

# SUPREME COURT OF QUEENSLAND

CITATION: *The Queen v Sinfield (No 2)* [2019] QSCPR 5

PARTIES: **THE QUEEN**  
v  
**FREDERICK RONALD SINFIELD**

FILE NO/S: BS No 1627 of 2018

DIVISION: Trial Division

PROCEEDING: Application under s 590AA *Criminal Code*

ORIGINATING COURT: Supreme Court at Maryborough

DELIVERED ON: 7 August 2019

DELIVERED AT: Brisbane

HEARING DATE: 22 July 2019

JUDGE: Davis J

ORDERS: **1. The accused be tried on count 4 on the indictment separately from counts 1, 2 and 3.**

**2. Evidence of the commission of counts 1, 2 and 3 on the indictment is not admissible in proof of count 4.**

**3. The evidence of Mrs Jean Kingsley as appears in paragraphs 17-21 of her first addendum statement, the evidence of [Complainant 2's son] as appears in paragraph 11 of his statement and the evidence of Mrs Cindy Groves as appears in paragraphs 7 and 8 of her statement is inadmissible in the case against the accused on count 4 on the indictment.**

CATCHWORDS: CRIMINAL LAW – EVIDENCE – PROPENSITY, TENDENCY AND CO-INCIDENCE – JOINDER OF PERSONS OR COUNTS – where the accused was charged with two counts of recording in breach of privacy, one count of rape and one count of murder – where the accused applied for counts on the indictment to be tried separately – whether the counts involving the deceased formed part of a series of offences of the same or similar character - whether the evidence of sexual interest was relevant in proof of the count of murder

CRIMINAL LAW – EVIDENCE – RELEVANCE –  
 GENERALLY – where the Crown sought to lead evidence  
 under s 93B of the *Evidence Act* 1977 – where the accused  
 opposed the admission of such evidence which related to  
 sexual interest in the deceased on the basis of relevance –  
 whether the evidence of sexual interest was admissible in  
 proof of the count of murder

*Criminal Code*, s 227A, s 349, s 567, s 597A  
*Domestic and Family Violence Protection Act* 2012, s 20  
*Evidence Act* 1977, s 93B, s 93C, s 132B

*Banditt v R* (2005) 224 CLR 262, cited  
*De Jesus v The Queen* (1986) 61 ALJR 1, cited  
*HML v R* (2008) 235 CLR 334, followed  
*Hock v R* (1988) 165 CLR 292, followed  
*IMM v R* (2016) 257 CLR 300, cited  
*Makin v Attorney-General for New South Wales* [1894] AC  
 57, cited  
*Pfennig v R* (1995) 182 CLR 461, followed  
*Phillips v The Queen* (2006) 225 CLR 303, followed  
*R v Bauer* (2018) 359 ALR 359, followed  
*R v CBM* [2015] 1 Qd R 165, followed  
*R v Cogley* [1999] VSCA 123, cited  
*R v Cranston* [1988] 1 Qd R 159, followed  
*R v Davidson* [2019] QCA 120, cited  
*R v Dubois* [2018] QCA 363, followed  
*R v Knight & Ors* [2010] QCA 372, cited  
*R v Lester* (2008) A Crim R 468, cited  
*R v Makary* [2018] QCA 258, cited  
*R v Nibigira* [2018] QCA 115, followed  
*R v O’Dempsey* [2018] QCA 364, cited  
*R v Robertson & Ors* [2015] QCA 11, followed  
*R v Smith* (1915) 11 Cr App R 229, cited  
*R v Straffen* [1952] 2 QB 911, cited  
*Roach v The Queen* (2011) 242 CLR 610, cited  
*Sibanda v R* (2011) 33 VR 67, cited  
*Sio v The Queen* (2016) 259 CLR 47, cited  
*Sutton v The Queen* (1984) 152 CLR 528, cited  
*The Queen v Sinfield* [2019] QSCPR 3, cited

COUNSEL: M T Whitbread for the Crown J P  
 Benjamin for the Accused

SOLICITORS: Director of Public Prosecutions (Qld) for the Crown  
 Legal Aid Queensland for the Accused

[1] Frederick Ronald Sinfield (the accused) is charged on indictment with four counts, namely:

Count 1  
Section 227A(1)  
Criminal Code  
Form 128A

That on a date unknown between the first day of February, 2015 and the first day of May 2015 at Cooloola Cove in the State of Queensland, FREDERICK RONALD SINFIELD without [COMPLAINANT 1]'s consent, visually recorded [COMPLAINANT 1], in circumstances where a reasonable adult would expect to be afforded privacy and [COMPLAINANT 1] was engaging in a private act and the visual recording was made for the purpose of visually recording a private act.

Count 2 That on or about the second day of July 2015 at Eli Waters in Section 349(2)(b) the State of Queensland, FREDERICK RONALD SINFIELD Criminal Code raped [COMPLAINANT 2].  
Form 195

Count 3 That on or about the second day of July 2015 at Eli Waters in Section 227A(1) the State of Queensland, FREDERICK RONALD SINFIELD Criminal Code without [COMPLAINANT 2]'s consent, visually recorded [COMPLAINANT 2], in circumstances where a reasonable adult would expect to be afforded privacy and [COMPLAINANT 2] was in a private place and the visual recording was made for the purpose of visually recording a private act.  
Form 128A

Count 4 That on the sixth day of July, 2015 at Hervey Bay in the State Section 300, 302(1)(a) of Queensland, FREDERICK RONALD SINFIELD Criminal Code murdered [COMPLAINANT 2].  
Form 151

- [2] His trial is listed to commence on 27 August 2019 in Maryborough.
- [3] In March of 2019 I heard an application by the accused to exclude evidence and for orders for separate trials for different counts on the indictment. On 29 March 2019 I excluded evidence of various interviews between the accused and police<sup>1</sup> and adjourned the joinder application as it was not ready to proceed.
- [4] The two issues for determination now are:
- (i) joinder;
  - (ii) whether certain evidence which the Crown seeks to lead under s 93B of the *Evidence Act 1977* ought to be excluded.

### **The Crown allegations**

- [5] Both the accused and [Complainant 2] lived in Eli Waters which is a coastal suburb of Hervey Bay. [Complainant 2] lived at [Currawong Court] and the accused lived at 12 Bushlark Avenue. Those two addresses are quite close to each other.
- [6] [Complainant 2] was elderly and not in the best of health. The accused visited [Complainant 2] regularly and assisted her with domestic tasks.

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<sup>1</sup> The *Queen v Sinfield* [2019] QSCPR 3.

- [7] On 4 July 2015 the accused telephoned 000 and reported finding [Complainant 2] in her home badly injured. She died on 6 July 2015. The accused is charged with [Complainant 2]'s murder. That is count 4.
- [8] When [Complainant 2] was found by paramedics she was in a state of partial undress. Paramedics Alison Vollmerhause and Natalie Pickering were the first emergency services officers to see [Complainant 2]. Ms Vollmerhause in her statement described the scene as this:
- “21. She was on the right hand side of the bed. She was laying between the bed and a coffee table which was up against the wall. Her head was on a pillow at the base of the bed side table. She was laying on her back and her ankles were crossed. Her hands were next to each other across her chest and there was a towel across her chest underneath her hands. She had no top on. She was wearing flannel pj pants that were black and white or grey in a striped pattern.”<sup>2</sup>
- [9] Ms Pickering described what she saw as follows:
- “18. I have gone into the room and saw a lady on the ground. This seemed to be the bedroom. She was lying supine on the floor next to the bed next to a coffee table and bed side table. She was cerebly [sic] agitated where she would keep crossing her arms and legs in jerking motions. This is pretty usual for a head injury.
19. She appeared very old, and only had a slight frame, and seemed pretty tall. She was naked from pants up but had a towel over her breasts. I think she had pyjama pants on. I remember she had loads of jewellery on and big fake nails.”<sup>3</sup>
- [10] [Complainant 2]'s bloodstained pyjama top was found in the washing machine. The blood on the pyjama top was identified through DNA analysis as being [Complainant 2]'s blood.
- [11] Also located in the washing machine were:
- (i) a tea towel;
  - (ii) a bloodstained white shawl;
  - (iii) three socks, one of which tested positive to blood.
- [12] There were bloodstains on the top of a table in the ensuite to the bedroom where [Complainant 2] was found and also bloodstains on the vanity sink. Those bloodstains were diluted.
- [13] Examination of [Complainant 2] did not reveal any evidence of sexual interference with her.
- [14] Police conducted a search of the accused's residence and located a Lenovo desktop computer. They also seized a memory card installed in a Pentax camera. Digital

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<sup>2</sup> Paragraph 21 of the statement of Alison Margaret Vollmerhause dated 9 July 2015.

<sup>3</sup> Paragraphs 18 and 19 of the statement of Natalie Kay Pickering dated 10 July 2015.

recordings that were located formed the basis of the Crown’s case against the accused with respect to counts 1, 2 and 3.

[15] [Complainant 1] ([Complainant 1]) met the accused in about February 2015 and struck up a relationship with him.

[16] On an occasion when the accused and [Complainant 1] were having some consensual sexual encounter, the accused recorded their activities. [Complainant 1] saw the accused doing this, objected, and their relationship ended. The recordings were found by police.

[17] The recording of [Complainant 1] in the circumstances alleged is charged as an offence against s 227A of the *Criminal Code*. That section provides:

**“227A Observations or recordings in breach of privacy**

(1) A person who observes or visually records another person, in circumstances where a reasonable adult would expect to be afforded privacy—

(a) without the other person’s consent; and (b) when the other person—

(i) is in a private place; or

(ii) is engaging in a private act and the observation or visual recording is made for the purpose of observing or visually recording a private act;

commits a misdemeanour.

Maximum penalty—3 years imprisonment.

*Examples of circumstances where a reasonable adult would expect to be afforded privacy—*

1 A person changing in a communal change room at a swimming pool may expect to be observed by another person who is also changing in the room but may not expect to be visually recorded.

2 A person who needs help to dress or use a toilet may expect to be observed by the person giving the help but may not expect to be observed by another person.

(2) A person who observes or visually records another person’s genital or anal region, in circumstances where a reasonable adult would expect to be afforded privacy in relation to that region—

(a) without the other person’s consent; and

(b) when the observation or visual recording is made for the purpose of observing or visually recording the other person’s genital or anal region;

commits a misdemeanour.

Maximum penalty—3 years imprisonment.

*Example for subsection (2)*—using a mobile phone in a public place to take photos of women’s underwear under their skirts without their consent

- (3) In this section—**consent** means consent freely and voluntarily given by a person with the cognitive capacity to give the consent.

**genital or anal region**, of a person, means the person’s genital or anal region when it is bare or covered only by underwear.”

- [18] Also located were recordings concerning [Complainant 2]. These were taken on the evening of 2 July 2015. It is common ground that these show [Complainant 2], apparently asleep, being sexually assaulted and digitally penetrated. The recording captures images of a watch on the wrist of the offender. That watch is of similar appearance to one seized by police from the accused. The similarity of the accused’s watch to that depicted in the images, together with the presence of the recording in the possession of the accused and evidence of the accused’s contact with [Complainant 2] over a period leading up to 2 July 2015, provides a substantial circumstantial case that the accused is the person shown in the recording assaulting [Complainant 2].
- [19] Consent to penetration cannot be given by a sleeping person.<sup>4</sup> The penetration is an act alleged to be the offence of rape against s 349 of the Code. That alleged rape is count 2, and the recording is charged as count 3, being an offence against s 227A of the Code.<sup>5</sup>
- [20] There are nine witnesses through whom the Crown intends to lead evidence pursuant to s 93B of the *Evidence Act*. They are:
- (i) Beverley Anne Sinfield. She is the estranged wife of the accused. She has known [Complainant 2] for many years.
  - (ii) Robert James Young. He was a friend of [Complainant 2] and had known her since the early 2000s. Up to her death he would see [Complainant 2] at least once a fortnight.
  - (iii) Jean Kingsley. She is married to another of the Crown witnesses, Laurence Geoffrey Kingsley. They live nearby to where [Complainant 2] lived and were friends and often visited.
  - (iv) Laurence Geoffrey Kingsley. He is Jean Kingsley’s husband.
  - (v) Michelle Christine Russen. She met [Complainant 2] in 2014 when she was employed as [Complainant 2]’s cleaner and became friendly with her.
  - (vi) [LBA]. He is [Complainant 2]’s grandson and the son of another Crown witness, [KSA].
  - (vii) [KSA]. He is [Complainant 2]’s son.

<sup>4</sup> *Banditt v R* (2005) 224 CLR 262 at [40]-[41], *Sibanda v R* (2011) 33 VR 67 at [54]; and see the observations of Sofronoff P in *R v Makary* [2018] QCA 258 at [54] that since the amendments made to s 248 (definition of “consent”) in 2000, consent must be “given”.

<sup>5</sup> Section 227A appears in paragraph [17].

(viii) Cindy Louise Groves. She was [Complainant 2]'s neighbour.

(ix) Bevan Aaron Binecke. He is employed as a pool cleaner and regularly cleaned [Complainant 2]'s pool.

[21] The evidence sought to be admitted pursuant to s 93B has been reduced by the Crown to a schedule which I attach and mark "A".

### **Joinder**

[22] Section 567 of the *Code* allows for joinder of more than one count in an indictment. Section 567 provides:

#### **"567 Joinder of charges**

- (1) Except as otherwise expressly provided, an indictment must charge 1 offence only and not 2 or more offences.
- (2) Charges for more than 1 indictable offence may be joined in the same indictment against the same person if those charges are founded on the same facts or are, or form part of, a series of offences of the same or similar character or a series of offences committed in the prosecution of a single purpose.
- (3) Where more than 1 offence is charged in the same indictment, each offence charged shall be set out in the indictment in a separate paragraph called a *count* and the several statements of the offences may be made in the same form as in other cases without any allegation of connection between the offences.
- (4) Counts shall be numbered consecutively."

[23] Section 597A empowers the severance of counts on an indictment notwithstanding that they are properly joined under s 567. Section 597A provides:

#### **"597A Separate trials where 2 or more charges against the same person**

- (1) Where before a trial or at any time during a trial the court is of opinion that the accused person may be prejudiced or embarrassed in the person's defence by reason of the person's being charged with more than 1 offence in the same indictment or that for any other reason it is desirable to direct that the person should be tried separately for any 1 or more than 1 offence charged in an indictment the court may order a separate trial of any count or counts in the indictment.
- (1AA) In considering potential prejudice, embarrassment or other reason for ordering separate trials under this provision in relation to alleged offences of a sexual nature, the court must not have regard to the possibility that similar fact evidence, the probative value of which outweighs its potentially prejudicial effect, may be the result of collusion or suggestion.

- (1A) The court may discharge a jury sworn from giving a verdict on the count or counts directed to be tried separately.
- (2) The procedure on the separate trial of a count shall be the same in all respects as if the count had been set out in a separate indictment.
- (3) The court may adjourn a separate trial, remand the accused person and make such orders as to bail and otherwise as the court thinks fit.
- (4) For the purposes of this section— *adjourn a separate trial* includes postpone a separate trial in a case where the accused person has not been called upon to plead to a count in an indictment.”

[24] It can be seen that s 567 allows joinder in one of three circumstances:

- (i) if the charges are founded on the same facts; or
- (ii) if the charges form part of a series of offences of the same or similar character;
- (iii) if the charges form part of a series of offences committed in the prosecution of a single purpose.

[25] Although there are four counts, there are three episodes. Count 1 is an isolated event concerning [Complainant 1]. Count 1 was allegedly committed at least two months before counts 2, 3 and 4. Counts 2 and 3 were allegedly committed against [Complainant 2] on the one occasion. Count 4 was committed a couple of days after counts 2 and 3.

[26] Counts 2 and 3 are based on the same facts and are clearly joinable with each other. Apart from that, the Crown does not submit that charges 1, 2 and 3, and 4 are founded on the same facts or that they were all committed in prosecution of a single purpose. If the four counts representing the three occasions are joinable, then it is on the basis that they form part of “a series of offences of the same or similar character”.

[27] It is unnecessary to analyse the cases which have considered the notion of “a series of offences of the same or similar character”. It is well-established that the test is fulfilled where there is “some nexus between the offences, that is, elements of similarity which in all the circumstances of the case enable the offences to be described as a series”.<sup>6</sup>

[28] For “similar fact” or “tendency” evidence to be admissible, that is, evidence of discreditable conduct in proof of a charged act, the evidence must not only be relevant to proof of the charged act, but have a high degree of probity justifying admission of the evidence. Since *Hock v R*:<sup>7</sup> “... evidence of an accused’s commission of discreditable acts other than those the subject of the charge may be admitted as tendency evidence

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<sup>6</sup> *R v Cogley* [1999] VSCA 123 at [24], *R v Cranston* [1988] 1 Qd R 159 and *R v Nibigira* [2018] QCA 115 at [90].

<sup>7</sup> (1988) 165 CLR 292 at 294-5 confirmed in *Pfennig v R* (1995) 182 CLR 461 at 481-2

only where it supports the inference that the accused is guilty of the offence charged and permits of no other innocence explanation”.<sup>8</sup>

- [29] McMurdo JA, in *R v Davidson*,<sup>9</sup> considered an appeal where the appellant’s complaint was that different counts of rape and sexual assault against different complainants had been joined in the one indictment and heard together. There was another ground to which

I need not refer. His Honour, following *Phillips v The Queen*,<sup>10</sup> *De Jesus v The Queen*<sup>11</sup> and *Sutton v The Queen*,<sup>12</sup> observed:

“[11] In this case, those two grounds involve essentially the one question, which is whether the evidence of each complainant on a charge of sexual assault was admissible for each of the charges of rape, and vice versa, because the rules for the reception of ‘similar fact’ evidence were satisfied. If the evidence of an offence was admissible on the other charges, then there was a sufficient connection to make all of the charges a series of alleged offences within the meaning of s 567. However, if the evidence was not admissible, then there was not such a series, and there was unacceptable prejudice within the meaning of s 597A.”

- [30] The most serious offence charged against the accused is count 4. I was informed during argument that, whatever the result of the current application, the Crown intended to proceed with count 4 at the sittings in Maryborough in late August. Both the Crown and the accused accepted that on the question of joinder, the real issue was whether the evidence of the commission of counts 1, 2 and 3 is admissible in proof of count 4. If so, the charges were both legally joinable and ought to be tried together. If not, then separate trials should be ordered either on the basis that the charges were not joinable under s 567, or in exercise of discretion under s 597A.
- [31] Counts 2, 3 and 4 all involve the one alleged victim. Count 1 concerns a different complainant. The joinder of different counts involving different complainants gives rise to more complicated considerations than the joinder of different counts involving the one complainant.<sup>13</sup> It is, therefore, appropriate to consider firstly, the admissibility of the evidence of counts 2 and 3 in proof of count 4.
- [32] Similar fact evidence is circumstantial evidence. In proof of the count or counts on the indictment the Crown leads evidence not directly in proof of the doing of the charged acts but leads evidence of the commission of other offences (or discreditable conduct), proof of which makes it more likely that the accused has committed the charged offence.<sup>14</sup> The circumstantial evidence may be relevant to prove particular elements such as intention or may be led to identify the accused as the perpetrator of the charged

<sup>8</sup> *R v Bauer* (2018) 359 ALR 359 at [52].

<sup>9</sup> [2019] QCA 120, with whom Gotterson JA agreed, adding supplementary reasons.

<sup>10</sup> (2006) 225 CLR 303 at 307 [7].

<sup>11</sup> (1986) 61 ALJR 1 at 2-3 [4] and [8].

<sup>12</sup> (1984) 152 CLR 528 at 531 and 541-2

<sup>13</sup> *Phillips v The Queen* (2006) 225, *R v Nibigira* [2018] QCA 115, *R v CBM* [2015] 1 Qd R 165.

<sup>14</sup> *HML v The Queen* (2008) 235 CLR 334 per Hayne J at [181]; of course there may be direct evidence as well.

act. It may be that the evidence is relevant to proof that the charged act actually happened.

- [33] In cases, for instance, where evidence of sexual interest is led, there are often no doubts about identity. The issue is whether the offender committed the charged sexual act and the evidence of other discreditable conduct showing sexual interest in the complainant is led to show that it is more likely that the accused acted upon his sexual interests and therefore committed the offence. *HML v R*,<sup>15</sup> *IMM v R*<sup>16</sup> and *R v Bauer*<sup>17</sup> are cases where these considerations arose.
- [34] Evidence of the commission of conduct other than that charged may be led to identify the accused as the perpetrator of the charged acts where there is other evidence that the charged acts occurred. *Pfennig v The Queen*<sup>18</sup> is an example of such a case as are the earlier “hallmark” cases.<sup>19</sup>
- [35] In *Makin v Attorney-General for New South Wales*<sup>20</sup> the presence, at houses occupied or previously occupied by the accused of the bodies of several babies, was relevant to prove both the commission of the offence of murder and to identify the accused as the killers. In the “Brides in the Bath” case,<sup>21</sup> the relevance of the evidence was both to identify the deceased’s husband as the killer and to exclude the suggestion of accidental drowning.
- [36] The starting point then is as stated by the High Court in *Phillips v The Queen*:<sup>22</sup>
- “To what issue was the similar fact evidence relevant? It is essential at the outset to identify the issues at the trial on which the similar fact evidence is tendered, for this is central to the identification of relevance, and to the assessment of probative force on which the admissibility of similar fact evidence depends.”*
- [37] Here the issue in count 4 to which evidence of the commission of counts 2 and 3 is said to be relevant is identification of the accused as the person who inflicted the injuries upon [Complainant 2] and killed her. In other words, the Crown argues that because the accused digitally raped and filmed [Complainant 2] in her home on 2 July 2015, it is more likely that he inflicted fatal injuries on her on 4 July 2015.
- [38] Two possible bases emerged in argument as to how the evidence of the accused’s commission of counts 2 and 3 was relevant in identifying the accused as the perpetrator of count 4. These were:
1. Motive;
  2. Sexual interest.

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<sup>15</sup> (2008) 235 CLR 334.

<sup>16</sup> (2016) 257 CLR 300.

<sup>17</sup> (2018) 359 ALR 359.

<sup>18</sup> (1995) 182 CLR 461.

<sup>19</sup> *R v Straffen* [1952] 2 QB 911.

<sup>20</sup> [1894] AC 57.

<sup>21</sup> *R v Smith* (1915) 11 Cr App R 229.

<sup>22</sup> R 229. 22 (

- [39] As to motive, the Crown submitted, in effect, that:
- (i) counts 2 and 3 were committed on 2 July 2015;
  - (ii) counts 2 and 3 are serious offences, proof of which against the accused would have serious ramifications for him;
  - (iii) [Complainant 2] might make complaint about the commission of counts 2 and 3; therefore
  - (iv) to avoid being accused of counts 2 and 3, the accused silenced [Complainant 2] by killing her;
  - (v) count 4 was committed only two days after counts 2 and 3.

- [40] The theory as to motive is at best speculative and there are several fundamental problems with the theory. It is common ground that [Complainant 2] appears to be asleep during

the commission of counts 2 and 3. She makes no protest during the incident and she made no mention of it to any of the witnesses who are available to give evidence pursuant to s 93B of the *Evidence Act*. There is no evidence to suggest that the accused may have thought that [Complainant 2] realised that she had been raped and was therefore in a position to complain about the accused's conduct.

- [41] As to the sexual interest nexus between the counts, the Crown submitted, in effect that:
- (i) counts 2 and 3 were committed on 2 July;
  - (ii) the offender who committed counts 2 and 3 (on the Crown case the accused) had a sexual interest in [Complainant 2];
  - (iii) the perpetrator of count 4 had a sexual interest in [Complainant 2];
  - (iv) consequently, the evidence of the commission of counts 2 and 3 is probative of the identity of the offender in count 4; on the Crown case the accused.

- [42] There is solid evidence on which to conclude that the accused had a sexual interest in [Complainant 2]. Count 2 is constituted by the accused digitally penetrating [Complainant 2]'s vagina. Count 3 is constituted by the accused filming his sexual penetration of [Complainant 2]. Further, there is evidence of sexual interest from some of the witnesses prepared to give evidence pursuant to s 93B of the *Evidence Act*.

- [43] Jean Kingsley had conversations with [Complainant 2]. In her police statement, Mrs Kingsley said this:

“35. It was then that [Complainant 2] told me, ‘I don’t know what it is about Rick but he makes me feel a little bit uncomfortable.’ I said, ‘What do you mean?’ She said, ‘He came in earlier this morning and I was having trouble having a shower. I rang him. He came over straight away.’ I said, ‘Why did you call him? You knew we were coming over.’ She said, ‘I’m in so much pain I couldn’t wait for you to come. I called Rick because he lives just down the road. I know that he looks after his mum and asked if he could help me. He gave me a shower, took me to the bed, lay me on the bed, I felt very embarrassed. He said don’t worry about it I’ve seen it all before and

he began to push the bowel back into place.’ The she said, ‘It didn’t go in and I don’t think you are going to get it back in so he helped me get dressed and he left.’”

[44] In an addendum statement, Ms Kingsley said:

- “3. Further to what I have mentioned in that conversation I spoke to [Complainant 2] about how Rick picked her up when she was having trouble having a shower.
4. [Complainant 2] told me that she had fallen and couldn’t get up and called out for Rick to help.
5. I noted that [Complainant 2] has then paused and was shaking.
6. I asked ‘did something happen?’
7. [Complainant 2] said ‘It was just the way he picked me up’.
8. I have asked her ‘How did he pick you up?’
9. [Complainant 2] told me that ‘He had one hand near my private and the other one on my bum’. [Complainant 2] then said ‘that’s [Complainant 2] when your nursing isn’t it.’” [45]

Later in her addendum statement, Mrs Kingsley said:

- “17. I had asked [Complainant 2] again ‘Has something happened.’
18. [Complainant 2] said something about when Rick had laid her on the bed.
19. I have asked ‘When he laid you on the bed what happened?’
20. [Complainant 2] said ‘He had his hand where he shouldn’t have and I told him to piss off.’
21. [Complainant 2] then told me ‘He helped me get dressed and then he left.’”

[46] The incident relayed by [Complainant 2] to Mrs Kingsley was not the incident charged as counts 2 and 3.

[47] Cindy Groves, in her statement, said:

- “16. ... [Complainant 2] told me that Rick would tell her about the fact that he couldn’t get an erection and that he hadn’t had sex with his wife Bev for four years when they had been together. [Complainant 2] said that this made her feel uncomfortable but at the same time Rick was doing odd jobs and things around the house that she requested him to do. ...”

[48] The fact that the accused was prepared to speak to [Complainant 2] about such private and sexual matters hints at what he might have viewed their relationship as.

- [49] The only evidence that the murderer may have had a sexual interest in [Complainant 2] is the fact that when she was found she was naked from the waist up. An inference can be drawn that the murderer removed her pyjama top. This inference is open from the fact that [Complainant 2] died from head injuries that bled and the top with [Complainant 2]’s blood on it was found in the washing machine.
- [50] However, as there is no medical evidence suggestive of any type of sexual assault, evidence of the removal of [Complainant 2]’s pyjama top becomes equivocal.
- [51] In the Crown’s written submissions dated 22 March 2019, there is a summary of the Crown’s evidence. Included in that summary is the following:
- “17. Evidence at the scene of attempts to clean up blood by the murderer, including:
- (a) Transfer blood stains on the top of a table in the ensuite and diluted blood stains on the vanity sink indicating an attempt to wipe it away;
- (b) a bloody towel in a bucket of liquid in the laundry; (c)
- Located in the washing machine:
- (i) a tea-towel;
- (ii) the deceased’s blood stained pyjama top also in the washing machine (she was naked from the waist up when discovered);
- (iii) a blood stained white shawl; and
- (iv) three socks, one of which tested positive to blood.”
- [52] I accept the Crown’s submission that the various pieces of evidence identified form the basis upon which one reasonable inference which is open is that the murderer attempted to clean the scene of blood. A further inference which is reasonably open is that the act of removing [Complainant 2]’s pyjama top was part of that clean-up operation rather than a manifestation of a sexual interest by the murderer in [Complainant 2].
- [53] The speculative nature of the submission as to motive to kill to silence [Complainant 2], and the competing inferences as to the motivation behind the murderer removing [Complainant 2]’s pyjama top, diminishes the probative value of the evidence of the commission of counts 2 and 3 in proof of count 4.<sup>23</sup> The evidence supports an inference that the accused is guilty of count 4, but only on the impermissible basis that the accused, having offended against [Complainant 2] (counts 2 and 3) is likely to offend against her again (count 4). The evidence of the commission of counts 2 and 3 does not exclude the rational inference that a third party murdered [Complainant 2].
- [54] Accordingly, the test for admissibility has not been fulfilled. The evidence in support of counts 2 and 3 is not admissible in support of count 4. It follows that count 4 cannot and ought not be tried with counts 2 and 3.

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<sup>23</sup> *R v Bauer* (2018) 359 ALR 359 at [69], and the “Pfennig test”, *Pfennig v R* (1995) 182 CLR 461 at 484, *R v CBM* [2015] 1 Qd R 165 at [44].

[55] The Crown sought to admit the evidence of count 1 in proof of count 4 by linking that evidence to counts 2 and 3. In other words, the Crown pointed to a series of factors and submitted that the evidence of count 1 was admissible as evidence of discreditable conduct relevant to counts 2 and 3. Then, if evidence of counts 2 and 3 (the same victim as count 4) was relevant in proof of count 4, it followed that, at least indirectly, evidence of count 1 was admissible in proof of count 4.

[56] As, in my view, the evidence of counts 2 and 3 is not admissible in proof of count 4, it follows that the evidence of the commission of count 1 is not admissible in proof of count 4. There is nothing in the evidence sought to be led in proof of count 1 which identifies the accused as the person who murdered [Complainant 2].

### **The s 93B evidence**

[57] Section 93B of the *Evidence Act* allows admission of evidence as an exception to the hearsay rule. It provides:

#### **“93B Admissibility of representation in prescribed criminal proceedings if person who made it is unavailable**

- (1) This section applies in a prescribed criminal proceeding if a person with personal knowledge of an asserted fact—
  - (a) made a representation about the asserted fact; and
  - (b) is unavailable to give evidence about the asserted fact because the person is dead or mentally or physically incapable of giving the evidence.
- (2) The hearsay rule does not apply to evidence of the representation given by a person who saw, heard or otherwise perceived the representation, if the representation was—
  - (a) made when or shortly after the asserted fact happened and in circumstances making it unlikely the representation is a fabrication; or
  - (b) made in circumstances making it highly probable the representation is reliable; or
  - (c) at the time it was made, against the interests of the person who made it.
- (3) If evidence given by a person of a representation about a matter has been adduced by a party and has been admitted under subsection (2), the hearsay rule does not apply to the following evidence adduced by another party to the proceeding—
  - (a) evidence of the representation given by another person who saw, heard or otherwise perceived the representation;
  - (b) evidence of another representation about the matter given by a person who saw, heard or otherwise perceived the other representation.

- (4) To avoid any doubt, it is declared that subsections (2) and (3) only provide exceptions to the hearsay rule for particular evidence and do not otherwise affect the admissibility of the evidence.
- (5) In this section— ***prescribed criminal proceeding*** means a criminal proceeding against a person for an offence defined in the Criminal Code, chapters 28 to 32.

***representation*** includes—

- (a) an express or implied representation, whether oral or written; and
- (b) a representation to be inferred from conduct; and
- (c) a representation not intended by the person making it to be communicated to or seen by another person; and
- (d) a representation that for any reason is not communicated.”<sup>24</sup>

[58] Section 65 of the *Evidence Act* 1995 (NSW) is broadly equivalent to s 93B, although s 65 has wider application. It is enlivened where the person who made the representation “is not available to give evidence” whereas s 93B only applies where the person who made the representation is unavailable to give evidence “because the person is dead or mentally or physically incapable of giving the evidence”. Nothing turns on that distinction here.

[59] Section 65 was considered by the High Court in *Sio v The Queen*.<sup>25</sup> In *R v O’Dempsey*,<sup>26</sup> Sofronoff P extracted the principles from *Sio* and said as follows:

“[95] An equivalent of s 93B was considered by the High Court in *Sio v The Queen*. The following propositions emerge from the Court’s joint judgment in that case:

1. The provision is concerned to relax the exclusionary effect of the hearsay rule in relation to an assertion of fact by a person who had personal knowledge of that fact;
2. The provision proceeds upon the assumption that the asserted fact is relevant to the case of the party seeking to adduce evidence of the representation that asserts that fact;
3. The provision thus directs attention to the particular representation that asserts the relevant fact;
4. The provision therefore requires the identification of the particular representation that asserts the relevant fact;

<sup>24</sup> Section 93C concerns directions to the jury on s 93B evidence.

<sup>25</sup> (2016) 259 CLR 47.

<sup>26</sup> [2018] QCA 364.

5. The circumstances in which that representation was made must then be examined to determine whether the conditions of admissibility have been met;
6. This process must be applied to each relevant representation containing a fact that is sought to be proved by means of the provision;
7. It is impermissible to approach the task on a compendious basis whereby an overall impression is formed about the general reliability about all the statements sought to be tendered;
8. The provision operates upon the footing that the circumstances in which the representation was made may be seen to be such that the dangers which the hearsay rule seeks to prevent are not present or are negligible in the circumstances;
9. The provision requires that a trial judge be positively satisfied that the representation which is tendered was made in circumstances that make it likely to be reliable notwithstanding its hearsay character;
10. The circumstances in which a representation was made may include other representations which form part of the context in which the relevant representation was made, such as other statements that are inherently fanciful, preposterous or demonstrably incredible;
11. The trial judge is not required to form an opinion about the reliability of the representor as a witness because the representor will not be a witness; rather, the essential task is to identify the objective circumstances, if any, that warrant a conclusion that the representation is likely to be reliable.

[96] The task imposed by s 93B is, therefore, one that requires the trial judge to make a finding of fact upon which the admissibility of the evidence depends. In this case, the issue for the judge was whether he was satisfied that each representation was made in circumstances making it highly probable that the representation was reliable.”

[60] The scope of what constitutes the “circumstances” in which the representation was made,<sup>27</sup> has been considered in a number of cases: *R v Lester*,<sup>28</sup> *R v Knight & Ors*<sup>29</sup> and *R v Robertson & Ors*.<sup>30</sup> For reasons which appear below, it is unnecessary to consider those cases or the impact of the High Court’s decision in *Sio v The Queen* upon them.

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<sup>27</sup> Section 93B(2)(b).

<sup>28</sup> (2008) A Crim R 468.

<sup>29</sup> [2010] QCA 372.

<sup>30</sup> [2015] QCA 11.

[61] Mr Benjamin of Counsel for the accused provided a schedule which I shall attach and mark “B” responding to the Crown’s schedule. He thereby identified those aspects of s 39B which are in contention in relation to the admission of each piece of evidence.

[62] Mr Benjamin does not contest:

- (i) that [Complainant 2] had personal knowledge of “the asserted fact” the subject of each representation; nor
- (ii) that [Complainant 2] is deceased; nor
- (iii) that the s 93B witnesses are available to give evidence; nor
- (iv) that the representations were made by [Complainant 2] to each of the witnesses in circumstances either shortly after the asserted fact happened and in circumstances making it unlikely the representation is a fabrication or made in circumstances making it highly probable that the representation is reliable.<sup>31</sup>

[63] Mr Benjamin only opposes the admission of the s 93B evidence on the basis of relevance and even then his submissions are restricted to limited parts of the evidence of Mrs Kingsley, [KSA] and Ms Groves.

[64] The objection which Mr Benjamin takes to Mrs Kingsley’s evidence is a valid objection. The objection is to the evidence recorded at paragraph [45] of these reasons. As already observed, evidence of the commission of counts 2 and 3 was sought by the Crown to be admitted in proof of count 4 as evidence of sexual interest identifying the accused as the person who committed count 4. Paragraphs 17 to 21 of Mrs Kingsley’s addendum statement could only be admissible to prove the accused’s sexual interest in [Complainant 2]. I have rejected the Crown submission that the evidence of the commission of counts 2 and 3 is admissible on count 4 for reasons I have explained. Any sexual misconduct by the accused against [Complainant 2] is irrelevant and the evidence is inadmissible in proof of count 4.

[65] The evidence of [KSA] which is the subject of objection, is as follows:

“11. Mum had another friend called Rick. He was married to an old friend of Mum’s from when she was living in New South Wales. This woman was called Beverley IRWIN and I believe her and Rick divorced recently. Beverley used to be a paid carer by Centrelink to look after my Mum and they actually lived at my Mother’s house at one point when Mum was in Hospital but there was a disagreement because they moved Mum’s possessions around and items of property went missing so she told them to move out. This happened around four years ago. Beverley and Rick then rented a house across the road where Rick now lives with his Mother and I’m not sure where Beverley lives now.”

[66] The evidence of Mrs Groves to which objection is taken is as follows:

“7. Rick, Pat and Bev only lived with [Complainant 2] for a short time, I would say probably only a few weeks. Rick, Pat and Bev had brought all their belongings up and moved them in to [Complainant

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<sup>31</sup> *R v Dubois* [2018] QCA 363 at [57]

2]'s house and moved a lot of [Complainant 2]'s things around. [Complainant 2] quickly got over having three extra people in her house and arguments became quite common. I know that [Complainant 2] had an issue with Rick. As Bev was the carer she was receiving the full-time pension for [Complainant 2]. Rick sometimes helped out as well and [Complainant 2] had given Rick her bank card to pay bills and things while she wasn't able to. [Complainant 2] had given the PIN code for the card to either Bev or Rick as well so they could use the card. I know that [Complainant 2] got upset because Rick was using her card to pay bills and expenses however there was one time where he also drew out \$100 for himself. Rick justified this to [Complainant 2] and stated that it was for his fuel while he was driving Bev up to the hospital to visit [Complainant 2] when she had been in hospital for a week. [Complainant 2]'s opinion was that the full-time pension given to Bev should cover those expenses and that's what they were getting paid for. [Complainant 2] took the stance that the withdrawal of the money was stealing and this caused a big issue. [Complainant 2] said that Rick justified the withdrawal by saying that Bev was getting the full pension but he was using his own car and fuel to drive Bev up to see [Complainant 2] and he needed to be compensated.

8. The relationship between [Complainant 2] and Rick and Bev deteriorated after this and [Complainant 2] wanted them all out of her house. When they didn't leave straight away she accused them of squatting in her house. [Complainant 2] accused Rick of being very money hungry and she said he would ask her for say \$10 fuel money if he took her somewhere. [Complainant 2] eventually got Rick, Pat and Bev to move out and they ended up moving a few houses up the road to 7 Bushlark Avenue, Eli Waters. I know that this house is owned by a lady I know as Patria. I don't know Patria's last name but I know that she works at the Deli at Woolworths down the road. Not long after Rick, Bev and Pat moved out, Centrelink, according to [Complainant 2], sacked Bev as the carer for [Complainant 2]. I know that Bev confronted [Complainant 2] about this and accused [Complainant 2] of ringing Centrelink and cancelling her as the carer. I heard through [Complainant 2] that Bev was very upset and threw a set of keys at [Complainant 2]'s head and stormed off."

[67] Whether the evidence to which objection is taken is in a form that it is admissible under s 93B need not be decided. Evidence of some dispute about money years before the events the subject of count 4 on the indictment is not relevant to any fact in issue and is therefore inadmissible.

[68] There is other evidence of sexual interest sought to be admitted through the s 93B witnesses.<sup>32</sup> It is difficult to see how much of the s 93B evidence is admissible. Much

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<sup>32</sup> See the Crown schedule, attached as "A" and the evidence at [43] of these reasons

of it is said to be relevant to the “relationship” between the accused and [Complainant 2]. While the admission of relationship evidence is governed predominantly by s 132B of the *Evidence Act* independently of the *Pfennig* principles,<sup>33</sup> the evidence must still be relevant to count 4.

[69] It may well be that forensic decisions have been made that no objection ought to be taken. In any event, there is currently no application before me in relation to that evidence.

### **Orders**

1. The accused be tried on count 4 on the indictment separately from counts 1, 2 and 3.
2. Evidence of the commission of counts 1, 2 and 3 on the indictment is not admissible in proof of count 4.
3. The evidence of Mrs Jean Kingsley as appears in paragraphs 17-21 of her first addendum statement, the evidence of [KSA] as appears in paragraph 11 of his statement and the evidence of Mrs Cindy Groves as appears in paragraphs 7 and 8 of her statement is inadmissible in the case against the accused on count 4 on the indictment.

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<sup>33</sup> *Roach v The Queen* (2011) 242 CLR 610; assuming the relationship here was an “informal care relationship”, see *Domestic and Family Violence Protection Act 2012*, s 20, and therefore a “domestic relationship” for the purposes of s 132B.

## A

**R. v. SINFIELD**  
**EVIDENCE – s 93B Evidence Act 1977**

No	NAME	REPRESENTATION REFERENCE	ADMISSIBILITY	REPRESENTATION	CIRCUMSTANCES MADE
1	SINFIEL D Beverly Anne	[30] – Conversation with [Complainant 2] indicating that she was no longer needed as a carer.	To place in context the relationship between the defendant and the deceased.	Express oral – s93B(5)(a)	In the context of a serious subject matter. A close association between the carer and the witness.
2	YOUNG ROBERT James	About three weeks before (the murder), [Complainant 2] told me that she was uncomfortable around the defendant. ADDENDUM #1 [14]	To place in context the relationship between the defendant and the deceased.  Whether or not the deceased would choose the defendant as her carer.	Express oral – s93B(5)(a)	A serious subject matter. A close association between the deceased and the witness. Made shortly before the murder.
3	KINGSLEY Y JEAN	The conversations with the deceased on Friday 03.07.15 contained in [34] to [36] together with the related conversations in ADDENDUM #2 14.07 [6] to [21].  [Complainant 2] didn't seem to be herself. Laurie asked her if she was ok? She said, " <i>I'm just feeling a bit off today.</i> " Then the defendant appeared. I said, " <i>I'm sorry, I didn't hear you knock.</i> " He replied, " <i>That's ok, the door was open.</i> " (Also in #2 ADD 14.07 [3] she says that the defendant answered the door and both doors were locked. The deft said there was a problem with the rear screen door and then left ADD #2 [3]) It was half an hour later that the deft re-appeared. ADD #2 [8]). [Complainant 2] looked at me and appeared nervous.	To place in context the relationship between the defendant and the deceased.  Whether or not the deceased would choose the defendant as her carer.	Express oral and inferred from conduct – s93B(5)(a) & (b)	A serious subject matter. A close association between the deceased and the witness. Made shortly before the murder.

No	NAME	REPRESENTATION REFERENCE	ADMISSIBILITY	REPRESENTATION	CIRCUMSTANCES MADE
		<p>(After the defendant had left with Mr Kingsley to the post office.) [Complainant 2] told me that the defendant "<i>makes me feel a little bit uncomfortable</i>". She said that she was having trouble having a shower and had rung him earlier that morning. He came over. I asked him to help me. He gave me a shower, took me to the bed, lay me on the bed. I felt very embarrassed. He began to push the bowel back into place. She said, "<i>it didn't go in and I don't think you are going to get it back in</i>" he helped me get dressed then he left. [35]</p> <p>When she was telling me she paused and was shaking. I asked her if something happened? She said, "<i>it was just the way he picked me up. He had one hand near my private and the other one near my bum... that's [Complainant 2]l when you are nursing isn't it?</i>" I said, no it's not. I have been nursing for years. ADD #1 10/07 [3] to [10]. She also said when she was laying on the bed "<i>he had his hand where he shouldn't have and I told him to piss off.</i>" ADD #1 10/07 [17] to [20].</p>	<p>To place in context the relationship between the defendant and the deceased.</p> <p>Evidence that the defendant was prepared to touch the deceased on intimate parts of her body.</p> <p>Evidence of sexual interest.</p>	<p>Express oral and inferred from conduct – s93B(5)(a) &amp; (b)</p>	<p>A serious subject matter. A close association between the deceased and the witness. Made shortly before the murder.</p>

		In the car whilst travelling to the shops Laurie said to [Complainant 2], " <i>So Rick's going to be your carer is he?</i> " [Complainant 2] said, " <i>No... he wants to be but I'm too nervous for him to be a carer. I was going to ask Michele</i> "	To place in context the relationship between the defendant and the deceased.	Express oral – s93B(5)(a)	A serious subject matter. A close association between the deceased and the witness. Made shortly before the murder.
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No	NAME	REPRESENTATION REFERENCE	ADMISSIBILITY	REPRESENTATION	CIRCUMSTANCES MADE
		(RUSSON) <i>if she would be my carer.</i> " [36] I don't know who Michele is.	Whether or not the deceased would choose the defendant as her carer.		
4	KINGSLEY LAURENCE Geoffrey	The conversations with the deceased contained in the first statement at [20] to [22]	Whether or not the defendant was the carer of the deceased.	Express oral – s93B(5)(a)	A serious subject matter. A close association between the deceased and the witness. Made shortly before the murder.
		ADDENDUM #1 14.07.15 at [20]. The conversation about the defendant being the deceased's carer.	Whether or not the defendant was the carer of the deceased.	Express oral – s93B(5)(a)	A serious subject matter. A close association between the deceased and the witness. Made shortly before the murder.
		ADDENDUM #1 14.07.15 at [20]. The last 2 sentences about whether or not the deceased has been inappropriately touched.	Motive and sexual interest.	Express oral and inferred from conduct – s93B(5)(a) & (b)	A serious subject matter. A close association between the deceased and the witness. Made shortly before the murder.
5	RUSSON Michele Christine	In the last three weeks or so [Complainant 2] told me that she needed to find a new carer because Cindy was having a baby. [Complainant 2] suggested to me that I would be her carer. [37]	To place in context the relationship between the defendant and the deceased.	Express oral and inferred from conduct – s93B(5)(a) & (b)	A serious subject matter. A close association between the deceased and the witness. Made shortly before the murder.

6	[LBA]	[Complainant 2] mentioned a man that she is friends with and lives nearby who helps her look after her and do odd jobs. He comes over to massage her bad feet. I always thought it was odd. [17]	Motive and sexual interest.	Express oral and inferred from conduct – s93B(5)(a) & (b)	The close relationship between the deceased and the witness (her grandson and a police officer). The subject matter. Made shortly before the murder.
7	[KSA]	[Complainant 2] had a friend called Rick. He was married to an old friend of Mum's, Beverley. Beverley was a paid	To place in context the relationship between the defendant and the deceased.	Express oral – s93B(5)(a)	The close relationship between the deceased and the witness (her son).

No	NAME	REPRESENTATION REFERENCE	ADMISSIBILITY	REPRESENTATION	CIRCUMSTANCES MADE
		carer for Mum and they lived with her for a while. There was a disagreement because they moved Mum's possessions around and items of property went missing. [11]			The serious subject matter.
8	GROVES CINDY Louise	[Complainant 2] had an issue with Rick. [Complainant 2] got upset because he was using her card to pay bills and expenses and drew out \$100 for himself. [Complainant 2] said it was stealing and this caused a big issue. [7] The relationship between [Complainant 2], Bev and Rick deteriorated after that. [8]	To place in context the relationship between the defendant and the deceased.	Express oral – s93B(5)(a)	The close relationship between the deceased and the witness. The serious subject matter.

		<p>[Complainant 2] asked me to be her full-time carer and wanted to make it official with Centrelink. [14] [15] I knew I wouldn't be able to continue to be her carer after the baby arrived. I discussed this with [Complainant 2]. [16]</p> <p>[Complainant 2] told me that Rick wanted to be her carer but that she didn't want him to be as she felt uncomfortable around him. [Complainant 2] told me that Rick would discuss his erectile issue with her and told her that he hadn't had sex with his wife for four years. She told me that it made her uncomfortable. Rick often told [Complainant 2] that he was good at massages. She told me that she would never let him touch her because she was uncomfortable with him. [16]</p>	<p>To place in context the relationship between the defendant and the deceased.</p> <p>Whether or not the defendant was the carer of the deceased.</p> <p>Motive and sexual interest.</p>	Express oral – s93B(5)(a)	The close relationship between the deceased and the witness. The serious and personal subject matter.
No	<b>NAME</b>	<b>REPRESENTATION REFERENCE</b>	<b>ADMISSIBILITY</b>	<b>REPRESENTATION</b>	<b>CIRCUMSTANCES MADE</b>
		[Complainant 2] said Rick was persistent and frequently asked about being her carer. She was worried how he would react when she said no. [18]			

		Friday 03.07.18 at about 7:30pm - 8:30pm I telephoned [Complainant 2]. She sounded well. She told me that she had been out that day with Rick. [34] She told me that Rick was coming back to see her at 9pm to massage her legs. [35] She told me that she had trouble sleeping and Rick was bringing over some of his mother's medication. [36]	To place in context the relationship between the defendant and the deceased.  Motive and sexual interest.	Express oral and inferred from conduct – s93B(5)(a) & (b)	The close relationship between the deceased and the witness. The serious and personal subject matter. Made shortly before the murder.
9	BENECK E AARON Bevan	03.07.15 [Complainant 2] came outside the shop and stayed in the car. The neighbour came into pay her account. I went out to talk to her. She told me she wanted to stay in credit. She said her usual carer didn't turn up so her neighbour was helping her. [14] She wasn't happy that her usual male carer wasn't with her. [15]	To place in context the relationship between the defendant and the deceased.  Whether or not the defendant was the carer of the deceased.	Express oral and inferred from conduct – s93B(5)(a) & (b)	The relationship between the deceased and the witness. The serious subject matter. Made shortly before the murder.

**B**

**R v SINFIELD**

**SECTION 93B Evidence Act 1977**

No.	Witness Name	Subreference	Objected to or Accepted	Basis of Objection
1	SINFIELD, Beverly Anne		Accepted	
2	YOUNG, Robert James			

3	KINGSLEY, Jean	1.	<b>Objected in part</b>	Relevance and prejudice. The applicant submits that evidence appearing in the last paragraph of the respondent's outline (the reference to Mrs Kingsley's addendum statement, paragraphs 17-20) might be admissible in relation to counts 2 and 3, but is not admissible in relation to count 4. This is especially so if counts 2 and 3 and count 4 are to be severed.
		2.	Accepted	
4	KINGSLEY, Laurence Geoffrey	1.	Accepted	
		2.		
		3.		
5	RUSSON, Michelle Christine		Accepted	
6	[LBA]		Accepted	
7	[KSA]		<b>Objected to</b>	Relevance. The applicant submits that evidence of a disagreement relating to the movement or disappearance of the deceased's possessions four years prior to her death is irrelevant to the issues in the trial. The evidence certainly does not go so far as to establish that the applicant was responsible for moving anything or taking any property.
8	GROVES, Cindy Louise	1.	<b>Objected to</b>	Relevance. The applicant submits that issues regarding the interactions of the deceased and the applicant four years ago are irrelevant to the issues in the trial.
		2.	Accepted	
		3.	Accepted	
9	BENECKE, Aaron Bevan		Accepted	