

the statement he makes is accurate. I think it's a foolish thing for a police officer to do this, go around putting to witnesses what evidence she has in some other context, I really do, because there's always the risk that somebody could take a more bleak view of the matter than perhaps it warrants.

CROWN PROSECUTOR: Yes your Honour.

HIS HONOUR: These days what that bleak view can then result in is a reference of the matter to the Police Integrity Commission. And then they go round ~~investigating~~ *not in the real world* whether this was this, that or the other. *they don't* As far as what happened last January's concerned that to my mind has nothing much to do with it. What I have to consider is what I should do when it's communicated to me there's a witness in the witness box who feels to be under some form of threat because of something a police officer has said. Should I tell the witness that the witness is to ignore anything that was said? What is it I should tell the witness? I don't know.

CROWN PROSECUTOR: That was the thought that was occurring to me your Honour.

HIS HONOUR: Do I say nothing and so we have a tremulous witness? I can't make him promises of some kind because I don't personally provide protection for anybody from anything and I'm not going to make promises, you'll be all right don't you worry about it you just give your evidence and all will be well. That isn't something I can really promise, I don't know but I am minded to refer what has been put to me to the Supreme Court and they can direct whatever enquiries be undertaken. However I'm not going to do that until the crown has had the opportunity of considering whether it wishes to make any submissions. You may wish to consult the director of public prosecutions about the matter, the director may say it's not a matter for us to make submissions, the director may say it is a matter for us to make submissions. It seems to me to be a fairly significant matter and I shouldn't just rush off into doing something but what do you say I should do in relation to the witness? Leave aside whether I should refer Ms Hennessy for contempt.

*she has to be stopped.  
Peoples lives are at risk.*

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.  
25 WHEN  
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.

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.

CROWN PROSECUTOR: No obviously not.

5 HIS HONOUR: Because she's a witness but she's not your  
client as such. Indeed if she said something to you in  
the course of your discussing the matter with her you'd be  
obliged to report it to whatever authorities there were.  
10 If she said something to you that confirmed she had acted  
in contempt of court it would put you in a very difficult  
position to get any information from her I would think. I  
think really what has to happened is she should be brought  
in, I should tell her in broad terms the nature of the  
allegations and I should tell her that she should go and  
15 seek legal advice perhaps through the Police Association  
fairly quickly. I should tell her that I do not wish her  
to answer or to tell me anything but I think she's got to  
be told. I think if I ask you to go and tell her I'm  
putting you in the compromising position of telling her  
something and perhaps being told something which could be  
very difficult.

20 CROWN PROSECUTOR: Yes your Honour.

HIS HONOUR: I'd think I'd have to put over to tomorrow at  
25 lease what I do about this. Give her the opportunity of  
reflecting on it and give the director the opportunity of  
telling you what - and he might say take this positive  
stand, he might say take a neutral stand. I don't know.  
I really don't know. That would be what I would propose.  
The words spoken are said to be exactly what?

30 LAVAC: The words spoken are to the effect "The way you're  
giving your evidence anyone would think that you've been  
paid", words to that effect.

35 HIS HONOUR: Where was this said?

LAVAC: This was said on Friday afternoon after Mr. [REDACTED]  
40 finished giving his evidence. It was said in the police  
car while she was driving him home.

HIS HONOUR: The next fact, the next question that arises  
Mr Lavac is this. Okay, supposing I refer her for  
contempt in due course or for investigation of that  
because I am not going to conduct any inquiry myself.  
45 What bearing has that got on this case?

5 LAVAC: Well it has this bearing your Honour. When Mr [REDACTED] gets back in the witness box I would seek your leave to illicit that evidence from him as to what occurred last Friday and I imagine I will illicit from him that he was concerned and felt that it was putting pressure on him and that he feared repercussions from the police.

10 HIS HONOUR: Has that caused him to change his evidence?

LAVAC: Well I don't know your Honour, but if he perceives there is pressure put on him and he fears repercussions from the police it--

15 HIS HONOUR: But what is the - you see I don't want to appear to be restricting any proper matter that could result in your client being acquitted, right. It is important that he be able to ventilate any matter that could result in his acquittal. But the fact that a police officer has such a conversation with him after he's given evidence could be relevant to any further evidence he gives--

LAVAC: Absolutely and that's what--

25 HIS HONOUR: Perhaps, but one would have to see what that further evidence is. I mean he's given basically his evidence in chief, hasn't he?

30 LAVAC: Yes your Honour.

CROWN PROSECUTOR: Yes your Honour.

35 HIS HONOUR: And the crown is then seeking to go over various discrepancies between what he said in one statement with what he said in other statements.

40 CROWN PROSECUTOR: I've done that your Honour and all I propose to do now is show him the video of the upstairs area and ask him to indicate where he thinks from looking at that he's able to point out where he was standing.

45 HIS HONOUR: That's right, have a look at this and what do you say about that. You've said you were here and you were there, look this is what appears to happen.

CROWN PROSECUTOR: Subject to what he says of course, there may be some questions about what he says.

50 HIS HONOUR: Right. Well now what is the evidence that is then going to be influenced by this statement?

55 LAVAC: The problem of course your Honour is that if he feels that he was under pressure as a result of being spoken to by that officer last Friday and he fears repercussions from the police this could well influence the remainder of the evidence that he is about to give today when he's cross-examined by me.

HIS HONOUR: In what way?

LAVAC: Sorry"

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HIS HONOUR: In what way?

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LAVAC: Well it may cause him to hold back evidence that he feels he should give but he won't give because he fears repercussions from the police and the problem with that of course is your Honour that if he is influenced by what was said to him last Friday my client is deprived of the chance of a fair trial. I would be asking--

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HIS HONOUR: He's shown no - he's given his evidence in chief--

LAVAC: Yes.

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HIS HONOUR: --the crown has taken him to what apparently the crown view are inconsistencies. The crown's now going to take him to some videos.

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LAVAC: Yes, but I'm still--

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HIS HONOUR: Unless he does a somersault and says everything he said before is untrue I can't see how it affects your case. I find it very difficult to follow. However, I'd have to leave it open, I don't know.

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LAVAC: Yes, I don't know either your Honour.

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HIS HONOUR: I can't rule on evidence, questions of evidence, in a theoretical vacuum.

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LAVAC: Yes. I'm yet to cross-examine your Honour and I don't know what he'll say when I cross-examine him. All I know to date is that he's received pressure, improper pressure, from a police officer which may or may not influence the evidence he is still about to give. That's where we are at the moment your Honour.

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HIS HONOUR: What you've put to me before is that he got this improper pressure some time ago, that didn't deter him, he made the statement. In fact he appears to have made three statements and he's come to court. He's obviously very nervous.

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LAVAC: He's very nervous. That was what we said to him on 19 January. Now your Honour I asked you last week, I made an application that I'd be seeking to cross-examine the police on the basis that if this sort of pressure was put on this witness who is an independent witness on 19 January because he is independent he is less amenable to being influenced by what's said to him by the police. However, the same cannot be said for prosecution witnesses who have already given evidence and I would submit that I'd be entitled to cross-examine the police as to whether

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5 or not similar pressure was put on other prosecution witnesses who I submit would be more amenable to being influenced to give evidence in favour of the crown because they are in allegiance with the victim and there clearly is an allegiance with Mr Bullock.

HIS HONOUR: That, with the greatest of respect to you, doesn't make a great deal of sense.

10 LAVAC: I'm sorry your Honour, maybe I didn't put it as elegantly as I could have.

15 HIS HONOUR: Look if you've got a group of people who have their allegiance to Mr Bullock what particular pressure would the police be putting on them, they'd have their allegiance. Why would they be responding - why would the police need to put pressure on them?

20 LAVAC: Could I put it this way your Honour. I put it to all the witnesses that they were lying because they had an allegiance to Mr Bullock. Now surely--

25 HIS HONOUR: Including, you put it even to his wife although she did nothing whatever in her evidence to damage your case, in fact helped it. But you nevertheless put to her that she was lying.

30 LAVAC: Well clearly about being dragged and mishandled and mistreated by bouncers and--

35 HIS HONOUR: She didn't claim to be dragged or mistreated or mishandled. She didn't make any complaint about it. She didn't allege she'd been assaulted or bashed or mistreated. She'd been escorted to some area and then she saw nothing. She just saw absolutely nothing to incriminate your client, nothing, not a thing. And she specifically disavowed seeing your client or anyone punching her husband.

40 LAVAC: I appreciate that your Honour.

45 HIS HONOUR: You nevertheless put it to her, she's lying. I must say I was a bit lost about why you would do that as she seemed to be helpful to your case.

LAVAC: Well your Honour let's look at the other witness--

50 HIS HONOUR: I cannot understand this point, it doesn't make sense.

55 LAVAC: Could I just try and explain it to your Honour. Let's assume that witnesses who gave evidence about seeing my client punching the victim while he was being held by other bouncers, I put to them that they were lying. Now your Honour if they're approached by a police officer and told, we have closed circuit television footage of these bouncers holding Mr Bullock on the landing and punching him, we have video footage of him being dragged down the

stairs with the head going bump, bump, bump, down the stairs. If the police told them that then they would be in a position to be able to rely more confidently and more persuasively having been--

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HIS HONOUR: Did you ask any of them?

LAVAC: --having been told by the police that they had such footage.

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HIS HONOUR: Did you ask any one of them, what were you told by the police officers about the circumstances of this case? What did the police tell you about the material they had? You didn't ask one of them.

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LAVAC: No I didn't your Honour because I don't know whether they'd been approached by the police. I put to them that they were lying.

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HIS HONOUR: But you knew what Mr [REDACTED] was going to say and you knew that Mr [REDACTED] was going to say he was pressured improperly by the police. You had this opportunity to raise this, what did the police say to you? What did they say to you about CCTV footage? You haven't raised it. How on earth can you raise it now? Unless you're going to call - ask for each witness to be recalled as you put this conspiracy theory forward.

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LAVAC: No your Honour I'm certainly not going to do that.

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HIS HONOUR: I cannot honestly see the basis upon which you can cross-examine any police officer about what they might or might not have said to witnesses in this case. Sometimes it's very relevant to do it but I can't see it in this case. Your client's defence is self defence. That's what you announced, that's his claim, Mr [REDACTED] supports his claim.

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LAVAC: Yes.

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HIS HONOUR: Now if there's some basis upon which you could say Mr [REDACTED] is not giving evidence in accordance with the evidence he gave in-chief because of threats he backed down from the evidence, it might become a different matter in that you could or I might be able to allow you to cross-examine Mr [REDACTED] to show that had been done. A big problem would emerge as soon as the police came along because the Court is not concerned with an enquiry into whether it had happened and for me to allow you to cross-examine a police officer, whether she committed a criminal offence, would require me to give her warnings.

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5 That would have to be done I suppose but I would only allow it if I was convinced that the cross-examination is relevant to something and what is the evidence that she can give against your client. The only evidence she could give as I understand it is she organised people to go and take witness statements and she got CCTV. What in that is the subject of any likely contradiction? How can you say she's lying about doing any of that?

10 LAVAC: We say your Honour that in her capacity to order the taking of witness statements she deliberately cherry-picked the witnesses from whom statements should be taken, restricting them to witnesses who have an allegiance with the alleged victim and deliberately ignoring witnesses who may provide the defence with evidence that is helpful to the defence, that's one matter. The second matter your Honour is--

20 HIS HONOUR: No, no, you've told me all that. What is the relevant issue?

25 LAVAC: Well because we've now got new instructions that there was an approach made to Mr [REDACTED] this morning which is capable of influencing his evidence. If such an approach was made to Mr [REDACTED] surely I'm entitled to cross-examine whether or not a similar approach has been made to other prosecution witnesses who have given evidence in favour of the Crown.

30 HIS HONOUR: No you're not.

LAVAC: Alright your Honour.

35 HIS HONOUR: Unless you are challenging the police about the evidence they are given you cannot cross-examine them about matters of credit and even if you could cross-examine them on matters of credit you'd be bound by their answers, you'd not be allowed independently to call evidence to show that their statements were untrue, so if 40 she came along and said I deny saying that to Mr [REDACTED] never at any stage did I say anything of the kind, well what do you do then? You can't do anything.

45 LAVAC: I appreciate I'm bound by that your Honour, of course. Your Honour would you permit me to when I cross-examine Mr [REDACTED] to listen first of all what was said to him on 19 January about the non-existent video tape, that's the first thing. Secondly, would you allow me to elicit in cross-examination what was said to him by 50 Ms Hennessy last Friday when the police came. That must be relevant to this trial in that improper pressure was put on a witness called by the prosecution in the Crown's case by a police officer who is an officer-in-charge of this case, that must be relevant your Honour.

55 HIS HONOUR: I'd have to see.

LAVAC: Sorry your Honour.

5 HIS HONOUR: I'd have to see what point you wanted to raise those questions before I could consider giving you leave. Unless there is an issue in Mr [REDACTED]' evidence in which this becomes relevant I can't see the relevance. The mere fact this occurred doesn't mean it's relevant in the trial that's what I'm trying to tell you.

10 LAVAC: I understand that your Honour, we really won't know the relevance until we've heard the remainder of Mr [REDACTED] evidence.

HIS HONOUR: Unless he does a complete reversal--

15 LAVAC: Unless he does a somersault and a backflip I probably won't even ask him your Honour.

HIS HONOUR: Well there's the answer then.

LAVAC: Yes.

20 HIS HONOUR: We'll just have to wait and see. Anyhow, I think - who brought Mr [REDACTED] in today, is it the same witness - Senior Constable Hennessy?

25 LAVAC: We'll find out your Honour.

HIS HONOUR: I think this is a very inappropriate thing to be done I must say.

30 CROWN PROSECUTOR: I might say your Honour my understanding from last week and I don't know about Friday afternoon's arrangement but unless I've got my wires crossed I understood that Mr [REDACTED] asked to be given a lift in.

35 HIS HONOUR: He probably did and it was being done as an act of kindness.

40 CROWN PROSECUTOR: Yes your Honour, because of his own inability I understand to - he doesn't have a licence and he's also got the neck problem your Honour.

45 HIS HONOUR: He doesn't have a licence and he has a neck problem, yes, and he lives up on the northern beaches and this is a long way.

CROWN PROSECUTOR: Yes your Honour.

50 LAVAC: Your Honour I remember last Friday your Honour there was some discussion as to whether or not we would give him a lift home but we thought it would be inappropriate because she was under cross-examination by the Crown. I'm just told now by my solicitor that Ms Hennessy brought him in and took him home Friday and brought him in this morning.

55 HIS HONOUR: I'd feel a great deal more comfortable about doing anything if you were able Mr Prosecutor to go and seek some instructions from the Director.

CROWN PROSECUTOR: Yes your Honour.

HIS HONOUR: I'm not in any way reflecting on your  
competence or anything of that nature, it's just my  
5 experience in the past has been that if there is some  
really ticklish problem sometimes one of the Deputy  
Directors has come along to make submissions. Now this is  
something sort of that arises incidentally like this in  
10 the course of a trial. I've found that helpful in the  
past. Sometimes they've got authority because they appear  
in so many cases, they appear in the High Court and the  
Court of Criminal Appeal and they can put their hands on  
something fairly quickly and the first question is should  
15 I bring her in and alert her to this or should I not  
because a witness is currently giving evidence? Should I  
alert her to it and ask her to go and get her own advice?  
Should I ask to consider them referring the matter to the  
Supreme Court? If so should I receive representations  
20 from her legal advisors before doing that? Or should I do  
nothing?

LAVAC: Your Honour my view is that it would be  
appropriate now that the matter has been raised to bring  
her in and suggest to her that she should get legal  
25 representation.

HIS HONOUR: Well that might be right.

LAVAC: And I think that should be done now your Honour.

30 HIS HONOUR: Well maybe it should be but what I'm going to  
do is adjourn for half an hour, give the Prosecutor the  
chance to get some instructions. At the end of that time  
if he can't get them because the people are too busy or  
35 something well I'll have to decide whether I do take that  
course or not, but I do not want to take a course that  
might be wrong, this type of matter can create a great  
deal of trouble for a great number of people and should  
only be embarked upon if there is a proper basis for it.  
40 I don't want to give someone a sort of warning if I  
shouldn't give them a warning. It's not a very usual  
situation so I'm going to adjourn for half an hour. I  
think the jury had better be told that we've had a very  
big problem with the law and they could come back at half  
45 past twelve. I'll try and come back about ten past but if  
you're still discussing things Mr Prosecutor just get your  
solicitor to ring your opponent and my associate and I'll  
wait.

50 CROWN PROSECUTOR: Yes your Honour.

HIS HONOUR: Okay, I'll adjourn.

SHORT ADJOURNMENT