SUPREME COURT OF NOVA SCOTIA
Citation: *R v Rogers*, 2023 NSSC 296

Date: 20230921
Docket: 510693
Registry: Yarmouth

Between:

His Majesty the King

Plaintiff

v.

Robert Charles Rogers

Defendant

Restriction on Publication: Section 539 (1) Criminal Code

Judge: The Honourable Justice Pierre Muise

Heard: September 26 and 27, November 17 and December 12, 2022, in Yarmouth, Nova Scotia

Counsel: Robert Morrison and Saara Wilson, for the Plaintiff
Nicholaus Fitch and Scott Brownell for the Defendant

539(1) Order restricting publication of evidence taken at preliminary inquiry

Prior to the commencement of the taking of evidence at a preliminary inquiry, the justice holding the inquiry
(a) may, if application therefor is made by the prosecutor, and
(b) shall, if application therefor is made by any of the accused,
make an order directing that the evidence taken at the inquiry shall not be published in any document or broadcast or transmitted in any way before such time as, in respect of each of the accused,
(c) he or she is discharged, or
(d) if he or she is ordered to stand trial, the trial is ended.

By the Court:

DECISION ON ADMISSIBILITY OF ACCUSED'S STATEMENT TO POLICE

INTRODUCTION

[1] Robert Rogers, while arrested for the murder of Colton Cook, gave a statement to Sgt. Vardy of the RCMP regarding that murder.

[2] The Crown applied for a determination that the statement was voluntary and admissible.

[3] Mr. Rogers opposed that application.

[4] On January 3, 2023, I gave a bottom-line decision that the statement had been proven to be voluntary and was admissible. I indicated that a decision containing the reasons would follow.

[5] This is that decision.

ISSUE

[6] The issue is whether the Crown has proven the voluntariness of the statement beyond a reasonable doubt.

LAW AND ANAYSIS

[7] **Has the Crown proven the voluntariness of the statement beyond a reasonable doubt?**

[8] Mr. Rogers argued there was a reasonable doubt regarding whether he had an operating mind and thus a reasonable doubt as to voluntariness. That argument was based on the evidence from a forensic toxicologist and Mr. Rogers himself regarding his level of intoxication. He also referenced a comment his lawyer had made to the police regarding him being suicidal and him not having spoken to a mental health professional before giving his statement. However, that avenue, and the impact it may have had, was not explored and did not raise a reasonable doubt.

[9] The Crown argued the following. The toxicology projections were theoretical and based on Mr. Rogers' questionable self-reporting and, considering Mr. Rogers' ability to identify when he needed his medications and his manner of answering or refusing to answer questions, he clearly had an operating mind. There were no threats, promises, inducements, oppressive conditions or police trickery

that would raise a reasonable doubt regarding voluntariness. Therefore, it had proven voluntariness beyond a reasonable doubt.

Law and Analysis

[10] The common law confessions rule was addressed and canvassed by the Supreme Court of Canada in ***R. v. Tessier***, 2022 SCC 35.

[11] In that case, the statement was found to be voluntary and admissible despite the suspect not having been cautioned. Therefore, the summary at paragraph 89 focusses on the effect of the lack of caution. There was no lack of caution in the case at hand. However, a finding of voluntariness in the absence of a caution highlights the contextual nature of the analysis noted at paragraph 8 of ***Tessier***.

[12] I will first refer to the summary, leaving out many of the comments regarding the effect of lack of a caution, then to other points and principles articulated in ***Tessier***.

[13] Paragraph 89 states, among other things:

> In summary, the confessions rule always places the ultimate burden on the Crown to prove beyond a reasonable doubt that a statement made by an accused to a person in authority was made voluntarily. … The Crown need not prove that the accused subjectively understood the right to silence and the consequences of speaking, but, where it can, this will generally prove to be persuasive evidence of voluntariness. If the circumstances indicate that there was an informational deficit exploited by police, this will weigh heavily towards a finding of involuntariness. But if the

> Crown can prove that the suspect maintained their ability to exercise a free choice because there were no signs of threats or inducements, oppression, lack of an operating mind or police trickery, that will be sufficient to discharge the Crown's burden that the statement was voluntary and remove the stain brought by the failure to give a caution.

[14] Other points and principles articulated in ***Tessier***, with references omitted, include those which follow:

> The inquiry is to be contextual and fact-specific, requiring a trial judge to weigh the relevant factors of the particular case … . It involves consideration of "the making of threats or promises, oppression, the operating mind doctrine and police trickery" … . These factors are not a checklist: ultimately, a trial judge must determine, based on the whole context of the case, whether the statements made by an accused were reliable and whether the conduct of the state served in any way to unfairly deprive the accused of their free choice to speak to a person in authority … . [Para 68]

> [T]he proper application of the confessions rule aspires to strike the right balance between the individual and societal interests at play in police questioning: on the one hand, protecting the accused from improper interrogation by the police and, on the other, providing the authorities with the latitude they need to ask difficult questions to investigate and solve crime. [Para 4]

> The rule is animated by both reliability and fairness concerns, and it operates differently depending on context. … [W]hile the doctrines of oppression and inducement are primarily concerned with reliability, other aspects of the confessions rule, such as the presence of threats or promises, the operating mind requirement, or police trickery, may all unfairly deny the accused's right to silence … . A statement may be excluded as involuntary because it is unreliable and raises the possibility of a false confession, or because it was unfairly obtained and ran afoul of the principle against self-incrimination and the right to silence, whatever the context indicates. It may be excluded if it was extracted by police conduct [translation] "[that] is not in keeping with the socio-moral values at the very foundation of the criminal justice system" … . [Para 70]

> Generally, the operating mind doctrine requires the Crown to show that the accused possessed the limited cognitive ability to understand what they were saying and to comprehend that the statement might be used as evidence in criminal proceedings … [T]he Crown must show further that the police conduct did not unfairly frustrate the suspect's ability to understand that what they were saying could be used in

> evidence, that they were not subject to police trickery and that there were no circumstances that would otherwise cast doubt on voluntariness. [Para 8]
>
> The default assumption in the cases is that, absent a cognitive impairment, an operating mind exists. [Para 52]

[15] With these principles and guidelines in mind, I will now examine the circumstances of the case at hand and consider the relevant factors in determining whether the Crown has proven voluntariness beyond a reasonable doubt.

[16] I will start with the operating mind requirement, which the Defence submits has not been proven beyond a reasonable doubt.

[17] As stated at paragraph 63 of ***R. v. Oickle***, 2000 SCC 38: "The operating mind requirement 'does not imply a higher degree of awareness than knowledge of what the accused is saying and that he is saying it police officers who can use it to his detriment". As already referenced, the formulation used in ***Tessier*** was: "the operating mind doctrine requires the Crown to show that the accused possessed the limited cognitive ability to understand what they were saying and to comprehend that the statement might be used as evidence in criminal proceedings".

[18] Mr. Rogers confirmed he knew he was talking to a police officer and that he did not have to say anything in response to his questions.

[19] A little over five and one-half hours into the interview, he said to Sgt Vardy that he knew he was “never getting out again” and that he deserved it, suggesting he knew what he said could be used in criminal proceedings against him, as Cst. Martin had told him, and Sgt. Vardy had reminded him.

[20] There was no indication that Mr. Rogers suffered from any general cognitive impairment or deficit.

[21] The argument is that he was impaired by the effects of alcohol and drug consumption, and that raised a reasonable doubt regarding him having an operating mind.

[22] Mr. Rogers’ evidence regarding his consumption of alcohol and drugs included that which follows.

[23] He had a prescription for gabapentin, 600 mg (2 pills) three times per day. However, on the morning of his arrest, probably around 9:00 AM, he took six pills, and may have had another six pills at noon, then some after that. He had been taking gabapentin for years.

[24] They made him sluggish and a little drowsy.

[25] Though he was not supposed to take them while consuming alcohol, he did anyhow.

[26] He also had a prescription for dilaudid, 2 mg, four times per day. However, he had run out. He had last taken dilaudid 2 or 3 days before his arrest.

[27] Also, on the morning of his arrest, probably around 9:00 AM, he was smoking marijuana and started drinking regular sized cans of Budweiser Beer which was 5% or 5.5% alcohol. They had 7 left from a case of 36 he and Wayne Crawford were drinking the day before. He had gone to sleep around 2:30 AM and was quite intoxicated. Around 10:30 AM they purchased another 36 pack.

[28] He probably had 15 beers that day, before he was arrested, and was drinking the last one at the time of his arrest.

[29] He smoked about ½ gram of marijuana every ½ hour to every hour throughout the day, until about 20 minutes before his arrest, and estimated he had smoked 4 grams in total by the time of his arrest.

[30] He had recently been in the hospital for 30 days. During that time, he had no alcohol. Before that he had been drinking heavily on a regular basis. He had been on a drinking binge since his discharge from hospital.

[31] While being interviewed by the police he felt drug out, still under the influence and in a lot of pain.

[32] He was 5 foot 7 inches tall and, at the time, weighed probably 140 lbs.

[33] However, his evidence of taking triple doses of gabapentin, in shorter timeframes than prescribed, is inconsistent with his telling Cst. Martin at about 3:00 pm and Sgt Vardy at about 9:00 pm, that it was time for his 2 gabapentin pills.

[34] In cross-examination, he volunteered, unprompted, that his medications made him talk more. He had not mentioned that effect on direct examination, even when directly asked about the effects of the gabapentin. It is generally inconsistent with the recording of his statement. There are many long periods in which he is essentially silent as Sgt. Vardy engages in lengthy monologues.

[35] He was, as the Defence argued, fairly talkative at the very beginning of the interview. However, that was only while discussing general information about Mr. Rogers' life, family and other relationships, ie. things Mr. Rogers wanted to talk about at that point in the interview. As soon as Sgt. Vardy started discussing points more directly related to the murder investigation, Mr. Rogers became quiet.

[36] He acknowledged having testified, at the preliminary inquiry for Keith Siscoe, that he did not remember being interviewed by Sgt Vardy even though he

did remember it. He said that was because he did not want to answer the question and because he did not have a lawyer. Then he attempted to backtrack by stating he recalled some of it, and some of it he did not remember. When it was put to him again that, at the preliminary inquiry, he had just said he did not remember, he said he did not remember at the time. That was internally inconsistent.

[37] He attempted to explain why he would not have remembered on the day of the preliminary inquiry by saying he had a lot of gabapentin that day. It was made clear throughout this proceeding that the institutions holding him at the time controlled his medications. It does not make sense that they would give him more than his prescribed dose. He had been taking it for a long time, and the toxicologist, Jean-Paul Palmentier, testified one would build up a tolerance, meaning that the impairing effects would go away over time until there was an increase in dosage. He told Sgt. Vardy that he had been taking the gabapentin for years and that it did not affect him cognitively at all. Plus, there is no evidence he would also have been under the effect of alcohol at the preliminary inquiry. Further, he admitted his memory was not better during the *voir dire* than at the preliminary inquiry.

[38] For these reasons, his explanation that he did not remember at the time of the preliminary inquiry did not make sense.

[39] His evidence on this point demonstrated his readiness to lie about his lack of memory to circumvent questions he did not want to answer.

[40] It was also an example of him making things up as he went along.

[41] Through much of his evidence he presented as though he was fabricating it.

[42] He was generally evasive on cross-examination.

[43] One example is the following. It was suggested that him telling Sgt. Vardy he was going to follow his lawyer's advice showed that he remembered that advice. He responded by saying he remembered reading it in the disclosure.

[44] He clearly was feigning lack of memory as a tactic to avoid answering many questions.

[45] He also appeared to be feigning lack of memory to bolster his intoxication argument. It did not appear to make sense that he could remember how many beer he drank, gabapentin he took, and marijuana he smoked, but would not be able to remember significant parts of his arrest and questioning, even though during the interview he is referring back to things that happened before his arrest, parts of his arrest and processing, and to earlier points raised in the interview.

[46] Mr. Palmentier opined that the effects of alcohol and drug consumption on memory would extend to the ability to keep track of such consumption and to later remember how much was consumed.

[47] It is telling that he professes recalling points which support his position, or at least do not compromise it, but not those which detract from it.

[48] His evidence was not credible or reliable. I reject his evidence that he took more than the prescribed dosage of gabapentin. As noted, it is inconsistent with his telling Cst. Martin and Sgt. Vardy it was time for his two pills. It is also inconsistent with the quantity of pills he had left at the time. In contrast, he had already used up his supply of dilaudid. I also find he exaggerated his alcohol and marijuana consumption.

[49] That, itself, undermines the value and weight of Mr. Palmentier's opinion evidence.

[50] Plus, Mr. Palmentier, in his own evidence, stated that studies show that people only achieve 50 to 80% of the projected blood alcohol content ("BAC") calculated. Therefore, even if Mr. Rogers had not exaggerated his consumption, his BAC just before the start of his interview by Sgt. Vardy could have been as low as 133 mg / 100 ml. 50% of even the highest calculated BAC would only have been

193 mg / 100 ml. That appeared to be, at least in part, because the calculations use a maximum elimination rate of 20 mg / 100 ml / hour, while, especially in heavy drinkers like Mr. Rogers, the elimination rate can go as high as 35 mg / 100 ml / hour. Though he said Mr. Rogers' period of abstinence in the hospital could have decreased his elimination rate, he could not say how much.

[51] I disagree with the Defence argument that the hospital stay would make it such that a 10 to 20 mg / hour elimination rate would be appropriate for Mr. Rogers especially since he had been on a binge since his release from hospital. Given Mr. Rogers' consumption history, and his statement to Sgt. Vardy that he did not have any liver issues (which Mr. Palmentier said was the main thing which could lower a heavy drinker's elimination rate) an elimination rate approaching 35 mg / hour is appropriate.

[52] His opinion regarding the impacts on mental faculties was based on a BAC of 265 ml / 100 ml. They could include disinhibition, reduced cognitive ability, confusion, disorientation, perception, and recall. A light drinker at 265 ml / 100 ml would have difficulty talking and recalling information, a heavy drinker less so.

[53] Taking cannabis and gabapentin with the alcohol would have an additive effect, but it was not quantified.

[54] Mr. Palmentier further testified that watching the video of the statement to Sgt. Vardy would provide one perspective of the events, but that the officer doing the questioning, because they are closer, would be better able to observe and describe the person's condition.

[55] He testified it was beyond his expertise to opine on whether the ability to recall a lawyer's advice not to talk to the police indicated a detainee was not impaired to the point of not being able to recall. He did so despite having stated that it showed they were conscious and interacting.

[56] Given the unreliable foundation for Mr. Palmentier's calculation and opinion, their acknowledged inaccuracies particularly in heavy drinkers, and their limitations, they are of little or no assistance in determining whether Mr. Rogers had an operating mind while being interviewed by Sgt. Vardy.

[57] The evidence of Sgt. Vardy and the video recording are much more probative of the question. In coming to this conclusion, I am cognizant of Mr. Palmentier's evidence that, in a heavy drinker, the outward intoxication symptoms are not as noticeable as those in a light drinker, for the same BAC and thus impairment level. His cognitive ability to "understand what they were saying and to comprehend that the statement might be used as evidence in criminal

proceedings" can be gleaned from the video recording and could even more readily have been assessed by Sgt. Vardy. Mr. Rogers made Sgt. Vardy aware of his consumption history and recent binge drinking and drug consumption. So, Sgt. Vardy would have been alive to potential residual effects of alcohol, even if he did not have the expertise to determine the aggravating effect of drug consumption.

[58] In the case at hand, Sgt. Vardy testified that he had no concerns regarding Mr. Rogers' sobriety. He appeared sober and to answer questions appropriately. Even after he took his gabapentin, there was no change in his demeanor or condition.

[59] Cst. Hubert Martin also testified there was no noticeable change after Mr. Rogers took his gabapentin at about 3:00 pm, even though he did show some signs of intoxication at that time, albeit not extreme ones. Mr. Rogers had estimated his own level of intoxication around 3:00 pm as being a 4 out of 10. I agree with the Defence that 4 out of 10 for a heavy drinker, like Mr. Rogers, is likely different than 4 out of 10 for a light drinker. However, the interview did not start until more than 6 hours later.

[60] In ***Ciliberto***, 2005 BCSC 1859, the Court found the detainee had an operating mind based on his multiple: assertions of his right to silence; references

to his lawyer's advice not to say anything; and comments that it was in his best interest to not say anything.

[61] Similarly, during his statement to Sgt. Vardy, Mr. Rogers made at least 5 assertions to the same effect.

[62] About 13 or 14 minutes into the interview, he stated "I can't say nothing on behalf of my legal counsel", followed shortly after by "my counsel told me not to say nothing".

[63] About 1 hour and 45 minutes into the interview, he stated: "I got nothing more to say, I'm taking my lawyer's advice."

[64] Just over 2 hours into the interview, he stated: "I gotta stop talking cause all I'm doing right now is pissing my lawyer off right now." At that point, Sgt. Vardy was not asking any questions, let alone probing questions. Therefore, Mr. Rogers must have been thinking of the conversation generally, at least up to that point.

[65] About 3 hours and 10 minutes into the interview, he stated: "I'm taking the advice of my lawyer."

[66] He also impliedly referenced his lawyer's advice, about 4 hours and 7 minutes into the interview. He commented that it did not matter if he talked to the

police because, at that point, there was nothing his lawyer could do for him. That was not long after Sgt Vardy had read to him a note stating “My name is Bobby Rogers. I am responsible for Colton Cook’s death”, which note was dated October 2020.

[67] That indicates that knowing the police had the note was a significant factor which motivated him to talk.

[68] About 11 minutes later, he asked Sgt. Vardy whether he would give him a cigarette. Sgt. Vardy said he would but that he was not giving it to him because he wanted him to talk. He responded: “Yes talking to ya anyways so.” That is a clear indication that he was choosing to talk to Sgt. Vardy and he knew he did not have to.

[69] In the statement, his answers were responsive to the questions and coherent.

[70] Some examples include those which follow.

[71] At the very beginning, before he left the interview room to retrieve bottles of water for him, Sgt. Vardy asked him if there was anything else he needed. He immediately responded that he needed two of his gabapentin medications, because he took them three times a day and the last time he had taken one was at three o’clock and it was nine o’clock then. That is consistent with: the time Cst. Martin

stated he gave him his gabapentin; the evidence regarding his daily recommended dosage; and the evidence regarding when the interview started. It shows he was able to recall his dosage and the last time he took it and was alert to the time at the start of the interview, which Sgt. Vardy had voiced for the recording. He even told Sgt. Vardy that his gabapentin pills were "out there in a green bottle".

[72] In response to Sgt. Vardy's questions, he had answered that his son had a baby boy. Sgt. Vardy asked: "How old would he be then?". He responded by asking whether he meant the baby before answering that he was probably a year.

[73] When Sgt. Vardy asked for confirmation that the Keith who he was referring to was Keith Siscoe, he did confirm that it was, but added for further accuracy, that he really goes by Keith Grant because he uses his mother's name.

[74] When he was asked whether he used a chainsaw to dismember the body, he responded that he did not think so and explained his answer by stating "you know how much mess that would a made in that house". He added that he used a knife.

[75] Then Sgt. Vardy asked: "Oh you cut yourself doing the knife?" Again, Mr. Rogers reasoned: "So you probably found my blood?"

[76] When asked whether he wanted to say something to Colton Cook's family, he responded that they did not want to hear from him, explaining that he would not want to hear from someone who had done that to his son.

[77] He even came back to earlier questions, such as when he stated that the old 22 might be in the barn.

[78] After stating that Wayne Crawford's only involvement was helping clean up the mess, he asked whether Mr. Crawford was there, at the detachment, at the time, and suggested that he probably was. That is another indication of presence of mind.

[79] In addition, Mr. Rogers stated that Keith Siscoe was not present at the scene of the killing and did not help clean up the house. We know that was not true, because Mr. Siscoe pled guilty to being involved in dealing with Mr. Cook's body after-the-fact.

[80] So, Mr. Rogers clearly chose what he did or did not say during the interview.

[81] His demeanor, his manner of speaking and the pace at which he talked during the interview were the same as when he testified on the *voir dire.*

[82] Considering these points, there is no doubt that he had an operating mind.

[83] I must also consider whether the cumulative effect of the circumstances was such that there is a reasonable doubt regarding the voluntariness of Mr. Rogers' statement to Sgt. Vardy.

[84] The video-recorded interview took place at the Yarmouth Rural RCMP Detachment. It started around 9:15 pm and ended at about 3:30 am, so it lasted over 6 hours, including times when Sgt Vardy left Mr. Rogers alone in the interview room, and when he took Mr. Rogers out so that he could smoke a cigarette or use the washroom.

[85] That is an interview of moderate length. However, it was after Mr. Rogers had been given from the time of arrest around 1:34 or 1:44 pm to eliminate any alcohol or drugs, eat and sleep.

[86] Mr. Rogers's responses showed he understood the subject matter of the incident that was being discussed.

[87] For the reasons already noted, it is clear that Mr. Rogers had an operating mind.

[88] He had been arrested that day at 1:34 or 1:44 pm. At that point, the arresting officer, Cst. Martin, told him he was being arrested for murder. Cst. Martin also readvised him of the reason for his arrest on arrival at the detachment around 3:00

pm. Sgt. Vardy reminded him twice that he was arrested for the murder of Colton Cook at the very beginning of the interview. Therefore, his jeopardy would have been clear to him throughout his time with the police, including during the entire interview.

[89] Cst. Martin also chartered and cautioned Mr. Rogers at the arrest scene then re-chartered and re-cautioned him at the detachment when they arrived at about 3:00 pm, including advising him of his rights to counsel and silence, and that anything he said could be used in evidence, as well as that everything he said was being recorded.

[90] Mr. Rogers did confirm he wanted to call a lawyer. It was not possible at the arrest location or much of the way to the Yarmouth Rural Detachment because of the lack of cell phone reception in the area.

[91] Mr. Rogers consulted with his lawyer of choice in person at the detachment from 4:49 pm to 5:46 pm. Cst. Martin had informed that lawyer of the investigation, as well as the reasons for arrest and charges.

[92] Sgt. Vardy did not tell Mr. Rogers he could call a lawyer. However, Mr. Rogers had already received legal advice. Sgt. Vardy asked him to confirm that, and there was no change of circumstance or jeopardy since that advice. Sgt. Vardy

also reminded Mr. Rogers that he did not have to talk to him and advised him twice that anything he said could be used as evidence.

[93] During the interview, at least five times, Mr. Rogers made reference to following his lawyer's advice not to say anything to the police.

[94] Sgt. Vardy told him that was good advice.

[95] He clearly subjectively understood his right to silence and there was nothing done to diminish the importance of that right. As noted in ***Tessier***, that is "persuasive evidence of voluntariness", though it would take on greater importance in a case where the suspect had not been cautioned, such as in ***Tessier***.

[96] As noted at paragraph 169 of ***R. v. Piatt***, 2021 NSSC 20:

> The secondary caution addresses a suspect's prior contacts with other officers. In general, it informs the accused that nothing said by the police prior should influence the accused in the decision to make a statement. It negates promises or inducements made in those contacts.

[97] Sgt. Vardy's discussion covered those points by telling Mr. Rogers that he did not want him to feel obligated to say anything because of anything the police he had already had contact with said to him.

[98] In addition, there was evidence or agreement showing lack of misconduct during any prior contact obviating the need for any secondary caution: ***R. v. Martin***, 2010 NSSC 383, paras 21 and 22.

[99] The evidence of the officers that testified clearly showed the absence of any threats, promises, inducements, oppression or trickery by police officers or agents of the police, during contact with Mr. Rogers.

[100] There is an agreed statement of facts that the four officers who had contact with Mr. Rogers, but did not testify, did not: offer any promise or inducements in exchange for a statement; make any threat of consequences if Mr. Rogers did not provide a statement; nor engage in oppressive tactics or unfair police trickery.

[101] From watching the recorded interview, it is clear that Sgt. Vardy treated Mr. Rogers in a respectful, courteous, polite and mostly non-confrontational manner. The tone of the conversation was friendly, even jovial at times.

[102] He offered Mr. Rogers food, water, cigarettes and bathroom breaks. Mr. Rogers did accept Sgt. Vardy's offer of water, which Sgt. Vardy obtained for him. He said he was not hungry, but asked for his gabapentin, which Sgt. Vardy obtained for him. Intermittently throughout the interview, Sgt, Vardy continued to offer Mr. Rogers food, water, use of a bathroom and cigarettes outside. Sgt. Vardy did take Mr. Rogers out to use the washroom and smoke cigarettes.

[103] Nothing Sgt. Vardy, or any other officer, did would shock the community or not be “in keeping with the socio-moral values at the very foundation of the criminal justice system”.

[104] Considering the cumulative effect of the circumstances of Mr. Rogers’ arrest, transport, detention and of the taking of the statement, there is no reasonable doubt that Mr. Rogers’ statement to Sgt. Vardy was voluntary.

[105] I find that the Crown has proven the voluntariness of Mr. Rogers’s statement to Sgt. Vardy beyond a reasonable doubt.

CONCLUSION

[106] For the foregoing reasons, I conclude that Mr. Rogers’ statement to Sgt. Vardy is admissible as evidence.

Pierre L. Muise, J.