

**REPORT FOR MINISTER OF JUSTICE**  
**ON COMPENSATION CLAIM BY TEINA ANTHONY PORA**  
**BY**  
**HON RODNEY HANSEN CNZM QC**

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## (1) INTRODUCTION

1. This report is submitted to the Minister of Justice pursuant to the *Cabinet Criteria for Compensation and Ex Gratia Payments for Persons Wrongly Convicted and Imprisoned in Criminal Cases (1998) (the Cabinet Guidelines)*.
2. By letter dated 4 June 2015 the Minister asked me to provide advice on Mr Teina Anthony Pora's claim for ex gratia compensation for wrongful conviction and imprisonment.
3. Mr Pora had appealed successfully to the Privy Council against conviction on charges of murder, sexual violation and aggravated burglary. The Privy Council ordered that he should not be retried. On 13 April 2015, Mr Pora applied for compensation. The Minister, having decided that the claim merited further assessment, asked me to report whether Mr Pora has satisfied me that he is innocent on the balance of probabilities of the charges he faced.
4. For the purpose of compiling this report I have had available to me the full record compiled for the purpose of the appeal to the Privy Council. Additional documents and further evidence have been provided by counsel for Mr Pora and the Crown Law Office in support of comprehensive written submissions. I have sought and obtained additional documents in the course of my deliberations. I have not, however, thought it necessary to interview any of those whose evidence I have considered.
5. The events traversed by this report span more than 20 years. There are many witnesses whose evidence I have considered and a number of other individuals are, for one reason or another, identified in this report. In order to assist a reading of the report, I have therefore included as annexures:
  - A chronology of significant events Appendix 1
  - A list of those named in the report Appendix 2
  - A simple family tree of members of the extended Pora family who figure in this report Appendix 3

6. I record my gratitude to Mr Jonathan Krebs and Ms Ingrid Squire, counsel for Mr Pora, and Dr Mathew Downs, Senior Crown Counsel for their assistance.
7. For the reasons set out in the balance of this report, I have concluded that, on the balance of probabilities, Mr Pora is innocent of the charges of which he was convicted.

## **(2) A SHORT HISTORY**

8. On 23 March 1992 Ms Susan Burdett was raped and murdered in the bedroom of her home in Papatoetoe. She had been brutally beaten with a blunt instrument. A softball bat she kept for her own protection lay on the bed beside her naked body.
9. Police inquiries were initially unsuccessful in identifying an offender. Almost a year later, in March 1993, there was a breakthrough. Teina Pora, then 17 years old, and already with a lengthy criminal record, told the Police he was present when Ms Burdett was raped and killed by two other men. He identified the two men by name.
10. A year later Mr Pora was tried and convicted of aggravated burglary and of being a party to the rape and murder of Ms Burdett.<sup>1</sup> He was sentenced to life imprisonment. He was tried alone. The Police had already ascertained that the two men he had identified were not involved.
11. In 1996 Malcolm Rewa was arrested and charged with the sexual violation or attempted sexual violation of 27 women and the rape and murder of Ms Burdett. After trial in June 1998 he was found guilty of charges relating to 25 of the complainants. He was acquitted of charges relating to two of the complainants. The jury was unable to agree on verdicts in respect of Ms Burdett's murder and rape. At a second trial in December 1998 Mr Rewa was convicted of Ms Burdett's rape. The jury was again unable to agree on the count of murder. The Crown did not seek a retrial on that count and the Solicitor-General entered a stay of proceedings.
12. Malcolm Rewa's conviction for the rape of Ms Burdett led to Mr Pora successfully appealing against his convictions. A retrial was ordered which took place in 2000. For a second time Mr Pora was convicted of aggravated burglary and the rape and murder of Ms Burdett. He was sentenced (as he was in 1994) to life imprisonment and ordered to serve a minimum term of 13 years. His appeal against conviction was

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<sup>1</sup> The dates of the trial and the timing of other significant events are set out in the chronology attached as appendix 1.

unsuccessful. The order that he serve a minimum term of 13 years was, however, quashed as it was made without jurisdiction.

13. In 2013 Mr Pora sought leave to appeal to the Privy Council. Leave was granted in January 2014. On 3 March 2015 the appeal was allowed and Mr Pora's convictions quashed. An order that he should not be retried was made on 13 March 2015, paving the way for his application for compensation.



### **(3) APPROACH TO THIS APPLICATION**

#### **Criteria for compensation**

14. There is no legal right to compensation for wrongful conviction or imprisonment in New Zealand. Compensation payments are made on an ex gratia or discretionary basis. The Cabinet Guidelines were adopted to provide a standard process for considering the grant of compensation. As explained by Jeff Orr, Chief Legal Counsel of the Ministry of Justice:<sup>2</sup>

“... in the interests of fairness and consistency and in light of the duty to compensate normatively imposed by the International Covenant on Civil and Political Rights, the Government decided that it should nevertheless adopt a standard process for applications and decisions. Accordingly, in the last decade Cabinet adopted guidelines for determining eligibility for and quantum of payments for wrongful conviction and imprisonment. Because payments are ex gratia and involve the expenditure of, often substantial amounts of public money for which they are accountable, decisions appropriately rest with Ministers.”

15. In order to satisfy the guidelines it is necessary for someone in Mr Pora’s position to meet the following criteria:

- (a) Having been convicted of an offence, he has served all or part of a sentence of imprisonment;
- (b) He has had his conviction quashed on appeal without order of retrial;
- (c) He is alive at the time of the application;
- (d) He has satisfied a duly appointed Queen’s Counsel that he is innocent on the balance of probabilities.

16. Mr Pora meets the first three criteria. My task is to determine whether he has satisfied the fourth.

#### **Onus and standard of proof**

17. The requirement to prove innocence on the balance of probabilities is very different from the task that confronted the courts which heard the charges against Mr Pora.

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<sup>2</sup> New Zealand Law Society “Symposium, Criminal Law” (November 2006) 77 at 77.

The juries at his trial and retrial were required to decide whether he was guilty to the standard of beyond reasonable doubt. The Crown was required to discharge that onus of proof. For the purpose of this application, Mr Pora has the onus of proving that he is innocent on the balance of probabilities. That requires him to satisfy me that it is more likely than not that he is innocent of the charges of which he was convicted.

### **Admissibility of evidence**

18. In a criminal trial the Court can receive only legally admissible evidence. Evidence that does not meet strict legal requirements is excluded. That is appropriate when guilt is in issue. The same considerations do not apply to compensation enquiries conducted under the Cabinet Guidelines. I am able to receive any evidence which has a bearing on the issue I am required to consider. This may include evidence that for one reason or another was not heard at Mr Pora's trials and evidence which was adduced but not received for the purpose of the appeal. I will identify evidence in this category as I am required to consider it. I will discuss then why the evidence was not received by the Court and why it may nevertheless be useful for present purposes. There is also evidence that has been gathered and put before me expressly for the purpose of the application for compensation. I will identify that evidence also as it arises for consideration.
19. Whether the evidence was before the courts or not, my approach will be the same. It will be to give each item of evidence separate consideration and to decide whether it has potential value for the purpose of deciding whether Mr Pora is innocent. If it has potential value, I will consider then what weight can properly attach to it. Only after evaluating all the evidence of relevance in this way will I be in a position to reach a view on the critical issue.

### Significance of Privy Council decision

20. The decision of the Privy Council to quash Mr Pora's conviction was obviously of pivotal importance.<sup>3</sup> It made possible Mr Pora's claim for compensation. But the Privy Council's role was narrowly focussed and circumscribed by the laws governing the conduct of appeals. It was required to decide whether, in the light of fresh evidence admitted for the purpose of the appeal, Mr Pora's convictions should stand. Its decision can have no direct bearing on the very different question I am asked to consider. That said, some of the issues I am required to consider for the purpose of deciding whether Mr Pora is innocent, are not materially different from those the Privy Council looked at in deciding whether the convictions were safe. On those issues the views of the Privy Council merit careful consideration and I will refer to their Lordship's judgment from time to time.

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<sup>3</sup> *Pora v R* [2015] UKPC 9, (2015) 27 CRNZ 47.

#### **(4) THE CASE AGAINST TEINA PORA**

##### **Introduction**

21. In order to establish an entitlement to compensation Mr Pora must effectively discredit the Crown case. He must show that the evidence the prosecution puts forward cannot be relied on. He must show that the evidence that **can** be relied on – whether called by the prosecution or the defence – makes it more likely than not that he is innocent.
22. The evidence that must be considered for this purpose has progressively accumulated since Ms Burdett's body was discovered in March 1992. In order to provide context to an analysis of the evidence that is said to implicate Teina Pora, it is helpful to trace the development of the prosecution case. It began inauspiciously with a finding that Mr Pora had nothing to do with Ms Burdett's death.

##### **Teina is implicated**

23. In early April 1992 the Police were contacted by Mr Pora's 37 year old aunt, Terry Enofa McLaughlin. She is the sister of Teina Pora's mother who died when he was four. Since then he had lived with various family members, including Terry and her husband Maurice. He resided with them on and off though in April 1992 he was living elsewhere in Otara with his girlfriend, Fiona Bennett, and their two year old daughter.
24. After telephoning the Police several times, Terry McLaughlin made a written statement on 6 April 1992. In it she said that Teina had told her that he had seen a baseball bat covered in blood in "a tunnel" at the Manukau Velodrome. She and her husband went to the Velodrome and saw a baseball bat down a manhole. She said she linked what she had been told by Teina with the murder of Susan Burdett and said to her children "It must've been him that did it".
25. The same day the Police spoke to Teina Pora's sister, Paula Pora. Paula was then aged 19, a solo mother with a young baby. She was then living with Terry and Maurice

McLaughlin.<sup>4</sup> Terry McLaughlin had said in her statement that Paula Pora had told her that Teina had shown her a baseball bat at the Velodrome the previous Wednesday. Paula confirmed this in her statement. She said the bat was lying in the grass and had blood on it. She accused Teina of “killing the woman whose body had been found the previous week”. She said his response was “I didn’t kill her, my mates did.... I only rooted her”.

26. Teina Pora was also spoken to on 6 April. He confirmed he had seen the baseball bat in a drain when he was with three others and that he had told Terry McLaughlin and Paula Pora what he had seen. He said he had made a comment to his companions at the time that it may have been the bat that killed Susan Burdett as he had heard a bat might have been the murder weapon.<sup>5</sup> Mr Pora voluntarily gave a blood sample and fingerprints and was photographed.

27. One of those whom Mr Pora had named, Reuben Peihopa, also spoke to the Police on 6 April. He claimed to have been the one who first saw the baseball bat and to have commented that it might be the one used for the murder.<sup>6</sup> He said he had been told about the murder by his sister who had been interviewed by the Police. She worked at Super Strike, an indoor bowling facility where Susan Burdett had played the night she was killed. Another of those identified as present when the bat was found, Richard Bennett, was also spoken to.

### **Teina is exonerated**

28. As the Police investigation continued Mr Pora was again nominated by members of the extended Pora family and friends as a suspect. As a result, on 28 May 1992, he, Paula Pora and Richard Bennett were re-interviewed. Mr Pora agreed that it was possible that Reuben Peihopa found the bat first. He said that someone else in the group could have said that the bat was used in the murder of Susan Burdett.<sup>7</sup> He said

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<sup>4</sup> Statement of Paula Pora, 6 April 1992 at 1. Terry McLaughlin said, however, that Paula was then living with her boyfriend’s parents in Papatoetoe: Statement of Terry Enofa McLaughlin, 6 April 1992 at 4.

<sup>5</sup> Statement of Teina Anthony Pora, 7 April 1992 at 1-2.

<sup>6</sup> Statement of Reuben James Peihopa, 6 April 1992 at 1-2.

<sup>7</sup> Statement of Teina Anthony Pora, 28 May 1992 at 1-2.

that they were all talking and joking about who might have done it. He denied Paula Pora's allegation that he had been present and had raped Ms Burdett.

29. When Paula Pora was spoken to, she said that everything she had told the Police previously was a lie. She said her Aunty Terry had fallen out with Teina and had never liked him. Aunty Terry had suggested to her that she make up a story that would blame Teina for the murder and "have him put away". She said she and her aunt together with another aunt, Vicki Pora, sat down and made up a story using information from the newspaper. Another aunt, Mihi Tuhua, was also part of the plan. Paula said she had talked to Teina about the murder in general conversation but he had never admitted to "doing it". She said the parts of her earlier statement that implicated him in the murder or asserted he had followed Ms Burdett were made up by her and her aunts.<sup>8</sup>
30. On 10 June 1992 Detective Sergeant Karl Wright St Clair, who had conducted the interviews, filed a report. He recorded that:<sup>9</sup>

"During the reinterview of Paula PORA, she eventually admitted that her original statement was incorrect to the extent that she had conspired with her three Aunts, Terry MCLOUGHLIN, Vicki PORA and Mihi TUHUA to concoct a story implicating Teina PORA. The motive for this was that neither Aunty approves of Teina's criminal behaviour and they all wanted him placed in prison and out of their way."

Detective Wright St Clair concluded:<sup>10</sup>

"I suggest that no further action be taken in relation to Teina Pora as a suspect or investigating further the false information and conspiracy by Paula and her three Aunts. There has already been enough Police resources wasted in relation to this matter."

A Police job sheet made soon afterwards recorded that "it appears the McLaughlins are still orchestrating rumours to "fit" Teina Pora".<sup>11</sup>

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<sup>8</sup> Statement of Paula Margaret Pora, 28 May 1992 at 1 -2. On 20 March 1993 Paula Pora made a more detailed statement in which she identified precisely which parts of her original statement were untrue – Statement of Paula Margaret Pora, 20 March 1993 at 2- 3.

<sup>9</sup> Report Form, Detective Karl Wright St Clair, 19 June 1992 at 1.

<sup>10</sup> Report Form, Detective Karl Wright St Clair, 19 June 1992 at 2.

<sup>11</sup> Job sheet Detective R A Burgess, 22 June 1992.

31. During 1992 and into 1993 the Police investigation continued, still focused on finding a single perpetrator. The trail seemed to have grown cold. They were having no success identifying a suspect.

#### **Teina confesses**

32. On 18 March 1993, Teina Pora was arrested for failing to appear on outstanding charges including one of unlawfully taking a motor vehicle. He was interviewed by Detective Sergeant Mark Williams. In the course of the interview Mr Pora asked Detective Sergeant Williams if the Police had caught the person responsible for the Susan Burdett murder. He disclosed that he had some knowledge in relation to the crime. Detective Williams told him of a \$20,000 reward the Police were offering for information leading to the conviction of the offender. Mr Pora was shown the reward notice and Detective Williams explained what was meant by the term "indemnity from prosecution". He was then formally cautioned and his rights under the Bill of Rights explained to him. He agreed to be interviewed on video camera.
33. The interviews took place over three days, 18, 19 and 21 March 1993 and included retracing the journey Mr Pora said was taken from Super Strike to Ms Burdett's home. Detective Inspector Stephen Rutherford was present for the interview on 18 March and conducted the interviews on 19 and 21 March. On 20 March Teina Pora was visited by Maurice and Terry McLaughlin. He made disclosures to them that were broadly consistent with what he had told the Police. He said he had gone to Susan Burdett's house with two Mongrel Mob gang members whom he referred to as Dog and Hound before identifying them as, respectively, Roy Wong Tung, also known as Roy Dunn, and Gert Tengboon.<sup>12</sup> He said Dog and Hound had raped Ms Burdett and beaten her with a softball bat. He claimed not to have been an active participant.

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<sup>12</sup> The circumstances in which the two gang members were first identified are not entirely clear. At Mr Pora's first trial, Detective Sergeant Williams said Mr Pora confirmed their identity when he put their names to him in the course of an unrecorded interview on 19 March. He said he put the names to Mr Pora as a result of information received from Detective Inspector Rutherford. However, Detective Inspector Rutherford was not asked when and how he obtained the information.

34. On 23 March 1993 Teina Pora was charged with the murder, sexual violation by rape and aggravated burglary of Susan Burdett.

#### **The first trial**

35. At his trial in June 1994, Mr Pora's confession was the central plank of the Crown case which was that he had committed the crimes with two others. The two men named by Teina Pora had by then been cleared of involvement. The prosecution proceeded on the basis that Mr Pora's accomplices were unknown.
36. Maurice and Terry McLaughlin and their son Mure gave evidence. Maurice and Terry spoke of the admissions made by Mr Pora on 20 March 1993. His statements to them included disclosures that the offenders had taken a camera, purse, jewellery and a bowling trophy from the house. Terry McLaughlin said that Teina told her that he took the money and the others took the rest.
37. The prosecution also relied on the evidence of Terry McLaughlin and others regarding the baseball bat found in the drain at the Manukau Velodrome and Mr Pora's alleged comment that it might have been the bat used to kill Ms Burdett.
38. Mr Pora gave evidence in his own defence. He said he had falsely confessed to his involvement in the offending. He said Detective Sergeant Williams had shown him a reward notice and read it to him. He was told that if he had information but was not the main offender he would not be charged. Mr Pora denied involvement. He was unable to give any coherent explanation as to why he should have made a false confession.
39. Following the trial Terry McLaughlin applied for a reward for her assistance in securing Teina Pora's convictions. She was paid \$5,000 in July 1994.

#### **Police enquiries continue**

40. The police continued their search for Mr Pora's co-offenders. One of those spoken to in the course of their inquiries was Martha McLaughlin, the eldest daughter of



Maurice and Terry McLaughlin. It is not clear why she was interviewed as she had not volunteered information to the Police when other members of the family were assisting with inquiries. Martha identified or described a number of men whom she said had associated with Mr Pora at around the time of the murder. She provided further evidence incriminating Mr Pora including an allegation that in the days after the murder he came to her house to wash a bloodied rugby league jersey.<sup>13</sup>

41. Another person who gave information to the Police at this time and who, like Martha, would give evidence at Teina Pora's retrial was  $\begin{matrix} \text{\S 9(2)(a)} \\ \text{\S 18(c)(ii)} \end{matrix}$  ·  $\begin{matrix} \text{\S 9(2)(a)} \\ \text{\S 18(c)(ii)} \end{matrix}$  was a friend of Fiona Bennett, Mr Pora's then girlfriend and the mother of his daughter. He first made a statement to Police on 2 June 1994 shortly before Mr Pora's first trial when he was in prison on remand facing charges of aggravated robbery.<sup>14</sup> He claimed that while in prison Mr Pora had extorted money from him and at one stage had said "I have killed once and I wouldn't hesitate to kill again. It's like stealing a car, once you have done it and know how it's easy."  $\begin{matrix} \text{\S 9(2)(a)} \\ \text{\S 18(c)(ii)} \end{matrix}$  was not, however, called as a prosecution witness at the first trial.
42. On 8 March 1995, by this time a sentenced prisoner,  $\begin{matrix} \text{\S 9(2)(a)} \\ \text{\S 18(c)(ii)} \end{matrix}$  made another statement.<sup>15</sup> It appears from the tenor of the statement that he was interviewed as part of continuing inquiries aimed at identifying Mr Pora's alleged co-offenders. He described a number of men he had seen associating with Mr Pora. He also spoke of conversations with Fiona Bennett who, he said, told him she knew who was involved in the murder with Teina Pora and the motive for the murder.
43. Following a series of discussions with police officers spanning several months, Mr Pora himself made another statement on 24 May 1995.<sup>16</sup> In it he presented a completely different version of events, implicating a number of his associates, among them Richard Bennett, Terrence Kiro and Reuben Peihopa. He said they were paid by Richard Bennett's sister, Alexander (sic), who worked at Super Strike, to go to Susan

<sup>13</sup> Statement of Martha Huirua McLaughlin, 30 March 1995.

<sup>14</sup> Statement of  $\begin{matrix} \text{\S 9(2)(a)} \\ \text{\S 18(c)(ii)} \end{matrix}$ , 2 June 1994.

<sup>15</sup> Statement of  $\begin{matrix} \text{\S 9(2)(a)} \\ \text{\S 18(c)(ii)} \end{matrix}$ , 8 March 1995.

<sup>16</sup> Statement of Teina Anthony Pora, 24 May 1995.

Burdett's house and carry out the attack. It appears this was part of an attempt by Mr Pora to get transferred to a minimum security prison although, in the course of the prior discussions with the Police, he was offered a reward of \$5,000 for information leading to the arrest of his co-offenders.

44. Later in 1995 and in early 1996, through his then counsel, he engaged in further negotiations with the Police to name his co-offenders in return for a reward and favourable treatment. These, too, came to nothing.

#### **Malcolm Rewa is arrested**

45. In May 1996 Malcolm Rewa was arrested and charged with multiple counts of sexual violation and the rape and murder of Susan Burdett. His DNA matched with semen found in her body.
46. While this discovery opened up the possibility that Malcolm Rewa alone was responsible for the offending, the Police investigation proceeded on the assumption that he, Mr Pora and a third man had acted together. Evidence to support that hypothesis was not long in coming.
47. Within days of Malcolm Rewa's arrest in 1996, Martha McLaughlin, her mother, Terry, and John Pora, Terry's brother, arrived unannounced at the Manukau Police Station. They were shown photographs of Malcolm Rewa by Detective Sergeant Williams. Martha McLaughlin identified him as a person she had seen with Mr Pora both before and after the murder.<sup>17</sup>
48. At Teina Pora's retrial in 2000 Martha McLaughlin gave evidence of the association between Malcolm Rewa and Teina Pora and also of a number of other matters linking Mr Pora to the killing of Ms Burdett. They included his going to Super Strike on the night of the murder; bringing a bloodied rugby league jersey to her house the following day; the evidence of his finding the baseball bat; admissions made to her before and after his arrest; comments he made to her about disposing of a bowling

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<sup>17</sup> Statement of Martha Huirua McLaughlin, 20 May 1996.

trophy; and of seeing Teina Pora's sister, Lobelia, wearing distinctive blue leaf earrings similar to a pair believed to have been taken from Ms Burdett's house.

49.  $\frac{\text{s } 9(2)(a)}{\text{s } 18(c)(ii)}$  also told the Police of an association between Malcolm Rewa and Teina Pora around the time of the murder. He was interviewed in prison on 29 May 1996. He identified Rewa from a photo board of 12 men. He said he had seen him with Teina Pora "a few times".<sup>18</sup>
50. Evidence of association was also offered by Mure McLaughlin, son of Terry and Maurice and younger brother of Martha. He said he saw Rewa and Teina Pora together a couple of weeks before the murder. He also said he saw a man who might have been Malcolm Rewa sitting in a vehicle with Mr Pora around about the time of the offending.
51. A fourth witness who emerged to give evidence of an association between Rewa and Teina Pora was  $\text{s } 9(2)(a)$ . She said she had met Malcolm Rewa in the 1970s when she was in her teens. She said she had an association with the Mongrel Mob and knew, among others, Roy Wong Tung. She said she had seen Malcolm Rewa at a number of Mongrel Mob functions and on one occasion, about a month before Susan Burdett's murder, in the presence of Teina Pora whom she described as "an active little burglar". She said that she saw Malcolm Rewa and Teina Pora and Roy Wong Tung's half brother, Ringo Dunn, talking together.

### Teina Pora's retrial

52. At Teina Pora's retrial in 2000 the prosecution case was again built around the confession. Mr Pora was alleged to have acted with Malcolm Rewa and a third unidentified man. The evidence of Martha McLaughlin,  $\frac{\text{s } 9(2)(a)}{\text{s } 18(c)(ii)}$  and Mure McLaughlin, which showed an association between the two, was of obvious importance for this purpose. Martha and Terry McLaughlin also gave damning evidence linking Mr Pora to items said to have been taken from Ms Burdett's house at the time she was killed.

<sup>18</sup> Police Interview of  $\frac{\text{s } 9(2)(a)}{\text{s } 18(c)(ii)}$  29 May 1996.

### Further evidence

53. s 9(2)(a) died before the trial and a Crown application to have her evidence read was declined. I am however asked to have regard to her evidence for the purpose of the compensation claim.
54. The Crown also relies on the evidence of s 9(2)(a). She has sworn an affidavit for the purpose of the compensation claim. She was a member of a bowling team which played at Super Strike in 1992. She said that she saw Mr Pora in the company of Ms Burdett on the night of the murder. She had not mentioned this when earlier making a statement to the Police because, she said, it seemed unimportant and the Police seemed more interested in male members of the bowling fraternity.

## **(5) ISSUES**

55. From this brief outline of the way in which the case against Teina Pora developed, it is possible to identify the key elements of the prosecution case which must be challenged and found wanting if Mr Pora's claim for compensation is to have any prospect of success.
56. The first is, of course, his confession. It remains pivotal to the Crown case. Mr Pora must show it cannot be relied on.
57. Then there is evidence which the Crown says both underpins the confession and independently incriminates Teina Pora. Much of the evidence in this category will be examined when the factual content of the confession is scrutinised. It is convenient, however, to give separate consideration to some of the evidence in this category, namely:
- (a) Evidence of opportunity.
  - (b) Bloodied rugby league jersey.
  - (c) Finding of baseball bat.
  - (d) Stolen items.
58. The discovery that Mr Rewa was involved introduced a further element to the Crown case; evidence of an association between Teina Pora and Malcolm Rewa. That evidence must be examined in a wider context. For Mr Pora it is contended, first, that evidence of an association between Rewa and members of the Mongrel Mob gang with whom Mr Pora fraternised is implausible because of the antipathy between that gang and the Highway 61 gang with which Malcolm Rewa associated. Secondly, it is said that Mr Rewa habitually and for good reason acted alone when carrying out sexually motivated attacks and it is highly unlikely that he would have attacked Ms Burdett in the company of Mr Pora.
59. Finally, I am asked by the Crown to give consideration to interactions between Teina Pora and the Crown which are said to be inconsistent with innocence.

## **(6) THE CONFESSION – BACKGROUND**

### **Introduction**

60. A confession is the most potent weapon in a prosecutor's arsenal. It has been described as the most powerful, persuasive and damning evidence of guilt that the state can adduce.<sup>19</sup> It carries a persuasion which nothing else does. That is because no innocent man can be supposed ordinarily to be willing to risk life, liberty or property by a false confession.<sup>20</sup>
61. There is, however, a substantial and growing body of evidence that people **do** confess to crimes they did not commit. At the forefront of Mr Pora's case on appeal, and fundamental to his case for compensation, is that he is one of them. The first hurdle he must clear is to show that his confession cannot be relied on.

### **The circumstances in which the confession was made**

62. The circumstances in which Mr Pora made his confession to the Police have already been touched on.<sup>21</sup> In an affidavit sworn in support of his application for the prerogative of mercy<sup>22</sup> Mr Pora explains how at the time he made the confession he was under personal and financial pressures. He was supporting himself, his girlfriend and their daughter by criminal activities, stealing cars and burglaries. Items stolen were disposed of to members of the Mongrel Mob who, he said, treated him like a servant. He was using alcohol, drugs and solvents. He said he "wanted out" of that life but did not know how he could find a way.
63. Mr Pora said he told Detective Sergeant Williams about his problems when he spoke to him, shedding tears at one stage as he told the policeman that he wanted to "go straight". He knew of the \$20,000 reward being offered for information that would

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<sup>19</sup> Bruce A McFarland "Convicting the Innocent: A triple failure of the Justice System" (2006) 31 Man LJ 403 at 474.

<sup>20</sup> John H Wigmore, revised by James H Chadbourn *Evidence in Trials at Common Law* (Vol 3, Little Brown and Co, Boston, 1970).

<sup>21</sup> At [32]-[33] above.

<sup>22</sup> Affidavit of Teina Anthony Pora, sworn 3 February 2011 at [27]-[36].

help to find the killer of Ms Burdett. He told Detective Sergeant Williams he knew who did the murder. They talked about the reward and, according to Mr Pora, he was told that, if he was not the killer, he would not be charged and would get \$20,000 for helping. He deposed:<sup>23</sup>

“At the time, telling Police a story about who killed someone, seemed like a pretty easy way to make \$20,000. It is hard to explain why I decided to do what I did, it just seemed to be a way out of the life I was living.”

He went on:<sup>24</sup>

“During the time was [sic] held by Police, I believed that, because they thought I was helping them, I was going to get \$20,000 and I was not going to be charged for the murder. I did not really care what happened if I got caught lying. I thought it could not make my life any worse than it was at that time anyway.”

64. Mr Pora said that over the four days he was questioned he was interviewed on video and many times “off the record”. Members of his family came to the police station and he told them the same story as he told the Police. He said that what he told the Police was based on what he already knew, through the media, and what the Police told him. He said that, depending on the Police reaction, he would change his story.
65. In his affidavit Mr Pora also deals with information he provided when he was in prison in 1995. He said he was offered another, bigger reward by Police, to name his supposed co-offenders. He thought if he provided names there was a chance he could get some money and he might also secure a transfer from Paremoremo where there was a “hit” on him.<sup>25</sup>

#### **What Mr Pora told the Police**

66. In the course of his interviews, Mr Pora gave the Police a bewildering succession of differing versions of what he claimed to have happened. His account is riddled with inconsistencies and contradictions, abrupt retractions and the sudden introduction of new unheralded information. What follows contains the essential elements of his

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<sup>23</sup> Affidavit of Teina Anthony Pora, sworn 3 February 2011 at [35].

<sup>24</sup> Affidavit of Teina Anthony Pora, sworn 3 February 2011 at [39].

<sup>25</sup> A hit rewards other prisoners for attacking and beating the nominated victim.

narrative, distilled from more than 9 hours of interviews. It is an attempt to set the scene for a much more detailed analysis of his statements.

67. Mr Pora said that on the night Susan Burdett was killed he went to Super Strike at around 9.30pm. He was by himself. He was approached by two men he knew as Dog and Hound (whom he later identified as respectively, Roy Wong Tung, also known as Roy Dunn, and Gert Tenboon). He said they were members of the Mongrel Mob whom he had previously met at Roy Wong Tung's house. They asked him to accompany them and follow Susan Burdett when she left. Dog said they were going to "get her". Mr Pora said he had previously seen her at Super Strike.
68. Mr Pora said there were two softball bats in his car, a steel one he owned and a wooden one belonging to Dog which had been in his car for a couple of weeks.
69. He followed Ms Burdett to her house. Entry was effected through the bedroom window and by opening the front door. Ms Burdett was having a shower. Dog and Hound hid in her wardrobe and seized her when she emerged. They removed her clothing and took turns to rape her. While one was raping her the other punched and hit her with a softball bat. Mr Pora said he took a wallet from her handbag, a trophy and some jewellery. Dog took a camera. Pora said he disposed of the bat at the Manukau Velodrome after wiping blood off it onto a rugby league tee shirt he was wearing.
70. In the course of the interview on 21 March (after a lunch break) Mr Pora disclosed that the plan to follow Ms Burdett was in fact hatched earlier. He was told by Roy Wong Tung the previous Tuesday that a man called Tora (also referred to as Tuta) who lived close to Susan Burdett went to her house "pissed" and was caught by her. There was a verbal altercation and he told Ms Burdett he would "get her". At a gathering on the Tuesday, Roy Wong Tung and others including a man called Nigs also known as Giant, and Tora discussed the revenge attack. On the Sunday night before Ms Burdett was killed they went to her house. Mr Pora described looking at her through the window. It was agreed that Roy (Dog) would rape Ms Burdett and Gert (Hound) would "waste her with a softball bat".



71. It is convenient to analyse Mr Pora's claim that his confession should be disregarded in four parts:
- (a) First, to consider expert psychological and medical evidence that Mr Pora has disabilities which help to explain why his confession should not be relied on.
  - (b) Second, to examine those aspects of Mr Pora's statements that, on their face, call into question the accuracy of what he was saying.
  - (c) Third, to review those elements of the confession which the Crown says are supportive of its reliability as requiring knowledge likely to have been possessed only by a person who was present.
  - (d) Fourth, to consider matters dealt with in the confession which require examination in the light of independent evidence said to corroborate Mr Pora's account.

## (7) THE CONFESSION – PSYCHOLOGICAL AND MEDICAL EVIDENCE

### Introduction

72. As a first step to explaining why Mr Pora may have falsely confessed to the rape and murder of Ms Burdett, Mr Pora relies on the evidence of three experts whose evidence was adduced in support of his appeal to the Privy Council. The evidence seeks to explain generally why people may make false confessions and why in this case Mr Pora may have done so. The evidence is in two categories:

- (a) The opinions of Professor Gisli Gudjonsson, an internationally recognised expert in the area of false confessions, who undertook an assessment of Mr Pora and an analysis of his Police interview.
- (b) The findings of Dr Valerie McGinn and Dr Craig Immelman, respectively a clinical neuropsychologist and consultant psychiatrist, both highly qualified experts in the area of foetal alcohol spectrum disorder (FASD). They concluded that Mr Pora is a victim of FASD and suffers the serious deficiencies in brain function typical in such cases. They explain how these deficiencies are likely to have impacted on the way he conducted himself in the Police interview, leading to serious doubts as to the extent to which his statements can be relied on.

### Professor Gudjonsson's evidence

73. Professor Gudjonsson is an Emeritus Professor of Forensic Psychology at the Institute of Psychiatry, Kings College, London. He has had a distinguished academic and clinical career. He has made a particular study of the psychology of false confessions. He has written extensively on the subject and has given expert evidence in a number of criminal cases.<sup>26</sup>

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<sup>26</sup> Professor Gudjonsson's evidence has been considered by the courts in numerous cases in the United Kingdom including in support of appeals to the Court of Appeal and House of Lords. In *R v Pendleton* [2002] 1 WLR 72 (HL) at [22] Professor Gudjonsson was described by Lord Bingham as "a distinguished forensic psychologist" and in *R v Shane Stepon Smith* [2003] EWCA Crim 921 (CA) at [6] as "pre-eminent" in his field.

74. Professor Gudjonsson was requested to evaluate:
- (a) The reliability of the statements Mr Pora made to Police in 1993 and 1995;
  - (b) The reliability of statements made by Mr Pora to relatives; and
  - (c) To comment on any other issues or matters he considered pertinent to the case.
75. For the purpose of his evaluation Professor Gudjonsson arranged for an assessment of Mr Pora's intellectual functioning to be carried out by Professor Glynn Owens.<sup>27</sup> Professor Owens assessed Mr Pora's intellectual abilities as not far above the "Borderline" (70-79 IQ) level, placing him within the lowest 10% of the population in intellectual ability. One of the tests he administered showed that Mr Pora had significant weakness in verbal comprehension.
76. As a consequence of Professor Owens' assessment and Professor Gudjonsson's own findings and observations of Mr Pora's impaired verbal memory, reasoning and comprehension, Professor Gudjonsson requested a full neuropsychological assessment which was carried out by Dr Anthony Morrison.<sup>28</sup> Dr Morrison concluded:<sup>29</sup>

"...While many of the test results were consistent with his overall score in the Borderline Impaired Range, the following relative strengths and weaknesses were also observed:

Relative Neuropsychological Strengths

- Relatively intact processing speed.
- Relatively intact visual memory skills
- Good basic visual attention

Relative Neuropsychological Weaknesses

- Verbal Knowledge and Reasoning
- Verbal Memory"

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<sup>27</sup> Professor of Psychology at Auckland University and a registered clinical psychologist.

<sup>28</sup> Neuropsychologist and clinical psychologist.

<sup>29</sup> Affidavit of Gisli Gudjonsson, sworn 3 June 2014 and Exhibit A, Gisli Gudjonsson "Psychological Report of Teina Pora", 25 June 2012 at 43 at 29.

77. Professor Gudjonsson identified three main groups of vulnerability factors which he said would have affected Mr Pora's statement to the Police:

- (a) Conduct problems including his criminal lifestyle, manipulative and irresponsible behaviour, willingness and capacity to lie for perceived instrumental gains, a strong sense of entitlement, disregard for the consequences of his behaviour, his youth and the fact that he was in custody being questioned about other unrelated crimes and possibly fearing another prison sentence.
- (b) His perceived need, desire and determined focus and effort to receive the reward money. This was seen as consistent with findings made by Dr Morrison in relation to gambling.
- (c) Mr Pora's need for attention arising out of his deprived childhood and his feeling that he was neglected, unloved and rejected by his family. Professor Gudjonsson suggests that the benevolent and kindly approach of the interviewing police officer is likely to have encouraged Mr Pora to give the appearance of cooperating with the Police without giving away his ulterior motive.

78. In concluding Mr Pora's admissions to the Police in 1993 and 1995 are "inherently unreliable", Professor Gudjonsson relies on these vulnerability factors and the extent to which he was "significantly psychologically disadvantaged". He observes that the video interviews are consistent with these deficits:<sup>30</sup>

"It has helped a great deal with my work that most of the police interviews and the crime scene visit were video recorded. A detailed analysis of the police interviews and crime scene visit shows that Mr Pora is vague and hesitant in his descriptions of the crime and his replies to questions, and is typically very slow to respond. The general impression he gives is that he does not know the crime scene, is trying hard to pretend that he does, he does not know what to say when challenged, and needs considerable prompting and guidance to provide answers. He looks lost, bewildered, and out of his depth. He is quiet, passive and compliant in his demeanour. There is evidence from the recorded police interviews of poor verbal comprehension, reasoning, and memory. He also appears to become easily confused and is generally highly suggestible and

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<sup>30</sup> Affidavit of Gisli Gudjonsson, sworn 3 June 2014 and Exhibit A, Gisli Gudjonsson "Psychological Report of Teina Pora", 25 June 2012 at 43.

compliant in his responses. These functional deficits and traits from the police interviews are corroborated by recent psychometric testing.”

Professor Gudjonsson comments that the reiteration by Mr Pora of his confession to his aunt and uncle whilst in custody is consistent with his wishing to maintain his alleged knowledge of the rape and murder and does not require a separate model of understanding.

### **Objection to Professor Gudjonsson’s evidence**

79. The Privy Council refused to receive Professor Gudjonsson’s evidence. The Court had three main concerns with the evidence. First, that Professor Gudjonsson expressed a view on the critical issue of whether Mr Pora’s confessions *are* unreliable, thereby supplanting the Court’s role as ultimate decisionmaker on matters critical to the outcome of the case.<sup>31</sup> Secondly, Professor Gudjonsson’s report was said to have ventured into areas which had no direct relevance to the question it was legitimate for him to address.<sup>32</sup> Thirdly, Professor Gudjonsson relied on affidavits of Mr Pora that were not admissible as fresh evidence.<sup>33</sup> The Privy Council gave consideration to “filleting” Professor Gudjonsson’s report in order to isolate those parts which might be acceptable but concluded that it would not be possible to segregate those parts which were objectionable from those which were not.<sup>34</sup>

80. The Crown suggests that I should adopt the same approach. While acknowledging that I am not bound by the rules of evidence which governed the appeal, it is submitted that the opinions of the Professor are inseparable from Mr Pora’s out-of-court account and are without reliable scientific foundation.

81. I am satisfied that the matters which troubled the Privy Council do not require the exclusion of Professor Gudjonsson’s evidence for the very different purpose for which it is now put forward. I am not constrained by the usual injunction against a witness expressing an opinion on the ultimate issue or the requirement in appellate

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<sup>31</sup> *Pora v R* [2015] UKPC 9, 3 March 2015 at [24].

<sup>32</sup> At [28].

<sup>33</sup> At [29].

<sup>34</sup> At [34].

proceedings that new evidence sought to be introduced must be both cogent and fresh in the sense that it is evidence that could not with reasonable diligence have been obtained before trial. For the purpose of this matter both sides recognised that I am undertaking a new and distinct task for the purpose of which I can consider any evidence I judge may be of assistance, including evidence that would not have been fresh or, for other reasons, would be inadmissible in criminal proceedings. Whether or not the evidence is reliable and the weight to be attached to it, are other matters altogether.

82. In considering Professor Gudjonsson's evidence I will of course be mindful of the reservations expressed by the Privy Council. I am well aware that it is no part of an expert's job to decide whether the confession is true or false. That is my responsibility and mine alone. For the purpose of deciding whether Mr Pora's confession can be relied on I will derive whatever assistance I can from the evidence of Professor Gudjonsson and the other experts but ultimately the decision is mine to make having regard to the totality of the evidence, including my own assessment of what Mr Pora said and how he said it. As Professor Gudjonsson himself observed, psychology cannot discern the truth of a confession. That is ultimately a question of fact.

#### **Dr McGinn and Dr Immelman's evidence**

83. Mr Pora was referred to Dr McGinn for assessment after consideration by Mr Pora's advisers of Professor Gudjonsson's conclusions.<sup>35</sup> Dr McGinn suggested an investigation of whether Mr Pora may have an undiagnosed FASD given that persons with FASD are over-represented in the criminal justice system and are known to be suggestible in interrogative situations. Dr McGinn and Dr Immelman<sup>36</sup> undertook a joint assessment, the team approach being considered best practice in the diagnosis

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<sup>35</sup> Dr Valerie McGinn is a clinical neuropsychologist based in Auckland. She has a PhD in Psychology from the University of Auckland. She has specialist training in the diagnosis and treatment of FASD and has specialised in FASD since 2008.

<sup>36</sup> Dr Andrew Craig Immelman is a Consultant Psychiatrist based in Auckland. He has specialist skills in the diagnosis and treatment of FASD. He is an Honorary Senior Clinical Lecturer in the Department of Psychological Medicine at the University of Auckland.

of FASD as it provides the medical and psychological evidence required and best highlights the nexus between brain impairment and behaviour.<sup>37</sup>

84. Teina Pora's mother, Rita Pora, died when he was young. Doctors McGinn and Immelman obtained information about Mr Pora's family background from his father, Mr Cedric Rangī, his younger sister, Lobellia, and his aunt Matekino Matangi. She is the wife of Rita Pora's youngest brother, Tiki Pora.
85. Based on the information provided by Mr Rangī and Mrs Matangi, Dr McGinn and Dr Immelman concluded that Rita Pora had consumed alcohol during her pregnancy. However, because neither could be precise about the level of Rita's drinking, they took the most conservative approach in ranking the alcohol exposure for the purpose of the diagnosis. Of the other three criteria considered for the purpose of the diagnosis, Mr Pora was assessed as having mild growth deficiency, no level of expression of foetal alcohol syndrome (FAS) facial features and significant central nervous system dysfunction. Their diagnosis was formulated in the following terms in Dr McGinn's report:<sup>38</sup>

"Mr Pora fulfils the diagnostic criteria of an Alcohol Related Neurodevelopmental Disorder (ARND) also known as Static Encephalopathy (alcohol exposed) using the University of Washington nomenclature. ARND is on the Fetal Alcohol Spectrum with brain impairment but without the sentinel facial and growth features. It is noted that ARND is not a lesser form of disability than full Fetal Alcohol Syndrome. Peak alcohol exposure was not at the critical time to alter facial formation but the brain is susceptible to the teratogenic effects of alcohol throughout gestation. With New Zealand's weekend binge drinking culture this is not uncommon and about 70% of those affected by FASD do not show the characteristic facial features of FAS (Streissguth et al., 1996). Although IQ tends to be higher in individuals with ARND, prognosis is known to be poorer than with FAS where the disability is more apparent and more support services may be offered (Streissguth, 1997)."

86. Dr McGinn and Dr Immelman noted that FASD is often described as Swiss cheese brain damage. Some processes remain intact while others are in deficit. It is the variability of function that is typical but which can be deceptive with those affected often seeming more capable on the surface than they really are. Although Mr Pora's IQ was

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<sup>37</sup> AP Wartnik and SS Carlson "A judicial perspective on Issues Impacting the trial courts related to fetal alcohol spectrum disorders" (2011) 39(1) *The Journal of Psychiatry & Law* 73 at 73-119.

<sup>38</sup> Dr Valerie McGinn "Neuropsychological Assessment of Teina Pora", 12 May 2014 at 16.

well within normal limits, the degree of variability was described as significant and consistent with brain impairment.

87. One of Mr Pora's most notable impairments was of executive functioning. Dr McGinn reported that he showed no capacity for abstract thought, interpreting sayings entirely literally, and could not appreciate deeper or implied meaning.<sup>39</sup> She said these types of higher thought process deficits seriously affect a person's capacity to self-monitor, realise the thoughts and feelings of others, and appreciate how their actions may be perceived. She said:<sup>40</sup>

"Due to brain limitation Mr Pora will tend to say and do what seems to his advantage at the time, without a realisation that he is doing this. This tendency can be perceived as manipulative and self-serving until the underlying brain damage is considered and it is appreciated that this is not wilful or intentional."

88. She continued:<sup>41</sup>

"Having diagnosed and treated more than 200 children and young people with FASD, many of whom were youth offenders I am able to provide my opinion about the FASD limitations that Mr Pora would have shown at the age of 17 years when interviewed by the police and charged. I have viewed the evidence including transcripts and DVD footage. In my opinion at the age of 17 years Mr Pora was thinking and acting like a much younger child of about 8-10 years of age. He was not able to comprehend the meaning of complex words or sentences, grasping parts but missing much of the meaning. He lacked insight into his limitations and tended to respond as if he understood. When asked directly if he understood he would often say no, but he did not volunteer this information. What was most evident when reviewing police interviews was the paucity and simplicity of speech displayed by Mr Pora, and the long delays in his responding where he seemed confused and did not know how what to say. In the transcripts of Court proceedings Mr Pora tended to respond yes to most questions. Much of the language used and the length and complexity of questions pose would have been beyond his comprehension, in my opinion."

89. Like Professor Gudjonsson, Dr McGinn came to the view that Mr Pora started out on a course of events to convince the officers that he knew about the murder, when he did not. She saw him as having "stuck rigidly" to this stance, simplistically trying to

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<sup>39</sup> Dr Valerie McGinn "Neuropsychological Assessment of Teina Pora", 12 May 2014 at 18.

<sup>40</sup> At 18.

<sup>41</sup> At 19.



implicate others in order to gain the substantial reward offered and get himself out of trouble. She comments:<sup>42</sup>

“Although this would be considered a foolish and dangerous thing to do, Mr Pora was immature and naive, lacked common sense, and did not have the benefit of rational thinking capacity to appreciate this fact. In my opinion, he lacked and continues to lack the capacity to compare the benefits and risks of one course of action against another to make a good decision.”

90. Dr McGinn said that people with FASD, especially those with memory and executive deficits, are prone to confabulate; that is to make up stories to fill in the gaps that are not in keeping with the truth. She notes that this is different to lying as it is not intentional and is a feature of executive brain impairment. Testing showed Mr Pora to have a tendency to confabulate. She comments:<sup>43</sup>

“It is pointless trying to reason with the affected person as it is their lack of reasoning capacity that provides the risk of confabulation. They tend to argue black as blue in an extremely convincing way because they believe what they are saying to be true at the time, even though they may go on to say something in contradiction”.

91. In his report, Dr Immelman discusses how Mr Pora’s brain based deficits may impact on the validity of the information he provides in an interview situation. He says:<sup>44</sup>

**112.** A helpful explanatory model described by Novick-Brown et al (2011) discusses the three components: uncertainty about what the “correct” answers might be; interpersonal trust that the interviewer’s intentions are constructive and benign; and reluctance to admit uncertainty or lack of knowledge when the interviewees believe they should know, or are expected to know, the answers to the questions.

**113.** In Mr Pora’s case, firstly, he might be uncertain about what the correct answer to the question may be, because he does not remember. He may thus provide an incorrect answer to satisfy the interviewer.

**114.** Secondly, Mr Pora might also place trust in the person questioning him, and be eager to please.

**115.** Thirdly, Mr Pora might be reluctant to admit uncertainty about his lack of knowledge and continue to maintain a position which is different to the facts.”

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<sup>42</sup> At 20.

<sup>43</sup> At 20.

<sup>44</sup> Dr Immelman “Psychiatric report on Teina Pora” at [112] – [115].

92. Dr Immelman goes on to give an example of an incident that occurred in the course of his interview of Mr Pora when he point-blank refused to accept a position which differed from the demonstrated facts.

93. Dr Immelman concludes:<sup>45</sup>

"124. Thus, without addressing an "ultimate issue" type question such as whether or not Mr Pora had made false statements in the past to others such as the police, my clinical examination clearly demonstrates that:

- Mr Pora has a brain-based deficit causing cognitive impairment;
- The cause of the brain-based deficit is a Foetal Alcohol Spectrum Disorder, namely Alcohol Related Neurodevelopmental Disorder (ARND);
- This has been present since birth;
- This results in Mr Pora having problems remembering things (memory disturbance), articulating his thoughts clearly (speech and language disturbance), and being able to comprehend questions, as well as thinking through the consequences of his answers to questions (executive frontal disturbance).

125. This means that I would treat whatever answers Mr Pora provided to my questions with some doubt as to their veracity."

94. The Crown questions the factual basis for the conclusions drawn by Dr McGinn and Dr Immelman. Some concern Dr McGinn's evidence only and do not bear on the critical question of whether Mr Pora suffered from FASD.<sup>46</sup> However, in evidence adduced specifically for the purpose of this application, Dr Susan Blackwell and Dr Jon Nuth, both highly qualified clinical psychologists, refer to evidence which calls into question the diagnosis of FASD.<sup>47</sup> The most important of the matters they raise is the threshold issue of whether Mr Pora's mother (Rita Pora) in fact consumed alcohol during pregnancy.

95. As already noted,<sup>48</sup> in proceeding on the basis that she had done so, Dr McGinn and Dr Immelman relied on statements made to them by Mr Pora's father and the wife of his

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<sup>45</sup> Dr Andrew Immelman "Psychiatric report on Teina Pora", 12 May 2014 at [124]-[125].

<sup>46</sup> For example, her belief, contrary to the conclusion reached by the trial judge at the first trial (and upheld by the Court of Appeal), that Mr Pora did not understand his rights (see *R v Pora* (1994) 11 CRNZ 544 (CA) 93) and her understanding that PIN numbers were not provided in written form.

<sup>47</sup> Dr Suzanne Blackwell is a Clinical Psychologist in private practice in Auckland. She has been in practice for over 40 years. Dr Jon Nuth is a Clinical Psychologist. He has been in practice as a qualified post-doctoral psychologist since 2004. He has a Doctorate in Psychology from the University of Birmingham.

<sup>48</sup> At paras 84-85 above.

mother's brother. They backed up their recollections with a photograph of Rita Pora holding a bottle of beer which was said to have been taken at a hotel bar in Newmarket.

96. Doubt is cast on their statements in a letter signed by six siblings of Rita Pora written in response to publicity which was seen as reflecting unfairly on the family. The letter stated in part:<sup>49</sup>

"Rita did not drink alcohol throughout her pregnancy with Teina, or his younger siblings. In fact, my sister was not a drinker at all, so how did the psychologist come to this conclusion."

97. Dr McGinn responded to the criticisms of Doctors Blackwell and Nuth. Her further report includes input from Dr Immelman on specific issues. After systematically refuting the criticisms of Doctors Blackwell and Nuth she re-affirms the diagnosis of FASD.

98. I am satisfied that there is no proper basis for revisiting that finding. First, both Dr McGinn and Dr Immelman are acknowledged experts in the diagnosis of FASD which is, as Dr McGinn emphasises, a medical diagnosis. They worked as a team in reaching their diagnosis. Both Dr Blackwell and Dr Nuth acknowledge that they have no specialist qualifications or experience in the field of FASD. They are not qualified to diagnose or rule out FASD.<sup>50</sup>

99. Second, the bare unsupported assertion in the letter from Rita Pora's siblings that she did not consume alcohol during her pregnancy or at all cannot displace the contrary evidence relied on by Dr McGinn and Dr Immelman. They elicited the evidence in a medical interview situation in the context of determining whether Rita Pora's pregnancy was planned or unplanned and identifying any lifestyle and medical factors that might have impacted on the development of the foetus. The investigations were

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<sup>49</sup> Letter from six of Rita Pora's siblings, 20 August 2015.

<sup>50</sup> Dr Natalie Novick Brown, described by Dr McGinn as the world's leading expert in FASD and who provided peer supervision for the Pora case, has said:

*"FASD conditions are medical conditions (not psychiatric conditions). Therefore, psychologists do not have the training to diagnose or rule out medical conditions."*

*"... Psychologists with no training in a particular field (FASD) do not have the expertise to render any reliable/meaningful opinions and un-do an evaluation by someone who does have such training".*

of a general medical nature which were not specifically directed to exposure to alcohol. The photograph emerged in the course of a request for photographs of Mr Pora as a child for the purpose of studying his facial formation and was referred to by Mrs Matangi as evidence of the drinking lifestyle then engaged in by the group of which Rita Pora and the informant were members. I accept as justified the comment of Dr Immelman in response to the suggestion by Dr Blackwell and Dr Nuth that the coding he adopted for alcohol exposure should be modified in the light of the letter:<sup>51</sup>

"The history obtained from Mrs Matangi was unequivocal, and I think it is entirely justifiable to treat this as a history of confirmed drinking. The coding also used the most conservative approach, noting that alcohol exposure was confirmed but taking the level to be "unknown", and ranking it 3 (Some Risk)."

100. I do not consider it necessary to canvass the remaining criticisms of Doctors Blackwell and Nuth.<sup>52</sup> Leaving to one side that they are not adequately qualified to question the methodology adopted by Doctors McGinn and Immelman, their concerns are emphatically laid to rest in the response of Dr McGinn.
101. There is, however, one issue emerging from the commentary of Doctors Blackwell and Nuth which calls for further comment. It concerns Dr McGinn's observation that Mr Pora is prone to confabulate.<sup>53</sup>
102. Doctors Blackwell and Nuth make the point<sup>54</sup> that it would not be possible for Mr Pora to have confabulated his admission of involvement of the rape and murder of Ms Burdett as that would have required that he did not know whether he had committed the offence. I do not understand that to be suggested on behalf of Mr Pora. The contention is that he confabulated in the course of the interview, not in relation to the critical question of his involvement, but as part of an attempt to "fill the gaps" in his narrative. That appeals to me as a plausible explanation for the profusion of contradictions, inconsistencies and outright falsehoods in his statement.

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<sup>51</sup> Dr Valerie McGinn "Letter in Response to the statements of Dr Suzanne Blackwell and Dr Jon Nuth", 28 August 2015 at 5.

<sup>52</sup> Which included a suggestion that Doctors McGinn and Immelman may have been victims of confirmation bias, which is a predisposition to find the disorder being investigated.

<sup>53</sup> At 90 above.

<sup>54</sup> Dr Suzanne Blackwell and Dr Jon Nuth "Joint expert witness statement", 28 August 2015 at [133].

As will be seen, Mr Pora frequently switched from one version of events to another, often within the space of a few minutes. It is not the behaviour that would normally be expected of a person seeking to persuade his audience of the truth of what he is saying. The FASD diagnosis seems to account very well for the inept way in which Mr Pora went about trying to persuade the police that he knew what had happened.

103. It is necessary to emphasise, however, that the diagnosis of FASD does not establish that Mr Pora's confession should be rejected out of hand. It does not mean that the key elements of his narrative are untrue. What the diagnosis of FASD and the psychological testing do is to provide appropriate context for an examination of what Mr Pora said and how he said it. The reliability of his confession must be assessed in the light of his undisputed cognitive deficiencies and behavioural abnormalities but also by reference to verifiable empirical evidence.

## (8) THE CONFESSION – A CLOSER LOOK

### Introduction

104. The way in which Mr Pora conducted himself during the police interview provides general confirmation of the deficiencies identified in the psychological testing.<sup>55</sup> His literacy difficulties are plain. He writes laboriously, has difficulty spelling simple words and says he “can’t read that good”. He appears to lack an understanding of basic concepts such as how long a metre or yard is.<sup>56</sup>
105. The interviews are punctuated by frequent lengthy pauses, sometimes of up to a minute, even in response to simple questions. Mr Pora often failed to comprehend even straightforward questions. His intellectual deficiencies are manifest. His account overall is riddled with contradictions, inconsistencies, implausibility and vagueness.<sup>57</sup> His responses to questions are often halting, hesitant, incoherent and sometimes simply bizarre. In all sorts of ways the interviews impress as providing graphic confirmation of the diagnosis of FASD.
106. The deficiencies in Mr Pora’s account of events are of such magnitude and importance that, if judged as an eye witness account and not as a confession, his evidence would be dismissed out of hand. It can be redeemed only if, by reference to objectively verifiable facts, his account of events is shown to be credible. Most importantly for that purpose his narrative must be examined for knowledge that could only be explained by his presence. The Solicitor-General has identified a number of disclosures made by Mr Pora that are said to be in that category. They will be examined in the next section. At this stage it is convenient to examine aspects of what Mr Pora told the Police which, on their face, raise doubts about the reliability of what he was saying.

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<sup>55</sup> For the purpose of this report, I have viewed the video tapes of the interviews.

<sup>56</sup> Transcript of Interview with Teina Anthony Pora, 18 March 1993 at 49.

<sup>57</sup> See *Pora v R* [2015] UKPC 9 (2015) 27 CRNZ 47 at [7].

### **Events at Super Strike**

107. Mr Pora said that when, at Super Strike, Dog and Hound told him they wanted him to come with them and follow a lady when she left, they did not identify her. When the time came, he was summoned by Hound. Dog was waiting outside. He identified the victim and her car. Mr Pora said he followed Ms Burdett's car all the way to her home. He could not, however, remember the colour of the car or its make or even if it was big or small. For an experienced car thief, which Mr Pora acknowledged he was, this seems extraordinary.<sup>58</sup>

### **The route followed**

108. Mr Pora was asked about the route he took. His initial attempt to describe it and to provide a diagram was unsuccessful. A map was then produced. With considerable assistance from the interviewing officer he eventually traced the route followed, but his account was vague and unconvincing. Later that day, he accompanied the Police to Super Strike and they drove to Ms Burdett's house. Mr Pora was unable to provide accurate directions. I agree with the Privy Council's description of him as appearing disorientated and requiring assistance to indicate the way to the house.<sup>59</sup>

### **What happened on arrival**

109. Mr Pora gave two versions of what happened when they reached the locality where Ms Burdett lived. He initially said he dropped Dog and Hound off and parked the car near a telephone box. They then cut through other properties to reach Ms Burdett's place. Later he said that he followed Ms Burdett all the way to her house where he dropped off Dog and Hound before parking the car.<sup>60</sup>

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<sup>58</sup> The Privy Council commented on this. See *Pora v R* 2015 UKPC 9, (2015) 27 CRNZ 47 at [9].

<sup>59</sup> At [9].

<sup>60</sup> Transcript of Interview with Teina Anthony Pora, 18 March 1993 at 102.

## The house and the hedge

110. Mr Pora claimed to have been to Ms Burdett's house twice, on the night of the murder and also the previous day when he observed her through the window of the lounge.<sup>61</sup>

111. When Mr Pora visited the house in the company of Police on 18 March 1993, it is, however, obvious from the videoed interview that he did not recognise it. Indeed the interviewing officer comments:<sup>62</sup>

"Alright, well look, it's obvious you just don't know exactly which house, would you agree with that?"

Mr Pora nods his head in assent. When the house is pointed out to him he confirms it is the house and adds, as if to explain his earlier inability to identify it:<sup>63</sup>

"All those hedges were cut".

In fact, scene photographs show that the hedges were much higher at the time of the murder.

112. The police officer returned to the subject when they entered the property and the following exchange took place:<sup>64</sup>

Q. O.K. Now what happened from here? Was this hedge still here, or was it smaller or bigger, or don't you know?

A. (Shakes head) I don't know.

Q. You don't know. O.K. Where do we go to from here? Well you lead the way, alright. It's alright, there's no-one home.

113. On Sunday 21 March when Detective Inspector Rutherford again took Mr Pora through his account of events and he answered questions about leaving the property

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<sup>61</sup> This earlier visit was not disclosed until the interview on 21 March 1993, one of a number of puzzling and unexplained omissions from the initial narrative.

<sup>62</sup> Transcript of Video Footage from Superstrike to Victim's Home by Detective Inspector Rutherford and Detective Sergeant Williams accompanied by Teina Pora, 18 March 1993 at 6.

<sup>63</sup> Transcript of Video Footage from Superstrike to Victim's Home by Detective Inspector Rutherford and Detective Sergeant Williams accompanied by Teina Pora, 18 March 1993 at 6.

<sup>64</sup> Transcript of Video Footage from Superstrike to Victim's Home by Detective Inspector Rutherford and Detective Sergeant Williams accompanied by Teina Pora, 18 March 1993 at 8.



on the night, the topic of the hedge came up again and the following exchange took place:<sup>65</sup>

“Q. There's a hedge around it isn't there?

A. (nods head)

Q. Is that right?

A. Yep.

Q. Do you recall seeing that hedge when you went there on the Sunday and the Monday?

A. Can't remember.

Q. Can't remember, alright.

A. Cos its changed.

Q. It's changed?

A. It's all changed from the last time we went there.

Q. Have you been back there since apart from last Thursday?

A. No.

Q. Have you ever driven down there to have a look?

A. No.

Q. Alright. How's it changed?

A. I can't ...

Q. Sorry?

A. Can't ...

Q. Well you just said its changed, my question is how has it changed?

A. Hedges. The hedges are gone big.

Q. The hedges what?

A. Are gone big.

Q. The hedge's gone ... ?

A. Big.

PEARCE: Big

Q. Big. Alright. And you went down the road to your car, which was down the end of Pah Road by the motorway, aint that right?

A. Yeah”

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<sup>65</sup> Transcript of Interview with Teina Anthony Pora, 21 March 1993 at 108-109.

## Entry to house

114. Mr Pora provided a succession of differing accounts of how entry was gained to Ms Burdett's house. The Privy Council described this aspect of his statement in the following terms:<sup>66</sup>

"It was on the issue of how entry to the house was obtained, however, that Pora was at his most vague and inconsistent, not only when he accompanied police to the property but also in the accounts given during interview. At first he claimed he had climbed through a window; then he said he had waited outside the back door and was admitted to the house by Dog. This complete volte-face occurred within the space of three transcribed lines and two successive questions on the interview record. Later during interview on 18 March he said that all three had climbed through a window. But within moments he said that Hound had gone in through the door. Then he reverted almost immediately to the account that all three had climbed through the window. At 6.18pm on the same day, when he was at Ms Burdett's home with police officers he suggested that all three of them had climbed through a window by the back door."

## What happened inside the house

115. Mr Pora gave conflicting accounts of what he did inside the house and the parts played by Dog and Hound respectively.<sup>67</sup> At times he said he witnessed Ms Burdett being raped and killed. At other times he claimed not to have seen her being hit but to have heard her screaming. His accounts of Hound's involvement were wildly inconsistent. At times he insisted that Hound had raped Ms Burdett. At others he was adamant that he did not. A passage of the interview on 21 March 1993 is particularly revealing. After saying, contrary to earlier statements, that Hound did not rape Ms Burdett, he immediately went on to recount how Hound had a "turn" while Dog held her down.<sup>68</sup>

## Identification of Ms Burdett

116. When interviewed on 18 March Mr Pora was asked whether he had seen Ms Burdett before the night she was killed. After several lengthy pauses he said he had seen her once before, at Super Strike. He thought it was "last year". He said he saw her that

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<sup>66</sup> See *Pora v R* [2015] UKPC 9, (2015) 27 CRNZ 47 at [10].

<sup>67</sup> The Privy Council comments on this aspect of his statement at [11] of its decision.

<sup>68</sup> Transcript of Interview with Teina Anthony Pora, 21 March 1993 at 95.

night only after she emerged from the building into the carpark. He could not remember what she was wearing then or, when he was asked later, what she was wearing at the house.<sup>69</sup> The question of Ms Burdett's clothing and appearance was revisited in the course of the 21 March interview when Mr Pora disclosed for the first time that he had visited the house the day before the killing. He said he looked through the window into the living room where Ms Burdett was watching TV. He said he was "just taking a good look at her".<sup>70</sup>

117. He said he watched her for 5 minutes or less. He said he could not remember what she was wearing or what she was sitting on. He was then asked to describe her. This is what he had to say:<sup>71</sup>

Q. Alright. You must speak up, um, right. So, you got a good look at this lady, is that right?

A. Yes.

Q. Right, what did she look like?

A. Sort of white, fair looking, white.

Q. Sorry, I'm, the noise. Say that again?

A. Sort of fair looking.

Q. Fa...,

A. White

Q. Sorry?

A. Sort of fair.

Q. White?

A. Yeah

Q. What do you mean white?

A. White skin.

Q. White skin.

A. (nods head).

Q. Alright. Anything else about her?

A. Oh...

Q. I mean, you got a good look at this woman, didn't you?

<sup>69</sup> Transcript of Interview with Teina Anthony Pora, 18 March 1993 at 86.

<sup>70</sup> Transcript of Interview with Teina Anthony Pora, 21 March 1993 at 19.

<sup>71</sup> Transcript of Interview with Teina Anthony Pora, 21 March 1993 at 20-21.

- A. Yeah.
- Q. Alright. Anything else? Just take your time, think about it.
- A. Sort of chubby looking, oh, not that fat, sort of fat looking.
- Q. Sort of what?
- A. Fat looking.
- Q. Alright. O.K. Anything else? When you say fat, was she really fat?
- A. (Shakes head) Not that fat.
- Q. Not that fat, O.K. was she dressed in clothes or did she have a nightie on or ...
- A. (Shakes head)"

118. In fact Ms Burdett was neither fat nor chubby. Photographs show her to have been a slender woman.

#### **Position on bed**

119. Mr Pora was asked about Ms Burdett's position on the bed. He was asked to provide a diagram of where she was when he last saw her. He drew her lying lengthways on the bed with her head towards the top of the bed. In fact she was found lying on her back sideways across the bed with her legs folded, draped over the side and her feet touching the floor.

#### **Comment**

120. Had Mr Pora accompanied Dog and Hound to the house and acquiesced in the rape and murder of Ms Burdett, it is astonishing that his account should be so replete with uncertainty, inconsistencies, vagaries and outright falsehoods, and that he should choose to shield the (or a) principal offender while falsely identifying associates in the Mongrel Mob. It must be asked why, if he had first-hand knowledge of what happened, Mr Pora should have been unable to provide a coherent account. The Crown's response is that the essential accuracy of the confession is established by disclosures made by Mr Pora in the course of the interviews that only someone who was present at the scene would be likely to have known. These will be examined in the next section.

**(9) CONFESSION – WHETHER PRESENCE EXPLAINS KNOWLEDGE**

121. The Crown says that only someone who was directly involved is likely to have made the following disclosures made by Mr Pora in the course of his interviews. As earlier noted, those matters which require an enquiry into the evidence of other witnesses are examined separately.

**Followed Ms Burdett from Super Strike**

122. The Crown says that Mr Pora's claim that, with his co-offenders, he followed Ms Burdett from Super Strike to her home, conforms to what is likely to have happened.

123. As Ms Burdett was killed within 20-25 minutes of arriving home, it is certainly possible that she was followed home by the offender/s. Mr Pora was admittedly an habitue of Super Strike though it is by no means clear that he was there on the night of the murder.<sup>72</sup> For present purposes, however, what is important is not whether Mr Pora was at Super Strike or not that night but whether his claim to have followed Ms Burdett home requires knowledge that he is likely to have had only if he was involved.

124. In my view it does not. It was widely known that Ms Burdett was killed soon after arriving home from Super Strike. The obvious (and simplest) way for Mr Pora to explain his presence at Ms Burdett's house (given that his statement to the Police was a sustained attempt to persuade them he was there) was to say he followed her home. He did not have to be there in order to provide this information. In any event, as already noted, his account of how Ms Burdett was followed home was totally unconvincing. Among other things Mr Pora could not remember the route or the make and colour of her car.

**Mode of entry**

125. In the course of his interview, Mr Pora said he entered Ms Burdett's house by climbing in through her bedroom window, then admitting his co-offenders by opening the front door. For the Solicitor-General it is submitted that this description matched the scene

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<sup>72</sup> I will consider this in more detail later.

as it was discovered: the bedroom window was slightly ajar and the front door unlocked. It is said that Mr Pora accompanied the Police to the house in order to demonstrate how he gained entry; took them through a side gate to the rear of the property and showed them the window; and, once inside, led them to Ms Burdett's bedroom.

126. This summary of what Mr Pora said and did is relied on as demonstrating a familiarity with the property and with the way in which entry was effected which is explicable only on the basis that he was there. However, as previously noted, the particular account relied on by the Solicitor General is only one of a number of versions of what occurred that were given by Mr Pora in the course of the interviews. At different times he said: he did not go into the house at all; Dog climbed through the window and opened the front door; the others went in first but he didn't know how; both Dog and Hound climbed through the window; and that all three climbed through the window. Mr Pora similarly gave multiple and conflicting accounts of how he let the others into the house after climbing through the window. They included: unlocking the front door with keys he found (though he could not say where he found them); passing the keys out of the sitting room window to his co-offenders; and not finding any keys at all but unlocking the door manually.

127. The evidence (other than Mr Pora's statements) does not conclusively establish how entry was gained to the house. Ms Burdett's bedroom window was indeed partially opened when the scene was examined. There was, however, evidence that she sometimes slept with the window open. While it is open to inference that the intruder or intruders entered through the window and exited through the front door, there was nothing to show that is how ingress and egress was effected.

128. The scene examination evidence tends to indicate that entry was not gained through the window. Detective Sergeant Neil Grimstone, who conducted the scene

examination, found that, except by mounting garden furniture, it was impossible to climb through the window without touching any surface or marking it.<sup>73</sup>

129. Assuming, however, for present purposes that entry was gained through the bedroom window, I am unable to place any weight on Mr Pora's identification of it as the point of entry. When initially questioned his answers were confused and contradictory. At one point he said he had not actually seen Dog climb through the window at all. He said he knew he went through the window "Cos there was no other way of getting through". I take nothing from his identification of the window as the point of entry. Having been unable to identify the house, Mr Pora was effectively escorted to the back of the house where, when asked, he pointed to the window which provided the most obvious point of ingress.

#### **Number of bedrooms**

130. When asked how many bedrooms there were in the house Mr Pora said two or three. This is said to show he had been to the house.<sup>74</sup>
131. In fact Mr Pora initially answered "two" to the question of how many bedrooms there were. He then added "or three". As the vast majority of homes – certainly the homes Mr Pora is likely to have encountered – will have had that number of bedrooms, I do not think any significance can be attached to his answer.

#### **Shower**

132. Mr Pora said that when he got into the house Ms Burdett was in the shower.<sup>75</sup> On the basis of evidence that a person showering in the house could have been heard and the presence of clothing in the laundry basket, it is said that Mr Pora's disclosure is consistent with his being present.

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<sup>73</sup> I will discuss later the involvement of Malcolm Rewa in the rape and murder of Ms Burdett – sections (11) and (12). It is to be noted that in other crimes in which he has been involved the point of entry was similarly never established. He was known to have used a skeleton key.

<sup>74</sup> Transcript of Interview with Teina Anthony Pora, 18 March 1993 at 93.

<sup>75</sup> Transcript of Interview with Teina Anthony Pora 18 March 1993 at 104; Transcript of Interview with Teina Anthony Pora, 21 March 1993 at 89.

133. Mr Pora finally settled on a version of events that had Ms Burdett in the shower when entry to the home was effected. But there is no evidence that Ms Burdett in fact had a shower when she got home. The presence of clothing in the laundry basket (which was in Ms Burdett's bedroom) merely shows she changed out of some (at least) of the clothes she was wearing when she got home. There is nothing to corroborate Mr Pora's claim that Ms Burdett was having a shower when he entered. What he said on the point is as likely to be wrong as to be right.

#### **Ms Burdett's attire**

134. Mr Pora said that after Ms Burdett came out of the shower he thought she was wearing a nightie.<sup>76</sup> This is identified as knowledge likely to have been gained by his presence at the scene.

135. I regard it as quite the opposite. A person who was not at the scene could well have made an educated guess that Ms Burdett was wearing a nightie on the basis that that is what many women wear to bed. In fact she appears to have been clad in a bra and tee shirt when attacked. The bra was partially over Ms Burdett's head when she was found. The tee shirt was found bundled amongst the other bedclothes. The undergarment, at least, is inconsistent with the hypothesis that she might have just emerged from the shower. It seems much more likely that she had not removed the bra she was wearing when she was attacked.

136. Mr Pora's statements generally on the subject of Ms Burdett's clothing were inconsistent. He had earlier said that he could not remember what she was wearing.<sup>77</sup>

#### **Number of blows struck**

137. The Solicitor-General refers to passages in Mr Pora's statement in which he said Ms Burdett was "whacked" in the head between three and five times with a softball bat. This is said to accord with the pathological evidence.

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<sup>76</sup> Transcript of Interview with Teina Anthony Pora, 21 March 1993 at 90.

<sup>77</sup> Transcript of Interview with Teina Anthony Pora, 18 March 1993 at 97.



138. The references in Mr Pora's statement to the number of blows struck needs to be put in context. He had been asked about an earlier statement in which he said he had seen Gert (Hound) strike two blows. The following exchange then took place:<sup>78</sup>

“Q. What do you say about that.. on a previous occasion.

A. She could've been hit two, three, five times.

Q. You know, or are you guessing, the amount of times she was hit?  
Aye?

A. I know there was two.

Q. Well why do you say three, four or five? Aye? Mm?

A. Oh man ..

Q. Beg your pardon?

A. Can't ... I dunno.”

139. Earlier Mr Pora talked about Ms Burdett being raped by Dog and Hound.<sup>79</sup> He said they had been hiding in the wardrobe of the bedroom and grabbed her after she emerged from the shower. He said Dog raped her first while Hound punched her and he [Pora] punched her once. Then, while Hound raped her he said Dog got the softball bat and “whacked her” “three, five times, four”. At another point he said that Roy (Dog) hit Ms Burdett with the softball bat while Gert (Hound) was “rooting her”.<sup>80</sup>

140. The pathological evidence (of Dr Timothy Koelmeyer) was that five blows were struck with a heavy implement to the head of Ms Burdett and a sixth to the back of the left hand.

141. Ms Burdett's next door neighbour, Mrs Winifred O'Sullivan, said that 20-25 minutes after Ms Burdett arrived home she heard two series of thudding sounds. She was unsure of the number in the first series – “maybe three or four” – “loud, thudding noises”. She said one or two minutes later she heard a series of softer thudding noises.<sup>81</sup>

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<sup>78</sup> Transcript of Interview with Teina Anthony Pora, 21 March 1993 at 107-108.

<sup>79</sup> Transcript of Interview with Teina Anthony Pora, 18 March 1993 at 105.

<sup>80</sup> Transcript of Interview with Teina Anthony Pora, 21 March 1993 at 6.

<sup>81</sup> Retrial of Teina Pora, 21 March 2000, Notes of Evidence, Winifred Dorothy O'Sullivan at lines 10-20.

142. While Mr Pora's reference to between three and five blows being struck is broadly consistent with Dr Koelmeyer's evidence, in other respects what he said does not fit with what appears to have happened. He makes no reference to Ms Burdett's apparent attempts to defend herself or to a second series of blows and, of course, he gives a number of conflicting versions of who struck Ms Burdett and when.
143. The fact that Ms Burdett had been killed by blows to the head and the likely use of a softball bat had been in the public arena from an early stage. An article on the front page of the New Zealand Herald on 27 March 1992 referred to Ms Burdett having been struck about seven times to the head and the possible use of a softball bat.
144. In my view what was said by Mr Pora to the Police provides scant support for the proposition that he was present at the scene.

#### **The bedroom light**

145. Mr Pora was asked whether the light in the bedroom was on when the offending took place and answered "yes". The Solicitor-General argues that this is consistent with evidence of a bloodstain on the light switch that implied the light had been turned off after the offending. Tests indicated that the bloodstain could have been caused by a person using their forearm/elbow to switch the light on or off.
146. In fact, Mr Pora's recollection of whether the light was on or off varied in the course of the interview. When first asked he said he could not remember. He then recalled that there were no lights on. He retracted this minutes later before asserting some time later that the light was off.<sup>82</sup> When interviewed on 21 March he did not know whether the light was on.<sup>83</sup>
147. The presence of the bloodstain is highly equivocal evidence of the light having been on. The switch could have been touched accidentally without any intention to operate it. Also, it may be thought that an intending rapist would be more likely to prefer the

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<sup>82</sup> Transcript of Interview with Teina Anthony Pora, 18 March 1993 at 58, 59, 64, and 92.

<sup>83</sup> Transcript of Interview with Teina Anthony Pora, 21 March 1993 at 70, 90-91.

light to be off. Mrs O'Sullivan, the next door neighbour, said when she looked out the window after the second series of blows there was no light on whereas she noticed a light in an adjoining property.

148. It is impossible to make any finding whether the light was on at any stage and, if so, when and for how long. Assuming, however, that it was on at some stage, Mr Pora's statement to that effect was arguably the preferred if not the obvious answer to a leading question in circumstances where he was seeking to persuade his interrogators that he had seen what had happened.

#### **Briefcase in spare room**

149. Mr Pora said that he found a briefcase on the floor of the spare room and that he opened it to find "just papers and that".
150. The Police found a briefcase in the spare room. The locks were disengaged and there were papers lying on the floor. It is said that what was found corresponded closely to what Mr Pora described.
151. The briefcase is rectangular, square-sided and designed so the lid opens from the base like a suitcase. It was lying on its base on one of the two beds in the spare room. Next to it, also lying on the bed, was an Eastlight folder. There appears<sup>84</sup> to have been two sheets of paper on the floor though they are not separately identified in the inventory prepared by Detective Sergeant Grimstone.
152. Mr Pora dealt with the briefcase in the following passage of his interview on Sunday 21 March 1993:<sup>85</sup>

“Q. O.K. well just stop there. What did you find in that room?

A. I saw a suitcase on the, on the floor.

Q. A suitcase?

A. (Nods head).

Q. Where was it?

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<sup>84</sup> Exhibit 1, Photograph booklet, p39.

<sup>85</sup> Transcript of Interview with Teina Anthony Pora, 21 March 1993 at 100-101.

- A. In the room on the floor.
- Q. In the room on the floor. You sure about that?
- A. (Pause).
- Q. What type of suitcase was it?
- A. Briefcase.
- Q. A briefcase. Well just stop for a moment and just picture it best that you can, alright.
- A. (Nods head).
- Q. Was the light on in the room?
- A. Nah.
- Q. Alright. This suitcase that you say, it was like a briefcase, is that right?
- A. (Nods head).
- Q. Where was that?
- A. On the floor.
- Q. On the floor, right. And did you do anything with it?
- A. Open it.
- Q. You opened it, O.K. And was there anything inside it?
- A. Nothing, just papers and that.
- Q. Nothing, just papers and that.
- A. Yeah I was looking for money.
- Q. O.K. Just pause there. What sort of papers were they, do you know?
- A. No.
- Q. Did you have to move the suitcase?
- A. Nah.
- Q. When you were going through it? By that, did you have to pick it up off the floor?
- A. Oh, don't know.
- Q. Pardon?
- A. I don't know.
- Q. Well just think about it for a moment. You went into this bedroom, Gert was doing the business next door, you saw a suitcase which you told us looks like a briefcase, right?
- A. (Nods head).
- Q. Said you were looking for money, so you had a look inside ...
- A. (Nods head) .
- Q. And it had papers in it, right?
- A. Yeah.

- Q. And you said that this briefcase suitcase, was on the floor, right?  
 A. (Nods head) .
- Q. My question is, did you have to move the suitcase briefcase to search it?  
 A. Yes.
- Q. Right. Explain to me how you moved it.  
 A. Like it was on the, still on the ground and I just opened and just moving it.
- Q. Moving it.  
 A. (Nods head).
- Q. Alright. Did you place it anywhere?  
 A. Not that I know of.
- Q. Pardon?  
 A. No.
- Q. Nah, alright. That's fine. So you took nothing from the suitcase briefcase, is that right?  
 A. Nah.

153. It is apparent that Detective Inspector Rutherford was concerned to establish that Mr Pora had encountered the briefcase and to obtain confirmation from him that he had opened it and placed it on the bed. I find this curious as to that point there had been no reference to a suitcase or briefcase. It appears to have been introduced "out of the blue". It appears to be in the category of matters which had arisen since the interviews which concluded on 19 March. Detective Inspector Rutherford alluded to this when he said at the commencement of the interview on 21 March:<sup>86</sup>

"Okay I've just told you, haven't I, prior to coming into the room, I, I want to ask you some more questions arising from that is that we've ah, looked into since I last spoke to you, is that correct?"

154. The way in which the briefcase was introduced into the interview indicates there had been a reference to it during prior informal exchanges between police officers and Mr Pora. Regardless, the appearance of the briefcase, the file and the papers do not suggest to me interference by an intruder. I find their placement more consistent

<sup>86</sup> Transcript of Interview with Teina Anthony Pora, 21 March 1993 at 1.

with the occupant having opened the briefcase, a conclusion I infer the Police themselves reached until they interviewed Mr Pora in 1993.

#### **Search for money**

155. Mr Pora was then asked what happened next<sup>87</sup> and he said he checked underneath the bed for money. When further questioned as to how he did so he said that he lifted up the mattress. This was said to be consistent with the appearance of one of the two beds in the room.

156. That is not the conclusion I reach based on the photographs taken of the scene. One of the two beds is completely undisturbed. The duvet on the other bed is tucked under the mattress except for a small portion in the corner. There is no sign of any attempt having been made to look for money under either mattress.

157. I can see nothing in the appearance of the spare bedroom to indicate that it was interfered with in any way by the intruder/s. That also appears to be what the Police themselves concluded until the developments that took place in March 1993.

#### **Absence of fingerprints**

158. Mr Pora said that he and his co-offenders wore gloves or socks on their hands. That is of course consistent with the absence of fingerprints. But it is commonplace for offenders to seek to conceal their identity by this means and the obvious way in which Mr Pora would explain the absence of fingerprints.

#### **Blood on clothes**

159. Mr Pora said all assailants had blood on their clothing. That is the obvious outcome when the victim had been beaten to death with a bat. Presence at the scene is not required to explain this disclosure.

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<sup>87</sup> Transcript of Interview with Teina Anthony Pora, 21 March 1993 at 101.

## Motive

160. Mr Pora (belatedly) provided a possible motive for the murder when, on 21 March, he spoke of the killing as retribution for an incident that occurred on Ms Burdett's property the previous week. It appears that this variation to Mr Pora's account of what happened was first mentioned by him in conversation with Detective Sergeant Williams in the evening of Friday 19 March 1993.<sup>88</sup>
161. This part of Mr Pora's statement is said to dovetail with the evidence of Martha McLaughlin who said that Teina told her that the altercation occurred after a Mongrel Mob member "pissed" on Ms Burdett's section. It is not without interest that what Mr Pora told the Police was that the individual concerned was "pissed" at Ms Burdett's property, not that he "pissed" on her section. As by the time Martha McLaughlin made her statement, the confession had been heard at trial, it is possible she misheard or misunderstood what was said.
162. There was no evidence adduced at Mr Pora's trials that Ms Burdett ever encountered Mongrel Mob members at her property. § 9(2)(a) (Ms Burdett's team mate at Super Strike) told Police in 2013 that Ms Burdett had told her of an incident in which gang members smoked what § 9(2)(a) understood to be cannabis on her property. § 9(2)(a) thought this had taken place soon after Ms Burdett moved to the property about a year earlier. Ms Burdett told her that she ordered them off. It appears she took no further action and neither § 9(2)(a) nor anyone else who was made aware of it thought it worthy of mention to the Police at the time of the investigation. It provides scant support for Mr Pora's alternative explanation of a revenge attack that would, in any event, have been completely disproportionate to the provocation. The sexual motive assumed to that point was and remains much more plausible.

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<sup>88</sup> Jobsheet of Detective Sergeant Williams 23 March 1993 p4.

## Summary

163. On analysis the disclosures relied on by the Solicitor-General as confirmatory of Mr Pora's presence at the scene have been shown to be readily susceptible to explanation that do not require his presence. Collectively, they add to the concern that his claim to have been present was a clumsy concoction which simply cannot withstand critical scrutiny. Perhaps the best single example is his claim that Ms Burdett was having a shower when her assailants entered the house. It is not only unsupported by but inconsistent with the evidence. Much of what Mr Pora ventured is exposed as simple guesswork.
164. Whether or not Mr Pora's motive for making a statement was to obtain the reward, one thing is unarguable. He was doing the best he could to give a plausible account of what happened. It is equally unarguable that in that he failed abysmally. His narrative is utterly unconvincing. Not only is it shot through with inconsistencies, contradictions and patent fabrications, it does not disclose a single item of evidence that could be explained only by Mr Pora's presence at the scene. Perhaps the most obvious omission in that regard is the identity of his putative accomplices. If he was with Malcolm Rewa, why did he not name him? Why risk the wrath of the Mongrel Mob by naming Dog and Hound if he was in a position to identify the real culprit?



## **(10) INDEPENDENT EVIDENCE CORROBORATING THE CONFESSION**

### **Introduction**

165. As earlier noted, at Mr Pora's retrial, due in part to the emergence of Martha McLaughlin and <sup>§ 9(2)(a)</sup> § 18(c)(ii) as witnesses, the prosecution was able to rely on a number of strands of evidence that had not been available at the first trial. These were said to provide independent proof of Mr Pora's presence at the crime scene and, to corroborate his confession. In some areas the evidence has been supplemented either for the purpose of Mr Pora's appeal or specifically for the purpose of the compensation application.

166. The evidence is in the following categories:

- (a) Mr Pora's presence at Super Strike.
- (b) Bloodied rugby league jersey.
- (c) The disposal of the baseball bat.
- (d) Articles alleged to have been stolen:
  - (i) Camera;
  - (ii) Wallet;
  - (iii) Trophy;
  - (iv) Jewellery.

### **Presence at Super Strike**

#### **(a) The evidence**

167. In evidence at the retrial, Martha McLaughlin said that the evening Ms Burdett was killed Teina Pora picked up her brother, Mure, to go to Super Strike. Later that night, at around 10.30pm, she said that he came back with Richard Bennett who was in the passenger seat of his car. Another person whom she could not see was in the back.

Neither Richard Bennett nor Mure McLaughlin were asked about their movements that evening.

168. More recently, further evidence placing Mr Pora at Super Strike on the night of 23 March 1992 has emerged. § 9(2)(a)<sup>89</sup> is a widow, 80 years of age, who contacted the Police on 15 March 2013 after watching a television programme on the Susan Burdett murder. In 1992 she was the president of a bowling league which played at Super Strike. On the night of the murder she was in a team that played the team of which Susan Burdett was a member.
169. In an affidavit sworn for the purpose of the appeal § 9(2)(a) recalled that on that night Susan Burdett was called by loudspeaker to the counter at Super Strike and spoke to a young Maori man wearing a red and white bandana about joining a team.<sup>90</sup> She identified him as Teina Pora though she said when she saw him on television he looked slimmer. She had not recognised him from photographs published in the paper after he was arrested but she said she did recognise him when she attended the first day of his trial.<sup>91</sup>

**(b) My assessment of the evidence**

170. I do not attach any weight to this part of the evidence of Martha McLaughlin. She did not speak to the Police until 30 March 1995, more than three years after the murder. I find it scarcely believable that, unaided, she should be able to call to mind with such precision the events of 23 March 1992. There is no support for her evidence from those more directly involved. Putting to one side more general concerns about her credibility,<sup>92</sup> I reject as of no value this aspect of her evidence.
171. I accept as genuine § 9(2)(a) belief that she saw Ms Burdett speak to Teina Pora on the evening of 23 March 1992, but I am satisfied that she is mistaken in her recollection.

<sup>89</sup> Mentioned earlier at paras 54 and 162.

<sup>90</sup> Affidavit of § 9(2)(a) sworn 26 August 2014 at [21]-[23].

<sup>91</sup> Affidavit of § 9(2)(a) sworn 26 August 2014 at [28].

<sup>92</sup> Which I consider in more detail later.

172. First, if s 9(2)(a) had witnessed such an event, it is inconceivable that she would not have mentioned it to the Police when she was interviewed shortly afterwards. She told them that nothing unusual had happened.
173. Secondly, s 9(2)(a) present recollection is at odds with what was said by the two receptionists working at Super Strike on the night. Both knew Ms Burdett. Both were spoken to by the Police a few days later. Neither made reference to the incident described by s 9(2)(a). One of them, Linda Morrow, was traced in 2014 by an investigator acting on behalf of Mr Pora and swore an affidavit.<sup>93</sup> She reaffirms that nothing unusual happened that night. She is adamant that Susan Burdett was not called to reception. She said the public address system was only rarely used. It would be disruptive when games were being played and the staff hated using it. Furthermore, she said inquiries to join a team tended to be made informally; she could not recall any inquiry of that nature being made to reception. Ms Morrow also deposed that Ms Burdett's team comprised older people aged 30 and over, none of them Maori or Polynesian. She said if a 16 year old youth like Teina Pora had enquired about joining the league, she would definitely have remembered.
174. Ms Morrow's evidence is compelling. I am left in no doubt that s 9(2)(a) is mistaken. There is no credible evidence that Teina Pora was at Super Strike on the night of Susan Burdett's murder.

### **Bloodied rugby jersey**

175. In his statement to the Police in March 1993 Mr Pora said he was wearing a rugby league tee shirt on the night of the murder and wiped blood from the baseball bat onto the tee shirt before discarding the bat at the Velodrome.<sup>94</sup> When spoken to the previous year, he had told the Police<sup>95</sup> that at the time he was taking his washing to his Aunt Terry's house as the washing machine at his home was broken.

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<sup>93</sup> Affidavit of Linda Matilda Morrow, sworn 17 September 2014.

<sup>94</sup> Transcript of Interview with Teina Anthony Pora, 18 March 1993 at 77-78.

<sup>95</sup> Statement of Teina Anthony Pora, 28 May 1992 at page 3.

176. Martha McLaughlin said (in her statement and in evidence) that the day after the murder Mr Pora came to the house and washed two rugby league jerseys, one of which had blood on it. She said he told her the blood on one of the jerseys was from a bleeding nose he suffered while playing rugby. In her statement of 30 March 1995 she recalled Mr Pora bringing the jerseys to her house on a particular Tuesday. She said one had blue, purple and white stripes and had blood on it. The other, which he kept in his bag, was a Balmain rugby league jersey. She remembered Teina Pora asking for soap.
177. In his interview with the Police Mr Pora described a tee shirt or singlet (not a jersey) of somewhat different colours. Regardless, it could not have been the garment Martha McLaughlin saw as it became clear at trial that Martha McLaughlin was wrong about the date. The visit she described (if it took place at all) did not occur the day after the murder but a week earlier. She sought to pinpoint the date on which the visit took place by reference to a marching competition in which she participated. She said Teina came to the house on the Tuesday before the marching competition. Independent evidence established that the competition in question took place on 21 and 22 March 1992, the weekend before Ms Burdett was murdered.
178. In assessing Martha McLaughlin's evidence, including her recall of matters of detail, it must be borne in mind that by the time she made her statement, Mr Pora's confession had been aired at trial. It may also be assumed that she had become aware of what Paula Pora had earlier told the Police. It was in Paula's statement of 6 April 1992 that the existence of a bloodied jersey was first mentioned. She described a maroon and white striped jersey with blood on it that Teina Pora had tried to conceal from her. He had denied her suggestion that the blood might have been caused by a nose bleed. Paula Pora retracted this part of her statement in its entirety when later questioned.
179. This heightens concerns that Martha McLaughlin's evidence may have been coloured by claims by Paula Pora that she later recanted.

### Disposal of the baseball bat

180. The baseball bat found in the drain at the Manukau Velodrome provides an arguable link between Mr Pora and the murder. The injuries sustained by Ms Burdett could have been inflicted by such an implement and Mr Pora made comments at the time that could be interpreted as indicating knowledge of its being used in the attack. He told the Police that Dog and Hound had told him to get rid of the murder weapon and he did so by disposing of the bat at the Velodrome.<sup>96</sup>
181. The evidence of who found the bat, its precise location and who first suggested a possible link with the murder of Ms Burdett is conflicting and confusing. The three youths present with Mr Pora when it was found gave differing versions of what occurred. Richard Bennett said that the bat was first seen by Teina Pora and it was Teina who suggested a link with the killing of Susan Burdett. Terrence Kiro, a cousin of Richard Bennett, could not remember who saw it first. Reuben Peihopa who, unlike the other two, was not called to give evidence, at the retrial, is adamant that he was the first to see the baseball bat and to suggest a link with the murder. In the statement he made on 28 May 1992 Teina Pora agreed. He said he and Reuben Peihopa were close together and he thought Reuben actually saw the bat first. Mr Peihopa has sworn an affidavit confirming as accurate the statement he made to the Police on 6 April 1992<sup>97</sup> in which he explained that he knew a bat was suspected to be the murder weapon as his girlfriend's sister, who worked at Super Strike, had been interviewed by the Police and had told him of the possible use of a bat.
182. The accounts given by members of the Pora/McLaughlin family regarding the finding of the bat also varied somewhat. Paula Pora's final "corrected" version was that Teina showed her the bat down a manhole. She retracted her initial version of events that had the bat with blood on it lying on the grass. Martha McLaughlin said she was told by Teina that he had found the bat with blood on it under a tree and put it down the

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<sup>96</sup> Transcript of Interview with Teina Anthony Pora, 21 March 1993 at 112.

<sup>97</sup> Affidavit of Reuben James Peihopa, sworn 3 December 2013.

drain. In her statement she said that after she heard about the murder, she asked Teina if he had killed the woman. Her statement continued:<sup>98</sup>

“He didn’t answer me. That’s when I thought he had done it.”

As already mentioned, after she was told of the discarded bat, Terry McLaughlin came to the same conclusion.

183. At Teina Pora’s re-trial Martha McLaughlin gave evidence of Mr Pora telling her he had found and disposed of a bloodied bat. It seems odd that he would have told Martha and no one else that he had disposed of a bat. Once again, Martha attributes incriminating behaviour to Teina Pora which had been asserted at the time, then promptly retracted, by her cousin Paula.

184. While it is impossible to make firm findings in the face of the conflict of evidence, I tend to the view that the finding of the bat in the drain at the Velodrome so soon after the murder of Ms Burdett was purely coincidental. I consider Reuben Peihopa’s recollection of who first saw the bat and suggested a link to the murder is likely to be the correct one. It coincides precisely with what he told the Police. As the member of the group who knew that a bat was the suspected murder weapon,<sup>99</sup> it is likely that he would be the first to link the bat to the murder.

185. I believe it likely that, were it not for the intervention of Terry McLaughlin, the finding of the bat would never have become an issue for the Police. Her belief that Mr Pora was involved in the murder and the machinations that followed triggered the investigation in April-May 1992 which came to an end when Police concluded that members of the McLaughlin family had conspired to “fit” Mr Pora.

186. The Police retrieved the bat on 6 April 1992 but did not treat it as a possible murder weapon. They presumably reached the obvious conclusion that the most likely murder weapon was the softball bat found at the scene. As there was nothing to link the killer (or killers) to that bat, there would have been no reason for him (or them) to

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<sup>98</sup> Statement of Martha Huirua McLaughlin, 30 March 1995 at 3.

<sup>99</sup> See para 27 above.

take it when he (they) left. That is not to exclude the possibility of a second potential murder weapon but to draw the obvious inference from the available evidence.

187. In the course of appeal proceedings, forensic tests were undertaken to see if the bat from the drain could be linked to the crime scene. It was reportedly dry and flaking and might be expected to have produced detectable particles if used as a the murder weapon. The tests were negative.

### **Stolen property**

#### **(a) Camera**

188. Until Police interviewed Teina Pora in 1993, only two items of property were believed to have been taken from Ms Burdett's house – a Westpac credit card and a compact camera kept in a small grey and black pouch.<sup>100</sup> The fact that the camera was suspected to have been taken was publicised.<sup>101</sup> Martha McLaughlin said in evidence that she had read the article and asked Teina Pora about it.<sup>102</sup> He told her he had given a camera like that to his Uncle John.

189. In his interview Mr Pora referred to the theft of a camera. At his trial and retrial and, I was told, for the purpose of the appeal, the Crown argued that Mr Pora's knowledge of the theft of the camera was consistent with his having been present. That would not be so if Martha had told him about it or he had independently heard about it. What he is likely to have known only if he had been present is what the camera looked like. What he said to the Police about that was wildly astray. He described it as a "film, video camera". His demonstration of how he carried it under his arm indicated an object a great deal larger than a compact camera.<sup>103</sup> What he said in his interview indicates he had no idea what the stolen camera looked like.

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<sup>100</sup> It was an Olympus AF10 Super 35mm.

<sup>101</sup> In the Manukau Courier on Friday 29 May 1992 in an article under the heading "Police Certain Killer Picked up Missing Camera".

<sup>102</sup> Retrial of Teina Pora, 22 March 2000, Notes of Evidence, Martha Huirua McLoughlin at 90, lines 20-30.

<sup>103</sup> Transcript of Interview with Teina Anthony Pora, 18 March 1993 at 70-71.

**(b) Wallet**

190. Mr Pora said in his interview that he took a wallet from the house. He said there were two wallets in a handbag which was “in the open” [bed]room or the sitting room.<sup>104</sup> He said he took one that contained cash, ASB credit cards and Super Strike cards. He said he burned the wallet and the cards.

191. There is no evidence that a wallet was taken from the address. Ms Burdett’s wallet was found in a leather handbag hidden in the wardrobe in her bedroom. The credit card is presumed to have been removed from the wallet. Mr Pora’s claim to have taken a wallet and cards from a handbag that was “in the open” seems to have been pure guesswork.

**(c) Trophy**

192. The possible theft of a bowling trophy was mooted for the first time in the course of Mr Pora’s March 1993 interview. Until then there had been nothing to suggest a trophy may have gone missing. Mr Pora did not mention the theft of the trophy when he talked at the earlier stage of the interview about taking the camera and wallet. He did not even mention the trophy display when taken into the spare room of the house. It came up for the first time on 21 March prompted, it seems, by an off-the-record conversation Mr Pora had with Detective Sergeant Williams the previous Friday.<sup>105</sup>

193. Mr Pora told the Police that he took (“grabbed”) a trophy from the spare room. “I thought it was gold” he said. He then carried it with “the camera and the rings” back to the car where, he said, he waited for the others for about 10 minutes.<sup>106</sup> Mr Pora said the trophy was on the “drawer”.<sup>107</sup> When asked what he did with it he said “Don’t know”, before indicating he left it that night “down at Roy’s”. Later, when questioned further in the presence of his Aunt and Uncle, Mr Pora again said he “grabbed” the

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<sup>104</sup> Transcript of Interview with Teina Anthony Pora, 18 March 1993 at 69.

<sup>105</sup> Job Sheet of Detective Sergeant Mark Williams 23 March 1993 at p6.

<sup>106</sup> Transcript of Interview with Teina Anthony Pora, 21 March 1993 at 6.

<sup>107</sup> Transcript of Interview with Teina Anthony Pora, 21 March 1993 at 8.



trophy from “off the drawer”.<sup>108</sup> He said there were trophies on the drawer and “around in the room”. When asked to explain whereabouts in the room they were he said he couldn’t remember. He was also unable to say where the drawers were. When asked he said “somewhere in the room”.

194. There are some puzzling features of Mr Pora’s account of the theft of the trophy. The scene examination showed two shelves of ten pin bowling trophies in the spare room which Detective Sergeant Grimstone described as “obviously a trophy display area for the occupant of the address”. There was a chest of drawers in the room on the top of which were placed three ornamental piggy banks, a crystal vase arrangement and a broken china ornament of a horse which Detective Sergeant Grimstone opined had obviously been broken elsewhere and placed on top of the chest for repair in the future.

195. It seems odd that in a house in which everything appears to have had its place and which by common consent was kept in a tidy and orderly manner, there should have been a single trophy placed separately from the others. It also seems odd that Mr Pora should have been unable to say where or how the main display of trophies was kept.

196. There are also concerning aspects to the way in which the topic arose. The trophy was mentioned “on the record” when Mr Pora was interviewed by Detective Inspector Rutherford on 21 March in the presence of his Aunt and Uncle. By this time Mr Pora had accompanied Detective Inspector Rutherford to the house (on 18 March 1993). He was taken into the spare room and pointedly asked by Detective Rutherford while gesturing towards the shelves whether there “was anything in this room that was, ah on display at all?” to which Mr Pora replied:<sup>109</sup>

“Didn’t get to really look up that wall.”

He was then asked “well what did you do in this room?” to which he replied:

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<sup>108</sup> Transcript of Interview with Teina Anthony Pora, 21 March 1993 at 102.

<sup>109</sup> Transcript of Video Footage from Superstrike to Victim’s Home by Detective Inspector Rutherford and Detective Sergeant Williams accompanied by Teina Pora, 18 March 1993 at 12.

“Just went and looked for money.”

197. Detective Sergeant Williams’ record of the conversation he had with Teina Pora on the Friday evening (19 March) suggests that Mr Pora brought the topic up by offering to get him (Detective Sergeant Williams) a trophy he took. He said he would get his girlfriend to bring it in. After twice being left alone with his girlfriend (Fiona Bennett), Mr Pora is recorded as telling Detective Sergeant Williams that he had told her to get the trophy.
198. This part of the narrative is taken up by Martha McLaughlin in the statement she made to the Police on 30 March 1995. She said that after Teina got arrested she took Fiona Bennett to see him. She continued:<sup>110</sup>

“When Fiona came out she asked me to take her to her sisters place. I don’t know where it was, it was a two storied flat and it took a while to drive there. Fiona told me that Teina had asked her to go and get a bowling trophy from her sister who also plays indoor bowls and take the plate off it and put a new one on saying Susan BURDETT’s name. He wanted her to then put it in Roy DUNN’s place to get Roy in trouble with the Police because Teina didn’t like him. Teina had had a shotgun pointed at him, that’s why he didn’t like Roy. Fiona couldn’t find a trophy there and didn’t bother after that.”

199. There is an echo of what Martha refers to in a passage of Mr Pora’s interview on Sunday 21 March 1993. After disclosing that he took the trophy from on the drawers in the spare room, Mr Pora was questioned at length about what happened to the trophy. It is a passage of the interview that is punctuated by numerous lengthy pauses between question and answer. It is put to him that, when talking to Detective Sergeant Williams on Friday night, he had said he could probably get the trophy back.
200. The interview continues:<sup>111</sup>

“Q. On Friday night, you were talking to ah, Detective Sergeant WILLIAMS, remember?

A. (Nods head).

Q. Alright?

A. (Nods head).

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<sup>110</sup> Statement of Martha Huirua McLaughlin, 30 March 1995 at 5.

<sup>111</sup> Transcript of Interview with Teina Anthony Pora, 21 March 1993 at 9-10.

- Q. Did you tell him that you could probably get the trophy back?  
A. (Nods heads) Yeah.
- Q. Well what's the story there?  
A. I don't know if she can remember what, if she'd bring it in.
- Q. Pardon?  
A. I don't know if she'd bring it in or what.
- Q. Well what did you say to Mr WILLIAMS about the trophy?  
A. Oh, get it.
- Q. Get it.  
A. (Unclear).
- Q. Who was going to get it?  
A. Fiona.
- Q. Fiona was gonna get it. Is that right?  
A. (Nods head).
- Q. Well where was she gonna get it from, son?  
A. (Looks out window - then puts head down).
- Q. Mm?  
A. (Pause).
- Q. Wasn't the arrangement that you spoke to Fiona and she was gonna get the trophy and bring it into the Police? Is that correct or am I mistaken? Eh?  
A. (Pause).
- Q. That's right, isn't it?  
A. (Pause).
- Q. Teina?  
A. Yes.
- Q. Yes. Where was Fiona supposed to get this trophy from? Or is it a lie about the trophy?  
A. It's a lie.
- Q. Pardon? What did you say?  
A. It's a lie.
- Q. It's a lie.  
A. (Nods head).
- Q. O.K. It's a lie, why is it a lie? You tell me.  
A. (Shakes head) Don't know.

Q. Well, put it this way. Why did you tell Mr WILLIAMS that if he spoke to Fiona, she would be able to go and get the trophy and bring it into the Police? Why did you say that? Why make that story up? Mm?

A. (Pause).

Q. Why Teina?

A. It's not a story.

Q. Pardon?

A. You's fullas just don't wanna believe me, that's all."

201. It is, of course, impossible to reach any firm conclusion as to what was in Mr Pora's mind at this time but it seems that, having perhaps been reminded of the presence of trophies in the house, he saw a way of providing evidence to confirm he was there by producing a trophy. After speaking to Fiona Bennett he modified his strategy in order to make it appear that Roy Dunn had taken the trophy from Susan Burdett's house. He may well have seen it as a way of shoring up his claim that Roy Dunn was involved.

202. Whatever his motivation, Mr Pora's actions impress as a textbook example of the superficial, almost childlike, thinking processes of an FASD victim. It was a scheme that appeared to offer advantages to him but which did not have the slightest prospect of succeeding. It is an example of the sort of thinking discussed by Dr McGinn.<sup>112</sup>

203. The only other independent evidence bearing on the subject also comes from Martha McLaughlin. In her statement of 30 March 1995 she says she "remembered" Mr Pora telling her about a trophy sometime before he was arrested. She said she could not remember how the subject came up "but we were probably talking about the murder". She said he told her that he threw the trophy over a brick wall into the water at a beach. She said he did not say it was from Ms Burdett's house but he did say it was a bowling trophy.

204. Between 1995 when she made the statement and 2000 when she gave evidence at Mr Pora's retrial, Martha McLaughlin's memory of this conversation underwent a remarkable improvement. She was able to recall that the conversation took place

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<sup>112</sup> See for example the passages of her report quoted at paras 87-89 above.

"where the pool table is out in the garage". She said Teina told her he wanted a bowling trophy to give to his mates.

205. In my view Teina Pora's claim to have taken a trophy is a fabrication, pure and simple. His attempt to describe how he took it is utterly unconvincing; he does not appear to have been familiar with the room where the trophies were kept. It seems unlikely that any trophy was kept in the place he said he found it, on top of the drawers. It is not possible to draw any firm conclusions from the fragments of evidence as to why and how he should have chosen to make up this part of the story but there are indications that having known (from media reports)<sup>113</sup> or heard in the course of the Police interviews that there were bowling trophies in the house, as earlier suggested, he saw it as a way of demonstrating that he was indeed present.
206. I consider Martha McLaughlin to be mistaken in her recollection of a conversation about a trophy prior to Mr Pora's arrest. While I cannot completely exclude the possibility that Mr Pora's interest in the unsolved murder and media publicity about trophies might have caused him to bring the subject up at an earlier stage, I consider it much more likely that any conversation about a trophy took place after his arrest.

**(d) Jewellery**

207. As far as can be ascertained the theft of jewellery came up for the first time when Mr Pora spoke to his Aunt Terry on 20 March 1993. In a statement made immediately after the conversation she said he told her that he and his co-offenders took rings and a necklace as well as a trophy, camera, purse and cards. When he was interviewed the following day, Mr Pora referred to "grabbing" the trophy, then carrying "the camera" and "the rings" back to the car. He said that he dropped his accomplices at Roy's house and that "he [Roy] took the camera and the jewelleries". When asked to clarify what he meant by "jewelleries" he answered:

"The rings, the jewelleries".

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<sup>113</sup> Including a reconstruction on Crime Watch in April 1992.

208. Later in the interview he explained that the “jewelleries” were taken by Roy out of Ms Burdett’s room. He repeated that they were rings. There is no mention of a necklace.
209. The theft of jewellery played no part in the first trial. By the time of the retrial, however, it had become an important part of the Crown case. This part of the case had two elements. The first was that Ms Burdett had owned a distinctive pair of blue leaf earrings that were not in the house after her death. The second, based on the testimony of Martha McLaughlin, was that Teina Pora’s sister, Lobelia, had been seen wearing earrings of the same description soon after the murder. The jury was invited to infer that Mr Pora had stolen the earrings and given them to his sister.
210. The meticulous scene examination carried out by Detective Sergeant Grimstone gave no indication that jewellery may have been taken. There was a jewellery box on the dresser in Ms Burdett’s bedroom that appeared not to have been disturbed. In one of the drawers in a chest in the spare bedroom there were what were described as two trays of earrings. That drawer appears to have been closed and there was no sign of disturbance to its contents.
211. Ms Burdett’s mother, Mrs Mary Burdett, recovered Ms Burdett’s jewellery from her home. She confirmed there was a jewellery box and cards containing earrings. She thought her daughter would have had about 50 pairs of earrings. She said there were no blue leaf earrings amongst them.
212. Police interest in a pair of leaf earrings seems to have been sparked by a review of the statement made to the Police by Paula Pora on 6 April 1992. In her statement Paula Pora said that after Teina had shown her the baseball bat at the Velodrome and they were walking to the car:

“He wanted to know if I wanted a purse and a watch and some jewellery. He told me he had a bracelet and a pair of leaf earrings.”

A little later she said that two nights later she told Aunty Terry what Teina had told her and:

"When I was talking to her, Aunty Terry showed me some earrings and the purse. She told me she had got it from Teina. She had asked me if I had known anything about Teina and the murder and all that."

213. In early 1997 the Police made enquiries to ascertain if Ms Burdett had owned leaf earrings. Her son had no recollection of her wearing any such earrings but a friend, Diane Dawson, recalled that she had a pair and found a photograph of Ms Burdett wearing the earrings that was taken in January 1989.
214. These matters lay until three years later. A note written by Crown counsel and given to the defence on the third day of Mr Pora's re-trial records that when Detective Sergeant Williams showed Martha McLaughlin the photograph of Ms Burdett wearing the earrings in question, she told him she had seen Teina's younger sister, Lobelia, wearing them. According to the note, Detective Sergeant Williams spoke to Lobelia who told him to "fuck off". The note records that Detective Sergeant Williams took the matter no further until reminded by Martha of it that day. There is no other record of any of the discussions referred to.
215. Martha McLaughlin commenced her evidence on 22 March 2000, the date of the note, and was recalled to give evidence in relation to the earrings on 27 March 2000. It appears likely that the delay was to provide the defence time to respond to this aspect of the case. In evidence she said that after Ms Burdett's death she twice saw Lobelia wearing earrings that looked the same as those worn by Ms Burdett in the photograph. She claimed to be able to remember the date because it was just before her boyfriend's twentieth birthday and he would soon turn twenty-eight.
216. Lobelia Pora did not give evidence. The note of Crown counsel suggests that she was unreceptive to Police questions. She says otherwise. In an affidavit sworn on 25 February 2010 she deposes that a plainclothes policeman asked her about Teina giving her earrings.<sup>114</sup> She told him that she had never been given earrings or any other jewellery by Teina. She also told him that because her left ear gets infected when pierced, she can only wear an earring in her right ear.

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<sup>114</sup> Affidavit of Lobelia Deanna Pora sworn 25 February 2010.

217. There are a number of concerns about this part of the Crown case. They might have been avoided if Lobelia had been called to give evidence.<sup>115</sup> But major questions suggest themselves even if Lobelia's evidence is set to one side.
218. Perhaps the most obvious is that it required yet another remarkable feat of memory by Martha McLaughlin to be able to recall many years later the earrings she saw her cousin wearing in the months following the murder. Because Detective Sergeant Williams made no record of his conversations with Martha and Lobelia on this topic, it is not known when she first saw the photograph. What is known is that the photograph was not produced until at least five years later and it was eight years later when she felt able to confidently assert under oath that the earrings she saw being worn by Lobelia were the same as those in the photograph of Ms Burdett.
219. Then there is the fragile evidential foundation for the theory that the earrings were taken from Ms Burdett's home at the time of the murder. It cannot of course be assumed that the earrings she wore in 1989 were still in her possession. There is no suggestion that they were particularly durable or valuable and they could have been lost or discarded in the meantime. There is nothing to indicate that any jewellery was taken, either from the jewellery box or the cards in the spare room.<sup>116</sup> If jewellery was taken, the question immediately arises why the thief would select earrings of no apparent value. If Mr Pora took them, why did he not say so? Indeed, if he had taken jewellery of any kind, why would he dissemble about what it was? He had nothing to lose by giving an accurate account on this issue.
220. Finally, there is the role played by members of Teina Pora's extended family, notably Paula Pora and Terry and Martha McLaughlin. Significantly, all of them told the Police they were convinced of Teina's guilt from the outset.
221. As earlier noted, leaf earrings were first mentioned by Paula Pora in the statement she made on 6 April 1992. She retracted that part of her statement. She continued to maintain, however, that Aunty Terry showed her some earrings that she said were

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<sup>115</sup> She says she was not spoken to by the defence.

<sup>116</sup> Although there is a suggestion that Ms Burdett may have kept earrings on a card on her dresser.



given to her by Teina. This was not mentioned by Terry McLaughlin when she spoke to the Police in April 1992. But she remembered it when giving evidence at the retrial in March 2000.<sup>117</sup> She said Teina left jewellery at her house about one week after she learnt of the Police investigation. She said he told her he had stolen it. There was a matching set of earrings and a necklace. In evidence Terry McLaughlin described the earrings as “long feather things” and were “like a woody colour, brownish colour”.

222. What emerges is that the decision of the Police to focus on a pair of leaf earrings was prompted by a passage in a statement by Paula Pora which she later retracted as largely fabricated. This included the portion referring to the leaf earrings. One of the few parts which she maintained to be accurate was that Aunty Terry had shown her earrings and a purse given to her by Teina soon after the murder. If Terry McLaughlin’s evidence is to be believed on this issue, those earrings were neither blue nor leaf shaped.

223. This part of the Crown case has its genesis in the mischievous attempts of family members to incriminate Teina Pora in 1992. It achieved its final expression in the evidence of another family member, Martha McLaughlin given only after she “reminded” Detective Sergeant Williams of her ability to recall the appearance of the earrings worn by her cousin eight years hence. I regard that evidence as of no more worth than the discredited statement of Paula made in 1992.

## **Conclusion**

224. The evidence relied on by the Crown as corroborating key elements of the confession has failed to survive critical examination. There is no credible evidence to show that Mr Pora was at Super Strike on the night of the murder. The evidence that he washed a bloodied rugby league jersey in the days following the murder has been exposed as fundamentally flawed. The finding of the baseball bat seems likely to have been pure coincidence and to be, as initially concluded by the Police, a complete red herring. All

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<sup>117</sup> Notes of evidence at 166.

the indications are that the evidence linking Teina Pora with articles alleged to have been stolen from Ms Burdett has been invented or imagined.

225. This part of the Crown case relies heavily on the evidence of Martha McLaughlin. I have had reason to doubt the reliability and accuracy of her evidence in numerous respects. I find it curious that she should have emerged from comparative obscurity in 1995 to become, in time, a key Crown witness. Mr Pora's advisers believe she was motivated by the prospect of a reward. Her mother had, after all, received a significant sum the year before. Martha claims not to have received anything. The Police cannot be sure as their records are incomplete. I do not need to resolve the issue. It is sufficient to say that the role of Mr Pora's extended family generally, and Martha and her mother in particular, is one of the more disquieting features of a worrying series of events. Anything that might shed light on their involvement would foster a better understanding of why they occurred and how.

## **(11) MALCOLM REWA – EVIDENCE OF ASSOCIATION**

### **Introduction**

226. Conclusive evidence that Malcolm Rewa was involved in the rape and murder of Susan Burdett obviously called for a review of the police case against Mr Pora. It was necessary to confront the possibility that Rewa had acted alone with the corollary that Mr Pora had not been involved. The alternative scenario, consistent with the Police theory of the case to that point, was that Malcolm Rewa was one of Mr Pora's two accomplices. The third possibility – that the two acted together but there was no third man – would have seemed unlikely as inconsistent with the essential elements of Mr Pora's confession which had been the cornerstone of the Crown case against him.

### **The evidence**

227. It did not take long for evidence to emerge that supported the alternative scenario. One of those who was able to assist was Martha McLaughlin who, with her mother, Terry, and Uncle John Pora, presented herself at the police station soon after news of Malcolm Rewa's arrest became public. She was shown three photographs of Malcolm Rewa. She identified him as a man she had met the Friday before Susan Burdett's murder. She said (then and at Mr Pora's retrial) that he came to her parent's house (where she was living) in the company of a man called Trevor Brown. She said they were looking for Teina who came to the door and introduced them to her before they left together in the car. She also said that she saw him at Fiona Bennett's house two or three months after the murder.<sup>118</sup>

228. Martha McLaughlin was able to remember Trevor Brown's name but not that of the other man. Various names were suggested to her by the police including the nickname "Hama". She did not recognise any of them at the time but 45 minutes

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<sup>118</sup> Statement of Martha Huirua McLaughlin, 20 May 1996 at 5.

after the interview concluded she said that "having given the matter further thought, she remembered the man had been introduced to her as Hama".<sup>119</sup>

229. § 9(2)(a)  
§ 18(c)(ii), the prison inmate who had provided a statement in 1995 when Police were continuing their efforts to identify Teina Pora's co-offender was also able to assist. The Police visited him in prison on 28 May 1996. He was shown a photo board containing the photographs of 12 men. He was asked to point to any he knew. He identified Malcolm Rewa.

230. § 9(2)(a)  
§ 18(c)(ii) said he first met Malcolm Rewa at Roy Dunn's house when he went there looking for Teina. He did not speak to Rewa then. § 9(2)(a)  
§ 18(c)(ii) said he spoke to Malcolm Rewa for the first time at Fiona Bennett's place a few weeks or a month before the murder. Teina Pora was there too. He said he, Teina and Malcolm Rewa "shared a joint". He saw Mr Rewa again in a car with Teina Pora which drove past him while he was riding his motorbike. § 9(2)(a)  
§ 18(c)(ii) was able to pinpoint this to the day on which his landlady told him the police were making enquiries in the area into the murder of Susan Burdett. Subsequently, he saw Malcolm Rewa at a "drinking house" in Otara. Roy Dunn was also there. § 9(2)(a)  
§ 18(c)(ii) also referred to a visit to Fiona Bennett's house a few days after Teina Pora's arrest. He said Malcolm Rewa was sitting in the lounge with Roy Dunn and another man listening to a police scanner.

231. The last occasion on which § 9(2)(a)  
§ 18(c)(ii) said he saw Mr Rewa was three weeks or a month after Teina Pora's arrest. He was at Fiona Bennett's house when § 9(2)(a)  
§ 18(c)(ii) dropped some sheep meat off there.

232. Mure McLaughlin, Martha's brother, also identified Malcolm Rewa from a board of 12 photographs shown to him in May 1996. He said he thought he had seen him at Fiona Bennett's house around the time of the murder. On one occasion he was speaking to Mr Pora. On the other he was sitting in a car. At trial he said he could not be sure that Malcolm Rewa was the man he saw on either occasion.

<sup>119</sup> She did not give this evidence at the trial.

233. The final witness who was able to attest to an association between Mr Pora and Mr Rewa was S 9(2)(a) who gave evidence at Malcolm Rewa's first trial but had died by the time Mr Pora was retried. She claimed to have seen Rewa in the company of Mongrel Mob members on a number of occasions from 1989 onwards, at the home of Roy Dunn. She said that one month before Ms Burdett's murder she was at a Mongrel Mob party attended by Malcolm Rewa, Teina Pora and Roy Dunn. She said on the night of the murder she was at Roy Dunn's address when a Mongrel Mob member arrived at 11pm or midnight wearing bloodied clothing. She said she later burnt the clothes.

## Evaluation

### (a) Martha McLaughlin

234. Martha McLaughlin's identification evidence is problematical. Professor Neil Brewer,<sup>120</sup> who is an expert in eye witness identification, comments that identification from the photographs of a single suspect – a "showup" as it is called – results in a higher rate of false identifications than a "line up" when a witness is presented with a range of possibilities. It is a means of identification that is generally discouraged by the Courts.<sup>121</sup> That is because of the risk that a witness may unconsciously tend to think the person in the photograph is the person they had seen, the so called displacement effect.<sup>122</sup>

235. Martha McLaughlin's identification evidence was nevertheless admitted at Mr Pora's retrial.<sup>123</sup> Of relevance to the trial Judge's decision was that the evidence was gathered for the purpose of investigating Rewa's crimes, Mr Pora by then having been convicted. At the time Mr Pora was not under investigation. It was also seen as strictly

<sup>120</sup> Of the School of Psychology, Flinders University. See Professor Neil Brewer "Comments on Identification Evidence in the Case of Teina Pora", 28 August 2012.

<sup>121</sup> See for example *R v Tamihere* [1991] 1 NZLR 195 (CA) at 197-198.

<sup>122</sup> *R v Tamihere* [1991] 1 NZLR 195 (CA) at 197-198.

<sup>123</sup> *R v Pora* HC Auckland T.992309, 22 March 2000 at [11]-[13] per Williams J.

not evidence of identification at all on the basis that Ms McLaughlin was simply being assisted to put a name to a man with whom she was already familiar.<sup>124</sup>

236. For present purposes, I consider there is good reason to treat the photo identification evidence with considerable caution. The evidence is relied on for the purpose of showing that Martha McLaughlin had seen Rewa in the company of Mr Pora. She had not previously said she had met Rewa or anyone who looked like him. Her claim to have done so, and details of when that occurred, did not emerge until she had seen the photographs. There is a clear risk that, on the basis of a general resemblance, she could convince herself that the man in the photographs was the man she had seen.
237. Furthermore, identification was based on three encounters over four years previously, all of the them brief, one fleeting. I am highly sceptical of Martha McLaughlin's ability to recall the appearance and clothing of a man she met only briefly that long ago. She made no reference to a man answering Rewa's description in the statement she made a year earlier in which she exhaustively recounted her knowledge of Teina's acquaintances around 1992-1993. I am also sceptical that 45 minutes after the initial interview she was suddenly able to recall a nickname that had meant nothing to her when earlier mentioned.
238. Martha McLaughlin's evidence is contradicted by Trevor Brown. He was shown a photoboard of 12 photographs in May 1996. He did not recognise Malcolm Rewa. He was not called to give evidence but swore an affidavit for the purpose of the appeal.<sup>125</sup> He confirms that he was a friend of Teina Pora. He deposes that he has never seen or met Malcolm Rewa. He refutes Martha McLaughlin's evidence that she met Malcolm Rewa while with him and Teina Pora.
239. I find Martha McLaughlin's evidence of seeing Malcolm Rewa with Teina Pora unconvincing. I do not share her confidence that, after five years, she could recall the appearance and (belatedly) the nickname of a man she met and saw only briefly and

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<sup>124</sup> *R v Pora* HC Auckland T.992309, 22 March 2000 at [11].

<sup>125</sup> Affidavit of Trevor Mimetua Brown, sworn 6 March 2011.

whom she had no particular reason to remember. The method of photo identification only adds to this concern. Her evidence cannot stand against that of Trevor Brown.

(b) § 9(2)(a)  
§ 18(c)(ii)

240. § 9(2)(a)  
§ 18(c)(ii) had convictions for serious offences of violence and dishonesty. He received several indulgences from the police; Detective Sergeant Williams gave him a personal loan of \$150 and wrote a supportive letter to the Court when he was sentenced on domestic violence offending in 1999.<sup>126</sup> It appears also that he regarded himself as having been “targeted” by Mr Pora and his associates in prison. All are reasons to treat his evidence with caution reflecting, as they do, on his character and his motivation for incriminating Mr Pora.

241. The reliability of § 9(2)(a)  
§ 18(c)(ii) photo identification of Malcolm Rewa is questioned by Professor Brewer on a number of counts. It appears that § 9(2)(a)  
§ 18(c)(ii) had been shown the same photoboard previously and had not recognised anyone. Professor Brewer makes the obvious observation that it is unusual for a person’s memory to improve with the passage of time.

242. Professor Brewer was critical of the photo-array itself. He says only one other photo (no 2) was similar to the target photo (no 8), making the selection of one of those two photos the only plausible choices if § 9(2)(a)  
§ 18(c)(ii) had previously seen Malcolm Rewa or, more importantly, someone else of similar appearance, in the company of Mr Pora.

243. Thirdly, Professor Brewer comments on the means by which the identification of photo 8 took place. According to the police job sheet,<sup>127</sup> on viewing the photo board § 9(2)(a)  
§ 18(c)(ii) “eyes went straight to photo 8 and held there prior to scanning the rest of the board and returning to 8”. The following question and answer then took place:

“IS: Do you recognise anyone?”

HS: No

<sup>126</sup> It seems the letter was not used.

<sup>127</sup> Police job sheet dated 30 May 1996.

IS: I saw where you were looking, you recognise someone.  
 HS: Yeah, maybe  
 IS: Who?  
 HS: I recognise number 8"

244. Professor Brewer makes three points. First, the comment is in itself leading, explicitly suggesting to the witness that the administrator is aware that recognition has occurred and cueing the witness to report the outcome. This increases the likelihood that one or other of numbers 2 and 8 will be nominated.

245. Second, Professor Brewer says that studies of the visual behaviour of witnesses show that eye-scanning behaviour is a poor predictor of recognition accuracy even when measured with sophisticated techniques.

246. Finally, Professor Brewer says that the suggestion that the line up administrator could detect where the witness was looking needs to be treated with considerable scepticism. An experiment he conducted for the purpose led him to conclude that it is not possible for an observer to detect which face is being fixated on in a line up.

247. <sup>s 9(2)(a)</sup>  
<sup>s 18(c)(ii)</sup> gave evidence at the second trial of Malcolm Rewa in December 1998 as well as at Mr Pora's retrial in 2000. There are significant inconsistencies in his evidence of identification. They include a major and potentially significant discrepancy in the date on which <sup>s 9(2)(a)</sup>  
<sup>s 18(c)(ii)</sup> claimed to have first met Malcolm Rewa. At the Rewa trial he said he first met Rewa in September 1992. At the retrial he said he met him in February 1992, a few weeks before the murder.

248. A second inconsistency which has major implications for the reliability of <sup>s 9(2)(a)</sup>  
<sup>s 18(c)(ii)</sup> identification concerns the man he saw in the car with Teina Pora. In his statement of 8 March 1995 he describes him as a man with tribal tattoos on his face who is referred to by Fiona Bennett as "Uncle". At the retrial in 2000 he says that the man referred to in his March 1995 statement was Malcolm Rewa. He makes no mention of facial tattoos. In cross examination he was referred to his statement and to his description of the man as having what looked like tribal tattoos. He answered:



"Yes I did give a statement like that but thinking back now it was just more of a shadow through the glasses he was wearing".

249. Fiona Bennett disputes <sup>§ 9(2)(a)</sup> <sub>§ 18(c)(ii)</sub> claim to have met Malcolm Rewa through her. She was unable to identify Rewa when shown the 12 man photo board in 1996. She swore an affidavit in 2011 for the purpose of the appeal.<sup>128</sup> She rejects the claims (of <sup>§ 9(2)(a)</sup> <sub>§ 18(c)(ii)</sub> and Martha McLaughlin) that she knew Malcolm Rewa and that he had been at her house. She states that she has no recollection of the person <sup>§ 9(2)(a)</sup> <sub>§ 18(c)(ii)</sub> described as "Uncle" and disputes that she would refer to anyone as "Uncle" who was not actually an uncle.
250. Fiona Bennett was not called to give evidence. She spoke to Ms Dyhrberg, Mr Pora's counsel, several times during his trials but was never asked to give evidence.
251. Roy Dunn (also known as Roy Wong Tung) has also sworn an affidavit.<sup>129</sup> He describes himself as the spokesman for the Notorious Chapter of the Mongrel Mob. He speaks of being "being disturbed" to be named by Mr Pora as involved in the rape and murder of Susan Burdett.<sup>130</sup> He consented to providing a DNA sample and arranged to have the entire Mongrel Mob Notorious Club give DNA samples in order to put a stop to allegations that the Club was involved. Roy Dunn deposes that he does not recall knowing <sup>§ 9(2)(a)</sup> <sub>§ 18(c)(ii)</sub>. He knew Malcolm Rewa from when both were serving prison sentences in Wanganui prison in around 1979 or 1980. He was known as "Hammer". Mr Dunn says he has not seen him since. Mr Dunn is adamant that Rewa never came to his home and there was no occasion on which he was with him at Fiona Bennett's home. He says he never went to Mr Pora's home.
252. Mr Dunn deposes that from 1982 through to the late 1990s the Mongrel Mob Notorious and Highway 61 of which Malcolm Rewa was a senior member were at war with each other. He said it is unthinkable that he would have associated with him

<sup>128</sup> Affidavit of Fiona Anne Larissa Jacqueline Bennett, sworn 7 March 2011.

<sup>129</sup> Affidavit of Roy Dunn, sworn 25 February 2010.

<sup>130</sup> Affidavit of Roy Dunn, sworn 25 February 2010 at [7].

during that time.<sup>131</sup> It was a time when members of the two gangs “would attack each other on sight”.

253. Mr Dunn said he has never been asked by the police if he knew or associated with Malcolm Rewa, either on his own or with Teina Pora. He was never spoken to by counsel who represented Mr Pora in his trials.

254. Mr Dunn’s evidence regarding the relationship between the Mongrel Mob and Highway 61 gangs is supported by Dr Jarrod Gilbert, a sociologist teaching at Canterbury University and an acknowledged expert on gangs in New Zealand.<sup>132</sup> Dr Gilbert confirms that in 1992 and 1993 (and for a lengthy period before and after) there was deep-seated enmity between the Mongrel Mob and Highway 61 gangs.<sup>133</sup> On the Mongrel Mob side he said the Notorious Chapter, of which Roy Dunn was a founding member, was the leading antagonist. He says it would be very unlikely for individual members of warring gangs to fraternise. To do so would almost certainly lead to drastic disciplinary action. Dr Gilbert comments that, as Teina Pora was neither a member nor a prospective member of the Mongrel Mob and moved on the fringes of gang society, his relationship with Roy Dunn would have been distant. For him to have had an association with a senior member of a rival gang would, he said, be “highly unusual”, indeed unprecedented in his experience.<sup>134</sup>

255. In response the Crown refers to a statement by Noel Schultz, a retired police constable who was South Auckland Gang Liaison Officer between 1982 and 1996.<sup>135</sup> He says that there was not always hostility between opposing gang members. He uses as an example the ongoing relationship between Roy Dunn and his brother Ringo who was a patched member of the Head Hunters gang.

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<sup>131</sup> Affidavit of Roy Dunn, sworn 25 February 2010 at [23].

<sup>132</sup> Affidavit of Jarrod David Gilbert, sworn 27 February 2012. Mr Gilbert has a PhD and a first class honours degree in Sociology from the University of Canterbury. The topic of his PhD thesis was the rise and development of gangs in New Zealand.

<sup>133</sup> Affidavit of Jarrod David Gilbert, sworn 27 February 2012 at [20].

<sup>134</sup> Affidavit of Jarrod David Gilbert, sworn 27 February 2012 at [40]-[42].

<sup>135</sup> Statement of Noel William Schultz, 24 August 2015.

256. The sole example cited by Mr Schultz is not a persuasive answer to the evidence of Dr Gilbert and Mr Dunn himself. The notion that Malcolm Rewa regularly fraternised with Roy Dunn when their respective gangs were at war and was on friendly terms with someone who did not even reach the lowest ranks of the gang hierarchy, seems farfetched indeed. I am reinforced in the view that <sup>§ 9(2)(a)</sup> § 18(c)(ii) evidence cannot be relied on to establish a link between Malcolm Rewa and Teina Pora.

(c) § 9(2)(a)

257. Unlike the others who attested to a relationship between Malcolm Rewa and Teina Pora, § 9(2)(a) was able to point to a pre-existing, if distant, relationship with Malcolm Rewa. She had also known Roy Dunn since she was a child; they were distantly related. It follows that her evidence of a close and ongoing relationship between Malcolm Rewa and Mongrel Mob is unlikely to be the result of honest error. If the evidence is wrong, it is because she made it up.

258. There are reasons why she might have done so. § 9(2)(a) appears to have had an ambivalent relationship with the Mongrel Mob. Her partner, a former patched member himself, was apparently assaulted by gang members. Roy Dunn told the Police he believed § 9(2)(a) was "out to get us for what happened to her man... when he got the "bash" from the boys".<sup>136</sup> Her evidence in the Rewa trial directly implicated Roy Dunn and other gang members in the Susan Burdett offending. One of those whom she implicated subsequently became the focus of a covert operation involving the interception of his private communications. No arrests ensued.

§ 9(2)(a) was paid a reward of \$7,000.

259. § 9(2)(a) was undoubtedly well placed to give evidence linking Mr Rewa to the Mongrel Mob. She was closely connected with the organisation. But her evidence of a close and continuing relationship between Rewa and the Mongrel Mob runs counter to informed expectations as well as the evidence of Dr Gilbert, and is, of course, utterly rejected by Roy Dunn. I cannot exclude the possibility that she was

<sup>136</sup> Job Sheet of Detective Inspector S J Rutherford 24 July 1998.

responding to financial inducements and motivated by antipathy towards the Mongrel Mob.

## Conclusion

260. Evidence of an association between Pora and Malcolm Rewa that predated the rape and murder of Ms Burdett became focal to the police investigation. After Rewa was identified as the rapist by DNA evidence, Detective Sergeant Williams wrote in his notebook:

“Who should we see to show an association between Hama [Rewa] and Teina”

The possibility that Malcolm Rewa may have acted alone seems to have been excluded.

261. Those who could and did provide evidence of an association were not those whom it might be thought were best placed to do so. Trevor Brown, Teina’s friend and criminal associate in 1992, and Fiona Bennett did not recognise Malcolm Rewa when shown the photoboard and were not spoken to again. Richard Bennett did not recognise him either though he had only lived in Auckland for a month or two at the time of the murder.<sup>137</sup> Instead it was  $\begin{matrix} \S 9(2)(a) \\ \S 18(c)(ii) \end{matrix}$  who, among other things, seems to have exaggerated his friendship with Teina Pora, and Martha McLaughlin who provided the link in 1996.

262. There is evidence that some of the information provided by  $\begin{matrix} \S 9(2)(a) \\ \S 18(c)(ii) \end{matrix}$  may have found its way into Martha McLaughlin’s statement a few weeks later. Both refer to a man named Trevor Bennett. There is nothing to indicate a person of that name existed in Teina Pora’s social circle. Fiona Bennett’s brother is called Richard. They may have been referring to Trevor Brown.<sup>138</sup> It is, however, odd that both should make the same mistake.

<sup>137</sup> Notes of evidence at p47.

<sup>138</sup> In his statement of 8 March 1995  $\begin{matrix} \S 9(2)(a) \\ \S 18(c)(ii) \end{matrix}$  refers to “another Trevor... I don’t know his last name.”

263. Both also refer to Fiona Bennett's friend "Uncle" whom <sup>s 9(2)(a)</sup><sub>s 18(c)(i)</sub> insisted in evidence was Malcolm Rewa notwithstanding that Malcolm Rewa's face is not tattooed.<sup>139</sup> Both referred to "Uncle" as being a gang member, Martha McLaughlin adding "... the only gang I know Teina hung out with was the Mongrel Mob".<sup>140</sup>
264. <sup>s 9(2)(a)</sup><sub>s 18(c)(i)</sub> and Martha McLaughlin went out of their way to help the police in 1995 and 1996. It is not clear why either did so. The agendas of each was suspect. Neither had identified a person who matched the description of Rewa when giving statements before Rewa's arrest. The process by which they identified Rewa from a photograph the following year was seriously flawed.
265. In my judgment the evidence of an association between Teina Pora and Malcolm Rewa at or around the time of Susan Burdett's murder cannot be relied on. I consider it most unlikely that Rewa moved in Mongrel Mob circles in 1992-1993 or at any time. Leaving aside Mure McLaughlin, who did not attempt to maintain at trial that he had seen Malcolm Rewa before, there is good reason to doubt both the integrity and the reliability of the other witnesses relied on.

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<sup>139</sup> It will be recalled that he explained this by the shadows in the car.

<sup>140</sup> Statement of Martha Huirua McLaughlin, 30 March 1995 at 6. This statement was made a year before DNA was discovered connecting Mr Rewa to Ms Burdett.

## (12) MALCOLM REWA - DID HE ACT ALONE?

### Introduction

266. Malcolm Rewa is known to have carried out sexual attacks on lone women at least 27 times. He had a distinctive *modus operandi*. There were a number of common features or “signatures” to his offending. Some were evident in the attack on Ms Burdett.

267. One of the features of Rewa’s offending is that he invariably acted alone. For Mr Pora it is submitted that there is no reason to think that he did not follow his usual pattern of offending in the attack on Ms Burdett. Further, it is argued that it is inconceivable that he would have invited Teina Pora to accompany him.

268. The Crown disputes this, contending that there are features of the offending against Ms Burdett which distinguish it from the way Mr Rewa usually operated and which support the proposition that he did not act alone.

269. Among the common features of Rewa’s offending are:

- (a) His victims were younger women (age range 16 to 43), the majority in their 20s and 30s.
- (b) They lived alone (in a few cases with children) and were attacked in their homes at night, often when in bed asleep.
- (c) Typically victims were bound and gagged and their head and upper body covered, often with a pillow or bedclothes. The victim’s lower body was exposed and frequently she was positioned with her bottom on the bed and her feet on the floor.
- (d) Victims were often punched and/or throttled and subjected to threats of violence though generally the level of violence was moderate and did not result in serious injury.

- (e) There was often digital penetration and oral sex prior to penile penetration.
- (f) Erectile dysfunction was identified in many cases, associated with self-masturbation to achieve or maintain an erection.
- (g) Cash and/or goods were often taken from other areas of the victim's house.

270. What is known about the attack on Susan Burdett shows that in many respects it was typical of the way Malcolm Rewa operated. Indeed, at his retrial on the charges of murdering and raping Ms Burdett, the Crown relied on similarities with his proven offending to establish his guilt.<sup>141</sup> However, in argument before the Privy Council, and for the purpose of Mr Pora's compensation claim, the Crown says that, notwithstanding the presence of such features, the offending against Ms Burdett was atypical of Malcolm Rewa's offending and consistent with the proposition that he did not act alone.

271. In asserting, to the contrary, that the evidence is consistent with Rewa acting alone, Mr Pora relies on two distinctive characteristics of Malcolm Rewa and his offending. The first is that he habitually acted alone. The second is his erectile dysfunction.

### **The evidence relied on**

272. David Bruce Henwood is a non-sworn member of the New Zealand Police who retired in 2007. He was involved in several police operations set up to apprehend serial sex offenders, one of which led to the arrest and prosecution of Malcolm Rewa. He gave evidence at the first Rewa trial of the common features of the alleged offending. His expertise for that purpose was accepted.<sup>142</sup>

273. Mr Henwood swore an affidavit for the purpose of Mr Pora's appeal.<sup>143</sup> He deposes that his analysis of the evidence of all the scenes of Malcolm Rewa's offending

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<sup>141</sup> In submissions in support of a successful application to rely on such evidence, 8 features of the attack on Ms Burdett were identified as linking it with Rewa's offending against other women - Synopsis of Crown Submissions as to the Admissibility of Rape Complainant Evidence, 8 October 1998 at 1.

<sup>142</sup> *R v Rewa* HC Auckland T322/96, 5 March 1998 at 2-3 per Anderson J.

<sup>143</sup> Affidavit of David Bruce Henwood, sworn 30 July 2014.

revealed no evidence of the presence of a co-offender on any occasion.<sup>144</sup> He says there were occasions on which Rewa acted as though he was talking to a co-offender. He believes that to have been a “controlling ruse”.<sup>145</sup>

274. Mr Rewa suffers from what is known as conditional erectile dysfunction. In this condition an erection can be achieved only by forced oral or manual stimulation by the victim or by self-masturbation. Mr Henwood says that most sexual offenders suffering from conditional dysfunction involve their victim in their attempts to achieve an erection. The cases involving Malcolm Rewa were not typical in this regard. He took great steps to minimise any sort of contact with the victim, employing scopophilia (shining a torch on the victim’s genitals) and self-masturbation to achieve an erection.<sup>146</sup> He would cover the victim’s upper body and face and take steps to prevent their viewing either his difficulty in gaining an erection or his masturbation. On occasions he would move to another part of the room.

275. Mr Henwood is of the opinion that Malcolm Rewa would not have allowed Mr Pora or anyone else to accompany him on this one occasion. He says Rewa, as a “macho loner” of 40 years of age, would not have taken a 16 year old Mongrel Mob associate, especially as it would have revealed his erectile dysfunction.

276. Professor Laurence Alison is the Chair in Forensic Psychology at the University of Liverpool and is an expert in criminal profiling. He provided a report dated 12 March 2013 at the request of Mr Pora’s advisers.<sup>147</sup> He describes the rape of Ms Burdett as entirely consistent with Rewa’s behavioural style up to that point – a female victim approximately the same age as Rewa, attacked in her home and whilst alone. As in many of the other attacks, she was in her bedroom, naked (though with her head covered) and with her legs hanging over the side of the bed.

277. Professor Alison expresses the view that it is much more likely that Malcolm Rewa acted alone than with another. He gives three reasons for his view. First, rapists tend

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<sup>144</sup> Affidavit of David Bruce Henwood, sworn 30 July 2014 at [56].

<sup>145</sup> Affidavit of David Bruce Henwood, sworn 30 July 2014 at [57].

<sup>146</sup> 17 out of Rewa’s 27 victims reported Mr Rewa’s self masturbation.

<sup>147</sup> Professor Laurence Alison “Report in Relation to the Rape and Murder of Susan Burdett”, 12 March 2013.



to be thematically and specifically behaviourally consistent. If they are used to working on their own there is no logical reason why they would begin to work with a co-offender.

278. Second, Professor Alison observes that Rewa appears to enjoy both elements of control and quasi intimacy. He had shown himself to be quite effective at controlling women on his own. Professor Alison comments that this was one of the very rare attacks where a victim aggressively appeared to have fought back.
279. Third, Professor Alison comments that if Rewa and Mr Pora had worked together they were “a very unusual team”. He says the age gap of nearly 25 years is extremely unusual for a co-offender rape. He comments that it is hard to imagine what conditions would have led Rewa, who for many years was raping women as a sole offender, to change his behavioural style to include offending in which a much younger man was involved.
280. Professor Alison responds to the argument that the greater level of violence supports the proposition that Mr Rewa did not act alone. He says:<sup>148</sup>

“The two competing hypothesis are that the violence emerged as a product of now working in a co offending group or for some other reason, or combination of reasons. In my view that latter seems more probable – Rewa’s pattern of offending was becoming more violent and in many cases more brazen (we can see this in the escalation of multiple violence over time) and also less intimate. Moreover, Rewa responds especially badly to resistance and part of his sexuality appears to be compliant, bound and controlled victims. Many of the verbal interactions and most of the physical ones are directed at controlling and achieving compliance, with a preference for a particular physical position of the victim for attempted intercourse (with, on several occasions self masturbation). Thus, a more plausible theory for violence might be a failure on Rewa’s part to control Susan Burdett, followed by an altercation and an unfortunate weapon of availability. Such violent interactions can escalate very quickly and with fatal consequences. We do know that Rewa was prepared to knock other victims unconscious and use extreme violence to maintain control so it is not surprising that sooner or later a failure of control would lead to murder.”

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<sup>148</sup> Professor Laurence Alison “Report in Relation to the Rape and Murder of Susan Burdett”, 12 March 2013 at 18.

281. Professor Glynn Owens.<sup>149</sup> has made a particular study of the relationship between masculinity and wellbeing and is the author of a book and several articles on the subject. He expresses the view that it is inconceivable that Rewa, as a leading member of the Highway 61 motorcycle gang, would deliberately expose himself to potential ridicule by inviting a much younger male to a rape scene where his sexual dysfunction would become apparent. He concludes:<sup>150</sup>

“Mr Rewa's pattern of offending consistently showed a pattern of operating alone. There would need to be compelling evidence to justify a claim that on the occasion of Susan Burdett's rape and murder he suddenly decided to deviate from this pattern and take along a young male.

By contrast, Mr Rewa's previous history of erectile difficulties during his attacks lends considerable weight to the belief that he would remain consistent in his pattern of working alone. To have had his sexual problems brought into the open by the presence of a witness would have resulted in considerable humiliation, loss of face and loss of status among his associates. He clearly would not have risked this without good reason.

Although it is possible to speculate on possible scenarios which might have led to his taking along Mr Pora, on closer examination these scenarios turn out to be entirely unconvincing.

I therefore respectfully offer the professional opinion that Mr Rewa would have had to have very compelling reasons to deviate from his normal practice and take along Mr Pora. In the absence of any evidence regarding such reasons, I conclude that it is unreasonable to assume that he did so.”

### **The Crown's challenge to the evidence**

282. The Crown takes issue with the opinion evidence. Mr Henwood's experience is said to provide an insufficient basis for him to conclude that Malcolm Rewa acted alone. The Crown says that his expertise lies in the identification of characteristics common to the Rewa victims; it does not extend to the manner in which Mr Rewa or other serial rapists would necessarily act or react on any particular occasion.

283. Professor Owens' expertise in the relationship between masculinity and wellbeing does not, it is said, qualify him to comment on how a particular offender would act on a given occasion. The proposition that Rewa's erectile dysfunction made it less likely

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<sup>149</sup> Professor of Psychology at Auckland University.

<sup>150</sup> See Affidavit of Richard Glynn Owens, sworn 25 June 2014 annexing as exhibit A: Brief of Evidence, Professor Richard Glynn Owens at [18].

that Mr Pora would be present is described as speculative and requiring, as the Privy Council is said to have accepted, “a leap of faith”.<sup>151</sup>

284. The Crown says Professor Alison’s evidence must be approached with caution as criminal profiling is still in its infancy; it can only look to the most likely sequence of events; it cannot account for unusual or “outlier” events; and it is necessarily general in nature. For these and other reasons, the New Zealand Court of Appeal has held psychological profiling evidence is not substantially helpful to criminal courts.<sup>152</sup>

### **Evaluation**

285. I acknowledge that the expert evidence should be received subject to the caveats identified by the Crown. I accept without question that it is not appropriate for the experts or, indeed, possible for me to conclude with certainty on the basis of Rewa’s established pattern of offending, that Mr Pora was not present when Ms Burdett was murdered. What I can do, is to have regard to the expert evidence in coming to my own view on the likelihood of Mr Pora being present.

286. For this purpose, I proceed on the basis that Rewa habitually acted alone. There are suggestions in the evidence he gave at his trial<sup>153</sup> that others may have been present on isolated occasions. His evidence was self-serving and cannot be preferred to the objective analysis of Mr Henwood. Rewa, does not, in any event, claim that others were present when he assaulted the victim.

287. The Crown referred me to a statement made by a woman, now deceased, who claimed to have been sexually assaulted by Rewa and another in the late 1970s and 1980. While she describes sexual assaults by each, there is nothing to show they acted together. Indeed she says that on one occasion Rewa locked the door before

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<sup>151</sup> In fact what the Privy Council accepted to be conjectural was the contention that a jury may have been more disposed to find that Mr Pora was not present if it had heard evidence of Rewa’s erectile dysfunction. That is not the same as saying that Rewa’s erectile dysfunction could not have affected a decision on whether to invite someone to accompany him. *Pora v R* [2015] UKPC 9, (2015) 27 CRNZ 47 at [54]

<sup>152</sup> *R v Evans* [2010] NZCA 340, (2010) 25 CRNZ 155 at [21].

<sup>153</sup> Transcript of viva voce evidence of Malcolm Rewa in *R v Rewa*, 12 May 1998 at 1395-1399.

subjecting her to sexual indignities. (She refers to his having difficulty achieving and maintaining an erection).

288. Some of the familiar, though by no means invariable, features of Malcolm Rewa's attacks were not evident in the attack on Ms Burdett. There is, for example, no evidence that she was bound. Unlike most of Rewa's victims her upper body was unclothed (though a t-shirt found on the bed and a bra partially over her head could have been removed or come off during the struggle). The only significant feature to distinguish the Burdett case from the 26 other known offences, is the nature and degree of violence. Only on one other occasion was a blunt instrument used by Malcolm Rewa as a weapon and that was itself a relatively unusual case where the victim was attacked while getting back into her vehicle after stopping at an ATM machine. The extreme brutality of the attack on Ms Burdett and its tragic consequence distinguish it from all the rest.
289. The Crown says this tells against the theory that on the night of the murder Malcolm Rewa acted alone. I am not persuaded that it does. In all other cases Malcolm Rewa used sufficient force to subdue the victim. Usually he achieved this by punching or throttling or a combination of the two. On at least one occasion the victim was rendered unconscious. Physical violence tailed off when the victim ceased or was rendered unable to resist. While there is little evidence of gratuitous violence, Malcolm Rewa used brutal and substantial force when required.
290. What Malcolm Rewa encountered when he accosted Ms Burdett in her bedroom appears to have differed from what he was accustomed to in at least two respects. First, there was a weapon nearby. Second, it appears that Ms Burdett fought back fiercely. She had taken a self-defence course. She was physically strong. She had defensive wounds on her hands. Dr Koelmeyer said one such wound was unlikely to be caused by the bat but could have resulted from a punch thrown by Ms Burdett. It seems likely that substantial force was needed to subdue her. With a baseball bat close at hand, it is not difficult to envisage how the level of violence could have quickly escalated,

291. I do not accept that the presence of a second person is necessary to account for the homicide. And I strongly incline to the view that it would have been extraordinary indeed if Mr Rewa had chosen to involve Mr Pora. The reasoning of Professor Alison is appealing, not just for its theoretical underpinnings, but also because it conforms to common sense. Why would a man who preys on women purely for his own gratification, and has an established and successful modus operandi, suddenly choose to involve an accomplice? If he did, why would he choose to invite a youth associated with a rival gang, whose vulnerability must have been obvious for all to see?

292. I am also attracted to the proposition that the erectile dysfunction that was a permanent feature of Malcolm Rewa's offending decreases the likelihood of his involving another man in his offending. While the Crown was inclined to deprecate Professor Owens' view that a person in Rewa's position would not have risked humiliation, loss of face and loss of status by revealing his sexual problems to associates, I find his evidence persuasive. I have no difficulty accepting that a man, even a man of Malcolm Rewa's perverted sexual proclivities, would be unlikely to involve another man in his sexual activities, if to do so involved exposing serious sexual dysfunction. The Privy Council accepted the same sentiment, albeit in somewhat more restrained terms, when it said:<sup>154</sup>

"The theory that [Mr Rewa's] confidence would have been contingent on the absence of other men is not implausible."

293. It is noteworthy that, in the course of an interview in which Malcolm Rewa flatly refused to provide information, he was asked about knowing Mr Pora. The interview continued:<sup>155</sup>

Q. "Have you read about Teina PORA being charged with and convicted of the Burdett homicide?"

A. "Yeah"

Q. "You don't know him?"

A. "Never met him. I'm not saying any more."

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<sup>154</sup> *Pora v R* [2015] UKPC 9, (2015) 27 CRNZ 47 at [53].

<sup>155</sup> Affidavit of David Bruce Henwood, sworn 30 July 2014 at [27].

In this respect, at least, I believe Rewa to be telling the truth.

### **Conclusion**

294. The evidence of Malcolm Rewa's modus operandi associated with his erectile dysfunction makes it extremely unlikely that he involved another person in the attack on Ms Burdett. The excessive violence employed is readily explicable; it neither requires nor necessarily suggests the presence of another person.

### (13) CONDUCT INCONSISTENT WITH INNOCENCE

295. The Crown asks me to consider communications made on behalf of Mr Pora immediately before his trial in 1994 and his retrial in 2000 which are said to be capable of rebutting Mr Pora's contentions that he is suggestible, innocent, and has consistently maintained his innocence. I am also asked to have regard to negotiations undertaken through his counsel while he was in prison. It is acknowledged the material would not be introduced for the purpose of a prosecution. I am asked to receive it in the interests of justice as of relevance to the central issue in this case.
296. In an affidavit sworn on 23 September 1999 in opposition to Teina Pora's appeal against conviction Paul Davison QC<sup>156</sup>, senior counsel for the prosecution at both the trial and retrial, deposed to approaches made by Ms Marie Dyhrberg QC, Mr Pora's counsel, immediately before the commencement of the trial in 1994. He said Ms Dyhrberg had advised him that "she might get instructions from the appellant which named names".<sup>157</sup> Mr Davison said he made it clear to her that the Crown intended to proceed on the basis of what Mr Pora had disclosed in his confession which, on the Crown's view, made him a party to murder and rape, and any further information he provided would be used, if it was thought fit, to assist the Crown case.
297. The commencement of the trial was delayed while Ms Dyhrberg took instructions. Having done so, she told Mr Davison that she had told the appellant she would not speak to the Crown without Mr Pora telling her the truth, and all of it. She said her client had said to her that he was prepared to speak to her and tell her everything. The matter was taken no further. The trial commenced with Mr Pora giving evidence denying his participation.
298. The Crown also refers to correspondence which took place immediately before Mr Pora's retrial and which records discussions between counsel. The correspondence discloses that at a meeting of counsel on 10 March 2000, the Friday before the Monday on which the trial was due to commence, Ms Dyhrberg was asked by Mr

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<sup>156</sup> Now the Honourable Justice Davison. Affidavit of Paul Joseph Davison, sworn 23 September 1999.

<sup>157</sup> Affidavit of Paul Joseph Davison, sworn 23 September 1999 at [7].

Davison whether any consideration had been given by the defence to offering a plea of guilty to manslaughter as, he records, was done on the first day of Mr Pora's first trial. Ms Dyhrberg advised him that she would confer with her client and junior counsel. She advised junior counsel for the Crown, Mr Ross Burns, on Monday 13 March that she had instructions to ascertain whether the Crown would accept pleas of guilty to manslaughter and rape. At a conference before the trial judge, Ms Dyhrberg confirmed those instructions and sought a sentence indication from the Court. She advised that she considered it her duty to provide her client with a range of all the available options. The Judge commented on the reluctance of the High Court to provide sentence indications. The matter was taken no further.

299. The Crown also refers to exchanges that took place in 1995-1996. Detective Sergeant Williams explains in an affidavit sworn for the purpose of the compensation application that in 1995 the Police had reached the view that there was a serial rapist operating in the Auckland area and that he was responsible for the semen found inside Ms Burdett's body. Mr Pora was approached through Ms Dyhrberg and after a series of exchanges he advised that he would identify the offender in return for a reward of \$50,000, a letter to the parole board and a transfer to a minimum security prison.

300. For the Crown it is submitted that Mr Pora's offer to "name names" at his first trial and following his conviction in 1995 and 1996 sits uncomfortably with innocence and with the proposition that the prospect of a reward induced a false confession in 1993. His dealings with the Police are said to confirm that he is capable of making informed decisions and exploring opportunities for forensic advantage notwithstanding his difficulties.

301. The materials relied on by the Crown were referred to Ms Dyhrberg for comment. She is adamant that any discussions regarding a possible guilty plea were at her instigation alone.<sup>158</sup> She states that Mr Pora never asked her to approach the Crown and offer a guilty plea or advised her that he would enter such a plea or that he was guilty of any

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<sup>158</sup> Marie Dyhrberg QC "Teina Pora- Compensation Claim", Letter dated 18 September 2015 at 1.



of the charges. She states that he always maintained that he was not present when Susan Burdett was raped and murdered and that he had nothing to do with her death and rape.

302. Ms Dyhrberg says that any references to a \$50,000 reward, to assistance at parole hearings and to prison benefits were as a result of an approach made to her by the Police. The Police offered Mr Pora a reward of \$50,000, a letter at his parole hearing after he had served 7 years and benefits while in prison if he could help identify the serial rapist who was responsible for the rape and murder of Ms Burdett. She twice visited Mr Pora in prison with the costs of her travel and accommodation being met by the Police. She advised him of the existence of an identified serial rapist whose name had been linked to the Burdett homicide and rape. He did not offer names at the first visit. He gave a couple of names at the second visit. These were excluded through DNA testing. He did not suggest to Ms Dyhrberg that he could provide the names because he was present when the offending took place.
303. Ms Dyhrberg is clear that Mr Pora has never, directly or by implication, admitted to her that he was involved in any way with the murder and rape of Susan Burdett. She says his position has always been that he is not guilty because he was not involved or present at the scene of the offences.
304. I find nothing in these events to support an inference of guilt. The pre-trial exchanges in 1994 and 2000 are no more than instances of defence counsel discharging her duty to ensure that all available options were presented to her client. The negotiations in 1995 and 1996 are very much in keeping with the clumsy and foredoomed attempt Mr Pora made to advance his interests in 1993, both typical of the sort of thinking identified by Dr McGinn and Dr Immelman as characteristic of FASD victims.
305. With the assistance of Ms Dyhrberg, Mr Pora put himself in a position which would likely secure his early release from prison, more agreeable conditions while he remained in prison and a large sum of money. His failure to take advantage of the offer is susceptible of only one explanation. He did not name the rapist because he

did not know who he was. He did not know who the rapist was because he was not present when Ms Burdett was raped and murdered.

#### **(14) CONCLUSION**

306. The evidence relied on to implicate Teina Pora in the rape and murder of Ms Burdett has been considered in three broad categories:

- The confession
- Independent evidence
- Evidence of association with Malcolm Rewa

While it has been convenient to examine the evidence in this way, no part of it stands alone. On the Crown case the evidence combines and interlocks to present a mosaic in which Mr Pora stands beside Malcolm Rewa when Ms Burdett was raped murdered. There may or may not be a third person present.

307. Most of the pieces for the mosaic were provided by Mr Pora himself. It is his story. The critical question is whether it is believable. It is said to broadly conform to the forensic evidence; to show knowledge unlikely to be possessed by someone who was not there; and to be supported by the evidence of other witnesses.

308. That is not the view I take. I find Mr Pora's version of events simply cannot withstand critical scrutiny. All the indications are that he made it up as he went along. Lured by the prospect of a reward, lulled by the belief that the consequences for him would not be drastic and with his judgment and his thinking befuddled by FASD, Mr Pora set out to persuade the Police that he was there. Against the odds he succeeded by using knowledge he already had, information unwittingly fed to him by his interrogators and with the help of family members who had already formed the view that he was guilty and were willing accomplices.

309. However, on objective analysis what Mr Pora told the Police and others, was a transparent concoction. Time and again he showed he had no idea of what had happened. He did not know how to get to Ms Burdett's house; he did not know the house; he did not know what she looked like. He did not disclose anything that he

could have known only if he had been present. On the contrary, he made mistakes that he would not have made if he had been present. His account is so plainly a fabrication that it collapses under its own weight.

310. What then of the “independent” evidence that is said to corroborate the confession? Most of it emanated from family members who had already decided that it was Teina “that did it”. Subsequent events have served to vindicate the judgment of Detective Sergeant Wright St Clair that family members conspired to incriminate Teina Pora. The “assistance” they gave to the Crown case, including highly persuasive evidence purporting to link Mr Pora to the crime scene, had its origins in that mind-set.
311. The evidence of members of Mr Pora’s extended family is also relied on to show an association between him and Malcolm Rewa. I have explained why I regard that evidence as similarly suspect. Regardless, I find the undisputed evidence leads to the irresistible inference that Malcolm Rewa acted alone and was solely responsible for the rape and murder of Ms Burdett. There is no credible evidence to show that he was accompanied by Mr Pora.
312. Mr Pora has established on the balance of probabilities that he is innocent of the crimes of which he was accused and convicted in relation to the rape and murder of Ms Burdett. Indeed, the state of the evidence is such that, in my view, he could have proved his innocence to an even higher standard.

23 March 2016  
Rodney Hansen CNZM QC  
Shortland Chambers  
Auckland

## APPENDIX 1

### Chronology of Significant Events

|                       |  |
|-----------------------|--|
| 23 March 1992         | Susan Burdett is killed  |
| 6 April 1992          | Terry McLaughlin contacts police about Teina Pora's alleged involvement  |
| 6 April 1992          | Teina Pora interviewed by Police   |
| 28 May 1992           | Teina Pora again interviewed by Police   |
| 10 June 1992          | Police decide to take no further action against Teina Pora   |
| 18 March 1993         | Teina Pora arrested on outstanding charges   |
| 18-21 March 1993      | Teina Pora interviewed by Police in connection with the murder of Susan Burdett                                    |
| 23 March 1993         | Teina Pora charged with the rape and murder of Susan Burdett   |
| 8 March 1994          | Teina Pora's confessions are ruled admissible  |
| 2 June 1994           | <sup>s 9(2)(a)</sup><br><sup>s 18(c)(ii)</sup> first statement to Police   |
| 7-15 June 1994        | First trial of Teina Pora  |
| 1 July 1994           | Teina Pora sentenced to life imprisonment  |
| 8 March 1995          | <sup>s 9(2)(a)</sup><br><sup>s 18(c)(ii)</sup> second statement to Police  |
| 30 March 1995         | Martha McLaughlin's first statement to Police  |
| 24 May 1995           | Teina Pora makes a further statement to police   |
| May 1996              | Malcom Rewa arrested and charged with multiple counts of sexual violation and the rape and murder of Susan Burdett |
| 20 May 1996           | Martha McLaughlin identifies Malcolm Rewa  |
| 29 May 1996           | <sup>s 9(2)(a)</sup><br><sup>s 18(c)(ii)</sup> identifies Malcom Rewa  |
| March-June 1998       | First trial of Malcolm Rewa  |
| December 1998         | Retrial of Malcolm Rewa  |
| 18 October 1999       | Court of Appeal quashes Teina Pora's convictions   |
| 20 March-6 April 2000 | Retrial of Teina Pora  |
| 6 April 2000          | Guilty verdicts  |
| 23 June 2000          | Teina Pora sentenced to life imprisonment  |
| 12 October 2000       | Court of Appeal dismiss Teina Pora's appeal against conviction   |

|                   |  |
|-------------------|--|
| 20 August 2013    | Teina Pora files application for leave to appeal to Privy Council              |
| 31 January 2014   | Privy Council grants leave to appeal   |
| 4-5 November 2014 | Privy Council hearing  |
| 3 March 2015      | Privy Council quashes Teina Pora's convictions                                 |
| 30 March 2015     | Privy Council orders that Teina Pora is not to be retried                      |
| 13 April 2015     | Teina Pora applies for compensation  |
| 4 June 2015       | Rodney Hansen QC appointed to review Teina Pora's application for compensation |

## APPENDIX 2

### Persons named in the report

#### Susan Burdett's family and friends

|                     |                             |
|---------------------|-----------------------------|
| Mary Burdett        | Susan's mother              |
| Dianne Dawson       | Friend of Susan Burdett     |
| Winifred O'Sullivan | Susan's next door neighbour |

#### Members of Teina Pora's Extended Family

|                    |  |
|--------------------|--|
| Terry McLaughlin   | Teina Pora's aunt, his mother's sister   |
| Maurice McLaughlin | Terry's husband                          |
| Martha McLaughlin  | daughter of Terry and Maurice            |
| Mure McLaughlin    | son of Terry and Maurice                 |
| Rita Pora          | Teina Pora's mother                      |
| Cedric Rangī       | Teina Pora's father                      |
| Paula Pora         | Teina Pora's half-sister                 |
| Lobelia Pora       | Teina Pora's sister                      |
| Vicki Pora         | Teina Pora's aunt, his mother's sister   |
| Mihi Tuhua         | Teina Pora's aunt, his mother's sister   |
| John Pora          | Teina Pora's uncle, his mother's brother |
| Tiki Pora          | Teina Pora's uncle, his mother's brother |
| Matekino Matangi   | Teina Pora's aunt, married to Tiki Pora  |

#### Friends and other associates of Teina Pora

|                                  |   |
|----------------------------------|---|
| Fiona Bennett                    | Teina Pora's girlfriend                               |
| Chanelle Bennett                 | daughter of Fiona Bennett and Teina Pora              |
| Richard Bennett                  | Fiona's brother and a friend of Teina Pora            |
| Alexandra Bennett                | Fiona and Richard's sister                            |
| Trevor Brown                     | friend of Teina Pora                                  |
| Ringo Dunn                       | Roy Dunn's brother                                    |
| Roy Wong Tung aka Roy Dunn (Dog) | President of the Notorious Chapter of the Mongrel Mob |
| Terrence Kiro                    | friend of Teina Pora                                  |
| Reuben Peihopa                   | friend of Teina Pora                                  |
| Gert Tengboon (Hound)            | Member of the Mongrel Mob and associate of Roy Dunn   |

**Other witnesses**

s 9(2)(a)  
s 9(2)(a)  
Linda Morrow  
s 9(2)(a)  
s 18(1)(ii)

former bowler  
Mongrel Mob associate  
former Super Strike employee  
friend of Fiona Bennett

**Police**

R A Burgess  
Neil Grimstone  
Stephen Rutherford  
Noel Schultz  
Mark Williams  
Karl Wright St Clair

Detective  
Detective Sergeant  
Detective Inspector  
Former police officer  
Detective Sergeant  
Detective Sergeant

**Experts**

Professor Laurence Alison  
Dr Suzanne Blackwell  
Professor Neil Brewer  
Dr Jarrod Gilbert  
Professor Gisli Gudjonsson  
David Henwood  
Dr Andrew Craig Immelman  
Dr Timothy Koelmeyer  
Dr Valerie McGinn  
Dr Anthony Morrison  
Dr Jon Nuth  
Professor Glynn Owens

Professor of Forensic Psychology  
Clinical Psychologist  
Professor of Psychology  
Sociologist  
Professor of Psychology  
Retired Police Sergeant  
Clinical Psychiatrist  
Pathologist  
Clinical Psychologist  
Clinical Psychologist  
Clinical Psychologist  
Professor of Psychology

**Counsel**

Paul Davison QC  
Ross Burns  
Marie Dhyrberg QC

Senior Crown counsel at both trials  
Junior Crown counsel at retrial  
Senior defence counsel at both trials



### APPENDIX 3

#### Pora Family Tree

