

IN THE DISTRICT COURT  
OF NEW SOUTH WALES  
CRIMINAL JURISDICTION

JUDGE C ARMITAGE  
AND A JURY OF TWELVE

PARRAMATTA: MONDAY 7 JUNE 2010

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

**SUMMING-UP**

HIS HONOUR: Members of the jury, the accused stands before you today charged on the indictment. You have a copy of that document. It charges firstly that between 11 July 2009 and 14 July 2009 at North Rocks in the State of New South Wales he did break and enter the dwelling house of Kamal Issa at 331 North Rocks Road, North Rocks and then committed a serious indictable offence therein, namely intentional or reckless damage of property belonging to Kamal Issa, secondly, that on 14 July 2009 at Sydney in the State of New South Wales without lawful excuse, he made 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, belonging to Kamal Issa would be damaged or destroyed., and thirdly that on 15 July 2009 at North Rocks in the State of New South Wales he used a carriage service by sending an email in a way that reasonable persons would regard as menacing, harassing or offensive.

I take this opportunity of reminding you that at this stage you are free to ask questions about these legal directions I am giving you. If you have any difficulty with them you can ask as often as you like and ask any questions that you wish in relation to both the legal directions and any question of fact.

Members of the jury, to these charges the accused has pleaded that he is

not guilty. It becomes your duty and responsibility therefore to consider whether he is guilty or not guilty of the charges and to return your verdicts according to the evidence which you have heard. The accused is guilty of nothing at all until the Crown has proved beyond reasonable doubt the essential ingredients of the charges.

I propose to commence this summing-up with a number of general directions which, to some extent, are a repetition of those I have given you at the commencement of the trial. It is, however, important that I give them again, not only to remind you of what I said earlier but to place those directions in the context of the trial which has now taken place.

What I said earlier was, in a sense, an explanation to you of the part you are expected to play in the trial and a warning to you that it was necessary for you to participate in the determination of the factual issues. I remind you that those principles of law which I give to you, you are bound to accept. You are bound to apply them to the facts of this case as you find them to be.

The facts of the case and the verdicts you give are for you and you alone because you are the judges of the facts. I am the judge of the law but you are quite correctly called the judges of the facts. I have nothing to do with those facts or your decisions in relation to them. I have nothing to do with what evidence is to be accepted by you as truthful or what evidence is to be rejected by you as being untruthful, nor indeed what weight you might give to any particular part of the evidence which is being given or what inferences you draw from that evidence.

It is for you to assess the various witnesses and decide whether they are telling the truth. You have seen each of the witnesses as they have given their evidence. It is a matter for you entirely whether you accept that evidence.

Your ultimate decision as to what evidence you accept and what evidence you reject may be based on all manner of things, including what the witness had to say, the manner in which the witness said it and the general impression he or she made on you when giving evidence. In relation to accepting the evidence of witnesses you are not obliged to accept the evidence of any one witness, you may, if you think fit, accept part and reject part of the same witness's evidence. The fact that you do not accept a portion of the evidence of a witness does not necessarily mean that you must reject the whole of the witness's evidence. It does not mean that you should not accept the remainder of that evidence if you think it is worthy of acceptance.

You have heard addresses from counsel for the Crown and the accused. You will consider those submissions that have been made in their addresses and give their submissions such weight as you think fit. In no sense are those submissions evidence in the case.

If I happen to express any views on questions of fact you must disregard those views unless you happen to agree with your own independent assessment of the evidence. That is what I mean when I say that you are the judges and the sole judges of the facts of the case. I am, of course, entitled to express a view. I do not, however, propose to try and persuade you one way or the other in the case. That is not my task. I may, when I come to a particular issue, suggest to you that there is no real dispute about it. That, of course, is my view and it is open to you, if you wish, to reject that view if it does not accord with your own independent assessment of the evidence.

I shall of course endeavour during the summing-up to focus attention on those parts of the evidence which seem to me to be the areas to which counsel have devoted most of their attention. Of course it is necessary for you

in deliberating to consider the totality of the evidence, and not only the evidence to which I have referred you or to which you have been referred by counsel.

You are brought here from all walks of life and represent a cross-section of the community, a cross-section of its wisdom and its sense of justice. You are expected to use your individual qualities of reasoning, your experience and your understanding of people and human affairs.

In particular, and I cannot stress this too strongly, you are expected to use your commonsense and your ability to judge your fellow citizens so that you bring to the jury room during your deliberations your own experience of human affairs which must necessarily be varied as there are twelve of you. It is that concentration of your own experience and your own individual abilities, wisdom and commonsense which is the critical foundation for the whole of the jury system which has lasted in this state for almost 200 years. You have a very important matter to decide in this case, important not only to the accused, but to the whole community. The privilege which you have in sitting in judgment upon your fellow citizens is one which carries with it corresponding duties and obligations. You must as a jury act dispassionately, impartially, fearlessly. You must not let sympathy or emotions sway your judgment.

I emphasise this particularly in this case because the accused has chosen to defend himself and has on occasions expressed controversial views and has made submissions to me about various matters in a way that some of you may have found challenging, or for that matter, I may found challenging. You must put out of your mind any views you may have about the accused presents in court, the views he expresses, the submissions he makes or the way he conducted his case. He is entitled as any citizen is to a fair trial. That

means that you must concentrate wholly and solely on the task you have, which is to decide whether the Crown has or has not proved reasonable doubt the elements of each of the charges the accused faces.

Let me now say something to you about the onus of proof. This is, as you have already been told, a criminal trial of the most serious nature. The burden of proof for guilt of the accused is placed on the Crown. That onus rests upon the Crown in respect of every element of the charges. There is no onus of proof on the accused at all. It is not for the accused to prove his innocence. It is up to the Crown to prove his guilt. And prove it beyond reasonable doubt.

It is, and always has been, a critical part of our system of justice that persons tried in this court are presumed to be innocent unless and until they are proved to be guilty beyond reasonable doubt. This is known as the presumption of innocence. This expression "proved beyond reasonable doubt" is an ancient one. It has been deeply ingrained in the criminal law in the criminal law of this state for almost 200 years and needs no explanation from trial judges.

The Crown does not have to prove, however, every single fact of the case beyond reasonable doubt. The onus which rests upon the Crown is to prove the elements of the charges beyond reasonable doubt and I shall subsequently outline to you the elements of the charges. In a criminal trial there is only one ultimate issue: has the Crown proved the guilt of the accused beyond reasonable doubt. If the answer is yes the appropriate verdict is guilty. If the answer is no the verdict must be not guilty.

Under our system of law your verdicts, whether they be guilty or not guilty, ought be unanimous. That is not to say that each of you must agree on

the same reasons for your verdicts. You may rely individually on different parts of the evidence or place a different emphasis on parts of the evidence. However, by whatever route you each arrive at your decision, that final decision of either guilty or not guilty in relation to each charge, ought be the decision of your and unanimously before it can become your verdict.

As you may know, the law permits me in certain circumstances to accept verdicts which are not the verdicts of you all. These circumstances have not as yet arisen, so that when you retire I must ask you to reach verdicts upon which each one of you is agreed. Should, however, the time come when it is possible for me to accept verdicts which are not unanimous, I will give you a further direction.

I now turn to the essential ingredients of the charges against the accused, of all of which the Crown must satisfy you beyond reasonable doubt. I have prepared a list of directions which will now be handed to you. Please familiarise yourself with the document and I will then take you through it. This written material has the directions on the applicable law and verdicts is only an aid to understanding the oral directions I give you. I suggest that you have this material before you and that you all refer to it as I explain what the Crown must prove beyond reasonable doubt in relation to each charge and how it says it has proved it.

Now ladies and gentlemen, you will find that the piece of paper which I have given you follows precisely what I am about to say in relation to each of the charges, except it leaves out the evidence upon which the Crown relies on each of the charges which I need to direct you about. It leaves that out, but in relation to the elements of each of the charges you will find that what I am about to say will accord precisely with what is on the bit of paper. So there is

no need to pause now and let you absorb it, because you will notice that I say exactly what is written there.

The accused is firstly charged with breaking and entering the dwelling house of Kamal Issa at 331 North Rocks Road, North Rocks between 11 and 14 July 2009 and committing a serious indictable offence therein, namely intentional or reckless damage of property belonging to Kamal Issa. To prove this charge the Crown must satisfy you beyond reasonable doubt that (1) the accused broke and entered the premises described. Broke means forcibly gained access. It is not a break-in to walk in through an open door. Entered means what it says: that is, went inside. A dwelling house relevantly to this case is a house where someone lives or resides.

Here the Crown relies on the evidence of Kamal Issa as to finding the dwelling house broken into and then on the contents of exhibit F, a website printout found by Mr Issa, and the contents of exhibit J, a letter addressed to Andrew Scipione, being an email sent to Lisa O'Brien, and on the accused's record of interview, exhibit G, in all of which the Crown says the accused admitted breaking into the premises concerned in order to prove that the accused did this.

Here the Crown also relies, in order to prove that the premises were at the relevant time a dwelling house of Mr Issa, on the evidence of Mr Issa as to his purchase of the property and on the plan, exhibit A, a Certificate of Title and Title Search, exhibit C, the Transfer, exhibit B, the evidence of Paul Gothard, Shane Flexman, Charles Yong, Lisa O'Brien and Andrew McArtney, and the loan agreement and general terms of mortgage of memorandum, exhibit H, and the transcript of hearing before Associate Justice Harrison and her reasons for judgment of 26 June 2008 as edited by the Crown, exhibit K,

the judgment of the Supreme Court entered 10 July 2008, exhibit L, the notice of motion dated 4 September 2008, transcript of hearing before Justice Rothman as edited by the Crown and associate's note of hearing before Justice Rothman both dated 11 September 2008, exhibit M, the writ of possession dated 29 August 2008 exhibit N, the notice to vacate dated 29 August 2008, part of exhibit R, and the writ of restitution dated 12 November 2008, exhibit O.

The Crown must also prove beyond reasonable doubt (2) that the accused then committed a serious indictable offence, namely intentional or reckless damage of property belonging to Kamal Issa. I direct you that intentional or reckless damage of property is a serious indictable offence. Damage here bears its ordinary meaning and may include any damage of any kind. Property here refers to personal property, that is, goods and not any real property or real estate on which they may have been situated at the relevant time.

The second concept you must consider here, apart from damage to property, is the accused's intention. The Crown must prove that at the time the accused damaged property belonging to Kamal Issa, if you conclude beyond reasonable doubt that he did so, that he did so either intentionally or recklessly. Intent or intention are very familiar words. In this legal context they carry their ordinary meaning. Intention maybe inferred or deduced from the circumstances of which the alleged break-in occurred, and from the conduct of the accused before, at the time of and after he allegedly did the specific involved in the offence. Whatever a person says about his intention may be looked at for the purpose of finding out what that intention was in fact at the relevant time. In some cases a person's acts may themselves provide the

most convincing evidence of his intention. Where a specific result is the obvious and inevitable consequence of a person's act and where he deliberately does that act, you may readily conclude that he did that act with the intention of producing that specific result. But you must remember that you are considering the intention of the accused, not what your intention might have been if you had been in his position, nor the intention of some theoretical person. You should not conclude, if you find that the accused damaged the property of Kamal Issa, that the accused intended to do so without carefully considering all of the evidence in the present case which bears upon that question.

The Crown relies alternately on an allegation that the accused recklessly damaged the property of Kamal Issa. The element of recklessness is made out if you are satisfied beyond reasonable doubt that the damage was caused recklessly by the accused. Damage is caused recklessly if the accused realised that some physical damage may possibly be done to the property concerned, yet he went ahead and acted as he did. It is not necessary that the accused realised the degree of damage that was in fact caused, provided that he realised that some damage of that type would possibly occur. The accused cannot be found to have acted recklessly unless the Crown proves that the accused actually thought about the consequences of his act and at least realised the possibility of some damage of that type occurring.

The Crown asks you to infer from what it says were the actions of the accused in damaging the property concerned that this was done either intentionally or recklessly. In order to prove that the accused damaged the property of Kamal Issa the Crown relies on the evidence of Kamal Issa as to his ownership of the property concerned and as to finding the damage. The

Crown relies also on the photographs, exhibits D and E, and on the evidence of Andrew McCartney. In order to prove what it says are admissions by the accused that he damaged the property concerned and he did so intentionally or recklessly, the Crown relies on the email addressed to Ryan Ratcliff including a copy of the email sent to Lisa O'Brien, exhibit P, and on the extract from the website found by Kamal Issa, exhibit F, and on the letter to Andrew Scipione being email sent to Lisa O'Brien, exhibit J. The Crown relies also on the evidence of the accused in this trial.

The charge refers to damage to property that was inside the dwelling house of Kamal Issa before the accused allegedly broke into it. Any damage to that dwelling house, for example, by graffiti is irrelevant to this charge. It is not relied upon by the Crown on any charge.

The accused in this case says that he believed that the premises were his at the relevant time because Supreme Court proceedings in which he lost possession of those premises were not tried by a jury and therefore unlawful. However, I have to direct you that the belief of the accused that he still owned the premises at 331 North Rocks Road North Rocks is not in law a lawful excuse for so acting.

The accused is secondly charged with making a threat on 14 July 2009 to Andrew Scipione without lawful excuse with the intention of causing Andrew Scipione to fear that property namely, premises at 331 North Rocks Rd 331 North Rocks belonging to Kamal Issa being damaged or destroyed. To prove this charge the Crown must satisfy you beyond reasonable doubt that:

- (1) The accused made a threat to Andrew Scipione. Threat bears its ordinary English meaning in this charge. Here the Crown relies

on the evidence of Selina Withaneachi, William Ellis, Simon Last, Stephen Parkhurst and Lisa O'Brien and on CCTV footage at Telopea Post Office, exhibit Q, a letter to Andrew Scipione sent by email to Lisa O'Brien, part of exhibit J, the envelope, also part of exhibit J, the website extract, exhibit F, the accused's record of interview, exhibit G, and the email addressed to Ryan Ratcliff, exhibit P. I think it is also fair to say that the Crown relies on the accused's evidence.

(2) The Crown must prove beyond reasonable doubt that the accused threatened to damage or destroy property at 331 North Rocks Road North Rocks, the property of Kamal Issa. Here the Crown relies on the letter sent to Andrew Scipione sent by email to Lisa O'Brien, exhibit J.

(3) The Crown must prove beyond reasonable doubt that the accused intended at the time he made this threat to cause Andrew Scipione to fear that the premises concerned would be damaged or destroyed. Here the Crown again relies on the letter sent to Andrew Scipione sent by email to Lisa O'Brien, exhibit J, and on the extract from the website found by Kamal Issa, exhibit F, and it asks you to infer that at the time it says he made the threat concerned, the accused intended to cause Andrew Scipione to fear that the premises concerned would be damaged or destroyed.

You will again recall the direction of intention which I have given you; again you must remember that it is the intention of the accused you are considering, not the intention of some theoretical person or

what your intention may have been in the same circumstances.

As to the element or ingredient that the accused acted in so doing without lawful excuse, a lawful excuse means a reason why the action the accused took was not unlawful. It is a matter which an accused may raise in defence of this charge, and consequently it must be proved by the accused on the balance of probabilities. I direct you again that the belief of the accused that he still owned the premises at 331 North Rocks Road North Rocks was not in law a lawful excuse for so acting.

The accused is thirdly charged with using a carriage service by sending an email in a way that reasonable persons would regard as menacing, harassing or offensive. To prove this charge the Crown must satisfy you beyond reasonable doubt:

(1) That the accused used a carriage service by sending an email.

I direct you that a carriage service includes a service for carrying communications by means of guided and/or unguided electromagnetic energy; emails are carried by such a process. Here the Crown relies on the evidence of Carmen Smith, Ryan Ratcliff and on the accused's record of interview exhibit G, and in the email addressed to Ryan Ratcliff including a copy of the email sent to Lisa O'Brien, exhibit P; it is fair to say that the Crown relies also on the evidence of the accused.

The Crown must also prove beyond reasonable doubt,

(2) That the accused did so in a way that reasonable persons would regard as menacing, harassing or offensive.

Menacing, harassing or offensive are words which carry their ordinary English meaning in this charge. They mean simply that the behaviour

concerned would be regarded as menacing, harassing or offensive by reasonable persons which means ordinary respectable members of the community of ordinary fortitude or emotional strength and without undue sensitivities. Here again the Crown relies on the evidence of Ryan Ratcliff and on the email addressed to Ryan Ratcliff including a copy of the email sent to Lisa O'Brien (exhibit P); it invites you to conclude from the language of the email itself that it was sent in a way that reasonable persons would regard as menacing, harassing or offensive.

Now giving separate consideration to the individual counts or charges as I directed you to do at the commencement of this trial means that you are entitled to bring a verdict of guilty on some counts and not guilty on some other counts if there is a logical reason for that outcome. If you were to find the accused not guilty on any count, you would have to consider how that conclusion affects your consideration on the remaining counts, however, you should not regard the existence of multiple charges as an invitation to compromise. Suppose, for example, that six of you were for a verdict of guilty on all of the charges and six of you believed that the accused was not guilty of anything at all. It would be quite wrong in these circumstances to compromise by convicting him in one or more but not all of the charges.

As I told you at the time of the DVD recording of the interview with the accused by the police was played and a transcript of the recorded interview was made available to you while you were reviewing the recording, if there were any divergences between the interview recording you saw and the transcript you read, the recording itself is the primary record and you must accept the actual recording as a correct record of what occurred in the interview over the transcript, which is purely and simply an attempt at

producing an accurate recording in writing for you as an aide mémoire of the contents of the interview.

You will also recall that I instructed you at the time the recorded interview was played to you that if you noticed any edits or deletions from the recording or transcript of the recorded interview, these were undertaken purely and simply to remove irrelevant matter. You must ignore these deletions and not speculate in any way as to what they contain. You must concentrate wholly and solely on the actual contents of the record of interview that is before you in evidence.

The accused as you are aware chose not to answer some of the questions put to him by the police at the time of his arrest. All people in this country have a right to silence, that is, to choose not to answer questions put to them by the police,. That is precisely what the police officer told the accused when he asked if he wanted to answer their questions. There is some exceptions to that right, for example, when a police officer asks the registered owner of a car who was driving it at the time of some traffic incident, but these exceptions do not apply here. Therefore in this case it would be quite wrong if the accused, having listened to what the police said and having decided to exercise his right to silence, later found that a jury was using that fact against him; you must not do that of course. It is important therefore that you bear in mind that the accused's right to silence cannot be used against him in any way at all. The fact that he chose to take note of the caution given by the police and chose to remain silent cannot be used against him; under our law an accused person has a right to silence.

What I propose now to do is to sum-up the Crown and the accused's cases to you. It is not usual in relatively short trials such as this one, as distinct

from trials which go, for example, for months, for the judge to independently summarise the evidence;. There are two reasons for that. The first is that one or other of the parties, often both, will have canvassed the evidence in great detail and it would be an insult to your intelligence to do it again. The Crown has done that. Mr Wilson has also canvassed to some extent the evidence, although he has been more discursive. The second reason not to canvass the evidence in a short trial is that it runs the risk of bias. It runs the risk of the judge, in an attempt to summarise the evidence, over-emphasising the evidence that favours either the Crown or the accused, so I will stay out of that, and all I propose to do is to remind you briefly of what the parties said in their addresses, and in the case of Mr Wilson firstly, I will be obliged to tell you that some things that he said that were incorrect, and then I will be obliged to remind you of some things which he did not say which actually favour his case, which must be considered by you, because had he had a barrister or solicitor appearing for him, that person would have put these matters to you, and they should seriously affect your consideration of whether or not the Crown has proved beyond reasonable doubt his guilt on any of the charges. I emphasise that the matters that I put to you are not matters upon which I hold personal views, and insofar as I am referring you to matters of fact that you must consider when you are considering the guilt or otherwise of the accused, what you think of the arguments that I shall summarise to you in favour of the accused is a matter for not and not for me. I am not directing you; all I am doing as a matter of fairness is doing what I and any other judge does with an unrepresented accused, and that is drawing attention to arguments in his favour which have not been put by him, and that is what I shall do.

The Crown reminded you ladies and gentlemen, firstly of the undoubted

fact that the Crown has to prove the elements of all of the charges and every one of them beyond reasonable doubt. The Crown correctly acknowledged that.

The Crown went through all of the evidence as to each of the charges. I have already done that myself to some extent, in that I directed you when summing-up the elements of the charges the evidence upon which the Crown relies to prove them. For that reason I am not going to repeat the Crown's summary of the ways in which it says the evidence proves the guilt of the accused, including, of course the evidence of the accused in his own case, as well as the evidence of the Crown witnesses and in various documents and other matters which are placed before you as exhibits.

The Crown indicated that I would direct you as to various matters which the accused had put in the trial which were incorrect and I shall proceed to do that in a moment. In fact, I will do it now, but please keep in mind that although I am obliged as a matter of law to direct you that some of the assertions made by the accused were incorrect, there were areas that he touched on, which I will develop further where he had arguments in his favour, and they must be very seriously considered by you.

I repeat what I said at the beginning of this summing-up. You must not be diverted by any views you may have about the accused's presentation, the way he conducted himself in court, the way on occasions he took me on - I am a big boy and I am used to do that. My job is to deal with it and I did. You must not take into account any social views that you may have, or any political views that you may have that might perhaps have been touched on, or where a raw nerve may have been touched by the accused's presentation. You have to put all that aside. The only thing you have to attend to is whether on each of

the charges the Crown has proved its case in relation to every element of the charge beyond reasonable doubt; that is what the trial is about.

I am obliged to tell you concerning the accused's address that there were four areas where he made incorrect assertions.

The first is that there are two elements in each charge. Firstly whether he did the act concerned and secondly whether he had a guilty mind, that is, whether he did wrong. Now, there is more than one element on each charge that concerns whether or not he did the act, because there are several elements in each charge. You cannot just approach the matter globally and ask yourself, did he do the act? You will notice from the piece of paper that I gave you that there are a number of elements, each of which the Crown must prove beyond reasonable doubt in relation to each of the charges. So by telling you, you need only examine whether he did the act, the accused actually did himself a disservice. You have to give detailed attention to each of the elements that I have given you on that piece of paper I have given you, that is, as far as the alleged acts by the accused are concerned and, of course, the requirement of proof beyond reasonable doubt is there also and I have already told you about that.

Secondly, so far as a guilty mind is concerned, it is not actually correct to say, "Did I do wrong?". The question is, "Did I do what the law defines as wrong and has the Crown proved beyond reasonable doubt that I did it?".

The correct law about intention is that which I have given you and you will find that on the piece of paper as well. It is summarised by saying that you have to attend to what is the intention of the accused at the relevant time, not what your intention might have been, not what the intention of a reasonable person might have been, not what anybody else's intention might have been.

It is a question of what his intention was when he did the acts concerned.

That, you will see is quite important in relation to some aspects of the charges and I will come to that in a moment.

Now the second respect in which the accused's assertions were incorrect is that Magna Carta always entitles you to a trial by jury in all proceedings. As I told you earlier, English legal history shows us that there were many offences punished by Justices of the Peace in England summarily without a jury, both before and after Magna Carta right up to the present time. Apart from that, Parliament has sovereignty to determine that certain matters will or will not be tried by a jury. You are here because in relation to charges of this type the accused has a right to trial by jury. He has exercised that. He did not, I regret to say, have the right to trial by jury in the Supreme Court in the proceedings in which he was deprived of the possession of his property.

The third incorrect assertion that he made was that variable interest rate loan documents are always void for uncertainty. Many of us might perhaps wish that was so. Many of us, including myself, have variable interest rate claims. Regrettably, it is not the law that they are void for uncertainty.

Fourthly, the final assertion the accused made which was incorrect was that, or perhaps I should cover the Supreme Court proceedings, because the accused said that he did not have a trial by a jury in the Supreme Court which was undoubtedly the case, he said that the Supreme Court orders in which he was deprived of his property were invalidly made.

I have to direct you in law, each of these things that I am directing you about that the accused said that were incorrect, are questions of law and not of fact. So it is a matter for me and not for yourselves.

I have to direct you in law that there is only one way of challenging the

orders made in the Supreme Court and that was on appeal. You have heard that the accused did that. He was not successful. A jury may not overturn or impugn, as it is called, the decision of another court. You must accept that that decision was validly made, and that as a matter of law the accused was no longer entitled to possession of his property at the time each of the acts alleged in this indictment are supposed to have been committed. That is the fact.

The final matter that I have to tell you is that he asserted that it is a matter for yourselves what law you apply, and that you may set aside an invalid law or an invalid legal act that took place in the past, if you wish. I am afraid you cannot do that.

It is possible for many of us to have sympathy with what has happened to Mr Wilson over the time that he relates, over fourteen years. He is an intelligent man and has, if I may respectfully say so, certain fixed ideas about his legal rights. Many of us may find ourselves in that situation in those circumstances but it does not change the fact that our legal assertions are either right or wrong. It is wrong to say that you as a jury may make your own determination as to the validity of the law that led to Mr Wilson being deprived of his property; you may not. You must accept from me the legal proposition that he was no longer entitled to his property, and that Mr Issa was the registered proprietor of the property at the time of the acts concerned. That is all about it.

I have a bit more to tell you about Mr Wilson's case that he may not have considered. You must consider with the utmost care all of the evidence from which the Crown relies to prove each of the elements of each of the charges in order to determine that the Crown has proved all or any of them beyond

reasonable doubt; that includes the first charge. There is a legitimate argument that may be put in the accused's defence on the first charge that it is my duty to put to you as a matter of fairness, as he is unrepresented, which counsel may have put to him had he engaged one, and you must give it careful consideration.

You must consider whether on the evidence the Crown has proved beyond reasonable doubt that the accused knew when the alleged break-in occurred that the dwelling house was that of Kamal Issa. The Crown relies on a number of pieces of evidence to prove this, which I have already outlined. As I have said, it is not a lawful excuse for his actions that the accused believed that the Supreme Court proceedings deprived him of possession of the premises were unlawful, but you must still be satisfied beyond reasonable doubt that the accused knew that the premises concerned belonged to somebody else.

The second matter you must consider is that in the record of interview or in the various communications upon which the Crown relies to prove that he broke into the premises concerned and that he damaged the property concerned, you must ask yourselves, did the accused genuinely intend by the words he used to admit the matters upon which the Crown relies.

I remind you to prove that it was the accused who broke into the premises concerned and that he damaged the property concerned. The Crown relies entirely on what it says are the accused's conscious and deliberate admissions that he did those things. It has no other evidence to link the accused with those acts, apart from what he said in evidence in this trial. It does not, for example, have any forensic evidence such as fingerprints, nor does it have eyewitness evidence as to the accused doing these things.

So you must therefore ask yourselves, did the accused know what he was saying in his interview or in the communications concerned or in his evidence, or did he speak or write in the heat of the moment without considering what his words meant? As the Crown must prove its case beyond reasonable doubt, if you think that there is even a reasonable possibility that the accused did not intentionally admit the acts concerned, it is your duty to acquit the accused of the first charge. The Crown cannot prove its case on the first charge by showing that the matters it asserts are more likely than not to be true; it must prove all of the elements or ingredients of it beyond reasonable doubt before you may convict the accused on that first charge. The Crown acknowledged that, and it is also true in relation to the second and third charges.

Again, in relation to the second charge I remind you that you must consider with the utmost care all of the evidence upon which the Crown relies to prove each of the elements of each of the charges in order to determine whether the Crown has proved all or any them beyond reasonable doubt; that includes the second charge.

An argument which counsel may have presented for the accused on the second charge, probably would have, is that if he sent the communication to Mr Scipione as alleged, he did not necessarily intend that Mr Scipione should fear that the premises of Mr Issa at 331 North Rocks Road, North Rocks would be damaged or destroyed. Have a look at exhibit J. It is in very extravagant terms, with all sorts of wandering references to the Eureka Stockade, Miners' rights, juries and high treason. You must remember here that it is the Crown's case - I withdraw that. Even if you think, contrary to this argument, that the accused threatened in the communication to destroy or damage the property

himself, you must also ask yourselves, did the accused deliberately send the communication with intent to cause Mr Scipione to fear damage to or destruction of the property, or did he send it in the heat of the moment, without considering the consequences it might have, that is, to cause Mr Scipione to fear that these things would occur.

Did he, for example, send it for some ulterior motive, for example, to draw attention to himself as a victim for what he saw as an injustice, or as he said, did he send it purely and simply to get all of his wrongs before a jury, without any realistic intent to cause Mr Scipione for fear of the consequences concerned?

Did he see the making of this threat as simply a drastic way of gaining Mr Scipione's attention and get arrested, without any real intention of causing Mr Scipione realistically to fear these things? Whether Mr Scipione in fact held these fears is not relevant to this charge. What the accused's state of mind was when he sent the communication, if you think he did, is highly relevant to his intent when he did so. You cannot take it as being his realistic intention to cause Mr Scipione to harbour the fears upon which the Crown relies just from the terms of the communication itself. You must examine the accused's state of mind when he sent it.

If you are satisfied beyond reasonable doubt that he did so, as the Crown must prove its case beyond reasonable doubt, if you think there is even a reasonable possibility of when he sent it he did not fully appreciate that Mr Scipione might genuinely fear the matters which the Crown relies on, he cannot be found beyond reasonable doubt to have sent the communication intending Mr Scipione to fear damage to or destruction of the property; then you must acquit the accused of this second charge. I remind you that that

second charge reads “with the intention of causing the said Andrew Scipione to fear”. So it is a question of the accused’s intention when he sent it. He says his intention was not to cause Mr Scipione to fear these things; he said that his intention was simply to get all his wrongs before a jury. If you think therefore that there is even a reasonable possibility that his intention was not to cause Mr Scipione to fear that the property would be burnt down or damaged, but that his intention was something else, even if that is just a reasonably possibility, you must acquit the accused of the second charge. That is an argument in favour of the accused on the second charge which counsel would have put in his favour.

Again I remind you in relation to the third charge that you must consider with the utmost care all of the evidence upon which the Crown relies to prove each of the elements of each of the charges; that includes the third charge.

An argument which counsel might have presented for the accused on the third charge is as follows. You might think that it is not the intention of the criminal law to criminalise every communication sent by email which might literally be seen the addressee as menacing, harassing or offensive. Who among us has not sent an email which we later regretted? Who among us has not received an email which seemed offensive or which might even have seemed harassing or menacing? This charge, you must remember, requires that the email concerned be either menacing, harassing or offensive to a criminal degree. What did the accused say in the email concerned, if you think he sent it? Have a look at exhibit P. It is again in extravagant terms; it is rambling and discursive. Is it really menacing, harassing or offensive in the criminal sense, or is it the outpourings of an obviously obsessed mind, by which no-one could truly be offended or feel harassed or menaced? As the

Crown must prove its case beyond reasonable doubt, if you think there is even a reasonable possibility that the second of these alternatives is the true situation, you must acquit the accused of this third charge.

I emphasise that these are all arguments in relation to the charges which counsel might have put to you, which counsel might have put for the accused if he had one; as he is unrepresented they must be put for him as he has not fully done so. You must give them very careful consideration indeed in deciding whether the Crown has proved beyond reasonable doubt any or all of the elements or ingredients of the charges. However, as they are arguments which might have been presented by counsel for the accused, if he had one, in relation to the charges, what you think of them is a matter for yourselves and certainly not for me.

Except for two matters you will be pleased to hear that I have completed all I have to say to you before asking you to retire to consider your verdicts. The two final matters are these.

Firstly, if you wish to have any part of the evidence checked or read back to you at any stage of your deliberations then that can be arranged - played back to you I should say. You need only let one of the sheriff's officers know and the court will reassemble for that purpose. There is also a transcript of the evidence and if there is any part of the evidence that you wish to see in transcript form that can be arranged too.

Secondly, if you would at any stage of your deliberations like me to repeat any direction of law I have given you, please do not hesitate to ask. It is fundamental you should understand the principles you are required to apply. The procedure is again for you to indicate to one of the sheriff's officers that you would like such further assistance; a note indicating the problem causing

you difficulty would be helpful. Upon such a request the court will reassemble for the purpose of seeking to assist you.

I shall now tell you what happens when you return with your verdicts. You will take your places in the jury box. Your foreperson will be asked to stand; she should be in a position to state clearly your verdicts.

With these final directions I have now completed my summing-up. With a final reminder that any verdicts you reach must be unanimous, I ask you to retire to the jury room to consider your verdicts.

HIS HONOUR: First I have to ask, Mr Crown and Mr Wilson, are there any matters that you say should be in my summing-up that I have not included or any matters that I did include that should not have been included? If you have such submissions I will hear them in the absence of the jury. Firstly, Mr Wilson, the answer to this question is yes or no. Do you have such submissions?

ACCUSED: A strong one, a very, very strong one.

HIS HONOUR: Thank you. I will hear it when I ask the jury to leave. Mr Crown, do you have any?

CROWN PROSECUTOR: There is one matter I wish to mention, your Honour.

HIS HONOUR: Thank you. Ladies and gentlemen, do not start deliberating until I get you back and tell you you can start. The reason is that either Mr Wilson or the Crown may convince you that something needs to be added to my summing-up. I will just ask you to leave while these matters are discussed. That is the usual procedure by the way.

IN THE ABSENCE OF THE JURY

HIS HONOUR: Yes, Mr Wilson.

ACCUSED: Well the most important thing is that parliament does not have sovereignty; you should not tell them that in this country that parliament has sovereignty; sovereignty lies with the people. And secondly, you should not be telling them to accept any judgment from a court where there has not been the benefit of trial by jury, which is our inalienable right to protect our property.

HIS HONOUR: Thank you, Mr Wilson. I have already directed the jury on

those subjects. I regret to say that we disagree. But I have heard what you have said and I understand what you said and I have taken it into account in making my decision what to tell the jury; I just regret to say that we find ourselves in disagreement. You have had a very fair opportunity to address the jury on that subject and, Mr Wilson, they know exactly what your views are. I have simply been obliged to direct the jury in accordance with law.

ACCUSED: You should not direct them wrongly.

HIS HONOUR: Thank you, Mr Wilson--

ACCUSED: You should not direct them that we do not have the right to trial by jury with regard to our property.

HIS HONOUR: Thank you, Mr Wilson, I think you've made yourself clear.

CROWN PROSECUTOR: Just this, your Honour. Your Honour did at one stage say that you propose to sum-up the Crown case and then that of the accused.

HIS HONOUR: Yes.

CROWN PROSECUTOR: I think you may have - I'm not sure if your Honour changed your Honour's mind because you then went straight on to say where the accused was in error and then gave the arguments that you said--

HIS HONOUR: Yes, what I did was to say to the jury that in your address you summarised all of the evidence upon which you relied, and I had already summarised that when I was directing them on each of the charges, and I did not therefore propose to repeat what I said in my summary of the Crown case, because in fact you had already provided me with a very detailed list of the evidence upon which you relied. You repeated that list essentially in your address to the jury. I had already repeated the list in my directions so I didn't want to do it again, at the risk of overbalancing the summing-up.

CROWN PROSECUTOR: I have no complaint about that as such, your Honour, it's just that I didn't quite know if that was what your Honour intended.

HIS HONOUR: When I get the jury back I will simply tell them that Mr Crown has reminded me that I did not give a detailed summary of the Crown case - well in that case, Mr Crown, if you don't require me to do that I won't say--

CROWN PROSECUTOR: I don't think that's - I'm not sure that's appropriate quite frankly, your Honour.

HIS HONOUR: No. I really - when I think about it I'm chary about any impression that--

CROWN PROSECUTOR: You shouldn't say that after - unless it's an omission, deliberate--

HIS HONOUR: No, I don't think there is an omission. I did what I did deliberately. It was perhaps the way I phrased it, Mr Crown, and that may be my fault but I did what I did deliberately because when I came to - I took detailed notes of your address and your address consisted entirely and properly of reminding the jury of its obligation to consider proof beyond reasonable doubt, of reminding the jury of all of the evidence which you say proves each of the charges, and reminding the jury that I would direct them on a number of matters of law including areas of dispute between the Crown and the accused as to what the law was, which I then proceeded to do. So I think, Mr Crown, I covered it.

CROWN PROSECUTOR: I certainly don't ask your Honour to tell them now what I said.

HIS HONOUR: No.

CROWN PROSECUTOR: Unless it was an accidental omission which--

HIS HONOUR: I don't think it is. We'll get the jury back.

IN THE PRESENCE OF THE JURY

HIS HONOUR: Thank you ladies and gentlemen, I just got you in to say that I do not propose to add in any way to my summing up. I have already said all I need to say so you may now commence deliberating. We do not ordinarily take a verdict between 1 and 2 in order to give everybody a chance for lunch. You can deliberate over lunch. I think for the sake of more abundant caution we will assume that you do not commence deliberating till 2 o'clock. You can if you wish; we will assume that.

But ladies and gentlemen, just keep in mind if it takes longer than this afternoon to properly consider all the evidence, so be it. Please do not be in a hurry. If by 4 o'clock this afternoon or earlier than that you have reached a conclusion, well and good. If you have reached a conclusion on each of the charges, then you should come in and tell us through your foreperson what it is, but do not hurry. Do not think that you have to be away at a certain time, do not allow, with due respect, personal commitments to bear upon your desire to discuss the evidence properly. It will probably take you quite a while I suspect.

And I emphasise again, please, if you have any queries send me a note. You may go with the officer.

JURY RETIRED TO CONSIDER ITS VERDICT AT 12.58PM

HIS HONOUR: Since there are people here with Mr Wilson, I am going to take the unusual course of simply saying to those in the gallery as well as to Mr Wilson, the conflict that comes up in this case is a classic one which ultimately occurs between what the law is and what people think is the justice of the law. Judges in this state swear an oath to uphold the law; that means the law as it is. Judges may not allow their personal views as to the validity or otherwise in moral terms of a law to interfere with their doing their duty. Doing their duty includes telling the jury what the law is. What a judge thinks of that law is nothing in point; what matters is what the law is. That is a judge's duty, and I am afraid that until a higher court directs him or her that the law is otherwise, a judge must accept the law as it is. That is why I have done what I have done, it may not be--

ACCUSED: What about natural justice?

HIS HONOUR: I am not going to debate the matter. I have simply said what I have said. Natural justice or procedural fairness is quite a common concept in legal affairs. As a matter of fact, we apply it. I will adjourn.

ACCUSED: I remind you, you are sworn to do right after, after, A-F-T-E-R.

LUNCHEON ADJOURNMENT

HIS HONOUR: I have a jury note which will be marked for identification but before it is I will hand it down so you can both read it. What are we up to?

MFI #23 JURY NOTE

HIS HONOUR: It reads this way, "Can we please have the transcript of the judge's summary that addresses charge 2" and I'll pass that down. Now unfortunately a transcript won't be available til tomorrow and it's just after 3 o'clock today. I don't think we should delay until tomorrow to obtain a transcript of what I said. What I propose to do, unless either of you has any suggestion to the contrary, is this. I have already given them an elements sheet that concerns charge 2. What I propose to do, Mr Wilson and Mr Crown, is to firstly read out the portion of my summing-up in which I told the jury the evidence the Crown relies on in relation to charge 2 and then read out to the jury the notes I made for myself concerning charge 2, which consists of a number of arguments that I put, I'm just finding it, in favour of the accused, which he may not have put himself, or at least may not have fully put in relation to charge 2. I think that's what the jury wants. Do you both agree that that's the proper thing to do?

CROWN PROSECUTOR: Yes your Honour.

HIS HONOUR: Mr Wilson, are you happy with that?

ACCUSED: So you are going to reread it to the jury are you?

HIS HONOUR: I'm going to reread to the jury the facts on which the Crown relies in relation to charge 2, and I am going to draw their attention to the fact they've already got written material from me as to what the elements or ingredients of charge 2 are. Then I'm going to read through the evidence the Crown relies on in relation to charge 2, that won't take long, and then I am going to repeat to them the arguments that I put in your favour on charge 2. That's what I'm going to do; are you happy with that?

ACCUSED: Yeah, this is not the one where you mislead them about the variable interest rates and--

HIS HONOUR: Well, I'm not going to be saying anything on that subject, whether we agree that I did or did not mislead them, I'm not going to be saying anything about that. I'm only going to be talking about the allegation that you sent a threat to Mr Scipione with intent to cause him to fear that you would - that you would destroy or damage the premises. I am going to firstly tell them that I have given them a written elements sheet about that which just sets out what the Crown has to prove. Then I'm going to tell them that the Crown - I'll repeat again that the Crown relies on the following evidence, 1, 2, 3, 4, - and that charge and then I'm going to repeat - then I'm going to say to them, also ladies and gentlemen, part of my summing-up on charge 2 included the following arguments in favour of the accused. I am going to remind them of some things that you party said and some other things that you didn't say, which were to the effect that intention is really important, and Mr Wilson said that he intended to get Mr Scipione's attention, he wanted to get arrested so he could get before a jury, he didn't intend to make Mr Scipione fear he would burn the house down, so I am going to remind them of that argument in your favour on that point as well.

ACCUSED: Well if the jury want it, then that's the way it ought to be.

HIS HONOUR: Yes, exactly, so that's what I'm going to do. Okay. Let's get the jury back.

ACCUSED: Excuse me, will your directions be on the transcript tonight?

HIS HONOUR: Tonight or tomorrow morning, one way or the other, depends on when it's available.

JURY RETURNED TO COURT AT 3.10PM

HIS HONOUR: Thank you ladies and gentlemen, I am sorry it took a little while. Personally I had another trial started in this court, we do not waste time, well we have got one jury out we start another one, and secondly I had to rope

in all the parties in this one, thirdly we had to have a little discussion about what to tell you. You have got a note which you have sent me. It reads, "Can we please have the transcript of the judge's summary that addresses charge 2". Thank you for that note. I will pass that note down to place with the file.

I presume in view of the fact that you have already got your elements sheet in relation to charge 2 you know what the Crown has to prove beyond reasonable doubt in relation to charge 2 because it is there in front of you on your bits of paper. I am going to repeat to you everything else that I said about charge 2, which I think is going to cover it. I cannot give you a transcript because it will not be available until tomorrow and I am not going to keep you waiting until tomorrow. You saw me reading from something but that is not a transcript; that is just some notes that I make for myself. As you can imagine, judges do not sum-up off the top of their heads; they go away and slave over it and get it right and then read from it, and that is what I have done.

Now in relation - firstly I will remind you of the evidence the Crown relies on. That the accused made a threat to Andrew Scipione, that is element 1 in charge 2. Here the Crown relies on the evidence of Selina Withaneachi and William Ellis and Simon Last and on Stephen Parkhurst and Lisa O'Brien, the CCTV footage of Telopea Post Office, that is exhibit Q, the letter itself to Andrew Scipione sent by email to Lisa O'Brien, that is part of exhibit J. The envelope, also part of exhibit J. The website extract, exhibit F. The accused record of interview, exhibit G and the email to Ryan Radcliff, exhibit P. So that is just to prove that something was sent.

Now, as to the content of the alleged threat that the accused threatened to damage or destroy property at 331 North Rocks Road, North Rocks, the property of Kamal Issa, there the Crown relies on exhibit J, which is the letter

itself to Andrew Scipione sent by email to Lisa O'Brien, so that is exhibit J.

Now, thirdly to prove that the accused intended at the time he made the threat to cause Andrew Scipione to fear that the premises concerned would be damaged or destroyed, the Crown again relies on exhibit J, that is the letter to Mr Scipione sent to Ms O'Brien by email, and on the extract from the website found by Kamal Issa, exhibit F.

Now, what the Crown asks you to do is to infer that at the time it says the accused made the threat he intended to cause Andrew Scipione to fear that the premises would be damaged or destroyed. I gave you a direction on "intention"; that is on your bit of paper in relation to charge 1. I invite your attention back to that, and I reminded you that here again you must consider the intention of the accused, not the intention of some theoretical person, and not what your intention might have been in the same circumstances.

In relation to argument for the accused, the Crown case can be summarised on count 2 by the evidence it relies on, including the fact that they ask you to look at the thing itself and infer that the accused had the intention to make Mr Scipione fear what it says in the document, that he would destroy or damage the property.

Now I also reminded you, you have to consider very carefully the evidence in support of each of the elements of charge 2 to make sure or ascertain whether the Crown has proved each of them beyond reasonable doubt. Then I went on to the accused's arguments. Mr Wilson himself articulated that in part, although not entirely, and it is my duty to put forward the arguments that he could have put reasonably on count 2 to you, and then leave it to you.

Now, his argument might well be, and was in part, that the fact that he

sent the communication to Mr Scipione, and the fact that it read the way it did, did not necessarily mean that he intended that Mr Scipione would fear that the premises of Mr Issa at 331 North Rocks Road, North Rocks would be damaged or destroyed, and you are invited to look at exhibit J. It is in very extravagant terms and all sorts of wandering references to the Eureka Stockade, miners' rights, juries and high treason.

You must also ask yourselves, therefore, did he deliberately send it with the intent to cause Mr Scipione actually to fear destruction to or damage to the property, or did he send it in the heat of the moment, I said, without considering the consequence it might have, that is, it might cause Mr Scipione to fear that those things would occur? Did he send it for some ulterior motive, for example, to draw attention to himself as a victim of what he saw as an injustice, and did he see the making of this threat as simply a drastic way of gaining Mr Scipione's attention without any real intention of causing Mr Scipione realistically to fear those things? Whether Mr Scipione in fact held those fears is not relevant to this charge, but what was the accused's state of mind at the time he sent the communication, if you think he did? His state of mind when he sent it was highly relevant to his intention when he did so. You cannot take it as being his realistic intention to cause Mr Scipione to harbour the fears upon which the Crown relies just from the terms of the communication itself. You must examine the accused's state of mind when he sent it. If you are satisfied beyond reasonable doubt that he sent it.

As the Crown must prove its case beyond reasonable doubt, if you think there is even a reasonable possibility that when he sent it he did not fully appreciate that Mr Scipione might genuinely harbour the fears the Crown relies on, he cannot be found beyond reasonable doubt to have sent the

communication intending Mr Scipione to fear damage to or destruction of the property, and you must acquit the accused of this separate charge. You might remember that I reminded you that the indictment reads “with the intention of causing the said Andrew Scipione to fear”. So, it is not just sending it, it is his intention, and I reminded you also of his evidence, which was “I intended to get before a jury”. “I intended to get before a jury because I thought a jury could right all the wrongs that I had suffered over fourteen years. I was trying to get arrested; that’s why I sent it. I didn’t intend Mr Scipione to fear that I would burn down what I thought was my own property”. That is what the accused says.

Now, that is a fair summary I hope of both sides of the argument, and that is, as far as I could do it, identical with what I have already said to you on the subject. I hope that is satisfactorily. You may go with the officer.

HIS HONOUR: Just a moment, are you both happy with that? Mr Wilson are you happy with that?

ACCUSED: Yes your Honour. **[A LIE. I did not and would not say that.]**

CROWN PROSECUTOR: Yes your Honour.

JURY RETIRED TO FURTHER CONSIDER ITS VERDICT AT 3.19PM

HIS HONOUR: Mr Wilson, I will get you to leave the bar table now, we have another trial and you will be called back in as soon as anything happens. Thank you too, Mr Crown.

CROWN PROSECUTOR: May it please the court.

HIS HONOUR: It’s usual, Mr Wilson, to get the jury in and send them home at this point.

ACCUSED: I didn’t hear.

HIS HONOUR: It’s usual in these circumstances to get the jury in and simply send them home.

ACCUSED: Oh.

HIS HONOUR: That's all I'm doing. Let's get the jury in.

CROWN PROSECUTOR: Your Honour, it's particularly important with respect to warn the jury not to go the websites.

HIS HONOUR: I'm going to.

CROWN PROSECUTOR: Particularly important in view of some of the things as said by the accused--

HIS HONOUR: I'm going to.

CROWN PROSECUTOR: Thank you, your Honour.

JURY RETURNED TO COURT AT 4.04PM

HIS HONOUR: Thank you ladies and gentlemen. All I am doing is sending you home until tomorrow morning. Assemble in the usual way at the usual time. I will not be calling you in here at 10 o'clock. I will be doing another trial. But we will assume, unless we are told to the contrary, that you start deliberating at 10 o'clock tomorrow morning. Any queries, send me a note. Just remember everything I have told you. I will not go through the whole tedious list; you obviously will not talk to anybody coming in or out; and you will not discuss it in little knots of two or three. You have all got to be present in a group of twelve in the jury room before you discuss the trial. Do not discuss it with anybody at home. It is just particularly important that I remind you that I ruled that the evidence of the contents of the accused's website when he attempted to tender it were not relevant to this trial. That therefore means that you must not have access to his website on your home computers in any way whatsoever. That comes under the heading of making private enquiries and is something which the **Jury Act** forbids.

I know that Mr Wilson disagrees with that and I am sorry that I have had to tell you that, but that is your duty and you have got to obey my directions and that is that. So we will see you tomorrow morning and we will assume that

you start deliberating at 10 o'clock. The officers will inform us if that is not so but, officer, I am assuming unless I hear to the contrary that they start at 10 o'clock. All right, you may leave.

JURY LEFT COURT AT 4.06PM

HIS HONOUR: All right, stood over to 8 June, bail continued. I'll adjourn.

ADJOURNED TO TUESDAY 8 JUNE 2010

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