

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

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	)	<u>Martyn Langstaff</u>
	)	for the Crown
- and -	)	
	)	
	)	<u>Marc A. Zurbuchen</u>
DALE MARTIN CHUBB,	)	<u>Hayley S.K. Allardyce</u>
	)	for the accused
	)	
accused.	)	
	)	Judgment Delivered:
	)	February 5, 2026

RULING ON ADMISSIBILITY OF ACCUSED'S STATEMENT

BOND J.

INTRODUCTION

[1] On December 4, 2023, Dale Chubb was arrested in Norway House, Manitoba for the murder of Faron Wilson (the "victim"). Following his arrest, Mr. Chubb was interviewed by Royal Canadian Mounted Police ("RCMP") officers (the "police"). During the interview, Mr. Chubb made admissions regarding his involvement in the incident.

[2] The Crown seeks to have Mr. Chubb's statement ruled admissible for the purposes of his trial, and the defence is opposed. The onus is on the Crown to prove beyond a reasonable doubt that the statement was voluntary.

[3] In addition, the defence seeks to have the statement excluded from evidence on the basis that it was obtained in a manner that was in breach of Mr. Chubb's right to counsel protected by the ***Canadian Charter of Rights and Freedoms*** (the "***Charter***"). The onus is on the defence to establish on a balance of probabilities that Mr. Chubb's right to counsel was breached and that the evidence should be excluded.

[4] These two issues were addressed together in a blended *voir dire*.

[5] The evidence in the *voir dire* consisted of testimony from the arresting officers (Sargeant Jason Bell ("Sgt. Bell") and Constable Tanvir Ahmed ("Cst. Ahmed")) and the interviewing officers (Constable Nicholas Lamothe ("Cst. Lamothe") and Constable Scott Verestiuk (Cst. Verestiuk")) as well as audio and video recordings of the interactions. The defence called no evidence on the *voir dire*. The facts are fairly straightforward.

[6] Following his arrest, Mr. Chubb was transported to the RCMP detachment. Prior to entering the detachment, the officers were advised that there was a medical emergency occurring in the cell area, and they would not be able to enter the detachment until it had been addressed. The officers had no information about how long it would take to address the emergency.

[7] After asking Mr. Chubb about exercising his right to counsel, Sgt. Bell made a call to Legal Aid duty counsel on his cell phone. During this process the officers were advised that the emergency had been addressed, and they could bring Mr. Chubb into the detachment. At that point, Sgt. Bell had duty counsel on the phone. He handed the

phone to Mr. Chubb, who was in the rear of the police vehicle, and the officers left Mr. Chubb alone for the call and stepped away from the vehicle. Mr. Chubb spoke to counsel for about 13 minutes while the officers waited outside. After the call, Mr. Chubb was taken inside the RCMP detachment and lodged in a cell.

[8] Later that day, Mr. Chubb was taken to an interview room where he was interviewed for about three-and-a-half hours. During that time, Mr. Chubb was provided with coffee, some food, and two cigarettes, at his request. In the interview, at various points, Mr. Chubb said that he had no comment to make, was feeling stress and anxiety, and wanted a cigarette. Mr. Chubb initially denied any involvement in the homicide, but as the interview progressed, he made some admissions regarding his involvement.

[9] The Crown argued that the statement was given voluntarily. The Crown argued that the interview was conducted in a calm and non-aggressive manner. There were no threats or inducements made to Mr. Chubb, and the police provided for his well-being and comfort.

[10] The defence argued that the interview was conducted in an oppressive atmosphere as the police failed to provide Mr. Chubb with adequate cigarettes, persisted in questioning despite his discomfort, and made implied inducements related to his legal jeopardy and safety concerns.

[11] Regarding the alleged ***Charter*** breach the defence argued that the arresting officer failed to properly ascertain Mr. Chubb's choice of counsel, steering him towards calling duty counsel. He also argued that the officers should have taken him into the RCMP detachment as soon as the emergency no longer prevented entry, where the physical surroundings would be better for a telephone call to counsel.

[12] The Crown says that Mr. Chubb's **Charter** rights were respected with the call made to duty counsel. The Crown points out that Mr. Chubb did not express any dissatisfaction with his call with duty counsel.

ISSUES

[13] For the reasons that follow, I have concluded that the statement is admissible.

The issues to be decided are:

1. Did the police violate Mr. Chubb's s. 10(b) **Charter** right by failing to properly ascertain his choice of counsel and steering him to duty counsel?

Answer: No

2. Did the police violate Mr. Chubb's s. 10(b) **Charter** right by facilitating his call to duty counsel while he was in the rear of the police vehicle? Answer:

No

3. Has the Crown proved beyond a reasonable doubt that the statement given by Mr. Chubb was voluntary? Answer: Yes

Issue #1: Did the police violate Mr. Chubb's s. 10(b) *Charter* right by failing to properly ascertain his choice of counsel and steering him to duty counsel?

[14] The right to counsel protected under s. 10(b) of the **Charter** imposes two obligations on the police when they detain a person. The first is to inform the detainee of his right to consult counsel without delay and the second is to provide the detainee a reasonable opportunity to contact counsel should he choose to exercise that right (*R. v. Suberu*, 2009 SCC 33 (CanLII); [2009] 2 S.C.R. 460, at para. 38). The defence

argued that the officers who arrested Mr. Chubb failed to ascertain Mr. Chubb's counsel of choice and steered him to duty counsel.

[15] Based on the evidence of Sgt. Bell, I find that Mr. Chubb was advised of his right to counsel twice following his arrest. He was advised first immediately upon his arrest and he answered in the affirmative when he was asked if he wanted to call a lawyer. He did not, however, name a lawyer he wished to call. He was advised again when he was inside the police vehicle and the interaction was recorded. Sgt. Bell advised Mr. Chubb: "You may call any lawyer you wish or get free legal advice from duty counsel." He also advised Mr. Chubb that if he wanted to call a lawyer other than duty counsel, a phone and phone book would be provided.

[16] When asked: "Do you want to call duty counsel or any other lawyer?", Mr. Chubb responded: "Um, well, I don't have a lawyer but, uh, I could call some, I could maybe, I dunno, Legal Aid, I dunno." Sgt. Bell then clarified: "Okay, just a second here. Am I understanding correctly that you don't have a lawyer but maybe Legal Aid is who you might wanna call?" Mr. Chubb answered: "Yeah." Sgt. Bell answered: "Okay, so I do understand you then."

[17] Sgt. Bell testified that he had asked the clarifying question after Mr. Chubb's response was "wishy washy" and was satisfied after doing so that he understood Mr. Chubb's choice.

[18] After Mr. Chubb's call to duty counsel, Sgt. Bell asked him: "Okay, did you speak with a lawyer that you chose?" Mr. Chubb responded with: "Ummm." Sgt. Bell then asked: "You spoke with a lawyer?" Mr. Chubb responded: "I spoke with a lawyer." Sgt. Bell said: "Yeah, and you chose Legal Aid. That was Legal Aid. So you spoke to a

lawyer you chose, yeah?" Mr. Chubb answered: "Yeah." Sgt. Bell then confirmed with Mr. Chubb that he was satisfied that he was given an opportunity to call a lawyer, and that he understood what the lawyer told him.

[19] Defence counsel argued that Mr. Chubb's responses to Sgt. Bell's inquiries were equivocal and should have prompted Sgt. Bell to ask Mr. Chubb further questions about his choice of counsel and his satisfaction with the call. In my view, when viewed as a whole and in context, there is nothing in the exchange between Mr. Chubb and Sgt. Bell that should have prompted Sgt. Bell to make further inquiries regarding Mr. Chubb's exercise of his right to counsel. The exchange was polite, unhurried, and clear. When Mr. Chubb's response was "wishy washy" as described by Sgt. Bell, he clarified. At no point did Mr. Chubb express any concern or dissatisfaction with his call to duty counsel. There is no evidence before me that Mr. Chubb at any time wished to speak to any other lawyer, either before or after his call to duty counsel. I disagree with the submission that Mr. Chubb's comments during the interview to the effect that he did not want to talk to police without a lawyer beside him meant he was dissatisfied with the call he made to duty counsel or that he misunderstood the advice he received.

[20] To satisfy their obligations under the ***Charter***, police officers are required to facilitate a detainee's access to counsel of choice. The detainee, however, must exercise some diligence in exercising his right to counsel (***R. v. Willier***, 2010 SCC 37, at para. 35). Here, Mr. Chubb did not at any point indicate to Sgt. Bell that there was any misunderstanding regarding his wish to contact Legal Aid duty counsel. He did not express any dissatisfaction with the call to Legal Aid duty counsel afterwards.

[21] Defence counsel further argued that Sgt. Bell improperly steered Mr. Chubb towards duty counsel, because facilitating access to duty counsel would be easier than providing Mr. Chubb with access to a phone book, or the internet, to find a lawyer he wished to call. Defence counsel referred to a number of cases where Courts found that the officer had done just that, and so violated the detainee's **Charter** right to counsel.

[22] I find that the cases relied upon by defence counsel are distinguishable on their facts. For example, in **R. v. Cure**, 2020 MBQB 175, the accused indicated he did not have a specific lawyer in mind, and without any further discussion, the officer called Legal Aid for him. In this case, Sgt. Bell clarified with Mr. Chubb that he wished to call Legal Aid duty counsel. In fact, he clarified twice. First, as noted above, the exchange was: "Okay, just a second here. Am I understanding correctly that you don't have a lawyer but maybe Legal Aid is who you might wanna call?" Mr. Chubb answered: "Yeah." Second, after explaining to Mr. Chubb he would allow him to speak to counsel while he was in the police vehicle, and before making the call he asked: "So you mentioned Legal Aid, I'll given them a call if that's still ok with you?" and Mr. Chubb answered: "Yeah."

[23] I appreciate that there is a power imbalance inherent in interactions between a police officer and a detainee in police custody, which may make it difficult for a detainee to express his wishes. However, there is no evidence that Mr. Chubb was pressured into choosing duty counsel or felt otherwise intimidated. Sgt. Bell's communication with Mr. Chubb was clear, calm, polite, and matter-of-fact. There is nothing on the evidence to suggest that Mr. Chubb wished to call any lawyer other than Legal Aid duty counsel.

[24] I find on the evidence that Sgt. Bell did not interfere with Mr. Chubb's choice of counsel and did not steer Mr. Chubb to call duty counsel.

Issue #2: Did the police violate Mr. Chubb's s. 10(b) *Charter* right by facilitating his call to duty counsel while he was in the rear of the police vehicle?

[25] That the police have a duty to provide a detainee with a reasonable opportunity to consult with counsel is incontrovertible (*Suberu*, at para. 38). Courts have also recognized that it may not be practical or reasonable to facilitate a detainee's access to counsel at the roadside or otherwise before transportation to a police station (*R. v. Musa*, 2021 ONSC 2615, at paras. 130 and 132). One reason for this is the requirement that consultation with counsel proceeds in private. There is no allegation here that Mr. Chubb's consultation with duty counsel was not private. The concerns raised by the defence are that the rear of the police vehicle was cramped, cold, and less comfortable than a room in the detachment where it would be warm and there would be a chair and table. The defence argued that the police should have taken Mr. Chubb into the RCMP detachment for the call to counsel. The defence further argued that the police should have given Mr. Chubb the opportunity to make a second call to counsel after he was taken into the detachment.

[26] The question is: did the police give Mr. Chubb a reasonable opportunity to consult counsel? (I note that once it is established that the detainee expressed his wish to consult counsel, the onus shifts to the Crown to establish that he was given a reasonable opportunity to do so.) (See *R. v. Luong*, 2000 ABCA 301, at para. 12.)

[27] As noted above, Sgt. Bell and Cst. Ahmed transported Mr. Chubb to the detachment after his arrest, but were unable to enter the building upon arrival because there was a medical emergency in the cell area. Sgt. Bell explained to Mr. Chubb that he would provide him with his cell phone to speak to counsel while he was in the police

vehicle. Mr. Chubb was in the rear of a Ford Explorer SUV equipped with a secure barrier between the front and rear seats. Mr. Chubb's handcuffs were removed for the purpose of the call, and the vehicle turned off to ensure that its recording device would be deactivated during the call. Turning off the vehicle meant that the heat was off. However, I accept the testimony of Cst. Ahmed that the vehicle would have been running throughout his shift that day, consistent with his practice to ensure that the equipment in the vehicle is kept warm. I also accept his testimony that the temperature that day was -5 degrees Celsius. This is consistent with Sgt. Bell's testimony that it was cold outside, but not so cold as to be a concern for the temperature inside the vehicle. Even considering that Mr. Chubb was dressed in runners, pants and a hooded sweatshirt, rather than boots and a jacket, I cannot conclude on the evidence that Mr. Chubb would have been uncomfortably cold. The vehicle had been running with the heat on for some time, it was -5 degrees Celsius outside, and the heat was off for a total of about 25 minutes while the call was made.

[28] I do not accept the submission that the officers should have taken Mr. Chubb into the detachment as soon as they were permitted entry. Sgt. Bell testified that when he was advised that they could enter, he already had duty counsel on the phone. The audio recording shows that Sgt. Bell had explained the situation to duty counsel, exchanged phone numbers with him, provided Mr. Chubb's name and date of birth, and answered some questions posed by counsel. Sgt. Bell was handing the phone to Mr. Chubb when he was advised that they could go into the detachment. It was reasonable to continue the call.

[29] The defence suggested that Sgt. Bell decided to continue with the call to counsel in the vehicle for his own convenience. However, I accept Sgt. Bell's testimony that he was concerned about the timely facilitation of Mr. Chubb's right to counsel. As he testified, he did the best he could to facilitate the call to counsel when he did not know how long it would be before they would be able to enter the detachment building. It was not unreasonable to proceed with the call when contact with counsel had been established.

[30] I am satisfied that the police afforded Mr. Chubb with a reasonable opportunity to consult counsel. There is no evidence that Mr. Chubb was uncomfortable in the rear of the police vehicle. He spoke to duty counsel for thirteen minutes. Following the call, he expressed no concerns about the call and indicated that he understood the advice he was given. There is no basis to find that the police were required to provide Mr. Chubb a second call to counsel after he was taken into the detachment to satisfy their obligations under s. 10(b) of the *Charter*.

Issue #3: Has the Crown proved beyond a reasonable doubt that the statement given by Mr. Chubb was voluntary?

[31] An accused's statement to a police officer will be admissible at trial only if it is proven to have been voluntarily given. The Crown bears the onus of proving that the statement was voluntary. The Crown must prove voluntariness beyond a reasonable doubt (*R. v. Oickle*, 2000 SCC 38 (CanLII), [2000] 2 S.C.R. 3).

[32] The question of voluntariness is an objective one, although Mr. Chubb's individual characteristics should be considered. The inquiry is contextual and fact specific, requiring the weighing of all the circumstances. The statement must be the product of an operating

mind. The statement must not have been obtained by police through the operation of trickery, oppression, threats or inducements. The ultimate question is whether Mr. Chubb exercised free will by choosing to make a statement (*R. v. Gyles*, 2015 MBQB 21, at para. 5; *Oickle*, at para. 71).

[33] Consideration of all of the circumstances is particularly important where the issue is whether the interview was conducted in an atmosphere of oppression. The factors that may create an atmosphere of oppression include “depriving the suspect of food, clothing, water, sleep, or medical attention; denying access to counsel; and excessively aggressive, intimidating questioning for a prolonged period of time” (*Oickle*, at para. 60).

[34] The police are duty-bound to investigate crime and are entitled to question persons suspected of committing a crime as part of their investigation. Few suspects will spontaneously confess to a crime, and it is not improper for the police to make efforts to convince the suspect that it is in his or her best interests to confess. This becomes improper only when these efforts raise a reasonable doubt about whether “the will of the subject has been overborne” (*Oickle*, at para. 57). Where investigators create an atmosphere of oppression, intentionally or otherwise, such that the court cannot be satisfied beyond a reasonable doubt that the resulting statement was voluntarily given, then it must be ruled inadmissible.

[35] The Crown argued that the evidence, and in particular the video recording of the interview, should satisfy the Court that Mr. Chubb’s statement was voluntary. They argued that the issues raised by the defence do not raise a reasonable doubt about the voluntariness of his statement.

[36] The defence argued that I should have a reasonable doubt about the voluntariness of Mr. Chubb's statement based on a number of factors taken together:

- a) Ignoring Mr. Chubb's assertions of his right to silence;
- b) Failure to provide a second opportunity to consult with counsel;
- c) Failure to provide adequate food;
- d) Failure to provide Mr. Chubb with more than two cigarettes;
- e) Implied threats and inducements related to Mr. Chubb's expressed concerns for this safety; and
- f) Implied threats and inducements related to Mr. Chubb's level of involvement in the offence.

[37] As I will explain, I find that none of the concerns raised - individually or taken together - raise a reasonable doubt regarding the voluntariness of Mr. Chubb's statement.

- a) Ignoring Mr. Chubb's assertions of his right to silence*
- b) Failure to provide a second opportunity to consult with counsel*

[38] At the beginning of the interview, Mr. Chubb said "no comment" multiple times, and said more than once that he would talk to the officers if he had a lawyer with him. I do not agree with the defence submission that Mr. Chubb's references to having a lawyer beside him were a request for a second consultation with counsel. (Even if there were, I see no basis upon which Mr. Chubb would have been entitled to a second consultation.) Mr. Chubb's references to wanting a lawyer with him were part of his response to questioning; he wanted to avoid saying anything against his interests. Despite Mr. Chubb's expressed reluctance to speak, Cst. Lamothe continued to engage with him and ask him about his knowledge and involvement in the victim's death. This he is

entitled to do, so long as the continued questioning does not result in Mr. Chubb's will being overborne.

[39] Cst. Lamothe's questioning is polite, calm, and respectful. Cst. Verestiuk's occasional interventions are similar in tone, although slightly more pressing. None of the questioning is aggressive and at no point during the interview are the officers' voices raised.

[40] This is not a case where Mr. Chubb continued to assert his right to silence throughout the interview. Early in the interview, and without significant prompting, Mr. Chubb began to answer questions. When Cst. Lamothe asked him how he is feeling after he had smoked a cigarette, Mr. Chubb stated: "This thing is weighing heavily on my chest ... I really do wanna let it out but I can't because I don't know what to say that will be, you know." In response, Cst. Lamothe told Mr. Chubb that he just wants to know what happened. He appealed to Mr. Chubb's sense of responsibility to, and sympathy for, the victim's family, and asked Mr. Chubb to help him give them closure. He returned to this theme throughout the interview. In my view, it was the appeals to Mr. Chubb's conscience that prompted him to answer questions.

c) Failure to provide adequate food

[41] During the interview, Cst. Lamothe told Mr. Chubb that police would obtain a burger and fries for him from a local restaurant, as he had requested. This meal was never provided to Mr. Chubb, and instead he was provided "a TV dinner", and at the end of the interview, offered another. The defence acknowledged that Mr. Chubb was not entitled to the particular meal that he requested, even when it had been agreed to by Cst. Lamothe. Rather, he argued that the failure of the police to provide the meal was

part of the atmosphere of oppression created by the police because during the interview Mr. Chubb expressed frustration that the meal was not provided.

[42] In my view, the failure to provide Mr. Chubb with the meal he requested is irrelevant to the analysis. Mr. Chubb was provided with food, which he ate. He was provided with coffee, which he drank. His need for sustenance was adequately addressed. His frustrated desire for a burger and fries had no bearing on whether his statement was voluntarily given.

d) Failure to provide Mr. Chubb with more than two cigarettes

[43] During the interview, Mr. Chubb told Cst. Lamothe that he was a heavy smoker dependent on cigarettes. He requested the opportunity to have a cigarette on multiple occasions. Towards the end of the interview, he expressed a strong desire for a cigarette and told police he needed to smoke to deal with the stress and anxiety he was feeling.

[44] The police provided Mr. Chubb with two cigarette breaks during the interview. This involved stopping the interview, removing Mr. Chubb from the interview room, and escorting him to the garage in the RCMP detachment where a door could be opened to allow ventilation. More than one officer was required to monitor the open door and Mr. Chubb. The officers told Mr. Chubb – more than once - that these cigarettes were not provided in return for information, but were provided as “creature comforts”. Mr. Chubb said he understood. Later in the interview, Mr. Chubb’s requests for cigarettes were denied, and he was advised that he would be permitted to have one before he was taken back to his cell, when the interview was over, whether he provided information to the police or not.

[45] The defence argued that the provision of only two cigarettes during the interview contributed to an atmosphere of oppression given Mr. Chubb's dependence on cigarettes. The defence also argued that the police officers' promise of a cigarette only after the interview was over established an inducement motivating Mr. Chubb to give information so that the interview would end and he could have a cigarette.

[46] I am not persuaded by the defence arguments. Mr. Chubb was not entirely deprived of cigarettes. The explanations given for the limit on the number of cigarette breaks provided by the officers were reasonable. The cigarette breaks interrupted the interview process and required additional officers to assist. I conclude from the entirety of the video recording of the interview that Mr. Chubb's expressed discomfort was caused by the circumstances in which he found himself – implicated in a homicide and arrested for murder - not the denial of cigarettes. I accept that a further cigarette break might have eased some of the discomfort for Mr. Chubb, but the denial of that cigarette break does not amount to oppression in the circumstances.

[47] The argument that Mr. Chubb provided information only to end the interview so that he could have a cigarette is undermined by what Mr. Chubb himself said at the end of the interview. After writing an apology note to the victim's grandmother, Mr. Chubb agreed with the officers that he felt better and calmer after having given them information about what happened. He told the officers that his mind was more at ease and his chest was feeling better, after telling them what happened. Mr. Chubb was motivated to give information to the police by his conscience, to which the police appealed.

e) Implied threats and inducements related to Mr. Chubb's expressed concerns for this safety

f) Implied threats and inducements related to Mr. Chubb's level of involvement in the offence

[48] The defence argued that the officers implied that police assistance in addressing his safety concerns was dependent on him providing information. I find no such implication on the whole of the evidence. Mr. Chubb raised concerns for his safety more than once, and each time the officers responded appropriately. They acknowledged his concerns, and confirmed their duty to address them. They also pointed out that they needed to know the source of any threats to his safety. They explained to him that any safety concerns while he is in custody would be addressed by correctional services. His concerns were neither dismissed by the officers, nor were they used to induce him to give a statement.

[49] Similarly, I find the police officers' references to Mr. Chubb distinguishing himself from the others alleged to be involved in the homicide did not amount to an improper inducement.

[50] An inducement need not be explicit to raise a doubt about voluntariness. Even where interviewing officers do not offer any direct promise of police or court action, inducements of decreased jeopardy for speaking and threats of increased jeopardy for silence can give rise to an implicit *quid pro quo*. The question then becomes whether the threats or inducements, alone or in combination with other factors, raises a reasonable doubt about the voluntariness of the statement. (See **R. v. Wabason**, 2018 ONCA 187, at paras. 17-19.)

[51] Whether the interviewing officers' comments amounted to an implied *quid pro quo* depends on what was said, and how it would be understood in the context. In **Wabason**, the interviewing officer told the accused that unless he spoke up immediately, he would "go down" for first degree murder, and "take the fall" for a murder he did not commit, and repeatedly told him if he spoke he would be in less jeopardy (at paras. 12-13). What is significant is that the interviewing officer "characterize[d] the legal consequences of making or not making a statement as a given" and the Court found this to be coercive (at para. 16) (emphasis added). The Court went on to find that in all the circumstances, including that the accused was a 19-year-old Indigenous youth, the implied inducements raised a doubt about the voluntariness of his statement.

[52] Similarly, in **Gyles**, implied inducements, in the context of a pattern of oppressive conduct were found to render the accused's statement inadmissible. In that case, police told the accused that the interview was his only chance to speak, and implied that if he did not speak he would be presumed guilty, convicted, and jailed for 25 years, whereas if he did speak, there was a prospect of a reduced charge (at para. 55).

[53] Here the officers did suggest to Mr. Chubb that he tell them what happened to confirm that his involvement in the homicide was not as serious as the others charged. However, they made no reference to the possibility of a reduced charge or any other possible outcome in relation to the charge against Mr. Chubb. On the contrary, they told him that the others alleged to be involved were charged with murder, and that he would be charged with murder, too.

[54] Moreover, even if there was an implied inducement, I find that it does not raise a doubt about the voluntariness of Mr. Chubb's statement. Mr. Chubb is a mature man and

is not particularly vulnerable to police pressure. In my view, Mr. Chubb was motivated to provided information to the interviewing officers for two interrelated reasons: the officers told him about evidence that implicated him in the homicide, and they appealed to his conscience. I come to this conclusion based on the manner in which the interview unfolded, and how Mr. Chubb provided information during its course. During the interview, Mr. Chubb clearly expressed his concern about what had happened to the victim, saying that it was “fucked up” and the victim was “just a little boy”. He referred to a friendship between his grandmother and the victim’s grandmother. He expressed revulsion regarding the violence that was inflicted on the victim by the others. Initially he denied any involvement, but made admissions as he was presented with the evidence that the police had obtained. As police told him what other witnesses had said, and pointed to the possibility of DNA evidence, Mr. Chubb changed his narrative, admitting to hitting the victim and taking a baggie containing crack cocaine from his pocket.

CONCLUSION ON VOLUNTARINESS

[55] In my view, the officers properly and appropriately took care of Mr. Chubb’s physical needs and comfort while he was in their custody. They gave Mr. Chubb food, although not the food he had requested. They gave him coffee when he asked, and allowed two cigarette breaks during the interview. They also allowed him to smoke two more cigarettes after the interview was finished. At no point did the officers suggest to Mr. Chubb that he had to tell them more before he would be given a cigarette. On the contrary, they specifically told him that they would allow him to have a cigarette whether he spoke to them or not.

[56] The interview was conducted in a calm and respectful manner and there was nothing aggressive or intimidating in the tone or manner of questioning. Cst. Lamothe, who conducted the majority of the interview, never raised his voice, never showed any frustration, and never showed any disrespect or antipathy towards Mr. Chubb. Cst. Verestiuk's manner was likewise calm and respectful.

[57] At one point later in the interview, when the officers were out of the room, Mr. Chubb appeared agitated. He paced and spoke out loud about needing a cigarette. At other times, Mr. Chubb appeared quite calm, eating food, and sipping coffee. His emotional upset appeared to be connected to his distress about what had happened, not his treatment by police.

[58] Appealing to Mr. Chubb's conscience to persuade him to tell the truth about what happened is not inappropriate. Such an appeal will only raise concerns about the voluntariness of the statement if they are such that the detainee's will is overborne. I find that in this case, Mr. Chubb's free will to choose was neither undermined nor overborne.

[59] I am satisfied beyond a reasonable doubt that Mr. Chubb's statement was voluntary.

CONCLUSION

[60] For the foregoing reasons, I conclude that Mr. Chubb's statement is admissible evidence for his trial.

_____J.