

**PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** R. v. States, 2012 NSPC 72

**Date:** 20120508

**Docket:** 2182743

**Registry:** Kentville

**Between:**

Her Majesty the Queen

v.

Adam William States

**Judge:** The Honourable Judge Claudine MacDonald

**Heard:** January 31, February 1, 2, 8, 10, 29, May 2, 2012, in  
Kentville, Nova Scotia

**Written decision:** October 1st , 2012

**Counsel:** M. Ingrid Brodie, for the Crown

Donald Fraser, for the defence

**By the Court (orally):**

[1] This is my decision with respect to the voluntariness *voir dire* that was held on January 31, February 1, 2, 8, 10, 29, May 2, 2012.

[2] Mr. States was arrested for manslaughter at 9:22 a.m. on May 26<sup>th</sup>, 2010. While in police custody he was interviewed separately by three officers: Sergeant Vardy, Sergeant Briers, and Constable Canning.

[3] During the interview conducted by Cst. Canning on May 27<sup>th</sup>, the accused made inculpatory statements which the Crown is seeking to have ruled admissible. The issue is: has the Crown established the voluntariness of the accused's statements beyond a reasonable doubt?

[4] Mr. Fraser, counsel for Mr. States, gave notice last week that should the statements be ruled voluntary, he will be making a *Charter* application or applications. This *voir dire* is solely in relation to the voluntariness issue. In order for a statement to be ruled voluntary, the Crown must prove the following: there was no *quid pro quo* inducement in the nature of threats or promises; the absence of oppression; the presence of an operating mind; and the absence of police trickery that would shock the community.

[5] My starting point will be the comments of Justice Iacobucci, speaking for the Supreme Court in *R. v. Oickle* [2000] S.C.J. No. 38:

In defining the confessions rule, it is important to keep in mind its twin goals of protecting the rights of the accused without unduly limiting society's need to investigate and solve crimes. Martin J.A. accurately delineated this tension in *R. v. Precourt* (1976), 18 O.R. (2d) 714 (C.A.), at p. 721

Although improper police questioning may in some circumstances infringe the governing [confessions] rule it is essential to bear in mind that the police are unable to investigate crime without putting questions to persons, whether or not

such persons are suspected of having committed the crime being investigated. Properly conducted police questioning is a legitimate and effective aid to criminal investigation.... On the other hand, statements made as the result of intimidating questions, or questioning which is oppressive and calculated to overcome the freedom of will of the suspect for the purpose of extracting a confession are inadmissible. ...

All who are involved in the administration of justice, but particularly courts applying the confessions rule, must never lose sight of either of these objectives. (para.33)

Justice Iacobucci, (para. 69):

The doctrines of oppression and inducement are primarily concerned with reliability. However, as the operating mind doctrine and Lamer J.'s concurrence in Rothman, *supra*, both demonstrate, the confessions rule also extends to protect a broader conception of voluntariness "that focuses on the protection of the accused's rights and fairness in the criminal process" .... Voluntariness is the touchstone of the confessions rule. Whether the concern is threats or promises, the lack of an operating mind, or police trickery that unfairly denies the accused's right to silence, this Court's jurisprudence has consistently protected the accused from having involuntary confessions introduced into evidence. If a confession is involuntary for any of these reasons, it is inadmissible. (Oickle, *supra*, para.69)

[70] Wigmore perhaps summed up the point best when he said that voluntariness is "shorthand for a complex of values": *Wigmore on Evidence* (Chadbourn rev. 1970), vol. 3, §826, at p. 351. I also agree with Warren C.J. of the United States Supreme Court, who made a similar point in *Blackburn v. Alabama*, 361 U.S. 199 (1960) at p. 207:

[N]either the likelihood that the confession is untrue nor the preservation of the individual's freedom of will is the sole interest at stake. As we said just last Term, "The abhorrence of society to the use of involuntary confessions . . . also turns on the deep-rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves." . . . Thus a complex of values underlies the stricture against use by the state of confessions which, by way of convenient shorthand, this Court terms involuntary, and the role played by each in any situation varies according to the particular circumstances of the case.

[6] The analysis under the confessions rule is to be contextual, and the Court must:

... 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 of the aspects of the rule discussed above. (*Oickle, supra*, para.71)

[7] Defence counsel argued that his client's right to silence was breached- specifically, that on more than thirty occasions Mr. States told the police he did not wish to speak to them, yet the interviews continued. In *R. v. Singh* [2007] S.C.J. No. 48 the Supreme Court of Canada made it clear that the voluntariness inquiry covers both the common law confessions rule and the s.7 right to silence. In *Singh*, the court rejected Mr. Singh's argument that, if successful, would have required police officers to refrain from questioning any detainee who states that he or she does not wish to speak to the police. Charron stated, "The right to silence does not mean, however, that a person has the right *not to be spoken to* by state authorities."(*Singh, supra*, para. 28) It should be noted as well, however, that:

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

[8] I will start with a broad overview of the three interviews which were carried out. All interviews were video and audio recorded. As mentioned earlier, Mr. States was arrested at 9:22 a.m. on May 26, 2010. He was cautioned, advised of his *Charter* rights, and exercised his right to counsel. That day, Sergeant Vardy interviewed Mr. States from 11:45 a.m. until 6:30 p.m., at which time Mr. States was returned to the cell where he remained until approximately 9:45 p.m. when Sergeant Briers began his interview which concluded at 1:08 a.m. on May 27<sup>th</sup>.

The third and final interview, carried out by Cst. Canning, took place from 7:25 am until shortly before 10 a.m. on the 27<sup>th</sup>. It was during this interview that Mr. States made inculpatory statements.

[9] In total, Mr. States was interviewed for approximately 12 hours. I say approximately because although Mr. States spent 12 hours in the interview room, there were bathroom breaks, cigarette breaks, and occasions when Mr. States was alone in the room. Again, as part of the broad overview of what took place during these interviews, Mr. States' cell mate during some of the time he was in the cell was an undercover operator. Further, another officer, Constable Weston, played the role of a noisy, unruly prisoner. Although Cst. Weston testified during the *voir dire*, she was never questioned with respect to this role-playing. Despite this, I am satisfied based on the evidence of Cst. Singer and Exhibit 15 that Cst. Weston was in the cell area when Mr. States was 'between interviews' - after completion of the Vardy interview, and before the interview carried out by Sgt. Briers. That is, Cst. Weston was in the cell area making noise from 6:30 p.m. until 9:45 p.m. on the 26<sup>th</sup>.

[10] It was clear from the *voir dire* evidence that Mr. States, who described himself as being slow, had difficulty at times understanding what was being said to him during the interview process. I raise this because, as set out in *R. v. Singh, supra*, the test on voluntariness is objective, but:

...the individual characteristics are obviously relevant considerations in applying this objective test. (para.36)

And again, I will be coming back to this issue later in my decision.

[11] During the three interviews, Mr. States repeatedly told the officers he did not wish to say anything. Often, the response he received was to the effect, 'you don't have to speak; we just want you to listen.' It should be noted as well, however, that Mr. States told the officers on several occasions that he was there on his own free will, a point emphasized by Crown counsel in her submissions.

[12] A similar interviewing technique was used by the three officers. Each gave what could accurately be described as monologues relating to, for example, the

importance of accepting responsibility for one's actions, the stresses of parenthood, the fact that good people sometimes do bad things.

[13] Further, Sergeant Vardy, Sergeant Briers, and Constable Canning each in his or her own way set up a dichotomy and presented the following choices to Mr. States - either you lost your cool and snapped, causing Antonio's death, or you're a 'madman' or a 'Charles Manson' type and in fact you planned to kill Antonio Pynch. The three officers who interviewed Mr. States made it clear to him that they knew he was responsible for Antonio's death. The only issue was his degree of culpability. Mr. States' claims of innocence were deflected, in fact, called self-serving or ignored. The choice presented to him was to admit that he snapped or to admit that he planned the murder of the child.

[14] Before going into further detail with respect to specific aspects of the interviews, I will note at this time that the police did not comply with s. 503 of the *Criminal Code*. As mentioned earlier, Mr. States was arrested at 9:22 am on May 26<sup>th</sup>, the final interview not concluding until 9:54 am on May 27<sup>th</sup>. Mr. States was not brought to court until after 9:54 a.m. There is no evidence setting out any explanation as to why Mr. States was not brought before a justice as required by s. 503, which reads as follows:

Where a justice is available within a period of twenty-four hours after the person has been arrested by or delivered to the peace officer, the person shall be taken before a justice without unreasonable delay and in any event within that period.

Clearly, the police have an obligation is to get the detained person before the Court or before a justice without unreasonable delay, 24 hours being the maximum allowable time period to detain a person without having him/her brought before a justice.

[15] The police may have mistakenly believed that they had 24 hours to bring Mr. States before a justice. (Cst. Canning replied in the affirmative in response to the question: 'Were you aware the 24 hour clock was coming along?') But as I said, the law is clear – the individual who has been arrested is to be brought before a justice “without unreasonable delay”.

[16] I will now highlight some of the key exchanges during each of the three interviews to illustrate (1) the style or method of interviewing that was employed by the officers, (2) the content or substance of the interviews and (3) the individual characteristics of Mr. States -- all in the context of voluntariness.

[17] At the beginning of the first interview Mr. States says tells Sgt. Vardy he is 'freezing.' (Tab 2, page one)

Sergeant Vardy: I'll get you something there bud. Did, did you have any other clothes?

Mr. States: This is it, this is what they took me in.

Sergeant Vardy Well, we're not outside and it's probably warmer outside than ... well I'll see what I can do about that.

Mr. States: I got no if you got any questions for me?

Sergeant Vardy: No, no.

Mr. States: I'm not going to answer you.

A few minutes later, Sergeant Vardy tells Mr. States:

I'm not going to disrespect you and you know I'm basically here, I'll just to, you know have a quick chat with you and talk to you, make sure everything's okay. I want to make sure that you're ah, feeling okay with everything, and that you understand what's gone on here today and you understand that, all right?

Mr. States: I was just going to say my lawyer said not to talk to anybody.

Sergeant Vardy: I mean, you don't have to.

Mr. States: But I'm being, he said you're going to make him comfortable and this and that...I like to be nice.

Sergeant Vardy: Sure, so do I.

Mr. States: You can ask me any questions. I'm not answering them.

Sergeant Vardy: That's fine... because I don't have questions for you. (Tab 2 page 4)

[18] Relevant with respect to the individual characteristics of Mr. States: although Mr. States was 26 years old at the time of the interviews, he at times sounded younger than his chronological age, for example his statement: "I like to be nice." Similarly, when Sergeant Vardy tells Mr. States that it is important that he (Mr. States) be treated very professional, Mr. States responds: "I'll tell you a few things about me. I used to be bad." (Tab 2 pages 6). Mr. States' lack of sophistication became clear as the *voir dire* progressed and I will highlight some examples of this at the conclusion of my decision.

[19] Within minutes of the interview getting underway, Mr. States raised the issue of his detention, asking the officer:

Here overnight am I?

Sergeant Vardy: I have no idea.

Mr. States: What I want to know like, I think I am, so.

Sergeant Vardy: Yeah, it'll probably gonna be a while I'd say. What are you thinking about?

Mr. States: Just that I'm not supposed to be talking to nobody.

Sergeant Vardy: Listen, I'm not even talking about any of that stuff..... My, but you know what, my ulterior motive is right now is to make sure you're comfortable... I've always said to people we can talk about this all day long but there, there's a reason for everything. There's a reason why things happen..... The police do their investigation; they have their job to do. I understand and I'm glad you were given your right to counsel. I'm glad you got, you sought legal advice..... You should be speaking to a lawyer. (Tab 2 page 15)

About one-half hour into the interview, Mr. States, in the context of discussing his arrest, raises the issue of his clothing:



No, I was like I got no socks, no nothing, you're freezing me out. I asked the cop, I said man, they don't have a spare anything that I could put

Sergeant Vardy: Who's that?

Mr. States: On.

Sergeant Vardy: The jail guard?

Mr. States: the two cops that brought me in

Sergeant Vardy: okay

Mr. States: I said is there anything here that I can throw on or anything no

Sergeant Vardy: I might see if I can do something about that because it's...it's not cold here but I mean you obviously you only got shorts on and a t-shirt

Mr. States: I got boxers and that's it

A few minutes later Mr. States says:

I feel comfortable, I'm in here, I'm sitting on a chair, right? (Tab 2 page 22)

[20] During the first and third interviews there were periods of time when Mr. States was ill. He told Sergeant Vardy that he had acid reflux and during the initial interview Mr. States appeared to be gagging or spitting into the garbage. The next morning, during the interview with Constable Canning, Mr. States vomited for several minutes. It should be noted that Mr. States told both officers that this was not unusual for him because, as he told Sgt. Vardy, he suffered from acid reflux.

Mr. States' first request to use the washroom was at 12:24 and Sergeant Vardy tells him "I'll see what I can do for you, alright?" (Tab 2 page 48) Sergeant Vardy leaves the room and returns at 12:30, explaining that he was "just checking on the washroom...just give me one second, okay?" The officer leaves the room again, and returns at 12:39 to escort Mr. States to the washroom. When Mr. States stands up from the chair, he says to the officer, "just soaked that chair from

sweating. I didn't pee" (Tab 2 page 50) and the officer responds with "Lord dying, what's wrong with ya?" .

[21] At approximately 1:00 p.m. the tone of the interview changes when Sergeant Vardy tells Mr. States:

There is no doubt in my mind that you're responsible for causing the death of Antonio Junior.

Mr. States: What did you say?

Sergeant Vardy: There's no doubt in my mind that you're responsible for causing the death of Antonio Junior. Now what I want to do is I want to talk about some of the reasons why..... There are a lot of people out there that may sit back and they might try and analyze things without looking at every individual, looking at everything from the way they're brought up, how they act, who they're talking to. You know, everything from the different what I call molds and ethics that we get from growing up as kids, right, because you're raised differently than me. Everybody is raised differently.....You're a good son. You know, one is you're a good son. One is you're a good father. One is that you take responsibility and you try to do the best you can for others... (Tab 2 pp.51-52)

[22] About five minutes later into this, I would not call it a discussion, 'monologue' being a more apt description, the officer tells Mr. States a story, setting out how his grandfather suffered from stomach pains while waiting to leave for war. The officer explained to Mr. States that his grandfather's stomach pain did not go away until the grandfather actually left the ship and went off to battle, the point being that the pain finally went away once the grandfather knew 'that he's got to come to grips with what's happened...' (Tab 2 page 55)

Later he says,

"you know, you are 26... The important thing is ... that you yourself find the courage to talk about the truth and what's happened because at the end of the day, Adam, this is about you....You're at the stop sign right now. You have a decision to make. You either go left and you look down the same road trying to always look behind you to see what's going on behind you or you turn right and

you look straight ahead. You've dealt with the past. You move on, and to me that's important.... One day you might, you may look at this investigation. This is not simple. There's nothing simple about it, all right? Do I think that you went out and tried to kill Antonio Junior? No, I don't. I don't think that at all. And I want you to get that in your head because I can tell you one thing, I don't think that's in you. Because you know what? You got too big a heart and the heart to me is what's important. (Tab 2 page 55)

[23] The officer talks about the effects of stress, (Tab 2 pp. 64-65), and 'flight or fight' (Tab 2 p. 70). When the officer begins to discuss the cause of death of the child, Mr. States says, "I don't want to talk about it." (Tab 2 p. 72-app, 1:30 p.m.) Sgt. Vardy: "No, and I understand. You know what? That little boy's gone. There's nothing we can do to bring him back." The interview continues with Sgt. Vardy once again telling the accused that he is certain that he caused the death of Antonio Pynch.

Sgt. Vardy: -There's no doubt that you're responsible for causing the death of Antonio, Antonio Junior....do I think that you intended, your intention was to kill Antonio. No, I think that you intended to hurt him or discipline him. I think you intended to teach him a lesson but you know what, there's a difference, right?

Mr. States: I wouldn't hurt that little fellow at all...I wouldn't do it.

Sgt. Vardy: And you know what? We're beyond that part of it though, Adam, and I think it's important to realize the situation that you're in today because you're kind of not even looking at it.

Mr. States: I am.

Sgt. Vardy, No.

Mr. States: I'm being blamed for something I didn't even do.

Sergeant Vardy: Adam, you know what? We're beyond that side of it and I want to explain something to you because I think there's something you need to understand. (Tab 2 p.76 1:30p.m.) -(at this point Sgt. Vardy offers to get a

bucket for Mr. States) –then continues –it’s like with my grandfather you know ...what’s ahead of you...Buddy told me ...you were sick...I said you know what I’m glad he’s sick because that tells me that he, he had a conscience.... I know I’m dealing with a guy that cares, a guy that loves, ...because... if you were the type of guy that was standing...outside the 7-11 store preying on people... things like that, hurting people...that would be different. (Tab 2 pp.76-77 at 1:36 p.m.)

[24] The officer then tells a story about his brother who was on the verge of hurting one of his own children but “snapped out of it” upon hearing a ringing telephone. (Tab 2 ps. 77)

Sgt. Vardy: I sit there and think to myself...the phone didn’t ring for Adam...some people are lucky enough to have that phone ring...

A few minutes later:

Sgt. Vardy: I’m not questioning your love for Antonio... for anyone in your family, buddy, but I’m telling you right now you can’t let this eat you up inside because you’re in a situation right now where this is tearing you up. It’s tearing your guts up. It’s, you know what? It’s written all over your face Adam and, and that’s the difference. (Tab 2 p.78)

Mr. States eventually tells Sgt. Vardy “I’m done talking” (Tab 2 p.79)

Sgt. Vardy: And that’s fine and the thing is, you know what, Adam?...Because I know for a fact that you’ve done better for your family. You’ve given them opportunities the best you can, ... I’m not going to question you. I’ve looked at all the statements. I’ve looked at all the evidence, okay? And there’s no doubt in my mind that you’re responsible for the death of Antonio. There’s no doubt.

Mr. States: No doubt for what? (Tab 2 p. 80)

Sgt. Vardy: That you’re responsible for the death, the cause of death for Antonio Junior, okay? None whatsoever, none.

Mr. States: What do you mean, none?

Sgt. Vardy: There's no doubt that you're responsible.

Mr. States: I'm responsible?

Sgt. Vardy: Yeah, none whatsoever.

Mr. States: So I'm responsible?

Sgt. Vardy: Yes, you're responsible.

Mr. States: I'd like to ah, a phone call at least so I can call my lawyer.

Sgt. Vardy: you've already called your lawyer. (Tab 2 pp.80-81)

[25] Shortly afterwards, Mr. States does engage in more of a question and answer type of interview with the officer- statement and response is perhaps a more accurate way to describe it. At 1:46 p.m. Mr. States says:

Mr. States: You asked me so many questions.

Sgt. Vardy: I'm not asking you anything.

Mr. States: Like my lawyer said, that's what you guys are gonna do.

Sgt. Vardy: No, I'm not. No. You know what, you want to sit down think about it, you sit down and think about it, because I don't even want you to talk to me, Adam...

Mr. States: So you're telling me that I'm done for now?

Sgt. Vardy: I'm telling you that you're responsible for causing the death of Antonio Junior.

Mr. States: No, I'm not, sir. I went ....

Sgt. Vardy: (interrupts) Listen, Adam.

Mr. States: I don't want to talk about it. I won't. (Mr. States has his head on his knees.)

Sgt. Vardy: We're beyond that, that's fine, and you know what? At least you don't have to worry... because you know something? This is something that's been tearing you up and it's something that's caused you grief...been eating him up.

Mr. States: Well, what's eating me up?

Sgt. Vardy: The fact that you know what happened.

Mr. States: I don't know what happened.

Mr. States: The little, little boy died...He, he was a good friend of mine. Man, I loved him. (Tab 2 pp.83-84)

A few minutes later, Mr. States says to the officer,

"I am slow. I told you I'm slow. I don't understand big words and stuff like that.

Sgt. Vardy: I'm not trying to use any big words. What I'm saying to you, Adam, look at me. What I'm saying to you is that if you were to sit there and punch him a hundred times, there's a lot of difference in striking somebody a couple, a lot of difference.

Mr. States: Like I told ya ....

Sgt. Vardy: And you know what? ... There is no doubt you're responsible. The thing is, Adam, is why it happened and that's what we need to concentrate on here today.

Mr. States: I am responsible? I am not responsible. (Tab 2 p.89)

Interruptions ensue as Mr. States attempts to tell the officer he is not responsible for the child's death. (Tab 2 p. 89)

[26] Turning next to pg. 93, again this is repetition of the theme I referred to earlier. The officer says:

Sgt. Vardy: You know what? The day that you get arrested for the mistake that you made.

Mr. States: I don't make no mistake.

Sgt. Vardy: Look, Adam, Adam, I'm beyond that, right. I'm beyond that, okay. I can tell you right now, this is not about whether or not you did it. This is about why this happened, okay? (Tab 2 p. 93 at 1:55p.m.)

A few minutes later, Mr. States: Appreciate you talking to me. I'm, earlier we had a good talk and it's just like my lawyer said, they get you in there and....

Sgt. Vardy: What? Listen, I don't even want to know what your lawyer said, you know. I'm going to tell you something. Adam, this is nothing more than what it is right here, buddy. I can tell you that. I think you're a good person too really.

Mr. States: And you're a good guy too, right? (Tab 2 p. 96 at 1:59p.m.)

Sgt. Vardy then draws the analogy of a train out of control, and the only person who can pull the brake on the train is Adam States. (Tab 2 p.97).

Sgt. Vardy: "If this was where the stress boiled over, then we need to talk about that... (if) this was a situation...you knew what you were doing that'd be different. I'd rather you just tell me that up front and I can walk out and be the end of it, I don't think that's you though and I don't think you could tell me that because it's not in you.

Mr. States: Tell you what, sir?

Sgt. Vardy: That you planned it or you...

Mr. States: I didn't plan nothing.

Sgt. Vardy: That's what I mean. That's my point.

Mr. States: I didn't plan nothing. I didn't.

Mr. States: I didn't do ... (mutual interruptions) Mr. States says, I didn't do nothing to him. And it's not what you're talking about. I do now remember... (Mr. States engages in some conversation with the officer)

And then pg. 99, at approximately 2:00 o'clock during the interview Sgt. Vardy talks about closure.

Sergeant Vardy: But that little boy needs the truth.

Mr. States: And he's getting the truth.

Sgt. Vardy: The truth is you being honest with yourself.

Mr. States: I am being honest with myself.

Sgt. Vardy: I'm not talking anything other than that. I'm talking simply about you being upfront, having the courage to tell the truth about everything that happened.

Mr. States: I am telling the truth.

Sgt. Vardy: ...you're not thinking of the big picture. Sgt Vardy speaks for a few minutes, then says: I think you realize deep down that it's a mistake. And it is



then, And that's the mistake, that's taken place and we need to understand that. We need to respect that. But the thing is, Adam, it takes you. It takes a man to actually give his side of the story.

Mr. States: I give my

Sgt. Vardy: Because

Mr. States: Side of the story.

Sgt. Vardy: Until your side is told, the truth, it doesn't give anything. It doesn't paint that picture...(Tab 2 pp.100-101)

Several minutes later Sgt. Vardy: Deep down inside, you know what, what actions occurred and the thing about it is, Adam, is that that's the situation we're in. (Tab 2 page 107)

Mr. States: I don't like you. You're blaming me for killing that little boy.

Sgt. Vardy: Yes, I am. Yeah, I told you right from the get-go, there's no doubt that you caused the death of Antonio Junior.

Mr. States: You didn't. When you walked in you didn't say that.

More conversation takes place-

Mr. States: I told you I wouldn't lie to you. I slapped on his fingers twice. .. (Tab 2 p. 108)

Several minutes later-Sgt. Vardy: Adam, I'm going to tell you something. Don't disrespect yourself by telling any more untruths, okay? I'd rather you didn't say anything, Adam, because .... (Tab 2 p. 112)

Mr. States: I'm just talking to you at my free will. My lawyer told me not to, not to talk to you.... (Tab 2 p.112)

--Sergeant Vardy: I don't think that you're some Charles Manson type that preys on people. I think that you are, you're Adam States and you've got your own path. Yes, you've made mistakes. I've made mistakes. We both have made mistakes. The thing, the thing is there are times when that phone rings that people don't make that extra mistake. And Adam, I don't think the phone rang for you. That's why I talked to you about that here today. That's why I brought this up with you. (Tab 2 p. 113)

Mr. States: I don't understand.

Sgt. Vardy: That's why I ...

Mr. States: Anything.

Sgt. Vardy: Talked.

Mr. States: You're saying about a phone ringing or nothing.

Sgt. Vardy: About my brother, remember, I talked with. Well, that's what I'm talking about.

Mr. States: Yeah I

Sgt. Vardy: That's what I'm talking about.

Mr. States: I'm not like your brother though...

.....Sgt. Vardy: This is not about whether or not you did it. It's about why it happened. (Tab 2 p.114)

Sergeant Vardy: That's what makes this whole investigation different because you've got a chance. But it's up to you to make that decision, Adam. It's up to

you to have the courage to tell the truth and deal with the situation head on. (Tab 2 p.120-2:32 p.m.)

Mr. States, I am dealing.

Sgt. Vardy: Because

Mr. States: with the

Sgt. Vardy: You know

Mr. States: Situation

...

Sgt. Vardy: I can tell you right now, not.

Mr. States: I am.

Sgt. Vardy: I can tell you that you're responsible for causing the death of Antonio Junior. Simple.

Mr. States: No, I am ....

Sgt. Vardy: Straight up.

Mr. States, Not, sir.

Sgt. Vardy: Okay and we're beyond that, simple.

Mr. States: Well I don't, I don't know. I'm done talking.

Sgt. Vardy: Then you know, that's fine because I'd rather, if you didn't tell it, I'd rather you actually sat there and listened.

Mr. States: Right, and you use it against me.

Sgt. Vardy: No, I'm not going to use it against ya. I'm not going to use anything against ya. And that's where you're wrong. (emphasis added) (Tab 2 p.121)

Clearly, this final assertion of Sgt. Vardy is contrary to what Cst. Markovic told Mr. States when he cautioned him. However, when I consider the *voir dire* evidence in its totality, the officer's statement that he is not going to use anything against Mr. States is without legal significance. Later, at 2:40 p.m., Mr. States asks Sgt. Vardy when he will be going to court:

I'm here overnight, am I?

Sgt. Vardy: You're here until the investigation's done. Yeah

Mr. States: So I go to Court tomorrow.

Sgt. Vardy: I've no idea and I'm not the one that can answer that question. Mr. States, Okay. No, I'm just asking.

Sgt. Vardy: No, I'm not the one that can answer that question, right? But that's what it's about here today, nothing more or less, when we talked. (Tab 2 p.124)

[27] Several minutes later, Mr. States complains once again about being cold:

Mr. States: I'm freezing.

Sgt. Vardy: Now you can't go out there now.

Mr. States: I'm freezing.

Sgt. Vardy: What?

Mr. States: Goose bumps all over me, just frozen.

Sgt. Vardy: Well I'll check on pants and that for you but I did tell them to get them so hopefully they got them. (Tab 2 p. 133)

Sgt. Vardy says: There's no doubt in my mind, you're going to have a bright future but you've got to deal with these mistakes if that's what they are. If I'm wrong, Adam, you know what, tell me. If I'm wrong and this was something you fully intended, that'd be different. (Tab 2 p. 134)

Mr. States: I didn't intend nothing. No mistakes, no nothing.

At 3:01, Mr. States tells Sergeant Vardy, "I'm a little slow and you gotta space things out. (Tab 2 p. 135)

Sgt. Vardy: I got her spaced out for you. So they're not from a slap on the finger, right? (Tab 2 p.135)

Mr. States: I don't want to talk about it no more okay. (Tab 2 p. 136)

Sgt. Vardy: Yeah, because it's not fair to you to do that. It's something you need to figure out yourself.

Mr. States: I don't want to talk about it no more.

Sgt. Vardy:...I can guarantee you 99.9 per cent of those people would understand because of those stresses. I'm going to tell you, I don't speak to many people that deal with that, that dealt with as much as you dealt with and you've done pretty friggin' good, I can tell you that considering because that's a lot of stress. The difference is I'm not going to be able to say that. It's up to you. That's what it's all about.

Mr. States: Cold. ...

Sgt. Vardy: ...I'll check on a pair of pants, okay? But I want you to think about this, Adam.

Mr. States: And go have a pee if I could...And go back down to the cell.

Sgt. Vardy: I'll get you to a washroom here in a minute. (Tab 2 p.137)

[28] Sgt. Vardy leaves the interview room at 3:03 and returns at 3:12. Meanwhile, Mr. States is seated with his head on his knees. Sergeant Vardy returns with clothing which Mr. States puts on. Mr. States says again, "I need to pee real bad" and Sgt. Vardy responds with, "Yes, I'm going to see if I can get you out. They got the other fella out there so just one second." (Tab 2 p.137) Both Sgt. Vardy and the accused leave the interview room at 3:13; as I mentioned earlier, Mr. States made the request to go to the washroom at approximately 2:57.

[29] Later in the interview Mr. States again tells the officer "I don't want to talk no more, okay?"

Sgt. Vardy: No, that's fine. No, no, that's, that's fine and, and I totally understand now, okay? But you got to realize something, Adam. This is not about anything else now but you.

Mr. States: I

Sgt. Vardy: Okay.

Mr. States, No, I know I just made a mistake. I'm sorry. I, I told you I'd tell you the, all the truth that you need.

Sgt. Vardy: Yeah.

Mr. States: And I did.

Sgt. Vardy: No. Well, you, no, you haven't though. You haven't told.

Mr. States says, Yes, I

Sgt. Vardy: Me

Mr. States: Have

Sgt. Vardy: About well you haven't told me about those two hours... (Tab 2 p.140)

Sgt. Vardy: Adam...I don't know the one thing I guess is the best thing for me to say here today is ... (Tab 2 p.143)

Mr. States: You're, you're mixing me right up like.

Sgt. Vardy: Mixing you up? All I'm saying to you is just I, you know what I don't want. I don't want you to lie any more.

Mr. States: I'm not.

Sgt. Vardy: I'd rather you didn't even talk to me.

Mr. States, All right then, I won't.

[30] Later during the interview at (Tab 2 pg. 145) Sgt. Vardy shows Mr. States a photo of the child, telling him "that's not caused by a slap on your finger okay...enough's enough okay? Let's be a little bit realistic because you have to be. This little boy needs those answers." Drawing an analogy, Sgt. Vardy compares Mr. States' 'lies...and deceit' to a cancer that 'grows again and again'. (Tab 2 p.146)

Mr. States: What?

The officer, I'm telling you right now, Adam.

Mr. States: I'm done...I don't want to hear it.

Sgt. Vardy: That's fine, and you can be done but it's the same thing.

Mr. States, I'm done anyways.....

...Sgt. Vardy: You don't want to look at that picture because you're thinking oh that's, I got to look like I'm sad. I'm starting to think maybe you don't care, I see

Mr. States: What picture?

Sgt. Vardy: That picture

Mr. States: I don't wanna...see that picture

Sgt. Vardy: No I don't blame ya. Why do you don't wanna see it because it brings back too many memories.

Mr. States: What memories does it bring back?

Sgt. Vardy: It brings back mistakes that are made.

Mr. States: I didn't make no mistakes. (Tab 2 p.148 at 3:37 p.m.)

Sgt. Vardy (3:45 p.m.): I hope that it's only been since this incident...that you've lost that emotion. Because if you've been like this for a long time, buddy, then you're a train wreck waiting to happen. You're not going to pull that brake. And that's, you know what? That's the scary because you control it. (Tab 2 p.151)

Sgt. Vardy tells Mr. States that "he is in a river of lies." (Tab 2 p.155)

Mr. States: How am I in a river of lies?

Sgt. Vardy: You're in because of your omissions because you're burying yourself in this.

Mr. States, No, I'm not.

Sgt. Vardy: I'm telling you you are. That's happening right now is I'm throwing you that life ring, trying to pull you in. Sure, because you deserve that and I can tell ya, you're in that river buddy and she's swirling hard and you're going down.



Mr. States: Well let me go.

Sgt. Vardy: If you were some monster, ah, and some predator, that'd be different. You know what? I might agree with ya. But that's not you. You and I both know that that's not what you're about. .. (Tab 2 p.156)

Several minutes later Mr. States repeats something he said earlier: "I'm, I'm slow." (Tab 2 p. 159)

Mr. States said, I don't want to talk to you no more. (Tab 2 p.162 at 4:08 p.m.)

Sgt. Vardy: And that's fine. You know what, at the end of the day that's probably the best decision you've ever made.

Mr. States: But you're a good guy though.

Sgt. Vardy: But no, I think you are too. But I think you're lost inside that, I really do. I think you're lost. ....Because at the end of the day the police will have her story, they'll have everybody else's story. He's already told his story. When they did the autopsy, they told his story. He spoke through the medical examiner and that's the way I see it. ....The only thing left is dear old Adam, and that's what you have to realize because you're not painting yourself a very good picture. (Tab 2 p. 162)

Mr. States asks for a cigarette. (Tab 2 p. 168 at 4:20 p.m.)

Sgt. Vardy: I'll see what I can do.

Mr. States: I really appreciate it....I don't want to talk no more, sir.

Sgt. Vardy: No, and I... you know what? I don't want you to talk.

Mr. States: I'll go down to the cells and sit down there.

Sgt. Vardy: No, you'll sit in here. Basically, you're not gonna be going back to the cell anyway. You're going to be here. I'm gonna talk to ya and we're gonna

deal with the situation. You don't have to say anything. I don't care if you say anything. (emphasis added)

Mr. States: You're a good person though.

Sgt. Vardy: No, no problem.

Mr. States: You're a nice person. (Tab 2 p. 169)

[31] At one point, Sgt. Vardy tells Mr. States "if you think there wasn't a thorough investigation done, you're wrong. Mr. States asks the officer, "What is a thorough investigation?" (Tab 2 p. 170)

Mr. States says, So I'm not going back down to the cell tonight or...?

Sgt. Vardy: No.

Mr. States, No?

Sgt. Vardy: Not right now anyway.

Mr. States: Can I, I come back here and have a mattress or something?

Sgt. Vardy: A mattress for what?

Mr. States, I want to lay down.

Sgt. Vardy: What's wrong with ya?

Mr. States: I just

Sgt. Vardy: Man, you got up this morning. You had a good sleep last night. (Tab 2 p. 171 at 4:24 p.m.)

After fifteen minutes of conversation, Sgt. Vardy tells Mr. States “you’re here because you deserve to give your side of the story.”

Mr. States: Well I give my side of the story...

Sgt. Vardy: Your side of the story is, is self-serving.

Mr. States: self-serving when I can what this is that, I was at their house, at their house and at their house and at their house. (Tab 2 p. 185)

Later, Mr. States is told, he must “come clean...

You gotta deal with that situation. It’s not just for that little boy. It’s for your mom and dad. It’s not just for them either. It’s for your two kids so you can be the father that you’re supposed to be, and until you move on with your life, until you face that reality, until you look in the mirror, nothing’s gonna change. It’s entirely up to you.

This monologue starts at 4:51 and continues until Sgt. Vardy leaves the interview room at 5:01 p.m., returning at 5:18 p.m. During that time, Mr. States can be seen resting his head on the desk, staying in that position until 5:14. at which time he gets up and moves to the floor where he remains stretched out until Sgt. Vardy’s return. Soon after Mr. States tells Sgt. Vardy he’s “fuckin’ tired” (Tab 2 p. 195-5:19 p.m.) and a minute later he tells the officer: “I don’t want to talk anymore. I’m too tired.”

[32] At 5:40 p.m. Mr. States tells Sgt. Vardy: “I’m not speaking. You wait till my lawyer gets here.” Sgt. Vardy replies: “I don’t care if you don’t speak. You don’t have to. Like I said to you five hours ago it’s not about that. It’s about being able to accept responsibility.” (Tab 3 p.8) Sgt. Vardy talks for a few minutes, and Mr. States tells him: “It seems like you’re, you’re being awful rude now.” (Tab 3 p.10) Near the end of this first interview Sgt. Vardy once again tells Mr. States that he knows he caused the child’s death.

Sgt. Vardy: I'll give you that guarantee right now. The flu didn't cause his death. Adam caused his death. That's the difference."

Mr. States: Well then if that's your opinion, that's your opinion, be it.

Sgt. Vardy: No, that's not. Listen, it's not an opinion. There's no doubt in my mind you did.

Mr. States: What?

Sgt. Vardy: No doubt, none whatsoever.

Mr. States: That I hurt that little boy?

Sgt. Vardy: Yup. Yeah, none whatsoever.

Mr. States: You and everybody else....

At 5: 48 p.m., Mr. States tells the officer "I'm done." Sgt. Vardy continues talking, and at 5:54 p.m. Mr. States says. "I can't handle listen to you. That's all I know. "(Tab 3 p.15).

Shortly afterwards, at 5:57 p.m. the following exchange takes place:

Sgt. Vardy: You couldn't care less about that boy or any of the other kids.

Mr. States: Who don't care less?

Sgt. Vardy: You.

Mr. States, I do so.

Sgt. Vardy: Well that's my point though. That's the only other thing that, that's the only other possibility that I can see and, you know, I refuse to believe that but it's easy to say 'I do so' ...That's why we're looking for an explanation from you.

Your actions that day don't justify him not being here anymore. That's why your side of the story. You know what, you deserve that. Do you think it would be fair to you if you just picked you up and never even asked you your side of the story?  
(Tab 3 p. 19)

[33] At 6:00 p.m., the video shows Mr. States spitting into the garbage, and soon after he asks, "Is it all right if I can use the bathroom?" Sgt. Vardy replies, "I'll see if I can. Yeah, just give me a minute." (Tab 3 p. 21) Sgt. Vardy leaves the interview room at 6:02 p.m., returns at 6:30, wakes up Mr. States and the interview concludes soon afterwards.

[34] Sergeant Briers' interview of Mr. States begins at 9:45 p.m. with Mr. States telling the officer that he is tired, mentioning, "Yeah, after hearing that girl come in shouting in the hallway." Based on the evidence, it is clear 'that girl' is a reference to Cst. Weston.

Sgt. Briers: You didn't have a good break then?

Mr. States: No.

Sgt. Briers cautions Mr. States and asks him, "So what does that mean to you?"

The answer, "I'm like, ah, investigation... You can give evidence when we go to Court." (Tab 3 p.24)

Sgt. Briers: You know, you remember Greg? I work with Greg okay so Greg talked to you about that, mentioned to you that there was no doubt in his mind that you were responsible for causing the death of Antonio Pynch.

Mr. States, That's what he said, yeah.

Sgt. Briers: Okay, so that's what you're here for.

Mr. States: Yeah.

Sgt Briers: So you understand that? Do you understand that?

Mr. States: No.

Sgt. Briers: What don't you understand? What don't you understand?

Mr. States: I'm not really sure. I can't even think right now I'm so tired. (Tab 3 p. 25).

[35] Within minutes of the interview getting underway, Mr. States informs Sgt. Briers, "No, I'm not talking no more... And I don't want to listen to it." (Tab 3 p. 29)

Sgt. Briers: I understand why you're under stress. I can ...see why that would be bothering you, the whole thing that's going on here... But it's important to have it resolved and with resolution, with having this fixed up, you have to take on responsibility.

Mr. States: I have responsibility for myself.

Sgt. Briers: Yeah, well that's not an option right at this stage.

Mr. States, Well my lawyer said that when I want to go back to my cell, and I want to go to back to my cell.

Sgt. Briers: Yeah well that's not one of the options here, okay? That's not one of the options. I'm not asking you to talk to me. I'm just asking you to listen. (Tab 3 p.30)

...Mr. States: Well I'm trying to sleep and you drug me out of the cell.

Sgt. Briers: I never dragged you out of the cell. I asked you to come down here and you said you didn't really want to but you agreed to come down with me.

Mr. States, I don't want, I didn't even really want to come down.

...Sgt. Briers: Well you can put your head right down there and just listen to me.  
(Tab 3 p.31)

Discussion with respect to blunt force trauma and the officer asks Mr. States: Do you know what that means?

Mr. States: I'm not sure. I got no answers.

9:55 p.m. (Tab 3 p. 33) Mr. States says: I don't want to talk about that.

9:59, (Tab 3 pg. 36) Mr. States asks for a cigarette and Sgt. Briers says, "Well, let me see if I can go get you a cigarette and you'll, you'll promise me you'll come back in here?"

Mr. States: okay.

(This exchange shows how important, it was to the officer that he keep Mr. States in that interview room-the officer was prepared to get a cigarette for the accused if he agreed to return to the interview room.)

Upon their return to the interview room, Mr. States appears more alert than he had previously; indeed, there were no signs of the fatigue that had been apparent earlier during the interview.

[36] Advancing to 11:30 p.m. This is (Tab 3 pg. 130-11:30 p.m.)

Mr. States: Can I go pee and lay down for a little bit? Tell you, I'm really tired, sir.

Sgt. Briers: Well I'm tired too, buddy, and that's the, that's the dirty evil. We have to make sure we try to work through this and understand how this all happened.

Mr. States, Yeah, I just want to lay down for an hour so I can get a little bit of sleep, try to. .... that fellow in there, he said,.....I heard you snoring there till that

girl got in. I said I must have fell asleep and that girl come in and started hollering.

[37] Mr. States asks for a cigarette and he also requests a bathroom break at 11:30 p.m., but the interview continues with the officer telling a story about losing a knife in the Bras d'Or Lakes, the moral of this story being the importance of telling the truth. (Tab 3 pp.130-134) At the conclusion of this monologue, Sgt. Briers tells Mr. States, "Well I see here now is you've told a lot of lies to kind of build up this story that happened on those three days, those two days prior to poor Antonio's death."

Mr. States repeats his earlier request to use the washroom: "Can I use the bathroom? Can I please?" (Tab 3 p. 134 at 11:39 p.m.)

Sgt. Briers says, "Just give me a second.

Mr. States: I'll just go on down there where I peed before.

Sgt. Briers: No, hold on a second.

Sergeant Briers leaves the interview room, returns seconds later, and he and Mr. States then leave the interview room.

After that Mr. States repeats on several occasions that he is tired. Sergeant Briers tells him "I'm not getting you a mattress anyway- "So you, you hear my story"

Mr. States response to this is:

I'm always this kind to talk to you guys. I'm doing this all on my own free will...And my lawyer told me, do not leave the cell. If they come and get you, you say leave me in here. You don't want to do no questions... I'm more polite than anybody else is, you know what I mean? (Tab 3 p. 136-11:43 p.m.)\_



[38] At 12:20 a.m. Mr. States tells Sgt. Briers that he would “just like to be able to go and lay down.” Sgt. Briers leaves the interview room for a few minutes, and during this time Mr. States lies down on the floor where he remains until Sgt. Briers returns. After 25 minutes of more questioning, the following exchange occurs:

Mr. States: I’m done talking... I just want to lay down. I need to lay down.

Sgt. Briers: It’s funny though Adam. You go to a certain time you could talk all day about something that’s irrelevant. You’re pretty good about that, and then we go on to an issue that’s a little bit more touchy, a little bit more

Mr. States: I don’t want to talk about that no more.

Sgt. Briers: I know, but

Mr. States: I’m tired, I want to lay down.

Sgt. Briers: I wonder what you talk about when you do that because I wonder was it just a diversion type of thing you’re doing here?

Mr. States: There’s no diversion. I’m tired. I’ve been here all day. (Tab 3 p. 179 12:45 a.m.)

Sgt. Briers: Adam so have I. I’ve been up since 5:00 o’clock this morning. I don’t know what your life is like but I’m a very busy person myself. You’re not the only one.

Mr. States: Call my lawyer.

Sgt. Briers: But I guarantee you Adam I probably have a far busier week on a regular basis than you do...If we want to talk about something that’s irrelevant you’re sitting fine and dandy there. We talk about a little bit more of a touchy issue, something you’re not willing to talk about, not willing to address and we go and do this foolishness. You know what Adam, I thought you were a better person than that. I know I’ve seen you over there, like why. (Tab 3 p. 180)

....

Mr. States: I want to sleep and my choice to come down here in this room to talk to you, just like my lawyer said, you don't have to move from that cell.

Sgt. Briers: You're here though, aren't you?

Mr. States: Yeah, on my own choice. And he said if you go there and you say you want to go back to the cell, they take you back to the cell.

Sgt. Briers: Yeah, might not have been always. That might not have a lot of ... .. for him though I guess it is.

Mr. States: If I didn't want to talk to you, he said stay there but my free own willing I come down here.

Sgt. Briers: Yeah and that's fine. I give you credit for that.

...Mr. States: So if I say you could take me back down there

Sgt. Briers:...but as I told you, I am not, I am taking you back there

Mr. States: And and then you won't.

Sgt. Briers: ...I'm willing to take the time in order to talk to you to make sure we can try to have some resolution to this...

Mr. States: Some resolution when I can barely even keep my eyes open. (Tab 3 p. 181 at 12:48 a.m. Later, Mr. States repeats that he is there on his own free will.

Shortly before 1:00 a.m., Mr. States once again complains about being tired. At 1:01 a.m., Sergeant Briers leaves the room, returns at 1:08, and escorts Mr. States out of the interview room.

[39] The final interview begins at 7:25 a.m. the following morning, The demeanour of Constable Canning was affable, pleasant, and empathetic; quickly she established a rapport with Mr. States. Despite this, Mr. States tells the officer “I’m not telling you no more.” (Tab 5 p. 4) It should also be noted that during this interview Mr. States becomes ill-vomiting-after which he tells the officer that is sick on most mornings.

[40] Constable Canning used an interview strategy similar to that of Sergeant Vardy and Sergeant Briers. That is, she gave short speeches or monologues in which she set up the dichotomy that either Mr. States ‘lost it’ because of the stresses of parenthood or intentionally killed the child. The following excerpt is illustrative of this interviewing strategy:

I think that the picture has been painted for you to be this madman you know, that beats up on little kids you know until they die. I don’t think that’s what happened here. I explained to you that the frustrations that I felt as a parent, okay, you’ve got to learn to walk away but that’s not always easy...Correct me if I’m wrong. Did you plan this? Did you say, well if I went and got rid of Antonio, life with Julia and just one kid would be fine? ... I’m gonna plan to do something to him. Is that what took place there? You know, there’s two ends of the spectrum, right? There’s the end where you plans it and then there’s the end where you just lose your cool, and if anyone can say that they weren’t at the end of that end, okay, where they’ve lost their cool at some point, they’re liars, because we’re humans, okay? We have things about us that aren’t pure, that you know, we do things. We’re humans. We make mistakes, okay? Someone told me one time that the reason that the eraser’s at the end of the pencil, you know why? Why do you think they came up with that? (Tab 5 p.37)

Mr. States: Because what?

Constable Canning: ...We know that saying about the fact that people make mistakes and that’s what the pencil was made, okay? Because you can rub it out and I’m not here today to rub out what happened okay but I’m here today to get the truth, because that’s what we do as police officers... (Tab 5 p. 38)

After several minutes of conversation, Cst. Canning says:

...And after that Antonio got sick and the doctor that did the autopsy says that that's exactly what would happen. These are doctors. They know what the symptoms are going to be of, of the type of injury that Antonio had. So we're here to look for an, for an explanation, you know, to say yes, judge. This is what happened, okay? But was it planned or did it happen and it wasn't meant to? Because there's no one that can look at someone that makes a mistake and say I've never made a mistake. Because if they say that, they're, they're full of shit and you know that and I know that. Would you agree? You would, wouldn't you? And Adam, that's all we're looking for is the truth. This is not going to go away. Your conscience is always going to have this on it. Everyone's going to suspect, okay? No one is stupid in this situation, nobody. But you know what? How can you blame someone for trying? And that's all you were doing was trying. You were trying your very best, okay? You could have easily said, I've seen fathers okay with their own children go, 'you know what? So what, it's your job, train them, discipline them. You know, tell them they can't do this, tell them they can't do that, and they just tune it out. They get really good at tuning it out. And you didn't tune it out. You did not tune it out in that two hours, okay. You couldn't tune it out and you became angry and something happened. That's the way I figure it out. Or did you wait for Julia to go to the Co-op? I mean, that's the only two spectrums that it could be. You know, Julia goes to the Co-op this evening with Michelle and you're just waiting for them to go through the door because you've got it planned that you're going to hurt Antonio.

Mr. States: Never would hurt him. (Tab 5 p. 43)

...

Mr. States: I'm not telling you no more. (Tab 5 p. 44)

Cst. Canning: When you make statements like that, that makes me think that you're on the end where it was planned.

Mr. States: My lawyer said not to talk because they use it in court on you.

Constable Canning: I respect that ...what your lawyer has to say. But I'm here as a police officer and we're called truth seekers. This is the intervention room, okay? When you clear your conscience ... I'm sure you've been there before, okay? And Greg talked to you about that last night. When you tell one lie you gotta tell another lie and you gotta tell another lie...I knew from reading the file ...

oh, she says, All I'm asking for is the truth, okay? I knew from reading the file, I knew that Antonio had a mistake. He peed on the floor. We've established that now and thank you for that, Adam, because now I can see the picture that I as a mother, okay, am responsible for, responsible for toilet training my kids. I can feel your frustration and it's frustrating as hell.. (Tab 5 p.44 at 8:26 a.m.)

Constable Canning talks for several minutes – repeating the scenario which I referred to earlier- Mr. States planned to kill the child, or he became angry/frustrated and caused the child's death. This monologue concludes with Cst. Canning telling Mr. States: “you lost your cool and no one can blame you for that.” (Tab 5 p. 49-8:37 a.m.)

Mr. States: Okay, is there no way I can get out of here?

Constable Canning: Well you don't have to talk to me but I'm gonna talk to you.

Mr. States: Is there any way I can get out of here?

Constable Canning: What are you asking from me?

Mr. States: Ah, some kind of bail here or something.

Constable Canning: I don't know. I'm not the primary investigator on the file. I'm not the lead investigator.

Mr. States, Well I don't want to say no more. (At this point Mr. States has his head down.)

Constable Canning: And I don't know where the investigation is going.

Mr. States: I want my lawyer.

Constable Canning: But I'm going to tell you. You spoke to your lawyer yesterday and you said you were satisfied, were you not, with what they provided to you?

Mr. States: I want my lawyer.

Constable Canning: You have a conscience. There's no doubt in my mind. You want the truth to be known because you're that type of person, Adam. You're that type of person and there's no doubt in my mind about that. I told you I wouldn't waste my time with you if I couldn't see that in you.

Mr. States: All right. I made a mistake. I kicked him in the groin. Is that what you want to hear? (Tab 5 p. 50 8:39 a.m.)

[41] Later, Cst. Canning suggests to Mr. States that "Sometimes it's worth telling the person" (Tab 5 page 94) . When Mr. States tells her that "I can't write or nothing" (Tab 5 p.94) Cst. Canning offers to write the note to the mother's child on his behalf –"tell me and I'll write" she says at 9:34 a.m. Mr. States says:

I'm sorry for hurting your son. (intonation as if asking a question)

Cst. Canning: okay

Mr. States: And I love you very much. I'm sorry for my actions and we, we talked about it. I'm going to miss you and Kingsley and Antonio very much. I don't know how to say it.(Tab 5 p. 96)

Shortly afterwards, Mr. States tells Cst. Canning he "only got grade four" (Tab 5 p. 97) and is unable to read. Further questioning ensues, and the interview concludes at 9:54 a.m.

[42] Has the Crown established voluntariness beyond a reasonable doubt? In *Oickle* (para.69), Justice Iacobucci outlined several situations that could give rise to an atmosphere of oppression:

Without trying to indicate all the factors that can create an atmosphere of oppression, such factors include depriving the suspect of food, clothing, water, sleep, or medical attention; denying access to counsel; and excessively aggressive, intimidating questioning for a prolonged period of time.

It is clear from the evidence that some of Mr. States' essential human needs were not met, specifically with respect to clothing, sleep, and timely bathroom breaks.

[43] With respect to the issue of appropriate clothing, Mr. States was wearing shorts, boxer shorts he said, and a T-shirt when he was first being interviewed. He was cold, yet despite his repeated assertions that he was cold, he was not given clothing for approximately a three-hour period. There may have been a reasonable explanation as to why Mr. States had to wait so long for something as basic as a pair of pants. If there was a reasonable explanation, it was not offered to the Court.

[44] In cross-examination by Mr. Fraser, the suggestion was put to Sgt. Vardy that Mr. States could have been provided with a jump suit to wear. Sergeant Vardy responded by expressing his opinion that jumpsuits are dehumanizing. That may be. Being questioned while cold and attired in boxers is, arguably, equally as dehumanizing.

[45] With respect to the bathroom breaks-I referred to this when I went through the overview but just to summarize, at approximately 12:24 in the afternoon Mr. States tells Sergeant Vardy that he has to use the washroom. Sergeant Vardy leaves the room. When Sgt. Vardy walks out of that room, Mr. States, or any one in his position, does not know how long he is going to have to wait before he will be taken to the washroom. Maybe it will be a minute; maybe it is going to be 15 minutes; maybe it is going to be an hour. In any event, that Mr. States was left there and Sergeant Vardy returned to the interview room at 12:30, telling Mr. States he "was just checking on the washroom ...Just give me a second, okay?" Sergeant Vardy leaves again and returns nearly ten minutes later, telling Mr. States that he would take him out for a smoke break. Mr. States gets up from the chair and tells the officer that he 'didn't pee on the chair' and Sergeant Vardy responds, as I mentioned earlier, "Lord dyin', what's wrong with you?" Well, Mr. States did have to wait to use the washroom. Perhaps he did urinate on the chair. Being provided with timely access to washroom facilities is just so very basic. It is not something that one would think should take any period of time at all to organize. Mr. States is told by the officer 'just give me a second'; he waits. In fact, the accused waits for five minutes until the officer comes back. Mr. States waited

probably 15 minutes or so. I will put it this way-it is just another factor to be considered when determining if oppression has been negated.

[46] Similarly, during the Briers' interview, Mr. States asked if he could 'go pee' and Sgt. Briers proceeds to tell the Bras d'or/Lake story. Upon completion of this monologue Mr. States repeats his request. One would have to watch the interview to fully capture the tone of Mr. States, but here are his words: "Can I use the bathroom? Can I please?" This is at 11:39 p.m.-approximately ten minutes after he initially asked about using the washroom. Mr. States, after having requested a bathroom break, sat and listened to Sgt. Briers talk for nine or ten minutes. Then Sergeant Briers says, 'just give me a second.' And Mr. States says, "I'll go on down there where I peed before." The officer says 'No, hold on a second', leaves the room for a few seconds, returns and only then escorts Mr. States out of the cell.

[47] With respect to sleep, Mr. States' assertions about being tired and wanting sleep were either criticized or debated. Repeatedly he indicated he wanted to sleep. Times throughout the interview he would stretch out on the floor. By the time Sergeant Briers began interviewing Mr. States, he had been in police custody for approximately 12 hours. Sergeant Briers begins his interview at 9:45 p.m., Mr. States having told Sergeant Briers before the interview got underway that he was tired and wanted to sleep.

[48] We are not dealing here with a situation where a detainee had, for example, been arrested in the middle of the night, and the detainee is going to be interviewed, be it midnight, be it 2:00 a.m. or whatever. We are not dealing with a situation like that. We are not dealing with a situation involving an individual who had just been arrested or who had been in custody for a relatively short period of time. We are dealing with a situation involving an individual who had been in custody for hours. He was arrested at 9:22 in the morning. In fact, by the time the Briers interview got underway, Mr. States had been detained for more than 12 hours. He had already been subjected to a lengthy interview before Sergeant Briers brought him back for the second interview. Despite Mr. States' repeated requests, reasonable ones, the Briers interview continued until approximately 1:00 a.m. One might think that Mr. States had a three hour break between the Vardy interview and the Briers interview. He could have rested; he could have slept; he had the opportunity to sleep. But this 'between interviews' time period coincided with Cst. Weston's playing the role of a noisy prisoner in the cell area.



[49] Now as I mentioned, Constable Weston was called as a witness but she was not asked questions about this. The evidence about her role-playing comes, as I mentioned earlier, from Constable Singer as well as from Exhibit 15. For what possible reason would the officer be playing the part of a raucous prisoner? I draw the inference, the only reasonable explanation for this, that the noise she created in the cell area would make it more likely than not that Mr. States would agree to accompany Sergeant Briers to the interview room. As a corollary of this, if Constable Weston's noise prevented Mr. States from getting rest or sleep, then so be it.

[50] Next I will deal with the issue of detention as it relates to voluntariness. I already referred to s. 503; further, I have read the case law that counsel have provided to me on this issue. It is clear that the police may continue carrying out investigative measures after a suspect has been detained. In *R. v. Storrey* (dealing with the issue of lawfulness of arrest and whether detention was arbitrary) the Court held that the 18-hour delay from the time of arrest until that person was brought before a justice was not unreasonable. (In *Storrey*, the delay was in order that a line-up identification could be arranged. ) In *R. v. Koszulap* (1974), 20 C.C.C. (2d) (O.C.A.) the court emphasizes that s. 454 of the *Criminal Code* (now s. 503) restricts powers to detain; it does not permit the police to hold someone for 24 hours.

[51] Here, Mr. States was held beyond the 24-hour outside limit referred to in s. 503. Clearly his detention after 9:22 a.m. on May 27<sup>th</sup> was unlawful. There is no argument about that. But as I said, the section mandates bringing a detainee before a justice without unreasonable delay. There was no explanation offered as to why arrangements were not made for Mr. States to be brought to Court or before a justice without unreasonable delay as the law requires. Why not take him to Court some time on the 26<sup>th</sup>?

[52] Why were arrangements not made to have Mr. States brought to court or arraigned through the after hours J.P. Centre? For example, that could have happened after Sergeant Vardy's interview had ended. Instead, Mr. States was in the cell with the undercover operator and subjected to the noise of the other officer pretending to be an unruly, intoxicated prisoner.

[53] I referred earlier to specific instances when Mr. States made inquiries as to how long he would spend in custody. I am not going to repeat those examples other than to highlight the fact that admissions were only made after Mr. States started asking Constable Canning questions with respect to how long he was going to be in custody. Cst, Canning told Mr. States the same thing he had been told by Sgt. Briers and Sgt. Vardy-he did not have to talk but “I’m going to talk to you.” (Tab 5 p. 50). By this time Mr. States had spent hours in custody, listening to officers talking to him. He then asks “Is there any way I can get out of here?” before he makes the admission.

[54] I wish to digress for a moment. Part of the submissions the last day were to the effect that Mr. States not brought to court within 24 hours because the police wanted to make sure that there was not something that might serve to exonerate Mr. States. After the admission, Constable Canning questioned Mr. States about drugs that might have been found in the child’s body, questioned him as to whether or not he had discussed what had happened with Julia, questioned him with respect to the footwear he was wearing. To suggest that this line of questioning which further delayed Mr. States being brought before a justice, was carried out because Mr. States’ answers may have exonerated him, lacks sincerity. Regardless, section 503 mandated that Mr. States was to be brought before a justice “without unreasonable delay”. This was not done. Obviously, interviewing Mr. States and getting a statement from him took precedence over the time requirement set out in the *Criminal Code*.

[55] When I consider the circumstances and everything which had taken place, Mr. States’ options were clear. He could either maintain his innocence and stay in custody, or confess to something and be released. He had been subjected to hours of monologues that set out the dichotomy I referred to earlier. The accused was repeatedly told that the police knew he killed Antonio. What they wanted to find out was whether he was a good person who did a bad thing or whether he was a ‘madman’ or ‘Charles Manson’.

[56] The officers provided Mr. States with the opportunity to accept the lesser of two evils. Indeed, any time Mr. States would deny involvement in anything that might have contributed to the death of the child, he was told, for example that it

was self-serving; they knew he was responsible; the investigation was beyond whether or not he was responsible.

[57] On approximately 30 occasions Mr. States indicated to the officers that he did not wish to speak to them.

[58] Mr. States is an unsophisticated 26 year old. He described himself as slow, and this self-description is consistent with his presentation during the hours of interviews that were conducted. At times he did not comprehend what the officers were saying to him; his ability to communicate was not what one might expect from someone his age-for example: “I like to be nice”; I used to be bad”; “I don’t understand big words and stuff like that”; not understanding what ‘thorough investigation’ meant; “The questions that you guys asked me, I told you. I can’t process them that quick.” (Tab 2 p. 174) “I pood myself”-(Tab 5 p. 63)

[59] I find that an atmosphere of oppression existed. Waiting three hours for a pair of pants, having to wait after requesting bathroom breaks, the lengthy detention which exceeded the maximum time allowable under the *Criminal Code*, and being subjected to long interviews that compelled Mr. States to listen to the officers for a prolonged period of time, created an atmosphere of oppression.

[60] My finding that there was an atmosphere of oppression is sufficient to dispose of this, but given the evidence heard during the *voir dire* I go further and find that Mr. States’ right to make a meaningful choice whether to speak to the police or not was overborne as a result of the police persistence in carrying out their interviews. (*Singh, supra*, para. 37). Given the evidence heard during this *voir dire*, there is some overlapping between the circumstances which gave rise to the atmosphere of oppression and those which deprived Mr. States of his right to silence. With respect to the latter: Mr. States repeatedly indicated he did not wish to speak to the police; his denials were ignored; he was subjected to lengthy interviews that continued with no clear end in sight. Based on these factors, I find that Mr. States was denied his right to silence in that his ability to choose whether to speak to the police or not was overborne by the persistence of the police in carrying out their interviews.

[61] In conclusion, the Crown has not established voluntariness beyond a reasonable doubt. The statements of the accused are inadmissible.

