

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Sandeson*, 2016 NSPC 17

Date: March 29, 2016

Docket: 2899325

Registry: Halifax

Her Majesty the Queen

v.

William Michael Sandeson

DECISION ON STATEMENT VOIR DIRE

Judge: The Honourable Judge Anne S. Derrick

Heard: February 11, 12, 22, 23, and 24

Decision: March 29, 2016

Charges: section 235 of the *Criminal Code*

Counsel: Susan MacKay and Kim McOnie, for the Crown

Eugene Tan, for William Sandeson

By the Court:*Introduction*

[1] On August 18 and 19, 2015 in the space of approximately thirty hours Mr. Sandeson was questioned three times by police investigators about the disappearance of Taylor Samson.

[2] Taylor Samson went missing on the night of August 15. He has never been located.

[3] On August 17, police investigators linked Mr. Samson's last known phone contact to Mr. Sandeson. Sgt. Charla Keddy was tasked to contact Mr. Sandeson for an interview. On August 18 he responded to a message she left him and agreed to meet her at the Halifax police station.

[4] Sgt. Keddy began talking to Mr. Sandeson just after 1 p.m. on August 18. At about 2:45 p.m. she drove him home.

[5] Mr. Sandeson was not suspected as having any involvement in Mr. Samson's disappearance until after his interview with Sgt. Keddy. Following that interview, police investigators determined there were inconsistencies between what Mr. Sandeson had told Sgt. Keddy and what was contained in text messages he provided from his phone. He was placed under surveillance. At 8:25 p.m. on August 18 he was arrested in relation to Taylor Samson's disappearance for kidnapping, drug trafficking and misleading police, and taken into custody.

[6] Placed in an interrogation room at the Halifax police station, Mr. Sandeson was *Chartered* and cautioned. He spoke to a lawyer by telephone. For the most part he remained impassive and said almost nothing as D/Cst. Roger Sayer talked at him between approximately 10:30 p.m. on August 18 and 2 a.m. on August 19.

[7] This first interrogation ended with Mr. Sandeson being taken to cells to sleep. A second *Chartered* and cautioned interrogation was started on August 19 at about 9:50 a.m. In the course of that interrogation, conducted mostly by Cst. Jodi Allison, Mr. Sandeson disclosed he had met with Taylor Samson on the night of August 15. He eventually provided Cst. Allison with a narrative, the details of which he changed in a subsequent iteration.

[8] Other than various breaks, Mr. Sandeson's August 19 interrogation lasted most of the day. At 6:45 p.m. Cst. Allison arrested him for murder.

The “Confessions Rule” - General Principles

[9] Statements made by a suspect to police are inadmissible unless they are made voluntarily. (*R. v. Spencer*, [2007] S.C.J. No. 11, paragraph 11) The issue is one of choice. Simply put, did the suspect make a voluntary choice to talk to police or was he deprived of choice through the police using “coercion, trickery or misinformation or the lack of information?” (*R. v. Whittle*, [1994] S.C.J. No. 69,, paragraph 30)

[10] The analysis of a statement's voluntariness is a contextualized process. The circumstances of the interview or interrogation must be examined to determine whether, taking into account specific factors, there is a reasonable doubt about voluntariness. (*R. v. Oickle*, [2000] S.C.J. No. 38, paragraph 71) The specific factors to be considered are whether there were threats or promises made, whether the suspect was subjected to oppression and whether he had an operating mind, and, as a separate inquiry, whether there was police trickery. If a confession is involuntary for any of these reasons, it is inadmissible. (*Oickle*, paragraph 69)

[11] Oppression may occur where a suspect is deprived of food, clothing, water, sleep or medical attention, denied access to counsel or subjected to aggressive, intimidating questioning over a prolonged duration. (*Oickle*, paragraph 60) Confronting a suspect with inadmissible or fabricated evidence can contribute to the oppressive conditions.

[12] The “operating mind” requirement contemplates that the suspect must have an awareness of what he is saying and that he is saying it to police officers who can use it to his detriment. (*Whittle*, paragraph 37; *Oickle*, paragraph 63)

The Specific Factors Identified by Mr. Sandeson as Raising a Reasonable Doubt about the Voluntariness of his Statements

[13] Nine police officers testified at the *voir dire*. The Defence did not call any evidence. Mr. Sandeson says there is evidence of inducement and oppression that casts the voluntariness of his statements into doubt. He is not asserting that any police officers threatened him or used police trickery to get him to talk.

Mr. Sandeson’s August 18 Interview with Sgt. Charla Keddy

[14] Sgt. Keddy interviewed Mr. Sandeson in the early afternoon of August 18 when the investigative focus was on Taylor Samson as a missing person. Mr. Sandeson was of interest as the last person known to have had contact with Mr. Samson. He was not a suspect or under arrest. Sgt. Keddy testified she told Mr. Sandeson she wanted him to be fully forthcoming about what he knew and assured him he was not going to get into trouble for telling her about any drug involvement. (*Exhibit VD-1, 13:43:46*)

[15] It is this reassurance by Sgt. Keddy that Mr. Sandeson says was an impermissible inducement to get him to talk.

[16] The circumstances of the Sgt. Keddy interview do not support Mr. Sandeson's characterization of what she said as an inducement that led to him making statements involuntarily. Sgt. Keddy testified that she knew there was "possibly some drug involvement" in the Taylor Samson missing person case. She knew witnesses are reluctant to talk to the police about drugs for fear of getting into trouble. She wanted to get the drug issue out of the way so Mr. Sandeson would focus on what he could tell her about his contact with Taylor Samson. She sought to remove any impediment to Mr. Sandeson telling her what he knew. Sgt. Keddy and the other police investigators wanted to find Mr. Samson.

[17] As noted in *Oickle*, "...courts must remember that the police may often offer some kind of inducement" to get a suspect to talk. Inducements are "improper only when...whether standing alone or in combination with other factors, [they] are strong enough to raise a reasonable doubt about whether the will of the subject has been overborne." (*Oickle, paragraph 57*)

[18] I find absolutely no evidence that Mr. Sandeson's will was overborne as a result of being told by Sgt. Keddy that he would not get into any trouble for his drug dealing.

[19] In making his case that Sgt. Keddy employed an inducement to get him to talk, Mr. Sandeson notes that despite what she said he was arrested that evening for drug trafficking. I find this to be irrelevant. The evidence establishes that Sgt. Keddy did not reassure Mr. Sandeson in order to have grounds to later arrest him and take him into custody. When Sgt. Keddy drove Mr. Sandeson home after

interviewing him, there was no thought of Mr. Sandeson being arrested for anything.

[20] Sgt. Keddy testified that when she interviewed Mr. Sandeson on August 18 police investigators did not believe he had any responsibility for Taylor Samson's disappearance. Her conduct of the interview was consistent with this evidence.

[21] Mr. Sandeson also claims that the circumstances under which the Sgt. Keddy interview was conducted raise the issue of oppression.

[22] When Mr. Sandeson arrived for the interview, Sgt. Keddy and Cst. Hynes met him outside the police station and escorted him through a secure entrance to the interview room. They were in plainclothes with visible side arms and police badges. Mr. Tan says this created an oppressive context for the interview. I reject this submission. There is not a shred of evidence to suggest that Mr. Sandeson was intimidated by being at the police station or by any of the police officers he encountered there. Not only were the circumstances of the Keddy interview not oppressive, Mr. Sandeson never asked to leave and made no inquiries about how he would get out of the building.

[23] Sgt. Keddy's interactions with Mr. Sandeson were relaxed, congenial and courteous. She conducted the interview in a comfortable setting - an informal unlocked witness interview room and not a locked cinder-block interrogation room. She treated Mr. Sandeson with politeness and respect. In the videotape of the interview Mr. Sandeson is visibly calm, comfortable and at ease throughout. He spoke freely to Sgt. Keddy and plainly understood what he was being asked and why. At various points when Sgt. Keddy left the interview room, Mr. Sandeson sat quietly on the sofa showing no signs of agitation or anxiety.

[24] Mr. Sandeson was very forthcoming with Sgt. Keddy. In the course of the interview he told her about NextPlus, a texting app he had deleted from his phone the day before. It was the app he had used for communicating with Taylor Samson on August 15. Sgt. Keddy expressed an interest in Mr. Sandeson trying to re-install the deleted app. He told her he could possibly do that if he could log into a wifi signal. When Sgt. Keddy suggested he might be able to do it when he was at home, "to see if you can bring it back up", Mr. Sandeson responded: "Or if there's wireless here, I could do it right now." (*Exhibit VD-1, 13:52:22*)

[25] Once Mr. Sandeson succeeded in re-installing the texting app using a personal hotspot outside the interview room, the texts reloaded and Mr. Sandeson told Sgt. Keddy: “I can basically answer any question now that I have this.” (*Exhibit VD-1, 14:15:57*) At 14:18:15 hours, Sgt. Keddy asked Mr. Sandeson if he “minds” if she looks at his texting conversations with Mr. Samson. Mr. Sandeson handed her the phone and helped her interpret what she was looking at. He also helped her access the call logs. Mr. Sandeson showed no reservations about sharing the contents of the NextPlus app.

[26] Sgt. Derek Boyd met Mr. Sandeson when he and Sgt. Keddy were trying to locate a wifi signal outside the interview room. He described Mr. Sandeson as “completely fine”, “very cooperative, very polite” and “very intelligent.” I accept that neither Sgt. Boyd nor D/Cst. Marshall Hewitt, the Forensic IDENT officer who was brought in to take screen shots of the NextPlus app messages, made any threats or promises to Mr. Sandeson.

[27] Mr. Sandeson was sufficiently at ease with the police investigators to decline their request to keep his phone for a couple of days to obtain a digital copy of its contents. He told them he did not want to part with it for that long. Sgt. Boyd testified that when screen shots were suggested instead, Mr. Sandeson said that would be fine. Sgt. Keddy refers to this back in the interview room with Mr. Sandeson: “So, our tech guys are just gonna come and take some screenshots...” Mr. Sandeson nods his acknowledgement. (*Exhibit VD-1, 14:15:47*)

[28] At 14:43:16, Sgt. Keddy comments to Mr. Sandeson that she knows he has to get to a pre-arranged appointment scheduled for 3 p.m. Mr. Sandeson is not anxious about leaving, telling her: “Or I can call them.” This indicates to me that Mr. Sandeson would have kept talking to Sgt. Keddy had she asked him to stay longer. He showed no signs of anxiety or impatience with being questioned. His demeanor throughout the Sgt. Keddy interview was open and accommodating.

No Reasonable Doubt about the Voluntariness of Mr. Sandeson’s Statements to Sgt. Keddy

[29] I am amply satisfied the evidence establishes beyond a reasonable doubt that what Mr. Sandeson said to Sgt. Keddy he said voluntarily. He had options to choose from - for example, to try and reload NextPlus at home, to leave his phone with police or let them take screenshots, to be on time for his pre-arranged

appointment or continue talking to Sgt. Keddy – and he made choices. What he chose to tell Sgt. Keddy was not as a result of any inducements or oppression.

Mr. Sandeson's Arrest

[30] Mr. Sandeson's arrest at 8:25 p.m. on August 18 was uneventful. Police officers involved in the arrest testified that he was calm. No one made any promises or threats or offered any inducements to get Mr. Sandeson to provide a statement. After he was *Chartered* and cautioned he indicated that he wanted to speak to a lawyer. This was facilitated. All the police officers who dealt with him testified that he appeared to understand what was happening.

Mr. Sandeson's August 18/19 Interrogation by D/Cst. Roger Sayer

[31] Thirty minutes after his arrest Mr. Sandeson was in a typical cinderblock interrogation room at the Halifax Police station. A featureless box without windows, it contained a chair that was bolted to the floor. The door was locked. The room had video and audio-taping capability.

[32] D/Cst. Sayer's interrogation of Mr. Sandeson lasted from late in the evening of August 18 to the early morning hours of August 19, about two and a half hours during which Mr. Sandeson said almost nothing.

[33] Mr. Tan submits that the D/Cst. Sayer interrogation was the platform of inducement and oppression on which Mr. Sandeson's involuntariness was built. It is necessary for me to discuss the D/Cst. Sayer interrogation before moving on to the interrogation conducted by Cst. Allison over the course of August 19, an interrogation that elicited statements from Mr. Sandeson which he says were the product of inducement and oppression that started with D/Cst. Sayer.

[34] Before D/Cst. Sayer arrived to meet Mr. Sandeson, D/Cst. Jason Shannon *Chartered* and cautioned him using a standardized form. Mr. Sandeson indicated he understood what was being said to him and initialed and signed the form accordingly. (*Exhibit VD-2, 21:47:13*) D/Cst. Shannon then escorted Mr. Sandeson from the room for a telephone call with Legal Aid duty counsel. (*Exhibit VD-2, 21:47:30*)

[35] D/Cst. Sayer entered the room at 22:26:49. He testified he was tasked with trying to get a statement from Mr. Sandeson that would lead to Mr. Samson being found.

[36] D/Cst. Sayer asked Mr. Sandeson if he had understood the advice he received and Mr. Sandeson responded that he did. (*Exhibit VD-2, 22:27:20*) In the interrogation the next morning, Mr. Sandeson indicated he had been advised by counsel of his right to remain silent. (*Exhibit VD-3, 10:56:04*) He exercised that right robustly in the course of the D/Cst. Sayer interrogation.

[37] I accept D/Cst. Sayer's evidence that he did not use impermissible inducements to try and get Mr. Sandeson to talk. He urged Mr. Sandeson to tell him where Mr. Samson was, noting that he had been missing for 72 hours and had a liver condition. "So make a choice, Will. Where is he?" (*Exhibit VD-2, 10:41:12*) He appealed to Mr. Sandeson's compassion and moral sensibilities, for example telling Mr. Sandeson: "What it'd be like for your mom to be sitting home in Truro right now wondering where you are, hoping that there was a good enough person out there that even if they made a mistake, a bad choice, that they would come and do the right thing and let her know what happened to her son." (*Exhibit VD-2, 10:42:30*)

[38] D/Cst. Sayer did not suggest to Mr. Sandeson that it would go better for him if he talked. Neither he nor any other police officers threatened Mr. Sandeson or made him any promises. No police trickery was employed.

[39] I also dismiss any suggestion that Mr. Sandeson was subject to oppression in the course of D/Cst. Sayer's interrogation. Oppression can be found in "distasteful" conditions created by police during an interrogation. Such conditions may induce a "stress-compliant" and inadmissible statement. Alternatively, oppressive conditions may "overbear the suspect's will to the point that he or she comes to doubt his or her own memory, believes the relentless accusations made by the police, and gives an induced confession." (*Oickle, paragraph 58*)

[40] The physical circumstances which Mr. Sandeson experienced during the D/Cst. Sayer interrogation were not oppressive. Although he had mentioned an upset stomach to D/Cst. Shannon, he said that was there before he arrived at the police station. He did not complain of discomfort, hunger, cold or tiredness. He did

not ask for a washroom break. He asked for nothing except some water which was obtained.

[41] I am satisfied that D/Cst. Sayer did not subject Mr. Sandeson to questioning that was improper. Mr. Sandeson was not confronted with inadmissible or fabricated evidence. D/Cst. Sayer's tone was measured and calm. He did not raise his voice. He was emphatic at times and insistent but not overly aggressive or intimidating. The interrogation was not prolonged.

[42] While Mr. Sandeson remained stoic and almost entirely silent throughout D/Cst. Sayer's interrogation, he paid close attention to what was being said to him. In response to D/Cst. Sayer stating: "You know where he is, Will, or you know what happened", Mr. Sandeson in a low voice responded: "I don't know." (*Exhibit VD-2, 22:33:05*) When D/Cst. Sayer misidentified one of the texts, Mr. Sandeson pointed out it was a text from Mr. Samson. (*Exhibit VD-2, 22:52:13*)

[43] Initially Mr. Sandeson acknowledged what was being said by D/Cst. Sayer by nodding or shaking his head. As the interrogation went on, Mr. Sandeson fell silent and did not maintain eye contact. He weathered D/Cst. Sayer's dogged approach. None of D/Cst. Sayer's techniques pried any responses out of him.

[44] At 01:07:09, D/Cst. Sayer gave up trying to get Mr. Sandeson to open up and left to make arrangements for him to be lodged in cells for the night so he could get some sleep.

[45] The video footage of the D/Cst. Sayer interrogation leaves no doubt that Mr. Sandeson was fully competent and in control of his faculties throughout. D/Cst. Sayer, describing Mr. Sandeson as "an intelligent young man", testified that at no time did Mr. Sandeson appear to not appreciate what was happening. It is apparent he understood that what he might say to D/Cst. Sayer could be used to his detriment. (*Oickle, paragraph 63*)

Conclusion on the D/Cst. Sayer Interrogation

[46] I find that D/Cst. Sayer's interrogation of Mr. Sandeson did not wear him down and leave him in a debilitated, suggestible state for the interrogation by Cst. Allison that followed on August 19. I am left in no doubt about the voluntariness of any responses by Mr. Sandeson to D/Cst. Sayer's questions.

Mr. Sandeson's August 19 Interrogation by Cst. Jodi Allison

[47] Mr. Tan submits that Mr. Sandeson's August 19 interrogation, an interrogation that, with breaks, lasted from approximately 10 a.m. until about 6:30 p.m., was conducted in oppressive circumstances and involved impermissible inducements. He says that Mr. Sandeson experienced physical discomfort, emotional distress, a denial of access to counsel and an undisclosed change in his jeopardy which undermined the voluntariness of what he said to Cst. Allison.

[48] As I will be discussing, the intensity of Mr. Sandeson's emotional distress during the August 19 interrogation makes it appropriate for me to also consider in my analysis of voluntariness whether he had an operating mind when he was speaking with Cst. Allison.

[49] Because assessing voluntariness is "highly fact-sensitive" (*R. v. Spencer*, [2007] S.C.J. No. 11, paragraph 5), what follows is a description of Mr. Sandeson's August 19 interrogation. In the main it was conducted by Cst. Allison with a 40 minute interlude of questioning by D/Cst. Sayer.

[50] Shortly after Cst. Allison introduced himself, Mr. Sandeson asked if his lawyer knew he was still at the police station because he thought he was supposed to meet her at court. He was referring to the duty counsel he had spoken to the night before. Cst. Allison explained he could be held by police for twenty-four hours.

[51] In the course of the Cst. Allison interrogation, Mr. Sandeson raised the issue of talking to a lawyer twelve times. (*Exhibit VD-12, Defence Summary of August 19 Interrogation*) A further contact with a lawyer was not facilitated by the police during the interrogation. I will be addressing whether this constituted oppression, either alone or as a contributing feature of Mr. Sandeson's April 19 interrogation.

[52] Mr. Sandeson's interrogation by Cst. Allison was conducted in the same standard interrogation room he had been in the night before. He was provided with water and twice offered breakfast which he declined. About 30 minutes after Cst. Allison started talking, juice and food from McDonald's was delivered to the room. Ten minutes after this Cst. Allison established that Mr. Sandeson probably didn't sleep during his night in cells. This did not arise because Mr. Sandeson was showing signs of sleepiness or inattention. Cst. Allison had been appealing to Mr.

Sandeson's conscience, telling him: "You're a good guy, Will...The bad guys, the monsters, Will, they have no trouble sleepin'...cause they don't care. They don't care what they did or who they did it to..." (*Exhibit VD-3, 10:49:22*) Cst. Allison tied Mr. Sandeson's sleeplessness the night before to his "good guy" conscience.

[53] Forty-five minutes after Cst. Allison entered the interrogation room, when he asks Mr. Sandeson what happened "that night", the night of August 15, Mr. Sandeson tells him: "I want to help but I just wanna talk to the lawyer first." (*Exhibit VD-3, 10:55:50*) It is an indication that Mr. Sandeson wanted to exercise the choice to talk but was hesitant given the advice he had received that he should not say anything. He went on to say: "I just want help articulating what I want to say..." (*Exhibit VD-3, 11:01:04*) He wanted help before he said anything to Cst. Allison because he perceived that what he said on August 18 to Sgt. Keddy led to him being "charged" with trafficking. Cst. Allison explained he had been arrested but not charged. (*Exhibit VD-3, 11:05:12*) Mr. Sandeson doesn't know "...how much help I can be and how much it's gonna hurt me..."(*Exhibit VD-3, 11:06:38*) He explains why he wants to talk to the lawyer: "I just wanna tell them what happened, then I can tell everyone." (*Exhibit VD-3, 11:06:52*)

[54] Cst. Allison did not disparage the legal advice Mr. Sandeson received, referring to it as "perfect legal advice." (*Exhibit VD-3, 10:56:10*) This remark accords with Cst. Allison's approach to Mr. Sandeson generally: respectful and even-handed.

[55] Between approximately 11:07 and 11:10, Mr. Sandeson struggled, obviously distressed, with the choice between remaining silent or starting to talk to Cst. Allison about "what happened." He asked, "Is there no way I can talk to someone else first?" (*Exhibit VD-3, 11:08:05*) He wanted to know if he can be held "indefinitely", and says: "'I just wanna know what kind of mess...if I wait for a lawyer, do I get to see a lawyer?" (*Exhibit VD-3, 11:09:45*) Cst. Allison told him he will eventually get to see a lawyer. (*Exhibit VD-3, 11:09:50*)

[56] Cst. Allison persisted in asking Mr. Sandeson what happened and appealing to the potential for Mr. Sandeson to help Mr. Samson and alleviate the misery of his anxious family. When asked by Mr. Sandeson, "What happens if...I'm just silent now?", Cst. Allison responded that the missing Mr. Samson is "not gonna get any help" and neither is the brother who is missing him. When Mr. Sandeson

was asked if Mr. Samson was still alive, he said he didn't know. (*Exhibit VD-3, 11:11:25*)

[57] Mr. Sandeson continues to weigh his options, telling Cst. Allison: "I can't trust you and my lawyer at the same time." (*Exhibit VD-3, 11:13:01*) Pressed to open up about what happened to Taylor Samson on the night of August 15, Mr. Sandeson says: "I don't know what happened to him." (*Exhibit VD-3, 11:13:27*)

[58] Mr. Sandeson continues to resist saying anything. He repeats that he was "told not to say anything." (*Exhibit VD-3, 11:17:25*) He wants to talk to a lawyer. He becomes increasingly distressed. When Cst. Allison asks him why the police have him there, he says: "To help. Help find out what happened." (*Exhibit VD-3, 11:18:21*) He struggles with the competing pressures "to help" as proposed by Cst. Allison and to not talk as advised by his lawyer. (*Exhibit VD-3, 11:21:41*) At Cst. Allison's suggestion he imagines himself in Cst. Allison's shoes and talks about how "mad and frustrated" he would be if confronted by someone who was not talking: "I would be so mad at me, for not talking...I just wouldn't understand, if someone wants to help, they should just help." (*Exhibit VD-3, 11:21:23 to 11:21:40*) Cst. Allison has told him: "I'm not mad." (*Exhibit VD-2, 11:21:30*) Mr. Sandeson wants to talk to his lawyer: "Why can't I just talk to a lawyer first about it? Why can't I do that?" (*Exhibit VD-3, 11:22:26*) He emphasizes: "And she told me not to make a statement, so I shouldn't make a statement right now." (*Exhibit VD-3, 11:22:36*)

[59] At this point, Cst. Allison becomes more emphatic without being aggressive: "You need to tell us what the heck happened Saturday night and who else was involved or if there's other people around, you need to do that right now." (*Exhibit VD-3, 11:23:36*) He goes on to tell a distressed Mr. Sandeson: "...if you're tellin' me the truth that you wanna help him, there's no issue with you telling us what happened. There's not a problem because you are trying to help this guy. You're tellin' me you think he's probably still alive, well, then, you better start talkin', tellin' us what the heck happened." (*Exhibit VD-3, 11:24:15*)

[60] The statement by Cst. Allison that "There's not a problem" with Mr. Sandeson telling the police what happened to Mr. Samson is somewhat ambiguous. In the context of the interrogation in its entirety I believe the ambiguity of the statement was unintentional. And I am satisfied Mr. Sandeson clearly understood

that talking to the police could create a significant problem for him, an understanding he demonstrated by his frequent references to having been advised not to talk.

[61] At this point, approximately an hour and a half into the interrogation, Mr. Sandeson is very upset and weepy. Cst. Allison has reassured him: “When you’re tellin’ the truth, ya never need help articulating how you’re gonna say something. Do you understand what I’m sayin’, Will? You don’t need help at tryin’ to explain somethin’ because it’s the truth.” Mr. Sandeson responds: “I know.” (*Exhibit VD-3, 11:25:08*)

[62] Two minutes later, crying, Mr. Sandeson describes a home invasion at his apartment by three unknown intruders while he and Mr. Samson were sitting at the kitchen table “counting the money.” Mr. Sandeson was struck on the back of the head as he tried to run into his bedroom. Face down on the floor he heard “more fighting” and was told to stay down. He says something inaudible about “a gun” and says he thinks “they” all left at the same time. (*Exhibit VD-3, 11:29:02 to 11:30:39*) Questions from Cst. Allison make it apparent that Mr. Sandeson’s reference to a gun was a description of Mr. Samson being hit by one of the intruders wielding a gun. As for himself, he says he was hit with something “lumpy.” (*Exhibit VD-3, 11:31:39*) Mr. Sandeson tells Cst. Allison that he was kicked in the back of the head while on the floor and that Mr. Samson fought with the intruders. There was “a lot of blood” including on some money. Mr. Samson put the bloody money in a bag and “cleaned the blood.” (*Exhibit VD-3, 11:32:38*)

[63] Mr. Sandeson tells Cst. Allison that Mr. Samson brought the “weed” in “the biggest bag” he had ever seen. (*Exhibit VD-3, 11:34:38*) According to Mr. Sandeson there was forty thousand dollars on the kitchen table. (*Exhibit VD-3, 11:36:51*) He described the intruders as dressed all in black, “black jeans.” (*Exhibit VD-3, 11:35:33*) They left with Mr. Samson and almost all the money. Mr. Sandeson tried to clean up the blood.

[64] Pressed by Cst. Allison to disclose where Taylor Samson was now, Mr. Sandeson continued to emphasize that he did not know. Weeping and emotional during this questioning, he told Cst. Allison: “I think somebody took him. I think someone took him.” (*Exhibit VD-3, 11:57:03*) Confronted with the texts he later sent to Mr. Samson’s phone that make it look as though they never met up, Mr.

Sandeson says he was trying to cover up what happened because he was “scared.” (*Exhibit VD-3, 11:58:49*)

[65] Cst. Allison does not believe Mr. Sandeson and tells him so. His questioning is persistent but does not become aggressive or hostile. He asks Mr. Sandeson what happened to the marijuana Mr. Samson had brought with him to sell. Mr. Sandeson, still weepy and tremulous, indicates the intruders took it: “I don’t know. The same that happened to the money...It’s gone.” (*Exhibit VD-3, 12:10:07*) In considerable emotional torment, Mr. Sandeson continues to insist he does not know if Mr. Samson was alive or dead after the intruders left with him. (*Exhibit VD-3, 12:12:55*)

[66] Between 12:18:34 and 12:46:48 Mr. Sandeson says nothing while Cst. Allison talks. His physical posture, bent double at the waist, indicates his anguish. He responds with a “yes” when at 12:46:47 he is asked if he needs to use the washroom.

[67] After returning with Cst. Allison from his washroom visit, Mr. Sandeson says he is “freezing cold” and wonders if he is allowed to have a blanket. He tells Cst. Allison he has been “frozen since yesterday.” (*Exhibit VD-3, 13:00:42*) Although Cst. Allison says he will see what he can do, Mr. Sandeson is never provided with a blanket or any warmer clothing. It was Cst. Allison’s evidence that he “can’t say” that he ever inquired about getting Mr. Sandeson a blanket. Mr. Sandeson did not complain again about being cold and does not show obvious signs of being cold.

[68] Mr. Sandeson then asks if a lawyer is coming to see him: “...is there a lawyer on the way?” (*Exhibit VD-3, 13:00:53*) Cst. Allison deals with this inquiry by telling Mr. Sandeson that he has already spoken to a lawyer and that there are “things that we need to straighten out...” (*Exhibit VD-3, 13:01:42*) He tells Mr. Sandeson: “There’s elements of what you’ve told me are true but there’s a lot of it that...is not true.” (*Exhibit VD-3, 13:02:28*) When Cst. Allison assures Mr. Sandeson of his good faith, saying that he is being truthful and upfront with him, Mr. Sandeson acknowledges this and says: “I appreciate it.” (*Exhibit VD-3, 13:01:51*) He asks how long he can be held and Cst. Allison explains that after 24 hours he has to be remanded. (*Exhibit VD-3, 13:02:52*)

[69] It is now about three hours into the interrogation. Cst. Allison tells Mr. Sandeson that the evidence being gathered by the police “is not pointing to what you’ve told us.” (*Exhibit VD-3, 13:03:10*) He presses on with trying to get Mr. Sandeson to talk about what happened on the night of August 15. He appeals to Mr. Sandeson’s conscience, talks about the “predicament” he is in, and shows him photographs of the Forensic IDENT investigation of his apartment with the evidence of apparent “blood splatter” as he calls it. (*Exhibit VD-3, 14:41:47; Exhibit VD-8, 17 IDENT photographs*) Mr. Sandeson starts crying again and holds his head in his hands. Despite his distress, he acknowledges that he is hearing what Cst. Allison is saying to him but he offers no response. (*Exhibit VD-3, 14:52:38*)

[70] As Cst. Allison continues to probe, Mr. Sandeson becomes increasingly distraught, sobbing audibly and taking gasping breaths. His crying is unabated and escalates. His intensely emotional state persists for some time. Cst. Allison tells him he has to talk to alleviate the stress he is under. (*Exhibit VD-3, 15:00:00; 15:00:20*) He tries to help Mr. Sandeson, urging him to calm down, “Take a couple deep breaths...Deep breaths...Just keep calm...I know you’re trying to talk just breathe for a minute, okay?” He puts a steadying hand on Mr. Sandeson’s shoulder. (*Exhibit VD-3, 15:01:17 to 15:02:41*) Cst. Allison continues to talk as Mr. Sandeson sobs, bent over in heaving distress.

[71] Despite his condition, Mr. Sandeson chokes out simple “no’s” when Cst. Allison asks if whatever happened had happened before and says: “Tell me that you weren’t the mastermind.” (*Exhibit VD-3, 15:04:05*)

[72] Cst. Allison continues to offer calming advice to the distraught Mr. Sandeson. Mr. Sandeson gasps out that he thinks he is going to “pass out”. (*Exhibit VD-3, 15:05:48*) Cst. Allison gets him to sit up, breathe deeply and “keep calm.” (*Exhibit VD-3, 15:06:04*) He tells Mr. Sandeson that he will feel “so much better when you talk about it. I guarantee it.” (*Exhibit VD-3, 15:06:52*)

[73] With the interrogation moving into its fifth hour, Cst. Allison has not made any headway in getting more details from Mr. Sandeson about what happened to Taylor Samson. As Mr. Sandeson’s extremely distraught state continues, Cst. Allison presses on in the same measured, steady tone to try and elicit information. He decides at 15:16:23 to leave the interrogation room to get Mr. Sandeson some water. While he’s gone, Mr. Sandeson folds himself into a tucked-up crouch on the

floor, breathing heavily from the exertion of his distress. Cst. Allison returns at 15:21:09 with water. He tells Mr. Sandeson he is going to give him “a couple of minutes to collect himself” and leaves the room at 15:21:53 with Mr. Sandeson still on the floor. He reminds Mr. Sandeson that the police investigators have the video recorder from his apartment.

[74] Cst. Allison returns at 15:23:45. Mr. Sandeson asks to be helped to the washroom and Cst. Allison takes his arm to steady him. Mr. Sandeson moves slowly and is shaky but upright. When they return after about five minutes Mr. Sandeson is walking unaided.

[75] The approximately 15 minute interruption in the interrogation enabled Mr. Sandeson to regain his composure although he is clearly still very upset. Cst. Allison tells him “This is the moment of truth for you, bud, okay?” (*Exhibit VD-3, 15:30:20*) and shows him stills from video surveillance of the hallway outside his apartment. (*Exhibit VD-8*)

[76] It does not take long before Mr. Sandeson is once again huddled over in his chair and unresponsive. Cst. Allison does not hammer away at him but says: “Okay, you’ve gotta get yourself together here, okay. This is you and me talking about something that you didn’t plan to happen.” (*Exhibit VD-3, 15:32:04*) He tells Mr. Sandeson: “...this is not gonna go away... You gotta get yourself together right now, okay? You gotta talk about this. You gotta talk about what your involvement was.” (*Exhibit VD-3, 15:33:21*)

[77] By 15:42, Mr. Sandeson is crying again. His anguished state – crying, moaning, ragged breathing – ebbs and flows but he continues to disintegrate into weeping and keening throughout the remainder of Cst. Allison’s questioning. Cst. Allison wants to know what happened on the night of August 15 and who else was involved. He paints the investigative picture for Mr. Sandeson: “...It looks very bad. It looks like you planned on hurtin’ this guy. Looks like you set it up. Looks like you tried to clean it up. Looks like you tried to manipulate the video...it ain’t lookin’ so good for you.” (*Exhibit VD-3, 17:22:57*)

[78] Mr. Sandeson eventually tells Cst. Allison he wants to open up about what happened. (*Exhibit VD-3, 17:30:37*) He says he is worried he cannot prove what he has to say. (*Exhibit VD-3, 17:31:35*)

[79] Cst. Allison draws some small details out from Mr. Sandeson, that it was two males who came to the apartment when he was there with Mr. Samson. Cst. Allison observes that it is very hard to get information, “like pulling hen’s teeth...” (*Exhibit VD-3, 17:37:25*) He tries in vain to get an identification of the intruders from Mr. Sandeson.

[80] Immediately after Cst. Allison makes the “hen’s teeth” remark, D/Cst. Sayer relieves him and takes over the interrogation for almost 40 minutes. (*Exhibit VD-3, 17:37:45 to 18:14:53*)

[81] D/Cst. Sayer does not mince words. He tells Mr. Sandeson he doesn’t believe him and describes some of the evidence that has been collected. He uses a harsher, more strident tone than Cst. Allison. He describes what Mr. Sandeson’s video surveillance shows. He is forceful and direct, and demonstrates that he was not moved by Mr. Sandeson’s weeping which he had observed from watching the interrogation on a monitor in another room. Referring to Cst. Allison, he tells Mr. Sandeson: “You played Jodi like a fiddle my man. Like a fiddle. That man came in here wantin’ to believe in you, you sat there and cried for hours and hours like you were some kind of victim...” (*Exhibit VD-3, 17:49:03*)

[82] Mr. Sandeson pays close attention, looks at the photographs D/Cst. Sayer has and doesn’t cry. He hangs his head and listens without comment while D/Cst. Sayer reviews the investigation and goes through the text messages. Mr. Sandeson shows no signs of the emotional anguish that characterized much of his time with Cst. Allison.

[83] Cst. Allison returns at 18:22:56 and takes Mr. Sandeson to the washroom. When they come back, Mr. Sandeson gives a revised version of the August 15 home invasion. Its details include that Taylor Samson was shot by morph-suited intruders in the back of his neck (*Exhibit VD-3, 18:40:05*) while sitting on a chair in Mr. Sandeson’s kitchen. The intruders then left with Mr. Samson in the big bag that contained the marijuana Mr. Taylor had brought with him. (*Exhibit VD-3, 18:31:02*) When Mr. Sandeson related this new version of events he was calm and dry-eyed.

[84] The interrogation concludes with Cst. Allison asking Mr. Sandeson how the intruders would have known about the rendezvous with Mr. Samson at his

apartment. Mr. Sandeson tells him they had followed him a few days earlier when he was on his way back home from meeting Mr. Samson. (*Exhibit VD-3, 18:43:58*)

[85] At 18:45:30 Mr. Sandeson was arrested for murder.

Were Mr. Sandeson's Statements to Cst. Allison Made Voluntarily?

[86] The issue of whether Mr. Sandeson exercised a free choice in making statements to Cst. Allison must be examined in relation to factors that either on their own or in combination with each other can raise a reasonable doubt about voluntariness. The factors I have considered in assessing the Cst. Allison interrogation are inducement, oppression and whether, due to emotional distress, Mr. Sandeson was no longer functioning with an operating mind.

Inducement

[87] In the course of the Cst. Allison – D/Cst. Sayer interrogation on August 19, various inducements were employed primarily in the form of appeals to Mr. Sandeson's conscience and moral code and reassurances that he would feel much better once he told police what had happened to Taylor Samson. None of this was improper. Such appeals and reassurances do not constitute a *quid pro quo* offer. A police officer who "convinces a suspect he will feel better if he confesses...has not offered anything." (*Oickle, paragraph 56*)

[88] It is also relevant to note in Mr. Sandeson's case that where a suspect "is treated properly, it will take a stronger inducement to render the confession involuntary." (*Oickle, paragraph 71*)

[89] I find that Mr. Sandeson was not subjected to any impermissible inducements during the August 19 interrogation. The strategies used by Cst. Allison and D/Cst. Sayer to try and get him to talk were appropriate interrogation strategies.

Oppression – Physical Needs, Access to Counsel and Nature of Questioning

[90] Mr. Sandeson was provided with food, juice and water by Cst. Allison. He was taken for washroom breaks as requested. Observed to be tearful, a box of tissues was delivered to the interrogation room. (*Exhibit VD-3, 11:19:44*) Although there was no follow up to Mr. Sandeson's complaint of being cold, he did not

mention this again and never appeared to be in physical discomfort because of the temperature in the room. On occasion, he even lay on the cement floor.

[91] Mr. Sandeson did make a number of requests to speak to a lawyer which were rebuffed. I do not find that this created or contributed to the interrogation being oppressive. He had spoken with counsel and very clearly understood it was his right not to speak to police. In response to Mr. Sandeson's requests during the interrogation to talk again to a lawyer, Cst. Allison acted in accordance with the law as determined by a majority of the Supreme Court of Canada in *R. v. Sinclair*, [2010] S.C.J. No. 35.

[92] I do not find this to be a case where voluntariness is in doubt because of "police persistence in continuing the interview, despite repeated assertions by the detainee that he wishes to remain silent..." (*R. v. Singh*, [2007] S.C.J. No. 48, paragraph 47) Mr. Sandeson knew he was entitled not to say anything to Cst. Allison. When he talked it was because he made the choice to do so not because his resistance was overwhelmed.

[93] Mr. Tan has submitted that there was a change in Mr. Sandeson's jeopardy during the Cst. Allison interrogation which should have re-triggered his section 10(b) *Charter* right to counsel. I find this is not something a preliminary inquiry judge can explore. I believe it is properly a matter for trial. (*R. v. Sinclair*, paragraphs 29 and 51)

[94] As for the style, tone and techniques employed in the interrogation I find that Cst. Allison was persistent in his questioning without being oppressive. His persistence was not relentless. He was unfailingly patient and calm. He often paused and was actively listening for what Mr. Sandeson might say. Both he and D/Cst. Sayer were respectful of Mr. Sandeson. They did not humiliate or belittle him or subject him to offensive language. D/Cst. Sayer's more confrontational style, what he described in his testimony as a "non-emotional" approach, was still restrained and appropriate.

[95] I find that Cst. Allison and D/Cst. Sayer did not create an atmosphere of oppression for Mr. Sandeson. Their conduct of his interrogation did not have an impact on his ability to freely choose whether to speak to them or not.

[96] A suspect's emotional reaction during questioning can be the result of oppressive treatment by the police as happened in *R. v. Will*, [2012] S.J. No. 380 (Q.B.) and lead to a finding of involuntariness. I do not find that to have been the case here. I find that Mr. Sandeson's emotional distress does not support an inference that the circumstances of his interrogation were oppressive. There was nothing improper in the conduct of the interrogation by Cst. Allison that caused Mr. Sandeson's distressed state. I note as well that Mr. Sandeson regained control of his emotions at various times, including for the entire 40 minutes that D/Cst. Sayer, a more confrontational interrogator, was talking to him.

Operating Mind

[97] Mr. Sandeson's emotional distress must also be examined to determine if it deprived him of an operating mind in the course of the interrogation. Whether emotional distress is examined as a factor in the oppression assessment or in the context of exploring whether the suspect had an operating mind, if it undermines a suspect's ability to freely choose between the options of talking or not talking to the police, it can result in the voluntariness of a statement being cast into doubt.

[98] As I have described, Mr. Sandeson was extremely anguished during significant portions of Cst. Allison's interrogation. His distress escalated once Cst. Allison produced the Forensic IDENT photographs from Mr. Sandeson's apartment including the still photographs developed from the hallway video surveillance. (*Exhibit VD-8*)

[99] Notwithstanding Mr. Sandeson's emotional disintegration, Cst. Allison pressed on with the interrogation. He did so in a calm, measured fashion and endeavoured to settle Mr. Sandeson when his distress was most intense. Failure to afford a distraught suspect a reasonable time to calm down can be a factor in finding a statement does not clear the voluntariness hurdle. (*R. v. McNair*, [2007] O.J. No. 576 (C.J.), paragraph 19) However as I noted in my review of the interrogation, Cst. Allison suspended the interrogation for a total of about 15 minutes, which included taking Mr. Sandeson out of the room to the bathroom, a break that assisted Mr. Sandeson collect himself.

[100] Mr. Sandeson, although not a savvy, sophisticated detainee, was an intelligent, well-educated one. He was on the brink of starting medical school at Dalhousie. He was not challenged by any cognitive or intellectual disabilities. There is no evidence that he was suggestible under police questioning.

[101] Despite his distraught condition, Mr. Sandeson showed a continued ability to comprehend what was happening and made choices about how to respond. He provided two narratives concerning what happened at his apartment on the night of August 15. The first one offered an explanation for forensic evidence found by investigators. When confronted with evidence that challenged this first narrative, Mr. Sandeson re-worked some of the details he had initially provided. He was fully able to decide what to say and to adjust the narrative when it was shown to be inconsistent with the evidence that had been collected.

[102] Mr. Sandeson made a free choice to talk to the police. His decision to talk was not because his resistance to doing so was overwhelmed by his emotional distress. It was not because he became unable to comprehend the consequences of what he was doing. And it was not because he just wanted the interrogation to end. It was a painful process for him but Mr. Sandeson opted to talk to Cst. Allison. He made a voluntary choice to talk. His will was not overborne by anything done by the police during his interrogation.

No Reasonable Doubt about the Voluntariness of Mr. Sandeson's Statements to Cst. Allison

[103] I am amply satisfied that the Crown has proven beyond a reasonable doubt that the statements made by Mr. Sandeson in the Cst. Allison interrogation were made voluntarily.

Conclusion on the Statement Voir Dire

[104] For the foregoing reasons I find that all of Mr. Sandeson's statements to police on August 18 and 19 were voluntary statements. Consequently, they are admissible evidence on the issue of committal at this preliminary inquiry.

Derrick, P.C.J.

