The Queen v Wojtowicz [2005] NTSC 53

PARTIES:	THE QUEEN
	v
	WOJTOWICZ, EDWARD JUSTIN
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NO:	(20506394)
DELIVERED:	16 SEPTEMBER 2005
HEARING DATES:	2 & 3 AUGUST 2005
JUDGMENT OF:	MARTIN (BR) CJ

CATCHWORDS:

EVIDENCE – Admissibility and relevance – recent complaint – personal diary entries – mother found and read diary entry by child victim – when asked if true victim replied "yes" – whether notes in diary admissible as exception to hearsay rule under rule under s 26E of the Evidence Act NT – operation of s 26E – "sufficient" probative value – response of victim to mother's enquiry equates to complaint and admitted as spontaneous complaint – pages containing specific entries concerning the accused admissible – other pages admissible

Evidence Act (NT) s 26E, s 26F
Evidence Reform (Children and Sexual Offences) Act (NT) 2004

Papakosmas v The Queen (1999) 196 CLR 297, at 313–314, followed.
Roberts v The Queen [2001] WASCA 191; *R v Joyce* [2005] NTSC 21, applied.

R v Gallagher (1986) 31 SASR 73, considered; *R v Lockyer (*1996) 89 A Crim R 457 at 459, considered.

REPRESENTATION:

Counsel:

Crown:	Ms E Armitage
Defendant:	Mr I Rowbottam

Solicitors:

Crown:	Office of Director of Public Prosecutor
Defendant:	Withnalls

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

The Queen v Wotjtowicz [2005] NTSC 53
No. (20506394)

BETWEEN:

THE QUEEN

AND:

EDWARD JUSTIN WOJTOWICZ

CORAM: MARTIN (BR) CJ

REASONS FOR JUDGMENT

(Delivered 16 September 2005)

Introduction

[1] This is an application to exclude evidence commonly known as evidence of recent complaint of a sexual assault.

[2] Edward Justin Wojtowicz is charged with unlawfully assaulting a 15 year old female person in circumstances of aggravation. The complainant was aged 15 years at the time of the alleged assault. It is the Crown case that the assault was accompanied by circumstances of indecency.

[3] According to the statement of the complainant, the assault occurred on or about 22 December 2004. She is not certain as to the precise day. In a statement signed on 28 February 2005, the complainant states that she

received a diary for Christmas and wrote down what had occurred. The statement reads as follows:

> "I got a diary for Christmas and wrote down what I went through with Justin and how I was feeling. A couple of weeks later my mum found my diary and read it. She asked me if it was true, I said, 'Yes'. Mum and [mum's partner] kicked Justin off the property, he tried denying that he did anything."

[4] In a subsequent statement dated 19 April 2005, the complainant states that she had been asked by an investigating officer to supply a further statement regarding the notes in her personal diary. The statement reads as follows:

> "I keep a personal diary. I keep this diary totally to myself and it is [a] very private thing for me. I write about things that affect me, my feelings and my thoughts. I wrote on the cover of the diary, '[complainant's christian name] Diary. Please do NOT read anything in here.'
>
> About two or three days after Justin assaulted me I was upset, angry and confused. I wrote about what happened in my diary. On the computer at home I also typed text about what happened to me. I printed this off and folded the two sheets of paper with my text on it and put this also in my diary."

[5] There are two entries under consideration. The first appears on a left hand page and is written in very large letters as follows:

> "What's the
>
> purpose of
>
> Life? Why live?
>
> Live for What?"

[6] The second entry commences on the page immediately adjacent to the first entry and directly relates to the accused:

> "I really hate Justin. The other night he got home, from out bush, at 1 am. I was asleep outside and the rude fucker came and woke me up. He layed down next to me and I was still half-asleep and he put his arm around me and started to kiss my neck. I woke up and I told him to stop. He didn't and I was getting scared. I ask him why was he back so late, that made him stop and he sat up. I sat up to so he couldn't pin me to the bed. I went to stand up and he grabbed me and lent forward like he wanted to kiss me. I kept telling him that I had a boyfriend and I didn't and don't ever want to do anything with him. I also told him get off my bed. It would have been 2 or 3 o'clock before I got him out of my bed and room. I haven't told anyone. I asked him what [his partner] would think if she found out and that I'm not the kind of person who cheats on the person they love. He looked at me, grabbed my arm (really hard) and told me that noone will find out and if people do I would be the one to blame. After that he left and gave me a real fucked look.
>
> Justin is a fag
>
> Justin is a snob
>
> A fuck head
>
> [This entry is not reproduced as it will be excluded from the evidence]
>
> 4 lyfe !! "

[7] In a statement dated 14 March 2005 the complainant's mother states that near the end of December 2004 and into January 2005 she noticed that the complainant was becoming moody and very withdrawn. She also observed a change in the complainant's attitude toward the accused. Previously the accused and the complainant had appeared to be on good terms and friendly

with each other, but in late December and early January the complainant avoided the accused.

[8] The complainant's mother discovered the complainant's diary in about mid January 2005 while looking for a phone number in a caravan occupied by the complainant. The mother's statement reads as follows:

> "I found what looked like a diary. It had written on it '[complainant's christian name] diary please do not read anything in here'. I read and found an entry where she describes Justin trying to have sex with her and touching her up. I was so upset and started to shake. I went outside and vomited.
>
> I spoke to [the complainant] on the phone and told her that I had read her diary. She was initially upset that I read her diary but after a while she was OK about it. I had her sleep that night at her boyfriend's parents' house as I did not want her coming home with Justin still living on the block near her. She came home the next day and we spoke about what Justin had done to her. She was angry, scared, upset and crying."

[9] By way of elaboration, the Crown Prosecutor stated that both the complainant and her mother will give evidence that they are unable to recall the specific words used in their conversation. The complainant will apparently say that during the conversation her mother said that she had read about Justin and asked if it was true to which the complainant replied "Yes". The complainant's mother will apparently say that she asked whether the entry about Justin was true and received a positive answer.

[10] The Crown seeks to place before the jury the contents of the diary entries together with evidence of the conversation between the complainant and her mother. In addition the Crown seeks to tender the relevant pages of the

diary. The accused objects to any evidence concerning the entries and the conversation.

[11] The objection raises consideration of the common law principles governing the admission of complaints in sexual cases. In addition, I am required to consider the operation of s 26E of the Evidence Act ("the Act") which permits the admission, in identified circumstances, of a child's statement to another person in relation to a sexual offence as evidence of the facts in issue. Admission pursuant to s 26E is by way of an exception to the rule against hearsay evidence.

Common Law

[12] At common law evidence of a recent complaint of a sexual offence is admissible as evidence of consistency of conduct by the complainant. Such evidence is not admitted as an exception to the hearsay rule and cannot be used as evidence of the truth of facts asserted by the complainant. Any attempt to use the evidence as evidence of the truth of facts asserted would infringe the rule against the reception of hearsay evidence.

[13] Counsel for the accused initially submitted, without much enthusiasm, that the contents of the diary entries could not amount to a complaint because they were private entries and not a statement made to another person. This submission is contrary to the decision of the Western Australian Court of Criminal Appeal in *Roberts v The Queen* [2001] WASCA 191. The Court was concerned with a diary entry by a complainant alleging a number of acts

of sexual intercourse. The diary had been discovered by the complainant's father who had questioned her as to whether the entry was true. The complainant had confirmed that the entry was true.

[14] In a judgment with which Kennedy and Steytler JJ agreed, Miller J held that once the complainant had confirmed to her father the accuracy of what she had written, she was making a complaint to her father of the sexual assault. In the matter under consideration, by adopting the entry concerning "Justin" as true, the complainant was complaining of a sexual assault to her mother.

[15] Counsel for the accused also suggested that the content of the diary entry as adopted by the complainant could not amount to a complaint because it was not an account given to the mother spontaneously. It was an account given in response to a question "Is it true?"

[16] Counsel was unable to point to any authority to support the proposition that a statement is denied the quality of a complaint if it was not made spontaneously. The same suggestion was rejected in *Roberts*. A number of authorities were cited in *Roberts* in which complaints made in response to questions were admitted. Those authorities included the remarks of King CJ in *R v Gallagher* (1986) 31 SASR 73. The Chief Justice observed that a requirement enunciated in an earlier authority that, to be admissible, a statement of complaint must not be in response to leading questions, has not survived as a ground of objection. It is one of the factors to be taken into account in determining whether to admit the complaint.

[17] In my opinion, the fact that the complainant responded to a direct question "Is it true?" does not deprive the content of the entry of its quality as a complaint. Evidence of the content of the diary entry concerning "Justin", together with the evidence of the conversation between the complainant and her mother, is admissible pursuant to common law principles as evidence of a recent complaint.

[18] Submissions were also directed to the issue of the admissibility of the pages of the diary containing the complaint should the evidence amount only to evidence of recent complaint. In the circumstances, however, it is unnecessary for me to reach a concluded view on this issue. As discussed later in these reasons, in my opinion the content of the entry is admissible as an exception to the rule against hearsay evidence by reason of the operation of s 26E of the Act. I am also of the view that by reason of the ambit of s 26E, the pages of the diary containing the relevant entry are admissible. In these circumstances it is unnecessary to determine whether the document would be admissible if the evidence was received only as evidence of a complaint pursuant to common law principles.

[19] Initially I was inclined to the view that as it is the content of the statement amounting to a complaint which is admissible as evidence of consistency of conduct and, therefore, the evidence is relevant only to credit, the pages are not admissible. However, on reflection I tend to the view that there is force in the proposition that as evidence of a

complaint is admissible, albeit for limited purposes, evidence is also admissible of the manner in which the complaint was made and, for that purpose, the pages are admissible.

Section 26E Evidence Act

[20] Section 26E of the Evidence Act was enacted in 2004 as part of a package of evidentiary reforms introduced by the Evidence Reform (Children and Sexual Offices) Act 2004. Those reforms included amendments to the Justices Act to provide that evidence of children at preliminary examinations in connection with sexual offences must be given by written or recorded statement and children cannot be cross-examined at that hearing. Time limits were introduced in respect of prosecutions for sexual offences both summarily and on indictment. Amendments were made to the Act to increase the protection available to child witnesses giving oral evidence. In particular, ss 16 and 21D are as follows:

> "16. **Disallowance of question**
>
> (1) The Court may disallow any question that the Court considers to be misleading, confusing, annoying, harassing, intimidating, offensive, repetitive or phrased in inappropriate language.
>
> (2) In determining whether to disallow a question, the Court must have regard to –
>
> (a) any relevant condition, attribute or characteristic of the witness, including –

(i) the age, maturity and cultural background of the witness; and

(ii) any mental, intellectual or physical characteristic of the witness; and

(b) if the witness is a child – the principles set out in section 21D.

21D. **Principles in relation to child witnesses**

(1) It is the intention of the Legislative Assembly that, as children tend to be vulnerable in dealings with persons in authority (including courts and lawyers), child witnesses be given the benefit of special measures.

(2) If a witness is a child, the Court must have regard to the following principles:

(a) the Court must take measures to limit, to the greatest extent practicable, the distress or trauma suffered (or likely to be suffered) by the child when giving evidence;

(b) the child must be treated with dignity, respect and compassion;

(c) the child must not be intimidated when giving evidence;

(d) proceedings in which a child is a witness should be resolved as quickly as possible."

[21] Further protection for children was achieved by the enactment of s 21B of the Act. That section provides for the pre-recording of either the examination-in-chief or the whole of the evidence of a child or person who suffers from an intellectual disability and for the evidence to be given at

trial by the playing of the film taken of the complainant when the evidence was pre-recorded.

[22] Section 26E of the Act was introduced in the context of this package of reform. It is in the following terms:

> "26E. **Exception to rule against hearsay evidence**
>
> (1) In a proceeding in relation to a sexual offence, as an exception to the rule against hearsay evidence, the Court may admit evidence of a child's statement to another person as evidence of the facts in issue if the Court considers the evidence is of sufficient probative value as to justify its admission.
>
> (2) In a preliminary examination under Part V, Division 1 of the *Justices Act*, the child whose evidence is admitted under subsection (1) cannot be cross-examined in relation to the statement.
>
> (3) An accused person cannot be convicted solely on the basis of hearsay evidence admitted under subsection (1)."

[23] For the purposes of the Act, the complainant is a child. Section 21A defines a child as a person who is under 18 years of age.

[24] It is readily apparent that a primary purpose of the reform package is to offer increased protection for children and other vulnerable witnesses. In that context s 26E creates an exception to the rule of hearsay evidence in respect of a child's statement to another person if the court considers the evidence to be of "sufficient probative value as to justify its admission". No

other guidance is given as to the matters to which the court should have regard in determining whether to admit a statement pursuant to s 26E.

Section 26E – Admissibility

[25] Counsel for the accused submitted that the diary entry could not amount to a "statement to another person" for the purposes of s 26E. It was contended that the entry amounts to no more than a recording of private thoughts not intended for communication to another person.

[26] "Statement" is defined in s 4 of the Act as including "any representation of fact or opinion, whether made in words or otherwise". In my opinion, that definition encompasses the complainant's diary entry which contains written representations of fact and opinion. There is no basis for reading down the definition to exclude written representations.

[27] In addition, viewed in its entirety, s 26E contemplates the admission of written statements. Section 26E(2) provides that where the statement of a child is admitted in a preliminary examination pursuant to s 26E(1), the child cannot be cross-examined in relation to the statement. In the same package of amendments, s 105AA was introduced to the Justices Act and provides that the evidence of a child in relation to a sexual offence at a preliminary examination must be given by written or recorded statement. It follows that ss (2) contemplates that a statement admitted under ss (1) will be a written statement.

[28] On the basis that s 26E applies to written statements, counsel submitted that a written diary entry not intended for communication to another person is not a "statement to another person" for the purposes of s 26E. However, this submission overlooks the evidence that when asked by her mother, the child adopted the statement as true. Upon that adoption the statement became a statement by the child to her mother.

Discretion

[29] The Court is given a discretion to admit evidence of the statement if the Court considers the evidence is of "sufficient probative value as to justify its admission". As Riley J pointed out in a helpful judgment in *R v Joyce* [2005] NTSC 21, the presence of probative value is, in itself, not enough to qualify a statement for admission pursuant to s 26E. The evidence must have "sufficient" probative value "to justify" its admission.

[30] The word "sufficient" is not defined. Counsel for the Crown submitted that the threshold is not as high as a requirement that evidence have "significant" or "substantial" probative value. Reference was made to the decision of Hunt CJ at CL in *R v Lockyer* (1996) 89 A Crim R 457 in which his Honour was concerned with the admissibility pursuant to the Evidence Act 1995 (NSW) of evidence tending to prove that the accused had previously committed offences in circumstances relevant to the charge of murder before the Court. In the context of the New South Wales Act which rendered such

evidence inadmissible if the Court thought that the evidence would not have "significant probative value", his Honour said that:

> " "Significant" probative value must mean something more than mere relevance but something less than a "substantial" degree of relevance." (459).

His Honour added (459):

> "One of the primary meanings of the adjective "significant" is "important", or "of consequence". In my opinion, that is the sense in which it is used in s 97. To some extent, it seems to me, the significance of the probative value of the tendency of evidence (whether led by the Crown or by the accused) must depend upon the nature of the fact in issue to which it is relevant and the significance (or importance) which that evidence may have in establishing that fact."

[31] Limited assistance is gained by considering the meaning of words such as "significant" or "substantial" used in other legislation because the test posed by s 26E does not involve a judgment only as to the extent of the probative value of the impugned evidence. In its terms, s 26E recognises that the admission of the child's statement as evidence of the facts in issue is an exception to the rule against hearsay evidence. The legislature must be taken to have been aware of the historical concerns about the dangers associated with such evidence. This awareness is confirmed by the requirement in s 26E that evidence of a child's statement possess sufficient probative value to "justify" its admission.

[32] In my opinion the Court is required to assess the probative value and, having regard to the dangers associated with this type of hearsay evidence, to

determine whether the admission of the evidence is justified having regard to that probative value and all the circumstances of the case. It is not a requirement that the evidence have "significant" or "substantial" probative value, but if the evidence is "significant" in the sense that it is "important" or "of consequence" to the facts in issue, subject to questions of reliability and discretionary exclusion, such evidence would ordinarily possess "sufficient" probative value to "justify" its admission.

[33] As Hunt CJ at CL in *Lockyer* pointed out, an assessment of the probative value must depend upon the nature of the fact in issue to which it is relevant and the importance which that evidence may have in establishing that fact. In this context I agree with the following observations of Riley J in *Joyce*:

> "[19] … In applying the provision the Court is called upon to make a value judgment in circumstances where some, and possibly all, of the evidence in the particular matter is yet to be adduced.
>
> [20] It would not be helpful or wise to endeavour to further define the legislative requirement nor to exhaustively identify the matters which may be of assistance in addressing this issue. Much will depend upon the circumstances of the particular case and the nature of the statement sought to be admitted in the context of those circumstances as they are understood at the time. What is of assistance in one case may not be in another. It is necessary for the Court to consider all of the known surrounding circumstances of the particular case in order to determine whether the evidence is of sufficient probative value as to justify its admission in the circumstances of that case."

[34] The High Court had occasion in *Papakosmas v The Queen* (1999) 196 CLR 297 to consider provisions of the Evidence Act 1995 (NSW) which permitted evidence of a statement to be admitted as evidence of the facts

asserted. Section 56 of the New South Wales Act provided that relevant evidence is admissible and s 55 stated that relevant evidence is evidence that, if accepted, could rationally affect (directly or indirectly) the assessment of the probability of the existence of a fact in issue in the proceedings. In addition, the New South Wales Act contained a number of exclusionary rules including s 59 which, in substance, excluded evidence of a previous statement if it was sought to use the previous statement as evidence of the facts asserted. In other words, s 59 excluded hearsay evidence.

[35] The New South Wales Act also provided exceptions to the exclusionary provisions. One of the exceptions to the exclusion of hearsay evidence was found in s 66. That section provided that in a criminal proceeding, if a person who made the previous statement was available to give evidence and had been or was to be called to give evidence, the hearsay rule did not apply to the previous statement given by that person if, when the statement was made, the occurrence of the asserted fact was fresh in the memory of the maker of the statement.

[36] Notwithstanding the exception contained in s 66, to be admissible the "hearsay" evidence had to be relevant. In addressing that issue in *Papakosmas* in the context of an immediate complaint by the complainant accompanied by crying and significant distress, Gleeson CJ and Hayne J held that the evidence of complaint was relevant. Their Honours acknowledged that it is possible to imagine circumstances in which evidence

of the fact of the complaint might not be relevant and that some complaints might be made in circumstances which require particular attention to be given to the danger of fabrication.

[37] In discussing whether the making of a statement is capable of probative value, Gaudron and Kirby JJ expressed the following views (313 [52].):

> [52] "What does emerge from the common law as a reflection of elementary logic is that, without more, evidence that a particular statement was made is probative only of its making and its contents and those inferences which, in the circumstances, may be drawn. On the other hand, it also emerges from the common law, and, again, as a matter of logic, that the circumstances in which a statement is made may sometimes render it probative of the facts asserted."

[38] Their Honours then illustrated the common law position by reference to the res gestae doctrine. After reference to *Ratten v The Queen* [1972] AC 378, their Honours spoke of the requirement of a connection between the fact to be proved and the making of the statement in order to render the statement probative (314 [55]-[58]):

> [55] "The principle expressed in *Ratten* is crucially dependent on the virtual certainty of the statement in question being true and, to that extent, it reflects the common law's bias against the reception of hearsay evidence. That is because it is not logically necessary for the possibility of concoction to be excluded before a statement is probative of the fact asserted in it. Rather, all that is necessary is that the statement be consistent with the fact to be proved and its making so connected to that fact that, when taken in conjunction with other evidence in the case, it bears on the probability of that fact having occurred.
>
> [56] The nature and degree of the connection necessary before a statement is probative of the fact asserted in it will, of course, depend on the nature of that fact and, if it be different, the fact ultimately to be proved. Even so, the connection will ordinarily be

> found in the close contemporaneity of the statement with the fact in issue and the consideration that the statement is a statement of the kind that might ordinarily be expected from the maker if the fact were true. Similarly, a statement that is closely contemporaneous with the fact in issue and is contrary to what would ordinarily be expected if that fact were true rationally bears on the improbability of its having occurred.
>
> [57] The question whether, in the particular circumstances, a statement that is not closely contemporaneous (for example, a subsequent statement to police) is probative of the facts asserted in it can logically only be answered in a case in which those circumstances arise. However, there must be some connecting circumstances because, otherwise, evidence that a particular statement was made is probative only of its making and it contents and such inferences as, in the circumstances, may be properly drawn.
>
> [58] As a matter of logic, the statement is not, as such, proof of the facts asserted. People do make false statements of fact an false accusations. Nothing in the Act requires the admission of a statement unless, in the terms of s 55, it could rationally affect, directly or indirectly, the assessment of the probability of the facts asserted. There has to be more than the fact that the statement is made to produce the conclusion required by s 55 as the price of admissibility. Rationality connotes logical reasoning."

[39] It appears that the accused denies any act of assault. In my opinion, the child's statement is both consistent with the crucial facts to be proved and very closely connected to those facts. The statement is important to the issues of whether the assault occurred and, if it occurred, whether it was accompanied by circumstances of indecency. If the evidence of the complainant is accepted, the entries were made within a few days of the events about which she wrote. The entries are contained in a confidential diary in which the complainant has made other entries concerning her personal thoughts and feelings about other issues in her life. The

complainant did not intend that other persons would read the entries. It is the kind of behaviour and entry that would ordinarily be expected if the facts in issue, namely, the assault accompanied by circumstances of indecency, occurred.

[40] Counsel for the accused urged that the evidence should be excluded in the exercise of the discretion because the prejudicial value outweighs the probative value. In my opinion, however, the evidence is capable of significant probative value and, with appropriate directions, there is little risk that the jury will misuse the evidence in an unfair manner. Counsel for the accused will have the opportunity of cross-examining the complainant and her mother. In the exercise of my discretion I decline to exclude the evidence of the content of the entry concerning the accused. That evidence will be admitted pursuant to s 26E of the Act.

Admissibility of Documents

[41] A consideration of the admissibility of the pages of the diary containing the entry concerning the accused and the adjacent page written in large handwriting involves construction of s 26E in its context. While s 26E refers to the admission of evidence of a child's statement to another person, such evidence is not limited to evidence of a complaint. As Riley J observed in *Joyce*, the effect of s 26E is to enlarge the ambit of admissible evidence. It authorises the admission of "evidence" of a child's statement to another person.

[42] "Evidence" of the complainant's statement is derived from three sources. First, the relevant pages of the diary. Secondly, the oral evidence of the complainant and, thirdly, the oral evidence of the complainant's mother. By way of comparison, if the complainant had written and posted a letter to her mother setting out the details of her allegations against the accused, in my view there could be no issue that the letter itself would be admissible pursuant to s 26E.

[43] Although s 26E is concerned with the admission of evidence of a statement "to another person", upon a proper construction of s 26E "evidence" of a child's statement to another person includes evidence of the manner and circumstances in which the statement to another person was made. An assessment by the jury of the reliability and significance of the evidence necessarily requires evidence of the manner and circumstances in which the statement was made. The legislature cannot have intended to deny the jury the benefit of such evidence.

[44] It is not appropriate to endeavour to define the precise ambit of the evidence which is admissible. Section 26F of the Act requires that in estimating the weight to be attached to a statement rendered admissible as evidence by the Act, "regard shall be had to all the circumstances from which any inference can reasonably be drawn as to accuracy or otherwise of the statement … .".

[45] In all the circumstances, in my opinion the pages containing the specific entries concerning the accused are admissible and should be admitted into

evidence. The fact that the child made the entries in a diary containing other entries relating to matters personal to the complainant is admissible, together with evidence that the entries were intended to be confidential to the complainant and were not intended to be read by other persons. This would include evidence of the content of the cover of the diary and, for that purpose, a photocopy of the front cover will be admitted. In my view, the manner in which the front cover is written is probative of the intention that entries in the diary be confidential to the complainant.

[46] As to the page written in large handwriting adjacent to the beginning of the entry concerning the accused, according to the complainant this entry was made at about the same time as the entry concerning the accused. Although it does not in its terms refer to the accused, it is intrinsically linked to the entry concerning the accused and to the complainant's thought processes at the time she made the entry concerning the accused. It is probative of the complainant's state of mind at the time she made the relevant entry. The probative value is found not just in the content of the adjacent page, but also in the manner in which the page was written. Both the content and the manner of writing are of significant probative value in the assessment of the reliability of the relevant entry. In these circumstances the relevant page will be admitted.

[47] In determining that the relevant pages of the diary should be admitted together with the cover of the diary, I have not overlooked the issue of discretionary exclusion. I have borne in mind the danger of the jury giving

undue attention to the documentary exhibits because the documents will be available in the jury room. This is a well recognised danger which has been subject of comment in numerous authorities, particularly in the area of confessions. However, notwithstanding those dangers, by reason of the probative value of the documents I have reached the view that the documents should be admitted. Appropriate directions will be given to the jury concerning the proper use of the documents.
