NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. S.F.M.*, 2022 NSCA 37

Date: 20220428
Docket: CAC 513675
Registry: Halifax

Between:

S.F.M.

Appellant

v.

Her Majesty the Queen

Respondent

Restriction on Publication: s. 486.4 of the Criminal Code

Judge:	Derrick J.A.
Motion Heard:	April 28, 2022 in Halifax, Nova Scotia in Chambers
Written Decision:	May 4, 2022
Held:	Bail pending appeal denied
Counsel:	Jonathan T. Hughes, for the appellant Mark A. Scott, Q.C., for the respondent

Order restricting publication — sexual offences

486.4 (1) Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(a) any of the following offences:

(i) an offence under section 151, 152, 153, 153.1, 155, 160, 162, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347, or

(ii) any offence under this Act, as it read from time to time before the day on which this subparagraph comes into force, if the conduct alleged would be an offence referred to in subparagraph (i) if it occurred on or after that day; or

(b) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in paragraph (a).

Decision:

Introduction

[1] Mr. M. has appealed his convictions for sexual assault and assault against an intimate partner, his wife, S.K. He applied pursuant to s. 679 of the *Criminal Code* for bail pending his appeal. The Crown opposed his release. After a hearing in Chambers on April 28th, 2022, I denied bail with written reasons to follow. These are my reasons.

Mr. M.'s Appeal

[2] Mr. M. was convicted on July 6th, 2021 of three offences following a judge-alone trial before Associate Chief Justice Patrick Duncan of the Nova Scotia Supreme Court (2021 NSSC 368). The convictions were on Counts #1, #2 and #4 in the Indictment:

> 1. That he between the 23rd of September, 2013 and the 25th day of August, 2017 at, or near Halifax, in the County of Halifax in the Province of Nova Scotia, did unlawfully commit a sexual assault on [S.K.], contrary to Section 271 of the *Criminal Code*.
>
> 2. AND FURTHER that he between the 1st day of September and the 30th day of September, 2016 at the same place aforesaid, did unlawfully commit a sexual assault on [S.K.], contrary to Section 271 of the *Criminal Code*.
>
> 4. AND FURTHER that he between the 23rd day of September, 2013 and the 25th day of August 2017 at the same place aforesaid, did unlawfully assault [S.K.], contrary to Section 266 of the *Criminal Code*.

[3] Associate Chief Justice Duncan acquitted Mr. M. of two other charges: a sexual assault against S.K. alleged to have been committed between May 1st and August 31st, 2017 and a threat to cause bodily harm to S.K.

[4] On March 2nd 2022, Duncan A.C.J. sentenced Mr. M. to three years and three months in prison (2022 NSSC 90).

[5] Mr. M. is appealing on the grounds that the trial judge committed various errors of law. As described in grounds 1 to 6 in the Notice of Appeal, these errors include: admitting factually and legally irrelevant evidence of bad character and propensity; failing to properly articulate the type, scope, and inferences that could be drawn from similar fact evidence; improperly weighing the credibility of the

parties and coming to an unreasonable verdict based on his findings of fact; failing to give adequate reasons for his decisions on the issues of similar fact evidence, character and propensity evidence, thereby depriving the Mr. M. of a meaningful understanding of what similar fact evidence was being admitted; and failing to properly apply the test for honest but mistaken belief in consent.

[6] Mr. M.'s appeal will be heard on October 12th, 2022.

The Trial and Sentencing of Mr. M.

[7] Mr. M. and S.K. were married in 2013. There were several times when S.K. left Mr. M. but then returned. The marriage broke down finally on August 25th, 2017.

[8] The Crown's case against Mr. M. relied on S.K.'s testimony. The trial transcript is not available yet. I was referred to the trial judge's decision for a description of the evidence. Three witnesses testified. The Crown called S.K. and her mother. Mr. M. testified in his own defence.

[9] Mr. M. and S.K. were adherents of Islam. Mr. M. met S.K. at the local mosque. They married quite soon after collaborating on a program Mr. M. was offering for people who, like him, were recent converts. They agreed on a conservative marital arrangement: S.K. would be "allowed to work" and have responsibility for the care of any children (para. 32). Mr. M. would shoulder the financial responsibility for the family. The trial judge described tensions emerging in the relationship. According to S.K., Mr. M. began exercising control over her. There were arguments and, as evidenced by the conviction for the assaults, incidents where Mr. M. used physical force. S.K. also described being compelled to engage in sexual acts with Mr. M. to which she did not consent.

[10] The trial judge's reasons were lengthy. There has been no suggestion that he failed to instruct himself correctly on the law relating to the Crown's burden of proof, proof beyond a reasonable doubt, the principles applicable to assessing credibility and reliability, and the steps set out in *R. v. W.(D.)*, [1991] 1 S.C.R. 742 for determining whether the Crown has met its burden where an accused has testified. Nor is there said to be any error in the trial judge's thorough review of the law of consent and honest mistaken belief in consent

[11] The trial judge provided a comprehensive review of the evidence. He took a nuanced approach to the credibility and reliability of the testimony he heard from S.K. and Mr. M. It was consistent with how he had described the task before him:

> [12] I must decide looking at the evidence as a whole whether the Crown has proved Mr. M.'s guilt beyond a reasonable doubt.
>
> [13] In fulfilling my responsibilities, it falls to me to decide how much or little of the testimony I accept. I may believe some, none or all of it.

[12] The evidence reviewed by the trial judge included Mr. M.'s testimony on cross-examination concerning an incident S.K. described as non-consensual fellatio in September 2016:

> [221] He testified that he had suggested that she could relieve his stress by providing a "gummy special" to help release tension. S.K. protested in the beginning but eventually agreed. He was asked whether it was required for him to persist in order to get her agreement and he acknowledged that it was but that that was the case more often than not. The words that he used were it was "more often than not the dance that happened" in their relationship. A short time later he was asked whether he believed it was her obligation to perform sex. He agreed it was part of her obligation to provide sex. He also testified that her response in this situation was typical; that is, "Let's get it over with".

[13] Mr. M.'s approach to the issue of S.K.'s consent to have sexual relations with him was evident from additional responses he gave in cross-examination:

> [222] Mr. M. agreed that S.K. typically protested when he sought to have sexual relations with her but that her body language communicated consent. The only time that her body language and her words communicated a lack of consent was on August 24, 2017. He also testified that she had many different ways of trying to delay the onset of sex and many different excuses to avoid engaging in sex with him. When asked whether he understood the word "No", he said that he did but that the language that exists between a husband and a wife is very different. When further pressed he agreed that "No" has a clear meaning.
>
> [223] Upon further examination he stated that having sex with S.K. always involved pestering and negotiation and sometimes pleading or begging.

[14] August 24th, 2017 was the occasion of one of the assaults for which Mr. M. was convicted. S.K. testified she had fallen asleep in bed watching television. Mr. M. attempted to take down her pants as a prelude to sexual intercourse. She told him not to do that. In response, using both feet, he had kicked her off the bed and

onto the floor. The next morning, after further verbal conflict with Mr. M., S.K. took the couple's daughter and left the apartment and the marriage.

[15] The other assault for which Mr. M. was convicted involved a slap that left S.K. with a black eye. This occurred during an argument in January 2017. Mr. M. testified he had reacted instinctively to an angry comment by S.K. The trial judge found no justification for the slap. In his sentencing decision, he said it was apparent Mr. M. had lost his temper.

[16] The trial judge identified a source of considerable disharmony in the marriage: sexual intercourse was difficult and painful for S.K. and Mr. M. enjoyed and sought an active sex life. This tension was "aggravated by [Mr. M.]'s belief that it was a duty for his wife to participate in sexual activities with him" (para. 279). The judge found there was common ground in the evidence of S.K. and Mr. M. that Mr. M. had a pattern of trying to talk S.K. into sexual intercourse,

> [282] …whether it was, as he said, a negotiation, or by pleading or begging or incentivizing…Essentially, he overcame her resistance by being persistent and sometimes invoking what he saw as her religious obligations to provide him with sex.

[17] The trial judge concluded there was proof beyond a reasonable doubt Mr. M. had sexually assaulted his wife, as charged in Count #1, by engaging in non-consensual sexual intercourse:

> [285] The problem for Mr. M. is that Canadian law as it relates to the requirement to have a valid consent is very strict in its interpretation, as I laid out earlier in my recitation from other cases. Mr. M.'s own testimony, and in particular some of his answers in reply to the prosecutor's questions, make it clear that he knew that S.K. was, on many occasions, communicating clearly that she did not want to have intercourse with him and that her ultimate consent was obtained not as a willing partner but as a person who had given in. Language such as "let's get it over" or negotiating to perform a different sex act are consistent with a lack of a valid consent to intercourse.
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> [286] Section 273.1(2) stipulates that:
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> > No consent is obtained . . . where
> >
> > …
> >
> > (d) the complainant expresses, by words or conduct, a lack of agreement to engage in the activity; or

> (e) the complainant, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity.
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> [287] There is evidence that S.K. would tell him how much penetration was hurting and to stop. Mr. M.'s response to being told to stop was, frequently, to ask whether he could continue until he was finished and that in some instances, in fact, he would do so. This in my mind is the scenario that is contemplated in 273.1(2)(e) which I have just quoted.
>
> [288] As indicated, the Crown must prove beyond a reasonable doubt that the complainant did not consent to this sexual activity in question. Consent means the voluntary agreement of the complainant to engage in the sexual activity. The consent must be to each and every act that occurred. The complainant is not obliged to express a lack of consent either by words or conduct. There is no consent unless the complainant agreed in her mind to this sexual activity at the time it was occurring. Submission or lack of resistance does not constitute consent in Canadian law.
>
> [289] I am satisfied that the Crown has proven beyond a reasonable doubt that during the time alleged in Count #1 there were a number of instances in which Mr. M. ignored the clear communication of a lack of consent or was reckless or wilfully blind to the lack of consent by S.K. I accept her evidence that sexual intercourse was so painful for her that in her mind as the sexual activity was occurring, she was not voluntarily agreeing to engage in the activity. I am satisfied therefore that the evidence proves beyond a reasonable doubt that at least some of the complained of incidents that were testified to were cases where the complainant was not consenting to the sexual intercourse and that she had communicated this to Mr. M. both before and during intercourse. Notwithstanding the accused's testimony, I do not accept that he took reasonable steps to ensure that consent was present and valid during the course of the act of penetration. There is ample evidence of his desire to override her objections through, as he says, negotiation. The bottom line is that in general it was his view that he had the right and she had the obligation to engage in this. I do not accept that he took the reasonable steps necessary to find an honest but mistaken belief in consent. In making this conclusion I also refer to his email statements and his own testimony that he knew she did not want to engage in the intercourse. In my assessment he chose to rationalize at the time that the conversations they were having justified and provided him the right to proceed.

[18] The trial judge convicted Mr. M. on Count #2 of the Indictment for the September 2016 incident of coerced oral sex. He found he was satisfied beyond a reasonable doubt that S.K. did not subjectively consent to that act. He held:

> [291] … Further, I conclude that, notwithstanding other examples of consensual oral sex, in all of the circumstances that have been presented around this one

> particular incident, Mr. M. again, I believe, ignored the clear signs that there was a lack of consent. He rationalized his conduct and whatever steps he might have taken to satisfy himself that there was consent were not reasonable steps. Therefore, I find there is no support for a defence of an honest but mistaken belief in consent and so I find Mr. M. guilty in relation to Count #2 of the Indictment.

[19] In his sentencing decision, the trial judge, referencing his analysis from the trial in relation to Count #1, said he had concluded the non-consensual sexual intercourse occurred more than ten times over the course of the four-year marriage.

Mr. M.'s Proposed Release Plan

[20] Mr. M. proposed being released on bail with two sureties: two friends, one of whom had been his surety when he was on judicial interim release pending trial and sentencing. The friends each pledged $5000 in cash and personal property. They filed affidavits and were cross-examined by the Crown.

[21] Both proposed sureties presented as sincere and genuine in their willingness to be supportive of Mr. M. They understood what their obligations as sureties would be and the responsibility to notify the police if they found Mr. M. had failed to comply with his conditions. Their pledges of $5000 represented a significant commitment for each of them: although employed, it was apparent they were not affluent. One proposed surety rents a room in a house; the other lives in an apartment. They each deposed to their belief Mr. M. would not do anything to jeopardize his relationships with them or the cash and property they had pledged for his release.

[22] Neither surety was offering to have Mr. M. live with them. They each intended to keep tabs on his whereabouts by regular cell phone calls. They indicated they trusted Mr. M. to be honest with them about his whereabouts and activities. The friend who knew Mr. M. from attending Nova Scotia Community College said he had developed the skill of being able to tell by a person's tone in a telephone conversation or text message that they were not being truthful. His confidence in this regard was not reassuring.

[23] The proposed sureties each acknowledged a limited ability to check on Mr. M. in person. One lives in Hubley, some distance outside of metropolitan Halifax. He works at home other than on Tuesdays and Wednesdays when he goes to his office in downtown Halifax. The other proposed surety lives in the city but not on the peninsula. She works in the downtown core, although not exclusively, as her

job also takes her to different locations in the city. In short, the proposed sureties do not live in close proximity to Mr. M. or even in his neighbourhood. During the day, they are both employed. Their principle means of communication with Mr. M. would be by cell phone and text messaging.

[24] Mr. M. also filed an affidavit and was cross-examined. He has been incarcerated since his sentencing. He had previously been living alone. His release plan was to return to his apartment and work on picking up the threads of various business ventures he had been developing. As a result of his conviction, his employment had been terminated. At the time of his sentencing hearing, he was receiving Employment Insurance. He testified that if released on bail he would be looking into whether he could get EI payments reinstated. He said his father would be willing to assist him financially with the rent for his apartment.

[25] Although Mr. M. testified that one of the businesses under development was 30 to 60 days short of being viable, he went on to describe this project, designed to assist Black and Indigenous entrepreneurs start online businesses, as something he wanted to do "on the side". A venture that needed more of a work-up to become airborne was a coffee-delivery service. Mr. M. said he intended to pursue both businesses. He wants to give back to the community and sustain himself financially. He acknowledged having a debt of approximately $13,000 accumulated during a period of unemployment while he and S.K. were together. He did not have a clear plan for dealing with the debt, saying it was not currently his primary concern.

[26] Mr. M. spoke emotionally about his older daughter, A., from a first marriage. A. is the subject of *Children and Family Services Act* proceedings. Mr. M. testified he wants to obtain custody of A. It was pointed out to him in cross-examination that his affidavit indicates his "children" were "apprehended from their mother's care and are potentially being place [*sic*] for temporary care and custody". The affidavit continues: "I am advised by my counsel for the *Children and Family Services Act* matter…that should I be released pending my appeal, I have a realistic chance of being granted care and custody of my children, notwithstanding my convictions under appeal..."

[27] Mr. M. confirmed that his two children with S.K. are not the subject of *Children and Family Services Act* proceedings. He characterized the discrepancy between his affidavit and the facts as "semantics". He said as far as the accuracy of the language in the affidavit was concerned, he "trusted his lawyer" as he was

himself a “lay person”. I note he had been asked at the start of his cross-examination if, having just read through his affidavit, there was anything he would like to correct. He said there was not.

[28] Mr. M.’s proposed conditions for his release included the standard conditions to keep the peace, attend court as required, and surrender himself into custody in advance of his appeal. In addition, he proposed the following: a residence requirement to live at his apartment on peninsular Halifax; not to possess firearms or weapons; not to be within 50 meters of where S.K. is living, working or studying; and no direct or indirect communication with S.K. with certain exceptions.

[29] Mr. M.’s release plan did not include a curfew or house arrest provision. Mr. Hughes was asked about the absence of a curfew condition. He said he and Mr. M. felt this restriction of Mr. M.’s liberty was unnecessary although, were a curfew to be imposed, Mr. M. would comply with it.

Analysis

[30] Bail pending appeal is dealt with in accordance with s. 679 of the *Criminal Code*. Section 679(3) of the *Code* sets out the three statutory criteria:

> (3) In the case of an appeal [against conviction], the judge of the court of appeal may order that the appellant be released pending the determination of his appeal if the appellant establishes that
>
> (a) the appeal ... is not frivolous;
>
> (b) he will surrender himself into custody in accordance with the terms of the order; and
>
> (c) his detention is not necessary in the public interest.

[31] Bail on appeal is materially different from bail pre-trial (known as judicial interim release). Mr. M. no longer enjoys the presumption of innocence that applied at the time of his trial. The entitlement to reasonable bail pre-trial guaranteed by s. 11(e) of the *Canadian Charter of Rights and Freedoms* does not apply in the context of a motion for bail pending appeal. Mr. M. came before me bearing the burden of establishing, on a balance of probabilities, that he met each of the s. 679(3) criteria (*R. v. Oland*, 2017 SCC 17, at para. 19).

[32] Mr. M. failed to persuade me he should be released. I concluded that Mr. M. could not satisfy the public interest criterion. Mr. M.’s grounds of appeal, which I

consider to be weak, and the deficiencies in his release plan are relevant to this assessment.

[33] I am not placing much emphasis on the first two criteria under s. 679(3). I deal with the issue of whether the appeal is frivolous within the public interest analysis. As for the issue of Mr. M. establishing he would surrender himself into custody as required by s. 679(3)(b), I acknowledge he was wholly compliant with his judicial interim release conditions. While it is not irrelevant that he is now subject to serving a penitentiary sentence which the Crown is seeking to have increased by way of a cross-appeal, there is nothing else to suggest an incentive not to surrender himself into custody. His breaches from September 2012, for which he received a conditional discharge, are stale. His release plan, however, lacks a sufficiently robust monitoring component. His sureties are unable to offer the supervision that would be required for release on bail pending appeal.

[34] Where Mr. M.'s request for bail falls is at the public interest hurdle, s. 679(3)(c).

[35] The public interest criteria has two components: public safety and public confidence in the administration of justice. The determination by Justice Arbour of the Ontario Court of Appeal in *R. v. Farinacci* (1993), 86 C.C.C. (3d) 32, that the "public interest" is comprised of these two considerations remains "good law" (*Oland*, at para. 26).

[36] I have scrutinized Mr. M.'s application for bail through the lens that is the public confidence factor. That is not to say public safety is irrelevant here. Mr. M. was described by the trial judge in his sentencing decision as lacking insight into his crimes. And although the Crown did not express a concern that Mr. M. would fail to surrender himself in advance of his appeal, as would be required by a release order, his release plan, with the deficiencies I have described, would not serve to maintain public confidence in the administration of justice.

[37] The public confidence component involves "the weighing of two competing interests: enforceability and reviewability" (*Oland*, at para. 24). The enforceability component reflects "the need to respect the general rule of the immediate enforceability of judgments" (*Oland*, at para. 25). In other words, it is expected Mr. M. will be held to account by continuing to serve the sentence imposed on him. The reviewability component reflects a recognition that our criminal justice system is not fail-safe and that appellants challenging the legality of their

convictions “should be entitled to a meaningful review process ...” (*Oland*, at para. 25).

[38] In *Oland*, the Supreme Court of Canada directed appellate judges considering motions for bail to apply the factors relevant to the public confidence criteria in pre-trial release. These factors are: the apparent strength of the Crown’s case; the gravity of the offence; the circumstances surrounding the commission of the offence; and the potential length of imprisonment (at paras. 31-32).

[39] The reviewability interest is assessed in relation to the strength of the appeal (*Oland*, at para. 40). My examination of this component of the public confidence aspect of the public interest test has been limited to a review of the trial judge’s decision and Mr. M.’s Notice of Appeal. That restricts somewhat the “preliminary assessment” to be made of the strength of Mr. M.’s appeal (*Oland*, at para. 45). However, I do have the benefit of the trial judge’s comprehensive reasons in convicting and then sentencing Mr. M.

[40] In my assessment of Mr. M.’s grounds of appeal, I am mindful that *Oland* endorsed “a more pointed assessment of the strength of an appeal” beyond merely considering if the appeal passes the “not frivolous” test (para. 44).

[41] Mr. M.’s grounds of appeal are weak. It appears to me on the basis of what I have reviewed – the trial judge’s reasons – that the Crown is positioned to put forward a strong case in support of Mr. M.’s convictions. I say this in the context of deciding Mr. M.’s bail application: the merits of his appeal will, of course, be ultimately determined by the panel who hears his appeal.

[42] As I noted earlier, Mr. M.’s appeal grounds include complaints that the trial judge committed errors in his assessment of credibility, his admission of extrinsic misconduct evidence, and his application of the test for honest but mistaken belief in consent. Mr. M. is facing into a significant headwind to make out the errors he alleges. There is a high level of deference accorded to judicial determinations of credibility, the admission of evidence, and the assessment of whether reasonable steps were taken to ascertain consent. It is not evident the trial judge committed palpable and overriding error such as making determinations not supported by the record (*R. v. Gagnon*, 2006 SCC 17, at para. 10).

[43] The trial judge’s reasons indicate he took care in his approach to the extrinsic evidence of misconduct the Crown sought to have admitted. At the start of his decision, he described this as evidence of “several instances of Mr. [M.]’s

alleged bad conduct that is extrinsic to the facts alleged as constituting the offences in the Indictment" (para. 3). He noted the Crown's application and the defence objection. He explained:

> [4] With the agreement of counsel, the entirety of the evidence was received in a *voir dire* with the admissibility of that contested evidence to be determined at the conclusion of the trial. The evidence which I conclude is admissible then will form the evidence of the trial without the necessity of calling that evidence again.

[44] He then discussed the applicable legal principles and the burden on the prosecution to establish on the balance of probabilities that the probative value of the proposed evidence outweighed its prejudicial effect. He instructed himself on the factors he was to consider in assessing the probative value of extrinsic misconduct evidence: the strength of the evidence that the acts occurred; the connection between the accused and the acts and extent to which the proposed evidence supported the inferences the prosecution was seeking to establish; and the materiality of the evidence. He observed later in his reasons that Mr. M. "had elected to respond to the contested allegations" (para. 210).

[45] The trial judge referred to having taken extrinsic evidence into account for the limited purposes of narrative and for context. He expressly declined to admit evidence that he found was of "questionable relevance" and where its prejudicial effect outweighed its probative value (e.g., paras. 85, 86 and 122). Issues of deference and the absence of palpable and overriding error come into play in relation to Mr. M.'s complaints concerning how the trial judge dealt with the extrinsic evidence.

[46] The trial judge's reasons have to be examined as a whole. He was not required to refer to every piece of evidence he heard nor was it necessary for him to address every sub-issue that emerged from the testimony. The submissions of Mr. M.'s counsel at the bail hearing seemed to suggest the judge was obliged to undertake an atomized approach. A trial judge does not need to describe every consideration leading to a finding of credibility, or to the conclusion of guilt or innocence (*R. v. R.E.M.*, 2008 SCC 51, at para. 49).

[47] There is no question Mr. M.'s offences were very serious. Sexual assault is a highly gendered crime that profoundly impacts its victims' physical and mental health (*R. v. Goldfinch*, 2019 SCC 38, at para. 37). The sentence imposed and the trial judge's findings surrounding the circumstances of the commission of the offences reflect the gravity of his crimes. The trial judge also identified as

aggravating that: Mr. M. violated the trust that exists in a domestic relationship; he did so repeatedly; he inflicted mental anguish during the commission of the offences; he used coercive intimidation to obtain his wife's compliance to sexual acts she did not consent to; and his crimes left his wife with residual psychological damage, as described in her Victim Impact Statement (2022 NSSC 90, at para. 61).

[48] The trial judge weighted Mr. M.'s sentence toward denunciation and general and specific deterrence. He took into account that Mr. M. showed a lack of insight into his wrongdoing, had previously committed assaults in a domestic relationship, and was on probation from May 2014 to November 2016 during which time he committed offences against S.K. (para. 62). Mr. M., whose only previous sentence was a conditional discharge, received a penitentiary sentence of 3 years and 3 months.

[49] There is a final balancing to be done of the enforceability and reviewability factors. There is "no precise formula that can be applied to resolve the balance". It is a nuanced exercise that requires "[a] qualitative and contextual assessment" (*Oland*, at para. 49). Where the applicant has been convicted of a "very serious crime, the public interest in enforceability will be high and will often outweigh the reviewability interest, particularly where there are lingering public safety … concerns" (at para. 50). In Mr. M.'s case, the public interest in enforceability overwhelms the reviewability interest. I find his detention is necessary in the public interest.

Conclusion

[50] Mr. M. did not dislodge the burden requiring him to establish, on a balance of probabilities, that he should be released pending his appeal. His motion for bail pending appeal is dismissed.

Derrick J.A.