

IN THE DISTRICT COURT  
OF NEW SOUTH WALES  
CRIMINAL JURISDICTION

5 JUDGE C ARMITAGE

PARRAMATTA: MONDAY 24 MAY 2010

10 **2009/59266 - R v John WILSON**

Mr Rowling as Crown Prosecutor  
Accused appeared in person

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15 IN THE ABSENCE OF THE JURY PANEL

HIS HONOUR: Do you have an indictment Mr Crown?

20 CROWN PROSECUTOR: Yes I do your Honour. I need leave to amend your Honour. Perhaps I might just show you the amendment and pass a copy down to the accused. The accused is in person.

25 HIS HONOUR: Yes, he's here.

CROWN PROSECUTOR: And I haven't shown him a copy of this yet.

HIS HONOUR: I'm just concerned about his being suddenly provided with an amendment to the indictment of which he has no prior notice.

30 CROWN PROSECUTOR: He has no prior notice because the amendments are drafting amendments and no more your Honour. I don't have authority to sign the indictment.

35 HIS HONOUR: I see.

CROWN PROSECUTOR: Because of count 3 which is a Commonwealth offence. Mr Keith Alder, a Deputy Senior Crown Prosecutor here in Parramatta signed it but he suggested a few shall I say drafting alterations, for  
40 instance leaving out "North Rocks" and those are the amendments made. But your Honour perhaps I should have given him a copy earlier but it didn't seem appropriate but they are only drafting errors, as I think your Honour will be able to tell and I seek leave to present that indictment.

45 HIS HONOUR: If you hand me the original indictment and the new indictment then I'll know.

CROWN PROSECUTOR: I don't think I have the original your Honour. I think it's still on the file.

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HIS HONOUR: Well how can I explain the amendments to an unrepresented accused if I don't have the original.

CROWN PROSECUTOR: Your Honour it's on the file already.

5

HIS HONOUR: Well it's on the file, it would have been helpful to hand it up.

CROWN PROSECUTOR: I'm sorry your Honour.

10 HIS HONOUR: Is what's handed to you the original indictment?

CROWN PROSECUTOR: As I understand it yes your Honour.

15 HIS HONOUR: Thank you. Right, just let me read both. The original has two counts, the--

CROWN PROSECUTOR: Three counts your Honour.

20 HIS HONOUR: I see and that--

CROWN PROSECUTOR: It goes over the page.

HIS HONOUR: And the amended one also has three counts.

25 CROWN PROSECUTOR: That's right your Honour and they're cast under the same section, section--

HIS HONOUR: I see.

30 ACCUSED: I object to the amendment.

HIS HONOUR: Yes, you are Mr Wilson? For the record I'm simply asking you--

35 ACCUSED: It's quite obvious that they've removed Andrew Scipione from the amended - you've got him so that's all right, in the third one I can't see him mentioned here.

40 CROWN PROSECUTOR: He's not mentioned in the first one. There's been no change to the third count your Honour.

ACCUSED: No, the first one looks about the same.

45 HIS HONOUR: Am I right in thinking that the only changes are to the second.

CROWN PROSECUTOR: No your Honour there's a slight change to the first count.

50 HIS HONOUR: Yes, tell me what it is.

CROWN PROSECUTOR: Well it says - the expression "or reckless" has been deleted from Crown one and there has been a trifling - it says "intentionally damage" instead of "intentional damage of property".

5 HIS HONOUR: I see.

CROWN PROSECUTOR: It's a grammatical change.

10 HIS HONOUR: Well that's not all together right because the word "reckless" is removed from the new one.

CROWN PROSECUTOR: Yes.

15 HIS HONOUR: What it amounts to Mr Wilson is this, in the original indictment, as I'm picking it up, it charges - I'll just read it out. You're familiar with it I'm sure but I'm going to put it on the record anyway. It charges that,

20 "Between 11 July 2009 and 14 July 2009 at North Rocks in the State of New South Wales you did break and enter the dwelling house of Kamal Issa at 331 North Rocks Road and then committed a serious indictable offence therein, namely intentional or reckless damage of property belonging to Kamal Issa."

25 The new one reads this way,

30 "Between 11 July 2009 and 14 July 2009 at North Rocks in the State of New South Wales you did break and enter the dwelling house of Kamal Issa at 331 North Rocks Road and then committed a serious indictable offence therein, namely intentionally damage the property belonging to Kamal Issa."

35 Now you will see that in the original indictment it says "intentional or reckless damage". In the new indictment it says "intentionally damage". Now the difference is this if the Crown persuaded the jury - if the Crown proceeded on the original indictment they could succeed against you, if the jury found against you, on the basis of either reckless damage or intentional damage. In the new indictment they have to succeed on the basis of intentional damage only. In other words as I read the indictment and correct me if I'm wrong Mr Crown, the amendment to the first count is actually in your favour. The reason it's in your

40 favour is that they've restricted themselves in the new indictment and that's the one I now hold up, is it not Mr Crown?

CROWN PROSECUTOR: Yes your Honour.

45 HIS HONOUR: In the new indictment they must prove that the damage was intentional. In the old indictment they could have proved either that it was intentional or that it was reckless. Now reckless means in broad terms that the accused acts in such a way that he or she clearly contemplates that the damage may be done and yet proceeds to act in that way. In other words they

50 don't have to prove intent, they just have to prove that it was reckless, in other

words that you were if you like criminally careless as to whether the damage occurred or not. In the new indictment they've actually got to prove that you intended to damage the property concerned. They've restricted themselves to intentional rather than simply making it intentional or reckless. Now you have  
5 the right to object to the new amendment if you wish but my job is to advise you, as far as I can, on your rights. I'm not appearing for you, don't get me wrong, but my job is to make sure that you as far as possible have the knowledge that a barrister would have about running your case and what I'm  
10 telling you is that the new amendment to count 1 is actually more restrictive so far as the Crown's case is concerned than the old one. That may assist you.

ACCUSED: I object to the charge because it's absurd to begin with.

15 HIS HONOUR: I'm sorry?

ACCUSED: The charge is absurd to begin with because 331 is not dwelling house of Kamal Issa, so the whole charge is absurd.

20 HIS HONOUR: Well quite frankly Mr Wilson if the Crown fails to prove that 331 North Rocks Road was the dwelling house of Kamal Issa at the time of the acts it alleges against you, then the Crown would fail to prove its case. So that is not so much a basis for objection to the charge because that's in the original indictment anyway, that is a basis for the defence, in other words you may  
25 wish to submit to the jury in due course that the Crown has not proved beyond reasonable doubt that the dwelling house of Kamal Issa is 331 North Rocks Road. So that is a matter for the defence and it's in the original indictment anyway. What I'm talking about is the amendments. Mr Crown there may be a lot to be said for proceeding on the original indictment.

30 CROWN PROSECUTOR: Yes your Honour, well may it please the court. Will your Honour give me 15 minutes because I need to have it re-engrossed and signed by a person of authority to do it?

35 HIS HONOUR: Yes, I simply point out that the amendments, so far as I can see - just let me have a look at the amendment to count 3. Look really Mr Crown when I look at the original indictment, firstly it's signed by a Crown Prosecutor in any event. If the Crown Prosecutor who signed it had authority to sign it, then you can use it as is.

40 CROWN PROSECUTOR: I don't know who signed it your Honour. I can't read the writing.

HIS HONOUR: I see. Well for more abundant caution then you should take the course that you should suggest.  
45

CROWN PROSECUTOR: Yes your Honour.

HIS HONOUR: I hand back both indictments. They're simple drafting amendments. Rather than burden poor Mr Wilson with changes to the  
50 indictment I think it's a lot simpler if we proceed on the original indictment.

CROWN PROSECUTOR: Yes your Honour. Though I should just say this your Honour, that the two interlined matters - sorry "Andrew" will be spelt "Andrew" not "Andre".

5 HIS HONOUR: Yes.

CROWN PROSECUTOR: And "North Rocks Road" where it occurs the first time in count 2 will have a capital letter.

10 HIS HONOUR: Yes I see, well those are spelling errors and nothing more.

CROWN PROSECUTOR: Yes your Honour.

15 HIS HONOUR: Could I have the original indictment please Mr Crown?

CROWN PROSECUTOR: I'm sorry your Honour.

HIS HONOUR: I just want to give the accused the advice I should give him now.

20

CROWN PROSECUTOR: Which indictment was your Honour asking?

HIS HONOUR: The original.

25 CROWN PROSECUTOR: The original, yes your Honour. I think we have copies of that.

HIS HONOUR: I'm going to hand it back to you in a moment but I just want to tell Mr Wilson something. Mr Wilson you've been charged with three offences.  
30 This is a piece of official advice that I must give you at the commencement of your trial, so that's why I'm giving it to you now at the earliest possible opportunity. The Crown has signalled its intention to rely on the original indictment, so put out of your mind any amendments to the indictment. There is not now any question of whether you object to any amendments to the  
35 indictment because there are none, right. All that will be required when the indictment is read to you in the presence of the jury is that you plead either guilty or not guilty. Obviously you intend to plead not guilty to each charge and if that be the case then as the indictment is read to you and I shall ask you - I think it's sufficient Mr Crown, is it not, since the accused is conducting his own  
40 defence if he stands at the bar table when he's indicted?

CROWN PROSECUTOR: Your Honour he can hardly go behind the glass--

45 HIS HONOUR: Precisely.

CROWN PROSECUTOR: He can hardly conduct a defence from there your Honour.

50 HIS HONOUR: Precisely, that's my point. I'm simply asking you are you content Mr Crown, I see no problem, if the accused pleads to the charges

within reach of a microphone at the bar table where he presently is?

CROWN PROSECUTOR: Well I assume your Honour is going to direct that he may conduct his defence from there.

5

HIS HONOUR: Of course and I give such direction. He's not in custody.

CROWN PROSECUTOR: No your Honour, he's on bail.

10 HIS HONOUR: But I'm going to give him the advice I need to give him now, so that even before the trial commences he knows what he can and can't do.

CROWN PROSECUTOR: Yes your Honour.

15 HIS HONOUR: So far as the charges are concerned Mr Wilson, all that will happen is that my Associate, sitting in front of me, will read each charge to you and she will say, "How do you plead, guilty or not guilty?" and all you need say is either "guilty" or "not guilty". Presumably you intend to plead not guilty to all of the charges, is that so? Yes?

20

ACCUSED: That's right, I've done no wrong.

HIS HONOUR: In other words you propose to plead not guilty, yes?

25 ACCUSED: I've done no wrong, yes.

HIS HONOUR: Thank you. I hear that but there is an official way of pleading to the charge. Rather than saying "I've done no wrong", what you must say if you intend to plead not guilty is "not guilty".

30

ACCUSED: It means the same thing.

HIS HONOUR: Of course it means the same thing, you're exactly right but I'm just asking you, if you would, when you are asked to plead to the charges would you simply use the proper wording which is "not guilty", do you understand?

35

ACCUSED: Yes, I don't want to impede the process of the jury, so yeah.

40 HIS HONOUR: Thank you. Very well, now listen carefully, you may sit down for the moment. Just listen carefully to the advice that I give you and if there's anything you don't hear please say so.

45 ACCUSED: Yes, I do have a little trouble with hearing, I've got hearing aids but they're pretty terrible things.

HIS HONOUR: Thank you. If you want to use them, well and good, if you don't--

50 ACCUSED: Well, they don't work very well, I don't know what's wrong with

them, it's a very mechanical, sounds terrible.

5 HIS HONOUR: Very well, that's a matter for you. But Mr Wilson, you will in  
the presence of the jury be charged with three charges. The first one, to read  
it to you is that between 11 July 2009 and 14 July 2009 at North Rocks in the  
State of New South Wales, you did break and enter the dwelling house of  
Kamal Issa at 331 North Rocks Road, and then commit a serious indictable  
10 offence therein, namely, intentional or reckless damage of property belonging  
to Kamal Issa". The second charge is that on 14 July 2009 at Sydney in the  
State of New South Wales, without lawful excuse, you did make a threat to  
Andrew Scipione with the intention of causing the said Andrew Scipione to fear  
that property, namely, premises at 331 North Rocks Road, North Rocks,  
15 belonging to Kamal Issa would be damaged or destroyed. The third charge is  
that on 15 July 2009 at North Rocks in the State of New South Wales, you  
used a carriage service by sending an email in a way that reasonable persons  
would regard as menacing, harassing, or offensive. To these charges, you  
intend to plead not guilty.

20 ACCUSED: Yeah, one of the point here has got 14th on one and 15th on the  
other one.

HIS HONOUR: It's up to the Crown to put in whatever dates the Crown wishes  
to allege.

25 ACCUSED: Okay, I stand corrected, I'm happy.

HIS HONOUR: I just want to continue giving you the advice that I need to give  
you. Mr Wilson, as this is a criminal trial, the burden or obligation to prove that  
you're guilty is placed squarely on the Crown. That burden rests with the  
30 Crown in respect of every ingredient or essential fact that makes up the  
offences with which you've been charged. There is no obligation whatsoever  
on you to prove any fact or issue that is in dispute. You do not have any  
obligation to call any evidence or prove anything. I should explain to you my  
role and the role of the jury in the trial. The jury is the sole judge of the facts.  
35

ACCUSED: And the law.

HIS HONOUR: The law is a matter for me.

40 ACCUSED: No it's not.

HIS HONOUR: I'm sorry, it is.

45 ACCUSED: No it's not.

HIS HONOUR: I propose to adjourn until you learn to keep quiet while I am  
trying to tell you--

50 ACCUSED: I'm just trying to correct you, you are wrong. The jury decide the  
facts and the law.

HIS HONOUR: I am trying to explain to you what the law is.

ACCUSED: I am trying to explain to you what the law is.

5 HIS HONOUR: I am the judge, I have been trained with the law, I know what  
the law is, you don't. What I am trying to tell you for your own protection is  
what the law is. The reason I say "for your own protection" is that you are  
entitled, as you have chosen to defend yourself, to have the information that a  
10 barrister would have if a barrister defended you. In other words, you are  
entitled to know what a barrister or solicitor or a judge, I was a barrister for  
twenty one years myself, and a solicitor for five years before that, I think I know  
what I'm talking about, I've been a judge for fifteen years, before that I went to  
law school. That's what most barristers or solicitors do, in other words, they  
15 learn what the law is. A person who's not legally qualified is entitled to have  
explained to them as a right as a citizen what the law is, and that is what I am  
seeking to do for you.

ACCUSED: I'm trying to help you too because the jury, if they don't judge the  
20 facts and the law, they are not doing their duty.

HIS HONOUR: Can I make it very simple? In a moment I will explain to you  
this, the jury's function is to decide the necessary facts which the Crown may  
or may not have proven, depending on the jury's decision, in order to reach a  
decision as to your guilt or innocence. The jury must have explained to it by  
25 me what the law is. The jury's job then is to apply that law, and I think this is  
what you're talking about, you're right in this way, the jury does have to apply  
the law to the facts in order to decide whether you're guilty or not. To put it  
another way, the jury has to be told, amongst many other things, what the  
essential ingredients are, what the initial list of things is that the Crown has to  
30 prove in order to prove its case against you. So that the jury can make sure  
that and look at each part of the Crown case and ask themselves "Did this  
happen or didn't it, has the Crown proved this or hasn't?" The jury of course  
has to be given a list of things which the Crown must prove. The Crown will do  
that at the beginning of the trial, at the end of the jury in the summing up, I'll do  
35 it, so that the jury knows what the law is. But you're right in the sense that the  
jury then applies the facts to - then applies that law to the facts of the case as it  
finds them, and then, and only then, does it come to a conclusion about  
whether you are guilty or not guilty. You are right in the sense that the jury has  
to apply the law as well as finding facts, I think that's what you're talking about.

40 ACCUSED: They must do more than apply the law, they must judge the  
justice of the law.

HIS HONOUR: I think we're talking about the same thing, if I may say so.  
45

ACCUSED: I'd like to read a introductory paragraph from a nineteenth century  
barrister called Lysander Spooner "For more than 600 years, that is since  
Magna Carta in 1215, there's been no clearer principle of English or American  
Constitution Law than that in criminal cases, it is not only the right and duty of  
50 juries to judge what are the facts, what is the law, and what is the moral intent

of the accused, but is also their right and their primary and paramount duty to judge the justice of a law, and to hold all laws invalid that are in their opinion unjust or oppressive, and all persons guiltless in violating or resisting the execution of such laws”.

5

HIS HONOUR: I am most grateful for your assistance in reading that out, and that is of assistance. What I will now do is continue with the advice that I need to give you. Would you sit down please?

10 ACCUSED: As long as you understand that the role of the jury is to judge the facts and the law.

HIS HONOUR: I will tell you in the course of the advice I give you how that is to be done, and I will tell the jury in due course how it's to be done. Would you please sit down so I can continue the advice? I will just repeat what I said. As  
15 this is a criminal trial, the burden or obligation to prove that you're guilty is placed squarely upon the Crown. That burden rests upon the Crown in respect of very ingredient or essential fact that makes up the offence with which you have been charged. There is no obligation whatsoever on you to  
20 prove any fact or issue that is in dispute. You do not have any obligation to call any evidence or prove anything. I should explain my role and the role of the jury in the case. The jury is the sole judge of the facts. All disputes about matters of fact in this case will be decided by the jury, and not me. Generally that means that it is entirely up to the jury to decide what evidence they accept  
25 and what evidence they do not accept. I am not involved in making decisions about the facts, I am the judge of the law. During the trial, this means that I am required to ensure that all the rules of procedure and evidence are followed. At the end of the trial, I will give the jury directions about the legal principles that apply to this case.

30

I will explain to them how the legal principles should be applied to the issues that they have to decide. Sometimes during the trial, a question of law will arise for me to decide, this might include arguments about whether particular  
35 evidence should be admitted. I may need to hear arguments from the Crown Prosecutor and from you before I make a decision. If that occurs, it is usually necessary for the matter to be debated in the absence of the jury.

ACCUSED: I object. You can't exclude the jury, this is trial by jury.

40 HIS HONOUR: I'm not excluding the jury, I'm telling you how the jury are involved. The jury are of course involved and that is what I have said.

ACCUSED: The facts and the law.

45 HIS HONOUR: Yes, in the way that I have explained.

ACCUSED: They judge the justice of the law.

HIS HONOUR: They judge the justice of your case which is I think what you  
50 mean.

ACCUSED: They judge the law.

HIS HONOUR: Very well. After the jury has been empanelled, I will ask the Crown Prosecutor to give an outline of the case the Crown anticipates  
5 establishing by the evidence. The purpose of the opening is to assist the jury in understanding the evidence as it is given during the trial. What the Crown tells the jury in the outline is not evidence, it is nothing more than an outline of what the Crown expects the evidence will establish. After the Crown  
10 Prosecutor has completed his address, you will have the right to address the jury yourself. Your address can refer to any issues which you dispute, or which you do not dispute.

ACCUSED: Sorry, I missed that part.

15 HIS HONOUR: After the Crown Prosecutor has completed his address, you will have the right to address the jury yourself.

ACCUSED: After he does it, okay.

20 HIS HONOUR: That's at the end of the case, that's after the Crown has finished its case and if you have called any evidence, or given any evidence yourself, then you will have the opportunity to address the jury after the Crown has done so. In other words, you get the last address to the jury, which is an  
25 advantage, I may add. In other words, the last voice they hear before my summing-up and they go to consider their verdict is yours. Your address can refer to any issues which you dispute or which you do not dispute. However, at this stage your address must be limited to the matters dealt with in the prosecutor's opening address, and if you wish, to the matters you propose to raise in your defence, like the Crown Prosecutor's opening address, what you  
30 say to the jury at this stage is not evidence. You do not have to address the jury, that is up to you, and what I'm telling you here is that you have another opportunity to address the jury, and that is at the beginning of the trial after the Crown has given the jury an outline of what the Crown intends to prove. In that address, you don't address on your entire case, you don't have to.

35 The idea of that address is simply to tell the jury the respects in which you dispute the Crown case against you. It's so the jury knows what the issues are in this trial, in other words, the jury knows what are the areas of disagreement as to the facts of the case between you and the Crown Prosecutor, that is to  
40 say between you and the Crown. So if you wish, when the Crown has finished addressing the jury, telling them what they say its case is all about, and please if I may, I'd ask you not to interrupt during the Crown's address. You will then have the opportunity to say to the jury "Well ladies and gentlemen it is my case that" one, two, three, four, however you like to put it, in other words, you can  
45 tell the jury the respects in which you dispute the facts which the Crown wishes to prove. What you say in your address is not evidence, you will have the opportunity to give evidence from the witness box, either on oath or on an affirmation when the time comes. All you will be doing is simply giving the jury, if you like, a potted outline of what your case is, if you have the idea.

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Now to continue. You will hear the Crown Prosecutor explain to the jury the nature of the charges, and the Crown's case against you. When the jury's brought back into court, the Crown Prosecutor will call witnesses and produce documents or other material to seek to prove the charges. Once the Crown  
5 Prosecutor explains to the jury the nature of the charges and the Crown's case against you, it will call witnesses and produce documents or other material to seek to prove the charges. Documents and other material tendered in the evidence during the trial are marked as exhibits. The exhibits are used by the jury in its deliberations. You can object to any question asked by the Crown  
10 Prosecutor if you have a legal basis for doing so. An example of a legal basis for an objection is that a question is not relevant, or it is unfair. If you want to object to any question after it is asked, but before it is answered, you must stand up and say "I object". I will then hear whatever you want to say about the question, and depending on why you're objecting, I may do so in the  
15 absence of the jury. You cannot object simply because you disagree with the evidence.. If you are unsure as to your right to object to a question on legal grounds, you should ask me for assistance.

20 ACCUSED: But you've got no jurisdiction to make any judgments. This is a trial by jury.

HIS HONOUR: It is my job to control the proceedings and it is my job--

25 ACCUSED: To assist the jury.

HIS HONOUR: Yes of course, it is my job to rule on any objections to evidence that may be sought to be given by the Crown.

30 ACCUSED: No, no, that's making a judgment, it's trial by jury.

HIS HONOUR: No, just a moment, it's not making a judgment, there are two questions--

35 ACCUSED: A ruling is a judgment.

HIS HONOUR: Just a moment, there are two questions. The first question is whether a question is legally admissible, that simply means can the Crown ask the question, are they allowed to do so. The second question is whether that evidence is acceptable or not. That is not a matter for me, it's a matter for the  
40 jury, that's the difference. I am only making a ruling as to the admissibility of the question, I am not making a ruling as to whether or not the evidence is to be believed.

45 ACCUSED: I object.

HIS HONOUR: Well, I'm just telling you that I am not making a ruling about whether the evidence is to be believed or not. All I am doing is telling the - all I will be doing is telling the Crown, or in due course yourself, whether or not the evidence is admissible. That is a matter for the judge.  
50

ACCUSED: No it's not.

5 HIS HONOUR: That is not a question of whether or not the evidence is to be believed, that is the difference, that is entirely a matter for the jury, as you rightly say.

ACCUSED: No, that's restricting evidence.

10 HIS HONOUR: Can I just ask you, would you appreciate it if you are entitled to ask the - for me to ask the Bar Association if you would like to receive advice pro bono, that is free, from a barrister? It may assist you if I afford you that right so that either you can have a barrister represent you in the trial, or if you don't want that, you can have a barrister advise you on whether or not you have a good chance of beating the charge, and whether or not you have  
15 certain rights during the trial. Would you like to take that course? Because if you would, I would be prepared favourably to consider an adjournment for that purpose. Would you like to do that?

20 ACCUSED: No, I've learnt by experience that I cannot trust barristers, I cannot trust judges, it's up for the jury. This is why I've been demanding trial by jury for fourteen years.

25 HIS HONOUR: Could I just say this to you, whether or not you trust me, the fact is that the trial has to proceed in an orderly way. Proceeding in an orderly way means that I must be allowed to exercise my function. My function is to decide on a preliminary basis whether evidence is admissible or not. It's up to the jury to decide whether they accept the evidence or not. I think your point is this, that the jury has to decide on the justice of your case, that's precisely why you've got a jury, that's why we have juries in this country, twelve ordinary  
30 people, they're not lawyers, they're not barristers or solicitors, they're just ordinary people. I'm like the referee in a football match, if you like, I'm the person here who says whether the rules have been obeyed or not. But as to the rules by which the jury operates, they apply the rules, I don't, it's not my job to decide whether you're guilty or not, that's up to the jury.

35 ACCUSED: They decide the admissibility of evidence to them.

HIS HONOUR: Quite frankly, I decide the admissibility of the evidence.

40 ACCUSED: No you don't.

HIS HONOUR: This trial is not going to proceed in an orderly way unless you allow me to decide the admissibility of evidence or not. If you do not allow me to decide the admissibility of evidence, and you repeatedly interrupt my  
45 attempt to do so, I am sorry to say that you will be guilty of contempt of court, and that is--

ACCUSED: Contempt of court.

50 HIS HONOUR: I must warn you that what I decide about the admissibility of

evidence is binding.

ACCUSED: You mentioned contempt of court, a contempt of court is interfering with the administration of justice.

5

HIS HONOUR: Quite so.

ACCUSED: And justice is the protection of rights and the punishment of wrongs.

10

HIS HONOUR: Quite so. Can I make it simple? Deciding whether evidence is admissible or not is not, if you like, applying the law on the question of your guilt or otherwise. All it's deciding is whether or not the Crown is allowed, or you are allowed, but particularly the Crown is allowed to call certain evidence or not. If the Crown wished to call evidence which was not admissible, and it was allowed to call it and the jury heard about it, that would disadvantage you in your defence. My role in deciding that the admissibility or otherwise of evidence is to decide whether or not the jury is allowed to hear evidence against you. I am trying - the purpose is to protect you against inadmissible evidence being given before the jury, that is why judges decide the admissibility of evidence, not whether or not it should be believed, but just whether or not it should be called, that's the difference, that's that.

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ACCUSED: No it's not that, because it's trial by jury, the jury are entitled--

HIS HONOUR: I am not going to sit here and argue, I'm going to leave the bench.

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ACCUSED: It's a matter of the truth, the whole truth and nothing but the truth.

SHORT ADJOURNMENT

35

HIS HONOUR: Mr Wilson I'll just continue with the advice that I need to give you. If the Crown seeks to tender material such as a document, photograph, video or other item you have the right to object to its tender if there is a legal basis for the objection. If you want me to rule on the tender of any such material you should stand up and say, I object and I will then hear whatever you want to say. Again, I may do so in the absence of the jury. You have the right to cross-examine the Crown witness, that is to ask him or her any questions which you think may help you.

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ACCUSED: Can I just clarify one point. When you say, you are controlling the Crown solicitor in presenting evidence, are you also saying that you're controlling evidence that I want to present?

45

HIS HONOUR: I deal with any objections to evidence in due course.

ACCUSED: So in other words you're saying--

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HIS HONOUR: I want to continue with the advice that I'm giving you. You

have the right to cross-examine a Crown witness, that is to ask him or her any questions which you think may help you or weaken the Crown case. However there must be questions, not statements or comments by you. If a Crown witness is able to say something or has material which you think will assist  
5 your case for example, perhaps an earlier inconsistent statement by an alleged victim who's a witness, then you can ask the witness questions and tender in evidence that material through that witness. If there is evidence which you want the jury to consider which effects the reliability of the witness or the witness's evidence, for example relating to the witness's memory or potential  
10 unreliable witnesses or possibly identification evidence, then you may test that by asking the witness questions.

If you are going to contradict the evidence of a Crown witness or suggest that the witness is telling lies you must make your allegations to that witness in the  
15 form of questions, so that he or she has the opportunity to respond to your suggestions. It is also important for you to remember that any suggestion in a question you have asked during cross-examination is not evidence, unless the witness agreed with that suggestion. So for example, if you ask the witness,  
20 "You saw me wearing a grey jumper on such and such a date, didn't you" that's just an example and the witness says, "No" or "I don't know" or "I don't remember" then there is no evidence to support the particular question you've asked. I'm sure you can follow that.

After the Crown Prosecutor has called all the Crown witnesses you will be  
25 given an opportunity to suggest to me, that the Crown case should be taken away from the jury because there is not enough evidence to prove the charges against you. This application is made in the absence of the jury, you don't have to do this you may do so if you wish. If you don't not make such an application or if you make such an application and it's rejected, you will then be  
30 given an opportunity to present any evidence you wish to answer the Crown case. You don't have to give evidence yourself, you don't have to call any witnesses to give evidence on your behalf. The Crown has to prove it's case against you, you don't have to prove anything. However if you are calling any evidence either by giving evidence yourself or by calling other witnesses you  
35 may, if you wish first address the jury. The purpose of addressing, that means at the end of the Crown's case. For the purpose of addressing the jury before you call your evidence is to give them a general outline of the case you're going to present. During that address you can't attack the Crown case, you have the opportunity to do so later in your final address, after all the evidence  
40 has been given. You may give evidence yourself or chose not to give evidence. If you chose not to give evidence I will direct the jury that you are entitled to say nothing and make the Crown prove your guilt and that your silence in court cannot be used against you.

45 If you do not give evidence you can still call other witnesses to give evidence which is relevant to the charges. You may also tender any relevant documents or other things as exhibits in your case. If you intend to give evidence yourself or to call other witnesses it is normal to give your own evidence before calling those witnesses because if you give evidence after any of your witnesses the  
50 comment may be made that you've tailored your own evidence to fit with the

evidence given by them but if you decide not to give evidence, I'll direct the jury that, that decision cannot be used against you either. In other words you've got the right to remain silent. You don't have to give any evidence whatsoever against the Crown's evidence if you don't wish to do so it is  
5 entirely a matter for yourself whether you do so or not.

I remind you again that it is entirely a matter for the Crown to prove it's case against you and to prove it beyond reasonable doubt to the jury's satisfaction, you don't have to prove anything. When you do call your own witnesses, if you  
10 do, you may ask them questions however you can't ask your own witness a leading question. A leading question is one which suggests the answer to the witness. Like, "You're a good bloke aren't you?" for example, that suggests the answer.

If you do ask a leading question then the Crown is likely to object. In some circumstances you may with the leave of the court question a witness you've called as though you were cross-examining the witness. You may wish to do this because the witness has given evidence that is unfavourable to you or the witness has not made a genuine attempt to give evidence about a matter  
20 which he or she may reasonably be expected to have knowledge about, or if the witness has given a prior statement which is inconsistent with the evidence he or she has given in court. If that occurs I'll make a legal ruling about whether you can cross-examine your own witness. If leave is granted you may ask him or her any questions which you think may help you or weaken the  
25 Crown case.

The Crown has the right to cross-examine the witnesses you call. At the conclusion of the Crown's cross-examination you may ask each witness further questions to explain or contradict matters put to them in cross-examination  
30 which they might have been unable to explain or contradict during the cross-examination itself. It's also very important that all of the evidence you want to the jury to hear is given in your case.

When all the evidence has been presented both you and the Crown prosecutor have the opportunity to address the jury again. The Crown prosecutor will address the jury first; after that you will have the opportunity if you wish to address the jury. At that time you may present arguments as to why the jury should not accept the Crown case against you or as to why you should be found not guilty. At that stage you can discuss the evidence already given but  
40 you can't introduce new evidence because you've already had your opportunity quite obviously, this is where the jury. You will be entitled to refer in your addresses to all of the evidence that the jury has heard or seen, that includes any exhibit which has been put into evidence and includes your own evidence if you've given evidence.  
45

As I've already said, any suggestion in a question you have asked one of the Crown witnesses during cross-examination or one of your own witnesses is not evidence unless the witness agrees with the suggestion put to them. You must understand that if during your address you assert facts about the charges  
50 which are not supported by the evidence I may give the Crown permission to

make a supplementary address or another address to the jury replying to any such assertion. If you would like me to give advice at any stage in the trial about anything that I've told you, and I know it's a lot to understand in one go, please let me know when the particular matter arises.

5

I think I have now given you all of the advice that I need to give you regarding the conduct of the trial. There are a few other matters that I need to tell you though. In this case the Crown - I withdraw that - there's no suggestion to any admission to any investigating official I take it?

10

CROWN PROSECUTOR: I'm sorry, your Honour?

HIS HONOUR: There is no suggestion of any admission to an investigating official?

15

CROWN PROSECUTOR: Yes, your Honour, there is an ERISP which may need editing. I haven't attempted to do so because I do not know and have not inquired of him what the accused's attitude would be, though he does evince a determination to have it before the jury in the electronically recorded interview itself.

20

HIS HONOUR: In other words the stance of the accused is that he wants the whole of the electronically recorded of interview placed before the jury. Is that right?

25

CROWN PROSECUTOR: That appears to be so but I don't know if that is his stance and I should say this, your Honour: at one stage during the course of the interview police officers asked him whether he had had any psychiatric problems, and it may well be that that should not be before the jury. I think there was a reason why they asked those questions.

30

HIS HONOUR: Yes. Mr Wilson, could I just ask you this question: did the police at any stage during your record of interview ask you if you had psychiatric problems? Do you recall anything about that?

35

ACCUSED: Yes, it's actually on the electronic interview I did at the police station--

HIS HONOUR: I see. My view would be, Mr Wilson, that it would be unfair to you to have that question in because it may prejudice the jury.

40

ACCUSED: I don't want to restrict the jury in every way they must judge the truth, the whole truth and nothing but the truth--

45 HIS HONOUR: Of course.

ACCUSED: --so in fact the way I answered that question in the police station is that I've actually had two psychiatric assessment during the course of the last 14 years and I told them on both occasions they says I had no mental disorder but in fact that I have high moral values and was of super intelligence.

50

And I thought that was the greatest laugh of all time.

HIS HONOUR: Yes.

5 ACCUSED: Because in other words they're trying to get me under some Mental Health Act, even the times I've been put in goal with--

HIS HONOUR: All right.

10 ACCUSED: --they've had psychiatric nurses--

HIS HONOUR: Could I put it simply--

ACCUSED: Uh?

15

HIS HONOUR: Could I put it simply, Mr Wilson, if you say that the answers you gave are to your mind an adequate defence against any suggestion that you have any psychiatric problems it may well be that I will allow the jury to see that evidence if that is what you wish.

20

ACCUSED: But you can't restrict any evidence. You can't.

HIS HONOUR: We'll debate that if and when we need to, Mr Wilson--

25 ACCUSED: Well - during the course of it, yeah.

HIS HONOUR: All I'm talking - I'm just trying to protect you and warn you against evidence that may possibly prejudice the jury. If you don't want it excluded, Mr Wilson, and your replies are to the effect that you've said they are then it may well be that it is proper to look at it - it may well be that it is proper for it to go before the jury.

30

ACCUSED: Well the jury will decide the admissibility of evidence.

35 HIS HONOUR: Well we'll debate that--

ACCUSED: It's called trial by jury.

HIS HONOUR: Could we just continue with the advice I need to give you. In this case the Crown alleges that you have had conversations with an investigating official; the Crown may wish to say that those are admissions. It is for the judge of the trial to decide whether admission you made should be admitted into evidence if you want me to do that. In other words, if you want me to decide whether the jury is allowed to hear any admission that you are supposed to have made in your record of interview then if you wish me to I may intervene to protect you against--

45

ACCUSED: I don't want you to make any judgments whatsoever.

50 HIS HONOUR: Very well, thank you.

ACCUSED: No.

HIS HONOUR: Thank you.

5 ACCUSED: It's trial by jury.

HIS HONOUR: Well I'm just telling you that if that were to occur I would decide those issues by hearing evidence from the witnesses to whom you've alleged to have made the admissions. And if you wish to contest the evidence  
10 of the admissions then you should tell me now and I'll deal with the issue before the jury is empanelled, in other words--

ACCUSED: You won't deal with any issue before a jury comes--

15 HIS HONOUR: Could I just say this to you. You have the right if you wish - if you don't want to do it don't do it, you have the right if you wish to raise the admissibility of any evidence of which you have notice. Now if you don't want to do that, if you want all that evidence to go before the jury then you're not obliged to raise it. I'm just pointing out a right that you have as a citizen, that's  
20 all.

ACCUSED: My right is to trial by jury.

HIS HONOUR: Thank you.

25 ACCUSED: And the jury have sovereignty.

HIS HONOUR: Yes. If you want to suggest to the jury that you're a person of good character, either generally or in a particular respect then you're entitled to raise that good character for their consideration. You may do this by either  
30 asking appropriate questions of Crown witnesses or by stating this during your evidence. If you do not have a criminal history then you may wish to ask one of the Crown witnesses a question about that. If you do have a criminal history it would be advisable not to ask any Crown witness about that because  
35 otherwise that criminal history would come out before the jury.

ACCUSED: Now that's a very critical point.

HIS HONOUR: Yes.

40 ACCUSED: Because I've never been convicted in any court of proper jurisdiction. Never. I've never had a jury.

HIS HONOUR: Thank you. Is it the case that there are no prior convictions, Mr Crown?  
45

CROWN PROSECUTOR: No, your Honour, there - I haven't got the details, your Honour, but he has been convicted before magistrates but he maintains that they have no jurisdiction because they sat without a jury.  
50

HIS HONOUR: I follow. Well I'm just telling you this, Mr Wilson, if you raise the question of whether you have any criminal convictions before the jury and any Crown witness says that you have, firstly that would damage your case for the obvious reason that the jury would know that you have criminal  
5 convictions, whether or not you say that they're valid convictions the jury would still know about it and I would be obliged to discharge the jury.

ACCUSED: No--

10 HIS HONOUR: So if it is the case that you have convictions before a magistrate, whether or not you say they're valid convictions--

ACCUSED: The law says. The law says they're not valid.

15 HIS HONOUR: Well I hear that but one way or the other I'm just telling you that if the jury gets to hear that you have convictions before a magistrate, whether or not they're valid, that may damage your case. And because it may damage your case I would be obliged to discharge the jury. So I'm just  
20 advising you not to raise before the jury with any Crown witness or otherwise any question relating to whether or not you have convictions, valid or invalid, before a magistrate because otherwise your defence of the trial will be prejudiced.

25 ACCUSED: Not at all. In fact a principal or essential element of my case is to challenge the jurisdiction of the courts. I have never had a jury and it is in law, it is in Magna Carta, Bill of Rights, habeas corpus, petition of rights that any proceedings and doings against the - my right to trial by jury is of no consequence or example. Those courts have never had proper jurisdiction and yet they - they're called kangaroo courts.  
30

HIS HONOUR: Thank you, Mr Wilson. If you wish to rely on an alibi, that is to suggest either by cross-examination of Crown witnesses during your own evidence or by calling witnesses in your case that you were not at a relevant place at the relevant time but was somewhere else, then unless you've already  
35 given notice of that alibi to the Crown you may not do so unless you first obtain the leave of the court.

ACCUSED: How do you mean leave of the court, what court?

40 HIS HONOUR: Well I said - I'm not talking about you leaving the court--

ACCUSED: No, no--

45 HIS HONOUR: --I'm saying that if you intend--

ACCUSED: Permission.

HIS HONOUR: --to raise an alibi the Crown must know about it, the Crown must have notice of it.  
50

ACCUSED: And I've got to get your permission?

HIS HONOUR: Well we are talking about alibis. Does it arise?

5 CROWN PROSECUTOR: No notice has been given, your Honour.

10 HIS HONOUR: Yes. An alibi means that you say you were somewhere else at the relevant time and could not have done what the Crown alleges you were doing. That is an alibi. If you intend to raise that then it may be something that requires a ruling. Do you actually intend to raise an alibi, that is to say that you were somewhere else when you were supposed to have done certain things?

15 ACCUSED: Point of clarification there. You're saying the court will make a ruling--

HIS HONOUR: Could I just ask you a question: do you intend to raise an alibi in the sense that you say that you were somewhere else at the time the Crown says that you committed an offence?

20 ACCUSED: That's a nonsense question.

HIS HONOUR: Well I'll ask you--

25 ACCUSED: It is a nonsense question.

HIS HONOUR: I'll put it another way. Do you intend to say that when the Crown says you did certain things you weren't there?

30 ACCUSED: I reserve that for the jury--

HIS HONOUR: All I'm--

ACCUSED: Because it's a matter for the jury to decide--

35 HIS HONOUR: Can I ask you another question: do you intend to say that you could not have committed the offences the Crown alleges against you because you were somewhere else, you were not at the place where the Crown says they were committed? Is that something you intend to raise in your case?

40 ACCUSED: That's not only hypothetical it's nonsense.

HIS HONOUR: Well it may be. All I need to know--

45 ACCUSED: All I want is to get a jury.

HIS HONOUR: Yes, you will get a jury. All I want to know is do you intend to raise in your case that the Crown has not proved its case that you committed certain acts because you weren't even there? Do you intend to raise such a point?

50

ACCUSED: I reserve that for the jury when they're empanelled and they can hear the truth, the whole truth and nothing but the truth.

5 HIS HONOUR: All right. Well I'll just tell you this: if you do raise such a matter and the Crown has not had notice on it I will be obliged to discharge the jury, and the result will then be an adjournment of the trial to allow the Crown to investigate such an allegation.

10 ACCUSED: I do not want this trial aborted in any way because justice has been denied, the banks are stealing and destroying and killing and they're going - with the sanction of the so-called courts.

HIS HONOUR: Thank you.

15 ACCUSED: This trial must not be aborted under any pretext whatsoever, it must go to a conclusion and justice must be served.

20 HIS HONOUR: Thank you. Now the law requires that you be tried by a jury of 12 persons chosen from those members of the public forming a jury panel who are presently in court. Each potential juror has been given a number. They are referred to by that number and not by their names. 12 cards will be drawn at random from a box, one by one. Each of the 12 persons selected will then take a seat in the jury box over there, that you see there--

25 ACCUSED: Point of clarification. On the indictment it's got a list of jurors.

HIS HONOUR: No, it hasn't.

30 ACCUSED: What do you mean? Here is it. It says, "Indicted - The Queen against John Wilson, indictment, jurors", it's got 12 spaces.

HIS HONOUR: I know but the names are not - all that occurs when a jury is selected the numbers are written there not the names.

35 ACCUSED: So you don't put their name here?

HIS HONOUR: No.

40 ACCUSED: They're anonymous--

HIS HONOUR: There is a law that says that jurors names are not to given.

ACCUSED: What law's that?

45 HIS HONOUR: It's the Jury Act.

ACCUSED: The Jury Act says that--

50 HIS HONOUR: The Jury Act says that the names of jurors are not allowed to be given in open court; they have numbers. That's because people - I know

this doesn't apply to you of course, but sometimes jurors in cases where people have been accused of very violent offences, sometimes jurors when their names have been named they've been threatened. So it's for the safety of jurors that that law is in place?

5

ACCUSED: When did that come in?

HIS HONOUR: Quite a while ago.

10 ACCUSED: When?

HIS HONOUR: I'm not going to go into detail; it came into effect more than 20 years ago. Now could I continue. The sheriffs officer will hand them a Bible and that depends on whether or not the sheriffs officer has been told that they'll take an oath or affirmation. This next bit is extremely important. You have a legal right to challenge a maximum of three people who come to the jury box to be sworn without giving any reason. If you do wish to challenge a particular juror you should simply say "challenge" as that person's number is read a second time. In addition, if you want to challenge a particular person for a specific reason then you should without stating your reason say "challenge for cause" or challenge for a particular reason if you like. I will then deal with the situation as it arises.

15

20

The Crown has the same right of challenge and that right will be exercised by the Crown prosecutor. In other words you can challenge up to three people without giving a reason, it can be simply that you don't like the look of them.

25

ACCUSED: So in other words one juror comes in at a time.

30 HIS HONOUR: Yes.

ACCUSED: At a time, and they are questioned by--

HIS HONOUR: Well I'll tell you how it works. The jury numbers are called out and one by one the 12 people whose numbers are called out will go into the witness box. Then after that they're numbers will be read out a second time and they'll stand up. Right? When that happens, when their numbers are read out a second time either you or the Crown have the right to challenge those jurors. All you do is say "challenge". You each have the right to challenge up to three of them without giving a reason.

35

40

ACCUSED: What about jury selection?

HIS HONOUR: That's what we're--

45

ACCUSED: Do I ask prospective jurors questions or not?

HIS HONOUR: No, you don't have the right to do that.

50 ACCUSED: I don't have the right to--

HIS HONOUR: No. It exists in America but not here.

ACCUSED: Not here.

5 HIS HONOUR: Not here--

ACCUSED: We don't have jury selection?

10 HIS HONOUR: We don't have the right to - you don't have the right nor has the Crown any right to ask jurors any questions.

ACCUSED: That's not - that's not fair.

15 HIS HONOUR: Well it may or may not be fair but the parliament has passed that law and I can't change it.

ACCUSED: But the--

HIS HONOUR: I am bound by the laws of parliament just as you are.

20 ACCUSED: No, I'm not. I'm bound by common law not by statute law and there is an international covenant that says that a jury must be competent, independent and impartial. How are you going to determine if they're competent if you don't ask them questions?

25 HIS HONOUR: I simply direct you that as a matter of law as it stands at the present time you may not ask jurors any question as they stand to give - as they stand in response to their numbers being given the second time.

30 ACCUSED: So somebody who's going to judge me, I can't even find out if they're competent in any way, that - if they know their responsibilities, what they are to do.

35 HIS HONOUR: It is for me to remind them of their responsibilities in my opening remarks. When I make some opening remarks to the jury and I tell them everything that they should do, in other words how they go about deciding the case--

40 ACCUSED: But you're not doing that now, you're saying they can only judge the facts--

HIS HONOUR: What I am telling you is this, I am telling you that they must decide - they must apply the law to the facts.

45 ACCUSED: They judge the justice of the law.

HIS HONOUR: Of course they judge the justice of the law.

ACCUSED: They all got that, that's a plus--

50 HIS HONOUR: Yes, in other words I tell them what the law is; they apply that

law to the facts of the case. In that way they decide the justice of the application of the law to your case. That's what they're there for. That's precisely how they do it.

5 ACCUSED: They judge the justice of the law.

CROWN PROSECUTOR: Your Honour, I think that the accused means something different by judging the justice of the law.

10 HIS HONOUR: Well I'm trying to get through this Mr Crown.

CROWN PROSECUTOR: I think he - I think he means what Lord--

15 HIS HONOUR: I think we are going to find I am on the edge Mr Crown, of--

CROWN PROSECUTOR: Well it may get to that, your Honour, and with respect it's got very close to it now.

20 HIS HONOUR: No, I'm not talking about taking any action against the accused, what I'm concerned about is that he receives proper advice. He's extremely resistant to receiving proper advice, but I don't want this trial to be unfair to the accused.

25 CROWN PROSECUTOR: I accept that, your Honour, but, your Honour, what's happening is the perpetual threats to disrupt the trial.

HIS HONOUR: Well, that may be, but Mr Crown, I'm trying to exercise as much latitude as I possibly can to ensure that the trial proceeds.

30 CROWN PROSECUTOR: Yes, I see that, your Honour.

HIS HONOUR: If action is taken against the accused in a particular way the only result of that is the evil day when the trial proceeds is put off.

35 CROWN PROSECUTOR: I accept that, your Honour.

40 HIS HONOUR: It is an extremely difficult task and it is one that I can't shirk simply by taking a certain procedure which results in any trial today being aborted. Unless of course it's absolutely necessary to do so. I am trying to avoid that Mr Crown by exercising--

CROWN PROSECUTOR: I appreciate that, your Honour.

45 HIS HONOUR: --considerable moderation if I may say so.

CROWN PROSECUTOR: While I am on my feet, your Honour, and I'm sorry to have interrupted the accused--

50 HIS HONOUR: No, no.

CROWN PROSECUTOR: --I have a freshly engrossed indictment and perhaps I might give your Honour that, and I have a copy for the jury.

HIS HONOUR: Thank you.

5

CROWN PROSECUTOR: I also have some things, your Honour, I have a spare copy for your Honour and I also have photocopies of the relevant parts of the Commonwealth Criminal Code Act 1995.

10 HIS HONOUR: Yes, thank you.

CROWN PROSECUTOR: Which your Honour may need for the elements of count 3.

15 HIS HONOUR: Yes. During this interruption I see counsel present at the bar table, you're here for Mr Purcell are you?

KUMAR: No, your Honour, I appear on behalf of Joanne Harrison and Andrew Scipione. I have two notices of motion--

20

HIS HONOUR: I beg your pardon.

KUMAR: Your Honour, my name is Kumar, K-U-M-A-R--

25 HIS HONOUR: Yes. Yes.

KUMAR: --I apologise for not announcing my appearance earlier your Honour but I was reluctant to interrupt your Honour's advice to Mr Wilson.

30 HIS HONOUR: Yes.

KUMAR: Your Honour, I appear in relation to two subpoenas which have been issued by Mr Wilson.

35 HIS HONOUR: Yes.

KUMAR: The first subpoena is issued on Joanne Ruth Harrison.

HIS HONOUR: Yes.

40

KUMAR: And that subpoena orders Ms Harrison to attend and give evidence today. The second subpoena is on Mr Andrew Scipione and that subpoena is also for the attendance of Mr Scipione to appear to give evidence today.

45 HIS HONOUR: Yes, I see.

KUMAR: Your Honour, I have two notices of motion which seek to set aside those subpoenas.

50 HIS HONOUR: Yes.

KUMAR: The basis of setting aside the subpoena on Ms Harrison is that she is an Associate Justice of the Supreme Court.

HIS HONOUR: Yes.

5

KUMAR: And the basis for setting aside the subpoena on Mr Scipione is that he does not have any relevant evidence to give in these proceedings.

HIS HONOUR: I see.

10

KUMAR: Your Honour, I have evidence to prove that.

HIS HONOUR: Thank you. And those notices of motion need to be decided presumably before the trial proceeds.

15

KUMAR: Yes, your Honour, I have those notices of motion here. I have served copies on Mr Wilson and the prosecution.

HIS HONOUR: Yes.

20

KUMAR: I'm in your Honour's hands when your Honour wants to deal with those.

HIS HONOUR: Yes. I follow, yes. Mr Wilson, you have heard Ms Kumar indicate what her notices of motion are. Perhaps you could rise to your feet. Presumably you do not wish to agree to those notices of motion, that is to say you oppose them. Are you ready to meet those notices of motion today?

25

ACCUSED: Well apart from the fact that they are pivotal to the case insofar as the woman conducted the kangaroo court without a jury and so-called dispossessed me and then Andrew Scipione is violently involved in the case, he's even mentioned by name in the second indictment, second charge on the indictment and beside that, any notices of motion must be decided by a jury. Not by a judge. So reference to this Act of 1899, says,

30

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“Upon the hearing of any motion or summons the court or judge may upon such terms as the court or judge thinks reasonable order any document to be produced, any witnesses to appear and examine viva voce et cetera”

40

So in other words you've got either a court or you've got a judge. Now at no stage will I ever consent to be without a jury. So therefore the court has got no jurisdiction to proceed summarily which means by a judge sitting alone. So all these notices of motion, every aspect of this case must be decided by the people who have the responsibility to judge every part and parcel of this case, which is a jury.

45

HIS HONOUR: Yes, thank you Mr Wilson, I hear what you say. Would you hand up the notices of motion please.

50

KUMAR: Your Honour, I have two notices of motion, one on behalf of Ms Joanne Harrison and the other on behalf of Mr Andrew Scipione. I also hand up the subpoenas to attend to give evidence which were issued on both those persons.

5

HIS HONOUR: Yes, I see. Are there affidavits in support of the notices of motion?

10 KUMAR: Your Honour, in relation to - no there are not. In relation to the application in respect of Ms Harrison--

HIS HONOUR: Yes.

15 KUMAR: --I rely on s 16 of the Evidence Act.

HIS HONOUR: Yes.

KUMAR: I have a copy for your Honour.

20 HIS HONOUR: Thank you.

KUMAR: And a copy for my friend, Mr Wilson.

25 HIS HONOUR: Thank you.

ACCUSED: I challenge any jurisdiction that you think you might have to determine this notice of motion. I challenge the jurisdiction.

30 HIS HONOUR: I have heard what you have said.

ACCUSED: And as soon as I challenge the jurisdiction in May there must be a special jury to decide that jurisdiction. You cannot judge in your own cause.

35 HIS HONOUR: I hear what you say.

CROWN PROSECUTOR: Perhaps I should say this, your Honour, I have no legal interest in either of those motions and I don't seek to be heard.

40 HIS HONOUR: You don't seek to be heard, I would appreciate it you remain however Mr Crown.

CROWN PROSECUTOR: Well I propose to remain of course your Honour.

45 HIS HONOUR: Thank you.

CROWN PROSECUTOR: But can I just say this?

HIS HONOUR: Yes.

50 CROWN PROSECUTOR: I don't propose to call Mr Scipione and as your

Honour sees count 2 you will see it's not pretended that he ever received the communication. I rely on a slightly different notion, i.e., that it was calculated - it was served - it was sent with the intention of causing him alarm.

5 HIS HONOUR: Thank you.

CROWN PROSECUTOR: It's a letter addressed to him threatening - in which the accused threatened to burn down the premises at 331 North Rocks Road, North Rocks. The accused asserting he was entitled to do so because it was  
10 his own property.

HIS HONOUR: Yes, thank you. Well I'll deal with the notices of motion separately.

15 ACCUSED: Well I object because you have no jurisdiction to determine any notice of motion or any part of the case.

HIS HONOUR: I have noted your objection. If you wish to raise the submission that I have no jurisdiction, despite my ruling that I have jurisdiction,  
20 you have the right to appeal to the Court of Criminal Appeal and exercise your right--

ACCUSED: But that's more judges, more judges, self interest judges.

25 HIS HONOUR: Well, that's--

ACCUSED: That can't be positive - fair. The only fair trial is by a jury. That is the only fair trial that can possibly be because I have experience in these courts the last 14 years and I'll be bringing up all those cases. I've got a whole  
30 stack of evidence here.

HIS HONOUR: Thank you. Would you tell me the basis upon which you wish to call Justice Harrison?

35 ACCUSED: Because she conducted unlawful proceedings, okay, and I have the transcript there, I have already entered into an affidavit the whole conduct of her on that occasion must be brought into focus in a court of justice. So we cannot allow judges to just trample our rights. To just impose absolute abominations of judgments on people who have got no defence. We have a  
40 defence, we have the jury and this is our ultimate defence.

HIS HONOUR: Would you explain to me how the evidence of Justice Harrison is relevant to the issues in this trial?

45 ACCUSED: I'll tell that to the jury, because you can't decide a notice of motion. So if the lady here wants to object to having witnesses subpoenaed to give evidence then she's going to have to qualify that to a jury, not to anything inferior.

50 HIS HONOUR: Is there anything else you wish to say about that subject?

ACCUSED: Well I've already said I challenge the jurisdiction.

HIS HONOUR: Thank you.

5 ACCUSED: And it's mandatory, it's peremptory that there be a stay of proceedings until the jurisdiction of the court is determined.

HIS HONOUR: Thank you.

10 ACCUSED: Do you understand that?

HIS HONOUR: I have heard what you've said.

ACCUSED: Do you understand?

15

HIS HONOUR: I have heard what you've said.

ACCUSED: Do you understand?

20 HIS HONOUR: I understand the words that you have used, yes. Would you please sit down.

KUMAR: Your Honour, in relation to s 16(2)--

25 HIS HONOUR: Yes.

KUMAR: --your Honour, when your Honour, in applying that section your Honour would apply the factors in s 192 of the Evidence Act.

30 HIS HONOUR: Thank you.

KUMAR: Which are the general factors which your Honour takes into account in determining whether leave be granted.

35 HIS HONOUR: Thank you.

KUMAR: Thank you, your Honour.

FOR JUDGMENT SEE SEPARATE TRANSCRIPT

40

HIS HONOUR: I know you don't agree with that decision, Mr Wilson, but I must separately approach--

45 ACCUSED: Well we have a constitutional Act in Australia called "an Act for the regulation" - "regulating of the Privy Council for the taking the court commonly called the star chamber". In that it lays down penalties for any judge who denies people their rights under the Magna Carta. Are you familiar with that constitutional law?

50 HIS HONOUR: Yes.

ACCUSED: And it says that - I believe it says the first time that a judge denies any body the rights under the Magna Carta the penalty back then was 500 pounds sterling.

5 HIS HONOUR: Yes.

ACCUSED: And it escalated after that. So in other words it says quite clearly that no-one is above the law and the law is the jury, the jury are the law; no-one is exempt from facing justice and facing the law.

10

HIS HONOUR: Yes.

ACCUSED: Do you understand?

15 HIS HONOUR: I understand.

ACCUSED: And so you're overruling our constitutional law that judges are accountable.

20 HIS HONOUR: Judges are indeed accountable--

ACCUSED: To a jury.

25 HIS HONOUR: Well the law is, according to the law of this State, that if you wish the challenge the ruling I have made you appeal against it and an appeal lies against the decision I have made to the Court of Criminal Appeal or in some cases to the Court of Appeal. There are certain time limits for the exercise of that right, broadly speaking you have 28 days in which to exercise it. If you wish to do that you may do so. That is how I am accountable.

30

ACCUSED: I've no intention of offering any opportunity to the abortion of this trial, it must go ahead and justice must be served.

35 HIS HONOUR: All right. I've heard what you've said. Now will you tell me the purpose for which you seek to call Mr Scipione.

ACCUSED: Mr Scipione, because he is named in the indictment for starters just like Mr Kamal Issa is named there, he is part of the indictment.

40 HIS HONOUR: Yes, and is there any other way that his evidence could be relevant to any issue--

ACCUSED: Very much so, very much so and I'll explain that to the jury as we go along.

45

HIS HONOUR: Yes, would you like to explain it to me now.

ACCUSED: You've got no jurisdiction, I intend to explain my case to the jury. They have the ultimate authority, they have sovereignty.

50

HIS HONOUR: Thank you. Are you telling me that you do not wish to tell me how Mr Scipione's evidence could be relevant--

ACCUSED: But you are irrelevant to a trial by jury.

5

HIS HONOUR: Thank you. You don't wish to--

ACCUSED: A trial by jury is trial by jury.

10 HIS HONOUR: All right, you don't want to say anything further at this point about the relevance of Mr Scipione's evidence. Is that right?

ACCUSED: Well I think it's only fair and I'll be asking the jury to subpoena Mr Scipione--

15

HIS HONOUR: I see.

ACCUSED: --and I'll be giving the reasons to them. So if you're deciding now, no, you want to protect Mr Scipione, you want to protect your fellow judges and so forth then that'll come back to the jury because the jury are the law. They have the ultimate authority to--

20

HIS HONOUR: Yes.

25 ACCUSED: --make and impose laws in Australia.

HIS HONOUR: I hear what you say.

FOR JUDGMENT SEE SEPARATE TRANSCRIPT

30

HIS HONOUR: I think you have no further connection to the trial, Ms Kumar?

KUMAR: No, I don't, your Honour.

35 HIS HONOUR: In those circumstances you are excused.

KUMAR: Thank you, your Honour.

40 HIS HONOUR: I see it is now 12 o'clock. I propose to take the morning adjournment. After the morning adjournment I have another short matter to deal with that has absolutely no connection with you, Mr Wilson, it concerns another accused person. When I have dealt with that I will come back to your trial. As I have already told you, the jury will be empanelled. The procedure is that one by one the numbers are read out by my associate as they are drawn  
45 at random from a box in front of her, people will come to the jury box and take their places one by one. Neither you nor for that matter I nor the Crown may interrupt that process.

50 Then the jurors are asked to stand one by one. As they are asked to stand you may if you wish challenge up to three of the jurors without giving any

reason. After you have exercised your right to challenge up to three jurors, if you do that, then you must challenge for some reason. In those circumstances I will ask you what the reason is. I've endeavoured to explain the procedure to you as best I can; that is what will occur when we resume your trial.

5

ACCUSED: I'd like something clarified as far as the swearing in of a juror. Now I have heard in these courts where the sheriff or the clerk asks the witness to falsely swear where they say, "I swear by almighty God". You can't swear by "almighty God" because nobody owns "almighty God" so that is a false oath, and at the end they don't even acknowledge the Bible and they do not say "so help me, God". Now what is the actual oath for a juror--

10

HIS HONOUR: I will just explain. A person who considers themselves bound by a religious oath on the Bible may as a matter of law swear that oath. If a person does not consider they're conscience bound by a religious oath then they take what is called an affirmation. That is a choice open to the juror. The form of the oath is set down by law. If you don't agree with that law then I suggest you go to your member of parliament and suggest that it should be changed, but I am bound by the law as to how the oath is administered, just as the Crown is, just as you are.

15

20

ACCUSED: So they are forced to make a false oath?

HIS HONOUR: It is not a false oath.

25

ACCUSED: When they say, "I swear by almighty God", that is a false oath.

HIS HONOUR: I understand what you say. If you wish to raise that with any person who has the power to make laws, for example, a member of Parliament, then you may do so. It's up to parliament to change that not me.

30

ACCUSED: Well in the Oaths Act there are numerous oaths made by judges et cetera et cetera never a once does it say, "I swear by almighty God", but they've brought this in, I don't know how recently--

35

HIS HONOUR: As a matter of fact that's what I did when I was sworn in because my conscience is bound by almighty God as it happens, I could've taken an affirmation if it isn't, but I can assure you that--

40

ACCUSED: But you can't pledge "almighty God" because you don't own "almighty God".

HIS HONOUR: Very possibly. I took an oath set out by law--

45

ACCUSED: The law is wrong.

HIS HONOUR: Well it may be, and as I've said it's up to parliament to change that law if it wishes. I can't change it.

50

ACCUSED: But that's in fieri of law--

HIS HONOUR: All right. I hear what you say. I'm going to take the morning adjournment. As I've said I'll deal with another case briefly and then we'll come back to your trial.

5 ACCUSED: Can I leave all my material here or not?

HIS HONOUR: Yes, you may. I'll adjourn.

SHORT ADJOURNMENT

10

HIS HONOUR: Yes. Mr Wilson, will you come forward? Now Mr Wilson, I'm sorry that that's taken up some time. It's going to take more than the 15 minutes we've got until the court lunch hour to empanel the jury, so I'm going to do that after lunch. When I empanel the jury, there are people sitting  
15 in the public gallery. I will have to ask them to move aside so that the jury panel members can sit in the seats where they're sitting now. You'll find there are so many jury panel members, they'll occupy all of the seats.

ACCUSED: Oh.

20

HIS HONOUR: So what I'd ask these people to do when we're ready to proceed with the jury is, if they could just move, I hope that if some seats could be found, it would be nice. But one way or the other, I'll get them to sit in front of that barrier that separates the jury panel seats from the courtroom. So they  
25 can watch the process of empanelling the jury. I must warn them that they must not speak to, or otherwise contact in anyway the jury members. I'm sure they wouldn't seek to do so but if they do, we would not be able to empanel, we have to get a new panel because jury members are not allowed to be spoken to by any other member of the public during the process of  
30 empanelling. There's nothing sinister, it's just to make sure that they are seen to be quarantine if you like, from any interference of any sort, not that I suspect anybody here of doing anything like that, just a case of justice being seen to be done as well as being done. So, when I come back at 2 o'clock and we start to empanel, before the jury panel comes in, I'll just get you to move from where  
35 you are now to somewhere in court in front of where the jury sits so that you can observe the process, which I'm sure you'd like to do.

Are these people, Mr Wilson, people who are connected with yourself?

40 ACCUSED: Well, I've had so much support from around the world but distance is a great tyranny, and the people who have come along here this morning, I appreciate that, but--

HIS HONOUR: I see. In short, they've come along to support you.

45

ACCUSED: Yeah. Yeah, support justice.

HIS HONOUR: Good. Okay.

50 ACCUSED: Now we all want to see justice.

HIS HONOUR: Of course we do. It's nice to see that you have support, and they're most welcome to sit here throughout the trial, it's a public trial.

ACCUSED: Well, I appreciate that too but like I said, it's up to them and--

5

HIS HONOUR: Yes. Of course it's entirely up to them. I'm just going to move them away from where the jury sits when we empanel, that's all. We always do that in trials, it's not this particular trial, it's just a precaution we always follow.

10

ACCUSED: Play it by ear.

HIS HONOUR: Yes, precisely. Yes Mr Crown.

15

CROWN PROSECUTOR: Your Honour, my impression was that your Honour hasn't finished, completed - I think I may have interrupted your Honour in the observations that your Honour was giving by way of advice to the accused.

HIS HONOUR: I have - just a moment.

20

CROWN PROSECUTOR: You had got to closing addresses but I'm not sure what else there was.

HIS HONOUR: No, no. The last piece of the pro forma advice relates to empanelment, Mr Crown.

25

CROWN PROSECUTOR: You had given that.

HIS HONOUR: I had.

30

CROWN PROSECUTOR: Yes.

HIS HONOUR: Yes, precisely. If there's anything else that you think I should give, on reflection, I'm only too happy to receive assistance from you.

35

CROWN PROSECUTOR: Can I just say a couple of things, your Honour. I return documents subpoenaed from the Commissioner for Police, namely the accused video camera and a small tape.

40

HIS HONOUR: Yes, I see.

CROWN PROSECUTOR: They were uplifted by my instructing solicitor. Copies have been made. I will look at them, I'm not sure whether they ought to be played. They maybe grossly prejudicial for all I know, and I'll give--

45

HIS HONOUR: Mr Crown, the answer is simply. I expect you to raise any matter of prejudice, as a matter of fairness to the accused.

CROWN PROSECUTOR: Yes.

50

HIS HONOUR: If you think that anything arguably maybe prejudicial, you let me know.

CROWN PROSECUTOR: Sure.

5

HIS HONOUR: But I deal with objections accordingly as the parties require me to. I have advised Mr Wilson as to his right to object in advance to any evidence. His attitude is that he wants the jury to see all the evidence. If I think it's a matter of my duty that anything is admissible, I know he disagrees with my view about that, I must follow the law as I've explained to him, I will rule on that question. And Mr Crown, I look to you to raise anything of that sort that you're seek that I rule on.

10

CROWN PROSECUTOR: Please the court. I will do that of course.

15

HIS HONOUR: I'm just concerned that the man's rights are maintained at all times.

CROWN PROSECUTOR: I appreciate that, your Honour.

20

ACCUSED: Well, my right is a right to property. They stole that camera from my house. The police stole that camera. Why is it - that was about last July.

HIS HONOUR: Yes.

25

ACCUSED: Why haven't I got my camera back to my property, they just stole it. I don't mind them taking it, copy it, or the video within it, but I've been denied that as well.

30

HIS HONOUR: Well, as I understand it, the documents and the camera have now been returned. If they were--

ACCUSED: Well--

35

HIS HONOUR: If they were obtained from you, then I imagine they are to be returned to you.

ACCUSED: They were obtained, they were taken, they--

40

HIS HONOUR: Mr Crown, let me get it clear. You're returning them for the purpose of them being returned to the accused, is that right?

45

CROWN PROSECUTOR: No, no, your Honour. I'm returning them because they were subpoenaed by the accused to produce to the court, uplifted by the police for the purpose of making a copy, and I now return them back to the custody of the court.

HIS HONOUR: I see.

50

CROWN PROSECUTOR: --to stay there pending the order of the court, but

they were taken by the police as evidence at the time of the arrest.

HIS HONOUR: Is there any reason why I should not return them to the accused?

5

CROWN PROSECUTOR: At this stage, they are held by your Honour as evidence in the cause and the answer is--

10 HIS HONOUR: Well, they're not evidence in the cause unless they become so.

15 CROWN PROSECUTOR: Well, pending evidence in the cause and they should remain with the court under the subpoena issued by the accused, and called for.

HIS HONOUR: Yes, I follow, yes, thank you Mr Crown, that's clear.

ACCUSED: There's two parts to it, there was a camera and the tape.

20 HIS HONOUR: Well, can I simply tell you that you have the right of access to any documents that have been subpoenaed from you or that have been subpoenaed from anybody else, subject to any other order that I might make but ordinarily you have the right to access. You certainly have the right to  
25 access to that camera and those documents. You may not take them away from the court at this point while the trial was on, but you have access to them for purposes of your defence.

30 ACCUSED: Well, last Thursday we were in court 1 and Mr Keleman said for them to make a copy and give me a copy, I haven't got it.

CROWN PROSECUTOR: I have two copies, I don't know what's--

HIS HONOUR: I expected that be done, Mr Crown; it's as simple as that.

35 CROWN PROSECUTOR: I got two copies, I'll check them to make sure they're the same and--

HER HONOUR: Yes, if you would, thank you.

40 CROWN PROSECUTOR: --Mr Wilson will have one copy. May I just mention two matters, your Honour.

HIS HONOUR: Yes.

45 CROWN PROSECUTOR: Firstly, I am having difficulty obtain some certified copies of the relevant conveyancing documents on which I rely. Your Honour will appreciate that the property was sold by a mortgagee under a power of sale.

50 HIS HONOUR: I don't know anything about that, Mr Crown. I haven't had an

opening, I haven't heard anything. But Mr Crown, I'll say this, either the Crown is ready to proceed with this trial or it is not. If you don't have certified copies of the documents and it is a necessary party of the Crown case to tender certified documents, then I expect to be told.

5

CROWN PROSECUTOR: What I'm doing your Honour, is telling you that they're on their way and I expect to have them in the morning but they're being delayed. This is what I told his Honour Judge Keleman this morning.

10 HIS HONOUR: Yes.

CROWN PROSECUTOR: I don't think it will hold up the conduct of the trial--

HIS HONOUR: Provided that it doesn't, that's no problem.

15

CROWN PROSECUTOR: But I just feel it necessary, it may require rearrangement of witnesses and that sort of thing.

20

HER HONOUR: Well, that maybe, but it's up to the Crown; the order in which the Crown calls its witnesses is of course a matter for the Crown. In exactly the same, it's a matter for the accused if he does call witnesses, to decide in what order he calls them.

CROWN PROSECUTOR: Yes.

25

HIS HONOUR: That's an elementary proposition. All I say, Mr Crown, is that if it affects the readiness of the trial to proceed, full stop, then I expect to be told, that's all.

30 CROWN PROSECUTOR: I imagine I can give your Honour a more definitive answer this afternoon. I've certainly called for--

HIS HONOUR: Well, I want to know before I start the trial.

35 CROWN PROSECUTOR: Very well, your Honour. My solicitor will--

HIS HONOUR: Because what I don't want is the trial adjourned and the jury discharged because of--

40 CROWN PROSECUTOR: Yes.

HIS HONOUR: It maybe in those circumstances that I may oblige the Crown to proceed on the evidence it has.

45 CROWN PROSECUTOR: Yes.

HIS HONOUR: So if there's a difficulty, I expect to be told at the beginning of the trial.

50 CROWN PROSECUTOR: There's one--

HIS HONOUR: Just a moment - two people wanting to talk to me. My associate's simply - just a small machinery matter. The last two seats in the bottom row, I gather, the jurors can't sit in, and I expect the officer to direct the jurors in relation to that.

5

CROWN PROSECUTOR: There are 14 seats.

HIS HONOUR: Yes, precisely. We only need 12 seats for jurors. Anyway, we'll solve that small - that's the least of our problems in this trial.

10

CROWN PROSECUTOR: May I mention one matter which may go to a length of time.

HIS HONOUR: Yes.

15

CROWN PROSECUTOR: I have been somewhat unwell. I've made an appointment and I have leave to go to - subject to your Honour's direction, to attend a medical specialist in the morning of 2 June 2010. That's next Wednesday, Wednesday of next week.

20

HIS HONOUR: Yes.

CROWN PROSECUTOR: I would be obliged if your Honour were to allow me to attend that.

25

HIS HONOUR: Yes, you're most welcome to, Mr Crown.

CROWN PROSECUTOR: And I would certainly be available at 2 o'clock.

30

HIS HONOUR: In the same way as if Mr Wilson had a similar appointment, I would give him leave to attend it.

ACCUSED: No, this is number one priority here, right now.

35

HIS HONOUR: I'm reminded that I myself have leave that day and I won't be sitting on that day so that solves the problem.

CROWN PROSECUTOR: I'm indebted, your Honour.

40

HIS HONOUR: Thank you. Now, there's one further matter. Yes, what's the length of the trial, Mr Crown?

CROWN PROSECUTOR: We've said seven to ten days.

45

HIS HONOUR: I'm in Parramatta for a period that will comfortably cover that, but nevertheless other trials have been scheduled. I can see the potential for overrunning but nevertheless, how many witnesses are there in the Crown case?

50

CROWN PROSECUTOR: Less than 15, your Honour, ten to 12.

HIS HONOUR: Thank you.

CROWN PROSECUTOR: Fifteen.

5 HIS HONOUR: I don't propose to ask you at this point, Mr Wilson, whether  
you wish to call evidence or give evidence or call witnesses, that's a matter for  
you. You don't have to decide that until the end of the Crown case, so that's  
why I'm not asking you about that question now; you don't have to answer. As  
10 I advised you from the beginning, it's for the Crown to prove its case beyond  
reasonable doubt on every single one of the ingredients of every charge that  
they bring against you. That's the Crown's function, and that it's the jury's  
function to decide whether or not they've done so, as I've said. You don't have  
to prove anything; in consequence, whether you give evidence or not is  
15 entirely up to you and you don't have to decide or tell either the Crown or me  
whether you want to give evidence or call any, until the Crown has finished its  
case. All right?

ACCUSED: The burden is on the one who affirms and not on the one who  
denies.

20

HIS HONOUR: You're exactly right. That's precisely right, Mr Wilson, you've  
grasped it entirely, and I'm glad you have. All right, I'll adjourn, I'll resume at  
2 o'clock.

25 LUNCHEON ADJOURNMENT

HIS HONOUR: I understand that there are some witnesses in the trial or  
people otherwise concerned with the trial in the jury seats at the moment. It  
would be desirable if they could move before I call the panel in. Firstly, to  
30 make room for the panel and secondly, to avoid any possible suggestion--

CROWN PROSECUTOR: There are some Crown witnesses in those seats,  
your Honour.

35 HIS HONOUR: Yes. Yes, well--

CROWN PROSECUTOR: Three, four--

40 HIS HONOUR: --it's a public court and if you wish them to remain Mr Crown  
they are perfectly welcome to do so.

CROWN PROSECUTOR: I think it would be more convenient--

45 HIS HONOUR: But I only make the observation that they can't sit there  
because that's where the jurors are going to be. I've already moved the  
accused's supporters and it's fair that I move them as well.

CROWN PROSECUTOR: I prefer that the empanelment of the jury should be  
unimpeded--

50

HIS HONOUR: Yes.

CROWN PROSECUTOR: --and I think they should probably - I think they are all leaving your Honour, the Crown witnesses--

5

HIS HONOUR: Well that solves the problem, they don't have to unless you wish them to Mr Crown.

CROWN PROSECUTOR: Well I wish the jury to be unimpeded. Can I say--

10

HIS HONOUR: Well, that's what I want too, so we're in agreement about that.

CROWN PROSECUTOR: Yes. May I say two things?

15 HIS HONOUR: Yes.

CROWN PROSECUTOR: I have in my hand faxed copies of a title search, a mortgage signed by the accused and also a transfer under power of sale under which one Kamal Hussein Issa came into being the registered proprietor of the land--

20

HIS HONOUR: Yes.

CROWN PROSECUTOR: --at 331 North Rocks Road.

25

HIS HONOUR: Yes, Mr Crown.

CROWN PROSECUTOR: I haven't yet got certified copies of them though one of them is a photocopy of a certified copy, they are faxed copies.

30

HIS HONOUR: Mr Crown, unless and until you have certified copies you can't tender them as it seems to me.

CROWN PROSECUTOR: Well that's not necessarily so your Honour because of s 48 of the Evidence Act--

35

HIS HONOUR: Well I'll hear argument about it in due course, that's all I'll say.

CROWN PROSECUTOR: What I'm saying is this, your Honour, I can't guarantee when they will be come to hand because they appear to be in the mail somewhere between the Department of Lands, it was in reliance of that--

40

HIS HONOUR: Put it broadly Mr Crown, the Crown is either ready or it's not.

CROWN PROSECUTOR: It is not ready at this minute but it will be ready probably tomorrow morning because I will then have certified copies.

45

HIS HONOUR: I see.

50 ACCUSED: But they're invalid anyway.

HIS HONOUR: I'm sorry.

ACCUSED: They're invalid anyway.

5 HIS HONOUR: Well I understand that and that is a matter that you will be able to make submissions about in due course.

ACCUSED: To the jury.

10 HIS HONOUR: Well--

ACCUSED: It's a matter of law so it goes to the jury.

15 HIS HONOUR: Yes, well you may make submissions about them to the jury if you wish and I will deal with them as necessary when the time comes.

CROWN PROSECUTOR: Can I just tell your Honour the Crown--

20 HIS HONOUR: Yes.

CROWN PROSECUTOR: --the basis for the submission is, as we understand it, that the mortgage--

25 HIS HONOUR: You better remain there Mr Wilson, so you can hear what the Crown is saying, it's very important.

ACCUSED: That's why I moved, I want to hear what he says--

30 CROWN PROSECUTOR: As we understand it the accused says that the mortgage under which he borrowed money from the mortgagee who has transferred the property to Mr Issa, that the mortgage had a variable rate of interest and was therefore void.

35 HIS HONOUR: Yes.

CROWN PROSECUTOR: The advance of money amounted to a gift and therefore - and he was entitled to keep it.

40 HIS HONOUR: Yes, I follow that.

CROWN PROSECUTOR: He also maintains that because of that, every succeeding transaction is void.

45 HIS HONOUR: Yes.

CROWN PROSECUTOR: And therefore that he remains the true owner of the property.

50 HIS HONOUR: Yes.

5 CROWN PROSECUTOR: Now all that of course is totally wrong in law, your Honour, and we would be inviting your Honour so to direct the jury if it comes to that. And we would be saying that it would be wrong - wrong for the accused to attempt to tell the jury something else as a matter of law in view of the fact of your Honour's position in this trial. We understand that he will do so.

10 HIS HONOUR: I shall be - I shall be telling the jury in due course what their functions are and what my functions are. The jury will hear that from the beginning. If the accused says something to the jury that you say is wrong in law you will have the opportunity of telling me and in the absence of the jury I shall hear submissions--

15 ACCUSED: I object. You cannot make any such ruling.

HIS HONOUR: --from - just a moment. In the absence of the jury I shall hear submissions as to what I should tell the jury and I will hear submissions from you and also from Mr Wilson. Having heard those submissions I will make such direction to the jury as accords with the law. That is how it will proceed  
20 Mr Crown.

CROWN PROSECUTOR: I am indebted to your Honour and that is what I expected your Honour to say, but I am concerned that the jury's verdict may be ultimately influenced by some totally wrong submissions of law and a totally wrong series of applications by the accused.  
25

HIS HONOUR: Well, it is for me to address - it is for me to direct the jury in appropriate terms Mr Crown and I shall do so.

30 CROWN PROSECUTOR: I accept all that your Honour, but there comes a time when what happens is equivalent to subverting your Honour's rulings. If that happens I shall be very concerned about whether the jury could continue.

35 HIS HONOUR: Well, I hear that Mr Crown, and if that time comes then you may make such application as you see fit.

CROWN PROSECUTOR: Yes, of course, your Honour, I'm indebted to your Honour. The other thing I should perhaps tell you is this. The Crown case includes the making - that there were two necessary evictions of the accused  
40 from the premises. One under an original writ of possession and another under a document called a writ of restitution which I can't prove, but I will be able - in the sense of having a certified copy of it, but I do have--

45 HIS HONOUR: Why is that? Why is there no certified copy?

CROWN PROSECUTOR: Well, basically your Honour, because I did not become aware that there was a certain confusion in my papers I had--

50 HIS HONOUR: I'm getting a deep impression that the Crown is not ready.

CROWN PROSECUTOR: I - well your Honour, what happened was that I was not aware that there were - because--

5 HIS HONOUR: Well that may be but you need a certified copy do you not?

CROWN PROSECUTOR: Well, s 48 takes the - of the Evidence Act, takes the matter some way but I certainly think it thoroughly desirable that I do have certified copies.

10 HIS HONOUR: Let me look at section--

CROWN PROSECUTOR: I think it's s 48.

15 HIS HONOUR: Just a moment, I shall tell you.

CROWN PROSECUTOR: Yes. Under - I would be able to prove the writ of restitution by an officer of the sheriff of quite high rank saying this is a copy of a document which I have as sheriff and it's part of my records.

20 HIS HONOUR: Just let me read it.

CROWN PROSECUTOR: 48(1)(e), your Honour, or (f).

25 HIS HONOUR: Let me have a look. Yes, I follow. Well Mr Crown, I will hear submissions about the admissibility of the document in due course.

CROWN PROSECUTOR: I am indebted to your Honour.

30 HIS HONOUR: All I insist on is that if the Crown in any respect is not ready to proceed in this trial it tell me now.

CROWN PROSECUTOR: Well, your Honour--

35 HIS HONOUR: If you tell me that the certified copies will be here in the morning, then Mr Crown, I will expect them tomorrow morning.

40 CROWN PROSECUTOR: I can't tell your Honour that. My instructions don't enable me to say that and in particular I cannot tell your Honour that there will be certified copies of the writ of restitution which is the one under which a second time the accused was evicted.

HIS HONOUR: Yes. Well, all I will say is that if the trial starts--

45 CROWN PROSECUTOR: Well I ask for the matter to go over til tomorrow when I will be able to give your Honour more definitive advice.

HIS HONOUR: In other words you don't want a jury empanelled today so far as you're concerned.

50 CROWN PROSECUTOR: As the matter stands at the moment I can't ask for

that in view of what your Honour has just said.

HIS HONOUR: Yes.

5 CROWN PROSECUTOR: There is another matter which I perhaps ought to have raised this morning and that is the question of two notices that I have served under s 97 of the Evidence Act.

HIS HONOUR: Yes.

10 CROWN PROSECUTOR: A tenancy notice. We say the material is relevant and admissible under the ruling, what I might call Halloran's(?) case.

HIS HONOUR: Yes.

15 CROWN PROSECUTOR: But in case I'm wrong with that we seek to tender it as tenancy evidence. One of the notices was only served last week and we would be asking in order to get it in, if we need to do so, for your Honour to exercise a discretion under s 100 of the Evidence Act. That's my problem. I  
20 didn't come--

HIS HONOUR: Well, that is a problem and where an accused is unrepresented and not necessarily able to properly articulate an argument as to the shortening of time for the service of the notice concerning tenancy  
25 evidence, it may well be that I form the conclusion that that is a proper matter to be considered in the exercise of my discretion.

CROWN PROSECUTOR: Yes.

30 HIS HONOUR: Obviously s 192 applies to it and general questions of fairness apply to it. Even if an accused is not able personally to indicate any respects in which he has been prejudiced in his defence by late service I think it has to be presumed that a person may be prejudiced, I don't say he is, by the service of the late notice concerning tenancy evidence and it may be that the court is  
35 not able to be provided with a precise outline of the nature of the prejudice by reason of the circumstances that the poor man is unrepresented and not necessarily able to articulate such fine distinctions as may be involved in the prejudice question. To put it another way you may not get it in.

40 CROWN PROSECUTOR: Yes, I understand that, your Honour.

HIS HONOUR: I'm not ruling finally but that is a very high risk that the Crown faces.

45 CROWN PROSECUTOR: I appreciate everything your Honour is saying.

HIS HONOUR: I think you need to obtain instructions therefore--

50 CROWN PROSECUTOR: I think I do. I was just going to ask your Honour to give me 15 minutes to seek instructions from one of my clients.

HIS HONOUR: Well, that may be, but Mr Crown, you say that you are not in a position to inform me that the matter is ready to proceed from the point of view of the other evidence that you seek to obtain until tomorrow morning. In those circumstances I'm certainly not going to empanel the jury.

5

CROWN PROSECUTOR: Yes.

HIS HONOUR: You indeed suggested I don't.

10 CROWN PROSECUTOR: Well I have to, your Honour. I mean I haven't got--

HIS HONOUR: Well it's your duty, it's the Crown's duty to indicate the problem.

15 CROWN PROSECUTOR: Yes.

HIS HONOUR: And you seek to guide me by suggesting that the jury not be empanelled in these circumstances. I agree emphatically with that suggestion and I want to find out the Crown's state of readiness--

20

CROWN PROSECUTOR: Yes, well--

HIS HONOUR: --tomorrow morning once and for all.

25 CROWN PROSECUTOR: I - if your Honour gave me until tomorrow morning at 10 o'clock I would - I think I can say this, your Honour, tomorrow morning I will either seek instructions to vacate the trial date--

HIS HONOUR: Yes.

30

CROWN PROSECUTOR: --or announce that I am so certain of getting my documents that I would go on.

35 HIS HONOUR: All right. Thank you. Well I don't care which it is Mr Crown, I'm in your hands.

CROWN PROSECUTOR: No, I appreciate that. Yes.

40 HIS HONOUR: And in terms of seeking instructions to vacate the trial date that's a matter for me not yourself. Quite obviously I only say that for the benefit of the accused, but I - I just want to know once and for all whether the trial is ready and if it's not I want to know why and I'll seek to know what your application is, I'll ask Mr Wilson what his attitude is to your application and I'll decide.

45

CROWN PROSECUTOR: Yes, your Honour.

50 HIS HONOUR: Putting it very simply Mr Wilson, the Crown, you may stand up, the Crown is flagging a number of respects in which it says the trial may possibly not be ready to proceed. So far as I am concerned, I want to know,

once and for all, because we can't have the trial proceeding a certain way and then encountering procedural difficulties because the Crown then wants to do certain things. I don't want the jury discharged in the middle of the trial for example, I don't want the trial proceeding unfairly from your point of view and it's my job to make sure it's fair.

So as I am sure you will agree it's proper that I wait until tomorrow morning to see what the Crown says about the evidence it seeks to call. I've just given Mr Crown some pretty firm instructions as to the matters he needs to find out about. All I can say is we'll find out tomorrow morning.

ACCUSED: Well they're only relying on invalid documents. The bottom line in this issue is the lawful dispossession of the free man and that has not been done, so all these certified documents are all null and void to begin with. So once we establish the fact in law, under Magna Carta, under our constitution of rights, under our birthright, anyway you look at it, we can only be dispossessed or imprisoned, or exiled or outlawed, or destroyed in any way, only by the lawful judgment of our equals and that has not been done. On that basis all these documents that he wants to put in are totally worthless.

HIS HONOUR: Well I hear what you say Mr Crown, if the Crown makes an application for vacation of the trial date tomorrow you will have your opportunity to say what you think is appropriate and I will rule accordingly. If the Crown does not make such an application the trial will proceed in the way that I have explained to you. The matter is stood over to tomorrow, bail is continued. You don't seek that it not be continued, Mr Crown?

CROWN PROSECUTOR: No, your Honour.

HIS HONOUR: No. Stood over til tomorrow, bail continued. We'll need to see you at 10 o'clock tomorrow morning of course Mr Wilson. I'll adjourn.

ADJOURNED PART HEARD TO TUESDAY 25 MAY 2010

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