
CANADA / JUDGMENT

R. v. Watts

2003 BCSC 1403

COURT

Supreme Court of British Columbia

DECIDED

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: H.M.T.Q. v. Watts

2003 BCSC 1403

Date: 20030908

Docket: 21866-3

Registry: Vancouver

Her Majesty the Queen

Against

John Andrew Watts

Before: The Honourable Madam Justice Gray

Ruling on Voir Dire

September 8, 2003

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INTRODUCTION

- [1] THE COURT: On Friday, September 5, 2003, I ruled that the Crown had established that two videotaped statements by the accused were voluntary within the meaning of the authorities and admissible. I gave the ruling with reasons to follow, because it was not clear that there was sufficient time for me to provide reasons and for the trial to complete that day as scheduled.
- [2] The Crown's evidence is now complete. The defence has requested my reasons on the voir dire before deciding whether to call evidence when the trial continues on Tuesday, September 9, 2003, at 11:00 a.m. These are my reasons.
- [3] John Watts is charged with one count of arson under s. 434 of the Criminal Code. At issue in the voir dire was the admissibility of two statements made by Mr. Watts. The evidence on the voir dire included the videotape and written transcription of both statements, as well as the evidence of two RCMP officers, each of whom took one statement.

ISSUE

- [4] The sole issue was whether the Crown had established beyond a reasonable doubt that the statement was voluntary in the sense used in the authorities. That question included a consideration of the entire context of the statements. I did not understand Mr. Reid, counsel for Mr. Watts, to be seeking a remedy under the Charter. However, I understood Mr. Reid to argue that the entire context of the statements included the effect of the police conduct on Mr. Watts' Charter rights to counsel and to silence.

FACTS

- [5] In August 2002, the Shell service station at 1580 Highway 99, Squamish, B.C. was owned by Shell Canada Products. The operator of the convenience store at the station was Matthew Dehaan. The accused was a friend of Mr. Dehaan's.
- [6] On Thursday, August 22, 2002, Mr. Watts worked as a cashier at the convenience store. His shift finished at midnight. He was staying at the home of Mr. Dehaan, and went there after his shift.
- [7] By roughly 12:30 am on Friday, August 23, 2002, there was a fire in the convenience store. A number of people went to the fire scene, including Mr. Dehaan, Mr. Watts, police and fire personnel. Mr. Dehaan identified Mr. Watts as the last employee to leave before the fire.
- [8] Constable Adams of the Squamish RCMP interviewed Mr. Watts at the fire scene. This interview was brief, lasting about 5 minutes. The police had not identified Mr. Watts as a suspect at the time. Counsel agree that this statement is admissible.
- [9] Presumably, Mr. Watts left the fire scene at some point after about 1:30 am. and returned to Mr. Dehaan's home to sleep.

- [10] The convenience store was equipped with three security cameras, which operated using a multiplex system. During the morning, Mr. Dehaan, the fire chief, and an officer named Constable Manieskiew (phonetic) watched the security videos. As a result of that, they identified Mr. Watts as a suspect.
- [11] Corporal Orthner, who took the first statement at issue on the voir dire, did not watch the security videos prior to taking the statement. Constable Manieskiew told Corporal Orthner that the video showed Mr. Watts locking the door, then crawling on his hands and knees towards the merchandise rack at the front of the store, at one point looking up and around and directly at the camera, then Mr. Watts is doing something near the ground, then crawling away, then the shadow of a person walking away on the outer limits of the camera's range, and approximately 3 to 5 minutes later, flames are seen in the location where Mr. Watts had last been seen.
- [12] Later in the afternoon, the police gained information that Mr. Watts was at Mr. Dehaan's home. Corporal Orthner and Corporal Byrne went there.
- [13] Corporal Orthner arrested Mr. Watts. He advised Mr. Watts that he was under arrest for arson for setting fire to the shell station the previous night. He advised Mr. Watts that all conversations between Mr. Watts and the police would be audiotaped. The conversation relating to the arrest was audiotaped and transcribed. Counsel agree that this statement is admissible.
- [14] At around 5:10 pm, being within minutes of the arrest, Corporal Orthner advised Mr. Watts of his Charter rights, saying the following:

Like I said, you're under arrest for Arson. It is my duty to inform you that you have the right to retain and instruct counsel in private without delay. You may call any lawyer you want. There is a 24-hour telephone service available which provides a legal aid duty lawyer who can give you legal advice in private. This advice is given without charge and the lawyer can explain the legal aid plan to you. If you wish to contact a legal aid duty lawyer, I can provide you with a telephone number.

- [15] Mr. Watts indicated that he understood, and said that he wanted to call a lawyer.

- [16] Corporal Orthner then said:

And finally, John, you are not obliged to say anything, but anything you do say can be used as evidence in Court.

- [17] Mr. Watts indicated that he understood that.

- [18] Corporal Orthner took Mr. Watts to the Squamish Detachment. Following the booking procedure, Corporal Orthner took Mr. Watts to a telephone. At first, Mr. Watts declined Corporal Orthner's offer to give him the Legal Aid number. Within ten minutes he requested it and Corporal Orthner gave it to him and allowed him to call to leave a message requesting a return call. Corporal Orthner then returned Mr. Watts to a cell. At around 5:50 pm, Legal

Aid called back, and Corporal Orthner told the caller that Mr. Watts was charged with arson and would not be released that night. Mr. Watts then spoke to the caller.

- [19] At around 6:00 pm, Mr. Watts indicated to Corporal Orthner that he had spoken with a lawyer and was satisfied. Mr. Watts was returned to a cell equipped with blankets, bed, drinking water and toilet, and was provided with dinner.
- [20] At around 9:00 pm, Corporal Orthner brought Mr. Watts from his cell to an interview room and took the first videotaped statement. This first statement was taken over a period of about 45 minutes.
- [21] Both Corporal Orthner and Mr. Watts were seated during the first part of the interview. Corporal Orthner did not repeat the Charter warnings or the other police warning. However, he did ask Mr. Watts if he had spoken with legal counsel and he indicated that he had. Corporal Orthner asked, "You know that I'm a police officer, that what you say can be used - repeated in Court?" Mr. Watts answered "yeah". Mr. Watts also answered that he had been treated "okay" so far.
- [22] Corporal Orthner asked general questions about Mr. Watts' family, residence, work history, and knowledge of Mr. Dehaan. Mr. Watts stated that he dropped out of school in grade 10, and took his G.E.D. to obtain grade 12.
- [23] Corporal Orthner then referred to the videotape, and asked Mr. Watts what he thought it showed. Mr. Watts said it probably showed him on it, and that it might show who did it, but that he did not do it. Corporal Orthner asked Mr. Watts to think about that, and said the video was very clear. Mr. Watts said he had thought about it, and said, "my legal counsel asked me not to say anything else, so." Corporal Orthner responded, "yeah, that's - that's advice that ah, that the lawyers give. And ah, it's up to you to listen to that advice. So right now, we're just talking about what happened."
- [24] Corporal Orthner then asked other questions about what happened during Mr. Watts' shift. He asked Mr. Watts whether he was angry at Mr. Dehaan or anybody, and Mr. Watts said that he was not. Mr. Watts said he wouldn't want to do anything to hurt Mr. Dehaan or his store. Corporal Orthner said that Mr. Watts didn't harm anyone. Mr. Watts said that he wouldn't want to harm Mr. Dehaan, and that Mr. Watts himself had lost money because he was supposed to work there for a few more days.
- [25] Later, Corporal Dehaan asked Mr. Watts why he thought he was arrested. Mr. Watts said he was "not too sure. I'm sure that you looked at the videotape. I know there wasn't much time between the time I left and the time that it started. I don't know." Mr. Watts responded to further questions to the effect that he believed in telling the truth and in God, that he was Anglican, that he doesn't lie often, and hadn't lied recently.

- [26] Constable Orthner then described the videotape as showing Mr. Watts locking up the store, walking away, and then about a minute later, on his hands and knees, crawling back up to the front of the store, stopping, lifting his head up and looking around and at the camera, and then doing something at the bottom. Mr. Watts interrupted and said he was trying to close the cabinet some more, and that he was bending down, not crawling.
- [27] Corporal Orthner stated that Mr. Watts crawled, and backed away crawling, and then drove away, and minutes later there was smoke. Mr. Watts said that he might have lit a cigarette, and didn't know if he accidentally put the match there, but didn't purposely do anything.
- [28] Corporal Orthner then said he wanted to look at one thing and would be back in a minute. Mr. Watts asked if he could go out and have a cigarette or something, and Corporal Orthner said "not really". Mr. Watts asked if someone could come out with him and watch him outside, and Corporal Orthner said "we don't usually do that", and he couldn't make Mr. Watts any promises.
- [29] Corporal Orthner then left the interview room for a matter of minutes. When he came back, he stood in the room and said, falsely, that he had looked at that video again and there was absolutely no doubt in his mind that Mr. Watts started that fire. Mr. Watts denied starting the fire. Corporal Orthner repeated that the video was clear, and Mr. Watts said he didn't do it on purpose.
- [30] Corporal Orthner stated a number of times that Mr. Watts did it and Mr. Watts denied it. Corporal Orthner asked a number of times why Mr. Watts did it, and he said he didn't.
- [31] I will now quote from the transcript (Exhibit D on the voir dire) page 16, line 10, through page 17, line 27:

DO John, I just want you to tell the truth.

JW I am.

DO You, you're not telling the truth, John. You're not. You're not. Tell me what happened there? Tell me what happened?

JW My lawyer's advised me not to say anything.

DO Yeah. That's the advice he's given you, I know that.

JW (talking @ same time)

DO That's the advice he's given you. But John, you started the fire. It's on the tape. What can you say about that? Do you not like Mathew? Do you not like Shell?

JW No.

DO You don't like Shell?

JW No, I like Shell.

DO Well, maybe there's some other issue here that I don't know about.

JW No, there's no issue.

DO There, there- there is an issue here, 'cause just - you started a fire, John. Nobody got hurt, well, some property damaged. Big deal. It's insured. Shell is a big company, they'll pay, they pay for whatever. Ah, they're not even going to notice that, right? Mathew, I don't know if he's got a deductible he has to pay, but anyways, his inventory is insured. So, the building is des - you know, damaged a bit. And, and ah, they have to fix it. The question here is you. You know, I'm concerned about you. I'm concerned that you need some help. And sitting here, denying it, is not going to help you to get over this. So John, just look at me. Come on.

JW I didn't do anything.

DO I know you did do it John, okay?

JW Well, I'm sorry - but I didn't.

DO I know you're upset, but -

JW Please, may I - like to go back. [Mr. Watts stood up.]

DO Nope. Sit down, sit down. John, I - I - I know that you've done this, alright? Probably thought, maybe you'd start a little fire, it wasn't going to go anywhere. Somebody would see it, there's lots of traffic on Highway 99, and hey, somebody's going to spot it right away, and put it out. It probably got a little bigger than you thought it was going to get. But you didn't mean it to get that big. Is that - is that what it was?

JW No.

DO Are you sure?

JW Mmhmm.

DO Think about this now. You light something little at the bottom there, you're thinking, all that traffic going by, they're going to see the flames, somebody's going to call, the Police, the Fire Department, they're going to whip in here, and it's going to be just those things will burn up. Am I right?

JW No.

DO I am right, John. Like I said, what do I want from you here- I want the truth from you. You tell me you're an Anglican, you tell me you believe in God. And yet you're sitting here, lying. You're lying, John. You need some help. And sitting here, denying this is not going to get it, get it for you. You've probably heard this before, the only way you can get help, is to tell the truth. So John, what, what is the truth?

JW I did it.

DO I know you did.

JW I didn't think it was going to be anything major, I thought it was just going to be a minor thing - if I'd know what was in there, and I didn't know, I would never have done it.

DO Of course you - you never expected it to get this big -

JW Oh, no, I didn't know there was gasoline in there.

- [32] Corporal Orthner continued to question Mr. Watts about what he was doing. Mr. Watts said that he would like a cigarette, and Corporal Orthner said "okay, can you just wait a few minutes and I'll see what I can do to help you out." Corporal Orthner testified at trial that this was a reference to possibly providing gum or candy.
- [33] Corporal Orthner continued questioning about what was set on fire and what Mr. Watts used. Just before the end of this interview, Corporal Orthner asked Mr. Watts if he wanted any water or anything, and Mr. Watts responded that he was fine. Corporal Orthner took him to the cell at around 9:47 pm.
- [34] Another officer had watched the interview from another room, and suggested to Corporal Orthner that there could be a problem with Corporal Orthner offering an inducement. Corporal Orthner then arranged for Constable Adams to do a separate videotaped interview.
- [35] At around 11:30 pm the same day, Mr. Watts was sleeping in his cell. Corporal Orthner woke him up and took him to the interview room and left him there with Constable Adams.
- [36] At the beginning of this second videotaped interview, Constable Adams said, "before we speak, I just want to advise you, ah, that everything we say is videotaped and audiotaped." Mr. Watts said "I'd rather speak to my lawyer before proceeding." Constable Adams said, "okay, I just want to speak to you a little bit okay, it's just kind of in reference to what we were speaking to about [sic] last night."
- [37] Constable Adams then confirmed that Mr. Watts was being detained for arson. He asked Mr. Watts if he understood that he was not obliged to say anything, but anything he did say may be given as evidence. Mr. Watts indicated that he knew that, and that Corporal Orthner had explained that to him.
- [38] Constable Adams then referred to Corporal Orthner, and said, "just because you have spoken to him, um, if he has promised you anything, in any manner, or threatened you in any manner, to say anything or to not say anything, I just want to make sure that you understand that if he did say anything, that it's not to um, prejudice this conversation in any manner" and "Like, we're just starting with a clean tape, slate here, okay? We'll forget about what you told me in that car. That's no big deal. I understand completely."

- [39] Constable Adams then asked Mr. Watts exactly what did happen, and about Mr. Watts' relationship with Mr. Dehaan, what Mr. Watts was thinking, and possible motive. Constable Adams had Mr. Watts draw a diagram of where Mr. Watts went. Constable Adams questioned him about his involvement in another fire about a year prior. Mr. Watts denied any involvement in that fire. This interview concluded just before midnight, at around 11:54 pm.
- [40] Corporal Orthner testified at the voir dire that at the time he took the statement from Mr. Watts, he believed that Constable Maniewskew's description of the video was accurate. He also testified that he had subsequently viewed the video. Having done so, he testified the video does not clearly show that Mr. Watts was not adjusting the rack, that Mr. Watts may have been crouching rather than on his hands and knees, and that the video does not show that Mr. Watts lit a fire.

ANALYSIS

- [41] The applicable law is well-described by Madam Justice Daphne Smith in *R. v. Donald Ingram*, [2002] B.C.J. No. 1141, 2002 BCSC 574, at paras. 56 and 57, as follows:

The Crown has the burden of proving the voluntariness of any statement it seeks to admit into evidence beyond a reasonable doubt while the defence has the burden of establishing any alleged Charter breach on a balance of probabilities.

In *R. v. Oickle*, [2000] 2 S.C.R. 3, 2000 SCC 38, the court confirmed that the application of the confessions rule, which applies to all statements made by an accused to a person in authority, necessarily involves a contextual inquiry. All of the circumstances surrounding the taking of the statement must be examined including such factors as any threats or promises, oppression, the operating mind requirement and police trickery. Oppressive conditions were described as including deprivation of food, clothing, water, sleep, or medical attention; denial of access to counsel; confrontation with fabricated evidence; or, aggressive questioning for a prolonged period of time. The operating mind doctrine requires only that the accused know what he is saying and that it may be used to his detriment.

- [42] In *Ingram*, Madam Justice Smith concluded that the statements were voluntary. She held that they were inadmissible because of breach of ss. 7 and 10(b) of the Charter, and because admission of the evidence would render the trial unfair.
- [43] Mr. Reid argued that there were problems in the interviews which cumulatively rendered them involuntary, although any aspect taken alone might not do so. He referred in particular to Constable Orthner's reference to Mr. Watts getting help, the police treatment of Mr. Watts' right to silence as creating an aura of oppressiveness, to the police subtly trying to undermine Mr. Watts' right to remain silent, and to the police fabrication of evidence. He argued that the second videotaped statement was tainted by the problems with the first.

[44] I will consider first the arguments about Mr. Watts getting help. Mr. Reid argued that Corporal Orthner's statements, "sitting here denying it isn't going to get it for you", implied that if Mr. Watts confessed, he would get help. While the help is unspecified, Mr. Reid argued that on a common sense basis, it suggested psychiatric or similar help. Mr. Reid argued that similarly, Corporal Orthner's statement "The only way you can get help is to tell the truth", and "I'm concerned that you need some help. Denying it is not going to help you to get over this", suggests that a confession would result in help.

[45] In *Oickle*, the Supreme Court of Canada accepted this summary of the evidence about moral or spiritual inducements at para. 56:

A final threat or promise relevant to this appeal is the use of moral or spiritual inducements. These inducements will generally not produce an involuntary confession, for the very simple reason that the inducement offered is not in the control of the police officers. If a police officer says "If you don't confess, you'll spend the rest of your life in jail. Tell me what happened and I can get you a lighter sentence", then clearly there is a strong, and improper, inducement for the suspect to confess. The officer is offering a quid pro quo, and it raises the possibility that the suspect is confessing not because of any internal desire to confess, but merely in order to gain the benefit offered by the interrogator. By contrast, with most spiritual inducements the interrogator has no control over the suggested benefit. If a police officer convinces a suspect that he will feel better if he confesses, the officer has not offered anything. I therefore agree with Kaufman, *supra*, who summarized the jurisprudence as follows at p. 186:

We may therefore conclude that, as a general rule, confessions which result from spiritual exhortations or appeals to conscience and morality, are admissible in evidence, whether urged by a person in authority or by someone else.

[46] The court summarized the law on inducements as follows at paras. 57 and 71:

In summary, courts must remember that the police may often offer some kind of inducement to the suspect to obtain a confession. Few suspects will spontaneously confess to a crime. In the vast majority of cases, the police will have to somehow convince the suspect that it is in his or her best interests to confess. This becomes improper only when the inducements, whether standing alone or in combination with other factors, are strong enough to raise a reasonable doubt about whether the will of the subject has been overborne.

...

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

...

Again, I would also like to emphasize that the analysis under the confessions rule must be a contextual one. In the past, courts have excluded confessions made as a result of relatively minor inducements. At the same time, the law ignored intolerable police conduct if it did not give rise to

an "inducement" as it was understood by the narrow Ibrahim formulation. Both results are incorrect. Instead, a court should strive to understand the circumstances surrounding the confession and ask if it gives rise to a reasonable doubt as to the confession's voluntariness, taking into account all the aspects of the rule discussed above. Therefore a relatively minor inducement, such as a tissue to wipe one's nose and warmer clothes, may amount to an impermissible inducement if the suspect is deprived of sleep, heat, and clothes for several hours in the middle of the night during an interrogation; see Hoilett, *supra*. On the other hand, where the suspect is treated properly, it will take a stronger inducement to render the confession involuntary.

- [47] While Corporal Orthner's statements were dangerous in the sense that they came close to suggesting an inducement or hope of advantage, in the context they did not do so. They occurred following references to telling the truth and belief in God. There is no direct reference to the police offering any advantage. They appeal to moral or spiritual matters and help, not to a tangible offer from the police.
- [48] I consider next the argument that Constable Orthner created an aura of oppression with respect to Mr. Watts' right to remain silent. Mr. Reid referred to the fact that Mr. Watts twice said that his lawyer told him not to say anything, and the third time tried to leave the room, and was stopped by Constable Orthner.
- [49] Corporal Orthner did not say at any time that Mr. Watts had the right to remain silent. Around the time of the arrest, Corporal Orthner said that Mr. Watts was not obliged to say anything. The interview took place after Mr. Watts had obtained legal advice. Mr. Watts' statements demonstrate that he had been advised not to say anything.
- [50] Corporal Orthner's questioning was polite and in moderate tones. It was not sensitive to Mr. Watts in the sense that he did not treat Mr. Watts' comments as a refusal to speak. However, the law permits police officers to be persistent and to question an accused person even when they do not wish to be questioned. Corporal Orthner did not belittle the legal advice, in fact stating that it was up to Mr. Watts to follow the advice.
- [51] Mr. Watts did not demonstrate a strong will to follow his lawyer's advice in the face of persistent questioning. The law regarding admissibility does not require the statement to be voluntary in the sense that the accused subjectively wanted to make the statement. It only requires that the police objectively not act in a manner so oppressive that it would be expected to overbear the will of the accused.
- [52] The "operating mind" requirement does not imply a higher degree of awareness than knowledge of what the accused is saying and that he is saying it to police officers who can use it to his detriment. See Oickle, para. 63. There is no doubt here that Mr. Watts met this requirement.

[53] The right to silence was discussed by the Supreme Court of Canada in *R. v. Hebert*, [1990] 2 S.C.R. 151, 57 C.C.C. (3d) 1, together with the related principles of the right to counsel and the "confessions rule." Chief Justice McLachlin, before she became Chief Justice of Canada, summarized her conclusion on the scope of the right to silence as follows at paras. 68 and 69:

In keeping with the approach inaugurated by the Charter, our courts must adopt an approach to pre-trial interrogation which emphasizes the right of the detained person to make a meaningful choice and permits the rejection of statements which have been obtained unfairly in circumstances that violate that right of choice.

The right to choose whether or not to speak to the authorities is defined objectively rather than subjectively. The basic requirement that the suspect possess an operating mind has a subjective element. But this established, the focus under the Charter shifts to the conduct of the authorities vis-à-vis the suspect. Was the suspect accorded the right to consult counsel? Was there other police conduct which effectively and unfairly deprived the suspect of the right to choose whether to speak to the authorities or not?

[54] In *R. v. Ekeman* (2000), 146 C.C.C. (3d) 346, 2000 BCCA 414, the Court of Appeal said as follows at para. 29:

If it is permissible for police to continue questioning an accused after he has said he is unwilling to speak to police at all, it must surely have been permissible for the police to decline to accede to Mr. Ekman's request that counsel be present, always making it clear that he had the right to remain silent and not to answer the questions being put.

[55] Mr. Reid's argument suggested that Corporal Orthner's conduct did not meet the description in *Ekeman* because the officer did not always make it clear that Mr. Watts had the right to remain silent. However, Mr. Watts' own statements indicate that he knew that, and he had consulted counsel. Applying the objective test, the police conduct was acceptable.

[56] In the context of the authorities, the police conduct objectively was not of the pressing and persistent nature that might overbear the will of the accused and mean the statement is involuntary and inadmissible. The facts here are very different from *Ingram*, where the interviewing police repeatedly refused to allow the accused to speak to a lawyer. In *Ingram*, Madam Justice Smith was of the view that the statements were voluntary, but excluded them on the basis of the Charter breaches. Here, the accused does not argue that the Charter was breached, but essentially suggests that the police failure to be sensitive to the accused's desire to follow his lawyer's advice is one factor creating an aura of oppressiveness.

[57] I have also considered the issue of police fabrication. Corporal Orthner fabricated the information that he had personally viewed the video, and that he viewed it during the period that he left Mr. Watts alone in the interview room. However, Corporal Orthner believed that he was accurately describing what the video showed. Corporal Orthner subsequently viewed the video, and admitted on the voir dire that the video fell short of how he described it to Mr.

Watts. The video was not in evidence on the voir dire, and I had not seen it at the time I made the ruling.

[58] This fabrication is at worst in the nature of an exaggeration. The police are entitled to exaggerate evidence in their interviews in the investigation of crime. Corporal Orthner's fabrications in this case do not strip the statement of voluntariness for the purpose of determining admissibility.

[59] In *Oickle*, the Supreme Court of Canada summarized the law as follows at paras. 61, 65-66, and 100:

A final possible source of oppressive conditions is the police use of non-existence evidence. As the discussion of false confessions, *supra*, revealed, this ploy is very dangerous: see *Ofshe & Leo* (1997a), *supra*, at pp. 1040-41; *Ofshe & Leo* (1997), *supra*, at p. 202. The use of false evidence is often crucial in convincing the suspect that protestations of innocence, even if true, are futile. I do not mean to suggest in any way that, standing alone, confronting the suspect with inadmissible or even fabricated evidence is necessarily grounds for excluding a statement. However, when combined with other factors, it is certainly a relevant consideration in determining on voir dire whether a confession was voluntary.

...

A final consideration in determining whether a confession is voluntary or not is the police use of trickery to obtain a confession. Unlike the previous three headings, this doctrine is a distinct inquiry. While it is still related to voluntariness, its more specific objective is maintaining the integrity of the criminal justice system. *Lamer J.'s concurrence in Rothman, supra*, introduced this inquiry.

...

66 *Lamer J.* was also quick to point out that courts should be wary not to unduly limit police discretion (at p. 697):

[T]he investigation of crime and the detection of criminals is not a game to be governed by the *Marquess of Queensbury* rules. The authorities, in dealing with shrewd and often sophisticated criminals, must sometimes of necessity resort to tricks or other forms of deceit and should not through the rule be hampered in their work. What should be repressed vigorously is conduct on their part that shocks the community.

As examples of what might "shock the community", *Lamer J.* suggested a police officer pretending to be a chaplain or a legal aid lawyer, or injecting truth serum into a diabetic under the pretense that it was insulin. *Lamer J.'s discussion on this point was adopted by the Court in R. v. Collins, [1987] 1 S.C.R. 265 at pp. 286-87, 33 C.C.C. (3d) 1, 38 D.L.R. (4th) 508; see also R. v. Clot (1982), 69 C.C.C. (2d) 349 (Que. Sup. Ct.).*

...

In short, merely confronting a suspect with adverse evidence -- even exaggerating its accuracy and reliability -- will not, standing alone, render a confession involuntary.

- [60] Having looked at each of these factors independently, I will now consider the circumstances of Corporal Orthner's videotaped interview in general.
- [61] Mr. Watts was well treated. When not being questioned, he was given food, a blanket, bed, toilet and access to drinking water. He was permitted to continue wearing his own clothes. He was not allowed to smoke cigarettes despite more than one request, and the second interview occurred after he had been woken up, but these are modest deprivations in all the circumstances.
- [62] Mr. Watts was subjected to about 45 minutes of questioning for the first statement, some of which occurred after he said his lawyer told him not to say more. He was not permitted to leave the interview room when he sought to do so.
- [63] Corporal Orthner's questioning was in moderate tones. He did not yell, and Mr. Watts did not cry. There were long pauses in conversation. Taken in context, the circumstances of the interviews were not oppressive. The questioning which led to the confession lasted about 30 minutes, in contrast with, for example, the acceptable questioning in Oickle which apparently lasted over 8 hours.
- [64] I considered a number of other cases not cited by counsel in which the court concluded that statements were inadmissible. Those cases were. *R. v. R.K.P.* (2001), N.S.R. (2d) 223, 2002 NSSC 190; *R. v. Walsh* (2002), 4 C.R. (6th) 341 230, 2002 NSSC 134; *R. v. N.T.A.* (2002), 163 C.C.C. (3d) 387, 2002 BCCA 103; *R. v. Rhodes* (2002), 3 C.R. (6th) 21, 2002 BCSC 667; *R. v. Ilina* (2001), 159 Man. R. (2d) 293, 2001 MBQB 317; and *R. v. Sabri* (2002), 166 C.C.C. (3d) 179, 4 C.R. (6th) 349 (Ont.C.A.).
- [65] I am satisfied that the circumstances in those cases were more oppressive than the circumstances of Mr. Watts' videotaped statements.
- [66] The Crown established beyond a reasonable doubt that the videotaped statement taken by Corporal Orthner was voluntary within the meaning of the authorities. The only concern about the videotaped statement taken by Constable Adams' was whether it was tainted by the conduct relevant to the earlier videotaped statement. Since that is admissible, both videotaped statements are admissible.
- [67] The concerns raised by Mr. Reid may affect what weight if any should be given to Mr. Reid's videotaped statements. My ruling on admissibility is not intended to comment on the issue of weight.

"V. Gray, J."

The Honourable Madam Justice V. Gray

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