SUPREME COURT OF QUEENSLAND

CITATION:	*R v Wills* [2015] QSC 378
PARTIES:	**R** **v** **WILLS, Dean Mark** (applicant)
FILE NO/S:	Indictment No 38 of 2013
DIVISION:	Trial Division
PROCEEDING:	Application pursuant to s 590AA of the *Criminal Code* 1899 (Qld)
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	9 February 2015
DELIVERED AT:	Brisbane
HEARING DATE:	5 February 2015, 6 February 2015, 9 February 2015
JUDGE:	Burns J
ORDER:	**The ruling of the court is that the evidence of the Crown witness, Kristopher James Warren, is excluded in its entirety**
CATCHWORDS:	CRIMINAL LAW – EVIDENCE – JUDICIAL DISCRETION TO ADMIT OR EXCLUDE EVIDENCE – EVIDENCE UNFAIR TO ADMIT OR IMPROPERLY OBTAINED - GENERALLY – where the applicant is charged on indictment with murder – where the victim was set upon by a group of assailants in an industrial shed at Southport – where the assailants decamped from the scene after loading the victim's body into a vehicle driven by one of them – where a male who was in the shed at the time of the attack may have witnessed the attack and/or assisted to load the body into the vehicle – where investigating police subsequently interviewed the male and obtained written statements from him – where at least four detectives participated in the interview – where the male was subjected to persistent, aggressive questioning and threatened by police – where the Crown intends calling the male as a witness in the prosecution case – where the applicant applies pursuant to s 590AA of the *Criminal Code* 1899 (Qld) to have the evidence of the witness excluded from the jury's consideration – whether the evidence of the witness is reliable – whether the evidence should be excluded in the exercise of the discretion conferred by s 130 of the *Evidence*

Act 1977 (Qld)

CRIMINAL LAW – EVIDENCE – JUDICIAL DISCRETION TO ADMIT OR EXCLUDE EVIDENCE – POLICE INTERROGATION – PROPRIETY OF POLICE QUESTIONING AND OTHER CONDUCT BY POLICE – GENERALLY – where the applicant is charged on indictment with murder – where the victim was set upon by a group of assailants in an industrial shed at Southport – where the assailants decamped from the scene after loading the victim's body into a vehicle driven by one of them – where a male who was in the shed at the time of the attack may have witnessed the attack and/or assisted to load the body into the vehicle – where investigating police subsequently interviewed the male and obtained written statements from him – where at least four detectives participated in the interview – where the male was subjected to persistent, aggressive questioning and threatened by police – where a formal record of interview of the male was conducted later that day and he was warned in accordance with the requirements of the *Police Powers and Responsibilities Act* 2000 (Qld) – where a written statement was obtained from the witness following the formal record of interview – where the Crown intends calling the male as a witness in the prosecution case – where the applicant applies pursuant to s 590AA of the *Criminal Code* 1899 (Qld) to have the evidence of the witness excluded from the jury's consideration – whether the evidence of the witness is reliable – whether the witness was a suspect within the meaning of s 415(1) of the *Police Powers and Responsibilities Act* 2000 (Qld) at the time of interview – whether the interview was conducted in breach of s 416, s 418 or s 431 of the *Police Powers and Responsibilities Act* 2000 (Qld) – whether the evidence should be excluded on public policy grounds

Criminal Code 1899 (Qld), s 590AA, s 245, s 246
Evidence Act 1977 (Qld), s 130
Police Powers and Responsibilities Act 2000 (Qld), s 415(1), s 416, s 418, s 431

BBH v The Queen (2012) 245 CLR 499; [2012] HCA 9, cited
Bunning v Cross (1978) 141 CLR 54; [1978] HCA 22, cited
R v Falzon [1990] 2 Qd R 436, cited
R v Grimes [2012] QSC 229, followed
R v Ireland (1970) 126 CLR 321; [1970] HCA 21, followed
R v McLean; Ex parte Attorney-General [1991] 1 Qd R 231, cited
R v Pohl [2014] QSC 173, cited
R v Roughan [2009] QCA 21, cited
R v Uittenbusch [2012] QSC 89, cited
R v Versac [2013] QSC 46, followed

Rozenes v Beljajev [1995] 1 VR 533, cited
Warmenhoven v The Queen [2006] QSC 64, cited

COUNSEL:	R Frigo for the applicant M Cowen QC for the respondent
SOLICITORS:	Peter Shields Lawyers for the applicant Office of the Director of Public Prosecutions for the respondent

HIS HONOUR: This is my ruling on an application brought by the defence pursuant to s 590AA of the *Criminal Code* of Queensland. By that application, the defence asks that the evidence of a proposed Crown witness, Kristopher James Warren, be excluded from the jury's consideration.

The accused, Dean Mark Wills, is charged on indictment with the murder of Darren Britza in March 2001. His trial is set down to commence before me on Wednesday (11 February 2015).

According to the Crown case, on or about 23 March 2001 the deceased was in attendance at an industrial shed situated at Minnie Street, Southport, when a white Commodore station-wagon containing a woman and two men arrived and reversed in. The deceased was set upon by the two male occupants from this vehicle. The deceased was brutally beaten, stabbed and possibly also struck with an instrument. It is the Crown case that the deceased died in consequence of the injuries inflicted by these assailants and that his body was wrapped in a tarpaulin or something similar, lifted into the back of the station-wagon and then taken from the scene. It is alleged by the Crown that the accused, Mr Wills, was one of the assailants.

On 2 March 2008, that is, almost seven years later, the deceased's remains were located in a shallow grave under a bridge at Boyland. In the police investigation that ensued, information emerged to the effect that Kristopher James Warren, may have been present in the industrial shed at the time of the killing and, relevantly, that he may have witnessed the attack on the deceased and/or assisted the assailants to wrap the body in the tarpaulin, or similar covering, to which I have referred. According to a formal record of interview which commenced at 4.58 pm on 11 November 2008 (Exhibit 1D), earlier that day

Warren had "*voluntarily surrendered himself into police custody*" and was conveyed to the police station at Broadbeach for questioning.

Warren was born on 28 June 1983 and was therefore 17 years of age at the time of the attack on the deceased. On the material before me, that is, the statements, interviews and evidence from the Committal Hearing which comprise Exhibit 1, Warren had a troubled upbringing, a poor level of education (having left school at the end of Year 8) and he had become involved in the use and supply of dangerous drugs, as well as other nefarious activities. He was living in the shed to which I have referred, sleeping in an area on the mezzanine level, and was being used as something of a "drug runner" by the person in control of those premises. By the time he was questioned by police on 11 November 2008, Warren was 25 years of age, gainfully employed and living with his partner and their three year old son on the Gold Coast.

When first questioned by police at the Broadbeach Police Station, Warren disavowed any direct knowledge of the attack on the deceased in 2001. He was then questioned by the following detectives during an interview which commenced at 3.33 pm that day: Senior Sergeant W, Sergeant M, Senior Constable G and Senior Sergeant T. There may, in addition, have been other police officers present at different times during the interview. The exchanges between Warren and the police officers during the interview were the subject of an audio recording which is in evidence before me.

During this interview, Warren was subjected to persistent aggressive questioning of a most intimidatory nature. He was threatened, insulted and generally treated in an appalling manner. Although the transcript of this interview forms part of Exhibit 1, there can be no substitute for listening to the recording. Quite apart from anything else, the tone adopted by the various police at different times throughout the interview are telling.

So far as threats of physical harm are concerned, they include the following (the references below are to the transcript which is in evidence as part of Exhibit 1 at Tab C):

> *I'll snap your fucking neck.*

At page 15.

> *You don't have to smile at me, 'cause I'll wipe the fuckin' thing off your face*.

At page 18.

> *Mate, I'm fuckin' close to doing something which I fuckin' think I need to do to fuckin' make you realise the severity of this.*

At page 12.

In addition to threats of physical harm, Warren's liberty was threatened several times:

> *I'll charge you with murder right now. I'll handcuff ya, I will put you in the watch house, and you'll be fucking in jail for fucking 15 years.*

Page 18.

> *You will go to jail tonight.*

Page 23.

> *You won't see your kid until that child is, is 15, 16 years of age.*

Page 23.

> *You're going in for murder and that'll be tonight.*

Page 23.

> *What we got to do is try and get you out of this spot. 'Cause you have a missus, you have a baby, and you now have a life. ... There's only one way to keep 'em, mate. There's only one way.*

Page 7.

> *Because honest to God, we are the only ones that can help you see your baby.*

Page 8.

> *Apologise to your missus and your kid. You won't fuckin' see 'em again.*

Page 12.

> *You've had a family, you've got a fuckin' missus, and you got a fuckin job. Wanna keep it? ... There's only one way to fuckin' keep it.*

Page 13.

I am assisted by the written submissions of counsel, who have done their best to isolate the various statements of significance that were made to Warren during the course of this interview but, even then, I do not regard the statements so isolated as being exhaustive of the statements of concern.

It is apparent, and I find, that the detectives involved in this questioning were intent on obtaining from Warren a version that matched the information they had received regarding at least two matters: first, observations they believe Warren may have made in relation to the attack on the deceased and, second, Warren's involvement, if any, in the wrapping of the body prior to it being loaded into the station wagon and taken from the scene.

I find – borrowing from the language used by de Jersey CJ in *R v Falzon* [1990] 2 Qd R 436 at 437 – that the clear message to Warren was that, unless he accepted the allegations that were being put to him and gave the information that was being sought, he would be regarded as lying and things would go very badly for him. I also find that the various threats operated as a real inducement to Warren to, in effect, tell the police what they wanted to hear. For example, it was put to Warren on a number of occasions that he had helped to wrap the body. Warren's denials of any involvement in that regard were aggressively rejected until at last he said that he had been so involved. Similarly, Warren's early insistence that he was in no position to see the assailants during the attack – he was hiding behind a wall of tyres on the mezzanine level – was continually challenged until he succumbed under what I find to have been an inordinate and quite unjustified degree of pressure to say that he had made at least some observations.

Almost needless to say, Warren was not given the benefit of any of the safeguards that exist for the questioning of suspects under the *Police Powers and Responsibilities Act* 2000 (Qld). I will say a little more about that topic in a moment.

The conduct on the part of the detectives who questioned Warren during this particular interview was described by Mr Frigo, who appears for the accused, as "breathtakingly confronting". The learned Crown prosecutor, Mr Cowen QC, also accepted that the conduct was "outrageous" and, in written submissions, "lamentable". For myself, I regard the conduct of the police involved in the questioning of Warren as shameful. It has no

place in the investigation of offences in this State, no matter how serious the offence under investigation might be. Indeed, the more serious the offence, the more important it is that an investigation is carried out with the utmost propriety and in accordance with the requirements of the *Police Powers and Responsibilities Act*.

Mr Cowen QC attempted to distinguish this case from that considered by de Jersey CJ in *Falzon* by submitting that Warren was not alleged to be an accomplice to the murder. However, the revised Pre-Trial Memorandum lodged on behalf of the Crown contains the following entry (under the heading, "Evidence of an accomplice, a prison informer or an indemnified witness"):

> *Paul Dewar, Matthew Ireland, Kristopher Warren (as a potential accessory after the fact)*

I agree with that entry. Depending on what stage of the investigative process police were questioning him, Warren said that he had some involvement in the disposal of the body, at least at the scene before the station wagon left the premises. Of course, he may have available a ready defence of duress but, at the time he was questioned, police believed that he had that degree of involvement and, for that reason, he was at least potentially an accessory after the fact in their eyes. He was therefore a suspect within the meaning of s 415(1) of the *Police Powers and Responsibilities Act* 2000. As such, he was entitled to all of the safeguards that are enshrined in that statute for the questioning of suspects.

I record these further matters.

The interview which is Exhibit 1C commenced at 3.33pm and concluded a little over an hour later. At 4.58pm on the same day, Sergeant M and Senior Constable G commenced a formal record of interview of Warren during which the feature that Warren had "*voluntarily surrendered*" into police custody was established (at page 5 of the transcript). Importantly for present purposes, Warren was also warned in accordance with the *Police Powers and Responsibilities Act*. He was informed that he had a right to communicate with a lawyer before the questioning continued and cautioned in accordance with s 431 of the Act. At the Committal Hearing, some of the evidence of which is part of Exhibit 1, Detective G was cross-examined as to why such cautions had been administered. At page 4-37, the following exchange appears:

> *And then you go and start a formal interview in which you give him warnings as if he was a suspect? Oh, I was – didn't see him as a suspect. I did it as a safeguard.*
>
> *As a safeguard? Yes.*
>
> *Well, what could be the point of giving him warnings at that stage after all of this? Well, just in case, because he – maybe he might have decided to tell the whole truth and he might have said he was the killer. So I gave him some warnings just in case.*

It is also of relevance that, following the formal record of interview on 11 November 2008, a written statement was obtained from Warren by Senior Constable G. It was received as Exhibit 1B and consists of 39 paragraphs. Its purpose was stated (in paragraph 3) to be:

> *[To] provide a proof of evidence so [it] may be considered for an indemnity against prosecution. I have made this statement voluntarily and on the understanding that nothing contained in this statement will be used against me in any court proceedings other than in proceedings in respect of the falsity of information provided by me.*

In the result, an indemnity was in fact extended by the then Attorney-General of this State indemnifying Warren against prosecution. That occurred on 4 May 2011. For reasons which the material does not adequately explain, the indemnity was later revoked.

In the end, after considering these and other aspects of the material, I have little difficulty in rejecting the proposition that Warren was being questioned as a mere witness. Rather, I find that he was at least a suspect in the sense conceded by Detective G at the Committal Hearing. As such, the interview of Warren was conducted in breach of the *Police Powers and Responsibilities Act*: ss 416, 418 and 431. Furthermore, the threats of physical harm to which I have referred are probably enough to constitute an offence against s 246 of the *Criminal Code*. See the definition of assault in s 245, extending as it does to threats of harm.

I find that the overall effect of this conduct on the part of the police was such as to cause Warren to provide a version which he would otherwise not have been prepared to give. This came about through an overbearing combination of intimidation and inducement. I find that this operated to provide the essential content of the formal record of interview, which commenced at 4.58pm on 11 November (Exhibit 1D), the written statement

provided that evening consisting of 39 numbered paragraphs (Exhibit 1B), the written supplementary statements provided on 12 November 2008 (Exhibit 1E) and 17 November 2008 (Exhibit 1F) and the further interview conducted on 17 November 2008 (Exhibit 1G).

…

The Crown has submitted that Warren's evidence is an important thread in a case which is entirely circumstantial. First, his evidence is intended to be used as "recognition evidence", it being submitted that Warren is the only witness who recognised the accused as one of the assailants. Second, it was submitted that Warren's evidence as to the observations he is said to have made about what occurred during the attack and the wrapping of the body advances the prosecution case. It follows that, if I were to exclude Warren's evidence, the Crown case will be considerably weakened.

I have serious reservations about the reliability of Warren's evidence, at least so far as it is to be advanced as "recognition evidence". I refer to Exhibit 1C. At page 19, Sergeant M asks Warren to refer to the people he saw arriving at the shed by name. Warren replied:

> *There was Jade and there was three people. There was Jade Clarke, Dean, Dean, I don't remember what his last name is, his name's Dean, and someone else. Dean is the very well known psycho person on the Gold Coast.*

At page 35, M asks Warren:

> *Did you know Dean's last name?*

Answer:

> *No, it was Johnson or D – no, it was Dean [INDISTINCT] and um, – Dean fucking.*

M wants to know "Dean's" surname and, further down on page 35, Warren says:

> *I only know because he went to school with my, you - , my eldest brother, Paul. He went to school with him.*

At page 44, M asks this question:

> *A bloke called Dean?*

Warren says:

Yeah. Well Dean.

Then, this part of the conversation appears to have occurred outside of the presence of Warren. Sergeant M says:

He said Dean Johnson. He, He's a bit sketchy on that.

In the formal record of interview which commenced at 4.58 pm on 11 November (Exhibit 1D), at page 20, M asks Warren, with reference to the person called "Dean":

What's his last name?

Warren responded:

I can't, it can't, I still haven't got it come to me, aye?

M:

What'd you think it was?

Warren:

I think it was Johnson or Jur, no Jurd was the other Dean 'cause there was Dean Jurd and there was another Dean. Willsy, Dean Willsy.

M says:

Wills?

Warren responds:

Yeah, they used to call him Willsy.

M:

Dean Wills, How old's Dean?

Warren:

I would not have a clue.

Further questioning ensued about Dean's age, his relationship to Warren's older brother and which school each had attended. It was established – if, that is, what Warren said can

be relied on – that Warren's brother and this person, Dean Wills or "Willsey", had attended Benowa State High School.

From that uncertainty, one then finds in the written statement taken from Warren (at paragraph 15) the following positive assertion:

> *The second person who got out of the car was Dean Wills, who we call "Willsie". He was seated in the front passenger's seat. I knew it was "Willsie" as he used to go to school with my brother Paul and I haven't seen him for years.*

There is material before me that establishes, or suggests at least, the making of enquiries by one of the police officers of the principal of the Benowa State High School regarding the possible identity of this person, Dean, such inquiries having been made either on the evening of 11 November or the following day. The material also discloses that Warren had never met the applicant. He had seen him in the company of his brother several years before the attack in 2001. I refer in this regard to the cross examination of Warren at the Committal Hearing, at pages 9-63 to 9-65. I was also informed by counsel that Warren was unable to identify the accused as one of the assailants from a photo board.

This "recognition evidence" was the subject of express comment in the now superseded Crown Pre-Trial Memorandum which is attachment A to the submissions of Mr Frigo dated 3 February 2015 and forms part of Exhibit 3:

> *Warren identifies Wills as present but the identification is not conclusive nor of significant weight.*

In my view, this "recognition evidence" needs to be treated with considerable caution.

So far as the account given by Warren as to what occurred in the shed is concerned, his account developed incrementally over the course of the interview (Exhibit 1C) and, indeed, as one reads what occurred following the interview, it continued to develop in the formal record of interview, subsequent statements and final interview.

Mr Cowen QC has submitted that the following facts revealed by Warren during the interview (Exhibit 1C) betrayed direct knowledge of the attack: that the body was wrapped in a blue tarpaulin; that the body was also wrapped in a blanket; that the vehicle

was reversed up to the shed; that the vehicle used was a white Holden Commodore; and that the name of one of the assailants was "Dean".

Dealing with the last-stated fact first, that will only assist in an assessment of the reliability or otherwise of what Warren said if Warren correctly identified the accused as one of the assailants. The other facts are said or submitted by Mr Cowen QC to have been, in effect, exclusively within the knowledge of Warren when he advanced them to the police during the interview which is Exhibit 1C. It should however be remembered that Warren spoke with the witness Dewar the day after the attack in the shed. The conversation was brief, with Dewar warning Warren to not say anything to anyone about what had occurred. It is, however, possible that Dewar provided some of the information which Warren revealed in his interview. It is also possible that, in the intervening seven-year period, Warren may have spoken to others with information, first or second-hand, about what is said to have occurred. Nonetheless, I do accept the force of what Mr Cowen QC has submitted as one way of testing the reliability of the account Warren ultimately gave.

I have also considered the authorities provided to me by Mr Cowen on the question of whether it would be appropriate for me, on the hearing of this application, to consider what Warren told his mother some time after the attack in 2001. It was submitted by Mr Cowen QC in writing on 4 February 2015 that:

> *Contemporaneous with the killing in 2001, Warren told his mother, Brenda Warren, all about it.*

I have considered what that witness has said in a statement dated 23 November 2009. Having considered the evidence from her which forms part of Exhibit 1, I have difficulty accepting that she was told by Warren, with reference to the incident, "all about it". Certainly, according to her, Warren told her that "Willsey" had come to the shed looking for the deceased and that an attack ensued which involved the deceased and at least "Willsey". Her statement makes it clear that the reference to "Willsey" is a reference to the applicant. I do however note that her written statement post-dates the interview which occurred on 11 November 2008. Nonetheless, again, I accept the force of what Mr Cowen QC has submitted as to how this evidence assists me to assess the reliability or consistency of what Warren told the police on 11 November 2008.

Lastly, I refer to the evidence Warren gave at the Committal Hearing and, in particular, to the passages appearing at pages 9-56 to 9-58. Those passages were the subject of submissions by Mr Frigo, who highlighted that Warren, whilst under oath, confirmed that, whilst he was present during the attack, he was not in a position to see the attack.

There are, as both counsel conceded, potentially two separate discretions in play. There is the discretion which is reserved by s 130 of the *Evidence Act* for me to exclude evidence if satisfied that it would be unfair to an accused person to admit that evidence and the discretion arising on public policy grounds.

So far as the fairness discretion is concerned, I was referred to a number of authorities including *Falzon*, *R v McLean; Ex parte Attorney-General* [1991] 1 Qd R 231, *Warmenhoven v The Queen* [2006] QSC 64, *R v Roughan* [2009] QCA 21, *R v Uittenbusch* [2012] QSC 89, *Rozenes v Beljajev* [1995] 1 VR 533 and *R v Grimes* [2012] QSC 229.

Having considered those authorities, I find myself in agreement with the observations made by Peter Lyons J in *Grimes* at paragraph 44. There, after considering many of the same authorities to which I have just made reference, at paragraph 44, his Honour said:

> *The authorities establish two relevant principles. The first is that the unreliability of evidence is not, of itself, a sufficient reason to exclude it. The second is that evidence may be excluded if its admission would result in an unfair trial. Situations in which a trial might be unfair would include cases where the directions of a trial judge may well not be sufficient to enable the evidence to be assessed properly by a jury (such as in cases where its prejudicial nature may continue to affect a jury, notwithstanding the directions of a trial judge); or where evidence which might well be unreliable cannot be tested by cross-examination.*

Also see *BBH v The Queen* [2012] HCA 9 at paragraph 99 per Hayne J.

Although I have serious reservations about the reliability of Warren's evidence in the sense that there is a risk, in my view, that his statements are not entirely truthful and reliable, but rather a response to what he felt the detectives questioning him wanted him to say, I am not persuaded that it would necessarily be unfair to the applicant to admit them into evidence. I have reached that conclusion for essentially three reasons. First, the interview itself (Exhibit 1C) was recorded. The recording can be made available to the

jury. It follows that conduct of that interview by the police can be fully explored at trial. Second, to assist in that process, Mr Cowen QC confirmed that the police officers involved will, if required, be made available to be called at the trial. The jury can then make their own assessment of the reliability of Warren's account. Lastly, I can give directions to the jury to warn them of the risks I have identified.

It follows that I am not persuaded that this is an appropriate case for the exercise of the discretion reserved under s 130 of the *Evidence Act* 1977.

That, however, is not the end of the matter because I am persuaded that the evidence of Warren should be excluded in the exercise of my discretion to exclude evidence on public policy grounds: *R v Ireland* (1970) 126 CLR 321 and *Bunning v Cross* (1978) 141 CLR 54 at 74.

In *Ireland*, Chief Justice Barwick identified the competing considerations:

> *On the one hand there is the public need to bring to conviction those who commit criminal offences. On the other hand there is the public interest in the protection of the individual from unlawful and unfair treatment. Convictions obtained by the aid of unlawful or unfair acts may be obtained at too high a price.*

As Daubney J observed in the *R v Pohl* [2014] QSC 173 at paragraph 16:

> *These principles must be balanced against each other to determine whether to admit or exclude the evidence.*

His Honour went on to observe, again at paragraph 16, that this exercise was restated by Stephen and Aickin JJ in *Bunning v Cross* as "the desirable goal of bringing to conviction the wrongdoer" as pitted against "the undesirable effect of curial approval, or even encouragement, being given to the unlawful conduct of those whose task it is to enforce the law."

In the same judgment, Daubney J adopted the observations made by Applegarth J in *R v Versac* [2013] QSC 46. I also adopt the same observations which appear at paragraphs 5, 6 and 7 of his Honour's judgment. In particular, at paragraph 5, his Honour said:

> *The discretion "is necessary to protect the processes of the courts of law in administering the criminal justice system." This judicial integrity principle*

> *holds that courts should not admit the tainted fruits of unlawful conduct, lest the administration of justice be brought into disrepute. The discretion also serves the policy of deterring unlawful conduct by those entrusted with powers of law enforcement.*

And then, at paragraph 6, Applegarth J set out a number of the relevant factors to be weighed in the exercise of the discretion of whether to exclude or admit evidence. I have had regard to each of them.

Lastly, Applegarth J made the point, at paragraph 7, that:

> *Although fairness is relevant to the public policy discretion, it is not its focus. Instead, considerations of public policy are engaged, and fall to be applied in the particular circumstances of the case. The weight given to competing factors depends on those circumstances. For example, the particular circumstances may deprive the principle of deterrence of much weight. The unlawful conduct may have been the subject of disciplinary procedures, counselling or other remedies which sanction wrongful conduct or deter its repetition. If this is not the case, exclusion of the evidence may be appropriate to both uphold the judicial integrity principle and to deter such conduct in the future. If such unlawful conduct is tolerated by those in higher authority, then the case for exclusion will be stronger.*

I know nothing about what, if any, action has been taken in relation to the conduct of the police officers involved in the interview of Warren. There is reference in the material to some process before the then-named Crime and Misconduct Commission but, beyond that, I am not assisted to determine whether or not other means of deterrence have been employed.

That made plain, the following factors are, to my mind, significant.

The conduct was deliberate. It was undertaken with complete disregard for Warren's rights under the *Police Powers and Responsibilities Act* and involved conduct potentially in breach of s 246 of the *Criminal Code* of Queensland. The police also conducted themselves in complete disregard of the rights of any person who might later be charged on the face of the evidence obtained from Warren. The interview could easily have been conducted in an appropriate and lawful manner, but plainly it was not.

Further, it is likely from the way in which the evidence was obtained from Warren, that the police conduct has affected the cogency of the evidence so obtained. In this regard, I

am cognizant that unfairness to an accused person is not a decisive factor in the exercise of this particular discretion but, nonetheless, it is a factor that I have weighed in the balance. As such, my findings and remarks in connection with the application that I exercise my discretion on fairness grounds apply. The evidence is important to the Crown case but not indispensable to that case. I have also kept at the forefront of my mind, throughout, the feature that the offence charged on this indictment is the most serious on the criminal calendar.

In the end, though, I am simply not prepared to give the imprimatur of this court to the conduct engaged in by the police officers on 11 November 2008. Conduct such as that is to be deplored, not condoned.

I exclude the evidence of Kristopher James Warren in its entirety.