SUPREME COURT OF QUEENSLAND

CITATION:	*R v Fraser* [2004] QCA 92
PARTIES:	**R** **v** **FRASER, Leonard John** (appellant)
FILE NO/S:	CA No 163 of 2003 SC No 263 of 2002
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	2 April 2004
DELIVERED AT:	Brisbane
HEARING DATE:	9 February 2004
JUDGES:	de Jersey CJ, Davies JA and Mackenzie J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Appeal against conviction dismissed**
CATCHWORDS:	EVIDENCE – ADMISSIBILITY AND RELEVANCY – IN GENERAL – EVIDENCE UNLAWFULLY OR IRREGULARY OBTAINED – where appellant convicted of one count of manslaughter and two counts of murder – where appellant made statements and admissions to a witness who was helping police - whether the evidence of a witness as to statements made by the appellant should have been excluded because of the methods used to obtain the evidence – whether the trial Judge should have admitted evidence obtained from the appellant while in the custody of police pursuant to an order under the *Police Powers and Responsibilities Act* 2000 EVIDENCE – ADMISSIBILITY AND RELEVANCY – SIMILAR FACTS – IN GENERAL – RELEVANT PRINCIPLES – whether evidence of the appellant's previous conviction of murder should have been admitted as propensity or similar fact evidence *Criminal Law Amendment Act* 1894 (Qld), s 10 *Police Powers and Responsibilities Act* 2000 (Qld), s 230, s 233 *Bunning v Cross* (1978) 141 CLR 54, distinguished

McDermott v R (1948) 76 CLR 501, considered
Pfennig v R (1995) 182 CLR 461, applied
R v Broyles [1991] 3 SCR 595, considered
R v Juric (2002) 4 VR 411, considered
R v O'Keefe [2000] 1 Qd R 564; [1999] QCA 50, CA No 332 of 1998, 5 March 1999, considered
R v Swaffield; Pavic v R (1998) 192 CLR 159, considered

COUNSEL: M J Byrne QC for the appellant
P F Rutledge for the respondent

SOLICITORS: Legal Aid Queensland for the appellant
Director of Public Prosecutions (Queensland) for the respondent

[1] **de JERSEY CJ**: On 9 May 2003 a jury in the Supreme Court convicted the appellant of three offences: the manslaughter of Julie Dawn Turner at Rockhampton on or about 28 December 1998 (he was acquitted of her murder); the murder of Beverley Leggo at Rockhampton between 25 February 1999 and 31 March 1999; and the murder of Sylvia Benedetti at Rockhampton between 16 April 1999 and 22 April 1999. He appeals against those convictions.

[2] The appellant had additionally been indicted on a fourth charge of murder, in relation to Natasha Ryan. Uniquely in Queensland's history, Natasha Ryan was found alive in the course of the trial. The Crown then entered a nolle prosequi on that count.

[3] The prosecution case was that the appellant violently murdered each of the women and disposed of their bodies at various locations near Rockhampton. His motivation was at least partly sexual. (In relation to the homicide of Julie Turner, the jury was obviously not satisfied of proof beyond reasonable doubt of the intent requisite for murder.) At an earlier trial, the appellant had been convicted of the murder at Rockhampton, on or about 22 April 1999, of Keyra Steinhardt.

[4] While awaiting trial on the charge of murder in relation to Keyra Steinhardt, the appellant on numerous occasions made statements incriminating him in the killings of all four persons, to a fellow inmate Quinn, whom he had met while in prison some years before. Quinn approached the police and agreed to pass on what the appellant was telling him. Subsequent conversations were recorded. During those conversations, the appellant said things about the killings which only the person responsible could have known. For example, he disclosed where the remains of the bodies of the victims could be found, that a ligature would be found around Beverley Leggo's throat and the location of some of Julie Turner's clothing. On 3 December 2001, the appellant drew maps showing where the remains would be found, and on 21 December took police officers to the hitherto undiscovered remains of Julie Turner and Beverley Leggo, and to the place where a member of the public had earlier discovered the remains of Sylvia Benedetti. From a certain stage in his conversations with Quinn, the appellant appreciated the fact that Quinn was passing on the information to the police; the appellant's preparedness to provide information from that point is explained by, variously, his wish to enhance his prospects of being detained at the John Oxley Memorial Hospital rather than in prison, and his apparent wish to have the police believe that another person, whom

he named "Squeaky", was responsible for the killings. On one of the bases of the defence case, the appellant disposed of the bodies for "Squeaky", "Squeaky" having carried out the killings.

[5] The Crown case was based in part on the appellant's statements to Quinn. But it was appreciated the appellant's statements, so far as they were incriminating, should desirably be seen to be supported independently. Accordingly, the Crown was permitted to lead, as similar fact evidence, evidence of the appellant's murder of Keyra Steinhardt. The jury became aware that the appellant had been convicted of her murder. The defence had submitted that none of this evidence was admissible, or that it should have been excluded in the exercise of the learned trial Judge's discretion; that is, evidence of statements made by the appellant to Quinn, evidence of the appellant's taking the police officers to the location of the remains of the victims at Rockhampton, and evidence of the murder of Keyra Steinhardt. The admission of that evidence is challenged by the grounds of appeal.

[6] Before coming to the grounds of appeal, it is necessary to say something of the circumstances of the killings. I deal with them in chronological order. My purpose is to seek to highlight points of commonality and distinction, before directly addressing the issue of the admission of the evidence in relation to Keyra Steinhardt as part of the proof of the instant counts.

Julie Turner

[7] Julie Turner, who was 39 years of age, was killed in the early morning of Monday 28 December 1998. She had previously attended the Airport Liberties nightclub in Rockhampton city.

[8] Bank records show a withdrawal from the appellant's account a few minutes before midnight on 27 December 1998 in the city area, and the withdrawal of $50 by means of an automatic teller machine situated approximately 150 metres from the nightclub.

[9] The appellant and Ms Turner had known each other. The appellant had at an earlier time offered to help extract Ms Turner from a domestic situation she found unsatisfactory.

[10] Ms Turner's skeletal remains, skull missing, were found on 21 December 2001 in bushland at Kinka Beach east of Rockhampton. The appellant directed the police to the site and had previously drawn a map accurately showing the location. The cause of death could not be established because of the condition of the skeleton.

[11] The missing skull was potentially significant because the injuries to the other victims – to which I will come – included head injuries.

[12] In his conversations with Quinn, the appellant also accurately referred to the location of some of Ms Turner's clothing (a bra and a sandal strap), on vacant land elsewhere.

[13] In those conversations, the appellant gave two incriminating, although contrasting, accounts of his involvement in this killing. The first was that he met her outside the nightclub and gave her a lift, an argument ensued, he struck her in the throat and

killed her, then left her body in the Nankin Creek area. Much later on, and during the phase when the appellant was seeking to persuade the police that "Squeaky" was the killer, the appellant claimed Ms Turner was strangled with her own bra near the vacant land referred to earlier.

Beverley Leggo

[14] Ms Leggo, 36 years of age, was killed at Rockhampton probably in early March 1999. She was last seen at 10:30am/11:00am on 1 March 1999 when she attended at the Bank of Queensland in the city area in order to see the manager. He was not then available. She failed to return an hour later, as she had been requested to do.

[15] Bank records show withdrawals from the appellant's bank account in Rockhampton on 1 March 1999.

[16] The appellant and Ms Leggo knew each other.

[17] On 2 March 1999, some of Ms Leggo's property was found near the Nerimbra boat ramp on the Fitzroy River. A strap on a bag was broken. The appellant was familiar with that area.

[18] Ms Leggo's skeletal remains were located on 21 December 2000, lying on the ground, covered by lantana, in bushland at Nankin Creek. There was no clothing associated with the remains. A bra and black panties were tied around the neck area. The facial area of the skull showed substantial injury. A pathologist assigned, as the cause of death, ligature strangulation and head injuries.

[19] Prior to the discovery of the body and Ms Leggo's belongings, the appellant disclosed information of their whereabouts. He drew a map locating Ms Leggo's remains, and indicated that they would be found lying on the ground. He also disclosed where her handbag, thrown into the river, would be located. He directed the police to the location of her body. He also disclosed that she had been strangled with a bra and panties.

[20] On 10 April 1999, the appellant took Elizabeth Green and her 13 year old daughter to Nankin Creek for a swim, to an area less than 20 metres from where Ms Leggo's remains were found. While they were at the creek, the appellant went off alone for some time in the direction of where the remains were later found.

[21] To Quinn, the appellant made various incriminating statements. The first version, given in November 2000, was that he picked up Ms Leggo as she was hitchhiking. He killed her and put her body in an overburden pit, leaving her bag at the river with a view to covering his tracks.

[22] A week or so later, he said he picked her up at a shopping centre, killed her, and put her body in the overburden pit. He subsequently said he killed her by hitting her in the throat in the course of an argument, and that he threw her handbag into the river.

[23] Then in January 2001, while contending the murderer was "Squeaky", the appellant claimed Ms Leggo was strangled with her panties, he indicated the location of her clothes near the boat ramp, and he referred to knickers being around her neck.

[24] Finally, later in January 2001 and again in March 2001, the appellant spoke of knocking Ms Leggo out at the swimming hole and pulling the panties tightly around her neck.

Sylvia Benedetti

[25] Ms Benedetti, then 19 years of age, was killed on the night of Sunday 18 April 1999 in a vacant room at the Queenslander Hotel in Rockhampton. The hotel was then due for demolition.

[26] The appellant and Ms Benedetti knew each other. They were last seen together on 18 April 1999 at 6:00pm/6:30pm in the Rockhampton Mall. Ms Benedetti's skeletal remains were found by a member of the public, partially buried in sand, at Sandy Point near Rockhampton on about 20 November 2000. There was no clothing on the body. She had apparently been struck with a heavy instrument on the left side of the face a number of times. Head injuries were the cause of death. The appellant drew a map indicating the location of Ms Benedetti's remains, and later took the police to near where the member of the public had located her remains.

[27] Ms Benedetti was apparently killed in a vacant room of the Queenslander Hotel, which as I have said was due for demolition. A large quantity of blood consistent with hers was found in the room, and some of her clothing was located in a freezer unit. On 21 April 1999, the appellant was told by someone that the Queenslander Hotel was being demolished. He responded: "They can't do that". There is evidence placing the appellant in the vicinity of the hotel later that day, and later again, at a place a short drive from where Ms Benedetti's remains were later found.

[28] Blood consistent with Ms Benedetti's was found a few days later in the boot of the appellant's car, and on a cigarette paper in the glove box of that vehicle.

[29] In his conversations with Quinn, the appellant said Ms Benedetti was killed by multiple blows to the left side of the face, and that a towel had been used to clean up her blood. He claimed on 14 December 2000 to have heard a noise, to have entered the room, to have seen Ms Benedetti staring, with blood over her, and to have struck her with a piece of wood, placing her body in the boot of his car and burying her in a shallow grave at Sandy Point. In mid-January 2001, while seeking to implicate "Squeaky", the appellant said that Ms Benedetti was killed during an argument following an attempt to do a "deal" at a hotel.

Keyra Steinhardt

[30] Keyra Steinhardt, nine years of age, was killed on 22 April 1999 in bushland in suburban Rockhampton while walking home from school. She was struck from behind by a blow of sufficient strength to fracture her skull.

[31] The appellant had been seen walking in the area shortly before the attack.

[32] When located, Ms Steinhardt's body was naked, lying on the ground, with her jumper over her head and upper torso, partly concealed by grass and vegetation. Although the precise cause of death could not be established, death was consistent with her throat having been cut.

[33] The Crown case against the appellant, presumably accepted by the jury at his trial, was that having killed Ms Steinhardt, the appellant left the scene, collected his car, drove back to the area, collected her body and then dumped it in bushland a short drive out of Rockhampton. The appellant took the police to the area a fortnight after the killing.

[34] On the day of the attack, police located blood consistent with Ms Steinhardt's on the hinge of the boot of the appellant's car. Similar blood was found on a knife subsequently located in the appellant's garage. In his interviews with the police, the appellant claimed that he had lent his car to the person "Squeaky", and that "Squeaky" had possession of the vehicle at the time of the attack on Ms Steinhardt.

Grounds of appeal

[35] I turn now to the grounds of appeal.

1. Admission of the evidence of the appellant's murder of Keyra Steinhardt

The ground of appeal is expressed as follows:

> *"1. Evidence that the appellant murdered Keyra Steinhardt should not have been admitted:*
>
> *(a) The evidence was not of similar facts. Steinhardt was a child abducted in broad daylight with witnesses. None of the other charges relate to such facts.*
>
> *(b) Further, the very fact that the trial Judge admitted this evidence as having 'strikingly similar aspects of the death of these four women', prior to the re-emergence of one such women (sic), alive, demonstrates the error.*
>
> *In other words, the evidence was not of such calibre that there was no reasonable view of it other than supporting an inference that the Applicant killed Natasha Ryan and, hence, the other persons.*
>
> *2. Given such weaknesses in the evidence, even if it was technically admissible, this was a case where its enormous prejudicial effect should have resulted in its discretionary exclusion."*

The learned trial Judge admitted this evidence, as probative of the appellant's guilt in relation to the three counts before the jury, as propensity or similar fact evidence admissible on the basis discussed in *Pfennig v R* (1995) 182 CLR 461, 480-1 and *R v O'Keefe* [2000] 1 Qd R 564.

[36] The relevant test is expressed in this way in *Pfennig*:

> "…propensity evidence is not admissible if it shows only that the accused has a propensity or disposition to commit a crime or that he or she was the sort of person likely to commit the crime charged. But it was accepted that it is admissible if it is relevant in some other way, that is, if it tends to show that the accused is guilty of the offence charged for some reason other than that he or she has committed crimes in the past or has a criminal disposition. It was

> also accepted that, in order to be admissible, propensity evidence must possess "a strong degree of probative force" or the probative force of the evidence must clearly transcend the prejudicial effect of mere criminality or propensity. Very often, propensity evidence is received when there is a striking similarity between different offences or between the evidence of different witnesses. In particular, it was recognized that the existence of such striking similarity is necessary in cases such as *Sutton* [(1984) 152 CLR 528; 11 A Crim R 331] where the prosecution seeks to lead the evidence on the basis that the similarity between different offences founds a conclusion that they must have been committed by the one person with the consequence that evidence which would be admissible to show that an accused committed one of the offences is admissible to prove that he or she committed another or the others of them."

[37] The learned trial Judge noted that the appellant's motor vehicle was used to transfer the deceased bodies of each of Keyra Steinhardt and Sylvia Benedetti; that those deaths occurred within a period of three to four days; that the appellant's statements to Quinn were inextricably interwoven, implicating him in all alleged deaths; and that the circumstances of those deaths were strikingly similar – all bodies or skeletons were found in naked condition, save that of Ms Benedetti; the remains were located within a relatively confined area on the outskirts of Rockhampton; and all victims had apparently suffered severe injuries to the head or throat.

[38] Mr Byrne QC, who appeared for the appellant, emphasized points of distinction between the case of Ms Steinhardt and the others. Hers was a case of abduction in daylight hours; she was a nine year old child, whereas the other victims were adults; by contrast with the others, Ms Steinhardt was previously a stranger to the appellant; and a knife was used on Ms Steinhardt. In addition, the range of evidence available against the appellant in relation to Ms Steinhardt was more comprehensive than in the other cases, including evidence of eye-witnesses to the attack, evidence of the selection of the appellant as the offender from a photo board, and the presence of his footprint in loose soil at the scene of the killing. (I should say I do not consider that, in principle, that feature – the availability of more comprehensive evidence – tends against the admissibility of the evidence of the circumstances of the killing on this basis.) Mr Byrne submitted that the learned Judge erred in admitting evidence in relation to the killing of Ms Steinhardt as probative of the appellant's guilt of the murders charged, or that he should have excluded that evidence in the exercise of his discretion, acknowledging the sort of risk to which the court referred in *O'Keefe* (at 573-4).

[39] Consistently with *O'Keefe*, two questions needed to be addressed: first, was the propensity evidence of such calibre that it should reasonably be viewed only as supporting an inference of guilt of the offences charged; and second, should the propensity evidence be admitted, would the whole of the evidence in the case – assuming its accuracy and truth – have the capacity, reasonably, to exclude all innocent hypotheses?

[40] Mr Rutledge, who appeared for the respondent, pointed to the aggregation of these circumstances: that within about four months at Rockhampton, four female persons were killed; in relation to the last two, blood consistent with that of both victims

was located in the appellant's vehicle; three of the victims were last seen in the city centre, and the fourth, Ms Steinhardt, was attacked in a bushland allotment nevertheless within a generally built-up area; the remains of all four were found north east of Rockhampton in bushland areas, and importantly, the appellant's residence was in north east Rockhampton; in each case, the victim's remains were unclad, suggesting a sexual motivation; in each case little effort had been made to conceal the body, and the remains were discovered only a short distance from vehicular access; and there was strong basis for concluding that each had been killed because of blows to the head.

[41] Mr Rutledge submitted in these terms:

> "The objective improbability of –
> - four females being attacked in the Rockhampton area within a period of four months;
> - in circumstances clearly pointing in each case to a sexual motivation for the attack;
> - where the victim is violently killed – that violence in at least three of the cases involving blows to the head which would have incapacitated the victims;
> - where the murderer then dumps the bodies in bushland type areas north east of Rockhampton;
> - the victim is naked when dumped; and
> - there has been a minimal amount of effort taken to conceal the bodies and striking similarity in method of disposal (three on top of the ground, one in a shallow grave in sand) other than leaving them in bushland areas;
>
> is such … that there was no reasonable view other than supporting an inference that the same offender was responsible for each of the attacks."

[42] I accept that submission. Each of the questions formulated in *O'Keefe* should be answered yes. The feature of the emergence, alive of Natasha Ryan, extraordinary though it was, was not fatal to the similar fact approach, and because of that extraordinary character. The jury was aware of this circumstance, and properly directed on the use which could be made of the evidence relating to the killing of Keyra Steinhardt. In my view this first challenge, whether based on grounds of admissibility or discretion, fails.

2. Evidence of Mr Quinn

The ground of appeal is cast in these terms:

> *"3. The evidence of the witness Quinn should have been excluded because it was obtained in reckless disregard of the rights of the Appellant whose freedom of choice to speak to the Police had been seriously infringed."*

It was submitted for the appellant that Quinn's evidence was obtained "in reckless disregard of the rights of the appellant whose freedom to choose to speak to police was seriously impugned": a police informer was given "free reign" to gain information, and that continued, with substantial official resourcing, over a couple of years.

[43] It is not suggested the relevant statements made by the appellant were not potentially incriminating. They clearly were. The issue is the rightness or fairness of holding those statements against the appellant at his trial, because they were made while he was charged and in custody, and having regard to the investigative means employed against him.

[44] For the appellant, Mr Byrne emphasized that for at least much of the requisite period, the appellant had, in relation to the police, exercised his so-called right to silence. The relevant police officers had regularly reminded him of that right. Mr Byrne also pointed to the apparent dedication with which the police garnered this support from Quinn, including steps taken to ensure the accuracy of the information passed on. The appellant would characterize Quinn as a police agent who unfairly exploited the appellant notwithstanding the appellant's inclination not to assist the police.

[45] In relation to this issue, one has regard to the discussion in *R v Swaffield; Pavic v R* (1998) 192 CLR 159. See also *R v Juric* (2002) 4 VR 411. Principal considerations are whether the appellant should be regarded as having spoken voluntarily, the reliability of the information he gave, and whether admitting the evidence on a discretionary basis would give the prosecution an unfair forensic advantage. The discretionary consideration must be addressed in recognition of the desirable goal of bringing wrongdoers, especially those guilty of murder, to conviction. It also must be acknowledged that the circumstance that a person makes incriminating statements while in custody awaiting trial is not, of itself and without more, sufficient to justify the exclusion of evidence of covertly recorded incriminating material.

[46] Mr Rutledge helpfully grouped the relevant disclosures into chronological phases.

[47] ***The first phase*** covered the period 22 April 1999 to 16 November 1999. It will be recalled Keyra Steinhardt was murdered on 22 April 1999. Later that day the appellant was taken into custody in relation to her abduction. Over following days he was interviewed by the police on numerous occasions, leading eventually to his taking the police to the location outside Rockhampton where Ms Steinhardt's body was found on 6 May 1999. The appellant was that day arrested for her murder. From about 1 July 1999, while on remand awaiting trial for the murder of Ms Steinhardt, the appellant began talking to Quinn about the murders. It was the appellant who first approached Quinn. From 15 July 1999, Quinn commenced making notes of the conversations. The appellant told Quinn on a number of occasions that he wanted to go to John Oxley Memorial Hospital, so that he would be a patient rather than a prisoner. On 16 July 1999 Detective O'Keefe, who had previously arrested Quinn on fraud charges, went to see Quinn at Quinn's request. Quinn advised that the appellant said he wanted to talk about serial killings. Detective O'Keefe next saw Quinn on 23 September 1999 and asked Quinn to talk to him at a later stage "if anything comes along". On 10 November 1999 the appellant was arrested in relation to the murder of Ms Benedetti, and declined to be interviewed. Detective O'Keefe did not see Quinn again until over a year later on 26 October 2000. After 16 November 1999, when Quinn and the appellant had a falling out because the appellant accused Quinn of being a police informer, there was an 11 month break during which no discussion of the murders took place between them.

[48] The following points should be made about this first phase. The appellant made general admissions to multiple murders. It was Quinn who approached the police, to tell them that the appellant was talking to him. The police adopted the attitude of simply being prepared to accept any information which came their way. They did not issue instructions to Quinn. They were simply receiving information.

[49] ***The second phase*** covered the period 26 October 2000 to 20 December 2000, commencing about a month after the appellant's conviction for the murder of Keyra Steinhardt, and before he was sentenced. The appellant repeated the theme that he wanted Quinn's help to get him into the John Oxley Memorial Hospital, saying that he wanted to get everything out of the way. Conversations between Quinn and the appellant were covertly recorded from 13 December 2000. During this phase, the appellant made detailed admissions of involvement in the murders, and indicated where he disposed of the bodies. He provided maps which accurately identified the location of the bodies of Ms Leggo, Ms Benedetti and Ms Turner. It was clear from the conversations that the appellant knew the maps were being sent to the police: sometimes he complained that the police were not finding the bodies. At one stage he told Quinn that if he were allowed, he would go to Rockhampton to show them the bodies on the ground. While the appellant later indicated he did not want to go to Rockhampton, over the days following 14 December 2000 he changed his mind. Quinn then informed the police that the appellant was willing to go, and that led to the trip to Rockhampton on 21 December 2000.

[50] In summary, in relation to this phase, the appellant, having recently been convicted of the murder of Keyra Steinhardt and awaiting sentence, decided to enlist Quinn's help to get him into the John Oxley Memorial Hospital as a restricted patient. He apparently saw it as in his interest, in order to achieve that objective, to reveal the location of the three bodies. To that end, he supplied Quinn with maps which he obviously intended should go to the police, some of which accurately showed where the bodies were located. Once again the police were not issuing instructions to Quinn, but simply receiving the information the appellant gave Quinn.

[51] ***The third phase*** concerns the events of 21 December 2000. That was the day the appellant and Quinn went with the police to Rockhampton. The appellant was woken early, and without complaint met Detective Hickey. One of his first (controlling) comments to Detective Hickey was: "Just shut up and do as you're told." The appellant directed the police to the locations at Nankin Creek and Kinka Beach where the remains of Ms Leggo and Ms Turner were found. He also took the police to Emu Park, to near where the remains of Ms Benedetti had earlier been located by a member of the public. It is clear he was fully advised of his right to have a solicitor present, and not to go with the police or answer questions, but voluntarily participated.

Admission of evidence of phases 1-3

[52] In my view all of the evidence covering those phases was properly admitted. (I later deal briefly again with the phase three evidence in relation to the last ground of appeal.) The following considerations militated in favour of the admission of the evidence: the appellant and Quinn were long-standing friends; Quinn offered the information to the police in circumstances not involving impropriety in either; the issue was the alleged commission of the most serious of crimes, and the police were

obliged to approach their task with assiduity; Quinn did not engage in any unreasonable probing during his contacts with the appellant, and the appellant should be regarded as having acted quite voluntarily; indeed, the appellant knew that at least some of the information he was giving Quinn was being passed on to the police, and the appellant was using the exchanges, at least in part, for his own purposes, insofar as he was interested in admission to John Oxley Memorial Hospital.

[53] Had Quinn overborne the appellant by unfair questioning, or what amounted to cross-examination, or had he persisted notwithstanding the appellant's protests that he did not wish to speak to him, or had the police been actively directing Quinn in his pursuit of the appellant (cf *Juric*), the position would have been different. But where the appellant spoke voluntarily with Quinn, in part to advance his own interests as he saw things, and expecting at least some of the information to be passed on to the police, the prosecution was in my view entitled to use the incriminating material which emerged in proof of these extremely serious charges. The circumstance that directly in relation to the police themselves, the appellant had earlier exercised his right of silence, should not have led to the exclusion of the evidence. That itself needs to be assessed against his expectation that the information given to Quinn would in any event be passed on to the police, notwithstanding that he apparently believed that that could work to his advantage.

[54] ***The fourth phase*** arguably raises a different consideration. It covers the period 29 December 2000 to 12 July 2001. During this phase, the appellant began to develop the explanation that the real murderer was someone else, the person named "Squeaky". The appellant's account of his own involvement moved from a claim that he dumped the bodies for someone else, to a claim that "Squeaky" took him around and showed him the locations of the remains of Ms Turner, Ms Leggo and Ms Benedetti. This version first appeared in a conversation with Detective Hickey on 1 January 2001: the appellant said he had got rid of most of the bodies for "someone – I can't say who". The appellant subsequently gave Hickey further information implicating "Squeaky". On 10 January 2001, the appellant having asked to see Detective Hickey, told him he had dumped the bodies of Ms Benedetti, Ms Turner, Ms Leggo and Keyra Steinhardt, and claimed he was being paid for doing the dumping, and that the police should investigate the person "Squeaky".

[55] The arguably distinctive aspect of this phase arose on 12 January 2001, when Quinn told the appellant that if the appellant gave him all of the details of the missing women, he, Quinn, could devise a "plan" to blame someone else. The appellant agreed. The intention was that information given by the appellant would be passed on by Quinn to one of his prison visitors, who would then pass it to the media, the idea being that "Squeaky" would claim knowledge of facts only the murderer would know, thus exculpating the appellant. Quinn later wrote down, at the appellant's dictation, the account which it was contemplated would be passed to the media. It was the appellant who controlled the content of the document. It was to be in the form of a letter from the person named "Squeaky", and the appellant expected that once in the hands of the media, it would be passed to the police, but not as having come from the appellant, rather as having come from "Squeaky". In fact, contrary to his arrangement with the appellant, Quinn provided the hand-written material directly to the police, as being material of which the appellant was the author.

[56] The written material began with these paragraphs:

> "I want you to air this to the world by the tabloids and the electronic media.
>
> I want you to understand that I am responsible for all of the murders in the Rockhampton area. You will never know my real name but you can refer to me as Squeaky. Now I will give information on the murders that only the real culprit would know. This information would never have been published by media sources."

[57] It may be noted that during this phase, the appellant was regularly speaking with the police. It was he who called Detective Hickey to the prison. His intention was to provide information designed to have the police believe that "Squeaky" was the murderer. In this phase, from 1 January 2001, the appellant was plainly not exercising his right not to answer questions from the police in relation to the alleged murders. He spoke with the police, at his own instance, on many occasions, always declining the offer to have his solicitor present. He was actively engaging in a course of deception designed to distract attention from himself.

Admission of evidence of phase 4

[58] Save arguably for what follows, I would again consider the evidence of this phase clearly admissible on the same basis of admissibility as detailed above in relation to the evidence of the first three phases. The arguable complication, to which substantial oral submissions were directed at the hearing of the appeal, is that Quinn departed from the plan and deceived the appellant by furnishing the written material, not to the media, but directly to the police, and informing the police of the appellant's deception, whereas the appellant had intended that the information be transmitted to the police by the media, and not attributed to him. The question is whether that should in fairness have led to the exclusion of the evidence of this phase, at least as from 12 January 2001 when the plan was first raised between the appellant and Quinn.

[59] There is no doubt the information was discreditable to the appellant, and one could not be confident that had it been excluded, the convictions would still have followed. But to my mind, the admission of the evidence was justified.

[60] Mr Byrne submitted, probably correctly, that by this stage, Quinn was acting as an agent for the police. On one view, that lent significance to the deception he worked upon the appellant. The issue on that basis would be whether the police should in effect have been held accountable for that deception, leading to the exclusion of the evidence of the plan on discretionary grounds. It is important however to note that the police had no "directing" involvement in any of this. It was not their suggestion that Quinn raise this "plan" with the appellant. Although Quinn might during this phase be characterized as a police agent, his communications with the appellant were apparently not even influenced by police officers, and it was entirely his own decision to inform the police of the development of the "plan" and to pass on the written material. It would in my view be unduly formal or technical (cf. *Bunning v Cross* (1978) 141 CLR 54, 75-6) to exclude the evidence just because the person who deceived the appellant may technically be styled an agent of the police. The police were themselves at this stage approaching the matter as they had always done: simply receiving such information as was passed to them. In those

circumstances, I do not consider that Quinn's deceit, vis a vis the appellant, in passing the information after 12 January to the police rather than the media, should have denied the prosecution the forensic advantage of leading that relevant evidence. The admission of the evidence was not, in my view, "unacceptable having regard to prevailing community standards" (*Juric*, at 446): on the contrary, the public interest was legitimately advanced by its being admitted. Addressing the other *Swaffield* considerations, the evidence was relevant and incriminating, and the statements voluntarily made. The appellant did not intend his authorship of the material to be revealed, but that is the usual situation with covertly recorded material. The circumstance that Quinn in that way duped the appellant should not have led to the exclusion of this relevant and incriminating material.

[61] There are two other background considerations. First, most of what was disclosed in this phase, and particularly in the written material prepared by Quinn upon the appellant's dictation, was not new, but had already been covered in communications between the appellant and Quinn, and the appellant and the police. Mr Rutledge analysed the written material in order to highlight what information was there revealed for the first time. It should not in my view have contributed to a view that evidence of what had occurred in this phase, from 12 January 2001 when the "plan" was first mentioned between the appellant and Quinn, should have been excluded, especially noting that its accuracy was otherwise confirmed, as appears below.

[62] The new information was that Ms Leggo was strangled with her own black panties (black panties were found around her neck at post mortem); the location of Ms Turner's brown sandals (a sandal matching Ms Turner's was found there); and a description of the clothing she was wearing (a similar bra was located); that Ms Benedetti was hit on the left side of her head (left-side head injuries were confirmed at post mortem), that the towel used to clean up the blood was placed in a hole in the wall (and was located there), and that her clothing was placed in an old refrigerator "lift lid freezer" (verified).

[63] Second, it should be noted that before there was any suggestion of the plan (on 12 January 2001), the appellant had two days earlier explicitly raised the "Squeaky" scenario, voluntarily, with Detective Hickey. Indeed, the alleged involvement of "Squeaky" had been raised in evidence at the Keyra Steinhardt trial. What transpired after 10 January 2001 should be regarded as an extension, or further development, of that scenario. In the overall context, and perceiving the strength of the Crown case against the appellant, a reasonable juror would probably have condemned this scenario as fanciful, but what was potentially significant was that the appellant would conspire with Quinn to put this misleading material into the public arena.

[64] Balancing relevant features, the Crown was in my view properly permitted to lead that evidence. In summary, the information was relevant, incriminating and voluntarily given. While it was used in a way the appellant had not intended (a common situation with covertly recorded material), the police were not themselves involved in securing it, or in the deception involved in its disclosure by Quinn, and acknowledging the duplicitous character of the whole manoeuvre, the public interest was properly served by the admission of the evidence.

[65] In my view this ground of appeal was not sustained.

3. Rockhampton evidence

This final ground of appeal states:

> *"4. The evidence of events and conversations involving the Appellant in Rockhampton following his removal from prison by Police should have been excluded as:*
>
> *(a) The Magistrate who made the order to remove the Appellant was deliberately misled; and*
>
> *(b) The witness Quinn was falsely represented and used by the Police and correctional authorities as the Appellant's "buddy" during such removal.*"

It was very important to the Crown case that the appellant be shown to have identified the sites of the remains, clothing etcetera, on the ground at Rockhampton. To secure the appellant's presence at Rockhampton, because he was in custody the order of a Magistrate was necessary. That was made, following the appellant's indication that he consented to what was proposed. It is the legitimacy of the Crown's reliance on that consent which is essentially challenged.

[66] The contention that the Magistrate was "deliberately misled" was not sustained.

[67] While it is true that in taped conversations with Quinn on 13 and 14 December 2000, the appellant said that he would not go to Rockhampton for this purpose, he changed his mind, and on 18 December 2000 Quinn informed the police that the appellant had agreed to do so. It was on that basis the Magistrate made the order. Consistently, the appellant subsequently cooperated in travelling to Rockhampton, and voluntarily and accurately, identified the relevant sites to the police. I refer to what I have already said about these events.

[68] In these circumstances, the learned Judge properly admitted this highly probative evidence.

[69] I would order that the appeal be dismissed.

DAVIES JA:

1. The question in issue

[70] I have had the advantage of reading the reasons for judgment of the Chief Justice. Subject to some specific matters to which I shall refer in discussing what has been described in argument and in his Honour's reasons as phase 4 of the conversations between the appellant and the witness Quinn, I am content to accept his Honour's statement of the relevant facts and contentions. I also agree with his rejection of grounds 1, 2 and 4 of the notice of appeal and with his reasons for doing so.

[71] Ground 3 contended that:

> "The evidence of the witness Quinn should have been excluded because it was obtained in reckless disregard of the rights of the Appellant whose freedom of choice to speak to the Police had been seriously infringed."

[72] That ground tended to change somewhat during the course of argument but it remained primarily one that the evidence of Quinn referred to should have been excluded on the ground of unfairness because of the means by which it was

obtained. I agree with the Chief Justice that the learned trial judge did not err in refusing to exclude the evidence described by his Honour in phases 1, 2 and 3 for the reasons which he gives. The difficulty in this appeal, as his Honour has recognized in his reasons, lies in the admission of the evidence of exchanges between the appellant and Quinn during phase 4 which was from 29 December 2000 to 12 July 2001.

2. Some further facts

[73] It is necessary to place phase 4 in the context of changes in the appellant's willingness to speak to police. When on 10 November 1999 he was arrested for the murder of Sylvia Benedetti, the appellant refused to be interviewed. In the meantime he had been speaking to Quinn, a fellow inmate, about "serial killings".

[74] However, at the latest, from 1 December 2000, the appellant in his conversations with Quinn, plainly knew or at least appeared to assume that what he was telling Quinn about the location of the bodies of Benedetti, Turner and Leggo, and maps which he was drawing to identify their location, were being passed on to the police. At that stage, it seems, he thought that this would help him in his endeavour to be sent to a psychiatric hospital instead of to a gaol although it is not clear why he thought this. What is also not clear is whether he realized that his detailed admissions to the murders of each of those victims was also being passed on to the police.

[75] These conversations with Quinn culminated in the appellant agreeing to go with police to the location of the bodies which he did on 21 December 2000. However, to the police he claimed to know the location of Benedetti's body only from television reports, though there had been none; and he declined to say how he knew the location of the other bodies. So the identification by him of the location of the bodies was not, it seems, intended to be an admission by him that he murdered each of these victims. It is in this context that we come to phase 4.

[76] The suggestion from the appellant that another person had committed the murders the subject of this appeal and that the appellant did no more than dispose of the dead bodies for that other person, appears to have first emerged in a conversation between the appellant and Detective Hickey on 1 January 2001 at a meeting which the appellant requested. He volunteered further information about this to Hickey on 10 January 2001. During this conversation he said that he dumped the bodies of Benedetti, Turner, Leggo and Steinhardt but said that he was getting paid for doing the dumping and that they should investigate a person called "Squeaky". He repeated and elaborated somewhat on these statements in later conversations with Detective Hickey on 29 January, 12 February, 22 February, 28 February and 12 March.

[77] In the meantime the appellant told Quinn on 3 January 2001 what he was saying to the police; that he had a debt to someone of $10,000 and that he went for a drive to get rid of "something" to clear the debt. Because the appellant had already made detailed admissions to Quinn about his murdering each of the victims the subject of this appeal, he knew when he told Quinn, as he did on that date, the story which he was telling to the police that he was simply dumping the bodies for someone else, that Quinn would know that this was a story which the appellant was making up to explain to police how he knew where the bodies were. That the appellant knew this appears from what he said to Quinn at this time.

[78] By this time Quinn had been, for some time, an agent of the police for the purpose of passing on any information which the appellant gave him with respect to any of these three murders. This was pursuant to an arrangement made between Detective O'Keefe and Quinn on 16 July 1999; and on 30 July 1999 O'Keefe registered Quinn as a police informant in respect of this matter. But his authority was limited to passing on information to police "if anything comes to hand". Detective O'Keefe said that he was not asked to seek Fraser out or to try to elicit information from him.

[79] Thereafter from time to time Quinn passed on information to police which he had received from the appellant. From 13 December 2000 conversations between Quinn and the appellant were, with Quinn's consent, secretly recorded. But as I have already mentioned, from, at the latest, 1 December 2000 until 1 January 2001 when, for the first time, the appellant told Detective Hickey that he disposed of the bodies for someone else, it seems that the appellant knew or at least assumed that at least some part of what he was telling Quinn would be passed on to the police.

[80] The next relevant conversation between the appellant and Quinn was on 12 January 2001. On that day Quinn told the appellant that if he gave Quinn details of the missing women in Rockhampton (presumably details not previously known) he, Quinn, could devise a plan that may blame someone else for the crime. In his evidence Quinn described the plan as one "that I created to extract information from Fraser regarding the missing women". He also said in evidence that his purpose was to forward that information on to the police. But of course he did not tell the appellant that. In this conversation the appellant said that it must be a plan to blame Squeaky and involve giving the police information that they didn't already know.

[81] In a second conversation on that day Quinn told the appellant that any information that the appellant could give him on Squeaky he would give to a visiting friend to send out to the media. The appellant was, according to Quinn, very excited about having the information passed on to the media. This was the genesis of the plan which was devised between them that the appellant would dictate a confessional letter containing information which only the murderer would know; that Quinn would have it smuggled out of the prison; and that arrangements would be made for it to be distributed to various media outlets as a letter from the real murderer, Squeaky.

[82] From about 1 January 2001, it seems, the appellant's purpose was to cast blame for the murders on Squeaky and to claim that his only involvement was in disposing of the bodies for Squeaky. And it is plain that, from 12 January, the incriminating disclosures which were made by the appellant to Quinn were made pursuant to Quinn's plan which Quinn deceived the appellant into thinking was one to cast blame on Squeaky but which, in reality, was a means of extracting incriminating evidence from the appellant to be passed on to the police.

[83] There is no doubt that these disclosures and a letter in the form of a "confession" by Squeaky, all of which Quinn subsequently passed on to police, contained highly incriminating, and objectively verifiable, evidence against the appellant which had not been disclosed by him before, though some of it had already been objectively verified. This included that the murderer strangled Ms Leggo with her own black panties which were left around her neck; the location of further items of clothing of Julie Turner and identification of the clothing that she was wearing at the time of her murder; and that Sylvia Benedetti was hit a number of times with timber on the

left side of her head; that the towel used by the murderer to wipe up her blood was placed in a hole in the fibro wall above the stairs of the Queensland Hotel and that her clothing would be found hidden in the freezer of an old refrigerator on the premises. This evidence was highly incriminating because it was evidence which no-one except the murderer, and those who conducted searches of the locations of the bodies and, in the case of Benedetti, of the scene of her murder, could have known.

[84] By 12 January 2001 the police had given no instructions to Quinn to obtain incriminating evidence from the appellant, let alone as to how he should do so. It is true that the police facilitated Quinn's recording of conversations with the appellant by providing him with the means by which to do that including, ultimately, placing a recording device in Quinn's cell. But there is no evidence that, at any time, they instructed him or even requested him to elicit information from the appellant. Indeed the only evidence on this question, that of Detective O'Keefe, was to the contrary. Moreover there is no evidence that Quinn discussed with police his plan to deceive the appellant before or during its implementation.

3. The relevant principles and their application

[85] The question is whether this evidence should have been excluded either because it was not voluntarily made or in the exercise of his Honour's discretion on the ground either of unfairness or of public policy. The starting point for a discussion of the law on these questions must now be *R v Swaffield; Pavic v R*.[1]

[86] In that case the joint judgment of Toohey, Gaudron and Gummow JJ identified four bases for rejections of statements by an accused, only three of which were arguable in that case and are in this. They are that it was not voluntarily made, that it would be unfair to the accused to admit it and that it would be unacceptable to admit it on grounds of public policy.[2]

(a) whether the appellant's evidence was voluntarily given

[87] In *McDermott v R*[3] Dixon J stated the relevant principle in the following terms:

> "But it is also a definite rule of the common law that a confessional statement cannot be voluntary if it is preceded by an inducement held out by a person in authority and the inducement has not been removed before the statement is made …"

[88] Relevantly here the question is whether "an inducement held out by a person in authority" caused the disclosures in question. The police had given no instructions to Quinn to elicit information from the appellant but appeared content, by 12 January, to accept the benefit of whatever incriminating admissions the appellant made during his conversations with Quinn. However none of this, in my opinion, could be taken as authorizing Quinn, expressly or implicitly, to practise the deceit upon the appellant which he did. In my opinion, therefore he was not a "person in

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1 (1998) 192 CLR 159. I have elsewhere criticized the joint judgment of Toohey, Gaudron and Gummow JJ and the judgment of Kirby J in that case. See (2002) 76 ALJ 170 at 177 - 179. But of course I accept and apply what their Honours said there in deciding this appeal.

2 At [50] - [52].

3 (1948) 76 CLR 501 at 511.

authority" within the meaning of the above statement or within the meaning of s 10 of the *Criminal Law Amendment Act* 1894.

(b) whether it was unfair to use this evidence against him

[89] The first point which should be made here is that there could be no doubt about the reliability of this evidence. Much of it is tape recorded and the circumstances in which it was conveyed conduced to its reliability. Moreover it was, for the most part, objectively verifiable.

[90] Secondly, this evidence was disclosed to Quinn in what the appellant thought was an attempt to deflect blame from him and place it on Squeaky by revealing facts which only the murderer would know and attributing knowledge of them to Squeaky.

[91] Thirdly, the appellant was not, at the time the plan was devised or during these disclosures, exercising his right to silence. On the contrary, he was speaking freely to police, indeed at his request, but he was telling them that he had disposed of the bodies for Squeaky, thereby implying that it was Squeaky who had committed the murders. Had he been given the opportunity to choose whether to tell the authorities what he was telling Quinn during this period it is plain that he would have declined.

[92] Fourthly, Quinn deceived the appellant into believing that, if he disclosed incriminating information, it would be attributed to Squeaky, whereas his real plan was to extract incriminating information from the appellant in order to pass it on to police; and the relevant evidence was obtained by that deception.

[93] And fifthly, as already mentioned, this deceit was not authorized by the police.

[94] With those matters in mind, I turn to the discussion of the unfairness discretion by the High Court in *R v Swaffield; Pavic v R*.[4] Toohey, Gaudron and Gummow JJ in their joint judgment said:[5]

> "Unreliability is an important aspect of the unfairness discretion but it is not exclusive. As mentioned earlier, the purpose of that discretion is the protection of the rights and privileges of the accused. Those rights include procedural rights. There may be occasions when, because of some impropriety, a confessional statement is made which, if admitted, would result in the accused being disadvantaged in the conduct of his defence."

[95] A little later their Honours said:[6]

> "In the circumstances of this case, the admissions were elicited by an undercover police officer, in clear breach of Swaffield's right to choose whether or not to speak. The Court of Appeal was right in its conclusion and this appeal should be dismissed."

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4 (1998) 192 CLR 159.

5 At [78].

6 At [98].

[96] Kirby J stated the principle to be applied in somewhat similar terms to that stated in the joint judgment. His Honour said:[7]

> "In the case of covertly obtained confessions, the line of forbidden conduct will be crossed if the confession may be said to have been elicited by police (or by a person acting as an agent of the police) in unfair derogation of the suspect's right to exercise a free choice to speak or to be silent. Or it will be crossed where police have exploited any special characteristics of the relationship between the suspect and their agent so as to extract a statement which would not otherwise have been made."

[97] When, in the joint judgment, their Honours speak of impropriety, and Kirby J in his judgment speaks of forbidden conduct, they mean, I think, impropriety or forbidden conduct by police or by their authorized agent. Quinn had no specific or even general authority from the police to deceive the appellant in order to obtain incriminating evidence from him. And although the police did not impose any specific limitation on him as to how he might obtain evidence from the appellant, I do not think that either his conversations with Detective O'Keefe or the subsequent conduct of the police in supplying Quinn with the means of recording conversations with the appellant authorized Quinn, or could be reasonably viewed as conferring any authority upon him, to so deceive the appellant. On the contrary his authority up to that point had been only to pass on any relevant information which he received.

[98] This case is therefore distinguishable, in this respect, from *R v Juric*[8] in that what took place between the appellant and Quinn was not in consequence of any direction given to Quinn by police. In *Juric* the evidence in question was of conversations between Juric and a fellow prisoner, Foley, as to the manufacture of a false alibi. There was a conflict between the evidence of Foley and a police officer as to whether Foley's initial instructions included to bring up with Juric whether he had an alibi or not. But it was not disputed that, after the original discussion between Foley and Juric with respect to a false alibi, the police officer was told of this discussion and instructed Foley to pursue it which he did. On the contrary, in this case the police had no knowledge or even suspicion of Quinn's plan to deceive the appellant, or even that he had done so until much later, and nothing which they had said or done encouraged that course. Whether or not Quinn's conduct in deceiving the appellant may properly be described as impropriety, it was not impropriety by the police or by a person acting as their agent.

[99] There is a further matter to which I should refer in this respect. In *Juric* the court seemed to accept as correct a statement by Iacobucci J in *R v Broyles*[9] that the authorities may not take the benefit of actions of their agent which exceed his instructions. But that was after his Lordship had defined a person as a state agent for the purposes of the relevant exchange if that exchange would not have taken place, in the form and manner in which it did, but for the intervention of the state or

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7 At [155].

8 (2002) 4 VR 411.

9 [1991] 3 SCR 595 at 611 - 612; a case relied on in other respects by the court in *Swaffield*. The passage in *Juric* is at [60].

its agents.[10] The statement that the authorities may not take the benefit of actions of their agent which exceed his instructions was made on the assumption that a person was a state agent in accordance with this definition. If that definition were applied to this case, Quinn would probably have been a police agent for the purpose of the relevant exchanges between him and the appellant because if he had not been engaged and encouraged, by the supply of recording equipment, to pass on relevant information to the police he would probably never have embarked upon this deceit.

[100] However I would not be prepared to accept that, in considering the exercise of this discretion, Quinn was a police agent for the purpose of deceitfully eliciting incriminating confessions from the appellant merely because the police had encouraged him to pass on any relevant admissions which the appellant made to him. On the contrary, it seems to me, he would not be a police agent for that purpose unless either the police had instructed or encouraged him in that deceit or their instructions to him could be said to have encompassed that conduct. It is one thing to say that a police officer remains a state agent notwithstanding that he may have acted improperly, and even in breach of his authority, in eliciting incriminating admissions from an accused. But it is quite another thing to say that where, as here, the police do no more than accept an offer by a third party to pass on information received from an accused, and by supplying him with recording equipment encourage that course, and that third party, without the consent or even knowledge of the police, embarks on a plan to deceive the accused into making damaging admissions, he becomes a police agent for that purpose.

[101] In the circumstances in which the evidence was plainly reliable and, though it was obtained by deceit, it was deceit by Quinn acting entirely outside any authority which he was given by police, I do not think that there was any relevant unfairness in admitting it.

(c) whether it was contrary to public policy to admit this evidence[11]

[102] Substantially for the reasons which I discussed when dealing with the question of fairness I do not think that the answer to this question can be in the affirmative. The evidence was reliable and highly probative of a very serious offence and, in my opinion, it was disclosed in consequence of a deception by Quinn, for which the police were in no way responsible. The community would, I think, be justifiably outraged if, in those circumstances, the evidence were excluded.

[103] For those reasons I agree with the Chief Justice that the learned trial judge was right to admit the evidence adduced in phase 4. It follows that I agree that the appeal must be dismissed.

[104] **MACKENZIE J:** The appellant was tried on counts alleging the murder of four women at Rockhampton. A nolle prosequi was entered on one count on the eighth day of the trial when it was discovered that the alleged victim, Natasha Ryan, had been in hiding for reasons of her own and was still alive. On 9 May 2003 the appellant was convicted of the murders of Beverly Leggo and of Sylvia Benedetti. He was convicted of the manslaughter of Julie Dawn Turner. There was a rational

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10 At 608.

11 *Bunning v Cross* (1978) 141 CLR 54.

basis for the acquittal of murder in her case, since on one version of events the jury may have had a reasonable doubt about the existence of an intent to kill in her case.

[105] In an earlier separate trial, the appellant had been convicted of the murder of a schoolgirl Keyra Steinhardt who was attacked by the appellant when she was walking through a vacant block of land in Rockhampton on her way home from school. The appellant was apprehended for her murder within a short time of the killing. Traces of her blood and that of Sylvia Benedetti were found in various places in a Mazda motor vehicle belonging to him. It was one element of his version of events in the Keyra Steinhardt trial, given soon after his apprehension, that he had lent his vehicle to a person he knew as Squeaky on the day of the killing. A person with that nickname and the surname nominated by the appellant had been called at that trial, as he was at the present trial, and gave evidence that he was not in Rockhampton during the relevant period.

[106] After the verdict had been returned in the Keyra Steinhardt trial, the Crown applied for an indefinite sentence which was imposed on 9 November 2000. Some of that background information is relevant to grounds which will be discussed shortly.

[107] The first two grounds for appeal are that evidence that the appellant murdered Keyra Steinhardt should not have been admitted as evidence of similar facts and, even if the evidence was admissible, the prejudicial effect should have resulted in its discretionary exclusion. One issue related to the emergence of Natasha Ryan from hiding. It was said that this falsified the basis of admission since it was obvious that there was not a credible case that Ms Ryan was dead. For reasons which appear later, this, in my view, does not falsify the basis of the admission of the evidence.

[108] *Pfennig v R* (1995) 182 CLR 461 at 480–481 sets out the applicable principle. The fact that blood of both Sylvia Benedetti and Keyra Steinhardt, who were killed within a few days of one another, was found in the appellant's vehicle was relevant to the identity of the killer of each of them, even though Ms Benedetti was a young woman of 19 and Keyra Steinhardt a child of nine. The evidence of the presence of blood in the appellant's vehicle was capable of assisting the jury to reach the conclusion that whoever had killed one of the women had killed the other. In the case of Keyra Steinhardt, there was eyewitness and other evidence tending to connect the appellant with her killing as well as evidence suggesting that there was sexual interference with her.

[109] The link between Ms Benedetti and Keyra Steinhardt in my view weakens the appellant's argument that evidence of Keyra Steinhardt's murder was not admissible. It is true that Keyra Steinhardt was murdered in the mid-afternoon and that there was no evidence that she knew or had met the appellant prior to her death. There was also evidence that a knife with her blood on it was found at the appellant's home. While the state of her body did not permit a definitive conclusion to be drawn, it was consistent with her throat having been cut at some time. It is also true that the objective evidence in her case was much more detailed than in any of the others.

[110] Having said that, it is not appropriate to describe many of the features identified by the appellant as ones making it unfair to admit the evidence concerning Keyra Steinhardt's murder on discretionary grounds. Evidence tending to prove the

identity of the person whom the jury might have thought was linked to both Keyra Steinhardt's and Ms Benedetti's killings does not have that quality, even though it almost exclusively related to the death of only one of them, apart from the presence of the other's blood in the vehicle. The fact that evidence of the identity of the killer of Keyra Steinhardt was strong does not amount to inadmissible prejudice if the evidence was otherwise admissible.

[111] Returning to the issue of whether admission of the evidence for the purpose for which it was used offended against the rules for admission of propensity evidence, there were a number of features that were not dissimilar, to use a neutral term for the purpose of discussion, between the individual cases. Ms Turner's skeletal remains with the skull missing, were found on top of the ground, covered with palm leaves in a bushland area east of Rockhampton. There was no clothing on the body. Ms Leggo's skeletal remains were located in bushland to the east of Rockhampton on the top of the ground covered by lantana. There was a substantial injury to the facial area of the skull, suggestive of being caused before death. She had a ligature made of her pants and brassiere tied around her neck. There was no other clothing on the body. Ms Benedetti's skeletal remains were found, partly buried in sand, east of Rockhampton with severe injuries to the left side of the face consistent with her having been struck a number of times. Her blood was found in a room of a disused hotel, in a pattern indicating a violent attack. The cause of death was head injuries. There was no clothing on her body when it was found.

[112] Keyra Steinhardt was knocked to the ground by a punch that fractured her skull. There was eyewitness evidence suggesting that the appellant appeared to be having sexual intercourse with her as she lay unconscious on the ground. Her body, in a decomposed state, was found about two weeks later in bushland partly concealed by vegetation. Apart from her jumper which was over her head and her upper body there was no clothing on her body. The deaths were of four females resident in Rockhampton and occurred within a four month period.

[113] The respondent relied on a number of features which, it was submitted, rendered the evidence admissible. They were directed towards establishing that there was an objective improbability of the deaths not being the responsibility of the same offender. Particular reliance was placed on the fact that four females had been attacked in the Rockhampton area within the period of four months in the circumstances pointing in each case to a sexual motivation for the attack. Further each victim had been violently killed. In the three cases where the bodies were intact, blows to the head which would have incapacitated the victims were inflicted; in the other, the head was missing. The bodies were dumped totally or partly unclothed in bushland areas north-east of Rockhampton with minimal effort taken to conceal them. It was submitted that there was no reasonable view other than of an inference that the same offender was responsible for each of the attacks.

[114] The respondent supported admissibility on the basis of *Pfennig*, and *R v O'Keefe* [2001] Qd R 564 where it was said that the questions to be considered and answered in the affirmative as a precondition to admissibility were, firstly, whether the propensity evidence was of such a calibre that there was no reasonable view of it other than as supporting an inference that the accused person was guilty of the offence charged, and, secondly, if the propensity evidence was admitted, the evidence as a whole, that is to say that the whole of the evidence in the case

including the propensity evidence, is reasonably capable of excluding all innocent hypotheses (assuming that the evidence as a whole is accurate and true).

[115] In this case there was a good deal of evidence in statements and other forms, especially that the accused knew where the bodies were lying, which, if accepted, was capable of excluding the possibility that the appellant was innocent. The fact that the evidence had been admitted at a time when Natasha Ryan was still believed to have been a victim does not in my view falsify this conclusion notwithstanding the arguments pressed in that regard by the appellant. The appellant had made admissions concerning her death as well, but her body obviously was not discoverable. In my view there is no basis for maintaining that the criteria for admissibility were not met or for exercising the discretion to exclude admissible evidence on the ground of prejudicial value exceeding probative value in this instance.

[116] The third ground of appeal is that the evidence of a witness Quinn should have been excluded because it was obtained in reckless disregard of the appellant's right to silence. To understand this ground, it is necessary to understand the history of the connection between Quinn and the appellant.

[117] From about July 1999, while the appellant was on remand awaiting trial for the murder of Keyra Steinhardt, he began talking to Quinn whom he had met in the past in prison about the murders. Quinn started to take notes shortly after that and amongst other things was told that the appellant would rather go to John Oxley Hospital where he would be detained as a restricted patient rather than a prisoner. Quinn sent a message to a detective, Detective O'Keefe, who had previously arrested him. When O'Keefe went to see him, Quinn advised that the appellant said that he wanted to talk about serial killings. When Detective O'Keefe next saw Quinn about two months later, Detective O'Keefe asked Quinn to chat to him at a later stage "if anything comes along".

[118] When the appellant was arrested on 10 November 1999 for Ms Benedetti's murder, he declined to be interviewed by police. Shortly after that, the appellant accused Quinn of being a police informant and there was no conversation between them for almost 12 months.

[119] In this period there is no reason to regard evidence of what was said by the accused as having been unfairly admitted in evidence. Quinn had simply informed the police that the appellant was talking to him and the police simply advised him that they would receive any information passed on to them. The appellant spoke freely to Quinn of his own accord.

[120] The next phase was of about two months duration, commencing in the period between the appellant's conviction of the murder of Keyra Steinhardt and before he was sentenced. There was a necessary delay in sentencing because the procedures applicable to an application for an indefinite sentence had to be satisfied. In this period the appellant told Quinn that he wished to have his help to be placed in John Oxley Hospital. Some conversations were covertly recorded with Quinn's consent. The appellant made detailed admissions to the murders and gave details of where the bodies were disposed of. Maps were drawn, some of which accurately identified where the bodies of Ms Leggo, Ms Benedetti and Ms Turner were found.

The appellant was aware that the maps were being sent to the police, even complaining that they had not found the bodies.

[121] At this stage Quinn was assisting the police by consenting to have the conversations with the appellant recorded. However, he was not acting under any direction or instructions from the police as to how he might solicit admissions from the appellant. There is no reason to refuse to admit this evidence. Far from the appellant's right to silence being subverted, it may be inferred that, in his own mind, he saw it as being in his interests to pass the information to the police in furtherance of his attempt to be treated as a restricted patient rather than a prisoner.

[122] The next phase is concerned with 21 December 2000 when he was taken from prison in Brisbane to Rockhampton. While there he took the police to the location of the bodies of Ms Leggo, Ms Turner and Ms Benedetti although he claimed that he only knew of the location of Ms Benedetti's body because he had seen it shown on television. Ms Benedetti's remains had been found by a member of the public but the location had not been shown on television.

[123] The fourth ground of appeal impinges on this phase since it is alleged that a Magistrate's order to take him from prison for the purpose of furthering the investigation had been obtained by deliberately misleading the Magistrate as to the appellant's willingness to do so. Associated with that complaint is an allegation that Quinn was "falsely represented and used by the Police and correctional authorities as the Appellant's "buddy" during such removal." (Quinn had administratively been appointed the appellant's "buddy" within the correctional institution and had been taken to Rockhampton on 21 December 2000 with him). It was alleged that the police behaviour was "cavalier and also deceptive" and that the evidence should therefore have been excluded.

[124] The substance of the argument on behalf of the appellant is that the appellant had told Quinn on a number of occasions in the course of conversations prior to 21 December 2000 that he did not want to go back to Rockhampton. Quinn agreed that that was so but said that the appellant's attitude was changeable in that regard. Detective Hickey said that, so that he would not excite suspicion as to why he was regularly attending the prison, he made an arrangement with Quinn that if Quinn wanted to pass a message to him the listening device would be monitored between 6.30 and 6.40pm each afternoon so that he could do so. Hickey said that on 16 December 2000 there was a message that the appellant was seriously contemplating undertaking the trip to Rockhampton. On 18 December 2000 he was advised by Quinn that he had spoken to the appellant who was agreeable to travel to Rockhampton with the police to show the locations of the remains of the missing women.

[125] Hickey then applied under s 230 of the *Police Powers and Responsibilities Act* 2000 for an order under s 233. That order was granted on 20 December 2000. The application stated that the person subject to the application had been advised of it. The details set out were that the appellant had advised an informant that he was agreeable to travel to Rockhampton with investigating detectives and participate and assist detectives in the location of burial sites. Similar information is contained elsewhere in the document. It is apparent from what was said in the application that

the appellant had not been asked directly by the police officer about his willingness to go to Rockhampton. Quinn had been the person who had done so.

[126] The criteria for granting an order are that the Magistrate is satisfied that the removal of a person into the custody of a police officer is reasonably necessary for questioning the person about the offence or the investigation of the offence (s 232). There is nothing in the Division of the Act relating to removal of persons from lawful custody for those purposes that the person must be given notice of the application. However the real complaint appears to be that the police officer used Quinn as the means by which agreement was obtained. There is no evidence that Quinn did not tell the police officer that the appellant was agreeable to go, nor any that Hickey did not believe the information given to him, nor any evidence that the Magistrate was misled.

[127] The evidence does not suggest that when the police arrived to remove him from prison in their custody he displayed any unwillingness to cooperate. It is true that he was presented with a situation where the transfer of him to the custody of the police for the purpose of further investigation was already authorised by the order. However nothing that subsequently happened suggests that he was unwilling to participate. He participated actively in locating the bodies and speaking about various aspects of events.

[128] In my view, there is nothing suggesting that the appellant's will was overborne. Further, I am satisfied that he was not unwilling to participate in the journey to Rockhampton and subsequent events there. There was no non-compliance with the law by the police. Insofar as this phase of the matter relates principally to the occasion of the travel to Rockhampton and events there, I am satisfied there is no basis for excluding evidence of what happened on discretionary grounds.

[129] The fourth phase of Quinn's evidence commences about the beginning of January 2001. It is principally concerned with the development of the story that Squeaky was responsible for the killings. When the appellant had been in Rockhampton locating the places where the bodies were, he professed not to know the identity of those of Leggo and Turner. As the story evolved it changed from the appellant dumping the bodies not knowing that they were bodies, for money to pay off a debt, to Squeaky taking him around and showing him where the bodies were. Early in this period the appellant was asking Hickey to visit him; during conversations during these visits the suggestion was hinted at that another person was responsible for the killings, although the appellant would not reveal his name at that point. Later, the allegation that Squeaky was involved was mentioned by the appellant.

[130] One critical point for the purpose of ground three is what happened on 12 January 2001. Quinn proposed a plan that he said might shift the blame from the appellant. The appellant was receptive to the development of a plan and said that the blame should be put on Squeaky of whom the police already knew. He suggested that the police must be given information that they did not already know. Quinn proposed that he would pass the information to a visitor who would then give it to the media. The information would betray knowledge of facts known only to the killer.

[131] In later conversations between the appellant and Quinn, in which the appellant was an active and even dominant participant, there was further discussion of what the

contents of the story should be. A statement, the author of which was said in the text to be Squeaky, emphasising that there was information in it that only the "real culprit" would know, was prepared.

[132] Instead of this information being given to a visitor to give to the media, Quinn passed it onto the police. In that respect he practised a deception on the appellant who believed Quinn was collaborating with him to shift the blame from him to Squeaky. There is nothing in evidence that suggests that the police influenced Quinn to embark upon the plan to concoct a media campaign. On the contrary it seems to have been Quinn's own idea.

[133] There is no doubt that the evidence obtained by Quinn during this phase of the matter was damaging to the appellant. It included information that the killer would have known and was not, to that time, in the public arena. For example, he said that he had strangled Ms Leggo with her panties which were around the neck of the victim. He gave information as to where the sandals belonging to Ms Turner could be found. He gave information consistent with the injuries found on Ms Benedetti's head, a degree of violence consistent with the distribution of blood in the disused hotel and identifying where a towel used to wipe up the blood and the victim's clothing could be found. All of this evidence was particularly incriminating.

[134] With regard to the application of principle to this phase of the matter, I have had the advantage of reading Davies JA's reasons for judgment. I respectfully agree with his analysis of the situation and agree that there was no unfairness requiring the evidence to be excluded in the exercise of the discretion to do so.

[135] The fourth ground of appeal has essentially been discussed in earlier paragraphs of my reasons. I am satisfied that there was no reason to exclude evidence of what the appellant said and did while the police officers had him in their custody pursuant to the order under the *Police Powers and Responsibilities Act* 2000. I therefore agree that the appeal against conviction must be dismissed.