

CANADA / JUDGMENT

R. v. Dhaliwal

2016 BCSC 1966

COURT

Supreme Court of British Columbia

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2016 BCSC 1966 R. v. Dhaliwal

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Dhaliwal,

2016 BCSC 1966

Date: 20160218

Docket: X076431-7

Registry: New Westminster

Regina

v.

Gurjinder Gary Dhaliwal and

Gursimar Singh Bedi

Before: The Honourable Mr. Justice Schultes

Oral Ruling on Voir Dire

Re Admissibility of Statements of Gursimar Singh Bedi

Counsel for the Crown:

W.M. Stephen, Q.C.

B. Kielmann

Counsel for the Accused G.S. Bedi:

H.M. Patey

J.V. Myers

Place and Dates of Hearing:

New Westminster, B.C.

October 26-29, 2015

November 3-6, 16- 20, 2015

December 10-11, 2015

January 5-8, 2016

Place and Date of Judgment:

New Westminster, B.C.

February 18, 2016

1. INTRODUCTION

- [1] Gursimar Bedi is charged with manslaughter and being an accessory after the fact in connection with the murder of Maple Batalia in Surrey on September 28, 2011.
- [2] This voir dire deals with the admissibility of statements that he gave to members of the RCMP interview team and to Maple's sister Roseleen Batalia (who assisted the police) over the weekend of November 30 to December 3, 2012. In total, he was interviewed for more than 20 hours during that period, although the Crown has pointed out that the interviews in which he was actually engaged with respect to the offence were for a shorter period within that time.
- [3] The only one of these statements that is capable of proving his involvement in the offence was given in the early morning hours of December 3, but the Crown seeks a voluntariness ruling with respect to all of them.
- [4] This voir dire was conducted in a very focused and organized way. Some evidence that is relevant both to Mr. Bedi's statements and to those given by his co-accused Gurjinder Dhaliwal was called on a separate voir dire, with the agreement that the evidence would apply to the voir dire of both accused.
- [5] All of the police interactions with Mr. Bedi, from just after he was arrested to the end of the last interview and his escort back to the cells, were either audio- or video-recorded. In addition, many of the police witnesses who dealt with him testified on the voir dire. While their evidence was helpful in providing background information and context for the interviews, such as the physical circumstances of Mr. Bedi's custody outside of the video recordings, and in emphasizing for advocacy purposes some of the actions by the police that are said to affect voluntariness, it is common ground that the assessment of voluntariness will turn on Mr. Bedi's actual interactions with the police and Roseleen Batalia. This is

because the intentions of the police, including whether they were pursuing underlying strategies in order to obtain a statement (which they self-evidently were) can neither aggravate nor mitigate the objective effects of their actual actions towards Mr. Bedi, as captured in the recordings.

- [6] There are no Charter applications. The issue is whether the Crown has proven beyond a reasonable doubt that Mr. Bedi's statements were the result of a decision on his part to speak to the police, or whether a doubt arises that his will was overborne by what the defence submits were ongoing efforts by the police to undermine the exercise of his right to silence.

2. EVIDENCE

- [7] Obviously the voir dire is concerned with the admissibility of Mr. Bedi's statements, not their content, but it may be helpful, in order to grasp the significance of some of the interview excerpts that I will be quoting, to understand that Maple (whom I will refer to by her first name to distinguish her from Roseleen) was shot and stabbed in the parking lot of the Simon Fraser University Surrey campus in the early morning hours of September 28, 2011.
- [8] It was understood by the investigators that Mr. Dhaliwal was her former boyfriend. They were aware of an allegation of a previous assault by Mr. Dhaliwal on Milu Dhillon, a young man whom he suspected of having a relationship with her.
- [9] The person who killed Maple was connected to a white Dodge Charger that was seen in the SFU parking lot. Mr. Bedi was believed to have rented it a few days earlier and then returned it following the murder, after cleaning it.
- [10] Investigators were also in possession of text messages sent before and after the killing between phones that they believed had been in the possession of Mr. Dhaliwal and Mr. Bedi. They also had cell site information showing these phones in the area of the SFU Surrey campus before the murder and then leaving it afterwards.
- [11] Also useful to know to grasp the context of Mr. Bedi's interviews is that he was identified inside the SFU building on both the night before the offence and the night of the offence itself, before it took place.
- [12] Finally, it will assist in the comprehensibility of the excerpts from the interview transcripts to know that both Mr. Bedi and Mr. Dhaliwal went by the nickname "Gary", in preference to their legal first names.
- [13] The arrest and interviews of Mr. Bedi and Mr. Dhaliwal were part of a coordinated and extensively pre-planned effort by the investigators.

- [14] Crown counsel approved the charges on October 23, 2012. With respect to Mr. Bedi they were the same as the present charges, but the investigators did not seek to have an Information sworn and arrest warrants issued immediately. Rather, they spent the ensuing five weeks preparing for what they called the "arrest weekend," which was to begin on the Friday, November 30.[1]
- [15] According to the evidence of the investigators, the Friday arrest was chosen, among other reasons, to allow the maximum amount of time to interview the suspects before their required court appearance on the Monday; to accommodate the many related tasks that the interviews required, such as preparation of appeals to the suspects from family members and interviews of witnesses who could only safely be spoken to after the arrest; and to make it easier to obtain the services of officers from other RCMP detachments, whose supervisors are reluctant to part with them during the week.
- [16] A specific team of officers was assigned to deal with the various aspects of Mr. Bedi's interview. Sgt. Li and, in the initial stages, Cst. Froese, were to look after his transportation to the Surrey Detachment and his access to counsel following his arrest. Sgt. Davidson was designated as the primary interviewer, and Cpl. Di Nella had the secondary interviewer role.
- [17] The suspects were kept under surveillance throughout the day on November 30 and their arrests were coordinated to take place at approximately the same time.
- [18] Mr. Bedi was arrested at 6:10 p.m. in the area of King George Highway and 76th Avenue. His car was boxed in by the police vehicle ahead of him and multiple officers approached his car.
- [19] While it is not an essential aspect of the defence arguments against voluntariness, his arrest is part of the overall circumstances that I am required to consider and so it should be reviewed briefly.
- [20] There was some forcefulness to the arrest, according to Cpl. McLellan, who participated in it. When the officers approached, they were yelling at Mr. Bedi to show his hands and exit the vehicle. Cpl. McLellan had her gun drawn and thought it likely that her fellow officers had too, given the nature of the arrest. They were in plainclothes.
- [21] For some reason the officer on Mr. Bedi's passenger side felt it necessary to smash that window. Mr. Bedi was pulled out of the driver's side door and placed on the ground by that officer and a colleague, after which he was handcuffed, assisted to his feet, and taken to a police vehicle. Cpl. McLellan agreed with the suggestion that Mr. Bedi was "manhandled" by her colleagues in this process. She noticed a drop of blood on his hand afterwards.
- [22] The recording of the police interactions with him began after he was handcuffed. Sgt. Li and Cst. Froese assumed custody of him then.
- [23] Despite charge approval for Mr. Bedi having been for the offences of manslaughter and accessory after the fact, he was arrested for murder.

- [24] Sgt. McIntosh, who assisted in coordinating the investigation, testified that grounds existed for an arrest for that higher offence, and since it was the highest possible jeopardy that Mr. Bedi would face, it would "avail him of the best opportunity to speak to counsel". He agreed with the suggestion that this also meant that if evidence surfaced in the interview justifying a charge of murder, then investigators would not have to stop the interview. He also agreed that access to counsel can be disruptive to the interview process. Sgt. Li made concessions along the same lines in his evidence.
- [25] The police dealings with Mr. Bedi on Friday evening involved attempting, at his request, to reach his counsel Marvin Stern by phone from the arrest scene, transporting him to the Surrey Detachment and booking him into a cell there, and facilitating a private phone call between him and Mr. Stern. Cpl. Di Nella visited him late that night to find out if he needed food, since he had been booked in after dinner was served to the prisoners, and also to find out if Mr. Stern would be coming to the detachment to speak with him, in addition to the phone call. No attempts were made to interview Mr. Bedi that night.
- [26] Sgt. Li saw no injuries to Mr. Bedi during the process of booking him into cells. Cst. Froese offered to have a paramedic look at him after he complained of having been "punched pretty hard" in the arrest, but Mr. Bedi declined. He later complained to Cpl. Di Nella of a sore neck from the circumstances of his arrest, which he said included being "clocked" and/or "booted," which I took to mean struck or kicked. He was offered Tylenol but responded that he was "good." (He asked for Tylenol or Advil "for his neck" on Saturday evening, during an interview with Sgt. Davidson. This request does not seem to have been followed up on by the investigators.)
- [27] While the physical arrangements of Mr. Bedi's custody are also not a central feature of the argument against voluntariness, it is worth noting as part of the overall circumstances that the evidence was that the cellblock area is very noisy, the cells are spartan, their temperature is cool and that, like all prisoners, he was given a thin blanket and permitted to wear only one layer of clothing. Pillows are not provided to prisoners. The lights are on all the time, but prisoners are not permitted to cover their faces with the blanket.
- [28] An undercover officer, Cpl. Doyon, shared Mr. Bedi's cell, adopting the role of a prisoner who was being extradited back to Canada from Washington State. The Crown did not rely on any of the conversations between them as evidence and it was not argued that his interactions with Mr. Bedi had a significant effect on the voluntariness of the police interview statements, but there are some features of his evidence that are helpful in the voluntariness analysis.
- [29] Cpl. Doyon estimated that of the 30 hours or so that he and Mr. Bedi spent together in the cell over the weekend, Mr. Bedi appeared to be asleep (that is, lying on his mattress and not moving) for about 21 of those hours. Mr. Bedi did not express any discomfort with his physical surroundings during their conversations.

- [30] Although Cpl. Doyon described Mr. Bedi as generally calm, he said there were times when he engaged in biting his nails, pacing, and talking to himself. Cpl. Doyon used the term "distracted" to describe this behaviour. He noted this occurring twice in the late afternoon and early evening of December 1, and once in the evening of December 2. In relation to these incidents, he advised Mr. Bedi not to look defeated, because the police were watching and it was something that they would pick up on.
- [31] Cpl. Doyon also participated in a scenario in which he was supposed to have disclosed his involvement in his offence to the police in an interview, after which he expressed relief. The objective was to convey to Mr. Bedi that it felt good to explain one's criminal involvement in this manner. In addition, at one point he told Mr. Bedi that it is good to sit down with the police and see what evidence they have.
- [32] The morning of Saturday, December 1 was spent with a further phone call between Mr. Bedi and Mr. Stern, and an in-person visit with Mr. Stern's articulated student.
- [33] On the afternoon of December 1, the investigators began their formal attempts to obtain a statement from Mr. Bedi with Sgt. Davidson as his initial interviewer. The dates and times of his interviews with Mr. Bedi were, approximately:
- December 1, 12:45 p.m. to 3:42 p.m. and 7:51 p.m. to 2:55 a.m. on December 2;
 - December 2, 1:20 p.m. to 6:50 p.m.; and
 - December 3, 12:21 a.m. to 1:22 a.m.
- [34] During the interviews, numerous pre-recorded video statements were shown to Mr. Bedi on a screen in front of him. The investigators also referred to photos, notes, charts, and other "props," as they called them, and used a whiteboard to write on.
- [35] In addition to these formal interviews, arrangements were made for Cpl. Di Nella to take Mr. Bedi for breaks at several points, in an outdoor alcove of the detachment that had been fenced off for use by the interview team. These encounters were recorded with a hand-held device, even though the area was also apparently wired to intercept sound. As a result, the quality of these recordings is not as good as what is available from the interview room. Mr. Bedi developed a friendly relationship with Cpl. Di Nella and spoke more openly during these breaks than he did in the interview room.
- [36] The interview that began at 12:45 p.m. on December 1 can be described as an introduction and overview by Sgt. Davidson. Mr. Bedi stated at the beginning that he had been advised by Mr. Stern not to say anything, and said very little after that, other than to reassert that advice three additional times and to ask to speak to Mr. Stern again at the end. The interview was, as a result, largely a monologue by Sgt. Davidson, emphasizing the following themes that are potentially relevant to the issue of voluntariness:

- He was not there to take a statement from Mr. Bedi and the investigation does not require Mr. Bedi to say anything.
 - He would be presenting information to Mr. Bedi about what he was facing, so that Mr. Bedi could make an informed decision about whether to speak or not.
 - Using an anecdote involving his own brother, who had become involved in the drug world, and the circumstances surrounding the subsequent murder of his niece, he suggested that: (1) Mr. Bedi, like the brother, is a good person who has "core values," but has lost his way and (2) expressions of remorse that are offered long after an offender is caught, such as at the sentencing of an offender who was a party to his niece's murder, may not seem sincere to the victim's family or to the offender's own family.
 - He did not believe that Mr. Bedi was the one who shot Maple. What the evidence shows, rather, is that Mr. Bedi and Mr. Dhaliwal either planned her murder in advance, or that something happened on that day that led to the decision that she should be killed.
 - If Mr. Bedi was involved in planning the murder, then Sgt. Davidson understood why he was not saying anything, but if he had been manipulated into participating, Sgt. Davidson could not understand why he would not stand up for himself. If he had a lesser level of responsibility, then that needed to be told.
 - Because of impending media coverage, by Monday everyone would know of Mr. Bedi's involvement in the murder. This comment followed a reference to Mr. Dhaliwal's house having been shot up, which Sgt. Davidson said was either due to a drug war or in retaliation for Maple's murder.
 - Mr. Dhaliwal was in the process of talking to investigators and Mr. Bedi "wouldn't believe" the things he was saying.
- [37] During the course of this interview, Sgt. Davidson also played Mr. Bedi some video clips: two comedy segments, likely intended as ice breakers; a statement by a reformed local gang member given shortly before he was murdered; and a musical photo montage that appears to be from his niece's funeral.
- [38] After this first interview, Mr. Bedi's request to speak to Mr. Stern again was granted. He then appeared before a judicial justice to be remanded in custody to appear in court on Monday, and was permitted to speak to Mr. Stern again after that remand.
- [39] The second interview, on Saturday evening, was more focused on the presentation of evidence in the case against Mr. Bedi. Sgt. Davidson outlined some key components of the evidence, including playing audio clips from witness statements. Some of the important themes and statements that he developed that potentially bear on voluntariness were:
- The evidence paints "a terrible, terrible picture".

- He was not there to force Mr. Bedi to say anything, but only to show him what he was facing, so that he could make an "active decision".
 - Like Sgt. Davidson's brother, who had needed the tragedy in his life of his daughter's death to return to the good person he really was, this was an opportunity for Mr. Bedi to return to his essential goodness.
 - Mr. Bedi was being asked to confirm that he was not the shooter -- in other words, that he played a role similar to the passenger in the vehicle that ran over Sgt. Davidson's niece. He reminded Mr. Bedi that by the time the passenger expressed remorse at his sentencing, "it was cold".
 - He and Mr. Dhaliwal had made numerous errors in the course of committing the offence that allowed the investigators to catch them.
 - Mr. Bedi was manipulated by Mr. Dhaliwal into playing his part in the offence.
 - Voices could be heard faintly from another interview room, and in reference to them Sgt. Davidson said he did not know what Mr. Dhaliwal was saying to those investigators.
 - If Mr. Bedi knew that Mr. Dhaliwal was going to shoot Maple, he should not say anything because he was "not the person I thought you were".
 - Mr. Bedi is "completely done" by the evidence and the investigation does not need him to say anything. But "goodhearted people" should be given the opportunity to be truthful when they have been caught.
 - Now that there has been a media release, people are looking on Mr. Bedi as "a bit of a hero" for telling the police about Mr. Dhaliwal's role.
 - If Mr. Bedi's text to Mr. Dhaliwal before the murder saying, "gotta get it done" means that he knew of the plan to kill Maple in advance, then he should not answer the "million dollar question" that arises.
 - Later, Sgt. Davidson phrased the question as whether this was "hunting," (being there to kill Maple), or "stalking," (keeping an eye on her).
 - Reiterating that Mr. Bedi can make an informed decision in light of the evidence, Sgt. Davidson said that if Mr. Bedi's father were there, he would tell him to tell the truth.
- [40] At the culmination of the evidence summary, Sgt. Davidson showed Mr. Bedi a re-enactment video purporting to be taken from the viewpoint within the vehicle that was involved in the murder at and shortly after the time it was committed. Sgt. Davidson then said the following (from page 49 of Exhibit 16, starting at line 2226), demonstrating a more forceful approach than in the previous parts of his evidence summary:

And then her friends running. See them running Gary? Maple BATALIA's dead. That's how long it took. If that doesn't make you want to throw up and heart pound out of your chest then you are not the person I thought you were. Shame on you if you're not feeling bad right now man. Did she scream? Did she scream Gary, did she know what hit her, can you hear it? Can you hear that gun fire? Were you scared at that moment or excited?

- [41] After leaving Mr. Bedi alone for a few minutes, he returned, at which point Mr. Bedi asked if he could speak to Marvin Stern again, "after all this." Sgt. Davidson responded that Mr. Bedi had had "lots of chats with counsel" and that nothing has really changed since he has been in custody (I infer that he meant in terms of Mr. Bedi's jeopardy).
- [42] The emotional intensity of the conclusion to the evidence summary continued, as Sgt. Davidson played video appeals from Maple's parents and from Mr. Bedi's younger brother. Both sets of videos were emotionally powerful. Maple's mother sobbed throughout her portion of that video, seemingly on the edge of hysteria. In his portion, her father told Mr. Bedi that if it was not his idea to kill Maple "please tell us what else so we can forgive you" and then "to tell the truth so that you can be forgiven". In his brother's very brief video, which Sgt. Davidson played to him twice, the brother cried uncontrollably as he repeated how much he loves Mr. Bedi and stated that he could not live without him.
- [43] After showing Mr. Bedi a photo of Maple deceased and asking, "Did you do that?" Sgt. Davidson then began to dwell on a theme, which would carry on throughout the interviews -- that these and other family members wanted to know whether he had shot Maple. In particular, Mr. Bedi's own family members and his girlfriend were being asked by others if he was a murderer. Sgt. Davidson then returned to the issue of the timeliness of an expression of remorse and followed it by raising directly the spectre of Mr. Dhaliwal implicating him as the shooter: (Exhibit 16, pages 54-55, beginning at line 2426):

And one day, one day you're gonna beg and pray and ask and hope for your family's forgiveness. I hope, for you Gary, that you do that at the right time. Maple BATALIA's dad gave you a video message to you, Gary BEDI and the BEDI family, all he asked for is the truth from you and he can forgive you. That man will never hug his daughter again, Gary, as long as he lives. This is the last memory he has of her, when he had to identify her in the morgue. That picture right there.

(This is a gesture to the photo he had shown Mr. Bedi.)

And he's willing to forgive you, if you speak the truth to him. If you tell the truth, he's willing to forgive you. It's not a difficult question. Were you the passenger or the driver in that white Charger, leaving S-F-U?

Then further on:

What would you think if ah, how would you feel, what would your thought process be if Gary says that you shot her? How would you feel about that? What if he came out and said, that Gary was tryin' to get into my crew, he wanted some status, he wanted some respect, so he agreed to do it, said he'd do it. What would you think of that? If Gary was to say something like that? 'Cause he could say that, couldn't he? Right? Do you agree with me that he could say that?

- [44] Towards the end of this interview, Mr. Bedi and Cpl. Di Nella went to the outside area where the breaks were held. Although this was done ostensibly for the purposes of taking a break from the interviewing process, some of the conversations provided insights into Mr. Bedi's concerns at that stage and show Cpl. Di Nella elaborating on similar themes as those being pursued in the formal interviews.
- [45] Mr. Bedi asked him what the pre-trial centre was like, what a bail hearing was, and whether a person can be released on bail with conditions. When Sgt. Davidson joined them outside later in the break, Mr. Bedi asked if he would be transferred to the pre-trial centre on Monday.
- [46] In their conversations, Cpl. Di Nella provided anecdotes following the general theme of personal redemption, involving a former gang member in Los Angeles who eventually became a sheriff, Cpl. Di Nella's own work in a group home in his youth and his ongoing relationships with some of the home's success stories, and lastly an overweight father who was challenged to run marathons by his son, who later became paralyzed and was pushed in a wheelchair by his father on the runs. He also used the examples of Tiger Woods and David Letterman, both of whom were caught in extramarital affairs, but whose subsequent treatment by the public was very different because David Letterman admitted his indiscretion immediately without qualification.
- [47] After he joined them, Sgt. Davidson urged Mr. Bedi to reflect on the matters that they had discussed and stressed again the value of taking responsibility, paying one's debt, and moving on. He rebuffed Mr. Bedi's question about whether he would be able to talk to Mr. Stern the next day on the same basis that he had earlier -- that Mr. Bedi had had plenty of opportunities to speak to him and nothing had changed since then.
- [48] After they had returned to the interview room, while waiting to hear that some other prisoners in the cellblock had been dealt with so that Mr. Bedi could be taken back to his cell, Sgt. Davidson engaged in a conversation with Mr. Bedi that relates to the role of the advice of counsel in his ongoing exercise of his right to silence. (Pages 62-63 of Exhibit 16, starting at line 2808):

Sgt. M. DAVIDSON: You must have a really laid back way about ya?

Gary BEDI: What do you mean?

Sgt. M. DAVIDSON: Like casual, kind of passive.

Gary BEDI: Not really

Sgt. M. DAVIDSON: What's that?

Gary BEDI: Not really, just doing what Marvin said (CHUCKLES).

Sgt. M. DAVIDSON: You're what, sorry?

Gary BEDI: Just doing what Marvin told me kinda thing, so.

Sgt. M. DAVIDSON: How do you feel about that?

Gary BEDI: Huh?

Sgt. M. DAVIDSON: How do you feel about that?

Gary BEDI: Bout what?

Sgt. M. DAVIDSON: As a person?

Gary BEDI: I'm Sorry?

Sgt. M. DAVIDSON: What?

Gary BEDI: Sorry, um I can't get you?

Sgt. M. DAVIDSON: Uh, like you said, I'm just doing what Marvin said to do. I'm saying as a person how do you feel about that?

Gary BEDI: Yeah, I'm just doing what the lawyer said to say, stay [quiet] kinda deal.

Sgt. M. DAVIDSON: Mm-hm.

Gary BEDI: I mean, I'm not a bad guy or anything, pretty talkative guy but when ss,ss, something like this it's best ta do what your lawyer says.

Sgt. M. DAVIDSON: Oh, ya I'm all good with that, don't ah, told ya that numeroustimes I got no problem with that whatsoever. I guess I just know what kinda person I am. It wasn't so much about the fact that you weren't talking about anything, that's all good and dandy but you just, I don't know it's almost like you're not even uh, I don't know how to describe it, like, like you're not even taking it seriously.

Gary BEDI: It is a serious matter.

Sgt. M. DAVIDSON: Ah, just, just your, body language and you just don't, ah, don't really say that. Into one of the most high profile murders in Surrey in a long time. And you're right in the thick of it dude.

[49] Mr. Bedi's next interview, beginning on the afternoon of December 2, initially involved Cpl. Di Nella, who provided lunch from McDonald's for them. Mr. Bedi did not eat his.

- [50] Relevant parts of their amiable small talk were Mr. Bedi's comment that "it's brutal", in response to Cpl. Di Nella's suggestion that the bed in his cell was hard, and his affirmative responses to suggestions that his ongoing sniffing and coughing, which continued throughout the rest of the interviews, meant that he was getting sick. Mr. Bedi made a comment to the same effect.
- [51] Sgt. Davidson took over, and began to develop certain relevant themes.
- [52] He emphasized that he was not trying to pin the murder of Maple on Mr. Bedi and that there was nothing that he was going to present to suggest that Mr. Bedi "pulled the trigger" in relation to her death. He apologized for having left that impression during the previous interview.
- [53] He explained the nature of the offence of being an accessory after the fact, which Mr. Bedi had by that point been charged with.
- [54] He began to put forward the theory that Mr. Bedi had not believed in advance that Mr. Dhaliwal would kill Maple, but had decided to help him once it had happened.
- [55] After referring again to the shooting at Mr. Dhaliwal's house, he asked Mr. Bedi if he felt that his family or house could be targeted. After a pause, Mr. Bedi said no.
- [56] Sgt. Davidson emphasized the distinction between Mr. Dhaliwal's actions in killing his girlfriend out of jealousy and the unacceptability of an uninvolved person such as Mr. Bedi targeting her in the same manner. He said that is why he believed that Mr. Bedi was not the murderer. However, he noted that the media and the public "are gonna just take whatever they hear" and that the only way the story of Mr. Bedi's lesser involvement in the murder could be told and for his family to understand it, "is from your mouth".
- [57] He played Mr. Bedi a quite disturbing audio recording of a young Surrey woman who was shot in her vehicle while in the presence of her young child. He tried unsuccessfully to have Mr. Bedi agree that such conduct was "not righteous" after he reiterated his belief that Mr. Bedi had not really thought that Mr. Dhaliwal would shoot Maple. He sought to attribute Mr. Bedi's actions after the murder to panic in the face of a surprising shooting. For example, he referred to the high degree of visibility that the vehicle they were in would have had at the murder location as an indication of Mr. Bedi's lack of advance knowledge.
- [58] The next stage of this interview was the revelation of additional incriminating evidence, tied in with the fact that Mr. Bedi's father's worried text messages to him on the night of the shooting actually helped the police to identify the location of Mr. Bedi's cell phone (and by extension Mr. Bedi) after the shooting took place, and showed him driving away from the scene. Sgt. Davidson described this as "fate" and said that it had halted the disabling effect of being involved in the murder on Mr. Bedi's life, by leading to his arrest.

[59] Significantly, he quoted Mr. Bedi's father as believing that his son was present at the murder, but disavowing any suggestion that Mr. Bedi had any advance knowledge of what was to follow. Sgt. Davidson then returned to the theme of the likelihood of harm to Mr. Bedi's family from the lack of a timely explanation of his role. (Exhibit 20, page 48, beginning at line 2148):

When I learned all that stuff, this morning before I went to bed and then I looked at this again, one of the things, one of the things that I think you owe your dad and you owe your mom and you owe your brothers, and we saw your brother's reaction when he found out, 'cause your dad told him, Gerri did this, he's part of this. is this. You owe them, for them to know now to understand. Because they will be victims of this, relentlessly until you can set them free. And what I mean by that is this, Giuseppe, the guy who killed my niece, he dragged his pay-, parents along, his family, and then he tried to apologize and tell everybody he was remorseful a long [time] later, and it fell as a shallow [and] self-serving.

[60] He accentuated the point with a story about a murderer whose daughters abandoned him after they found out that he had been lying to them for many years about having murdered their mother, followed by these comments at page 49, line 2225:

What I'm saying to you Gary is and I think you see where I'm going with that is this, your mom and dad and your brothers and the people that are important with you, to you, they will stand behind you, they will understand and they will support you. All they need to know, no matter what it is, all they need to know is what the truth is. That's what they need to know.

...

They need to know that the person that they raised, the person that. they love and the person that they know, just like my brother and my family, is truly the person we believe they were. I wanna be able to give your parents that for you.

[61] He later linked this theme with the desire of Maple's parents to know whether Mr. Bedi was sorry that he was involved in her murder. That in turn was made part of the overall potential explanation that there had been a lack of knowledge on Mr. Bedi's part of Mr. Dhaliwal's intention to carry out the killing, followed by panic after it occurred. Sgt. Davidson put this theory once again to Mr. Bedi for his acknowledgment.

[62] Sgt. Davidson left the interview room and Cpl. Di Nella took Mr. Bedi for a washroom break. When he returned, Sgt. Davidson gave Mr. Bedi a note from his family members expressing their love for him. It is not possible to say for certain from watching the video, but Mr. Bedi may have become somewhat tearful at this point.

- [63] The next stage of the interview was concerned with emphasizing to Mr. Bedi that he had been used and manipulated by Mr. Dhaliwal, as shown by Mr. Dhaliwal's callous and selfish conduct after the killing, leaving Mr. Bedi to dispose of the rental vehicle and deal with Mr. Dhaliwal's vehicle being parked near his home. In light of this conduct, Sgt. Davidson urged Mr. Bedi to choose his loved ones, and not protect Mr. Dhaliwal or allow him to be the one who explains the offence.
- [64] Referring again to sounds that were audible from another interview room, Sgt. Davidson suggested that Mr. Dhaliwal, "your buddy, is bawling his eyes out right now. That's him blubbering." He then adverted to the danger that Mr. Bedi was "selling out" his loved ones, who were at home wondering if they were right about him, "[w]hile someone else [who in this context is obviously Mr. Dhaliwal], is goin', I want to get to the last chair, I want my story to be out first."
- [65] He then played a video appeal from Mr. Bedi's high school basketball coach, for whom I infer Mr. Bedi had great admiration, urging him to be the responsible person that his coach knew him to be. Sgt. Davidson linked that advice to Mr. Bedi's family and ex-girlfriend as well, asserting that even if Mr. Bedi pulled the trigger, which they did not believe, they would stand behind him -- "All they need to know is two things. That you're sorry, you wish it never happened and the truth."
- [66] Using the metaphor of a sinking ship to describe the situation, Sgt. Davidson referred to Mr. Bedi's family as his "life preserver".
- [67] He then revealed that Maple's DNA was located in blood on the headlight control and driver's side visor of the vehicle that was seen at the murder scene, which, as I have said, there is evidence that Mr. Bedi had rented. Sgt. Davidson repeatedly put the question to Mr. Bedi of whether he was driving the vehicle at the time of the murder, and brought in again the possibility of Mr. Dhaliwal implicating him as the driver, (page 79, line 3615):

Did he manipulate you to the point where he had you kill his ex-girlfriend? Did he have that much power over you? Or did he put you in this position 'cause he lost control? They [that is, Mr. Bedi's family] wanna know, buddy. They're prepared for whatever the answer is. He was drivin' though, wasn't he? Right? Come on, man, reach deep. Show me that heart that you have on the golf court. The basketball court. Gary was driving, right? Not you? The witnesses say the person in the driver's seat's the person who got out and shot. Wasn't you, was it? Was it? Come on. What are they telling you? What are they tellin' you, man? That light switch, that visor, doesn't say you killed anybody. Doesn't say you killed anybody.

It says you're an Accessory After the Fact. Why get painted with the same brush as him? If he did, if you didn't do it. If you did, I understand why you're not tellin' me. If you're not gonna do it for yourself, do it for them. So they don't lose faith in you. You see now there's no getting' around, there's no gettin' around that you got rid of the vehicle that was used in the murder of Maple.

And later on:

Only one person got outta that car that night in the parkin' lot on that corner. Gary? Was it you? Wudda you gonna do if the only other person that was in that vehicle that night says it was you? Wudda you gonna do? Wudda you gonna do? It's your name on the vehicle. It's you in the videos. It's you on the video in SFU. Dude, wudda you gonna do if he says that? Is that the case? Or is it that? Is it you gettin' out the veh- outta the vehicle and doing something because you were manipulated into doing it? Or is it you sitting in the passenger seat going, What the fuck are you doin'? 'Cause they're very different things, aren't they? Absolutely. So. Are you manipulated into killing your friend's ex-girlfriend? Or are you sitting in the passenger vehi- seat going, What the fuck are you doin'? You're sitting in the passenger's seat goin', What the fuck are ya doin', right? Am I right Gary? It's your choice, man.

[68] And further, after revealing that forensic examination has shown the presence of blood "all over the car", (line 3714):

. . . an' I mentioned to you, you know, what are you -- you going to do if he drops this? Is what are you going to do if Gary drops this on you? Right? . . . The reality is is that he has the opportunity to put you the person and say, Hey man, I was just goin' there ta threaten her and scare her, and he called me a Sissy and wanted to prove to the crew that he was tough, an' he jumped out and killed her. He could spin anything he wants, you've seen him spin, he's a manipulator. And this is what I say to you my friend, is, if you're okay sitting here with him doin' that, you're not gonna stand up for yourself for what's right, for what your family represents, then that means you're okay with people being told that you did that.

[69] Next, he showed Mr. Bedi graphic autopsy photos of cuts to Maple's head and confronted Mr. Bedi in a very intense manner (page 83, Exhibit 20, beginning at line 3755):

Did you do that to Maple? Gary, did you do that to Maple? Did you do that to her? Did you do that? Did you? Are you kidding me, man? Really? You can have me sit here and ask you that question and show you that picture, and you can't answer that question? Did you do that to Maple? Did you carve into her skull, man? If you did, I totally get why you haven't said anything to me. I totally understand it. Your lip is curling up, your eyes are sinking into your head. You look disgusted. Does this disgust you? I'm workin' here t'day for Maple. This is real, man. This is real. This is real shit. This is it. Exactly. You can't even look at it because that's disgusting, isn't it? So, as a normal human bein' why would a guy who doesn't even know Maple do that? This is the reality of what happened that night Gary. This isn't make-belief, it's not a movie. You can never make that go away, buddy. If it's this, buddy, if it's you in the passenger seat, if it's you goin', What the fuck are you doing, man? It's important. It speaks to you. It speaks to the person you are. Did you do this to Maple? Gary?

[70] He told Mr. Bedi that Mr. Dhaliwal had been laughing with the investigators during one of his smoke breaks.

- [71] Then he revealed that the evidence was even stronger than he had previously described. A shell casing matching the ones at the scene of Maple's murder was found in the vehicle that Mr. Bedi rented. Gunshot residue was also found inside. It could also be proven that he had washed the vehicle before he returned it
- [72] Returning again to the sinking ship metaphor, he advised Mr. Bedi that he was not there to force him into anything, and that he has the choice to sit back and "hope the boat goes the way it's supposed to go, hope ta God that [Mr. Dhaliwal is] the solid dude that you think he is."
- [73] After that, he played a video from Mr. Bedi's former girlfriend, expressing her shock at these events, recalling the funny person that he was known as in high school, and suggesting to him to be honest and do the right thing for his and Maple's families.
- [74] Finally for this interview, Mr. Bedi was shown a video of Roseleen Batalia, who was referred to by everyone as Rosie, in which she expressed the view that he had not intended Maple to be killed and imploring him tearfully to do the right thing and give them closure by describing what happened.
- [75] As a wind-up to this session, Sgt. Davidson stressed the importance of Mr. Bedi to use the "heart" that he had previously demonstrated in his life, to help speak for Maple and help her family.
- [76] Mr. Bedi was then escorted back to his cell by Sgt. Li. During that process he asked if he could speak to Marvin Stern again and Sgt. Li said he would look into it. About 15 minutes later he returned to the cell and told Mr. Bedi that he had had "lots of access to counsel," so it would not be permitted. Mr. Bedi then asked if he could have some fresh air with Cpl. Di Nella. This was eventually allowed much later in the evening, shortly before 11:00 that night.
- [77] It appears that Mr. Bedi had been sleeping when Cpl. Di Nella went to the cell. During this time in the break area, Cpl. Di Nella spoke on the theme of difficult experiences that ended up having positive outcomes for people and of there being repeated opportunities for a person to redeem oneself after mistakes.
- [78] He spoke of his observation of the strong love that Mr. Bedi's father had for him, in response to which Mr. Bedi said that he felt he had let his father down. Cpl. Di Nella related the opportunity for redemption of which he had been speaking to the love that Mr. Bedi's family had had for him, and spoke encouragingly of the future possibilities for Mr. Bedi once he had dealt with the present matter. In response to Cpl. Di Nella's comments about the importance of not judging Mr. Bedi, as some police officers might, Mr. Bedi said, "I'm not a bad person. Yeah, I made a bad decision." (Exhibit 23, page 23.)

[79] After an anecdote about having maintained a positive, non-judgmental relationship with a person whom he had investigated for an assault, Cpl. Di Nella embarked on a similar theme to the one that had been pursued by Sgt. Davidson, about the harm that will come to Mr. Bedi's family if they attempt to defend his actions in the community without knowing the truth. In particular (Exhibit 23, page 29):

The people who really know you will know. That's right, and they'll support you, and they'll love you because they'll think, they'll think, and they'll believe, Gary would never. Gary would never, no, and they'll defend you. Right through to the process and, you know what, mark my words, every day in court in that front aisle will be your dad, and brothers standing by your side because they're going to believe in you and they're going to believe what you say, and they're going to support you. And they would have defended you to everybody, to the community, to the different people who don't know you. And when the process starts going through, and the evidence starts coming out, and what you saw today, 'cause I could tell from the time I talked to you and saw you that it was, it was affecting you. When that starts coming out, it's gonna devastate them. And it's gonna hurt them because all that time they spent believing you and defending you 'cause of what they, like . . . exactly what you said, not my Gary. My Gary wouldn't.

[80] Somewhat inconsistently, he followed this theme with the assertion that Mr. Bedi's family knows he did not pull the trigger and have their arms open for him.

[81] Cpl. Di Nella continued with stories illustrating the opportunity for changing and defining himself as a person that now faced Mr. Bedi. Those included a serious illness suffered by Cpl. Di Nella's father, which caused Cpl. Di Nella to value him more greatly; and an offender involved in a drive-by shooting who wanted to tell his son about his poor life choices.

[82] This led to a reaffirmation of the good person Mr. Bedi was and the value of taking responsibility for his actions, but only his own actions. Such an approach was contrasted to a person charged with murder, with whom Cpl. Di Nella had dealt, who refused to make a clean breast of it with his family, resulting in his wife committing suicide when the evidence came out in court. This was in turn contrasted to what was described as the admirable acceptance of responsibility by one of the offenders in the notorious Surrey Six murder case.

[83] After Mr. Bedi described the beneficial effect of having met someone worse off than himself during a stay in hospital, Cpl. Di Nella urged him not to take life for granted again and not to continually disappoint his family.

[84] This break ended on an anecdote by Cpl. Di Nella about a warm and tearful reconciliation between a contract killer and the mother of his victim.

[85] Cpl. Di Nella brought Mr. Bedi back to the interview room, saying that Sgt. Davidson wanted to ask him "a couple of questions about the booking and shit like that". Instead, when he arrived, Sgt. Davidson brought Ms. Batalia into the room and she began an extended monologue towards Mr. Bedi that featured the comments that he had his whole life ahead of him and this "one chance to do the right thing."

[86] Among her comments along these lines, she told him (Exhibit 24, page 3, beginning at line 124):

This wasn't your idea then I really want to believe somewhere inside of me that you didn't want this to happen. (PAUSE) I really wish you could just say something to me. You're that last barrier; you're that last thing that can connect me to what happened to my sister, I have the right to know. My family has the right to know. We want to be able to forgive and we want to be able to start healing from this.

[87] Sgt. Davidson then chimed in with (at page 5, line 186):

Gary, if you ever want forgiveness from Maple's family, now is the chance. This is the righteous time and I know you understand that, . . .

And in reference to Ms. Batalia (page 6, line 229):

She's giving you the chance now to pour your heart out, to allow forgiveness to start entering in there from her.

[88] Cpl. Di Nella entered the room and, with his hand on Mr. Bedi's shoulder, implored him to let his "big heart" come out and show his father the kind of person that he could be.

Referring to Mr. Bedi's previous comment that he did not want to disappoint his father anymore, Cpl. Di Nella indicated that Mr. Bedi was disappointing him now, I infer by his failure to open up concerning his role in the offence to Ms. Batalia.

[89] Cpl. Di Nella went on to emphasize that it is okay to be sorry, and by saying it, Mr. Bedi can give the Batalia family closure. Ms. Batalia reinforced the importance of that to her family in her follow-up comments.

[90] The lack of a response by Mr. Bedi, despite these various entreaties, led Sgt. Davidson to re-enter the room and shift the tone of the interview markedly. Standing by Mr. Bedi and using a tone that escalated in volume to nearly yelling by its end, Sgt. Davidson said (Exhibit 24, page 10, beginning at line 430):

Adriano . . . Hold on right there. Um, Um, alright, you know what, Gary, I got to tell you something. I spent a lot of time with you, I believed in you, I've told you stories about my life. This man in here, tells me that you guys were, wherever you were, in the smoke room having a chat and that he actually saw tears and emotion from you. And that you actually showed genuine feelings for what's happened here. And I believed him, because I told you this is my best bro, and you come back in here and you turn back into this coward. A shallow man, so this is how it is, we're done. We're done. I told you the platform was being presented for you, at every level I possibly could for you to self, save your self-dignity and you couldn't do that. That's fine. So, this is what's gonna happen, you, we're done, we're done, you're going to court, you go have a great life. Adriano, if you think he needs to go for a little stretch, cause you believe in him, then you go grab his shoes and coat and your coat, but if you think he needs to just go back to cells, then take him down. But if you think, giving him a little cry out there in the rain will help, then, you go

grab the shoes and the coat, man, and yours too.

...

Rosie, I'm really sorry that this man has decided to humiliate you and embarrass you like this, okay? I thought he had more in him, I would never have brought you in here and allowed to be to experience this if that had been the case. Alright? I can't believe, I really believed in him, I really believed in him, I saw the same tributes that I'd seen in my brother. I told him a storey about when my brother's daughter, my niece was murdered and how it felt for me and all the great things that came out of that afterwards, when our family became close and I wanted him to be the same. I thought he was gonna be the same, I told him an intimate storey and this is what he does, he disrespects you when you were that strong to come in here and represent your family, I can't believe it, I can't believe that you would do this. Just sit here like a coward, selfish and try to play the, the victim. And then you want people to believe that Gary BEDI (sic), Gary ah sandbagged you.

(I think Sgt. Davidson corrected himself here to mean in effect, "Mr. Dhaliwal sandbagged you.")

You make people start thinking that maybe you're the one that did this. And then you shake your head and you want to feel, make me feel bad that I would even suggest that. I don't get it, I don't get it. You drove a car that was involved in her sister's death. You took it back and tried to cover it up. And you just sit there. Tell me, tell this wonderful lady, did you pull the trigger? Did you kill her sister? Tell her. Did you? Did you? Look it. Want her to believe you in any level and you just looked at her and then look at me. Did you? Did you kill her sister? Did you kill her sister Gary? Open your mouth, did you kill her sister? Did you ruin her life? Her family? Did you pull the trigger and ruin your family? Did you? Wow and Adriano said you were crying, what were you crying about? What were you shaking your head for? Am I disgusting you? Am I embarrassing you? Or am I making you laugh? What is it? What is it Gary?

[91] After Ms. Batalia interjected to ask that Mr. Bedi at least confirm that he was not the one who pulled the trigger, Sgt. Davidson returned to his theme (page 12, beginning at line 513):

I can't take this disrespect. I guess the big question, you did hey? You did. You're hoping that Gary DHALI WAL's gonna take the fall for what you did. Is that what you're saying here? Really? Twenty-three years old and you can't say the words if you didn't do it, are you kidding me Adriano? If someone asked you if you killed someone, would sit there like a mute? Like a coward, or would say, you're out of your mind buddy? If you had an ounce of, of courage that this lady has, you'd be a mountain of a man. And I really, and actually you know what, I got to tell ya, I'm sounding a little emotional now and I really apologize for that because I am a very calm man but this is how passionate I am about this, this is how passionate about, what my brother gave me and my nieces death and that's the same passion that this fine lady here, Rosie gonna have in her, to make good out of a wrong forever, I apologize Gary that I was disrespectful to you and probably unprofessional and called you things that you don't deserve to be called, but I got to tell you man, I believed in you, I picked you to come and talk to you, I showed you my niece's memorial and this lady built the courage to come and talk to you, not only can you not say sorry to her, you can't

even shed a tear for her. Put your hoodie on there, young fella.

[92] By this point, Cpl. Di Nella had returned to escort Mr. Bedi for his break. After hesitating for a moment and Cpl. Di Nella asking what he was waiting for, Mr. Bedi got up and, apparently in a state of agitation, said: "I just need to walk, I promise I'll be back, I'm sorry." And left with Cpl. Di Nella.

[93] During their time outside, Cpl. Di Nella's initial tone was noticeably less warm and supportive towards Mr. Bedi than it had previously been. Once they were outside, albeit in a lower-key manner, he engaged in what can fairly be described as a rant of his own (Exhibit 25, page 4):

All that stuff, man, all that stuff's about wanting to make the right decision, wanting to make people proud of you, wantin' to turn your life around. You will have a life after this, man, you will. All that woman needs, all that family needs is just to have some closure in their life. You know you were fuckin' manipulated. You know you were used. Don't you? You saw it, you saw all the evidence. You know you were manipulated, don't you? Don't you? Right? You saw it. Are you gonna tell me you don't see it? You see it, don't you? Gary. Don't you? You didn't touch the gun, didn't you? Did you? You didn't touch it? I know you didn't. Didn't ya? That's all. That's all. I'd be screaming that from the highest fuckin' mountain. Right? I'd be screaming that from the highest fuckin' mountain. You didn't, did you? Did you?

Mr. Bedi coughed and Cpl. Di Nella said:

That's all she wanted. That's it. You were manipulated. You were used. The heart you've got is so big that somebody took advantage of it. You sat right there and told me that it happened. You told me that that's what it was to happen. But that's not who you are. This is not who you are. Is it, Gary? Is this who you are? No, it's not. Exactly. This is not who you are. Is this how you want to be remembered? No, it's not, Gary. It's not how you wanna be remembered. That's not the kind of person you are. You were used, Gary. You said so yourself. People that you think you can trust. Didn't you say that? Gary, didn't you say that? You didn't even touch the gun, did you? Did you, Gary? Did you? You were used. You were manipulated. That is okay. Because you have a big heart. Isn't that right? That's happened before where people have taken advantage of you. Hasn't it? Hasn't it, Gary? You talk about letting your dad down. You talk about letting your family down, then when given a chance not to let them down anymore.

[94] Although they are not easily audible themselves, Cpl. Di Nella also reflected back some comments from Mr. Bedi to the effect that he was confused, that he did not know what was going on right now, and that he did not know what to say to Ms. Batalia.

[95] After about 20 minutes, Ms. Batalia herself entered the smoke break area with the concurrence of the investigators. Clearly having modified her objective somewhat, she told Cpl. Di Nella that hearing that Mr. Bedi was "not the one that pulled the trigger" would be enough for her. She added: "... I really wanna be able to forgive you." (Exhibit 25, page 9). And: "You are killing her over and over by staying silent."

[96] She also repeated the note of urgency in her earlier comments (Exhibit 25, page 11):

Do you really wanna live, just knowing that you had that one chance to get our family's forgiveness and you never said anything?

[97] Cpl. Di Nella explained to Ms. Batalia that the person in front of her was not the same person he had spoken to earlier and that he was "embarrassed and offended" with respect to Mr. Bedi's lack of responsiveness.

[98] Mr. Bedi ultimately addressed Ms. Batalia, acknowledging her pain and affirming Maple's worth as a person, but explaining the situation as follows (Exhibit 25, p. 13):

You have to understand in my shoes right now, I'm in a, a, I'm, I'm basically cornered right now. I don't know what's really going on, what's happening. I don't know what to really tell you (chuckles) at this point. . . . Uh, I don't know what else I can say right now.

[99] Ms. Batalia responded quite forcefully and repeated comments that he just needed to tell her that he was not the one who shot Maple.

[100] In answering these persistent requests from her, Mr. Bedi made comments that seemed to pertain to his understanding of his right to silence as of that point (Exhibit 25, page 16):

I wanna say something but, um, uh. (Rustling) I don't know, I just, I really wanna say something, but I've just been told I can't say anything by Marvin, so, I don't know. But (chuckles) I'm in a very confused mind state right now. So I don't know what to really do.

And also (Exhibit 25, page 16):

No, I mean yeah, you guys do deserve to know, but I mean I don't, I've just been told I just can't be talking about anything right now until, until we see what happens tomorrow morning really. I, I'm just doing what I've been told. I don't know what else to say.

[101] Before evoking the image of what will happen to Mr. Bedi in the next life when he goes before God, Ms. Batalia said (Exhibit 25, page 16):

'Kay all I'm gonna say is this is the only chance you will have to say something. It won't matter tomorrow, it won't matter twenty years from now.

[102] Sgt. Procyk, who had been liaising with the Batalia family and had previously given Ms. Batalia the official warning for private citizens who act on behalf of the police, entered the area and employed a ruse, designed to encourage Mr. Bedi further to speak, by telling Ms. Batalia that Mr. Dhaliwal had something he wanted to say to her. Mr. Bedi then asked if he could just talk to Ms. Batalia alone for a minute.

[103] Ms. Batalia continued to implore Mr. Bedi in the same vein to give her family peace, by telling them that he did not kill Maple.

[104] Sgt. Procyk then returned and explained he would do everything he could to facilitate Mr. Bedi saying what he needed to say to Ms. Batalia. He offered them an opportunity to speak in an interview room or an office. Mr. Bedi did not express a settled preference.

[105] Sgt. Procyk ultimately guided them to an office within the detachment that had been covertly set up to record audio and video in a manner that could not be detected by the occupants. Beyond the initial warning as part of his booking-in interview that he was subject to being recorded anywhere while at the detachment, Mr. Bedi was not specifically warned about this recording. Sgt. Procyk feigned checking doors of a few other offices first, in order to create the impression that the so-called wired office had been chosen randomly.

[106] This encounter between Ms. Batalia and Mr. Bedi, later joined by Sgt. Dadwal, in the wired office contains the inculpatory admissions on which the Crown seeks to rely.

[107] After an interchange in which Mr. Bedi expressed fear for his and his family's safety, Ms. Batalia was successful in obtaining from him the admission that she had previously been seeking (Exhibit 26, pages 3-4):

Roseleen BATALIA: I just wanna really believe that you're not a killer. That's all I wanna believe. I wanna hold Gary DHALI WAL responsible for this.

Gary BEDI: Ha ha - I'm trying to tell you that I, I'm not, I am not a killer. I'm not a killer.

Roseleen BATALIA: You didn't kill Maple - that's all I wanna hear from you. You didn't kill my sister? No?

Gary BEDI: No. I would never . . . harm an innocent body like that, no.

Roseleen BATALIA: So you weren't the person that shot her? You're not responsible for her death? No? That's right? Yeah? Please just look at me in, in the eye and just tell me once that you didn't kill her.

Gary BED: I, I didn't kill your sister.

[108] During their subsequent discussion following this, Mr. Bedi said that he was "scared for my life" and expressed the concern that Mr. Dhaliwal could "pin it all on me and walk away". He also appeared to confirm his attention to Ms. Batalia's earlier comments by telling her, in the context of not knowing what to expect from court, "At least you get your closure."

[109] He entreated her, as well, not to think that he was a cold or a bad person. When Ms. Batalia told him how much better his admission had made her feel, he gave an answer or a response that may provide some insight about his motivations for providing it and he said (Exhibit 26, p. 8):

After seeing your mom's video, just the tears in her eyes, it just reminded me of my mom. I couldn't . . . I couldn't see her suffer like that. Just . . . basically just saw my mother.

[110] After some general conversation between them about the loss of Maple, Ms. Batalia was called out of the room in a further police ruse, ostensibly to take a call from her mother. Cpl. Di Nella replaced her and gave Mr. Bedi some further encouragement about how this matter did not have to be his defining moment.

[111] Ms. Batalia returned after about five minutes. Cpl. Di Nella left and she began to press Mr. Bedi for more details about his involvement, which she cast in terms of being able to go to his parents and assure them that he had not killed Maple. Mr. Bedi resisted, saying, "That's all you need to tell them." (Exhibit 26, page 15.)

[112] When she pursued the issue, he seemed to twig to the investigators possibly having put her up to it, asking her, "What else do they want you to ask me?" He also said he wanted her to tell his family what his dad already believed, that he "wouldn't do that," presumably meaning actually committing a murder.

[113] Following Ms. Batalia's suggestion that staying quiet is basically like being on Mr. Dhaliwal's side, Mr. Bedi was prepared to acknowledge, in relation to accompanying him to the scene of the murder (Exhibit 26, p. 16, beginning at line 629):

I didn't think he was gonna shoot - like I didn't think that was gonna happen, I don't . . . I don't know what else to say. I didn't think that was gonna happen. Not at all.

[114] He also said that Mr. Dhaliwal "didn't really mention anything" about his purpose in going to the murder scene that night, and that if he had known that Mr. Dhaliwal was going to do something bad, he definitely would not have gone with him.

[115] Ms. Batalia returned to the theme of Mr. Bedi's brothers being taunted by people based on a mistaken view of his role in the murder. She also reinforced the urgency of this particular exchange between them in a similar way as she had earlier (Exhibit 26, page 19, line 741):

You may not see me or my family for the rest of your life but this moment, this one time of meeting you is going to stay with me forever.

[116] Mr. Bedi made several more comments along the same lines of not having known in advance what Mr. Dhaliwal was going to do to Maple, before Ms. Batalia's attempts to obtain information stalled, with her putting a series of specific questions that received no answer other than (Exhibit 26, page 23, line 879):

I can tell you that much . . . the rest of it just don't know I don't know what to say. Things are too fucked.

[117] Sgt. Dadwal then entered the office and began to speak to Mr. Bedi. His evidence was that he was alive to the issues of fatigue and emotional disintegration, based on his experience, and saw no signs of either in his dealings with Mr. Bedi.

- [118] The image that Sgt. Dadwal presented and his manner of interacting with Mr. Bedi was significantly different than the previous police officers and requires some additional description to give the actual flavour of the recordings to the transcribed words. Somewhat physically imposing, sporting a shaved head, adopting a very streetwise demeanour, and speaking rapidly and using street language (for example, addressing Mr. Bedi throughout as "bro"), and profanity where necessary, Sgt. Dadwal offered an authoritative yet quite charismatic figure. He also had the gift of being able to ask questions in a manner that seemed to assume that Mr. Bedi would be prepared to answer them.
- [119] He immediately connected himself to Mr. Bedi's community by suggesting that he knew him from their neighbourhood -- working out in the same gym and attending a local high school.
- [120] His major and ultimately successful change from the previous approaches was to create an atmosphere between himself and Mr. Bedi that purported to be based on "straight shooting" and a street-level perception of events in which respect is the ultimate thing to confer, and people giving their words to each other is the ultimate bond.
- [121] Asserting that Mr. Bedi was "no gangster" and accordingly should take off the hood on his sweatshirt, Sgt. Dadwal launched into an initial salvo that included the following (Exhibit 26, page 24, beginning at line 944):

I'm not here to judge you - I actually fuckin' live like in the neighbourhood, so at the end of the day I have family here too, I'm not here to judge you, I'm not here to paint you . . . with a brush, I'm not here to get mad at you, I'm not a fuckin' magician . . . I'm not here to make you do anything - I don't roll like that. Okay, Gary - but the bottom line is I don't hate you. What I do know is your family is suffering, and what I do know is you're in for a hell of a ride in pre-trial. Cause I know a lot of guys out there. I go there a lot of the times to interview people. I've interviewed Barzan hard-ass and all the high end, all the R.S., all the IS, all the U.N.

(I take notice that these are all acronyms for notable local gangs.)

So I know what happens over there and uh those walls aren't made for you, my friend.

- [122] Sgt. Dadwal elaborated on the structure at Surrey Pre-trial, including the various units such as protective custody, but stressed that he had no control over what unit Mr. Bedi would be placed in. He used this description to lead to the assertion that the only people who would be taking Mr. Bedi's calls from Pre-trial on his bad days would be his family.
- [123] That led to a further assertion that it was his family that would have to deal with "the shit that's gonna show up at his [family's] doorstep" and "his dad's workplace." Seeming to change topics abruptly, Sgt. Dadwal asked Mr. Bedi if he had ever thought of committing suicide and after receiving an affirmative response, linked it to his previous comments about pre-trial by asking how many friends had come to visit him. There were then questions about Mr. Bedi's drug use, put to him in a fairly rapid-fire manner, and transitioning quite seamlessly into similarly paced questions and answers about the offence

itself:

Sgt. P. DADWAL Just, just marihuana and shit like that

Gary BEDI Yeah.

Sgt. P. DADWAL That's nothing crazy, right? Yeah. Um, did Gary pay you to go out there that night?

Gary BEDI Huh?

Sgt. P. DADWAL Did Gary pay you to go out there that night?

Gary BEDI No.

Sgt. P. DADWAL Okay. Did he tell you what was going to happen?

Gary BEDI I didn't think what was, like, what was going to happen really.

Sgt. P. DADWAL Okay.

Gary BEDI I didn't see it coming like that, no.

Sgt. P. DADWAL Is that your word to me

Gary BEDI Yes.

Sgt. P. DADWAL Telling the absolute truth?

Gary BEDI Yes.

Sgt. P. DADWAL I believe you because you're looking me in the eyes. That's why I believe you okay? So what did he say he was gonna [do], like harass her or something or what?

Gary BEDI I Honestly, like . . . I dunno man.

Sgt. P. DADWAL It's really important for me to understand what was going [on] in your mind believe me

Gary BEDI Just - millions [of] things are racing through my mind right now, I just don't even know where to start right now, man. I honestly don't even know - I honestly had zero intentions of any of - any of this shit - I had no idea like what was gonna go down that night.

Sgt. P. DADWAL Did you touch the gun?

Gary BEDI Sorry?

Sgt. P. DADWAL Did you touch the gun?

Gary BEDI No. I didn't even know if he had a gun.

Sgt. P. DADWAL Is that your word?

Gary BEDI Yeah.

Sgt. P. DADWAL You telling me the truth?

Gary BEDI Yeah.

Sgt. P. DADWAL[Indicating to Ms. Batalia:] Tell her that.

Gary BEDI I told her.

[124] Ms. Batalia then joined in the questioning, with Sgt. Dadwal pursuing the issue of Mr. Bedi's whereabouts at the time of the shooting and his knowledge that Mr. Dhaliwal had a gun, culminating in this exchange:

Sgt. P. DADWAL 'Kay. You didn't do it, though? Did you pull the trigger? How come Mark, how come Mark [that is a reference to Sgt. Davidson], he was thinking you pulled the trigger.

Gary BEDI I didn't pull the trigger. I told Rosie that.

Sgt. P. DADWAL Promise?

Gary BEDI I looked her right in the eyes and I told her that, and you can tell him that too.

[125] After some discussion about Mr. Bedi's family, Sgt. Dadwal told him that Mr. Dhaliwal "doesn't give a fuck" about him, that he was stupid, and that he had been used by Mr. Dhaliwal. Sgt. Dadwal also asked:

Sgt. P. DADWAL Are you worried about your family?

Gary BEDI Of course, I love my family man.

Sgt. P. DADWAL Good answer. That's good.

[126] This led to a series of questions and mainly responsive answers from Mr. Bedi about his role in the offence, Mr. Dhaliwal's whereabouts while he was inside SFU, and what exactly he understood Mr. Dhaliwal's intentions to be.

[127] Sgt. Dadwal added, "First of all, I already fucking know," to one of his questions, and, "First of all, all these answers I already know. I'm trying to give you check marks," to another -- conveying, it seemed, that he was only seeking to have Mr. Bedi confirm information that was already in the possession of the police.

[128] When Mr. Bedi responded to a question by indicating he was a passenger in the car and never got out, Sgt. Dadwal said, in reference to Ms. Batalia, "Okay. Tell her the truth, tell her that then," leading Mr. Bedi to reaffirm his position and lack of knowledge.

[129] After obtaining answers concerning Mr. Dhaliwal's use of a gun and a forceful assertion that he did not get out of the car, Sgt. Dadwal emphasized the police were just looking for the truth, because, "At the end of the day we could be wrong in our shit too-."

[130] After further questions and answers about Mr. Bedi's actions, Sgt. Dadwal asked him again to take his hood off because "It totally disrespects me."

[131] Mr. Bedi resisted answering a question about returning the rental car, leading to the following exchange:

Sgt. P. DADWAL Tell me, whose idea was that?

Gary BEDI I can't even . . . I can't even honestly - and no disrespect - I just can't even talk about all this shit right now.

Sgt. P. DADWAL Okay. What do you want to talk about?

Gary BEDI I just can't talk about all this shit anymore right now. I just-

Sgt. P. DADWAL (INDECIPHERABLE) tell the truth, right? And you need to allow them to heal and you need to allow yourself to heal, and allow her mom and dad to heal [referring to Ms. Batalia] and your family to heal. And healing only starts with the truth. You can bottle this shit up, man, and that's why I even asked you if you decided - if you'd thought about killing yourself cause I had my best friend kill himself so it fuckin' sucks, straight-up, okay? Second of all is people that bottle all this shit up like you, who actually have feelings, that have a heart and actually have a family that are sitting here and you're being totally respectful to me, you're the guy that's getting eaten alive at pre-trial. You're the guy that they're gonna make, you're gonna turn into someone's bitch, straight-up. Not that I want that to happen, I'm saying you're the guy that those walls weren't made for, for you. You need to heal from this, you need to become a better man, while you're doing your time you need to do something, you need to go to school and become something of yourself. Continue to tell the family that you told the truth. She [referring again to Ms. Batalia] needs to tell the community that you told the truth. Community needs to know that you, wo- you are accountable for this and you told the truth. The community - if the community's gonna make your, your family victims. Community's forgiving, man. Your family is gonna forgive ya. That's the only way you can heal from this.

[132] Mr. Bedi was then prepared to answer a question about how he came to rent the car initially. Sgt. Dadwal asked Ms. Batalia if he could speak to Mr. Bedi himself and, after thanking Mr. Bedi for helping her family and telling the truth, she left.

[133] Sgt. Dadwal said that Cpl. Di Nella and Sgt. Davidson liked Mr. Bedi and felt bad for him. In response Mr. Bedi said:

I had a talk to - yeah, Adriano's good, good talks. Fuck, I even broke out and I just don't know, I opened up to him random . . . they're good guys, they're not bad guys.

[134] After affirming that the police have no influence on what happens to him or what sentence he receives, Sgt. Dadwal asked, in reference to this offence not involving "the Gary they know," if he could be Mr. Bedi's voice in the community, to which Mr. Bedi replied, "Please."

[135] However, when Sgt. Dadwal said he would need to have the whole story from the beginning in order to do that, he encountered resistance as follows:

Gary BEDI (INDECIPHERABLE) Honestly man I just don't even know what else to say. It's been a fuckin' long day.

Sgt. P. DADWAL It has a been a long.

Gary BEDI Marvin just said not to say anything and . . .

Sgt. P. DADWAL Well, that's good advice, man. And I'm not gonna, I'm not gonna dis any lawyer's advice - it's good advice.

Gary BEDI I just can't talk any more, man.

Sgt. P. DADWAL I respect that

Gary BEDI I just can't talk anymore- I don't mean any disrespect to you, please don't look at me in a bad way but I just can't say much more, man.

Sgt. P. DADWAL What do you, what do you think I'm thinking right now?

Gary BEDI I don't

Sgt. P. DADWAL Do you, do you think I think you're Do you trust me?

(TALKING OVER EACH OTHER)

Gary BEDI We just met.

Sgt. P. DADWAL Does it look like I'm playin' ya?

Gary BEDI No, you're a straight-shooter, like you said.

Sgt. P. DADWAL Right. Right. Okay. Let me tell you this . . . people out on the street, the people who are - your parents are going to run into, the community, [the] people out there, Maple's family. Rosie . . . they need to know the truth. 'Kay? And at the end of the day, when I, when I, when I speak to people - I've spoken to a lot of people - anyone can come in and give me a little bit and put their foot in the pool and tell me a bit of the truth, okay? They can put their foot in the pool and tell me the truth. For somebody who believes they have to jump in the fuckin' pool and go for a swim. You can't put your foot in a pool and take your foot out of the pool or your foot in the pool and take your foot out of the pool. To be believed by people, to be believed by anyone, any human being, it's human nature, you gotta tell the story. Straight up. And I'm not gonna sit here and massage ya or force ya to tell the story. I'm not a magician, I'm not I - can't do anything, I can't (INDECIPHERABLE) or you know, (INDECIPHERABLE) or wave a magic wand and make you do that. It's not that at all, man. At the end of the day, you already know its better telling the truth. So I'm saying my suggestion to you, my strong suggestion to you is you tell me the whole story, the whole truth. Okay? Cause right now, I'm telling your right now, Mark and a bunch of other cops and a bunch of other people think you knew that she was gonna get killed. You helped rent that vehicle, you knew she was gonna get killed, and then you helped cover it up after the fact like crazy. Kay. Now you're nodding your head, and I wanna believe ya, and I want to know where this all started for ya. When does Gary first get you involved?

- [136] These statements resulted in Mr. Bedi answering questions about what he was told in advance of the day of the murder and Mr. Dhaliwal's references to a man whom he suspected was involved with Maple and what was to happen to him (the man being Mr. Dhillon).
- [137] Sgt. Dadwal responded to Mr. Bedi's claim not to know why nothing happened on the first night that he and Mr. Dhaliwal were at SFU with, "come on man. I've been straight with you. Fuck, I'm not stupid." This led to a very lengthy series of further questions and quite responsive answers about various aspects of the offence.
- [138] In relation to the time he went to SFU with Mr. Dhaliwal, Sgt. Dadwal said, "Just roughly. Like we already fuckin' know." When asked whether Mr. Bedi saw Mr. Dhaliwal use a knife on Maple, Sgt. Dadwal said, "Tell me straight bro."
- [139] During the course of this dialogue, Mr. Bedi referred to his good name in the community and that people would not believe that he had been involved with a matter like this.
- [140] When Mr. Bedi responded to a question about what he had done with his clothes after the offence with, "My clothes are fine - I didn't do anything." Sgt. Dadwal said, "Good answer, brother, good answer. That's what I like to hear."
- [141] After receiving all of this information about the offence, Sgt. Dadwal raised the possibility of Mr. Bedi meeting with Maple's parents and said he would leave him alone for a few minutes to think about it. The following exchange then occurred:

Gary BEDI Who else is coming right now?

Sgt. P. DADWAL No one's coming unless I they bring up to meet with mom and dad.

Gary BEDI Are you coming back here?

Sgt. P. DADWAL I'm gonna come back. Unless you want other people to come in here?

Gary BEDI No. Just . . . be str- be straight with me. I prefer you were here.

- [142] When he returned, Sgt. Dadwal briefly discussed the issue of speaking to the Batalias, and then posed further questions about the offence, which Mr. Bedi gave mostly responsive answers to. Mr. Bedi then asked for some fresh air, and when Sgt. Dadwal offered to phone Cpl. Di Nella to take him, Mr. Bedi responded:

Gary BEDI Yeah, yeah - just -

Sgt. P. DADWAL That cool?

Gary BEDI Just chill for a minute if you don't mind.

Sgt. P. DADWAL He man, if you want me to chill

Gary BEDI This, this is the comfiest seat I've had all fuckin' week, man.

Sgt. P. DADWAL I thought you'd wanna go rest and go to sleep and -

And Dadwal again:

Sgt. P. DADWAL If you want me to hang out with you, I'm good with that man.

(TALKING OVER EACH OTHER)

Gary BEDI I'm good right now.

[143] This was followed by a few questions relating to the offence, how he came to know Mr. Dhaliwal, and some background that he and Sgt. Dadwal had in common. Sgt. Dadwal then asked if Mr. Bedi would participate in a video asking Mr. Dhaliwal to tell the truth for the sake of Maple's family. Mr. Bedi responded:

Gary BEDI Honestly, man I'm just doing it for my own sake. I don't wanna fuckin' say anything. I don't want, you know, people comin' -

The transcript has them talking over each other, and then Mr. Bedi says:

Gary BEDI I don't want, I don't want people comin' to my door at my house.

[144] This refusal was accepted by Sgt. Dadwal.

[145] As he left the interview room with Cpl. Di Nella, he said to Sgt. Dadwal, "I just need you to be my voice, man." It was 4:48 a.m. on December 3.

[146] The conversation between Cpl. Di Nella and Mr. Bedi after these admissions were made was mainly genial and largely irrelevant. Cpl. Di Nella briefly retrieved Mr. Bedi again from his cell for the purposes of having him stand at the door of Mr. Dhaliwal's interview room for 45 seconds, to indicate to Mr. Dhaliwal that Mr. Bedi had talked to the investigators. The recording suggests that Mr. Bedi became somewhat disturbed with the uncertainty of what was going on and repeatedly asked Cpl. Di Nella to find Sgt. Dadwal. He also reasserted the advice he had received from his lawyer at the outset not to say anything.

[147] His final return to the cells by Cpl. Di Nella ended on a lighthearted note, as Mr. Bedi asked, "What happened to my roommate?" in apparent reference to the undercover officer, Cpl. Doyon.

3. GOVERNING PRINCIPLES

[148] I think my discussion of the arguments being put forward by the defence and Crown will make more sense if I first set out the general principles governing the admissibility of statements to persons in authority, which are not in dispute, before considering the additional authorities that are being relied on.

[149] In *R. v. Oickle*, [2000] 2 S.C.R. 3, Justice Iacobucci, writing for a majority of the Supreme Court of Canada, restated these principles, which had become subject to differing interpretations, in a more clear and understandable manner.

- [150] Firstly, the confessions rule has the twin goals of "protecting the rights of the accused, without unduly limiting society's need to investigate and solve crimes." (para. 33).
- [151] The correct approach to determining the admissibility of statements eschews hard and fast rules, in favour of a contextual approach in which the judge considers all of the relevant circumstances.
- [152] Inducements offered by the police to confess are considered to include both promises and threats. Such inducements can be express or implied, and may involve the suspect or third parties to whom the suspect has a connection and in relation to whom such an inducement would have influence on the suspect.
- [153] In contrast to the sometimes rigid application of the confessions rule in previous cases, Oickle offers a more realistic, nuanced, and flexible approach to assessing the impact of inducements on voluntariness:

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.

- [154] The most important consideration in all cases is to look for a quid pro quo offer, that is an offer by the police to do or not to do something in return for the suspect speaking to them, by interrogators, regardless of whether it comes in the form of a threat or a promise.
- [155] A distinction that Iacobucci J. drew in Oickle that has some significance in this case was between the prohibited forms of inducements that I have described and so-called moral or spiritual inducements. In essence, drawing the suspect's attention to potential benefits or detriments that are not within the control of the police will not generally render a statement inadmissible.
- [156] An application of the contextual approach required by Oickle means that the effect of a particular inducement on the suspect is affected by the surrounding circumstances. In the example given by Iacobucci J., the offer of minor physical comforts can acquire huge significance, and may render a statement inadmissible, if the suspect had been deprived of them.
- [157] With respect to oppression, Oickle offers a non-exhaustive list of relevant factors that could affect admissibility, including "depriving the suspect of food, clothing, water, sleep, or medical attention; denying access to counsel; excessively aggressive, intimidating questioning for a prolonged period of time", or the use by the police of non-existent evidence, although Iacobucci J. pointed out that this last factor would likely affect admissibility in conjunction with other factors.

[158] Oickle also suggests that in this contextual analysis, inducements and oppressive circumstances can operate together to render a statement inadmissible in its totality, by leading to a reasonable doubt about voluntariness.[2]

[159] In the subsequent case of *R. v. Spencer*, [2007] 1 S.C.R. 500, Justice Deschamps for the majority emphasized the contextual nature of the inquiry in *Oickle* and the importance of not focusing on the mere presence of a quid pro quo:

13 While Iacobucci J. recognized in *Oickle* that the existence of a quid pro quo is the "most important consideration" when an inducement is alleged to have been offered by a person in authority, he did not hold it to be an exclusive factor, or one determinative of voluntariness. On the contrary, the test laid down in *Oickle* is "sensitive to the particularities of the individual suspect" (para. 42), and its application "will by necessity be contextual" (para. 47). Furthermore, *Oickle* does not state that any quid pro quo held out by a person in authority, regardless of its significance, will necessarily render a statement by an accused involuntary.

14 To the extent that any distinction in law may be asserted between the traditional "confessions rule" in *Ibrahim v. The King*, [1914] A.C. 599 (P.C.), at p. 609, per Lord Sumner, and this Court's decision in *Oickle*, the latter must prevail. In my view, however, Lord Sumner's formulation of the "narrow" rule does not mean that any quid pro quo will automatically render a statement involuntary. Indeed, Lord Sumner required that in order for a statement to be admissible, it must not have been "obtained from [the accused] either by fear of prejudice or hope of advantage". In the subsequent case of *Director of Public Prosecutions v. Ping Lin*, [1976] A.C. 574 (H.L.), at p. 595, Lord Morris asked: "was it as a result of something said or done by a person in authority that an accused was caused or led to make a statement".

15 Therefore, while a quid pro quo is an important factor in establishing the existence of a threat or promise, it is the strength of the inducement, having regard to the particular individual and his or her circumstances, that is to be considered in the overall contextual analysis into the voluntariness of the accused's statement.

[160] In other words, as expressed in D.M. Paciocco and L. Stuesser's *The Law of Evidence*, 6th Edition, at p. 328, *Oickle* has reinforced causation as a central consideration.

[161] Given the significance of an allegation of interference with Mr. Bedi's right to silence in this case, the other Supreme Court of Canada case that should be reviewed for its governing principles is *R. v. Singh*, [2007] 3 S.C.R. 405. In that decision Justice Charron for the majority held that "the confessions rule effectively subsumes the constitutional right to silence [as guaranteed by s. 7 of the Charter], in circumstances where an obvious person in authority, such as a police officer, is interrogating a person who is in detention. This is because in such circumstances the two tests are said to be functionally equivalent." (at para. 39). This means that there does not have to be a separate s. 7 inquiry in circumstances where the issue is the actions of police and whether they have potentially undermined the exercise of the right.

[162] A breach of the right to silence will inevitably render a confession inadmissible under the Oickle test, Charron J. explained, because of the interference with the suspect's meaningful choice about whether or not to speak to state authorities. In the majority's view, the application of the confessions rule actually enhances a suspect's right to silence because (at para. 38):

. . . under the common law rule, the onus is on the Crown to prove voluntariness beyond a reasonable doubt. The mere presence of a doubt as to the exercise of the detainee's free will in making the statement will suffice to ground a remedy. And, by contrast to remedies under the Charter, which are subject to the court's discretion under s. 24(2), a violation of the confessions rule always warrants exclusion. [Emphasis added.]

[163] Charron J. also added this helpful gloss on the voluntariness inquiry (at para. 36):

On the question of voluntariness, as under any distinct s. 7 review based on an alleged breach of the right to silence, the focus is on the conduct of the police and its effect on the suspect's ability to exercise his or her free will. The test is an objective one. However, the individual characteristics of the accused are obviously relevant considerations in applying this objective test.

[164] Singh also echoes Oickle in its strong affirmation of the principle that despite the accused's right to remain silent, the police are entitled to put questions to those from whom they think information about the commission of a crime can be obtained. That is, ". . . the common law also recognizes the importance of police interrogation in the investigation of crime." (at para. 28).

[165] However, in affirming in this manner the legitimacy of police questioning, Charron J. sounded a warning about the consequences of abusing it, at para. 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.

[166] As Mr. Bedi's counsel has pointed out, a decision by a suspect to provide some responses to police questioning does not waive the right to silence with respect to further questioning. This was explained in *R. v. Turcotte*, 2005 2 S.C.R. 519 at para. 52:

... A willingness to impart some information to the police does not completely submerge an individual's right not to respond to police questioning. He or she need not be mute to reflect an intention to invoke it. An individual can provide some, none, or all of the information he or she has. A voluntary interaction with the police, even one initiated by an individual, does not constitute a waiver of the right to silence. The right to choose whether to speak is retained throughout the interaction. [Emphasis in original.]

[167] Finally, lest it be thought that this persistent questioning as described in *Singh* opens up a separate route to exclusions, either within the confessions rule or in some other way, *R. v. Batisse*, 2015 ONCA 322 at para. 18, makes it clear that the focus is still always on the choice of the suspect whether or not to speak:

[18] For persistent police questioning to constitute a breach of a detainee's right to silence, it must have the consequence of depriving the detainee of the right to choose whether or not to speak to the police. This is made clear in *R. v. Singh* ... at para. 46 ... in a quotation from *Hebert* ...

... there is nothing in the rule to prohibit the police from questioning the accused in the absence of counsel after the accused has retained counsel. Presumably, counsel will inform the accused of the right to remain silent. If the police are not posing as undercover officers and the accused chooses to volunteer information, there will be no violation of the Charter. Police persuasion, short of denying the suspect the right to choose or depriving him of an operating mind, does not . Police persuasion, short of denying the suspect the right to choose, does not breach the right to silence. [Emphasis added by Charron J. in *R. v. Singh*.]

4. ARGUMENTS

A. On behalf of Mr. Bedi

[168] In the defence submission there are three different components of the police conduct in obtaining these statements that should raise a reasonable doubt about their voluntariness: specific inducements, including quid pro quo; the existence of an overall atmosphere of oppression; and, by far the most significant aspect of the defence submission, "the concerted and systematic devaluing of [Mr. Bedi's] right to silence".

[169] The inducements are said to take the form of the classic quid pro quo prohibited by the authorities.

[170] The first of these are the statements by Ms. Batalia that she and her family will forgive Mr. Bedi and tell his family that he did not commit the murder, if he provides her with information. This includes, I infer, the explicit statements by her father to that effect in his video appeal.

- [171] The second is said to be Sgt. Dadwal's offer to be Mr. Bedi's "voice in the community" which, in order to carry out, required a complete recitation of Mr. Bedi's involvement in the offence from the beginning. Mr. Bedi's counsel submits that the effect of this particular inducement can be readily gauged by the fact that Mr. Bedi brought it up himself again to Sgt. Dadwal as he was being escorted from the office.
- [172] The defence argues that both situations fall outside the kinds of "moral inducements" that Oickle suggested would not present an obstacle to admissibility. In contrast to the examples in Oickle, here it is argued that the person making the offer had the direct ability to confer on Mr. Bedi something that he perceived as a benefit (from Ms. Batalia and her family, forgiveness of him, and from Sgt. Dadwal, a role as his spokesman, correcting misinformation about him, in the community), if he gave them the requested information.
- [173] The oppressive circumstances relied on here include the overall extremely lengthy interviewing process; the protracted and aggressive manner of questioning at some stages; and the uncomfortable cell conditions in which he was kept when not being interviewed.
- [174] As I have said, the greatest emphasis was placed on the police's undermining of Mr. Bedi's right to silence. His counsel points out that he explicitly asserted it repeatedly, asked for further opportunities to speak to Mr. Stern (which, in view of his references to Mr. Stern's advice not to say anything, should be seen as being intimately connected to the exercise of that right), and, most importantly, made the obvious effort to exercise it, by remaining largely silent in the face of repeated questions and monologues by the police over many hours of interviewing, to which he gave no or non-verbal responses. There should therefore be no ambiguity about his intentions in that regard.
- [175] Set against Mr. Bedi's wishes are what I am asked to find were an orchestrated set of themes pursued by the police, despite their coyness and evasiveness in their evidence about whether such themes were ever planned in advance, or discussed as they were proceeding. Among the most prominent interview themes cited by the defence were:
- The police were not trying to get a statement from Mr. Bedi and the strength of the case was such that nothing was required from him. (I infer that the resulting argument is that these assertions, which taken alone could perhaps be seen as dissuading him from speaking, were meant to set up the subsequent proposition from the investigators that remaining silent in the face of this unanswerable evidence says negative things about him and his level of involvement.);
 - Following his lawyer's advice says something about him as a person;
 - In order for his story to be accepted, it needs to be given immediately;
 - If he remains silent, people will lose faith in him and/or believe he is a bad person;
 - Remaining silent is an indication of various levels of knowledge and culpability, ranging from planning the murder, firing the gun himself, or at least participating willingly;

- Silence will preclude forgiveness from the Batalias and his own family and will actively harm his family out in the community. It will also indicate that he is lying and protecting Mr. Dhaliwal;
- Silence is disrespectful to Ms. Batalia and shows him to be a coward; and
- Sgt. Dadwal cannot be his voice in the community, thus ameliorating the negative perceptions that will otherwise attach to him, unless he has the complete story of Mr. Bedi's involvement.

[176] According to the defence, Ms. Batalia, in her own involvement, echoed and reinforced these themes and added some forceful elaborations of her own. The most significant of these were that her family needed information from Mr. Bedi in order to heal and have closure, and that such an opportunity needed to be acted on immediately and would not be available again.

[177] In the defence submission, it is also crucial to examine Mr. Bedi's reactions to these various tactics, and to keep in mind his isolation throughout the interview process from other sources of information, other than what the police chose to give him.

[178] Counsel says that the proof of the effectiveness of the fictional narrative that had been given to Mr. Bedi were his own statements of dismay at being thought to be a bad person, either by the Batalias or in the community. His statements also illustrate vividly, it is argued, the conflict that he had been placed in between his lawyer's advice and compliance with the deceptive obligations that had been put on him. Overall, his comments reveal the effectiveness of the false sense of urgency that had been attached to his compliance, his fear for his own safety, and his general fatigue after many hours of interrogation. His final capitulation in the face of the offer by Sgt. Dadwal to correct the community's impression of his character and actions is said to show the complete success of the fiction that has been imposed on him.

[179] Mr. Bedi's counsel relies on trial decisions that have characterized some of the police tactics that were used in Mr. Bedi's case as inimical to the exercise of a free choice by a detainee about whether to speak. I have listed these tactics thematically rather than as they were provided in the submissions.

[180] Inappropriate police conduct has been found to include:

- Ignoring persistent assertions of the right to silence and/or denigrating the advice of counsel to remain silent (R. v. Tammie, 2001 BCSC 366 paras. 66,73,78-80; R. v. Rhodes, 2002 BCSC 667, aff'd 2003 BCCA 263, paras.109-110; R. v. Ciliberto, 2005 BCSC 1859 paras. 58,61,72-83; R. v. Felker, 2009 BCSC 408 at paras. 24-60, 69-71; R. v. Fitzgerald, 2009 BCSC 1599 paras. 10-13, 23-28; R. v. Smith, 2011 BCSC 1695 paras.155-157; R. v. Davis, 2011 ONSC 5564 paras. 28-37; R. v. Gyles, 2015 MBQB 21, paras. 44-48, 51-55; R. v. Ekradi, [2003] O.J. No.971 (S.C.J.), paras. 30-37, 39-52, 68-70);
- Using aggressive or intimidating questioning, including involving a grieving relative of the victim, to increase the emotional intensity of the interview (Ciliberto, paras. 44-45; Gyles, paras. 46,53);

- Implying that the suspect should not speak to the police if the killing was planned, or that the evidence shows a very serious role in the offence that they should correct if they do not want the police to act on it (Tammie, para. 68; Ciliberto, paras. 29 - 35; 87; R. v. Lincoln, 2009 BCSC 385, 233-252, 281-286);
- Conversely, pressing a lesser role on the subject that they will accept in order not to be thought of as the principal offender (R. v. Feng, 2015 BCSC 455, paras. 156-157, 161-164; Gyles para. 32);
- Employing an undercover officer concurrently with the suspect's assertion of his right to silence during ongoing interviews (Tammie, para. 124);
- Giving the impression that the interview offers the suspect their best or only opportunity to explain themselves (Tammie, paras. 133-134; Smith, paras. 149-150, 155; Feng, para. 157, Gyles, paras. 22-32, 55; Felker, para. 58); and
- Suggesting that a co-accused is in the process of blaming them for the offence, when such evidence will be inadmissible in a joint trial (Smith, paras. 149-150, 155, 158; R. v. Elkradi, [2003] O.J. No. 971 (S.C.J.), paras. 44-52).

B. On behalf of the Crown

- [181] Crown counsel reaffirms the importance of looking at the entire context of the words used by the police officers and Ms. Batalia, and of assessing their effect on Mr. Bedi objectively based on the video and audio recordings, since that is the only evidence of their effect. I should not speculate about what his intentions and the effect of any police statements on him may have been. Most fundamentally, Crown submits there is a lack of causation between any alleged inducements and the statements that Mr. Bedi ultimately made.
- [182] Within that framework, the Crown made a number of additional points.
- [183] With respect to potential inducements, telling Mr. Bedi to describe his involvement in order to be forgiven is the kind of moral appeal that Oickle says should not affect admissibility. This applies equally to video appeals from the Batalia family.
- [184] Comments to the effect that this was the only chance for Mr. Bedi to do the right thing were no more than an expression of the reality that an admission is seen as being less sincere as time goes on, as illustrated in Sgt. Davidson's anecdotes, which were not misleading. As far as Ms. Batalia (who was physically present when it was said) is concerned, such an assertion could well have been a reality rather than a threat, since it may have been her final opportunity to receive an admission from Mr. Bedi. Most importantly, Crown argues that no admission actually resulted from these comments.
- [185] In the trial decision of R. v. Foerster (28 March 2014), Vernon 47160 (B.C.S.C.), Mr. Justice Rogers found nothing untoward in telling a suspect that the current state of the evidence makes him look bad, but that some explanation for it might stop people thinking as badly of him. Such a comment is inoffensive, according to Rogers J., because it is true.

- [186] In addressing any potential concerns about oppression, the Crown points out the extensive opportunities to consult with counsel that Mr. Bedi was provided with before any interviewing on matters of substance was carried out. The police were most solicitous about the exercise of this right.
- [187] He was also provided food and drink and was able to make decisions about when specifically he wished to receive them.
- [188] He was offered, but declined medical assistance for whatever injury he may have suffered during the arrest. Whatever the origin of his sniffing and coughing, it was not nearly as prominent during his ultimate inculpatory admissions to Sgt. Dadwal.
- [189] Aside from the clothing restrictions in his cell, he was allowed to wear extra clothing when he needed it for warmth during the interview and rest breaks.
- [190] Whatever the shortcomings of the cell, they were the same conditions as were faced by all the prisoners in the cellblock. According to Cpl. Doyon, Mr. Bedi appeared to have been able to get some sleep and, while the Crown acknowledges candidly that he was kept up very late on December 3, he displayed no overt signs of exhaustion. He continued to make discriminating choices about what answers he would give to Sgt. Dadwal and the manner in which he would answer.
- [191] Other than the outburst from Sgt. Davidson, the Crown contends that Mr. Bedi was spoken to politely and respectfully throughout the interviews. He even continued to look at Sgt. Davidson as the outburst was occurring, which the Crown suggests he would not have done if he had actually been intimidated, and he said nothing inculpatory until two hours later.
- [192] With respect to the overall length of the interviews, the Crown stresses that there is no such thing as a fixed length after which such a process will automatically become oppressive. It was also submitted that one should look at the amount of time in which Mr. Bedi was actually being interviewed about the offence, which was notably shorter than the complete interviews. What matters at the end of the day, in the Crown's submission, is whether a suspect is so fatigued that his ability to continue to make informed choices about whether to speak has been affected. Mr. Bedi's behaviour, as shown in the recordings, demonstrates in his case that it had not.
- [193] Reviewing the trial decisions dealing with assertions of right to silence that were ignored by the police, Crown notes that they were much more aggravated situations. In those cases in which the degree of police persistence was found to be unacceptable and to undermine the right to silence there were often very large numbers of explicit assertions of the right to silence, occasionally numbering into the hundreds, by the suspects.
- [194] The Crown also points to the absence of apparent mental health issues for Mr. Bedi here, which is in contrast to the suspects who were rendered more vulnerable for that reason in some of the decisions relied on by the defence.

[195] Ultimately, the Crown asks me to look at Mr. Bedi's actual conduct throughout the weekend as the best evidence that his will was never overborne. This conduct includes:

- asserting his right to silence as advised by counsel;
- accepting or declining refreshment from time to time;
- referring to an apparent injury during the arrest, to haven gotten sick by December 2, and asking for fresh air and washroom breaks as he required them;
- choosing to become more responsive as the weekend wore on;
- asking for information about his circumstances and what would be happening to him from there, such as the circumstances at pre-trial;
- speaking in a more relaxed manner about non-offence-related personal matters with Cpl. Di Nella;
- demonstrating overt sympathy towards Ms. Batalia and her family;
- choosing not to answer further questions from her or answering only minimally after he had given the answer that was to have provided her with closure;
- dealing with Sgt. Dadwal in the final interview in an alert and engaged manner; and
- most importantly, exercising continuing control over the narrative that he provided to Sgt. Dadwal, at times minimizing his role, changing the story, refusing to answer questions, and asserting his right to silence. Crucially, when asked to record a video appeal to Mr. Dhaliwal, he felt able to refuse.

[196] Crown counsel submits that in this case we have the motivation for saying anything directly from Mr. Bedi in the form of his reference to the tears of Maple's mother in her video appeal, which reminded him of his own mother. He told Sgt. Dadwal that having spoken to Ms. Batalia felt good and took a weight off his mind, which is consistent with having acted out of remorse and a desire to take responsibility for his actions, which the police were legitimately entitled to promote during their dealings with him.

5. DISCUSSION

[197] I think the most suitable approach to resolving this case will be to consider first the various matters that are said to constitute oppressive circumstances, interference with the right to silence, and inducements. If any are found to exist, I must then go on to consider whether they played a causative role in producing the statements that Mr. Bedi gave.

[198] As the Supreme Court of Canada makes clear, this analysis must be based on the entire context of the statements, taking into account all relevant factors.

- [199] Dealing first with the question of oppression, factors that may not have directly impacted Mr. Bedi's ultimate admissions, but that likely played a background role in his ability to deal with the police, are the overall length of the interviewing process, including the time of night at which the final interview was held, and his resulting level of fatigue.
- [200] I appreciate the point that there is no fixed time after which the length of police interviews will necessarily become unreasonable, but this was, by any standard, an extremely long interview process, stretching into the very morning of Mr. Bedi's court appearance. Notwithstanding Mr. Bedi's level of alertness as shown on the video, and Sgt. Dadwal's up-close observations of that level based on his experience, the duration and intensity of the police questioning that preceded his final statement and the ordinary human experience of a person's thinking processes at those hours of the night, suggest that he would not have been at his absolute sharpest level mentally.
- [201] That said, while it will certainly be part of the overall context of assessing voluntariness, I do not find this is a situation in which the level of sleep deprivation and fatigue to which he was subjected created anything approaching oppressive conditions in the interviews.
- [202] I am also unable to find other oppressive elements in the manner in which Mr. Bedi was housed and cared for by the police over the weekend.
- [203] In terms of accommodation, I would say that he was as comfortable (or uncomfortable, to put it more accurately) in the Surrey Detachment cellblock as any other prisoner. The cool temperature that Cpl. Doyon described, the minimal bedding given to prisoners, and the constant light, may not be ideal in the broad scheme of things, but there was nothing inhumane about them or that was uniquely imposed on Mr. Bedi.
- [204] Similarly, the level of stress that he manifested to Cpl. Doyon and the amount of sleep that he was apparently able to get do not seem inconsistent to me with the legal situation that he faced and the sound and lighting conditions that were common to all prisoners.
- [205] There is also no suggestion that he was ever unable to access food or water when he wanted it.
- [206] His counsel has not advanced specifically whatever physical interaction may have taken place with the police upon his arrest as a factor going to voluntariness, and he did not request any significant medical attention to cope with its effects.
- [207] Similarly, while I do not doubt the legitimacy of his nasal congestion problem on December 2, nothing suggests that it went beyond a routine cold or allergies, and Crown counsel is correct to point out that its effects were much diminished by the time of his interactions with Sgt. Dadwal.
- [208] Therefore I am also unable to say that his physical condition had any impact on the atmosphere of his interactions with the police.

- [209] The manner in which he was questioned over the weekend was thorough, tenacious, and occasionally forceful. I will be commenting specifically on some of the behaviour of Sgt. Davidson and Cpl. Di Nella as it impacted Mr. Bedi's exercise of his right to silence, including Sgt. Davidson's more aggressive stance at certain points, but in general I agree with the Crown that the overall process of questioning was carried out in a respectful manner.
- [210] Turning to Mr. Bedi's exercise of the right to silence, I will re-emphasize that the views of his interviewers on the nature of their actions towards him are not really helpful, compared to an objective assessment of the manner in which those actions appeared to have impacted on him during the interviews, as recorded on audio and video.
- [211] It is patently obvious that the interviewers in this case pursued common themes over time and shared information with each other, resulting in both the formal interviews and the breaks developing those themes. They shifted their tactics when they met resistance and also ensured that Ms. Batalia's comments to Mr. Bedi helped further their objectives.
- [212] There is nothing inappropriate about these approaches in themselves. Reluctance on the part of some of the police witnesses to accept those obvious actions in their evidence when they were pointed out to them does them no credit, but, as I have said, it is what they actually did as shown in the recordings and how it affected Mr. Bedi, not what they considered themselves to be doing or why they did it, that matters in this inquiry.
- [213] The first issue under this heading is the persistent questioning, despite Mr. Bedi's indications at various times that he was invoking his right to silence. His counsel is quite right to submit that, carried far enough, this can in itself undermine the right as the cases indicate. Singh points out that persistence in the face of such a response can be a strong indication that an eventual statement was not the product of free choice.
- [214] I also agree that a person who simply exercises the right by remaining silent, as Mr. Bedi largely did, should be in no worse a position than someone who repeatedly tells the police they are invoking the right, as in some of the cases. But I come back to the requirement, as expressed in *R. v. Hebert*, [1990] 2 S.C.R. 151 and restated in *Batisse*, that such persistence must have the effect of depriving the suspect of the ability to choose before it breaches the right.
- [215] In the cases to which I have been referred in which it has been determinative of admissibility, this factor often resembles a war of attrition by the police, in which the questioning is carried on past all reasonable prospect of success, for the apparent purpose of projecting to the subject the inevitability of having to speak. While I have already commented on the length of these interviews in the context of oppression, and will have more to say on the effects of particular portions of the questioning on Mr. Bedi's right to silence, I cannot say that the persistence of questioning here was, in itself, such to render Mr. Bedi incapable of exercising his right whether to speak.

- [216] I will now deal with some of the statements to Mr. Bedi by the investigators that his counsel have suggested are part of the overall fictional narrative about the case that ultimately caused him to speak.
- [217] Sgt. Davidson asserting that he was not there to take a statement from Mr. Bedi was somewhat misleading, since he clearly was, and so such a remark must have either been intended to reinforce the strength of the subsequent evidence, or to imply that any comments that Mr. Bedi made were not in the nature of a statement to the police.
- [218] I do not see anything improper in suggesting that the strength of the case was such that no comment from Mr. Bedi would be required, but that he was being given the opportunity to provide his input. In the absence of lying about the existence of particular evidence, an indication by the police that certain consequences are likely to flow from the state of the evidence, without some further explanation, seems to me to be a legitimate means of persuading the suspect to comment.
- [219] However, I think the statements that if the killing was planned or he had advance knowledge he should not answer were somewhat unfair, in the sense that they seek to portray silence as a negative admission and would tend to promote a denial solely to address the implied accusation, rather than as a free choice to speak.
- [220] The greater weight to be attributed to an early expression of remorse by Mr. Bedi seems to me to fall within the range of legitimate glosses that the officers could put on the situation, by recourse to the ordinary experience of human nature. It is something that Mr. Bedi would have been equally capable of disregarding as accepting, since it is not an assertion that depended on legal knowledge that he did not possess. I would distinguish this from the false suggestion, which has been found to be improper in other cases but did not arise here, that explanations offered at trial by an accused person will have less weight if they were not originally contained in a statement to the police, or the general "best chance" scenario in which the suspect is told that the explanation will never again have the same amount of weight. Here the benefit of an early admission was related to the issue of remorse and the admission's beneficial effect on those who hear about it.
- [221] The repeated revival of the concern that Mr. Bedi might be seen as the shooter, something that other officers were said to believe, was repeatedly linked to the possibility that Mr. Dhaliwal was cooperating or might cooperate with the investigators to accuse Mr. Bedi. I disagree with the submission of Mr. Bedi's counsel that these comments inevitably depend on the false legal premise that Mr. Dhaliwal's evidence was admissible against him in a joint trial. That discounts the other viable possibility, which was not excluded here, of calling Mr. Dhaliwal as a witness against Mr. Bedi, either in separate trials or as part of some plea arrangement. And, as a practical matter, a statement by one suspect concerning the role played in the offence by the other would obviously have the potential to affect the investigation, regardless of the ultimate admissibility of that statement in the other's trial.

- [222] However, to the extent that this approach was based on instilling the fear of Mr. Dhaliwal telling his story first, rather than the ultimate implications of the statement, I think it was improper to a degree, because it could provoke Mr. Bedi to make an admission solely to avoid being falsely implicated or, as Sgt. Davidson put it, to get to the "last chair" first. It is a dangerous interference with the right to silence to suggest that whoever confesses first will benefit from the point of view of their ultimate legal liability for that reason alone, as opposed to liability resting on the evidence available against the suspect.
- [223] This is not a case in which I can find that a lesser degree of involvement was put to Mr. Bedi solely to lure him into accepting it to avoid being considered more culpable, as has been condemned in other cases. Although the possibility that he was actually the shooter was intermittently raised, mainly as a possible explanation for why he was not speaking, in the overall context of the interviews it would have been clear to Mr. Bedi that the consistent investigative theory centred around his culpability for manslaughter and accessory after the fact, with the main unknown being his level of advance knowledge of Mr. Dhaliwal's intentions.
- [224] I will deal with the Batalias' request for information in return for forgiveness under the heading of inducements, but in general I think it was open to the investigators to present Mr. Bedi their version of the negative view that would be taken of him, the abuse that his family might suffer, and the ongoing pain that would be caused to the Batalias if he failed to explain the true nature of his involvement. The same is true for the idea that he was thereby protecting Mr. Dhaliwal.
- [225] I think this is a kind of permissible theorizing by the officers, based on known facts, that it is open to the subject to accept or reject, as in the case of the investigators' comments about the benefits of an earlier expression of remorse. It is certainly a narrative created by the investigators, as the defence contends, but it seems to me to have offered him a reason to decide to speak, rather than taking away the ability to decide. More importantly, it is also self-regulating, in that a suspect, absent intellectual deficits or mental health issues (which can be reflected in other aspects of the voluntariness analysis) will not be influenced by possible scenarios put forward by the investigator if they have no basis in reality, as the suspect perceives it. The investigators here certainly made a great deal out of it, but at its core, the proposition that Mr. Bedi's family and/or the Batalias would suffer from not knowing the true extent of his involvement is not really a fanciful one, and Mr. Bedi had the capability of rejecting it if he found it implausible.
- [226] Leaving aside the potential inducement relating to their forgiveness, I think Ms. Batalia was entitled to state as a fact, from her point of view, that this was Mr. Bedi's time-limited opportunity to provide her and her family the information they required, in order to obtain closure and for them to provide forgiveness. As the Crown points out, this could well have been an expression of her reality.

- [227] Similarly, leaving aside its potential status as an inducement, Sgt. Dadwal's portrayal of the need for Mr. Bedi to have him as his voice in the community was a similarly legitimate extrapolation based on known facts for a persuasive purpose.
- [228] However, it was clearly improper for Sgt. Davidson to ask Mr. Bedi how he "felt" about the advice of his counsel not to speak and to imply, by his own statement, that he himself knew what kind of person he was, and that there was something improper in following such advice. I cannot conceive of any purpose for which this could have been said other than to cause Mr. Bedi to doubt that advice, and by extension to waver in his resolve to exercise the right that it is intended to protect. Sgt. Davidson's subsequent climb-down from that position, to claim that he was actually concerned with Mr. Bedi's apparent lack of emotion, did not remove the unsavoury quality of the initial comment.
- [229] Sgt. Davidson's tirade, followed by an almost equally intense engagement by Cpl. Di Nella, tended to undermine Mr. Bedi's right to silence, by placing very significant emotional pressure, augmented in Sgt. Davidson's case by verbal abuse, on Mr. Bedi to extract the admission that he was not the shooter, as a means of opening him up to further dialogue. This cannot be characterized as an attempt simply to persuade him to speak.
- [230] Finally, there are the two potential explicit quid pro quos that Mr. Bedi's counsel has identified.
- [231] I am unable to agree with the Crown's submission that these fall within the category of moral appeals, as envisioned in *Oickle*, or that offers of intangible benefits, such as forgiveness, should be analyzed differently than tangible ones. The Crown has referred to para. 50 of that judgment, in which the Court characterizes an offer of psychiatric assistance as being less strong than, for example, an offer of leniency, but the Court still characterizes it as "clearly an inducement". In that situation, the Court simply said that all of the circumstances must be considered to determine that inducement's overall strength.
- [232] The key to the definition of a moral appeal in *Oickle* is that what is offered is not within the control of the police. It was not disputed that Ms. Batalia acted as an agent of the police and that the video appeal from her father was provided for the same purpose, and so it is as though the police had conveyed the offer themselves. Similarly, Sgt. Dadwal's offer to be Mr. Bedi's "voice in the community" depends on actions solely within police control, regardless of whether Sgt. Dadwal ever intended to carry it out.
- [233] I do not think the fact that the Batalias were offering, in effect, an emotion or a state of mind on their part in return for information diminishes its potential as a conferred benefit in return for Mr. Bedi speaking. I appreciate the Crown's point that other individuals to whom Ms. Batalia or Sgt. Dadwal later spoke may or may not come to the same state of emotion or understanding that they might be urged to, but what I believe matters for the purposes of identifying an inducement is that Ms. Batalia (and her father in his video) and Sgt. Dadwal offered to perform an act in return for information. It is the transaction between them and what they will do for Mr. Bedi in return for information that defines the

quid pro quo, in essence.

- [234] However, I do not think that the requests by Ms. Batalia for information so that her family can heal and have closure, offered Mr. Bedi anything in return so as to amount to a quid pro quo.
- [235] The contextual inquiry then becomes, as Lord Morris put it in *Director of Public Prosecutions v. Ping Lin*, [1976] A.C. 574 (H.L.), at p. 595 (a case relied on by the Supreme Court of Canada in *Spencer*): "was it as a result of something said or done by a person in authority that an accused was caused or led to make a statement". In other words, what was the causative link, if any, between things done by the police or their agents here and Mr. Bedi's statements?
- [236] Although the Crown is seeking admission of the entire series of interviews, the reality is that the only inculpatory admissions to Ms. Batalia, after the exculpatory statement that he did not kill Maple, was that he did not think Mr. Dhaliwal was going to shoot and that he would not have gone with him if he had known Mr. Dhaliwal was going to do "something bad," which implicitly identify him as being present at the scene and would be of value from a prosecution point of view. The meat of the inculpatory admissions is what was provided to Sgt. Dadwal.
- [237] As I have said initially, the length of the interviews and the time of night and the resulting fatigue levels are part of the background for Mr. Bedi's statement, but are not determinative of anything in themselves. Most of the improprieties that I have identified during the interviews, in terms of interference with the right to silence, do not appear, by reference to Mr. Bedi's subsequent statements, to have had any impact on his later decision to speak to Ms. Batalia and Sgt. Dadwal. There are two exceptions.
- [238] Mr. Bedi later referred to the possibility that Mr. Dhaliwal could "pin it all on me and walk away" when he was speaking to Ms. Batalia in the office, before he made the admissions to her about not being the shooter and not knowing what was going to happen. This suggests that Sgt. Davidson's raising of the possibility of Mr. Dhaliwal informing on him as the shooter was still operating in his mind. I cannot, however, identify any connection between this concern and any subsequent admissions.
- [239] More significantly, it is clear from the recordings that Sgt. Davidson's tirade emotionally upset Mr. Bedi, notwithstanding the subsequent apology. This was a situation that Cpl. Di Nella's intense, though not particularly abusive, follow-up would have perpetuated. It is also clear from Mr. Bedi's comments in the break area that he was then deeply conflicted about the advice that he had received from Mr. Stern, in light of his wish to assist Ms. Batalia, whom he had been repeatedly accused of humiliating and disrespecting by the officers.

- [240] It makes perfect sense that he would then seek to speak to Ms. Batalia privately, in an attempt to reconcile those two serious pressures without incriminating himself, and that he would open up in a room that he was led by the police to believe was not being recorded.
- [241] Thus, I think the abusive rant by Sgt. Davidson and Cpl. Di Nella's follow-up keyed on extracting the concession from Mr. Bedi about not being the shooter, seemingly at all costs, did tend to undermine his attempts to remain silent in that situation.
- [242] The forgiveness inducement on behalf of the Batalias was repeated during the discussions in the break area and kept current by Ms. Batalia, initially in the interview room with Sgt. Davidson chiming in on its urgency, once she arrived in the smoke break area, and upon her arrival in the office, so it certainly could not be said to have dissipated at the point that Mr. Bedi made his admissions to her in the office.
- [243] I have kept in mind that Mr. Bedi said, "At least you got your closure," (a reference to the request from Ms. Batalia that I have concluded was not in itself an inducement) after he had confirmed he was not the shooter, and that he did not seek any confirmation that he had been forgiven by her. I have also kept in mind the point that after this, when Ms. Batalia told him how much better his admission had made her feel, he referred to the effect that the video of her mother had had on him. As I mentioned, the Crown submits this is his motive for confessing and shows decisively that his will was not overborne at that point.
- [244] The difficulty I have with the Crown's submission is that the video of Ms. Batalia's mother was shown to Mr. Bedi during the interview that ended in the early morning hours of December 2, with no appreciable effect on his willingness to speak then. It is important to remember that the mother was also included in the forgiveness scenario put forward by Ms. Batalia. Even if sympathy for the mother as a factor in itself was a motivation to speak, among others, it does not displace what seems to me the likelihood that the pressure applied to him by the officers and/or the inducement of forgiveness helped to motivate him to speak to Ms. Batalia. I think the same is true of Ms. Batalia's permissible comments about the family having closure. They may also have been present as a factor, but it is not possible to prefer them conclusively to the improper motivations that I have identified as operating on Mr. Bedi's thinking.
- [245] On the current evidence, it is impossible to say, without speculating, precisely what motivated Mr. Bedi to speak. But given the close temporal connection between his admission to Ms. Batalia of both the emotional pressure from the officers to concede that he had not been the shooter and the forgiveness inducements from Ms. Batalia, I think it is appropriate to draw the inference that they played a prominent role.
- [246] As to the "be your voice in the community" inducement, Sgt. Dadwal's request for the entire story in order to fulfil that role was initially rebuffed by Mr. Bedi, who referred again to his legal advice. But after Sgt. Dadwal expanded on the reasons that he needed the truth in order to assure the community about Mr. Bedi, and wove in again the concern that some

officers thought that Mr. Bedi knew in advance that Maple was going to be killed, this inducement was successful in extracting further admissions. Mr. Bedi's final request of Sgt. Dadwal was for him to fulfil this role as his voice, so it clearly made a deep and continuing impression.

- [247] I have kept in mind that Mr. Bedi never approached anything like emotional disintegration in any of these encounters and that he was able to continue to make the kinds of choices that the Crown has described, including remaining less than completely candid and refusing to do certain things that Sgt. Dadwal wanted. My decision is not based on him having given up entirely or his having become some kind of passive tool of the police. It is that I am left with a reasonable doubt that he was emotionally pressured and induced into forsaking his right to silence to make statements that he did not wish to make, which is the essence of involuntariness. In that regard, a partial grudging admission can be as involuntary as an abject surrender, and the latter is not a precondition to doubt about voluntariness.
- [248] I have also considered whether it is possible to treat the portion of Sgt. Dadwal's interview after Mr. Bedi's admissions to Ms. Batalia, but before the quid pro quo about being the voice in the community, separately. There is nothing particularly objectionable about that questioning from the point of view of the issues I have described. But coming as it did on the heels of what I have found to have been improper emotional pressure and inducements, and given the extent to which Sgt. Dadwal clearly built on the atmosphere that already existed between Mr. Bedi and Ms. Batalia by that point, including Ms. Batalia's continued presence as a person to whom Mr. Bedi was instructed to address information, I cannot see any principled basis to treat it as anything other than a continuation of the tainted admissions.
- [249] For these reasons, I am left with a reasonable doubt in all the circumstances about whether Mr. Bedi's will was overborne or, put another way, whether he was deprived of the ability of whether or not to choose to speak to the police by the actions of the RCMP and their agent, in relation to these particular admissions.
- [250] As a result, the portions of the statements from Exhibit 24 onwards are inadmissible. I do not know if the Crown seeks to have the preceding statements used for any purpose such as cross-examination. There is nothing objectionable about them in themselves, and I can hear from the Crown about that at the appropriate time.

The Honourable Mr. Justice T.A. Schultes

- [1] Viniel Chand, an associate who at that stage of the investigation was believed to have a connection with the murder, was arrested on December 1. No advance charge approval had been sought for him. His arrest and interview were referred to during Mr. Bedi's interviews, but are not otherwise relevant to this voir dire

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- [2] Two other areas of inquiry described in Oickle -- whether the suspect had an operating mind at the time he gave the statements, which is capable of interacting with inducements and oppression to produce an involuntary statement, and the separate inquiry about whether the police engaged in trickery that would shock the community, do not arise on our facts.
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