SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Sandeson*, 2021 NSSC 377

Date: 20210122
Docket: CRH No. 502777
Registry: Halifax

Between:

Her Majesty the Queen

Respondent

v.

William Michael Sandeson

Applicant

D E C I S I O N
Judicial Interim Release

Judge:	The Honourable Justice James L. Chipman
Heard:	January 20 and 21, 2021, in Halifax, Nova Scotia
Oral Decision:	January 22, 2021
Written Decision Parties Only:	January 22, 2021
Counsel:	Christine Driscoll and Kimberley McOnie, for the Respondent Allison Craig, for the Applicant

By the Court (Orally):

INTRODUCTION

[1] The Applicant is charged with the first degree murder of Taylor Samson on August 15, 2015. On Wednesday and Thursday the Court heard evidence and argument on whether the Applicant should be granted judicial interim release ("JIR"). Previous to this, the parties filed briefs and authorities. As well, the Applicant submitted:

1. The Notice of Application;
2. The affidavit of the Applicant;
3. The affidavit of Katherine Sandeson (mother);
4. The affidavit of Michael Sandeson (father);
5. The affidavit of David Sandeson (brother);
6. The affidavit of Adam Sandeson (brother);
7. The affidavit of Matthew Sandeson (brother);
8. Documents from Recovery Science Corporation ("RSC"), the proposed electronic monitoring entity;
9. A map of the Sandeson property, where the Applicant proposes to reside during his sought after JIR;
10. Bail Plan from the Nova Scotia Justice Department of Correctional Services;
11. Initial bail hearing oral decision of Justice Campbell dated October 23, 2015;
12. Excerpts of Crown Closing (dated June 12, 2017); and
13. Excerpts of Charge to the Jury (dated June 15, 2017).

[2] As for the Crown, they filed these additional materials:

1. The Applicant's Offender Incidents Report dated January 11, 2021; and
2. Memorandum of Argument (Crown leave to appeal application) dated November 12, 2020.

[3] On the first day of the hearing the Applicant filed his response to the application for leave to appeal (dated January 5, 2021) and the Crown's reply (dated January 15, 2021).

[4] The Court heard *viva voce* evidence from Sgt. Roger Sayer on behalf of the Crown and from the Applicant's proposed sureties as well as RSC's director of operations, Stephen Tan. The Crown entered 13 photographs through exhibits one and two.

GOVERNING LAW

[5] Whether to detain an accused is determined by consideration of the three grounds set out in s. 515(10) of the *Criminal Code*, R.S.C. 1985, c. C-46:

> **Justification for detention in custody**
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> (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:
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> (a) where the detention is necessary to ensure his or her attendance in court in order to be dealt with according to law;
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> (b) where the detention is necessary for the protection or safety of the public, including any victim of or witness to the offence, or any person under the age of 18 years, 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
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> (c) if the detention is necessary to maintain confidence in the administration of justice, having regard to all the circumstances, including
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> (i) the apparent strength of the prosecution's case,
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> (ii) the gravity of the offence,
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> (iii) the circumstances surrounding the commission of the offence, including whether a firearm was used, and
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> (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.

[6] In addition to the authorities submitted by counsel, I provided them with *R. v. Drake*, 2020 NSCA 27 (decision under publication ban pursuant to s. 517 of the *Criminal Code)*.

[7] In *Drake* at paras. 6 – 8, Justice Beaton (Justice Beveridge concurring by separate reasons and Justice Scanlan dissenting), set forth what underpins the question of JIR or bail:

> [6] Underpinning the question of bail including a review under s. 680, is the protection afforded accused persons under ss. 11(d) and (e) of the Canadian Charter of Rights and Freedoms, that they are presumed innocent until guilt is proven beyond a reasonable doubt and are not to be denied reasonable bail without just cause. The exceptional nature of denial of bail was recently discussed in *R. v. Myers,* 2019 SCC 18 where Wagner, C.J.C. offered this guidance:
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> > [1] The right to liberty and the presumption of innocence are fundamental tenets of our criminal justice system. In the pre-trial context, release - at the earliest opportunity and in the least onerous manner - is the default presumption in Canadian criminal law. Pre-trial detention is the exception, not the rule.
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> [7] That observation echoed similar comments found in *R. v. St-Cloud*, 2015 SCC 27 and *R. v. Antic*, 2017 SCC 27.
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> [8] *Myers* reaffirmed that pre-trial detention can also have negative practical implications for accused persons:
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> > [27] As this Court has recognized, the experience of pre-trial detention can have serious detrimental impacts on an accused person's ability to raise a defence: see *R. v. Hall*, 2002 SCC 64 …

BACKGROUND LEADING UP TO THIS JIR APPLICATION

[8] The Applicant originally sought JIR soon after his arrest. My colleague, Justice Campbell denied bail in an October 23, 2015 oral decision. Campbell, J. found that the Applicant met his onus on the primary and secondary grounds, but ordered Mr. Sandeson detained on the tertiary ground. Much has transpired in the five years and three months since the Applicant was originally denied bail. On June 18, 2017, following a lengthy jury trial, the Applicant was convicted of first degree murder. He was sentenced to the mandatory life sentence with no eligibility for parole for 25 years.

[9] Almost three years to the day after his conviction – on June 17, 2020 – the Court of Appeal overturned the Applicant's conviction and ordered a new trial. I was appointed case management judge on October 23, 2020. I had an initial case management meeting with counsel and the accused on November 6, 2020. Among other dates, January 20 – 22, 2021 was scheduled for Mr. Sandeson's JIR hearing. On November 12, 2020 the Crown filed a leave to appeal application with the

Supreme Court of Canada. At a subsequent case management meeting, with the exception of the bail hearing dates, all of the other scheduled dates were vacated pending the Supreme Court of Canada's decision on leave.

[10] In *R. v. Sandeson*, 2020 NSCA 47, Justice Farrar set forth the background of this matter at paras. 4 – 27:

> Background
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> [4] In August of 2015, Sandeson was living in Halifax and was about to start his first year of medical school at Dalhousie University. Mr. Samson was also living in Halifax. He was a physics student at Dalhousie and lived close to the appellant. The August 15 meeting was arranged so that Mr. Samson could sell to Sandeson a large quantity of marijuana for which he was to pay $40,000. Mr. Samson left his apartment and told his girlfriend he would be back soon. He left his wallet, keys and prescribed medication behind. Security video recordings showed Mr. Samson arriving with the appellant at the appellant's apartment at 1210 Henry Street at about 10:30 p.m. on August 15. He was carrying a large black duffel bag. That was the last time Mr. Samson was seen and he has not been heard from since. His body has not been found.
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> [5] Pookiel McCabe had an apartment across the hall from Sandeson's apartment. He and a friend, Justin Blades, and Sandeson were in McCabe's apartment on the evening of August 15 but Sandeson returned to his own apartment shortly after Blades arrived. Eventually, Blades and McCabe heard a single gunshot. Sandeson can be seen on the security video going to McCabe's door very shortly thereafter and Blades and McCabe testified that the appellant seemed in a state of shock or panic.
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> [6] At trial Blades and McCabe testified they walked across the hall with Sandeson and looked in his apartment, where they saw a man slumped over in a chair as well as blood, cash and drugs. Blades and McCabe went back to McCabe's apartment but then returned to Sandeson's apartment a short time later. Blades testified that he saw streaks of blood leading from the chair where the man had been sitting, to the bathroom. Sandeson said he had to clean up and asked Blades for the use of his car but Blades refused. As I will discuss in greater detail later, when McCabe and Blades were originally interviewed by the police both denied having any significant information relating to the investigation.
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> [7] The security video, which recorded to a DVR in Sandeson's apartment, showed Blades and McCabe returning to McCabe's apartment and then leaving the building altogether. The DVR did not record between approximately 11:30 p.m. on August 15 to approximately 1:00 a.m. on August 16.
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> [8] Sonja Gashus, Sandeson's girlfriend, arrived at the apartment at about 12:30 a.m. on August 16. She noticed the apartment smelled of bleach. Blades made that same observation later that morning.

[9] Sandeson's roommate, Dylan Zinck, testified that Sandeson asked him not to be at their apartment after 8 p.m. on August 15. Similarly, Ms. Gashus testified he told her not to be at his apartment that evening.

[10] At 2:52 a.m. Sandeson texted Jordan McEwan, who was also involved in the drug trade, and told him that Mr. Samson had taken his money without delivering the marijuana. Sandeson sent texts to Mr. Samson's phone complaining that Mr. Samson had not come back with "that stuff" and that he did not know what Mr. Samson was planning to do.

[11] Surveillance video showed Sandeson cleaning out the trunk of his car later on the morning of Sunday, August 16. Mr. Samson's DNA was found in that trunk.

[12] That same day, Mr. Samson was reported missing. The case was not assigned to the Halifax Regional Police Major Crimes Unit until late on Monday, August 17. The police learned that the last call to Mr. Samson's phone came from an IP address located at a group home for persons with disabilities in Lower Sackville. The police attended at the group home to find out who had been communicating with Mr. Samson. Sandeson worked at the group home but was not present when the police attended. A co-worker contacted him on Tuesday, August 18, and said that the police were looking for someone who had been communicating with Mr. Samson from the home. Sandeson contacted the police and met with them that afternoon.

[13] On the morning of Monday, August 17, the video surveillance recordings showed Sandeson removing garbage bags and other items from his apartment while wearing gloves. Cell tower records indicated that on Tuesday, August 18, Sandeson's phone was in Truro, where his family has a farm. Later, investigators found items at the farm consistent with those Sandeson removed from his apartment. Mr. Samson's DNA was found on some of those items, including a shower curtain and a large duffel bag.

[14] Sandeson met with the police on the afternoon of August 18 and gave the first of three statements. He said, while at work on Sunday, August 16, he learned that Mr. Samson was missing. The last time he had seen Mr. Samson was on Thursday, August 13. That night he sampled some marijuana Mr. Samson was selling, but thought it was of poor quality and did not take any. According to Sandeson they arranged by text to meet again on August 15 so that he could sample some other marijuana that Mr. Samson had in a large quantity.

[15] Sandeson also told the police he waited for Mr. Samson on the evening of August 15, but he did not arrive. Eventually Mr. Samson texted that he was outside. Sandeson said he went outside but did not find Mr. Samson. They spoke briefly on the phone but did not meet. Sandeson said he texted Mr. Samson after Ms. Gashus returned to the apartment and told him not to come and suggested they get together the next day. Sandeson said he received no response to that text.

[16] At the end of the interview, Sandeson let the police look at his phone and take photographs of his text messages with Mr. Samson. After Sandeson left the

station, the police reviewed the text messages and became concerned about inconsistencies between the text messages and the information Sandeson had provided. In particular, the messages revealed the planned drug deal was a large transaction. They also seemed to suggest Mr. Samson had not failed to show up as planned, contrary to Sandeson's statement.

[17] The investigation into the disappearance of Mr. Samson was led by a "triangle" of police officers: Sgt. Kim Robinson, Sgt. Derek Boyd and D/Cst. Roger Sayer from the Major Crime Unit. Mr. Samson was reported missing on the morning of August 16. The case was transferred to the Major Crime Unit on August 17, once it was understood that Mr. Samson had a significant medical problem (a condition related to his liver); had left his apartment without his medication; and, had been arranging to meet someone to complete a drug transaction.

[18] As a result of the inconsistencies in the information provided by Sandeson and out of concern for Mr. Samson's health, at approximately 6:30 p.m. on August 18 the triangle decided they had sufficient grounds for a warrantless (exigent) search of Sandeson's apartment. The search was conducted shortly after 6:30 p.m. on August 18. The police did not find Mr. Samson in the apartment. They did not find any signs of foul play but did see a surveillance system connected to a DVR, a quantity of magic mushrooms, and an empty box for a handgun (but not the gun itself). After leaving the apartment, the searchers later returned and disconnected the DVR to prevent its contents from potentially being erased remotely. Officers on the scene were instructed to secure the apartment while a warrant was obtained. The officers decided to wait in the apartment in order to secure it.

[19] After the exigent search, the triangle determined Sandeson should be arrested for misleading the police, kidnapping and trafficking. He was arrested between 8:00 and 8:30 p.m. on August 18.

[20] A search warrant for Sandeson's apartment was ultimately granted at approximately 4 a.m. on August 19. The search commenced at about 5:30 a.m. that same day.

[21] The search and examination of Sandeson's apartment indicated an attempt had been made to clean the apartment. Despite the cleaning efforts, blood was found that contained Mr. Samson's DNA. Cash was seized and a 9mm gun loaded with one bullet was found in a locked gun case. The blood splatter on the gun was consistent with a person being shot at a distance of two to four feet away. It, too, contained Mr. Samson's DNA. The gun also had the DNA of Sandeson and another unidentified person on it.

[22] A bullet lodged in a window casing in the apartment was also found to have Mr. Samson's blood on it. Expert evidence indicated that the bullet could have been fired by any of a 9 mm, or .38 or .357 caliber firearm. The police noted there was no shower curtain in the apartment's bathroom.

[23] After his arrest on August 18, Sandeson was interviewed a second time. He denied any knowledge of what had happened to Mr. Samson.

> [24] A third interview took place on August 19. It began at about 9:50 a.m. and ended at about 6:40 p.m. Sandeson maintained he did not know where Mr. Samson was, what had happened to him, or whether he was alive.
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> [25] During that interview, Sandeson said three men had entered his apartment dressed in black and wearing masks. They attacked Mr. Samson and Sandeson. One of the masked men had a gun. Sandeson was struck on the head and fell to the floor. He did not see what happened to Mr. Samson, but there was a lot of blood. The intruders took the large duffel bag and any of the money which had not become bloody and exited through the front door with Mr. Samson. Sandeson said he was scared and panicked and cleaned up as much of the blood as he could. He threw out his shower curtain because it had blood on it.
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> [26] After he was shown some of the video from his security cameras, Sandeson said that two men had been hiding in his roommate's bedroom when he and Mr. Samson were in the kitchen. They had come in through the window which opens on to a rooftop where there is a barbecue. They were wearing black "morphsuits" that covered their faces. The men were there to scare Mr. Samson in part because Mr. Samson owed money. When they came into the kitchen, Sandeson retreated to his room. They pointed a gun at Mr. Samson and told Sandeson to turn off his security video recorder, which he did. The men told Mr. Samson that "he was done." There was a single gunshot and a lot of blood. The two men put Mr. Samson in the duffel bag with the marijuana and most of the cash and carried it out the front door. Sandeson said that he then cleaned up the apartment as well as he could and took the garbage out -- mostly paper towels -- in the morning.
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> [27] Although Sandeson initially said that he had not seen Mr. Samson get shot, he eventually said Mr. Samson was shot in the back of the head. At this point, he was arrested for murder.

[11] The Court of Appeal ultimately held that the trial judge ought to have granted a mistrial. In this regard, during the trial it became known that the Defence-hired private investigator, Bruce Webb, had assisted the police by locating and putting them into contact with Mr. McCabe and Mr. Blades (the two individuals referenced at paras. 5 – 7 above). These two men had previously provided police statements denying having any significant information relating to Mr. Samson's death. However, after being interviewed by Mr. Webb, it became clear that they had relevant information. Mr. Webb encouraged the police to re-interview the two witnesses and on behalf of the police took steps to locate and gain the confidence of the two men. The Court of Appeal determined that the involvement of Mr. Webb with the police was not disclosed to the Defence in advance of the trial.

[12] When the Crown revealed to Defence counsel at trial that Mr. Webb had assisted the police, the Defence sought a mistrial. The trial judge found that there

had been a breach of disclosure but denied the mistrial. This was reversed on appeal. At paras. 99 – 100, Justice Farrar stated:

> [99] As Sandeson's counsel argued on appeal, "this catalogue of conduct does not amount to passive listening" (Appellant's Factum, ¶59). Despite the fact the police did not initiate the first contact with Webb (VD7 Decision, ¶138), the facts accepted by the trial judge and supported by the record reveal police officers were active participants in a common venture with Webb to obtain Blades' statement. The police:
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> - knew that Webb worked for the Defence when they received his Information;
> - knew that Webb was doing something wrong and that he was violating his duties to the appellant;
> - were completely unconcerned Webb was doing something wrong or that they might come into possession of privileged information;
> - did not seek legal advice on the point notwithstanding the novelty of the situation;
> - told officers to call Webb;
> - actually called Webb;
> - assured Webb his name would be kept out of police records;
> - told officers to keep his identity confidential;
> - asked Webb to meet them at Blades' home;
> - met Webb at Blades' home; and
> - delivered on their assurances to keep his name out of police records.
>
> [100] All of which allowed the police to take advantage of Webb's assistance in obtaining Blades' statement and to benefit from the rapport Webb had built up with Blades. This was nothing less than a collaborative effort between the police and Webb.

[13] In the decision the Court of Appeal touched on whether the police conduct constituted an abuse of process at paras. 105 – 106:

> [105] Returning to the police conduct in this matter -- does it amount to an abuse of process? At this point it is important to recall that a finding of an abuse of process by the trial judge was neither requested nor necessary. Sandeson only had to show there was a reasonable possibility the late disclosure of the evidence foreclosed realistic opportunities to investigate this issue and advance an abuse of process claim at a new trial.

> [106] In my view, Sandeson had crossed that threshold and a mistrial should have been ordered. It would be entirely possible for a judge to find the police conduct revealed by the undisclosed information could amount to an abuse of process. I will explain why. However, the determination of whether it amounts to an abuse of process is for the judge hearing the new trial. My comments here are only to illustrate a viable argument can be made. Whether it will be successful is not for me to decide.

[14] After canvassing relevant authorities, Justice Farrar at paras. 117 – 124, reviewed the actions of the police and whether the state conduct could be found to affect society's sense of fair play and undermine the integrity of the justice system:

> [117] However, it is possible a court may find, even without resort to litigation privilege or confidentiality considerations, it offends society's sense of fair play and fundamental notions of justice for the state to accept assistance of a professional in the investigation and prosecution of an accused when that professional is currently retained by that accused for the purpose of helping him defend himself against the state. Once again I wish to make clear I am not deciding the issue but only illustrating such an argument is neither fanciful nor doomed to fail.
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> [118] The state conduct in the present case (detailed in para. 99-100 above) could, arguably, be found to affront society's sense of fair play and undermine the integrity of the justice system.
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> [119] To begin, by accepting and using Webb's information that Webb only possessed because he was asked by defence to interview Blades and McCabe, aspects of defence trial preparations were disclosed to the police, and then used to the state's advantage without the knowledge of the person affected: the accused.
>
> [120] Here, the relationship the police exploited between Sandeson and Webb was not only one of trust, but one formally established for the purpose of assisting him in defending himself against the state. Further, Webb was privy to at least some discussions about defence strategy and details of the accused's side of the story, thus making Sandeson vulnerable to Webb.
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> [121] Before concluding on this point, I would like to address the trial judge's question to himself about "What should the police have done in these circumstances? (*VD*7 Decision, para138).
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> [122] There are any number of things the police could and should have done differently in these circumstances. There is no reason why the police should not have told Webb he could not disclose aspects of defence trial preparations. The police should have immediately notified the Crown of Webb's actions so that the Crown could then alert the defence to what Webb had done. Instead, Sandeson's lawyers were left completely in the dark, oblivious to the fact the private investigator they had hired, and with whom they had shared defence strategies, was covertly informing the police, in a relationship the police kept secret.

> [123] There are other situations wherein the police must stay away from evidence, such as statutorily compelled evidence obtained after the commencement of a penal investigation (see e.g. *R. v. Jarvis*, 2002 SCC 73 and *R. v. Ling*, 2002 SCC 74). They also cannot accept assistance from professionals such as auditors exercising statutory powers to gather evidence (see e.g. *R. v. Williams* (1994), 130 N.S.R. (2d) 8 (N.S.S.C.) and *R. v. Mercer*, 2005 NLCA 10 (albeit in obiter)).
>
> [124] Considering all the above, there is the potential that a court may find the undisclosed information constituted a residual category abuse of process.

[15] In light of the Court of Appeal's decision it is possible that future pre-trial applications will cause the Crown's case to be dismissed or diminished. With respect to the former, the parties have agreed that the next pre-trial application will be for a stay for an abuse of process. If the Applicant is unsuccessful with his argument for a stay for an abuse of process, he may alternatively seek to have the evidence of Mr. McCabe and Mr. Blades excluded at trial.

Primary Ground: s. 515(10)(a)

Whether Mr. Sandeson's detention is necessary to ensure his attendance in court in order to be dealt with according to law:

[16] With respect to the primary ground, I note that Mr. Sandeson does not possess a criminal record and he has presented a well thought out plan of release. In any event, the Crown does not oppose JIR based on the primary ground. I find that Mr. Sandeson has met his onus on the primary ground.

Secondary Ground: s. 515(10)(b)

Whether Mr. Sandeson's detention is necessary for the protection or safety of the public 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:

[17] As for the secondary ground, Justice Campbell found Mr. Sandeson met his onus, when his parents were his only sureties. The plan now involves five sureties (his parents plus his three brothers) and electronic monitoring. Given the 24/7 monitoring addressed by RSC's director of operations, Stephen Tan, the plan of release accordingly further reduces the chance of Mr. Sandeson re-offending or interfering with the administration of justice. Five hundred thousand dollars has been pledged by Mr. Sandeson's parents. His brothers have pledged relatively small

amounts; however, given that two of his brothers are students and his third brother has significant student loans, the funds are personally significant.

[18] Mr. Sandeson's lack of criminal record is also relevant to the secondary ground. Further, the 2015 concerns about his ongoing drug trade participation are considerably reduced, given that he has been incarcerated.

[19] Superficially, the plan to increase Mr. Sandeson's sureties from two to five family members may seem an improvement. On closer examination, I find the provisions for five sureties to actually be weaker than what was contemplated back in October, 2015. I say this because Mr. Sandeson's brothers do not presently reside on their parents' property. Whereas the plan involves Mr. Sandeson living on his parents' farm, his siblings have not lived there on a full time basis since before each was in first year university. Although his two younger brothers may possibly end up living there over the 2021 summer months, this is by no means a certainty. As for Adam Sandeson, he has essentially ruled out a move to the farm. In the result, should Mr. Sandeson's parents rely on any one of his brothers to watch over the Applicant, it may pose a significant inconvenience. They are all now living at least an hour from the farm and their collective evidence does not lead me to conclude they will be moving any time soon, if at all. Posing questions over the phone – as all three pledged to do – regarding their brother's whereabouts and circumstances is obviously not ideal.

[20] With respect to Adam Sandeson as a proposed surety, I have more specific concerns. My concerns are based on the history between Adam and William Sandeson, brought out during Adam's cross-examination. From his evidence we know that Adam did not report William's past transgressions to his parents or the authorities. When Adam Sandeson learned of his brother owning a 9 mm handgun and possessing large amounts of (then) illegal drugs, he stayed silent. He also allowed William to store what he knew to be drugs in his apartment basement. He did this knowing that Mr. Samson had been missing. Adam Sandeson obviously felt his loyalty to his brother outweighed disclosing serious information which had to have led him (as an intelligent young university student at the time) to know that William was involved in the drug trade.

[21] Given Adam Sandeson's past behaviour of not at least telling his parents about William's concerning activities and allowing him to store drugs on his property, I have little confidence that he can be a reliable surety or jailer in the community for his older brother.

[22] In considering Mr. Sandeson's JIR, I am concerned with the plan to involve his brothers as sureties. If I was inclined to grant bail, I would reduce his sureties to his parents, only. In my view, Adam Sandeson's past behaviour *vis-à-vis* William, is enough to take him out of the equation. As for David and Matthew, they, along with Adam, do not classify as "jailers in the community".

[23] Based on their affidavits and testimony there is nothing to indicate that either of William Sandeson's parents today appreciate what was behind their son leading what Justice Campbell described as a "double life" back in 2015. Of course, he was referring to the fact that William Sandeson was an accomplished athlete and student on the one hand and on the other, involved in the drug trade. After the alleged homicide, there is strong evidence that the Applicant hid items connected to Tyler Samson's murder on his parents' property. Neither parent addressed this in their evidence. Nevertheless, the proposal contemplates the Applicant living on the property, largely under his parents' watch. If his mother cannot be with him, the plan suggests his father will watch over him. This could well prove challenging given Michael Sandeson's job duties involving driving a feed delivery truck within Colchester and neighbouring counties. For example, cell service in these areas may prove challenging.

[24] I reference cell service because the RSC 24/7 monitoring relies on this. Mr. Tan confirmed this in his testimony. He also candidly admitted that the GPS ankle bracelet proposed to be worn by Mr. Sandeson is not a guarantee an individual cannot breach. Monitoring is such that a breach is likely to be discovered within 15 minutes. Presumably, action on the part of the police would follow the police being notified by RCS and/or one of the sureties.

[25] In addition to these developments in the five years and three months since his original bail application, there has been "detrimental behavior" documented on behalf of Mr. Sandeson, while incarcerated. The Offender Incidents Report details three incidents of what I would characterize as relatively benign poor behavior during his time in jail. Very recently, however, there is a documented incident appearing on Mr. Sandeson's record which discloses this August 24, 2020 "Disobey Order":

> SEG 3. WHILE CONDUCTING AN INTERVIEW WITH INMATE HE WAS TOLD HE WOULD BE REMOVED FROM HEALTH CARE CELLS BECAUSE THE HEALTH CARE STAFF HAD NO MEDICAL HOLD ON HIM. HE WAS GIVEN THE OPPORTUNITY TO CHOOSE ANY DAYROOM TO MOVE TO BUT HE REFUSED. HE WAS ORDERED BY THIS OFFICER AND HE

> STATED HE WAS HOMICIDAL AND WOULD KILL ANOTHER INMATE IF HE WAS PLACED ON A LIVING UNIT. HE STATED HE HAD NO PARTICULAR PERSON HE WAS ANGRY WITH BUT HE WOULD CHOOSE A VICTIM OR MULTIPLE VICTIMS UNTIL STOPPED.

[26] The Crown characterizes the above behaviour as "manipulative and threatening". They say it offers "troubling insight into Mr. Sandeson's psyche". The Crown submits that this behavior must be considered in context with the background they submit, as follows:

> Despite his apparent pro-social background, Mr. Sandeson was living a double life as a drug dealer. There is compelling evidence that he is responsible for the execution-style murder of Taylor Samson for financial gain. Given the brutal and heinous nature of the offence, the Crown would submit that the Court should be very concerned that the accused will commit a further offence if released, including a violent offence or an offence interfering with the administration of justice.
>
> Taylor Samson's body has never been found. Several weeks before his murder, Mr. Sandeson texted one of his friends, Amanda Clarke. Mr. Sandeson was angry with his girlfriend Sonja Gashus. He told Ms. Clark that he wanted to kill Ms. Gashus. He said that he would cut off her extremities, put the body in a bucket of lye, and leave it for the coyotes to eat. This is particularly disturbing given the events of August 15, 2015 and the fact that Mr. Samson's body has never been found.

[27] In the result, the Crown argues that "no level of restrictive conditions would be enough to keep the public safe should Mr. Sandeson re-offend".

[28] The statements are not rebutted by Mr. Sandeson. Indeed, the Applicant chose to file nothing (this option was afforded to him) in reply to the Crown's submissions. In argument Ms. Craig answered the Court's queries by stating that this was an "off the cuff remark". She questioned whether the words were ever spoken and said there was no context to the remarks. Applicant's counsel emphasized that her client has no history of violence during his time in jail. She noted he has upgraded his studies (he has achieved further credits to earn an MBA) over the past nearly five and a half years while incarcerated.

[29] While it is correct that Mr. Sandeson has had no history of violence in jail, I am not prepared to disregard his recent comments made while being interviewed by a jail official. This is particularly so when I consider the circumstances of the alleged homicide and Mr. Sandeson's demonstrated past behaviour (as outlined above by the Crown in their brief). This was addressed by Sgt. Sayer during his direct evidence when he spoke of Mr. Sandeson's texts to a friend. As such, it cannot be

said that his words were "a heat of the moment" direct exchange with his (then) girlfriend. Rather, his texts to another woman made it clear that he wanted to kill his girlfriend. Mr. Sandeson provided graphic and disturbing detail. Sgt. Sayer said that Mr. Sandeson's texts revealed that he wanted to dissolve Ms. Gashus' body parts in chemicals.

[30] In the wake of the texts there is of course the alleged murder of mid-August, 2015. In the sentencing decision, *R. v. Sandeson*, 2017 NSSC 193, Justice Arnold made significant findings of facts. I have reviewed the decision and find that Sgt. Sayer's *viva voce* evidence on this application mirrored the findings of Arnold, J., albeit (in keeping with a JIR hearing), they were provided in summary form.

[31] Having touched on the unsettling texts about the Applicant's (then) girlfriend and the circumstances of the alleged crime, I return to the August 24, 2020 "Disobey Order" (referenced at para. 25 of this decision). Mr. Sandeson's words speak for themselves. They are attributed to Mr. Sandeson during an interview by a prison official. As such, it cannot be said that Mr. Sandeson uttered these words while he was under imminent threat. For example, he did not say these things in an attempt to ward off another inmate or inmates. Rather, because he was told that he would be removed from health care cells, Mr. Sandeson responded by stating that he was homicidal. He added that if he was placed on a living unit he would kill another inmate. He concluded by stating that he would choose a victim or multiple victims until stopped.

[32] I have considered the Crown and Applicant arguments in the totality of the circumstances. On balance, I have grave concerns about releasing Mr. Sandeson, even in the context of what would be an acceptable plan of release if his brothers were removed as sureties. My concerns are rooted in the circumstances of the alleged crime along with the comments about Ms. Gashus and the recent incident in jail.

[33] Once again, less than five months ago Mr. Sandeson uttered threats when he was told he would be moved from the health care cells. Mr. Sandeson made these threats in close proximity to having stated during Crownside that he would be seeking JIR. Knowing what was at stake, he nonetheless chose to threaten murder. Accordingly, I regard Mr. Sandeson's unprompted words as impulsive and dangerous.

[34] Given Mr. Sandeson's utterances in the face of the pending bail hearing, I have little comfort even with strong sureties and electronic monitoring, that the

public will be safe. With his documented recent transgression, it is not difficult to envision Mr. Sandeson breaching his conditions and jeopardizing the safety of others. The recent history demonstrates impulsive, impetuous thoughts and words on the part of Mr. Sandeson.

[35] I have significant concerns that Mr. Sandeson could again exhibit such thoughts and absent a jail setting, act on them to the extreme detriment of those around him. Accordingly, I find that the Applicant has not met his onus on the secondary ground. I have determined that having regard to all the circumstances, there is a substantial likelihood that should he be released from custody, Mr. Sandeson would act on his thoughts and words, thus committing a serious crime. In the result, the application must fail on the secondary ground.

Tertiary Ground: s. 515(10)(c)

Whether Mr. Sandeson's detention is necessary to maintain confidence in the administration of justice.

[36] Notwithstanding my decision that the Applicant has failed on the secondary ground, I will go on to consider the tertiary ground. As I consider the tertiary ground, I am ever mindful of Mr. Sandeson's release plan. In this regard, *Drake* provides guidance at para. 16:

> [16] The refusal to grant release was in relation to the tertiary ground, although in discussing the tertiary ground the JIR judge did not consider once again the nature of Mr. Drake's release plan, despite its relevance (*R. v. Wright*, 2019 ONSC 1598 at para. 66; *R. v. Dang*, 2015 ONSC 4254 at paras. 56-58)

[37] In *Drake* the allegations were severe and involved the use of a firearm. If convicted, Mr. Drake was liable to receive a lengthy term of imprisonment. The same may be said in Mr. Sandeson's case. To "set the stage" for my analysis of the tertiary stage, I return to Justice Beaton's comments in *Drake* at para. 21 – 32:

> [21] There was no dispute before either the JIR judge or this Court that the allegations against Mr. Drake are grave (s. 515(10)(c)(ii)) and the circumstances surrounding the commission of the offence include the use of a firearm (s. 515(10)(c)(iii)). Mr. Drake is liable, if convicted, to a lengthy term of imprisonment (s. 515(10)(c)(iv)). The whole of the argument before this Court centers around the first factor in s. 515(10)(c), being "the apparent strength of the prosecution's case". Mr. Drake argues the Crown's case cannot be characterized as overwhelming and in the absence of such a conclusion in this case his burden is met and his release is justified.

[22] Following his assessment of the evidence, the JIR judge characterized the strength of the Crown's case:

> In this form of a bail hearing, the Court cannot and ought not try to assess the ultimate credibility or reliability of any of these three witnesses. That will be for the jury to decide at trial, although they will do so not in isolation, but in light of all the surrounding evidence as a whole, looking at the combined effect of the identification evidence and the circumstantial evidence. Suffice it to say at this point that without being able to anticipate the outcome of the jury's assessment of that identification evidence, which is open for challenge by the Defence, and in the absence of any physical evidence, the Crown's case cannot be said at this stage to be overwhelming, although it has the potential to be. At this juncture I think Crown counsel was being more realistic in placing it from moderate to strong along the spectrum.

[Emphasis added]

[23] In describing the prosecution's case as "moderate to strong", and taking that factor in concert with the other three factors in s. 515(10)(c), the JIR judge concluded his decision was a "close call". On my reading of the record, the JIR judge erred in characterizing the strength of the Crown's case and that assessment diminished the impact of the very strict terms of the release plan, which as noted earlier, was not considered again at the tertiary ground stage.

[24] In *R. v. St-Cloud*, *supra*, Wagner, J. (as he then was) summarized the essential principles of the application of s. 515(10)(c):

> [87] I would summarize the essential principles that must guide justices in applying s. 515(10)(c) *Cr. C.* as follows:
>
> • Section 515(10)(c) *Cr. C.* does not create a residual ground for detention that applies only where the first two grounds for detention ((a) and (b)) are not satisfied. It is a distinct ground that itself provides a basis for ordering the pre-trial detention of an accused.
>
> • Section 515(10)(c) *Cr. C.* must not be interpreted narrowly (or applied sparingly) and should not be applied only in rare cases or exceptional circumstances or only to certain types of crimes.
>
> • The four circumstances listed in s. 515(10)(c) *Cr. C.* are not exhaustive.
>
> • A court must not order detention automatically even where the four listed circumstances support such a result.
>
> • The court must instead consider all the circumstances of each case, paying particular attention to the four listed circumstances.
>
> • The question whether a crime is "unexplainable" or "unexplained" is not a criterion that should guide the analysis.

> • No single circumstance is determinative. The justice must consider the combined effect of all the circumstances of each case to determine whether detention is justified.
>
> • This involves balancing all the relevant circumstances. At the end of this balancing exercise, the ultimate question to be asked by the court is whether detention is necessary to maintain confidence in the administration of justice. This is the test to be met under s. 515(10)(c).
>
> • To answer this question, the court must adopt the perspective of the "public", that is, the perspective of a reasonable person who is properly informed about the philosophy of the legislative provisions, Charter values and the actual circumstances of the case. However, this person is not a legal expert and is not able to appreciate the subtleties of the various defences that are available to the accused.
>
> • This reasonable person's confidence in the administration of justice may be undermined not only if a court declines to order detention where detention is justified having regard to the circumstances of the case, but also if it orders detention where detention is not justified.
>
> [88] In conclusion, if the crime is serious or very violent, if there is overwhelming evidence against the accused and if the victim or victims were vulnerable, pre-trial detention will usually be ordered.
>
> [Emphasis added]

[25] Here, the alleged crime is serious and very violent. However, it is incorrect in my view to characterize the evidence against Mr. Drake as moderate to strong. *St-Cloud* also addressed the act of assessing the apparent strength of the prosecution's case:

> [58] Despite these difficulties inherent in the release process, the justice must determine the apparent strength of the prosecution's case. On the one hand, the prosecutor is not required to prove beyond a reasonable doubt that the accused committed the offence, and the justice must be careful not to play the role of trial judge or jury: matters such as the credibility of witnesses and the reliability of scientific evidence must be analyzed at trial, not at the release hearing. However, the justice who presides at that hearing must consider the quality of the evidence tendered by the prosecutor in order to determine the weight to be given to this factor in his or her balancing exercise. For example, physical evidence may be more reliable than a mere statement made by a witness, and circumstantial evidence may be less reliable than direct evidence. The existence of ample evidence may also reinforce the apparent strength of the case.
>
> [Emphasis added]

[26] Mr. Drake maintains the JIR judge erred in placing the case along the spectrum as "moderate to strong". Mr. Drake asserts the case is, at best, "weak to

moderate". The lack of physical or forensic evidence, the weaknesses in the circumstantial evidence, and the issues surrounding the reliability (distinct from credibility) of the three key Crown witnesses cause me to agree.

[27] The language of s. 515(10)(c) does not require, on strict reading of the phrase "the apparent strength of the prosecution's case", that the case be "overwhelming" in strength. In *R. v. Hall*, 2002 SCC 64, the Court stated:

[26] Therefore, Parliament provided for denial of bail where paras. (a) and (b) of s. 515(10) are not met but the judge, viewing the situation objectively through the lens of the four factors stipulated by Parliament, has decided that there is "just cause" for refusing bail. To allow an accused to be released into the community on bail in the face of a heinous crime and overwhelming evidence may erode the public's confidence in the administration of justice. Where justice is not seen to be done by the public, confidence in the bail system and, more generally, the entire justice system may falter. When the public's confidence has reasonably been called into question, dangers such as public unrest and vigilantism may emerge.

[Emphasis added]

[28] Neither *St-Cloud* nor *Hall* stand for the proposition that overwhelming evidence is a pre-condition for detention on the tertiary ground. Regardless, the evidence in this case depends almost entirely on three witnesses whose reliability is equally as likely to be discounted as accepted by a jury.

[29] As set out in para. 58 of *St-Cloud*, it is not for the hearing judge to analyze credibility; rather, the judge must consider the quality of the evidence. It was in his finding that the Crown's case was moderate to strong that, with respect, the JIR judge erred. While the weaknesses in the Crown's case alone may not warrant this Court's intervention, in concert with the strict terms of proposed release, they render detention unwarranted.

[30] The evidence likely to be called at trial would, if accepted, undoubtedly implicate Mr. Drake. However, much remains to be seen between now and the time of trial, anticipated to be at least a year away. It is not disputed by the Crown there are clear avenues open to Mr. Drake to mount a rigorous testing of its evidence.

[31] As noted, the JIR judge acknowledged that:

… without being able to anticipate the outcome of the jury's assessment of that identification evidence, which is open for challenge by the Defence, and in the absence of any physical evidence, the Crown's case cannot be said at this stage to be overwhelming, although it had the potential to be. At this juncture I think Crown counsel was being more realistic in placing it from moderate to strong along the spectrum.

[32] The JIR judge's reference to "potential" would seem to recognize there is an equal possibility that the evidence would be accepted or rejected. The JIR judge went further when he concluded "there were two eyewitnesses to the murder as previously described … whose reliability is open for challenge by the Defence".

[38] As part of the tertiary ground analysis, the Applicant raises the issue of the current pandemic. The Applicant notes that when there is an appropriate release plan, the COVID-19 crisis "weighs heavily in favour of release". COVID-19 and the impact on bail was recently considered in *R. v. B.T.D.*, 2020 NSSC 165 where Justice Rosinski noted at para. 132:

> [132] B.T.D. testified he has asthma. I am sceptical that he is truly "asthmatic", as opposed to perhaps allergic to spring blossoms and such. I accept that he has the same likelihood as other inmates of contracting the Covid 19 virus. Dr. Barrett opined that the risk of contracting the virus by inmates in present circumstances is "very, very, very low". I bear in mind that it is reasonably foreseeable in the near to medium term that there will be new inmates added to the existing inmate population in Nova Scotian correctional facilities, and specifically Burnside. However, I am satisfied that rigorous monitoring, procedures and guidelines have been instituted in order to ensure the health and safety of inmates during this very challenging time. I found his proposed surety, P.K.S, would likely be unreliable and ineffective. Similarly, electronic monitoring is not necessarily available to him (due to poor internet at the residence of P.K.S. and the limited number of units available) and he has not established that it is available and will be effective. Even had he done so, I would likely still decline bail under section 515(10)(c). Should there be a material change in circumstances, another bail review application is possible per section 520(8) *CC*.

[39] There is no evidence to suggest that Mr. Sandeson is at a greatly elevated risk to contract COVID-19 while in a Nova Scotia correctional facility. While I have turned my mind to the pandemic and the numerous Ontario cases submitted by the Applicant, COVID-19 does not weigh in favour of release in the circumstances of the Applicant.

[40] Returning to *Drake*, as Justice Beveridge explains in his separate and concurring decision at para. 49, the "overarching inquiry under the tertiary ground is the maintenance of confidence in the administration of justice". In assessing this, I must consider all of the circumstances including the enumerated factors set out in s. 515(10)(c).

[41] The first of the enumerated factors is "the apparent strength of the prosecution's case". Having regard to the majority in *Drake*, I am of the view that the evidence against the accused must be "overwhelming" or at a minimum, "the Crown's case must be compelling or very strong and other circumstances make it necessary to order detention in order to maintain the public's confidence in the administration of justice" (see *Drake* at para. 56).

[42] When assessing the strength of the Crown's case in the original JIR hearing Justice Campbell did not have the benefit of the recently decided *Drake*. Nevertheless, he characterized the Crown case as "substantial" (pp. 14, 24). At pp. 14 – 20 Campbell, J. reviewed the evidence that the Crown presented during the October 23, 2015 hearing. He classified the Crown's evidence as "strong" (pp. 19, 21, 24 and 27) and that "viewed as a whole, it [the circumstantial evidence] strongly supports the inferences that the Crown has argued" (p. 20). Having considered the evidence of Sgt. Sayer, I make the same observations. In my view the Crown's evidence can be fairly characterized as overwhelming.

[43] The Applicant submits that the case against Mr. Sandeson "was, arguably weakened significantly during the trial". This statement is not elaborated upon and we know that the trial resulted in Mr. Sandeson being convicted of first degree murder. In fairness, what the Applicant is really focussing on is the collective actions of Mr. Webb, the police and the Crown lead to a "meritorious argument" that the proceedings against Mr. Sandeson ought to be stayed as a result of an abuse of process. The Applicant goes on to argue that the Court of Appeal made it clear that the stay has "significant merit". Alternatively, they submit that even if a stay is not found to be warranted that the evidence of Mr. McCabe and Mr. Blades could be excluded which would "substantially weaken" the Crown's case. In support of the latter argument, the Applicant provided excerpts from the Crown's closing and Justice Arnold's charge referencing the evidence of Messrs. McCabe and Blades.

[44] The Crown takes issue with the Applicant's argument that their case has been weakened significantly. With respect to the possible exclusion of the evidence of Mr. Blades and Mr. McCabe, they correctly point out that this evidence was never before Justice Campbell as it was not then in the Crown's possession.

[45] As for the abuse of process argument, the Crown points out that the Court of Appeal's comments in no way equate with a stay application having "significant merit". In this regard, the Crown refers to Justice Farrar's comments at paras. 106 and 117 (see these paras. quoted at paras. 13 and 14 of this decision). When I review these passages and the entirety of the Court of Appeal's decision, I must agree with what the Crown has submitted. In this regard, Farrar, J.A. says that the abuse of process argument is "viable" and "whether it will be successful is not for me to decide" (para. 106). He goes on to state, "I am not deciding the issue but only illustrating such an argument is neither fanciful nor doomed to fail" (para. 117). In light of these comments, and in any event, I possess an open mind on the upcoming stay application. I do not regard the pending stay application as significantly

weakening the Crown's case. Having said this, I have obviously considered this as part of my tertiary ground analysis and note that it was not something Justice Campbell had before him.

[46] In arriving at my determination that the Crown has overwhelming evidence, I pause to acknowledge that some of what Sgt. Sayer has spoken of may not be ultimately led or admitted at the second trial. Further, I have considered the defences that Mr. Sandeson may raise. These include the stay, exclusion of the evidence of Mr. Blades and Mr. McCabe, and the other issues that occupied the original trial judge's seven *voir dire* decisions.

[47] Even in the event of the evidence of Mr. McCabe and Mr. Blades being excluded, I regard the Crown's case as compelling, very strong and ultimately overwhelming. I say this with reference to Sgt. Sayer's evidence on this application, which buttresses the strong circumstantial and primary evidence discussed by Farrar, J.A. in the Court of Appeal decision (see the background section reproduced at para. 10 of this decision), by Campbell, J. in his bail decision and Arnold, J. in the sentencing decision.

[48] In this regard, I refer to the significant evidence addressed by Sgt. Sayer (excluding what he said about the latter statements and trial evidence of Messrs. McCabe and Blades) that:

- Mr. Sandeson had three cameras placed outside his apartment;
- There are video recordings showing Mr. Sandeson's comings and goings on August 15, 16, 17 and 18;
- Mr. Sandeson was a drug dealer at the relevant time;
- In his apartment he had a safe where he kept a 9 mm semi-automatic handgun and cash;
- Ammunition for the gun was found in Mr. Sandeson's apartment;
- The recordings show Mr. Samson with a large black duffel bag entering Mr. Sandeson's apartment at around 10:30 p.m. on August 15, 2015 but never leaving;

- Mr. Sandeson's kitchen chair where Mr. Samson is thought to have been seated was determined to be in line with where a bullet was found in the windowsill;
- Mr. Samson's DNA was found on several spots ("splatter") on the gun;
- The bullet tested positive for Mr. Samson's DNA;
- Mr. Sandeson's shower curtain was missing from his apartment bathroom;
- On August 16 Mr. Sandeson was observed on DVR leaving his apartment with Ms. Gashus just before 6 a.m. On this summer day he was wearing a sweater and an orange hunter's toque;
- When Ms. Gashus gave her statement she said that she usually stayed at Mr. Sandeson's apartment but that she stayed at a girlfriend's on the night of August 15, 2015. When she returned to the apartment early in the morning of August 16, 2015, she found Mr. Sandeson cleaning blood;
- Mr. Sandeson told Ms. Gashus he was trying to sell his drug business to two people and they had gotten into a fight and that is where the blood had come from;
- Mr. Samson's remains have never been located;
- Mr. Sandeson provided the police with three inconsistent statements;
- Mr. Samson's DNA was found in Mr. Sandeson's vehicle trunk, in his apartment and on items that were stashed at the Sandeson family farm;
- Various items, including the large black duffel bag and Mr. Sandeson's shower curtain were found hidden in an old vehicle on the family farm;
- Blood and human hair was found inside the large back duffel bag and testing confirmed it to match Mr. Samson's DNA;

- The phone records of Mr. Sandeson and Mr. Samson demonstrate they were in contact immediately prior to Mr. Samson never being seen or heard from again;

- On August 17, 2015, Mr. Sandeson was observed taking a Dalhousie University back pack, a box (later confirmed to contain separately packaged marihuana) and a garbage bag into Adam Sandeson's Halifax apartment;

- The search of Mr. Sandeson's apartment revealed minute blood traces on the floor boards; and

- When the floor boards were pried up, there was a large amount of blood found in the location where Mr. Samson is believed to have been shot.

[49] In characterizing the Crown's case as overwhelming, I have also considered Ms. Craig's cross-examination of Sgt. Sayer revealing that:

- Mr. Sandeson's cameras were not shut off until after Sgt. Sayer believes the homicide occurred;

- The DNA of three people – Mr. Sandeson, Mr. Samson and an unknown third party were on the grip and trigger of the gun;

- The gun has not been conclusively linked to the bullet found in the window casing; and

- The apartment had a balcony which could have allowed for entering and exiting the unit.

[50] Having reviewed the entirety of the evidence, I am not at all persuaded that the above concessions of Sgt. Sayer do much to weaken the Crown's case. For one thing, in setting out the previous points in support of the strength of the Crown's case, I purposely avoided mention of the evidence of Messrs. McCabe and Blades. If I add the evidence that comes from their latter statements and the last trial, there is considerable inculpatory evidence, which far outweighs the one arguable point elicited by the Applicant. As for as the cameras, the evidence reveals that Mr. Sandeson was of the mistaken understanding that the recordings would be taped over every twenty minutes, such that the earlier recordings would not be preserved. With

regard to the DNA of a third person on the gun, this could have been on account of an individual touching the gun at any time. As for the uncertainty about the bullet, it could not be determined because it had been essentially flattened in the windowsill. The bullet was the correct ammunition for Mr. Sandeson's 9mm handgun. Finally, we know Mr. Sandeson and Mr. Samson walked into the apartment through the main door across the hall from Mr. McCabe's apartment. Later video footage shows various comings and goings through the same door. None of the extensive video recordings show anyone not depicted going in the apartment door. There are no witnesses who say they saw anyone else, such as the two unknown men Mr. Sandeson speaks of in his earlier police statements.

[51] Given all of the evidence – direct and circumstantial – presented at this JIR hearing, I find the quality and quantity of the Crown's case to be such that it is overwhelming.

[52] In addition to the overwhelming evidence referrable to the charge of first degree murder, there is what the Crown (aptly in my view) characterizes as evidence that goes to Mr. Sandeson's psyche:

- Mr. Sandeson's response to his girlfriend allegedly cheating on him was to threaten to kill her and dispose of her body; and
- Mr. Sandeson's response to being told he was going to be moved from the health care cells was to state that he was homicidal and that he would kill multiple victims.

[53] I have already provided considerable detail regarding the above. I find that pre-alleged homicide texts and post alleged homicide comments attributable to Mr. Sandeson to be highly relevant and concerning. Shortly after Mr. Sandeson texted about threatening to kill Ms. Gashus and dispose of her body in a way that would leave no trace, we have the circumstances of the murder charge and Mr. Samson missing – to this day – without a trace. Fast forward five years to the summer of 2020. We have Mr. Sandeson going on the record in Crownside before me stating that he wants to put the Crown on notice that he will be seeking bail. About a month later, notwithstanding all that is at stake, Mr. Sandeson tells a prison official that he is "homicidal". He adds that if he does not get his way he will kill another inmate. While he stated that he had no particular person he was angry with, he said he would choose a victim or multiple victims until stopped.

[54] In my view this amounts to a very disturbing window into Mr. Sandeson's mind. Indeed, it causes me grave concern as I consider it with all of the other

relevant factors. Coupled with everything else I have enumerated, I am not satisfied that Mr. Sandeson should be granted JIR. Public confidence in our justice system would not be maintained if this person accused of a drug trade related first degree murder were granted bail. This is so because we have his texts threatening murder before the alleged crime and the words spoken in prison threatening murder. With respect to the alleged crime we know that the body of the victim was disposed of by unknown means. There is a strong Crown case with overwhelming evidence with or without Messrs. McCabe and Blades. The release plan, while sound, does not overcome the odious nature of the alleged crime and the spectre of Mr. Sandeson being released to the property where the evidence from the killing was found by police.

[55] In coming to my decision I am mindful that Mr. Sandeson is entitled to the presumption of innocence. He does not have a criminal record. I am cognizant of the delay, particularly with the leave application before the Supreme Court of Canada. In all of the circumstances, it is nevertheless likely that Mr. Sandeson's trial (if it occurs) will take place in 2022 or 2023. I do not regard this delay, while unfortunate to all concerned, to be such that it outweighs the other factors which I have outlined herein.

[56] In short, I have determined that Mr. Sandeson's plan of release, while good, is not good enough to permit me to release him. His five proposed sureties are his parents and three brothers. All are sincere and well-intentioned. However, each proposed surety would have significant challenges if tasked with watching over William Sandeson.

[57] Having reviewed the evidence, circumstances and authorities, I have no reason to depart from Justice Campbell's words from the initial bail hearing at pp. 14 – 20. In the result, the Applicant has not satisfied his onus on the tertiary ground. His continued detention is required to maintain confidence in the administration of justice. The application for JIR is hereby denied.

Chipman, J.