

1 CANADA
2 PROVINCE OF NOVA SCOTIA

CASE NO. 2028419,
2028420, 2028421

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7 **IN THE PROVINCIAL COURT**

8 Cite as: R. v. Seguin, 2014 NSPC 120
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12 **HER MAJESTY THE QUEEN**

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15 versus
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18 **GREGORY LEO SEGUIN**
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26 **DECISION RE VOIR DIRE**

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29 **HEARD BEFORE:** The Honourable Judge Frank P. Hoskins

30
31 **PLACE HEARD:** Provincial Court
32 Dartmouth, Nova Scotia
33

34 **DATE OF DECISION:** January 21, 2014
35

36 **COUNSEL:** Peter Dostal Crown Attorney
37 Robert Stewart, QC Defence Attorney
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DECISION 1

1 **HOSKINS, J.P.C. (Orally):**

2 The central issue of the *voir dire* is whether the Crown has proven beyond a
3 reasonable doubt the voluntariness of the statement made by Mr. Seguin to the
4 police, which had been tendered into evidence as Exhibit 1.

5 In consideration of this issue, the defence contends that the Crown has failed
6 to discharge its burden of proof beyond a reasonable doubt that the statement was
7 free and voluntary because the Crown did not call certain officers that were present
8 at the time of the execution of the search warrant, and the recollections of the
9 officers who testified were incomplete, and the police did not provide a secondary
10 caution, all of which renders the statement involuntary.

11 The Crown contends that there's no obligation upon the Crown to call all
12 relevant persons in authority as witnesses in a *voir dire* on voluntariness. The
13 officers' testimony was thorough enough for the court to be satisfied in establishing
14 the voluntariness of the statement, as comprehensive notes and detailed
15 recollection of every aspect of the investigation may be preferred, but it is not
16 necessary. Moreover, the officers' testimony in the *voir dire* showed only an
17 absence of memory or of notes of fewer significant portions of the investigative
18 process and, thus, not raising doubt on the voluntariness of the statement. The

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1 Crown further argues that, while the secondary caution is a factor to consider in
2 determining the voluntariness of the statement, it is not determinative of the issue.

3 As I stated earlier in these proceedings, I have reached the conclusion that
4 the Crown has proven beyond a reasonable doubt the voluntariness of the
5 statement as recorded in Exhibit 1 and, accordingly, what follows are my reasons
6 for reaching that decision.

7 In considering whether the Crown has proven the voluntariness beyond a
8 reasonable doubt in the case, three sub-issues arose, which are:

9 (1) Whether the Crown proved voluntariness, notwithstanding that it did not
10 call certain officers who were present during the execution of the search warrant
11 and arrest;

12 (2) Whether the recordings or recollections of the officers who testified are
13 sufficiently complete to establish voluntariness; and

14 (3) Whether the lack of a secondary caution renders the statement, Exhibit
15 1, involuntary.

16 For the following reasons, I have answered each of the three foregoing
17 questions in the affirmative. I am satisfied beyond a reasonable doubt that the
18 statement, Exhibit 1, made by Mr. Seguin, was voluntarily made in the sense that it

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1 was not made by reason of threats or promises, inducements or oppression, and I
2 am satisfied that Mr. Seguin's statement was the product of an operating mind.

3 Before I address the three sub-issues raised in the case, I will first
4 summarize the evidence of the two police officers who testified in the *voir dire*.

5 The evidence of Constable MacDougall: In the instant case, the police
6 arrived at Mr. Seguin's residence at approximately 6:10 a.m. on March 24th, 2009,
7 for the purposes of executing a search warrant. Constable MacDougall and
8 Constable Gorman knocked on the residence door. Mr. Seguin answered the door.
9 Constables Gorman and MacDougall were dressed in plain clothes. Constable
10 MacDougall identified himself as a police officer and several officers from the ICE
11 Unit accompanied Constables MacDougall and Gorman during the search of the
12 residence.

13 Prior to the search, the officers attended a meeting wherein they discussed
14 the warrant so that the officers understood what they were there for and what the
15 investigation entailed. Constable MacDougall recalled the officers present during
16 the search, which included Constable Trider.

17 Constable MacDougall described what he did when Mr. Seguin answered
18 the door. He stated that they were invited in the residence by Mr. Seguin.
19 Constable MacDougall explained why the police were there, which included an

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1 explanation of the contents of the search warrant and the offences for which they
2 were investigating. Mr. Seguin was placed under arrest for the possession and
3 distribution and accessing of child pornography. At that time, Mr. Seguin
4 appeared to be nervous and advised that another person was inside the residence, a
5 Ms. Kimberly Bell.

6 Upon placing Mr. Seguin under arrest, Constable MacDougall provided Mr.
7 Seguin, from memory, the police caution and the *Charter of Rights*. He explained
8 to Mr. Seguin that he could contact a lawyer and that he did not have to say
9 anything. He stressed that he told Mr. Seguin that he had the right to talk to a
10 lawyer and that he did not have to say anything regarding the investigation.
11 Constable MacDougall also explained to Mr. Seguin the Legal Aid process; he
12 explained that he had the option to phone Legal Aid.

13 Following that, Mr. Seguin was taken outside and placed in a police vehicle.
14 Detective Constable Gorman and Constable MacDougall placed Mr. Seguin in the
15 back seat of the police vehicle, which was parked in the driveway of the residence.
16 After Mr. Seguin was placed in the vehicle, Constable MacDougall read from a
17 card Mr. Seguin's *Charter of Rights* and police caution. Constable MacDougall
18 read the contents of the card into the court record.

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1 After reading from the card Mr. Seguin's *Charter of Rights*, Constable
2 MacDougall stated that Mr. Seguin responded by saying that he understood. Mr.
3 Seguin was asked whether he wanted to speak to a lawyer, and he indicated that he
4 did not wish to phone a lawyer at that time. After Mr. Seguin was advised of his
5 right to apply for Legal Aid assistance, he stated that he understood.

6 Following that, Constable MacDougall read the police warning to Mr.
7 Seguin, where Mr. Seguin responded that he understood what was stated to him.
8 He stated that it appeared to him that Mr. Seguin appeared to understand
9 everything that he had stated to him.

10 Mr. Seguin was then transported to the Halifax Police booking, located on
11 Gottingen Street in Halifax. Constable MacDougall estimated they arrived there
12 approximately 6:30 a.m. Upon arrival at the police station, Constable MacDougall
13 stated that he and Detective Constable Gorman escorted Mr. Seguin into the police
14 station and placed him in an interview room. He estimated that Mr. Seguin was
15 placed in the interview room at approximately 6:35 a.m. Constable MacDougall
16 stayed in the interview room while Detective Constable Gorman acted as a monitor
17 of the recorded interview. The recorded interview commenced at 6:42 and ended
18 at approximately 7:45 to 7:50, approximately an hour.

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1 Constable MacDougall testified that he never made any promises to Mr.
2 Seguin, nor did he make any statements to Mr. Seguin that could be interpreted as
3 being threatening in any way. Constable MacDougall stated that Mr. Seguin did
4 not appear to be under the influence of drugs or alcohol and, while Mr. Seguin was
5 nervous, nothing else stood out. He added that he did not identify any mental
6 health issues concerning Mr. Seguin. Mr. Seguin indicated that he was stressed out
7 but did not say anything about having any mental health issues or being sick.
8 Constable MacDougall stated that nothing transpired that would cause him to stop
9 the interview.

10 Constable MacDougall testified that, from the point where he first came into
11 contact with Mr. Seguin until the end of the interview, Mr. Seguin was never
12 outside his presence. Constable MacDougall was asked:

13 Can you recall any conversations that had occurred
14 between Mr. Seguin and anyone, that being you or any
15 other officers, from the time that you first encountered
16 him to the beginning of the recording?

17 Constable MacDougall's response was:

18 No, there was no conversations in respect to anything.

19 He stated:

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1 No conversations in the house, no conversations in the
2 vehicle, and back at the cell block, there was no outside
3 conversations. Everything was audio taped and
4 videotaped.

5 Exhibit 1 was played in court, which is an audio/video recording of the
6 interview of Mr. Seguin.

7 On cross-examination, Constable MacDougall agreed that he had never met
8 Mr. Seguin before the date in question. Constable MacDougall stated that he
9 believes that the warrant was executed at approximately 6:10 a.m. He also agreed
10 that nine police officers were involved in the search.

11 Constable MacDougall stated that the warrant was explained by himself and
12 Constable Gorman, but, because he was handling the warrant, he explained the
13 warrant. Constable MacDougall stated that Constable Trider was present.
14 Constable Trider's can-say statement was read to Constable MacDougall, which
15 stated:

16 Can testify that he is a member of the Halifax Regional
17 Police assigned to the Integrated Internet Child
18 Exploitation Unit and that he read the warrant and was
19 the fourth person in the door.

20 It was then suggested to Constable MacDougall that Constable Trider read
21 the warrant, not himself, to which Constable MacDougall replied:

8 **DECISION**

1 Constable Trider probably would have basically
2 answered questions in relation to the warrant, but I recall
3 me handling the warrant that morning in question.

4 It was suggested to Constable MacDougall that, if Constable Trider
5 answered questions pertaining to the warrant, then those questions would have
6 been asked by Mr. Seguin. Constable MacDougall answered:

7 If he has in his can-say that he dealt with the warrant, I
8 would assume that he had some dealings with the
9 warrant.

10 Constable MacDougall agreed that, after a brief conversation with Mr.
11 Seguin, the officers entered the residence. None of the officers were in police
12 uniform. Constable MacDougall was asked the following question:

13 Okay. You've got no idea what Constable Trider might
14 have said to Mr. Seguin?

15 Constable MacDougall's answer was:

16 No, I would have no idea what Constable Trider said to
17 Seguin.

18 Constable MacDougall was asked:

19 And, in fact, you were not with Mr. Seguin the whole
20 time that you were in the apartment, were you?

21 Constable MacDougall's answer:

1 I can't say for sure if I was with Mr. Seguin. I was in the
2 apartment. I don't think -- I was the arresting officer, to
3 my recollection. Mr. Seguin would have been around me
4 the whole time, to my recollection.

5 Constable MacDougall stated that he did not search the residence, that he
6 was simply the arresting officer there. He could not recall conducting the search in
7 the bedroom. Constable MacDougall testified that he provided Mr. Seguin with
8 his *Charter of Rights* on three occasions: once in the apartment, once in the
9 vehicle, and once at the police station.

10 Constable MacDougall estimated that it took approximately 15 to 20
11 minutes to drive Mr. Seguin from Mr. Seguin's residence to the police station. He
12 also could not recall any conversation with Mr. Seguin in the police vehicle during
13 the drive to the police station, including questions asked by Mr. Seguin about the
14 distribution of child porn.

15 It was suggested to Constable MacDougall that he must have had a
16 discussion with Mr. Seguin about the police and himself being on the computer on
17 March 2nd, because Mr. Seguin comments about it, but Constable MacDougall
18 stressed that he could not recall any such conversation. Constable MacDougall
19 agreed that he never provided the secondary warning to Mr. Seguin and Constable
20 MacDougall stated that he did not recall any conversation between Constable
21 Gorman and Mr. Seguin.

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1 The evidence of Detective Constable Gorman: Detective Constable Gorman
2 testified he attended Mr. Seguin's residence at approximately 6:10 a.m. on
3 November the 24th, 2009, for the purpose of assisting in the execution of a search
4 warrant at Mr. Seguin's residence in Lower Sackville. After knocking on the door,
5 Mr. Seguin answered the door and was placed under arrest by Constable
6 MacDougall and it was explained why the officers were there. The officers
7 entered the residence and conducted a search.

8 Detective Constable Gorman recalled that Mr. Seguin was provided with the
9 *Charter of Rights* and police caution after he and Constable MacDougall escorted
10 Mr. Seguin to the police vehicle. He did not recall whether Constable MacDougall
11 provided Mr. Seguin with his *Charter of Rights* while they were inside the
12 residence, nor did he recall whether the warrant was provided to Mr. Seguin or
13 whether Constable MacDougall was in possession of the warrant.

14 Detective Constable Gorman recalled that Mr. Seguin was provided with his
15 *Charter of Rights* and police caution, but could not recall the wording that was
16 used in providing those rights.

17 Detective Constable Gorman recalled Constable Trider being present for the
18 search as a team member, but does not recall what exactly he did during the search.
19 He could not recall whether Constable Trider interacted with Mr. Seguin. Nor

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1 could he recall whether Mr. Seguin had communicated with any other officer as he
2 is not sure whether or not he was the only officer in control of Mr. Seguin. He
3 suggested that it was more likely Constable MacDougall was responsible for the
4 control of Mr. Seguin, as he placed him under arrest.

5 Detective Constable Gorman could not say that his attention was focused on
6 Mr. Seguin during the entire time while they were in the residence because his
7 attention may have been momentarily distracted while he spoke to another officer
8 on the scene. Nor did Detective Constable Gorman recall any conversations
9 between Mr. Seguin and an officer. He also did not recall having conversation,
10 himself, with Mr. Seguin while in the residence.

11 Detective Constable Gorman also testified that he had no conversation with
12 Mr. Seguin while they transported him to the police station from the residence. He
13 did not recall any conversation that Constable MacDougall had with Mr. Seguin
14 during the transport from the residence to the police interview room at the police
15 station. Detective Constable Gorman stated that they arrived at the police station
16 at approximately 6:40 a.m. He stated that they had transported Mr. Seguin from
17 6:15 to 6:40 a.m. He stated that he could not recall any conversations between Mr.
18 Seguin and himself or Constable MacDougall during that time period.

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1 Detective Constable Gorman stated at no time during his interactions with
2 Mr. Seguin during the date and time in question did he have any concern about
3 whether Mr. Seguin understood what was going on, nor was there any concern
4 about Mr. Seguin's mental or physical health. Detective Constable Gorman stated
5 that at no time during his interactions with Mr. Seguin during the date and time in
6 question did he or any other officer make any promises or threats of any sort to Mr.
7 Seguin. Nor did he or any officer make any comment about the possible penalties
8 involving the charges under investigation.

9 On cross-examination Detective Constable Gorman stated that he could not
10 recall how Mr. Seguin was dressed on the date and time in question. Detective
11 Constable Gorman estimated that he was inside the residence for approximately
12 five minutes before he and Constable MacDougall escorted Mr. Seguin to the
13 police vehicle and then to the police station.

14 Detective Constable Gorman agreed with the suggestion that, during the period of
15 time that he and Mr. Seguin was in the residence, which was approximately five
16 minutes, that it is possible that Mr. Seguin could have had contact with officers in
17 the residence, given the size of the apartment and the number of officers present.
18 Detective Constable Gorman stressed that he did not have any conversation with

1 Mr. Seguin during the transport to the police station and does not recall any
2 conversation between Constable MacDougall and Mr. Seguin.

3 Detective Constable Gorman stated that Mr. Seguin would not know that the
4 police were monitoring his computer on March 2nd. As to whether anyone would
5 have told him that, Detective Constable Gorman stated that the police do not
6 monitor specific individual computers and that he, Detective Constable Gorman,
7 did not tell Mr. Seguin that.

8 A portion of Constable Trider's can-say was read to Detective Constable
9 Gorman. It stated that he read the warrant and was the fourth person in the door of
10 59B Smokey Drive. Detective Constable Gorman stated that it is possible that
11 Constable Trider read the warrant.

12 As stated, the Crown tendered Exhibit 1, which is an audio/video recording
13 of the statement that Mr. Seguin made to the police at the police station on the date
14 and time in question.

15 Now, that is a summary of the evidence called in the *voir dire*. Having
16 carefully assessed Constables MacDougall and Gorman's evidence, which included
17 my observation of their demeanour while they testified, I accept their evidence. I
18 find that there was no significant internal contradictions in their respective
19 evidence, nor was there any significant inconsistencies between their evidence. In

14 **DECISION**

1 fact, I find that the officers both testified in a straightforward manner, were clear in
2 their recollections of their involvement in the matter and candidly admitted what
3 they could not recall, and their reasons for that were adequately explained.

4 Both Constables MacDougall and Gorman were confident in answering
5 questions and without hesitation provided the necessary detail. They were not
6 argumentative or evasive, even when pressed on certain matters that were beyond
7 their knowledge, such as whether Constable Trider had any conversations with Mr.
8 Seguin.

9 Having observed Constables MacDougall and Gorman's demeanour during
10 their testimony and having carefully listened to their evidence, I do not find that
11 they embellished or exaggerated their evidence in any way, as I found that both
12 officers testified to the best of their abilities, were sincere, and readily conceded
13 their failure to recall certain specific details and adequately explained their reasons
14 for their inability to recollect certain details in the sequence of the investigative
15 process.

16 In my view, their evidence was persuasive as both provided their testimony
17 in a fair and appropriate manner, possessed good recollections of their involvement
18 in the investigative process, withstood a thoughtful cross-examination, as they
19 were unwavering in their responses, and both witnesses, Constables MacDougall

1 and Gorman, fairly responded to the suggestions put to them in cross-examination
2 as they either agreed or disagreed with the suggestions put to them and provided
3 reasonable explanations where required.

4 In other words, I did not find either Constable MacDougall or Detective
5 Constable Gorman careless or reckless in answering questions, but were rather
6 thoughtful and candid, which was consistent with their deportment while on the
7 stand. Indeed, the same deportment was evident of Constable MacDougall during
8 the video recorded statement, Exhibit 1.

9 Again, the overarching issue in this *voir dire* is whether the Crown has
10 proven beyond a reasonable doubt that Mr. Seguin's video recorded statement
11 made to the officers was voluntary and made with an operating mind.

12 The onus is on the Crown to prove beyond a reasonable doubt that the
13 statement made by Mr. Seguin was voluntary, as that term is defined in the
14 jurisprudence. As stated by the authors of *The Law of Evidence in Canada*, 3rd
15 Edition, Butterworths Canada Ltd., Toronto 2009, at pages 437-430, at pages 437-
16 38:

17 Reduced to its essentials, the voluntariness inquiry
18 focuses predominantly, though not exclusively, on the
19 ability of the accused to make a meaningful choice
20 whether or not to confess. All the surrounding
21 circumstances, including the accused's mental state, are

1 considered in evaluating whether the conduct of the
2 authorities deprived the suspect of making a meaningful
3 choice by reason of threats, inducement, oppression,
4 coercion, trickery, misinformation or other abuse.
5 Causation, which was a component of the traditional
6 *Ibrahim* rule, thus remains relevant in analysing the
7 relationship between the police conduct and the resulting
8 confession under the modern confession rule. The
9 voluntariness test should not be mechanically applied to
10 the facts of a particular case, rather, the trial judge should
11 evaluate all of the circumstances of each case to
12 determine whether the confession is voluntary in the
13 broad sense of the term.

14 The Supreme Court of Canada confirmed in *R. v. Oickle*
15 that voluntariness is shorthand for a complex of values.
16 The voluntariness test thus encapsulates the various
17 rationales and considerations underlying the confession
18 rule in an overarching contextual assessment. The multi-
19 faceted nature of the test is well summarized in the
20 Supreme Court's recent decision in *Spencer*. In *Oickle*
21 the court recognized that there are several factors to
22 consider in determining whether there's a reasonable
23 doubt as to the voluntariness of a statement made to a
24 person in authority, including the making of threats or
25 promises, oppression, the operating mind doctrine and
26 police trickery. Threats or promises, oppression and the
27 operating mind doctrine are to be considered together and
28 should not be understood as a discrete inquiry completely
29 divorced from the rest of the confession rule. On the
30 other hand, the use of police trickery to obtain a
31 confession is a distinct inquiry, given that its more
32 specific objective is maintaining the integrity of the
33 criminal justice system.

34 The author's note at page 438:

1 The cases should be seen as illustrative of the factual
2 situation where trial judges or appellant courts have
3 decided that a particular statement was voluntary or
4 involuntary. Moreover, even though some circumstances
5 may be conveniently collected in categories, the
6 existence of a particular circumstance in a case may not
7 automatically render a statement admissible or
8 inadmissible.

9 The authors refer to a number of factors which are well set out in the law
10 that the courts ought to consider. At page 451, under the heading “*The Operating*
11 *Mind Requirement*”, the learned authors of *The Law of Evidence Canada, supra*,
12 page 451 state:

13 A statement may be involuntary when it is not the
14 product of an operating mind. The operating mind test of
15 voluntariness focuses on the accused's state of mind at
16 the time he or she makes the statement. The causes for a
17 lack of an operating mind include physical shock, lack of
18 intellectual capacity, hypnosis, the self-induced
19 drunkenness, impaired mental capacity is insufficient to
20 preclude voluntariness on its own, may, nonetheless,
21 impact on the voluntariness broadly conceived.

22 At page 453 the authors stated:

23 The court in *R. v. Oickle* adopted the threshold test for
24 operating mind enunciated in *Whittle* as follows:

25 Sopinka explained that the operating mind
26 requirement does not imply a higher degree of
27 awareness, that knowledge of what the accused is
28 saying and that he is saying it to the police officers
29 who can use it to his detriment. I agree and would

1 simply add that, like oppression, the operating
2 mind doctrine should not be understood as a
3 discrete inquiry completely divorced from the rest
4 of the confession rule. The operating mind
5 doctrine is just one application of the general rule
6 that involuntary confessions are inadmissible.

7 The next paragraph the authors state:

8 In *R. v. Spencer*, Deschamps, J., reiterated that threats or
9 promises, oppression and operating mind doctrine are to
10 be considered together. In some situations the suspect
11 may pass the *Whittle* operating mind test, but the
12 suspect's mental capacity, in combination with other
13 vitiating factors, may render the statement involuntary.
14 Following *Oickle* and *Spencer* the ultimate test in
15 voluntariness, and a trial judge should analyse each
16 vitiating factor, from threats to trickery to oppression to
17 operating mind, in the context of the other vitiating
18 circumstances.

19 And lastly the authors state:

20 The absence of other vitiating circumstances may not,
21 however, be determinative. In some situations a
22 statement may be involuntary or an accused does have an
23 operating mind under the *Whittle* test, even if the police
24 are properly investigating a crime and do not use trickery
25 to offer an inducement to the accused. For an example,
26 in *R. v. Ward* the accused provided a confession to the
27 police after having just regained consciousness from a
28 motor vehicle accident. Unbeknownst to the police the
29 accused was in a state of shock at the time and the
30 Supreme Court held the confession inadmissible for a
31 lack of operating mind.

1 In essence, voluntariness is almost completely contextual. Because of the
2 variety and complicated interaction of circumstances that can vitiate voluntariness,
3 the inquiry is governed more by guidelines than by rules. A consideration of the
4 entire circumstances surrounding statements is required, which includes a
5 consideration of several factors, including threats or promises, oppression and an
6 operating mind requirement.

7 In light of that, the three sub-issues must be addressed. With respect to the
8 issue of whether the Crown proved voluntariness, notwithstanding that it did not
9 call certain officers who were present during the execution of the search warrant
10 and arrest, I am of the view that the law is clear that there is no required witnesses
11 and no rule governing witnesses who must be called by the Crown in a
12 voluntariness *voir dire*.

13 Prior judicial announcements that voluntariness cannot be proven unless the
14 Crown calls all witnesses connected to the giving of the statement relates solely to
15 the Crown's burden or proof and not to a duty or a rule. Thus, while the Crown
16 may find it impossible to prove voluntariness in the absence of witnesses who
17 played a material part concerning the statement, there is no rule of law that
18 prevents a judge from finding voluntariness in the absence of particular witnesses.

20 **DECISION**

1 The issue is one of voluntariness beyond reasonable doubt, not which
2 witnesses were or were not called by the Crown. This proposition finds support in
3 the *R. v. Socobasin*, [1996] N.S.J. No. 387 (CA), decision of the Nova Scotia Court
4 of Appeal wherein the court stated at para. 73:

5 The accused's position is that the prosecution is obliged
6 to call every witness who had anything to do with an
7 accused who makes a confession from the moment of his
8 first contact with the police until the statement has been
9 given. In my opinion, the proposition stated in those
10 terms is too broad.

11 Similarly, in *R. v. Menezes*, [2001] O.J. No. 3758 (Ont.S.C.) an Ontario
12 Superior Court of Justice decision, the court stated, at para. 19:

13 There is no absolute rule that every person in authority,
14 irrespective of the degree of contact with the accused,
15 need be called on a confessional *voir dire*.

16 It would seem that there is no hard and fast rule with respect to when an
17 officer should be heard from, as Justice Hill observed in *Menezes, supra*, at para.
18 19:

19 A flexible rule designed to examine the role of any police
20 officer with real investigatory or custodial contact
21 generally promotes meaningful scrutiny of the relevant
22 government contact.

1 In the present case, the defence contends that the Crown should have called
2 Constable Trider as he may have conversed with Mr. Seguin, as it was suggested
3 that Constable Trider may have read the warrant to Mr. Seguin. The defence
4 contends that the turn of words in Constable Trider's will-say statement, which is a
5 disclosure document, states that, "He read the warrant," suggests that he may have
6 read the warrant to Mr. Seguin.

7 However, I find that there is no suggestion in the evidence that Constable
8 Trider or any other officer present at the search, either directly or by any
9 reasonable inference, that any person in authority conversed with Mr. Seguin in the
10 residence about his involvement in the offences alleged during the short time
11 period, approximately five minutes, which was approximately 30 or more minutes
12 before the actual taking of his statement at the police station.

13 Moreover, another interpretation of Constable Trider's will-say statement is
14 that he simply read the warrant before he searched the residence. The words "read
15 the warrant" would be consistent with that interpretation. In other words, the will-
16 say does not say "read the warrant to".

17 Also it is important to consider the evidence of both Constables MacDougall
18 and Gorman. Both officers clearly and unequivocally stressed during their
19 testimony that they could not recall observing or hearing Mr. Seguin conversing

22 **DECISION**

1 with any officer while in the residence. I am, however, mindful that they agreed
2 with the suggestion that Mr. Seguin could have talked to an officer.

3 Be that as it may, the evidence does not establish that Mr. Seguin did,
4 indeed, have a conversation in which threats or promises may have been made.
5 Even if Constable Trider read the warrant to Mr. Seguin, nothing in that would
6 lead a reasonable person to infer that a threat or promise was made.

7 The next issue is whether the recordings and recollections of the officers
8 who testified are sufficiently complete and reliable to establish voluntariness.

9 It is trite law that there must be a sufficient evidentiary record of the
10 interaction between the accused and the police in order for the Crown to discharge
11 its voluntariness onus. In fact, this evidentiary obligation extends beyond the
12 interaction between the accused and the police, up to and including the recording
13 of the statement. The Crown is obliged to give sufficient details of the
14 circumstances surrounding the taking of the statement and the actual taking of the
15 statement itself to satisfy the judge beyond a reasonable doubt that it was
16 voluntarily made. Thus, the Crown must produce a sufficient evidentiary record of
17 what was said, by whom, where, when and in what context. The court may then
18 assess the likelihood of inducements, threats or coercive behaviour that may

1 constitute an inducement and finding an absence of same, may conclude that the
2 Crown has proved voluntariness beyond a reasonable doubt.

3 In the present case, I'm satisfied that the Crown has produced a sufficient
4 evidentiary record of the interaction between Mr. Seguin and the officers, which
5 includes the actual circumstances surrounding the taking of the statement, which is
6 captured by Exhibit 1. I accept the evidence of Constables MacDougall and
7 Gorman that they did not recall any officer making a threat or promise to Mr.
8 Seguin while he was in their custody. The officers did not recall observing or
9 hearing Mr. Seguin converse or talk to anyone during the five minute interval
10 while they were in the residence. Indeed, the combined testimony of Constables
11 MacDougall and Gorman satisfy me that it is speculative to suggest that Mr.
12 Seguin was in any contact, and certainly no legally meaningful contact, with
13 another officer during the entire time period in question. The officers'
14 uncontradicted testimony, which I accept, is that they or any other officer involved
15 in the investigation did not offer a promise or make a threat or inducement to cause
16 Mr. Seguin to make the statement, Exhibit 1.

17 The officers' evidence of Mr. Seguin's demeanour and observations of him
18 on the videotape fails to raise any doubt of him having been subjected to
19 inducements or improper treatment. Having watched and listened to the

24 **DECISION**

1 videotaped statement, Exhibit 1, I find that Mr. Seguin was alert, attentive,
2 articulate and concerned as he answered questions. His answers were clear,
3 concise and thoughtful. His answers are responsive and without hesitation. He
4 appeared comfortable and engaged in a conversation with the officer which was
5 highly conversational in tone and professional in nature in many respects. I am
6 satisfied beyond a reasonable doubt that the statement was elicited without
7 oppression, fear of reprisal or hope of advantage and there was no breakdown of
8 resolve to remain silent.

9 As Justice Hill stated in *R. v. Menezes, supra*, at para. 31:

10 Repeated review of the videotaped statement permits the
11 following observations. Mr. Menezes is alert and
12 confident. He speaks frequently in an animated fashion
13 with hand gestures and demonstrations. His answers are
14 responsive, clearly spoken without hesitation. He is not
15 shaken or taken aback by Constable Carty's questions,
16 comments or observations. At times the arrestee is
17 smiling. Far into the interview, he elects to sit down
18 cross-legged in the chair. The interview is highly
19 conversational in tone with a give and go flow between
20 the participants.

21 Again, I am referring to this case because the approach that Justice Hill has
22 taken is similar to the one I have taken here in that I have the benefit of a video and
23 audio taped statement observing the witness' interaction with the police, rather than
24 a police only providing his or her recollections of what had taken place.

DECISION

1 I am satisfied beyond a reasonable doubt that the statement was elicited
2 without oppression, fear of reprisal or hope of advantage. There was no
3 breakdown of a resolve to remain silent. In the result, the Crown has established
4 on the totality of the evidence, including Exhibit 1, that the statement was
5 voluntary.

6 I am satisfied beyond a reasonable doubt that Mr. Seguin knew what he was
7 saying and its potential for use to his detriment. In fact, I find, after reviewing
8 Exhibit 1, that Mr. Seguin was clear, concise and intelligible when he answered the
9 questions posed by Constable MacDougall. Indeed, Mr. Seguin was internally
10 consistent throughout the interview and he struck me as being sincere and honest.
11 I find that Mr. Seguin possessed an operating mind at the time he made the
12 statements, which is demonstrated by his ability to comprehend the questions
13 asked and his ability to provide clear and thoughtful responses.

14 I am satisfied beyond a reasonable doubt, having considered the totality of
15 the circumstances, that Mr. Seguin possessed sufficient cognitive capacity to
16 understand what he was saying and what was said to him, including his ability to
17 understand and appreciate his *Charter of Rights* and police caution.

18 I accept Constable MacDougall's evidence that he was satisfied that Mr.
19 Seguin understood his rights and caution, and I am satisfied beyond a reasonable

26 **DECISION**

1 doubt that Mr. Seguin provided his statement with an operating mind and that it
2 was voluntarily made on the date and time in question. I have no doubt that Mr.
3 Seguin's utterances to the officers were made voluntarily without any threats,
4 promises or inducements or oppression and it was the product of an operating
5 mind.

6 Having carefully considered and assessed the totality of the evidence,
7 including all of the circumstances surrounding the making of the utterances or
8 statements, I am satisfied beyond a reasonable doubt that the statement made to the
9 officers, as recorded in Exhibit 1, was made voluntarily.

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HOSKINS, J.P.C.