

5 Nobody can make those fears go away and the fact that the witness has fears doesn't necessarily mean that anybody has done anything to cause him to have those fears. So I think that's the first thing that has got to be determined. Then I've got to decide whether there is anything sufficient to require any answer to be given. But as far as the trial is concerned it would seem to me that unless there's some basis for concluding that the witness' evidence has been affected in some way by something done as opposed just to a fear there's no basis for that to be explored in the course of the trial. I've heard submissions from both sides on it and I'll give more extensive reasons for it at a later point. But I'm not going to allow it to be done unless there is some clear basis. Now I would also be of the opinion that this evidence from Mr ~~XXXXXX~~ should be obtained now before we go any further.

20 ~~XXXXXXXXXX~~, SWORN (12:50PM)

HIS HONOUR

25 Q. What is your full name Mr ~~XXXXXX~~?

A. ~~XXXXXXXXXX~~.

Q. And you're a witness in these proceedings?

A. That's correct, yes.

30 COURT OFFICER: Your transcript from Friday has been emailed to you judge, there seems to be some problem--

HIS HONOUR: But what about today's transcript, are we getting that?

35 COURT OFFICER: Today you are on the daily but there is a question of priorities in relation to it, you will get it as soon as it's completed.

40 HIS HONOUR: I see alright, because they don't have to come in and out of the court because it's being done from a remote room.

COURT OFFICER: That's right yes your Honour.

45 HIS HONOUR

Q. Mr ~~XXXXXX~~ I've been told that on Friday last which was 9 February you travelled home with a police officer is that right?

50 A. That's correct.

Q. Who was that?

A. Detective Karen Hennessy.

55 Q. How did you come to be travelling with her?

A. It was organised to give me a lift in, I actually come in, travelled in the morning with her as well.

Q. Now I've been told that during the course of this lift home some conversation occurred about this case, is that right?

A. It was more outside the court after.

Q. Outside the court?

A. Yeah.

Q. Before you got in the car?

A. Yes that's correct.

Q. How did this start?

A. Pretty much I was a bit shaken after the experience of being in here and I just sort of expressed to her that it was a lot worse than I anticipated and she more or less said well given the circumstances of my evidence and me being apparently the only person in the nightclub that has seen this, well my evidence, my version, she said more or less anyone would you know think you're getting - it was along the terms of paid or money for my evidence, basically. I mean this is very difficult for me because I find her a very nice lady, she's very open, easy to talk to but she never accused, like she never said that she thought or any of the police thought that you know payment or money was involved, it was just the way she said it. At first it never bothered me but once I got home and thought about a few other things she mentioned to me as well in the car yeah it made me feel uncomfortable.

Q. What other things?

A. Well I mean we spoke about a lot of things relating to children and various things about my neck injury and she basically asked me about like how long has it been since I've worked out like in a gym and I'd previously been asked the same question by Mr Aitken in relation to do I work out. So she asked me what gym I'd been to when I was younger because I said I trained when I was 18 like from 17, 18 and 19 and then the only other time I've ever really trained from memory was around 2000, 2001, I had a little brief time at the gym with my brother at Belrose and she said I didn't know there was a gym at Belrose, I said yeah it's in the shopping centre at Glenrose.

Q. In 2000 was it?

A. It was 2000 or 2001 from memory.

Q. How did this make you feel, I'm just not clear, why did this make you feel uneasy?

A. Well it just made me feel like she was - wasn't really a conversation, it was - don't know it felt like I was being investigated about this whole you know may be it was because being questioned in conference in relation to do I work out. To me it made me feel like she was trying to determine where I've--

Q. Which conference was this that someone asked you about working out?

A. In a conference I had at the very beginning on the

first Monday I was here with Mr Aitken the prosecutor.

5 Q. Now coming back to this, you said to her it was a lot worse than you expected, this giving of evidence and she said tell me if this is right, given that this was the only evidence of anybody like this, anybody could think that you were being paid, is that right, anyone could think?

10 A. The way she worded it was more because of - basically because I'm the only - I have a different version apparently to everyone else I guess, that's what she was implying but and given that anyone would think I was getting paid or money.

*all his mates*

15 Q. But she didn't say she thought that?

A. No, no she did not.

Q. You say you're not being paid?

20 A. I definitely said yeah I'm - I mean it was more in a relaxed sort of conversation but it wasn't until I got home and reflected on it, it just made me feel very uncomfortable for her to be thinking along those lines.

25 HIS HONOUR: Alright well now do you wish to ask some questions?

LAVAC: Yes just one your Honour.

30 <ON VOIR DIRE MR LAVAC

Q. When this was said to you by Ms Hennessy, did you feel pressure upon yourself in relation to the evidence that you were giving or that you had given or were still to give?

35 A. With what she said to me in relation to the money?

Q. Yes.

5 A. No it - well at the time that she sort of said it it was you know it was a friendly sort of conversation but it wasn't until I reflected on it when I got home, you know, but as far as me giving evidence it doesn't - it just made me feel uncomfortable the suggestion of--

HIS HONOUR

10 Q. So it doesn't affect your evidence?

A. No it doesn't affect my evidence.

LAVAC: I have nothing further your Honour.

15 HIS HONOUR: Have you anything--

CROWN PROSECUTOR: No thank you your Honour.

HIS HONOUR

20

Q. Would you just step outside and for the moment don't talk to anyone about this.

A. Thank you your Honour.

25

<THE WITNESS WITHDREW

HIS HONOUR: On what basis would I come to a conclusion Mr Lavac that there was some attempt being made to influence evidence?

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LAVAC: Well quite clearly your Honour he said that he didn't feel pressure and that it didn't influence his evidence, so on the basis of that answer I suppose there's no basis for coming to a conclusion that there was an influence on his evidence.

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HIS HONOUR: Well that would be my view.

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LAVAC: The only thing I want to add to that your Honour is whether or not there was an influence it would appear certainly even though there was an influence there certainly could be construed that there was an attempt to exert some sort of influence. Whether the influence succeeded or not is neither here nor there. Clearly on this evidence your Honour there was what I would construe as an attempt.

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FOR JUDGMENT SEE SEPARATE TRANSCRIPT

50 HIS HONOUR: I'll adjourn, we'll come back at ten past two.

LAVAC: Two thirty your Honour?

55 CROWN PROSECUTOR: Ten past two.

LAVAC: I thought you said half past two your Honour, I'm sorry.