

I said, "Continue." He said, "I can't tell you anything to help you verify."

I said, "I don't want to get to the stage where I have to tell you everything I know. I would like you to give me a true account of what you did." He said, "I didn't go anywhere near that place and I wasn't going to kill anybody. The only thing I can think about was at the night I broke into Brett Dell's place. Was that what I did after the taxi?"

I said, "It wasn't the night you broke into Brett Dell's place." He said, "No, that was prior. I knew that."

I said, "We're at the crossroads, aren't we, Andrew?" He said, "Mate, I didn't kill her and I had nothing to do with it."

I said, "Where did you go when you left the taxi?" He said, "I'm trying to remember but I can't."

I said, "What did you do?" He said, "It was probably the night I spoke to the caretaker at the flats and asked for a key to flat 72."

I said, "No, Andrew, that was Sunday night." He said, "Yeah, okay."

I said, "All right, Andrew, here's a test for you. Tell me about the police badge again." He said, "The police badge? Yeah, that was given to me by the guy who stole the chalice."

I said, "When?" He said, "A few days before she was killed."

I said, "You know that tiepin and police badge? If you had've looked at that tiepin very closely, it's got the regimental number of the police officer who owns it, okay? You weren't made aware of this on the day Cottesloe pinched you so they only charged you with unlawful possession. The fact was they didn't know the full story on that day either. That tiepin was removed the day you were at the police station. It was there on the morning and gone that afternoon. No-one could have given it to you a couple of days before. It was stolen on the Monday you were taken to Cottesloe." He said, "Okay, you busted me on that one."

I said, "I even told you it was a test, didn't I?" He said, "Yeah, you did."

I said, "Why didn't you tell me the truth?" He said, "That's the only bit of bullshit I've told all up."

I said, "Come on, Andrew, you know that you have told me many lies." He said, "That's the only bullshit I have told you in all this."

I said, "You don't want to tell us about any of the unlawful things that you have done, Andrew, but it has gone beyond that, mate. We want to know the truth." He said, "Yeah, I lifted the badge and the tiepin."

I said, "We don't need to dwell on that, Andrew. I want to know what you did when you left the taxi." He said, "I don't know."

I said, "All right, be it your way. We'll move on. Flora Metallica, the jewellery shop, let's talk about that. When have you been there?" He said, "I've been there prior to the person's said incident and that was the only to inquire if she wanted to buy some jewellery and she said no."

Does that read, "I've been there prior to the person's said incident and that was only to inquire if she wanted to buy some jewellery and she said no"?---Yeah, that's right.

Thank you?---I said, "Continue." "She said no and that was it."

I said, "Who did you speak to?" He said, "I'm sure it was Pamela Lawrence."

I said, "Why do you say it was her?" He said, "Because I recognise her from the photographs on the television."

I said, "When did you see them?" He said, "At Graylands."

I said, "Where did you go when you went into the shop?" He said, "Where I told you I went, just here."

I said, "Did you show her the jewellery?" He said, "I went like that, that's all." That is depicted on sketch number 10 as where he says, "Where I told you I went, just here." Virtually a replica of the previous two ones where he has indicated where he has gone in. "And that was it? You didn't hand her a ring or anything?" He said, "No."

I said, "The first time we interviewed you at Graylands we asked you the question and these are written down off our notes: 'Have you been in the Flora Metallica jewellery store?' Your answer to that was, 'I looked in the window a week or so back and saw a gumleaf I liked. I saw a middle-aged woman with glasses. Not the woman that was killed and in the news.'" There was a

pause and then I said, "Mate, that's word for word verbatim of what you said." He said, "Well, maybe I was mistaken."

I said, "Mistaken about what?" He said, "About who I actually spoke to."

I said, "Well, was it Pamela Lawrence?" He said, "I don't know."

I said, "Why did you tell us two different stories?" He said, "Probably because I wasn't sure."

I said, "I've gone on to ask you if you know her name and you said, 'No.'" He said, "I've got mixed up, that's all."

I said, "You also said that it wasn't the woman that was in the news." There was a pause before he said, "There you go. It just goes to show you how unstable my mind was, doesn't it?"

I said, "You're telling the story." He said, "I don't know, mate. I thought it was the one I saw on television."

I said, "We have actually spoken to the woman who you spoke to on the day you went in to sell jewellery." He said, "So it wasn't Pamela Lawrence."

I said, "No. She says you did show her jewellery, that you took off a ring and handed it to her. Is that right?" He said, "Yeah."

I said, "Why didn't you tell us that?" He said, "I don't know."

I said, "Well, when was it?" He said, "The same day I went into the hi-fi store to get a power cord for my stereo."

I said, "When was that?" He said, "A few days before she was killed."

I said, "These visits occurred on the same day?" He said, "On the same day, yeah."

I said, "You actually went in the hi-fi store on the Monday of the murder." He said, "Yeah, right."

I said, "Was that the same day you went into the jewellery store?" He said, "Maybe, yeah; probably."

I said, "So you are saying it was the same day and that you went into both stores." He said, "Probably."

I said, "Well, why do you connect the two?" He said, "Because that is how I am trying to cover my tracks here; that's why."

I said, "So you have told your story about taking the radio into the hi-fi store. Where is that now?" He said, "That is at the hock shop at Willetton."

I said, "How come you didn't carry that into the jewellery store?" He said, "Probably because I didn't have it on me; probably because it was two different days."

I said, "So you are saying now that it was two different days?" He said, "Probably was, wasn't it?"

I said, "What appears to be happening here, Andrew, is that every time we want to talk about this jewellery store, you start telling conflicting stories." He said, "Well, this is murder, isn't it, and I had nothing to do with it. I just went in and asked if she was interested in buying jewellery."

I said, "That may well have been the case on that day, Andrew. We don't dispute that, but you still haven't told us where you went after you got out of the taxi." He said, "I told you I can't remember."

I said, "Why won't you tell us?" He said, "I have tried to tell you but you don't fucking believe me."

I said, "Settle down, Andrew. We have all kept a level tone all along so let's keep it that way."

Right, I will just stop you there and ask about his tone at that stage then?---Well, throughout the interview on 10 June up until probably the last two pages, he has been very cooperative almost to the point of being very self-confident and self-assured and almost to the point of cockiness and over the last, say, 20 or 30 questions and answers he has started to get his back up a bit with me and when he particularly said that phrase, he was very - his tone was very much louder than it had been before and fairly aggressive.

Thank you. You can continue now?---Yes, so I told him to settle down. I said, "Settle down, Andrew. We have all kept a level tone all along so let's keep it that way." He said, "I know that for sure. What do I do about it?"

I said, "There is only one thing to do; tell the truth." He said, "I don't remember. Maybe I am mixed up; fucked if I know." Again, very aggressive.

I said, "Settle down, Andrew. Don't get aggressive about this. I don't like that. Now, the reason why you can't remember what you did after the taxi is because you have told us a story and you have realised the homework we have done." He said, "I told you all I know."

I said, "You haven't told us all you know, Andrew. Let's talk about after you got back to Michelle's and about what happened then." He said, "Okay."

I said, "Tell me about it." He said, "Got changed and had a smoke with Michelle and Michael there. Damien got there after and then Henry. We smoked and I went to Michael's place in Fremantle. He said he was leaving now and I said I wasn't ready to go yet, so I left about half an hour after him."

I said, "Where did you go?" He said, "I went back to his place."

I said, "How did you get there?" He said, "By train."

I said, "How did you get to the train station?" He said, "I walked."

I said, "Which way?" He said, "Down Murray Avenue into Ecclesborne, down Glyde into the train station."

I said, "Did you go past the jewellery shop?" He said, "Well, yes, I would have done."

I said, "What did you see?" He said, "I didn't see anything. I didn't notice anything."

I said, "You didn't notice anything at all - the police or anything?" He said, "Nothing."

I said, "Go on, continue." He said, "Got on the train. Went to Michael's place. Smoked some drugs. Wanted to get going. Came back. On the way back to Michael's place I dropped into the porn shop in there. Picked up a pornographic book."

I said, "What's the name of the porn shop?" He said, "The Underground Bookshop on the corner of - just where the public toilets are on the way to the train station in Fremantle."

I said, "Okay." He said, "Picked up a porn book and went back to Michelle's place." I said, "How did you get back to Michelle's?" He said, "On the train."

I said, "Where did you get the train to?" He said, "Mosman Park." I said, "Did you walk back from the train?" He said, "Yeah."

I said, "Did you go past the jewellery store?" He said, "Walked past the jewellery store." I said, "What did you see?" He said, "No, nothing untoward, not unless I saw the police there that time, but that couldn't be because the first time I saw that it was getting dark, it was dusk, and when I saw that coming back it was night-time."

I said, "Continue." He said, "In the time I left to go to Michael's place it was dark. It was already dark when I went to Michael's place and definitely dark when I came back."

I said, "Go on." He said, "Go on where?" I said, "So when did you see it the first time?" He said, "It may have been when I went home. Went out to score some drugs. Couldn't get any drugs. Came back. That was when I saw it like that. That was when I first saw it, was when I went out to buy drugs and the second time I saw it was when I came back to Michelle's place about 20 to 7 or whenever it was."

I said, "So let's go through it again. Where did you go after you left the taxi?"

MURRAY J: Mr Bates, I think we might pause there. It seems to be getting to another line of questioning.

BATES, MR: Yes, certainly, your Honour. There is just one matter of law I had in mind.

MURRAY J: You wanted to speak to me?

BATES, MR: Just one matter of law very briefly, yes.

MURRAY J: I see, yes.

Mr Caporn, that is as far as we will go with the evidence this afternoon. I just simply formally remind you that as you would know being still in the course of giving your evidence you should have no discussion with any person whatsoever about the process of giving the evidence or the content of the evidence, whether you are getting it right or omitting anything or anything of that sort?---Yes, your Honour.

(THE WITNESS WITHDREW)

MURRAY J: Ladies and gentlemen, if I let you go now, we can start again at 10.00 in the morning, if you would please. Thank you very much.

(At 4.28 pm the jury retired)

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MURRAY J: Ladies and gentlemen, if I let you go now, we can start again at 10.00 in the morning, if you would please. Thank you very much.

(At 4.28 pm the jury retired)

MURRAY J: Yes, Mr Bates?

BATES, MR: Yes, just a brief matter, your Honour. The media evidence I was proposing to introduce through this witness - the statements and the tapes and the newspaper articles and photographs - my learned friend and I have agreed that they can be read into evidence by consent and they can be marked for identification - that is the tapes and the newspaper articles and the photographs marked for identification - and I was going to address some questions to this witness about doing it in the way that your Honour suggested - about what is not in the media - and there is three areas where there would seem to be a certain element of unfairness to the accused if it was done in that way because there are certain things that are in there and certain things that aren't in there.

The first of those areas is - the media very clearly says, "A witness saw a person in the shop around 5 pm and that person bobbed down." Then there are a number of things that the media didn't say - for example, that the person was a male; that the witness was a female - a girl in her early teens - that she saw him from the front passenger seat of a car which was a Toyota Corolla - a light green colour.

So it would seem that in fairness to the accused both the positive and the negative should be put so that there is no unfairness there. So we say what is in the media and what isn't because there are certain parts that are and aren't in the one subject matter. There are another two areas that are similar to that. One is that the media refers to the woman being hit about the head at least 10 times. That seems to be the general thrust and also perhaps related to that area - with a blunt instrument and then there is references in the media to a number of different types of instruments - in particular the anode is shown and there is also a reference to a star picket and some other items.

So it seems that the positive should be put and then the negative can be put in relation to that - that the areas on the head where she was hit are not shown; that she wasn't hit to any other part of the body; that a spanner or a wrench - it wasn't referred to but certainly a blunt instrument and being hit about the head and those other items were.

Then all the rest of it can be dealt with in a neutral way about what is not in the media, but those items where some things are mentioned in the media but not others - it would seem as a matter of fairness to the accused that it should be put both in the positive and the negative. I have discussed that with my learned friend and as I understand it he doesn't have any

objection to that course being followed and I just thought that the matter should be raised before your Honour so that if your Honour has any views or any ruling to make, that can be made.

MURRAY J: I am obliged to you, Mr Bates. Does that accurately record your view, Mr Hogan?

HOGAN, MR: Yes. My concern or rather your Honour's concern was and so was mine that the trial not be to do with the previous media reports and notice that the items are to be marked for identification. We will go that far only and that does seem to be indeed the fair way to put it.

MURRAY J: Yes, I think that is in accordance with what I had in mind and with the directions I gave when we had the directions hearing. It is not strictly in accordance with Hoyle so far as leading evidence is concerned, of course, but I think the truncation does enable the matter to be put with proper balance and fairness and avoids the harmful aspects of having a wealth of information from various published accounts, both on the television and in printed media.

HOGAN, MR: Yes, that would indeed be harmful, yes.

MURRAY J: Yes. All right, gentlemen, thank you. Otherwise all in order so far?

HOGAN, MR: Yes.

MURRAY J: We are falling a bit behind, but I suppose that is only to be expected really.

BATES, MR: Yes. The schedule was a bit optimistic and it was expected that this would take some time, as will the cross-examination.

MURRAY J: Yes. I saw the program anticipated that both this witness and Mr Emmett's evidence would be concluded in the space of a morning.

BATES, MR: Yes, it was very optimistic, but there is probably - once we get onto the other witnesses we will probably pick up considerable time then.

MURRAY J: All right, thank you, gentlemen. We will resume again at 10 am.

AT 4.34 PM THE MATTER WAS ADJOURNED UNTIL
TUESDAY, 7 NOVEMBER 1995

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THE SUPREME COURT OF
WESTERN AUSTRALIA

90 of 1995

THE QUEEN

and

ANDREW MARK MALLARD

MURRAY J
AND A JURY OF TWELVE

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON TUESDAY, 7 NOVEMBER 1995, AT 10 AM

Continued from 6/11/95

7/11/95
(s&c)

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MURRAY J: Thank you. Be seated please, Mr Mallard.

Sergeant, you remain bound of course by the oath that you took when you came to the witness box yesterday?---Yes, your Honour.

Mr Bates?

BATES, MR: Thank you, your Honour.

Detective Sergeant Caporn, yesterday I think we got up to the stage where we're part of the way through a conversation that you had on 10 June 1995 at the major crime offices at Curtin House in Beaufort Street with Detective Emmett and the accused man and we're part of the way through a conversation after a break and then you resumed at 5.15 pm. Is that correct?

MURRAY J: I think the note I took, Mr Bates, was that we had dealt with the conversation insofar as it dealt with the movements later of the accused and the witness was about to relay a question about going again through the movements of the accused person after he came with the taxi.

BATES, MR: That's correct, sir, yes.

MURRAY J: That's the point on which we proceed, I think.

BATES, MR: The last question yesterday was at the top of page 76, "So let's go through it again. Where did you go after you left the taxi?"

MURRAY J: Yes. Pick it up there, thank you.

BATES, MR: That's part of the way through a conversation which commenced at 5.15 pm. Is that correct, Detective Sergeant Caporn?---That's correct.

If you could take us then from the top of page 76 and take us through that conversation?---I said, "So let's go through it again. Where did you go after you left the taxi?" He said, "Went back to Michelle's place. I think I've grabbed the pushbike; thrown on the leather jacket."

I said, "Hang on. Hang on. We know that you didn't go straight from the taxi to Michelle's place, don't we?" He said, "No, I did go to the laundry. The leather jacket and the bike were in the laundry. So I went back there first, got the bike, chucked on the leather jacket, come back and rode up to North Fremantle."

I said, "Rode to North Fremantle?" He said, "Yeah, that's where I went. I rode to North Fremantle and picked up half an ounce or a quarter of an ounce of

marijuana from a guy called Alan Alanski who lives with a guy, a seaman called Big Josh or Big Joshua."

I said, "What's the address?" He said, "I don't know the address but it's right next to a church."

I said, "What street is it in?" He said, "Stirling Highway. Goes off to the left to go over the bridges. Goes into Fremantle that way as well as - and there's an intersection with a set of lights on it. They live just up past. Get off at the North Fremantle station. There's a church there with a street. They live right next door to it in a set of units."

I said, "What unit are they in?" He said, "Both units. They live together. There's a duplex but they both live in the whole lot together. They sort of like share that place together."

I said, "Go on." He said, "And went up and got the drugs and rode back and that's when I rode back and gone into Michelle's. I took off the jacket, relaxed and smoked dope."

I said, "So when did you go past the shop?" He said, "I don't know. The first time was when I was going to get these drugs at North Fremantle. It was still light but getting dark."

I said, "You went to North Fremantle and you went that way? Why?" He said, "Because I was on the bike and that was the only way I knew how to go. I didn't know any other way to go."

I said, "You're saying you'd left Mosman Park and ridden out Glyde Street and what did you see at the shop?" He said, "I saw what I explained to you which was the copper doing this, but I don't think that's right because I was on foot."

I said, "Then why do you tell us that?" He said, "A bit confused. North Fremantle must have been another night. No, I can't remember."

I said, "You know why you can't place it, don't you?" He said, "No."

I said, "Because you are telling lies trying to cover yourself of what really happened." He said, "No, I didn't murder her. You have got the wrong bloke, pal."

I said, "So where were you?" He said, "I didn't murder her. I didn't do it. I swear to God I don't know nothing about - I didn't murder anyone. I had nothing to do with it. I swear to God I didn't murder her. I had nothing to do with it."

I said, "What happened?" He said, "I don't know."

I said, "Why don't you know?" He said, "I don't remember. I told you what I know."

I said, "A witness saw someone in the store at a time around the murder, Andrew. Was it you?" He said, "You can put me in the store when I asked that woman about jewellery but no way did I do the murder."

I said, "I am not talking about the time you went there and spoke to an employee." He said, "I did not murder anybody. I'm innocent. I did not murder her."

I said, "Did you go into the store that afternoon or evening?" He said, "No, I told you. I have only been there once and that was about a week prior to the murder."

I said, "Well, where were you?" He said, "No, I am confused; that's it. I have been cooperative and you are trying to pin me for the murder. That's it. I didn't do it. I'm innocent. I swear I didn't do it."

I said, "We need to know what happened." He said, "I have told you everything I know. I have tried to help you."

I said, "Let's get one thing clear here, Andrew. No-one is coming out and accusing you of murder. We know your game. You are a scam man but there is a lot of things I don't like about your account of the events that day." He said, "I wasn't in the store that night. I wasn't in the store that night, sergeant."

I said, "We are trying our best to help you, Andrew. We want to know what happened." He said, "I can't tell you any more."

I said, "Andrew, we have various witnesses who saw a person of your distinct description outside the store that evening between 4.30 and 5.15." He said, "That's a case of mistaken identity pure and simple. It wasn't me. I was not in the store. It wasn't me. I didn't murder anybody and I wasn't in the store."

I said, "Where were you, Andrew?" He said, "Can I use the toilet please and then I will answer your question?" At 6.25 pm the interview was suspended. The accused was supplied with food, drinks and a cigarette and the interview was recommenced 50 minutes later at 7.15 pm.

I said, "I want to resume, Andrew, to start talking about what you have been doing over the last few weeks." He said, "Yes, okay."

I said, "How would you describe how you live?" He said, "On my wits; that's how I live. I can talk to anybody any time."

I said, "What do you mean by that?" He said, "That's how I live. You know I went to England a few months back, for instance. I didn't get a job. I just lived on wits, getting through, talking to people. That's how I live all my life, sergeant, on my wits."

I said, "What do you mean, getting through talking to people?" He said, "Conning - I can talk to anybody and then can con them about anything."

I said, "Are you trying to con me now, Andrew?" He said, "No, I wouldn't do that, sergeant."

I said, "Now, can you tell us about where you were after the taxi?" He said, "I can't remember, sergeant. I can't remember. Maybe that was - I went in there" - sorry - "that was the day I went in there to the jewellery store to sell jewellery."

I said, "What time was that?" He said, "It would have been lunchtime, mid-morning."

I said, "Andrew, you know that you could not have been in there at that time on the Monday of the murder." He said, "Well, it must have been another day then. I only went in to sell jewellery. She said, 'No' and I left. I asked the woman behind the counter and I thought that was Pamela Lawrence from the identikits given after the murder."

I said, "I know and you know that was a separate incident, Andrew. I am talking about on the day the murder occurred, in particular that afternoon." He said, "The people that saw someone like me near the shop - are you sure they didn't see me looking in the window like this, because I've done that before?" and when he said this sentence he put his hands over his eyes, as if looking in the window of the shop.