

with the terms of the order; and

(c) his detention is not necessary in the public interest."

In **R. v. F.F.B.** (1992), 112 N.S.R. (2d) 423, Chief Justice Clarke set forth the principles to be followed governing an application of this kind.

The Chief Justice stated at p. 427:

" The burden of proof that the continuing detention of the appellant is not necessary is upon the applicant and applies equally to all three grounds. The proof that is required is on a preponderance of the evidence or on a balance of probabilities...."

The Crown does not submit that Mr. Langille has failed to meet the burdens imposed under the provisions of s. 679(3)(b) and (c).

Mr. Langille has been a long term resident of Truro, and he was out on bail since the time the charges were first laid against him. There has been no difficulty in securing his appearance at trial, or at the adjourned sentence hearing.

Mr. Langille's age, his lack of criminal record both before and after these offences, the fact that he has not attempted to communicate with either of the victims except at their initiative since the time the offences occurred, are some of the factors that motivate the Crown to adopt its position.

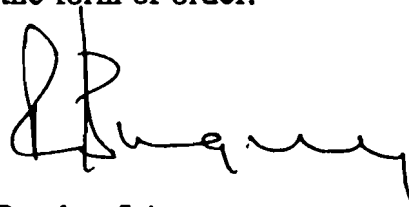
Notwithstanding this concurrence by the Crown, it is necessary for me to be convinced that Mr. Langille has satisfied the provisions of s. 679(3).

Having read the material filed with the Court including the affidavit of Mr. Langille dated August 15, 1994, and listening to the submissions of both counsel,

there is at least "some arguable point to be made" as discussed by Brook J.A. of the Ontario Court of Appeal in **R. v. Davison and Brosie**, (1974) 20 C.C.C. (2d) 422 at 423, and further that the grounds are not "paltry, trifling or lacking seriousness" as the word "frivolous" is defined in the Concise Oxford Dictionary.

Accordingly Mr. Langille's application for bail is granted.

I will hear counsel with respect to the form of order.

A handwritten signature in black ink, appearing to read 'J.A. Pugsley', written in a cursive style.

Pugsley, J.A.

1994

CAC 107989

IN THE NOVA SCOTIA COURT OF APPEAL

BETWEEN:

GERALD ALBERT LANGILLE APPELLANT

-and-

HER MAJESTY THE QUEEN RESPONDENT

ORDER

BEFORE THE HONOURABLE JUSTICE PUGSLEY IN CHAMBERS:

THIS APPLICATION for an Order admitting the Appellant to bail pending his appeal against conviction, brought pursuant to s. 679 of the Criminal Code, having come on for hearing before me in Chambers at The Law Courts, Halifax, Nova Scotia on Monday, the 22nd day of August, 1994;

AND UPON HEARING READ the Notice of Application dated the 17th day of August, 1994, the Affidavit of the Appellant deposed to on the 15th day of August, 1994, the Notice of Appeal and Application for Leave to Appeal filed herein and dated the 17th day of August, 1994, and the other documents on file;

AND UPON HEARING Cameron S. McKinnon, counsel on behalf of the Appellant, and Robert C. Hagell, the solicitor for the Respondent;

AND UPON MOTION:

IT IS ORDERED that the Appellant shall be released from the custody of the Keeper of the Antigonish County Correctional Centre at Antigonish, in the County of Antigonish, upon his entering into a Recognizance in Form 32 before a Justice in the amount of \$5000.00 (five thousand dollars) without surety to justify in that amount, without

the deposit of cash or other valuable security, and upon the following conditions, namely:

1. That he keep the peace and be of good behaviour;
2. That he remain within the territorial jurisdiction of the Province of Nova Scotia;
3. That he forthwith deposit to the said Justice, any Passport he now has or may hereafter acquire;
4. That he forthwith advise the Officer in Charge of the Truro Detachment of the Royal Canadian Mounted Police, or his delegate, of any change in his address;
5. That he report by telephone once a week on Friday between the hours of 8:30 a.m. and 4:30 p.m. to the Officer in Charge or his delegate at the Truro Police;
6. That he have no contact or communication directly or indirectly, with Betty Jean Ross and Susan Scott;
7. That he not have in his possession at any time any non-prescription drugs or firearms;

8. That he surrender into the custody of the Keeper of the Colchester County Correctional Centre at Truro, in the County of Colchester, on or before the hour of 6:00 p.m. on October 5, 1994, the day preceding the date set for the hearing of his appeal herein; should the appeal be sooner dismissed, quashed or abandoned, he shall surrender into the custody of the Keeper of the Colchester County Correctional Centre at Truro aforesaid within twenty-four (24) hours of the filing with the Registrar of the order dismissing or quashing the appeal or the Notice of Abandonment of the appeal, as the case may be;

9. That he have no contact or communication directly or indirectly, with any female person under the age of sixteen (16).

AND IT IS ORDERED that should the Appellant abide by the foregoing conditions, the said Recognizance shall be void, otherwise it shall remain in full force and effect.

DATED at Halifax, Nova Scotia, this 22nd day of August, 1994.

Registrar

CONSENTED TO AS TO FORM:

Robert C. Hagell
Solicitor for the Respondent