

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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who is
the
criminal
here 35

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.

GAME - 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 10 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 15 threat.

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 20 counsel--

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

25 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 30 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.

CROWN PROSECUTOR: Well as I understand it your Honour the 35 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 40 happened on the landing and dragging him down the stairs--

HIS HONOUR: That happened earlier.

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

HIS HONOUR: That's a different matter.

50 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 55 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

LAVAC: Your Honour Mr R also told me that he fears repercussions from the police and that may well influence the evidence that he is about to give today. His evidence certainly isn't finish but He did state to be
5 categorically in the presence of my solicitor that he does fear repercussions from the police.

HIS HONOUR: Well I can't give him any reassurances about that matter. I would think it most regrettable indeed if
10 Mr R had any repercussions visited upon him. To do such a thing, to visit repercussions on someone in return for their giving evidence, would be to commit a most serious contempt of court and I would have thought would result in the officer or officers being sent to gaol if that were
15 proved. Certainly if I were I judge of the Supreme Court and such a case came before me and I was satisfied beyond reasonable doubt that that's what happened that would be the fate of the officers concerned. It would be a very nasty thing indeed. Apart from anything else, apart from
20 contempt of court the matter of course can be referred to the Police Integrity Commission which can conduct it's own investigation. If police attempt to threaten someone as a result of giving evidence or during the course of evidence that would be improper conduct and criminal conduct and the sort of conduct that would involve that Commission. The conduct itself of course could amount to a perversion of the course of justice. I must say it's a very difficult matter to know what to do.

WHEN
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30 CROWN PROSECUTOR: I must say your Honour that one of the things that occurs to me too if I was speaking to the director that one of the questions might be asked would be what does the officer-in-charge have to say about this allegation?

35 HIS HONOUR: As I can't conduct an enquiry nor can you one would imagine, we don't know what the officer-in-charge might say. Mr R might be telling lies, difficult to see why he would be. He might be telling the truth totally.
40 He might be that the police officer said something which he's misconstrued but whatever it is, if she's talked to him in any way about the evidence that he has been giving or is giving she puts herself in distinct peril because it should be done. If you were to go off and talk to a
45 witness during the course of examination and express any view you'd be at great risk of contempt of court proceedings and criminal proceedings and dismissal from the public service. Even if what was said in the long run wasn't all that significant, it's not so much what's said
50 the fact is it is said and it's said by someone in authority.

GAME-SBT-MATCH
CROWN PROSECUTOR: Yes your Honour.

55 HIS HONOUR: I think she's probably got to get her own legal advice quite frankly. I don't think the crown can actually give her legal advice as such.