R v Stanley, 2017 SKQB 367 (CanLII)

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QUEEN'S BENCH FOR SASKATCHEWAN

Citation: **2017 SKQB 367**

Date: **2017 12 13**
Docket: CRIM 40 of 2017
Judicial Centre: Battleford

BETWEEN:

HER MAJESTY THE QUEEN

– and –

GERALD STANLEY

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Counsel:

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Scott R. Spencer and Dustin L. Gillanders for Gerald Stanley

REASONS FOR JUDGMENT RE ADMISSIBILITY OF STATEMENTS MADE BY GERALD STANLEY
December 13, 2017

POPESCUL C.J.Q.B.

I. INTRODUCTION

[1] Gerald Stanley is charged with second degree murder in connection with the death of Colten Boushie.

[2] The Crown seeks a ruling from the Court that certain statements made by Mr. Stanley were voluntarily provided and, thus, admissible. The Crown has indicated that should these statements be found to be voluntary and admissible, it may choose not to introduce them as part of the Crown's case, but might only use them for cross-examination purposes should Mr. Stanley take the stand at his trial. The purpose for which the Crown may wish to use the statements is irrelevant to the question of whether the statements are admissible.

[3] A *voir dire* was entered into in advance of the trial proper, for the purpose of enabling the Crown and defence to address the issue of voluntariness by calling evidence and making submissions. In the *voir dire* the Crown and defence presented, pursuant to s. 655 of the *Criminal Code*, RSC 1985, c C-46, a two-paragraph agreed statement of facts. Additionally, the Crown called one witness, Cst. Aaron Gullacher, the Royal Canadian Mounted Police [RCMP] officer who interviewed Mr. Stanley. Through Cst. Gullacher, the Crown presented an audio video recording of the interview which took place the day after the incident that spanned approximately 4-1/2 hours. The audio video recording was played in its entirety, with the exception of several instances where the recording was, with consent of both the Crown and defence, fast forwarded over periods when Mr. Stanley was alone in the interview room.

[4] The defence chose to call no evidence at the *voir dire*.

II. PARTIES' POSITIONS

[5] The defence contends that the statements were involuntary. The defence's main argument is that Cst. Gullacher continued to question Mr. Stanley for several hours even after he had explicitly chosen to remain silent. Further, the defence argues that Cst. Gullacher employed a number of improper interrogation tactics and strategies designed and intended to overrule Mr. Stanley's unequivocal decision not to provide a statement. According to the defence, this amounted to strategically violating the letter and spirit of Mr. Stanley's right to remain silent.

[6] The defence submits that the Crown has failed to discharge its burden to establish voluntariness beyond a reasonable doubt and that the entirety of the statement provided at the interview should be ruled involuntary and thus, inadmissible.

[7] The Crown argues that it has established beyond a reasonable doubt that the statements made by Mr. Stanley to Cst. Gullacher were made voluntarily after Mr. Stanley had been provided with a police warning and was advised of, and exercised, his right to counsel.

[8] The Crown acknowledges that Cst. Gullacher persisted in questioning Mr. Stanley after Mr. Stanley told the investigating officer that he did not want to provide a statement on the advice of counsel. However, the Crown contends that persistent questioning after Mr. Stanley clearly expressed his choice to decline to provide a statement does not render what was said involuntary. Further, the Crown argues that nothing else occurred during the interview process that would render the statements involuntary.

[9] The Crown submits that all of the statements made by Mr. Stanley during the interview, captured by the audio video recording, were voluntary and should be ruled admissible.

III. THE LAW

[10] There really is no dispute about the state of the law. Both counsel referred the Court to the leading cases in the area, namely: *R v Hebert*, 1990 CanLII 118 (SCC), [1990] 2 SCR 151; *R v Oickle*, 2000 SCC 38 (CanLII), [2000] 2 SCR 3 [*Oickle*]; *R v Singh*, 2007 SCC 48 (CanLII), [2007] 3 SCR 405 [*Singh*]; and *R v Sinclair*, 2010 SCC 35 (CanLII), [2010] 2 SCR 310 [*Sinclair*]. I have re-read, and studied, these decisions and several other decisions referred to me by counsel.

[11] Simply stated, the voluntariness rule is that in order for the statements made by Mr. Stanley to Cst. Gullacher, a person in authority, to be admissible, the Crown must establish beyond a reasonable doubt, in light of all the circumstances, that the will of Mr. Stanley has not been overborne by such things as inducements, oppressive circumstances, or the lack of an operating mind. Additionally, there must not be police trickery that unfairly denies Mr. Stanley his right to silence.

[12] If the Crown proves voluntariness beyond a reasonable doubt, there can be no finding of a violation under the *Canadian Charter of Rights and Freedoms* [*Charter*] of the right to silence in respect of the same statement. (See *Singh*, at para 31.)

[13] The Supreme Court in *Oickle* established that the "contemporary confessions rule" requires a contextual analysis of all the conditions surrounding the statement under review. The burden is on the Crown to establish beyond a reasonable doubt that the will of the accused has not been overborne by any one of the following three factors:

1. *Threats or Promises*

A threat or a promise in exchange for a statement has been described as the core of the confessions rule. Obvious examples, such as threats of bodily harm or promises of leniency, are easy to identify. Veiled or indiscreet threats or promises, such as "it would be better if you confess" can result in statements being excluded due to involuntariness. However, not all inducements will render a statement involuntary, as noted by the Supreme Court:

> [57] In summary, courts must remember that the police may often offer some kind of inducement to the suspect to obtain a confession. Few suspects will spontaneously confess to a crime. In the vast majority of cases, the police will have to somehow convince the suspect that it is in his or her best interests to confess. This becomes improper only when the inducements, whether standing alone or in combination with other factors, are strong enough to raise a reasonable doubt about whether the will of the subject has been overborne. … The most important consideration in all cases is to look for the *quid pro quo* offer by interrogators, regardless of whether it comes in the form of a threat or promise.
>
> (See *Oickle*, at paras 47-57.)

2. Oppression

A statement may be excluded as involuntary where it is the product of an atmosphere of oppression, even though there have been no improper inducements. The ultimate question is whether the oppressive circumstances, raise a reasonable doubt about whether the will of the accused was overborne. Factors found to have created an atmosphere of oppression include: the deprivation of food, clothing, water, sleep or medical attention; denying access to counsel; confronting the accused with "non-existent" evidence and "intimidating questioning for a prolonged period of time". (See *Oickle*, at paras 58-62.)

3. Operating Mind

The operating mind test requires that an accused possess a limited degree of cognitive ability to understand what they are saying and to comprehend that the statements made could be used in a proceeding against them. Statements made by a person who is grossly intoxicated or is suffering from shock after an accident might not be admitted into evidence because they were not the product of an operating mind. The question is whether the accused possessed an operating mind. This does not mean that it is necessary to inquire into whether the accused is capable of making good or wise choices or one that is in their best interest. It was noted by the Supreme Court that this principle is just one application of the general rule that involuntary confessions are inadmissible. (See *Oickle*, at paras 63-64; and *R v Whittle*, 1994 CanLII 55 (SCC), [1994] 2 SCR 914 at 939.)

[14] An additional, fourth consideration, not related to whether the will of the accused has been overborne, but which will render a statement "involuntary", is unacceptable police trickery.

4. Police Trickery

A statement may be considered involuntary and inadmissible if it is obtained by police trickery that is so appalling as to shock the community. The inquiry is not dependent on a finding that the will of the accused was overborne by inducements, oppression or the exploitation of a non-operating mind. The primary objective is to maintain the integrity of the criminal justice system while not unduly restricting police techniques.

Examples provided in *Oickle* of conduct that would shock the conscience include investigators posing as a priest or a legal aid lawyer.

A certain degree of police trickery is inherent in many effective and appropriate police tactics. Police are to be given considerable latitude as to what they can say to induce an accused to make a statement, including things that might not be strictly true, provided such conduct is not of such a nature that it will shock the community. (See *Oickle*, at paras 65-66; and *R v Hart*, 2014 SCC 52 (CanLII) at para 212, [2014] 2 SCR 544.)

[15] Since the evidence at the *voir dire* revealed that the interview of Mr. Stanley encompassed a period of time spanning just over 4-1/2 hours and since the questioning was persistent, even after the accused asserted his right to remain silent, it is useful to examine some of the principles emanating from *Singh* relating to repeated and unremitting questioning.

[16] Police are not required to refrain from questioning an accused who states that he does not wish to speak with the police. There is a distinction to be drawn between the right to remain silent and the right not to be spoken to. This differentiation was explained by the Supreme Court in *Singh* as follows:

> 28 What the common law recognizes is the individual's right to *remain* silent. This does not mean, however, that a person has the right *not to be spoken to* by state authorities. The importance of police questioning in the fulfilment of their investigative role cannot be doubted. One can readily appreciate that the police could hardly investigate crime without putting questions to persons from whom it is thought that useful information may be obtained. The person suspected of having committed the crime being investigated is no exception. Indeed, if the suspect in fact committed the crime, he or she is likely the person who has the most information to offer about the incident. Therefore, the common law also recognizes the importance of police interrogation in the investigation of crime.
>
> [Emphasis in original]

[17] However, persistent questions in the face of an accused's repeated assertion that he wishes to remain silent may raise a reasonable doubt that the statements made were not voluntary. The number of times the accused asserts his right to not make a statement is part of the overall assessment of the circumstances, but is not itself determinative. Each case must be determined on its own facts. The ultimate question is whether the accused exercised his free will by choosing to make the

statements that he did. In *Singh*, the Supreme Court made the following comments, which I find instructive:

> [47] … First, the use of legitimate means of persuasion is indeed permitted under the present rule – it was expressly endorsed by this Court in *Hebert*. This approach is part of the critical balance that must be maintained between individual and societal interests. Second, the law as it stands does not permit the police to *ignore* the detainee's freedom to choose whether to speak or not, as contended. Under both common law and *Charter* rules, police persistence in continuing the interview, despite repeated assertions by the detainee that he wishes to remain silent, may well raise a strong argument that any subsequently obtained statement was not the product of a free will to speak to the authorities … .
>
> (See *Singh*, at para 47.)

[18] Counsel for Mr. Stanley also raised an issue relating to whether the right to further consult counsel arose in the circumstances of this case. Normally, s. 10(b) of the *Charter* (the right to retain and instruct counsel without delay and to be informed of that right) affords the accused a single consultation with a lawyer. However, in certain circumstances, a further opportunity to consult counsel may be constitutionally required. The jurisprudence recognizes that there is a duty on the police to provide a detained accused with an additional opportunity to consult counsel where a change of circumstances makes it necessary to fulfil the purpose of s. 10(b) of the *Charter*. In those situations, the accused should be entitled to consult counsel again so he can re-evaluate his choice to co−operate with the police investigation or declare not to do so. For example, non-routine procedures, such as participating in a line-up or submitting to a polygraph, that arise after an initial consultation might justify a second consultation since such matters might have fallen outside of the expectation of the advising counsel at the time of initial consultation. Further, if the investigation takes a new or more serious turn, the initial advice may no longer be adequate.

[19] The initial advice received by the accused in relation to how he should exercise his right in the context of the police investigation is presumed to be sufficient and correct. Thus, using the words of the Supreme Court of Canada in *Sinclair*:

> ... It is assumed that the initial legal advice received was sufficient and correct in relation to how the detainee should exercise his or her rights in the context of the police investigation. The failure to provide an additional opportunity to consult counsel will constitute a breach of s. 10(b) only when it becomes clear, as a result of changed circumstances or new developments, that the initial advice, viewed contextually, is no longer sufficient or correct. …
>
> (See *Sinclair*, at para 57.)

[20] Further, the change in circumstances is not determined by the subjective mindset of the accused:

> 55 The change of circumstances, the cases suggest, must be objectively observable in order to trigger additional implementational duties for the police. It is not enough for the accused to assert, after the fact, that he was confused or needed help, absent objective indicators that renewed legal consultation was required to permit him to make a meaningful choice as to whether to cooperate with the police investigation or refuse to do so.
>
> (See *Sinclair*, at para 55.)

[21] The references above to case authorities and certain legal concepts and principles are not intended to be exhaustive; rather they are provided as a basic legal context for the analysis that follows.

IV. FACTUAL BACKGROUND

[22] On August 9, 2016 at 6:47 p.m., Mr. Stanley was detained for murder. At 6:53 p.m. he was arrested for murder and advised of his right to counsel. Mr. Stanley was at his residence when this occurred. He was subsequently taken to the Biggar RCMP detachment where he was lodged in cells.

[23] That same evening, Mr. Stanley consulted legal counsel at 8:16 p.m. and again at 10:43 p.m.

[24] At 2:09 a.m. on August 10, 2016, RCMP officers awakened Mr. Stanley to take swabs of his hands and to seize his clothing. He was provided with replacement clothing. He then remained in his cell, alone, until 1:20 p.m. on August 10, 2016, when he was escorted into an interview room at which time he met Cst. Gullacher for the first time.

[25] Prior to the interview, Mr. Stanley was provided with breakfast and lunch.

[26] The interview took place in a relatively small office within the Biggar detachment. The room was furnished with a small desk and two chairs. Mr. Stanley sat in a chair next to the desk. He was able to use the desk to set his coffee. Cst. Gullacher sat to Mr. Stanley's right. The two sat a comfortable distance from each other.

[27] The interview started at approximately 1:42 p.m. and concluded at approximately 5:58 p.m. – a little over four hours later. During that time, Cst. Gullacher and Mr. Stanley left the interview room on several occasions for relatively brief periods of time. The reason for leaving the interview room included, retrieving coffee, washroom breaks, facilitating a telephone call with legal counsel and so that Cst. Gullacher could consult with another investigator who was watching the interview in another room live via an audio video feed. Cst. Gullacher testified that during the times that Mr. Stanley was not in the interview room (and out of the range of the audio video cameras) there was no discussion of any consequence between him and Mr. Stanley and that Mr. Stanley did not communicate with anyone other than with his

lawyer while on the telephone in a private room.

[28] At approximately 1:53 p.m., shortly after the interview commenced, Mr. Stanley told Cst. Gullacher that he had been expecting to hear from his lawyer that morning. According to Mr. Stanley, this lawyer, whom he identified as “Barb”, had told him “to wait for her”.

[29] Cst. Gullacher indicated that he was not aware that Mr. Stanley was expecting to talk to his lawyer that morning. He then confirmed with Mr. Stanley that he had already consulted with two different lawyers the day before. Cst. Gullacher said he would check this out. He then left the interview room for several minutes.

[30] Upon his return, Cst. Gullacher advised Mr. Stanley that he had been informed by one of the other members that Barb had phoned the detachment at 11:45 a.m. Cst. Gullacher passed on the message left by Barb that she was not planning on coming to the detachment to meet with Mr. Stanley. Cst. Gullacher then proceeded to commence the formal portion of the interview.

[31] Cst. Gullacher confirmed with Mr. Stanley that he was aware that he was under arrest for murder, at which time Mr. Stanley stated, “Man, I wish I could talk to that girl, I just don’t know what to do.” At that point, at approximately 2:04 p.m., Cst. Gullacher advised Mr. Stanley that he did not have to give a statement by words, gestures or otherwise and that anything he did say could be used as evidence in a court proceeding against him. Cst. Gullacher asked Mr. Stanley if he understood, to which he nodded in the affirmative. Cst. Gullacher also advised Mr. Stanley that the interview was being audio and video recorded.

[32] Cst. Gullacher then engaged Mr. Stanley in conversation and invited him to tell his side of the story. Mr. Stanley replied by saying that his lawyer told him not to say anything and that he knew “nothing about the law” and that he did not “want to do something stupid” on his own.

[33] Cst. Gullacher then left the room at approximately 2:10 p.m. and returned at 2:19 p.m. Upon his return Cst. Gullacher stated that he arrived at the conclusion that it would be in Mr. Stanley’s best interest to speak to Barb again because “I can tell you want to talk with her”. At approximately 2:20 p.m., Cst. Gullacher left the interview room with Mr. Stanley so that Mr. Stanley could phone his lawyer.

[34] After a few minutes, Cst. Gullacher and Mr. Stanley returned to the interview room. It is apparent from their conversation that Mr. Stanley had been permitted to attempt to call Barb, but that she was not available. Cst. Gullacher left a message with Barb to phone him on his cellphone. Cst. Gullacher suspended the interview as they waited for a call from Barb.

[35] At 2:35 p.m. Cst. Gullacher re-entered the interview room, where Mr. Stanley was waiting, to advise that he had just received a call from Scott Spencer. Cst.

Gullacher informed Mr. Stanley that Mr. Spencer is a lawyer from Saskatoon who said that he had been retained by Mr. Stanley's family. Cst. Gullacher offered to take Mr. Stanley to a private room so that he could speak with either Mr. Spencer or Barb. Mr. Stanley accepted the invitation and left the room with Cst. Gullacher.

[36] Approximately 20 minutes later, Mr. Stanley was brought back into the interview room. It is apparent from the context of the conversation captured on the audio video recording that Mr. Stanley had been able to consult with Mr. Spencer. Mr. Stanley then stated, "I'd like to get it over with as bad as you but I've got to do what he says".

[37] Cst. Gullacher, unfazed by Mr. Stanley's comment, then proceeded to attempt to persuade Mr. Stanley to tell him what happened so that the investigators would have the "full story", pointing out that the police only have "one side of the story". Cst. Gullacher also said things like:

- Our goal is to collect all the evidence before … the 24 hour comes up
- It's … in our best interest for you to tell your side of the story
- It's … in my best interest for you to tell that complete story
- It's important to get these details out
- There's still some … information we don't have, right?
- Did you mean to kill him?
- I'm just looking for the truth.

[38] The overall response of Mr. Stanley was that he did not wish to provide a statement at that time because he was advised not to and he was concerned that he might make inadvertent errors that might hurt him in the long run. In response to Cst. Gullacher's repeated requests to provide details of the incident, Mr. Stanley consistently asserted his choice not to do so. Responses to Cst. Gullacher's persistent requests for a statement included the following:

- I'm going to wait
- I want you to know, I just can't … I've got to do what he said 'cause I just don't want to screw it up
- I can't. Sorry. I'd like to but … it's fucking killing me
- I can't
- Well I'd like to give you a hint but I can't
- I will, just not today
- I don't know if I can answer … that, you know

- Oh, I know. It looks … but I … I must wait
- I mean, I'm not waiting so I can change anything. I'm waiting because I want everything properly processed
- I'm sorry I just … I've got to … I'd like to talk to buddy
- Well, the only way I could do it is to tell you my side but I can't
- I don't … I'm unsure if it was … I don't want to say anything
- It ah … that's why I … I … it's so involved I've got to wait. I have to do what he said, so …
- You'll find out
- But I think you're good at your job, I just cannot tell you. You know? I'm not … I'm not trying to make it too hard on you
- … I don't know if I'm supposed to or what
- But … you'll understand when you hear the whole deal
- … but you'll hear the complete deal
- And they were … but I have to tell the whole story then you'll hear it
- And that'll be the … you'll see why
- Maybe, but I have to wait
- I have to wait to say
- Ah … there is but I can't say I don't think, 'cause it's part of my whole trip
- … I'd like to say it but I don't know if I can. We all know there was three but they weren't ah … ah … ppff … do you know sign language somehow? … ah … that won't work
- But I don't want to say anything anymore
- No, I can't say … anymore
- No. That's it
- I can't say anymore
- But I better stop
- Like if somebody would have asked me that yesterday, I probably would have just spilled 'er right out. I don't know what I would have done.

[39] The above references are not exhaustive, but are illustrative of the nature of the dialogue between Cst. Gullacher and Mr. Stanley.

[40] Shortly before the interview ended, Mr. Stanley signalled that he was becoming tired of the repetitive questions and remarked:

> … I think so. I don't know. I don't know. I don't … do you want to talk about something else yet?

[41] Shortly after that, at approximately 5:58 p.m., the interview ended. It is apparent that Cst. Gullacher could see the writing on the wall and was prepared to accept that, despite his efforts, Mr. Stanley was not going to provide him with details of the incident under investigation.

V. ANALYSIS

(a) Was Mr. Stanley's right to choose to talk or to remain silent overborne by Cst. Gullacher's persistent and skilled attempts to convince him to provide a statement as to what happened the previous day?

[42] I conclude, in light of all the circumstances, viewed contextually, that the Crown has established beyond a reasonable doubt that the will of Mr. Stanley was not overborne by threats or promises, oppressive circumstances or the lack of an operating mind.

[43] It is apparent, after watching, and re-watching, the interview of Mr. Stanley that it did not occur in oppressive circumstances. Mr. Stanley was in fresh clothes, had just finished lunch and was offered, and accepted, coffee several times during the interview. Mr. Stanley was able to use the washroom facilities when requested. He was provided the opportunity to speak with his lawyer, and exercised it, during the course of the interview. Mr. Stanley had also been afforded the opportunity to speak with legal counsel on two occasions, the day before.

[44] Mr. Stanley, although expressing that he was nervous and tired, and at one time that he was claustrophobic, did not appear to be unduly agitated, anxious or stressed. He was able to communicate competently and expressed himself appropriately. Although there were occasions when Mr. Stanley became somewhat emotional, he was able to recover quickly and regain his composure. He was not emotionally distraught and appeared calm and polite during the course of the interview.

[45] The interaction between Cst. Gullacher and Mr. Stanley was relaxed and cordial. Neither raised his voice at the other nor said anything rude or disrespectful. Neither of them expressed any anger. Although Cst. Gullacher did impress upon Mr. Stanley the gravity of the situation, he did not do so in an overbearing or overly aggressive manner. Cst. Gullacher, a 12-year member of the RCMP, is considerably younger than Mr. Stanley. Mr. Stanley did not appear to be intimidated by Cst. Gullacher. In fact they discussed how Cst. Gullacher was similar in age to one of Mr. Stanley's sons.

[46] It is clear that Mr. Stanley had been advised of his right to remain silent

and that he understood that right. In fact, he was quite successful in exercising his right to remain silent – repeatedly. Mr. Stanley never did provide a "confession" in the true sense of the word, nor did he ever provide "his side of the story" as he was urged to do by Cst. Gullacher. Granted, during the course of the interview Mr. Stanley did make a number of comments surrounding the incident in question and also made some statements that might be characterized as admissions. However he never yielded to Cst. Gullacher's repeated requests to reveal his personal perspective of what had happened the previous day.

[47] The banter between Cst. Gullacher and Mr. Stanley was friendly in tone. Cst. Gullacher would say that he would really like to get Mr. Stanley's side of the story, to which Mr. Stanley would reply that he was sorry but he could not get into it because his lawyer had instructed him not to make a statement. At times, Mr. Stanley was almost apologetic about his inability to fill Cst. Gullacher in on the details.

[48] On several occasions after stating that Mr. Stanley "can't" oblige Cst. Gullacher's request, the officer would engage in more general conversation before circling back to the incident. Mr. Stanley did provide some information, but would quickly catch himself and decline to provide further information. Although some of the tactics employed by Cst. Gullacher were intended to, and did, provide some pressure on Mr. Stanley to be forthright, Mr. Stanley resisted the pressure and would not divulge the major details that the officer was seeking.

[49] Where, as here, an interview spans the course of several hours and where, as here, the officer is persistent in attempting to convince an accused to provide information in the face of repeated refusals to do so, the interviewer does run the risk that a court might find that his conduct has deprived the accused of the right to make a meaningful choice whether to speak, or not. It is all a matter of degree.

[50] I conclude that Cst. Gullacher did not go beyond what he was entitled in law to do. Mr. Stanley's will to remain silent was not overborne. He exercised his free will to divulge the limited information that he did.

[51] Further, I find that there were no threats or inducements offered or suggested by Cst. Gullacher to Mr. Stanley. Nothing was said, or could be construed as suggesting, that Mr. Stanley's legal position would be improved by providing a statement.

[52] In addition to the persistent nature of the questions, counsel for Mr. Stanley pointed to several other portions of the interview to support his argument that the will of Mr. Stanley had been overborne. These included:

(i) a suggestion by Cst. Gullacher that he needed to provide a statement within 24 hours of arrest;
(ii) word games;
(iii) providing inaccurate legal advice;
(iv) undermining the advice of legal counsel;

(v) refusal to provide further consultation with counsel;
(vi) the false narrative respecting a mythical sexual assault case.

I will address each of these themes.

(i) a suggestion by Cst. Gullacher that he needed to provide a statement within 24 hours of his arrest

[53] Mr. Stanley was arrested at 6:53 p.m., August 9, 2016. Cst. Gullacher presumably in reference to s. 503 of the *Criminal Code*, told Mr. Stanley that "… we basically have 24 hours to hold you" without laying a charge. The officer suggested that if a statement was provided by Mr. Stanley it would get put in the package of material that would be sent to the prosecutor who would be determining what charge, if any, would be laid. Counsel for Mr. Stanley argued that statements such as this constituted a false representation that induced Mr. Stanley to provide information against his will. He characterized this aspect of the interview as "the most coercive strategy" that was intended to convey the message that if Mr. Stanley wanted to be released he needed to talk immediately because the "24 hour" clock was running out.

[54] A major problem with this argument is that the officer's statements are rooted in the truth. The police do in fact have a discretion to hold a person arrested without warrant for up to 24 hours before taking them before a justice to be dealt with according to law. Presumably, any statement made by a suspect, inculpatory or exculpatory would likely be factored into whether a charge is laid and if so, what that charge might be.

[55] Further, the suggestion that Cst. Gullacher suggested directly or indirectly that providing a statement would affect the decision of whether Mr. Stanley was released from custody is not borne out by the evidence. There was nothing said or done by Cst. Gullacher which could be construed as offering a favour or advantage in exchange for a statement. A careful review of the interview does not support the allegation of an improper inducement.

[56] Finally, Mr. Stanley, with the exception of some statements made relating to circumstances surrounding the incident, managed to maintain his silence which supports the contention that his will was not overborne.

(ii) word games

[57] On several occasions Cst. Gullacher said things like, "it's in my best interest for you to tell me the complete story", and, "… it's going to be in … in our best interest for you to tell me your side of the story …", and "being a police investigation … and where we are, it's important to get these details out …".

[58] Defence counsel suggests that statements like these are examples of the officer playing "word games" that caused the will of Mr. Stanley to be overborne. I disagree. Whether statements such as those referenced above were shrewdly calculated

technically correct statements intended to mislead or were merely awkwardly worded phrases that happened within the course of a lengthy interview is of no consequence. The instances referenced by defence counsel, reviewed in context and in conjunction with the whole of the circumstances, does not leave me with a reasonable doubt respecting the voluntariness of the statements. Furthermore, even if these statements were designed to induce Mr. Stanley to speak against his will, he was able to resist, offering no more information than he chose to provide.

(iii) providing inaccurate legal advice

[59] Cst. Gullacher at times referred to certain legal concepts respecting accident, self-defence, and the differences between first degree murder, second degree murder and manslaughter. Counsel for the defence takes exception to these remarks and challenges the correctness of the officer's statements. It may be that some of the definitions provided by Cst. Gullacher are not perfectly described. However, there was nothing said in this context that bears on the question of whether what was said by Mr. Stanley was voluntary or involuntary.

[60] Referencing the differences between the types of murder and manslaughter and introducing the notions of self-defence and accident were obviously intended as a segway to encourage Mr. Stanley to open up. The broad stroke references to these legal principles were not unduly inaccurate or misleading.

(iv) undermining the advice of counsel

[61] At certain points during the interview Cst. Gullacher commented that it was Mr. Stanley who was on the "hot seat". For instance, this exchange took place toward the end of the interview:

Gerald Stanley: You can make that lawyer guy tell me to tell it, and write it out. He may do that? I don't know. I really don't, but I have to put my faith in him I guess.

Cst. Gullacher: Mmm-hmmm. [affirmative] You've got to remember you're the guy sitting in this hot seat right now.

Gerald Stanley: Mmm-hmmm. [affirmative]

Cst. Gullacher: You know what I mean? You're the guy facing the jeopardy.

Gerald Stanley: That's right. That's why.

Cst. Gullacher: Not him. He's not there.

Gerald Stanley: No.

Cst. Gullacher: You are.

Gerald Stanley: I know.

[62] While an exchange like this approaches the line of impermissibility, it does not cross it. Comments such as those referenced above, and ones similar to them, did not, in the context of the interview under examination, denigrate the advice given by counsel. Comments of this nature did not have the effect of causing Mr. Stanley to lose confidence in the advice provided by counsel. In fact, he continued to rely upon the advice to remain silent respecting the details of the incident.

[63] Additionally, I find that these comments did not impact on Mr. Stanley's decision to choose to provide limited information to Cst. Gullacher.

[64] In sum, I find that this line of questioning, although perhaps best to be avoided, did not, in the whole of the circumstances, raise a reasonable doubt respecting the voluntariness of the statement.

(v) refuse to provide a further consultation with counsel

[65] Although not framed in terms of an alleged *Charter* breach, counsel for Mr. Stanley asserts that the voluntariness of the statements are affected by the fact that Mr. Stanley should have been afforded another opportunity to consult with counsel. The basis for this argument is Mr. Stanley's repeated comments that he would not provide any further statements until at least he had the opportunity to meet in person, and speak with, his lawyer.

[66] I am not able to accept this argument for at least two reasons. First, the objective circumstances had not changed significantly enough to engage a further right to counsel. Mr. Stanley was arrested for murder and had consulted with counsel on two occasions prior to the interview and once early on in the interview. He had been permitted to engage and seek advice from legal counsel respecting the very matter that was the subject of the interview. There were no new objectively observable developments that would trigger an additional opportunity to consult counsel. Accordingly, Mr. Stanley was not, at that point, legally entitled to another legal consultation and, therefore, Cst. Gullacher cannot be criticized for not providing it.

[67] Second, and perhaps of equal importance, is that it is clear that Mr. Stanley was not suggesting that he wanted to speak with his lawyer again at that time. Rather, a fair interpretation of what he was relaying was that he was aware of his right to remain silent, that he was choosing to exercise that right with respect to most of the details of the incident and that he may, at some later date, choose to provide a more fulsome statement – but, that would only happen after he had an opportunity to meet with his lawyer and his lawyer advised him to do so.

(vi) the false narrative respecting a mythical sexual assault case

[68] During the interview Cst. Gullacher told a story which, he admitted on

the stand, was made up for tactical reasons. The fictitious story was about an accused person who refused to give a statement to police, presumably relying on legal advice, who was then charged with sexual assault. At the end of the trial, it was determined that the accused and the complainant had engaged in consensual sex and the man was acquitted. According to Cst. Gullacher, "He had sex consensually with that girl, and if that was known to us at the time, it would have saved months, years of court process because … we are logical people".

[69] Counsel for the defence points to this dialogue as one of the most egregious examples of improper interview tactics employed by Cst. Gullacher that day. He argues that this improper tactic should render the entire interview to be declared involuntary. Even though Cst. Gullacher did not explicitly state that Mr. Stanley would not be charged if he gave a statement, defence counsel argues that this was certainly the intended message and that this should be found to be a clear inducement that raises a reasonable doubt respecting voluntariness.

[70] With respect, I am not able to accept this argument. First, the message within the fabricated tale told by the officer is not entirely inaccurate or misleading. In some circumstances it may be appropriate for a suspect to provide a statement. Such a statement might satisfy the police that the suspect should be exonerated completely or, perhaps, when thrown into the mix might influence the Crown as to whether to proceed with a particular charge. Although it can be fairly argued that there is some truth in the message relayed by the officer, it is appropriate to recognize that a statement of innocence given by a suspect to the police would not necessarily stop a prosecution short of a trial.

[71] It is a truism, however, that the Crown is bound to take into account all the evidence, including any statement given by a suspect, inculpatory or exculpatory, in determining whether it meets the prosecutorial standard to proceed. A statement from a suspect is not determinative of whether the Crown proceeds but would be one of the many factors that would be considered.

[72] Second, as mentioned before in other contexts, a police tactic such as this, viewed along with all of the other circumstances does not cause me to be left in reasonable doubt respecting the voluntariness of the statements made during the interview. I find that despite this strategy, Mr. Stanley was not persuaded to provide Cst. Gullacher with any more details than he was prepared to volunteer.

(b) Was any of the conduct of Cst. Gullacher so appalling as to shock the community such that the statements provided during the interview ought to be ruled inadmissible?

[73] Although counsel for the defence asserted that some of Cst. Gullacher's conduct was improper to the point that the voluntariness of Mr. Stanley's statements

should be put in doubt, there was no serious suggestion that any of that conduct was so egregious so as to warrant exclusion by virtue of intolerable police trickery.

[74] I agree. As mentioned previously, comments, statements or confessions of an accused may be considered "involuntary" and inadmissible if it is obtained by police trickery that, "… though neither violating the right to silence nor undermining voluntariness *per se*, is so appalling as to shock the community". (See *Oickle*, at para 67.)

[75] While Cst. Gullacher did employ a number of tactics intended to induce Mr. Stanley to provide "his side of the story", there was nothing said or done that constitutes police trickery of such a magnitude that exclusion of the statements is necessary to maintain the integrity of the criminal justice system.

VI. CONCLUSION

[76] The Crown has proven beyond a reasonable doubt that all the statements were made voluntarily by Mr. Stanley with an operating mind and are thus admissible.

C.J.Q.B.

M.D. POPESCUL