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THE DISTRICT COURT
OF NEW SOUTH WALES
CRIMINAL JURISDICTION

5 JUDGE LATHAM

THIRD DAY: FRIDAY 21 NOVEMBER 2003

10 **03/11/0584 - REGINA v JOHN DENNIS MAGUIRE**

15 HER HONOUR: Just returning to the matter of Maguire, Madam Crown were you able to get some instructions in relation to those matters I raised yesterday?

20 CROWN PROSECUTOR: Yes your Honour I was. Your Honour I have got some typed - my officer in charge went to the endeavour of typing up the results of his inquiries. He contacted most of the people that were referred to. A couple of them he wasn't able to. Will your Honour permit me to give you that information from the Bar table or does your Honour wish me to call that evidence.

25 HER HONOUR: Have you seen it Mr Byrne?

30 BYRNE: No I haven't. It was just handed along the Bar table about 30 seconds ago. I am not just quite sure. Is this a summary of information that was obtained in discussions between the officer Cuthbertson and these people yesterday?

CROWN PROSECUTOR: That's correct your Honour.

35 BYRNE: Well I don't have any knowledge of that information I am just working off the papers that we have been--

40 HER HONOUR: I accept that. I just asked the Crown to get some instructions, the only status the information has at this stage, Mr Byrne is that it is a summary of her instructions. Whether or not it ultimately needs to be tested further I suppose depends on what it tells me.

45 BYRNE: Could I just have a moment to look at it?

HER HONOUR: Yes certainly.

50 BYRNE: Thank you.

CROWN PROSECUTOR: Can I hand your Honour up a copy?

HER HONOUR: Do you have a problem with me seeing it Mr Byrne?

55 BYRNE: No.

HER HONOUR: All right. Just on the basis of that

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information Madam Crown I would have thought the possibility of contamination is reasonably well established. I say that because a number of the persons referred to yesterday, as either complainants relating to
5 the year of 1984, and the tendency witnesses who were to be called in support of those complainants, have either attended one or both reunions and/or a rugby match before or after the reunion and the extent to which they have been asked to think specifically of any conversations
10 about Maguire the extent of their information is that they don't recall any such talk, but I must confess that is not the test, the test is whether or not the circumstances are such that the possibility of concoction arises. It would seem to me that with the exception of CFB, everybody
15 else has had an opportunity to either participate in or at least hear a discussion of these matters even if they haven't been a party to the discussion they've been, in circumstances where one could have taken place.

20 CROWN PROSECUTOR: I think also in that category is CFA as well.

HER HONOUR: And CFA which is still a problem in terms of the primary basis of your submission yesterday
25 which was to do with a number of complainants relating to the year of 1984. I mean we could go through the exercise of calling all of these people and having them examined but and I want to make it clear I am not being critical of anyone and I am not being critical of the way is being
30 conducted no one could be but this is just one of those cases where there have been so many opportunities available to these people for that contamination to arise that I couldn't be entirely confident that this hasn't
35 occurred on some conscious or unconscious level.

CROWN PROSECUTOR: That was the next step I was going to suggest that because this issue is very live that perhaps the witnesses could be called on the very narrow basis of the aspect of contamination.
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HER HONOUR: Yes but that you see the problem is even though they might say well I don't recall it, (a) it doesn't mean it didn't happen but (b) it's hardly relevant
45 to the test because the test is one of inherent possibility, not actual realisation of concoction and that's always been the difficulty. Do you want to say anything further about it Mr Byrne?

BYRNE: Your Honour only this that the aspect that is addressed in the notes that have been prepared to this morning deals only with the reunion issue. It's really just one aspect of contamination.
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HER HONOUR: I know that.
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BYRNE: There are others.

HER HONOUR: But I would have thought that was enough in

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any event and there is also the reference to rugby matches which wouldn't surprise me in the context of post-school activities. No doubt there'd be occasions when old boys would come to school sports functions and social functions independently of year reunions and I would have thought that it would be surprising if, in the context of these allegations having been made by one or more of the boys in that year it would be surprising if that hadn't been the subject of a conversation at some time at some place.

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BYRNE: Yes your Honour. Perhaps if I could put it briefly, in our submission, the material here is enough but if your Honour were not of the view that it's enough then there is certainly more available with respect on that issue apart from the reunion notice but that is all I can say.

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HER HONOUR: Yes, all right. Well Madam Crown I think the only course that I can take from this point is to indicate to you that independently of any misgivings I might have about the basis for the tendency evidence being admissible and I haven't reached a concluded view on that whether or not the basis upon which you put forward the tendency evidence would have been sufficient to satisfy that criteria of significant probative value and then even after that whether or not the section 101 tests would have been met but before you get to 101, if there is the possibility of concoction then immediately the significant probative value which would otherwise arise from tendency is cut away and I think we have reached that stage. I will hand down some formal reasons for refusing the Crown's application for having these matters heard together next week.

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CROWN PROSECUTOR: I think it is the other way around your Honour I think it was--

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HER HONOUR: Sorry it was Mr Byrne's application to sever the indictment so I will hand down some formal reasons why I think the application should be granted which in has in it a refusal to accede to the evidence being called as tendency or coincidence. I am just wondering have you been able to determine which matter you might be able to commence on Monday?

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CROWN PROSECUTOR: Yes your Honour I spoke of this briefly with my officer in charge yesterday in terms of organising the witnesses for the complainant ^{CFA} [redacted], that is a discrete matter with a limited number of witnesses and it should be attainable to have that matter ready to proceed on Monday.

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HER HONOUR: what would be the time estimate in relation to ^{CFA} [redacted].

CROWN PROSECUTOR: I would have thought probably four days.

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HER HONOUR: So that's just the one count is it?

5 CROWN PROSECUTOR: Yes your Honour, one discrete count on a specific day. I am just conferring with my officer in charge if your Honour will pardon me for a moment.

10 HER HONOUR: I am just looking at the balance of the term there is only really three full weeks because the week of 15 December I have already got a matter allocated to that week and I am just thinking in terms of scheduling perhaps another trial at the conclusion of the trial involving
CFA [redacted] - I think we could probably fit one more in.

15 CROWN PROSECUTOR: I was just discussing that aspect as well that as soon as I--

20 HER HONOUR: If CFA [redacted]'s matter went for next week I still think that there would be the prospect of completing another matter in the remaining two weeks.

CROWN PROSECUTOR: I agree with that your Honour. Next week's matter, CFA [redacted] - like four days, it could be shorter so we will keep our options open.

25 HER HONOUR: Could I just make something else clear just in case and I know this is in the realm of speculation because we still have to determine what happens in respect of CDR [redacted]'s matters. If we were to at least complete matters relating to two complainants before the end of
30 term the beginning of next term I have the first three weeks in Bathurst which means I wouldn't be in a position to do the next one until late February, early March. I am assuming that once we start this process then it would not be appropriate for someone else to pick it up half way
35 through.

CROWN PROSECUTOR: I agree.

40 HER HONOUR: So just for your purposes Mr Byrne it might be early March before we pick up with CDR [redacted]'s matters but that would certainly give both parties enough time to resolve that issue in terms of experts before. It may be, I don't know, that once the Crown gets advice from their experts it may be that that issue is resolved without it
45 having to be the subject of any determination by me.

CROWN PROSECUTOR: I don't think so.

50 HER HONOUR: You don't think so.

CROWN PROSECUTOR: No. I actually spoke to an expert this morning and he is preparing a report and as soon as it is hand it will be provided to my learned friend your Honour.

55 HER HONOUR: All right.

BYRNE: Could I just say in relation to the matter of CFA [redacted], that would be a relatively short matter as I

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see it.

CROWN PROSECUTOR: Indeed.

5 BYRNE: I think four days is being cautious. The evidence
of CFA is very very short. His evidence in the
committal proceedings was short.

10 HER HONOUR: I should just let you know though that Friday
of next week, 28th, is out of play, because I have a
number of part heard sentence matters listed that day
anyway and Fridays are usually pretty pointless so it - I
15 think four days is as you say probably generous but unless
for some reason for example if we were in the position to
send a jury out on the Wednesday morning I could
conceivably strike another panel for the next one on
Wednesday morning so certainly Monday of next week I could
20 indicate that we may want another panel by Wednesday
morning, that's always an option.

20 BYRNE: Yes and it's a real possibility in this case.

HER HONOUR: Well all right we will expect to at least get
to another matter by the middle of next week.

25 BYRNE: I think so, realistically, yes. Your Honour can I
just make one application I suppose of sorts, it is a
personal matter in a sense. On 2 December which is a
Tuesday I have two matters which are in the special leave
30 applications list in the High Court. There is just no
ability to negotiate about listing times in the High
Court, they just say that's when it's on and that's it and
this matter was listed long before the High Court matters
were listed but--

35 HER HONOUR: I am under no illusions Mr Byrne the High
Court is not going to - I am not going to take precedence
over the High Court. I don't suppose you know where you
are in the special leave list that morning.

40 BYRNE: I don't.

HER HONOUR: It doesn't take all that long.

45 BYRNE: No they are usually over by lunch time certainly.

HER HONOUR: Look, we will see how we travel but if it
means we don't start till 12 o'clock on Tuesday, so be it.

50 BYRNE: Thank you your Honour. I just wanted to raise it
now so that it is on the record.

HER HONOUR: I will stand the matter over to trial on
Monday of next week at 10am. Bail is continued.

55 ADJOURNED TO MONDAY 24 NOVEMBER 2003

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