

CASE HISTORIES

(September 1980)

## 1. REGINA v. Darrel Joseph BURKE.

On 9th of August 1977, I was arrested at Abbotsford at approximately 9 o'clock in the morning. I left my mother's house at 9 o'clock that morning and I drove down the street and went around a couple of corners, which would have been a couple of hundred yards away from my place, and I was confronted at a road block by police officers at which time, a gun was placed at my head and I was assaulted and dragged away from the car.

I had a little four-year-old boy with me at the time and the area was virtually littered with police officers wielding and pointing guns in my direction, having little regard for the safety of my boy.

A lot of armed police officers emerged from hiding in nearby home units and other surrounding houses in the immediate vicinity. The boy was completely hysterical and I'm sure you would understand, that the impact of the impression that this little boy would have experienced upon being confronted in a manner that can only be described as being SICK, will forever psychologically affect the future and well being of this child.

After I had been dragged from the car, I asked the police if they would take the boy up to my mother's place, because the kid did not have any idea of where he was, and he had never previously visited my place before.

I also wanted to ask my mother to contact my solicitor. I naturally wanted a solicitor present, because I had had dealings with the police some years ago, relating to some charges for which I had been on parole at the time. I knew at the time of my arrest (which I have indicated was not "the-every-day-sort-of-arrest" that the average person might encounter, but rather a 'Starsky and Hutch' styled arrest) that it obviously pointed to matters of serious consequences, and that the need of my solicitor being present during interrogations by the police was an important factor that required urgent attention.

The police refused to comply with my efforts to have the boy taken to my mother's place, and so, I endeavoured to reason further with the

police in allowing the child to be taken along with me to the police station, where it became obvious that I would be taken to. I had assumed at the time that my request was a reasonable one and that in fact, the mother of the boy would go to the police station and pick him up, and also that I might be able to relay a message to her, to contact my mother in order that my solicitor could be present during police interrogations. I believed at the time that I was exercising my rights as a free citizen.

The police further refused to act in accordance with my demands, and subsequently left the boy standing on the roadside, an area which he was not familiar with.

I was then dragged off to the Five Dock police station where I was placed in a room. The police refused to acknowledge the fact that I required the presence of legal assistance, and went about their business of asking questions.

They asked me what I knew about an armed robbery that had been committed on the 4th of July, 1977. I told them that I knew nothing about any armed robbery. I then asked if I could ring my mother, as I was concerned about the safety of the boy. I also wanted to notify my mother of my arrest.

The police upon hearing my requests, then said that if I did not cooperate with their inquiries, they in turn would not cooperate with my demands. I refused to say anything further, and was later taken to a lock-up cell where I was kept for over an hour, after which time, I was then transferred from the Five Dock police station to the C.I.B.

I was escorted to the C.I.B. by the arresting officers from the Armed Hold-up Squad, a detective from the Homicide Squad and others.

On arrival at the C.I.B., I was taken to a room where I was left in the custody of two members of the Armed Hold-up Squad.

I was in the room for some time and nothing was said to me during that period. After a while one detective left the room, and that was the last time that I heard from the Armed Hold-up Squad. I was then taken to the Homicide Squad room where I was questioned over a number of things. I was interrogated by the Homicide Squad for what seemed like months. In fact I was detained at the C.I.B. for a period of not less than 10 hours,

after which time I was taken to Central.

When I arrived at Central I was then told that I had been charged for the armed hold-up that had taken place on the 4th of July, 1977. I later realised that I had been charged on the robbery of 4th of July, which another man, Augusta Canu, had also been charged on. That was the first time that I had ever known of the robbery, apart from the period when detectives had questioned me in relation to the robbery. At no time what-so-ever was I spoken to or questioned at the C.I.B. in relation to any armed robbery, and at no time during the interrogations did I ever make any admissions to the police.

At no time what-so-ever did I take part in any Record of Interview. I had nothing what-so-ever to do with that armed hold-up.

I had seen set-up by certain people outside, who had given the police some information that had led them to believe that I had taken part in the robbery. My past record had also given rise to the strength of information that had been passed on to the police. The fact that I had previously been arrested in 1970 for an armed hold-up and shooting, which the police believed I was guilty of, and the fact that I had a parole term hanging over my head, was enough information by which the police could exercise their devious methods in order that a conviction be made. This was in fact made and resulted in my being later sentenced to a term of imprisonment.

After having spent a period of one month on remand (Sept. 1977) I was told that my parole had been revoked due to the fact that the Parole Board had received reports from the Police of incriminating activities that I was supposed to have been involved in during the time that I had been on parole.

I was later transferred from the remand section to the C.I.P. where I was to commence the remainder of my sentence, of which I had previously been released on parole, and which was for a term of 14½ years.

I remained at the C.I.P. up until the 22nd of June 1978, at which time I went to trial and was convicted and sentenced to 10 years with a non-parole period of 5 years. It was ruled that the sentence which had been wrongfully imposed upon me would begin at the expired terms of my parole period, which I was doing and which is 8½ years. The date of my parole expiry is September 1983 and at the end of that time I will begin the 5-year non-parole period imposed upon me on the 22nd of June, 1978, and which will end in December 1988.

So in fact, this being the case, I am serving a sentence of 18½ years with a minimum non parole period of 11½ years.

In the eyes of true justice, which there appears to be less of in this unjust country, the fact that I am doing a sentence on the grounds of police malpractice, namely the producing of false evidence in the form of an unsigned record of interview at my trial, it would appear that such devious tactics used by the police are an acceptable factor to the entire judicial system, and that in fact the community at large in its ignorance support and accept such methods of bureaucratic corruption to the extent that ultimately someone has to pay the penalty, no matter how innocent the victim is, or else, why are such practices allowed to continue?

The police in their corrupt ways would say, "If we can't find the culprit we'll create one", and that is exactly what happens.

Without the incriminating document of police verbal in the way of an unsigned record of interview used against me, and admitted as the only piece of evidence at my trial, I would never be here in this prison to this day. Without such evidence that had convicted me, there would never have been a case at all. Instead, I was found guilty on the grounds of such evidence.

The police admitted under oath that everything that was contained in that record of interview, was known to them prior to my arrest. So in fact, I did not have to say anything, because everything that was in the record of interview, had already been said. Everything had already been documented long before my arrest.

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A nightmare had been created and all that had remained to be done was to find a victim upon which the police could exercise their fantasies.

#### I AM THAT VICTIM!

It seems pretty unreal what the police could do and actually go to the end of the world to do, in order that a conviction be made.

On the 26th of June 1978, four days after I had been convicted and sentenced, I filed my appeal on the grounds of the conviction and severity, and because throughout the trial I had been refused the daily transcripts

by Judge Thorley, and at the end of the trial when I had dismissed my barrister, I had no transcripts and nothing in which to work on. To obtain the proper grounds of appeal, I filed for the appeal and applied for legal aid.

It wasn't until the 22nd of September, almost three months after I had requested the assistance of legal aid, did I actually receive any notice from my solicitor, of the ground of appeal.

In the meantime, during the earlier part of July 1978, the girl that I was living with outside, Wendy Hunt, committed suicide by taking an over-dose of sleeping tablets. She also left many suicide notes stating clearly that I was innocent of the charges that I had been convicted of.

Wendy committed suicide in protest at the verballed evidence used by the police to convict me.

On the 17th of November 1978, I took all the suicide notes that had been written, to the Appeal Court, and still my appeal was dismissed. I have, since then, put in my appeal to the High Court of Australia. My solicitor has told me, that my appeal will come up in about 2 months. (Nov. 1980.)

As I have stated previously, that when I had filed my appeal on the 26th of June, it took something like three months before my appeal was recognised. After some agonising moments, my mother was able to raise some money for a solicitor to assist me in my case. When I got the solicitor, it took him about a month to get a copy of the transcripts and to sift through them for the grounds to appeal on.

My appeal was dismissed because of the delay in time that it took for a solicitor to attend to my case, and the time in which I was supposed to have filed my appeal, had expired. I had been given 10 days in which to file the grounds of appeal.

The time factor involved in filing an appeal was something that I was never aware of.

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Since I've been in prison, my mother has been harassed often and my father has been a frequent victim of police scare tactics. - WHY?!!

The police believe that my mother's place was used to split up the takings of an armed robbery, - (Which never existed). My mother and father are both pensioners and they have been the constant targets of police abuse, police verbal and police harassments. All this happened just about the time when my appeal was due to be heard. My mother had also saved 1700 dollars for my solicitor at about this time, and she was charged for having it by the police, who claimed it was part of the \$50,000 robbery. She was charged for having goods in possession.

My mother came before the courts on the charges 18 months later, which she lost. She lost the case which the police verballed her on. She lost the \$1700, which she saved for my appeal. She paid \$600 in solicitor's fees. She paid \$300 Court costs. A \$300 fine was imposed upon her.

It was unbelievable. How could such a thing happen to a sixty-three-year old pensioner, who had never been in trouble with the law or even verballed before, as was blatantly obvious in her case?

My father who was very sick at the time, never got over the shock of the entire situations that had taken place over the months.

My father died of a heart attack in January 1979.

Again, during the month of March when I was waiting for my High Court Appeal (March 1979), the police did a raid on my mother's house, booting down the door which is an all too common method of entry used by the police everywhere, and arrested my young niece who had in her possession, a couple of marijuana cigarettes. My mother was also arrested after she had been loaded with an ounce of marijuana, which the police said they had found behind a cupboard that had not been previously moved for some years. They simply marched through the house, picked on a particular spot and in this instance, it was a cupboard, moved it aside and said to her, "Where did this come from?" My mother was absolutely shocked! She thought that perhaps it was mine but I assured that it wasn't mine.

Once again, my mother had to go before the courts on charges that she had never committed. She could not afford to go through the experiences that she had done before. She could not afford to fight the courts as she had previously done. Here was an old woman, a pensioner who had never committed any wrong doing before in the eyes of the law, suddenly being con-

fronted by police corruption at its lowest, and having supposedly become a criminal during a space of two years. She could not handle these sorts of pressures.

As a result of all this, she pleaded guilty to the marijuana charges.

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It was after my trial during a period of rest, in a hotel, that my barrister asked a couple of jurors why they had found me guilty. They replied that they couldn't believe that the police would tell lies.

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So that is what the whole thing boils down to. It was their word against mine.

While I am doing 18½ years as a direct result of police verbal and police malpractice, another nightmare is being created somewhere out there, and another victim is being sought to further enhance upon the fantasies of a misguided few.

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#### FROM THE DAILY PAPERS

"A Family Court judge told the Queensland Supreme Court yesterday that he believed it was unwise to make statements to the police in the absence of other witnesses.

"Peter Francis Underhill told the court he had been a law student, a Supreme Court associate, a barrister and a judge, and 'one thing I know is that when you are by yourself and talking to the police you terminate the conversation as quickly as possible.'"

S.M.H. 28/11/80.

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AND NOW FOR SOMETHING COMPLETELY DIFFERENT: The Judicial  
View of Police Verbal.

The support given by appellate courts, and the NSW Court of Criminal Appeal in particular, helps sustain the continuance of verballing. A prime illustration of such support is provided in the comments of Street C.J. in Darrel Burke's case (Rv Burke, 30th November 1978, unreported) made in relation to a submission that an unsigned record of interview should not be admitted into evidence either in written or oral form if there no co-operation other than by members of the police force. Chief Justice said:

"I should say at the outset I find this submission unpalatable and wholly unacceptable. It denigrates, absolutely unjustly and unjustifiably, the police force of this state. This community can count itself fortunate to be served by a body of men and women who comprise a police force of which it can justly be proud and of which we are indeed proud. In the face of difficult odds and often, alas, badgered by ill-informed and unfounded criticism, our police have a fine record of achievement in preserving for the citizens of this state the civilities that are necessary for life in a law abiding community. To suggest the evidence of all police officers is inherently suspect to such an extent to require corroboration is, in my view, offensive and utterly without justification."





2.

## REGINA v. Ronald THOMAS

The following statement about police verbal, is an area which has affected me on two occasions.

The first time was in 1969 when I was convicted for the murder of a night watchman at Newtown, along with my mother, step-father and another co-accused.

When giving evidence, the police produced unsigned records of interview and as a result of them having been fabricated and used at our trial, we were both convicted and terms of imprisonment were imposed upon us.

Had I made the record of interview, I would have clearly stated that the night watchman's death was an accident, but instead, the police were able to fabricate evidence in such a way as to show the jury that a murder had been committed, and which resulted in my being sentenced to a life sentence.

After serving ten years of a life sentence, my mother was released on a licence. A week before her release, I escaped from Milson Island. I was arrested three months later at Byron Bay, where my mother had been licensed to. I was arrested by two detectives from the Armed Holdup Squad in Sydney. These two detectives later went and arrested my mother who was living at Byron Bay at the time. My younger brother and his three kids were also taken into custody.

At the police station, there was much confusion, because I wouldn't give my correct name. Knowing that my mother was also at the police station, I didn't want to see her charged for anything because she was on a licence, and any breach of the licence would have automatically sent her back to prison to serve the remainder of her life sentence. I chose to keep my true identity concealed.

We came to an arrangement after they found out who I was, or who I told them I was, when I thought I could make some sort of deal with the police into not charging my mother because of the breach of her licence. I wish to state clearly, that my mother was not in a position to harbour me, and nor was my brother. I was never harboured, sheltered or given

money by either my mother or brother, and this is an accurate and true statement.

I knew only too well how the police operated, and I was aware that they could charge my mother and brother for harbouring me, merely on the grounds of the fabricated evidence concocted by the police, which is becoming an all too familiar method in dealing with people. The police don't need evidence these days. By the time you get to the courts, the police would have concocted enough stories to have you convicted.

While being taken to a cell on the night of my arrest at Lismore Police Station, I said to one of the detectives "Look, can't we work something out with my mother and brother?" He said we'd have a talk about it tomorrow.

The next day I was taken to a detectives' room at Lismore Police Station, and I was asked a series of questions relating to my activities while on the loose. I hadn't committed any crimes while I was out and I also told the police who I was working for.

We came to some arrangement about the position my mother was in. The police wouldn't take money but they were willing to bargain with me, if I confessed to an unsolved local crime committed while I was on the run.

I agreed to this on the condition that my mother and brother would not be verballed by the police. The police would not find it difficult to get up in court and say things that my mother would never say. Their words would be more easily acceptable by the jury, than would the words of a person who had confrontations with the police before.

The agreement was, that I was to confess to a local break and enter on a farm shed.

After we had come to this arrangement and they had commenced to record of interview I asked them if I could talk with my mother. After telling them that I would not sign the record of interview, they agreed to allow my mother and I to speak together.

My mother and I were left to talk to one another, and while this was going on, the two detectives were working on the record of interview.

I told my mother what had happened, that I had confessed to a crime

that I had never committed in order that they, the police would not verbal her for harbouring me. She begged me not to sign any statement or record of interview, and that she didn't mind going to court. I told her that I didn't mind doing the charge that the police offered to me, because I was doing life anyway, and as the police pointed out, a bust would not affect too greatly any further period of imprisonment that might be later imposed upon me. I really didn't mind going through all of this, if I knew it could save my mother and brother.

After they had finished the record of interview, I agreed to signing it as part of the deal. I was also given a copy of the record of interview.

In the court proceedings that followed I pleaded guilty to the break and enter up until the time the police started giving evidence against my mother.

I wish to state at this point that when the prosecution are refusing bail to anyone, they are in fact doing so from instructions by the police, and in our case, the two detectives from the Armed Holdup Squad, gave instructions to the prosecutor at one of our court appearances.

At one court appearance, the police wanted bail refused to my mother, on the grounds that they had claimed that my mother had made admissions to them, that I had stayed at her place for a short time prior to my obtaining a place of my own at Byron Bay. At the following court appearance that she had, I subpoenaed all the real estates books to show that I had a place to stay during the time I was out.

At the next court appearance, the police made claims that my mother had given me money. They said she had made such an admission to them. I later subpoenaed my bank book to show the court that I had monies of my own during the time I was out. The other matter of her putting me up and the money was never ever mentioned again.

These two matters were never even brought up at the lower court hearing. The police obviously, didn't care what they were saying to the prosecutor, as he was merely there to serve their interests, in disallowing bail to my mother. At the Court of Petty Sessions, we filed a No Bill and the Attorney General saw fit to deem it applicable, on the grounds that the police had no evidence. It was known from the start that my mother or

brother never harboured me. In fact both my mother and brother were given a No Bill by the Attorney General.

When it was time for me to go to court, after being on remand for two years - the day before my trial, I asked a friend to call one of the detectives from the Armed Holdup Squad and to tell him that I wished to speak to him. He came out to Parramatta Gaol and I was called to the bottom of the auditorium where legal visits, and in some cases where police want to interview you, - a professional visit takes place.

Before going to the auditorium to speak to the detective, I, with the help of two friends, concealed a small tape recorder on my body.

When I walked into the room, the detective was waiting and I immediately began to ask him a number of questions. I asked him why he and the other detective had gone back on the original deal? He said that it wasn't his fault and that it came from "higher up".

The interview which I had with the detective lasted for about twenty minutes and during that time, I asked him a couple of times, "Did we make a deal?" And his answer was, "Yes!" It was difficult for me to make him confess but I did manage to make him admit to the questions which needed answers.

The following day at court, - the first day of my trial where preliminary things were heard and the jury were picked, and evidence was given by the police - the detective was asked if he was asked a number of questions by me the day before. He was told of the answers that he had given and which were on the tape and was asked, if he had made them. He had denied ever making any such admissions.

I got into the witness box without the jury being there, and the prosecution questioned me as to why I couldn't remember certain conversations that happened two years ago. I could not answer word for word but I was prepared to provide the prosecution with the conversation that I had with the detective the day before. I was asked why I couldn't remember one conversation so well and not another. I told the prosecution that I had taped the conversation.

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... and they all freaked out!

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Judge Hicks began to ask a number of questions relating to the tape. He didn't at any stage ask if he could listen to the tape.

The Judge eventually adjourned the court and called for my barrister and the prosecution to his chambers. About ten minutes later, while I was still in the witness box with the tape in my hand, the prosecution asked me two questions which really didn't add any weight to his case.

After a short recess in proceedings I again took the stand. Judge Hicks refused to accept the signed statement which the detectives made and ordered the jury to acquit me.

It may be of interest to know, that after I was arrested, charged and remanded for the break and enter deal I made with the police, another man was charged with that offence and he had also given in his statement the names of two accomplices that he had committed the crime with.

The man was later sentenced to a term of imprisonment, before I went to trial - before I fronted Judge Hicks.

The case which I have just made, is a very involved case in which I have left out many details.

I am willing to give these details plus the taped conversation that took place between the detective and myself, at Parramatta Gaol, to anyone who is interested.

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Finally, I would like to state that although it may only be a minority in this unjust society, who are dealt a fierce attack by the cruel and inhuman methods used by police in the way of police verbal, unsigned fabricated records of interview, and corruption and malpractice at all levels of the police force, and as well, other business and political organisations, that that same minority will and is becoming that much more evident in the light of their activities, in endeavouring to bring to the awareness of the public the need for drastic changes and reform in certain areas of the judicial system. This small minority who are undoubtedly victims of the entire judicial system will in the immediate future, bring about the total collapse of those areas in the system that reflect the suffering and hurt of innocent men and women. Such people like myself and many others cannot put up with

police verbal and police malpractice any longer. Gone are the visions of wanting to kill a cop because he made a crooked deal or he railroaded some poor soul. There is only one way to fight corruption and that is to meet it front on and to approach those areas that required treatment, for surely, corruption at whatever level and under whatever circumstances, is in this day becoming a disease - a sickness that is not at all beyond cure. With public support and pressure, we who are the minority battlers, ask that something positive be done in bringing justice and balance into the entire justice system. I personally do not agree with laws and rules in the way that they have been designed, archaic and very very old in most instances, and I certainly will never accept the manner by which certain sections of the law enforcement agencies in the community, are able to manipulate and distort those same laws to cover their mistakes, to shield their inadequacies - and all of that which is threatening the livelihood and the future of our beloved children.

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