest, both in the text messages and in the recorded statement with Kyle Campbell. There would be no incentive for him to do otherwise if he were released at this time.

[189] The proposed plan for the release of Steven was that he reside with his parents and Kyle. He resided with his parents when he committed a serious violent criminal offence. He resided with his parents when he was using cocaine without their knowledge.

[190] Having listened to his parents, I am sure they are well-intentioned but I am not satisfied that their loyalty to their son would not overcome the burden and responsibility of supervising Steven and ensuring his good behavior.

[191] If Steven and Kyle were together at home, I have no doubt they would communicate about the charges against them. I have no doubt their parents would not, and probably could not, stop them from doing so.

[192] Even if Kyle is kept in custody and Steven is released to his parents' home, I am not at all confident, having listened to his parents, that they would provide the supervision necessary to ensure his high motivation to continue his interference with the investigation would not continue.

[193] On the second ground, I find his detention necessary for the protection of witnesses. Based on my analysis, the evidence weighs heavily in favour of the likelihood that Steven will continue attempts to interfere with an investigation that is not complete.

E.4 Tertiary Ground

[194] If I am wrong about the second ground, then in my view he should be detained on the third ground. The third ground deals with the maintenance of confidence in the administration of justice.

[195] The first of the enumerated circumstances is the apparent strength of the Crown's case. As stated, the Crown has a case of first degree murder against Steven that is not weak or strong. Their investigation is not complete. The Crown has a strong case against him for accessory after the fact to murder.

[196] The second enumerated circumstance is the gravity of the offence. Obviously first degree murder is the gravest of offences. Accessory after the fact to murder is not at the top, but is much closer to the top of a very tall ladder of criminal offences than to the bottom.

[197] The third enumerated circumstance is described as the circumstances surrounding the commission of the offence. I have already described the circumstances surrounding the commission of the offence in the decision respecting Kyle. The circumstance of the murder itself could not be worse, but Steven's apparent role in this offence appears to differ from Kyle's.

[198] The offence itself was a planned and deliberate murder. No evidence of provocation or justification or excuse respecting the offence itself or of a reduced culpability in respect of the offence is apparent from the evidence.

[199] Steven appears to have wanted a greater role in the event itself but his offer was declined by Kyle. He may have incited or counseled Kyle, and he obviously took an active role in the cover up. He does not appear to have been a reluctant participant.

[200] The fourth enumerated factor is that, if convicted, he would be liable for a potentially lengthy period of imprisonment. If Steven were convicted of first degree murder, whether on the basis of

counseling Kyle or supplying the gun to Kyle or otherwise, then he is subject to the same term and condition of imprisonment as Kyle. That is, life imprisonment with no eligibility for parole for 25 years. If he is convicted of being an accessory after the fact to murder, he is liable to life imprisonment, but would not necessarily be sentenced to prison for life.

[201] The event itself is extremely serious. His role in the offence is not minor. In my view, it is likely that if convicted of the s. 240 offence, he would be imprisoned for a very long time.

[202] I conclude that, because of the cold-blooded nature of the murder and his apparent substantial involvement, the confidence of a well-informed, dispassionate member of the public in the administration of justice would be eroded and not maintained if Steven Gowen was released.

[203] For these reasons, I deny Steven bail.

J