

RSB:SND

966/10
REVISEDIN THE DISTRICT COURT
OF NEW SOUTH WALES
CRIMINAL JURISDICTION

JUDGE C ARMITAGE

PARRAMATTA: MONDAY 24 MAY 2010

2009/59266 - R v John WILSON**JUDGMENT** - notice of motion to set aside subpoena for A Scipione; see transcript p 31

HIS HONOUR: Application has been made also by notice of motion today by the State Crown solicitor to have set aside a subpoena to Andrew Phillip Scipione to give evidence. I think I may know that Mr Scipione is the Commissioner for Police. I must examine the matter according the relevance of any evidence that Mr Scipione may give in the trial.

A subpoena may be set aside under the Evidence Act, among other reasons, if it is oppressive on the grounds that any evidence that the person subpoenaed may give could not have relevance to the trial. Just pardon me a moment.

ACCUSED: Can I also add a little point here about the relevance because part of my evidence is the way that I have been treated by police officers, namely I've been assaulted, I've been trespassed upon, I've been imprisoned unlawfully by police officers, and Andrew Scipione is responsible for the conduct of his officers and I'm going to draw him to account for that.

HIS HONOUR: Thank you. You have defined a further basis upon which you seek to call Mr Scipione.

Originally when asked the accused was unwilling to relate to me any respect in which the evidence of Mr Scipione could be relevant to the issues in this trial. He has just, by way of interruption to my reasons, given a reason why he says the evidence of Mr Scipione may be relevant. It is that the accused has been mistreated in various ways he says by police officers and

that Mr Scipione is their ultimate commander and he wishes to call him to give evidence, and presumably to seek to cross-examine him as an unfavourable witness in respect of the conduct of police officers towards him, the accused.

Any such allegations would be more properly put to the police who have allegedly committed the acts the accused alleges against them. If the accused wished to subpoena particular police officers then the subpoenae would be binding upon them, subject to any application of the kind made today which the Crown may wish to make. That is a matter for another day.

The accused has not defined to me any respect in which it is said that Mr Scipione may have personal knowledge of the matters of which he complains at the hands of other police officers, nor has he defined any respect in which the evidence of Mr Scipione might otherwise be relevant to this trial. It is not relevant to count 2 in the indictment, which charges, in brief terms, that the accused made a threat to Mr Scipione with intent to cause fear that the property of another would be damaged, because it is not an element in that charge that Mr Scipione was in fact caused to fear anything.

In those circumstances it seems to me proper to set aside the subpoena against Mr Scipione on the basis that it would be oppressive, because Mr Scipione would not be able to give any evidence of relevance to this trial. I set aside the subpoena to Mr Scipione.

I have explained earlier to the accused that the law of this State gives him a right of appeal against any ruling I may make in the course of this trial to the Court of Criminal Appeal, or in some cases to the Court of Appeal. He has indicated he does not wish to seek legal advice because he has had previous experience with barristers, solicitors and judges and does not trust them. That is a matter for him.

I have sought nevertheless to explain to him in the course of the hearing of this motion that he has the right to indicate to me the respects in which the evidence of Mr Scipione may be relevant to the issues in this trial. He has not to my mind done so satisfactorily, and that is the reason for my decision to set aside the subpoena to Mr Scipione, along with the other matters I have already articulated.

I direct that my remarks just made, along with my remarks concerning the other subpoena which I have set aside today, be transcribed for correction by me and placed with the papers.

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