

THE QUEEN v. RANDALL LUDLOW ASKELAND

RULING GIVEN DURING TRIAL
(Voir Dire)

COSGROVE J.

11th March 1983

The accused, who is a partner in a well-known firm of solicitors, is charged with the murder of his wife on the night of 9th/10th November 1982 at the matrimonial home in Launceston. The Crown case is that he travelled from Launceston to Hobart on the afternoon of 9th November, drove back to Launceston on that night, murdered his wife and then drove back to Hobart in time to receive his breakfast in his motel room at 6.30 a.m.

From 10th to 14th November the accused was interviewed on a number of occasions by police officers. His car was impounded, his clothes taken for scientific examination, and his house closely inspected and photographed. It was apparent that the police regarded with great suspicion the suggestion that his wife's death could be attributed to an unauthorised intruder. The accused must have known that he was a prime suspect.

At 9.30 a.m. on 30th November, Sergeant Otley and Senior Constable Garratt went to the accused's office. They spoke to the accused and one of his partners. They required the accused to go with them to the police station (about 400 metres away). The accused said that he had business to

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transact in the Family Court. He made arrangements for others to carry or adjourn those proceedings. Then he went with the police. He was, as Sergeant Otley conceded, virtually under arrest. The sergeant, who was in charge of the investigation, had decided that he would, at some time that day, conduct an interview with the accused which would be recorded on a typewriter; and further, that unless the accused could demonstrate his innocence or at least go a long way towards doing so, he would be charged with murder.

At 10.00 a.m. Sergeant Otley began to interrogate the accused. A handwritten note of the conversation, in question and answer form, purporting to be verbatim, was made by Senior Constable Garratt. A typewritten copy of those notes was included in my papers. (I mention that only to ground the observation which I make in the sentence which immediately follows this one as to the quantity of evidence given before the jury - I do not refer to them for the purpose of arriving at my decision). The content of the first fourteen typewritten pages was given in evidence without any objection being made on the ground that the answers of the accused were not voluntarily made. Those answers, although relevant, contained no outright confessions. I heard evidence as to the transactions of the remainder of that day and the following morning on the voir dire.

The material parts of the interrogation as given on the voir dire by Crown witnesses were as follows.

Sergeant Otley's Evidence. (Confirmed by Detective Constable Garratt). This part of the interview would, on his evidence, have begun at 3.00 p.m. or thereabouts.

Q. "Did you take your sixteen year old secretary Elizabeth McLaughlin, to Hobart for a day trip sometime before your wife's murder?"

A. "Yes".

Q. "For what reason?"

A. "To keep me awake during the trip, I was tired."

Q. "Well couldn't you have taken your wife and family?"

A. "That wouldn't be practical."

Q. "Did you tell your wife?"

A. "No it didn't concern her."

Q. "Did you take Elizabeth McLaughlin to the Launceston Show?"

A. "No I didn't."

Q. "She informed us that you did."

A. "Oh yes that's right, I wanted her to take some measurements between side show sites for me."

Q. "Could that not have been done by a male assistant?"

A. "Yes I suppose - could I have a glass of water please?" (Given a glass of water).

Q. "Did you spend the long weekend at Low Head prior to your wife's death by yourself?"

A. "Yes".

Q. "For what purpose?"

A. No reply.

Q. "You said that you and Wendy had a satisfactory sex relationship, explain to me why you had, in your office, several pornographic paperback novels?"

A. "What are you talking about?"

Q. "I believe that these books were of no literary value other than each chapter depicting sexual activity?"

A. No answer.

Q. "We've been informed by one of your colleagues that you have disposed of these books since your wife's death, is that correct?"

A. "I may have had one or two, which colleague?"

Q. "Was Wendy aware of these books?"

A. No reply.

Q. "What was the purpose of these books?"

A. Pause. "Wendy and I used to read them in bed together of a night."

Q. "Are you suggesting that your wife read these books?"

A. "Yes".

Q. "Well why keep them at the office?"

A. No reply.

Q. "We have four independent witnesses that say that your vehicle was not parked in Harrington Street during the early hours of Wednesday, the 10th of the 11th '82. Can you explain that?"

A. "No I can't they must be mistaken."

Q. "Four people mistaken doesn't that seem odd?"

A. No reply.

Q. "We have an eye-witness who states that he saw you drive a white Holden Station Wagon out of Newstead Crescent between 1.30 a.m. and 2.00 a.m. on the 10.11.82, can you explain that?"

A. "He's wrong I wasn't there, he wouldn't be able to identify me."

Q. "This person knows you by sight and could not possibly be mistaken."

A. "Well he is."

Q. "We have another witness who saw a vehicle fitting the description of your wife's vehicle drive into David Street after 2 a.m. on the 10.11.82."

A. "Did he see me?".

Q. "We have a number of witnesses who state that at various times after 2 a.m. they observed a utility similar to yours travelling towards Hobart on the Midlands Highway."

A. No answer.

Q. "A security officer states that he saw a utility similar to yours parked at the back of the El Rio Service Station at approximately 1.30 a.m. on the 10.11.82, can you explain that?"

A. No reply.

Q. "I believe that the trip to Hobart on the 9.11.82 was nothing more than to establish an alibi for your wife's murder. I believe that you conceived the plan to murder your wife sometime before you travelled to Hobart on the 9.11.82?"

A. (Sobbed) "No I didn't kill her."

Q. "I also believe that after murdering your wife you fabricated a burglary by ransacking your home and interfering with your back-door lock?"

A. "No, no."

Q. "That's when you started making mistakes - you're not a practical person?"

A. "I know I'm not." (Cried).

Q. "You have no knowledge of how a burglary is committed?"

A. "No".

Q. "Would you look at this photograph of your wife as she was discovered on the morning of the 10.11.82?"

A. "No, I won't look." (Photograph placed in front of him).

(The photograph in question was No. 2 of P.4).

"Yes thank you Sergeant."

Q. "Are you trying to say that an unknown person broke into your house, having murdered your wife and then ransacking your home, taking nothing?"

(The accused then glanced at the photograph).

(At this point there was then a conversation relating generally to crime in the United States).

The accused asked for and was given a glass of water.

"When I made my observation at your home on the 10.11.82 it was obvious, very obvious in fact that the burglary was a facade, in fact, it was so bloody obvious that when you tampered with the back door lock was stupidity in itself."

The accused then sobbed.

Q. "The scratches made on the bolt could have only been made in the open position of the door, not as you suggested, as suggested, by a burglar. This shows how impractical you are."

A. No reply.

Q. "I believe that you conceived your idea for the burglary from the films shown to you by First Class Constable Cramp, depicting burglaries in America?"

Accused paused for some time.

Accused: "Is there any scientific evidence to prove that she died in her sleep?"

Otley: "No".

Accused: "Can you explain the lack of blood?"

Otley: "I can't; that's something that worries me. The pathologist should be able to."

Accused: "Can I have a glass of water?" (Mr. Garratt went to get one). "Michael, be patient with me. It's going to take some time yet. I didn't kill her."

Otley: (giving evidence) "The interview room door has to be fixed ajar, and as Detective Garratt was doing that, the accused said: 'Can I speak to Bert and Bob please?' I said: 'Certainly Randall.' Detective Senior Coad and Detective Hinds then came into the room, and Detective Garratt and I then left."

Q. by counsel: "Yes, and are you aware of the Christian names of Detective Senior Coad and Detective Hinds?"

A. "Yes, Bob and Bert."

During cross-examination of Detective Constable Garratt, he was asked to carry out a demonstration designed to test his ability to note this conversation. The

demonstration showed not only that he had that ability but that the interview had proceeded at a very slow and deliberate pace. The accused must have realised, warnings apart, that his words were being carefully recorded and might be used in evidence. I have directed the preservation of the tape-recording of these tests.

Detective Constable Hinds' Evidence. (Confirmed by Detective Senior Constable Coad). This part of the interview would, on his evidence, have begun at 4.05 p.m. The following extract is taken from the transcript. The questions are by Crown counsel.

Q. "During that afternoon did you hear the accused say something?"

A. "Yes I was outside the interview room."

Q. "Can you tell us about what time that was, what you were doing and what you heard please?"

A. "That was at about 4.05 p.m. I saw Det. Garratt coming from the interview room. I looked in, I saw the accused in the interview room in company with Det.Sgt. Otley. I heard the accused say 'Can I speak to Bert and Bob please?' Det. Otley said 'If you wish'."

Q. "Can you just - if I can just stop you there please, can you tell us what you were doing immediately before you heard the accused say that?"

A. "Det. Coad and I was walking towards the coffee room which is immediately opposite the interview room."

Q. "Thank you, well now after you heard Sgt. Otley say 'If you wish' what did yourself and Mr. Coad do please?"

A. "Det. Coad and I entered the room, shortly after that Det. Garratt came back into the room with a mug of water and put it on the desk."

Q. "Thank you Sgt. Was there anybody left in the room then besides Mr. Askeland, Mr. Coad and yourself?"

A. "No Det. Sgt. Otley and Det. Garratt both left the office."

Q. "And can you tell us what conversation followed after that please?"

A. "I said 'How's things going now Randall?' and he said 'I'm getting there slowly'. I said 'Do you want to speak to us' and he said 'Yes'. He drank some water and said 'I've got a lot of faith in you two fellows, will you tell me something?' I said 'If I can'. He said, 'Do you think I murdered Wendy?' I said 'Yes'. The accused got up, walked backwards and forwards in the office, he said 'I know you aren't fools, but you've got to understand that it's a big step for me to take to admit it. I want time to think, can I go to the toilet?' Det. Coad said 'Do you only want to piss?' The accused said 'No'. He said, 'You'd better go to the toilet down the passage then.'

Q. "What happened after that please?"

A. "We left the office, I said I'd go down the passage and make sure that there was no press about. I went down, I checked in the vicinity of the toilet and downstairs in the enquiry section, I then returned to the upstairs floor, went back down the passage and I told the accused and Det. Coad to come down. The accused and Det. Coad joined me in the passageway further down, he walked to the toilet and entered the toilet."

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after some time I called out. I said: 'Are you all right Randall?', and he said: 'Yes, I'll be out in a minute.' He then joined us. We walked back down the passage. We entered the interview room and the accused produced a small pocket knife from his pocket. He said: 'You're not very safety conscious. I could have cut my wrists.' He laughed when he said this. There was further discussion about the knife. He then said: 'Can you tell me one thing?' He said: 'Is there any scientific evidence to prove that Wendy was asleep when she was hit?' I said: 'No'. Detective Coad said: 'You told me in the passageway that you was going to tell Bert and I about it. Are you saying that you murdered Wendy?' The accused said: 'Yes'. Detective Coad said: 'I must warn you that you are not obliged to answer any questions or make a statement unless

you wish to do so, but anything you do say will be noted and may be given in evidence. Do you understand that?' The accused said: 'Yes'. Detective Coad said: 'Now do you wish to talk about it?' He said: 'Yes, it will take a long time.' He walked towards the window, turned around. He said: 'Bob, would you be so terribly offended if I spoke to Bert for a couple of minutes on his own.' Detective Coad said: 'Certainly not. How long do you want?' He said: 'As long as it takes you to make me a cup of coffee. Two large coffee, no sugar, no milk.' Detective Coad then left the office. The accused walked backwards and forwards in the office. He said: 'It's been the truth I've told them, right up to and including making the telephone call from Hobart. I did come home that night, because she said if I didn't come home to bed, she would get somebody else in to take my place. I came home. I parked the ute in Campbell Street. Your witness is wrong when he said he saw the car - the ute parked at the El Rio Service Station.' He said: 'I let myself in the back door. I went into the bedroom. I saw the sash weight near the bed. I tried to talk to her. She wouldn't talk. I got into bed and sat there. I tried to talk to her again. She said: 'You just missed the fellow I had here. He's a jolly sight better lover than you.' With that, I grabbed the weight and hit her and kept on hitting her.'"

Counsel: "Thank you, and what happened after that please?"

Hinds: "Detective - there was a knock on the door. I opened the door. Detective Coad was there. I said: 'Is it all right for Detective Coad to come in now Randall?' He said: 'Yes'. Detective Coad placed a cup of coffee on the table. I related to Detective Coad what the accused had told me. He said - Detective Coad said: 'Is that what happened Randall?' He said: 'Yes, and you wouldn't believe how much better I feel already.' He said: 'Can you tell me something?' I said: 'If I can'. He said: 'Can you tell me why there wasn't more blood splattered about the room?' I said 'I can, I believe, but I'll leave that to the pathologist'. He said 'Will you two interview me, I'd like you to?' I said 'Det. Sgt. Otley is in charge of the investigation. He will interview you, I'll relate to him what you've told us.' Det. Coad and I left the office. I spoke to Det. Sgt. Otley, I returned to the interview room with Det. Sgt. Otley and I informed the accused that

Det. Sgt. Otley would interview him."

4.57 p.m. - 8.25 p.m. Recorded interview.

(Record of interview annexed).

8.30 p.m. Inspector Archer. (The following excerpt is taken from the transcript. The questions are by Crown Counsel).

- Q. "Can you tell us who you spoke with, whereabouts it was and at what time please?"
- A. "I spoke to the accused Randall Askeland in the Inspector's office at 8.30 p.m."
- Q. "And did somebody introduce Mr. Askeland to you?"
- A. "Yes Det. Sgt. Otley."
- Q. "Do you recall what was said or the effect of what was said please?"
- A. "Yes he said 'Inspector this is Randall Askeland who we have just interviewed in regard to the murder of his wife, Wendy June Askeland on the 10th November, 1982. Would you complete the details in the interrogation register please?'"
- Q. "Thank you, what happened after that?"
- A. "Sgt. Otley gave me the interrogation register and handed me the record of the interview. He said 'This is a record of the interview' and he and Det. Garratt left my office."
- Q. "What was said after they left please?"
- A. "I said to the accused 'Did you hear and understand what Det. Otley said to me?' He said 'Yes'. I said 'I want you to clearly understand that I am from the uniform branch which is independent to the Criminal Investigation Branch to which these officers belong. I'm independent of this investigation and I'm here to find out whether you have any complaints as to the manner in which you've been treated by any police officers. Is there anything you wish to say?' He said, 'They have behaved as gentlemen'. I said 'You do not have to say anything further or answer any of the following questions unless you wish to do so. Anything you do say will be recorded

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and may be given in evidence.' I showed the accused the record of interview and I said 'Is this the record of interview which was previously mentioned?' He said 'Yes'. I said 'Have you read it?' He said 'Yes I have'. I said 'Is it correct?' He said 'Yes, it accurately records the questions and the answers.'"

Counsel: "Did Mr. Askeland do anything after that? Or did you say anything after that? Well perhaps I may ask you this, were you doing anything at all while he was - you were asking these questions and he was giving you answers?"

Archer: "Yes I was filling in the interrogation register. And when I'd finished that I said 'I'd like you to read this document that I have been filling in.' He appeared to read it and I said 'Have you read it?' He said 'Yes I have read it'. I said 'Do you wish to sign this document as an acknowledgment of its accuracy?' and he said 'O.K.'"

Q. "Did he do anything after that?"

A. "He signed the sheet and then I completed it and I handed him back to the custody of Dets. Garratt and Otley."

Inspector Archer was an impressive witness.

Constable Brush produced the relevant entry in the charge book which showed that the accused was searched and charged at 8.45 p.m. He said that he remembered the accused, Garratt and Otley being in the charge room at and shortly before that time. He said he saw the accused in the charge room again at 9.30 - 9.40p.m. with Otley and Garratt. They went through the door leading to the cells.

Sergeant McMahon, who was officer of the watch, produced the watch house register, and said that he had visited the accused in cell No. 2 at 9.45 p.m., 10.55 p.m. and 11.55 p.m. Although there was some criticism of the book entries, I regard both McMahon and Brush as honest and impressive.

Constable Canning of the Drug Squad gave evidence that he saw and spoke to Constables Hinds and Coad at 7.30 p.m. in the Muster Room and that he saw Sergeant Otley in the corridor at 9.45 p.m. He was not cross-examined.

Inspector O'Garey, head of the Launceston C.I.B., said that he spoke to Hinds and Coad in the Muster Room at some time after 6.00 p.m. They reported to him on this matter. He saw them again in the same place at about 8.00 p.m. and at or about 10.00-10.30 p.m. Then they all three went to a hotel and from there to Sergeant Dexter's house arriving at a time approximately between 11.30 p.m. and midnight. He was challenged only as to times and conceded that he spent about an hour at the hotel with Hinds and Coad, and could have arrived there as late as 10.30 p.m.

The Duty Books.

Garratt, Hinds and Coad, each of whom deposed to going off duty at a time later than midnight, were required to produce duty books which showed that they claimed to have been on duty till 4.30 a.m., 4.00 a.m. and 4.00 a.m. respectively. Otley, Archer, McMahon and Brush, each of whom claimed to have ceased duty at midnight, were not asked to produce their duty books.

The Accused.

The accused gave evidence. He said that he commenced work on 30th November at 1.00 a.m. He said that he was taken into custody at his office at about 9.50 a.m. and driven to the police interview room. He was told at the outset that he was to be charged with murder. He was not cautioned at any time. He said that Garratt took no notes, and there were no breaks for meals of any kind except for the consumption by police officers of portion of a hamburger at midnight. He admitted making the great majority of the

answers recorded in the record of interview, and of those deposed to by Hinds and Coad, but he said that Otley was rarely present during the recorded interview. The gist of his evidence was that the confession was due to exhaustion, his imprisonment in the interview room, and a period of verbal abuse from Hinds and Coad, followed by a period of suasion or coaxing from them, and his belief (induced by Hinds and Coad) that if he confessed, as he did, he would be charged with manslaughter rather than murder. The chronicle of events as he related them was:

10.00 a.m. - 8.30 p.m.	Interrogation by Otley and Garratt.
8.30 p.m. - 10.00 p.m.	Interrogation by Coad and Hinds.
10.00 p.m. - 3.00 a.m.	Recorded interview.
3.30 a.m.	Interrogation register with Inspector Archer.
3.40 a.m.	Charged.
3.50 a.m.	His watch was taken. Shortly thereafter he was placed in cells.

He said that he could not recall ever seeing Constable Brush until he saw him in the witness box. Certainly he was not in the charge room when the accused was charged. He was not sure whether he had ever seen Sergeant McMahon, but he was positive that he had not seen him or any one like him at the police station that night.

The confession as recounted by the accused was similar to the Crown evidence except for the shift in time. The preliminary searching questions which Otley said the accused asked him were said by the accused to have been asked of Hinds only. He recounted also that he asked Hinds whether the room was "bugged" - an intriguing question, if asked. He said, too, that he pointed out errors in the record of interview to Otley and Garratt and was told that he could correct them in evidence and they would agree with him.

But the crucial factor is the time shift. If the accused is correct, then all of the Crown evidence is false in a material particular, which strongly suggests the camouflage of oppressive conduct. If the accused is wrong,

the error affects his account of oppressive conduct. On this issue, attention naturally focuses on the three uniformed policemen. The C.I.B. witnesses, although on some points validly criticised by Mr. Wright, were mutually consistent and Garratt was impressive. Their evidence and their version of events was reasonably coherent. It did not seem artificial. Some of the deficiencies in their evidence pointed more towards truth in respect of the confessional evidence coupled with carelessness in some respects and in other cases with attempts to account for an apparent over-statement of overtime worked rather than towards concoction and perjury. The accused was also impressive at times, but at other times his evidence carried a strong suggestion of artifice, sometimes conscious, sometimes perhaps the product of rationalisation. On some matters such as the circumstances surrounding the taking of the photographs on 1st December 1982, I positively disbelieve him. There were, too, internal inconsistencies in the version which he gave. I do not mean to say there were contradictions, but the account was suspect to some degree because of the extravagant mood swings which he related. For example, his professed trust at the time of confession in those who had recently abused him was, at least, curious. But mood swings of this sort could conceivably, I suppose, be a feature of the accused's character. So one turns to the uniformed police. Inspector Archer was always part of the Crown case. McMahon and Brush were not. They were hurriedly called up when cross-examination revealed the allegations which the accused was making. They gave a strong impression of having had their attention directed to their entries very recently and Brush said that the first occasion on which he was asked to remember the events of the night of 30th November was on the afternoon prior to his giving evidence. It is true that their records were not perfectly kept, and that they had not properly carried out the police practice, but that hardly points to deliberate falsification. In fact, it may support the contrary proposition. They all deposed to ceasing duty well before 3.30 a.m. Archer said he left about

1.00 a.m. and the other two said their shifts finished at midnight. The watch house register seems to confirm McMahon in this. In sharp contrast to the cross-examination of the C.I.B. personnel, their duty books were not called for, and it was not put to either Brush or McMahon that they remained at the station after midnight or to any of them that they falsified the records. All three were, in my opinion, honest and credible witnesses. But if the accused is correct they must have deliberately made false entries on the night of 30th November 1982 or shortly thereafter. For what reason? To confuse the accused? To shorten the apparent length of the interrogation which was, on any version of events, a long one? It was never suggested to them that they conferred with the C.I.B. or were instructed by the C.I.B. about their keeping of records. What purpose could they have for the actions attributed to them? I asked this question of Mr. Wright arguendo, and his answer was not, in my opinion, convincing. There is a surreal quality about the accused's version of events which in itself invites disbelief. Putting together my assessment of the oral evidence with the documentary exhibits I am satisfied that the prosecution evidence as to times is correct. In reaching that conclusion, I have put to one side, because of the possibility of error in identification, Mr. Askeland's evidence that in the evening of 30th November a plain-clothes officer roughly answering Garratt's description, told him that his son had been charged.

It does not, of course, follow automatically that the other events to which the accused deposed did not occur during a shortened time span. But my rejection of his evidence affects his credit. In the examination of the evidence of oppression the internal inconsistencies in the accused's evidence are significant. The accused's version of the actual confession and the preliminary searching questions asked by him is in script, although not in actors, very close to that given by the Crown witnesses. The accused said that he

confessed because he trusted Hinds and Coad. (He was on Christian name terms with them, as he was with Otley. He had known them for years). He said that just prior to the oral confession, and after suffering a long period of abuse from them, he told them that he was glad to hear that they had been "completely exonerated" of allegations of falsification of a signature to a record of interview "because I had always considered them to be decent chaps". He said he asked Bob Coad ".....if he would be offended if I asked him to leave". He said he asked Hinds and Coad to interview him. He signed the interrogation register on which Inspector Archer recorded his comments that the record of interview was accurate and that the police had behaved as gentlemen. His attitude to Otley and Garratt on the next morning is indicated in the photographs, but there is also evidence of his joking with them in the police car. All of this material sits ill with his allegations of brutal psychological pressure from Otley and Garratt and of prolonged verbal abuse such as repeatedly being called "a cunt" by Hinds and Coad. On the other hand it sits well with the questions that he asked and with the police evidence that he asked Otley (Michael) to be patient with him, that he called in "Bob and Bert" (Coad and Hinds) and told them that he was "getting there slowly"; that he "had a lot of faith in you two fellows", that "you've got to understand it's a big step for me to take to admit it", that he went to the toilet for the avowed purpose of getting time to think, that he produced the knife in the way he said he did and so on. The slow and deliberate progress of the interviews gave him ample time to reflect on the advisability of confessing to those who had, as he said, so shamefully treated him. I reject his account of the interrogations.

Then there is the matter of the photographs which he was shown during the interview. I accept the Crown evidence as to this. In my opinion the accused's repeated tearful reaction in court to any mention of the photographs was artificial and not genuine.

I reject also any suggestion that he was given any hope of a manslaughter alternative by the police. In my opinion, the accused had in mind, at least before the first interview with Otley and Garratt ended, the possibility of a confession which might suggest manslaughter on grounds of provocation, or even acquittal on the grounds of automatism. It was his plan, and he checked for its safety before entering upon it.

I turn now to the law.

The relevant principles of law are, I think, these:-

- 1(a) A confession of any sort will be excluded unless it has been shown to be made voluntarily.
- 1(b) The standard of proof of voluntariness is that it should be such as to satisfy the judge of the fact. Deane J. in Cleland v. The Queen (1983) 57 A.L.J.R., 15, said that the standard of proof is proof on the balance of probabilities. He cited, inter alia, Wendo v. Reg. (1963-64) 109 C.L.R. 559 at 562 and 572-573; McPherson v. Reg. 55 A.L.J.R., 594 at 596-7 (also reported in 37 A.L.R., 81); and Collins v. Reg. (1980) 31 A.L.R. 257 at 258 per Bowen C.J., 271 per Muirhead J., and 310 and 318 per Brennan J. (Collins was a decision of the Full Federal Court).

It is clear enough that each of the Federal Court judges so stated the law, but I do not find it so stated in Wendo or McPherson nor has any other High Court decision containing such a statement been cited to me. I do not regard the proposition as settled law; and I apply myself to this task on the basis that I must be satisfied of the voluntariness of confessional material before it can be admitted. That satisfaction requires a standard of proof,

perhaps variable in content, but always intermediate between proof beyond reasonable doubt and proof on the balance of probabilities. Both counsel have expressed their agreement with this proposition.

1(c) A confession is shown to be voluntary if it is shown to be made:

".....in the exercise of a free choice to speak or be silent. A confession will not have been voluntary if it has been obtained from the accused by fear or prejudice or hope of advantage exercised or held out by a person in authority, or as a result of duress, intimidation, persistent importunity or sustained or undue insistence or pressure - anything that has overborne the will of the accused."

(McPherson 37 A.L.R., 81 at 85 1.39 ff.).

The application of the principle that, to be admissible, a confession must be shown to be voluntary is flexible and not limited by any specific categories of inducements or threats (see per Dixon J. (as he then was) in McDermott v. The King (1948) 76 C.L.R., 512). The question is simply this: Was the confession the product of a will which was, in its exercise, free from any exterior restraints or pressures emanating from a person in authority? Interior restraints on the will are not relevant (in this context see Sinclair (1946) 73 C.L.R., 316). The phrase "a person in authority" is to be given a wide application. Mr. Wright was kind enough to express his agreement with my own ruling in Oates (unreported) Serial No. 63/1979. I would adhere to what I said there, subject to what was said in Cleland, particularly by Dawson J. and subject to the observation (not here relevant) that the time has come to put the ritual or "crystallized" "unreal" tests behind us and to concentrate on the freedom of exercise of the will.

2. If the confession is voluntary, the question then arises whether there is some circumstance which makes it unfair for it to be given in evidence on the trial of the accused. This involves consideration of any circumstance, such as the manner of its making, which would tend to suggest that it may be unreliable.
3. The confessional evidence may, at the judge's discretion, be rejected if there was some behaviour on the part of the accusers which would justify doing so on the ground of public policy. (Bunning v. Cross (1978) 141 C.L.R., 54).

In this analysis, I have followed as closely as I can, the judgment of Dawson J. in Cleland (supra), with which I would respectfully express my agreement.

There is one matter not expressly discussed in that judgment which is, I am sure, implicit in it. It is this:- given the categories and tests posed by his Honour, evidence of police impropriety is relevant to all three.

I am satisfied that the confession was voluntary. Although the accused was closely confined for a long time, and the questioning in the latter stages was rough, the accused was at all times aware of his rights to refuse to go to the station unless arrested, to remain silent, to ask for legal representation, to ask to be released, or if charged, to be taken before a magistrate, but he did not choose to exercise those rights. He did not refuse to answer questions except in isolated cases where it suited him to do so. He was in my opinion confident and prepared to fence with his interrogators. It is true that the police agree that he sobbed at a crucial stage of the interrogation. Whether that was real or not I cannot say, but it was closely followed by the question from the accused "Is there any scientific

evidence that she died in her sleep?" a question which indicates a free and searching mind. His subsequent confession to Hinds was, in my opinion, part of a conscious plan calculated to save what he could out of what he saw as an imminent wreck. The record of interview was only the fulfilment of that plan. There are no indications in either of a broken will or a mind undone. I express no opinion as to the truth of the confessions.

I am satisfied that it would not be, in any sense, unfair to him to allow the confessions to be given in evidence.

Counsel did not suggest that I should exclude the confession material on public policy grounds, and I do not think I should. I dismiss the objections.

I also dismiss the objection to the photographs. In my opinion, the accused knew beforehand that he would be photographed, knew that he was being photographed, that the photographs would be used in evidence, and knew that he was under no obligation to take part in that process.

There were some parts of the preliminary interview which I excluded principally upon the basis that they consisted of questions to which the accused gave no answers. I gave my reasons for doing so to counsel at the time.

Record of Interview between Randall Ludlow Askeland and Det. Sgt. Michael Otley. Conducted at Launceston Police Headquarters on Tuesday the 30th of November, 1982.

Also present: Det.1/C Const. R.E. Garratt

Questions asked by: Det.Sgt. M.L.Otley

Interview typed by: Det. 1/C Const. R.E. Garratt

Time commenced: 4.57pm

Q1. Randall as you are aware we are making enquiries into the murder of your wife, Wendy June^{PLM} Askeland. Enquiries have revealed that your wife was murdered some time during midnight on the 9.11.82 and 4am on the 10.11.82. From information received and enquiries made I believe that you returned from Hobart on the 9.11.82 sometime around midnight and that you parked your Holden utility at the rear of the El Rio Service Station Newstead and walked to your residence at 5 Newstead Crescent. I believe that your wife was expecting you home some time shortly after midnight on the 9.11.82. I believe that you did arrive home sometime shortly after midnight on the 9.11.82 and that a short time after your arrival home you bashed your wife on her head four to five times with a window sash weight. I believe that you then fabricated a burglary by ransacking several rooms of your house and by interfering with the back door lock. I then believe that you drove your wife's Commodore from your home and parked it at the rear of the Newstead Hotel. I believe that you then returned to your utility and drove back to Hobart in the early hours of Wednesday the 10.11.82. I intend to ask you some questions in relation to this matter but before I do I must warn you that you are not obliged to answer my questions or say anything unless you wish to do so but whatever you do say will be recorded by Det. 1/C Const. Garratt, by means of a typewriter and may later be given in evidence. Do you understand what I have just said to you?

A. Yes.

Q2. On the 9th of November, 1982, did you travel to Hobart in your utility?

A. Yes.

Q3. Did you go to Hobart on business?

A. Yes.

Q4. Did you also attend a stamp meeting at Lindisfarne that evening?

A. Yes.

Q5. Prior to travelling to Hobart on the 9.11.82 did you inform your wife of your intentions?

A. Yes.

(Sgd) R.E.Garratt 1299

R.L.Askeland

(sgd).M.L.Otley Det.Sgt.1/6 376

- Q6. What was your wife's reaction to you travelling to Hobart on the 9.11.82?
A. She suggested that as I was going to a meeting that night that I stay the night.
- Q7. Did you intend to stay overnight in Hobart when you first decided to travel there on the 9.11.82?
A. No, I was not certain but I told Wendy that I probably would.
- Q8. At what time did you decide to stay overnight?
A. I can't remember.
- Q9. Did you book into a Motel on the 9.11.82?
A. Yes.
- Q10. Which Motel did you book into?
A. The Town House.
- Q11. What prompted you to stay in Hobart overnight on the 9.11.82?
A. Tiredness.
- Q12. Can you recall at what time you booked into the Town House?
A. No.
- Q13. At what time did you leave the stamp meeting at Lindisfarne?
A. After 9pm.
- Q14. Where did you go after leaving the stamp meeting?
A. Motel.
- Q15. Can you recall at what time you arrived at the Motel?
A. About 9.30 pm.
- Q16. Where did you park your utility?
A. In the car park underneath the Town House.
- Q17. What did you do on your arrival back at the Motel?
A. Had some beer and telephoned Wendy.
- Q18. Can you recall how much beer you had to drink?
A. I would have had three cans.
- Q19. Can you recall the brand of beer that you drank?
A. No I can not recall. It was beer that was in the fridge in my Motel Room. I didn't buy it.
- Q20. Can you recall at what time you telephoned Wendy?
A. I tried to call as soon as I returned to my Motel Room but the connection took quite some time. In fact I had to ring the switchboard twice.
- Q21. Was the connection finally made?
A. Yes, after about fifteen to twenty minutes.

(Sgd) M.L. Otley Det. Sgt. 1/6 376

Q22. Can you recall what you discussed with your wife Wendy during this telephone conversation?

A. I said that I was staying overnight. She told me that telecomm had traced one of the anonymous calls and that the head of Telecomm in Hobart would phone me tomorrow. She then became upset because I had decided to stay in Hobart.

Q23. What did she say to give you the opinion that she was upset?

A. She said I didn't love her and was always away and if I wasn't going to be with her she had somebody else who would be. She then hung up.

Q24. How did you react to this?

A. I decided to go home.

Q25. Did you in fact go home?

A. Yes.

Q26. Can you recall at what time you left Hobart?

A. I suppose it would have been about ten.

Q27. Did you travel directly to Launceston from your Motel?

A. Yes, after getting petrol.

Q28. Where did you obtain petrol?

A. I can't recall the name of the petrol station or the street it was in. It was near the Motel.

Q29. Was the petrol station open at the time you obtained petrol?

A. No, I had to use a machine.

Q30. What type of machine?

A. A two dollar machine.

Q31. Did you fill your tank up?

A. Yes.

Q32. Can you remember how many two dollar notes you used?

A. No.

Q33. Can you remember how long it took you to return to Launceston?

A. No.

Q34. Can you remember at what time you arrived back in Launceston?

A. I really don't know.

Q35. What did you do when you arrived back in Launceston?

A. I parked the car in Campbell Street and walked home.

Q36. Why did you do this?

A. Because if there was some one with my wife I did not want to alert them.

Q37. How did you gain entry to your house?

A. Back door.

Q38. Was the back door locked when you arrived home from
Hobart?

A. Yes.

Q39. Was Wendy awake when you arrived home?

A. No.

Q40. Were there any outside lights on at your home when
you arrived home?

A. Yes.

Q41. Can you recall which outside lights were on?

A. Not really, only to say that there were lights on
at the front and the back of the house.

Q42. What did you do on entering your house after returning
from Hobart?

A. I went to the bedroom.

Q43. Do you mean your bedroom?

A. Yes.

Q44. Was the light on in your bedroom?

A. No.

Q45. Did you switch the light on?

A. Yes.

Q46. Was Wendy asleep at this stage?

A. I think she woke up when I switched the light on
and spoke to her.

Q47. What did you say to Wendy?

A. I can't remember the precise words, but I think
I said here I am I've come home after all and I said
I'm pleased your by yourself or something like that.
Wendy did not reply.

Q48. What happened then?

A. As I was talking to Wendy I walked round to my
side of the bed to switch my bedside light on and
I noticed a window weight lying on the floor just
beside my side of the bed.

Q49. Was the window weight that you saw beside your bed
the one that you told me in an earlier conversation
with you you had placed in the hallway of your house
on the preceding Monday or Sunday of your wife's
murder?

A. I presume so.

Q50. Did you in fact switch on your bedside light?

A. Yes.

Q51. What did you do then?

A. I walked back and switched off the main light.

Q52. What did you do then?

A. Just during the course of doing this Wendy had still not replied. I said well aren't you pleased to see me or something like that.

Q53. Did Wendy reply to this remark?

A. No, not really, she just sort of grunted, rolled over on her stomach, she didn't do anything really.

Q54. What happened then?

A. I got changed into my pyjamas still talking to Wendy but I can't remember what I said. I then got into bed, and turned out my bedside light.

Q55. Had Wendy replied at this time?

A. No.

Q56. Did this upset you?

A. Yes.

Q57. What happened then?

A. I just sat up in bed in the dark for a while.

Q58. What were you thinking about at this time?

A. I was just upset that she wasn't talking to me, that's all.

Q59. What happened then?

A. (Pause) After a while she said I was too late I had just missed him.

Q60. What happened then?

A. She said and he's a jolly side better at it than you are.

Q61. What did you think she meant by that?

A. Sex.

Q62. What was your reaction?

A. I don't know I just did it. You might find it hard to believe but I loved her.

Q63. When you say you did it what do you mean?

A. I can't answer that.

Q64. Did you pick up the window weight?

A. Sobbed then cried and replied yes. (Pause) What an awful thing to do.

Q65. What were you thinking when you picked up the window weight?

A. I don't know.

Q66. What did you do after picking up the window weight?
A. I just swung it.

Q67. At her head?
A. I suppose I must have.

Q68. What hand did you use?
A. I don't know.

Q69. Were you angered by your wife's remarks?
A. Yes.

Q70. Was it your intention to hit your wife with the
window weight?
A. Yes it must have been.

Q71. Can you recall how many times you struck your wife with
the window weight?
A. No.

Q72. At the time you struck your wife were you upset with
her remarks?
A. Of course I was.

Q73. That upset that at that time you wanted to kill her?
A. I don't know what I was thinking. I just did it.

Q74. What happened as a result of you striking your wife
with the window weight?
A. I killed her.

Q75. What did you do next?
A. I cried.

Q76. Was that because of what you had done?
A. Yes.

Q77. What did you do then?
A. I got up and I realised what I had done, got dressed
and I had to get away. I panicked and flew around
the house and pulled things out.

Q78. Why did you do this?
A. Before this I had realised what I had done so I
decided to make it look like a burglary.

Q79. Did you do anything else to create the impression
that there had been a burglary?
A. I gouged the back door lock.

Q80. What implement did you use to gouge the back door lock?
A. An old knife.

Q81. Can you describe the knife to me?
A. An old kitchen knife.

Q82. Was the blade pointed or rounded at the end?

A. Rounded.

Q83. Where is the knife now?

A. Thrown away.

Q84. Did you throw it away?

A. Yes. Nobody else was involved.

Q85. Where did you throw the knife?

A. Out of the car.

Q86. Are you referring to your utility?

A. Yes.

Q87. Can you recall whereabouts you threw your knife out
of your utility?

A. No.

Q88. What did you do after you interfered with the back
door lock?

A. I can remember getting a stick to put up against the
bedroom door to stop young Richard going in.

Q89. Where did you obtain this stick?

A. Just outside in the backyard there are lots of them
there.

Q90. What did you do after propping the bedroom door?

A. I don't remember. I don't remember the order I did
things in.

Q91. (Garden gloves shown to Randall Askeland) What can
you tell me about these gloves?

A. I bought them about a month before Wendy's death.
I bought them for Wendy.

Q92. These gloves were found near your wife's Commodore
when it was parked ~~xxx~~ at the rear of the Newstead
Hotel the morning after your wife's murder. What
~~x~~ can you tell me about that?

A. ~~ALA~~ I put them there.

Q93. What was the reason for that?

A. A red herring.

Q94. Do you mean you did it to throw people off your track?

A. I suppose so but I now realise that it did not make
the slightest difference chucking them out of the car.

Q95. Did you use any gloves during the fabrication of the
burglary?

A. Yes.

Q96. What gloves did you use?

A. Rubber washing up gloves.

Q97. When did you put these on?

A. Whilst ransacking the house.

Q98. For what purpose?

A. So as not to leave any fingerprints.

Q99. Where are the gloves now?

A. I chucked them out of my utility somewhere along the Midlands Highway.

Q100. How did you leave 5 Newstead Crescent after the murder of your wife?

A. In Wendy's car.

Q101. Did you still have the rubber gloves on?

A. Yes.

Q102. Was this to negate leaving your fingerprints in your wife's vehicle?

A. Yes.

Q103. Where did you drive your wife's vehicle to?

A. To the Newstead Hotel car park.

Q104. What route did you take to the Newstead Hotel?

A. Along Newstead Crescent out on to Elphin Road.

Q105. Did you see any vehicles?

A. I can't remember.

Q106. What did you do then?

A. I got out of the vehicle, threw out the garden gloves, walked back to my utility and drove back to Hobart arriving at 4.15am or 4.30am on the Wednesday morning.

Q107. What did you do on your arrival back in Hobart?

A. I parked the utility in Harrington Street, returned to my Motel room had the last can of beer and went to bed.

Q108. What time did you wake up?

A. Shortly before 6.30am.

Q109. What did you do then?

A. I showered then breakfast arrived, I threw most of it out.

Q110. What did you do then?

A. I rang my home in case some one was there.

Q111. ~~I~~ What did you do then?

A. I then rang the Scotts.

- Q112. For what purpose?
A. I wanted to make sure that the children were not left.
- Q113. What did you do then?
A. I then went to Kingston, then to Telecomm and I then returned to Launceston.
- Q114. What time did you arrive back at 5 Newstead Crescent?
A. About 11.30am.
- Q115. (Picklock device shown to Randall Askeland) What can you tell me about that picklock?
A. I made it and left it in the study.
- Q116. When did you make the pick?
A. In the early hours of the tenth of November.
- Q117. Is there anything else that you wish to tell me about this matter?
A. I wish to God that I never had done it.
- Q118. Do you wish to make a written statement about this matter?
A. No, but I would like to say that I truly regret all the pain and suffering that everyone has been put through.
- Q119. I would now like you to read the Record of Interview. Do you understand that?
A. Yes.
- Q120. (Record of Interview shown to Randall Askeland who appeared to read it through) Have you read the Record of the Interview?
A. Yes.
- Q121. Do you agree that it is a true and accurate account of the questions that I asked and the answers that you gave to those questions?
A. Yes but I don't recall the words after the word Crescent in question 100.
- Q122. Do you wish to sign the record of the interview?
A. Yes.
- Q123. Will you initial the typeographical errors?
A. Yes.
- Q124. I would now like you to read the additional questions and answers that I have typed since you last read the record of the interview and if you agree that they are true and correct you may sign the record of interview if you wish. Do you understand that?
A. Yes.