PARTIES:	**EDWARD JAMES HORRELL**
	v
	THE QUEEN
TITLE OF COURT:	COURT OF CRIMINAL APPEAL OF THE NORTHERN TERRITORY
JURISDICTION:	APPEAL FROM SUPREME COURT EXERCISING TERRITORY JURISDICTION
FILE NO:	CA13 OF 1995
DELIVERED:	11 April 1997
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JUDGMENT OF:	Martin CJ, Angel, Bailey JJ

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Criminal law – appeal and a new trial – miscarriage of justice – misdirection – circumstantial evidence – whether an intermediate fact direction should have been put to the jury in summing up – Appeal dismissed – No miscarriage of justice.

Criminal law – appeal and a new trial – miscarriage of justice – misdirection – evidence of lies – whether an Edwards direction is mandatory – Appeal dismissed – No miscarriage of justice.

Criminal Code NT ss 162, 177(a)
Khoosal & Singh (1994) 71 A Crim R 127 at 131,applied
R v Edwards (1993) 178 CLR 193, considered
R v Sheppard (1990) 170 CLR 573, distinguished
Renzella (Victorian Court of Appeal, unreported. 6 September 1996), applied
Totivan & Dale (Victorian Court of Appeal, unreported, 15 August 1996), applied

REPRESENTATION:

Counsel:

Appellant:	Mr Priest
Respondent:	Rex Wild QC

Solicitors:

Appellant:	Mr J Laurence
Respondent:	Ms G O'Rourke

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BAI97002
IN THE COURT OF CRIMINAL APPEAL
NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

No. CA13 of 1995

BETWEEN:

EDWARD JAMES HORRELL
Appellant

AND:

THE QUEEN
Respondent

CORAM: MARTIN CJ, ANGEL AND BAILEY JJ

REASONS FOR JUDGMENT

(Delivered 11 April 1997)

THE COURT:

Introduction

This is an appeal against conviction following verdicts of guilty by a jury on counts 1 and 3 of an indictment dated 5 June 1993 that the appellant (1) murdered Michaeline Hunter (s. 162 of the *Criminal Code)* and (3) with intent to cause grievous bodily harm to Patrick Hunter caused grievous harm to Patrick Hunter (s. 177(a) of the *Criminal Code*).

A notice of appeal filed on behalf of the appellant set out six grounds of appeal. At the commencement of the hearing of the appeal, Mr P. Priest, on behalf of the appellant, abandoned all but the following two grounds:

(a) The learned trial Judge misdirected the jury on the proof needed in this circumstantial case; and

(b) The learned trial Judge misdirected the jury on lies.

The Crown case

The Crown's case was the appellant had lived in a de facto relationship with Michaeline Hunter (the deceased) for some twelve months. The Crown alleged that late in the evening of 27 August 1994 the appellant entered her premises and hit her several times about the head with the blunt edge or the side of an axe, thereby causing extensive injuries which resulted in her speedy death. During the course of the same incident the Crown alleged the appellant committed the offence in count number 3 of the indictment against the deceased's son Patrick Hunter with a single blow from the axe to Patrick's head and shoulder. In this regard, it is to be noted that the jury acquitted the appellant of attempted murder (count number 2 of the indictment) and convicted on the alternative in count number 3 pursuant to s. 177(a) of the *Criminal Code.*

The Crown case relied entirely upon circumstantial evidence. There was evidence of motive and opportunity, evidence of the presence of the appellant at the scene of the offences around the relevant time, evidence of lies as to what the appellant saw and did at the scene and evidence as to what he did and said after the time of the alleged offences which was inconsistent with innocence.

It is unnecessary for present purposes to set out a comprehensive summary of the evidence at trial. In broad terms, there was evidence of:

(a) arguments between the appellant and the deceased throughout the day and evening in question (culminating in the appellant being told to leave the deceased's premises and the appellant ripping out the phone from the wall of the deceased's premises as he did so);

(b) jealousy of the deceased's relationship with another;

(c) the appellant returning to the deceased's premises, but parking 270 metres away and returning to his car hot, sweating and breathing hard;

(d) the deceased's blood on the appellant's clothes;

(e) such blood included spattering;

(f) the attacker leaving barefoot footprints at the scene and the preponderance of the evidence was that the appellant was barefoot at the time he went back to the deceased's premises;

(g) the appellant not raising the alarm upon (as he said) seeing the deceased on the floor;

(h) a comment by the appellant to a driver (from whom he had hitched a lift) which indicated that he knew a child had been hurt in the incident;

(i) the appellant telling the police: "I didn't kill Miky. I saw her on the floor, I saw the blood and the axe and I just panicked and ran out" (being inconsistent with the evidence of the deceased's

blood being found on his clothes and the axe being found in a property adjoining the deceased's premises).

Circumstantial evidence – misdirection?

At trial it was conceded on behalf of the appellant that he had the opportunity to commit the offences, i.e. that he did return to the deceased's premises around the time of her death and the attack on Patrick Hunter. There was no concession that blood from the deceased was found on the appellant or that it had got there in the manner alleged by the Crown (i.e. by the appellant's wielding of the axe).

In directing the jury with regard to circumstantial evidence, Mildren J, the learned trial Judge, sought to illustrate the concept by an example of drawing an inference of fact from a chain of circumstances. He then continued:

> "There is another way in which circumstantial evidence can be used to draw an inference. An inference also might also be able to be drawn from a combination of factors which, when viewed as a whole, persuade you that the inference should be drawn. The factors to be considered are not like links in a chain, as in the first example that I gave, but are rather more like strands in a cable. It may be that no conclusion can be drawn by looking at each individual fact separately, each strand in the cable separately, but when the facts are looked at together, in the light of all of the circumstances of the case – that is, as a cable with the strands all bound around each other together – you may be satisfied that an inference can properly be drawn from those facts.
>
> You may think, for example, that the probative force of the combination of the facts looked at together has a cumulative effect. You should, therefore, not reject one circumstance because standing alone no inference can be drawn from it. You should look at all of the circumstances together. In the light of the whole of the evidence you are entitled to draw an inference of guilt from a combination of facts, none of which viewed alone would support that inference.
>
> However, before drawing an inference of guilt from

> circumstantial evidence you must be satisfied that the inference is the only rational inference which can be drawn from all the circumstances. It is important to bear this in mind in respect of two particular matters that you will have to consider.
>
> The first is: was it the accused who wielded the axe which killed the deceased and caused grievous harm to Patrick Hunter or could it have been someone else? The second matter is: if it was the accused who did those things, did he do so with intent to kill or to cause grievous harm? *In respect of both of those matters the Crown seeks to prove those matters by circumstantial evidence of the strands in the cable kind*, and I will have more to say about that in a moment." (emphasis added)

After summarising the (circumstantial) evidence in the context of the prosecution and defence cases, the learned trial Judge returned to the question of how the jury should approach proof by circumstantial evidence. He said:

> "If I can return briefly to the subject of circumstantial evidence, because there is one particular matter that I want to deal with. As I have said already, this is a circumstantial case and you therefore have to look at all of the circumstances. *However, some circumstances relied upon by the Crown might be critical to your process of reasoning and of such importance, that without it, no inference of guilt could be drawn.*
>
> In this case I refer in particular to the blood on the deceased's clothes and the pants. You are not to draw any inference of guilt from the blood on the accused's clothes, unless you are satisfied beyond reasonable doubt, that that blood was the deceased's and that it got onto the accused's clothes on the night of her death as a result of the use of the axe." (emphasis added)

Mr Priest, who appeared for the appellant before us (but not at trial) submitted that in the circumstances of the case, the passage just quoted amounted to a misdirection.

He referred to the following remarks in *R v Sheppard* (1990) 170 CLR 573 by Dawson J (with whom Toohey and Gaudron JJ agreed, and Mason CJ generally concurred) at p. 572:

> "Circumstantial evidence is evidence of a basic fact or facts from which the jury is asked to infer a further fact or facts. It is traditionally contrasted with direct or testimonial evidence, which is the evidence of a person who witnessed the event sought to be proved. The inference which the jury may actually be asked to make in a case turning upon circumstantial evidence may simply be that of the guilt of the accused. However, in most, if not all, cases, that ultimate inference must be drawn from some intermediate factual conclusion, whether identified expressly or not. Proof of an intermediate fact will depend upon the evidence, usually a body of individual items of evidence, and it may itself be a matter of inference. More than one intermediate fact may be identifiable; indeed the number will depend to some extent upon how minutely the elements of the crime in question are dissected, bearing in mind that the ultimate burden which lies upon the prosecution is the proof of those elements. For example, with most crimes it is a necessary fact that the accused was present when the crime was committed. But it may be possible for a jury to conclude that the accused was guilty as a matter of inference beyond reasonable doubt from evidence of opportunity, capacity and motive without expressly identifying the intermediate fact that the accused was present when the crime was committed.
>
> On the other hand, it may sometimes be necessary or desirable to identify those intermediate facts which constitute indispensable links in a chain of reasoning towards an inference of guilt. Not every possible intermediate conclusion of fact will be of that character. If it is appropriate to identify an intermediate fact as indispensable it may well be appropriate to tell the jury that that fact must be found beyond reasonable doubt before the ultimate inference can be drawn. But where – to use the metaphor referred to by *Wigmore on Evidence*, vol. 9 (Chadbourn rev. 1981), par. 2497, pp. 412-414 – the evidence consists of strands in a cable rather than links in a chain, it will not be appropriate to give such a warning. It

> should not be given in any event where it would be unnecessary or confusing to do so. It will generally be sufficient to tell the jury that the guilt of the accused must be established beyond reasonable doubt and, where it is helpful to do so, to tell them that they must entertain such a doubt where any other inference consistent with innocence is reasonably open on the evidence."

Mr Priest submitted that apart from identifying the blood on the clothes as a fact that needed to be proved beyond reasonable doubt, the learned trial Judge did not identify – and indeed refused to identify – any other intermediate fact or facts as requiring proof beyond reasonable doubt. In Mr Priest's submission, it is possible (given the vigorous challenge in cross-examination to the evidence of the relevant expert) that the jury could have rejected the evidence that

(i) there was blood of the deceased on the appellant's clothes; OR

(ii) that if there was, that such blood got onto the deceased's clothes on the night the deceased met her death; OR

(iii) that if it did, that such blood got on the clothes as a result of the appellant's use of the axe.

Accordingly, Mr Priest submitted that the jury ought to have been given the direction contemplated by *Sheppard* concerning proof of intermediate facts. Further, Mr Priest submitted that if the jury **were** satisfied beyond reasonable doubt that the deceased's blood got onto the appellant's clothes "as a result of the use of the axe", then the other circumstantial evidence became wholly superfluous in determining guilt.

It is to be noted that after the jury had initially retired to consider their verdict, trial counsel (Mr Ross Q.C.) for the appellant raised a number of issues with the learned trial Judge. In particular, trial counsel requested the learned trial Judge to give an intermediate fact direction regarding the evidence that the appellant was barefoot when he returned to the deceased's premises. Mr Ross requested that the jury be told that they

must find the appellant not guilty if they thought it a possibility that he was wearing shoes at all relevant times. This invitation was rejected by the learned trial Judge.

In our view, the learned trial Judge was correct to reject the submission of Mr Ross. As Mildren J said in summing up to the jury on this issue:

> "...Of course whoever was in the room and killed the deceased may well have worn shoes before entering the house, took them off and then having done the act put them back on again. This is one possibility. Another possibility is that the person who did this crime had no shoes on and did not have any on at any time. The point of that is that whether or not the accused had shoes on when he returned, does not necessarily mean that he cannot have been the person who committed the crime. But nevertheless it is a factor that you should bear in mind one way or the other..."

In short, it was **not** essential for the jury to be satisfied beyond reasonable doubt that the appellant was barefoot at all material times on the night in question before they could reach a verdict of guilty. Similarly, in our view, putting aside for the moment the evidence about blood on the appellant's clothes, it was not essential that the jury be satisfied beyond reasonable doubt as to any one or all of the other items of circumstantial evidence before it was open to them to reach a verdict of guilty.

Dawson J in *Sheppard* makes clear that an "intermediate fact" direction will not be appropriate where "the evidence consists of strands in a cable rather than links in a chain". Here the learned trial Judge dealt with the case as a "strands in a cable" case rather than one of "links in a chain". We consider that he was right to do so. Putting to one side the evidence relating to the deceased's blood on the appellant's clothes, there was no circumstantial evidence of the kind which would require a direction of the type contemplated by *Sheppard.* As to the evidence of blood, it was not so much a link in a chain as the strand upon which the entire Crown case rested.

As the learned trial Judge put it:

> "...some circumstances relied upon by the Crown might be critical to your process of reasoning and of such importance that without it, no inferences of guilt could be drawn."

The learned trial Judge then detailed the critical evidence. In short, the learned trial Judge was telling the jury that they might not draw an adverse inference from the presence of blood on the appellant's clothes unless they were satisfied beyond reasonable doubt that:

(1) the blood on the appellant's clothes was that of the deceased; AND

(2) such blood got there on the night the deceased met her death; AND

(3) such blood got there as a result of the appellant's use of the axe (in contrast to some other method such as contact with blood on the deceased or in her premises).

It may have been preferable if the learned trial Judge had spelt out the words we have added in parenthesis – but the fact that his words were intended in this sense flows from the context, in particular the way in which the defence had sought to challenge the evidence of blood on the deceased's clothes in general and in particular, if the jury were satisfied that it was the deceased's blood, how it could have come to be there.

The direction of the learned trial Judge regarding the evidence of blood on the appellant's clothes was not a direction of the type contemplated in *Sheppard*, but rather a direction to the jury that they might not convict the appellant if they entertained any reasonable doubt about the evidence supporting (1), (2) and (3) above. In short, the learned trial Judge was directing the jury that if this evidence was rejected, the jury might not convict on the basis that they were sure of all the other circumstantial evidence. In reality, this was a direction favouring the appellant.

Mr Priest's observation that if the jury were satisfied beyond reasonable doubt the deceased's blood got onto the appellant's clothes "as a result of the axe" then the other circumstantial evidence became wholly superfluous in determining guilt may, in practical terms, be correct – but beside the point. The point is that the jury were directed that they should not draw any inference of guilt from the presence of blood on the appellant's clothes if they were unsure that it was the deceased's blood on the appellant's clothes and as to the circumstances in which it had come to be there.

We are satisfied that there was no misdirection by the learned trial Judge regarding circumstantial evidence in the circumstances.

Lies – misdirection?

We turn now to the only other ground of appeal argued by Mr Priest; the learned trial Judge's direction concerning alleged lies made by the appellant to the police. Two days after Michaeline Hunter met her death and her son Patrick was injured, the appellant was brought to Katherine Police Station. The appellant was cautioned and taken to Katherine watchhouse for routine processing. In the course of a police officer entering the appellant's details into a computer record, the appellant said:

> "I didn't kill Miky. I saw her on the floor. I saw the blood and the axe and I just panicked and ran out."

It is common ground that the appellant did volunteer this information. The appellant did not give evidence at trial.

In his final address, counsel for the prosecution, Mr Cato, emphasised the evidence which appears to contradict the appellant's version of events. In particular, on the appellant's version of events he "saw the blood...just panicked and ran out.". This, as Mr Cato stressed to the jury, was completely at odds with the evidence suggesting that the deceased's blood was found on the appellant's clothes and that such blood included

spatter. As Mr Cato told the jury, spatter could not be explained simply on the basis that the appellant had come into contact with the deceased's blood while at her premises. Similarly, the appellant's statement that he saw the axe was to be contrasted with the evidence of it being located beyond a fence in a property adjacent to that of the deceased. In the absence of some hypothesis consistent with the appellant telling the truth (e.g. Counsel's suggestion that the attacker was still on the premises when the appellant saw the axe or returned after the appellant had left and subsequently threw it over the fence into the neighbouring property) the appellant could not have seen the axe on the floor when he visited the property.

While Mr Cato emphasised the evidence which suggested that the appellant's version of events was false, at no stage did he invite the jury to use the appellant's lies (if they were satisfied such was the case) as evidence of his guilt. In effect, Mr Cato invited the jury to reject the appellant's version of events on the basis of all the evidence in the case.

The learned trial Judge, on the other hand, in directing the jury said:

> "The other matter that I want to refer you to is this. It is in relation to the statement that the accused volunteered to the police about not doing the crime, but going to the room, seeing the boy, the axe, panicking and leaving – seeing the body, rather, the axe, panicking and leaving. This statement that the Crown relies on as raising an inference of guilt or an implied admission of guilt, because the Crown says part of the statement, at least, is a lie."

The learned trial Judge pointed out the evidence which suggested that the appellant's version of events was false and then directed the jury in accordance with *R v Edwards* (1993) 178 CLR 193 that the lie needed to be deliberate, not inadvertent, and must relate to a material issue. The jury were also told that the accused must tell the lie "because he perceives that the truth is inconsistent with his innocence". After the jury had retired to consider its verdict, Mr Ross, on behalf of the appellant, took exception to

the learned trial Judge's direction concerning lies. As a result the jury were directed further in accordance with *Edwards* that "there must be some independent evidence upon which you can form the opinion that what was said was a lie".

Mr Priest took no exception to these directions of the learned trial Judge, but submitted the directions concerning lies were deficient in an important respect. He submitted that the learned trial Judge failed to give directions in accordance with the following passage from *Edwards* at p. 211:

> "Moreover, the jury should be instructed that there may be reasons for the telling of a lie apart from the realisation of guilt. A lie may be told out of panic, to escape an unjust accusation, to protect some other person or to avoid a consequence extraneous to the offence. The jury should be told that, if they accept that a reason of that kind is the explanation for the lie, they cannot regard it as an admission. It should be recognised that there is a risk that, if the jury are invited to consider a lie told by an accused, they will reason that he lied simply because he is guilty unless they are appropriately instructed with respect to these matters. And in many cases where there appears to be a departure from the truth it may not be possible to say that a deliberate lie has been told. The accused may be confused. He may not recollect something which, upon his memory being jolted in cross-examination, he subsequently does recollect."

In Mr Priest's submission, such directions are mandatory and the failure to give directions along the lines above has led to a miscarriage of justice.

Further, Mr Priest submitted that the learned trial Judge's directions concerning lies are deficient in another respect. If we have understood Mr Priest correctly, it was submitted that if the jury understood the directions as permitting them to found an **inference** of guilt (rather than an implied **admission** of guilt) upon the suggested lies, then the jury were led into impermissible logic.

On Mr Priest's submission, the directions of the learned trial Judge import a "very subtle vice" since, for the jury to be satisfied that the appellant lied when he said he saw "blood and the axe" and "just panicked and ran out", they would have to be satisfied that

he committed the crime, i.e. wielded the axe. On this basis, if the jury needed to be satisfied that the appellant committed the crime in order to be satisfied that he had lied, then the lie or lies could not be used to found an "inference of guilt" (in contrast to an **admission** of guilt). In Mr Priest's submission, such reasoning is circular and the invitation to the jury to rely on such flawed logic was erroneous and has caused a miscarriage of justice.

This last submission may be dealt with shortly. The submission relies on the assertion that for the jury to be satisfied that the appellant's statement was a lie, the jury would need to be satisfied that the appellant committed the crime. In our view, in advancing this, Mr Priest has fallen into the error which he seeks to persuade us the learned trial Judge committed, i.e. flawed logic.

This may be demonstrated by what occurred at the trial. After the jury had been asked to retire to consider their verdict, as we have noted, trial counsel for the appellant raised a number of issues with the learned trial Judge upon which he sought further directions.

One such issue was a matter which Mr Ross frankly conceded that he had overlooked in his final address to the jury. The learned trial Judge agreed to the request and as a result, recalled the jury and said, inter alia:

> "Now there is another matter that counsel for the accused has asked me to put to you; a matter which he omitted to tell you in his address by oversight. And that is this, that Mr Ross wants you to take into account this. You may remember in reference to the statement, which I am sorry I am going to repeat to you again: 'I didn't kill Miky; I saw her on the floor. I saw the blood on the axe and I just panicked and ran out'.
>
> What Mr Ross says is this, that you have heard how the Crown has dealt with the subject of seeing the axe and has dealt with the possibility that – and what the Crown had to say about the possibility of the murderer may have been still on the premises or came back later on and retrieved the axe. But what he asks you to think about is that

> there is another possibility, in that in his panic, having seen the body, he saw the axe there, picked it up and he was the one who threw it over the fence.
>
> Now I say no more about it than that. That is what Mr Ross wanted to put to you in his address and he forgot to do it."

If the jury were inclined to accept this explanation, notwithstanding no evidence to support it, it would have been open to them to conclude the appellant's statement to the police was false (a "lie") but one which was accompanied by an explanation as to how the appellant had come to see the axe and had got blood on his clothes (by picking it up and disposing of it). Accordingly, the jury's satisfaction that the appellant's statement was a lie was not necessarily dependent upon their satisfaction that he committed the crime. We are not persuaded that there was any flawed logic in the directions of the learned trial Judge regarding lies.

We return to the other issue concerning lies raised by Mr Priest – the absence of any direction to the jury that there may be reasons for the telling of a lie apart from the realisation of guilt.

Before considering the significance, if any, of this omission, it is worth recalling that prosecution counsel at trial did not seek in his address to the jury to rely on lies by the appellant as being of positive assistance to the prosecution in proving his guilt. Mr Cato attacked the appellant's statement to the police as lies solely for the purpose of getting it rejected. Accordingly, it was not necessary for the learned trial Judge to give a "lies direction" along the lines suggested in *Edwards*.

Notwithstanding that a lies direction was unnecessary in the particular circumstances, the question arises as to what, if anything, flows from the failure to give a full direction in accordance with the guidance provided by *Edwards*.

Mr Priest submitted that the directions suggested in *Edwards* are mandatory, i.e. that in all cases where it is suggested that lies may be relied upon to prove guilt, the full

directions suggested by Deane, Dawson and Gaudron JJ must be given and that failure to do so will necessarily result in a miscarriage of justice.

We are unable to accept such a sweeping proposition. In *Edwards*, their Honours set out the requirements which must be satisfied before a lie can be relied upon to prove guilt and added that a jury should be instructed that there may be reasons for the telling of a lie apart from the realisation of guilt, and that if they accept that a reason of that kind is an explanation for the lie they can not regard the lie as an admission. Their Honours said the jury should be "appropriately" instructed as to these matters. We do not interpret the case as formulating an absolute requirement each time it is suggested that a lie told by an accused might be used as evidence of his guilt. The oft-used term "an *Edwards* direction", properly understood, refers not to a set formula reciting the words of Deane, Dawson and Gaudron JJ, but to a direction given in accordance with the facts of the particular case adopting such requirements in *Edwards* as are required in the circumstances. An incomplete or imperfect *Edwards* direction will not inexorably lead to a conviction being quashed: *Totivan & Dale* (Victorian Court of Appeal, unreported, 15 August 1996) at 12-13; *Renzella* (Victorian Court of Appeal, unreported, 6 September 1996) at 8-9. As the Victorian Court of Appeal said in *Khoosal & Singh* (1994) 71 A Crim R 127 at 131: "What was said in the quoted and other passages from *Edwards* is not to be treated as if it were a legislative prescription".

In the present case, the jury was directed, inter alia, that:

> "It is only when the accused tells the lie, because he perceives that the truth is inconsistent with his innocence, that the telling of the lie may constitute evidence against him. In other words, in telling the lie, the accused must be acting as if he were guilty."

There was thus no evidence of any "innocent" explanation for the appellant's lies to the police (if indeed they were accepted as such by the jury).

In *Edwards*, the High Court referred to possible "innocent" explanations for lies such as panic, escape of an unjust accusation, protection of some other person or avoidance of consequences extraneous to the offence. The judgment continues (at p. 211):

> "The jury should be told that, if they accept that a reason of that kind is the explanation for a lie, they cannot regard it as an admission."

In the present case, no explanation of any kind was offered for the alleged lies. Accordingly, it is difficult to see how the jury could have "accepted" any "innocent" explanation beyond relying on pure speculation as to the appellant's motives for lying. In the present case, a direction limited to a general statement that there may be reasons for the telling of a lie apart from the realisation of guilt would have been no more than a statement of the obvious. A direction which went further and suggested possible 'innocent' explanations for lies generally, coupled with the passage quoted above, would only have served to confuse the jury in the absence of any evidence to support any such explanations. The jury might well have taken it as an invitation to speculate, despite the earlier direction of the learned trial Judge to decide their verdict upon the basis only of the evidence presented in Court. As in *Murphy* (1994) 62 SASR 121, we do not think the jury should have been called upon to speculate without the benefit of evidence as to what innocent explanation there might be, see per King CJ at 127.

The directions required in a criminal trial must necessarily be tailored to the particular circumstances of the case. The circumstances of the present case particularly demonstrate the need to avoid speculation on the jury's part. In the present case, it is a fact that - unknown to the jury - immediately after leaving the premises of the deceased on the night of her death, the appellant drove to the home of the 18-year-old daughter of the deceased. There on the pretext of taking her to see her mother, the deceased, he drove her away in a motor vehicle. Instead of returning to the deceased's premises, the

appellant drove to an isolated place and raped her at knife point. Subsequently she was raped twice more by the appellant. The appellant pleaded guilty to three counts of sexual intercourse with the daughter without her consent – two of which involved anal as well as vaginal sexual intercourse.

Evidence of these events was excluded from the trial in the exercise of the learned trial Judge's discretion. This evidence was excluded upon application of trial counsel for the appellant. Against this background, we consider that it would have been quite unfair to expect the learned trial Judge to have suggested possible innocent explanations, such as panic, for the appellant's alleged lies to the police without the jury being aware of the appellant's actions following the death of Michaeline Hunter and the assault of her son, Patrick before he spoke to police. If such possible innocent explanations were to be aired, a fair trial would have demanded that the jury be aware of events leading up to the appellant's statement to the police.

Trial counsel for the appellant, while seeking further directions on lies (to which the learned trial Judge acceded) made no complaint that the "full" direction in *Edwards* had not been given. We consider that this was a conscious decision given what had occurred prior to the appellant speaking to the police. We also consider that such an approach was entirely appropriate in the circumstances.

We are satisfied that in the particular circumstances of this case, the directions of the learned trial Judge regarding lies were unnecessary, but that having regard to the directions that were given, no miscarriage of justice occurred.

Accordingly, we dismiss the appeal.