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**JURISDICTION** : SUPREME COURT OF WESTERN AUSTRALIA  
IN CRIMINAL

**CITATION** : THE STATE OF WESTERN AUSTRALIA -v-  
EDWARDS [No 2] [2019] WASC 282

**CORAM** : HALL J

**HEARD** : 24 & 25 JUNE 2019

**DELIVERED** : 9 AUGUST 2019

**FILE NO/S** : INS 164 of 2018

**BETWEEN** : THE STATE OF WESTERN AUSTRALIA  
Prosecution

AND

BRADLEY ROBERT EDWARDS  
Accused

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*Catchwords:*

Criminal law - Evidence - Whether evidence is relevant - Rulings made

*Legislation:*

Nil

*Category:* B

**Representation:**

*Counsel:*

Prosecution : Ms C Barbagallo SC, Ms T Payne & Mr B Hollingsworth  
Accused : Mr P Yovich SC & Ms G Cleary

*Solicitors:*

Prosecution : Director of Public Prosecutions (WA)  
Accused : Mony De Kerloy

**Case(s) referred to in decision(s):**

Goldsmith v Sandilands [2002] HCA 31; (2002) 76 ALJR 1024  
HCP v The State of Western Australia [2019] WASCA 38  
R v Soma [2003] HCA 13; (2003) 212 CLR 299  
The State of Western Australia v McBride [2015] WASC 275

**HALL J:**

1 Counsel for the accused has prepared schedules setting out objections to evidence contained in the prosecution brief. At a hearing on 24 to 25 June 2019 I heard submissions in regard to those objections. During the course of argument some objections were conceded, some fell away and others were withdrawn. In respect of other objections it was agreed that argument would be deferred until the witness had been proofed. The following are my rulings in respect of the balance of the objections.

2 There is one further exception and that relates to evidence that is said to be relevant because it goes to prove some emotional upset or stress in the accused's life at times which bear some correlation to the commission of the alleged offences. I will identify that evidence below. Subsequent to the hearing on 24 June 2019 the defence filed written submissions on this issue that also raised some additional grounds for objection. The State then filed written submissions, responding to the defence submissions but also raising new arguments based on motive and also referring to some additional evidence. In light of these submissions it will be necessary to list this issue for further oral argument.

**Relevant legal principles**

3 Most of the objections to be dealt with in these reasons are based on the issue of relevance. I summarised the law of evidence in respect of relevance in a previous ruling in this matter. For ease of reference I repeat that summary here.

4 Evidence is relevant if it makes more probable a fact in issue or a fact relevant to a fact in issue. The essential components of the law in respect of relevance were referred to by Gleeson CJ in *Goldsmith v Sandilands*.<sup>1</sup> The principles were recently summarised by Buss P in *HCP v The State of Western Australia*:<sup>2</sup>

In *Goldsmith v Sandilands*, Gleeson CJ made the following observations in relation to the concept of relevance and the admissibility of evidence:

- (a) The primary rule of evidence is that a court will receive, and will only receive, evidence that is relevant to the issues at the trial.

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<sup>1</sup> *Goldsmith v Sandilands* [2002] HCA 31; (2002) 76 ALJR 1024.

<sup>2</sup> *HCP v The State of Western Australia* [2019] WASC 38 [45] - [46].

- (b) Evidence is relevant if it could rationally affect, directly or indirectly, the assessment of the probability of the existence of a fact in issue at the trial.
- (c) The general rule that relevant evidence will be received is qualified by other rules.
- (d) One such qualification limits investigation of collateral matters.

The question as to the relevance of evidence, in a criminal trial before a judge and jury, is whether the evidence, if accepted, could rationally affect the jury's assessment of the probability of the existence of a fact in issue. See *Smith v R*. Evidence may have that effect directly or indirectly. See *Roach v R*. Evidence may be relevant if it assists in the evaluation of other evidence. See *HML v R*. Evidence is either relevant or it is not. No question of discretion is involved. A decision as to whether evidence is relevant is based on logic and general experience. See *BBH v R*. If evidence is not relevant, no further issue arises as to admissibility. Irrelevant evidence will not be received. See *Smith* [6]. The rules of exclusion at common law arise for consideration only with respect to evidence which is relevant. See *Papakosmas v R*; *Roach* [14].

## **Objections**

5           There are fourteen areas of objection. Thirteen of those areas are in respect of the statements of various prosecution witnesses or parts of those statements. The final areas are contained in the record of the interview between the accused and the police. I will deal with each of the first thirteen areas by reference to the name of the witness concerned. In respect of a number of the witnesses there are suppression orders as to their identification and they will be referred to in these reasons by initials.

### **1. Elizabeth Douglas**

6           Ms Douglas and her husband knew the parents of the accused in the early 1980s. In around 1982 the parents of the accused, the accused, his brother and sister went to the Douglas house for a barbecue. Ms Douglas states that she went inside the house and into her bedroom to get something. She saw the accused standing at the end of the bed looking around the room. He was not touching anything; just standing there looking. Ms Douglas thought nothing more of it until the next day when she opened one of the cupboards in her bedroom and noticed that the bra strap to one of her bras was hanging out of a drawer. She said that this cupboard was near to where the accused was standing when she saw him. She states that the position of

the bra was unusual and that she is certain that she did not leave it in that position. None of her items of underwear were missing.

7 The defence objects to the whole of the statement of Ms Douglas on the basis that it is not relevant to any issue for determination at the trial. They say that there must be doubt as to whether the accused did anything in relation to the underwear. In any event this occurred when the accused was a boy and the conduct is not similar to that which is the subject of counts 1 and 2.

8 The State submits that the evidence is relevant because it goes to prove that the accused had an interest in women's underclothing. The State case is that the 1988 Huntingdale series of offences involved an offender who was seen in a flowing garment. Such a garment was left behind at the scene of counts 1 and 2. The State says that the evidence of Ms Douglas confirms that the accused had an interest in women's lingerie or women's underwear and that this provides a connection to the 1988 offences in that the offender in respect of those offences was wearing a flowing garment when the offences were committed. The State says that the evidence shows that such an interest persisted over time, including to December 2016 when women's undergarments were found in the course of a search of the accused's house.

9 In my view, this evidence is not relevant for the following reasons. At the time of the incident described by Ms Douglas the accused was a boy aged 13 or 14. It is not suggested that he took any underwear, though there is an implication that he may have looked at or moved a bra. This does not, however, support an inference that he had an unusual or distinctive interest in women's underclothing. Furthermore, this incident bears no similarity to the Huntingdale offences, which are the subject of counts 1 and 2 in the indictment and which occurred some six years later. This is not evidence that could rationally affect the question of whether the accused is the offender in respect of any of the counts in the indictment.

## 2. EB

10 EB is the first wife of the accused. The first group of objections are to portions of her statement dated 30 December 2016. The first objection is to paragraphs 39 - 44, 46, 53 - 54, 56, 58 - 59, 61 - 62 and part of 64 of that statement. Paragraphs 39 - 44 relate to EB's interaction with the accused following what has been described in earlier reasons as the Hollywood Hospital incident. In essence, she says that the accused told her that he could not remember the incident

happening, though he remembered that afterwards he stayed in a bathroom where he was arrested. At paragraph 46 EB refers to the accused having to go to see 'someone' once a week, though he did not disclose where or who it was he saw. At paragraphs 53 - 54, 56, 58 - 59, 61 - 62 and part of 64 EB describes her own reaction to finding out about the incident, the accused's reluctance to talk to her about it and her assumption that his employer knew.

11 The defence objects to this evidence on the grounds that it is irrelevant to any issue at the trial. They say that what occurred in the Hollywood Hospital incident is independently verifiable and what the accused may have told, or not told, EB adds nothing.

12 The State submits that this evidence is relevant because if the accused gives evidence he may make statements which are inconsistent with what he told EB at the time. In particular the State says that if the accused were to give an account of the Hollywood Hospital incident it may be inconsistent with him being unable, or unwilling, to give such an account to EB. The State says that it is necessary for the prosecution to not only prove its case but to lead evidence that would negate any defence case which is reasonably foreseeable.

13 In my view, this evidence is not presently relevant. It is not suggested that this evidence constitutes an admission against interest by the accused. Its only relevance would be to the credibility of the accused in the event that he gave evidence which was inconsistent. A prior inconsistent statement cannot be led by the prosecution in anticipation of the accused giving evidence.<sup>3</sup> The foundation for this evidence lies in circumstances which are not yet in existence and cannot be known, that is whether the accused will give evidence and what he will say about the Hollywood Hospital incident. There is presently no proper basis for the admission of this evidence.

14 The next objection is to paragraphs 158 - 161, 163 - 166, 171 - 190, 196 - 201 and 203 - 213. In these paragraphs EB states that the accused increasingly used the computer at night and that she would go to bed on her own. She says that in the six months before they split up he spent a lot of time on the computer, sometimes until 3.00 am. This would have been around mid-1995. She states that she started to go out on her own with work friends about once a month. She then began a relationship with DF. DF shared the house with the accused and EB and she describes the progress of her relationship with him.

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<sup>3</sup> See *R v Soma* [2003] HCA 13; (2003) 212 CLR 299 per McHugh J at [60].

Eventually she moved out of the house and left the accused in early 1996. She refers to a later meeting and to returning to the house to pick up some personal belongings. She refers to a later occasion when the accused came to her house with divorce papers. She was pregnant at the time and he asked her whether she was sure that the baby was DF's. He told her that he had met another woman. She says that the last time she saw the accused was in early 1997.

15           The defence objects to this evidence on the grounds that it is irrelevant.

16           The State submits that this evidence gives 'some background as to what is occurring' in the life of the accused at the time that it is alleged the offences were being committed. It is said that this provides 'context to that offending' and is evidence of opportunity. In regard to context the State says that the personal circumstances of the accused form part of its circumstantial case and that a pattern of behaviour can be gleaned, namely that where there is a decline in his personal relationships offending conduct is more likely to occur. The State does not suggest that there is any direct causal link between stressors in the accused's personal life, other than in respect of the Hollywood Hospital incident. However they do say that such stressors are a contributing factor which is relevant in determining whether the accused is the offender.

17           In my view at least some of this evidence is relevant to the issue of opportunity; that is whether at the relevant times the personal circumstances of the accused were such that he could more readily have committed the offences at the times alleged because he was less constrained by a close relationship. As to the suggestion that there is some connection between times of emotional turmoil in the life of the accused and the commission of the offences, this depends on it being possible to correlate significant incidents in the life of the accused with the dates of the offences. There is a basis for this in respect of the Hollywood Hospital incident, but evidence relating to that incident is the subject of another objection which is yet to be determined. This is one of the areas of evidence referred to in paragraph 2 about which a ruling must be deferred pending further submissions.

18           The next objection is to paragraphs 277 - 279 and 318. These paragraphs also relate to the breakdown of the relationship and are said to be relevant to opportunity and to emotional upset. My views in that regard are the same. That is, some parts may be relevant to

opportunity, but the relevance of evidence as to emotional upset must be deferred.

19           The next objections are to the statement of EB of 15 March 2017. The first objection is to paragraphs 19 - 38 of that statement. In these paragraphs EB describes occasions when she was away from home during the time she was living with the accused. The State relies on this as evidence relevant to opportunity and also to the nature of the relationship. For the reasons I have expressed above it may be relevant to opportunity, but whether it is otherwise admissible is subject to hearing further submissions on the emotional upset issue.

20           The next objection is to paragraphs 39 - 41. In these paragraphs EB refers to her recollection of when it was that the relationship with DF developed into an intimate one. This is said to be relevant only because it enables EB to place other events in time, in particular when it was DF moved into the house where the accused and EB were living. It was agreed in the course of argument that the State could achieve this by leading evidence that DF moved in after he came back from a trip overseas.

21           The next objection is to paragraphs 43 - 55. In these paragraphs EB refers to an incident when she was at DF's house and her car broke down and the accused came to fix it. She also refers to a second incident when the accused caught she and DF kissing.

22           The State says that this evidence is relevant to emotional upset and has to be seen in the light of the evidence of another witness, Paul Luff. For reasons earlier given this objection must be deferred pending further submissions.

23           The next objection is to paragraphs 61 - 64. In these paragraphs EB refers to attending a New Year's Eve gathering on the evening of 31 December 1994 at DF's house and to the accused attending later. The only relevance of this is to enable the development of the relationship between EB and DF to be placed in time. The relevance of this is not apparent because DF only refers to a subsequent New Year's Eve in his own statement. This is a conflict that may be resolved in proofing and I will defer it until that occurs.

24           The next objection is to the whole of EB's statement of 12 February 2019. In this statement EB states that she saw a doctor to confirm that she was pregnant and told the accused shortly after she found out. She states that this would have been April or May 1996 and



was a couple of weeks after seeing the doctor. Other evidence establishes that the date she saw the doctor was 4 June 1996 and that she went for an ultrasound on 12 June 1996. EB says that she does not remember the details of the conversation but does say that the accused's reaction was to go quiet.

25 The State says that this evidence is relevant because it shows that the accused was in a state of upset or emotional turmoil at the time of the death of Jane Rimmer on 9 June 1996. Again, this falls into the emotional upset category and must be deferred pending further submissions.

### **3. CG**

26 CG is the second wife of the accused and the objections relate to her statement of 7 February 2017. The first objection is to paragraphs 30 - 32 and 33 - 35. In these paragraphs CG states that the accused told her about his first marriage, which he initially said had broken up because of communication issues but later said that his first wife had cheated on him.

27 The State says this is relevant to the accused's attitude to his marriage breakdown. The State says that it can be inferred that the breakdown played on his mind because he did not reveal the infidelity until some years later. The State says that it can also be inferred that he was still concerned about it many years later and this supports an inference that it was a traumatic event for him at the time it happened.

28 The defence say that this evidence has no context. It is not clear from the statement whether there were two conversations or multiple conversations. The defence say that it cannot be inferred that the timing of these conversations necessarily indicates anything about the state of mind of the accused either at the time of the events or at the time of the conversations.

29 In my view this evidence is not relevant. It is not capable of establishing any relevant state of mind at any particular point in time. It does not make more likely any fact in issue or any fact relevant to a fact in issue.

30 The next objection is to paragraphs 60 - 62. In these paragraphs CG explains in very general terms how the relationship with the accused developed and when it was he proposed to her.

31 The State says that the relevance of this is that the relationship with CG commenced on 1 April 1997 and Ms Glennon went missing on 15 March 1997. The evidence goes to the issue of opportunity in that prior to 1 April he was not in the relationship with CG and therefore had more opportunities to be out late at night without it being noticed. The State also say that it explains why there were no further offences after 1997.

32 The defence say that the evidence has limited value because in the initial stages the relationship with CG did not occupy the accused at all times. She only refers to him playing volleyball on Thursdays and going to the movies on weekends and other times, with frequencies that are not specified. As to the fact that no further offences were committed after 1997, the defence say that this started out as a tendency argument, became a circumstantial emotional upset argument and is without foundation.

33 In my view this evidence is relevant to the question of opportunity. Its probative value in isolation may not be great, in that it is general and does not purport to account for all of the accused's time. It does, however, have some value when taken together with other undisputed evidence.

34 The next objection is to paragraphs 130 - 132. In these paragraphs CG states that the accused is adept at knots and that she first noticed this when he showed her how to release a knot on a tarpaulin. She says that the accused made clotheslines at the house they lived in and that he used cable that was from Telstra.

35 The State says that this evidence is relevant because the complainant in the Karrakatta offences states that she was tied up with a piece of knotted cord that appeared to have been pre-prepared and that had the effect of handcuffs. The apparent implication is that a special ability with knots is a characteristic that is relevant to the identity of perpetrator of the Karrakatta offences. Further, the State suggest that this evidence is capable of establishing such a special ability.

36 The defence say that evidence that on one occasion CG had difficulty untying a knot and that the accused showed her how to do it does not have any probative value in relation to the offences against KG (the Karrakatta complainant). KG does not give any evidence about the expertise or otherwise of her assailant, just that she had

trouble getting out of being tied up. The defence say that this can happen for a great many reasons which have nothing to do with the expertise of the person who tied the knot.

37 Neither the evidence of KG nor that of CG establish any special or distinctive ability in tying knots. Far less can it be said that there is any feature established by this evidence that can be said to be clearly present in the Karrakatta offences. The evidence of CG is general and unremarkable and does not reveal any characteristic that is uncommon or capable of being used to distinguish the accused from other people. The fact that the accused was able to demonstrate to CG how to untie a knot in a tarpaulin and set up clotheslines at their house does not make it any more likely that he was the assailant in the Karrakatta offences. The evidence is not relevant.

#### **4. Charles Richards**

38 Mr Richards went to school with the accused and was a friend of his in the late 1980s. The objection is to paragraphs 18 - 20 of his statement. In those paragraphs he refers to an occasion when the accused was being teased by his brother about a 'stash of chicks' undies that were found in his bedroom'. Mr Richards says that he does not remember the accused reacting to the comment and that it seemed to him like it was just 'water off a duck's back'.

39 The State says that this evidence is relevant because it goes to the accused's interest in women's underclothing. The State submit that the absence of a response by the accused is in fact a response in the sense that a denial might have been expected if what was said was untrue. In essence the State are saying that this is a situation where a denial was compelled by the circumstances and that silence can be taken as an admission.

40 The defence submits that there was nothing in the circumstances that could reasonably be thought to compel denial and there is no probative value in the accused's non-reaction to his brother teasing him.

41 The law in relation to the circumstances in which silence can be capable of amounting to an admission is conveniently summarised by Corboy J in *The State of Western Australia v McBride* [2015] WASC 275. In essence there must be something in the surrounding circumstances which reasonably compels a denial by a person who has an accusation put to them. Where a person gives an answer which is

ambiguous, neutral, equivocal or otherwise not plainly inconsistent with a consciousness of innocence it should be excluded as irrelevant.

42 In this case the exact words used by the brother are not recounted. All that is said is that the brother was teasing the accused and made a 'smartarse remark'. An accusation could be inferred from this, but it is far from clear. This is not a case where it is open to conclude that the only reasonable response was a denial. The circumstances do not allow for a conclusion that a failure on the part of the accused to respond to what was being said by his brother amounted to an admission. The vague and general nature of the evidence and the context in which it occurred are pertinent. The evidence is not admissible.

## **5. CH**

43 CH met the accused a number of times in the mid-1990s because a good friend of hers was going out with the accused's brother. She went out to restaurants with the accused on a number of occasions. The objection is to paragraphs 54 - 58 of her statement. In those paragraphs she states that on one occasion she was in the accused's car when he detoured to show her what he described as a worksite. He pulled up in an area that had a clearing that was about half-an-acre with smaller shrubs and trees around it. It was somewhere south of the river. The accused wanted her to get out of the car but she said no as she could not see much point. She said she could not understand why he took her there as there was nothing to see. She said that she told him it was boring and wanted to go. They then left and continued to their destination. She said that the accused was not happy that she was not interested but he did not get cross.

44 The State says that the relevance of this evidence is that the accused took a woman in his work vehicle to a bush location. The State refers to the fact that the bodies of Jane Rimmer and Ciara Glennon were found in bush locations.

45 The defence submit that this evidence is irrelevant. They say that taking a woman in his car to a bush location and doing nothing cannot assist in proving that he killed either Ms Rimmer or Ms Glennon.

46 Any similarities between the incident described by CH and the circumstances surrounding the deaths of Ms Rimmer and Ms Glennon are superficial. CH was a person whom the accused knew and with whom he had a friendly relationship. There is no suggestion he ever

met Ms Rimmer or Ms Glennon. Nothing occurred at the bush location he took CH to and when she asked to leave he complied. It is not suggested that this location can be identified or that it is close to the location where either of the bodies were found. A single incident does not support a conclusion that the accused had some tendency to use his Telstra motor vehicle to take young women to remote locations. This evidence is not capable of making it more likely that the accused is the person who killed either Ms Rimmer or Ms Glennon. It is not relevant.

## **6. Tracey Jane Chrystal**

47 Ms Chrystal was in a relationship for a short time with the accused's brother in the mid-1990s. She is a friend of CH. The objection is to paragraphs 47 and 50 - 52. At paragraph 47 Ms Chrystal states that the accused would refer to his ex-wife as 'the bitch' but that it was unusual for him to speak about her. At paragraphs 50 - 52 Ms Chrystal refers to there being an older blue sedan at the house of the accused's parents when the accused was living there.

48 The State says that this evidence shows the accused's real attitude towards his first wife, EB. It is said to possibly illuminate his attitude towards the breakdown of that relationship.

49 The defence submit that this evidence has no probative value.

50 The suggestion by the State appears to be that reference by the accused to EB in derogatory terms indicates that he is likely to have felt emotional upset or turmoil at the time of the breakup. I do not accept that line of reasoning. A reference by a person to a former spouse using derogatory terms may indicate some personal animosity, but it is not a reliable indicator that the person had any particular incident of emotional turmoil, let alone one that coincided with the dates of the offences. This evidence does not make any more probable any fact in issue at the trial, in particular it does not make it any more likely that the accused is the person who committed any of the offences.

51 As regards to the evidence relating to the blue sedan the State says that it is relevant because it shows that the accused had access to a variety of vehicles and in particular a blue vehicle in circumstances where one of the witnesses in the Telstra living witness incidents refers to being driven around in a blue vehicle. The defence sought further time to consider this aspect of the evidence.

**7. DF**

52 DF had a relationship with EB whilst she was married to the  
accused. In his statement he provides an account of how that  
relationship commenced and developed. He shared a house with the  
accused and EB and continued a relationship with her without the  
knowledge of the accused. He describes an incident in January 1996  
when the accused caught he and EB kissing.

53 This evidence is relied upon by the State to support its emotional  
turmoil argument. For reasons I have referred to earlier, this issue must  
be deferred pending further submissions.

**8. Paul Luff**

54 Mr Luff is a former work colleague of the accused. The  
objection is to paragraphs 111 - 116 of his statement. In those  
paragraphs Mr Luff refers to the allocation of after-hours callouts when  
he worked for Telstra. Most of the callouts were done by another  
colleague but if that person could not do the work he had a list of names  
that he could call to see if someone else could do it. There was an  
account to which all employee hours worked was generally booked.  
However recordkeeping in the 1980s and 1990s was 'not great' and  
workers did not keep official diaries.

55 The State says that this evidence is relevant to opportunity to  
commit offences in that it shows that the accused as an employee of  
Telstra at the time may have used his Telstra vehicle out-of-hours to  
attend to a callout.

56 The defence submit that this evidence establishes nothing of  
relevance.

57 The evidence does not establish one way or another whether the  
accused was allocated callouts at any particular time, or ever. This  
evidence does not make it any more or less likely that Telstra vehicles  
seen late at night in the Claremont area were being driven by the  
accused. In any event, the available evidence is that he was able to use  
his work vehicle for private purposes. This evidence is so vague and  
general in nature as not to have any probative value and is, therefore,  
inadmissible.

**9. Lindsay Paul Hilton**

58 Mr Hilton was also a former work colleague of the accused. Objection is taken to paragraphs 11 and 24 of his statement. At paragraph 11 Mr Hilton states that he is aware of the Hollywood Hospital incident and at paragraph 24 states that after that incident he knows that the accused worked at the Claremont Superdome.

59 The State says that this evidence is relevant because it enables Mr Hilton to place the events in time. The accused later had a conversation with Mr Hilton in which there was a reference to the fact that he (the accused) had worked at the Claremont Superdome in the 1990s. The significance of this is said to be that during an interview with the police the accused denied that he had anything to do with the Claremont area until after 2009.

60 The defence submit that this evidence has no relevance. There is independent evidence from a person who also worked at the Superdome with the accused as to when that occurred. All that the evidence of Mr Hilton adds is that at some unspecified time he had a conversation with the accused in which there was reference to this work.

61 In my view, whilst Mr Hilton's evidence does not appear to add much to other more direct evidence relating to whether the accused worked in the Claremont area in the 1990s, it could not be said to be irrelevant. The fact that the accused referred to such work when speaking to Mr Hilton is evidence which can confirm that it occurred and that the answer given to the police was untrue. The relevance of the false answer to the police is, potentially, that the accused was trying to falsely distance himself from the area in which the offences occurred. It is not yet clear whether the State will be asserting that this was a consciousness of guilt lie.

**10. Deryck Foulner**

62 Mr Foulner was formerly a resident of Nedlands and lived in a house on Langdon Street between 1986 and 1997. He has provided two statements both of which are objected to in their entirety. In his statements he refers to having noticed a Telstra van parked at the Karrakatta cemetery on four or five occasions at some time in the mid-1990s. By reference to the dog that he owned at the time he is able to say that he noticed this van sometime in 1995.

63           The defence submits that this evidence cannot be relevant to the Karrakatta offences because it post-dates those offences by 10 months. Nor can it be said to be relevant to the Telstra living witness incidents because the parking of a Telstra van at the Karrakatta cemetery bears no similarity to that conduct.

64           The State accept that the four or five occasions that Mr Foulner saw the white van occurred some seven months later than the Karrakatta offences. They point to the fact that a similar van was seen by another witness at the time of those offences driving in the vicinity and that the place that the van was seen parked by Mr Foulner is relatively close to where the offences occurred. In regard to the Telstra living witness incidents, the State points to one incident relating to the witness Katrina Jones which occurred in early December of 1995. She describes a van pulling over and the driver offering to give her a lift. She climbed into the van and described it as having no writing or logos on it but that the driver said he worked in telecommunications. This incident occurred near to the Albion Hotel on Stirling Highway. The State submit that an inference can be drawn that whoever was driving this van was the same person who was parking in Karrakatta as described by Mr Foulner.

65           This evidence is not relevant. There is no rational connection between the presence of a van parked in Karrakatta in 1995 and the commission of the Karrakatta offences some seven to ten months earlier. In argument the State did not maintain that any such connection existed. However, they did assert that a connection could be made with the Telstra living witness incidents. That connection is extremely tenuous. It relies upon the place where the van was parked being proximate to where the Telstra living witness incidents occurred, being the Claremont Cottesloe area. The suggestion appears to be that an inference can be drawn that the driver of the Telstra vehicle seen parked by Mr Foulner was also the person who was involved in the Telstra living witness incidents. But those incidents involved a variety of vehicles and so called 'prowling' conduct that was never observed in respect of the vehicle seen by Mr Foulner. In any event the registration of the Telstra vehicle seen by Mr Foulner and the identity of its driver are not capable of being established. Furthermore, to say that the place the van was parked is so geographically close to where the prowling conduct occurred that this in itself makes the evidence relevant, cannot be accepted. This evidence is incapable of making more probable any fact in issue in the case. It does not make it any more likely that the



accused was the offender in respect of the Karrakatta offences, nor that he was the person responsible for the Telstra living witness incidents.

### **11. Christine Hams**

66 Ms Hams is the mother of a friend of Sarah Spiers. The objection is to a passage that appears on page 2 of Ms Hams (unnumbered) statement. In that statement Ms Hams refers to a discussion that she had with Ms Spiers on 26 January 1996. She says that Ms Spiers did not mention anything about her personal life and to her knowledge she did not have a boyfriend and was not seeing anybody. Ms Spiers told her that she was planning to go out with Ms Hams' daughter and another friend later that night, that they were going to a concert and then to the OBH Hotel in Cottesloe. She said that they would probably all end up at Club Bayview in Claremont.

67 The State say that this evidence is relevant as to the manner of Ms Spiers' death and to negate any suggestion that she took her own life or that there was some unhappy interpersonal relationship that might otherwise explain her disappearance.

68 The defence objection is that this is inadmissible hearsay and that Ms Hams' description of Ms Spiers at the time as being happy is sufficient to meet the prosecution need to establish the state of mind of Ms Spiers at the relevant time.

69 I accept that the evidence is relevant to establish Ms Spiers state of mind. The evidence is not hearsay because it is not relied upon for the truth of its contents. The evidence is relevant in excluding other possible explanations for her disappearance and death, other than abduction by a stranger. The acceptance by the defence that Ms Hams could give evidence that Ms Spiers appeared happy is an implicit acceptance that evidence of this type is relevant and admissible.

### **12. Amanda Spiers**

70 Amanda Spiers is the sister of Sarah Spiers. Objection is taken to a passage that appears on page 6 of the typed version of her (unnumbered) statement. In that passage she states that her sister never told her about anyone harassing her.

71 The defence say that this is irrelevant because it is not probative of any issue at the trial.

72 The State submits that the evidence is relevant to the state of mind of Ms Spiers and to excluding other possible explanations for her abduction and death.

73 The passage needs to be seen in the context of the whole of Amanda Spiers' evidence. In that statement she sets out, in passages that are not objected to, that she had never known her sister to have a boyfriend, but she was always responsible and that she usually let her know where she was going and who she was going to be with. It is likely in this context that had Sarah Spiers been harassed by anyone she would have told her sister. Though not of great probative value the evidence does contribute to excluding possibilities for her disappearance and death other than abduction by a stranger.

### **13. Abigail Webster**

74 Ms Webster was a solicitor at the firm where Ms Glennon worked. They became friends. Objection is taken to passages on pages 2 and 8 - 9 of her (unnumbered) statement. In the passage on page 2 Ms Webster recounts a conversation that occurred sometime around 10 March 1997. In that conversation Ms Glennon spoke about her holiday, her plans for her career and that she was looking forward to her sister's wedding. In the passage on pages 8 and 9 Ms Webster states that she spent a lot of time talking to Ms Glennon about her sister's wedding, including ideas for a hens' night.

75 The State says that this evidence is relevant to the state of mind of Ms Glennon at the relevant time and goes to negating any suggestion of suicide or that she would disappear voluntarily.

76 The defence say that the fact of Ms Glennon's death and how she died are not in issue. In these circumstances suicide is a non-issue and the evidence is therefore irrelevant. The evidence relating to Ms Glennon's anticipation of her sister's wedding and hens' night cannot assist in determining the circumstances of her death because however she came to meet her end, her death prevented her from attending those events.

77 There are some expressions of opinion in Ms Webster's statement which are clearly inadmissible. In particular, the last paragraph in the second passage that has been referred to. However, I otherwise accept that this evidence is relevant to the state of mind of Ms Glennon in the time immediately preceding her death. I accept that suicide is not a possibility on the available evidence but Ms Glennon's state of mind is

relevant in other respects. Her commitment to her work and family events makes it unlikely that she would have done anything voluntarily that would have put those commitments at risk. It makes it more likely that she was abducted by a stranger.

#### **14. The police interview**

78 The accused was interviewed by police on 22 December 2016. Objection is made to two passages in that interview. The first passage appears at page 130 - 131 of the interview transcript. After a passage in which the accused admits dressing up in women's clothing but then denies it, the interviewing officer presses him for more details and the accused says that he does not feel comfortable talking about it. He is pressed in this regard but maintains that he does not wish to answer.

79 The defence object to this passage because, in effect it has no evidentiary value. The accused is essentially saying that he does not wish to say anything further on the subject and no conclusions as to the reasons for that can properly be drawn. The accused was entitled to decline to answer questions and that right should not be impugned.

80 The State submits that the police were legitimately following-up on the accused's responses and for him to say that he was not comfortable talking about it was not the same as saying that he wished to exercise his right to silence. The State say that there may be some significance in the accused saying he did not feel comfortable talking about it, but it is difficult to say what that significance is without knowing what the defence is. The State say there is nothing oppressive or irrelevant in the questioning and that the accused does not exercise his right to silence.

81 Whilst there may be a qualitative difference between a person saying they do not feel comfortable about talking about an issue and a person declining to answer a question, it is difficult to see what the relevance of this evidence is. It appears that the State is suggesting that it can be inferred that the accused felt uncomfortable because the conduct in question was connected to the offences, but to draw any such inference would be speculative. There may be entirely innocent reasons why the accused would feel uncomfortable about talking about this conduct. The evidence does not make more probable any fact in issue in the case. Furthermore, the State appears to rely on this evidence not because it is presently relevant to any issue but because they anticipate that it may become relevant depending on what the defence in the case is.

HALL J

82           The second objection is to a passage that appears on page 155 of the interview transcript. This passage follows the accused being questioned about DNA evidence. After being asked by the interviewer for an explanation of the DNA evidence the accused says that he does not know what the questioner means and says that the police are assuming that he is done it. The police officer responds by saying that he is not assuming that the accused has done it, that he is not assuming anything and that 'science speaks for itself'.

83           The defence object to this passage because it is an irrelevant comment by the police officer.

84           The State say that this is a legitimate response to the accused's answer.

85           Whilst the statements of the police officer regarding whether he was assuming anything were neutral and a mere response to what the accused had said, the statement that science speaks for itself was clearly a comment. It was not framed as a question or part of a question. It was simply an assertion on the part of the police officer that the science was irrefutable. Whether or not that is so is a matter to be determined at the trial. The police officer's view of the evidence is not relevant.

I certify that the preceding paragraph(s) comprise the reasons for decision of the Supreme Court of Western Australia.

AL  
Associate to the Honourable Justice Hall

9 AUGUST 2019