

IN THE LOCAL COURT
DOWNING CENTRE
MAGISTRATE MILLEDGE
TUESDAY 10 JUNE 2025

2024/00214041 - R v Tony SMITH

OFFENCE Use carriage service to menace/harass/offend

Sergeants Notman, Yessayan, Bloomfield and Breckenridge for the Informant
Mr Tighe for the Accused

HER HONOUR: Tony Smith. This is use carriage.

TIGHE: Yes.

HER HONOUR: Is it still contested?

TIGHE: Yes.

PROSECUTOR NOTMAN: No complainant.

HER HONOUR: Yes, Sergeant Notman. I beg your pardon. Yes.

PROSECUTOR NOTMAN: No complainant at this stage. Apparently on their way.

HER HONOUR: They're on their way?

PROSECUTOR NOTMAN: Apparently. The OIC is in contact with them.

HER HONOUR: How many witnesses do you have?

PROSECUTOR NOTMAN: Two.

HER HONOUR: That includes the complainant?

PROSECUTOR NOTMAN: Yes.

HER HONOUR: Are you certain that they're on their way? Do you know where they are right now?

PROSECUTOR NOTMAN: They claim they're at St Vincent's Hospital. I don't know.

HER HONOUR: Just what? Standing outside or that they're admitted or something.

PROSECUTOR NOTMAN: Getting medication or something and then they're coming straight here.

HER HONOUR: I will show it as ready. There's another Court ready to draw but I won't send that in if it's not ready yet.

MATTER STOOD IN LIST

Tony Smith.

PROSECUTOR YESSAYAN: I've taken that one over from Sergeant Notman. I just have Sergeant Bloomfield speaking with the informant, just so we can go ahead, ma'am.

HER HONOUR: Is the complainant here now?

PROSECUTOR YESSAYAN: I understand they're not here. No.

HER HONOUR: They're not here. So what's happening, sergeant?

PROSECUTOR YESSAYAN: Your Honour, it will--

HER HONOUR: Where's Mr Tighe? Would you call Tony Smith, please. It's now 25 past 10, sergeant. We'll wait till Mr Tighe comes back and then you can tell me what you're proposing to do.

PROSECUTOR YESSAYAN: Yes, your Honour. I have Sergeant Bloomfield speaking with the informant. I'll ask for her to come in to deal with the application.

HER HONOUR: Thank you. Mr Tighe, I'm re-mentioning the matter of Tony Smith. It's now 25 past 10 and there's still no complainant. Sergeant Bloomfield is going to be mentioning this matter, I understand. What's happening, sergeant?

PROSECUTOR BLOOMFIELD: Your Honour, I will make a formal adjournment application. We're not in a position to proceed. The complainant is not present. I just had the officer go down to print the subpoena and his email response. I can press on with the adjournment application if your Honour's happy to accept from the bar table--

HER HONOUR: You just tell me what the email response is going to be.

PROSECUTOR BLOOMFIELD: He was subpoenaed ten days ago. He did respond. The subpoena was sent by email. He responded to the officer, so he is aware of today's Court date. The officer spoke with him this morning. He said he was at St Vincent's Hospital receiving treatment. I do not know what the treatment is for, however, he explained that he receives this treatment

every two months. He has a window of five days in which he can get it. Today was the last day. He indicated to the OIC that he would be at Court around 11am. I understand that the Court is very busy. He has never indicated to the police that he was not willing to come, but I do understand that he has significant mental health issues, as your Honour will see from the facts.

HER HONOUR: I haven't read them yet.

TIGHE: Your Honour, may I just be excused to bring my client in?

HER HONOUR: Yes.

TIGHE: He's just outside. Sorry.

HER HONOUR: Sergeant, I'll just take a moment to read the facts.

PROSECUTOR BLOOMFIELD: Thank you.

TIGHE: Mr Smith's just here in the white shirt.

HER HONOUR: Thank you. You can take a seat. Sergeant, you're making the application now, are you? You're not waiting till 11 o'clock?

PROSECUTOR BLOOMFIELD: Well, my understanding is that your Honour wanted to hear this matter now.

HER HONOUR: No. I was just wanting an update.

PROSECUTOR BLOOMFIELD: Certainly. I'm in the Court's hands. If your Honour gives it till 11 o'clock, which is the time that the complainant told us he would be here--

HER HONOUR: All right. We will hold till 11 o'clock.

PROSECUTOR BLOOMFIELD: Thank you, your Honour.

HER HONOUR: Mr Tighe, we'll have to do that.

TIGHE: Yes, your Honour. Obviously, it's a matter that my client's here and ready.

HER HONOUR: I can appreciate. If he's not here, it's not going ahead.

TIGHE: It's incredibly frustrating in the circumstances, your Honour.

HER HONOUR: Yes. Of course.

TIGHE: I've only just been notified. Thank you.

HER HONOUR: All right. Don't go too far away.

PROSECUTOR BLOOMFIELD: Thank you, your Honour.

MATTER STOOD IN LIST

HER HONOUR: Mr Tighe, what's happening? Is yours still floating around, is it?

TIGHE: I believe the complainant's now here. I'm not sure who from my friend's office is appearing in the matter.

HER HONOUR: What was the name of your one?

TIGHE: Smith. Anthony or Tony Smith.

HER HONOUR: Got it. Smith. Sergeant Bloomfield.

TIGHE: Your Honour, it's now Sergeant Breckenridge. He's in it and I understand the complainant's here. So that matter's ready whenever the Court's ready.

HER HONOUR: After morning tea, at 12 o'clock, I'll give you some idea of how we're placed with it.

TIGHE: Yes. I understand. Thank you.

MATTER STOOD IN LIST

HER HONOUR: Mr Tighe, and I want to find out off you and Sergeant Breckenridge what's happening with this matter.

PROSECUTOR Breckenridge: Thank you, your Honour. I'm going to be making an adjournment application, mostly because of certain matters that I just want to put on the record as to why this matter's going to take a certain course today. The complainant was present at 11 o'clock after his appointment, as he had foreshadowed earlier when my colleague, Sergeant Bloomfield was addressing the Court. I spoke to him. I saw that he had a brief conversation with the duty lawyer. It was my understanding that he was ready to give evidence and the matter was otherwise ready to proceed.

About five minutes before - not even, about 20 minutes before - we came back into the Court room after the morning tea adjournment the OIC noticed some fresh SMS messages on her police mobile phone from the complainant. I won't say exactly what he said but he expressed concerns about how he had been treated by the justice system in the past and how he anticipated he would be treated by the justice system today and into the future and stated on that basis he was going to be departing and did not intend to give evidence today. I, of course, requested the OIC to message him and explain the inevitable consequences of that, which is that the matter would almost assuredly be withdrawn and dismissed. He was of the view that on a future date, if the police had more evidence, then perhaps he'd be more likely to attend.

It's not really open for him to make that assessment. In my view, the matter was perfectly capable of proceeding today on the brief that it had if he was present. I realised over morning tea I actually remembered the complainant and the accused. I actually prosecuted a previous matter between the same parties about a year ago, another domestic violence matter, and I thought perhaps that when I remembered that personal familiarity that that might give him some level of comfort knowing that I was a known quantity as a prosecutor. To no avail. He is otherwise not comfortable with the usual process in giving evidence today.

So I formally make the adjournment application on that basis. I anticipate a certain outcome to that application, for obvious reasons, but I feel as though it would be remiss of me not to. I only say that because he did get in the witness box and give cogent evidence that resulted in at least one finding of guilt in an unrelated matter between the parties in the past. He is capable of doing it and

he is capable of being a witness that can support a finding of guilt in another matter but, of course, I think there was a bit of a leading a horse issues on the last occasion as well. That's my adjournment application, your Honour.

Thank you. Formally, what do you have to say, Mr Tighe?

TIGHE: Your Honour, the application's opposed. I think I indicated that earlier today when somewhat of a half adjournment application was advanced when the complainant wasn't before the Court. We're again in the same situation at 12.36pm, and I thank my friend for quite fair submissions in relation to the communications.

HER HONOUR: Yes. I think so, too.

TIGHE: And I've seen my friend and the officer-in-charge making efforts to contact this person throughout the morning, but obviously there are concerns that have been communicated to the Court about a perception of the treatment by the justice system and that it was his decision to attend for a brief period of time and then leave. How can we have any confidence, in my submission, that--

HER HONOUR: That he's going to be a willing participant.

TIGHE: That's so.

HER HONOUR: I've read the facts and there's certainly a history between the parties.

TIGHE: That's so. My client's travelled down from Queensland for the purpose of the hearing and he's here today.

HER HONOUR: No. I hear you.

TIGHE: I can continue, your Honour, but--

HER HONOUR: No. Sergeant, look, I have read the facts. Certainly, there is a lot in those facts that certainly describes a history between the parties and very much what you are saying about the complainant today I get that sense when I read the facts, that things are not that straight forward. It is very clear that the police have done everything they possibly can to try and comfort the complainant and assure him that they do have a place in the system, but they have decided to leave. You cannot tell me that it is going to be any different on the next occasion and for that reason I DO NOT GRANT THE ADJOURNMENT.

PROSECUTOR BRECKENRIDGE: May it please the Court.

TIGHE: The Court pleases.

PROSECUTOR BRECKENRIDGE: Thank you, your Honour. On the basis of that adjournment have been refused, I withdraw the single sequence of use carriage service to menace, harass, offend on the authority of Sergeant Yessayan.

HER HONOUR: Nothing to say about that, Mr Tighe?

TIGHE: No. I don't oppose that course, your Honour. May I just have a brief moment to speak with my client?

HER HONOUR: Yes, course. Yes.

TIGHE: Your Honour, I'm instructed to make an application for costs.

HER HONOUR: Good on your client for doing that. What have the police done that's wrong?

TIGHE: Well, your Honour, in relation to the conduct of the matter today, I can't say that anything they've done is wrong.

HER HONOUR: Absolutely.

TIGHE: It's a matter that my client's obviously aggrieved by the fact that this is a situation that's seen him charged. It dates back to 2023. He's been self-represented for a period of time. He has paid some money in relation to obtaining of cyber trace report in preparation for this hearing.

HER HONOUR: They're not professional costs.

TIGHE: No. In terms of obviously engaging a legal representative, that's something that has fallen upon him.

HER HONOUR: So what head under 214 do you say that comes under - and then I can quickly dismiss your application because I don't see any basis for it.

TIGHE: Yes. Your Honour, I've dispensed advice in respect of the prospects of success of the application.

HER HONOUR: Police have done nothing wrong.

TIGHE: It's a situation that what the Court has before it today, in my submission, this is a matter for which, of course, the Court was to consider the elements of the charge and whether or not a reasonable person might determine, after considering all of the circumstances, that the conduct from the accused and my client was to the effect of it being menacing, harassing or offensive. That is by virtue of one - it was supported by one statement only, which is that of the complainant. This is a (1)(vi) case and it's a case that, as my friend fairly indicated, that there were prior matters that involved these two previously and that, in effect, your Honour, I believe the only - it may not necessarily - your Honour's likely not to agree, but I think it's numbered (d), other relevant circumstances, subs (d). That's really all I can hang my hat on with the application, your Honour.

HER HONOUR: I have read the facts. Looking at the facts, the police certainly had reason to deal with your client in the way that they did. I am not convinced that they have done anything that they should not have done. They have tried to secure the attendance. All morning they have been waiting for him. The Court has waited for him. He got here at 11 o'clock and then he took off shortly thereafter. That is not the police's fault. The police have done nothing that would bring them within one of the heads of 214, so YOUR APPLICATION

FOR COSTS DOES NOT SUCCEED, I am afraid, Mr Tighe. There is no basis for it.

TIGHE: As the Court please.

PROSECUTOR BRECKENRIDGE: May it please.

HER HONOUR: Any searches that he did, they're not professional costs but I appreciate what you say about legal fees. But, no.

TIGHE: Thank you, your Honour.

PROSECUTOR BRECKENRIDGE: Your Honour, to be clear, there was no suggestion that the police had done anything wrong in terms of what's happened today.

HER HONOUR: No. But there's got to be a reason for the costs being incurred.

PROSECUTOR BRECKENRIDGE: I understand.

HER HONOUR: Particularly in these types of matters. Thank you.