

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *R. v. Hubley*, 2017 NSSC 44

**Date:** 20170217

**Docket:** CRH 450084

**Registry:** Halifax

**Between:**

Her Majesty the Queen

v.

George Edward Hubley

**DECISION**

**Judge:** The Honourable Justice Felix A. Cacchione

**Heard:** January 30 and 31, February 1, 2, 3, 6, 7, 8 and 13, 2017

**Oral Decision:** February 17, 2017

**Written Decision:** February 21, 2017

**Counsel:** Glen Scheuer, Esq. and Robert Kennedy, Esq., for the  
Provincial Crown  
Brian Church, Q.C., for Mr. Hubley

**By the Court (Cacchione) orally:**

[1] The accused is charged with being an accessory after the fact to the murder of Catherine Elizabeth Miller contrary to s. 240 of the **Criminal Code of Canada**, R.S.C., 1985, c. C-46, and interfering with human remains contrary to s. 182(b) of the **Criminal Code**.

[2] Catherine Miller (Ms. Miller) was murdered on July 15, 2014 by Jason Johnson (Mr. Johnson) and Kelly MacDonald (Ms. MacDonald). Both individuals entered guilty pleas to the offenses of second degree murder and interfering with human remains. They were sentenced on October 27, 2016.

[3] Mr. Hubley was charged on November 26, 2014.

[4] Admissions, made pursuant to s. 655 of the **Criminal Code** for the purpose of dispensing with proof thereof, are contained in Exhibit 1, the agreed statement of facts, filed with the court. The most relevant admissions are that after Ms. Miller had been bludgeoned in the face with a tire iron by Mr. Johnson and was unconscious in the trunk of his vehicle, Mr. Johnson called Ms. MacDonald. Ms. MacDonald then drove, with their infant child in her vehicle, to Mr. Johnson's location.

[5] Ms. MacDonald and the child entered Mr. Johnson's vehicle. Ms. MacDonald then drove Mr. Johnson's vehicle to their residence in Lawrencetown. On the way, Ms. Miller became conscious and started screaming and kicking in the trunk, yelling "Jason" and "you don't have to do this." Ms. MacDonald feared that Ms. Miller would kick out a tail light and told Mr. Johnson that he had to "finish her off."

[6] They then stopped at their residence where they dropped off their child. Ms. MacDonald proceeded to contact her friend, Mr. Hubley, by telephone and made plans for her and Mr. Johnson to attend at his residence in the Sheet Harbour area. Ms. MacDonald told Mr. Hubley to have tarps, a saw and an axe ready for when they arrived and that he should not ask any questions. Ms. MacDonald then obtained a "hooked knife" and left the residence.

[7] En route to Mr. Hubley's residence, Ms. MacDonald stopped the vehicle at an unknown location and told Mr. Johnson he had to kill Ms. Miller. Mr. Johnson then got out of the vehicle, opened the trunk and cut Ms. Miller's throat with the hooked knife. They then started to drive again. As they started to drive again, Ms. Miller

continued to kick and make noise in the trunk of the vehicle. Ms. MacDonald stopped the vehicle again and told Mr. Johnson that he had to “finish it.” Mr. Johnson went back to the trunk and slit Ms. Miller’s throat with the hooked knife. This injury was fatal.

[8] Between 7:59 p.m. and 11:38 p.m. that evening there were nine telephone calls between Ms. MacDonald and Mr. Hubley. Eight of those calls were initiated by Ms. McDonald.

[9] At approximately 11:30 p.m., Ms. MacDonald and Mr. Johnson arrived at Mr. Hubley’s residence located at 1132 Passage Road in Sheet Harbour. Mr. Hubley met them at a graveyard near his residence and guided them to the location of his house.

[10] Mr. Hubley had tarps, a five pound splitting maul, and a hand saw laid by his back steps prior to their arrival. Once the trunk of Mr. Johnson’s vehicle was opened, Mr. Hubley observed the body of Ms. Miller and noted that her face was swollen, smashed up and that she appeared to be of Asian descent because her eyes were so swollen.

[11] Mr. Hubley helped Mr. Johnson remove Ms. Miller’s body from the trunk and put her body on the tarps that Mr. Hubley had provided and that Mr. Hubley, Mr. Johnson and Ms. MacDonald had laid out on his lawn. They laid Ms. Miller’s body out on the grass near the back corner of Mr. Hubley’s house next to the oil tank as Mr. Johnson stated that he needed light from the exterior spotlight.

[12] Ms. MacDonald and Mr. Hubley eventually went inside the residence. Ms. MacDonald was crying and apologized to Mr. Hubley, who tried to comfort her.

[13] Mr. Johnson proceeded to dismember Ms. Miller’s body using the five-pound splitting maul provided by Mr. Hubley. Mr. Johnson was having difficulty removing Ms. Miller’s head with the splitting maul, and he used the hand saw that Mr. Hubley had provided to complete the dismemberment. Mr. Johnson removed Ms. Miller’s head and hands from her body, which was done to prevent her identification through dental and fingerprint records.

[14] Mr. Hubley was in and out of his house several times that evening and at one point observed Mr. Johnson swinging the axe at Ms. Miller’s body.

[15] The trunk liner, which was soaked in blood, was removed from the vehicle. Mr. Hubley assisted Ms. MacDonald in cleaning out the trunk of the car. Bloody material, including the trunk liner, was put into garbage bags to be burned.

[16] Mr. Johnson, Ms. MacDonald and Mr. Hubley wrapped Ms. Miller's torso in the tarps and put Ms. Miller's head and hands in a garbage bag.

[17] Mr. Johnson and Mr. Hubley then placed Ms. Miller's remains back in the trunk of the vehicle. Mr. Johnson, Ms. MacDonald and Mr. Hubley then smoked a joint together.

[18] Prior to Mr. Johnson and Ms. MacDonald's departure from the property, Mr. Hubley provided them with a change of clothing and a shovel which they took with them before they left his property.

[19] Mr. Hubley was told by Mr. Johnson and Ms. McDonald to burn any remaining evidence.

[20] The next evening Mr. Hubley burned the evidence in a fire pit located on his property. This included the trunk liner, the five-pound maul, the hand saw, Ms. Miller's purse, her bra and the bloody material and clothing contained in garbage bags. He threw the hooked knife used to kill Ms. Miller and her keys in the ocean from an area near his fire pit. He later retrieved the metal maul head that was not consumed by the fire from the fire pit and drove his four-wheeler along the beach, some distance from the pit, and threw the maul head into the ocean. The metal part of the handsaw (the saw blade) that remained after the fire was left in the fire pit.

[21] Mr. Hubley did not observe any firearms in the possession of either Mr. Johnson or Ms. MacDonald that evening during this incident.

[22] Mr. Hubley did not communicate with Mr. Johnson after he left his property that night.

[23] After leaving Mr. Hubley's property that night, Mr. Johnson and Ms. MacDonald travelled to an area near the Halifax Stanfield International Airport where Mr. Johnson threw Ms. Miller's hands into the woods. Ms. Miller's body was later taken to an area located off the Horseshoe Turn Road, Lawrencetown, Nova Scotia where it was tied to a tree so that animals wouldn't drag it away. Her head was buried in a sinkhole in another location on the same property.

[24] During the investigation, police obtained four judicial authorizations to intercept private communications in relation to the homicide of Ms. Miller. The first authorization was issued on August 29, 2014.

[25] As a result of those authorizations, it was determined that Mr. Johnson stayed at an associate's residence in Bedford, Nova Scotia in order to hide from police from September 2014 until his arrest on November 22, 2014. No communications were intercepted between Mr. Hubley and Mr. Johnson between August 29, 2014 and Mr. Johnson's arrest in November.

[26] In the period from October 8 to November 25, 2014, Mr. Hubley had contact with Ms. MacDonald through telephone calls and text messages. These communications were intercepted.

[27] On November 25, 2014 Ms. MacDonald took undercover officers to the location of Ms. Miller's body in the area located off of Horseshoe Turn Road. The body was observed to be tied to a tree and was covered by tarps.

[28] On November 26<sup>th</sup> and 27<sup>th</sup>, 2014 searches were conducted at Mr. Hubley's property located at 1132 Passage Road, Sheet Harbour, Nova Scotia. The following remains were located:

- (a) A sawblade in the fire pit which was the same used during the dismemberment of Ms. Miller;
- (b) A fragment of Ms. Miller's right ulna bone located in the grass near the back corner of Mr. Hubley's house, next to the oil tank; and
- (c) A maul head was located on the shoreline at low tide. This was the same maul used during the dismemberment of Ms. Miller.

[29] The evidence presented at trial establishes that on November 24<sup>th</sup> Staff Sergeant McQueen and Constable Weatherbie, acting in an undercover capacity and posing as drug dealers and roommates of Mr. Johnson, approached Ms. MacDonald at her residence. They spoke to her about Mr. Johnson's arrest on November 22, 2014. They told her their residence had been searched, which meant that they were now also involved in Mr. Johnson's difficulties with the law and asked whether there was any evidence they could dispose of to help Mr. Johnson. Ms. MacDonald was suspicious. The officers left the residence and returned later that evening with the actual search warrant used by the police to search Mr. Johnson's residence. They

gained Ms. MacDonald's confidence by using this ruse and learned that she had evidence relating to Ms. Miller's homicide.

[30] The next day, November 25<sup>th</sup>, Ms. MacDonald led the undercover officers to a location in Lawrencetown where Ms. Miller's remains had been disposed of. They observed Ms. Miller's remains wrapped in a tarp and tied to a tree. Ms. MacDonald then took them to another location where they attempted to find Ms. Miller's hands. As a result of their conversation with Ms. MacDonald they also learned of Mr. Hubley's involvement. Later that evening they attended his residence. They told Mr. Hubley they were there on Ms. MacDonald's advice and that she would vouch for them. Mr. Hubley was hesitant and skeptical about these two unknown individuals attending his residence late in the evening.

[31] The undercover officers had arranged with Ms. MacDonald to text 'okay' to Mr. Hubley. They asked Mr. Hubley to send her a text message which he did. The text message Mr. Hubley sent read "okay?" Ms. MacDonald replied "okay." Mr. Hubley then opened up to the undercover officers.

[32] Mr. Hubley told them he had disposed of all the evidence by burning most of it. He also told them he had thrown Ms. Miller's keys, a knife and the axe head, used to dismember Ms. Miller, into the ocean. Mr. Hubley took the undercover officers to the fire pit he had used to dispose of the evidence. Constable Weatherbie, wearing gloves provided by Mr. Hubley, searched through the ashes in the fire pit while Staff Sergeant McQueen spoke to Mr. Hubley. Mr. Hubley told him that when it happened he received numerous calls from Ms. MacDonald and during one of those calls she had told him to get out tarps, an axe, a saw and a shovel.

[33] Mr. Hubley also told the undercover officers that he had provided Ms. MacDonald and Mr. Johnson with a change of clothing. He told the undercover officers that the police had come a few times to question him and that he had covered it off with a story. Before the undercover officers left his residence Mr. Hubley asked for the return of the gloves he had provided to Constable Weatherbie and threw them into his woodstove. He gave the undercover officers a different route from which to leave his residence because he knew the Emergency Health Services building on his road had surveillance cameras.

[34] Mr. Hubley told the undercover officers that he was scared of Mr. Johnson because he was a cokehead and he did not trust cokeheads. He also said "what was I supposed to do." Mr. Hubley made no mention of any threats being made to him by either Ms. MacDonald or Mr. Johnson.

[35] Mr. Hubley and Ms. MacDonald were both arrested on November 26, 2014. Mr. Hubley was interviewed by Detective Constable Sayer that day and provided a statement which was acknowledged by his counsel as having been given freely and voluntarily. This statement was audio and video recorded.

[36] In his statement Mr. Hubley indicated he knew, as a result of a telephone conversation with Ms. MacDonald when she and Mr. Johnson were approximately halfway to his residence, that Ms. Miller was in the vehicle. He also stated that Ms. MacDonald told him she was coming to his residence and she knew roughly where he lived. She also told him that if he did not help her she would drive around until she found his vehicle. He told Detective Constable Sayer that Ms. MacDonald asked him for an axe, a tarp and a saw. He denied having anything to do with dismembering Ms. Miller's body.

[37] October 3, 2014, Mr. Hubley was interviewed at his residence by Detectives Langille and Allison regarding any contact he may have had with Ms. MacDonald on July 15<sup>th</sup>. The interview was audio recorded. Mr. Hubley denied any recollection of having contact with Ms. MacDonald on that day. Mr. Hubley, although friendly, appeared nervous. When asked about his apparent nervousness he indicated it was because of a custody battle he was having with the mother of his child. Mr. Hubley also told the officers that Mr. Johnson had never been to his residence. He told them that at some point he had purchased hunting equipment from Ms. MacDonald.

[38] At the request of the lead investigator, the same officers returned to Mr. Hubley's residence on October 8, 2014 to see if he would provide them with a DNA sample. During this meeting Mr. Hubley indicated that he had been thinking about any contact he may have had with Ms. MacDonald in July. He told the officers he had purchased some tools from her for \$50.00 but that he could not recall if it was on July 15<sup>th</sup>.

[39] Ms. MacDonald was interviewed on October 15, 2014 regarding any interaction she may have had with Mr. Hubley. This interview was also audio recorded.

[40] A further audiotaped statement was taken from Mr. Hubley on October 22, 2014 when Detectives Allison and Skinner attended his residence to collect his DNA sample. Part of the purpose for their attendance was also to stimulate conversations between Mr. Hubley and Ms. MacDonald, which the police were intercepting.

[41] Mr. Hubley was never asked by the officers, during any of their meetings, if he was fearful of Mr. Johnson or if he had any fear for his or his family's safety.

[42] Shortly after the officers departed his residence on October 22<sup>nd</sup>, Mr. Hubley had a telephone conversation with Ms. MacDonald. He told her what he had told the officers and she asked him what kind of questions they were asking.

[43] Mr. Hubley testified. The following is a summary of his evidence.

[44] Mr. Hubley has a Grade 11 education and is one and one half credit short of his Grade 12 certificate. He was bullied in school by both students and teachers. He attempted suicide twice but never told anyone about these attempts. His father died when he was 13 years-of-age. He assumed household responsibilities by mowing grass, shovelling snow and selling fish to earn money for the household. After his second suicide attempt – he decided that he would be good and do something to help people. He has a six year old daughter. He has had various employment in the construction, seafood and waste management industries.

[45] He testified that he became friends with Ms. MacDonald's brother Chris who came fishing with him and with her fiancé Kevin. Mr. Hubley's mother lives approximately ten kilometers away from his house.

[46] He only met Mr. Johnson a couple of times just to say 'hi' and 'goodbye' at Patsy's house. Patsy is Ms. MacDonald's mother and where Ms. MacDonald lived.

[47] On July 15<sup>th</sup> his daughter slept at his mother's house because he was working the next day and would have to get up early. After his daughter went to sleep at about 8 p.m. he visited a friend known as Parker for about 30 to 45 minutes. Parker lives three to four kilometers away from his residence. He then went home at about 8:30 to 9:00 p.m.

[48] Ms. MacDonald called him twice but he did not answer the first call because he was putting his daughter to bed and the second time he did not answer was because he did not want to. At some point he did return her call and she told him she was coming to see him. He told her he was going to bed. She then said that if he did not meet her she would drive around until she found him.

[49] Ms. MacDonald had no idea where he lived since she had only been to his residence once to drop off her boyfriend at the time so that he and Mr. Hubley could go fishing. He returned her call from his friend Parker's house. He agreed to meet

her. She continued to call him and he did not know where she was coming from. Ms. MacDonald asked for an axe, a saw and a tarp and he thought she had struck or jacked a deer.

[50] He did not know where Ms. MacDonald was coming from or if anyone was with her. He agreed to meet her at a graveyard located on the same road as his residence. The graveyard is approximately five to seven kilometers from his house. They met at the graveyard and Ms. MacDonald and Mr. Johnson followed him to his house where he told them that the things she had asked for were there. Mr. Johnson said “we are doing it here.” Mr. Hubley replied no. Mr. Johnson repeated what he had said. It was then that he saw the body in the trunk of the car. Mr. Hubley was afraid because he thought if he can do that what is he going to do to me.

[51] He testified that he has blocked a lot of stuff out but some stuff still comes back to him every day. He thought, at the time, that if he did not make these people happy who would they be going after next and he thought about his daughter.

[52] The tarp, axe and saw were either next to his outdoor steps or in the house. Mr. Johnson told him to grab Ms. Miller’s foot which he did. He was in shock at this point. He could not recall if the tarp was laid out before the body was taken out of the vehicle.

[53] He remembered Ms. MacDonald and Mr. Johnson being in his house and asking him for a change of clothing. It was at this point that Ms. MacDonald said to him “shush” and silently mouthed the words “he has a gun in the car.” He then gave them the clothing they asked for and Mr. Johnson left the house.

[54] Mr. Hubley remained in the house with Ms. MacDonald. She told him that if anyone asked he was to say she was there in order to sell him some tools. He and Ms. MacDonald were in the house for about 15 minutes when Mr. Johnson hollered for him to come outside. He went out and saw Mr. Johnson swinging the axe at Ms. Miller’s neck. Mr. Johnson asked him to help. Mr. Hubley responded “no you have to do it yourself” and returned to the house.

[55] His next memory was Ms. MacDonald telling him to get rid of everything and seeing Mr. Johnson pick up Ms. Miller’s head and placing it in a garbage bag. He took the garbage bags to the fire pit. Ms. MacDonald asked him to get rid of Ms. Miller’s keys. She also asked him if he could take Arthur’s (someone with whom Mr. Hubley fished) boat out and get rid of the body. He put her off by giving her some excuse. Ms. MacDonald then asked if he could bury the body on his property

but he gave her an excuse by saying that there was only one foot of topsoil on top of the bedrock.

[56] Ms. MacDonald and Mr. Johnson cleaned out the trunk of the car and put things in the garbage bags which he provided.

[57] He spent the following day thinking about hiding the garbage bags but was scared to do so because he thought Ms. MacDonald and Mr. Johnson might think he was doing that to give the bags to the police and “ratting them out.” He was scared of what they would do to him or his family.

[58] When asked about the intercepted conversations he had with Ms. MacDonald he said he was trying to make her think that he was her friend because he was scared for himself and his family.

[59] He testified that he told the undercover officers he was scared. He also said that after he gave his statement to Detective Sayer he felt relieved and safer. He acknowledged that his first mention of seeing Mr. Johnson holding Ms. Miller’s severed head was at trial. He testified that he did not call the police out of fear.

[60] He explained that the reason he did not tell the police about Ms. MacDonald making the motion of a gun with her hand and mouthing the words “he has a gun in the car” was because he was relieved about getting it off his chest and it slipped his mind.

[61] Mr. Hubley’s evidence on cross-examination was as follows: He is someone who has a hard time saying no. He barely knew Ms. MacDonald and she was more of a business associate than a friend. He made the choice to help her out of fear.

[62] He told the undercover officers to leave via a different route that would have prevented them from travelling by the Emergency Health Services building because he knew this building had video surveillance cameras and thought the police would get that video because he suspected these men were undercover police officers and that they would get the video.

[63] He admitted receiving a number of calls from Ms. MacDonald on July 15<sup>th</sup> but did not recall any conversation that day about tools.

[64] He did not know how many times he had stayed at Ms. MacDonald’s mother’s house. He did not watch TV there but simply went there to eat, shower and sleep when he was working in the city. He hardly ever saw Ms. MacDonald at her

mother's residence even when he stayed there and he never popped in just to visit. He denied that he was attempting to minimize the contact he had with Ms. MacDonald.

[65] When Ms. MacDonald called him on July 15<sup>th</sup> she had a "bit of a panicked voice" on the phone. He went to the graveyard to help her out. Ms. MacDonald has never threatened him nor did she ever threaten him in the lead-up to July 15<sup>th</sup>. He acknowledged that between July 15<sup>th</sup> and November 26<sup>th</sup>, 2014 he never told her he felt threatened or fearful. He also had no knowledge of Mr. Johnson being violent.

[66] When asked if there was anything he would like to change or add to what he said in his statements to the police he answered "no." He acknowledged having read and listened to the transcriptions of his statements. He denied leaving anything out of his statements but said that he just recalled different things and remembered different things.

[67] He testified that in his statement to Detective Constable Sayer he wanted to tell the truth and did tell the truth.

[68] He acknowledged that there were no verbal threats made to him and that he had no fear when he went to the graveyard.

[69] He admitted there were things that he said in court which he did not tell the police during the ten hours he was with Detective Constable Sayer. An example of what he did not tell the police but testified to in court was about thinking Ms. MacDonald had either hit or jacked a deer. He explained that when he spoke to Detective Constable Sayer the deer thing did not come to mind. When Ms. MacDonald asked him to have an axe, a saw and tarp ready and not ask any questions he did not think that it was weird that she would ask for these tools to cut up a deer. He also admitted that the deer never came up in any conversations he had with Ms. MacDonald.

[70] He acknowledged that it took Ms. MacDonald three hours from the time she first called him to the time of her arrival. He said that he did not think it was weird that she would travel three hours over a dead deer.

[71] He admitted to testifying about things that were not in his statement such as: thinking that Ms. MacDonald had hit or jacked a deer; her asking him to take Arthur's boat out to dispose of the body; her asking if the body could be buried on

his property; or dialling 911 on his phone after Ms MacDonald and Mr. Johnson had left.

[72] He admitted that no one ever said anything about harming his family. Between July and November he thought about calling the police but made the choice not to. During that period no one threatened him or his family. He said he did not call the police out of fear. He was hoping that Ms. MacDonald and Mr. Johnson would get caught.

[73] His evidence was that he saw Mr. Johnson swinging the axe at Ms. Miller's head/neck. He agreed, however, that he told Detective Constable Sayer he saw Mr. Johnson swinging the axe at Ms. Miller's hand and did not mention her head or neck. He denied lying about this and said that he could have meant to say head but said hand instead.

[74] In cross-examination on February 6<sup>th</sup> he testified about driving to pick up Chris and then Jeremy on the way to work the day after Ms. MacDonald and Mr. Johnson came to his house with the body. On February 7<sup>th</sup>, he acknowledged that there was nothing in his statement about picking up Chris to go to work.

[75] When asked about getting a deer into the trunk of Ms. MacDonald's car, which was a smaller Hyundai Accent vehicle, he said he did not think it would be difficult to put a deer in that trunk. He thought Ms. MacDonald was alone, however, when he was referred to his statement, Exhibit 12(b) at page 95, he acknowledged telling Detective Constable Sayer "they told me they were coming." He also testified that when Ms. MacDonald and Mr. Johnson were a little over half way to his house he started to suspect that it was not a deer in the car.

[76] He did not know there was a dead body in the trunk until it was opened. However, in his statement when he was asked by Detective Constable Sayer "when did you know she (referring to Ms. Miller) was in the car?" his response was "when she (referring to Ms. MacDonald) was about half way there." He also nodded affirmatively to Detective Constable Sayer's statement "she told you on the phone." [Exhibit 11(b) at page 20]

[77] With respect to Ms. MacDonald's hand gesture of a gun and her mouthing the words "he has a gun in the car" his evidence was that Mr. Johnson was behind Ms. MacDonald when she did this. He admitted that he never said the word "gun" in any statement he provided to the police and that he had no reason to believe Ms. Miller had been killed by a firearm.

[78] When Ms. Miller was taken out of the trunk he only looked at her foot and her face but just glanced at her neck and did not see that it had been cut. He did not recall getting any blood on his hands at any point or cleaning out the trunk. On February 6<sup>th</sup> he testified that they, meaning Ms. MacDonald and Mr. Johnson, cleaned out the trunk. He acknowledged that his memory was better on November 26<sup>th</sup> when he gave his statement and that he told the police he cleaned out the trunk.

[79] He suspected the undercover officers who came to his house were police officers yet he told them that he threw the knife and keys into the ocean. He did this so that the police could find these items.

[80] He repeatedly referred to doing what he did and making the decisions that he made in order to keep his family safe but agreed that there is nothing in his statement about fearing for his family.

[81] He admitted that he could have left his house and gone to his mother's house, driven to the city or anywhere else before Ms. MacDonald and Mr. Johnson arrived because he had a car but he did not do so.

[82] Although he implicated both Ms. MacDonald and Mr. Johnson in his statement to the police nothing has happened to him and that he still lives in the same house.

[83] On July 15<sup>th</sup> between 10:04 p.m. and 11:38 p.m. he received six calls from Ms. MacDonald and when these calls came in he already knew about getting the axe, tarp and saw ready. He did not ask any questions. He denied knowing there was a body in the car and maintained that he thought it was a deer. It did not cross his mind why Ms. MacDonald would want a tarp, an axe and a saw. He believed that she would take the tools with her. He denied knowing that Ms. MacDonald and Mr. Johnson had committed murder before they arrived at his house.

[84] He conceded that he was speculating about a lot of things in his evidence.

[85] He testified he was scared when he looked into Mr. Johnson's eyes and he knew when the trunk was opened that Mr. Johnson and Ms. MacDonald had killed someone. He said he was fearful at that point and was going to make them happy.

[86] When he and Mr. Johnson took the body out of the trunk Mr. Johnson had not threatened him at that point and was not aggressive with him. Mr. Johnson did not have a weapon in hand nor did he ever see him with a gun or any other weapon

except for the axe which he had provided to him. His evidence was that he continued to help Mr. Johnson and Ms. MacDonald throughout the evening because he felt fear.

[87] He agreed that anyone driving down his road that evening might see the body being dismembered but explained that he wanted it done in an open area so that if anyone drove by they would call the police and he would not be seen as a rat.

[88] Despite saying he was fearful of Mr. Johnson he refused to help him when asked to do so. He agreed that he was free to move around that evening and that no one told him to stay in one location.

[89] His evidence, on direct examination was that Ms. MacDonald and Mr. Johnson cleaned out the trunk of the vehicle. He agreed, however, that in his statement [Exhibit 11(b) at page 27] he nodded affirmatively when Detective Constable Sayer said “you had already cleaned out the trunk.” He could not remember if the trunk liner was soaked in blood despite carrying it from the vehicle to his fire pit by the shoreline. He also carried some garbage bags filled with unknown items to the fire pit. Those bags stayed on the shoreline near the fire pit until the next evening when he burned them.

[90] Ms. MacDonald gave him the keys and the knife to get rid of when he was taking garbage bags down to the pit. He said he threw these items into the ocean as far as he could to a spot where he knew the police could get them later on and not to help Ms. MacDonald and Mr. Johnson get away with murder. He repeatedly testified that he did what he did to help Ms. MacDonald and Mr. Johnson out of fear.

[91] He did not help putting Ms. Miller’s body back in the trunk of the vehicle. He agreed, however, that in his statement [Exhibit 11(b) at page 35] he admitted helping Mr. Johnson put Ms. Miller’s body back in the car.

[92] In this statement [Exhibit 11(b) at page 21] he told the police he did not like Mr. Johnson and that Mr. Johnson told him if he said anything he would hit him; however, at trial he could not remember if Mr. Johnson said that. In his evidence at trial he repeatedly mentioned his fear of Mr. Johnson. He agreed that despite this fear he told several people that he did not like Mr. Johnson. He told Constable Allison on October 3<sup>rd</sup> that he did not like Mr. Johnson. He also told Ms. MacDonald on October 9<sup>th</sup> that he did not like Mr. Johnson who was, at the time, Ms. MacDonald’s boyfriend and the father of their child.

[93] He did not go to the police out of fear but acknowledged that the fear was not as a result of anything Ms. MacDonald or Mr. Johnson did or said to him that evening.

[94] He admitted that he burned not only Ms. MacDonald's and Mr. Johnson's clothing but also his clothes. He denied doing this to get rid of evidence.

[95] He only threw the maul head into the ocean after the police came to see him on October 3<sup>rd</sup> because he was worried and it was his decision to do this.

[96] There was a lot of communication between him and Ms. MacDonald in the period between July and November 2014. The conversations were so that he could get his story straight and also so that Ms. MacDonald and Mr. Johnson would not think that he had ratted them out. He wanted to talk to her to get their stories straight so that they matched. He did this so that she would think he was on her side. He did not talk to Ms. MacDonald before October 3<sup>rd</sup> about getting their stories straight. He acknowledged that he did not lie to Ms. MacDonald but did lie to the police.

[97] He agreed that in his statement to the police he never mentioned anything about Mr. Johnson harming him or his family.

#### **THE LAW:**

[98] Section 23(1) of the **Criminal Code** defines an accessory after the fact as one who, knowing that a person has been a party to an offence, receives, comforts or assists that person for the purpose of enabling that person to escape.

[99] The offence of being an accessory after the fact is a specific intent offence. The prosecution must prove that the predicate offence, in this case, murder, was committed by the party alleged in the indictment and that the person accused of being an accessory after the fact had knowledge of the commission of the offence by the principal.

[100] The external elements which the Crown must prove were set out in **R. v. Camponi** (1993), 82 C.C.C. (3d) 506 as follows:

- (a) conduct on the part of the accused which had the effect of receiving, comforting or assisting a person; and,

- (b) the circumstances under which the person who is said to have been assisted was a party to an offence with respect to which the accessoryship is alleged.

[101] The corresponding fault elements are (a) that the accused's conduct was intentional; (b) that the accused knew the person he assisted was a party to the offence with respect to which the accessoryship is alleged; and, (c) that the accused had an ulterior intention or desire to assist for the purpose of an escape. In order to obtain a conviction under s. 240 of the **Criminal Code** the Crown must prove each of these separate external and fault elements beyond a reasonable doubt.

[102] The *actus reus* of this offence requires the accused to have "received, comforted or assisted" the principal offender or offenders. The accused must have done this for the purpose of enabling an offender or offenders to escape. Acts which merely have the effect of assisting the offender or offenders to escape are not sufficient: *R. v. McVay* (1982), 66 C.C.C. (2d) 512. The actions taken by the accused must have been carried out for the purpose of enabling the principal offender or offenders to escape. Even if an accused had more than one purpose in carrying out his actions, it will suffice if one of his purposes is the desire to help the principal or principals evade justice.

[103] The word "escape" in section 23 of the **Criminal Code** not only includes helping someone to physically "get away" but also helping someone to escape prosecution or punishment: *R. v. H. (D.G.)*, 2009 S.K.P.C. 34 at para. 48.

[104] It is necessary that the alleged accessory be proven to have known that the principal offender or offenders participated in the particular offence to which the accused is charged with being an accessory. Proof that some offence was committed will not suffice. In the present case the prosecution must prove that the accused had knowledge of the unlawful killing.

[105] Section 657.2(2) of the **Criminal Code** states:

Where an accused is charged with being an accessory after the fact to the commission of an offence, evidence of the conviction or discharge of another person of the offence is admissible against the accused, and in the absence of evidence to the contrary is proof that the offence was committed.

[106] In the present case, Exhibit 1 – the agreed statement of facts – signed by Mr. Hubley on January 28, 2017, admits pursuant to s. 655 of the **Criminal Code** that Mr. Johnson and Ms. MacDonald both entered guilty pleas to the offences of second degree murder and indecently interfering with human remains in relation to Ms. Miller.

[107] The offence of interfering with human remains under s. 182(b) is one of commission. The prosecution must prove beyond a reasonable doubt that: (a) the accused interfered with a dead human body or human remains; (b) that the interference was improper or indecent; and, (c) that the accused intended to improperly or indecently interfere with a dead body or human remains.

[108] Proof of physical interference with a dead body or human remains is not required: **R. v. Moyer**, [1994] 2 S.C.R. 899.

[109] Mr. Hubley has raised the defence of duress by testifying that he did what he did on July 15, 2014 because he feared for his safety and that of his family.

[110] The defence of duress is a particular application of defence of necessity: **R. v. Hibbert** (1995), 99 C.C.C. (3d) 193 (S.C.C.) at paras. 53 – 55.

[111] Once the accused has raised the defence of duress and introduced some evidence to support it, the Crown has the burden of proving beyond a reasonable doubt that the accused did not act under duress: **R. v. Ruzic**, *supra*, at para. 100.

[112] Following its decision in *Ruzic* the Supreme Court of Canada revisited both the statutory and common law defence of duress in **R. v. Ryan**, 2013 SCC 3. The court stated that duress is.... *[A]n applicable defence only in situations where the accused has been compelled to commit a specific offence under threats of death or bodily harm: R. v. Ryan, supra*, at para. 29. It set out the elements of both the statutory and common law defence of duress and noted at para. 81 that the two forms share the following common elements:

1. there must be an explicit or implicit threat of present or future death or bodily harm. This threat can be directed at the accused or a third-party;
2. the accused must reasonably believe that the threat will be carried out;
3. there is no safe avenue of escape. This element is evaluated on a modified objective standard;

4. a close temporal connection between the threat and the harm threatened;
5. proportionality between the harm threatened and the harm inflicted by the accused. The harm caused by the accused must be equal to or no greater than the harm threatened. This is also evaluated on a modified objective standard;
6. the accused is not a party to a conspiracy or association whereby the accused is subject to compulsion and actually knew that threats and coercion to commit an offence were a possible result of this criminal activity, conspiracy or association.

[113] The court noted two differences between the statutory and common law defence. The first is that the statutory defence applies to principals while the common law defence is available to parties and the second is that the statutory defence has a list of exclusions whereas it is unclear whether any offenses are excluded under the common law defence: *R. v. Ryan*, *supra*, at para. 83.

[114] If a person can avoid the effects of duress by escaping from threats without damage to himself, he must do so. In other words, a man must not voluntarily put himself in a position where he is likely to be subjected to such compulsion: *R. v. Sharpe* (1987), 85 Cr. App. R. 207, at p. 210.

[115] The court in *R. v. Li* (2002), 162 C.C.C. (3d) 360, referencing the *Ruzic* decision stated at page 28:

The threat must be a real threat affecting the accused at the time of the offense: at p. 43 The duress defence is assessed by a mixed objective/subjective standard. It is available where a reasonable person having reasonable firmness, sharing the same characteristics as the accused such as his or her age or background would have acted on the threats: see pp. 31 – 32.

[116] The defence of duress is not available where the accused has a safe avenue of escape. In applying this defence, the law does not require an accused to seek the official protection of police in all cases. The requirement of objectivity must take into consideration the special circumstances in which the accused finds himself or

herself as well as his or her perception of those circumstances: *R. v. Ruzic*, *supra*, at pp. 31 and 40. The court in *Ryan* referred to this as the modified objective standard.

[117] Once the defence of duress has been raised with sufficient evidence to possess an air of reality the Crown must then disprove at least one of the elements of the defence beyond a reasonable doubt.

[118] To determine whether there is an air of reality to a defence the question is whether there is evidence upon which a properly instructed jury acting reasonably could acquit if it believed the evidence to be true. The second part of this question can be answered by asking whether the evidence presented is reasonably capable of supporting the inferences required to acquit the accused. In applying the air of reality test the whole of the evidence must be considered and the evidence relied upon by the accused must be assumed to be true: *R. v. Cinous*, [2002] S.C.J. No. 28 (S.C.C.) at paras. 49-57.

[119] The availability of a reasonable opportunity to escape removes the defence of duress. Where such an opportunity exists, the accused can no longer contend that he or she lacked a realistic choice in committing the offence charged. The question of whether a safe avenue of escape existed is to be determined according to an objective standard. When considering the perceptions of a reasonable person however, the personal circumstances of the accused are relevant and important and should be taken into account.

[120] An accused cannot blindly choose to engage in wrongful conduct and later expect to be excused on the ground that he or she acted under duress. In order to assert that wrongful acts done under a form of compulsion should be excused as morally involuntary, an accused must have taken steps, recognizing the individual's history, personal circumstances, abilities, capacities and human frailties, as well as the external circumstances, to discover his or her full range of options before deciding to engage in the wrongful conduct: see *R. v. Keller* (1998), 131 C.C.C. (3d) 59 at p. 56.

[121] The court in *Hibbert*, *supra*, also dealt with the safe avenue of escape requirement by stating at p. 224:

The so-called "safe avenue of escape" requirement in the law of duress is, in my view, simply a specific example of a more general requirement analogous to that in the defence of necessity identified by Dickson, J. – the requirement that compliance with the law be "demonstrably impossible" -- ... the defence of duress must be seen

as being based upon the same theoretical foundation, it follows that the defence of duress includes a similar requirement – namely, a requirement that it can only be invoked if, to adopt Dickson, J’s phrase, there is “no legal way out” of the situation of duress the accused faces. The rule that the defence of duress is unavailable if a “safe avenue of escape” was open to the accused is simply a specific instance of this general requirement – if the accused could have escaped without undue danger, the decision to commit an offense becomes, as Dickson, J. observed in the context of necessity, “a voluntary one, impelled by some consideration beyond the dictates of necessity and human instincts.”

[122] When assessing the reasonableness of an accused’s conduct for the purpose of determining whether he should be excused from criminal responsibility, it is appropriate to employ an objective standard that takes into account the particular circumstances of the accused, including his ability to perceive the existence of alternative courses of action: See *Hibbert* at p. 226. The appropriate objective standard to be employed is one that takes into account the particular circumstances and human frailties of the accused. In determining whether an accused person was operating under constrained options, that is, he had no realistic alternative course of action available, the accused perceptions of the surrounding facts can be highly relevant to the determination of whether the accused’s conduct was reasonable under the circumstances and whether the conduct is properly excusable.

[123] An accused cannot rely on the common law defence of duress if he had an opportunity to safely extricate himself from the situation of duress. The rationale for this is that in such circumstances if the accused had a chance to take action that would have allowed him to avoid committing an offense, it cannot be said that he had no real choice when deciding whether or not to break the law. Whether or not a safe avenue of escape existed is to be determined according to an objective standard. When considering the perceptions of a reasonable person, however, the personal circumstances of the accused are relevant and important and should be taken into account: *R. v. Hibbert, supra*, at p. 228.

[124] Duress operates to relieve a person of criminal responsibility only after he has been found to have committed the prohibited act with the relevant intent or *mens rea*. Morally involuntary conduct should not be subjected to criminal liability. Criminal responsibility should be attributed only to an act that is the result of the deliberation of a free and conscious mind.

[125] If a person can reason right from wrong and has the ability to choose right or wrong then attribution or responsibility and punishment is morally justified or deserved when that person consciously chooses wrong.

[126] In *R. v. Ruzic*, *supra*, at para. 59 the court stated:

The assessment of a defence of duress at common law may carry with it a number of practical risks and problems relating to evidence. At times, as in the case at bar, proof of the defence may rest on little more than the accused's own evidence. Verification of a spurious claim of duress may prove difficult. Hence, courts should be alive to the need to apply reasonable, but strict standards for the application of the defence.

[127] Duress focuses on the search for a safe avenue of escape but rejects a purely subjective standard, in the assessment of threats. Courts must use an objective/subjective standard when appreciating the gravity of the threat and the existence of an avenue of escape. The test requires that the situation be examined from the point of view of a reasonable person but one who is similarly situated. The court will take into consideration the particular circumstances where the accused found himself and his ability to perceive a reasonable alternative to committing a crime, with an awareness of his background and essential characteristics. An accused is subject to a basic duty to adjust his conduct to the importance and nature of the threat. The law includes a requirement of proportionality between the threat and the criminal act to be executed, measured on a objective/subjective standard of the reasonable person similarly situated. The accused should be expected to demonstrate some fortitude and to put up a normal resistance to the threat. The threat must be to the personal integrity of a person. In addition, it must deprive the accused of any safe avenue of escape in the eyes of a reasonable person similarly situated.

[128] The operative test is whether the accused failed to avail himself of some opportunity to escape or render the threat ineffective.

[129] When assessing Mr. Hubley's credibility the directions of the Supreme Court of Canada in *R. v. W (D)*, [1991] 1 S.C.R. 742, must be applied. If I believe Mr. Hubley's evidence I must acquit; if I do not believe his evidence but I am left in a state of reasonable doubt by it I must acquit; and, if I am not left in doubt by his evidence I must consider whether, on the basis of the evidence which I accept, I am convinced beyond a reasonable doubt of his guilt.

[130] There are inconsistencies between the proven facts and Mr. Hubley's evidence. Mr. Hubley in his testimony also downplayed or did not recall certain things that he previously admitted doing or saying. Much of Mr. Hubley's evidence was prefaced with phrases such as "I think," "I probably," "I don't remember" or "I don't know."

[131] Despite signing admissions on January 28, 2017 made under s. 655 of the **Criminal Code**, Exhibit 1, where Mr. Hubley admitted certain facts he continued to maintain that he could not remember or did not know or did not do certain things such as:

1. In Exhibit 1 he admitted putting the axe, tarps and hand saw by his back steps but at trial he did not know if these tools were in the house or outside;
2. In Exhibit 1 he admitted that he helped Ms. MacDonald clean out the bloodied car trunk but at trial, on direct examination, he testified that Mr. Johnson and Ms. MacDonald cleaned out the trunk and on cross-examination his evidence was that he did not remember cleaning out the trunk;
3. In Exhibit 1 he admitted that Ms. Miller's body was laid out on the grass near the back corner of his house because Mr. Johnson stated that he needed light from the exterior spotlight. Mr. Hubley also said the same thing in his statement to Detective Constable Sayer on November 26, Exhibit 11; however, at trial on cross-examination his evidence was that the purpose of having Ms. Miller's body there was that it was in an open area and if anyone drove by his house they would see it and call the police thereby shielding him from being seen as a snitch or a rat;
4. At trial his evidence on direct examination was that he could not recall if the tarps were laid out on the grass before Ms. Miller's body was taken out of the trunk. In Exhibit 1, he admitted that he helped Mr. Johnson remove the body from the trunk and put it on the tarps that he had provided and that he, Mr. Johnson and Ms. MacDonald had laid out on his lawn.
5. In Exhibit 1 he admitted that he, Ms. MacDonald and Mr. Johnson wrapped Ms. Miller's torso in tarps and put Ms. Miller's head and hands in garbage bags; however, on cross-examination he testified that he saw Mr. Johnson put Ms. Miller's head in a garbage bag but did not recall seeing her hands being put in a garbage bag;

6. In Exhibit 1 Mr. Hubley admitted that he helped Mr. Johnson and Ms. MacDonald wrap Ms. Miller's torso in tarps and that he and Mr. Johnson placed Ms. Miller's remains back in the trunk of the vehicle; however, in his testimony on cross-examination he was not sure about how Ms. Miller's body got into the trunk of the vehicle after the trunk had been cleaned.

[132] There are numerous other examples of inconsistencies, omissions and fabrication in Mr. Hubley's evidence that affect his credibility. Mr. Hubley's assertion, on direct and cross-examination, that he did not know what was in the trunk of the vehicle until the trunk lid was opened is belied by his statement to Detective Constable Sayer where he said that he knew what was in the trunk when Ms. MacDonald and Mr. Johnson were half way to his residence. In his evidence on cross-examination he also said that he thought Ms. MacDonald had struck or jacked a deer and that was why she was calling him and asking him to provide tarps, an axe and a saw.

[133] When interviewed by Detectives Langille and Allison on October 3, 2014, Mr. Hubley told them that he had no contact with Ms. MacDonald on July 15<sup>th</sup>. On October 8<sup>th</sup> when he was interviewed again by the same officers he told them that he may have had contact with Ms. MacDonald in July when he purchased some tools from her but could not recall if it was on July 15<sup>th</sup>.

[134] In his statement of November 26, 2014 after his arrest, Mr. Hubley told Detective Constable Sayer that he was scared of Mr. Johnson because he knew he was a drug dealer and because of his big eyes. He made no mention of fearing Mr. Johnson because he believed Mr. Johnson had a gun. He made no mention of Ms. MacDonald making a gun gesture with her hand and mouthing the words "he has a gun in the car." Notwithstanding his statement to Detective Constable Sayer, Mr. Hubley testified, in his direct examination, that when Ms. MacDonald entered his residence, ahead of Mr. Johnson, she made a gun gesture with her hand and silently mouthed the words "he has a gun in the car."

[135] Throughout his testimony Mr. Hubley stated that he feared for his safety and that of his family. He admitted, on cross-examination that since July 15, 2014 neither he nor his family has been threatened.

[136] Mr. Hubley told Detective Constable Sayer that he was "pretty sure" Mr. Johnson threatened him and told him that if he said anything he would hit him.

However, on cross-examination when this portion of his statement was put to him Mr. Hubley could not recall if Mr. Johnson had actually said that.

[137] Despite his purported fear of Mr. Johnson, Mr. Hubley acknowledged that he told several people, including Ms. MacDonald, who was Mr. Johnson's girlfriend and the mother of his child, that he did not like Mr. Johnson.

[138] Mr. Hubley had a conversation with Ms. MacDonald on October 22<sup>nd</sup> shortly after he was visited by the police. During their conversation Mr. Hubley told Ms. MacDonald what he had told the police officers. A review of the intercepted communications between Mr. Hubley and Ms. MacDonald makes it obvious that they were colluding with each other with respect to the information they had or would be providing to the police. Mr. Hubley admitted during cross-examination that the various verbal and text communications he had with Ms. MacDonald after October 8<sup>th</sup> were so that their stories matched.

[139] Mr. Hubley's evidence on cross-examination, that when Ms. MacDonald called him and asked for tarps, an axe and a saw he thought she had jacked or struck a deer, was the first time he mentioned this. He acknowledged that it took Ms. MacDonald three hours from when she first called him to her arrival. He said he did not think it was weird that she would travel three hours over a dead deer. His evidence on this point was simply not credible given the size of the vehicle he thought she was driving, the distance she would have to drive to reach his residence and his statement to Detective Constable Sayer.

[140] Mr. Hubley's evidence that Ms. MacDonald was not a friend but rather a business associate; that he did not know how many times he had stayed at the house Ms. MacDonald shared with her mother; that he hardly ever saw Ms. MacDonald at that residence even when he stayed there overnight is an example of his attempt to downplay the relationship he had with Ms. MacDonald. I do not accept his evidence, on cross-examination, that he was not attempting to minimize the contact he had with Ms. MacDonald.

[141] Mr. Hubley throughout his evidence both on direct and cross-examination referred to blocking things out of his memory and not recalling certain things. I am quite certain that Mr. Hubley has blocked things out of his memory because of the gruesome events that took place on his property. However, I am also certain that there are things he knows, has not blocked out and still will not acknowledge or speak of. I am also satisfied that he has fabricated some of his evidence.

[142] Mr. Hubley repeatedly testified about fearing for himself and his family. While he subjectively may have believed that if he did not make these people happy they would harm him or his family, there is no evidence objectively speaking to support that belief given that he did not testify about seeing any weapons or hearing any threats either before or after the event.

[143] In *R v. Park* (1995), 99 C.C.C. (3d) 1 (S.C.C.), Justice L'Heureux Dube speaking of a defence based on the state of mind of the accused stated the following at p. 15:

Although there is not, strictly speaking, a requirement that the evidence be corroborated, that evidence must amount to more than a bare assertion. There must be some support for it in the circumstances. The search for support in the whole body of evidence or circumstances can complement any insufficiency in legal terms of the accused's testimony.

[144] Assuming for the sake of argument that an implied threat existed the threshold question is whether the acts, conduct or words spoken of the person alleged to have made the threat could reasonably be construed as a threat. As Martin, J.A. stated in *R. v. Mena*, [1987] O.J. No. 392 at para. 55:

On this threshold question, an objective standard must necessarily be met. If the judge at the conclusion of the evidence is of the opinion that no reasonable jury could find that the words or conduct constituted a threat of the kind required, the judge will withdraw the defence of duress from the jury.

[145] Mr. Hubley testified about being afraid of Mr. Johnson. However, he also testified that at some point Mr. Johnson asked him to come outside while he was dismembering Ms. Miller's body. Mr. Johnson asked Mr. Hubley to help him and Mr. Hubley's reply was "no you have to do it yourself" and then he re-entered the house. If Mr. Hubley was so fearful of Mr. Johnson and wanted to "make him happy" why would he say this? It simply does not make sense that he would refuse a request from someone he feared.

[146] Mr. Hubley's evidence was that he was relieved when he gave his statement to Detective Constable Sayer and felt safer. Despite being relieved and feeling safer there were a number of things about which he testified at trial that were not in his statement such as:

1. Ms. MacDonald asking him to get rid of Ms. Miller's keys and the knife;
2. Ms. MacDonald asking him if he could take Arthur's boat out and get rid of the body;
3. Her asking him if he could bury the body on his property;
4. Seeing Mr. Johnson holding Ms. Miller's head; and
5. Ms. MacDonald making a gun gesture with her hand and mouthing the words "he has a gun in the car."

[147] On cross-examination Mr. Hubley confirmed Staff Sergeant McQueen's evidence that he told the undercover officers to leave via a route that would not take them past the Emergency Health Services building. He also testified that he knew this building had video surveillance cameras and he thought that the police would get that video. He then said that he suspected these two men were police officers. Mr. Hubley's evidence on this point makes no sense. Why would he speak so freely about what he, Ms. MacDonald and Mr. Johnson did on July 15<sup>th</sup> to people he suspected were police officers? As well, a review of his audio video recorded statement, Exhibit 11(a), and his exclamation contained at page 19 of the transcript of that interview, Exhibit 11(b) "you saying there were cops at my house last night" belies his assertion that he suspected the undercover officers were police officers.

[148] Another example of Mr. Hubley's evidence being inconsistent within itself comes from his testimony that he did not get rid of evidence in order to assist Ms. MacDonald and Mr. Johnson but rather did so to keep his family safe. He then said that he threw the evidence in a place where he knew the police would find them later. He was referring to throwing Ms. Miller's keys and the murder weapon into the ocean. It is preposterous to think that throwing items into the ocean would be to put them in a location where the police could later find them.

[149] In Exhibit 1, Mr. Hubley admitted that he, Ms. MacDonald and Mr. Johnson laid out tarps on his lawn with Ms. Miller's body on them near the back corner of his home next to the oil tank as Mr. Johnson stated he needed light from the exterior spotlight. He agreed, in cross-examination, that anyone driving down his road that evening might see the body being dismembered in this location. He also said that

he wanted it done in an open area so that if anyone drove by they would call the police and he would not be seen as a rat. His evidence on this point is simply not believable.

[150] The defence position is that Mr. Hubley did what he did out of duress. Any evidence that Mr. Hubley was acting under duress comes from his own statements and evidence. In his testimony he repeatedly stated that he feared for his and his family's safety. In his statement to Detective Constable Sayer, Mr. Hubley said that he was "pretty sure" Mr. Johnson had threatened him, however, when cross-examined on this point he could not recall if Mr. Johnson had actually said that. He also admitted that since July 15, 2014 neither he nor his family have been threatened. It is clear from listening to Mr. Hubley's statements to the police and his testimony that his alleged fear stemmed not from any threats made to him or his family but from his belief that he would be labelled an informant and therefore in danger.

[151] Mr. Hubley acknowledged that, from the time he first spoke to Ms. MacDonald on July 15<sup>th</sup> to the time of her arrival, a period of several hours, he could have hidden his car in the woods near his residence, driven to his mother's house, or some other location.

[152] On the basis of the evidence I do accept I find that Mr. Hubley was not explicitly or implicitly threatened nor was his family threatened. Mr. Hubley had a safe avenue of escape.

[153] There is no air of reality to Mr. Hubley's assertion that he acted under duress.

[154] I am satisfied beyond a reasonable doubt that Mr. Hubley was an accessory after the fact to the murder of Ms. Miller.

[155] I am satisfied beyond a reasonable doubt that Mr. Hubley improperly interfered with a dead body by providing the tools used to dismember Ms. Miller's body, by assisting in wrapping her dismembered body in tarps, by putting her torso and body parts in garbage bags and by assisting in putting these in the trunk of Mr. Johnson's vehicle. I am also satisfied that his actions were the product of an operating mind.

[156] Convictions will be entered on both counts in the indictment.

Cacchione, J.