

HIS HONOUR: So what's the relevance of police officers?

5 LAVAC: You will recall that I mentioned to you the other day that there will some cross-examination of police in relation to an investigation which the defence says was fatally flawed from the beginning.

10 HIS HONOUR: So what?

LAVAC: Well your Honour it's not just a matter of so what. My client was, it's going to be part of our case, that he was singled out for special treatment by the police because he'd thrown a number of police officers out of that place in the twelve months prior to that. There will be allegations of misconduct being put to those police, allegations which go as far as trying to influence witnesses in the prosecution case and in the defence case and that is something your Honour that the jury is entitled to hear.

20 HIS HONOUR: You're going to go so far as to allege that particular police had tried to warn witnesses off or tried to influence the evidence they'd given?

25 LAVAC: Tried to influence the evidence certainly your Honour. My friend knows what I'm talking about. I've asked him if he could find out for if there is in existence a particular tape of a particular incident which we have never been supplied with and which has never been disclosed to us but it will become important in the defence case. That's the reason I ask whether there is any connection between the victims and police officers who played football for the Narrabeen Sharks and we now know so far there is at lease two police officers. An officer named Winter and a very senior officer named Freudenstein who are both known and connected to the victim.

30 HIS HONOUR: Yes but I still find it very hard to follow I've got to say. I mean it's one thing where police come along and give evidence against someone. The very last trial I had as a barrister in this very courtroom was a case in which my client contended that all the evidence against him was given by police officers. There were no other witnesses and his contention was that they'd all fabricated the case against him and therefore we went and got a whole lot of material to the discredit of these police officers. Each one of them was cross-examined to show they had a motive for doing this that and the other. Now that's easy to understand because if their evidence was disbelieved there was no case. There were no lay witnesses. In this case the only witnesses to what occurred were lay people, there were no police present.

45 LAVAC: It's part of the defence case and it will become--

50 HIS HONOUR: But I don't know which particular witnesses are supposed to have been leaned on or influenced.

LAVAC: Well I can tell you now your Honour that certainly Mr - do you want me to tell you now?

5 HIS HONOUR: You might as well, I've got no information at the moment to suggest anybody's been leaned on.

LAVAC: Your Honour I have information and I have notes as a result of conferences I've had with witnesses that there was improper attempts to influence certainly Mr ~~██████~~ by Karen Hennessy who is the OC of this case.

pure evil
HIS HONOUR: That's this man here?

15 LAVAC: Yes your Honour.

HIS HONOUR: Well that's yet to be explored.

LAVAC: And there's a possibility also that she influenced the evidence of Mr Drew Mitchell. You will recall your Honour--

HIS HONOUR: Has he given evidence?

25 LAVAC: He gave evidence, he was a prosecution witness who told us your Honour that he saw the victim being dragged down the stairs, legs first with his head bouncing on the stairs as he was dragged down. That evidence came out despite the fact that there's nothing about that in his witness statement. I've got information from the last witness who gave evidence Mr ~~██████~~ that Ms Hennessy the officer-in-charge of this case when she took a statement from him she told him that she had a video tape in her possession that clearly showed bouncers beating Mr Bullock on the landing and clearly showed Mr Bullock being dragged down the stairs with his head bouncing on those stairs as he was dragged down. *co-incidence or damning proof*

40 HIS HONOUR: Okay let's just assume that this is entirely believable. That Ms Hennessy, Senior Constable Hennessy for reasons of her own was trying to persuade a witness that she had evidence that was contrary to his evidence. That doesn't seem to have stopped him from giving the evidence. He's given the evidence. How does the fact that she, subsequent to the event, attempt to influence him in anyway if that was what she was doing, how would that have any bearing on whether this occurred? How does that have any bearing on whether this occurred?

50 LAVAC: Well for a start your Honour we have evidence from Mr Drew Mitchell that that occurred.

HIS HONOUR: What occurred?

55 LAVAC: That there was dragging down the steps with the head bouncing on the steps.

HIS HONOUR: Yes. Let's stay with something that I'm

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asking rather than wandering onto something that you want to talk about.

LAVAC: Sorry your Honour.

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HIS HONOUR: The current witness Mr R it would appear when you come to cross-examine him you want to put to him that Senior Constable Hennessy attempted to persuade him that she had evidence from a video showing that what he was saying couldn't be true, or couldn't be right. Let's assume it went so far as that. Let's assume for the moment for the purpose of the argument that Senior Constable Hennessy was doing this because she thought badly of your client as a result of what other people had told her. That some police officer had said to her, he's a bad fellow he threw me out last week you know, we ought to get him or something.

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5 She has some belief about him and that's what leads her to say this. Supposing she does say this, the fact is he has come along here to give evidence, notwithstanding her claims that she has a video. If she was trying to influence him, it had no affect at all, didn't influence him. He came and he's given the evidence. Hasn't had anything to do with him giving evidence. What your putting may be relevant if someone was taking proceedings for perversion of the course of justice against Senior Constable Hennessy but they haven't or if they do, it's not in this trial. I can't see that it bears on anything.

15 LAVAC: If it happened it certainly could amount to an attempt to pervert the course of justice. This was a fatally flaunting--

20 HIS HONOUR: This is a person who has no evidence whatsoever to give about what occurred. The evidence against your client comes from other people, it doesn't come from police.

25 LAVAC: Your Honour the problem is however that because we already have evidence to the jury from Mr Drew Mitchell who very strangely says that he saw the victim dragged down the stairs, head bumping on the stairs as he goes down. That evidence is not in his witness statement. How did it get there?

30 HIS HONOUR: How did what get there? If it's not in his witness statement it didn't get there.

35 LAVAC: It's not in his witness statement, the only way that he could've given that evidence is because--

40 HIS HONOUR: How did it get there? I can suggest a number of things. The police here were suburban police. This is just a fight in a pub. They took quick statements, they didn't worry about going to enormous detail about it because it's just a pub fight. Why should we spend too much of police resources investigating it? That's one possible reason. Another possible reason is particular police took particular statements, weren't terribly interested and did it as quickly as possible. Another reason is they tried to get as much information as they could. The particular witness didn't say anything at the time and then came along and said something later. All these are possibilities but the fact that people may have, subsequent to the event, behaved in a way which on one view of it is discreditable, on another view of it it may be merely saying to a witness who has a version, look I've got to tell you, you've given me this version, there is another version available, you appreciate I've got videos, I'm telling you that now. You wish to pursue this version? Okay. Which wouldn't be particularly discreditable at all. But I am not conducting an inquiry, this is a trial. I can tell you now, unless I'm prepared to hear argument further on this, that unless you can

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persuade me there's something more relevant than this, I'm not going to allow this to be pursued.

5 LAVAC: Certainly if there was an attempt to pervert the course of justice in respect of Mr R, it obviously hasn't succeeded because he's come to court and given the evidence he's done. However it may well be that there was a successful perversion of the course of justice in relation to Mr Drew Mitchell. Because he gave that
10 precise evidence which is not in his statement.

HIS HONOUR: Nothing's been put to Mr Mitchell to suggest any police officer leaned on him to give false evidence. Where's the evidence that Mr Mitchell was leaned on to
15 give false evidence?

LAVAC: There's no evidence your Honour but he certainly gave--

20 HIS HONOUR: You can't just run a case that something--

LAVAC: --evidence at that, of something which wasn't in his statement, something which Karen Hennessy has told R--

25 HIS HONOUR: I'll give you the weekend, you can come along on Monday and you can try and persuade me. Unless you can persuade me I'm not going to allow a trial to go off into a side issue, which essentially is an attack on the credibility of police officers for not doing their duty
30 properly in investigating something. The jury cannot give a verdict on that and just running a semi-trial on that issue invites them to have at the forefront of their mind a totally irrelevant issue rather than the real issue in this case, which you announced, was self-defence or not
35 self-defence.

LAVAC: I appreciate that it's a collateral issue but it's my submission--

40 HIS HONOUR: It's utterly collateral and unless you can persuade me, I'm not going to allow it. If I don't allow it, what is the point of calling six or seven police officers merely to say they went along and I got a statement from this witness and I got a statement from
45 that witness? May be there's a police officer who can say I turned up on the night and this is what I saw outside. May be that's got some slight relevance. I saw blood on this man's face, he appeared to be dazed or something or I saw the two bouncers standing there and I saw people
50 throwing abuse at them. That might have some relevance. I'm not going to have a trial going on for another week, people being called to do nothing, say nothing of any substance. Monday morning, if I rule against you and you still insist on those police being called, well they'll be
55 called all right but I won't let you cross-examine them on this issue.

LAVAC: Your Honour that goes without saying. *JOB.*

5 HIS HONOUR: That would mean would it not, if they're the final witnesses, that the police evidence would finish some time on the Monday and you'd be into your case some time on the Tuesday?

LAVAC: That's quite possible your Honour.

10 CROWN PROSECUTOR: I just remind my friend that if it assists him in considering this issue, that Mr Mitchell in conference and this was something that emerged in cross-examination after I'd told my learned friend, had said that he thought he was carried out by the legs. Which is where the head bouncing business I think has emerged from.

15 HIS HONOUR: I don't really think - look you talk to him about it. Look Mr Prosecutor, you talk to him about it if you want to--

20 CROWN PROSECUTOR: I'll just remind my friend, page 406.

HIS HONOUR: --I do not need to be persuaded. Contradictions in evidence are a matter for redress to the jury and why somebody's contradictory and whatnot, that's
25 a matter that can be put to the jury. The point that I am putting, if I am correct and I'd want the crown's assistance on this too on Monday, if I am correct, there is no point in calling the witnesses. If they are to be called, they should all be available on Monday, so I think
30 the crown should take steps to have all police witnesses available. It's quite likely they'll be called and I will not be permitting very much cross-examination. That would be done with a view to the defence case starting on the Tuesday.

35 LAVAC: I hear what your Honour says. Could I also indicate at this stage your Honour and I've already told my learned friend that I will be at the end of the crown case, I am considering making a Prasad application, certainly in respect of the--
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HIS HONOUR: I'll consider any application when you make it, I'm not going to give advance rulings on what I'll do on applications.
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LAVAC: I'm just indicating now your Honour.

HIS HONOUR: I've got to say, I give these Prasad directions ~~only rarely~~. HE GAVE ME ONE - I WONDER WHY?
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LAVAC: I appreciate that your Honour.

HIS HONOUR: Often times, I think giving them is, from a defence point of view, rather counterproductive.
55 Sometimes it stands out as a case for giving it but I would hear what you say of course. The other thing we have to deal with on Monday morning gentlemen is this question of the view.

they arise. If witnesses are called, if the crown objects I'll consider it, if the crown doesn't object I'll still consider it.

5 LAVAC: There is a matter that I need to raise this morning and it's directly related to what you have just said. I've spoken to my friend about it before we came into court so he is aware of it.

10 This morning when I arrived in court I was approached by Mr [REDACTED]. I told him that I couldn't talk to him because he was being cross examined by the crown. He told me that he was extremely upset and anxious, and I asked him was it something to do with other than what he had said in court.

15 SPEAKER: Your Honour, from previous experience there should be no problems with having a bus available for tomorrow morning.

20 HIS HONOUR: Thank you. I will confirm the order for tomorrow morning. Probably forty eight hours was required because we were up at Darlington I suspect.

25 Alright, Mr [REDACTED] approached you and he said he was very upset.

LAVAC: Yes. Mr Reeves informed me this morning that he was upset because last Friday when he finished his evidence he was approached outside court by Karen [REDACTED], the officer in charge of the case--

30 HIS HONOUR: Karen [REDACTED] *Here she goes again deeper + deeper*

35 LAVAC: Karen Hennessey if the officer in charge. She approached Mr [REDACTED] outside court and said words to him to the effect of 'the way you're giving your evidence any one would think that you're being paid to give your evidence'. This upset him enormously.

40 I told the Crown about it this morning and it is consistent with what Mr [REDACTED] told me in notes that I've made as a result of conferences I've had with him, that on the 19 January '07 when he was subpoenaed and Karen Hennessey spoke to him on that occasion, he was concerned that she was putting pressure on him. She told him that she had closed circuit television footage of what happened on the landing, that two bouncers held Shane and that the blond guy punched him until he was unconscious, and they then dragged him down the stairs and his head went bang, bang, bang down the stairs.

50 Mr [REDACTED] was quite upset and concerned about this and felt that she was-- *She is a disgrace to the uniform.*

55 HIS HONOUR: Alright, where is Senior Constable Hennessey? *probably setting someone*

LAVAC: I don't know where she is today. *else up.*

CROWN PROSECUTOR: She's on duty and I hadn't anticipated she would be at court directly this morning.

HIS HONOUR: Was she here on Friday?

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CROWN PROSECUTOR: She was your Honour.

LAVAC: Your Honour, because - I understand that she drove Mr [redacted] home after court last Friday, that's my understanding. Because this was said to Mr [redacted] last Friday while--

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HIS HONOUR: Did she drive him in? Who drove him in?

LAVAC: I'll find out but I am instructed that she certainly drove him home. Because this was said to Mr [redacted] on Friday and he certainly perceived it as an attempt to interfere with his - Karen Hennessy is here your Honour I'm told. I would renew my application your Honour to cross-examine - to elicit this evidence in my cross-examination of Mr [redacted] and I would seek your leave--

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HIS HONOUR: Well just one minute, before we do that it seems to me a question now arises about whether a police officer during the course of cross-examination of a witness because I've given the Crown leave to cross-examine, has spoken to the witness about the evidence that the witness has given. That raises a question of contempt of court because no person is allowed to do that and it raises the spectre of my having to refer the matter to the Supreme Court, because it was not something done in the court. My powers to deal with contempts of court deal with matters that are in the court. I do not think I have the power to deal with someone for contempt of court who has done something outside the door of the court, even if it's connected very directly with the court. Is this lady wanting to see someone or--

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LAVAC: Yes thank you your Honour. Your Honour that lady is associated with me, she has brought to court some matters which - some documents which I inadvertently left at home, I apologise for that interruption your Honour.

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HIS HONOUR: Well it creates a very difficult situation Mr Prosecutor I must say.

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CROWN PROSECUTOR: Yes your Honour I mean at present the suggestion from the bar table is that this officer has suggested to him that anyone would think you're being paid to give your evidence as I understand what's been said--

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LAVAC: Yes words to that effect your Honour.

CROWN PROSECUTOR: It doesn't necessarily imply that she has discussed or sought to influence the evidence that he was giving on Friday.

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HIS HONOUR: It must mean that if she said that, how could she possibly say it if she - anyhow it doesn't matter whether she even knew what evidence he was giving, she is a police officer, she's not just a member of the public who doesn't know what the law is. You're just not permitted to go up during the course of someone's cross-examination and go and put anything to them about the proceedings, and anything to them can be anything to suggest what they're saying is wrong, is biased, it's false or anything else. Anything that could be in any way taken to be some attempt to influence them. Now if a barrister or a solicitor did such a thing you know it would be almost a strike off offence really, quite apart from being in contempt of court. Well if they found contempt of court they'd strike you off and of course barristers and solicitors do not do such things, you don't go up, you might be tempted to but you don't, you do not go up during the course of someone's evidence. Even during evidence in chief you wouldn't go up and say to a witness are you being paid to do this, because it could be taken as an attempt to influence them in the giving of evidence and the essence of that form of contempt of court is just doing that. Doing anything that could be an attempt to influence evidence. No witness should be put under any pressure.

FAME - SET - MATCH!!!

Now it poses a particular problem for a trial when a particular witness in the course of giving evidence says that someone has done that. I cannot myself understand why she would do that unless it is a situation of a police officer having a particular view about a case. Some police officers can become too close to the case they investigate, too driven to get a result. Now I am not in a position myself to conduct an enquiry into this. This is a court, we're dealing with this trial, I am not conducting - have no authority whatsoever to conduct an inquiry into whether this occurred, that would be quite wrong. Indeed to conduct such an inquiry could run the risk that a person would be required to admit committing a criminal offence.

Because I dared to complain

CROWN PROSECUTOR: Precisely your Honour it's a--

HIS HONOUR: So you can't possibly do that. So I don't - were you thinking that I might, well I wouldn't I can assure you. I have in fact, when I was at the bar I had to on one occasion appear in the Court of Appeal to have a contempt finding overturned made by a judge in the Family - in the Matrimonial Courses Division who did conduct such an inquiry in these sorts of circumstances and of course the plain fact is he had no authority to conduct it, no authority to require anyone to give evidence and no authority whatsoever to run around and find someone guilty of contempt following an illegal inquiry. So I am not going to do that. That would be quite wrong, but I'm afraid this does raise the question whether I should refer the matter to the Supreme Court because they are the people or that court is the court which appropriately

deals with this type of matter. I don't think I should bring her in and charge her with contempt.

5 CROWN PROSECUTOR: No your Honour.

HIS HONOUR: I have no evidence before me. It's a different thing if there's a contempt in the face of the court, someone comes in and perhaps shouts and yells abuse at me or something of that nature, well I can say there's the evidence, it's on the record. I can charge them with contempt. Even then if it was a serious matter I would charge them and refer them, I wouldn't deal with it myself. But it does pose a problem for the proceedings. We can't have a witness who feels he's under some form of threat.

10 CROWN PROSECUTOR: Well I don't - I must say your Honour all of this is taking as gospel of course what is said to have occurred, one side of the conversation relayed by counsel--

HIS HONOUR: Look I understand that but I can't conduct an inquiry.

15 CROWN PROSECUTOR: Yes.

HIS HONOUR: I can only say something has been put to me to suggest that a witness whose giving evidence at the moment believes he's under some form of threat as a result of a police officer, namely the officer in charge of the case, approaching him after he'd given the evidence and saying things to him about the evidence.

20 CROWN PROSECUTOR: Well as I understand it your Honour the two things alleged to have happened are one, that after his evidence on Friday words to the effect of "anyone would think you're being paid to give your evidence" was said to him, but that the conversation supposedly said about the CCTV being in possession of police showing what happened on the landing and dragging him down the stairs--

HIS HONOUR: That happened earlier.

25 CROWN PROSECUTOR: --is said to have occurred back in January, well before he gave his evidence.

HIS HONOUR: That's a different matter.

30 CROWN PROSECUTOR: Yes.

HIS HONOUR: What occurred in January could on one view of it be regarded as an attempt to pervert the course of justice if you were looking at it in a rather bleak way because you're attempting to influence a witness, that's one way of looking at it. On another hand it could be merely a passing on of information to a potential witness so the witness could consider against in the light of what has been communicated, whether the evidence he gives or