SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Sandeson*, 2022 NSSC 254

Date: 20220907
Docket: CRH No. 498639
Registry: Halifax

Between:

Her Majesty the Queen

Applicant

v.

William Michael Sandeson

Respondent

***Pre-trial Voir Dire* 3 – EXIGENT CIRCUMSTANCES SEARCH**

DECISION

Judge:	The Honourable Justice James L. Chipman
Heard:	June 27, 28, 29, 30 and July 4, 2022 in Halifax, Nova Scotia
Counsel:	Carla Ball and Kimberley McOnie, on behalf of the Crown Alison Craig, on behalf of William Michael Sandeson

By the Court:

INTRODUCTION

[1] Mr. Sandeson is charged with the first degree murder of Taylor Samson. On August 16, 2015, Mr. Samson's stepmother reported him missing. The next day, the Halifax Regional Police (HRP) formed an investigative Triangle in an effort to locate Mr. Samson. The situation evolved rapidly, and on August 18th, the Triangle decided to proceed with an exigent circumstances search of an apartment the police believed Mr. Samson had visited on the evening he went missing.

[2] This *voir dire* deals with the warrantless entry of the apartment, which was where Mr. Sandeson lived in August 2015. The Crown called 15 police officers and 20 exhibits were entered by consent over the course of this pre-trial hearing.

BACKGROUND LEADING TO THE TRIANGLE'S DECISION TO PROCEED WITH THE EXIGENT SEARCH

[3] On the morning of Monday, August 17, 2015, Sgt. Robert Fox was tasked with interviewing Taylor Samson's mother, Linda Boutilier. She provided background information about her son, whom she had not heard from since the previous Thursday. She was concerned about her son as it was not normal for him to be out of touch for that long. She told Sgt. Fox that her son had a student loan and that he sold "five to dime drugs." Ms. Boutilier also said her son had "liver problems", for which he took daily medication, and that she had concerns for his well-being if he went days without his prescription. Sgt. Fox allowed that Ms. Boutilier "felt he might be dead, because she hadn't heard from him."

[4] After interviewing Ms. Boutilier, Sgt. Fox eventually met with Sgts. Boyd and Robinson to brief them and provide the Triangle with a DVD of the interview.

[5] D/Cst. Jonathan Beer was tasked by the Triangle with conducting a follow-up interview with Mr. Samson's mother. D/Cst. Beer reviewed the previous interview before conducting his session, later on August 17th.

[6] D/Cst. Beer understood from Ms. Boutilier that Taylor Samson was missing and that he suffered from "an auto-immune liver disease." He learned that Mr. Samson would "show jaundice, physical signs" if he went without his prescribed medication after a period of about two weeks. Based on what Ms. Boutilier told him,

D/Cst. Beer was under the impression that Mr. Samson would "become violently sick" around the two week mark if he went without his prescription.

[7] After his interview with Ms. Boutilier, D/Cst. Beer reported to Sgts. Boyd and Robinson. In addition to passing on the medical information, he supplied names of Mr. Samson's friends and contacts. He also reported that Ms. Boutilier advised him that she learned that her son had asked one or two friends to go with him on the night he went missing, but that they had been unavailable. On cross-examination, D/Cst. Beer agreed that he advised the Triangle of a drug deal that occurred in an alley a few houses from Mr. Samson's residence, and that Mr. Samson had gone to meet a person by the name of Dustin Johnson or Dustin Jackson.

[8] D/Cst. Randy Wood and his partner, Cst. Bobby Clyke, were tasked with searching for Mr. Samson, but were unable to locate him. They searched a Dawn Street apartment where the occupants permitted them to enter but said they did not know Taylor Samson. They also attended at a Lower Sackville residence for people with special needs, as Mr. Samson's phone records revealed he had been in touch with someone at that location.

[9] On August 17, 2015, D/Cst. Wood interviewed Mr. Samson's girlfriend, MacKenzie Ruthven. She confirmed that she had not seen Mr. Samson for days and did not know his whereabouts. Ms. Ruthven provided names of Mr. Samson's friends and contacts. She also told D/Cst. Wood that her boyfriend "was on some medication for an auto-immune disorder with his liver." She elaborated that "he didn't often take the medication and she got angry with him for not taking it …it wasn't life threatening, he could go months without it."

[10] On cross-examination, D/Cst. Wood confirmed that during his interview of Ms. Ruthven, he stopped the session on two occasions to meet with members of the Triangle, who provided him with additional information.

[11] On August 17, 2015, D/Cst. Jennifer Lake was tasked with following up with Taylor Samson's banking, transportation, and health information. For the latter she was given one of his pill bottles (Azathioprine, 50 mg). D/Cst. Lake noted that 105 pills had been filled on April 9, 2015 and there were 59 left in the bottle. Mr. Samson was prescribed 3.5 pills daily. She learned before doing any follow-up that Mr. Samson had a "liver disease."

[12] D/Cst. Lake called the Lawton's pharmacy in the Professional Centre on Spring Garden Road and spoke with pharmacist Kim Hirtle. She had a ten to 15

minute conversation while she was in the project room with members of the Triangle "likely" present. D/Cst. Lake was advised by Ms. Hirtle that a person would take the medication for "elevation sickness, rheumatoid arthritis, liver disease such as Hepatitis and for organ transplants, to supplement the health of it." Ms. Hirtle told D/Cst. Lake that after a few days of not having the medication, "the person might start to feel ill, vomit, pass out, toxins might build up in the blood and not properly cleanse, could have an affect on organs transplanted, the liver, a build up of toxins and progression of what might happen."

[13] On cross-examination, D/Cst. Lake acknowledged her understanding that if Mr. Samson did not have the medication that "it was a slow progression …it would happen over a few days." She agreed that she did not know how many pills he regularly took. Ms. Hirtle advised D/Cst. Lake that it had been 73 days since Mr. Samson picked up the medication. She said her data base did not cover all pharmacies in Nova Scotia.

[14] D/Cst. Lake checked with the airport, train station, and bus company and all checks came up negative regarding Mr. Samson. She did not receive any information back from Capital Health. Mr. Samson's banking information confirmed that there had been no activity on his account since the day he went missing. D/Cst. Lake relayed all of what she learned to the Triangle.

THE TRIANGLE'S RATIONALE FOR PROCEEDING WITH THE EXIGENT SEARCH

[15] Sgt. Kim Robinson met with fellow Triangle officers Sgt. Derrick Boyd and D/Cst. Roger Sayer during the evening of August 17, 2015. She was tasked as the Triangle lead investigator on the Taylor Samson missing person file. Mr. Samson had been missing since the evening of August 15th. During the briefing, Sgt. Robinson learned, among other things, that Mr. Samson had been on his way to complete a drug deal on the night he went missing.

[16] Sgt. Robinson was advised that Mr. Samson was diagnosed with a liver condition and needed "a daily dosage medication …a detective followed up with the pharmacy, the medication was needed to remove toxins from his system." Sgt. Robinson understood from Sgt. Boyd that D/Cst. Lake advised that without the prescription drug, "toxins would build up in his blood stream and it would become a life threatening condition." Additionally, Sgt. Robinson learned that Mr. Samson "left with two to four pounds of marijuana to do a drug transaction with a new client." As well, she was informed that recent social media searches revealed no

activity by Mr. Samson. She also learned that he had no recent travel and that his phone was "turned off or dead."

[17] Mr. Samson's latest texts were followed up on and this led to William Sandeson being identified as a last contact. Sgt. Robinson tasked Sgt. Charla Keddy with interviewing Mr. Sandeson. Sgt. Robinson was present in the HRP project room when Mr. Sandeson was interviewed and observed parts of the session. She described him as "very pleasant, talkative, helpful." Her impressions changed after reviewing some of the text messages that Mr. Sandeson provided to police; "the information was not consistent with what Mr. Sandeson had told Sgt. Keddy." After conferring with Sgt. Boyd and D/Cst. Sayer, Sgt. Robinson believed that Mr. Samson and Mr. Sandeson had been involved in "a large transaction involving 20 pounds of marijuana", which she said would have a street value of $90,000.00.

[18] On cross-examination, Sgt. Robinson acknowledged that she did not review all of the texts and relied upon Sgt. Boyd and D/Cst. Sayer regarding the content. She did not review Mr. Sandeson's later texts, nor the texts from two other men.

[19] Sgt. Robinson spoke of a "changed scenario", because of "a lot of violence associated with a large drug transaction." The Triangle decided to conduct surveillance of Mr. Sandeson because he had "misled" them. An initial exigent circumstances search was conducted on August 18, 2015, with police entering Mr. Sandeson's residence at 1210 Henry Street, apartment 2, at approximately 6:30 p.m. Sgt. Robinson confirmed the reasoning behind the Triangle's decision: "At the time, we were incredibly concerned that Mr. Samson had gone without medication since the 15th …we were really concerned at that point, toxins were building up, a life threatening condition." She added that the information they had received caused the Triangle to believe Mr. Samson was "involved in a violent drug transaction, we had to find him ASAP."

[20] The Triangle was aware that Mr. Samson's residence was a few minutes' walk to 1210 Henry Street and that "all indications were that Will Sandeson had last contact with him." Apart from an immediate search, the "only other option would be to hold the scene and request a search warrant." Sgt. Robinson said it would have taken "several hours" to obtain a warrant, noting that the ultimate warrant was "signed off on" at 4:00 a.m. on August 19th.

[21] Sgt. Robinson explained the rationale for going ahead with the exigent search as "the preservation of life, first and foremost – I believed he was in there as did other team members." Sgt. Robinson re-iterated that it was determined that

apartment 2 was "the last place he was …the liver condition, three days out, level of violence concerns …oh my God, we have to find him, he has to be there, it really was life saving mode, we honestly felt he was in there." She elaborated that Mr. Samson may have been injured or tied up.

[22] On cross-examination, Sgt. Robinson said she was not aware of a tip reporting that Mr. Samson had been seen on South Street around midnight on August 16th. She was also unaware that his mother told police that her son could fight and look after himself, or that she said he would be fine without his liver medication for an extended period of time. Further, Sgt. Robinson had not been advised that Ms. Ruthven told police that Mr. Samson could survive for up to a year without his medication. Nor was she aware that Ms. Ruthven said he had gone several days without his medication in the past without significant consequences. Sgt. Robinson elaborated that she was going by what D/Cst. Lake had told the Triangle, which was based on pharmacist, Kim Hirtle's view that "the toxins would be building up and due to the time frame, it was a life threatening situation." She emphasized that she relied on the pharmacist as "most credible" over other reports.

[23] On cross-examination, Sgt. Robinson acknowledged being unaware that Ms. Hirtle told D/Cst. Lake that these effects were not related to any particular diagnosis. She added that she was of the "understanding that no recent prescription had been filled."

[24] Sgt. Robinson confirmed that the exigent search proceeded and that Mr. Samson was not found. She was advised that the search turned up "a large mushroom grow-op and an empty gun box." Given these developments, it was determined that Mr. Sandeson had to be located. At the same time, the Triangle wanted officers to "provide containment [of apartment 2, 1210 Henry Street] until we could have an authorized search warrant."

[25] The Triangle also learned that D/Cst. Shannon located a DVR system which he believed was part of a surveillance system. D/Cst. Shannon reported his concern that Mr. Sandeson could remotely delete the recording so "he made the decision on the exigent search" to preserve the evidence by disconnecting the DVR.

[26] Sgt. Robinson added that once the Triangle learned of the presence of the gun box, magic mushrooms, and the DVR system, they decided to seek the search warrant "right away." They knew the gun box was empty and were concerned that a firearm could be in Mr. Sandeson's possession.

[27] Sgt. Robinson confirmed that surveillance was placed on Mr. Sandeson by 3:20 p.m. on August 17th, when he was seen leaving Canadian Tire. He was ultimately arrested in the early evening on Leaman Drive in Dartmouth. During the time that he was under surveillance, he was only in his apartment for a brief period before driving his motorcycle to Dartmouth.

[28] On cross-examination, Sgt. Robinson elaborated on the Triangle's knowledge of large drug transactions or "drug rips" that can result in "the person purchasing not cooperating, things go wrong and violence happens." She acknowledged that there had been no reported calls for help or of a struggle, or any reports of Mr. Samson entering the apartment building. It was put to Sgt. Robinson that given this lack of evidence, and the fact that they had surveillance of Mr. Sandeson out doing errands, that there was nothing to justify any fear of violence. Sgt. Robinson responded by reiterating the potential for violence with a drug rip, noting, "We're basing on past investigations, a very common occurrence in Halifax, violent drug activity." Having said this, she acknowledged that she did not have experience in the drug section but that her colleagues did and, "I relied on their experience."

[29] Sgt. Robinson agreed that police did not seek out Mr. Sandeson and ask him if they could search his apartment; however, she noted that he was not at the police station at the time. She added that for a time, they did not know where he was, and did not have a way of contacting him. She agreed, however, that Sgt. Keddy had reached him the day before. Sgt. Robinson said police attempted, without success, to reach the owner of 1210 Henry Street.

[30] Sgt. Robinson added that a "BOLO" (be on the look out) was put out for Mr. Sandeson. The call to do the exigent search was ultimately made between 5:00 and 6:00 p.m.

[31] Sgt. Lawrence Derrick Boyd was in the Major Crimes (homicide) unit in August 2015. On August 17th, RCMP S/Sgt. Fred Priestly of the integrated RCMP/HRP unit called Sgt. Boyd regarding a missing person. They met shortly thereafter and Sgt. Boyd was briefed on the Taylor Samson missing person file. Mr. Samson had not been heard from since he left his residence at 10:30 p.m. on the previous Saturday. Bank records and phone checks revealed no activity since his disappearance. He had not been admitted to any area hospitals.

[32] Given this information, Sgt. Boyd prevailed upon S/Sgt. Priestly to initiate an investigative Triangle. Sgt. Boyd was the team leader and he contacted D/Cst. Roger Sayer to serve as file coordinator and Sgt. Kim Robinson as lead investigator. All

three met with S/Sgt. Priestly for a briefing in the HRP headquarters project room on August 17th.

[33] Various tasks were assigned and at around midnight on the 17th, officers Wood and Clyke reported that Mr. Samson's last phone contact was with a staff member at a Lower Sackville small options home. Mr. Samson's girlfriend was interviewed on the 17th and she reported that Mr. Samson had left on foot – without his keys and wallet – with a "large duffel bag indicating that he'd he back in ten minutes."

[34] The small options home staff member was determined to be William Sandeson. At around noon on August 18th, Sgt. Boyd received a report that Mr. Sandeson had called into HRP's main reception. Sgt. Boyd directed Sgt. Charla Keddy to communicate with Mr. Sandeson, as he had been the last person in contact with Mr. Samson. Mr. Sandeson was interviewed at the police station on August 18th and Sgt. Boyd observed the interview.

[35] During the interview, when Mr. Sandeson was having difficulty obtaining an internet signal, Sgt. Boyd stepped out of the monitoring room and met with Mr. Sandeson and Sgt. Keddy to help him get a signal so that he could access his texts. He interacted with Mr. Sandeson for about ten minutes and described him as "intelligent, easy to talk to, a normal person." Mr. Sandeson declined Sgt. Boyd's request to take his phone, but permitted him to have an officer (D/Cst. Marshall Hewett) photograph his texts. Mr. Sandeson left the police station at around 3:00 p.m.

[36] Sgt. Boyd then reviewed the text messages and, contrary to what Mr. Sandeson had told Sgt. Keddy, it appeared to Sgt. Boyd that Mr. Sandeson and Mr. Samson had met. On cross-examination, he acknowledged that he did not read all of the texts and that D/Cst. Sayer "called me over and pointed the ones out."

[37] Sgt. Boyd said D/Cst. Hewitt prepared a booklet of the text photographs and that D/Cst. Sayer reviewed them and, "he called me over …I became very concerned." Sgt. Boyd felt that the texts were about a large drug transaction. With the aid of exhibit VD3-13 (the text photographs) he demonstrated that the reference to "20" he took to mean 20 pounds of marijuana, which had a street value at that time of $90,000.00. Sgt. Boyd said the Triangle's earlier information was that the transaction was only four pounds. According to Sgt. Boyd this was "significantly large, the chance of a drug rip increased …a robbery …we all felt a large drug deal was going down this night, Saturday …I believe Taylor met with Will and went in

the door of 1210 Henry." He added that the texts demonstrated this, and that Mr. Samson "could have easily walked there, which is what he did."

[38] Sgt. Boyd decided to initiate surveillance of Mr. Sandeson, "to determine where he was heading, if he was trying to get rid of evidence." He noted that at one point they "lost Mr. Sandeson and he was picked back up in Dartmouth." On cross-examination, he acknowledged being kept up to date on the surveillance and that there was no evidence that anyone else was involved in Mr. Samson's disappearance. Sgt. Boyd responded that Mr. Sandeson "could be putting on an act" by attending to errands.

[39] Sgt. Boyd noted that Mr. Samson was on medication for liver disease. He learned this from D/Cst. Lake who contacted a pharmacist, Kim Hirtle. It was Sgt Boyd's understanding from speaking to D/Cst. Lake on August 17th, that "if he didn't take this liver medication, after a few days he would become very ill." He also reviewed the monitor notes of Linda Boutilier's August 17th statement provided to Sgt. Fox and believed that "after four or five days without the medication that he could become very ill." He said he did not have the time to review Ms. Boutilier's other statement.

[40] Sgt. Boyd added that he did not have the time to review all of Ms. Boutilier's statements in light of the text messages. He said, "We had to act now, save Taylor now." He added that he was in the monitor room when MacKenzie Ruthven gave one of her statements and that she also mentioned the liver condition.

[41] On cross-examination, Sgt. Boyd was challenged on his evidence that he did not have time to review Ms. Boutilier's second statement. He felt this statement may have been provided "shortly before entry" on the 18th; however, it was pointed out that the statement was on the 17th. Sgt. Boyd replied, "There's other things going on, other things in the investigation." When pressed about the other information suggesting that Mr. Samson's (unmedicated) liver condition was not so serious, Sgt. Boyd conceded that he had not been made aware of that information.

[42] Sgt. Boyd could not recall why he had not read Ms. Ruthven's second statement. He conceded that at the time he did not know that the pharmacist was unaware of Mr. Samson's specific condition, the details of his prescription, or the number of pills that were gone from the bottle. He also acknowledged that he was not aware of information provided by Felicia Butler (a colleague of Mr. Sandeson's). He clarified that he knew Mr. Sandeson had a girlfriend and roommate; however, he was told that the roommate rarely stayed at the residence.

[43] Sgt. Boyd discussed the situation with D/Cst. Sayer and Sgt. Robinson and, "because we all believed Taylor Samson was in trouble, kidnapped, held against his will, potentially being tortured", that they were "all in agreement on the evening of August 18th that we should do an exigent search." Accordingly, he asked S/Sgt. Greg Mason to help facilitate the search, as he wanted a uniformed police presence. On cross-examination, he explained that S/Sgt. Mason was in charge of patrol officers.

[44] Sgt. Boyd did not know the layout of the apartment in advance of the search. He did not instruct the officers on how to carry out the search to look for the 6′ 5″, 250 pound, "very large person who would be easy to locate if in there." He elaborated that this was "potentially a drug rip and William Sandeson had either incapacitated Taylor Samson or had him tied to a wooden chair with bleeding …wounds, he was in need of help. His liver condition and three days without medication was also concerning." He noted that it took "about a half hour to get organized" before the apartment was entered.

[45] Asked why he did not proceed with a warrant, Sgt. Boyd said, given his belief that Mr. Samson needed immediate help, they could not afford to wait "more than five hours" for a warrant. He added, "I believed he was incapacitated or tied up or in trouble, all factors in play, the liver condition was part of it and there's a drug rip and well being …" He felt Mr. Samson was being held to obtain information about where he kept his drugs and money.

[46] Defence counsel asked how he came to the image of Mr. Samson tied up in a wooden chair and bleeding. He agreed that there was no evidence of a struggle. He acknowledged that Mr. Samson was much larger than Mr. Sandeson.

[47] Pressed on why he thought Mr. Samson's condition worsened because of bleeding, he said, "I didn't have any evidence but it seems reasonable if he's not in perfect health to believe not having medication a factor." He acknowledged that there was no evidence of Mr. Samson being tortured but said, in his experience, drugs rips where people are trying to determine where money and drugs are kept involve that.

[48] When the officers entered apartment 2, Sgt. Boyd "was on pins and needles" monitoring on the radio. He was advised that Mr. Samson was not present. He heard from D/Cst. Underwood or D/Cst. Sheppard that the officers disconnected the DVR so that it could not be remotely erased. He added that if he had been asked, he would have told them to do this, "because I believe you should preserve evidence, so it would not be remotely deleted." On cross-examination, he said he did not believe

that he ordered the DVR to be unplugged. Although he was not aware of a case involving a DVR being erased remotely, he held this concern because he knew that cell phones and other technology could be deleted this way. Sgt. Boyd wanted the scene secured so that a search warrant could be prepared to seize property.

[49] Sgt. Boyd confirmed on cross-examination that entry was made in an effort to save Mr. Samson, and not for the preservation of evidence. Having said this, he added, "When we got in, I asked officers to secure the scene which preserves evidence." He noted that it was not his decision to have two officers stay inside and that he only learned of this "at the last trial." He also agreed that he did not call for extra officers to secure the scene.

[50] On cross-examination, Sgt. Boyd agreed that on many occasions when they are together, Triangle members are briefed about developments. If this does not occur, every effort is made to advise the team. Sgt. Boyd was unaware of tips that came in on August 17th that Mr. Samson had been seen near his apartment on the 16th at around midnight. Nor did he know of Ms. Boutilier's comments to Sgt. Fox that her son could fight and generally handle himself. As well, he did not know that she said he only might end up in hospital if he had not taken his medication for four or five days.

[51] Defence counsel asked Sgt. Boyd why the police did not call Mr. Sandeson and ask for permission to enter his apartment. He reiterated that the texts made Mr. Sandeson a suspect and "he's not at home and I wouldn't generally ask a suspect." He noted the Triangle's belief that "this was the actual big drug deal." When pressed as to why they did not call Mr. Sandeson on his cell, he said he did not recall why not. On re-direct he added, "We don't normally call a suspect and ask to go in their residence, the evidence might be deemed inadmissible depending what happens. I prefer to get a warrant in most circumstances."

[52] D/Cst. Roger Sayer, file coordinator for the Triangle, traced the history of the Taylor Samson missing person investigation. He noted that by the time of the exigent search decision, the Triangle had "several sources of information." This included the information obtained "in a task written by D/Cst. Jennifer Lake." He noted that pharmacist Kim Hirtle advised that if Mr. Samson had a liver condition and was not on his prescribed medication, that his "liver couldn't clear toxins." He also read monitor notes of Linda Boutilier's first statement where she said her son took the medication for his liver and had been hospitalized in relation to this condition when he was a teenager. From the notes of the first statement, he also knew that after four

to five days without the medication, "he would start to become ill." He recalled that Ms. Boutilier was of the opinion that Mr. Samson "did not always disclose his health information to his girlfriend."

[53] Based on his review of notes from Ms. Boutilier's second statement, he knew she changed four or five days to five or six days and that it would be one to two weeks without medication before Taylor got "very ill." D/Cst. Sayer could not be sure as to how quickly Mr. Samson's condition would deteriorate.

[54] From MacKenzie Ruthven's statement (monitor notes) D/Cst. Sayer learned that Mr. Samson needed liver medication, but that he did not always take it. She was of the opinion that it would be "months before he'd be really ill." He was aware of her opinion before the exigent search.

[55] As for the weight D/Cst. Sayer accorded to these somewhat conflicting opinions, stating, "I gave weight in different levels. Ms. Hirtle was a pharmacist and had medical knowledge, supported by Ms. Boutilier's statements. Ms. Ruthven had only been dating Taylor for six months, she was trying to be helpful but wouldn't have the same knowledge of his history." He added that he put credence in Ms. Boutilier's comments that Taylor did not share his complete medical situation with his girlfriend.

[56] On cross-examination, he elaborated that he thought his birth mother would know more about his medical condition than his girlfriend, from whom he kept his medical issues. He acknowledged that the Triangle afforded different weight to the various sources as to Mr. Samson's medical condition by the Triangle. He explained that Ms. Boutilier's thoughts about why Taylor would not have disclosed his complete medical situation "rings very true" with him.

[57] D/Cst. Sayer also learned that Mr. Samson was involved in the drug trade. This information came from the texts between Mr. Sandeson and Mr. Samson, along with the statements of Ms. Boutilier, Ms. Ruthven, and a friend. Although Mr. Sandeson told Sgt. Keddy that he and Mr. Samson were involved in transacting small amounts, the texts revealed "much larger drug involvement." He elaborated that the amount of marijuana "was at least 20 pounds, 30 to 40 possibly." D/Cst. Sayer added that there were texts demonstrating that Mr. Sandeson and Mr. Samson were about to meet at 1210 Henry at 10:22 p.m. on August 15, 2015, which aligned with the timeframe Ms. Ruthven provided as to when she last saw her boyfriend. He noted that Mr. Samson's 6093 South Street address was perhaps 100 to 200 metres from 1210 Henry, which was "fairly close." With all this in mind, D/Cst. Sayer directed

the surveillance unit to "keep eyes on William Sandeson", and he was ultimately arrested in the early evening on August 18, 2015.

[58] According to D/Cst. Sayer, based on all of the information, the Triangle was of the view that Mr. Samson had been involved in "a drug transaction gone wrong, a drug rip with violence which was a cause for concern for Mr. Samson's health and well being." He said the legal options came down to a search warrant or exigent search, and that the latter was chosen for "a combination of health concerns and drug rip." He noted that a warrant would take considerable time and that the one police ultimately obtained took ten hours, which would have been "too late if Mr. Samson was in bad health."

[59] D/Cst. Sayer stated that the hope was to find Mr. Samson, and that "everything moved very fast" in terms of the August 18th developments. He said there were many different tasks taking place, and while Mr. Sandeson was a suspect, the Triangle did not assume that he was the only one involved in Mr. Samson's disappearance. Again, he referred to the texts and references to a "safe house", and the possibility of others being involved.

[60] D/Cst. Sayer said the Triangle discussed Mr. Samson's health situation "at length, for me the main concern and other things that would compound, the drug rip and what goes with it." He said the police had to act with speed, and the "number one priority" was "to preserve the safety of the public."

[61] D/Cst. Sayer elaborated that the drug rip notion came from his belief that "a drug transaction was going to take place, drugs for money …one or a third party steals drugs, money or both and there's violence." He cited examples of files that he worked on where this kind of violence occurred.

[62] On cross-examination, when challenged about the drug rip, D/Cst. Sayer replied, "I felt we had evidence he left for a drug transaction and neither him nor drugs had been seen since." He elaborated about his two examples of previous cases, adding that he was aware of "several" drug rips involving violence.

[63] D/Cst. Sayer said he was not involved in planning the exigent search. He was informed of the results, including the unplugging of the DVR, and noted that he agreed with the decision.

[64] On cross-examination, D/Cst. Sayer recalled "several tips coming in" in the wake of Taylor Samson's disappearance, and that one may well have been that he

had been seen near his residence around midnight on August 16th. Citing time constraints, he agreed that it was not followed up upon.

[65] Defence counsel pressed D/Cst. Sayer about the fact that Mr. Samson's bank accounts were not accessed, making a kidnapping unlikely. D/Cst. Sayer took issue with this suggestion, pointing out that in his experience, drug dealers work in cash and not bank accounts. He agreed there were no ransom requests or reports of anyone being forcibly taken away. He was not prepared to concede that the location of the apartment was a relatively busy area in mid-August. He agreed that there were no reports from Henry Street neighbours about noise and the like.

[66] D/Cst. Sayer acknowledged that Ms. Boutilier said Mr. Samson could fight and generally look after himself physically. He also conceded that Mr. Samson was a relatively bigger man than Mr. Sandeson, but added that zip ties and duct tape could have been used.

[67] Defence counsel challenged D/Cst. Sayer regarding his view of Mr. Samson's health situation. He agreed that he did not have all the information from the statements; however, even with all that information, he would not have changed his opinion. He noted that nobody had seen Mr. Samson take his medication in the lead up to his disappearance. He also maintained his view that "we can't assume his medical condition wouldn't have worsened by violence." It was then put to D/Cst. Sayer that "we don't know violence goes hand in hand with drug rips." D/Cst. Sayer disagreed.

[68] D/Cst. Sayer was repeatedly asked why the Triangle did not reach out to a physician or "Telehealth Ontario" for more information on Mr. Samson's medical situation. D/Cst. Sayer noted that "privacy issues" would prevent police from readily obtaining this information. He maintained that the police had reliable information from Taylor's mother and a "medical professional", pharmacist Kim Hirtle.

[69] D/Cst. Sayer was challenged regarding the pill count and prescription date; however, he noted that Ms. Hirtle told D/Cst. Lake that not all the pharmacies in the province were covered in the database she reviewed.

[70] D/Cst. Sayer conceded on cross-examination that he was not aware prior to the search that Mr. Sandeson had a roommate.

[71] D/Cst. Sayer was pressed as to why police did not call Mr. Sandeson to ask him if they could enter his apartment. He responded that if Mr. Sandeson had been

home, he would have been asked first. He added, however, "I had no reason to believe he'd be forthcoming because he already misled us."

[72] D/Cst. Sayer agreed that they lost track of Mr. Sandeson "for a fair chunk of time" during surveillance. He said one of the rationales for the surveillance was that Mr. Sandeson "might have led us to where [Mr. Samson] was, if he wasn't at 1210." He added that he believed Mr. Samson was at the apartment.

THE SEARCH AND CONTAINMENT OF MR. SANDESON'S APARTMENT

[73] On August 18, 2015, at approximately 6:00 p.m., D/Cst. Jason Shannon received a call from Sgt. Kevin Smith to go to 1210 Henry Street to meet with D/Cst. Underwood. Both dressed in plain clothes, they met outside the residence at 6:15 p.m. They waited a short time for marked units to arrive. D/Cst. Underwood informed D/Cst. Shannon that they would be going into apartment 2 to search for Taylor Samson, who "suffered from a liver disorder and required his daily medication." Uniformed officer Alicia Joseph and two other uniformed officers soon arrived and they were all briefed by D/Cst. Underwood. Mr. Samson was described as "a big guy with dark hair and that he was white."

[74] D/Cst. Shannon went up the stairs and knocked on the door of apartment 2, announcing that the police were there. He heard loud music coming from the neighbouring apartment. A young man emerged from the unit, apartment 1, and he was told to go back inside. After several knocks and no response, D/Cst. Shannon kicked the door open.

[75] On cross-examination, D/Cst. Shannon said he did not hear any noises from inside while he was outside of the apartment. When the neighbour emerged, he did not tell police that he had observed anything unusual.

[76] With the aid of photographs of the apartment (VD3-14 and VD3-15) and a diagram of the layout (VD3-16), D/Cst. Shannon described the exigent search carried out by the five officers. Among other things, he noticed several plants, a missing shower curtain, a Smith & Wesson gun box, DVR wires, a DVR and a camera, a large plastic cooler, and a safe. Shortly after the initial search, he went back and disconnected the DVR, "so it couldn't be accessed remotely." He clarified that he had not left the scene when he went back in to unplug the DVR wires. He informed D/Cst. Sheppard that he disconnected the DVR while in the hallway outside of the apartment. He also advised him what he had observed inside the apartment. On cross-examination, he said he did not touch the safe.

[77] D/Cst. Shannon estimated that he was at the scene for a total of 20 minutes and spent seven to eight minutes inside the apartment.

[78] On cross-examination, D/Cst. Shannon confirmed that he moved a ceiling tile near the camera in the hallway outside of the apartment. He was uncertain as to when he did this. Once he completed the apartment search, he was satisfied that Mr. Samson was not in the apartment. He left before the other officers and could not be certain what they were doing inside the apartment.

[79] D/Cst. Shannon agreed that he did not believe Mr. Samson was up in the ceiling and that he did not have a warrant to search other parts of the building. It was put to him that he was "conducting a different investigation to see what was up with the camera and that he was not aware of a single case where DVR recordings were erased remotely", and he agreed with the latter.

[80] Defence counsel asked why so many searchers were required for this relatively small apartment. D/Cst. Shannon said it was "normal practice" for secondary searching; i.e., another officer following behind. He added that some of the officers initially went to the north side and the others to the south side of the unit. He noted that they did not know the apartment layout prior to entering, and that Mr. Samson "could be in a lot of places." He said he kicked the gun box, and that it would have been neglectful not to because of "officer safety" and the risk that the gun could fire by itself. He also said that the presence of a gun "could be potential of another offence."

[81] On August 18, 2015, D/Cst. Josh Underwood was tasked by the Major Crime unit with assisting in the Taylor Samson missing person investigation. At 5:25 p.m., he was working with Cst. Ron Hines when Sgt. Boyd called and requested that they attend at 1210 Henry Street. D/Cst. Underwood learned that "Mr. Samson's last known place was inside unit 2." He clarified on cross-examination that he believed Mr. Samson to "have last been known to be in apartment 2."

[82] Upon arriving, D/Cst. Underwood and Cst. Hines waited for further instructions. At 6:15 p.m., D/Cst. Sheppard called advising that "Major Crimes had formed grounds to believe exigent circumstances existed to enter out of safety and concern for Taylor Samson." By this time, D/Cst. Shannon and D/Cst. Craig Upshaw were present. Uniformed officers Alicia Joseph and Corey Brewer arrived soon thereafter.

[83] D/Cst. Underwood briefed the constables; he knew Taylor Samson was a male and also had his age. He was unsure if he relayed a physical description. D/Cst. Underwood generally described the search. Initially, he thought Csts. Joseph and Brewer searched the basement of the building. He also recalled knocking on the door of unit 1 and that he or D/Cst. Shannon spoke with the male who answered. The man agreed that they could come in to look for Ms. Samson, so D/Cst. Underwood and D/Cst. Shannon searched apartment 1 for "three to five minutes."

[84] D/Cst. Underwood said D/Cst. Shannon next knocked on unit 2 and announced "police." When there was no response, D/Cst. Shannon kicked the door open. This was around 6:30 p.m.

[85] On cross-examination, D/Cst. Underwood said he learned of Taylor Samson's medical condition the day before, from Sgt. Boyd. He was not briefed on how long Mr. Samson could safely go without medication.

[86] There was no discussion on how the search would be carried out. D/Cst. Underwood recalled looking in the kitchen, where he opened the cabinet doors. He also looked in the left side bedroom. He noticed a safe in this bedroom. Once the search was completed the officers "re-convened and somebody brought to everybody's attention a video camera mounted to the wall outside of the apartment." D/Cst. Underwood saw the hallway camera and could see that the wires led to a DVR box in the bedroom he had searched. On cross-examination, he agreed that he could not see wires going from the camera through the kitchen area prior to entering the bedroom.

[87] D/Cst. Underwood was shown exhibit VD3-15 and reviewed photos 22 – 26 showing the hallway camera, wires hanging down, and at least one ceiling tile moved out of position above the camera. He did not think the wires were hanging down or the tile(s) were out of place when he attended.

[88] D/Cst. Underwood agreed on cross-examination that the search revealed no signs of kidnapping or hostage taking. He did not observe anything related to drug trafficking.

[89] After locating the DVR, all members left the apartment. D/Cst. Underwood said he called D/Cst. Sheppard "within seconds" and told him that they had not found Taylor Samson. He updated D/Cst. Sheppard regarding what was observed, including the camera and DVR. D/Cst. Sheppard told him to "stand by", and within 20 minutes, "he called back and made clear concerns, I assume the Triangle's, that

the DVR box could be accessed remotely and footage could be erased, so we were told to disconnect so that potential evidence couldn't be lost." D/Cst. Underwood relayed the concerns to all of the officers. He went back inside the apartment and D/Cst. Shannon disconnected the DVR. They did not review the DVR contents.

[90] D/Cst. Underwood was not in uniform during the search but wore an external body armour police vest and had his badge displayed. He was not wearing gloves. While back outside (after the DVR was disconnected) he again spoke with D/Cst. Sheppard and was told that a search warrant was being prepared such that "apartment 2 would have to be held, the continuity of the apartment, would have to be maintained" and that officers would be sent.

[91] Officers McGrath and Starrett arrived at approximately 8:00 p.m. They were positioned inside at D/Cst. Underwood's request because "there were a number of windows and doors" that were potentially accessible. D/Cst. Underwood elaborated that the deck off of the other door in the kitchen would be "fairly easy to access." While "ideally, police officers would be posted at each entrance, we didn't have the luxury of those resources, only two units were sent to us." D/Cst. Underwood called D/Cst. Sheppard regarding his manpower concerns, but D/Cst. Sheppard did not answer. D/Cst Underwood left a message. He assumed D/Cst. Sheppard would receive his message promptly. When D/Cst. Underwood did not hear back, he assumed that D/Cst. Sheppard was "preoccupied with something."

[92] D/Cst. Underwood took Csts. McGrath and Starrett up to the apartment and, knowing that it would be "12 – 13 hours before the search warrant would be sworn", he instructed them to sit at the kitchen table. He did not say anything about using the bathroom; he said it was "not something I would normally do, I assume one could leave for the washroom or to eat etc. and leaving one to maintain the apartment." D/Cst. Underwood directed the officers "not to touch anything unnecessarily." He agreed that there were no stairs to the balcony, but that a person could access it by standing on a garbage can or green bin.

[93] RCMP Cst. Ron Hines partnered with Sgt. Charla Keddy and later D/Cst. Underwood on August 18, 2015. While with D/Cst. Underwood, they were assigned by Sgt. Boyd at 5:55 p.m. to attend 1210 Henry Street, apartment 2. They parked and watched the building for about a half hour. D/Cst. Shannon arrived and, shortly thereafter, Sgt. Boyd called D/Cst. Underwood to instruct the officers to enter apartment 2. D/Cst. Underwood relayed that this was "the last known place Taylor Samson had been seen." Cst. Hines recalled Csts. Joseph and Brewer as the

uniformed officers who were part of the search. He knew D/Cst. Upshaw and said that he was not present.

[94] Prior to the search, Cst. Hines recalled seeing a picture of Taylor Samson and had his birthdate, so he knew he was 23. Before entering apartment 2, Cst. Hines noticed a camera in the hallway outside of the unit. After "someone" announced police and nobody answered, the officers entered. Cst. Hines checked the south or left hand side bedroom, as well as other areas of the apartment. He looked in the bathroom and saw "nothing noteworthy."

[95] Cst. Alicia Joseph was uniformed and on patrol with Cst. Corey Brewer in Halifax on August 18, 2015. Prior to her formal shift starting, she spoke with MacKenzie Ruthven at about 5:20 p.m. Cst. Joseph was asked to pick Ms. Ruthven up at 1210 Henry Street and drive her to police headquarters. Once at the station, Cst. Joseph placed her in one of the interview rooms. Ms. Ruthven told her that she had not provided complete information to the police earlier that day. The "very upset" woman spoke of Taylor in "the present tense, he was a Dalhousie physics student and dealt drugs on the side." She relayed concerns about her missing boyfriend and Cst. Joseph passed this information on to Sgt. Tanya Chambers.

[96] At 6:12 p.m. on August 18th, Cst. Joseph was requested to attend at 1210 Henry Street, apartment 2 and to go in under exigent circumstances. S/Sgt. Greg Mason advised her to attend to search for a "missing party." She drove there with her partner and they were briefed by D/Cst. Underwood. D/Cst. Shannon and a male RCMP officer were also present. After a brief discussion – "it was important to find him as he required medication and might be in medical distress" – the six officers proceeded to the doorway. Cst. Joseph recalled that a description was provided for Taylor Samson – "tall, physically fit with dark hair."

[97] On cross-examination, Cst. Joseph said she learned that apartment 2 was Mr. Samson's "last known place and he had a medical condition." She agreed that the apartment was "oddly shaped, not huge."

[98] Cst. Joseph reviewed the search with the assistance of the photographs in a manner largely consistent with D/Cst. Shannon. She noted that the bathroom was "dirty, but that the tub was really clean …there was no shower curtain." She explained the thoroughness of her searching, "so I could say with 100 percent certainty I searched all areas."

[99] Cst. Joseph estimated that the search lasted 12 to 15 minutes. When she left, Cst. Starrett and Cst. McGrath stayed on scene to "hold the residence." At 9:00 p.m., Cst. Starrett called her, as he observed MacKenzie Ruthven outside of the apartment "hugging a male who meets the description of Taylor." She returned to the address and saw Ms. Ruthven and a number of young adults, including a young man who resembled Mr. Samson.

[100] At 3:30 a.m., Cst. Joseph and Cst. Brewer were called to relieve Csts. McGrath and Starrett while they went on break. Upon arriving, she observed the two officers sitting in chairs at the kitchen table. She donned her blue gloves and stood with her back to the kitchen sink for 30 to 35 minutes while Cst. Brewer sat in a chair facing the bathroom. She then sat in a kitchen chair. The uniformed officers did not search the apartment. She recalled hearing a noise at some point and briefly going into the back bedroom. Csts. McGrath and Starrett returned and officers Joseph and Brewer departed.

[101] Cst. Corey Brewer was requested to attend 1210 Henry Street on August 18th and arrived at 6:26 p.m. He recalled meeting D/Csts. Underwood and Shannon. For perhaps five or six minutes, he and other officers were briefed by the detectives about an exigent search of apartment 2 for Taylor Samson. Cst. Brewer described details of the search, including that he pulled a cooler out from under a bed and looked inside. On cross-examination, he said that by 6:55 p.m., they left the scene. He observed the DVR and thought that it was connected to the hallway camera.

[102] Cst. Brewer did not know the apartment layout prior to going in. There was not a discussion in advance regarding how the search would proceed. He estimated that he was in the apartment for ten to 15 minutes total.

[103] Cst. Brewer described his search, which included opening the sliding doors into the main hall closet. There were a large number of mason jars with what he described as "bird seed with fungus growing inside of them."

[104] At 3:24 a.m., Cst. Brewer returned with Cst. Joseph to relieve Csts. McGrath and Starrett, who were seated in the kitchen. While in uniform and wearing leather gloves, he sat at a kitchen chair facing the south bedroom, and recalled Cst. Joseph in the other chair facing in the opposite direction. Nobody arrived at the apartment while he and Cst. Joseph were there for about an hour and a half.

[105] At one point Cst. Brewer saw a cat outside on the roof and got up to look, then also observed a barbeque and chair on the flat roof. The door to this area remained

closed at all times. He noted that Cst. Joseph did not leave the kitchen area, and said neither touched anything in the kitchen.

[106] On August 18, 2015, Cst. Chris Starrett was instructed by S/Sgt. Mason to attend at 1210 Henry Street. During their brief discussion, he was told there was to be a search conducted for a missing person, Taylor Sampson, who was described as a "tall, Caucasian male." He drove there alone where he met with D/Csts. Shannon and Underwood and Csts. Joseph and Brewer. He also recalled another plainclothes officer in attendance.

[107] While going up the stairs to the apartment, Cst. Starrett noticed a camera "coming down from a drop ceiling and there were a couple of tiles removed." Cst. Starrett followed the other officers into the apartment and began looking for Mr. Samson. Among other places, he looked under the bathroom sink inside the vanity, "to make sure nobody was curled up under there." On cross-examination he added, "It was best to check just to be sure, peace of mind." He noticed that there was neither a shower curtain nor bath mat in the bathroom. He looked out the window and saw a barbeque and potting soil. In all, Cst. Starrett thought the search lasted 15 to 20 minutes. He agreed on cross-examination that there were no signs of foul play or that Mr. Samson had been there.

[108] Cst. Starrett noted that the officers "congregated in the kitchen area until we were instructed to leave at 6:50 p.m." At 8:00 p.m., he was called back to "secure the scene until a warrant was written." He went inside the apartment with his partner Cst. Justin McGrath; this was "recommended because of the windows and doors that could be accessed." He noted that there were "numerous exit and entry points …the best way would be to stay inside because if you were outside there wouldn't be a view of these other windows and doors." On cross-examination, when asked about the decision to wait inside, he said, "I came to that conclusion myself." He did not know if more officers had been requested to watch the outside areas or whether there was a "manpower issue that night."

[109] The officers decided that it would be "best to wait in the kitchen area as this was closest to the door." They closed the door and sat on the kitchen chairs, facing different directions. Both officers were wearing police uniforms; Cst. Starrett was not wearing gloves. They remained in place there from 8:00 p.m. until they were relieved at 3:24 a.m.

[110] As they were there a long period of time, both officers "had to urinate" while at the apartment. They had no instructions regarding this situation, and both used the toilet. Cst. Starrett had hand sanitizer, so did not use the sink.

[111] While on break, the officers returned to the police station and they were replaced by Csts. Joseph and Brewer. At 4:48 a.m., Csts. Starrett and McGrath returned to the apartment and stayed in the kitchen. At 5:57 a.m., Sgt. Sandy Johnson arrived and instructed Csts. Starrett and McGrath to leave.

[112] At around 9:00 p.m., Cst. Starrett heard voices outside, so he left the kitchen and went to the north bedroom where he looked out the window. He witnessed MacKenzie Ruthven talking with four or five people. A male had his arm around her. Cst. Starrett contacted Csts. Joseph and Brewer to ask them to attend in the alley area to determine if this male was the missing person. Cst. Starrett estimated that he was in the north bedroom for "a few minutes", and was unsure if Cst. McGrath entered the bedroom.

[113] At 11:10 p.m., Cst. Starrett heard "three loud bangs" outside the building. He went back to the north bedroom and saw Linda Boutilier talking to Csts. Marinelli and Baird. He looked in the former laundromat next door where he observed Cst. Brent Bates with his dog (canine unit). He recalled that they searched in the basement area but found nothing. While Cst. Starrett searched, Cst. McGrath remained in the apartment. When he returned, Cst. McGrath was still seated on the kitchen chair.

[114] At 1:15 a.m., Pookiel McCabe opened the unlocked apartment door. He told the officers that, "at 11:00 p.m., a female lawyer contacted him to get bail money out of the apartment." He asked the officers if they knew where the money was. Cst. Starrett noted that Mr. McCabe later left his apartment at 1:44 a.m. carrying a backpack.

[115] Cst. Justin McGrath had been an HRP officer for a few months when he, along with his partner Cst. Starrett, were requested to attend at 1210 Henry Street, apartment 2, at approximately 8:00 p.m. on August 18, 2015. They were asked to "maintain the continuity of the scene." Upon entering through the front door, "we stayed in the kitchen for most of our time." He added that for the majority of the time, they were seated on the kitchen chairs facing opposite directions. Cst. McGrath wore his patrol uniform; he did not wear gloves. They were on site until approximately 6:00 a.m. the next day.

[116] Cst. McGrath said they two were relieved at 3:10 a.m. until 4:48 a.m. by Csts. Joseph and Brewer. During this time at apartment 2, they did not search the premises. He went to the washroom "several times, less than five", and washed his hands in the bathroom sink. He recalled Cst. Starrett also used the washroom. At around 9:00 p.m., the officers heard a conversation going on in the outside alley so Cst. Starrett went in the north bedroom to be closer. During this time, Cst. McGrath got up from the kitchen and stood in the bedroom doorway.

[117] At approximately 1:00 a.m., Pookiel McCabe came from across the hall to the doorway of apartment 2. Cst. McGrath thought Mr. McCabe seemed surprised to see the officers there. Mr. McCabe stayed in the threshold, explaining that he was "there to get bail money." Cst. McGrath said at some point later he noticed Mr. McCabe leaving his apartment.

[118] At 5:27 a.m., D/Cst. Sandy Johnson arrived "with the completed search warrant and began processing the scene." Csts. McGrath and Starrett left the apartment and stayed outside on the street until Cst. Warren Steele relieved them at 6:00 a.m.

[119] Cst. McGrath knew there was an ongoing missing person investigation. He knew there were no signs of this person or "foul play" at the apartment.

PREPARATION OF THE SEARCH WARRANT

[120] D/Cst. Justin Sheppard was called into work on August 17, 2015, and assigned to be the affiant on the Taylor Samson missing person investigation. He reviewed the situation to date in preparation for writing production orders, a search warrant, and informations to obtain (ITO). He recalled meeting with the Triangle in the project room and being "directed to write" in the late afternoon. Sgt. Boyd also tasked him with calling D/Cst. Josh Underwood, and they spoke at around 6:00 p.m.

[121] On cross-examination, D/Cst. Sheppard confirmed that Sgt. Boyd told him to tell D/Cst. Underwood to enter the apartment. In addition to a "liver condition concern", D/Cst. Sheppard was told that Mr. Sampson "might have been involved in drugs, a drug deal."

[122] D/Cst. Sheppard was told about "concerns for Taylor Samson's well being." At 6:00 p.m., he directed D/Cst. Underwood to go into 1210 Henry Street, apartment 2, to check for him. He spoke with D/Cst. Underwood later on the same evening and was told that Mr. Samson was not present, but that he had observed:

- video surveillance and a DVR;
- a hand gun case; and,
- a safe.

[123] D/Cst. Sheppard placed this information in an ITO and, on the direction of Sgt. Boyd, told D/Cst. Underwood to unplug the DVR. On cross-examination, he said that all officers had cleared the apartment when D/Cst. Underwood was told to re-enter and disconnect the DVR.

[124] D/Cst. Sheppard estimated that he took six to seven hours to draft the ITO. He ultimately received approval at 5:40 a.m. on August 19, 2015.

POSITIONS OF THE PARTIES

Crown

[125] The Crown argues that the exigent circumstances search was warranted because the police reasonably considered:

> a. the deceptive police interview that Mr. Sandeson gave, which included the significant minimization of the drug transaction and the lie related to Mr. Samson in fact attending Mr. Sandeson's home;
>
> b. the concerns in relation to the liver condition that required regular medication (gleaned from various sources);
>
> c. that there was a drug deal that could have gone "sideways" or "bad"; and
>
> d. that the experience in obtaining a search warrant would take several hours to obtain (which, given the concerns about Mr. Samson's safety, was, in their analysis, too long to wait).

[126] The Crown points out that on August 16th, Mr. Samson had been reported missing and was last seen on the evening of August 15th. He was shown through Mr. Sandeson's texts to have last had contact with William Sandeson around the time he went missing. Further, the Crown says, the texts offer proof that Mr. Samson entered apartment 2.

[127] The Crown submits that the police were justified in believing that Mr. Samson may have been the victim of foul play. Rather than fanciful, the Crown argues that the Triangle's view that Mr. Samson could have been tied up was based on police

experience and common sense, having regard to the potential for violence associated with a drug rip.

[128] The Crown submits that reliable sources – the people closest to Mr. Samson – provided the police with information that added to the concern that Mr. Samson was in danger.

[129] The Crown acknowledges that likely five or six officers carried out the search of the relatively small apartment. This was justified, according to the Crown, because the police did not have the apartment layout in advance and they had a person who needed to be saved. The Crown acknowledges that the search took anywhere from seven to 15 or so minutes, and that this was not unreasonable given the thoroughness deployed by the officers.

[130] The Crown submits that the items noted by the officers during the search were obvious and in plain view to be seen.

[131] As for the anticipated Defence argument that the police should have called Mr. Sandeson and asked for his permission to enter, the Crown refers to the evidence of Sgt. Boyd and D/Cst. Sayer. Sgt. Boyd stated that had Mr. Sandeson been consulted as a then suspect, this would have engaged his *Charter* rights and he would have to be cautioned. As for D/Cst. Sayer, they emphasize his testimony that Mr. Sandeson had shown by his texts (in the wake of what he said to Sgt. Keddy) that he could not be relied upon.

[132] The Crown summarizes its position with the submission that the exigent circumstances search was warranted for the protection of safety and preservation of evidence. While Mr. Samson was not found, the Crown says that the police properly unplugged the DVR to prevent the possibility of someone remotely destroying possibly relevant recordings that might assist their investigation, pending police obtaining judicial authorization to further search the premises.

[133] With respect to the containment of the apartment, the Crown notes that there was no discovery of evidence, and an overall lack of obtrusiveness. They point to the multiple potential entry points and that a lack of resources prevented what would have required a large number of officers to guard from the outside.

Defence

[134] The Defence says the proposed justification for the search, even if sincerely believed, was unreasonable and fails to meet even the relatively low standard of reasonable suspicion. Mr. Sandeson submits that police were acting on a hunch – one based on pure speculation, which ran contrary to much of what they knew to be true at the time.

[135] Further, the Defence submits that police conduct during and after the search was unreasonable and exceeded the scope of what is permissible in justified warrantless searches under exigent circumstances. The search of a small apartment for the sole purpose of locating someone inside took as long as 25 minutes. Additionally, after completing the search, police re-entered the unit, unplugged the DVR connected to the surveillance camera installed outside the unit, and remained inside while a warrant was sought.

[136] The Defence submits that the searches breached Mr. Sandeson's right to be free from unreasonable search and seizure under s. 8 of the *Charter* and that, as a result, all evidence obtained during the exigent search of his apartment should be excluded pursuant to s. 24(2) of the *Charter*. Furthermore, the subsequent ITOs authorizing the searches of his apartment were predicated on information obtained directly as a result of the illegal searches. The evidence discovered during these later judicially authorized searches are "fruit of the poisonous tree" and should also be excluded pursuant to s. 24(2).

[137] The Defence says the police did not adequately assess the information that they sought out, such that they acted on only part of what they ought to have known at the time. For example, with regard to Mr. Samson's medical condition, the Defence argues that it was not nearly as dire as the Triangle concluded. Mr. Sandeson submits that officers knew through Ms. Boutilier's first statement that Mr. Samson could go four to five days without medication before he might end up in hospital. From her second statement, they learned he could go without the pills for a couple of weeks. As well, Ms. Ruthven's statements were to the effect that he would be fine without taking his medication.

[138] With respect to the notion that Mr. Samson had been kidnapped or subdued and tortured, the Defence says this is "baseless, mindboggling and concerning." Mr. Sandeson notes that there were no reports of violence or a struggle. While acknowledging that weapons may be involved in the drug trade, the Defence says there is no evidence that Mr. Sandeson and Mr. Samson even met, or, if they did, that anything untoward happened. The Defence adds that the notion that Mr. Samson

had been taken at gun point – "bleeding from every orifice, tied to a wooden chair" – is completely without foundation.

[139] The Defence is highly critical of the Triangle, particularly regarding the officers' lack of communication. For example, the Defence asks how it is possible that Sgt. Robinson was unaware of the information provided by Ms. Boutilier and Ms. Ruthven. The Defence goes on to question Sgt. Boyd's plea that he did not have time to review all of the information. As for D/Cst. Sayer, the Defence characterized his evidence as being "evasive and condescending", submitting that he "refused to address questions or resorted to talking points." Mr. Sandeson added that police could easily have reached out to a "local health agency" to obtain more information regarding Mr. Samson's condition.

[140] The Defence notes that whereas D/Cst. Sayer said the issue of Mr. Samson's health and the weight to put on the information was discussed at length by the Triangle, Sgts. Boyd and Robinson's evidence was to the contrary.

[141] Mr. Sandeson adds that officer Joseph was not advised about anything beyond concern for Mr. Samson's medical condition and that the same can be said of the warrant affiant, D/Cst. Sheppard. In the words of Ms. Craig, "It's like they were writing a screenplay in their heads." She submits that there was no evidence to support the theory that the majority of drug deals involve violence.

[142] With respect to the manner of search, the Defence notes that whereas the search took anywhere from seven to 20 minutes, it should have lasted about 90 seconds. Mr. Sandeson submits that the search "shows a pattern of disregard" because police searched for such a long time and inside small areas for a large adult male, adding that it was wrong for D/Cst. Shannon to have kicked the gun box. The Defence also questions the number of officers and why five or six were required, adding that it was "ridiculous" to have two search each room.

[143] The Defence points out that at least by D/Cst. Shannon's evidence, the officers re-entered the premises to unhook the DVR. As for the containment, the Defence emphasizes that two officers sat in the apartment for over ten hours and repeatedly used the washroom. As for the notion that there was a lack of resources, Mr. Sandeson argues that there was no evidence led to justify this excuse.

[144] In conclusion, Mr. Sandeson argues that, given the nature and extent of the information obtained by police during their initial warrantless entry into the

residence, the search of the apartment went well beyond the limited purpose of protecting the life and safety of Mr. Samson.

[145] Additionally, the Defence argues that the decision to remain in the apartment and to unplug the DVR occurred after the exigent search of the apartment was complete. The urgent circumstances supposedly justifying the entry were over. Furthermore, there was no reason the police could not have secured the residence while waiting outside. The suggestion that the DVR could be erased remotely was purely speculative – there was no basis for the officers to reasonably suspect that the evidence would be lost if it were unplugged. Having searched the unit already, officers knew it to be unoccupied.

[146] Overall, the Defence submits that the breaches in this case are serious and are temporally connected to the offences and the evidence discovered. Mr. Sandeson argues that the *Charter* breaches severely impacted his right to privacy and security and the cumulative breaches in this case ought to result in the exclusion of evidence.

GOVERNING LAW

[147] While the burden of providing a *Charter* violation is on the accused, once an accused demonstrates that the search is warrantless, the onus shifts to the Crown to prove on a balance of probabilities that each search was reasonable within the meaning of s. 8.

[148] In *R. v. Sandeson*, 2017 NSSC 197, Justice Arnold considered the exigent search at paras. 312 – 357. I have reviewed the decision (and especially the referenced paras.) discussing the search based on the evidence and arguments made before my colleague over five years ago. As emphasized by Defence counsel, Justice Arnold's findings (and ultimate decision) must be treated very cautiously. It is perhaps trite to state, but I must base my decision on the evidence led before me, along with the current state of the law. With respect to the former, I have exhaustively reviewed the evidence in the sections of this decision discussing the Triangle's rationale to go ahead with the exigent search, the search itself, and the containment of Mr. Sandeson's apartment. As for the law, many of the authorities referenced by Arnold, J. are contained in the parties' books of authorities, albeit the Crown referred to one more recent decision - *R. v. Garland*, 2019 ABCA 479.

[149] While I regard the additional authority as helpful in informing my analysis, I pause here to say that I do not consider that the law has changed since Justice Arnold rendered his decision. In the result, and based on my review of all of the law provided

by the parties, I find Arnold J.'s review of the law to be accurate, helpful, and of application here. In particular, I refer to and reproduce paras. 315 – 333:

> [315] There is no doubt that the police entry into Sandeson's apartment on August 18, 2015, constituted a warrantless search. In *R. v. Waterfield* [1963], 3 All E.R. 659 (C.C.A.), Ashworth J. stated that if police conduct constitutes a *prima facia* interference with a person's liberty or property, the court must consider two questions: first, does the conduct fall within the general scope of any duty imposed by statute or recognized at common law; and second, does the conduct, albeit within the general scope of such a duty, involve an unjustifiable use of powers associated with the duty. The police forcing their way into Sandeson's apartment constitutes a prima facie interference with his right to be free from state interference, and more particularly, from unreasonable search and seizure.
>
> [316] Section 42(2) of the *Police Act*, S.N.S. 2004, c. 31 states:
>
> > 42 (2) Subject to this Act and the regulations, or any other enactment or an order of the Minister, the authority, responsibility and duty of a member of a municipal police department includes
> >
> > (a) maintaining law and order;
> >
> > (b) the prevention of crime;
> >
> > (c) enforcing the penal provisions of the laws of the Province and any penal laws in force in the Province;
> >
> > (d) assisting victims of crime;
> >
> > (e) apprehending criminals and offenders who may lawfully be taken into custody;
> >
> > (f) laying charges and participating in prosecutions;
> >
> > (g) executing warrants that are to be executed by peace officers;
> >
> > (h) subject to an agreement respecting the policing of the municipality, enforcing municipal by-laws within the municipality; and
> >
> > (i) obeying the lawful orders of the chief officer, and the person shall discharge these responsibilities throughout the Province.
>
> [317] Section 487.11 of the *Criminal Code* states:
>
> > 487.11 A peace officer, or a public officer who has been appointed or designated to administer or enforce any federal or provincial law and whose duties include the enforcement of this or any other *Act* of Parliament, may, in the course of his or her duties, exercise any of the powers described in subsection 487(1) or 492.1(1) without a warrant if the conditions for obtaining a warrant exist but by reason of exigent circumstances it would be impracticable to obtain a warrant.

[318] Section 529.3(2) of the *Criminal Code* defines "exigent circumstances":

> (2) For the purposes of subsection (1), exigent circumstances include circumstances in which the peace officer
>
> (a) has reasonable grounds to suspect that entry into the dwelling-house is necessary to prevent imminent bodily harm or death to any person; or
>
> (b) has reasonable grounds to believe that evidence relating to the commission of an indictable offence is present in the dwelling-house and that entry into the dwelling-house is necessary to prevent the imminent loss or imminent destruction of the evidence.

[319] Section 529.3(2) of the *Criminal Code* reads quite differently than s.11(7) of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19:

> 11(7) A peace officer may exercise any of the powers described in subsection (1), (5) or (6) without a warrant if the conditions for obtaining a warrant exist but by reason of exigent circumstances it would be impracticable to obtain one.

[320] In *R. v. Pelto*, 2013 ONSC 6511, [2013] O.J. No. 4694, the court summarized the law as it relates to a warrantless search of an accused's home:

> 30 Generally, a warrantless search of a dwelling is presumptively a violation of s. 8 of the Charter, and the onus is on the party who performed the search to prove its reasonableness (*R. v. Feeney*, [1997] 2 S.C.R. 13).
>
> 31 There is an extremely high expectation of privacy in a home (*Feeney*, *supra* para. 30 at para. 43, *R. v. Tessling*, 2004 SCC 67 at para. 22).
>
> 32 Sections 529.3 and 487.11 of the *Criminal Code* provide for warrantless searches in the case of exigent circumstances.
>
> 33 The *Criminal Code* provisions noted above are not exhaustive of all circumstances in which warrantless entry of a residence may be justified. The police are under a common law duty to act to protect life and safety, and entry into a dwelling house may be justified when the totality of the circumstances is considered (*R. v. Godoy* [1999] 1 S.C.R. 311 [*Godoy*]).
>
> 34 Exigent circumstances have been recognized at common law as a basis for searching property without a warrant. The jurisprudence that addresses this issue appears to rest on two bases. The first relates to the risk of imminent loss or destruction of evidence or contraband before judicial authorization can be obtained. The second basis emerges where there is a concern for the public or police safety.
>
> 35 In Canada, a test set out by an English court in *R. v. Waterfield*, [1963] 3 All E.R. 659 (C.C.A.) has been adopted by the Supreme Court of Canada in *Godoy* as the standard for determining the common law powers

> of police with respect to the interference of an individual's liberty or freedom. The *Waterfield* test informs the court on how to evaluate the common law powers and duties of the police where there is a prima facie interference with a person's liberty or property. The courts must conduct the following two part analysis:
>
> a) does the conduct fall within the general scope of any duty imposed by statute or recognized at common law? and
>
> b) does the conduct, albeit within the general scope of such a duty, involve an unjustified use of power associated with the duty?
>
> (*Godoy, supra* para. 33 at paras. 14-16, 18).

[321] In *Paterson*, Brown J. discussed "exigent circumstances" in the context of s. 11(7) of the *CDSA*:

> 32 All that said, circumstances in which "exigent circumstances" have been recognized have borne close resemblance to the definitional categories in s. 529.3(2). This Court's jurisprudence considering s. 10 of the *Narcotic Control Act*, R.S.C. 1985, c. N-1 (which was repealed and replaced by the *CDSA*), which permitted a peace officer to search a place that was not a dwelling-house without a warrant so long as he or she believed on reasonable grounds that a narcotic offence had been committed, is instructive. That provision was held in *R. v. Grant*, [1993] 3 S.C.R. 223 "Grant 1993", to be consistent with s. 8 of the *Charter* if it were read down to permit warrantless searches only where there were exigent circumstances. Such exigent circumstances were then described to exist where there is an "imminent danger of the loss, removal, destruction or disappearance of the evidence if the search or seizure is delayed" (*Grant* 1993, at p. 243; *R. v. Feeney*, [1997] 2 S.C.R. 13, at para. 153, per L'Heureux-Dubé J., dissenting; and *R. v. Silveira*, [1995] 2 S.C.R. 297, at para. 51, per La Forest J., dissenting). Similarly, circumstances in which "immediate action is required for the safety of the police" were also found to qualify as "exigent" (*Feeney*, at para. 52; see also, in respect of searches to preserve officer safety, this Court's statement in *R. v. MacDonald*, 2014 SCC 3, [2014] 1 S.C.R. 37, at para. 32, that such searches will be responsive to "dangerous situations created by individuals, to which the police must react 'on the sudden'"). In *Feeney*, at para. 47, exigency was also said to possibly arise when police officers are in "hot pursuit" of a suspect (see also *R. v. Macooh*, [1993] 2 S.C.R. 802, at pp. 820-21).
>
> 33 The common theme emerging from these descriptions of "exigent circumstances" in s. 11(7) denotes not merely convenience, propitiousness or economy, but rather urgency, arising from circumstances calling for immediate police action to preserve evidence, officer safety or public safety. This threshold is affirmed by the French version of s. 11(7), which reads "l'urgence de la situation".

> 34 Even where exigent circumstances are present, however, they are not, on their own, sufficient to justify a warrantless search of a residence under s. 11(7). Those circumstances must render it "impracticable" to obtain a warrant. In this regard, I respectfully disagree with the Court of Appeal's understanding of s. 11(7) as contemplating that the impracticability of obtaining a warrant would itself comprise exigent circumstances. The text of s. 11(7) ("by reason of exigent circumstances it would be impracticable to obtain [a warrant]") makes clear that the impracticability of obtaining a warrant does not support a finding of exigent circumstances. It is the other way around: exigent circumstances must be shown to make it impracticable to obtain a warrant. In other words, "impracticability", howsoever understood, cannot justify a warrantless search under s. 11(7) on the basis that it constitutes an exigent circumstance. Rather, exigent circumstances must be shown to cause impracticability.
>
> 35 The appellant says that the requirement of "exigent circumstances" rendering it "impracticable" to obtain a warrant requires, in effect, that such circumstances "leav[e] the police no choice but to proceed with entering a dwelling-house". In other words, he maintains that the "impracticability" of obtaining a warrant should be understood to mean impossibility. Conversely, the Crown submits that a much lower threshold is indicated, such that obtaining a warrant is not "realistic" (whatever that may mean) or "practical".
>
> 36 While I am not persuaded that the strict condition of impossibility urged by the appellant is denoted by Parliament's chosen statutory language of impracticab[ility], neither am I satisfied by the Crown's argument equating impracticability with mere impracticality. Viewed in the context of s. 11(7), however -- including its requirement of exigent circumstances -- "impracticability" suggests on balance a more stringent standard, requiring that it be impossible in practice or unmanageable to obtain a warrant. The French version of "impracticable" in s. 11(7) -- "difficilement réalisable" -- is also consistent with a condition whose rigour falls short of impossibility but exceeds mere impracticality of obtaining a warrant. So understood, then, "impracticable" within the meaning of s. 11(7) contemplates that the exigent nature of the circumstances are such that taking time to obtain a warrant would seriously undermine the objective of police action -- whether it be preserving evidence, officer safety or public safety.

[322] Justice Brown concluded his analysis of exigent circumstances in [*sic*] by stating:

> 37 In sum, I conclude that, in order for a warrantless entry to satisfy s. 11(7), the Crown must show that the entry was compelled by urgency, calling for immediate police action to preserve evidence, officer safety or public safety. Further, this urgency must be shown to have been such that

> taking the time to obtain a warrant would pose serious risk to those imperatives.

[323] While the *Paterson* decision was made in the context of exigent circumstances as described in s. 11(7) of the *CDSA*, the words of the Supreme Court of Canada are of course helpful to this analysis relating to a *Criminal Code* search.

[324] The Crown argues that the police entered Sandeson's apartment to prevent imminent bodily harm or death to Samson, then went back into the apartment to unplug the DVR, and then stayed in the apartment until a valid search warrant was obtained to prevent the imminent loss or imminent destruction of evidence.

[325] In *R. v. Godoy*, [1999] 1 S.C.R. 311, [1998] S.C.J. No. 85, Lamer C.J. considered the doctrine of exigent circumstances in the context of a 911 call and stated:

> 11 In my view, public policy clearly requires that the police ab initio have the authority to investigate 911 calls, but whether they may enter dwelling houses in the course of such an investigation depends on the circumstances of each case.

[326] The Chief Justice went on to explain:

> 16 A 911 call is a distress call -- a cry for help. It may indeed be precipitated by criminal events, but criminal activity is not a prerequisite for assistance. The duties specifically enumerated in s. 42(1) of the *Act* may or may not be engaged. The point of the 911 emergency response system is to provide whatever assistance is required under the circumstances of the call. In the context of a disconnected 911 call, the nature of the distress is unknown. However, in my view, it is reasonable, indeed imperative, that the police assume that the caller is in some distress and requires immediate assistance. To act otherwise would seriously impair the effectiveness of the system and undermine its very purpose. The police duty to protect life is therefore engaged whenever it can be inferred that the 911 caller is or may be in some distress, including cases where the call is disconnected before the nature of the emergency can be determined.

[327] While we are not dealing with a 911 call in this case, the police were investigating a missing person's case, where the person went missing during a drug transaction. Sandeson was the last person known to have spoken to Samson, and he had outright lied to the police about the scale of a drug deal and whether Samson had actually arrived at his apartment. The police had good reason to believe that Sandeson might have knowledge of Samson's whereabouts. Sandeson argues that his privacy interests were ignored by the exigent search. The conflict between privacy interests and the core values of dignity, integrity, and autonomy were discussed by Lamer C.J. in *Godoy*:

> 19 There is unquestionably a recognized privacy interest that residents have within the sanctity of the home. In *R. v. Plant*, [1993] 3 S.C.R. 281,

> this Court recognized that the values underlying the privacy interest protected by s. 8 of the *Canadian Charter of Rights and Freedoms* are (per Sopinka J. at p. 292) "dignity, integrity and autonomy". In *R. v. Edwards*, [1996] 1 S.C.R. 128, at para. 50, Cory J. elaborated that one aspect of this privacy interest is "[t]he right to be free from intrusion or interference". However, dignity, integrity and autonomy are the very values engaged in a most immediate and pressing nature by a disconnected 911 call. In such a case, the concern that a person's life or safety might be in danger is enhanced. Therefore, the interest of the person who seeks assistance by dialing 911 is closer to the core of the values of dignity, integrity and autonomy than the interest of the person who seeks to deny entry to police who arrive in response to the call for help.
>
> ...
>
> 23 In the case at bar, the forced entry into the appellant's home was justifiable considering the totality of the circumstances. The police were responding to an unknown trouble call. They had no indication as to the nature of the 911 distress. They did not know whether the call was in response to a criminal action or not. They had the common law duty (statutorily codified in s. 42(3) of the *Act*) to act to protect life and safety. Therefore, the police had the duty to respond to the 911 call. Having arrived at the appellant's apartment, their duty extended to ascertaining the reason for the call. Acceptance of the appellant's bald assertion that there was "no problem" would have been insufficient to satisfy that duty. The police had the power, derived as a matter of common law from this duty, to enter the apartment to verify that there was in fact no emergency. The fact that the appellant tried to shut the door on the police further contributes to the appropriateness of their response in forcing entry. As I have already discussed, the privacy interest of the person at the door must yield to the interests of any person inside the apartment. A threat to life and limb more directly engages the values of dignity, integrity and autonomy underlying the right to privacy than does the interest in being free from the minimal state intrusion of police entering an apartment to investigate a potential emergency. Once inside the apartment, the police heard the appellant's wife crying. They had a duty to search the apartment and find her. In my view, Finlayson J.A. for the Court of Appeal correctly concluded that the police conduct was a justifiable use of their powers.

[328] Justice Rosenberg provides an excellent analysis of exigent circumstances as described in s. 529.3 of the *Criminal Code* in *R. v. Kelsy*, 2011 ONCA 605, [2011] O.J. No. 4159, where he noted for the unanimous court:

> 24 Exigent circumstances have been recognized at common law as a basis for searching property without a warrant. Cases that have addressed the issue of exigent circumstance appear to rest on two bases. The first basis relates to the risk of imminent loss or destruction of the evidence or

> contraband before judicial authorization could be obtained. The second basis emerges where there is a concern for public or police safety.
>
> 25 In my view, the premise underlying the exigent circumstances doctrine where there is an imminent risk of loss or destruction of evidence is that, if time permitted, the police could have obtained prior authorization, usually in the form of a search warrant. Ordinarily, this means that the police would have had reasonable grounds. Therefore, in this context, exigent circumstances do not justify a warrantless search for evidence or contraband on less than grounds for obtaining a warrant. Warrantless searches on less than reasonable grounds may be recognized in other circumstances where there is a lower expectation of privacy, such as border searches, but those circumstances did not apply here.

[329] Justice Rosenberg went on to consider the issue of imminent loss or destruction of evidence under s. 529.3:

> 27 The common law power to search for evidence in exigent circumstances has largely been codified since the enactment of the *Charter*. As the trial judge noted, s. 487.11 of the *Criminal Code* authorizes a warrantless search by a peace officer if the conditions for obtaining a warrant under s. 487(1) (the normal search warrant provision) or s. 492.1(1) (the tracking warrant provision) exist "but by reason of exigent circumstances it would be impracticable to obtain a warrant". Similar provisions exist in s. 117.02 for search and seizure of weapons and in s. 11(7) of the *Controlled Drugs and Substances Act*.
>
> 28 As the trial judge noted, while these provisions do not define exigent circumstances, s. 529.3(2) of the *Criminal Code* does contain a definition of exigent circumstances. Section 529.3 is part of a package of amendments enacted in the wake of the Supreme Court of Canada decision in *R. v. Feeney*, [1997] 2 S.C.R. 13, where the court held that an arrest warrant did not authorize entry into a dwelling-house to effect the arrest. Section 529.1 provides for the issuing of a warrant to enter a dwelling-house to arrest or apprehend a person where the conditions set out in that section are met. Section 529.3 allows an officer to enter a dwelling-house without a warrant where the conditions for issuing the warrant exist but by reason of exigent circumstances it would be impracticable to obtain a warrant. The definition of exigent circumstances in s. 529.3(2) refers to (a) danger to people and (b) loss of evidence and provides as follows:
>
> > For the purposes of subsection (1), exigent circumstances include circumstances in which the peace officer
> >
> > (a) has reasonable grounds to suspect that entry into the dwelling-house is necessary to prevent imminent bodily harm or death to any person; or

> (b) has reasonable grounds to believe that evidence relating to the commission of an indictable offence is present in the dwelling-house and that entry into the dwelling-house is necessary to prevent the imminent loss or imminent destruction of the evidence.
>
> 29 Section 529.3(2)(b), like s. 487.11, is premised on the existence of grounds to obtain a warrant. The urgency of the situation relieves against the necessity to obtain the warrant, not the necessity for the grounds to obtain the warrant. Cases since the enactment of the *Charter* that have considered exigent circumstances as a basis for searching for evidence or contraband appear to have assumed that grounds to obtain a warrant were required. See *R. v. Rao* (1984), 46 O.R. (2d) 80 (C.A.), leave to appeal to S.C.C. refused, [1984] S.C.C.A. No. 107; *R. v. Silveira*, [1995] 2 S.C.R. 297; *R. v. Feeney*.
>
> 30 A distinct line of cases has developed using the *Waterfield* test, which I will discuss below. However, it seems to me that at least when considering the loss or destruction of evidence, the exigent circumstances doctrine should be confined to cases where the officer had grounds to obtain the prior judicial authorization but could not do so because of the risk of imminent loss or destruction of the evidence. In my view, this conclusion is also consistent with this court's decision in *R. v. Belnavis* (1996), 29 O.R. (3d) 321, aff'd [1997] 3 S.C.R. 341, a case concerning search of a motor vehicle. Speaking for the court at p. 339, Doherty J.A. held that in exigent circumstances, where it is not feasible to obtain a warrant, "a police officer may search a lawfully detained motor vehicle if the officer has reasonable and probable grounds to believe that the search will disclose evidence". He went on to state that: "[t]his exception to the general warrant requirement must, however, be narrowly construed where the search is conducted as part of a criminal investigation".
>
> [31] I point out that the need for this common law power may have largely disappeared in light of the statutory amendments.

[330] Justice Rosenberg also considered the issue of public safety and exigent circumstances:

> 32 The second set of exigent circumstances that appears to have been recognized is where there is a concern for the safety of the public or the police. The parameters of the power to search without warrant in such circumstances appear somewhat vague except where they have been codified as in s. 529.3(2)(a) and this common law power has largely been overtaken by the Waterfield doctrine. In any event, even in this context, something close to reasonable grounds appear to be a prerequisite to a valid search.

> 33 Thus, in a somewhat different context where exigent circumstances were invoked, in *R. v. Golden*, [2001] 3 S.C.R. 679, the court required reasonable grounds as a precondition to a field strip search said to be required for officer safety. Iacobucci and Arbour JJ. wrote as follows, at para. 102:
>
> > Strip searches should generally only be conducted at the police station except where there are exigent circumstances requiring that the detainee be searched prior to being transported to the police station. Such exigent circumstances will only be established where the police have reasonable and probable grounds to believe that it is necessary to conduct the search in the field rather than at the police station. Strip searches conducted in the field could only be justified where there is a demonstrated necessity and urgency to search for weapons or objects that could be used to threaten the safety of the accused, the arresting officers or other individuals. The police would also have to show why it would have been unsafe to wait and conduct the strip search at the police station rather than in the field. Strip searches conducted in the field represent a much greater invasion of privacy and pose a greater threat to the detainee's bodily integrity and, for this reason, field strip searches can only be justified in exigent circumstances. [Emphasis added.]
>
> 34 I should not be taken as having held that reasonable grounds are required in other circumstances where the exigent circumstances doctrine is invoked to justify a search for the purpose of protecting the public or police officers. It may be that a lesser standard, such as articulable cause or reasonable suspicion, as codified in s. 529.3(2)(a), will be appropriate in some circumstances. Thus, see *R. v. Golub* (1997), 34 O.R. (3d) 743 (C.A.) at p. 759.

[331] Sandeson emphasizes his apparent good character, lack of prior criminal history and cooperation with the police when pointing out that in *R. v. Golub* (1997), 117 C.C.C. (3d) 193, [1997] O.J. No. 3097 (C.A.), the court stated:

> 21 In deciding whether reasonable grounds exist, the officer must conduct the inquiry which the circumstances reasonably permit. The officer must take into account all information available to him and is entitled to disregard only information which he has good reason to believe is unreliable: *R. v. Storrey*, *supra*, at pp. 423-24; *Chartier v. The Attorney General of Quebec* (1979), 48 C.C.C. (2d) 34 at 56 (S.C.C.); *R. v. Hall* (1995), 39 C.R. (4th) 66 at 73-75 (Ont. C.A.); *R. v. Proulx* (1993), 81 C.C.C. (3d) 48 at 51 (Que. C.A.).

[332] In *Pelto* the court emphasized the significant right to privacy that citizens have regarding their homes:

> 45 I appreciate the argument of the Crown that police must often make split second decisions which are easy to criticize well after the fact. However, I do not accept that this decision was made in this kind of situation of urgency that might otherwise excuse a prima facie violation of Mr. Pelto's right to be protected from unreasonable search. I agree with the argument of the defence that the right to privacy in one's home is a very significant right and one that should give police pause to consider in the carrying out of their duties. I agree with the argument of defence counsel that the vigour with which property crimes such as house invasions are pursued by the Crown is good and proper confirmation of the value to which our society places on the sanctity of one's home. The police should be respectful of these rights.

[333] Sandeson also relies on *R. v. Timmons*, 2011 NSCA 39, [2011] N.S.J. No. 216, as support for his position that there were no exigent circumstances and that his home was unreasonably searched when the police went in without a warrant. In that case a mother reported that her daughter was being abused by the appellant. The police called the daughter, who said she was fine, but they continued to try and locate her. They eventually found the appellant's home, where the daughter answered the door and told them she was fine. Oland J.A. said, for the court:

> 40 Four R.C.M.P. officers, with their firearms or Taser out of their holsters and at the low ready position, were at the scene. So was an unarmed auxiliary constable. They had positioned themselves at two entrances to the house. When the police demanded, Nadine came and opened the door. She was the person who had been reported as having been abused by Mr. Timmons.
>
> 41 If the police were concerned that her assurances that all was well might not be genuine or made of her own free will, they could have asked Nadine to step outside the house. The police could then have questioned her face to face and away from any possible influence by Mr. Timmons.
>
> 42 If she had been in any danger, Nadine then could have simply left with the five officers. She had been located and was safe with them. There would have been no reason or need to enter the residence.
>
> 43 The police had no information that there was anyone in the house other than Mr. Timmons and Nadine Shaw. However if, because of the perceived scream or otherwise, they were concerned that there might be anyone else in the house who was in trouble, they could have obtained that information from Nadine Shaw, outside the house. They could also have asked whether there were any firearms or weapons there. If she said that there was someone who needed assistance, the officers would have reasonable grounds to believe that that person's safety was a risk. They then would have been justified in entering the house to locate and protect him or her.

> 44 If Nadine refused to step outside the house when asked, the police might have suspected that Mr. Timmons was threatening her from behind the door or farther away, and that he was armed. In that case, they would have had to decide how next to proceed. Depending on the circumstances, one reasonable option might well be a warrantless entry with the object of protecting Nadine's safety.
>
> 45 But the police did not ask Nadine to step outside the house. Instead three officers entered. Nadine Shaw told them that she was fine. There was no one nearby or who was interfering with their conversation. The only person in view was a man lying on a bed in a bedroom. There was no evidence that he either moved or reached for something suddenly, or indeed at all. Nevertheless the police went straight into the bedroom, had him get up, did a pat-down search to which the man cooperated, and then proceeded to search his house.
>
> 46 In my view, the trial judge erred in principle by failing to consider alternatives to the warrantless entry of Mr. Timmons' home and bedroom, and the search of his home.
>
> 47 In fulfilling their duties to prevent death and serious injury, the police are often required to make rapid assessments and decisions in potentially dangerous situations. However, they must always include in their considerations the rights set out in the *Charter*. Chief Justice Lamer's statements in & 22 of *Godoy*, where he emphasized that the intrusion into a dwelling to ascertain the safety of a caller was limited to the protection of life and safety, are instructive and clear. I repeat:
>
> > The police have authority to investigate the 911 call and, in particular, to locate the caller and determine his or her reasons for making the call and provide such assistance as may be required. The police authority for being on private property in response to a 911 call ends there. They do not have further permission to search premises or otherwise intrude on a resident's privacy or property.
>
> 48 In his submissions to the trial judge, counsel for Mr. Timmons emphasized and quoted this passage from *Godoy*. While the judge referred to Godoy in his reasons, he made no mention of this principle. It does not appear that he considered it in deciding that the police entry without a warrant was justified.

[150] Within the above quotation, I recognize that Justice Arnold specifically referred to the Crown's argument (para. 324) and Defence emphasis (para. 331) but this does not detract from my reliance on his accurate recitation of the law. I would add that the Crown argued the same points at this *voir dire* and although the Defence did not overtly emphasize Mr. Sandeson's "apparent good character, lack of prior criminal history and cooperation with police", I have borne this in mind.

[151] With respect to *R. v. Kelsy*, 2011 ONCA 605, the Defence emphasized para. 35, which follows the passage from Justice Rosenberg's decision quoted by Arnold, J. at para. 330:

> [35] However, whether exigent circumstances are invoked to search for evidence or to protect the public or for officer safety, it is the nature of the exigent circumstances that makes some less intrusive investigatory procedure insufficient. By their nature, exigent circumstances are extraordinary and should be invoked to justify violation of a person's privacy only where necessary. Sopinka J. made that point in *R. v. Feeney* at para. 52:
>
> > According to James A. Fontana (The Law of Search and Seizure in Canada (3rd ed. 1992), at pp. 786-89), exigent circumstances arise usually where immediate action is required for the safety of the police or to secure and protect evidence of a crime. With respect to safety concerns, in my view, it was not apparent that the safety of the police or the community was in such jeopardy that there were exigent circumstances in the present case. The situation was the same as in any case after a serious crime has been committed and the perpetrator has not been apprehended. *In any event, even if they existed, safety concerns could not justify the warrantless entry into the trailer in the present case. A simple watch of the trailer in which the police were told the appellant was sleeping, not a warrantless entry, would have sufficiently addressed any safety concerns involving the appellant.* [Emphasis added by Rosenberg, J.A.]

[152] Having regard to the above (and all of the authorities), I recognize that exigent circumstances are extraordinary and should be invoked to justify violation of a person's privacy only where necessary.

[153] The *Waterfield* test was referenced by Arnold, J. at para. 315 of his decision. In this *voir dire*, the Defence reminds the Court of the Supreme Court of Canada's discussion of what is meant by "reasonably necessary" in *R. v. Dedman* [1985] 2 S.C.R. 2, at para. 69:

> 69 Turning to the second branch of the *Waterfield* test, it must be said respectfully that neither *Waterfield* itself nor most of the cases which have applied it throw much light on the criteria for determining whether a particular interference with liberty is an unjustifiable use of a power associated with a police duty. There is a suggestion of the correct test, I think, in the use of the words "reasonably necessary" in *Johnson v. Phillips, supra*. The interference with liberty must be necessary for the carrying out of the particular police duty and it must be reasonable, having regard to the nature of the liberty interfered with and the importance of the public purpose served by the interference. …

[154] This was amplified upon by the Supreme Court of Canada in the majority decision of Justice LeBel in *R. v. MacDonald*, 2014 SCC 3, at paras. 36 - 38:

> 36 At the second stage, if the answer at the first is affirmative, as it is in this case, the court must inquire into whether the action constitutes a justifiable exercise of powers associated with the duty. As this Court held in *Dedman*,
>
> > [t]he interference with liberty must be necessary for the carrying out of the particular police duty and it must be reasonable, having regard to the nature of the liberty interfered with and the importance of the public purpose served by the interference. [Emphasis added; p. 35.]
>
> Thus, for the infringement to be justified, the police action must be reasonably necessary for the carrying out of the particular duty in light of all the circumstances (*Mann*, at para. 39; *Clayton*, at paras. 21 and 29).
>
> 37 To determine whether a safety search is reasonably necessary, and therefore justifiable, a number of factors must be weighed to balance the police duty against the liberty interest in question. These factors include:
>
> 1. the importance of the performance of the duty to the public good (*Mann*, at para. 39);
> 2. the necessity of the interference with individual liberty for the performance of the duty (*Dedman*, at p. 35; *Clayton*, at paras. 21, 26 and 31); and
> 3. the extent of the interference with individual liberty (*Dedman*, at p. 35).
>
> If these three factors, weighed together, lead to the conclusion that the police action was reasonably necessary, then the action in question will not constitute an "unjustifiable use" of police powers (Dedman, at p. 36). If the requirements of both stages of the *Waterfield* test are satisfied, the court will then be able to conclude that the search in question was authorized by law.
>
> 38 As can be seen, the *Dedman-Mann* line of cases does not stand for the proposition that all acts related to an officer's duties are authorized by law. Quite the opposite, only such acts as are reasonably necessary for the performance of an officer's duties can be considered, in the appropriate circumstances, to be so authorized. The English Court of Appeal was clear on this point in *Waterfield*, in a passage quoted by this Court in *Dedman*:
>
> > Thus, while it is no doubt right to say in general terms that police constables have a duty to prevent crime and a duty, when crime is committed, to bring the offender to justice, it is also clear from the decided cases that when the execution of these general duties involves interference with the person or property of a private person, the powers of constables are not unlimited. [Emphasis added; p. 33.]

[155] The limits on police authority were emphasized by Justice Oland in *R. v. Timmons*, 2011 NSCA 39, and I note her comments as reproduced by Arnold, J. at para. 333 (see especially Oland, J.A.'s paras. 47 and 48).

[156] In terms of what constitutes "reasonable suspicion", I turn again to the Supreme Court of Canada and Justice Moldover's comments in *R. v. MacKenzie*, 2013 SCC 50, at paras. 41 and 64 :

> [41] I turn then to the crux of this case. The hallmark of reasonable suspicion, as distinguished from mere suspicion, is that "a sincerely held subjective belief is insufficient" to support the former (*Kang-Brown*, at para 75, per Binnie, J., citing P. Sankoff and S. Perrault, "*Suspicious Searches:* What's so Reasonable About Them?" (1999), 24 C.R. (5th)123, at p. 125). Rather, as Karakatsanis J. observes in *Chehil*, reasonable suspicion must be grounded in "objectively discernible facts, which can then be subjected to independent judicial scrutiny" (para. 26).
>
> …
>
> [64] That is not to say, however, that police training and experience must be accepted uncritically by the courts. As my colleague Karakatsanis J. notes in *Chehil*, "hunches or intuition grounded in an officer's experience will [not] suffice", nor is deference necessarily owed to a police officer's view of the circumstances because of his or her training or experience in the filed (para. 47). Reasonable suspicion, after all, is an objective standard that must stand up to independent scrutiny.

[157] In *R. v. Chehil*, 2013 SCC 49, the Supreme Court of Canada at para. 26 explained what it takes to constitute "reasonable suspicion":

> [26] Reasonable suspicion derives its rigour from the requirement that it be based on objectively discernible facts, which can then be subjected to independent judicial scrutiny. This scrutiny is exacting, and must account for the totality of the circumstances. In *Kang-Brown*, Binnie J. provided the following definition of reasonable suspicion, at para. 75:
>
> > The "reasonable suspicion" standard is not a new juridical standard called into existence for the purposes of this case. "Suspicion" is an expectation that the targeted individual is possibly engaged in some criminal activity a "reasonable" suspicion means something more than a ere suspicion and something less than a belief based upon reasonable and probable grounds.

ANALYSIS AND DISPOSITION

[158] With respect to the search, I am alive to the Defence concerns that it took an inordinately long time to go through the relatively small dwelling. When I go over all of the evidence, I am especially mindful of the officers' testimony that they were unaware of the layout, and that they wanted to conduct a very thorough search. In the words of Cst. Joseph, "So as a mother, I could say to Taylor's mother" that police had carefully searched. I accept that in being thorough, the officers may have spent longer than necessary. Nevertheless, I am satisfied based on the evidence that the search was relatively unobtrusive. For example, the police did not notice blood or bleach residue, which was later turned up with the warranted search.

[159] Without question, the gun box should not have been kicked, and I find D/Cst. Shannon's rationale for doing so to be a stretch. I also question the necessity of Cst. Brewer looking inside the cooler. Nevertheless, given all of the evidence, I repeat my opinion that the search was relatively unobtrusive. In coming to this conclusion, I am mindful of the fact that officers looked within what were likely small spaces, such as the bathroom vanity and kitchen cupboards. On balance, however, I accept that the officers were being thorough, and that it could not be known with certainty that these spaces were limited to their door size and did not extend into other areas.

[160] Additionally, there is the matter of the containment of the scene. Without question, this could have occurred in a more orderly manner. For example, the officers could have spotted one another so as to permit one to take a washroom break away from unit 2. Indeed, this is what D/Cst. Underwood contemplated would take place. As well, proper procedure would undoubtedly have dictated that all wore the kind of protective gloves donned by Cst. Joseph.

[161] At the outset, it would have made more sense to have officers stationed at the potential entry points to the apartment, such that re-entry would not have occurred. Nevertheless, I accept from the fact that D/Cst. Underwood did not hear back from D/Cst. Sheppard on his message about deploying other officers that they were otherwise engaged and unavailable for such a potentially lengthy time frame.

[162] With respect to the DVR/camera issue, it was apparent to most officers upon entering the hallway that there was a camera situated outside unit 2. Although it did not definitively come out in the evidence, I accept that an officer must have dislodged the ceiling tile(s) (the photographs clearly show the tile(s) moved out of place). This allowed officers to deduce that the wires led to the DVR in what was William Sandeson's bedroom (the photographs show certificates in his name on the walls of this bedroom).

[163] Concerning hallway observations, I refer to *R. v. W.(D.L.),* 2012 BCSC 1700, and Justice Romilly's comments at para. 79:

> [79] In *R. v. Laurin* (1997), 113 C.C.C. (3d) 519 (Ont. C.A.), the court was of the view that "hallway olfactory observations" did not amount ŧ to a "search" by the police. Morden A.C.J.O. stated at 21-23:
>
> > … The police officers making their way to the appellant's apartment were entitled to be in the hallway, as were other tenants of the building, their visitors, repair people, the landlord, and so on. I do not think that the fact that they were engaged in an investigation of a complaint meant they had no right to use the common hallway to attend the door of the appellant's apartment. Their presence there was not dependent on the invitation of the appellant, express or implied. I refer to the fact that the outer doors of the building were not locked or otherwise secured,
> >
> > I do not thing there is any tenable basis for holding that the appellant had a reasonable expectation with respect to the smells emanating from his apartment into the hallway. The smell was so strong that it was noticeable with the apartment door closed and there is no evidence that the police officers had to get close to the door to sniff for the odour.

[164] The evidence is unclear whether D/Cst. Shannon took it upon himself or was directed by Sgt. Boyd to unhook the wires. On either rendering – and given all of the evidence, I find favour with the former – I accept that this was a reasonable step that may have resulted in the preservation of relevant evidence. In making this determination, I accept D/Cst. Shannon's and Sgt. Boyd's evidence that they had experience with other technology (specifically, phones and computers) being remotely erased. Although neither could say if they had experience with a DVR being remotely erased, I accept that this was a logical extension of their past experience and that disconnecting the DVR was a relatively unobtrusive step.

[165] In assessing this matter, I must objectively examine whether the police had grounds for the exigent search. In doing so, I have carefully examined the evidence in the time after Mr. Samson was reported missing on August 16th. Soon thereafter, a missing person investigative Triangle was established. Sgts. Boyd, Robinson and D/Cst. Sayer constituted the Triangle, and from the evidence it is apparent that Sgt. Keddy's interview with William Sandeson was a key component of what they assessed. By all accounts, Mr. Sandeson presented as a pleasant, forthcoming young man. Soon scheduled to start Dalhousie Medical School and a member of the Dalhousie track team, he came across as a charming, helpful individual. Of course, the other side of Mr. Sandeson's life involved dealing drugs, and the Triangle knew that Mr. Samson also was involved in the drug trade. Having said this, both men

were understood – at the time Sgt. Keddy interviewed Mr. Sandeson during the early afternoon of August 18th –to have dealt in relatively small amounts of marijuana.

[166] The Triangle had Sgt. Keddy reach out to Mr. Sandeson because Mr. Samson's phone records ultimately led to Mr. Sandeson as a last contact before Mr. Samson was last seen, at around 10:30 p.m. on August 15th. Towards the end of his interview with Sgt. Keddy, Mr. Sandeson agreed to allow the police to access his phone messages. This resulted in D/Cst. Hewitt putting together a booklet of 67 screenshots of the texts, (exhibit VD3-13) the majority between Messrs. Samson and Sandeson.

[167] The evidence confirms that D/Cst. Sayer reviewed these texts in detail and shared his opinion of them with the other Triangle members. Sgts. Boyd and Robinson each viewed some of the texts, which were pointed out by D/Cst. Sayer. At 8:37 p.m. on August 15th, this highly significant exchange begins between the two men:

Will:	Won't be later than 10
Taylor:	Perfect
Will:	Leaving Truro soon. Dude has safe house in Hali he wants me to use. It's close to you somewhere in south end. I can call soon with address
Taylor:	Safe house? Just bring me the cash, I don't want to go to some safehouse of someone who I have no idea who they are.
Will:	It's Asian grocery upstairs
	I been there before
	Right by your place
Taylor:	Where's Asian grocery? Don 88?
	As in the one that's in the building two buildings away?
Will:	Yes haha real close
Taylor:	So buddy lives in Truro, but has a house in Halifax?
	Am I meeting him there or just you?
Will:	Just me inside
	I told him you were gonna split the delivery into pieces so he said he would drop cash as necessary
Taylor:	What do you mean by that? I have all 20 ready to go.

Will:	Ok that's way better man
	Thursday you mentioned it would just be 5-10 a time then revisit
Taylor:	Oh sorry about the miscommunication
Will:	Hopping on the bike, I'll hit you up when I'm there. He's gonna roll somewhere else I guess and meet after
	Last check to make sure, 20 for 20 per right?
	Yea?
	Ok leaving now, hit you up when I'm there
Taylor:	Yes. I'll make sure now just to reassure you. Just got out of the shower
Will:	Yo man sorry for running late, just hit the crib. Give dude 5 mins or so to clear out then I'll meet you at the door
	Side glass door
	Let me know when you're on the way or if you're walking over I'll help with baggage
Taylor:	I'll be over. Side glass door? Like where the laundromat is?
Will:	Yup that side
	Rolling big bag?
Taylor:	Kk. I'll be there in a minute
	Its just you there right?
Will:	Yup, sounds like party next door though
	Actually hold dude bunch of traffic
	They said they're leaving in 5, just asked
	Lost the end there
Taylor:	It was really static
Will:	They're leaving now
	Gone
Taylor:	I'm out back of the building now. Is that your bike parked by the door?,
Will:	I'm walking out now

[168] There is no further text exchange between Messrs. Samson and Sandeson. At 2:23 a.m. on August 16th, texting resumes for the first time on Mr. Sandeson's Nextplus App when he writes:

Will: This isn't cool man, you said you'd be right back

Want that stuff

Next, at 10:55 a.m. on August 16th he texts:

Will: Don't know what you're planning

[169] In my view, and as I will explain in my continuing discussion and analysis, the above excerpted texts are extremely important in understanding why the Triangle acted within hours to effect an exigent circumstances search for Mr. Samson.

[170] From Justice Arnold's decision in *R. v. Sandeson*, 2017 NSSC 197, he noted as follows:

> [345] On the basis of the information the police had gathered at the point of the decision to conduct an exigent search, excluding the misunderstanding of Samson's medical condition, I find that the police had reasonable grounds to suspect that entering Sandeson's apartment was necessary to prevent imminent bodily harm to Samson. The information included:
>
> - Samson was reported missing on August 16, 2015, by his family;
> - The police received information from Samson's girlfriend, Mackenzie Ruthven, that a) he had been missing since 10:30 PM on August 15, 2015; b) they were getting ready to go downtown; c) he said he needed to go for a walk and never came back; d) he was going to sell marijuana to someone and left with a black duffle bag; e) he did not take his wallet or keys and said he would be back soon;
> - The police spoke with Samson's roommate, Andrew Mecke, on August 16, 2015. He said that a) he had not seen Samson since August 15; b) Samson had asked him to go with him meet a new client, but he had not gone with him;
> - The police had received information from Samson's mother, Linda Boutilier, that a) it was very unusual for Samson not to return to his apartment or not to call anyone; b) he was to have been in Amherst visiting her on August 16, 2015; and c) she was aware that he sold marijuana;
> - A PING of Samson's phone could not be completed as the phone was either off or out of range. The phone was last used at 10:22 PM on August 15, 2015, to phone number 705-242-8366;
> - The police obtained a production order on August 17, 2015, regarding the IP address for the 705-242-8366 phone number. The results came back to 189 Cavalier Drive, Lower Sackville, Nova Scotia. Police attended at this address and learned that William Sandeson worked at the group home;

- The police then determined that the (705) phone number was being used by William Sandeson;
- Sandeson contacted the Halifax Regional Police and met with Keddy on August 18, 2015, to provide a statement. Sandeson told Keddy that Samson was just going to provide him with a small sample of marijuana on August 15, but that Samson had never arrived at his apartment;
- Sandeson then provided Keddy with text messages between himself and Samson;
- After Sandeson was driven home by Keddy the police reviewed the text message conversation between Sandeson and Samson. That series of texts showed an arrangement made between the two men to meet at 1210 Henry Street in Halifax for the purpose of conducting a twenty pound drug deal in exchange for $40,000;
- Therefore, although Sandeson had been pleasant and co-operative with Keddy, the text messages revealed that he had told her a series of lies. Samson had gone missing during a major drug transaction with Sandeson and Sandeson lied about Samson ever arriving at his home.

[171] I am cognizant of the evidence at this *voir dire*, only, inclusive of the *viva voce* evidence and exhibits. Indeed, I am once again mindful of Defence counsel's words to be very cautious with relying on anything from the earlier *voir dire* where the evidence and arguments were different from what took place before me. Nevertheless, when I scrutinize the evidence led on this the *voir dire* in late June 2022, I find myself left with the same points as emphasized by Arnold, J.

[172] When I consider what the Triangle acted on by going forward with the exigent search on August 18th, I conclude that the police had objectively reasonable grounds to suspect that entering Mr. Sandeson's apartment was necessary to prevent imminent bodily harm to Mr. Samson. I therefore find the search to be authorized in law. Indeed, given the circumstances, I have determined that the Crown has met their burden in proving that the warrantless search was justified such that Mr. Sandeson's rights under s. 8 of the *Charter* were not violated. Furthermore, in all of the circumstances, I find that the unplugging of the DVR was justified and that the manner in which the searches were conducted did not violate the *Charter*. In the event that I am incorrect in my conclusions, given the totality of the evidence on a s. 24(2) *Charter* analysis with the *Grant* factors in mind, I would not exclude the evidence located as a result of the exigent search.

[173] Having regard to all of the evidence, I am of the view that police held an objective rationale for discerning that Mr. Samson was in a life-threatening situation.

The police erred on the side of caution, and I find support for this considered action in appellate decisions from British Columbia and Alberta. In *R. v. Larson*, 2011 BCCA 454, Justice Groberman noted:

> [26] The standards applied by the courts in determining whether life or safety is at risk are fairly relaxed ones. It is recognized that in matters involving the protection of life and physical safety, the police have no realistic choice but to err on the side of caution. The Crown cites a series of judgments of this Court that illustrate this point.

[174] More recently in *R. v. Garland*, 2019 ABCA 479, the Court stated at para. 42:

> [42] In situations involving warrantless searches driven by concerns for public safety (to save people from imminent harm or death), the subject's reasonable expectation of privacy must yield to the safety and well-being of others thought to be at risk. It is recognized that in matters involving the protection of life and physical safety, the police have no realistic choice but to err on the side of caution: *R. v. Larson*, 2011 BCCA 454 (B.C.C.A.) at para 26. However the police are not allowed to create their own artificial exigent circumstances and impracticability to wait: *R. v. Paterson*, 2017 SCC 15 (S.C.C.) at para 82; and *R. v. M. (N.N.)* (2007), 223 C.C.C. (3d) 417 (Ont. S.C.J.)

[175] When I consider the entirety of the evidence, I accept the testimony of the Triangle officers to the effect that this was a fast-moving, dynamic situation. Taylor Samson was reported missing just two days before the exigent search was decided upon. He was a 23 year old physics student~~,~~ who was a large man, capable of handling himself. It was uncharacteristic of him not to be heard from for days. Like most young people in this era, he routinely texted those closest to him. The police checked with the people who were closest to him and learned he had a girlfriend and mother with whom he regularly stayed in touch. From Ms. Ruthven, they learned that he had stepped out of his South Street residence at about 10:30 p.m. on August 15th. She said he had been preoccupied texting in the lead up to this. He left his wallet, medication, and keys behind. He was last seen carrying a large duffel bag. Although Ms. Ruthven was concerned for her boyfriend, she was also at least initially protective of him to the point that she did not want to say too much about his drug involvement. Indeed, when I reviewed her statements, I observed (even through the printed page) that she was upset and her anxiety was running high.

[176] As for Ms. Boutilier, she telegraphed that the situation must be dire even to the point of speculating that her son was dead. While the Defence has taken this comment to the level that it is justification for their argument that the exigent search

was unwarranted, I strongly disagree. To my mind, the Triangle had a mother and girlfriend before them who were extremely despondent and crying out for help. The police knew from the texts that Mr. Sandeson had likely come into contact with Mr. Samson at the same time when Ms. Ruthven last saw her boyfriend. On fair reading and having regard to the testimony of the Triangle members, I find that they had reasonable and probable grounds, based on the texts, to conclude that Taylor Samson had been led by William Sandeson and possibly others into apartment 2, 1210 Henry Street.

[177] I also find that the members of the Triangle were justified in their belief that the transaction was large (20 pounds according to the texts and given the large duffel bag) and that Mr. Samson may have been the victim of foul play and/or was being held against his will (and without access to his phone) inside the unit. Based on the evidence from the texts and their canvass of his mother, Ms. Ruthven, friends, and even considering the (now regarded as deceptive) interview of Mr. Sandeson, along with their experience of drug rips gone bad, I find that the police were entirely justified in moving forward with the exigent circumstances search.

[178] While the Defence essentially mocked Sgt. Boyd for his colorful portrayal of what might have befell Mr. Samson, I do not regard his testimony with this view. Rather, I find his evidence to be illustrative of what he envisioned at the time, given his processing of the texts and interviews against the backdrop of a 20 pound drug transaction. A young student was gone without a trace (except for the recovered texts) and had not been heard from in nearly 72 hours.

[179] In addition, the Triangle had the information concerning Taylor Samson's health status. Without a doubt, he suffered from a liver condition. There were conflicting reports from Ms. Boutilier and Ms. Ruthven, and within these individuals' own accounts, as to how long he could be without his medication. The Defence emphasizes the follow-up interviews with these women, which extended the timeline well beyond a few days and, in the case of Ms. Ruthven, brought into question the necessity of the medication. While I appreciate this later information was not accounted for by Sgts. Robinson and Boyd and discounted by D/Cst. Sayer, this does not end the matter. There was also the information obtained from the pharmacist. In this regard, I am mindful of Sgt. Robinson's comment on cross-examination that she preferred the medical professional's account as opposed to what one might be told by the "Starbucks barista". I took this to mean that she relied on the information of pharmacist Ms. Hirtle, and that when challenged with lay persons' interpretations, she was unmoved. In short, she had information from Ms.

Hirtle, through D/Cst. Lake, that Mr. Samson's liver would be unable to cleanse toxins without his medication and that the situation could become dire within days.

[180] The Defence spent considerable time with D/Cst. Sayer challenging his reliance on Ms. Hirtle's information. It was put to him that the Triangle could have reached out to a physician for a more considered opinion. In considering his response – surrounding privacy concerns and that he was comfortable with the pharmacist's opinion – I am satisfied that the Triangle exhibited appropriate diligence and reasonably explored Mr. Samson's health condition within the context of all that was rapidly taking place. Once again, I am mindful of the quickly emerging justifiable concerns for Mr. Samson's well being, and that time would be of the essence in attempting to rescue him.

[181] In assessing this matter I am mindful of the observations of Cromwell, J. in *R. v. Cornell*, 2010 SCC 31:

> [23] First, the decision by the police must be judged by what was or should reasonably have been known to them at the time, not in light of how things turned out to be. Just as the Crown cannot rely on after-the-fact justifications for the search, the decision about how to conduct it cannot be attacked on the basis of circumstances that were not reasonably known to the police at the time: *R. v. DeWolfe*, 2007 NSCA 79, 256 N.S.R. (2d) 221, at para. 46. Whether there existed reasonable grounds for concern about safety or destruction of evidence must not be viewed "through the 'lens of hindsight'": *Crampton v. Walton*, 2005 ABCA 81, 40 Alta. L.R. (4th) 28, at para. 45.

[182] In the present case, I am satisfied that the police had subjectively and objectively reasonable and probable grounds to enter the apartment.

[183] The question of whether the police were required to have a warrant prior to entering the apartment turns on a number of considerations. Normally, anyone in a private dwelling has and is entitled to a very high expectation of privacy. This expectation may be limited in circumstances where legislation authorizes police intrusions. Sections 529.1 and 529.3 limit that expectation in circumstances that may properly be described as "exigent".

[184] There is no question that the police entry into the accused's apartment was a "search", even though it was a search of limited extent, designed simply to secure the premises until a warrant could be obtained. Warrantless searches are *prima facie* unreasonable, and the question becomes whether the search was legally authorized and carried out reasonably.

[185] Section 529.3(2) defines exigencies as including (a) danger to people, and (b) loss of evidence. Another limitation is that the police must have had grounds to obtain prior judicial authorization but could not do so for reasons amounting to exigency. Given the evidence and authorities, I must determine whether the police, in undertaking a warrantless search of the accused's apartment, acted within the narrow exception of exigent circumstances authorized by s. 529.3(2) of the *Criminal Code*.

[186] It is important to consider the totality of the evidence and not to engage in a piecemeal analysis. Here, several officers were engaged in discussions that led to a judgment call that the circumstances were exigent within the meaning of the law.

[187] I am satisfied, bearing in mind Cromwell J.'s observations in *Cornell*, that as it appeared to the police in the early evening of August 18, 2015, there was a reasonable belief that Mr. Samson was in a dire situation, with his well-being in peril. From the police perspective, it appeared that there was no time to lose. I am satisfied that the police had ample grounds for obtaining a warrant, but that the urgency of the situation justified entering the apartment without one.

[188] When police attended the accused's residence to look for Mr. Samson, they also observed the apartment to ensure there was no one else there and to make sure that it was secure. They unhooked the DVR and then suspended any further search until they had a warrant.

[189] The officers involved explained that they believed that seeking a warrant would take some time, and that they felt they had to move quickly. There was evidence as to how long they expected a warrant to take, and it was clearly beyond the time they felt could be spared, given Mr. Samson’s potentially perilous situation.

[190] In my view, "exigency" must be assessed in terms of the reasonableness of the police belief that no time should be lost in entering to look for Mr. Samson. Again, given all of the evidence and authorities, I conclude that it was reasonable for the police to think that the situation was that urgent, such that the warrantless search would be justified.

[191] In conclusion, having reviewed the totality of the evidence, I am cognizant of various inconsistencies in the police officers’ testimony. To cite just one example, D/Cst. Underwood thought that officer Upshaw participated in the search of apartment 2 when no other officer said he was there. The inconsistencies cause some concern; however, on balance I attribute many of the discrepancies to the passage in

time of nearly seven years. Indeed, the fact that all the officers were not on the same page gives me some level of comfort, as I did not perceive any collusion or choreography. In short, while not one hundred percent reliable, I found the overall evidence to be sound and, importantly, credible.

[192] I extend these comments to all of the officers, including the members of the Triangle, who were vigorously cross-examined. Contrary to the submissions of the Defence, I found Sgt. Boyd, Sgt. Robinson, and D/Cst. Sayer to be credible. In particular, I did not perceive evasion or resorting to talking points on the part of D/Cst. Sayer (or the other Triangle members). Rather, I found all officers to be straight-forward and candid about their imperfections in what I have characterized as a quickly moving, dynamic situation.

[193] I therefore find that the police entry into the accused's apartment was necessary in an effort to save Taylor Samson. Their conduct in searching and subsequently placing officers primarily in the kitchen, thereby securing the evidence they expected to find, and refraining from searching further until a search warrant had been obtained, struck the right balance between the competing interests at stake here – attempting to find Mr. Samson and preservation of evidence on the one hand, and the accused's s. 8 privacy rights on the other.

[194] The police entry into the apartment meets the definition of exigent circumstances contained in s. 529.3(2)(b), and therefore does not constitute a violation of s. 8. The Crown has met its burden in this regard.

Chipman, J