

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Sandeson*, 2022 NSSC 151

Date: 20220531

Docket: CRH No. 498639

Registry: Halifax

Between:

Her Majesty the Queen

Applicant

v.

William Michael Sandeson

Respondent

Pre-trial Voir Dire 2 – ADMISSIBILITY OF STATEMENTS

DECISION

Judge: The Honourable Justice James L. Chipman

Heard: April 19, 20, 21, 22, 25, 26 and 27, 2022 in Halifax, Nova Scotia

Written Submissions: May 3, 2022

Counsel: Kimberley McOnie and Carla Ball, on behalf of the Crown
Alison Craig, on behalf of William Michael Sandeson

By the Court:

INTRODUCTION

[1] This *voir dire* deals with the admissibility of three statements given by Mr. Sandeson on August 18 and 19, 2015 to police officers. The Crown must prove beyond a reasonable doubt that Mr. Sandeson's statements were voluntary.

[2] The Crown submits that neither the police who had contact with Mr. Sandeson, nor the police officers who conducted the interviews, engaged in any improper inducements that would raise a reasonable doubt as to the voluntariness of Mr. Sandeson's statements.

[3] In addition to arguing that Mr. Sandeson's statements were involuntary, the Respondent submits that the second and third statements were obtained in a manner that violated the Respondent's rights pursuant to sections 10(a) and 10(b) of the *Charter*.

[4] The Crown concedes that Mr. Sandeson's jeopardy changed in his third statement at 18:40:25. This is the time of the interview where Mr. Sandeson tells Cst. Jody Allison (the interviewer) that Taylor Samson was shot in his apartment. At that point they submit that it became clear to police that Mr. Samson had been murdered. Accordingly, the Crown concedes that the last four minutes of the third statement should be excluded.

BACKGROUND

[5] Mr. Samson went to Mr. Sandeson's apartment on August 15, 2015. The next day he was reported to the police as a missing person. The Major Crime Unit became involved on August 17th and an investigative Triangle was soon constituted.

[6] On August 18, 2015, Mr. Sandeson, who was not then a suspect, was interviewed for one hour and 45 minutes. He was later arrested for kidnapping, misleading the police (obstruction of justice) and trafficking, and questioned for about four hours on the evening of August 18th and into the early morning hours of August 19th. Later, beginning on the morning of the 19th, Mr. Sandeson was questioned for approximately ten hours.

[7] About eight hours into his final interview Mr. Sandeson provided information to cause police to shortly thereafter re-arrest him for murder.

DECISION MADE TO INTERVIEW MR. SANDESON

[8] Sgt. Roger Sayer was a Halifax Regional Police Department (HPD) D/Cst. in 2015 with nearly 15 years experience. He traced the background of the Samson missing person case from the time he was first reported missing on August 16th. Mr. Samson's family and friends were particularly concerned about his out-of-character disappearance given that he had a liver condition requiring medication that he left behind (along with his phone and wallet) when he told his girlfriend he would return shortly.

[9] On August 17th at around 3:00 p.m. D/Cst. Sayer was called in to assist and soon thereafter Sgt. Boyd formed the investigative Triangle. D/Cst. Sayer was assigned as file co-ordinator with the lead investigator role going to D/Cst. Kim Robinson and team lead to Sgt. Boyd.

[10] On cross-examination D/Cst. Sayer agreed that the Triangle knew prior to the interviews that Mr. Samson had left to meet with a new drug client and that he was only supposed to be gone for 15 minutes. He agreed that the last phone number to make contact with Mr. Samson was traced to be Mr. Sandeson's. He added that prior to the first interview that police believed Mr. Samson had been abducted, not murdered. Having said this he acknowledged, "we have to keep an open mind" to the possibility of a homicide. He further agreed that there was no evidence that Mr. Sandeson's bank account was accessed, there were no ransom demands and no reports of abduction.

[11] On August 18th call logs were obtained showing calls made by Mr. Samson to a special needs home in Sackville, Nova Scotia. Officers were tasked to attend and they learned that Mr. Sandeson worked there. D/Cst. Sayer said the reason Sgt. Charla Keddy was tasked to interview Mr. Sandeson was "the phone numbers, simply put".

THE FIRST INTERVIEW

[12] S/Sgt. Charla Keddy was a Sergeant with almost 15 years experience with the RCMP when she became involved in this matter. She described herself as a "tasker", as she was provided tasks by the investigative Triangle. On August 18, 2015, D/Cst.

Kim Robinson initially tasked her to locate two people who might have information concerning Taylor Samson's whereabouts.

[13] Sgt. Keddy and her partner Cst. Ron Hines were in their unmarked police vehicle on August 18th when Sgt. Derrick Boyd called to assign a different task. She was asked to contact William Sandeson, as he had been one of the last contacts on Mr. Samson's phone records. She called Mr. Sandeson and left a message around noontime and he shortly thereafter returned the call. They agreed to meet that day at 1:00 p.m. at HPD headquarters on Gottingen Street.

[14] Sgt. Keddy met Mr. Sandeson as planned just outside of the front entry of the police station. She described him as, "very friendly, co-operative, seemed in good spirits" and had no concerns about his ability to understand what was going on. They walked to the south side entrance of the building where Sgt. Keddy used her pass card and code to enter. She was wearing plain clothes such that her holstered firearm would not have been visible under her blazer. At the time Sgt. Keddy did not believe Mr. Sandeson to be a suspect; he was not searched or handcuffed.

[15] Sgt. Keddy elaborated on what she said when she first spoke with Mr. Sandeson; that the police were conducting a missing person investigation and that he was a potential last contact of Mr. Samson's. She added that police were aware that Mr. Samson may have been involved in drug activity and that if Mr. Sandeson had knowledge he should "be up front" as this was not a drug investigation. Sgt. Keddy noted that Mr. Sandeson's mood did not change upon hearing this.

[16] Sgt. Keddy took Mr. Sandeson to the HPD "soft" interview room, a small carpeted room with two chairs and a sofa. At no time did she make threats or promises or have physical contact with Mr. Sandeson. On cross-examination Sgt. Keddy acknowledged that she did not give a caution or "the standard warning about telling the truth" in advance of the interview. As it was not a KGB statement, she did not ask Mr. Sandeson to give an oath or affirmation. She agreed on cross-examination that Mr. Sandeson was not told that he could leave at any point, nor was he told that the doors to the room were unlocked.

[17] Sgt. Keddy elaborated that the soft interview room is accessed by a double-doored entry and that the doors do not lock. She believes that the two doors help dampen noise. There is a washroom off of the room. The room is often used to interview complainants in sexual assault cases; the CD entered of her recorded interview with Mr. Sandeson (VD2-1) identifies the room as "SAIT"; i.e., sexual assault investigation team.

[18] Sgt. Keddy described Mr. Sandeson as co-operative throughout as she advised him that she would be interviewing him and that the session would be audio/video taped. She was aware that he had an appointment later in the afternoon to have his car repaired.

[19] Sgt. Keddy's videotaped interview (approximately 1 hour, 45 minutes) of Mr. Sandeson was played in Court. During the times that she left the room (and the interview was suspended), Sgt. Keddy provided testimony as to what she was doing outside. This involved checking with Cst. Hines, who was monitoring the interview on a computer screen in a next-door room and checking with other officers, who were located down the hall in the project room.

[20] On cross-examination Sgt. Keddy was asked about the exchange (beginning at p. 39) about drugs other than marijuana. She answered that she simply wanted to determine if any other illicit drugs were involved.

[21] Towards the end of the session Mr. Sandeson voluntarily provided his phone so that police could photograph screenshots of his recent texts. On cross-examination she agreed that Mr. Sandeson was not told that he could decline to provide his phone. Owing to a poor wifi signal in the interview room, Mr. Sandeson and Sgt. Keddy as well as Sgt. Boyd and D/Cst. Hewitt congregated in the hallway area (where there was good wifi reception) outside the room and D/Cst. Hewitt, of the Forensic Identification Section (Ident), took 67 photographs (exhibit V2-3) of screenshots. During this time Sgt. Keddy recalled that Sgt. Boyd and Mr. Sandeson engaged in small talk.

[22] When the interview concluded Sgt. Keddy and Cst. Hines drove Mr. Sandeson to his Henry Street address so that he could make his car appointment. She described the short drive – Mr. Sandeson was in the backseat of the unmarked police car – as involving friendly, general conversation. Mr. Sandeson's upbeat mood was unchanged. She found him to be truthful and that his status had not changed; "I did not believe in any way that he was responsible for Mr. Samson's disappearance".

[23] Superintendent Derek Boyd was a veteran Sergeant in mid-August, 2015 and the team leader of the investigative Triangle on the Sandeson case. Sgt. Boyd monitored this interview from the nearby project room. His evidence lined up with Sgt. Keddy's with respect to the circumstances of the initial interview.

[24] Sgt. Boyd recalled meeting Mr. Sandeson in the hallway outside of the interview room. Mr. Sandeson declined his request to take his phone to make digital

copies; however, he agreed to have his messages photographed. While this went on he talked to Mr. Sandeson about track; he described him as “friendly, outgoing, easy to talk to”.

[25] On cross-examination Sgt. Boyd agreed that Mr. Sandeson had not been cautioned when he was asked about providing his phone because he was not a suspect. He agreed that Mr. Sandeson was not told that he could decline to provide his phone; however, “he said no to my first question, so I assume he’d know”.

[26] RCMP Corporal Ronald Hines was a Constable in 2015 with over ten years in the Force. He was on duty with Sgt. Keddy on August 18, 2015, when she received the task from the Triangle to interview William Sandeson. They were told that Mr. Sandeson may have had recent contact with Mr. Samson.

[27] Cst. Hines monitored Sgt. Keddy’s interview with Mr. Sandeson from a room next to the soft interview room. He described the interview room and set up in a manner consistent with Sgt. Keddy.

[28] Cst. Hines also described the drive from police headquarters back to Mr. Sandeson’s residence as Sgt. Keddy did; albeit, he recalled that she drove the unmarked police vehicle. He had no concerns regarding Mr. Sandeson’s ability to understand what was going on; “he was well-spoken offering information, he seemed to want to assist in the investigation, he was easy to talk to ...very polite”.

[29] Marshall Hewitt retired as a police officer with HRP in 2019. In 2015 he was a D/Cst. with 17 years experience. He worked in Ident with the “overall responsibility to go to crime scenes and process crime scenes ...retrieve and process evidence”.

[30] On August 18th at around 2:00 p.m. Sgt. Boyd asked him to photograph Mr. Sandeson’s phone. In the hallway beside the soft interview room uniformed D/Cst. Hewitt met Mr. Sandeson and with his assistance took 67 photos of screenshots (exhibit VD2-3). During his 15 – 20 minutes with Mr. Sandeson, Sgt. Boyd was also present and he recalled that the two talked about university and sports.

[31] On cross-examination D/Cst. Hewitt said given what Sgt. Boyd told him that he believed Mr. Sandeson was consenting to having his screenshots photographed.

[32] In August, 2015 Ms. Sandeson was almost 22 years of age. He had completed a B.Sc. in kinesiology in three years and spent four months in medical school in the

Caribbean. He was due to start his first year at Dalhousie Medical School within days.

[33] By the time of his interactions with police Mr. Sandeson had just finished a job in patient admittance at the Queen Elizabeth II Health Sciences Center and was working at a group home in Sackville. He was on the Dalhousie track and field team and was training with a Halifax club team. He agreed on cross-examination that he was in “good shape”.

[34] Having just been admitted to medical school Mr. Sandeson agreed that he possessed “some degree of confidence” and had the ability to “understand and juggle more than the average person”.

[35] Mr. Sandeson first heard from a co-worker on the evening of August 17th or early the next day that police had attended his workplace in Sackville and wanted to speak with anyone who had been in contact with Taylor Samson. On August 18th Mr. Sandeson noticed that he had received a number of calls from a blocked number. He also received a voice mail from Sgt. Charla Keddy and subsequently called the police and spoke with her. She wanted to speak with him and offered to come to his place or have him come to the station. He opted to attend and an hour or so later ran to the police station to attend at the agreed upon time of 1:00 p.m. Soon thereafter Sgt. Keddy greeted him and together they exited the station and re-entered through the south side door with Sgt. Keddy using her swipe card and a code. On cross-examination he said “I didn’t feel I had a choice to walk to that end” with Sgt. Keddy.

[36] He acknowledged on cross-examination that he was aware that the police wanted to speak with him to help determine where Mr. Samson was and that he called back within twenty-four hours. He agreed that he did not consult with a lawyer and agreed to speak with Sgt. Keddy, who had identified herself as a police officer. Mr. Sandeson felt that he could offer information and agreed to go to the police station. He was in “good health” on this day. He acknowledged that Sgt. Keddy was dressed in plain clothes and was not intimidating: her demeanor was calm, friendly and professional.

[37] On the basis of what he was told by Sgt. Keddy, Mr. Sandeson did not think that he would get into “any trouble if I acknowledged drug trafficking or spoke about drug trafficking”. Mr. Sandeson brought up his texts “to buttress what I was saying”. Mr. Sandeson did not have phone data so he was “offered wifi to re-install my App”. While in conversation outside of the interview room (where there was a wifi signal) Sgt. Boyd gave Mr. Sandeson a choice, “...to take my phone for days or wait a little

longer at the station to get someone else to photograph the phone texts ... I wasn't told I could refuse to give my phone to the police". Mr. Sandeson understood that the police were interested in his texts with Mr. Samson; he was not asked if they could take photographs of other texts. On re-direct he said that he could not see his phone when the photographs were being taken because he was talking to Sgt. Boyd.

[38] He was not threatened by Sgt. Keddy or D/Cst. Hewitt and their session was respectful. Mr. Sandeson agreed that he offered to give her his phone during the interview.

[39] When shown the video on cross-examination, Mr. Sandeson acknowledged that he gave D/Cst. Hewitt the thumbs up signal when he told him he was going to photograph his phone. While outside the interview room, he agreed that there was laughter between Sgt. Boyd, Sgt. Keddy, D/Cst. Hewitt and himself and that he offered several pieces of information to the police.

[40] At the end of his interview with Sgt. Keddy she offered to drive him home and he accepted "because I was already late for my Canadian Tire appointment". On cross-examination he agreed that his car appointment afforded him an opportunity to leave the interview earlier but that he kept the discussion going. He added, however, that he did not "believe I had any power to end it". Mr. Sandeson took the officers up on their offer of a drive because he was going to be late for the appointment.

SURVEILLANCE AND ARREST OF MR. SANDESON

[41] While Sgt. Keddy was interviewing Mr. Sandeson in the soft interview room on August 18th D/Cst. Sayer watched and listened to some of the session from the monitors in the HPD project room. At this point Mr. Sandeson was not a suspect. D/Cst. Sayer's view of Mr. Sandeson changed after he went through the photographs of his texts between 3:00 p.m. and 3:30 p.m. on August 18th. When he compared the texts to some of what he had said in the interview; "that doesn't line up, I have concerns".

[42] On the basis of his concerns, the decision was made to place surveillance on Mr. Sandeson. At this point, D/Cst. Sayer did not know whether Mr. Samson was deceased. He thought he might have been "abducted or was being held in the hopes of gaining more marijuana, drugs".

[43] D/Cst. Sayer formed the view that Mr. Sandeson was arrestable for “misleading the police, kidnapping and trafficking”. D/Cst. Sayer said the ‘misleading police’ pertained to his statement to Sgt. Keddy and agreed the actual *Criminal Code* offence would be obstruction of justice. In addition to surveillance, the Triangle sought to have Mr. Sandeson’s apartment searched. The search turned up a firearm box, drug paraphernalia and “at least” three surveillance cameras. Officers disconnected the power at Mr. Sandeson’s apartment given their view that the surveillance footage could be “remotely wiped”.

[44] Sgt. Boyd said that he initiated surveillance on Mr. Sandeson after D/Cst. Sayer informed him that the texts contradicted much of what Mr. Sandeson said to Sgt. Keddy. He also arranged for an “exigent search” of Mr. Sandeson’s apartment, especially given concerns about Mr. Samson’s liver condition and his overall health.

[45] On cross-examination Sgt. Boyd agreed that holdback evidence is only useful if it relates to an offence that is being investigated. Here, he said the bullet in the window casing may have related to the disappearance of Mr. Samson.

[46] D/Cst. Robbie Baird had been with HPD for just over ten years by the summer of 2015. At the time he had worked in Guns and Gangs for four or five years.

[47] On August 18th at around 4:00 p.m. he was called into a headquarters briefing. He was tasked to be part of a surveillance team to try to locate Mr. Sandeson. At around 5:00 p.m. the casually attired D/Cst. Baird left headquarters and drove his unmarked car to Dartmouth and parked in the Gray Arena parking lot. By early evening he received a call advising that Mr. Sandeson was leaving a nearby residence; he was instructed to arrest him. D/Cst. Baird drove there, parked and exited vehicle. He observed Mr. Sandeson walking; D/Cst. Baird identified himself and advised Mr. Sandeson that he was under arrest for kidnapping. Mr. Sandeson was calm, polite and cooperative. Although casually attired, D/Cst. Baird was wearing his bullet proof vest which had police markings and his badge was prominent. He handcuffed Mr. Sandeson and by this time officers Mirko Markovic and Marc MacMullin were on scene and Cst. MacMullen read Mr. Sandeson the caution.

[48] Cst. MacMullin has been with the RCMP for 14 years. In August, 2015 he worked in the integrated Guns and Gangs section. On August 18th he and his partner Cst. Markovic were part of the surveillance team assigned to Mr. Sandeson. Just after 8:00 p.m. they parked on Lancaster Drive in Dartmouth. At 8:24 p.m. they received a call that Mr. Sandeson was on Leaman Drive. Cst. MacMullin’s next

note reflects that at 8:32 p.m. he arrested Mr. Sandeson. He clarified that Mr. Sandeson was being placed under arrest when he and his partner arrived.

[49] Cst. MacMullin was casually attired on account of the surveillance detail. He took out his “*Charter* card”, read Mr. Sandeson his rights and placed him under arrest. Mr. Sandeson confirmed that he understood what was read to him. Cst. MacMullin had “no concerns in his ability to understand, he was not impaired by alcohol or drugs ...”. He felt Mr. Sandeson to be compliant; he discerned “shock or sensory overload from him ...he had the look of trying to process everything that was going on”.

[50] Cst. MacMullin placed the handcuffed Mr. Sandeson in the back seat of the unmarked police vehicle and got in the back seat next to him. Cst. Markovic drove and Cst. MacMullin recalled having a general conversation with Mr. Sandeson about school and running during their relatively brief direct drive to the Gottingen Street police station.

[51] Once at the station Mr. Sandeson went through the “normal booking process” which included being searched. He was then placed in one of the interview rooms. During his interactions with Mr. Sandeson, Cst. MacMullin had no concerns about his ability to understand what was happening. Overall, he found Mr. Sandeson to be “very friendly, compliant”.

[52] At approximately 8:00 p.m. on August 18, 2015, Cst. Markovic, who was conducting surveillance with Cst. MacMullin, received a radio transmission that Mr. Sandeson had been observed on Leaman Drive. Csts. Markovic and MacMullin were wearing plain clothes and had visible badges and sidearms. By the time they arrived on Leaman Drive, Mr. Sandeson was under arrest and with D/Cst. Baird.

[53] Mr. Sandeson was placed in handcuffs and Cst. MacMullin brought him to the police van. Cst. MacMullin read Mr. Sandeson his police caution and *Charter* rights in the police vehicle. Cst. MacMullin told Mr. Sandeson he was arrestable for kidnapping. Cst. Markovic drove the van to police headquarters while Cst. MacMullin rode in the back with Mr. Sandeson. He overheard Cst. MacMullin making small talk with Mr. Sandeson about sports and school.

[54] On their arrival at headquarters, Mr. Sandeson was taken to booking. Cst. Markovic said he appeared to understand everything that was going on around him and he observed nothing noteworthy about Mr. Sandeson's demeanor.

[55] At around 8:00 p.m. Mr. Sandeson was with his girlfriend at her maternal grandparents' home on Leaman Drive in Dartmouth. He was arrested for trafficking and he thought that because of what he had been told earlier that this was a mistake. He also thought his girlfriend was arrested; he told her it would be alright. Once taken to the interview room at HPD headquarters he was advised that he was arrested for kidnapping, trafficking and misleading police. He was provided with the opportunity to speak with a lawyer and did so.

[56] On cross-examination he agreed that he was about to hop on his motorcycle when he was arrested. He had not consumed any alcohol. He took no issue with the "very professional" way in which the arrest was carried out.

THE SECOND INTERVIEW

[57] D/Cst. Jason Shannon was a nearly 15 year veteran of HPD by August, 2015 working in the general investigative section. D/Cst. Shannon read Mr. Sandeson his *Charter* rights and police caution; this is the initial part of his video/audio recorded session in the "hard" interview room (exhibit VD-4).

[58] When D/Cst. Shannon first entered the room Mr. Sandeson was laying on the floor. Upon D/Cst. Shannon's entry, Mr. Sandeson got up and sat in the interview chair and initialled the HPD Caution Statement form (exhibit VD2-7), confirming that he understood what was read to him. D/Cst. Shannon stated, "he was receptive and I had no concerns about his answers ...he understood in an appropriate fashion". D/Cst. Shannon advised Mr. Sandeson that he was under arrest for kidnapping, misleading police and drug trafficking.

[59] As Mr. Sandeson asked to call a lawyer, D/Cst. Shannon took him down the hall from the interview room to a private room. At 9:50 p.m. he placed Mr. Sandeson in contact with duty counsel Laura McCarthy and her name is recorded on the form. Mr. Sandeson had an approximate twenty minute private call with Ms. McCarthy. D/Cst. Shannon then took Mr. Sandeson back to the interview room.

[60] D/Cst. Shannon did not know the temperature of the interview room but "usually the rooms are warm". He thought that he or someone gave Mr. Sandeson a bottle of water.

[61] Sgt. Boyd tasked D/Cst. Sayer to interview Mr. Sandeson. Going into the interview, D/Cst. Sayer testified that he did not believe Mr. Samson was deceased.

[62] D/Cst. Sayer noted that the interview room is about 12' x 12' and that there is a bolted down interviewee chair. There is one door into the room which is usually locked. There is not a bathroom off of the interview room. While the interview took place, Mr. Sandeson sat in the interviewee chair and D/Cst. Sayer on a chair with wheels. During his testimony, exhibit VD2-4 was played, the complete video/audio recording of the approximately four hour session. As well, the Court was provided with a transcript of the interview (exhibit VD2-5).

[63] When D/Cst. Sayer comes in, Mr. Sandeson is in the witness chair with his head down. Throughout the approximately four hour session Mr. Sandeson keeps his head down.

[64] While speaking to Mr. Sandeson, D/Cst. Sayer has with him, and often refers to, a copy of Mr. Sandeson's (previously photographed) text messages. D/Cst. Sayer sits within two to three feet from Mr. Sandeson for most of the session. D/Cst. Sayer uses a soft voice and long pauses throughout most of what is largely a monologue punctuated by Mr. Sandeson's nods of the head or very occasional utterances.

[65] D/Cst. Sayer acknowledged that by speaking softly and getting close that his approach is to try to "make people a little more uncomfortable". With Mr. Sandeson, "here I was making a plea, so he'd feel it".

[66] D/Cst. Sayer described his overall approach in conducting the interview; "I was going for emotional responses". Later, when he started to refer to Mr. Sandeson's texts; "I decided to go in and take more of a direct, evidentiary approach".

[67] During his cross-examination Sgt. Sayer was taken to several places where he speaks of Mr. Samson's death or potential death. In answer to these references he maintained, "at the time we had no evidence to support that Mr. Sandeson was involved in the death of Taylor Samson". He added that he was keeping his mind open and, "my belief was if I could put this out there to him, he would say 'no, he's not dead, this is what happened'".

[68] D/Cst. Sayer was peppered with cross-examination questions surrounding quotes from his session with Mr. Sandeson where he alluded to Mr. Samson being murdered. In all cases he denied having this knowledge, explaining that he was "offering possibilities, because I don't know". He maintained that there were no reasonable and probable grounds to arrest Mr. Sandeson until after he gestured as to where Mr. Samson was shot.

[69] Throughout D/Cst. Sayer maintained that he had to keep his mind open to all possibilities but, “my belief was that he was kidnapped and my hope was he’d tell me his side and where he was”. D/Cst. Sayer said that had Mr. Sandeson answered his questions differently, “I would have stopped and arrested him for murder”. Later he said that he did not have “evidence to support” murder at this point of his interview. He added that he did not believe he needed proof beyond a reasonable doubt. When it was pointed out that Mr. Samson is not seen leaving the apartment, D/Cst. Sayer noted that it was possible the video had been turned off when Mr. Samson left.

[70] While the interview was going on D/Cst. Sayer knew Mr. Sandeson’s apartment would be searched. He spoke of a gun because he was aware that a firearm box had been located. D/Cst. Sayer said that because there was only a small amount of blood located that they still had “no information that Mr. Samson was deceased”. At no time did D/Cst. Sayer believe that Mr. Sandeson’s jeopardy changed.

[71] D/Cst. Sayer noted that throughout he felt that Mr. Sandeson was paying attention “listening very intently”. He noted that he did not fidget. He observed that Mr. Sandeson pulled on his shirt and picked at his hands; he referred to this as grooming. He stated that Mr. Sandeson “did not cry, was very quiet, respectful”. At one point he touched Mr. Sandeson “hoping it might elicit an emotional response;” however, Mr. Sandeson asked him not to, so he stopped.

[72] Early on in the interview Mr. Sandeson asks for water but he does not receive any. D/Cst. Sayer said that he did not intentionally deprive Mr. Sandeson of water. Throughout the session D/Cst. Sayer noted that Mr. Sandeson gave “no indication he was hungry, thirsty or needed to go to the washroom”.

[73] Toward the end of the session D/Cst. Sayer asks “am I keeping you awake” and as with most of his questions, this is met with a nod of the head. From D/Cst. Sayer’s vantage point throughout the session, “he never fell asleep”. Mr. Sandeson does not look up when D/Cst. Sayer leaves; he shortly thereafter gets up from the chair and lays down on the floor.

[74] D/Cst. Sayer returned to the project room to “talk to the Triangle regarding next best steps, he’d get sleep and we’d get resources going”. During this time he did not learn anything that caused him to believe there was a change in Mr. Sandeson’s jeopardy.

[75] In 2015 D/Cst. Donald Buell had over 30 years with HPD and was assigned to the homicide/polygraph section. On August 18th he was asked to attend at headquarters to assist with the investigation. He attended at the project room where he monitored Mr. Sandeson's interviews.

[76] While monitoring the interviews, D/Cst. Buell had no concerns whether Mr. Sandeson did not have an operating mind. On cross-examination he could not recall if Mr. Sandeson asked D/Cst. Shannon for water, adding, "we'd ensure that he got water if he wanted it". When it was pointed out that Mr. Sandeson in fact did not receive water for four and a half to five hours, he said "I must have missed that". He added that if a person did not receive requested water, "you could ask again".

[77] After D/Cst. Sayer finished interviewing Mr. Sandeson at 1:07 a.m., D/Cst. Buell was the next officer to enter at 2:03 a.m. As Mr. Sandeson is on the floor when he enters, the first thing D/Cst. Buell says (in a loud voice) upon entering is "stand up". D/Cst. Buell spends a few minutes alone with Mr. Sandeson before D/Cst. Sayer returns. He said some things to Mr. Sandeson because, "I wanted to give him something to think about". As for his rationale for saying "Taylor's not coming home", D/Cst. Buell said this was because of the health concerns surrounding Mr. Samson's liver condition.

[78] On cross-examination he denied being of the opinion that Mr. Samson was dead. He learned of Mr. Samson's liver condition through Facebook and news reports. D/Cst. Buell was questioned as to why Mr. Sandeson was left laying on the floor; he responded that this is not unusual and in any case, arrangements were being made to provide Mr. Sandeson with a cell for the night.

[79] After a few minutes D/Cst. Sayer joined D/Cst. Buell and Mr. Sandeson in the interview room and completed health forms so that he could enter cells. D/Cst. Sayer felt that Mr. Sandeson understood what he was being asked.

[80] D/Cst. Sayer stated that part of the rationale for stopping the interview was to get Mr. Sandeson some rest. He thought he heard the next day that he "hadn't slept a lot." He added that police cannot control whether a person sleeps and that Mr. Sandeson had been provided with the opportunity. He could not say if Mr. Sandeson was provided with a blanket.

[81] Mr. Sandeson described the interview room as a confined space with a fixed chair across from the door. The interviewer's chair was on wheels. He recalled that the room had concrete walls and as for the temperature, "it felt fairly cold". In

addition to feeling cold, Mr. Sandeson was “confused as to why I’m in this situation”. He added, “I wasn’t feeling well earlier in the day, stomach problems continued to plague me”.

MR. SANDESON’S NIGHT IN CELLS

[82] D/Cst. Buell and D/Cst. Sayer took Mr. Sandeson to the booking area. D/Cst. Buell thought that it took between one and three minutes to get there. They did not have a conversation during the brief walk there, other than at one point when, “I looked at him and said he didn’t look very well – he was pale and looked like he was getting sick – there was no response from Mr. Sandeson that I recall”. On cross-examination D/Cst. Buell added that Mr. Sandeson “didn’t say anything back to say he was ill”.

[83] On cross-examination D/Cst. Buell was asked what steps were taken to ensure that a detainee got an adequate sleep. He replied that the person would be placed in a cell by themselves. He noted that it was the responsibility of the booking officers to provide blankets and “check if there are any issues or concerns”. Specifically asked about the steps taken to see if Mr. Sandeson got sleep, D/Cst. Buell could not recall; however, he noted that he watched the next day’s interview with Cst. Allison and “he didn’t appear so exhausted”. Reminded that Mr. Sandeson was asked if he slept and that he nodded, “no”, and whether this caused him concern, D/Cst. Buell replied; “I’m watching and Cst. Allison is a very experienced investigator and interviewer and if he had a concern, I knew it would be addressed immediately”. In D/Cst. Buell’s opinion Mr. Sandeson was “alert ...engaged with him ...they brought him food and drink”.

[84] During part of the time between 1:07 a.m. and 2:03 a.m. D/Cst. Sayer was at the cells booking area. Arrangements were made to place Mr. Sandeson in a single cell with a bed, toilet and sink. A booking officer would provide Mr. Sandeson with a blanket, water, protein bar(s) and if requested, toilet paper. D/Cst. Sayer did not ask Mr. Sandeson if he wanted food; “if he had asked, he could have had anything”. He could not recall whether Mr. Sandeson slept during his time in the cell.

[85] D/Cst. Shannon had contact with Mr Sandeson the next morning when he and Cst. Hines took him from cells back up to the interview room. He recalled that on the short walk that they talked about where Mr. Sandeson grew up. At the beginning of the August 19th recorded interview, D/Cst. Shannon and Mr. Sandeson conclude this small talk upon D/Cst. Shannon leaving the room at about 9:50 a.m.

[86] Mr. Sandeson told D/Cst. Shannon that he was feeling “a little bit” better. D/Cst. Shannon thought the two might have been talking about Mr. Sandeson having an upset stomach. During his interaction with Mr. Sandeson he had no concerns about his health. He recalled that Mr. Sandeson declined breakfast on August 19th because he had a power bar.

[87] On August 19th Cst. Hines recalled going with D/Cst. Jason Shannon and bringing Mr. Sandeson from the HPD cells up to one of the “cubes” interview rooms (the same room that was used for Mr. Sandeson’s earlier interview). Both officers were wearing plain clothes and Mr. Sandeson was not handcuffed. Cst. Hines had no concerns about Mr. Sandeson’s ability to understand things. There was no physical contact with Mr. Sandeson, nor were there threats or pressure. Cst. Hines monitored this interview; he would have made notes if he had apprehended any concerns (health issues and the like) during what he described as “quite a lengthy interview”. On cross-examination Corp. Hines could not recall whether Mr. Sandeson was awake or asleep when he went down to get him in cells.

[88] Mr. Sandeson noted that he asked for water early in the interview but was not provided with any. Later, when he was taken to cells (around the time when D/Cst. Buell commented that he looked unwell), “I thought I might throw up, I felt weak, I was cold, anxious, I hadn’t eaten much that day.” Mr. Sandeson thought he had woke early on the morning of the 18th and “a few days prior to my arrest I was having difficulty sleeping as well”.

[89] Mr. Sandeson described the cell he was placed in as “colder than the interview room” noting that it had a toilet and sink combination along with a narrow bench, perhaps six or eight inches in width. He was not provided a blanket or sweater. He said that he did not get any sleep on account of the temperature and because he was not feeling well and could not lay down on the small bench. As for the floor, “it was covered in debris and appeared to be wet as well”. When D/Cst. Shannon came for him in the morning he was offered breakfast but declined; “I wasn’t hungry, I didn’t think I could keep anything down”.

THE LEAD UP TO THE THIRD INTERVIEW

[90] On August 19th at around 9:00 a.m., D/Cst. Sayer received a report from officer Sandy Johnson that evidence was found as a result of the search of Mr. Sandeson’s apartment. There was blood splatter on several areas and a bullet hole found in a window sill. D/Cst. Sayer asked the officer if there was enough blood

found to conclude that someone died and was told “no”. As for the bullet hole, the officer could not say how long it had been there or whether there was blood around it. At this point D/Cst. Sayer was aware that Mr. Sandeson had a firearm license.

[91] D/Cst. Sayer agreed that the apartment search revealed that a bullet was found in a window sill, that blood was located in the apartment, as well as a bag of bloody money and that the scene had been cleaned up. He stated that the Triangle became aware of these things at around 9:30 a.m. on August 19th. D/Cst. Sayer referred to this as “hold back evidence” as it was only known by the searching officers and Triangle, albeit D/Cst. Buell became aware as well. He agreed that an empty gun case was observed in the apartment the day before. He also acknowledged the missing shower curtain with a receipt for a new one being found and possibly a missing bath mat.

[92] Sgt. Jody Allison was a ten year Constable with the RCMP in August, 2015. Part of the integrated unit, Cst. Allison received a request from Sgt. Boyd to interview Mr. Sandeson. He met with members of the Triangle in the project room during the late evening of August 18th. While they met he could see from the monitor that D/Cst. Sayer was interviewing Mr. Sandeson and he watched part of the session.

[93] Cst. Allison recalled looking at photographs of Mr. Sandeson’s texts and learning that the missing person had a liver condition. The next morning Cst. Allison returned to the project room and Sgt. Fred Priestly provided him with copies of the texts and told him that some blood had been found at Mr. Sandeson’s apartment.

[94] On cross-examination Cst. Allison said that upon learning that Mr. Samson was missing, “I knew he was selling drugs” and that his last known contact was Mr. Sandeson.

[95] Cst. Allison left the project room and attended his office nearby on Brunswick Street. He looked up Mr. Sandeson on PROS (Police Reporting and Occurrence System) but found no criminal record or anything of significance. He reviewed the texts and because he knew Mr. Sandeson was going to medical school, printed off the Hippocratic Oath; “I was trying for some sort of bond, connection with Mr. Sandeson”. He found out that Mr. Sandeson worked with special needs individuals. In all, Cst. Allison estimated that he spent one and a half to two hours preparing for the upcoming interview.

[96] Cst. Allison said his objective going into the interview was “to find out what happened in that apartment ...what happened to Taylor ...to make it a comfortable

place for Mr. Sandeson to talk”. Cst. Allison spoke with Sgt. Priestly, D/Cst. Buell and members of the Triangle. It was agreed that the interview duration would “depend on how the interview went”. He learned that the search of the apartment revealed that there was a video system and that more information might become available as the interview progressed.

THE THIRD INTERVIEW

[97] During Cst. Allison’s testimony, the approximate ten hour video recorded session (exhibit VD2-8 and VD2-11) was played in Court and the transcript (exhibit VD2-9) and D/Cst. Buell’s monitor times and notes (exhibit VD2-10) were provided. For most of the session Cst. Allison is seated about 2’ from Mr. Sandeson in the “hard” interview room. He sat close because he had trouble hearing Mr. Sandeson and because “its better to have a conversation”. There are times when he places his right hand on Mr. Sandeson’s left shoulder area but otherwise there is no contact between them.

[98] The questioning begins at about 10:10 a.m. and about 30 minutes later D/Cst. Buell brings Mr. Sandeson an orange juice and fast food breakfast in a brown paper bag. A few minutes into the interview Mr. Sandeson laughs when Cst. Allison sees that he has not touched the meal and says, “you don’t have to eat that”. Soon thereafter Cst. Allison suggests that Mr. Sandeson probably did not have “a wink” of sleep the night before and Mr. Sandeson agrees. On cross-examination he agreed that Mr. Sandeson confirmed that he had not slept.

[99] For almost the entirety of the interview Mr. Sandeson casts his gaze downward and his face is mostly in his hands. Cst. Allison testified that Mr. Sandeson “appeared to be alert ...knew what was going on”.

[100] As the interview progresses, Cst. Allison refers to text messages and shows him a photograph of Taylor Samson arm in arm with his special needs brother, Connor. Cst. Allison is generally soft spoken throughout the lengthy session. Mr. Sandeson communicates by nodding and when he vocalizes answers he speaks very softly and often in a high pitched manner. As Cst. Allison questions him intently, Mr. Sandeson frequently blows his nose and cries. He sketches his apartment layout on a file folder and the sketch is contained within exhibit VD2-6, a bundle of all of the materials that Cst. Allison had with him during the interview.

[101] On cross-examination Cst. Allison agreed that by times Mr. Sandeson cried and had a lot of mucous, adding that at one point, “he seemed to me to be hyperventilating and said he was going to pass out ...I told him to take deep breaths”.

[102] At p. 66 of the transcript (VD2-9), Cst. Allison gently places his right hand on Mr. Sandeson’s shoulder and neck. Asked why; “a comfort thing ...to me he was having a break down there, sobbing”. Shortly thereafter, Mr. Sandeson says that he would like to have a lawyer.

[103] On cross-examination Cst. Allison was asked why he did not facilitate Mr. Sandeson’s request to (again) speak with a lawyer; “my understanding was he already spoke with a lawyer and understood his rights ...I felt he was satisfied with his legal advice.”

[104] Cst. Allison was taken to the passage where Mr. Sandeson says he wants to speak with a lawyer because he wants help “articulating”. He then acknowledged several instances where he used the word “articulate” with the gist being that Mr. Sandeson would have no problem articulating if he told the truth.

[105] It was put to Cst. Allison that he gave the impression that as long as Mr. Sandeson told the truth he did not have to do as his lawyer said; he denied this stating, “no, I’m sticking with the theme to tell the truth”.

[106] Cst. Allison acknowledged that Sgt. Keddy said that Mr. Sandeson would not get in trouble for talking about drugs. Cst. Allison was taken to where he told Mr. Sandeson that he had been “arrested but not charged” with trafficking.

[107] Cst. Allison acknowledged that he did not answer Mr. Sandeson when he asked how long he would be held.

[108] During a break just after noon hour, Cst. Allison leaves the photo of Taylor and Connor out where it can be seen and while he is out of the room Mr. Sandeson puts the photo back inside the folder. Mr. Sandeson gets up from the chair and paces the small room. Upon Cst. Allison returning Mr. Sandeson says he’s “freezing cold”. There is no more mention of this during the interview. Asked about the temperature of the room, Cst. Allison replied, “I thought comfortable”.

[109] Cst. Allison said he forgot to get Mr. Sandeson a blanket and that he was not asked again. He added, “I didn’t see any goosebumps or him shivering”. Cst. Allison said that he did not find the room to be cold.

[110] During a lengthy break later in the afternoon Mr. Sandeson lays on the floor. As Cst. Allison is taking longer to return than he said before he left the room, Mr. Sandeson stands up and takes the plastic juice cup as though he will use it to relieve himself; then Cst. Allison re-enters the room. The two leave so Mr. Sandeson can use the washroom and they return a minute later.

[111] Cst. Allison noted that he was provided some of the photos in the morning but the ones of Mr. Sandeson's apartment were given to him later in the day. When shown a number of photos depicting blood remnants, Mr. Sandeson becomes very upset – panting and sobbing. He says he may “pass out”, repeatedly blows his nose, breaths heavily and rocks in the chair. Cst. Allison touches Mr. Sandeson, “for comfort, he was obviously upset”. When Cst. Allison leaves the room to get Mr. Sandeson water, Mr. Sandeson gets on the floor in a bent down, praying-like position. When Cst. Allison returns with the water he soon thereafter shows Mr. Sandeson a still picture of Mr. Samson taken from his video surveillance system as he enters Mr. Sandeson's apartment.

[112] Cst. Allison agreed that some of the still photos that he took into the interview came from Mr. Sandeson's surveillance system and he knew from one that Mr. Samson came into the apartment. He added that at this juncture he still believed that others were involved and not just Mr. Sandeson.

[113] When Cst. Allison saw the apartment photograph revealing the target on the door, “I put two and two together and assumed he had some sort of firearm”. He acknowledged that blood was found in several areas of the apartment and that Mr. Sandeson's shower curtain had been removed (and replaced).

[114] On cross-examination Cst. Allison was taken to a number of passages in the transcript including where he spoke of the comparative sizes of Messrs. Sandeson and Samson. He agreed that he was suggesting that a significant amount of force would have to be used to kidnap him.

[115] Cst. Allison was asked about his references to Mr. Samson possibly being deceased; however, he denied knowing this to be the case. He said that he thought Ms. Sandeson knew “where the people had taken him ...he had to have had involvement ...my belief then there had to be others involved, up until the very end”.

[116] Cst. Allison was confronted with the fact that a number of his questions referenced violence; however, he made it clear that he regards kidnapping “as a fairly violent offence”. He added that this is especially so when drugs and money are

involved. Since blood was found at the apartment he believed there had been “a struggle, I presumed Mr. Samson got injured there”. Later he said that he questioned him about cleaning the apartment in the face of his denial that he did not know the others who he said were involved.

[117] Just before Mr. Sandeson revealed that Mr. Samson had been shot in the back of his head, Cst. Allison questioned him about shooting. He said that he asked about this because, “at the time, I noticed the target in his house from the picture ...I thought possibly a firearm was used”.

[118] During a couple of times in the interview Mr. Sandeson can be observed lightly hitting his head with his hands. Asked about this, Cst. Allison said, “he seemed to be tapping himself with an open hand, not a fist ...not a very hard tap”.

[119] After a break at 5:00 p.m. of about 16 minutes, Cst. Allison returns with a subway sandwich and apple juice which he gives to Mr. Sandeson. Soon thereafter in response to Mr. Sandeson’s crying, Cst. Allison says, “Will, stay with me bud”. Asked about this, Cst. Allison stated, “I felt he still understood ...crying more instead of focussing on what I was asking him”.

[120] Before D/Cst. Sayer went back in the interview room he knew from watching that Mr. Sandeson had provided Cst. Allison with a version of what happened. He noted that this version gave “evidence” to what had been said about the amount of blood at the apartment. When he re-entered the room D/Cst. Sayer “took more of an emotional approach”. He could not recall the interview room temperature but said that it was “comfortable”.

[121] At 5:37 p.m. Cst. Allison leaves and D/Cst. Sayer returns taking a much harsher approach in questioning. At one point, referring to Taylor Samson, D/Cst. Sayer asks, “He never left your place that we can see, so where is he?” Mr. Sandeson sips on his apple juice. His demeanor is markedly changed from when he was with Cst. Allison and D/Cst. Sayer challenges the (now calm and composed) Mr. Sandeson about this.

[122] D/Cst. Sayer noted that Mr. Sandeson’s demeanor was “very emotional” while he was interviewed by Cst. Allison, whereas he thought that when he was in with Mr. Sandeson, “he was very quiet ...he listened very intently”. At no time did D/Cst. Sayer have any concerns about Mr. Sandeson being hungry, thirsty or uncomfortable.

[123] After about a half hour with Mr. Sandeson, D/Cst. Sayer leaves and Mr. Sandeson is alone in the room for about eight minutes. He looks up at what he presumably knows to be the camera and requests to use the “washroom, again, please”. Within a minute, Cst. Allison enters the room and escorts him to the washroom.

[124] When Mr. Sandeson and Cst. Allison return to the room, Mr. Sandeson sits back in the chair and Cst. Allison stands over him. Mr. Sandeson looks up at him and maintains eye contact for part of this segment. Cst. Allison leaves briefly and when he returns he arrests Mr. Sandeson for murder. He asks Mr. Sandeson if he understands his rights “thus far” and Mr. Sandeson gives him a thumbs up signal. Cst. Allison takes Mr. Sandeson to a private room so he can speak with a lawyer. Upon returning to the interview room about 20 minutes later, Mr. Sandeson starts to eat his subway sandwich and drink a bottle of water or apple juice.

[125] While outside of the room Cst. Allison met with D/Cst. Sayer and Sgt. Boyd briefly in the hallway. There was “no discussion about the reason, just that I would go in and arrest him for murder”.

[126] D/Cst. Sayer maintained that Mr. Sandeson’s jeopardy did not change until approximately 11:30 p.m. when he gestured to Cst. Allison that Mr. Samson had been shot in the back of the head. Once Mr. Sandeson said that Mr. Samson was put in the bag and moved, “we thought Mr. Samson was most likely deceased”.

[127] D/Cst. Sayer noted that when Cst. Allison interviewed Mr. Sandeson that Mr. Sandeson provided more information, “he used his right hand to show that Mr. Samson was shot in the back of the neck or head area”. When D/Cst. Sayer heard this he thought, “what did he just say ...his jeopardy changed”. He recalled at the time watching with Sgt. Boyd from the monitors in the project room. The decision was made to re-arrest Mr. Sandeson; the form was printed off and it was decided to have Cst. Allison arrest Mr. Sandeson for murder.

[128] Sgt. Boyd noted that it was later the next day when watching Mr. Sandeson’s session with Cst. Allison that his jeopardy changed. He said that when Mr. Sandeson “made a motion with his hand to the back of the neck ...now we believe he’s dead, now his jeopardy changes and he would be arrested for murder”. Sgt. Boyd then walked with D/Cst. Sayer down the hallway and knocked on the interview room door; “we told Cst. Allison to arrest Will Sandeson for murder”.

[129] Cst. Allison referred to notes that he prepared (exhibit VD2-12) on a HPD Caution Statement form when he contacted Laura McCarthy for Mr. Sandeson. With the aid of the notes he recalled that Mr. Sandeson first spoke with Ms. McCarthy on the phone (eight minutes) and then in person (one hour, 20 minutes) in the same private room.

[130] Throughout the session Cst. Allison felt that Mr. Sandeson “understood everything we were talking about ...he was very engaged in everything I was saying, he replied appropriately”. He concluded his direct examination stating that at no time were there threats, promises or intimidation.

[131] Ident Section D/Cst. Wasson enters the room at close to 8:00 p.m. and with Cst. Allison present he takes a number of photographs of Mr. Sandeson. Mr. Sandeson responds to various requests as photos are taken of several areas of his body.

[132] Cst. Allison recalled speaking with Mr. Sandeson outside of the interview room at about 8:15 p.m. He asked Mr. Sandeson about his safe combination and about the trigger lock on his pistol and Mr. Sandeson provided answers to both inquiries.

[133] When he returned to the interview room Mr. Sandeson felt cold. On several occasions he asked to again speak with his lawyer. Asked why, “I thought I’d be going to Court or Burnside on the morning of the 19th”. He based this on what he heard others in cells talking about and from his conversation with his lawyer. As neither happened, “I started to doubt my recollection of what my lawyer said to me...”.

[134] Fairly early on in the session with Cst. Allison, Mr. Sandeson was told that he had not been charged with anything and that there is a difference between being charged and arrested. Mr. Sandeson stated, “I had no conception what the difference was, whether there was a difference” adding that he believed that he was being held against his will. Mr. Sandeson said “the longer the day stretched, the more concerned I was about how long they could do this ...I was doubting the advice I had been provided”. He added that he did not perceive an end in sight and was concerned enough to ask about it.

[135] During his interview with Cst. Allison, Mr. Sandeson said that he “hyperventilated I think at different intervals ...my hands were tingling and I thought

I was going to lose consciousness ...it was some sort of panic attack probably at the time”.

[136] Mr. Sandeson was taken to where he said to Cst. Allison that he could not “trust you and my lawyer at the same time”; “I’m feeling an internal debate as to who I’m getting better advice from – him or my lawyer”. He added that based upon what he was told, “...if I co-operated with him and provided him with information I wouldn’t get in any trouble”. Mr. Sandeson continued, “I wanted it to be over, I wondered if I had to prove something myself to get me out. He’s using that word ‘articulating’ which I had used before regarding my lawyer ...if I could speak to her I’d be able to make more of an informed decision”.

[137] During his cross-examination it was put to Mr. Sandeson that he asserted himself and generally paid attention. He admitted that fairly early in the first interview when D/Cst. Sayer touched him that he asked him not to do this. He said that after his first request for water went nowhere, it did “not make much sense to repeat the request”. He agreed that at the end of his session into the early morning of the 19th that he was asked about any physical health issues and that he replied “no”. He agreed that he did not throw up while outside of the interview room and that the next morning he acknowledged feeling a little better. He agreed he ate a power or protein bar and throughout the session with Cst. Allison had water or apple juice. Prior to giving Cst. Allison his first version of what happened in his apartment, Mr. Sandeson was provided food and juice. He added, “I told them that version of what occurred ...I began to feel like I didn’t have a choice in the matter, the impression, I had to say something to get out of there”.

[138] He acknowledged being told on two occasions that he could be held for up to 24 hours after his arrest.

[139] Mr. Sandeson agreed that after he provided his first version that Cst. Allison showed him photographs from inside his apartment and he then made the decision to tell another version. He acknowledged that when D/Cst. Sayer confronted him with the evidence that he listened but not to the “entirety”. When it was put to him that he was not crying, he responded, “certainly not hysterical”.

[140] Towards the end of the interview he agreed that he followed D/Cst. Wasson’s commands when he photographed him and that he had no difficulty putting on the “bunny suit” and shoes.

VOLUNTARINESS

[141] In *R. v. Sandeson*, 2017 NSSC 197, Justice Arnold considered voluntariness with respect to the first statement and I adopt his review of the law, analysis and reasoning as set out at paras. 177 – 197.

[142] As for the text messages, I similarly adopt Justice Arnold’s review of the law, analysis and reasoning as set out at paras. 216 – 232 of his decision.

[143] Having carefully reviewed the three statements and testimony of the officers and Mr. Sandeson, I accept the Crown’s position that the statements were voluntary. In this regard, I have considered the leading authorities on voluntariness (*R. v. Oickle*, 2000 SCC 38; *R. v. Spencer*, 2007 SCC 11; *R. v. Garnier*, 2020 NSCA 52) and the right to remain silent (*R. v. Singh*, 2007 SCC 48; *R. v. Dussault*, 2022 SCC 16), along with the requirement that Mr. Sandeson had an operating mind (*R. v. Whittle*, [1994] 2 S.C.R. 914).

[144] Throughout my consideration of the statements I have adopted a contextual approach. In short, I find that there were no threats or promises; there was no *quid pro quo*; although the interview was lengthy, the police conduct was not oppressive; the police treated Mr. Sandeson respectfully and humanely throughout; Mr. Sandeson’s will was not overborne by the police; and, he had an operating mind.

[145] With respect to inducements, I refer to *R. v. Oickle*, 2000 SCC 38 at para. 57:

[57] In summary, courts must remember that the police may often offer some kind of inducement to the suspect to obtain a confession. Few suspects will spontaneously confess to a crime. In the vast majority of cases, the police will have to somehow convince the suspect that it is in his or her best interests to confess. This becomes improper only when the inducements, whether standing alone or in combination with other factors, are strong enough to raise a reasonable doubt about whether the will of the subject has been overborne. On this point I found the following passage from *R. v. Rennie* (1981), 74 Cr. App. R. 207 (C.A.), at p. 212, particularly apt:

Very few confessions are inspired solely by remorse. Often the motives of an accused are mixed and include a hope that an early admission may lead to an earlier release or a lighter sentence. If it were the law that the mere presence of such a motive, even if promoted by something said or done by a person in authority, led inexorably to the exclusion of a confession, nearly every confession would be rendered inadmissible. This is not the law. In some cases the hope may be self-generated. If so, it is irrelevant, even if it provides the dominant motive for making the confession. In such a case the confession will not have been obtained by anything said or done by a person in authority. More commonly the presence of such a hope will, in part at

least, owe its origin to something said or done by such a person. There can be few prisoners who are being firmly but fairly questioned in a police station to whom it does not occur that they might be able to bring both their interrogation and their detention to an earlier end by confession.

The most important consideration in all cases is to look for a *quid pro quo* offer by interrogators, regardless of whether it comes in the form of a threat or a promise.

[146] The police did rely on moral inducements to persuade Mr. Sandeson to speak with them. Both D/Cst. Sayer and Cst. Allison at various times told Mr. Sandeson that he would feel better about himself, his family and girlfriend would be relieved along with Mr. Samson's family, if he explained what happened. Having said this, the police made no improper promises or threats to Mr. Sandeson. There is no *quid pro quo* offer from the police to Mr. Sandeson within the statements.

[147] The Respondent essentially argues that there was police oppression because at least the third interview was too long. Throughout both interviews Mr. Sandeson says he was cold, tired and had an upset stomach such that he could hardly eat. He says that the persistent police questioning amounted to psychological pressure.

[148] I reject the above argument primarily based upon my careful review of the three exhibits (VD2-4, 8 and 11). When I watch Mr. Sandeson in the interviews I cannot conclude that he is over-tired. He clearly followed the questions and demonstrated this by nodding or later, (especially with Cst. Allison) verbally answering. Indeed, his demeanor change is rather remarkable when his resistance to D/Cst. Sayer is contrasted with his, at times, apparent emotional fragility with Cst. Allison. When I consider the entirety of the interviews I am left to conclude that Mr. Sandeson's upset was occasioned by trying to avoid the difficult questions from Cst. Allison and not because he was overborne with emotion.

[149] Bathroom breaks were given upon request, albeit one was delayed by about ten minutes. Food was provided and although Mr. Sandeson did not eat much and complained to a degree of an upset stomach, he did not become physically ill and did not ask for stomach medication or the like. Although his initial request for water was ignored, Mr. Sandeson was thereafter offered and provided with juice and water.

[150] Mr. Sandeson is dressed in long khaki pants and a short sleeve, loose fitting, surgical type shirt. While he complains of being cold on a couple of occasions, this is not a common refrain and at no point does he appear to be shivering. He does not ask for the room temperature to be increased.

[151] In making these findings I point out that they come primarily from carefully watching and listening to the videotaped interviews. In this regard, I have placed far less stock in the (nearly seven years later) evidence from the officers and Mr. Sandeson about room temperature and the like.

CHARTER CONSIDERATION

[152] Having concluded that the statements are voluntary and that the texts were properly obtained by the police, I must go on to consider whether the statements were obtained in a manner that violated his s. 10(a) and 10(b) *Charter* rights.

[153] Out of an abundance of caution I feel compelled to state that I find on the evidence and law that the first statement and obtaining of the texts withstand *Charter* scrutiny and are therefor admissible. In this regard, I again draw reference to Arnold, J.'s decision in *R. v. Sandeson*, 2017 NSSC 197 and in particular, paras. 233, 234 (the case citations therein, only), 235 – 248, 249 (but not the last sentence), 252 – 256, 258 – 261 and 266 – 270.

[154] The second and third statements are the focus of Mr. Sandeson's *Charter* argument. Upon arrest or detention, the *Charter* guarantees an individual both the right to be informed of the reason for their detention, as well as the right to retain and instruct counsel without delay. Although generally an initial warning will suffice, in some situations the police are obliged to provide an accused with an additional opportunity to consult with counsel.

[155] In Mr. Sandeson's pre-application brief, his *Charter* argument *vis-à-vis* the second and third statements is summarized this way:

Prior to the Applicant's second statement, he was arrested for kidnapping, amongst other offences. He was cautioned in relation to those offences, and provided an opportunity to consult with counsel. However it is clear that, by that point, the police already suspected him of much worse. As the investigation wore on, more utterances were made, and more evidence was gathered, that suspicion only grew. Yet at no point prior to his statement that the deceased had been shot in the back of the neck or head was the Respondent advised that his jeopardy had changed. It was incumbent on the police to have done so far sooner than they did.

[156] I have provided detailed summaries of the evidence on this *voir dire*. Scrutiny of the testimony of the officers who questioned Mr. Sandeson reveals that they all denied having knowledge of Mr. Sandeson being a murder suspect until after he provided details about what befell Mr. Samson inside the apartment. Even if this

testimony of D/Cst. Sayer, D/Cst. Buell and Cst. Allison is accepted, as Ms. Craig points out, this does not end the enquiry. What is critical is what was said to Mr. Sandeson during the time that he was being questioned after being arrested for kidnapping, “misleading police” and trafficking.

[157] If Mr. Sandeson's jeopardy changed from being a suspect for kidnapping, obstruction of justice, and trafficking to being a suspect for murder, he should have been re-arrested, given his s. 10 *Charter* rights again and he should have been provided with another opportunity to speak with a lawyer. All of this happened, though not nearly as early in the interview process as Mr. Sandeson alleges.

[158] In all of the circumstances I believe that it is critical to examine the exact words said to Mr. Sandeson, so as to determine whether he truly was a murder suspect. In this regard, I have below referenced the passages isolated by Ms. Craig in her cross-examination and closing submissions:

Second Statement

D/Cst. Sayer

VD2-5, p. 25:

Probably kissed his girlfriend goodbye said, I'll be back in a couple of minutes. We're going to go out tonight and have some fun. Maybe talked to his mom on the phone earlier, was planning on having a nice weekend. It was going to be a nice, sunny, hot weekend, and somebody took that all away, and you'll have to excuse me for not wanting to believe that a person who says that they are about to start Med school on Sunday is that type of person who would do that.

VD2-5, p. 27:

Many, many people's lives changed forever on Saturday, and it's always amazed me how a person at 10:20 p.m. on Saturday can be doing what they've done a million times before and five minutes later (snaps fingers) everything changes and it's all about the choices we make because if you ever think about it, what if you had chosen not to make this deal?

VD2-5, p. 28:

...Will, is that we deal in facts, and the facts are you ...we know you set the deal up, you know he was at your place and he was never seen again after he was at your place.

So that means our options are limited. Either you hurt that man or you know who did.

VD2-5, p. 29:

...and the people who hurt this person are held responsible because Taylor was a person, not a thing, not an object, a person who had feelings, loved, was loved, is missed, and I see in you that you know that's wrong and I see in you that you want to let that out.

VD2-5, p. 31:

...and from what's been gathered here so far, it's quite possible that they're seeing your words that lead a man to his death over weed. What does that say about a person? Is that what you want your story to be? Someone who led a man to his death over a bag of marijuana, robbed a family of their son over a bag of marijuana, put a family in financial distress over a bag of marijuana.

VD2-5, pp. 33-34:

I highly doubt they're home in Truro tonight talking about their son that led a man to his death and did nothing to help. Set a man up and did nothing to help. I don't think they'd be very proud of that because you're showing yourself to be that monster, Will, sitting there, you never once denied it, never once said you didn't know what happened to him, not once, you just sat there. Given opportunity after opportunity to do the right thing and chosen not to and you didn't have to because you know right from wrong.

Did you hurt this man, Will? No response? Do you know where this man is, Will? Do you know who he met on Saturday night?

VD2-5, p. 35:

That doesn't bother you even a little bit, Will, because there are some people here who believe that you walked him into that just like you would be walking somebody in front of a firing squad.

VD2-5, p. 40:

...maybe you hurt this man and that's why you don't want to say anything.

VD2-5, p. 42:

...does she know that that guy she had her arms around today was responsible for hurting someone? Does she know what you're capable of, Will?

When you were with her Saturday night or Sunday, does she know what you did?

VD2-5, p. 46:

...You got a couple of hundred dollars, you ...you know, you got a pound of weed for somebody's life, Will? Is that how much a person matters to you? Is that all a life is worth to you?

VD2-5, p. 50:

...So we went to your house and he wasn't there but it definitely looks like you had access to firearms, doesn't it, Will? And a firearm would make a huge difference

in all of this, wouldn't it? What difference would a .38 make in all of this? Make it a lot easier to handle a 6'5 guy, wouldn't it.

VD2-5, p. 54:

It appears that your value of life is nothing more than a few joints and, I guess, in some ways, we're fortunate because if you hadn't made the choice you made today, you'd be probably in a position where you could hurt more people, ...

VD2-5, p. 57:

It's not too late for you. Is it too late for him? Do you know it's too late, Will? Because I don't get it, Will, if he is somewhere where he can be saved, why are ... wouldn't you say something, unless you know that that's not possible. Can I save him, Will? Can you help me save him? Can you save Taylor? Can you or is it too late?

D/Cst. Buell

...Because you're certainly not innocent in all this. You're definitely a big player. You played that bullshit off earlier today with Charla. Now we know the difference, based on the text messages, that you're a much bigger player, the same is your place with all the surveillance equipment on it and everything else.

...

And we both know the reality that Taylor is not coming home, that's not going to happen, big time.

Cst. Allison

VD2-9, pp. 38-39:

Q. You haven't been charged with anything.

A. I've been charged with trafficking.

Q. You haven't been charged with anything. You've been arrested. There's a difference between being arrested and being ...

A. Well (inaudible).

Q. ...charged, right?

A. Okay.

Q. To be charged, you have to have the ... They swear an information and take you to court before a judge, okay? Are you concerned about the trafficking?

VD2-9, p. 41:

A. No, like, so I can get held indefinitely?

Q. Held indefinitely? Well, I wouldn't say ...

A. I'm not saying forever but...

Q. Forever isn't ...there's no forever for anything. Will, what happened to Taylor?

VD2-9, p. 43:

A. I can't trust you and my lawyer at the same time.

Q. Lis- ...listen to what I'm saying here.

A. I ...

Q. You're saying you want to help Ta- ...Listen to me for a second here, just listen, you don't have to say one word. Taylor ...you're sa- ...you're telling me in one sentence you want to help him but then you won't answer me when I say, is he still alive?

VD2-9, p. 45:

A. Why can't I just talk to somebody? If Laura comes down, I'll be able to tell everything. I just need to talk to a lawyer. Why can't you, like ...like I said, as soon as (inaudible).

Q. Do you want to help Taylor?

A. Yeah.

Q. Do you want to help Taylor? Is it too late to help Taylor, Will?

A. (Shrugs.)

Q. You don't know?

A. I don't know.

Q. Okay, well, we need to find out what happened...

VD2-9, p. 47:

A. Why ...why can't I just talk to a lawyer first? Why ...why can't I do that?

Q. Well, you've al- ...you've already spoken to a lawyer.

A. If I just had another chance to speak to a lawyer.

Q. No. You got good legal advice.

A. And she told me not to make a statement, so I shouldn't make a statement right now.

Q. Here's the thing ...here's the thing, Will, you're telling me you want to help Taylor, you want to help his brother.

VD2-9, p. 49:

Q. Here ...here's the thing. If you're going to tell the truth, then you're not going to have to worry about, Oh, how am I going to explain this? How am I going to ... You tell the truth, you tell the truth, then you don't have to go back tomorrow

and think to yourself, Wait a second, oh, did I tell him I did this? Oh, yeah, I should've told him I did that.

When you're telling the truth, you never need help articulating how you're going to say something. Do you understand what I'm saying, Will? You don't need help to try and explain something because it's the truth.

VD2-9, pp. 75 - 76:

A. I'm listening. I'm listening.

Q. You don't have to say one word. I ...I don't want you to say one ...one word. You lied to the investigator yesterday, you're trying to cover your tracks Saturday night by sending those emails, you bought a new shower curtain, you did a whole bunch of other things. There's blood all over the place. You clean up. You told me you cleaned up. I know you cleaned up. What do you think that says?

VD2-9, p. 102:

A. No.

Q. You ...you have a firearm registered to you, right?

A. Yes.

Q. Okay. Did you ever shoot anything with it because that ...

VD2-9, p. 104 -105:

A. (crying)

Q. Will, it's just like I said. This was a boulder that got pushed down the hill and it's going ...you couldn't control it, right? That's why you did the things that you did. Like I said, if you were this stone cold person, you wouldn't have made the mistakes that you made here, right? Right? If you were a stone cold person, you wouldn't have made those mistakes. You're a human being that got tied up in something that you couldn't control, right?

A. (crying)

Q. Who else was there? You know who was there. Who else was there, Will? Will, things get worse before they get better. You've got it tattooed on your arm. This isn't going to get better. You told me ...you told me earlier that when you woke up Saturday morning, it wasn't your intention to have this ...this happen, right?

Will, if you were used in this to set this thing up, then you've got to say, right? Do you ...do you hear what I'm telling you? You do hear what I'm saying, right?

VD2-9, p. 119:

Q. No? Because I ...like I said, Will, I'm having a hard time making that jump between a guy that wants to be a doctor, that helps out people, to going and hurting a guy.

VD2-9, p. 124:

Q. ...I can tell you, this ain't cool, right? You've got a bag full of blood-covered money in your bedroom, there's blood in your kitchen, there's blood in your bathroom, and it's not blood that, you know, would end up there from somebody washing their hands, so herein lies the problem. Either you had some part in putting it there by doing whatever or somebody else did.

VD2-9, p. 136 - 137:

A. (Body moving.)

Q. That's all it was?

A. (Body moving.)

Q. Or did you even know it was going to be a drug rip? Did you even know it was going to be a drug rip?

Will, now is the time, right now. When he showed up there, he showed up there with 40,000 bucks worth of weed, give or take a bit, right? He showed up there with that weed. There was more than just you there, right?

Will, stay with me here, okay, stay with me. Did ...did he start it? Did he throw the first punch? You know what I'm saying here? Is that how this kind of went down? You know what I'm saying? He's a big man. Tell me about how it started. Did you start it? Did you start the whole ...this whole thing?

VD2-9, p. 138 -139:

Q. ...

Who else was there with you at this place? Who else was there? Because I can tell you right now that this whole sequence of events does not look very good for you. It looks very bad. It looks like you planned on hurting this guy, it looks like you set it up, it looks like you tried to clean it up, it looks like you tried to manipulate the video, it looks like a whole bunch of things. ...

VD2-9, pp. 142 - 143:

A. I want to say, but I can't prove it.

Q. Don't worry about proving it, don't worry about proving it. Who else was there? That's not for you to prove.

A. Yes it is.

Q. It's for us.

A. (inaudible).

Q. It's for us to prove. Who else was there, Will? That ..that part, you don't have to prove because you know who was there, right? Will, do you know who was in this place? Do you know who was in your apartment? Who was in the apartment, Will? Who was in the apartment? Who was there? Who was there with you?

Will, you just said that you want to tell me what happened...

A. (Nods "yes".)

Q. Okay? You want to tell me but you're worried that you can't prove it. Don't worry about proving anything. Who was there with you? You don't need to prove it. I can see what you're saying on your lips. You don't need to prove anything. That's not ...that's not for you to worry about, that's for us to prove.

Who was there? Who was there, Will? Okay, let's start with this. Were they male?

JURISPRUDENCE WITH RESPECT TO JEOPARDY

[159] Justice Arnold provided a very helpful review of the leading authorities on the issue of how a change in jeopardy affects an accused's s. 10 *Charter* rights at paras. 276 – 283 of *R. v. Sandeson*, 2017 NSSC 197. I refer to the authorities he cited and further cases from the Supreme Court of Canada, *R. v. Singh*, 2007 SCC 48 and *R. v. Dussault*, 2022 SCC 16. At my request counsel provided written submissions on *Dussault*, as it was released two days after closing submissions.

[160] In *Singh* the Court notes that the importance of the caution pre-dates the *Charter*:

[31] Therefore, the notion of voluntariness is broad-based and has long included the common law principle that a person is not obliged to give information to the police or to answer questions. This component of the voluntariness rule is reflected in the usual police caution given to a suspect and the importance attached (even before the advent of the *Charter*) to the presence of a caution as a factor in determining the voluntariness of a statement made by a person under arrest or detention: see *Boudreau v. The King*, [1949] S.C.R. 262; *R. v. Fitton*, [1956] S.C.R. 958; *R. v. Esposito* (1985), 24 C.C.C. (3d) 88 (Ont. C.A.). A common form of the police caution given to a person who has been charged with an offence is the following: "You are charged with ... Do you wish to say anything in answer to the charge? You are not obliged to say anything but whatever you do say may be given in evidence." Therefore, the police caution, in plain language, informs the suspect of his right to remain silent. Its importance as a factor on the question of voluntariness was noted by this Court as early as 1949 in *Boudreau*:

The fundamental question is whether a confession of an accused offered in evidence is voluntary. The mere fact that a warning was given is not necessarily decisive in favour of admissibility but, on the other hand, the

absence of a warning should not bind the hands of the Court so as to compel it to rule out a statement. All the surrounding circumstances must be investigated and, if upon their review the Court is not satisfied of the voluntary nature of the admission, the statement will be rejected. Accordingly, the presence or absence of a warning will be a factor and, in many cases, an important one. [Emphasis added; p. 267.]

[32] Although the confessions rule applies whether or not the suspect is in detention, the common law recognized, also long before the advent of the *Charter*, that the suspect's situation is much different after detention. (As we shall see, the residual protection afforded to the right to silence under s. 7 of the *Charter* is only triggered upon detention.) After detention, the state authorities are in control and the detainee, who cannot simply walk away, is in a more vulnerable position. There is a greater risk of abuse of power by the police. The fact of detention alone can have a significant impact on the suspect and cause him or her to feel compelled to give a statement. The importance of reaffirming the individual's right to choose whether to speak to the authorities after he or she is detained is reflected in the jurisprudence concerning the timing of the police caution. René Marin, in his text Admissibility of Statements (9th ed. (loose-leaf)), at pp. 2-24.2 and 2-24.3, provides a useful yardstick for the police on when they should caution a suspect:

The warning should be given when there are reasonable grounds to suspect that the person being interviewed has committed an offence. An easy yardstick to determine when the warning should be given is for a police officer to consider the question of what he or she would do if the person attempted to leave the questioning room or leave the presence of the officer where a communication or exchange is taking place. If the answer is arrest (or detain) the person, then the warning should be given.

[161] With respect to s. 10(b), I note that in *R. v. Sinclair*, 2010 SCC 35, the majority stated as follows:

[47] Section 10(b) should be interpreted in a way that fully respects its purpose of supporting the detainee's s. 7 right to choose whether or not to cooperate with the police investigation. Normally, this purpose is achieved by a single consultation at the time of detention or shortly thereafter. This gives the detainee the information he needs to make a meaningful choice as to whether to cooperate with the investigation or decline to do so. However, as the cases illustrate, sometimes developments occur which require a second consultation, in order to allow the accused to get the advice he needs to exercise his right to choose in the new situation.

[48] The general idea that underlies the cases where the Court has upheld a second right to consult with counsel is that changed circumstances suggest that reconsultation is necessary in order for the detainee to have the information relevant to choosing whether to cooperate with the police investigation or not. The concern

is that in the new or newly revealed circumstances, the initial advice may no longer be adequate.

[49] The police, of course, are at liberty to facilitate any number of further consultations with counsel. In some circumstances, the interrogator may even consider it a useful technique to reassure the detainee that further access to counsel will be available if needed. For example, in the companion case of *R. v. Willier*, 2010 SCC 37, [2010] 2 S.C.R. 429, a skilled interrogator commenced the interview by making it clear to the detainee that he would be free at any time during the interview to stop and call a lawyer. The question here is when a further consultation is required under s. 10(b) of the *Charter*. For the purpose of providing guidance to investigating police officers, it is helpful to indicate situations in which it appears clear that a second consultation with counsel is so required. The categories are not closed. However, additions to them should be developed only where necessary to ensure that s. 10(b) has achieved its purpose.

...

[51] The detainee is advised upon detention of the reasons for the detention: s. 10(a). The s. 10(b) advice and opportunity to consult counsel follows this. The advice given will be tailored to the situation as the detainee and his lawyer then understand it. If the investigation takes a new and more serious turn as events unfold, that advice may no longer be adequate to the actual situation, or jeopardy, the detainee faces. In order to fulfill the purpose of s. 10(b), the detainee must be given a further opportunity to consult with counsel and obtain advice on the new situation. See *Evans* and *Black*.

...

[52] If events indicate that a detainee who has waived his right to counsel may not have understood his right, the police should reiterate his right to consult counsel, to ensure that the purpose of s. 10(b) is fulfilled: Prosper. More broadly, this may be taken to suggest that circumstances indicating that the detainee may not have understood the initial s. 10(b) advice of his right to counsel impose on the police a duty to give him a further opportunity to talk to a lawyer. Similarly, if the police undermine the legal advice that the detainee has received, this may have the effect of distorting or nullifying it. This undercuts the purpose of s. 10(b). In order to counteract this effect, it has been found necessary to give the detainee a further right to consult counsel. See *Burlingham*.

...

[54] The cases thus far offer examples of situations where the right of another consultation arises. However, the categories are not closed. Where the circumstances do not fall into a situation previously recognized, the question is whether a further opportunity to consult a lawyer is necessary to fulfill s. 10(b)'s purpose of providing the detainee with advice in the new or emergent situation.

[emphasis added]

[162] More recently, Justice Brown had cause to consider when the police have a duty to re-advise detainees of their rights in *R. v. Zekarias*, 2018 ONSC 4753 where he stated:

[40] At the bottom of p. 28 of the transcript Det. Margetson asked the defendant "If I was to tell you she is dead, what can you tell me about that?" Det. Margetson then asked the defendant a series of questions relating to Ms. Ghirmay's death. In cross-examination on the *voir dire*, Det. Margetson agreed that he was asking questions about the murder investigation.

[41] Later at p. 37 of the transcript, Det. Margetson asked the defendant "Adonay, did you kill her?" Det. Margetson also agreed in cross-examination that that question was a facet of the murder investigation.

[42] The leading case in Ontario on the duty of police to re-advise detainees of their rights during an interview/statement scenario is the Ontario Court of Appeal's decision in *R. v. Sawatsky* (1997), 35 O.R. (3d) 767. In that case, the court held that the police must reiterate the right to counsel if they want to ask questions that go beyond an exploratory stage in connection with a related but significantly more serious offence, or a different and unrelated offence. See also *R. v. J.B.*, 2015 ONCA 684 at para. 22.

[43] While the police, in the course of the investigation, do not have to reiterate the right to counsel every time that the investigation touches a different offence, they must restate the accused's right to counsel when there is a fundamental and discrete change in the purpose of the investigation, one involving a different or unrelated offence or a significantly more serious offence than the one contemplated at the time of the warning. See *R. v. Evans*, [1991] 1 S.C.R. 869 at pp. 892-893.

[emphasis added]

[163] Very recently, an unanimous Supreme Court of Canada reiterated the principles in *Sinclair*, with Justice Moldaver stating as follows at para. 34 of *Dussault*:

[34] Once a detainee has consulted with counsel, the police are entitled to begin eliciting evidence and are only exceptionally obligated to provide a further opportunity to receive legal advice. In *Sinclair*, McLachlin C.J. and Charron J., writing for the majority, explained that the law has thus far recognized three categories of "changed circumstances" that can renew a detainee's right to consult counsel: "... new procedures involving the detainee; a change in the jeopardy facing the detainee; or reason to believe that the first information provided was deficient" (para. 2). Of course, for any of these "changed circumstances" to give rise to a right to reconsult, they must be "objectively observable".

[164] The Supreme Court of Canada continued by referring to para. 52 of *Sinclair* (quoted herein at para. 161).

[165] Mr. Sandeson argued at the *voir dire* that the officers involved in questioning him repeatedly undermined the advice he had been given by counsel. For example, he expressed to Cst. Allison that he was confused about whether he should trust his lawyer or Cst. Allison, because both could not be telling him the truth. Justice Moldaver opined on that exact issue in *Dussault* at paragraph 45:

[45] Simply put, the purpose of s.10(b) is to provide the detainee with an opportunity to obtain legal advice relevant to their legal situation. As noted earlier, the legal advice is intended to ensure that “the detainee’s decision to cooperate with the investigation or decline to do so is free and informed”. The legal advice received by a detainee can fulfill this function only if the detainee regards it as legally correct and trustworthy.

[166] The evidence led at this *voir dire* confirms that soon after his first interview on August 18th the Triangle were of the view that Mr. Sandeson’s statements to Sgt. Keddy did not line up with his texts. By the time the second interview started on the evening of the 18th, a police search had turned up an empty firearm box, drug paraphernalia and surveillance cameras at Mr. Sandeson’s apartment. Notwithstanding this information and the content of the (soon to be asked) questions strongly pointing to Mr. Sandeson as being responsible for Mr. Samson’s death, D/Cst. Shannon placed Mr. Sandeson under arrest for “kidnapping, misleading the police and trafficking”. It was with this backdrop that he received legal advice.

[167] In the second interview D/Cst. Sayer enters the room at 10:26 p.m. on August 18th. At this point we know that Mr. Sandeson had a phone call with legal aid counsel, Ms. McCarthy. D/Cst. Sayer confirms with Mr. Sandeson that his rights were explained to him and that he understood the legal advice.

[168] As the words quoted at para. 158 of this decision demonstrate, relatively early on in the second interview D/Cst. Sayer commences making comments implying that Taylor Samson is dead. For example, he says, “...that they’re seeing your words that lead a man to his death over weed...”. Furthermore, I believe that a fair reading of D/Cst. Sayer’s overall comments readily demonstrate that he (and the Triangle) then had reason to suspect Mr. Sandeson as being responsible for Mr. Samson’s homicide.

[169] The second interview ended just after 2:00 a.m. on August 19th. About four minutes prior to the interview concluding D/Cst. Sayer exited the interview room

and D/Cst. Buell entered. D/Cst. Buell, who had been monitoring the interview and was privy to what was known by the Triangle stated among other things, “and we both know the reality that Taylor is not coming home, that’s not going to happen, big time”. When I consider this comment in the context of all of the evidence of what was then known from the texts and the search, I have no hesitation in concluding that Mr. Sandeson should have been arrested and *Charter* cautioned for what he was suspected of, murder, at the beginning of this interview.

[170] The situation is compounded when one considers the evidence from later on in the morning of the 19th. By 9:30 a.m. D/Cst. Sayer confirmed that the Triangle received word that the apartment search revealed blood splatter on several areas, a bag of bloody money had been found and a bullet hole was observed in a window sill. There was also a missing shower curtain with a receipt for a new one located.

[171] It is with this information in hand that Cst. Allison began questioning Mr. Sandeson at around 10:10 a.m. on the 19th. The first of the above quotations attributed to Cst. Allison (para. 158, p. 30) begin at around 11:00 a.m. during the third interview. When Cst. Allison asks, “is it too late to help Taylor, Will?”, this is after they have had a conversation about what he is arrested for (not yet murder) and after Mr. Sandeson is told he cannot be held “forever”. Cst. Allison also asks if it is too late to help Mr. Samson immediately after Mr. Sandeson says he needs to talk to a lawyer.

[172] Having considered all of the evidence in context, I am left to conclude that Cst. Allison (just like D/Csts. Sayer and Buell) had reason to suspect Mr. Sandeson murdered Mr. Samson before he interviewed Mr. Sandeson. I make this finding fully cognizant of the testimony of these officers to the effect that they were contemplating possibilities, keeping an open mind and that the comments were posed more because they were aware that Mr. Samson’s liver condition placed him in jeopardy of dying without required medication. Indeed, on the basis of my review of the entirety of the evidence and having applied a fair contextual reading of the words of the police officers in the second and third statements, I specifically reject the officers’ explanations.

[173] In the result, I am of the view that Mr. Sandeson should have been arrested for murder at the outset of the second interview. Given all of the *voir dire* evidence it is apparent to me that the police then had reasonable grounds to suspect the person about to be questioned, Mr. Sandeson, had committed the offence of murder with respect to Mr. Samson.

[174] As the Supreme Court of Canada directs, s. 10(b) should be interpreted in a way that fully respects its purpose of supporting the detainee's s. 7 right to choose whether or not to co-operate with police. Although Mr. Sandeson had the usual single consultation before the second interview got underway, his legal consultation was in the context of being under arrest for crimes of much less significance than murder. In any event, as the evidence bears out, developments surely occurred (based upon what D/Cst. Sayer, D/Cst. Buell and Cst. Allison said to him and how he responded) that clearly required a second consultation. The fact that the offer to re-consult with a lawyer came over 80 percent of the way through the third interview was far too late. Accordingly, Mr. Sandeson did not have a timely opportunity to obtain the legal advice he needed to exercise his right to choose in the new situation. As the words of the officers demonstrate, this situation was that Mr. Sandeson was a murder suspect. He was not told this until he had provided self-incriminating information to Cst. Allison.

[175] In all of the circumstances I am of the view that early on in the second interview the police officer asked questions that went beyond an exploratory stage in connection with a related but significantly more serious offence. Police should then have reiterated Mr. Sandeson's right to counsel. This was not done at anytime throughout the second interview and only in the waning stages of the third interview.

SECTION 24(2) CHARTER ANALYSIS

[176] Given that I have found statements two and three violate the *Charter*, I must determine whether to exclude one or both of the statements at the upcoming jury trial. In this regard I must consider s. 24(2) of the *Charter*. The Supreme Court of Canada in *R. v. Grant*, 2009 SCC 32, set out three considerations to evaluate whether or not the admission of evidence would bring the administration of justice into disrepute at para. 71:

- (1) the seriousness of the *Charter*-infringing state conduct (admission may send the message the justice system condones serious state misconduct);
- (2) the impact of the breach on the *Charter*-protected interests of the accused (admission may send the message that individual rights count for little); and
- (3) society's interest in the adjudication of the case on its merits.

[177] The ultimate focus of s. 24(2) is a consideration of whether having regard to all the circumstances, the admission of the evidence in the proceedings would bring the administration of justice into disrepute.

[178] The tipping point in the exclusion question comes down to the seriousness of police conduct. This makes sense, as police are at the forefront of the legal system; their actions and the courts' response affect the repute of the administration of justice. A reasoned public is apt to view conduct that wilfully exceeds legal authority as a mark on the justice system. The other side of that coin is those breaches that occur in unusual circumstances, perhaps in a legal gray area, with an absence of bad faith.

[179] The police actions in this case did not occur in a legal gray area. The law with respect to an accused's change in jeopardy was well known in 2015. The questioning by the officers which included multiple references to Mr. Sandeson being responsible for Mr. Samson's death should not have been posed without Mr. Sandeson having had the opportunity to understand the seriousness of what ought to have been the charged offence and to obtain legal advice in the context of the most serious charge of murder.

[180] I have borne in mind the factors enumerated by the Supreme Court of Canada and balanced those factors in deciding that I must exclude both statements.

[181] Having regard to all the circumstances the first statement and Mr. Sandeson's text messages shall be admitted at the upcoming jury trial. The second statement and third statement are ruled inadmissible as in violation of the *Charter* such that they will not be admitted at the jury trial.

Chipman, J.