

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

COLE ALLAN GRIFFIN

Transcript of a Ruling delivered by The Honourable
Justice L.A. Charbonneau, sitting in Yellowknife, in the
Northwest Territories, on the 11th day of July, A.D. 2013.

APPEARANCES:

Mr. B. Demone and
Ms. M. Zimmer: Counsel for the Crown

Mr. T. Boyd: Counsel for the Accused

(Charge under s. 271 of the Criminal Code of Canada)

BAN ON PUBLICATION OF THE COMPLAINANT/WITNESS
PURSUANT TO SECTION 486.4 OF THE CRIMINAL CODE

BAN ON PUBLICATION PURSUANT TO SECTION 648 OF
THE CRIMINAL CODE

1 THE COURT: Cole Griffin is on trial this
2 week in Yellowknife on a charge of sexual assault
3 against C.C. The events are alleged to have
4 occurred in 2006 when Mr. Griffin was in a
5 common-law relationship with Ms. C.'s mother.
6 C.C. was eight years old when the acts complained
7 of are alleged to have taken place.

8 After the jury selection process was
9 completed earlier this week, a voir dire was held
10 to determine the admissibility of a statement
11 Mr. Griffin gave to Constable Brett Foley on
12 August 18th, 2011. Defence is not alleging any
13 breach of Mr. Griffin's Charter rights in the
14 taking of that statement but argued that the
15 statement was not admissible because the Crown
16 had not established its voluntariness beyond a
17 reasonable doubt. Earlier this week, I advised
18 counsel that my conclusion was that the statement
19 taken on August 18 was admissible and that I
20 would put my reasons on the record later on
21 during the trial. These are those reasons.

22 The Crown called two police officers on the
23 voir dire and introduced a number of recordings
24 and the transcripts of those recordings. It also
25 filed an Agreed Statement of Facts. The defence
26 did not present any evidence on the voir dire.

27 The Agreed Statement of Facts, Exhibit

1 V-1-1, and the first three recording, Exhibit V-2
2 and its transcript which is found at Exhibit
3 V-1-2, concern Mr. Griffin's dealings with the
4 authorities at the time he was arrested on a
5 warrant in Edmonton, his transportation to
6 Yellowknife by the Alberta sheriffs, how the RCMP
7 in the Northwest Territories took custody of him,
8 the booking procedure at the Yellowknife
9 detachment, and the steps taken to allow him to
10 exercise his rights to counsel before his
11 interrogation began.

12 There is nothing controversial, factually
13 speaking, about Mr. Griffin's interactions with
14 the persons in authority who dealt with him
15 during that time frame. Those interactions were
16 either the subject of admissions in the Agreed
17 Statement of Facts or were recorded. That leaves
18 very little room for ambiguity or confusion about
19 what was said, the disposition Mr. Griffin was
20 in, how he interacted with the officers, and how
21 he was treated.

22 The defence's reasons for arguing that the
23 statement is inadmissible relate to things that
24 happened during the statement itself.
25 Accordingly, I will not go into all the details
26 of the evidence about what transpired before the
27 statement, but I will summarize that aspect of

1 the evidence because it is part of the context of
2 what led to the taking of the statement.

3 Mr. Griffin was arrested in Edmonton on
4 August 16, 2011, and was escorted back to the
5 Northwest Territories by Alberta sheriffs on
6 August 18th. Constable Ludlow and Constable
7 Foley were tasked to attend the Yellowknife
8 airport and take custody of him. They went to
9 the airport in the early afternoon that day.
10 They took custody of Mr. Griffin and escorted him
11 back to the Yellowknife detachment. The
12 escorting process was uneventful. The recordings
13 reveal that Mr. Griffin was polite, cooperative,
14 engaged in discussions with the officers during
15 the car ride from the airport. There is no
16 suggestion that he was intoxicated or that his
17 faculties were otherwise affected in any way, nor
18 any evidence that he was injured or suffering
19 from any condition or state that would be
20 relevant to the voluntariness of the statement
21 that he later provided. He was advised of his
22 rights to counsel and given an opportunity to
23 exercise that right. He was advised of his right
24 to silence and there is nothing to suggest that
25 he was not aware of it. On the contrary,
26 Constable Foley testified that Mr. Griffin
27 appeared to understand everything she told him.

1 Moreover, when there was a discussion about
2 Mr. Griffin possibly attempting to contact
3 another lawyer after he spoke to counsel while at
4 the detachment, he said words to the effect that
5 there was no point, that the other lawyer would
6 tell him the same thing the first one had, namely
7 not to say anything; and, finally, there is a
8 point in the statement where he specifically
9 refers to the fact that anything that he says can
10 be used against him.

11 Based on all of this, I conclude that
12 Mr. Griffin understood his rights, including his
13 right to remain silent and the potential
14 consequences of giving up that right. I also
15 conclude that there was nothing about his
16 condition, physical or mental, or in the manner
17 in which he was treated prior to the commencement
18 of the statement that raises any concerns or
19 doubt about its voluntariness.

20 The statement itself is Exhibit V3. It
21 began at 16:47 and concluded at 19:23. The
22 transcript is at Exhibit V-1-3. There were four
23 short breaks during the statement of durations
24 ranging from two to eight minutes. Defence
25 conceded at the voir dire that nothing of concern
26 or of relevance to the admissibility of the
27 statement occurred during those breaks.

1 Mr. Griffin remained in the interview room during
2 the breaks and he continued to be filmed.

3 Crown also filed as Exhibit V-4, another
4 audio recording of the statement. This was a
5 recording that Constable Foley did as a backup to
6 the audio features of the videotaping equipment.
7 It was introduced in the event that there may be
8 a need to listen to some portions of the
9 statement that were not clear as there are points
10 where the sound on the video is not of the
11 greatest quality. I did not find it necessary to
12 resort to it in making my decision about the
13 admissibility of the statement.

14 The interview was lengthy. During the first
15 part of the statement, Mr. Griffin spoke about
16 how he met the complainant's mother, R.C., how
17 they began a relationship and moved in together,
18 how he developed a close relationship with her
19 children and, in particular, with C. He talked
20 about some of the problems that arose in his
21 relationship with R.C. and the circumstances that
22 led him to leave that relationship for good. He
23 then talked about some of the things that were
24 happening in his life while he lived in Edmonton
25 up until the time he was arrested on the warrant
26 issued in conjunction with this charge.

27 Constable Foley then began focusing the

1 questions on Mr. Griffin's relationship with C.
2 Mr. Griffin talked about how close they were,
3 that he was a father figure and her best friend.
4 He explained how he tucked her in at night and
5 sometimes tickled her in a playful manner. While
6 he admitted physical contact, he denied
7 categorically that any of the contact that took
8 place between them was of a sexual nature.

9 Constable Foley persisted in her
10 questioning, confronting Mr. Griffin more closely
11 with the specifics of the C's allegations and
12 telling him that she had no doubt that they were
13 true. Initially, Mr. Griffin maintained that
14 nothing untoward happened. Eventually, however,
15 he did admit to one occasion where he and C. had
16 been sleeping in the same bed and he woke up with
17 his hand down her pants. Constable Foley
18 continued to question him and probe him about the
19 nature of the physical contact that occurred when
20 he would tuck the complainant in and eventually
21 he acknowledged that in addition to tickling and
22 kissing her on her belly and leg and blowing air
23 on her skin, he would also kiss her in the
24 genital area. He said this only happened twice
25 and that the contact was very brief. (And I
26 misspoke originally. He had said that he had
27 blown air on her belly, he did not talk about

1 kissing her on her belly.)

2 The case of R. v. Oickle, 2000 SCC 38 sets
3 out the governing principles when assessing
4 whether an accused's statement should be found to
5 have been made voluntarily and therefore
6 admissible. The Court reiterated the history and
7 the development of the confessions rule and how
8 its continued relevance persists even now that
9 the right to silence is a right that is protected
10 in the Charter through Section 7. At paragraph
11 33, the Court noted the twin goals of the
12 confessions rule, namely the protection of the
13 rights of an accused and the need to not unduly
14 limit society's need to investigate and solve
15 crimes.

16 The Court also underscored the importance of
17 avoiding false confessions and how the law has
18 increasingly come to recognize the types of
19 conditions that risk producing them. There is
20 little doubt that confessions that are the
21 product of threats, inducements, oppressive
22 conditions, or made by someone who does not have
23 an operating mind, have a greater risk of being
24 unreliable.

25 There is also little doubt that a confession
26 by an accused person is a powerful item of
27 evidence for the Crown. The admission into

1 evidence of an unreliable confession is something
2 that undoubtedly can lead to wrongful
3 convictions. Courts have to be vigilant in their
4 gatekeeping function when examining whether the
5 Crown has established the voluntariness of a
6 confession to the requisite degree. The
7 evolution and principles that underlie the common
8 law rules governing the admissibility of
9 confessions reflect an increasing need to address
10 those concerns. While the inquiry is focused on
11 the concept of voluntariness of the confession,
12 this in many ways largely overlaps and ties in
13 with the concept of reliability of the
14 confession, as noted in Oickle in paragraph 47.

15 The determination of whether a statement is
16 voluntary is contextual and it requires a
17 consideration of a number of factors. No two
18 situations are ever exactly alike, and this is
19 not an area that lends itself to rigid
20 approaches. Rather, the whole of the
21 circumstances must be considered to determine the
22 issue of voluntariness. A series of factors must
23 be examined. Globally, they address most of the
24 concerns that could arise about circumstances
25 that call into question the reliability of a
26 confession. Those factors are the existence of
27 threats or promises, whether there are oppressive

1 conditions, whether the person making the
2 statement has an operating mind, whether the type
3 of trickery that the police use to elicit the
4 statement would shock the community.

5 Applying the law to this case, first of all,
6 factually speaking, there is little controversy
7 about what happened during the statement because
8 the entire interaction between Mr. Griffin and
9 Constable Foley was recorded. As the Supreme
10 Court noted in Oickle, recording interrogations
11 has many advantages. It gives the courts a means
12 to monitor interrogation techniques; it may deter
13 police officers from acting improperly during
14 those interrogations; and it allows courts to
15 make more informed judgments about whether the
16 interrogation practices used in a given case were
17 such that they were likely to lead to an
18 untrustworthy confession.

19 This case is a very good example of why it
20 is so useful to have the benefit of a video
21 recording. Many things that arose during this
22 long interview would have been difficult to
23 convey through testimony only: Some of the long
24 pauses before Mr. Griffin gives certain answers,
25 the non-verbal language and tones of voice used
26 both by him and Constable Foley during the
27 interaction, the changes in emotions shown by

1 Mr. Griffin at different times. Instead of
2 having to rely only of the evidence of the
3 interviewer or, potentially, the evidence of the
4 interviewer and the evidence of the accused to
5 account and describe what happened, which
6 inevitably involves some element of subjective
7 filtering, the Court can actually see for itself
8 what happened during the exchange. The video
9 recording creates an objective record of what
10 happened. It is truly the best evidence possible
11 to assess the admissibility of the evidence and
12 the authorities are doing the right thing and
13 proceeding in this fashion when taking statements
14 from detainees.

15 On the basis of that evidence, there is no
16 question that Mr. Griffin had an operating mind
17 at the start of the interview and throughout the
18 interview. He was engaged, and although he grew
19 more quiet and became emotional around the time
20 he made his admissions, there is nothing to
21 suggest that he did not have an operating mind,
22 and, indeed, defence is not suggesting that. The
23 recording also does not disclose any particular
24 trickery being used by Constable Foley to get
25 Mr. Griffin to confess. She obviously used
26 various interviewing techniques. At times she
27 was more gentle, at times more pointed and

1 forceful in her questioning. But the type of
2 trickery that courts have found will render a
3 statement involuntary, as I have mentioned, are
4 tricks that would shock the conscience of the
5 community. Nothing of the sort is revealed by
6 the evidence here. Far, far from it.

7 As to oppressive conditions, the Supreme
8 Court in Oickle described those in the following
9 manner at paragraph 58:

10 Oppression clearly has the
11 potential to produce false
12 confessions. If the police create
13 conditions distasteful enough, it
14 should be no surprise that the
15 suspect would make a
16 stress-compliant confession to
17 escape those conditions.
18 Alternately, oppressive
19 circumstances could overbear the
20 suspect's will to the point that
21 he or she comes to doubt his or
22 her own memory, believes the
23 relentless accusations made by the
24 police, and gives an induced
25 confession.

19 The record reveals nothing of the sort here.

20 The issues raised by defence about the
21 voluntariness of the statement are related to
22 what defence says were inducements that were made
23 and led Mr. Griffin to make the incriminating
24 admissions. The onus to establish that this is
25 not the case and that the statement is voluntary
26 rests with the Crown of course. Voluntariness of
27 the statement has to be established by the Crown

1 and it has to be established beyond a reasonable
2 doubt.

3 The Supreme Court provided considerable
4 guidance in *Oickle*, at paragraphs 48 to 57, about
5 the hallmarks of the types of threats or
6 inducements that will call into question the
7 voluntariness of a statement. Among other
8 things, it quoted with approval an excerpt from a
9 decision by the British Columbia Court of Appeal,
10 *R. v. Jackson* (1977), 34 C.C.C. (2d) 35 where the
11 Court said:

12 Cases must be considered in
13 relation to their own facts. It
14 is my opinion that for a promised
15 benefit to a person other than the
16 accused to vitiate a confession,
17 the benefit must be of such a
18 nature that when considered in the
19 light of the relationship between
20 the person and the accused, and
21 all the surrounding circumstances
22 of the confession, it would tend
23 to induce the accused to make an
24 untrue statement, for it is the
25 danger that a person may be
26 induced by promises to make such a
27 statement which lies at the root
of this exclusionary rule.

21 Here the Court is talking about an
22 inducement that relates to a person who is not
23 the accused, but the comment is equally true, I
24 think, for an inducement that relates to the
25 accused.

26 It is very clear that an inducement does not
27 have to be an overt one to bring into question

1 the voluntariness of a statement. An inducement
2 could be very subtle yet very effective in
3 overbearing the will of a person. The analysis,
4 as I have already mentioned, must be contextual.
5 The outcome does not always depend on whether
6 certain specific language was used or not used by
7 the interviewing officer. The Supreme Court
8 recognized in Oickle that more often than not
9 people do not spontaneously confess to police
10 officers. Many interviews of suspects by police
11 begin with denials and proclamations of
12 innocence. A skilled interrogator will
13 inevitably have to use certain techniques or
14 approaches to move a suspect from denial to
15 admission. Sometimes this does include certain
16 things that could be considered "inducements" in
17 the broad sense of the word, but not every
18 inducement will taint the admissibility of the
19 statement obtained. The key is whether the
20 overall circumstances raise a doubt about the
21 suspect's will having been overborne by whatever
22 the interrogator said or did. And once again I
23 want to quote directly from Oickle, from
24 paragraph 57:

25 In summary, courts must remember
26 that the police may often offer
27 some kind of inducement to the
suspect to obtain a confession.
Few suspects will spontaneously

1 confess to a crime. In the vast
2 majority of cases, the police will
3 have to somehow convince the
4 suspect that it is in his or her
5 best interests to confess. This
6 becomes improper only when the
7 inducements, whether standing
8 alone or in combination with other
9 factors, are strong enough to
10 raise a reasonable doubt about
11 whether the will of the subject
12 has been overborne.

13
14 And, finally, the Court addressed the
15 question of inducements that are in the nature of
16 an appeal to the conscience of the person being
17 interviewed. This is at paragraph 56 of Oickle.
18 Referring to the facts in that particular case,
19 the Court said:

20 The final threat or promise
21 relevant to this appeal is the use
22 of moral or spiritual inducements.
23 These inducements will generally
24 not produce an involuntary
25 confession, for the very simple
26 reason that the inducement offered
27 is not in the control of the
28 police officers. If a police
29 officer says "If you don't
30 confess, you'll spend the rest of
31 your life in jail. Tell me what
32 happened and I can get you a
33 lighter sentence", then clearly
34 there is a strong, and improper,
35 inducement for the suspect to
36 confess. The officer is offering
37 a quid pro quo, and it raises the
38 possibility that the suspect is
39 confessing not because of any
40 internal desire to confess, but
41 merely in order to gain the
42 benefit offered by the

43 interrogator. By contrast, with
44 most spiritual inducements the
45 interrogator has no control over
46 the suggested benefit. If a

1 police officer convinces a suspect
2 that he will feel better if he
3 confesses, the officer has not
4 offered anything.

5 Based on that, the Court concluded that
6 confessions that result from spiritual
7 exhortation or appeals to conscience or morality
8 are admissible whether those comments are made by
9 a person in authority or by someone else.

10 Appeals to conscience can take many forms.
11 For example in Boukhalfa, 2013 ONSC 1255, the
12 interrogator suggested to the detainee, who was
13 charged with having murdered his brother, that it
14 would help their father cope with the tragic
15 events if he could understand what had happened
16 and why the detainee did this. This was found by
17 the Court to be an appeal to the detainee's
18 conscience, not an inducement that tainted the
19 admissibility of the statement eventually
20 obtained.

21 In deciding whether an inducement calls into
22 question the voluntariness of the statement, the
23 most important consideration is whether there was
24 a quid pro quo by the interrogator. In other
25 words, that the interrogator conveyed that in
26 exchange for the statement, the detainee would
27 receive some benefit that the interrogator can
28 provide. As noted before, when an interrogator

1 makes an appeal to the detainee's conscience,
2 talks about the fact speaking up and speaking out
3 will make him feel better, move on to the next
4 stage, et cetera, there is no quid pro quo
5 because the inducement does not relate to
6 something the officer can actually provide.

7 This takes me to the two areas of concern
8 that defence raised at the conclusion of this
9 voir dire. Defence's position is that there were
10 improper inducements during this interview and
11 that they were such that the statement was not
12 voluntarily given.

13 Both areas of concern arose before
14 Mr. Griffin made any incriminating admissions.
15 The first has to do with certain fears that he
16 expressed about being in custody. Defence
17 counsel argued that certain comments that
18 Mr. Griffin made during the time he was in the
19 custody of Constable Foley reflected a concern
20 about being in detention, and that is true.
21 Mr. Griffin talked about the conditions at the
22 Remand Centre in Edmonton in an exchange he had
23 with Constable Ludlow shortly after he arrived in
24 Yellowknife.

25 During the statement with Constable Foley,
26 he made a comment about how he was as good as
27 dead if he got charged with these things and

1 anyone found out, and when Constable Foley asked
2 him why he felt that way, he talked about inmates
3 getting killed or beaten at the Remand Centre,
4 one who had assaulted a female and one who had
5 assaulted a child. Constable Foley's response
6 was to tell Mr. Griffin that she did not place
7 him into that same category as those people. She
8 did talk about rehabilitation, about how in
9 Canada the approach is not to lock someone up and
10 throw away the key. She talked about the fact
11 some people who commit serious crimes have
12 themselves been hurt and need help but that that
13 help cannot be forced on them.

14 Defence counsel suggested that Constable
15 Foley's responses to Mr. Griffin's expression of
16 concern was not what it should have been, that by
17 shifting the conversation to rehabilitation, she
18 used that as an improper inducement to lead
19 Mr. Griffin to confess.

20 Having reviewed the excerpt of the
21 discussion between the two at that point, I do
22 not find that the record bears this submission
23 out. Constable Foley never directly or
24 indirectly offered leniency to Mr. Griffin in
25 exchange for a statement, she merely pointed out
26 to him that his future was not necessarily going
27 to mirror what he had observed with some of those

1 offenders who he had seen be seriously assaulted
2 at the Remand Centre.

3 It is true that there were other points in
4 the statement where Mr. Griffin again expressed
5 fear about going to jail, a desire not to be
6 locked up, but there is nothing, in my view, that
7 shows that Constable Foley manipulated or used
8 that fear in a manner that compromised the
9 voluntariness of the statement. Specifically,
10 she did not offer him anything.

11 The second area of concern has to do with
12 the fact that Mr. Griffin could have been induced
13 to admit the allegations that C.C. had made out
14 of a concern for her; that after his initial
15 denial, he eventually caved in because he wanted
16 to protect her. This second area of concern has
17 to do with something that Constable Foley did do
18 during the statement, which is to use
19 Mr. Griffin's affection for C. to encourage him
20 to disclose what had happened. There are a
21 number of occasions where this came up in the
22 statement and I gave that issue serious
23 consideration. For the record, I am just going
24 to give some examples of some of the things
25 Mr. Griffin said, which taken in isolation could
26 raise some concerns. For example, "... my
27 biggest problem ... right now is that ... I'm

1 found innocent then she is found as a liar. And
2 I don't want that for her." Next quote:
3 "... I'd never want to see her hurt." Next
4 quote: "What (do) you want me to say?" Next
5 quote: "I didn't touch C.C. Like I really, like
6 for sure, I want to say yes about it." And then
7 Constable Foley asks, "Why would you want to say
8 yes?" and he says, "... I don't want C. to look
9 like a liar." At another point he says, "Sure,
10 yeah. Just yeah. If she says I did, then... I
11 did." At another point he says, "It's whatever
12 she wants. She wants me locked up and put away,
13 then whatever." And finally he says at another
14 point, "But if she believes it, we'll do whatever
15 we can to help her. That's all I want." Taken
16 in isolation, some of those things that he said
17 and that I have quoted can raise concern, but
18 these comments cannot and should not be looked at
19 in isolation.

20 Constable Foley was cross-examined about
21 whether she had any concerns given some of the
22 things that Mr. Griffin was saying, that he might
23 be just about to go along with the allegations
24 just to protect Ms. C. Constable Foley answered
25 that her view and impression was that Mr. Griffin
26 wanted to talk. Her words were to the effect
27 that "there was a lot of guilt in that room" and

1 that she simply tried to bring him along to the
2 point where he did -- by her appealing to his
3 conscience and encouraging him to be honest, he
4 would tell the truth. She noted also that his
5 initial story had many overlaps with C.C.'s
6 version. He admitted to a lot of physical
7 contact in ways and circumstances similar to what
8 C.C. had described around the time that he would
9 tuck her in. Constable Foley's impression was
10 that Mr. Griffin was telling partially the truth
11 and then glossing over the details, so she
12 pursued those details. She also pointed out to
13 him that there were contradictions in what he was
14 saying. For example, at one point he said that
15 even if he wanted to touch her, he couldn't have
16 because she was all tucked in with the blanket.
17 Constable Foley pointed out that he himself had
18 said that at the point of putting her to bed, he
19 would tickle her and blow bubbles on her skin, so
20 that, in fact, he could have touched her. There
21 is no question that as part of her interrogation
22 technique, Constable Foley used Mr. Griffin's
23 affection for Ms. C to try to get him to admit
24 that he had done these things to her, the things
25 that C. said he had done. But she did so largely
26 by appealing to his conscience, by focusing on
27 the importance of protecting her and on his

1 affection for her. She talked about
2 accountability, she talked about honesty. She
3 emphasized that a fair bit. And as she started
4 to get more and more admissions from Mr. Griffin,
5 understandably she began to question him and to
6 probe further, continuing to appeal to his
7 honesty and underscoring accountability.

8 In addition to having considered the type of
9 language and approach that the officer used,
10 which I find involved nothing inappropriate,
11 there are other things that contribute to satisfy
12 me beyond a reasonable doubt that this statement
13 was voluntary and not simply the result of
14 Mr. Griffin's will being overborne and him having
15 decided to go along with things Constable Foley
16 was saying or suggesting to him to protect C.
17 First, the incriminating portion of Mr. Griffin's
18 statement do not consist of one- or two-word
19 answers where he merely agrees with suggestions
20 being put to him. He gave details; he spoke, he
21 did not merely acquiesce. And, importantly, some
22 of the details came completely from him and not
23 from things that Constable Foley had suggested.
24 The specific location where he kissed her on her
25 genital area is an example of this. Secondly,
26 Mr. Griffin did not adopt everything the officer
27 told him the complainant had said. Constable

1 Foley suggested this may have happened several
2 times in part because when asked what he did
3 after tucking her in and doing these things,
4 Mr. Griffin mentioned several possibilities:
5 Going back to spend time with his friends or
6 watch TV or go to bed. In his answer to that
7 suggestion, he maintained that this only happened
8 twice. He also maintained that the contact of
9 his mouth on her genitals were mere moments,
10 whereas the officer had explained that C. said he
11 would stop there for a time.

12 A very good example that shows Mr. Griffin
13 was not merely going along with what Constable
14 Foley was suggesting is when he was talking about
15 the incident when she was sleeping with him in
16 his bed. At one point in the interview,
17 Constable Foley asked a question and the language
18 she used was that his hand had been in her
19 vagina. Mr. Griffin jumped in and corrected her.
20 He said, "It was never in her vagina. Never in.
21 Never. Never in her. Never." That intervention
22 is not consistent with the notion that he simply
23 caved in and agreed to go along with everything
24 that Constable Foley was saying.

25 I also found the changes in his demeanour
26 and non-verbal language as the interview
27 progressed quite telling. There are long pauses

1 and silences and there are sighs at critical
2 times during the interview. He does become
3 emotional, although he is clearly still able to
4 speak and interact with the officer.

5 These various things that I have talked
6 about do not give, in my view, this statement the
7 hallmarks of being the product of someone who has
8 become induced to simply go along with what is
9 being suggested to them, rendering the confession
10 involuntary.

11 In addition, and although I ruled that part
12 of the statement should be edited out because it
13 is not relevant to this charge, Mr. Griffin ended
14 up making another admission, admissions that have
15 nothing to do with this case, nothing to do with
16 protecting C., and nothing to do with what
17 Constable Foley was suggesting to him because
18 Constable Foley did not know anything about it.
19 At that point, she was trying to determine
20 whether police should be concerned about speaking
21 with other young people Mr. Griffin may have
22 interfered with. The admission about the
23 unrelated incident, which completely came from
24 him, is not consistent with the statement having
25 been the result of his will being overborne by
26 the thought and the objective of protecting C.C.

27 So in addition to the conversation itself

1 not demonstrating that the officer presented
2 Mr. Griffin with quid pro quo, the overall
3 unfolding of the statement and the things that
4 Mr. Griffin said as he was making his admissions,
5 and after he made them, combined with his
6 demeanour, satisfies me beyond a reasonable doubt
7 that the statement was voluntary.

8 I may have not mentioned it, but the things
9 Mr. Griffin expressed about how he felt is
10 another reason that I find this statement has the
11 hallmark of a voluntary statement, because those
12 things, too, were about how he said he was
13 feeling, not things that the officer was
14 suggesting to him.

15 The last thing I will note is that as far as
16 Mr. Griffin's motivation to speak and what was
17 going on in his mind at the time, I had no direct
18 evidence on the voir dire because he chose not to
19 testify at the voir dire. That of course was his
20 right, but one of the consequences of that is I
21 am left with the evidence that I have: His
22 words, his demeanour, his reaction to the officer
23 and to the questions during the statement itself.

24 The conclusions that I was asked to draw
25 about his state of mind at the voir dire, based
26 on the evidence presented at the voir dire, are,
27 in my view, beyond the realm of inference and

1 would fall into the realm of speculation.

2 While considerations about the reliability
3 of statements figure prominently in how the law
4 about determining their voluntariness has
5 evolved, the Court's task on a voir dire like
6 this one is not to make a finding beyond a
7 reasonable doubt about the veracity of a
8 statement made by the accused. What the Crown
9 has to establish is not that the statement is
10 true but rather that it was made voluntarily.
11 The gatekeeping function of the trial judge is to
12 ensure that only statements that have proven to
13 be voluntary get presented to the jury. Once
14 that threshold is passed, it up to the trier of
15 fact to weigh it, assess it, and consider whether
16 any weight can be placed on it. The arguments
17 presented by defence at the voir dire, and in
18 particular the ones related to the possibility
19 that Mr. Griffin only said what he said to
20 protect C., go to the ultimate reliability of his
21 statement, in my view, not to the question of
22 whether the statement was made voluntarily, and
23 they go to the reliability of the statement as
24 far as what the jury in this case will make of
25 it.

26 Those were my reasons for concluding that
27 the statement was admissible, subject of course

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to the ruling I made about editing its last part.

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Certified Pursuant to Rule 723
of the Rules of Court

Jane Romanowich, CSR(A)
Court Reporter