

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Sandeson 2016 NSPC 18

Date: March 29, 2016

Docket: 2899325

Registry: Halifax

Her Majesty the Queen

v.

William Michael Sandeson

DECISION ON COMMITTAL

Revised judgment: The text of the original judgment has been corrected according to the attached erratum dated **August 30, 2017**.

Judge: The Honourable Judge Anne S. Derrick

Heard: February 8, 10, 11, 12, 22, 23, 24, 25,
March 1, 2, and 4, 2016

Decision: March 29, 2016

Charges: section 235 of the *Criminal Code*

Counsel: Susan MacKay and Kim McOnie, for the Crown
Eugene Tan, for William Sandeson

By the Court:***Introduction***

[1] William Sandeson is charged with the first degree murder of Taylor Samson. This is my decision on the contested issue of committal to trial.

[2] On the evening of August 15, 2015, Taylor Samson left his South Street apartment to transact a drug deal nearby. He never returned.

[3] The Crown alleges Mr. Sandeson murdered Mr. Samson on August 15 and that the murder was planned and deliberate. The evidence tendered by the Crown in support of a committal for first degree murder includes *viva voce* testimony, witness statements, forensic evidence, photographs, security camera footage from a surveillance system Mr. Sandeson installed, text messages, and what Mr. Sandeson said to police during questioning.

[4] Mr. Sandeson was questioned by police investigators on videotape on three occasions, first as a potential witness on August 18 and then following his arrest later that day. A *voir dire* was held to determine if his statements to Sgt. Charla Keddy on August 18 and Cst. Jodi Allison on August 19 were made voluntarily. I concluded they were. (*R. v. Sandeson, 2016 NSPC 17*) I have taken them into account as evidence on the issue of committal.

[5] I have not taken into account the evidence of some text messages exchanged by Mr. Sandeson with two friends in March 2015. (*Exhibit 29, pages 11 and 14*) I view these texts as not proximate enough in time to Mr. Samson's disappearance to be probative on the issue of committal.

[6] In the following reasons I explain the test for committal and the role of a preliminary inquiry judge. I then discuss whether there is evidence to support a committal of Mr. Sandeson for first degree murder.

The Test for Committal

[7] The assessment to be made in Mr. Sandeson's case is whether there is any evidence upon which a reasonable jury properly instructed could return a guilty verdict on the charge of first degree murder. (section 548(1), *Criminal Code*; *United States of America v. Sheppard*, [1977] 2 S.C.R. 1067)

[8] The most recent recital of the test for committal to trial is found in the Supreme Court of Canada's decision of *M.M. v. United States of America*, [2015] S.C.J. No. 62:

45 The test for committal for trial is whether there is any admissible evidence that could, if believed, result in a conviction: *Sheppard*, at p. 1080; *Arcuri*, at para. 21. Where the evidence is circumstantial, the judge must conduct a limited weighing of the circumstantial evidence to assess whether, in light of all of the evidence including any defence evidence, it is reasonably capable of supporting the inferences that the Crown asks to be drawn: *Arcuri*, at para. 23.

[9] There must be a committal for trial if there is "some evidence of culpability for every essential definitional element of the crime for which the Crown has the evidential burden." (*M.M.*, citing *R. v. Charemski*, [1998] S.C.J. No. 23 paragraph 3)

[10] The sufficiency of the Crown's evidence must be assessed with reference to the Crown's ultimate burden to prove the case against Mr. Sandeson beyond a reasonable doubt. (*R. v. Turner*, [2012] O.J. No. 4088 (C.A.) citing (as she then was) *McLachlin, J.'s statements in R. v. Charemski*, [1998] S.C.J. No. 23, paragraph 35) The Ontario Court of Appeal noted in *R. v. Turner* that the evaluation of whether the evidence is capable of supporting the inferences necessary to establish the essential elements of the offence must be undertaken with this ultimate burden of proof in mind. (*Turner*, paragraph 16)

Limited Weighing – Whether the Evidence if Believed Could Reasonably Support an Inference of Guilt

[11] A preliminary inquiry judge does not assess the quality, credibility or reliability of the evidence beyond conducting a limited weighing to assess whether the inferences the Crown seeks to have drawn from the circumstantial evidence are reasonable. (*M.M.*, paragraph 47)

[12] As the case against Mr. Sandeson is circumstantial I have engaged in this limited weighing of the evidence, asking myself whether the evidence is reasonably capable of supporting the inferences the Crown wants a jury to draw. (*R. v. Arcuri*, [2001] S.C.J. No. 52, paragraphs 23 and 30)

[13] Only inferences that favour the Crown are to be considered, even where more than one inference can be drawn from the evidence. (*R. v. Savant*, [2004] S.C.J. No. 74, paragraph 18) In the event of competing inferences, the inference advanced by the Crown must be the inference that prevails at the preliminary inquiry stage. (*R. v. Campbell*, [1999] O.J. No. 4041 (C.A.), paragraph 7, cited in *R. v. Sazant*, paragraph 23)

[14] The Crown's evidence has to support logical and reasonable inferences. A committal to trial cannot be founded on speculation or conjecture. (*R. v. Morrissey*, [1995] O.J. No. 639(C.A.), paragraph 52) But an inference does not have to be "compelling" or even "easily drawn." (*R. v. Munoz*, [2006] O.J. No. 446 (Ont. S.C.J.), paragraph 21, cites omitted) A difficult inference is not necessarily unreasonable or illogical. (*R. v. Katwaru*, [2001] O.J. No. 209 (C.A.), paragraph 40)

The Elements of the Offence of First Degree Murder

[15] For a reasonable jury properly instructed to convict Mr. Sandeson of first degree murder it will have to be satisfied beyond a reasonable doubt that:

- 1) Mr. Sandeson caused Mr. Samson's death;
- 2) Mr. Sandeson caused Mr. Samson's death unlawfully;
- 3) Mr. Sandeson had the state of mind required for murder; and
- 4) Mr. Sandeson's murder of Mr. Samson was both planned and deliberate.

Is There Evidence that Taylor Samson is Dead?

[16] A preliminary question is whether a jury could reasonably infer that Mr. Samson is dead. I find it could.

[17] Mr. Sandeson's statement to Cst. Allison supports a reasonable inference that Mr. Samson is dead. Mr. Sandeson told Cst. Allison that Mr. Samson was shot in the back of his neck by intruders at his apartment on August 15. He said they put Mr. Samson in a large black bag and left with him. (*Exhibit 36, 18:40:05; 18:31:02; 18:31:17*) He insisted he did not know if Mr. Samson was alive or dead. (*Exhibit 36, 11:26:50*)

[18] As the preliminary inquiry judge making a determination on whether to commit to trial I do not weigh the merits of Mr. Sandeson's narrative as exculpatory evidence. (*M.M., paragraph 46, citing R. v. Hynes, [2001] S.C.J. No. 80, paragraph 52*) It is simply evidence that could support a reasonable inference that Mr. Samson was killed in Mr. Sandeson's apartment.

[19] A jury could reasonably infer that Mr. Samson is dead from the following evidence:

- No one has heard from him since he left his apartment on August 15, telling his girlfriend he was going "a couple of houses over" and would be only 15 minutes or so. She was expecting him to return as they had plans to go out later that night.
- The video surveillance from the hallway outside Mr. Sandeson's apartment shows Mr. Samson entering the apartment on the night of August 15. The DVR for the video camera was seized from Mr. Sandeson's bedroom. Other than a cessation of the recording from approximately 11:30 p.m. on August 15 to 1 a.m. on August 16, there is continuous video footage. After following Mr. Sandeson into his apartment, Mr. Samson does not appear again on the video surveillance.
- The only evidence that Taylor Samson ever left Mr. Sandeson's apartment is Mr. Sandeson's statement to Cst. Allison that he was removed by morph-suited intruders in a large black duffle bag.
- In his narratives, Mr. Sandeson told Cst. Allison there was "a lot of blood" in the apartment which he tried to clean up.

- The search by forensic investigators of Mr. Sandeson's apartment revealed the presence of a considerable amount of blood and Mr. Samson's DNA.
- Taylor Samson's blood was found in the trunk of Mr. Sandeson's car. (*Exhibit 12, Forensic Laboratory Report dated September 18, 2015, page 4, DNA Conclusion 10*) His blood was also identified on items seized from a farm owned by Mr. Sandeson's family, including inside a large black duffle bag. (*Exhibit 13, Forensic Laboratory Report dated October 22, 2015, page 2, DNA Conclusions #1*)

Is There Evidence that Mr. Sandeson Caused Mr. Samson's Death?

[20] My next focus is on whether it can reasonably be inferred that Mr. Sandeson caused Mr. Samson's death. I find this is a reasonable inference that a jury could make.

[21] Mr. Sandeson's apartment was searched on August 17 and 19, 2015, by forensic identification officers. They identified what they believed to be blood and took swabs for analysis which came back indicating the presence of Mr. Samson's DNA in Mr. Sandeson's kitchen and bathroom. (*Exhibit 16, Forensic Laboratory Report dated August 28, 2015, page 2, DNA Conclusion #'s 1 and 2*) A number of areas on walls, the kitchen floor, the kitchen table and two chairs indicated the presence of blood. There was evidence of surfaces having been wiped.

[22] Forensic investigators located a bullet embedded in the frame of a window near the kitchen table. It was tested for the presence of DNA. The profile of the major component matched Taylor Samson's DNA. (*Exhibit 15, Forensic Laboratory Report dated January 21, 2016, page 3 of 4, DNA Conclusion #4*)

[23] With the combination provided by Mr. Sandeson on the night of August 19, police opened a safe in Mr. Sandeson's bedroom and located a trigger-locked 9 mm Smith and Wesson handgun. The safe also contained a box of ammunition. Two rounds were missing from the box of ammunition. (*Exhibit 2, Photograph 173*) D/Cst. James Wasson, a forensic IDENT officer, testified that the bullet located in the window frame and the live round found in the chamber of the 9 mm were consistent with the ammunition found in the safe.

[24] Forensic testing of the 9 mm handgun established that the mixed DNA profile on the grip and trigger contained Mr. Sandeson's and Mr. Samson's DNA. (*Exhibit 14, Forensic Laboratory Report dated November 4, page 1 of 2, DNA Conclusion #1; Exhibit 12, Forensic Laboratory Report dated September 18, 2015, page 3 of 4, DNA Conclusions #6*) Two stains, one on each side of the "slide" of the gun were tested and identified as containing Taylor Samson's DNA. (*Exhibit 12, Forensic Laboratory Report dated September 18, 2015, page 3 of 4, DNA Conclusions #3 and 5*) The ammunition clip for the gun also had Taylor Samson's DNA on it. (*Exhibit 12, page 3 of 4, DNA Conclusion #7*)

[25] All this evidence supports a reasonable inference that Mr. Sandeson shot and killed Mr. Samson in his kitchen using the 9mm handgun located later by police in the safe in his bedroom. It would be reasonable for a jury to infer that the presence of Mr. Samson's DNA on the trigger, grip and clip of the handgun was the result of Mr. Sandeson transferring Mr. Samson's DNA by handling the gun after the shooting.

Is There Evidence that Mr. Sandeson Caused Mr. Samson's Death Unlawfully?

[26] I am satisfied that the evidence supporting the inference that Mr. Sandeson shot Mr. Samson and killed him on the night of August 15 also supports the reasonable inference that Mr. Samson's death was caused unlawfully.

[27] There is also the evidence that Mr. Sandeson gave a number of different narratives about the evening of August 15. This evidence can support the inference that Mr. Sandeson caused Mr. Samson's death unlawfully. (*R. v. Rodgeron, [2015] S.C.J. No. 38*) A jury could reasonably infer that, taken with all the other evidence, Mr. Sandeson's inconsistent narratives were attempts to hide his having unlawfully caused Mr. Samson's death.

The Inconsistent Narratives

[28] Mr. Sandeson told his girlfriend, Sonja Gashus there had been a fight as the apartment leaving him with blood to clean up, he told a co-worker he had helped clean up blood at a friend's residence after the friend was victimized in a home invasion (*Exhibit 27, Police Statement of Sarah Duncan, August 20, 2015*), and he eventually gave two different narratives to Cst. Allison - the first describing a home

invasion during which he and Mr. Samson were assaulted and the second describing a home invasion during which Mr. Samson was shot.

[29] There is also the evidence of Mr. Sandeson saying nothing about a violent altercation at his apartment on the night of August 15. He made no mention of a home invasion during a visit to his across-the-hall neighbour, Pookiel McCabe around 3 a.m. on August 16. (*Exhibit 20, Police Statement of Pookiel McCabe, August 27, 2015*) He said nothing to his friend, Justin Blades, when he saw him on the morning of Sunday, August 16 around 11 a.m. (*Exhibit 18, Police Statement of Justin Blades*)

[30] Mr. Sandeson also made no mention of a violent home invasion when he was interviewed by Sgt. Keddy on August 18. However, based on the principles in *R. v. Turcotte*, [2005] S.C.J. No. 51, I have not taken that evidence into account. (*Turcotte, paragraph 51*)

Is There Evidence that Mr. Sandeson Had the State of Mind Required for Murder?

[31] The state of mind required for murder is made out by evidence that a person either meant to cause the victim's death or meant to cause him bodily harm that he knew would likely result in his death and was reckless whether he died or not. (*section 229(a), Criminal Code; R. v. Nygaard, [1989] S.C.J. No. 110, paragraph 29*)

[32] As I have noted, there is evidence to support the reasonable inference that Mr. Sandeson shot Mr. Samson in his kitchen.

[33] Mr. Sandeson told Cst. Allison that Mr. Samson was shot in the back of the neck while he was sitting on a chair in the kitchen. (*Exhibit 36, 18:40:05*) Trajectory measurements done by forensic IDENT officers in Mr. Sandeson's kitchen appear consistent with a gun being fired by a person standing behind a seated person into the back of the seated person's neck or head. (*Exhibit 2, Photographs 121 – 132, in particular Photographs 130 and 131*)

[34] In the second narrative he gave Cst. Allison, Mr. Sandeson indicated that a single shot was fired by the intruders into the back of Mr. Samson's neck. (*Exhibit 36, 18:31:22*) The jury could take into account that although police interrogators had

shown Mr. Sandeson some of the evidence that had been gathered by investigators, they had not told him a bullet was found lodged in a window frame in his kitchen. Mr. Sandeson did not know the police had discovered evidence of a shooting in his kitchen. I find that a jury could reasonably infer that the description Mr. Sandeson gave Cst. Allison was a description of what *he* did to Mr. Samson, not what purported intruders did. It is reasonable to infer that Mr. Sandeson was able to describe Mr. Samson being shot because he shot him.

[35] It is a reasonable inference that Mr. Sandeson would have foreseen that shooting Mr. Samson at close range in the back of the neck with a 9 mm handgun would either kill him or cause him such serious bodily harm that he would likely die.

[36] Discharging a gun at close range toward a person risks deadly consequences. In *R v. Bains*, the Ontario Court of Appeal held that:

All firearms are designed to kill. A handgun is a particularly insidious and lethal weapon. It is easy to carry and conceal, yet at close range, it is every bit as deadly as a .50 calibre machine gun. It follows that when, at close range, a handgun is pointed at a vital portion of the body of the victim and fired, then in the absence of any explanation the only rational inference that can be drawn is that the gun was fired with the intention of killing the victim. No other reasonable conclusion can be reached: a deadly weapon was used in the very manner for which it was designed - to cause death. It is appropriate to conclude that in these circumstances the gun was fired in order that it might fulfill its design function and kill. An element of surprise arises only if death does not occur. (*R. v. Bains*, [1985] O.J. No. 41 (C.A.) (QL version); *leave to appeal dismissed*, [1985] S.C.C.A. No. 158)

[37] The jury members would be entitled to use their common sense in assessing the evidence:

Common sense dictates that people are usually able to foresee the consequences of their actions. Therefore, if a person acts in a manner which is likely to produce a certain result it generally will be reasonable to infer that the person foresaw the probable consequences of the act. In other words, if a person acted so as

to produce certain predictable consequences it may be inferred that the person intended those consequences. (*R. v. Seymour*, [1996] S.C.J. No. 64, paragraph 19)

[38] On the evidence, a jury would be entitled to decide that the death of Mr. Samson would be an ordinary or probable consequence of his being shot in the back of the neck and make the inference that Mr. Sandeson subjectively knew that.

Evidence of Motive

[39] Evidence of motive is relevant evidence even though the Crown does not have to advance evidence of motive to secure a committal to trial for murder, nor prove motive to obtain a conviction.

[40] The Crown submits that financial pressures on Mr. Sandeson gave him a motive to murder Mr. Samson. Mr. Sandeson was about to start his first year of medical school at Dalhousie. He had obtained a personal line of credit in the amount of \$200,000, co-signed by his mother. According to an account statement dated August 6, 2015, \$76,173 had been spent by that time. (*Exhibit 29, page 9*) Mr. Sandeson's mother was already perturbed about Mr. Sandeson's spending. He had received a text about his mother's views on July 17: "Laurie got mail today. She is mad over credit line." (*Exhibit 29, page 6*) Mr. Sandeson's response to that text was: "Well she has no need to be. Will be paid this september." (*Exhibit 29, page 5, July 17, 2015*)

[41] In the Crown's submission Mr. Sandeson was formulating a plan in July 2015 to get his hands on enough money to pay off the outstanding balance on his line of credit. A jury could reasonably infer that Mr. Samson's twenty pounds of marijuana presented the opportunity Mr. Sandeson was looking for.

Conclusion on the Issue of Committal for Murder

[42] I am satisfied based on the foregoing reasons that a reasonable jury properly instructed could return a verdict of guilt against Mr. Sandeson for murder.

Is There Evidence that Mr. Sandeson's Murder of Mr. Samson was Both Planned and Deliberate?

[43] The remaining issue is whether there is evidence that the murder of Mr. Samson was planned and deliberate. Evidence supporting reasonable inferences of both planning and deliberation would ground a committal for first degree murder.

The Constituent Elements of Planning and Deliberation

[44] First degree murder is an intentional killing that is both planned and deliberate. A plan for the purposes of first degree murder is “a calculated scheme or design that has been carefully thought out, and the nature and consequences of which have been considered and weighed.” (*R. v. Nygaard*, [1989] S.C.J. No. 110, paragraph 18, citing *R. v. Widdifield* (1961) unreported decision of the Ontario Supreme Court) “Deliberate” means “considered, not impulsive” and includes the concepts of being slow in deciding and cautious, implying that the accused must take time to weigh the advantages and disadvantages of his or her intended action. (*Nygaard*, paragraph 18)

[45] A murder committed on a sudden impulse and without prior consideration, even though the intent to kill is clearly proven, would not constitute a planned murder. (*R. v. Smith*, [1979] S.J. No. 476 (C.A.), paragraph 28) In *Smith*, the evidence of a “cruel and sadistic” shooting of the victim in cold blood was found not to show “the implementation of a previously determined design or scheme.” (*Smith*, paragraph 31) The Court went on to say: “It may well be that the killing was deliberate. However, even if it was, there could only be a verdict of first degree murder if the evidence established as well that the murder was planned.” (*Smith*, paragraph 32)

[46] Planning in the context of first-degree murder must not be confused with intention. Planning as an element of first degree murder only occurs after the intent to murder had been formed. “There must be some evidence that the killing was the result of a scheme or design previously formulated or designed by the accused and that the killing was the implementation of that scheme or design.” (*Smith*, paragraph 28)

[47] The elements of planning and deliberation must be present before the act of murder commences. For example, a strangulation that takes four to five minutes to

complete does not constitute the deliberation that is required for a murder to be classified as first degree murder. (*R. v. Ruptash*, [1982] A.J. No. 424 (C.A.), paragraph 5) It is not enough that a killer have taken a weapon in hand: this does not alone amount to having deliberated on a plan, “especially where the weapon is at the ready.” (*Ruptash*, paragraph 6)

The Evidence of Planning

[48] A properly instructed jury could reasonably infer that Mr. Sandeson planned Mr. Samson’s murder from evidence of luring and deceit, evidence that Mr. Sandeson did not have \$40,000 for twenty pounds of marijuana, evidence that he put money on display as part of a ruse, and evidence that Mr. Sandeson ensured his girlfriend, Sonja Gashus, would be out when Mr. Samson came over with the drugs.

- Evidence of luring - the text messages Mr. Sandeson sent to Mr. Samson

[49] The text messages from Mr. Sandeson’s cell phone (*Exhibit 1 and Exhibit 33*) indicate that he and Mr. Samson were acquainted prior to August 15, something Mr. Sandeson had told Sgt. Keddy. They appear to have met up on Thursday, August 13 at Mr. Samson’s old apartment on Robie Street for the purpose of Mr. Samson showing Mr. Sandeson some marijuana. (*Exhibit 1, Screenshots of Texts, pages 1 – 9*)

[50] On Friday, August 14, Mr. Sandeson advised Mr. Samson that he had a purchaser who “is happy with price” and wanted to “up the order.” Mr. Sandeson told Mr. Samson that the interested party “Can afford 30 tomorrow or 40 by next weekend.” Mr. Samson texted back at 11:15 p.m. on August 14: “I’ll get as much as I can for Tomoreow” (*Exhibit 1, page 10*)

[51] A jury could reasonably infer that the text exchanges between Mr. Sandeson and Mr. Samson on August 13 and 14 had to do with arranging a multi-pound marijuana transaction for August 15.

[52] In text exchanges between Mr. Sandeson and Mr. Samson on Saturday, August 15, Mr. Sandeson asked: “How much is ready?” and was told “20” by Mr. Samson. (*Exhibit 1, page 13*) Especially given other evidence I will be referencing, a jury could reasonably infer that Mr. Samson had 20 pounds of marijuana available for the drug deal Mr. Sandeson was expressing an interest in making.

[53] Mr. Samson was eager to do the transaction on Friday morning but Mr. Sandeson said he was unavailable as he was working “through the day in bridgewater” and would not be back until “around 9 Tonight.” He told Mr. Samson he had to go “to Truro for the cash” and adds: “I can meet at 9 no problem though to talk it over.” The text response by Mr. Samson suggests he was dismayed by the prospect of a discussion when he had understood there was to be a “transaction”. Mr. Sandeson confirms in reply: “I can do it.” Mr. Samson advises that if the drug deal doesn’t happen that night “I’m gonna have to pay extra for wasting his time. Sounds a bit ridiculous but I had told him last night that it was going to be today for certain.” (*Exhibit 1, pages 10 – 14*) A jury could reasonably infer from this text exchange that Mr. Samson had been “fronted” the marijuana by a dealer who was expecting to be paid on August 15.

[54] Mr. Sandeson reassured Mr. Samson that the deal would happen that evening. “Yup I’m gonna make a run for the cash its good for tonight just a bit later.” He proposes 10 p.m. which is a later rendezvous than Mr. Samson would have preferred but he agrees to it. (*Exhibit 1, pages 15 – 17*)

[55] Mr. Sandeson texted Mr. Samson that he was “Leaving Truro soon. Dude has a safe house in Hali he wants me to use.” (*Exhibit 1, page 18*) He went on to describe the location of the “safe house” which was in fact the location of his apartment on Henry Street. Mr. Samson reacted warily: “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.” Mr. Sandeson maintains the illusion that it is someone else’s residence: “I been there before” and reassured Mr. Samson that it will be “Just me inside.” (*Exhibit 1, pages 19 and 20*) He tells Mr. Samson: “He’s gonna roll somewhere else I guess and meet after.” (*Exhibit 1, page 22*)

[56] When Mr. Sandeson texts Mr. Samson to advise that he has arrived, he delays him: “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.” (*Exhibit 1, page 23*) He delays Mr. Samson further after giving him the green light to come over: “...Actually hold dude bunch of traffic. They said they’re leaving in 5, just asked...They’re leaving now. Gone.” (*Exhibit 1, page 25*)

[57] Mr. Sandeson's video surveillance footage shows two men leaving the hallway outside Mr. Sandeson's apartment just minutes before Mr. Samson comes into the building. (*Exhibit 30, 22:24:00*) It is reasonable to infer that this is the "traffic" Mr. Sandeson wanted to clear before he brought Mr. Samson up from outside.

[58] The timing of when Mr. Sandeson went to meet Mr. Samson at the Henry Street entrance of his building can be reasonably inferred from Mr. Sandeson's text messaging and the video surveillance footage (*Exhibit 30*). After Mr. Sandeson informed Mr. Samson that the "traffic" had left, Mr. Samson messaged him: "I'm out back of the building now. Is that your bike parked by the door?" Mr. Sandeson texted in response: "I'm walking out now." At 22:24:47 on the video surveillance, Mr. Sandeson can be seen going back down the hallway outside his apartment, texting. He goes out through the door that opens onto the stairs going down to the front of the building. At 22:25:46 he is bringing Mr. Samson along the hallway and into his apartment. (*Exhibit 30; also Exhibit 17, still photographs 1 and 2 from video surveillance*)

[59] A jury could reasonably infer from the texts that Mr. Sandeson's plan was to lure Mr. Samson and his twenty pounds of marijuana to his apartment where he intended to kill him and steal the marijuana. Mr. Sandeson told Cst. Allison there was no third party for whom he was acting as a broker. (*Exhibit 36, 11:46:50*) The location of the rendezvous was not someone's safe house. It was Mr. Sandeson's apartment where he had a gun and ammunition.

- Evidence that Mr. Sandeson did not have \$40,000 for 20 pounds of marijuana

[60] On August 15 during their text exchanges about meeting up for the drug deal, Mr. Sandeson confirms with Mr. Samson what he indicates had been agreed on previously – "Last check to make sure, 20 for 20 per right?" Mr. Sandeson told Cst. Allison there was forty thousand dollars on kitchen table which he and Mr. Samson were counting when the intruders burst in. (*Exhibit 36, 11:36:51*) A jury could reasonably infer that in his text to Mr. Samson, Mr. Sandeson was confirming the purchase price for the 20 pounds of marijuana Mr. Samson was selling: \$40,000 for 20 pounds of marijuana is \$2000 a pound, in other words, 20 for 20.

[61] Nothing close to forty thousand dollars was located at Mr. Sandeson's apartment by police. Damp twenty dollar bills in a garbage bag were seized from Mr. Sandeson's bedroom. They totaled \$2270. (*Exhibit 2, Photograph 70*) Another \$5000 in 20's was found in the bottom of a wastebasket in the bathroom. (*Exhibit 2, Photograph 117*)

[62] There is also evidence that contradicts Mr. Sandeson's texts to Mr. Samson that he went to Truro to get the money required for the drug deal. Mr. Sandeson told Sgt. Keddy that on the evening of August 15 he went out to supper in Halifax with his girlfriend. Sonja Gashus confirmed this in her statement to police. She was with him from when he got home from work around 5 p.m. on August 15 until she left to visit a friend around 9 p.m. (*Exhibit 24, Police Statement of Sonja Gashus, August 18, 2015*)

- Evidence that Mr. Sandeson put money on display as part of the ruse that he was going to purchase Mr. Samson's 20 pounds of marijuana

[63] As I just noted, forensic investigators found \$2270 in damp bills in a garbage bag in Mr. Sandeson's bedroom. They emitted a strong smell. Sgt. Sandra Johnston, asked to describe the smell said it was "a decomposition sort of smell." The bills were stained with a reddish tinging. Although laboratory testing was unable to determine if DNA was present, it can reasonably be inferred that it was Mr. Samson's blood on the money. Mr. Sandeson told Cst. Allison that it was Mr. Samson who was bleeding after being assaulted by the intruders. (*Exhibit 36, 11:30:50*)

[64] A jury could reasonably infer that Mr. Samson and the money were in close proximity when he was shot. It is a reasonable inference that Mr. Sandeson had the money on display so that Mr. Samson's suspicions would not be aroused. To effect his plan to kill Mr. Samson and take the 20 pounds of marijuana Mr. Sandeson needed Mr. Samson to believe they were engaged in the simple drug transaction that had been discussed.

- Evidence that Mr. Sandeson ensured his girlfriend would be out when Mr. Samson came over with the drugs

[65] Sonja Gashus told police that while they were at dinner on the evening of August 15 Mr. Sandeson said he was going to have some people over to the

apartment to talk about “some stuff” and that she “shouldn’t be there.” She made plans to visit a girlfriend in the neighbourhood and was out when Mr. Sandeson brought Mr. Samson to his apartment.

[66] A jury could reasonably infer that Mr. Sandeson’s plan for killing Mr. Samson and stealing the marijuana included luring him to his apartment after deliberately delaying the rendezvous time with the pretense of going to Truro to get the funds, pretending to have the money, and ensuring that his girlfriend would be out.

After-the-Fact Conduct

[67] There is after-the-fact conduct, also known as post-offence conduct, to be considered in this case. I have looked at it to determine what, if any reasonable inferences could be drawn from it by a properly instructed jury.

[68] After-the-fact evidence can be used “as positive evidence of a particular mental state (like planning and deliberation)...” (*R. v. Cudjoe*, [2009] O.J. No. 2761, paragraph 91 (C.A.); *R. v. Poitras*, [2002] O.J. No. 25, paragraph 11 (C.A.); *R. v. Pan*, [1999] O.J. No. 1214, paragraph 246 (C.A.)) It is circumstantial evidence and a properly instructed jury will be told that it must be examined in light of all the evidence and not in isolation. (*R. v. White*, [1998] S.C.J. No. 57, paragraph 21)

William Sandeson’s After-the-Fact Conduct as Evidence of Planning

[69] As it got later on the night of August 15, Ms. Gashus texted Mr. Sandeson to see whether the people he said he was expecting were still at his apartment. He told her it would be another hour “or something like that.” (*Exhibit 24, Police Statement of Sonja Gashus, August 18, 2015*)

[70] While Ms. Gashus was still out, Mr. Sandeson cleaned up blood in his apartment using copious amounts of bleach. According to Ms. Gashus’ police statement, Mr. Sandeson told her when she returned to the apartment that two of the men who had been there earlier had been in a fight and one of them bled everywhere. To clean up the blood after the altercation, Mr. Sandeson had “poured...a whole thing of bleach...” in the kitchen. Ms. Gashus said the apartment smelled of bleach and Mr. Sandeson was “a little off...kind of a little weird. He was kind of sweaty...” and his heart was “pounding.” (*Exhibit 25, Police Statement of Sonja Gashus, August 19, 2015*)

[71] Ms. Gashus told police Mr. Sandeson had said there were three “guys” at the apartment who were there to “buy” his drug clients. She understood from Mr. Sandeson that after the fight, he had been paid “in weed” and the men had left. (*Exhibit 25, Police Statement of Sonja Gashus, August 19, 2015*)

[72] As I noted earlier, Mr. Samson’s blood was identified forensically on various surfaces in Mr. Sandeson’s kitchen. (*Exhibit 15, Forensic Laboratory Report dated January 21, 2016, page 3 of 4, DNA Conclusions #2*) It is reasonable to infer that Mr. Sandeson used bleach to try and clean up Mr. Samson’s blood in the kitchen and, as part of his plan to get rid of evidence, ensured that Ms. Gashus did not return until the job was done.

[73] Some of Mr. Sandeson’s after-the-fact conduct was captured on the video surveillance system he had installed. He had located a camera in the hallway outside his apartment and another one overlooking his parking spot on Henry Street. He told Cst. Allison he believed the system produced poor quality images and over-wrote itself every twenty minutes. (*Exhibit 36, 11:39:41; 11:40:13*)

[74] Forensic investigators discovered that Mr. Sandeson’s video surveillance system ceased operating for a period of about 90 minutes from 11 p.m. on August 15 to 1 a.m. on August 16. The DVR for the system was located by police in Mr. Sandeson’s bedroom. A jury could reasonably infer that Mr. Sandeson shut the system off so he could remove Mr. Samson’s body from the apartment without being captured on video doing so.

[75] Other steps taken by Mr. Sandeson were also consistent with attending to the aftermath of the plan to kill Mr. Samson. A jury could reasonably infer that the following was part of a murder plan:

- Very early on the morning of August 16, Mr. Sandeson drove Ms. Gashus and her friend, Chantale Comeau, to work. Normally it was Ms. Gashus who used the car to pick Ms. Comeau up for work. According to her statement to police, Ms. Comeau found the fact of Mr. Sandeson driving them very unusual: “...it has never happened that...he would want the car at 5 in the morning.” (*Police Statement of Chantale Comeau, August 21, 2015*)

- Ms. Comeau told police Mr. Sandeson had unseasonably heavy clothes on for a summer morning. Mr. Sandeson can be seen on the video surveillance footage for the early morning of August 16 wearing the clothing Ms. Comeau described. (*Exhibit 30, 05:52:41; Exhibit 17, still photographs 3 and 4*)
- The video surveillance shows Mr. Sandeson returning to his apartment shortly after dropping Ms. Gashus and Ms. Comeau off at work. He leaves again carrying a handful of garbage bags. (*Exhibit 30, 06:05:08; 06:08:10*)
- The next video surveillance sighting of Mr. Sandeson on August 16 is three and a half hours later when a different camera records him backing his car into its parking spot. He can be seen apparently spraying the trunk of the car having fetched a spray can from his apartment. He is no longer wearing the heavy clothing and is dressed in a white tank top and track pants. (*Exhibit 30, 09:35 – 09:41*)
- After spraying the car trunk, Mr. Sandeson is captured on the video surveillance footage carrying a large black duffle bag into his apartment. (*Exhibit 30, 09:42:16; Exhibit 17, still photographs 7 and 8*)
- On August 18, the video surveillance shows Mr. Sandeson leaving his apartment with a full garbage bag and a blue Adidas kitbag. He is wearing distinctive red work gloves. He places the garbage bag and Adidas bag in his car. He adds additional items and then drives away. (*Exhibit 32, 08:09:11-08:14:58, cameras 1 and 3*)
- A police search by warrant of the Sandeson farm property in Truro was started on August 25. On August 27 a number of items were seized from an old disabled ice cream truck at the property. A large black duffle bag measuring 41 inches by 16 inches by 16 inches was located there inside a blue Adidas kitbag that closely resembled the one Mr. Sandeson was seen removing from his apartment on August 18. (*Exhibit 9, Photographs 1 – 5*) The duffle bag contained Mr. Samson's blood. (*Exhibit 13, Forensic Laboratory Report dated October 22, 2015, DNA Conclusions #1*) The red stains are readily seen

in Exhibit 5, photographs 120 and 121. Also found at the farm were a shower curtain from Mr. Sandeson's apartment and a tarpaulin inside a garbage bag. The shower curtain was located in one garbage bag (*Exhibit 9, Photographs 10, 12, 14, and 21; Testimony of Sgt. Kim Robinson*) and the tarpaulin in another. (*Exhibit 9, Photographs 7, 8, and 9*) The shower curtain, the tarpaulin and the handles of the garbage bag containing the tarp all contained traces of Mr. Samson's blood. (*Exhibit 13, Forensic Laboratory Report dated October 22, 2015, DNA Conclusions #1; Testimony of D/Cst. James Wasson*) Distinctive red and black work gloves were found discarded on the farm property by Search and Rescue on August 27. (*Exhibit 8, Photographs 1 – 4; Testimony of Sgt. Kim Robinson*)

- Ms. Gashus told police that on August 16 she noticed that the shower curtain from Mr. Sandeson's apartment was missing. (*Exhibit 25, Police Statement of Sonja Gashus, August 19, 2015*)
- The black duffle bag showed signs of stress-wear. One of the handles was torn from its moorings and there was embedded dirt at one end of the bag. (*Exhibit 5, Photographs 109 – 113 and 114; Testimony of D.Cst, James Wasson*) It could be reasonably inferred that the bag had been dragged over dirt with a heavy object in it, such as a body.

[76] A jury could reasonably infer from the evidence I have just reviewed that Mr. Sandeson placed Mr. Samson's body in the large black duffle bag that Mr. Samson had used to transport the drugs and then loaded it into his car while his video surveillance system was shut off. Mr. Samson's blood got into the bag and also on to the trunk lining of Mr. Sandeson's car. The shower curtain and the tarpaulin also came into contact with Mr. Samson's blood at some point. There would have been ample time for Mr. Sandeson to remove the body to the Truro farm in the approximately three and a half hours when there is no video footage showing him at his Henry Street apartment. It is reasonable to infer that the embedded dirt on the duffle bag was from Mr. Sandeson dragging it with its heavy load along the ground. On his return to Henry Street, as he had done in his kitchen, Mr. Sandeson attempted to remove bloodstaining from his car's trunk. A jury could reasonably infer that,

having brought the black duffle bag back to his apartment on August 16, Mr. Sandeson hid it in the blue Adidas bag and on August 18 returned to the Truro farm property to dispose of it.

[77] There is other after-the-fact evidence that supports a reasonable inference of planning in Mr. Sandeson's murder of Mr. Samson. This evidence is found in video surveillance and witness statements and texts.

[78] There is evidence that Mr. Sandeson removed the marijuana Mr. Samson had brought to his apartment and stashed it in the basement of his brother's residence nearby. On August 17 at 07:52:08 Mr. Sandeson's hallway surveillance camera captures him leaving his apartment with black Dalhousie backpack and a white KitchenAid box with a plastic grocery bag balanced on top. (*Exhibit 31, camera 3*) Items matching this precise description were located by Mr. Sandeson's brother in his basement. (*Exhibit 4, Photographs 57 – 63*) Seized by police under warrant they were found to contain 20 pounds of marijuana. (*Testimony of Sgt. Kim Robinson*) The evidence indicates that Mr. Sandeson dropped the backpack, box and bag off at his brother's on August 17. (*Exhibits 21 and 22, Police Statements of Nick Rotta-Loria and Matthew Donovan, August 21, 2015*) A ziplock bag of marijuana from the cache was forensically tested and found to have Taylor Samson's blood on it. (*Exhibit 12, Forensic Laboratory Report dated September 18, 2015, page 3 of 4, DNA Conclusion #9*)

[79] It would be reasonable for a jury to infer that the seized drugs were the 20 pounds of marijuana that Mr. Samson had brought to Mr. Sandeson's apartment 36 hours earlier and that Mr. Sandeson's stashing of it at his brother's was part of his original plan to murder Mr. Samson for the drugs and later realize the full profit from selling them.

[80] A text from Mr. Sandeson to a friend after he is informed that Mr. Samson is missing reveals Mr. Sandeson's awareness that drug dealers can't involve the police when one party to the illegal transaction is ripped off: "This is why this shit is ridiculous, cause no one good on their word and can't call the cops." (*Exhibit 1, page 62*)

[81] Mr. Sandeson's planning to eliminate Mr. Samson and take his drugs can also be reasonably inferred from him telling his good friend and neighbour, Pookiel

McCabe, around 3 a.m. on August 16 that he wanted to stop selling “weed” and was going to “sell his contacts and then he’s going to be done.” (*Exhibit 20, Police Statement of Pookiel McCabe, August 27, 2015*) This was only a few hours after Mr. Sandeson had come into possession of twenty pounds of marijuana with no cash outlay.

[82] Taken with all the other evidence, Mr. Sandeson’s texts on August 16 contribute to a reasonable inference that he was covering up the plan he had executed to dispose of Mr. Samson and acquire the 20 pounds of marijuana outright. At 2:23 a.m. he sent a text to Mr. Samson’s phone: “This isn’t cool man, you said you’d be right back. Want that stuff.” At 10:55 a.m. he texted again: “Don’t know what you are planning.” (*Exhibit 33*) A jury could reasonably infer that this was part of a plan to make it appear that Mr. Samson had failed to show up as arranged and had simply disappeared with the drugs.

[83] Mr. Sandeson sent other deflecting texts in the early morning hours of August 16. In one he told a friend: “Man I got fucked. Taylor took money and won’t answer...” (*Exhibit 1, page 49, 2:52 a.m.*) He wonders if Mr. Samson is “running.” (*Exhibit 1, page 53*) Later he texted another friend that he had not seen Mr. Samson since Thursday “and then nothing. I tried his number. Had to order off someone else had money all lined up.” (*Exhibit 1, page 34*) He went on to say he hadn’t given Mr. Samson any money. (*Exhibit 1, page 37*)

[84] What Mr. Sandeson said in his text on August 16, at 2:23 a.m. to Mr. Samson’s phone and the “I got fucked” text at 2:52 a.m. can be contrasted to texts Mr. Sandeson exchanged with another friend in the early morning hours of August 16. At 1:42 a.m. on August 16, Mr. Sandeson texted an old friend, Amanda Clarke, to ask if they could “Have a little catch up tomorrow?” She responded at 4:53 a.m. to say that would “potentially” work. At 4:59 a.m. Mr. Sandeson asked: “Have a chance to snap?” Three minutes later he texted again: “Student loan paid off and I’m completely squeaky clean now! Sold market share away.” Ms. Clarke responded: “That’s great!” (*Exhibit 29, page 1*) Mr. Sandeson made no mention of a bloody altercation at his apartment or the terrible events he described to Cst. Allison on August 18. A jury could reasonably infer that Mr. Sandeson’s elation about paying off his “student loan” was due to his having successfully executed a plan to murder Mr. Samson and obtain 20 pounds of marijuana for sale for pure profit.

Evidence of Deliberation

[85] As I said earlier in these reasons, a committal to trial for first degree murder must be supported not only by evidence of planning but also by evidence of deliberation on the plan. The evidence I have examined on the issue of deliberation in this case are certain texts, the video surveillance footage and the witness statements of Pookiel McCabe and Justin Blades.

[86] On the evening of August 15, Mr. Sandeson's video security system shows Mr. Samson following Mr. Sandeson into his apartment at 22:26:06. (*Exhibit 30*) Mr. Sandeson had delayed bringing Mr. Samson upstairs until some "dudes" had left the building. As I have mentioned, he achieved this with the text to Mr. Samson that said: "...Actually hold dude bunch of traffic. They said they're leaving in 5, just asked...They're leaving now. Gone." (*Exhibit 1, page 25*)

[87] At 22:29:15 Mr. Sandeson can be seen on the hallway video surveillance going across the hall to Pookiel McCabe's apartment. Then a mutual friend, Justin Blades, comes out into the hallway from Mr. McCabe's apartment and briefly stands looking into the Sandeson apartment. He goes back to the McCabe apartment.

[88] From 22:30:31 to 22:31:30, Mr. McCabe and Mr. Blades are in the hallway and Mr. Blades is at Mr. Sandeson's door which is ajar. At 22:32:09, they return to Mr. McCabe's apartment. It is less than a minute later that Mr. McCabe and Mr. Blades are seen on the video footage leaving via the hallway. They go out through the door at the end of the hallway and are gone.

[89] Mr. Blades and Mr. McCabe were interviewed by police about their interactions with Mr. Sandeson on the evening of August 15. Mr. Blades had dropped by Mr. McCabe's apartment to collect him for a house party. In his police interview he confirmed he had been standing at the doorway of Mr. Sandeson's apartment. He saw no one and nothing out of the ordinary. He saw no drugs or cash out on the kitchen table. Mr. Blades, who was eager to get to the party, encouraged Mr. Sandeson to come out with them but he didn't want to. According to Mr. Blades this was not unusual. (*Exhibit 18, Police Statement of Justin Blades, August 26, 2015*)

[90] Mr. McCabe also recalled asking Mr. Sandeson if he wanted to come out to the house party. During this conversation, Mr. Sandeson's apartment door was open. Mr. McCabe told police he could see the kitchen table but there was no money or drugs on it. He saw no one in the kitchen. Mr. McCabe told police: "Everything seemed normal." (*Exhibit 20, Police Statement of Pookiel McCabe*)

[91] A jury could reasonably infer that the reason Mr. McCabe and Mr. Blades saw no one in Mr. Sandeson's small kitchen approximately 5 to 6 minutes after Mr. Samson went in there was because Mr. Sandeson got Mr. Samson to stay out of sight. It is a reasonable inference that Mr. Samson was still alive at this time: Mr. McCabe and Mr. Blades would have been sure to notice a gun shot and the bloodletting that the forensic investigation confirms occurred in that kitchen.

[92] Once Mr. McCabe and Mr. Blades left for the party at 22:32:42, Mr. Sandeson and Mr. Samson would have been alone. Mr. Sandeson's roommate was out too.

[93] Mr. Sandeson is next seen on the hallway video surveillance at 22:40:56. He opens the door to his apartment and stepping into the hall, appears to lean over the shoe rack and straighten up again. Most notably, he has no clothing on his upper body. Previously, when he brought Mr. Samson into his apartment he had been wearing a black Adidas athletic jacket.

[94] A witness statement explains what Mr. Sandeson was doing in the hallway. A friend, Andrew Falkenham, had texted him to pick up a few grams of marijuana for personal use. He expected to have a social visit with Mr. Sandeson when he came to get the marijuana as that was customary, but this time Mr. Sandeson told him he would leave it out on the shoe rack. Although Mr. Falkenham thought it was "a little weird", he assumed Mr. Sandeson was busy. (*Exhibit 23, Police Statement of Andrew Falkenham, August 26, 2015*)

[95] The hallway video camera recorded Mr. Falkenham coming into the hallway and at 23:01:33 leaning over the shoe rack and taking something. (*Exhibit 30*) This accords with Mr. Falkenham's statement to police. He told police he heard nothing from Mr. Sandeson's apartment other than some music. (*Exhibit 23, Police Statement of Andrew Falkenham, August 26, 2015*)

[96] I find a jury could reasonably infer that by the time Mr. Sandeson stashed Mr. Falkenham's marijuana in the hallway shoe rack, Mr. Samson had been shot. It is significant that Mr. Sandeson was shirtless when he stepped to the shoe rack. It can be reasonably inferred that he was shirtless because shooting Mr. Samson had sprayed or spattered him with blood.

[97] Mr. Samson was alive at 22:25, the time he is seen on camera entering Mr. Sandeson's apartment. The reasonable inference that Mr. Samson was dead by the time Mr. Sandeson is shown on the video surveillance to be shirtless – at 22:40 – suggests that Mr. Sandeson waited until Mr. McCabe and Mr. Blades had left before completing his plan to murder Mr. Samson. This is evidence of deliberation. Mr. Sandeson had previously delayed bring Mr. Samson up to his apartment. A jury could reasonably infer that Mr. Samson ensured that there were no witnesses to Mr. Samson coming up to his apartment or being at his apartment and held back from shooting Mr. Samson until there was no risk of anyone hearing or seeing anything suspicious or alarming.

[98] The evidence I have reviewed supports the reasonable inference that Mr. Sandeson deliberated on his plan to kill Mr. Samson and waited for the most advantageous circumstances to effect the plan and clean up afterwards. It could reasonably be inferred that sometime between the departure of Mr. McCabe and Mr. Blades and Mr. Sandeson's shirtless appearance in the hallway, he shot and killed Mr. Samson. He cleaned up the blood with bleach and, after turning off the security cameras, he moved Mr. Samson's body in the black duffel bag to the trunk of his car.

Conclusion on the Issue of Committal

[99] I find a jury could reasonably infer from the evidence, including Mr. Sandeson's after-the-fact conduct, that the murder of Mr. Samson was planned and deliberate. This is not to say that the inferences I have identified as reasonable inferences will necessarily be the inferences a jury will draw but they are within "the field of inferences that could be reasonably drawn..." (*R. v. Hawley*, [2012] O.J. No. 4927 (C.A.), paragraph 10)

[100] It may be that competing inferences could be drawn from the evidence. A jury may be asked to infer that Mr. Samson's death was the result of an attempted robbery

by Mr. Sandeson that went tragically awry. However as I noted at the start of these reasons, a preliminary inquiry judge is to consider only those inferences that favour the Crown and must not to weigh competing inferences. (*R. v. Deschamplain*, [2004] S.C.J. No. 73, paragraph 15; *R. v. Quinn*, [2008] O.J. No. 3621 (C.A.), paragraph 3; *R. v. Campbell*, [1999] O.J. No. 4041(C.A.), paragraph 7)

[101] For the reasons I have given, I am satisfied that a reasonable jury properly instructed could return a verdict of guilty against William Sandeson for the first degree murder of Taylor Samson. Accordingly I am committing him to trial for first degree murder as charged.

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Sandeson 2016 NSPC 18

Date: March 29, 2016

Docket: 2899325

Registry: Halifax

Her Majesty the Queen

v.

William Michael Sandeson

Judge: The Honourable Judge Anne S. Derrick

Heard: February 8, 10, 11, 12, 22, 23, 24, 25,
March 1, 2, and 4, 2016

Erratum Date: August 30, 2017

Charges: section 235 of the *Criminal Code*

Counsel: Susan MacKay and Kim McOnie, for the Crown

Eugene Tan, for William Sandeson

Erratum:

- [1] Paragraph 80, replace, “Mr. Taylor” with “Mr. Samson”.
- [2] Paragraph 91, replace, “Mr. Taylor” with “Mr. Samson”.
- [3] Paragraph 92, replace, “Mr. Taylor” with “Mr. Samson”.
- [4] Paragraph 96, replace, “Mr. Taylor” with “Mr. Samson”.
- [5] Paragraph 97, replace, “Mr. Taylor” with “Mr. Samson”.